New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by Enbridge Gas New Brunswick for approval of proposal changes to rates for its Small General Service, General Service and Contract Service, Contract General Large General Service LFO, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fueling

PUB Premises, Saint John, N.B.
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CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Jacques A. Dumont
Diana Ferguson Sonier

BOARD COUNSEL: Ellen Desmond

BOARD STAFF: Doug Goss
John Lawton

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Good morning.

MR. LAWSON: Good morning.

MR. SORENSON: Good morning.

MR. HOYT: Good morning.

CHAIRMAN: This is a hearing in reference to an application by Enbridge Gas New Brunswick for approval of proposed changes to rates for its Small General Service, General Service and Contract Service, Contract General Large

Service LFO, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fuelling.

If that is all your prices I wish you had just said that.

MR. HOYT: It doesn't include the HFO.

CHAIRMAN: Thank you. Okay. Mr. Hoyt, you are here representing the applicant today. Who else is with you, sir?

MR. HOYT: I'm joined today by Andrew Harrington who is the General Manager of EGNB, Shelley Black, the Manager of Regulatory and Upstream and Ruth York, a Regulatory Analyst.

CHAIRMAN: Thank you, Mr. Hoyt.

Now the Formal Intervenors. Competitive Energy Services?

MR. SORENSON: Yes, Mr. Chairman. John Sorenson here.

CHAIRMAN: Thank you, Mr. Sorenson. Flakeboard?

MR. LAWSON: Gary Lawson and Barry Gallant from Flakeboard.

CHAIRMAN: Thanks, Mr. Lawson. Atlantic Health Sciences Corporation?

MR. STEWART: Christopher Stewart with Ken Baird of the Corporation.

CHAIRMAN: Thanks, Mr. Stewart. Is Mr. Duncan here, Calvin Duncan? I just see him as an Informal Intervenor. And who is with you today, Ms. Desmond, Board Counsel?

MS. DESMOND: Yes, Mr. Chairman. Doug Goss, Senior Adviser, John Butler as Adviser to the Board. Thank you.

CHAIRMAN: Okay. And Mr. Lawton is here too?

MS. DESMOND: And Mr. Lawton, sorry.

CHAIRMAN: Great. Thank you.

Okay. Anything preliminary, Mr. Hoyt?

MR. HOYT: I have nothing. But perhaps Mr. Stewart wants to deal with the confidential schedules that he provided to the parties.

CHAIRMAN: Mr. Stewart, we have adapted a very colorful scheme in that anything that is confidential we ask that it be put on colored paper, so that even I don't get mixed up and throw it around, okay.

However, you do have some in your material. So if you would like to -- do you have a mike?

MR. STEWART: I do not.

CHAIRMAN: He doesn't have a mike.

MR. STEWART: And actually now that you have said that, Mr. Chairman, the pink paper thing does ring a bell from being on the sideline of one of the hearings the other day.

CHAIRMAN: Well, actually it works very well.

MR. STEWART: Yes. And I should have recalled that for this particular matter.

The issue fairly simply stated is this. In its Information Request Enbridge asked for a breakdown of certain of the numbers that we had provided in our evidence. As we all know, the ratemaking methodology here is sort of starting from the burner tip and working backwards.

In order to provide those details as to how we came to our burner tip price, they asked for disclosure of our commodity price which is of course an unregulated price entered into on a confidential basis with a third party licenced marketer. And so we don't mind providing that information for the purposes of showing how the number is added up, as it were, to arrive at the burner tip price.

But we were concerned (a) in terms of our acknowledgement to keep those numbers confidential, number 1. And that may have a familiar ring to it. And number 2, the issue concerning our need to potentially negotiate a new price on the expiration of this current agreement. And you know, the circumstance where if it is apparent then that any price with us will then become a price on the public record, then that may affect the price that we can negotiate. And those are our concerns.

We don't have any problem disclosing it to the Board for the purposes of showing how our number is added up. We don't intend to refer to it specifically. But it is contained in the schedules that we have filed purportedly on a confidential basis or sharing that information with the other Intervenors and the Board for the purposes of this hearing. But that is the concern that we have.

CHAIRMAN: Let's try and be very specific as, you know, we have it in our bundle here. And we have had it marked confidential in the paper that was filed to us. That is the last red unnumbered tab --

MR. STEWART: Yes.

CHAIRMAN: -- and what you filed with the Board. So we have done that.

But for the purposes of his hearing, as you are familiar on the NB Power side, what we do is that any of the Intervenors who are prepared to sign a confidentiality agreement, then those parties will be able to review that evidence.

And are you proposing a similar thing here?

MR. STEWART: Precisely. And I'm not sure it is even necessary to formalize it in terms of an agreement. I'm prepared to accept an undertaking from counsel that they will keep that particular number in confidence.

The problem that we had is that the way the schedules are prepared -- you know, our first **blush was okay, well, we would just block that number out. But it is all a matter of arithmetic.

And we played with it for awhile trying to find well, is there a way that you can just do the simple math and not arrive at that number? And it kept being no every time we tried to work --

CHAIRMAN: What happens if there are Intervenors with no counsel?

MR. STEWART: Well, except for Mr. Sorenson -- I'm prepared to take Mr. Sorenson's undertaking.

CHAIRMAN: Mr. Hoyt?

MR. HOYT: We don't have any problem with it. We were provided with the schedules at the end of last week. And we understand that it is the specific gas price that AHS would like to remain confidential.

And we don't intend to refer to the specific price.

Although we may well refer generally to the schedules.

CHAIRMAN: And you have given Mr. Stewart your agreement that you will keep it in confidence?

MR. HOYT: I do now.

CHAIRMAN: Have any of the other parties been given that information? Or alternatively do they want it?

MR. STEWART: To be clear, Mr. Chairman, all of the Formal

Intervenors were provided with the schedules sort of on a without prejudice basis, so they would have the opportunity to review them in preparation for the hearing subject to the Board sort of ruling on the point.

CHAIRMAN: Gee, I wish you were so cooperative on the NUG contracts. I'm sorry. This is another -- well, then we are ready to go ahead then from the aspect of the confidential information, I presume. Anything else?

Well, today, as I emphasized when we broke at the pre-hearing conference, this is argument day. It is not evidence day. And the evidence, as substantial as it may be, is all in front of us.

So my intention would be is that Mr. Hoyt should lead off as presenting to the Board what it is and why it is and what you want the Board to do. And then we will go around through the Intervenors. And then we will come back to you for a brief rebuttal. Would that be acceptable?

MR. HOYT: It sounds fine, Mr. Chairman.

CHAIRMAN: I wonder what this beast is doing here?

MR. HOYT: I think Mr. Sorenson will let us know.

CHAIRMAN: Okay. A nice-looking outfit. Just a second. Go ahead, Mr. Hoyt.

MR. HOYT: Thank you, Mr. Chairman.

On August 15th 2005, Enbridge Gas New Brunswick applied to the Board of Commissioners of Public Utilities for an order approving changes to its Small General Service, General Service, Contract General Service, Contract Large General Service Light Fuel Oil, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fueling Rates.

No increase is proposed in the delivery charge for SGS which includes residential customers. Only their monthly customer charge is being increased to a level comparable with other utilities.

No Intervenor took issue with the proposed adjustment to the fixed customer charge for SGS customers.

First I will address the Board Approved market based rates methodology. In a decision dated June 23, 2000, the Board approved EGNB'S market based approach for setting its distribution rates during the development period. The methodology used by EGNB in calculating its proposed rates in this application is consistent with what was done initially in 2000 and again in 2004 and 2005.

The objective of EGNB's market based rates is to provide potential end-use customers with an economic incentive to convert to natural gas and to provide EGNB with the ability to respond quickly to fluctuations in the marketplace through the use of a rate rider.

During the development period, which currently is expected to run until December 31st 2010, the Board has authorized EGNB to operate in a non-traditional regulatory framework, the primary purposes of which are to allow EGNB to establish a market for natural gas in New Brunswick and to be able to respond to competitive market developments in a timely manner. It is incumbent on EGNB to watch the costs of competing energy sources and move with the market.

EGNB is expected to seek rate increases when there is a sustained spread between natural gas and oil prices. EGNB will not remain viable if it does not pursue rate adjustments consistent with its market based business model.

In meetings with prospective customers, EGNB's rate methodology is described. The variability inherent in the market based rates is communicated to all customers when they first sign up for natural gas and annually thereafter in a Board approved Notice of Market Based Rates which clearly states that the rates are, and I quote, "based on market conditions and may change significantly over time", end of quote.

EGNB continues to believe that its market based rates methodology is appropriate for reasons set out in EGNB's response to Board Interrogatory No. 4 and A4 and A5 of EGNB's evidence.

Now looking a the application of the market based rates methodology. In determining its proposed target distribution rates in this application, EGNB updated two numbers, the forward wholesale price of oil and the forward retail price of natural gas.

EGNB continues to use Enbridge Utility Gas or EUG as the forward looking retail price of natural gas.

Approximately two-thirds of gas users are purchasing EUG and the EUG price is publicly available in the marketplace. None of the Intervenors challenged EGNB's use of EUG as the forward retail price of natural gas.

Large customers with purchasing power, such as Atlantic Health Sciences with its favorable gas price that is locked in until November 2006 are able to contract for natural gas at more favorable pricing than EUG which would allow for even higher rates. EGNB though has not used those prices because it uses typical customers in its methodology.

Now looking at retail oil prices. Since EGNB applied for its 2005 rate increase in November 2004, the wholesale price of oil has continued to rise on a forward basis. As pointed out in EGNB's evidence, the forward looking wholesale price increased by US $13.45 per barrel or 28 percent at the wholesale level from the forward price for oil for 2005 anticipated in EGNB's 2005 rate application. This leads to significant increased incremental savings.

In determining retail oil prices, EGNB starts with a forward looking 12 month strip averaged over 21 days. This provides for a consistent comparison with the forward looking gas price. These forward prices are then transformed into retail prices by using a market spread based on the historical relationship between retail oil prices for typical customers in a given rate class and the wholesale price of oil.

EGNB is continually following the market to ensure that its market based rates are appropriate for striking the correct balance between the addition of new customers and recovery of its costs. The correct balance is based on the anticipated forward spread between oil and natural gas costs. Based on a sustained trend of a higher spread, EGNB applied to increase its rates in August 2005.

I would like to just ask the Board to turn to CES's response to EGNB's Interrogatory No. 5 (c).

MR. DUMONT: Could you repeat?

MR. HOYT: It is CES's response to EGNB Interrogatory 5 (c).

CHAIRMAN: Okay.

MR. HOYT: So what you have in front of you is a chart comparing wholesale oil and gas prices over a period of months during 2005.

And what you will notice is that the wholesale price of oil was more than 20 percent higher than the wholesale price of gas in January, February, March, April, May, June, July and August of 2005.

So contrary to the suggestions of Competitive Energy Services and Flakeboard Company Limited, EGNB did not choose a single day that provided an inappropriate spread between natural gas and oil. This would, in fact, be diametrically opposed to EGNB's stated goal of achieving a balance between cost recovery and the need to grow EGNB's customer base.

If you want to just keep that set of IR responses. That is the only other binder that I will refer to a bit later in the submission.

So next I would like to turn to efficiencies. Efficiency gains in converting from oil to natural gas have always been part of EGNB's rate setting methodology in determining percentage savings. EGNB's evidence in its interrogatory responses, particularly to CES Interrogatories No. 6 and 8, support the efficiency gains used in EGNB's calculation of distribution rates.

Clearly, new natural gas fired appliances are more efficient than the old oil fired appliances they are replacing and the fact is that is the potential customers EGNB is pursuing are those switching from old oil fired appliances to new natural gas fired appliances.

Typical customers receive efficiency gains in converting from oil to gas and that must receive consideration in setting market based rates. EGNB has used the same efficiencies in setting a relationship between input energy requirements and typical energy output in this application that were used in its 2004 and 2005 rate applications.

With respect to the different operating efficiencies of various appliances, EGNB has extensive experience working with natural gas appliances and assessing efficiencies. CES's comments on efficiencies continue to be more confusing than helpful. Its examples are not reflective of the New Brunswick market. CES used an efficiency gain of 6 percent based on its view that this is the level of efficiency difference between a new natural gas fired appliance and a new oil fired appliance. The logic of CES in continuing to compare only new oil fired appliances to new natural gas fired appliances escapes us.

As for comparing old oil fired appliances to new natural gas fired appliances, which is the marketplace EGNB is pursuing, no one really challenges EGNB's numbers. In fact, Atlantic Health Sciences Corporation acknowledges that there will be efficiency gains, as set out in A10 and A14 of Atlantic Health Sciences' evidence.

Now turning to striking the balance. As in previous market based rates applications, EGNB is attempting to strike a balance between providing sufficient incentive to customers to convert to natural gas and recovering as much of its costs as possible during the development period from existing customers. In maintaining that balance, EGNB should not provide any more economic incentive to customers to convert to and continue using natural gas than is absolutely necessary. EGNB's rates should be set at a level beyond which EGNB is unable to meet its growth requirements.

So one side of the equation is customer savings. As CES states in A6 of its evidence, the predominate factor that determines whether a customer converts is savings. In its response to CES IR number 11, EGNB set out savings experienced by typical customers from 2002 to 2005 year to date.

Two actual customers, Flakeboard and Atlantic Health

Sciences, have provided their actual savings to the Board in this proceeding. CES, on the other hand, continues to deal in hypotheticals and provides examples that cherry pick the parameters when in fact it represents five real live customers in this proceeding. Where are their savings numbers and the actual calculations of those savings?

Let's look at Flakeboard first. And I would ask the Board to turn to Flakeboard's response to EGNB Interrogatory 1 (a).

CHAIRMAN: Could you come up here, Mr. Hoyt. I don't know about my fellow Commissioners, but I'm having a terrible time. I haven't used these particular binder really with the excerpts that I'm looking at.

MR. HOYT: No. That is our response to Flakeboard.

CHAIRMAN: Yes.

MR. HOYT: There is a third binder.

CHAIRMAN: All right. I think Mr. Lawson is saying something. But we can't tell what it is. Perhaps that is just as well.

MR. LAWSON: I think everybody else might have a different version than what the Board has.

CHAIRMAN: No wonder I felt that way.

MR. LAWSON: It was nothing personal, Mr. Chairman. I do apologize. I would guess that there are 15 copies floating around with some numbers missing.

CHAIRMAN: Could we just -- could we then just take a break for a minute. And you provide the Secretary with the copy that you wish to refer to, Mr. Hoyt.

MR. HOYT: I just wanted to check the CES ones.

CHAIRMAN: Yes. I'm sorry, the flow of your presentation. Yes. CES is okay. It is just the -- would you like to provide a copy to the Secretary of the one that you did refer to that we were all struggling to find? And I'm not going to invite you to start afresh. But if you want to go back and go through those figures again. I followed what you were saying.

MR. HOYT: But just in terms of the record that the Board has, I think it is important though that the correct set of Flakeboard responses --

CHAIRMAN: I do too, yes.

MR. LAWSON: If you would like I will certainly undertake to provide 15 copies of the right version, for which I do apologize. It may be water under the bridge, too late by the time you get it. But I can certainly get it today by noon hour.

MR. HOYT: And I mean, I know that happens. So that is not an issue. But I know in the prehearing the Board mentioned the possibility of delivering a decision today. I would certainly want them to have the benefit of the Flakeboard responses before they did that.

CHAIRMAN: Mr. Lawson, why don't you provide the Board Secretary with a copy.

MR. LAWSON: Sure.

CHAIRMAN: And she can then have some of our admin' staff do three copies.

Okay. We are going to take a five-minute break here.

(Recess)

MR. LAWSON: I didn't realize my mistake was newsworthy, Mr. Chairman.

CHAIRMAN: They hadn't heard about that. But we will make sure they do. Good. Thanks very much. Sorry it took so long.

Okay. Mr. Hoyt, you were about to refer to a CES Interrogatory. But we want to go back to the one of Flakeboard.

MR. HOYT: Yes. Maybe just --

CHAIRMAN: Cover that again.

MR. HOYT: Right. Just to put us back where we were, what I was discussing was striking the balance and the importance of striking a balance between providing sufficient incentive to customers to convert to natural gas and recovering as much of its costs as possible during the development period. And we were talking about the customer savings piece, that side of the equation.

So what I wanted to do first was to look at Flakeboard and ask that everyone turn to Flakeboard's response to EGNB Interrogatory 1 (a).

CHAIRMAN: And that response is on page --

MR. LAWSON: 2 of 3, Mr. Chairman.

CHAIRMAN: Okay. The total monthly absolute savings.

MR. HOYT: Exactly.

CHAIRMAN: Right. Okay.

MR. HOYT: And what Flakeboard has done there is to set out its monthly savings from using natural gas between October 2004 and October 2005. And I have added up the numbers. And Flakeboard's actual savings from October 2004 to October 2005 were $2,217,636.

So in the 2005 rate proceeding earlier this year, we were talking about projected savings. These now are actual saving numbers, $2.2 million. And that is in a year when Flakeboard was not fully converted until October of 2005.

And just while we are here, I would like to just note if you just look at Flakeboard's response to Interrogatory 1 (b), which is just down below, they have indicated there that Flakeboard's total direct costs of conversion was $2.3 million. So that would seem to indicate a pretty good payback.

Now Flakeboard in response to EGNB's IR number 1 (e) indicated that since February of this year they had saved $1.98 million, since February. And the target savings for a customer of this profile, as set out in EGNB's IR number 1 (f), for the 12 months ended January 2006 would be 941,000. So Flakeboard achieved more than double their target savings in 7 months.

Now turning to Atlantic Health Sciences, Schedules were filed, in confidence, in response to Interrogatories posed by EGNB. Schedule A, which is the basis of Table Number 1 to its evidence, is of little relevance. I note that Line 1 from that Table Number 1 is the forecast savings anticipated by AHS when it decided to convert, so that line should be kept in mind. The rest of Schedule and Table 1 though are irrelevant in that they suggest that the proposed rate increases in this application and EGNB's current EUG price were somehow relevant when AHS made the decision in late 2004 to convert. Similarly Schedule D is also of little relevance given that it uses EGNB's EUG price despite the fact that Atlantic Health Sciences has a better gas price from December 1st 2004 until November 30th 2006.

The other two Schedules, however, provide Atlantic Health Sciences' actual savings from April 2005 until October 2005, which you will find in Schedule B, and their projected savings, based on seven months of experience and Atlantic Health Sciences' actual gas price, for November 2005 to March 2006 which is found in Schedule C. So that a combination of those two schedules give us a year.

Those schedules include EGNB's proposed rate increase as at January 2006 and despite the fact that efficiency gains are not factored into their calculations even though Atlantic Health Sciences acknowledges in its evidence that such gains are likely, those schedules indicate that savings at the Charlotte County Hospital, Ridgewood and Centracare in the first year should total $62,058.

Atlantic Health Sciences suggests that its savings are due to its favorable gas price but that is its actual gas price for two years and it has no basis for concluding that its fuel costs after November 30, 2006 will be much higher, as indicated in A19 of its evidence.

What you have got to remember though is Atlantic Health Sciences made the initial decision to convert these three facilities at a cost of $110,600, receiving no incentives from EGNB, based on projected total annual savings at the three facilities of $6,021 which is set out on Line 1 of Table 1 of its evidence. Its actual savings are, by its own evidence, likely to be $62,058 or 10 times higher than its forecast savings.

In each of EGNB's rate proceedings, Intervenors have suggested that projected savings are overstated. However, that has never been proven at a subsequent proceeding. In fact, subsequent proceedings have always shown that EGNB, if anything, has always understated customer's actual, absolute savings.

Now look at the other side of the equation which is EGNB cost recovery. EGNB's peak deferral account is now estimated to be $130.7 million. Higher amounts of deferred costs today will result in higher cost of service rates being charged to existing and future customers after the development period. In the shorter term, a reduction in distribution rates will extend the development period. If EGNB, through its rates, cannot keep the deferral account down, when it moves to cost of service based rates, there could well be serious, unnecessary rate shock to customers, including those customers currently on EGNB's distribution system. Further, it would be impossible for EGNB to remain viable if it attempted to recover its costs from its current customer base.

The increased competitive advantage as of August 15, 2005, when EGNB's application was filed, not only allowed but required EGNB to apply to adjust its rates to ensure EGNB is recovering the maximum amount of its costs. The Intervenors do not demonstrate an appreciation for this side of the equation. However, as the Board stated at page 7 of the 2004 rates decision, the -- and I quote, "The Board considers that it is very important that every effort be made to limit any increase in the amount of the deferral account", end of quote.

Now turning to growth. Growth is the primary indicator that EGNB's target distribution rates are achieving the objective of striking the proper balance. If anything, it can be an indication that rates are not high enough. EGNB must, in order to secure the long run financial viability of the distribution system, grow its revenue.

2004 was the highest growth period for EGNB since commencing operations in 2000 and EGNB is on track to exceed its growth target for 2005. In response to Board Interrogatory Number 1 (b), EGNB indicated that as at September 30, 2005, distribution revenue signing were 116 percent of target and throughput was 128 percent of target. Such sustained growth indicates that customers are realizing sufficient economic incentive to convert to natural gas.

No Intervenor has challenged EGNB's growth numbers for 2004 and 2005. In fact, the evidence of Flakeboard and Atlantic Health Sciences indicate the achievement of significant savings.

EGNB would never implement rate increases which would stop growth. EGNB needs to get to cost of service based rates. No one is more motivated towards growth and no one better positioned to cause it to happen than EGNB. EGNB's evidence on growth is thorough and based on its experience and actual knowledge of what is going on in the New Brunswick marketplace. The Intervenors purport to be able to assess the impact of EGNB's proposed rate increase on EGNB's ability to attract new customers, which is unsupported by an real evidence, when all they are actually doing is trying to keep their own rates down despite continued savings, substantial price increases in their alternate energy sources and significant under-collection of EGNB's cost to serve them.

Now turning to incentives. CES and Flakeboard both posed Interrogatories regarding EGNB incentives, suggesting that incentives were a big reason for EGNB's growth. However, EGNB confirmed that it has always provided incentives and that it will continue to do so in a manner similar to other businesses such as cellular telephones and satellite dishes where the business needs to grow. And CES, in response to EGNB's IR Number 10 (b), confirmed that NB Power provided significant incentives to customers to switch from oil to electricity in the 1980's. Incentives are a normal component of the marketing strategy for businesses that are in the growth phase of their lifecycle. As indicated in EGNB's response to Flakeboard's Interrogatory Number 22, EGNB is unaware of any gas utility in Canada that did not use marketing programs with incentives to gain market share. No incentives are given to existing customers, so the only impact on revenue is within a customer's first year of service. While the proposed rate increase is to spread the appropriate costs over all EGNB customers, incentives are instead tied to reducing a potential customer's conversion costs, and thereby reducing the payback period, thereby incenting the initial conversion. Incentives are one marketing tool. EGNB has decided, with significant success, to focus its marketing dollars more on the customer than on big ad campaigns. Such mass media marketing efforts attract smaller residential customers doing partial conversions that do not contribute the necessary revenues to the distribution system.

As indicated in EGNB's response to Flakeboard Interrogatory Number 17, EGNB's focus on the commercial, institutional and industrial segments during the short-term will translate to lower customer attachment numbers but significant throughput expansion. And as I said, revenue growth is EGNB's key performance indicator during and after the development period. It is noteworthy that both Flakeboard and Atlantic Health Sciences confirmed in their IR responses that neither has received a cash incentive from EGNB.

Now turning to the rates requested and timing. Flakeboard made an issue of the fact that EGNB is proposing a substantial increase from March 2005 to 2006 for the first tier of the delivery component and the CLGS LFO class and raised the spectre of businesses closing and moving operations outside New Brunswick and of FLakeboard converting to heavy fuel oil despite not having done the required environmental check.

The increases in distribution rates are not at all inappropriate in a market based model. Market based rates are not based on cost of service. One reason that the increase appears substantial is that EGNB is starting from a low number. EGNB's rates are way below cost of service.

The increase in the CLGS LFO class' delivery charge applies to sophisticated customers who will focus on the absolute savings available. The fact is that Flakeboard is making significant savings, $2.2 million in the last year. And the proposed rate increases are only on the regulated distribution charge.

The only parties arguing against the proposed rate increases are large customers who appear to be trying to piggyback on residential and small commercial customers while ignoring what is happening in the customers' markets for alternate energy sources and the continued and increasing absolute savings available to them.

Now timing, this is important. Two of the Intervenors, CES and Flakeboard, appear to be suggesting that EGNB's forward pricing of oil and natural gas should be updated as part of this proceeding. EGNB strongly disagrees. EGNB is following a well established process. The relevant time for determining the forward looking prices for oil and natural gas is when the application is filed. In the 2000 application, the Board approved EGNB rates to commence in November 2000 based on information filed in May 2000. In the 2004 application, the Board approved

EGNB rates to commence in May 2004 based on information filed in February 2004. And in the 2005 application, the Board approved EGNB rates to commence in April 2005 based on information filed in November 2004.

No one, particularly not Flakeboard nor CES, who actively participated in EGNB's 2005 rate application in March of this year, ever remotely suggested that the evidence in that case should be updated closer to the actual hearing date despite the fact that EGNB had provided those calculations to the Board and the Intervenors. And to its credit, EGNB did not seek the higher rates that those calculations would have supported.

EGNB's evidence demonstrates that EGNB did not just select a date between April 1st 2005 when its 2005 rates were approved and August 15, 2005 when the new rates were applied for that would result in higher rates. In fact, an application at any time between April and August would have resulted in similar distribution rates to those applied for.

Both oil and natural gas, since the time of EGNB's application, have undergone extreme volatility tied in large part to the effects of two hurricanes. That volatility should not be considered long-lived in nature.

Note that in CES's definition of "volatile" in response to

EGNB's IR number 14, it described volatile as shortlived. The trend between oil and natural gas preceding the hurricanes is more representative when the competitive advantage of natural gas versus oil at the wholesale level was within historic tolerances.

In addition, EGNB's decision to file its rate application in August resulted from discussions with Board Staff, see A22 of EGNB's evidence, to determine a date that should result in a Board decision in December, shortly before the proposed January 1st implementation date. EGNB did not just pull the date out of the air which is the impression the Intervenors have tried to leave.

One thing that all parties agree on is that oil and natural gas prices have been volatile since September. In fact, Flakeboard at A8 of its evidence acknowledges, and I quote, "the escalating costs of energy generally", end of quote. This year's hurricane season is the worst on record. But let's remember what happened after Hurricane Ivan in September 2004.

MR. LAWSON: Mr. Chairman, I don't think there is any evidence of what happened.

MR. HOYT: A return to the historical relationship --

MR. LAWSON: Mr. Chairman, I object.

CHAIRMAN: All right.

MR. LAWSON: If we are going to call some new evidence then we want the opportunity to discuss it. I have no idea what happened.

CHAIRMAN: All right. I think you -- just strike that sentence out of your --

MR. HOYT: Some regulatory lag is inevitable. It results in delays in rate increases and consequently increases to the deferral account. EGNB's timely response to market conditions can be facilitated with the rate rider, allowing EGNB to respond on a timely basis as economics fluctuate.

A lot of time and money have been invested in this proceeding. The Intervenors would like EGNB to start all over and go through a complete rate case again only to potentially run into the same volatility. Such an approach would result in EGNB continually leaving money on the table and thereby increasing the deferral account. As pointed out in EGNB's response to CES Interrogatory Number 10, three items must be kept in mind. First, energy prices continue to evolve. EGNB believes it would be ill advised to adjust from the as filed rates given the current volatility and temporary nature of its source, effects of two hurricanes. Second, to do this would be completely inconsistent with how EGNB's previous applications have been dealt with, wherein the methodology and resulting targets were not updated from the filed evidence. And thirdly, to do such an amendment is unnecessary as the framework and tools, the rate rider methodology, have been established to deal with changes in energy prices.

Now to discuss that rate rider. EGNB has indicated in this and all pervious rate applications that it would use the rate rider where circumstances warrant. EGNB has always said that if its rates do not trike the proper balance between maximizing cost recovery and providing sufficient economic incentive to end use customers, EGNB would file the appropriate rate rider and effect the proper balance. Intervenors indicate they are skeptical, given that EGNB's rate rider has never been used. However, the Board must realize that it has not been necessary given the circumstances to date.

Well, we are here today to demonstrate EGNB's willingness to use the rate rider. EGNB will implement a rate rider tomorrow if the Board approves its rates as filed today; otherwise, shortly after the Board makes its decision. That rate rider would be made effective January 1st.

Why use the rate rider now? To deal with the current volatility in the pricing relationship between oil and natural gas. True market conditions, absent anomalies, support the rates as filed. EGNB firmly believes that once the current volatility subsides, EGNB should be in a position to reinstate those rates without having to wait another six months to obtain an order from the Board. EGNB is unable to present the rate rider to the Board until it knows that its rates have been approved as filed. If the Board delivers its decision either today or tomorrow, EGNB can introduce the rate rider and provide the required two weeks notice to the Board and marketers. If the Board is unable to deliver a decision in the next day or so, EGNB would ask the Board to adjust the required notice periods surrounding implementation of the rate rider to enable the new rates and rate rider to take effect on January 1st.

In conclusion. As indicated earlier, one of the objectives of EGNB's market based methodology is to allow it to respond quickly to changes in the competitive marketplace. EGNB respectfully requests that its rates be approved as filed, effective January 1st 2006, recognizing that EGNB intends to implement a rate rider on account of the current volatility in the natural gas versus oil pricing relationship.

At page 10 of its March 31st 2005 decision, the Board said, and I quote, "The recent changes in market prices and volatility in both fuel oil and gas and the evidence of Enbridge, all suggest that the forecast provided in evidence will almost certainly be wrong. For this reason, the Board considers that Enbridge is in the best position to determine at any point in time if its rates are providing the required economic incentive to customers or if rate are too high and are a deterrent to attracting customers. The Board expects Enbridge to use rate riders to reduce distribution rates if necessary to allow the total cost of gas for customers to be competitive with other fuels", end of quote.

And again that is the Board's decision in March of this year.

EGNB submits that this rate application should be decided on that same basis, particularly given EGNB's willingness to implement the rate rider as evidence that the Board approved market based rates methodology works.

Thank you.

CHAIRMAN: Mr. Hoyt, do you not feel that your client is in a bit of a conflict of interest here in that your very capable partner Mr. MacDougall has been in front of this

Board in the NB Disco hearing for a number of months arguing how there has to be a level paying field, and that therefore that the electricity rates in this province must increase, that the declining block rate structure be done away with.

And yet your application shows that the SGS, which is basically the residential, even though the formula produces a rate increase there that comes up maybe about 20 percent, if you look at it that way in reference to the transportation.

But you are saying for marketing reasons, et cetera the formula shouldn't be followed. And therefore you are keeping those rates artificially low. Whereas across the street presumably is somebody who is on oil.

And I don't know the exact figures. But the press will say that oil prices for the retail consumer have gone up by 30 or 40 percent in the last 12 months.

Doesn't that put you in a bit of a conflict?

MR. HOYT: No, I don't think so, Mr. Chairman. In terms of the residential class there is a different set of circumstances created because of the NB Power rates. But in terms of making the submission on behalf of EGNB, no, I don't see any conflict.

CHAIRMAN: Even though you are putting yourself, if the

Board were to agree with that, at a distinct advantage to the oil customer or the oil supplier across the street?

MR. HOYT: I think that is a timing question. If NB Power's rates were where they should be right now, we would be following that methodology with respect to the residential customers right now.

CHAIRMAN: Well, we are in the process of trying to put them where they should be. That is a process. But I'm just saying on a philosophical basis you are asking that the marketplace in your competition with oil, you are asking us to approve that those residential rates be kept low. I know that that is not something any regulator likes to do is to say increased residential rates for the consumer. But there is -- we want to set just and equitable rates. And if your formula works as you have told us it does and should and was approved before should it not be done in an evenhanded way.

MR. HOYT: Well, I think because of the special circumstances that we have identified and are detailed in the response to the Boards IR-4, I think that a difference circumstance is justified in this situation

CHAIRMAN: Okay. Thank you. Go ahead, Mr. Sorenson.

MR. SORENSON: Mr. Chairman, I'm going to grab a microphone and walk, if that is okay.

CHAIRMAN: We are unaccustomed to that. But obviously an American tradition.

MR. SORENSON: I'm trying to do a holiday tribunal. I have copies of this if you would like them.

CHAIRMAN: Have you shown that to your friends opposite, as we say in law?

MR. SORENSON: I will give them a copy.

CHAIRMAN: Okay. Then what we are going to do is we are going to take give minutes and give Mr. Hoyt and Mr. Lawson the opportunity to look through that and Mr. Stewart too. And let us know --

MR. SORENSON: We didn't have the opportunity to see his presentation prior to speaking.

CHAIRMAN: I presume this is going up on the screen.

MR. SORENSON: Yes, it is.

CHAIRMAN: And he didn't make the strategic error of handing it out in advance. No, they can look at it. So that if there is no problems with what you are going to do from an evidentiary point of view, then we are clear sailing.

Take a couple of minutes.

Would someone from Board Staff let us know. And then we can resume.

(Recess - 12:00 p.m. - 1:30 p.m.)

CHAIRMAN: I understand Mr. Goss has been playing his practical jokes again. Any preliminary matters before we go to Mr. Sorenson?

MR. HOYT: I have just one thing. It was suggested to me that I provide one clarification surrounding the rate rider. And that is concerning the timing of the decision. It is important for the decision to be implemented January 1st, because the rate -- the rider may result in reductions to some currently approved rates. So I thought it was important that that be provided to the Board.

CHAIRMAN: I have never seen members of the Bar, you know, universally screw up their faces and shake their heads, Mr. Hoyt.

MR. HOYT: Yes. We will try again. As requested this morning, EGNB continues to request that the decision be made in the next few days, so that the rates and the rate rider can be implemented January 1st. And that is because the rider may result in reductions to evenly currently approved rates. So that if the decision were delayed for a month, reductions that would be available to customers would not take effect for an additional month by February 1st.

CHAIRMAN: Reductions off the existing rates?

MR. HOYT: In some cases.

MR. STEWART: Well, what precludes the use of the rider today if they are existing rates?

CHAIRMAN: Speak up, Mr. Stewart.

MR. STEWART: Sorry. My comment was what precludes the use of the rider today if they are existing rates?

MR. HOYT: There is nothing that precludes it.

CHAIRMAN: You don't want us to have a nice Christmas.

MR. HOYT: The applicant's position is that knowledge of the Board's decision in this matter, in terms of the rates going forward, are what will then enable it to make its rate rider decision.

CHAIRMAN: Okay. Thank you for that, Mr. Hoyt. Mr. Sorenson, I understand that you with the other parties have worked out a revised slide presentation?

MR. SORENSON: Yes, sir.

CHAIRMAN: Okay. Do you want to get a microphone or have you got one?

MR. SORENSON: Mr. Chairman, Mr. Hoyt asked me to eliminate one slide and then make adjustments to three, four or five other slides. There are a couple of slides that have December in there. Because the data comes from the Internet and it is actually updated every day. As such those were eliminated and November was put in.

CHAIRMAN: Okay.

MR. SORENSON: This Power Point basically addresses the applicant and the application. First and foremost, focusing on the GS, increased rates went from 2.2166 per gj to $3.38 per gj which was a 52.6 percent increase in this particular rate class the last go-round.

Now they are proposing to increase to $7.18 per gj which is another increase of 112 percent. So if you take into consideration, starting at 2.21 and going up to 7.18, in just one year in the GS rate class we are seeing an increase of 224 percent over the past year.

Similarly if you go to CGS, increased from $1.50, basically $1.51 per gj to 3.14, which last year at this time it was 108 -- well, actually last March, 108.25 percent increase in the rate class. Now they are proposing 5.89, an additional 87 percent. That translates to 290 percent increase, going from $1.51 to 5.89

In the LGS, LFO category, similarly you have gone from basically 79 cents to 9.73 which was a 24 percent increase, now to 2.39. It is an increase of 145 percent this year of 203 percent since these were recently revised.

So our issues and concerns which were in our evidence basically was the methodology and computation of the rate request. We do think it is overly simplistic. It does definitely favor the applicant. We don't believe it is market representative because of the volatility that now exists in the market.

And again we also think it is very outdated, something that occurred in 2000. Basically we believe it is not necessarily reflective in today's world. The last two years, a tremendous amount of volatility in all energy products.

So we also think the data in calculating rates is unrealistic, with misleading assumptions. I think we have talked about that through our evidence. Market prices obviously have been more favorable than actual market prices.

Efficiency factors, I don't think anybody is disagreeing on efficiency factors now. What we are saying is let's compare apples to apples on efficiency factors. And what that basically gets into is newer updated equipment versus older outdated equipment. And we have some things here that were submitted in the evidence that we talk about a little bit more.

The vast abuse of incentives which has increased now to 1.9 million through '905, which will be over 2 million on a run rate for 2005. We believe that's as high now as 78 percent of the distribution revenue for a year.

We believe that is basically buying the market because savings don't exist. And of course then the market conditions natural gas continues to compare --

CHAIRMAN: Mr. Sorenson, I will interrupt for just a second. Don't you think, if you have an argument vis-a-vis incentives, that really comes into a review of EGNB's financial results? That is a matter to be argued in that proceeding?

MR. SORENSON: Absolutely it could be.

CHAIRMAN: All right. I think it is more appropriate there than --

MR. SORENSON: But that is how they are attracting customers, is --

CHAIRMAN: And certainly that is what I heard Mr. Hoyt say.

MR. SORENSON: Mr. Hoyt. And then it was throughout the evidence.

CHAIRMAN: Yes. I'm not -- I'm just saying that when you come to argue whether the incentives are out of whack with everything in the marketplace or whatever, that is really for reviewing their financial results. In other words are they putting out too much that way, et cetera. Okay. Carry on.

MR. SORENSON: And the market conditions natural gas continues to compare unfavorably against fuel oil despite what the applicant had communicated in the future for 2006 is pretty high. This is through November.

Gas, the commodity continues to be volatile and on the rise. This is NYMEX, New York Mercantile Exchange, Henry Hubb. This is the 12 months from last November. Natural gas prices are up 86 percent from a year ago at this time. And market was and has climbed drastically both pre and post the two hurricanes.

Crude oil. Crude oil is up. No one denies it. It is up. Energy prices are up. Oil has also become more volatile and overall on the rise. Crude prices are up 38 percent, again 38 percent versus 86 percent. That might defuse some of this tracking issues that we have talked about. The market climbed drastically pre hurricane and peaked, and since has come off its hurricane highs.

This is -- through November, this is the 36 previous months of the NYMEX, New York Mercantile Exchange, a rolling average before a 12-month forward strip. We actually produce this every week for many, many, many of our customers throughout the northeast and in Texas. And basically you can see again gas has really been on the rise since 2002, rather substantially, where you are talking November 2002 is $4 for mm btu. We all agreed back then there was a tremendous amount of savings in converting to natural gas. But since then obviously the market has really increased substantially, and moreover the last year.

This snapshot was done on 9/23. If you -- we are not talking about December data. But this is actually -- has increased since the snapshot. But let's talk about this snapshot in a little more detail.

Basically if you had looked at a forward curve back in March 23rd, looking out into the future, and then now you look at a forward curve from September 23rd, you will see there is a $2 differential in gas on a go-forward basis. And you will see that basically gas doesn't get below the $10 mark for mm btu till April '07.

So as such $10 gas price on the New York Mercantile Exchange is a $13 gas price here or even $14, depending on transportation charges, et cetera, et cetera, et cetera. So the point being is that proves once again that gas, and really you have to push it out, is not as pretty or rosy picture next year. And the prices continue to remain quite high.

But again we are not denying that crude is up. Here is crude oil. You could see again from January '04 through November '05 the 12-month forward strip. Again oil is up. All energy products are up. Gold is up. Everything is up.

Heating oil futures, 12-month forward strip again through November. You will see again last year at this time it was below a dollar. Now it approaches $2 and recently has come off down into the $1.70 range.

This gives you a very good indication through November again heating oil. It shows that -- but it did spike during the hurricane months but has come off rather substantially since -- more recently in the last 12, 14 weeks.

The same thing with natural gas through November. You could see that it started to come off its hurricane highs but now has -- actually in November it started to climb back up. And then again recent gas prices are now over 14 and peaked over $15 per mm btu.

MR. HOYT: Mr. Chair, I let the first one go. This is the concern that we had in terms of getting into December pricing and so on which isn't part of any of the evidence that has been filed today. I have no problem with it going to November of '05.

CHAIRMAN: Let me ask you a question. Those prices you have in reference to heating oil, et cetera, those are dollars per gallon. Those are I presume U.S. gallons?

MR. SORENSON: Correct.

CHAIRMAN: Just for a base mark for me, how many litres in a

U.S. gallon?

MR. SORENSON: 3.8 is a simple average to use.

CHAIRMAN: Thank you.

MR. SORENSON: Okay. Again through to November -- thank you, Mr. Hoyt. Last year at the rate hearing we brought in this chart. Last year, the top one. And you could see that was March.

And I'm going to get over here. And here we go. Good. A little picture thing. My kids would like this. Again you could see some of the volatility, see the inconsistency that's spread between the two lines. They cross over, et cetera.

Now I'm not going to disagree with Mr. Hoyt. Sure, there was a six-month time frame right here that actually looked favorable in the comparison between natural gas and oil. But now look at it.

CHAIRMAN: Would you agree with Mr. Hoyt that what was the first part of the graph displays the relationship that is historic as well?

MR. SORENSON: No.

CHAIRMAN: You wouldn't?

MR. SORENSON: No. It is just recent. It is recent but not necessarily historic. Natural gas --

CHAIRMAN: November '04 through to --

MR. SORENSON: Right.

CHAIRMAN: -- July and August, i.e. that natural gas prices were lower than and remained relatively constantly lower than those of oil --

MR. SORENSON: As compared --

CHAIRMAN: -- in history?

MR. SORENSON: Would have been -- from that snapshot I would agree, yes, but not necessarily historically. Because they have varied, yes.

Market volatility. Mr. Hoyt and the applicant put in a question about volatility. I defined it for him. And he was kind enough to repeat it today. But all energy products are volatile right now.

Long-term, 50-year supplies of both oil and natural gas remain pretty much unchanged over the past two decades, even though oil consumption has grown significantly. And why has that? You know, we have got computers. We have got all these things that require oil. Production capacity, extraction, refining, however, hasn't kept up. That is both gas and oil.

Overall increases in efficiency, energy efficiency and new economics of Chinese production, Asia, India. But the big issue is any small disruption, a hurricane, cold weather creates spikes or impacts on oil and natural gas prices, creates -- and that is volatility, as such the times that we are now going through, a very volatile time. And that requires more forward looking, more past looking and a lot more data to actually compile any type of rate methodology.

Again last year, natural gas and oil trend but spread in August and September, very clear. Natural gas and oil cross and disperse during October through December. There wasn't any hurricane then. No hurricane last year. It just got cold. There wasn't any hurricane.

So the choice of market timing can affect the spread between natural gas. You could see it was optimized, actually very much optimized by the applicant last year. So again we said last year a more realistic comparison is backcasting and forecasting.

Now look at it again. Again obviously the lines have crossed. And we all know what happened after the hurricanes. Gases run through the end of November. Oil has done a -- has come off since the hurricanes.

The natural gas and oil trend, again from January to August, natural gas and oil cross and dispersed in August, post the first hurricane. The choice of market timing affects the spread, as we talked about. Natural gas is catapulted upwards while oil has retreated.

So what has happened now is oil and natural gas have inversed. They have actually inversed. And we saw the other day oil track natural gas. Gas was going up. Oil tracked it. Went the other way. So again times are changing.

This is the chart that Mr. Hoyt cited, we are not disagreeing. But what we do see is -- again, you do see that one month there was a 1.23, another month might have been 1.29, but now you can see that September, October, November have actually decreased substantially. The ratio is now negative or flat resulting in better economics for oil versus natural gas and this is -- doesn't even include LDC charges.

So again, I can't emphasize this enough. Timing makes all the difference. By choosing August, the first week or two of August, the applicant paints an unrealistic picture which is not realistic of what is trending through the end of November.

So we talked about efficiency factors. And there is a lot of agreement among most people that you do improve with natural gas fired equipment. But we are saying that you should improve -- if I am the City of Saint John, which they have done, is they compare a new natural gas fired unit or appliance versus a like oil fired appliance.

We do find though the City of Saint John actually and I disagree a little bit, we do find that 6 percent improvement in general on a newer equipment of oil versus natural gas. So natural gas typically is more efficient than oil fired units. We all agree.

But if you look at what is submitted in the evidence in MacLeod & Grant actually submitted a point basically saying that oil and natural gas fired units are the same, which was submitted part of evidence.

And then we actually asked -- we had this done by Carmichael Engineering and then LeRoy Heating, actually took results, test results of a 17 year old product, a 17 year old facility boiler, oil fired boiler and it came between 80 and 84 percent efficient -- 80 and 84 percent efficient. So again, if you compare that versus a gas application, that margin is much less and it is more likely again the 4, 5 or 6 percent improvement instead of the 15, 18, 19, 20, 22, whatever the applicant has done.

So if you take this information and apply it, you will see that your rate increase should only be 28 percent in the GS account and 34 percent, that's keeping the numbers the same, that's keeping all of the applicant's numbers the same, but basically saying we are just changing the efficiency factors. And it's 28 percent and 34 percent, again rather significantly so you should not be increasing rates obviously 92 and 108 percent.

Next point. Compare use EGNB's November gas utility rate and November New Brunswick oil prices. We simply picked up the phone and talked to Irving. This was posted on the Enbridge website so nothing earth shattering here. 14.71 was their gj rate, Irving's retail oil rates, .75 cents for GS and .65 cents for CGS. We found that is just over the phone. If you really want to negotiate those numbers can come down. The proposed rate increases uses -- using the Enbridge efficiency improvements but now just apply those new rates, new charges, if you will, for natural gas and oil, 48 percent in the GS class, 8 percent and then again when you use more realistic fuel prices and then the efficiency improvements it would say that Enbridge should reduce their rates 26 percent in the GS class and then reduce 85 percent in the CGS class.

And again, all we did same model, their model. We are not trying to, you know, get into all these different modellings. We learned from the past. Okay. The point being is again, we took their model, just changed the retail oil prices and then you put the variance levels of efficiency factors in.

Lastly we used Enbridge's model again. We used their

November gas utility rate and then New Brunswick oil prices.

Now I want to make note, I made a mistake here. And thank you, Mr. Hoyt. That should say what the City of Saint John's variable rate was, 16.29. They had not been locked in at that point. Retailer rates 63 cents per litre for CGS -- for GS and CGS proposed rate increases using their efficiency improvements. If we use their efficiency, again vast -- which we disagree with -- we would say that you would reduce the rates 80 percent in the GS class that they have submitted and 76 percent in the CGS class.

And then if you put on the efficiency improvements that we have talked about, which again diminish down to just 4 or 5, 6 percent, basically they should eliminate rates. That tells you where the fuel prices are today. And that displays that loud and clear. A realistic view. Real life, real answers.

So back to the incentives.

CHAIRMAN: That oil price that you have in the City of Saint John example --

MR, SORENSON: Which is actually cheaper if we jump onto the Province's, for example, but that's not part of -- we didn't submit that as part of the --

CHAIRMAN: Because that's the way they purchase their fuel.

MR. SORENSON: Right. But we didn't do that. We just -- that's just through Irving directly. Not -- not participating -- the province has a better price, 57 cents. So we didn't do that. We learned from last time. Enbridge provides 78 percent of signed distribution --

CHAIRMAN: Pleased to hear that.

MR. SORENSON: -- Enbridge provides 78 percent of signed distribution revenues incentives, which on a run rates over $2 million. Why? There is no savings. There is no savings today converting from natural -- from oil to natural gas. There just isn't savings. There is savings on anything. If I compare -- if I am a homeowner or a business and I want to put a new oil unit in against an old oil unit, sure, I could show you 15 or 20 percent efficiency improvement immediately. I will use less oil. But again when you compare apples to apples, new oil equipment versus new -- new gas equipment versus new oil equipment, those efficiency factor improvements are much different.

Customers attracted to improving or upgrading their facilities and appliances for free or minimal costs. The City basically got a $23,000 cheque on $40,000 worth of upgrades. That was a huge contributing factor and we thank Enbridge very much for converting one of their old oil units over to natural gas.

But I haven't seen any independent studies. We have talked about this for five years. There is no independent studies to prove or validate switching as such Enbridge -- so what's happening, we think they are buying the market. Just like a cell phone company, sure they use cell phone companies and satellite companies. How do they get share? They buy market share and hope that they amortize those costs over a period of time that that will turn into revenue dollars.

Let me give you a classic example. Marriott Hotels, they are famous for this. The build a new hotel in the area, they are the cheapest rates. They give rooms away for the first three months, get occupancy level up to 90 percent, and then start to increase their room rate. The same thing. The problem is you are talking about 100' -- $200 million infrastructure problem here.

So financials are clearly negatively impacted by these business and we are seeing in the escalating deferral account.

So what do we all agree upon? Savings have definitely, definitely -- I was out there for years begging customers and showing them ways to convert natural gas -- to natural gas from fuel oil. And for the first two, three years in New Brunswick it was wonderful. I remember I had -- I had a meeting yesterday with Moosehead and we were dusting off papers from 2001, which natural gas prices were 2 and $3. I mean, it's just a whole different world now.

MR. HOYT: Mr. Chair, the stories are great, but they are not in the evidence.

CHAIRMAN: Just carry on with not what happened yesterday at Moosehead.

MR. SORENSON: Okay. Fine. All right. We won't talk -- thank you, Mr. Hoyt. If it was a Red Sox story, he would have me still talking, you know.

CHAIRMAN: Moosehead is closer to my heart actually.

MR. SORENSON: The point is market conditions have changed substantially over the past two years. The great savings of the past are gone, eliminated, don't exist. And you need to compare -- even back then if you compared new, brand spanking new oil equipment versus brand spanking new natural gas fired equipment four years ago, you could drive a truck through that savings, but it no longer exists that way.

Efficiency improvements typically do not occur by converting from oil-fired applications to natural gas, but natural gas is a cleaner burning fuel. We all agree there. We all agree.

But just to show -- to say this one more time, a picture is worth a thousand words. Look at that. I mean, that -- the volatility and how things have changed is dramatic, dramatic.

So what are the issues that exist with the application? Again, we believe the methodology that applied in 2000 should be thrown out. It's outdated, it's unrealistic, it's not relevant. The data points are flawed. It's unrealistic. It does not represent the market and is completely favourable for the applicant. Simple. The prices of fuel should be realistic and consistent with the market, you know, Enerdata, all these other websites we can go to. Let's get real numbers from the market from the suppliers of oil and natural gas in the market and we have real numbers to apply. Efficiency improvements should compare new or upgraded natural gas equipment to like or similar equipment that burns oil, not old and outdated.

However, again we have real data submitted on a real test that showed a 17-year old boiler, 80 to 84 percent efficient. Not bad. They have done a good job of maintaining it.

Incentives have reached unparalled levels to attract customers due to the fact there are no savings. People will switch, if you are going to give us -- you got to pay for my conversion. I would. But that has a negative impact on the applicant's financials and we won't go any further than that. And the applicant continues to fail and address the applicable issues in the market, which again detracts from the issues at hand, which is do customers actually save under the current rate schedule? Current? No. Let alone the proposed.

So we recommend that the Board finally has a chance for the first time in five years to say no. No. Reject the application. Reject the application by the applicant. And hey, maybe it's now time to say, okay, we passed you a rate rider a couple of years ago, do it, use it on the existing rates and prove to us that you can actually show us 15 percent savings against other fields across the market. Because then maybe their -- we are at a point now we have to basically do reduced rates and applicable savings and there should be some type of audit trail, because clearly they are on one side and the rest of us are other and there is a Mack truck that you can drive through the differences on how to approach this market. That's it. Thank you very much, Mr. Chairman.

CHAIRMAN: Mr. Sorenson, what do you say to Mr. Hoyt's argument that who better knows what's appealing to their customers and that they are in fact the party that stands to lose the most if in fact they don't offer the incentive to come over to natural gas?

MR. SORENSON: Well, Enbridge has millions of customers. Enbridge as a whole, as company with consumer's gas. We, of course, only have 20,000 customers, which again though is a very large base. We manage about 3 bcf of gas, which is a lot of gas and we manage 300,000 barrels of oil, et cetera. We do this for a living. From an economic perspective, this is what we do. Enbridge has a vested interest in the province. Obviously they have a vested interest in the infrastructure. I think they are more in tune with their financials than the consumers' financials. And the reason why the incentives have had to increase so much is because savings have not been available.

So to answer your question, the only way to attract business in this current market is for them to buy the market or buy market share and put those incentives in place. And as such if they weren't doing that, there would be no other way to attract business.

CHAIRMAN: There are some in this province who say this province is so small that in fact the customers of Enbridge are not realizing savings or are not being pleased with what's happening, they are going to tell their neighbours, and their neighbours are going to ask them, you have got natural gas, are you satisfied? And if they say no, I was at first, but boy, they are pricing themselves out of market, then they are not going -- they are going to be hurting themselves.

MR. SORENSON: I see the people of this province over the last five years, a lot of times they kind of stick to their knitting and kind of keep a lot of that stuff to themselves. But the --

CHAIRMAN: You sit on this side of the bench.

MR. SORENSON: Yes. Well, yes, because of insurance rates and, you know --

CHAIRMAN: They are moving it when it really affects them.

MR. SORENSON: When it really affects them. Hits them. Look at the size of the market. They have 4,000 customers, not even. They only have 4,000. Remember the original application? Because I do. I was here. We have been seeing each other a long time over these issues. The point being is they were supposed to have 6' or 7,000 customers by now. They haven't. Why? There was a compelling story at first. However, they probably approached the market incorrectly. And now they are approaching it probably -- I think probably a more positive way.

They are putting their marketing dollars instead of on TV into a customer's pocket and helping, you know, buy their equipment. But the facts -- the facts are the same. If there was drastic savings, you would see a lot more customers. We wouldn't be here, because their volume, their throughput would be a lot better than it is.

CHAIRMAN: Thanks. Mr. Lawson.

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

Just -- it goes without saying I guess, the Gas Distribution Act basically says the rates that you have to consider and approve have to be just and reasonable. That's the measure of the test.

It also provides that the onus is on the applicant in this case to establish what would be fair and reasonable rates.

And like Mr. Sorenson I start off with -- and I have just chosen the LFO class, but I look and say that a 144 percent rate increase in tier 1 for LFO has -- it screams out as being other than just and reasonable.

I think just and reasonable isn't just looked at from the perspective of the supplier of the services. It has to be looked at from the customer's perspective as well. And is 144 percent increase just and reasonable? Certainly not on its own but not at all when you look at it and say within a 12 month period, between April of this year and January of 2006, there would be an increase that triples the rate. Triples the rate that it was in March of this year.

CHAIRMAN: Mr. Lawson, did your client not realize that we are in the so-called development period and that Enbridge had a very lengthy hearing in front of this Board and the Board approved of the development period, and that they continue day after day after day to lose money and they are putting it into the deferral account, and that therefore what they put on the public record and otherwise is as are customer base grows we will increase our rates, but we are going to try and keep that in balance so that we still offer that discount to customers?

MR. LAWSON: I can tell you, Mr. Chairman, because I was actively involved as you know in this process with Flakeboard, and I can tell you unequivocally, perhaps because of poor legal advice, but they had absolutely no sense of what this process was about.

And in fact I would comment on your comment about the neighbours telling the neighbours, I think Flakeboard will be described as a relatively sophisticated business, but this was an absolutely new industry to this sector. EGNB had been there for years. Flakeboard knew nothing about gas until two years ago or something like that.

We can't unfortunately attribute it to either the neighbours talking about how much their savings were or how much their real savings were. They don't really have that sense.

Flakeboard has a sense now, but unfortunately there was no sense of the extent of this control on the regulatory side. If you had said to them that the rates were going to triple, more than triple -- triple -- back when the -- they withdrew the application for single end use franchise -- if I had said to them that we wouldn't be here, I think I can safely say we would certainly have continued a very serious fight over single end use franchise. Absolutely no question about that, Mr. Chairman. Particularly when we look at the figures that are on -- in the evidence today with respect to the lateral that serves Flakeboard St. Stephen.

The rate generates -- next year is expected by EGNB to generate $800,000 without a rate increase. The costs associated with that lateral are $250,000. That's EGNB's numbers. Right now Flakeboard is contributing three times the cost of Flakeboard and other customers, although I think it's fair to say that the substantial portion, that is Flakeboard, considering three times the operating costs of that lateral. There was no sense of what was to come. None.

And I submit, Mr. Chairman, that's part of the difficulty in the marketing campaign for getting customers over, is that you pick -- and even when we had this application -- this first rate application that Flakeboard participated in was the one this spring, I can tell you I had no concept. Certainly not nearly as knowledgeable today -- or then as I am now with respect to this process -- had no concept going into that of what truly was involved in sort of the future, the deferral accounts and so on.

And that's where we have spent a lot of time, energy and money to deal with this issue. Most customers don't. Present them the information that is presented to the Board in the application today in terms of the savings to be achieved and most customers, most customers will look at that and say, I don't know anything about gas. Seems reasonable, seems fair. I guess I should convert, convert to gas. And then the reality strikes home. That's the simple reality of it.

I don't think the evidence is much different than for Atlantic Health Sciences as well, again a large and very sophisticated consumer.

CHAIRMAN: I'm sorry, but I don't know what we -- for instance as a Board we can do, further than actually having a written decision that we post on the web that talks about in detail precisely what is going on and how prices will be set in the future until that development period is over.
And your client is a large sophisticated company and to say that with an investment as I understand is close to $330,000 in the conversion, that there was not even that amount of homework done, it simply amazes me.
MR. LAWSON: $3 million, Mr. Chairman.
CHAIRMAN: Pardon?
MR. LAWSON: $2.3 million.
CHAIRMAN: All right.
MR. LAWSON: So a lot of money.
CHAIRMAN: A lot of money.
MR. LAWSON: No question about it, Mr. Chairman.   There is no question. Part of it of course is predicting the future, the difficulty with predicting the future. And that's what this Board is really charged with today is predicting the future, because you have to predict what 2006 holds in store. Given the market base formula that is in place currently, you have to predict what really would be savings in 2006 to attract customers, because a

decision will be made today or in the next few days which will then be implemented in the future having to explain to clients based on the then real savings presumably. And that -- I don't envy you for that job but unfortunately it's the job that you folks have.

CHAIRMAN: And I will say to you as I did to Mr. Sorenson, you are fully well aware that Enbridge is not breaking even at the present time and you are fully well aware of the magnitude of the deferral account and you are also fully well aware it would be totally contrary to their corporate interests if they were to set their prices where it would discourage any new attachments, because they can never make money with the present customer base they have.

MR. LAWSON: I agree that there are times when one has to default to the operator. I submit, Mr. Chairman, you as the Board and ourselves expressing opinions have as much ability to predict the future for next year as they do in terms of what will be the likely price -- relative price of gas and relative price of oil next year. And that's really what this is about.

CHAIRMAN: That's certainly from the Board's approval of the rate rider concept is why the rate rider is there.

MR. LAWSON: Mr. Chairman, I think the rate rider is an appropriate thing to comment on because they suddenly have become converted. Well I'm not going to even give them credit for converting. They haven't even said that they are going to apply a rate rider. They said if you give us the rate increase we want, we will give you, the consumers, the rate rider.

CHAIRMAN: With great frankness, I personally -- I'm not speaking for my fellow Commissioners -- look at it and say there is an application in front of me. What they do tomorrow -- we have an opportunity to take a look at anything that they file and then in two weeks time approve, disapprove, modify, whatever. So I'm not dealing with that.

MR. LAWSON: No.

CHAIRMAN: I simply -- I did want to know if the urgency were off in reference to giving a decision today as we had hoped that we would be able to do.

I will just put one other thing on the table here. It occurs in just about every utility hearing that we have. The price of natural gas, the molecule and oil is a constantly moving target. Every utility has to pick a time and use that time to develop the filing that comes before the Board, and to pick a time prior to making the application is a very logical thing to do.

MR. LAWSON: I agree.

CHAIRMAN: So, you know, I have had many times in front of me counsel saying you should update these figures and the Board has always said certainly. And then halfway through if relationships change again you want them all over -- you know. There is such a thing as regulatory lag and then there is regulatory death. I mean -- so you have to pick that point in time. And the rate rider comes into play.

MR. LAWSON: I agree that a point in time has to be taken, but of course the objective in selecting a point in time is to identify what is likely to be in the future, what is likely to happen in 2006? Because that's really what this is all about. What kind of savings will it take to attract customers in 2006? So that's the objective.

Well I submit that if it appears as though the numbers that were -- used for filing -- because you have to come up with some numbers during the filing -- appear to be now wrong -- because history is not always the best judge of the future -- appear now to be wrong, you have to take a look and see what the future is more likely to hold today than when the application was filed three or four months ago, whenever it was.

And we heard for example in evidence in the last application in the spring that there was evidence called by a newspaper article from that morning's newspaper by EGNB supporting that the price of oil in that case had gone up significantly.

CHAIRMAN: I can't remember that for the love of me.

MR. LAWSON: But there was --

CHAIRMAN: Ask me what I did yesterday, I can't even remember that.

MR. LAWSON: I understand. I have sympathy with that problem. But I happen to remember this particular event and it was -- and it was called as evidence, used as evidence.

I was chatting this morning with Mr. Hoyt on the matter. It was used as evidence and submitted by way of argument as showing that look, we know where things are headed and that oil is going up and therefore the differential between oil and gas was getting more significant relative to when they filed in November or whenever it was of 2004.

We submit the same thing as here. The Board has to predict the future. And the best indication of what the future holds is probably easier to determine today than it was in August. And the world has changed. There is no question about it. The differential between -- what perhaps is -- there is no evidence of it what the historical differential at least has talked about it -- I don't honestly know -- but what is talked about is the historical differential of oil being cheaper than -- sorry, gas being cheaper than oil, seems to have changed significantly.

The other thing that has changed very significantly is both of the fuels have gone through the roof. So it's not just a question of the relativity of those two fuels. Now as evidenced by Flakeboard's -- given in Flakeboard's evidence, now suddenly the dynamics have changed so that it's not just a question of oil versus natural gas.

Suddenly people are saying look, some of those things that might have been energy alternatives in the past that made no economic sense, make economic sense. While they may not have made economic sense when oil was $40 a barrel and natural gas was whatever its historical equivalent would have been, when both of those move up the benchmark those alternatives become realistic.

And suddenly natural gas -- and my final point here in the argument was to be I have some concern about the very fundamentals about natural gas, the infrastructure that is in place for distribution of natural gas in New Brunswick, because what is its future going to be when -- with these historically high prices? What -- how will we convince people? Flakeboard -- or sorry, EGNB indicated in their evidence the reasons why their initial projections from '99 and 2000 are not -- they are an apples and oranges comparison to what is now, because they projected gas at $2.40 I think it was a gigajoule and a variety of other things.

Well that's the world we are working in today. That's the reality. So they are saying you can't compare us to what our initial estimates were up to now, our performance, because things are different.

We agree 100 percent things are different. It does -- therefore, a) is the regulatory scheme developed back when things were different still applicable? And I don't pretend to know what the right regulatory scheme is. I'm just barely catching on to pricing. Is in fact there a better way to evaluate? I don't know the answer to that. But it doesn't appear as though the future looks very bright when you are looking at $133 million hole, today an $82 million hole. It boggles my mind how it can possibly be dug out of. It just -- quite simply with these kinds of relative prices, because you are going to see people looking at alternative fuel options which is going to -- and what is going to happen you are going to have some people who are on gas who can't get out of gas without spending a lot of money.

Some people are on gas and oil who have to look at those two options and say they are both historically high but those are the only choices we have. They are both high. It's one or the other. And then you will have other people who will say look, we have to look at alternative sources of fuel including, heaven forbid, HFO as an option, including bio-mass wood burning facilities on an industrial or commercial level and even on an individual basis. So that --

CHAIRMAN: Don't tell me you are against bio-mass?

MR. LAWSON: No, Mr. Chairman. In fact the evidence is that it's something being used by Flakeboard. They are implementing it as we speak, because --

CHAIRMAN: Sure. Why not?

MR. LAWSON: And that -- in that case they are doing it and removing the tier kind of energy consumption. So they are not even getting rid of it, the most -- they are getting rid of some but not much of the most expensive distribution rates. And yet it still makes sense to convert so they don't use gas or oil because those have both moved up so high.

So that's really the long-term challenge, not really for the Board to consider in this case. But in the long-term there are some real fundamental issues of how do you dig out of a hole that's $82 million deep at the moment with this fundamental change? I mean, that's not for us --

CHAIRMAN: You have no advice for them then?

MR. LAWSON: Well I have a couple of bits of advice but I'm not so sure they want to hear them, so I won't bother advancing them.

So let me just I guess --

CHAIRMAN: I interrupted you.

MR. LAWSON: That's all right. I was on point 2, so I am okay. I have covered off a number of these.

The one thing we would agree is that given the structure that we are in we need -- "we" -- and I say we because it's EGNB -- we are in the same boat. We are in the same boat. We need more customers on that pipeline service, because it's the only way to have any help if we don't get more customers. So our objective is indeed to get more customers.

The question is is how is it going to be accomplished? And not just a few more customers because the kinds of numbers of additional customers while perhaps above target is not nearly adequate. It boggles my mind how there could be -- and I haven't seen projections how they are going to reach by 2011 a break-even, but it gets hard to see the model that is going to allow them to do that at this stage in the game.

I haven't looked at the model. There may be a model but it's just hard to see with the numbers that are taking place now.

There was indication that look, the increase in April had little or no effect on the customer signings. First of all, the increase was smaller than the increases being sought today. We don't know how many people just decided -- you know, EGNB wouldn't know about them -- they just decided I'm not going to make an application or talk to EGNB about switching. There may have been some of those, but I think the most important difference is the sales pitch, if you will, that could be made post-increase in April showed that oil at that time until about August, late August, early September oil was still less favourably priced than natural gas.

So giving an example to the customer obviously would show that it was more favourable, there could be these targeted savings. That fundamental has changed. September to now has changed significantly that formula. And as a result I don't think you can say, well it didn't have an impact last time, so it's not going to have an impact this time, au contraire.

My view is is it's going to be -- it will have a significant one if the consumer is presented with the numbers today is in the 21 day average on a go-forward basis. If they used the August numbers, then I would say they would be wrong to do that, but if they use the August numbers it looks great. The reality is that the August numbers don't appear to be realistic.

Just one comment quickly. I'm not going to the efficiency issue. But I -- this efficiency of furnace, I didn't quite understand where Mr. Sorenson was coming from last time.

But I must say, as I was going through things this time, I began to appreciate more of what his point is. And I think it makes some sense. If you are telling a customer you are going to save some money, the customer is going to replace his or her furnace, then they have to really -- to see what truly savings they are going to get they have to decide how much will I -- what will it cost me with my new oil furnace versus what will it cost me with my new gas furnace?

And it is that relative savings that really matters.

Because if I'm confronted with replacing, really it's a question of the efficiency of my new oil versus my new gas furnace. And I only now appreciate the significant effect that that efficiency issue can have on the numbers or the true savings formula.

I think the best indication of what this future might better look like is chart A which is in the evidence of -- and I would refer the Board to it, the evidence of Barry Gallant on behalf of Flakeboard -- chart A is the chart that identifies, using the --

CHAIRMAN: Hang on till I shuffle paper here. And that is exhibit A?

MR. LAWSON: Chart.

CHAIRMAN: Chart A, sorry.

MR. LAWSON: That is right. Although I might add that while I'm confessing to all my sins, it is referred to as Chart B in the evidence, but it is actually Chart A. And this --

CHAIRMAN: You better go to church on Sunday.

MR. LAWSON: I might as well bare my soul here. As far as I know everything else is okay.

CHAIRMAN: That's 2.

MR. LAWSON: I'm not going to admit to the third one, wherever it might be.

So Chart A, what this does is it identifies again for the LFO class only. And it identifies using the typical customer that EGNB has. And it is used in the first column on the left as of August 8th which is the application and the information supplied for the application by EGNB.

And then it just said look, let's take the middle of, to the extent we could, the middle of September, October and November to use exactly the same formula that was used in their calculations, but using the -- and the same methodology for determining oil, gas -- we didn't adjust for efficiencies -- and said all right, let's just see what the result of that would be on a go-forward basis.

That exact same method of calculation results in an increase in September, by September 16th. That would be $2.49 instead of the requested 2.39. But you can see it is almost to nothing by October. By November it would require a rebate, so pay the customers, if you will, $1.85 rebate -- $1.83 rebate.

So using an average of September, October and November's, a more recent in time frame, it would be 25 cents rate instead of the current 79 cents. That just gives you a sense that if the current pricing, relative pricing of oil and gas continues into 2006, that 25 cents would be more appropriate than $2.39.

The one thing I think we all agree on is that there is a volatility to the relative pricing. I think we can also all agree that none of us can predict the future. At least I will agree I can't predict the future. And amongst other things my stock portfolio tells you that very clearly.

But we do know that there is going to be a volatility in that relative price of fuel. I suspect it is fair to say that when there is a settling down, it is going to settle down at a higher level than it settled down last year and the year before. It just seems to be the way things work in the world. But there is that volatility.

Just on this issue of incentives, just very quickly, the cell phone business is used as an example of, you know, the incentives as being a way to lure customers. I don't disagree.

The only comment I would make is one of the very big differences between this business and say the cell phone service business is that the price to the consumer at the end of the day for the product is determined by the supplier.

So if I'm Rogers and I want to lure in a customer, I can lure them in with incentives. Because I have a pretty good idea of what my cost base -- my cost structure is going to be along into the future.

You can't do that because EGNB doesn't have control over what really is a very fundamental part of the relationship of savings. That is gas and oil prices EGNB doesn't control.

And so when they get an incentive in to get a customer in, and their evidence is they don't demand any guarantees from those customers, that they will continue to buy service.

So when they give the City $23,000 or whatever it is, there is no guarantee the City will buy service from EGNB. They have done it on the basis saying look, we will figure they will buy service because there are savings to be had.

There is no guarantee that will take place. They could end up taking the money and finding that the historical prices change. And there is no point in using gas anymore. It is not in our best interest.

The one thing we can say is for those who are capable and those who are sophisticated enough, they will switch the moment it makes sense to switch from natural gas to oil.

Flakeboard's evidence is the day before they filed the answers to their Interrogatories they switched. And their evidence is that in January and February they intend to remain using oil rather than natural gas.

It is just -- people will respond that way, not -- they are going to do what is in their best interest. And so the incentives can buy a customer base. But it doesn't ensure any volume of level of income.

In the cell phone business, when you lure a customer in, you control over what the prices are going to be. So you can say, I will set the price to keep them there. I will make sure that the product that I'm offering -- they will stay with us.

EGNB doesn't have that luxury. The price of whether -- the likelihood of whether they will stay or not is more likely going to be determined by a world market of oil and gas.

The other comment would be is if targeted savings were assured -- and of course these are targeted savings. There is no guarantee any of these savings will actually be accomplished. If they were assured then presumably there would be no need for a sales team.

Because one thing I can say is is that most people, if they are given an opportunity to save money, will take that opportunity and save money, particularly if it attracts -- it is attractive because it is also more environmentally friendly, cleaner and so on. But they will save the money. They won't need incentives. They will just switch.

Look at the Wal-Marts in town. People flock to the Wal-Marts because they can save money. People will save money. You don't need incentives. If the targeted savings were working as they are supposed to, you don't need incentives. People will come anyway.

And you will have everybody instead of 15 percent or 20 percent or 27 percent of the marketplace. You will have everybody. And we obviously don't have everybody. And that is because people are scared of the uncertainty of the future.

Just quickly on the rate rider, just as a -- give you an example. The rate rider -- the evidence that was given by Ms. Black -- I won't bother getting the Board to refer to it -- but I will just cite it. The evidence in Supplementary Interrogatory 21, in response to CES Supplementary Interrogatory 21, sorry, says EGNB would apply to use a rate rider under conditions where it was unable to meet its growth requirements and it felt that distribution rates were contributing to this. So it is unable to meet them.

Mr. Chairman, I understand -- Flakeboard understands EGNB is bleeding. No question about that. And I think their evidence is that if there is one dollar that they should be getting, they want to get that. So they are looking to get that last dollar. Particularly where you are bleeding that hard, I can understand why they want to do that.

But use as an example the rate rider scheme. It would be open to them to use a rate rider to attract customers. But they could in fact say if a customer is saving -- current customers are not saving anything or virtually nothing in using gas, they don't matter to us, because we don't have to give them 10 percent savings. That is a targeted savings for them to come on. But there is no obligation that they have to try to save them any money. But then they can say, instead of to get new customers, we don't need a rate rider. We will use an incentive system to get those customers over what might be thought to be a six-month period for example where there may be some differential between gas and oil. So we will give the customer an incentive to come on board to get their 10 percent saving, so it is attractive to them, and transition them over that six months, but the current customers will get no savings.

The only thing that will motivate them, and I will give them this credit, they will have to, presumably if not in the short run, in the long run they will have to say, if those customers aren't saving anything, those current customers, they will bail and go somewhere else. So they have to make sure that they don't let them lose money. But they don't have any obligation to use a rate rider, no commitment I submit by this to use a rate rider to ensure there are savings for customers they already have. I have mentioned -- it was mentioned in the evidence, and I was alluding to this earlier, business has to consider -- Flakeboard is not drawing a picture of doom and gloom that they are intending to leave because energy costs are higher somewhere else. There has been no consideration that I know of to that effect. But Flakeboard is saying business is business. And if in fact their competitors are getting energy at a higher cost -- and you have heard this -- this Board has heard this not that long ago in another hearing -- business will go where the business costs are best. That is really the way business works. And if their competitors are getting costs at a cheaper rate then that is -- that will either be the undoing of that business, or it could be the undoing, or it could be the cause of moving that business. I'm not suggesting for one minute Flakeboard is considering that. But at some point it could have an impact.

Just on this question on sort of one's immediate reaction would be that, look, if you had a decrease in the rates -- the current rates -- let's say they are 25 cents -- one's immediate reaction would be, well look, what is going to happen? Well they are going to lose more money. I just submit that their evidence is -- and again this is in answer to Flakeboard's supplementary interrogatory number 10 -- EGNB said EGNB does not know if a decrease in distribution rates would or would not result in incremental growth. So they don't even profess that the result of a decrease would be sort of the doom and gloom of their industry. They don't know. We don't know either. We just know that whatever has been happening in the last few years relative to what has to happen hasn't worked. That's why they are at 82 million instead of the peak $13 million initial projection and why they are projected at $133 million.

Mr. Chairman, members of the Board, that's -- let met just check my notes. Past savings -- these are just comments with respect to the CES -- sorry -- to the EGNB argument.

Firstly, past savings, that's not an issue. Flakeboard has had and doesn't dispute the fact that it --

of course, the issue is not here what happened to Flakeboard, the issue is here typical customers as EGNB has proposed.

But as it relates to Flakeboard, it saved significant money. It saved almost all of its direct costs, none of its incremental costs yet, but almost all of its direct costs. Unfortunately that's past savings relative to its previous energy costs. It's no indication what is going to happen in the future. And that's really where the decision has to be made by the Board what is going to happen in the future.

This is a -- I don't run the business, but my gut reaction is it seems odd that an industry that is -- that needs to make money, needs to dig itself out of that hole, continues to literally dig holes by putting in new pipeline. It would seem to me that the focus would be -- again I don't run the business, but I can't imagine the focus wouldn't be on trying to get converts for people instead of spending more money on new lines to try to get more customers by just adding new lines instead of saying, we have lines in place, let's get customers for those new lines.

Mr. Chairman, that is all the submission I have.

CHAIRMAN: Thanks, Mr. Lawson. We will take a ten minute recess and, Mr. Stewart, when we come back we will hear you and then Mr. Hoyt.

(Recess)

MR. STEWART: These three facilities have high enough volume --

CHAIRMAN: Those are St. Stephen --

MR. STEWART: Charlotte County Hospital, Centracare and Ridgewood. They have high enough volume to -- local expansion and are potentially a real source of revenue for Enbridge Gas New Brunswick. And furthermore these facilities are public in that sense. There is certainly little risk that they won't pay the bills. And Enbridge Gas New Brunswick can rely on their existence for some considerable time.

Our submission is that our situation is indicative of many other --

CHAIRMAN: The people in St. Stephen are very pleased to hear that, that the Charlotte County Hospital will be there for some considerable time.

MR. STEWART: And since the recorder is now on, that's the facility where I was born as a matter of fact.

CHAIRMAN: I knew there was something about him.

MR. STEWART: Thank you. Our submission is that our situation is indicative of many other potential customers out there and accordingly the Board should give some weight to our experience and views in this matter.

Now if I could please ask you to refer to the evidence of Shelley Black and particularly the very first page, page 1 of 13. As we all know because it has been the subject of discussion for over five years now, Enbridge Gas New Brunswick adopted the so-called market based rate making methodology, and we are all fairly familiar with it. But I think it's worthwhile to briefly revisit it again, at least in terms of its overall objectives.

And if I could refer you to question and answer 3 in the written direct testimony of Shelley Black, that's on the bottom of the first page. The question is posed, Enbridge Gas New Brunswick has stated previously that its distribution rates are market based. Please explain the purpose of market based rates? And in essence the answer is twofold. Market based rates are, number 1, predicated on local market condition, number 2, with the objective of providing potential end-use customers with an economic incentive to convert to natural gas. That's the purpose for setting the rates. That is the purpose that their rates that they have asked you in this application to determine, is supposed to achieve.

Just turn to the next page of Ms. Black's evidence. Questions 4 and 5 there is a brief discussion on exactly how do we do that. And it's the classic start from the end and work backward approach that we are all familiar with. At the risk of over-simplifying it, you take a burner tip oil price, you take a burner tip natural gas price and you look at the difference. And their theory is, as has been accepted by the Board in the past, that if the burner tip natural gas price is a certain percentage below, then that will achieve the objective of incenting potential end use customers to convert.

The question for you today is, is that difference number bigger than it used to be? Is that the case at the moment? Is there room between those two prices, that difference number, to allow Enbridge to take a bigger slice? That's the issue that's before you.

On page 3 of Ms. Black's evidence is the chart the derivation of target distribution rate. And if we take a quick look, line 1 produces a retail oil price per litre -- dollars per litre. Line 11 produces a commodity price for natural gas. Everything else from there is arithmetic. You add to the commodity price of natural gas the distribution charges and get a burner tip price. The retail price for oil is a delivered burner tip price.

The question for you to determine is are those numbers with the application of arithmetic sufficiently demonstrative of greater room than there used to be in order for Enbridge to take a larger slice of the pie. It will come as no surprise that our submission is today there is not. There is not sufficient room to take a larger slice of pie. They say these numbers appearing in line 1 and in line 11 are indicative of the marketplace. And we say they are not.

Enbridge goes on in the rest of its evidence, and in essence in an attempt to support its choice of retail oil prices and natural gas commodity price to support ultimately its difference number, which it says is large enough for it to take a slice -- a bigger slice.

CHAIRMAN: Mr. Stewart, those rates that you have just referred to and say that you disagree with, were they correct or were they reasonable in August when this application was prepared and then filed?

MR. STEWART: No.

CHAIRMAN: No.

MR. STEWART: They were not. And quite frankly even more so today, but they weren't at the time either.

CHAIRMAN: And I have another quick question --

MR. STEWART: Sure.

CHAIRMAN: -- because I have interrupted you right now -- is that on your -- in your confidential documentation, which you filed with the Board, I'm looking at schedule B and that's the Charlotte County Hospital and you give us the monthly cost of fuel oil in litres for April through and including October of 2005, are those the provincial government negotiated prices?

MR. STEWART: Yes. And that's what we were requested to disclose. Yes, they are.

CHAIRMAN: Thank you. Go ahead, sir.

MR. STEWART: When we received Enbridge's application for yet another increase -- and you have already heard the description of the percentages in terms of the scope of the increase, what struck us was that -- well, quite frankly the numbers didn't add up with our sense of our experience as a real life classic customer affected by these rate increases.

And we felt that they were not representative of the current reality of those "potential" end use customers Ms. Black is talking about in answer number 3, that Enbridge's rates must incent to convert.

As Mr. Hoyt pointed out earlier today, it is correct that Atlantic Health Sciences Corporation has saved money in the sense that it has avoided higher energy costs by using natural gas and has converted. That is a given. That is fully disclosed.

And Mr. Baird made that quite clear in his evidence. And we have provided, as you have just referred us to, Mr. Chairman, schedule B and C which takes a shot at projecting what those savings might be going a little forward.

But we felt, and Mr. Baird's evidence confirms that our current savings were, not to put too fine a point on it, a function of some good luck because of the fortuitous lock-in of our natural gas price prior to hurricanes and all other sorts of things.

And while we are grateful for those savings and delighted that that is the way it has come to pass, we are not sure that -- and we submit that it is not indicative of the overall market that was facing those potential end use customers needed to be incented to convert.

The lock-in of our natural gas price allowed us to weather that short-lived effect of spikes in prices that Mr. Hoyt spoke about at some length this morning.

So accordingly we reviewed what the difference in the change of rates would have made to us if we in essence redid the analysis that we had done a year ago when we were in fact one of those potential end-use customers considering the decision to convert.

And we looked at the usage calculations that we had done in the past. And we looked at it in terms of the cost of oil at the time and said -- at that time, when we made our decision to convert, a year ago almost to the day, or a little bit more than a year ago now, would we have done so if Enbridge's rates were increased to the rates that they are seeking now?

And the answer was that based on that projection we were actually working with at the time, when we were a potential end-use customer looking to be incented, was that the extra $57,000 would tip us over the other way. Because the difference number just wasn't big enough.

CHAIRMAN: Are you in that -- are you lumping those three facilities in to say that? In other words, those three facilities are physically separated by in some cases great distances. Would you not have analyzed -- and did you analyze for instance the Charlotte County facility separately on that same basis?

MR. STEWART: Yes. I mean, the decisions were made contemporaneously . But we did look at the numbers for each one and those were disclosed.

And so we looked at the numbers again and said that the total extra costs -- and they are broken down in our evidence in terms of facility by facility -- would be $57,000 more. It was going to cost $110,000 plus to convert. That would skew the mathematics.

CHAIRMAN: What I'm saying is would it skew the mathematics sufficiently in reference to each individual facility?

MR. STEWART: Yes.

CHAIRMAN: Or would perhaps it have been okay. to go ahead with the Charlotte County facility and not the other two?

MR. STEWART: The answer is that I think our numbers revealed a savings at Charlotte County even if Enbridge took a larger slice of the pie.

CHAIRMAN: Yes.

MR. STEWART: But yes, it would have only resulted in a saving of, I think based on our initial production, of about $6,000. And the cost of converting Charlotte County individually was about $30,000.

So Charlotte County may have been a question on its own. Don't know. Fair enough.

CHAIRMAN: Any of those facilities still dual fuel or --

MR. STEWART: All three are till dual fuel.

CHAIRMAN: Because I know the Regional here is capable of that. And certainly at the present time are you burning natural gas or oil?

MR. BAIRD: Natural gas.

MR. STEWART: At this moment, yes. And depending on rates after the 1st of January, that math will need to be redone.

Our simple submission is that -- it is in -- yes, the Charlotte County conversion was $50,300. So on a $6,000 saving alone, I mean, the fact is we -- no, sorry. That was what we actually did. And I'm going to look at Mr. Baird's evidence before I misspeak.

When we made the decision to convert, the overall saving in all three facilities was $6,000. After you added in the extra $57,000 in -- applied to our analysis in time, just going in and doing nothing more than increasing Enbridge's rates, then that would result in an extra cost at Charlotte County of $4,800, at Centracare of $22,000 and at Ridgewood of $24,000.

So before you considered the cost of paying for the conversion, or paying for the conversion, you would be paying more for the energy alone at all three facilities.

CHAIRMAN: Mmmm.

MR. STEWART: And our submission was simply customers like us making that decision if now Enbridge rates are higher, it was marginal to begin with, it tips it over the scale. We then went in and did a little bit of a second analysis and said well, that was based on oil and gas prices when we actually did it a year ago. What would happen if we use current oil and gas prices for the month of -- at that point I think it was the month of October, of this fall, and even dramatically moreso?

I mean, those numbers resulted in, you know, 16 1/2 thousand dollars extra fuel cost for Charlotte County, 26,000 at Centracare and 29 1/2 thousand at Ridgewood. That was our submission. Our submission was you can talk about NYMEX strips. You can talk about all kinds of other forecast projections, whatever. But our real life experience as a recent convert to natural gas was such that if the rates are increased to the level that they are requested by Enbridge today, we would not have converted. And therefore the objective that is supposed to be obtained by the setting of these rates would not have been met. That is the submission.

Then we received Information Requests on our evidence. And I'm not going to read this letter in verse to you. But the tone of which, and was reflected in Mr. Hoyt's submission this morning, is what are you talking about? You still save money. And your submission was just -- you hauled out of the drawer the analysis you did when you made the decision to convert.

That is a hypothetical analysis. It is not really indicative of what we are saying in our evidence, that the numbers that appear in Ms. Black's evidence are in fact representative, and there is the difference that they say there is.

Well, okay. As I said before, we have saved some money. And our submission, our response to that -- because we did anticipate that a little bit in our evidence -- was yes, well, we got a little lucky. We locked in at an opportune time. We locked in at a price that was about a dollar and a half over the 12-month average prior to that.

So the decision was not an easy one. And we did get lucky to the extent that we happened to lock in before all the hurricanes and price spikes. And so we have had some saving.

But going forward, that is not going to be the case. Even our contract is going to expire. And then we are going to have to start paying our freight on our commodity price. And then that difference is going to shrink dramatically. And if a bigger chunk is taken out of it from increased distribution rates, there will be nothing left at all.

Now we are big boys and girls. We made the decision to convert. And if we don't like the price of gas we will switch back to using oil or we will pay the extra costs. But this isn't about whether or not we are going to make or lose money on our energy costs going forward.

That is not the objective for you to consider. The objective for you to consider is will those rates established by you today or tomorrow incent new customers to convert? And our submission is no, it won't.

And in direct response we said okay. Well, yes, we did -- we were trying to represent what we did when we were a potential customer needing to be incented by hauling our analysis we did at the time out of the drawer. Let's look at our actual experience and see if the numbers still add up then.

And if I could I would like to refer you to the schedule D that we filed. It's technically part of response to interrogatory to us number 12. I would like to make a couple of points about this chart, this spreadsheet, before we begin.

The first is where we began here was with line number 5, monthly natural gas consumption. And I'm looking firstly -- I have the first page of schedule D which is the Charlotte County Hospital one, it's the one I have in front of me now.

Those are the actual consumption numbers of natural gas consumed by the Charlotte County Hospital during the months in question. So that's with the brand new natural gas burning equipment. So the efficiency quotient here is already taken into account and the comparison monthly fuel oil consumption is actually converting those gigajoules into oil numbers, into litres. So that takes into account the efficiency.

Secondly, they are real prices. They are the prices paid by the Charlotte County Hospital for fuel oil. Granted they may be a bit lower than market because they are part of the provincial purchasing program with which I believe we are all familiar. But those are our real prices paid at the time.

Now we said that the savings you point to are as a result of our fortuitous lock-in. And you said, you being Enbridge, in your evidence that the indicative commodity price that should be used is your system gas price because of the reasons laid out in Ms. Black's evidence as being a good benchmark.

So fine. We went back and said, how does our actual experience translate if we compare the oil prices we would have paid and we compare the Enbridge system gas price as it changed, the actual price month by month, as a customer considering converting how would the numbers have worked out for us? As you can see how the numbers would have worked out for us would have been a saving of -- "saving" of about $7,000. Or an overall saving as compared to an equivalent fuel cost or fuel oil cost of -- and the number is in the bottom right-hand column under total year-to-date, six percent.

MR. DUMONT: Excuse me. Just to have it clear in my mind here, are you saying that your monthly savings, line 12 as a total year-to-date, that number 6 would be six percent?

MR. STEWART: Correct.

MR. DUMONT: More or less?

MR. STEWART: No. We would have paid six percent less than -- using natural gas than we would have if we had used oil.

MR. DUMONT: Repeat that for me, please?

MR. STEWART: Sorry. If we compared what we would have paid for fuel oil, Enbridge's system gas price, apply our actual consumption numbers, gas would have only been six percent cheaper --

MR. DUMONT: Cheaper.

MR. STEWART: -- than oil. And that's taking into account the efficiency quotient because we used the consumption numbers based on what our new equipment actually burned. Now in Ms. Black's evidence and as we know Enbridge's position is that the difference number that we need to be incentive to convert is actually 10 percent.

So if we had not converted and if we were making -- looking at our hard numbers as to whether or not we would be incentive to convert, there is no 10 percent once you increase Enbridge's rates. If you don't increase Enbridge's rates then there is a 10 percent.

The change is even more dramatic, if you can slip to the next page of schedule D, when you look at Ridgewood.

It would actually have cost 21 percent more -- in this case cost more -- to burn natural gas at Ridgewood if we had to pay Enbridge's higher distribution rates that they are seeking in this application. That's pretty easy math.

I will admit, because I am sure Mr. Hoyt is going to point out when I am done, that typically a typical customer the size of Ridgewood may not be able to leverage the slightly lower oil prices we get as being part of the provincial purchasing program. But you have to change a 21 percent extra cost into a 15 percent in this rate class saving in order for there to be room for Enbridge -- for customers or users like Ridgewood in order to convert. And you can --

CHAIRMAN: Some would say you have to move to the Miramichi.

MR. STEWART: Indeed. Indeed. Or Bathurst I think was the location. So there just isn't room.

The same analysis applies in Centracare. When we look at our hard consumption numbers with our new equipment, comparing actual prices, it would have cost us from the months of April to November, 19 percent more to burn gas than it would have to burn oil.

And once again for Centracare the goal is a 15 percent saving. It's not there.

We make the same submission. Mr. Sorenson I think did a pretty good job showing graphs and things and looking at Enbridge's analysis from the, you know, North American price of fuel perspective. And then I think his submission in the end is, you know, the difference isn't there from that angle.

And what our submission is when you use us as a typical customer you would want to attract with volumes that you would be looking for to increase your revenue, if you increase -- if Enbridge increases its rates the way it sought in this application we will not convert. And other facilities like ours will not convert, because it just doesn't pay. You are not going to pay 21 percent more and 19 percent more and then incur another $60,000 to convert. I think as Mr. Lawson made it quite clear, businesses will go where the money is to be saved.

One of my last comments is, Mr. Chairman, a point you have raised with some of the other presenters. And that is this, well what about Enbridge and Mr. Hoyt's point that he made about rate shock and the deferral account and its mounting? And my answer to that is, I don't care. Enbridge Gas New Brunswick sought the monopoly on natural gas distribution. They got it. It was their proposal to proceed on the basis of utilization of a deferral account. I was certainly there during all those hearings.

The market based rate making methodology was of their own design and ultimately, as we are all aware, they bear the risk that they will be unable to recover their deferral account amounts. They set the ground rules. They have to live by them. Their rates are set at a level which will incent potential users to convert. It is not existing users responsibility to make Enbridge Gas New Brunswick profitable. If they want to be profitable then change their rate making methodology. You can't have it both ways.

My last comment is to echo something Mr. Lawson said because I thought it was a very appropriate comment and I think it bears repeating.

In her evidence Ms. Black points to strong attachment figures as one of the bases or one of the supports for their position that there is room in the difference between the prices for them to charge more. A whole bunch of people are attaching, so there must be savings to be had there. And that's where Mr. Sorenson's point about money spent on incentives becomes relevant to this proceeding, because frankly I think it undermines Ms. Black's position in that regard.

Instead of using the rate rider to lower rates so people are incented to attach, the Enbridge technique has been to give a cash incentive, so they basically give a cost saving to customers to put them on the hook, and then existing customers have to pay. That's not consistent with their stated and your approved market based rate making methodology. It's a rate rider applied only to new customers for a short period of time.

Those are my submissions.

CHAIRMAN: Thank you, Mr. Stewart.

MR. HOYT: Thank you, Mr. Chairman. I won't be very long. In the case of Flakeboard, I would like to just touch on a couple of things. And the first one being Mr. Lawson's suggestion that Flakeboard has absolutely no idea how the pricing worked. As you pointed out, they are clearly a very sophisticated customer and they acknowledged in response to EGNB's IR-5(f) that they knew these were -- they knew and they know these are market based rates. To suggest that they -- had they known they wouldn't have been here today, well they would have missed out on $2.2 million in savings in the past year.

I think their submission is similar to Atlantic Health Sciences in that they are here trying to keep their rates down despite continued savings. Their alternate energy sources are going upward, they are increasing, and they are ignoring the significant under collection of EGNB's cost of service rates. So I think they are choosing to take that position ignoring some of these other factors, which are obviously very important.

In terms of Atlantic Health Sciences, a couple of things. Mr. Stewart talked about having real life numbers. Well again the real life numbers are $62,000 in savings in one year versus the expected savings of $6,000 when they made their decision to convert in November 2004, long before Enbridge applied for these rates. And yes, that does apply to the three facilities.

They only expected $6,000 in savings and on that basis were prepared to expend over $110,000 to convert their facilities. In fact in their response to Enbridge's IR number 3 they also acknowledge there are other reasons for converting to gas beyond savings. They talked about establishment of dual fuel capability for patient safety and comfort as well as expanding supply options for potential cost savings, the use of a cleaner burning fuel. They acknowledge that there are other factors that go to a customer's decision as to whether or not they in fact are going to convert to natural gas.

With respect to schedule D, the last three schedules that Mr. Stewart went through, first of all we don't agree that that one is relevant because Atlantic Health Sciences has a gas price and they have chosen to substitute a different one and re-run calculations. But that being said the first thing I would point out, as Mr. Stewart correctly anticipated, I would point out that the top line is the province's oil buying price. That in itself makes it difficult to suggest that all of a sudden this is a typical customer analysis.

The second thing Mr. Stewart suggested was that the efficiency numbers were taken into account because now they have AHS's, actual gas consumption figures. As I understood what he was saying they have taken those actual gas consumption figures, converted gj's to litres and all of a sudden that's supposed to be the right oil line which means efficiencies are taken into account. Well that's not the case because if they were still on oil they would have used more oil. So it's not going to -- it's just not a matter of switching -- or by doing a conversion from gj's to litres and somehow having taken efficiencies into consideration.

So schedule D takes into account -- doesn't take into account the fact that they have got a better fuel oil price and it does not consider the actual efficiency gains that have been realized.

But what I would really like to just conclude with is the Intervenors have always chosen to ignore -- or I wasn't sure if they chose to ignore it or they didn't understand it, but Mr. Stewart makes it clear that in his case he just doesn't care that the fact is that the real test of whether the applied for rates are just and reasonable is to determine if Enbridge has struck an appropriate balance between providing sufficient incentive to convert to natural gas and recovering as much of its costs during the development period.

That's my submission.

CHAIRMAN: Thank you, Mr. Hoyt. Give us five minutes and we will let you know whether or not we will becoming back with a decision today or not.

At the outset, I want to say the Board will be filing written reasons later.

We will approve the rates as applied for with exception that you will have to remove the adjustment that you have made to the SGS class. We want you to file frequently and staff will work this out with you updating of future prices on the various methodologies that you and staff will work out, so that we can continue to track what's occurring in future prices. And if the relationship of prices between oil and gas continues for some time as it is right now, then we may well schedule a generic hearing to look into your methodology of setting market based rates.

We want to say that there are a number of very interesting arguments that have been made in front of us today by the Intervenors. And so our decision will address a number of those and particularly from the point of view of possibly scheduling a generic hearing sometime in the future. And as I say, all of those will be set down in a written decision. And I wish you all a Merry Christmas.

(Adjourned)

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