

NEW BRUNSWICK BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

PRE-HEARING CONFERENCE JULY 22ND 2003

Delta Hotel, 10:00 a.m.

IN THE MATTER OF a Board Order dated June 12, 2002 to hold a generic hearing in respect to market issues and conduct related to the sale of gas and customer services in the natural gas industry in New Brunswick

Before: Chairman David C. Nicholson

Vice Chairman Alyre Boucher

Commissioner H. Brian Tingley

Commissioner Robert Richardson

Board Counsel Ellen Desmond

Board Staff John Lawton

Doug Goss

Board Secretary Lorraine Legere

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CHAIRMAN: Good morning, ladies and gentlemen. This is a pre-hearing conference in reference to a generic hearing which the Board signed an order on on the 12th of June 2003 in respect to the market issues and conduct related to the sale of gas and customer services in the natural gas industry in New Brunswick.

This generic hearing, in the opinion of the Board, was necessitated by changes to the Natural Gas Distribution

Act and a new regulation which was passed in the spring of this year.

As most of you have been here before, you are aware of some housekeeping items. And that is that when you wish to speak, raise your hand so that the master of ceremonies in the rear can ascertain which mike you are sitting at. Or, alternatively, I guess if you just push the button and that will engage your microphone. Sorry, it's the other system I'm thinking of.

My intention this morning is that we would -- we will make up our agenda as we go, I guess is what I'm going to say. But a couple of things. First of all, in the back of the room, if you don't already have it, there is a tentative filing schedule dated the 12th of June 2003. Madame Secretary, they were in the back of the room, were they? So everyone should have one of those at this time.

My intention is to go through the notices of intention to be an intervenor which have been filed with us, and to get your representation on the record. And then go back through that list again and give each party the opportunity to tell the Board in their own words why they believe that they should be given full intervenor status in this matter.

I'm trying to keep things in a manageable size. And I

want to tell you that there are some that, certainly it's just my own feeling having read what they had to say, that their only interest is to keep informed as to the events that are occurring here.

And the Board has approached the shorthand reporting service and made arrangements so that we will be getting overnight service on transcripts, which we will then be putting on our web page so that you can access that, hopefully, before close of business on the day following the hearing. So that should, hopefully, suffice the necessity of some people not being on the full intervenor status and causing more paper and correspondence to flow.

So if you could just indicate who is here. I will go through the list. Competitive Energy Services?

MR. SORENSON: Here.

CHAIRMAN: Okay. Would you punch your button and --

MR. SORENSON: Jon Sorenson, here.

CHAIRMAN: Mr. Sorenson, thank you. Department of Natural Resources and Energy?

MR. BARNETT: Don Barnett and Jim Knight from -- it's probably called the Department of Energy now, Mr. Chairman.

CHAIRMAN: You and I had a conversation yesterday --

MR. BARNETT: That's correct, yes.

CHAIRMAN: -- though it may be called that, but it's not that because the Act hasn't been changed.

MR. BARNETT: I'm not sure whether the Act will be changed retroactively.

That's the only comment I would make, Mr. Chairman. Anyway we will go by the Department of Natural Resources and Energy for the time being.

CHAIRMAN: And Emera Inc.? Makes that easy. Enbridge Atlantic Energy Services Inc.?

MR. MACDONALD: Mr. Chairman, Enbridge Atlantic Energy Services is not represented officially at this meeting. But David Teichroeb has indicated any correspondence can be directed to him.

CHAIRMAN: All right. Who is speaking on his behalf now?

MR. MACDONALD: I'm sorry, Rod MacDonald. I am --

CHAIRMAN: Thank you. Thank you, Mr. MacDonald. And Enbridge Gas New Brunswick Inc.?

MR. HOYT: Len Hoyt from McInnes Cooper for Enbridge Gas New Brunswick.

I'm joined by Rock Marois who is the general manager of EGNB and Tim Walker who is the manager of corporate affairs.

CHAIRMAN: Thank you, Mr. Hoyt. Irving Energy Services Limited?

MR. BROWN: Mark Brown here representing Irving Energy, Mr. Chairman.

CHAIRMAN: Maritime Natural Gas Pipeline Contractors Association Inc.?

MR. ROSS: Mr. Chairman, David Ross representing the Association.

CHAIRMAN: I'm sorry, who is that again?

MR. ROSS: David Ross, thank you.

CHAIRMAN: Nova Scotia Department of Energy? Makes that easy. Potash Corporation of Saskatchewan?

MR. ZED: Peter Zed, Mr. Chair.

CHAIRMAN: Thank you, Mr. Zed. WPS Energy Services Inc.?

MR. STEWART: Christopher Stewart and I'm joined today by Edward Howard of WPS.

CHAIRMAN: Thank you, Mr. Stewart. Park Fuels Ltd.

MR. LEROY: Bill LeRoy, Mr. Chairman.

CHAIRMAN: Thank you, Mr. LeRoy. New Brunswick Natural Gas Association?

MR. MACDONALD: Rod MacDonald, President of the New Brunswick Natural Gas Association, Mr. Chair.

CHAIRMAN: Thank you, Mr. MacDonald. All right. Each of you have -- are there any other parties here who are applying for intervenor status at this time even though they didn't put in a written notice? That doesn't mean that I countenance it, but I just wanted to make sure. Okay. Let's go back.

Competitive Energy Services Inc, Mr. Sorenson, why do you believe the Board should grant you full intervenor status?

MR. SORENSON: Mr. Chairman, thank you. I have been involved with the natural gas industry since its inception. Initially with WPS Energy Services as a marketer soliciting customers, working closely with Maritimes NorthEast Pipeline and currently with Competitive Energy Services. We are a management company consultant that represents customers, so it is in our interest to make sure that the market remain competitive in the best interest of our customer base.

CHAIRMAN: Do you have any certificates at all from the Board? I am just checking through here.

MR. SORENSON: Yes, we do.

CHAIRMAN: And that would be for?

MR. SORENSON: As a management -- it's actually threefold. Management company, consultant, broker.

CHAIRMAN: My understanding from your intervention is that you wish to proceed in the English language?

MR. SORENSON: Correct.

CHAIRMAN: And you have no preference as to whether the hearing be written or oral?

MR. SORENSON: Correct.

CHAIRMAN: Good. Thanks, sir.

MR. SORENSON: Thank you, Mr. Chairman.

CHAIRMAN: All right. Mr. Barnett?

MR. BARNETT: Mr. Chairman, on behalf of the Department, the natural gas file has been an active file for us since 1997. With the advent of Sable Gas in 1999 we followed that. The award of the franchise to Enbridge Gas New Brunswick. And seeing the gas market develop in an orderly and timely manner is something of keen interest to the Province and to the Department, sir.

CHAIRMAN: I'm tempted to say a whole pile of things, but I won't, sir.

MR. BARNETT: Maybe it's a good job I missed that, Mr. Chairman.

CHAIRMAN: And Emera is not represented here today. And Mr. MacDonald has spoken for Enbridge Atlantic Energy Services Inc., but I think I am going to turn this one on Mr. Hoyt, if I might. He is always able to handle these matters.

Explain, Mr. Hoyt, if you could, what has the intention been in reference to Enbridge Atlantic Energy Services Inc.? In other words, my pure hearsay evidence is that it's to be wound up and cease to do business as soon as it can. Is that correct?

MR. HOYT: Under the new regulation over the next year or

two, Enbridge Atlantic will be winding down its operations. But during that time has obligations to meet its obligations under customer contracts and so on. It remains a licenced marketer with the Board. And they have also actively participated in the market since its inception, and I think would bring a lot to the issues to be discussed.

CHAIRMAN: I guess there is a question that I -- there is a question that's begging to be asked. And that is why can its interest not be represented in this matter fully by your client and yourself?

MR. HOYT: Well I think that their -- although in some aspects the interest may be aligned, there will certainly be issues that come up that the two entities won't necessarily be coming from the same place.

CHAIRMAN: Okay. Thank you, Mr. Hoyt. Irving Energy Services, Mr. Brown?

MR. BROWN: Mr. Chairman, as a licensed marketer in the Province of New Brunswick and an active participant in the growth of the market, Irving Energy requests a standing as a full intervenor in this hearing as changes to the Gas Distribution Act may have a negative impact on our business plan going forward.

CHAIRMAN: Thank you, Mr. Brown. Maritime Natural Gas



Pipeline Contractors Association Inc.?

MR. ROSS: Mr. Chairman and Board members, as we stated in our notice of intention to participate, our association members are natural gas pipeline construction companies and our membership includes a significant number of individuals who are highly knowledgeable regarding the industry, its present level of development and its potential for the benefits of the provincial economy.

It would be fair to say that our members and business colleagues represent a very broad cross-section of some 150 to 200 New Brunswick medium to large size commercial businesses. That's in the range of a million to 25,000,000.

Most of these 200 businesses are potential natural gas commercial customers. A significant number of them are also potential players in the New Brunswick natural gas industry as suppliers of goods or services that complement the industry. These businesses are well connected throughout the New Brunswick business community and they represent a community of interest that can be either influenced favourably or unfavourably towards growth and development of the industry. Presently they are substantially unfavourably orientated towards the industry as it has been developed to date. Most of these

businesses, however, would be delighted to participate in an active way in a revitalized NB natural gas industry.

We feel we have a very important positive contribution to make to the Board and we feel it's in the best interests of our members and stakeholders that the industry move forward quickly.

We respectfully request the Board's granting of formal status to our association.

CHAIRMAN: Mr. Ross, have you got a copy of the -- a listing of the members of your organization that you could share with the Board?

MR. ROSS: I do not have -- Mr. Chairman, I do not have that listing with me but I certainly can provide that to the Board.

CHAIRMAN: All right. Mr. Ross, what is your personal participation in the natural gas industry in the province?

MR. ROSS: I am an employee of M.R. Martin Construction Company and formerly of Robinson Construction Company, a contractor to a large portion of the pipeline. I'm also the secretary of the Maritime Natural Gas Pipeline Contractors Association.

CHAIRMAN: Okay. M.R. Martin Construction, what work have they done and when was the last time they did it in reference to any natural gas construction in this

province?

MR. ROSS: M.R. Martin Construction has not done any pipeline construction. However, Robinson Construction has done a significant portion.

CHAIRMAN: Robinson Construction is the company with which you are no longer associated, but is it one of the members of this association that you are representing today?

MR. ROSS: Yes. I am still associated with Robinson Construction as well.

CHAIRMAN: All right. When was the last time and what was the nature of the participation in the natural gas market in the Province of New Brunswick that Robinson Construction had?

MR. ROSS: Robinson Construction constructed as a subcontractor approximately 60 kilometres of natural gas mains distribution in Moncton, Dieppe, Oromocto and Fredericton.

CHAIRMAN: And when was that, sir?

MR. ROSS: That was done in 1999, 2000 -- or sorry -- in 2000 and 2001.

CHAIRMAN: And is that the subject of litigation before the courts today?

MR. ROSS: I believe it is, yes.

CHAIRMAN: How long would it take you to get a listing of

the members of your organization so the Board can look at it, sir?

MR. ROSS: I could have a copy of that listing to you tomorrow.

CHAIRMAN: Today is the day we are going to rule on whether or not you can have full intervenor status or not. I would suggest that when we take our break that we will give you sufficient time to contact someone to get that list so that it can be put before the Board.  
  
Okay?

MR. ROSS: Thank you, sir.

CHAIRMAN: Thank you. There is no one here representing the Nova Scotia Department of Energy. So, Mr. Zed, Potash Corporation of Saskatchewan Inc.?

MR. ZED: Thank you, sir. PCS, as you are aware, is the only local gas producer in this province and as such is interested in all market issues related to the sale of gas and customer service in the natural gas industry. We are particularly concerned with the legislative and regulatory framework governing the natural gas industry and its suitability to PCS as a local producer and its role in promoting the development of the New Brunswick natural gas industry.

It certainly isn't any secret, it's a matter of public record, that PCS holds the rights and intends to explore

for more gas in the Sussex area and has to date invested, again a matter of public record, millions of dollars in such exploration and production. And for that reason continues to be very interested in these proceedings.

CHAIRMAN: Your client doesn't want to serve anybody but itself, does it, Mr. Zed, and by that I don't mean to reflect on your client. I mean in other words, it doesn't wish to market gas to anybody except itself, is that correct?

MR. ZED; Certainly there is no intention at present to market gas to anybody other than ourselves. But as you may recall during the franchise application hearings, long-term, if sufficient quantities of gas are discovered then there are plans to either move it into the Maritimes & Northeast Pipeline or perhaps enter discussions with Enbridge Gas Distributor for distribution in the Sussex area. That's all prospective but -- because currently there are only sufficient quantities to utilize in the plant.

CHAIRMAN: Good. Thanks, Mr. Zed. Mr. Stewart?

MR. STEWART: Thank you, Mr. Chairman. WPS Energy Services, as I believe you are all aware, is a certified gas marketer and an active participant in the natural gas market in the province. Clearly we would be directly

affected and have been directly affected by the legislative changes and the establishment of the new rules as it were for the marketplace going forward.

Mr. Chairman, if I might I just echo your comments or the concerns that you raise with respect to the participation as a full intervenor of Enbridge Atlantic Services. As I looked at the correspondence that was filed by that organization, I think it's the letter dated June 13th, I mean the opening paragraph says that Enbridge Atlantic has ceased new business development and has in fact exited the marketplace I guess other than its obligations under its existing contracts.

Mr. Chairman, if the purpose of this proceeding is to set the sort of new rules for the marketplace going forward at least for the next five or six years, I would echo your concerns and suggest to the Board that granting intervenor status to a legislatively-barred market participant would only complicate these proceedings and be of no particular value to any of us.

CHAIRMAN: Thank you, Mr. Stewart. I will give Enbridge Atlantic Energy Services Inc. an opportunity to have a last word on that before we conclude, but before that Park Fuels Limited, Mr. LeRoy, as I read your request you have just simply missed the date but you are a marketer and do

have an interest in the marketplace, and I don't wish to put words in your mouth but I'm just sort of paraphrasing what I read from that.

Is that a fair representation of your situation?

MR. LEROY: That is correct, Mr. Chairman, and any changes of course to the Act do affect us directly going forward.

CHAIRMAN: Okay. Well I think the Board's intention is to have active players who can -- who are participating in the marketplace or plan to, et cetera, to bring the best evidence in front of us that we can have. Anyway, we will consider your request and after the break we will let you know.

New Brunswick Natural Gas Association, Mr. MacDonald, back to you, sir.

MR. MACDONALD: Mr. Chairman, thank you for the opportunity. In addition to the letter that you have in front of us, I think it's imperative to realize that our association as identified there, consisting of approximately 42 companies, and I use the word approximate because we are in the process of signing some new companies up as we speak.

CHAIRMAN: Can you outline for us -- when you say 42 companies, what is the nature of their business normally?

MR. MACDONALD: Okay. Mr. Chairman, some of those members

are present in front of you right now, the various marketers, the utility, contractors who are involved in the conversion of equipment, manufacturers who are involved in the supplying of that equipment to be converted, is a representation of some of the members that we have.

And in respect to your question earlier, we will make the list of members of our association available to you today at the break.

I think it's imperative for us to, as an association with respect to the fact that we do have members here who are asking for intervenor status to represent their own personal interests -- it's imperative to look at the association that we represent as a whole of which these members are a part but may not necessarily represent the interests of the entire association. And that's why we have asked for intervenor status.

CHAIRMAN: How do you -- how would you characterize the interests of the entire association differing from those members that are here? For instance, Enbridge Atlantic Energy Services is one of the members of your association?

MR. MACDONALD: That is correct.

CHAIRMAN: And so is Enbridge Gas New Brunswick Inc.

MR. MACDONALD: Correct.

CHAIRMAN: So how -- some equipment installers et cetera are



members of your organization, as I understand it. But how would the interests of the entire association differ from the two Enbridge firms that I have just outlined?

MR. MACDONALD: I think I will refer back to Mr. Hoyt's response as to the co-relation between Enbridge Atlantic --

CHAIRMAN: Oh no, no. You have to be original.

MR. MACDONALD: It is believed, sir, that within our association there are different viewpoints as it relates to different areas, whether it be in this case the marketing side of the business or whether it be with government and public safety is another issue in that. And we feel that it is imperative that this opportunity that is presented to the association gives us that chance to show the Board what the association's opinion is, which may in fact be different than some of the members that we have that are asking for intervenor status in front of you here today.

CHAIRMAN: Good. Thank you, Mr. MacDonald.

MR. MACDONALD: Thank you.

CHAIRMAN: And just before we do take a break I will go back quickly to you and say do you have anything that you want to add as a result of Mr. Stewart's participation in my questions, that is, for Enbridge -- I guess, Mr. Hoyt, you

can do it, if you want to, for Enbridge Atlantic Energy Services Inc.

MR. HOYT: Yes, I would like to comment on two of the interventions, Mr. Chairman.

First with respect to Mr. Stewart's comments on the EAS intervention. Mr. Stewart used words like exited the market and legislatively-barred. I think that he is getting a little bit ahead of himself in that the legislation clearly provides for EAS over a period of time to wind up its operations, and that this isn't -- there is no immediate prohibition on them being involved in the market and they will in fact have those obligations to satisfy.

In the meantime all of the requirements of Section 69 of the Gas Distribution Act remain in place requiring separation between Enbridge Gas New Brunswick and Enbridge Atlantic Energy Services. And as I pointed out earlier, Enbridge Atlantic is one of three or four active marketers or parties who have acted actively as marketers in the past couple of years and will bring I believe a wealth of experience in terms of some of the issues and the problems and things that might be done a little differently to try and improve the market going forward.

And just to refer to one of Mr. Stewart's questions

that was submitted on behalf of WPS, number 11 indicates how will the Board prevent market manipulation toward EGNB so that in 2008 the portfolio of contract doesn't get rolled to Enbridge Atlantic Energy Services or another preferred marketer. And despite the prejudicial way in which the question is asked, I think again it brings forth issues where Enbridge Atlantic Energy Services may in fact be involved.

So I would speak in support of them being allowed to participate as a formal intervenor.

CHAIRMAN: Good.

MR. HOYT: The second intervention I would just like to comment on briefly is that of the Maritime Natural Gas Pipeline Contractors Association. And as Mr. Ross indicated, the membership essentially consists of a number of pipeline construction companies and in our experience with the association --

CHAIRMAN: Mr. Hoyt, can I hold you on that, and I will tell you why, is that the Board wants to see the list of participants from Mr. Ross. And so we will go revisit that again, that one particular one, okay.

MR. HOYT: I will save my comments for then.

CHAIRMAN: Thank you, sir.

MR. HOYT: Thank you.

CHAIRMAN: Mr. Ross, we will give you some time over this break to get that list and you inform the secretary, Mrs. Legere, when you have gotten that. I would ask all of the intervenors to take a look at the tentative agenda that we have handed out -- or filing schedule we have handed out today and, secondly, if you would please to think about how we continue to proceed today? In other words, just toss it out. Do you see any use of us going through the Board's questions and the questions which have been filed up until today's date to see if there is consensus here that, yes, this is a good question, or, no, it's totally irrelevant, not arguing on it, but just to canvass to try and assist in reducing the number of questions that are floating out there, or any other suggestions that you might have, so that when we come back we can address how it is that we proceed today and as well up to those tentative dates that we have, the 13th and 14th I believe.

Now just for everybody's understanding, it has been the Board's approach when we say hearing what we want simply is you in the room so that we can discuss the questions, et cetera, et cetera, et cetera. We have no intention of calling witnesses per se at this time. It's just to be able to say, look, the Board has reviewed everybody's comments, here is our tentative responses, here

is the problems we see, what do you have to say? That's sort of the way we are thinking of proceeding.

Mr. Zed?

MR. ZED: Mr. Chair, I don't know if this is the appropriate time or not, but I will just formally make the Board aware that on behalf of PCS I intend to request that this hearing be expanded beyond those questions to deal in particular with issues relating to our franchise, to the local producer franchise, and I don't know when an appropriate time might be to make that representation to the Board.

CHAIRMAN: Well probably the 15th of August, Mr. Zed. I'm being supercilious. Not right now. Let's deal with these other matters and then at the end of that perhaps that's the time to do that.

MR. ZED: That's fine. Thank you.

CHAIRMAN: Good. Thanks. We will take a break. And, Mr. Ross, you can let us know.

(Recess - 10:35 a.m. - 11:10 a.m.)

CHAIRMAN: During the break the Board has addressed the granting of intervenor status to most of the participants. And for the sake of the record, Competitive Energy Service -- all of the following -- sorry, no, I will do it individually.

Competitive Energy Services will be a full intervenor. Also the Department, which my confrere, Mr. MacNutt, claims is the Province and not the Department. But we won't go into that.

And Emera Inc. who is not represented will not be granted full intervenor status. And I hope whoever is in touch with them indicates that the transcripts, et cetera, will be on our web site and they can access that information there.

Enbridge Atlantic Energy Services, the Board notes what has been said on behalf of them in that -- oh, wait hang on just a minute. No, sorry. Put that aside for a sec'.

Enbridge Gas New Brunswick, of course. Irving, of course. The Maritime Natural Gas Pipeline Contractors is off to the side for a moment. The Nova Scotia Department of Energy will not be granted intervenor status.

Potash Corporation will be, as will WPS Energy and Park Fuels. The New Brunswick Natural Gas Association will also be granted full intervenor status. And we, of course, note what Mr. MacDonald said, that there could well be the Association have opinions which differ from the other participants in this hearing.

I'm going to put Enbridge Atlantic Energy Services off

to the side for just a moment, if I might. And I will go now, Mr. Ross, to your membership roster. Thank you. And it's pretty clear. You have divided them up into three separate ones.

The Heritage Project in Nova Scotia, you are referring to the distribution franchisee over there, I presume?

MR. ROSS: Yes, Mr. Chairman.

CHAIRMAN: Yes. Okay. Now the prime contractors or subcontractors which on your list which we have provided to -- we will provide to the shorthand reporter as number 1. And there are three of those that you have listed as number 1. And you say they are prime contractors or subcontractors in the 2000, 2001 series. That is HEF Industries Ltd., Robinson Construction Company Ltd. and Roso Enterprises Ltd. Is that correct?

MR. ROSS: Yes, Mr. Chairman.

CHAIRMAN: And those are the ones that presumably have the litigation that's presently in the court system?

MR. ROSS: Yes, sir.

CHAIRMAN: Okay. Then you have a group of others that are listed as number 2. And you below say, currently active in natural gas industry Heritage Project Nova Scotia 2002, 2003, subcontract work for a couple of other New Brunswick firms.

What is the nature of the grouping of number 2, Mr. Ross, can you tell us that? What sort of services did they supply?

MR. ROSS: The companies keyed as number 2, Mr. Chairman, have been basically subcontractors in the construction of natural gas service connections or in the case of the work in Sussex of pipeline. And so some have a more significant role than others, but they are involved in supplying either labour services or construction services, material and equipment and that sort of thing.

CHAIRMAN: Okay. So it's your position -- and I just want to make sure on this, that you are here representing them in that capacity?

MR. ROSS: Yes, sir.

CHAIRMAN: Not as possible customers of the natural gas distribution system?

MR. ROSS: Well, the --

CHAIRMAN: It's rather -- just to explain and not to get you off guard here. It's rather important that when a possible intervenor comes and says I want to be an intervenor that we know the nature of the intervention that they are going to be pursuing. So that during the questioning if you start getting off course -- that's why I'm paid the big bucks, is to make sure you go back and



ask the questions that are relevant to the nature of your intervention. That's all, Mr. Ross, that's why I'm asking these questions.

MR. ROSS: Mr. Chairman, we just received this information package yesterday, so we haven't had a chance to convene the members of our association. But as I understand it from executive discussion, the purpose of our intervention would be to focus on the positive things that could be done within the industry from a market development perspective. So it's not necessarily focused on behalf of these particular companies here. But because these companies have performed a substantial amount of work in the past and would like to perform more, they have an interest in the development of the marketplace. And so the growth of the marketplace is of great interest to them.

CHAIRMAN: All right. You understand that what we are doing here, and we have attempted to say it in our Board order is that we want to have a hearing in reference to the market issues and the conduct of the market relating to the sale of natural gas and customer services in the industry in New Brunswick that those issues have been created really because of the change in the legislation that has occurred in the spring of this year.

MR. ROSS: Yes.

CHAIRMAN: You understand that?

MR. ROSS: Yes, we do, Mr. Chairman.

CHAIRMAN: All right. And with all that background on the record, then we will grant your association intervenor status.

MR. ROSS: Thank you, Mr. Chairman. Okay. Now let's go back to the last remaining one. That's Enbridge Atlantic Energy Services Inc. My fellow commissioners and I would like to have some comment. And I'm afraid, Mr. Hoyt, we are back to you on this one.

It's unclear. I have gone back and looked at the regulation. And if I may paraphrase it, and if my interpretation is incorrect, I know you will correct me.

But that pretty basically is that Enbridge Gas New Brunswick as a distributor can sell the molecule provided that Enbridge Atlantic Services Inc., which is an associated company, does not sell the molecule or renew contracts. Is that a fair interpretation?

MR. HOYT: My understanding, Mr. Chairman, is it's not that it not sell, but that it not enter any new contracts.

CHAIRMAN: It could renew then?

MR. HOYT: No. Let me just find the provision.

CHAIRMAN: Yes. All right.

MR. HOYT: Yes, it is Section 3 2 of the new regulation provides that EGNB can only sell gas if Enbridge Atlantic Energy Services does not enter into a contract with a customer for the sale of gas after the commencement of the regulation. So my understanding is that the company is not entering into any new contracts or renewing the contracts that are out there.

CHAIRMAN: All right. And since the promulgation of that reg, has your client sold -- entered into a contract to sell gas?

MR. HOYT: Yes, they have.

CHAIRMAN: Now what happens if Enbridge Atlantic Energy Services Inc. in fact enters into a new contract to sell gas?

MR. HOYT: Then we would have a big problem and it won't happen.

CHAIRMAN: You sure would. Pardon me?

MR. HOYT: It won't happen.

CHAIRMAN: All right. So therefore what is their role in the marketplace today and out into the foreseeable future?

MR. HOYT: They have existing contracts out there under which they have obligations to supply gas to customers.

CHAIRMAN: Now how long do those -- what is the longest of those contracts?

MR. HOYT: My understanding is that it's up to two years.

CHAIRMAN: From today?

MR. HOYT: Yes.

CHAIRMAN: Go ahead, Mr. MacDonald?

MR. MACDONALD: Mr. Chairman, specifically March of 2005.

CHAIRMAN: March of 2000-and?

MR. MACDONALD: '5.

CHAIRMAN: And '5. So all they will do between now and March of 2005 is  
serve those contracts.

MR. HOYT: And my understanding is that in terms of number of contracts  
they may have the most contracts out there of any marketer.

CHAIRMAN: Okay. On the basis of that understanding the Board may have  
another question that it may put in the list of questions. But  
anyhow, on that basis and with that explanation on the record,  
certainly between now and March of 2005 Enbridge Atlantic Energy  
Services Inc. is part of the marketplace in this province and  
therefore we will grant full intervenor status.

So I think that's -- and correct me if I am wrong, but I think we  
have dealt with all of the intervenor matters.

I just want to clear up one thing that staff brought to my  
attention when we went back in. What we are doing today is that we  
are looking at the questions that should

be -- that are legitimate. In other words what questions should be on the table as it were for all of the participants here to put in their opinions on and the answers will come after that hearing in August. So if we go through the list of questions it's whether or not the question is legitimate, not the answer, but should we address that question.

Now let me go around the room here and ask each of you during the break if you have any thoughts in reference to our agenda to be followed today and for that matter if you have any on that tentative list that we handed out this morning. So let me start with Competitive Energy Services Inc.

MR. SORENSON: Thank you, Mr. Chairman. A question for you, if I may address the Board. Would now be a time -- Mr. Walker with Enbridge Gas New Brunswick has presented a proposal to some of us in this room about forming a work group to go through these questions and come up with a plan in lieu of --

CHAIRMAN: With frankness, I think before we decide a work group would be appropriate we should find out what questions are appropriate. I think that's the cart before the horse.

MR. SORENSON: Thank you, Mr. Chairman.

CHAIRMAN: Right. So Competitive Energy Services, what are your thoughts as to how we proceed today?

MR. SORENSON: These questions are suffice, Mr. Chairman. In other words, all the questions that are here I believe are applicable to the discussion, so should carry forward.

CHAIRMAN: All right. The proposal that I had put before we went, and that's why I gave my little blurb a minute ago, is is there any advantage in us going through the questions that the Board posed plus the questions posed by the intervenors, to see if there is consensus in the room that that question is legitimate and should be addressed?

MR. SORENSON: I do not believe that's necessary.

CHAIRMAN: Okay. That's Competitive Energy Services. Department of Natural Resource and Energy?

MR. BARNETT: Mr. Chairman, we have looked at the questions as compiled and though in some of the answers I guess we would suggest it may be addressed in the legislation, I don't think we are prepared to eliminate any of the questions at this point in time, sir.

CHAIRMAN: In other words, you concur with Competitive Energy Services?

MR. BARNETT: Yes, if that was exactly their position.

CHAIRMAN: How about Enbridge --

MR. SORENSON: Yes, that was our position.

CHAIRMAN: Enbridge Atlantic? They can't say anything because they are not here. Well we will just pass them by at this point. How about EGNB?

MR. HOYT: Yes, we would like to comment on the questions, Mr. Chairman. As part of the notice that went out on June 27th it indicated that that was part of the purpose for today was to review and comment. We don't want to comment on each individual question but we certainly have some general comments and Mr. Marois would like to speak generally as well.

CHAIRMAN: Okay. How about Irving?

MR. BROWN: We don't have any issue with any of the questions as are they are currently --

CHAIRMAN: You reserved, as is normally your wont, the right to do it.

So I'm just waiting until you do. Okay. Thanks, Mr. Brown.

MR. BROWN: Thank you, Mr. Chairman.

CHAIRMAN: Mr. Ross?

MR. ROSS: Mr. Chairman, we don't have any particular position I guess regarding the questions that are listed at present. We would certainly be prepared to acknowledge what the Board would like to do with those, but we don't have any particular position one way or the other on the questions that are listed so far.

We do note that Mr. Zed raised a matter of the possibility of posing additional questions and we would like to raise that issue as well, and we would be content to let the Board determine whether or not they believe the questions that could be posed are proper to come before the hearing.

CHAIRMAN: All right. We will go back around again here. Just trying to get a sense of where the parties want to go. Mr. Zed, on the questions that are posed or additional questions?

MR. ZED: On the questions that are posed, we have always taken the view that there is no such thing as a stupid question or a silly question. And if some of the answers to these questions are apparent then they will get resolved pretty quickly, but we would certainly be in favour of allowing parties to ask the questions that they posed.

With respect to additional questions I do have one issue and I will either bring it up now or later at your --

CHAIRMAN: Okay. Thanks, Mr. Zed. Mr. Stewart?

MR. STEWART: Mr. Chairman, while not an extensive commentary I think it is appropriate to look at some of the questions, not so much as Mr. Zed says whether the



questions are stupid or not, some I think are variations on a theme and some I think which is the exercise we are going through now or going to go through in the next few minutes is to try to sort of set the scope of the hearing. And we do have some comments about whether some of the questions are posed by some of the parties are beyond the scope of what we are talking about today, not that they are perhaps not valid questions per se, but whether they should be on the agenda for this session, as it were.

CHAIRMAN: Okay. Park Fuels, any comments?

MR. LEROY: We currently have no issues with the questions.

CHAIRMAN: Thanks, Mr. LeRoy. How about Mr. MacDonald, your association?

MR. MACDONALD: Mr. Chairman, we support the questions that are there but also to make comment on not to preclude the possibility of the additions of future questions that may in fact be part A or part B of the existing list that you have here.

CHAIRMAN: I stand to be corrected or a different input into this, Mr. MacDonald. But what we are trying to do today, as Mr. Stewart has just said, is define the scope of the hearing and for people to start reserving the right to add additional questions in the future is probably not very orderly. In other words, we have got to try and define

what the issues are today and that's -- or the Board may have to rule on some of them, and will do that. But we should be trying to do that now.

MR. MACDONALD: Understandably, Mr. Chairman. Possibly it's just in terms of discussion on the existing questions, there may be other points that will come in that will broaden the scope of that question but be able to maintain this as it's stated here.

CHAIRMAN: All right. Well you have got four or five intervenors who in fact wish to make comments on it and presumably what I will do is go around and call for those parties to make their presentations, then if any of the intervenors that have said the questions all look pretty good to them and they can go with them, if they as a result of hearing what the other intervenors have had to say, I will give them another kick at the cat, as it were. Does the Board staff want to take a quick break and talk about perhaps an additional question arising from the questions that I have put to Mr. Hoyt concerning Enbridge Atlantic Energy Services Inc.?

MS. DESMOND: If we could, Mr. Chairman, please.

CHAIRMAN: All right. We will take five minutes and come back in again.

(Recess)

CHAIRMAN: I get so excited with these hearings I lose total track of time, and it's now ten to 12:00, and I think what we will do is -- the Board had one additional -- Board staff has one additional question that we will put in the mix and then we will adjourn until after lunch, come back at 1:30 and we will go around the room as we had indicated to those parties that had comments.

The question will be, given Enbridge Atlantic's plan to exit the New Brunswick market, should the Board develop requirements to be followed by them or any other marketer in similar circumstances? So that will be the additional question.

So we will rise now and come back at 1:30 and it would be my intention to those -- to have the parties that have indicated that they had some questions they wanted to address the Board on, we will go around the room, get those down, and then if any other -- we will go around everybody after that, see if they have any questions on that.

Okay. Good. See you at 1:30.

(Recess - 12:00 p.m. - 1:30 p.m.)

CHAIRMAN: Good afternoon, ladies and gentlemen. Before we go around and ask those who have indicated they had some things they wanted to say, are there are preliminary

matters?

If not, I will just go through the list and skim over you, unless you raise your hand and say, I have something I wish to address.

Competitive Energy Services? Department of Natural Resources and Energy? Enbridge Atlantic Energy Services? Enbridge Gas New Brunswick, Mr. Hoyt?

MR. HOYT: Mr. Chairman, in a moment I would like to comment on some of the specific questions that have been raised without going through all of them, but prior to that Mr. Marois would like to make a few remarks for the record.

CHAIRMAN: Okay.

MR. MAROIS: Good afternoon and good morning, being the eternal optimist, but before we comment on the specific issues raised by the various parties to this generic hearing we believe that it is critical to put this application in the proper context.

First, to our understanding this is a generic hearing. As a result, the focus should not be on EGNB but rather on market issues affecting the entire industry. Everyone in this room has a role to play in making the industry work and everyone in this room has a role to play in making this generic hearing work.

Second and most importantly we are very concerned with

the impact that this hearing could have on the development of our industry at such a critical stage of its development.

EGNB has already invested close to \$120,000,000 in the development of the natural gas industry in New Brunswick. However, we have been able to generate only a fraction of the revenues of our original plans. As a result, EGNB's forecast peak deferral which represents the accumulated shortfall in the recovery of cost during the development period, is now expected to reach \$17,000,000 as compared to 13,000,000 in our original plans. This is real money with real consequences. To say that the industry is still young and fragile is an understatement.

As a result of this harsh reality the province took extraordinary measures by changing the legislation to simplify the model for customers and allow EGNB to play a more active role in the development of the natural gas industry.

It is important to note that the province did not change the legislation in a vacuum. There was a consultative process that involved many people in this room to date. As a result parties have had input which resulted in the province's policy decisions. Parties should not be given a second kick at the cat as part of

this generic hearing. This would be a total waste of everybody's time and money.

The purpose of these extraordinary measures put in place by the province is to remove some of the barriers the industry was facing. We are very concerned that this process as well as what comes out of it could result in new barriers that would negate what the province was trying to achieve in the first place. EGNB's interest is not to compete with other industry players but rather to have the tools at its disposal to be able to adequately compete with other energy sources. The question should not be, does EGNB have an unfair competitive advantage over the gas marketers, but rather does the natural gas industry have what it takes to be able to compete with other energy sources.

In this regard the Board should find comfort in the fact that EGNB is only allowed to sell gas for a limited time and that the regulation has a built in exit strategy. In other words, the more EGNB is successful in the short term the more the industry will be strong and successful in the long run.

Industry participants must work together. The focus of the various industry players at this critical stage of development of our industry must be on growing the

industry rather than on in-fighting to get a bigger piece of a smaller pie.

This can only be achieved by players that are willing and able to invest in the development of our industry. This is the harsh reality of a greenfield industry.

EGNB has demonstrated its commitment to do so. We cannot afford to hold back. EGNB absolutely needs the freedom to effectively compete with established bundle and often less regulated energy sources. EGNB must be seen as the locomotive of the industry.

The Board has demonstrated in the past its openness to a non-traditional regulatory framework. We respectfully submit that the situation at hand requires such an untraditional regulatory framework.

More specifically we implore the Board to be very selective in the issues to be addressed because most of the issues raised have already been addressed in previous Board orders or in policy decisions of the province when enacting the changes to the legislation.

This is neither the time nor the place to come up with a wish list of issues.

We also implore the Board to adopt a process that is manageable and if we are to keep the entire list of issues that is in front of us it is impossible to have a

manageable process. The process also has to be efficient, cost effective and timely.

I was pleased to hear this morning that the intention of the Board is not to have a formal process or formal hearing scheduled for August, but we want maybe to go the next step and suggest that the Board should adopt a working group with a limited number of relevant issues to deal with and a relatively short deadline to deliver on this mandate.

Fall will soon be upon us. This is the busiest period of the year for our industry hopefully and we need to be ready to take full advantage of it. We all need to be focusing on adding customers because fall only happens once a year and at the pace things have been going we cannot afford to be distracted on secondary issues, especially if they have already been addressed. We need to get on with our business.

Thank you.

MR. HOYT: Now, Mr. Chair, I would like to --

CHAIRMAN: Mr. Hoyt, I would like to say something if I might at that point, and I want to address you and not Mr. Marois. I understand where he is coming from. But if I compare and contrast the changes in the legislation and the regulations which occurred this spring to the process



which the province went through at the time that the Gas Distribution Act was brought together, went through its any number of different drafts and ultimately was put before the house and the participation that occurred, particularly from Board and Board staff's point of view, it was a very, very different process.

I don't want to address or open up everything again at all, but the reason that the Board has initiated a generic hearing in this matter is that in our read of the legislation and the regulation it raises all sorts of questions which in my humble opinion personally, not of the Board necessarily, but in my opinion it raises as many questions as it perhaps solves.

Now we intend to keep the hearing as focused as we possibly can but that doesn't mean that if there is a question or questions that arise because of the change to the legislation and the reg that in our opinion should be approached and should be addressed, we are not going to back away from that. All right. I just want to make that clear.

Go ahead, Mr. Hoyt.

MR. HOYT: I understand where you are coming from and when I go through some of the specific questions that have been suggested to be added I think that it will perhaps explain

in a bit more detail where we are coming from.

In terms of the process that led up to the amendments to the Act and the regulations I don't want to speak for the Province, you know, they can make whatever input they feel is appropriate, but my understanding is that there was a process where a lot of the stakeholders that are here today were involved over a period of some time in trying to determine the parameters that would determine what would go into that regulation, that parties were given the opportunity to submit whether there should be restrictions on existing customers or should it just be new customers or existing, the classes, it just went on and on. And there were a lot of meetings held. I don't know to what extent the Board, if any, was involved in the process, but the Province did take an approach where they sought input and then at the end of the day had to reach a number of policy decisions in enacting the legislation.

So again I will comment specifically on a few questions just as examples of what the point is that Mr. Marois was making, but again I think it's a process that the Province initiated. I would commend them for doing it. It's not -- it wasn't a regulation that just came out of nowhere without stakeholders having been given an opportunity to participate.

CHAIRMAN: No, and I'm not trying to say that, but I'm saying that there is two parts of it. There is A is the legislation and also the regulation. And I'm simply saying that the kind of input that was received and the time frames and the drafts, et cetera, is very different from that which occurred at the time that the legislation was initially put in place. I think that that was a better process because the number of drafts that certainly Board staff was able to review and the original Act, allowed everybody to approach that legislation and think about the various scenarios and questions that could arise. And that process has continued since it was passed. As your client well knows, the Board has made a number of recommendations as we work with the legislation itself and find that for instance in the case of Mr. Zed's client, that really probably was never thought of when the original legislation went through, so we made a recommendation to change it.

All right. I don't want to get hung up on that. That's all I'm saying is that this is the Board's attempt -- best attempt to try and set some rules or withdraw some rules or deal with the market as it presently is. And we hear what Mr. Marois has to say and it certainly our desire, as it is even more so his, that

it be a good working and ultimately profitable marketplace. So this is our best method of getting on with it.

Go ahead, Mr. Hoyt.

MR. HOYT: So what I would like to do, Mr. Chairman, is just to make some general points about the questions overall. Go through some of the comments that EGNB made on the Board's suggested questions. And then to deal with a couple of examples from the WPS and Competitive Energy's suggestions. I don't propose to go through all the questions unless the Board wants.

I do have a submission that I provided to the Board Secretary, and I will now provide to the other participants of our position that I will set out today on both the WPS and the competitive advantage questions. So that without having to go through each one individually today, the parties will be aware of where EGNB is coming from.

CHAIRMAN: Okay, Mr. Hoyt, just so I understand you. What we are trying to do now is to come up with a Board decision as a result of today which we will issue to the parties, hopefully, by tomorrow, of the list of questions that will be addressed for the remainder of this process.

And do I hear you saying that that's what you are

addressing in your presentation?

MR. HOYT: Yes, exactly. I'm going to make a few suggestions for additional questions. But essentially focus more on questions that have been proposed by other parties that we don't feel are necessary.

CHAIRMAN: Okay. All right. Go ahead, Mr. Hoyt.

MR. HOYT: So I will just take a moment and hand these out to the parties.

CHAIRMAN: Thank you.

MR. HOYT: I don't think it will be a big surprise, Mr. Chairman, that EGNB is likely to be one or perhaps the only party to be looking to remove some questions. But in terms of some of the points that Mr. Marois was alluding to, it's important that this process be manageable so that it can result in something good for the industry.

So just overall I have tried to come up with a couple of comments that applied generally to the questions that have been proposed. And I guess the main comment echoes a bit of what we were just discussing.

And that is that a number of questions relate to issues that have already been determined by the new regulation.

The Province had to have made a number of policy decisions in enacting the regulation as they did. The Province followed the process. They sought the input from

a number of stakeholders. And, again, I leave it to the Province to decide whether they want to add anything to that about how that process worked.

And also the Department of Natural Resources in its intervention made the point that DNRE was responsible for consultation with stakeholders in development of policy and legislative amendment. So I mean clearly it's a process that they went through.

The second comment, general comment, is that there are a couple of questions on billing and the ability of parties other than EGNB to bill. In terms of that issue, and we made the point in our comments on the letter concerning the Board questions, EGNB strongly opposes the inclusion of any questions related to billing.

The issue has already been dealt with extensively twice, at both the marketers hearing and the rates hearing. The market hasn't developed in any way that justifies revisiting the issue at this time.

Thirdly, and this echoes a bit of what Mr. Marois had indicated.

This is a generic hearing, and that the focus shouldn't be just on EGNB. There are a number of issues that if they remain, questions to be considered should be applicable to all parties. Other marketers as well as the distributor.

The fourth general comment, fourth and final general comment is on the code of conduct. There are a number of questions relating to whether or not it should apply to EGNB. And the Province, for whatever reason, has decided to treat EGNB differently. EGNB under the new legislation or the amended legislation is not a marketer and they are not required to have a certificate.

I refer the Board to Section 66 (1) (b) of the Gas Distribution Act which is the rulemaking power of the Board concerning the code. And what it provides is that the Board may make rules governing the conduct of a person holding a certificate.

The Board didn't amend -- or the Province didn't amend this section when they amended the legislation. And we would suggest that the intention is that the code applies to marketers. And the new regulation applies to EGNB. The code determines what the restrictions, if any, are that are to be imposed on marketers. And the new regulation sets out the rules that are applicable to EGNB. So that there may be some question as to whether or not the Board has the authority to extend the code to EGNB under the existing legislation.

Now to turn to some of the specific questions that have been proposed. First I would like to just touch on

the submission that EGNB made concerning the questions that have been proposed by the Board. And in that submission EGNB suggested that a couple of additional questions be included.

One of the questions concerned this process itself in whatever form it ultimately takes. And Enbridge is concerned that all participants should pay the cost of this hearing.

And the question that we suggested be included, just who will bear the cost of this generic hearing? Clearly we think that that's a relevant issue where it's a hearing to determine market issues and so on, and there are a number of participants other than just the distributor.

Along those same lines, EGNB wants to raise the issue regarding allocation of the Board's annual expenses. That, again, because the participants, the stakeholders are all in the room, it would seem to be appropriate to deal with that issue at this time.

And the third issue along the same lines, and this is because the notice of this proceeding is not restricted to sale of gas and customer services. It also clearly provides that it's to deal with market issues.

The third issue that is particularly marketer related, we refer to on page 3 of the submission on the Board's



questions. And that was just to reference back to section 2.12 of the Board's decision in the marketer's hearing, where the Board indicated that it would require regular reports from all marketers and reports were necessary for the Board to approve and update emergency allocation plan. Determine whether or not effective competition exists. To ensure that marketers are complying with the conditions of their certificates.

And EGNB has suggested adding the following questions. What nature and timing of reports to be filed by gas marketers is required by the Board? Are all of the marketers in compliance with those Board requirements? And what additional reporting does the Board require of gas marketers to allow it to fulfil its mandate? So those are all --

CHAIRMAN: Excuse me for interrupting. But what are you reading from now and where are you in it?

MR. HOYT: This is a letter that EGNB --

CHAIRMAN: All right. I'm sorry. I was trying to find you in here, you see, which is what you passed.

MR. HOYT: Sorry. In the package that the Board circulated by notice dated June 27th, it included all of the submissions received from interested parties on the questions that the Board had proposed.

CHAIRMAN: Yes. So this is your letter to the Secretary of June 13th?

MR. HOYT: Dated June the 13th.

CHAIRMAN: Sorry. Do you want him to go back and refer to those specifically again.

Yes. Now would you just go back now that we have got the right -

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MR. HOYT: Sorry.

CHAIRMAN: So we are in the right church here, if you wouldn't mind?

MR. HOYT: Sure. Not at all. Just referencing some of the points from this letter, there are three marketer related issues that EGNB has suggested be included as part of this process. And it goes to the fact that the notice of the proceeding doesn't restrict it just sale of gas and customer service issues. It also talks about market issues.

And it seems appropriate that if the parties who have been granted intervenor status are all here and in the room that it would be appropriate to deal with these particular issues.

The first being who is to pay the cost of this generic hearing. I don't think it should be assumed that EGNB would necessarily bear the cost, so that it would warrant

discussion of the parties.

The second comment --

CHAIRMAN: That's --

MR. HOYT: That's one that we had suggested be added. Secondly, along the same lines, Enbridge has also suggested that the issue of allocation of the Board's annual expenses between marketers and the distributor should be examined as part of this process.

And at the bottom of page 1 of the letter suggests the question that be added to deal with that issue.

And then the third point that I was making you will find actually towards the end of page 3 of the letter. And we quoted Section 2.12 of the Board's decision in the marketers hearing where the Board had indicated at that time that it would require regular reports from all marketers, set out what those reports were for, particularly to ensure that marketers are complying with the conditions of their certificates.

And Enbridge suggests adding the following questions. What nature and timing of reports to be filed by gas marketers is required by the Board? Are all gas marketers in compliance with those Board requirements? And what additional reporting does the Board require of gas marketers to allow it to fulfil its mandate?

So again, those are additional questions that EGNB has asked be included as part of that proceeding.

In terms of the code of conduct, and as it relates to the marketers as it currently does, at the top of page 2 of that letter, EGNB has suggested adding some questions concerning marketers and whether or not they are in full compliance with the existing code of conduct. Is the existing code of conduct monitored and is the existing code of conduct enforced?

So aside from the comments that I made earlier as to whether or not EGNB can be bound by a code of conduct, that particular code of conduct, these questions relate to the existing situation and the marketers who are subject to comply with it.

The next paragraph I don't want to -- I won't go through in detail. But this is the point in terms of the billing. The issue clearly has been canvassed before. At the end of the quote in the second paragraph on page 2, you know, the Board made it clear that the provision of billing services and the question of who should provide billing services was determined by the Board after the marketers hearing.

It has been canvassed twice and it really doesn't seem to be appropriate for this proceeding.

In terms of the rest of the questions, question 3, 4, 5 and 7

that the Board has suggested, the point that Enbridge has made --

CHAIRMAN: Slow down. And you are now going to look at the Board's

submitted questions and comment on that, and then move on to --

MR. HOYT: Yes. Not in a great deal of detail though. The point that's

made on those questions in the letter, questions 3, 4, 5 and 7, is

that those questions are as applicable to gas marketers as they are to

the utility. The way that they have been suggested by the Board, they

are only being asked in the context of how they would apply to EGNB.

And our reading of those is that they should be made equally

applicable to other gas marketers.

CHAIRMAN: Okay. Go to the specifics. And one of the reasons that I'm

tying you into written paper here is that if we are going to -- I

mean, all I could think of when you started suggesting some of these

questions is that Mr. Marois said that we want to get this over and

done with before the fall sets in. And we certainly do. But we are

expanding a lot of things here, that's all I can say, Mr. Hoyt.

However, the Board Staff has got to try and keep track of what it is

that you are bringing up. So if you can tie it to a piece of paper we

have or you have passed

out, that makes it easier so that we can address what are the appropriate questions and what are not.

MR. HOYT: No. And, Mr. Chairman, we have done that. In terms of the points that I am making, I'm really just focusing on a couple of things that have been suggested in this letter. I am not suggesting anything new. This is a submission that was made in mid June in response to the proposal.

CHAIRMAN: Okay. Now we are clear on that part. Carry on, sir.

MR. HOYT: Okay. When we made this submission, at that point we were under the impression that there wasn't an opportunity to try to have questions removed, particularly where they were just coming from the Board. And since other parties have suggested questions, and you will see from some of the comments I make in a moment, that I really think that there should be an opportunity to remove some questions.

We believe now that question 3 and question 5 that the Board has suggested have really already been dealt with by the regulation. They deal with pricing issues. And there are provisions in the regulation, including Section 3.1(g) and 3.1(d) in terms of information that the regulation requires Enbridge to provide in connection with its

pricing. Forecasted pricing and so on. And, again, these are in keeping with some of the specific comments I will make on the WPS and Competitive Energy suggested questions.

CHAIRMAN: That's 3 and 5 you are referring to?

MR. HOYT: 3 and 5 of the Board's --

CHAIRMAN: Certainly the Board doesn't believe that just because we have tentatively asked a question that they are sacrosanct at all. If they are irrelevant, they should be removed.

MR. HOYT: And on those two, Mr. Chairman, 3 and 5, we believe -- particularly as you will see when I get into the other questions, why those types of things have been covered in the regulation.

And just the last question the Board had asked, number 9, deals with the code of conduct. I would just refer the Board back to the comments I made earlier about the code of conduct and whether or not EGNB can be bound by it.

So those are really the comments on the submission that EGNB made. Again, it's essentially reiterating the position that it took at the time. And aside from suggesting that questions 3 and 5 are perhaps already dealt with in the regulation, there is nothing new being suggested there.

CHAIRMAN: Okay. Just I want to point out to Board Staff. If, in fact, they are not clear as to Mr. Hoyt's submission to us, by all means hit the button and say something. Because you just said something which I interpreted was the last question and it turns out that it wasn't. It was the last question you had referred to because that was code of conduct. And I went searching at the end. So that's just me hearing at my advanced age, that's all.

MS. DESMOND: Mr. Chairman, we have been trying --

CHAIRMAN: You have got to push the button.

MS. DESMOND: Sorry. Thank you. We have been trying to follow clearly which questions Mr. Hoyt is asking be removed or amended. In his letter of June 13th with respect to question 3, he has asked that there would an addition to that question. But as I understand his submission today, he is asking question 3 to be removed. So we are just trying to clarify exactly what is his intention with respect to that question.

MR. HOYT: Yes. And that's a fair question. The point that I tried to make earlier was when we made that submission our understanding was that those questions weren't out there to be removed. That there wasn't that possibility. But given the process as it has developed since, and the



comments that the Chairman just made, that it is obvious that there is room for that. And we would suggest that consideration be given to removing questions 3 and 5.

CHAIRMAN: I have to comment that it's rarely do I hear a barrister and solicitor say that something isn't open to argument.

MR. HOYT: That's probably why Mr. Zed is kicking my chair. So at this time what I would like to do is to turn to the questions that have been proposed by Competitive Energy Services and WPS. And that's the written submission that I just provided to the Board and the other participants.

And we can go through each one if you would like. But what I have tried to do is to provide EGNB's position on each one. But in looking at it yesterday in preparation for this, I thought that the point that's made in a lot of these questions in terms of the policy decisions having been made by the Province, that if I refer to three or four of them, that it will -- the Board will get the sense of where we are coming from. And then it's just a matter of going through, either Board Staff or the Board, if they have specific comments on each question. But if there is any that the Board wants to deal with specifically, we would be glad to.

CHAIRMAN: You go ahead, Mr. Hoyt. Of course we haven't

seen this before, so I would like to hear from you. And if you think you can cover it with just -- in the fashion that you have said, please do so.

MR. HOYT: In terms of the Competitive Energy submission and the 12 questions that they have added, most of those questions we believe have already been decided by the Province in enacting the regulation in the manner that it was done.

For example, to turn to question 12. The question that was suggested was, should the utility offering be limited to customer size and class? And the Province, although this was the subject of a lot of discussion back and forth by various parties in terms of what restrictions there should be placed on the regulation, at the end of the day the Province made the policy decision not to limit EGNB's gas offering to any particular size or class. There is no restrictions in terms of who they can sell gas to. The amendment to the Act provides that EGNB can sell gas in accordance with the reg and the reg then goes in terms of what -- how can EGNB sell gas. And there are no restrictions of any kind suggesting that there are only particular classes that can be sold to.

And again going back to the discussion we had earlier about the process that was followed by the Province, there

were a lot of suggestions that that maybe shouldn't be the case. And where the Province was and how their thinking evolved I'm not -- I can't pretend to tell you, but I know what they ended up with and they ended up with a regulation that doesn't contain that type of a restriction.

To look at question 8, and actually question 8 and 10, they are essentially the same type of question, question 8 asks, should the utility notify all customers that their choices for natural gas are X, Y and Z? In the regulation under section 3 (1)(i) it clearly provides that Enbridge is required to advise a customer of all its available gas supplier options no more than 90 days and no less than 60 days before a gas sale contract expires. So the Province has looked at the issue and decided that, yes, Enbridge just can't let one of these contracts expire and not provide customers with information about what that customer's options are. They clearly set out what Enbridge has to do along those lines.

CHAIRMAN: I hate to interrupt you, and -- this that you have quoted, it's before the expiration of a contract.

MR. HOYT: Right.

CHAIRMAN: But the question to me is when you are talking to a new customer.

MR. HOYT: But again though the same point, I mean if the Province in the regulation determined that there is a point in time when EGNB has to provide that type of information to a customer, it would have been provided for in the regulation.

CHAIRMAN: All right. Mr. Hoyt, frankly what we are getting down to here is if the statute or the regs are silent as to a question, and I can't lay my hand on it right now if we have general supervision, but certainly the whole thrust of the Gas Distribution Act is that this Board shall in fact have that overriding power on the marketplace and its participants. If, you know, a specific situation is not covered, you are saying that the Board therefore has no jurisdiction to look at it and rule in reference to it. I mean I may be jumping the gun here and it may be simply because we are getting into the nitty-gritty of the answers to the questions rather than the fact that this may or may not be a legitimate question to have on the list. I don't know. It's tough to draw the line.

Mr. Hoyt, go ahead.

MR. HOYT: I would agree with that in terms of it being tough to draw the line and in some of the responses here we were faced with the same issue about well are we

answering the question now, which isn't really what we want to try to do, we want to comment on whether it should be there. And again because we know the process that was followed, we know that these issues, the ones that I'm referring to, were specifically dealt with, canvassed from the parties and a decision made by the Province in terms of what the regulation would provide.

CHAIRMAN: All right. I can appreciate that. I don't know, and my Commissioners don't know, Board staff may know, but I don't, and that's why I'm here. However, I will stop talking if I possibly can keep myself from doing so and let you continue, because the other parties in the room may have something to say on it too, sir. Go ahead.

MR. HOYT: Sure. And as I say, I'm not -- I don't -- rather than belabour that point on all of the questions, I think that those are a couple that make the point clearly that these are issues that we believe have already been canvassed.

Just to finish on the submissions by Competitive Energy Services, question 3 again relates to the billing and for reasons that I mentioned earlier we don't believe that's appropriate as something to be dealt with one more time. And question 9, which talks about Enbridge being permitted to have an unfair advantage, I think just for

the way that it's been asked in terms of the negative implication and the question that it should be -- that it should be excluded.

In terms of WPS, again we believe that a number of these questions have already been dealt with and I will only touch on a couple.

Number 15, the gist of the question is that should EGNB be permitted to market to existing customers, meaning should they be restricted to only new customers. And similar to the position that we outlined with respect to Competitive Energy, the regulation does not limit EGNB to new customers. And causing this proceeding to go through that is -- will be revisiting all of the issues that were dealt with in terms of the process that led to the regulation. The regulation clearly doesn't limit EGNB to new customers.

In terms of number 11 of WPS, the question provides, and I referred to this one this morning, how will the Board prevent market manipulation towards EGNB so that in 2008 the portfolio of contracts doesn't get rolled to EAES or another preferred marketer. And as we set out our position clearly the question is prejudicial just in terms of the way that it is asked, but beyond that the customer management proposal that is referred to and provided for

in the regulation under Section 7 deals with this issue. The Board will ultimately determine how to deal with gas customers of EGNB. There is a time when that customer management proposal has to be provided towards the end of the period of time when EGNB can sell gas, and the Board has the ability at that point in time to determine what that customer management proposal provides for.

So again to deal with that question now as part of this proceeding is getting ahead of things. There is a process that has been included in the regulation to deal with that at the appropriate time.

I mentioned in the EGNB letter on the Board questions when I referred to removing questions 3 and 5 suggesting that they really dealt with pricing issues and what EGNB should be required to disclose, there are a number of those types of questions in the WPS submission in terms of gas pricing. Well there are a number of provisions, I mentioned a couple of them in Section 3.1 of the regulation, but also the gas purchase plan which is referred to in the regulation as dealing with how EGNB pricing and sale of gas issues are to be handled. And I think it's important to note that in the regulation it provides specifically that the gas purchase plan is confidential.

So to get into discussion at these hearings about what EGNB has to disclose with respect to some of that pricing, for all of the reasons that are -- or all of the items in the regulation that deal with the issue, it just doesn't seem appropriate to add a whole bunch of other restrictions that in effect will prevent EGNB from getting on with the job of selling gas in accordance with the regulation.

And the last point that I wanted to make in terms of WPS is question 3, and I apologize for the order. It just in going through them it seemed like the best way to bring them up.

Question 3, the question asked whether EGNB -- all EGNB gas sale contracts be for a one year period or can they be for a shorter time.

Well Section 3.1(b) of the regulation clearly provides that Enbridge's gas sale contracts can be for a period of time shorter than a year. I mean there is no requirement that those contracts be for a year. So to then change that or impose an additional restriction, it's -- it will just impose another level of restrictions on what will likely be a very difficult market anyway.

So again, I urge the Board or Board staff to take a look at the specific comments on each of these suggested



questions. The theme on a lot of them is the same in terms of whether or not the issue has been dealt with. We have made reference to the particular place in the regulation that we believe already covers the issue. So that without belabouring each question, unless the Board would like to do that, I'm -- I think that the point has been made in terms of how we suggest those questions be dealt with.

So just in closing, again to echo Mr. Marois, it's essential that this be a manageable process, that the number of issues needs to be limited in some way. And with all of the questions that are out there now and looking at the proposed schedule that the Board has, it would be difficult. I mean in the last go round with the marketer's hearing we used the working group process that whittled the issues list down to four and that ended up in a couple of day proceeding. So to start out with, you know, 30 or 40 questions, this is going to be a long drawn out process.

Now I took from Mr. Stewart's comments this morning that he may have some suggestions for combining some. I think clearly there are some themes, questions that could be grouped under different categories. But again I think trying to deal with each of these questions individually

that are out there now as proposed will be a long, arduous process.

And again to spend time on issues that have already been determined by either the province in the regulation or by the Board in previous proceedings, I don't think it would be best use of this process. I think there are things that clearly benefit, that can be gained from this process, but I don't think that we should make it such a big proceeding that we really can't get much accomplished.

So again a timely resolution of the matter is important I think for everybody so that everyone in this room can get on with business and make the natural gas industry work

Those are our comments, Mr. Chair.

CHAIRMAN: Thank you, Mr. Hoyt. Mr. Brown, did you have an area -- I guess you were -- I tried to smoke you out but you were being aggressively neutral there, if I remember correctly. You had no input that you wanted to have at this time?

MR. BROWN: Keeping it specific to the questions, Mr. Chairman, no. No, I don't and I am not prepared to read statements about -- or waste the Board's time in reading statements about what I feel about the changes in the legislation. Thank you.

CHAIRMAN: Okay. Thank you. Mr. Ross, did you have anything on questions? In other words, the appropriateness of the existing questions or additional questions that you wanted to propose? Not an argument on the questions?

MR. ROSS: Thank you, Mr. Chairman. We are satisfied that all of the questions that have been posed should receive a suitable response by the Board and so we are quite pleased to respond to whatever the Board provides there.

We do though have a question that we would like to add. We commend the Board for dealing with broad market issues. And we also hope that this industry can grow and prosper for many, many participants. And we agree that sooner is better than later for everyone. We submit that the Board and all the industry participants have a window of opportunity with this hearing and at this time and juncture to ensure that all the important factors necessary for the New Brunswick natural gas industry development that meets expectations of all stakeholders be put in place.

We respectfully suggest that there are several important and diverse factors or dimensions that impact the success or lack thereof in the sale of a commodity or a service. That is in the successful cultivation of a new

industry of promise and potential besides product pricing strategies and channels to market.

In particular, cultivation of a consistently positive image of the product and the providers in the provincial community --

CHAIRMAN: Mr. Ross, I am going to interrupt you. I'm sorry, but let's just deal with the specific matter that we are going around the room with now. Do you have any questions that you believe should be struck from the list or questions that should be added?

MR. ROSS: I have a question that should be added.

CHAIRMAN: Okay. What would that be, sir?

MR. ROSS: We respectfully pose the following for the Board's consideration. First, from a broad perspective, what other broader market factors or issues may there be, if any, that in the Board's opinion should be considered and addressed within the regulatory policy framework that would enhance market development in the New Brunswick natural gas industry.

CHAIRMAN: Thank you, Mr. Ross. That is a wonderful platform for us to give a wish list. But what is the more specific one following that?

MR. ROSS: Specifically would the benefits of a policy objective of requiring or at least preferring the use of

N.B. contractors in all aspects of construction and development engender a prevailing climate of public empathy and a significantly more positive customer take up rate.

CHAIRMAN: Now, I have two comments. Number one, do you have those written out? And if you do, could you give them to the secretary? Secondly, in that second one you bring up policy.

MR. ROSS: Yes.

CHAIRMAN: This board's role in our system is not to establish policy. That is Mr. Knight at the back of the room. So later you should probably give him a copy of that too. But if at the break, if you would give a copy of those two questions to the Secretary, then we will look at those in the round again.

MR. ROSS: Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Ross. Mr. Zed? Not your motion, but if you want a question, I guess. Is that what you are going to do to me? You are going to put your motion --

MR. ZED: Well I now have to ascertain what would be the most advantageous.

CHAIRMAN: You are the lawyer. I want you to try it out. If you have some specific questions.

MR. ZED: I have -- I will not add anything to the comments

that Mr. Hoyt has made or Mr. Brown and I suspect Mr. Stewart with respect to the existing questions. I have another matter that I wish added to the Board's consideration. I can either deal with it now or perhaps when Mr. Stewart finishes dealing with the questions that are before the Board, it might be more appropriate. I am at your --

CHAIRMAN: Well I think from what I heard you say this morning that probably if you had some specific questions rather than the broadening them -- the scope of the hearing as it is called, which is what I understood that you were looking for this morning, right?

MR. ZED: Let me ask this -- let me put a question that I would like added and perhaps explain why I would like it added. And the question is what legislative or regulatory changes are required to clarify the role of a local gas producer under the Act and regulations?

And if I might tell the Board why I am here seeking to have that question added. It's to some degree, it's -- and just to give some of the Board members a little bit of history, and some of the other participants a little history, I represented the Potash Corporation several years ago when they brought an application before this Board for a local gas producer's franchise. The Board

awarded that in July, I believe July 31st 2001.

During the course of the hearing, it became very apparent, and in the preparation for the hearing, it became very apparent I think to all involved that the legislation did not strictly contemplate very carefully the role of local gas producer in the statutory scheme.

I think we all recognize that. And without quoting from the Board's decision, the Board, itself, raised the issue of some possible amendments to that statute.

The amendments I think are for the most part amendments that really are for the benefit of everybody. I don't think they are particularly contentious. I think everybody knows what the problem is. We made several representations to the Province. We attended one or more group meetings that were convened by Board staff to deal with possible legislative change. And we also -- and we are still back at the same place we were three years ago.

And I don't point the finger at anybody. I understand the resources have been spread pretty thinly, both the Province, Enbridge has been very busy with a number of other imperatives. And just so everybody knows, so has the Potash Corporation. But the fact remains is that the Potash Corporation is the only local producer in the province. They have spent not \$120 million as Enbridge

has, but millions of dollars in exploring for and bringing gas into production. Further, several more million dollars building a gas plant. And that gas is now being used as we speak at their plant in Sussex.

As we all know, the supply of gas they found is not endless. The Potash Corporation intends to do further exploration. Some of that exploration is going to be outside of the current franchise area awarded by the Board. And if quantities of gas are found there, then we are right back where we were before arguing with the Province and arguing with Enbridge and making representations to this Board how the Board should accommodate us by putting a round peg in a square hole.

CHAIRMAN: Mr. Zed, I am going to interrupt though. Your question, would you reiterate your question?

MR. ZED: The question is what legislative and regulatory changes are required under the Gas Distribution Act to clarify the role of a local gas producer?

CHAIRMAN: All right.

MR. ZED: And the reason we are here is very simply there is no other forum for us to move this agenda along. This is in Mr. Marois' words, a generic hearing. We are taking --

CHAIRMAN: I am sorry, I have to disagree with that. The building has a large white dome in Fredericton, sir. And



that's where you can move that agenda along. And I am not being supercilious. We have in our decision that you have referred to, we made our -- the Board's recommendations known to government that we believe that there should be an amendment made to accommodate your client and anyone else who would be in a similar situation.

You can propose the question. I am speaking only as Chairman here and I appreciate where you are coming from. And we will deal with it. It's as simple as that, sir, as to whether or not it's an appropriate question to add.

MR. ZED: Could I leave you with one thought?

CHAIRMAN: Certainly.

MR. ZED: And that thought is that regardless of whether or not the Province deigns to deal with this matter sometime in the near or distant future, it's going to involve the very same parties who are before this Board today. And I am just suggesting that from an economic point of view, from an efficient point of view, efficient use of everybody's time, we don't really intend to belabour this group with anything more onerous than making a representation on the changes that people will have an opportunity to comment on, as will the Board.

And that's really all we are seeking. We don't want to slow the process down. We just want an opportunity to make our

representation in a public forum. Thank you.

CHAIRMAN: Good. Thanks, Mr. Zed. Mr. Stewart.

MR. STEWART: Thank you, Mr. Chairman. I have been back here sort of desperately to read all of Mr. Hoyt's comments on the questions, and as best I can I am going to sort of begin where he finished and address some of the comments that are in this document that he has circulated and his presentation to you a few minutes ago.

Like you, Mr. Chairman, I look at the responses in this document to both questions -- additional questions posed by WPS and I guess by Competitive Energy Services as well, and categorize Mr. Hoyt's comments into two themes, the first being that the answer to the question is a "policy decision of the province". And like you, Mr. Chairman, I would submit that the mere fact that the act or the regulation may be silent on a particular point does not in and of itself mean that a policy decision was made by the province to authorize Enbridge proceeding any particular way or quite frankly that there was a policy decision that they -- or be granted some kind of carte blanche. That's why we are here. That's precisely why we are here.

Furthermore, the second theme seems to be, the answer is in the regulation. And once again with respect I don't

think that's the case. Clearly some questions may be more easily answered than others. Some questions maybe the answer is 3.1(b), (c), whatever it is, of the regulation, and after we talk about it and after the Board considers it, the question may be answered by reference to that particular statutory provision. Perhaps.

But, for example, if I look at the regulation, and this is the gas distributor marketing regulation, the new one. I mean, there are all kinds of points in here which literally do beg the question.

Mr. Hoyt made reference at one point I believe to the calculation of gas price which is in subsection 4.1. I mean, the regulation in section 4.1 -- and I'm just going to skip down to the next to last line. It says, Which price shall be based upon -- does that mean entirely determinative upon -- the cost of gas to the distributor of purchasing gas and of selling gas to customers. Well that's a pretty -- we are having a generic hearing that's a pretty generic statement.

And I think it's appropriate to ask some other questions about how that is going to work and whether those numbers or those things mean things and that the Board should make rules or regulations or issue directions about how they are going to proceed. That's just an

example.

With respect to Enbridge Gas New Brunswick, I think I know the answer does not mean that the question shouldn't be asked. I mean, all of us will benefit from clarification of each of these questions, whether the answer proposed here by Enbridge is accepted or not.

To be clear, Mr. Chairman, we have no objection if when Board staff and with the Board, you know, takes these questions which were sort of submitted each in a vacuum from themselves, and, you know, has a little poetic licence to consolidate questions which are sort of variations on themes or perhaps a bit repetitive or perhaps organizes them by topic with sub points or something like that to make it a little easier for us all handle. That seems appropriate.

But the mere fact that somebody thinks they know the answer, even if somebody thinks they are pretty certain they know what the answer is, that's no basis not to ask the question.

Furthermore, Mr. Chairman, just as my final sort of general comment, I guess we wouldn't have any objection either to the extent that if some of these questions and the way that they are asked, and I guess we are all guilty a little bit of our own context. I mean, in the Enbridge

letter they ask questions about, you know, are the gas marketers violating the code of conduct as if somehow that could be the case. And I think in the cases we have submitted Mr. Hoyt pointed out or is of the view that a question is prejudicial. I mean, if that's the case then surely Board staff can tidy up the language so the question is a little more fairly posed and if it is unfairly posed in the first place then again we would have no objection to a little poetic licence there if that is going to help us all move forward.

With respect to really what we are -- I thought we were supposed to be talking about here today and I guess in a large measure we have, is what is the nature and scope of what we are talking about here and do we have any objection with some of the things that may be raised by some of the other parties? And we do, although they are not significant.

The first one I will address specifically is the question which is raised on the bottom of the first page of Enbridge Gas New Brunswick's June 13th correspondence. And Mr. Hoyt didn't mention this one specifically today, at least if he did I didn't notice it, and maybe that means it's not one he is pushing that hard and maybe we can agree to take it off the list.

But on the bottom of the first page of the correspondence there is a reference to Board cost allocation under section 87 of the Act, and that may or may not be, like Mr. Zed's issue, a question worthy of, you know, consideration by the Board at some point. Maybe it is, maybe it is not. I'm not certain. But with respect I don't think that it is one of the market issues which resulted from the recent legislative changes to the Act and the new regulation. I mean, that has been around for a long time. And with respect I think that question is just a bit outside the scope of where we are going. If they want to talk about who should pay for this hearing, I guess in strictly speaking that may be on.

Equally if we could -- will you just flip to the next page of the Enbridge Gas New Brunswick letter, there -- and again I'm like Ms. Desmond, I'm not sure whether these questions were in or out, but, you know, the Board has raised an issue with respect to the gas marketers code of conduct. And generally speaking I think we are of the view that it is working relatively well, but given the change and the fundamental way that the marketplace is now going to operate and the fact that the code is two or three years old, I don't think that any of us have any particular objection to at least a minor revisiting if it

needs a little tweaking here and there.

But to ask questions about, you know, are marketers in compliance and sort of to start talking about what has been happening to date and revisit, you know, who was doing what or what was the case, with respect I don't think that's a marketplace issue going forward as we are. I mean, if it's relevant to the extent that you want to talk about how the code should need to be tweaked a little bit because what people are doing on the ground isn't necessarily the case, but if the question posed is should the -- should we go through an examination to see if someone is in violation, well clearly there has been a process that has been already in place to deal with that, and it doesn't necessarily need to be a question posed here, and again with respect I think that's probably a bit prejudicial.

Finally, Mr. Chairman, there is this referral and I know that it was in one of the WPS questions as well and I'm going to speak about the issue of the sort of overall pricing supervisory role that the Board has under section 59, and then Enbridge Gas New Brunswick comment's are on the bottom of page 2 of their January 13th letter.

And --

CHAIRMAN: June 13?

MR. STEWART: Did I say something differently? Well June

13th. Sorry.

CHAIRMAN: Sorry.

MR. STEWART: I'm not listening to myself. Despite the fact that we had raised it as a question in terms of when would the Board see fit to depart from if necessary the prescribed pricing formula that Enbridge Gas New Brunswick has as opposed to being subject to market forces like the regular gas marketers have, and we thought that was a relevant issue for consideration and we I guess still submit that it would be. But to broaden the scope of this proceeding to get into an analysis of, you know, if and when the Board was going to exercise its power under section 59 to set gas prices, I think is beyond the scope.

Again that's not a marketplace issue raised as a result of these recent legislative amendments which is what I understand the Board's order deals with.

That's not a recent change. That's a situation that -- that piece of the legislation has been there since the outset and I don't think that we should get sidetracked on a lot of naval gazing about the potential for a section 59 consideration.

Finally, and I guess I suppose that, you know, if we are going to have a little peak into the code of conduct again to see if there is any tweaking that needs to be



done, there may be some issue about, you know, how gas marketers have been operating. But on the last page of Mr. Walker's June 13th letter he -- there are three questions posed at the bottom of the page in terms of the requirements of the annual reports to be filed by gas marketers, and asking, you know, what are the nature of those reports?

Are they in compliance? What additional reporting does the Board require to allow it to fill its mandate?

Again those requirements have been in place for some considerable time. The reports are required as the Board sees fit. Enbridge Gas New Brunswick has made some considerable discussion both in its opening comments by Mr. Marois and its comments submitted by Mr. Hoyt, to make it very clear that it is not a gas marketer. And those issues are not as a result of the recent legislative changes. Section 87 is still there. It hasn't changed. And I don't see the relevance of that issue to the issues that the Board's order has put on the table for us now.

You know, I refer back to the notice sent out by -- I guess signed by Ms. Legere on June 6th where, you know, the Board has identified a number of market issues that have resulted from recent legislative changes.

Again I guess both Mr. Marois and Mr. Hoyt and myself

are agreeing at least in principal on something and that is that, you know, we do have to be careful here not to create a wish list of everything that we would like to talk about and like to bring before the Board in this proceeding, and focus, you know, on the things which are governing the marketplace and how people are going to operate in the market in this crucial upcoming fall that all of us recognize.

And with respect I think going abroad in terms of talking about something that has been in place now for four years seems to be -- I mean, seems to me to suggest that we are going to have a very long session indeed, and quite frankly it may be appropriate to ask those questions, but just not in this context for this hearing.

In terms of the questions posed by the Board we don't have any objection to those questions that are there or even as they are phrased. We would I think urge the Board and Board staff to being sort of a central clearing house of all of these submissions to use what I think I have been calling its poetic licence a bit to help consolidate all these questions and maybe group them by subject or category to enable us to make sort of efficient submissions.

Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Stewart. My notes indicate that Park Fuels had nothing they wanted to say at this particular time.

And, Mr. MacDonald, you didn't in that initial round say that you wanted to comment. No.

We are going to take a break. We are going to give you say a 10 minute break. And then what I wanted to do is ask Board Staff to come back into the room with you and just chat with you informally to see how we should proceed through the rest of today. That is do the parties have a need to -- those who have not made comments to us, do they have a need to, in fact, make comments on the submissions that have been made. And those parties who have now made submissions, do they want to have another crack at what the other submitters have had to say if they came first.

Okay. How is that for putting the Board Staff on the line. So we will be ready in -- the staff will come back in in about 10 minutes time. Thanks.

(Recess - 2:50 p.m. - 3:25 p.m.)

CHAIRMAN: It's my understanding that some of the intervenors wish to address the Board. So what I will do is go through the list of intervenors and in order. And I would ask the parties if they have already addressed all of the issues that they forego their turn.

Competitive Energy Services, Mr. Sorenson?

MR. SORENSON: We would like to respond, Mr. Chairman.

CHAIRMAN: Pardon me?

MR. SORENSON: I would like to respond, if I may?

CHAIRMAN: Yes. That's what I'm calling on you for.

MR. SORENSON: My response is a rebuttal to Enbridge Gas New Brunswick's response to our questions that we put forward to the Board. And I will specify a couple of examples. And then kind of talk about the comments by Mr. Hoyt overall.

On his document that he prepared today, page 2, question number 8 that we put forward, we put forward the question, should the utility notify all customers of their choices for natural gas, you know, whether they are x, y, z and so on.

If one looks to the regulation, and I think you were kind enough, Mr. Chairman, to point this out earlier. But if one looks at the regulation, Section 3.1, A gas distributor shall advise a customer of all available gas supply options no more than 90 days, no less than 60 days before the expiration of a contract for the sale of gas.

Again, our issue with new customers, so we feel that is very ambiguous the way that is written. And it's not addressing new customers as they come on to the system.

So that is why we posed that question.

Another example in general terms is billing. I was part of the billing issues back in 2001. For example, the rules and regulations, the legislation and the current -- and the rules and regulations were different to address billing at that point in time. So in correspondence if the rules and regulations have changed since, do things like billing need to be revisited where, again, a marketer has the opportunity to provide a single source bill to the customer, not just the utility.

On page 3, which was submitted by Enbridge Gas New Brunswick, question 12. And, again, Mr. Marois might have made a good comment that I probably should have revisited the gas tariff. Should the utility be offering be limited to customer size and class. Again, the regulation does not say anything specific as it relates to a customer. It says that the distributor may sell to a customer. What does that mean?

We just want some rules and regulations. We are not necessarily against -- we are not against the utility offering gas to customers. But we want it defined. Is it to all customers, all classes, all sizes?

So back to Mr. Zed's comments earlier, there is no such thing as a dumb question. Our questions were put

forward because we felt that there was a lot of ambiguity, a lot of grey in the regulations and we want better definitions. Our job is to represent the customer and we want to be able to provide the customer with a clear choice of who to purchase their gas services from. And we feel the regulation needs to be better defined. Thank you.

CHAIRMAN: Thank you, Mr. Sorenson. Mr. Knight, am I correct in saying you didn't want to comment before and you don't want to comment now? Right. Good. I was correct for a change.

And Enbridge Atlantic Energy Services had the opportunity before.

Presumably they have nothing to say now. Mr. Hoyt, you have had your opportunity. Mr. Brown, you --

MR. HOYT: Mr. Chairman, we would like the opportunity to speak on some of the submissions that were made following ours.

CHAIRMAN: All right. Which ones are those?

MR. HOYT: Just briefly, the first one is the Maritime Gas Contractors' suggestion of adding a question about whether it would be beneficial to require Enbridge to use New Brunswick contracts. And we believe the Chairman correctly indicated that that's a policy matter and an

issue for the Province, not something that should be addressed in this hearing.

And in terms of the scope of the hearing really going afar, Enbridge's position is that that -- adding a question of that nature would certainly be taking this hearing in a direction that I don't think anyone contemplated.

With respect to PCS and Mr. Zed's comments. Again, in terms of the legislative issues and the decision made after the PCS application, we believe that it really is an issue between PCS and the Province. That it was dealt with at the hearing. And again would get this hearing off on quite a different tangent. And while we clearly sympathize with Mr. Zed in the objective of getting legislative amendments, having been down that road, we cannot support including that issue in this hearing as well.

The last intervenor that we would like to comment on statements that were made is WPS. Mr. Stewart discussed our position concerning policy decisions of the Province and believing that it will take us -- it will cause us to revisit issues that have already been determined.

Although Mr. Stewart may not have been involved in the consultative process that was involved with the Province

on developing the regulation and the amendments to the legislation as I was not, but clearly WPS was. And others that are here today participating in this process have had numerous opportunities in the development of that regulation to make their case.

And as Mr. Marois indicated earlier, what revisiting those issues will do is cause them to have a second and even third kick at the can.

Mr. Stewart also referred to our suggested question in our June 13th letter concerning allocation of Board expenses between marketers and Enbridge Gas New Brunswick. And questioned whether or not we still wanted that to be an issue, and whether I had referred to it. Clearly, I did refer to it. And it is something that we believe is an appropriate question.

Mr. Stewart also made a number of suggestions that question some of the questions don't relate to amendments to the Act or the regulations. And that a number of questions -- where we would make the point that a number of questions that are suggested by parties don't necessarily flow from the Act or the regulation. Particularly questions that were originally posed by the Board.

And in his comments Mr. Stewart was looking for



something that he could agree with us on. We also would like to find that agreement. And if the questions were somehow to be limited to issues that flow just from the amendments to the regulation and the legislation, that that may be a way to narrow the scope of this proceeding.

But clearly from the suggested questions that started this process which came from the Board, and dealt with things like billing or revisiting the code of conduct as it applies to other marketers, we took it that there were other issues that could come into play.

And if the scope of debate is to be opened up, then there are issues that we feel should be added to that list.

One other comment that Mr. Stewart made concerned Enbridge's suggestion that if Section 59 of the Act dealing with competition issues is to be considered, that Enbridge suggested that needs to be done in the context of all marketers.

Clearly it's about -- that section is about competition. And there are only a couple of players in the market. So to somehow restrict that to Enbridge I don't think would result in the question being properly canvassed.

And Mr. Stewart described my comments in terms of a

couple of themes. And I think if I had to try to take the theme from his comments, it seems to be that if the question relates to Enbridge it's okay. But if it relates to other marketers or might involve looking at their practices, that it's not on.

To suggest that not looking at the past practices and what hasn't worked in the market to date I don't think is a realistic approach to try to move the market forward in a positive direction.

So to conclude, again Enbridge's objective is to make this a manageable process where issues related to -- primarily issues related to gas and customer services being the items dealt with in the new regulation are dealt with, and would be prepared to move forward on that basis.

Those are my comments, Mr. Chair.

CHAIRMAN: Thank you, Mr. Hoyt. Irving and Maritime Natural Gas Pipeline Contractors had nothing to say on the last go around, so nothing here.

Potash, Mr. Zed, you have had your --

MR. ZED: Yes. Thank you very much.

CHAIRMAN: Thank you. And, Mr. Stewart, you have had yours.

MR. STEWART: You are looking at me very tentatively, Mr. Chairman.

CHAIRMAN: Well I just wanted a confirmation. That's all.

MR. STEWART: Yes, Mr. Chairman, that's fine.

CHAIRMAN: And Park Fuels and Mr. MacDonald the Gas Association. So that concludes our go around for today. If you would flip back to your tentative schedules. I am going to propose to you and hear the cries of anguish that will result from this, but the Board will do everything within its power to get its final list of questions to you by close of business on Monday next, which is the 28th, is it? I was reminded during the break that August starts next week. So that was kind of an eye opener. Monday the 28th?

MR. BOUCHER: Yes.

CHAIRMAN: Yes. We will have the final list of questions to you on Monday the 28th. We will ask that you e-mail to all parties and to the Board the responses to the questions. Now we are dealing with the substance here. On the 1st of August, by close of business on August 1, which is the Friday. And the interested parties may respond to -- or make comment on other party's responses to the questions by the 7th of August. That's at noon. Which puts us back on schedule. And that we will convene the hearing -- and again I emphasize we are not looking at calling witnesses, but rather we are just simply addressing the questions and hearing from the parties as

to in viva voce, as it were, lawyers or representatives arguing back and forth as to the answers to the questions on the 13th and the 14th.

Any comments from the intervenors? We really -- it's our intention -- it's pretty obvious by this time table that we want to get this matter cleared up by mid-August, if we possibly can. That's our intention.

We have a few other pressing issues that the Board is involved with. If you want to see a circus come tomorrow. Anyway -- all right, on that basis then, we will adjourn until August 13th at -- oh, all right -- sorry, I have not -- we have not ruled, but the official language of the hearing will be English. And it's a combination of -- well really it's a written hearing with the ability at the end to get together and argue, is what it is.

Yes, Mr. Hoyt?

MR. HOYT: The schedule indicates that the hotel is booked for the 13th and 14th. So that's what we should plan on is a two-day process? And I assume if it goes over, it's not going to go into the 15th?

CHAIRMAN: Well if it is, we will have you all send your clients home and you lawyers can come over to the Board's premises and argue there.

MR. HOYT: Thank you.

CHAIRMAN: No, we are looking at space, but we will find some place, that's for sure. We will adjourn then until 10:00 a.m. on August 13th. Mr. Stewart?

MR. STEWART: Just a little point of order. You said to e-mail their questions and things to all parties. I assume you mean just to those who have been granted intervenor status now?

CHAIRMAN: I am sorry, I am having trouble hearing you. Maybe you are a little close to that mike. I don't know if that's it or not.

MR. STEWART: I am sorry, Mr. Chairman.

CHAIRMAN: Yes. That's better.

MR. STEWART: Just a very minor point of order. You had -- we were talking about the schedule. You were talking about asking us to e-mail our response or the responses, et cetera, to all parties. And I assume that that means just the people who you have now recognized as intervenors today?

CHAIRMAN: Absolutely. Those are the only parties, plus the Board.

MR. STEWART: Okay.

CHAIRMAN: But the onus is on you to get it out to everybody so that nobody has to serve anybody else. And everybody, Madam Secretary has e-mail addresses that's all acceptable

to all of the --

MS. LEGERE: Everyone has e-mail addresses and a new schedule or new parties --

CHAIRMAN: Yes. Okay. Mrs. Legere tells me that all parties do have e-mail and presumably that's the easy way to do things today and we will do that. And she will send out a new list of coordinates by the end of the week so that you have everything in one place. But I think it's pretty complete now.

Anyway, thank you for your cooperation. It was a longer day than I had hoped for, but not as long as I had anticipated. How is that? See you on the 13th.

(Adjourned)

Certified to be a true transcript of the proceedings of this hearing as recorded by me, to the best of my ability.

Reporter