

New Brunswick Board of Commissioners of Public Utilities

Pre-Hearing Conference April 4th, 2000
Delta Hotel, Saint John, N.B.

IN THE MATTER OF AN APPLICATION BY ENBRIDGE GAS NEW BRUNSWICK
INC. DATED DECEMBER 31, 1999, FOR A PERMIT OF PERMITS TO
CONSTRUCT PIPELINES IN ORDER TO PROVIDE NATURAL GAS
DISTRIBUTION SERVICE

Henneberry Reporting Service

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Undertakings by Mr. MacDougall

page 19 - default agreement

page 36 - to indicate those sections that we feel we have complied with, those that we haven't complied with, giving a reason and asking for a specific exemption if the parties feel that is necessary, and providing a table of concordance to list those sections we have complied with

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Chairman: David C. Nicholson, Q.C.

Commissioner: Monika Zauhar

Commissioner: John Chenier

Commissioner: Jacques A. Dumont

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CHAIRMAN: Good morning, ladies and gentlemen. This is a prehearing conference in reference to an application by Enbridge Gas New Brunswick for a construction permit. And I will commence by asking for appearances, please. The applicant?

MR. MACDOUGALL: Mr. Chair, good morning. David MacDougall, counsel for the applicant Enbridge Gas New Brunswick Inc. On my left I have Mr. Neil Harte, Manager of Operations for Enbridge.

On my right, to my immediate right, Mr. Arunas Pleckatis, President of Enbridge Gas New Brunswick Inc. To his right my colleague Len Hoyt of McInnes Cooper. And to his right Mr. John Thompson, Manager of Marketing for Enbridge Gas New Brunswick.

CHAIRMAN: Good. Thanks, Mr. MacDougall. And so that I

don't overlook it this hearing, appearances for Irving Oil Limited?

MR. STEWART: Mr. Chairman, Christopher Stewart for Irving Oil Limited, joined this morning with Ms. Debbie Hunter from Irving Oil, immediately to my left.

CHAIRMAN: Province of New Brunswick?

MR. BLUE: Good morning, Mr. Chairman. Ian Blue for the Province of New Brunswick. To my right is Marion Rigby, Department of Natural Resources and Energy.

CHAIRMAN: Union of New Brunswick Indians?

MS. ABOUCHER: Good morning, Mr. Chair. Juli Aboucher on behalf of the New Brunswick Indians. On my right is Mr. Ross Mill. And on my left is Mr. Ron Perley.

CHAIRMAN: City of Moncton?

MR. MACLELLAN: Good morning. Don MacLellan on behalf of the City of Moncton. And on my right is Bill Cooper, our City Solicitor for the City of Moncton.

CHAIRMAN: Thank you. City of Fredericton?

MR. NOBLE: Good morning, Mr. Chairman, Board members. Bruce Noble appearing on behalf of the City of Fredericton.

CHAIRMAN: Saint John Energy?

MS. COUGHLAN: Good morning. Jennifer Coughlan, Saint John Energy.

CHAIRMAN: City of Saint John?

MR. BAIRD: Good morning. Jim Baird, City of Saint John.

CHAIRMAN: MariCo Oil & Gas Corporation? Anyone here representing MariCo Oil & Gas Corporation?

NB Power? Town of Dieppe?

MR. RICHARD: Good morning. Roland Richard representing Town of Dieppe.

CHAIRMAN: And last but not least, Environment Canada?

MR. LINDSAY: George Lindsay, Environment Canada.

CHAIRMAN: Are there any other parties that are in the room that haven't filed written notice? I would like to do a few housekeeping items here that I -- a few housekeeping items here.

Mr. MacDougall, do you have any affidavits of publication and posting?

MR. MACDOUGALL: Yes, I do, Mr. Chair. There is two. There is one affidavit of publication. And the other one is an affidavit of service, because some municipalities and others had to be served by registered mail.

Copies are there. And we will give 15 copies to the Board and distribute copies to the Intervenors here today.

CHAIRMAN: All right. I will just mark those. And they will form part of the record then, Mr. MacDougall.

At the back of the room, when you came in, there is a policy statement that the Board has issued in reference to formal intervention, informal intervention and written comment status, et cetera. And I'm sure that counsel have all received those. You haven't yet? Okay. Are you

picking those up?

And while you are doing that, the Board at a recent meeting also expanded the definition of what a sensitive feature was under our Gas Distributors and Marketer's filing regulation. And that sheet has been handed out by the Board secretary, I believe, prior to the commencement of the hearing. And also I believe there are copies on that back table.

I would like now, if I could, to return to the interventions and find out exactly what each Intervenor wishes to have by way of status before the hearing. And the Board will then deal with that section of our procedural bylaw whereby we have to accept the intervention or not.

And Irving Oil Limited of course is a formal intervention, Mr. Stewart?

MR. STEWART: That is correct.

CHAIRMAN: Province of New Brunswick, Mr. Blue?

MR. BLUE: It is a formal intervention, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Blue. Union of New Brunswick Indians?

MS. ABOUCHER: A formal intervention.

CHAIRMAN: Right. City of Moncton?

MR. MACLELLAN: Formal intervention.

CHAIRMAN: Okay. City of Fredericton?

MR. NOBLE: Formal intervention, Mr. Chairman.

CHAIRMAN: Saint John Energy.

MS. COUGHLAN: Formal intervention.

CHAIRMAN: City of Saint John?

MR. BAIRD: Formal intervention, Mr. Chairman.

CHAIRMAN: MariCo is not here. But their correspondence indicated that they wished to be a formal Intervenor.

NB Power, who is not represented, they just wanted to reserve the right to make a comment to the Board by way of letter of comment. Therefore they are an informal Intervenor.

The Town of Dieppe?

MR. RICHARD: As was submitted, it was placed on the informal intervention list based on the correspondence we sent. We would request copies of the file evidence. Is that possible?

CHAIRMAN: Under our rules we better make you a formal Intervenor, so that you will get copies of everything.

MR. RICHARD: Okay. That is good.

CHAIRMAN: And Environment Canada?

MR. LINDSAY: As submitted, informal intervention.

CHAIRMAN: Informal? Yes. Thank you. I would like to address the municipalities now. And I too read the press.

And it appears to me that the basic reason, and this may be incorrect, but the basic reason that the municipalities are represented here today has to do with taxation, charging for easements, et cetera. I would just

like to go through the municipalities and see if that is the sole reason.

My reason for asking that is that, for instance, if the municipalities were not to be represented at the construction hearing, why we could probably all fit in the Public Utilities boardroom and thereby save a number of dollars.

And it may well be that the Board has no power to deal with the question that you are here for. So that is the reason that I would like to poll you and find out just exactly what the nature of your intervention is.

Let's start with the City of Moncton.

MR. MACLELLAN: Mr. Chairman, you are somewhat correct, I suppose, in your interpretation of why we are here. Of course we recognize that part of the reason we need to intervene is the fact that the rules of the game for us are not clear. They are very unclear.

We don't point to Enbridge for that. We realize that that is something that the Province needs to do for us, is to clear up those -- the rules of the relationship and the relationship that will develop between Enbridge and our municipality.

So yes, one of the issues definitely relates to compensation. We are not sure exactly what form that compensation should take, whether it is taxation, whether it is a percentage of revenue.

And I guess what in our counsel, our City Counsel has done in communication with the Province is ask that they get busy and clear up those issues for us and do their homework.

But our concerns relate to much more than taxation and easements. It relates to the whole issue of the need for us to have an agreement with the gas distribution company when they come into our city.

And it is not just compensation. It is clarifying issues like the fact that our City Engineer should be the final signoff on where gas lines should be. That is just one example.

It is agreeing on things like how restoration will occur. It is things like will they replace tress when they are destroyed or damaged?

It is a myriad of issues. And certainly what you are seeing here is frustration on the part of the municipalities. Because there is nothing yet that determines how we will go about getting these agreements.

In fact the information we have at this point, we don't even know if we are going to have agreements with the gas distributors.

So you are partially right, Mr. Chairman. But you are also right that the majority of our issues will relate to the need for municipalities to have appropriate agreements with the gas company.

CHAIRMAN: Mr. MacLellan, do you agree that if it has to do with compensation and this Board has no jurisdiction in reference to it, maybe you should ask Mr. Cooper to share the mike with you there.

MR. COOPER: Yes. We could accept that position, Mr. Chairman. The real -- the issue is that the municipality is responsible for right-of-ways. And we have this intervening act about to happen on our right-of-ways.

And we don't know what the rules are. And the rules not necessarily set down by this Board, but set down by the Province through the standard construction regulation which has been promised and has been anticipated.

We expect that many of our questions may be answered by that standard construction regulation. But until such time as somebody produces that document, we have to be here, because we don't know what is happening.

CHAIRMAN: Well, Mr. Cooper, after we finish with the other matters, the Board will take a short recess and then come back in again. Because I would like the municipalities to chat with one another again.

But I point out to you section 16(3) of the Gas Distribution Act. And my interpretation, but I could be persuaded otherwise, is that basically if there is a disagreement between the gas distributor and a municipality or planning district about whether the gas distributor must comply with a requirement of the standard

construction regulation, a bylaw or regulation under the Community Planning Act, then this Board will adjudicate. Otherwise, you know, from where I sit, I don't see us with any jurisdiction.

Now I would just like, as I say, after a brief recess, after we have done the other business here, perhaps you can come back to me again.

And I guess all I'm looking for is that if the Province does come forth with the standard construction bylaw between now and the time of this construction hearing, then we will be able to take it for granted that the municipalities will go off pursuant to that standard construction bylaw and not be appearing at the hearing. I guess that is where I'm coming from.

MR. MACLELLAN: Mr. Chairman, could I just follow up on that? I would like to clarify on our behalf that it is more than -- or reiterate that it is more than compensation. I would just like to clarify that, that it is the whole idea of the need to have an actual agreement with the gas company. I would just like -- I just wanted to clarify that.

CHAIRMAN: Okay. City of Fredericton? Mr. Noble, anything to add?

MR. NOBLE: Yes, Mr. Chairman. With respect, we understand the taxation issues are not the issues for this Board.

The City's concern flies more particularly with

respect to the distribution of the pipeline, the infrastructure within the limits of our streets and our rights-of-way, the nature of the construction and the nature of the agreements with the applicant, and ultimately the interrelationship which is going to exist between us and with them.

Since this Board is dealing with construction permits and permit applications, I think that those are very directly relevant to the circumstances.

In addition, there are other agreements which must be dealt with between us as far as finances are concerned. But our primary concern is the infrastructure and those items which are specifically set out in the Gas line Distribution Act.

CHAIRMAN: Mr. Noble, you I presume have read 16(3). But again I would like you to direct your attention to that.

And perhaps when we come back after the break -- I'm just saying rather than expend the resources, et cetera and be here throughout this hearing, that perhaps the appropriate way to go is if you can't negotiate pursuant to that standard construction bylaw, that you then come back in a separate application, just to have the Board adjudicate as between the City and -- or the municipalities and the applicant.

Go ahead.

MR. NOBLE: Mr. Chairman, the nature of the application and

the suggestions as to whether or not there are going to be single contracts or in fact individual contracts with each municipality makes that a major concern for us, and I think it is an issue which should be resolved by this Board.

We are not -- I understand the position that you are taking with respect to those items but I think there are some elements of the application itself of the implications for the municipalities, which have to be resolved by this Board or should be -- the ground rules should be laid down.

That will allow us to deal with the applicant more directly on those issues that are financial or those issues which tie directly to our own bylaws and our own legislation.

CHAIRPERSON: Thank you, Mr. Noble. Mr. Blue, I will recognize you in an minute. I would like to go through the municipalities here if I could. The City of Saint John, Mr. Baird.

MR. BAIRD: Mr. Chairman, I would substantially agree with much that has been said for Moncton and Fredericton. And I guess I would point out that many things -- while you say you have read the press, many things have been said, and I guess I say that also with respect to the Province and the applicant. Many things have been said in terms of what people are going to do, what form the regulations may

or may not take, but we don't have those.

So it does put us into a position of wondering, well what -- in fact what role does the Board have to play and if those regulations were to be very minimal and to say very little about the nature of the relationship between the municipalities and the gas distribution company, I would think that we would be here requesting that the Board play a more active role with respect to the nature of its permit and what in fact they are approving and the conditions of their approval.

Whereas if we are -- if we were dealing with a rather comprehensive set of construction regulations I think quite possibly, as you suggest, many of the issues that we have concerns about will be resolved.

It does go beyond financial. That is probably the thing that the press picks up on most readily, but clearly there are more significant issues.

CHAIRPERSON: Thank you. Mr. Richard.

MR. RICHARD: Good morning. I guess I will echo the same comments that have been identified today, but being somewhat of a smaller municipality I guess our main interests is our right-of-ways and the affects it's going to have on our municipality.

And not knowing the details of that standard construction agreement which as we understand it are going to set the rules of the game, if you will, for possible

agreements is where our main concern lies. And at this stage we don't -- we are not aware of those -- of those rules that we have to play by.

And it is the right-of-ways and the direct and indirect costs that will be affected in the long term. And as previously noted it is not necessarily the taxation issue, that's not our main concern at this presentation. It is the unknowns, I guess.

CHAIRPERSON: Thank you, Mr. Richard. Mr. Blue, can you shed any light on the standard construction regulation or any other matter?

MR. BLUE: Mr. Chairman, I am going to stand up because I don't have a microphone.

CHAIRPERSON: Would you like to come up to the front here on table 1. And I have neglected -- the shorthand reporter will discipline me later -- but when you speak if you would identify yourself, it would be helpful for her.

MR. BLUE: Mr. Chairman, I don't have a lot of information. I have a little bit of advice though.

A great deal of faith is being put in the unyet made standard construction regulation. I have seen the regulation in draft. The regulations simply would impose a default agreement in the event that the municipality and Energy Gas New Brunswick are unable to reach a reasonable agreement. If there is then a disagreement with the default agreement imposed by provincial regulation after

failure of good faith negotiations, the Board will be able to resolve any difference of opinion.

I think what this tells us is that it makes a great deal of sense for the municipalities and Enbridge to negotiate in good faith a standard type of agreement between a gas company and a municipality. Precedents for these abound across Canada and Ontario and Alberta.

The form of agreement in the standard construction regulation, if it is made in the form that I have seen it, would be basically the agreement that is used by Enbridge Consumers Gas Company and Union Gas in Ontario.

It is fair, it does not cover every detail, it does not cover every issue. And the reason for that is that the relationship between the gas company and the municipality is an ongoing one that carried on in good faith in which there must be an element of trust. Not a relationship where every dispute comes before an independent and impartial tribunal and is argued by lawyers to be resolved by order. It doesn't make sense to proceed that way.

So I would urge the municipalities and I would urge Enbridge to negotiate in good faith, try to reach an agreement bearing in mind that the taxation issue is going to be determined by the Province, and let each party ensure itself that it's a standard type of agreement, because that is after all what other municipalities across

the country get. We are not going to reinvent the wheel here in New Brunswick, in my respectful submission, and let's proceed that way.

Now there is no reason, in my submission, why if there are remaining issues applicable to each municipality that cannot be resolved in that agreement, that the Board cannot be spoken to by the municipality in terms of an appropriate condition for a permit to construct.

But let's go through the negotiations, let's see what the outstanding issues are before the Board is heard on that. That doesn't have to be done in this hearing. The Board can be approached at any future time, as you yourself have noted, for an amendment to a certificate for a condition if the Board thinks one is necessary in the public interest.

I don't, however, want any municipality to go away thinking that the standard construction regulation is going to be a solution, a perfect solution to all the problems that the municipalities have shared with us this morning and the issues that they have raised. It probably won't be. Those can only be resolved by ongoing negotiations in good faith between the gas company and the municipalities.

As for when the standard construction regulation will be ready, my understanding is soon. I can't be any more precise than that.

Thank you, sir.

CHAIRPERSON: Mr. Blue, you mentioned that the taxation issue also will be resolved by the Province. Can you share any further knowledge with us in that regard as to when that will be?

MR. BLUE: No, sir, other than I know that the discussions have been held at the highest levels and we are awaiting - - we are waiting for that issue to move forward

CHAIRPERSON: Thank you, Mr. Blue. Mr. MacDougall, since I can just ask one rather than every municipality, have negotiations commenced with the various municipalities by Enbridge Gas New Brunswick?

MR. MACDOUGALL: Mr. Chair, what I would like to say is Enbridge Gas New Brunswick has been working closely with the municipalities and we have met with the engineering departments of the various municipalities. Parties from the municipalities for the year one construction have shown up at the open houses and otherwise. We were not aware, I don't believe, until Mr. Blue made his comments that the process may be that of negotiation with a fall-back agreement.

So any discussions that have gone on to date have gone on in the spirit of the fact that Enbridge Gas New Brunswick is going to co-operate and work with the municipalities throughout in the absence of or with a standard construction regulation.

We are waiting for the standard construction to come out, as are the municipalities, and would hope that that would come out in a timely fashion so that we know the parameters under which we should be operating and should be acting.

Mr. Blue has said that they are now in draft, he gave an idea of what they may be. We were not aware of that. We look forward to seeing them in final form and then acting in accordance with them to the extent that that is required.

Our key issue really is one of timing. We agree with the municipalities that this is an issue that should be resolved. Hopefully if it could be resolved in advance of the hearing on this construction process going forward, that would be I think to everybody's benefit and then we would be able to answer thee questions somewhat clearer.

CHAIRPERSON: Following up on what Mr. Blue said, have you shared with the New Brunswick municipalities the form of agreement that Enbridge uses in Ontario and/or Union in Ontario?

MR. MACDOUGALL: We are not -- I am not a hundred percent whether that has been or has not been, but if we could talk amongst ourselves for a moment and then we can get back to you with whether that has been shared with the municipalities.

CHAIRPERSON: By all means, yes.

(Short break)

MR. MACDOUGALL: Mr. Chair, my understanding is that the form of municipal operating agreement that Enbridge or Enbridge Consumers Gas or Union uses in Ontario was shared with the Province, a copy was given to them to show what Enbridge does do in another jurisdiction.

It wasn't shared between Enbridge Gas New Brunswick and the municipalities specifically, it was given to the Province as an example of what is done in Ontario. Whether the Province shared that with the municipalities or not we are unsure.

Again, it was given to the Province to give an idea of what was done by Enbridge in other jurisdictions in the understanding that the Province is the party who is going to be preparing the standard construction regulation.

CHAIRPERSON: Mr. MacDougall, I wonder if the Board could request the applicant to get copies of that agreement from Ontario and share it with all the municipalities that are going to be -- that form part of this application?

MR. MACDOUGALL: Mr. Chair, I think that is fine and we would undertake to do that. However, I don't know if that document will become the standard construction regulation, so I don't know if we want to create a situation where we are sharing a document that the province may or may not use. I just raise that.

We have no problem with sharing what is referred to as

the Municipal Operating Agreement in those jurisdictions.

Again, if we are relying on Mr. Blue's comments that in draft that would be the default agreement, we will share that on that basis.

CHAIRPERSON: Okay. Thank you. Now each Intervenor and the applicant of course received from the Board a tentative schedule and I just wonder if there are any comments on that, or shall we proceed in this hearing with that schedule? Anybody any comments? Moncton? Saint John?

MR. MACLELLAN: Mr. Chairman, I guess I will start by saying I think we are as surprised as Enbridge in terms of the different slant that has been put on the standard construction regulation.

I guess we thought that it was going to cover more than it does. And the fact that now the door is going to be opened, that all municipalities negotiate their own agreement with Enbridge. Given that, I think Mr. MacDougall has pointed out the fact that that could take some time.

I am wondering what that does to this schedule. We are going to be hard-pressed without understanding the agreement and the standard construction regulation to effectively be an Intervenor based on this schedule.

CHAIRPERSON: I appreciate what you are saying and that is why I am going to take a break. But I think you should look at it and look at the section that I quoted to Mr.

Cooper. And I think you come by way of a separate application to us to adjudicate in reference to any difficulties you may have in negotiating with the applicant in this hearing.

And then we can attach a caveat to the permit, they can run parallel is what I am saying. And frankly, I don't want to cut off anybody's opportunity to be an Intervenor in this process at all. But I think if you take the time and think about it you may find that as long as you keep in mind that you have the right to get before the Board to have us adjudicate in reference to that agreement, why then, your interests will be protected. But that is why I want to have this break after.

MR. MACLELLAN: Well, Mr. Chair, before we do break, could I just follow-up on that. My question to the Board, I guess, is when we disagree, meaning Enbridge and the municipalities, when and if we disagree, and we come to the Board, I am wondering what -- on what basis you will adjudicate? That is part of our problem.

We don't -- particularly we won't know the rules of the game even after we have the standard construction regulation, by the sounds of things. So our concern would be how the Board will adjudicate.

If you are using the Ontario agreement, as an example, I would just like to go on record and say the Ontario municipalities are fighting with the Ontario Energy Board

right now over those -- the unsatisfactory nature of the operating -- the model operating agreement that are used in Ontario. So I guess that is my question to the Board, how will you adjudicate?

CHAIRPERSON: I suggest that you talk to your solicitor in the break and he will get back. And I think that those are things that -- this is new to New Brunswick, but we can probably do it in a rather expeditious fashion. Mr. Stewart?

MR. STEWART: Just before you break, the tentative schedule that has been circulated, which I assume will now become the schedule --

CHAIRPERSON: Yes.

MR. STEWART: -- is there any change in this from what was previously circulated as the tentative schedule?

CHAIRPERSON: Not to my knowledge. Let me read it out. I have got a couple of matters before we will take that break.

Of course the Pre-filed Evidence is now passed, Notice of Intention to Intervene on the 31st of March, pre-hearing conference today, interrogatories to EGNB April 14, EGNB response April 21, Intervenor evidence April 28, interrogatories to Intervenors May 5, Intervenors responses May 12, hearing commences May 15. That's the only one I have ever seen, Mr. Stewart, frankly.

MR. STEWART: Fine. I just didn't have my other one.

That's fine.

CHAIRPERSON: It is different from your other one?

MR. STEWART: No.

CHAIRPERSON: Just before I see if there are any matters that the parties wish to bring up, this is not in reference to the construction application, but yesterday the Board received a letter forwarding along in the rate application the interrogatories for Irving Oil Limited and for staff's witness in which Mr. Hoyt expressed perhaps the need at the commencement of the rate hearing next week to make a motion.

I received that and simply spoke briefly with Board counsel, Mr. O'Connell and Mr. Goss, and I would think it would be propitious if counsel would meet with Board counsel and Mr. Goss after this pre-hearing conference concludes and try to get to the bottom of this.

Frankly, the Board doesn't want to get involved in a very complex motion at the commencement of the rate hearing if we can at all avoid it. It is going to take a good deal of time.

So that is all the Board is saying, is that I would like you to sit down if you would after and see if we can find out what is at the bottom of this.

MR. MACDOUGALL: Mr. Chair, we consider that is fine, we will meet with Mr. O'Connell after this and also advise you that that motion which was directed to one of the

other parties in that hearing, we have already set up a tentative time to meet with counsel for that party to try and deal with the issues to the extent necessary. If not, we will probably continue with our motion. We will talk to Mr. O'Connell at the break.

CHAIRPERSON: Perhaps Mr. Stewart could be involved as well

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MR. MACDOUGALL: I would hope so.

CHAIRPERSON: -- and Mr. Blue and, you know, any of the Intervenors who wish to be.

All right. Any matters that any of the Intervenors wish to bring up at this time before we take our break. City of Saint John?

MR. BAIRD: Mr. Chairman, when I made my initial comments I was alluding to the fact that really without the standard construction agreement we are in a bit of a situation where what are the matters that are not covered, how bare bones, how lack of detail there may be in these regulations.

And what I was thinking that I read and was struggling to find before I spoke was section 21(1) where it speaks of the Board granting a permit subject to terms and conditions. And really I guess that to me is the heart of it is, well without knowing what is already covered in the regulations, where do you start?

I would think surely many of the issues that are of

concern to us will be covered in those regulations and may very well be covered in a satisfactory fashion. But unless we know that, we are really -- and I would think yourselves as well as ourselves are not in a position to address the subject of what reasonable terms and conditions should be considered.

CHAIRPERSON: We will take our break. I suggest -- it is quarter after 10:00, the Board will come back in at 25 to 11:00. If you are doing a lot of talking, you want some more time, why let us know.

Thank you.

(Recess)

CHAIRPERSON: Any of the parties have anything to report to the Board after that break? Mr. Noble?

MR. NOBLE: Thank you, Mr. Chairman. With respect, it is the position of the City of Fredericton and I believe the other municipalities, that we wish to continue as formal Intervenors.

We are listed as parties pursuant to the fact that this is an application. We have interests with respect to the location of the proposed pipeline and its effect upon the environment for our respective municipalities. And as each of those are elements of the Act and each of those are issues that must be dealt with in some way, shape or form, we feel that it is of real value to us to be available to participate in an active way before this

Board.

Given those circumstances, we do believe that it is relevant for us to be here and we wish to remain and participate fully with the Board and with the applicant.

CHAIRPERSON: Thank you, Mr. Noble. All of those parties that have submitted interventions, both formal and informal, are approved as Intervenors by the Board pursuant to our regulation.

I am hopeful that negotiations will start and that you won't wait on the Province.

MR. NOBLE: Certainly not, Mr. Chairman. We would be more than happy to deal with Enbridge in an informal fashion.

MR. PLECKAITIS: Mr. Chairman, that is our position as well. We intend to enter those discussions.

CHAIRPERSON: Good. Thank you. Now I had neglected to bring up one further matter. And that is Mr. Blue had written to the Board on Friday in reference to exemptions which were requested in the original application.

And during the break I had an opportunity to talk with Board staff concerning it and Board staff has been in touch with Enbridge concerning any exemptions under Section 5.

And my understanding, Mr. Highfield, is that if Enbridge wanted a specific exemption from Section 5 that the Board was to be informed and reasons given why that specific exemption should be granted. To date, as I

understand it, there have been no specific requests for exemptions under Section 5.

In Mr Blue's letter he requests that EGNB provide a concordance showing where the Section 5 required information is included in the application by schedule, page and paragraph number, and as well the other than Section 5 exemption should be discussed. That is if the EGNB is going to go ahead with the request for any of those others. The one that gets me is being able to lay pipe under a public building. That is the one that sticks with me.

Okay. Two parts of it then, the Section 5. Mr. MacDougall, does the applicant have any difficulty in providing the concordance which Mr. Blue requested in his letter of the 31st of March

MR. MACDOUGALL: Mr. Chair, maybe we can go back one step on your initial comment there that Enbridge Gas New Brunswick hasn't made a specific request for exemptions. What I would like to do is refer back to our letter of March 20th that was file with the Board. And under numbered paragraph 2, we did ask for direction on the issue pursuant to subsection 1 of the filing regulation, essentially that we be exempted from that filing regulation and that the Board accept our filing as made with the right of Intervenors to respond.

This would be similar to the direction that the Board

granted with respect to Section 9 under the rates application. I believe that is the issue that Mr. Blue is addressing, the fact that we have asked for that exemption.

The reason we have asked for that exemption is we believe that having met with Mr. Highfield, we had discussed -- Mr. Harte discussed some of the issues, some of the provisions as we stated in our letter we felt were not either specifically applicable to EGNB or would be somewhat impractical in the circumstances in the first year of a green field operation.

We continue to be of that view and we believe the Board should take cognizance of the fact that we have made a filing which we believe is a filing on which the Board can make its determination to issue permits. And also we would be able to respond to Intervenor's IR's as and when they came in as they were applicable to our filing. And as the Board mentioned earlier, the Board does have the authority to condition our permit to the extent it feels it may require other information.

Our facilities application dealt with issues as they may arise. For example, we have stated that we would provide as built drawings, we would continue to do that.

Again, some of the requirements and some of the information we said we would provide on an ongoing basis is caused by the fact that this is a green field

environment and it is difficult for us to have all of the information in the specificity required by the regulations at this time.

For example, just to point out a couple of the regulations, a couple of the sections deal with transportation service contracts with marketers. We won't be having those. Some of the issues dealing with M&MP, they may be controlling some of the facilities, custody and transfer stations, communicate control and communication.

So there is a whole series of issues and we really felt the best approach in year one was to file our facilities application with as much information as we felt was available at the time, allow Intervenors to ask their questions as necessary as IR's or at the proceeding, and that that was the best way to move forward.

So we would still be asking the Board for that direction and we believe it is the appropriate approach for the Board to take in this first application.

CHAIRPERSON: What was the date on the letter you referred to?

MR. MACDOUGALL: March 20.

CHAIRPERSON: Yes. Okay.

MR. MACDOUGALL: And I will just raise, Mr. Chair, we can deal with Section 5 but there are a couple of other exemptions and issues raised in there which we would come

back to later and ask for the Board to discuss before the end of the day. And it is paragraph 2 -- numbered paragraph 2 on page 2 which deals with the Section 5 issue.

Again, I believe that is what Mr. Blue is addressing in his correspondence of March 31.

CHAIRPERSON: Yes. Go ahead.

MR. MACDOUGALL: Those are our comments.

CHAIRPERSON: Mr. Blue?

MR. BLUE: Mr. Chairman, members of the Board, the Province is supportive of Enbridge Gas New Brunswick's desire for a timely facilities hearing and is very conscious of the need to have Enbridge ready to start constructing this summer. And is going to be supportive of everything possible to do that consistent with complying with Provincial law.

Mr. Chairman, Enbridge is an applicant. Under this Gas Distribution Act, the onus or burden of proof is on Enbridge to prove that it has made its case for a permit. The Gas Distribution and Marketers Filing Regulations were made by the Board. They are regulations that have the force of law.

The applicant, in my respectful submission, must comply with them. Obviously with respect to matters that are not yet in existence, such as marketer's contracts, transportation arrangements, it can't.

But the way that most applicants file permit applications or applications to build pipelines is to comply with a set of filing requirements similar to these.

These were not cut out of whole cloth. These regulations are similar to regulations that exist elsewhere.

The normal process is to file a binder with tabs. The tabs have on it the regulation section, behind each tab normally is the information required by the regulation or an explanation of what -- why that information cannot be provided. Alternatively, if there is a request for an exemption to that regulation, grounds are put forward.

That is a fairly easy thing to do, that's a fairly easy way to organize.

What we have instead here are schedules with information that may or may not comply with the regulations. I don't know, because I haven't gone through it. My analysts haven't been able to complete it.

But none of the parties to his hearing should have to go look for the required information, like raisins through a rice pudding.

The onus should be on the applicant to provide that information to the Board so that the Board's analyst and the parties' analyst can refer to it. What I am asking Mr. MacDougall to do, and I spoke to him on the phone about this and he suggested I write the letter that I have written to the Board, is simply give us a concordance.

Have one of their analysts go through and tell us where the right information required by each regulation is found in those various schedules.

If the -- tell us if the applicant cannot provide it, and why. And if they want an exemption from a particular requirement, tell us why, what is the case for that? That is the onus on an applicant to prove the case that the pipeline is required in the public interest.

The information that they are asking for a blanket exemption from, sir, is whether they are complying with the engineering codes and regulations applicable to pipelines, technical information about the pipelines, their hazards analysis, their description of regulating equipment, odor injection facilities, they are saying they don't want to have to comply with this.

These are important issues. These are issues that the public are going to raise with the Board or raise with politicians. You have got to know about those.

So I am assured that they have addressed some of these issues somewhere, or are able to do it. All I want them to do is tell everyone where in all that material we can find that. I don't -- I submit it is not up to us to discover and prove the case, it is up to them to prove their case.

So that is my comment about blanket exemptions.

I make the same comment about Section 7, the

environmental regulations. Those regulations are very carefully drawn. They require an analysis of environment effects and again if that information is in there, tell us where Section 7 has been complied with, if not, why not.

Now I submit that is a reasonable thing to do and I submit that the lawyers and the analysts working together can produce that schedule in a day. That is not an onerous task and I submit the Board should have it.

And the exemptions, I understand from Mr. MacDougall that in fact there is no application to interfere with the mine -- or work and I understand -- I think I understand from him, perhaps he can clarify it, that there is no application to build under public buildings that are not getting gas service, so that is not an issue. And with respect to exemptions from municipal bylaws, let's deal with that on a case-by-case basis as you have suggested, Mr. Chairman.

Those are the Province's submissions.

CHAIRPERSON: City of Moncton?

MR. MACLELLAN: Mr. Chairman, I would just like to pick up on that last point that Mr. Blue made. I am wondering about an exemption that is being asked for, one in particular -- two in particular, I guess. Any exemptions for Enbridge in terms of the Community Planning Act or the Municipalities Act. If Enbridge is exempted from subsection 7.5 of the Municipalities Act it would mean

that there is no responsibility, or the municipalities do not have the power to shape an agreement with the gas --

CHAIRPERSON: Look, I am going to cut that off. I think we are getting far afield here. Because that is a particular section in our legislation whereby we would have to adjudicate if someone were to be exempted from the Community Planning Act provisions or municipality. And that is not what we are talking about here.

What we are talking about here is whether Enbridge as the applicant should be exempted from any of the provisions of the legislation or, as Mr. Blue has said, give a concordance so we can all find out where the information is.

That is the basic thing that we are looking at now, not -- I mean in introducing the subject matter, I think I said that Mr. Highfield had been talking with Mr. Harte and it may or may not -- I may or may not have properly characterized it. But my impression was that Board staff had said, if you wish a specific exemption from any of the filing requirements, that you specifically state which one you want and the reasons why.

Now we have exempted Enbridge Gas New Brunswick from certain requirements because in a green field situation it is impossible to do it. But certainly not the kind of thing you are speaking of.

MR. MACLELLAN: Mr. Chairman, just so I can be clear on

that, you are saying now is not the time to argue whether the exemption should be granted. And I want to clarify the Board hasn't yet exempted Enbridge from those items pointed out by Mr. Blue. Is that correct?

CHAIRPERSON: Well my understanding is that no, not the ones that are in this correspondence. The Board has not exempted Enbridge from any of those.

MR. MACLELLAN: Thank you.

CHAIRPERSON: Okay. Any other parties. Mr. Stewart?

MR. STEWART: Mr. Chairman, it is the position of Irving Oil that -- I guess in essence we agree with Mr. Blue's submission --

CHAIRPERSON: Sorry. I am having difficulty hearing, Mr. Stewart.

MR. STEWART: I am sorry. We agree with Mr. Blue's submissions. The applicant does have a variety of -- I mean the regulation is very clear. In essence we all have a check list. I am sure the Board and Board staff in essence has a check list that they go through to determine whether each of the requirements are met and/or met satisfactorily, but we certainly have a check list of each of the items that are to be included in the application.

Part of the problem we face as a practical matter is in essence we have a stack -- I actually have a cardboard box full of materials in which I have to try to sift through to try to determine what Enbridge's position is,

with respect to, as Mr. Blue points out, subsection 10 or 12, or whatever it happens to be.

And I don't think it is appropriate in the circumstance for Enbridge to ask for in essence an omnibus exemption from Section 5. Because some of the items there are maybe sufficiently covered in the evidence that has been filed and are certainly directly relevant even in a green field situation

And I don't think it is too much to ask, to ask the applicant to identify where in the evidence they have dealt with the topics that are mandated by the regulation and/or if it is not appropriate because it is a green field, advise. Or if they are unable to provide that information at this time, advise that as well.

We would submit that the Board should direct Enbridge to do that and do that sufficiently in advance of the hearing so that we can deal with our information requests accordingly.

I think in the end if Enbridge does that, then that will go a long way to reducing the number of information requests. Because the number one information request from us is going to be, provide us the concordance, because I don't know how else we can deal with it.

And if we go forward in that fashion then we will know the position and answer on a variety of things and I suspect will be able to ask a lot fewer questions and make

the process go much smoother.

I think it is in their own interests, I guess that is our submission. Thank you.

CHAIRPERSON: Thank you, Mr. Stewart. Any other parties?

Any response, Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair. On behalf of Enbridge Gas New Brunswick, the filing that we made we believe covers - - certainly covers certain sections of Section 5. And the request we had made is that Section 5 is subject to the board allowing to otherwise direct. And that is why we had requested the direction.

And we feel that -- we continue to feel it is appropriate in the circumstances. However we don't feel that it is unreasonable or too onerous for us to indicate those sections that we feel we have complied with, those that we haven't complied with, giving a reason and asking for a specific exemption if the parties feel that is necessary, and providing a table of concordance to list those sections we have complied with.

Sometimes it will be in part. Because some of these sections are broken into subsections. And sometimes we have complied with half of a subsection. It is just the nature of the way the regulations are and the nature of a green field operation. But we would undertake to do that.

With respect to the other sections that Mr. Blue raised, it is my understanding again that we are not going

under a mine or quarry from the maps we currently have nor are we going under any buildings.

However those exemptions we will ask for them during the proceeding, as the Chair has indicated it would be appropriate if we needed to. Although we don't anticipate needing to do so.

With respect to 16(4) again we are asking, and asked in our application, that we have the right to use that exemption during the proceeding, when the matter could be heard.

Again, hopefully we wouldn't have to revert to 16(4) if the standard construction regulation was in place. 16(4) is probably not as applicable if that is the case.

And the final point which hadn't been raised by anyone but is in Mr. Blue's letter, is the applicability of section 96(3). Again 96(3) allows the Board to otherwise direct with respect to certain regulations that may not have been complied with.

We have asked in our letter of March 20th that that be used in a few circumstances. And we would ask that we be allowed to continue to use it if we need to make an application throughout the proceeding. And then it can be adjudicated on at that time.

With respect to Section 7 raised by Mr. Blue, we have not asked for an exemption from Section 7. We feel we have complied with Section 7 in our Environmental Impact

Assessment.

CHAIRMAN: Mr. Blue?

MR. BLUE: It is just that I didn't hear Mr. MacDougall say that he would give us the concordance for Section 7. But maybe -- had he said he would give us the concordance for it.

MR. MACDOUGALL: I believe we could give a concordance with Section 7. It may be a little different from EIA to EIA. They were set up to be very, very standard. However, some areas have a few environmental issues that don't occur in others. So we would endeavor to do that.

I guess coming back to Mr. Blue's point though that this would take a day, I don't believe it will take a day, Mr. Chair. So I think we would want a fair amount of time to make sure that we fully and appropriately comply, if that is what the Board eventually orders.

CHAIRMAN: Any estimate on how long that would take?

MR. MACDOUGALL: I think we have a rates case starting next week.

CHAIRMAN: I think we do too.

MR. MACDOUGALL: Can I confer with my colleagues --

CHAIRMAN: Yes.

MR. MACDOUGALL: -- for a couple of minutes?

(Short break)

MR. MACDOUGALL: Mr. Chair, we know the concern raised by some of the Intervenors that they would like to see this

before they file their IR's. The problem is they are expected to file their IR's on April 14th. And we are in our rates proceeding next week.

And although the company representatives on the construction side can put this together, there is a certain measure of a legal component to ensure that it is the right sections of the regulation and otherwise that are being complied with. And we feel we will have a bit of a tight time line to be able to do that and focus on the rates issues as well.

We were wondering if we could agree to have that filed somewhere after the 14th, which would be maybe around the 17th, so the concordance would be in. The parties would all have it well before they have to put in their evidence. They may not have it though by the time they have to issue IR's.

But I believe by reading through the facilities application and knowing that we are going to provide the concordance, the issues that they want to raise IR's on will come to them without knowing whether or not there is a specific part of the regulation that has been named next to the section.

So we would ask to be able to have until the 17th of April.

CHAIRMAN: Any comments from the other parties?

MR. BLUE: That is perfectly acceptable.

CHAIRMAN: Okay. Mr. Stewart?

MR. STEWART: It is not acceptable to us, Mr. Chairman.

With respect, that was part of our whole submission for being in a position to do that.

It makes it -- I mean if we -- we will end up having to do the process from the outside looking in in order to do the information request by the 14th.

I think -- with respect, it would seem to me that if Enbridge has, you know, filed its evidence, one would assume that it knows what regulations or what parts of what regulations it has complied with and what it hasn't.

One would have thought that would have been an exercise they have already gone through.

And I appreciate that when you have to actually create a table of concordance or something of that nature, that that is no small task. I understand that.

But with respect, the whole point of wanting it in the first place is so that we are in a position to assess the application and determine what if any information request we will make, particularly to those issues that aren't addressed in the evidence.

We will need to know why it is -- you know, that bit of reasoning. So if that is going to get put off then -- and I don't necessarily have any objection in principle to that. But our information request should be put off as well. I mean, it kind of cuts both ways.

CHAIRMAN: Mr. MacDougall, I think -- I see a lot in what Mr. Stewart has to say, in that Enbridge has prepared the evidence. And they should know whether or not those sections have or have not been complied with and where they have. To me it seems that way. That may not be true.

Is there a compromise here somewhere where we can say look, we will have a draft of the concordance out to the parties by say the end of this week? And Enbridge reserves the right to correct that concordance up to the 17th.

And then Mr. Stewart, in doing his interrogs, will have the benefit of the nonlegal approach that staff of Enbridge would take. And that would assist him in his process.

MR. O'CONNELL: Mr. Chairman, if I could, from Board staff for a second.

CHAIRMAN: That is Mr. O'Connell. I'm sorry. They are not identifying themselves.

MR. O'CONNELL: You are quite right. I forgot.

CHAIRMAN: Go ahead, Mr. O'Connell.

MR. O'CONNELL: One of the possibilities might be, Mr. Chairman, or might arise is whether or not the Intervenors to the construction hearing actually plan to file prefiled written evidence with the Board. The schedule that you went through earlier this morning

indicates Intervenor evidence April the 28th.

If they are not going to do that, that also eliminates the item that is interrogatories to Intervenors. And perhaps the filing of the concordance and interrogatories to Enbridge Gas and their response could be moved back in time.

Now that would require some sort of a commitment from the Intervenors today about what they are going to file or not file in terms of evidence. But that might free up a couple of extra weeks.

CHAIRMAN: Are any Intervenors prepared to commit to not wanting to call witnesses in this hearing or do they wish to reserve the right? That is basically what you come down to.

MR. STEWART: Certainly we are not prepared to commit that at this time. Again it is sort of a horse and cart issue. I might be able to commit to doing that in terms of if I knew what information requests I have. And you know, this has to be the first step in that process, I think.

CHAIRMAN: Okay. Mr. MacDougall?

MR. MACDOUGALL: Mr. Chair, with respect to your suggestion, I think we could commit. But we would rather have till Monday, if that was possible, which would be the 10th, to file our without prejudice concordance, then a follow-up on the 17th, if that would be appropriate. That would give four days, so --

CHAIRMAN: All right. Mr. Stewart?

MR. STEWART: That would seem perfectly acceptable, Mr.

Chairman. And so I would like just to sort of determine two things before we leave the subject. One is exactly what Enbridge is undertaking to do here.

Because it is not clear to me whether they have undertaken to indicate if they have complied with the section or have provided evidence on a point that they have agreed to identify, you know, if it is 5(3) for example, that 5(3) is dealt with here.

And we are not even asking necessarily that Enbridge commit that that is the only spot in all of the entirety of their evidence that, you know, issues surrounding 5(3), to use a hypothetical example, are dealt with. Just simply from their perspective, you know, this is where they feel that they have dealt with that.

We are not limiting them to that, strictly speaking. But in fairness they should. Because obviously the evidence has to be considered in its totality. But they should be able to identify to the extent that, you know, we addressed that point with this bunch of evidence.

And Monday the 10th is fine.

CHAIRMAN: Okay. Any comment on that, Mr. MacDougall?

MR. MACDOUGALL: Mr. Chair, for clarity we will give a full concordance showing that where issues have been addressed, where issues have not been addressed.

And where they have not been addressed we will either indicate that we are not addressing them because they are inapplicable or we are not addressing them and asking for a Board direction in that regard.

We will ask for the same direction on the inapplicable ones. But there will be two sets. There are some that are just not applicable because they are not applicable to our circumstances. There is others that may not be responded to for a timing issue or otherwise.

\ CHAIRMAN: Okay.

MR. MACDOUGALL: And we will ask for the Board to approve those.

CHAIRMAN: Good.

MR. O'CONNELL: Mr. Chairman, just one comment if I may?

CHAIRMAN: That is Mr. O'Connell?

MR. O'CONNELL: I'm sorry. I'm so used to -- I'm used to working with a court reporter. I think -- I keep forgetting she might not know my voice.

If -- just so I understand what is being proposed here, the suggestion is a draft concordance will be available on the 10th from Enbridge Gas. That leaves only from the 10th to the 14th for interrogatories.

Another suggestion might be that the Board and the other Intervenors perhaps be given the opportunity to deliver supplemental interrogatories based on the concordance only.

CHAIRMAN: That is after the 17th?

MR. O'CONNELL: That is correct.

CHAIRMAN: Any comments on that?

MR. STEWART: Mr. Chairman, I think part of the process would be to limit interrogatories in the first place. And so that sort of defeats the purpose.

I would prefer to receive, you know, as best I can, as quick as they can, in good faith. And then we can work with that. That is -- see, that still is in the middle of the rates hearing. That makes it very difficult as a practical matter.

I'm wondering -- it would be -- at least Irving Oil as an Intervenor would be prepared to squeeze the subsequent deadline in terms of our own evidence, if any. And maybe if we pushed the interrogatories to Enbridge Gas back to the Monday, on the 14th, whatever it is. I don't have a calendar in front of me.

MR. MACDOUGALL: Mr. Chair, before we go down that road, we would like to really keep to the schedule. And I think we will talk to other reasons. We feel the concordance that will get out by the 10th will be substantial.

What we want to do is ensure that we have a little bit of a legal review to make sure that we are not doing anything inappropriate and we are a little constrained in time. So it will be substantial.

Parties can certainly cross-examine if issues arise.

And that being said, our facilities application is still our facilities application. I mean, we feel parties will read it. And the issues for IR's will generally arise out of that.

What this process is is to tell parties where we may or may not have complied. We are going to try and do that substantially by the 10th, with the ability just to make sure if we missed a few items or if we want to reword something, that the lawyers have a chance to adjust that.

CHAIRMAN: Yes.

MR. MACDOUGALL: So we would really like to stick to the schedule. We think that the parties, the Intervenors can start looking at what IR's they want to issue on the 10th. They will then get the letter. And if they need to revise their IR's, they have three days to do so.

MR. O'CONNELL: Mr. Chairman, from the Board staff perspective -- my name is O'Connell. From the Board staff perspective, it is key that we have as open and complete and public a hearing into all these issues as can possibly be achieved.

To do that we need the opportunity to submit interrogatories to whatever this applicant submits well prior to the hearing.

To come to the hearing with unanswered questions from the Board staff perspective is not the best way to proceed. We need to have the opportunity to review that

concordance and submit interrogatories based on that material.

And all that this applicant does when he tries to hold us to a schedule is try to limit that openness, simple as that.

CHAIRMAN: What about the -- and I forget whether it was Mr. Stewart or who it was, that we stick with the existing schedule.

And if because of the legal look at the concordance after the 10th -- or excuse me, as of the 10th, that certain other issues arrive, then that we extend the right for interrogatories to be delivered on those changes in the concordance for a further five days or something like that.

Mr. Stewart?

MR. STEWART: Mr. Chairman -- and I know that the problem with this is that, you know, you push one way, you fall off one edge of the table. You push the other way, you fall off the other edge of the table.

But Mr. MacDougall suggested he needs to the 10th to do this. The problem is that that -- I mean, the 10th to the 14th is in the middle of the rates hearing for both the Intervenors and Board staff.

So he sort of can't have his cake and eat it too. If he does it by the Friday -- I mean, we are not asking for very much. But a clear weekend would be nice at the very

least.

It is going to be virtually impossible to deal with a concordance and the IR's in the middle of the rates hearing. And with respect, this is the applicant case. And the onus is on them.

CHAIRMAN: All right. The Board will retire to talk about this. However, before we do that, are there any other matters? Mr. Blue?

MR. BLUE: Mr. Chairman, there is one statement that Mr. MacDougall made which I want to clarify in light of the application.

As I heard him, I heard Mr. MacDougall say that in this case, being the construction case, Enbridge Gas New Brunswick Inc. is not applying for any exemption from Section 7 of the Gas Distribution and Filers -- the Gas Distribution and Marketers Filing Regulations. Section 7 is the section that deals with the environment. And I took comfort from that.

But then I refreshed my memory about Section 9 of the application. And in Section 9 of the formal application -- this was the one filed last December -- it says the applicant does not propose to construct any pipelines which will affect sensitive features within the meaning of section 7 of the Gas Distribution and Marketers Filing Regulation in the year 2000. Pausing there, if it doesn't --

MR. MACDOUGALL: Not to interrupt. I think we have amended our application to deal with this issue. So we might be able to stop going forward and satisfy Mr. Blue, if we now file the amendment that we have there.

We did file all our Section 7 information and our amendment now to the application will reflect that we have filed Section 7 information for this year.

May I see a copy of that? Mr. Chair, would you like us to table that with the Board now and the other Intervenors?

CHAIRMAN: Good idea.

MR. MACDOUGALL: Ms. Leger has one copy. We will give you another copy.

CHAIRMAN: I think that is the copy that was out of my binder with the affidavits of publication.

MR. MACDOUGALL: That is right. I'm sorry. We were doing one thing at a time. And that is on my list here. And I had not yet brought it up. So we have a few more items ourselves, but --

CHAIRMAN: Yes.

MR. MACDOUGALL: So we have amended our application to indicate that with respect to sensitive features for the first year's construction, that we will file sections, I believe it is 7(4) to (21).

I apologize for interrupting, Mr. Blue, but --

CHAIRMAN: No. If you want to see that. Mr. Blue, if you

want a few minutes to look at that, the Board will retire in a few minutes to consider the concordance and the timing of that. So you will have an opportunity to read through that and see if it satisfies your request.

You say you have some other matters, Mr. MacDougall?

MR. MACDOUGALL: Would you like to deal with them now or after your --

CHAIRMAN: Oh --

MR. MACDOUGALL: -- break?

CHAIRMAN: -- we may have to make some decisions. So we might as well add it to the list.

MR. MACDOUGALL: Okay.

CHAIRMAN: Go ahead.

MR. BLUE: Mr. Chairman, before my friend does that, I have now read it. And the amendment says "to the extent that the pipelines proposed to be constructed by the applicant during the development period affect any sensitive features, the applicant requests that the Board waive the requirements of Section 7 of the regulations which would in those circumstances require the filing of information required by Section 7(4) to 7(21) of the regulation at the time of filing this application."

And it goes on to say "pursuant to Section 7(2)(b) a copy of the applicant's initial proposed environmental protection plan", et cetera, is attached a schedule.

But nowhere does it say that the applicant is

complying with Section 7 of the regulation for purposes of this application. They are asking for an exemption from it.

MR. MACDOUGALL: Mr. Chair, I can clarify.

CHAIRMAN: Okay.

MR. MACDOUGALL: We have filed in accordance with Section 7.

The next item that I was coming to on my list was with respect to Section 7 the order we are requesting is the same with the order with respect to Section 4 on the public information program, that the Board order that we can file our Section 7 information at the time of our prefiled evidence rather than at the time of the filing of the application.

Because that information wasn't prepared at that time, which was what was indicated in the application. So it is merely a timing request that we are asking for.

So the Section 7 materials which are included in our Environmental Impact Assessment have been filed with our prefiled evidence.

So we will be asking the Board today to order that that filing is in compliance with the regulation, notwithstanding that the information was not filed at the time of the application, in that we filed the applications on December 31 to get the process started to allow for notifications and otherwise to go out on the construction application.

It would be very similar to the Section 4 order with respect to the PIP. And that is also covered in our letter of March 20th. And those are two of the issues that we would like the Board to give direction on today.

CHAIRMAN: Mr. MacDougall, I think -- is there anything else that the applicant wants to file? Let's get it all out to all of the parties. And then we will see what we have to deal with.

MR. MACDOUGALL: There is a list of about three exemptions that we are asking for separate from what was raised in Mr. Blue's letter. So we can go through each one of those and advise the Board exactly what it is we are asking for.

MR. BLUE: Do we have written requests to the Board for those that all us counsel can read?

MR. MACDOUGALL: Our letter of March 20th which I understand was forwarded to all parties as of March 20th. And the only item that is missing from that is the Section 7 issue which Mr. --

CHAIRMAN: Just a second. Let's get March 20. I have sort of lost track of things here, to say the least. Okay. Go ahead.

MR. MACDOUGALL: Okay, Mr. Chair. And I guess just to give some background, we had filed this letter on March 20th, again asking for certain directions from the Board.

We had done so by correspondence with the Board. In that we had not yet heard back, we thought we would raise

these matters again today.

Now the Board doesn't have to determine them today. But we just wanted to re-raise them. Because these are the directions we are seeking.

So with respect to paragraph 1 of the letter of March 20th, the Board has already sent us a letter dated December 16, 1999 advising that we could file a public information program as part of our prefiled evidence.

We would just ask that the Board issue a direction particularly to that effect, in that a specific direction was not given by the Board at that time. And we believe Section 96(3) allows the Board to do that.

So although the Board did so order, it wasn't done with respect to any specific legislative reference. And we would just ask the Board do it in accordance with subsection 96(3) for finality.

And in that regard I note that Mr. Blue in his letter of December 31 agreed that the Province had no objection with that.

The second thing that we asked for in that letter was Section 5, which we have dealt with.

The third issue was with respect to subsection 30 of the Gas Distribution Rules, the procedure regulation. It calls for a certain method of numbering pages and a question and answer form.

Our facilities application, the way it was prepared,

didn't easily lend itself to that. So we would ask that the Board, pursuant to subsections (3)(1) and (3) of the procedure regulation provide its direction, dispensing with that requirement that we necessarily file in question and answer form or by numbered paragraph.

And again I note at least the Province, in Mr. Blue's letter of March 31, did not object to that.

And the third item -- or the fourth item, and the one that is not on here, is with respect to Section 7 in that it was determined following the filing of our application that there were sensitive features that may be affected that were not fully known at the time of the filing of the application. It is a requirement that Section 7 be complied with. Section 7 will be complied with.

However Section 7 speaks to filing that information at the time of the application. It was not done at the time of the application. But it was done at the time of the prefiled evidence which allows all the parties full time to answer and respond to it.

And we are asking again for a direction pursuant to section 96(3) that the Board order that the timing for the filing of that be the date of the filing of the prefiled evidence as opposed to filing at the time of the application, which is identical to what we requested with the public information program.

We didn't ask for this earlier on the sensitive

features issues because at the time of the filing of the application, as I said, it was unsure whether there would be sensitive features, because of the ongoing environmental work.

CHAIRMAN: All right. The Board is going to take a 15-minute recess.

(Recess)

CHAIRMAN: The Board took a recess to consider two things. One, the issue of the concordance and secondly to read the amendments, et cetera that had been filed.

Mr. MacDougall, I think you have something you want to tell the Board about the concordance?

MR. MACDOUGALL: Yes. With respect to the concordance issue, the applicant would make its efforts to get that in by close of business this Friday, to try and alleviate any concerns of the Intervenors.

CHAIRMAN: My understanding is that you will have it in on Friday. And that includes the legal review of it, is that correct?

MR. MACDOUGALL: It will be the final form.

CHAIRMAN: Right. Thank you. That I think deals with that.

Then Mr. Blue, you had a very quick opportunity to read the amendment. And you had some comments. And do you have any further comments on that amendment?

MR. BLUE: No, thank you, sir. I just got them through MacDougall. And I understand that the amendment was only

with respect to the timing of the information provided in Section 7.

And the company intends to comply with Section 7. And that is all I was concerned about.

CHAIRMAN: Good.

MR. BLUE: I consent to the order that they are seeking.

CHAIRMAN: All right. Well, I'm -- with frankness, one looks at the letter of March 20. And that is paragraph 1 and as well the amendment. The Board views both of those as timing matters.

And I believe, Mr. MacDougall, you wanted an order under 96(3) dealing with both of those?

MR. MACDOUGALL: We thought that that would be the appropriate legislative basis for the Board to do that, Mr. Chair.

CHAIRMAN: Well, maybe we can make a ruling from the bench, as it were right now, that pursuant to 96(3), dealing with timing only, not substantive issues, that what was requested in reference to paragraph 1 in your letter of March 20, and as well in reference to the amendment that you filed this morning dealing with section 7, the Board approves both those.

MR. MACDOUGALL: That is fine, Mr. Chair.

CHAIRMAN: Okay. Now are there any other --

MR. MACDOUGALL: Paragraph number 3 of our letter, Mr. Chair.

CHAIRMAN: Yes. Your numbering. With all of the insurance applications that I have gotten over I don't know how many years, I don't understand why people can't number sequentially. Every insurance company in this country, because they have actuaries, I guess, refuse to do so. However in this case we will waive the requirements of section 30(3) in reference to your application. Try and do better next time.

MR. MACDOUGALL: We will certainly endeavor to comply next time, Mr. Chair. We appreciate that.

CHAIRMAN: All right. Now any other matters, Mr.

MacDougall, that the applicant wishes to bring before this prehearing?

MR. MACDOUGALL: Mr. Chair, we have a bunch of -- a series I guess of procedural issues that we would like to discuss.

Maybe we can do them one at a time. And most of them are probably minor. But I think we will help move the process along.

One issue is with respect to Section 18(4) of the Act, Mr. Chair. Section 18 provides that the applicant -- you will note, Mr. Chair, in Section 18, with respect to an application for a permit there is a requirement to file copies of the application and the material required by the regulations, which would be the IR's, et cetera on six separate Ministries, as well as the municipalities affected by the application.

Those municipalities are the 25 municipalities now named in our application as well as I believe two other municipalities that were affected because the pipeline went through those municipalities. I believe those are Bath and Millville. So together there are six Ministries and 27 communities.

Now not all of those communities have filed as Intervenors. But subsection 18(4) says that those parties are a party to this proceeding. We just wanted to point that out to the Board in that they are not now on your Intervenor list going forward.

We were wondering if the Board wanted to give some direction as to whether or not we should continue and the Intervenors should file with all of those Ministries and municipalities even if they have not now intervened or if maybe either the Board or the applicant could write a letter to those who have not intervened, indicating that as they have not, they would no longer be formal parties to the proceeding.

CHAIRMAN: With frankness, Mr. MacDougall, I don't know why they were all served. Erring on the side of caution. But this application is in effect only dealing with construction that will occur in the year 2000, as I understand.

MR. MACDOUGALL: Well, Mr. Chair, we are making comments with respect to the development period and how we feel the

process will go forward throughout the development period after that.

And that was why we felt it was incumbent upon us to serve all those parties.

CHAIRMAN: I have something that I have not talked to my fellow Commissioners about that I will certainly state here, is that in the evidence that has been filed -- well, the Board wrote a letter some time ago indicating how they believed we should proceed in reference to construction, which was pretty basically that notice would be given to the general public for the construction which would occur out for a reasonable length of time.

And my understanding was that Enbridge had chosen this year to do that, and that is what the detail is on. You could have a bit of detail further out than that.

But I guess the point of the Board writing that correspondence was to say if somebody lives in Dalhousie or Campbellton and they are served -- their mayor is served with a notice that, you know, this is where we are going to lay pipe in your community, provided that Maritimes and Northeast actually puts a spur into that area, is really not giving -- well, the general public is going to say hey, that is way off in the future.

The Board plays a role of being the forum where members of the general public can bring their concerns to an authority that in fact has jurisdiction over ultimately

where that pipe will be laid.

I guess what I'm trying to say is it has to be -- the construction has to be planned within a reasonable length of time so the members of the general public will say, I had better pay attention to this.

I notice in the application that Enbridge again is saying, we are going to file reports with the Board about construction. And it seems to indicate that there will not be a construction application as the one we are presently in process.

I presume, and again this is a very brief reading of your prefiled evidence, that that is based upon "lightheaded regulation". And that is the way in which Enbridge is approaching this matter.

If you look at the legislation, alternative forms of regulation, which is what you would call lightheaded, deal only with the setting of rates. All of the alternate forms of regulation only deal with that. They do not deal with construction.

Now having said all of that, if the applicant wishes to pursue the approach that I believe I see in your prefiled evidence, that there will be no further construction hearings as you roll out your pipe, then you had better be prepared to argue that strenuously come this construction hearing, and also to look at the alternative that the Board my rule against that because -- and I would

appreciate it very much if you can find in any other North American jurisdiction where they have gone to lighthanded regulation, be it green field or otherwise, where they haven't required that public review of a construction program. I would appreciate that.

Now if you get me back on topic, Mr. MacDougall, with what you had originally brought up, I would appreciate it.

MR. MACDOUGALL: I guess the question that I did bring up is with respect to Section 18 and whether a direction should be issued by this Board or maybe a letter from this Board to those other municipalities, saying that they have not intervened and it is not incumbent upon the applicant or the Intervenors to file information with them.

CHAIRMAN: Oh, I see. So you don't have to continue to file?

MR. MACDOUGALL: That is correct. There is, you know, a voluminous amount of material. The Intervenors themselves will be filing information. And those parties are named as -- in 18(4) it shows them as a party to the proceeding.

As such --

CHAIRMAN: And the second --

MR. MACDOUGALL: -- they may continue to be a party to the proceeding.

CHAIRMAN: Right. The second half is permissive and may designate a person or counsel to act on his or her behalf.

My suggestion is that the applicant write to the

Ministers -- no, not the Ministers -- but the municipalities, the mayors and point out that they have not filed an intervention, and that you request their permission that they no longer be copied with all documentation.

MR. STEWART: Would that be on behalf of the other parties as well?

CHAIRMAN: Sorry, Mr. Stewart?

MR. STEWART: I'm sorry. I'm just wondering if

Mr. MacDougall can explain that not only with his own, the applicant's materials, but it is also relevant for us --

CHAIRMAN: All right. Refer to --

MR. STEWART: -- in the proceeding.

CHAIRMAN: Yes.

MR. MACDOUGALL: And Mr. Chair, we would likewise probably do that with some of the Ministries that are mentioned here as well.

And again all of those parties would have a right to respond, and to the extent that they wished to stay receiving those materials, that would probably be acceptable. That is they have not, you know, filed as an Intervenor.

It is our view that they probably do not. So we just wanted to let the Board know that we felt there was a necessity to deal with that process.

CHAIRMAN: Well, I think with that, the Board would have

something to say. Because Mr. Highfield is chairing a pipeline committee of all the representatives of all the departments. And that is an ongoing thing. So that they --

MR. O'CONNELL: The Board staff position, Mr. Chairman, would be that it would be necessary that the Ministries of the provincial government continue to receive all materials.

MR. MACDOUGALL: That is fine, Mr. Chairman.

MR. O'CONNELL: The direction --

CHAIRMAN: That was Mr. O'Connell again. Okay. That is great.

MR. MACLELLAN: Mr. Chairman, if I may, if --

CHAIRMAN: Would you identify yourself?

MR. MACLELLAN: Don --

CHAIRMAN: Moncton again, I know.

MR. MACLELLAN: I'm becoming a burr in the saddle, aren't I?

CHAIRMAN: No, no.

MR. MACLELLAN: Don MacLellan, City of Moncton.

CHAIRMAN: Right.

MR. MACLELLAN: If the Board does give Enbridge the right to -- or suggest that Enbridge should write that letter to municipalities to say, here is your last opportunity to receive the information, does that also suggest that they still have time to indicate their desire to be an Intervenor?

CHAIRMAN: Well, my words I thought conveyed that. If you know -- if you don't have any interest in continuing as an Intervenor, would you please inform Enbridge so that we can discontinue copying you with all documents, and as well the Intervenors.

Now that was certainly my approach too. And I thought that was Enbridge's.

MR. O'CONNELL: From a Board staff perspective, it would probably be important that this letter say that pursuant to Section 18, subsection (4) of the Act, those municipalities be told that they are presently parties to the proceeding, and that something -- they have to do something positive or take some act or write a letter to --

CHAIRMAN: All right.

MR. O'CONNELL: -- indicate that they no longer want to be parties to the proceeding.

CHAIRMAN: Mr. MacDougall, would you share your correspondence with Mr. O'Connell prior to sending it out --

MR. MACDOUGALL: Yes.

CHAIRMAN: -- and the Board approve it? Thank you.

MR. MACDOUGALL: And that is exactly the sort of thing we wanted to get done, so that we can clarify with those parties.

CHAIRMAN: Okay. Good. Any other matters, Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair, with respect to letters of comment that may be filed, we were wondering if the Board could today maybe set a date by when they may be in. I know the Board has done this on the rates hearing, just so that there would be some clarity on the process.

And we would suggest that Friday, May 12th, which is the date Intervenors' responses have to be in, and prior to the weekend before the hearing commencing, would be an appropriate date. And that would be consistent with the date for letters of comment that the Board allowed in the rates proceeding.

CHAIRMAN: Okay. Well, number one, I appreciate you bringing that up. And what were the dates again you had suggested?

MR. MACDOUGALL: I would suggest May 12. So that would give parties all the way up till the weekend before the hearing.

CHAIRMAN: Yes. And any parties have any problem with that?

MR. STEWART: This is the informal Intervenors?

CHAIRMAN: Yes.

MR. STEWART: Yes.

CHAIRMAN: Okay. Then written comments by informal

Intervenors will be filed with the Board, served upon the applicant and the other Intervenors by -- I guess it is Friday, May 12th.

And as well, if any informal Intervenors wish to make

an oral presentation to the Board, again that will be at close of evidence prior to summation by the parties.

MR. MACDOUGALL: Now, Mr. Chair, our next procedural issue is with respect to filing of information. I am not sure if this or is not addressed in your policy statement, I haven't had a chance to review it in detail. I guess I do see now here with written evidence you say one copy to each formal Intervenor. That was our question.

In the rates case we ended up sending numerous copies to different parties. There is an awful lot of information in this case, we feel it is appropriate to send one copy of all the information to an Intervenor and not necessarily two or three copies because they have named more than one, they can name numerous parties but we would anticipate sending one set of materials and that Intervenor would send one set of materials to each other.

CHAIRPERSON: So in other words, if they say counsel is so-and-so and the president is so-and-so and there is a secretary treasurer, you send it to counsel and he looks after or she looks after forwarding it on to the rest of them?

MR. MACDOUGALL: That's right, or to whoever they nominate as the person they want to receive it.

CHAIRPERSON: Yes. Well it is my understanding that that was incorporated in the rule.

MR. O'CONNELL: And the other thing of course, Mr. Chairman,

is -- the same thing applies to the applicant, Mr.

Chairman, so when anybody is sending material to Enbridge Gas they just send one copy.

CHAIRPERSON: Anything else?

MR. MACDOUGALL: To counsel for Enbridge, that would be fine then, to Mr. Hoyt.

MR. BLUE: Mr. Chairman, I am way back here and I couldn't hear.

CHAIRPERSON: He said that from Enbridge's point of view -- that is Mr. Blue, who can't be heard or hear -- so, Mr. Blue, I will repeat what Mr. MacDougall said and I --

MR. BLUE: He just wanted one copy sent to Mr. Hoyt.

CHAIRPERSON: That's correct.

MR. BLUE: But he will send me -- continue to send me copies, and Mr. Barnett copies --

CHAIRPERSON: No, I think that is what we just said we wouldn't do, is that we are trying to say, if it goes to you then you will be responsible to send it to Mr. Barnett.

MR. BLUE: In the Province's case that is not going to work because Mr. Barnett's office is in a different place from mine and a different place from Mr. Richard Burns, who is the chief law officer of the Crown who should get it as well. And we are all busy people and it may not get -- I mean, I don't run a courier service. That is the applicant's responsibility, we put our names there and all

the people that I have mentioned at least in the Province's case need to have that at the same time.

CHAIRPERSON: Mr. MacDougall, can we make -- and Mr. O'Connell, can we make an exception in the case of the Province.

MR. MACDOUGALL: We will make an exception in the case of the Province.

MR. O'CONNELL: We are happy to accommodate the Province.

MS. ABOUCHER: Mr. Chair, Juli Aboucher for the Union of New Brunswick Indians. Unfortunately the same situation applies to my client, that means that we have counsel in a different city than the client, and it would certainly be equally helpful to have one copy here in New Brunswick and one copy with counsel and get receipt to both. If it applies to the Province, then we would ask that it apply to us as well.

CHAIRPERSON: Can we make an second exception to the rule for the Union of New Brunswick Indians?

MR. MACDOUGALL: Yes, Mr. Chair.

CHAIRPERSON: Mr. O'Connell? Yes. These parties had better get New Brunswick counsel. Okay. Any other matters, Mr. MacDougall?

MR. MACDOUGALL: The next point, Mr. Chair, just for a point of clarification, April 21st, which is the date by which Enbridge Gas New Brunswick has to have responses to interrogatories in, we will probably respond on that day,

but that date is Good Friday. So the parties may not be in and may not be receiving it, it may be difficult to get it to the Board. I don't know if the Board will be open on that day. We don't want to shift the schedule by asking for further time, we will make it available on that day. But if parties aren't able to receive it they will receive it on the Monday presumably, or the Tuesday. We will abide by having it available but it will be up to parties to get it.

CHAIRPERSON: Obviously the Board should have a calendar with religious holidays on it. That is the best you can do and I appreciate it, Mr. MacDougall.

Mr. Stewart?

MR. STEWART: It never fails that these things get complicated, my lord -- my lord? Mr. Chairman.

CHAIRPERSON: Thank you, Mr. Stewart.

MR. STEWART: I didn't mean to sound that couldn't be a possibility, Mr. Chairman. Based on Ms. Aboucher's -- we only have her on for the -- so if she wants it sent somewhere else, she is the only name on the list, on the Intervenor list that you have circulated. Can we get a fresh list?

CHAIRPERSON: I think after today the Board will be preparing a "fresh list", because there is -- for instance, Mrs. Leger attempted to find out whether people were informal Intervenors or formal, et cetera, and the

Town of Dieppe has got to move over to being a formal because they want the documents, et cetera. So yes, there will be a new list and we will add the second name for the Union of New Brunswick Indians.

MR. STEWART: Right. It might be -- just so we are all consistent, I think we are all trying to do the right thing, it is just to save wasted paper and/or making sure the people who want it really get it. To the extent Ms. Leger could -- if you could, you know, just put an asterisk or something beside -- you know -- for example, Mr. Hoyt will be the, you know, person receiving the stuff for Enbridge, I can be the sole person receiving stuff for Irving Oil. Just so we know who the -- if we have got three or four names under some of these representatives or some of these parties, that we can just flag who is to be the receiver of whatever. And if there are two for Mr. Blue and two for Ms. Aboucher, that's fine too, so we are all using -- working off the same list.

CHAIRPERSON: All right. The secretary has made note of that and I am sure it will happen. Any other matters, Mr. MacDougall.

MR. MACDOUGALL: No, Mr. Chair. Thank you very much.

CHAIRPERSON: Thank you. Any other -- any Intervenors with any matters they wish to bring before the Board now.

MS. ABOUCHER: Mr. Chairman, I was just wondering if it would be possible for the Union of New Brunswick Indians

to be also provided with the standard agreements, Ontario municipality agreements that are being provided to the municipalities?

MR. MACDOUGALL: That is fine, Mr. Chair.

CHAIRPERSON: Yes, that is fine. Any other matters?

MR. O'CONNELL: Mr. Chairman, Board staff would also appreciate receiving copies of those same agreements that are being provided to my learned friend.

CHAIRPERSON: Okay. Mr. MacDougall, just before we rise, if -- you know -- number one, the Board did not respond to your letter I guess it was of the 20th, and, you know, we are a part-time Board and we have been, like everybody else in this room, inundated by paper.

However, certainly from my practice days and as chairing this Board, the kind of amendment that you filed today to your application, if that were made available at an earlier time, even if at 9:00 o'clock this morning counsel had received a copy of it and you indicate that you are going to amend during the hearing, then Mr. Blue would have had the opportunity to have read it through and understood it and we would have as well.

So I know sometimes it is difficult to get all this paper in the right place at the right time, but certainly the more warning that you can give as to that which you wish to do, the better it is for the whole proceeding.

Mr. Blue has moved up.

MR. BLUE: Sir, I think it is clear but let's just clarify it, and the reason I raise this point is because you had mentioned this morning that in the rates case my friend Mr. Nicholson had filed a notice of motion concerning some other party. I have not seen a copy of that notice of motion. But is the rule in the construction case going to be that if the applicant or any party has a bilateral issue with one of the Intervenors or a party has a bilateral application with the applicant, they still must serve copies of that correspondence or notice of motion or whatever with all other parties to the hearing? The reason for that is we all might have an interest in the same issue as well.

CHAIRPERSON: Yes.

MR. BLUE: So I assume that that is the rule, but could we just clarify that?

MR. MACDOUGALL: Mr. Chair, with respect to the rates case, the letter was dated March 30th and our records show that it went -- we keep a filing of all of the parties and it was sent from our records here to Mr. Blue at 6:06 p.m. at his fax number.

We will endeavour obviously in a rates case or construction application to file all of the materials with all of the Intervenors once they become Intervenors to the proceeding, without a doubt on a go-forward basis we will do that.

CHAIRPERSON: Good. Thank you. Well we will adjourn then to the 15th of May and the exact location in the City of Saint John remains a mystery, and we will let you know. I mean, it may well be that half of the Intervenors will decide they are going to withdraw, but if they aren't we have to look for hotel space. So it will either be the Board's premises or hotel space here.

Thank you very much.

(Adjourned)