

1

2 New Brunswick Energy and Utilities Board

3 IN THE MATTER OF a Review of Matters Related to the

4 Regulation of Enbridge Gas New Brunswick

5

6 held at the New Brunswick Energy and Utilities Board premises

7 on January 22nd 2009.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

INDEX

1	
2	1 - Letter - page 27
3	2 - Written Submission - page 27
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	

1 New Brunswick Energy and Utilities Board

2 IN THE MATTER OF a Review of Matters Related to the

3 Regulation of Enbridge Gas New Brunswick

4

5 held at the New Brunswick Energy and Utilities Board premises
6 on January 22nd 2009.

7

8 BEFORE: Raymond Gorman, Q.C. - Chairman

9 Cyril Johnston - Vice-Chairman

10 Roger McKenzie - Member

11 Edward McLean - Member

12

13 NB Energy and Utilities Board - Counsel - Ms. Ellen Desmond

14 - Staff - Doug Goss

15 - John Lawton

16 - Dave Young

17

18 Secretary to the Board - Ms. Lorraine Légère

19

20

21 CHAIRMAN: Well good morning, everyone. This is a pre-

22 hearing conference of the Energy and Utilities Board in

23 relation to a review of matters related to the regulation

24 of Enbridge Gas New Brunswick. It is different than some

25 of the other matters that we had, in the sense that we

26 generally have a pre-hearing conference in relation to a

27 matter that is before us by way of application. There is

28 in fact no particular application that this pre-hearing

29 relates to.

30 So by way of just a brief explanation the intention of

31 the Board in setting the pre-hearing down for today was to

32 view it somewhat similar to the way a court may view a

33 case management type of a process, to come up with a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

process which will allow us to determine the issues that are necessary to be decided by this Board going forward, to try and get some sequencing as to what those issues -- the order in which they should be heard and eventually to come up with a hearing time frame and schedules and to have some discussion with respect to process in terms of filing of evidence, interrogatories, filing of evidence by other parties, responses, all of those types of things. So that's the sort of general purpose of today's hearing.

And to that extent I would anticipate that perhaps it may be a little more informal than hearings that we typically have. And we may in fact adjourn the hearing temporarily during the morning and allow parties to discuss some of the issues that may come forward to see whether or not there is any sort of common list of issues that the parties believe should be heard going forward.

So if anybody wants to sort of address how we should even proceed with respect to this pre-hearing once we have taken the appearances, we can deal with that.

I will take the appearances. And I will start with Enbridge Gas New Brunswick. I guess I normally say the Applicant. I don't think in this case I can say that.

MR. HOYT: Len Hoyt appearing for Enbridge Gas New Brunswick. And I am joined by Dave Charleson, EGNB's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

General Manager.

CHAIRMAN: Thank you, Mr. Hoyt. The Interested Parties who have registered with us, Atlantic Wallboard is first?

MR. STEWART: Christopher Stewart, Mr. Chairman. And I have Mark Bettle with me this morning.

CHAIRMAN: Competitive Energy Services has registered and Jon Sorenson has sent a letter. So I guess I know that he is not in attendance this morning. I believe that letter was distributed to the parties. Is that correct?

Everybody has that?

Department of Energy?

MR. ERVIN: Yes, Mr. Chairman. Patrick Ervin, Director, Pipelines, Petroleum and Natural Gas. And with me today is John Todd, President of Elenchus Research Associates.

CHAIRMAN: Thank you, Mr. Ervin. Flakeboard Company Limited?

MR. LAWSON: Good morning, Mr. Chairman, Members of the Panel. Gary Lawson, and appearing with me is Barry Gallant of Flakeboard.

CHAIRMAN: Thank you, Mr. Lawson. Public Intervenor?

MR. THERIAULT: Good morning, Mr. Chairman. Daniel Theriault, and with me this morning is Robert O'Rourke.

CHAIRMAN: Before I get to the Energy and Utilities Board is there anybody else present that is not accounted for? All

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

right. New Brunswick Energy and Utilities Board?

MS. DESMOND: Ellen Desmond, Mr. Chair, and from Board Staff, Doug Goss, John Lawton and David Young.

CHAIRMAN: Thank you. I guess for the record the Panel for this pre-hearing is comprised of the Vice-Chair, Cyril Johnston, Roger McKenzie, Edward McLean and myself, Ray Gorman.

As I have indicated I guess in my opening remarks, the purpose and nature of this pre-hearing is to essentially define the issues that need to be looked at going forward.

And part of the background for this arises out of two or three hearings that occurred last year. There was two applications by Enbridge to change distribution rates. One was to the LFO distribution rate and then second application was for virtually all of the other rates I think with one exception that Enbridge has. And in those decisions and in the -- there was also a motion prior to one of them, the Board ordered a couple of technical sessions which have been undertaken. One was the -- and I am just going to go back to the decision of January 8th on the motion. "The Board, however, believes that work needs to be done to establish the criteria that will allow it to make a determination as to just when the development period will end. The Board, therefore, directs Board

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Staff to convene a meeting with EGNB and other interested parties to discuss this matter and to develop a proposal that would be brought forward to the Board for its consideration. This process is to commence in the fall of 2008. Subsequent to the conclusion of that process, the Board intends to conduct a generic hearing for the purpose of determining the appropriate method that will be used when it is appropriate to change from the current market-based method."

My understanding is that the technical sessions in fact began prior to the fall of 2008, but that at this point in time, they have been adjourned. And I am not sure if there is another date in which they are to commence. Does anybody -- anybody advise me with respect to -- I guess the Board is just looking for a little bit of an update on that? Does anybody know what the status of that matter is?

MR. THERIAULT: I think it is in limbo, Mr. Chairman.

CHAIRMAN: Well perhaps that may well be one issue that obviously needs to be talked about today.

And the second matter that the Board addressed in its decision was -- the two decisions issued on April 9th 2008 dealing with the rate matters that I have discussed. In that regard the Board said, and I am reading -- I am

1
2 quoting here, "The Board will therefore convene a
3 technical conference to be followed by a generic hearing.

4 The purpose of this process will be to examine all
5 elements of the derivation formula to ensure that the
6 target savings levels are appropriate and that they are
7 achieved through the use of the formula. This process is
8 separate and apart from the process directed by our
9 decision of January 18." That process in fact has
10 occurred and is now the subject matter of a hearing, which
11 is scheduled to commence I believe on April 22nd of this
12 year.

13 So in the course of these hearings as well, the Board in
14 December dealt with the approval of financial and other
15 reports dealing with the 2007 year -- Enbridge's 2007
16 year, and a number of issues were raised. At that time
17 the parties, which they felt going forward we should
18 examine.

19 So that's the context or the background with which we have
20 today's pre-hearing. It is an opportunity for all
21 interested parties who have come today or who have
22 submitted something in writing to give us your views on
23 what issues the Board needs to address in hearings going
24 forward.

25 We would be looking for some input as to perhaps some

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

of those issues can be grouped together. And I think we like to achieve some economy here if we could, if two or three matters could be heard at the same time, and we would certainly want to hear your thoughts on that. And then discussion about the process itself, the filing of evidence, IRs, responses, those types of things. And I think the sequencing is also an important issue. I don't really think that the Board, as result of what's going on today will be able to establish a precise time frame.

But I think if we can at least get to the point where we know what the sequencing is, you know, it is our intention to move it forward in as timely a fashion as possible.

Anybody have any comments on the process that I guess we have set for today in order to discuss these issues? Mr. Hoyt, do you have any comments or any suggestions as to whether or not the Board should proceed in that fashion or some other way?

MR. HOYT: No. It makes sense. It's consistent. We have a submission to make to deal with both setting out the issues that we think need to be addressed and some scheduling suggestions. And I would expect the other parties do as well.

CHAIRMAN: Mr. Stewart, is that essentially where you are at on this?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. STEWART: Indeed.

CHAIRMAN: Mr. Ervin? I guess we have a letter from you.

MR. ERVIN: Yes. Again I concur with what has been said,
Mr. Chair.

CHAIRMAN: Mr. Lawson?

MR. LAWSON: Mr. Chair, my only comment would be this is a
very broad open perspective of what should be looked at.
And to a certain extent some of us approach, we have a
fairly narrow experience with EGNB, which has been
principally been over the last number of years dealing
with rate increases and the issues that come from that.
This is obviously broader in scope. And while we have a
fairly lengthy list of things we think would be
appropriate for consideration, I don't know if it might be
appropriate to have a more informal process where there
could be some open discussion with EGNB and the Board
Staff to help identify other issues, because we have
identified some based on what seemed to be fairly obvious
from sort of going through these processes in the last
while should be considered, but there may be some other
things that are outside the scope of what we have
experienced.
So I just throw that out as an idea of maybe after we are
finished here, there be a chance to have a more

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

informal discussion before the final list is made.

CHAIRMAN: Well I guess there is always an opportunity for informal discussions of the parties at any time obviously are free to try and get the other parties together and discuss these matters.

And you know the nature of what we are here to do today sometimes is done by way of a technical session. And really wouldn't have participation of Board members. But the reason that we have done it in this fashion today is that we think that it needs to be done in a timely fashion and that's one way to make sure that the issues are brought forward and that it doesn't-- it's not something that gets bogged down in the process.

But, you know, your suggestion is a good one. And it may be that even before we hear the submissions of the parties, maybe the list of things that people are prepared to bring forward this morning have some similarities and there may be some agreement as to what should be brought forward.

Would you favour the opportunity to have at least a brief discussion with other Intervenors as to what they are or -

-

MR. LAWSON: I think that would probably -- and just having read the few submissions, and I am guessing at least most

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

would agree on the vast majority of that list of things is my guess. Now whether the Board agrees and whether EGNB agrees, I don't know, because I don't know what their submission is. That's my guess based on the little bit I have seen so far. It may be valid.

MR. STEWART: Mr. Chairman, if I may, and I don't necessarily disagree. I guess we are -- and I know Mr. Hoyt certainly is, and the rest of us are all sort of jazzed up and ready to go. So I wonder if it might not be appropriate for us to at least maybe even in a truncated fashion just sort of generally review what we think is important and we will get some sense, and then quite frankly, I agree with Mr. Lawson, maybe at that point if it looks like there is a fair bit of overlap or we can -- then we can sort of kick around what we think should be on the list.

CHAIRMAN: Sure. And I think if there is some overlap that's maybe not the issue. The issue may well be whether or not there are matters that some parties think need to be looked at and other parties think absolutely not. You know, I think it -- and I guess at the end of the day, if the parties have a list of matters that they think the Board should look, I mean the Board may take a slightly different view and may think that something hasn't been

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

talked about and ought to be.

Mr. Theriault any comments on the process for this morning?

MR. THERIAULT: No. Except that I would tend to agree with Mr. Stewart obviously. I would like to hear the submissions by EGNB and the other Intervenors. And then I guess the Board can decide afterwards, you know, whether we proceed in this formal fashion or an informal fashion.

But I think it would be helpful --

CHAIRMAN: Or perhaps a combination.

MR. STEWART: Yes.

MR. THERIAULT: And I think it would be helpful though for all the parties to hear at least the starting points of where each of the parties are.

CHAIRMAN: All right. Mr. Hoyt, I am going to ask you whether or not you feel you ought to go first or last?

MR. HOYT: Well, we are prepared to go first.

CHAIRMAN: All right.

MR. HOYT: It's tradition.

CHAIRMAN: Break with tradition. Go ahead.

MR. HOYT: To commence this process the Board scheduled today's pre-hearing conference so that interested parties can appear and provide comments as to the relevant matters that should be reviewed as part of this process and the

1
2 appropriate scheduling of such reviews. The following
3 represents EGNB's submission on this matter.

4 And EGNB believes that the following seven matters will
5 require consideration by the Board.

6 And the first one is the Development Period Criteria. In
7 the January 18th 2008 Motions Day decision, the Board
8 stated that it "believes that work needs to be done to
9 establish the criteria that will allow it to make a
10 determination as to just when the "development period"
11 will end". This matter properly requires consideration by
12 the Board.

13 Number 2. The End of the Development Period. The
14 Development Period was approved to continue until December
15 31st 2010 in the Board's January 21st 2005 decision. At
16 this time there is no certainty that the Development
17 Period Criteria will be satisfied by that time. As a
18 result, a determination will need to be made as to whether
19 the Development Period should be extended and if so, for
20 how long.

21 3. The Cost-of-Service Study Review. During past
22 proceedings, parties have expressed concerns regarding the
23 absence of a cost-allocation study by EGNB. They have
24 indicated the need for this and a desire to be able to
25 review the results of such a study and the resulting

1
2 cost-of-service rates.

3 4. Deferral Account Recovery Period. In its January 21st
4 2005 decision, the Board ruled:

5 "The Board approves the deferral account being recovered
6 through rates between the end of the development period
7 and a date no sooner than December 31st 2040. However,
8 the Board does not believe it would be appropriate to
9 determine a specific recovery period for the deferral
10 account at this time. Enbridge is directed to apply to
11 the Board for approval of a specific amortization schedule
12 for the recovery of the deferral account when
13 circumstances provide more certainty concerning the actual
14 date at which the development period will end."

15 5. Return on Equity. EGNB's current return on equity was
16 approved in the Board's June 23rd 2000 decision for use
17 during the Development Period, however, the return on
18 equity once the Development Period has ended will need to
19 be determined.

20 6. Post Development Period Rates. The final state cost-
21 of-service rate classes that EGNB will use after the end
22 of the Development Period will need to be approved by the
23 Board, both from a structure and cost perspective.

24 7. Transition Period. It may not be feasible to

1
2 move immediately from the Development Period into the
3 final state cost-of-service environment. The need for and
4 nature of a transition period between the end of the
5 Development Period and the end state will require review
6 by the Board.

7 Now some comments with respect to schedule. The various
8 activities that may require Board consideration have
9 differing time sensitivities and as such need to be
10 approached through a series of proceedings. In some
11 cases, the Board may choose to address a number of matters
12 through a single more comprehensive hearing. Other
13 matters may however best be dealt with independently so
14 that all parties will have a framework from which to
15 address the subsequent issues. The following is a
16 proposed framework and timing for addressing the issues
17 identified above.

18 It's broken into three parts. The first part would be the
19 Development Period Criteria. And which we would suggest
20 could be dealt with in the spring of 2009.

21 In its June 23rd 2000 decision, the Board stated, "The
22 Board considers it appropriate that Board Staff, in
23 consultation with EGNB, develop specific criteria that
24 will be used to decide when the development period shall
25 end." As referenced above, the Board provided similar

1
2 direction in its January 18th 2008 Motions Day decision.
3 Both of these decisions contemplate a process that looks
4 solely at the Development Period Criteria. By holding a
5 hearing that is focused solely on establishing this, the
6 Board and parties can assess the appropriateness of the
7 measures for determining the end of the Development Period
8 without having to deal with arguments that the Development
9 Period has or has not ended at the same time.

10 It is practical to first establish measures and once they
11 are approved by the Board, evaluate the current business
12 and market conditions to assess if the criteria have been
13 satisfied.

14 The second phase would deal with the Development Period
15 End and/or Extension. And we would propose that it be
16 dealt with in late fall 2009.

17 A determination will need to be made as to whether the
18 Development Period criteria have been met and when the
19 Development Period will actually end. In the absence of
20 an application from EGNB to extend the Development Period,
21 the Development Period will end on December 31st 2010, as
22 specified in the Board's January 21st 2005 decision.

23 And then the third phase are Post Development Period
24 Operations. And the timing of this really depends on the
25 timing of the end of the Development Period. That would

1
2 be quite a different scenario if the Development Period
3 were to end at the end of 2010, as opposed to ending in
4 2015.

5 There are a number of matters that will shape the manner
6 in which EGNB operates and rates are determined once the
7 Development Period ends, including what the revenue
8 requirement is and how the end state rates are to be
9 structured to recover this, what the post-Development
10 Period return on equity will be and how the Deferral
11 Account is to be amortized. This would also likely
12 include determining how a transition to these various
13 changes is to be addressed and over what period of time.
14 And those are EGNB's submissions.

15 CHAIRMAN: Thank you, Mr. Hoyt. Mr. Stewart?

16 MR. STEWART: Thank you, Mr. Chairman. This morning, we
17 have two initial submissions and then two points that we
18 wanted to review with the Board and then discuss some
19 particular issues that we thought should be brought to the
20 Board's attention or should be part of these deliberations
21 in any event.

22 Our first initial submission, and Mr. Hoyt touched on it
23 in his comments to you earlier, is with respect to the
24 need for the parties and Enbridge and the Board, everyone
25 in this room, to have before them the cost-of-service

1
2 allocation study and a comprehensive one.

3 We suggest that the Board cannot properly consider
4 submissions from any quarter, be it Enbridge or the
5 ratepayers or review the matter on its own right, without
6 having that information and data before it. And I think -
7 - it wasn't quite clear from Mr. Hoyt's submission. He
8 mentioned it, but then he didn't -- and when he was
9 talking about scheduling discuss when such a study would
10 be complete or when it would be done.

11 It is certainly our submission that the Board should
12 direct Enbridge Gas New Brunswick to proceed with that
13 study forthwith, immediately. And as a practical matter
14 what we suggest is that based on my understanding of these
15 things, as I recall, speaking to Mr. Reid, who was our
16 expert in the last rate case, I asked him how long it
17 would take to do a cost-of-service study and he said well
18 he could do one in three hours or three months, depending
19 on what kind you do it.

20 And I suspect not all cost-of-service studies are created
21 equal. And having said that what we propose would be that
22 the Board direct Enbridge to file with the Board within
23 some reasonable time period, 50 days, 20 days, 30 days, a
24 proposal for a cost-of-service allocation study. That is,
25 who is going to do it, where it is going to be

1
2 done, what it is going to deal with. And so that before
3 we charge off and spend both time and money on this
4 venture that we are all on the same page as to what sort
5 of study is going to happen and going to occur to make
6 sure that we are really getting the information that we
7 all need.

8 And so as part of the submissions in terms of what the
9 Board should do as working in the process, our first
10 request is that the Board issue that Order shortly,
11 immediately.

12 Our second submission is that when the Board considers the
13 issues that are before it that it should focus on what we
14 submit are the most pertinent issues. And what we mean by
15 that is it will come as no surprise to the Members of the
16 Board that our submission is that the development period
17 is over, and candidly has long since been over. And while
18 I suspect that it is appropriate for the Board to conduct
19 a review to satisfy itself that the development period is
20 over, I don't believe that it is necessary to go through a
21 two-step process of establishing some criteria and then
22 sitting back and waiting for Enbridge to meet the
23 criteria. And the market, we have heard a lot of argument
24 on all these issues. At the last rate hearing we heard
25 discussion about low hanging fruit, and medium hanging

1
2 fruit and the tree being bare. And we heard about mature
3 markets and all kinds of things. And that rather than
4 simply delaying this process even further by in a vacuum
5 establishing criteria for something that we suggest has
6 already happened, the Board needs to determine, answer the
7 question through the other end of the telescope. Is the
8 Development Period over or not? Not simply to create
9 criteria that may or may not be met at some future point.

10 So that that's not a two-step process, it is in fact a
11 one-step process.

12 We would suggest that the Board should not spend a great
13 deal of time considering how long it should stand in one
14 place, but really should focus on the issues which
15 determine where is it that we are going to and how do we
16 get there?

17 And that the major issues before you are how do we get
18 through this transition period, because in our submission
19 the day of the status quo has passed. And where should we
20 be going to? Because clearly we don't think you can deal
21 with what should happen in a transition period until you
22 know where you are transiting to. And to come full
23 circle, intricate in that analysis or essential to the
24 analysis is having the cost-of-service allocation study
25 for us to begin to conduct the analysis that will be

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

necessary to move in that direction.

In terms of the issues that the Board should consider and any specific questions that should be part of that process, perhaps -- and certainly Mr. Hoyt will remember, we did have a process when the initial hearings were taking place when the franchise was first awarded. And we went through a process where the various stakeholders in consultation with the Board created literally I think we called it an issues list. And if you look at the June decision that Mr. Hoyt referenced earlier, there were issues which were agreed on, which were appended to the decision and then the decision itself is in essence the Board's ruling on various of the outstanding issues.

And we suggest that a similar process would be appropriate for this kind of generic hearing review. And that Board literally determine an issue list, and I suspect that's really what's going on here today, pose those questions and conduct a hearing on them in that fashion.

Now I had a list of issues. But I have also had the opportunity to review Mr. Ervin's list that he presented to you in his written submission that is before you this morning. And candidly it is quite clear that Mr. Ervin is more articulate and a better writer than I am, and so what

1
2 I suggest I do is refer you to his list because it is in
3 essence my list as well. And I don't want to steal Mr.
4 Ervin's thunder, but if I could refer you please to the
5 third page of his written submission. And this is under
6 Mr. Ervin's heading, The Development Period and
7 Transitional Issues. The bottom of the third page there.

8 And he has some issues identified by a bullet. And the
9 first question or issue that is asked, Is there or should
10 there be a clear definition of "development period"
11 adopted by the Board? In other words, should there be
12 criteria established around that and then a way that Mr.
13 Hoyt would suggest.

14 At the risk of repeating myself, I am not sure that that
15 is particularly necessary for this process. What's
16 necessary for the process is for the Board to determine
17 where do we go from here. You can call it a development
18 period. You can call it a transitional phase. You can
19 call it simply tomorrow, but the real fundamental issue is
20 where do we go from here.

21 So I am not sure it is particularly necessary to define
22 the Development Period, per se. What I would say is that
23 what is essential is to move forward on these issues and
24 to determine among other things what ratemaking
25 methodology will the Board use going forward.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Next issue. Is it appropriate for the development period to end for some classes sooner than others? And our submission is that that's a very valid point to have before the Board. I assume by, is it appropriate for the development period to end, really is a comment with respect to -- and I think in my own note I had said is -- should this same ratemaking methodology be used for all of the rate classes, or should different methodologies be used? And I think that's a matter that all of us need to review and the Board needs to consider and turn its mind to at this time or as part of this process.

Is it open for the Board to make adjustments or transitional requirements to its non-traditional regulatory framework, even before it determines that the development period has ended? My submission on the point is that yes, it is. And our view is that that's precisely the issues that the Board should turn its mind to as part of this process.

Should EGNB be subject to a feasibility test, its capital infrastructure plans? Absolutely. The issue should be before you in this process.

Should the current and future infrastructure be subject to a "used and useful" test? Yes. And even if there is some remnants of the "development period

1
2 approach", part of what the Board should consider in this
3 process is again, as part of a transitional phase, should
4 these matters be rolled in like a "use and useful" test
5 for capital expansion? Absolutely. The Board should made
6 the determination of whether that's -- Enbridge is
7 required to do that going forward.

8 All costs be subject to a reasonability test during the
9 development period and any transition period? Indeed
10 again, proper for the Board to consider.

11 And should there be incentive mechanisms? I agree a
12 proper point for the Board to consider.

13 Down at the bottom of page 4, the bullet issues raised by
14 Mr. Ervin again. Should the deferral account recovery
15 period be an outcome of these proceedings? I would
16 suggest that yes, it should.

17 Should EGNB be required to set out a feasible plan and
18 timeline for ending accumulations to the deferral account
19 and for its recovery to the end of the defined period?

20 Yes. And to that I would add, the Board should also
21 consider how or at least on the basic parameters that the
22 Board will order the deferral account recovered. Who
23 pays, how much and where?

24 And should there be consequences to EGNB for any failure
25 to meet the plan? Indeed, properly before the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Board.

The last two issues raised by Mr. Ervin I think are more Department of Energy-related issues, but we certainly don't have any objection that those matters should be considered with the Board as part of this process.

So just to review quickly, our submission is that we need to have a cost-of-service study. Everyone does. And one that we -- and the type of study that we all can buy into.

Secondly, we need to focus on the issues which will determine how rates are determined and how rate classes are organized, and how Enbridge will conduct its business in its commercial expansion going forward from this process on, both as a transitional phase, and then once the transitional phase ends, where we will be at the end of that transitional phase. Where are we going to, how we going to get there?

And finally -- and I thought perhaps going to be unique to the Commission on this, but I should have known better. Absolutely the rate of return and rate allocation should be part of the Board. Whether that needs to be determined as part of the transitional period process, that might be something which should be parcelled out as a separate hearing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Those are my submissions.

CHAIRMAN: Thank you, Mr. Stewart. Mr. Sorenson submitted a letter with some recommendations. I think that has been circulated this morning. Given that everybody has a copy of that -- I actually considered reading that into the record, but I think everybody does have a copy of it, and it is something that anybody as we proceed through, if they want to respond to any of those points then perhaps they should. But I guess everybody has had an opportunity to have a look at it, so I don't think it is necessary to read it into the record.

MS. DESMOND: Mr. Chairman, could I suggest maybe it be marked as an exhibit?

CHAIRMAN: All right. We will just mark that as exhibit 1. Well, Mr. Ervin?

MR. ERVIN: Yes, Mr. Chairman. I think again, you know, I prepared and submitted a written submission. I think in the interest of time, I don't propose to read it into the record if that's fine with you?

CHAIRMAN: I think Mr. Stewart has already --

MR. ERVIN: I was going to add at the risk of what Mr. Stewart has already said, perhaps if we could mark this as an exhibit as well.

CHAIRMAN: Sure. We will make that exhibit 2. And anything

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

further you want to say other than what is in your submission?

MR. ERVIN; I don't have any particular suggestions as to the process. You know, I think the suggestions made by Mr. Hoyt, you know, generally made sense to me. I think the whole issue of the deferral account perhaps should be an additional central focus of the proceedings. I don't know if it fits neatly into the development period criteria or either of the other two that Mr. Hoyt mentioned. So, you know, I think it could properly form the basis of a separate area of focus, whether it is branched off completely or kind of a sub-issue of something else.

I agree with Mr. Stewart's submission the cost-of-service study has to fit in there somewhere and generate. I agree with the submission that that should be undertaken at a very early stage in order to provide some analysis and information that would be very useful to the whole exercise. But other than that, I don't have any particular submissions on the sequencing or how to break it up.

CHAIRMAN: And in your written submission, in fact page 5 towards the bottom, you do mention specifically the cost-of-service study (which should be subject to its own

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

rigorous process). In a sense you are saying that apart from definition of issues, I take it, that you also done - something that's very important. In terms of sequencing, do you see this as something that should occur very early on then, is that what you --

MR. ERVIN: I think so. You know, generally speaking, Mr. Chairman, kind of a whole discovery process of getting, you know, getting facts out and getting some analysis out is very important to help everybody kind of further define what the positions should be and obviously to help the Board arrive at its own conclusions. So that -- I agree with the suggestion of Mr. Stewart that perhaps there should be some kind of a proposal, how that cost-of-service study would be approached and the timelines and so on and so forth.

In terms of -- I should mention on the -- I guess the last couple of bullet points on the issues that Mr. Stewart mentioned again, should the defined period be limited to August 31st 2039, you know, I recognize that that is slightly at odds with what the 2005 decision said and which I think said minimum -- a minimum of 2040. But I just raise that point to highlight that that deferral period now is kind of out -- well it is out of sync with the current term of the franchise agreement. That kind of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

got away in 2005 with that decision. And I just raise it as a general issue that in my belief, you know, there should be at some point some alignment between the franchise agreement term and the deferral period. It seems to me at least that that would be the case. It's gotten away from us that way. And we have to somehow, you know, bring that back into alignment. Not suggesting for a second that -- you know, that it should be backed off to 2019 or anything of that nature, but as a long-term issue, you know, it is probably more of an issue between the Board process and the Department of Energy and aligning the franchise agreement, you know, certain aspects of that with the Board process.

CHAIRMAN: Sure. And could that be aligned in a different way that if there were an extension to make the extension fit the date that's currently there rather than the 2039 date? In other words, assume that if there is an extension, it would -- the extension goes to August 31st 2039, which is another 20 year term, but it could be a 21 year term, for example?

MR. ERVIN: Yes.

CHAIRMAN: There are other ways to align it I guess is all I am trying to say.

MR. ERVIN: Yes. And those are just -- again questions that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

we raise without making a suggestion as to the solution right now.

CHAIRMAN: Thank you. Mr. Lawson?

MR. LAWSON: Mr. Chairman, surprisingly there are -- there seems to be a lot of commonality here, which I think is good in some respects.

Just with respect to the cost-of-service study, which I do think as well is very important, and timeliness is very important, I think the foundation on which such a study would be built at least simultaneously there has to be a review of the appropriateness of the classes. That was mentioned by at least, you know, one of the other -- I think it was Mr. Stewart. Is the classification structure that was developed 10 years ago by the Board for rates, does it continue to be an appropriate structure in light of what actually has evolved, rather than what in fact was contemplated back 10 years ago? So that may have to -- sort of a study -- it is our submission that that should be part of a -- sort of a very preliminary review by the Board on the issue of what are the appropriate classifications. That be part and parcel of the cost-of-service study, because ultimately there will need to be -- that cost-of-service needs to be allocated to some parts and classes and the class structure, therefore, is the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

foundation on which it would be built.

So we would sort of look to have that taking place simultaneously.

I think other than that for the most part, we are in agreement with those things that have been addressed. We do think that as part of this process, including the cost study, there needs to be an issue -- and it has been raised by Mr. Theriault previously, when one gives consideration to the fact that I understand the deferral account now has accumulated to about \$180 million, it is a very substantial amount of money, particularly compared to the revenue stream that has been generated over the same years that that's developed.

There hasn't been a very close scrutiny on the actual cost-of-service being provided, the actual cost, the reasonableness of the cost-of-service being provided by EGNB, which are basically contributing to the \$179 million, plus the revenue stream that is flowed.

So we think that it would be -- there should be a review of the reasonableness of the cost, whether all costs are prudent that are being incurred, and as part of that review, because it has been at least a significant piece of that, how incentives to customers are dealt with. So that would be part of it. In other words, the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

subsidies or incentives that have been provided to get customers to join and how that is being dealt with from an accounting perspective.

So beyond that I think we would submit that most of the issues that we think are appropriate have already been laid on the table.

CHAIRMAN: Can I ask you a question about the last item you spoke of the review of the reasonableness of the cost. I am just wondering what you would contemplate with respect to that, as to whether you were speaking to on a going forward basis, some sort of a different way of looking at costs or are you talking about some review of costs that occurred in the past. I just want to kind of capture precisely what it is that you are looking at.

MR. LAWSON: Well obviously for on a go forward basis, we would say it definitely needs to be reviewed. I guess it really is on sober second thought and reflection based on Mr. Theriault's previous submission to this Board on another matter that it struck me that \$180 million of accumulated losses have been almost without a close scrutiny on the reasonableness and prudence cost. And that it would seem appropriate that the review also give consideration to some of those past costs. I know that is difficult, but I don't think it is unreasonable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN: I think the amount that you are quoting for the deferral account is not correct. What would the current balance?

MR. HOYT: 130.

CHAIRMAN: 130 million.

MR. LAWSON: Okay. I apologize. A mere 130 --

CHAIRMAN: It is still a large number. I can appreciate that.

MR. LAWSON: Yes.

CHAIRMAN: It's that somebody reading the record may --

MR. LAWSON: I apologize.

CHAIRMAN: No, I don't think you need to apologize. I just want to make sure that somebody reading the record would understand what the actual amount was.

MR. LAWSON: And I am just curious, is the 130 inclusive of all part of the deferral account?

MR. HOYT: That is the deferral account.

MR. LAWSON: There is no other recovery from -- in the future from customers, such as anticipated -- that's the amount?

MR. HOYT: Yes.

CHAIRMAN: That would be the current -- that's the present balance, in round figures 130 million. Anything else, Mr. Lawson?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. LAWSON: No, Mr. Chairman. Thank you.

CHAIRMAN: Mr. Theriault?

MR. THERIAULT: Thank you, Mr. Chairman. Obviously, the process by which this Board deals with the outstanding regulatory issues will be important to the future regulation of EGNB.

Now the Board has already separated consideration of the market-based ratemaking formula from other aspects of the regulation of EGNB. However, it is quite possible that the separation will produce some overlap with respect to the evidence that is presented in a hearing into the market-based formula with evidence that is presenting in a hearing into other regulatory matters.

I would recommend that for this process that all the remaining regulatory issues with respect to EGNB be addressed in a single hearing.

Now we have heard here today discussion about various issues and there have been a number of regulatory issues identified by EGNB and by other participants at the technical conference and also set out here this morning I think in more detail.

Nevertheless I would suggest that all of these outstanding regulatory issues can be reduced to two major matters.

First would be identifying the criteria that

1 would signal the end of the development period.

2 And secondly, identifying the timing and the transition
3 process to move EGNB from market-based ratemaking to cost-
4 based ratemaking.
5

6 While it may be appropriate that the Board considers these
7 issues in the sequence that I have identified, it would
8 not be necessary to have separate hearings for each of
9 these major matters.

10 I would suggest that the following elements or issues
11 should be part of a hearing into other regulatory issues
12 with respect to EGNB. First, the identification of
13 appropriate criteria to signal the end of the development
14 period.

15 Secondly, a prudency review to confirm or disallow the
16 following: One, the amounts invested since start-up in
17 plant infrastructure. Secondly, the amounts expended for
18 marketing. And thirdly, the amounts accrued in the
19 deferral account.

20 Also as part of the hearing, I think the rate of return on
21 equity, including an investigation into the impact of
22 EGNB's cash distribution policy on cost of capital would
23 have to be looked at. Further, the deferral account
24 recovery period. Also I think we have to look at EUG
25 revenues, expenses and profits, including an

1
2 evaluation of the impact of an effective firewall on the
3 EUG revenues. And also fifthly, I think we have to look
4 at the cost of service study which has been discussed here
5 this morning. Sixth, I think we should look at the
6 transition process to determine post-development period
7 rates. And seventh, is the determination of minimum
8 filing requirements for EGNB and EUG in the future. These
9 requirements I would suggest should be comprehensive
10 enough to ensure transparency in the operation and
11 independence of these two entities.

12 Now I would recommend that the hearing process, the
13 process itself, follow the format established by this
14 Board in other regulatory matters. That would be that
15 EGNB would file evidence on the issues that are
16 identified, that Intervenor would submit first round of
17 IRs, then based on the responses to the first round, there
18 would be supplemental IRs, with a possible Motions Day,
19 then the Intervenors submit evidence with IRs on that
20 evidence leading and culminating in a public hearing.

21 Now I guess, Mr. Chairman, I would like to advise the
22 Board that as part of my participation in this hearing, I
23 would expect to submit a motion for reconsideration of an
24 earlier Board ruling that the development period cannot
25 end for one customer class before it ends for all customer

1
2 classes. I believe that it will be necessary for the
3 Board to reconsider this ruling in order to ensure that an
4 appropriate set of criteria for signalling the end of the
5 development period are presented for the Board's
6 consideration in this hearing.

7 And just one comment I guess -- and if I understood Mr.
8 Stewart correctly, if I understood him correctly, he said
9 that he didn't think it was important to have criteria for
10 the end of the development period. And that may or may
11 not be true for the LFO class, but I would suggest that
12 those criteria are certainly needed for the other classes.

13 And I think it is an important function that has to be
14 taken place here. Thank you.

15 CHAIRMAN: Mr. Theriault, perhaps something I would maybe
16 ask you to give me a little more detail on is this motion
17 that you refer to, because you really outlined the process
18 that as you say everything should be essentially heard
19 together, rather than -- I guess your preference would be
20 one or two large hearings as opposed to a great number of
21 small ones. Would the subject matter of the motion that
22 you refer to not be something that would also fit within
23 this context of this hearing, why would that be separate
24 and apart? I just wonder --

25 MR. THERIAULT: Well, no, I am suggesting, Mr. Chairman, I

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

am just advising the Board -- and I think I used the word,
I would expect to bring depending on how --

CHAIRMAN: Sure --

MR. THERIAULT: -- the issues breakout here. I guess when I
go back and read the ruling of the Board dealing with that
--

CHAIRMAN: Yes.

MR. THERIAULT: -- I think it makes it difficult -- it may
very well be possible that the Board may decide at some
future point that the development period is over for a
class, but not over for other classes and then come up
with a transitory approach to deal with that issue. But I
think to preclude that the development period can end --
can only end when all classes have reached the development
period I think is narrowing or restricting the Board.

CHAIRMAN: No. Sure. And I not really looking to get into
the substantive issue. I really was wondering you were --
you brought that up in the context of talking about
process or procedure and so you would see that as
something that would need a determination prior to the
generic hearing that we would --

MR. THERIAULT: I guess it would depend on how the Board --
what is decided as result of this hearing and the process
going forward. That's why I say I would expect depending

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

upon what this Board rules.

CHAIRMAN: Fair enough. Ms. Desmond, do you have any comments about this going forward?

MS. DESMOND: Thank you, Mr. Chair. The Board Staff did look at a number of issues that we thought from a Staff perspective should be considered. Many of those issues, of course, have been identified already this morning. There is one -- just one item I guess I would comment on. There have been a number of submissions around the cost of service study. And I believe Mr. Lawson suggested that there would be some need to look at rate classes. And Mr. Stewart also suggested that may be a proposal be put before the Board in terms of having all parties comment on how that study would proceed. I believe that during the technical sessions, there was some suggestion that the cost of service study would start and maybe has already begun. So it may be useful for the Board to hear comments from EGNB in terms of if in fact that cost-of-service study has already commenced and how that might impact on the suggestions that have been made by the Intervenors?

CHAIRMAN: Any other comments that you wish to make or it is that --

MS. DESMOND: No, that's everything. Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN: Thank you. Mr. Hoyt, can you address that issue?

MR. HOYT: I am going to ask Mr. Charleson to address that.

CHAIRMAN: Sure.

MR. CHARLESON: Ms. Desmond is correct that we have already begun the work on the cost-of-service study. We started to work on this in the fall of 2008. And currently do have a consultant engaged that we are working with on developing that with a target to have our study -- the study work completed by May of this year. And incorporated into that study is a look at the rate classes, you know, through the discussions that we have had with the consultant that was identified as one of the elements that you would consider as part of doing the cost study. How you would allocate costs, what classes and what the proper class structure that would go in terms of how the cost drivers fall in, so work is already underway.

CHAIRMAN: Thank you. Mr. Hoyt, any comments that you want to put forward now that you've had an opportunity to kind of think about it or chat about it?

MR. HOYT: No, I think just the initial reaction. The -- in Mr. Stewarts' submission, he queried when we saw that cost of service study play into the proposed schedule that we had outlined and we would see it as part of what I described as phase 2, which is the proceeding that would

1
2 determine the end of the development period. We would see
3 the cost of service study being required for that process.
4 The other comment Mr. Stewart made is that the development
5 period is over and has long since been over. Now prior
6 Board decisions have always contemplated first determining
7 what the development -- the end of the development period
8 criteria are from the original Board decision in June of
9 2000 to this Board's decision in -- last year, I think it
10 was in April, on the rate decision, identifying the need
11 to actually address the development period criteria -- or
12 the criteria that would indicate the end of the
13 development period.

14 I would disagree, obviously, with Mr. Stewart's suggestion
15 that the development period has long since been over or
16 that it is over now. In fact, there is a Board decision
17 that has it in place until December 31st of 2010 and that
18 obviously is a date which can be extended.

19 It is hard to talk about whether it is over or not though
20 unless you know what the criteria are that determine it.

21 I think in Mr. Ervin's submission, he outlined the -- or
22 referenced a couple of ways that a development period has
23 been defined. We could find all kinds of different ones
24 either that have been submitted by parties in evidence or
25 have been referenced by Board in

1
2 decisions. So to us we always come back to the starting
3 point for this process that we are embarking on, needs to
4 be to determine what does end the development period. And
5 in response to a suggestion that it is over I think it
6 just focuses on the issue that you have to determine okay,
7 what decides it's over. That seems to be the starting
8 point.

9 In terms of the Department of Energy submission, I have a
10 few reactions just to it just because we have the benefit
11 of having it in advance. In terms of the way it is set
12 up, Mr. Ervin lays it out in three parts. The first
13 section headed "The Regulatory Framework in General" that
14 starts at the bottom of page 2, we don't see the
15 Department's suggestions that the Board define key
16 principles and goals or review the relative roles of the
17 Board in the province as part of the regulatory
18 proceeding. We assume the Province seeks input from the
19 Board as to policy issues on an ongoing basis. But at the
20 end of the day, the Board's role is determined by the
21 legislation that governs it. It is the Province's role to
22 set the policy direction. So it seems -- it would seem to
23 us to be outside the regulatory arena.

24 The second section of the submission titled "The
25 Development Period and Transitional Issues" -- and Mr.

1
2 Stewart did go through a number of the bullets. Again. it
3 refers to a couple definitions of the development period.

4 And as I mentioned, there are lots of those definitions
5 out there. And again just reiterating, that is why we
6 need to start first of all by determining what those
7 criteria are.

8 So we would agree with the first bullet at the bottom of
9 page 3 in terms of having to define what the end of the
10 development period is. The next four bullets though all
11 raise transitional issues and to the extent that they
12 involve changing the model while the development period is
13 ongoing, EGNB would disagree. The Board, through numerous
14 regulatory proceedings, has established the rules in place
15 for the development period. And EGNB has invested \$350
16 million based on the regime that is in place. So we
17 strongly oppose changing the rules in the middle of the
18 game.

19 To the extent that those bullets raise transitional
20 issues, we would refer you to our submission that there
21 may well be transitional issues but we see those arising
22 between the end of the development period and getting to
23 the end state cost of service rates.

24 The next two bullets, which would be bullets 5 and 6, they
25 don't, we would suggest, fit into this proceeding.

1
2 They relate to matters that relate to the financial
3 reviews of EGNB that are done annually and in the pending
4 decision of the Board in relation to EGNB's 2007 financial
5 results will likely address a couple of those issues.

6 The third section of the Province's submission, the
7 deferral account and the recovery period, with respect to
8 those two issues, EGNB has also identified them as issues.

9 The debate is more as to when they get addressed.

10 With respect to Mr. Sorenson's submission, I don't have
11 too many comments. But if you go to page 2 of the
12 submission, the first two items that he raises, again cost
13 allocation and the deferral account, I think everybody --
14 I think everybody here this morning has identified those
15 as issues. Whether his specific questions are appropriate
16 or not is another matter.

17 In terms of the other issues, in terms of the proposed
18 cost structure, it talks -- yes, in terms of the rates, as
19 you mentioned, Mr. Chair, there is a separate proceeding
20 that is ongoing with a result in a hearing on April 22nd
21 that will look at the rates methodology. Sorry, that is
22 with respect to number 4, with respect to the rate
23 methodology. That would be dealt with by the separate
24 proceeding.

25 Number 5, marketing and incentives. Again, that is a

1
2 matter more appropriate for the financial results review.

3 As Mr. Theriault knows, it was an issue that was
4 addressed in a recent hearing and is subject to a pending
5 Board decision.

6 With respect to item 6, the Enbridge Gas service and
7 whether Enbridge should be able to sell gas and so on, we
8 would suggest that is more a legislative matter than a
9 matter for this regulatory proceeding. The Gas
10 Distribution Act and the Gas Marketing Regulation
11 currently allows EGNB to sell gas in a certain manner and
12 I think what Mr. Sorenson is addressing here is more the
13 policy issue as to whether or not they should be able to,
14 and as I say, it is more of a legislative issue.

15 In terms of Flakeboard's submission, Mr. Lawson referenced
16 the rate class as being part of the cost allocation study
17 and I think Mr. Charleson just confirmed that we do in
18 fact see those as being part of that study.

19 The other point though that he made in terms of all of
20 EGNB's costs and incentives and so on being subject to
21 this process, again they are matters that were recently
22 dealt with in the financial results review and are subject
23 to the Board's upcoming decision.

24 With respect to Mr. Theriault, I thought I was going to
25 get to say that I agreed with him for the first time,

1
2 but then he kept going. When he started, he began by
3 suggesting a two kind of cart process. And the first one
4 again he had identified as the criteria that would signal
5 the end of the development period. And obviously it is
6 something that we are on side with and really do believe
7 it is the first step in the process.

8 The second phase that he described again is this timing
9 and transition period for moving from EGNB's market-based
10 rates to cost of service rates. So again, although we see
11 those as two separate processes, he has lumped them
12 together. And the reason I think that we see them
13 primarily as two separate processes is that determination
14 as to whether the development period has ended will
15 determine whether it is then appropriate to go on and
16 address all of the other issues.

17 I'm not trying to get any kind of indication as to when
18 the development period is likely to end because I don't
19 know. I haven't seen the numbers. But I use as an
20 example the date we have today is 2010. So that is
21 obviously one possibility.

22 If the determination though is that it hasn't ended and
23 for sake of argument that it wasn't -- that it doesn't end
24 until 2015, it would seem premature in 2009 to be
25 developing or answering all of the questions as to what

1
2 might happen a significant period of time later.

3 So that is the primary rationale for distinguishing that
4 second and third piece of the structure. So as I say, to
5 that point, I think Mr. Theriault and I are close to being
6 on the same page. And in terms of the number of other
7 items that he raised, which I assume would all be part of
8 that second process, a number of those again and we just
9 went through the hearing with Mr. Theriault on the
10 firewall, on the filing requirements for EGNB, dealing
11 with EGNB's distribution policy, whether a prudency review
12 or not. I mean, we just made our submissions on that and
13 await the Board's decision.

14 So I think a number of those items again are more directed
15 to the financial results area than where I think we are
16 headed on this review. In terms of the motion, I mean I
17 leave it to the Board if there is a formal motion, I guess
18 we would address it at the time. But it would seem with
19 the course the Board is going on, that that would be up
20 for discussion like everything else.

21 I think that concludes the various submissions.

22 CHAIRMAN: Thank you. Mr. Lawson?

23 MR. LAWSON: Mr. Lawson, you indicated this might have a bit
24 of informality so I wonder if I might just raise one other
25 issue on the process question. It strikes me as we are

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

talking about this that we are obviously talking on a variety of what I will describe as big picture issues. And within each big picture issue there are a whole bunch of questions that arise about what should be dealt with within each of those big picture issues. And the difficulty with sort of the process that traditionally is followed by the Board is an applicant is the one who submits the evidence in support of their application and the process follows in response to that evidence.

I am wondering if it may be useful once issues have been identified, for the Board to sort of work with all the parties to identify what things should be dealt with by way of evidence rather than leaving it to, for example, EGNB to submit evidence and sort of start the process and therefore they effectively become the definers of what it is that is going to be dealt with under that. So I think perhaps we are thinking at the highest level now but it would be useful to think at sort of the more minute detail -- not minute detail, but more detail about the kinds of issues that should be dealt with under each subject.

CHAIRMAN: Certainly one of the things that we did want to talk about today is the process going forward understanding that this may differ in many respects from traditional hearings in the sense that there may not be an

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

applicant as such. Or an applicant perhaps has been told that will be an applicant. But not in the traditional sense of somebody coming forward because they want to and think it's appropriate and are seeking some relief. I would think the cost of service one might be the simpler one because if in fact Enbridge were -- it was indicated they were going to provide a report by a certain date then to a certain extent it becomes like an application and others respond to it.

But I think you are correct. I think the process that we follow is an important issue to consider. And again because of the informality of this and normally through the parties and back to the applicant, because we don't have an applicant you don't necessarily get the last word, Mr. Hoyt.

Anybody else have any other comments that they want to make? Mr. Stewart?

MR. STEWART: I do, Mr. Chairman. It seems to me that at some point the task that is going to be before you is to deal with one sort of very basic philosophical issue. And that is because there is I think a theme to Mr. Hoyt's remarks and a theme to all of the other people in the room's remarks, certainly those who represent ratepayers and the department. And that is in terms of looking at

1
2 these issues surrounding, you know, the so-called
3 development period in its end and it seems to me there are
4 two basic philosophies that have been espoused today.

5 Mr. Hoyt would have you suggest that you look at the
6 development period in a vacuum and then say okay, is the
7 light switch on or off. You know, is it over or done.
8 And then and only then do you move on to the other issues.

9 And I think the other submissions you heard this morning
10 are that that's not the proper way to consider the issues
11 and that you cannot consider it in a vacuum and to a
12 certain extent you have to understand you know the end of
13 the development period will be in a large measure in my
14 view determined by when you are moving to this other place
15 and what that other place is. And then putting in place
16 the transition before it. I don't think it's as simple as
17 saying a development period ends when it ends and then
18 only at that point do you start some sort of transitional
19 phase. And I would encourage the Board not to divide the
20 issues in that fashion.

21 CHAIRMAN: Anybody else have any additional comments? Mr.
22 Ervin?

23 MR. ERVIN: I would just echo the eloquent remarks of Mr.
24 Stewart. I was going to mention the same thing, that you
25 know I see the transitional period as not necessarily

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

commencing with the -- whatever the defined end of the development period is. If -- there are certain aspects of the regulatory regime I think that can and should be examined as perhaps ways of you know altering and ameliorating the current regime to the extent that it should be. Without, you know -- and I don't -- certainly the Department isn't advocating pulling the regulatory rug out from underneath of Enbridge. But looking at the issue from the point of view as, you know, we have set out a particular regime back in 2000 which have got us along over the years. Are there other ways of making that regime better even before the end of the so-called development period.

CHAIRMAN: Thank you. Mr. Theriault, anything further?

MR. THERIAULT: No, I would concur with Mr. Ervin and Mr. Stewart.

CHAIRMAN: There may be some questions from the Panel members. Mr. McKenzie, anything?

MR. MCKENZIE: No questions.

CHAIRMAN: Mr. McLean?

MR. MCLEAN: No.

CHAIRMAN: I feel certain that Mr. Johnston will have some.

VICE CHAIRMAN: Well you're right. But I will continue I guess along the theme that, you know, Mr. Stewart has

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

raised and Mr. Ervin as well. I will make a couple of comments of my own to begin with, which is that I think that the process we are beginning here today, this process of trying to put an orderly and efficient schedule together for dealing with the regulatory matters that are going forward is challenging. And I think we have made a good first step here today and hopefully we can keep going on it. But I do have some illustrations I think of the concerns and the challenges that we face.

Mr. Hoyt, I am going to address my first question to you, which is you have listed seven matters to deal with and the first one is the criteria for the end of the development period. And the last one is the reference to a transition period in terms of what the -- what the nature of the rules would be during a transition period. Is that what I understand you to be suggesting.

MR. HOYT: Yes.

VICE CHAIRMAN: Do we not have to have some idea of what the rules are going to be at the conclusion of the development period, before we decide what the criteria are going to be for ending the development period?

MR. HOYT: Our expectation is that you wouldn't -- that you can determine the criteria and the development period separately and that the determination will be made as to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

when that development period has ended.

Once you know you are headed towards the end of the development period there would be a need to determine what this transitional period is.

And I think there is a bit of distinction between where Enbridge is on this transitional period and where a number of the other parties are in terms of when that period is.

And I think the difference for Enbridge is that we are talking about a transitional period that doesn't commence until the end of the development period.

Whereas I know Mr. Ervin just mentioned -- I think the transitional period he is talking about could start anytime. So I think that is the fundamental difference in terms of the transitional period that we are all talking about.

VICE CHAIRMAN: I think you are right. And I would make one comment as well, which I think that there is a distinction between a transitional period and a suggestion that certain rules or policies should be changed during the development period.

I think there are two perhaps distinct things there which are sometimes being confused. Or not -- confused is the wrong word. Being used in different ways by different speakers.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

So I think we need to be somewhat precise with what we mean when we talk about these different things. And we need to try and get on the same wavelength collectively here.

MR. HOYT: I would agree with the issue that you have identified. Again for us it goes to this issue of changing the rules of the game.

I mean, they have been determined for the development period. There has been significant investment made based on a set of parameters and a regime in place for the development period.

Our concern is if you start transitioning during the development period, well, that has in effect changed the rules.

VICE CHAIRMAN: Certainly. But at the same time it would not be unlikely that if there was an application to extend the development period that together with that some of the other parties might suggest that during that extension rules might be changed.

MR. HOYT: Yes. I would fully expect that.

VICE CHAIRMAN: So again we are -- some people might refer to that as a transition period. And some people might refer to it as a development period. And we have to be -- we have to work to try and develop a common vocabulary as

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

we move forward through this process.

I'm a little bit concerned about one issue. And Mr. Stewart has raised this and so forth. And that is the issue with the cost-of-service study.

And I guess I would like your comments to begin with, Mr. Hoyt, and then Mr. Stewart and anybody else who wants to chime in.

On the issue of customer classes and the cost-of-service study, as I understand it from Mr. Charleson's comments, there has been a consultant retained by EGNB who is preparing a cost of service study which will contain proposed customer classes.

And I certainly know that the composition of customer classes can be a matter of controversy. I'm not predicting it is going to be here. But certainly in other areas it can be.

And I guess what I'm wondering is whether you feel -- and I'm inviting the other parties to speak as well, is whether there would be -- whether there is any value in the Board seeking to address this issue of class composition while the remainder of the study is going on, or whether the most efficient way to do it will be to await the thing.

I just have -- I think it is a challenging thing to do

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

a cost allocation study in particular until there is
certainty on a customer class composition.

MR. HOYT: Mr. Charleson, will respond to that.

MR. CHARLESON: I think what you get into when looking at
the cost of allocation study and the customer classes can
become a bit of a chicken and egg situation.

And again my comments are based just on the discussions
that I have had with -- the one discussion I have had with
our consultant, because of people within my organization
that are dealing more directly.

And my view would be that it is probably best to let the
cost study be done with a recommendation in terms of the
composition of the customer classes, which would be
derived based on an assessment of the different -- what
are the different cost drivers.

And from the description of the consultant, you take a
look at those cost drivers, and that is how you create
your class compositions and come with that. By doing that
it at least provides a starting point then that other
parties can either challenge that.

But to try to define the customer classes in the absence
of knowing what cost drivers are, again you could create
classes that then have -- create issues in terms of
certain cost drivers blended across different customer

1
2 classes and could create some issues in terms of clarity
3 of how costs get allocated. So like I say, it is a bit of
4 a chicken and egg on it.

5 But my suggestion or my preferred approach would be let's
6 complete the study that is under way right now. Parties
7 will have the opportunity to review and obviously question
8 and challenge how some of that is being done.

9 And then it can be, you know, adjusted based on direction
10 from the Board in terms of well, what if the classes were
11 structured this way. At least you have got the
12 foundational information together.

13 VICE CHAIRMAN: And just before I turn over to the other
14 parties to comment on that issue, is there a relationship
15 between the process that is in place in terms of technical
16 conferences working towards trying to get criteria for the
17 end of the development period and the cost-of-service
18 study?

19 Is there a linkage there that people feel this is going to
20 assist in developing criteria, from Enbridge's perspective
21 or --

22 MR. HOYT: Mr. Theriault described it as in limbo. I kind
23 of expect that this process will take over the Technical
24 Committee review process. I don't see those two things
25 going on parallel.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VICE CHAIRMAN: When you say this process, Mr. Hoyt, do you mean the process we are engaged in this morning? Or do you mean the process with respect to the cost-of-service study?

MR. HOYT: No. I see it as all of the things that we are talking about. I think every party has identified development period criteria as one of the items that would likely end up on this agenda.

And if it is part of a process before the Board I don't see why the Technical Committee would be continuing. I don't want to get into the discussions of that committee.

VICE CHAIRMAN: Absolutely not.

MR. HOYT: But I don't see a parallel process going on while parties are submitting evidence in the whole hearing process.

VICE CHAIRMAN: I must have not been clear in my question.

Because what I was -- the point I was seeking to make I guess -- and I'm sincere when I think I wasn't clear in my question -- is whether there is a relationship between developing the criteria for the end of the development period and the cost-of-service study.

In other words is the report, the evidence that is going to come out of the study, going to be of assistance

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to the parties and the Board in trying to develop criteria for the end of the development period. Or can we go ahead with that hearing potentially before that study is circulated?

MR. HOYT: Yes. We see -- again back to the order -- we see it more in terms of defining -- define the criteria first. And then the cost-of-service study would be used in evaluating those criteria.

So again we would see the criteria development coming first and then the cost allocation study being part of the second process to determine whether or not the development period has ended.

VICE CHAIRMAN: Mr. Stewart, do you have any thoughts on the matters I have raised?

MR. STEWART: Just to reiterate -- or to acknowledge the distinction you made between -- you spoke in terms of limbo and issues in terms of -- I think there are two types of issues that are potentially before the Board. One is, you know, what if any, for lack of a better word, tweaking or changes or issues need to be made during the remainder, whether it is determined to be tomorrow or two years from now or a year and a half from now of the development period.

And then what should be put in place for a transition

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to the end of the development period. Clearly our submission, as I think Mr. Hoyt has conceded, is that the transition period should begin now or whenever the Board sees fit.

It doesn't need to begin and should not, I would submit, begin at the end of the so-called development period, whenever that would be deemed to be.

So I agree with the distinction. I just believe that both of those types of issues need to be before the Board in this process.

With respect to the cost-of-service study, I agree with Mr. Charleson. It is a bit of a chicken and egg scenario.

I don't know what this report is going to say. I don't know what it is going to see. So it is difficult for me to comment on whether we should wait until we see it or not.

The concern I have with that is a little bit of the old horse is out of the barn scenario, whereas -- you know -- and that's -- or the submission that we made earlier was -- I was hoping that we would then be able to talk about what sort of study will be done.

And then to ensure that we don't then wait until May until this study is presented to us, and a study done by a consultant hired by EGNB, then for us -- as a result of a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

many month process apparently, for us to then to try to deal with after the fact.

And I don't know how we get around that now. But it would seem to me that this process might be an opportunity to avoid that situation which would only then delay matters even further in my view.

VICE CHAIRMAN: Now I know that you don't support the idea of having a hearing specifically to determine criteria for the end of the development period.

But if it is determined that such a hearing is appropriate, would you feel that the cost-of-service study would need to be reviewed and studied prior to that hearing taking place? Or could that process take place prior to the circulation of the study?

MR. STEWART: I think it could take place prior to the circulation of the study. My -- I think. I'm shooting from the hip.

If you were going to isolate the issue in the way that I suggest perhaps you are, it is not so much that I take issue with that kind of hearing going forward. What we take issue with is what is being considered when that determination is made.

Our view is that when you consider, you know, the criteria for the end of the development period, that you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

can't simply, you know, make a list of eight -- you know, 1, 2, 3, 4, 5 and 6 happened, therefore the development period is over.

What we think you need to do in order to establish that criteria is to determine what if any changes you need to make on the immediate short term and where you are going to be at the end of that.

So it is part and parcel of the same -- and you can put that label on it. But all of those issues need to be before the Board in order to make that determination.

You can't make it in a vacuum without determining where you are going and how you are going to get there, to determine whether it is over or not.

VICE CHAIRMAN: Mr. Ervin, do you want to jump in on any of these topics?

MR. ERVIN: I don't have anything to add, Mr. Johnston, other than -- you know, to your particular question. I don't really see any kind of co-dependencies -- coping dependencies between the cost of service study and the development of criteria for the end of the determinant -- the development period. So I think the two could processes could proceed in parallel.

VICE CHAIRMAN: Mr. Lawson?

MR. LAWSON: Yes, Mr. Vice Chairman. I would agree with

1
2 Mr. Ervin's comment. I don't understand how they might be
3 as co-dependency.

4 But just a couple of other comments, one on process, one
5 on the general rules of the game change and the transition
6 issue.

7 I guess my only comment on this changing the rules of the
8 game partway through, being transitional up to the end of
9 the development period, I think everybody would have to
10 agree that since the current deferral account is 10 times
11 what was originally anticipated, and the market has
12 developed completely differently than what anybody dreamed
13 of 10 years ago, the rules of the game should be reviewed
14 today.

15 I mean, to say look, we went into this game with a view
16 that we were going to have a development period and the
17 rules of the game would operate this way for that entire
18 development period, and there should be no change in the
19 meantime, is to ignore the fact that through no fault of
20 any customers of EGNB's -- I'm not going to place the
21 fault anywhere else for the moment -- through no fault of
22 customers of EGNB's, the rules of the game are entirely
23 different.

24 When our client joined there was an anticipation, as an
25 EGNB customer, that by 2005 the deferral period would

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

be over. We are in 2009 and we know it is not.
So the game is very different. I think the Board has to
keep that in mind when determining whether or not it is
appropriate. And I know that is argument. But I just
think it is important.
As to the process, I do think it would be beneficial, for
example in the cost of study it would be I think very
beneficial if in fact the parties could get together and
understand what it is that is being done and the general
principles that are being looked at by EGNB in their cost
study to assist in trying to see if there is any way,
without going through a six-month hearing process after
the thing has been done where our experts come in and
their experts come into the battle process and come out
with something at the end, if there is any way we can
expedite that process by having the parties meet,
understand what it is that EGNB's approach is, and whether
or not there is anything that can be done by agreement
with the parties on how that study would deal with it,
leaving then at least hopefully a smaller framework of
issues that have to be dealt with by this Board in a
review of the cost study determination. That would
include for example the classifications. Because I do
think the classifications are very important.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

And what we are doing -- what EGNB is doing is developing a classification system and saying here is how the cost allocation will be done on that, where we may have a completely different view about what the cost allocations are, which would take much of the rest of the study to be useless.

My only comments. Thank you.

VICE CHAIRMAN: Mr. Theriault?

MR. THERIAULT: Yes. Thank you, Mr. Vice Chair.

I'm just curious -- and again I know where it is in more of an informal setting. So I pose a question to the Board roundabout to Mr. Charleson.

But does the cost-of-service study include a rate design study? Because it is my understanding that is the appropriate way to deal with the various classes or review of various classes.

Secondly I guess just on -- I guess on the last point made by my friend, by Mr. Lawson, I don't think it is necessary -- and I could understand the hesitancy of EGNB to say oh, we want, you know, Dan Theriault to sit down with us and go through our cost-of-service study and give us his input on that.

I mean, it is their study. They are going to be presenting it. They will be submitting it to the Board if

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the Board should so order. And then obviously it will be subject to scrutiny by the various parties.

I mean, I don't know how practicable it would be to have, you know, six parties sit down with EGNB and say okay, we all have different inputs that we want put into this study, various things.

I mean, I think it would be very confusing for EGNB. Not that I'm here to argue on their behalf. But I think it would be appropriate. The more appropriate process is the traditional process of them presenting a study and it being reviewed and then obviously being decided upon by the Board.

VICE CHAIRMAN: My thought is, although the development of cost-of-service study has been certainly discussed in many proceedings before this Board, I'm not sure, and I stand to be corrected, that the Board has ever directed such a study to be completed. So this is something that they are doing voluntarily.

So I think the Board no doubt would want to reflect carefully before we pushed them too far in terms of what they need to divulge about the work that they are doing.

MR. THERIAULT: It was part of the -- you know, and through the technical conference process that this cost of service study came about.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

But as I think Mr. Stewart had mentioned earlier, one of the things he is requesting of the Board, I think in his original submission, is that EGNB be ordered to provided a cost-of-service study.

So that would in effect start the process. And thankfully they seem to be quite a ways along. So that should help from a time point of view.

CHAIRMAN: Is there anybody that wants to add anything at this point in time? Mr. Hoyt, any further -- I guess everybody has had that opportunity.

Ms. Desmond, anything further that you want to add?

MS. DESMOND: No, thank you.

CHAIRMAN: Mr. Lawson, at the outset you made a comment about an opportunity to sort of talk informally, you know, with the parties about the process. I don't know whether or not you want to use the time that -- you know, everybody is here.

And I think what the Board is going to do is just take an adjournment to consider whether or not there is anything else that needs to be dealt with today while we have -- rather than saying to everybody well, you know, we will return for now and then determine that perhaps there may have been another issue or two that we should have talked about.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Does anybody have any other issues though at this point in time they think need to be dealt with, who hasn't already been canvassed?

MR. HOYT: I can just provide the answer to Mr. Theriault's question to Mr. Charleson, that the cost-of-service study does include rate design study.

CHAIRMAN: Anybody have any other issues that they feel haven't been adequately canvassed or canvassed at all that ought to be canvassed this morning?

MR. STEWART: Mr. Chairman, maybe something we should think about during the adjournment, and perhaps the Board as well, just in terms of, you know, is where very practically where to go from here, and just in terms of logistics of are we going to assemble an issues list? Is the Board going to make a proposal? Do parties make proposals?

I don't have the answer to that right now. But perhaps it is all something we could give some thought to.o.

CHAIRMAN: Certainly the development of an issues list is sort of primary on our minds. And it would be again obviously extremely helpful if there were a common issues list that virtually everybody agreed to. To a certain extent, you know, a lot of what we heard were variations on similar themes. But again there

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

obviously have been some instances of substance.
So I think we will take a brief adjournment to consider the process going forward. And at the same time the parties may want to consider whether nor they want to use the time available today to see whether or not some I guess commonality might be achieved in terms of what that issues list should contain.

But for now I think we will take a 15-minute adjournment and consider where to go from here.

(11:14 a.m. - 12:37 a.m. - Recess)

CHAIRMAN: When we adjourned I guess it was for the Board to consider what the process was going to be going forward and for the parties to meet to see whether or not there may be any commonality if you will that it could be reached on issues and process.

I understand that some of the parties at least may want this matter adjourned for an opportunity to address some of the issues that perhaps they didn't anticipate being raised today.

What the Board -- I guess what we are going to do is canvass the parties first of all to see what it is that they would prefer. Because there is a couple of options the Board has. As I indicated earlier they are a little more informal perhaps on this one than they might be on

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

other matters.

The Board can take what it heard today. It can develop an issues list from that. It can group them where possible, set out the process and procedure going forward, set what we see at this point in time as the appropriate sequence and then start scheduling hearings.

Bearing in mind that as circumstances change, parties at anytime would be free to come to the Board to suggest that because of a change in circumstances or something else that the sequence ought to change.

It might be more logical -- what is logical now may not be necessarily logical in three or four months as we start to go through this process. And the Board of course could be available at the request of the parties by way of motion at anytime to work out any issues as we go forward.

That is what I would have seen as the outcome of today's hearing. But I'm advised that the time during the break was used for parties to try and come up with an agreed-upon issues list where the parties might agree on the priorities and sequence, and that some parties may have heard issues today that were raised that they didn't anticipate and want sometime to consider and address.

And sort of the option would be to have Board Staff essentially develop a comprehensive issues list once the

1
2 transcript is available today and circulate that to the
3 parties and then have the parties come back and address
4 the Board as to the very same issues that we had today,
5 simply having an opportunity to reflect on some issues
6 that maybe weren't anticipated. Because I think for most
7 of the issues we probably got a pretty good idea of where
8 the parties stand.

9 So with that background, Mr. Hoyt, I'm just going to
10 canvass the parties as to where you would like to see this
11 go.

12 MR. HOYT: In terms of your description as to how you
13 thought this would proceed, I mean, I think other than the
14 issues list I would agree with everything else that you
15 have said.

16 I think it is important that as part of the next steps
17 that the Board does provide some direction in terms of
18 where its head is at in terms of sequencing and that type
19 of thing and not just -- you know, that we don't just go
20 off with this issues list, not having any sense of how the
21 Board sees this thing playing out, recognizing that it may
22 change as circumstances evolve.

23 But in term so the issues list I think that your latter
24 description in terms of what the parties have discussed on
25 the break is accurate, that a list would come

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

out with some grouping to try to again give us some sense as to where it is headed, so we don't just have a list of 30 bullets and we, you know, debate whether we think that is in or that is out, that there would be an opportunity for some input on that list and then the proceedings would go forward.

But I think it is important that we do get some sense from the Board on direction, even if it is only in terms of the sequencing, based on the arguments that were heard today.

CHAIRMAN: I'm going to ask you to elaborate on that.

Because I'm not sure if we can -- if what you are asking is that we make a decision on some of the issues but not all of the issues.

And for example sequencing would be a difficult one for the Board to render a decision on if in fact, you know, the issues list wasn't finalized and to maybe think well, that some things shouldn't even be considered.

So it might be inappropriate for the Board to say well, we think the first thing in sequence is item A when argument is yet to really be -- final argument yet to be made, if you will, that perhaps certain items shouldn't even be there.

It seems to me that before we can set forth a sequence

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

we would have to say, here are the issues as we see them.

MR. HOYT: Yes. I mean, I think it is another one of these chicken and egg that we have got unfortunately. And I would describe it as even if it is some type of interim reaction from the Board as opposed to a direction that -- and again maybe it goes to being a bit less formality than is normally the case, and whether it is done by some kind of an indication to the parties as to where this should go or a direction to Board staff.

It just -- and I took it from your initial comments that the reaction is look, we heard a lot today in terms of where parties were at. And so I take it the Board likely would have been prepared to make some kind of a decision to give all the direction.

But there has been a discussion between the parties that, you know, perhaps we can narrow the issues or at least agree on what the list of those issues would be. So you know, it would seem worthwhile to at least see if there is any anywhere.

It won't surprise me if we come back three weeks from now and in discussions I don't know what to say. But hopefully we are able to in many cases agree that issues should be on the table.

CHAIRMAN: I don't think what I'm putting forward is a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

possibility as the Board coming up with an issues list with groupings. But what certainly would be possible would be for Board Staff to undertake that task. And you can take that for what it is worth.

I think it would be helpful, let's put it that way, if in fact we are going to return, I think it would nice to have an issues list to work from and some proposed groupings. Because I think it may make the discussion focus a little bit better on what the priorities should be.

MR. HOYT: And my understanding is that what the parties would do with that list would be to go through it, identify the issues that aren't contentious. And then the ones that are contentious would come back to a proceeding similar to this.

CHAIRMAN: If I were to call that Plan B is that what you are telling me that you would favor then, would be to come back with this issues list and groupings and kind of have a last shot at putting before the Board your thoughts on it?

MR. HOYT: Yes. I mean, I don't know if favor is the right word. But I think that is where we are at.

CHAIRMAN: I guess -- what are you asking us to do then?

You are asking us to have a -- to adjourn this to another

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

day for another opportunity to discuss it with an issues list being put out?

MR. HOYT: Yes. Again I think though the part that we are not getting any benefit of is any type of direction from the Board based on what has been heard today.

I think there are lots of things for the parties to discuss. But I think some type of direction would be helpful in terms of where you see this going.

CHAIRMAN: If we were to come back -- we don't want -- the last thing we want to do is adjourn this for a lengthy period of time.

That is, you know, part of -- part of the reason we did this, rather than a technical conference but to get ourselves involved, was to see that it was done on a timely basis. And that is something we would like to stick to if at all possible.

Where do you see the -- I understood that maybe the 12th of February was the earliest date. I'm not sure who it was could make -- it might have been you. I'm not sure.

MR. HOYT: I'm one of them.

MR. LAWSON: I'm available on the 11th.

CHAIRMAN: Well, so would you be available on the 12th or 13th of February?

1

2 MR. HOYT: I would say the 13th. I think we should canvass

3 --

4 CHAIRMAN: No. I understand that. But I just -- I might as

5 well ask you now that you have got the floor, that is all

6 in terms of dates. Because if it is not going to work it

7 is going to create a series problem in terms of when we

8 would do this.

9 MR. THERIAULT: Are you talking February 13th?

10 CHAIRMAN: Friday the 13th.

11 MR. THERIAULT: Unfortunately I'm in court in Newcastle.

12 CHAIRMAN: Your first available date is the 12th or the

13 13th. I'm not sure which.

14 MR. HOYT: The 13th.

15 CHAIRMAN: And we already know that Mr. Theriault is not

16 available on the 13th. And then I think we have got some

17 issues in terms of Board availability right into March.

18 And there is the so-called March Break at the first of

19 March. There is no sense in scheduling anything for that

20 date because, you know, people just won't be available.

21 All I will end up doing is rescheduling.

22 26th or 27th of February?

23 MR. HOYT: I'm fine. But Mr. Charleson has got commitments.

24 MR. THERIAULT: Mr. Chairman, have we decided or --

25 CHAIRMAN: I have not. I was -- and maybe I should never

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

have got into the dates until I got into the subject of whether or not we should go down that road.

But it seems to me then just in my discussions with Mr. Hoyt and what I know about dates at this point in time that we are certainly beyond the March Break before we could come back, it seems to me.

Mr. Stewart, I will hear from you.

MR. STEWART: Well, Mr. Chairman, one of the reasons I think all of us are having a little trouble articulating exactly what we want here is that you have had the benefit of hearing what we think but we have not had the benefit of hearing what you think on some of these issues. And it is difficult then for everybody in the room to draw a consensus.

Now I appreciate the concern that the Board is under in that circumstance. But that is the practical reality of why we are kind of struggling with where we go here I think.

Our position is that I think we -- if the Board, whether it is something generated, you know, with the blessing of the Board or by Board Staff or a direction or something, that if there was a tentative issues list circulated and a tentative grouping of that list and a tentative, you know, procedure.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

And I'm not necessarily talking about hearing dates, we are going to have a hearing on this and a hearing on this or -- as part of one big hearing -- a proposal put forward as tentative, subject to the Board's final ruling, subject to the further submissions of parties.

We will look at the proposal and say we think it is fine or we don't, or there is an issue missing or one too many or we think you should do it in some other way, and that we come back for a hearing as quickly as possible to say our piece if any on the tentative list circulated.

CHAIRMAN: Let me ask you -- because dates seem to be something that is going to cause us considerable grief in terms of making this matter go forward.

What would you think if we were to go along with something like that about written submissions only by a certain date?

MR. STEWART: Well, that is the less than favorable approach I have to admit. I mean, it would seem to me that, you know, this approach is going to work very well. You get everybody in a room and sort of hammer out the last few things. Candidly I find that written submissions take more time and cost more money.

But if it means putting it off till the middle of March, then I don't think that is an acceptable approach

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

either.

CHAIRMAN: I haven't canvassed all of the parties as to availability of dates. But simply looking at Mr. Hoyt and Mr. Theriault's dates and the dates that the Board has, we would be beyond the March Break before we could look at it. And then I know at that point in time the Board's schedule --

MR. STEWART: I'm available on Friday the 13th.

CHAIRMAN: Well for what it is worth, so am I. But it doesn't serve us well if all the people that are --

MR. STEWART: Of course.

CHAIRMAN: -- present here today -- so you would prefer that we have an actual hearing rather than written submissions?

MR. STEWART: I would. But you know, I guess -- but only to a point. If the, you know, return hearing is in April sometime then I will do written submission, you know, a few days after I get the tentative list, if that is my only alternative.

CHAIRMAN: Well, it strikes me that it is going to be somewhere towards the end of March. And you said you want -- you know, it would help you to know what the Board is thinking.

And I can tell you -- one thing I can tell you is that we believe very much that this matter does have to move

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

forward.

MR. STEWART: I agree.

CHAIRMAN: If we were to render a decision and come up with an issues list based on what we have heard today and set some priorities, and if parties believe that maybe that wasn't correct, I mean, there is always the opportunity to bring a motion to ask the Board, based on certain information, you know, to consider well, how about changing it and doing it in a different fashion based on some facts that may not have been available at the time. We can always reconsider our decisions.

And as I say, one has to look at it almost -- this isn't something that is static, you know. It changes as we go forward. And my biggest concern is delay. I think that the worst position the Board could put everybody in is to delay it to the point that we don't do anything.

And if we -- if at the end of the day the priorities aren't the way everybody or each and every one of you would see them, better that we get started than not do anything at all. To that extent I can tell you what the Board is thinking.

MR. STEWART: All right. And Mr. Chairman, so I'm clear, you know, clearly -- as you and other Board members are well aware, these have been issues near and dear to my

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

client's heart for a long time. And so, you know,
proceeding expeditiously is a priority.

I would like to have come back in two weeks and do it in
person. But if it means any significant delay to March
then we will make a written submission that we will live
and die by and we can move forward.

CHAIRMAN: Thank you. Mr. Ervin?

MR. ERVIN: I'm in favor, Mr. Chairman, of having the Board
Staff, you know, compile a list of issues that is a list
of agreed issues and a list of contentious issues.
Based on what we have heard today I think it could
probably be rapidly, you know, vetted and agreed upon by
the parties here within a short period of time, and then
have written submissions on the contentious portion of
that list.

Again I agree with Mr. Stewart. It would be nice if we
could come back here in two weeks time to do that process.

But it doesn't look like that is in the cards. So I
think a written submission -- I don't see this as -- I
mean, obviously we are not arguing the substance of those
issues.

CHAIRMAN: That is right.

MR. ERVIN: I'm just arguing whether they are germane to the
process or not. And it shouldn't -- it shouldn't be too

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

involved from my point of view.

CHAIRMAN: Thank you. Mr. Lawson?

MR. LAWSON: I guess I would share Mr. Stewart's view in terms of -- on all points. And just with that in mind, I know that some complication in early February arose as a result of my being away from February 1st to the 8th. But I could in that time, if it was suitable for the Board and everybody, participate by conference call, if that made it easier. I don't know how that works for the Board's scheduling or anybody else's schedule,

CHAIRMAN: Well, before I look at the dates, then you do feel that the Board should at least have an issues list and some groupings developed and the parties have an opportunity to respond to that either in writing or in person?

MR. LAWSON: Precisely, Mr. Chairman, I do. I would prefer the in-person. But I would say certainly if delay is the alternative, a significant delay, I would rather see it be in writing.

MR. ERVIN: Mr. Chairman, if you have a chance, just one point I forgot to mention. On the issues list, I think one of the suggestions was that issues list would include groupings or suggested groupings. I'm not sure whether that would, you know, add a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

dimension to the process that further complicates arriving at a consensus on the issues list itself. And I would advocate not coming up with the groupings at that stage. I think once we have the issues all identified and dealt with, my suggestion would be that the Board could come up with its groupings. I think probably the Board has enough information and argument at that stage to decide on groupings and govern its own process.

You know, obviously there could be some input. But I think to group them on the issues list and then try to arrive at that consensus that we are trying to achieve just adds that complicated dimension to it.

CHAIRMAN: Mr. Lawson, did you have anything else to --

MR. LAWSON: No, Mr. Chairman. Thank you.

CHAIRMAN: Mr. Theriault?

MR. THERIAULT: I guess I would be in favor of the Board making a decision let's move this matter along as you suggested, Mr. Chairman.

If there is a concern, if I had a concern with a particular issue being left off or sequenced improperly I'm sure I would bring it to the Board's attention by virtue of a motion or some other matter.

CHAIRMAN: Ms. Desmond, any comments from Board Staff on this issue?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. DESMOND: Nothing further.

CHAIRMAN: Just in terms of dates to come back in the event that we were to go down that road, the first week of February, Mr. Lawson, you say that you could participate by conference call on all days during that week or on particular days or --

MR. LAWSON: I'm sure my wife will be happy -- unhappy about any one of them.

CHAIRMAN: This is a vacation to some warm place I trust.

MR. LAWSON: I hope so. Hopefully not too hot though after I tell her this.

MR. THERIAULT: Mr. Chairman, just so the Board is aware, I'm available the 2nd, 5th and 6th of that week.

CHAIRMAN: Anybody else have any availability issues on that week?

MR. STEWART: I'm not available on the 2nd, like the Monday. But I'm available Tuesday, Wednesday, Thursday, Friday.

MR. HOYT: Mr. Charleson is not around the 2nd or 3rd. I'm out. I don't even think they have phones where I'm going, so -- phones that work.

CHAIRMAN: That kind of kills that doesn't it?

MR. HOYT: Again, I mean, I could -- I would look at involving somebody else if it came to that.

CHAIRMAN: Sure. Anybody else have any comments then on the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

process that we are going to follow?

MS. DESMOND: Mr. Chair, if I could just comment, I was just wondering if -- there is some concern about all of the panel members being available. And would that impact on your having a conference call or a hearing?

CHAIRMAN: Well, that is a good point. I meant to bring that up. Thank you.

One of our panel members will not be available beyond next week in person. So if in fact we had written submissions they could participate in the outcome. If not we still have a quorum of three.

I'm assuming nobody has any difficulty with that given the nature of what we are doing. As I say, it still leaves us with a quorum.

But if we end up with actually coming back after the end of next week then we are -- this is going to be a panel of three and not four. If we do it by way of written submissions we will obviously have all four.

MR. HOYT: Just one other thing I did want to comment was the written submission. I mean, in terms of Enbridge we are fine with written submissions. And I would think particularly given the level of discussion that we have had today and the exchange, it is not like parties haven't had an opportunity to put forward

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

their views. So we would be quite comfortable with proceeding with written submissions.

CHAIRMAN: Anything else? Give us five minutes and we will be back.

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

CHAIRMAN: We have had a few minutes there to consider how to proceed on this. And here is how we are going to proceed.

The Board instructs staff to develop an issues list to be circulated to the parties on or before January 28th.

Parties will have an opportunity to comment in writing on the issues they agree with and those they disagree with.

As well, parties may wish to comment on possible groupings and the sequence of hearings. The comments from the parties are to be received on or before the 9th of February.

I would remind everybody that this is to a certain extent a bit of a work in progress and that as soon as we -- we will issue a decision as quickly as possible.

But going forward, as I say, the parties may wish to, by way of motion, come back to the Board if they feel circumstances have changed ultimately when we do issue our decision.

It would be our intention, if at all possible, to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

issue a decision on that week of February the 9th.
Does anybody, due to schedules of being out of town, have any difficulty with the date the 9th of February? It can certainly be done before that. But does that create a problem, an insurmountable problem I should say for anybody?

All right. Well, then is there anything else before we adjourn today, any other issues that need to be determined?

All right. Well, then the Board Staff will get that issues list out on or before January 28th. We will look for submissions from the parties. And we do promise that we will put a decision out absolutely as soon as we possibly can.

Thank you.

(Adjourned)

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

Reporter