

NEW BRUNSWICK BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

HEARING August 13th 2003

Delta Hotel, 10:00 a.m.

IN THE MATTER OF a Board Order dated June 12, 2003 to hold a generic hearing in respect to market issues and conduct related to the sale of gas and customer services in the natural gas industry in New Brunswick

Before: Chairman David C. Nicholson, Q.C.

Vice Chairman Alyre Boucher

Commissioner H. Brian Tingley

Commissioner Robert Richardson

Board Counsel William F. O'Connell

Ellen Desmond

Board Staff John Lawton

Doug Goss

Board Secretary Lorraine Legere

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CHAIRMAN: Good morning, ladies and gentlemen. In an effort to avoid the press, we came through the back way this morning. But whether it has wrecked havoc on the sense of humor in the room.

As you all are aware, we have had a paper proceeding up until this point in time. And we have asked those

parties who wanted to come together today and discuss the

questions orally.

Board staff has made up a listing which I think you all have on comments re final list of questions. And I would propose, subject to anybody's better suggestion, that we proceed through those in numerical order.

I guess I would rather have this far more casually even though we are sitting up here in our normal positions. So that if a party has something they want to say they can just raise their hand and jump into the discussion.

I have also invited Board staff and consultant to participate if they think something is being missed or whatever.

So with all that having been said, I will now take appearances.

Competitive Energy Services?

MR. SORENSON: Here.

CHAIRMAN: Okay. Where? There, okay. And who is it appearing? Mr. Sorenson?

MR. SORENSON: Correct.

CHAIRMAN: Right. Okay.

Province of New Brunswick as represented by the Ministry of Natural Resources -- or it is now Energy?

MR. BARNETT: In case you don't recognize my accent, it is

Don Barnett joined by Jim Knight from the Department of Energy, Mr. Chairman.

CHAIRMAN: Enbridge Atlantic Services Inc.?

MR. TEICHROEB: Dave Teichroeb, Regional Manager, Enbridge Atlantic, Mr. Chairman.

CHAIRMAN: Thank you. Enbridge Gas New Brunswick?

MR. HOYT: Len Hoyt from McInnes Cooper with Rock Marois, the General Manager and Tim Walker, the Manager of Corporate Affairs.

CHAIRMAN: Thanks, Mr. Hoyt.

Irving Energy Services Limited?

MR. BROWN: Right here, Mr. Chairman. Mark Brown and Kim Ward, representing Irving Energy Services.

CHAIRMAN: Thank you, Mr. Brown.

Maritime Natural Gas Pipeline Contractors Association Inc.?

MR. ROSS: Mr. Chairman, David Ross.

CHAIRMAN: Thanks, Mr. Ross.

New Brunswick Natural Gas Association?

MR. MACDONALD: Mr. Chairman, Rod MacDonald.

CHAIRMAN: Thanks. Park Fuels?

MR. LEROY: Bill LeRoy, Mr. Chairman.

CHAIRMAN: Potash Corporation of Saskatchewan?

MR. ZED: Peter Zed, Mr. Chair.

CHAIRMAN: Mr. Zed, do you have a motion to make?

MR. ZED: Yes, Mr. Chairman. In light of the fact that the final list of questions did not include a question that we sought to have included, for reasons which we understand and appreciate, Potash wish to withdraw as a formal intervenor at this time.

CHAIRMAN: Thank you, Mr. Zed. Thank you for your participation.

WPS Energy Services Inc.?

MR. STEWART: Christopher Stewart, Mr. Chairman. I'm joined this morning by Ed Howard.

CHAIRMAN: Thanks, Mr. Stewart.

Who is here for the Board?

MR. O'CONNELL: Mr. Chairman, William O'Connell appearing as Board counsel. I have with me Ellen Desmond, Mr. John Butler, Douglas Goss, Senior Advisor, John Lawton, Advisor, Gay Drescher, Advisor, James Murphy, Advisor.

CHAIRMAN: Okay. Anybody have any problem with proceeding with the questions in numerical order or any preliminary motions at all? Mr. Hoyt?

MR. HOYT: A couple of things, Mr. Chairman. Initially I would like to make a correction in the transcript from the pre-hearing conference.

It relates to a statement that Mr. Marois made that is

found at page 37. And perhaps I could just ask Mr. Marois to make the clarification.

MR. MAROIS: Yes. When I was alerted to the fact that the industry was at a critical stage and that customer additions were lower than expected, I mentioned that the peak deferral was expected to reach 70,000,000 -- 70 and not 17 as indicated in the transcripts.

CHAIRMAN: Thank you.

MR. HOYT: And just one other item. In preparing for this proceeding and looking at the code of conduct for marketers that is on the Board's website, I notice in the definition of consumer that it now reads "A consumer is a person who consumes no more than 50,000 gigajoules of gas per year", as opposed to the code which was contained in the original marketers decision from 2000 which indicated that a consumer meant a person who consumes no more than 50,000 cubic meters of gas per year.

I believe that the change would have been made somewhere along the way after the -- there was a subsequent marketers proceeding, an addendum.

The decision was rendered indicating that there should be an amendment made to the code of conduct to change references to cubic meters to gigajoules. But I would

suggest that perhaps the number of gigajoules should have

been changed at the same time.

The issue is important because the code as originally prepared was intended to apply to low-volume consumers. And people more familiar with the conversion from gigajoules to cubic meters tell me that with the definition, the way it is currently worded, it would apply to a much larger group.

So I think for purposes of clarification on that issue, as it is dealt with in the list of questions, it would be useful just to know exactly what it does apply to.

CHAIRMAN: Sounds logical. Do you have a translated unit volume? Good heavens. That is the logical next step.

MR. HOYT: I think I know the number. But let me -- I'm told 1879.

CHAIRMAN: Anybody else in the room have comments on that?

MR. O'CONNELL: Mr. Chairman, I'm advised that the correct figure is 2000.

CHAIRMAN: It is a nice even number, Mr. Hoyt. Is that all right?

MR. HOYT: Yes. Mr. Marois tells me it would be appropriate because that is consistent with classes that the distributor uses as well.

CHAIRMAN: Okay. Any other comments?

MR. HOYT: Just one last item. And that concerns the --

CHAIRMAN: No. Concerning that, Mr. Hoyt. Just a sec'.

Anybody in the room?

MR. MACDONALD: Mr. Chairman, the actual calculation equates out to 1879. And that is where that number came from.

The rounding up to 2000 reflects rate class.

CHAIRMAN: Okay. For purposes of the transcript, when we are going through, perhaps you could identify yourselves when you do speak.

Okay. Mr. Hoyt?

MR. HOYT: The last item, just with respect to the comments re final list of questions, I think it would be useful, at least from our point, to have a bit of time to just go through it, to come back, so that rather than bouncing among the three of us, in terms of the appropriate one to speak, that we would have a more organized response, if that met with the Board's approval.

CHAIRMAN: I think so, if I understand what it is you are asking, are you asking we have a break now until you have gone through that or what not or how?

MR. HOYT: A half-hour?

CHAIRMAN: If it will shorten up the entire process, of course. We will take a half-hour break.

Before I leave the room though, are there any other

matters that any of the parties want to put before us before we do go?

Mr. Barnett?

MR. BARNETT: Mr. Chairman, the Province in its response to Question 4 I think raised the issue which I don't see on the list of questions.

And that is the -- in the ABC billing, with Enbridge now as a gas marketer, the issue of what sort of fire wall is there or what information do they have, customer information for companies that avail themselves of the ABC service, now that Enbridge is actually a gas marketer?

And I don't see that question in there.

CHAIRMAN: Then I guess we have chosen to leave it out. I don't know. I will turn to staff during the break, Mr. Barnett, and find out about that.

I have had a good deal of difficulty in hearing what you said. I think you are speaking -- you are a little too close to your mike when you do speak.

MR. BARNETT: Do you need me to repeat the position, Mr. Chairman?

CHAIRMAN: Well, if nobody else in the room had difficulty hearing you, I wouldn't say so, no. Okay.

MR. BARNETT: Thank you.

CHAIRMAN: All right. We will take our break. Thank you.

(Recess - 10:15 a.m. - 10:45 a.m.)

CHAIRMAN: Mr. Barnett, when we broke why you were questioning the lack of a question that your department had put that wasn't included.

And that is a subset of your response to Question number 4 in reference to ABC service?

MR. BARNETT: That is correct, sir.

CHAIRMAN: Okay. Well, certainly if you would just like to put on the record that question, we will add that to number 4.

MR. BARNETT: Mr. Chairman, the department would like to have included, the question relates to information that may be available as a result of a party availing themselves of the ABC service of Enbridge Gas Distribution New Brunswick that it may give information not available to other marketers in the field.

So we would just like to examine if in fact there is additional informations available to Enbridge Gas New Brunswick by way of the ABC service it would not have by any other mechanism, that that be looked at as to how that should be addressed if in fact there should be a firewall.

CHAIRMAN: Okay. Thank you, Mr. Barnett.

Any other preliminary matters before we hit Question

numbers 1 and 2?

All right. On your sheet in reference to 1 and 2, the Board staff has paraphrased it with those four subsets of the question or combined them into the four.

Anybody -- you see what we have said. And we are not closing any doors here at all. We have just -- it is our reading of the written answers and responses, et cetera that there appears to be consensus that the code itself is adequate, but that the definition of agent and broker should be added. And we just simply say that appears to be appropriate from our reading the written submissions.

Does anybody have anything they want to add to that?

I see a hand up back there. It is Mr. Stewart.

MR. STEWART: Yes, Mr. Chairman. Our position on the code is sort of to agree with what you just said and just to disagree in part.

I don't think that we have any issue with the code as it is presently working now as applying to the licenced gas marketers. And were it not for the recent legislative change, I don't think we would be here arguing for any particular change one way or the other.

We are always open to any change or tweak that might be appropriate, you know, the one that Mr. Hoyt suggested this morning in terms of making sure that the proper

conversion to gigajoules was done.

But it seems to me that we have the cart before the horse a little bit in that if the code applies to Enbridge Gas New Brunswick which is the question sort of next on the list, as I understand it, then it may be necessary to amend the code to reflect that fact, and maybe are there any special considerations that need to be made now that we have, you know, it is going to govern the sale of system gas as well.

So in and of itself there is no changes required today per se. But that doesn't mean that there aren't going to be changes required depending on what else happens with the code.

CHAIRMAN: I appreciate those comments. I was going down through the list point by point here, Mr. Stewart. Maybe I had better just truck on through. And then we will have an open discussion on all of the points.

But certainly, from what I'm hearing, there is no problem, if things remain as they are or the code is applicable to all and sundry, that the definition of agent and broker should be included. Okay.

Now there is also a suggestion that the references to agency agreement should be removed. Would you -- what we want and ask for on that particular suggestion, would the

party who put it forth give specific reasons as to why

they should or should not happen, and anybody else comment who wants to.

Mr. Hoyt?

MR. HOYT: As the party that put it forward, the suggestion is really to consider what consequential amendments, particularly with respect to that definition, may be required if the definitions of agent and broker are in fact added.

For example, agent and broker will now be defined terms that aren't used anywhere in the code. So not having known whether those amendments would be accepted, we didn't go through and look at what the impacts would be.

But agency agreement seemed to be one term that likely would need some changes if the definitions of agent and broker were included. But we haven't gone through the process of identifying what those would be.

And you know, it is not a big issue. It is really just we are making the thing flow once certain amendments have been made.

CHAIRMAN: Thank you. Any other comments?

Next point, certain parties have asked for clarification of the Board's role with respect to

monitoring and enforcing that code. The Board would like

specific comments as to what information the Board can provide that would assist in this area.

Mr. Goss, do you remember who brought that up in the first place, since no one here seems to want to own it?

Mr. Hoyt, did you do that too?

MR. HOYT: No. I'm not sure if we did it. But just I didn't want to dominate. But we have something to contribute on this.

CHAIRMAN: Okay.

MR. HOYT: And I would refer to section 212 of the original marketers decision in terms of what the Board might do in terms of monitoring or enforcing the code.

In that decision the Board indicated that the Board would require regular reports from all marketers, and that these reports are necessary for the Board to, among other things, ensure that marketers are complying with the conditions of their certificates.

We are unaware whether or not those types of reports are actually required or filed or what is done with them.

But that would be something that would seem to be a mechanism to at least annually have some kind of review done about what is going on out in the marketplace.

CHAIRMAN: Yes, sir.

MR. TEICHROEB: Mr. Chairman, Dave Teichroeb, Enbridge

Atlantic. I guess a general comment is what I would like to make on this point. The nature of New Brunswick's marketplace being a greenfield, and I still consider it very much a greenfield market place, I would respectfully suggest that the Board may want to play a more proactive role in trying to obtain a pulse of what is happening in the marketplace.

And that there are areas for a review of whether sufficient consumer safeguards are in place. Are any areas for undue pressure being applied in the marketplace?

Are issues related to inter-fuel competition creating problems for a new emerging growing industry such as the natural gas industry in New Brunswick?

CHAIRMAN: Thank you. I'm silent because I'm just not about to get into what it is the Board does or doesn't do. We will look into that and see if it serves any purpose in doing it.

That's an enforcement issue. I know most of you in this room want to bring it up. What we are trying to do is bring clarity to the rules before we talk about how are we going to enforce them. But anyway, that's just my comments.

I will speak with staff later on about it. And I will

ask staff to make a note and we can comment on that later.

Thank you, Mr. Teichroeb. Anybody else? Yes, sir?

MR. MACDONALD: Mr. Chairman, Rod MacDonald of the New Brunswick Natural Gas Association. I believe that we are the author of this statement.

CHAIRMAN: You own it now then, all right.

MR. MACDONALD: Specifically as we replied in writing to the question, some of our members, and the majority of our members were not sure as to the fact that certain members without our association had to abide by a code of conduct different to what we have in our association. And it's to that respect that this question was put to the Board and in our submission.

So the process, is there a code of conduct that certain parties in the natural gas industry have to operate under? And if so, what is that code? And if so, if that code is violated, what is the process and what are the ramifications?

CHAIRMAN: Which members in particular are you referring to, you know. The code of conduct is in printed form. It's on the web site. I think in it it indicates to whom it is applicable.

MR. MACDONALD: With respect, Mr. Chairman, I believe that some of our members may not have taken the opportunity to

address the web site of the PUB, and thus this is the

source of that comment that was referred to here.

CHAIRMAN: All right. Any other comments? The next bullet is several parties said that EGNB should follow similar rules. EGNB said that the Board does not have legal authority to require this. Section 71(1) was suggested as the source of authority for the Board.

And just carrying on to the last, and this is, you know, these last two paragraphs are the real meat of this thing. The Board would like comments on the appropriateness of 71(1) or any other section of the Act or the regulations that would provide the Board with the necessary authority for this purpose.

Now I think everybody here has a comment on that. And I will ask for EGNB's first, Mr. Hoyt.

MR. HOYT: And my initial comment to this part was going to be to ask whether or not it indicated that a decision had already been made that EGNB would be bound by the code. But I took it from your opening comments that that's not, in fact, the case.

So what I will do is just comment on the section first and then let Mr. Marois comment in terms of it's appropriateness of its application to EGNB.

As pointed out in the second submission of EGNB, we

believe that subsection 66(1) of the Act sets out the

options available to the Board with respect to rule making.

We don't dispute that 71(1) provides the Board with a general supervisory power over EGNB and other participants in the natural gas marketplace. However, it wasn't intended to be a blanket authorization for the Board to make rules which are specifically provided for elsewhere in the Act.

So with respect to the specific question on the appropriateness of 71(1), we don't believe that it is appropriate and in fact does not authorize the Board to impose a code of conduct on EGNB.

So perhaps I could ask Mr. Marois to --

CHAIRMAN: Before you do, Mr. Hoyt, dig a little deeper into that section, if you wouldn't mind, and just let's talk about it. Because that is a rather important matter. In effect what I want you to do is to argue that in fact that section does not apply to this situation and why.

MR. HOYT: The reason that it doesn't apply to this situation is because there is a specific provision elsewhere in the legislation that deals specifically with the Board's ability to make rules such as the code of conduct.

It is clear from 66(1) (b) where the Board gains its

authority to impose a code of conduct on holders of a certificate. It indicates that the Board may make rules governing the conduct of a person holding a certificate.

The Province in amending its legislation and enacting the regulation did not choose to require EGNB to have a marketer's certificate.

There is a distinction that has been made in terms of how EGNB will be treated vis-a-vis other marketers, a policy decision that the Province has made.

And in terms of the interpretation of the legislation, what I'm saying is that there is a general provision that is overridden by a specific provision elsewhere in the same legislation.

CHAIRMAN: All right. Let's take that to its logical conclusion though, Mr. Hoyt. What I hear you saying is that it is -- you know, because the rules of conduct -- and the Board may make rules, and it talks about those rules, and EGNB would not be specifically included in there -- that the general supervisory powers which 71 track don't give the Board to -- it doesn't give the Board the legal authority to do something which has not been envisaged in the legislation.

In other words, if the Act is silent as to EGNB's

being subject to any order of the Board -- which frankly,

if you have a general supervisory power, it does have that authority, of prima facie.

But I'm just trying to see how it is restricted. Because it is not -- EGNB is not specifically covered under the sale -- in reference to the sale of the molecule under 66, how does that limit 71?

MR. HOYT: No. But at the beginning of my comments I indicated that we recognize the general supervisory power of the Board.

But where an issue or a topic has been specifically addressed elsewhere in the legislation, detailing what the Board's authority is in that area, that the general supervisory power can't be used, then override what is specifically provided for elsewhere in the legislation.

CHAIRMAN: Well, there is no question you are absolutely correct, that we are the creature of statute. And we have to be bound by that.

Let's turn to that section then. Which section are you referring to that you believe that the Board is limited?

MR. HOYT: 66(1).

CHAIRMAN: That was not amended, was it, in the --

MR. HOYT: No, not -- I don't know if it was at the pre-

hearing that I made that comment or if it was in one of

the submissions, that if the Board had intended the code of conduct to be extended to EGNB, that that section would have been amended as part of the amendments made earlier this year -- sorry, that the Province would have made the amendment.

CHAIRMAN: Okay. Other parties?

MR. HOYT: Excuse me.

CHAIRMAN: Sure.

MR. HOYT: Just in terms of the code of conduct and its applicability, do you want to deal with just the section first and then come back --

CHAIRMAN: I would rather do the legal argument before mixing it up with the policy end of things or whatever.

Mr. Sorenson, do you want to comment?

MR. SORENSON: No, Mr. Chairman.

CHAIRMAN: Okay. Mr. Barnett?

MR. BARNETT: No, sir.

CHAIRMAN: You don't want to comment or --

MR. BARNETT: I guess as a non-member, not a member of the legal profession, we are told very clearly by government interpreting statutes, legislation is up to that side of the profession, sir.

CHAIRMAN: The Province is being extremely, aggressively

neutral here today. Okay.

Mr. Brown?

MR. BROWN: We have no comment on that, sir.

CHAIRMAN: Mr. Ross?

MR. ROSS: Mr. Chairman, like Mr. Barnett, we would prefer to defer to the legal representatives who are here today for the other intervenors.

CHAIRMAN: Okay. Mr. MacDonald?

MR. MACDONALD: No comment, Mr. Chairman.

CHAIRMAN: Mr. LeRoy?

MR. LEROY: No comment, Mr. Chairman.

CHAIRMAN: Well, Mr. Stewart?

MR. STEWART: I think you have been waiting in anticipation, Mr. Chairman. There is that old saying, Mr. Chairman, that says if it looks like a duck and it sounds like a duck it is normally a duck.

And paragraph 71(1)(b) and/or (a) for that matter, in my view, is a very broad and sweeping grant of authority to this Board. I'm sure Mr. Hoyt would agree.

And I think as you already alluded to, Mr. Chairman, this Board is a creature of statute. But that works both ways. You operate within the confines of the statutory authority given to you. On the other hand, when it is given to you, it is given to you.

I mean, as I understand Mr. Hoyt's submission, it is

that well, because the rulemaking section, and rule in quotation mark being that sort of quasi regulation that you can produce or that the Board can issue under section 66 and 67 doesn't deal with an issue, then somehow that means that the Board doesn't have jurisdiction to issue orders, or as section 71 says, give any direction or approval or make any order. And that is as broad as it gets.

The implication of the negative, that somehow the fact that section 66 was not specifically amended, quite frankly isn't on. I don't think that holds water.

I mean, you might argue that, you know, the Province could have repealed section 66(1)(a) about how it deals with a gas marketing affiliate, by passing the regulation which says you can't have one during this period.

Well, it didn't. But does that mean you are allowed to have an affiliate? No, it doesn't. And the regulation says what it says.

Mr. Chairman, I think that we are talking about a legal argument here. And I'm not going to sort of cite precedential authority letter and verse. But I think it all waters down to the courts have looked at statutory interpretation these days with what they call a purposeful

approach.

You know, what is the purpose here? What is going on? How should the statute be put to work? What was the purpose of it? And section 71, particularly 71(1) is a general catch-all. If we haven't mentioned it anywhere else, let's make it clear that this is the nature and scope of the Board's authority.

And I would submit that it does that very thing. It is designed entirely with this situation in mind. And it is applicable and gives the Board, in my view, jurisdiction to do not only what we are talking about here, but a lot more.

And the negative implication of the so-called policy decision of the Province is not sufficiently probative to allow you to interpret the statute any other way.

CHAIRMAN: But when I read let's say -- you started a quote from 71(1) (b). And I read it that "Where it appears to the Board that circumstances may require in the public interest to make any order or give any direction, leave or approval that by law it is authorized to make or give", that to me is the stumbling block in that particular section to -- in other words, we have not specifically been given the authority to make EGNB subject to the code of conduct or any other -- I mean, for instance that we

could issue a Board order and not make -- and make in that

order, say that these are the rules that EGNB will follow in reference to the sale of gas.

But when you look at that general supervisory thing, it has behind it that we can do anything necessary to do, provided that the Act contemplates us having that legal authority.

What have you got to say to that, Mr. Stewart?

MR. STEWART: Well, two things, Mr. Chairman. First is I think the "by law it is authorized to make" is not -- it sort of modifies the nature of the order, direction, leave or approval, not a sense that you need -- that it purports to limit the jurisdiction.

I mean, I think what modifies "to make any order or give any direction, leave or approval" is the clause before that which says "Where it appears to the Board that the circumstances may require it in the public interest."

I would concede that the orders under Section 66 don't have that prerequisite. And I suppose I would -- you could convince me that in order for the Board to for example issue an order or give a direction that Enbridge Gas New Brunswick as a gas seller must comply with the code of conduct, then it would have to be in the public interest and in circumstances that require it.

I think the Board has to come to that conclusion

first. But once it comes to that conclusion, is it the -- you know, for example "by law it is authorized to make" modifies the nature of the order.

I mean, I don't think the Board could for example order, like a court could, order Mr. Marois to get into his wallet and pay money. That is limiting the kind of order or direction it can give and not the circumstances under which it can give the order or direction.

CHAIRMAN: Thank you. Mr. Hoyt, do you have anything in response?

MR. HOYT: No, I think, Mr. Chairman, you pointed out the issue with 71(1) and another principle of statutory interpretation is that all words contained in the statute have got to be given some meaning. And clearly that reference to by law it is authorized to make or give have to be given some meaning. So I think that the issue that you have raised with respect to 71(1)(b) is a correct one.

CHAIRMAN: Okay. We will pass on to question number 3 now.

Sorry, Mr. Hoyt, you -- Mr. Marois wants to say something.

MR. HOYT: Just before we do, I just want to make the point as well, we just had a discussion on whether or not there is the statutory authority or not. And clearly it was

provided as part of our response because of the question
that was asked in terms of where this authority comes

from.

But the issue from EGNB's point of view that is more important is that there are business reasons why that code shouldn't be enforced or made applicable to EGNB. And those are the comments that Mr. Marois would like to make now. So I don't want it to be just a question of well if there is authority then that code should apply. I think clearly there are some very good reasons why it should not.

CHAIRMAN: Go ahead, Mr. Marois.

MR. MAROIS: Yes. I will be brief because I think we have covered it in our material. But really bottom line is the concerns we have are practical reasons -- practical concerns. EGNB is governed in many regards. We have got a general franchise agreement that is quite detailed, there is a letter of credit. There is provisions for reviews by the Board. We are governed by the Act. We are governed by several regulations.

And then to add another layer in the form of a code of conduct, we are really concerned that there is a potential for conflicts. I mean, unless the code would be really well developed so that we ensure that there is no conflict with other provisions either in the Act or the general

franchise agreement, there is a potential for confusion.

And it just adds another layer of barriers, for lack of a better word.

To my knowledge, I am not aware of any other such code of conducts required from utilities, for specific provisions. For example, when a utility has an affiliate, then you have circumstances. But in this case those issues are already dealt in the Act. So for a code of conduct specifically dealing with the utility itself, I am not aware of that. So in my mind, it would just be an additional layer of burden that are all covered one way or the other through the Act, the agreements and the regulations already in place.

CHAIRMAN: Any comments on Mr. Marois' comments, other than Mr. Stewart. Let's just go around to the rest of them first. I can count on you, I know. Any of the other parties? Board counsel had something.

MR. O'CONNELL: Yes, Mr. Chairman. I have a couple of things I would like to say. Mr. Hoyt and Enbridge Gas New Brunswick are attempting, and in my view, weekly attempting, to hide behind the proposition that the general provisions to make rules in Section 66 and to supervise in Section 71 are overridden by specific provisions in the new amendments.

Let me suggest to you that for that argument to wash,

those provisions have to be very specific. There is nothing in the new legislation that says Section 66, power to make rules doesn't apply to Enbridge Gas New Brunswick.

There is nothing in the amendments that say that Section 71, the power to supervise, doesn't apply to Enbridge Gas New Brunswick. And failing that, their argument to me shouldn't carry very much weight.

Then Mr. Marois says that you are adding an extra layer of bureaucracy to the activities of Enbridge Gas New Brunswick. Let me suggest to you the proper way to paraphrase that is to say that Enbridge Gas New Brunswick doesn't want to play by the same rules that everybody else does. Because that is what Enbridge Gas New Brunswick is here to say to this Board.

That we want to operate in our own way, in our own fashion and unregulated by the Board. And I think, Mr. Chairman, probably the appropriate question to put to Enbridge Gas New Brunswick is how do they see the role of this Board in terms of regulating its sale of molecules function.

I mean, we debated three years ago at some length the role of the Board in terms of regulating the distribution.

There is a very different question here today. And that

question is how does Enbridge see the role of the Board in

terms of regulating its sale of gas to the end user.

CHAIRMAN: I will come back, Mr. Hoyt. And I opened up a -- not a can of worms, but by allowing staff to participate in the hearing in this fashion, it adds a new element. But if I can go to Mr. Stewart who had his hand up. I cut him off. So he can make his comment.

MR. STEWART: Thank you, Mr. Chairman. And there is a reason why I wanted to go first because I wanted to take credit for Mr. O'Connell's comment. But sadly, he has stolen my thunder. I mean, I thought Mr. O'Connell summed it up rather nicely. We couldn't agree more. I think that cuts straight to the heart of the matter. And I would simply repeat that submission, agree with it entirely.

CHAIRMAN: Mr. Hoyt?

MR. HOYT: In terms of the closing comment about what we should be doing is deciding what should govern EGNB in connection with the sale of the molecule is what I understood that is what we were doing.

My understanding was that this generic hearing was established as a result of amendments to the legislation that allowed EGNB to sell gas. And through our submissions and submissions of a number of other

interested parties, information has been provided to the

Board as to what the various stakeholders think the rules should be with respect to not only EGNB, but to the other marketers.

And I think in terms of EGNB's position in terms of how it should be governed and what rules apply and what don't that it will be cut and clear over the course of the next day or two.

I think though just in terms of I guess the approach that Mr. O'Connell has taken in terms of you know what EGNB wants to go at this with no rules or anything else, I think it is important that Mr. Marois make a couple of comments to perhaps put it in context and respond to some of the suggestions.

CHAIRMAN: Go ahead, Mr. Marois.

MR. MAROIS: Thank you. Yes, I must admit that the comments of Mr. O'Connell do raise some sensitive chords with me. And I think again coming back to maybe similar comments I made at the pre-hearing, we mustn't lose track of the context. Sometimes I really got the impression that some of the parties live in a theoretical wonderland. I mean, we like to use buzz words like level playing field and market power. But let's set the facts straight and let's talk about the real issues here.

The real issues is we only have 1,500 customers right

now as we speak and \$120 million in the ground. We are halfway through 2003 and we have added 300 customers as an industry. The target was 3,000. This is the real issue.

As a result, the viability of the industry is at stake. The only real common thread I could detect from some of the intervention is the protection of their self-interests against the big bad utility.

Now to be totally honest, I would like to have some market power. But nothing could be further than the truth. If we had such power, I think we should call the Guinness Book of Records, because we would probably be the smallest utility in the world with 1,500 customers to have market power.

The concern at this critical stage of the development of the natural gas industry needs to be that we have a level playing field with our competition. We need to have a playing field period. Because if the situation continues like this, and I don't have the exact quote in mind, but you reassured me, Mr. Chairman, at the pre-hearing when you indicated that the Board was truly concerned with the viability of the industry.

Well, this is what is at stake here. With a targeted -- or projected \$70 million deferral, let me tell you that

the survival of the industry is at stake. So

let's focus on having a playing field rather than focusing on trying to have a level playing field at all stakes. Because we did have a level playing field in the past. We were the only marketer selling gas. And we see where that brought us.

The rules have changed. The government has allowed Enbridge Gas New Brunswick to offer bundled services. I need to be clear that if these proceedings result in barriers that really prevent us from implementing the fully bundled model and reaping the benefits of the fully bundled model there may not be a level playing -- a playing field at all. That's where we are at today.

The current situation needs to change. The bundled model is basically our last hope to do so. The level playing field that the Board should be concerned about, like I said earlier, is the level playing field to allow us to better compete with other energy sources. Electricity, oil are all able to offer bundled services, we are not.

The Province made a conscious decision to allow the utility to offer bundled services. And that is tied with conditions, terms and condition. And one of them is we are limited by time. We only have a few years to deliver

on the merits of a bundled service. So time is literally

ticking. We need to get on with business and implement the new model now.

If we get tied down to the point where we are basically just another marketer, we will lose the benefits of the bundled service so why do it at all. I mean why worry about doing it if we can't promote it, if we can't push it, if we can't leverage it.

The marketers that believe that we are somehow their competition are really missing the boat completely. The objective of the bundled model is to be able to better compete with the other energy sources. This is the real competition, not EGNB. Thank you.

CHAIRMAN: Thank you, Mr. Marois. We are going to take a short break.

MR. BARNETT: Mr. Chairman, if I may just make one comment.

Don Barnett, National Resources, Department of Energy.

Mr. O'Connell left me with the impression that there was no regulation as far as Enbridge Gas New Brunswick's selling of gas is concerned. And I would suggest, sir, that's far from the truth.

Both the issue of a level playing field has come up between the -- triggered by the code of conduct, but level playing field has been brought up. Sir, I suggest to you

even if Enbridge were -- the code of conduct was applied

to Enbridge, this still is not a level playing field. Enbridge is obligated under the regulation to post their gas prices. Other gas marketers don't have to do that, sir. So there is a degree of regulation and a degree of control on Enbridge Gas New Brunswick's operations without the code of conduct. And mechanisms on complaints, et cetera, things like that are all covered off in Enbridge's web site. So they are available to all of the marketers here. They are available to all customers in that regard.

So to say that in fact as a result of legislative change that Enbridge is now selling gas that's not subject to any rules or conditions, sir, I take exception to that.

CHAIRMAN: What is posted on the web site as far as price, Mr. Barnett, is an estimate which is revised and revised and revised. Is that not correct?

MR. BARNETT: My understanding is there are right now there is a price, yes. It's posted for the previous month and posted for the month of August.

CHAIRMAN: It will be amended by actual results in the future. That's my understanding.

MR. BARNETT: Yes, sir, but there is no price posted by the marketers. That's free competition, sir.

CHAIRMAN: I am not welcoming -- no, I'm not inviting

further comment, Mr. Marois. We are going to take our

break. And with just one comment, and we go back to the very beginning of the gas market. You have talked about you are regulated very heavily by the franchise agreement, et cetera, with the letter of credit, et cetera. That's with the Province.

I made a point, or our Board made a point at the time that franchise agreement was signed that we are bound by what the Legislature tells us and what the regulations from the Lieutenant Governor in Council tell us. You may be bound by the other thing. But the regulatory scheme, which is what we are dealing about with here has to come from that statute or the regs.

MR. MAROIS: Well with all due respect, Mr. Chair, if you read the gas general franchise agreement, even though the right of credit is with the Province, the Board is the one that will trigger its application. So I mean where it resides in my mind is not consequential. It's the Board that at the end of the day determines if our behaviour is proper or not.

MR. HOYT: Just as a follow up to that, I would just refer not only to the general franchise agreement, but to Section 9(2) of the Gas Distribution Act which clearly gives the Board the control over the termination of the

franchise agreement, and what happens to things like

letters of credit and so on. I think it is within the Boards control, Mr. Chair.

CHAIRMAN: All right. We will take a break.

(Recess)

CHAIRMAN: I don't want anybody accusing me of taking more breaks now that I have fallen off the smoking wagon. That is not it. I wanted to take a couple of minutes to take a look at the franchise agreement just so that I refresh my memory. Because it is a question which will come up.

And Mr. Hoyt or Mr. Barnett can correct me if I'm wrong in this. But our quick review of it is that after the seven years and a review of EGNB's activities, if we find or believe that there is a material breach of the franchise agreement, then we recommend that there be a call on the line of credit.

And that must be approved by an OIC or the Lieutenant-Governor-in-Council. And only they can make the call. And it would be payable to them.

Mr. Hoyt?

MR. HOYT: I don't think that you are restricted to doing that every seven years. Anytime that there is material breach -- I think if you look at Section 9(1) of the Gas Distribution Act it indicates "The Board has full

authority and jurisdiction to inquire and to determine and

report to the LG & C on whether a gas distributor has breached a material term or condition of a franchise agreement. And the Board shall do so at least every seven years."

So there is an obligation to do it every seven. But if there is ever a material breach anywhere along the way, you have jurisdiction at that point to start that process, and --

CHAIRMAN: All right. But the point is that you go back to the franchise agreement. It is a material breach of that.

And of course there is absolutely nothing in the franchise agreement about EGNB's sale of gas. That's the reason this whole thing came up in questioning.

MR. HOYT: No. But Mr. Chairman, with respect, in Section 6.1 which sets out -- 6.1 of the general franchise agreement which sets out the requirements to provide the \$10 million letter of credit, it is there and indicates that it is security for the performance of its obligations under the franchise agreement, a bunch of other things and the Gas Distribution Act.

And the Gas Distribution Act now says that EGNB can sell gas in accordance with the regs. The regs then set out how that is to be done. And if EGNB breaches those

then the hook flows right back to the letter of credit.

So I believe through the Act the Board can access that letter of credit.

CHAIRMAN: Do you agree with that, Mr. Barnett?

MR. BARNETT: We have been seeking a final opinion on that, Mr. Chairman. But the thrust of it, yes, subject to some checking we are doing.

CHAIRMAN: Thank you. Okay. We will go on to Question number 3. And as you see on the sheet it is paraphrased saying should the amount of letters of credit be reduced or rescinded. And we are talking about those that are presently lodged with the Board by the marketers. And secondly should EGNB be required to post a line of credit for its sale of gas.

So let's deal with the first one first. And I will go through the batting order here. Competitive Energy Services, Mr. Sorenson?

MR. SORENSON: Yes, Mr. Chairman. It is our opinion that the letter of credit be reduced so that it is not prohibitive for other marketers, other potential participants, to come into the market, and also decrease over a period of time, once that marketer and/or supplier has proven their value and worth to the market.

So for example, if it is reduced from \$500,000 as it

currently is to 250,000 and then is eliminated by year 3,

it is our opinion that capital can be put to use in the market itself through the acquisition of customers, et cetera.

On the second part of the question, we believe that all sellers of gas should be required to post a letter of credit, again similar to a code of conduct issue. We believe that across the board what applies to one seller of gas should apply to another seller of gas.

So it is our opinion that Enbridge would be required to post a letter of credit if they are selling gas in the market.

CHAIRMAN: In light of what Mr. Hoyt has had to say, just at the opening of this part of the hearing, as to the \$10 million line of credit that is presently lodged, what do you have to say to that? Anything additional?

MR. SORENSON: It is a separate issue. It is a separate issue.

CHAIRMAN: Mr. Barnett?

MR. BARNETT: The only point I would make, sir, if in final conclusion the Province comes to the position that the letter of credit, the \$10 million letter of credit is in fact -- does cover off Enbridge in its additional role now as a seller of gas, then one would say why would there

need to be an additional letter of credit in that regard?

In terms of reducing the letter of credit, once a marketer has established itself as a bonafide marketer, has developed credibility with the Board and with the market at large, then I raise the question about reduction of letter of credit and even the need of letter of credit, and whether or not a financial statement would be adequate.

CHAIRMAN: I must say, Mr. Barnett, that the letters of credit that are filed with the Board by the marketers are made to the Board.

So the Board in its wisdom is able to call on them with no reason whatsoever. It is an extraordinary discipline tool that the Board hopes it never has to use.

But it is certainly a very direct thing, whereas the one that is presently lodged by Enbridge, it must go through and receive the approval of Cabinet. So there are really two very separate approaches to it.

Any comments on that?

MR. BARNETT: I guess I'm still seeking the clarification, sir, in regards to the \$10 million letter of credit, you know, the details of how that -- if it could be accessed under a default provision of Enbridge marketing gas.

CHAIRMAN: Thank you. Mr. Teichroeb?

MR. TEICHROEB: Yes, Mr. Chairman. As a marketer we are in

favor of the Board having the flexibility to review individual marketers as they have quote played out a certain period of time in history and demonstrated to the Board and the industry that those letters of credit should be able to be reduced.

That flexibility should be there. It should also be there to be able to increase letters of credit if future market shares, market changes, market behaviors warrant it.

In respect to the letter of credit being applicable to the gas distributor, I think I would like to kind of draw in part of Question 2, which we did not have an opportunity to respond on.

I think the Board in this greenfield market in particular has an interest in making sure that consumer interests are the first and highest priority.

And in light of Enbridge utility gas being a non-for-profit offering, it is distinct and separate from for-profit activities in the marketplace.

And therefore there needs to be a separate consideration in light of what sort of hook per se the Board needs in order to pull in behaviors that might be inappropriate for consumer safeguards.

In fact if you were to look at this last winter as an

example, if we had the facts before us, one might ask whether past activities do test or pass the test of reasonableness.

That is all.

CHAIRMAN: Mr. Hoyt?

MR. HOYT: First with respect to the marketers and the letters of credit, as we indicated in our first submission, the first response to the questions, we believe that there is already a process in place which was approved by the Board in the original marketers decision.

It is found as attachment to that marketers decision.

It was a suggestion that the consensus committee came up with that provided a number of alternatives to letters of credit.

And although I believe the practice for all marketers to date has been to require the letter of credit, it in fact goes through a number of other alternatives, which essentially boil down to if the Board can get comfortable with the marketer that is applying and the type of security that is given, then it doesn't necessarily have to be a letter of credit or it doesn't have to be the amount that was originally provided for. It provides I believe for adjustments all along the way.

So in terms of EGNB there is no opposition to

suggesting, you know, reduction or rescission of letters of credit, provided that the Board remains comfortable with the marketer, its investment in the marketplace and so on, so that the customers' interests are likely to be protected. Because I think that is the reason that those letters of credit are imposed.

In terms of EGNB, we have had the discussion I believe in terms of -- one of the primary reasons that EGNB believes that it should not have a letter of credit imposed on it, that being the fact that there already is a significant letter of credit that is posted.

There are other reasons submitted as part of our submission which I won't go through now. But I would make the point that the other marketers -- I don't want to say all of the other marketers -- but many of the suggestions from other marketers were that the letters of credit should be reduced or removed over time as in fact they demonstrate their involvement in the market.

The Board has some experience with them. They have got some financial investment and so on. And on that basis those letters of credit should either be rescinded or removed.

I would suggest that the Board has similar experience

with EGNB. It has been here from the outset in terms of

the gas distribution business. And I would suggest that it has made those kinds of investments and is here for the long-term and so on.

So the types of factors that the marketers are asking be taken into consideration and result in reduction of the letters of credit clearly apply in EGNB's case.

So I think that you could come to the conclusion now that if a letter of credit had at some point been required of EGNB for selling gas, that it would no longer be required.

CHAIRMAN: Thanks, Mr. Hoyt.

Mr. Ross -- I'm sorry, Mr. Brown?

MR. BROWN: Mr. Chairman, Irving Energy believes that the letter of credit should be rescinded for many of the same reasons that Mr. Sorenson pointed out.

Quite frankly the capital that is required to maintain that letter could be employed elsewhere in terms of growing the market, and given that we are the marketer with what is I believe to be the largest letter of credit, it is significant from our perspective.

As far as Enbridge is concerned, and Enbridge being potentially required to post a letter of credit for its sale of gas, I would just like to comment that they are

two separate things.

The letter of credit currently provided for under the Distribution Act is separate and thus should not be applicable to Enbridge's sale of gas.

So to the extent that marketers are required or people involved in the sale of commodity supply are required to post a letter of credit, Enbridge should in fact be required to do the same, and in fact should be required to post the largest letter of credit, just as Irving Energy Services was required to post the largest letter of credit because of I believe a perception that it had a dominant position in the marketplace.

Enbridge's monopoly on distribution gives it the dominant position in the marketplace and the most market power and does not make the playing field level. So therefore they should be required to post a substantially larger amount. Thank you.

CHAIRMAN: Thank you, Mr. Brown. Mr. Ross?

MR. ROSS: Regarding the consensus that the Board has noted here we note with the exception of the department that most of the other respondents would be those who would be required to supply proof of financial responsibility. And we respectfully reiterate our submission that tangible proof of financial responsibility, by a performance bond

or a letter of credit, is the only assurance upon which

the Board should rely. We suggest that the financial information on the public record is greatly inadequate for use by industry participants to gain any confidence regarding a key participant's financial responsibility.

And across the length and breadth of the industry there should be many smaller participants who would not otherwise be represented here today, who may well need that proof. Thank you.

CHAIRMAN: I have to point out that the Board does do a review of the financial results of EGNB each year. And that the result of that review -- well, there is another question dealing with that later on if I remember correctly. So there is financial information out there on EGNB and its performance and the Board reviews it.

Mr. MacDonald?

MR. MACDONALD: No comment beyond our written submission, Mr. Chairman, at this time.

CHAIRMAN: Thank you, Mr. MacDonald. Mr. LeRoy?

MR. LEROY: No comment beyond the written submission, Mr. Chairman.

CHAIRMAN: Mr. Stewart?

MR. STEWART: Thank you, Mr. Chairman. Much like the question about whether or not Enbridge Gas New Brunswick

should also be a signatory or bound by, for lack of a

better term, the code of conduct, I think the issue also applies here with whether or not they should be required to post a letter of credit. And it seems to me all of those things are variations of a theme. The larger question here is very simply put. And that is Enbridge Gas New Brunswick is now permitted to sell the commodity.

And there is a very sketchy basic scheme or mechanism surrounding how that's going to work in the new regulation that has been promulgated.

And so the issue before us today is whether or not Enbridge Gas New Brunswick as a seller of the commodity will be subject to the same rules as everyone else who sells the commodity.

And once you answer that question in the affirmative, and we would submit that the Board should do that, then a lot of these issues sort of fall over like dominos. Should they be, you know, follow rules similar to the code of conduct or be part of the code of conduct, yes.

Should they be required to post a letter of credit, yes. Specifically with respect to the letter of credit and this discussion about, well, we already have a \$10 million letter of credit posted with the Province, Mr. Chairman, I would echo your comments.

Number one, I'm not so sure I would agree with Mr.

Hoyt's interpretation that Section 9(1) does, in fact, give you the jurisdiction to draw down on that. But even if -- even if he is correct, there are a couple of other issues.

At some point someone decided, I think the Province, that \$10 million was necessary to secure the obligations of Enbridge Gas New Brunswick under its franchise agreement. And the Act puts in place a mechanism, you know, the Board review, the Order-in-council from the Lieutenant-Governor, as to when that can be drawn down. That's all well and good.

But many of the marketers here have letters of credit to the tune of hundreds of thousands of dollars. So there is question number one. Even if the \$10 million letter of credit applies, that amount was deemed necessary to cover the distribution obligations. Well should that letter of credit be now increased by hundreds of thousands of dollars, or whatever the appropriate amount is for Enbridge Gas New Brunswick. You heard Mr. Brown's comments on that. In order to cover their new role in the marketplace as a seller of the commodity. So question number one is the quantum.

Number two is the nature upon, you know, the purpose

that the letter of credit is there. Again, Mr. Chairman,

I think you are already in tune to my point. Because I think you pointed out to Mr. Barnett that the Board has a virtual automatic right to draw on that letter of credit.

I mean they are very broadly worded. And there is not this whole sort of mechanism. It's a very sharp stick, as you said, to ensure that any problems are quickly addressed.

That's not the case with the \$10 million letter of credit. It serves a completely different purpose. And if Enbridge Gas New Brunswick chooses to sell the commodity, and it's clear they want to, that's great. They are permitted to now. Then they should be subject to the same rules and conditions. And they should have to incur the same costs as all of the other marketers. And including at risk, virtually at the Board's whim, a several hundred thousand dollar letter of credit.

And I'm a lawyer, not a businessman. But I'm sure the businessmen in the room, and women in the room, are thinking, well, there is the other issue too. And that is the cost. Though marketers have to reach into their pocket and pay the cost of that letter of credit, if you are going to now allow another seller of gas to incur or to not incur that expense, then that is going to give them

an unfair market advantage.

As I recall back, the purpose for these letters of credit were fundamentally for the protection of the consumer. And it seems to me to make no sense that the consumer who buys from WPS or Irving Energy Services or any other marketer, you know, has a letter of credit for which, you know, any obligation for them might be easily satisfied, that someone who buys gas or system gas from the utility does not. The rationale falls down.

So I think the bottom line of the submission is if you are going to be a seller of gas in this province, then you should be prepared to live under the same rules and operate under the same restrictions as the other sellers of gas. And if that means posting a letter of credit, then that's what it means.

CHAIRMAN: Thank you, Mr. Stewart. Mr. Hoyt?

MR. HOYT: Just references to sketchy and scheme and that type of thing, we have got to respond. Mr. Stewart indicates there is a larger question now that Enbridge is permitted to sell gas. And that there is some sketchy scheme regulation about how that is going to work.

Well, that regulation requires the following. EGNB may enter into a contract for the sale of gas on or before September 1, 2008. There is a limit. Contract for the

sale of gas shall not exceed one year. There is a

specific section that deals with the price of gas. And the Board is to satisfy itself that the price charged by Enbridge for gas is properly calculated.

There are specific pricing transparency provisions. The Board can determine the manner in which the price shall be publicized.

EGNB needs to file with the Board a gas purchase plan within six months. And the Board is to satisfy itself that EGNB has purchased gas in accordance with that plan.

The price of gas will be shown separately on the customer's invoice. Enbridge must indicate the expiry date of each one year contract and advise customers of all their gas supplier options prior to the expiry date.

Before December 31, 2007 Enbridge must file with the Board a customer management proposal. The Board may order the transfer of EGNB's customers for the sale of gas on or before September 1, 2009.

Again Mr. Stewart suggests that now that Enbridge is a seller of gas that it should have to follow the exact same rules that the rest of the marketers are bound to follow.

Is he suggesting that other marketers are going to limit their contracts to one year? Is he suggesting that on renewal that they are going to advise their customers

of what the options are? Are they going to start

publicizing their pricing mechanisms, how they are calculated?

I think that if there is a suggestion that everything is to be put the same way, that consideration has to be given to the fact that the Province has established the rules that it felt were appropriate under which EGNB could sell gas.

There is a separate -- there is a separate set of provisions that do apply and require EGNB to sell that gas in a particular manner.

MR. MAROIS: And I would just like add over and above what Mr. Hoyt just said --

CHAIRMAN: Just a minute, Mr. Marois.

MR. MAROIS: Well they are important points.

CHAIRMAN: Yes. Just I like to have one spokesman for a party, if we are able to do so. Now if Mr. Hoyt has chatted with what you want to talk about, and believes that you are better equipped to do it, then fine. But I don't like double teaming, okay.

Mr. Hoyt, speak to your client for a second and just see what it is.

MR. HOYT: Just one last point to add, Mr. Chairman. And that is the fact that Enbridge is a not for profit seller

of gas. They are restricted by that regulation. There is

no profit mechanism in the gas sales that they are authorized to undertake.

CHAIRMAN: Good. Thank you, Mr. Hoyt.

Looking at the time, could I suggest that we move to Question 8. And basically it is, as we have paraphrased it, "Should automatic renewal clauses be removed?" And the consensus was, as we read it, was no. And our impression therefore is it will not require it.

Anybody take umbrage with that? Okay.

MR. TEICHROEB: Excuse me, Mr. Chairman. Dave Teichroeb, Enbridge Atlantic.

CHAIRMAN: You got a short hand there.

MR. TEICHROEB: Just late. Not that we take umbrage with that. I would just propose that the current drafting for the code of conduct leaves some ambiguity as far as customers being able to terminate their agreements after their first invoice after renewal, and that it is only subject to -- that provision is only subject to a cause or effect by a change in price.

New Brunswick's pricing structures are somewhat unique in that variable pricing is rather commonplace, unlike many other areas, and that there might be a benefit to just tightening the overall wording to just include all

contract renewals, leave the customer with the ability to

opt out 30 days after their first invoice.

CHAIRMAN: Okay. Would you speak to staff over the lunchtime and just point out where you are suggesting an amendment on that?

MR. TEICHROEB: I will. Thank you.

CHAIRMAN: Thank you. Mr. Brown?

MR. BROWN: Mr. Chairman, I don't have a specific comment on Question 8. But I was wondering if the Board was prepared to allow the other parties to make a comment regarding Mr. Marois' statements before the last break? Or is that something that will perhaps be done later?

CHAIRMAN: I'm sorry. I can't remember what Mr. Marois' comments were before the last break. And I'm not trying to be difficult there at all.

Would you speak to Board counsel and refresh his memory, if it needs to be, about what those comments were? And if I didn't give the opportunity, I certainly will. Okay.

MR. BROWN: Thank you, Mr. Chairman.

CHAIRMAN: Thank you. Question 10, "Should the financial report of EGNB concerning the sale of gas be made public?"

There appears to us to be consensus that that should be done. And on the basis of that we have said we will

make it part of the annual review of EGNB's overall

financial results, which is a public document.

Mr. Stewart?

MR. STEWART: Mr. Chairman, maybe I didn't wave my hand high enough. Just on Question 8, one brief point. I don't think that -- our position is, in terms of are renewal clauses being disallowed or anything of that nature, I don't think we disagree with what you said.

What I didn't hear you address -- and maybe it will be a function of whether or not Enbridge is sort of governed by the code of conduct. But renewal clauses are only permitted by the marketers subject to the sort of notice constraints which are mandated by the code of conduct.

And so there is kind of two issues there. One is does that need to be changed? I think we are all in agreement that is doesn't.

The second issue is well, is Enbridge going to have automatic renewals in its contracts? And if so should they then be subject to the same notice requirements?

CHAIRMAN: All right. To put that issue on the table,

Mr. Hoyt, do you have any comment on it?

MR. HOYT: I would just refer to the regulation, the new regulation, Section 3(1)(i) which obligates EGNB to provide notice of renewals between 90 and 60 days of the

expiration of a contract.

CHAIRMAN: Is that a satisfactory answer to your question, Mr. Stewart?

MR. STEWART: Not really. Because it doesn't deal with an automatic renewal provision. It just says you have to give notice. I mean, that provision in the code of conduct, the restriction was in terms of so-called automatic renewals.

The regulation doesn't deal with whether Enbridge can say -- I mean, the other marketers can't have so-called automatic renewal provisions unless those notice provisions are there.

So Enbridge has to give notice. But do they have to give the same kind of notice we do in order to have an automatic renewal? The regulation doesn't say to give automatic renewals you must give this notice.

CHAIRMAN: Any other comments?

All right. I won't go to Question 10 now. I will break for lunch and ask everybody, if they are able to, to get back at 1:30. Thank you.

(Recess - 12:25 p.m. - 1:30 p.m.)

CHAIRMAN: I'm aware that the parties wanted to address Mr. Marois' remarks. And I will certainly give them that opportunity.

Are there any other preliminary matters? If not,

Mr. Sorenson?

MR. SORENSON: Thank you, Mr. Chairman. As it relates to Question 1 and 2 in the last part of it, the topic on code of conduct, Competitive Energy Services represents the customers. Some of our customers include the City of Saint John and the Province of New Brunswick.

It is our goal to have a open and competitive market.

We are also very much an advocate of the utility being able to offer gas services to the customers, as we feel again it is a customer convenience.

However, it is our opinion that no one seller of gas should have a competitive advantage via market rules and regulations. And as such we feel that the utility should be governed by the same rules and regulations as a marketer who is selling gas has to abide to.

Or there must be some type of additional rules and regulations that possibly govern the utility like there are in other markets across North America as it relates to the sale of natural gas.

Thank you, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Barnett?

MR. BARNETT: I really have nothing to add, Mr. Chairman, except to say let's not lose focus of exactly what we need

in the province of New Brunswick. And that is we need a

healthy natural gas industry. And a foundation on that is having a healthy distributor.

CHAIRMAN: Mr. Teichroeb?

MR. TEICHROEB: Enbridge Atlantic has nothing to add at this point.

CHAIRMAN: Thank you. Mr. Brown?

MR. BROWN: Mr. Chairman, I would just like to make some very brief comments on some of the statements or part of the statement that Mr. Marois said with regards to the health of the industry.

While I would concur with Mr. Barnett that a healthy distributor is important, the fact of the matter is that although the market hasn't evolved to Enbridge Gas New Brunswick's expectation, it doesn't mean that the industry is fundamentally unhealthy, nor does it mean that the industry won't exist if Enbridge decides that the Province of New Brunswick is not a place for them to continue to invest.

Another minor point I would like to make, sir. And that is with regards to Mr. Marois' comments with regards to the oil industry being bundled. Sir, it is not bundled. As you well know, there is no monopoly on any part of the supply chain in the oil industry, not the

distribution nor sale of the commodity.

Thank you.

CHAIRMAN: Thank you, Mr. Brown. Mr. Ross?

MR. ROSS: No comment at this time, Mr. Chairman.

CHAIRMAN: Thank you. Mr. LeRoy?

MR. LEROY: Nothing to add, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Stewart?

MR. STEWART: Just simply this, Mr. Chairman. And that is that I think it hopefully is the theme that runs through the submissions we have made.

And that is that we really feel that the best way to grow the market and to bring the result that both Mr. Marois and I think every other person in this room wants is to ensure a marketplace where there is, you know, fair competition and a regulatory scheme which encourages that, you know.

It's the level playing field. I mean, that is kind of a bit of a trite term. But it keeps coming up time and time again.

And so while I think we agree on the goal, the issue is how do we get there? And our view is that increasing competition or making sure that there is fair competition is the best way to do that.

Thank you.

CHAIRMAN: Thank you, Mr. Stewart.

Any brief remarks, Mr. Hoyt?

MR. HOYT: No comment, Mr. Chair.

CHAIRMAN: Question number 4, "Should marketers be permitted to bill for distribution services if their customers prefer such an arrangement?"

Our reading is there is no consensus. But Board staff has identified the following questions that arise if marketers were to be permitted to bill for distribution.

And we would like each party to address those. And we will come back to the question which Mr. Barnett has added after we have gone around on those.

So Mr. Hoyt?

MR. HOYT: Mr. Marois is going to speak to this question, Mr. Chair.

MR. MAROIS: Thank you, Mr. Chair.

First of all, I would like to commend the Board for raising I guess the additional issues related to billing by the marketers. Because -- and even ourselves, sometimes we get -- we are I guess faulty in oversimplifying the billing process.

Billing is a lot more than just sending a piece of paper. It involves a lot of things. And some of them are listed as part of those questions.

But before I comment on what we consider very serious

operational concerns about allowing marketers to do the billing, I would like to make a more general comment. And a more general comment is it is simply not the time to look at this. It is even probably the worst possible time to look at this.

The main reason why the Province decided to change the model to a bundled model was to provide customers with a simpler model, something that provides them with a one-stop shop.

If at the same time we are introducing this simpler model we allow the marketers to bill distribution service, this will create even more market confusion than we have today and will negate the benefits of a bundled service by the utility.

The policy decision to allow the utility to offer bundled service has already been made. So that is what should be the focus.

CHAIRMAN: Mr. Marois, I will stop you there. Because it raises an immediate question in my mind. How does allowing a marketer to bill for your distribution services, i.e. one-stop shop of the marketer, how does that make it a less simple concept?

MR. MAROIS: Well, first --

CHAIRMAN: I don't understand that.

MR. MAROIS: Well, first of all, the marketer already has a possibility of having a one-stop shop in terms of billing.

Because we offer that --

CHAIRMAN: Not for your distribution.

MR. MAROIS: No, no. But we can do the billing for them.

So in terms of simplicity for the customer. But I will give you one example. And I was going to elaborate on each point. But I will give you just one example.

If the marketer was allowed to bill for our services, so would the marketer have the call centre to answer billing inquiries? And if a customer called about a billing inquiry which deals with the distribution side, will the marketer be answering that question? Or will that question be sent to us?

So then --

CHAIRMAN: That sounds to me as if that is a fifth question that should be in the line.

MR. MAROIS: Exactly. Exactly.

CHAIRMAN: Carry on.

MR. MAROIS: But you wanted an example of how more complicated it would be. Just another point I would like to make in terms of a general comment is to implement a billing system or billing by marketers at this stage would

be a huge distraction.

Because to be able to fully address these points and other points that would certainly come up as part of the process would require a lot of time and effort on the part of many parties.

And when you put this into context, the three marketers here that are non-Enbridge affiliated currently represent about 600 customers. So how realistic is it to do all this work for 600 customers?

And so we need to reposition the debate that the fact that Enbridge Gas New Brunswick is able to bill for its distribution system doesn't provide it with a strategic advantage over the marketers. We need to simply be able to compete with other energy sources.

So what -- I guess to get to the point about the specific items that are listed here, in terms of the issue of disconnection which relates more broadly to the issue of credit and collection, the issue of reading meters, we do not believe that the marketers should be doing this. Because we do not believe that marketers should be doing the billing at this stage.

And I think the best thing we could rely on at this stage is a real life example. And the best real life example we have, which is the most recent one, is the

Georgia example.

In Georgia they unbundled in 1997. And the marketers were forced to do the billing. And that created a host of problems that at the end of the day resulted in a lot of customer frustration, marketer frustration, industry frustration.

And that was in a mature industry. Imagine doing this in a startup industry where you are trying to gain customer confidence. This would be simply suicidal.

So we have got an article that we can provide with the Board that details some of the problems facing Georgia. And we are confident that will shed some light into some of the problems that could be faced here in New Brunswick.

CHAIRMAN: Thank you. Mr. Sorenson?

MR. SORENSON: Thank you, Mr. Chairman.

I'm just going to answer your questions yes or no, if that is okay, and not get into a long --

CHAIRMAN: As the judge always says, it is your case.

MR. SORENSON: Thank you.

CHAIRMAN: Choose any way you want to do it. Thanks.

MR. SORENSON: Again our advocate -- we will continue to be an advocate for the customer as that is who we represent.

So in our opinion should marketers be able to order disconnections? Again if our customer is not paying that

supplier or Enbridge, the answer to that question is yes.

Should a marketer be required to read meters? I think that really dictates if a marketer is willing to go through the cost of putting an additional meter in and then the labour associated with actually reading the meter, then I find no reason why that would be a problem.

Should marketers be required to guarantee payment to Enbridge? As a former operator in the New York City market, we had a company called Smart Energy that actually worked very closely with the LDC on gas and utility on the power side. And the marketers were allowed to bill for the utility.

So we did -- it was allowed to have one-stop shopping.

So Smart Energy could actually send a bill for the demand distribution both on the gas and the electricity side in the ConEdison territory of New York. Under that model we were required to pay and guarantee payment for those customers and those services to the utility.

So should a marketer be required to guarantee payment to the utility Enbridge Gas New Brunswick if they are doing the billing? My answer to that would be yes.

What effect would there be on the letter of credit for the marketers? Again that really remains to be seen on how this whole letter of credit related issue is going to

be acted upon with the Board.

But there needs to be some assurances if a marketer is in financial disarray, that that customer will be able to be served. And again that is an issue that will have to be addressed also with Enbridge.

CHAIRMAN: Thank you, sir. Mr. Barnett?

MR. BARNETT: Checking back, it seems to me that this question was canvassed extensively in the past. And in looking at the decision of the Board, in looking that up, I sought for reasons as to why the Board made the decision that it did make, that the billing would be done by the distributor.

And I'm asking myself exactly what has changed since then. Albeit Enbridge Gas Distributor New Brunswick can now sell gas. What effect that does in terms of raising this question again still is a puzzlement in my mind.

I guess the part that I would bring to the Board's attention is in a greenfields market, keeping everything as simple as possible should be paramount. In that regard I'm not going to take a position one way or the other in regards to whether a marketer should be allowed to bill for the service.

But I do urge you to consider the fact that we have few customers. We have customers who are still trying to

gain an understanding of how the gas market functions. So

whichever is the simplest process for the benefit of the customer is something that I would subscribe to.

CHAIRMAN: Thank you. Mr. Teichroeb?

MR. TEICHROEB: Yes, Mr. Chairman. In reference to the questions that have been put forward by the Board, the first one, should marketers be able to order disconnections. I think it needs to be pointed out that under the current ABC service offered by the utility the marketers do not even need to accept credit exposure for customers that aren't large volume customers.

The services that are in place and offered by the utility now clearly are trying to stimulate the marketplace and take away certain burdens and risks that the marketers would bear. And therefore make it easier for marketers to enter the marketplace.

I'm going to leave the other three points for a moment. Because Enbridge Atlantic remains concerned that too many encumbrances are being placed on the very party, Enbridge Gas New Brunswick, who has the most --

CHAIRMAN: I am going to interrupt you. Because speak for your own company's point of view. And I know you are attempting to do that. But what you are doing is you are duplicating what they have done. You have done a good job

of staying away from doing that up until now.

MR. TEICHROEB: And I respect your request. But this is coming from a marketer who has a vested interest in growing the customer base so that it is more economical for marketers to have a larger pool of customers.

The current marketplace is stagnant. It is not growing at the pace needed for gas marketers to remain profitable and to provide the services that I believe consumers are requiring. And if you will bear with me, I will try to cover those points off as quickly as I can.

CHAIRMAN: Just what you are saying is you certainly are a marketer, but my understanding is you are not going to be renewing contracts.

MR. TEICHROEB: We are living within the confines of what has been placed on Enbridge Atlantic due to the recent legislative changes. I am still trying to articulate to the Board and other industry stakeholders what we feel is needed for New Brunswick to have a viable and sustainable natural gas industry.

CHAIRMAN: All right. But do it from the position if it were effectively you are not going to be a marketer in the future. Go ahead.

MR. TEICHROEB: Well, I will speak to how I believe consumers want their views represented then. It must be

recognized that four profit activities of a gas marketer

have different business drivers than what a non for profit offer places for customers and what needs to be safeguarded against as far as market abuses.

Enbridge Gas New Brunswick as a distributor already has more obligations for transparency than what others have and when the customers --

CHAIRMAN: Back to what you just said, sir. You said you were going to speak from the point of view of a customer.

And you are, you know, now you are again repeating EGNB's case. I don't like to cut people off. But let's be sensible here. If you want to talk about the customers and what it will do for them or not to them, then that's fine. Because Mr. Hoyt and Mr. Marois are quite capable of speaking on behalf of that company.

MR. TEICHROEB: All right. It is my belief that customers will want the benefits that come with economies of scale and a large customer base. Grow that industry and the critical mass will give more opportunities for customers and marketers.

Recent surveys and inquiries in our office through this past winter have demonstrated that the marketplace was seeing prices that I believe consumers are extremely dissatisfied with and prices that consumers should not

have been asked to bear.

If you look at other jurisdictions where there is a certain price control in place to safeguard their interests, the equivalent prices in some jurisdictions would have ranged from \$6 a gj to 9.55. And when you look at New Brunswick through the independent surveys and inquiries our office has had, prices have ranged as high as \$18 a gj.

I don't believe consumers should be asked to foot that kind of responsibility. And they should be entitled to the value proposition they signed up for when they spent thousands of dollars converting their facilities over.

When looking at why marketers should not be able to bill for distribution services, I believe customers have the confidence in a single provider who is already under the review of the regulator with significant abilities for that to be policed and monitored. The transparency will be there from a distributor offer. And as I mentioned earlier, the ABC billing service allows the marketers a lot of benefits by reducing their credit exposure. Therefore they should not be able to order disconnections.

Customers should have the ability to have their interests evaluated as to whether they should or should not be connected in the peak of the winter heating season. And

regulators impose those kind of conditions on the

utilities now.

Should marketers be able to read the meters? I believe that's more of an issue of economies of scale. I think the industry benefits from something that truly is offering the most cost effective and accurate services.

Should marketers be required to guarantee payment to Enbridge Gas New Brunswick? The utility should be able to establish the credit requirements that it would have and have the marketers meet those credit requirements.

But I have no comment on what the effect would be on the letters of credit for the marketers. Thank you.

CHAIRMAN: Thank you. Mr. Hoyt?

MR. HOYT: I think we already had our shot at this one, Mr. Chairman.

CHAIRMAN: You did. I'm just -- anyway. Mr. Brown?

MR. BROWN: Thank you, Mr. Chairman. Our answers to the Board staff questions in order are, yes, no, no and as yet to be determined. Thank you.

CHAIRMAN: Thank you for your brevity as well. Mr. Ross.

MR. ROSS: No comments on this question.

CHAIRMAN: Mr. MacDonald?

MR. MACDONALD: No comments.

CHAIRMAN: Mr. LeRoy?

MR. LEROY: No comment.

CHAIRMAN: Mr. Stewart?

MR. STEWART: Mr. Chairman, I think this question has come before us about, you know, marketers doing billing. Because as we all recall, you know, the decision was made in a different context when Enbridge was perhaps the more natural party to do this. Because, well, they were not in competition with any of the marketers.

And fundamentally I'm not so sure the issue is whether -- or our position is whether marketers should be able to do the billing per se. But I have been thinking over here this morning about the comment that Mr. Barnett made earlier on and kind of adding on to this point in terms of what necessary protections are going to be put in place now that, you know, if in fact Enbridge is going to still be the only one stop shopper to ensure that, you know, there is no sharing of information and that sort of thing.

I mean, the issue needs to be addressed as to how customer information and, you know, leads and confidential financial data and all that stuff is going to be handled if the person who provides the ABC billing service is now in direct competition with you.

CHAIRMAN: Excuse me, Mr. Stewart. When I introduced this question I thought I had made it clear we would go through

the questions and come back to the ABC problems.

MR. STEWART: Sure. Okay.

CHAIRMAN: I don't want to cut you off. I just want to keep it in order.

MR. STEWART: No, that makes perfect sense. So in terms of the question, I will take Mr. Brown's lead then. Order disconnections, no. Read the meters, no. I think we have long since decided that that's part of the natural monopoly. In terms of guaranteed payment to EGNB, I think that really is a function of the nature of the ABC and how that's going to work. Possibly. And a letter of credit from marketers, well none.

CHAIRMAN: Thank you. All right. I am just reading from the Department's answer to question number 4, second paragraph. The Board's question triggers a second question concerning the role of the distribution company under the ABC service. The current decision could lead to the perception that the knowledge of contracts between marketers and their customers could give rise to use of such information by the distribution company for marketing of gas and services to these customers in competition with the gas marketers who are using the ABC service provided by the distribution company.

So anybody any comments on that? Starting with you,

Mr. Sorenson.

MR. SORENSON: Just a moment, sir. No comment.

CHAIRMAN: Mr. Barnett, if you want to add greater clarity to the question, please do so.

MR. BARNETT: Mr. Chairman, only in asking that question, in our response we were not entirely clear exactly what information Enbridge gas distribution would have, they could use -- now that they are a gas distributor. There may be mechanisms that are already in place that we are not aware of.

And so I guess I have nothing else to add. I'm just waiting to hear EGNB's answer to the question that you have now posed to them.

CHAIRMAN: I guess it makes sense if we go to EGNB. And then we will come back.

MR. MAROIS: Thank you. The first thing I would like to say is our intention is definitely not to use information we have from other marketers to be able to promote our utility gas.

I think the first thing we have to say is even if we don't provide the ABC billing we have got most of the information anyway. Because all the customers are our customers.

So we have that information. We have certain

information in terms of the contract terms. Because we

have to ensure that the customers have a contract with the marketer.

In terms of the pricing information we will get from marketers, that has no impact on our pricing. Because our pricing is not based on market prices. It is based on costs. So our price will be what it will be based on our costs. So we will not change our price even if we had access to information from other providers.

And finally, I mean, our -- I have said this before. Our objective is clearly to grow the pie. I mean, to talk about sharing such a small pie and fighting for market share, in my mind it is so ludicrous.

I mean, our sole objective here is to grow the pie. We want a bigger pie. And if the pie is bigger it is going to create opportunities for everybody.

CHAIRMAN: I anticipate there is going to be quite a bit of debate on this. I'm going to go back, Mr. Sorenson. Do you have anything further you want to say after having heard what EGNB says?

MR. SORENSON: Yes, sir. Thank you, Mr. Chairman.

A concern that we would have, again being customer focus, is that if the utility has certain information that they are aware of regarding the contracts between the

marketer and the customer, and then using that information

as a marketing mechanism to sell their services of offering natural gas, that is a concern.

I will give you an example. Yesterday I was at a customer's location in New Brunswick. And I was told by the customer that the utility had sent them a bill. And on that bill it had said that your contract with supplier XYZ, marketer XYZ will be expiring at X period of time. And then the next line was, consider the utility to sell you natural gas upon the expiration of that agreement.

Now does that give a competitive advantage to one seller of natural gas over the other? And that is a decision the Board is going to have to make. And how is that governed on a go-forward basis?

But again, as an advocate of allowing a consumer to choose among multiple choices, whether it is the utility and/or suppliers, it would seem that there is an advantage, a competitive advantage with those type of statements being presented to the customer in an ABC billing format where a marketer doesn't necessarily have that ability.

CHAIRMAN: Thank you. Mr. Barnett, I will go back to you again.

MR. BARNETT: I have nothing to add at this point,

Mr. Chairman.

CHAIRMAN: In other words did Mr. Marois' comments add anything to your appreciation of the problem?

MR. BARNETT: Yes, it does. However, he did leave the door open a bit that there may be some information that they don't have I believe. He was only referencing two or three items I believe in his response there.

CHAIRMAN: I guess the lawyer in me says -- and Mr. Hoyt and Mr. Stewart have referred to statutory interpretation previously this morning.

But if you look at the legislation as it was and it began, when you had a prohibition with the LDC being able to sell gas, and they could only do it through an affiliated company, the protections were all there in the Act to ensure that that information didn't flow from one to the other or it came through in other places in the regulations.

There does seem, sir, now to be a real gap. And I'm glad you brought the question up. But does government have any inclination that they would bring forth regulations dealing with perhaps problems of confidentiality or what marketers considered or customers considered to be confidential?

MR. BARNETT: I guess having raised it as an issue before

this hearing, Mr. Chairman, I should like to hear

everybody's view on it. I would like to hear the views of the Board in assessing all the information that they have heard.

And I guess we will take under advisement, you know, whatever comes out of the Board on this particular issue, having heard all the parties speak to it.

CHAIRMAN: Thank you, sir. Mr. Teichroeb?

MR. TEICHROEB: Yes, Mr. Chairman. You will note that in our response to the questions that were submitted, we have gone even further than what the question asked, in that I don't and Enbridge Atlantic does not believe the best interests of customers have been served to date in the industry.

And as a result, we believe that the industry as a whole needs to do more due diligence to ensure that quote were are not "choking off" the growth that is possible. And that could be from the negative sentiments that come from consumers that aren't pleased with the service that they have.

And therefore we have recommended to go further by saying that with all the benefits that the ABC service provides and the fact that we don't believe the utility offer should be viewed as competitive.

It is the minimum performance standard that customers

should be able to expect. If that customer finds value in other offers, they have all the ability to make that change as to who supplies their fuel.

But until the industry can satisfy itself that there is nothing choking off the growth that the industry should be expecting, there should be the ability for government board and all stakeholders to have some means of collecting data as to what is happening in the competitive environment.

And therefore we have gone further in suggesting that the ABC system be mandated for the development period.

CHAIRMAN: Thank you. Mr. Brown?

MR. BROWN: Thank you, Mr. Chairman. Although the sale of gas commodity is seen as critical by the distributor in order to grow the markets, and the distributor also felt that legislative changes were necessary to alleviate customer confusion in the marketplace, recent actions by the distributor have shown that they have decided to abuse the dominant market position by misleading customers through a language on their monthly bills as referenced by Mr. Sorenson, by sending letters that biased marketer offerings in favor of utility gas, and by denying customer requests for service because said customer had not

inquired about utility gas notwithstanding the fact the

customer already signed with a marketer. Thank you.

CHAIRMAN: Thank you, Mr. Brown. Mr. Ross?

MR. ROSS: No comment.

CHAIRMAN: Mr. MacDonald?

MR. MACDONALD: No comment, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Leroy?

MR. LEROY: No comment.

CHAIRMAN: Mr. Stewart?

MR. STEWART: Well, Mr. Chairman, as you pointed out, I have more or less said my piece on this probably last time around.

Just simply to reiterate, my agreement with the comment you made -- I think it was in your exchange with Mr. Barnett -- in that, you know, the decision about Enbridge being the billing or the provider or the only one who could bill distribution services was made in the context of certain, you know, legislative umbrella over it. And now we are out from underneath that umbrella.

And I think what is necessary, and I rather suspect Enbridge probably wouldn't have too much trouble with this, is in ensuring that those same protections which existed before exist now, and maybe even moreso because the need for them is even greater because Enbridge is in

competition selling the commodity.

And unfortunately I don't have a proposal here. I don't have a page which says, you know, thou shalt do this and thou shalt do that. It would seem to me that that might be a subject that is best addressed in a code of conduct which includes Enbridge. And that is why some of these things are interrelated. That is all. Thank you.

CHAIRMAN: Thank you, Mr. Stewart.

Question number 5. I'm sorry. Who wants to go ahead?

Go ahead.

MR. MAROIS: Just mainly rebuttal. I guess a lot of the comments we have just heard are premised on the fact that Enbridge Gas New Brunswick will be just another seller of gas.

I hope that today we have been able to demonstrate that that is not the case. We are quite different. We have our own set of rules. We are a non-profit seller of gas.

And to my knowledge there is no other jurisdictions where there is this segregation of information between the utility and itself. I mean, selling gas by utility is an integral part of our business. And I'm not aware of any such separation.

And I find unfortunately that some -- I guess we have

been accused of certain things today. And I don't think

this is the place to deal with it. But if there are some legitimate concerns they should be forwarded to us. And we will definitely deal with them.

CHAIRMAN: Well, I agree with the last question. But in my experience in the regulation of utilities there are oodles of cases where employees are separated within the same corporate organization and not allowed to share information with other employees of that same organization. So that sort of approach is not at all unique.

Now I'm not -- I don't know the natural gas industry. But I can tell that is the case in reference to electricity and others. But anyway we will just -- I just wanted to share that with you.

MR. HOYT: Mr. Chair, just before you leave Question 4, Mr. Marois mentioned an article that concerned the Georgia experience. We actually have two of those that we would like to leave with the Board and the other parties.

Is it appropriate to do it now? Or do you want me to just do it on a break, put it at the back of the room?

CHAIRMAN: Do it on a break. And again for the other parties, if there is something that you want to question or discuss about these articles, why that is fine.

Question number 5, what specific information should be

provided to customers prior to signing an agreement? Our staff and Board's reading of the responses was that there was a consensus that the requirements of the existing code of conduct, subject to some comments we have made, are sufficient for marketers and EGNB's requirements as set out by the regulation.

The Board notes that section 2.5 and a copy has not been provided to you. Or perhaps it has. It has.

Mr. Goss is shaking his head. So section 2.5 describes the information to be provided in an offer, but does not clearly require that an offer be made.

The Board would like your comments as to whether that section should be revised to make offers mandatory and that such offers be in writing.

So we will go around the room again. Mr. Sorenson?

MR. SORENSON: Thank you, Mr. Chairman. I do not believe it is necessary to revise Section 2.5. Thank you.

CHAIRMAN: Mr. Barnett?

MR. BARNETT: I am not convinced there is a necessity to revise 2.5 either, Mr. Chairman.

CHAIRMAN: Mr. Teichroeb?

MR. TEICHROEB: Yes, Mr. Chairman, we feel that Section 2.5 is adequate but that it should be enforced as a written

offer. Thank you.

CHAIRMAN: Mr. Hoyt?

MR. HOYT: I agree that there is no need to change Section 2.5 and agree with the rest of the Board's reading of the responses.

CHAIRMAN: Mr. Brown?

MR. BROWN: Thank you, Mr. Chairman. We believe the current rules are sufficient.

CHAIRMAN: Mr. Ross?

MR. ROSS: No comment.

CHAIRMAN: Mr. MacDonald?

MR. MACDONALD: Thank you, Mr. Chairman. We also believe that 2.5 is adequate as it stands right now.

CHAIRMAN: Thank you. Mr. LeRoy?

MR. LEROY: We also agree with the current rules.

CHAIRMAN: Thank you. Mr. Stewart?

MR. STEWART: Thank you, Mr. Chairman. I think the answer to this is in 2.6.1. And as I recall way back when when we drafted this thing, you know, whether -- however the offer was made, whether it is orally or in writing or a combination of both or what have you, there is the sort of over -- the governing obligation that the marketer shall not enter -- and I am now reading 2.6.1. Shall not enter into any contract with a consumer that is inconsistent

with the offer made. So -- and leading to the contract.

So if in fact that remains in place, then you know, again speaking too much like the lawyer, you have to have offer and acceptance for a contract. So whatever is put in front of the customer, be it in writing, be it orally, be it a combination of both, there is an overall obligation to be consistent with that in the deal that is actually done.

And if that is the case, then it seems to me that it is not necessary to mandate that every offer be made in writing up front. I suspect as a practical matter, it often is. But we are talking here also about a code which applies to the low volume consumers. And to mandate that each offer be put in writing seems a bit unnecessary.

And I don't think that there have been any particular human cry of -- or list of complaints in that regard, so I suggest that it should stay exactly as it is.

CHAIRMAN: Thank you. Question 6. Should customers be advised as to the potential for price volatility. And if yes, should they sign an acknowledgement? Our notes are that there was consensus that signed acknowledgements were not necessary. And certainly our initial impression is therefore we would not require them.

With regard to information on price volatility, most

said it was not necessary. But some said yes. The Board

considers that this information should be provided and that the most logical way to do so is through an offer.

Now we will go back around again and get your comments on that. Mr. Sorenson?

MR. SORENSON: Thank you, Mr. Chairman. We believe that yes, the supplier should communicate to the consumer that there is price volatility. However, signing an acknowledgement we believe would be too difficult to administer. Thank you, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Barnett?

MR. BARNETT: Mr. Chairman, I think a verbal presentation to the customer is adequate. The actual signing of a document I don't think is necessary.

CHAIRMAN: Mr. Teichroeb?

MR. TEICHROEB: Yes, Mr. Chairman. We read this to speak specifically to price variations. And therefore do not view additional signatures or acknowledgements being required if the offer was disclosed in full with the customer's full understanding. Thank you.

CHAIRMAN: Thank you. Mr. Hoyt?

MR. MAROIS: Sir, we will ensure that the wording in our terms and conditions is appropriate and commend the Board for having this issue applicable to both the utility and

marketers.

CHAIRMAN: Sorry, Mr. Marois. I lost the last part of what you said.

MR. MAROIS: I said we commend the Board for having this issue applicable to both the utility and marketers in terms of providing information.

CHAIRMAN: Thank you. Mr. Brown?

MR. BROWN: Thank you, Mr. Chairman. In the course of a normal sales discussion with a customer, sales presentation with a customer, we feel that 100 percent of the time there is sufficient discussion about price volatility inherent not only with natural gas, but other forms of fuel.

And therefore there is no reason to acknowledge that in written form. Thank you.

CHAIRMAN: Good. Thank you. Mr. Ross?

MR. ROSS: No comment, Mr. Chair.

CHAIRMAN: Mr. MacDonald?

MR. MACDONALD: No comment, Mr. Chairman.

CHAIRMAN: Thank you. Mr. LeRoy?

MR. LEROY: Regarding this issue, we believe whether it be verbally or written, it should be communicated clearly to the customer that that may very well be a possibility and definitely no signed acknowledgement should be required.

CHAIRMAN: Thank you. And Mr. Stewart?

MR. STEWART: I guess simply enough, Mr. Chairman, I think the provisions in 2.5 and 2.6 of the current code of conduct I think are more than sufficient.

I think that they are broad enough to ensure that, you know, the price, clearly state the price, be it a price or pricing formula, if there is price volatility built in the contract I think that would be required in order to comply with the code.

Our only comment would be that it goes without saying, and I take Mr. Marois' assurance at heart, that all sellers of gas would -- be it system gas or a gas marketer would in fact ensure that that is properly communicated to the customer and is a clear term of their agreement.

CHAIRMAN: Thank you. Question 7. Should EGNB notify potential customers of all possible suppliers?

The consensus as we read the responses was yes. EGNB pointed out this information is already on their website.

The Board considers that sufficient information on possible suppliers is available to potential customers subject to comments that anybody might have in the room.

I won't go around the room. If you have a comment you want to make raise your hand.

CHAIRMAN: Okay. We did 8 before lunch. 9. How should the

Board determine if prices are reasonably and sufficiently

competitive?

There were suggestions that the Board should conduct surveys and monitor the market. We would like your comments on the specific information that you believe should be collected, its source and the particular uses that would be made of such information.

Now I want -- would you like us to take our break now and give you an opportunity to list those down or are you all ready to go?

I will take it silence is acquiescence and we will go ahead. Mr. Sorenson?

MR. SORENSON: Thank you, Mr. Chairman. When analyzing the -- when the Board chooses to collect data and to evaluate both prices, supply prices as well as tariffed rates from the utility, there is numerous sources to secure that information.

A suggestion obviously is when they do is to compare Canadian markets throughout the various Canadian provinces and their gas prices as well as other similar type greenfield markets that are attached to the Maritimes & Northeast Pipeline system, such as Bangor Gas, Maine Gas in Brunswick and then further down into the granite state and then into Boston.

Where they get that particular information, tariffed

rates can be pulled up on any LDC's website and then data can be collected through phone calls. There are numerous research companies up and down in Maine and Massachusetts that provide a lot of this data as well as out of Toronto.

So I think really it is up to the Board's discretion on how they would actually collect all that data. But again, it would be nice to see that they secure information from other Canadian markets as well as Maritimes & Northeast Pipeline markets. Thank you.

CHAIRMAN: Thank you, Mr. Sorenson. I myself personally had a different interpretation as to why we put the question in to begin with. And that is the section in the legislation which requires, us as DNRE says after, in compliance with Section 59 and I am looking at -- I am thinking of the New Brunswick marketplace itself. Not across the eastern North America.

MR. SORENSON: You need some type of benchmark or some type of comparison tool, I would assume. Because again how can you compare all the prices, how can you compare a fixed price versus a variable price versus some type of index price? That could be very difficult.

CHAIRMAN: Thank you. Mr. Barnett, you presume we are doing something. What is it that you presume we are doing and

how?

MR. BARNETT: Well I am assured you are, I guess, Mr.

Chairman, in my own mind. As Mr. Sorenson said, there is a lot of trade information available. Some of it is current price, some of it may be a month or two out of date. When you look at the National Energy Board website they publish gas prices a month or two late albeit but they do give you a good reference point. They publish it on firm contract sales like Imperial Oil, the Boston Gas, they do it on an aggregated basis on short-term sales. There is various magazines. Bloomberg's for example would have commodity prices. Even the Globe & Mail produces a daily Henry Hub price as a reference point.

It is a challenge however specifically relative to the Maritime markets the National Energy Board identified when it looked at recently the result of the hearing that was held here last summer exactly what to do about prices, say a (inaudible) price for the commodity, or even a Dracut price. And they are looking at how that could be perhaps collectively done with the assistance of people who are selling into the Maritime market.

So there is a challenge in regards to that. But in terms of a base reference price, NYNEX prices, Henry Hub

prices, ADCO prices, Alberta prices, all this information

is readily available. What I assumed or presumed was that the Board was already doing this on its day-to-day looking at gas markets. So we are not just waiting for hearings to crop up or a complaint under the section that you have referenced in that regard.

So there is a lot of information available, it needs to be collected, it is aggregated in certain areas and again back to the National Energy Board on a monthly basis, and actually on a aggregated monthly basis. So today you can look at prices up until I think May on a five month basis. So it is available.

So that's what I presumed the Board was already doing in anticipation, being proactive, if in fact there should be a complaint under the reference section in that regard.

But as far as specific price in New Brunswick market it may well be that the Board will have to collect that with the co-operation of marketers and look at it on an aggregate basis.

CHAIRMAN: Well again I read Section 59. The Board may make orders regulating the price of gas or of a customer service charged by gas marketer when it finds that the price -- and the price there to me refers back to the preceding portion, which is the price of gas in the New

Brunswick marketplace.

Now certainly Board staff monitors those things that you have been speaking of, Mr. Barnett, but it's a question of getting the information from the marketplace in New Brunswick to comply with the section, as far as I am concerned. That's my interpretation. I'm open to anybody else's. But when it finds that the price is not subject to an effective competition sufficient to protect the customer's interest. So we have to monitor to see if there is enough competition in the New Brunswick marketplace to provide competition. So that's why the question is phrased as it was.

The Board would like comments on the specific information that should be collected, its source and the particular uses to be made of such information in the New Brunswick market context.

Now, Mr. Goss, if I have strayed from the original intent in putting that in, by all means grab a mike.

There were suggestions that the Board should conduct surveys and monitor the market. In order to monitor the market in this province should we be sending out surveys to marketers and find out in confidence what their prices are?

Go ahead, Mr. Barnett.

MR. BARNETT: Mr. Chairman, one new piece of information

that is available now of course is what is posted on the Enbridge website. So there is a reference point there for a New Brunswick price.

CHAIRMAN: Of course, but that doesn't tell us whether that's competitive or non-competitive or anything.

MR. MAROIS: Yes, sir, it does, because with all due respect, when a market is not competitive usually where that gets reflected is in the profit --

CHAIRMAN: I'm sorry. I missed that.

MR. MAROIS: When a market is not sufficiently competitive where usually that gets reflected is in the profit margin. So if the market is not competitive enough you can expect higher profit margin. Since our price does not include any profit margin at all, the fact that the market would be competitive or not will not impact on our price.

The other thing is our price will be based on actual costs which the Board will review in depth annually. So the Board will have access to data information to make itself comfortable that the price we paid was effectively reflective of market conditions.

So yes, it is a reference price. Naturally you can't compare directly with the marketer's price because there is no profit margin in it. But with all due respect, I

think it is a good benchmark to use.

CHAIRMAN: Yes, but, I'm sorry, everybody is missing the point I am attempting to make. I mean fine. I know I and the Board will know it, and the public will know that we have checked it, what your costs were, not your overheads included but your costs, but how does that tell me whether the market place is competitive? It doesn't unless I have the information about what price gas is being sold for out there and if there is competition. I mean that's why we put in the survey bit is that how can we compare whether or not there is competition in the marketplace or there isn't? I mean, one would have to believe that with Enbridge having a price that is capped how can anybody -- capped at being a non for profit, how can anybody have a competitive marketplace? It really -- I just don't understand it frankly. There you have it.

Anyway, go back to the original question which is, and we have gone through to Mr. Barnett, we would like some comments that if we were to do such things as conduct surveys in order to monitor the market, what kind of information should we ask for, what should be its source and what would be the uses made of that?

So, Mr. Teichroeb, I guess you are next.

MR. TEICHROEB: Yes, Mr. Chairman. We do believe like Mr.

Sorenson that there would be a need to look outside of the

area of New Brunswick to have a comparative benchmark. There are a lot of things that can make up the price and there are regional issues.

That said and done, there are ways of taking enough information to get an aggregate, a benchmark, as to how New Brunswick is faring against other jurisdictions.

What we also believe or what we find I will say somewhat disturbing is that this question has been asked in isolation of how the distributor's price would be evaluated for competitiveness.

CHAIRMAN: I'm sorry, I don't understand.

MR. TEICHROEB: Well the question specifically asks how is the Board to satisfy itself that the prices charged by the gas distributor for customer services are reasonably and sufficiently competitive to protect the interest of consumers. We believe more needs to be done to survey the marketplace as a whole in New Brunswick to understand are the competitive issues eliminating customer interest or creating a burden on customers. I.e., is the offers from various retailers not in line with what one could expect if that retail offer was being made in other jurisdictions? There needs to be a means of collecting that, be it confidential submissions to the Board or we

believe in light of the fact that Enbridge Gas New

Brunswick is not competitive, i.e., it's a cost of service base, that marketers could use the ABC billing and that could be submitted to the Board on a confidential basis or the government for that matter.

Thank you.

CHAIRMAN: Mr. Hoyt?

MR. HOYT: No further comment.

CHAIRMAN: Mr. Brown?

MR. BROWN: Thank you, Mr. Chairman. I would concur with both what Mr. Sorenson and Mr. Barnett said with regards to indicative pricing being available from such publications as say Inside Fercer gas daily with regards to specific points of which the New Brunswick market is referenced, such as Dracut Massachusetts, and of course you are well aware what the distribution rate is and of course the MN&P website will tell you what the rate is for transportation.

Beyond that though, sir, it may help the Board or aid the Board to engage some market research activity whereby perhaps they canvass customers and allow an independent body to determine or provide data which would allow the Board then to interpret whether or not the market is competitive and there is a competitive offering in New

Brunswick.

Thank you.

CHAIRMAN: Thank you, Mr. Brown. Mr. Ross?

MR. ROSS: No comment, Mr. Chairman.

CHAIRMAN: Thank you. Mr. MacDonald?

MR. MACDONALD: Thank you, Mr. Chairman. I believe in our initial response to this question we viewed this question as going beyond the provincial borders and drawing from the various entities that are out there that would provide this information. And hearing your clarification given here now as it relates to Section 59 I guess we are confused as to how you really wanted to have this question answered. And as such if we are to remain within the provincial borders what is the level that would be used as a benchmark to determine competitiveness if we had three marketers that were charging 30, 35 and \$40 a gigajoule when the actual cost was \$6, how would we determine that those offers are in fact competitive? Would it be the lowest price.

So our recommendation to the Board would be as you have heard previously, that we go beyond the provincial borders and use industry standards.

CHAIRMAN: Good. Thank you, Mr. MacDonald. All I can say is normally if you don't understand how to answer a

question then the question is poorly put, and I probably

confused the issue totally by reading from Section 69. So be it.

Mr. LeRoy?

MR. LEROY: We would agree in whole with Mr. Brown's comments.

CHAIRMAN: Thank you, sir. Mr. Stewart?

MR. STEWART: Mr. Chairman, when I look at what is in Question 9, there are sort of two issues. The first, you know, it says the Board is to satisfy itself that the prices charged by the gas distributor for customer's services are reasonably and sufficiently competitive to protect the customer. And it doesn't say prices charged by the gas distributor for gas but in the first part it's talking about customer services. And we know as a result of the recent amendments to the legislation that, you know, the definition had been changed and, you know, the amendments to Section 52, the repeal of Section 53, now means that, you know, the Board control over what EGNB charges for the so called "customer services, yard line maintenance, meter reading, billing, load balancing" are now arguably outside the Board's control. And I thought that the question that was being asked here is, okay, well you still have your mandate under Section 59, or do you,

since Section 59 doesn't talk about the price of a

customer service charged by a gas marketer because you otherwise had control over those things in the other sections which have now been repealed. So I was of the view that maybe the first thing we were doing is, okay, now that Section 52 and 53 have been repealed, or amended I should say, then how -- or should the Board, because it has the ability when a service charged a marketer is not subject to effective competition to make an order, how is it going to deal with those customer services charged by Enbridge Gas New Brunswick.

And I'm not sure that I know the answer to that other than to say that I think it needs to be part of whatever the Board orders here, whether again it's some sort of code of conduct or an order or direction to ensure that while it may not require -- those charges may not require Board approval per se, I think they should still be subject to the overall requirement that, you know, they are subject to some sort of effective competition.

Secondly, in terms of if we are also determining, you know, the price of gas, I don't have -- again we don't have any specific suggestions. Maybe a survey would be appropriate. I think Mr. Brown said to do some market research that may involve some kind of review in or

outside the province. But at the end of the day that's

not -- I don't think that's -- given the standard that the Board has here that that should be too difficult or onerous, to collect a bit of data maybe on a regular basis or maybe on an ad hoc basis, and maybe even an analysis of some statistics in terms of, you know, is one marketer or seller of gas in this case dominating the marketplace? If that's the case then maybe we should do some research, or something of that nature.

But a little bit of market research and some element or some control over, or some mandated umbrella over the charges that the so-called customer services that are going to be charged by Enbridge Gas New Brunswick.

CHAIRMAN: Thank you, Mr. Stewart. Mr. Goss indicates he would like to speak to this.

MR. GOSS: Thank you, Mr. Chairman. I just wanted to apologize to all present, the question as it went out was not worded the way I believe we had intended. It was -- you were correct, it was a reference -- intended to be a reference to Section 59, which as amended, at least in my copy, says the Board may make an order regulating the price charged by a gas marketer or a gas distributor for gas or a customer service if the Board is of the opinion that the price is not subject to effective competition

sufficient to protect the interest of customers.

So the question was intended to address both the distributor and marketers, gas and customer services.

Thank you.

CHAIRMAN: Well I apologize, because I was reading from the old script. Does anybody wish to have any comments after Mr. Goss made those comments? Yes, sir. Go ahead.

MR. MACDONALD: Mr. Chairman, if I just might add further, and I apologize for not including it in my response, but we do support a survey of the current market periodically, which would give a true reflection of what the prices that are being currently sold out there are.

CHAIRMAN: Thank you, Mr. MacDonald. All right. We will take a 15-minute break and come back at 3:00 o'clock.

(Recess)

CHAIRMAN: All right. Then carrying on. No preliminary matters? Good. Question 10, and the question was should the financial report of EGNB concerning the sale of gas be made public? There was consensus this should be done. The Board our -- impression is that we would make it a part of the annual review of EGNB's overall financial results.

And let's go through. Mr. Sorenson?

MR. SORENSON: Thank you, Mr. Chairman. No further comments

on Question 10.

CHAIRMAN: Thank you. Mr. Barnett?

MR. BARNETT: No further comment, sir, on this question.

CHAIRMAN: Thank you. Mr. Teichroeb?

MR. TEICHROEB: No further comments, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Hoyt?

MR. HOYT: No comments.

CHAIRMAN: All right. If there is anybody who wants to comment raise your hand? Go ahead, Mr. MacDonald. I am sorry, Mr. Ross. Sorry.

MR. ROSS: Mr. Chairman, some remarks that were made earlier, and since we are in a financial role here, the comments regarding -- to a previous question regarding the letter of credit, was that Enbridge financial information is already made public. As a chartered accountant, I have reviewed that information. And on the whole I find it to be a remarkable piece of accounting craftsmanship.

I can state though with confidence that it would not provide any evidence of financial responsibility to any industry participant. So just while we are in a financial mode, I want to add that clarification. Thank you.

CHAIRMAN: Well I will pass on your comments in reference to accounting craftsmanship. But as to -- so you would support the information reference say the gas be made

public in EGNB's financing reporting though?

MR. ROSS: Yes, Mr. Chairman. We did and we do.

CHAIRMAN: Thank you. You don't want to comment on

accounting craftsmanship do you, Mr. Hoyt or Mr. Marois?

MR. HOYT: No comment.

CHAIRMAN: Question 11, what should be the role of the Board

in response to customer complaints involving the sale of

gas? And staff has put together the comment, most said

that the role of the Board should be the same for all

parties. EGNB and EIEIO, as I affectionately refer to the

company, said that the Board should act as a facilitator.

The Board would like comments on whether or not it has

the authority to make binding decisions on complaints

involving EGNB and its customers regarding the sale of

gas? Because we certainly do in other aspects of the

distribution aspects, et cetera. So, Mr. Sorenson?

MR. SORENSON: Thank you, Mr. Chairman. CES agrees with

EGNB and EAESI that the Board should act as a facilitator.

And the second question is should they be able -- should

the Board be able to make binding decisions? And the

answer -- our position is yes. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, sir. Mr. Barnett?

MR. BARNETT: I think the idea of facilitator is a useful

one, Mr. Chairman, a role for the Board to play. I notice

the second question, specifically the sale of gas, because

I did become aware through this process that the Board has approved Enbridge's -- Enbridge Gas New Brunswick's complaint procedure as far as customer services are concerned. And that is a letter from the Board Secretary, which was referred to in Enbridge's response to a particular question in that regard.

I think there should be a party of last resort for a customer complaint. A similar manner there is with customer service.

As far as the legal authority to do that, I would have to defer that to my legal colleagues -- to the legal people in this room, sir.

CHAIRMAN: Thank you, Mr. Barnett. I should say that normally if there is a complaint comes in then the Board does in fact act in the fashion of a facilitator in that we attempt to get the parties together and clear up any misunderstanding there may be between the utility and the customer as to wording or whatever it may be.

But just following up on what Mr. Barnett says, is the Board has always approached that certainly in reference to distribution matters, that we are the final judge of that dispute, provided it is not a matter that should go before the court system. Simple as that. I just -- I say that

and ask you for you comments. Mr. Teichroeb?

MR. TEICHROEB: Mr. Chairman, we have no further comments, other than the written submission as a facilitator.

CHAIRMAN: Mr. Hoyt?

MR. HOYT: Mr. Chairman, in terms of Enbridge's response to complaints, as Mr. Barnett and others have mentioned, Enbridge voluntarily prepare and submit for approval of the Board a complaint resolution, a policy, which I have here and could submit with the Board or just provide to other intervenors. It is available on the website. And believe that it sets out a mechanism that obviously the Board was satisfied with at the time in that it gave its approval for it.

Mr. Barnett did mention as well now that EGNB is authorized to sell gas, there will be an additional provision so that it doesn't just apply in the context of distribution services or customer services, but will also apply to a customer complaint that relates to the sale of gas.

Those amendments have already been prepared. We have just held off sending them into the Board, because we didn't want to confuse it in the middle of this process. But that as well will be changed.

So I think there is sufficient provision in terms of

how complaints dealing with EGNB should be handled. The

suggestion that EGNB made was that marketers and EGNB should essentially be treated the same. It would seem appropriate that that policy doesn't -- I don't think it imposes anything that should be surprising to anyone. So perhaps something along that nature is appropriate for marketers as well. And I think the authority to impose it on marketers would be through a term or condition to the marketers' certificate.

CHAIRMAN: Thank you, Mr. Hoyt. Don't hold back on bringing anything up that may confuse the Board. You can't get things much worse up here, I don't think. Thank you.

MR. BARNETT: Mr. Chairman, Don Barnett. Just let me add something. We became aware of the complaints procedure that the Board had approved for customer services and the distribution as a result of this process. We were not aware of it prior to that time. And it begs the question as to when the Board makes the decision -- I don't know whether other marketers were aware of the complaints procedure in that regard, as to whether or not there should be some formal notification for people in the marketing business or involved in the gas industry development in the province of being made aware of that,

sir? And I wonder if the Board could consider that for some future similar circumstance?

CHAIRMAN: You are talking about the procedure to handle complaints --

MR. BARNETT: No, sir. I am talking about the decision of the Board, which is in a letter dated October 4th, from the Secretary to Mr. Hoyt, to which was attached appendix A, which is the Enbridge Gas New Brunswick's complaint resolution policy. I was not aware --

CHAIRMAN: You are suggesting that should be put out to all and sundry for comment before it's approved?

MR. BARNETT: Not in comment, sir. But I was not aware that the complaint procedure that is here had in fact been approved by the Board.

CHAIRMAN: How should we have done it differently, Mr. Barnett?

MR. BARNETT: I am just saying that when the decision was made, it would have been useful to have the Board's decision sent out to parties who were involved in the gas industry in the province, sir.

CHAIRMAN: Well with frankness, what does the website say about that policy? Does it say that it was Board approved?

MR. HOYT: Mr. Walker was the person that communicated with the Board and believes that it does indicate it was Board

approved. But as I understand it, the policy itself is on

the website.

MR. WALKER: It does on Board instruction also include reference to Board coordinates. So that parties are aware that the Board has looked at it and has reference there for as a last resort.

CHAIRMAN: And the Board will consider your request, Mr. Barnett.

MR. BARNETT: Thank you.

CHAIRMAN: All right. Mr. Brown?

MR. BROWN: We have no further comment to make, Mr. Chairman. Thank you.

CHAIRMAN: Thank you, sir. Mr. Ross?

MR. ROSS: No further comment, Mr. Chairman.

CHAIRMAN: Mr. MacDonald?

MR. MACDONALD: No comment, Mr. Chairman.

CHAIRMAN: And Mr. LeRoy?

MR. LEROY: No comment, Mr. Chairman.

CHAIRMAN: Mr. Stewart?

MR. STEWART: Just one brief comment, Mr. Chairman. And that is is it necessary or advisable and I haven't seen the amendments that Mr. Hoyt has proposed to the complaint mechanism.

But just to tie it back to the issue of a letter of

credit, I mean, my understanding is that, among other

things, if the Board found a customer complaint warranted against a marketer then that would be potentially one of the situations where the Board might draw on the letter of credit.

And by approving the mechanism that Mr. Hoyt is advocating here now, I just want to be sure that we are not precluding that possibility should the Board see fit to require a letter of credit.

CHAIRMAN: Mr. Hoyt, do you have any comment on that?

MR. HOYT: I don't think what we are suggesting in terms of a change to this really has much bearing. I mean, if the Board determined that there were to be a letter of credit, they are going to have to impose some kind of conditions or situations when it could be drawn on.

The only change that we are talking about making is in the three or four places of the policy where it says "regarding EGNB's distribution or customer services", we are going to say "gas supply, distribution or customer services." That is all -- it is just extended to the gas supply business that EGNB is now in.

CHAIRMAN: Mr. Stewart, I will just make one comment. It would be with extreme reluctance that the Board would call on a letter of credit of any marketer or otherwise, if it

is a dispute with customer that would involve a question

of damages.

The letter of credit is there basically to, as I said, to be a very convincing reason for the marketers or the distributor to obey the Board's orders. Simple as that. I don't want to get the Board into where the court system should be.

Anyway, having said all that, we are over to the last question I believe, which is a lengthy one. Should the Board develop additional requirements for any marketer who is planning to exit the market?

Board staff says most said yes. EGNB and EAESI said the Board should amend the code to allow the seller of gas to assign its customers without any Board oversight. And EAESI said it has not applied to surrender its certificate and therefore should be treated the same as other marketers.

The Board would like your comments. Is a marketer who is clearly exiting the market the same in fact as the other marketers? What criteria should be used to determine when a marketer is exiting the market? What information if any should be provided to the customers of a marketer who has been deemed to be exiting the market?

And the Board notes that Section 2.7 of the Code,

Contract Renewals -- and you have been provided with a

copy -- does not specifically address the situation where a marketer, for whatever reason, is not planning to renew a contract.

The Board would like your comments as to whether Section 2.7 should be revised to specifically address a situation where a renewal is not being offered.

So Mr. Sorenson, would you go down through those questions and add anything further that you wanted?

MR. SORENSON: Thank you, Mr. Chairman. Where Competitive Energy Services disagrees with the legislation, we are not truly an advocate of Enbridge Atlantic Energy Services obviously exiting the market. But with that said, since the legislation does require them to exit the market, we will answer the questions accordingly.

We believe there should be some generic rules for any marketer that exits the market. However, each situation needs to be reviewed we believe on a case by case basis. So is a marketer who is clearly exiting the market in fact the same as other marketers?

We would take the opinion today as no, they are not. However they do have customer commitments. And some definition of those customer commitments has to be defined and then adhered to.

What criteria should be used? Again I think the

criteria of a marketer exiting, in this particular case the legislation has forced the exit of Enbridge Atlantic Energy Services due to the fact that the utility will be able to offer to sell gas. There may be other issues such as economic issues where a marketer must exit or is forced to exit the market.

So again I think this focuses on that it has to be more on a case by case basis due to the fact that the conditions of a marketer exiting are probably different under every scenario.

What would be our opinion, and what has happened in other markets -- and I keep alluding to New York and Massachusetts, where I have had a lot of working experience -- but what information if any should be provided to the customer of a marketer who has been determined to be exiting the market?

It is our opinion a drop-dead date needs to be put in place. An example possibly may be though Enbridge Atlantic Energy Services again is being forced from the market and has customer commitments for up to two additional years, it is our opinion that if they are exiting the market they should exit the market.

So hence a date, let's say 90 days, 120 days be put

forward to the customer. And with that said, in that time

frame, the customers become available either to the utility or to the other marketers operating in the marketplace.

So, for example, each customer can be notified that your contract will be expiring due to these following circumstances by the end of the year. Your choice is to go with the utility, with Competitive Energy Services as your management company, with Irving, Park Fuels or WPS, giving that customer a choice over X period of time. If they so do not choose a marketer and/or agent, management company or broker, then they can default to the utility automatically.

So should 2.7 be revised to specifically address a situation where a renewal is not being offered? Yes.

Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Sorenson. Mr. Barnett?

MR. BARNETT: I think in echoing the first part of what Mr. Sorenson says, that some generic view of rules in regards to marketers exiting the system would be useful.

But having said that, each case is probably specific and should certainly be able to add -- the Board should have the ability to be able to add to those generic rules for a specific case in that regard.

Is Enbridge exiting the market the same as any other

marketer? I guess they are compelled to leave the market as a result of the regulation. So it is not the same. But that gets me into matters which will be specific to Enbridge Atlantic leaving the system.

I don't have a comment on the criteria to be used when the marketer is exiting the system, other than to say that obviously we have the customers, should have the customers at heart and apprising the customer of the departure of Enbridge Atlantic from the system. And the timing of such would be important.

In terms of reviewing section 2.7 we would support it should be revised to specifically address a situation where the renewal is not being offered for whatever reason.

CHAIRMAN: Thank you, Mr. Barnett. I think it is the lawyer in me that reacts in saying that every situation is unique, so you should make new rules every time anything like this occurs. It is much safer to make a broad generic rule that is applicable to whoever does, regardless of how they leave the marketplace.

Anyway, Mr. Teichroeb?

MR. TEICHROEB: Thank you, Mr. Chairman. Enbridge Atlantic continues to operate in compliance with the code or

certificate and any additional requirements of the Act.

We are committed to honoring our customer agreements and our obligations to those customers.

And since Enbridge Atlantic continues to meet those obligations to its customers until the expiration date of their agreement, it is our belief that the Board should be satisfied that we are meeting these obligations of the customer.

If for any reason at a future date the Board deems that marketers' communications, if they are exiting, requires preapproval by the Board, it is our belief that this same standard should apply to all marketers when their agreements are being renewed with customers. No differentiation should exist.

We as Enbridge Atlantic have been forced to play out our hand in exiting the market. We have not had a choice in this. Other marketers, if they were choosing to exit the market, would not necessarily divulge that detail.

As a result, we feel it compromises the commercial value of our book by any forced outcome or predetermined nature that could be dictated by the parties including the Board.

There has been some suggestions by Intervenors that we be forced to assign or otherwise transfer our customers.

This is completely unacceptable to Enbridge Atlantic. We

have invested shareholder money as a private business. And we believe we should have the right to extract the fair value of that commercial book of customers.

If there is a business entity in this room or in the province that deems they want to discuss our customer book, then I believe that should be a private discussion between me and those parties. And it should not be in the review of this hearing.

It is our belief that if there is a predetermined outcome or any regulated outcome to this that precludes us from working with the existing marketers or any other party to try and obtain the full value of our customer book, that we would be compromised on obtaining the commercial value.

And ultimately we do believe customers should have full choice on who they select upon their renewal. And it is Enbridge Atlantic's intention to ensure customers do have that full choice.

I guess in summary, if a marketer is in compliance with their certificate, no Board involvement is required nor should it be sought. And this doesn't apply for just Enbridge Atlantic. We believe it carries forward to the future issues involving those marketers.

Is a marketer who is clearly exiting the market the

same as other marketers? We feel that statement should go into a question of are they in compliance with the various requirements?

What criteria should be used to determine when a marketer is exiting the marketplace? Again are they in compliance and meeting their customer obligations?

What information if any should be provided to the customers of that marketer who has been determined to exit the market? Nothing different than the encumbrances placed on others.

And to 2.7 being revised? No, we do not believe it requires any further revisions.

Thank you.

CHAIRMAN: Thank you, Mr. Hoyt.

MR. MAROIS: So I can proceed, Mr. Chair?

CHAIRMAN: Yes, please. I asked for Mr. Hoyt, but you can substitute. It's fine.

MR. MAROIS: Taking into account your comment that you would prefer more generic rules, I have to say in terms of the first question, is a marketer who is clearly exiting the market the same in fact as -- I have to say it depends. But in my mind, the major criteria here is a marketer exiting at a specific point in time, does not necessarily

honouring the terms of the contracts in place, compared to

a marketer who is willing to remain in operation until the contracts expire. If a marketer is willing to stay in operation until the contract expire, my mind, there is no issue. As long as he sends a notice say I won't renew your contract. But a marketer that ends his operation at a specific point in time, that's very different. And there needs to be specific provisions for that.

In terms of the criteria to be used, in my mind it should be the same criteria as Article 64.7 of the Act, which is really protecting the interests of customers. And at the end of the day, that's the key criteria that the Board should be concerned about.

What information, if any, should be provided to the customer of a marketer, who has been -- I think it's clearly directly related to the first point. In other words, if a marketer is honouring a term of the contract, information to be provided will be different than if the marketer is exiting at a specific date and time.

We do not see the need to modify Section 2.7 of the Code. Because that section deals specifically with renewals. And here we are talking about non-renewals.

And we would just like to reiterate our request to have Section 2.8.1 of the Code revised to change the end

of the sentence that states that does not hold a

certificate to anybody that's able to sell gas, a seller of gas.

CHAIRMAN: Mr. Brown?

MR. BROWN: Thank you, Mr. Chairman. Our answer to the first question is yes. With regards to the criteria, when a marketer decides to exit the market for whatever reason, we believe a notification provision with a clear intent to exit the market provided to all of the marketer's existing customers should be provided.

With regards to Section 2.7, we believe it should be revised. And I refer to the Irving Energy Services answer to Question 12 to provide guidance to the Board.

CHAIRMAN: Thank you, Mr. Brown. Mr. Ross?

MR. ROSS: No additional comments, Mr. Chair.

CHAIRMAN: Thank you. Mr. MacDonald?

MR. MACDONALD: No comment, Mr. Chairman.

CHAIRMAN: Thank you. Mr. LeRoy?

MR. LEROY: No comment, Mr. Chairman.

CHAIRMAN: Mr. Stewart?

MR. STEWART: Thank you, Mr. Chairman. Just a couple of brief comments over the top of the vacuum cleaner behind me. Oh, they shut it off. I agree with Mr. Marois that I think that there is a distinction between a situation

where a marketer simply indicates that I am going to exit

the marketplace at the last of my -- expiry of my last contract or I am not going to actively sell, but I will honour my existing contracts, and a marketer who simply decides that I am going to leave town, as it were.

I think in the end, it is a -- and it may be a function of the rules that are put in place, whatever they might be, should relate to the letter of credit that the Board holds as security. I mean ultimately that as you pointed out in terms of complying with the Board order would be the situation where the Board would have the most influence. Particularly with respect to a marketer who is going to be exiting the marketplace.

So that in essence what should happen, is that to the extent that there is security left in place by any given marketer, that the Board should establish some criteria, likely notice to the customers, indication -- satisfaction to the Board's satisfaction that the book of business is being sold or has been sold or that appropriate arrangements have been made before the letter of credit is released. That ultimately, as you pointed out I think a couple of times today, is your stick, as it were.

In terms of the Enbridge Atlantic situation, and I know that there is provisions in the regulations to deal

with that, clearly I think that that's a special case and

would require some special consideration.

I am not sure I am entirely clear about what Enbridge Atlantic's plans are? Whether there is going to be any special notification directed to its customers upon the expiry of each of its contracts? Whether that's necessary, warranted given the exchange that's happened in terms of the utilities ability to sell gas on the choice that's being made by Enbridge Atlantic to exit the market.

In terms of what information might the Board require to be provided to customers on an exit, clearly what the options are, what it means to the customer, I think you could design a form or a fairly standard notice that would be given out on fairly standard terms. And I don't think it's something that even would necessarily need to be established in advance. Just simply that a notification be sent to the customer, either (a) that their marketer will honour their contract and leave at the expiry of their contract or will not be ever renewing it, or their marketer is going to be ceasing to serve them, arguably in breach of their contract as of a certain date, and assist that individual or that customer in finding an alternate source of supply, or at least providing them with the options or some directions in how to secure an alternate

source of supply.

Finally, with respect to Section 2.7 of the Code, I don't think it's necessary, and I would reference everyone to Section 2.6.7 of the Code, which says, when a contract is expiring, a gas marketer shall notify the consumer in writing of such fact not less than 60 days before the contract's expiration.

So a renewal requires a notice of renewal no more than 120 days. So if I don't get my renewal notice, customers are required to be given a notice of expiry 60 days before anyway. So with respect to disagree with the -- I know that 2.7 doesn't require it in writing. But I think 2.6.7 does.

CHAIRMAN: Good. Thank you, Mr. Stewart. Mr. Hoyt?

MR. MAROIS: I simply want to retract I guess my response to question 2, because I misread the question. When I -- and the question is what criteria should be used to determine when a marketer is --

CHAIRMAN: I am sorry, Mr. Marois, I am having -- yes, push it away. Thank you.

MR. MAROIS: Sorry. I just want to retract the comment I made on the second question, which is what criteria should be used to determine when a marketer is exiting the market? I had misunderstood the question. And my

response was the criteria should be protect the interest

of the customers. I just misunderstood the question.

CHAIRMAN: Thank you, sir. It now says after discussion on the questions, the Board is going to take a five-minute recess. We put that in there for a specific reason. I don't think the reason still exists. But anyway I will take a five-minute break.

(Recess)

CHAIRMAN: As I indicated when we drew up the list of questions, we had a possibility in mind of carrying on with what's under the line at the end there. So I wanted to check with staff to see if they felt that there would be anything that should be referred to a working group. And I wish to report that not only was there consensus, there was unanimity that we couldn't see it.

But if somebody here wants to state anything differently, why, now is your opportunity.

So, well, the hearing is concluded then. And we want to thank the parties for their effort and participation today. And the Board ultimately will be deciding on probably all of those questions.

Mr. Barnett?

MR. BARNETT: Mr. Chairman, in the interest of constructive comments, not to add more to the evidentiary part of your

hearing, but I would have found it useful if the document,

which was a very good document that the Board staff, I believe, put together and we used as a reference in the course of day, it would have been useful if we could have that the day before in future cases.

It would give us the opportunity to discuss amongst ourselves maybe more in more depth than what we did in the half hour that we had.

So just, hopefully taken as a constructive comment that if we can in fact get a document like that the day ahead or even the night before it would, I think, provide to be useful in the area of efficiency of the hearings.

CHAIRMAN: Thank you for that comment, Mr. Barnett.

Frankly, we all thought you would have done that yourselves. But I'm sure that that small local law firm will be able to produce that in the future if the Board requires it. Again, thank you.

(Adjourned)

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

Reporter