

New Brunswick Energy and Utilities Board
IN THE MATTER OF An application by Potash Corporation of
Saskatchewan Inc. (PCS) for a Permit to Construct a brine
disposal pipeline between PotashCorp Penobsquis and PotashCorp
Cassidy Lake

held at the Fairway Inn, Sussex, New Brunswick on December 8th
2008.

Henneberry Reporting Service

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1 New Brunswick Energy and Utilities Board
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2 Saskatchewan Inc. (PCS) for a Permit to Construct a brine
disposal pipeline between PotashCorp Penobsquis and PotashCorp
3 Cassidy Lake
4 held at the Fairway Inn, Sussex, New Brunswick on December 8th
2008.

5
BEFORE: Raymond Gorman, Q.C. - Chairman
6 Cyril Johnston - Vice-Chairman
Connie Morrison - Member
7 Steve Toner - Member

8 New Brunswick Energy and Utilities Board -
9 Board Counsel - Ms. Ellen Desmond
Board Staff - Todd McQuinn
10 David Keenan
David Young

11
12 Board Secretary - Lorraine Légère

13

14 CHAIRMAN: Good morning, everyone. This is a pre-hearing
15 conference of the New Brunswick Energy and Utilities Board
16 in connection with an application by Potash Corporation of
17 Saskatchewan Inc., for a Permit to construct and operate
18 in approximately 29.4 kilometer brine disposal pipeline
19 between the PotashCorp Penobsquis Mine and the PotashCorp
20 Cassidy Lake Mill and the supporting infrastructure.

21 The quorum of the EUB for this hearing is comprised of
22 Connie Morrison, Steve Toner, Cyril Johnston and myself,
23 Raymond Gorman.

24 At this time I am going to take the appearances
25 starting with the Applicant.

1
2 MR. ZED: Thank you, Chairman. Peter Zed and Nadia McPhee
3 representing the Applicant, Potash Corporation of
4 Saskatchewan. And I am joined at this table with the
5 General Manager of the New Brunswick facility, Mark
6 Fracchia. And I am also joined by other representatives
7 of the Applicant who if we get to that stage of the
8 empanelling a witness panel, they will be introduced more
9 specifically.

10 CHAIRMAN: Thank you, Mr. Zed. The Board received a number
11 of Notices of Intervention. First, the Hammond River
12 Angling Association. I believe we received a letter from
13 Mr. Benjamin. Is he present today?

14 MS. CAMPBELL: No, I am though on behalf of --

15 CHAIRMAN: You have to come forward, Ms. Campbell.

16 MS. CAMPBELL: Which mike?

17 CHAIRMAN: Anyone is fine, I think.

18 MS. CAMPBELL: No, actually, Tom, had asked that I appear,
19 Sarah Campbell. I am the watershed biologist.

20 CHAIRMAN: Thank you, Ms. Campbell. Mr. Bruce Northrup, the
21 MLA for Kings East has sent in a letter. Is he present?

22 MR. NORTHRUP: Yes, Mr. Chair. I am Bruce Northrup, MLA for
23 Kings East.

24 CHAIRMAN: Thank you. And I guess while you are there, and
25 I will have to get Ms. Campbell to come back as well. I

1
2 did want to canvass the parties as to what level of
3 participation that you wanted. Under our process you can
4 be a formal or an informal intervenor. And informal
5 intervenors often want to have copies of all of the
6 information, documentation, and perhaps file some written
7 submission. Formal intervenors typically ask questions of
8 the witnesses and take a much greater role in
9 participation at the hearing itself.

10 So I guess, Mr. Northrup, I don't believe in your
11 letter we could tell which level of participation it was
12 that you wanted to take?

13 MR. NORTHRUP: I had sent a letter to the Board and I had
14 received a lawyer's letter last week from the reply to my
15 letter.

16 CHAIRMAN: Yes.

17 MR. NORTHRUP: I do have another letter to either give to
18 the Board or to read to the Board this morning in reply to
19 the lawyer letter.

20 CHAIRMAN: This would be the -- when you refer to the
21 lawyer's letter you are referring to one from the lawyer
22 for the Applicant?

23 MR. NORTHRUP: Yes.

24 CHAIRMAN: So in terms of participating in the hearing
25 itself would it be your intention to, for example, ask

1
2 questions to the witnesses or to supply any evidence or
3 anything of that nature?

4 MR. NORTHRUP: No, I think my information is in the letter
5 that was submitted to the Board.

6 CHAIRMAN: Thank you, Mr. Northrup. Ms. Campbell?

7 MS. CAMPBELL: No, we would just like to be informal
8 intervenor. Thank you.

9 CHAIRMAN: So your intention was simply to read something
10 into the record or to make submissions, but not your
11 intention to ask questions of witnesses or to file
12 evidence or anything of that nature?

13 MS. CAMPBELL: No.

14 CHAIRMAN: Thank you. Is Mr. Chambers here?

15 MR. CHAMBERS: I am Roy Chambers. I am a dairy farmer from
16 along the route. I have some questions I would like to
17 ask and some things that I think should be added to the
18 regulations in future.

19 CHAIRMAN: So can I take from that then perhaps you want to
20 be a formal intervenor in the sense that you want to be
21 able to participate in the hearing through a questioning
22 of witnesses and things of that nature?

23 MR. CHAMBERS: I think so.

24 CHAIRMAN: Thank you. Then Tereca Carr?

25 MS. CARR: Good morning.

1
2 CHAIRMAN: So you are Tereca Carr?

3 MS. CARR: Yes.

4 CHAIRMAN: And is it your intention to be a formal or an
5 informal intervenor? I think you have heard me describe
6 the distinction to the other intervenors?

7 MS. CARR: Yes, I intend to be a formal intervenor.

8 CHAIRMAN: And do you intend to file any evidence or would
9 your participation be limited to cross-examination of
10 witnesses, for example?

11 MS. CARR: I had submitted a letter to the Board and did
12 receive a response with attachments and outlining the
13 procedures today. However, I didn't have sufficient time
14 to do everything for today. So with that intention I felt
15 that I felt as being a formal intervenor.

16 CHAIRMAN: So what you are telling us is you would like to
17 be a formal intervenor though?

18 MS. CARR: Yes.

19 CHAIRMAN: Thank you. Village of Sussex Corner? We
20 received a letter from Mr. John Mahoney. Anybody here
21 from the Village? No one present.

22 As well there are a number of parties pursuant to
23 Section 6 of the Act that require notices of the
24 application to be filed on them and they are automatically
25 parties to this procedure. I understand that a copy of

1 this was filed with the Mayor of the Town of Sussex.

2 Anybody here from the Town of Sussex? And then we have
3 various ministries that need to -- have noticed file and
4 they are automatically parties. Minister of Agriculture
5 and Aquaculture. Anybody here? Minister of Energy?
6

7 MR. BILODEAU: Good morning. I am Alain Bilodeau for the
8 department, representing the Department of Energy.

9 CHAIRMAN: Thank you, Mr. Bilodeau. And will you be --
10 sorry, I am going to get you to come back, Mr. Bilodeau.
11 Will you be participating fully in the hearing in terms of
12 being a formal intervenor or are you here simply to
13 observe?

14 MR. BILODEAU: I am just here to observe.

15 CHAIRMAN: Thank you, Mr. Bilodeau. Minister of
16 Environment? Minister of Local Government? Minister of
17 Natural Resources? Minister of Public Safety? Minister
18 of Transportation?

19 Anybody, other than the Board, is there anybody here
20 that wishes to participate that I have not heard from or
21 whose name I guess I haven't mentioned? This would be the
22 time to come forward and identify yourself. Okay.

23 New Brunswick Energy and Utilities Board?

24 MS. DESMOND: Ellen Desmond, Mr. Chair, as Board Counsel.

25 And for Board Staff, Todd McQuinn, David Young and David

1
2 Keenan.

3 CHAIRMAN: Thank you, Ms. Desmond. The Board is in
4 possession of a number of pre-filed documents, which we
5 will mark as exhibits. And I am not sure whether or not
6 the proposed exhibit list was distributed to the various
7 parties. I feel pretty certain that the Applicant would
8 have that list, but I don't know about the others. Those
9 particularly who wanted to take part as formal
10 intervenors, do you have a copy of the exhibit list --
11 proposed exhibit list?

12 MS. CARR: No.

13 CHAIRMAN: And Mr. Chambers? Do you have a copy of the
14 exhibit list?

15 MR. CHAMBERS: No.

16 MS. DESMOND: Mr. Chair, I have extra copies I can provide
17 to the two formal intervenors. We can -- we have a couple
18 of copies here we can share.

19 CHAIRMAN: Okay. I think that would be appropriate. We
20 will go through the list. All right. The documentation
21 that's been filed up to this point in time, firstly I
22 understand that the Applicant has filed an affidavit of
23 filing of this application, information or material, to
24 the specific government ministries that I have mentioned.
25 And Madame Secretary you have that document?

1
2 MS. LEGERE: Yes.

3 CHAIRMAN: I am going to ask the formal intervenors if they
4 have any issue with any of these documents being marked as
5 an exhibit then please let me know and then we can discuss
6 your objection, but that first document is nothing more
7 than an affidavit from the Applicant saying they have
8 complied essentially with Section 6 of the Act.

9 MS. CARR: Okay. Can I have just one moment.

10 CHAIRMAN: Did you want a moment to go through that list?

11 MS. CARR: Yes.

12 MR. CHAMBERS: Yes. please.

13 CHAIRMAN: Just let me know when you have had an opportunity
14 to review it.

15 MS. CARR: Thank you for the opportunity to review some of
16 this because some of the material was provided for us at
17 our library here in Sussex.

18 CHAIRMAN: Yes.

19 MS. CARR: And I did reference to a couple of -- a study
20 that is only at the library in my letter to the Board.

21 CHAIRMAN: Yes.

22 MS. CARR: And in that I am not sure which part of it was
23 responding to in the applications either a 4 or 5. We do
24 have one report with us. We, meaning, Roy Chambers.
25 However, I did not bring all of the details, in another

1 report, which is actually only accessed in the library.

2 And it would be referring to like, 4 and 5.

3
4 CHAIRMAN: Well perhaps I could maybe better explain just
5 precisely what it is we are doing at this stage of the
6 hearing. The documents that are listed on that draft
7 exhibit's list are all documents that have already been
8 filed with the Energy and Utilities Board.

9 MS. CARR: Yes.

10 CHAIRMAN: And which are available for public viewing both
11 at the Board and at the Applicant's premises. I think
12 they also were filed with the municipality in Sussex for
13 viewing as well.

14 MS. CARR: Correct.

15 CHAIRMAN: At this stage, it is really just a matter of
16 determining what documents we should mark as exhibits.
17 And typically those will be the documents that will be
18 placed before witnesses for purposes as asking questions
19 and also for the Board to obviously examine the proposals
20 by the Applicant.

21 So at this stage, we are not looking -- or not
22 suggesting that anything that's in these documents is
23 being accepted by the Board. Simply looking to have it
24 marked as exhibits, as evidence, which was filed by the
25 Applicant in support of their application.

1
2 So all we are doing is looking to mark the documents.
3 But occasionally in a hearing, and quite frankly it is
4 rather rare, but occasionally some party has an objection
5 to a particular document because of -- not because it
6 might not help their case, but there is some legal or
7 technical reason that they would raise.

8 So at this stage, it would be our intention to mark
9 these documents as exhibits, unless one of the formal
10 intervenors has some issue with one of those documents and
11 feels that it should not be marked.

12 So maybe the simply question I could put to you is do
13 you have any objection to the marking of those documents
14 as exhibits? And if you feel --

15 MS. CARR: No, I do not have an objection.

16 CHAIRMAN: And Mr. Chambers?

17 MR. CHAMBERS: No.

18 CHAIRMAN: Perhaps the two of you might stay up at that
19 microphone. It might be simpler.

20 MR. CHAMBERS: Yes. I have gone through the -- roughly
21 anyway, Volume 1, 2 and 3 of the application and I don't
22 have any reason not to accept those at this time.

23 CHAIRMAN: Okay.

24 MR. CHAMBERS: I do have a lot of questions about them but -

1
2 CHAIRMAN: No, I understand. And that's another phase in
3 the hearing process. You know, just in terms of moving
4 forward, the first thing that we typically do is mark the
5 relevant documents that have been pre-filed.

6 Does anybody else have any objections? Or Board
7 Counsel have any objections, anything there?

8 MS. DESMOND: No. Thank you.

9 CHAIRMAN: All right. Well then with the consent of the
10 formal intervenors then, we will proceed to mark the
11 documents that have been pre-filed.

12 So the documents will receive the exhibit number that
13 corresponds to the description of the document on the
14 draft exhibit list. And I will go through that.

15 Exhibit 1, is the affidavit of filing of application,
16 information or material, to specific government
17 ministries. Exhibit 2, is the affidavit of Publishing of
18 Notice pursuant to the Board's Order. Exhibit 3, is an
19 Application for a Permit to Construct - Volume 1 of the
20 application. And it consists of Parts A, B, C and D, and
21 Appendices A to L. Exhibit 4, is the Application for
22 Permit to Construct - Volume 2 - Manuals. And that
23 consists of Parts A through J.

24 And, Mr. Zed, perhaps you could help me with this. H
25 and J are documents to be provided at a later date, that

1
2 those manuals are to be updated?

3 MR. ZED: The manuals are actually ready in draft form, but
4 they relate to -- they will relate to the -- once we get
5 -- assuming that we will be successful in this
6 application, we will need to make a further application
7 for licence to operate. And those two manuals really in
8 our view, and I think the concurrence of Mr. McQuinn,
9 relate to the licencing application -- sorry the -- yes,
10 the licencing application for operation purposes.

11 CHAIRMAN: So they don't have any application to the matter
12 before us today?

13 MR. ZED: That's right.

14 CHAIRMAN: All right. So the exhibit 4 then H and J are not
15 -- there is no materials under those tabs. Exhibit 5, is
16 the Application for Permit to Construct - Volume 3 -
17 Environmental Impact Assessment Report & Environmental
18 Management Plan. And that consists of Parts A and B and
19 the Appendices. Exhibit 6 is a letter from the Pipeline
20 Coordinating Committee dated November 3rd 2008. Exhibit 7
21 will be a letter form Mark Fracchia/PCS to Ruth Levi,
22 President of the Mawiw Council of First Nations. Exhibit
23 8 is a c.v. of March Fracchia, General Manger, PCS Potash
24 NB Division. Exhibit 9 is the c.v. of Janet Blackadar,
25 Manager Environmental Sciences, AMEC. Exhibit 10 is the

1
2 c.v. of Lance -- that should read Reid, I believe,
3 shouldn't it -- Lance Reid, Project Services and Pipeline
4 Construction Manager, AMEC. And Exhibit 11 c.v. is Brian
5 Roulston, Superintendent of Engineering, PCS Potash, NB
6 Division.

7 MS. CARR: I have just one question. Mr. Reid, I can't
8 identify him. I don't -- I accept that he is the person,
9 but I don't recognize him.

10 MR. ZED: Well if it will make matters easier, Mr. Reid,
11 would you please stand up?

12 MS. CARR: Thank you.

13 CHAIRMAN: Mr. Zed, are there any other documents that you
14 believe should be entered as exhibits at this stage?

15 MR. ZED: Not at this stage.

16 MR. CHAMBERS: One moment, please? In my copy of the Volume
17 1, there is a couple of sections that were out of order.
18 That they weren't in the Table of Contents. I was just
19 looking to find where they were. I think they were listed
20 as Appendix G and H.

21 MR. ZED: Well H isn't there.

22 CHAIRMAN: This is in Volume 1 or 2?

23 MR. CHAMBERS: Volume 1.

24 CHAIRMAN: Volume 1, I don't think has -- you are saying one
25 of the appendices is missing in Volume 1?

1
2 MR. CHAMBERS: Well it had two additional ones, kind of out
3 of order. I don't know whether they were from a different
4 book that were mistakenly put in this or --

5 CHAIRMAN: Just take a second, Mr. Zed. Maybe you can --
6 can you just have a look at the documentation and see if
7 it -- we can resolve that?

8 MR. ZED: Let's see what ours says. Unfortunately, we are
9 stuck with an alphabet with 26 letters. And there is an
10 Appendix G to exhibit B, which Mr. Chambers thought was in
11 the wrong place. G being under tab B. But it follows
12 logically through all the other information that I have.
13 He thought he had two G's which were different.

14 CHAIRMAN: So you are saying there is not nothing missing or
15 out of order?

16 MR. ZED: I think it appears to be in order.

17 CHAIRMAN: We will just wait for a moment there till they
18 get that sorted out. It is a lot of material to digest.

19 MR. ZED: We put together a copy for him because he asked
20 for certain things. So I thought we put it together in
21 the wrong order, but it appears to be in the right order.

22 CHAIRMAN: So, Mr. Chambers, then are you satisfied that you
23 have all of the appropriate information in front of you
24 now?

25 MR. CHAMBERS: Yes.

1
2 CHAIRMAN: Thank you. I do want to just perhaps, Mr. Zed,
3 ask you to address the issue on Volume 2. It is exhibit
4 4. And that would be Part H and Part J, which already
5 alluded to -- Part H being the Operations and Maintenance
6 Manual and Part J being type Training Program and
7 Continuing Education Plan. And I think you have indicated
8 that those would be filed at a later date because they
9 would -- it would be more part of the -- appropriately
10 part of the licencing process.

11 The concern that I have is that typically this is the
12 hearing that the public participates in and once a permit
13 to construct is issued, and if all other things fall in
14 place, very often there is not a second hearing if you
15 will -- a second public hearing for an opportunity for the
16 public to come forward and question the evidence or the
17 processes in place and things of that nature. And it
18 seems to me that with a brine line already in existence
19 that certainly a Training Program and Continuing Education
20 Plan, and presumably also the Operations and Maintenance
21 Manual must be documents that -- you would almost think
22 they might be works in progress, if you will. If they are
23 available, I think that this would probably be the
24 appropriate time to file them, even if they might more
25 logically fit with the licencing phase if you will.

1
2 This is an opportunity for the general public to ask
3 questions. And if there is something later on in those
4 documents that they object to, then presumably they might
5 be looking for -- you know, for a further public hearing.

6 It may be in your client's best interest, for example,
7 to file them now if you have them.

8 MR. ZED: I have three copies of each with me. And I just -
9 - we don't have any objection to filing them now. The
10 real issue was we didn't want to cause any confusion. In
11 the past the pipeline applications I have been involved
12 in, we have always sort of developed them with respect to
13 the licensing hearing. So there is nothing -- I mean we
14 are taking the same steps that we have in the past, but I
15 really don't have any objection to filing them with the
16 Board today.

17 CHAIRMAN: Well the point I guess I am trying to make is
18 that if documentation is filed at a later point in time,
19 then often -- often times, if a permit to construct issues
20 and if all other conditions, presuming there were
21 conditions, if all conditions are met, you know, typically
22 then that would result in a licence being issued. And it
23 wouldn't be unusual, for example, for the public not to be
24 looking for a second hearing. But if there were documents
25 that weren't available at this point in time to be

1
2 examined by the public, there would be a far greater
3 chance perhaps that intervenors would want to question
4 those documents at a later point in time.

5 So if you have the documents today, it is your case, I
6 can't tell you to file them. But I am going to suggest
7 that you do.

8 MR. ZED: Yes, could we just have a moment?

9 CHAIRMAN: Sure. How about we take a five-minute break.

10 MR. ZED: sure.

11 CHAIRMAN: Just let the Board know when you are ready.

12 (Recess - 10:50 a.m. to 11:00 a.m.)

13 CHAIRMAN: Yes, Mr. Zed. What did you decide to do?

14 MR. ZED: Whatever the Chairman wishes.

15 CHAIRMAN: Well it is your case, Mr. Zed.

16 MR. ZED: And I understand that although it is our case, I
17 would just like to explain for the record that what we
18 have done is that we followed the same procedure that we
19 followed with respect to other pipeline applications. And
20 the provision under the Pipeline Act that we are here --
21 that brings us here today is for an application for a
22 permit to construct. If we are successful sometime during
23 the course of construction as we are nearing completion,
24 we will be filing with the Board an application for a
25 license to operate. And in our experience typically that

1
2 has been when the Training Program, Continuing Education
3 Plan Manual and the Operation and Maintenance Manual would
4 be finalized.

5 In the normal course, these documents would go to --
6 in the case of this Board, Mr. McQuinn. And they would be
7 the subject of a dialogue between the Applicant and Mr.
8 McQuinn as to whether or not they required changes or
9 would be appropriate. Typically these documents don't go
10 to the Pipeline Coordinating Committee for comment,
11 because we understood and would agree that they are under
12 Mr. McQuinn's purview. But we don't have any objection to
13 filing them in their present form bearing in mind that we
14 fully expect Mr. McQuinn to have comments with respect to
15 the contents, so they may change based on his
16 recommendations or requirements.

17 CHAIRMAN: Well, I would agree that whatever you file today
18 certainly at the end of the day may not be in its final
19 form because in order to get a licence to operate, of
20 course, as you know the Board has to consider that in any
21 event.

22 MR. ZED: Yes.

23 CHAIRMAN: So it wouldn't be Mr. McQuinn, but it is a quorum
24 of the Board. And so these would be documents that need
25 to be filed.

1
2 The point that I am trying to make is that the members
3 of the public are present. These are documents that are
4 referred to and if there are any concerns about the
5 ongoing safety, if you would, of this project, then it
6 would seem to me that people who are present today to make
7 presentations may well be interested in knowing what's
8 in - or what's at least in a general sense what would be
9 in the Operation and Maintenance Manual, for example, and
10 the Training Program to ensure there is continuing safety
11 for the project.

12 MR. ZED: And Mr. Chairman, we don't take issue with that.

13 Merely, we were just following procedure that had been
14 adopted earlier. And we take your point as being a valid
15 one and I would like to file both manuals. I have a very
16 limited number of copies. So if I could file one of each
17 with the Board. And I do have two other copies if anybody
18 would like them. And if anybody would like more than
19 that, I will arrange to make them available to them.

20 CHAIRMAN: Thank you. So the two documents then would the
21 Operations and Maintenance Manual would be the first?

22 MR. ZED: Operations and Maintenance Manual, Brine Disposal
23 and Pipeline System.

24 CHAIRMAN: I am going to mark those, because of your
25 comments, rather than showing them as appearing --

1
2 appearing under part H of exhibit 4, I am going to give
3 that a separate exhibit number. And that will be exhibit
4 12.

5 Now again just before I guess -- I am going to ask
6 both the formal intervenors, I guess I am skipping a step
7 here, whether or not you have any objection to that being
8 marked, after we have gone through all of this. Any
9 objection?

10 MS. CARR: May I just state one question.

11 CHAIRMAN: Again because the microphones up there and the
12 two of you are formal intervenors, it may make sense if
13 you stay at that table.

14 MS. CARR: I certainly don't object to them providing the
15 information. Exhibit number 2 you discussed would be the
16 part H. And then part J, Training and Continuing
17 Education Plan would be marked exhibit number 2 as well?

18 CHAIRMAN: No, they would be -- we have marked 11 exhibits
19 this morning already. So they would be respectfully
20 exhibit number 12 and exhibit number 13.

21 So, Ms. Carr, then you have no objection to that. And
22 Mr. Chambers, you have no objection?

23 MR. CHAMBERS: No objection.

24 CHAIRMAN: So those documents then, the Operation and
25 Maintenance Manual will be exhibit 12. And the Training

1
2 Program and Continuing Education Plan will be exhibit 13.

3 And Mr. Zed, I don't have them in front of me, but have I
4 described them appropriately?

5 MR. ZED: Yes, you have.

6 CHAIRMAN: Thank you. All right. So I guess that takes
7 care of all of the documents to be marked. I just want to
8 make a general comment about the purpose of today's
9 hearing. And it is to allow the Applicant, the
10 intervenors and any other interested parties to make
11 representations with respect to the nature of the
12 procedure to be followed by the EUB in considering the
13 application and any matters in respect thereto, such as
14 the need for interrogatories, the setting of a date for a
15 hearing, et cetera. And this is all set out in Section
16 5(4) of the Act.

17 For the benefit of those in attendance who may not be
18 familiar with the Board's role, I would point out in
19 considering an application the Board shall take into
20 account matters that it considers relevant and shall
21 consider -- these are set out in the legislation, we have
22 to consider the location of the proposed pipeline and its
23 effect upon public health and safety and the environment.

24 Secondly, the financial responsibility of the
25 Applicant. And then in the case of the pipeline for the

1
2 transmission of natural gas, which of course does not
3 apply in the present case, the existence of present and
4 future markets for the pipeline, and such other matters as
5 we consider relevant in the public interest. And so just
6 for your benefit those can be found under Section 7 of the
7 Act.

8 So the purpose and the advertised purpose of today's
9 hearing is as a pre-hearing conference that is to
10 establish the process and procedures to be followed at the
11 hearing.

12 Now I know that Mr. Zed has indicated that he would
13 like to proceed with a full hearing today. That again
14 wasn't what was advertised. So perhaps I might ask Mr.
15 Zed, is that still your intention and perhaps you might
16 address the Board on that issue?

17 MR. ZED: Yes, thank you, Mr. Chairman. While we always
18 recognize the pre-hearing is an opportunity for members of
19 the public to come forward and make their case to either
20 be appointed formal or informal intervenors, and to make
21 their -- and the Board has dealt with those issues, it has
22 also been our experience in situations where the matter
23 can be dealt with expeditiously the Board has in the past
24 expeditiously while still allowing members of the public
25 to exercise their rights to information, right to question

1
2 witnesses. It's been our experience that the Board has in
3 some circumstances converted the pre-hearing to a full
4 hearing.

5 Now we have -- we have heard some of the people speak
6 today, Ms. Carr and Mr. Chambers, and we don't understand
7 either of their situations to be inconsistent with what we
8 are asking. They both have been aware of the
9 application -- the pending application for many months.
10 As you are aware, we filed an application with Department
11 of Environment, November of 2007. And as a result of that
12 application, PCS' plans of locating and constructing the
13 brine pipeline have been well known for a period of
14 certainly a year plus in this area. There have been a
15 number of open houses. There has also been significant
16 dialogue between in Ms. Carr's case with PCS. I know
17 there has been some dialogue with Mr. Chambers, with PCS.
18 We have a witness panel here today that is quite prepared
19 to answer or attempt to answer any questions they might
20 put. We don't know that a delay in the process would
21 assist anybody. I mean it would be a delay in our view
22 for the sake of delay.

23 These good people are here today and I see Mr.
24 Chambers from his level of preparation and discussions
25 that Ms. Carr has had with people at PCS, they are quite

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2 able to ask questions and receive answers. And I would
3 ask the Board to therefore convert this to a hearing and
4 if it becomes apparent during the course of the hearing
5 that there is some reason to adjourn for any length of
6 time, then I guess I will leave it to the Board to make
7 that decision.

8 But with all due respect, we would ask that we
9 continue today and tomorrow if need be to allow these
10 people an opportunity and the Board and Board Staff an
11 opportunity to question our witness panel. And if at the
12 conclusion of that feel it is appropriate to deliberate
13 and hopefully grant our application.

14 CHAIRMAN: Thank you, Mr. Zed. Mr. Chambers, do you have
15 any comment with respect to whether or not we should talk
16 about process today for a hearing which would occur at
17 some other time or whether or not we should proceed and
18 have the full hearing today?

19 MR. CHAMBERS: I don't know that I want it to go much
20 longer. It's been a long drawn out process. I would like
21 to put it behind me myself. I don't know about Tereca.

22 CHAIRMAN: So, Mr. Chambers, can I -- are you saying that
23 you would like to proceed today?

24 MR. CHAMBERS: I don't know how much better I could get
25 prepared for this. There is way more than I can digest

1
2 here in my workload anyway. So I think I have enough
3 questions today to --

4 CHAIRMAN: So you would support the Applicant's motion then
5 to move into a full hearing today?

6 MR. CHAMBERS: I don't have --

7 CHAIRMAN: I am not trying to put words in your mouth. I
8 just want to make sure I understand your position.

9 MR. CHAMBERS: Yes.

10 CHAIRMAN: Because, you know, you are certainly entitled to
11 take, you know, either side of that argument that you wish
12 and the Board will take into consideration whatever
13 comments you make of course.

14 MR. CHAMBERS: I am sure we could always be more prepared.
15 I certainly could. But like I said it might be delay for
16 delay's sake on my case. So I have no problem with it
17 right now.

18 CHAIRMAN: Thank you, Mr. Chambers. Ms. Carr?

19 MS. CARR: I did outline in a letter to -- actually it was
20 sent via fax and e-mail to the Board, and it was dated on
21 November 26th. And I did receive a response and
22 documentation of which I had many copies already. And a
23 response did come from Ms. Légère. The questions I guess
24 that I had outlined does encompass something maybe on a
25 larger scope that on a -- but I feel I am prepared.

1
2 So mainly the health and safety concerns which I
3 emphasized. The Applicant has submitted exhibit 12 and
4 exhibit 13 today. I would possibly like to consult those
5 and see those sometime if it's not today, tomorrow
6 perhaps.

7 CHAIRMAN: Well do you want an opportunity to have a look at
8 those two new documents that have been marked 12 and 13.
9 And is it your position then that we, the Board, should
10 proceed to a hearing today or that the Board should
11 adjourn this to a later date for a hearing?

12 MS. CARR: I would prefer a later date.

13 CHAIRMAN: Okay. And could you just outline for me your --
14 you know, basically the reasons you would like to have a
15 later date if you would?

16 MS. CARR: If I could try to itemize it, I have been very
17 actively following this due to the fact that the possible
18 proposed sites were directly through the family farmland.
19 And the site that has been proposed is I would say less
20 than, as I indicated in my letter, a kilometer possibly.
21 I am a golfer, so let's say 310 yards from where I could
22 stand hitting a orange stake. So I kind of estimated
23 there.

24 I have researched what I could, but I travel
25 internationally for my work. And I did attend public

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2 meetings and I have tried to read as much as I could, but
3 a New Brunswick Energy and Utilities Board's procedure
4 policy and public interest I feel has been defined to me.
5 And I have had access to research information. However, I
6 am also have plans for what I intend to do December and
7 January for my work and I travel internationally.

8 CHAIRMAN: In the event --

9 MS. CARR: And we are coming up to a Christmas break as
10 such, so I am very limited for time, too.

11 CHAIRMAN: In the event that we did not proceed today and,
12 for example, say that we were to proceed in January, I am
13 just wondering are you telling us that you -- you know,
14 you aren't prepared to with all of your questions today
15 having reviewed all the material or do you feel that we
16 should go through an interrogatory process. I don't even
17 know if you know what that is?

18 MS. CARR: What was the last process?

19 CHAIRMAN: An interrogatory process.

20 MS. CARR: Interrogatory?

21 CHAIRMAN: Or information request. I think that it has been
22 defined both ways. Often known as an IR process. If you
23 are not certain of -- you know, the position that you, you
24 know, that you want to take on this.

25 I am certainly prepared again to take a short

1
2 adjournment. And you may want to ask Board Staff just to
3 assist you in terms of letting you know what might occur
4 or what benefits. You may be able to determine is there
5 some benefit to have an adjournment. I just get the sense
6 you are not certain?

7 MS. CARR: Yes, there would be a benefit for me for an
8 adjournment. However, I am not sure if the person that I
9 can speak with is available today.

10 CHAIRMAN: In the event that the Board were you set a
11 hearing date other than this week, what would your
12 availability be?

13 MS. CARR: Excuse me. Prior to the 15th would be fine. I
14 am not available -- I am available the 12th or the 15th.
15 But I am not available from the 16th to the 31st.

16 CHAIRMAN: So you are talking about prior to the 15th of
17 this month?

18 MS. CARR: Yes. December. Let me clarify. I am available
19 December 11th, 12th, 15th or 16th. And then I am not
20 available from the 17th to the 31st of December. And
21 January is pretty tight.

22 CHAIRMAN: Do you have any dates in January at all?

23 MS. CARR: In January? The week of the 5th to the 9th is
24 available.

25 CHAIRMAN: Okay. I think it might be beneficial to take a

1
2 short break and perhaps you can confer with Board Staff
3 about, you know, some of the processes that might or might
4 not be available, but if -- I am looking at the first set
5 of dates that you gave me, and if what you are talking
6 about is a couple of days, I mean we do have times
7 scheduled for this hearing, you know, tomorrow and
8 Wednesday, so I am not sure if what you are saying is
9 maybe you just need a -- you know, a day or two. I don't
10 know. So I think what we will do is just take again
11 another short adjournment I think so that you can discuss
12 that perhaps with Board Staff, so maybe you might get a
13 better idea as to what some of processes might be. And
14 then we will -- as soon as you are -- Board Staff will
15 let me know as soon as you are ready.

16 Anybody else -- i assume everybody else, since they
17 are informal intervenors, I am going to presume if they
18 have a statement to make would want to make that statement
19 today while they are is, is that a fair --

20 MS. CAMPBELL: Yes.

21 CHAIRMAN: Thank you, Ms. Campbell, Mr. Northrup. Yes, Mr.
22 Zed?

23 MR. ZED: If I might, I mean if it assists the process, we
24 are quite prepared to proceed today for the purpose of
25 allowing Mr. Chambers, for example, to ask questions if

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2 it's going to be a delay for, you know, just a couple of
3 days. And he may wish to proceed today. I mean I will
4 leave that to the parties and the Board to decide, but you
5 know if we could do the witnesses today, or if some of the
6 intervenors could do the witnesses today, that's
7 acceptable to us as well and then adjourn for a day or two
8 or three if that would accommodate Ms. Carr. We sort of
9 remain ready to accommodate. We would like to obviously
10 proceed as quickly as possible, but I will that to the
11 Board.

12 CHAIRMAN: Thank you. I think we will take an adjournment
13 here and allow Ms. Carr an opportunity perhaps to explore
14 some of the options or just to determine what benefit
15 delay of varying intervals might be for her. And if
16 somebody would just let the Board know when you are ready.
17 Thank you.

18 (Recess - 11:22 a.m. to 11:40 a.m.)

19 CHAIRMAN: So, Ms. Carr, you have had an opportunity to I
20 guess consider what some of the options might be in terms
21 of what position you would take. So perhaps you could
22 address the Board at this time?

23 MS. CARR: Certainly. I would be interested in pursuing the
24 IR process.

25 CHAIRMAN: And in the event that the Board were to allow

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2 that, would you anticipate being able to do that this
3 week? I say that because I know that you -- the first set
4 of dates that you gave in terms of being available for a
5 hearing were actually Thursday, Friday of this week. You
6 know, in the event that the Board were to grant your
7 request to have an IR process, you know, would that be
8 possible or do you feel that you need more time?

9 MS. CARR: December would not be convenient for me at this
10 time. I have some work commitments that I have to make
11 and family matters that I have to attend to. However, I
12 can be flexible with January, other than the date -- I am
13 sorry, I didn't bring Blackberry or anything with me here.
14 The 5th to the 9th of January?

15 CHAIRMAN: For a hearing or for a --

16 MS. CARR: I am not available. I will be -- I will not be
17 in the province of New Brunswick.

18 CHAIRMAN: No, but for example, I think you said earlier
19 that you would be available from the 5th to the 9th of
20 January for a hearing?

21 MS. CARR: Oh, yes. Yes.

22 CHAIRMAN: And is that what you are telling us now --

23 MS. CARR: Yes.

24 CHAIRMAN: -- in other words the IR process that you are
25 proposing would occur over the next few days with a

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2 hearing perhaps in January. Is that what you are really -
3 - I just want to make sure I understand what you are
4 suggesting.

5 MS. CARR: Yes. Excuse me, I was getting my dates mixed up.
6 I do have international travel commitments starting the
7 12th of January.

8 CHAIRMAN: No, fair enough. So I guess what I am hearing
9 from you is that you would like a hearing to be delayed
10 but to occur sometime in early January, the first week of
11 January, the 5th to the 9th.

12 MS. CARR: Or after the dates of the 12th to the 18th. And
13 other than that, I don't have my other --

14 CHAIRMAN: The second -- the other question that I was
15 asking you is how on the IR process, which are written
16 questions, which would occur prior to the hearing --

17 MS. CARR: Yes.

18 CHAIRMAN: -- would you have any problem if the Board were
19 to grant your request, would you have any problem doing
20 those in the next few days, the written questions?

21 MS. CARR: Yes.

22 CHAIRMAN: You could do that?

23 MS. CARR: I would have a problem, because I have -- I mean
24 I work Monday to Friday. And some of the people that I
25 have consulted I am not sure of their schedule. So I did

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2 not have an opportunity to go to speak with them yet.

3 CHAIRMAN: I guess, because I am sure Mr. Zed is going to
4 want to respond to what it is you are saying.

5 What I am hearing is that a hearing from the 5th to
6 the 9th of January would work for you?

7 MS. CARR: Correct.

8 CHAIRMAN: And if we do allow an IR process, that process
9 generally gives a period of time for an intervenor to
10 submit written questions and then gives a period of time
11 obviously for the Applicant to respond to those written
12 questions. And we do have the holiday season coming on
13 us very quickly and so I suppose that becomes -- makes the
14 situation a little bit more difficult perhaps for
15 everybody. I am just wondering, I think you had indicated
16 earlier that the 11th, 12th and 15th and 16th were dates
17 you could have done the oral hearing. I am wondering if
18 you could do the -- if we were to have IRs, if you could
19 them within that time frame, which would them presumably
20 allow a hearing in early January.

21 And again this is all -- the Board hasn't made a
22 decision on this by the way. I am simply trying to get a
23 sense of what you are asking for in terms of time frames,
24 because if I don't then I am sure Mr. Zed will address
25 this in terms of time frames and then we will be back over

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2 to you on that issue anyway.

3 MS. CARR: With the upcoming holiday season and a few family
4 commitments that I have, I could accommodate certain dates
5 as I indicated previously or re-schedule some events. I
6 would say that the 16th would not be a good day.

7 CHAIRMAN: 16th of?

8 MS. CARR: Of December.

9 CHAIRMAN: We will try to -- I am not sure that we are
10 talking about the same thing. The IR process doesn't
11 require your attendance obviously. It is simply a date by
12 which you would submit your questions presumably by e-
13 mail, so that you don't need to worry about the mails,
14 getting the questions --

15 MS. CARR: And I can send by fax --

16 CHAIRMAN: Fax or e-mails. So the 16th wouldn't come into
17 play in the sense that if you had -- you know, if that
18 were a day you had something else planned -- all I am
19 really trying to establish from you is for purposes of
20 that first phase that you are suggesting, the IR phase,
21 when would you be able to get your written questions sent
22 to the Applicant?

23 MS. CARR: Would it be reasonable to say I could have it
24 completed by the 15th of December?

25 CHAIRMAN: Well --

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MS. CARR: A week from today?

CHAIRMAN: -- I am asking you. Can you --

MS. CARR: Yes.

CHAIRMAN: -- is that reasonable to you, I guess?

MS. CARR: Yes, that is reasonable.

CHAIRMAN: And then you are suggesting that you could do a hearing that week of the 5th to the 9th of January. And then if that didn't -- wasn't available to the Board or to the Applicant, your next availability would be when?

MS. CARR: I need a calendar -- that was February --

CHAIRMAN: So the rest of -- so January would be out. You would be into February basically. Is that a fair statement?

MS. CARR: Yes.

CHAIRMAN: So do you have anything else you want to add to your comments there about the process?

MS. CARR: No, not at this time.

CHAIRMAN: All right. So to summarize you want an IR process followed by a hearing at a later time?

MS. CARR: Yes.

CHAIRMAN: Anybody else want to address that issue before I go back to Mr. Zed?

MS. DESMOND: Mr. Chair, sorry, I think Ms. Campbell had indicated she wanted to make a submission to the Board.

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2 Perhaps, Mr. Zed, will want to respond to that as well.

3 CHAIRMAN: Ms. Campbell, perhaps you can come up to the
4 microphone. There is another microphone right up front
5 here, too.

6 MS. CAMPBELL: That's okay. Thank you. I was wondering if
7 I could request to change my status to formal?

8 CHAIRMAN: And so you wish to question the witnesses?

9 MS. CAMPBELL: I do, yes.

10 CHAIRMAN: Are you interested in the IR process?

11 MS. CAMPBELL: No.

12 CHAIRMAN: Just an opportunity to ask questions of
13 witnesses?

14 MS. CAMPBELL: Yes.

15 CHAIRMAN: All right. Thank you. Mr. Zed?

16 MR. ZED: Well if I may I will deal first with Ms. Campbell.
17 We certainly don't have any objection to her change of
18 status.

19 I wonder if before I address the issue, we could have
20 some clarification. I understood that Ms. Carr was
21 available the 16th, the week of the 16th and that if it is
22 just -- the 16th of December. I may have misheard her,
23 but I thought originally when she answered the question
24 there was the prospect of maybe holding the hearing next
25 week. And if the IR process is complete by the 15th, we

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2 will answer the questions instantaneously to the best of
3 our ability. And so I am just wondering if we could look
4 at something along those lines if in fact that is
5 possible. And again just so -- if we could just clarify
6 what her commitment is the 16th? Working the 16th?

7 MS. CARR: I have a family commitment. My mother is elderly
8 and I have to go and accompany her to a doctor's
9 appointment and it is out of town.

10 CHAIRMAN: Maybe just to sort of clarify for the record,
11 your availability. You have indicated 11th, 12th,
12 15th, and in fact asked if we would have an IR process
13 that would terminate on the 15th. So if that were the
14 case, if the Board were to allow that, what would be your
15 next available date to come to an oral hearing? After the
16 15th of December, I know that you can -- you have
17 indicated the week of 5th to the 9th of January. Are
18 there any days, I think, Mr. Zed wants to know do you have
19 any days after the 15th, but prior to early January? In
20 other words, any dates in December?

21 MS. CARR: Yes, I understand the question. Just one moment,
22 please. I am sorry, depending on the appointment with a
23 family member on the 16th, I am not sure of my
24 availability. However, I would anticipate the 22nd and
25 23rd should be available of December.

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2 CHAIRMAN: I can tell you that the Board has three more
3 hearings between now and Christmas. And actually the
4 15th, 16th, 17th would not work for the Board in any
5 event. We have a hearing on the 22nd.

6 MR. ZED: I guess I was hoping for the 18th to allow her --
7 or visitation with her mother and the doctor's appointment
8 on the 16th. And I was aware of the Board's schedule the
9 week of the 15th, but I was hoping maybe the 18th that she
10 could be available.

11 CHAIRMAN: I know the 18th also will not work for the Board.

12 MR. ZED: Okay.

13 CHAIRMAN: I am not -- the 19th would be a possibility. How
14 does the 19th look for you?

15 MS. CARR: Could you clarify what notification I would just
16 provide to the Board if I did commit to the 19th and
17 something came up with my parent that I couldn't be --

18 CHAIRMAN: I think we would rather pick a date that we know
19 that you can make it, rather than one that you might be
20 able to. I think that --

21 MS. CARR: Then I have to go back to my dates in January.

22 CHAIRMAN: What about the 23rd?

23 MS. CARR: Oh, the 23rd. 23rd of December. I can be
24 available.

25 CHAIRMAN: We are going to check with the Board's schedule

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2 as well. Always a possibility of running two panels at
3 the same time, but getting panel members may be difficult
4 as well.

5 MR. ZED: Mr. Fracchia is just going to check something on
6 our schedule, as well as his scheduling.

7 CHAIRMAN: Thank you. For the record we will change the
8 status of the Hammond River Angling Association to formal
9 intervenors. So we have used our time productively.

10 MR. ZED: I am sorry. Were there any other dates being
11 floated or -- no? No. Okay.

12 CHAIRMAN: Not that I know of.

13 MR. ZED: All right. Well look I think realistically
14 because of Christmas shutdown and that type of thing,
15 whether it is the 23rd or the first week of January really
16 doesn't matter a whole lot in terms what productively
17 might be done.

18 So if that -- I guess if it can't be within the next
19 week, then really January is the -- I mean given the
20 Board's schedule, 15th, 16th, 17th and 18th I believe are
21 taken. Then we are really into probably Christmas
22 shutdown mode.

23 CHAIRMAN: Perhaps Mr. Zed you could address what you feel
24 is necessary in terms of length of time for the hearing.
25 Is this a hearing that could be conducted in one day? And

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2 I also Ms. Carr that same question. Maybe she is a little
3 more in control of the answer to that than you are.

4 What would your view be in terms of do we need more than
5 one day?

6 MR. ZED: We had intended to put the panel on and about a
7 half hour presentation, sort of go through from A to Z in
8 terms of summary of the evidence, which could really be 10
9 minutes or 15 minutes. And beyond that, I guess we are at
10 the -- to some degree the mercy of people posing
11 questions.

12 I don't know how many questions the Board or Board
13 Staff may have given that we have been through the PCC
14 process. I would hope they would be relatively limited.
15 But these three intervenors to some degree will determine
16 the length of the hearing. I can't imagine that it would
17 be longer than a day or a day and a half.

18 CHAIRMAN: Ms. Carr, can you give me an estimate, I am not
19 going to hold you to it, because I appreciate when you
20 prepare for a hearing, you may have an idea that it is
21 going to take a certain amount of time and often times it
22 takes longer. But do you have a sense of how long you
23 would need to ask your questions?

24 MS. CARR: Based on the fact that I have just received the
25 exhibit 12 and 13, and I accept those, I still do need

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2 some time for research.

3 CHAIRMAN: Yes.

4 MS. CARR: And if the date of the 23rd doesn't work out,
5 then I would say that the Christmas season and everything,
6 the 5th would be my availability for sure.

7 CHAIRMAN: Do you think a one day hearing would be long
8 enough?

9 MS. CARR: Yes, certainly. I should hope. Half a day, I
10 hope.

11 CHAIRMAN: Mr. Chambers, do you have any reason to believe
12 that a one day wouldn't be enough?

13 MR. CHAMBERS: No.

14 CHAIRMAN: And Ms. Campbell? You are getting your exercise
15 this morning.

16 MS. CAMPBELL: No, I think one day would be fine.

17 CHAIRMAN: Thank you.

18 MR. ZED: Could I --

19 CHAIRMAN: Ms. Desmond, sorry -- Ms. Desmond, do you have
20 any reason to believe that more than one day would be
21 necessary?

22 MS. DESMOND: I think one day would be sufficient, Mr.
23 Chair.

24 CHAIRMAN: All right. And I just have the parties, one
25 other question then Mr. Zed I will hear from you. Again

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2 in the event that we are to adjourn this matter do the
3 parties I guess have a preference as to the location of
4 the hearing, given the number of intervenors that we now
5 have, we could certainly easily accommodate the hearing at
6 the Board premises in Saint John, but if there is a
7 preference to have a hearing here, I would like to hear
8 that as well. So I guess, Ms. Campbell, you are at the
9 front row, put you first?

10 MS. CAMPBELL: I have no preference.

11 CHAIRMAN: Ms. Carr? Mr. Chambers?

12 MR. CHAMBERS: Are you going to be doing any of it today?

13 CHAIRMAN: We will have to decide what we are going to do.

14 We have had the submissions and we just want to gather in
15 all of that information to consider. So I can't say yes
16 or no to that. I have to confer with the other Panel
17 Members to decide. But in the event that we didn't do it
18 today, that's really my question, do you have a -- does it
19 matter to you if it is in Saint John at the Board premises
20 or would you prefer that it was here again?

21 MR. CHAMBERS: I suppose we could car pool. I don't want to
22 inconvenience you guys, of course.

23 CHAIRMAN: Well it is not a matter of inconvenience. We do
24 have premises that lend themselves very well to hearings
25 that's all.

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2 MR. CHAMBERS: Okay.

3 CHAIRMAN: And there is obviously some additional cost
4 involved in renting facilities such as this. So I take
5 that that you would be okay either place?

6 MR. CHAMBERS: I guess I am flexible enough right now. I
7 have got help at home to back me up in case I -- weather
8 gets bad or something like that so --

9 CHAIRMAN: Okay. And Mr. Northrup, I am just wondering if
10 we were to adjourn the hearing to a later point in time
11 and because you are an informal intervenor, you may have
12 some comments you want to make, would you want to proceed
13 today or would you want to make your comments at the time
14 of the adjourned hearing?

15 MR. NORTHRUP: Mr. Chair, I am very flexible. I am just in
16 the Legislature from Tuesday to Friday for the next two
17 weeks. So as long as I have lots of notice, I have no
18 problem.

19 CHAIRMAN: Thank you. Mr. Zed?

20 MR. ZED: Firstly, I would like to acknowledge that we gave
21 notice today subsequent to the Board issuing an Order for
22 a pre-hearing. And I have asked that it be converted into
23 something more than that. So I do appreciate the Board's
24 indulgence and I appreciate the indulgence of the parties
25 here.

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2 Having said that, I would submit that in order for the
3 Board not to accede to our request, there would have to be
4 some demonstrated need for a member of the public to use
5 the requested delay for some purpose. And while I
6 appreciate the request is for more time, I just want it
7 noted that Ms. Carr met with Mr. Fracchia, November 8th
8 2007 to discuss this project.

9 This project has been vetted by Environment Department
10 and this project was -- and because of that there were two
11 separate open houses in April. One at least of which Ms.
12 Carr attended. There was another open house advertised
13 back in July that was a result of a Board Order accepting
14 the Applicant's public consultation plan. She is not a
15 landowner. She is not here representing anybody other
16 than herself. She wrote a letter to the Board, which we
17 have received and she has posed a number of questions.
18 And in our view, no amount of time you allow Ms. Carr will
19 result in better quality questions than what she has
20 already raised. Those questions have been answered
21 directly in speaking with her a year ago. Those questions
22 were answered to the extent they were raised at any one of
23 the three open houses. And we have a panel, which I would
24 like to seat and have sworn, and they are prepared to
25 answer in great detail all of the issues that Ms. Carr has

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2 raised. And I think, you know, in fairness, if you read
3 the letter and the issues she has raised, they are issues
4 that have been extremely well canvassed by the
5 Environment, EIA process and by the Pipeline Coordinating
6 Committee. And to allow a week to better put those
7 questions in writing is not going to do anything to bring
8 further or better information to this Board upon which you
9 will make a decision.

10 And I think it clear from Ms. Carr's position, she is
11 opposed to the project. And we don't take issue with
12 that. People are entitled to their opinion. But this is
13 clearly a case in our view of delay for delay sake. The
14 two documents that we tendered here today are in total 40
15 pages long and they relate to the licencing application,
16 which we will have to bring to this Board some time late
17 in the construction phase.

18 And while we understood the Chair's comments, they
19 were very helpful, we filed them, there will be plenty of
20 time to take issue, if there is any issue with those
21 documents. Or on the contrary, there is plenty of time to
22 read those over a lunchbreak and ask any questions you
23 might want to ask. But those documents are living
24 documents. They are going to change given the dialogue we
25 have with the safety officer employed by the EUB. And if

1
2 the Board upon our application for licence decides to
3 convert it to a hearing as they have every right to do,
4 then that will be thoroughly vetted publicly.

5 So take those two document that we have tendered as 12
6 and 13 and put them aside, what else is new? This project
7 has been before the public for well over a year. There
8 have been a significant number people who have asked
9 questions. They have received answers. The only thing
10 that has changed from November are two things. There has
11 been a slight re-route. And secondly, the Applicant has
12 decided to use double wall -- double piping in certain
13 sensitive areas. So really everything has been out before
14 the community from day one. This is a brine line. It is
15 to a certain degree -- that's okay -- it's a brine line --

16 CHAIRMAN: Actually I am going to ask you to open the door.

17 MR. ZED: Open the door, yes.

18 CHAIRMAN: This is a public hearing.

19 MR. ZED: Yes. No, I understand. That's why --

20 CHAIRMAN: Thank you, Mr. Zed.

21 MR. ZED: Anyway so really this isn't -- and I don't like
22 using sort of the vernacular, but this really is not
23 rocket science. There is no -- there is nothing very
24 complicated to understand about the process. It's piping.
25 There is brine goes through the piping. There is certain

1
2 safety factors built into it. And there is a huge
3 environmental issue. And that environmental issue has
4 been canvassed not only by the experts in the
5 Environmental Department, but it has also been given a
6 thorough vetting by all the government departments
7 involved in PCC. And the public has had three open house
8 opportunities to appear and ask questions. And then the
9 only objection we really have today is Mr. Chambers comes
10 and quite frankly spoke the truth. No, it would only be -
11 - I am not interested in delay for delay sake. I can
12 always be better prepared. We can all say that about
13 ourselves. We could always be better prepared.

14 So I would ask this Board to think what good will come
15 of a one month delay in this process? And what it means
16 in terms of the company's -- yes, there are financial
17 implications for the company, but I am not here asking you
18 to take those into consideration. And, you know, I could
19 be questioned -- Mr. Toner could come back and say well
20 why didn't you file the application earlier? And the
21 answer to that would be very simply is we don't have
22 control over this application. We filed an application in
23 November of 2007 that took about 10 or 11 months to work
24 out way through with the Department of Environment, which
25 sort of was the starting point of, you know, PCC wouldn't

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2 issue a determination until a departmental certificate was
3 issued. So, you know, we can't -- we couldn't with
4 precision -- we made the application when we were ready.
5 It has taken us a great deal of time. And, yes, it will
6 cost us more money. But also there are hundreds of trucks
7 on the road every day transporting brine, which is a
8 safety issue and a very significant environmental issue.

9 So from our point of view, I am not going to stand
10 here and tell you that the contract -- or sorry, the
11 project is off for a month's delay, but there are
12 significant potential consequences of delay. There always
13 are.

14 And we would simply ask the Board to take all what has
15 gone on before into account. Nobody has come before you
16 saying they have an engineering study that they need to
17 fine tune. They have an expert who couldn't be here
18 today. They have any evidence of any kind or description.
19 All they are saying is we want to ask more questions.

20 So what we would ask the Board to do is continue
21 today. Let us ask -- let Mr. Chambers ask his questions.
22 Let Ms. Campbell ask her questions. Let Ms. Carr ask her
23 questions. And if at the end of the day, it is apparent
24 that there is a deficiency in the answers or there is some
25 common sense gap or disconnect that needs to be addressed,

1
2 then revisit this issue.

3 We have set aside two or three days for this. And we
4 are confident that given the calibre of witnesses and the
5 amount of work that has gone into this project that we can
6 answer today any reasonable question put by any reasonable
7 individual. And if not, we will gladly suffer the
8 penalty. But I don't want to waste today, and I don't
9 want to waste tomorrow, and I don't want to waste
10 Wednesday, if they could get this project moved ahead.
11 And if you don't accede, what's the worst thing that can
12 happen? The worst thing that can happen, is we will have
13 a third or two-thirds of the hearing over with and Ms.
14 Carr will still get to answer her questions or ask her
15 questions and we will still be back for an hour in
16 January. I suppose that's the worst thing that can happen
17 if you follow my logic.

18 So with respect I just ask you to take that into
19 consideration. And I am by no means, please, taking issue
20 with an individual's right to appear. It is just that
21 given the questions that have been posed by Ms. Carr, and
22 people like Ms. Carr, I think the Chambers' approach is a
23 common sense approach that I would ask the Board to adopt.
24 Thank you.

25 CHAIRMAN: Thank you, Mr. Zed. I would just point out for

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2 the record that I think your application was not filed
3 with us. I appreciate all of the preliminary matters that
4 you went through, but I think in total, November the 4th,
5 so I think the process from the EUB perspective has moved
6 with great speed.

7 MR. ZED: I would take absolutely no issue and thank you for
8 the co-operation and it has, but I just -- I was just
9 really preemptively answering the question why we are
10 where we are, is that the preceding process was beyond our
11 control and took a period of about 11 months.

12 CHAIRMAN: The issue I would like to see you perhaps address
13 maybe in a little more detail is the issue of the notice
14 itself. The notice that went out to people said this
15 would be a pre-hearing conference, where intervenors and
16 other interested parties should attend to make
17 representations on (a), the type of proceeding to consider
18 the application, (b) the procedure to be followed in
19 respect of the proceeding, and (c) any other matters in
20 respect thereto. And many people may take that to mean
21 that in fact there would be hearing today. But some might
22 take it to -- it was going to be about the procedure only.
23 And in terms of onus here, you know, I think your argument
24 essentially suggests that the onus is on the intervenor to
25 show why the delay is needed. One might make the opposite

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2 argument. I am really just going to ask you to respond to
3 that as to whether or not the onus should not be on the
4 Applicant to show that we should in fact proceed to a full
5 hearing, as opposed to treat it as a pre-hearing which is
6 what it was advertised to be.

7 MR. ZED: And I -- ny comments at the outset, I do recognize
8 that we do recognize that the advertisement and the Order
9 were for a pre-hearing. And we are asking the Board to do
10 something that the Order does not expressly contemplate,
11 although the Board has done -- converted pre-hearings to
12 hearings before.

13 I guess my point to address the specific question is -
14 - and let me choose my words carefully -- I think if
15 somebody saw that notice and were first aware of the
16 project at that time, they would be in a little different
17 situation than Ms. Carr or intervenors that I would be in
18 her category, who have been well aware of the project for
19 well over a year. So I would say that would be a
20 difference.

21 The other difference would be is what is the nature of
22 the objection? The nature of the objection is not as a
23 homeowner, not here representing a group with an interest,
24 but representing her own particular viewpoint. And let me
25 just speak bluntly that this brine pipeline should not be

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2 constructed. And, you know, as I say that's a fair
3 presentation. And if she wants to make that presentation,
4 then she is perfectly within her rights to do so.

5 But this Board routinely deals with such parties by
6 giving them an informal intervenor status to say you can
7 make your comments. And if you are prepared to make them
8 today, make them today. If you are prepared to -- or if
9 you prefer to do them in writing, do them in writing. The
10 only difference with Ms. Carr is she hasn't yet made up
11 her mind whether she wants to ask more questions or she
12 sort of made up her mind that she might ask the questions
13 differently. She is not quite sure. And what I would
14 suggest is given her early comments that it might be
15 appropriate to let her ask the questions, see what answers
16 she gets and if it requires adjourning until Wednesday, we
17 did have three days tentatively scheduled, come back even
18 on Wednesday afternoon and allow her an opportunity to ask
19 any further questions that she may have. It's as simple
20 as that. I don't take issue with what our advertising
21 said. I don't take issue with what the Board Order said.
22 And I don't take issue why expressly we are here.

23 I merely ask the Board to take a common sense view
24 to what the nature of this objection is, to give Ms. Carr
25 a reasonable amount of time to formulate her questions,

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2 and if at the end of the one or two day process, there is
3 a real reason to delay, then that will become apparent and
4 the Board can so rule. I have nothing further.

5 CHAIRMAN: Thank you, Mr. Zed.

6 MR. CHAMBERS: Excuse me?

7 CHAIRMAN: Yes, Mr. Chambers.

8 MR. CHAMBERS: I wrote up a paper the other day expressing
9 kind of the background I have with the pipeline. And it
10 is kind of interesting now that the PCS doesn't want to
11 delay right now. They didn't seem to eager to rush things
12 along last winter. And I have written that up. I have
13 got a few copies here and would care to consider it.

14 CHAIRMAN: Well it may well be something that we could
15 consider. It strikes me if -- at this point in time, the
16 only issue we are really trying to consider is one of
17 whether or not to proceed to a full hearing today or
18 whether or not to delay. If there is something in there
19 you feel that addresses the issue of the appropriateness
20 of an adjournment to a later time for a hearing, then I
21 think this is the time for us to hear -- to you to submit
22 that or to read it into the record. But if it has to do
23 with the merits of the application itself, then at least
24 at this stage of the proceeding, it would be premature.

25 MR. CHAMBERS: No, I guess the point is that the application

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2 was only in November 8th, something like that. The books
3 are a lot to go through. I worked at them quite a bit,
4 but I haven't gotten all the way through them myself. I
5 don't know how much more I could get out of them. But I
6 can understand that there can be more in there that
7 somebody might be able to get out of them. If they are
8 not -- I am not sure what she was aware of. But I can
9 understand that a little more time might be appropriate
10 here.

11 In my dealings with PCS, they were -- they did not
12 have an engineer on staff last winter to answer my
13 questions or concerns about the pipeline route. And so
14 they eventually changed the route to go around my
15 property. They have signed enough people to get around
16 that. But my interest is to make sure it is safe. Right
17 now -- it went from being 500 meters from my home to about
18 30. So it's coming very close to my home right now.

19 CHAIRMAN: And I assume these are all issues that you want
20 to raise at the hearing through questions and through
21 submissions.

22 MR. CHAMBERS: Well I covered most of the background of how
23 they dealt with me and other landowners. But safety
24 concerns are my main interest in this and how the pipeline
25 is being set up. They can probably take care of mine

1
2 today. But to say that it wouldn't be a good idea to wait
3 and let her have some time to digest all of the
4 information that's become available, I think that the last
5 month is -- we have been looking for the information for
6 some time. And as far as I know the first notice I got
7 was in the paper just a few weeks ago.

8 CHAIRMAN: Sure. The volumes, those three volumes I believe
9 were filed with the Board on I think it was on the 4th of
10 November. So I am going to assume that it was sometime
11 after that that point in time that you would have had
12 access to them. Thank you.

13 Well I guess since you jumped in I am going to go
14 around again. Ms. Carr, anything further on this one
15 issue of delay?

16 MR. CHAMBERS: Delay, yes. With respect to -- I can
17 appreciate that time is money and time is money to
18 everybody. However, I don't feel adequately prepared to
19 continue to change this from a pre-hearing to as
20 advertised. That's why I requested the IR.

21 CHAIRMAN: Ms. Campbell, do you want to add anything to the
22 issue?

23 MS. CAMPBELL: Not really. We actually found out about the
24 meeting very late. I haven't had an opportunity to review
25 any of the documents. I am merely here because I am

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2 familiar with the actual process of a brine line
3 installation. And so I have some, you know, specific
4 questions associated with that process. I would
5 appreciate some time to go over them, but I have questions
6 regardless.

7 CHAIRMAN: Mr. Zed, I am going to give you another
8 opportunity. I don't know if there is anything you can
9 add to what you have already said?

10 MR. ZED: Not productively, no.

11 CHAIRMAN: All right. Just give me one second. We are
12 going to just adjourn for a few minutes to discuss this
13 motion of Mr. Zed's. And hopefully we will be back in a
14 few minutes.

15 (Recess - 12:20 p.m. to 12:35 p.m.)

16 CHAIRMAN: This is motion by the Applicant to move from a
17 pre-hearing conference to a full hearing immediately. The
18 Board has considered the motion and finds that the
19 Applicants have not discharged the onus to establish that
20 the Board should exercise its discretion to move
21 immediately to a hearing. So the Applicant's motion is
22 denied. And I would like to give a little background as
23 to the reasons that the Board is doing this.

24 Firstly, as the wording of the notice for today's
25 hearing which indicates that a pre-hearing conference

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2 would be held at the Fairway Inn, Sussex, New Brunswick on
3 December 8th 2008, commencing at 10:00 o'clock in the
4 forenoon. And where the Applicant, intervenors and other
5 interested parties should attend and make representations
6 on the following, (a) the type of proceeding to consider
7 the application, (b) the procedure to be followed in
8 respect of the proceeding, and (c) any other matters in
9 respect thereto.

10 So the notice would have created an expectation that
11 today's hearing was a pre-hearing conference only.

12 Secondly, Mr. Zed correctly pointed out that the Board
13 on a number of occasions has moved from a pre-hearing
14 conference to a full hearing. In my time on the Board, I
15 can state, however, that each and every time that has
16 happened there has never been any objection to that
17 occurring. And in fact in most if not all instances in
18 fact there were no intervenors whatsoever. So this
19 differs quite materially in that respect.

20 Also we are taking into consideration the fact that
21 one intervenor believes that the extra time will be very
22 helpful to properly prepare for the hearing. And that
23 position is supported by the other two intervenors, one of
24 the others who has indicated that she could also use some
25 extra time to read the material.

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2 It is noted that the material consists -- the pre-
3 filed evidence of three very large volumes of evidence,
4 which was filed with the Board on November 4th of this
5 year. We can only assume that the intervenors would have
6 had access to it sometime after that. And so I would
7 suggest that a month would have been the maximum amount of
8 time they would have had it. But in all likelihood some
9 time substantially less than that.

10 So for all of those reasons, as I have indicated, the
11 motion to turn this pre-hearing conference into a hearing
12 is denied.

13 The Board does appreciate the comments made by Mr. Zed
14 in terms of moving forward in as timely a fashion as
15 possible. And we have heard from all of the parties in
16 terms of their availability and the amount of time that
17 they would require in order to appropriately prepare for a
18 full hearing. Bearing that in mind, we will give the
19 parties until noon on December 16th to file any written
20 information requests. And those written information
21 requests can be filed by e-mail with the Board. And
22 obviously they have to go to the Applicant so that the
23 Applicant will be able to respond to them. And if the
24 parties have not already shared e-mail information and/or
25 fax information, the information requests actually should

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2 go to the formal intervenors, the Board and the Applicant,
3 so that all of the parties know what the others have
4 asked.

5 The Applicant will have till noon on December 22nd in
6 order to respond. I think Mr. Zed indicated they would be
7 responded to immediately, but I assume by going to noon on
8 December 22nd, that would be adequate time for the
9 Applicant to deal with the information requests. And a
10 hearing will commence on January 7th at 10:00 a.m. And at
11 this time, I believe that hearing will be at the Board's
12 premises in Saint John. If that changes, all the parties
13 will be notified. So it will commence on January 7th at
14 10:00 a.m. at the Board's premises, which is located in
15 the City Hall building, 14th floor, in Saint John. And we
16 are going to set aside the 8th, even though virtually
17 everybody has indicated that this will only take a day at
18 the most. We certainly don't want to get to a situation
19 where it isn't enough and now we got to start looking
20 forward to dates in February or March. So we are also
21 going to set aside the 8th to use if necessary.

22 So that disposes of that motion. Are there any other
23 matters relating to this pre-hearing conference for the
24 Board to consider? Mr. Zed?

25 MR. ZED: Thank you, for your ruling, Mr. Chairman. I am

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2 just wondering if the Board Secretary has electronic
3 contact information for everybody? You may have sent
4 out --

5 MS. LEGERE: Usually within 24 hours of pre-hearing
6 conference information goes out to all the parties to give
7 everyone -- everyone elses' contacts.

8 MR. ZED: Does everybody have electronic?

9 MS. CARR: No.

10 MR. CHAMBERS: No.

11 MR. ZED: So how --

12 MS. LEGERE: Mr. Chambers is the only one who has indicated
13 that he will require --

14 MR. ZED: Hard copies.

15 MS. LEGERE: -- a fax or some other means.

16 MR. ZED: Okay. Anyway we will be getting that in the next
17 day or two.

18 MS. LEGERE: Yes.

19 MR. ZED: Thank you.

20 CHAIRMAN: So the parties simply co-operate and to provide
21 that electronic communication information if they have it.
22 And I guess for those who don't, we will have to make some
23 other alternate arrangement to make sure that the
24 documents get delivered in a timely fashion.

25 Anything else? Any other preliminary matters to deal

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2 with? Ms. Desmond?

3 MS. DESMOND: Mr. Chair, I just wanted to clarify I
4 understood from your earlier comment that the questions
5 would go electronically to formal intervenors. Would it
6 be appropriate for the information to go to all
7 intervenors, formal and informal if it's to be sent
8 electronically?

9 CHAIRMAN: Yes, certainly. And that's my mistake. Thank
10 you. In fact there will be a coordinates list with
11 electronic -- basically e-mail addresses for all of the
12 informal intervenors, as well as, that information will be
13 shared with them. Anything further? Mr. Zed?

14 MR. ZED: Not for me, thank you.

15 CHAIRMAN: Ms. Carr?

16 MS. CARR: Thank you. I just want to ensure that as you
17 describe the IR process to me --

18 CHAIRMAN: Yes.

19 MS. CARR: -- that everything has to be submitted no later
20 than noon on the 16th.

21 CHAIRMAN: On noon on the 16th. I think you had indicated
22 the 15th was what you needed and it works better for the
23 Board if we set up noon as a sort of a deadline. So I
24 guess that allows you to --

25 MS. CARR: Correct.

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2 CHAIRMAN: -- a little bit more time than you had requested,
3 yes.

4 MS. CARR: And I am not sure I have all of the contact
5 information as well with respect to who has identified
6 themselves as formal.

7 CHAIRMAN: The Board Secretary will in fact maybe before
8 everybody gets out of here, if they could share as much of
9 that information as possible. And generally what we do is
10 what we call a coordinates list where all of the parties
11 will be listed with their e-mail addresses if they have
12 them and it will be shared with all of the parties so that
13 when you correspond with the Board on this matter from
14 this point forward you should copy everybody who is either
15 a formal or informal intervenor so that they have all of
16 the information that's available to the Board.

17 MS. CARR: Thank you.

18 CHAIRMAN: Anything further? Mr. Chambers, anything?

19 MR. CHAMBERS: Nothing for me, thanks.

20 CHAIRMAN: Ms. Campbell, anything further?

21 MS. CAMPBELL: No, thank you.

22 CHAIRMAN: And Ms. Desmond?

23 MS. DESMOND: Just one further point, Mr. Chair. And
24 perhaps I missed your determination on this. But with the
25 Village of Sussex Corner, where they are not here and they

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2 are not represented, has a determination been made with
3 respect to their status, and will they continue to be a
4 part of the proceeding?

5 CHAIRMAN: I don't think that we did make a ruling with
6 respect to the Village of Sussex Corner. And it strikes
7 me that they might have fit under Section 6 quite frankly
8 as a municipality that may be affected. I mean I would
9 suggest that the Village of Sussex Corner be treated at
10 this stage as a party and copied with all correspondence.
11 And under the legislation all of the ministries are also -
12 - all the Ministers actually are considered to be parties.
13 So that will all be part of the coordinants list.

14 MR. TONER: Just to clear something up. So, for example, if
15 Mr. Chambers faxed his questions, are they going to be
16 scanned and sent to everyone from Lorraine?

17 CHAIRMAN: I think we can accommodate Mr. Chambers if he
18 sends some documentation to the Board. The Board could
19 distribute it. You know, I think that shouldn't be a
20 problem for us to attempt to facilitate this matter for
21 you if that's necessary for sure.

22 Anybody have anything else at this pre-hearing
23 conference? All right. Well that concludes the pre-
24 hearing conference and the Board then will convene on
25 January 7th at 10:0 a.m. to consider the application.

Thank you.

MR. ZED: Thank you.

(Adjourned)

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


Reporter

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