NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER OF an application by Enbridge Gas New Brunswick Inc. to change its Contract Large General Service LFO distribution rate

Held at the New Brunswick Energy and Utilities Board premises, Saint John, N.B., on February 15th 2008.

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INDEX

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| BEFORE: | Raymond Gorman, Q.C. | - Chairman |
| | Cyril Johnston, Esq. | - Vice-Chairman |
| | Edward McLean | - Member |
| | Steve Toner | - Member |
| | Robert Radford | - Member |

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| NB Energy and Utilities Board - | Counsel | - Ms. Ellen Desmond |
| | Staff | - Doug Goss |
| | | - John Lawton |
| | | - Dave Young |

Secretary Ms. Lorraine Légère

Assistant Secretary - Ms. Juliette Savoie

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CHAIRMAN: Well, good morning, everyone. I will take the appearances at this time starting with the Applicant?

MR. HOYT: Len Hoyt and Dave MacDougall for EGNB.

CHAIRMAN: Thank you, Mr. Hoyt. Atlantic Wallboard LP, J.D. Irving, Limited?

MR. STEWART: Christopher Stewart and Sarah Price, Mr. Chair.

CHAIRMAN: Thank you, Mr. Stewart. CME? Flakeboard Company Limited?

MR. LAWSON: Good morning, Chairman, Board Members. Gary Lawson for Flakeboard.

CHAIRMAN: Thank you. N.B. Energy and Utilities Board?

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

CHAIRMAN: Thank you, Ms. Desmond. And Informal Intervenors, I don't know if have any here this morning or not? Canadian Restaurant and Food Services Association? Competitive Energy Services? Department of Energy? Ganong Bros. Limited? Public Intervenor?

MR. THERIAULT: Mr. Chairman, Daniel Theriault.

CHAIRMAN: Good morning, Mr. Theriault. And Sucor Limited? Mr. Hoyt any preliminary matters prior to final argument?

MR. HOYT: None for me.

CHAIRMAN: All right. Then I will ask you to proceed with your argument?

MR. LAWSON: Mr. Chairman, sorry, just a preliminary matter.

CHAIRMAN: Sorry, Mr. Lawson.

MR. LAWSON: I would like to file with the Board on a confidential basis the answer to our undertaking given yesterday with respect -- which I have already provided the information to the Applicant. And it so to be filed with the Board on pink paper, confidentiality.

CHAIRMAN: Thank you, Mr. Lawson. That document will become FCL-4(C).

MR. LAWSON: Thank you, Mr. Chairman.

CHAIRMAN: Any other preliminary matters, Mr. Lawson?

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

CHAIRMAN: Mr. Stewart, anything preliminary from you?

MR. STEWART: No, Mr. Chairman.

CHAIRMAN: Thank you. All right. Mr. Hoyt?

MR. HOYT: Good morning, Mr. Chair, Panel Members. I am sampling some of Saint John's water here, so if I start to fade, you will know what to do.

I have a copy of my argument with some transcript references, which may be helpful to the Board, which I will leave behind. I won't cite the pages and so on as I wade through this.

Enbridge Gas New Brunswick applied to the New Brunswick Energy and Utilities Board for an order approving changes to its Contract Large General Service Light Fuel Oil distribution rate on November 5th 2007.

In a decision dated June 23rd 2000, the Board approved EGNB's marked based approach for setting its distribution rates during the Development Period. The methodology used by EGNB in calculating its proposed rates in this application is consistent with what was done initially in 2000 and again in 2004, 2005 and 2006.

The Board confirmed that EGNB's market-based methodology continues to be appropriate in a decision dated January 18th 2008, which I will refer to as the

"Motions Decision". At pages 3 and 4 of that decision, the Board determined that "This method establishes rates that provide an incentive to convert to and continue to use natural gas. The rates are not based on costs...Market-based rates were necessary to develop the natural gas system in New Brunswick and the Board believes they are an essential element of the "Development Period..." The Board continues to believe that it is appropriate to use the same method for setting rates for all classes...The Board, based on the evidence, is convinced that the "Development Period" has not yet ended nor will it in the near future. The Board will, therefore, proceed to set rates in this application using the market-based method."

During the Development Period, which is currently approved to run until 2010, the Board has authorized EGNB to operate under a non-traditional regulatory framework, the primary purposes of which are to allow EGNB to establish a market for natural gas in the province and to be able to respond quickly to competitive market developments through use of a rate rider. It is incumbent on EGNB to watch the costs of competing energy sources and move with the market. EGNB is expected to seek rate increases when there is a sustained spread between natural gas and oil prices. EGNB will not remain viable it if does not pursue rate adjustments consistent with its market-based business mode.

I would like to speak a bit about the application of the market-based rates methodology. In determining its proposed target distribution rates in this application, EGNB updated four items -- the forward wholesale price of oil, the average monthly contract demand, exchange rates and the forward retail price of natural gas, in the latter case using EGNB's Enbridge Variable Product or "EVP" as opposed to Enbridge Utility Gas "EUG". As the Board is aware, EGNB's market-based methodology ultimately compares burner tip prices of competing fuels.

In terns of retail oil prices, EGNB continues to feel that oil is the most appropriate benchmark against which to set its LFO rate. Most of the LFO customers switched to natural gas from oil and as Mr. Charleson pointed out, "13 of the 20 customers have oil as an alternate fuel."

In determining retail oil prices, EGNB starts with a forward looking 12 month strip averaged over 21 days. The use of the 21 day average is not arbitrary, having been used in all of the EGNB's prior rate applications and also for establishing and adjusting rate riders. It provides for a consistent comparison with the forward looking gas price and ensures to the greatest extent possible that EGNB is staying current with and tracking the actual market. As Board Member, Mr. Toner, noted, "A 365 day average of the U.S. exchange rate would not give you a precise future."

Being responsive to market volatility is something that Mr. Reed acknowledged in his testimony as being important. In a response to Mr. MacDougall regarding the use of a floor and ceiling he stated, "You want to be responsive to market conditions so you don't lose the throughput. That's what everyone should start with trying to maximize throughput on the system."

EGNB disagrees with Dr. Gaske that the 21 day pricing is not what is driving customers' decision to switch to natural gas. While the decision to convert to natural gas does require a longer term capital investment, the competitiveness of natural gas will however will be the deciding factor. Without a competitive value proposition, customers will not convert.

As EGNB has indicated, the inability to be responsive to changing market conditions will have undesirable consequences. If EGNB is out of step with the competing fuels, it runs the risk of adding costs unnecessarily to the deferral account in an inclining market and being unable to lower rates in a timely manner to maintain a competitive advantage in a declining market.

The ability to effectively use rate riders is a key aspect of managing these rates. Since riders are typically addressed on a monthly basis, it makes sense to use a 21 day average, i.e., the 21 trading days in a month, that matches this time period. Mr. Reed would seem to agree with this given this view that "if EGNB is attempting to respond to market conditions over a shorter period of time, let's say in the next month, then I would think it would focus on the best estimate of what's going to happen in the next month with regard to oil prices or competing fuel prices to make that determination."

It is important to note that EGNB uses the 21 day average for all of the forward looking price information in arriving at its rates; oil, natural gas and exchange rates. Having a consistent view of these market elements is important to ensuring the proper market signals are being sent relative to the competing fuel. As Mr. Reed indicated, retail fuel prices move on a daily basis and if you are trying to create a relationship associated with oil prices you have to have some measure of flexibility available. This is in fact exactly the basis for EGNB's market based rates methodology, and what it has been and will continue doing in the New Brunswick market.

Applying the 365 day average proposed by Mr. Reed would ultimately provide an outcome that would not reflect market conditions, and has the potential to leave EGNB with rates that are either not competitive or lead to unnecessary additions to the deferral account. Both situations that EGNB argues are not in the interests of its customers or the development of the natural gas industry in New Brunswick.

Mr. Reed provided no support for his so-called "general rule" for using a longer historic period in the context of forward looking oil and natural gas prices. In fact, Mr. Reed does not seem to appreciate that EGNB's rate applications set a maximum cap on the rates under which the rider provides the necessary flexibility to react to market conditions. When market conditions persist such that the cap should be increased, as in the present situation, EGNB files for an increase in the rate cap. Such an application takes a number of months until a final decision. If an average period of greater than 21 days was used, this would mute the market signal and prevent EGNB from raising its cap, thus providing higher than targeted savings to its customers and unduly increasing the deferral account.

Mr. Reed complains that the cap and rider system requires trust in EGNB, but EGNB has earned that trust and history clearly shows EGNB has used rate riders and rate reinstatements to follow its Board approved methodology to give the targeted savings while at the same time minimizing the deferral account. Mr. Reed gave no evidence that EGNB has not demonstrated exactly the proper use of the methodology, because in fact it has.

In conclusion on this point, the 21 day average has been used since day 1 for all of EGNB's rate filings, and has successfully provided the correct market signals and flexibility. Unlike Mr. Reed's suggestion, EGNB's respectful submission is that in times of market volatility it is more important than ever ot use the 21 day average to stay closely aligned with the oil markets both for the purposes of the cap and appropriate use of the rate rider.

The forward oil prices are then transformed into retail prices by using a market spread for typical LFO customers. EGNB used the same approach in setting its market-based rates in 2000, 2004, 2005 and 2006.

Board counsel asked about the Derivation of Retail Oil Prices for 2008 and particularly the No. 2 distillate price at New York Harbour. As set out in EGNB's response to Board IR No. 4, there are a number of factors used to calculate the retail oil price. No one factor should be looked at in isolation. And as Mr. Charleson stated, "our proxy is within the range...that we see from the information that we do get on the marketplace, and that's what gives us confidence that the retail price is at least a reasonable proxy." In addition, EGNB is continually monitoring the market in an effort to confirm a typical retail oil price.

EGNB follows the market closely to ensure that is market-based rates are appropriate for striking the correct balance between the addition of new customers and recovery of its costs. The correct balance is based on the anticipated forward spread between oil and natural gas costs. Based on a sustained trend of a higher spread, EGNB applied to increase its rates last November.

EGNB did not choose an arbitrary to day on which to base its application. This would, in fact, be diametrically opposed to EGNB's stated goal of achieving a balance between cost recovery and the need to grow EGNB's customer base. As Mr. Reed conceded, the spread between oil and gas prices was actually higher on every day subsequent to November 1st 2007 up to when he responded on February 8th 2008.

If anything, current forward looking forecast suggest a greater opportunity for EGNB to increase its market-based rates than was the case at the time of its application, which I will elaborate on in a moment.

First, I would like to look at contract demand. EGNB revised the Average Monthly Contract Demand or "CD" from 487 GJs to 350 GJs in this application. EGNB explained that the CD was based on an estimate done in October 2007 showing an average monthly CD for LFO customers, excluding one very large customer, of 357 GJs. Mr. Charleson confirmed that from year to year EGNB revisits how the customers' contract demand should be established for customers based on their consumption patterns.

In response to a question from Board counsel about EGNB's $5.20 monthly demand charge, Mr. Charleson pointed out that there is variability in terms of demand charges across jurisdictions, some are higher, some are lower, but at the $5.20 level, EGNB is still able to deliver the targets savings.

Now turning the retail natural gas prices. EGNB used its EVP product as the reference price for commodity for the purpose of setting its LFO rate. EVP is a relatively new product geared to large commercial customers. EGNB did not have a commercial product available until April of

2007.

Although no LFO customer is currently using EVP, 17 other commercial customers use it. In response to a question from the Vice-Chair, Mr. Charleson indicated he expects one LFO customer will be looking to use EVP. Also EGNB only has knowledge of two customers' contract prices, but they are pretty much identical to the EVP product except they have a lower premium.

EGNB in calculating its LFO rates, must use a proxy for LFO customers' gas prices. As was seen in this proceeding, customers are typically reluctant to provide their gas price.

And if an Intervenor's cost of gas is lower than EVP, it will actually be getting even bigger savings. And if their gas cost is higher, they have EVP as an alternative to lower their cost.

At A-16 of its evidence, EGNB explained in full why it used EVP as the reference price for commodity rather the EUG.

Turning to, striking the balance, as in previous market-based rates applications, EGNB is attempting to strike a balance between providing sufficient incentive to customers to convert and continue to use natural gas and recovering as much of its costs as possible during the development period from existing customers. In maintaining that balance, EGNB should not provide any more economic incentive to customers to convert to and continue using natural gas than is necessary because to do other wise would add to the already significant deferral account.

Each of the Intervenors either refuses to acknowledge or misunderstands the basis premise of EGNB's approved market-based rates methodology. The Intervenors have also chose to ignore the fact that the real test of whether the applied for rates are just and reasonable is to determine if EGNB has struck an appropriate balance between providing sufficient incentive to convert to and continue using natural gas and recovery of as much of its costs as possible during the development period.

So the two components of striking the balance. Customer savings. Mr. Reed has suggested without any specific foundation, except that markets are currently volatile, that LFO customers be given a 15 percent versus 10 percent savings. This belies the evidence in New Brunswick to date that 10 percent is currently sufficient. Mr. Charleson explained that absolute savings had grown to the point where EGNB felt it appropriate to reduce the target savings level. He confirmed that results since

2005 validate that decision. Existing customers have continued to use gas and not switch to alternate fuel. In fact, Mr. Reed's own client, AWL, signed on up to EGNB's LFO rate fully aware that 10 percent savings was what was used to determine the rate.

If a larger savings is provided the differential simply goes into increasing the deferral account. If it becomes apparent that the 10 percent is not being achieved due to any future change in the oil/natural gas spread, EGNB can adjust its rates downwards by use of a rate rider.

Further, since the time of its application until now, Mr. Charleson confirmed that using the current spread would suggest an even higher rate cap. Using something greater than 10 percent would simply provide a savings level greater than necessary to have LFO customers convert to and continue to use natural gas, while setting a cap that could be substantially lower than appropriate if the spread increases. EGNB does not have the flexibility of the rate rider to increase rates above the cap, and setting a cap lower than what market conditions support needlessly adds to the deferral account.

In the case of Flakeboard, it continues to have significant savings. After agreeing that Flakeboard has achieved savings of at least 10 percent by burning natural gas over the cost of using light fuel oil, Mr. Gallant confirmed that its actual savings from using natural gas between October 2004 and December 2007 would be in the ballpark of $9.6 million. Mr. Gallant also acknowledged that EGNB's forecasted Flakeboard savings for 2008 of $4.2 million would also be in the ballpark. And EGNB confirmed that the requested rate increase is factored into those forecast savings. Almost $14 million in savings in just over four years.

And to complete the picture, Mr. Gallant confirmed that Flakeboard virtually recovered its full capital cost of conversion within one year.

Flakeboard is a good example of how well the market-based methodology is working to provide significant savings when compared to alternate sources of energy.

Flakeboard's savings experience and quick recovery of its conversion costs demonstrate that the natural gas business is developing in New Brunswick and the market-based rates methodology is working.

Now to speak to EGNB cost recovery. EGNB has invested approximately $300 million in New Brunswick to date. Higher amounts of deferred costs today will result in higher cost of service rates being charged to existing and future customers after the development period. And in the shorter term, a reduction in the requested distribution rates will extend the development period.

It is difficult to tell at times if the Intervenors want the development period to end or not. The Intervenors are arguing against rate increases that will go toward reducing contributions to the deferral account and moving EGNB closer ot the end of the development period.

Mr. Steward raised a number of concerns with EGNB earning a return on its investment. At page 4 of the Board's Motions' Decision it states: "The Board also has a responsibility to ensure that EGNB has a reasonable opportunity to recover its prudently incurred investment, which includes the deferral account and to earn a return on that investment." Dr. Gaske confirmed that this is a generally recognized regulatory principle.

The increased spread between oil and natural gas prices as of November 5th 2007, when EGNB's application was filed, not only allowed but required EGNB to apply to adjust its rates to ensure EGNB is recovering the maximum amount of its costs. The Intervenors do not demonstrate an appreciation for this side of the equation. However, as the Board stated at page 5 of the Motions decision, "It is essential, for the long term future of the natural gas system in New Brunswick, that the deferral account not continue to grow. During the "Development Period" it is important that whenever circumstances permit, prices should be set so as to address this issue."

Growth, is a primary indicator that EGNB's target distribution rates are achieving the objective of striking the proper balance. EGNB must, in order to secure the long run financial viability of the distribution system, grow it's customer base.

Growth in recent years can be seen on both the number of customers and throughput fronts.

Such sustained growth indicates that customers are realizing sufficient economic incentive to convert to and continue to use natural gas.

Now one is more motivated towards growth and no one better positioned to cause it to happen than EGNB. EGNB's evidence on growth is based on its experience and actual knowledge of what is going on in the New Brunswick marketplace. As this Board noted in its March 31, 2005 Rates Decision at page 10: "...the Board considers that Enbridge is in the best position to determine at any point in time if its rates are providing the required economic incentive to customers or if rates are too high and are a deterrent to attracting or maintaining customers."

And EGNB has also been clear throughout this proceeding that if its distribution rates were affecting growth, it will use the rate rider to reduce distribution rates, as it has demonstrated in the past.

There are potentially five more LFO customers, which is 25 percent of the current number of LFO customers. The potential throughput from those five customers is 85 percent of that of the 20 existing LFO customers.

One of the potential LFO customers, only 3 kilometers from a mainline, is signed on for gas now. It's just a matter of getting a pipeline extended to them.

And very real discussions are ongoing with another of the potential LFO customers who is 30 kilometers from the mainline.

Now to speak to incentives. Mr. Lawson suggested that incentives are a big reason for EGNB's growth. Mr. Charleson explained that after capturing a lot of the low hanging fruit in the early years, EGNB is now moving into segments of the commercial market that are more challenging to convert. As payback equations are more difficult to make work, incentives are required to convert those customers and grow the customer base. He further explained that a key part of looking at incentives is the payback to EGNB, noting that "it is important to recognize as well that when you look at say $38 million in incentives amortized over 41 years, that is about a million dollars a year to generate $15 or $16 million a year in revenue."

Incentives are a normal component of the marketing strategy for businesses that are in the growth phase of their lifecycle.

Incentives are tied to reducing a potential customer's conversion costs and thereby reducing the payback period, thus incenting the initial conversion. Incentives are not provided to all customers and no incentives are given to existing customers.

Now for the rates that have been requested. EGNB has not had a rate increase since January 1, 2006. The last time EGNB applied for an increase to the CLGS-LFO rate class, oil was trading at $61.78 U.S. per barrel. At the time this application was filed, oil had increased to $82.01, an increase of 33 percent.

The requested increases in distribution rates are not at all inappropriate in a market-based model. Market-based rates are not based on cost of service.

And it is essential to remember that EGNB's rates are market-based. If those rates were calculated today, the market would allow them to be much higher. As pointed out by Mr. Charleson in his opening statement, "the proposed rate would have been $5.75 or 27 percent higher than what is requested in this application." As such, if anything, EGNB's current application for rate increases is a compromise to what the market-based methodology would call for today.

As Mr. Charleson described it, and I will quote from his opening statement, "This application is requesting an increase to the first block of the LFO rate. This, however, is just one component of the total cost to an LFO customer of using natural gas. For a typical LFO customer under the proposed rates, the charges arising from this block only represent about 30 percent of the total cost of using natural gas. For a much larger customer, like those intervening in this proceeding, the first block represents about approximately 20 percent. Within the rate itself, there is also a demand charge component, and for large consumers two additional block rates. EGNB is not proposing any increase to these rate components...the burner tip impact to customers is significantly less than the impact you arrive at by looking at only one element of the cost of using natural gas. When all these factors are considered, the impact on a typical customer is roughly 18 percent and for a large customer is approximately 11 percent.

This statement was not challenged by the Intervenors, they simply argued that in their view the cost of the commodity was irrelevant. EGNB maintains that this is just not the case under its market-based rates methodology.

The parties arguing against the proposed rate increase ignore what is happening in the customers' markets for alternate energy sources and in Flakeboard's case, the actual achieved savings.

Now, I will speak about the rate rider. EGNB has indicated in this and all previous rate applications that it would use the rate rider where circumstances warrant. EGNB has always said that if its rates do not strike the proper balance between maximizing cost recovery and providing sufficient economic incentive to end use customers, EGNB will file the appropriate rate rider and effect the proper balance.

As the Board pointed out at page 5 of the Motions decision, "EGNB has demonstrated that, if market conditions change, it will apply to lower its rates and the Board expects that EGNB will continue to do so."

Mr. Charleson confirmed in his opening statement that, "EGNB has demonstrated over the past few years that if market conditions dictate that prices should be reduced, it will do so through the use of a rate rider...The rates established in this proceeding will establish the maximum rate until such time as EGNB applies for new rates and that EGNB may, as it has done in the past, apply rate riders when necessary to reduce rates to reflect changes in market conditions."

I would like to address some of the points made by the Intervenors. Both the Intervenors' witnesses and their experts alluded to various reasons as to why EGNB's costs to connect them to EGNB's distribution system are relevant. However, the Board in its Motions decision at page 4 decided very clearly that it would "proceed to set rates in this application using the market-based method."

The Intervenors, while trying to say on the one hand that this application was all about distribution rates, when to considerable lengths to describe the impact on their production costs without providing any substantive supporting information. Surely the fact that AWL's expectation of the Canadian dollar at .85 cents U.S., rising to .95 cents U.S. between 2005 and 2007 would have had a significant impact on their business model. It is also noteworthy that AWL confirmed that ACOA provided $35 million in assistance for their project. It is unclear whether that contribution was in any way factored into AWL's comments in its evidence.

AWL indicated that it has no fuel alternative implying that it should somehow be treated differently. However, Mr. Charleson noted that only 13 LFO customers are dual fuel meaning that six others do not currently have dual fuel capability.

The Intervenors also alluded to competitors in other jurisdictions. The market-based methodology was put in place to develop a gas distribution system within New Brunswick. It is of little if any value, and not appropriate, to compare EGNB's rates and methodology to rates or methodologies in other jurisdictions which do not have the New Brunswick model. It is also meaningless to compare EGNB's rates to stand-alone costs or third party natural gas alternatives, because (1) AWL and Flakeboard agreed voluntarily to go with EGNB's LFO rate and (2) there are in fact no other natural gas alternatives. The competitiveness of gas distribution rates between jurisdictions is in any event simply not a relevant consideration for the setting of market-based rates in New Brunswick. In New Brunswick the relevant comparison is to what the alternative fuel is or would be without natural gas.

Dr. Gaske went on at length about Flakeboard's hypothetical ability to build its own pipeline and bypass EGNB's natural gas system entirely. He was apparently unfamiliar with the single end use franchise provisions of the Gas Distribution Act. Flakeboard did not proceed with its application for a single end use franchise and AWL's request for one was denied.

Since that time, section 13.1(1.1) of the Act has been significantly narrowed and now provides that the Board may not grant a single end use franchise if the franchise applied for is in an area actually serviced by EGNB. There is no legislative basis for what Dr. Gaske was suggesting.

The true test of the Board approved EGNB model is that it has been a success in all classes including LFO, as is evidence by EGNB's response to Flakeboard IR-2. The methodology and the rates resulting from it have attracted every LFO customer on or in very close proximity to a natural gas main and none have switched their load to an alternate fuel. Since the last LFO rate case, two customers have signed on to the LFO rate. Those new customers signed on notwithstanding that EGNB's LFO rate had increased from 97.73 cents to $2.39. AWL was one of those new customers. In fact, Mr. Power confirmed that AWL was fully aware of the rate when it signed on, and from the prior rate change it would have been aware of its volatility.

The competitiveness arguments raised by Mr. Reed deal only with the gas distribution rates as between different jurisdictions, and he simply holds everything else equal acknowledges he is not an expert in wallboard costing. Furthermore, his conclusions regarding the possible impact on AWL of EGNB's rate request derive wholly from information from Mr. Power, not a critical, independent analysis.

He also acknowledged that his competitiveness argument holds equally true for capital costs, and as previously mentioned AWL confirmed that they already received $35 million from ACOA towards their $90 million capital project.

Dr. Gaske's competitiveness arguments simply rest on hypothetical and unavailable natural gas alternatives as discussed above.

Furthermore, EGNB's application is in any event for the class as a whole, not any one LFO customer, all of whom are in their own competitive businesses.

The Intervenors' experts have put forward various proposals in relation to EGNB's rates. However, they are not appropriate at this time. The Board has initiated a process that is to commence in the fall of 2008 and lead to a generic hearing to determine the appropriate method to be used when it is time to change form EGNB's current market-based method. There will undoubtedly be lots of proposals on the table at that time from EGNB and interested parties. To single out specific processes for only the LFO class at this time, would in the context of EGNB's market-based rates methodology be unproductive. As the Board recently stated in the Motions decision, "...the Board does not believe that it would be appropriate for the "Development Period" to end for one customer class but not for the other customer classes."

So in conclusion, no one likes a rate increase. However, EGNB's rates are not cost of service, but are market based. And energy prices indicate that a rate increase is warranted. In fact, current forward looking pricing indicates that the applied for rates are, if anything, too low to the tune of $1.21 per GJ.

As Mr. Charleson concluded in his opening statement:

The applied for rates result form the application of the Board approved methodology to changes in market conditions.

Secondly, the methodology as it is currently approved provided EGNB with the tools necessary to be responsive to changes in the pricing of the fuels it is competing against.

Thirdly, the applied for rates provide the proper balance between providing a sufficient economic incentive to convert to and continue to use natural gas and maximizing cost recovery so that additions to the deferral account will be minimized and not unduly burden the utility and future customers.

EGNB applied for a rate increase effective February 1, 2008 and now respectfully requests that its rates be approved on the basis that they are just and reasonable, effective immediately after your decision. Those are the comments of the Applicant.

CHAIRMAN: Thank you, Mr. Hoyt. Any questions from the Board? I will start with Mr. Radford, do you have any questions?

MR. RADFORD: Mr. Hoyt, just point on clarification, exhibit A-10. Find it myself. Okay, there?

MR. HOYT: Yes.

MR. RADFORD: When you come down to LFO Tier 1 and you carry those figures along -- I will go back, on A-10, looking at LFO Tier 1 and go right along from 201 to 207, and we look at the budget figure of 63.04, okay there?

MR. HOYT: Yes.

MR. RADFORD: Then you show no increase , it would be 41.06.

MR. HOYT: Right.

MR. RADFORD: And then you show applied for increase at 75.56?

MR. HOYT: Yes.

MR. RADFORD: Would you just clarify the difference between 63.04, how that's arrived at and how -- I think I know how 75.56 is arrived, but I don't understand how 63.04 is arrived?

MR. HOYT: In terms of the change from no increases to applied for increases that factors in the requests of the two applications for rate increases. That's how you would go from the no increased number to the applied for increases. The difference between the no increases and the budget numbers are based on a forecast budget of EGNB I believe it was in October. It's noted on the chart. Under the footnote on budget, the last point that is made there references a budget based on October 4 commodity prices.

MR. RADFORD: Yes.

MR. HOYT: So those were prior to the actual application being made. So on October 4th, the projected additional revenue or the revenue from the LFO rate class would have been the 63.04.

MR. RADFORD: That's without any increase is it?

MR. HOYT: No, no. There would have been a budgeted increase, but not the budgeted -- or not the rate increase that was subsequently applied for. So they did a budget in October --

MR. RADFORD: Thinking it's going to be -- they are going to apply for a certain amount --

MR. HOYT: Right. And at that time --

MR. RADFORD: -- and they come back in and ask for a different amount?

MR. HOYT: Right. Back on -- right, because on October 4th if they plugged the numbers into the derivation of target rates calculation, it would have produced that level of revenue. But the application was based on numbers as of November 1st, so a month later the market had moved and resulted in the applied for rate increase.

MR. RADFORD: I think I understand the evidence. Thank you.

CHAIRMAN: Mr. McLean, any questions? Mr. Toner?

MR. TONER: No.

CHAIRMAN: Mr. Johnston?

VICE CHAIRMAN: Mr. Hoyt, I have reviewed the cases, the decisions of the other -- of the previous Board, of this Board we are continued, and there is a consistent theme it seems to me directing or encouraging EGNB to maximize its revenue whenever possible, would you agree with that that's the theme of those decisions or one of them?

MR. HOYT: I would agree it's one of them.

VICE CHAIRMAN: And I would suggest that it's going to be a question for this Board, and I suspect this will be brought up by the Intervenors that that principle should somehow be moderated, this maximization principle, given the current spread between oil and natural gas relative to the historical data that we have been provided with. And I am just wondering whether you would like to address that issue of whether the Board should moderate it's position on that maximization of revenue? Is that -- is my question clear?

MR. HOYT: I believe so. And my answer would be no that we don't think that's the case. And I have tried to in the section of my argument describing striking the balance. i tried to explain why, because by not allowing the market-based -- or the rate increase of the market-based methodology would determine, there are unnecessary additions being made to the deferral account, which causes the development period to be extended, which subsequently has impacts on customers into the future. So the idea is -- the objective is to get out of the development period. And rate increases, which are justified on the basis of the current marked-based methodology are the rates that exist -- sorry, the prices that exist in the market would indicate that those are the rates that should be charged allowing the revenue to go into the deferral account at some point reducing the time to get to that development period or at the end of the development period.

VICE CHAIRMAN: Thank you.

CHAIRMAN: The Board is going to take about a 10 minute adjournment. And then we hear from Mr. Stewart when we come back.

(Recess - 9:50 a.m. to 10:00 a.m.)

CHAIRMAN: Mr. Stewart, are you ready to proceed with closing argument?

MR. STEWART: I am, Mr. Chairman.

Good morning, gentlemen. As you are well aware I represent Atlantic Wallboard, J. D. Irving in this proceeding. And I have prepared some remarks this morning.

But if at any point during my presentation any of you have any questions, please don't hesitate to interrupt if there is a question about the particular matter or issue that I'm talking about at the time. And of course as you see fit I will take whatever questions you have at the end.

Well, as I guess as we are all well acquainted by now, this application is a request by Enbridge Gas New Brunswick to raise the charge for the first block of its LFO rate from $2.39 per GJ to $4.5428 per GJ. And that is straightforward enough I suppose. They say they are entitled to it. And candidly we say they are not.

So how do we start our analysis? I suggest that any analysis must begin with a review of the regulatory background surrounding this particular application.

So what are the rules here? What can the Board do? Indeed what must the Board do?

The starting point is of course your governing legislation. The statute which governs this application gives you the authority to convene this hearing and to consider the application.

I have -- what I did, Mr. Chairman, is I remember referring the Board to a couple of decisions and a few of the IR's. And rather than us flipping back and forth from one binder to the next and pulling out some decision, I just kind of put it all -- I don't think it should be marked as an exhibit. I put some data on one page to keep us from flipping back and forth. It is just an aid to argument.

CHAIRMAN: Thank you, Mr. Stewart.

MR. STEWART: There are five there I think.

So if we could just turn to tab 1 of the little booklet. I just have reproduced the appropriate section of the Gas Distribution Act. And I thought it was important to just review what the Act says about you are supposed to do and what the parameters of this application are.

The opening premises as you can see is subsection 52 (1) which says "No gas distributor" -- that of course is Enbridge Gas New Brunswick -- "shall charge for the distribution of gas except in accordance with an order of the Board."

In other words, simple enough, but they need your permission to charge their customers whatever it is they are going to charge them. That is why we are here.

Subsection 52 (3) says "The Board may make an order approving or fixing just and reasonable rates and tariffs that a gas distributor may charge for the distribution of gas or for supplier of last resort."

So in other words your jurisdiction here is limited to granting orders approving just and reasonable rates.

And that is in some ways restated in the next subsection, subsection 52 (4) that "The Board may, if not satisfied that the rates or tariffs applied for are just and reasonable, fix such other rate and tariffs as it finds to be just and reasonable."

So the statute mandates you to consider the application. And if you find the rate that is sought in the application not to be just and reasonable, you can reject it. Or you may, if you see fit, substitute an alternative rate which you find to be more indicative or that achieves the goal of being just and reasonable.

Flip over to the next page, 52 (5). "In approving or fixing just and reasonable rates and tariffs, the Board may adopt any method or technique that is considers appropriate, including an alternative form of regulation."

So when you consider a rate application you can consider and adopt a methodology for calculating the rate in question. The Board is free to set cost of service rates, market-based rates or a high rate or any other variation of that theme as you see fit. The Board grants you broad jurisdiction to do that when you consider an application.

And that is reinforced or spelled out a little bit in the very next subsection which says "An order under this section may include conditions, classifications or practices applicable to the distribution of gas."

It can set rate classes. It can set different charges for rate classes. And you can set rules for calculating rates. For example you could say that the rate increase is tied to the price index and adjust it on a certain basis. Or you can determine whatever you feel that you want to determine in order to achieve your mandate of setting a rate that is just and reasonable.

The last directive of note -- this is down the page a little bit, section 54. "In an application regarding rates and tariffs for gas distribution, the burden of proof is on the gas distributor."

So to be clear, in this application the burden of proof is on Enbridge Gas New Brunswick. It is up to Enbridge Gas New Brunswick to satisfy you that they are entitled to the rate increase they seek. It is not up to the intervenors to establish to you that they are not. The onus is on them. And the onus on them lies throughout.

If they haven't proven that their rate sought is just and reasonable then your mandate is to deny the application or as you see fit substitute a number of your own.

In the end it is the classic utility tradeoff. EGNB has been given a province-wide monopoly. No one is allowed to carry out the business or provide the service that they do.

If you want to move gas this far within the province of New Brunswick, outside of a federally regulated pipeline, Enbridge Gas New Brunswick gets to do it. And they get to charge you for it. You are not allowed to ever do it yourself.

And they are also granted, among other things, 13 percent return on their investment. The tradeoff is however that the charges to their customers are subject to Board oversight and control.

So they have a monopoly. And to ensure that monopoly is not abused, you set the prices they charge at a fair or just and reasonable level. And that has been acknowledge by the Board from the outset.

And if you flip to tab 2 in the little book I have provided you, there is a little excerpt from the original rate decision from the Board in June 23, 2000. I have just produced page 5 for your ease of reference, the second paragraph.

And the Board said "The Board's task is to balance the interests of the various parties in the natural gas marketplace while carrying out its statutory duties. It must provide an opportunity for the owners of EGNB to earn a fair return on their investment while at the same time ensuring that customers and other parties are protected from any misuse of monopoly power."

In other words you have to ensure that the customers are protected by ensuring that the rate you grant or approve are just and reasonable. And I will speak more on what just and reasonable is in a few minutes.

But I suggest that the legislation in the law generally indicates that the Board must revisit all of these issues each and every time it considers a rate application.

Now I will conceded that what approach the Board took last time is a relevant consideration, among many others. But at the risk of oversimplifying it, it may be relevant that the Board determines that the situation in the circumstances are sufficiently similar today that you should use the same methodology that you used last time.

On the other hand what we did last time may be relevant in that the Board determines the situation and the circumstances today, or at the time of the application before it, are sufficiently different that following the same path would no longer lead to a just and reasonable rate. And the Board then would either deny an application or embark on another path to find a substituted number.

And I submit this is the mandate of the Board. It is true that the Board has considered a particular circumstance and a particular methodology in a particular circumstance a couple, I think it is technically three, times before.

But the Board has not, and I submit as a matter of law it cannot at one point cast a methodology in stone for a subsequent application. To do so would be to fetter its discretion and amount to the Board ignoring its statutory duty, altering -- that the Board alter itself the directives for the parameters given to it by the legislature.

The obligation of the Board in the Act is clear. Every time you consider an application you must consider all factors. Maybe it will be business as usual. Maybe it will be, we need to change. The one thing that is always clear is that you must achieve a just and reasonable rate at the end of the day.

Now in this application again EGNB has urged you to follow a particular market-based approach. Atlantic Wallboard submits, and I on their behalf, that you should not. Or at least you should not follow the formula EGNB advocates in this particular application, in these particular circumstances, having these particular consequences to the ratepayers.

So what is a market-based approach anyway? I think we are starting to get a good handle on it now. But what a market-based approach is in theory, as I understand it, that rates are not set using a typical approach of the cost of providing a service plus a built-in profit margin or rate of return, in this case gas distribution.

Rather they are set on what the market will support for the service provided, determined in some cases by a competitor's cost. In this case Enbridge Gas New Brunswick points to their nominal determined cost of light fuel oil.

However even back in 2000 when New Brunswick truly was a greenfield, when the local gas distribution infrastructure of any kind, of any shape, form or inclination did not exist, customers were still divided into rate classes in recognition of their relative cost to the system.

So right from the get-go the cost of the customer was still a relevant consideration when the Board established these so-called market-based rates. The smaller classes which are typically more expensive to connect and with higher sort of cost to serve versus potential revenue ratios were required to pay much more.

The original rate set was -- the variable rate was $3.37 cents per GJ. Then the larger LFO customers who paid 79.1 cents per GJ, something about four times less.

So even though a market-based approach was adopted by the Board in 2000, the rates have always had a cost of service element.

And this fact is also recognized by the Board when it later approved the three tier process or alteration to the LFO class. Because the incremental cost of serving the higher volumes is lower. So at the higher volumes it would make sense that they should pay -- that the customer should pay a lower rate.

In fact at the outset it was accepted that these market-based rates would be set at levels so that they were all generally lower than the cost of service or that a cost of service approach would have required.

As we have heard, and as sort of makes common sense, you know, the first 10 customers on the system would each pay, you know, $3,000 a GJ if they had to pay the cost of service to the point.

So the purpose for the Board adopting this market-based approach in the first place was to find some way to charge customers an amount which was clearly much lower than the cost to serve them. That is why the market-based approach was used. And I submit that is why the market-based was advocated. And that is why it was adopted by the Board.

In fact I was at the hearing in 2000. And it wasn't seriously objected to at that time. Because in those circumstances quite frankly it made sense. And in those circumstances it gave just and reasonable results.

But never in my submission -- and if you haven't reviewed the decision I would encourage you to do so -- was it intended that the market-based rates set for a class would massively exceed the cost of serving class members. And we used to massively subsidize the other rate classes.

If I could ask you please just to turn to tab 3 of my little booklet. There is another little excerpt from that original rate case back in 2000 when this market-based approach was first turned to. And it is just at the end of page 14. And at this point the Board is talking about whether or not it was necessary for Enbridge to file a cost of service study initially.

And the Board said, and it probably made sense, that in the first couple or first few years of this greenfield thing we are going to be using market-based rates, they are going to be lower than the cost of service anyway, so there is not much point in this initial part of the development period to ask Enbridge to do a cost of service study. This wouldn't be of any particular value.

And the Board said "The Board agrees that the information that would be provided by cost of service studies in the initial years of a 'greenfield' situation would be of limited value. The Board will not require EGNB to file cost of service studies at this time."

Now remember "at this time" was before anybody had put one centimeter of pipe in the ground.

"The Board does consider that the revenues provided by a given customer class should, over time, be reasonably close to the costs incurred to serve that class of customers."

So they are saying these market-based rates over times should move up at some level, as the development period proceeds, to be reasonably close to the costs incurred to serve that class of customers.

"This will minimize the amount of cross-subsidy and send the proper economic signals to customer. The Board intends to revisit this issue near the end of the development period."

Well, here we are. We are now near the end of the development period. And it is clear that the context in which these market-based rates were originally adopted was that they should be utilized up to the point that they become reasonably close to the costs incurred to serve that class of customer.

Not, in my submission, to impose rates on a class of customer that would massively cause that customer to cross-subsidize other classes.

Market-based rates were a technique to charge less than the cost of service and overtime up to the cost of service. But not, as EGNB would now have you do, massively overcharge for that service. Never has the Board ruled that. And I submit that result is unjust and unreasonable.

Because if this had been the Board's intention it would have simply established one charge for every customer. If the customers were all to be lumped together, as EGNB would have you do, and say until we are to the point where all of our customers are generating enough revenue -- it doesn't matter how unfairly the relative customers contribute to the revenue -- and deferral account contributions are lowered to zero, then the formula applies to them no matter what the result, the Board would have said so.

But it didn't. It said much higher rates for certain customers, much lower rates for other customers, in recognition of this goal, avoiding cross-subsidy.

The Board did not order that the cost of serving a rate class was to be completely ignored and not ever considered. And despite the fact Mr. Johnston invited Mr. Hoyt to do that this morning, he declined.

The Board simply accepted an approach advocated by EGNB as achieving a just and reasonable approach, having regard to all matters, including a nod to the cost of service and minimizing cost-subsidy based on the circumstances before it.

Just like it was in the past, it is incumbent upon EGNB to satisfy you that their approach should be followed again in these circumstances. And I submit they have not done so.

Utilizing market-based methodology is merely a technique in certain circumstances to achieve a just and reasonable rate. It is not, as EGNB would have you believe, the very definition of just and reasonable. A market-based approach, cost-based approach, any other approach, a hybrid approach should be only followed to a just and reasonable conclusion.

If any methodology carries us beyond that point, we -- and by "we" I mean you -- need to get off that methodology bus. This is your statutory obligation. You only follow a methodology to the point you achieve a just and reasonable rate. And if it goes beyond that then the methodology ceases to be indicative.

Well, okay, what is just and reasonable anyway? And candidly, gentlemen, if I knew the complete answer to that, I would have probably known last Wednesday's 649 numbers and I wouldn't be sitting here this morning talking to you. I would be someplace warm with water that I could drink preferably.

But I think that there may be some guidance in the case law. And I did a little bit of digging around to see if I could find any authorities that would suggest to us what just and reasonable really means as a practical matter in this case.

And I can tell you I had limited success. But I would like to refer you to a couple. And they are in the decisions in this little booklet that I have given you. And the first one is under tab 4.

And it is a decision from the Nova Scotia Court of Appeal. And it is an appeal -- the particular facts of this case don't matter much. But at the time, the City of Dartmouth built a water line over the bridge. And they were selling water from one utility to the other.

And the real issue in the case was whether or not the Board of Commissioners of Public Utilities of the Province of Nova Scotia had the jurisdiction to order retroactive water rates.

But in this case -- and if you flip to the third page in -- the Court of Appeal quoted from the Nova Scotia Board of Commissioners of Public Utilities about some commentary they had about just and reasonable rates.

And if I may, at the bottom of the page there on page 3. "The application is being made by the City of Dartmouth under the provisions of Section 60 of the Public Utilities Act, which provides that a public utility shall not collect any compensation for any service performed by it until the Board has approved a schedule of rates, tolls and charges for the service." Well, that sounds familiar, the same as us.

"There is no statutory requirement setting out how the Board must determine rates, although Section 41 of the Act requires that any order of the Board regarding rates must be 'just'. Customers expect a utility to supply good services at a reasonable rate. The concept of a reasonable rate is a heritage from the common law when it was called a 'reasonable price'" -- and I'm not even going to attempt the Latin I'm afraid. Although I'm sure -- I know that there is a Sister Mary Margaret who is very disappointed that my Latin is lacking from when she taught me in elementary school, or junior high school. "Or 'whatever is deserving' (quantum meruit). The statutory element of 'just' complements the 'reasonable' test of the common law, so it can now be said that the Board must determine rates that are 'just and reasonable'."

In other words, from the customer's perspective, supply good services at a reasonable rate. Well, that doesn't get us a long way. But let's carry on.

Under the next tab is a decision from the Ontario Energy Board. And once again the particular facts of this situation, although they are a little closer to ours, aren't really the point of my bringing this particular decision forward.

As I understand it, Union Gas which is a local gas distributor, very much like Enbridge Gas New Brunswick, only bigger, because of the population of southern Ontario and its franchise area, was applying for rates going forward for, as I understand, for 2006.

Normally they do their rates on a cost of service basis. But they didn't have coincidentally a fully allocated cost of service study available for the Board's review.

And so having -- they presented to the Board basically an argument saying well, our costs are going up, so we should be able to -- you should give us a bit of an increase.

And the Board ruled that -- I think I'm paraphrasing a bit -- but the gist of it is that the Board found that, you know, that you haven't met your evidentiary burden to support an increase.

And the Board then considered well, okay, if you haven't met a cost of service, is there any other method that we should use to bring some sort of increase in the meantime.

If I could refer you to page 3 of that decision under the subtitle "Board Findings".

"With respect to the first question posed in the Board's Notice, the Board concurs with the parties and finds that the evidence filed to date does not represent a sufficient evidentiary basis to proceed with a cost of service approach to rate setting for 2006."

In other words the applicant Union Gas didn't meet the evidentiary burden upon it because it has the burden as applicant.

"The Board also notes Union's statement that the information for a traditional cost of service review does not exist and therefore cannot be provided in the time frame required for rates to be approved by January 1, 2006. The Board must therefore decide whether an alternative approach to rate setting, if any, is warranted."

And I should point out here that, just like in our case, even though -- and I'm sure for a decade Union Gas had its rates approved by the Ontario Energy Board under a cost of service basis -- the Board was free for this particular year to go to another methodology if the circumstances warranted it.

And I will carry on. "Union has proposed a formulaic approach using the Consumer Price Index."

In other words Union Gas said well, look, if I don't have my full cost of service study done, just increase my rates by the Consumer Price Index, with an additional adjustment to account for costs related to its aging work force.

"Union submitted that timing pressure and the prima facie evidence of increased costs provide sufficient grounds for the Board to consider such an approach." And other parties challenged that.

And the next paragraph. "While the Board has traditionally used a cost of service approach to rate setting, the OEB Act does not require the Board to take this or any other specific approach to determine whether rates are just and reasonable rates. However, any approach taken by the Board requires a sufficient evidentiary basis for the Board to make an informed decision in the particular circumstances of each case that the rates set by the Board are just and reasonable."

So we know that just and reasonable rates can only be achieved if you find that you have sufficient evidence upon which to draw that conclusion.

And candidly I'm still not sure all of this is really helping us to get a good handle on what just and reasonable means. But we are making some progress.

If you would flip to tab 6. I just produced the head note of this case. And I have a full copy if somebody wants it. It is a decision from 1998 of the Newfoundland Court of Appeal.

And once again in this particular case the facts were how to deal with the jurisdiction of the Board to do a whole bunch of other things, including how it directed Newfoundland Light and Power to do certain things with its revenue and all kinds of stuff which really aren't particularly relevant here.

But there was some commentary. And the last page under the tab is page 14 of the decision. And in this case the issue was setting a just and reasonable rate of return to a rate. But the just and reasonable rate of return would then become a function of the rate which was set.

And paragraph 23. "This statutory entitlement of the utility to earn a 'just and reasonable' return is the linguistic touchstone for the balancing exercise. This phrase emphasizes the fairness aspect, both to the utility, in earning sufficient revenues to make its continued investment worthwhile and to maintain its credit rating in the financial markets, and to the consumer, in obtaining adequate service at reasonable rates. It also emphasizes the need for a tempering of each interest group's economic imperative by consideration of the interests of the other."

In other words in order to set a just and reasonable rate for this case, it is imperative that you conduct the same balancing act.

You would have to consider the interests of the applicant and their financial situation. But you also must consider the interests of the consumer and their right to be charged a reasonable price for the service that is provided to them.

And with respect, the only balancing that EGNB has urged on you is simply that they should be happy. It could be worse if they were on oil.

Now I would submit that the evidence certainly from my client was they never considered using oil. Oil didn't work. If you had to go to oil we would be out of business.

And I rather suspect, given the numbers that are in the Flakeboard evidence as to what the competitors pay for natural gas, while they might technically have the ability to fire up an oil-fired burner, if that is what they had to do, they would be so uncompetitive that they would be out of it.

And so I think that the comparison to oil, for these customers at least and this rate class, which is all that is before you here, amounts to -- I guess it amounts to the -- you know, it is like the wife beater says, it is just and reasonable that I hit you twice, because I could have hit you three times, it could have been worse.

The question for you to ask, is the rate that is being charged just and reasonable, not can I envision a scenario where you could pay more.

In paragraph 25 of this decision it says "There is no uniform methodology employed in the regulatory jurisdictions in North America for the determination of a just and reasonable rate of return. What recurs, however, is a theme that the process is not an exact science and depends on a variety of factors necessary to balance the competing interests involved. Rate setting is essentially a prospective exercise where determinations are made on the basis of estimates and information that will not necessarily remain static."

And they quote from a Supreme Court of Canada case that says -- or sorry, a U. S. case that says "depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts."

So in order to achieve a just and reasonable rate you must take regard to all the relevant facts and you must use the exercise of a fair and enlightened judgment.

And I guess, gentlemen, it comes down to the old definition of art. I don't know what art is but I know it when I see it.

And I submit to you that it will be a similar circumstance here. I'm not sure I can articulate to you exactly what just and reasonable rates are. But when you review all the circumstances you are going to know them when you see them.

And I would submit to you that the amount advocated by Enbridge Gas New Brunswick in this proceeding does not pass that test.

So that does beg the question well, what are all the circumstances? For its part, Enbridge Gas New Brunswick says in essence, we presented the Board with an approach in June of 2000 which the Board accepted and generally followed. And more on that later.

And the circumstances are all the same and you should follow it again. Actually I think they suggest that you aren't bound to follow it again. And I have already addressed that point at some length.

Enbridge Gas New Brunswick says nominal price of oil less nominal price of gas less 10 percent equals the rate. End of analysis. I will stop.

Poor Mr. Charleson kept repeating the same mantra again and again in answer to my questions, Mr. Lawson's questions and Ms. Desmond's questions. In essence he kept saying it is the formula, nothing but the formula, nothing else matters, nothing else is relevant. As long as you are following that formula and you get a result which is

10 percent lower than nominal oil price, it doesn't matter.

And like Enbridge Gas New Brunswick said in response to IR number 9, and it is reproduced under tab 7, if the formula said $20 a GJ then the rate is $20 a GJ, no matter what the consequences to the ratepayer might be.

And again Mr. Johnston invited Enbridge to depart from that position this morning. And they declined.

Enbridge's position is that the formula is the font from which all just and reasonable rates spring. And Enbridge is elevated to the level of the constitutional framework in which all other considerations and deliberations must operate.

If it is not obvious from my tone, we do not agree with this position and urge the Board not to accept it.

Enbridge suggests that this Board has somehow blessed this formula and mandated its use without variation or consideration until the end of the so-called development period. It is a fait accompli.

This is again a proposition with which we do not agree and I submit a proposition which is faulty at law.

Even though the Board has applied the formula in the past, it has reviewed and altered the result and its applicability in a given context.

For example initially the Board accepted rates in the LFO rate class with a nominal discount of 15 percent. And the Board saw fit to change that to 10 percent.

And just like it can change the percentage, in my view the Board is entitled to change any other portion of the formula it sees fit in order to achieve a just and reasonable rate. It can use the 15 percent discount again as urged on you by Mr. Reed.

It can use a Dracut price for natural gas. It can use a New York Harbour price for number 2 distillate. Use a market sampling for 365 days instead of 21 days, as Mr. Reed would have you do?

Because as we know, this rate will be set for a year. And Mr. Reed said logic would indicate that if you are going to set it for a year, use a year sampling.

You can establish a ceiling or a cap if that will help achieve a just and reasonable rate. Or quite frankly adjust the formula's result as you see fit, having your broad discretionary mandate to achieve a just and reasonable result.

EGNB's suggestion is that it is entitled to the result of its formula, in essence that the Board and the ratepayers are simply stuck with it no matter what. If the formula says 4.50 a GJ or $20 a GJ, that is it.

This is not an accurate characterization of the Board's previous decisions or your (inaudible) at law in this proceeding. And we urge you to reject it.

Because it has been clear from the outset that the Board can and will depart from the formula's result as it sees fit.

In the very first rates case back in 2000 one of the issues before the Board was whether or not this formula, oil price, gas price, percentage spread, particularly for the lower, smaller rate classes, left enough room for the independent natural gas marketers, one of whom I represented at that hearing, to actually make any money.

Because there was no room in this nominal burner tip for them to make a profit margin if they were actually going to sell to commodity. And they are the big piece of the pie. And the Board struggled with that.

And so what happened was the Board looked at the result of the Enbridge gas formula, the same exact formula that is put before you in this proceeding, and said you know what, we are concerned that there is not enough room for marketers, we are going to whop off 20 percent.

And if I could ask you to turn to tab 8 of the booklet I gave you.

This is a decision of the Board in that regard. And it goes on to set the background in a way that I have just talked about. If I could flip you to the second page, the second full paragraph.

"EGNB proposes that its target rates be approved as filed. It considers that the 'Market Price' provided by these rates will, in total, permit marketers to operate and customers to be attached as planned. If this does not occur, EGNB stated that it would use the rate riders to reduce rates to an appropriate level." The same thing they are saying today.

"EGNB also said that to lower rates when in fact this was not required would cause the deferral account balance to be higher than necessary." The same thing they are saying today.

"Irving and Engage", which was an independent natural gas marketer who decided they would -- never did come to New Brunswick -- "propose that the target rates should be set at amounts lower than EGNB has requested. They do not consider that the 'Market Price' proposed by EGNB is adequate. Irving is concerned over the effect that this would have on the number of marketers willing to enter the New Brunswick marketplace."

So in this case one of the circumstances was whether there is going to be enough room in here for these marketers to make any money. We don't have that circumstance here today. In essence we have what is the effect on the ratepayer. But that was a concern of the Board at the time, a different concern but a concern.

"The Board must, despite the absence of undisputed verifiable amounts for several critical elements, set the initial amounts for the target rates for the distribution of natural gas in New Brunswick."

This was the first rate. So the Board didn't have the option of rejecting an application as being insufficient, because there were no rates at all. They had to set some sort of rate.

"The Board must base its decision on what it believes to be in the public interest. It believes that an open competitive marketplace for the sale of natural gas is in the public interest. The Board has exercised judgment in reaching a balance between minimizing the amount that will go into the deferral account and providing an environment that will encourage marketers to commence operations in the province."

In the same way that I would submit in this hearing you are going to be required to think about how much needs to go into the deferral account and the effect on the ratepayers.

On the last paragraph -- the second last paragraph on the next page. "The Board, therefore, orders EGNB to adjust its proposed target rates to provide a reduction of 20 percent per GJ for each of the SGS, GS and CGS rate classes. EGNB is to develop new rates and to file these for the Board's approval."

And as I recall they did so. And the new rates were approved I think on the 16th of July, subject to -- no, that can't be right, because this is the 19th. A few days later anyway.

So what happened was the Board looked at the formula, considered the circumstances and said, you know, it is not in the public interest. It doesn't achieve a just and reasonable rate. We are going to knock 20 percent off what is applied.

So just like that, you have jurisdiction to do that, or in our submission dismiss the application outright as you see fit.

So what does Atlantic Wallboard say about these circumstances? Well, we say that the circumstances are such that you should deny the application. But the real question of course is why should you deny the application.

The onus is on EGNB not only to prove the inputs into their formula but to satisfy you of a couple of things.

Number one, that the existing rates are today unjust and unreasonable. Because if the existing rates today are just and reasonable, then those are just and reasonable rates. And they are the rate that you should continue to leave in place.

So what is wrong with the rates today? Arguably nothing. Except perhaps higher rates would mean some more money for Enbridge. That is the only thing that has changed. There is no evidence that we can't build bigger in Sackville if we don't have any more money, no evidence of that whatsoever.

The second thing you have to do is establish, if they satisfy to you that the existing rates are unjust and unreasonable, that some other number is in fact the just and reasonable number. And they must do so considering both their own interests and the interests of the customers as well.

I submit that not only have they not proven either of these things from an evidentiary legal perspective, they have been clear that they view the effect on customers and the objective reasonableness of the rate charge in relation to service provided, be it 4.50 a GJ or $20 a GJ as totally irrelevant, and have declined to address those issues, let alone provide an evidentiary basis to satisfy the burden upon them to do so.

For this reason alone I think the application should fail. But there is more than that. I submit that the evidence before you in its totality leads to the undeniable conclusion that the result of the application of this formula or EGNB's formula does not result in a number which is a just and reasonable rate.

Firstly the formula and its incent to convert objective is of ever decreasing relevance in the twilight of the development period, or its strict application of the formula.

As we all know, and as I went through at some length, when it was first advocated and accepted in New Brunswick, the province was a true greenfield circumstance. Today, eight years later, or not quite eight years later, EGNB has 132 employees, 657 kilometers of pipe in the ground, 30 more planned for 2008.

They serve nine communities across the province, Saint John, Moncton, Dieppe, Riverview, Fredericton, Oromocto, St. George, St. Stephen and Sackville, literally from one end of the province to the other. Total gross revenue for 2007, $51.7 million.

The circumstances in which the formula was originally applied and the circumstances today are dramatically different.

Specifically with the LFO market, this whole incent to convert matter is, with the maybe exception of one -- or maybe, if you really want to stretch it, two -- the LFO market is fully penetrated. There is no conversion to incent anymore.

If I could just ask you to flip to tab 9 of the little booklet. I just have some excerpts of the construction plans there.

And if you look at the forecast, the first page is from the 2008 construction plan. And it was filed on the 21st of December, 2007 more than a month after this application was filed.

Table 1, 2008 Forecast Customer Additions, in the LFO class zero. So on December 21, 2007 Enbridge Gas New Brunswick was forecasting adding zero customers to the LFO rate class, zero conversions plant or forecast.

Let's go back a year. In 2007 they were forecasting zero additions to the LFO market. Go back to the year before. Now this puts us December 2005.

Interestingly, I may note, just before their last major rate increase, there were 18 LFO customers at that point. So that means 18 of our existing 19 -- there may have been one fall off, one got on, but a net 18 anyway --

were all attached before the rates really started to increase.

And it talks about there being a forecast of two additions. One I presume is Atlantic Wallboard. But I don't know that for sure.

But we know that in fact only one of those two came to fruition. And none are anticipated, according to the construction report filed on the 21st of December, for the next year. So that means that in the last two years and a bit, since rates have really gone up, there are no forecast additions.

Now I did hear Mr. Charleson's evidence saying that they are in chat with somebody, that they can't get a pipeline under a highway. So maybe there will be one other customer.

I am skeptical I must say of this plan to build a 30 kilometer pipeline. Maybe that will happen, maybe it won't. But there is no document signed. And the evidence was well, this potential customer, parent company won't approve the capital cost to convert.

So that is the status of that now. It is a no. Let's be clear. Despite efforts by Enbridge Gas New Brunswick to make it a no. And three others which are -- two they haven't talked to in years and one they have only had some conversations with. And there is no connection anticipated for them.

Not only has the LFO market gathered all the low-hanging fruit, they have skimmed the tree. I mean, the only fruit left is at some distant branch some long way away.

So the whole purpose in this formula of providing a rate which is based on a lower cost to incent to convert is now irrelevant. It is now moot. This market is fully penetrated.

And to apply a formula that has that objective in mind in this marketplace I would submit does not result in a just and reasonable rate.

The submission of Atlantic Wallboard, Flakeboard and certainly the submission of Ganong's and certainly the submission of the Public Intervenor for that matter make it clear that LFO customers in New Brunswick operate in a North American or national marketplace.

I think the evidence is all -- there has been -- Enbridge has not produced any evidence to say that their rates are lower than any other jurisdiction. They are paying much less for the service, this expensive service that Enbridge Gas New Brunswick provides.

So they are not saying oh, I get some advantage from using the lower cost alternative. They are saying, I use natural gas, and if I don't get this low cost, I'm out of business, or my viability is fundamentally affected.

The cost of a competing fuel is now not relevant. Atlantic Wallboard never considered using fuel oil. And even after the ACOA loan that Mr. Hoyt referred you to and even after a source of Gypsum closed and even after all of these other things, having a shipyard building to convert to a plant, then and only then did the business model work. It's not like we had a business model and then all of a sudden somebody came along and gave us free gypsum or free money.

That is the market these customers operate in. That is how they assess whether the price charged to them is reasonable or not. What are my competitors paying? How does it compare to a price of a product that if I used I would be out of business?

Perhaps the formula served its purpose in its day. Clearly the Board thought so. But it is now moot. And its effectiveness as a vehicle to achieve a just and reasonable rate, because initial cost of service rates would be too high, is now over.

Both Mr. Reed and Dr. Gaske confirmed that using the formula in this context to achieve the rate sought by

Enbridge Gas New Brunswick in this application would be unheard of in any other regulatory environment in North America.

And unheard of, I submit, because I believe they both got to because of the effect it would have on the ratepayer, and the effect that it would have that they would be paying a price for a service which is completely disconnected to the cost of providing that service and completely disconnected to what its competitors pay for an identical service in other jurisdictions.

So what are the consequences to the ratepayers if this application goes through? It is clear that the evidence is from Ganong, from Atlantic Wallboard, from Flakeboard that their viability is in question. It is not just it is going to hurt a bit, it is going to pinch.

As I believe Mr. Ganong pointed out, the Consumer Price Index is like 6.7 or 6.4 percent or something like that. You are asking us to take a 90 percent increase, $852,000 right off the bottom line.

Now what is the effect on Enbridge Gas New Brunswick if you don't get a rating? Well, the effect is well, they get less revenue. But let's have a look at their finances to see what the effect really is.

And if I could ask you please to turn to tab 10 of the little report that I gave you.

When I reproduced the 2006 financial statement I just added some numbers in from the evidence just to be illustrative. If you just flip to the last page of tab 10.

Let's just look at the -- we have all the numbers for 2006 and only a couple of the numbers for 2007. We do know, if you look at the last page there, that for 2006 total revenue was 14.124 million, total expenses 18.45 million, a bit of what I called an operating loss.

You add in there guaranteed 13 percent rate of return on equity. And you had a total contribution to the deferral account of 18.24. Now that is down from 21.8 the year before.

And in 2007, charging the rates that are in effect today -- and we don't know the total revenue, I suspect because we don't know the cost of goods sold. I think we did come up with a total expense number of 22.7 million.

But we do know that -- and we don't know what the rate of return was. But we do know the net result of all that must be improving. Because the contribution to the deferral account we know has now dropped to $15.496. Again these are all at the rates currently being charged today without a penny increase.

So let's flip if we could to tab 12. And this is EGNB response to undertaking number 1 Mr. Radford referenced Mr. Hoyt to earlier. The projection for 2008 is revenue of $28.6 million. That is significantly up from 2007 expenses, that we know.

And then we have got some things to compare it with. And I tried to do this when I was in cross examination. But I buggered up my arithmetic. I think I got it straight now.

The number under -- the $37.58 million as the result after increases is the actual for 2008 assuming that the increases were put into effect at the beginning of this month.

So to compare an annualized no rate year to an annualized rate increase year you need to add that number back in. So if you add in 1/12 of the proposed increase and then you add in one-quarter of the increase that -- assuming the increases sought for in the other rate pass you actually come up with a $39.258 million number.

So that is an increased revenue, as a result of these two rate applications, of $10.65.

MR. TONER: Excuse me. You said we could interrupt here?

MR. STEWART: Please do.

MR. TONER: But in this same table under 12 -- in tab 12 the revenue is 21.1 not 18.4 or .3, as at tab 10.

MR. STEWART: Sorry?

MR. TONER: In tab 10 you are stating that their total revenue is -- well, roughly operating 18.4, 18.3.

MR. STEWART: Sorry. That is 2007. That is the past 2007 actual number.

MR. TONER: And what does tab 12 show us? 21.1 or --

MR. STEWART: Tab 12 shows us anticipated revenue for 2008.

MR. TONER: But under 2007 is that a budget of 21.1 or --

MR. STEWART: Don't know. That may be the number.

MR. TONER: I'm --

MR. STEWART: Yes, I know. That may be the number. I think that is the distribution number. So maybe -- look, I got -- I put in those 18.4 and 18.3 because that was the response to our IR 2 (g).

But maybe you are right. The total distribution revenue is higher than that. It is $21.132.

MR. TONER: Just in case. It was a woman. I figured she might shed some light on that.

MR. STEWART: Undoubtedly. So I think--

MR. TONER: I'm just trying to follow your math too.

MR. STEWART: Fair enough.

MR. TONER: And I'm just trying to get --

MR. STEWART: No. Fair enough. I think what that means then is if we have distribution revenue of 21.132 million and we have -- you have a net installation revenue number, it wouldn't need to be very big to get you up to the total expense number that we have of 22.7.

So that means that in 2007 -- thank you, Mr. Toner -- at existing rates, it would appear that Enbridge Gas New Brunswick is in fact at least meeting all of its operating costs but not yet meeting its full rate of return. But it is getting there.

And then we have this budget number which is as I understand it what the rate increase would be if they had done their math one month before and budgeted for 2008 for it.

And the one-month difference, if you subtract the two numbers, on an annualized basis is $6.79 million. What a difference a month makes.

And if we then turn to tab 11. And if you look at the projected -- tab 11, page 2. If you look at the forecast addition to the deferral account, if all you did was give them the budgeted increase, the number they would have got if they had done their math the month before, next year they only -- they would earn their full rate of return and only put a million dollars in the deferral account.

And by the year after that they are covering everything, not only their operating expenses but their rate of return as well.

And if you turn to the last page of tab 11. What I did is I reproduced the chart that is on the preceding page just as it was in such fine print.

At the budgeted level the total rate of return that Enbridge would be earning is on the top line, 21.54, 24.75, 27.09.

And at the -- if you only gave them a rate increase at the budgeted level, they would return what I have been calling -- and I'm sure it is not the proper term of art -- but an operating profit of $14.42 million, $23.66 million, $27.09 million.

Which results, when you add in there 13 percent rate of return, gives you the additions, and then deletion or subtraction from the deferral account that they project.

And the last line is what would happen to the deferral account -- and I just backed out the extra 3.86 revenue. The difference between no rate increase and an increased rate based on the so-called budget, if you look at numbers in tab 12, is $3.86 million. So I just took -- I know it is probably not an exact thing and there is probably some other adjustments that you would need to make.

If you look at tab 12, the difference between 32.468

million and 28.608 million is $3.86 million. So in other words if all you did was give them an increase up to the budgeted level, they would get another $3.86 million.

And giving them just that much more revenue and not the full -- not an additional $6.79 million in revenue that they are asking for in this application -- would mean that by the end of next year they are actually paying down the deferral account, ahead of schedule.

And if you give them no rate increase at all, in broad strokes, and that is the last row here -- I just backed out that $3.86 million -- the deferral account still drops -- the additions, annual additions still drop like a stone, 10.9, 4.9, 3.23.

So if all we did is you applied their forecast going forward, with no rate increase at all, has the contributions going from in 2006 at $18.8 million to 2010 to $3.2 million. So those are the effects on Enbridge.

And if you give them the full rate increase you are asking for today, the deferral account is gone. Why is it gone? Because you then have the LFO rate class customers massively subsidizing the rest of the system, so much so that they single-handedly make the rest of the system profitable. And that result I would submit is unfair and unjust.

So what are the balancing considerations? If you don't give Enbridge any more revenue -- and that is the only thing they pointed to as to why they need more revenue, because we have to keep the deferral account low. If you give them no more revenue and just let things continue on in accordance with their forecast, the contributions annual to the deferral account continue to drop dramatically.

Now will it be paid off? Or will they be at the crossover point at current rates according to their forecast by 2010? No. But they are getting pretty darn close. And if all you gave them was a budgeted amount they are there next year.

And so is there any need to take the revenue out of the pocket of these LFO customers to the point where they are massively cross-subsidizing the rest of the system to pay down the deferral account, the evil that we are all concerned about, and the Board frankly is concerned about? The answer is no.

I would submit there is not any need, if you look at the numbers, to take one penny out of the LFO rate customers, that things are unfolding nicely and exactly as Enbridge has indicated back in 2005 when they asked the development period to be extended.

It won't be before 2010. But we should revisit it at that time because we are getting clobbered. They can achieve that goal without charging their customers one penny more, according to their own forecast.

And quite frankly I have some problems, you know, the formula itself. Or perhaps more properly EGNB has -- well, I'm going to use the word orchestrated it. Some might say manipulated it. And that sort of reveals a fatal flaw in the system.

While it is presented as a simple, insert the variable, item A, item B, item C, you get a result, the reality is that the formula is really a construct designed to achieve a desired result, and in my submission not an objective indicator.

Some customers included some averages but not in others. Customers and their volumes who are really not LFO customers anymore are included, just because they are not quite technically off the system anymore. Differentials are created and utilized when a more reliable publicly indicator is available. For these reasons alone I think the formula as a result is suspect.

But clearly the biggest one is the 21 day average and the applicability of the formula in this current unprecedented oil and natural gas market.

And if I could ask you then please to turn to tab 13 of the little book.

And what I did was reproduce the chart and big enough so I could actually see it nicely, in response to Flakeboard IR EGNB 12 (5).

And then what I also did was I marked on there what the spread was at the time of EGNB's rate increase. And what I did was I looked at the date they filed their application, previous applications, because -- except for the June on where they ordered a refiling.

Because what you are doing then is you file the application today based on the data, the average you have just looked at, just like you did here. I mean, you file in November looking at -- or December looking at November's data.

So what we are looking at is the spread immediately to the left of the line. That is what was being considered at the time of the application.

Two things emerged from that analysis. One is it is clear in the first three applications that Enbridge applies with a big gap immediately after the gap is about to close. So we set target rates on a gap. And then it closes. So the timing is not coincidental I would submit. And neither is the timing of this application.

Secondly if you look at the gap in the price immediately to the left of the line, look at the size of it. You don't need to scale it off. When the formula has been applied in the past, the gap isn't anywhere near what it is today. The current spread is unprecedented.

And this means two things I would submit. Either, number one, the fundamental -- or one of the fundamental underpinnings, as Mr. Charleson agreed when I asked him the question, to the applicability of the formula, is that the price of natural gas and oil generally track each other.

So if they cease to track each other then the formula ceases to become indicative. Or that in previous times, when the Board has applied the formula, the gap was much more smaller.

And the gap we have here is so unprecedented that it creates a result that works a hardship on the ratepayers that none of the previous applications of the formulas ever did. Because the gap equals the rate in essence.

Never before have we paid these kind of rates. Never before have the consequences and the balancing act between what is good for the utility and good for the customers been such a dramatic shift.

If I could ask you please to turn to turn to the next tab. The first part is just the rates. Let's just put things in perspective what is being asked for here. It is really just a reflection of the size of the gap. The rate in July 2000, target rate, ceiling rate set in March of 2005, target rate set in January 2006 and as applied.

I mean, in a very short period of time these rates have gone through the roof. I mean, no surprise, but there it is.

And if you look at for customers like Atlantic Wallboard and Flakeboard and potentially others who pay the full 33,000, their volumes are larger than $33,000 a month, what does that mean as a monthly charge to them -- or excuse me, an annual charge to them?

Having delivered for you 33,000 gigajoules of gas used to cost you $313,000. Then it went up to 387'. Then it went up to $946,000. And now it is going to go up to $1.798 million, in basically two years and a bit. That hardly seems just and reasonable.

Finally if I could ask you to turn to the next tab. And what I did was -- and I have footnoted where it came for there on the bottom. But I just assembled some of the data from the IR, okay.

First row is how much did it cost Enbridge to connect up these two customers? 3.2 million for Flakeboard because they had to build a little longer pipe, 700 grand for Atlantic Wallboard.

What is the annual distribution revenue anticipated if the rate increase goes through? Ball park 2.1 million. And I'm not suggesting these numbers are exact. I'm just trying to give an illustrative example.

What is the annual direct cost of servicing those customers? Well, for Flakeboard, EGNB's answer was the cost of serving the St. Stephen lateral is 250'. And that included amortizing the initial capital cost to build it.

Now that would mean also the cost of servicing Ganong's and everybody else on the St. Stephen lateral. But even if we apply the whole shot to Flakeboard -- because I suppose there might have been no guarantee that anyone else would have signed up when the built the line -- Atlantic Wallboard $19,500.

Now I will fully concede that that is only the direct cost to serve this particular customer and to build the infrastructure to this particular customer and that these customers would have to pay their fair share of the overall overhead and to get the system to a position where it could have served them in the first place.

So you know what? Double it. Change the 250' to half a million. Triple it. Change it to 750,000. They are going to get $2.1 million. Or even if you back out the first initial cost they are going to get $1.85 million from Flakeboard.

Give them zero rate increase and reduce the revenue that they are -- or not allow them to claim an extra $850,000 out of Flakeboard, Flakeboard would still be contributing -- and I'm probably stealing Mr. Lawson's thunder -- but a million dollars to Enbridge Gas New Brunswick after they pay the direct service cost.

Heck make them pay another 500,000 for their share of the overhead and to get the system to that point per year. That still leaves $500,000 that this customer is paying to Enbridge Gas New Brunswick.

So if the sole rationale for increasing rates was to keep the deferral account down, the reality is that these customers, both Atlantic Wallboard and Flakeboard, and I suspect Ganong's and I suspect most other of the LFO rate customers are paying more than their fair share to keep the deferral account low as it is. They are leaving a lot of money on the table. And this assumes that there is no other rate increase.

I mean, maybe it is not true for some of the other classes. Maybe when you do your second application you will decide that, you know, all of the circumstances for the residential customers means that they should pay more. I don't know. I haven't even looked at the evidence. I don't know what is going on in the case.

But if your are balancing the interest, as I suggest that your obligation at the beginning to do is between the utility's books and its right to earn, you know, a rate of return, and these customers to pay a fair and reasonable price for the service they provide, at today's rates they are in my view, in my submission -- and I think it was echoed by both Mr. Reed and Dr. Gaske -- they are paying more than their fair share today, let alone any rate increase.

A rate increase would result in my view an unjust and unreasonable rate for these customers. It is not their responsibility to single-handedly pay the deferral account down. Their responsibility is to make a just and reasonable contribution toward it. And they already are at today's rates.

If you allow Enbridge Gas New Brunswick to charge the more, they will be massively cross-subsidizing in a way that is not just and not reasonable. And it will have significant and dramatic consequences to their competitiveness and to their mere viability.

And what will it achieve? It will achieve getting the deferral account to zero, or contributions to the deferral account to zero, at a couple more years than originally forecast, that is all.

And this is why -- this contribution that they are making today is why both Mr. Reed and Dr. Gaske, particularly Mr. Reed was saying, you should order some sort of cost of service study now. Because these customers are doing more than their fair share to keep the deferral account today.

Because if you don't keep track of that today, then when you do go to a cost of service model, and part of the cost of service is paying down the deferral account, these customers are going to be double-decked. Because they have been paying more than they should already to keep the deferral account low.

When you put payment of the deferral account back on the table in the cost of service model, you are going to make them pay all over again, when other rate classes may be the ones draining and causing the deferral. And so this cross-subsidization is so significant that it should be tracked at today's rate.

The position of Atlantic Wallboard Limited or Atlantic Wallboard Limited partnership in this application is that Enbridge Gas New Brunswick has not met the burden upon it to establish to you that the rates charged to LFO customers are currently unjust and unreasonable.

The only basis for departing from those rates that they appointed to was the need to keep their deferral account low or the additions to the deferral account lower.

I submit that when you examine the numbers you see that at today's rate the LFO customers, certainly the two who are Formal Intervenors in this proceeding, are doing more than their fair share already. And to ask them to do any more would be unjust and unreasonable.

And for those reasons I suggest this application should be dismissed. And I would urge on the Board to leave LFO first block rates precisely where they are.

Those are my submissions.

CHAIRMAN: Thank you, Mr. Stewart.

Any questions from the panel? Mr. Toner? Mr. Johnston? Mr. Radford? Mr. McLean?

I don't have any questions either. So again thank you for your presentation.

The Board will take another break. And then we will hear from Mr. Lawson.

(Recess - 11:30 a.m. - 11:40 a.m.)

CHAIRMAN: Mr. Lawson, are you ready to proceed with closing argument?

MR. LAWSON: Yes, Mr. Chairman, thank you. I again will apologized, Mr. Stewart very capably advanced almost all the argument that I am going to advance, so I am going to do it incapably. Some of which I will try to eliminate, so as to reduce duplication. There were a few things that he made concessions on that I will want to modify, but for the most part I would say the arguments are not substantially different I guess for obvious reasons.

I would start with the comment, as Mr. Stewart did, that this is about rate setting for a gas distributor. It's not about how much money has -- EGNB managed to afford as a savings, for example, to my client.

My client, as the evidence was indicated through Dr. Gaske, and as alluded to partly by -- in the argument by EGNB, did apply for a single end use franchise, and that's on the record. It didn't proceed, as Dr. Gaske's evidence, unrefuted yesterday was, that essentially obstacles of great variety were thrown away. and the record is clear that EGNB opposed the single end use franchise, to the point where Flakeboard decided it could no -- there was no point in spending good money after bad to proceed with the application.

Flakeboard did not want to become a customer of EGNB.

EGNB is not its saviour having saved it money on gas. I wanted to convert to gas inspite of, not because of EGNB. And I think that's very important, because EGNB wants it thought in the minds of all that look we have saved these folks a pile of money. They haven't. In fact I submit this increase goes in as it is, it will do -- it will drive Flakeboard to look very seriously at a whole variety of alternatives, which will not include EGNB. And who is going to win from that? Well, Flakeboard will. Certainly the ratepayers of New Brunswick for EGNB will not. And I don't think that can be lost sight of by this Board.

The consequences of what I am going to describe is an avariciousness or greed, if you will, by EGNB to grab every dollar at whatever cost on the basis of saying it's got -- we have to reduce our deferral account at any price regardless of its impact on our customers.

They said the argument this morning that what is happening in other jurisdictions has little or no value. Well it may not have any little -- any value to EGNB in the short term, but it has every value to Flakeboard. It has every value to Atlantic Wallboard. And I submit, I don't even know who the other customers are in the class, Ganongs, I guess as well, have given an indication, it is of significant value to them. It is very important, because business is not carried on in isolation. It is not carried on in a let's do a formula, fill in the blanks and tell you your costs are going to go up by 90 percent. And it doesn't matter, it is of little or no value what that does to your business. Sorry, you can't do that. As a regulator you can't. That's why I submit the regulatory legislation -- or the legislation requires that they be just and reasonable rates. And that just and reasonable requires the balance between the parties, the customers and EGNB.

EGNB has been given a monopoly. Dr. Gaske pointed it out yesterday. If this was not a monopoly -- of EGNB -- sorry, if it was a monopoly, but EGNB was going out and said we are a monopoly and we will set whatever rates we want, because we don't have any regulatory authority to set rates, what rates would they set? I submit the rates that they would set, as a monopoly without any regulation over their monopoly would be exactly the same kind of rates that they are charging now.

They would say, you can't go anywhere else. We have got you over a barrel and we are going to charge you these rates. And there is nothing you can do about it, because there isn't even a regulatory authority you can go to to revert to. The reason why that isn't permitted is because the duty -- the legislator says the duty falls on you to establish just and reasonable rates, to strike that balance between them.

Now EGNB's whole argument I submit this morning is that the formula for just and reasonable rates was established in 2000. It was used subsequently on a number of occasions and all you are supposed to do here today is fill in the blanks.

I have got -- I want to address the issue of filling in the blanks in a moment. But all you have to do is fill in the blanks. Well I submit, as Mr. Stewart did, that to do so would be in violation of your obligations under the legislation to determine if rates are just and reasonable. And I submit that with all due respect that the determination in the January decision of this Board on a motion where the party asked to have an opportunity see if market-based rates were appropriate, this Board actually made a decision that they were appropriate without the parties actually being heard on that issue. So I would submit that the Board has to revisit the issue, with all due respect, of whether or not just and reasonable -- your legislative requirement for just and reasonable rates I submit requires you to look again at the market-based issue and whether or not that should continue.

And I do that obviously with great reluctance, because I don't like to stand here before you, or sit here before you, and tell you that I think the decision that you made pre-judged the issue. But I believe it did without having had a fair hearing on the issue of whether or not market-based rates were appropriate. And I submit that the legislation requires you to revisit that subject.

Why should you revisit it? Why is it that you should think about this? Well quite honestly, the only circumstance -- and I was trying to think about what circumstances are the same today as they existed in 2000 when that decision was made by the Board. The only circumstance I can think of -- and I am sure there are others -- I am sure that Mr. Hoyt will very capably point them out, but is that EGNB was a gas distributor. Everybody had anticipated -- they looked at the spread -- up until then, they looked at the historical spread between gas and oil and said we will come up with a market-based pricing that deals with the correlation between these two.

I am not going to pretend to be knowledgeable about this. Somebody did some calculations for me. And if you have any questions on this, I am afraid I can't answer them. I will read it. I don't even know what it means.

But there is this concept of a perfect correlation when two things move exactly together in unison, there is a correlation of one between them.

If you look at the correlation between gas and oil prices from 1997 to 2006 -- so '97 to 2006, that same correlation comes out to .79. So close to one. And I am guessing looking back the correlation sort of preceding 2000 is probably sort of similar, but I don't know what the math -- I don't know how you calculate it, let alone if it's right, but just looking at the pattern.

The correlation between gas and oil prices from January 2007, we are talking a very short time, to February of 2008 is .015 -- minus .015. So I understand from these statistics that means there is no correlation any longer between the two relative prices. A picture is worth a thousand words. I don't know what this correlation stuff means, but when I look at this chart that's under tab 13, in the documents that Mr. Stewart put in, that's part of the evidence already, very, very clearly there is no longer -- Mr. Charleson would not describe the gap between the two prices currently as a an anomaly.

It -- to me that is a zeal to do the best you can for your case. It is absolutely an anomaly when you look at. He described -- well the differential between them on a percentage base hasn't been much different and then conceded the percentage differential between them has zero to do with what this formula does. It is purely based on dollars. If we want to look at the differential, we -- I would be pleased to see the Board do a calculation and use the differential between them at the time -- and apply that differential today. The example, the differential be -- when the calculation was done back in 2000 by the Board, if you just do that simple calculation that I did with the LFO with Mr. Charleson, the evidence shows that the spread between oil and gas at the time the application was made in 2000, June of 2000, was 16 percent. The then regulated gap in price or savings, targeted savings, was 15 percent. That left 1 percent basically as the stream of revenue in the gap that would be available to EGNB. 1 percent, that's what the Board directed would be the result. And EGNB operated on that assumption.

Today that same gap is 36 percent difference at the time the application was made to say nothing of the larger gap now. 36 percent minus the 10 percent savings, because the 15 percent was changed to 10 percent. There is a 27 percent gap or 27 percent left over after that gap. And EGNB wants every cent of that 27 times more than what was anticipated when they made the application and when this Board -- preceding Board made the decision about what is appropriate. It's multiplied by 27 times. You can't say the circumstances are the same. That's just the spread, the penetration.

And I submit the reason why we are here, and the reason why there is such a big deferral account worry about has little to do with anything other than the failure on the part of EGNB to successfully penetrate the market. Why? I don't know. But if you look at the statistics that have been filed in previous hearings about the intended targets that EGNB had to get into the marketplace and how many customers are going to sign on versus the reality, they are completely different than the reality. Those numbers are completely different.

What has happened? I would say EGNB has had good fortunes smiling on them by sheer and utter good luck, not good management on their part, the price of gas has relative to the price of oil remained -- the gap has increased. And so they have a significant increase in revenue. What about their throughput? Because that's really the test. What is their success measure? Their increase in revenue I submit, much of that increase in revenue has occurred as a result of revenue increases, rate increases that this Board has granted.

If we just look at, for example, throughput increases, and I will just for the record refer -- I won't bother asking you to turn to it -- IR-2 -- I think it's IR-1, Roman Numeral II of SCL A-4, well I think now that I think about it, anyway 2005 the throughput was 3,300 total throughput -- 3,395 gigajoules. In 2007, it was 4,451 gigajoules. So there was a 31 percent increase in their throughput at that time. However, to put through to develop that extra throughput, 31 percent, they spent $23 million of ratepayers money, not their money. Incentives are not their money. There is not -- that's not to be fooled. If Flakeboard gives an incentive to their customers, it's Flakeboard's money. They don't get it back from anybody else.

EGNB said we are going to take money from future ratepayers and we are going to give it to the ratepayers. $23 million. That's versus $2.3 million, so they got an increase -- the first 3,395 gigajoules, cost $2.3 million in incentives. The low lying fruit. Our clients were one of the low lying fruit. They cost $2.3 million for the first 3,400 gigajoules. The next 1,100 -- or worry, about 1,100, roughly 1,100 gigajoules cost $23 million. 10 times more. In 2005 to 2008 -- so that's to 2007, so let's grab on to capture AWL as a customer.

So 2005 to 2008, they got an 87 percent increase in throughput during that time, but they spent $43 million -- $43 million in incentives.

Well, I can tell you I may not be the best lawyer in the world, but I can tell you I would have clients lined up at the door if I promised to pay them to use my services. Of course, they would. There would some smart enough not to come, but most people would say, free legal services, I want in. Thank you very much.

They have managed to attract a customer base with we submit Flakeboard's money and Atlantic Wallboard's money, that they way they are doing it -- and their comment as this morning is that we are going to attract $16 million in revenue with $1 million a year in -- spread over 41 years of incentives. Now, I didn't follow the mathematical calculation, so I don't know. All -- my mind wasn't paying full attention, because all I immediately said is gee whiz, I wonder how much they -- those customers guaranteed the $16 million in revenue stream? The evidence is no customer getting incentive. As I understood it no customer getting incentives guarantees that they are going to be a revenue stream in the future for EGNB.

In fact I don't know whether or not the customer who has closed down -- virtually closed that we have evidence on the LFO class got any incentives or not. They may have had an incentive and they may have spent the incentive and closed down their operations. Who knows. There is no evidence of that. But there is no guarantee that any income stream will come as a result of this $43 million in giveaways, if you will, of money.

Mr. Charleson's evidence was, and I think it is clear and consistent with a couple of the decisions of the Board previously is that the purpose of the market-based structure that is in place was to attract customers. And the reason why we needed to do something like that is because you would never be able to attract customers by charging them costs.

Well the fundamental underlying principle of that is that the costs will be greater than the formulated price. We submit we are past that right now. That's why Mr. Reed's evidence -- I liked the concept of his saying look use the market-based pricing, but put a cap on it at cost. And I submit that's what the intention was. The intention was that the upper end of the market-based pricing would be cost, because I don't think anybody would have dreamed that the cost -- this market-based pricing was going to actually going to try to recover more than cost.

Now we don't have detailed information about costs. We don't disagree. EGNB doesn't have it either. They don't even keep it, even though as referred to by Mr. Stewart in the June decision of 2000, the Board said over time classes will have to have rates that set -- that recovers costs over time. Yet they haven't even tracked what their costs are by class. So I don't know how we are going to do it.

So the only information we have about what the costs should be is that we have information about costs with respect to two of the LFO customers. Is this representative of the rest of the LFO customer class? I have no idea. No idea. Certainly we have no evidence that it is not. We have the evidence that Mr. Stewart alluded to that the cost of all of the St. Stephen lateral, not just that which services Flakeboard, but all the St. Stephen lateral was -- is $250,000 a year. And we know that the revenue stream at current rates from one customer, Flakeboard -- don't know what the rest of St. Stephen generates -- one customer is $1.2 million.

So we know that Flakeboard is paying all the operating costs of the entirety of St. Stephen and then some, some substantial amount beyond that.

Mr. Stewart said even if you assumed that there were $500,000, for example, of common costs that should be shared, that we are still contributing too much. Well I would submit that the figures that we should be sharing in terms of common costs are substantially less than that. And I know it's not about Flakeboard. This is about a class, which I am going to chat about in a second. But this is about a class. But if you just look at them as a proxy, as the term is being used around here, as a proxy of the class, they are contributing substantially more than the entire cost to service all of the St. Stephen community.

Interestingly, Mr. Butler's evidence was that the reason why they didn't want to take free service that Flakeboard offered them, Flakeboard build the pipeline to their plant in St. Stephen and said to EGNB you can use this pipeline to service the rest of the community, all of the other customers in St. Stephen. Their answer was no, because we need to -- Mr. Butler, I believe the evidence is to this effect, basically said we needed Flakeboard to subsidize the operation for the rest of St. Stephen.

Well the fundamental principle of regulatory monopolies is that you don't cross-subsidize. And the Board recognized that in the June decision and said that's why over the long run, we have to consider that the costs within the class, so we don't get cross-subsidization.

So what have changed then? The spread has changed significantly. That 1 percent is now 27 percent beyond what is left over after the difference between price norm. The penetration level is substantially different than anybody had ever dreamed. The incentive levels are substantially different than anybody would have ever contemplated would be provided. The rates over costs -- rates being set in excess of cost, I submit way beyond what was anybody was contemplated.

The deferral account is -- and this isn't in evidence here today, but it is in evidence with the Board on file from other decisions approximately 10 times what the originally forecast deferral account would be before there was a recovery. I believe that the initial forecast was that the deferral account would reach about $13 million. And I may be wrong on that. I didn't have a chance to check. I apologize. $13 million before you get to the cross over period and you start recovering. $13 million. And I am not sure what this impact will be, but it is something close to $130 million that it will be now. 10 times more. Way beyond what anybody dreamed of when the decision was made of this market-based pricing concept.

Has the LFO class fully been penetrated, if you will? Is it a class where all potential customers have been accessed? Well there are five left. Mr. Charleson's evidence was is that the reason why those people are not customers are obstacles other than the rate differential. We can't get a permit to go under a road. We can't convince management of the parent company management to spend the money to do the conversion. Three -- two customers -- three other customers, we don't know why they won't, but he said the obstacles for conversion are not a question of rate setting. The purpose they say of rate setting with market-based pricing is to attract people in. Well that's not going to do anything to attract those people in. They said there are other obstacles beside rate setting that are keeping people out.

I alluded this in cross-examination, the fundamental underpinning for this rate increase is we have seen a phenomenal increase in the price of light fuel oil since the last rate application. 33 percent. We all know -- unfortunately all too well know how much oil has increased over the last couple of years. And they are saying as a result of that, we should get a whole bunch of extra money. Not because of anything else we have done, because our costs haven't escalated on a disproportionate basis or anything else, but we should get that.

Those cost increased 33 percent. A phenomenally large amount of money. They want the consequence of that to be for the LFO class a 90 percent increase, three times what the price of the basis for calculating this is. It goes up 33 percent and they want our rate to go up 90 percent for exactly the same escalation.

I would like to take a quick look at this issue. Even if you use -- even if you use the market-based pricing that the formula used in the past what should this Board do? If you decided look, regardless of all these other things, what should we do? Well, we -- as I understood it yesterday, or perhaps it was the day before, I now know that the retail oil price, even using the various factors that they have used, when you compare the -- and again it's almost like a correlation concept here, the West Texas price used in New York that was obtained as a result of the undertaking from the Board's questioning, that price is lower and has an impact. I haven't done the calculations of what the impact is, but because the oil price should be lower, that too makes the benchmark for comparison lower. So their 4.54 needs to be lower because the retail oil price they are using should be lower. They say look it's a proxy of what our customers truly are paying. I don't know that they know anybody's rates that they are paying for oil. How they can describe it as a proxy, I don't know. There is certainly no evidence about what other customers in the LFO class are paying. There are quite a variety of range -- there is quite a variety of range of LFO volume these customers in this one class would be using. Whether that's right or not, I don't know. But just adjusting it, retail price, by virtue of using the New York price rather than adjusted Texas price or something of that nature seems to -- has a reduction in price, according to Mr. Reed. What about the price of gas? Another important piece.

The one thing that EGNB wants you to do is say look you have used this formula in this past. You need to be consistent, continue to use it again. But we don't want you to be consistent when it is to our disadvantage. So we have used in all the other applications the EUG price of gas. But you know what we don't have any customers who use this EVP, but we came up with an idea. We are going to have an EVP price for gas, and we will use that as a benchmark because it makes our spread better. We are going to abandon the EUG idea and we are going to come with an EVP. They have 20 percent of their customers are on EUG. And zero percent of their customers are on EVP.

Yet they want to use the EVP price. They want to break the practice of using application of consistency and use EVP price.

That alone by our calculation results in 27 cents knocked off their $4.54. The average monthly contract demand, if you look at the answer that they gave in their undertaking, and it's interrogatory number 3 by the EUB, when I read it, it's the justification of why they have used 350 gigajoules. And the evidence is clear that when that average monthly demand goes up, the rate goes down. The last application that this Board heard for this class, they used 487 gigajoules. This time they used 350. Very helpful for them to the point of about 22 cents a gigajoule using that 22 cents in the delivery rate. If you look at the answer to their interrogatory though, that interrogatory 3 to the Board, they say we did a calculation -- I have forgotten when it was in September or October. We did a calculation of it and that's the number we used four hundred -- and the result of it was the same, approximately the same as last time, so we used the same number as last time. Well that's not true. The last time they used 487. This time they are using 350. Why did they use 350? I don't know. They said they used the same as last time and they didn't.

In fact the number they said -- 300 -- the number that's the same, or substantially the same, I think it was 387 or something like that, as the last time, they said this time, we lobbed off one big customer, our client. Again, they want us in the class when it is to their advantage, and they want us out of the class -- sorry, when it is to their advantage. Why would they do this calculation? The calculation comes up to 616 gigajoules or more, I believe the evidence was if you include us in the class. Just using the 487 of last year -- consistent with last year, which I understand from the interrogatory was what they were intending to do, results again in a 22 cent change drop in that price.

Let me just -- Mr. Stewart addressed this issue briefly, the timing of the application. The Board has not dictated when an application must be made for a rate increase. But I think it is very telling that the -- looking at this budget issue that Mr. Radford addressed earlier, this budget column versus the reality. On October 4th for their own internal purposes, they did a calculation and said if we did a rate increase in October 4th, what would this formulaed calculation that we have been using in the past result in for a rate increase? And they come up with some numbers of what that would result in for their own internal budget. One month later, they actually made the application. In our class alone, LFO Tier 1 class alone, that represented, just that less than 30 day wait period because the calculation was, as I understand it from the evidence, October 4th and the actual application was calculated based on November 1st, less than 30 days results for an 11 month period for that one class of one and a quarter million dollars extra from 20 customers, just by waiting 28, 29 days. Is that what the system was designed to do? I submit it was not. And why, because nobody dreamed that it would have that kind -- the relative pricing would have that kind of volatility, because it never had had before. That's a 50 percent increase in the increased revenue sought from the one class -- a 50 percent increase in the revenue just by virtue of waiting less than 30 days.

In Mr. Charleson's primary evidence, his A-3, his answer 7, I went through this in his cross examination, indicates that it requires EGNB to adjust its rates at the earliest possible opportunity to ensure that EGNB is recovering the maximum amount of its costs -- costs interestingly of providing distribution service, to ensure its recovering the maximum amount of costs regardless of its impact on customers. He didn't say giving consideration to the impact on customers. It's regardless of the impact of customers. Our only objective is we are required to maximize the money we can extract from customers.

Just very quickly on this incentive issue. I must say I find that the concept -- and I am not an accountant. I am not an economist. I am -- some would say barely a lawyer, but in any event, I am at least a lawyer. The understanding is, I have a difficult time grasping the concept though that every dollar that EGNB, quote on quote, gives to customers by way of incentives, they get a 13 percent rate of return on it. They get the 13 percent. Customers pay it back, but they get a 13 percent rate of return on it. Now if I am wrong, I apologize. But if I am right, it mystifies me that a monopoly has carte blanche, because there is nobody who regulates how much money they give in terms of incentives. If I am right, they give away our clients money and earn 13 percent on the rate of return every time they do that.

In addition, of course, we as a customer have to pay whatever interest costs are associated with any borrowings required in order to be able to make -- give those incentives. And that just blows my mind as they used to say.

This concept -- I think -- Dr. Gaske wrote alluded to it yesterday, this competition, the fact that Flakeboard doesn't live in a bubble. It lives in the competitive world and it has -- its competition is not in New Brunswick. It's competition is in North America. When its competitors -- and when we have seen the relative pricing of gas, and in the chart that is attached to Flakeboard's evidence, the price of distribution service in their seven plants -- and when you look at that, and relative to Nova Scotia, this current rate is greater than anybody else and the requested rate is ridiculously greater than everybody else.

But the one thing you can say about the competitors, and this is not -- this is not just for Flakeboard, it's for Atlantic Wallboard, it's for Ganongs, it's for everybody, and that is if all the competitors are on gas, which is I suspect the logical thing for people to be on, then as the price of gas goes through the roof for the competitors, it will go through the roof for Flakeboard. So there is no real -- you know, there may some modest difference in the pricing they pay for gas, but there is no real competitive advantage or disadvantage that flows from that. As the price of light fuel oil goes through the roof, the competition down the street couldn't care less. They merely say glad I have gas. While Flakeboard, Atlantic Wallboard, Ganongs and others look at it and say, wait a second, even though I am not taking light fuel oil, I am getting whacked in the side of the head with a price increase that none of my competitors have even though I don't use light fuel oil. You can't be cost -- that doesn't work in a cost competitive environment. And I worry, as Mr. Stewart does, about the kind of consequences it will have. And don't -- don't get us wrong, I mean $850,000 a year extra for Flakeboard is -- I don't know what EGNB is -- but it is for Flakeboard a very substantial sum of money. It's a lot of money no matter how you slice it.

They are prepared to pay a reasonable rate. Are they anxious to pay the $2.39 there now? That rate is triple -- the current rate is triple what they signed on in 2004. Escalation of cost of living since then maybe 7 or 8 percent, just adjusting Mr. Ganong's evidence. It's triple, three times what they pay. But they are prepared to live with that, not anxiously, even though we submit that that's a rate that even subsidized costs and I will address that briefly in a second.

But what in essence is happening. The way I would describe it is is that Flakeboard is being asked -- and other customers in the LFO class are being asked to jeopardize a portion of their business, put it at risk, because of this competitiveness issue in order to subsidize other customers, residential and other classes of customers in the province of New Brunswick. I submit that is completely and utterly wrong and contrary to regulatory principles.

In closing I would just like to advance what it is that Flakeboard would like to propose that this Board do with this application. As indicated we believe that there should not be any increase in the current rate of $2.39. We firmly believe that a cost allocation study must be done immediately and should be ordered by this Board to be done immediately. The fact that no cost studies -- no cost analysis have been done a class basis, notwithstanding the June decision surprises us, but it needs to be done and it needs to be done immediately.

We would recommend that the Board schedule a hearing that would follow the cost study being done. And in that hearing it would determine a cost allocation between classes. It would determine the appropriateness of classes, because we have heard evidence today that suggests EGNB doesn't like us in the LFO current class for some purposes at least anyway, and we submit that there is no -- to use an analogy in another legal world no community of interest, because we are very different as a customer from most of the LFO customers. So it would be appropriate to move that to a different -- to create a different class for these substantially larger customers who are being serviced very closely to the main lines. Again cost structure being an important factor for determining what -- who should be in what class. Determine when and what tests should apply for the ending of the development period. Right now really the ball is in the court of EGNB to decide when it is over. There are a couple of quantifiable measures of what meant when it is over and these are a bunch of some other subjective issues of when it is over. And I submit that from the evidence the nature of what I heard I would submit that EGNB, even if this rate increase is granted, it would seem as though they wouldn't intend to apply early for the end of the development period. Of course, it is not in their best interest to do that we submit. It's certainly in the best interest of fairness. But have the Board address the issue. What specific things need to be addressed and when do they objectively get measured that the development period is over.

In that also, if it's determined the development period is not yet over for an individual class or you are not prepared to end the development period on a class by class basis, we would submit that you should review what market-based pricing should be used. In other words, if there is to be a market-based pricing still for some or all classes, what is the right formula under the current circumstances? Very different from the ones eight years ago.

Also to address the issue of segregating the deferral account issues, because as alluded to by Mr. Stewart and Dr. Gaske, I can't remember if Mr. Reed addressed it, the issue that essentially right now what is happening for at least some of the customers in the LFO class is they are paying in excess of their costs, their all in costs if you will, and are paying down somebody else's deferral account. That's what they are doing now. And that's not the way the system I don't think was intended.

And finally if the Board should conclude though that notwithstanding all of this that the formulaed approach -- notwithstanding all the changes and everything else, is the approach that the Board should use again and it's a quote unquote, fill in the blank number, then I have already indicated some of the blanks that need to be addressed by this Board, because they are as far as we are concerned wrong. But we would submit that notwithstanding all of that, that you can't lose sight of the fact that the other classes, the range of the rate increases that the other -- that are being sought in the other classes is for one zero -- between 11 and 26 percent. And we would submit that it would be inappropriate to have our classes increase be greater than the amount that is being proposed to be increased by the other classes.

The average of the other classes would be significantly less than 26 percent. We would submit the upper end of what we would should get as an increase for our class, if the Board is going to grant it, would be 26 percent.

And unless there are any questions, those are all the long comments I have.

CHAIRMAN: Thank you, Mr. Lawson. Panel any questions? Mr. Radford?

MR. RADFORD: Mr. Lawson, just some clarification. You mentioned two figures pertaining to setting the natural gas prices. Can you just explain those to me, please? What they are?

MR. LAWSON: In the formula, the two biggest most important elements of the formula are the retail oil price, so what price --

MR. RADFORD: No, no.

MR. LAWSON: Oh, I am sorry.

MR. RADFORD: The ones, you used --

MR. LAWSON: EVP and EUG?

MR. RADFORD: Yes. What was that about?

MR. LAWSON: Sorry. The EVP and the EUG -- the EUG, and I don't even know what it stands for to be honest with you, but it is a rate that's been charged by Enbridge to some customers that where they supply gas. And it is posted on their website as a gas pricing that's available. And so they had to use a benchmark of some sort in the past about what price should be used for gas for the calculations in this formula and EUG has been used.

They are now proposing in this application to change using this EUG concept and instead another acronym, EVP. That's I think Enbridge's variable price I think it is. And that's -- I don't know how it is calculated to be honest with you, but it is a different priced gas. EUG is a price of gas. EVP is a price of gas. EUG, they have 20 customers or 2 percent -- 20 percent of their customers on EVP. They don't have any on. But they are saying we are going to use this EVP price. Now it happens to be a lower price than the EUG. As a result, opens the gap more. We don't think it is appropriate.

MR. RADFORD: Yes, I understand, Mr. Lawson, now. I just didn't understand the two --

MR. LAWSON: EUG versus EVP. I totally understand the confusion.

CHAIRMAN: Mr. McLean any questions?

MR. MCLEAN: No questions.

CHAIRMAN: Mr. Toner?

MR. TONER: Yes. I am looking for a document. I am not going to mention the number, but there was a confidential documentation that we got this morning --

MR. LAWSON: This morning, okay.

MR. TONER: -- I am being very careful. Now that percentage --

MR. LAWSON: Yes.

MR. TONER: -- on that document, is that the same for all of Flakeboard's plant, or is that strictly the company overall or --

MR. LAWSON: I -- to be honest with you, I haven't any idea. I would be shocked it if was, just because we have seen the relative price of distribution service at each of the plants and it's substantially --

MR. TONER: And that's exactly what I am getting at. And in -- if we were to look at the -- and I don't mean to reference like the burner tip price for those --

MR. LAWSON: Yes.

MR. TONER: -- are we still looking at a 90 percent difference? Or like overall, I mean if you are looking at the gas price for your client, and you are looking at that 4.54 price and you are comparing it to your 2.39 that are paying now, so I am just trying to get a feel for what is the actual percent cost of product at the tip of the burners are we looking at?

MR. LAWSON: In each of the respective plants?

MR. TONER: Yes. Because $850,000 is a lot of money.

MR. LAWSON: Yes.

MR. TONER: But I am just trying to get a feel for what your opinion is?

MR. LAWSON: As to what the others are? I haven't got any idea. I apologize.

MR. TONER: Okay.

MR. LAWSON: I couldn't even speculate what the relevant pricing would be of each of them. But I guess our point is is this, gas prices are gas prices. And there is no regulation if you will with respect to the gas prices.

MR. TONER: Right.

MR. LAWSON: The commonality is the distribution component. And the distribution component here is dramatically higher than for the same volume in all the other jurisdictions where we do business and in New Brunswick and Nova Scotia, which is indeed a greenfield location.

MR. TONER: Now you stated earlier as well at the beginning and at the end of your -- this morning, when you spoke this morning --

MR. LAWSON: Yes.

MR. TONER: -- and if 2.39 you are comfortable with, 4.54 you are terribly uncomfortable and at the point where your company is looking for other methods of burning -- what -- and you alluded to what percentage, what are you guys think the price is fair and just, in your opinion?

MR. LAWSON: Just so you will know --

MR. TONER: And I don't want you to --

MR. LAWSON: -- I didn't discuss this with my client, even though I threw out that 25 percent idea, I would say an upper limit would be the 25 percent, as opposed to the 90 percent. But that is a randomly selected number. I really do believe that for the LFO class customer, when a close cost analysis is done and a review that whether or not there is a -- it's appropriate to continuing market-based pricing for this class, I don't think the determination would be made that it is appropriate.

The only reason to keep market-based pricing here is not to attract customers, because the five aren't coming, their obstacles -- their obstacles are different. So we are not -- market-based pricing isn't appropriate. The only reason to keep market-based pricing in place for this class is so that you can get enough money from them to carry the rest of the classes.

MR. TONER: So can I -- I am going to take you to this evidence and I think it is --

MR. LAWSON: Which tab?

MR. TONER: Tab 12. And I just want to make sure that I am walking away completely understanding this?

MR. LAWSON: Yes.

MR. TONER: So if you are looking at LFO Tier 1?

MR. LAWSON: Yes.

MR. TONER: And we look at their budget of 6.3 million?

MR. LAWSON: Yes.

MR. TONER: And applied increase at 7.5 --

MR. LAWSON: Yes.

MR. TONER: -- and so we are looking at percentage of what?

MR. LAWSON: Well bearing in mind the increase of -- the applied for increases is only 11/12th's of the year, because this was sort of their figure in here was --

MR. TONER: Okay. So there is one month missing?

MR. LAWSON: There is one month missing.

MR. TONER: Okay.

MR. LAWSON: And the key here is is that it is not the budget. The budget is almost a -- the only purpose for the budget is is that that's what they -- when they calculated it, if they did a rate increase using October 4th.

MR. TONER: But the volumes are the same though?

MR. LAWSON: The volumes are the same.

MR. TONER: So if we are looking at 1.2 million over 6.3 different, right?

MR. LAWSON: Yes.

MR. TONER: What the difference is?

MR. LAWSON: Yes.

MR. TONER: And if we look at any other class, GS, for example?

MR. LAWSON: Between classes?

MR. TONER: Or any class? Pick GS or CGS --

MR. LAWSON: Pick GS, on October 4th --

MR. TONER: Because the time frames would be the same. We would be taking time out of the picture, right?

MR. LAWSON: Well, I don't think the time is the same because the applied for increases for the LFO class is using the calculations as of November 1st.

MR. TONER: Right.

MR. LAWSON: I am not sure when the calculations were done for the other classes. But I am assuming that the applied for increases column reflects their calculations as of the date they did their application for those classes, which would be different.

MR. TONER: So that being in mind though, it would be the difference -- it would work in your favour though, if you look at the percentages?

MR. LAWSON: Oh, look there is no question. IF you decided that this 21 day average is appropriate, which I agree with Mr. Reed it is not, but if used 21 day average is appropriate and they decided to withdraw this application and said, you know, the price has gone crazier since, let's apply as of February 1st, the rate would -- instead of being $4.54, I think the indication is it would be five dollars and something cents for our class.

MR. TONER: Right.

MR. LAWSON: Of course, no question. And our arguments would be exactly the same that --

MR. TONER: But I guess my point is that if you take any other classes, it looks like there is about a 20 percent difference for each though?

MR. LAWSON: Between budget and applied for?

MR. TONER: Budget and applied for increase? Or less for the other?

MR. LAWSON: I can't explain that. I can't explain why that is to be honest with you.

MR. TONER: I am just using the same rationale that you said, you would find it fair if it was done for the -- as the same for all the other classes?

MR. LAWSON: Well the other class, I just look at it and say look, we all pay rates. And we are all getting the same kind of service. Some are on a much, much larger (inaudible), why is it -- and the driver in each of the cases is each light fuel oil prices, as I understand it, light fuel oil prices, the benchmark driver. That's what causing this escalation in pricing, for each of us. Why is that their rates should go up 25 percent for that escalation and our rates should go up 90 percent --

MR. TONER: Right.

MR. LAWSON: -- on the light fuel oil costs only went up 33 percent? That's the only reason for drawing the analogy between the classes.

MR. TONER: Thank you.

VICE CHAIRMAN: Mr. Lawson, I just want to ask you a couple of questions about your recommendation with respect to a hearing.

MR. LAWSON: Sure.

VICE CHAIRMAN: As you know on the Motions decision the

Board declared its intention, I will just read this here, "...to conduct a generic hearing for the purpose of determining the appropriate method that will be used when it is appropriate to change from the current market-based method."

So the hearing that we are -- the generic we are anticipating is to determine what methods will be used when the current method is no longer in place?

MR. LAWSON: Right.

VICE CHAIRMAN: And I am just trying to get -- to distinguish I guess between your suggestion and what we have declared our intention to -- is the main difference that you want -- you have stated that there should be a fully allocated cost of service study done before that hearing and a timing issue? Are those the main differences between what we have declared our intention to do and what you are proposing?

MR. LAWSON: The study I am proposing would be done by whoever is going to do the study and then would be the subject matter of the hearing along with -- the Board is indicating that we need to decide what is appropriate sort of at the end of the development period effectively, whether do it by class by class or otherwise. We are suggesting that you need to first look at the question of when does the development period end. So that needs to be determined. In the meantime, what are the cost allocation between classes? So do a cost allocation study and then as part of that hearing process also decide what are the cost allocations between classes, because that has to be done. And once the development period of over, whatever determination has been made about when that should end what rates, type of rate settings should be applied for the classes on a go forward basis, which will have to deal with all sorts of things, like -- I mean this -- again, much like the power rate increases in which we participated -- the hearings we participated in the fall.

We are not really anxious to participate in those hearings. This is a very expensive process to proceed. But we think the Board has to go through it and I am hoping my clients will see the wisdom of participating. But we think the Board has to go through that process to make a determination on a go forward basis.

So I see the hearing being broader than the hearing that was contemplated by the Board and having to address basically all the issues. When does the development period end? What cost allocation should there be? What method of pricing should be determined on a go forward basis? Post-development period? All those issues have to be addressed.

VICE CHAIRMAN: Thank you. And my own part I just echo your comments that I hope all of the interested participants in this participate in this process as it goes forward.

MR. LAWSON: And I think it really does require that participation to have the Board get a fair and balanced hearing. The real difficulty is I mean there are 20 customers in this class. There are only two customers here. Just happens to be the two largest customers, because this is an intimidating process for most customers and it's an expensive process for most customers. And so they don't jump into these things very willingly. And I just look at -- we have had four days of hearings, or three and a half -- almost four days of hearings and this morning's argument, for example, there was something said -- that was unchallenged, the 18 percent and the 11 percent unchallenged. Well, quite honestly, I would like to be able to say with certainty we turned very stone to make sure that all the evidence was absolutely complete and accurate. We didn't. Economics drives us to not be able to challenge each and every thing. Much the same as in the power rate increases, we can't look at each and every factor. It's just cost prohibitive.

As a result, there is some things we left. I don't agree with those facts, and I don't think they are right, but you have to have people participate in the process to be able to get a fair and balanced perspective on this. Never going to be perfect.

VICE CHAIRMAN: Thank you.

CHAIRMAN: Mr. Lawson, I take it that your primary position then is that the application should be dismissed and that there would be no increase?

MR. LAWSON: That's correct, Mr. Chairman.

CHAIRMAN: But I also take it from your remarks that in the event that is some increase on a market-based system, that the inputs if you will into the calculation should change in a number of respects?

MR. LAWSON: Yes, Mr. Chairman.

CHAIRMAN: I think as I followed through you mentioned, for example, the use perhaps of the EUG versus the EVP system. And I think you said that would result in a difference of about 27 cents. And then you referred to the average monthly demand and it that was calculated in a different fashion, that would result in a reduction of 22 cents?

MR. LAWSON: Right.

CHAIRMAN: But you also mentioned the calculation of the retail price of oil. And I don't believe that you indicated what difference that would have made in terms of a dollar amount. Do you have that amount?

MR. LAWSON: No, Mr. Chairman, I apologize. I did indicate that I don't have it, because I didn't do the calculation. And it wasn't something -- we looked at it last night to see if we could figure it out, but it's -- there are more variables than we could quickly figure out to be honest with you.

There are -- one of the answers to the undertakings that the Board -- EGNB outlines sort of the variables, the various factors how to get to that. I don't know what kind of impact it does have.

CHAIRMAN: And I think if I put the question a different way, is it possible that depending on timing that that amount could work to your disadvantage? Is that a time issue with respect to that calculation or would you know?

MR. LAWSON: No, my understanding -- and I don't -- and I stand to be corrected on this, my understanding is is that what was being done yesterday or the day before was a formula was calculating a price -- and I can't remember if it was resulting in a New York price and then I understood that the Board was saying isn't there also a New York price, so you don't have to do the formulaed calculation, and that the result is that the price at the New York price was in fact lower than the formulaed calculation. I don't know if that's right. But I don't see that would make a difference negatively.

CHAIRMAN: Well my question is though that if it would produce a more favourable result, for example, based on the information that might have been available on a given day, perhaps yesterday, are there days when in fact the opposite result could be produced or do you not have the answer to that?

MR. LAWSON: As you can guess from my answer to your last question, I don't really know a heck of a lot about what this subject matter deals with. It was an inquiry of the Board, which I thought was very good, but I don't know what difference the day to day impact would be if it was done day or the next. I am sorry. I don't know. And I can't conceptualize whether it would make a difference.

CHAIRMAN: And I was going to ask you what you would see as a sort of a maximum, as I understand as a result of the question Mr. Toner asked that you thought maybe -- am I correct that you said a 25 percent --

MR. LAWSON: 26 percent is the upper limit of the request for the other classes. So we submit that the upper limit, even though theirs is quite a broad range, the upper limit would be the upper limit that should be entertained for this class, given again that which is driving their increase is the same which is driving ours, which is a 33 percent increase in light fuel oil.

CHAIRMAN: Thank you.

MR. LAWSON: Thank you, Mr. Chairman, Members of the Board.

CHAIRMAN: Mr. Hoyt, I guess you get the opportunity for rebuttal. Do you need a break or is it going to be a lengthy rebuttal?

MR. HOYT: It shouldn't -- the rebuttal will probably be 20 minutes or so, but I would like a bit of a break before proceeding.

CHAIRMAN: We will take about -- actually I think we will take -- it's quarter to 1:00 now, so we will take a little bit longer break. I was thinking to about 1:30. Does give everybody a chance to get out and perhaps grab a bite to eat and get back? All right. We will reconvene at 1:30.

(Recess - 12:45 p.m. - 1:30 p.m.)

CHAIRMAN: Good afternoon. Mr. Hoyt, are you ready for rebuttal? Mr. MacDougall, I guess.

MR. MACDOUGALL: We are a tag team again, Mr. Chair. I think it's I was the scribe, and I don't think anyone else could read my handwriting. So I can't claim that there is anything beyond that.

Mr. Chair, Board Members, thank you for this opportunity to reply to the Intervenors' evidence from this morning.

First off, EGNB fully concurs that rates must be just and reasonable and that burden is on EGNB and EGNB believes they have totally me that burden in this proceeding. There is no argument that the rates must be just and reasonable and that it is our burden to meet in that regard.

However, unlike mentioned this morning, EGNB has never suggested at any time that the Board was bound to any specific outcome. We did not put that forward, although we believe it was mentioned by one of the parties this morning.

EGNB's position is that this Board must base its decision on the application before it. And the case we put forward was what we felt the burden was and what was necessary to be met by EGNB in this application in large part based on the methodology that has occurred in the past and the Board's rulings as we understood them to date.

In our view what the Board must do is to look at the actual evidence and the actual background to EGNB's application.

In that regard in reply to some of the issues raised this morning, the Intervenors have provided no evidence that the viability of any customer is in question. Although their counsel made those statements this morning. When asked they refused to provide any cost structure information and absolutely no evidence on their gas cost at the burner tip.

The Intervenors themselves said this information was in their view irrelevant, which of course EGNB's position is it is not with respect to the application of the market-based methodology.

Their counsel have no evidence on which to support the contentions of the viability or otherwise of their clients based on this application.

Now EGNB's evidence is that we are applying for a rate cap. The actual go forward rates could well be lower . In the last rate case, for example, EGNB immediately used the rate rider where the spread was not sustained from the time of the initial application to the date of the decision. If the spread is sustained, the rate cap is perfectly reasonable.

But it is important, and the Intervenors never seem to raise this that what is being put forward here is a rate, an increase in the rate cap.

The market-based approach was developed and has always been implemented to provide a savings to the alternate fuel. It has never been related to cost no matter what Mr. Stewart may say to the contrary.

If we look at the June 23, 2000 decision and I don't think we have to pull it up, I know the Board has it, that Mr. Stewart referred you to some extracts of, we would actually see at that time the initial rate setting. There was a 30 percent discount to cost for the residential class from their alternative fuel, now 20 percent and 15 percent for LFO, now 10 percent. All LFO customers fully knew this.

On the issue of EGNB's budgets, this was raised by both Mr. Stewart and Mr. Lawson, and I know there was a question raised this morning as well by Mr. Radford. EGNB's budgets have nothing and never did have anything to do with EGNB rate case filings. It is simply the regular corporate budgeting exercise. EGNB merely provided this info in this proceeding in response to an information request.

At the time of the 2008 budget, EGNB assumed it could raise rates based on the then available information. So it used it in its corporate budgeting exercise. But the budgeting exercise has nothing to do with rate cap application filings.

Since EGNB may have to use the rate rider, it is very possible that if the budget figures, for example, were relied on in setting the cap in this proceeding, EGNB will not even meet its budget, let alone the revenues that current market conditions would support. The Intervenors either do not understand or choose --

MR. RADFORD: Would you just say that last sentence again, please?

MR. MACDOUGALL; Certainly, Mr. Radford. If in this case you were to rely on the budget figures, rather than relying on what EGNB has put forward, because there is a chance that EGNB would have to use the rate riders, there is a very good chance that the revenues -- that the budget would not even be met, let alone the revenues that EGNB is seeking as appropriate for the rate cap, because the rate riders would go below the cap that is set at the budget --

MR. RADFORD: Yes.

MR. MACDOUGALL: -- and we wouldn't even reach the budget. And it is this very methodology that the Intervenors appear to either one, not understand, or two, choose to ignore.

This application is to raise the rate cap. And this provides EGNB with the flexibility to deal with the deferral account, which is already at $118 million. And as Mr. Lawson said, some 10 times greater than originally anticipated and the development is longer than was forecast.

The date of the budget has nothing to do with the date of the application. As we noted, every day since November 1, the spread has been even higher than the application, let alone the date of the budget. If the cap is not reasonably close to the current market spreads, then the riders become useless and the entire methodology is essentially rendered mute.

As well the rate cap is not structured to stay in place for any defined time period, notwithstanding what Mr. Reed or Mr. Stewart may say. The cap stays in place as long as appropriate based on market conditions and then the rider is used to operate within the cap.

Again on the evidence, there is no evidence of these so-called massive cost subsidies that Mr. Stewart mentioned. No evidence whatsoever.

And with respect to any subsidies within in the class, AWL and Flakeboard are in fact only two customers in the overall LFO class which the rate application is aimed.

The current spread between oil and natural gas must be addressed. It does not need to fully be tracking identically all the time. What is important is the directional changes. Both oil and natural gas are higher than they were in 2000. The previous LFO rate case increased rates from 97.73 cents to $2.39. No different than the situation of the application today. If the spread is sustained, the cap is appropriate. If it is not sustained, the riders will be used.

Again with respect to statements made by both Mr. Stewart and Mr. Lawson, the evidence re rates in other jurisdictions clearly shows the wide disparity, in some cases a ten-fold difference even between mature utilities, gas distribution costs.

This is in fact the evidence of Mr. Stewart's own expert. And all of these rates were, as far as we understand, approved in their various jurisdictions as just and reasonable.

The construction plans raised by Mr. Stewart are clearly not reflective of who eventually signs up for service. They just deal with what is known for construction for upcoming years. Also Mr. Stewart made some comment about the customer who was within 30 kilometers. I think he said that we didn't have the transcript, but the parent organization however has rejected this. In fact that is not the evidence at all.

What Mr. Butler said is that it has been agreed as the right thing to occur at the company level in New Brunswick, and it has been brought forward to the parent for approval. That's where it currently stands.

With respect to Mr. Lawson's comments, if Flakeboard gets a reduced increase, it simply gets an even higher saving than the $14 million through 2008 that they are forecast to have achieved from their time of conversion, along with their one year conversion payback. And AWL's data shows that it will use essentially the same amount of gas as Flakeboard. I think both of them were estimating $2.1 million. They simply see greater savings in these periods of higher energy prices against the alternate fuel than they would otherwise think.

Now with respect to the issue of the contract demand and the issue raised by Mr. Lawson of using 487, rather than 350, to use anything other than the current average of the typical customers in the class would not give a proper picture of current market conditions. And I think that was well said by Mr. Charleson at page 366 of the transcript where he said, and what we found when we looked at the average in October, that it was very comparable to the average that we had seen from the analysis we had been using for a period. And as a result we -- you know, the

350 that we had been using as our basis for determining whether a change to rates was required appeared to be an appropriate still and a reasonable reflection of the average contract demand. That is the evidence in this proceeding.

Now, Mr. Lawson also said that the rate increase in his view should be capped at 26 percent and he was basing this on the range of the increase in the GS case, the one that's coming up that went from 11 to 26 percent. And he said the 26 percent was at the high end of that range. The problem is that Mr. Lawson unfortunately compared apples with oranges. He compared that to the 90 percent increase.

In fact the 11 to 26 percent increase in the GS classes is a burner tip percentage. And it's properly compared to the 11 to 18 percent figure that is in EGNB's testimony. The 90 percent figure that the Intervenors have been bandying about is just the increase on the first block, not taking account that there is no increase in the second and third blocks in the LFO rate, the only rate with the tiers and no increase in the contract demand. So in fact if one looks at it, the increases in the LFO class at burner tip average are at 11 to 18 percent, compared to the GS of 11 to 26 percent. That is the proper comparison.

I would like if, Mr. Chair, if the Board Members could look to its A-10, but it was actually in the package of materials Mr. Stewart used, so I think it is the document behind tab 12. And Mr. Stewart made some comments about the extent that it appeared to him that the LFO class was driving all of the increases. I would just -- if the Board members could look -- if you can look at the no increase compared to the applied for increase, there is a differential there of approximately $8.9 million. In fact -- and we won't do all the math here, but after today, if parties take a look at it, you see if you look at that column for the various classes, $5.5 million of that is coming from classes other than the LFO. So more of the increase is coming from the other application than from this application.

I would also like on A-10 with respect to something raised by Mr. Stewart, if you look at 2007, the bottom line it says $21,132,000. That's the forecast figure for 2007. If you go to his -- I believe it's tab 10, and you go to page 2 of 14, you would see under 2007, 18.4 million. These are the figures he was referring to. Well in fact that is the actual number for 2007. So comparing it to the figure under tab 12, 21,132, you will actually see that for 2007, EGNB missed its budget by some $3 million and that of course was being of changes in market conditions that are different from the budget.

Mr. Chair, you raised a question to Mr. Lawson about the fact that the New York Harbour price may work for the Intervenors one time, but against it another time. And in fact the only number we have was the comparable number for this application, because Board Staff asked us to do it as of given day. And in fact it showed what it showed, but EGNB has also not done any analysis of what would have occurred on any other given day, but we do concur with you that it could well be different one way or the other depending on what the formula did, as opposed to what the numbers would reflect on any given day of the actual. And it is in fact for that very reason that we have used a consistent formula throughout the various applications.

In fact we would also suggest that the same question is relevant in relation to EVP. The issue of EVP versus EUG, as raised by Mr. Lawson, because as I pointed in Mr. Charleson's evidence, although the EVP price used in the current application results in a slightly higher delivery charge, it is because of a current anomaly within the EUG rate. And I think Mr. Charleson said on the stand this was because there was out of the money hedged, that's out of the money hedge that it is now being cleared through that account with the EUG customers and that will then switch back in the other direction when that is done, which we understand will probably be by about the middle of this year.

Mr. Chair, just in conclusion, essentially what the Intervenors are asking you to do in a whole bunch of different manifestations is to make or potentially make various changes to the methodology without them in anyway keeping into account how the methodology works as a whole by setting the rate cap and allowing the rate riders to be used flexibly underneath that. The changes they propose in almost instances would in one manner or another lead to making the methodology quite mute because it would mute the signal that's required to then subsequently use the rate riders. And again we believe that the fundamental misunderstanding or lack of acknowledgement of the rate cap is a -- is driving maybe some of the comments that they are making, which we don't think are appropriate changes in this application.

Mr. Chair, that's the end of EGNB's reply evidence. Thank you for the opportunity have participated over the last four days.

CHAIRMAN: Thank you, Mr. MacDougall. Are there any other housekeeping matters? Any sort of loose ends that we haven't dealt with undertakings or anything of that nature? I can't think of any, but I just want to canvass the parties to be sure. Mr. MacDougall, nothing that you are aware of? Mr. Stewart? Mr. Lawson?

MR. LAWSON: No, Mr. Chairman.

CHAIRMAN: Ms. Desmond? Well at this time then I want to thank the parties and their counsel for their professional manner in which they have conducted themselves throughout this hearing. The Board really appreciates the thoroughness of which the parties have addressed the issues that we now must deliberate upon. We will do our best to get a decision out just as quickly as possible.

I think I may have made the mistake in the DISCO hearing of actually predicting a release date, which of course we have now gone by. So I am not going to do that today. Simply to give you my undertaking that we will work on it diligently and get it out just as quickly as we possibly can.

I also want to thank Board Staff and our court reporter again for the services that they provide to us and the efficient running of the hearing.

So, Ms. Desmond, nothing further that I need to deal with? Then this matter is adjourned.

(Adjourned)

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

Reporter

## E

## Q



## R