New Brunswick Board of Commissioners of Public Utilities

Hearing May 9th, 2000

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Chairman: David C. Nicholson, Q.C.

Commissioner: Monika Zauhar

Commissioner: Robert Richardson

Commissioner: R. J. Lutes

Commissioner: Leonard Larocque

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CHAIRMAN: Any preliminary matters?

MR. MACDOUGALL: No, Mr. Chairman.

CHAIRMAN: All right. Mr. Blue?

MR. BLUE: With the Board's permission, could I question from here, sir? I just felt sorry for Mr. Maclure yesterday, turning his head to the right so much. He looked uncomfortable.

CHAIRMAN: Well, Mr. Harrington was dipping to the left too. And that bothered me. But they are in charge of their own mikes.

CROSS-EXAMINATION BY MR. BLUE:

Q.221 - Mr. Harrington, let's start by looking at exhibit I, page 2 and 3 of 13. Do you have that, sir?

MR. HARRINGTON: I do.

\Q.222 - Now at the paragraph that commences at the bottom of page 2 going over to the top of page 3, you say that Enbridge was faced with two options, the firm service agreement that would have no quantities but an aid to construct, and the firm service agreement that would have no aid to construct but have the payment commitments, is that correct?

MR. HARRINGTON: That's correct.

Q.223 - Now do we agree that Enbridge had a third option, constructing the facilities by itself?

MR. HARRINGTON: No. We don't agree. We did have the option to construct two of the facilities ourselves, that being the lateral facilities in Moncton and St. George.

However, custody and transfer facilities, the pipeline's position was that we were not permitted to construct those facilities. So we couldn't have.

Q.224 - But you could have constructed the noncustody transfer facilities yourself?

MR. HARRINGTON: That's correct.

Q.225 - And you have given us some information about the cost of doing that in exhibit J, schedule 1, is that correct?

MR. HARRINGTON: Yes.

Q.226 - Now could you also get out exhibit I, schedule 5 which is the schedule with the four colors on it?

MR. HARRINGTON: I have that.

Q.227 - Okay. If you look at the deferral account balance graph which is page 2 of 2 of schedule -- exhibit J, schedule I and schedule -- exhibit I, schedule 5, can we agree that both schedules show the effect of the required facility options on Enbridge's deferral account balances?

MR. HARRINGTON: That's correct.

Q.228 - And you have chosen the Maritimes and Northeast firm service agreement for 11,785 gigajoules per year because you believe that that is the option that would increase the deferral balance the least, is that fair?

MR. HARRINGTON: That's a correct assessment.

Q.229 - Okay. Now if we compare the two graphs, am I correct that the lower line on exhibit J, schedule I is the same line as the yellow line on exhibit I, schedule 5?

MR. HARRINGTON: That's correct.

Q.230 - Okay. Am I also correct that the higher diamond line on exhibit J, schedule I does not appear on exhibit I, schedule 5?

MR. HARRINGTON: That is correct.

Q.231 - But it could be, couldn't it?

MR. HARRINGTON: Certainly.

Q.232 - And if it was, am I correct that it would lie on exhibit 1, schedule 5 above the yellow line but below the purple line?

MR. HARRINGTON: For the most part, yes.

Q.233 - So if Enbridge could only resell something less than 50 percent of its capacity, it would be just as well off, wouldn't it, if it built its own laterals?

MR. HARRINGTON: I don't -- it would be subject to check. But I believe the number would be 32 percent of our capacity.

Q.234 - Thank you. Now just so that I understand the legend on exhibit I, schedule 5, you see you have 75 percent of FSA value recovered, 25 percent of FSA value recovered, 18 percent of FSA value recovered and 50 percent of FSA value recovered?

MR. HARRINGTON: That's correct.

Q.235 - Now would it be equivalent -- could you recover 75 percent of FSA value by discounting your capacity 25 percent and selling it all?

MR. HARRINGTON: That's correct.

Q.236 - And similarly if you only recovered 18 percent of your FSA value recovered, you would be discounting it by 82 percent and selling it all?

MR. HARRINGTON: That's correct.

Q.237 - So the value recovery would be a function of (a) the discount and (b) the amount you sell, is that fair?

MR. HARRINGTON: That's correct.

Q.238 - Now sir, can you just describe to me what market circumstances would result in Enbridge being able to sell say only -- being able to recover only 32 percent of its FSA value?

MR. HARRINGTON: I think as a start I would say that this would put into question the economics of Maritimes and Northeast Pipeline. They have built that pipeline. Their backers have capitalized that particular project on the assumption that its transportation has value. And we would assume that that value is somewhere much greater than 32 percent of the value of the transportation.

So if we found ourselves over the long-term being only able to recovery 32 percent of those costs we would be surprised.

Q.239 - Mr. Harrington, let's just pause there. Maritimes and Northeast Pipeline has a pipeline utilization agreement guaranteeing it a throughput of 440,000 MMBQ per year for 20 years?

MR. HARRINGTON: That's correct.

Q.240 - That doesn't mean that that much gas will flow through it. That means that they are guaranteed taker pay for 440,000 MMBQ for 20 years?

MR. HARRINGTON: The underpinning contracts, which is what I believe you are referring to, that is correct.

Q.241 - All right. So you could have Maritimes and Northeast Pipeline being economic but markets not developing in New Brunswick sufficient, or elsewhere sufficient, to recover

32 percent of your FSA value, is that fair?

MR. HARRINGTON: If you don't mind if you could just restate the question.

Q.242 - Yes. Without introducing the concept of Maritimes and Northeast Pipelines being uneconomic, what market circumstances would cause you only to be able to recover 32 percent of the FSA value?

MR. FORGET: Mr. Chairman, the value of the capacity of the upstream transportation is closely tied to the market development and depending on the way the market will develop, where the market will develop, the value will vary from time to time.

Are we addressing a seasonal need? Are we addressing an annual need? Or are we addressing a mid term or long term need? All those elements will influence the value of how much we can put into the market and what the value would be.

So there is several elements to address when we are taking into account how should we market the capacity. It's having a good understanding of the market, good understanding of the players, where the gas is flowing, what we would expect the market to develop in mid term, medium term, and all those elements will have to take -- be taken into account before addressing the market.

And all those elements taken into account will conclude into a price variation.

Q.243 - Mr. Forget, Mr. Harrington, I am trying to give you the opportunity to assure me that recovering 32 percent of FSA value in your opinion is easily done. I don't hear you saying that. I hear you saying that the market is uncertain, you have to look at the long-term, the short-term, how it will develop?

MR. FORGET: As I say yesterday, addressing the exhibit K, schedule 4, we expect that the market will develop. We expect that the value will be much higher than 30 percent, but 30 percent, we feel that it's an easy target to achieve.

MR. HARRINGTON: And in addition I think you will find in our evidence, exhibit I, that we feel that over the long-term recovering 60 to 75 percent of that value will be a target which is achievable.

Q.244 - Let's turn then to focus in a bit more closely on these facilities, and perhaps as a starting point you could get out exhibit J, schedule 9. This is a response to a Board staff IR.

MR. HARRINGTON: I am there.

Q.245 - The first thing I want to look at is the cost of the four transfer stations. Mr. Harrington, if you look at the cost of the four stations in Saint John they appear to be approximately 686,000 apiece if you divide the 2.7

million by 4?

MR. HARRINGTON: That's correct.

Q.246 - And the St. George station I believe is about $585,000?

MR. HARRINGTON: That's correct.

Q.247 - Okay. But if you look at the Moncton station, in the note, it's about 1,569,000 and the Fredericton station is 1,357,000, both the Moncton and the Fredericton station being a lot more expensive than the four Saint John stations and the St. George station?

MR. HARRINGTON: That's correct. And the reason that there is a difference, and in some cases there is a substantial difference between those costs, is because of what those facilities will provide, and the size of those facilities.

For instance, any one of the four stations in Saint John is relatively small in terms of a maximum throughput compared to the one facility which will provide the ongoing needs for the City of Moncton.

As well, in the City of Moncton and using Fredericton as an example, those facilities will provide, where necessary, and they will provide odorization, pressure regulation, heating, if required, as well as the tap and the metering facilities that both Maritimes and Northeast and Enbridge Gas New Brunswick will require.

Whereas in Saint John the gas will be odorized before it comes into the City of Saint John by Maritimes and Northeast, and so those facilities are relatively more simple, including the tap, metering and just pressure regulation without the requirement for odorization.

Q.248 - Continuing to look at exhibit J, schedule 9, the cost of the Moncton lateral to be built by Maritimes and Northeast is about four-and-a-quarter million dollars, is that fair? That would be the five eight twenty minus the fifteen sixty-nine that we talked about in the note?

MR. HARRINGTON: That would be correct.

Q.249 - And the cost of the St. George lateral to be built by Maritimes and Northeast is about 1.7 million?

MR. HARRINGTON: That is correct.

Q.250 - Okay. But we asked you what it would cost Enbridge to build those facilities, and you gave us information in your response to NB interrogatory 1 at exhibit L, schedule 1.

MR. HARRINGTON: That's correct.

Q.251 - And you told us there that the St. George lateral could be built by Enbridge for $930,000?

MR. HARRINGTON: Yes, I believe I indicated that. I haven't gotten to it yet but I believe I indicated the Moncton piece would be $1.7 million. And I -- I don't have my response in front of me --

Q.252 - Yes.

MR. HARRINGTON: -- at this second, but what I think I indicated there was that the Enbridge estimate was for direct capital. And when I say direct capital I mean it includes just the materials and the labour that would be directly required to install that particular facility, whereas Maritimes and Northeast in constructing their estimates, my understanding is that they have included contingencies and overheads in putting forward those estimates.

So they are different estimates.

Q.253 - But some contingency and some overhead, Mr. Harrington, in the case of St. George, because your estimate is 41 percent lower than Maritimes' and it's 25 percent lower for the St. George lateral, right?

MR. HARRINGTON: That's correct.

Q.254 - Moncton lateral is about 60 percent lower?

MR. HARRINGTON: Subject to check. I haven't done the division but --

Q.255 - Yes. And, Mr. Harrington, why don't we have a specific analysis that compares the cost of Enbridge building these laterals with the cost of Maritimes building these laterals on the same basis so that we can be satisfied that you are right, because on the numbers that you give us it appears that Enbridge can build these laterals a lot cheaper than what you are paying Maritimes for them?

MR. HARRINGTON: Well, just to reclarify, in the approach that we are recommending here, we are presenting the opportunity of -- whether it's Enbridge or whether it's Maritimes and Northeast building facilities, to avoid completely the capital cost of those facilities, or at least to the extent that we can recover the cost of the FSA value.

So if we could recover 100 percent of the cost of those facilities -- sorry -- 100 percent of the cost of the transportation costs, ratepayers would not be paying for those facilities whether they are built by us or whether they are built by Maritimes and Northeast.

And what the analysis that has been done shows is that in either case, as long as we can recover a certain amount of that contract, and in both cases we believe it's a reasonable amount, the 18 percent and the 32 percent, targets that we think will be easily exceeded, customers will be better off.

Q.256 - Yes. I understand that point. But the point I am putting to you is if you could build them cheaper than Maritimes the top line on exhibit 1, schedule 5, would be lower and the exposure of customers would be less.

It wouldn't be a relative comparison, it would be they would be absolutely better off. Because you are not going to recover 100 percent of FSA value, you are forecasting 65 to 70 percent, isn't that correct?

MR. MAROIS: Well I think you are right and I think we have already addressed that in the sense that when you look at exhibit I, schedule 5, when you take into account the capital contribution or the contribution in aid of construction we would have to pay to Maritimes and Northeast as the reference point, we say as long as we recover only 18 percent of the capacity we are even.

But if we were to build ourselves since that would be a relatively less costly, we would have to recover 32 percent --

Q.257 - Yes.

MR. MAROIS: -- of the capacity. So if the reference point is building it ourselves, you are correct in the sense that the capital cost would be lower. But in terms of the relative importance of the minimum amount we would have to recover in terms of the FSA it's still relatively small at 32 percent.

So the principle is the same, it's just the absolute numbers would change, you are correct.

Q.258 - Could we have a look at your response to Irving Oil IR number 2, exhibit K, schedule 2.

And in question 1 Irving asked you to provide a detailed work paper showing the calculations and analysis explaining how EGNB concluded that a maximum daily transportation quantity of 11,785 gigajoules was the contract amount required for 20 years to justify the facilities under M&P's tariff, and your answer to 1 was, this work was performed by the pipeline and is not in the possession of EGNB. The facilities and costs will be subject to review by the National Energy Board at an upcoming proceeding.

MR. HARRINGTON: That's correct.

Q.259 - Mr. Harrington, are you telling us that Enbridge did not test the numbers received from Maritimes and Northeast to see if the volumes made sense based on its knowledge of M & NE's operating and owning costs? You just accepted them?

MR. HARRINGTON: I guess a couple of points. Enbridge Gas New Brunswick tested the reasonableness of those numbers. However, we are not in possession of all the elements that go into those particular calculations.

Further, our operations group is in constant contact with Maritimes and Northeast's operation people to make sure that costs are as reasonable as possible that are going into the facilities, that they are not being overdesigned, that costs from a contingent standpoint aren't being included which are not necessary.

But that being said, my objective in this analysis was to find the most economical approach, and the 11,785 number we felt after considering the options is the most economical approach to take.

Q.260 - But, Mr. Harrington, under article 17 of Maritimes' tariff they do the analysis in a certain -- in a way that is regulated by the Board.

Did you not ask for a copy of their analysis and do you not have a copy of that in Enbridge's possession?

MR. HARRINGTON: The answer is no, we do not have a copy in our possession.

Q.261 - Could we go next to exhibit L, schedule 2, and in question B the Province asked you this, "If there were no other marketers and existing Maritimes -- M & NP shippers, e.g., Irving Oil who have their own FSA's with M & NP, does Enbridge believe that the lines depicted in exhibit 1, schedule 5, page 1 of 1, would still be accurate and that 65 to 70 percent of the capacity cost would be recoverable?", and your answer is, yes, because the company has indicated in other responses upstream shippers do not have capacity which allows them to assess EGNB's primary delivery points on a firm basis. This also presupposes the shippers have closely matched this capacity with their market requirements and therefore have limited excess capacity to divert to the EGNB market.

Do you see that?

MR. HARRINGTON: Yes.

Q.262 - But in the question we were giving you a forced choice. We were saying if Irving turns out to be the only shipper, there are no other marketers than Irving, who has it's existing FSA, would those lines be the same? That's what we wanted an answer to. Could you answer that question for us?

I know you think there is going to be other shippers, but if there isn't would you be able to -- would you be able to recover 65 to 70 percent of the FSA value? And we are just trying to assess the risks here.

MR. FORGET: Do you refer to Irving being the only marketer or Irving being the only shipper?

Q.263 - Irving being the only marketer.

MR. FORGET: Okay.

MR. MACLURE: Mr. Blue, I guess that -- sorry about the delay. I think that trying to put back our minds into the concept of there being only one marketer and there being only one marketer that has existing firm service agreements is a difficult concept for us to completely come to grips with, and it would certainly seem that it would generate far more fundamental problems in the marketplace than simply our ability to recover 60 to 70 percent of the FSA.

That being said --

Q.264 - I only use it because that's the situation we have today.

MR. MACLURE: Well today I guess we have no marketers but --

Q.265 - Well we have very hopeful people here sitting behind me.

MR. MACLURE: Yes. And -- yes, and there are other people that we are hopeful will participate, but anyway, let's -- getting on a little bit.

Do we think that it would still be accurate that with only a single marketer we would be able to recover 65 to 70 percent of the capacity costs?

I -- if the -- if the market were to proceed as we continue to visualize it and the market were to grow and there was still only one marketer and that marketer was allowed to proceed in the marketplace, the assumption would be to my way of thinking we would be able to -- whether the 65 or 75 percent was completely achievable would -- is to some extent a little bit -- it might be more at risk, I guess, but I am not certain that it would be completely at risk because the capacity that Irving Oil has already contracted for is to a large extent capacity that they have contracted for for single end use franchise locations, and as a consequence of that there is a market there for it.

Now they have indicated in the past that some of that capacity would be able to supply the residential, commercial and industrial marketplace within New Brunswick, but whether over the full 20 year period, if they were the only marketer over that full period of time, that they would need to -- my belief would be that at some point in time they would need to go out and contract for additional firm service or get additional capacity, as opposed to completely deleting and supplying less and less to the single end use franchises.

As a consequence of that, I believe that our capacity would continue to have value but it would have value to them because it would make more sense for a company like Irving Oil to come to us to buy it at some kind of a market price where we could sell it elsewhere as opposed to going back and buying it full toll from the pipeline.

So it would still have value, whether -- I guess it's difficult for me to say whether that value would continue to be 65 to 70 percent. I would say that maybe it's a little bit more at risk.

MR. HARRINGTON: And just to follow up on that, if I could ask you to look at exhibit I, schedule 4, I believe, trying to recall the numbers that -- in one of -- I believe it was in Irving's evidence that they indicated they had contracts for 50,000 gigajoules per day, in and around there, and if you refer to that curve, even if they took no gas at their single end use franchise they would be able to meet the market requirements up to the year 2010. Now I don't think that they would be interested in not using any gas at their single end use franchises. So I think that --

Q.266 - Thank you. That is helpful and I think we all hope that there will be more marketers.

MR. MAROIS: And just maybe to conclude that point -- I don't remember the exact IR number. If we look back into the evidence that was submitted in the first phase of this rate case, and one of the questions we posed to Irving Oil, they indicated that they had the capacity, if my memory serves me right, to double the need for gas in their plant.

So if that does materialize just there, there is an evident need for additional capacity.

Q.267 - Still on the same IR response, I would like to go to question A. This is exhibit L, schedule 2, page 1. And we had asked you there what toll Maritimes used when it determined the 11,785 gigajoule volume need. And you told us that the toll they used was a test toll of 60 cents per MMBTU?

MR. HARRINGTON: That's correct.

Q.268 - And that by using this test toll rather than the actual toll, the pipeline is given some assurance that adding incremental facilities will not impact the competitiveness of the system?

MR. HARRINGTON: That's correct.

Q.269 - And the 60 cent test toll of course is required by Maritimes' tariff. So that is the one that they were entitled to use in doing the analysis, is that fair?

MR. HARRINGTON: That is fair.

Q.270 - Okay. But Maritimes applied for a postage stamp toll. I believe it was about 74 cents per MMBTU?

MR. HARRINGTON: That is correct.

Q.271 - So that is about -- results in Enbridge paying about 23.3 percent more per MMBTU than the number in which Maritime did its analysis.

That is sort of the markup between the test toll and the actual toll?

MR. HARRINGTON: Subject to checking the map, I would agree.

Q.272 - And if Maritimes had done the analysis using the test toll -- or not the actual toll, the 74 cent applied for toll, presumably the volume requirements would be 23 percent less approximately?

MR. HARRINGTON: That would be correct.

Q.273 - So if you had a lower quantity, that would lower the lines presumably on exhibit I, schedule 5, is that correct?

MR. HARRINGTON: That would be correct.

Q.274 - So by having Maritimes construct these facilities, you are paying about 23 percent for no benefit. This just goes right into Maritimes' pocket, so to speak? That is an inefficiency in your way of proceeding, is that fair?

MR. HARRINGTON: I wouldn't say it goes into Maritimes and Northeast's pocket. I would say that it would go to the benefit of all shippers on their system including the pipeline.

Q.275 - Yes. But would you agree with me that you could see it as an inefficiency in the way that you -- in the way that you are going about having these facilities developed?

MR. HARRINGTON: That is the rules of the game as per Maritimes and Northeast's tariff. And I guess, like it or not, that was the methodology that the pipeline is required to use under the N.B. approved tariff.

Q.276 - Okay. Well, you haven't rejected my term "inefficiency". So let me ask you just to elaborate on what you said yesterday.

Do you have specific plans to challenge Maritimes' use of the test toll in the upcoming RH1-2000 proceeding in its construction of these small connecting facilities?

MR. HARRINGTON: Enbridge Gas New Brunswick has every plan to work with the pipeline trying to make a more flexible tariff so that acquisition of facilities in the future is much more straightforward and we have more options available to us.

However, at this point in time we don't think that it would be in Enbridge Gas New Brunswick's or its future ratepayers' benefit to challenge the test toll at this point in time for these specific facilities. Because we believe it would be very likely that we would not get the facilities in the time frame that we require them, if we did.

Q.277 - Let's turn to Irving Oil's evidence, page 2.

MR. HARRINGTON: I'm there.

Q.278 - In question 7 and the answer 7, Irving Oil expresses concern about the possible magnitude of the discounts that Enbridge might offer, is that correct?

MR. HARRINGTON: That is correct.

Q.279 - And you and I have talked about discounts could be, on the numbers you are showing here, anywhere between -- up from zero to 75 percent?

MR. HARRINGTON: That's correct.

Q.280 - Are you prepared to give the Board any assurance on limits on discounts, lower limits? Or do you want it left completely open to your discretion?

MR. HARRINGTON: I think what we have been putting forward with regard to our approach to marketing this capacity is that we require flexibility to deal with the market needs.

I think we all understand that both Maritimes and Northeast Pipeline's market as well as our own market are very immature and are going to be changing over time.

I think that what we are requesting is the flexibility to be able to meet those needs to maximize our cost recovery as we go forward. So we would like complete flexibility in dealing with the marketing of that capacity.

MR. MACLURE: Mr. Blue, just one other point, just so that you understand the concept of a floor or a lower level. And let's assume for one second that the Board were to feel that maybe a floor of an 82 percent discount, which gets us down to the 18 percent recovery was an appropriate maximum discount that we should be allowed.

And Enbridge Gas New Brunswick has marketed in whatever capacity it is able to, and it is still holding on, as Mr. Harrington had some examples of yesterday, and we still have 7,000 Gj's.

And somebody comes to us and says well, I will take 3,000 of those Gj's for four months but I want an 85 percent discount.

And if we have a floor that says we can't sell it for any less than -- any more than 82 -- then we will sit and we will continue to miss the opportunity of being able to at least recover 15 percent of that to the benefit of the ratepayer.

Q.281 - Mr. Maclure, I understand that logic completely.

MR. MACLURE: Yes.

Q.282 - And I guess the reason I'm asking the question is on the one hand you are saying to the Board, over time we will recover 65 to 70 percent of the cost. That is over the 20-year period?

MR. MACLURE: Mmmm.

Q.283 - On the other you are saying, put no brakes on us on what we can do in a particular deal.

And it seems to me that those are just a little bit -- I understand why you are saying no brakes. And I understand the wisdom of that. But they sound a little bit inconsistent.

MR. MAROIS: They are not really. Because what you have to realize is that sometimes you will assign capacity for a relatively short period of time. So it is not because you assign it at 85 percent discount for four months.

The intention that -- the intention will be to give that level of discount over time, over a longer period. It is really -- some of this assignment will be for a relatively short period of time.

Q.284 - Could we turn to page 3 of the Irving Oil evidence. And in question 11 and question 13, Irving Oil raises the affiliate deal point, in other words that one of your affiliates may buy secondary capacity at a preferred rate.

And you said for the same -- on the same logic that Mr. Maclure has just given me, that that might be in the best interest of all consumers. And I understand that.

But would Enbridge have any trouble agreeing to sell secondary capacity to a marketing affiliate through an open process, such as an RFP process?

MR. HARRINGTON: No. We would have no problem.

Q.285 - All right.

MR. HARRINGTON: However, we don't want to be limited to that being the only process that we utilize.

Q.286 - I wasn't suggesting that. I was just saying when it is an affiliated transaction it might be equivalent to the N.E.B.'s old first offer role that -- or an affiliate has offered to buy at this capacity, does anyone else want to make us a better offer?

MR. HARRINGTON: We would be open to that process.

Q.287 - To your knowledge are there any other pipelines in Canada where secondary capacity is being sold at discounts of 35 to 40 percent, at the present time, today?

MR. FORGET: As I said before, there is a secondary market out there through Canadian Pipeline. The value of the capacity is moving each and every day according to the market need to market requirement.

And from time to time you may see capacity being very low and other -- from time to time being higher than the tolls. So it all depends on the pipeline being full or not.

MR. MACLURE: Mr. Blue, I think you asked about a specific pipeline. And certain TransCanada Pipelines has in fact at different points in time capacity on it on the secondary market as traded in those kinds of ranges, at points in time.

Q.288 - All right. And how long do the deals at 35 to 40 percent last? Are they for a few months? Are they for some period of years?

Can you -- I'm just trying to get on the record what you are proposing is not new.

MR. MACLURE: They would -- typically in my experience at Enbridge Consumers Gas, where a lot of the pipeline capacity on TransCanada Pipeline is actually assigned to the marketing community and people that are delivering into the Enbridge Consumers Gas franchise area, such assignments would be for periods of -- one-year periods, sometimes two-year periods.

My experience has typically been that even the assignments for a longer term, the assignees are not often willing to play the market to the same extent, that they are a little bit concerned about commitments for longer term at certain prices.

They could subassign and -- but if the price continues to go down, they may have lost an opportunity.

Q.289 - Yes. But in terms of the discounts that you are thinking of to resell this capacity and recover your value, I judge that you are open to long-term contracts.

If somebody -- if some shipper came along and said, we will buy 50 percent of your capacity for 20 years if you give us a discount of whatever, you would be open to that sort of a deal?

MR. MACLURE: We would be open to it. I think we could certainly scrutinize it very closely that that deal was in the best interest of the ratepayer. But, yes, we would be open to it.

My sense might be that even at that deal there might be certain shippers that still, on a 20-year -- because a 20-year -- a 20-year deal would be a permanent assignment of that capacity, which would mean that any recall from them back to us would disappear, so that they are permanently on the hook for that for the full 20 years.

Q.290 - A 15-year deal?

MR. MACLURE: Yes.

Q.291 - A 10-year deal? Will you look at those sorts of deals?

MR. MACLURE: We certainly would.

Q.292 - All right. Thank you. Let's talk to -- about the wholesale service. Mr. Maclure, as I understand it, the rates that Enbridge is proposing for its transportation service with an E-trace class are postage stamp rates across the province?

MR. MACLURE: Yes, they are.

Q.293 - And that means that regardless of where one lives in Enbridge's service area, if one is in a rate class one pays the same rate for a distribution service?

MR. MACLURE: Yes. If you are a residential customer, no matter where you were located in the province, you are going to pay the same amount for residential supply.

Q.294 - Okay. Now in your evidence yesterday and in your prefiled statement, you described the wholesale rate as a rate that a marketer would charge to a group of customers. And would that group of customers all be at the same rate class?

MR. MACLURE: They would be -- your opening statement was that the marketers would charge -- that we would charge the marketer a rate for a block of customers that are combined. And they would all -- so there would be one rate.

The volumes would be accumulated for that particular -- for those customers. And there would be one rate that would apply to all those customers.

Q.295 - And as you envisage the service, the marketer gets the bill from Enbridge. And then it turns around and sends its bill to the gas consumers, is that correct?

MR. MACLURE: Yes. It would disaggregate the single bill that it sent to the marketer for the wholesale service, disaggregate that bill and have predetermined or prenegotiated with those end use customers whatever price it had negotiated for a combination of the delivery service and the commodity service.

Q.296 - This would be what we would call a bundled rate for everything?

MR. MACLURE: Yes. I would assume that they would bundle it all back together again.

Q.297 - All right. Now bear in mind that you are talking about the marketer would be -- in the marketers group there would be customers from different rate classes. I think you said that?

MR. MACLURE: Yes. Customers of different types, I guess. Because I just -- because they are only in a rate class when they are actually on one of our other rates. So -- but customers of different characteristics.

Q.298 - Now yesterday you mentioned diversity among customer classes. And I believe that that is a term of art. And could you explain that to us?

MR. MACLURE: Mmmm. The concept of diversity in the gas distribution business is a concept where you recognize that basically the cost that a customer imposes on the distribution system is largely a cost either that relates to it being simply a customer, such as a billing cost. And it doesn't matter whether the -- it is directly related to the fact that you are a customer.

The other main cost item is a capacity-related cost. And it is related to the amount of gas that a customer would consume on a peak day. But those customers do not all -- that does not happen simultaneously.

So that the sum of the whole -- the sum of the parts doesn't always equal the whole. And that concept of building systems or contracting, when you recognize that all of the peaks don't run together, is the concept of diversity.

So that you are not -- a distributor doesn't have to design a system in order to be able to supply every customer's peak day simultaneously.

So if you have coupled an industrial customer with a number of residential customers, their demands do not coincide, so that you can optimize your system.

When you take that back to the concept of a wholesale rate, that diversity benefit has been pulled back to the block of customers under contract instead of being reserved for the system as a whole.

Q.299 - Thank you. So let me be clear about this. If you designed a wholesale rate, the rate would be less for distribution per customer than it would be if you simply took the number of customers and multiplied it by their applicable rate. Is that your understanding of a wholesale rate?

MR. MACLURE: That would be my understanding of a wholesale rate. I guess that the only caveat I would have of course is by not having actually gone ahead through some kind of design, that there would be different ways of doing it.

But my view would be that that -- in the purest form of what I consider to be a wholesale rate, that is what would happen.

Q.300 - So would the wholesale -- let me -- for understanding, did you say that the wholesale rate would appropriate diversity to the people within the wholesale rate class that more properly belonged to the system as a whole?

MR. MACLURE: That's my belief.

Q.301 - And that results from giving them a different rate than simply the rate for their applicable rate class?

MR. MACLURE: It's the consequence of parceling out a block of customers and having a single rate for that block.

Q.302 - So you could have particular customers, end use customers that outside the wholesale group would be in a particular rate class getting a different rate for transportation service than the rate class?

MR. MACLURE: To my way of thinking there is no question that they would get a different rate simply because the rate within the wholesale rate would be a rate that is -- it's a blend. So let's use a slight --

Q.303 - I am just focusing on the transportation -- on the distribution service now.

MR. MACLURE: Yes, and I realize that you are, so I think that -- but I think maybe to be helpful to the Board just the one concept in a very simplistic term would be that let's say you have three rate classes outside of the end user rates, and you have got residential, commercial and industrial as a simplistic example.

And residential distribution is charged at 20 cents a cubic meter. For commercial distribution service it is charged at 15 cents a cubic meter and industrial distribution service it is charged at 10 cents a cubic meter.

Well in the wholesale rate you might end up with something that is -- for all the block of customers, something that is 15 cents a cubic meter. So -- but that is 15 cents a cubic meter that is a distribution service that is applicable to all the customers together with no identification of how much is the apportionment for residential customers, how much for the commercial customers that are part of that rate, or how much for the industrial customers.

That apportionment becomes entirely the purview of the gas marketer at that stage because they are saying my average cost is 15 cents, I could charge the residential customer 22, the industrial customer 2 and the commercial customer 19, or I could charge the residential customer 18, the commercial customer 25 and the industrial customer something else.

So you are right, there is a disconnect between the end user rates and what might be charged to each.

Q.304 - So do I conclude from that that the marketer's rate then would be inconsistent with postage stamp rates?

MR. MACLURE: Oh yes.

MR. MAROIS: And I guess just to add to that, I guess everything else being equal, if a group of customers pay less distribution tolls through the wholesale rate the other distribution customers would pay relatively higher.

And that's where I think there is a potential of creating a non-level playing field for marketers, because if you have the two type of rates, if some marketers use the wholesale rates they would have I guess an advantage in terms of the distribution component that the other marketers would not have.

So that is one of the fundamental concerns there. If you have a wholesale rate for everybody, then everybody is on a level playing field. But if not, you have this potential for an unlevel playing field.

Q.305 - Do you believe, Mr. Maclure, that the customer's bill should show the cost of each component of its service separately?

MR. MACLURE: I think so.

Q.306 - And why is that?

MR. MACLURE: I think that from a customer knowledge point of view that they want to know what portion of the rate is regulated by the public utility board. They want to be able to be assured that that part of their cost is being properly translated back to them.

Now I guess when you come down to the other components, if you get into transportation and commodity, that a delivered cost of gas may be slightly different, but I think the part that they are most interested is the part that is regulated by this Board.

Q.307 - How could a bundled bill let customers in New Brunswick know how much they are paying for distribution service, a bundled bill from a marketer?

MR. MACLURE: I don't believe that it could.

Q.308 - I just want to go to page 12 and 13 of your testimony, Mr. Maclure.

MR. MACLURE: I have that.

Q.309 - And this is where you are discussing -- you are asking the Board to -- I'm sorry -- I am in the wrong reference. Let's go to exhibit K, schedule 9.

MR. MACLURE: Yes, I have that.

Q.310 - And here you are talking about the disadvantages of disconnection of Enbridge from the customer --

MR. MACLURE: Yes.

Q.311 - -- and you give a list in your response to 1. Could you -- what are the safety concerns that you are concerned about in disconnect?

MR. MACLURE: Well in the first instance I guess that early on we had concerns about the ability to communicate with the customer over safety issues and therefore by not actually being the sender-out of the bill, that we would have some concerns over our ability to communicate effectively with customers. So that --

Q.312 - This is pertaining to information --

MR. MACLURE: This is information exchange with respect to safety. The ongoing issue is that certainly in the -- for the first instance when a customer first signs up, especially in the greenfield environment, we will know who the customer is because we are going to have to go onto the property and install the service line and the meter. So we will know who the customer is.

However, on an ongoing basis if that customer moves and you continue to have a new customer that moves in, and for whatever reason in this marketplace they continue to take service from the wholesaler, there is no specific need for Enbridge to know that there has been a change.

That change is really an interested -- it's between the wholesaler, the marketer and the customer that they have changed. As far as we are concerned we are still delivering gas to an address and that's all it is. We are not delivering gas anymore to a customer, an end user. We are delivering gas simply to an address.

At that stage there is a disconnect. So to the extent that there are safety issues that happen to be causing us to need to communicate on a very fast basis with that customer, if there are issues around -- simply issues around the customers being aware actually that Enbridge is the entity that is delivering the gas to them.

When you are not doing the billing and your name is not necessarily in front of the customer as much, they are not going to be as aware that Enbridge is the one to contact for all these safety concerns.

So there will continue to be a disconnect in those particular -- in those particular areas, which we think is vitally important.

Q.313 - Okay. Mr. Maclure, your 2 and 3 I don't need to get you to explain because I think they speak for themselves.

But 4, system design concerns, what do you -- what concerns do you have there that you haven't already told us about?

MR. MACLURE: Well we put that in because again the concept of a wholesale rate is one in which the wholesaler is contracting for delivery service to end use locations. They are contracting for a block of capacity on the distribution system. Different from a pipeline, the distribution system is all tentacles as opposed to one complete pipeline.

So on a transmission system you contract for transmission capacity basically to one large point that is a single point of delivery.

In this case you are contracting for capacity to a multitude of different points of delivery, and so to the extent that there are changes in terms of the volume the marketer has the ability because of its basically the capacity contract to move the volume around on the distribution system differently than it would if it were a single end -- single point.

So there -- a multiplicity of delivery locations. And if you have got -- so you do have some possible system integrity issues in terms of the system being designed in size in order to accommodate the wholesalers' needs.

Q.314 - Mr. Maclure, in the earlier part of the hearing there was a discussion about there being value in a customer, do you recall that discussion?

MR. MACLURE: Yes, I think so.

Q.315 - Right. I didn't see anywhere in your answer that concept that one of the reasons you want to maintain the connection with your customer is that there is value to Enbridge in the customer.

Would it be fair to add that to the list of reasons why you don't want to disconnect?

MR. MACLURE: Not -- not in the same context. I mean certainly there is value in customers but not in the same context of -- that there would be in a bundled utility. Again we are a delivery business.

There is value -- the value that we have in the customer is the identification of Enbridge as the provider of a service so that the customer knows who they should be dealing with for certain aspects of the delivery service.

But we are not basically selling services. So the value -- the value to -- the value of the customer to Enbridge takes on a somewhat different meaning in the New Brunswick context than it would for example in some of the bundled utilities in other jurisdictions.

MR. BLUE: Thank you, Mr. Chairman, thank you, Panel.

CHAIRMAN: Mr. O'Connell, would you like the Board to take its break now?

MR. O'CONNELL: Yes, please, Mr. Chairman.

CHAIRMAN: Okay. We will do that.

(Recess)

CHAIRMAN: Mr. O'Connell, go ahead.

MR. O'CONNELL: Thank you, Mr. Chairman.

<u>CROSS-EXAMINATION BY MR. O'CONNELL</u>:

Q.316 - Gentlemen, I think you all know me. But perhaps Mr. Forget, you don't. My name is Bill O'Connell. I'm Board counsel. I initially want to start this morning with some questions based on costs.

And if you need to get -- I should have said this before the break. But if you need to get some material to answer these questions, feel free to let me know. And I will give you a minute.

I need to get some numbers with respect to the transfer stations and the laterals both as they existed at the time that Enbridge made its proposal to the Province of New Brunswick and as they exist today and what the changes are and what the reasons for those changes are.

And what I propose to use to help me and perhaps to help you in getting me this information is exhibit J, schedule 9 which is board staff interrogatory number 9 and the response to that.

Now can we start by dealing with the issue of the pipeline refusing to let -- or to contemplate, as I understand it, Enbridge Gas New Brunswick building the transfer stations.

Now was that -- my understanding is that was not always the case, that when Enbridge Gas first made its proposal to the Province, that contemplated Enbridge building the transfer stations?

MR. HARRINGTON: Yes. That's the case. Enbridge always recognized that a portion of the custody transfer facility would be -- would have to be built by the pipeline.

And that would be, just to be clear, the portion that would be the tap into the actual main line or lateral, as the case may be.

Q.317 - You are talking about the pipe between the transfer station and the main line?

MR. HARRINGTON: Yes, the actual tap into the pipeline, a stub of pipe that would --

Q.318 - A stubby pipe?

MR. HARRINGTON: And --

Q.319 - That I understand.

MR. HARRINGTON: -- a metering facility is something that we always considered the pipeline to be required to build.

What we envisioned being permitted to be able to build was the pressure regulation facilities, the odorization facilities and if required heating components of that.

Q.320 - Can you tell me what Enbridge estimated it would cost Enbridge to build those transfer stations, what the number was when you made the proposal to the Province?

MR. HARRINGTON: Just give me a second please.

Q.321 - Certainly.

MR. HARRINGTON: If I could ask everyone to please turn to exhibit I, page 6.

Q.322 - I'm probably the last one. But I'm there.

MR. HARRINGTON: Very good. There is two tables on that particular page. In the second table there is a line. It says station.

In the original proposal -- and I know this is being shown as negative numbers -- but those particular figures are the figures that Enbridge Gas New Brunswick in its original proposal to the government estimated for the cost of those portions of the custody transfer stations.

Q.323 - Okay. So let's go through -- there should be --

MR. HARRINGTON: As an example, Fredericton --

Q.324 - All right.

MR. HARRINGTON: -- our capital estimate at that point in time was $550,000.

Q.325 - And now it is --

MR. HARRINGTON: And now in our situation that figure is zero.

Q.326 - Okay. You mean, that is because Enbridge isn't billing it?

MR. HARRINGTON: That's correct.

Q.327 - But if we go to interrogatory -- Board staff interrogatory number 9, the number there for the Fredericton station is 1.357 million?

MR. HARRINGTON: That is if we chose to make a capital contribution in aid to the pipeline, that is the figure that Enbridge Gas New Brunswick would be paying to Maritimes and Northeast.

Q.328 - Is that not the Maritimes Northeast estimate of what they will have to spend to build that transfer station?

MR. HARRINGTON: That is correct.

Q.329 - So what we are dealing with here is an Enbridge Gas cost in its proposal to the Province of $550,000 and now a couple of years later a cost with Maritimes Northeast doing it of approximately three times that?

MR. HARRINGTON: Yes. But I think as I have pointed out, in our approach that we are taking here, our attempt is to completely avoid that particular capital expenditure.

Q.330 - You may -- Enbridge may be avoiding that capital expenditure but it seems to me that you are avoiding spending $550,000 and the quid pro quo to your ratepayers is a cost of $1.357 million?

MR. HARRINGTON: No. That isn't correct. The way that that would take place is if we had elected to take the approach of making a capital contribution in aid to the pipeline. We have not taken that approach.

We are recommending that we take a firm transportation agreement with the pipeline. And to the extent that we can avoid the expenses of that contract through the resale of the capacity, we hope to eliminate those capital expenditures for ratepayers.

Q.331 - Well, hypothetically let's suppose -- what you are asking the Board to do here today is to approve -- you are taking that $3 million approximately per year and making it part of the rate base?

MR. HARRINGTON: That is correct.

Q.332 - That is correct, right?

MR. HARRINGTON: That's correct.

Q.333 - Suppose the Board doesn't like that idea? Suppose the Board says no, because it is costing $60 million plus as opposed to 12.2, we won't let you do that.

Isn't it distinctly possible that that 1.357 million will end up being the cost and a cost that goes directly to the ratepayers?

MR. MAROIS: I think I would just like to comment a little bit on the question. My colleague said yes, it would be on rate base. It would not really be a rate base per se. Because rate base are the assets. It would be the cost of service. Just a small distinction.

But we just have to be careful when we compare the numbers. Because it is easy to compare apples and oranges. I could appreciate when you look at the face value or the absolute value of the 3 million times 20 years, it is 60 million. But that is an absolute number.

If you -- for example if you bring that to a net present value, you are talking more about 26 million. And if on the other hand you take the net present value of the impact on revenue requirement of the 12.2 million, you are talking more about $19 million.

So I think the first exercise you must do when looking at these numbers, if you want to compare, you have to bring it back to a comparable basis, which is -- there is two ways of looking at it.

In our evidence we have looked at it by comparing the impact on the deferral account balances. But you can also look at it I guess from a net present value point of view.

So that is the first comment I would like to make, I guess on your question, in the sense that just be careful on the comparison of the amounts.

So what we are really comparing here is if we were to pay $12.2 million to Maritimes and Northeast, we would end up with a net present value in terms of revenue requirement of 19 million.

By entering into the FSA we have a net present value of 26 million. However, the big difference is by entering into the FSA there is an opportunity here to reassign part or all of this cost to the customers. And the customers through their marketers will need to assign capacity no matter what.

So that is where the notion of avoiding these costs comes into play. Since the marketers will need capacity anyway, by using our capacity we will have been able to have these facilities built at no extra cost.

Because the customers will pay the same toll as they would pay otherwise. So I think if we are going to compare the numbers, we have also to understand the notion that is behind it.

And to come back to your line of questioning, if the costs or the estimated costs of Maritimes and Northeast are inflated, where that comes into play is we would have contracted for an FSA which is -- would otherwise could have been less.

That is the only real difference in terms of comparing their cost estimate to ours, is with a lower cost estimate we would be in a position to be able to sign for less capacity.

But I can assure you the negotiations with Maritimes and Northeast have taken several months. And we have questioned them on numerous times on their assumptions regarding costs and other components.

And at the end of the day we do feel comfortable that the numbers they are giving us are reasonable in their circumstances.

Q.334 - Okay. Look -- and I will accept your net present value of the 60 million at 26' basically because I'm not in a position to argue with you about that.

But you did all of a sudden turn 12.2 million into 19 million. And I would be interested in the basis for that?

MR. MAROIS: Yes. Because 12.2 million is an upfront capital investment. But that translates into an annual revenue requirement that is going to be -- have to be recovered over the life of this amount.

Just as an example, the first year revenue requirement related to this 12.2 million is almost identical to the 2.9 million that we will be paying in terms of firm service capacity, with no possibility at all to minimize this amount through some reassignment.

And I could go over some of the components of that impact on revenue requirement. For example --

Q.335 - Yes, please.

MR. MAROIS: -- the return, just the return on the 12.2 million is roughly 1.5 million.

The depreciation is roughly 450', $500,000. Then you have the property tax, capital tax, which adds up to about 200,000. And then you have about $900,000 in income tax. So that will have to be recovered through your rates in terms of a revenue requirement.

Yes, it will go down over time, because your return will go down. But the net present value of this flow of costs that will have to be recovered in a revenue requirement is still at $19 million. Like I say, with no possibility of reducing that. With the FSA the beauty of it is as soon as you sell any portion of the capacity, you offset your costs.

And like we say, as long as we reduce it by roughly 18 percent we are even. So as long -- any capacity that we sell over and above 18 percent, the customers come out ahead.

MR. FORGET: And if I may add to that, referring to the 18 percent, it would be the worst case situation. We believe that the market will develop, as we have shown in exhibit I, schedule 4. The market in New Brunswick is expecting to develop very fast in the future.

We also have to look into the Northeast market where M & NP believes that the market will develop very, very shortly. They even expect that they will double the pipeline capacity.

So meaning that if you want to double the pipeline capacity it means that you need capacity. So it would mean that the value of the capacity will improve.

So 18 percent would be the worst case ever, meaning that there would be no market, there would be no gas flowing through the pipe. So that is a worst case.

Q.336 - Let's talk about that just a second. You were -- one of you, and I forget which one of you was responding to Mr. Blue's questions a few minutes ago looking at the Province of New Brunswick's interrogatory number 2, which is schedule 2 to exhibit L.

And once again we were discussing that, you know, 60 to 75 percent recovery over time. And I was not clear -- that 65 to 70 percent, I gather that's an average? When you say over time that means that's an average?

MR. MACLURE: Yes.

Q.337 - Okay. So what we are talking about here is a recovery of say -- let's use your number -- 18 percent in the first couple of years and then a recovery of 120 percent 15 years down the road, is that the way I should look at that number?

MR. MACLURE: No, I don't believe so. I think that the difficulty we have with the 18 percent is the -- the only reason we ended up putting in the 18 percent at all wasn't that we ever believed that 18 percent would be a level. It was simply to provide a range of sensitivities for comparative purposes. So that was the purpose of those particular ranges. It wasn't saying that we expect the market value to be at that level for any long-term duration of time.

But you recognize that capacity in and of itself has value at different times, at different points in time of the year. In the winter time it has values that typically exceed full toll. In the summer time in this kind of a market it will have values that are much less than full toll.

So on average though over the life of this particular contract we are confident that 65 to 70 percent of the cost of the contract, if you will, is recoverable.

And we say that largely because in order for it not to be that, basically you have to begin thinking that the market in the northeast is going to collapse, because the pipeline itself has been sized and designed to move to move Sable gas to the northeast United States, to Boston, and the producers want to sell that gas. So they are going to be competing into the Boston market.

So for the value of that capacity to not -- to not be there, you have to begin understanding that the market that the pipeline was built to serve has not developed or it doesn't exist in the northeast.

And the producers have invested a considerable amount of money in the offshore at Sable. They are going to want to sell that gas. And so what will happen is the prices will dictate that that capacity does in fact get used.

So I guess that I -- I just want to be careful. You asked about the 18 percent. The 18 percent is simply a number that we developed to say, this is the breakeven point. We do not expect that number to be realized over the long-term.

Will there be ever a point in time where we have to sell at 18 percent? Maybe for a short duration, but we don't believe it will ever be for any lengthy period of time. We don't think that that's the market price and will be the market price for capacity.

MR. MAROIS: If I can I would like to turn you to exhibit I, schedule 5, the graph, and maybe just share with you how we interpret this graph so that we are all on the same wavelength. It's the deferral account balance graph.

Our intention by submitting this graph was that the line that really is important to us or the line that we believe is the most realistic scenario is the dark blue line with the red dots. We believe that we will be able to sell capacity on average at around 75 percent of its value.

All the other lines that you have on this graph, the yellow line, the pink line, the red line, they are sensitivity analysis. They are there just to show what would happen if on average we would sell capacity at different percentages.

So it gives us a range of impacts and it also just shows to us that as long as we are selling capacity in the market on average at 18 percent we are at least as well off as if we were to pay 12.2 million today in the form of a contribution in aid of construction.

So I think it is important to look at it that way. We still firmly believe that it is very reasonable to assume that the capacity will be sold at around 60 to 75 percent. And that is supported by I guess a lot of things, and we did file in one of the -- our responses to some IR's a very recent speech made by Mr. Langan, and they are talking about doubling capacity. So I hope that if they are talking about doubling capacity that they are confident that existing capacity will be used and useful.

And I guess the other thing I would like to say is I guess from EGNB's perspective, yes, the cost consequence of the 11,785 FSA is important, but it's a relatively small amount in the big scheme of things, and the market should quite easily absorb this relatively small capacity.

Q.338 - Several times in your evidence and in answers to interrogatories Enbridge talks about this 60 to 75 percent recovery. Is there a basis for that? Is there a calculation? Are there assumptions upon which it is based? Or is it a number that you just pulled out of the air?

MR. FORGET: If I may address that saying that it's a conservative number.

Q.339 - No, no, wait a second. My question was, is there calculations, assumptions or -- I mean I have heard it is a conservative number several times. Now I am looking for a basis for that number.

MR. FORGET: Let's say that's an assumption taking into account the -- all the market will develop. When you put forward an assumption about what you think the value of the capacity will worth, you have to take into several hypothesis thinking about, as Mr. Marois just said, how the northeast market will develop, how the pipeline will increase their capacity, taking all that into account, you have to target a relative, conservative number.

Q.340 - So it's a guess?

MR. FORGET: It's not a guess but more a fundamental kind of analysis, taking everything into account.

Q.341 - So do you have some sort of an analysis you can give to the Board that shows them how you arrived at that range?

MR. FORGET: No.

Q.342 - So it's a guess?

MR. MACLURE: Mr. O'Connell, I wouldn't say that it's a guess. What you -- what you have is you have people who have been working in the industry for a number of years that are experienced that you go and you talk to, you try and get a sense of the market.

It's a -- it's an informed judgment based on the market -- the development of the market, what you believe the long-term capacity will be worth.

You cannot make a specific calculation saying, yes, this is the calculation that says that this is what it will be worth based on some hypothetical examples.

What you are dealing with is a situation where you rely on the experience of other people who are knowledgeable and you make an informed judgment that that is a reasonable estimate.

Q.343 - Will you accept what we have got here is an informed guess?

MR. MACLURE: I would say it is an informed judgment. I don't like the word guess obviously.

Q.344 - Well look, Mr. Maclure, you can't have your cake and eat it too. You spend half your time before this Board telling them about how it is a greenfield new environment and you can't tell this and you need flexibility for that, and then you come here and say, but based on years -- and I acknowledge your years of experience and the marvellous talent that Enbridge has, but all I am saying to you is what we have got here is a guess.

MR. MAROIS: I guess -- we don't like the word guess -- and

I won't throw anything at you.

I guess one big difference -- and I fully appreciate what you are saying in the sense that yes, it is a greenfield operation, and yes, we do have a lot of question marks in terms of the development of our market.

But where we feel a lot more comfortable in terms of the capacity is the entire northeast market that can use our capacity, in the sense that, for example, the New Brunswick market could develop slower than we anticipate and that would have an impact on EGNB, but if the northeast American market develops faster than planned and there is a need for capacity, then our capacity will have value.

So you can almost have a scenario where the New Brunswick market is zero and there is still a good demand for our capacity.

So I guess what I am getting at is the market for our capacity is a lot broader than our market for distribution services.

So that's in our mind quite an important difference.

Q.345 - Okay. As I said earlier, you know, I will accept your evidence of the net present value of the 60 million at 26. Can we go back to the items that you added onto the 12.2 million and --

MR. MAROIS: I did not -- I did not add on amounts. What I said was the consequence of the 12.2 million on revenue requirement, because the fact that you would be spending $12.2 million today would have consequences in terms of costs.

So if you take these costs over time and net present value these costs, it will have an impact on revenue requirement. In other words, you will have -- if you spend -- if you give a capital contribution in aid of construction to Maritimes and Northeast of $12.2 million today, over time you will have to collect from the customers a net present value of $19 million. And that takes into account the fact that you have to -- you have to look at the returns that these amounts would generate over time.

Q.346 - I guess to me, and maybe I am looking at this in an overly simplistic fashion, under the service agreement the net present value of the cheque that somebody is going to have to write to Maritimes and Northeast this year, this fiscal year, is 26 million, and the net present value of the cheque that somebody is going to have to write to Maritimes Northeast in the aid to construct regime is 12.2 million?

MR. MAROIS: Not necessarily. The 12.2 million is first of all is Maritimes and Northeast net present value, and by doing so they avoid certain costs that are shared to us.

We would be responsible throughout the period for possibly contributing to the maintenance of these facilities.

So they look at it from their own criterias. But once we pay the 12.2 million we have -- that's going to generate costs in terms of our cost structure. So that's why you cannot look at it only in those terms.

Q.347 - Well let's talk about -- I mean perhaps I am being overly simplistic. But I guess when I restricted my analysis of the situation to net present value I saw writing a cheque for 26 million, writing a cheque for 12.2 million.

So try to take me beyond that. That's just the way that I saw it. Additional costs. Now I was making notes while you were talking about -- one was return, which I gather you to mean interest, and of this maybe Mr. MacLure rather than you that was giving this evidence.

MR. MAROIS: No, I can handle it.

Q.348 - Okay.

MR. MAROIS: The 12.2 million if it was a contribution in aid of construction would be added to our rate base. You agree with that?

Q.349 - Yes. I expected that.

MR. MAROIS: Okay. So that would generate a return at our average rated cost of capital, and in the first year we estimate that roughly 1.3, $1.4 million. So that's the return in year one related to this amount in our rate base.

We also have to depreciate that $12.2 million because it's in our rate base, it's in our assets. So the year one depreciation would be like I said roughly 450', $500,000.

So those are costs that we would recover in our rates starting in year one on an ongoing basis, and actually it will evolve over time because as you depreciate your assets the return will go down, but I am giving you a year one example.

And these amounts, since we are paying for it, will have an impact on our taxes. We will have to pay more property taxes because our assumption is that property taxes are based on property, plant and equipment. So just that component of the taxes is about $120,000.

And we would also have to pay capital taxes and large corporate taxes of about $60,000.

So that gives a pre-tax impact on revenue requirement of about $2 million.

To that we need to add the income tax component that we need to recover in our rates which is roughly $900,000.

So in year one by paying $12.2 million we will have to generate in our rates to recover these costs $2.9 million, which I said is almost identical to the amount we would have to pay in form of the FSA.

The big difference is by paying it in the form of a firm service agreement you are able to resell the capacity, and let's look -- I don't want to be overly optimistic, but let's say we are able to reassign a hundred percent of the capacity at full toll, the cost would be zero, while you do not have that advantage if you pay a capital -- a contribution in aid of capital because you are stuck with the investment.

So there is a fundamental difference in the nature of these amounts. It's really -- it's hard to compare because conceptually they are so different. One you are paying for something that you are stuck with. The other you are paying a fee on an ongoing basis but since the market will require that service you are able to resell it. That's the entire logic here of being able to avoid paying for something twice.

Q.350 - Well let me put it to you this way. Suppose that the Board rejects the application in the sense that it doesn't like the $3 million a year cost being added into the cost of service and prefers the $12.2 million up front aid to construct. Is Enbridge prepared to go ahead and operate based on the payment of the 12.2 million up front?

MR. MAROIS: If that was the wish of the Board we would definitely, how could I say, do that. What we would do I guess at an additional step is we would then revisit the possibility of building some of the laterals ourselves, if we felt that that was more advantageous.

So that is where I guess the clause in the contract allows us to revisit these options based on the outcome of this proceeding.

However, I hope we make a compelling case that we feel that going the FSA route is much more advantageous to the customers. But there are other options.

Q.351 - If you go with the aid to construct option, who at the end of the day owns these various laterals and transfer station facilities?

MR. MAROIS: Maritimes and Northeast.

Q.352 - Well, if Maritimes and Northeast owns them, why are you figuring taxes on them into the calculation?

MR. MAROIS: Well, for ratemaking purposes this 12.2 million is of a nature of a capital investment in a sense that it is made to serve the customers in a long-term perspective.

So we would not try to recover 12.2 million in year 1. Even though they own the pipe, we have paid an amount to them.

So that contribution in aid of construction would form part of our assets for ratemaking purposes. It is a long -- it is a cost that is made for long-term purposes. So it is treated like any other amount in the rate base.

Like I wouldn't see us passing in our cost 12.2 million in year 1. That would not be appropriate. So as soon as you are deferring over time you are adding it in rate base.

I guess the other way of looking at it is if we weren't putting it in rate base it would -- we could put it in a deferral account. But it would have the same consequence as putting it in rate base.

Q.353 - Is there anywhere in the service agreement or any other documentation between Enbridge and Maritimes Northeast where Enbridge agrees to pay property taxes on facilities owned by Maritimes and Northeast?

MR. MAROIS: No.

Q.354 - Has there been any discussions or negotiations between Maritimes and Northeast and Enbridge that touch on Enbridge paying property taxes on facilities owned by Maritimes and Northeast?

MR. HARRINGTON: No.

MR. MAROIS: Not to my knowledge.

Q.355 - And so what your testimony here today is, that in the face of that, Enbridge is telling this Board that it is going to pay hundreds of thousands of dollars of property tax on facilities owned by Maritimes and Northeast?

MR. MAROIS: One thing you have to understand is -- let's say that for our discussion purposes Maritimes and

Northeast -- the cost of these facilities would be $12.2 million, for discussion purposes, and we pay them 12.2 million.

They no longer have these assets in terms of dollars. The assets are there but they are at a zero value. So they will not pay property taxes based on those amounts. Because the amount is zero. It is part of their -- it comes and eliminates their cost of building it.

So I guess we have to make the distinction between the legal ownership of the assets and who really pays for them. Since we would be paying for them, for all practical purposes it is part of our asset base. So if it costs them 12.2 we will give them 12.2. So their book value is zero.

Q.356 - Look, I'm sorry, I'm just a simple guy from a have-not province. But let's try this again. I asked you who owned those assets. And you said Maritimes Northeast?

MR. MAROIS: Yes.

Q.357 - Correct. And what you are suggesting is the Province of New Brunswick will consider those to be your assets for the purposes of taxation? Is that what you are trying to tell me?

MR. MAROIS: Well, the way we have modeled our tax cost in our proposal is we calculate our tax at 1 percent of our property, plant and equipment.

So at the end of the day this $12.2 million we consider it would be part of our property, plant and equipment. Because we would be paying for it.

Q.358 - Well, have you gone -- or has Enbridge gone to the Province of New Brunswick and asked them for a ruling in terms of who they are going to invoice for property taxes on those pipeline laterals and transfer facilities?

MR. MAROIS: No. And the problem is even more fundamental than that. Right now we don't really know how we will be assessed for our plant. All this is being revised as we speak. So we made an assumption here. But we don't know, like I say, period, how the taxation issue will end up.

Q.359 - So you don't know if the Province of New Brunswick is going to assess Enbridge or Maritimes and Northeast with respect to the property taxes on the laterals and transfer stations?

MR. MAROIS: The issue is specific to the capital contribution.

Q.360 - No, no, no.

MR. MAROIS: If you look at --

Q.361 - No, please.

MR. MAROIS: No. But if we look at the other scenario where we pay an FSA and they build a system, and they have no contribution in aid of construction, they will be assessed on these assets.

But if we pay for them then it might be a different story. We don't have a ruling from -- like I say, the entire property tax is under review right now, not just for this item, for everything. So I don't know. I can't tell you.

Q.362 - So the answer is you don't know whether they are going to assess Enbridge or Maritimes and Northeast?

MR. MAROIS: Under the contribution in aid of construction, I don't know for certain. Under the other scenario I know for certain it will be Maritimes and Northeast, because it is a completely different agreement.

Q.363 - Tell me, has Enbridge Gas New Brunswick asked the Province of New Brunswick for a ruling of that nature based on the $12.2 million aid to construct option?

MR. MAROIS: No.

Q.364 - Because you don't have to -- you don't expect to have to use that option, do you?

MR. MAROIS: Which option?

Q.365 - The 12.2 million aid to construct. Your approach to these hearings and everything that has gone on thus far has been based on the fact that you anticipate the Board will approve the service agreement approach?

MR. MAROIS: Yes. Because that is in our view the most advantageous option.

Q.366 - So any of these numbers that you add onto the 12.2

million, you don't really know whether they are accurate or not.

And you don't know whether you will have to pay them or not because you haven't explored the $12.2 million aid to construct option?

MR. MAROIS: I don't agree with your characterization. I guess any number in our proposals could be contested from that sense in the sense that a lot of things you don't know for sure until the rubber meets the road.

But I think we have made reasonable assumptions that is consistent throughout the numbers we are looking at. And yes, there might be some fluctuations in the actual end result.

But even if you were to -- I guess for discussion purposes, even if you were to eliminate completely the property and capital tax components with the calculation I just made, it would not change our conclusions.

We still feel that it is more advantageous to use the FSA option, because we remain confident of being able to reassign a good portion of that capacity.

Q.367 - Depreciation. The number you gave me for depreciation was I think about $400,000. Now would you agree with me that if Maritimes and Northeast Pipeline owns the laterals and the transfer station, then depreciation is their problem, not your problem?

MR. MAROIS: Okay. Well, put it another way. Call it amortization. Let's say --

Q.368 - Okay.

MR. MAROIS: -- we put the 12.2 million in the deferral account and we say we will spread it over 20 years. You will still have to input a portion of the 12.2 million every year.

So maybe depreciation is not the proper term. But the concept remains the same.

Q.369 - Look, if we take this 12.2 million and want to recover it plus some of these extra costs over 20 years, would you agree with me you are looking at a payment of something like 1.4, 1.5 million?

MR. MAROIS: I don't like the word, extra costs. They are cost consequence of that 12.2 million. But let me restate the debate in another position.

I don't agree with the statement that the 12.2 million should be the net present value. But let's say it was for a hypothetical discussion, okay.

If we were to sign the FSA or use the FSA as the preferred option, and if we were successful in reassigning on average 75 percent of the value of this capacity, the net present value would be $6.5 million.

So without playing at all with the 12.2 million, if we are successful to achieve the target that we feel is reasonable, you would end up with an amount that is half the 12.2 million.

And even if we were to say only 50 percent of the capacity is reassigned on average, you end up with a net present value of 13 million which is almost comparable to the 12.2 million.

So like I say, I firmly believe that the 12.2 million cannot be used as is. But even if it was used as is, as representing a net present value, even under the scenario of a 50 percent recovery of capacity, you are still in the same ball park. And we believe we can beat that target.

Q.370 - All right. Let's go back to where I started and that is dealing with costs. And we talked about costs of the Fredericton lateral and the transfer station as they existed at the time of your proposal to the government and as they exist today. Let's deal with the Moncton lateral, and we probably should do the same thing that was suggested before, and that is go to page 6 of exhibit I.

Can you tell me what the cost of the Moncton lateral and the Moncton lateral station were at the time that you made the proposal to government and what they are today.

MR. HARRINGTON: Certainly. I brought -- in my opening remarks yesterday I brought people through the Moncton example, in particular, and it might help to go back to the maps in a second. But I just want to explain that in our analysis at the time of putting forward the proposal to the government we were not required to construct any lateral facility into the Town of Moncton -- into the City of Moncton. We weren't expecting to have to be required to do that.

And that was because we were dealing with the possibility of single end use franchises arising in that particular city that would justify the construction of a lateral, as is the case in Saint John, into the city that we could take service from, just as we are doing in Saint John.

So the only capital cost that we envisioned incurring in that situation was for a custody transfer facility and there the figure, as you can see in that particular table, is $700,000.

Q.371 - And so at the time of the proposal it was zero cost for a lateral and $700,000 for the transfer facility?

MR. HARRINGTON: That's correct. And just to add to that, at that time of course we assumed that there were volumes on the revenue side that wouldn't be part of our -- in Moncton for instance, because those single end use customers would be customers of Maritimes and Northeast, they wouldn't be our customers. So now we are adding back in capital to build a portion of that particular pipeline, but we expect to attach those particular customers over time as well.

Q.372 - Okay. So give me the numbers for the transfer station and the lateral today?

MR. HARRINGTON: As you can see in that particular table -- and I am referring still to page 6 of exhibit I --

Q.373 - Yes.

MR. HARRINGTON: -- we estimate that we will be putting in $1.7 million in addition to what we had assumed in our original proposal. So that is --

Q.374 - Which was zero, right?

MR. HARRINGTON: Which was zero, yes. And in addition to that Maritimes and Northeast has provided an estimate at -- that we provided in response to Board staff interrogatory number 9, where the lateral and custody transfer facility are estimated at $5.8 million.

Q.375 - Well I was going to get there, because I am confused. The 1.7 million dollar figure on page 6 of exhibit I --

MR. HARRINGTON: That's correct.

Q.376 - -- that's the cost of building the lateral into Moncton?

MR. HARRINGTON: I might get you to turn to the map now for Moncton.

Q.377 - Okay. Go ahead.

MR. HARRINGTON: Are you there?

Q.378 - No, I am not, but -- you are saying the difference is because the route is different?

MR. HARRINGTON: No. I am just going to explain the particular piece that the $1.7 million represents.

Q.379 - Okay. Go ahead.

MR. HARRINGTON: Are we at the map? The piece that is highlighted in pink --

Q.380 - You understand I am not turning the map because I didn't get one with colours on it, so it's not much help to me, but you go ahead.

MR. HARRINGTON: Sorry about that. The portion that is highlighted in pink is the piece that our estimate now is for $1.7 million.

Q.381 - All right.

MR. HARRINGTON: The piece that is highlighted in green is the piece that Maritimes and Northeast has provided the estimate for, including the custody transfer facility of approximately $5.8 million.

MR. MAROIS: Again, the $5.8 million would be relevant if we were to pay the contribution in aid of construction. They will build those facilities but the cost of those facilities will be recovered through the firm service agreement.

CHAIRMAN: I just wanted to understand what Mr. Harrington said. The 5.8 million includes the cost of the transfer station plus the green pipe that will go to Maritimes and

Northeast Pipeline?

MR. HARRINGTON: That's correct.

CHAIRMAN: Have you got a split between those two?

MR. HARRINGTON: Between the custody transfer and the --

CHAIRMAN: Right.

MR. HARRINGTON: I can do the math if you want to bear with me for a second.

MR. MAROIS: Let me refer you to exhibit G, schedule 9 -- J, sorry, J. Translation. In the table you have a combined amount of 5,820,000 for the lateral and the station. However, in the paragraph underneath the table we show the cost of the station which is 1,569,000. So by difference the cost of the lateral is 4,251,000.

CHAIRMAN: Sorry to interrupt, Mr. O'Connell.

Q.382 - And over and above -- just so that I understand this. Over and above the 5.8 million that is on interrogatory -- Board staff interrogatory number 9, we should add to that the $1.7 million that is on page 6.

MR. HARRINGTON: If you are thinking of the scenario where we made a contribution in aid to construct, correct.

Q.383 - Okay. Let's talk about St. George for a minute.

MR. HARRINGTON: Certainly.

Q.384 - On page 6 of exhibit I --

MR. HARRINGTON: Yes.

Q.385 - -- there are some figures there for the lateral and the station. Can you tell me what the figures were for the St. George lateral and the custody transfer station in the original proposal to government?

MR. HARRINGTON: They are as stated in that particular table.

Q.386 - So it's --

MR. HARRINGTON: And that would be $930,000 for the lateral and .2 million dollars, $200,000, for the transfer facility.

Q.387 - Okay. Now if we look at interrogatory number 9, Maritimes Northeast cost is 2.277 million, of which 585,000 is the custody transfer facility.

MR. HARRINGTON: That's correct.

Q.388 - And so there is, as we have stated before, a -- where the lateral would have been 930,000 if you built it, if Maritimes Northeast builds it it is approximately 1.6 million, correct

MR. HARRINGTON: Roughly, yes.

Q.389 - And the transfer station, if Enbridge builds it it is about $200,000, and if Maritime Northeast build it it's $585,000, correct?

MR. HARRINGTON: Correct. I do just want to -- I did make a clarification earlier on that the figures as presented on page 6, those are direct capital expenditures, material, labour, whereas the numbers presented by Maritimes and

Northeast would be a cost that they would bill us and so we would assume include contingency, overhead and --

Q.390 - Profit. They are going to make some money when they build them and bill you for it, aren't they?

MR. HARRINGTON: No.

MR. MAROIS: No, they should not. The way they are going to make their money is on their return for these investments.

Q.391 - So do you know how much they build in for contingency on these various projects? It seems to me I saw in your numbers about a month ago that when you put in contingency it's pretty close to a hundred percent.

MR. MAROIS: You do raise interest with your comments. I don't think we add 100 percent contingency. I think if you -- it all depends on the numbers for -- typically for these types of investments you are talking between 10 and 20 percent.

Q.392 - And so is that what you figure that Maritimes and Northeast has built in in terms of contingency on these numbers?

MR. MAROIS: Personally I do not know. The discussions on this level of details were held between our operations manager and the engineering group at Maritimes and Northeast.

Q.393 - But it wouldn't surprise you if the contingency was in the vicinity of 20 percent?

MR. MAROIS: No.

Q.394 - Would it surprise you if the contingency was in the vicinity of 40 percent?

MR. MAROIS: Yes, it would, and I don't think we would feel comfortable with that.

Q.395 - Okay. There has been various discussions between this panel and Mr. Stewart and Mr. Blue over a number of issues in terms of potential sales of capacity and they both tried to -- how will I put this -- get the panel to define what they would and would not do in certain circumstances.

And I thought what I would try is to put a hypothetical to the panel and see how you would respond to this, or how Enbridge would respond to this.

So in my hypothetical there are three potential purchasers and each purchaser wants to buy all of the capacity. Purchaser A offers 70 cents a gigajoule for a term of one year. Purchaser B offers 60 cents a gigajoule for the term of two years. Purchaser C offers 50 cents a gigajoule for a term of five years.

Now what I would like you to do is to take me through the Enbridge decision making process and how they would arrive at a decision as to what to do with those three offers.

MR. HARRINGTON: I just want to ask one quick clarification. This is for the entire amount, right?

Q.396 - That's correct.

MR. HARRINGTON: I think the starting point would be, does Enbridge believe that A, B and C are the best possible deals.

And if we do believe, you know, that they represent the best possible deals that are out there in the marketplace, then the next question is in each of the specific cases -- and let's look at C which is the five year -- do we think that by tying up that capacity for the entire five years we are going to miss an opportunity in year three, for instance, that may allow us to collect more? If we don't think that, then let's get right back to the three scenarios, and I think it is quite straightforward, it is a net present value analysis of those three options, and based on that net present value analysis you select.

Q.397 - Well how do you -- part of the analysis should be what is going to happen in year three, and how would you approach that?

MR. HARRINGTON: I think I did try to address that. Are you asking me specifically how we would know what is going to happen in year three?

Q.398 - Well how do you deal with the possibility that somebody may come along in year three with a better offer?

MR. HARRINGTON: Really I believe that's a judgment based on what you think is going to happen in the marketplace, taking into consideration projects that are underway with other parties.

For instance, our year three is a very interesting potential year three because of the ongoing talks about the interconnection between Maritimes and Northeast system and the existing TQM system.

So we would have to take that particular project into mind and think, do we think that value will increase at that point in time? Will that have a meaningful impact that we might want to keep aside some of that capacity -- or have that capacity available at that point in time when we could potentially maximize our returns.

Q.399 - How do you demonstrate to the Board the prudence of your decision making process?

MR. MACLURE: I believe that it's going to be a combination of a variety of things, one of which is whatever you can do in terms of a specific calculation that would cause you to make a particular decision.

But in anything else it is the ability to convince the Board that based on the circumstances and that your understanding of the market at the time, that you are going to have to convince the Board that the decision that you made by, as Mr. Harrington used in his example, of looking at the forward looking market of what your expectation was that you believe that there was a reasonable expectation that you would be able to achieve more in the later years than by committing to the capacity early on at a lower price, was a prudent and reasonable business decision.

There are certain things that just are not mathematically modelable. So by not being able to model it, that doesn't mean that it wasn't a reasonable business decision.

It simply means that you have to do your best to convince the Board that based on the information that you had available and the thought process that you used to make those business decisions, it was very reasonable at the time and that your judgment wasn't flawed.

Q.400 - All right. Let's try another hypothetical. And in this one Enbridge has legal title to the capacity, and immediately upon that happening along comes a potential purchaser who wants to buy your entire capacity for the full 20 years for 50 percent of your cost of that capacity.

Describe what you look at, the decision making process?

MR. HARRINGTON: I think being here today certainly we would consider this, but we don't think that based on what we have told you that we would think this is a good deal.

And certainly for the entire 20 years we do expect to be able to recover more than 50 percent, and so would likely not enter into that deal.

Q.401 - Now is this the type of dilemma that once you are operating this distribution system or systems that will come up regularly?

MR. FORGET: Yes. And if I can add to that, as I said before everything would be underpinned by a strategy, strategy where we will have to be very close to the player, the market, meaning having a good understanding of who are the player, who are the shipper, who are the marketer, what are their names, having a good understanding of the market, the New Brunswick market, the Atlantic market, the northeast market, have a vision of the market development in the next few years, in the next five years, having discussion with the pipeline, what are their expectation of the pipeline being developed in the future. As Mr. Harrington said, three years from now there may be some development to tie with Quebec market.

So all of that will be part of a strategy to have a good understanding and to figure out the best deal possible at the time where the deal will be present.

Q.402 - And when you say the best deal possible, the best deal possible for who?

MR. FORGET: For the ratepayer.

Q.403 - And so is Enbridge Gas prepared to undertake that periodically it will come back to this Board and review the decisions it has made in circumstances such as this, and convince the Board that they have been made prudently, in the best interests of the ratepayers?

MR. FORGET: At the minimum it's going to be part of the annual review. Like we don't see really a difference between that cost and other costs of the utility. The Board can question any cost we incur to ensure that they were prudently incurred.

So yes, we do feel we have to be able to justify this to the Board. At this time we are not proposing any specific mechanics. I think it will evolve like other components of the marketplace, but yes, it is a cost like any other cost and our objective is to minimize that cost.

Q.404 - You remember at the hearing that took place in April we -- an undertaking was extracted from Enbridge to give complete access to their books and records to the Board, and I guess I make that suggestion with respect to these decisions. But at the same time there will be many of these decisions made over time, it's the sort of thing that will happen.

And is there a mechanism available that Enbridge can use to bring these decisions in an individual fashion to the Board so that we can look at the prudence of these decisions one by one, or is that asking for too much?

MR. MACLURE: It would seem to me that that would be an almost day to day requirement. I would frankly believe that the Board would probably prefer, or would prefer to see it on an annual review as opposed to a one-off review.

I think the other thing that -- just a point that I would like to make is this is not unique in this marketplace. The other distributors in other jurisdictions do transact and sell -- and sell commodity that is surplus to their requirements on a regular basis.

So it is not that we are doing something that is particularly unique. I guess what is more unique is that we actually have no requirement for this capacity at any time, and we only entered into this arrangement in order to get facilities built. So that's what makes it unique.

But in terms of the ability to market the capacity that is not something that is unique to the New Brunswick marketplace.

Q.405 - All right. Can you turn to the service agreement, which is exhibit I, schedule I. Now one of you gentlemen commented this has been under negotiation for some time. Can you tell me when Enbridge started negotiating this agreement with Maritimes and Northeast?

MR. HARRINGTON: It seems like -- it's been quite some time, so I will -- I don't want to be incorrect, but I believe it was October or early November of 1999.

Q.406 - Of 1999. The document that the Board has before it, is that a document that was prepared by Maritimes and Northeast, or is it a document prepared by Enbridge?

MR. HARRINGTON: If you are referring to who actually typed the document, that would be Maritimes and Northeast. There was considerable work that went into it from both sides.

Q.407 - Have there been various drafts of this document as time has gone on?

MR. HARRINGTON: Yes.

Q.408 - Can the Board have copies of all drafts of this document?

MR. MACDOUGALL: Mr. Chair, if I may, I certainly think that that's a commitment that would be inappropriate in the circumstances. These are third party negotiations. There are I am sure a lot of drafts. I was part of a lot of those drafts. I am not sure that all the drafts are dated or undated. There is mark-ups and otherwise.

This is a third party negotiation with Maritimes and Northeast and Enbridge Gas New Brunswick to come to the final arrangement. To see those drafts I think would be of very, very little value to the Board.

The evidence before the Board is that this is the arrangement that Enbridge Gas New Brunswick has determined is appropriate in the circumstances. This is the document put forward to the Board.

I mean the necessity to look at drafts of negotiations between third parties is highly unusual and certainly would be subject to comment by M & NP who are not a party to this proceeding. But I think to look for drafts for contractual arrangements on an ongoing basis is most unusual and most inappropriate.

CHAIRMAN: Mr. O'Connell.

MR. O'CONNELL: Mr. Chair, I just thought in the spirit of openness and transparency that we have heard so much about over the past little while, that this applicant might be prepared to let the Board have an insight into the negotiation process and what terms were discussed and what were in and what came out and --

MR. MACDOUGALL: Mr. Chair, why not ask questions along that line? I mean to release drafts of agreements with no basis of the understanding behind it, after six or seven months of negotiation, again with a third party, I am sure Mr. Harrington is able to answer questions about the nature of the discussions, to the extent that he feels they are not confidential.

CHAIRMAN: Mr. Blue, you have your hand up?

MR. BLUE: Sir, just to support Enbridge. I think the experience -- there is no Board that I know of that would require production of drafts on the grounds it is a waste of time, for the reasons given by Mr. MacDougall. Just a terrible waste of time. Even court orders and examinations for discovery don't require a draft, because everyone knows the only thing that means anything is the document people sign.

CHAIRMAN: Mr. O'Connell, do you want the Board to rule on this?

MR. O'CONNELL: No. Mr. Chairman, I am prepared to move on. I have made the request and I got an answer and I can live with that.

CHAIRMAN: All right. Go ahead.

Q.409 - Let me ask you some specific questions. At any time was part of the negotiations between Maritimes and Northeast and Enbridge the possibility of Enbridge building the custody transfer stations?

MR. HARRINGTON: Yes.

Q.410 - And that was taken off the table at some point in time?

MR. HARRINGTON: Yes, after considerable discussion.

Q.411 - And who took that off the table?

MR. HARRINGTON: The pipeline.

Q.412 - And what was the reason they gave Enbridge for removing that as an item for negotiation?

MR. HARRINGTON: If my recollection is correct, and just by the way, that never was -- you never would have seen that in a draft contract.

If my recollection is correct, their rationale was internal policy, and precedent in that they had been providing these facilities to all customers to date or they had already provided these facilities to all contractors for the capacity to date, or they had them under contract.

Q.413 - Did Enbridge Gas New Brunswick ever get anything in writing or any basis for this policy?

MR. HARRINGTON: We received that particular policy statement directly from the president of Maritimes and Northeast to our president, face to face. I don't think we did ever receive it in writing.

Q.414 - Okay. So there is nothing -- when I looked at that I couldn't understand, because obviously I looked at the cost that Enbridge proposed in terms of building these things, and then I looked at the cost that Maritimes and Northeast proposed in building these things, and the significant difference, and I must admit I thought that perhaps Enbridge might have made a considerable effort to convince Maritimes and Northeast that they should build the transfer stations?

MR. HARRINGTON: We did.

Q.415 - And in the end it's an unwritten policy communicated by the president of Maritimes and Northeast to the president of Enbridge that carried the issue?

MR. MAROIS: Well I guess that's why it was escalated to that level. It's I guess a reflection of the difference in opinions regarding that.

MR. HARRINGTON: And just to follow up on that, Enbridge is very interested in trying to make that -- those internal policies and the tariff that guides the pipeline as flexible as possible.

The options that were facing us in the year 2000 and in 1999 we hope are not the only options that are facing us in the future. We had a specific operational objective of being in service this year, and there were certain judgments that had to be made to ensure the likelihood of that reality, and that was one of them.

Q.416 - Would you agree with me that your rush to natural gas in the year 2000 is at the expense of some higher costs that will be passed on to the ratepayers?

MR. HARRINGTON: No.

Q.417 - Why do you say that?

MR. HARRINGTON: Well I say that -- the approach that we put forward will potentially eliminate the cost of those facilities for end use customers in New Brunswick. Our objective is not to incur or to minimize to the extent possible incurring any costs associated with those particular facilities.

MR. MACLURE: One other thing, Mr. O'Connell, I think that it is important to know, is our option in all of this was to challenge Maritimes and Northeast at the National Energy Board and that kind of a challenge would have taken time, would have taken money, would have taken -- and with no guarantee of success. So we don't know what the National Energy Board will say.

As Mr. Harrington has pointed out, we on an ongoing and going forward basis we would hope that we will be able to work with Maritimes and ultimately get changes to their tariffs, but we were not optimistic and virtually certain that we would not have been able to accomplish that this year for deliveries and to be able to interconnect with their system for November 1, because this would have resulted in a much more formal hearing process than the one that will be undertaken now with respect to this particular firm service agreement.

And I think the other thing that is important to remember is that in the negotiation of this contract we went to Maritimes and Northeast basically with an objective to have an interconnection and facilities built at the seven transfer stations and the two laterals, and said, how -- what is the FSA that we have to sign in order to get these facilities built? What is the lowest commitment that we need to make to the pipeline to get these facilities built? And that was our objective, to get the lowest commitment that we had to make.

So when we get back into dealing with costs and the difference between our costs and their costs, the negotiation was a firm service agreement and the lowest volume that we would have to commit to, the lowest capacity on the pipeline that we would have to commit to.

So it becomes very difficult to then argue that their costs are wrong because what they are really saying is that this is what we want, we want -- in order to build these facilities we want you to sign a firm service agreement for 11,785 cubic -- or gigajoules per day, period.

MR. MAROIS: And I guess just a little comment on cost estimates, what we have in front of us are not the actual costs, they are cost estimates, and the costs will be what the costs will be.

So assuming Maritimes and Northeast are prudent in how they build these facilities and they exercise good judgment in building these facilities, everything else being equal, their costs added to their rate base will be lower if they are lower than the forecast, and all the shippers will benefit, including EGNB, to relatively lower tolls than they otherwise would have been.

So we will pay for these facilities through the tolls and the tolls will sooner or later reflect the actual cost of building these facilities.

And we are all hopeful and we will be working for Maritimes and Northeast to ensure that these facilities are built in a prudent fashion.

Q.418 - Can I ask you to turn to page 2 of that service agreement, the very first clause under the heading, Condition Precedent for Benefit of Customer.

I assume that that's in there at the instigation of Enbridge?

MR. HARRINGTON: That's correct.

Q.419 - And as I read that, that gives Enbridge up until September 1st the option to opt out of this agreement for whatever reason they choose. There is no limitation on why. Just the option is there.

MR. HARRINGTON: That's correct.

Q.420 - Why was that asked for?

MR. HARRINGTON: I think as indicated in response to one of the interrogatories, I am not sure exactly which one, the primary reason for the existence of that condition was to be able to deal with the actions of third parties, including the decision of this Board as one, and I think we have been through an example of that this morning.

Should the Board direct us to capitalize these facilities in terms of the contribution and aid to construct, well we have the flexibility under the terms of this contract to change direction.

Should the N.E.B. have an issue or not approve one of the applications which will go forward under this contract, the decision of that -- and I could only -- I can't even imagine what the situation may be, but it may force us to change our decision about proceeding with this particular contract.

And finally I guess, you know, we may see changes in the position of the pipeline on issues that we can't comprehend at this point in time that may leave us thinking about the rationale for continuing with this particular contract.

Q.421 - Why was the drop dead date of -- maybe that's a poor choice of words -- September 1st chosen?

MR. HARRINGTON: That was the negotiated date. The pipeline certainly would have loved to have seen that date moved closer to today, and we certainly wanted to have as much flexibility as possible out into the future.

September 1 was a date that we thought, should situations change in a particular way, and I will try and build this in, that we would be able to respond, and if you will just give me a second to explain this.

If for some reason the lateral portions for St. George and Moncton give rise to intervention before the N.E.B. and potentially stop or cancel that process, we thought it could be likely that we step in under the jurisdiction of this particular Board, build those two particular laterals, and have a hearing before the N.E.B., hopefully less contentious, about just the custody transfer facilities back at the main line. And September 1 was a date that we felt we could operationally deal with that.

Q.422 - Look, this service agreement, is Enbridge Gas in the process of negotiating any other agreements at this time with Maritimes and Northeast?

MR. HARRINGTON: No.

Q.423 - And is Enbridge in the process of talking to any marketers of capacity at this time?

MR. MACLURE: We haven't begun talking to any marketers. Because to the best of our knowledge there continue to not be any marketers that are certificated in the province.

Q.424 - So your evidence would be that Enbridge Gas New Brunswick is not talking to any of its affiliated companies with respect to affiliated companies marketing in New Brunswick?

MR. MACLURE: No.

Q.425 - Okay. We talked earlier this morning with respect to, you know, the hypothetical decisions I put to the panel. And does the panel have an estimate of the cost involved in monitoring the market to make informed decisions such as the type I put to you this morning with respect to sale of capacity?

MR. MAROIS: We will not have someone or some function to do just this. We will have to be involved in the upstream market one way or the other at least in the terms of gas control. We have to understand, I guess, what is going on. So this service will either be provided by ourselves or through shared services with another party. So it will be part of the overall monitoring of the upstream market. We will need to do it one way or the other.

Q.426 - Does the panel have an estimate of the costs required to review prudence of sales such as the hypothetical ones I put to you this morning?

MR. MAROIS: I guess a similar response is since, like I mentioned earlier, we see this as being part of the annual review by the Board, there should not be really any important incremental cost to review this component.

Q.427 - I have a couple -- can you turn to the Province's interrogatory number 1, which would be schedule L -- or exhibit L, schedule 1?

Direct capital expenditure, could you tell me what that term means?

MR. HARRINGTON: That was my terminology. And I think I have explained that. That is the direct labour and materials associated with the installation of facilities, excluding overheads, contingencies and so on.

Q.428 - The sale of capacity, your evidence is, will occur in a marketplace where there is numerous buyers and sellers. Would Enbridge be prepared to arrange for capacity on the Maritime and Northeast Pipeline if this were to be treated as a unregulated part of the business?

MR. MAROIS: No, not at this time.

Q.429 - Now Mr. Blue asked if Enbridge was prepared to give to the Board a limit on discounts in terms of auctions of capacity. And your answer was rather more lengthy than that, but the note I made to myself at the time was no. Is that correct?

MR. MACLURE: That's a correct interpretation of my lengthy response.

Q.430 - The other note I made to myself at the time was to remember to ask this panel if Enbridge was prepared to commit to the Board to limit discounts to affiliated companies?

MR. MACLURE: The answer would again be no, to the extent that the discount to an affiliate would still be the best deal that the Enbridge Gas New Brunswick could get for the price and term of that particular assignment, it would not make sense for the ratepayers to be penalized from that revenue -- from having -- getting that revenue.

Q.431 - Now I guess the concern that I would suggest to you is present is that Enbridge Gas New Brunswick would give a better deal in terms of discounts to an affiliated company as opposed to other marketers. And is Enbridge prepared to undertake to the Board not to do that?

MR. MAROIS: Yes. But I think when we are looking at affiliates throughout this hearing, throughout other hearings, all sorts of concerns have arisen. And I think bottom line is the concept is we should treat any affiliate the same way we treat any other marketer. That goes with capacity, goes with anything else. And I don't think -- I think our interpretation of treating an affiliate the same way as any other marketer doesn't mean treating it worse. Saying not treating better, but it should get the same fair treatment that any other marketer would get. And at the end of the day it is going to be up to us to demonstrate that that was the case.

I think when we talk about this here in a vacuum it may be hard to comprehend how we will be able to justify that these amounts are reasonable or not. But there will be some data available in the marketplace. Like this will not be done in a vacuum. Things will evolve. There will be relatively common knowledge on the price of this capacity, the value of this capacity. So there should be information out there to be able to help assess the reasonableness of our transactions.

MR. MACLURE: And in addition I think it's fair to say that it should be just as much of interest to the Board and to other market participants that we do not favour Irving Oil or Energy Source Canada or Engage over one of those other markets. So that we don't favour any marketer over any other marketer. And one of those marketers might be an affiliate. But the favouritism and showing favouritism applies to all marketers. And we have a statutory, I guess, requirement not to show favouritism to any marketer.

Q.432 - Okay. So the short answer to my question is will the panel -- will Enbridge undertake not to treat an affiliate or give it better deals than other marketers? The answer is yes.

MR. MACLURE: Yes.

MR. O'CONNELL: Thank you. Mr. Chairman, those are all of the questions I have for this panel.

MR. CHAIRMAN: Mr. MacDougall, how long do you anticipate your redirect will take, five minutes?

MR. MACDOUGALL: Ten, maximum.

MR. CHAIRMAN: Five, seven, out of --

MR. MACDOUGALL: I suggest we start and it will be done very shortly.

MR. CHAIRMAN: Yes. Well the Board has some questions. We are going to take a five minute recess and we will come back.

(Recess)

MR. LUTES: I just had one question for Mr. Marois, if you please. In the present valuing of the future costs related to the $12 million, what I gleaned was that you really hadn't refined all of those numbers.

But it was your clear conclusion that the present value of the future costs was a number that you weren't going to be able to recover except through rates, whereas you hope that you will be able to recover a good piece of the $3 million annual cost, plain and simple?

MR. MAROIS: Yes. You are correct, I guess. And even if we were to accept the fact that the 12.2 million is representative of a net present value of the cost of paying a contribution in aid of capital, that is a sunk cost. There is nothing you can do about that.

While if you incur cost through a firm service agreement, you have the opportunity to resell the capacity and alleviate some or all of that cost. You are correct.

MR. LUTES: It is the only question I have, Mr. Chairman.

CHAIRMAN: Just a general -- and I haven't spoken with my fellow Commissioners about this at all. But just a general comment. Throughout our regulatory proceedings, why the applicant has been asking the Board to use lighthanded regulation and to for instance try and use paper hearings where possible et cetera.

Just a general comment. It is my belief that you could have drafted your evidence in a fashion that would have cut out an awful lot of the questions that we had to ask here today. I think Mr. Blue alluded to it.

When I read it and I look at it, and I'm familiar with the proposal that you made to the Province. There were cost numbers there as to the construction of the stations and the laterals and that sort of thing.

From my perspective the thing to do would have made that your starting point and say, this is what we started with our proposal. These were the costs involved. These are the costs now. Here is what has happened between then and now.

Talk about the fact that you can't -- you couldn't negotiate with Maritimes and Northeast so that you could build those. Let us know that.

Tell us what kind of scrutiny that you gave to those costs that Maritimes and Northeast are putting forth. Differentiate between what you were going to build and what they were going to build. What were the additional add-ons that they have put in?

In other words that is the kind of written testimony that will give the Board the comfort in proceeding with a paper hearing. And things will become crystal-clear. Now that is a general overall.

Now the specific questions that I have with you and perhaps you can -- you know, we are running into the difficulty of having two regulators, from where I sit. There are some costs out there that we are all talking about that we can't scrutinize as a regulator would.

There was a remark, and I don't know which one of you said it, is that there are provisions in the approved tariff that you can't get around.

And I got back again to Mr. Blue's cross-examination where you are paying in effect 23 percent more than if the tariff revision that is presently applied before before the N.E.B. were used.

Is there any way in the application that is going to be made between now and September presumably to the N.E.B. that you can request that, that new tariff if approved by the N.E.B., be used to recalculate the amount of capacity that you will require to build those facilities?

MR. HARRINGTON: If I might just bring maybe a bit of clarity. The numbers -- we will just set them out, are 60 cents per MMBTU. And that is the test toll. That number has been set out in the tariff for quite some time.

And the pipeline has been very firm and does not intend on changing its position with regard to the use of the 60 cent test toll. That is embedded within the tariff.

The second number that we talk about, I believe, is roughly 74 cents per MMBTU. That is the number that is being applied for as the operating toll going forward for this upcoming year. And that is going to hearing -- I believe June 26th is the date for that.

There are parties that are interested in changing the 60 cent test toll to accomplish the objective that you state. And if that were -- if that number were to change, we certainly would look forward to reducing our commitment to the pipeline.

So I hope that answers your question. My thoughts -- and these are just, you know, looking forward, is that I don't think that the pipeline is going to -- or I don't think that that particular number is going to change.

CHAIRMAN: So you don't think the N.E.B. will approve of the test toll being adjusted to go to the actual toll?

MR. HARRINGTON: That's correct. I -- and this again is just my thoughts. I think from their perspective that they appreciate that that number being lower than the actual toll will result in enhanced competitiveness of the pipeline, that being that constructing incremental facilities will not have a negative implication on the actual toll. It will force tolls lower to the benefit of all shippers.

CHAIRMAN: Do you intend to say anything in that hearing?

MR. HARRINGTON: We are an Intervenor in that particular hearing. And we have just submitted our interrogatories. So yes.

CHAIRMAN: So are you going to say anything about moving the test toll to what is applied for?

MR. HARRINGTON: I don't think that we have finalized our positions with regard to the hearing yet. We still have some time. If I might just for a sec.

MR. MACDOUGALL: Mr. Chair, I have some questions on redirect. But one of them is specifically on that. And at the break, because Mr. Blue raised this, I got N.E.B.'s determination on this, that prohibits that issue being raised at that proceeding.

I can put that forward now so you could see it and then continue my questioning.

CHAIRMAN: No. I will just stop my questioning on that, Mr. MacDougall. And you can go ahead and do it. I will flip over again to the kind of testing that will be done in reference to the cost of construction of the facilities, that they are going to be -- you know, if it were to come before this Board, why then I would anticipate that you would come and say that you could build them more cheaply or less expensively.

And that would test what they have done. Do you think the N.E.B.'s approach is going to be the same? Look, let them make some profit or let -- you know.

I noted that Mr. Marois said that they would -- you would do everything that you could to ensure that the expenditures were prudent. And that is appreciated. And that will reflect in the tolls.

But again, their estimates, as I see it, as to what it would cost to build those facilities, will in fact drive the capacity that you have to contract to take. So it is almost as if you are closing the door after the cow is gone.

MR. MAROIS: That was effectively one of our concerns. And I can tell you that although we haven't filed the drafts that the numbers did improve. Because of our discussions they did improve substantially.

So I am confident that we have I guess derived all the forecast savings that we were able to. Like we did do that exercise. And we did scrutinize. We did get the cost estimates. And we did ask questions.

And so we did wring out some of the -- we were successful in lowering their cost estimates quite a lot.

CHAIRMAN: And I have heard you testify that you believe over the 20 years that you will be successful in recapturing for the ratepayers between 60 and 70 percent of the cost by reselling the capacity.

So I go one step further than Board counsel did. And if the Board were to allow you to put 35 percent of the cost of that capacity into rate base and earn as a capital contribution -- no, that is the wrong terminology -- allow 35 percent of the cost to flow into your rate base, would you then be prepared to have it an unregulated service for that 65 percent? I'm testing your confidence level.

MR. MACLURE: I'm going to try and voice the company's probable opinion on the fly, so to speak, and say that that would have to be something that we would likely probably want to go back and think about, what the risk implications are and a whole whack of other issues that would arise out of that.

Because I guess what I -- as I hear the question it would be that the company would commit to 65 percent of the capacity and market that on a completely unfettered basis, totally unregulated. And that the only part that would get into rate base would be 35 percent.

I think that we would want to do a fair bit of thinking about the extent to which we would want to enter into that agreement. I wouldn't want to say right now, yes, we are going to consider that or actually -- or that I would want to say no.

CHAIRMAN: Mr. MacDougall?

REDIRECT EXAMINATION BY MR. MACDOUGALL:

Q.433 - Mr. Chair, maybe I will start then with the issue that came from Mr. Blue's discussion this morning and as well some of the questions you raised yesterday with respect to the National Energy Board.

And what Mr. Hoyt can do is distribute to all the parties here a letter that, through the wonders of technology, I was able to get from my office to here at the break.

CHAIRMAN: That will be A-28.

MR. MACDOUGALL: Thank you, Mr. Chair.

CHAIRMAN: And you haven't referred to A-27 yet?

MR. MACDOUGALL: No, I have not, Mr. Chair. I will probably do so in the cross-examination.

CHAIRMAN: Okay.

Q.434 - Mr. Harrington, if you could take a second and read through this letter. And I will identify it as a letter dated April 27, 2000 from the National Energy Board, the Secretary, Mr. Mantha, to a Mr. Whalley of the Cape Breton Regional Municipality?

MR. HARRINGTON: I have read that.

Q.435 - Is that letter in relation to the same hearing order that Mr. Blue raised with respect to the 60-cent toll issue?

MR. HARRINGTON: That is correct.

Q.436 - Could you read the first two sentences of the second paragraph of that letter into the record please?

MR. HARRINGTON: I certainly can. "In response to the specific points included in your letter of 20 April 2000, the Board continues to hold the view that the 60-cent test toll is a fundamental element of the lateral policy that was approved in the GH-6 '96 decision. The Board was not convinced that it would be appropriate to review the lateral policy, including the test toll in this proceeding."

Q.437 - And is it your understanding that that is the position of the National Energy Board with respect to the test toll as determined in their initial proceeding on the laterals policy?

MR. MACDOUGALL: That is correct.

Q.438 - Thank you.

MR. MACDOUGALL: Mr. Chair, I'm just going to ask a few questions on redirect. Some of them may have been partially answered as I wrote them down in order by people as they spoke today. So I will try and confine them to the best I can. But they derive out of two or three comments made by different parties.

Q.439 - I think, Mr. Harrington, first off, if your proposal, the the proposal put before the Board today is not accepted by this Board, where does Enbridge Gas New

Brunswick stand with respect to how it would have facilities built to interconnect with M & NP in this year?

MR. HARRINGTON: As it stands, if the Board does not approve this approach, we would be back into negotiations with the pipeline.

Q.440 - So you would be essentially back to square one and you would start your process over?

MR. HARRINGTON: That is correct.

Q.441 - So to go to your opening statement, and I will read the comments as I think they were made, you were asking the Board to approve the inclusion into the cost of service of costs of the firm service agreement with the pipeline.

And second you are asking the Board to approve your right to alleviate those costs by marketing of the capacity on an unfettered basis. Is that correct?

MR. HARRINGTON: That is correct.

Q.442 - And if the Board does not do that, it is not EGNB's understanding that the Board will attempt to impose a contractual arrangement on you and M & NP, a party that is not at this proceeding?

MR. HARRINGTON: That wouldn't be my understanding. That is correct.

Q.443 - Mr. Stewart asked some questions yesterday about the $2.9 million or the $3 million that goes through the

20-year period under the proposal you have put forward. He did so without really comparing it to the aid to construct. That was done a bit today though.

If you build the facilities that you are allowed to build under this proposal, what happens specifically to those costs?

MR. MAROIS: They would be included in rate base.

Q.444 - And how would they be recovered?

MR. MAROIS: Over time through rates. They would -- yes, part of the recovery would be through depreciation. And there would be a return on the unamortized balance.

Q.445 - And if M & NP builds these facilities under this proposal or otherwise, under an aid to construct, how are those costs recovered?

MR. MAROIS: It is going to be --

MR. HARRINGTON: They would be -- those costs would be recovered in terms of their tolls to shippers in New Brunswick, Nova Scotia, potentially in Quebec and down through the United States. All shippers on the system.

Q.446 - Mr. O'Connell this morning referred you to a couple of exhibits. I don't think you will have to pull them up, Mr. Harrington. But he compared exhibit J, schedule 9 for Fredericton, which was showing an amount of $1,357,000 to exhibit I, page 6 that showed a $500,000 estimate from your proposal?

MR. HARRINGTON: Mmmm.

Q.447 - If the Board disallows your proposal and you go back to the drawing board and negotiations, as you mentioned earlier, would you be allowed to build these facilities for $550,000 under M & NP's rules as you now understand them, or under the arrangements or discussions or negotiations which you have had with M & NP to date?

MR. HARRINGTON: Based on the discussions that I have had with Maritimes and Northeast Pipeline to date, the answer is no.

MR. MACDOUGALL: That is all my questions, Mr. Chair.

CHAIRMAN: Thank you, Mr. MacDougall. Thank you, gentlemen. You are excused. And we will come back at 1:30, an hour. Is that all right? Good. Okay.

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

CHAIRMAN: Any preliminary matters? If not, Mr. Stewart, go ahead.

MR. STEWART: Thank you, Mr. Chairman. Mr. Chairman, I think we will need to swear the panel.

MR. KIRSTIUK and MR. NEWTON

DIRECT EXAMINATION BY MR. STEWART:

MR. STEWART: Thank you, Mr. Chairman. We have for the Board's consideration the testimony of Murray Newton, who is the Manager of Natural Gas Planning with Irving Oil Limited, sitting closest to you, and beside him Steve

Kirstiuk, General Manager of Business Development for Irving Oil Limited.

And if I may, I guess either jointly or individually -- perhaps we will begin with Mr. Kirstiuk.

Q.1 - Mr. Kirstiuk, I see that you have filed with the Board prefiled written evidence. Was this evidence prepared under your direction and control and accurate to the best of your knowledge and belief?

MR. KIRSTIUK: Yes, it was.

Q.2 - And Mr. Newton, again was the prefiled written evidence prepared under your direction and control and accurate to the best of your knowledge and belief?

MR. NEWTON: Yes.

MR. STEWART: Mr. Chairman, if I may, just a couple of brief questions for this panel I guess in chief, to summarize their evidence, I think much in the way the previous panel did. And so I will go forward on that basis.

CHAIRMAN: All right, Mr. Stewart. On page 3 the answer to question 13, I would presume that is prearranged deals -- permits prearranged rather than rearranged.

MR. STEWART: I have no doubt that that is the case, Mr. Chairman.

MR. NEWTON: Prearranged.

Q.3 - Prearranged. Answer to? In answer 13?

CHAIRMAN: Answer 13, right, the first line. It says "permits rearranged deals." It should be "prearranged".

MR. STEWART: And I would ask that the record so reflect the change in the written evidence. Thank you.

Q.4 - Mr. Kirstiuk, I see from the evidence that you filed with the Board that, as I understand it, is your intention to be marketing natural gas under the name Irving Energy Services. Could you please briefly explain why you have chosen to do so?

MR. KIRSTIUK: Yes. We believe that the name is more closely aligned than the name Irving Oil with the types of offerings that we will be providing our future customers.

Q.5 - All right. Then, Mr. Kirstiuk, would you please summarize Irving Oil or Irving Energy Services Limited or Irving Energy Services, excuse me, position on the Maritimes and Northeast pipeline capacity issue?

MR. KIRSTIUK: Certainly. We are in agreement with Enbridge Gas New Brunswick's proposal to contract for transmission capacity with Maritimes and Northeast.

This commitment represents a cost of approximately $3 million per year, and as a result is a significant commitment where underrecoveries from resale of this capacity can have a sizable impact on the deferral account.

It is the disposition of this capacity and hence this impact on the deferral account that we believe should be governed by specific criteria.

The following principles we believe need to be adhered to. (1) there is an open and transparent bidding process. (2) should not preferentially advantage parties such as EGNB affiliates or parties such as Sempra, Nova Scotia Power or even ourselves who may have greater staying power in the market and encourage more marketers to participate in the bidding process. (3) capacity should be marketed on a shorter term basis for a period of not more than two years. (4) the transportation should be marketed such that the transportation achieves its highest potential value in order to minimize the impact on the deferral account, noting the previous criteria. And (5) prearranged deals at full toll could be allowed, since there would be no adverse impact on the deferral account.

Q.6 - Thank you. Mr. Newton, can you please summarize your position on the wholesale service issue please?

MR. NEWTON: With respect to the wholesale service, it is important to remember what Irving Energy Services is proposing in this proceeding and what we are not proposing in this proceeding.

We are not proposing some form of discounted rate. As set out in our prefiled evidence, that is a matter that first ought to be discussed by the working group.

The rate to be charged for this service is a matter of rate design and should be established after the parameters of the service are established.

We are proposing that Enbridge Gas New Brunswick be directed to introduce an additional service option, the so-called wholesale service.

The introduction of an optional wholesale service will provide marketers with the option of contracting with Enbridge Gas New Brunswick for distribution services. The wholesale service should be truly optional. No marketer or end user should be required to use it.

A wholesale service will allow marketers to aggregate the market requirements of a number of end users. A wholesale service allows the marketer to contract directly with Enbridge for distribution services, saving end users from the complexity and obligations associated with having to at all times deal with the distributor.

The decision to use natural gas should be made as easy and as efficient for end users as possible.

With a wholesale service the process is simplified for end users because they will have the option to not always have to -- they will have the -- they will have the option to not always have to contract with a number of separate parties whether they be Enbridge, gas marketers or perhaps other customer service providers.

End users should be able to choose how their energy requirements will be met. End users may prefer to deal with one service provider or several separate service providers. Let end users decide.

How would a wholesale service work? As explained in our prefiled evidence, the marketer would contract with Enbridge for the associated distribution service.

Enbridge would install and read the meters. Enbridge would bill the marketer for the distribution company's charges. The marketer would then invoice natural gas end users for all marketing services rendered.

The introduction of a wholesale service will simplify end users natural gas related conversion and pricing decisions -- purchasing decisions, sorry.

Such a simplified approach will be attractive in the marketplace, especially in the initial development stage of natural gas development where the introduction of such a service will maximize end user flexibility and simplify the decision to use natural gas.

Remember prospective natural gas end users will have a host of decisions to make. From whom will they purchase gas? What natural gas-consuming equipment will be required?

How much gas -- how much will the gas cost? How much will it cost to convert? How do I select the most beneficial distribution service and rate to meet my needs?

Who will help end users with these important questions? Marketers are best positioned to answer these important questions.

Let Enbridge do what it does best, design, construct, own and operate the distribution system. Let energy marketers do what they do best, selling natural gas and assisting energy end users with their energy needs.

Yesterday Enbridge Gas New Brunswick raised a number of concerns as to why it is opposed to the introduction of a wholesale service. Enbridge first suggests a wholesale service disconnects it from the end use customer.

As explained in our testimony, a wholesale service will not disconnect Enbridge from end users. If marketers use the optional wholesale service, marketers should be required to include whatever promotional and safety inserts Enbridge requires in marketer invoices to end users.

In addition Enbridge is not prevented in any way from sending its own communications to whoever and whenever it likes.

Enbridge also suggested yesterday that it may not be able to communicate with end users because it may not know who the marketers customers are.

Mr. Chairman and Board members, this is misleading. Marketers will have to tell Enbridge who the end users are because Enbridge will have to install the necessary distribution facilities to physically connect the end user to the distribution system.

In addition Enbridge will be reading the meters. And marketers will need to know the meter readings so we can invoice our marketer customers for actual gas volumes consumed.

Enbridge also raises the spectre that this Board has better control over a bill originating from Enbridge rather than marketers.

Enbridge even suggests that marketers may not accurately and separately portray the distribution component of the natural gas price on marketers' bills.

Enbridge seems to fear that marketers may repackage or rebundle services in such a manner that end users do not really know what they are purchasing.

Enbridge's concerns do not ring true. Irving has not proposed to rebundle services so end users do not see all of the separate components.

Irving Energy Services is proposing a wholesale service so it can simplify end users conversion contracting and purchasing decisions. We don't want to complicate them.

Irving Energy Services and hopefully all other marketers will not mislead or misrepresent the services it is selling to customers. We wouldn't keep our energy customers for very long if we did do that.

Remember this Board effectively regulates marketer activities through its marketing certification process as well as the marketer code of conduct.

Enbridge also raises the safety issue. Marketers understand that Enbridge Gas New Brunswick is the best party equipped to deal with safety concerns. Marketers using the wholesale service should be directed to include Enbridge's 24-hour emergency number on all marketer invoices and promotional materials.

In addition natural gas-consuming equipment such as furnaces and hot water heaters should include stickers displayed in a prominent place advising Enbridge's 24-hour emergency number. This will be the case with or without the introduction of a wholesale service.

Finally, the Enbridge panel testified yesterday that a wholesale service is not required at this time because of the greenfield nature of the New Brunswick market.

Mr. Chairman and Board Members, that is precisely why a wholesale service is required. The introduction of a wholesale service will allow marketers to simplify prospective natural gas end users conversion and purchasing decisions. A wholesale service will enhance marketers ability to grow the markets for natural gas in the early years when natural gas is first being introduced into the marketplace.

That completes my summary of our evidence.

MR. STEWART: Thank you. Mr. Chairman, the panel is available for cross-examination.

CHAIRMAN: Mr. MacDougall?

CROSS-EXAMINATION BY MR. MACDOUGALL:

MR. MACDOUGALL: Good afternoon, Mr. Kirstiuk, Mr. Newton, Mr. Chair, panel members.

I will do my questions in two sections, M & NP and the wholesale rates so as to keep some consistency. So the first series of questions will deal with the M & NP issue.

Q.7 - In your evidence at question A-7, and you may want to bring up question 7, your answer to question 7, you indicate that amounts paid by EGNB to M & NP and not recovered through resale will be added to EGNB's deferral accounts. And since these amounts could be significant the long term consequences, and in your words, the potential negative impact could be significant.

Now having made that statement, I would like to refer you to exhibit I, schedule 5, which is the deferral account balance chart proposed by EGNB.

On the basis of this exhibit and Enbridge's evidence, do you agree that so long as 18 percent of the value of the FSA is recovered, that customers of Enbridge Gas New

Brunswick are better off than they would otherwise be if Enbridge Gas New Brunswick was to pay an add to construct for these facilities?

MR. KIRSTIUK: Mr. MacDougall, in our testimony I think we are very clear in our agreement that EGNB and what they are doing with respect to going this route with Maritimes and Northeast is the correct approach. We believe that to be the case.

What is relevant here is the impact on whether it's 18 percent or whether it might be 65 to 70 percent, or whether it might be 100 percent. That's what is relevant here.

And we believe that it is in the best interests of the customers that are going to be taking natural gas to ensure that the unabsorbed demand charges are actually minimized.

Q.8 - Okay, Mr. Kirstiuk, your answer will probably help me get rid of some of my questions. Because I would like to refer back to your question 4 and your answer, which appeared to me to be that you stated that you accepted Enbridge Gas New Brunswick's proposal that the cost of the M & NP contract be corporated into Enbridge Gas New Brunswick's costs. Is that correct?

MR. KIRSTIUK: We believe that the approach that ENGB is taking is the correct approach and that the costs associated with it should be taken into account, yes.

Q.9 - Okay. So to that extent and to the extent that Enbridge's evidence is that if 18 percent of the value of the FSA is recovered the ratepayers are better off than if an aid to construct was in place, I have a concern about how you raise that in the context of the deferral account issue.

Because isn't it the truth that Enbridge's evidence to date is that Enbridge's entire proposal, the reason that they have brought this forward, is that this is the proposal that best seeks to maximize reductions in the deferral account. That's the basis of this proposal, is it not?

MR. KIRSTIUK: Mr. MacDougall, once you get past the point where you have made the decision to go the route with respect to having Maritimes and Northeast build these facilities, the next question that comes into play is how can the amounts in the deferral account be minimized. That is precisely what the issue is.

And what we have to ensure here is that every attempt is made to (a) ensure that the way the transportation is handled is actually going to help develop the market by encouraging marketers to come into the marketplace, and (b) that the discount that that capacity will go for will be minimized.

Q.10 - Okay. Taking that as a premise, and I think that is the premise on which Enbridge Gas New Brunswick has put forward its evidence, does Irving Oil Limited anticipate participating in the secondary market for natural gas in the Maritimes?

MR. KIRSTIUK: I'm not sure of that at this point in time. I think the possibility exists that we might.

Q.11 - You may be a player in the secondary market?

MR. KIRSTIUK: Yes, the possibility would be there.

Q.12 - And would that secondary market include other shippers on the M & NP pipeline? For example, Nova Scotia Power, NB Power, could it include those parties as well?

MR. KIRSTIUK: Certainly it could.

Q.13 - And will there be regulation of those parties' activities in the secondary market?

MR. KIRSTIUK: To the extent that those parties may be marketing natural gas in New Brunswick or in Nova Scotia there would be.

Q.14 - Okay. So you are saying to the extent they are selling capacity in the secondary market, would their sales of that capacity be regulated as to how much they would sell that capacity for, how much they would be allowed to sell or otherwise?

MR. KIRSTIUK: Well what I'm saying is that I think the question -- the original question was would these parties be regulated. And --

Q.15 - Okay. I'm now asking whether their secondary market sales would be specifically regulated?

MR. KIRSTIUK: Well none of those parties have deferral accounts.

Q.16 - That's not my question.

MR. KIRSTIUK: So, no, but --

Q.17 - My question is just would those parties be regulated?

MR. KIRSTIUK: I believe they would not. Because -- well, okay. Now just so I'm clear on the question. Would those parties be regulated with respect to that specific circumstance?

Q.18 - Yes, that's correct.

MR. KIRSTIUK: And my answer would be no. But I believe the reason that they would not be is the fact that none of them have deferral accounts.

Q.19 - Well it's not that they have a deferral account or not. They wouldn't be regulated in that market. Isn't it correct that there is nobody who would regulate those parties in that market? Whether -- they may have deferral accounts. How do we know if a marketer has a deferral account or not. That's not the issue. It is that those parties are -- my question is are they regulated in the secondary market by this Board?

MR. NEWTON: May I add -- try to add on to what Mr. Kirstiuk has said here. I think your question -- the answer to your question is you are correct as far as I know. I can't speak for all Maritimes and Northeast shippers. Some of them may be regulated.

But in our case, our activities in the secondary market would not be regulated directly. To the extent we wanted to participate in the secondary market the National Energy Board does have processes in place to monitor those kinds of activities.

But I think the important fact here, Mr. MacDougall, to make is if Irving Oil choices to market its capacity in the secondary market, we absorb the cost. So to the extent we do sell capacity into the secondary market and we are not able to recover 100 percent of the full toll, N.E.B. approved toll, then -- and that's typically referred to as an unabsorbed demand charge -- in Irving's case we would bear the cost of that.

As we understand it, what Enbridge is proposing in this case is Enbridge would attempt to remarket its capacity into the secondary market. And we have no reason to not believe that Enbridge would do everything it could diligently to try to maximize its revenue recovery.

But to the extent you don't do that, and to the extent Enbridge sells capacity in the secondary market at a discount less than a hundred percent toll, notwithstanding the fact that may be the appropriate thing to do in the circumstances, the fact remains it's Enbridge's distribution toll payers who will pay for that.

So it may not be -- it may not be a perfect analogy, but it's almost analogous to someone playing poker with someone else's money.

Q.20 - But to come back to our earlier points in which Mr. Kirstiuk agreed to the extent that more than 18 percent of that firm service value was recovered it would be better than the aid to construct proposal?

MR. KIRSTIUK: See, I liken that to a capital investment decision. Once you have made the decision with respect to, you know, going forward on that basis, the costs associated with that is sunk.

What is important going forward is that everything is done to ensure that the right decisions are being made in order to minimize any negative impacts with respect to a deferral account.

Q.21 - Okay. And I agree with that. And I guess that's where I'm coming to. Maybe my questions will get a little clearer of where they are going in a second.

Is this generally a fluid and dynamic market, a secondary market?

MR. KIRSTIUK: What do you mean by fluid and dynamic?

Q.22 - Well it's not a static market that there is a set series of procedures where everybody follows every day. There is a certain amount of capacity that is available every specific day. The amounts available in the market differ from day to day. The parties in the market differ from day to day. Is that correct?

MR. KIRSTIUK: I think that would -- the presumption I think is generally true. To what degree that it's fluid and dynamic is an open question.

Q.23 - Okay. That's fair.

MR. KIRSTIUK: And I don't think we really know the answer to that.

Q.24 - Okay. In question A-13 -- or your answer to your question A-13 -- or question 13, on page 3, you suggest to that the Board should order that EGNB be prohibited from marketing its capacity via pre-arranged deals to any of its affiliated companies unless the capacity is marketed at the full MM 365 toll.

So I would like to refer you -- and I don't know if you have a copy of the Gas Distribution Act or if your counsel does, but we have copies of the section, it's Section 69(h) of the Gas Distribution Act -- we could actually provide copies to everyone, Mr. Chair. I don't know how many people have the Act handy.

So, Mr. Kirstiuk, if I could refer you then to Section 69(b).

MR. KIRSTIUK: Yes, I see it.

Q.25 - And I would just like to read Section 69(h) states that a gas distributor shall make no unjust discrimination in matters relating to allocation, assignment, release or other transfer of the gas distributors capacity rights on a transmission line or a pipeline regulated by the United States Federal Energy Regulatory Commission.

Now would you agree that Section 69 of the Gas Distribution Act sets out rules for transactions between the distributor and marketers including, if any, its own marketing affiliate?

MR. KIRSTIUK: Okay. Now could you repeat the question again, just the last part of it.

Q.26 - Sure. Just with respect to Section 69, I wanted to know if you would agree that Section 69 sets out rules for transactions between the distributor and marketers, be they any marketers, whether it's their own marketing affiliate or otherwise?

MR. KIRSTIUK: That appears to be the case. And are you referring to 69(h) or the whole -- all of 69?

Q.27 - Well for the purpose of this, let's say 69(h)?

MR. KIRSTIUK: That seems to be true, yes.

Q.28 - And 69(h) prescribes then that EGNB shall not treat any marketer differently from any other marketer with respect to allocation, assignment, release or other transfer of its capacity on a transmission line. Would that be your interpretation?

MR. KIRSTIUK: I would say that with respect to what is in the Act I think that's accurate.

Q.29 - So to the extent --

MR. NEWTON: I would like to add onto that, if I could, a bit. The actual words in the Act -- and I am going to get myself in trouble here probably because I am not a lawyer -- but the actual language in the Act, as I see it, says, makes no unjust discrimination. And so I think the key is whether or not -- I think you can discriminate if it is justified and it's warranted.

Q.30 - I would agree that Mr. Newton is a good lawyer and that is a good distinction to have drawn, that is correct, as I am sure this Board knows.

MR. STEWART: He has been well trained.

Q.31 - Which is actually helpful for my line of questioning, so -- well that is fine. So I guess now I am trying to bring this back to around where we started. So you agree that EGNB's goal as it is stated should be to maximize the resale and recovery of this capacity to reduce its deferral account to the fullest extent possible, is that correct?

MR. KIRSTIUK: Yes, subject to the fact that we believe that it would be important to not create a situation where only those parties that had a certain staying power in the market could actually bid for this capacity.

Q.32 - Okay. So would you agree that by treating an Enbridge affiliate, if it came to New Brunswick, differently or unjustly discriminated against that party, other than any other marketer, that this could potentially preclude the opportunity to maximize the deferral account to the benefit of all customers?

MR. KIRSTIUK: I think that if there is an open and transparent bidding process that there would not be a situation -- my own feeling is that an open bidding -- an open and transparent bidding process is very consistent with what is in 69(h). It basically ensures that in fact what 69(h) is really getting at, that there won't be any unjust discrimination, actually does occur.

Q.33 - But I guess I would like to get back specifically to my question, that if you prohibit the distributor from dealing in one way with a marketer otherwise than it can with others, does that not potentially limit its ability to maximize cost recovery and reduce the deferral account?

MR. KIRSTIUK: I think it depends on the process.

Q.34 - Okay.

MR. NEWTON: I think, Mr. MacDougall, our evidence -- and we want to be very clear here -- that with respect to pre-arranged deals, we don't think pre-arranged deals should be allowed for anyone. That's what our evidence says. And we have -- to the extent that you are drawing our attention here to the question and answer to question 13, what we are dealing with there is a situation where the Board determines that pre-arranged deals are appropriate, then we are suggesting that this distinction ought to be drawn, but to be clear here, as Mr. Kirstiuk has said, we support the use of an open and transparent process at all times. We don't think pre-arranged deals are a good thing for anyone regardless of who the capacity is being sold to.

Q.35 - But that being said, would it be correct to state that you believe all marketers should be treated similarly, or at least there should be no unjust discrimination between marketers by the distributor?

MR. KIRSTIUK: I would agree, and I think the nature of a pre-arranged deal, how can you ensure in a pre-arranged deal that really people may be unaware of what discussions are occurring behind the scenes, how can you be certain that in fact that no marketers are being treated unjustly?

Q.36 - Okay. Then let's go to your question 14. Let's follow that up a little bit. In the question -- in question 14 you request that the Board direct that EGNB's marketing of M & NP capacity be done in an open and transparent manner, and you suggest the use of an open request for proposal or public bidding process perhaps by using an electronic bulletin board.

So is it your testimony that you believe this is the only way to maximize cost recovery for the sale of this capacity.

MR. KIRSTIUK: I think that the process ought to be open and that whatever process is decided, all marketers can contribute equally. There may be other mechanisms, there may be an auction approach that is taken, that may in fact be something that could be appropriate under these circumstances. There may be other methods that as long as they are consistent with being an open and transparent, you know, could work.

Q.37 - Okay. Could I refer you now then to exhibit A-27 which was put into evidence yesterday. So gentlemen, could I ask were you aware that there was a similar proposal before the National Energy Board where parties in 1995 asked the pipeline to tender through only a bulletin board and open approach, and that that was the issue that was primarily raised in the decision referenced in A-27?

MR. KIRSTIUK: Okay. Could I just have a moment just to review this.

Q.38 - Certainly.

MR. KIRSTIUK: Could you repeat the question?

Q.39 - Sure. I guess what I was asking here is if you were aware. And if you weren't previously on reading this, and maybe we can go to the section here in paragraph (i), the second sentence, that the Board stated it was considering the following items.

And one of the issues to be raised here was whether any shipper who wished to release capacity on either a permanent or -- a temporary or permanent basis would be required to post its proposal on an electronic bulletin board.

Would you agree that that was one of the questions raised in this proceeding?

MR. KIRSTIUK: Yes.

Q.40 - And could we go down to the bottom paragraph. And I would just like to read that comment there.

"The Board has decided that it is not necessary at this time to require shippers to post available capacity for bidding or to require shippers to post the results of secondary market transactions on an after the fact basis."

Would you agree that that was one of the findings in this decision?

MR. KIRSTIUK: Right. I would agree that that is one of the findings. But I would also say that there are probably some reasons why this decision is quite different than the circumstances that we are dealing with here.

One is is that the shippers that would be using the systems being discussed here would not have deferral accounts, okay. They would be parties similar to perhaps ourselves, that if they have a capacity that they are releasing in a secondary market, that they in fact would find themselves in a situation where they would bare the cost of any unrecovered demand.

Q.41 - Would you agree that many of the shippers on the TransCanada Pipeline are LDCs? Some of the shippers on the TransCanada Pipeline are LDCs, let's put it --

MR. NEWTON: That is fair. Some of the shippers are LDCs. I think it is also worth nothing here that my recollection of this procedure that the N.E.B. used with respect to N.E.B. regulated pipelines, that this occurred back in late 1994 and I guess early 1995 when companies were first actively developing electronic bulletin boards.

There really was no such thing as an electronic bulletin board prior to that. I can't testify as to the specific year that they came into existence. But my recollection is that one of the larger issues that was being discussed here was whether a bulletin board was the proper vehicle to use.

I think the real point here is to the extent a shipper on the TransCanada system attempts to sell its primary capacity in the secondary market, TransCanada's remaining toll payers are not expected to pay for the difference.

That is the distinction.

Q.42 - Okay. Well, let's go to page 2. Because what I'm really trying to get at here is the concept of trying to maximize flexibility and therefore get the best value for the FSA that Enbridge Gas New Brunswick has so as to reduce the deferral account.

And if we can look then at the last line of the first paragraph on page 2, the finding "The Board believes that the best approach at this time is to allow parties maximum flexibility in structuring their secondary market transactions while being prepared to consider any concerns which parties may bring to its attention as the market evolves."

And then going down to the last paragraph, "In conclusion the Board is of the view that as the secondary market appears to be working well, a minimum of regulatory oversight is required."

From the language of this decision, speaking about permitting maximum flexibility in structuring these market transactions, do you not think that decision was made with the Board in contemplation of what was best appropriate for the market, what it thought was best appropriate for the market?

MR. KIRSTIUK: I think it would be important actually to just reread the words that you just read to us. And basically the Board is saying here that because the secondary market appears to be working well, we haven't even started with the secondary market. We haven't even had the opportunity to see whether or not the secondary market is working well yet.

They are justifying, at least in terms of my interpretation, that because the secondary market appears to be working well, that it ought -- parties ought to be allowed maximum flexibility with a minimum of oversight.

The issue here is different. Okay. We have a secondary market that we haven't even tested yet.

Q.43 - Okay. Mr. Kirstiuk, no. That is correct. We haven't. So are you leading to say then that in a secondary market that hasn't been tested we should start placing restrictions on it up front, not let the market begin at all, place restrictions on it because this will help maximize sales in that market?

MR. KIRSTIUK: It is precisely why it needs to be open and transparent. It is very, very important to make sure that as this is developing we see a market -- we see this unfolding in an open and transparent way so that parties that can contribute to providing solutions on how this ought to work can.

Q.44 - Is there any evidence before this board, and taking into account the requirements of section 69 (h) that would make you believe that Enbridge Gas New Brunswick will not act in an appropriate manner as one of the players in the secondary market?

MR. KIRSTIUK: I don't think that there is anything that is telling us that Enbridge would act improperly. What we are saying is is that there are participants that can add value to this process.

And having an open and transparent process with respect to how this capacity is going to be handled, you know, as far as we are concerned, is something that is to the benefit of all participants in the marketplace.

Q.45 - Is it the best way to maximize the value of the capacity held by parties in that market?

MR. KIRSTIUK: We believe it is. And the reason why we believe it is is that having an open and transparent process is more likely to attract more marketers into the marketplace.

Q.46 - So that open and transparent process should be imposed on the entire secondary market then?

MR. KIRSTIUK: With respect to --

Q.47 - Regardless of our deferral account issue, you have now said that you believe that for the entire market, not just us, correct?

MR. KIRSTIUK: With respect to the way in which this capacity is handled, because of the impact with respect to the deferral account, it is important that this is going to be handled in an open and transparent basis.

Q.48 - But the secondary market in general doesn't have to be in an open and transparent basis?

MR. NEWTON: Are you speaking --

Q.49 - I'm asking you a question. Because it seemed to me that Mr. Kirstiuk --

MR. NEWTON: Are you asking a question --

Q.50 - Well, wait a second, Mr. Newton. I'm --

MR. NEWTON: -- generically or just in this instance? I think that is where the confusion is.

Q.51 - Well, Mr. Newton -- Mr. Kirstiuk just seemed to say that the market for this capacity should be open and transparent, not for this specific capacity.

So now I'm asking, do you believe that secondary market should be fully regulated so that all parties participating in it should do it in an open and transparent basis, whatever that may be?

MR. KIRSTIUK: Okay. You are talking about all participants in the marketplace?

Q.52 - In the secondary market.

MR. KIRSTIUK: Yes. I would disagree from the point of view that the motivation that parties that are not regulated, okay, would be to ensure that whatever arrangements that they are putting in place are in their best interests.

Q.53 - But isn't that the motivation of Enbridge Gas New Brunswick as put forward by all of its evidence?

The whole reason for this proposal, this type of proposal, rather than an aid to construct or rather than a reassignment mechanism, a forced reassignment, is to reduce the deferral account. Isn't that the entire evidence before you?

MR. KIRSTIUK: See, Mr. MacDougall, there are two very big distinctions here, okay. One is one that we have talked about quite a bit here with respect to the deferral account, okay, where any unabsorbed demand charges essentially go into a deferral account that --

\Q.54 - I know, Mr. Kirstiuk. I know you have said that, so --

MR. KIRSTIUK: No, no. Let me --

Q.55 - But let's not -- the question is isn't the evidence before you here that Enbridge Gas New Brunswick's goal -- the reason they are entering into this type of arrangement is to reduce the deferral account?

MR. KIRSTIUK: Mr. MacDougall, let me --

Q.56 - Just yes or no to that question? Because that is the evidence.

MR. KIRSTUIK: Excuse me. Mr. MacDougall, could I --

MR. STEWART: Mr. Chairman, the witness is trying to answer the question. Mr. MacDougall posed the question. I think he should give the witness the opportunity to answer the question. And then he can ask his next question after that. To say to a witness, I want a yes or not answer, to an open-ended question, is not --

MR. MACDOUGALL: Well I was just getting the same answer to all the questions, Mr. Chair. So that is why I was being a little more forceful.

CHAIRMAN: Let's try it again, because I don't want to get into restricting a witness to have to yes or no. But try and keep your answers as brief as you are able, Mr. Kirstiuk.

Go ahead, Mr. MacDougall.

Q.57 - I just wanted to know if in your view the evidence before you on the proposal put forward by Enbridge Gas New Brunswick was to try and put forward a proposal that would decrease the deferral account balance to the customers and the ratepayers of Enbridge Gas New Brunswick?

MR. KIRSTIUK: I believe that that is the case. However, there are two important distinctions that should be pointed out.

Those distinction are (1) the impact on the deferral account that we have already talked about. And secondly that Enbridge will have an affiliate potentially that could be marketing natural gas.

And it is very important that any of the arrangements that could be done between Enbridge and its affiliate are consistent with what we are reading in 69 (h) and consistent with a code of conduct that would govern the distributor.

Q.58 - Maybe now we could turn to the wholesale rate issue. Mr. Newton, could you give me examples of other Canadian jurisdictions in which the specific type of wholesale service you describe in your question and answer 16 and what you described earlier today is offered by an LDC?

MR. NEWTON: I have not undertaken any kind of study or analysis to determine whether or not that is the case. But I can tell you I'm not aware of another example in Canada where we have a greenfield market circumstance that's presented here. I'm also aware that in most other Canadian jurisdictions, different billing options, invoicing options are available in the marketplace. And that is not the case here.

A wholesale service option we think will be attractive in the marketplace. We think customers are going to want to see that kind of a service provided. And I'm not sure that you really learn lessons by looking at other jurisdictions that have been fully bundled and are going through all of the complications associated with unbundling their systems today. So there are no other circumstances in Canada that I'm aware of that present the same circumstances as presented here.

Q.59 - But are there any jurisdictions that you are aware of without having done your study on this issue that offer this type of wholesale service in Canada?

MR. NEWTON: I am not aware that there are. And I'm not aware that there are not.

Q.60 - Are you aware of any jurisdictions in North America that offer this specific type of wholesale service?

MR. NEWTON: I am aware of other jurisdictions in North America where such proposals have been put forward.

Q.61 - Are you aware of any where they have been accepted and are the type of service conducted by an LDC in North America today?

MR. NEWTON: I think I have to answer that the same way I did your question in Canada. I'm not aware of any other jurisdictions in North America where that is the case. But I'm also not aware that that is not the case.

Q.62 - Could you go to your question 24? You posed a question that Enbridge Gas New Brunswick seemed to take the position that the wholesale service does not conform to the Board's decision in the marketers hearing. That being that the LDC should bill for its services and for those marketers who were requested to do so. Marketers who wish to bill for their own services may do so. Your answer was absolutely not. This is not about billing.

So do you really believe that in the marketers hearing decision this Board contemplated that a marketer and not an end user was going to be the customer and it made its determinations on billing?

MR. NEWTON: With respect, I don't think that issue was canvassed during the hearing. We had discussions about billing. I certainly don't recall discussions about who ought to be able to contract with Enbridge. It really is an issue about contracting for service. It's not a billing issue.

Q.63 - But I guess my question was do you believe that in making its decision this Board contemplated that the end user was going to be the customer -- that the end user was not going to be the customer when it make its determinations on billing?

MR. NEWTON: I can't answer that. I don't know.

Q.64 - Okay. Could we maybe, and I don't know if you have that. Again Mr. Hoyt has copies. I would like to refer you to the transcript in the marketers hearing. And Mr. Hoyt can hand out -- it is pages 98 and 106.

CHAIRMAN: What date is that?

MR. MACDOUGALL: It is January 10th. So, Mr. Newton, I guess I would like to first go to page 98.

MR. STEWART: Mr. Chair, what I had assumed that Mr. MacDougall was going to do was to, I don't know, something akin to an impeachment or something where he was going to show some evidence of Mr. Newton at some previous proceeding. But if what he is attempting to do here is to put in evidence of a witness that's not here by putting the transcript around, then I don't think that's on. If he wanted to call some of these people or ask this question to Mr. Maclure, then he could have done it.

MR. MACDOUGALL: Mr. Chair, I'm not -- I'm not here to ask questions of any witnesses. What we have is an issue before us -- Mr. Stewart raised an issue yesterday, a whole bunch of questions with respect to the customer not being the end user which is sort of an issue of semantics to me. This transcript is a transcript of a proceeding that was referred to in which this question talks about and I want to point out to this Board that statements were made that use those words. I don't care about the answer of the party, I'm putting it forward.

CHAIRMAN: Well frankly, I would have thought that that might be something that you could cover in summation rather than dealing with this panel, Mr. MacDougall. And I don't know --

MR. MACDOUGALL: I guess the --

CHAIRMAN: Frankly, I don't know how anybody can speculate what was in the Board's mind when they actually made their decision. I think the decision has to speak for itself.

MR. MACDOUGALL: I agree.

CHAIRMAN: So if you wish to refer to these in your summation, then please do so. But I think the objection is upheld and we will not allow --

MR. MACDOUGALL: Okay. Can I refer to the decision then as Mr. Stewart did yesterday?

CHAIRMAN: You can. In your summation?

MR. MACDOUGALL: But not in any question -- I couldn't refer to the decision either rather than the transcript?

CHAIRMAN: I think that's a question of argument as to what it is the Board said in its decision. And counsel can certainly do that. But I think the more appropriate place is for you to do it in summation.

MR. MACDOUGALL: Okay, that's fine, Mr. Chair. I would just like to note that Mr. Stewart did raise that issue yesterday, not in summation.

CHAIRMAN: Okay. I forget.

MR. MACDOUGALL: He has dealt with the issue. This is in response to Mr. Stewart's questions on the topics.

CHAIRMAN: That is 20/20. You should have objected yesterday, I guess, Mr. MacDougall.

MR. MACDOUGALL: Well I didn't think it was a matter that required an objection, Mr. Chair. I think it's --

CHAIRMAN: I can understand that.

MR. MACDOUGALL: -- appropriate then and appropriate now. But I will deal with it in summation. I'm sure the Board will determine what it said and what it meant at the time.

Could we go to your question 28. And the question was, Are your concerns about this shortcoming in the ABC service alleviated if Enbridge Gas New Brunswick includes in these other customer service charges on its single bill? And the response was, No. While this additional option would be welcomed, it does not allow marketers to simply consumer purchase conversion decisions by removing consumers from having at all times to deal with EGNB."

So is what you want, based on the words in your testimony, the right for marketers to remove consumers from having to at all times deal with EGNB?

MR. NEWTON: No. And this is an important point here. What we were trying to cover off in this question and answer -- and I can't speak for others who were involved in the previous hearing -- but when we were talking about billing options a couple of months ago, I think most of us, at least Irving, were looking at a situation where the distribution company would be billing for its distribution charges and a marketer would be billing for gas commodity charges.

And now that we have come up the learning curve a little bit further, we have stepped back and we have looked at other customer services that customers may require as well. Someone is going to have to sell folks gas furnaces and install them and service them and insure them.

And it's unclear to me whether Enbridge Distribution has the capability today to include those line items on its invoice. I don't know if they can or cannot. I don't know if they contemplate doing that or not. That's what this Q and A went to, was we don't want to put ourselves into a situation where we make this so complicated for customers that even if they choose a combined single bill option, the ABC service that Enbridge offers, and even if Irving or some other marketer chooses to use that service because we think it's easier to combine all those charges on one bill. We may still have to send out a second bill to customers for gas consuming equipment. If we want to service someone's furnace. If we want, you know, insurance that's related to it, maintenance, cleaning, all of those things. So I'm not sure that Enbridge's proposed ABC service allows -- gives us an opportunity to do that. I frankly don't know the answer to that question. And all we are trying to say here is that if Enbridge does adjust its ABC service to allow those kinds of customer services to be set out as a separate line item, that's something we would look forward to in the marketplace. But it still doesn't address the issue that we are trying to have addressed in this proceeding where we think the market

would like to have an option available to it, where marketers actually step up and contract for distribution service with Enbridge.

Q.65 - But I guess, Mr. Newton, what I was trying to get at is in saying that that wouldn't -- that that wouldn't satisfy you, what you went on to say is the reason it would not satisfy you is because it would not simplify consumer purchase conversion decisions by removing the consumers from having at all times to deal with EGNB. The reverse being then what you are looking for is to be able to remove consumers from all times to having to deal with EGNB. That's what this answer said. Are you now saying that answer was incorrect?

MR. NEWTON: That's not the intent of the answer. The intent of the answer is in that particular circumstance addressed by this answer here, the end user would still be forced to deal with two different entities. They would be forced to deal with the distribution company for the ABC service. And they would still have to deal with a separate service provider for all of the other services. That's the point.

There is no option available today absent the proposed wholesale service that will allow customers to have the simplicity of having all of the natural gas related options dealt with in one place by one party. It's not an option today.

Q.66 - And if they had that option, you would hope that that would remove the consumers from having at all times to deal with EGNB or not?

MR. NEWTON: Well consumers are always going to have to deal with EGNB on safety issues. The pipe is going to come -- if you look at a residential consumer, the pipe is going to come up to the wall of your home. Enbridge is going to read the meters, install the meters. So I don't think anything we have said today or in our evidence suggested that Enbridge has absolutely no relationship with end users.

Q.67 - Under the wholesale service is it correct that the Board would only regulate the bill to the marketer and not to the end use customer?

MR. NEWTON: Could I ask you, Mr. MacDougall, to repeat the question again, please?

Q.68 - Certainly. Under a wholesale service, is it correct that the Board only regulates the bill to the marketer and not to the end use customer?

MR. NEWTON: I'm not sure that that is the case. I think if this Board chose, through its market certification process, to regulate marketers' bills to customers, I think it has that capability.

Q.69 - At this time is that the process that is carried on in the province of New Brunswick, that marketers' bills would be regulated?

MR. NEWTON: I don't think any of us have drilled down into that level of complexity to determine that.

Q.70 - Do you think this Board has an interest in ensuring that the regulated rate charged to the end user is made known to the end user?

MR. NEWTON: Absolutely.

Q.71 - Do you propose that marketers taking wholesale service should be regulated by the Board on the specific provisions of this service to end users, including billing?

MR. NEWTON: Could you repeat the latter part of your question again?

Q.72 - Do you propose that marketers taking wholesale service should be regulated by this Board on the specific provisions of this service to end users, including billing?

MR. NEWTON: I think we could accept that. Just to be clear, Mr. MacDougall, what we are talking about is this Board at all times having the authority to ensure that the distribution charge component of the marketer's bill is properly identified and set out on marketers' bills. We have no problem with that.

Q.73 - Would a wholesale service affect the provision of postage stamp rates to end use customers not offered this service by a marketer?

MR. NEWTON: I don't think so.

Q.74 - Then are you saying that the rates that would be charged by a marketer under a wholesale service to its customers would be identical to those charged by Enbridge Gas New Brunswick?

MR. NEWTON: The distribution rates?

Q.75 - The distribution rate.

MR. NEWTON: Absolutely.

Q.76 - So if the distribution rates being charged to the customers are going to be identical to the rate that would have been proposed by EGNB, isn't this just another billing mechanism, not a wholesale service? It's just another way to send an aggregated bill by the marketer which in our view this Board has decided isn't appropriate?

MR. NEWTON: It's a way for marketers who want to respond to customers' desire for a simple service. It's a way for marketers to respond to that and make the decision to convert the gas and use gas as simple as possible. That's what we are trying to do.

It's a customer service, it's an option, it's a flexibility that we think customers are going to value, and frankly we think it's going to be a valued service, Mr. MacDougall, that will be of assistance to your client. We think we all have an interest in growing the market and, you know, I don't know what more I can say about this.

We have talked to customers in focus groups. We continually hear that natural gas is new to Atlantic Canada. Some people consider it to be very complicated in terms of all the things you need to do in order to bring gas to your doorstep, and we feel that any marketer who is prepared to step up and simplify the process for customers will be providing a service that will be valued. That's why we want to provide it. Or, you know, that's at least why we want to have the option to provide it. If this service is not valued in the market, we are not going to provide it.

Q.77 - But it's not going to turn into lower distribution rates for the customers?

MR. NEWTON: That's -- you know, I have tried to be as clear as -- perhaps I haven't been as clear as I should have been, but I think we have tried to be clear here that Irving Oil is not proposing any different or unique rate for this service.

Q.78 - In your question 30 you take issue with the assumption that EGNB's customers should always be the end user. On the reverse, is there anything in EGNB's proposal that precludes the marketer from having a formal contractual relationship with all its end users?

MR. NEWTON: I think if I understand your question, you are asking whether or not there is anything in Enbridge's proposal that would preclude marketers from having a separate contractual arrangement with their end users?

Q.79 - That's correct.

MR. NEWTON: No.

MR. MACDOUGALL: Mr. Chair, that is all my questions.

CHAIRMAN: Mr. Holbrook?

MR. HOLBROOK: Mr. Chairman, no questions.

CHAIRMAN: Mr. Zed?

MR. ZED: I don't have any questions, Mr. Chair.

CHAIRMAN: Thank you. Mr. Blue?

MR. BLUE: Yes, sir. I wonder if we might take a short break so I can see what Mr. MacDougall has done to my notes.

CHAIRMAN: Certainly. We will take a break.

(Recess)

CHAIRMAN: Go ahead, Mr. Blue.

CROSS-EXAMINATION BY MR. BLUE:

Q.80 - Thank you, Mr. Chairman. Mr. Kirstiuk, just so that I am clear, is Irving Energy Services a division of Irving Oil Limited?

MR. KIRSTIUK: It is a business name that we are using, that is correct.

Q.81 - It is not a separate corporation?

MR. KIRSTIUK: That's correct.

Q.82 - All right. I just wanted to be clear on that. Mr. Kirstiuk, with respect to the secondary capacity, I don't want to get into a dispute with you about whether other sellers of secondary capacity should be regulated or not, because I take your point that if you make a mistake you will see it in the bottom line, whereas the regulated company makes a mistake other people see it in their bottom line. So I want to put that issue aside.

And I -- but having done so, let me just go down through your requirement for capacity. You say that it should be an open and transparent bidding process.

MR. KIRSTIUK: Yes.

Q.83 - Okay. And Mr. MacDougall referred you to Section 69(h) of the Gas Distribution Act, and I want to refer you to Section 69(l). Do you have that? It's on the same page as the --

MR. KIRSTIUK: Yes, I do.

Q.84 - And what it says is that at any given time a gas distributor shall disclose information provided to any gas marketer about the marketing or sale of gas to customers or identifying potential customers or about the delivery of gas to or on a system to all gas marketers on the system by posting the information on its electronic bulletin board. And were you familiar with that provision before I read it to you?

MR. KIRSTIUK: I have read the Act before. I certainly would not have been able to quote it but I am familiar with it.

Q.85 - Okay. Would a requirement that Enbridge post its secondary capacity availability on the electronic bulletin board meet your criterion of an open and transparent bidding process system?

MR. KIRSTIUK: I think it is definitely a step in the right direction. I think --

Q.86 - Okay.

MR. KIRSTIUK: I think that by posting it on the electronic bulletin board what is achieved is basically market participants would be able to see that that capacity is up for sale.

I believe it should -- we should also be going one step further with respect to the bidding process, so that that bidding process would also be open and transparent.

Q.87 - Okay. I direct your attention to paragraph 69(o) of the Gas Distribution Act 1999, which also requires a gas distributor to file with the Board procedures that will enable gas marketers and the Board to determine how the gas distributor is complying with the standards set forth in this section. And again were you familiar with that section before I read it to you?

MR. KIRSTIUK: Probably a similar -- similar comment, Mr. Blue.

Q.88 - But again if the Board required Enbridge to disclose on a regular basis the nature of secondary transactions ex post facto, would that meet your criterion of an open and transparent bidding process since if you didn't like one you could always make a complaint to the Board?

MR. KIRSTIUK: I think if the procedures were consistent with an open and transparent bidding process, I think it would.

Q.89 - Okay. Now the next thing you said is there is to be no preferential dealing, and I think Mr. MacDougall has been over that with you in connection with section 69(h). And do we agree that if you think there is preferential dealing that is unjust that you can make a complaint to the Board?

MR. KIRSTIUK: Yes, I believe that that is possible, but I think it would also be important to ensure that, you know, prudent steps were taken to try to ensure that that wouldn't happen in the first place. And I believe that an open and transparent bidding process, you know, if that were so ordered, would prevent that from occurring.

Q.90 - Yes. But I am looking for what the Board is going to write in its report to meet your concerns. And when I look at these three paragraphs I wonder what more the Board needs to write in order to say that it now wants to have an open and transparent bidding process, than it has. Is there something else that you would want the Board to say in its decision?

MR. KIRSTIUK: I think what I would say, Mr. Blue, is I would probably add on that the procedures that would be contemplated in section (o), Section 69(o), would basically specify that an open and transparent bidding process would be the mechanism by which secondary capacity would be disposed of.

Q.91 - All right, sir. Now if it's an open and transparent bidding process, Mr. Kirstiuk, why would the sales of that capacity have to be limited to less than two years? And let me just throw into that question the fact that Enbridge are professionals, they have great experience in the gas distribution business, it's their job to monitor the market. Why couldn't the Board rely on their judgment as to length of terms?

MR. KIRSTIUK: Because I think in this particular circumstance one of the fundamental issues that I think is before the Board right now is to ensure that marketers are encouraged to come into this marketplace.

Q.92 - Yes.

MR. KIRSTIUK: Because of the nature of the marketplace that we are dealing with right now, it would be my belief that marketers would be more inclined to come in if they knew that they would be able to bid for capacity within a manageable time frame, such as two years, as opposed to finding themselves competing against parties that might be able to put a very low bid in for a very long time period that may in fact on a net present value basis be actually be higher than even a bid that might be at full toll for a limited time period.

Q.93 - All right. So you would say the commitment should be made for less than two years to keep any one marketer, including yourselves, from becoming entrenched and discouraging other marketers and thereby diminishing competition in New Brunswick?

MR. KIRSTIUK: That's correct.

Q.94 - Are you aware of any sales of capacity -- secondary capacity, Mr. Newton, anywhere that have been for more than two years?

MR. NEWTON: Yes.

Q.95 - And what are the nature of those?

MR. NEWTON: I am not sure I can talk about them. I used to work for a regulated pipeline company.

Q.96 - Are they common?

MR. NEWTON: I think -- I think they can be. I think if you take a look at Maritime and Northeast's tariff, as an example, and I think it's fairly typical of most Canadian interprovincial pipeline systems, they provide for both temporary and permanent capacity releases and assignments.

And in some cases the pipeline company becomes aware of those kinds of assignments, in other cases they may not. If the receipt and delivery points remain consistent, the pipeline may not even know about a temporary assignment.

And the distinction between a temporary assignment and a permanent assignment, as I understand it, is a primary firm shipper might have a contract of ten or 15 years duration and the assignment for any period of time less than the full contract term is determined to be a temporary assignment. And as long as the receipts and delivery points remain the same, the pipeline company may not even be aware of it.

And I can tell you, Mr. Blue, that was the case on TransCanada.

Q.97 - Thank you. Is it your understanding, Mr. Kirstiuk, that Maritime will have a bulletin board that will allow shippers to advertise capacity that is available?

MR. KIRSTIUK: That's my understanding.

Q.98 - Right. Thank you. Now with respect to affiliate transactions, Mr. Kirstiuk, I didn't hear your last --

your fifth point, but I think you said you would have no objection if they were at full cost?

MR. KIRSTIUK: That's correct.

Q.99 - All right. Now this morning I put to Mr. Maclure, would he have trouble if Enbridge did in its judgment think that an affiliate transaction would have the best effect on the deferral account, then turning around and offering that to other marketers who might be interested. Did you hear that evidence?

MR. KIRSTIUK: Yes, I did.

Q.100 - And do you have any trouble with that procedure?

MR. KIRSTIUK: I think that procedure does make sense.

Q.101 - All right. Okay. Let's talk about wholesale rates, wholesale service, Mr. Newton. I want to understand your position. And I don't want to get into the issue of whether you are reopening the billing issue or not. I will leave that to Mr. MacDougall.

But I judge from your answers to questions 24 and 29 that you respond to the argument that Enbridge makes against you, that you are trying to reopen that decision by saying that you would still be billing a customer. But your customer under your marketing service would be the marketer as opposed to the end user. Is that fair?

MR. NEWTON: Yes.

Q.102 - All right. Now you have also said -- you are not here to design a rate and not talking about a rate. But in a way we have to do that a little bit to see if it is a good idea. So my next questions are going to be in that context.

You are saying that under the marketers service, the marketer would send one bill to the customer. So the customer would get one bill for a distribution service and all other customer services including gas, is that correct?

MR. NEWTON: I think that is the way that Irving would do it. But I'm not sure that making a wholesale service available to other marketers would necessarily require other marketers to do it that way.

Q.103 - I'm just talking about what Irving Energy Services is talking about. Because that is the only evidence we have. But under the Irving model the marketer that provided the marketing service would send one bill. And that bill would cover distribution service and all other energy services -- all other services including the sale of gas?

MR. NEWTON: Yes.

Q.104 - All right. Now would the marketing class of customers include customers of different rate classes of Enbridge such as small general service customers, industrial customers, large general service customers, whoever the marketer could sign up?

MR. NEWTON: I think the way we would likely proceed with this -- and then this is all subject to refinement going down the road -- but I heard concerns expressed yesterday by the Enbridge panel about a marketer combining different classes of services in one wholesale service and somehow confusing customers in terms of what they would actually be paying for.

I think that could be easily -- I think marketers could easily deal with that by entering into separate wholesale arrangements with Enbridge with respect to the different customer classes.

So what I mean by that -- and perhaps the residential classes is the best one to look at initially. I wouldn't see Irving as a marketer assembling residential, commercial and industrial customers all in one wholesale service.

I'm not sure how that would work. I don't know how we would -- if we did that I don't know how we would be able to break out the separate rates that are regulated by this Board. So that is not the way we would go forward.

Q.105 - Okay. Mr. Newton, this is important. Until you heard Enbridge express that concern yesterday, had you made that distinction in your mind between different customer classes within the group? Or is that a distinction that you have just put before us something that you have improvised today after hearing that evidence?

MR. NEWTON: I wouldn't -- I wouldn't call it improvised. There are a whole host of detailed issues, Mr. Blue, that I will acknowledge we haven't thought through.

And in some cases it is because, you know, we need to talk to Enbridge about how they would want to administer this. One example would be a contract term.

We don't know today what the nature of the contractual arrangement would be between Enbridge and Irving. We have had no discussions about that.

And we have tried to address that in our testimony by indicating we think that is an appropriate issue to be dealt with by the Working Group. That is why we are a member of the Working Group. And we think it works well in that regard.

If Enbridge were to offer this kind of service, what kind of term commitment would they require marketers to enter into? We don't know the answer to that.

So there are a lot of detailed mechanical type issues that would need to be worked out. But at the end of the day, I don't think they are difficult issues. I think we can work them out.

Q.106 - Thank you for that, Mr. Newton. But my question was really confined to whether your evidence today, the wholesale rate, would be according to Enbridge rate class, was that knew today? Or was that something that you had when you wrote your evidence?

MR. NEWTON: We never contemplated assembling different rate classes in one service where end users would not know the regulated distribution rate they would be paying.

Q.107 - Okay. And you said to Mr. MacDougall that the rate class -- the marketers' class bill would always show to a member of say the small general service class, the same small general service rate that is paid by other small general service customers who are not in the marketers' rate class, correct?

MR. NEWTON: Yes, sir. And one of the reasons we would want to do that, for a residential customer the distribution rate could -- and, you know, I don't mean this in any negative way -- but the distribution rate will form a very significant portion of the all-in cost to residential homeowners.

So we think it is important that they understand all of the components. So we will separately identify those items, absolutely.

Q.108 - And just because I want to have it clear in the transcript, you are not proposing for the marketers' rate class a bundled rate for all services?

MR. NEWTON: That's correct.

Q.109 - Okay. What is in it for Irving Energy Services then?

MR. NEWTON: What is in it for Irving Energy Services?

Q.110 - Yes.

MR. NEWTON: Providing choice --

Q.111 - What I'm getting at, you are taking on the responsibility of developing bills, sending it out, differentiating among classes, showing Enbridge's rate, not getting any of the benefits of diversity that Mr. Maclure and I were talking about this morning. What is in it for Irving Energy Services?

MR. NEWTON: What is in it for Irving Energy Services is growing the gas market and getting more customers for Energy. It is about giving our customers choice and flexibility.

And you have hit a hot button, Mr. Blue. It is a pretty important issue to my company. It is a pretty important issue to any marketer. It is about providing customers with choices and flexibility. That is a good thing.

Q.112 - All right. Now could we have a look at section 53 of the Act? Now what section 53(1) says is, "The Board may require a gas distributor to publish separate rates and tariffs for each customer service according to its associated unit of measure and the Board may by order alter an associated unit of measure if it considers that another associated unit of measure better enables customers to compare customer service as offered by a gas distributor with those offered by others."

Do you see that section, sir?

MR. NEWTON: Yes.

Q.113 - Now that refers to gas distributors, but the policy behind that section, I put it to you, is that a bill should have every service separated out so that the customer can comparison shop. Do you understand that?

MR. NEWTON: I think that's what it says and we agree with that.

Q.114 - Would the marketers' bill breakdown each service provided according to its unit of measure so the customer could comparison shop with other marketers and other service providers?

MR. NEWTON: I think it's in the best interest for any marketer to do that.

Q.115 - All right.

MR. NEWTON: Just as an aside here, I don't want to get off on a tangent, but one of the issues we are wrestling with in Atlantic Canada here are different units of measurement in New Brunswick and Nova Scotia. And one of the complexities that we are going to have to deal with, in New Brunswick we are dealing with cents per meter cubed. In Nova Scotia we are likely talking about dollars per Gj.

And that is going to be confusing in the marketplace. And we are going to have to find a way to get around that.

So it's not only important, Mr. Blue, I take your point in New Brunswick that marketers be very clear in terms of the services they are offering and the pricing of the individual components. But there is even a broader issue here in terms of Atlantic Canada and Nova Scotia and New Brunswick having similar mechanisms in place.

Q.116 - Mr. Newton, just going back to the beginning of that answer, which was to my question about whether Irving is going to show each item of service according to its unit of measure so the customers can comparison shop, your answer was any marketer should do that. My question specifically is is Irving proposing to do that?

MR. NEWTON: I think customer choice, and I am going to go back to the customer choice again, if customers desire that kind of line-by-line breakdown on their invoices, then that's something we would likely provide. With respect to the distribution service component of the bill, I can absolutely tell you that we would include that. We would set that out separately on the bill.

Q.117 - But if we have different classes of service, including marketers service, wouldn't it make sense for all billers who provide customer services, which can include the distributor, to have to present their bills to customers in the same way?

MR. NEWTON: I think in theory, Mr. Blue, I can agree with you. From a practical viewpoint in the marketing world, I am not sure all customers would want that done in the same way. From Irving's perspective it -- would it be one of our marketing goals to be very clear in terms of the kinds of services we are offering? Absolutely.

Q.118 - All right.

MR. NEWTON: Will other marketers do that? I don't know.

Q.119 - I guess that depends on what order the Board makes. Mr. Newton, I guess one of the things that I am concerned about having been around the regulatory world for awhile, is that let's assume the Board were to authorize discussions about a marketers' rate that the next time we are here or maybe the time after that marketers come back and say, well gee, we are providing a valuable service. We are saving Enbridge some money. Perhaps we should get a little break to reflect that. In other words, get the benefits of diversity in another way. Are you ruling out that request? Are you ruling out the possibility of that request in the future on behalf of Irving?

MR. NEWTON: No, I don't think that would be a very responsible thing to do. I think if the market --

Q.120 - All right.

MR. NEWTON: Sorry?

Q.121 - I said all right.

MR. NEWTON: Okay. If, you know, we intend to provide services our customers want and will continue to propose services that we believe are market responsive. Circumstances can change.

Q.122 - But my question was specifically related to distribution service cost. You are not ruling out the possibility of asking the Board at some time in the future that the marketers' rate get a break on distribution service cost relative to other customers who are not within the marketers' rate class. Is that fair?

MR. NEWTON: No, I am not ruling that out.

Q.123 - Right.

MR. NEWTON: I think it would be up to this Board to rule on an request in the future people might make.

Q.124 - Mr. Newton, won't a marketer always want to assist an end user on how to bring natural gas to a customer and with all the sort of decisions you say you want to make under the marketers' rate? Aren't you going to do that anyway in order to sign up customers and make the market grow?

MR. NEWTON: I think it depends on the nature of the service that the individual marketer intends to bring to the market.

In Irving Energy Services case, I think we would like to be active in providing all services to customers. I am not sure all marketers will do that. There may -- and there is nothing wrong with that. There may be some marketers who only want to sell the commodity. There may be other marketers who only want to sell furnaces. And there may be others who want to be involved in all of those services.

Q.125 - Mr. Newton, I am just confining my questions to Irving. And we will deal with other marketers when they arise. But wouldn't Irving Energy Services, let's -- if the Board said no to a marketers' rate work just as hard to sell natural gas to customers and sell additional services?

MR. NEWTON: A marketers' rate or I am a little confused here. A marketers' rate, are you asking about a marketers' rate or wholesale service?

Q.126 - I guess I am asking about a wholesale service. If the Board said no to wholesale service, wouldn't Irving Energy Services work just as hard to educate customers, sign them up, get them to burn gas?

MR. NEWTON: We think -- we think we might have to work a little harder at it, but absolutely we would still work at it.

Q.127 - Okay. And even if you don't get a wholesale rate, won't you still be able to aggregate several customers and take that proposal to Enbridge? To have Enbridge bill the customer on your behalf?

MR. NEWTON: I think there are agency arrangements that could be used to help service some of the residential size customers. But when you are getting into some of the larger accounts, the commercial and industrial accounts, my understanding of Enbridge is -- tariff is that certain services require contracts between those end users and Enbridge.

So I am at a loss today from a business perspective to really figure out how we could do that. Would we work to try to assist the process? Absolutely. But I think it comes back to, Mr. Blue, that this whole issue of simplicity and complexity and trying to help people make the decisions they are going to have to make to spend capital to convert systems to use natural gas, we think all of us need to be making that process as simple and easy and efficient as we can for customers.

Q.128 - If simplicity was the goal though, we wouldn't need marketers. We would just have the gas company sell a bundled service, wouldn't we? I mean the Province has moved beyond -- has moved beyond that and we have to deal with it the way the legislation was written?

MR. NEWTON: You wouldn't have competition. You might not have the lowest cost and you certainly wouldn't be providing customer choice.

Q.129 - But you would -- it sure would be simple, wouldn't it? I have been confused ever since 1985 as a customer, Mr. Newton.

MR. NEWTON: Irving could probably help you out.

Q.130 - Now in the wholesale rate, would Irving be in effect providing an ABC service to Enbridge with respect to billing for and collecting the distribution charge?

MR. NEWTON: No. No, we don't view it that way. We would simply be the contract party with Enbridge. We would enter into a contractual arrangement with Enbridge and Enbridge would bill us for services.

Q.131 - All right. Thank you.

MR. NEWTON: Enbridge would bill marketers for services, just to be clear.

Q.132 - Let's say there is another marketer on the scene. Let's say Sempra. And let's say Sempra supplied the natural gas equipment and the installation and Irving sold the gas, would Irving then allow Sempra to provide the wholesale service in that scenario? How would that work? Dueling marketers?

MR. NEWTON: I wouldn't -- I wouldn't preclude the possibility of doing that.

Q.133 - Okay. Do you -- Mr. Maclure told us several reasons why the connection with the customer was important. Do you concede those points, but say that they should not be decisive or do you deny those points completely?

MR. NEWTON: I don't think -- I don't think we could ever deny the existence of the relationship. I mean, the physical pipes will be put in the ground and physical infrastructure will be brought up to end user's doorsteps.

Meters will be installed. And meters will be read. But that may be the extent of the service provided by the distribution company to the end user.

So once the pipes are in the ground, I'm really not too sure how much ongoing interaction there is going to be between the end user and the distribution company. I think -- that remains to be seen, I think.

You know, to the extent someone comes home in the evening and smells gas and there is a safety issue, then you want to have that homeowner calling the gas company. You want them calling the distribution company. But --

Q.134 - Okay. Just so that I have a clear answer in my transcript, Mr. Newton, I hear you telling the Board this afternoon that your wholesale rate proposal would not in any way prejudice postage stamp rates within a customer class across the province, that you would ensure that that did not happen. Is that fair?

MR. NEWTON: I think that is fair.

Q.135 - At this hearing?

MR. NEWTON: We have made no proposals with respect to a wholesale rate.

Q.136 - Okay. But with respect to future applications, you are making no commitments, is that fair, on behalf of Irving?

MR. NEWTON: I think -- I think it is fair to conclude that any party to this proceeding, Enbridge, marketers, any other party that may have proposals in future with respect to any service that either Enbridge offers today or we would like to see them offer. So I --

MR. BLUE: I will take that as a no to my question and say thank you very much. And thank you, Mr. Chairman.

CHAIRMAN: Board counsel?

MR. O'CONNELL: I will be very brief, Mr. Chairman.

<u>CROSS-EXAMINATION BY MR. O'CONNELL</u>:

Q.137 - Gentlemen, the concept of wholesale rate and wholesale service, that is set out in your evidence. Where did it come from?

MR. NEWTON: I want to make sure I understand your question. Distinguishing between the rate and service?

Q.138 - No, no, no, no. Just -- and I hate to use the term "bundled" because it gets used all the time in many different contexts. But just the whole idea together of wholesale rate and wholesale service that you have articulated in your evidence, where did it come from?

MR. NEWTON: Well it came from a couple of places. The initial idea that we had came from Enbridge's own franchise application before New Brunswick. I mean, that is where I first read about the concept of a wholesale service.

The precise wording that I have used here or that we have used here in the answer to question 32 -- if you go to page 8 of our prefiled testimony you will see four options identified. The first three we characterize as billing options that we think this Board has already dealt with in its previous decisions.

The language that we have used there in quotes, the two-bill arrangement, utility, single bill arrangement, the marketers single bill arrangement and the wholesale service model, that is precise wording that has been lifted out of a New York State Public Service Commission staff paper on these issues. It is wording that we were not aware of until the last several weeks, I think it is fair to say.

I guess the direct answer to your question is that the whole concept of a wholesale service, the genesis for it initially came out of the Enbridge application.

We have had some very preliminary discussions with customer focus groups with potential customers. And we are hearing that that type of a model would be attractive in the marketplace.

Q.139 - Okay. Any reason why you can't provide the Board with a copy of that staff paper from New York for their ratification?

MR. NEWTON: No. We can do that.

Q.140 - Okay. Thank you. Mr. Newton, you have been employed in other jurisdictions in utilities in the past. I don't have your c.v. in front of me. But it seems to me you have been employed in utilities for awhile?

MR. NEWTON: That could be a good thing. And it could be a bad thing. Yes, I have.

Q.141 - Did you work in industries such as natural gas related -- natural gas in the province of Ontario?

MR. NEWTON: No.

Q.142 - The province of Manitoba?

MR. NEWTON: No.

Q.143 - Saskatchewan or Alberta?

MR. NEWTON: Alberta, yes. And I guess other provinces indirectly. The company that I worked for was an interprovincial pipeline system that --

Q.144 - Okay.

MR. NEWTON: -- crossed through some of those provinces you mentioned.

Q.145 - Are you aware of any use of wholesale rates or wholesale service in the province of Alberta?

MR. NEWTON: I'm embarrassed to say I can't answer the question. I don't know. I haven't looked at it. And I haven't looked at that for a reason.

We -- or I talked about undertaking an exhaustive study at one point of other jurisdictions in North America in terms of whether this is a unique concept or some kind of a new idea that others haven't thought of before.

And we really came down to at the end of the day that we felt in the particular circumstances presented here in New Brunswick that we are dealing with a greenfield situation and that the situation here, the market environment really is an unique one.

And we felt this was an appropriate model to use. And we really didn't spend time looking at other jurisdictions to see whether there were similar services available.

I tried to answer I think one of Mr. MacDougall's questions earlier this afternoon that I don't know the answer to that question. I don't know if they exist. And I don't know if they don't exist.

Q.146 - Well, Mr. Newton, how did you find the New York State staff paper?

MR. NEWTON: I had a conversation. We have been involved in a number of working groups both here in New Brunswick and Nova Scotia with several different -- several market participants, different players who would like to market gas, Sempra, Enbridge and several other people. And I don't recall whether it was brought to my attention by someone through that process.

We have also had -- I have asked legal counsel that we deal with in the United States to research a couple of issues for us. And they didn't do an exhaustive research, but they did present us with some examples that were move related to the billing issue than the wholesale service issue.

I'm not trying to put too fine of a line on this. But I really do thing it is important for people to review the answer to question 32.

The first three issues there we acknowledge are billing issues. That is what they are. And we think they were canvassed during the last hearing. The fourth option is not a billing issue.

Q.147 - And look, I remember Mr. MacDougall putting that question to you about what you were aware of in terms of wholesale rate and wholesale service in other jurisdictions. And I can't quote you. And so I won't try to quote you. But the gist that I took from your answer is, I ain't saying yes and I ain't saying no. And I want to probe that a little bit farther if you don't mind.

MR. NEWTON: Okay.

Q.148 - And I want to do that by talking to you briefly about what you did in preparation for this hearing. Now at sometime before this hearing, preparing for this, you prepared the written evidence, 30 some odd questions that we have before us today, correct?

MR. NEWTON: That is right.

Q.149 - When did you do that?

MR. NEWTON: Precisely when I did it?

Q.150 - Well, I don't mean did you do it -- what day did you do it, what week did you do it? I will take whatever I can get.

MR. NEWTON: I did it a week ago Sunday morning, whatever date that was.

Q.151 - Okay.

\ MR. NEWTON: Eight, nine days ago.

Q.152 - Okay. And so you knew at least eight or nine days ago that wholesale service and wholesale rate was going to be an issue today?

MR. NEWTON: That's correct.

Q.153 - As a matter of fact, you knew a long time ago, because you were conscious that Enbridge Gas New Brunswick mentioned wholesale rates in their proposal to government months and months and months ago and then dropped it?

MR. NEWTON: That is true.

Q.154 - And as a result of Enbridge raising the issue of wholesale rate and wholesale service, and then dropping it, Irving becomes interested in the concept and sees it as of benefit to Irving Energy Services, correct?

MR. NEWTON: We see it as a benefit for customers.

Q.155 - Yes. And what is good for the customer is good for Mr. Irving?

MR. NEWTON: I think so.

Q.156 - I expect he would be happy to hear that. So I guess I am somewhat surprised that Irving Energy Services, knowing for all this time that wholesale rate and wholesale services is going to be an issue here today, did nothing to research what is out there in terms of precedents in other provinces and states.

Now are you telling us here today that is what happened?

MR. NEWTON: I am telling you that we did not put a full court press on researching regulatory precedent in other North American jurisdictions. Yes, that's what I am telling you.

Q.157 - Well tell me, did you go to -- did you go to a prevent defence and look anywhere?

MR. NEWTON: We looked at New York.

Q.158 - You looked at New York and you found this staff paper, and you found this staff paper after talking to somebody at the Working Group within the last few weeks. Now did you ever -- I mean let's -- did you ever look at the

Province of Alberta to see if they ever used or approved a wholesale rate or a wholesale service?

MR. NEWTON: No, I did not.

Q.159 - You never looked?

MR. NEWTON: I did not.

Q.160 - And when I say you, I mean the Irving you, not the Newton you. And did you ever look at the Province of Saskatchewan and see if they ever used or was approved for use a wholesale rate and a wholesale service?

MR. NEWTON: We looked at Ontario.

Q.161 - Okay. You looked at Ontario. Thank heavens. What did you find in Ontario?

MR. NEWTON: Inconclusive evidence. That's why we didn't put it on the record.

Q.162 - You didn't find any use of or approval of a wholesale rate or a wholesale service in the Province of Ontario, did you?

MR. NEWTON: It's a work in progress, sir.

Q.163 - As of today, or as of last week, or as of last month, or as of the first of the year, was there any use of or approval of a wholesale rate or a wholesale service in the Province of Ontario?

MR. NEWTON: I am sorry. I didn't catch your question.

Q.164 - As of today, as of the last week, the last month, or going back to the first of the year, is there any use of or approval of a wholesale rate or a wholesale service in the Province of Ontario?

MR. NEWTON: The short answer is no. The issue is being discussed at the Working Group level as I understand it in various task forces in Ontario today -- not today precisely, but at this time. It's an issue that is being addressed.

Q.165 - Okay.

MR. NEWTON: You have to remember that what we are dealing with here in North America is an industry that is trying to unbundle itself. You are not dealing -- we don't have any other situations in North America where you have a Greenfield situation presented as is the case here. You are dealing with mature systems where utilities have dealt with end users for decades and are being forced to unbundle their services. We could have spent a lot of time and money canvassing those kinds of situations. We didn't think it would be helpful to this Board to do that.

Q.166 - All right. Just one other brief area to canvass, then I will get out of Dodge. To my simple way of thinking the wholesale rate is a discounted rate, but what I can't get my mind around is how the Board can control who gets the benefit of what portion of the discount?

MR. NEWTON: I guess I must have really confused people today. I will say it again. We have made no proposals with respect to a discounted rate for wholesale service. It's not about the rate. It's not about the price. It's about providing customers a choice to have their decisions simplified, providing marketers with an opportunity to contract directly with Enbridge. We have made no proposals on a discounted rate. We have had no discussions with Enbridge about a discounted rate. We have had no discussions with anyone about a discounted rate. We have had no discussions with customers about a discounted rate. I don't -- you know, I am a little -- I have been struggling here because it's not part of our proposal.

Q.167 - Look -- and perhaps that's -- the confusion is my fault rather than your fault, because I -- in the context of a rate hearing I am trying to get a handle on an issue like who gets the benefit of this discount, and if I have misconstrued what you have said I apologize for that.

And, Mr. Chairman, Commissioners, those are all the questions I have for this panel.

CHAIRMAN: Thank you, Mr. O'Connell. Mr. Stewart?

MR. STEWART: I have no re-direct for this panel, Mr. Chair.

CHAIRMAN: Thank you, gentlemen. Now it is my understanding, Mr. Blue, that it would be most convenient for you and the province if we were to adjourn tomorrow because you are going to be meeting with municipal officials, is that correct?

MR. BLUE: That's correct, and we hope that the product of our meeting will be to shorten the construction hearing.

CHAIRMAN: Yes. I don't think anybody in this room will try and stand in the way of doing that.

So we will adjourn to 1:30 tomorrow afternoon for summation?

MR. BLUE: 2:00 o'clock might be a bit more comfortable.

CHAIRMAN: Okay. 2:00 o'clock. Great. We will do that. Thank you.

MR. BLUE: Thank you, Mr. Chair.

(Adjourned)

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

Reporter