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New Brunswick Board of Commissioners of Public Utilities

Hearing March 20th 2002, 10:00 a.m.

Saint John, N.B.

IN THE MATTER OF AN APPLICATION dated December 21, 2002 by Potash Corporation of Saskatchewan Inc., for a Permit to Construct a Pipeline to transport natural gas to its potash mining and processing facility located at Penobsquis, New Brunswick

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CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Emilien LeBreton
H. Brian Tingley
Leon C. Bremner

BOARD COUNSEL William O'Connell, Esq.
Ms. Ellen Desmond

BOARD SECRETARY Lorraine Légère

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MS. LEGERE: Today is March 20th 2002. This is a hearing in the matter of an application dated December 21, 2002 by Potash Corporation of Saskatchewan Inc. for a permit to construct a pipeline to transport natural gas to its potash mining and processing facility located at Penobsquis, New Brunswick.

CHAIRMAN: Could I have appearances please? First on behalf of the applicant.

MR. ZED: Yes. Peter Zed and Serena Newman appearing on behalf of the applicant, Mr. Chairman.

CHAIRMAN: The Province of New Brunswick as represented by the Department of Natural Resources and Energy, we have received correspondence indicating that they will not be appearing. And they have withdrawn.

And as well we have received communication from Enbridge Gas New Brunswick to the same effect.

The Union of New Brunswick Indians?

MR. GETTY: Norval Getty for the Union of New Brunswick Indians.

CHAIRMAN: Mr. Getty, you can stay seated if you would. I think that is a better use of the mike than giving Potash Corp. three of them. Okay. So we will leave that microphone for you there.

And the staff of the Board?

MR. O'CONNELL: William O'Connell appearing as Board counsel. And with me I have Ellen Desmond.

CHAIRMAN: Now in the prehearing conference, Mr. Zed, you filed and we have marked as exhibits proof of publication, et cetera, so that's all in your --

MR. ZED: Yes.

CHAIRMAN: I think there are a number of preliminary matters we should probably cover but go ahead.

MR. ZED: Mr. Chairman, would you like to raise them in the order that you --

CHAIRMAN: I was giving you that choice, Mr. Zed.

MR. ZED: Giving that choice? Okay.

CHAIRMAN: We haven't started on time because we have some

--

MR. ZED: Yes.

CHAIRMAN: -- difficulties. And I think we should put on the record what is going -- or what hasn't been going on there.

MR. ZED: Okay. One of the issues, Mr. Chairman, is an issue concerning the interplay between the Board's jurisdiction and that of the Department of Environment.

And it is the applicant's position that the Board has jurisdiction with respect to environmental matters as they relate to construction of a pipeline. There is a specific exemption in the environment legislation. And it was certainly our view that this Board has exclusive jurisdiction in that regard.

However, the Department of Environment takes a slightly different view. And they take the view that notwithstanding that the pipeline itself is within the Board's jurisdiction, that ancillary matters related to the construction of the pipeline are still within the jurisdiction of the Department of Environment.

As a result of the Department of Environment's view,

correct or otherwise, we registered with that Department.

It is sort of a parallel process with this application. And the understanding being -- and had significant discussions and interplay with the Department of Environment.

I mean, I don't mean to suggest it has been adversarial. But essentially the requirements of Environment would have been the same as the requirements of the Board, if I may be so presumptuous.

In other words, the same work would be done under either process in terms of the workup that Mr. Gillis' company undertook.

The scenario that we saw playing out was that we would obtain the construction permit from the Board and that there would be a condition. One of the conditions attached to that construction permit would be that we obtain all necessary governmental approvals.

Now, you know -- I mean, will include in that list highway usage permits, water course alteration permits, things of that nature, which this Board with respect does not have jurisdiction to entertain.

Also because we have registered under the EIA process, we have been led to believe that we will obtain a permit from Environment. And upon obtaining the Board's approval

that permit will be issued, screening us out of the EIA, any further requirement to do any further assessments. And Environment will in that permit set certain conditions.

And those conditions we are quite prepared to live with. They haven't all been ironed out. But they are issues that we have been dealing with them on an ongoing basis. One of the conditions is they ask the question, what do you intend to do with the waste products from your excavation? Well, we will file with them an appropriate plan and satisfy them in that regard.

Another question related to the roadway that is currently -- we are currently using to get to the well site. As our application indicates, we are building a new road, new access road, so we fully intend at the appropriate time to remove the old roadway. And Environment wants certain assurances that we will do so in an environmentally sensitive area in the appropriate fashion. And, you know, we certainly will agree to that.

I guess what I'm saying is we can live with a condition from this Board requiring that we obtain whatever approvals are necessary from Department of Environment.

CHAIRMAN: But if they don't have jurisdiction then the

approvals aren't necessary. We are in a catch-22 here.

MR. ZED: Well --

CHAIRMAN: In other words, it has to be an order of this Board because we have the sole jurisdiction.

MR. ZED: Well, I understand that.

CHAIRMAN: That is why Environment should have an input into this particular process. The second thing is it is the only time, pursuant to any New Brunswick legislation I'm familiar with, that someone other than Environment can make a judgment as to whether or not for instance your company would have to comply with one of Environment's conditions. We could overrule that, you know.

We have had a conversation before we came in here that if the company is prepared to give up that Boards adjudicative role, in case Environment puts a too onerous a task in front of you, then that certainly is one step towards it.

But my other concern is that without the input from the Department of the Environment -- and, you know, I will ask you to talk about what these ancillary services might be that they believe they have jurisdiction over.

Because, you know, if there is something to do with the actual construction of the pipeline that is not in the ancillary services definition, then I can very well

perceive if something were to happen in the future, the Department of the Environment would say to the Board, the Board erred, they didn't look after that.

MR. ZED: Well, I have a difficult time speaking on their behalf.

CHAIRMAN: Well, of course.

MR. ZED: But --

CHAIRMAN: I'm just trying to get to the bottom. What is it that they are saying that gives them jurisdiction that they are taking?

MR. ZED: Well, I think the one that they have their most success in hanging their hat on is Regulation 87-83 (v) which says "All enterprises, activities, projects, structures, works or programs affecting two hectares or more or bog, marsh, swamp or other wetland."

I mean, I don't know -- there is another one here but it refers to commercial -- excuse me, just one second. Okay. All commercial extraction or processing of combustible energy-yielding materials except fuel wood. Now I don't know how that affects us. But that's one that was thrown at us at one time.

The bottom line is the applicant -- just so the Board understands, and I think the Board does, all we were trying to do is get along with everybody. And really we

were requested to register.

We weren't about to get into a constitutional challenge with Environment over the issue of whether we should or shouldn't register, especially in light of the fact that we would have done exactly the same sort of assessment for either department.

CHAIRMAN: No, no. And I appreciate that. I guess -- and I fault myself in this regard in not insisting that somebody from the Department of the Environment come here.

Plus the other -- I think there are two other departments in government that are depending upon that EIA process to have their input into your project.

But I would have insisted, if I had awakened earlier, to having them here today just to sign off on it from our perspective.

MR. ZED: Is there any -- you know, this has been scheduled for three days. And I don't think any of us thought it would take three days. Perhaps we could have somebody appear tomorrow.

I mean, we just -- as you appreciate, we placed a call half an hour ago. And it doesn't look like we can get anybody here today. But I don't know that we couldn't have them here tomorrow.

I mean, we certainly -- we can try. We would know

perhaps after the noon break what our --

CHAIRMAN: Yes. When you made that call, Mr. Zed, did they indicate that they just wouldn't come or --

MR. ZED: Well, they indicated they were in meetings. I didn't speak directly. Mr. Gillis spoke with somebody -- Mr. Gillis, one of our witnesses. And he is with AMEC. And he spoke with somebody with whom we have been dealing quite regularly throughout this process in the department. And I don't think anybody said they wouldn't come. It is just that people were in meetings.

This individual was interrupted in a meeting to take the call and has other meetings scheduled this afternoon.

So we didn't -- and again we hadn't fully understood what the Board's concern was. I think I do now.

So the question is -- or perhaps a suggestion would be that if we have a break, or at lunchtime we can place a call and ask a more direct question.

CHAIRMAN: No. I think that is very appropriate. We will just carry on. I just wanted to get on the record the concerns that I certainly have. And I haven't spoken with my fellow Commissioners about --

MR. ZED: Certainly.

CHAIRMAN: -- these aspects. And we will talk about it during our break or whatever. And we can get back on it.

So are there any other matters that we should get on the record now, Mr. Zed?

MR. ZED: There are some -- I will put something on the record please. I don't want this to appear that I'm -- I don't want to be too presumptuous, but at the prehearing one of the questions asked was whether a delay would occasion us any undue grief. And at the time we responded perhaps a little inexactly. Because there is one issue that has now become pressing. And that is the Migratory Birds Convention. In order to clear the land for -- to prepare for construction, we have to disturb what might be nesting sites.

And we are -- we may be in difficulty unless we are allowed to clear land. And when I talk clear the land I'm talking about cutting trees and brush, not excavating or anything of that nature.

But that is work that has to be undertaken very soon. It has to be completed in order to be safe, sometime in the next two or three weeks. I mean, it is two days work.

CHAIRMAN: What is your legal opinion as to whether or not this process applies to somebody cutting trees on their land or their right-of-way?

MR. ZED: My opinion is, and I have offered this opinion, is that it doesn't apply. But we did not want to appear

presumptuous.

And we didn't want -- quite frankly I didn't want somebody coming to the Board complaining that we had started the project while the application was pending.

CHAIRMAN: Well, you are taking a gamble that the Board might not approve that. And you will have felled the forest. But otherwise I concur with your opinion --

MR. ZED: That is fine.

CHAIRMAN: -- that you can go ahead, provided that you have the legal right to do so.

MR. ZED: Yes. That is understood.

CHAIRMAN: That is understood.

MR. ZED: So I think that is -- those are really the only two issues that I think -- other issues I think would be better dealt with the panel.

CHAIRMAN: How do you propose to proceed?

MR. ZED: Well, one of the things we proposed is that we have a panel of five. And they are seated at the front two tables. It is anticipated that Mr. Gauthier will either respond or designate who he wishes to respond.

And due to the fact that we have portable microphones the seating is certainly okay with us if it is okay with the Board.

CHAIRMAN: The Board has no problem with that.

Mr. O'Connell, do you have difficulty or --

MR. O'CONNELL: None, Mr. Chairman.

CHAIRMAN: Mr. Getty, any problem with that?

MR. GETTY: No.

CHAIRMAN: We will proceed on that basis. I will ask the Secretary to swear the panel. You gentlemen get up and come to her up here please.

RAOUL GAUTHIER, GEORGE BOLLMAN, GREGORY GILLIS, JOHN STEVENS, JAMES URBANOWSKY - Sworn

CHAIRMAN: Mr. Zed, you forwarded to the Board the resume of the witnesses that you intend to call. Might I suggest that you -- if you have got an extra copy of those that we will mark them and put them on the record.

Exhibit 1, which are the resumes of the five panellists, is that correct --

MR. ZED: Yes, Mr. Chairman.

CHAIRMAN: -- and it's a 20 page document and it will be exhibit 1. I'm sorry. It will be -- well there is no other evidence, there is no other parties, we will call it A-1 for applicant.

And we used these two and a half weeks ago. I think it was a city truck that had the same --

MR. ZED: Same frequency.

CHAIRMAN: -- same frequency. So don't be surprised. Okay.

Go ahead, Mr. Zed.

MR. ZED: Mr. Chairman, I think just to start I will introduce the panel. For the record, Mr. Raoul Gauthier, who is the general manager of PCS. Mr. George Bollman, who is the project manager at PCS. The second table behind on the left is Mr. Greg Gillis of AMEC, the environment consultant. John Stevens of Neil & Gunter, the engineering design consultant. And Mr. James Urbanowsky, who is the -- essentially the project consultant with respect to primarily construction.

If I might, I do have a few questions for the panel just by way of clarification of some issues that might have changed.

CHAIRMAN: Is somebody going to give an overview to us as to what is being proposed and asked for?

MR. ZED: I certainly will. What is being asked for is -- well to back up. Of course we have received both an awarded franchise from this Board and signed a franchise agreement with the Province of New Brunswick. PCS would now like to get on with the project by constructing the appropriate facility and as a result the application to do so, the application for permission to do so, was filed on December I believe 21st or 22nd of last year.

The application is to construct certain well site

facilities, a raw gas pump pipeline approximately 2,500 meters in length, gas processing facilities and a sales gas pipeline approximately 600 meters in length. The details of course are more particularly set out in the four volumes of the application.

The construction details are stamped in attachments I believe 1(a) -- I will make sure of the numbering of these -- attachments 1(a), 1(b) and 1(c) are attached -- sorry -- are stamped preliminary, and just before the question is asked, the reason they are preliminary is those documents are prepared really prior to any contract being awarded or construction being started, and of course the Board recognizes that in any such process there has to be some flexibility, and the permit that we are seeking of course we fully expect that the Board would attach a condition to ensure that any construction is done with the approval of Board staff and in substantial compliance with these specifications.

So we are not asking for a blanket authority to construct a pipeline in any manner we decide. We fully intend to build in accordance with these specifications unless there is some good construction reason or design reason why we should change, and then what we would expect to do is have a liaison established probably with Board

staff to approve those changes, which again should not be material but would obviate the need to come back before the Board for every little change in size of a flange or location of a piece of pipe.

The other thing -- the other thing that we recognize is that the Board has concerns with a lot of issues that we can't possibly, nobody can possibly address in anticipation of all eventualities, and we recognize that there will be a significant number of conditions attached to any such permit. We have taken the liberty of exploring with Board staff the conditions that were appropriate in the Enbridge construction permit and for the most part we don't have any difficulty with complying with those conditions. There are three or four conditions that I will address in direct testimony just to tell why we think they are inappropriate or should be modified somewhat, but any conditions that we don't refer to without going through the 28 or 29 conditions we discussed with the Board we are quite prepared to live with them as they are set out.

I don't know how the Chairman anticipates we will introduce those conditions, whether it's necessary to go through each and every one in advance or -- we are sort of at your mercy here.

CHAIRMAN: I think what we will attempt to do here, and depending on what we say and what we --

MR. ZED: Yes.

CHAIRMAN: -- witness with the environment may change the complexion on the beans too --

MR. ZED: Sure.

CHAIRMAN: -- but certainly we just wanted to say these looked like a -- or staff wanted to say these looked like a good draft, and we have your comments on them. And the Board will take your comments into consideration when and if it issues the permit and applies the conditions, that's all.

MR. ZED: That's fine. And -- let's see -- well I think that's about it in terms of an overview, unless, Mr. Chairman would --

CHAIRMAN: So any examination in chief you might have.

MR. ZED: I believe the -- we have prepared a large bristol board plan of the application. And really what -- we do have one issue that may constitute an amendment to the application with respect to routing. And the alteration in route may be something that could be addressed by staff after the fact, but since we are aware of it now we prefer to bring it up with the Board.

One of the landowners -- well first let me back up.

All of the landowners who are affected by this construction project, or potentially, have either entered into a right-of-way agreement or given us a legal option to enter into a right-of-way agreement pending the Board's approval of the project.

There is one landowner, an elderly lady, who has agreed in principal with everything but the fact remains is she had some issues over what this payment we were going to make to her would do to her pension, and at the very last minute is expressing some reluctance and wishes more time to think about whether or not she should enter into the right-of-way agreement.

And we are not prepared to ask the Board to do anything in the way of expropriation at this point, and what we have done, and we really have sort of a fail-safe built into this system, we -- this section here -- I will get Mr. Gauthier or Mr. Bollman to explain exactly what the issue is, but we -- if we cannot obtain the right-of-way necessary to build this section we already have the adjacent area under agreement. So it would mean moving the pipeline about 18 meters one way or the other, depending on whether or not this lady changes her mind about whether or not she wants to accept the money.

So Mr. Gauthier and if he wishes Mr. Gillis can

comment on that. The reason I say Mr. Gillis is Mr. Gillis may just want to confirm that there is no adverse environmental impact one way or the other by moving this pipeline that distance.

So I would ask Mr. Gauthier if he could explain in more detail where the pipeline might have to be moved.

MR. GAUTHIER: Mr. Chairman, the landowner in question is a narrow circle of land between Route 114 and the edge of this black line. This person is worried about what income tax she is going to pay, the effects on her pension.

So the other landowner in behind here has agreed that we could use that strip of land immediately adjacent to Mrs. McLaughlin's land.

So it just means moving the right-of-way from the edge of Mrs. McLaughlin's land, slip it over to Mrs. MacLeod's land. And she has agreed to do that.

So we will still try to get Mrs. McLaughlin to sign off, but if she doesn't want to we will go with Mrs. MacLeod's.

So it just involves this section.

We have another landowner who has not signed off but she has given her verbal commitment. She is out of the country, she has been in India for several months, will be back next week. But we don't see a problem with her at

all.

MR. ZED: Thank you.

MR. GAUTHIER: I would ask Mr. Gillis to just quickly talk about environmental issues.

CHAIRMAN: You can stay where you are, Mr. Gillis, or if you need a mike just take the one from the front table.

MR. GILLIS: Thank you. The area in question has been identified in the routing as having some potential for archaeological resources undefined to date, and the plan would be to monitor, whether there or any other location in that general vicinity. So --

MR. ZED: Any questions before I move on? So really, Mr. Chairman, all we are doing is alerting the Board to the fact that the routing may change with respect to that parcel of land in the manner Mr. Gauthier described, and we would ask that if that is necessary after a permit is issued that we not have to -- that the Board staff be authorized to sign off in that event.

CHAIRMAN: What -- would you have your witnesses, Mr. Zed, or I will have to swear you, explain to us the process you went through to allow the public to see what was going to happen, et cetera? In other words, what public process and opportunity did the people of that area have to come and view the project and talk to the applicant about it,

et cetera.

MR. ZED: I will just refer the Board to the application, section 7, which is the consultation plan which sets out the consultation plan that was approved by this Board, and the reference therein to appendix 3 which sets out what actually transpired as a result of us implementing that plan. And I would ask Mr. Gauthier to explain what it is that -- on the record what it is that actually occurred.

MR. GAUTHIER: I will ask Mr. Bollman to do that.

MR. BOLLMAN: Well as per the application, a number of public information sessions were held throughout the community with those groups.

CHAIRMAN: How many did you have, Mr. Bollman?

MR. BOLLMAN: I couldn't give you an exact --

CHAIRMAN: Does appendix 3 in section 7 say how many occurred?

MR. GAUTHIER: It does.

CHAIRMAN: What I want here, Mr. Zed, is that I would like your witnesses to tell us what happened, what sort of participation came from the public and whether or not there were any concerns about this particular area or any area, so the Board Members who may or may not have read appendix 3, et cetera, staff certainly has, they will get an appreciation of the opportunity that the general public

had to come in and look at your plans. And I will ask the witnesses also to comment -- I think Mr. Gauthier has in reference to just flipping that eight litres over into somebody else's property. And what sort of impact would that have. Was there anything that came out at the time of the public hearings that a reasonable person would believe that some people who went and had not participated in our hearing process might, in fact, be concerned because it's getting closer to their property or something of that nature. How is that for giving your testimony?

MR. GAUTHIER: Yes. Mr. Chairman, the process -- the consultation process started last April, the year 2001. One of the first meetings that we had was with the Union of New Brunswick Indians. Discussed the projects. They raised several, you know, concerns.

One was -- worried about us crossing the Kennebecasis River. Well now, we are not crossing the Kennebecasis River. Although there are several small brooks that we have to cross. We said the pipeline will go underneath these brooks.

Another issue they raised was native employment, you know, with this project with the construction phase. We said that it's a small project, it will be tendered to qualified companies. They mentioned that they had a joint

venture with a construction company that were very interested in tendering. We said by all means we are happy to listen to your -- what you have.

A third issue they raised is that the Kennebecasis River was used as a portage route. And that there could be campgrounds, native campgrounds or burial grounds in the valley. We responded that during the construction the excavation, that we will have a qualified archaeologist present to ensure that if one of these things is encountered we would stop the project and take the necessary routes then.

CHAIRMAN: Can you bring that a little bit further? You say we would stop the project, and what would you do then if you did. I mean, we had certain -- with EGNB there was a -- there was a line that was being laid outside of Moncton and certain archaeological things were found there. And the provincial archaeologist was going to go down and did go down, but hadn't filed their report with the Union of New Brunswick Indians and EGNB. And then the contractor went back in and started to work again.

And the Union of New Brunswick Indians and the Board were, quite frankly, upset that there weren't appropriate controls put on that contractor because the Provincial Archaeologist didn't have a chance to get back.

Could you tell us what -- if you have arrived at some agreement with how to do that?

MR. GAUTHIER: Mr. Gillis --

CHAIRMAN: Sure.

MR. GILLIS: Thank you, Mr. Chairman. We were involved in the Enbridge work and have been involved in a number of other linear corridor projects in the province. And over time we have come up with a protocol that we feel and in discussion with representation from UNBI and others sort of satisfies that kind of requirement. In that if there is an artifact identified or found by the archaeologist during construction, there is immediate contact made with the Provincial archaeologist and representatives of UNBI and MAUWI, as well and the other aboriginal organization in the province to at least make sure that they are alerted. And they then have an opportunity to come down and examine the material or take part in any kind of further analysis.

We want to try to make sure that that kind of thing doesn't happen, the thing that happened in Moncton.

CHAIRMAN: Has there been a protocol with the Union of New Brunswick Indians that if, in fact, some of their people have to come down and take part in reviewing what is going on, that they will be compensated for their out of pocket

expenses, et cetera?

I'm crossing those bridges now. Because if it occurs that we are going to get into it then, I would rather that we do it now and look after it and go from there.

MR. GAUTHIER: No. We have not made an agreement on that topic to pay their time. But, you know, we would certainly look at that if it is necessary.

CHAIRMAN: Well, I suggest that during our next break you approach that. And Mr. Getty is here representing the Union of New Brunswick Indians.

And, you know, you can always refer to the Province of New Brunswick expense account regulations if you want to and things of that nature.

I don't want to put words in anybody's mouths. But it is far better that we cover that now, so that if it does occur then the representatives of the Union of New Brunswick Indians will know that they will be compensated for having to go and at what rate. Okay.

MR. ZED: Mr. Chairman --

CHAIRMAN: Yes.

MR. ZED: -- I thought I understood you. But now I -- maybe I didn't understand you too clearly.

So you are suggesting that we talk about -- you originally talked about out-of-pocket expenses. Now you

are talking about actual compensation for attending?

CHAIRMAN: What I said was you can use the travel reimbursement regulation of the Province --

MR. ZED: Yes.

CHAIRMAN: -- by way of precedent or something --

MR. ZED: Okay.

CHAIRMAN: -- of that nature. If you agree with Mr. Getty that those representatives of the Union of New Brunswick Indians should get a per diem when they are on site or something, then that is fine. But I just think those things should be approached now before we leave here.

Those were the things that the Union of New Brunswick Indians brought to your attention.

MR. GAUTHIER: Yes. One more issue was they wanted to know if there was any Crown lands. We informed them there would just be the highway crossings in the route that would belong to the Department of Highways.

CHAIRMAN: What about just members of the general public in that particular area? Did they attend those sessions?

MR. GAUTHIER: Mr. Chairman, we met with all the landowners. gave them a -- we had a little presentation prepared. So we gave them all the same presentations.

We met with the Town of Sussex, the Town Council, the mayor and the councillors. We had an open house in the

Town of Sussex which about 50 people attended. It was -- you know, various types of questions, more of an information about natural gas, the safety of it, how does it burn and stuff like that.

One issue that a lady raised was she was worried about -- there is a cemetery -- at that time the pipeline route was going in behind a cemetery on private land. She was worried that the cemetery could not be expanded.

We checked into that. It wasn't an issue. But since then the pipeline is now on the highway side of it, so it is not an issue at all. So she was satisfied with that.

We met with a whole host of agencies, a lot of charity groups like the business communities, business -- the Sussex business community, Elk, those of that nature. A lot of good feedback, no, really major concerns.

The Kennebecasis Watershed Restoration Committee had raised a concern about -- because the valley is a sensitive, environmentally sensitive area, asked if we could look at the -- initially we had the -- facility in the valley.

So they asked if we could, you know, get rid of that equipment. And we did comply with that and made a change to our design. It was very good constructive criticism. We enjoyed that.

We met with oh, several other groups during this whole process prior to the hearing last July, including natives about the tender for construction. They came on site with their group, you know, and discussed the project, which was a very, very good meeting.

And we did provide with the Board a list of people that we did consult with last year. I see you have that on record. All in all it was very favorable.

CHAIRMAN: You did file with us but there are individuals in this room who haven't been, and that's really the reason I wanted to get all of that on the record.

I will just ask Mr. Gillis. You have presumably walked the route --

MR. GILLIS: Yes.

CHAIRMAN: -- and are familiar with it? This area where the flip-flop may occur because of the difficulties with the right-of-way agreement and that sort of thing, is there anything you can see that there is any difference in that 8 to 10 meters left, right or center where you might -- in other words the Board just looking at it, are we in that distance that it might move? Is there anything really changing with the topography or otherwise?

MR. GILLIS: No. It is on a fairly -- it is a high elevation in the area. But we did constraint mapping

which identifies the environmental constraints along the entire area, to be quite frank.

And the only constraint -- there are no other constraints there apart -- it is identifying -- there is an area of potential for archaeology similar to other areas along -- and all that means is we would want an archaeologist present when the project is going through there.

And that is the only thing. And that is common no matter where that section of the right-of-way goes.

CHAIRMAN: Thank you.

MR. ZED: Mr. Chairman, at the risk of giving evidence, but I just do want to put it on the record, that the consultation plan -- the references in the application to the consultation plan also make note of the fact that 5,320 mail flyers were issued to three Canada Post offices in the Sussex area.

They were essentially delivered to households within a 20 -- 15 kilometers of Sussex. So that was done. I mean, that sort of shows the magnitude of the direct notification we undertook.

CHAIRMAN: Mmmm.

MR. ZED: And a bilingual brochure outlining the project was forwarded to 57 interest groups at about the same time to

encourage them to contact PCS.

So we have had very limited feedback given the nature -- or given the scope of the contacts that we have made. And I think Mr. Gauthier has been telling you about what people have said.

But I just want the Board to understand that in addition to advertising in a public meeting quite widely, we did also directly through a mailout contact 5,300 households and 57 special interest groups.

And the brochure is in, if anybody cared to look at their leisure, in appendix 3. It is quite a detailed brochure telling who, what, why, where and when.

CHAIRMAN: My reason for questioning on this is that you have asked that there be an amendment.

MR. ZED: I understand.

CHAIRMAN: And I just want your witnesses to express to those of us in the room today what sort of participation.

We certainly approved the plan in advance. So I presumed --

MR. ZED: I didn't take it -- well Mr. Chairman --

CHAIRMAN: No.

MR. ZED: -- I just wanted to make it clear that in addition to what Mr. Gauthier has referred to, there was this mailout. And so there was quite an effort made to contact

people who might be affected.

CHAIRMAN: How long would this right-of-way be that would be affected if you had to change? In other words, what is the width of that property?

MR. GAUTHIER: Approximately 200 meters, Mr. Chairman.

CHAIRMAN: Okay.

MR. ZED: Mr. Chairman, I would just like to ask the panel some questions regarding some of the conditions that -- draft conditions that we discussed with the Board.

CHAIRMAN: I don't know if I have misplaced my copy from yesterday. We will take a five minute recess now, Mr. Zed, and make that call to Environment if you want to and we will make some copies.

(Recess)

CHAIRMAN: Mr. Zed, first of all, how did you make out on the telephone?

MR. ZED: I am led to believe that Mr. Perry Haines, the Director of environmental planning, can be here some time between three and 3:30 this afternoon.

CHAIRMAN: Sounds great.

MR. ZED: And if you will allow him a little bit of leeway, he is travelling from Fredericton.

CHAIRMAN: Sure. That's good. Thank you. All right. And we broke so that we could look at the draft conditions.

MR. ZED: Before I get there could I deal with one other undertaking.

PCS has agreed it will reimburse UNBI for any out-of-pocket expenses using the Province of New Brunswick guidelines if they are called out to the site because of a finding on the -- during construction.

CHAIRMAN: Okay.

MR. ZED: Mr. Gauthier, if I could refer the witness panel to the conditions, draft conditions, and before asking them questions I will refer the Board to condition 7, and it appears the third sentence in that paragraph is a hold-over from the Enbridge conditions. In other words, it appears to be related to cost-based service. And we would suggest that with the deletion of that the paragraph is otherwise acceptable. I don't know any other reason that would be in there.

The next condition that we would like to refer to is condition 9, and the draft condition has the permit to construct terminating on the 31st of December, 2002, unless otherwise ordered by the Board.

Now as a result of our construction schedule we -- that's fairly tight.

CHAIRMAN: What would be reasonable, in your client's opinion, on that?

MR. ZED: Mr. Gauthier?

MR. GAUTHIER: Mr. Chairman, we don't really have a problem with this date except that things happen. If a piece of equipment doesn't show up on time, we go beyond this date, we would like to be able to just send you a letter asking for an extension --

CHAIRMAN: Well I --

MR. GAUTHIER: -- or change the --

CHAIRMAN: That certainly is an appropriate way to proceed.

We can't guarantee. We would like to have the reason why.

MR. GAUTHIER: Yes.

MR. ZED: It is just really as long as it is understood that the date is -- will allow for flexibility we need because of construction delays, then we otherwise don't have a problem with it. We are not asking for a blanket approval for another year or anything --

CHAIRMAN: Okay.

MR. ZED: -- because we fully intend to proceed. Okay.

CHAIRMAN: Yes. I mean if you sit here now and say, look, gee whiz, if everything falls in place then we probably will make it, but we know that we will make it by the 15th of February and the reason for that is we have ordered an XYZ and it's got to come from Singapore and we are number

72 in line and their production schedule -- if you have

got a date that appears to be more reasonable because of something like that, then fine, but if it's just because you don't know something untoward may occur, but certainly if it does and you explain it to the Board, all we need to do is have a finite date involved, that's all.

MR. GAUTHIER: Yes. It's just in general a concern.

CHAIRMAN: Okay.

MR. ZED: So as of now that date looks achievable subject to things happening.

CHAIRMAN: Okay.

MR. ZED: The next item is -- excuse me -- we had an issue with 17 but I think it's now not an issue. Okay. Sorry. We resolved it. It's something that we can accommodate.

Okay. The next issue would be 21 and I would ask Mr. Gillis to speak to both 21 and 22.

MR. GILLIS: Thank you. I have got suggested re-wording for number 21, if that's all right.

CHAIRMAN: Sure. Go ahead, suggest.

MR. GILLIS: PCS shall conduct appropriate surveys for species and special status unless it is clear that the method of construction will have no potential impact on critical habitat for these species.

MR. ZED: And that really was just by way of clarification. That's what we think it means.

CHAIRMAN: All right. We will make a note on that.

MR. ZED: Thank you.

CHAIRMAN: You had something on 22 as well, Mr. Gillis.

MR. GILLIS: Yes, that's correct. As the project is now outlined, we do not envisage any contact with identified wetlands. So what I would suggest for number 22 is put a statement in front of that, In the event of construction through identified wetlands, and leave the rest of the statement.

CHAIRMAN: I don't know that I understand what you are saying. So would you like to say that in a different way? I understood that you would be in contact with wetlands, I guess.

MR. ZED: That's what I would just ask Mr. Gillis to maybe explain the original plan and the revised routing, and perhaps that could -- that will --

CHAIRMAN: Right.

MR. GILLIS: This has been an iterative project from the word go. We have looked at a various variety of routing alternatives and what have you. And early on in the project when we looked at the information base we were using the entire flood plane of MacLeod Brook in the area of the existing access road was identified under some mapping we had obtained as a wetland habitat.

So in consequence of that we said that we needed to be very careful about that. In discussions with the Department of Natural Resources & Energy we learned that wetland habitat that had been converted to agricultural land was no longer considered wetland habitat.

So what that left us with is one small wetland which can be identified on some of the mapping that we have presented which is away from where the construction would take place.

So really the situation with respect to wetlands has changed therefore because of the change of the definition of a wetland, also from the point of view of the relocation of the new preferred route which we were very concerned about constructing into the flood plane, so the new route takes us out into higher ground pretty well as soon as possible. So we are out of the wetland.

CHAIRMAN: So again your proposed amendment to 22 is to just add something to the commencement, is that right?

MR. GILLIS: That's right, in the event the construction through wetland -- identified wetland habitat.

CHAIRMAN: Okay.

MR. ZED: I think the final item is 28. 28 refers to monthly construction reports during the construction, I assume it's season, for construction of the extra high

pressure/high pressure systems, and I would just ask Mr. Gauthier to comment on what -- whether or not they are constructing extra high pressure or high pressure systems.

MR. GAUTHIER: Mr. Bollman.

MR. BOLLMAN: Just for general information, our pipeline will be, under the Gas Distribution Act, the gathering lines will be a high pressure system. And the construction period for the pipeline would be probably a maximum of two months.

So we could be moved if the word extra high pressure out of there or not, because it doesn't really concern us, but -- anyway if we are going to have a two month construction period for these things so it is not really -- it's not like a major project where it is an ongoing thing.

CHAIRMAN: What do you suggest by way of amendment?

MR. ZED: Well I guess, Mr. Chairman, we would ask the Board to consider whether was need to file any construction reports. I mean to us this was designed to encompass something that might go on for a year or two years or three years. I mean, the actual construction itself might take six weeks, it might take nine weeks, and by the time a report is received, as we all know, and looked at at the end of the first month, if the report is done and

submitted to the Board by the time somebody looks at it or does something with it, it's quite likely or possible that the project may be completed. So it's not a big deal but we just don't know what the utility is -- what use the Board intends to make of the reports. We will certainly comply with anything the Board directs. We just suggest that this may not be required in the circumstances. And if it is --

CHAIRMAN: Have you spoken with Mr. McEwing about that?

MR. ZED: No. He was away yesterday, so I haven't.

CHAIRMAN: Looking for snow I understand.

MR. ZED: Yes. So we will -- you know -- we will abide by any -- that's our only concern is the timing, other than the issue of the extra high pressure system which we are not constructing.

CHAIRMAN: My suggestion is during the next break someone speak to Mr. McEwing and he may have some input into what would be appropriate reporting, if he needs it or whatever.

MR. ZED: Yes. It's really as simple as that.

MR. O'CONNELL: And maybe, Mr. Chairman, part of the discussion could be what reports, construction reports, or information are being requested by the provincial government departments, and maybe all this applicant has

to do is copy the Board on what it is sending to other government departments.

CHAIRMAN: Okay. So perhaps you can during the break check that out. Go ahead, Mr. Zed.

MR. ZED: I was provided yesterday by Board staff with a copy of a letter that went from Mr. McEwing of Planning and Land Management addressed to Mr. Urbanowsky who is one of the witness panel. I don't know if you have seen it?

CHAIRMAN: Yes. We have it.

MR. ZED: Just the discussion -- I had a discussion with staff yesterday relating generally to whether the subject matter of this letter should be encapsulated in another condition.

And I guess our position is simply this, that before commencing construction we will either obtain the necessary highway usage permit or we will otherwise receive permission from the Department to do so.

In other words we will receive Departmental approval.

This letter was written by a lay person to an engineer seeking to set out terms of an indemnity with respect to -- you know, which would operate. And that is fine.

But I think in all likelihood we have every intention of applying for the permit and having the permit before we start construction.

But if we don't, and if the Department otherwise gives us permission, we will make whatever arrangements they require. I just don't want to undertake to provide a blanket indemnity like this. And that is my only concern.

And I think it is safe to say that we are prepared to be subject to a condition that will ensure that we receive all necessary government permits or approvals before commencing, and just leave it at that.

CHAIRMAN: It's pretty basic --

MR. ZED: So I just --

CHAIRMAN: You have put it on the record, Mr. Zed.

MR. ZED: And I don't think this needs to be dealt with separately.

CHAIRMAN: I think what I will do, however, is I'm going to mark the letter as an exhibit, or a copy of it, sorry. And that will be out of my binder.

And it will be exhibit A-2. Just so that is on the record of the hearing.

MR. ZED: Mr. Chairman, unless the Board has anything further, that is all we have on direct.

CHAIRMAN: Well, I will ask Mr. Getty if he has any questions for the panel.

Mr. Getty, if you do have some questions, do you want to bring that mike and come up here so you can look these

gentlemen in the eye while you are asking the questions?

Or what is your pleasure?

MR. GETTY: I don't need to look anybody in the eye, sir.

CHAIRMAN: Okay. Fine.

MR. GETTY: Mr. Chairman, the Union of New Brunswick Indians would like to know if there have been any discussions with the Board of the Public Utilities, Commission staff as regards any conditions that might be applied in regard to aboriginal people and how they may benefit from this project?

CHAIRMAN: Would you rephrase that question? Are you asking if the Board staff has had any conversations with the applicant concerning how the Union of New Brunswick Indians may benefit from this project? Is that what you are asking?

MR. GETTY: Yes. We would like to have it on the record as to whether or not there have been any discussions with the Public Utilities Board staff concerning any conditions that might be applied to this licence or authorization in regard to how the aboriginal people of New Brunswick may benefit from this project?

CHAIRMAN: Well, have you got the question, Mr. Gauthier?

MR. GAUTHIER: I think so. We have not had discussions with the Public Utilities Board about how the natives could

participate in this project or benefit monetarily.

But tell Mr. Getty that we have had discussions with him and his people about construction, the tendering of their -- on the projects, which they could benefit in that way. But that is my answer.

CHAIRMAN: Okay.

MR. ZED: If I could just qualify. Mr. Chairman, I just point out that the condition 30 deal -- that in the list of conditions we just reviewed, it does reference archaeological sites. I mean, we have had discussions with respect to that.

CHAIRMAN: But the question wasn't with the Board staff.

MR. ZED: No. I understand. But I had those discussions with Board staff --

CHAIRMAN: All right.

MR. ZED: -- that Mr. Gauthier would not have been aware of.

CHAIRMAN: All right. Go ahead, Mr. Getty.

MR. GETTY: Mr. Chairman, in regard to condition number 30 that -- listed on this series of conditions which makes reference to the Union of New Brunswick Indians --

CHAIRMAN: Yes.

MR. GETTY: -- has there been any discussion with the Union of New Brunswick Indians as regards that particular condition, or any letter notifying them of the condition

or anything like that?

MR. GAUTHIER: At the very first meeting we had with UNBI back on April 6th 2001, we had a discussion about what would we do is we find some archaeological sites or materials. We said that we would try to contact them immediately. Or they could have somebody on site.

Since then we are to use -- Mr. Gillis has testified that we will use the protocol that is in place with the Enbridge project. And we are prepared to pay out-of-pocket expenses as Mr. Zed has explained.

CHAIRMAN: Have you communicated that to the Union of New Brunswick Indians? Did you in your meeting of April of 2001 communicate all those things to the Union of New Brunswick Indians?

MR. GAUTHIER: No, not of the out-of-pocket expenses nor the actual protocol.

CHAIRMAN: Okay. So the answer I guess -- well, you have heard the answer of the witness. Go ahead, Mr. Getty.

MR. GETTY: Mr. Chairman, the Union would like to know if there has been -- if Mr. Gauthier or someone else from PCS can put on record any discussions or offers for discussion with the Union of New Brunswick Indians or MOUWI that have taken place since the initial reading back in April 2001?

MR. GAUTHIER: Could I ask him to be a little clearer on the

question about -- concerning what projects, what benefits, I'm sorry? Just rephrase that again please.

MR. GETTY: Mr. Chairman, all we are asking is if Mr. Gauthier can put on the record whether or not he has had any meetings or any of his staff have had meetings with the Union of New Brunswick Indians or the MOUWI group representing aboriginal people as in regard to this project, any aspect of this project since that initial meeting back in April of 2001?

MR. GAUTHIER: Mr. Chairman, two days -- three days after that first meeting we received a letter from UNBI saying that they are very interested in participating in the construction phase of that project and would be interested in bidding. We arranged the meeting.

They came on our site April the 27th to review the project with this joint venture company that they have proposed. It was a very good meeting, discussed the entire project. And they left. Got a letter from UNBI on May the 1st thanking us for this meeting. And it was very positive. And they were very encouraged.

May the 15th I drove to their offices in Fredericton, had a two-hour meeting with five of their senior -- of their staff. At that meeting we discussed -- I listened to a whole host of issues.

First was that I was born in Saskatchewan and that the land title issues in Saskatchewan were different there than they are in New Brunswick. But in New Brunswick the natives have not relinquished their title to all lands and all natural resources. And I'm just paraphrasing what they said to me.

That there was no need for us to apply for a franchise agreement. Put in an application for a local gas producer franchise because the gases belong to them. And they would issue the franchise. Also that the natural gas royalties we would have to pay, we should pay it to them.

They use a 10 percent rate that the government has set.

First my response was I'm complying with the laws in the province of New Brunswick. I will pay the royalties to the Province. If the natives have an issue with that they can go see the Province. That is basically what the meeting was about.

CHAIRMAN: Mr. Getty?

MR. GETTY: Just by way of clarification, Mr. Gauthier, you are saying that there haven't been any meetings since that initial meeting?

MR. GAUTHIER: That's correct.

CHAIRMAN: Well, I thought you -- you just said May the 15th you went to Fredericton.

MR. GAUTHIER: Oh, I'm sorry. If he said since May the 15th?

CHAIRMAN: No. He said since the initial meeting. That is pretty obvious, that there have been a number of meetings, Mr. Getty. So where are you going with this question? I don't understand?

MR. GETTY: The Union would like to know if Mr. Gauthier has received any correspondence since May?

CHAIRMAN: Do you have anything particular in mind? If you do, Mr. Getty, put it in the question. Did you receive a piece of correspondence from the Union of New Brunswick Indians, dated such-and-such a date and addressed to so-and-so?

Let's not play fishing expeditions here. Let's be precise in what it is you want to know.

MR. GETTY: We would like to ask Mr. Gauthier whether he received any correspondence from the Union of New Brunswick Indians asking to meet with him to discuss how the aboriginal people might benefit from this project since May?

MR. GAUTHIER: Mr. Chairman, we received a letter of congratulations on receiving the gas franchise, local gas producer franchise and received early this year a letter from them asking for a contribution to their environmental

conference being held in Fredericton. That's it.

MR. GETTY: Mr. Chairman, we would like to ask Mr. Gauthier if PCS would be willing to put an additional condition in that PCS negotiate with the Union of New Brunswick Indians an agreement as to how the aboriginal people of New Brunswick might benefit from this project?

MR. GAUTHIER: No, Mr. Chairman.

MR. GETTY: That is all my questions, Mr. Chairman. But I would like to clarify the statement made just as the hearing resumed.

There was a statement made that Potash is prepared to reimburse out-of-pocket expenses for representatives from the Union of New Brunswick Indians to go to any archaeological site that may be disturbed during construction.

The implication there was that the Union had agreed to that. And I would like to put on record that the Union has not agreed to that. That's what PCS has offered.

CHAIRMAN: Are you saying that you will not accept out-of-pocket expenses if in fact you are asked to go? I don't understand, Mr. Getty, frankly. Let's be precise in what it is you are trying to say.

Are you saying that is not a good enough package, we need more than that? Or are you saying you don't have to

pay us if in fact we go to the site any out-of-pocket expenses? What are you saying to the Board?

MR. GETTY: The Union would like to sit down with Potash Corporation and negotiate some kind of agreement with them as to what the relationship will be between the aboriginal people and Potash Corporation.

Part of that agreement would be dealing with the archaeological matters such as out-of-pocket expenses or whatever.

But there has been no agreement up to now that there would be any kind of discussions or any kind of agreement or that the Union would accept out-of-pocket expenses.

This is just an offer that was made during the break as far as out-of-pocket expenses is concerned for archaeological site investigation.

And it's up to the Chiefs of the Union of New Brunswick Indians to decide what kind of agreement they may enter into.

CHAIRMAN: Right. Now I understand. Mr. Getty, since May the 15th when Mr. Gauthier attended at the Union of New Brunswick Indians' offices in Fredericton, are you aware of anything that came from the Union of New Brunswick Indians to the applicant requesting a meeting to sit down and negotiate the things you have just addressed the Board

about? Has there been anything initiated that you are aware of by the Union of New Brunswick Indians?

MR. GETTY: Yes, there has.

CHAIRMAN: Do you have a copy of it?

MR. GETTY: I don't have it with me. But I can certainly get it and provide it to the Board. Mr. Gauthier has a copy of the correspondence. He made reference to it.

CHAIRMAN: Well, the correspondence that he made reference to didn't, as I heard it -- and I will ask Mr. Gauthier to explain it again -- it didn't ask that UNBI have a meeting with PCS to sit down and talk about how you could benefit from this construction. That's not what I heard anyway.

MR. GETTY: My understanding is that the -- for instance the letter that was sent congratulating them on getting the franchise agreement, in that letter there was an offer to sit down with them and discuss the matter further. But the Union received no response to that letter.

It's my understanding that there was a second letter sent after the meeting in Sussex with the Board in regard to arranging this hearing and the schedule for this hearing. There was a second letter sent to Potash suggesting that the Union is prepared to sit down and discuss.

There was another letter send that asked Potash to

make a contribution to the Environmental Conference. But in that letter there was no reference made to sitting down and having discussions.

That was strictly a letter that was sent out to various corporations asking for donations toward the Environmental Conference.

CHAIRMAN: So what you are saying, Mr. Getty, is between May the 15th and today there were two further letters sent by the Union of New Brunswick Indians to Potash Corporation suggesting that there be a meeting where you will sit down and talk about the benefits that the Union of New Brunswick Indians might obtain in reference to the construction project we are talking about today, is that correct?

MR. GETTY: That's my understanding, yes.

CHAIRMAN: Yes. Mr. Gauthier, do you know anything about those other two letters?

MR. GAUTHIER: I have -- I probably have a letter received August 30th from Darrell Paul, Executive Director, congratulating us on receiving a local gas producer franchise.

It goes on to say, The next phase of construction we look forward to receiving information about the details of the pipeline construction plans. This might be a good

time for us to have a further meeting to discuss how the aboriginal people of New Brunswick can benefit from this indigenous natural gas development. It would be a pleasure to host you once again here in the offices at Fredericton. I have asked Ron Perley to follow up with you on arranging a convenient date, time and place. I never received a call from Mr. Perley.

CHAIRMAN: That was August of 2001?

MR. GAUTHIER: August 30th.

CHAIRMAN: And you are saying -- you are telling the Board that Mr. Perley would follow up. And to your knowledge he didn't?

MR. GAUTHIER: That's right. That's correct, sir.

CHAIRMAN: Okay. Mr. Getty, just for future reference, if you are -- you know, the appropriate thing for you to do would be to bring copies of these letters with you and show them to the witness and ask him if he had a copy of this. And that makes it easier for us.

Now the second one -- that is the only one you are aware of, Mr. Zed or Mr. Gauthier?

MR. ZED: Mr. Chairman, we just happen to have a copy of that for another reason. And I'm not aware of any other correspondence. Mr. Gauthier may have received it, I don't know.

MR. GAUTHIER: No. I want it mentioned in my initial dissertation, sir.

CHAIRMAN: Okay. Any other questions, Mr. Getty?

MR. GETTY: No.

CHAIRMAN: Board counsel?

MR. O'CONNELL: I do have some questions for the panel. If it is all right, I will move --

CHAIRMAN: Yes.

MR. O'CONNELL: -- Mr. Chairman. Gentlemen, I have a number of issues to deal with. The first one is the question of insurance. Somewhere in the materials I read about your \$5 million US per occasion coverage.

MR. GAUTHIER: Yes.

MR. O'CONNELL: I would like to ask PCS to file with the Board a complete copy of your insurance coverages as they relate to this project.

MR. GAUTHIER: I will see if I can get that, sir.

MR. O'CONNELL: Well, one other thing, just so you know why.

MR. GAUTHIER: Okay.

MR. O'CONNELL: One of the things that is obviously a concern to me and probably a concern to the Board, is the exclusions that would be part of those policies. And I think it's necessary for the Board to examine those policies and in particular the exclusions so we can get a

real handle on what the length and breadth of the coverages are.

MR. GAUTHIER: I will phone my insurance broker and see if I can get that for you. As long as we -- we would ask that you keep that confidential to the Board.

CHAIRMAN: What, the policy?

MR. ZED: It's probably a blanket policy that insures much more than just this project. And that's why -- I'm not sure because I haven't seen the policy. But I, for another purpose we have issued a certificate from the insurer confirming that a certain coverage is in place for a certain facility. And I wonder if that might suffice. If we could refine it to that point, we would have no trouble. In other words, getting a certificate from an insurer saying that there is coverage for such and such and that the operations are not excluded. Will that do?

MR. O'CONNELL: I would have to look at it.

MR. ZED: And, again, I don't really know what I'm -- because I haven't seen the policy either. Just there may well be locations insured, for example, that are confidential. Or maybe some equipment insured that is confidential. So can we deal with that once we see what we can get. And it may well be that there will be a request to keep it confidential at that time.

MR. GAUTHIER: Mr. Chairman, can you allow us to make a phone call at the break and we will see what is available and discuss this after.

MR. ZED: We will definitely get you something.

CHAIRMAN: Well, all right. Mr. Zed, you know where --

MR. ZED: Yes.

CHAIRMAN: -- counsel is coming from and what we need to do.

MR. ZED: Maybe we will formally undertake after the break, so we will know what it is we can provide.

CHAIRMAN: I mean on the face of it, Mr. Gauthier, it somewhat surprises me that you would want to have an insurance policy to be confidential.

MR. GAUTHIER: If I was worried about the amount, it has already come out.

CHAIRMAN: Oh, you put that in your evidence.

MR. GAUTHIER: I know.

CHAIRMAN: So certainly it came out. In the Enbridge Gas New Brunswick situation, again, Enbridge is a large organization with many, many different sites, very complex insurance. And the Province in fact on that occasion hired a consultant out of Toronto to review all of the policies to ensure that it would cover the situation in this Province. And the Board had simply had a supplemental opinion from that insurance expert filed with

us to cover the situation off.

I just suggest that you pursue it at the time of the break. And Mr. Zed can pursue it with the Board Counsel.

MR. ZED: Okay. Mr. Chairman, so you know, I ran into exactly the same issue when we were negotiating the franchise agreement with the Province. And we provided them with a certificate from an insurer describing the amount of the coverage and the type of coverage. And that may suffice. But we will discuss it with Mr. O'Connell.

MR. O'CONNELL: And just one related topic, if I may, when you are talking to your insurer, is the issue of cancellation of policies and notice to the Board. As I am sure you will remember, in the year when the Board regulated the Motor Carrier, the formal certificate that was accepted by the Board had an undertaking from the insurer not to -- not to suspend or terminate a policy without giving a notice period to the Board.

MR. ZED: Well that was before my time, Mr. O'Connell, but I will take your word for that.

MR. O'CONNELL: Mr. Gillis during his evidence talked about some sort of a protocol that dealt with archaeological issues. And the subject of the protocol came up a number of times. There was never an offer to -- or a suggestion that this protocol should probably be filed with the

Board, and I'm wondering if that's possible.

MR. ZED: So Mr. Gillis will provide -- we will provide a copy of the protocol.

MR. O'CONNELL: One of the issues arising out of the protocol that I wasn't clear on this morning is the issue of what happens when you come across -- well, unfortunately the note I made to myself was archaeological stuff. That's not what he said, but that's what I put down. Exactly what happened? Can you describe it to the Board, please?

MR. GILLIS: Sure. Perhaps I can back up just a little bit to run through a little bit of the process that we have gone through from the archaeological viewpoint. I think that might help a little bit.

What we have done is we do a three level archaeological investigation on projects like this. The first thing we do is we do sort of a probability assessment. We look based on other projects we have been involved with and historical evidence from the area, we look for what areas would most likely have archaeological -- be archaeologically significant. So once we identified those areas that have a very high level, we go out and we do field work. And based on the field work we do a few investigations. We either discount

these areas or say, yes, there continues to be a high potential or some potential for archaeological material to be here.

The whole purpose of this exercise is so that we are - - we do not lose any information that would be of value to the archaeological record or to the aboriginal communities.

So having done that, we are then left with areas that we feel we should monitor during construction to make sure that if anything is found, it's dealt with appropriately.

The protocol that I mentioned has been developed over a course of series of projects, including highways, electrical transmission lines, gas pipelines of various sizes. And it starts off with there is a requirement, for example, if you find what may be human remains to stop work, notify the RCMP, notify archaeological services and commence an investigation such as that.

If you find things that are less than potentially human remains, the protocol is to notify archaeological services and in the case of anything that may potentially be of aboriginal interest, UNBI and MAUWI and say here we have found something that may be this and here is what we are going to do. And there is a procedure where that information or that artifact is examined by archaeologists

both with the Province and representatives of UNBI or MAUWI. And then the project, if it turns out to be nothing, fine. If it is something, then additional work is done. Either remove the information or extract the information content from that or you take other action.

Again, the entire protocol is designed to prevent a loss of archaeological information. And we have used this in the past on a few -- a few projects and continue to do so.

One of the projects that we considered, for example, is here at Fort LaTour. We had people involved from various communities take part and examine or look at any information.

MR. O'CONNELL: Gentlemen, I have some questions arising out of the answers to interrogatories. So if you can lay your hands on that. And I am going to start with the responses to the interrogatories from the Board.

The first interrogatory from the Board dealt with the quality assurance program, and you used a couple of terms in your response, the very first paragraph of your response.

However, PCS will be screening and selecting qualified tenders based on their historical performance. I would be interested in knowing what the PCS process is for

establishment of the historical performance is, and if necessary facility audits, and I would be interested in a description of what a facility audit is, and what type of data it generates.

MR. GAUTHIER: We as a potash operation produce a product.

We chose some tenders, though not to proceed with a quality assurance program because we produce a bulk product, bulk commodity. That doesn't really fall into a quality assurance program with respect to vendors and/or contractors.

What we are trying to say there is that over the last since 1983, the contractors and the vendors that we have used, we get to know if they follow acceptable environmental practices or quality assurance practices by dealing with them. So since 1983 we have a history with our clients, our customers. Therefore we mean a history.

Now if we buy a piece of equipment that is out of the ordinary, a gas processing facility trailer, it might be advisable for us to go and visit the factory where this is made to see if they comply with their laws and rules in whatever province that is.

So that's what we mean by saying that.

MR. O'CONNELL: In your answer to interrogatory number 3

from the Board deals with this Peerless odorizer unit. My

question to you is whether any other brands of these odorizer units were considered.

MR. STEVENS: This Peerless odorizer, the model that was selected, was selected early on in the process. It requires no power supply at the well site. It is going to be odorized. And these units have a demonstrated history of being trouble-free. There are a number of these units in the United States and Canada. That's why this unit was selected.

And we have not looked -- there are a number of other models, a number of other units available and on the market readily available. We have not evaluated, haven't gone down that road to this moment, have looked at others, but nonetheless the standard for selection we will make sure first of all that it applies with the process for safety reasons. And then if that odorizer requires a serial number or things like that obviously --

MR. O'CONNELL: Obviously, you know, the effective operation of the odorizer is one of the key safety issues in all this.

MR. STEVENS: Yes.

MR. O'CONNELL: I was interested in the basis for choosing this particular model over the other models that were considered.

MR. STEVENS: I think -- and again I'm not an expert on odorizers, but I think the modern technology is that we have a flow metre -- we have some way of measuring the output -- a flow valve which means there is no requirement for power. The unit selected in one of the earlier models; this model operates on a bypass valve based on pressure differential. You can throttle it very closely, it's self-correcting, requires no power supply, again a very prudent technology, but it's probably not state of the art in terms of new facilities, but nonetheless they continue to be utilized in the industry for certain applications, for certain remote locations and low flow pipelines, and we have researched two or three of them.

MR. O'CONNELL: One of the issues that you discussed briefly this morning was of course the fashion of extending this pipeline underneath brooks or creeks or MacLeod's Brook, or whatever it was. And when you -- could you describe in a little more detail -- you know, you said we drill underneath the creek, one, how deep do you normally do this and how do you go about doing it and are there any particular environmental problems that arise out of dealing with a water course?

MR. GAUTHIER: Mr. Urbanowsky? There are two phases, sir. We will get the environmental part and then we will do the

construction part.

MR. GILLIS: From the environmental perspective, that would be the goal of horizontal directional drilling to avoid contact with the water courses, so you set up sufficiently back from the water course to avoid, we are talking 10, 15, 20, 30 meters back from the water course to set up and you drill down below the water course. The only contact with the water would come if in a situation where you may frac out which means the drill bit comes up to the surface and intersects the water body. You get into that kind of situation generally where you have a lot of stoniness in the materials and the rock. We are not anticipating anything like that here. We have done soils tests and we find it very straightforward.

From the environmental protection point of view, this is by far the preferred method of crossing water bodies, including any small wetland areas.

The next step after that if you do frac out would be to do something along the lines of drycrossing which for small water bodies works very well as well. But the approach of preference is horizontal directional drilling.

MR. URBANOWSKY: The construction process using horizontal directional drilling is to first abide by the environmental regulations which set a minimum 30 meter

buffer zone. So we have to be a minimum of 30 meters behind the creek crossing.

The directional drill is then set up in an area irregardless of whatever that 30 meters is in an area that will not allow the drilling mud to flow to the stream or you take precautions to avoid that sort of thing happening.

The directional drill is angled down to go below -- at least three meters below the bottom of the stream bed so that you avoid sediments and mud and those sorts of things. And it travels along, you can physically control the direction of that drilling head to move in any horizontal or vertical direction that you require.

So based on previous soils testing that was done and testing of depth of stream bed, you can decide what direction and depth that you wish to move in, and control that drill bit to go underneath the stream bed and come out at some distance 30 meters beyond the other buffer zone at whatever depth and location you wish to. And that is accomplished by the drilling -- the drill people actually following along with the drill head and they have an ultrasonic device that tests the depth and direction and angle of attack for that drill, so they can accurately follow the drill bit at any location and point and

determine where it is in regards to where they want to be.

The comment of fracking out is a technical term. It describes the underground material breaking up and you actually physically see that. You don't know -- you know it occurs because you see drilling mud emerging from the ground as you are drilling.

And it's a process that does happen but I can't say whether it happens often or not at all, it does happen, and normally you stop drilling at that point to control the amount of material coming out. And this is not bad material, it's simply a Bentonite solution in the water which is clay and water that you use to lubricate the drill.

So we watch for that as we are drilling. And in the worst case scenario as it crosses underneath the stream you watch for a sediment plume in the water. If you don't see it your drilling is good. And we are trying to be as deep as practical underneath the stream and if we determine through soil samples that there could be gravel or other barriers below the stream bed, then we try and go around them or below them. You can literally back the drill up and take -- try again in a different location, try and get through and then come out the other side.

So that's the construction procedure. And I will stop

there.

MR. O'CONNELL: Well just to change course a bit. Within the last few days you have filed with the Board a number of amendments to the evidence and to the applications, and I have gone through them and flagged them, but I guess perhaps it would be of assistance to the Board if you could talk your way through those amendments, what they are, the reason for them.

MR. GAUTHIER: Okay. Mr. Bollman.

MR. BOLLMAN: I'm going to assume that the amendments we are talking about is the change from one four inch gathering line into two three inch gathering lines?

MR. O'CONNELL: When I read them -- yes, that is the majority -- when I got to some of the later ones deeper in the evidence I wasn't clear as to the reason for them. I have got them flagged myself if that will help you. I can take you to them.

MR. GAUTHIER: They are all concerning that change, sir.

MR. O'CONNELL: So they all arise out of that change --

MR. GAUTHIER: Yes.

MR. O'CONNELL: -- from one pipe to two pipes?

MR. GAUTHIER: Yes.

MR. O'CONNELL: Okay.

MR. GAUTHIER: We will explain the reason why we are doing

that.

MR. O'CONNELL: Yes, please.

MR. BOLLMAN: We were just correcting the gathering line scenario from four inch to two three inch.

MR. O'CONNELL: Okay.

MR. BOLLMAN: And we have made that change because as we -- from an operational point of view we are moving two phase fluid through this pipeline, basically a gas and there are liquids that condensate and produce water. We are moving from a low region to a higher region, and so we are going to require some pigging. That means shutting down the line, you put a pig in and you push the fluids ahead of the pig up to where it discharges. That pig is just a foam ball, a big foam rubber ball.

CHAIRMAN: We have an expert on pigs in the room.

MR. BOLLMAN: Yes, we do, as a matter of fact. So during this pigging process you end up with some periods of flow, non-flow conditions. These are very transient and small and they represent no safety problems or any other problems but could result in some small gas interruption supply to our mill. And -- so that's not something we -- and this is a grey area. It's not cut and dry. The pipeline has surge capacity which should to a large extent mitigate this circumstance, but there still remained some

site possibilities. We could have some natural gas, transient natural gas flow interruptions.

So by going to two three inch lines, then we can pig one line and run the other line, and then we can just avoid the whole issue. That's the primary reason for the change.

MR. O'CONNELL: Can I ask you to go back to this time the PCS responses to the Enbridge Gas New Brunswick interrogatory. On some occasions I didn't understand what you meant. You can probably explain this.

Interrogatory number 1 of Enbridge Gas New Brunswick, and that was -- that interrogatory focused on interconnection between PCS facilities and Enbridge Gas New Brunswick facilities. And your answer was that the processing facility is capable of accommodating in a connection and then you answered another question using the same terms. I guess I came away from reading those interrogatories and those answers wondering, one, what you meant by your answers, two, whether you have looked at Enbridge Gas New Brunswick facilities in any part of -- you know -- as they exist now in any part of the province to determine -- to deal with the question of interconnectability.

MR. GAUTHIER: We have not finalized the design because --

wait till we get the permission to construct to get the final design completed.

But their -- Enbridge's request at the -- for franchise hearings was they wanted to be able to connect to our processing plant at the outlet.

Well, at the outlet of our processing plant we have a valve. We have to have a valve and a meter. When and if it becomes time for Enbridge to hook up, we will close the valve and we will put a T in the line.

That is all that is required, and a meter. It is not a big issue. It is just -- have it approved by Enbridge and we will go ahead.

MR. O'CONNELL: Okay.

MR. GAUTHIER: That is not a major concern at all. It may be an issue to Enbridge. But it's not to us.

MR. O'CONNELL: They are not here.

MR. GAUTHIER: I might add, it's just like in your house you have a water line, and if your water goes somewhere else in that water line, you shut off the valve, you cut it and you put in a T, the same thing.

MR. O'CONNELL: If you look again on your answers to the Enbridge undertakings, page 2 of 4, the very first response, the top of the page, Permits will include all those required by the Gas Distribution Act, national,

provincial, municipal and local permits.

Now what happened during the course of the Enbridge Gas New Brunswick application is they were asked to and they did file a list with the Board of what in their view were the national, provincial, municipal permits that were required for their facilities. Can I ask PCS to do the same thing?

MR. ZED: May I?

MR. O'CONNELL: Sure. I have no problem.

CHAIRMAN: How many more questions do you have,

Mr. O'Connell?

MR. O'CONNELL: 20 or 30.

MR. GAUTHIER: In the draft conditions we are required to keep a copy of all permits on site.

MR. O'CONNELL: Yes.

MR. GAUTHIER: Is that not sufficient enough?

MR. ZED: Do you want a list of them?

MR. O'CONNELL: Well that is what Enbridge Gas New Brunswick did. They filed a list of what they felt were the necessary permits.

I mean, it is difficult for the Board to enforce that condition unless it knows what in the view of the applicant the necessary national, provincial, municipals permits are.

MR. ZED: Well, let me put it to you this way. We certainly are going to apply for or have applied for all permits we think are relevant. So it probably shouldn't be too onerous a task. So we will provide a list of permits that we think are applicable.

MR. O'CONNELL: If you want to break for lunch,
Mr. Chairman.

CHAIRMAN: We will break for lunch and come back at we will say 2:00 o'clock.

(Recess - 12:35 p.m. - 2:00 p.m.)

CHAIRMAN: Mr. O'Connell, have you made new arrangements?

MR. O'CONNELL: No, I have not, Mr. Chairman. But I thought you were going to -- I was sitting there for a couple of reasons, one of which is to give you the opportunity in case you want to mark something.

CHAIRMAN: I have changed my mind.

MR. O'CONNELL: Okay. And I think probably --

CHAIRMAN: I was tackled at lunch, Mr. Zed, because I didn't have the presence of mind to mark the prefiled evidence with an exhibit number.

I have tried to blame it on everybody. But it appears my fault. And I probably should do that. Do you have an extra copy there?

MR. ZED: We brought it for exactly this reason.

CHAIRMAN: Now the Board Secretary tells me she has copies.

I won't do it now. But I will do it after. And I will give the -- just a moment -- the prefiled evidence will have exhibit number A-3.

MS. LEGERE: Prefiled evidence. Attachment 1 (a) (b) (c) and 2.

MR. ZED: 1 (a) (b) (c) and 2. The application, 1 (a) (b) (c) and 2.

CHAIRMAN: And the interrogatory responses will be exhibit A-4. Have I missed anything, Madam Secretary?

MR. ZED: The prefiled evidence, we did send in an amendment with respect to those. So I will consider that just prefiled? Or do you want to mark it as a separate item? I really don't care. It is up to the Chair.

CHAIRMAN: They were amended on what date? It was last week, wasn't it?

MR. ZED: Yes, it was.

MS. LEGERE: March 15th.

CHAIRMAN: All right. Then the record will show that the prefiled evidence was amended by certain amendments that has been were referred to actually in Mr. Gauthier's testimony. And Mr. O'Connell has asked questions about it. It was March the 15th. As of that date. So they are amended to reflect those we received on that date.

MR. ZED: There are two other matters.

CHAIRMAN: Yes.

MR. ZED: Sorry. I didn't mean -- I thought you were finished.

CHAIRMAN: No, no. I'm finished -- having finished my confession --

MR. ZED: Yes.

CHAIRMAN: -- with prodding from counsel.

MR. ZED: There were two items carried over from this morning. One is with respect to the undertaking regarding insurance coverage.

I think Mr. O'Connell and I have sorted it out. But I will let Mr. O'Connell -- or would you rather --

MR. O'CONNELL: No. We have had discussions over the lunch hour break, Mr. Chairman. The policy, as Mr. Zed suspected is 3, 4 or 5 inches thick. It is considerable.

Mr. Zed has suggested, and I think it is probably -- would probably be acceptable to the Board, that a certificate of insurance that is revised and contains some undertakings with respect to the notice of the Board be filed, and that the exclusions under the policy would also be filed.

All we would need to know -- in my view, as long as we can verify that there is coverage both during the

construction and operation of the pipeline and in the amount that we discussed this morning, that probably should satisfy the Board's requirements.

CHAIRMAN: If that is acceptable, Mr. Zed. The reason I was hesitating there is that I have -- in my experience there have been different policies with risks covered as between construction as versus operation. And that is the only reason I hesitated. If counsel worked that out, I'm sure that is fine.

MR. ZED: I have no doubt we can. Just as I thought, it is a worldwide policy that covers all their operations all over the world. And it is probably just like Enbridge can sort out.

CHAIRMAN: If our counsel -- if Board counsel is satisfied with the form of the certificate then that is fine with the Board.

MR. ZED: The only other matter -- and I just spoke ever so briefly with Mr. McQuinn before we started, with respect to condition 28. It does with -- dealing with the monthly construction reports. I understand Mr. McQuinn feels that that condition can be deleted.

CHAIRMAN: Okay. And while we are on that topic, Board counsel mentioned that he had been speaking with you, Mr. Getty, concerning the conditions. And those were simply

conditions, if you didn't hear what I think Mr. Goss said to begin with, that he compiled, looking at the Esso pipeline application in the South End of Saint John, plus the EGNB application that we had, and just putting them out there for comment from the parties.

If you have any comments on these conditions or issues to those conditions, why by all means when the testimony is completed you will have the opportunity to make suggestions to the Board for additions or deletions. That really is just something -- a starting point is what it amounts to. Okay. Mr. Zed, anything else?

MR. ZED: That is it for now, Mr. Chairman. Thank you.

CHAIRMAN: Okay. Mr. O'Connell?

MR. O'CONNELL: Thank you, Mr. Chairman. Gentlemen, I'm still looking at the PCS responses to the Enbridge Gas New Brunswick interrogatory.

And I'm looking at page 3 of 4, the PCS response to interrogatory 2 (b) which deals with the filing of manuals. And the PCS response is "Upon filing the manuals with the Board we will request that they remain confidential."

And I guess I would be interested in knowing why you feel the PCS manual should be confidential when in the hands of the Board?

MR. GAUTHIER: We don't want -- it is going to cost us a considerable amount of money to produce these documents. We don't feel that -- if we make this public, make these public documents other people will benefit from these in the future. So if they remain confidential to the Board, that is okay. We don't feel Enbridge should have these documents.

MR. O'CONNELL: Does PCS not have access to the Enbridge manuals that are filed with the Board? My impression is they are public documents, but --

MR. ZED: Our understanding is that they were filed on a confidential basis. If we are wrong then we are wrong. But that has certainly been our understanding.

CHAIRMAN: All I can do is interpret from nodding heads in the room that from that interpretation -- some of them I know were filed with the Board for review or are available at EGNB's premises for Board review. But there are a lot of different manuals and I don't profess to know. Board counsel, my understanding from what Mr. Goss is saying back there is that they are not public knowledge. They are reviewed by the Board on a confidential basis, which is unfortunate. It puts the onus on Board staff to go through it. And we all know that two minds are better than one.

If someone who had knowledge of the industry were also to take a peek at it and might have some suggestions that you would benefit from as well. But if that is your choice then --

MR. GAUTHIER: Yes, it is.

MR. O'CONNELL: And the very next response to EGNB's interrogatory 2 (c) which is "Please provide details of PCS' experience in constructing and operating a pipeline."

And the response, which is not particularly helpful, I don't believe, "PCS will construct and operate the proposed pipeline to meet the required provisions of the Act and applicable regulations for the satisfaction of the Board."

Would you like to take another shot at answering that question?

MR. GAUTHIER: Okay. I will just give you a quick brief of the Canadian operations of our company. We just in Canada consume over 100 billion cubic feet per day of natural gas in our potash mines out west.

So we have considerable experience in the natural gas and in using gas in our facilities, all sorts of pipes, meters, you name it, burners. So we have a lot of experience.

Is that satisfactory? That's just our Canadian

operations.

MR. O'CONNELL: I don't know what Enbridge Gas was looking for when they put the question to you. But just when I read the question and the response to it, it wasn't -- it didn't answer the question.

MR. GAUTHIER: It's a bit vague.

CHAIRMAN: And frankly your answer was a bit vague too. You didn't answer whether or not you have any experience in the construction or operation of a pipeline. You have got a lot of experience with natural gas.

MR. GAUTHIER: I answered Mr. O'Connell's question. It was, what is your experience in operating?

MR. O'CONNELL: Okay. Well, let me try to be more direct. Can you tell me about your experience in constructing a pipeline?

MR. GAUTHIER: I will defer to Mr. Bollman.

MR. BOLLMAN: We are paying very good dollars to a number of excellent contractors to help us construct this pipeline. I won't even attempt to name the contractors.

MR. O'CONNELL: No, no, no, no, no, no. I don't need that. Would I be fair to say that PCS has never itself constructed a natural gas pipeline?

MR. BOLLMAN: I don't -- that may not be accurate. Because we are an international corporation.

MR. O'CONNELL: In Canada. I will get the question right sooner or later.

MR. GAUTHIER: That's correct.

MR. O'CONNELL: Okay. And has PCS ever operated a natural gas pipeline in Canada?

MR. BOLLMAN: When you say pipeline I assume you mean by the definition of the Act?

MR. O'CONNELL: Yes. A pipeline as the one that is regulated by this Board.

MR. BOLLMAN: Yes. We have a substantial number of hydrocarbon experience years in our mill from people who have worked in various facilities in the province, Irving Refinery handlings. I have a list in my briefcase.

MR. O'CONNELL: Has Potash Corporation of Saskatchewan ever operated a natural gas pipeline in Canada?

MR. BOLLMAN: No.

MR. O'CONNELL: Okay. Thank you. Page 4 of 4, Question 2 (e) from Enbridge Gas New Brunswick. "Who are the trained and qualified personnel that will be providing required maintenance on PCS' pipeline?"

And you respond to that by saying "PCS will have" -- and when I read that I took that to mean will have it sometime in the future, don't have today -- "trained and qualified personnel in-house to perform the day-to-day

maintenance required."

Now does PCS have anybody hired to provide maintenance to the pipeline that brings us all here today?

MR. BOLLMAN: Are we talking maintenance here, or maintenance and operations?

MR. O'CONNELL: Well, the question as it was put by Enbridge Gas New Brunswick said, "Who are the trained and qualified personnel that will be providing required maintenance"?

MR. BOLLMAN: At the present time we are in the process of qualifying a number of individuals with provincial IMT certificates.

MR. O'CONNELL: So as of today there is nobody?

MR. BOLLMAN: Except that we have available to us to hire a number of individuals at our choice.

MR. O'CONNELL: Unfortunately you find yourself in a position where it is PCS that is here today?

MR. GAUTHIER: Yes.

MR. O'CONNELL: And it is PCS that is making this application?

MR. GAUTHIER: Yes.

MR. O'CONNELL: And it is PCS that is going to take the responsibility for the construction and operation?

MR. BOLLMAN: Yes. And it is PCS who regularly uses contractors and other people to do their work.

MR. O'CONNELL: But in your material -- and I will tell you, I can't -- when -- whoever drafted these interrogatories on behalf of Enbridge, the quotation marks were on "trained and qualified personnel."

And that probably means -- and I can't tell you that I can put my finger on it. But that probably means that somewhere in your evidence you referred to having trained and qualified personnel to provide the required maintenance?

MR. BOLLMAN: Yes. By the time --

MR. O'CONNELL: But you don't have any?

MR. BOLLMAN: By the time the plant goes into operation these people will have their IMT's.

MR. O'CONNELL: And they will be employees of PCS?

MR. BOLLMAN: Yes.

MR. O'CONNELL: And so it will be PCS and not some subcontractor that will be taking responsibility for that maintenance on the pipeline?

MR. BOLLMAN: Under the regulations, when we have -- to install like a new pipe -- a new piece of pipe in the mill, we may have to -- they are in levels of accomplishment. There is different tickets.

So we may have to hire -- bring in the highest ticket just to sign off in the work that our guys do. And we

have made some arrangements in that regard already.

CHAIRMAN: Mr. O'Connell, can I just ask what is an IMT?

MR. BOLLMAN: Industrial maintenance technician.

CHAIRMAN: Who grants that?

MR. BOLLMAN: The gas board, provincial gas board.

CHAIRMAN: Is this under the old Department of Labour?

MR. BOLLMAN: I'm not really qualified to answer that

question. I don't know exactly what the question -- what the answer is.

CHAIRMAN: Well, we always say that -- for instance the processing plant is under the Boiler and Pressure Vessels Act and that sort of thing. And that is -- the responsible department, it used to be the Department of Labour. I don't know who it is now.

MR. BOLLMAN: Yes. We use the word "safety code services" a lot which is --

CHAIRMAN: Yes. All right. I have heard that as well.

MR. BOLLMAN: And I don't profess to be very knowledgeable in this, this field.

CHAIRMAN: But again, Mr. O'Connell, I don't want to interrupt. But I just -- that is why I asked the question, is that they don't deal with the same -- they deal with pressure vessels, et cetera.

MR. BOLLMAN: Well, plus replacing -- if I have a piece of

pipe which is corroded in the mill, these people are required to replace that piece of pipe in the mill.

CHAIRMAN: Well, that may be in the mill.

MR. BOLLMAN: But if you want to talk about the underground pipeline then it is -- that may not be the case. For the underground pipeline you will probably have to do a little further work on this, I would suggest.

CHAIRMAN: Well, you had better speak to the Board staff who is in charge of safety and inspection of natural gas pipelines.

MR. GAUTHIER: The day-to-day maintenance will be done by PCS personnel. And there will be -- we will have six qualified individuals. Specialized projects, specialized testing is done by outside people, outside contractors.

CHAIRMAN: I just suggested you speak to the Board staff about that. It is our jurisdiction to look after safety and inspection of natural gas pipelines in this province.

I'm sorry, Mr. O'Connell. Go ahead, sir.

MR. O'CONNELL: Thank you, Mr. Chairman. One more question arising out of that interrogatory and the response, is the required -- the term you use is "required day-to-day maintenance."

And could you please enlarge on that and tell the Board and the Board staff what in your view makes up the

required day-to-day maintenance?

MR. BOLLMAN: Well, since this is a new project, for the first number of years there will be no day-to-day maintenance on the -- like today there will be no maintenance. And probably next month there will be no maintenance.

But from time to time, for example, instrumentation will require more work than most because there is lube tuning and control valve maintenance and this kind of stuff. The piping elements will be good for years to come.

So most of the day-to-day maintenance will involve initially instrumentation by and large, which is what the IMT certificate deals specifically with. There is a lot of site-specific. A lot of this training those guys are taking that deal with site-specific stuff that we have -- that we --

MR. O'CONNELL: Does PCS foresee any limitation to Board staff access to the facility from one end to the other during construction or operation?

MR. BOLLMAN: No. As a matter of fact we welcome Board input. I have already had a meeting with Todd McQuinn. And the meeting went well. And we --

MR. O'CONNELL: Well, I'm not talking about -- you know,

physical access to the pipeline --

MR. BOLLMAN: Yes. It's not a problem.

MR. O'CONNELL: -- both outside and inside the enclosed mine area?

MR. BOLLMAN: Yes, sir.

MR. O'CONNELL: I'm just about finished. There are a couple of things about the change from one line to two line that raised some questions in my mind.

Question number 1. Is the gas from both of the two McCully wells usable by and of itself?

MR. BOLLMAN: Both of these wells are from the same reservoir. They are -- in the samples we have taken, within the variations in the laboratory work there is little to distinguish between them, if that is your question.

MR. O'CONNELL: Well, look, and maybe the term "usable" wasn't -- is it possible what might happen here is you might find the gas from one well running down one pipeline and the gas from the other well running down the other pipeline to the processing facility?

MR. BOLLMAN: That's the intent.

MR. O'CONNELL: That's the intent?

MR. BOLLMAN: Yes.

MR. O'CONNELL: Okay.

MR. BOLLMAN: The intent is not to co-mingle before we have ability to test. And our well-testing facilities are at the processing plant. So we will not co-mingle before the testing facilities as per Alberta regulations.

MR. O'CONNELL: There was some discussion during the hearing last summer over the location of the gas processing facility. And I'm not sure if you made it clear when you had access to the plan where you are putting the gas-processing facility and more importantly why you chose that particular site?

MR. BOLLMAN: Yes. I could talk on that briefly if you like.

MR. O'CONNELL: Please.

MR. BOLLMAN: When we were here for the franchise hearings I believe we were showing the facility right about here. After that -- during that time we were drilling a well, McCully Number 3, somewhere around here. That well has not proven to be very promising.

After that we drilled another well, McCully number 4.

And that well is located down here. And so to this day McCully number 4 looks very promising. So we are going to pipe in gas from McCully number 4 in the near future. So the gas will have to come from this side up to here. It did not make any sense to leave their processing

facilities back here, bring the pipeline all the way down here, then all the way back again.

So that was the primary reason why we chose to relocate the processing plant here because this now appears to be more central to what we anticipate will be the producing field. Does that clear it up?

MR. O'CONNELL: Yes. The figure -- I'm looking at figure 8.2.1 out of your formal application.

MR. BOLLMAN: Yes.

MR. O'CONNELL: Now the one that I have in front of me appears to show in the gas processing facility as being 2,500 meters from the well site and about 600 meters from the fuel gas scrubber.

MR. BOLLMAN: Okay. That has been -- that represents our current situation, yes.

MR. O'CONNELL: Okay. So that's where we are today?

MR. BOLLMAN: Yes. Yes, that's where we are today. This represents where we are today.

MR. O'CONNELL: Mr. Chairman, those are all the questions that I have.

MR. LEBRETON: I have a question about the operation of the lines. I understand that you are -- are you suggesting that operating a propane line inside a building, that you have experience with that kind of work? That's not the

same thing as doing a pipeline. It's not the same code, not the same -- the same thing. These operate of different gasses coming in from the well, if you are used to working on propane. It's not the same piping, not the same grade.

MR. BOLLMAN: Is this a question?

MR. LEBRETON: Yes. Are you suggesting that you people are qualified? Are you suggesting they are qualified to work on a pipeline outside the mill, the one that we are approving here? Because if I understand the statement you made was that they were qualified to work on piping inside a plant.

MR. BOLLMAN: 662 is very specific about what is required for maintaining a pipeline. I would like to point out that when we are building a pipeline we just have to have a qualified welder pass the welding qualification procedure when we are maintaining with an IMC certificate. This is something with 300 classroom hours. It's a much -- the IMP certificate far exceeds anything you need to build a pipeline.

If I have a welder, I get a procedure approved by the Board, I think my welder -- he passes the test, he could weld on a pipeline. In order to replace a piece of pipe in a mill a guy has to take 300 hours of classroom

training, lots of experience to get his IMP certificate.

There is no comparing the two procedures.

MR. GAUTHIER: Does that answer your question?

MR. LEBRETON: That's it.

CHAIRMAN: Any re-direct, Mr. Zed?

MR. ZED: I think that's clear enough. Thank you.

CHAIRMAN: Thank you, gentlemen, for your testimony here today. And we will take a recess until the gentleman from the Department of the Environment arrives.

The Department of Agriculture as well indicated I think -- Mr. McQuinn, nod, is that correct? Is it just the Department of Agriculture who said that they were -- because the Environment was going to be doing their review that they wouldn't bother going through this committee of yours?

I wonder if during this break, Mr. Zed or you, Mr. McQuinn, could contact Agriculture and just find out if they in fact do have anything that they are anticipating in that context, so we can get sort of a clearance from them as well.

So the Board will recess and let us know when the gentleman from the Department of Environment is here. And I believe Board counsel will probably speak with you about what it is the Board wants to get from the chap from the

Environment.

(Recess)

CHAIRMAN: Mr. Zed, have you and Board counsel talked about how to handle this witness we have been waiting for?

MR. ZED: I think enough that we may have to wing it a bit, but we have the two individuals here and I wasn't sure whether you wanted to -- I can ask them some questions to start things rolling and address the concerns which I think the Board has.

CHAIRMAN: Well probably the easiest thing to do is ask them to come up and be sworn and --

MR. ZED: Yes. Mr. Chairman, we have with us Mr. Perry Haines who is the Director of project assessment for the EIA for the environment and local government, and Julie Smith who is a project manager with the same department. And I would ask them to come up and be sworn as witnesses, please.

PERRY HAINES and JULIE SMITH - Sworn:

CHAIRMAN: Before Mr. Zed starts with his questions, the Board wants to thank you for clearing your slate and coming down here and hopefully as a result of this we can make certain that our jurisdictional lines are clear in the future. But thank you. Mr. Zed.

MR. ZED: I will just put on the record we have had

discussions just briefly with the two witnesses and essentially explained that what we would like them to do is in their view explain the interface between the environmental assessment for which we have registered and the environmental assessment necessary -- necessary that the Board must rule on as a result of this application, and also perhaps explain in their view how the pipeline co-ordinating committee interfaces. We have also asked them to comment on what they would expect to happen as a result -- what they would expect to happen in the Board and as a result of that what conditions they might like attached to any Board order.

CHAIRMAN: Have you shown them the draft conditions that Mr. Goss produced and we have been talking about at all? Have they had an opportunity to look at that?

MR. ZED: No.

CHAIRMAN: Okay. What I am going to suggest is that they can go ahead and give their testimony as you have suggested, and we may have some questions, and then we will give them an opportunity to take a peak at this, because frankly there may be things that we, the Board staff, have put in there that aren't necessary and these are the folks to tell us about it. We simply used by way of precedent on these conditions that we suggest we might

attach to a permit to construct using the EGNB permit to construct by way of a precedent for it because at that time Natural Resource and Energy was the principal representative before the Board with Department of the Environment alongside and Mr. Blue, your solicitor at that time, suggested certain conditions to go and attach.

So having said all that, go ahead. Respond in any way you want to.

MR. ZED: Yes. And I will leave it to the two of you to decide who is best to answer a particular question.

But maybe you can start off by just telling what your general involvement is with respect to the EIA process and how you feel it interfaces with the current application before the Board and the requirements in that application that we do the environmental assessment, a copy of which has been provided to you?

MR. HAINES: The project was registered under the Environmental Impact Assessment regulation in October, towards the end of October last year. It was registered under the category all commercial extraction and processing with combustible energy yielding material. And that's part of schedule A of our regulation that dictates whether a project has to be registered or not.

As part of that process there was documentation being

prepared for the overall environmental side of things, including not only that but pipeline information that was submitted as part of the review process. That review process as all review processes goes out to a technical review committee to look at, and that includes provincial agencies as well as federal agencies, principally Environment Canada and DFO.

They have reviewed that. There has been a couple of iterations on that process and there was a last set of a few questions set out a week or so ago and it is expected that those will be turned around fairly quickly, and that the process from the Environmental Impact Assessment regulation will be dealt with in the very near future.

In regard to the pipeline committee, we received the documentation in the January, February time frame that was sent out. We had -- not knowing how this process worked, we had some questions back to staff of the Board to say, you know, okay, we have already got this registered under the Environmental Impact Assessment process. How do you want the two processes to interact? What kind of scenarios are you looking at? We are certainly more than willing to pull out some of the concerns that have been identified under the Environmental Impact Assessment on the pipeline component and make sure they are into your

process. If that's what you want we can do that.

And in the meantime I had some of our other reviewers on the process talk to me and say the same question, you know. Again because they weren't familiar with the process they were wondering how the two processes would interact. So we asked those questions.

It was determined that obviously we didn't want duplication. We didn't want two things doing the same thing. So that if the concerns could be addressed under the Environmental Impact Assessment process that that was sufficient, that was what was determined, and that's how we addressed the process. We wrote back saying, you know, our concerns can be addressed through the Environmental Impact Assessment process and maybe some of the other reviewers did too, I believe some did. And that's how it was left I guess. Now obviously some of our reviewers had some additional questions and they participated and sent those through the pipeline committee process.

MR. ZED: So there has been an overlap of essentially all three process to some extent?

MR. HAINES: There has been, yes.

MR. ZED: But it is your position that you have no intent that the applicant or anybody in the applicant's situation have to duplicate their efforts?

MR. HAINES: No. We are always trying and whether it's this process and our process or the federal process and our process, we are always out to try to streamline as much as possible for the proponent and still meet everybody's mandate, but ensure that, you know, duplication is minimized as much possible.

MR. ZED: And forgive me, Mr. Chair, if I lead a bit because of the unusual nature for this, but perhaps Ms. Smith can answer this question as project manager. You have had communications with the applicant and perhaps you can just tell me more generally what the nature of those communications has been.

MS. SMITH: Sure. Under the review once the technical review committee has reviewed the documentation that was submitted they have a list of questions or concerns or requests for additional information. So we went through that. That was submitted back to the applicant and they submitted responses to that. And we are at the stage now where there is some additional questions that came out of the answers to the original questions and that's where we are right now.

MR. ZED: Now would you categorize those questions as being sort of routine or hot button items or -- just in your own words?

MS. SMITH: Sure. A lot of the questions that came out were questions that I wouldn't consider red light, or red stoppers as we would say. There was issues regarding permits that would be needed or -- like for water course alterations for example for any work that was near a water course. They were a lot of the issues that would have come out in another project that would have been of this nature or another nature that would be near to a water course. There wasn't anything unusual that really came out of this review.

MR. ZED: And what is the status of your review?

MS. SMITH: The status right now is I sent I think it was March 11th a letter with some additional questions with respect to the answers that the applicant had provided. They are not -- I don't think they would be difficult to answer. For example, a question on, you know, what would they be doing with an access road that they had put in, things to that nature. And we are just waiting for the applicant to provide answers to us on that and then we will be at the stage where we can -- I can send a recommendation to the Minister.

MR. ZED: Okay. So you anticipate that's in the -- assuming you get the answers fairly quickly that will happen fairly soon?

MS. SMITH: Yes. Generally what happens is when I get the answers I submit it again to the technical committee and I generally give them two weeks to review this additional information, and we go from there.

MR. ZED: And in general terms what are the nature -- what are your options in terms of your recommendations to the Minister?

MS. SMITH: Okay. Well based on this review and based on the information to date the recommendation that I would put forward would be to proceed with conditions. Now the minister has final decision on that, but based on this review -- the review of this project and the issues that came out, there is no issues or no impacts identified that could not be addressed through conditions.

MR. ZED: And conditions relating to road remediation and obtaining necessary permits and things of that nature.

MS. SMITH: Things of that nature. For example a condition could be the proponent must get a water course alteration, a permit before any activity occurs within 30 meters of a water course or an approval to operate under the air quality.

MR. ZED: So based on what you know today, and I don't want to pin you down any more than that, you don't envision recommending any further environmental assessment of stage

2 or anything like that be done, is that fair?

MS. SMITH: Yes, that's fair.

MR. ZED: And to get back to the Chairman's concern, if the Board were to issue a permit, what condition would you -- condition or conditions would you like that permit to contain to protect the interests that you people have to protect?

MR. HAINES: Well I think not knowing what has been drafted or not having seen it, but obviously it --

CHAIRMAN: If you want to --

MR. HAINES: No, I think in general terms we can talk specifics. You know, if the Board wanted to put something in, you know, subject to all the conditions -- that their approval is subject to all the conditions that would be forthcoming in the EIA, you know, that would ensure that both are given the same amount of strength and that, you know, we would be -- and you may have others but that certainly would be satisfactory to us.

CHAIRMAN: Board counsel? I'm sorry. Maybe, Mr. Getty, do you have any questions of these witnesses? No. Board counsel, do you have any questions?

MR. O'CONNELL: Mr. Chairman, if I may make a suggestion.

If they are going to have the opportunity to look at the existing conditions --

CHAIRMAN: Mike. Try that again.

MR. O'CONNELL: If we are going to give this panel the opportunity to look at the conditions that we have been talking about, maybe a prudent course of action might be for them to take that opportunity now to comment on the conditions that we have been looking at today, and that comment may give rise to some questions, but --

CHAIRMAN: No, I think that's a good idea. Why don't we take a break. You take your time, look at what we have here, delete anything that you think should be deleted or add to it or agree with it or whatever. I will have a couple of questions because I want to make certain my appreciation of what has happened here is correct, so that -- as you know or the whole reason that Mr. McQuinn is heading the committee is so that we don't duplicate and so that things move smoothly and this is a little different than we had in the EGNB one, but I just want to make sure -- so we will take a recess. Mr. O'Connell, if you would let us know when the witnesses have had an opportunity to review.

MR. O'CONNELL: Will do, Mr. Chairman.

CHAIRMAN: Thank you.

(Recess)

MR. ZED: Mr. Chairman, the witnesses have reviewed the

conditions, the draft conditions which we discussed earlier.

And I guess other than a condition they would liked added, which we will deal with momentarily, perhaps I could ask them if they have any comments or are they satisfied or should there be any amendments to what is already there?

Is that a fair question for the two of you?

MR. HAINES: No, I think we are satisfied with the conditions that were presented here -- with the additional general one.

MR. ZED: May I be so presumptuous as to read the additional general condition which I think is what you require?

It is "PCS shall obtain a certificate of determination under the EIA regulation and comply with all requirements stated in the certificate."

Is that the condition that you wish inserted?

MR. HAINES: That is correct.

CHAIRMAN: Mr. O'Connell, do you have any further questions?

MR. O'CONNELL: I listened to your description of the process that your department has been going through. And at the end of the questioning I wasn't sure whether there were any significant unanswered concerns existing at any level in government with respect to this project.

MS. SMITH: There are questions that have to be answered.

But what I was trying to say was that of the questions that have been asked, none of them were issues that I would consider significant enough to stop a project or to not give an approval to proceed.

MR. O'CONNELL: Okay. So the message that the Board can take from you two today is that in the view of the Department of the Environment, you are saying to the Board you can proceed with authorizing the construction of this pipeline?

MR. HAINES: That is correct. We expect that, you know, that the few questions that are left can be answered and that there is nothing there that is going to stop the project from our perspective at this point in time.

And that once you receive the answers from the proponent that we will proceed to the next step which is recommendation to the Minister.

MR. O'CONNELL: Now when you examine the project -- bear with me here. When you examine the project, is that an examination that takes you right from the well to the meter?

MS. SMITH: I was just looking at the map here. What they submitted in the registration encompassed everything, had everything in it from the well site to the processing

facility.

MR. O'CONNELL: Okay. So --

MS. SMITH: So that is -- sorry. That is what was sent out to the reviewers. And that is why they commented on the complete --

MR. O'CONNELL: That is all I had, Mr. Chairman.

CHAIRMAN: For my edification, does it include the well site?

MS. SMITH: With the location -- sorry, with the location of where it is? Yes.

CHAIRMAN: Give me a little bit of history. The Board gave a decision, and I think it was in July -- again Natural Resources and Energy were here. It had to do with the application of PCS to have a local producer's franchise.

We had a discussion with counsel for the Province in the hearing room. We discovered that in the existing Act and regulations of the Province of New Brunswick there was a gap.

And that had to do with gathering lines. And that there was no regulatory jurisdiction with the Province in reference to regulation of gathering lines.

And as a result of that the Board gave a decision for purposes of this particular application which said that for this application gathering lines will be included as

being within the Board's jurisdiction, so there would be a provincial authority that could regulate the gathering lines from a safety aspect with the recommendation to the Department of Natural Resources and Energy that they enact legislation to -- and we all agreed that it should -- but for the purposes of this application it extended back -- it included all the gathering lines. And it goes to the meter.

But over the last two and a half years there has been a discussion between the Board and your Department concerning trying to make it one-stop shopping.

And the impression that the Board certainly had as a result, and what occurred in reference to the EGNB application was that for this purpose only, i.e. for gas distribution line, the Department of the Environment would not have jurisdiction to order an EIA.

And the ultimate authority would rest with this Board as to whether or not there should be an EIA and that therefore we would depend upon the Department of the Environment to plug in its recommendations into the pipeline committee as if you were another department for these purposes.

We would have the ultimate authority to say, you know, what you are requiring of the applicant is too onerous,

there is a compromise, et cetera. So okay. So that is why we were surprised today with a lot of these things happening.

Now you are in the process of your EIA. And you are coming forth with it. And I have given all this preamble just to say that if the Board concurs with your request today, after having heard the answer to Mr. O'Connell's latest question which is, as you have said here today, you have seen nothing that would suggest this Board shouldn't approve the project. That I don't want in the future the Department of the Environment saying well, we had an EIA, and we were going through it, and the Board included it in reference to the PCS application, so we should be able to do that every time. In other words the law of the Province has said the Board should be the ultimate arbiter in reference to it.

I think we are all a little bit at fault here in the way this has gone. And again I appreciate your having come down here on short notice so we could all talk about this as we have.

Those are my only comments. Do any of my Commissioners have any questions?

MR. BREMNER: I have, my lord. When you make your recommendation, ma'am, to your Minister --

MS. SMITH: Yes.

MR. BREMNER: -- under your past history have you had an occasion where your recommendation hasn't been taken?

MS. SMITH: I have been with the Department since 1998. No.

MR. BREMNER: Thank you.

CHAIRMAN: I guess I do have a question. What it has to do with, we had a complaint in reference to flaring off of one of the McCully wells.

And at that time we got in touch with someone in your department and put the individual who was complaining about it. And at that time my understanding or recollection is that you didn't have anything in place which governed, from an environmental point of view, flaring.

Is that still the same situation?

MS. SMITH: Sorry. I was just conferring.

CHAIRMAN: No, no. You are a panel. All panels do that.

MS. SMITH: I know that there is a gentleman that was working on it at the time now. And how far he is in the process or not -- I know that it can require a permit more like in the exploratory side of things.

CHAIRMAN: Yes.

MS. SMITH: I'm not really sure. I'm assuming though it would cover over into other areas as well.

CHAIRMAN: Is it -- I presume it is under the Oil and Gas Act, that there are regs that would govern exploration, wells and drilling and that sort of thing?

MS. SMITH: Yes. I think -- I know that his -- he is coming from the air quality side. The approval would be under the air quality. But as for the exact details on that, I'm not sure.

CHAIRMAN: Any questions on the Board's question?

MR. ZED: No, Mr. Chairman.

CHAIRMAN: Thank you very much for your attendance. We have been able to clear up, put it on the public record. And we now have an understanding of one another's jurisdiction.

That is great. Thanks. You are excused. And you can go back to Fredericton if you want to, if you are not interested in sticking around to watch the rest of the process.

Now the applicant has no further witnesses of course.

MR. ZED: No.

CHAIRMAN: Mr. Getty has indicated that he is not calling any witnesses. And he would like to address the Board in summation. And that is certainly appropriate. The Board certainly has no witnesses.

So Mr. Zed, do you want to come up to the Board now?

MR. ZED: Well, I don't think a lengthy summation is required or appropriate, but we -- on behalf of PCS I would really ask that the Board recognize, as I believe they do, the fact that the matter has been delayed for good reason.

But in large part for matters beyond our control we had a significant delay with the Province in acquiring the franchise agreement.

That was preceded by a delay in the Board's decision as a result of discussions we undertook voluntarily with Enbridge to try to resolve another issue.

And now our latest delay was occasioned by UNBI requesting the delay for purposes of getting a better handle on the application.

And we are in a situation now where time really is becoming of the essence and is of the essence. And we would ask the Board to give an oral decision in this matter to avoid the delay that will be occasioned waiting for translation services primarily.

We would also ask the Board to approve the application obviously. And subject only to those conditions which we have discussed today with the amendments we have suggested. And with incorporating the amendment of course that has been requested by Environment.

And beyond that, Mr. Chairman, I think the application speaks for itself. I don't intend to say any more than that unless the Board has some issues that should be addressed.

CHAIRMAN: Okay. Thank you, Mr. Zed. Microphone for Mr. Getty.

MR. GETTY: Thank you, Mr. Chairman. The Union of New Brunswick Indians appreciates the opportunity of being here to participate in the hearing.

We would like to make sure, make it clear on the record that we are not opposed to this project.

Mr. Chairman, the Union of New Brunswick Indians is only interested in trying to ensure that the aboriginal people of New Brunswick benefit from this development of one of the natural resources of the province.

To that end the Union is interested in negotiating an agreement, either a short-term or a long-term agreement with Potash Corporation of Saskatchewan to try and ensure that there are some benefits arriving to the aboriginal people from this project.

We understand that this is something which is provided for in the Oil and Gas Act. And we feel that it is something that should be taken into consideration by the Board.

To that end we would like to propose another condition to any approval the Board may grant. And I have it written out. And with the Board's approval I will distribute copies of this.

CHAIRMAN: Sure. By all means. You need one, do you? We have got plenty here. Mr. Getty I think has got an extra one or two.

MR. GETTY: Mr. Chairman, as you can see, this is fairly short and sweet. It is also very general. It is not trying to tie down any specifics. We feel that this is a reasonable condition.

And we would request the Board add this condition along with the other conditions, any other conditions that they may specify in approving the application.

Thank you very much.

CHAIRMAN: Thank you, Mr. Getty.

Mr. Zed, do you have any comment on this?

MR. ZED: Yes, I do, Mr. Chairman. Despite the general nature of the -- despite the general wording that has been proposed by Mr. Getty, PCS would object in principle to entering into any such discussions.

It is PCS' view that they have done everything that they are legally obligated to do and intend to continue to do anything that they are legally obligated to do.

In addition to that, the discussions that have been held with UNBI have to a large degree focused on, from one angle or another, the issue of royalty payments. And PCS' position we believe is the same position as the government of New Brunswick has adopted. And that is it is not an issue that certainly we are prepared to discuss with them.

We are paying -- we are bound to pay royalties to the Province. And if UNBI has issues with respect to royalties, then more properly they can take those up with the government of New Brunswick and the government of Canada. And the discussions that we would be asked to be entered into would be fruitless for that reason.

CHAIRMAN: Mr. Getty, I have got a question that I forgot to ask you. Because in your summation to the Board, when you indicated that your purpose of putting this forward was to try and get the benefits from this particular project for the native people of New Brunswick. And that you believed it was in the Oil and Gas Act. And I'm not trying to put you on the spot. But I don't know where it would be in the Oil and Gas Act. And if you do have a citation you could give me, I would appreciate it. Because I would like to see if you do.

MR. GETTY: Do you have a copy of the Act?

CHAIRMAN: We can certainly get one. Mr. O'Connell in his

binder I'm sure has one.

MR. O'CONNELL: Are you talking about the Gas Distribution Act?

CHAIRMAN: No. Oil and Gas Act.

MR. O'CONNELL: Oil and Natural Gas Act?

CHAIRMAN: Yes. That is a different piece of legislation.

And, Mr. Zed, you have a copy of that legislation?

MR. ZED: Yes, I do.

CHAIRMAN: If you know the section that Mr. Getty is referring to, give a hand here again.

MR. ZED: I will.

CHAIRMAN: Frankly I'm not familiar with any section that might be, that's why I asked the question.

MR. ZED: And nor am I, Mr. Chairman. I'm just looking again through the regulations to see if there is something that we --

CHAIRMAN: Take your time, Mr. Zed. All right. Mr. Getty, what I am going to suggest is that the Board will -- we will reserve our decision this evening but we will give an oral decision we hope tomorrow morning at 11:00. If you find something overnight that you believe impacts on it, why then by all means let us know. And -- yes?

MR. ZED: Could he let us know as well?

CHAIRMAN: Yes.

MR. ZED: Because we --

CHAIRMAN: That's appropriate that you let Mr. Zed know as well. And then we can come -- we will be back here at 11:00 o'clock tomorrow morning and deal with the matter. You know, Mr. Zed, you mentioned royalties and discussions and, Mr. Getty, I'm quite certain you were in Sussex at the pre-hearing conference when I described how legally you would have to approach that. That you would have to make a -- if for instance it came up to a land titles question, exactly what the Union of New Brunswick Indians would have to do in order to get into that whole question. Otherwise you would be treated as an Intervenor like any other citizen of the Province of New Brunswick.

And my understanding of where you are coming from is in reference to the desire to get benefits for the aboriginal peoples from projects of this nature really springs from the federal Royal Commission on aboriginal people. That's my interpretation. Wherein, I believe they made recommendations from that that if it were a natural resource based industry that then your people would be able to take benefit from it. That's my understanding and that's why when these matters come up I say nothing about you have to do it in a certain way because it really does -- it puts the Board in a quandary

in that as a quasi-judicial tribunal we don't normally deal with matters like the treatment of the federal Royal Commission report and how matters will be treated by way of their recommendations. Normally I would look to the provincial government to give guidance in reference to that. But I just give that by way of background and so that you will be aware that appears to be where I'm coming from anyway.

However, we do have your suggested amendment and I will speak with my fellow commissioners about it and I understand where you are coming from.

So we will adjourn now until tomorrow morning at 11.

(Adjourned)

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