New Brunswick Energy and Utilities Board
IN THE MATTER OF a Review of Enbridge Gas New Brunswick's Market Based Formula
held at the New Brunswick Energy and Utilities Board, Saint John, New Brunswick, on April 24th 2009.

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PANEL: Raymond Gorman, Q.C. - Chairman
Cyril Johnston - Vice-Chairman
Donald Barnett - Member
Edward McLean - Member
Steve Toner - Member

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

Board Secretary - Lorraine Légère

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CHAIRMAN: Good morning, everyone. I will take the appearances starting with Enbridge Gas New Brunswick Inc.

MR. MACDOUGALL: Good morning, Mr. Chair. David MacDougall. And our tanks our thinning. Today with me is Mr. Charleson. And there is no one in the back row.

CHAIRMAN: Thank you, Mr. MacDougall. Our room is big enough today. Atlantic Wallboard?

MR. STEWART: Christopher Stewart for Atlantic Wallboard. And I'm joined today by Mark Bettle.

CHAIRMAN: Okay. And Mr. Sorenson is not here for Competitive Energy Services. Flakeboard Company Limited?

MR. LAWSON: Good morning, Mr. Chairman. Gary Lawson. And with me is Barry Gallant. And I have been remiss. There is also a Scott Giddens with me and has been for the last couple of days as well for Flakeboard. So he is also with us.

CHAIRMAN: Welcome, Mr. Giddens. And the Department of Energy is an Informal Intervenor. Public Intervenor?

MR. THERIAULT: Good morning, Mr. Chairman. Daniel Theriault. And I'm joined this morning by Robert O'Rourke.

CHAIRMAN: Thank you, Mr. Theriault. New Brunswick Energy and Utilities Board?

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

CHAIRMAN: Thank you, Ms. Desmond. So this morning I guess is for final argument. And if there aren't any preliminary matters that anybody wants to raise, Mr. MacDougall, I call upon you first.

MR. MACDOUGALL: Thank you very much.

Mr. Chair, Board Members, thank you for the opportunity to provide Enbridge Gas New Brunswick's Final Argument in this proceeding.

The Order of the Board dated December 15, 2008 which mandated that this hearing go forward noted that it arose out of the two decisions of the Board on April 9, 2008 which directed EGNB to, and I quote, "participate in a technical conference and thereafter a generic hearing to examine all of the elements in the market-based rate formula used to derive the rates charged to customers."

EGNB provided written testimony in this regard on January 26, 2009. It provided responses to various information requests on February 23. And it provided amended evidence and supplemental IR responses on March 19.

EGNB's evidence clearly supports the market-based rate formula being put forward by it and fully supports the various elements of that formula.

It is important to note at the outset that no party has filed any evidence contradicting any of the actual elements of the market-based rate formula put forward by EGNB. Mr. Strunk has suggested certain of what he calls "refinements" to the market-based formula, but none of the so-called refinements address in any way the actual elements which make up the formula. We will deal with

Mr. Strunk's evidence shortly.

As part of EGNB's evidence it had a report prepared by M. J. Ervin & Associates which recommended appropriate benchmarks and market spreads for distillate fuel prices to be used in EGNB's market-based rate formula. There was no evidence filed by any other party in relation to this specific topic.

On the totality of the evidence in front of the Board, EGNB submits that it has established that the market-based rate formula it is proposing is appropriate for the remainder of EGNB's Development Period and is just and reasonable.

I would like now to talk for a bit about the Public Intervenor evidence.

The Public Intervenor put forward the evidence of Mr. Strunk. Mr. Strunk made three proposals which he referred to as refinements to the methodology. As I previously noted, and as I will expand upon momentarily, Mr. Strunk's proposals are far from "refinements". Two of these proposals are fundamental deviations from the methodology, and his third proposal is actually for the development of a new rate.

Dealing with his first proposal, Mr. Strunk suggests that a single residential rate be established that would be set at the lower of the existing SGSRE and SGSRO rates. The driver however for this recommendation came from Mr. Strunk's Exhibit 2 analysis. However, as the cross examination of Mr. Strunk with respect to his revised Exhibit 2 demonstrated, with the exception of a brief period of approximately a month, two at the very most, the SGSRO and the SGSRE rate have each been consistently below the delivered cost of electricity from NB Power. Thus there is in fact no foundation for Mr. Strunk's proposal to begin with.

In its Decision of November 24, 2006 this Board explicitly approved EGNB's application to replace its SGS rate class with three separate rate classes, the SGSRO, the SGSRE and the SGSC. In that Decision the Board stated as follows, and I quote again, "The Board has carefully reviewed the application and supporting evidence. The Board believes that the proposed changes will be in the public interest during the period of time that the use of market-based rates remains appropriate."

EGNB's market-based rate methodology is used to provide a target savings to customers from their competing fuel. In order to effectively market natural gas during the Development Period, the aim of the market-based regime is to provide the target savings necessary to incent customers to switch from their current fuel source. This is why EGNB applied for, and the Board approved, the development of the three specific SGS classes in 2006. Nothing has fundamentally changed in the marketplace from that date.

Mr. Strunk's proposal completely fails to recognize the impact on the deferral account. If the lower of two rates is used, then an entire class will be provided savings that are more than sufficient to incent their conversion. The level of savings will be overstated (possibly significantly) not only for new customers in that class, be it the SGSRE or the SGSRO, but for all the customers in that class who have already converted. EGNB's rates do not change just for new customers. When a change in rates is made, it applies to all customers in the class, those who already exist and those new customers who may join the class. As such, there is a significant negative impact caused by Mr. Strunk's proposal by reducing the revenue that is coming from all of the customers in the referable class who already exist. As is clear from Exhibit 7 (a), which was Attachment 1 to Mr. Charleson's Opening Statement, and which uses the current formula rates as an example of how Mr. Strunk's proposal would work, it would be necessary to immediately add approximately 1,600 new SGSRO and approximately new SGSC customers, a 33 percent and 65 percent increase in these customers respectively, to offset the revenue loss caused by the proposal. As Mr. Charleson made clear, EGNB simply does not believe this is realistic, nor has Mr. Strunk provided any evidence that the use of his proposal would generate enough customers to come anywhere near to offsetting the resulting increase in the deferral that it would cause.

Finally on this point, this proposal would lead to a confusing array of target savings, since the target savings levels would no longer be consistent. Presently they are 20 percent for both SGSRE and SGSRO customers. Under Mr. Strunk's proposal, one group of residential customers would see larger savings than the other. As Mr. Charleson explained to Mr. Theriault, EGNB's marketing plan is to be able to demonstrate to customers that they have achieved the necessary target savings level.

As was demonstrated in cross examination, Mr. Strunk's own analysis with respect to this proposal, which analysis starts with the fundamentally flawed assumption that his proposal was already in place in 2007 and 2008, shows that one would not even reach a cash break even until 2015, and only if his proposal retrospectively applied achieved an additional 8 percent incremental growth in both 2007 and 2008 of EGNB's entire market potential. If anything, his own analysis shows that Mr. Strunk's proposal would not have the desired effect, and is ill conceived,

Mr. Strunk's second proposal is to cap the rates arising out of the formula. He proposes that the Board look at either a cap based on actual costs of service or a cap based on inflation. This proposal would have the same impact as his first proposal. There would be greater savings than necessary for customers to convert, lower rates than necessary for those who have already converted, and unnecessary additions to the deferral account if the cap were reached. Equally problematic is the capped rates would no longer demonstrate any relationship whatsoever to the market for which the rates are to be set, essentially nullifying the entire intent of market-based rates during the Development Period.

In Exhibit 7 (b), which was Attachment 2 to Mr. Charleson's Opening Statement, EGNB utilized its existing rates at January 1, 2008 and demonstrated what would occur as a real life example under Mr. Strunk's proposal if the rates had been capped at inflation in the 2008 rate case. This exhibit demonstrated that there would be a forecast annual revenue reduction of approximately $9.5 million, which would require a significant increase in the number of incremental customers to overcome. Again, Mr. Charleson noted that this was an incremental increase which EGNB simply does not believe is achievable. Mr. Strunk has provided no evidence to the contrary. Interestingly, even to achieve the significant number of incremental customers suggested by the EGNB analysis, this would require 27 new high volume LFO customers, when in fact EGNB has only identified three potential new high volume LFO customers available to be attached to its system. As such, all of this LFO revenue would have to be recovered from the other customer classes, increasing even further the incremental number of customers required from those classes.

A cap at cost of service would be equally inapplicable during the Development Period when rates are being set to provide a target savings from competing fuels and are purposely designed on a non-cost of service basis. Mr. Strunk's examples in this regard were with respect to negotiated rates in mature utilities with large customer bases to spread out their costs. These examples are not relevant to the purpose of rates designed to provide a target savings against competing fuels.

Mr. Strunk's third proposal is to suggest that another "optional" rate designed to provide a fixed-price delivery service for customers who have elected for a fixed-price commodity offer. Mr. Strunk's proposal fails to recognize that there are various types of commodity offerings, and unlike the EGNB proposal, which aims to provide a target level of savings for typical customers in a class, Mr. Strunk is attempting to provide separate services for similar distribution class customers based on their commodity offer. As EGNB indicated there are various issues with this proposal. First, it fundamentally fails to recognize the postage stamp nature of EGNB's approved delivery rates by providing a different price for the same class of firm service. Second, EGNB would be unable to maintain a target level of delivery rate savings as commodity prices moved during the course of the year, either leading to an insufficient incentive for customers to convert or unnecessary additions to the deferral. And third, other gas marketers would likely see this as an unfair advantage tied to the Enbridge fixed-price commodity offering depending on the nature of their commodity offerings. In this later regard, Mr. Strunk himself noted in his testimony, and I quote, "such a rate offering would need to be designed to assure that it did not create distortions in the market for commodity gas supply." Finally, from his Opening Statement, Mr. Strunk appeared to resile somewhat from his filed position, and now to suggest the fixed-price delivery service rate could apply to any customer whether having fixed commodity pricing or not. This is even more problematic as it exacerbates the issues that I have just explained. There is no evidence of any call for such a distribution rate in the marketplace, and Mr. Strunk's proposal would bring with it many issues that are unwarranted, and he proposes no basis on which to actually set such a rate.

In conclusion, on the topic of Mr. Strunk's evidence, EGNB submits that none of his proposals address the elements of the market-based formula, and each of the proposals are actually contrary to the form of the market-based rates methodology appropriate for the Development Period. And these proposals do nothing to balance the objectives of the formula to both incent conversions and minimize additions to the deferral account.

I would now like to discuss EGNB's proposal and some issues that arose with respect to it.

The market-based formula proposed by EGNB is similar to the existing formula with some enhancements for purposes of transparency and accuracy which I will discuss shortly.

First, however, EGNB commends to the Board its response to PI IR-13 (2), where EGNB shows the target savings for each of the rate classes for 2002 to 2008 and the historic savings for the same years. EGNB has consistently been able to provide actual savings in the range of the target savings. EGNB is equally confident that the same market-based formula, enhanced as it has proposed, will continue to meet the target savings goals of the methodology.

With respect to the methodology itself, EGNB has proposed the following enhancements:

1. All calculations will be standardized to four decimal places;

2. Two calendar months of trading data will be used for establishing the maximum rates instead of the twenty-one trading days that had been used historically;

3. Annual consumption data and customer usage profiles have been updated to reflect recent experience with EGNB's existing customer base, and a process for updating these numbers on a go forward basis has been proposed, essentially utilizing the preceding twelve month's data; and --

4. Based on the report of M. J. Ervin & Associates, the determination of retail oil prices has been refined to

rely on trading data for No. 2 New York Harbour Oil for all retail oil prices, excluding heavy fuel oil, and the retail margins have been updated to reflect the findings of the M. J. Ervin & Associates report.

M. J. Ervin & Associates are leading experts in the field of petroleum pricing and their evidence stands uncontroverted on the record. Mr. Ervin proposes that heavy fuel oil continue to be set off of the WTI crude prices. He has also concluded that the New York Harbour No. 2 oil price is the appropriate benchmark for New Brunswick retail rack prices, and he has proposed the applicable spreads to this benchmark based on market information. It is clear from the record that in the absence of forward prices for New Brunswick rack pricing the best available benchmark is New York Harbour No. 2 heating oil.

The only question raised in respect to the market spreads proposed by Mr. Ervin was why he relied on the Saint John market. He noted that it was the single largest retail oil market in New Brunswick, it lies alongside and is geographically co-existent with the Saint John rack, and as noted in his response to EUB IR-15, the variance to other markets in New Brunswick was minimal, 0.3 cents per litre.

With respect to questions raised about the potential use of Brent vs. WTI as the benchmark for HFO, Mr. Ervin noted that on a forward basis, as utilized for the market-based rate formula, there would be little difference between Brent and WTI, and that he favoured the use of WTI as the NYMEX for WTI is a well established forward based market.

In response to a question from Board counsel, Mr. Ervin specifically noted that he did not think it would be useful to update the HFO spread annually as although the figure being used may change, it will likely be over a longer term period (5-10 years) as refineries upgrade, reducing the amount of resids on the market.

In response to questions from Board counsel, Mr. Charleson likewise confirmed that EGNB did not see value in updating the market spread data for each application as this would require carrying out a new study each time, which would entail significant effort and cost.

Similarly, the data from Mr. Ervin shows that the spread between the average New Brunswick retail price and the New York Harbour No. 2 oil spot price is relatively stable, and this is shown in Figure 5 of the M. J. Ervin report. Mr. Ervin indicated that over the past five years the spot-to-retail spread in New Brunswick averaged within a tight band, with a standard deviation of only 2.8 cents per litre. Further, and certainly as important, the proposed starting point for this spread is the maximum available spot-to-retail margin of 23 cents per litre which is actually fixed by regulation.

Ms. Desmond raised a few issues on cross examination with respect to some other aspects of the market-based formula elements. I would like to address some of these briefly. First, she queried whether it would be more appropriate to use the median rather than the mean figure for the actual natural gas consumption usage used in the formula. However, as was discussed,t he mean is an average of the usage of all the customers, and the median is simply the centre point. There would be significant issues using the median as opposed to the mean. The median only represents the usage of a single customer somewhere in a data set. There is nothing necessarily representative of the class by that single customer, especially considering that this data is used not just for the average usage but it is used for the customer usage profile. The mean on the other hand is meant to be an average of the usage of all the customers in the class thereby deriving a typical usage value and a typical usage profile. These are substantially different concepts, and the median would simply not be appropriate in the circumstances of the market-based formula.

Board counsel also raised some questions with respect to the usage, as part of the average of a class, of customers who are above who are above the class threshold for volume usage. As a starting comment we would note that in fact there is no maximum usage level in either the SGSRO or the SGSRE classes,so this issue is not even relevant to those specific classes. As Mr. Charleson noted further, until such time as customers above a class threshold may be moved into another class their usage is part of the class in which they are in. If these customers' usage was not used in the average, these customers themselves would see larger target savings than appropriate, unless the customer was actually moved out of the class as well as not being used in the usage profile. Although EGNB from time to time reviews customers to determine if they should move from class to class, until the customer is actually moved it would be inappropriate to discount usage from the specific class of which they are a part.

Finally, there are always usage variations in each class. And the averaging of the methodology recognizes such variations. Since annual usage changes from year to year, customers in one class may go over the threshold in one year and then come back down in the next year. EGNB would not move them out of the class, and their usage should remain part of the class.

In summary on this point, it is the usage in the class that is appropriate to determine the typical target savings for the class, and although EGNB will continue to monitor whether there are required changes in specific customer classifications, it would not be appropriate for the purposes of the market-based rates to notionally move usage from one class to another where it does not actually reside.

Now I would like to briefly discuss the topic of efficiencies. Mr. Theriault appeared to suggest that as some oil furnaces now being replaces by gas are newer equipment with better efficiencies, EGNB should not use the 65 percent as the seasonal efficiency for oil appliances in the SGSRO and SGSRE classes. Mr. Charleson acknowledged there has been some displacement of newer furnaces. However, he then indicated this was in part why EGNB is confident in retaining the higher seasonal efficiency of 68 percent versus the 65 percent that relates back to the older furnaces.

Ms. Desmond also raised an issue with respect to the

87 percent efficiency factor for natural gas being used in the SGSRO and SGSC rate classes based on the mix of natural gas boilers and furnaces. With respect to the gas equipment shown in the attachment to EGNB's response to EUB IR-5, there are approximately 1,000 boilers with a weighted average efficiency of 89 percent and 3,100 furnaces with a weighted average efficiency of 93 percent. Taking into account that some of the customers with a natural gas furnace also use lower efficiency natural gas water heaters for a smaller part of their load, EGNB derived a somewhat lower natural gas efficiency figure of 87 percent. As such, the 87 percent figure put forward by EGNB is consistent, and perhaps conservative, for the gas equipment usage (boilers, furnaces and water heaters) that is in the actual marketplace. We also note that although questions were asked of EGNB on this topic, no party has filed any evidence on the record suggesting any other efficiency factors are more appropriate.

With respect to the questions raised regarding volatility, of course volatility is an aspect of commodity markets, and market-based distribution rates will by necessity be impacted more significantly in periods of higher volatility than in periods of lesser volatility. However what needs to be recalled is EGNB's consistent use of the rate riders and reinstatements has displayed, that EGNB manages this volatility through the flexibility of these mechanisms, and continues to deliver the targeted value proposition to its customers. This is exactly how the market-based methodology was intended to work. If anything, the recent experience of tracking savings levels during periods of high volatility demonstrates the success of the market-based rates formula, and EGNB anticipates that its proposed refinements to the formula will only enhance this success.

With respect to the questions raised by Mr. Stewart and Mr. Lawson regarding the LFO rate, we would simply note that if anything the historic actual savings compared to target savings for the LFO customers have been on the high side, as demonstrated by EGNB's response to PI IR-13 (2). EGNB has captured a high percentage of this market with the exception of a few LFO customers who Mr. Charleson indicated are not being deterred by the target savings but by various other factors. The market-based rates formula is continuing to provide very attractive levels of savings for the LFO class opposed to its alternative fuel. There was no evidence put forward by Mr. Stewart or Mr. Lawson to the contrary, simply because there is no evidence to support any other conclusion.

I would now like to briefly discuss the application of the formula.

I would first like to address the point raised by the Chair of whether there should be a different approach for rate riders and rate reinstatements than for the setting of the maximum market-based rates. EGNB submits that the different approach to rate riders and rate reinstatements which exists today should continue. The market-based rates methodology should set the maximum cap. Within the cap however, EGNB should continue to have flexibility to vary the rates to ensure that the target level of savings is being achieved. Again as the response to PI IR 13 suggests, by using the rate riders and rate reinstatements within the cap, EGNB has been able to favourably track the proposed target savings levels. It would significantly diminish EGNB's ability to institute rate riders and rate reinstatements based upon its day to day tracking of the market, if it did not have continued flexibility on when to apply such riders and reinstatements. EGNB also contends that its proposal to base riders and reinstatements on 21 trading days rather than two months trading data remains reasonable considering the tighter time frame in which these actions are taken. Since the rate riders and subsequent reinstatements are capped within the maximum rates, some level of flexibility can be accommodated without impacting the full transparency of the setting of the market cap. This has worked effectively to date, and EGNB submits should not be changed. Because these actions would be occurring between market-based rate cap proceedings, EGNB does not, consistent with its current practice, propose to update annual consumption and customer usage profiles for riders and reinstatements. EGNB would also note that in its entire history it has only once deviated from the use of the complete formula, and this was only with respect to one element of the formula, which was approved by the Board. In this one instance, the deviation was used to reinstate distribution rates to a level lower tan what a strict application of the formula would have justified and, as stated by Mr. Charleson, this did in fact track closer to what actually subsequently occurred in the market.

In relation to this matter, Ms. Desmond also raised questions with respect to whether or not the market cap should change more than once a year, and the Vice-Chair asked for the parties' views on whether the cap could be changed more regularly based on the final form of Board approved methodology, possibly without riders and reinstatements. Although as I have just noted, EGNB believes that a formula cap set no more than annually, with the flexibility of riders and reinstatements, allows it to achieve the objectives of the market-based rates. EGNB would not necessarily be adverse to the cap being changed more regularly if it was on the basis of a simple application of the methodology. However, EGNB would have to maintain the right to determine when it was appropriate to apply for a re-setting of the cap, based on its assessment of a sustained change in market conditions that would impact the market-based rates objectives. This would ensure EGNB was able to deliver its value proposition to its customers. It would not be possible to say, for example, that the cap would be adjusted quarterly, or at any set point, as this could too easily impact the target calendar savings EGNB markets to its customers. Setting the cap looks at the next 12 months as opposed to the savings that would be achieved within the calendar year for a customer. EGNB manages its rates to deliver target savings on a calendar year basis. Automatically setting the cap on a quarterly basis, using the same example, would disregard the actual savings that had been achieved to date within the year, and the role that those savings play in meeting target savings by year end. Similarly, EGNB needs to maintain the flexibility of when to file for a rider or reinstatement, to again ensure that outside of setting the cap, the calendar year value proposition to the customer can be monitored and delivered by EGNB. In a volatile market, the riders and reinstatements have proved to work well. Any absence of the riders and reinstatements would lead to higher rates from time to time, and significantly impact EGNB's marketing proposition. If the Board were to consider any other approach than I have just noted, the potential significant impact on EGNB's sales and marketing strategies regarding targeted savings, and its ability to deliver on its customer value proposition, would have to be discussed and examined in much greater detail than was addressed in this proceeding, which focused on the elements of the formula.

Mr. Chair, Board members, in closing, EGNB would like to note that it actively participated in the technical sessions and discussions surrounding the market-based rates methodology. It provided all of the information requested by the Board and interveners, and it submits that through its evidence and the evidence of Mr. Ervin, it has more than demonstrated that its proposed formula is just and reasonable, in the same manner that the Board has found EGNB's market-based rates just and reasonable many times in the past. EGNB submits that the formula with the proposed refinements suggested by it, and the application of the formula in the context of rate riders and reinstatements as proposed by EGNB, should be approved.

And that is the end of our final argument, Mr. Chair.

CHAIRMAN: Thank you, Mr. MacDougall. I would just like you to expand a little bit with respect to rate riders and reinstatements. You speak of retaining some flexibility for Enbridge. And I guess there is not a lot of detail to that flexibility.

But I took from your comments that the flexibility would be essentially unlimited, that it would be Enbridge's decision for example on how many days of data to use or any other component.

Is this what we are talking about?

MR. MACDOUGALL: No, Mr. Chair, not at all. There is two issues of flexibility. One is the issue -- and it was unclear from, I think the questions from the Chair and from others, as to which one was being talked about. So I tried to address both. So let me go back over them.

One of them is an issue of when to apply for riders and reinstatements. So what Enbridge is it tracks on a weekly basis the data in the marketplace. It is tracking that at all times. And it institutes riders and reinstatements when it feels that there is a sustained change in the market.

So it just doesn't run the model and say oh, today it will be 21 percent savings or 19 percent. It runs the model and says, is there going to be a sustained savings level at the level we expect.

So it has to have the flexibility to determine from time to time within the cap if it sees a sustained change in data in the market, when to apply a rider or a reinstatement.

So that is the first level of flexibility that we are discussing, that that be maintained as it always has. And there has been no evidence posed to the contrary. There was just a question on the issue of flexibility. So that is the first level of flexibility.

The second level of flexibility is merely that there are a few elements of the formula that EGNB suggests should be different for rate riders and reinstatements than for the market-based cap.

One was the 21 trading days be used rather than the two months. One was that the annual usage profile not be updated because that's actually an annual figure.

And to be doing -- to be updating the actual usage and usage profile for rate riders and reinstatements would probably not lead to an appropriate review when you are trying to keep the target savings matched against the cap in which the profile was used.

CHAIRMAN: Okay. But when you talk about 21 days of data and you are talking about flexibility, you are talking about that might be the norm.

But you are looking to retain enough flexibility to come in in certain circumstances and say that it should be something different than 21 days?

MR. MACDOUGALL: That flexibility has always been there. As I say, it was only utilized once. I do think that it should be maintained that Enbridge would use the formula with the modifications it suggests for rates and riders, but that that flexibility be there, subject of course to Board approval. Things can change in a volatile market. As Mr. Charleson said, they used one day's data for one rate rider once in nine years. It was during a time period that we probably hadn't seen changes in oil and gas like that in the past. And it was in order to achieve the target savings level and to maintain that value proposition. We think that flexibility should be allowed to be there.

As I say, the experience suggests it has been used once in nine years. And we don't anticipate that the Board would regularly approve riders and reinstatements based on adjustments to the formula other than the specific defined adjustments.

But we are not proposing that some level of flexibility be removed, because it's subject to Board approval in any event.

CHAIRMAN: One of the elements of this flexibility, as you have indicated, when to apply -- I take it from your comments, but perhaps you could expand upon it, that you don't see this as something that should be Board-initiated, that this should be something that should be Enbridge-initiated?

MR. MACDOUGALL: Certainly, Mr. Chair. I don't think it actually can be Board-initiated. Because this is very different for example than like the gasoline pricing mechanism that's in place in this province right now. There has to be -- Enbridge is looking at its marketing data all of the time. And it looks to see if there are sustained trends. And then it looks at all of its customer base and what customers it has, which ones it's currently aiming its marketing programs and plans toward and what it's trying to achieve.

So it doesn't simply run the formula on any given day or week. It primarily looks at this on a weekly basis, collecting data throughout the week. It doesn't at the end of the week run the formula with those new numbers and say okay, it has changed, it is now -- instead of X it is Y, so therefore we have to change. It looks to see if there is a sustained spread, a sustained change.

So if one element in the marketplace has changed a little bit, but it's not anticipated to be sustained, it wouldn't necessarily say well, we should institute a rider.

Because it's looking three, four, five months out to say, is the annual target savings level going to be achieved?

So it's a much more dynamic and it is a much more complex decision-making process than a simple application of the formula. And that's why I said at the end if something else was to be reviewed -- it is much more complex than that. And that's what we wanted to explain in our comments today.

So we would suggest that the process continue to be as the process has been, as we feel that the hearing today was to deal primarily with the elements. The formula is the formula appropriate.

But we don't suggest that it would be appropriate. In fact we think it would be very difficult to just mechanistically apply the formula either for the cap or the rate riders or reinstatements.

CHAIRMAN: I appreciate the purpose for today's hearing was to deal with the formula. I didn't want to have this hearing though finish off and have something left hanging if you will. It is something that we should have dealt with.

MR. MACDOUGALL: And that is completely understood, Mr. Chair. And that is why we are making these comments.

CHAIRMAN: I guess you say that you would monitor the changes and would only come in for a rate rider or reinstatement in a situation where the change was sustained or where the evidence was that was going to be sustained.

But what if that circumstance existed and it did not come in to apply? Again I will go back to should other parties be able to initiate such an application? Should the Board be able to ask you to come in and show cause why you are not initiating a rate rider?

MR. MACDOUGALL: I don't think so, Mr. Chair. The purpose of the cap is to set a cap. So the flexibility -- the whole intent and the usage of these rates over the number of years is that you set a cap and that Enbridge can't come in to increase someone's rates.

I mean, we haven't had a flood of calls from people when we have instituted the riders lowering their rates complaining. So we can't ever raise the rates above what the Board has approved as the cap.

So we use the riders to lower the rates to ensure that the value proposition that we marketed and told our customers would achieve, that they will achieve it. And the evidence is that they have achieved it.

Had we not been able to use the riders, I don't know. But if we look back historically, presumably in many instances the savings wouldn't have been achieved. The deferral would be different.

But we used the riders to achieve the two objectives of the market-based rates. And then the reinstatements, sometimes they go up all the way to the market cap, sometimes they don't. So they still stay below it.

So I think that flexibility has to be given to the utility to do that. And there is certainly no harm in any way. Because in fact it is only done to go down.

And if you look back at the initial target rates decision that is exactly what the Board said. They said, we will set a cap. You can't go above that cap. And we will give you flexibility to achieve the goals and to ensure the target savings levels are there by bringing the rates lower.

CHAIRMAN: Thank you. Mr. Toner, any questions?

MR. TONER: No.

CHAIRMAN: Mr. McLean?

MR. MCLEAN: No.

CHAIRMAN: Mr. Barnett?

MR. BARNETT: Yes, Mr. Chair.

BY MR. BARNETT:

MR. BARNETT: Just one question, Mr. MacDougall. And it related to movement of customers from one class to another. I take your point that one year is not sufficient data.

But what would your view be if you had it reoccurring? Would it have to be two years or more? And then Enbridge would move them to what would be the appropriate cap based their level of consumption?

MR. MACDOUGALL: I don't know if there is two years or more. But Enbridge does monitor on a regular basis where their customers are in their classes. And they will continue to do that. And there would be movement of those customers. But I guess for the purpose of this hearing the issue was until the customer moved they are in the class they are in. And to not use their usage profile would start to skew the impact on the customers in that class.

As I noted, for the primary residential classes it isn't even an issue because there is no cap in there. And in fact going forward I think Enbridge would actually be looking at even the forms of some of the rates. Here there are caps.

Many other jurisdictions don't really have caps. They have more indicia of what the factors should be to be a customer and whether or not you decide to go to contract demand and negotiated rates and elements like that. That will probably occur at some point in the future when we move towards something other than market-based rates.

But for the current time period Enbridge looks at their customers, sees where they are, from time to time will contact a customer about whether they should be or should not be in a class. And they will monitor that.

And I think based on some of the questions from Ms. Desmond they will probably go back and take a refreshed look after this hearing to see if there are some customers maybe that they should be looking at in that regard.

MR. BARNETT: Yes. There have been some cases on the gas and electricity side where customers have found themselves in the wrong rate code to the disadvantage of the customer. Maybe sometimes it goes the other way as well.

I'm happy with the response. Thank you.

VICE CHAIRMAN: Yes. I have a couple of questions.

BY VICE CHAIRMAN:

VICE CHAIRMAN: Mr. MacDougall, first of all, a fairly specific question. You talked earlier about the use of the mean rather than the median?

MR. MACDOUGALL: Correct.

CHAIRMAN: And suggested that the use of the median would be inappropriate. And I think most specifically because the customer usage profile from the median would represent only the use of that one individual.

MR. MACDOUGALL: Correct.

CHAIRMAN: And my question is whether there is a reason why the customer usage profile would have to be calculated using the same methodology as the typical annual consumption or whether the annual consumption could be calculated using one method and the usage profile calculated using another method?

MR. MACDOUGALL: Yes. I think that would pretty problematic. Because what we are trying to get is a typical customer. So then you would not be achieving what the typical or the average usage and profile was for that customer. So a customer uses its gas. And it uses it according to a certain profile.

In fact when we went back, I think -- I can't certainly remember the numbers. But we went back and looked at one of the -- I think it was the SGSRO class. We saw there were 1,181 customers. So we went to customer 594 or whatever the middle point was.

When we went across that just very quickly, Mr. LeBlanc said well, look at this customer's usage in December, it is very good. That customer probably went away on vacation in December and ceased to use gas.

So to try and pick a customer either for its usage or for its usage profile on anything other than the mean could create a distortion. And I think where you are saying okay, maybe you could use it just for the usage but not for the usage profile.

But then you would have a disconnect between the average usage and the average usage profile. And I think -- I don't think that would -- certainly wouldn't enhance, I don't think, transparency or accuracy of the calculation.

VICE CHAIRMAN: The concern of course is that in that calculation we have customers who are using in excess of 600 Gj's which seem to be people who you would not necessarily factor in in trying to calculation who is typical. So it seems to me that there are challenges either way.

MR. MACDOUGALL: I think though there was only -- again when we looked -- there is no cap for example in the SGS or SGSRE. As I say, some people will have a bigger home I guess. But I don't think that using -- having a couple of customers like that significantly skews the average.

I think there is a lot of customers with certain usage. If you look at the class there is not one or two customers that -- and even if there was they would just be lost in the averaging of the use of the mean. It is not impacted by one or two larger SGS, SGSRE customers. So they would just be simply lost in the averaging.

When you do the average you have a lot of other customers with greater usage. And we are trying to get a typical target savings level so that we can mark it to everyone. We don't have a separate marketing program for, you know, size of dwelling per se.

VICE CHAIRMAN: I want to talk about a couple of comments that you have made today and that were made in the evidence earlier.

The phrase "mechanistic application" or the formula came up in your submission today. And I believe Mr. Charleson used it earlier.

Let me suggest for a moment that when we have completed our decision on this hearing and we have given direction with respect to all of the elements of the formula, from the perspective of the Board receiving an application for a rate cap or a rate rider, the application then becomes essentially mechanistic.

Would you agree with that?

MR. MACDOUGALL: Yes.

VICE CHAIRMAN: The challenge is that the decision to apply either for a rate cap or for a rate rider, rate reinstatement is not a mechanistic one but is made using a wide variety of business judgment factors that you have explained earlier.

Would you agree with that as well?

MR. MACDOUGALL: Yes. And that is why that decision needs to reside with the utility.

VICE CHAIRMAN: The challenge I think from the customer's perspective though perhaps is that the application or the formula once it is before the Board, either on a rate cap or a rate rider, while that is clearly understood and is mechanistic, the timing of the decisions are not -- there is a lack of transparency there.

Perhaps that is necessary. But it seems to me that that is perhaps a concern of the customer's. And this is why I have floated the idea -- I don't want to say I made the suggestion -- but of perhaps having more regular reviews by the Board.

And I'm just wondering whether you would agree with me that that is where we start to get into difficulties with transparency and whether that is something the Board should concern itself with, and whether it should concern itself with it in this application or in some other time?

MR. MACDOUGALL: Starting with the latter comment first, certainly I don't think the Board could deal with it in this application. I will discuss whether I feel that you need to at all. And again that was the latter comments in our opening statement.

It is a much more dynamic discussion that would have to occur because of the way EGNB has for the entire time of the market-based rates to date marketed its customer proposition and how it tries to -- what it does is it shows these customers -- at the end of year it is in a position to be able to tell people if they have achieved this.

And that is the entire goal. If you start resetting -- or if other parties other than the utility have an ability to come in and mechanistically, quarterly or whatever reset that cap, there is a lot of issues that would have to come into play. So that would certainly require much greater discussion in order to ensure that a reasoned decision flowed out of it.

Having said that I don't know that it really should be an issue. Because I have already talked to the Chair about the issues of the riders and the reinstatements.

Certainly I think that flexibility should be there because it has to move more rapidly. And it is always to go down from the cap that the Board has already approved. So we already have the protection of the Board-approved cap.

But on the issue of timing for example, it would be very difficult I think for the Board to institute it. It would be particularly difficult for all parties if any third party could institute an application.

For example, as Mr. Strunk pointed out, there were some points last year where he said if you mechanistically applied the formula the cap would increase to a very high level.

But of course EGNB didn't say because there has been, you know, a rapid drop because of a once-in-a-lifetime recession we should run in now and try and get our cap hooked at a much higher rate.

If it was set mechanistically the Board would probably say well, there it is, that is what it shows, now we have to do that. But that would be the wrong thing to do at the time. And I think it would work -- it works both ways. So the utility does use its judgment.

But what one has to look at is that if the Board continues to approve the value proposition that derives out of the market-based rates, the percentage savings -- the Board has always looked at those. And there is no contention in this proceeding that those percentage savings aren't correct.

As long as the Board can continue to see that the utility, through its use of the cap and the riders, is tracking the percentage savings levels, minimizing its deferral and converting customers, then we are okay.

And I think to do otherwise you would probably see more proceedings, more applications. You would have parties saying okay, well, we are not looking at this on a sustained basis. We think the cap can come down based on some data that would be in here.

I think you would be into -- you certainly wouldn't be achieving lighthanded regulation which of course is one of the fundamental essential elements of the compact between the Province and the utility during the development period.

VICE CHAIRMAN: Thank you.

CHAIRMAN: Thank you, Mr. MacDougall.

MR. MACDOUGALL: Thank you, Mr. Chair.

CHAIRMAN: Mr. Stewart?

MR. STEWART: Mr. Chairman, members of the Board, as is likely obvious by now, Atlantic Wallboard has not been as active in this particular proceeding as it has been in the past.

Candidly our resources are limited. And we intend to focus them on the pending proceedings and the establishment of the methodologies to be utilized in the future rather than this particular process dealing with the particular inputs and elements of the formula.

That is not to say that we don't have respect for this proceedings. If the Board has determined that Enbridge may utilize or continue to utilize a formula-derived so-called market-based rate methodology, we agree that it is crucial and in everyone's interest that the formula be as defined and as transparent as possible and utilizing benchmarks which are as representative as possible.

To the extent that formula is adjusted or tweaked in furtherance of these goals in this proceeding, we acknowledge that is a good thing. It is good for Enbridge.

And it is good for the ratepayers, everything from the mundane four decimal points that we have chuckled about to the more substantive items as in determining a representative oil price or competing fuel price.

We agree that the Board and ratepayers, both current and potential, should be able to recreate as it were an application of the formula. And again if that is a result of this process, so much the better.

Arguably this clarification refining of the formula should have occurred years ago, certainly when the development period was extended back in 2005. But be that as it may, here we are.

What this process has underlined is that the formula is meeting neither of its stated objectives of incenting connections. Connections are well below forecast. And I know there is some debate about exactly what each bar meant on Mr. Strunk's exhibit attached to his report.

But the bottom line is there is absolutely no doubt that the natural gas market has not expanded in the way that anyone very anticipated that it would. And it is well below forecast and indeed revised forecast.

Equally the deferral account or the second objective of minimizing contributions to the deferral account is not being met either. It is 10 times its original estimate at last check. And I suspect it is significantly higher than that now.

And perhaps most importantly the formula as it currently stands can produce results which do not meet the statutory requirement of just and reasonable rates. So with our submission it doesn't satisfy that element or that requirement either.

This process may improve the formula but will only make minor improvements to a formula, or perhaps more properly a methodology whose time has passed, particularly for the LFO rate class or LFO rate class customers.

The formula has failed in our view to meet its stated objectives or certainly has failed in the last little while. And it has created a marketplace where unpredictability and volatility are impairing the ratepayers' ability to run their business, and LFO ratepayers particularly.

Volatility with such an important element of our overhead makes budgeting, pricing, cost control, et cetera very difficult. And these fundamental business concerns impair ratepayers like Atlantic Wallboard's competitiveness in the marketplace.

Now I have obviously acknowledged the Board's rulings and the issues which will be on the table for another day. And you will hear a lot from me and from us on another day on those issues.

But the problem for us and we suspect all other LFO rate class customers, and perhaps the Board as well, is that we are trying to fix a formula that we submit is no longer relevant or effective and whose day has come.

To quote one of my client's representatives who, when we were preparing for this hearing used that old expression, it is like putting lipstick on a pig. The pig may be prettier but it is still a pig.

Again the lipstick is an improvement. And it probably should have been put on years ago. But it is a minor improvement at best.

And the point that I want to make today is that we urge the Board not to lose sight of its own rulings in this regard. I mean, I think the parties have done a pretty good job at keeping within the mandate that is before this particular hearing in talking about the elements and not drifting aside to the other issues.

And with respect, even the Board -- I could tell by some of the questions which have been posed -- are struggling a little bit between, you know, determining what the proper inputs of the formula should be and how the formula should be tweaked or transitioned in the future, everything from potentially in terms of how often it is applied to what standards should be used to judge its just and reasonableness of the results.

So by all means tweak the formula but do not view these as effective transitional provisions as we go forward or that the mechanistic -- to use that term which has been used both yesterday and today -- the mechanistic formula having been renovated, that it somehow deserves a longer life.

Tweak the formula, but acknowledge and recognize as we have that the existence of the formula in and of itself will literally be before the Board in a matter of months.

So having said all of that, if our proverbial pig is going to remain in the barn for the immediate short term, and we are going to put on some lipstick, what color should that lipstick be?

Or what if any changes to the formula do we recommend from our particular perspective at this time to perhaps get us through this immediate sort-term period until there are a larger consideration about the methodology that should be used in the current marketplace?

Well, firstly we will leave it in the Board's capable hands to assess the evidence that is before you. And we concede we did not put evidence before you on the fundamental issues, price of competing fuel, indeed what the competing fuel should be for the various rate classes, what percentage discount is still appropriate in the marketplace, efficiency factors, et cetera, even down to the decimal point issue.

And we are comfortable that the Board and Board Staff will do a proper assessment of the evidence and come to good conclusions on these items.

But beyond these our biggest concern with the formula per se is its lack of limits. We have argued before this Board in the past, including just over a year ago, that the bare result of the formula had resulted in rates which were not just and reasonable, typically because the swing was so great as to constitute rate shock or the result was a consequential rate which was so disconnected to the cost of Enbridge to provide this service as to render the mechanistic result of the formula unjust and unreasonable. And indeed that was recognized in the Board's decision I think in the last rate case where it exercised its discretion and backed off the mechanistic result of the formula somewhat.

I had drafted these remarks that I'm making now before Mr. Strunk testified. And I don't know if you can tell the difference between the blue and the black ink from your perspective. And I changed them a little bit.

But in his testimony yesterday it was almost like he had read my notes, particularly in one of his answers to -- I think it was one of Mr. Theriault's question on his redirect.

And that is ultimately for ratepayers, and certainly Atlantic Wallboard in particular, the biggest issue with the formula is that given the right market conditions, where the gap between competing fuels and natural gas widens or narrows, a proper application of the formula could result in a distribution rate of zero, which however tempting in the immediate short term, is not in the interest of ratepayers, and would be unjust and unreasonable both for Enbridge and for us. Because it is a lose/lose situation for the ratepayers.

Of course the converse is given the right spread or narrowing of the gap, the formula results in a rate which is too high so as to be unjust and unreasonable. When it is too high we pay too much. When it is too low then the difference goes into the deferral account which we have to pay back later. Only Enbridge earns a rate of return on the balance of the deferral account.

So on the immediate short term when we make rates lower than the amount that objectively they should be, because of the mechanistic application of the formula, we pay for it later because we pay it back plus interest someday. And that is not in the best interest of ratepayers.

So the challenge is to find a formula which falls within the sweet spot, so to speak. And we suggest that the formula in its current incarnation does not. It provides too much volatility in swings that affects the budgeting of big customers like Atlantic Wallboard, and we suspect regular folks trying to do their household budgets as well.

Now are these swings and changes mitigated somewhat by the rate rider and the rate reinstatements mechanisms? Well, sure they are. And I won't deny that.

But as Mr. Johnston just pointed out, the problem with that is that the control of the application of those things and the timing of those things is for the most part left in the hands of Enbridge. And there is no way for us to test whether that is appropriate or necessary or whether they have been dragging their feet one way or the other.

I would suggest that -- I don't suggest anything untoward necessarily on Enbridge's part. But they are running a business. And I suspect that it is difficult to make an objective analysis of when it is that they move or they don't.

When there is volatility in the commodity market we can control that. We can hedge our gas pricing. There are mechanisms put in place in the marketplace which allows customers, residential customers I suppose who can have a fixed price offering both from a marketer or from utility gas from Enbridge, or big customers like Atlantic Wallboard who can go to the marketplace and hedge their commodity pricing.

But we can't however hedge distribution charges. We are on a roller coaster with these. And I won't deny that sometimes the drops are more welcome than the spikes. But all ratepayers -- we and all other ratepayers are riding up and down. And whether we are up or whether we are down, once we are outside the zone we are losing, either long term or short term.

As the record of the proceeding back in 2000 will confirm, when the current formula was established, it was assumed and I think acknowledged by everyone present that the gap between oil prices and natural gas prices, from which ultimately all of this is derived, would remain relatively constant. And this volatility, these swings was an evil which I don't think Enbridge appreciated or marketers appreciated or even ratepayers appreciated.

But here we are -- and in the last, particularly in the last three or four years, unprecedented swings have occurred. And we have seen the statistics in terms of how often the prices are going up, the differences between the spikes and the target rates and the applications of the rate riders and the rate reinstatement mechanisms.

So no one anticipated that the formula results would be as variable as they have turned out to be. And so there was no element of the formula put in place to address that issue.

Accordingly we submit that in order to account for things unfolding in a way that no one really originally anticipated, that a ceiling and perhaps a floor on the formula results should be imposed, much in the way that perhaps Mr. Strunk has suggested or the Bangor Gas model which is attached as part of his evidence.

And I will explain what we propose. The problem with putting a ceiling place is of course where do you start? And we had a lot of discussion internally about where we would start.

And ultimately we felt that while we were again sorely tempted to suggest that the ceiling should start with respect to rates which are put in -- you know, actively being charged at the moment, because they are of course below the maximum Board-approved rate from the last rate case -- we felt we just couldn't do that with a straight face, not to the Board as a regulator.

I mean, ultimately for the LFO rate class, the 4.0861 per gigajoule maximum rate has been approved and viewed by this Board as just and reasonable at this moment. If the right market conditions were in place Enbridge could charge that rate.

So I think we have no choice, however tempting to use something else, but to start with that rate. And I think anecdotally we can be comfortable with that rate because quite frankly it is an unprecedentedly high rate. So as ceilings go it ain't much of a ceiling.

Our proposal is simple enough, that in the future should a mechanistic application of the formula produce a higher result than the current imposed maximum rate -- again my bias obviously is for the LFO rate class of for example 4.0861 per gigajoule.

That the formula have an additional element to limit the maximum which could be charged to the existing rate plus the consumer price index for New Brunswick compounded over any years in the interim.

So to use some easy numbers, we are having $4 a gigajoule today. If the consumer price index is 2 percent per year and Enbridge came forward in three years, then the formula result would bump into a ceiling in that way. Again not much of a ceiling. But I think it would go a long way to at least keeping the just and reasonableness of the formula's result between the ditches so to speak. Having said that, we also would suggest that the Board should not fetter its discretion and automatically preclude a review of a mechanistic result of the formula as to a determination whether or not the result is just and reasonable in and of itself.

We suggest that the Board -- it would be an error for the Board to abdicate its responsibility in that regard and rely solely on the formula results, even if the formula does have a ceiling in place.

In theory if the ceiling based on a CPI increase was $5 per gigajoule, and a rate application came forward which bumped into that, the Board would have ultimate discretion to depart from the formula result, both up or down.

The formula is only the formula. And it is a guide by which the -- and perhaps a crucial and important guide -- but only a guide for the Board to make its decision.

Finally -- my last point was conveniently -- I think the last point that was discussed or virtually the last point that was discussed with Mr. MacDougall -- and that is in terms of the Board's role going forward in terms of monitoring the situation or monitoring the application of -- the timing of rate applications and the implication of the timing of rate rider and rate reinstatement mechanisms.

We are not necessarily submitting that we should move to a quarterly system. Again I'm not sure we are adverse to that. I suspect there are pluses and minuses to it. I'm a little concerned that that might be going on to talking about ratemaking methodology adjustment as opposed to formula adjustment. But nonetheless we don't have a strong position on that one way or the other.

But we absolutely do submit that the Board must maintain the right, indeed has an obligation to monitor the activities of the utility in terms of the application of rate riders and indeed rate reinstatement mechanisms.

I mean, with respect that is the whole darn point of making the formula more transparent, making the formula recreatable by potentially an individual homeowner or an individual ratepayer, but most certainly the Board and Board Staff, so that the Board can then monitor the situation and satisfy itself and ratepayers can monitor the situation and satisfy itself with respect to what amounts to a trust us submission from Enbridge.

Now I'm not suggesting necessarily that Enbridge is untrustworthy. But I think it behooves everyone in the ratepayers' interest and in the public interest for the Board to have the ability to have a transparent formula so it can monitor and tune in to satisfy itself that Enbridge is dealing with the rate riders and the rate reinstatement mechanisms properly.

Does that mean necessarily that if on a particular day if Board Staff pulls the formula off the shelf and the result is different than the rate currently in place, that the Board or Board Staff would then immediately insist Enbridge should move up or down? No. We are not suggesting that.

But in the same way that Enbridge says well, we monitor the situation, when trends are emerging that a reinstatement mechanism or a rider be put in place, then there needs to be -- and I would suggest the Board has an obligation to be able to monitor that, and should reserve the right if need be to in essence ask Enbridge to show cause why it has not, if the right circumstances were in place.

So if we have a clear and transparent formula where we have inputs that we are comfortable with, that is recreatable, then when someone comes along to recreate it, whether it is Atlantic Wallboard or Board Staff, and we way, wait a minute, we see a trend here and we don't feel that Enbridge is reacting to it, then the Board has to retain jurisdiction to be able to say okay, Enbridge, this is what we think, what do you say?

That doesn't necessarily need to be the result of a formal proceeding. But that monitoring process must stay in place.

I suspect strongly that if I went down and stopped a residential gas customer on the street and said, you know, do you think the Public Utilities Board is keeping an eye on when these things go up and down, they would probably -- excuse me, Energy and Utilities Board -- they would probably say well, sure, that's what this whole thing is about.

And that is the whole point of having a clear and transparent formula, so that ratepayers can be comfortable, and Enbridge has the satisfaction that when they say, trust us, that indeed we can assure ourselves that they are trustworthy. Those are my submissions.

CHAIRMAN: Thank you, Mr. Stewart. Part of your submission that there should be a ceiling and there should be a floor. And you suggested what the limit on the ceiling should be. I don't know that I heard your suggestion as to what the limit on the floor should be.

MR. STEWART: Well, it is not that I don't think that thee shouldn't be one. I'm just not sure, you know, what standard, you know, or what hook you start the floor on. You know, when we did the ceiling we had a Board-approved maximum rate after a full-blown hearing. And I recognize you can't have it both ways. You can't cap without having a floor.

And again it is in our interest to have a floor. Because we are going to pay it back plus 13 percent per year at some point later on in the future.

So I wasn't being coy or evasive. I'm just not sure I know what it should be. Whether it is the lowest rate or some average or some formula, I'm not sure.

I think the Board could come up with something that is appropriate. And equally it should be -- you know, we should have the protection of the floor. Indeed so should Enbridge.

CHAIRMAN: But you don't have a specific suggestion --

MR. STEWART: I do not.

CHAIRMAN: -- as you did for the ceiling?

MR. STEWART: I do not.

CHAIRMAN: Mr. Toner, any questions?

MR. TONER: No.

CHAIRMAN: Mr. McLean?

MR. MCLEAN: No.

CHAIRMAN: Mr. Barnett?

BY MR. BARNETT:

MR. BARNETT: Mr. Stewart, I'm going to explore this cap as you have been referring to and has been mentioned in the proceedings in previous days.

Am I to understand that the cap you are speaking of, there would be a full-blown rate case, as what happened last year. And we have this mechanism whereby we can have rate riders and rate reinstatements. But the cap that you are talking about -- and you used the ceiling in your LFO customer case of 4.0861 --

MR. STEWART: Yes.

MR. BARNETT: -- that the cap would be then applied to that? There would be like -- and I guess I would liken it a little bit to what is in the current electricity legislation, where in fact you can have a CPI increase without a hearing in that regard.

So I'm a little bit puzzled as to how this cap would work. Are you saying then that on an annual basis for example this cap would be applied in whatever form it is, that Enbridge could apply that cap and that would be the rate for that particular customer class for that period of time, another year?

I'm just -- maybe you could explain to me exactly how you see that cap working?

MR. STEWART: Fair enough. And a good question. And to be clear, no, I'm not perceiving that it should be, you know, akin to the CPI increase that is in the Electricity Act, and in large measure because NB Power doesn't have the rate riders and rate reinstatement mechanism.

What we are talking about is limited entirely to the next time Enbridge comes to the table to set a new maximum rate.

And all we are suggesting -- it is a fairly limited suggestion -- is that if at that time the result of the formula is greater than for LFO rates, you know, 4.0861 plus the CPI mean time, then the formulaic mechanistic result will be limited by that ceiling. That is all we are suggesting.

And we are also acknowledging that it might be put in place if the formulaic result next time Enbridge came forward -- I suspect they wouldn't come forward -- and that is why the floor is a little less relevant -- but came forward and the result was dramatically lower, that it would run into a floor as well.

And that is consistent I think with Mr. Reid's suggestion in the last rate case and indeed Mr. Strunk's suggestion in this case.

MR. BARNETT: That is notwithstanding what has happened in the marketplace, for example a Katrina or a Rita or something like that. So is that what you are saying?

MR. STEWART: Yes. Because indeed again Enbridge controls when they come to the Board, right. So -- and I'm also saying -- there are two issues here. One is what is the mechanistic result that the formula kicks out?

At the last rate case Enbridge came forward and sought rates based on the mechanistic result, you know, the formula kicked out, and sought a rate increase on that basis. And the Board saw fit to exercise its overriding jurisdiction and to tweak that somewhat.

So there are two issues here. Number one, we are talking about the elements of the formula in its mechanistic nature. So in its mechanistic nature we suggest a new element to be added that creates a ceiling.

Now does the Board then have discretion to depart from the mechanistic result in the same way that it did last time and the same way that it did in the rate case, the initial rate case in 2000? Absolutely. So the Board would then have discretion if there was a Katrina or a bizarre circumstance.

It may be that an application of the formula and the CPI ceiling would result in a number that the Board felt was too low or too high in order to achieve the overall goal or its mandated goal of just and reasonable.

MR. BARNETT: And just final last point I guess. I know you represent the LFO, your particular client. But do you see that cap, whatever form it takes, applying to all customer classes?

MR. STEWART: Yes. I think so. And again I don't necessarily see why not, particularly if we are starting at a cap at a level which was in my view unprecedentedly high.

And if we look at the history in the meantime, you know, it hasn't been utilized much in the interim. We haven't reached that level much in the interim. So I think that, as I say, there is not much of a ceiling.

And I think that as long as the Board maintains its jurisdiction to depart from the mechanistic result, then in the right circumstances, in order to achieve just and reasonable rates, I don't see why it couldn't apply to all rate classes.

But I have to concede that our analysis and our suggestion was focused on what was indeed best for the LFO rate class.

MR. BARNETT: Thank you, Mr. Stewart.

<u>BY VICE CHAIRMAN</u>:

VICE CHAIRMAN: Mr. Stewart, just one point that I would like to make. One concern that I would have with respect to using the CPI index is that it is a very broad index. And here we are dealing with something that is an energy-related cost. And we have energy which is a very volatile -- it is pricing energy in general.

I'm just wondering if we were going to go that route whether it wouldn't be better to go with an index that was more sector-specific?

MR. STEWART: Well, we gave that some thought too. And I think the reason why we would suggest an index that is not so specific is that first off energy and energy pricing is an element, as I understand, of the consumer price index in the first place and can affect it up and down.

But ultimately here what we are -- we are not talking about energy pricing. We are talking about pricing for a service. And we are talking -- you know, when you put a ceiling in place you are talking about the consequences to the ratepayer.

So the ratepayer receives a service for which they pay a fee. And it is from that perspective ultimately that a ceiling would be viewed and would be effective.

And so in that circumstance it seemed that an index which was -- it doesn't need to be energy-related. It is just simply the provision of a service albeit delivery of energy, but it is not energy in and of itself. It is just a service providing.

So it would be better to have it rolled within a larger index that would take into account goods and services in a broad way that CPI does. That was our thinking.

VICE CHAIRMAN: But certainly that would get you potentially a long way away from the target savings levels that are presently prescribed, if there was substantial increases in the comparable energy sources and the costs for delivery of natural gas were limited by a broad inflation index?

MR. STEWART: Potentially. But I think that is mitigated by two factors. One is starting at the high ceiling we did in the first place, number (1). And number (2) retaining the discretion in the Board to exercise its discretion if need be on very specific facts or very specific circumstances.

Again the submission is with respect to what is the mechanism or what is the mechanistic result of the formula? And that is going to be one number. And the rate actually approved by the Board may be that number. Or it may be a different number.

And so we are not necessarily suggesting that Enbridge would be precluded necessarily or any other ratepayer would be precluded necessarily from arguing from a departure from the formula, in the same way that we had many times in the past, but simply to the extent that the formula is the primary measuring stick, that it needs to be -- have some limits to keep it, as I said, for lack of a better term, maybe a bit of a strange analogy between the just and reasonable ditches.

VICE CHAIRMAN: Thank you.

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

(Recess - 10:50 a.m. to 11:20 a.m.)

CHAIRMAN: I guess the next party on the list is Competitive Energy Services. So, Ms. Desmond, you are going to read into the record the submission of Mr. Sorenson.

MS. DESMOND; Yes. Thank you, Mr. Chair. And this is a letter from Jon Sorenson, who is a partner of Competitive Energy Services. It is dated April 22nd 2009. And as indicated yesterday, I will delete the portions that have been deemed inappropriate for the purpose of this hearing. So this is sent electronically to Lorraine Légère at the Energy and Utilities Board and to Intervenors in the hearing.

Ms. Legere: Competitive Energy Services or (CES) and the City Saint John apologize that we were unable to be there today during the hearings or submit recent evidence during these proceedings. Please note that we have viewed or reviewed much of the interrogatory filings and continue to be concerned with the following issues:

1. Rate Methodology

a. Rate Calculation based on both past and future markets of natural gas and competing fuels to better reflect market conditions.

b. Efficiency Factors - either be eliminated or designed to be more consistent with like replacement equipment (boiler/burners, etc.).

c. Add an additional class -- break LFO into two classes based on volume.

Over the past years and proceedings CES has provided evidence that addresses many of the issues regarding the rate methodology including the three items listed above. As we have communicated in both hearings and the work group, we have continued to find EGNB's rates disturbingly high as they are significantly higher than any other LDC charts that we are aware in North America, including the

Greenfield markets in the Northeast Atlantic area (Maine Natural, Bangor Gas, Heritage Gas). We can argue and have argue/debated so many points such as rate methodology, deferral account, the length of the development period, etc. all of which have been rejected over the past nine years.

One of the components that we have addressed many times during the hearings has been the use of efficiency factors in the rate methodology. We have provided numerous documents, calculations and evidence debating the efficient factor calculations and application as well as evidence from equipment manufacturers that have displayed the different between older equipment versus new equipment, oil fired equipment versus natural gas, etc.

Our concern is this area is the following:

And under the first bullet point:

Old or older equipment versus new equipment -- the efficiency factor differential should be substantially decreased as it should compare replacement equipment -- oil versus natural gas. In other words -- a more true comparison is the replacement equipment versus one another. We believe 19 percent is too high of a differential. The only way this number can be justified is to secure an independent organization to provide independent tests analyzing combustion and efficiency for commercial applications throughout the Province.

New equipment -- again the differential has become nominal in the differences in today's fossil fuel fired equipment. We are recommending an efficiency factor no more than 5 percent.

We ask that you consider this document as final evidence and/or a briefing from CES and the City of Saint John to be considered in the final decision making proceedings.

Thank you for your consideration.

Regards, Jon Sorenson.

And attached to that letter, Mr. Chair, was an article which I have got copies now that I don't believe the Board has yet seen that attachment. So perhaps I will leave those with Ms. Légère to be circulated. And I think Intervenors have got the attachment.

CHAIRMAN: Thank you. Mr. Lawson before I call upon you, and I am not going to allow the Board to question Ms. Desmond, but I want to go back to a comment Mr. Stewart made in his presentation, having to do with current rates. And it has come to my attention that the Board has issued a rate reinstatement with respect to the LFO class this morning. You -- I don't believe you would have been aware of that when you made your comments, that would be effective May 1st. I don't think that that fact would impact on what you might or might not have to say, but I just want to make sure you had that information. And if you want to consider, as to whether or not you have additional comments, I will hear from Mr. Lawson first, but just to make sure that you are aware of the fact that that did occur. Mr. Lawson?

MR. LAWSON: Thank you, Mr. Chairman. I guess I would just ask out of curiosity to what was the rate reinstated this time? Does anybody know?

CHAIRMAN: I don't have a copy of the Order.

MR. CHARLESON: The LFO. To the max. 4.08.

MR. MACDOUGALL: To the $4.08.

CHAIRMAN: And I understand that the effective date is May 1st. My understanding that it was -- there was other classed included as well.

MR. LAWSON: Well, thank you, for that good news, Mr. Chairman. I hope -- I might have to escape out this door and not to go near my client, I am afraid.

I guess my first comment -- and a number of these comments will be very similar to, although you will find that the conclusions and recommendations are different from Atlantic Wallboard's in some respects. But first like Atlantic Wallboard, I think you have to be careful not to read the absence of evidence from Flakeboard with respect to this or active participation in, for example, the IR process, as being a lack of interest or a lack of desire to correct what's wrong, what we think is wrong with this -- the formula and the issues around it. But it is really driven by a very practical considerations. Firstly, Flakeboard is a relatively sophisticated consumer, but is not at all a sophisticated person dealing with the issues, regulatory issues around this formula. And like Atlantic Wallboard has only so much that can be spent, particularly in this economic circumstance, and has said that we have to try to make it very focused, to be here and at least make some -- a limited presentation on this issue, but that we have to save whatever there is for the next round of the negotiations or the hearings. So that being said I guess we would comment, and some of this comes as no surprise to the Board, that we are looking at formula and reviewing the issues around the formula, which was developed about 10 years ago in what I will describe as a very different world, or at least what was perceived to be a very different world. And the chart and -- chart -- exhibit 6 that is in Mr. Strunk's report, which there was some discussion on yesterday, around what is the forecast -- the revised forecast -- even if you take out what the revised forecasts are, you can see the initial forecasts and the reality of the customer sign-ups are completely different. I think that shows that the formula that was developed was developed in a very different environment -- very different from what is in the reality of today, to the point that -- I note that by sheer coincidence in 2007, which is the last one in this chart, the actual numbers of customers in 2007 is very close to the exact number of what was expected to be the actual numbers in the first year, in 2001.

So we are just barely above the first year's projections in terms of real numbers. And really that causes you a concern. The purpose of the formula was to -- it was designed to say, first off, it is underlying principle is it will be pricing the service, because this is a service. EGNB likes to think of it as the global of energy that we should be looking at, energy costs, but it is not. They supply -- their utility is a pipeline, and only a pipeline. But they want to talk about it as a global service.

We look at it and say that this was designed to make it so the rate of delivery on their pipeline would for this formula be cheaper than the cost -- the usual rate setting mechanism, which would be based on the cost of the service, the cost of delivery.

We have said before this Board previously, we have not put any evidence in because I don't think we would have gotten away with it in any event or even cross-examined on the question. And it is going to be heard on another day, but we do believe that at least as it relates to the LFO class, that this formula results in a rate that is higher than the cost of service. And I think that from at least with respect to our client, I think the evidence is clear from previous hearings of this Board that that would indeed be the case. But that being said that fundamental principle that it was built on, I think at least as it relates to the LFO class, or some parts of the LFO class, aren't there.

Similarly, they were -- and I think everybody agrees, this formula was developed for two reasons. It was to strike that balance that everybody has talked about. To make sure that we have enough customers attracted to the system, the gas system and to maintain -- remain on the gas system, and to postpone or minimize the deferrals.

And as, Mr. Stewart said, neither of those are being achieved by this formula. We know that the number of customers aren't being achieved, as evidenced by this chart. The numbers are dramatically lower than, (a) originally projected, and (b) obviously substantially less than are needed to support the system. And to be honest with you, I don't know how there is an end in sight, because EGNB has tried a whole variety of mechanisms to attract customers. And there has been what can only be described as relative to what was intended and what is needed a modest -- at best a modest degree of success.

The question is, who is going to pay for that? This whole principle is on the basis that there is formula and the whole approach is that's going to be paid for by customers. EGNB bears not a single iota of risk of the consequences or that fundamental difference than what was anticipated.

As Mr. Stewart pointed out, the deferral account accumulates at a compounded rate of what is currently I believe 13 percent. And assuming that the customers and the pipeline and EGNB survive long enough that there will be a repayment of that amount to EGNB.

So who is actually paying the cost through this formula, who is paying the cost of this shortcoming, if you will, in the number of customers? It is the customer base that is there now. The small modest size number of customers that we have on the system right now. A total of at least -- I guess it is 9,400 as of 2008 when the figures were given yesterday.

So 9,400 customers are bearing the cost of what was anticipated to be at least in 2007 a customer base of 22,000 instead of 9,400. So while there is progress being made, it is unfortunately very slow progress. So there is something fundamentally wrong with the entire system.

I just want to briefly turn to a couple of issues. This issue of the typical customer, and we haven't called any evidence with respect to it, and we haven't even put it in issue, but I think it is important to consider. I believe -- and I am doing this based on the past, evidence from a past hearing, rather than what's here, but I believe if you look at the statistics that were given for the LFO customer, for the average LFO customer consumption in one of the IRs, if my memory serves me correctly, the two largest LFO customers, Flakeboard and Atlantic Wallboard were not included in that, because it was found to be -- it distorted the numbers. They were too large, so they were taken off. It appears to me, and I am a layman on the subject at best, looking at the statistics, that the statistics this time, the same was done. I can't tell you if that's got a positive or a negative consequence on us, but it does go to this question that was raised earlier about the mean versus the --

MR. TONER: Median.

MR. LAWSON: -- median. You can tell I didn't study math. I was smart enough to now know --

CHAIRMAN: Isn't there a mode in there somewhere.

MR. LAWSON: Yes. There is something. Needless to say, I don't know what that is either. But I do know that there -- to get a number, the indication is that -- the evidence appears to be -- or EGNB's position seems to be you have to include everybody and you have to average it out. But for us, they seem to have taken us out and said well everybody except these two guys, because they are big and distort the numbers. Now that may be right, but I just -- I guess caution the Board in looking at that is everything being done the same across the Board?

But as it relates to the formula itself, we have just basically two positions. Firstly, we agree that there should be a cap, as Mr. Strunk and Mt. Stewart have both proposed. Although we differ with both of them as to what should be the benchmark, what we differ with them up until about 20 minutes ago as to what should be the benchmark, because the benchmark we were going to propose was what I would describe as the then -- that was yesterday's draft of the version of this argument -- the then current rate, which was $1.87 I believe it was per gigajoule for the LFO class. I don't know the other classes. We don't believe that the extraordinary rate of $4.08 from the hearing last year would be an appropriate one to use as the benchmark from which a cap would apply to which a cap would apply.

And the reason why we don't believe that is that I think everybody would agree that we are dealing with at the moment a historical anomaly, that certainly in 1999 nobody would have ever dreamed that the kind of differential and the kind of rates we are talking about now would ever apply. The growth and the profitability of this system wasn't in anticipation of exorbitantly high rates. It was in anticipation of a growth for the customer base.

Unfortunately or depends I guess which side of the coin you are on, there has been an extremely large and unusual gap that's taken place between oil and gas that has created this $4 rate. And as a result, we believe that the rate that is more appropriate from which to apply a benchmark capping would be the rate which was in place yesterday I believe it was at a $1.87. That represents about two and a half times the rate, for example, that applied to Flakeboard when it joined in 2003.

CHAIRMAN: Mr. Lawson, just for the record, I believe yesterday's rate is also in effect today. Any new rate would not come in until the 1st of May.

MR. LAWSON: Oh, I am sorry. Okay. So I am going to say today's rate.

CHAIRMAN: You don't have to change your --

MR. LAWSON: Okay. Great. Perfect. I apologize. That's right, Mr. Chairman, you did point that out. So the rate as of today. And it -- the history I believe was $4.08. And then it dropped down to slightly over $2 was the evidence. And then it dropped down to $1.27. It went up to $1.87. Now it is up to $4.08. That is in the span of one year. With the exception of whatever the anomaly is that is taking place now, we have got one year of extreme volatility. And very unusual historical spreads between oil and gas. And we submit you can't use that unusual -- very unusual circumstance as the benchmark. That more appropriately it would be the $2 range that would be an appropriate benchmark in which to use.

As to the issue that the Vice Chair raised on whether it should be a CPI versus an energy index component, I guess two things. Firstly, there is already built into the formula itself, the component of escalation of energy costs, at least as it relates to the relative energy costs between the two of them, gas and oil, at least in the LFO category.

So I think that there is already some of that built into it. And the other is particularly if you use the $4.08 rate, for example, as the benchmark, to the extent that you then say the escalation will be whatever escalation there is, if there -- if the price of oil and natural gas drops substantially, leave aside whether a rate rider applies or not, if the rate drops substantially and then increases significantly, if you use your cap using that benchmark from what has been the increase this year to the following year, say a 50 percent increase in energy costs, that 50 percent increase may still not have taken it up to the point of where it was for the $4.08 rate being set, but yet you have set a CPI or an escalation factor at a much higher rate. So you could actually have the $4.08 using point X as the price of -- of relative pricing the fuel, then apply because you are now looking at the rate that applied for the current rate and an escalation in the current rate.

Not what was used for the $4.08, but the current rate in its escalation of energy costs generally, then you may now apply another 50 percent capping on top of that. So I think you are double counting. I am not very clear. I am sorry for that. But I do believe that you -- if you will take a look at it, if you set the cap and the rates drop, and then you use the benchmark of escalated energy costs, when you do that, you are going to get a distortedly high -- conceivably a distortedly high capping number.

I think, as Mr. Stewart does, that the CPI is a more appropriate benchmark, and I think his -- his point i s a very good one. The CPI is more applicable to the delivery of a service, which is a pipeline. EGNB's costs are not tied -- their costs are not tied to energy, because they are not in the energy business. Their costs are tied to what generally would be more accurate to CPI I suspect than they would be to the energy costs.

And the only other comment -- a couple of other comments is we don't believe a floor is appropriate. We don't really have any conceptual -- or sorry, we have a problem conceptually with the floor. We don't have any problem with the picking of a number, but our concern obviously is that to the extent that you set a floor, then customers at least who have the capacity to do that, will just say look it doesn't make any sense for me, because there is this minimum floor level, the differential doesn't justify me staying on gas, so I am going to switch over, if I have a capacity to switch over to oil, as some customers do, switch over to oil, and as a result the floor now instead of helping, ensuring contribution to the deferral account, a less contribution to the deferral account, makes it worse, because a customer like Flakeboard says look, we can usually turn the switch and go to oil, and when we turn the switch and go to oil, it cuts off basically most any revenue to EGNB. And I think it is a cut off your nose despite your face situation. So I think we would be concerned about having a floor, because I think it would impact on the revenues in a negative way for EGNB and the rest of the customers. And we would -- unlike the Atlantic Wallboard, we do believe that -- well not unlike Atlantic Wallboard -- I guess they didn't say one way or another, but we think that it would be appropriate in addition to the capping, which I thought was academic until this morning, as I think Mr. Stewart may have, in addition to that, we believe that the -- there should be a reinstatement of the 15 percent -- from 10 percent to 15 percent savings for the LFO customers.

And that -- the numbers are randomly selected, the 10 percent, the 15 percent. There is no magic to what it is. And the argument will be, well look there are only three customers there. Are we going to be able to lure three more customers for that purpose by doing -- and I am not going to pretend we can. I don't know. I don't know if EGNB is going to be able to lure those three additional, potential customers who are on the main in the LFO class with -- by going to 15 percent. But I think because the overall riding mandate of this Board is to set a just and reasonable rate, we believe that the 15 percent would be more just and reasonable than a 10 percent discount or targeted savings, I apologize.

So, thank you, Board members.

CHAIRMAN: Thank you, Mr. Lawson. Just to follow up on the 15 percent, I am just wondering, you know, is that just a number taken out of the air, or is there some basis on which you think that 15 percent, for example, is the better number and for what reason?

MR. LAWSON: It had been 15 percent. And I believe the indication was it was in 2005 that that changed. Flakeboard was a participant at that hearing where the change took place. And to be perfectly honest with you, I was their advisor at the time, and when I say this maybe I won't be from now on, but there was no concept whatsoever by Flakeboard, as a participant in that hearing, as to the consequences of that change. Not a single grasp of its impact. And it wasn't a focus, because it was a part of another process.

So as a result, there was no real hearing on this question of should it be 10 or 15 percent. We just submit that the 15 percent is to be honest with you fair. It's only 15 -- choosing 15 percent because it is what it had been until it was changed to 10 percent back, as I say, a few years ago.

CHAIRMAN: Thank you, Mr. Lawson. Mr. Toner? Mr. McLean? Mr. Barnett?

MR. BARNETT: No question.

CHAIRMAN: Mr. Johnston? Public Intervenor?

MR. THERIAULT: Did you want to give Mr. Stewart an opportunity?

CHAIRMAN: Did you want to take that opportunity now?

MR STEWART: Just ever so briefly, Mr. Chairman. There is -- I guess my comment is just simply this. I was tempted to just stand up and say, you know, ditto. But I think that, you know, this represents a shift in the rate of 120 percent for our client over about a two month period. And in my mind it just underscores the problem with the formula as manifest in the current marketplace, but it creates these swings and makes, you know, unpredictability that we can't hedge in the marketplace anywhere. And to the extent that there -- in my view, just highlights the need to have some element of the formula, even an element trickling down past the Board's discretion to the mechanistic size of the formula -- side of the formula to control these swings, so that we can carry on business. And we don't have the natural cap, as the Board is aware of, you know, the dual fuel capacity. That, you know, we run into a point that we can throw switch, you know, we don't have that capacity. We are a new construct and we only burn gas. And so I would suggest, or all future LFO customers more than likely and won't be conversion customers. So if that natural cap removed, the formula has to take -- do something to address this. It is reeking havoc with the customers and their ability to do any business planning by these swing. That's my submission.

MR. TONER: Can I ask a question?

CHAIRMAN: Certainly.

MR. TONER: From a usage perspective just to put it into context of the 120 percent from -- if the usage is identical for April and May, what would that represent dollarwise?

MR. STEWART: Dollarwise?

MR. TONER: Do you want to ask your client?

MR. STEWART: It's going to be approximately --

MR. TONER: Are we talking 10,000? Are we talking 50? That's why I want to put it into context?

MR. GALLANT: Sorry. If you are talking the base -- the base here, which is your 33,000 and if you now jump your rate from 187 to $4.08, you are in the neighbourhood of 60,000 plus dollars for one month increase alone.

MR. TONER: Thank you.

CHAIRMAN: We have discussed this before, but Mr. Stewart, but perhaps this might just put it into a bit of context. Would be beneficial to have regular price settings so that at least -- what I mean by regularly scheduled price settings, so that at least with a formula that was transparent and fully understood that there could be better preparation for the price swings? You know, we all listen to Bob Jones on Tuesday night and we could sort of have the equivalent in natural gas pricing.

MR. STEWART: I filled up, too. I don't have any inside information. I rely on Bob Jones. Possibly. You know, I think that's -- you know, and I guess that's where we -- I guess that's part of why we have urged the Board to -- you know, move beyond the mechanism of the formula and in an examination of the whole ratemaking methodology because -- particularly for our particular class, it seems more manifest than our class because perhaps the dollars are bigger, but I suspect if I am regular Joe homeowner, you know, smaller dollars equal a greater percentage, you know, in terms of effect and dipping into my disposable income. But possibly -- possibly, at least as an element of being able to control it, at least if there is an ability to view it and to monitor it and not, you know, literally find out at 11:00 that in, you know, a few weeks, you are going -- your distribution charges are going to double, then that would help. I am not sure -- I don't know. I am not a business analyst. I guess anecdotally, it would seem to be that could possible help.

VICE CHAIRMAN: Thank you.

MR. BARNETT: Mr. Chairman. Just to follow-up on the co-Chairman's question, Mr. Stewart, is there any advantage in -- we talked about caps, you have spoken about caps, and I understood it really related to a benchmark, which you had given me earlier, it was a ceiling which I guess we will be at at May 1st. Is there any advantage to your client or to the LFO category where in fact there was a limit on the amount of either rate rider or rate re-adjustment that could occur on a monthly basis?

MR. STEWART: I have to say that we talked about that at some length in terms of, you know, the greatest concerns that we had were that, you know, a mechanistic application of the formula, you know, might result in prices, which in our view were unconscionable even if they were proper under the view of the formula. And I know we don't have a cost of service benchmark, but hopefully we will have one some day. And so that created the concerns that we have had.

The other concern we had is the one we have talked about in terms of volatility and the quickness of the swings. And the news of this particular reinstatement underscores that. I would seem to me that when you can go in two months, 120 percent swing, then that in my view is arguably unjust and unreasonable even if it falls within, you know, below the target. And I know it probably meets a mechanistic application of the formula as it currently exists, but should there be limits on these swings? Absolutely. And I guess we haven't necessarily turned our mind as to what those should be, but this is a classic example of how that, you know, would come to play -- come into play. You know, we move from, you know, $1.85 to 4.08. That's a huge change. And like, Mr. Lawson, I think Mr. Bettle and I, we will have a phone call immediately after we adjourn to advise our client -- advise my client and his employer of this consequence, and they will have to scramble adjusting their business plans.

Now did we know that there was a maximum possibility the rate could bump into that? Yes, of course, we did. And so -- but the issue is how quickly.

VICE CHAIRMAN: Thank you.

CHAIRMAN: Thank you, Mr. Stewart. Mr. Theriault, if you just give me an estimate as to how long you think your summation might be? It's just that we are at noon. I think most people here would probably rather just continue. I haven't really polled the room, but I --

MR. THERIAULT: 25 minutes.

CHAIRMAN: Sure. Let's proceed then.

MR. THERIAULT: Of course, I am terrible at estimating times.

CHAIRMAN: That's okay.. It goes with the occupation.

MR. MACDOUGALL: Mr. Chair, just before Mr. Theriault proceeds on that basis, I am assuming as usual you will come to back down the row a bit and we will have a few minutes, maybe 10 or so of reply to who came before us, just for your scheduling purposes.

CHAIRMAN: Sure. I don't see that as being an issue. But it just strikes me that being heading into Friday afternoon, you know, generally speaking, people I think would rather just conclude if possible.

MR. MACDOUGALL: No, that's fine. I just wanted to give you an idea of the timing.

CHAIRMAN: Certainly. Mr. Theriault?

MR. THERIAULT: Thank you, Mr. Chairman, Board Members.

Before discussing the issues that are before the Board in this application, I submit it is useful to review the history and the effect of market-based ratemaking as it has applied to EGNB.

The first regulatory reference to market-based rates is contained in the decision of the Public Utility Board of June 23rd 2000. This decision confirmed that market-based rates were appropriate during the development period.

Over the next several years, discussions, meetings, hearings and decisions have led us to the current application that is before the Board today.

I submit there are negative effects to EGNB's consistent and persistent application of the current market-based ratemaking methodology. First, I submit this methodology continues to have perverse effects on both the growth in customer acquisition and on the growth in the deferral account. Second, the Applicant's rate base and its deferral account have grown much more rapidly than originally anticipated. Third, the rates of customer acquisition and throughput growth have been lower than originally anticipated.

I submit these negative effects are a clear indication of the failure of this particular market-based methodology to reach out to potential customers with a relevant message that is clear, easily understood and stable in its application.

The issues before the Board are interrelated and flow from its jurisdiction under the Gas Distribution Act of 1999.

I submit that the most important issue the Board must address is just exactly what it is that it regulates with respect to EGNB? I submit the answer is that the Board regulates the gas distribution rates of the utility and, under the legislation, these rates must be just and reasonable.

The may seem to be an obvious point, but so much of the debate in this application has focused on the wrong issue. It is not the Board's responsibility I respectfully submit to ensure that EGNB has the ability to capture a customer's savings on commodity costs by raising its distribution costs. it is not the Board's responsibility to allow EGNB to hide from the consequences of poorly researched and poorly implemented marketing strategies by making the deferral account available as financial cover. Rather, I submit, it is the Board's responsibility to ensure that the particular portion of the bill a customer receives for the delivery service is developed using rates that are just and reasonable. And what constitutes just and reasonable rates? Since this is a market-based ratemaking regime operating under a development period, rates cannot be expected to conform to costs. They do, however, have to be stable, because potential customers need predictability in order to make informed decisions that are in their best interest.

And what does EGNB offer residential customers? Quite frankly, what is on offer is a set of a unpredictable, highly variable distribution rates. The tables that I circulated during my cross examination illustrate the highly variable nature of the SGSRE, and the SGSRO delivery rates. And what was the response by the Applicant when I noted that the SGSRE delivery rate went up by 82.8 percent over 16 months. The literal equivalent of a shrug. EGNB was happy to explain that this increase was offset by a decline in commodity costs. Therefore, the customer would not notice that the utility had taxed away the benefits of a decline in natural gas prices.

Again, it is useful to remind ourselves that the Board's jurisdiction, with respect to the market-based formula, I submit, is restricted to the distribution rate, and this rate must be just and reasonable.

The Board order that initiated this review of the market-based formula was very specific, and I will quote, "Enbridge shall file...,the appropriate financial and market information which will permit a thorough examination of the said formula."

And what do we have from the Applicant's evidence that would permit this "thorough examination of the said formula"? Here is what I have been able to itemize from this evidence.

1. We should use four decimal places, unless otherwise specified.

2. A multi-step process that is virtually impossible for any customer to understand should determine retail oil prices.

3. The target savings levels should continue to be used despite the fact that there is no supporting evidence that these levels have achieved the objectives set out by the Applicant.

Much of the Applicant's argument is made up of questionable assumptions about the actual savings realized by customers, and how well distributed these savings are among customers over time.

Further, there are issues with the reliability of the data that is used in the formula. One of the data issues is that of the market spreads. The MJ Ervin report attempts to make the case that spreads between New York Harbour No. 2 furnace oil and St. John rack prices are relatively stable. But these spreads are not stable, as the graph circulated as part of the cross-examination showed.

I submit if the spreads are not stable, then a formula that incorporates these spreads will not be stable either. If the formula is unstable, it will produce unstable rates. And if rates are unstable, I would argue they are not just and reasonable.

Finally from the Applicant's case comes the admission that the utility does not always follow the formula in its applications to the Board for rate riders or rate reinstatements. The point was emphasized during my cross-examination of the Applicant's panel. I asked them about a Board decision on rate reinstatement dated February 20, 2009. Witness Charleson admitted that EGNB had used judgment to move from 21 days of energy futures market data to one day of market data.

The justification for this is that 21 days of data would have resulted in rates significantly higher than requested. I submit this can be translated to that EGNB didn't like the optics of the rate result when using 21 days of data and chose to use 1 day.

As a footnote to this incident, it is apparent that the Board had doubts about the reasonableness of this "exercise in judgment". Quoting form the Board decision: "In this instance the Board will accept management's judgment that the prices calculated from using 21 days of market information would result in a price that fails to give customers sufficient incentive to convert to natural gas. The Board approves the rates as proposed and listed below, but cautions EGNB regarding the use of a single day of data to support any future rate reinstatement application."

I submit Witness Strunk has provided a well-reasoned analysis of the market-based formula and the proposed some improvements to the framework for market=based rates. Specifically, Mr. Strunk addressed four questions in his evidence.

First, are EGNB's, stated objectives for the formula, i.e, to provide customers with a sufficient level of savings to incentivize the conversion to and continued use of natural gas and to minimize additions to the deferral account, reasonable?

Second, can EGNB's proposed formula be expected to achieve the stated objectives?

Third, has EGNB's application of the formula in practice been consistent with the realization of the stated objectives?

Four, are there improvements that could be made to the formula proposed by EGNB, and if so, what are they?

Are the stated objectives reasonable? Mr. Strunk's conclusion is that while they differ from traditional ratemaking objectives, they do fit within the regulatory framework under which EGNB is operating during the Development Period. However, and I submit it is a big however, the objectives fall short -- fall far short of reasonable because they do not include sufficient customer protections.

Can EGNB's formula achieve its stated objectives? Mr. Strunk concludes that the answer in no. There are two reasons for his conclusion. First, the market benchmark against which EGNB targets savings has not consistently been the lowest cost alternative fuel. Second, the market-based rate is inherently volatile. Such volatility is unnecessary since the purpose of EGNB's distribution rates is to recover the fixed costs associated with long-lived assets.

Has EGNB applied this formula in a manner that is consistent with its stated objectives? The answer from Mr. Strunk is an unequivocal no. EGNB has used discretion in the application of the formula and the triggering of proposed increases to the maximum rate, rate riders, and rate reinstatements.

And what does Mr. Strunk recommend? The first recommendation is that the lowest cost alternative fuel be used to set the rate for all general service customers. In one respect, this returns the formula to its original roots. At one time the Small General Service (SGS) class was treated as one, with no distinction between electric, oil and commercial. The difference in this proposal is that Mr. Strunk is suggesting that they all be treated equally; that is, the lowest cost fuel should be used to set the rates for all three SGS groups.

The second improvement is to place a cap on the maximum allowed market-based delivery rate. This cap will ensure that the rate does not travel outside the zone of reasonableness. The cap could be based on embedded cost of service once a cost of service study for EGNB is available for Board review and approval. In the interim, setting a cap based on inflation can serve as a substitute.

The third improvement is that EGNB offer an optional market-based delivery service rate for customers who seek fixed price delivery service rates. This would increase the stability and predictability of the delivery service rate.

EGNB's responses to these suggestions by Mr. Strunk for improvements in the formula was given in Mr. Charleson's opening statement. This response can largely be described I submit as fear mongering. Many of the supposed consequences that Mr. Charleson claims will befall the utility if Mr. Strunk's recommendations are accepted already occur in much larger measure under the existing market-based formula.

The existing market-based formula does not produce stable rates. The existing market-based formula does not meet EGNB's stated objectives. The existing market-based formula does not produce just and reasonable rates.

All that Mr. Strunk did in his evidence was to demonstrate that there is a need to improve the formula, and he proposed I submit perfectly reasonable methods to do so.

Now today, Mr. Chairman, Board Members, I have four requests to the Board arising out of EGNB's application and the evidence presented by my witness, Mr. Strunk.

One, I would ask the Board to implement a cap to be placed on the maximum allowed market-based delivery rate. For the immediate term, this rate cap would be adjusted upwards by the Consumer Price Index for New Brunswick.

Mr. Strunk has indicated that his three improvements to the market-based formula are not mutually exclusive and, therefore, the Board could implement all three. However, the rate cap will provide some improvement to the formula until the Board can approve a method for transiting to cost-based rates.

My second request is that since the price cap should be linked to embedded costs, EGNB be ordered to file the results of the cost of service study with the Board and all parties to this proceeding as soon as they are available. I would ask the Board, in consultation with EGNB, to confirm the precise date that the study would be complete.

And, of course, the results of the study should be available in hard copy and electronic format. Since I understand this study is being done using Excel, there should be no problem in providing the electronic copies to all parties.

My third request is that the Board set the frequency of applications for the maximum market-based delivery rate to be quarterly, rather than the annual time frame currently in place. A review of the frequency of rate rider and rate reinstatement applications over the past two years suggests using an annual application process for the maximum rate is no longer meaningful. The maximum rate becomes at best, a temporary phenomenon, which is soon superseded by requests to change it.

There are three, if you will, for lack of a better word,. Mr. Chairman, Board Members, provisos to this request.

First, with the implementation of a quarterly review of the maximum rate, the Board I submit should not, nor need not, accept any requests for rate riders or rate reinstatements. The frequency of applications to change the maximum rate obviates the need to entertain any requests for variations from the maximum rate.

I submit that the second proviso, again for lack of better word, relates to the process for administering applications for changes to the maximum rate. I would suggest that EGNB be required to file an application, together with supporting documentations and calculations, to the Board for its review and verification. As for the remaining aspects of the process, I would submit and leave that in the capable hands of the Board and the Board Staff to deal with.

The third proviso deals with the Board's responsibility to approve just and reasonable rates. A new approach resulting in more frequent applications for maximum rates will have the effect of substituting an automated formula process for a conventional rate application hearing. After this automated process has been in operation for some period of time, the Board, I submit should seek input from affected parties as to the impact of this new process has had, and, in particular, whether the process has resulted in rates that are just and reasonable.

Mr. Chairman, Board Members, my final request to the Board is in response to a comment and a request form the Chairman. On pages 174 and 175 of the transcript for April 22nd, in this hearing, the Chairman made the following statement: "So perhaps all of the parties might address the issue in final argument quite frankly as to whether or not a single formula should apply to both a rate application and rate rider applications, or whether or not there should be a separate formula which might include judgment I guess as you suggest."

Now I interpret this statement to mean that I should respond to the prospect of the formula being used literally when developing the maximum rate, but that formula could be tempered by judgment when considering applications for a rate rider or rate reinstatement.

If I am correct, Mr. Chairman, in my interpretation, I would have various concerns with this prospect. The existing formula as applied by EGNB fro maximum rate applications I submit is opaque, poorly understood by customers, and with inputs that are subject to significant variability. To supplement these aspects by superimposing management judgment on rate riders and rate reinstatement runs the risk of compounding the problems that are already apparent with the existing formula.

Further, there is no indication from the Applicant as to why this management judgment would be necessary, or what type of discretion would be used in its application.

MR. BARNETT: I thought it was off, Mr. Theriault.

MR. THERIAULT: That's no problem. I am glad it was yours and not mine.

MR. THERIAULT: One gathers a sense that EGNB wants the ability to modify the formula when the results are viewed to be "politically unpalatable". In other words, as I stated in questioning Witness Charleson, "the formula if necessary; but not necessarily the formula".

Finally, if the Board accepts my request to move to quarterly applications for changes to the maximum rate, there will be no need for rate riders or rate reinstatements. If there is no need for rate riders or rate instatements, then Mr. Chairman, there is no need for dual formulas.

Now I would like to end my final argument with some observations that I believe are important as the Board moves forward in its regulation of EGNB. First of all, I submit it is essential for the Board to understand the underlying weaknesses of the market-based formula approach to gas distribution rate setting. I can understand the interest the Board may have in developing a mechanistic approach to rate setting for EGNB. After all, is it much different from the regulation of gasoline?

Unfortunately, the answer to this question is yes. Gasoline regulation involves setting a price for a commodity. Natural gas regulation involves setting a price for a delivery service. Gasoline regulation pays no attention to fixed assets and their attendant fixed costs, because there are no fixed assets or fixed costs to consider. Natural gas regulation has to consider both the fixed assets associated with infrastructure, and the fixed costs that accompany those assets.

My point, Mr Chairman, Board Members, is quite simple. The current market-based approach to gas distribution rates setting can only be a temporary phenomenon. It cannot, and I submit, should not, go on forever.

Earlier, Mr. Chairman, in a previous hearing, you expressed a sense of urgency about moving forward with the other regulatory issues associated with EGNB. This included an examination of the Development Period, and the criteria for ending the Development Period. In addition, there are other issues, interrelated with that of the Development Period that must follow in short order.

Mr. Chairman, you, and the other Board Members, may well wonder at my sudden enthusiasm for the market-based formula approach -- enthusiasm that appears to show up in my request for the Board. However, I do not want to mislead the Board. I believe that the market-based formula approach has limited useful life and that we are very close to the point where it should be abandoned in favour of a cost-based approach. So I would ask the Board to accept my requests in the spirit in which they are offered; that is, as a means to moving forward to put in place a cost-based regulatory regime for EGNB. And, I would submit that the time is short.

Now if I may, Mr. Chairman, just to comment on the information given to Mr. Stewart and Mr. Lawson with respect to the rate reinstatement in the LFO class, and I am not even going to ask my friend what they are for the other classes. But I think this sudden increase in the LFO rate is illustrative of the need for a cap and for customers to be advised ahead of time if you are going to continue on with the rate reinstatement of rate rider system.

That's my remarks. Thank you very much, unless there is any questions.

CHAIRMAN: Thank you, Mr. Theriault. Look just with respect to the cap, we had some discussion with two other Intervenors with respect to cap as to starting point. I am not sure if it was in your submission, perhaps I just didn't write it down, where -- what would the starting point be for the cap? I don't know if you didn't indicate what it would be, perhaps you could --

MR. THERIAULT: Well there is various -- I think various alternatives that are available to the Board. One is you could use the current maximum for each class or you could take an average of the values for the maximum of each class over say the past few years and then you calculate the CPI adjustment based on that. I mean they are just two alternatives.

CHAIRMAN: Sure. Are you advocating a particular alternative I guess is what I am saying?

MR. THERIAULT: No. No, I am certainly -- that's why I say the process and what I tried to explain, you know, once the cap is in place, I think the Board -- the Board and the Board Staff -- the only thing that I would suggest, Mr. Chairman, is that if that approach is looked at before -- you know, once the Board, if the Board were to make the decision to proceed to the cap and say here is what we are doing, I would suggest it might be appropriate to invite all the parties, EGNB and all the other parties that are present here to give a written comment on that prior to an ultimate decision the Board.

CHAIRMAN: Now when Mr. Stewart was talking about a cap and how it might prevent the utility from perhaps collecting rates that they felt that they should be collecting that ultimately it may end up in a deferral account and it might create a pay me now or pay me later type of situation. Do you have any comment on that?

MR. THERIAULT: I am sorry, Mr. Chairman, if you can repeat it?

CHAIRMAN: Well I guess what I am really getting at is if you put a cap on is that potentially just going to result in higher amounts being paid into the deferral account, which will form part of a rate base -- the rate base going forward?

MR. THERIAULT: I think the best way to answer that, Mr.

Chairman, is in the discussion between the Vice Chairman, I think, and Mr. Strunk, yesterday when they talked about the cap and what was going on. At least I believe, Mr. Vice Chairman, it was in your discussion with him. But by putting cap in, you are going to acquire new customers. So I think over the long run that there will not be a general increase in the deferral account. But what you are creating -- you are creating the predict -- at least some level of predictability. I guess the discussion that the Vice Chairman and Mr. Strunk had, if I remember correctly, was that would quarterly hearings help and lead to a just and reasonable rate? And I think Mr. Strunk's opinion was that it could, but that without a cap you are still going to have that volatility even in a quarterly hearing. So you are still going to have the volatility. So if you have the cap -- and I think with the marketing strategy, EGNB can market it, that they do have this cap. And I think that will send a message out to consumers, certainly residential consumers and incentivize switching. Yes, like as Mr. O'Rourke says, they can put it on their website.

CHAIRMAN: So do I take it then from your response you are saying that perhaps any loss or greater loss that might have ended up in the deferral account would potentially be offset by new customers?

MR. THERIAULT: I don't think it could be any worse than what is going on now, as far as additions to the deferral account.

CHAIRMAN: Thank you. Mr. Toner?

MR. TONER: Thank you for staying within your 25 minutes, your estimate. I don't mean to draw you out, but when -- Mr. Strunk's evidence, and this is hard to ask this question without giving you my opinion but --

CHAIRMAN: Then don't.

MR. TONER: I know. But as the Public Intervenor, I feel that there is a balance between just and reasonable and savings to the consumer when it comes to the difference between residential oil and residential electric.

MR. THERIAULT: Okay.

MR. TONER: Okay. And Mr. Strunk, correct me if I am wrong, proposed that those three groups -- that those two be grouped, as well as, the General Service -- Small General Service?

MR. THERIAULT: Yes.

MR. TONER: He did. Right. And I am not sure that there was a supporting -- I can understand the electric and the oil customers be combined. I am not quite sure there is enough evidence to support in the group. But my question to you is because the lowest rate is the electric rate, why -- is it right now? Yes.

MR. THERIAULT: One says no, one says, yes. So I mean --

CHAIRMAN: It will be next week.

MR. TONER: The issue is that his recommendation was a rate that was below that, below all those three rates.

MR. THERIAULT: Well I think it was to match the lowest.

MR. TONER: I think it was below. It is to match the lowest?

MR. THERIAULT: It is to match the lowest.

MR. TONER: Okay. Do you feel that the -- I guess my question is do you feel that the two groups, the electric and oil together is enough, or do you feel that you --

MR. THERIAULT: Well --

MR. TONER: -- like what do you support, I guess?

MR. THERIAULT: -- what I support is the cap. And I think I mentioned that -- I have outlined in my closing the three -- the three scenarios put forward by Mr. Strunk, and even though he said the Board can do one of any three or parts of it, I would submit the cap. And the reason I submit the cap is because I think it is the quickest, simplest, most transparent way of providing stability or at least some form of stability on a short term basis without getting into a lot of complicated calculations and whatnot.

So even though Mr. Strunk put that forward, I think his evidence as I understood it was he simply put forward three proposals for the Board's consideration. I don't even think he took a position as to which one he felt was more appropriate. And that's why -- but I am here today, Mr. Toner, supporting the number 2, the cap portion --

MR. TONER: The cap. So you are not supporting grouping those groups together?

MR. THERIAULT: No. No.

MR. TONER: Thank you.

VICE CHAIRMAN: Mr. Theriault, I would just like to touch on one topic, but I would like to use a couple of illustrations.

In Mr. Strunk's evidence, the flavour that I get from it is that he believes that if we have one combined residential class at the lowest rate that this will attract more customers and that is -- that's his expectation. And as well that -- I think this is less expressed, but I think its probably the underlying premise that if there was cap on increases, that this is something as well that's going to attract customers to various rate classes. And the concern I have I guess with going in that direction is that the marketing and the business of

EGNB, you know, is theirs to run subject to the regulatory authority of this Board. And I am just wondering whether if we were to adopt the reasoning behind some of these proposals, the Board would be substituting its business decisions, its business judgment for that of EGNB, and if we would be doing that, whether it would be appropriate?

MR. THERIAULT: I don't think so, Mr. Vice Chairman. And maybe I will stick with the cap. And the cap is there to ensure that the maximum allowable rate stays within the zone of reasonableness, which is exactly I submit what this Board is here to decide, just and reasonable rates. So I don't think a cap would interfere with the running of their business. And certainly not the proposal that I have recommended with quarterly applications. It would just simply -- they would have -- they collect the information on two-month basis, so they would have it available to apply to the Board on a regular basis. But I don't believe a cap in any way, I don't see how it would interfere with their business. They have to adopt a different marketing strategy, but again as I say it does not appear what they have now is working. It certainly, as Mr. Lawson, pointed out, you know, you take one look at the graph to get the disputed section, you know, Mr. MacDougall and Mr. Strunk talked about, look at the actual and look at their proposed, and there -- obviously is not working.

VICE CHAIRMAN: But that's precisely my concern. I mean the assertion that is made by various parties at this hearing and in other hearings is look the EGNB model doesn't appear to be working. They are not getting the attachment rates they would like to have. Therefore, the Board should direct them to do certain things which will increase their attachment rate. And I have grave concerns about whether it is this Board's role to deal that specifically with the business decisions of EGNB. Maybe it is. You know, I am not closing the door on the --

MR. THERIAULT: No. I am not suggesting -- I am not suggesting that the Board intervene with the business decisions of EGNB. However, I do believe there is two objectives to the current ratemaking mechanism used by EGNB. One is to maintain targeted savings, and the other is to minimize deferrals -- minimize deferral account, additions to the deferral account. They haven't been achieved.

I submit there is a third one there. And that is variability. And I think that has to be considered and that is what this whole proposal has dealt with is to try and reduce -- it won't eliminate it, because you are dealing with commodity prices. It is not going to eliminate it, as Mr. Strunk said yesterday, you know, there is high volatility in commodity pricing. But the Board is here to set a distribution rate. And I submit that a third component has to be stability. I think in the evidence, Mr. Charleson, somewhere in the evidence, because I have read it several times, says you know, rate stability is preferable, but it is not crucial. Well I disagree with that. I think rate stability is crucial in the Board's determination of what is just and reasonable.

So I think anything that would improve that is not interfering with EGNB's business. It is simply I think maintaining what the Board must do under the statute.

VICE CHAIRMAN: Thank you.

MR. TONER: I have another question relating to --

MR. THERIAULT: And I thought you were the one who had to leave.

MR. TONER: I know. And back to your cap, do you -- asking for a cap on the existing groups of rates?

MR. THERIAULT: Yes, all groups.

MR. TONER: No, individually, are you -- are you pooling those three -- that's the key, he mentioned that he wanted to pool those first three?

MR. THERIAULT: No, no. No, no. No, no.

MR. TONER: It's every -- the residential electric, residential oil --
MR. THERIAULT: They would all -- the classification --
MR. TONER: -- would each have their own cap?
MR. THERIAULT: That's correct. They would all --
MR. TONER: So you are not asking to merge those?
MR. THERIAULT: No, not at this point. Something -- that may be a discussion that we have down the road, whether those classes should be merged in a subsequent hearing.
MR. TONER: Okay.
CHAIRMAN: Thank you, Mr. Theriault.
MR. THERIAULT: Thank you, very much. Mr. Chairman, I do have copies here I can hand out to the Board and to the parties of my prepared -- of my closing arguments.
CHAIRMAN: Thank you. Perhaps you can give the Board copies to the Board Secretary.
MR. THERIAULT: Yes.
CHAIRMAN: I guess in rebuttal in reverse order. Mr. Lawson, anything you wish to say in rebuttal from what you said after you had your words?
MR. LAWSON: I would like to take one moment, and I don't know if it would qualify as rebuttal, but just a question, a comment with respect to the Vice Chair's last comment about this -- to what extent are we interfering with the

management of day-to-day business? I have been on that side of the table before and always worry about, as somebody who represents a regulated utility, that the Board's job is not to run the business of the utility. And we would agree with that 100 percent. On the other hand, the Board's job absolutely is to set a rate that will then have them run their business in a fashion that will hopefully be profitable. But if they don't run it in a manner that is profitable, because they haven't figured out to do that right, for whatever reason, or customers won't join, the real question is who should pay the consequence of that?

So, yes, setting the rates and tinkering with the rates in a fashion that will affect their business, I don't think there is anything wrong with that. If you said, and by the way, here is how you are going to run your business, you need to go out and offer more subsidies to customers, you have to go out and run a lot bigger campaign for advertising. I don't think that's the Board's job. But I do think it is the Board's job because of the deferral account and all the money that is going into the deferral account to figure out how is it that as a regulator you set rates that will allow people to be attracted as customers to the utility. So I think it is important for the Board to give consideration as to how the utility is being run. Other than that, I am speechless.

CHAIRMAN: Thank you, Mr. Lawson. Mr. Sorenson, not being here, I guess won't get an opportunity for rebuttal. Mr. Stewart?

MR. STEWART: Mr. Chairman, simply I guess a little bit to deal with the issue raised by the Vice Chairman, as Mr. Lawson just did, while I understand -- and while that's obviously, you know -- obvious that the issue for the regulator in terms of you know how much regulation is too much and where do you draw the line in terms of establishing things, I think it is less of a concern for this Board and its particular context because the Board has taken upon itself to establish the deferral account, and has jurisdiction over the regulation of the deferral account. And thereby has already put itself into a situation where the business losses, or operating losses, for lack of a better word, of the utility are you know within the scope of its regulation and control.

So in that context, to the extent that there is a grey zone, you are already there. And once you have taken it upon yourself to establish the deferral account, to regulate the deferral account, then I think then the concern you have about are we then doing things which may affect the -- how Enbridge carries on business or its approach to business, then I think that's entirely within your mandate, and I would suggest that it is an essential element of our mandate in this market-based scenario. Less so, perhaps if you had a classic cost of service ratemaking mechanism.

CHAIRMAN: Thank you, Mr. Stewart. Now, Mr. MacDougall, did you indicate that you might want a short break or --

MR. MACDOUGALL: No, Mr. Chair. I just indicated that I would probably be a little long than the others, but I am ready to go.

CHAIRMAN: Right. Proceed.

MR. MACDOUGALL; Mr. Chair, I guess I will try and do the other parties in the order in which they came up, starting with comments from Mr. Stewart.

Again, I would just start by reiterating the level that the LFO savings have been achieved and I think the Board can look back at the record and see the savings that these customers have been seeing. They are actually seeing savings in excess of the target savings and they have been seeing them on a consistent basis.

So the actual customer value proposition has been very favourable for the LFO customers.

Mr. Stewart talked about a cap. He has talked about CPI compounded and he started from the maximum rates my understanding.

Again, Mr. Chair, Board Members, a cap at CPI centrally nullifies the intent of the market-based rates. So what the Intervenors are saying here -- and all three of them are talking about a cap, they have different starting points, they all three have different starting points from where the cap should start. But if you are going to use a cap at CPI it centrally nullifies the intention of market-based rates. That is far from our refinement.

Furthermore, the cap in no way, and none of these parties -- they all talk about the concern of the deferral account, but none of their propositions balance customer attachment with keeping the deferral account as low as possible. None of them try to balance it.

Mr. Stewart made a comment that the formula should only be a guide, and that the Board -- other parties -- i guess anybody can just use it as a guide. Well in fact then there would be no yardstick from which the utility itself is being measured. And I don't think we can just determine it at the end of this proceeding that it should be less mechanistic than it was before, and that it should only be a guide. EGNB has proposed from very specific refinements and it has indicated to the Board with respect to the riders and reinstatements, when it believes it should have some measure of a level of flexibility, but outside that we think a proposal should only be a guide and anything can happen, if anything that leads to significantly more chances of instability or parties being concerned as to what the outcome may be.

The intention of this proceeding was to make it more transparent and more clear so that parties could input info into the formula and understand what that formula would reveal.

Mr. Stewart, also talked about the Board having what apparently he is suggesting is some larger monitoring role of the rate riders and the rate reinstatements. Again, EGNB would submit that experience to date shows that EGNB uses the riders, uses the reinstatement on a regular basis to track the market and the Board is aware of that. And it is up to the Board to approve those riders or those rate reinstatements. So we believe that that monitoring role already exists today, and we anticipate that it will exist going forward.

Vice Chair Johnston raised an issue, we think a very, very important issue with Mr. Stewart about the CPI index.

And, of course, he mentioned wouldn't it be more appropriate to track an energy index if you were going to have any cap. Now, of course, we don't believe a cap is appropriate, because we believe a cap would not all the market-base rates formula to work as it was intended. But in fact your point is very prescient, because that's exactly what the market-based formula does. It uses NYMEX. We are proposing that it use New York Harbour No. 2, and this sets 12-month forward prices based on the energy indices.

So to use an energy index, you would then fall back to the indices that are used in the formula, which would then give you the formula rate. So the appropriate indices are exactly those that you are discussing forward-looking indices for oil and gas. And those are the two key elements of the proposal, together with the target savings level. So in fact it is capped at exactly what it is supposed to be capped at, the alternative fuel comparison. To put another artificial cap on top of it, and a cap, which of course would only limit the increases, that's the sole purpose that the Intervenors are attempting to do, is to just say we can't challenge -- we haven't challenged the elements. Let's just cap the increase so it can never go above CPI, which has nothing to do with the basis of the market-based rates formula whatsoever.

Mr. Theriault on a related matter said, and I think Mr. Stewart said this as well, that this is not an energy commodity. It's a service. But it is a service that is being priced based on the energy commodity. That's what occurring during the development period. These are market-based rates to show a global savings for the delivery price and the commodity price combined against the alternative fuel. That's exactly how it is designed. That's its purpose. it is not -- we do not have cost of service of rates or we would be in a cost of service rate setting process. So that is exactly what it is. These rates are market-based rates that take account of the fully delivered price of the fuel, which the delivery service. And the delivery service is set to ensure that the target savings level against a competing fuel is achieved. So to try and say that the service shouldn't be related to the underlying commodity again belies in totality the formula completely.

I just want to deal briefly with Mr. Stewart's comeback with respect to the Chair's comments this morning that the rate rider has had-- there had been a reinstatement that's effective in May.

I just first like to note that Mr. Stewart and his clients didn't complain when they saw significant decreases. We haven't heard them to complain when they saw significant decreases that would be of the same order of magnitude as the increase. We were within a cap and they have been seeing significant reductions. So the amount that is being increased in the upcoming months is the same amount that they have been saving in dollars off of the cap for all of the months before that. That's used so that they see the target level of savings. If we didn't increase it, they would see substantially greater target savings. They don't complain when it goes down. And we are not asking that it go above the cap, and we can't ask that it go above the cap.

Mr. Stewart made a comment about this reeking havoc on these businesses. Well I don't think the Board can take account of that. I don't think there is any evidence whatsoever that the distribution component only of only the energy input into these business is reeking havoc on these businesses. These businesses didn't file any evidence at all of the impact of their businesses in this proceeding.

Mr. Stewart raised questions about how difficult this is for their budget setting. Again, this is Mr. Stewart's comments. There is no evidence on their budget setting.

But we would anticipate that any of our LFO customers would set their budgets based on the maximum cap. That's what we would assume and that's what I suggest is what a appropriate business would do. They would say well this is maximum cap, let's set our budget on that. They might take their own forward views. They are very sophisticated that it could be below the cap. But, of course, the cap is there. They know that they can pay that. It think it would be -- that they are very aware of that. So why wouldn't they set their budgets now that that is the maximum. Then they can also have a view on, you know, maybe they will be saving some money from the -- but because there is a maximum cap that gives them complete flexibility, complete understanding about what their maximum budgetary issue on this matter would be.

And also Mr. Stewart said he didn't know what would happen I believe with respect to putting these customers' loads into the calculation. Well in fact if you -- and I believe that Mr. Theriault alluded to this as well -- but if you did put these customers' usage loads into the calculation, the rate would actually be higher. It wouldn't be lower. And I am going to talk a bit about that more when I talk about Mr. Theriault's comments.

Now I want to talk briefly about the comments by Mr.

Lawson on behalf of his client, Flakeboard. He talked about the recovery of cost, at cost of service and what his views may be on recovering cost of service. If the rates were recovering the costs, we would not have deferrals, and we would not have continuing money going into the deferral account. We are still in the development period. The rates are not recovering EGNB's costs. He said that EGNB bears no risk. Quite the opposite is true. EGNB bears the entire risk on the recovery of the deferral account. The deferral account will be an asset. Presumably, it will be amortized over some period of time. There is no regulatory guarantee that EGNB will recover the deferral account. They are given the regulatory compact that they have an opportunity to recover the deferral account. They bear the entire risk on being able to recover that from their customer base and when they can recover it from their customer base, the entire risk.

Mr. Lawson, took the initial forecast -- we dealt with Mr. Strunk on issues about what EGNB actual forecasts have been over the past number of years. Mr. Lawson decided today to take us back to the initial forecast of nine years ago and say that we haven't met that forecast. Well, as some of the Board members will know, maybe all, but some for sure, the initial proposal included hopefully getting to 25 communities throughout the province. Many of these communities being developed on the basis of northwest and northeast laterals to be built by a third party. But those laterals were never built by the third party, so it is very misleading to say that the initial forecast hasn't been met because of that target-based market rates proposal. There have been many, many factors why that initial forecast, which was based on having trends emission distribution throughout the province built by other entities, which never materialized. I am sure Enbridge would have been delighted had those laterals, as many others might have been delighted, had they materialized, but they did not.

So we have to look at current forecasts. And Enbridge is tracking well against their current forecast. I think it was Mr. Lawson, actually -- I might have said Mr. Theriault, I believe it was Mr. Lawson who made the further comments about what would happen if the LFO customers were included. As I had mentioned earlier, the rate would go up if they were included. And plus because of that that rate would go up for all customers in the LFO class, and then what would happen is all of the more typical customers would not see their target savings level, because they don't have usage in the second and third block.

It is very important to understand that these typical savings for LFO are designed primarily around the first block. And these two large customers are the ones that traverse into the second and third block. So they are very different for that purpose. And they have always been treated differently for the purpose of market-based rates setting based on their usage. But those larger customers who have usage in the second and third block actually see greater savings. So it is hard for us to see them here today complaining on all these bases, particularly, Mr. Lawson, who is saying he doesn't even know what the impact would be. And we do know what the impact would be.

Mr. Lawson made a proposal today that the target savings should now be 15 percent instead of 10 percent. There is no evidence whatsoever to support that. And Mr. Lawson did not bring forward evidence -- none of the Intervenors brought forward any evidence whatsoever that 15 percent would do anything to help achieve further customer attachment. In fact the record is very clear that moving from 10 percent to 15 percent isn't the factor that would drive further customer attachment. So it would simply have the impact of increasing the deferral account. Again, the point that these Intervenors never seem to address the balancing of the deferral account against customer attachment. But in this case, the evidence is clear, it wouldn't drive customer attachment. And, of course, you would get less revenue. And not only from those customers, but from every LFO customer. It would be a significant diminution in revenue with no added benefit whatsoever and customers would see an even greater savings than they are already receiving in that class.

Just to touch base on a couple of comments that Mr. Theriault made. He gave his view of what is on offer to customers by EGNB. Well what is on offer is annual target savings to their alternative fuel. That's why the customers convert. That's what they are expecting to see. That's the value proposition that EGNB markets and sells toward, and that's what's been creating conversions. and that is what is on on offer. The target-based rates methodology ties in completely to EGNB's business planning and model and it is the value proposition that is created. And I will talk about that again briefly shortly in response to some of the comments made by the Vice Chair.

Mr. Theriault raised an issue today this morning say, well look there is some dearth of some financial information. Well EGNB filed its evidence. All parties had a chance to ask in information requests. In fact, EGNB responded to all parties. Then Mr. Theriault asked supplemental IRs and EGNB responded to all the supplemental IRs through agreement with Mr. Theriault that he wanted responded to. I find it very surprising that today he is saying there is not enough information. The process was set up to allow a first round of information requests followed by a supplemental round, which he participated in both, and which we understood we had provided all of the information which he desired.

So EGNB's position it that it has fully complied with the Board's order and has provided voluminous financial and market information to support the market-based rates.

Mr. Theriault talks about filing the cost of service study as soon as possible. The Board has set a process with respect to a potential review of the cost of service study. That order has already been used. It's a phase procsees based on the Board's determination of which issues should be dealt with in each order. And EGNB is committed to following the Board's process in that regard.

Mr. Theriault now says that the Public Intervenor's proposal is that there should be quarterly setting of rates based on the market-based formula and that there should be no rate riders, and that this should be essentially an automatic process.

Again in response to that, and following up on the Vice Chair's comments as well, as we stated in our argument, we already addressed that. That would be very, very problematic. It would seriously underpin the ability to track the target savings given to a customer if all of a sudden the market-based rate cap was going to change on a quarterly basis, it would do nothing for stability. It would -- it could create issues of serious instability and it would take away any opportunity for the utility to be tracking to see whether there have been sustained changes, whether there are going to continue to be sustained changes, whether or not the customers are still achieving target savings. It would be a very fundamental change in the use of the market-based rates formula. It would be a fundamental impact on how that formula has been anticipated to be -- was used and is anticipated to be used throughout the Development Period. That is not a refinement. That is a fundamental change. But, of course, Mr. Theriault did not put any evidence on the record to change the formula. Now he is just suggesting that it should be used in a manner much, much different than it has ever been used in the past.

The Chair raised issues of the balancing piece with respect to the deferral of Mr. Theriault. And Mr. Theriault's response was that EGNB was going to acquire new customers to make up for this. But, of course, that is not supported by the evidence. The evidence is very clear from Enbridge that using a cap or using the other proposals by Mr. Strunk would lead to increases in the deferral account that would not be picked up by extra customer attachment.

The extra customers that would be required and would be immediately required, they just aren't targets that can be met. So it is nice to put a proposal forward and say we will lower the rates, we will keep them lower, and we will assume new customers. We have to have some valid evidential basis to say that you will attract those new customers of which there is none, and in fact, EGNB has shown the amount of new attachments and has indicated on the record that it is just unreasonable to anticipate that these changes would drive those attachments. Therefore, there would be significant ongoing impacts on the deferral. But yet at the same time, Mr. Theriault says that he doesn't like-- he doesn't like the market-based rates approach because it causes some issues with respect to attachment and increases in the deferral. Yet all of the proposals put forward by Mr. Theriault today and by Mr. Strunk would only exacerbate that situation.

Now with respect to the specific issue raised by the Vice Chair, now is it the business of the Board to run the utility, and how far does it go before it starts to micro-manage? Again, I would like to remind the Board of the comments I made at the end of my opening statement that in the Development Period, the concept was that there would be somewhat light-handed regulation. Whether EGNB believes to date that it has been totally light-handed is a question in and of itself, but they followed the Board processes to date, but the suggestions being made by the Intervenors here are certainly no where in the spirit of lighthanded regulation. And we, of course, we do agree, Mr. Vice Chair, that some of these proposals are going deep into the weeds of the business of EGNB in determining its marketing and sales program, how it creates the value proposition for its customer, and otherwise. And before any contemplation of such proposals, one would have to look at them very, very seriously. But we also agree with you that it is not an issue that the Board probably has regulatory authority to delve into.

Unlike Mr. Theriault's comments, issues like a cap would be a total interference of the market-base rates formula. It would essentially nullify its intent and then it would cause EGNB to have to revisit its entire value proposition to its customers and how it achieves that.

Mr. Theriault also made a related to comment I think two or three times that this would keep the rates in the zone of reasonableness. I have no idea what he means by the zone of reasonableness, and why a CPI cap that has nothing whatsoever to do with the market-base rates formula is reasonable. In fact we submit that the contrary is true. It is unreasonable in that it has no nexus to the purpose of the market-based rates formula.

And just on one closing concept -- a comment. Mr. Theriault seemed to suggest that Mr. Charleson made comments that stability wasn't important. I don't believe the record bears that out. I think Mr. Charleson's comments was you can have levels of stability, but not at the cost of the deferral account. So there has to be a balancing of volatility, customer attachment and the growth in the size of the deferral account.

In closing, we submit that EGNB has demonstrated that that's what they consistently try to do. They try to balance the two objectives. The proposals being put forward by others simply do not.

And those are our final comments. Thank you very much, Mr. Chair, Board Members.

CHAIRMAN: Thank you, Mr. MacDougall. Ms. Desmond, is there anything that we need to do to complete the record?

MS. DESMOND: Nothing further, Mr. Chair. Thank you.

CHAIRMAN: Thank you. I would like to thank all of the parties for their participation in this process. It was certainly done in a very professional manner and you have left us lots of food for thought. So we will as always issue a written decision and do so as quickly as we can. Thank you.

MR. MACDOUGALL; Thank you, Mr. Chair.

(Adjourned)

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