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New Brunswick Board of Commissioners of Public Utilities

Hearing April 26th, 2000

IN THE MATTER OF AN APPLICATION BY ENBRIDGE GAS NEW BRUNSWICK INC. DATED DECEMBER 31, 1999, FOR APPROVAL OF ITS RATES AND TARIFFS.

New Brunswick Board of Commissioners of Public Utilities

Hearing April 14th, 2000

IN THE MATTER OF AN APPLICATION BY ENBRIDGE GAS NEW BRUNSWICK INC. DATED DECEMBER 31, 1999, FOR APPROVAL OF ITS RATES AND TARIFFS.

Chairman: David C. Nicholson, Q.C.

Commissioner: Monika Zauhar

Commissioner: Robert Richardson

Commissioner: R. J. Lutes

Commissioner: Leonard Larocque

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CHAIRMAN: Welcome to our cosy premises. Before we begin I will take appearances please. The applicant?

MR. MACDOUGALL: For the applicant Enbridge Gas New Brunswick Inc., David MacDougall and Len Hoyt and Arunas Pleckaitis and Rock Marois.

CHAIRMAN: Irving Oil Limited?

MR. STEWART: Christopher Stewart for Irving Oil Limited. I'm joined with -- joined by, excuse me, Murray Newton of Irving Oil.

CHAIRMAN: MariCo Oil and Gas Corporation?

MR. HOLBROOK: Dennis Holbrook representing MariCo Oil and Gas Corporation.

CHAIRMAN: Union of New Brunswick Indians?

MS. ABOUCHAR: Juli Abouchar representing the Union of New

Brunswick Indians.

CHAIRMAN: Province of New Brunswick, Department of Natural Resources and Energy?

MR. BLUE: Ian Blue for the Province and the Department. And I'm accompanied by Don Barnett from the Department of Natural Resources and Energy.

CHAIRMAN: Sempra Energy Sales Limited.

MR. ZED: Peter Zed.

CHAIRMAN: And Board counsel?

MR. O'CONNELL: William O'Connell representing the Board Mr. Chairman.

CHAIRMAN: Preliminary matters. The exhibit list is on that back window ledge there. I don't know if everybody got an -- there is an error that was made in it. A-22 does not belong there. That is part of the construction application.

Before I ask counsel if there are any preliminary matters, the normal way in which the Board would proceed would be for the applicant to sum up.

And then we would go with Irving Oil, MariCo, Union of New Brunswick Indians and the Province of New Brunswick -- no, excuse me, Sempra Energy Sales and then the Province. And then on rebuttal we would reverse the order.

Are there any preliminary matters, ladies and gentlemen? If not, Mr. MacDougall?

MR. MACDOUGALL: Thank you, Mr. Chair. Mr. Chair, Commissioners, I'm pleased to have this opportunity to summarize Enbridge Gas New Brunswick Inc.'s position in this rates application.

To begin I would like to highlight what Enbridge Gas New Brunswick is asking the Board to approve in this proceeding.

Essentially the proposal before the Board is reflective of the essential elements negotiated with the Province and contained in the general franchise agreement.

There is nine specific items. Enbridge Gas New Brunswick Inc. requests that the Board order (1) that the rates filed at exhibit B, schedule 1 which are market-based target rates and the proposed ABC billing rates are just and reasonable.

(2) that the target rates may be revised downward throughout a given year by use of the rate rider filed at exhibit B, schedule 1, page 17.

(3) that the target rates may be reset annually subject to Board approval either upwards or downwards during the development period, taking into account market forces, and that EGNB have the flexibility to adjust its ABC rates in future as costs or market conditions dictate.

(4) that for fiscal 2001 Enbridge Gas New Brunswick be entitled to adjust its target rates if it feels this is

necessary as an exceptional one-time adjustment prior to the implementation of these rates in October 2000, to more accurately reflect market conditions at that time.

(5) that for the duration of the development period, Enbridge Gas New Brunswick's cost of capital be determined on the basis of a capital structure of 50 percent equity and 50 percent debt, a rate of return on equity of 13 percent and a cost of debt based on the 10-year long term Canada bond rate at the time the funds are borrowed plus 2.5 percent.

(6) approval of the use of deferral accounts, consisting of a pricing deferral account and a forecast discrepancies deferral account, and that amounts in the deferral accounts be allowed to earn Enbridge Gas New Brunswick's weighted average cost of capital and be amortized over a 40-year period.

(7) that Enbridge Gas New Brunswick be entitled to treat for regulatory purposes the taxes of the utility on a corporate basis notwithstanding its proposed limited partnership structure.

(8) that Board oversight during the development period be lighthanded.

And (9) and finally, that no specific time be set for termination of the development period, but that the end of the development period be based on when the utility can be

expected to function on a continuing basis within the parameters of a mature utility.

It is important to keep in mind that Enbridge Gas New Brunswick, in preparing its proposal to the Province of New Brunswick for the general franchise, developed a regulatory proposal that it believes provides for just and reasonable market-based rates for consumers in New Brunswick while allowing at the same time for an appropriate return to the utility in light of the risks inherent in developing a greenfield operation. This proposal was accepted by the Province as a package.

It is important that in your deliberations you remain aware that any impact on one component of the proposal would affect other components of the proposal.

For example as noted by Mr. Marois during cross-examination, any impact on Enbridge Gas New Brunswick's ability to recover its deferred revenues, including a return based on its weighted average cost of capital would necessitate the need for an overall increase in the requested return on equity.

Another example, Mr. Kumar, in response to the applicant's IR number 13, acknowledged for example that a reduction in the equity component would require an increase in the rate of return on equity, all other things being equal.

Now I would like to turn to a discussion on the rates themselves. First the target rates. The target rates are market-based and postage stamp. They were not designed to recover the full cost of service. Rather, as explained by Ms. Duguay, they were designed to encourage customer attachment.

The process started by establishing a representative competitive energy price in each of the residential, light fuel oil and heavy fuel oil markets, and discounting in each of these markets by 30 percent, 15 percent and 5 percent respectively to reach a burner tip price considered by Enbridge Gas New Brunswick appropriate to encourage adequate levels of customer attachment.

From that price Ms. Duguay backed out the forecasted upstream costs, including transportation, load balancing, commodity and marketer's margin.

The residual created Enbridge Gas New Brunswick's proposed distribution rates. It is very important to note that the residual component is the distribution rate. The residual component is not the commodity supply. It is not the transportation toll. And it is not the marketer's margin.

Other industry participants, marketers, Maritimes and Northeast Pipeline, et cetera set their own prices, as noted by Mr. Newton based on what the market will bear.

Particularly, as indicated by Mr. Maclure on cross-examination, EGNB has no, and I repeat no control over the marketers' prices to its customers.

What remains is the distributor's rate. And it is the applicant in this case that is proposing to underrecover its full cost of service in order to encourage market development. This was made abundantly clear by both Mr. Harrington and Ms. Duguay.

It is important to note, as evidenced by the graph which we saw a week or so ago at exhibit A-12 and as noted in the evidence, that natural gas's price advantage over competitive fuels is expected to remain sustainable over time, including and after the end of the development period.

EGNB's evidence contradicts any assertion that its proposal may not allow the initial pricing benefits to be sustained over the longer term. No evidence was put forth by any party to the contrary.

Some discussion was had during the hearing regarding the accuracy of Enbridge Gas New Brunswick's forecast of the component breakdown at target rates.

Enbridge Gas New Brunswick has utilized the best information available in setting these rates. But it has gone one step further to ask this Board for a one-time adjustment in its initial target rates if necessary,

closer to the 2000, 2001 heating season to more accurately reflect the actual conditions at that time.

This is not a change in EGNB's methodology. But as explained by Mr. Marois, since this rate case is farther away from the time when rates will actually be used than will be the case in later years, the company requests the flexibility to change the target rates, but only if the assumptions that underline the proposed target rates warrant such a change.

Enbridge Gas New Brunswick will use its best efforts to forecast competitive fuel oil provider prices and the component breakdown of overall costs to the consumer.

Both Mr. Kirstiuk and Mr. Newton themselves acknowledged that forecasting these variables was difficult at this time.

If during the year the utility determines that its target rates have not been set at a level low enough to encourage appropriate customer attachment, it has asked the Board to allow it to utilize a rate rider to be able to reduce -- and I stress, as did the witnesses -- reduce only customer rates.

The Board would be notified in advance of any such reduction. And the reduction would be indicated on the customer's bill, next bill.

As indicated by Mr. Maclure, customers rarely tend to

complain about a distributor rate reduction. Enbridge Gas New Brunswick does not see the requirement for advanced Board approval of the rate rider reductions for this reason.

As indicated by Mr. Maclure on cross-examination, changes would only be implemented where Enbridge Gas New Brunswick determined that there would be a sustained price reduction and would likely not be reset any more than quarterly if necessary at all.

Annual changes in the target rates, upward or downward, would be the subject of Board approval.

The rates themselves, as I mentioned earlier, are postage stamp, i.e., the same rate is paid by each customer in any given customer class, despite location. And the utility has proposed that the rates be capped in aggregate at cost of service. This provides an important safeguard to consumers.

That being said, as specifically noted by Ms. Duguay in response to redirect, for the fiscal year 2001 no rates at the current proposed target rates recover their full cost of service for any rate class.

Mr. Kumar acknowledged, after having reviewed the revised exhibit, that the small customer was not being discriminated against. He also acknowledged that historically in general the residential class does not

usually recover its full cost of service. There is no evidence to suggest New Brunswick should be different in this regard.

It would be completely premature at this time to place cost of service base caps on individual rates, particularly considering the market-based nature of the target rates, which are substantially lower than cost of service. Any such ceiling, as acknowledged by Mr. Kumar, would be purely arbitrary.

At this time it would be difficult, and it would provide limited value, to allocate the amounts in the deferral accounts to any specific customer class. Accordingly, Enbridge Gas New Brunswick does not propose to allocate deferral amounts to any specific customer classes at this time.

Now I would like to speak briefly about the ABC billing rate. Some issues were raised with respect to the price proposed by EGNB for this rate. The rate is meant to recover the cost of billing on behalf of the marketer, and Enbridge Gas New Brunswick taking on the potential bad debt expense associated with the commodity supply.

Enbridge Gas New Brunswick has exposure for the difference between the actual bad debt expense and the forecast bad debt expense which is built into the rate.

What appeared to be lost on some of the cross-

examiners was that this rate is optional. If it does not provide value to a marketer, the marketer need not take the rate.

As Mr. Maclure mentioned in his testimony, there are some 3' to 400,000 customers billed under this rate at a similar cost in Ontario. Again, as Mr. Maclure stated, there the market has appeared to have spoken.

Again however this is not an imposed rate. If marketers wish to bill their customers themselves or arrange for billing at competitive rates from another third party, they are entitled to do so.

Enbridge Gas New Brunswick is putting forward something which it hopes will assist marketers. As well, as explained very clearly by Mr. Maclure to Mr. Stewart, the marketer always gets paid. It is Enbridge Gas New Brunswick that will bear the collection risk, not the marketer, if the marketer chooses to avail itself of this rate.

In many instances, because of the billing cycle, the marketer may well be paid in advance of Enbridge Gas New Brunswick even billing the customer. It is the applicant's submission that this rate is just and reasonable and appropriate.

From the rates I would now like to move on to a discussion of the deferral accounts. The deferral

accounts were, to say the least, a source of some debate in this proceeding, from various angles.

There was debate as to what return Enbridge Gas New Brunswick was asking that it be entitled to earn on the deferral accounts. There was a debate on the nature of what went into each deferral account. And there was a debate on whether conceptually the deferral accounts could be treated as a single account.

Enbridge Gas New Brunswick's position on this matter is however quite simple. During the development period Enbridge Gas New Brunswick will not be able to recover its full cost of service from its revenues.

This is because, as indicated by Ms. Duguay in cross-examination, since there are insufficient numbers of customers in the early years to recover full costs, Enbridge Gas New Brunswick would have to charge rates which are not competitive. In those circumstances no market for natural gas would develop in this province.

In order to commence construction and development of the infrastructure necessary to serve customers both in the development period and throughout the life of the franchise, Enbridge Gas New Brunswick must invest up-front dollars to build the required infrastructure. There is no other way. These are capital dollars spent for the benefit of all customers of Enbridge Gas New Brunswick.

Since the infrastructure being put in place during the development period constitutes in large part the initial infrastructure necessary to serve natural gas distribution customers on an ongoing basis, Enbridge Gas New Brunswick's position is that it should be entitled to recover those dollars spent plus an appropriate return by being allowed the opportunity to earn its weighted average cost of capital on the deferral accounts in its rates charged to customers.

There is no distinction, and I repeat no distinction, between the dollars in the deferral account and those on which EGNB in able to initially attract a return. They are all being spent to build the necessary infrastructure to serve the consumers of New Brunswick.

The nature of the deferral accounts as discussed by Mr. Marois is that there are two deferral accounts, one a two-part pricing deferral account. The first component taking account of the difference between the target rates and cost of service, and the second component of the pricing deferral account taking account of any reduction in the target rates that may occur.

Secondly there is a deferral account which is a forecast discrepancies deferral account. As noted by Mr. Marois on cross-examination by Mr. Stewart, at present Enbridge Gas New Brunswick's forecast of this deferral

account is that it will be zero. That is the whole essence of a forecast discrepancies deferral account. It cannot be known at present.

Further, as explained by Mr. Marois, conceptually the deferral accounts can be viewed as one account. Revenue that comes in from any source will essentially go to reduce the deferral account.

Mr. Marois explained this to Mr. Stewart. If there is a positive balance in one part of the deferral account, the company would have to pay a return to the customer on this balance equal to the company's approved weighted average cost of capital.

And positive balances for example in the forecast discrepancy deferral account would be netted against negative balances in the pricing deferral account for future rate-making purposes. This is symmetrical as well. Customers benefit from positive changes in the forecast discrepancies deferral account.

Mr. Newton subsequently acknowledged that once he was made more fully aware of the mechanics of the deferral accounts, in particular the netting out, that he agreed these accounts should attract carrying costs.

There remained however suggestions that the deferral accounts should attract less than the weighted average cost of capital, essentially it would appear to somehow

keep the company honest.

There is nothing on the record in this proceeding to indicate in any way that the applicant will do anything other than incur prudent costs for a system which will be used and useful.

In fact Enbridge Gas New Brunswick's construction plans for the year 2000 are the subject of the upcoming construction hearing. All of its costs for its system will be the subject of review by this Board. And the deferral account balances at the end of the year will be subject to confirmation by this Board.

To suggest at this time, in a greenfield market with no historical information on which to base forecasting, that Enbridge Gas New Brunswick should not be entitled to have the opportunity to earn its weighted average cost of capital on the deferral balances would if anything create a situation where Enbridge Gas New Brunswick was not able to develop an appropriate rollout plan for the province because of its concerns of underrecovery through forecasting errors. This is fundamentally unfair in a greenfield situation.

As previously noted, both Mr. Newton and Mr. Kirstiuk acknowledged the difficulty of forecasting in this market at this time.

It must be remembered that what EGNB is requesting is

the regulatory right to recover the deferral accounts plus a return, but that EGNB bears the full commercial risk of nonrecovery of these amounts.

Although EGNB believes its rates will be sustainable, there is no commercial guarantee that EGNB will be able to charge rates in the future that will fully recover the deferral and still allow EGNB to be competitive in the market.

There remain significant uncertainties and challenges to be faced. Accordingly, as noted by both Mr. Pleckaitis and Mr. Marois during the hearing, Enbridge Gas New Brunswick has a strong natural incentive to exercise prudency to minimize the size of the deferral accounts and the time over which these amounts are recovered.

As specifically stated by Mr. Marois under cross-examination by Mr. Stewart, the main reason for the requested one-time true-up to the target rates would be for example if the competitiveness of natural gas has improved since the initial setting of the target rates, that by adjusting the target rates upward, EGNB would reduce the forecast deficiency.

And quoting Mr. Marois again, it is everybody's -- it is in everybody's interest to try to minimize as much as possible the forecast deficiency. This is the evidence before this Board.

I would like to turn now to the issue of the information provided to the Board during this proceeding. With respect to the type of information which Enbridge Gas New Brunswick proposes to provide to the Board with respect to both expenses and revenues, it is the essence of the applicant's request that the Board acknowledge its intent to proceed with lighthanded regulation during the development period.

Enbridge Gas New Brunswick intends to provide the Board with (1) prior to a fiscal period the following information, projected revenue requirements and cost of service in aggregate, proposed target rates and justification for those rates, projected year-end deferrals, projected customer attachments by rate class and volumetric forecasts by rate class; (2) during the fiscal period, prior notice of any reduction in rates through the use of the rate rider; and (3) at the end of a fiscal period actual financial results, actual deferrals and actual customer additions by rate class and actual volumes by rate class.

Only after the Board has reviewed and is satisfied that costs have been prudently incurred will the deferral account balances be finalized.

In Enbridge Gas New Brunswick's view the Board should not commit in this proceeding to a formalized public

review process during the development period.

There is no evidence currently before this Board that Enbridge Gas New Brunswick will do anything but incur prudent costs. The Board should not anticipate problems but rather act if necessary in the public interest.

As stated numerous times throughout this proceeding, the intention of Enbridge Gas New Brunswick is not to preclude a review of the financial activities of the utility. Rather during the development period the main objective of lighthanded regulation would be to avoid wherever possible full-blown hearings, a position agreed to by Mr. Newton on cross-examination.

Although the Board may at anytime determine that a full public hearing may be required, the applicant's view is that in this proceeding the Board should indicate its intention to accept the concept of lighthanded regulation in the manner put forward by the applicant and already accepted by the government as the Board's general intent for the development period.

Although, as Mr. Pleckaitis acknowledged, the applicant has not yet finalized how it would inform customers when it is considering a rate increase, he indicated that Enbridge Gas New Brunswick was open to various forms of notification such as publication in the press, notices in its bills. et cetera.

In essence what the applicant is looking for is flexibility during the development period and the ability to concentrate on the issues at hand, namely the attachment and servicing of as many customers as quickly as possible, rather than commit substantial time, effort and financial resources for frequent regulatory hearings.

Enbridge Gas New Brunswick is fully aware that there are many stakeholders with various interests in the natural gas business. It intends to work with all of these stakeholders to the greatest extent possible.

However, in doing so it wishes, as Mr. Pleckaitis stated in his opening statement, to be able to act as much like a competitive company as possible. Its competitors such as fuel oil providers are not regulated.

Enbridge Gas New Brunswick intends to aggressively compete for market share in the energy sector of New Brunswick. During the development period it intends to use market-based rates to attract and attach customers.

As Mr. Pleckaitis stated in cross-examination, if the utility does not charge competitive rates it will not keep customers for very long and it will deter new customers from choosing natural gas.

With respect to setting annual target rates, it is Enbridge Gas New Brunswick's view that a full public

hearing should not be necessary each year, as these rates will be tied to alternative energy sources.

With respect to changes during the year, the rate rider will only be used to reduce rates, and is a big element of the flexibility required by Enbridge Gas New Brunswick to react to competitive forces.

Lighthanded regulation together with the associated reduction in ongoing regulatory costs and resource commitments will help the utility to be competitive and to be able to provide an economically and environmentally attractive alternative energy source to the consumers of New Brunswick. That is the applicant's goal.

If Enbridge Gas New Brunswick is given the opportunity to commence business under lighthanded regulation, this will cause savings to consumers, allow for the utility to most effectively utilize its resources, and will at the same time give this Board the comfort it needs to know that it is effectively carrying out its mandate.

At this time I would like to refer to an issue that arose in the proceeding that is of some concern to the applicant. That is the issue of the applicant's effort to date.

There appears to be an impression given by some cross-examiners that Enbridge Gas New Brunswick has not been diligent in pursuing this rates application and its plans

for New Brunswick.

In my respectful submission, to say that Enbridge Gas New Brunswick has been lax in any way with respect to its plans for the province is indeed a gross misstatement.

After having been awarded the general franchise, Enbridge Gas New Brunswick filed in a timely fashion with the Board both its rates and construction applications by the end of 1999.

Enbridge Gas New Brunswick has consulted with this Board on how to move forward and has been, as noted by Mr. Pleckaitis in his opening statement, pleased to see the manner in which this Board has been willing to expedite the regulatory process.

Enbridge Gas New Brunswick participated actively in the marketers hearing and the numerous meetings leading to the consensus committee report. It remains extremely active in the marketers working group. It has filed its evidence in the construction proceeding and on the M & NP issue. And it is here today on its rates application. And it hopes to participate actively in resolving all outstanding marketing issues before the end of June.

While the company has devoted considerable resources to the regulatory process, and I for one being one of those resources, know the enormous amount of time and effort that have gone into these preparations, it has also

been making all, and I stress all, of the plans necessary for it to construct a natural gas distribution in New Brunswick in this fiscal year from scratch, including a fully operational office in Fredericton and additional employees with every passing week. This is no small undertaking.

It has done so in the spirit of the general franchise agreement with the Province of New Brunswick. And with respect to anyone who may think otherwise, I feel it would be extremely inappropriate for any impression to be left that this applicant has been anything but expeditious in its approach to this rates application and forthright in providing all the necessary information.

There is a significant IR process in this application as evidenced by the applicant's exhibits E through H, which constitute two of the large binders that we have been referring to throughout this proceeding.

The applicant's responses to information requests were thorough and complete. Some information that would be available for a mature utility has not been filed in this proceeding. But that is merely due to the fact that such information is not available or appropriate in a greenfield market.

The Board itself, in its correspondence to the applicant dated February 22, 2000 stated as follows, and I

quote "The Board considers that it would be difficult if not impossible for Enbridge Gas New Brunswick to comply with all the requirements of section 9 of the Gas Distribution and Marketers Filing Regulation with respect to the current application."

"The greenfield nature of the natural gas industry in New Brunswick requires that discretion be used, as no historical information exists.

"However the onus is on Enbridge Gas New Brunswick to provide sufficient information to permit a complete understanding of its proposed rates and tariffs. Enbridge Gas New Brunswick has filed its evidence in support of the application. Intervenors will have an opportunity to submit written requests to Enbridge Gas New Brunswick.

"The Board considers that this approach will permit parties to obtain any additional information that is both relevant and available.

"The Board therefore, pursuant to subsection 9 (2) of the regulation directs that the prefiled evidence of Enbridge Gas New Brunswick, together with its responses to any interrogatory submitted, shall constitute compliance with section 9 of the regulations for this application."

It is my respectful submission that the Board made exactly the right decision for this proceeding, and that Enbridge Gas New Brunswick has complied with the

regulatory requirements of this Board and has done everything in its power to provide all of the information necessary for the Board to determine that Enbridge Gas New Brunswick's rates are just and reasonable and that its regulatory proposal is appropriate for the consumers of New Brunswick.

It must be remembered that Enbridge Gas New Brunswick is requesting approval of a methodology for rate-setting and adjustments and not just approval of specific rates.

As Ms. Duguay indicated, her fully allocated cost of service study is of little true value in rate-setting in this immature startup market. These are not cost of service driven rates. They are market-based rates. The key factors that go into these rates are accordingly different.

By requesting the flexibility it has asked of this Board through the use of a rate rider, this will allow the applicant to adjust as necessary to market forces. This is the important element of the rates, not the cost of service at this time.

Enbridge Gas New Brunswick has accepted the commercial risk of utilizing market-based rates based on the assumption that the Board will grant it the opportunity to earn a weighted average cost of capital return on the deferred amounts.

Now I would like to turn to the capital structure and rate of return. The basis of Enbridge Gas New Brunswick's capital structure and rate of return was to provide the utility and its shareholders with an appropriate capital structure and return on equity relative to the riskiness of Enbridge Gas New Brunswick's business.

Enbridge Gas New Brunswick is entering a pure greenfield market. As Mr. Marois indicated in his opening statement, EGNB respectfully submits that the elements of its capital structure and proposed rate of return are just and reasonable based on the risks faced by EGNB in a greenfield venture.

These risks include, the company currently has no customers. All of the company's customers will have to be won over from established energy providers, who are expected vigorously to compete to keep their current customers.

Natural gas is an unknown product in the province of New Brunswick. Enbridge Gas New Brunswick will be making a large up-front investment but will only be able to add customers over time. And there is no existing natural gas infrastructure in the province of New Brunswick.

Ms. McShane in her testimony provided a clear independent analysis of Enbridge Gas New Brunswick's capital structure and rate of return.

And her evidence is uncontroverted that the level of return being requested on the basis of a 50 percent equity and 50 percent debt split is appropriate in the context of the riskiness of a small utility in a greenfield LDC market, particularly as compared to a mature utility.

As described by Ms. McShane, risk from the prospective of the shareholder is related to the potential for undercompensation. That potential is not only related to the greenfield nature of the utility but also to the fact that Enbridge Gas New Brunswick will be locking in its requested rate of return throughout the development period. During this period, inflation and interest rates which impact on the required rate of return are more likely to rise than fall.

Mr. Kumar has apparently misconstrued the company's intention with respect to the capitalization of Enbridge Gas New Brunswick. He described the proposed capital structure as deemed as opposed to actual.

Somehow he was under the impression that Enbridge Gas New Brunswick intends to capitalize its operations on a different basis than the 50/50 debt equity ratio that is proposed. Respectfully, Mr. Kumar's views in this regard are fiction.

For one example the equity that is being raised to finance the operation is evidenced by the issuance of the

limited partnership offering memorandum and the intentions of Enbridge documented therein.

Mr. Kumar in his written evidence had initially indicated that Enbridge Gas New Brunswick should be treated like its parent and should possibly have the same capital structure and only be required to obtain Enbridge Inc. or Enbridge Consumer Gas' rate of return.

This concept completely, and I stress completely, ignores the fact that the investment in Enbridge Gas New Brunswick is substantially more risky than an investment in a mature LDC.

What investor, if given the option of identical returns, would invest in an unknown greenfield operation as opposed to a mature LDC with reasonably forecastable cash flow? I can only suggest the answer to this would be no one.

The level of return and the portion of equity on which it is recovered must match the risk profile of the entity in question.

Whether Enbridge Gas New Brunswick is a separate corporation, a limited partnership or any other entity, to the extent that Enbridge Inc. or other investors are making an investment in that entity, they would expect to earn a return commensurate with that entity's risk.

And as stated by Ms. McShane on cross-examination,

investment opportunities are not limited to Canadian natural gas LDC's. One must look at entities operating under the same or similar business profiles.

Mr. Kumar seemed to suggest in his response to the applicant's IR's 25 (a) and (b) that every time the ownership of a utility changes, its capital structure and return should change to reflect the cost that each investor would require to raise equity. This is clearly illogical, as illustrated by Ms. McShane's testimony.

However, and I'm pleased to say, during cross-examination Mr. Kumar clarified his intent. And he stated that it was not his view that Enbridge Gas New Brunswick, operating in a greenfield market, should earn exactly what its parent or any affiliate is earning.

Rather he acknowledged that the Board should evaluate the risk profile of the individual subsidiary, i.e., Enbridge Gas New Brunswick and consider its risks associated with the greenfield market.

He concluded on this point, that his intent was merely that in his view you do not ignore the reality and where the dollars are originating from.

Ms. McShane's evidence was unequivocal that a failure to recognize the separation of Enbridge Gas New Brunswick, a greenfield utility, from its parent, would run contrary to virtually all regulatory precedent in this regard.

As explained by way of example, when the Ontario Energy Board looks at the return requirement on equity for Union Gas, it does not look at the risk profile of its parent, Westcoast Energy. Rather it looks at the risk profile of Union Gas.

If Mr. Kumar's views were adopted, then as noted by Ms. McShane, every regulator in Canada has been patently wrong for some time. Because this is the way that companies in Canada have been regulated. Because it reflects the appropriate way of looking at investments.

As clearly stated by Ms. McShane and as dictated by economic logic, each investment must be viewed on the basis of its own risk profile.

As Ms. McShane stated in direct and redirect examination, there is a benefit to the customers of the utility which arises from the affiliation of Enbridge Gas New Brunswick with its parent, an experienced natural gas provider.

These however are operational benefits to the customer. But they do not negate the inherent riskiness of the investment in Enbridge Gas New Brunswick Inc.

Enbridge Gas New Brunswick's risk profile is dependent on its size and the greenfield nature of the market, including the factors listed by Mr. Marois which I discussed earlier.

Regardless, in Ms. McShane's words, of the happenstance of ownership, the rate of return and capital structure required is that necessary to encourage investment in Enbridge Gas New Brunswick.

As stated by Ms. McShane, the investment by Enbridge positively impacts on Enbridge Gas New Brunswick's cost of debt and on the various costs that Enbridge Gas New Brunswick will incur. But the rate of return on common equity should be the same irrespective of ownership.

Mr. Kumar proposed no alternatives to those of the company. Indeed he did not undertake any analysis of the appropriate cost of capital of Enbridge Gas New Brunswick.

And Ms. McShane's evidence fully contemplated the factors underpinning an appropriate capital structure and rate of return for EGNB including its relationship with Enbridge.

Mr. Kumar also suggested that Enbridge Gas New Brunswick should be entitled to receive debt from its parent at the cost to its parent of that debt. This once again fundamentally ignores the nature of the separate risk profile of a subsidiary versus its parent.

If Enbridge Gas New Brunswick was required to go to the market it would be required to pay market rates for an un-bond-rated utility and would be subject to a myriad of potential terms and conditions required by any given

lender.

By allowing Enbridge Gas New Brunswick to avail itself of the receipt of debt from its parent, at rates appropriate for Enbridge Gas New Brunswick, it ensures that EGNB will in fact be able to raise the necessary financing on appropriate terms and conditions as and when necessary while allowing customers to benefit, since the applicant will be able to avoid additional costs that would have to be incurred if it had to raise such financing on its own.

Enbridge Gas New Brunswick will not have to go to the market and incur costs of issuance, be subject to owner's covenants and the vagaries of timing imposed by a lender.

In its proposal to the Province, a competitive process, EGNB proposed the capital structure and rate of return before this Board today.

In entering into the general franchise agreement the Province, after again a thorough and complete review, considered this capital structure and rate of return appropriate and determined that Enbridge Gas New Brunswick was the appropriate party to serve the natural gas needs of New Brunswick.

Ms. McShane, an independent expert on cost of capital, rate of return and capital structure, was requested to review Enbridge Gas New Brunswick's proposal after the

award of the general franchise.

Again her evidence is clear and unequivocal that the capital structure and rate of return proposed are fair and reasonable.

It is Enbridge Gas New Brunswick's respectful submission that on the evidence before this Board, this is the appropriate conclusion to be drawn. No expert evidence was presented to contradict this view.

I would like to turn briefly now to the limited partnership concept. The company has stated that it is organizing itself as a limited partnership and that it intends to include in its cost of service taxes that would be payable by the utility as if it were a corporation. Indeed this is one of the company's essential elements.

The company's initial proposal assumes taxes on a corporate basis and its cost of service has not changed. Taxes and the cost of service forecast are those reflective of a corporation.

Mr. Kumar has claimed that by recovering such taxes through rates, investors will realize windfalls. Apparently Mr. Kumar is willing to ignore his own acknowledgement that investors will directly be liable for income taxes attributable to their share of earnings from the limited partnership, a fact further substantiated within the limited partnership offering memorandum itself.

More importantly, as stated in the company's reply to Board staff IR number 8 and in Mr. Luison's testimony, the truth is that the company's proposed tax treatment ensures that the cost of service and hence customer rates are not impacted by anything other than the operations of the utility, thereby keeping the customers whole.

As mentioned during the course of the hearing, such a treatment has been accepted for other regulated utilities within Canada.

Now to discuss the development period. With respect to the end of the development period, Enbridge Gas New Brunswick is asking for flexibility to determine when this occurs based on when the company is able to sustainably act within the parameters of a mature utility.

On cross-examination Mr. Kumar clarified his view that the development period should end when Enbridge Gas New Brunswick is able to achieve the return of a mature utility on a cumulative basis, preferring as a guide the average return on equity of Canadian LDC's.

Mr. Kumar also acknowledged that at that time, Enbridge Gas New Brunswick can ask the Board to approve a return on equity and capital structure appropriate to the utility at that time.

As Mr. Marois indicated, the Board will be provided with ongoing information from Enbridge Gas New Brunswick.

And no one will just wake up one day to find the development period over. There should be no surprises.

Rather Enbridge Gas New Brunswick requests that at this time the Board acknowledge that the development period should continue until such time as EGNB is able to determine that it can operate sustainably within the parameters of a mature utility, including the ability to earn a return on a sustainable basis for a mature utility in comparable circumstances. Mr. Kumar does not seem to have disagreed with this.

I'm pleased to note in conclusion, from time to time in this hearing various parties have suggested that it is necessary for the Board to balance competing interests. Enbridge Gas New Brunswick agrees. In fact the applicant's proposal already explicitly does this.

When Enbridge Gas New Brunswick's plan is implemented, customers in this province will be getting a new energy alternative. And if the company's proposal is accepted they will be getting this energy at a substantial saving to what they are currently paying.

In return Enbridge Gas New Brunswick is seeking to be compensated in the manner that it feels is appropriate given the risks it faces. Enbridge Gas New Brunswick believes its rates methodology and specific market-based rates are just and reasonable and appropriate for the

current greenfield market in New Brunswick and fully in keeping with the spirit and intent of the general franchise agreement and the gas distribution.

CHAIRMAN: Thank you, Mr. MacDougall.

Mr. Stewart? You have got a mike right there. So you don't need to move. Your choice.

MR. STEWART: No. That's fine, Mr. Chairman. I'm comfortable where I am.

CHAIRMAN: Go ahead, Mr. Stewart.

MR. STEWART: Thank you, Mr. Chairman. Mr. Chairman, Board members, I must say that I do not envy your task. For once I feel it is much better to be the lawyer down here than it is to be the decision-maker up there.

You will have to sort through all of those binders of material and all the technical information and all the financial information and all the economic information to enable you to come to a decision which, as Mr. MacDougall suggests, will require you to do a very delicate balancing act of what may be some clear conflicting interests.

Having said that, my client's role in the natural gas industry will be as a natural gas marketer. And it is from that context that we make our submissions. And it is from that context that we approached the hearing.

As a marketer Irving Oil Limited, hopefully along with a myriad of other marketers, will be the front line of the

natural gas industry. We will be the ones out there actually doing the deals and selling the natural gas.

The marketers will be, to use Ms. Roth from Sempra's analogy, where the rubber hits the road. Do not lose sight of this fact.

Marketers may not be the regulated monopoly, but they are a crucial piece to the natural gas puzzle. Their perspective and their requirements are crucial to the successful development of the industry.

And I make those comments in the light of -- there seems to be a view permeating all of the discussions we have had, both in the marketing hearing and in the rates hearing to date, that New Brunswick is the -- not only a greenfield circumstance but the Field of Dreams from movie fame. There seems to be this sense amongst us all sometimes that if we build it they will come.

And the proper development of this industry is more than simply ensuring that the pipes get put in the ground. We can put millions of dollars of pipe in the ground. And we can make contracts with pipelines and gas suppliers and advertise and do all of those things. But none of it will work unless the marketers can get out there and have an environment where they can actually sell the gas to the customers.

If no one buys gas -- or more importantly if there are

not five or six people out there trying to sell the gas, all of this discussion, these millions of dollars, will go for naught.

When I was faced with the mountain of material that was eventually stacked up prior to proceeding with the actual hearing in this case, and was deciding on how we should approach it, I settled on basically a twofold approach.

The first was trying to distil through all that material exactly what it was that Enbridge Gas New Brunswick was asking the Board to do. And I am not in any way trying to suggest anything untoward by Enbridge Gas. And I like Mr. MacDougall know just how hard they worked. Because I know how hard I worked trying to keep up with them.

But it was clear I think as we went forward through this hearing that a lot of questions were answered, a lot of new information was received and a lot of clarifications obtained.

And I was sitting back here listening to Mr. MacDougall's presentation. And I realized that it was an odd circumstance where the results of my cross-examination of the other parties' witnesses was used at such considerable length in support of the other parties' own argument.

And when I approached the hearing it was a twofold way. One is perhaps as you would in a traditional cross-examination, to identify and maybe expose issues that you think are of some question.

But it was also in the view of trying to discover exactly what was going on. Again do I suggest anything untoward? No. It may have been just my own personal way to sort through all this material.

But what I do think that point highlights is the value of the hearing that we had. And I think both you and I will understand that where we are now is a whole lot different than where we were on the 10th of April. And that was a result of the hearing that we had in the interim.

The second approach was simply for the reasons I have stated already, to try to ensure that a marketer's perspective, firstly Irving Oil Limited's own perspective, but the perspective of other marketers, was considered when the important decisions that are going to be made in this proceeding are made.

So having got to that point, in my submissions today, I hope to ask two basic questions. The first is who is Enbridge Gas New Brunswick? And the second is what do they want?

The evidence before the Board is that Enbridge Gas New

Brunswick is 100 percent owned by Enbridge Consumers Energy Inc., which is in turn 100 percent owned by Enbridge Inc.

With respect this is not a small startup Maritime company. It is part of an international corporate giant, sophisticated in the energy and natural gas world.

Exhibit H, schedule 3, that is the Union of New Brunswick Indians information request number 3, is the Enbridge brochure "One company, one vision." And I encourage you to have a look at it.

This is from 1997. But they had $6.7 billion in assets worldwide and annual earnings of $217.3 million. They are involved in pipelines, electricity, natural gas distribution, energy services around the globe. This is a sophisticated company.

Enbridge Gas New Brunswick has been granted a legislated monopoly for 20 years to be the natural gas distributor in the province of New Brunswick, let us not lose sight of that fact, with an option to renew.

True, there are no guarantees in any of this process. But it is important to view the risk to Enbridge Gas New Brunswick in that light.

They spent a lot of money on their bid to obtain the franchise. They spent $1.5 million in the franchise fee. And they have had to post security of $10 million and

work

very hard to get through this process. There is a pot of gold at the end of the rainbow.

Furthermore it is important to keep in mind the forest for the trees. Enbridge Gas New Brunswick's approach in their rate-setting methodology is in fact for the most part a traditional recovery of cost of service approach.

True, initially they are going to use -- revenue won't cover expenses to put the infrastructure in place. And there will be deferral accounts. But on the long run there is no doubt that Enbridge Gas New Brunswick intends to recover all of their investment plus their rate of return plus the accumulated carrying costs on the deferral accounts.

The gist of it is they will recover, good Lord willing, every nickel they invest plus their rate of return. That is not all that different than any other utility anywhere. There is nothing wrong with that. In principle Irving Oil supports Enbridge Gas New Brunswick proceeding in that fashion.

The shareholders, or if it is a limited partnership, the partners to the organization, deserve a fair rate of return. That's fine. But let's keep in mind that the spade is a spade. It is a traditional approach, and it will require traditional regulatory oversight.

Before I begin to review Enbridge Gas New Brunswick's

specific requests and provide our comments and position on them, I would like to speak briefly about the comments made with respect to Enbridge Gas New Brunswick's franchise agreement with a partner, Natural Resources and Energy and the so-called "essential" elements.

I'm sure you are all well aware of the provisions of section 52 of the Gas Distribution Act. The Act provides that you, the Board of Commissioners of Public Utilities, sets the rates for the gas distribution company.

Subsection 52 (4) says that you set those rates as you find just and reasonable. 52 (5) says you use whatever method you feel is appropriate in the circumstances.

You are not bound, and I suggest you look with a bit of a sceptical eye at any arrangement between Enbridge Gas New Brunswick and the Department of Natural Resources and Energy.

The franchise agreement itself in article 1.9 clearly indicates that the Act governs -- and that is your legislative jurisdiction governs if there is any conflict with the agreement. And Mr. Pleckaitis agreed with that point in the initial part of my cross-examination of his panel.

Any suggestion that this is a fixed package deal which comes before you or even an innuendo that the Board somehow shouldn't tinker with something that has already

been agreed to is simply not on. Only the Board has jurisdiction. It is both fortunately and unfortunately your responsibility alone.

Are the items that are contained in the so-called essential elements important items? Of course they are. And does Irving Oil Limited agree with the positions of some of those essential elements? Of course we do.

But your obligation and your approach must be to determine these issues based on the evidence that has been led before you during the rates hearing and not as a result of anything else.

The second of my fundamental questions, that is what is Enbridge Gas New Brunswick asking for? Well, that is a little more complicated. And I'm going to start with the things that I don't entirely understand or I don't necessarily take issue with.

The first of these is the capital structure, cost of debt and return on equity. I think I now understand what the 50/50 debt equity ratio means. I understand now what the 30 percent return on equity means. And I understand a deemed cost of debt at whatever the long, 10-year Canada bond rate plus 2 1/2 percent is.

Irving Oil Limited has no particular position or comment to make on the propriety of those positions other than we encourage the Board to do, as I'm sure you will,

determine the propriety of those points and the necessity of those figures based on the expert evidence that you heard during the course of this hearing.

The next thing that Enbridge Gas New Brunswick is asking for is well, the establishment of the target distribution rates, the so-called market-based rates as set out in the rate schedules which are schedule 1 of exhibit B.

This is difficult. Because by their own admission, in fact by their own request, the numbers that are contained there are already moot. In essence you are being asked to approve nonrates. Because they want the ability to, as Mr. MacDougall indicates, true-up those rates in a few months time.

But please be careful not to treat them as throw-away numbers, even if you accede to Enbridge Gas New Brunswick's request to readjust them later on.

The numbers that are being set now are the numbers that the marketers are going to have to live with. And if natural gas is going to start to flow in this province within a matter of months, it is only going to flow if marketers have deals to sell it. And we are going to have to go forward on the basis of what numbers we have.

Don't send a message to potential marketers out there that, don't come to New Brunswick because we don't have a

clue what the distribution rates will be. We have set some numbers now but in essence they are meaningless because they are going to be adjusted in a couple of months anyway.

And this comes back to your competing interests. Because sure you want the rates to be as accurate, as representative as possible. But you must balance -- in that equation balance the perspective and the need for marketers to know what it is their customers are going to have to pay for the natural gas.

The next thing that Enbridge Gas New Brunswick is asking you to do is to approve their rate-setting methodology. And that breaks down into a couple of different categories.

The first -- and I know that Mr. MacDougall didn't refer to it specifically, but I think it is an important one, is the establishment of sort of a postage stamp rate, that is the same rate for the rate class across the province. And for the most part Irving Oil Limited has no concern with respect to that issue.

But let's look at the methodology again. And in fact just to help you understand what my submissions are going to be, I made a pie.

CHAIRMAN: Thank you very much.

MR. STEWART: Now Board members, as I understand the rate

methodology -- and I probably should have put it on this sheet -- but as I understand the rate methodology, there is some nominal current price out there apparently tagged on oil and potentially future electricity prices.

And from that you back out 30 percent as the percentage that Enbridge Gas New Brunswick has decided, at least for residential customers, that you need to reduce the price in order to convince people to convert.

I think we all have our mind around that now. And then the methodology is to then back out the other costs and to use what is left as the target distribution rate.

Now in principle Irving Oil Limited accepts that methodology. To be perfectly candid, I'm not sure how else you would do it. If you have to start from the end and work backward, that is what it is you have to do.

But as hopefully this chart illustrates, the distribution rate is going to be a very large piece of the pie, by far and away the largest piece.

And if the approach is to start at the end and work backward, then it will be essential that as you back out the other costs, that they are accurate, that they are fair and that they are representative.

Enbridge Gas New Brunswick's approach to break down their SGS rate, after we sort of got the numbers fixed there a little bit, is represented by this little pie

chart.

And as I stated earlier, my perspective on all of this is from a marketer. And the thing that jumped out at me, as I went through the analysis, as you will recall from the cross-examination, is the slice of the pie their analysis left for the marketer, which was 7 cents a gigajoule.

And you will remember a residential customers used approximately a hundred a year. That is the $7. And from that you add on the ABC charge. You are losing $5.60 per residential customer before you do anything else.

Now am I again suggesting anything untoward here by Enbridge Gas New Brunswick? Of course not. But you can see the importance of ensuring that these numbers are accurate. And you can see the importance of ensuring that different entities with different perspectives have their opportunity to make comment on these numbers.

If it is not done properly, the result is that marketers will be squeezed. I don't care who you are or what sort of business you are in, no one is in business to lose money on every customer. You won't be in business very long. It is as simple as that.

The nominal commodity cost of $2.06 a gigajoule, the evidence is that it could be much higher. That slice could be bigger. The M & NP toll, there is an application

pending to raise it from 65 cents to 70.43 cents. That slice will be bigger.

The figures assigned as a result of Enbridge Gas New Brunswick's analysis of what load balancing charges may be, to be honest I don't know whether those are correct or not. But you can't have your cake and eat it too.

If Enbridge Gas New Brunswick says that well, we need some discretion and flexibility because, you know, this is a greenfield market and we are going to have difficulty sort of getting things in order during the startup period, and I think that is correct, then so will marketers.

And the chances that they will have higher load balancing costs because they have a small customer base, at least initially, the chances that they may incur penalties, because how they deal with their commodity and transportation is real.

And even if you set a rate which enabled a marketer to recover its ABC charge, let us not lose sight of the fact that the marketer has to pay the rent. They have to pay their advertising. Because they are by definition a marketer. And their advertising bills will be significant. They got to pay their taxes. They got to pay their own credit costs. They got to run their office. They got to pay their staff, et cetera, et cetera, et cetera.

So whatever slice of this pie is assigned to marketers to eat and survive, as a result of Enbridge Gas New Brunswick setting its rates, because there is no room in that pie, everything is occupied, needs to have the input from the marketers.

Again am I suggesting anything untowards by Enbridge Gas New Brunswick? No. But they are looking at it from the outside looking in. We are looking at it from the inside looking out. And that perspective is an important one and can lead to fundamentally different results.

Let us not lose sight of the circumstance of a marketer. A marketer has to go and buy gas and arrange for transportation on a pipeline as a result of a longer term deal.

You might initially try to think you have a few customers and then go out and buy your gas. But at the end of the day, how it is going to work, is marketers commit themselves to buy gas and transportation, and then having a truckload full of it, are going to have to go out and sell it.

And if you create an environment through the establishment of the rates which don't allow the marketer to do that effectively, the industry will not grow and marketers will not come. They are not going to come to lose money. They must have the confidence they can

survive and thrive in the market.

I would like to speak briefly to Enbridge Gas New Brunswick's response to all this which was well, you know, it is a bit of a loss leader. You lose a few bucks on the sale of the commodity. But you are going to be in there selling a furnace and a stove and something else. And so that is where you can make your dough.

Well, we should be so lucky. And there are loss leaders and there are loss leaders. Based on the rate that is proposed as a target rate by Enbridge Gas New Brunswick at the moment, there are going to be significant losses on the sale of the commodity. And it is going to have to be one expensive furnace in order for a marketer to make a profit.

More than that, what Enbridge Gas is not saying when they say, but marketers, there is value in a customer -- remember Mr. MacDougall and the witnesses for Enbridge Gas New Brunswick made that point repeatedly -- but there is value in a customer.

What they are not saying is that as the local distribution company, Enbridge Gas New Brunswick, under the auspices of its general franchise agreement, or if they choose to establish a marketing affiliate, will undoubtedly enter into what is, by their own submission, potentially the more lucrative side of the business, that

is selling the equipment in the conversions.

As it stands now, Enbridge Gas New Brunswick will already have, since every person on the system will be an Enbridge Gas New Brunswick customer and will be receiving a bill from Enbridge Gas New Brunswick, that value in the customer already, without having to incur the loss leader that they are suggesting the marketer should incur. They will have obtained that value without incurring the loss.

And now maybe you understand why it was so important for Enbridge Gas New Brunswick to be able to sell the bills directly to their customers. Godspeed and more power to them. But we have to establish a level playing field in the establishment of the rates.

The practical results of their analysis and proposal presented here is that marketers will lose money on every customer. And they will be forced, if they choose to proceed that way at all, to try to live within the 30 percent zone and try to convince customers to sign up without the reduction that Enbridge says is appropriate, or they will have to try to make it up some other way.

With respect, I'm concerned that the message all of that will send is to other marketers don't come or you can't come.

Mr. Maclure's evidence was that he was contacted by Direct Energy, who did file an intervention, but we

haven't seen them yet. Engage, who was here for part of the hearing, and then left. Coast Energy, whom we have not seen yet.

Sempra, who is here, but has not been an active participant in these proceedings, and whom my own personal view is is facing, as the LBC in Nova Scotia, similar proceedings here. And I suspect their presence here is as much to do with that as anything. But even at that, even if they are here full-blown to market natural gas inside the province of New Brunswick, they have been on the sidelines if anything.

Where are those marketers? Be concerned about that. The industry depends on it.

Again am I suggesting anything untoward by Enbridge Gas New Brunswick? Of course not. But their perspective is a different one.

And all of this long discussion comes down to a single point. And that is the errors in these numbers, and again I'm sure it was just a complete oversight, that were originally presented to you -- I didn't even notice the error myself, because I wasn't able to sort of effectively convert gigajoules to meters cubed, as I'm sure you all struggled with.

But the nonappreciation of all the consequences of these numbers by Enbridge Gas New Brunswick demonstrates

the real value in clear terms of other stakeholder involvement in this process.

I would like to speak about the one-time adjustment in October please. And I have already mentioned in terms of how you deal with the establishment of the target rates.

But I am concerned that this will create rate instability at a crucial time in the market. And it may handicap marketers. Because the practical result is we can't do a firm deal until those rates are trued-up.

What do we tell our customers? And with respect to the submission of Enbridge that well, they won't care as long as they know it is going to be cheaper, I don't buy it for a minute. No one is going to sign a contract to buy natural gas unless they know how much it is going to cost.

No one signs a mortgage with the bank for their house on an assurance that, don't worry, your rates will be lower than what they are now. You want to know what the rate is before you commit. Because you are trying to decide, do I sign up for a six-month term, a two-year term, what have you?

Rate stability will be crucial for marketers to convince people to sign up. It may be our best selling point. If you take that away it is going to be difficult to convince people that, trust us, it will be cheaper. At

the very least no prudent residential homeowner or business person is going to go for it on that basis.

This one-time truing-up amounts to a new rate application. Now maybe between now and then you have decided and you have approved the approach. You have approved the start from the end and work backward approach.

But these numbers are going to be new. And they are going to be different. And it is going to amount to a new rates application, even if the methodology is off the table.

Accordingly, Enbridge Gas New Brunswick should be required to file documentation in support of their proposed rate, specifically detailing the support for initially their starting point, that the 30 percent reduction is valid and that the establishment of their burner tip price, which for example for the SGS rate class is now established at $9.08 a gigajoule or whatever it is, and the values assigned to the various elements, to their best efforts.

Marketers and other stakeholders should then be given the opportunity to review and provide input in advance of the Board ruling.

It will be essential that marketers participate in the establishment of what will clearly be the largest slice of

their pie they are going to have to sell to customers. It will also be essential that we know how big that slice of pie is as soon as possible.

If gas starts flowing by November 1, we have to know by September 1. If gas doesn't start flowing till December 1, then October 1.

We agonized about this in trying to assign a figure. We need to know these rates at least two months in advance of when gas will flow. And Enbridge will be able to know that as they go forward. As a marketer we view that as the minimum lag time.

Eventually, as with all things, the need for certainty is going to outweigh the benefits of accuracy. Sure, if we leave it to the very last minute before we turn on the tap, we could probably get the most representative market-based target distribution rate. But that won't mean any difference if no one signs a deal to buy the gas in the first place.

Whatever materials that Enbridge files in support of this new rate application have to be served on all the licenced marketers and given an opportunity to review them.

Now there are a couple of options as we go forward from there. Maybe we all put on our working group hats, and there is a fixed time for us to talk about these

things.

Enbridge Gas has said in good faith, I think, don't worry, marketers, you will be involved in this, and we will try to work this all out. We hope so. We are optimistic that that is the case.

But serve us with what you propose. Let us have a look at it. And then we come to a Y in the road. Perhaps we can sit down at the table and resolve these. I suspect we could. And there will not be the need for a "full-blown hearing."

But perhaps not. And if not then we have to be given the opportunity to find out some details, like ask information requests if we need to, and the opportunity to make submissions to the Board on, no, you can't set that rate, because I will lose my shirt if my margin that is left over is 7 cents a gigajoule for a residential customer or 1 cent a gigajoule for commercial customers.

Maybe we will be in there with full support of whatever Enbridge suggests, and maybe not. But we live and die on the establishment of these rates.

Setting target distribution rates is something too important to the industry to leave to a simple filing of information by Enbridge Gas New Brunswick.

Now I would like to speak briefly about the use of the rate rider and the sort of going forward discounts that

might be available.

Again in principle balancing the interest between the need for rate stability, which I think is crucial, and I submit is crucial, and the need to have Enbridge to be able to react to the marketplace and encourage development, brings us down on the side that in principle we support the use of a rate rider.

We suggest that there is sufficient notice to the Board so the Board can review it. And as I'm sure Enbridge has only asked for, but we want to make sure it is clear, that the use of the rate rider is down only and for the remainder of the annual period.

That helps foster rate stability or helps offset any change in the need for rate stability. And anything else is not on.

There are some practical considerations here as well for the marketers that will be out there. And whatever mechanism is put in place to notify marketers that the distributor is going to use its rate rider to reduce its distribution rate in a class or classes, then it is essential that all marketers be informed as soon as possible.

And if the price is going to go down, outside your control, you need to know that. I mean, just think of the practical result of trying to do a deal with a customer or

in good faith doing a deal today for a two-year term, only to have the rate drop tomorrow. Your customer is not going to be happy about that.

It is also essential, and again as I'm sure Enbridge will endeavor to do, but I think it should be reflected in the Board's order, that whatever mechanism is put in place, be it posting it on the electronic bulletin board that is envisioned by the Act under section 67 or whatever other mechanism, that all marketers know at the same time, particularly with respect if there is an Enbridge affiliate.

The last thing you want to do is have the good that might be obtained by the use of a rate rider create a situation where one marketer has an advantage over another. No one wants that. I'm sure Enbridge doesn't. Certainly Irving Oil or any of the other marketers don't either.

The setting of the annual target rates going forward, I won't repeat them specifically now. Because I have probably already talked longer than I should.

But the same notice requirement and opportunity to comment, and maybe a little side trip to the Working Group which will be necessary for the one-time adjustment in the fall, will absolutely be necessary setting the target rates as we go forward. Again simple annual filings is

not sufficient.

Furthermore -- and I don't know if this point has been addressed by anyone yet. But it will be essential when during the year that these target rates are set. Traditionally, as I understand it, the natural gas year runs from October -- or November 1 to October 31. I mean, that is the beginning and end roughly of the heating season.

And people make their decisions and buy their natural gas in anticipation of their existing agreements expiring on the 1st of November, which means as a practical matter that marketers will need to know what the target distribution rates are well in advance of that date when people are out there making their deal.

I would submit that these rates should be set on an annual basis as of May 1. The spring, when your heating season is just over, is when you will make arrangements for the next year.

And it is when marketers who are going to go out and bang on doors, particularly in the early period, as the distribution network widens, will want to be in a position to talk to people.

And actually let us not forget particularly early there is no one who is already set up to consume natural gas. So part of any arrangement will be, I will need to

get a new furnace, maybe a new hot water tank and whatever.

And that has got to be -- there has got be time lag in the deal there to enable us to actually put all that in place, so the person can start beginning to consume natural gas in the fall when they turn the heat on. The rates have to be set by the 1st of May.

The next point are the ABC charges. Specifically we do not challenge the proposed rate at this time. Mr. MacDougall makes a good point. If you think we are charging too much you can go someplace else.

But that point only goes so far. Because the idea here is to encourage marketers to enter the market. And most of those marketers will be from outside the province and may or may not have the infrastructure already established to send bills inside the province.

And so we should do everything we can to keep that charge as low as possible in order to encourage people to come. It should be limited to, as I think Enbridge has hopefully endeavored to do, a simple flow-through. There is no profit-taking here in this ABC charge.

Since time will -- only time will tell whether or not that is correct, the rates as they are now must be set by the Board, or the charge must be set by the Board, and marketers must be given notice if it is going to go up,

and marketers have the right to complain if it is too high.

By Enbridge's own submission the element of that charge, which is what they sort of have waved their magic wand and said okay, this is our best guess of what we are going to need to cover the bad debt cost -- you know, then they say well, wait a minute, that is not enough, we want the right to bump those up.

But it may be -- the opposite may be true. Maybe initially because everyone who is converting to natural gas has got to go out and buy a furnace and stuff, the cost of debt may not be -- bad debt may not be so high.

And if that is the case, the marketers should be able to take advantage of that by having that charge lowered and/or Enbridge shouldn't make a profit at it.

The next point are the deferral accounts. Again we accept them as necessary in principle. Again, I don't know how else you would do it. They are fairly common in the industry.

Mr. Newton testified that when he worked for TransCanada Pipelines on other issues that when there are big lump sum up-front investments that need to take place in order for the betterment of the system, that there should be some mechanism put in place where ratepayers don't take that hit initially and spread over the long

term. It quite frankly makes simple common sense.

But -- and there are several big buts. As we believe Enbridge has now clarified during the course of the hearing, or maybe it was there in the first place and we didn't really know for sure, but these deferral accounts must be two-way, to the extent that their forecast is more pessimistic than the real results, and the deferral accounts should be reduced accordingly.

Care must be taken by the Board not to create the deferral accounts as being a carte blanche and that all expenditures must be defendable and used and useful.

The carrying costs which are assigned to these balances and which will accumulate potentially for years to come should be limited to Enbridge's deemed cost of debt, that is the long-term bond plus 2 1/2 percent and not the weighted average cost of capital which is a higher number.

Because let's not lose sight -- and I think Mr. Newton made a very good point in his testimony that in essence this is deferred income. They will recover these amounts.

The fact that it is deferred income or the deferral itself should not be a profit centre for Enbridge Gas New Brunswick. To the extent they have an opportunity to earn that income, they shouldn't have to lose money on the deferral account.

And the long-term bond plus 2 1/2 percent is probably a rather generous number. They will not lose at that rate. But there should not be an element there of the 13 percent return on equity profit figure. They will earn that when they earn it.

Approval of deferral accounts in principle should not mean that all amounts incurred by Enbridge that aren't recovered in their revenues get automatically rolled in.

Enbridge must have the responsibility to carefully explain their proposed or their actual deferral account balances, where they came from and for example why it is that their forecasts were off the mark, particularly as we go into the later years of the so-called development period.

Enbridge Gas New Brunswick should be incented to keep the balances as low as possible. And again they have said here openly, and we take them in good faith at their word, that that is exactly what they will do. But there should not be an incentive to make them higher than they should be.

At the end of the day their goal is, as Mr. MacDougall has stated and as Mr. Pleckaitis stated in his testimony, to act as close as they can as being a competitive company. And having the luxury of the deferral account, it should not be a profit centre for them.

Equally, consequences of the long-term effect of these deferral accounts and the development of the industry, we should not lose sight of that in our rush to enable Enbridge Gas New Brunswick to spend the money to put the pipes in the ground.

And what struck me about this chart that was marked as A-12, when I looked at it, was those two lines don't meet. They keep going. And so we have to be sure that the establishment of these deferral accounts doesn't create a pillow on the rates for the indefinite future.

We don't want to create, to use a local example, a Saint John Harbour Bridge Commission which collects tolls but can never pay off its debt.

As it is, and I wrote down the numbers, in year 20 the size of that estimated cushion, and I believe the testimony was $1.2 million.

The onus must be on Enbridge Gas New Brunswick to annually establish that the development period should continue. And a Board order must be required in order for that to take place.

Now will that be an onerous burden? No. Because in the early years it will be almost obvious. And no one will take issue with it. And to be honest, Irving Oil Limited and myself are not particularly concerned about year 2, year 3, year 4. I mean, obviously we are going to

be in the development period, whatever that means, for sure.

But going forward in year 6, year 7, year 8, year 9 as Enbridge gets its pipes in the ground, as its customer base expands, as its revenues increase, and as it gets into a position to more accurately forecast and do all those things that it said it will need to be able to do and earn its rate of return in order for the development period to end, then the onus should be on them to establish that.

The what are quite extraordinary rights that you may very well grant Enbridge Gas New Brunswick for the duration of the development period and what they have asked you for, use of deferral accounts for forecasting errors, so-called lighthanded regulation, all of those things, those are special privileges that you will grant to them.

And the onus should be on them, particularly as they go forward in the later years, to establish to you that they should continue to have those special privileges. Simply put, the development period should not continue indefinitely until Enbridge says it should end.

Lighthanded regulation. Personally, I'm still not sure I know what lighthanded regulation means. And I would be loathe to suggest that this Board make a

declaration that they will proceed in a "lighthanded fashion going forward." Because none of us will really know what that means as a practical matter.

You may set filing requirements. You may put mechanisms in place which are less onerous than full-blown, knock-down, drag-out hearings. But don't just simply say you are going to proceed in a "lighthanded fashion". Because we will all be back here arguing about what that means.

And that won't do the other industry participants any good. And it won't do Enbridge Gas New Brunswick any good. And we will be right back where we started. And we won't avoid what they and we hoped to avoid.

Furthermore -- and it comes back to a little bit of you can't have your cake and eat it too. You can't say you need deferral accounts, you need special rate-setting methodology in all of those circumstances because of the uncertain nature of the greenfield market, and in the same breath say, but we don't need any sort of regulation or very lighthanded regulation.

It is premature. We don't know for sure how this is all going to unfold. And it is premature, even if you were so inclined, to take your hands off this process just yet.

Maybe you can back off some more. Maybe you can take

some step backward initially. But it is premature for us to come to that conclusion. I suspect in 2002 we will be revisiting this issue, one way or the other.

What we do encourage you to do is find a spot, an appropriate spot, and what I sort of have in my own mind as the spectrum of regulation.

There is this sort of annual filings that Enbridge Gas New Brunswick proposes on one end. And then there is the full-blown, as they use that term, oral hearing process. And somewhere along that spectrum is a reasonable place for this Board to put itself initially and maybe move toward as this market unfolds and as we go forward.

Whatever the model that you adopt or wherever in that spectrum you land, it must provide for specific notice to the other industry participants of important matters such as target rate-setting and continuance of the development period, et cetera.

We must be given advance notice and the opportunity to add our perspective in some way. Not only us. But let's remember who is going to be involved in this process next year and the year after and the year after that.

And that is the customer, the people who are actually paying the freight. They should have the opportunity to say their piece if they need to. They should know that it is a transparent process.

And even if they don't come down here to stand before the Board and say damn it, they are charging me too much for natural gas, at least they will know that there is some process out there that the public's interest is being looked after.

Again am I suggesting anything untoward by Enbridge Gas New Brunswick? Of course not. But the transparency and the need for public protection that that will bring is essential to the process.

Mr. Newton's evidence was that he doesn't want to mire Enbridge Gas New Brunswick or for that matter Irving Oil Limited in long and expensive drawn-out, full-blown hearings before this Board, what will seem like every six months.

That is not what we are advocating at all. Simply what is reasonably appropriate in the circumstances. And I have tried to put some parameters around that as best I can. But in large measure we leave that to the Board's discretion as to where in the spectrum you will land.

Mr. Pleckaitis said in his testimony that he was seeking that you order that oral hearings be precluded. I submit you should not do that, for two reasons. One is nothing motivates people to come to an agreement than having to go out and fight it out on the street.

And if you take that away, then you may indirectly

take away what we want to have happen. And that is everybody get together, come to a consensus, shake hands on it, walk up here to this office and say, here is what we think, ladies and gentlemen.

Secondly, well, a full-blown oral hearing may be necessary. You know, this Board is established. And it is given its jurisdiction under the legislation for a reason, a clear reason, protection of the market participants, protection of the public. And it should not be precluded.

And with apologies to MacKenzie King, not necessarily oral hearings but oral hearings if necessary. I'm just showing Mr. Blue that I can drop an analogy or two myself when I make my presentation.

The Board should set the parameters of what exactly should be filed and give us the opportunity to speak. The forms attached to the filing regulation as those so-called annual filings, form 2 for example, is wholly insufficient.

And to be perfectly candid, I expect we will have to feel our way through this process as we go forward.

Enbridge Gas New Brunswick Inc. is a regulated monopoly. And again I'm not suggesting anything untoward. But their "trust me" approach is not sufficient. Transparency is essential for both the market

participants, Enbridge customers and the public at large.

In closing, and I am getting to my closing, our submissions are based on four themes. Firstly, and we acknowledge and encourage, that Enbridge Gas New Brunswick be given a fair opportunity to earn a fair return and charge appropriate rates.

However it is an absolute necessity that other market participants participate in this regulatory process wherever you land in the spectrum, and be given the opportunity to provide their input and their unique perspective which I submit you must have in order to make a fair and appropriate decision.

We encourage the Board, even at this early stage, to keep an eye on the long-term consequences of your decisions you are going to make today and the basic approaches you may set for the so-called development period.

And finally that you create an environment which encourages marketer participation. Without it Enbridge Gas New Brunswick can put pipes from Bathurst to Chipman to the back street of St. Andrews, and it will go for naught.

With respect we think our submissions here today do not fundamentally change the nature of Enbridge Gas New Brunswick's proposal. I don't think that we have tinkered

with their package in any substantial way.

Having said that, our submissions and our requests to the Board, we believe, are crucial to the development of the industry. And we request that your order reflect those submissions accordingly.

Thank you.

CHAIRMAN: Thank you, Mr. Stewart. We will take a 15-minute break.

(Recess - 11:25 a.m. - 11:45 a.m.)

CHAIRMAN: On my list it is MariCo.

MR. HOLBROOK: Good morning, Mr. Chairman, members of the Board. Lacking a microphone at my seat, I have moved up to the seat of honor.

CHAIRMAN: That is why it is reserved.

MR. HOLBROOK: During the course of this rate proceeding, Enbridge has identified at length the inherent risks associated with significant investment in a greenfield environment.

To safeguard that risk it has proposed a modified cost of service methodology under which the dollars not recovered due to market conditions are deferred and recovered at a later time.

While Enbridge has stipulated the target rates it requests to meet the market will only be ceiling rates, during this first year it has requested the flexibility to

adjust rates in either direction. And it is conceivable that future circumstances may necessitate similar requests.

Market forces by their very nature are difficult to predict with any reasonable degree of accuracy. The very reason that Enbridge requests flexibility to respond to changing market conditions, namely the uncertainty associated with the market, gives rise to concerns for potential users of the system, such as MariCo, if there is uncertainty concerning Enbridge's rates.

This point was reinforced from the marketers' perspective in testimony presented by the Irving panel. Typically a large volume user has the flexibility through dual fuel capability to switch in response to changing market conditions.

In contrast once a local producer commits to delivering gas to Enbridge for example as opposed to building its own delivery system, the producer's options become quite limited.

Infrastructure is built by a producer based upon that arrangement. These facilities cannot be readily altered if Enbridge's delivery service rates rise to uncompetitive levels.

Now we appreciate that Enbridge, and they have articulated I think quite clearly, have every incentive to

keep their rates competitive. But this obviously is a concern in terms of the predictability.

Consequently a local producer's very economic survival may be dependent upon service rates that are both competitive and reliable going forward.

And some users of the distribution -- distributor system, excuse me, assume the risks associated with fluctuations in the market price for the commodity, whether it be natural gas or an alternate energy supply. They should not however have that risk compounded by uncertainty over the rates assessed by the distributor.

It has been suggested that Enbridge would flex its rates to respond to market conditions. But as Enbridge has acknowledged, it does not control the other components which comprise the ultimate market price.

Despite this lengthy review process, MariCo remains concerned with the discretion left to Enbridge by its proposal to adjust rates from time to time.

Local production represents many benefits to consumers of natural gas in New Brunswick. A local source of supply will provide both additional gas supply reliability and also operational flexibility for Enbridge.

In short Enbridge will not be dependent only upon deliveries off of Maritimes Northeast to serve customers in New Brunswick, to the extent that local production is

utilizing its system.

Sable Island Gas will be required to compete with local sources which should help keep gas commodity prices competitive. A local exploration program means local jobs, an expanding tax base, royalties to the Province, and additional consumers which improves the efficiency of the distributor system.

Local gas production is a viable industry and would in all likelihood be prospering today if producers did not face the many provincial and regulatory hurdles associated with delivering their New Brunswick production directly to market.

If Enbridge truly wants local gas producers to use its system to deliver gas to market, rates should be designed to encourage not discourage that activity.

Enbridge has proposed off-peak discount rates at a 25 percent discount to encourage off-peak use. I believe in the proceedings they have articulated the logic behind that. I think it is somewhat self-evident.

Enbridge has proposed premium rates of 110 percent of market prices for supplier of last resort services. This is presumably to discourage that use of the system, when it is least efficient.

In this instance local producers are simply requesting that Enbridge design rates to encourage use of local

production. A case in point would be the 25 percent discount off-peak service that I alluded to a moment ago.

This may at least provide some level of predictability to producers as they plan many years into the future their drilling programs and the significant investment they need to make in capital to bring that about.

In contrast, rolling in the cost of capacity on a Maritimes Northeast for parties that are using only local gas would not encourage a local production industry.

In short, providing timely delivery service at predictable and competitive rates designed to create an incentive for local producers would go a long way to encourage not discourage a local presence of natural gas in the province of New Brunswick.

In circumstances where utilities have developed such rates, they have recognized the inherent benefits of a local source of supply. An additional benefit for the utility is that lower delivery rates for local gas significantly reduce the incentive for producers to seek to bypass the distribution system. And I think the reasons again for that should be self-evident.

MariCo firmly believes that a tremendous opportunity exists to foster both a greenfield natural gas utility industry and a greenfield local gas production industry here in New Brunswick.

Unfortunately Enbridge's rate proposal does not presently address these producer reservations that I have articulated here today.

Perhaps in fairness to Enbridge, local producers prior to this hearing have not been sufficiently vociferous in making our concerns known. We will try and improve upon that delivery of that message going forward.

Hopefully our participation in this proceeding has helped to provide a clear indication of our needs and interests in this process.

We ask this Board to heed our producer message and to provide Enbridge the appropriate guidance. MariCo thanks the Board for the opportunity to present our views here today.

CHAIRMAN: Thank you, Mr. Holbrook. Union of New Brunswick Indians. Ms. Abouchar?

MS. ABOUCHAR: Mr. Chairman, members of the Board, before I start, I have prepared a book of authorities that excerpts the legal references that I will be making during my final argument in order to assist the Board. Would that be helpful?

CHAIRMAN: I don't know what you are going to quote yet, but --

MS. ABOUCHAR: Well, it probably would be helpful for you to have it in front of you.

MS. ABOUCHAR: The Union of New Brunswick Indians asks the Board to adopt one rule or principle if you like for calculating rates in its order.

And that would be that it is just and reasonable that the cost of negotiating and implementing any agreement between Enbridge Gas New Brunswick and the Union of New Brunswick Indians are allowed to be included in the rate base.

The jurisdiction to make this order is found in section 52 of the Gas Distribution Act. And I have provided that at tab 1 of the book of authorities.

Section 52 (6) provides -- enables the Board to establish rules for calculating rates. Or alternatively section 52 (5) allows the Board to adopt any methodology to determine rates.

And in addition of course 52 (3) of the Gas Distribution Act empowers the Board to make orders approving or fixing "just and reasonable" rates.

As the evidence has shown, making the order that UNBI seeks is just and reasonable, and represents the practice of utilities boards.

The evidence presented by Mr. Milne, who has worked for TransCanada Pipelines and has worked in the pipeline business for 20 years provides precedent for negotiated socioeconomic benefits to be included in the rate base.

His first example was a decision of the U.S. Federal Energy Regulatory Commission when it accepted that a 10 million U.S. dollar fund of Iroquois Gas Transmission System could be included in the rate base.

That fund, as you recall from the evidence, provided educational and recreational programs and also land enhancement benefits to communities in Connecticut to compensate for the fact that they were upset that there was going to be a swath of cleared land through their community, and they weren't going to be getting the benefit of natural gas.

The inclusion of this $10 million fund was specifically challenged by an Intervenor. And the FERC specifically allowed it in the rate base. And that is in the FERC Iroquois Gas Transmission System decision which is provided in response to the Board interrogatory 1.

And the cite for that decision is 53 FERC, P61, 184 (November 14, 1990) and specifically page 81. It is a long decision. But page 81 deals with the allowance of this socioeconomic benefits fund in the rate base.

CHAIRMAN: That was included in your brief that you filed --

MS. ABOUCHAR: It was included in the brief.

CHAIRMAN: Okay.

MS. ABOUCHAR: Yes, Mr. Chair.

CHAIRMAN: Because we don't have FERC here.

MS. ABOUCHAR: No. I understand that. The decision was provided to the Board in response to the Board's interrogatory.

CHAIRMAN: Yes.

MS. ABOUCHAR: In the second example, Transgas was involved in transporting and distributing gas in Colombia. In that case the company provided 3 miilion U.S. dollars worth of benefits, of socioeconomic benefits.

That is aside from environmental mitigation expenses to local and indigenous communities in Colombia. And that cost was also included in the rate base. And that information is provided in response to the Board's interrogatory 2 to UNBI.

In addition to these foreign jurisdictions we have sought to research the decisions of the National Energy Board, the Alberta Energy and Utilities Board, the Ontario Energy Board and the B.C. Utilities Commission.

In our research we have not found a single decision that excludes from the rate base either expenses incurred in negotiations with First Nations or expenses for fair compensation or benefits to First Nations.

Further, no party has provided any evidence to the contrary or objected to this principle. To the contrary, under cross-examination, Mr. Pleckaitis agreed that the cost, the agreed cost for negotiating and implementing the

agreement should be included in the rate base.

And the reference for that cross-examination is the transcript of this hearing April 10th at page 201 in response to the question 358.

CHAIRMAN: He did add "if reasonable" as I recall.

MS. ABOUCHAR: Well, he did -- question 357, the preceding question, did insert "if reasonable". But the follow-up question was whether the costs that are agreed between the parties, whether he agreed that those costs would be -- should be included in the rate base.

And his answer to that question was yes. The assumption behind, I am sure, is that the parties would negotiate something that was reasonable, but --

CHAIRMAN: While I'm interrupting you maybe I could just focus back.

Did I understand you correctly that you researched the National Energy Board decisions, the Alberta Utilities Review Board and the B.C. Utilities Board --

MS. ABOUCHAR: And --

CHAIRMAN: -- decisions, and you did not find any occasion when it excluded? Did you find any occasions when they were included?

MS. ABOUCHAR: The problem is that it is not often numerated. So it is hard to find -- no, the answer --

CHAIRMAN: So the answer is no?

MS. ABOUCHAR: -- to that question is no. It is generally not specified. It is -- I mean, if I had looked through all the transcripts and all the materials I might have come up with an answer.

But in general this -- the expenses toward -- for First Nations benefits are not specified as an extra cost. It is part of the construction cost. And it is included. It is not excluded. That is my understanding of the practice.

Support of those -- shall I continue?

CHAIRMAN: Yes, please.

MS. ABOUCHAR: Support for making this order can also be found in drawing an analogy to how utility boards treat other parties who are affected by pipelines, such as individual property owners.

Individual property owners have rights which can be legally affected through negotiation or expropriation if negotiations fail. Utility boards in Canada agree that the expenses for the negotiations and the compensation, fair compensation are to be included in the rate base.

And again in my research with the other utility boards, this is across Canada. And in some jurisdictions it is specifically stated in the legislation. In other jurisdictions it is assumed that unless there is some -- it is totally imprudent -- like you know, the company is

negotiating with a cousin, it's assumed that it is included in the rate base.

So there is no reason then that First Nations should be treated any less favorably. First Nations have rights and interests in land which are constitutionally protected. The Union of New Brunswick Indians represents First Nations with such rights and interests.

Under cross-examination Mr. Pleckaitis has agreed that it is his intention to negotiate an agreement with the Union of New Brunswick Indians which provides significant and specifically meaningful, long-term benefits for First Nations. And the reference to that is in the transcript of April 10th, page 198 to page 199.

And further, in response to the Union of New Brunswick Indians interrogatory 5, Enbridge Gas New Brunswick has stated that it has established some principles of friendship to apply to First Nations people.

And these principles of friendship include balancing growth of communities with respect to the land and people of the land, includes integration of aboriginal relations into their business plan, includes educational and training opportunities and developing an employment strategy to assist aboriginal people in gaining employment, includes the intention that procurement and supplier policies will reflect commitment to aboriginal

businesses, and that there should be an ongoing dialogue to encourage community development and support educational initiatives.

And in addition to these principles Enbridge, in their principles of friendship, indicates that it intends to develop a long-term agreement with First Nations to be based on these principles.

At this point -- those are nice words. Not to say anything against Enbridge. We are at the early stages. And the aspiration has been expressed that they desire to have this kind of a long-term agreement.

And we do hope that the parties do negotiate a meaningful agreement, that Enbridge does put a meaningful agreement with some specific ways of minimizing the impacts and leading to capacity-building within First Nations on the table.

And the cost of these negotiations and implementing the agreement with First Nations should -- ought then to be equally included in the rate base.

So in conclusion on the rate base issue, UNBI's request that this Board adopt the rule or principle that is just and reasonable for agreed cost of negotiating an agreement and implementing the agreement between the company and the Union of New Brunswick Indians be included in the rate base is supported by the American FERC, by

international practice, by the practice of the National Energy Board, the Alberta Public Utilities Board, the B.C. Utilities Commission and the Ontario Energy Board.

And further and finally and most importantly, it is our submission that it is just and reasonable that First Nations, with constitutionally-protected rights and interests, be treated no less favorably than individual property owners who would be negotiating with Enbridge Gas New Brunswick.

My remaining submissions pertain to costs. So I will proceed with them unless there are any questions from the Board about the rate base issue.

CHAIRMAN: When you say costs, you mean in this cause?

MS. ABOUCHAR: Costs in this proceeding, yes.

CHAIRMAN: I see. When I spoke with you prior to this process starting, I indicated to you that we had not -- well, this is the first occasion that legislation has been passed where this Board had the right to award costs to Intervenors or otherwise.

With frankness I think that the costs of your client in this matter are better handled in a separate application to the Board once we have established the procedure to be involved in that.

Now I'm open to what any other counsel has to say and your remarks in reference to that.

MS. ABOUCHAR: Thank you, Mr. Chair. I do -- my remarks in reference to that, I have spent a little bit of time thinking about this, from the point of view that it is indeed new for this Board. And my research and the documents that I'm providing to you I hope will be useful to the Board.

What I have done is canvassed the other provincial jurisdictions. And I would like to just review with you briefly the criteria that other jurisdictions apply and --

CHAIRMAN: Well, just looking at the time, if we establish a separate method of having you meet with the Board or a designated officer or something of that nature to argue as to costs, et cetera then I would suggest we go into all of it at that time.

MS. ABOUCHAR: Mr. Chair, I'm willing -- I'm in your hands. My concern is actually with the costs of an extra proceeding such as that.

And if it could be taken care of in 15 minutes today, with my eye on costs for my client, that would be certainly a reasonable and efficient way of proceeding. But again it is clearly -- it is the Board's discretion.

CHAIRMAN: The Board -- we had not notice that you would be proceeding in this fashion, except you did approach Board counsel I guess last week sometime.

MS. ABOUCHAR: A letter went to Board counsel and to the

applicant indicating that we had instructions to seek costs.**re index no heading**

CHAIRMAN: But nobody else in the room received one. And with frankness we did not go -- we didn't have time to go back and look at what an appropriate way of proceeding would be.

Now I will call on other counsel as to what their position might be in reference to this matter at this time. And the Board will retire and make a decision.

Mr. MacDougall?

MR. MACDOUGALL: Mr. Chair, the applicant's position would be to agree with the Board's position. Certainly we are not fully prepared to debate this issue today.

We did receive a letter dated April 24th indicating that the UNBI would raise an issue of costs. The letter didn't specifically state it would be done at this proceeding.

We are not prepared to go ahead. And we certainly will have comments on how costs should be awarded, particularly as at the end of the day this will affect the applicant. And it may be precedent-setting in nature.

So we would certainly look very favorably on a specified application by an Intervenor with appropriate time for the parties to respond. And hopefully if the Board has provided some direction in advance of that, that

would be our preference.

We actually would feel that we would be pretty much highly prejudiced to try and address this issue today. We are not prepared for it.

CHAIRMAN: Mr. Stewart?

MR. STEWART: I guess, Mr. Chairman, I don't really have a firm position one way or the other. I do have some sympathy for Ms. Abouchar's client who may be facing, you know, incurring the costs, extra costs to argue costs.

On the other hand I have to agree with Mr. MacDougall. I didn't know that this was on the table today. And there is some real precedent-setting ramifications from all this. And it is probably left better for another day.

But I just leave it in the Board's hands. We don't have a position.

CHAIRMAN: Mr. Holbrook?

MR. HOLBROOK: We also were unaware of this prior to today. We would also leave it in the Board's hands. We have no other position at this time.

CHAIRMAN: Okay. Mr. Blue?

MR. BLUE: The same position, Mr. Chairman. The precedents for awarding costs by various tribunals across the country is not a straightforward issue. And I submit that the Board should proceed as you have outlined, which is set it for another proceeding.

CHAIRMAN: Before -- does Board counsel have anything to say in this matter?

MR. O'CONNELL: We take no position.

CHAIRMAN: Okay. Anything you want to say before we retire for a minute? I'm sorry. Mr. Zed, who sits quietly in the back?

MR. ZED: Mr. Zed would agree with the Chairman's suggestion to reserve and deal with it at a later time.

CHAIRMAN: Anything further?

MS. ABOUCHAR: Mr. Chair, just that this is -- I'm sure that you are aware that this is an issue that could potentially incur additional costs to my client.

And we would appreciate, since certainly the outcome is by no means sure, we would appreciate very much addressing this in the most expeditious way.

And perhaps the way to proceed is to address this issue at the end of the construction hearings or at a time when the -- my client is going to have to appear before you in any event.

That might be one way to approach this, that would take care of their concerns of the additional resources expended to argue costs in another location at another time.

CHAIRMAN: Okay. Thank you. We will retire for a moment.

(Recess - 12:14 p.m. - 12:16 p.m.)

CHAIRMAN: Ms. Abouchar, I have taken a brief moment to speak with my fellow Commissioners. And pretty basically we concur in, first of all, that notice was not given to any of the parties.

Now technically the Board might award costs to any Intervenor against another Intervenor, you know, that sort of thing. So everybody should be served.

It is unfortunate. But there has been a lot on the Board's platter. And we haven't been able to get around to going through what is done in our sister boards across the country.

But I have been -- I'm familiar enough to know that, as Mr. Blue has indicated, it is not a cut and dried kind of thing. There are different ways of approaching it.

Some of them are in advance of any hearing, whereby the Intervenor has to be -- has to approach the Board or a taxing officer or something like that and ascertain whether or not at that time it is perceived that the intervention will be contributing something to the hearing that would otherwise not have come. On other occasions it is an assessment done after the hearing process. And I don't know all of them.

But what I will do and the Board will do is attempt if we possibly can to accommodate your client and tag something on let's say to the construction hearing, or if

your client would be involved in -- no, I guess probably not, the time that we reserved in June.

I'm just trying to see where we could piece it in. There is a hearing tentatively set for the 19th of June. But that is in case the Working Group doesn't come to a mutual decision in reference to certain matters that are before it. And I guess maybe the Union of New Brunswick Indians have not been involved in that process.

Anyway, suffice it to say that we won't hear any argument today in reference to costs for your client, but that over the next few days we will attempt to be in touch with you and the participants here and try and set something up so that we can accommodate argument at the end of the construction hearing.

MS. ABOUCHAR: Thank you, Mr. Chair.

CHAIRMAN: Okay. Let's go back if I could, just to understand again. In your summation and reference to this Board agreeing with the principle is just and reasonable costs of negotiating the agreement with your client and Enbridge be included in rate base, again you seem to indicate that there were precedents with the NEB, Alberta, B.C. and Ontario.

And I'm interested in the precedents. But my understanding of what we discussed earlier was that you were unable to find anything in those jurisdictions which

could be of precedent value to this Board, when you referred to it again.

Is there statutory provision in the legislation governing the NEB, Alberta, B.C. or Ontario that you can point this Board to?

MS. ABOUCHAR: A statutory provision to include negotiations with First Nations --

CHAIRMAN: Yes.

MS. ABOUCHAR: --in rate base? No, there is -- not that I'm aware of.

CHAIRMAN: Thank you.

MS. ABOUCHAR: Mr. Chair, what I did -- what I did do is speak with or have a researcher speak with the boards of -- the provincial boards that I listed and the National Energy Board.

And without exception they confirmed with me that this expense would -- they didn't know of a single example where this expense had been excluded from the rate base.

And I have done -- I mean, the research that I have done has turned up the FERC decision which appears to be the only decision where it was specifically challenged and accepted.

And the other -- the precedent that I referred to in the other province was -- I'm sorry if I misspoke -- was a precedent in practice of including.

CHAIRMAN: Okay. I have no further questions. Do you have anything further you wanted to say in reference to your summation? I have interrupted you on so many different bases.

MS. ABOUCHAR: I will just take a minute to look through my notes.

CHAIRMAN: You of course will have a right in rebuttal to say what you want as well.

MS. ABOUCHAR: No, Mr. Chair. Those are my submissions on the rate base.

CHAIRMAN: Good. Thank you very much.

MR. MACDOUGALL: Mr. Chair, if I may, just on the issue of going forward with the procedure on costs, if I could just raise a quick point on that.

You did mention in your comments just briefly that at some point the parties may have an ability to argue on that.

I think the applicant's submission on that would be that there may be a requirement to have some evidence put forward on the matter as well. And I know you indicated that you might get back to the parties in the next couple of days.

I don't know if it would be useful if the Board would want to have any submissions from parties in advance as to how they think this matter should be dealt with, if the

Board would just anticipate -- determine a process on its own, if it would welcome comment from parties in advance as to how they think that may work.

Or secondly if the Board was to determine a process on its own, I think that process should, from the applicant's position, allow some ability to put some form of evidence forward.

I don't know if it would just be a legal argument on the matter. There may be some evidence as to what the trends are in other jurisdictions and otherwise. We are more concerned just about the process of how you want to do that.

And I guess what the applicant is saying is that, you know, we would be pleased to make submissions at a hearing or in advance of that as to, you know, what our views are and how that may work or otherwise. And we would be pleased if other parties did the same.

CHAIRMAN: Well, the Board is always open to hearing from the parties as to what they think should be done. And over lunch we will continue to talk about it a bit. And maybe we will have something further to say after lunch.

MR. MACDOUGALL: Thank you.

CHAIRMAN: Mr. Zed?

MR. ZED: Mr. Chairman, Commissioners, thank you for the opportunity to address you today on behalf of Energy

Source Canada.

Firstly let me remark on the fact that although accepted by this Board as a formal intervening process, we did not participate directly in the hearing by offering evidence or cross-examination of witnesses. Please do not misunderstand our position to be one of disinterest.

On the contrary, as an Intervenor we received and thoroughly reviewed the prefiled evidence, the interrogatories and responses and attended the hearing in its entirely.

And as well, I might point out, from the outset we were an active participant in the Consensus Committee process, the marketers hearing. And now we continue to be an active participant in the marketers Working Group.

As a potential marketer in New Brunswick, Energy Source Canada has a real and substantial interest in the outcome of these proceedings despite Mr. Stewart's conjecture.

Your decision will impact on the viability of the marketplace for companies such as ours.

Now much of the evidence that has been put before this Board deals with technical financial issues such as ratios, returns on equity, rates of return and the like.

And it is simply our position that there is sufficient information upon which this Board may render a decision

with respect to those items. And having offered no evidence, we don't intend to comment further.

However there are three particular areas of concern to us. And I will comment on those from a gas marketers perspective. And our comments will be brief. They are designed to be made in support of the application. And I don't intend to rehash all of the particulars of these three topics.

But the three topics I will deal with briefly are, number (1) the concept of flexible pricing and our thoughts on that; number (2) the ABC billing process suggested by the applicant; and finally the issue of lighthanded regulation.

First and foremost, flexibility in pricing. It is our view that in a greenfield situation such as exists in New Brunswick, the only way the natural gas industry can be established, particularly at the residential level, is that the burner tip price of gas must be discounted significantly below the price of competing fuels.

It is equally critical that the industry be able to respond quickly to deep discounting which maybe done by our unregulated competition in an effort to keep natural gas out of the marketplace.

We would respectfully submit that the applicant's proposed methodology appears appropriately designed to

address both of these concerns.

The initial setting of target rates at prices dictated by the market and the ability to lower these prices without the need of a formal rate hearing are absolutely critical if natural gas marketers wish to attach customers already dependent on existing fuel services supplied by firmly entrenched competition.

The second issue I would deal with is the billing system proposed by Enbridge. Now you may recall that during the marketers hearing we took the position that the distributor was the appropriate party to do all billing.

While the Board's decision left it open to marketers to bill their own charges independently of the distributor, the applicant has come forward with a proposal which we embrace as being positive for marketing companies in a greenfield market.

The fact that the distributor is offering this service allows marketers to gain entry to the marketplace without having to incur the expense of developing their own billing systems or without incurring the significant expense of engaging billing providers at uneconomical levels given the small numbers of customers in this market at the outset.

Additionally the assumption by the distributor of the bad debt expense and collections removes a significant

financial burden from the marketer especially during the development period.

I would just say finally on this topic that the proposed initial rates appear reasonable.

Finally I will deal with the issue of lighthanded regulation. We are mindful that this Board has an obligation to protect the public interest in the exercise of its mandate. Therefore some would agree and some would suggest, I suppose, that the Board must keep a tight rein on this industry from the outset.

In our view however that is the wrong view. It is absolutely essential in our submission that if the natural gas market is to develop as planned in this province, the Board must allow the applicant to give effect to its plan during the development period, without the need to have the rates the subject of a full public hearing on an annual basis.

It is Enbridge's submission which we support that their methodology should be approved in principle for an extended period of time. We are sure it will be obvious to both the applicant and the Board when that development period should come to an end.

We are confident that the Board can develop a reporting system which will allow the Board to protect the public interest through an exchange of information, that

is through lighthanded regulation, without impeding the orderly development of the market in New Brunswick.

We are confident that the distributor and the Board, with the input of other parties if requested, can develop a reporting system that achieves the balance between public protection and development of the natural gas market.

Those are all my comments, Mr. Chairman. Thank you for the opportunity to address you.

CHAIRMAN: Thank you, Mr. Zed. We will break for lunch now.

Mr. Blue, how long do you anticipate your summation will take?

MR. BLUE: Mr. Chairman, a good hour, like Mr. Stewart.

CHAIRMAN: That was a good hour. No pun intended. If I were to say back at quarter to 2:00? Would that -- okay. Quarter to 2:00.

(Recess)

CHAIRMAN: As a preliminary matter over the lunch time, the Board talked about the matter of costs and how we would like to proceed.

And although we would like to tack it on to the end of the construction hearing, which was the suggestion, that's a different panel of the Board and we are dealing with costs in reference to this particular matter.

We may well be dealing in reference to costs in

reference to construction as well. But that's a different panel.

So what I am going to ask -- I guess the thought process is that we would like counsel to have an input into the total question, as to how they would recommend that the Board proceed and that's in the background of the various regimes that are set up across Canada and the U.S.

I went through two or three that I was familiar with, and I am sure you are all familiar with different ones.

And maybe the best way to do it is to submit something in writing to the Board and then to come in with an opportunity to argue your points and the Board make a decision and then proceed with whatever the decision is using that in reference to the costs of the Union of New Brunswick Indians at that time.

We did do one thing. The Board has reserved the 19th of May, which is the last day in the week of the construction hearings so that if we do conclude the construction hearing, the 18th or earlier, we could do it then.

So with all that food for thought, when you start your rebuttal, I would ask you to address the question as to how you think we should proceed.

Any preliminary matters before I call on Mr. Blue?

MR. BLUE: We should do that today in our rebuttal?

CHAIRMAN: Yes, if you would.

MR. BLUE: Sure. Okay. I will give that some thought.

CHAIRMAN: Go ahead, Mr. Blue.

MR. BLUE: Mr. Chairman, I am handing a copy of my notes to the court reporter. And in it I have references to what I say. I am going to refer to the references, but I hope that the reporter will type them the way I have written them, not the way I say them?

CHAIRMAN: You will have to talk to the reporter about that.

MR. BLUE: I already have.

Mr. Chairman, Members of the Board, let me start by saying that the Province wishes to thank the Board for its successful efforts in scheduling and holding this hearing in such a fair and efficient manner as it has.

The Province's objective in this hearing has been to further the Province's goal of making natural gas accessible to New Brunswickers by November 1st 2000 and to implement Enbridge Gas New Brunswick development plan. This the Province believes will ensure maximum access to natural gas for New Brunswick citizens and businesses over the next 20 years.

During the hearing, the Province has attempted to persuade you through its cross-examination that you should approve the 10 essential elements of Enbridge Gas New Brunswick roll-out plan in issue in this hearing, by Mr.

MacDougall and that you should do so in a positive manner.

In this argument, we also want to assist the Board by making submissions about the process which the Board should apply to the four types of rate change proceedings that Enbridge's witnesses told you about during the evidence.

I want to make it clear that the Province supports Enbridge Gas New Brunswick's application. And that the Province urges the Board to approve it in a manner consistent with the general franchise agreement, of which the essential elements are an integral part.

Now before making more specific submissions, I want to make a preliminary point. There was a lot of discussion, especially during Mr. Kumar's testimony, about issues that might materialize and things that might happen at some time in the future and that the Board should be vigilent to protect everyone against those things.

As Mr. Kumar noted, all parties should avoid speculation, including the Board. And he said that at April 14th, the transcript page 816, Question 268 to 271.

The Province also submits that it is not useful to impute motives to either Enbridge Gas New Brunswick or to any other party in the hearing, because that too would be out of pure speculation.

Now with that introduction, I am going to make some

more specific submissions.

The first thing I want to talk about are the essential elements of the application.

During the hearing, we have referred in evidence and on the record to both the general franchise agreement in Schedule E, part 2, of the essential elements. The essential elements are part of this evidence in this case. They are part of the general franchise agreement and the general franchise agreement is filed as part of Schedule A to Enbridge's application. That's at transcript 599. The essential elements were referred to on April 13th 2000 at pages 599 to 601 and in my questioning of Mr. Kumar on April 14th 2000 and those were Questions 100, 101, 447 to 449, 480, 687, 707 and 813 of April 14th.

The Province approved the essential elements when it granted the general franchise to Enbridge on August 31st 1999. The Province agreed with the essential elements when it signed the general franchise agreement on October 31st 1999. The Province supported the essential elements during this hearing and supports them today. The Province continues to believe that the essential elements are the best means of ensuring that New Brunswick residences and businesses have access to natural gas. As I stated, ensuring such access is one of the Province's key energy policy goals. The Province asks you to approve the

essential elements in your decision and I make that submission.

I want to talk about the Board's latitude for an alternative form of regulation. And here I want to make a point. The Act or the Regulations do not mention the term, light-handed regulation. The term it uses is alternative form of regulation. The Gas Distribution Act, 1999, gives the Board a degree of flexibility in designing efficient decision-making processes and methods of regulation that are unequalled anywhere else in Canada. There is the definition of alternative form of regulation that allows the Board to regulate without regard to rate base, without regard to rate of return and without regard to cost of service. There is the Board's power in section -- or subsection 52(5), to adopt any method of fixing tolls that it considers appropriate. There is section 72, which makes the Board the master of its own procedure. So the Board has the means to create here in New Brunswick unique, made-in-New Brunswick, solutions to all process and decision-making issues. It is not bound by what is done elsewhere.

The Province submits that the legislature's intention in conferring these broad discretionary powers on the Board, was to give this Board the jurisdiction that it needed: jurisdiction to regulate gas distribution issues

efficiently, speedily, cost effectively and fairly. Regulating in this manner will avoid regulatory lags, delayed decision-making and I underline expensive oral hearings. Oral hearings only add to the price of natural gas and will make it less competitive in the market place. Today, and especially under your Act, oral hearings are not required in order to ensure that every interested person can have a say fairly. Written hearings and electronic hearings allow for full and fair participation too.

The Province agrees that the Board's oral hearing in this case was appropriate because everyone is on a steep learning curve. The Province asks you, however, to avoid holding oral hearings on every rate change sought in the future. Again, oral hearings are expensive and time consuming and often, I submit, they are an unsatisfactory way of obtaining straightforward information. Written hearings and electronic hearings allow informed and wise public decision making, and meetings and discussions are also a good way for the Board, parties and counsel to educate themselves about regulatory issues and find out information. Now the Board has already taken this initiative with the formation of the Working Committee on Gas Marketers. And that I submit is an enviable precedent.

I note that nowhere in the Gas Distribution Act, 1999 is there an express requirement for an oral hearing. And the Province submits that the absence of such a requirement was intentional in order to ensure that other more efficient, less costly decision-making processes should be employed in New Brunswick.

I want to turn now to process issues. And here I am going to deal with the process that should be followed for the four types of rate changes that you heard about. That is annual changes in target rates. The exceptional one time adjustment to the target rates for October 1st 2000. Adjustment to the target rates by rate riders, and filing of historical information, including the deferral account balances.

So I will start with the process for setting a target rate. In Exhibit A, page 18 of 28, Enbridge describes the information that it proposes to file prior to a fiscal period to support changes in the target rates, and Mr. MacDougall repeated that this morning. The Province submits, however, that this proposed information falls a bit short of what should be provided. It certainly does not satisfy Section 9 of the Gas Distribution Marketer's Filing Regulations from which Enbridge was exempted in this case, but as its experience grows, need not be exempted in the future. Regulation 99-60, the Gas

Distribution and Marketer's Filing Regulation requires information in greater detail even than that provided by Enbridge in this proceeding.

And the Province suggests that six weeks prior to October 1st of any year, i.e., by mid-August, Enbridge should provide five items of information.

First, a forecast of its revenue requirement and cost of service in detail similar to that found in Exhibit E, Schedule 78, 80 and 81. Second, pro forma financial statements in a form similar to Exhibit E, Schedule 27. Third, a reconciliation of the projected sale volumes and revenue similar to Exhibit E, Schedule 29. Fourth, a continuity of the deferral accounts showing the amounts recorded monthly and the carrying charges recorded. And fifth, a rate base calculation similar to Exhibit E, Schedule 21.

Enbridge should serve this information on all interested parties to this proceeding, all interested parties to the facilities proceeding, all parties to the marketers proceeding and to any new marketers that emerge between now and then.

The Province submits that Enbridge should be permitted to serve this information on interested persons electronically and be required to post it on its website. Interested persons should then have approximately one

week

to review the information and provide requests for further information to Enbridge by the end of that week. Enbridge should respond fairly within a week after this by September 1st.

The Board should take comfort from the quality of the responses that Enbridge has provided to date. I can tell you, having participated in other hearings, that their responses have been response and haven't followed the tricks of some applicants where they carefully misunderstand the question, avoid the issue or outright refuse to provide the information. Enbridge has been co-operative. So I think the process I am describing would work well.

Parties then would provide their comments on Enbridge's filing to the Board approximately three weeks prior to October 1st. That would give the Board three weeks to make a decision about the new target rates. If major concerns arise, then the Board could have a brief oral hearing to allow parties to ask further clarifications and to argue their position. The Board could control that oral hearing. The Province, however, does not believe that such an oral hearing would be necessary in the early years, because at all times, Enbridge's market based rates are going to be less than cost to service.

I would turn next to the exceptional one time adjustment to the target rate for October 1st 2000. Mr. Marois described this proposed adjustment at page 103 of the transcript. As the Province understands it, Enbridge will be updating its energy price forecast close to October 1st 2000. As a result of this update, the target rates reviewed in this application will in all likelihood change.

The Province suggests that Enbridge should be required to file the proposed change in target rates by mid-August 2000. The filing should be served on all those who are parties to this proceeding, to the facilities proceeding and the marketers proceeding and any new marketers. In this filing Enbridge should file the details of the proposed change similar to those on pages 2 and 3 of Exhibit E, Schedule 47. In addition, Enbridge should provide the projected fuel oil price and the calculation of the discount. And the Province suggests that this information on fuel oil should be provided in cents per litre, cents per gigajoule, cents per cubic meter, while the target rates information should be provided in cents per gigajoule and cents per cubit meter.

If Enbridge proposes any change to other material numbers that we have reviewed in this hearing, the change should be explained in that filing. Parties then should

have a week to review the filing and if they have any questions provide them to Enbridge in writing with a copy to the Board. Enbridge again should respond within one week. The Board should then request that parties provide comments if any to the Board three weeks prior to October 1st 2000. Again, the Board would have three weeks to review the information and make a decision about the revised rate schedule.

I turn next to the adjustment to the target rates by way of --

CHAIRMAN: Just so I understand, Mr. Blue, so you are not suggesting from that one shot change this October that there should be the option of the Board to have a short oral hearing if necessary?

MR. BLUE: My lord -- Mr. Chairman, I think that's for the Board to decide.

CHAIRMAN: Okay.

MR. BLUE: It's to be -- we are not suggesting, we don't think it would be necessary. But obviously that's to be decided after you see the material.

The adjustment to the target rates by way of riders. The Province believes that the information required to support a change in the rider would be similar to the information required for the exceptional one-time adjustment, but submits that the timing of the proposed

steps must of necessity be more contracted. The Province suggests that the filing be two to three weeks before the proposed implementation date. Again, the parties to this proceeding would be the same as I have described and new marketers should receive copies. In addition, Enbridge should post the proposed changes on its website and provide notice of the request to change to customers in advance of the implementation date by a bill-stuffer that indicates where customers can obtain more information about the change.

Parties should have three --

CHAIRMAN: Again, I will stop you there. I just want to understand it. A bill-stuffer on the rider changes, which as I understand it, would occur quarterly?

MR. BLUE: Yes.

CHAIRMAN: That would be the object. So a bill-stuffer is that a practical way of informing? That's all I guess I am looking at from the point of view of --

MR. BLUE: We think it is because the audience you are trying to reach there is the customers themselves and every customer receives a bill.

CHAIRMAN: Okay. It just seems your timing would be difficult, that's all. But anyway, counsel can comment on it.

MR. BLUE: Well again this is two to three weeks before the

change. We see the bill-stuffer going out in the last -- the preceding bill.

CHAIRMAN: Yes. Okay.

MR. BLUE: Still on the adjustment to the target rates by way of riders, parties would have three to four working days to review the proposed change and request additional information. Enbridge would have the same time, three to four working days in this case to respond to requests, as would the Board, and the Board would then make a decision about the changes, and this time we would say without an oral hearing. The Board would have about a week and a half with the material. Since the rider by definition is a reduction in rates, no party is likely to object unless it believes the reduction should be larger. The key to making this process work will be good communication between Enbridge, the gas marketers and the Board.

The final filing that I want to talk about is the filing of historical information, including deferral account balances. And this was talked about at Exhibit A, page 18.

And as I noted with Mr. Kumar, New Brunswick Regulation 99-60, the Gas Distribution and Marketers Filing Regulation, and the filing requirements were provided in Exhibit C-16, tab 24, these require the filing of historical financial information. And section 10 of

the Regulations provided for additional information to be provided at year-end.

The Province expects that Enbridge will comply with quarterly and annual filing requirements. The information proposed by Enbridge at Exhibit A, page 18 of 28, would be included in these requirements. In addition, the Board staff's concern about affiliate transactions, such as those reflected in the services agreement, they were raised by Mr. O'Connell, could be met by the Board exercising its jurisdiction under subjection 72(b) of the Gas Distribution Act 1999 to require Enbridge to provide details of affiliate transactions. And that paragraph, as you recall, gives you the power to order any -- to provide evidence in your proceeding.

The Province suggests that since this filing raises no timing issues, a longer period could be provided for parties to review the historical information, ask clarifying questions and provide comments to the Board, if there are concerns. So in essence, this would be what is known in the trade as a complaint process. Again, the Province does not believe that an oral hearing would normally be required in order to resolve issues arising from historical information.

I turn now to what I call rate issues. And the first one is the cost of service model versus cost allocation or

cost-of-service studies.

The Board's witness, Mr. Kumar, offered the view that Enbridge's proposal to adopt market based rates that for some classes would be recover more than the class cost of service will result in small, captive customers paying rates higher than their cost of service. That's what he said. The Province submits that the Board should reject this evidence completely.

Exhibit E, Schedule 48, page 2 revised, tells a different story than Mr. Kumar's speculation. At line 6 it shows that Enbridge's proposed revenue to cost/ratio for small general service customers, these are residences and small businesses, will be 0.534 and these small customers will be required to pay only about half of the cost that they impose on the system. And you will recall that I reviewed this exhibit and addressed this issue on Wednesday, April 12th, with Ms. Duguay, Questions 268 to 286.

On April 14th, Mr. Kumar, under cross-examination about the revised schedule -- Schedule 48 revised, said that he had no problem with a revenue cost to ratio of 0.534 for small general service customers. Said that at Question 323. His concern was that this ratio might change in the future. Well I submit it's always true that cost ratios might change in the future. But that I submit

is a purely speculative submission. The only evidence that you have before you is that small and captive customers will not be paying rates higher than their class cost of service. The Province asks you to so find.

And here I want to clear up just a little bit of a terminology issue. On April 14th, I was testing Mr. Kumar's view that the Board's responsibility to establish just and reasonable rates might not be fulfilled if rates to a customer class substantially deviated from the cost of service of the rate class. Mr. Kumar said that on page 72 of his direct testimony. But after the smoke had cleared on that issue, Mr. Kumar had conceded and agreed that the Board had a discretion to allow cost to revenue ratios for customer classes that vary from one. And you will see that on Question 704 and 705.

But in that discussion Mr. Kumar introduced some confusion by referring us to essential elements item ii, which said that, "the aggregate annual revenue requirement..will be based on a full cost of service model..". And he did that to suggest that a one to one revenue to cost ratio was required. At least, I thought that he had introduced some confusion. But essential element (ii) means no more than Enbridge is entitled to recover its total costs and a reasonable rate of return on its investment and rates. That's all that it means. And

then the smoke on the issue -- that issue had cleared away, Mr. Kumar had also agreed to this interpretation and that was his answer to Question 709.

"The Cost of Service Model" referred to in Essential Elements (ii) stands in contrast to what is known as a cost of service study or a cost allocation study. And this type of study is a cost-accountants allocation of costs to customer classes using well-accepted conventions, and Ms. Duguay's exhibit 48, revised, is a good example of such a cost to allocation study.

The point is that item (ii) of the Essential Elements does not require class cost to service ratios to be one. In fact the Essential Elements are explicit that revenue to cost ratios for customer classes need not be one, because Essential Element (viii) says, "The gas distributor will have full flexibility to allocate the annual revenue requirement among different classes of customers in setting the target rate for each class for that year."

And the Province asks you to keep this distinction to which Mr. Kumar finally agreed, Question 713, in mind and hold that a class revenue to cost ratio of one, is not required by the Essential Elements or under the Act.

I want to talk for a moment about supplier of last resort. It was apparent from Mr. Kumar's testimony on

supplier of last resort issue that he simply did not understand the Gas Distribution Act, 1999 and Enbridge's proposal to the Province contained in the general franchise agreement in the application before you. If you review his answer about his position on supplier of last resort on April 14, Question 759, is apparent that he thought that customers have some right to elect to leave their marketer and receive system-gas supply from Enbridge and it was -- he was saying that if they do that, they should not have to pay 110 percent. But that belief on his part is not consistent with the rate schedule or the Gas Distribution Act, 1999.

The Gas Distribution Act, 1999, does not contemplate or permit Enbridge to sell gas except as a supplier of last resort. Customers do not sign on with Enbridge. They do not have a right to do so. A supplier of last resort is defined -- is a defined term in the Gas Distribution Act, 1999. And it means, "a person who sells or delivers gas where a gas marketer fails to supply gas to a customer on a timely basis and no other gas marketer is able or willing to do so."

I say again that Mr. Kumar obviously did not understand this rule. And I submit for those reasons that the Board ought to find this evidence on supplier of the last resort pricing to be irrelevant.

But Mr. Kumar agreed in his answer to Question 759 and Question 765 that if the marketer fails and the customer suddenly needs gas, it is appropriate for the customer to pay 110 percent. And he said that he had no trouble with the size of the 110 percent premium. And that was his answer to Question 767.

For this reason the Province asks you to find that there is no evidence contrary to Enbridge's evidence supporting the 110 percent premium for supplier of last resort service.

The next point I want to make is that Enbridge's proposal for market-based rates are consistent with regulatory principles. You will recall that Enbridge's rates are designed to be from 30 percent to 5 percent less than the price of competing fuels in order to ensure that marketers can attract customers. And we find that on April 12th Question 257 to 267 and elsewhere. The Province submits that this pricing is consistent with sound regulatory principles and ask you to so find.

You will recall that in my cross examination of Mr. Kumar, I reviewed quotations from the leading treatises on regulation that Mr. Kumar, himself has cited: Alfred Kahn, The Economics of Regulation, Principle and Institutions, Vol.II 1971; James C. Bonbright's Principles of Public Utility Rates (1961) and Garfield and Lovejoy's,

Public Utility Economics (1964). These passages that Mr. Kumar agreed with are contained in Exhibit C-16, Tabs 2, 3 and 4. And I read them into the transcript on April 14th and I won't repeat them here.

But they establish these points. Firstly, the merits of regulatory principles can change over time. Kahn said that at page 10.

Rates must be set to provide an effective instrument for the marketing of gas. Garfield and Lovejoy said that at page 125.

One objective of rates is to promote and retain the maximum economic development of the market. Garfield and Lovejoy said that at page 137.

Rates should be designed to hold existing businesses and promote new business. They said that at page 135.

And substantial weight should be given by the Board to managerial judgment in setting rates. They said that on page 135 as well.

And rates must be such as to motivate the owner to carry out its plans and to attract capital. Bonbright said that at page 49.

The Province submits that these principles, well recognized and stated a generation ago, still speak with a force and clarity that cannot be ignored. In addition, Mr. Kumar agreed that these principles were applicable to

Enbridge. He said that with respect to Kahn, Question 176, with respect to Garfield and Lovejoy at Question 200, and with respect to Bonbright, Question 222. So there is no conflicting evidence before you on that point.

We ask that you give these principles considerable weight in your consideration of Enbridge's request to find that its rates were just and reasonable.

The Province also wants to note that there is a pertinent precedent for Enbridge's market-based rates in the Bangor Gas Inc. decision of June 30th 1998, in Maine Public Utility Commission Docket 97-795. The Board will recall that I canvassed this with Mr. Kumar on April 14th. The material part to this decision are in Exhibit C-16, Tab 21. And I am going to read it, Mr. Chairman because it is so pertinent.

This is what the Maine Board said. "Finally, we review Bangor Gas's proposal to determine whether Bangor Gas has adequately shown that it will be able to provide service at just and reasonable rates. The Bangor Gas proposal is unusual in one regard: under its multi-year rate plan, Bangor Gas proposes to charge customers not on the basis of cost of service, but with a rate capped at an estimated price of alternative fuel. Consequently, rates do not depend on the start-up company's cost structure. Since Bangor Gas's multi-year rate plan does not tie cost

to rates, our review of these aspects of Bangor Gas's proposal is not as critical as if the rates were directly related to cost; the issue of whether Bangor Gas will be able to provide service at just and reasonable rates depends on the price cap structure it has proposed. OPA's arguments concerning the rate plan submitted by Bangor Gas (which we have approved in our order dated June 26, 1998 imply that rates for Bangor Gas must be linked directly to cost regardless of the practical limitation on prices imposed by competition from other fuels, especially oil. We disagree. Applying traditional rate of return regulations to a start-up gas utility, whose costs and markets are at best uncertain, might easily discourage the investment in gas distribution infrastructure that is likely to bring significant benefits to the Bangor area and ultimately throughout Maine. Under the Bangor Gas approach, the Commission will, after ten years, have the opportunity to assess whether costs and prices should be linked more directly. In the meantime, customers will have the benefits of competition from a new energy source, and will be assured (by the operation of the price cap) that they will be no worse off than they are today."

And Mr. Chairman, Mr. Kumar agreed that this is what the Maine Commission decided. But relevant as it is, Mr. Kumar did not bother to tell you about it in his evidence.

Mr. Kumar said only that -- that the only material difference between the Bangor Gas decision and what Enbridge is asking for in this case, is that Enbridge had filed Ms. Duguay's cost allocation study, whereas Bangor Gas did not file such a study. Yes, that's what he said. That's what he said the distinction was. But in the Province's submission this is not a material distinction and no reason for Mr. Kumar not to have brought the passage that I have read to the Board's attention.

I therefore submit that the Bangor Gas decision is a pertinent and favourable precedent for supporting approval of Enbridge's application.

I turn now to cost to capital issues. And specifically Enbridge has sought a capital structure of 50 percent common equity and 50 percent debt. Has sought a debt cost of the yield on 10-year long Canada bonds, plus 250 basis points or 2.50 percent and a return in common equity of 13 percent. And now the evidence that you have on behalf of Enbridge was the expert testimony of Kathleen McShane and she is a recognized expert throughout Canada. We find that in April 13th at pages 605, 606. She performed what she described as an expert opinion on the reasonableness of the essential elements on the cost of capital. That's her Exhibit C, page 2, and Exhibit C-15, Tab 1. And we find that in NBIR, # 23, and her answer at

page 586 of the transcript. She provided independent support for the proposed Essential Elements and her recommendations are she said based primarily on business risk differences between Enbridge and a mature LDC with reference to available market data for quantification of the differences. And she told us that in Exhibit C-15, Tab 1, NBIR, #23.

Now the Board Staff had the testimony of Mr. J. Kumar. He is not an expert on capital markets. The Board heard me ask him if he was and he did not claim to be. You will see that in the responses to April 14th, Question 518, 521 to 523 and 531. Mr. Kumar has never previously testified on capital structures, cost of debt and return on equity in Canada. That's April 14th, Question 518. And he did not provide any independent support or analysis of cost of capital elements. And he said that in his answer to Question 526 and 527.

What was his recommendation to you? He said that he was not testifying to actual levels of capital structure, cost of debt or return in equity. He said that at Question 521 to 522.

He said that the appropriateness of the actual return in equity was "outside the scope of my testimony and assignment." His responses to Question 438 and 443. He had no recommendations I said on capital structure, cost

of debt or cost of equity.

Now what were the relevant risk issues for Enbridge here in New Brunswick. Well first there is the greenfield nature of Enbridge Gas New Brunswick. There is just no dispute the greenfield nature of Enbridge's operations creates a unique risk which requires compensation.

Ms. McShane documents the risk differences of 250 to 300 basis points between Enbridge's risk and the risk of a mature LDC. She told us that a mature LDC has marketing customers. It has established customer loyalty. It has a tested gas supply. It has a known track record to customers. It has a cost structure where it can recover full costs. And Enbridge has none of these.

Ms. McShane testified that Enbridge's success depends on competitive pricing at the burner tip. She said that at Exhibit C, page 2. She said it depends on the ability to assure customers of reliable source of supply. The same reference. Ability to instill among potential customers the belief that natural gas is a superior source of energy. And the greenfield nature requires innovative pricing mechanisms.

Mr. Kumar, his testimony was that yes, a greenfield utility has a higher risk premium. He said that on page 28 of his witness statement. He said that Enbridge should be fairly rewarded for its risks. He said that at page

29. He said greenfield risks are greater than risks in more mature market at page 52.

The second risk that Ms. McShane identified was that it has a fixed rate of return during the development period. She said that that adds an element of risk. She said that at Exhibit C, page 6 and page 625 of the transcript. Mr. Kumar made no comment on that risk.

The third risk that Ms. McShane identified was the risk of the performance bond. The ten million dollar bond. She said that it adds a risk not present for mature LDCs. She said that at transcript 625, 626. Mr. Kumar made no comment on that risk.

The fourth risk was the small risks -- the small size risk. Ms. McShane told us that the small size of Enbridge increases its risk due to its reduced access to debt markets and lesser liquidity. She said that at Exhibit C, page 7 and the reduced ability to diversify its risk across markets. The same reference. Kumar's statement was we should not look at Enbridge Gas New Brunswick. We should look at Enbridge Inc. He said that at page 64.

On the deferral account, Ms. McShane said the deferral account does not fully offset Enbridge's greenfield risks. She said that in response to NBIR, #26. And she said that without the proposed mechanism, an LDC would have to earn returns in the 20 to 40 percent range to be able to

achieve over the life of the assets an average return commensurate with the company's risks. She said that in Exhibit C, page 5; Exhibit C-15, Tab 11, response to NBIR, #27.

Mr. Kumar told us that he had not conducted any analysis of Enbridge's risk. And you will find that in Question 539.

On the stand alone principle, the fundamental difference between Ms. McShane and Mr. Kumar was that Kumar said that Enbridge Inc. should be -- have its financial structure and returns based on its parent. And Ms. McShane said they should be on a stand alone basis. And McShane's evidence was, and I quote, "a critical premise of my analysis was the virtually universally accepted premise that the cost of capital is a function of the risks of the enterprise in which the investment is being made, not that of the entities making the investment." She said that at page 588.

Mr. Kumar said that that was patently wrong. But Ms. McShane's response to Mr. Kumar's statement was, "Well my initial reaction is to say if this is patently wrong, then every regulator in this country has been patently wrong for a long time." And Ms. McShane's testimony on that point, I submit, is entitled the great weight, since she has testified in 75 proceedings in Canada. Mr. Kumar has

testified in none in Canada.

Ms. McShane's position, I submit on the evidence before you, is consistent with financial theory in the passages, which will I refer to in a minute. It's also consistent with Canadian regulatory precedent. She said that the Alberta Public Utility Board imputes lower cost of debt than parent's to account for risk differences. That you will see that in her Exhibit C, page 11.

All Canadian Boards recognized stand alone principle. She said that at the transcript, pages 588 and again at 636.

She also referred to NEB decision in RH-2-80, where the NEB recognized the pipeline's diversification and set the capital structure and income tax factors on the cost of the pipeline alone, on the stand alone basis. And we discuss that in the transcript at pages 641 to 43. And Exhibit C-15, Tab 31, which is a copy of the decision.

Now Mr. Kumar's position that it should be based on the parent was inconsistent with basic -- the textbook, Basic Financial Management, by Scott Martin, Petty & Keown, that says, "For the calculated cost of capital to be meaningful, it must correspond directly to the riskiness of the particular project being analyzed." And Financial Management, by Brigham & Gapenski said, "Part of the capital budgeting process involves assessing the

riskiness of each project and assigning it a capital cost based on its relative risk." And we went through that with Mr. Kumar at Question 583 to 608.

Mr. Kumar was not aware of a Canadian regulatory precedent. His only thing that he grabbed on to was the PNG case from Ms. McShane's testimony in the schedule. In fact I think if the Board has its staff check, it will find that PNG is a stand alone company. His position, he agreed, indicates that the allowed return in equity is determined by who owns the company and that makes no sense at all. He said that in his response to Enbridge, IR #25. He cannot provide any regulatory precedent in Canada in support of his proposition. And there are lots of companies in Canada that are owned by other companies.

On capital structure, McShane testified that the Enbridge proposal is appropriate. She said that in Exhibit C, page 9. She told us that mature LDCs have capital structures with about 35 to 40 percent common equity. And mature LDCs have long-term debt of 50 percent, the same as Enbridge Gas New Brunswick. And she said that at Exhibit C, Schedule 1 and Exhibit C, Schedule 3.

She said the small size risk of Enbridge is offset by its higher equity ratio. And you will recall that she told us that a one percent size risk premium is in her

evidence, Exhibit C, page 9, and Exhibit C-15, Tab 16. She said there was a rule of thumb that for every one percent increase in debt ratio, the cost of equity increases by 0.1 percent. And she did that at Exhibit C, page 9. Exhibit C-15, Tab 17, which was her response to New Brunswick interrogatory #34. And that Enbridge's size -- she said that Enbridge's size premium is offset by adoption of the 50 percent debt, 50 percent equity capital structure.

Mr. Kumar said only that he thought that Enbridge's proposes equity is too thick. But his only comparison was of Enbridge, this greenfield company with mature Canadian LDCs. He said that at page 55. Again he performed no analysis of risk differences between Enbridge and mature LDCs. He admitted to that in Question 546 on April 14th. And he only looked at McShane's schedules, but he could not comment on what the numbers mean. He agreed with that on Question 609 to 619 on April 14th. He did not look at the British Columbia Utilities Commission generic decisions on return on equity or the NEB's generic decision on return on equity to see what the rules were in Canada. And he admitted to that on Question 562 to 563.

On cost of debt, Ms. McShane proposed to combined the yield on 10-year long Canada bonds plus 2.5 percent as a cost of debt for Enbridge. And her words were and I

quote, "The cost of debt proposed by Enbridge is a reasonable estimate of the stand-alone cost that Enbridge would incur if it raised debt on the basis of its own business and financial risk." She said that at page 588 of the transcript.

And she said that Enbridge's proposal was consistent with the stand-alone proposal, because if Enbridge stood alone, it would have at best a B+, which was a non-investment grade, a security or a B++ minimum investment grade rating. And she noted that the spread in yield between a B+ and B++ rated companies is about 1.6 to 2.95 percent. She said that at Exhibit C, page 12.

So Enbridge may not on a stand-alone basis always have access to debt when it wants it in the amount it wants, is what she said at page 628 of the transcript. And she also said that Enbridge by borrowing from its parent would have fewer onerous covenants on debt than it would if it had to borrow from the bank. She said it at transcript, page 676 and 700.

Now Mr. Kumar only said that the actual debt cost charged by Enbridge will be less than Enbridge's proposed debt cost at page 58.

I submit that Ms. McShane's evidence should be preferred, because she is an expert in these matters and because Kumar cannot provide any cites or precedents to

support his rather unprecedented position.

On cost of common equity, Ms. McShane testified that the 13 percent return in equity was reasonable. She said that in Exhibit C, pages 16 and 17. She noted the cost of equity for mature LDCs in Canada or the U.S. is about 10 to 11 percent. Exhibit C, page 15. She stated that she regularly performs independent tests of return in equity for mature LDCs in Canada. And she said that in response to Exhibit C-15, Tab 25, response to NBIR 37. For example, her British Columbia study in May of 1999, which she referred the Board to, that's Exhibit F, Schedule 38.

She has testified that the differential between greenfield and mature LDCs is about 200 to 300 basis points. She said that at Exhibit C, page 15. She verified this conclusion by numerous technical analyses, Canadian experience, U.S. experience, beta analysis, which we didn't even talk about in the hearing, but it's there in her analysis, and by reference to the World Bank study, none of which were even questioned upon or challenged. Mr. Kumar, as I said before, had no recommendation.

And I submit that there is evidence before you that the 13 percent return on equity is consistent with the returns on equities of other greenfield utilities. We have Sempra Atlantic and you will recall that it had 15.2 percent return in equity, using a 40 percent equity, 60

percent debt capital structure. And Mr. Kumar agreed that this implied a 13.46 return in equity, if applied to a 50-50 capital structure. We discussed that on April 14th at Question 385 to 390. And we filed the calculation, Exhibit C-17. So in Sempra we would have a higher return in equity than Enbridge is asking for.

The Bangor Gas Company, just across the border, the same -- almost the same situation as New Brunswick. And the Maine Public Utilities Commission gave Bangor a 15 percent return in equity.

And then the Inuvik Gas case up in the Northwest Territories, again with a 50-50 capital structure, the Yukon or the Northwest Territories Board gave Inuvik Gas a 14 percent return in equity from gas coming right from the McKenzie Delta. In other words, no gas supply issues whatever.

And so I submit -- and I also make the point that the 13 percent return in equity being sought by Enbridge in this case is consistent with Maritimes & Northeast Pipeline, who has a 13 percent return in equity, but Maritimes & Northeast Pipeline has long-term contracts. It has a pipeline utilization agreement, lots of back-stop guarantees and is less risky than Enbridge.

So I submit that you ought to find that the 13 percent return in equity is appropriate.

And for these reasons the Province asks you to accept Enbridge's evidence on capital structure, cost of debt and return in equity without change.

I turn now to rebuttal, Mr. Chairman.

CHAIRMAN: We are going to take a break before we get to rebuttal.

MR. BLUE: Pardon me?

CHAIRMAN: I said we will take a break before we hit rebuttal.

MR. BLUE: Okay.

CHAIRMAN: Okay. So we will take 10 minutes.

(Recess)

CHAIRMAN: Rebuttal, Mr. Blue.

MR. BLUE: Mr. Chairman, Members of the Board, the first point I wish to make by way of rebuttal is with respect to Mr. MacDougall's comment that the Board determine no specific time for the end of the development period and Mr. Stewart's submission that the Board should require Enbridge to justify continuation of the development period each year. That Irving probably wouldn't see the necessity to have to do that the first three years.

CHAIRMAN: Buses and trailer trucks we have to respect. It's the Saint John air-conditioning. Go ahead, Mr. Blue.

MR. BLUE: So we have Mr. MacDougall saying don't impose any limits on the development period. You have Mr. Stewart

saying make them justify it each year. But we don't think they would have to do it for the first three years, which is a little bit inconsistent. But that's in passing.

The Province's position is that we don't -- we see the need for the development period and we say that firstly, because we agreed to it in the essential elements. But do say that it is -- it must be reviewed by this Board in any case after seven years, because of the Board's statutory duty to do so after it is set out in subsection 9(1) of the -- sorry --

MR. MACDOUGALL: Gas Distribution Act, 1999.

MR. BLUE: Gas Distribution Act, 1999. Having said that, it's open to any party at any time to bring a motion for it to raise in a rate proceeding the inappropriateness or the appropriateness of the development period. And the Province just assumes that parties will govern themselves with that knowledge. But I join with you and support Mr. MacDougall's request that you not in this decision try to put any limits on the development period, knowing that you have to look at it after seven years in any case.

Mr. Stewart, in one of his rhetorical flourishes, said that what Enbridge was really seeking from you in this case by saying that it wants to recover its cost of service, plus return in equity was the traditional approval and that it required traditional oversight. And

I ask you to reject that submission for the reasons that I gave you in my main argument.

The Legislature structured New Brunswick's Gas Distribution Act, 1999 so that you would not feel constrained to apply traditional oversight. Instead in New Brunswick to get the gas market running, to get gas to as many businesses and customers as possible in accordance with Enbridge's development plan, we want innovative, low cost, efficient and fair oversight processes. That can be written electronic hearings. It's not traditional oral public hearings at every turn.

I want to return to the aide memoire to argument that Mr. Stewart provided in the form of a pie chart and just make some submissions about it. The contention that was pushed in cross-examination of Enbridge's panel and argued before you today was that the actual marketers margin was 7 cents. And I was a bit in a fog, in fact I was in a deep Bay of Fundy fog about what followed from that in Irving Oil's submission. But before I try to deal with something that I can only speculate about, let me comment on the graph.

Firstly, this is Irving Oil talking. Irving Oil, it is well known, has two firm service agreements with Maritimes & Northeast. One for 30,000 MMBTU per day, the other for 18,000 MMBTU. A total of 48,000 MMBTU. It's

clear that Irving does not require all that for its processes at the Refinery, because it does not have a third firm service agreement for gas as a marketer. So it's going to be selling some part of this 48,000 MMBTU per day. Irving claims to know the energy market in New Brunswick. That was in Mr. Kirstiuk's, Mr. Newton's evidence. It's going to be a marketer.

So the first thing I want to focus on is if it knows the market, and it if really provides service to customers, it might be able to persuade some of its customers to convert at a discount that is lower than a 30 percent discount from alternative fuels. Okay. Say it persuaded customers to convert at 20 percent, because it's a sophisticated energy company in New Brunswick. Then that would be a 10 percent addition to the $9.08 shown up here. They would be selling at 10.08, that's about 90 more cents to Irving. So now suddenly it would be 97 percent. If -- and marketers are going to do their best to market that gas at rates at which they will make money. Irving is capable of doing that.

Secondly, the load balancing transportation charge of 73 cents with the quantities of gas that Irving is taking from Maritimes, its sophistication in handling energy, it can do its own load balancing and save that 73 cents. The same is true of the load balancing commodity cost. With

the volumes of gas it is taking from Maritimes, and its flexibility to use it process-wise and other, it will not incur that. So the $1.06 is at the minimum Irving is going to make. Again I say that if it can persuade customers to convert a discount less than 30 percent, that goes right to its margin.

So I submit that you should take with a great deal of salt anything that is pushed on you about the 7 cents. There is an old saying, which the Board's advisor, Mr. Butler, will be familiar with, remember Cassandra, the character in Greek mythology in the story of Troy that always forecast the future, no one believed her. The problem is that in hearings like this, when people look at numbers, we get what is called the inverse-Cassandra effect. Just because the number is written down, people tend to believe it. Well it ain't true. So I submit that this -- that you should not put any credence in this exhibit whatsoever.

I turn now to the requested submissions about costs. Mr. Chairman, Section 86 of the Gas Distribution Act. 1999, specifically subsection 86(2), gives the Board a full discretion about whether to award costs and if so how to allocate costs. And I submit that Section 86 has to be read in the context of the Gas Distribution Act, 1999 with all the innovative devices the Legislature has given to

the Board to carry out its mandate. It would be a mistake, in the Province's submission, for the Board to embrace the principles for awarding costs say from Ontario, which has its own political history and background for that or from Albert, which has its, or from Newfoundland, which has its.

The principles upon which the Board should award costs should be relevant to the new century. It should be relevant to a greenfield situation in New Brunswick. And one principle that probably should be applied is it should not encourage unnecessary participation in or request for public hearings.

I recommend, Mr. Chairman, that the Board simply direct the Union of New Brunswick Indians to file its submission for costs. We should have a bill of costs prepared by Ms. Abouchar. And I would suggest that she use the scale of costs in the New Brunswick Rules of Civil Procedure or the New Brunswick Rules of Court and --

CHAIRMAN: I am sorry to interrupt, but my recollection the last time I looked at them, they are based upon a dollar amount.

MR. STEWART: Yes, it's based on the amount involved and that won't work in the circumstances.

CHAIRMAN: Well I suppose you could take the entire development period and deferral account --

MR. STEWART: I suspect Mr. MacDougall would --

MR. MACDOUGALL: I have a serious problem with that.

CHAIRMAN: Just in a practical matter though, that does, you know, I have been thinking about that Mr. Blue.

MR. BLUE: Let me then -- forget the New Brunswick Rules of Court. Let her prepare a bill of costs claiming the amount and justify the amount and justify on what set of principles the Union is claiming it.

The only principle that I am aware of that regulatory tribunals should award costs on is has the participation been useful to the Board, not useful to the party, but useful to the Board. Has it helped the Board understand the issues in a way the Board could not have done so without the assistance of that Intervenor. And I submit that all parties should be -- who support the Union's request or who oppose it, should be required to address that issue. Those are the Province's submissions.

Sir, in my connection with my comments about the pie graph, I had made the point that Irving has the firm service agreements. Those are for transportation in Maritimes. Irving also has, I should add, gas supply agreements with the Sable producers for those quantities. And we do not know what the commodity cost Irving is paying is. I suspect it's not $2.06 and that would go to the margin as well. But that's speculation.

It only remains, Mr. Chairman, to say two things. Firstly, it has been both a privilege and a pleasure to be permitted to appear before this Board. And secondly, I ask you again to support and to approve Enbridge's application in respect to the 10 essential elements that have been cited to you. Thank you, sir.

CHAIRMAN: Thank you, Mr. Blue. Before the day is over, if the opportunity presents itself, I would like you to confer with Mr. Barnett and if you are able to share with us any progress in reference to that standard construction by-law, why I think it would be of interest to everybody in the room.

The second thing is just in reference to the pie chart that we were looking at, I will not comment on the arguments in reference to Irving, but I, as I am sure my fellow Commissioners are, are concerned with other marketers who may be looking at coming into the market place and marketing gas and they would not have the obvious advantages that you allude to in reference to the Irvings.

MR. BLUE: But Mr. Chairman, I would submit they would. Sempra, who my friend Mr. Zed represents, is the Southern California Gas Company. They do market research to a degree that any gas company does. They would have gas supplies from Nova Scotia Power. They would have their

own gas supplies. They would be able to get -- to market at the same discounts perhaps as Irving. Any sophisticated company is going to have those advantages, which means that the margin, too, it's going to be a lot greater than 7 cents shown here. That's a canard. That 7 cents is a canard. Any sophisticated marketer is going to do better than 7 cents.

CHAIRMAN: It will be interesting to hear other counsels comments on that. Thank you, Mr. Blue. If I go in reverse order, it looks like Mr. Zed has an opportunity to talk about the sophistication of his client now.

MR. ZED: I will just wait for a vacant microphone.

MR. BLUE: We are going to have to pull the pin at about 4:00 o'clock. And if you are not -- with respect to the standard construction regulation, the government has decided to have a consultation process with municipalities. We are going to disclose the draft regulation in that process. And all I can say is that we are going our best to make sure that that will be before the construction hearing. So some time over the next week and a half.

CHAIRMAN: The consultation will be before?

MR. BLUE: Yes. Our object is the same as the Board's, to try to persuade the municipalities, they don't have to take up time in the construction hearing to talk about

those issues.

CHAIRMAN: Good. Thank you.

MR. STEWART: Mr. Chairman, is the draft construction regulation going to be shared with the other Intervenors?

CHAIRMAN: I guess you will have to represent a municipality.

MR. STEWART: I can always call.

CHAIRMAN: I only know what you just heard.

MR. STEWART: All right.

CHAIRMAN: Mr. Zed.

MR. ZED: Mr. Chairman, the only item I intended to address was the issue of costs. And it is our position that the Board's suggestion is a good one, that the parties have an opportunity, anybody who is interested submitting written submissions to the Board some time prior to the week of the 15th of May and hopefully having an opportunity to argue those positions on the 19th. I think that would give parties an ample opportunity to decide whether or not they wanted to comment.

I would say that during the break, discussion amongst counsel, the issue was raised of what if somebody wanted to call a witness or call evidence in that respect. And I guess my only comment would be by way of suggestion that it would be up to that party then to make that clear in the written submission. Parties would have an opportunity

comment on it at the hearing on the 19th and if the Board decided that it was appropriate, then this period would be extended. I mean if nobody comes up with that suggestion, then it could probably be resolved on the basis of written -- and then written submissions, then oral arguments.

With respect to the issue raised with my client's sophistication, I can only say that the methodology, as stated in the application, is an appropriate methodology in our way of looking at things. And if there is a distribution system in place, it's incumbent upon the distributor to work with the marketers to ensure that gas flows and it is our view that the market will look after itself.

CHAIRMAN: Thank you, Mr. Zed. Ms. Abouchar.

MS. ABOUCHAR: Mr. Chair, I will go ahead. I have one concern which has just occurred to me that I will not have the opportunity to reply to anything that the applicant might have to say in response to the UNBI's request of the Board, if I go now?

CHAIRMAN: Well that's right. That's the way it works. There has to be a --

MS. ABOUCHAR: Okay. There has to be a stop to this whole thing, right.

CHAIRMAN: -- there has to be a lead off batter, the whole thing.

MS. ABOUCHAR: Okay. Well then on the rate base issue, I just make the observation that there -- the rebuttal that we have heard so far, the evidence that we have heard so far, there has been so suggestion that the Board not grant the request that the UNBI has asked to accept the principle that it is just and reasonable that the agreed negotiated cost and the cost of implementing any agreement between the First Nations, specifically the UNBI and the company be included in the rate base. And I think that -- that the fact that there is no evidence to suggest that it would be unreasonable is something that the Board should weigh heavily in the favour of the Union of New Brunswick Indians.

On the issue of costs, Mr. Chair, I have to say in response to Mr. Blue's argument that I came today prepared with a bill of costs to provide to the Board and copies for all parties and prepared to discuss the principles. Mr. Blue has raised one principle. The principle that has participation been useful to the Board. That is an important principle and on that principle our submissions are that --

CHAIRMAN: Okay. Don't --

MS. ABOUCHAR: I am replying to Mr. Blue's evidence. Mr. Blue's --

CHAIRMAN: -- he is saying -- well --

MS. ABOUCHAR: My understanding was --

CHAIRMAN: -- we will canvass the whole thing again in one way or the other.

MS. ABOUCHAR: -- that was my understanding was that we were just going to give a feedback on your proposal for the date of May 19th. But having said that, evidence has been put before the Board and I would like to respond to it.

CHAIRMAN: Go ahead.

MS. ABOUCHAR: Has the participation been useful to the Board of the Union of New Brunswick Indians? The Union has raised an argument that is certainly relevant. It's within the Board's jurisdiction. No other party has raised it. And the Union has provided examples from other jurisdictions and has canvassed Canadian jurisdictions.

So in our submission, the Union has presented evidence and decisions that are useful to the Board to make the decision on this issue, which is well within the jurisdiction of the Board.

And further, the suggestion by Mr. Blue that this is the only -- that is the only principle is not accurate. Briefly, the principles that are very important is whether or not the participant is a commercial applicant, commercial intervenor. The Union is not a commercial intervenor. Whether or not the Union has a substantial interest in the matter? Whether the participant has acted

-- has incurred costs prudently and reasonably and acted efficiently during the hearings. And I submit to you that all those principles are equally as important as the principle about whether the participation has contributed to the understanding of the issues. All are equally important.

On the Board's recommendation that May 19th be reserved for costs, the Union is in favour of that and appreciative of the efforts to schedule this -- this cost issue at a time which is back-to-back with the construction hearing. We ask only that a date be set for submissions to be received by the Board on the issue of costs.

And those are my submissions and the Union is looking forward to making those -- the further submission on costs, which we were prepared to make today had it been appropriate. Thank you.

CHAIRMAN: Thank you, Ms. Abouchar. Mr. Holbrook.

MR. HOLBROOK: Good afternoon. On the issue of costs, I think the suggestion that Mr. Zed made a few moments ago is acceptable to MariCo.

On the other point about the sophisticated marketer, I guess it's up to debate whether or not when MariCo files for its marketing certificate, we will fall into that classification.

I would simply comment that perhaps our perspective is a little different from a marketing affiliate of a regulated utility. So we will probably part company with Mr. Zed on that point.

We share some of the concerns that have been articulated by Irving as a potential marketer. We may not have some of the advantages that have been articulated that Irving will have opportunity to comment as well, but clearly we are concerned about sufficient opportunity for a marketer, whether they are sophisticated or not, to be able to come into this province and compete to provide gas service.

So I just for the record, we want to reiterate that on this point at least, we share the concern that this graph highlights. With that said that will conclude our comments on rebuttal.

CHAIRMAN: Thanks, Mr. Holbrook. Mr. Stewart.

MR. STEWART: A couple of comments. First off, unlike the Department of Natural Resources and Energy, Irving Oil presented a panel of witnesses to this Board for the purposes of this hearing. And if Mr. Blue or his client, the Department of Natural Resources and Energy had any issue with respect to Irving Oil's position that a marketer is different than any other position or if Mr. Blue was going to come to these argument submissions and

give evidence about, or attempt to give evidence about my client's circumstance, he was perfectly free to ask those questions and he declined to do so. Mr. Blue's comments are not evidence. They are, as he pointed out, mere speculation. And I suspect my client would be so lucky to have the circumstance on which Mr. Blue has described.

The evidence before this Board, and as reflected in my little pie chart, those are Enbridge Gas New Brunswick's numbers. This is their analysis. It's not Irving Oil's analysis. And the evidence of Mr. Harrington was that if anything, he thought the commodity price was going to be up 20 percent, so the 2.06 would be bigger. And there is evidence that the Maritimes Northeast toll is going to go from 65 to 70 and a half cents. And quite frankly at the end of the day individual numbers don't particularly matter. I am sure Mr. MacDougall is going to say in his rebuttal, don't worry, you know, this -- we are all going to reassess these things when we come back in October, and I suspect they will. The point is and the point was not so much that it's seven cents or six cents or five cents, but whatever it is, it has to be sufficient to enable the marketer to survive, whatever that is. And let us hope there are more marketers than just Irving Oil.

Secondly, with respect to the end of the development period, as suggested by Mr. Blue, I would submit that the

Board's review -- special review process under Section 9(1) or subsection 9(1) of the Gas Distribution Act ought not to be included in your consideration of this process. That is a separate statutory review.

And in case there was some confusion because Mr. Blue, I think, maybe misinterpreted what I said and I will repeat my submission.

With respect to the end of the development period, since Enbridge will be coming back to the Board on an annual basis, in any event, it is Irving Oil Limited's submission that they must extend -- they must receive your blessing for an extension of the development period on an annual basis.

My only point is that I expect that that would be very easily established early on. And maybe easily established to year eight. I don't know the answer to that. I'm not saying they don't have to do it for three years and then they start doing it. They must do it every year. And then I'm adding the practical slant to that, that in the early years I suspect that will be easily done. That's all.

Finally, with respect to Mr. Blue's comments about the so called essential elements. I am beginning to take umbrage with the title that has been attached to them, or the label that has been attached to them as essential. I

don't know where that came from exactly. And if it came from the Department of Natural Resources and Energy's view of how those items are necessary, as Mr. Blue indicated, to get the gas flowing, then they should have called some evidence on the point. They should have brought somebody in here from the department or wherever and brought evidence before the Board about how essential these things are to get the gas flowing.

It's our submission there are elements of that which probably are essential. But they are not all essential. They just are what they are.

And in that regard I'm going to refer you to exhibit A-16. That's the offering memorandum for the limited partnership. And if you haven't reviewed it already, I suggest you do that. Because it's very -- makes for very interesting reading. Not that there is anything fundamentally different in here than what Enbridge has provided in its evidence, although you will see where some of the answers to the information requests came from.

But there is a subtle but substantial and important difference in the tone of Enbridge when they are selling and not buying. And I encourage you to review it on that basis.

But I'm going to refer you specifically to page 23. And it's under the section that's entitled, The Regulatory

Framework. And it's in here where the so called essential elements in the regulatory regime are discussed by Enbridge Gas New Brunswick.

And at the end of the list about two-thirds of the way down page 23, it reads as follows, "Notwithstanding the foregoing, under the Gas Distribution Act, the PUB has the right to adopt any method for setting rates that it considers appropriate." And I agree.

"Accordingly, the partnership and the government of New Brunswick will still have the onus of convincing the PUB of the merits of the proposed regulatory framework." Again I agree.

"Regulatory hearings are expected to be held for the purpose -- for this purpose commencing April 2000." And here we are.

"And there remains a risk that the proposed regulatory regime approved in the franchise agreement will be modified." And I agree with that again.

"In the event that the PUB should adopt a regulatory regime which is not -- does not reflect the agreement reached with the New Brunswick government as described above, the partnership will consider all options available to it, communicate any adverse effect on the partnership."

In other words it's clear in its own operating memorandum encouraging people to invest in this process

that Enbridge and the Province of New Brunswick realize that these elements are not truly essential to get the gas flowing. Or at least not all of them.

And it's also a recognition in the statement that it's up to the Board to do what it deems is appropriate in the carrying out of its statutory duty.

Thank you.

CHAIRMAN: Thanks, Mr. Stewart. Just for noting into the future. You were aware of that at the time that you made your submission to the Board, that is the essential element. And perhaps for a rebuttal it would have been -- it would have been more appropriate had you addressed the Board in your opening remarks, I would think. Anyway that's in the future.

MR. STEWART: Yes. And I -- and I can see that, Mr. Chairman. I guess it was that it was Mr. Blue's tag which Mr. MacDougall had not made that some how those elements were essential to get the gas flowing or essential -- from that approach I take --

CHAIRMAN: Well the only reason I'm bringing that is for the future, that counsel attempts to put all of their arguments into their original submission the Board -- or rebuttals get going on and on. They take on a life for themselves.

MR. STEWART: Yes. And point well taken, Mr. Chair.

CHAIRMAN: Thanks, Mr. Stewart. Mr. MacDougall?

MR. MACDOUGALL: Certainly, Mr. Chair.

MR. BLUE: Mr. Chairman, Mr. Barnett and I have to leave and we mean no disrespect. It's just that he has a meeting to go to and I have a plane to catch.

CHAIRMAN: He always has a meeting to go to. Okay. You are excused.

MR. MACDOUGALL: I seem to have this effect, Mr. Chair.

CHAIRMAN: As long as we stay, Mr. MacDougall.

MR. MACDOUGALL: That's important.

MR. STEWART: I'm waiting for the game show comment.

MR. MACDOUGALL: Well I will start with one better comment maybe. I do know at one point I believe Mr. Stewart said that a 30 percent return on equity. I'm sure he had said that once. I'm sure it was a slip. But I'm here to tell him that we are willing to start off by giving him 17 percent right off.

We do have rebuttal comments to most of the presenters today, but primarily to that of Irving Oil. And I guess I would like to start off, Mr. Chair, with going back to exactly the point that Mr. Stewart left with. A discussion of the role of this Board and a discussion of the so called essential elements.

A couple of times it appears that the applicant gets tarred with comments made by other parties. I hope that

the Board realizes we are here as the applicant and solely as the applicant. Our evidence has been put forward. We did put forward evidence and we expect for our application to be tested on the basis of that evidence.

With respect to the role of the Board, at no time did Enbridge Gas New Brunswick ever state that this Board was not to make a decision on just and reasonable rates and appropriate rates for this province.

This applicant is here before this Board with its evidence which it believes shows that its rates are just and reasonable and appropriate. And it is -- it is hopeful that this Board will agree with that. But that is your job, and at no time did we say it wasn't.

If other parties did, if Mr. Stewart has a concern with that, that is not the evidence of the applicant. We are here for the reasons that I believe you know what we are here for.

With respect to the comments on essential elements. What we have put forward is a proposal to the government, which is now before you as well, which had as a package a series of elements. Those elements work as a package as the evidence said in that if you are have an effect on one of those elements, it fundamentally affects the overall return to the company. The overall ability of the company to roll out its construction plans. The overall ability

of the company to attach customers in a timely fashion, et cetera. So to that extent they are seen as a package. An effect on one has an effect on another. That is the proposal we have put forward. That has always been our proposal. That's what our proposal is today.

With respect to any effect on those essential elements referring to the offering memorandum or otherwise, again, it has always been the applicant's position that this Board is the Board that will make this decision. That's why that's stated in the offering memorandum because that's what the position is.

We also believe, however, that if the proposal put forward in the general franchise agreement, which was signed by the applicant and the Province, is deviated from in any material respect, then as mentioned in the offering memorandum to potential investors, Enbridge Gas New Brunswick will have to weigh all of its options.

All of those options include, for example, renegotiation with the Province as specifically stated in the general franchise agreement. Those options are there. Those are options that this applicant does not wish to make.

An offering memorandum has to state risks to investors. One risk is regulatory risk of not having the proposal accepted by this Board. Therefore the offering

memorandum was clear and truthful in this regard. That has always been the position of the applicant. It is again today. We hope, though, that this Board will accept our application, because it is the position of Enbridge Gas New Brunswick that it is the right application. It is an appropriate application and it is an application that has just and reasonable rates. And we hope that it is on that basis that the Board is going to test the evidence before it.

To deal with the issues raised by Mr. Stewart with respect to concerns of marketers. Enbridge Gas New Brunswick's position is a positive position. And I hope the evidence testifies to that. Enbridge Gas New Brunswick wants to work with the marketers. It wants to see customers attached. It is not to Enbridge Gas New Brunswick's benefit to have marketers be dissatisfied or not to have marketers in the marketplace.

As Mr. Pleckaitis stated in his opening statement throughout the process and as we stated today, Enbridge Gas New Brunswick wishes to have the opportunity to act as a competitive player in the marketplace. Its competitors in the fuel oil business, of which Irving Oil is one, and I will get back to that, in the electricity business they do not have the same sort of regulations imposed on them as Enbridge Gas New Brunswick will.

Enbridge Gas New Brunswick wants to work with marketers and it feels that it's aligned in the same goal as the marketers.

Mr. Stewart made comments today about other marketers. He did that at the marketers hearing. And I would like to come back to that.

I think what we have to understand is Mr. Stewart is here representing his client Irving Oil Limited. He is not representing the consumers of New Brunswick. He is not here representing other marketers. He is here representing Irving Oil Limited, an oil company who is also anticipating getting into the gas business. I'm sure the Board is aware of that, but I wanted to point it out. He is not here for Direct Energy. He is not here for Sempra. Sempra spoke for themselves. Sempra spoke in favour of the applicant's proposal. He is not here for Coast Energy who he mentioned. He is not here for Engage Energy.

He also seemed to draw some illusions that the fact that those parties were not here opposing our application that that meant that maybe they weren't going to be here. Well there is no evidence to that effect. I'm not here to oppose what he said during argument. He made his argument. There is no evidence to base that. It's just as easy to jump to the conclusion that they are not here

because they think this is a very good proposal. Sempra has said as much today.

So I think we have to look at the evidence and we have to look at the parties that put forward that evidence. That being said, the applicant is going to work with Irving Oil Limited and all of the marketers to ensure that customers are attached and gas is delivered to customers in the province of New Brunswick.

With respect to the issue of traditional cost of service or the approach that the applicant has put forward, well what the applicant has done today and has done throughout this process is say that it wants a specific process that allows for market based rates. And in doing that it wants some flexibility. That flexibility is reflected in one hand by what is called light handed regulation, or what we have been referring to as light handed regulation.

Mr. Stewart however referred to this spectrum on one hand of full public hearings, and on the other hand of not providing any information at all. Well my submission, Mr. Chair, is that we aeronaut in either spectrum. But we are certainly not at the spectrum where we are not providing any information.

We have listed throughout the evidence, the witnesses have listed throughout a whole host of information and the

methodology by which we believe that information can be put to this Board. If anything, we are in the middle of the spectrum. We are even moving up towards the other end of the spectrum. And it's always open to this Board to have a complaints procedure, have oral hearings if it's required. What we are saying is allow some flexibility for this market to develop at this time.

At no time did this applicant say that it wasn't going to provide information. It has provided voluminous information and will continue to provide a significant amount of information to this Board. And it will provide all of the information that's necessary for you to carry out your mandate.

With respect to the issue of the marketers margin. Again, the applicant is going to work with the marketers. It wants to get gas into people's homes. At the end of the day though, it is the applicant that is proposing to not recover its cost of service. Whatever numbers are on whatever pie chart is not full cost of service number. That number that is reflective of Enbridge Gas New Brunswick does not recover its full cost of service.

The applicant is asking for a deferral account so that over time it can hopefully recover its full cost of service. However, there is risks involved in that and there is no guarantee that they will be recovered.

However, it will be at the end of the day, the party who has to make the tough decisions. And those decisions in some instances will be depending on what will be up to the marketer to determine what goes into the deferral account. Should it reduce its rates farther in order to attract a market.

If marketers are not coming, then the applicant can use the rate rider, can use the rate rider to reduce its rates, not the marketer's rates. Maybe to help the marketer get the margin the marketer needs to get out to customers. If it does that, its money, its cost of service that isn't recovered then has to go into the deferral account.

And, again, this ties into some comments Mr. Stewart made. Irving Oil Limited can't have it both ways. We can't reduce our rates, which are market based rates, to allow marketers to survive, and then not being able to recover the deferred amounts with our weighted average cost of capital. I mean, that's, you know, that's absolutely, in my respectful submission, inappropriate. You can't have it both ways.

We will try to do everything we can to have this market grow. If that includes reducing rates, that's fine, the applicant will reduce those rates to the extent it is economically feasible. And at the same time it will

ask for the ability to have the opportunity to earn its weighed average cost of capital on this deferral account.

It's not the marketers here today who are saying they are going to reduce their rates or their margins. It's the applicant today who is saying that. Specifically Mr. Newton, when asked in IRs from Enbridge Gas New Brunswick to present his position on what the marketers margin was, he would not do so. He said that that was information that was developing and that that was information that was proprietary to his company.

There is no other evidence before this Board today on what the appropriate marketers margin is. And maybe that information is developing. And to the extent it does develop the applicant is asking for flexibility to be able to reduce its rates to accommodate the other portions of the burner tip price so that we can attach customers.

No one else is offering to do that. Irving Oil in specifics would not say what they felt a marketers margin should or should not be. Hopefully Enbridge Gas New Brunswick will work with all of the marketers, including Irving Oil, to determine the appropriate rates going forward.

The next issue I would like to come to is on the deferral accounts. It follows on from what I was just talking about. With respect, Irving Oil Limited's

position is that the deferral accounts should not recover the weighted average cost of capital. That they should only recover cost of debt.

That may be the case and may be necessary in other jurisdictions where there is specific deferral accounts for specific short term funds or specific one events. That is not what is occurring in this market. What is occurring in this market is the applicant is putting up front dollars into the ground to build backbone infrastructure, which was stated by its witnesses and agreed to by the Irving Oil witnesses.

If it is not able to recover a full return on those dollars, be it through revenues or the deferral account, then it will not recover its weighted average cost of capital. It just won't occur.

So a perfect example. If we have a piece of pipe going from the M & NE main line into Moncton and it costs a hundred dollars. So the cost to put that pipe in the ground is a hundred dollars. If $50 of that is recovered from revenue during the development period and $50 is put into the deferral account, at the end of the day the only way the applicant can recover its full weighted average cost of capital on that $100 is to get its 13 percent return on the $50 that it got from the revenue and to allow its deferral account to earn the same return.

If it doesn't allow the deferral account to earn the same return, then at the end of the day the applicant does not recover its weighed average cost of capital on the full $100. But the two $50s, the $50 of revenue and the $50 in the deferral account, are the exact same money used for the exact same purpose. They are used to put the main backbone infrastructure in the ground. They are not a separate deferred amount. You start off with a hundred dollars. You either get it back from revenue or you get it back from the deferral account.

So in our respectful submission the deferral account must attract the same return as the revenue that the parties -- that the applicant is getting from its customers.

Mr. Stewart raised some concerns with respect to the setting of prices and the fluctuation of prices. Well in our respectful submission, Mr. Chair, prices in the energy market do fluctuate. I certainly over the past few months would like to have thought that my fuel oil prices don't fluctuate, but they do. So I come back every month over the past five or six months and they are higher, they are higher, they are higher.

Gas commodity amounts will fluctuate as well. There is no 100 percent certainty that is going to be given to the customers of natural gas in this province, as there

isn't 100 percent certainty given to the customers of fuel oil providers in this province that bills won't fluctuate.

The evidence of the applicant, however, is that it doesn't want rate shocks. It doesn't want to use its rate rider all the time. Mr. Maclure said that it would use its rate rider possibly quarterly. But maybe it wouldn't use its rate rider at all. If it doesn't need to use the rate rider, it won't use the rate rider. If it does need to do it, it wants to have the flexibility or the ability to use one.

I would now like to talk about both Mr. Stewart and Mr. Blue's comments on filing requirements. Mr. Stewart talked about some requirements. Mr. Blue, no matter how hastily I wrote, talked about a lot of other filing requirements. And I guess that's where I would like to start off.

The applicant's position again is that it's hopeful that the Board will issue an order essentially adopting the concept of flexibility and light handed regulation, a generic ruling in this proceeding to that effect. The applicant does not believe that it's appropriate in this proceeding to set out step by step procedures for the filing of information. Certainly at this point in time I'm not able to rebut the week by week procedures that Mr. Blue has set out. But maybe some examples.

He referred to Section 9. We requested an order of this Board that with respect to this proceeding Section 9 in its entirety should not be complied with. And the Board accepted that on the basis of a lost of historical information not being available.

But also at the same time we made comments to the Board on the fact that some of this information may never be available. Some of the information in that section actually is more applicable to a main line like MN & P rather than a gas distributor. So the applicant has concerns with that and they are going to raise them with the Province and the Board regarding regulations. So at this time I think it would be premature to adopt filing requirements specifically based on those.

Section 10 of the filing regulation refers to quarterly reporting. That quarterly reporting is more onerous with respect to a gas distributor than any jurisdiction that the applicant is aware of. It's that sort of reporting particularly that would be inappropriate during the development period in the view of the applicant.

Pro forma financial statements are not necessarily required. And we were unsure from Mr. Blue's comment who all of these other parties were. I'm sure not all the parties in the construction application want to know about

the rates issues all the time.

So there is a lot of issues out there. I don't think at this time the applicant would ask that the Board confirm a process, a specific week by week or a set process for these filings. What we would like to see the Board do is allow flexibility. Allow the applicant to be able to proceed with its plans. Allow the applicant to file the information that it proposed that it would file.

That does not preclude the Board from any time at requiring that further and more particular information be filed, or requiring a procedure at a later date. To do so within this application we feel is premature. And we would rather see the Board adopt the concept of light handed regulation, no matter how hard it may seem for others to know what that means. We have stated it quite simply. And it's really flexibility for us to move forward.

Just very quickly, Mr. Chair, a few comments on the submissions of MariCo and the UNBI. With respect to MariCo's submissions. As noted by the witness panels, I believe it was Mr. Maclure but maybe Mr. Harrington, EGNB's rates are based on economic rationale and economic reason.

At this point in time there is no specific producer coming forward with the sound economic information

required for EGNB to propose a rate. It has not proposed a specific rate for local producers. And, again, as mentioned by the witness panels, EGNB's rates are generally rates for the customers. So they must look first to the customer and make sure that there is no discrimination and that the customers are treated appropriately. However, that being said, Enbridge Gas New Brunswick as with the marketers, has been working with MariCo Oil and Gas Corporation. It will continue to discuss with MariCo Oil and Gas Corporation opportunities to bring indigenous gas if that gas is there and if it's economic to the marketplace.

Those discussions will continue. The applicant intends to continue with them. But the applicant does not see evidence before this Board on which this Board at this time could determine that it would be appropriate for the applicant to put forward some form of local producer class rate.

With respect to the UNBI submissions, again, the applicant has been working with the UNBI, has been meeting with the UNBI to deal with its issues. And it knows the UNBI has issues upcoming in the -- in the construction hearing.

As stated by Mr. Pleckaitis, and I believe that it was reiterated by the Board Chairman during his cross-

examination, he noted that reasonably incurred costs could possibly go in cost of service. Miss Abouchar sometimes refers to rate base, but the applicant's position is obviously that reasonably prudent incurred costs could go into -- go into cost of service for the applicant.

However, those would be costs just like with any other party. At various times the applicant will negotiate with various parties. It may negotiate with Irving Oil. It may negotiate with local producer class. It may negotiate with its contractors or others, with MariCo, for instance. And reasonably prudently incurred costs it would anticipate would go into its cost of service. And that would be for the Board to determine the prudency of those at such time as it rules on the cost of service of the applicant.

The only other thing we have now, Mr. Chair, is just the question on the costs and to the approach. As Mr. Zed said, we really don't think -- we had made the comment about the necessity for evidence. Again, that was if there wasn't the time to comment.

I believe that the Board had said there would be a time for a written comment. We would certainly be agreeable that the parties could all make written submissions. Miss Abouchar could do so. We could do so. Others who are interested could do so by May 12th. We

would suggest that would be an appropriate date. And then the parties could argue that matter on May 19th. That would give the parties -- although we would be in our construction hearing, we would have someone looking at it and they could review that.

CHAIRMAN: The fact of the matter, there was a time three weeks ago that I thought we will probably get through that construction hearing in two or three days. But then all of a sudden there is doubts cast on that. And nobody can predict accurately. And that's the difficulty with that whole thing.

But I think, subject to what my fellow commissioners have to say about it, that is the approach we will attempt to take. That if the construction hearing goes over into the 19th, then we will just have to reschedule it for another day if that's the way we decide to go.

MR. MACDOUGALL: And I certainly understand that, Mr. Chair. When you said the 19th I took it that you were assuming hopefully, as was I, that the 18th will end the construction proceeding.

Our understanding, I would think that if Mr. Blue and Mr. Barnett come through, that may knock some time off. We are -- from the parties we have heard we haven't expected a lot of evidence from other parties, although there might be a lot of cross-examination.

MR. CHAIRMAN: Mmmm.

MR. MACDOUGALL: So we would be hopeful on that as well. But we still think it would be appropriate then for people to put in their written submissions by the 12th. If the 19th is then available on the day we can -- we can speak to those. And otherwise, I guess the Board could move it to another day. But that would be -- that would be our submission. Written submissions followed by argument after people had had the chance to see those.

MR. CHAIRMAN: Mmmm.

MR. MACDOUGALL: Mr. Chair, that's all of our comments. Except on a personal note I would like to thank the Chair, and the Board, and the Board staff for the way you have conducted this hearing. And I know I'm going to be in front of you a lot more coming up, so I look forward to that as well.

MR. STEWART: Never hurts to be nice.

MR. MACDOUGALL: That was said with the greatest of sincerity, Mr. Chair.

MS. ZAUHAR: We hope you like us too.

MR. CHAIRMAN: Yes. I have been remiss in that I haven't turned to my fellow commissioners and found out if they had any questions of any counsel at all. And you have missed therefore your chance of Mr. Blue. But do the Commissioners have any questions at all?

MR. LAROCQUE: No.

MR. LUTES: No.

MR. RICHARDSON: No, I don't.

MS. ZAUHAR: No.

MR. STEWART: Excuse me, Mr. Chairman, I just have one question. And I didn't speak to the cost issue and I don't have anything else to add. But if there is a suggestion that we are going to make some submission by the 12th and maybe result -- I just want some clarification on what it is. Because it seems to me there are two issues.

One is, you know, the whole when might you be entitled to cost and what rules would govern that sort of generically. And then if someone is seeking cost in this hearing as the Union of New Brunswick Indians, you know, what costs? Should they get costs and what should they be. There seems to be two sort of separate issues there. And I just wondered are we going to be dealing with both of those or one of those or --

MR. CHAIRMAN: I don't have any idea.

MR. STEWART: Yes.

MR. MACDOUGALL: Mr. Chair, I would reiterate. I agree with Mr. Stewart. I am remiss in saying that. I think the applicant's position if it happened we would probably make some generic comments on the process and then also wait to

see what Miss Abouchar put forward. And then argue with respect to her bill of costs if that was necessary. But certainly --

MR. CHAIRMAN: I gather --

MR. MACDOUGALL: -- we would think general comments would be necessary.

MR. CHAIRMAN: Yes, I guess that's where I would be coming from too.

Well I want to thank counsel, including those who have left, for the way they have performed during this hearing. And the Board appreciates it because you have been courteous and we have gotten through a pile of information. I know -- oh, Mr. Zed?

MR. ZED: Just one issue, Mr. Chairman. I am not going to be -- I am going to be involved in Nova Scotia marketers hearings on the 19th, and that doesn't present very much of a problem. But I'm wondering if the Board's secretary or someone could advise say on the 18th whether or not the oral argument was going to go through, go ahead? Would that be unreasonable?

MR. CHAIRMAN: No.

MR. ZED: We will certainly check but --

MR. CHAIRMAN: Yes. No, no. That's fine.

MR. ZED: Okay.

MR. CHAIRMAN: Okay. That's no problem at all. You cut me

off in mid sentence there.

MR. ZED: Sorry about that. I don't respect you any less than Mr. MacDougall.

MR. CHAIRMAN: No, that's all right. You were quietly raising your finger.

MR. LUTES: At Mr. Zed's age he must get it off his chest quickly. It may be gone.

CHAIRMAN: You see, it's now gone. No, no. What I was going to say is that it is not a simple straight-forward decision, as I know everybody in this room appreciates.

The second thing is this is this is an officially bilingual province and our written decisions are in both official languages. You can rest assured that we will do all that we possibly can to expedite the process. But I can tell you that we will attempt to do a thorough job when we do do it as well. Anyway, thank you very much.

MR. MACDOUGALL: Thank you, Mr. Chair.

(Adjourned)