

New Brunswick Energy & Utilities Board
IN THE MATTER OF a review of the maximum margins, maximum
delivery costs and the maximum full service charge conducted
under the authority of Section 14(1) of the Petroleum Products
Pricing Act (S.N.B. Chapter P-8.05)

Held at the Delta Hotel, Fredericton, N.B., on October
7th 2008

INDEX

- Mr. Gardner - Cross by Mr. Ervin - page 254
 - Cross by Mr. Scholten - page 260
 - Cross by Mr. Wootton - page 262
 - Cross by Ms. Desmond - page 263
 - By Mr. Radford - page 268
 - By Mr. Toner - page 270
 - By The Chairman - page 275
- Mr. Michael Ervin - page 277
 - Cross by Mr. Everett - page 298
 - Cross by Mr. Hunter - page 300
 - Cross by Mr. Hoyt - page 304
 - Cross by Mr. Nicholson - page 308
 - Cross by Mr. Scholten - page 310
 - Cross by Mr. Wootton - page 319
 - Cross by Ms. Desmond - page 325
 - By Mr. Radford - page 332
 - By Mr. McLean - page 338
 - By Mr. Toner - page 344
 - By Vice-Chairman - page 351
- Mr. Gould - page 368
- Mr. Everett - page 375
- Mr. Hunter - page 382
- Mr. Richard - page 393
- Mr. Nicholson - page 400
- Mr. Scholten - page 409
- Ms. Thorne-Dykstra - page 421

INDEX (2)

Mr. Wootton - page 440

Mr. Zed - page 457

Mr. Ervin - page 479

Mr. Hoyt - page 491

Exhibit 8 - Response to Undertakings number 1 and number 2
from Michael Gardner - October 7th 2008 - page 253

Exhibit 9 - Document - 4121 - page 328

Exhibit 10 - Document - 4471 - page 328

Exhibit 11 - Accommodation Victoria submission - October 6,
2008 - page 439

Exhibit 12 - Canadian Federation of Independent Business -
October 3rd 2008 - page 439

Exhibit 13 - Report - Canadian Independent Petroleum Marketers
Association - October 1st 2008 - page 439

Exhibit 14 - Submission from Magnetic Hill Esso - May the 9th
2008 - page 439

Exhibit 15 - Submission from Scholten's Group - June 9th 2008
- page 440

Exhibit 16 - Submission from Ultramar Ltd. - September 17th
2008 - page 440

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2 delivery costs and the maximum full service charge conducted
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3 Pricing Act (S.N.B. Chapter P-8.05)
4 Held at the Delta Hotel, Fredericton, N.B., on October 6th,
7th 2008

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

9 N.B. Energy and Utilities Board - Counsel - Ms. Ellen Desmond
- Staff - Doug Goss
- Dave Keenan
10 - Dave Young

11 Secretary of the Board - Ms. Lorraine Légère

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14 CHAIRMAN: Good morning, everyone. I will take the
15 appearances at this time starting with Accommodation
16 Victoria? I don't believe Mr. Bosse was coming back.
17 Canadian Federation of Independent Business, anybody hear
18 from CFIB? Canadian Independent Petroleum Marketers
19 Association? I believe Ms. Savage was not returning
20 today. Canadian Oil Heat Association? Could I get you to
21 speak into the microphone, please?

22 MR. GOULD: Yes. William Gould.

23 CHAIRMAN: Thank you, Mr. Gould. And Canadian Oil Heat
24 Association/Clark Oil, is Mr. Clark here today?

25 MR. GOULD: Mr. Clark won't be able to attend this morning.

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2 CHAIRMAN: Thank you, Mr. Gould. Cooke's Quik Mart? Co-op
3 Atlantic?

4 MR. ZED: Peter Zed, Mr. Chairman. Again joined by Mr.
5 Davies and Mr. Chiasson.

6 CHAIRMAN: Thank you, Mr. Zed. Department of Energy?

7 MR. ERVIN: Patrick Ervin, Mr. Chairman, attended by Alain
8 Bilodeau.

9 CHAIRMAN: Thank you, Mr. Ervin. Everett's Car Care?

10 MR. EVERETT: Matthew Everett.

11 CHAIRMAN: Thank you, Mr. Everett. Gabriel Hache Ltee?
12 Nobody here. Global Fuels Inc.?

13 MR. GAUDET: Guy Gaudet. And Mr. Maddock will not be
14 attending today's hearing, he had to go to Montreal.

15 CHAIRMAN: Thank you, Mr. Gaudet. Greenwood Enterprises
16 Ltd.? Nobody here. Hunter's One Stop?

17 MR. HUNTER: Eldon Hunter.

18 CHAIRMAN: Thank you, Mr. Hunter. Irving Oil Marketing
19 Limited?

20 MR. HOYT: Len Hoyt for Irving Oil Marketing Limited. Again
21 joined by Matt Holland.

22 CHAIRMAN: Thank you, Mr. Hoyt. Magnetic Hill Esso? Nobody
23 here. Michaud Petroleum Inc.? No one here. Murray's
24 Esso? Not in attendance. Notre-Dame Express? Not here.
25 Richard Service Station and Richibucto Corner Store Ltd.?

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2 MR. RICHARD: Gabriel and Jean-Marie Richard representing
3 Richard Service Station and Richibucto Corner Store.

4 CHAIRMAN: Thank you, Mr. Richard. Salisbury Road Gas and
5 Convenience?

6 MR. NICHOLSON: Ted Nicholson.

7 CHAIRMAN: Thank you, Mr. Nicholson. Scholten's Group?

8 MR. J. SCHOLTEN: Jerry Scholten and Chris Scholten.

9 CHAIRMAN: Ultramar Ltd.? Not here today. Voice of Real
10 Poverty Inc.?

11 MS. THORNE-DYKSTRA: Bethany Thorne-Dykstra.

12 CHAIRMAN: Thank you, Ms. Dykstra. Westmount Esso & Service
13 Centre 1992 Ltd.?

14 MR. ROY: Ronald Roy.

15 CHAIRMAN: Thank you, Mr. Roy. XTR Energy Company Limited?

16 MR. WOOTTON: Ken Wootton representing XTR Energy.

17 CHAIRMAN: Thank you, Mr. Wootton. NB Energy and Utilities
18 Board?

19 MS. DESMOND: Ellen Desmond as Board Counsel. And from
20 Board Staff, David Keenan, David Young and Doug Goss.

21 CHAIRMAN: Thank you, Ms. Desmond. Did I miss anybody?
22 Okay.

23 Yesterday, Mr. Gardner had made a couple of
24 undertakings, have those been prepared? So the Response
25 to Undertakings number 1 and number 2 from Michael Gardner

1
2 dated October 7th 2008 I am going to mark those as exhibit
3 -- that will become exhibit 8.

4 Does anybody have any questions for Mr. Gardner with
5 respect to these undertakings?

6 MS. DESMOND: Board Counsel has questions, Mr. Chair.

7 CHAIRMAN: Other than Board Counsel, do any other parties
8 have any questions?

9 MR. ZED: I doubt it, but just take a second to have a look.

10 CHAIRMAN: Sure.

11 MR. ZED: Thank you.

12 CHAIRMAN: Well perhaps everybody can have a look to
13 determine whether or not they have any questions. In the
14 meantime, Mr. Gardner, I will ask to you to come forward.

15 Mr. Zed, have you had an opportunity to have a look at
16 that document?

17 MR. ZED: Yes.

18 CHAIRMAN: You were the first to cross examine yesterday,
19 that's all. I am not --

20 MR. ZED: Yes. No, we have looked at the numbers and there
21 is no questions of Mr. Gardner. Thank you.

22 CHAIRMAN: Thank you. I am just going through the list
23 perhaps of those who cross examined yesterday. Mr. Ervin,
24 do you have any questions?

25 MR. ERVIN: If I could have just one more minute, Mr.

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Chairman?

CHAIRMAN: Sure.

MR. ERVIN: Yes, Mr. Chairman, just a couple of questions of Mr. Gardner.

CHAIRMAN: Proceed.

CROSS EXAMINATION BY MR. ERVIN:

Q.250 - Just, Mr. Gardner, the undertaking number 2 at Table 4.2, just so I am understanding correctly, the first period that you are looking at there is from July '04 until June of '06, a period of approximately two years?

A. That's correct. Yes, that's correct.

Q.251 - And then for the more recent period to support what you used, a period of seven months in '08?

A. That's correct, yes.

Q.252 - And I am just wondering why you chose a different period of time in terms of averaging out that -- you know, to come out -- to arrive at your conclusions, why you chose a two-year period in the first case to arrive at one figure and a period of just seven months in the second scenario?

A. Sure. The original margin of 11 cents, as I understand it, was based on performance during a two-year period leading up to the introduction of regulation. So it would have been '04 to '06, June to July. So that

1
2 seemed to be a reasonable basis on which to look at both
3 the cost factors, as well as, the revenue factors that
4 entered the selection of that period.

5 But looking ahead, it seems to me that the relevant
6 basis upon which to make a ruling of this sort since
7 credit card fees probably represent the single largest
8 element of margin that is at play, as a function of, you
9 know, day-to-day business in particularly the swings in
10 utility -- or energy prices, that taking a long-term
11 average would not reflect current circumstances,
12 particularly in light of where energy prices are going.

13 I think this computation should be more forward
14 looking using prices that are likely to obtain in the
15 future, rather than ones that were experienced well in the
16 past.

17 The calculation is not intended to try to compensate
18 the industry for what happened over the last two years,
19 but rather to bring them up to a level that they can
20 operate viably looking ahead. So ancient history, in my
21 view, is not relevant. What we should be looking at is
22 the direction of and the level of prices going forward,
23 rather than as I say looking back.

24 And so recent prices to me reflect a more likely case
25 for what prices are going to look like over the next year

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2 or two years. In other words, we will be looking at
3 gasoline prices in the \$1.20, \$1.30, \$1.40 range, rather
4 than the 95 cent range.

5 Q.253 - Thank you. Again just to -- just so I understand it,
6 we are looking at a comparison then of five months leading
7 up to August of '08, would it not have been consistent to
8 use a five-month period leading up to and including June
9 of '06, to take, you know, kind of the equivalent type of
10 exposure or snapshot at that time and compare it to a
11 five-month period leading up to the current -- the current
12 time frame?

13 A. Well as I say if the 11 cents, that original margin
14 had been determined on the basis of a five-month period
15 and conditions over a specific five-month period, then it
16 would seem to be consistent, yes, to use that duration.
17 But again, as I understand it, a two-year period was used
18 looking at average activity over that two years. And that
19 being the case, it seems to me the underlying variables
20 that form the basis for that 11 cents should be tracked on
21 the same -- over the same period.

22 Q.254 - But again, you are not suggesting Mr. Gardner that in
23 arriving at the original 11 cents that the government
24 actually considered credit card usage at the time?

25 A. I don't think -- again it is my understanding, and I

1
2 don't know what government did consider other than taking
3 a look at the margin or the difference between New York
4 Harbour and X tax pump prices to come up with the 11
5 cents. But incorporated in that 11 cents are all the
6 costs of doing business, including credit cards.

7 So government I think, you know, we could argue knew
8 or should have known that credit cards, along with
9 utilities and wages and everything else form a part of the
10 cost of doing business.

11 Q.255 - And then -- just -- and I am not a statistician but
12 would it have been consistent in this approach to use a
13 period leading up to August or would that have extended
14 back for a greater period again just to get a general --
15 and I guess my point is, as you can gather, that in terms
16 of making a comparison between one period and another the
17 typical approach would be to use an equivalent period for
18 each?

19 A. Yes. And depending on what the objective of the
20 analysis is I can understand doing that. But the
21 objective of this analysis is to look ahead and say what
22 kind of costs are the industry -- is the industry going to
23 face based on gasoline prices and how credit cards affect
24 margins. And looking back at ancient history when prices
25 were in the 90, 95 cent range, I don't think it would be

1
2 particularly helpful.

3 So the logic of this analysis is not one looking back
4 saying how can we compensate industry for the higher
5 costs, but rather to look forward and say how do we ensure
6 that industry stays whole, if we want them to have a net
7 margin of whatever it might be, what kind of computation
8 should we make? And the logic suggests that we should use
9 a price that is more forward looking that reflects
10 circumstances as we expect them to be, rather than as we
11 saw that they were.

12 Q.256 - And, Mr. Gardner, are you satisfied that the 128.4
13 cents that you suggest is forward looking now is in light
14 of recent trends still realistic?

15 A. I would suggest it is probably on the low side if we
16 are looking ahead the next year or two. It is going to
17 depend entirely on how frequently the Board wishes to make
18 these kinds of adjustments. This is one that could easily
19 be incorporated into a margin adjustment on an ongoing
20 basis. So there wouldn't be any concern about whether --
21 you know, the price is historically of relevance or not.
22 It would always be the current price or one that
23 approximated the current price. And I think that's what
24 we are aiming for here.

25 MR. ERVIN: Thank you, sir. Those are all the questions I

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have.

CHAIRMAN: Thank you, Mr. Ervin. Perhaps I should have started back at the beginning here. So, Mr. Gould, do you have any questions?

MR. GOULD: No, I do not. Thank you.

CHAIRMAN: Thank you. Mr. Everett?

MR. EVERETT: No, thank you.

CHAIRMAN: Thank you. Mr. Gaudet?

MR. GAUDET: No.

CHAIRMAN: Mr. Hunter?

MR. HUNTER: No. Say no.

MR. ERVIN: Mr. Hunter says no.

CHAIRMAN: We do need more microphones sometimes. Mr. Hoyt?

MR. HOYT: No questions.

CHAIRMAN: Mr. Richard?

MR. RICHARD: I got no question for Mr. Gardner but I got a statement I would like to read to you.

CHAIRMAN: We will do the statements then after the evidence has been done. But you don't have any questions for Mr. Gardner on exhibit number 8?

MR. RICHARD: Thank you.

CHAIRMAN: Mr. Nicholson?

MR. NICHOLSON: I have no questions.

CHAIRMAN: Mr. Scholten?

CROSS EXAMINATION BY MR. J. SCHOLTEN:

Q.257 - I just wanted to clarify one thing in your numbers here with the revised Table 4.2 and you are assuming a lower usage rate from your original I guess document, while at the same time the credit card fee that you are using is in fact on the low end of your assessment as well?

A. What I tried to do with the bottom table is just to do a sensitivity analysis and say well what happens -- and it arose from a question from the Board yesterday. What happens if these numbers on credit card usage that are in the report are too high? So I said well let's take a look at that and drop it to 20 and 35 percent just to see how the -- what impact that would have on the margin. And it does drop it slightly.

Just out of interest I did use -- I didn't produce it here but I also put in a credit card fee of 2 percent and that brought it back up to about 5 -- or .5, half a cent per litre.

As I say some of these variables, particularly ones that are price sensitive are -- it does -- I think it seems to me become important to be as current as possible in making those adjustments.

Q.258 - In terms of the range that you used, I guess here it

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2 is suggested a high and a low on what you had for
3 information, is there any way to make an assessment or
4 would you have an assumption based on what an average
5 credit card rate would be under your I guess
6 investigations?

7 A. Yes, the difficulty with that is that many of the
8 smaller stations face higher fees. So they would be in
9 the 2, 2.2, 2.3 percent range. But their volumes are
10 relative to the New Brunswick average on the low side.

11 So in order to do that kind of analysis, and I agree
12 it is the one that a weighted average should be used, but
13 to do that you would really need to be working with more
14 detailed information on the applicable fees for -- you
15 know, by volume.

16 So if you had large users or large organizations like
17 Irving, or Ultramar or Wilson's you would really want to
18 be -- you know, get a pretty clear sense of what rates
19 were applicable to each of those companies and to the
20 stations within their organizations and apply that to the
21 volumes to come up with that volumetric average.

22 MR. J. SCHOLTEN: That's all. Thank you.

23 CHAIRMAN: Thank you, Mr. Scholten. Ms. Dykstra?

24 MS. THORNE-DYKSTRA: No, thank you.

25 CHAIRMAN: Mr. Roy?

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2 MR. ROY: No questions.

3 CHAIRMAN: Thank you. Mr. Wootton?

4 CROSS EXAMINATION BY MR. WOOTTON:

5 Q.259 - Mr. Gardner, your third table down, the one at the
6 bottom of the page, shows a sensitivity to a reduction of
7 credit card use. But would it be reasonable to expect
8 that in the economic times that we are now in and the
9 increasing crunch on credit and peoples' capital resources
10 that we would not see a decline in credit card use but
11 rather an increase? And therefore, it might be
12 appropriate to produce a table that showed those numbers
13 at a higher percentage, as opposed to a lower percentage
14 to better reflect the marketplace that we are in today and
15 the future that we have in front of us?

16 A. Well I agree that in the interest of balance one could
17 -- one could produce a range of tables like this, but the
18 factors that would drive credit card usage I don't think
19 are simply prices, cash availability and so on but
20 technology as well. And increasingly stations are, you
21 know, investing in pay-at-the-pump technology in part to
22 limit the driveoffs and then in part for convenience,
23 people want it. So with that technology and as that
24 becomes increasingly in place, consumers are going to have
25 very little option but to use credit cards or debit cards

1
2 in order to make their purchases.

3 So I think there are factors looking ahead that will
4 tend to drive credit card usage in the upward direction.
5 It is unlikely to go down from current levels.

6 MR. WOOTTON: I have no further questions.

7 CHAIRMAN: Thank you. Ms. Desmond?

8 CROSS EXAMINATION BY MS. DESMOND:

9 Q.260 - Mr. Gardner, just to start you made a comment to Mr.

10 Ervin about the fact you used in Table 4.2, a two-year
11 period, and you understood that when the original margins
12 were established the government hadn't looked at a two-
13 year window as a relevant period of time. On what basis
14 do you make that submission?

15 A. Well it is -- I have asked a number of people the
16 question and the defence I have based on the answers I
17 have received, it was a two-year period that had been
18 used. Now that may not have been the only factor. I
19 think that the government also looked at what was
20 happening in the other provinces in the Atlantic region.
21 And 11 cents seems to be a good figure.

22 Q.261 - I am not looking for names but are you talking about
23 industry participants or --

24 A. I am talking about industry participants and I am
25 talking about government people as well. And this goes

1
2 back to an interview I had with government officials
3 before I took on this assignment. This was just as
4 regulation was being introduced in '06.

5 Q.262 - Now with respect to Table 4.1, there are sort of a
6 number of lines that have variables could you simply walk
7 through the changes you made from the original Table 4.1
8 on page 27 of your original document and what changes you
9 did make in this new Table 4.1?

10 A. Well the only real change in 4.1 is in the price line.
11 And once that changes, all the other -- with the exception
12 of quantity, which has remained constant, change.

13 So all the other variables are a function of the
14 starting price. So once that changed, everything
15 cascades.

16 Q.263 - And I think the undertaking was to look at the 2006
17 year. Now I think the original you had -- looked at the
18 entire 2006 year, six months of which were unregulated?

19 A. Right.

20 Q.264 - And I noted a change as well in 2008 and that number
21 seems to be different. And I am just wondering on what
22 basis that number changed?

23 A. Well, as I understood the instruction, it was to use
24 the same April to August period for the -- you know, for
25 this table since that's what the basis had been. So

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instead of -- instead of using a figure -- let's say a representative figure from that period, I took the average for that period, the strict arithmetic average for that period and included those figures here.

Q.265 - Just because I am a little confused in terms of how that changed from yesterday. I thought you had testified yesterday that you did pick the August 2008 period?

A. No, I didn't take a strict average from that period. I used that period as the basis. But again the underlying assumption was that prices in that period were more likely to be reflective of the future than prices beforehand. So it wasn't a strict arithmetic average, this is.

Q.266 - And when I look at sort of the outcome in Table 4.1, when I look at gasoline and diesel, those numbers have changed. Would you say that is a significant difference?

A. No. They are in the hundreds. So I wouldn't say it's significant. It wouldn't change the conclusion that you can roll that into the broad inflation calculation.

Q.267 - And what about your heating oil, would you agree that that's a significant difference?

A. Well I guess it depends on your definition of significant. It has gone from .3 to .25. So there is 5/100s in the difference. So in the circumstances, I would use the .25.

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Q.268 - And that would be your recommendation now --

A. Yes.

Q.269 - -- based on how the market adjusted the six month regular return in 2006?

A. Yes.

Q.270 - For Table 4.2 could you identify specifically the changes you made from the original document?

A. The change was to use to April to August average, rather than the June figure, just the month of June. But otherwise the calculation in the first 4.2 is the same for the lower table. The credit card usage assumption has changed.

Q.271 - And again under the credit card usage there are two sort of scenarios there but would you agree using this April to August sample is more representative and is a better result?

A. It's what you asked for. And this is -- as I say this is a tough one to predict obviously, because you are asking for a prediction of where gasoline prices are going or crude oil prices are going. And I think I would go back and say this is as reasonable as 1.35 or 1.40. We don't know.

I think the real issue here is how the Board decides to incorporate a -- you know, the credit card factor into

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2 adjustments. Because if it is done on a -- say on a
3 quarterly basis and is sensitive to price, there is really
4 no issue. We don't have to worry about getting it right.
5 If it is on an annual or, you know, a two-year period,
6 again the risk of being way off is much more likely.

7 Q.272 - This is just a small point but in the original 4.2,
8 for the 2006 period you have an entry of 98.7?

9 A. Yes. I went back, because I noticed that yesterday as
10 I was looking at the tables, that there has been a -- and
11 I don't know if that was -- you know, an error in the
12 number of months that was used, but I mean, I rechecked
13 the numbers and 98.1 is the valid number there not 98.7.

14 Q.273 - With respect to Table 4.2, I believe yesterday you
15 indicated that using the average price for June 2008 is a
16 better indicator for assessing the impact of credit card
17 fees. Is that still your position?

18 A. Well as I just answered to the previous question, I
19 think the best solution is to make this adjustment on a
20 more frequent basis, so it always reflects current
21 conditions, rather than to trying to guess what the price
22 might be.

23 MS. DESMOND: Thank you, Mr. Gardner. Those are all of our
24 questions.

25 CHAIRMAN: Thank you, Ms. Desmond. Any questions from any

1
2 members of the panel on exhibit 8?

3 BY MR. RADFORD:

4 Q.274 - Mr. Chairman, just on point of clarification, Mr.
5 Gardner, if you would, if I understand the figures
6 correctly, in 2004, you say that the rate that the
7 retailer would have had to pay back to the credit card
8 company was 1.65, is that correct?

9 A. That's correct.

10 Q.275 - Now it is 1.75?

11 A. That's the low end of the range, yes.

12 Q.276 - I understand that. But the volumes are going up, and
13 certainly the dollar volumes are going up, why are they
14 not able to negotiate a better rate with dollar values
15 going up?

16 A. I don't think anybody negotiates with Visa and
17 Mastercard. I think it's here is the deal.

18 Q.277 - But doesn't -- the higher your volume --

19 A. Yes.

20 Q.278 - - for example, Costco would pay a much lower rate to
21 American Express than I would if I were a retailer, isn't
22 that correct?

23 A. That's correct. It's going to be a function of the
24 revenue they are likely to generate, yes.

25 Q.279 - Right.

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A. But the 1.75, as I understand it from the industry and from what I have read, would represent the real low end.

Q.280 - Yes, I understand that part. But you are showing that it is going up -- the cost is going up to the retailer rather than going down?

A. That's correct. And my understanding again from the industry is that these fees are rising.

Q.281 - The industry in general, not just the petroleum industry?

A. That's right.

Q.282 - When a retailer pays the wholesaler for the product, how do they pay? What's the general way? Do they pay it by credit card or do they pay it by cheque? What's the general rule?

A. I think the trend now is that the draw is made automatically from the bank account. So that it comes out on a specific day, whether it is seven days or 10 days after the purchase. Or it can vary but that's -- so it -- buy it comes out automatically.

Q.283 - So they do not use a credit card at that level?

A. I don't think so, no.

MR. RADFORD: Thank you. Those are my questions.

CHAIRMAN: Thank you, Mr. Radford. Mr. McLean?

MR. MCLEAN: No.

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2 CHAIRMAN: Mr. Toner?

3 MR. TONER: Yes, I have a few questions.

4 BY MR. TONER:

5 Q.284 - So I am trying to get a feel for the numbers. So I am
6 just using my Blackberry to do some calculations. The
7 ringer was turned off.

8 And I guess there is four variables when it comes to
9 the credit card fees. Originally you were requesting a
10 .58 cent increase for credit card fees as a whole. Okay.
11 But I feel that there is four variables that come into
12 play so that people understand where the number comes
13 from, because I feel it can easily be broken down. One of
14 them is the gasoline price?

15 A. Yes.

16 Q.285 - So I feel pretty comfortable that that number is
17 correct. If we assume no credit card increase like of --
18 be it -- I guess the question is whether or not there is a
19 credit card usage increase?

20 A. Yes.

21 Q.286 - And do we have any proof that there is a credit card
22 increase?

23 A. Again --

24 Q.287 - And if it is, what are we basing it on? Are we basing
25 on interviews? Are we basing it on --

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A. We are basing it on interviews with dealers and wholesalers, yes.

Q.288 - So we don't have a concrete -- we don't know?

A. We don't know a specific number.

Q.289 - And what the usage percentage -- so we are not sure if there is an increase and we are also not sure of what percentage the people are using credit cards or not?

A. I don't know the answer to that question. There are people in the audience who represent companies who would have that information. And the information they have provided me suggests that usage currently is in the 40 to 45 percent range.

Q.290 - And as far as the credit card fees whether -- again, we are not sure exactly if there is an increase or not. It depends if people are using what type of cards. So if people are using a different type of fee -- for like American Express has higher rates?

A. Yes, but most --

Q.291 - Break down?

Q.292 - -- many -- yes, many stations won't accept American Express because of the higher rate. And it is the same with, you know, other retail establishments. So the retailers are trying to keep their costs down so that they would accept the cards that have the lowest interchange

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2 fee and that is Visa and Mastercard. So those tend to be
3 the main ones and those fees are very close.

4 Q.293 - And so I guess what I would feel comfortable with, and
5 I will ask the Chairman if he agrees, if we were to take
6 that .58 cents or 53 or 46 -- because I did some quick
7 calculations earlier, and if the credit card usage is 35
8 percent with no increase --

9 A. Right.

10 Q.294 - -- keeping the fuel the same and the increase in the
11 credit fees, we are looking at .22 cents, 1.6, okay.

12 So if we are looking at -- I guess I would feel more
13 comfortable to have a breakdown and say the credit card
14 fee impact is .08 cents. Like do you know what I mean,
15 like the actual breakdown? Whereas the usage impact is 22
16 cents. I guess that would -- I don't know if that would
17 be something that you could breakdown and enter into
18 evidence --

19 A. Well --

20 Q.295 - -- and say that the -- if there is an increased fee --
21 you know, if I feel comfortable with your evidence that
22 there is an increase in fee, that will relate to a dollar
23 amount or a cent amount relating to credit card fees. The
24 other issue is how much usage? So if it's 35 percent, if
25 it's 45 percent --

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A. Right.

Q.296 - -- that it would also be further broken down, because I think that -- I feel that the gasoline price increase is realistic. It's just that the other --

A. Right.

Q.297 - -- the other variables are up for interpretation by the Board and say that -- you know, do we feel that there is enough evidence to say the usage is 35 percent? Is it 50 percent? Is it 45? And whether or not the fees are truly increased? I guess that the -- it all amounts to money. And if there really is truly differences on -- do you understand the question?

A. No, I understand the question. It's --

Q.298 - I don't want to over-complicate things, but for me it is pretty simple. If there is 8 cents relating to an increase, there would be 12, 22 cents related to whether it is 35 or 45 percent?

A. Right.

Q.299 - It may be 80 percent. I don't know. If you are asking me if I am -- it is going to be 98 percent --

A. Sure.

Q.300 - -- of the time. And I mean, my personal usage. But other people may never, ever use their credit card. So we don't know if -- we are not truly comfortable with --

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A. Well I think that, you know, if it fair comment that there is uncertainty over the starting number, whether it is 30 percent or 25 or 20. And there is uncertainty over the current usage or the --

Q.301 - Difference --

A. -- yes, or the difference. I think the -- if I were to make I guess another recommendation on this, it would be that the Board would directly solicit from the companies information that could be entered as evidence, because this is the single largest drain on a retailer's margin of all the variables. This comes right off the top. And as -- it is also sensitive to price. So with even, you know, 35 percent usage, or even, you know, 20 percent usage, you are losing a third of a cent or you are losing 8/10ths of a cent depending.

When prices hit the 1.40, 1.50 range, many dealers, because -- particularly the smaller ones, are losing, you know, one and a half cents right off the top, assuming a 2 cent -- I am sorry, a 2 percent card fee.

So there are a lot -- as you point out a lot of variables that play. The difficulty of -- and it is not a difficult computation, you can break it down into the components. The trouble is that it is all four components that do drive the cost to the retailer. And picking one

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and assuming the other at zero, is less real I think than a number like 35 percent. I think you could accept that as probably a floor on average.

But my guess is that the number is higher than that. I shouldn't say my guess, my sense is that the number is higher than that.

MR. TONER: Thank you.

CHAIRMAN: Mr. Johnston, any questions?

VICE-CHAIRMAN: No, thank you.

CHAIRMAN: I just have one.

BY CHAIRMAN:

Q.302 - And I guess to a certain extent it flow from Mr.

Toner's questions. The evidence of credit card usage I think you talked yesterday about it being anecdotal to a certain extent. And so I assume you have been told that card usage is up.

And we did discuss yesterday the Cannon testimony where I believe the figure 40 percent was used, and it was a mixture of debit cards and credit cards.

Did you get a sense when you got this anecdotal information that some of that increased usage might have been debit cards as opposed to credit cards?

A. Yes, it became clear early on that when we asked about credit card use that the retailer wasn't always making

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2 that distinction. So we would after the first couple of
3 interviews made sure that we narrowed the focus and said
4 now we are talking just about credit cards here, not debit
5 cards, to try to isolate the credit card usage.

6 So I am -- you know, I am confident that the numbers
7 reflect the dealer's sense of credit card usage. But they
8 weren't looking at statements. They were trying to recall
9 transactions.

10 Q.303 - No, I understand that. What would the charge be on a
11 debit card? I understand it would be less than a credit
12 card but --

13 A. Yes, it is not a percentage. It is 8 to 10 cents per
14 transaction.

15 CHAIRMAN: Thank you very much. I have no further
16 questions. And I guess this time perhaps you are finished
17 with your testimony. So unless anyone can think of a good
18 reason to keep Mr. Gardner, I guess he is free to get in
19 his car and head home. Thank you.

20 WITNESS: Thank you.

21 (Recess - 10:25 a.m. to 10:49 a.m.)

22 pa CHAIRMAN: Mr. Ervin, would you like to call your witness?

23 MR. ERVIN: Mr. Chairman, could I just ask for a short five
24 to 10 minute recess?

25 CHAIRMAN: Why don't we make it 15. We will be back in 15

minutes.

(Recess - 10:25 a.m. to 10:49 a.m.)

CHAIRMAN: Are you ready to proceed, Mr. Ervin?

MR. ERVIN: Yes, Mr. Chairman.

CHAIRMAN: And I see we have the witness in the chair, so I will ask Ms. Desmond to come forward and swear the witness.

MICHAEL ERVIN, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ERVIN:

Q.1 - I will ask you to introduce yourself, Mr. Ervin, and give us a résumé of your professional background and description of your business, please?

A. Certainly. My name is Michael Ervin. I am the President of M.J. Ervin & Associates, which is a consulting firm that specializes in the downstream petroleum industry.

My background in the downstream petroleum industry dates back to the late 1970s. I worked for approximately 12 years in the oil industry, starting with a company, Gulf Canada. And in that capacity with that company I managed a network of home heat and bulk delivery agents in Northern Ontario representing approximately, roughly 40 different communities. And a network of about 12 home heat and bulk fuel marketing agents that were under my

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2 responsibility.

3 Within that job, within that capacity, I negotiated
4 their margins basically, their commissions that
5 effectively set the dividing line between the marketing
6 margin and -- or sorry, the marketer's margin and the
7 dealer's margin for home heating products.

8 I also worked as the Regional Administration Manager
9 with Gulf Canada for the province of Ontario for a number
10 of years with overall responsibility for the ongoing day-
11 to-day operations of the facilities and control for
12 marketing representatives in that province.

13 I also worked as the regional manager, area manager --
14 proper use of the title, in Atlantic Canada, responsible
15 for home heat and bulk fuels operations for the provinces
16 of New Brunswick, Nova Scotia, Prince Edward Island and
17 Newfoundland. There I was responsible for a network of
18 territory managers, who in turn were responsible for again
19 the network of bulk fuels and home heating agents in
20 Atlantic Canada. Again with responsibilities for overall
21 examination of their costs and the setting their
22 commissions, which again would have been tantamount to
23 their operating margins.

24 Subsequently, I moved to Calgary and worked with a
25 company called Turbo, which subsequently merged with Shell

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2 Canada. In that role I was responsible for all marketing
3 operations for southern Alberta, including bulk, retail
4 and car lot operations. And in that role, again we
5 managed those agencies and dealers with respect to
6 examining costs and setting commission rates. Again
7 tantamount to the dealer margin.

8 I left Turbo prior to the merger with Shell and after
9 a brief period of time working with a consulting company
10 called KPMG, I formed my own consulting business. And
11 from '91 till present, M.J. Ervin & Associates has been
12 the business unto which I have operated.

13 As a consultant in this industry, we have a great deal
14 of experience in matters that I think are relevant to --
15 and in particular on an ongoing basis we do pump price
16 analysis and pump price monitoring. We are the I think
17 the defacto official source of historical price data for
18 retail, as well as, wholesale prices in Canada with
19 historical data dating back actually decades. We provide
20 that information now in contract to the Government of
21 Canada, which they in turn use and make public for
22 basically improving the visibility and the transparency of
23 petroleum prices in Canada.

24 We also do a great deal of industry benchmarking. We
25 benchmark retail petroleum operations and have done so for

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2 approximately 18 years, taking in confidential operating
3 data from oil companies with respect to their retail
4 petroleum operations and providing them back with
5 benchmarks as to their performance and measures such as
6 volumetric efficiency, non-petroleum revenues, return on
7 capital and again, a myriad of different measurements
8 retailing to retail petroleum operations.

9 We have done a fair bit of work with respect to
10 regulatory analysis itself. We assisted the State of
11 Hawaii in basically navigating through a nascent
12 regulatory process that they introduced in that state,
13 basically a price cap and similarly in general an intent
14 to price caps in other provinces in Canada.

15 We have worked with a client in representing, as an
16 expert witness, the nature of competition and prices and
17 margins to the Quebec Regie de l'Energie. We have made a
18 number of representations on behalf of clients to various
19 hearings and informal inquiries, I guess, as to again the
20 nature of competition and prices in Canada.

21 And that's I think a good overview of the relevant
22 experience that we have in this industry.

23 MR. ERVIN: Thank you. And I guess at this point I would
24 ask the Board if Mr. Ervin could be declared as an expert
25 witness in the area of petroleum markets, petroleum

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2 industry pricing and market regulation?

3 CHAIRMAN: I will just canvass the parties to see if anybody
4 has any questions for Michael Ervin with respect to his
5 expertise or any objection to him being so qualified. Mr.
6 Gould?

7 MR. GOULD: I have no questions.

8 CHAIRMAN: Mr. Zed?

9 MR. ZED: No, we don't have any objection to him being
10 qualified.

11 CHAIRMAN: Thank you, Mr. Zed. Mr. Everett?

12 MR. EVERETT: No objection.

13 CHAIRMAN: Mr. Gaudet?

14 MR. GAUDET: No objection.

15 CHAIRMAN: Mr. Hunter?

16 MR. HUNTER: No objection.

17 CHAIRMAN: Mr. Hoyt?

18 MR. HOYT: No objection.

19 CHAIRMAN: Mr. Richard?

20 MR. RICHARD: No.

21 CHAIRMAN: Mr. Nicholson?

22 MR. NICHOLSON: No objections.

23 CHAIRMAN: Mr. Scholten?

24 MR. J. SCHOLTEN: No objection.

25 CHAIRMAN: Ms. Thorne-Dykstra?

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2 MS. THORNE-DYKSTRA: No objection.

3 CHAIRMAN: Mr. Roy?

4 MR. ROY: No objection.

5 CHAIRMAN: Mr. Wootton?

6 MR. WOOTTON: No objection.

7 CHAIRMAN: Ms. Desmond?

8 MS. DESMOND: No objection.

9 CHAIRMAN: Well I think we will declare you then as an
10 expert as described by your counsel. So we can proceed
11 with your direct examination.

12 MR. ERVIN: Thank you, Mr. Chairman. Just as a point of
13 record as well, I am appearing here on behalf of the
14 Department of Energy in my capacity as a Director of
15 petroleum, pipelines and natural gas. And not in the role
16 of a legal counsel. So just to verify that.

17 CHAIRMAN: I think you are stuck with that role right now
18 anyway.

19 MR. ERVIN: Yes.

20 Q.2 - So, Mr. Ervin, I just ask you to give us a summary, we
21 have your evidence, of course, filed before the Board now.
22 But if you could give me a -- give us a summary of your
23 evidence as it is filed starting with an explanation of
24 the nature and purpose and scope of your report?

25 A. Oh, certainly. We were asked by the Department of

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2 Energy to basically conduct an independent and impartial
3 evaluation of the Gardner Pinfold study. And in doing so
4 to arrive at any findings as to cost and revenues as a
5 basis for the report's margins, recommendations. And
6 basically examine the overall assumptions and data that
7 was used in arriving at the recommendations.

8 In my report, and I will state now, this report is
9 stressed that the purpose of the engagement is not to fix
10 any apparent deficiencies in the Gardner Pinfold report.
11 We did not conduct from the ground up review of the prices
12 in order to arrive at any -- or do it, I should say, in
13 order to arrive at any particular findings of our own.
14 And so the intent of our report is really to in effect do
15 a critique of the methodologies and point out any
16 deficiencies in that respect, as well as, highlight any
17 data deficiencies that might have existed.

18 And to carry on I guess with the overall summary or
19 the overview report of itself, in the report, first of
20 all, make some general observations with respect to the
21 methodology that seemed to re-appear through various
22 points in the Gardner Pinfold study. And one of the
23 aspects that we will refer to as we look into the actual
24 line-by-line items that were covered in the Gardner
25 Pinfold report is really a lack of reference to where

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2 sources of data came from, lack of clarify with respect
3 to, you know, date ranges of prices and sources of those
4 prices, which may in fact be legitimate, but certainly I
5 think would have been helpful for me, as well as, the
6 reader to basically provide some more clarity and
7 transparency to the methodologies used.

8 But it certainly became clear that part of the reason
9 why some of the sources were lacking was because they were
10 anecdotally derived and not I guess derived at in any kind
11 of systematic way.

12 In going through some of the aspects of the report
13 itself, one thing that became very clear to us wasn't
14 necessarily relating to what was there but what wasn't
15 there. And in particular the real lack of reference to
16 non-petroleum revenues as an important metric to factor
17 into the evaluation of subsequent margin recommendations
18 that the consultant might have made.

19 Non-petroleum revenues constitute a very, very
20 important part of the revenue base for retail operations
21 in particular, but to a lesser degree for home heating
22 operations as well. The Gardner Pinfold report states,
23 and I will quote from my report. This is a quote from the
24 Gardner Pinfold's report. "The marketing margin has to
25 cover the entire cost of doing business (wholesale and

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2 retail) including --" and then some more text and then we
3 pick it up by saying again, "outlet operations and
4 maintenance, wages, and salaries and profit." And in
5 effect the report that Gardner Pinfold submitted suggests
6 that there is no other source of revenue for retailers
7 except the sales from the pump. And this is a very
8 serious fact, because net revenues from petroleum sales,
9 in addition to revenues from non-petroleum sources in fact
10 are the two sources that constitute the base of their
11 needs from which petroleum market and dealer operating
12 costs and profits are met.

13 This is not an insignificant oversight, because in our
14 experience there is some benchmarking work we do, we are
15 very aware that non-petroleum revenues constitute a very,
16 very significant part of the revenue base for dealers.
17 And that in fact, as I said in my report, if non-petroleum
18 revenues were simply denied to dealers, that market
19 margins would have to increase by as much as 100 percent
20 or even more. That is the importance of non-petroleum
21 revenues in it.

22 Now if non-petroleum revenues were stable, in other
23 words they didn't change relative to the amount --
24 revenues coming from gasoline sales, then that may not be
25 a factor in looking at basically what their value is now

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2 compared to what their value was a year ago or two years
3 ago. But in fact there has been a steady growth in the
4 importance of non-petroleum revenues over time. Certainly
5 -- and that has been one of the factors, that has
6 contributed to a widely stagnation of marketing margins
7 across Canada over the last 15 years.

8 When we examined volume of sales as a factor, the
9 Gardner Pinfold report very correctly cited volumes as a
10 very relevant factor in considering margin requirements.
11 We certainly agree with that view in that average
12 throughput in any given market will basically have a
13 billing onto margins. So if the market has more
14 throughput, we will see generally speaking that market
15 displaying in an unrelated environment at least a lower
16 margin.

17 Toronto would be a good example of that where average
18 throughputs in that market are amongst the highest in
19 Canada, upwards in dealer to the order 6 or 7 millimeters
20 per year on average. And it is not surprising to see as
21 result historically the rack to retail margin in Toronto
22 being amongst the lowest in the country.

23 So there is a relationship between volume throughput
24 and margin.

25 So similarly if there is an increase in demand and no

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2 change in the number of outlets in New Brunswick, for
3 example, then that would suggest that average throughputs
4 have increased, and therefore, the margin requirement has
5 gone down in effect. I am speaking from a regulator's
6 point of view when I say it that way. What generally in
7 effect happens is that price comes down of course.

8 The Gardner Pinfold report suggested that basically
9 there was no change in volume of sales and therefore that
10 wasn't a factor to be considered. In fact the Gardner
11 Pinfold report stated that the volumes actually -- the
12 volumes had -- demand had gone -- had been declining since
13 2004. The more accurate description would be that these -
14 - the demand had declined in 2005, but had neither grown
15 or declined in the years 2006 and 2007.

16 When we look at the data for volumes and Stats Canada
17 for May 2008, using year to date numbers, in others words,
18 January to May, we actually determined that there was a
19 3.6 percent increase in demand. And therefore, assuming
20 that there was no increase in the number of dealers or no
21 decrease in the number of dealers, that would represent a
22 3.6 increase in throughput. Again, based on that
23 assumption.

24 If in fact some retail gasoline stations did close in
25 the time between 2006 and 2008, that would in fact had

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2 represented an increase in that 3.6 percent of average
3 throughputs. But of course, we are not sure what that
4 number is, but certainly at the very least our data -- not
5 our data, but Stats Canada data actually records an
6 increase in demand and therefore an increase in
7 throughput. Again, based on those assumptions of no
8 growth or decline in the number of stations.

9 We looked at the storage cost evaluation that Gardner
10 Pinfold had done and certainly amongst the many questions
11 we had and the factors that they used to come up with a
12 margin recommendation, we had a number of questions just
13 regarding the whole area of credit terms, whether they
14 were realistic to use or not. In the scheme of things
15 because from the -- one period to the other, they are not
16 suggesting that credit terms have shifted. In other
17 words, where they use 7-day terms in one period, they are
18 using 7-day terms in another, it doesn't necessarily
19 create a huge concern with respect to this impact on the
20 margin change. But what is of particular concern is the
21 price assumptions and price data that is used. And
22 anywhere that Gardner Pinfold has used prices as a factor,
23 we have some real concerns with.

24 One of the key concerns is again, it is not stated
25 clearly in his report what the source of those -- that

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2 data is. And it certainly has been made clear in the
3 course of yesterday and today but we still have a great
4 deal of questions as to -- concerns as to how that
5 methodology is being applied.

6 In the original report, for instance, on the matter of
7 the storage costs, Gardner Pinfold used a month of July
8 number -- a month -- the value, as opposed to a year-to-
9 date value. They have been -- corrected it since then, of
10 course, in the submission made today. But certainly based
11 on the original report by using the month price, as
12 opposed to a more -- a broader price range, you are
13 basically taking a snapshot of the price that may be
14 arbitrarily higher or lower depending on what market
15 conditions might have been at the time. And so we
16 certainly had concerns in general with that.

17 Vis-a-vis credit card costs, again price was a very,
18 very critical issue, the price being probably the single
19 most important factor in creating the outcome that
20 Gardner Pinfold did with respect to his recommendation.

21 In our examination of the original report, Gardner
22 Pinfold suggests a 36.9 cent per litre increase in price
23 in the time frame of 2006, he didn't state what period,
24 versus May 2008.

25 Our data using maybe year to date averages for each of

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those two years produces not a 36.9 cent per litre increase, but an 8.9 cent per litre increase. And I think that frankly -- the approach that we took, although it may not be music to the ears of dealers, is actually a more appropriate methodology simply because it is using a broader time range, and therefore taken out an awful lot of the peaks and valleys that can be associated with taking a too small snapshot of the price.

Vis-a-vis credit card usage rates, I don't have a whole lot to add to that, other than the observation that a 50 percent increase in the frequency of credit card usage between '06 and '08 really flies in the face of my reason I guess or my belief that that would actually occur. And it may be a true -- it may be a true representation of what's happened, it may not be, but certainly to allow anecdotal data for such a critical measure is unsound.

I don't have any particular issues with the credit card fee, other than again that it represents something that is -- has an anecdotal nature, and I guess is lacking in any kind of rigorous methodology.

With respect to minimum wage, the report states that the wages of all workers tend to rise with each adjustment in the minimum wage. I wish that would have happened -- I

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2 wish I had lived in New Brunswick at the time when the
3 minimum wages are increasing by 19 percent, although I
4 didn't earn minimum wage for many, many years, that
5 certainly flew in the face of reason to me as well.

6 Certainly if all wages in New Brunswick increased,
7 with an increase in the minimum wage, we would have seen
8 that in Stats. Canada data, particularly for the retail
9 sector. In response to a supplementary question, we
10 actually looked at that Stats Can data. We found that
11 increase in wages in the retail sector was not 19 percent
12 but I believe 3.6 percent. And that's a quote off the top
13 of my head that may not be entirely accurate, but I
14 believe that was the actual amount. I stand to be
15 corrected on that. But it was significantly less, of
16 course, than the assumption of 19 percent as an increase.

17 There is no doubt that many workers in retail gasoline
18 stations are paid minimum wage. And one can assume that
19 all dealers abided by the law and in fact post -- or pay
20 them at the regulated minimum wage. But the fact is that
21 many people working in the retail sector are paid higher
22 than minimum wage. And certainly in the home heating
23 sector, truck drivers, clerical staff, et cetera, are not
24 likely to be paid minimum wage because of their higher
25 skill levels. And therefore, would be more likely to

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2 experience the wage increases that are more in keeping
3 with what you would see in the province as a whole.

4 The use of 50 percent as the assumed portion of
5 operating costs, although it comes from Statistics Canada
6 data, is lacking in one very key attribute, and that is
7 the size of that entire cost to the pumping of gasoline.
8 And as I made clear that gas stations do more than pump
9 gas. They sell pop and chips and cigarettes and car
10 washes and other non-petroleum kinds of goods and
11 services. And so to attribute the entirety of the wage
12 portion of the dealers' operating costs simply to the
13 margin would have basically reducing that by some amount
14 recognizing the fact that non-petroleum operations are a
15 source -- or a factor in the operators' wage cost is again
16 not a sound approach.

17 We had a look at the distribution expense
18 recommendations that Gardner Pinfold made. We didn't take
19 particular exception to it, in that I felt that where a
20 dealer faces daily costs at a higher than the cap, 2 cents
21 per litre, that it makes imminent sense to actually have
22 the dealers not absorb the difference in their price, in
23 their margin. And that his recommendation that it be
24 moved from 2 to 3 cents would be reasonable given the fact
25 that the price margin impact would only be in the case of

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2 those outlets whose costs are above the previous 2 cent
3 per litre limit.

4 Gardner Pinfold with respect to a full service
5 charge in effect recommended that that aspect be dropped
6 entirely. And I know that's not necessarily within the
7 purvey of the Board to do, since you didn't provide an
8 alternate recommendation as to what it might be if the
9 Board basically didn't have the option of dropping it, we
10 didn't really have an particular analysis of that, but we
11 do support the proposal that it be dropped in fact and
12 that market conditions and competition would be the most
13 effective way to regulate that and without the need for
14 any kind of established cap.

15 With respect to the propane supplement that Gardner
16 Pinfold submitted, I agree with Michael Gardner that it is
17 one of the most opaque aspects of the petroleum industry
18 that exists. And as difficult as it was for the
19 establishment of good numbers on the retail and home
20 heating side, it would be inherently moreso in the case of
21 propane. Not with standing that certainly the analysis I
22 felt suffered from the same kinds of general deficiencies
23 that we saw in the main body of the report, but given the
24 recommendations having a relatively small effect on the
25 overall margin change, we didn't feel that it was

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2 unreasonable. In fact, you know, we supported the changes
3 however inaccurate they might be, their impact, the margin
4 of error of his recommendation would have a relatively
5 small impact on the outcome because the change is a very
6 small percentage of the propane margin.

7 Whereas in the case of dealer margins, the margin of
8 error has a much larger impact, because it represents a
9 much higher percentage of the established margin.

10 So that is an overview of my report.

11 Q.3 - Thank you, Mr. Ervin. And one other item in this
12 morning's testimony, there was an undertaking provided by
13 Mr. Gardner. And if you would refer to that if you have
14 it there, Table 4.2 and Revised Table 4.2. I wonder if
15 you could comment on the particular methodology there and
16 the scenarios as they are presented in that undertaking?

17 A. I will take Table 4.2 as an example, but certainly
18 what I am going to describe would apply equally to the
19 methodologies in the R2 Tables presented in exhibit 8.

20 Now first of all, the period of time to establish the
21 base gasoline price -- in other words, the prior period
22 gasoline price of 98.1 cents per litre, that's based -- I
23 can only assume that the numbers are accurately derived.
24 And I am not going to speak to that, but in terms of the
25 methodology, he uses a time frame of between July of

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2 1904 -- sorry, 2004 and June of 2006 to establish that
3 average pump price. A simple average of the months
4 involved.

5 Conversely, Mr. Gardner used a period of April to
6 August of 2008 to establish the upper range, the most
7 recent range of prices to establish the 128.4 cent per
8 litre gasoline price. This has two very serious
9 methodological flaws based on years of looking at pump
10 price data and trying to represent them fairly and
11 accurately to the public. By using basically a very long
12 time -- first of all, it is important to establish that in
13 the time frame from 2004 to 2008, I think everybody is
14 generally aware that pump prices were rising, rising as a
15 result of an increase -- a steady increase in crude oil
16 prices, but also fluctuating as a result of the volatility
17 in the crude price, but also a volatility in what in the
18 industry is referred to as a crack spread. And although
19 the crude price is fairly unpredictable, crack spreads are
20 relatively predictable as to their seasonality.

21 In other words, crack spreads tend to be highest in
22 the spring and summer. And they tend to fall back down in
23 the spring -- in the fall and winter. And those crack
24 spreads as they rise basically are passed onto to the
25 consumer in the form of higher New York spot prices, in

1
2 the form of higher rack prices and ultimately, of course,
3 in the form of higher pump prices.

4 So that's the nature of the volatility of crack
5 spreads and their relationship to pump prices, as well as,
6 the volatility of crude prices.

7 So Michael Gardner used a very long date range, I
8 guess about two years of data to arrive at that lower
9 range. And one has to ask themselves, in the climate of
10 rising pump prices by basically choosing a very wide date
11 range, that effectively brings down the average pump price
12 that is being presented.

13 If one was to shorten that range up to do
14 commensurate, let's say, with the range used of April to
15 August, my math is what, five months, I guess -- five, six
16 months, what would that do to the average price of 98.1
17 cents if you actually took a shorter range of dates to be
18 more commensurate with the latter range of dates? That of
19 course raised the pump price assuming that the pump prices
20 were generally rising and they were.

21 Conversely by using a narrow range of prices at the
22 top end culminating in August of '08, if one was to take a
23 longer range of data in a price rising environment what
24 would that do to the 128.4? It actually make that number
25 smaller, because you are using a broader range of data

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2 capturing prices that were lower obviously as you went
3 further back into time. And so that -- because a bias
4 that is unfairly introduced into analysis that Gardner
5 Pinfold made.

6 But equally and perhaps far more important than that
7 is the fact that by using an in synchronous range of dates
8 in one period versus another, you are establishing a bias
9 with respect to the seasonality of the crack spread.

10 And in the case of using April to August number, for
11 instance, this is a period of time where gasoline crack
12 spreads are usually the highest. Therefore, the pump
13 price is usually the highest. Whereas in the 07/04-
14 '06/'06 range, that's encompassing not just one season,
15 but two whole years of data. So that takes out a lot of
16 the peaks and valleys.

17 As it so happened in the period from April of '08 to
18 August of '08, crude oil prices were at their historic
19 highs. They peaked at around \$147 per barrel. And so
20 this certainly introduces probably the most kind of biased
21 upward point for petroleum prices as a result of that.
22 Again had the methodology employed a more similar date
23 range, then that would have certainly brought the average
24 down. But I guess to summarize it, it really appears to
25 me to be very selective in terms of doing so without any

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real understanding to my point of why that would be, other than Mr. Gardner's explanation of trying to represent the April to August number as a forward looking estimate. But of course, he is not presenting -- he is not saying that as a forward looking estimate. He is stating that as an historical value as opposed to something that he thinks is going to happen in the future.

So again my concerns with the methodology lies along two lines with respect to using -- taking averages from a long date range versus a narrow date range respectively. And as well as picking a date range in the upper end that really is representative of very highly volatile pump prices and the most high historically I guess that they have been as a result of historically high crude prices.

MR. ERVIN: Thank you. Those are all the questions I have, Mr. Chairman.

CHAIRMAN: Thank you. Cross examination. We will start with Mr. Gould?

MR. GOULD: I have no questions.

CHAIRMAN: Thank you, Mr. Gould. Mr. Zed?

MR. ZED: No questions.

CHAIRMAN: Thank you, Mr. Zed. Mr. Everett?

CROSS EXAMINATION BY MR. EVERETT:

Q.4 - I do have a question. Is there any proof that says that

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the labour costs that he submitted were including anything but labour costs that he attributed to fuel sales?

A. Well, you know, Mr. Gardner's submission of labour costs was based on Statistics Canada data. And so I can only assume, as I am sure Mr. Gardner would have, that they are accurately derived numbers. But again my concern with the number isn't the accuracy per se, but the fact that it then used that and applied it to the gasoline margin without discounting it due to the fact that labour costs are used to not sell gasoline exclusively but to sell gasoline, pop, chips, car washes, et cetera.

Q.5 - But that amount of sales that are predominantly gasoline based wouldn't the majority of labour costs be gasoline based or petroleum based?

A. Well, in fact in Calgary I know a gas station that is unmanned and so the labour costs there is zero. It also doesn't sell any pop or chips, because there is nobody there to sell it.

Q.6 - But the labour costs can't be zero, because somebody still has to handle the money at the end of the night, somebody still has to do the bookwork, somebody still has to order. There is still labour costs attributed, whether it be somebody working at the store or not. There is still a labour cost?

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A. Well at a regular gas station, you know, to give you my example, absolutely there are labour costs. But when those labour costs are devoted towards the pumping of gas, as well as, the selling of pop and chips and cigarettes, et cetera, so to take the labour costs and basically assign it just to the gasoline margin is unreasonable.

Q.7 - It is. But there is also -- you just can't just assign labour costs in selling gas to the gasoline margin. There has to be a labour cost of doing the paperwork involved in selling gas?

A. Oh absolutely, yes. I agree with.

Q.8 - And there has to be a loss of labour that's caused by selling gas from those other non-petroleum things that you are selling. Say a service bay, someone who is working in the service bay has to leave their work in a service bay to go and sell petroleum, would that not be a loss in the other direction?

A. Well, I wouldn't describe it as a loss. It's a factor. You know, there are labour costs associated with all of these things yes.

MR. EVERETT: That's it. Thanks.

CHAIRMAN: Mr. Hunter?

CROSS EXAMINATION BY MR. HUNTER:

Q.9 - Good morning. I guess what I am hearing is a discussion

1
2 on statistical analysis and how long we took and what
3 timelines were used and so on and so on. I tend to deal
4 in raw numbers. What was the price of gas on the 1st of
5 July in '06? And what's the price of gas in the 1st of
6 July in '08? Do we have those numbers?

7 A. They are numbers that are readily available, yes.

8 Q.10 - As a dealer, I can I guess inform you that there is a
9 significant increase in the price of gas from -- in that
10 two-year period. Therefore, if we look at the credit card
11 costs, there is a direct relation. So whether we say the
12 timeline isn't right and it should be pulled back or not,
13 the reality of a person running a gas station is that when
14 the price of gasoline went up a percentage, 50 percent or
15 30 or whatever, that that charge directly to the credit
16 card use. And I guess I also volunteer that without
17 having raw data, the amount of credit cards being used in
18 my station between '06 and '08 has significantly
19 increased. Things like incentives and air miles and so on
20 and so on that the credit card companies use in order to
21 entice people to use them has driven that increased use.
22 How they pay for them, that is there particular point.
23 But it is a fact of what we are dealing with. So I --
24 again I like to deal with some raw data.

25 Another sort of avenue is the rural retailer versus

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2 the urban retailer. The margins that the retailers get,
3 regardless of what has been stated, we need to match the
4 urban area or we don't have the volume. And your point
5 about having C-store sales and so on is all part of it,
6 but if we don't have the volume, because we can't match
7 the prices in the urban area, so we are forced to be at
8 the urban price or else we lose significant traffic
9 through our -- for our locations.

10 So I have a question. Under the Act it states that
11 notwithstanding the margins that were used that it can be
12 negotiated between the wholesaler and the retailer, the
13 split in the margins.

14 Do you have any information as to what in fact the
15 retailers are getting in relation to the split with the
16 wholesalers?

17 A. I don't have that. Again at the outset, I stated that
18 we were not engaged to conduct an analysis. I appreciate
19 that rural dealers have a difficult time, because they
20 generally have less volume but as you stated, they have to
21 price with the stations down the road in the larger
22 populated areas. And that is a result of the fact that
23 there is better highways today, vehicles can drive much
24 longer distances before having to gas up again. And so --
25 and people generally from rural areas will go at least

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occasionally to these bigger centres to shop for not only gasoline but other goods and services as well. And so the competition has to be there. And they don't -- rural dealers do not have the luxury of posting the higher price, because as you said they will lose volume, they will lose customers as a result of that.

There is not a whole lot of loyalty to a small town dealer if there is a 5 cent per litre difference in the price to be sure. But, no, I mean, we don't have specific data to break that out. I mean, that would really have to be the subject of a separate study that really is outside of the scope of what we were engaged to do I am afraid.

Q.11 - And this is my point is that if we allow a certain portion of -- market system in the regulated system, what it ends up doing in the rural area is that the major suppliers just simply refuse to deliver. And that's what we are faced with in that rural area. And I will be making a presentation that sort of follows along that line, but the point is if we cannot get the margin, it becomes more and more difficult to continue to stay in business and therefore the distance that people have to drive, not everybody drives to the city for work or for that, but the distance that they have to drive simply to accommodate the work that they do in the rural area were

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2 lost -- will be increased because the rural supplier can
3 no longer continue to provide that service. Thank you.

4 CHAIRMAN: Thank you, Mr. Hunter. Mr. Hoyt?

5 CROSS EXAMINATION BY MR. HOYT:

6 Q.12 - So, Mr. Ervin, you heard Mr. Gardner explain that the
7 Board requested proposals for preparing a report that
8 would form the basis for this hearing yesterday, correct?

9 A. That's right. Yes.

10 Q.13 - And was M.J. Ervin asked to participate in that
11 process?

12 A. We were asked to participate and we did submit a
13 proposal, yes.

14 Q.14 - And I assume from that that you were unsuccessful?

15 A. Evidently.

16 Q.15 - So how did M.J. Ervin come to prepare a report for the
17 Department of Energy?

18 A. Well I was contacted by the Department of Energy, and
19 specifically, Patrick Ervin to do that study.

20 Q.16 - And when was M.J. Ervin retained by the Department of
21 Energy?

22 A. I can't state exactly the date but it was, you know,
23 roughly four to six weeks ago.

24 Q.17 - And can you describe the process that you undertook to
25 prepare your report?

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A. Well the process obviously consisted of reading the Gardner Pinfold report. And basically conducting an analysis of that based on our experience and based on other data that we have available to us in a nutshell.

Q.18 - And in your opening comments I think what you said was you didn't conduct a ground up review, is that correct?

A. We didn't attempt to replicate the Gardner Pinfold study using some alternative methodology. That would have been really the object of a much broader and more comprehensive study. It wasn't our goal to compete with Gardner Pinfold. Simply to analyze their methodologies.

Q.19 - So which of the intervenors in this proceeding did M.J. Ervin consult specifically for the purposes of preparing your report?

A. Solely with Department of Energy.

Q.20 - So none of the other intervenors?

A. That's correct.

Q.21 - And obviously then you didn't talk to Irving Oil, for example?

A. Well, I talk to Irving Oil a great deal but not in the capacity of this study, no.

Q.22 - And as part of your report -- then you didn't propose a lot of actual cost increase are justified in your report, correct?

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A. Certainly not. And I will say it again, our mandate was not to fix any apparent deficiencies in the Gardner Pinfold report.

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Q.23 - And in doing your critique you didn't speak to any of the intervenors to see if Gardner Pinfold had gotten anything wrong in terms of the information that it had produced in its report?

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A. No, I did not.

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Q.24 - And just so I am clear, you are not saying the

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information that Gardner Pinfold aggregated in its report is not the information that Michael Gardner obtained from New Brunswick wholesalers and retailers?

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A. I am not questioning his integrity at all, no, none whatsoever.

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Q.25 - And could you confirm that Gardner Pinfold has not recommended any increase in the wholesalers margin for either motor fuel or heating fuel due to an increase in wages?

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A. Evidently that is what his report shows, it says no proposed increase on the wholesaler side, correct.

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Q.26 - And you wouldn't dispute that the minimum wage in New Brunswick has in fact increased 19 percent from '06, '08, would you?

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A. I wouldn't dispute that, no.

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2 Q.27 - In your report again along the wages line, you
3 suggested the use of 50 percent and then I guess 40
4 percent for -- heating fuel is the assumed portion of
5 operating costs attributed to wages was clearly anecdotal?

6 A. I will admit that might have been a bad choice of
7 words, but certainly the use of 50 percent is inaccurate
8 in that, that is taking the entirety of the wage and
9 attributing it simply to the sale of gasoline and not to
10 the sale of other products at a retail outlet.

11 Q.28 - But the source as indicated by Mr. Gardner was Stats
12 Canada information?

13 A. That's right. And my use of the word anecdotal was
14 not a good one.

15 Q.29 - In your view how often should the maximum margin in
16 delivery costs under the petroleum products legislation be
17 reviewed?

18 A. I wasn't called upon to do that but if the Board gives
19 me leave I can suppose that on an annual basis it would be
20 appropriate, yes.

21 Q.30 - And along the lines of what we asked Mr. Gardner
22 yesterday, I mean, would you see it as possible to develop
23 a fairly transparent formula to recognize increasing
24 costs?

25 A. I think it is possible. In fact it is absolutely

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2 necessary I think to do so if one is to regularly evaluate
3 the margin requirement, yes.

4 MR. HOYT: Thank you, Mr. Ervin. Those are all our
5 questions.

6 CHAIRMAN: Thank you, Mr. Hoyt. Mr. Richard?

7 MR. RICHARD: No question.

8 CHAIRMAN: Thank you. Mr. Nicholson?

9 CROSS EXAMINATION BY MR. NICHOLSON:

10 Q.31 - Mr. Ervin, as a small independent branded retailer, I
11 take a little bit of exception to the fact that you speak
12 of incremental dollars be they C-store dollars or whatever
13 should maybe take the bite off of gasoline margin.

14 My problem is when you have a million and a half
15 dollars that you just hand from one hand to the other
16 hand, something has to be put in place so that a small
17 business owner isn't necessarily just working for the
18 larger oil companies. So I don't really feel that my C-
19 store sales should subsidize my gasoline sales, because
20 when you take into effect the costs of doing business, the
21 environmental costs, the financial costs, the licencing
22 costs, I am not sure that you are totally accurate in the
23 way that you are portraying this.

24 Gasoline sales should stand on their own. So if you
25 don't think 50 percent of the margin, do you have a number

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in your head that says how much you feel would be a fair number? And if so, I would like to hear it?

A. Well I think it is fair to say that if -- regardless of the size of your operation that that revenue was simply brought to zero, that there would be a need in an unregulated environment if you could to increase your gasoline price in order to re-establish a higher margin in order to basically make up for the lost revenue from C-store. So it is pretty irrefutable that non-petroleum revenues, along with petroleum revenues together have an impact on the margin.

In fact, you know, over the last 15 years, we have seen a very stagnant gasoline margin right across Canada, really attributable to a number of things, but not the least of which is the steady growth in C-store infrastructure and C-store revenues that have basically, sorry to say, you know, subsidized the margin. Maybe it shouldn't, but it does.

It's certainly a factor in having the margin remain stagnant over the last 15 years, along with other factors, such as the influx of high throughput players, such as the big box marketers, particularly in regions like western Canada.

I don't have a number, because the number would vary

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2 by station. Some stations have relatively low
3 contribution from non-petroleum sales. Whereas others
4 non-petroleum sales actually constitute the majority of
5 the net revenues. So the range is all over the map. And
6 so there is not one number that one can arrive at, but I
7 do acknowledge that in the case of small rural operators
8 in particular that suffer from both the low volumes, as
9 well as relatively low non-petroleum sales, and the two
10 generally go hand in hand, that it's a drama, in that --
11 that yes, at the low -- at the low range of throughputs,
12 you know, there is a commensurate lack of non-petroleum
13 revenues as well. But even at those stations, they are
14 vital to the sustainability of those operations.

15 CHAIRMAN: Any further questions? Mr. Scholten?

16 CROSS EXAMINATION BY MR. J. SCHOLTEN:

17 Q.32 - Yes. I guess the first question I would have would be
18 your -- you had addressed the minimum wage portion of the
19 Gardner Pinfold.

20 In your, I guess response to that report, you have
21 used the number that increase in New Brunswick from 2006
22 to 2008 is likely to be more in the order of 10 percent.
23 What number does that represent? Is that total wages and
24 salaries for New Brunswick or what does that number
25 represent?

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A. Well the 10 percent we used was basically a broad unsubstantiated guess as to what the increase might have been.

In the response to a specific question on that, we actually did get Statistics Canada data that showed -- and I don't have that in front of me unfortunately -- that the actual wage rate increase in the retail sector in New Brunswick -- and I am just going to be handed that document now, thank you -- was not 19 percent but in fact 3.6 percent.

Q.33 - So how would you make the assessment from 3.6? I guess Mr. Gardner's suggestion was 19. Statistics Canada is 3.6. And the 10 percent is?

A. Well I simply surmised in my report that it was probably -- I think my words were less than 10 percent.

Q.34 - And those numbers -- where that number would come from?

A. An educated guess following, you know, overall inflation rates and my general appreciation of what -- with what wage increases are likely to go to from year to year.

Q.35 - At the same time I guess Mr. Gardner has suggested or cautioned I guess the suggestion of using those more global numbers than for the gasoline industry itself, as opposed to the total retail to the gasoline industry.

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Do you have any numbers that would I guess bring us back down to the gasoline industry itself in terms of where the wages come from?

I guess what I am getting at I guess is your suggestion that minimum wage increases -- your suggestion I guess is that it wouldn't affect as much as Mr. Gardner had suggested?

A. Correct. It wouldn't affect him as much Mr. Gardner suggests, because not everybody working within the retail margin is paid minimum wage. The store owner I doubt is. The study that he did relates strictly to the retail part of the margin, of course. It makes no reference to what wages might have increased in the wholesale sector.

But, you know, clearly the right value is something less than 19 percent the minute that you acknowledge the fact that there is at least one person at a station and pretty much every station that earns something in excess of the minimum wage.

Q.36 - Do you have any numbers on the suggestions as to what percentage within that industry? Is that minimum wage?

A. Well again --

Q.37 - Or close to?

A. -- because we were not asked to derive alternate numbers or fix any apparent deficiencies in the report,

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2 no, the answer is we don't have specific numbers. Other
3 than again, the Statistics Canada data that refers to the
4 retail sector in New Brunswick, admittedly that
5 encompasses not only gasoline operations but others as
6 well. And there may be some differences that certainly
7 anybody familiar with the retail sector would know. Many
8 of them -- many people who work in the retail sector at
9 the entry level are in fact paid minimum wage. And yet
10 this 3.6 percent, which I assumed also, you know, reflects
11 the fact that the wage did increase. The minimum wage did
12 increase 19 percent also reflects the fact that within the
13 retail sector, there are people who are paid more than
14 minimum wage and whose wage rates did not increase by 19
15 percent.

16 Q.38 - Right. I guess you made the suggestion as well -- I
17 guess the question was posed and you had responded that in
18 your professional opinion, I guess the suggestion would be
19 that a review on an annual basis would probably be in
20 order I guess, is that a fair estimate?

21 A. Yes, that's what I said. And I certainly maintain
22 that belief, yes.

23 Q.39 - Generally speaking pricing is on the incline, as
24 opposed to a decline?

25 A. Well certainly not currently. But, you know, over --

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2 Q.40 - Generally?

3 A. -- over a broad period of time we have seen prices
4 increase significantly, absolutely. And so I think that
5 is one of the reasons why one has to do a regular
6 evaluation of the costs and revenues associated with the
7 margin that is revenued.

8 Q.41 - And in that line of thinking I guess would it be fair
9 to say then that even on a review or an annual review
10 basis, would always be playing a game of catch up, trying
11 to catch up to where those expenses or where those margins
12 or cost increases are coming from?

13 A. Well certainly over the course of the last five or six
14 years that would have been the case. I don't want to get
15 into projections of what I feel prices to be, but it kind
16 of begs the question and I feel that certainly in the next
17 year or two -- and this is not a belief shared only by
18 myself, that in the next year or two prices may very well
19 be on the decline.

20 But either up or down, it is going to be a game of
21 catch up absolutely. I guess as a possible methodology,
22 therefore, one might have to engage somebody to actually
23 project what the prices might be in order to feed into
24 whatever future formula may exist. But for now I think --
25 I believe the mandate was to basically do a retrospective.

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And that basically is what I am evaluating the Gardner Pinfold report on the basis of what he had presented and nowhere in his report did he present any of the price numbers including today's undertaking as a projection of prices he states in his previous prices.

Curiously when he talks about them, he represents them as perhaps a value that is commensurate with what lies in the future. But again he doesn't state that in his undertaking.

Q.42 - I guess that in the same I guess line of thinking, however -- and I guess you can answer this that it would be fair to say, however, that costs I guess would continue to increase despite the retail pricing?

A. Well -- but again in view of what may be a prolonged soft economy both in Canada and the United States, that may change, too. But nevertheless it is absolutely essential that it be evaluated for whatever it is from time to time, and again on an annual basis I feel it would be appropriate.

Q.43 - So what expenses would you -- or costs would you expect that may be going down in the near future?

A. Well delivery costs would be an example if fuel prices continue to decrease as they have been for one example .

Q.44 - I guess that being a function of that pricing end of

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2 the argument or calculation in terms of other costs, in
3 terms of credit card fess, in terms of wage expenses and
4 the like?

5 A. Well if gasoline prices go down, then credit card fees
6 will also decline because, of course, they are a
7 percentage of the pump price.

8 Q.45 - Thank you. Just a couple more questions, Mr. Ervin, if
9 you don't mind?

10 A. Certainly.

11 Q.46 - In your report you suggest that it is serious error of
12 fact to not include the non-petroleum revenues. To help
13 the Board, I guess in quantifying that effect, what
14 guidance can you give them to effect their decision?

15 A. Well, you know, I could certainly do that in general
16 terms. In the benchmarking work that we have done for
17 almost 20 years, It's become very evident to us that non-
18 petroleum revenues are a significant part of the operating
19 base of dealers. And again based on benchmarking data to,
20 you know, give you an idea that there are not a small
21 number of -- out of -- whose net revenues from non-
22 petroleum sales actually are sufficient to cover the
23 entire operating costs of some outlets. And I don't say
24 that's the norm by any means, I am just stating that would
25 represent at least the upper range. And they are

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2 portrayed a significance of that be included as a factor,
3 which it wasn't in the Gardner Pinfold report.

4 Q.47 - As well the addition of ancillary services to petroleum
5 stations, could that not arguably be suggested that that
6 could be its own separate business entity of which the
7 costs and value and return must satisfy its own demands
8 and --

9 A. Well, you could. If you were to a margin analysis
10 under a regulatory regime, if you wanted to adopt an
11 approach by which you parsed out wages and attributed some
12 wages to the non-petroleum side of the business and some
13 wages to the petroleum side of the business, parsed out
14 the lights, parsed out the credit card costs, et cetera,
15 that would be done.

16 I think that is an approach that Gardner Pinfold
17 didn't take. I think it is probably a cumbersome approach
18 if one has to basically decide amongst -- between doing it
19 that way versus basically simply acknowledging that
20 revenue has come in from non-petroleum and don't try to
21 parse it out I think would be the preferable way. But
22 there are options there and what you described is
23 certainly one of them. But of course, you would have to -
24 - you would have to somehow separate the wages. And of
25 course, when somebody goes into work at a gas station,

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2 they don't just go to work selling pop and chips. They
3 attend to whatever has to be done that day at that
4 station, be it non-petroleum or petroleum related.

5 Q.48 - I think that there is no question that there is
6 possible economies of scale adding services to a gas
7 station. So is it your suggestion that if a retail
8 operation is not satisfied with the margin they are making
9 at the pump that they should add a car wash, or a Tim
10 Hortons, or a convenience store or restaurant, whatever
11 business decisions they may choose to undertake?

12 A. Well I think that is in fact what we have seen over
13 the last 15 years. You know, we have seen oil companies
14 invest heavily in non-petroleum infrastructure because
15 frankly the margins there are better. And there is less
16 price sensitivity.

17 In other words, you know, people shop for the price of
18 gasoline at 60 kilometers an hour, but they will happily
19 go in and buy one of these for whatever price is on a
20 sticker without going next door to see what a competitive
21 price is, one of these being a bottle of water. So
22 certainly the industry has done that. In view of the fact
23 that margins have been stagnant, that has been the
24 recourse of the industry in general.

25 I will admit that some dealers that are in position of

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having low volumes and the low margins to boot would find it difficult maybe to raise the capital in order to basically do that.

But the fact of the matter is that is -- has been the response in recognition of the fact that non-petroleum revenues are not only an essential but a growing proportion of the total pie of revenue at a gas station.

MR. J. SCHOLTEN: Thank you.

CHAIRMAN: Ms. Thorne-Dykstra?

MS. THORNE-DYKSTRA: No questions, thank you.

CHAIRMAN: Thank you. Mr. Roy?

MR. ROY: No questions.

CHAIRMAN: Mr. Wootton?

CROSS EXAMINATION BY MR. WOOTTON:

Q.49 - I have a few questions. Mr. Ervin, a fair substantial amount of the expertise that you bring to the table is a direct result of the benchmarking work that you do for the petroleum sector, is that fair to say?

A. A portion of it is, yes.

Q.50 - And that benchmarking work who is that completed on behalf of, if we were to break the industry into say a few categories, major oil, integrated refiners, regional integrated refiners, wholesalers and retail independently owned stations. If you go into those four categories --

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2 what percentage of your fees and benchmarking work would
3 relate to one of those four categories?

4 A. I can tell you who my benchmarking clients are
5 specifically and maybe that will answer your question.
6 First of all, they are all marketers. We don't benchmark
7 individual dealer operations. That is not the nature of
8 the benchmarking we do. And those clients are Petro-
9 Canada, Imperial Oil, Shell, Chevron, Husky, Canadian Tire
10 Petroleum, Irving Oil and Ultramar. I believe that's all
11 of them.

12 Q.51 - So it would be fair to say that the benchmarking data
13 is driven -- is derived directly from information provided
14 by the major oil companies?

15 A. How you define major oil companies I guess may be
16 different from mine, but certainly we are talking about
17 regionals as well and Canadian Tire Petroleum being one of
18 them, of course, being an independent, as defined by Ms.
19 Savage yesterday.

20 Q.52 - A fairly large one. So with the benchmarking data two
21 really questions in regards to the benchmarking data. One
22 is -- is one of the components to that benchmarking data
23 credit card costs?

24 A. No, we don't break that down to that level, no.

25 Q.53 - No. So you don't get any information from these

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various companies that would provide you any indication of one of their cost functions --

A. Not as a specific measure, our benchmarking does not capture that single metric, no.

Q.54 - Does it capture haulage?

A. Yes.

Q.55 - So you have got a fair bit of benchmarking data that you can rely on as it relates to haulage costs and things of that nature?

A. Correct.

Q.56 - Since the advent of the legislation, are you aware of any increases in the cost of credit card processing either specifically related to the petroleum industry or the Canadian market at large?

A. I am aware of -- could you --

Q.57 - I am specifically asking about credit card increases?

In other words, the charges that Visa or Mastercard would charge to businesses, are you aware of it increasing since the advent of legislation or decreasing or it has stayed the same?

A. Well I am very aware that -- I guess as not in the sense that I have any numbers, but certainly knowing how credit card charges are levied, I am very aware that up until July of 2008, that there was a general upward trend

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in those costs on the part of dealers simply by virtue of the fact that those levies are made on the pump price, which up until July at least have been steadily increasing for sometime.

Q.58 - My question is not as it relates to volume at all, I am asking more the general percentage increase. If today say -- excuse me, if at the advent of legislation, the cost of credit card processing was 1.6 percent, from then to now would you -- do you have any knowledge that would say that number of 1.6 -- not suggesting that is the number, but just as a number of reference -- has the percentage number increased, decreased or remained the same since the advent with legislation?

A. Well to put it simply, we don't track that metric and so I can't really answer your question.

Q.59 - Would you estimate that the difference in the pump price at the advent of the legislation versus today is higher or lower?

A. I would have to look to see. I think a fair guess would be that it is higher.

Q.60 - We would agree that the cost of product increased since the advent of legislation?

A. In all likelihood again that is really subject to my looking at the numbers, because certainly we have seen

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2 a -- and we are seeing a climb in those prices now. But
3 if you are looking at today versus the advent of
4 legislation, probably, but again I wouldn't be prepared to
5 say categorically that's the case, no.

6 Q.61 - I want to talk a little bit about haulage. Based on
7 the increases in diesel costs, which has now become the
8 significant part of the overall haulage calculation to
9 bring product to market, diesel costs has certainly
10 increased since the advent of legislation, would you agree
11 with that?

12 A. I expect so, yes.

13 Q.62 - You didn't -- if you did I missed it, but I was
14 wondering did you have any comment in regards to Mr.
15 Gardner's recommendation in his report as it relates to
16 increasing the maximum allowable delivery charge from 2
17 cents to 3 cents?

18 A. I concurred with his recommendation.

19 Q.63 - The Stats Can data that we have talked a bit about, and
20 there were -- I am referring specifically to the sheets
21 that we have been referencing that talk to wages and
22 things of that nature, I am not familiar specifically with
23 these reports, you may have more familiarity than I. But
24 nowhere on here do I see any reference to the word,
25 convenience store, convenience store sales, convenience

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store revenues. Is it an assumption that we are making that this data actually includes the gas station with a convenience store or does Stats Canada actually separate the convenience store report, those convenience store numbers on a different set of data, which would also include wages?

A. No, these wages are for the retail sector and they do include gas stations. And the data don't cut out or exclude one portion of one aspect of the gas station versus the other. In fact it would be impossible for them to do so.

Q.64 - So we understand that the definition of the way that Stats Can collect this data is that it is for gas stations where have a convenience store, a car wash, whatever, is that fair?

A. Well if it is collected on all retail operations. You know, I can't recite chapter and verse the Stats Can methodology, but it is in its intent and in its practice I assume capturing all retail operations in New Brunswick in order to come up with these wage numbers.

MR. WOOTTON: That's all of my questions. Thank you.

CHAIRMAN: Thank you, Mr. Wootton. Ms. Desmond, how long do you think your questioning would be?

MS. DESMOND: I guess about a half an hour, Mr. Chair.

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2 CHAIRMAN: I think based on that estimate then that we will
3 take a break for lunch and come back at 1:15.

4 (Recess - 12:05 p.m. to 1:15 p.m.)

5 CHAIRMAN: Ms. Desmond, are you ready to proceed with your
6 cross examination at this time?

7 MS. DESMOND: Yes, Mr. Chair.

8 CROSS EXAMINATION BY MS. DESMOND:

9 Q.65 - Mr. Gardner, our first question is with respect to page
10 6 of your report. Mr. Ervin, sorry. Page 6 of your
11 report. And you may recall that the EUB had posed a
12 couple of IRs in relation to some of the material in your
13 document. And in particular IR-1, you might want to pull
14 that out as well.

15 And in the table, sir, I understand you used market
16 prices and not the maximum prices that would have set by
17 the Board, is that correct?

18 A. Number 1, the prices that we used in Table 1 were
19 derived from the M.J. & Associates actual pump price
20 surveys that we do.

21 Q.66 - Would a minimum have been maybe preferable to use the
22 maximum prices that the Board posts on a weekly basis?
23 And in that retailers that aren't charging less of a
24 maximum aren't getting less of a margin and that's maybe
25 by choice as opposed to -- you know, I guess there is

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options around that, and perhaps even posted price would be more reflective of the response --

A. Well, no, I think that using the actual prices would be more reflective of actual revenues derived by the dealers as opposed to the established price, if I understand your question correctly.

Q.67 - Yes, I guess when we talk about the margins -- and the purpose of this hearing, of course, is to set the margins. If you don't use the maximum posted price, there is a lot of judgment and flexibility and a lot of factors that might go into why a retailer doesn't charge that maximum.

And maybe using the maximum posted price is non-reflective in a truer, consistent approach to the data that should be used?

A. I don't believe so. Again just to put this in context, the IR with respect -- was with respect to credit costs and using price as the determinant of the historical basis for the charges and credit costs incurred by dealers and charged by credit card companies are a percentage of the price charged not the regulated priced, therefore by using the actual prices according to your survey -- and our survey, of course, is simply a sampling of them, but we believe to be an accurate one -- that is most reflective of the actual costs incurred by the dealers.

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2 Q.68 - Earlier in your direct testimony you referenced what is
3 called the crack spread?

4 A. Yes.

5 Q.69 - Could you maybe give a explanation to the Board as to
6 what the means or what that includes?

7 A. Well the crack spread is a more industry used term for
8 what in effect is the refiner margin. So the difference
9 between the cost of crude feed stock, and at the lower end
10 of the margin, and the revenue derived from the sale of
11 the refined product at the upper end. So the difference
12 between those two would be crack spread.

13 Refiner margin is more of a layman's term, and
14 frankly, more of a simpler calculated value in that
15 typically a refiner margin uses the rack price as the
16 nominal upper end of the margin and uses a benchmark crude
17 price. Often in this region crude as the lower end of
18 that margin calculation. But the two are almost
19 synonymous.

20 The difference, crack spread generally referring for a
21 refiner's point of view, to the actual price they derive,
22 which would not be the actual rack price, because products
23 are sold at other than rack prices normally. And at the
24 lower end, they would use the actual crude feed stock, as
25 opposed to a reference crude feed stock. But for simple

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purposes the two are somewhat synonymous.

Q.70 - Our next question relates to the two documents we circulated yesterday. The results, financial results for the small business profiles for gasoline stations. I don't know if you have those in front of you or not?

A. Which exhibit would that have been?

CHAIRMAN: I don't believe they were given an exhibit number.

MS. DESMOND: It was the Statistics Canada report. And perhaps, Mr. Chair, I would ask that they be marked as an exhibit at this time because I believe based on -- mark it for identification because I am going to refer to it frequently throughout the hearing.

CHAIRMAN: I think we can give it an exhibit number. I guess in the box at the top where it says "Report Criteria", one of them has the number 4121.

And I believe the next exhibit is number 9, Madam Secretary?

MS. LEGERE: The next one is 9.

CHAIRMAN: So exhibit 9 will be the document that has the number 4121 on it. And then exhibit 10, will be the document that has the number 4471 on it.

So exhibit number 10 would be the gasoline stations. And exhibit 9 is the petroleum product wholesalers.

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Q.71 - So I am looking specifically at document number 10, exhibit 10?

A. Yes.

Q.72 - And I am interested -- Mr. Gardner said yesterday that this document reflects both petroleum and non-petroleum sales?

A. I don't recall what he said but I would expect that it would reflect both petroleum and non-petroleum sales with respect to both revenues and costs.

Q.73 - And if we look at sort of the analysis here, it did suggest that about 50 percent of the businesses are not profitable, including those petroleum and non-petroleum sales, assuming that it does in fact reflect those?

A. According to this handout, yes.

Q.74 - And I guess my question is is if you take out the petroleum sales, isn't there -- a greater number of retailers are going to have less success, maybe the percentage of businesses that aren't profitable is likely to increase?

A. Well if you remove the revenue from petroleum sales --

Q.75 - Not petroleum sales, the non-petroleum sales?

A. Sorry. The non-petroleum sales, if you remove the revenue from non-petroleum sales then, yes, using a greater number of dealers would move from a position of

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2 profitability or sustainability to that of non-
3 profitability or non-sustainability, yes.

4 Q.76 - And I think that Mr. Gardner suggested that non-
5 petroleum revenue didn't have as great an impact as
6 perhaps your report might suggest. Do you still agree
7 with that view, recognizing that by removing the non-
8 petroleum sales a greater number of retailers are likely
9 to perhaps -- the result might be that a greater number of
10 retailers are not profitable?

11 A. Well certainly by removing non-petroleum sales, its
12 effect on increasing the number of unviable outlets, and I
13 would say increase the number to a very high percentage of
14 dealers, really lends credence to my view that petroleum
15 and non-petroleum revenues are both critical to the
16 sustainability of retail gasoline operations.

17 Q.77 - If I can just refer you to Table 4.2 that we have
18 talked a lot about and are now relying -- there has been
19 some revisions to that table, as a result of an
20 undertaking.

21 But having looked both the original of Table 4.2 and
22 now the changes that have been made, I just want to get
23 your opinion as to how significant the credit card charges
24 are on the overall dealer margins?

25 A. Well I believe in general that credit card charges

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2 are, you know, an important factor in the dealer margins.
3 I don't dispute that. And given that they are subject --
4 those charges in terms of dollar costs vary greatly as
5 pump prices go up or down is a source of a problem for
6 dealers who would I am sure like anybody prefer to operate
7 on more of a predictable basis in terms of what their cost
8 base is.

9 Q.78 - And recognizing that -- and there will be some
10 difficulty with the methodology that was used by Mr.
11 Gardner. At the end of the day his recommendation of 8.5
12 or .6 cents per litre increase, is that a reasonable
13 reflection of the impact of credit card fees on a dealer's
14 margin?

15 A. Well the .53 is not an absolute value. The .53 is
16 meant to reflect a change from what is assumed to be a
17 fair margin incorporating all of the costs, including
18 credit card costs at the time and what the change is today
19 or in the -- you know, the review period.

20 So it is difficult to answer in terms of your
21 question, because your question is posed as if the .53 is
22 an absolute value. In fact, you know, the credit card
23 costs have changed as a result of the change in prices.
24 And I don't dispute the need to review that, but what has
25 to be done is come up with a solid basis of what the

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2 factors are. The price being probably being the single
3 most important factor to try to achieve some clarity and
4 consistency on. And credit card usage and changes thereof
5 being the second most important one.

6 MS. DESMOND: Thank you, Mr. Ervin. Those are all my
7 questions.

8 CHAIRMAN: Thank you, Ms. Desmond. Questions from the
9 Board?

10 MR. RADFORD: Mr. Chairman, just more questions for
11 clarification.

12 BY MR. RADFORD:

13 Q.79 - Mr. Hoyt made reference to you having made an offer to
14 do the report here, which Mr. Gardner did. If you had
15 done it would you have approached it differently?

16 A. Yes, I would have. I can't state exactly how my
17 proposal was worded, but in short it suggested a different
18 methodology. And it did specifically address the likely
19 difficulty in getting good reliable data from the sector.
20 And that observation on my part was a key driver towards
21 taking a different approach.

22 And again I really am not able at this time to
23 elucidate on that with any degree of clarity other than to
24 say, yes, it was a different methodology and in particular
25 my proposal did recognize the inherent difficulties in

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getting data in a study of that nature from -- you know, from the industry.

Q.80 - I noticed in your background that you were in this business for about 28 years?

A. Correct.

Q.81 - And I think you started off with Gulf. Back in those days, Gulf, Texaco, Irving, Imperial, Shell, and Petrofina were all trying to put a gas station on every corner to the point that some of the municipalities had to put moratoriums on them or even put in their by-laws to make it very difficult to get the zoning.

What was the basic change from then to today?

A. Up until about the year 1990, the commonly evolved industry view, projection, in fact the view of government bureaucrats who had an interest in following this industry, pretty much surmised that there would be an ongoing increase in demand. I shouldn't say up until 1990. I should say up until about 1978, '79.

So when I started with Gulf there was -- yes, in many cases, four stations on some corners in some large cities.

What had happened to bring essentially a see change in demand at that time was the Arab oil embargo. And at that time there was -- a report following that was a huge shift away from larger cars, there were speed limits set in the

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2 United States. EPA standards for fuel consumption for
3 cars.

4 All of these kinds of consequences of the Arab oil
5 embargo set in motion a chain of events that basically
6 brought down demand significantly from then until about
7 1990, which resulted in the closure of over half of the
8 refineries in the country, in Canada. And roughly the
9 same number, the same proportionate of refineries in the
10 United States as well.

11 From 1990 onwards, we began to see an increase in
12 demand for gasoline and other petroleum products as a
13 result of a strong economy, but in my view as a result of
14 an increase in consumption of gasoline predicated on
15 consumer preferences starting to lean towards SUVs and
16 mini-vans and pick-up trucks.

17 So, you know, that I think is the general history of
18 gasoline demand and the results that really shaped that --
19 those demand patterns.

20 Q.82 - Thank you on that one. Now on Mr. Nicholson's
21 question, when he -- from what I understand he has pumps,
22 plus a convenience store.

23 You say that you shouldn't mix the costs or -- I was
24 just -- I wasn't quite sure what you were saying to him?

25 A. I guess my point was that you can't really separate

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2 the costs associated with running the gasoline side of a
3 gas station from the costs associated with running the
4 convenience store side of the gas station. The costs are
5 intermingled. And you can't in any objective way clearly
6 state how much of the cost is associated with one part
7 versus the other.

8 Q.83 - But in Mr. Gardner's presentation and I guess -- and
9 certainly we have heard here that 50 percent, roughly 50
10 percent of most of these C-operations are not profitable.
11 But you say you shouldn't mix the non-petroleum product
12 costs with the petroleum costs?

13 A. No, I didn't say that, sir. I simply said that you
14 cannot separate the costs from each other. In other
15 words, when a gas station operator pays his light bill, he
16 doesn't know how much of that light bill went towards the
17 gasoline side of the business versus the selling of pop
18 and chips and cigarettes.

19 Q.84 - Well in other parts -- well not necessarily New
20 Brunswick, but you have had experience right across the
21 country, those who operate without convenience stores, is
22 the survival rate higher there or lower without the
23 convenience store?

24 A. Well despite what was said yesterday, I would submit
25 that there are very few if any stations that don't have

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2 some sort of convenience store. And it really depends
3 perhaps on what one's definition of a convenience store
4 is.

5 My -- within the experience of what I do, I define a
6 convenience store as any sort of facility where you might
7 buy a bottle of pop or a bag of chips.

8 Q.85 - I see.

9 A. And again there are very few -- in fact no stations at
10 all that I am aware of that do not have some of
11 convenience store offering.

12 Q.86 - You have made a number of times references to Mr.

13 Gardner having used the 2004 to 2006 figure as the base,
14 rather than using a particular shorter period comparing it
15 to 2008, is that correct?

16 A. Well my issue isn't with him using such a broad period
17 of time per se, when comparing two periods of time in
18 order to come about with an estimation of the change. My
19 issue is that there should be consistency as to the
20 approach.

21 And generally speaking a longer period of time is
22 better than a shorter period of time, but if you are going
23 to do that, you should be consistent. In other words, if
24 you are going to represent a change between two sets of
25 time, they should be not only more or less the same months

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2 but they should cover the same seasonal period as well in
3 order to take away some, not necessarily all, of the
4 vagaries associated with comparing asynchronous points in
5 time or synchronous times of a year.

6 Q.87 - So it would therefore follow that with the information
7 that you have filed with us here, if we took April 2006 to
8 August 2006 and compared it to April 2008 to August 2008
9 is that what you are saying we should do?

10 A. I think -- yes, I think that would be a better
11 approach than if you took the approach that Mr. Gardner
12 did, yes.

13 Q.88 - In regard to a question by Mr. Hunter that was asked
14 there is split as I understand between the wholesale
15 proportion and the retail proportion, but there is some
16 crossover between the two, between the retailer and the
17 wholesaler.

18 Does the wholesaler -- what I am asking does the
19 wholesaler give up part of his 5 percent say for round
20 figures over towards the retailing in some sections and he
21 doesn't do it in others?

22 Because Mr. Hunter referred to being in a little bit
23 more remote area than a downtown city that things were
24 more difficult. And did I misunderstand?

25 A. It is difficult for me to respond to that, because

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2 again I didn't do the study that Mr. Gardner did and have
3 the discussions, and it wasn't part of the scope of what
4 we were undertaking to do.

5 I dare say that under this regulatory regime there are
6 probably instances where the wholesalers do give off some
7 of their margin in order to sustain the operation of some
8 of the more marginal part of the pump retail operations.

9 Q.89 - Do you know that as a fact?

10 A. I do not know that as a fact, no.

11 MR. RADFORD: Fine. Thank you. No further questions..

12 MR. MCLEAN: Mr. McLean?

13 BY MR. MCLEAN:

14 Q.90 - Mr. Ervin, you indicated that you thought if you had

15 won this proposal that Mr. Gardner had, you might have
16 difficulty getting information from the various publics or
17 people involved. Why did you think that?

18 A. Well based on my experience. I have done other
19 studies, of course, in the course of my 20 years or so and
20 some odd -- doing consulting work in this industry. And
21 the ability to be successful at that depends on basically
22 asking the right questions to start with. And I don't
23 have -- I am not privy to what questions Mr. Gardner asked
24 or how he posed them.

25 Q.91 - Yes.

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A. But also it depends on several other factors, not the least of which apparently is the willingness of those participants.

Q.92 - Well do you think most of them have the information and don't want to share it or most of them just don't have the information?

A. Well I think Mr. Gardner alluded to some of the reasons for the difficulties and he did refer and I expect that's the case where many simply did not want to share the information out of concerns with confidentiality of their financial statements exactly.

Q.93 - Just on exhibit 10 again for a minute, which is the one about the 50 percent.

You indicated that these wages obviously had to do with selling the pop and chips and what have you, but if that number is in the sales as well, doesn't that include everything such that we could say on average, employees, gas stations or convenience stores there, it is 50 percent wages? I mean, isn't that what it says, unless we want to start to go 60/40 or 70/30, is it not a reasonable assumption that they might be useful, because those sales are in there as well is what I am pointing to?

A. Well the sales are there, yes.

Q.94 - Yes.

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2 A. And the 50 percent in fact, yes, would -- if these
3 numbers are accurate and I have no reason to believe that
4 they are not, the 50 percent would represent the costs
5 associated not only with pumping gas, but of doing all the
6 things that derive the revenues in the first place. And
7 those revenues, of course, include both petroleum and non-
8 petroleum.

9 Q.95 - Another area which has not been covered exactly, you
10 indicated in some of your résumé or background work that
11 you do work on return capital employ?

12 A. That's part of the benchmarking work that we do.

13 Q.96 - So do you have a range that retailers look for as
14 return capital employ in their assets in the retail
15 division, the retail operation?

16 A. I am not sure what they look for. I know what -- you
17 know what is being returned to the marketers. And the
18 best return on capital is from a marketer's perspective
19 not a dealer's.

20 Q.97 - Yes.

21 A. It is very important to understand that. I want to
22 point out that the numbers that we benchmark are
23 proprietary nature. In other words, the operating data
24 given to us in confidence and they are not for public
25 dissemination.

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Q.98 - So you can't say what that number is?

A. I do generally as kind of a global number. I don't have that number available to me today, of course but --

Q.99 - So we could get at some point a global number to say what these people involved in this business should be receiving as fair return?

A. Well again it's -- what I have is not what they should be. It is what they are actually getting as a return on capital.

Q.100 - Right. Sorry. Yes. You also indicated you monitor gas selling prices?

A. Yes.

Q.101 - Could you tell us in non-regulated markets how much these prices are changing now? In other words, do they change every week or twice a week or once a month? What -
- is there a general number there that based on the current market activity?

A. Yes. Certainly knows the answer. It varies by market. Some markets change more frequently than others. And in our experience the markets that experience the most -- I wouldn't say volatility but frequency of changes are generally those markets with the lowest margins.

So, for example, Toronto generally speaking experiences a higher frequency of pump price changes than

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2 a market such as Whitehorse or Yellowknife. And -- very
3 simple. When you operate in Toronto, for instance, and
4 you know the rack to retail and margin in Toronto, for
5 example, '08 here today it is less than 6 cents per litre.
6 And in the years 2005, '06 and '07, it was less than 5
7 cents per litre.

8 When you have a 5 cent per litre margin and overnight
9 the rack price goes up let's say by 1 or 2 cents per
10 litre, that change is a percentage of the margin you have
11 is huge. And so that really necessitates a change to the
12 pump price in order to restore some kind of sustainable
13 margin.

14 In Yellowknife when the margin -- where a margin might
15 be in the order of 10 or 12 cents per litre, a 1 or 2 cent
16 rise in the rack price does not have the same impact on a
17 percentage basis. And therefore we generally see the
18 frequency -- sorry -- yes, frequency of changes being much
19 less in margins that have higher -- sorry, markets that
20 have higher margins.

21 Q.102 - And finally, Mr. Chairman, just to comment on this --
22 you know, non-petroleum revenue or the other departments,
23 is the Board -- or my interpretation or our mandate is to
24 look at changes in the cost of the fuel side of the
25 business to determine whether this weight should be

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2 adjusted.

3 And the fact that the profitability of the bakery or
4 the liquor store on the side is going up and down, well,
5 that's an important part to the overall success of the
6 operation.

7 Would you agree that that doesn't really matter about
8 us or our mandate? That we are not trying to add that
9 into the equation and say well look at the total business,
10 we are here to look at the petroleum side only?

11 A. Well, I don't think it would matter if the cost being
12 recorded were costs that are solely attributable to the
13 operation in the pumps. And that of course is not the
14 case. And so the two are inextricable from each other.
15 And therefore it is very difficult not to take into
16 account the non-petroleum revenues as a factor.

17 And as I said earlier if -- and as I said, in my
18 report, rather, if one was to simply turn off the tap of
19 non-petroleum revenues across the province, then there
20 would be an immediate demand for margins much, much higher
21 than they are now in New Brunswick or in any other
22 province for that matter.

23 Q.103 - Yes. But aren't we trying to look like the credit
24 card, we are just talking about the selling of the gas
25 with the credit card, you know, the delivery charge, the

1 carrying costs. Aren't all those just gas related?

2
3 A. Some of those kind of costs, yes, are in fact gas
4 related. But some of the costs are in fact attributable
5 to both the non-petroleum and petroleum side, not the
6 least of which, of course, are wages, which it is fairly
7 known established constitute upwards of 50 percent of the
8 total costs.

9 MR. MCLEAN: Thank you, Mr. Chairman.

10 CHAIRMAN: Mr. Toner.

11 BY MR TONER:

12 Q.104 - I would like to talk about minimum wage. Now the
13 minimum wage in 2006 was \$6.50 and in April 2008 was
14 raised to 7.75. So we agree that that is over 19 percent?

15 A. Yes.

16 Q.105 - Now other factors that aren't taken into -- that
17 Gardner didn't take into account was that Workers' Health
18 and Safety costs are also based per \$100 of operation, as
19 well as, employment insurance, CPP. So as you raise that
20 minimum, your overall hourly rate goes up, you would
21 agree?

22 A. I am not familiar with the mechanics of it but I will
23 take that on your word.

24 Q.106 - Yes, that you would show on your pay stubs. So there
25 were Health and Safety costs, and employment insurance,

1
2 CPP, all those attribute -- so the 19.2 percent increase
3 of hourly rate is actually higher to the actual cost to
4 the retailer?

5 A. For those people who are paid at the minimum wage.

6 Q.107 - That's right.

7 A. Yes.

8 Q.108 - So the hourly operation of that gas station, you would
9 agree has increase to keep the doors open, to keep someone
10 there?

11 A. As a result of the increase in the minimum wage?

12 Q.109 - Right.

13 A. Absolutely.

14 Q.110 - So -- and furthermore to this and if you want to take
15 non-petroleum-based revenue, would you agree though that a
16 lot of these convenience stores that probably have to
17 extend their hours given the competition like from Costco
18 and the Supertores that tend to be open 24 hours a day and
19 that tend to offer low prices or even the convenience
20 store aspect of a retailer, the other leases are also
21 very, very competitive and getting more competitive. So
22 it is more difficult for them to compete, would you agree?

23 A. I agree it is more difficult to compete. I couldn't
24 say with any certainty how every dealer would choose to
25 become more competitive.

1
2 In a case of non-petroleum offerings, you know, you
3 recited perhaps longer opening hours. That may or may not
4 be a case. Another response would be simply in changing
5 the offerings at the station. Another response may be to
6 basically, you know, expand the facility in order to carry
7 more goods and, you know, update the appearance of the
8 station itself in order to attract customers.

9 These are only some of the options available to the
10 dealer. Some of which, of course, are dependent on
11 raising capital or things of this nature.

12 Q.111 - Because the -- like options like pay at the pump, it
13 ultimately probably lowers their cost. They still have to
14 have someone there. But it also -- statistically people
15 won't tend to walk in the store either and buy other
16 products, because they are just paying at the pump, right?
17 So their tendency for human behaviour, would you agree?

18 A. Are you asking me that when people pay at the pump
19 they come in the store anyway?

20 Q.112 - Yes.

21 A. No, not necessarily at all. Although, you know,
22 certainly the question is imposed to me many times when
23 they pay at the pump to a gas station is that going to
24 actually diminish the back court sales -- and when I say,
25 back court, by the way, I mean the non-petroleum, the

1
2 C-store side.

3 Q.113 - Yes.

4 A. In our benchmarking in fact we have had a look at that
5 question and we found that pay at the pump in fact does
6 not diminish C-store revenues after it is introduced. In
7 fact pay at the pump facilities are generally just as
8 robust in terms of their C-store income as stations that
9 don't have pay at the pump.

10 And I think the behaviour there is clear that is that
11 consumers who like myself never go in and buy pop and
12 chips, simply pay at the pump and go, and whereas people
13 who do use the C-store to buy convenience goods may very
14 well still pay at the pump, but will also come into the
15 store and do what they have habitually done with respect
16 to buying some convenience goods.

17 Q.114 - In your report, in your response to EUB Q-3, your
18 Table 3. I guess -- like where are you going with this
19 table? We know that the hourly rate to operate the
20 facility has increased. And we don't need a lot of
21 variables there. Like if we look at an average gas
22 station probably has one employee working at -- most of
23 the ones I go to have one or two at the maximum, and if
24 they have two, it's because they have a big store. If
25 they only have one employee -- we know that their hourly

1
2 rates, it doesn't take a mathematician to figure out that
3 their hourly rates have increased due to minimum wage?

4 A. Yes.

5 Q.115 - But now you have introduced a table which, you know,
6 included in our evidence as basically a huge number of
7 variables, because now we are looking at Statistics Canada
8 New Brunswick weekly earning results. So now we have got
9 multiple industries. Multiple -- you know, we have gone
10 from basically a quite narrow with very few variables to a
11 whole lot of variables and I just kind of want to know
12 what -- kind of what was your rationale to give us this
13 information --

14 A. Sure.

15 Q.116 - -- because it is contrary to what he is saying,
16 therefore, I need to know where it comes from?

17 A. Well let me put the statement in context of how it
18 appeared. In my -- the main body of my report stated that
19 a more suitable approach would have been to determine the
20 actual change in wages and salary across New Brunswick.
21 Those figures are available from Statistics Canada.

22 I said that without having seen the Stats Canada. I
23 simply said the actual rate of overall wage increases from
24 '06 to '08, is more likely to be in the order of 10
25 percent at most. That generated the IR question which

1
2 basically asked me to actually cite the Statistics Canada
3 data, which I did in response to the question.

4 So there is no other motivation other than to respond
5 to the question.

6 Q.117 - And to back it up. Okay. And I don't -- excuse me,
7 Mr. Chairman, I don't mean to kick the credit card usage
8 to death, but I have to.

9 On page 6 of your report under credit card usage. And
10 I ask for everyones' patience. If -- and I would just
11 like you just to read that one paragraph under credit card
12 usage where it says Gardner Pinfold, Table 4.2.

13 If you just want to read that because I want to ask
14 you a question related to it?

15 A. Certainly. Gardner Pinfold's, Table 4.2 assumes that
16 credit card usage increased from 30 percent to 45 percent
17 from 2006 to 2008 and yet provides no explanation for this
18 dramatic increase in usage rate, an increase of 50 percent
19 in credit card usage in the two year time frame, one could
20 reasonably assume that a 50 percent increase in the
21 frequency of credit card usage on the part of consumers
22 would be reflected across a broad range of retail sectors
23 (it would be extraordinary gain for issuers of credit
24 cards), but we are not aware of any such trend.

25 The usage rates provided by Gardner Pinfold appear to

1
2 be drawn solely from anecdotal sources and the supposed
3 increase in usage is simply not credible.

4 Q.118 - So when you state but we are not aware of any such
5 trends where are you getting that data? Like you are
6 saying that no, we don't -- that the trends don't exist.
7 So where are you -- where are you getting that to say that
8 there is no trend? Is it your gut feeling or are you
9 saying, no --

10 A. No, I think that, you know, following the retail
11 sector and the gasoline retail sector in particular, I am
12 very aware that credit card is a major issue amongst the
13 dealers and marketers.

14 It would have struck me as something I would have seen
15 in all the literature I read, for example, that we would
16 have come across some sort of indication that usage rates
17 have increased that significantly as a -- basically as an
18 issue, giving further rise to, you know, to it as an
19 issue.

20 You know, I regularly read thoroughly publications
21 such as the Oil & Gas Journal, National Petroleum News,
22 which is the defacto, you know, journal for the retail
23 sector in North America and other publications, I have
24 never come across something of this nature. In fact the
25 Cannon report itself leads to a 40 percent usage rate,

1
2 which the Cannon report has written in '08 and yet it
3 reports an '06 number, and if it were such a startling
4 increase between '06 and '08, one would have thought that
5 the Cannon report would have cited some sort of
6 substantial increase in usage, albeit related to less
7 data, but nonetheless you would expect again some
8 indication of having it increase that substantially.

9 So no, we didn't see any basis for adopting that
10 anecdotal data as being credible.

11 Q.119 - Or we can draw from that further and say that maybe
12 the 30 percent -- maybe that the 45 is the correct number?

13 A. Who knows.

14 Q.120 - I know. Yes. I agree.

15 MR. TONER: So, that's it. Thank you.

16 CHAIRMAN: Mr. Johnston, do you have any questions?

17 VICE-CHAIRMAN: Yes, Mr. Chairman.

18 BY VICE-CHAIRMAN:

19 Q.121 - Mr. Ervin, I would like to start by talking about the
20 issue, the wage increase. And I would like to take a
21 slightly different approach to it by trying to understand
22 it in the context of an individual business. And what I
23 am really trying to do is not to through this discussion
24 come to some answer, but try to come through a framework
25 in my own mind how I can try and approach this issue.

1
2 The proposal in Mr. Gardner's report is that due to
3 wage increases, the margin be increased by .5 cents per
4 litre. We know that the average station, and there may be
5 no average station, but the average volume of a station in
6 New Brunswick is about 2 million litres per year. Is that
7 your understanding?

8 A. Yes, roughly.

9 Q.122 - I am just -- so if we had a station that was in the 2
10 million per litre range area and we increased the margin
11 by .5 cents, that would be an increase in revenue of
12 \$10,000.

13 Is that -- I think my math is correct? Does that
14 sound right to you?

15 A. I will take that as --

16 Q.123 - If anybody thinks it is wrong, let me know. I am just
17 trying to -- I am just trying to work this into a context
18 of trying to do some sort of analysis. So we have this
19 \$10,000 annual increase in revenue should the Board decide
20 to accept Mr. Gardner's proposal and that relates to a 2
21 million litre station.

22 Now my colleague Mr. Toner, has just talked about what
23 is typical in terms of employment at a station. We have
24 some written submissions and so forth that suggest that
25 two people working at a time is fairly typical.

1
2 Does that sound about right for a station that had a 2
3 million litre volume and sort of standard size convenience
4 operation that might go with that?

5 A. Oh, you know, quite often there would be one person if
6 it's a full service -- sorry, self-serve C-store. Then
7 there is no need for somebody at the front court, the
8 pumps. And in many cases there is only one person per
9 shift on the back court particularly during the non-rush
10 hours.

11 Q.124 - So you think it might even be less than two people per
12 day -- or on at a time. So we are looking at -- if it's
13 one person a day, we are looking at sort of 16 hours of
14 wages?

15 A. Yes. I am not suggesting it is always one person per
16 day, but certainly during the non-peak hours it could very
17 well be one person. So, you know, it might be one and a
18 half I mean, I am citing this as rough numbers, of
19 course. But I think we can maybe arrive at one and a half
20 as being representative for a 2 million litre self-serve
21 C-store operation.

22 Q.125 - And 16 hours would be a fairly typical day to be open?

23 A. Oh, we will take that as something that may be
24 typical, yes.

25 Q.126 - So my colleague here has a calculator, so we will just

1
2 do some math as we move quickly along. So that would be
3 24 hours of wages. And again I am not asking you to agree
4 with any of this. It is the structure of the -- and my
5 own personal analysis that I am trying to see if there are
6 errors in. So that would be 24 hours a day of total
7 employee time in an operation of this size you think would
8 be more or less appropriate per analysis?

9 A. 1.5 times 16.

10 Q.127 - 1.5 times 16?

11 A. Yes.

12 Q.128 - And the minimum wage has increased \$1.25 over the
13 period in question, according to Mr. Gardner's evidence,
14 is that what you understand?

15 A. Yes, I will accept that again as being credible and
16 accurate, yes.

17 Q.129 - So we would then have a total wage bill increase on a
18 daily basis of \$30, subject again to what my colleague
19 says about the additional costs that you would have and
20 that we might appropriately take into consideration. So
21 there is \$30 a day. And if they were open --

22 MR. TONER: Plus stat' holidays --

23 Q.130 - -- well, we are going to give them every day of the
24 year, that would work out to just under \$11,000 in
25 additional wages. So we are comparing that with the

1
2 proposal that would give them \$10,000 in increased
3 revenue. And we see the increased costs.

4 Again this is -- there are many assumptions in here
5 that everybody is earning minimum wage, everybody is
6 making this the entire increase, you know, nobody was
7 starting -- that everybody has received this \$1.25 an hour
8 increase.

9 Where your point would come into it, into my analysis
10 as I understand it, is would be to say, wait a minute,
11 these people are -- yes, they are making -- we having to
12 pay \$11,000 a year more in wage bills, but we shouldn't be
13 taking all of that out of the petroleum side. A lot of
14 their duties are non-petroleum related, so they should be
15 looking for this additional cost to be covered in other
16 areas of their operation, is that right?

17 A. In effect, yes, in the sense that certainly one -- I
18 don't think should expect to -- for the consumer to pay
19 the freight on costs that are not related to the pumping
20 of gas.

21 Q.131 - So in analyzing this issue, it seems to me that we
22 have to look at two basic issues. One is what is the real
23 increase in wages that is facing retailers? And there is
24 different evidence and different points of view about
25 that.

1
2 And then the second is what is some reasonable
3 division of this increase between the different operations
4 -- the different duties that these employees might
5 perform.

6 Are those the two things we need to focus on when we
7 are doing our analysis of this issue?

8 A. Well, as I said earlier, I think it is far more
9 difficult to parse out a wage attributable to gasoline
10 versus non-gasoline sales or non-petroleum sales. And at
11 first that I think would be more appropriate would be to
12 instead of trying to parse out that, actually encompass
13 the non-petroleum revenue as part of the evaluation in the
14 first place, then it saves you the rather arbitrary
15 exercise of trying to parse out, and you can deal with the
16 real numbers as opposed to again more assumptions which is
17 a great failing of the Gardner Pinfold report in the first
18 place.

19 Q.132 - But the fact is, Mr. Ervin, is that we need to make
20 decisions based on the evidence that's been presented.
21 And when you are finished, there isn't going to be any
22 more evidence presented. So this is what we have to work
23 with. And so we have to try and find the approach based
24 on what we have and do the best job that we can.

25 I would like you to look at Mr. Gardner's report at

1
2 page 21 if you would. Do you have that Mr. Ervin?

3 A. I have it in front of me, yes.

4 Q.133 - This page talks about marketing margin. And I
5 understand that this data is actually drawn from your
6 company as the source for the most part, is it?

7 A. Yes.

8 Q.134 - So you are familiar with this data?

9 A. I don't necessarily have taken this --

10 Q.135 - No.

11 A. -- but I will take it on --

12 Q.136 - But you have some familiarity with this topic, in any
13 event?

14 A. Absolutely.

15 Q.137 - In the upper graph, figure 4.2, the dark portion of
16 the bars is rack to retail, which I gather would generally
17 be what people refer to as the marketing margin?

18 A. They are synonymous, yes.

19 Q.138 - They are synonymous. The other -- the remainder of
20 those bars is the difference between the New York Harbour
21 price and the retail price in Saint John.

22 In non-regulated markets is that kind of a price
23 calculation generally done?

24 A. Which kind?

25 Q.139 - Where you would go to a source such as New York

1
2 Harbour and compare that with the retail price?

3 A. No. Certainly that's not a measure that we typically
4 do. We typically measure margins on the basis of rack to
5 retail, not New York Harbour to retail.

6 Q.140 - Right.

7 A. And I can explain why, if you wish?

8 Q.141 - Certainly.

9 A. New York Harbour is certainly an important benchmark
10 for wholesale gasoline as a spot price. To use New York
11 Harbour as a basis for comparison to pump prices in Boston
12 might be good because of the physical proximity of New
13 York to Boston.

14 But if you were to, for instance, use New York Harbour
15 as a basis for comparison to pump prices in Calgary or
16 Vancouver, you would find a lot of anomalies between New
17 York Harbour and the pump price and let's say Calgary rack
18 in the pump price. The further away you get from New York
19 Harbour, the more anomalies that you will see when
20 comparing New York Harbour to the rack price in whatever
21 market you are trying to compare.

22 And in Canada there about five fundamental what I call
23 supply orbits and those supply orbits represent vast
24 regions into which and out of which not a lot of product
25 flows. In other words, the supply their mains in their

1
2 own right and relatively self-sufficient.

3 So that for instance, in western Canada would
4 represent a supply orbit where it is supplied principally
5 from the four refineries, three refineries in Edmonton and
6 one in Regina, for example. And that pretty much makes
7 western Canada -- defines western Canada in terms of where
8 it gets its supply from.

9 The rack price in western Canada, in a market such as
10 Edmonton and Calgary, may vary considerably from the rack
11 price in Toronto when supply of petroleum product is tight
12 in that supply orbit. Whereas supply might be very loose
13 and available in let's say Halifax at the time. And so
14 you can see differences in rack prices as a result of
15 differences in tightness of supply.

16 And so that's why we almost always use rack as the
17 basis for comparison and not your New York Harbour,
18 because New York Harbour is really related to the supply
19 orbit within which New York resides and certainly has less
20 significance with respect to Calgary or other markets
21 outside of that supply orbit.

22 Q.142 - Now if we look down at figure 4.3, Mr. Gardner is
23 showing us the change in average marketing margin in
24 different cities across the country. But with the
25 exception of something you may have given briefly a few

1
2 moments ago, I don't believe there is in evidence what the
3 actual margins are in those other cities.

4 Is that in the evidence somewhere or --

5 A. I don't believe so.

6 Q.143 - Did you briefly make reference to it a few moments ago
7 when you --

8 A. Yes, I did.

9 Q.144 - You had a note in front of you?

10 A. Yes.

11 Q.145 - Can you tell us anything about -- we see increases,
12 for example, substantial increases in the marketing margin
13 in Vancouver. It is difficult to understand the relevance
14 of that unless we know what their marketing margin is in
15 Vancouver and was. Do you know what --

16 A. I actually, you know, made quick reference to some
17 margins. I didn't take Vancouver but I did take Calgary,
18 which is somewhat representative of what you see in other
19 markets as well. And I will tell you what they were from
20 2003 to 2008 in Calgary on an annual average basis.

21 Q.146 - And this is the rack to retail?

22 A. This is the rack to retail margin, yes. Marketing
23 margin.

24 Q.147 - And what are they?

25 A. From 2003 to 2008 year to date was 3.8, 5.6, 5.7, 5.7,

6.9 and 7.1, year to date. Keeping in mind that that is not a full -- we are not doing a 12 month to 12 month comparison. And so that number --

Q.148 - Could you go over those again, Mr. Ervin, I was slow with my pen?

A. Certainly. 3.8 --

Q.149 - And what year are we starting with here?

A. 2003.

Q.150 - 2003. 3.8.

A. 5.6.

Q.151 - 5.6.

A. 5.7.

Q.152 - 5.7.

A. 5.7, 6.9 and 7.1. Again that not being a 12 month number as the other ones were. And as I have said before one introduces some vagaries into the comparison if you are not doing like periods and like seasons.

Q.153 - And we have similar data for Saint John in figure 4.2?

A. Well I will cite those numbers for Saint John for the same periods of time?

Q.154 - Yes.

A. 7.8, 7.8, 8.2, 8.7, 7.5 and '08 year to date, 7.5.

Q.155 - Just out of curiosity, Mr. Ervin, the 3.8 in 2003 was that an anomalous year or were the preceding years rack to

1
2 retail that low of a margin in the Calgary area?

3 A. What had happened in Calgary, and in fact in many of
4 the western Canadian markets, in the period from 2003
5 roughly until '05, '06 was -- the entry and the racking up
6 of a great deal of competition associated with big box
7 marketers, an awful lot of the depressed margin -- and
8 certainly 3.8 in any market, let alone Calgary, I would
9 cite as being a depressed margin, marketing margin -- was
10 really as a result of the entry and the establishment of
11 one or more big marketers coming into western Canada
12 depressing prices, in effect price war, that was sustained
13 for a long period of time. And then the following --
14 around 2005, 2006, a restoration in the margin back to
15 what really had been more of a historical term. If we had
16 gone further back in time before 2003, we would have seen
17 margins -- I would cite margins that would be more in the
18 order of 5 to 6 cents per litre in Calgary.

19 And so what we see in this graph really represents a
20 change upwards but that change is as a result really of
21 restoration from a period of time where margins were
22 depressed as a result of the competitive activity at the
23 time, not only in Calgary, but it was characteristic of
24 most western Canadian markets at the time due to the
25 competitive behaviours, pricing behaviours associated with

1
2 the entry of some big box marketers.

3 VICE-CHAIRMAN: Thank you. Those are my questions.

4 CHAIRMAN: Mr. Toner, you indicated you had one more
5 question?

6 MR. TONER: Yes. Sorry.

7 BY MR. TONER:

8 Q.156 - In your -- is it costing more for a retailer to
9 deliver a litre of gas to individuals today than it did in
10 2006?

11 A. I can't say with any certainty not having, you know,
12 done a comprehensive study of it, no.

13 Q.157 - But in your expert opinion?

14 A. I am simply not prepared to say on the basis of what
15 are far too many variables for me to, you know, assess on
16 the top of my head.

17 Q.158 - Do you believe it is just more competitive?

18 A. No, I don't think the market is any more competitive
19 than it has been. I think the gasoline industry in
20 general is one of the most competitive retail sectors of
21 any in the country. And that is evidenced by margins that
22 have been stagnant for the last 15 years necessitating
23 closures, necessitating the addition of non-petroleum
24 assets and non-petroleum activities in order to basically
25 maintain the sustainability of those operations.

1
2 I can describe that in qualitative terms to be sure,
3 but again I would hate to simply say on the top of my head
4 what those changes have been or what the trends have been
5 without really doing an in depth assessment of what they
6 are.

7 But, you know, certainly when you look at credit cards
8 costs as one, up until recently -- up until around July
9 when now prices have started to go down and therefore
10 credit card costs, yes, up until July unquestionably there
11 has been an increase in credit card cost as a result of
12 the increase in price. The question is what price? What
13 has been the price difference? How can we properly -- how
14 can the Board, I suppose, properly assess upon which to
15 base the difference in terms of fair, sound comparisons of
16 prices, which are the key driver for those costs.

17 Q.159 - Right. But electricity costs has increased to a
18 retailer?

19 A. Well again rolls varies from province to province and
20 it is something that I haven't specifically studied.

21 Q.160 - No, in New Brunswick?

22 A. Again I haven't specifically looked at those. Again
23 my mandate was not to come up with an alternative but
24 simply to assess the Gardner Pinfold study itself.

25 MR. TONER: Thank you.

1
2 CHAIRMAN: I don't have any questions, so I will address
3 this to Mr. Patrick Ervin, do you have any redirect?

4 MR. ERVIN: No, we don't. Thank you.

5 CHAIRMAN: Well then, Mr. Ervin, thank you very much for
6 your attendance and your evidence here today.

7 That does conclude the evidentiary part of this
8 hearing process. And we will move to argument or
9 submissions.

10 I know that many of you have probably travelled a
11 great distance to be here today and I would like to sort
12 of accommodate everybody. So I think we will try -- we
13 will see what we can do to get all of the submissions done
14 before we leave today so that you won't have to stay
15 another night or return for another day.

16 And I am just wondering in terms of the order of
17 presentation, would the parties that may be are
18 represented by solicitors perhaps be willing to allow the
19 others to go first in order to accommodate some of their
20 travel needs, I think that might be helpful?

21 MR. ZED: I certainly would, Mr. Chairman.

22 CHAIRMAN: Mr. Hoyt?

23 MR. HOYT: I live 3 minutes away, so I am going to have a
24 hard time arguing with that. No problem.

25 CHAIRMAN: Mr. Ervin?

1
2 MR. ERVIN: I am certainly fine with that, Mr. Chairman

3 CHAIRMAN: I am told -- I am reminded you said you weren't
4 a lawyer today, so we appreciate your comments.

5 MR. ERVIN: Thanks for the consideration in any event.

6 CHAIRMAN: So I guess the first person on the list would be
7 Mr. Gould if you are ready. And perhaps in making
8 comments, if you would like to come forward to the front
9 table.

10 MS. DESMOND: Mr. Chairman, perhaps before submissions are
11 made, I just had a quick question. I believe Mr. McLean
12 asked Mr. Ervin to provide a number. I don't know if that
13 was an undertaking or if that's something that needs to be
14 --

15 CHAIRMAN: I will clarify with Mr. McLean. I took it that
16 it wasn't, quite frankly, that it was not -- that he
17 wasn't expecting a response to that.

18 MR. MCLEAN: Well I wasn't expecting one but if the
19 information could be forthcoming, I would certainly like
20 to see it, because I think it is relevant to the whole
21 proceeding. But what we are expecting -- or what these
22 people either should note or might make or are making in
23 other jurisdictions. I would like to see it as an
24 undertaking if it could be.

25 MR. ERVIN: My notes indicated get a global before I cross

1
2 it out. Get a global number. But I wasn't --

3 MR. MCLEAN: It's just a number to say that, you know, the
4 retail sector makes 16 percent or 18 percent or some idea
5 of what the return on these investments are if the sector
6 is going to continue and have reinvestment in it.

7 MR. ERVIN: May I just to clarify what might be the
8 undertaking that this number would not be retail return on
9 capital, it would be marketing return on capital.

10 MR. MCLEAN: So that's wholesale and retail together?

11 MR. ERVIN: Yes. I mean, I will certainly qualify and
12 explain what that number represents when I present it and
13 I will.

14 MR. ZED: Mr. Chairman?

15 CHAIRMAN: Yes, Mr. Zed.

16 MR. ZED: I am just kind of questioning, we are going to
17 conclude the hearing today, there is going to be some
18 information provided. I am not sure what the relevance of
19 that number is in light of the proceedings and in the
20 light of the regulation, which is not cost based so --

21 CHAIRMAN: Mr. McLean and I are just in the middle of a
22 conversation --

23 MR. MCLEAN: I will withdraw. If it is going to be problem,
24 I will withdraw it.

25 CHAIRMAN: All right. So there is no undertaking then.

1
2 Okay, Mr. Gould. Just one other thing.

3 Ms. Desmond, anything further in terms of the
4 evidentiary part of this hearing you feel needs to be
5 addressed?

6 MS. DESMOND: No, thank you, Mr. Chair.

7 CHAIRMAN: Okay, Mr. Gould, finally. Go ahead?

8 MR. GOULD: Thank you. I will try and keep this brief.

9 First, I would like to start by saying that the industry
10 did not ask for regulation. This was something that was
11 forced on industry by government.

12 I am here on behalf of Canadian Oil Heat Association,
13 but I am here on a volunteer basis. I do work for a local
14 heating oil company in the province of New Brunswick and a
15 lot of my experiences are from that. So a lot of the
16 members of the association here for COHA are independent
17 as well as major heating oil distributors in the province
18 of New Brunswick.

19 I am not sure if it's relevant to go into my
20 background or not, but it seems that other people that
21 seemed to be presenting seemed to make it relevant.

22 In my case, I usually tell people that I was baptized
23 with furnace oil as opposed to holy water. My father has
24 been in the oil business since before I was born, as well
25 as my grandfather. He started out with Texaco. I started

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2 working for him at the age of 14 for his own heating oil
3 company. And by the age of 16 started driving truck and
4 doing service work.

5 By the time I had finished university with a Bachelor
6 of Administration, I started doing managerial work for him
7 and now am one of the managers of operation. So a lot of
8 times when somebody talks to me, I am the trench guy. So
9 I am the one out there doing a lot of times the deliveries
10 dealing with the customers, dealing with a lot of things
11 that we do on a daily basis.

12 A lot of the evidence has been presented here today as
13 well as yesterday, understandably so is quantitative in
14 nature. And it is very hard to look at it any other way.
15 We are always looking at expenses. We are always looking
16 at costs associated. We are always dealing with a number
17 issue. But a lot of times what is overlooked is the
18 service side of our business. And that's one thing I
19 would like to take a few minutes to speak about.

20 On the service side, we provide a level of service to
21 customers throughout New Brunswick. We are often compared
22 with Nova Scotia, which is 70 percent heating oil, as well
23 as, P.E.I. which is over 94 percent.

24 New Brunswick is roughly about 19 to 20 percent
25 heating oil province wide. A lot of times our market is a

1
2 very rural market. A lot of times when we are talking
3 with people, we are talking about the customer that lives
4 for instance at the top of Crabbe Mountain, who before
5 regulation I used to deliver to. I could deliver into the
6 area on a weekly basis. And now I am lucky if I can get
7 out there every three weeks due to increased costs and
8 because of regulation.

9 A lot of times we are the frontline people that we
10 have to hear from customers. And a lot of times it is
11 very hard to say no, I can't or no, I won't. Or to turn
12 around and say, well it's because of regulation.

13 We try and meet our customer needs. We are a service
14 industry. But regulation keeps us from providing the same
15 level of service that we did before regulation. And a lot
16 of us find that very difficult. How do you tell the
17 customer on Saturday who calls you at home because they
18 know your home number and says gee, Bill, I have got a
19 smell of oil in my house. I can't get ahold of my local
20 service contractor but you provide me fuel and can you
21 give me a hand. I have to -- a lot of times I rush out.
22 I go see the customer. I can give them a hand. Maybe I -
23 - you know, in the case of Mrs. Jones two weeks ago, she
24 had a small leak in her oil line to her furnace. I was
25 able to stop it and put a little bit of speedy dry down

1
2 and get it all cleaned up for. She gave me a handshake, a
3 cup of tea before I left because I didn't have a choice
4 and went on my way. That's the level of service that we
5 do supply our customers.

6 We are not in the business -- we don't operate in a
7 central city. We operate province wide. A lot of times
8 our trucks will drive anywhere between a half hour or
9 more to even reach a single customer.

10 When you drive down a street in Nova Scotia, you can
11 hit seven homes that have oil. When you drive down a
12 street in P.E.I., you can hit nine that have oil out of
13 10, sorry.

14 In New Brunswick, you drive down a street that has 10
15 homes, you are lucky if you have got one.

16 So our industry is changing and it is declining. It
17 is not increasing.

18 When regulation was first proposed by the former
19 government at that time, they had come to industry and
20 said we are going to regulate it and you have the option
21 of either coming and sitting with us and talking with us
22 or we will make up our own numbers even though every
23 meeting that I sat at for the next six months, once a week
24 or every other week, we discussed numbers. We brought
25 together data. We brought together financial information

1
2 with the Province and we worked with them and it was
3 something that I think everybody at that time would have
4 said is unheard of.

5 But every time that we did have a meeting, I would
6 always start with the meeting saying we don't want
7 regulation. But it is a fact of the matter, we are in a
8 regulated environment now.

9 When regulation was put into place, I can tell you
10 that the facts, figures and numbers that we had worked
11 with government were basically put into a shredder 48
12 hours ahead of time and they made up their own numbers,
13 because I sat on that Board. And the numbers that we are
14 acting with today are nowhere near what they were.

15 Six months after regulation, we then had an
16 independent study similar to this one that was done to
17 which industry again put forth information. We put
18 through financials to that independent consultant who was
19 creating a paper to basically review regulation six months
20 afterwards.

21 When that submission was made, if anybody that's aware
22 of it, nothing was done. There was no increases even
23 though that paper had intended to increase certain margins
24 on wholesale and on retail side. But nothing was done at
25 that time. So again we were passed over and not listened

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2 to.

3 So we are here again today. And I hope that the Board
4 will take into consideration not only the facts and
5 figures that Gardner Pinfold has put together but also the
6 fact that we are a service industry and you do control how
7 much we do make.

8 The proposed increases on the wholesale and marketing
9 side not only are needed but they are required in a lot of
10 our cases for us to continue to offer the same level of
11 service. Thank you.

12 CHAIRMAN: Thank you, Mr. Gould. Any of the Board Members
13 have any questions for Mr. Gould?

14 MR. RADFORD: I am sorry, I have to ask you a question.

15 Could you not have billed Mrs. Jones for that call to her
16 house?

17 MR. GOULD: It is very hard to bill Mrs. Jones when she is
18 80 years old and on a fixed income.

19 MR. RADFORD: Yes.

20 MR. GOULD: And she has been a customer for 25 years.

21 MR. RADFORD: Right. So you feel that's part of your
22 service by --

23 MR. GOULD: Exactly.

24 MR. RADFORD: And do you do an annual service -- do you sell
25 them a service package or anything like that?

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2 MR. GOULD Every company is a little bit different when it
3 comes to the service side. So not every company will
4 offer service when it comes to either the upkeep or
5 maintenance of heating oil equipment.

6 A lot of times the heating oil distributors are just
7 that, heating oil distributors. Not all, but a majority
8 of them are where the service side is done by an outside
9 company.

10 MR. RADFORD: Thank you very much.

11 MR. GOULD: Thank you.

12 VICE-CHAIRMAN: Mr. Gould, you have seen Mr. Gardner's
13 report as it relates to proposed increases in heating
14 fuel?

15 MR. GOULD: Yes.

16 VICE-CHAIRMAN: Do you have any specific comments with
17 respect to his comments in relation to the margins on
18 heating fuel and the adequacy of his proposed changes?

19 MR. GOULD: At this time no, I do not. And unfortunately
20 due to the nature that I am here on the capacity of
21 Canadian Oil Heat Association, the directive that I have
22 been asked is what I had presented so, thank you.

23 VICE-CHAIRMAN: Thank you very much.

24 CHAIRMAN: Well, thank you for your comments, Mr. Gould.

25 And I know that you have been in attendance for both days.

1
2 So thank you for your time that you put into this
3 endeavour.

4 MR. GOULD: Thank you very much.

5 CHAIRMAN: Mr. Everett?

6 MR. EVERETT: My only comments today is that I grew up -- I
7 have been working in a gas station since I was 12 years
8 old. It's been 12 years. My father worked in a gas
9 station since he was 12 years. It's been 38 years for him
10 now. And have never had somebody come in and said that we
11 are going to fix your profit but we are not going to fix
12 your cost. It is impossible for us to operate a business
13 where we can only make so much money but nobody has to
14 appeal to you before they can raise our cost. It is
15 impossible. Like we cannot operate a business on this.

16 That's pretty much my only basis that I had to say
17 today is that you can't socialize one program and not
18 socialize all programs. It's -- you will kill the small
19 businessman and you are.

20 CHAIRMAN: Anything further?

21 MR. EVERETT: No, that's it.

22 MR. TONER: Can you describe to me like your business model?

23 MR. EVERETT: We have eight gas pumps and service bays.

24 MR. TONER: How many service bays?

25 MR. EVERETT: Two.

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2 MR. TONER: And how many employees are working there on --
3 at the same time?

4 MR. EVERETT: At the same time during the day there is four.

5 MR. TONER: So you don't have any convenience store?

6 MR. EVERETT: I don't -- I have a pop machine.

7 MR. TONER: Pop machine, whatever, and a couple of chips and
8 stuff?

9 MR. EVERETT: Yes. And in the evenings I have two people
10 working most of the time. And on weekends I have two
11 people.

12 MR. TONER: Two people working --

13 MR. EVERETT: At the same time.

14 MR. TONER: Because you have full service?

15 MR. EVERETT: Yes.

16 MR. TONER: Every pump is full service?

17 MR. EVERETT: No. Four are and four aren't.

18 MR. TONER: So you have got one person working the cash and
19 one person working the --

20 MR. EVERETT: Generally, yes. Or both people doing -- if
21 you have eight people waiting, you have to have two people
22 doing it.

23 MR. TONER: And in this operation, your hours of operation
24 are?

25 MR. EVERETT: My hours of operation are 7:00 in the morning

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2 during the week till 10:00 at night. On the weekends it
3 used to be 8:00 in the morning till 10:00 at night, but
4 now it is 8:00 to 6:00, because I can't qualify having
5 someone there --

6 MR. TONER: Beyond --

7 MR. EVERETT: -- from 6:00 o'clock at night to 10:00 with
8 oil costs for heating my building.

9 MR. TONER: Right.

10 MR. EVERETT: And other costs that are attributed like -- to
11 have someone there to not make money for me because even
12 if they do sell gas, they still don't make any money.

13 MR. TONER: And do you sell -- are you the type of gas
14 station -- because I am not sure where you are from --

15 MR. EVERETT: Fredericton.

16 MR. TONER: Okay.

17 MR. EVERETT: Yes.

18 MR. TONER: And would your business be the type of business
19 that would -- like do you have like charge accounts?

20 MR. EVERETT: We do, yes.

21 MR. TONER: You charge certain people and at the end of the
22 month they pay you?

23 MR. EVERETT: Local clients, yes.

24 MR. TONER: And they pay you by credit card?

25 MR. EVERETT: Yes.

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2 MR. TONER: So you carry them for 30 days and pay with a
3 credit card --

4 MR. EVERETT: Yes.

5 MR. TONER: -- at the end of your 30 days? And that
6 represents what percentage of your business roughly?

7 MR. EVERETT: Probably about 20 percent of our gas business
8 is --

9 MR. TONER: And do you figure people go to you because you
10 do that?

11 MR. EVERETT: Most likely, because we are locally owned.
12 Everybody knows who we are.

13 MR. TONER: Right.

14 MR. EVERETT: So they come to us because they know they can
15 call you on the weekend.

16 MR. TONER: Do you ever write-off any accounts like at the
17 end of the year, some people don't pay you or --

18 MR. EVERETT: That happens every year.

19 MR. TONER: Yes. And this business that you just described
20 to me is what you have today?

21 MR. EVERETT: Yes.

22 MR. TONER: And describe it to me in 2005, how different was
23 it or was it different at all or is it the same or what
24 changed?

25 MR. EVERETT: We had more hours in 2005. We had -- we could

1
2 pay our employees above minimum wage in 2005 but now we
3 can't.

4 MR. TONER: So you dropped your employees' wages or you just
5 hired new people at lower wages?

6 MR. EVERETT: I hire less employees. I used to have more
7 part-time employees that worked for me and I dropped --
8 well, I didn't drop their wages, but their wages -- they
9 have not increased. They are still getting paid minimum
10 wage.

11 MR. TONER: And your -- who does your bookkeeping? Do you
12 have someone that comes in at the end of the month that
13 does your bookkeeping?

14 MR. EVERETT: I do the day-to-day transcription. We have an
15 accountant that we pay.

16 MR. TONER: But you hire like a chartered accountant to do
17 your books at the end of the year?

18 MR. EVERETT: Yes. Or at the end of the months or --

19 MR. TONER: So maybe you can answer this question, has the
20 electricity rates in New Brunswick changed --

21 MR. EVERETT: Yes.

22 MR. TONER: -- since 2006?

23 MR. EVERETT: Yes.

24 MR. TONER: Right.

25 MR. EVERETT: So has furnace oil.

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2 MR. TONER: And your furnace oil costs. And did your
3 property tax go up?

4 MR. EVERETT: Property tax has gone up. My Workplace Health
5 and Safety has gone up.

6 MR. TONER: Okay.

7 MR. EVERETT: Everything -- nothing has gone down, no.

8 MR. TONER: What else has gone up though specifically in
9 your operational costs?

10 MR. EVERETT: Maintenance costs for my gas pumps to replace
11 things that break on gas pumps, dip sticks, trying to
12 clothe the employees, the cost for uniforms, the cost for
13 invoicing, the cost for computers, the cost -- every --
14 pretty much everything has gone up, nothing has gone down.

15 MR. TONER: And at the end of the month, do you know what
16 your costs are for credit card fees? Like do you know --

17 MR. EVERETT: My average cost every month is between \$2,200
18 and \$2,600 roughly.

19 MR. TONER: That you pay in credit card fees?

20 MR. EVERETT: That I pay in credit card fees.

21 MR. TONER: And most people pay with credit cards?

22 MR. EVERETT: I would say roughly -- I would say it's over
23 60, 70 percent is credit cards.

24 MR. TONER: Really?

25 MR. EVERETT: And then if you were to say just credit cards,

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probably about 50 percent I guess and then debit cards is probably another 10 to 20 percent.

MR. TONER: And is that representative in your \$2,200 bucks a month that you pay in fees?

MR. EVERETT: Yes.

MR. TONER: Thank you very much. Sorry I was so interrogatory.

MR. EVERETT: No, no, don't worry.

CHAIRMAN: Mr. Everett, just on the question Mr. Toner asked you about credit card fees, is that an increase from where it was a year before, or from two years before or is that -- you always found the numbers to be similar to that?

MR. EVERETT: It's an increase, because as fuel goes up \$60 -- of fuel goes up, the person who bought \$60 now buys \$40. And because we pay gas, we pay credit cards on percentages. We make gas on cents. So if say we made 5 cents a litre, at a dollar a litre, we make 5 percent. But now it is not a dollar a litre. So if our credit card is 2 percent -- say it is a dollar, I am making 5 percent, we then make 3 percent right away on some of these --

CHAIRMAN: I didn't frame my question very well. What I meant to ask you was whether or not the number of people using credit cards or the usage of credit cards has

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2 increased?

3 MR. EVERETT: The usage of credit cards I say has increased
4 and the usage of debit cards has increased a lot more as
5 well.

6 CHAIRMAN: Well thank you for your attendance at the
7 hearings over the last couple of days and your input into
8 this review. We appreciate that.

9 MR. EVERETT: Thanks.

10 CHAIRMAN: We will take a 15-minute break and we will resume
11 at about five after 3:00.

12 (Recess - 2:50 p.m. to 3:12 p.m.)

13 CHAIRMAN: For the information of everybody present, we are
14 going to make an effort to stay late and hear everybody
15 today if at all possible. Obviously I can't predict the
16 length of the various submissions, but I know that most
17 people would probably like to have this conclude today.
18 So if we go overtime, we will -- unless the hotel says
19 your contract ends at a certain time and you are out,
20 barring that we will try to conclude the hearing today.

21 The next name that I have on my list is Global Fuels,
22 Mr. Gaudet?

23 MR. GAUDET: I have no comments.

24 CHAIRMAN: Thank you, Mr. Gaudet. Mr. Hunter?

25 MR. HUNTER: I have a one page submission which I will

1
2 read. My name is Eldon Hunter. I own Hunter's One-Stop,
3 a gasoline C-store business in Douglas Harbour on Grand
4 Lake. I am located about 25 kilometers from Minto, 40
5 kilometers from Oromocto and 50 from Fredericton. I have
6 prepared a statement after some thought about both the
7 regulations and some of the things that we are dealing
8 with. And I certainly would be more than happy to discuss
9 other topics after as to the relation of the business, but
10 I will read my document.

11 The purpose of the Petroleum Products Pricing Act
12 (Bill 82) was to bring stability to gasoline prices,
13 protect the consumer and ensure a competitive market with
14 viable wholesalers and retailers.

15 The Act, however, fails to address the greatest threat
16 to rural retailers -- the assurance of supply.

17 The Act does not reflect the reality of the gasoline
18 delivery system. The Act provide no incentive to the
19 wholesaler to supply the rural retailer and the wholesaler
20 can cease supply to the smaller retailer in the name of
21 efficiency.

22 This leaves the rural retailer to obtain gasoline from
23 an "Independent Supplier" or to shut down.

24 I propose the following changes to the Act to assure
25 that all participants are on a level playing field. 1.

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2 Establish under the 'Definitions' the position of
3 "Independent Supplier". This person is neither a
4 wholesaler or a retailer under the current Act. This
5 requires the removal of Section 2 (Exemptions). 2.
6 Establish in the regulations the margin for the
7 "Independent Suppliers". 3. Where the wholesaler is the
8 supplier to the retailer, collect from the wholesaler a
9 stabilization tax equal to the independent supplier
10 margin. 4. Reduce the existing gasoline tax by an amount
11 equal to the amount collected by the stabilization tax.

12 This brings financial stability to all participants in
13 the petroleum supply and delivery system and removes the
14 tendency to "undercut" those that rely on the independent
15 supplier for their product.

16 CHAIRMAN: Thank you, Mr. Hunter. I know that you
17 appreciate that this Board cannot change legislation. And
18 I presume that your remarks are made to us in the hopes
19 that those who can change legislation will read those
20 remarks.

21 MR. HUNTER: That would be my intent, yes.

22 CHAIRMAN: One of your concerns seems to be the assurance of
23 supply. And you are I guess Douglas Harbour you described
24 it -- perhaps you could tell me where that is again? I
25 know that I know where it is, but --

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2 MR. HUNTER: It is on the shores of Grand Lake, the north
3 side between Fredericton, Oromocto and Minto, if you --

4 CHAIRMAN: And have you experienced some difficulties
5 personally with respect to supply or is this a comment
6 that you say would I believe might apply to some of your
7 peers, you know, operating establishments in other
8 locations?

9 MR. HUNTER: I will go back to my start. I have been in
10 business for 23 years. I was supplied by a major
11 supplier. We after the first couple of years come to an
12 agreement that I would receive 4.25 cents per litre as
13 margin. They installed all the equipment and they did the
14 repairs. As time when on and toward I will say early in
15 the 2000 -- maybe 2004, 2005, things started to tighten up
16 and they ceased doing repairs and charged for those
17 repairs.

18 When regulation came in in 2006, the number mentioned
19 was 5 percent. Any contact with the supplier for the 5
20 percent was met with -- we can do no better. That's your
21 negotiated price that you will have. My volume was not
22 significantly high, so you go along with that. In July of
23 2006, a representative from the supplier came in and said
24 we have decided we will no longer serve you. The point at
25 that time was that they would be done in two months. I

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2 negotiated -- the best I could get was that it would be
3 December. On December of 2007, they came in with the
4 trucks and the excavators removed their equipment and left
5 me with a site with contamination. Try going to the bank
6 and getting money with a contaminated site. I was able to
7 accomplish that and went -- managed to get new tanks in.
8 I went back into business, negotiated with an independent
9 supplier who at the time felt that he would be able to be
10 somewhere in the 6 cent range as profitability got up and
11 running. And since that time, the margin is somewhere in
12 the order of 4.6 cents. By the regulations I could be
13 higher. I am deemed a full serve, but my clientele is --
14 and my residents in my community work in either Oromocto
15 or Fredericton, and if I was to take my prices to anything
16 other than the Fredericton, Oromocto price, the volume
17 would drop significantly. I have had history of that.

18 A few years before that there was price wars in Minto
19 and my price was cheaper than Fredericton. I achieved
20 about a 30 to 35 percent increase in sales. The same
21 thing happens if I am 2 to 3 cents above Fredericton. I
22 will probably have a 30 to 40 percent decrease in sales,
23 which is decreasing in visitors to the site.

24 So one of my issues, of course, is that section of the
25 legislation that allows a free negotiation of the margins

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2 between the wholesaler and the retailer. It is my opinion
3 that does not occur. And you would be aware of perhaps
4 any approaches you have had by retailers to force
5 wholesalers to give them their margin. I am not aware of
6 that.

7 CHAIRMAN: Thank you. Any questions from members of the
8 Panel?

9 MR. MCLEAN: I guess maybe could you define independent
10 supplier again? I just don't quite understand what they
11 would do and how they would be different from a
12 wholesaler?

13 MR. HUNTER: Well what I deem the wholesaler would be Shell,
14 Irving, the major suppliers. When I -- when my
15 wholesaler left, I approached the other ones. They just
16 simply say if we don't see 1 1/2 million litres or a
17 significant amount, we have no desire to serve you. So
18 that leaves you to go to XTR, Wilson's, in my case,
19 Taylor Petroleum here in Fredericton, and they have to buy
20 their fuel from my understanding off the rack at some
21 price less than what the refiner would get. And what we
22 are now seeing is that the prices will be set for Thursday
23 a.m. and then Fredericton will come down .2 cents from
24 whatever they have got. So there is a continuous drop by
25 the major suppliers or the major retailers, refiner

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2 retailers to bring downward pressure on the smaller
3 retailer that has to get their fuel not from them, because
4 they refuse to serve them.

5 MR. TONER: So I am assuming, I am asking the question, I
6 assume that you have been shut down because of lack of
7 fuel?

8 MR. HUNTER: I managed to find the money and I put new
9 tanks, new pumps, new pump island, everything, mortgaged
10 my house and I am back in business.

11 MR. TONER: Okay. And but you are saying -- but you haven't
12 had a problem of losing -- since that happened, you have
13 always had your supply?

14 MR. HUNTER: Oh, yes. I have my supply. The person that
15 I -- what I call the independent supplier has been very
16 good. The other advantage that I have with this person is
17 I can try and guesstimate what the prices will be and I can
18 choose to take gas say on Tuesday if I think it is going
19 up or I can wait till Thursday if I think there may be a
20 drop. It's a guesstimate, but I can work that. When I
21 was with the major supplier it was the truck is leaving
22 the refinery, we decide when you are going to get it.
23 There were two incidents that I had when the truck was
24 loaded between 11:00 and 12:00 o'clock at night at the
25 refinery. It went down 2 cents the next morning and the

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2 issue was that's when it was loaded. That's what you pay.

3 So before it ever arrived at my site I had lost 2 cents.

4 MR. TONER: And your business is a one stop, so you have
5 groceries --

6 MR. HUNTER: I have groceries. I have gasoline, movies, I
7 have an N.B. Liquor agency sale.

8 MR. TONER: So having lost the gas you feel that you would
9 have lost some traffic?

10 MR. HUNTER: Oh, yes. It changes significantly. And part
11 of the what the rural retailer does, and I know in my
12 case, and I believe most of them are the same, we
13 participate in the livelihood of the community and our
14 future is really if we can get the community to continue
15 to grow. And when you move a facility like gasoline from
16 a small community, then that community is on a downward
17 spiral, rather than on an increase. It is important to
18 have it there.

19 MR. TONER: So you are the only gas station in your area
20 pretty much?

21 MR. HUNTER: Yes. There are two others within I will say 15
22 -- 13 to 15 kilometers in an opposite direction
23 (inaudible) out on Highway 10 between Minto and
24 Fredericton.

25 MR. TONER: And I am just -- because you mentioned it, so by

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2 you mortgaging your house, because you said you did that -

3 -

4 MR. HUNTER: Yes.

5 MR. TONER: -- you obviously -- it is still quite profitable
6 if you said -- unless your --

7 MR. HUNTER: Well it depends on whether you look at what the
8 accountant says or -- it is what I do.

9 MR. TONER: Thank you.

10 VICE-CHAIRMAN: Mr. Hunter, you indicated I think that

11 because of the market competition from

12 Oromocto/Fredericton, that you are not able to charge the

13 full maximum price that you would be allowed to now, is

14 that right?

15 MR. HUNTER: That is correct. Well, it's in the -- I guess
16 I will qualify it by saying that's a decision that I make.

17 That's not that I am not allowed to do. It's a decision

18 that I make from a business point of view. One of the

19 things we have is staff that has to take a tremendous

20 amount of abuse from everybody that comes in if your gas

21 prices are higher. And that wears on your staff day in

22 and day out --

23 VICE-CHAIRMAN: But the market forces that exist and the

24 social forces cause your gas to be priced less than what

25 the maximum would be allowed now?

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2 MR. HUNTER: That is correct.

3 VICE-CHAIRMAN: Given that do you have any thoughts on what
4 the effect would be on your operation if margins were to
5 be increased by this panel?

6 MR. HUNTER: Well, I think there was some discussion that
7 you had there doing the calculations of the \$10,000 and
8 the cost of staff. Any increase in the margin would show
9 up as bottom line profit. We run as efficiently and as
10 lean as possible. In most cases in the off season, I am a
11 single person operation on as far as staffing. I do all my
12 own books. There is not a lot of leeway to be found in
13 more efficiencies. It is volume and profit on the
14 individual products that you sell.

15 VICE-CHAIRMAN: I guess what I am wondering though is
16 whether an increase in the margin is going to have an
17 affect on what your actually able to charge given the
18 market and social forces that you described?

19 MR. HUNTER: Well I guess -- well if those social forces
20 continue to stay there, and that's my reason for my
21 presentation of looking at revisiting regulation. We only
22 have partial regulation. We don't have full regulation.
23 If those suppliers that are the major undercutters, the
24 major wholesaler retailers were forced to give up the
25 amount that the person who buys off the rack in order to

2 service, you would not see those downward pressures on gas
3 that you now see because they can pull their profit out of
4 it in some other way, either by less to their own
5 retailers or using more in the profitability on the
6 refining process and delivery process.

7 VICE-CHAIRMAN: Thank you very much.

8 MR. MCLEAN: I just wonder, Mr. Hunter, could you comment on
9 credit card use? There has been a lot of discussion on
10 that and how the trend has been over the last few years.
11 What do you find in your business?

12 MR. HUNTER: Certainly from a dollar point of view it has
13 significantly increased. It has increased from the
14 percentage as to how much, you know, on a daily basis. I
15 have in my bookkeeping process, it is some ways relatively
16 simple what I take in at the cash register is either in
17 cash or in credit cards. Cash I put in the bank, credit
18 cards get sent with a different process. So I keep a line
19 each day as to which is which so I can prepare my bank
20 account. So credit cards, I will give a very rough
21 system, but I would say total amount would have been in
22 the 30 to 35 percent range in -- even as much as two years
23 ago. Now it is well over 40 percent that I am -- that
24 people are buying on credit cards. And it relates to gas,
25 as there has been talked about before that percentage on

1
2 the card versus the dollar per litre or the price per
3 litre is what really has driven -- not only has the use
4 gone up, but the percentages that we lose per litre has
5 increased significantly with the prices going from say 90
6 cents to a 1.30.

7 CHAIRMAN: Thank you for your participation and your input
8 here today Mr. Hunter.

9 MR. HUNTER: Thank you.

10 CHAIRMAN: Mr. Richard?

11 MR. RICHARD: I am Jean-Marie and Gabriel, my son. I have
12 been in the retail gasoline business in rural New
13 Brunswick for 37 years. And this is not a question
14 related to -- like July 2006 could make a living in the
15 retail gasoline business as an independent retailer.
16 Since regulation the business is merging at less than god
17 I have no bank loan or I will be out of business. I want
18 to leave the business to my son, but now I am not sure if
19 it is possible to have him to make a living the way it is.

20 No one has asked me for my --

21 MR. G. RICHARD: Financial statements.

22 MR. RICHARD: -- financial statement, and I am willing any
23 time to give that to them, because there is a lot of thing
24 happen until 2006 from the end of July.

25 The last 27 months, the cost of the credit card and

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2 the salary and the insurance and all that been bigger all
3 the time. Like you would see the fee for the license, for
4 each site, we have got two sites, was something like 100
5 to 125 bucks. Now it is 500 bucks each site, plus we need
6 to pay more for the salary and all that. I figure that
7 out this summer, July and August for the credit card, the
8 average was 1 cent a litre. And that's a lot for the
9 service charge.

10 And another thing, if the thing continue like that,
11 like us in the small village we got -- like the population
12 is not that bad. It is around 12' to 1,500 people. But
13 somebody going to need to close up and they are going to
14 need to drive maybe 10 miles or 30 miles to get some gas.
15 And I don't believe it is a good idea. And the time I
16 would say before the end of June 2006, I was going to my
17 business and I started working at 7:30, 7:00 o'clock in
18 the morning, and I was going home at 5:30, 6:00 o'clock at
19 night. And quite a few times, I was happy to go back
20 home, because I did something in that day. But until the
21 last few years, it is pretty hard to be happy because I am
22 going home to think today I lost 200 bucks or I lost \$250.
23 And where the money I make 15 years ago or 20 years ago, I
24 need to put that on the two business to keep it running.
25 So I don't believe it is a good idea.

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2 And I really love my son, just like you people and I
3 really care to have the business continue just like
4 before, but if it continue like this, something going to
5 happen that's for sure. And I really care to see
6 something like P.E.I, a minimum, because the time we are
7 not going to find that, you know, we are going to be in
8 bad shape. And I was thinking before the end of 2000 --
9 the time they lost that in 2006, in July I was thinking we
10 are all set, but no way. In July and August -- but July
11 anyway, were the two service station, from the year before
12 I lost 30,000 bucks. So it is pretty hard to go home and
13 be happy. That's on gas I mean. And that's it. Thank
14 you.

15 CHAIRMAN: Mr. Richard, does your son -- do you have any
16 comments that you wish to make at this time?

17 MR. G. RICHARD: No, everything covered.

18 CHAIRMAN: Did I understand you to say, Mr. Richard, that
19 you operate two stations?

20 MR. RICHARD: Two stations, yes.

21 CHAIRMAN: And where are they located?

22 MR. RICHARD: One in Richibucto and one in St. Louis de
23 Kent.

24 CHAIRMAN: Yes. Are there others -- are there competitors
25 handy to either station.

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2 MR. RICHARD: Richibucto, is a Petro Canada. And St.
3 Louis --

4 MR. G. RICHARD: There is a few around.

5 MR. RICHARD: -- a few around. Oh, yes. But, you know,
6 they got a hard time just like us.

7 CHAIRMAN: And do you charge the maximum amount allowed or
8 do you have to charge -- Mr. Hunter indicated that he
9 charges, for example, less than the maximum allowed
10 because of market forces. Do you charge the maximum
11 allowed under the regulation?

12 MR. RICHARD: No, we follow the market. We follow the
13 market, whatever the market is we go at the same price.

14 CHAIRMAN: So when you speak of the market would you be
15 talking about the Miramichi or Moncton or Shediac?

16 MR. RICHARD: Moncton. We try to follow Moncton, yes.

17 MR. G. RICHARD: Yes.

18 CHAIRMAN: Thank you. Any questions?

19 MR. RADFORD: Mr. Richard, Mr. Gardner said he was having
20 difficulty in getting information for his report. Did he
21 contact you? And if he did, did you give him the
22 information?

23 MR. RICHARD: Honest to god, I always had the information,
24 but I never saw that, because any time at all anybody care
25 for it, I am willing to give it.

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2 MR. RADFORD: Thank you very much.

3 MR. RICHARD: Any time at all. For the last year and for
4 the last 37 years.

5 MR. TONER: You were saying from July last year to July this
6 year you lost \$30,000, is that over the two years?

7 MR. RICHARD: 2006.

8 MR. TONER: So July 2006 to July 2008? You made reference
9 to \$30,000. And is that a loss --

10 MR. RICHARD: Like from the year before, let's say 2005.

11 MR. TONER: For the month. You lost --

12 MR. RICHARD: For one month. For the two service station.
13 15,000 each.

14 MR. TONER: You lost -- okay. And you said --

15 MR. RICHARD: We were paying -- let's say we were paying
16 like 99 cents and we were selling for 98.

17 MR. TONER: Yes. Okay. So you are saying that on your --
18 so you lost \$30,000 just on your fuel. You are not taking
19 into account the cost. You are just saying you bought
20 fuel for this price and you sold fuel for this price and
21 you lost \$30,000 excluding the cost?

22 MR. RICHARD: Yes.

23 MR. TONER: No credit cards or nothing. So your loss is
24 truly more than that?

25 MR. RICHARD: Well, you know, that's -- the credit card --

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MR. TONER: Yes, plus your credit card --

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MR. RICHARD: I am saying between 2005 and 2006 in the same month in July, 2005 there is credit card, too, and in 2006 there was credit card, too. But the difference for the profit was 30,000 difference less just for July.

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MR. TONER: In your bottom line? On your bottom line?

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MR. RICHARD: Right. Let's say if you are selling the gas for 1 cent less than what you pay for, and you were making 5 cents that's what happen.

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MR. TONER: I am --I don't think -- I am not sure if I get -

12

- I want to understand -- like I am pretty smart --

13

MR. RICHARD: No, even maybe -- even if -- if you would like to ask questions in French, it is up to you, you know.

14

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MR. TONER: Non, mais, peux-tu t'expliquer en français.

16

Peut-être ça serait plus facile, je l'comprendrais mieux là.

17

18

MR. RICHARD: Peut-être oui.

19

MR. TONER: O.K. Mais, explique moi le back en français.

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MR. RICHARD: O.K.

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MR. TONER: « inaudible » était perdu.

22

MR. RICHARD: En 2006, dans le mois d'juillet, juste le mois

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MR. TONER: Pas year to date?

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MR. RICHARD: Un mois, « inaudible »

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2 MR. TONER: Juillet 2006?

3 MR. RICHARD: Juillet 2006, juste après la loi O.K. That
4 was the end of eh. C'était à la fin d'juin là, puis ça
5 commencé le premier d'juillet.

6 MR. TONER: Oui.

7 MR. RICHARD: Dans tout ce mois-là, la manière que ça ça
8 fait là, on a perdu \$30,000 dollars « inaudible » l'année
9 d'avant 2005. O.K. là, un mois avec les deux sites. Un
10 mois alentour 5.5, 6.1 d|litre avec les deux sites.

11 MR. TONER: 5.6 million.

12 MR. RICHARD: Million

13 MR. TONER: Million d'litres. O.K.

14 MR. RICHARD: Oua.

15 MR. TONER: Par année là?

16 MR. RICHARD : Par année.

17 MR. TONER : O.K.

18 MR. RICHARD : « inaudible » Comme dans l'été il y en \$
19 100,000 piastre de revenue. Dans l'été comme dans le mois
20 de juillet là, ça peut aller de jusqu'à six cents milles.

21 MR. TONER : O.K.

22 MR. RICHARD : D'un mois, sur les deux sites.

23 MR. TONER : O.K. J'comprends. O.K. Thank you.

24 CHAIRMAN: Mr. Nicholson?

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2 MR. NICHOLSON: My name is Ted Nicholson. I run a small
3 branded independent station in Moncton. I guess when
4 regulation first came in I was all for it because the
5 first thing I thought of well they are going to follow the
6 same formula as they have in Prince Edward Island where
7 the dealers all make 5 cents a litre and the oil companies
8 have to look after themselves, but unfortunately that
9 didn't work. So the way it works for me right now in
10 Moncton, the company that I am dealing with says that they
11 are going to live with the intent of regulation. So they
12 allow me depending on which day I buy it 5 cents a litre.
13 Out of that 5 cents a litre, I have to pay 2 cents a
14 litre for transportation costs, which of course brings you
15 down to about 3 cents. On credit card purchases at \$1.20
16 a litre, it costs you 2.2 cents per litre to cover off
17 your credit cards. So you are left with about 8/10ths of
18 a cent to operate your business on credit card sales.

19 I have heard several times over the last couple of
20 days are you charging the maximum in your market? To
21 which I say, no, I can't. I am in a market, for example,
22 I receive my product from Dartmouth where I am charged 2
23 cents a litre. Other companies are charged 1.2 cents a
24 litre to receive product out of Saint John. And there is
25 other companies who it appears to pay around 6/10ths of a

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cent to receive product out of the Miramichi. Of course the lowest transportation costs are the ones that set the market price.

So in my particular case, I can claim back 6/10ths of a cent on a 2 cent distribution cost.

MR. RADFORD: Sorry. Would you just repeat that again? I didn't get that.

MR. NICHOLSON: I pay 2 cents a litre for delivery. Another company in Moncton, they pay 1.2 cents per litre for delivery and another company pays 6/10ths of a cent for delivery. So what that means is the lowest delivery cost sets the market price, because for them to live with regulation they charge their 6/10ths plus their HST. And that is the price that they post up on their road sign.

So we are in a market where I could post 1.4 cents per litre more on my road sign and be competitive, but I am sure I could look across the street and see my business or my customers going there. So your choices are relatively clear if you want to have any kind of volume whatsoever, you have to match market.

So there I am, I am left in a situation where I am making down towards a cent a litre to operate my business. I personally don't have any problem with regulation, as long as regulation is laid out on a level playing field

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where we all have a way of having a price set in a market that we can all live with. But when you have several different delivery costs and everybody is trying to live with the intent of regulation, it is a very hard thing to do.

And that's my biggest beef with regulation, is my -- I mean credit card costs, no question, they are a factor. Are they growing, yes. On a daily basis -- and I am your average. I am your average. I am in a site that does about 2.1 million litres a year. So when Mr. Ervin and Mr. Gardner speak of the average, that's about where we -- or I am. My costs for credit card and debit card on a daily basis run anywhere from 200 to \$250 a day, of which probably -- and I was doing some quick checks on that, I am usually around 40 to 45 percent credit card. So the numbers that are being thrown around are reasonably accurate.

So does credit card have an effect on the business, no question. But the single biggest cost to my business in the Moncton area is the transportation cost.

Now I could buy my product out of Saint John. I approached a gentleman who had a tanker and he said, yes, I can bring you product out of Saint John for probably around a penny, 1.2. I thought, wow, I mean all of a

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2 sudden I am competitive again. The contract that I have
3 with the company that I deal with forbids me from doing
4 that, because they say they have no contract with Saint
5 John to do that. So I am stuck with the 2 cents one way
6 or the other. And I guess at that point that concludes
7 what I have to say. And I am open for questions.

8 CHAIRMAN: I just wanted to clarify one thing about the
9 numbers that you were discussing. I think you had
10 indicated that you had an arrangement where you had a 5
11 cent a litre margin, but then you were paying the
12 transportation costs out of that at 2 cents a litre. So I
13 think effectively what you are telling us is you have a 3
14 cent per litre margin, is that you are --

15 MR. NICHOLSON: That isn't the way that the company I deal
16 with looks at it.

17 CHAIRMAN: No, I appreciate that is probably the case. But
18 that's what you are telling us today is that the 5 cents
19 per litre has become 3?

20 MR. NICHOLSON: Absolutely.

21 CHAIRMAN: Any questions from the Panel?

22 MR. RADFORD: The only thing I would like to ask Mr.

23 Nicholson, did Mr. Gardner contact you, and if so did you
24 give him the information that you gave us here today?

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2 MR. NICHOLSON: I gave Mr. Gardner some information. I will
3 be honest with you, the questionnaire that I received from
4 him, you had to be a lawyer to work your way through it.
5 It was very detailed and very complex. I have a network
6 of dealers that I talk with and they all said the same
7 thing to me, how did you do this? How did you do this?
8 Well, it was complicated. The whole process could have
9 been much easier done with a series of sit down
10 consultations with dealers rather than a heavy load of
11 paperwork for people that go to work. I am on site every
12 morning at 6:30. I generally go home every night at 6:00
13 o'clock, 6:30. To add more paperwork into a day, you
14 know, that's asking a lot, it really is. The whole
15 process could have been done easier.

16 MR. TONER: And did you get it by fax, is that how you
17 were -- or you were mailed it the questionnaire?

18 MR. NICHOLSON: No. I am sorry, I can't remember how I got
19 it.

20 MR. TONER: And when you got one was it in French and
21 English or just the one in English?

22 MR. NICHOLSON: Actually I think I received mine by mail.

23 MR. TONER: And was it bilingual?

24 MR. NICHOLSON: I am not sure.

25 MR. TONER: Okay. I am just asking the question.

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2 MR. NICHOLSON: I am not sure.

3 MR. TONER: When you are saying 5 cents a litre, so in your
4 market people are charging the maximum rate?

5 MR. NICHOLSON: No. Because the maximum rate is the
6 government appointed price plus 2 cents plus HST. And as
7 I said earlier the company that pays 6/10ths of a cent
8 sets the market price, because they will take their
9 6/10ths of a cent, add it onto the government price with
10 their HST and that is their price.

11 MR. TONER: So you are 1.2 below --

12 MR. NICHOLSON: They are 1.4 below.

13 MR. TONER: 1.4 -- yes, 1.4 below.

14 MR. NICHOLSON: Yes.

15 MR. TONER: Thank you.

16 VICE-CHAIRMAN: I would just like to follow up on that point
17 a little bit. In the Moncton market is it your experience
18 that the price is generally about 1.4 cents below the
19 posted maximum?

20 MR. NICHOLSON: That is correct.

21 VICE-CHAIRMAN: Does it drop below that very much?

22 MR. NICHOLSON: Absolutely. It did this week. Excuse me,
23 but last Thursday when our prices were set, the Moncton
24 market went to 118.7. Okay. I looked at it and thought
25 man, I can't live with that. I went to 118.9, which is

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2 well within my right to do. That was Thursday. On Friday
3 there were places in Moncton selling product for 118.2.

4 But they were corporate sites. They weren't independents.

5 VICE-CHAIRMAN: Do you have any thoughts as to what the
6 effect on the actual pump price would be if the -- what we
7 refer to in this proceeding as the retail margin does get
8 increased is it going to have an effect or our competitive
9 forces going to keep it down?

10 MR. NICHOLSON: Well first of all it will depend upon
11 everybodys' delivery cost, because that is the formula
12 that we are using right now. My biggest concern in this
13 is that there is -- there is no -- nothing in place to
14 protect the mom and pop operations in this province,
15 because the corporate stores have deep pockets. I mean if
16 you are one of the majors, we have all seen the profits
17 that they turn. Now they will say to you well our
18 downstream operation, we are losing money on that. But
19 that's like having two arms. Like one is making money,
20 one isn't.

21 Ultimately if I have an operation that is making money
22 and there is three different components that make that up,
23 ultimately I make money. In my opinion, the majors have
24 structured their business so that they can't make money
25 downstream. They say they need 3 1/2 cents to operate

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2 their downstream operation, but they can't seem to make it
3 so they say. So I say well why don't you give it an extra
4 penny and then you can make it. It's just a matter of how
5 you have structured your business.

6 I am personally not very concerned about Irving Oil or
7 Petro Canada or Shell or any of these large corporations.
8 They seem to be doing quite well. The small independent
9 business person in this province is struggling. There is
10 no question about that. It's very evident.

11 I heard things over the last couple of days that
12 really bothered me. Like I am thinking to myself why
13 should my convenience store operation subsidize my
14 gasoline operation? It doesn't make sense. It is an
15 operation in and of itself. I have to pay environmental
16 insurance every year. I have to license all my lines. I
17 have to license my tanks. I have to have cathodic tank
18 tests done every year. I have to have a pressure test
19 done every year -- well not every year, but every second
20 year. It is just unbelievable how much money that you
21 have to put into your gasoline operation and when you look
22 at the environmental risk and return on investment,
23 sometimes I think why am I in this? But I am in it for at
24 least 8 more years, because I have a contract and I have
25 to live up to it. So in the course of the next eight

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2 years, I would like to figure out a way to survive. And I
3 don't think that my gasoline operation should make nothing
4 and be supported by either aspects of my business. There
5 has to be -- there has to be a way that it can carry
6 itself.

7 MR. MCLEAN: Just on that point. Do you in your
8 bookkeeping, do you try and differentiate to say that at
9 the end of the period like my gas operation made so much
10 and my convenience store and try and allocate some of the
11 costs between the two operation, even if it is arbitrary?

12 MR. NICHOLSON: I do a monthly profit and loss statement.
13 And in that profit and loss statement, I have margins
14 established for gasoline, like what my margin is per
15 product at the end of any given month. I have had months
16 where -- and as a matter of fact I think it was last
17 month, I lost about 28 percent on high test. Well that's
18 because you are sitting with product in the ground when
19 the price drops. Well two ways to look at that. You can
20 make it when it goes up, you can lose it when it goes
21 down. I can live with that. But when you look at the
22 history since 2006 and when you look at your margin in
23 gasoline and it is running around anywhere from 2 to 3
24 percent, that's not much margin not when you deal with

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probably a million and a half dollars. I wouldn't really call that return on investment.

CHAIRMAN: Mr. Nicholson, thank you very much for your remarks and for your participation over the past two days.

MR. NICHOLSON: Thank you, Mr. Chairman.

CHAIRMAN: The Scholten Group.

MR. J. SCHOLTEN: Thank you for having us here today. I didn't really prepare anything, but I just felt that it was important to say a couple of cents worth here.

For the record, the Scholten Group does not approve of the need of having price regulation. Nevertheless, we are all having to abide by it and we will do our best within that regime.

I guess our largest concern at this point was the onset of the initial maximum. There seems to be very little justification that we are aware of that supports that initial 11 cent marketing margin. We are not sure where it came from, how it was justified. We are debating here the changes that are required to adjust that marketing margin. But without knowing the initial reasons for setting it, we questioned the basis of a new margin being set. We feel that it was set arbitrarily low. And it is not sustained in the long term. That said I guess I personally operate four locations in four different

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2 regions. And on general our margin has decreased 1 cent
3 in the past two years. And that is not even being
4 discussed here today. What we are discussing is cost
5 increases. Obviously our cost have increased as well. So
6 we are getting hit on both sides of the coin. We estimate
7 that we are losing on average 2 cents a litre if we are in
8 the same environment as 2006.

9 Other issues that haven't been addressed is that
10 affecting that 1 cent loss of our actual margin has been
11 run at the pumps. In this transparent system, there is an
12 opportunity for the public to become aware of price
13 changes that are coming the following day. Generally ti
14 is 24 hours that word is that it is going to be changing a
15 cent, 2 cents, 5 cents, up or down. That has been
16 changing the publics' purchasing habits, which they did
17 not have that I will say advantage prior to regulation.

18 Obviously it is in the best interest and I, myself,
19 will fill up my fuel at the right day. We are seeing
20 changes in our volumes of up to 50 percent in that given
21 day. And that is straight off our margin. The other
22 thing that has been talked about extensively is our low
23 cost delivery. We are not charging the maximum that we
24 are allowed to according to the letter of the law, because
25 there is a necessity to meet the street price out there

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2 and our full delivery costs cannot be passed on without
3 repercussions for our volume. And that's all I have to
4 say I guess. So any questions?

5 CHAIRMAN: Thank you, Mr. Scholten. I just find it
6 interesting that most everybody has indicated that they
7 are not charging the maximum.

8 MR. J. SCHOLTEN: That's right.

9 CHAIRMAN: So how does an increase in margins impact on your
10 profitability? If the margins were to go up is there any
11 reason to believe that the market price now would change?

12 MR. J. SCHOLTEN: Not necessarily, no. One of the factors,
13 of course, is the low cost delivery. If that's the factor
14 that is degrading the margin that retailers are receiving
15 now, if the street price accepts say for argument sake a
16 cent increase in margin, we are still going to have the
17 issues of the lowest cost delivery.

18 There are areas that are competitive that choose to
19 for various marketing purposes to charge less than
20 surrounding areas to try and draw volume out. Those
21 pricing policies may still exist. So individual sites
22 still may not charge the maximum price in all likelihood.

23 CHAIRMAN: In the areas that you operate your stations, I
24 believe you said there were four different operations?

25 MR. J. SCHOLTEN: Yes.

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2 CHAIRMAN: Is anybody in those areas charging the maximum,
3 any of your competitors that you are aware of?

4 MR. J. SCHOLTEN: I cannot answer that because I am not
5 aware of their direct delivery costs. From my experience,
6 I suspect there are attempts to get there and then there
7 is a correction to the lowest cost delivery, but that's
8 just my supposition.

9 CHAIRMAN: Thank you. Questions?

10 MR. RADFORD: Perhaps you would just explain to me, the
11 wholesalers allowed say 5 cents?

12 MR. J. SCHOLTEN: Sure.

13 MR. RADFORD: Do the retailers get a part of that 5 cents in
14 some cases?

15 MR. J. SCHOLTEN: Are you referring to the wholesalers part
16 of the marketing margin?

17 MR. RADFORD: Yes.

18 MR. J. SCHOLTEN: They may or they may not depending on what
19 their negotiated term --

20 MR. RADFORD: But they may. Some do then is that what you
21 are saying?

22 MR. J. SCHOLTEN: Yes.

23 MR. RADFORD: Thank you.

24 MR. MCLEAN: I am trying to understand this full price. The
25 retail margin is 5 or 6 cents?

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2 MR. J. SCHOLTEN: The retail margin?

3 MR. MCLEAN: Yes.

4 MR. J. SCHOLTEN: According to the legislation is 5 cents.

5 MR. MCLEAN: 5 cents. And then plus the freight?

6 MR. J. SCHOLTEN: That's right.

7 MR. MCLEAN: So when you say someone isn't charging the
8 maximum, in your case, the maximum amount, if your freight
9 was a penny and a half, then the maximum you would charge
10 would be 6 1/2, is that correct?

11 MR. J. SCHOLTEN: I think we have to get passed the
12 wholesale margin and the retail margin.

13 MR. MCLEAN: Okay.

14 MR. J. SCHOLTEN: The maximum price allowed for retail for
15 argument sake could be 1.20, according to the schedule
16 that is posted by the Energy and Utilities Board.

17 MR. MCLEAN: Yes.

18 MR. J. SCHOLTEN: Plus up to a 2 cent, plus HST, delivery
19 charge.

20 MR. MCLEAN: Yes.

21 MR. J. SCHOLTEN: So according to the letter of the law if
22 my delivery was say a cent a litre, that is the cost that
23 I am being charged to receive the product to my site, I
24 could charge \$1.20 plus 1 cent. So 1.21 at retail. If my
25 neighbour for whatever costs strategy their delivery

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2 company employs with them, it is charged 6/10ths of a
3 cent, then the maximum then that they can charge according
4 to the law is 1.20.6. So I could charge 1.21. I am not
5 doing -- I choose not to do that for various reasons of
6 volume and loss of business and whatever have you, I
7 choose to meet my competitor at a \$1.20.6. So when the
8 question is asked whether I am charging the maximum, I
9 will have to reply no.

10 MR. MCLEAN: No. So if the competitor --

11 MR. J. SCHOLTEN: Yes.

12 MR. MCLEAN: -- was allowed another penny --

13 MR. J. SCHOLTEN: Right.

14 MR. MCLEAN: -- presumably he would go up the other penny.

15 So he would still add the .6 on, but the margin would go
16 up. So you still wouldn't be charging the margin. But do
17 you think the retail price in the area would go up by a
18 penny? Would he decide not to put that up as well? In
19 other words, if he charges his maximum --

20 MR. J. SCHOLTEN: I suspect -- I suspect they are.

21 Unfortunately, we don't have that information.

22 MR. MCLEAN: So if his maximum was allowed to go up, he
23 might increase his maximum, is that possible?

24 MR. J. SCHOLTEN: Possibly.

25 MR. MCLEAN: Possibly. So it might. Okay. Thank you.

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2 MR. J. SCHOLTEN: But again the whole point without a
3 minimum we allow opportunity for the free market to work.
4 So if they are choosing to remain a certain level of
5 competition, the market may not necessarily accept
6 whatever the recommendation is for an increase of margin.
7 That's -- time would only tell that.

8 MR. TONER: Are you the low delivery cost guy in any of your
9 four stores?

10 MR. J. SCHOLTEN: Not that I am aware of, no.

11 MR. TONER: No.

12 MR. J. SCHOLTEN: It doesn't appear so.

13 MR. TONER: The run at the pump would be the reason the 24 hour
14 window I understand is allow you guys to -- the computers
15 and stuff --

16 MR. J. SCHOLTEN: Absolutely.

17 MR. TONER: Is that necessary or have you guys got to the
18 point where that could be maybe waived so that the 24 hour
19 window didn't exist because of technology?

20 MR. J. SCHOLTEN: Well I am not sure how we would implement
21 the immediate change. Even that would just compound
22 issues that we have had with interruption clauses,
23 confusion that arises out of those. So I believe there is
24 some kind of necessity for a window. Nevertheless even
25 before it is announced from the EUB, due to the

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2 transparency, someone following the markets could estimate
3 with general proximity of what the price could be. So
4 there is an advantage and disadvantage to transparency
5 if --

6 MR. TONER: So you are not recommending that?

7 MR. J. SCHOLTEN: No.

8 MR. TONER: You think that that 24 hour window, you
9 understand that it is there and --

10 MR. J. SCHOLTEN: Absolutely.

11 MR. TONER: You can't prevent the run at the pump unless you
12 do it out of order on your pump or something?

13 MR. J. SCHOLTEN: No, the only thing I do comment on that is
14 that it is a reality at the street, but it does have an
15 effect on margin. Whether an estimate can be made as to
16 what the cost of that effect or the value of that effect
17 is is up for debate. But it does necessarily affect the
18 bottom line of retailers.

19 MR. TONER: So given delivery costs --

20 MR. J. SCHOLTEN: Yes.

21 MR. TONER: -- if this Board were to follow the Gardner
22 report and raise it by 1.58, roughly that's what it is
23 approximately --

24 MR. J. SCHOLTEN: There is a 1 cent --

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2 MR. TONER: 1 cent. Sorry. 1.58, sorry. Roughly speaking,
3 do you think it would make it -- it would go that you guys
4 would get it?

5 MR. J. SCHOLTEN: The delivery cost charge?

6 MR. TONER: No, not the delivery cost, because the delivery
7 cost is what's changing it --

8 MR. J. SCHOLTEN: In any of my markets, delivery costs
9 change would have no absolute no effect.

10 MR. TONER: So the delivery cost isn't going to change.

11 Keep it the way it is. So given the fact that people are
12 charging below, but you are saying that they are charging
13 below by the delivery cost, below the maximum or your
14 maximum. So they are charging their maximum plus
15 delivery?

16 MR. J. SCHOLTEN: I believe they are, yes.

17 MR. TONER: Right. Assuming what their delivery is?

18 MR. J. SCHOLTEN: True. Yes.

19 MR. TONER: So do you believe that it would go to you the 1
20 cent or not as a retailer?

21 MR. J. SCHOLTEN: I can't answer that without -- gasoline is
22 as a competitive of a product as I am aware of in our
23 economy. 1/10th of a cent per litre can change peoples'
24 buying habits. Whether the street will -- and I call it
25 the street, the retailers out there in every given market

1
2 will increase the retail price because the Board chooses
3 to increase the margin, I can't foretell. All I know is
4 that we have to remain competitive in each given market.
5 And it only takes one individual store to choose to follow
6 or not to follow those allowable increases if that answers
7 your question.

8 MR. TONER: Now in your -- do you believe though that since
9 2006, since the implementation --

10 MR. J. SCHOLTEN: Yes.

11 MR. TONER: -- do you believe that the number of retailers
12 has stabilized. That those who were going -- those stores
13 that were going to simply close have closed and that now
14 you believe that those that are still here obviously --

15 MR. J. SCHOLTEN: No. I --

16 MR. TONER: -- are making it work or they are cutting their
17 costs or they are being efficient or do you believe that
18 if nothing changes that more are going to close?

19 MR. J. SCHOLTEN: Absolutely. I believe if nothing changes
20 more are going to be closing.

21 MR. TONER: Thank you.

22 VICE-CHAIRMAN: Mr. Scholten, how long were you in the
23 retailing business before regulation came in?

24 MR. J. SCHOLTEN: Six years.

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2 VICE-CHAIRMAN: There has been quite a bit of discussion
3 lately about this issue about delivery costs being the
4 driver for setting the price in any given area?

5 MR. J. SCHOLTEN: Sure.

6 VICE-CHAIRMAN: And I had an exchange of question and answer
7 with Mr. Gardner the other day talking about that point
8 and it being the main variable that sets the price on the
9 street to use your expression?

10 MR. J. SCHOLTEN: Okay.

11 VICE-CHAIRMAN: What I am a little bit less clear on is what
12 was the driver of the price pre-regulation? Did delivery
13 costs play a role at that time or has this system
14 completely changed the dynamic?

15 MR. J. SCHOLTEN: Prior to regulation, it was more or less
16 in our experience the large oil companies studying the
17 price, leading it up or down, and the street being the
18 street for lack of a better expression, would match that
19 price.

20 VICE-CHAIRMAN: When you say the large oil companies, do you
21 mean the corporate-owned stores?

22 MR. J. SCHOLTEN: That's right.

23 VICE-CHAIRMAN: So these are the retail gasoline stores that
24 are directly owned by the --

25 MR. J. SCHOLTEN: Integrated refiners, yes.

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2 VICE-CHAIRMAN: -- large players?

3 MR. J. SCHOLTEN: Yes. Absolutely, yes.

4 VICE-CHAIRMAN: And so people would sort of look out their
5 window and say what is so and so doing today? Okay, they
6 are at 1.17 and so are we?

7 MR. J. SCHOLTEN: Sure. If I can quantify that to a certain
8 degree, independents generally had been known to be more
9 aggressive and they would make attempts to try and bring
10 the price down because there were some advantages, a
11 family owned, they keep it within the family. That's
12 where they earn their income. So they might be able to be
13 a little tighter, less return on investment. And
14 sometimes that would be accepted and sometimes that
15 wasn't. For example, outside Fredericton, they might
16 price half a cent below what Fredericton is. Sometimes
17 Fredericton would fight that and bring their price down to
18 match, and then that's hence starts all the gas wars that
19 become famous sometimes and where that ends, bottoms out,
20 somebody eventually has to give in so to speak to work
21 those differences out.

22 And to come back to your original point, delivery
23 charge, that was within -- that was just a negotiated
24 aspect of your contract with your supplier what a delivery

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2 charge would be. That was never part of a thought process
3 of what your retail price was at the street.

4 VICE-CHAIRMAN: Thank you.

5 CHAIRMAN: Thank you, Mr. Scholten for being here over the
6 last couple of days to participate in this process. We
7 appreciate your time.

8 MR. J. SCHOLTEN: Sure. Thank you.

9 CHAIRMAN: Ms. Thorne-Dykstra?

10 MS. THORNE-DYKSTRA: Thank you very much for allowing us the
11 opportunity to speak in front of you with regard to this
12 serious issue that affects many people. It has been very
13 interesting to listen to the conversations throughout
14 today.

15 My name is Bethany Thorne-Dykstra. And I am the
16 President of Voice of Real Poverty Inc. And we are a non-
17 profit organization with the purpose of improving the
18 quality of life, dignity and fair treatment of people
19 living on, or below, the poverty line within the province
20 of New Brunswick through awareness, education and advocacy
21 to the public, to government, other organizations and
22 agencies, and to provide support to each other.

23 According to Stats Canada (2001) there are 111,370 New
24 Brunswickers living on or below the poverty line,

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2 (including the working poor), which constitutes
3 approximately 15 percent of our entire population.

4 Now people on social assistance are broken down in
5 different categories. And I often get the question, what
6 is the poverty line? It is not a simple cut and dry
7 answer to that. And I have shown here that a single
8 employable person that the definition that the Social
9 Assistance people give receives, \$3,427 in total for a
10 year to live on, which is 81 percent below the poverty
11 line according to Stats Canada's low income cut-off level,
12 which has been designed and reported by the National
13 Welfare Council of Canada at \$17,895. A disabled person
14 again and single person has that same figure of \$17,895,
15 being the poverty line. And they come short of that by 56
16 percent, because they only received \$7,895 to live on for
17 the entire year. A single parent with one child receives
18 \$13,656, which is 39 percent of the poverty line, 22,276.
19 And a couple with two children receive 17,567, which is 48
20 percent shy of the \$33,251 definition poverty line by
21 Stats Canada.

22 A single person working a minimum wage job full-time
23 only receives a gross cheque of \$16,120, that is 10
24 percent short of the poverty line. Now they are working
25 full-time. Many are facing sporadic working hours as well

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2 right now. I also hear from people that they have a full-
3 time job, but they are working 36 hours this week and they
4 might get 25 next week and they might get 38 the following
5 week, but it is considered full-time/part-time. And
6 that's a full-time job. So even that is a high figure for
7 a lot of the people I talk with.

8 However can they even travel to their jobs if gasoline
9 goes up again, if they only receive this kind of money?
10 This is not making financial sense any more. Many seniors
11 and those on Canada Pension Disability and other fixed
12 incomes are trying to live well below the poverty line as
13 well. And they only receive \$600 a month to live on. How
14 do they go to the doctor or heat their homes? What
15 options are available if they can't afford to meet these
16 basic needs any more?

17 After reviewing the 2006 Child and Family Poverty
18 Report Card for New Brunswick issued by a network of 120
19 organizations across Canada, of which the Human
20 Development Council of Saint John and the Centre de
21 Bénévolat de la Peninsule Acadienne Inc. in Caraquet
22 participated, we were startled at just how big the gap
23 between the rich and the poor has grown in New Brunswick.

24 In New Brunswick, the Child and Family Poverty Report
25 Card shows that we have 24,550, or one in every six

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2 children in our province living in poverty. The lone
3 female parent families have a poverty rate of 58 percent.
4 Also, as a result of inflation and minimum wage not
5 keeping in synchronization and the fact that many parents
6 are required to work part-time jobs without good wages and
7 benefits, 42 percent of New Brunswick's poor children come
8 from homes with at least one full-time worker.

9 While the poorest 10 percent family income earners
10 with children increased their average earnings by 20
11 percent between the years 1993 to 2004, and the middle 80
12 percent family incomes rose by 27 percent. The richest 10
13 percent family incomes actually rose by 70 percent during
14 that same 10 year time frame.

15 The wage gap has definitely grown in New Brunswick.
16 So yes, some people can pay for more basic needs, more
17 oil, more gas, more diesel, but many cannot keep up with
18 the growing demand.

19 We are very concerned about the upcoming home heating
20 crisis we anticipate this winter. There is a crisis on
21 the horizon right now.

22 Last winter brought about the death of a homeless man
23 along the Mapleton Road in Moncton and the death of Paul
24 Emile Durelle of Baie-Ste-Anne who froze in his own home
25 last April.

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2 We have heard from the United Way, the Salvation Army
3 and many others suffering directly from last winter's cold
4 that electricity debts have gone up to \$1,700 were
5 accumulated by the end of the year and furnace oil aid was
6 completely depleted from our non-profit groups help
7 sources. The United Way has received calls already this
8 August for electricity help and our Voice of Real Poverty
9 organization has been working on several cases of housing
10 crisis directly related to this issue.

11 In June we hosted a Provincial Poverty Reduction
12 Meeting with 50 participants from the non-profit sector,
13 in conjunction with the United Way of Greater Moncton and
14 Southeast New Brunswick and Saint John's Vibrant
15 Communities with representation from Fredericton's
16 Community Planning Group on Homelessness. One of the
17 biggest concerns for these non-profits was the upcoming
18 home heating crisis this winter and the anticipated
19 increase in homelessness.

20 After letters to the Premier and Energy Minister Jack
21 Kier, two presentations to yourselves and the Energy
22 Utilities Board and two meetings -- one with Energy
23 Minister Kier in June and the second with both him and
24 Social Development Minister Mary Schryer on August 29th,
25 we hope we have the ear of government on this issue.

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2 This monumental meeting with the two Ministers and
3 Elizabeth Weir, CEO of Efficiency New Brunswick, was very
4 interesting. We invited the N.B. Senior's Federation,
5 United Way of Greater Moncton, Saint John's Vibrant
6 Communities and Fredericton's Community Planning Group on
7 Homelessness to join us. Together, we presented a four-
8 pronged solution based proposal to the government
9 officials recommending; (1) a low income heating energy
10 rate, both for electric and furnace oil, reflecting
11 various low income levels, just as Ontario and Maine have
12 been using them and looking at. And it is interesting
13 that we base our pricing for oil on the New York Harbour
14 figures. Maybe we should look to Maine for a solution to
15 our social issues when it comes to heating problems with
16 our people.

17 The second recommendation was to revise the economic
18 unit to allow low income people to share the bills, share
19 the rent, share the electricity, the heat, the food,
20 childcare, et cetera, helping families and friends to help
21 themselves without adding more taxpayer dollars to the
22 issue. The third item that we had was a non-disconnect
23 policy from November until May with a reconnect plan. Too
24 many will not be able to be reconnected this winter
25 because of debts they incurred last winter under the

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2 current policies. And fourthly, social housing
3 improvements-- making retrofits and energy efficiency
4 improvements to reduce the cost of heating, fixing
5 thermostats at a reasonable temperature in housing units,
6 adding boarding rooms to the Residence Tenancy Act so that
7 they have actually rules, like the apartment buildings
8 have, because currently boarding rooms have no governancy.
9 There are no regulations with running them. And I know
10 personally that I have helped one individual stay off the
11 street because of dealing with that and intervening,
12 that's when I learned there were no regulations to run a
13 boarding room, which I find absolutely amazing. Anyway,
14 and adjusting the issue of empty low income housing units
15 and apartments while waiting lists continue to grow. In
16 Moncton now there are 500 on the waiting lists now for NB
17 Housing and 250 of them are seniors. Within our low
18 income electrical and furnace oil rate, we suggest that
19 one that is based on various income levels is an
20 individual has a mere \$3,400 that they are expected to
21 live on or if they have 20,000 to live on, the low energy
22 rate should reflect accordingly. Our rationale is that
23 heat is not a luxury in New Brunswick. Either you stay
24 warm or you can freeze to death in -35 degree temperature
25 and needs to be provided for survival in New Brunswick.

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2 Also a different rate was established for large industrial
3 users due to a review of the burden of property taxes over
4 a period of years, the same can be done and correlated
5 with the social assistance rates, it has not gone up
6 between the years of 1997 and 2004 at any percent. They
7 stayed the same.

8 During the last five years, electricity rates have
9 risen 31 percent, while the social assistance rates have
10 only increased by 7 percent. And there was a 3 percent
11 increase just announced this month, which brings it up to
12 10.

13 In fact some categories within social assistance needs
14 a 70 percent increase just to be up to the Atlantic Canada
15 average. This is also identified in the Mini-Poverty
16 Report as recommendation #8 by the Non-Profit Taskforce on
17 behalf of the 1,000 non-profit groups. The Ontario courts
18 have ruled that it is within their Energy Utilities
19 Board's jurisdiction to establish a rate affordability
20 assistance program for low income consumers; therefore, we
21 believe that New Brunswick should do it. It is within
22 their jurisdiction according to the courts.

23 Hearing prior to our meeting that Nova Scotia has
24 increased their heating rebate to \$450 from the previous
25 200 and that this would apply to families and individuals

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2 with higher incomes than last year, yet New Brunswick is
3 dropping their \$100 rebate, we have had little hope for
4 our people. Our vulnerable cannot afford any more, in
5 fact many could not afford last year's heat.

6 We are anxiously awaiting the provincial government's
7 visionary affordable heating -- home heating plan to
8 address the crisis situation this year. But in regard to
9 your jurisdiction and this decision you are about to make
10 regarding the report you paid Nova Scotia's Gardner
11 Pinfold Consulting Economists Ltd. \$74,000 to get -- to
12 review the fuel margins, the costs and full service
13 charges in New Brunswick, we do hope that you will
14 consider those in our province who cannot afford the price
15 of gas and furnace oil currently. We read in the report
16 that heating oil is up by almost 80 percent from early
17 2007, after an already steady rise in prices ever since
18 2003. And I got my bill out of my bill box and found out
19 that on April 2nd, I got a little top up in my furnace oil
20 tank and it cost me \$825.84. Now when I look at what some
21 people in our province are given to live on, 800 bucks
22 might as well be a million bucks. They can't afford it.
23 In fact that lowest level on social assistance, that is
24 one-quarter of the entire amount they are to live on for
25 the year. This is only one cost. One basic need.

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2 We do understand that all stakeholders throughout this
3 system must be able to survive in order for an industry to
4 work. We do understand the increased cost of credit card
5 usage, of municipal tax, of increased minimum wages, of
6 carrying charges, general price inflation once regulation
7 was started, transportation, and general increases,
8 operating costs. We do understand the cost of living has
9 gone up. The cost of operating has gone up for
10 businesses.

11 I guess as a dairy farmer, myself, in a very regulated
12 industry, I found today's meetings very interesting,
13 because in our industry we have a Canadian Dairy
14 Commission, who is representative of each stakeholder in
15 the system. We have the producer at the table. We have
16 the processor at the table. We have the restaurantors
17 represented at the table. We have the consumers
18 represented at the table. And we have to justify our
19 costs if we have to incur any more costs to those people
20 in order for that to happen. We have on a regular basis
21 COP studies, cost of production studies done, which are
22 done in every province in this country to show the costs
23 of producing milk, because it does vary from one place to
24 another.

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2 What I find very interesting in the discussions here
3 with delivery, is that we decided since -- unless you were
4 the best friend of a dairy guy and sent him Christmas
5 cards and birthday cards, you didn't even get your milk
6 picked up back in 1960-something. So we decided to work
7 together put the regulation in place and have our own one
8 table desk that if people wanted our milk they could buy
9 from one source. What we did at that time was we pooled
10 the cost of transportation, so that the little guy up
11 north on the north shore could still farm and keep his
12 business going because we all shared his costs of getting
13 the milk from there to the dairy, because we supported one
14 another in our regulated business. I think there is room
15 for improvement within the regulation system. And I think
16 there is good examples out there to view.

17 With regard to our situation here and I am
18 representing those who can't afford much, we beg of you to
19 establish a low income rate for heating oil and
20 electricity so that the people can survive in this
21 province. We know you do have the jurisdiction to do this
22 and we plead with you to do so. Other provinces have
23 established plans to help their citizens like Nova Scotia
24 with a \$92 million Heat Smart Plan providing on average
25 \$700 to help 52,000 of their households.

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2 We find it extremely ironic that a Nova Scotia firm is
3 making the recommendation to increase these basic needs
4 here in New Brunswick when they have a plan of help and we
5 don't. In fact, our social assistance rates are as much
6 as 70 percent less than in certain categories compared to
7 the rest of Atlantic Canada, including Nova Scotia. With
8 another increase in basic economic drivers like heating
9 oil and fuel, we know that the food costs is going up,
10 clothing, rent, everything else and it will be passed onto
11 those who cannot afford now.

12 We plead with you to address this crisis now. Two
13 people died last year from the New Brunswick winter,
14 please do not allow those peoples' deaths to be in vain.
15 You do have the jurisdiction to set low income rates to
16 help our most vulnerable citizens and we plead with you to
17 do so now. Thank you.

18 CHAIRMAN: Thank you. Are there any questions from the
19 Panel?

20 MR. RADFORD: I want to speak to you on milk. The Milk
21 Marketing Board, they set the rate don't they that the
22 maximum amount that you can set for milk to be sold at?

23 MS. THORNE-DYKSTRA: We have to go through cost of
24 production studies in order to determine what the
25 reasonable rate of cost. Now we all have our little

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2 tricks and games on how we decide to do things to gain a
3 little bit here and there. But we have a standard price.
4 We cannot charge more. We get a dollar figure. It is the
5 same for everyone. I have to pay big bucks to get my
6 quota to ensure that I have so much milk that I can
7 produce and I get paid based on the litres I put in my
8 tank.

9 MR. RADFORD: But there used to be and may still be and
10 that's what I want to zero in on that you could not, for
11 example, a retailer could not drop the price of milk below
12 a certain level. I mean this is what we had heard about
13 today. Is that still the rule under the Milk Marketing
14 Board?

15 MS. THORNE-DYKSTRA: There is a range. You have a minimum
16 and we have a maximum range that they have to fall within.

17 MR. RADFORD: So can a retailer use it as a loss litre milk?

18 MS. THORNE-DYKSTRA: Then can reduce it to the minium level.
19 But again it is regulated all through the system. That's
20 what I don't understand with the way the things are being
21 done. And I have to say I am not an expert in the system.
22 But in order for regulation to work you need to regulate
23 every level. Like you cannot regulate one portion of it
24 and expect good results I don't believe because someone
25 else is going overtake it. You have to have every level

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2 regulated in order to keep everything in check. And
3 that's how we do it within the supply manage system.

4 MR. RADFORD: Thank you.

5 MR. MCLEAN: That was a very good presentation. Thank you
6 very much. You do make the statement that you understand
7 that all people in the industry have to survive and with
8 costs. And so as a specific question that's before us
9 about the increasing costs for marketing of products what
10 do you sort of recommend? I fail to see a suggestion here
11 to us what you really think we should do and how we could
12 differentiate among different incomes in New Brunswick.

13 Do you have any ideas on that?

14 MS. THORNE-DYKSTRA: Well right now if you do look at the
15 rebate the Province gives, they will look at income
16 levels. If people are struggling with low incomes, they
17 can get an income tax statement to find out what level
18 they are at and they can set a rate accordingly to what
19 would be appropriate for the income they are living on.

20 MR. MCLEAN: But that's nothing to do with us is it?

21 MS. THORNE-DYKSTRA: Yes, it is.

22 MR. MCLEAN: Explain to me?

23 MS. THORNE-DYKSTRA: In fact in Ontario in May of this year,
24 it went through the court system that the Energy Utilities
25 Board of Ontario had the jurisdiction to set rates for

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affordable heat. So, yes, it is within your jurisdiction.
Whether you decide to do that or not I guess is up to you.

MR. MCLEAN: So you are saying we should have different
rates for people and --

MS. THORNE-DYKSTRA: On low income.

MR. MCLEAN: -- on low income and the different sellers
would have to do that?

MS. THORNE-DYKSTRA: Yes, they would.

MR. MCLEAN: Based on where the fuel was delivered?

MS. THORNE-DYKSTRA: Yes, they would.

MR. MCLEAN: And how do we do that with gas when they go to
the gas station?

MS. THORNE-DYKSTRA: I think that would be very difficult.
But on heating oil, easy.

MR. MCLEAN: So heating oil you are differentiating heating
oil, yes.

MS. THORNE-DYKSTRA: Mmmm.

MR. MCLEAN: Thank you.

VICE-CHAIRMAN: Ms. Thorne-Dykstra, I am very familiar with
the Ontario case that you are talking about. And I don't
think it has any application to the price of heating oil
in the province of New Brunswick. And I would just like
to know whether you can point me to anything in our

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legislation that would enable this Board to set up a different price for heating oil for low income consumers?
MS. THORNE-DYKSTRA: I am not familiar with the legislation. I really couldn't tell you what is in the legislation, how it is worded, what you have to do with it, whether it requires a legislation change, but I do believe it can be done. And it can be done as a comprehensive package just like some other provinces, other states are doing to help their people.

VICE-CHAIRMAN: The point is this you have asserted numerous times today that we have that jurisdiction. I don't believe that we do. And it is a concern to me that your comments to my colleague, Mr. McLean, was well you have the jurisdiction and it is up to you whether you exercise it or not, because I don't think we do have the jurisdiction.

MS. THORNE-DYKSTRA: And you base that on?

VICE-CHAIRMAN: Well in Ontario what they were doing was regulating a public utility where they had the overall responsibility for setting its rates. We do not set the rates for heating oil in this province. We have some jurisdiction with respect to fixing the margins. And there is a legislatively approved formula for setting the price, but this Board does not have any of its own

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discretion with respect to fixing the price of heating oil. With respect to the margins, we have specific points that we are required to consider in fixing one margin for the province. That being the case, I cannot see where we would have the jurisdiction to do as you suggest.

MS. THORNE-DYKSTRA: All I know is that in Ontario it has already gone through the court system because that Energy and Utilities Board said not our jurisdiction, can't be done. It has gone through the courts. The courts have ruled, yes, it is their job. They can do it if they so decide to do it. And that was decided in May of this year. So if it was decided for Ontario, I expect it could go through the court system here as well to be determined for this particular Board. But I really don't know the legislation. So I am not going to say what needs to be changed within it or whether it is fine the way it is. I really am -- I am not educated enough to be able to do that.

VICE-CHAIRMAN: Thank you.

MR. TONER: Thank you very much for your presentation. It was really a -- I knew a lot of that stuff, but the presentation the way you made it is very clear to me. And thank you very much for your time.

MS. THORNE-DYKSTRA: You're welcome.

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2 MR. TONER: And we will look into that issue that you
3 brought up in Ontario.

4 MS. THORNE-DYKSTRA: Thank you.

5 MR. TONER: I will anyway.

6 CHAIRMAN: Thank you for your presentation here today. I
7 appreciate your interest and you taking the time to come
8 down from Moncton to address us. Certainly input from
9 groups like yours is very important to this process.

10 MS. THORNE-DYKSTRA: Thank you very much.

11 CHAIRMAN: We will take a 10-minute break.

12 (Recess - 4:48 p.m. to 4:55 p.m.)

13 CHAIRMAN: Before I hear further submissions, I just -- to
14 complete the record, part of the process, as everybody is
15 aware, was that we invited parties to either participate,
16 as all of you have over the last couple of days, or to
17 file with the Board written submissions. And we did
18 receive a number of written submissions. I'm going to
19 enter them and give them exhibit numbers.

20 And I believe that the Board has some copies available
21 for parties who would like to have a copy. If there
22 aren't enough copies here and you do want a copy, if you
23 would just contact the Board. And we will see that a copy
24 would be e-mailed to you.

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2 Lorraine (Mrs. Légeré), do we have a number of copies
3 here of these?

4 MRS. LEGERE: Only have one.

5 CHAIRMAN: Only have one? Okay. Well, then I guess if the
6 parties would just indicate by sending an e-mail to the
7 Board that you would like to have these submissions, we
8 will send them to you.

9 There were five submissions received through that
10 process. I think the person was Accommodation Victoria,
11 and that will become exhibit number 11. The date of that
12 document is October the 6th of this year.

13 The next one was from the Canadian Federation of
14 Independent Business dated October 3rd 2008. And that
15 will become exhibit number 12.

16 The next one was a report from Canadian Independent
17 Petroleum Marketers Association dated October 1st 2008.
18 And that is identical to a submission that was made here
19 yesterday. But that was prefiled. That will be exhibit
20 number 13.

21 The next one, exhibit number 14 is a submission from
22 Magnetic Hill Esso dated May the 9th, 2008. And just to
23 explain the date, this was a letter about this whole
24 process prior to us embarking upon it. And we were

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2 advised that that could just become a submission for this
3 process.

4 We also did receive on June 9th 2008 a submission from
5 Scholten's Group. And the same comment was made, that
6 they wanted that to become one of the written submissions.
7 So that is going to be exhibit number 15.

8 And then we have a submission from Ultramar Ltd. dated
9 September 17th 2008. And that will become exhibit number
10 16.

11 So as I have indicated, any of the participants who
12 would like to have copies of any of those documents, just
13 contact Board Staff and they will be e-mailed to you
14 immediately.

15 The next party to make a submission on my list here is
16 the Westmount Esso and Service Centre. Mr. Roy?

17 MR. ROY: I have no comments.

18 CHAIRMAN: Thank you, Mr. Roy. The next party then is XTR
19 Energy. Mr. Wootton?

20 MR. WOOTTON: Thank you. I really wanted to make a number
21 of observations and comments to the process as well as
22 tell you a bit about XTR and how we are involved in the
23 province of New Brunswick.

24 I started XTR Energy 10 years ago. It is a privately
25 held company. I'm the owner of the company and the

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2 president. The company is entirely funded with my own
3 resources over those 10 years. And we now have about 140
4 retail petroleum stations in six provinces across Canada.
5 So we operate today in Nova Scotia, New Brunswick, P.E.I.,
6 Ontario, Manitoba and Saskatchewan.

7 We do not own and operate any gas stations of our own.
8 It is our belief that we don't want to compete against our
9 customers. So we have a bit of a different approach to
10 the market than many of the others that you would deal
11 with.

12 When legislation was first brought in we were not a
13 huge supporter of it. Because we felt that the market
14 conditions were such that it provided a reasonable return
15 and was competitive enough to support the rural
16 requirements of the many dealers we have in the province.

17 I am however pleased that you are doing a review.
18 Because it certainly is necessary. And over time we have
19 seen a significant number of changes in our marketplace
20 which are critical and need to be addressed in order that
21 the marketplace continues a viable place for your rural
22 retail petroleum sites.

23 They are for the most part the customers to which we
24 support, small facilities, 5' to 700,000 litres, some
25 larger, some smaller, small operators, family-run

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2 businesses and small communities scattered around the
3 countryside, not too many of them located in major urban
4 centres. They are in some cases the ones that nobody else
5 wanted to deliver to, and hence the footprint that we
6 started to establish here in Atlantic Canada.

7 We have the pleasure or the distinction of being able
8 to operate in three of the provinces here in Atlantic
9 Canada that are all under regulated environments. And it
10 is very difficult, as I have listened to the presentations
11 and the discussions and the comments from various interest
12 groups to really come up with a solution that satisfies
13 all the stakeholders which is your challenge.

14 But there are some things that you can look at in some
15 of the other regulated markets that may give you some
16 hints or some direction which may help to address some of
17 those items.

18 One of those examples, the Province of P.E.I. just
19 recently announced that they will no longer announce 24
20 hours in advance of a price increase the price increase.
21 The reason for that is relatively obvious. When you are
22 in the industry, if the price is going up you have a huge
23 run at your station the night before which does not hurt
24 an independent operator. So it works for all parties.

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2 If you have the price go down you have no one at your
3 site. And the next morning when your retail price is
4 established, and that independent owner/operator is now
5 stuck with product at a much higher cost, and in some
6 cases a higher cost than the new regulated price. So they
7 are basically being legislated into losses through that
8 exercise.

9 So I would encourage you to give some consideration to
10 the notification period, the value of it and the
11 requirement of it and specifically how it impacts the
12 privately-owned individuals that are carrying that
13 inventory.

14 Minimum price. I spoke to Mr. Gardner earlier about
15 minimum price through the cross examinations. And I would
16 like to bring it up again. In the province of Nova Scotia
17 they have a minimum and a maximum price. The differential
18 is 1 1/2 to I think 4 1/2 cents. At the self-serve sites
19 it is 1 1/2 cents.

20 We have noticed as a company a significant difference
21 in the rural marketers in Nova Scotia and New Brunswick
22 specifically in the last six months.

23 And that difference is that in the province of Nova
24 Scotia we have small rural sites reinvesting capital back
25 into their facilities. That is not occurring in this

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2 province. And I think that is a serious thing to keep in
3 mind, as you think about the long-term viability of these
4 rural facilities, the people they employ and the part of
5 the landscape they provide here in the province.

6 So in the province of Nova Scotia we see that. We
7 don't see that in New Brunswick. The number of facilities
8 we have in each province, we have 21 in Nova Scotia and 24
9 in New Brunswick. So they are of like size.

10 One of the things that the financial institutions take
11 great comfort in in the province of Nova Scotia is that
12 they know the downside petroleum risk is minimized to that
13 4 1/2 cent level. Whereas in the province of New
14 Brunswick there is no minimization to that risk.

15 Credit card fees. There has been a tremendous amount
16 of talk about credit card fees. And I know you have
17 worked your calculator really hard trying to work your way
18 through it.

19 We have invested in the last two months a significant
20 amount of time talking to the credit card providers here
21 in Canada. We negotiate -- have been negotiating our
22 rates and prices with a variety of companies, trying to
23 secure the lowest possible rate for our private
24 independent operators.

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2 I can tell you that the cost on a percentage basis is
3 increasing both for Visa and for Mastercard. Our
4 assessment of XTR's credit card transaction activity, we
5 actually do -- about 15.5 percent of all of our Visa and
6 Mastercard card transactions are corporate cards which
7 attract a significantly higher rate than standard
8 commercial cards.

9 These would be cards that corporations would provide
10 to their employees or that are cards that accept --
11 provide points and things of that nature. So 15.5 percent
12 of all of our credit card transactions as a company are
13 actually driving a rate closer to 2.3 to 2.5 percent.

14 In addition to that both Visa and Mastercard have now
15 announced -- Visa is already in place and Mastercard is
16 putting in place effective November 1st additional
17 percentage fees for the acceptance of manual transactions.
18 A manual transaction would be one that is actually keyed
19 in to the terminal.

20 So if the individual's card doesn't swipe you have got
21 to key it in. If the individual has given you authority
22 to run the card through, but the card is not present, that
23 is considered a manual. That additional charge in the
24 manual can be anywhere from .4 to .7 percent depending on
25 the card.

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2 So it is not unusual now to find a Visa or a
3 Mastercard transaction that would run you -- depending on
4 if it is a manual and if it is a corporate, et cetera it
5 can get up to 2 1/2, 3 percent.

6 In addition to that, what people often don't refer to
7 in our industry are private label cards, PHH, Triathalon
8 Corp., GE, ARI, all corporate cards. The Province of New
9 Brunswick has a corporate card, snowplows, buses, things
10 of that nature. They are used at retail petroleum sites.
11 And they do come with a higher rate. So there is a lot
12 more card transaction activity out there than is typically
13 thought of.

14 So in addition to the fact that the price of gas has
15 gone up, there is an increase in the rates. And if you
16 want to look for places that you can get a better handle
17 on with the real value of those rates, the Canadian
18 Federation of Independent Business is a terrific source of
19 information for that and could provide a very good point
20 of reference for you in the future.

21 As far as credit card transactions, there has been a
22 fair talk about -- fair bit of talk about, you know, what
23 percentage of your card transaction activity is credit
24 card, what percentage is debit card, what percentage is

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2 cash? Our corporation as a whole would be in that 40 or
3 45 percent range of credit card transactions.

4 So I would concur with some of the data that
5 Mr. Gardner had.

6 On the haulage cost side, we deliver to the most
7 difficult customers in the petroleum industry here in New
8 Brunswick to deliver to, small volumes, older tanks which
9 hold less products, not full load deliveries, part loads,
10 constantly trying to mix them in with other deliveries
11 that are going the same way to get the delivery
12 efficiencies.

13 The need for the increase in the delivery rate maximum
14 from 2 cents to 3 cents is absolutely critical for these
15 independents in the rural markets that aren't taking full
16 loads.

17 In other jurisdictions they have dealt with it, for
18 example in the province of Nova Scotia with a zone
19 structure. That might be an alternative methodology for
20 you to deal with haulage rates.

21 Obviously the haulage rate in Saint John is
22 significantly cheaper than the haulage rate for the rural
23 markets. So I leave that there as a suggestion for you.
24 But certainly 2 cents a litre does not get product to
25 Chatham. It is just not enough.

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There was one item that came up in the discussion yesterday which I did want to point out. And that was in Mr. Gardner's proposal he had put in for a recovery for wholesalers of the levy, 25 points.

And I can tell you that at the time that the legislation was put in place it was not made clear to me that the levy was part of the 11 cents per litre. So I was surprised to hear that it was actually included. Because the levy amount didn't come out till later on.

So in closing my comments I would just like to say in order to meet the needs of all the stakeholders in this marketplace, you not only need to listen to the needs of the independents within the major urban centres but you need to be sensitive to those needs of those in the rural landscape who are really just hanging in there right now.

And they need you to address some of these cost concerns that they have within their organization. But at the same time I recognize that you have got to find a methodology that is fair to the consumer as well.

I'm prepared to answer any questions you might have.

BY THE CHAIRMAN:

CHAIRMAN: Thank you, Mr. Wootton. I would just like some clarification on the very first point you made with respect to announcing what the price will be for the

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2 coming week. And then I think your example was Prince
3 Edward Island where they used to announce it I believe 24
4 hours in advance. And they don't do that any longer.

5 And as you are aware, in New Brunswick the only people
6 that give advance notice are the people in the industry.
7 There is no advance notice from the EUB. I'm not sure if
8 you were aware of that or not.

9 MR. WOOTTON: I'm not sure how the consumers are finding out
10 but they are.

11 CHAIRMAN: Well, I have no doubt that the patterns that were
12 described here do occur from time to time when there are
13 price changes of significance. And part of it is through
14 media who go through the process. The process and the
15 formula is very transparent. It is in the legislation.

16 So if you have the appropriate data it is something --
17 it is a formula that people can work out. But that
18 information is not given out by the Board until, as I say,
19 one minute after midnight on the date it comes into
20 effect.

21 And I take it then from what you are saying is that
22 you would suggest that there be no change to that. You
23 feel it is important for the Board to continue to protect
24 the industry by not announcing that amount in advance?

25 MR. WOOTTON: I would agree with you, yes.

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2 CHAIRMAN: The second point I guess I had a question for you
3 was a minimum price. And of course that is not provided
4 for in our legislation.

5 But you mentioned Nova Scotia as being an area where
6 that is worked out. Is that in place anywhere else?

7 MR. WOOTTON: We don't operate in Newfoundland. So they may
8 have legislation that supports it. I believe they also
9 have a minimum price in the province of P.E.I. But I
10 could be corrected.

11 CHAIRMAN: Okay. Thank you.

12 BY MR. RADFORD:

13 MR. RADFORD: Mr. Wootton, you obviously have great
14 information on the industry, having been in it for so
15 long. So I would like to just take me from the refinery.
16 You are a wholesaler. Is that what --

17 MR. WOOTTON: That is correct.

18 MR. RADFORD: You are a wholesaler. So you pick up at -- or
19 have someone pick up for you at the refinery?

20 MR. WOOTTON: That is correct.

21 MR. RADFORD: Okay.

22 MR. WOOTTON: Or a terminal.

23 MR. RADFORD: You use your trucks or --

24 MR. WOOTTON: No. We have no trucking.

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MR. RADFORD: You have no trucks. So you arrange a price with the refinery?

MR. WOOTTON: Mmmm.

MR. RADFORD: And you pay the refinery by cash or draft or something but not by credit card, is that correct?

MR. WOOTTON: Not by credit card, no.

MR. RADFORD: Okay. Then you deliver it to only the ones that have your banner up, is that correct? Or will you deliver it to Mr. Hunter over here?

MR. WOOTTON: We would -- we actually just recently started to deliver to an unbranded XTR facility in the province of New Brunswick.

MR. RADFORD: But maybe Mr. Hunter for example can't take delivery because he is tied in with someone, as Mr. Nicholson said earlier.

So the rural deliverer, so you can make sure that supply is there to these people in the rural districts.

That is your --

MR. WOOTTON: That is what we do, yes.

MR. RADFORD: And you get paid -- how do you get paid by them? Do you get paid by cash, bank draft, credit card?

How do you get paid by your --

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2 MR. WOOTTON: It could be a variety of different ways.

3 Credit card is not typically one of the ones they like to
4 use because it does cost some fee.

5 MR. RADFORD: Right. And then -- so there is not a shortage
6 of product going throughout the Atlantic -- or throughout
7 New Brunswick? There is product available?

8 MR. WOOTTON: We have product available, yes.

9 MR. RADFORD: Okay. Now I'm trying to get this
10 transportation cost straightened out in my head, just from
11 the information that is given.

12 The wholesaler is allowed, I think it is say 6 cents,
13 for round figures, to deliver the product from the
14 refinery to the retailer, is that correct?

15 MR. WOOTTON: Well, your legislation allows for a 6 cent
16 above the New York Harbour --

17 MR. RADFORD: Right.

18 MR. WOOTTON: -- price.

19 MR. RADFORD: But the price that you may be paying --
20 technically if the price that you are buying is at New
21 York Harbour price then there is a 6 cents to work with?

22 MR. WOOTTON: Technically that would be true, if we could
23 buy at the New York Harbour price.

24 MR. RADFORD: Right. I understood that from the testimonies
25 that had been given out.

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2 Now the transportation cost is added onto the
3 retailer. He has to pay the New York Harbour price plus
4 the 6 cents plus your transportation costs?

5 MR. WOOTTON: Up to a maximum of 2 cents a litre.

6 MR. RADFORD: 2 cents. And you are suggesting it should go
7 to 3?

8 MR. WOOTTON: Yes.

9 MR. RADFORD: Okay. And I asked a question earlier to I
10 think one of the witnesses. Do some of the wholesalers
11 allocate part of that, whatever it is of the 6 cents,
12 towards some of their retailers?

13 I'm not asking if you do it. But knowing the industry
14 is that being done?

15 MR. WOOTTON: It may be done. I don't -- we don't see other
16 people's contractual arrangements. And as you can well
17 imagine from what you have heard over the last two days,
18 it is a rather complicated formula with capital investment
19 and contracts and things of that nature. So it could very
20 well be that they are sharing some of it.

21 MR. RADFORD: Thank you for sharing your knowledge.

22 MR. WOOTTON: You are welcome.

23 BY MR. TONER:

24 MR. TONER: I guess I'm just going to make a point. Because
25 you did -- you appear to be a wealth of knowledge. And

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2 Mr. Savage yesterday was a wealth of knowledge. And
3 unfortunately for us to do our job properly we need
4 information.

5 So I guess that -- and in industry is to realize and
6 find a way for us to get this information, is that -- it
7 is very unfortunate that we are not given enough
8 information on costs. And hopefully in future you can
9 tell your members that the reasons we want these numbers
10 is not to harm but is to help the industry I guess as a
11 whole.

12 Because you seem to have a very good grasp of the cost
13 associated with your business. Otherwise you wouldn't be
14 able to survive, right?

15 MR. WOOTTON: It is my business.

16 MR. TONER: And furthermore, about credit card fees -- and I
17 do know something, and I want you to verify and confirm
18 this, is that the rate that your retailers are charged, is
19 it not linked to the time with which they are paid the
20 money, which means that if you swipe your card tonight,
21 that at midnight they get their money? Or if they get
22 their money in a week or 21 days later that there actually
23 is a different fee associated with that?

24 So for example if the retailer was to swipe the card
25 and get their money at midnight they are charged a certain

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fee? If they get their money in a week they are actually charged a smaller fee?

MR. WOOTTON: That is not the case in our -- the way we run our business, no.

MR. TONER: Because everyone gets their money the next day?

MR. WOOTTON: All of our retailers are provided their cash less the percentage fee associated with that card next morning.

MR. TONER: Next morning, yes. But if they have to pay you in a week, let's say for example you collect every week -- I assume you don't collect on delivery. I assume you collect within a week?

MR. WOOTTON: Every account is a little different depending on --

MR. TONER: But if I'm not mistaken there is savings that could be associated with waiting a week to get your money from the credit card company. There is ways to save money on credit card fees. And that would be one of them, from my experience. So you may want to look into that and confirm.

MR. WOOTTON: Sure.

MR. TONER: If I'm incorrect then you be sure to write Lorraine a letter.

So anyway, thank you very much.

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2 MR. WOOTTON: You are welcome.

3 BY VICE-CHAIRMAN:

4 VICE-CHAIRMAN: Mr. Wootton, I just want to come back to
5 this issue of the notice period with respect to the
6 prices. It is not strictly speaking maybe before us here.

7 But now the process is that the Board issues to the
8 appropriate industry people the prices on Wednesday
9 morning, which are going to take effect at 12:01 a.m. on
10 Thursday. And so those should be received by industry
11 about mid morning.

12 In your view is that barely enough or plenty of
13 notice? Could it be later on in the day if that was
14 thought to be an advantage in terms of the information not
15 being disclosed?

16 MR. WOOTTON: It is plenty of notice. I'm not sure whether
17 we would gain an advantage or a disadvantage by having it
18 earlier or later. It really depends on if the change is
19 an upward movement or a downward movement.

20 VICE-CHAIRMAN: I guess what I'm doing is I'm speculating
21 that, as the Chairman said, some people get their
22 information from media sources who are sort of doing their
23 own independent calculations and so forth.

24 And as well I think that because the previous day it
25 is broadly known within the industry, and people are

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2 having to be informed of what is going to have to take
3 place, that I think a certain amount of this is being
4 disseminated either informally or sometimes more formally
5 by people in the industry.

6 I'm just wondering whether a later release time would
7 be of any benefit or whether the industry frankly couldn't
8 implement it if it was released much later?

9 MR. WOOTTON: I can't speak on behalf of the entire
10 industry. I know within our business, as long as we know
11 by 4:00 o'clock in the afternoon, we are fine.

12 VICE-CHAIRMAN: Thank you very much.

13 MR. WOOTTON: You are welcome.

14 CHAIRMAN: Thank you very much for your participation in
15 these proceedings.

16 (The witness stepped down)

17 CHAIRMAN: Now I think we are down to the lawyers. Mr. Zed?

18 MR. ZED: Thank you. I have asked Mr. Davies to join me in
19 case you have any business-related questions. It will
20 just be easier than me attempting to answer things I may
21 not know much about.

22 Firstly thank you very much for the opportunity to
23 participate in this process on behalf of Co-op Atlantic.
24 Let me just spend a moment to tell you a little bit about
25 who Co-op Atlantic is.

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It is a diverse and innovative business serving more than 120 member cooperatives and independently owned businesses throughout Atlantic Canada and the Maritimes.

Co-op is one of the largest integrated wholesale agrifood operations in the region. The core business scope is on consumer food products and the agricultural operations that support the production of many of these food products.

Co-op Atlantic has significant holdings in real estate housing and petroleum, the last of which I guess brings us here.

In New Brunswick we directly employ 603 people. The cooperative system employs approximately 1,800 people. New Brunswick is home to our petroleum wholesale activities. We are associated with retail gas operations in 29 neighborhoods and communities. As well we are associated with eight bulk home heating fuel businesses both rural and urban.

As a cooperative organization we are responsible to our members. In New Brunswick there are 50,000 Co-op members in both urban and rural communities. These members have invested in our petroleum operations over the years. They have a key interest in the performance of their business and the outcome of these hearings.

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2 Now firstly, I know it is late in the day, but I am
3 going to take a few minutes and talk about matters legal.
4 We have heard from a number of operators. And that has
5 greatly shortened what I'm going to say later in my
6 presentation, because I think they have very accurately
7 portrayed what Mr. Gardner found when embarking upon his
8 mandate.

9 Now this process -- first of all let me talk a little
10 bit about the process. And please, I'm not being critical
11 of the process. I just want to put the process in
12 practical terms to us as participants and observers.

13 This process began sometime publicly, late in June I
14 believe when the order emanated from the Board. And we
15 presume that prior to that time Mr. Gardner was engaged.
16 And although I will hear any arguments to the contrary
17 from our point of view, Mr. Gardner was employed as a
18 Board expert.

19 As such he was given a mandate which I think we all
20 realize now was virtually impossible to fulfil, if we
21 expected him to come in with a rigid and comprehensive
22 factual basis that captured information from the several
23 hundred businesses that are relevant to these proceedings
24 in New Brunswick.

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2 In a matter of mere weeks we would suggest he did a
3 commendable job and brought forth a report which he
4 suitably qualified as being in part anecdotal. And upon
5 cross examination and direct he explained to be anecdotal
6 but anecdotal in concert with his own beliefs and in
7 concert with his other industry experience. So there is
8 nothing that he wrote in the report that he doesn't
9 believe to be true.

10 Where possible, and it was a very difficult task as he
11 related, he supplanted this with third party sources. And
12 he found those sources to be consistent with what he found
13 upon doing his review.

14 Now there was some discussion about parties refusing
15 to be completely cooperative. And I need only remind this
16 Board, because I have appeared before this Board a number
17 of times and other similar boards, that what was the issue
18 with respect to which parties were allegedly
19 uncooperative?

20 And as I recall it was that they wouldn't provide
21 their financial statements. Now we all know that when a
22 company is asked to provide financial statements or asked
23 to provide a copy of a commercial contract, that sometimes
24 occupies this and other such similar boards for hours and
25 days in terms of going back and forth and deciding whether

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in the circumstance it is appropriate, if it is appropriate under what circumstances and what conditions the information would be filed with the Board.

So put yourself in the position of Co-op and other similar parties and probably, I think it is fair to say, a number of far less sophisticated parties and some more sophisticated when they are faced with a survey by a consultant who says look, give me a copy of all your financial statements.

Well, I dare say that it would not be -- if you really thought about it, who would expect those people to supply that information in confidence or not?

Were the process before this Board, and the Board asked to see the documents in confidence, then I think people would feel comfortable that sufficient safeguards would be put in place that that information would not be misused. But that wasn't the process.

Now the other thing that has been a bit of a -- I won't say negative -- but the inference was clear I think that some parties wouldn't supply information. In our case we would not supply credit card information. And there is a reason for that. We don't have that information.

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2 Co-op is a business of several hundreds of millions of
3 dollars, a small percentage of which -- about 10 percent
4 are petroleum products. A little more than half of that
5 are gas sales. They do not have a differentiated system
6 that will differentiate between petroleum gas or other.

7 So if they get a credit card, that credit card could
8 have been used to buy groceries. It could have been used
9 to buy gas. It could have been used to buy anything. But
10 the credit card sales with respect to petroleum would be a
11 very small part of their credit card sales. And again
12 they have no system to differentiate.

13 The other issue is they operate in 29 different
14 locations. Those locations, there is no central
15 repository for all of this information.

16 So in order for Co-op to answer Mr. Gardner's
17 question, what they would have to do, and the only thing
18 that would make sense, is to go forward for a period of 30
19 days, get somebody in each of those 29 locations
20 physically looking at the credit card receipts,
21 segregating them and then coming to this Board with a
22 tally, okay.

23 So I just want to let you know there is no -- and I
24 don't think Mr. -- I think Mr. Gardner understood that.
25 But I didn't want there to be left with the inference that

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2 we or anybody else had not provided this without good
3 reason. We just don't have that information.

4 Now I'm not going to speak very much about Mr. Ervin's
5 report other than to say it says what it says. But the
6 Vice Chairman correctly -- you stated that at the end of
7 this procedure or process you are charged with making a
8 decision. And you can only make that decision based on
9 the information you have. I think that is a correct
10 statement of what your mandate is.

11 So then the question becomes what do you have?
12 Despite the fact that Mr. Gardner's report is anecdotal,
13 despite the fact that it has been supplemented -- or
14 sorry, it has been supplemented, as he has noted, with his
15 background expertise, it has been supplemented to the
16 extent possible by third party references, we would
17 suggest that with respect to credit cards, with respect to
18 the issues facing those retailers in small urban
19 communities, that his report has been supplemented bang-on
20 with respect to his conclusions. So we would suggest that
21 the only credible evidence you have is Mr. Gardner's
22 report.

23 Now I don't take issue with Mr. Ervin who was retained
24 to critique the report. But Mr. Ervin doesn't offer

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2 anything concrete or not very much concrete by way of
3 alternative suggestion.

4 So we were faced with Mr. Gardner's report. What do
5 we do with it? Well, we look at the report. And his
6 report is consistent with our belief in what the problems
7 are in the industry. And his solutions are we might
8 quibble about .005 or .006 but we recognize the
9 limitations that he operated under and we can't do any
10 better the estimating or calculating those numbers than he
11 did.

12 So from our point of view, we are in a regulatory
13 process that was initiated by an order from this Board
14 subsequent to which in our view the Board is really the
15 applicant, has filed its evidence and we agree with the
16 evidence.

17 And I say that only because that answers our question
18 which was posed yesterday, why didn't any of the parties
19 file evidence? We didn't feel the need to file evidence
20 because in our view the Board's expert had filed a report
21 with which we agreed in all material respects.

22 Had we known the issue of credit cards -- you know,
23 this whole issue about credit card usage and credit card
24 fees, we could have done something, but I'm sure others
25 could have done more, to put forth that positive evidence

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2 to support Mr. Gardner, as they have come forward today,
3 at least a few of them. And really I haven't heard
4 anybody contradict his numbers in that regard.

5 So I guess what I would suggest is that this Board has
6 -- unless there is something in Mr. Gardner's evidence
7 that is not credible, that is what you are left with.

8 Now I will say one thing. Because there were quite a
9 number of questions around the issue of can you achieve
10 the highest margin? And what is the difference if we bump
11 this 2, 3, 4, 5 cents if you are not charging what you are
12 allowed right now?

13 And from a process point of view, in our respectful
14 submission, we would suggest that it is your mandate to
15 find the right number. It is your mandate to file the
16 right number to allow retailers, wholesalers, whatever the
17 case may be, to operate profitably, at least to keep their
18 head -- to survive. While people have a right to stable
19 gas prices, we would suggest that in any regulated
20 business the business has a right to be more than break
21 even.

22 So whatever the right figure is, the right figure is.
23 And we would suggest that should form the basis of your
24 decision. If the market decides, market forces determine
25 that the price is not achievable, that is a problem for

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2 another day. That is a problem we would suggest for other
3 parties.

4 So what we would ask this Board to do, on an interim
5 basis, and you don't have to categorize it as such, but it
6 will become apparent when I go on, in a moment, why I say
7 this is an interim basis. But I would ask you to adopt
8 Mr. Gardner's report. And then what I would ask you to
9 do, as part of your statutory mandate, is recommend to the
10 Minister that this whole concept of regulation should be
11 revisited. And the reason I say that is everybody has
12 been consistent here with respect to a number of issues.
13 And one that keeps coming back, we keep coming back to, is
14 there was not a meaningful consultation with the industry
15 before regulation was implemented.

16 People talked about going to meetings, being
17 theoretically consulted. And then when the legislation
18 was brought in to a person, to a company, the response has
19 been it bore no resemblance to anything we talked about at
20 our stakeholder meetings. Are we even sure where the 11
21 cents came from?

22 So what I'm suggesting is it is time to go back and
23 look not at whether there should or shouldn't be
24 regulation. Regulation is here. We are prepared to work

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2 with government and work with the Board. What we would
3 like to see is meaningful regulation.

4 And I'm just going to briefly summarize some of the
5 issues that Mr. Gardner raised. And there are issues that
6 we feel very strongly about that are not addressed and are
7 not addressed by the current regulation.

8 One of them is this whole issue of operating costs.
9 We feel very strongly that there should be a base line and
10 there should be an understanding by this Board, an
11 understanding by government, and if necessary a compromise
12 among the industry participants in putting forth a proxy
13 that truly represents operating costs.

14 And it may be necessary to develop a proxy in two or
15 three different sectors. And it may be necessary to
16 develop a proxy for two or three different regions or
17 zones with respect to transportation or whatever.

18 But I asked Mr. Gardner, and I believe -- and I don't
19 want to put words in Mr. Ervin's mouth -- but I think he
20 felt, they all felt that that was possible.

21 And so we have to get something on the table that
22 everybody understands so operating -- the concept of
23 operating costs are understood.

24 The smaller communities, as Mr. Gardner noted and as
25 we have heard from some of the participants here, this

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2 whole regulatory process is affecting the industry's
3 ability to maintain services it currently provides in
4 rural and outlying communities.

5 That has to be addressed. Now whether we go to zones
6 or whether we go to some other concept, this is something
7 that we -- the only way to talk about this or work this
8 through is through stakeholder consultation.

9 The whole issue of average pricing, I mean, you know,
10 we know in a rising market how that affects businesses.
11 You are always in a state of catch-up. And despite the
12 fact that the price of crude is now dropping, you know,
13 everybody in the business thinks long term that is going
14 back up pretty soon.

15 So we are in a bit of a respite now. But I don't
16 think many people think that we are not going to be in a
17 period of rising prices soon. Freight pricing zones I
18 have already mentioned.

19 Now what form of consultation am I throwing out there?
20 I don't have all the solutions for you. I don't have
21 solutions with respect to each of these individual items.
22 We have views, not solutions. And those views would be
23 shared with other members of the industry. They would be
24 shared with representatives of the Board if they saw it

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2 appropriate, and certainly with members, representatives
3 of government.

4 And I had the opportunity, just speaking from personal
5 experience, when natural gas was brought to the province,
6 one of the things the Board did, and some people here
7 certainly participated, was that they set up these
8 stakeholder consultations, these working groups, technical
9 groups, call them what you want.

10 And basically we were sequestered in a room and said,
11 here are the problems, you guys are the participants, you
12 solve the problems and you come to the Board with a
13 report. And to the extent you are not able to deal with
14 problems, we will.

15 And it was a very effective process. It is used at
16 the NEB on rate cases all the time. It is used -- been
17 used by this -- the predecessor Board, I know on at least
18 a couple of occasions with great success.

19 I know on the electricity side this Board employs the
20 use of technical conferences to great success for the most
21 part, you know. If there are 30 issues and 25 of them
22 come off the table by agreement of all the stakeholders,
23 then that is a very productive use of time.

24 Instead, this process, and again with all the greatest
25 respect, is not a gratifying -- there is no ability to --

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if you understand what I'm saying, what we are doing is we are responding to questions that are framed around a regulation which we feel doesn't address the needs of the industry.

So of necessity, we agree with Mr. Gardner's conclusions, but only because he was constrained from doing the job that we would have preferred be done.

So that is really our pitch. We would like to see Mr. Gardner's report adopted. We would like to see your report to government strongly recommend that this whole regulatory regime be revisited.

We would like to see you have the regulatory power, either by amendment to statute or regulation to supervise the process and to make sure that there is some ability to move it forward to some kind of conclusion which makes more sense to us all of us than this does.

And with that I think I will close and turn it over to the Board for any questions you might have. Thank you very much.

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

Questions?

MR. RADFORD: Mr. Zed, yesterday Ms. Savage came and spoke.

And she said she spoke for your client. Do you adopt the information that she filed?

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2 MR. ZED: We have the advantage of reading it in advance.

3 And we did sign off on it, yes.

4 MR. RADFORD: And in your comments just now are you

5 suggesting that we should expand this review at this time?

6 MR. ZED: What I'm suggesting is that you have done your

7 review. You have done your review in accordance with the

8 current statutory requirement. And that you make a ruling

9 with respect to that. And the ruling I would ask you to

10 make is to adopt Mr. Gardner's report.

11 Going forward what I would ask is that the stakeholder

12 consultation be initiated under your authority. And one

13 of the things I would hope that we would be able to

14 achieve is that once we agreed on certain costs there

15 wouldn't be a necessity to come back for a full hearing.

16 Perhaps if we could agree on certain costs we may be

17 able to agree on a certain escalation clause that would

18 say something, maybe tied to the minimum wage rate, tied

19 to the inflation rate or tied to something else.

20 I mean, there are all kinds of things that I think we

21 could agree to that would remove the need to come back

22 before the Board for what is a very expensive and time-

23 consuming hearing.

24 And unless you have a relatively constant review, I

25 think as Mr. Gardner clearly noted and everybody else has

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noted, two years is far too long. And because two years is far too long, what we are really saying is the review has to be almost continuous.

And the only way it can be continuous is if we put in place a mechanism that everybody could live with that provided some administrative escalators, or in periods of falling costs, a deescalator, if we get to a period of a recession.

So that is really what we are trying to avoid. We are trying to avoid this being out of step, pricing being out of step with reality. We are trying to -- cost recovery being out of step with reality.

MR. RADFORD: Thank you for your suggestions and submission.

VICE-CHAIRMAN: Mr. Zed, I just want to make sure I'm clear on a couple of points here.

Are you talking about two separate processes, one where we have technical sessions in preparation for another review similar to this one?

Or are you talking about a process where we have technical sessions looking toward an overall rehauling or changing of the regulatory structure?

MR. ZED: I would say the latter. I use the form only by way of example. Because I know this Board is very familiar with the fact that stakeholders can get together

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and solve problems and remove issues from dispute. So I was really talking about the latter.

What we did when natural gas regime was implemented is all the marketing rules, I think we had -- we developed those. And there were industry stakeholders. There were representatives I believe from government. We were under Board supervision as needed. And I think Mr. Goss was sort of the point man at that time if I recall. I mean, he may not have been.

But in any event we did the same thing for the -- so in other words we set up codes of conduct for marketing by agreement with the parties. We still had to go back to the Board. And the Board had issues with some, but generally speaking adopted the code of conduct that we proposed.

There was still an open public hearing. But there was an industry group that came together and put together proposals. So it avoided what could have been a months long process of, you know, five or six disparate parties arguing various points in public.

And they were able -- these were all done under sort of the cloud -- or sorry, the dome of confidentiality. Nobody was allowed to take any information out of the room. No discussions about anything we disagreed on ever

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2 came before the Board. The only thing that came back to
3 the Board was what we agreed on. And all bets were off
4 everything else. People were free to make their own
5 cases.

6 But what it did -- and we did that not only with the
7 marketer's rules but we did it with the initial rate
8 mechanism. And I think what it did is removed all kinds
9 of issues, that people said oh, they are just so
10 insurmountable that you can't possibly do it that way. I
11 participated in the same process in Nova Scotia to great
12 success. I know the National Energy Board does it all the
13 time with generally speaking a great deal of success.

14 And I just think -- what I'm saying is regulation was
15 brought in on a consultation that really was not a very
16 effective consultation. I think it is time to do that
17 now. Perhaps through consultation we can solve a lot of
18 the problems you have heard today.

19 VICE-CHAIRMAN: Well, Mr. Zed, we have processes very much
20 like what you are talking about going on now in the
21 natural gas sector. But they are over issues over which
22 the Board has in the end jurisdiction.

23 The difficulty I have with what you are proposing is
24 that at the end of the day it is the government who would

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2 have to make the changes that you are talking about. And
3 this Board doesn't have any authority to do that.

4 So I'm wondering whether you shouldn't turn around --
5 MR. ZED: Well, perhaps I wasn't articulate enough about
6 this. But what I would ask the Board to do is to ask
7 government for authority to initiate this process.

8 VICE-CHAIRMAN: I see.

9 MR. ZED: Okay. So there would be a regulatory -- need for
10 probably statutory or regulatory change before it started.
11 But that is really what I think has to happen. This Board
12 has to have jurisdiction.

13 Because as cooperative as we all will be, unless there
14 is an authority at the end of the day who is going to make
15 a decision, there really is no sort of end in sight to
16 some of these processes.

17 So I think it is a very effective interplay between
18 the Board and members of the industry that could work.

19 VICE-CHAIRMAN: Should the Board not request such authority
20 or should the Department of Energy or the government not
21 grant it, would it be beneficial to have technical
22 sessions to try and derive criteria for the next review?

23 I might just say that you may recall that the section
24 under which we are holding this review, under the previous
25 legislation called for it to be done on an annual basis.

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2 Now it is on a motion of the Board or upon application per
3 party. But nonetheless I think there is a consensus it
4 should be done fairly steadily.

5 Would the kind of technical sessions you are talking
6 about, limited, more limited in scope, be beneficial prior
7 to the next review?

8 MR. ZED: In my experience those types of sessions are
9 always beneficial, if for no other reason -- and in the
10 worst case scenario they crystallize your differences. So
11 at least you know what we are arguing about when we get to
12 a hearing.

13 So I think they are always beneficial. And more often
14 than not they result in people coming together on at least
15 some of the issues.

16 VICE-CHAIRMAN: Do you think that that process would result
17 in participants in the industry being willing to provide
18 on a confidential basis to Board Staff or otherwise some
19 of the data that appears to be somewhat lacking in this
20 proceeding?

21 MR. ZED: Well, I think people in business are used to doing
22 a cost benefit analysis. And if they see a potential
23 benefit to the process then perhaps they are prepared to
24 pay that cost.

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2 I can't answer. It would depend on what was on the
3 table, what the nature of the process was and what
4 safeguards could be -- I mean, I can't speak for anybody
5 in particular.

6 But it would seem to me that if this works the way it
7 should work, you would be able to -- the Board would have
8 enough information -- it may not be all of the
9 information, but enough information on which to make a
10 more reasoned decision than perhaps you feel you have
11 today.

12 VICE-CHAIRMAN: Thank you.

13 MR. TONER: Mr. Zed, you said Co-op has 29 gas stations?

14 MR. DAVIES: Or we are associated with.

15 MR. TONER: 29 gas stations. And averaging -- if we look at
16 the average there is 2,000,000 litres?

17 MR. ZED: That is why I brought Mr. Davies here in terms of
18 it.

19 MR. DAVIES: Average 2,000,000 litres. Maybe a fair number
20 below and a fair number above. We might get that average
21 based on the number we looked at.

22 MR. TONER: So if you look at Mr. Gardner's report and you
23 agreed with the .58 cents toward -- and I'm talking about
24 all the costs. I'm just saying .58 cents. Let's look at
25 that one for a second.

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2 And if we average 2,000,000 litres that is \$336,400
3 that we are talking about for Co-op Atlantic at .58 cents
4 a litre roughly?

5 MR. DAVIES: Okay.

6 MR. TONER: So I guess my point, if you hired a lawyer, you
7 could have hired an accountant to verify what your true
8 costs for that is?

9 MR. DAVIES: Yes.

10 MR. TONER: To verify and say yes, we agree with them. I
11 mean, you agree or you disagree. But the data, although
12 we don't have it, for an insignificant amount of money you
13 could have said yes, I agree with them because we had an
14 accountant look at those costs, without disclosing all of
15 your confidential information about your company.

16 MR. DAVIES: With respect to the sites that we are involved
17 with, some of them we own corporately. We can provide a
18 number.

19 The other ones are owned by a third party,
20 cooperatives. We don't have the -- I guess a lot of the
21 detail on how they actually operate the fine lines of
22 their business. But we do have all the wholesale
23 information.

24 So we have a pretty good idea of where these cost
25 factors are arising and what it does to our business. And

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2 as I had earlier noted, in principle we agree with what
3 Mr. Gardner had found.

4 MR. TONER: Right. And I guess from my perspective, you
5 know, I guess the information is available, is my point I
6 guess.

7 MR. DAVIES: Which information is that?

8 MR. TONER: That you can give us -- it is available
9 information, you just have to dig for it, I guess is my
10 point --

11 MR. DAVIES: Yes.

12 MR. TONER: -- relating to your costs?

13 MR. DAVIES: With respect to our costs, yes, except for the
14 usage on credit cards, that we would have to do a manual
15 observation of.

16 MR. TONER: Right. Thank you.

17 CHAIRMAN: Thank you, Mr. Zed and Mr. Davies. I appreciate
18 your participation in this process.

19 MR. ERVIN: I don't have a whole lot of comment, Mr.
20 Chairman. I think the evidence that has been filed on
21 behalf of the Department of Energy and the testimony of
22 M.J. Ervin & Associates today, you know, really provides
23 the foundation for our position. And that is, you know,
24 that there are certain weaknesses in the Gardner Pinfold
25 report.

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2 I guess, you know, we should hark back to the overall
3 objectives of the Act itself, you know, when we are -- in
4 order to put this whole process I guess into context. And
5 that is set out in Section 1.1.

6 And, you know, the primary objective of the Board is
7 to consider the fact that consumers should benefit from
8 the lowest price possible without jeopardizing the
9 continuity of supply of petroleum products.

10 So that implies that there is in fact some kind of a
11 balance to be achieved here between the interests of the
12 consumers in obtaining the lowest price possible and
13 ensuring that the margins are not set so low as to cause a
14 significant exit from the industry and thus jeopardize the
15 ability of the industry to in fact supply the consumer in
16 the first place.

17 So I think that is, if I may suggest, you know, the
18 type of balance that is trying to be achieved here.

19 The review itself of course is under Section 14(1) of
20 the Act. And, you know, that uses the term whether the
21 margins are justified. And that is really, you know,
22 again the exercise that is being undertaken by the Board
23 here today.

24 And of course that term of justified obviously must be
25 read within the context of Section 1.1. I think the term

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2 whether the margins are justified, I would suggest, must
3 mean that it is justified considering the fact that
4 consumers should benefit from the lowest price possible
5 without jeopardizing supply. So, you know, just to put
6 that into context.

7 Mr. Zed has urged the Board to accept the report of
8 Gardner Pinfold. And if I heard correctly it was on the
9 foundation that there was really no other evidence filed
10 to, you know, rebut so to speak their presumptions that
11 that report has made.

12 And I would just stress that this -- I don't believe
13 that this review is set up as an adversarial type of
14 process. It is not an application by a party for an
15 increase for example.

16 And if it was an application say under Section 12 or
17 13 of the Act then there would be a certain onus that the
18 applicant would have to meet in order to cause the Board
19 to accept the application.

20 In this case there is no concept of onus as I
21 understand it. And so the Board is free to consider the
22 report of Gardner Pinfold or not to accept its
23 recommendations, based on the whole entirety of the
24 evidence and submissions that it has heard throughout this
25 process.

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2 And so I would suggest that, you know, there is no
3 prima facie case, so to speak, that the Gardner Pinfold
4 report has made, you know, which requires someone to come
5 in and rebut that or overturn it. It is really a process
6 which relies on the entirety of all evidence.

7 And I think the evidence that has been filed on behalf
8 of the Department of Energy in some respects is evidence
9 that is there in order to consider the fact that there are
10 no rural consumer groups that are represented at this
11 hearing. So we are in that sense making sure that that
12 Section 1.1 is -- you know, does come into play in the
13 ultimate decision.

14 So I would submit that -- although there may be
15 certain aspects of the Gardner Pinfold report that are
16 worthy of consideration and certainly some aspects of it
17 that the Department agrees with or doesn't take any
18 objection to.

19 You know, there were many aspects of it. And I won't
20 go into a detailed review of them. We have all the
21 evidence here, many aspects that cast some doubt as to --
22 as the reliability of the conclusions.

23 Because the conclusions are based upon for many, many
24 cases an examination of what the costs of the industry
25 were as of July 1st of 2006 versus what the costs are now.

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2 And there were many, many assumptions. And many of those
3 assumptions were based on anecdotal evidence.

4 We realize that the Board is faced with that challenge
5 of having to decide something in the context of incomplete
6 evidence and unreliable evidence and evidence that, you
7 know, we wish we had better information from various
8 sources and we don't.

9 But I'm just suggesting that there is no compulsion to
10 say well, if this is all the evidence we have then we must
11 act upon it in the absence of any other evidence. And I
12 suggest that that is not a necessary outcome of this
13 review.

14 So the main reason for our intervention, you know, was
15 not really to take a position for or against any
16 particular adjustment in the margins. But it is only to
17 ensure that any adjustments made by the Board is made on a
18 sound factual basis and of course in accordance with the
19 stated objectives of the Act.

20 There was one aspect of the Gardner Pinfold report --
21 and I think Mr. Gardner himself made several allusions to
22 the idea that his analysis and his recommendations were
23 based on so-called forward-looking objectives.

24 And again I would leave it to the Board to consider
25 whether forward-looking objectives are really within the

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2 scope of what the Board has to consider as opposed to
3 ensuring that whatever the proper margins are are
4 justified as of today and not justified as of some future
5 date based on some projection of what the cost may be say
6 a year from now.

7 I think recent events in commodity and credit markets
8 have illustrated the folly of trying to make predictions
9 as to what costs will be in the future.

10 And admittedly that means that the Board is playing a
11 game of catch-up if we are going to be doing a review say
12 on an annual basis of this nature or any other nature. It
13 is based on looking at the situation today and determining
14 whether the margins today are justified.

15 But I think it would take a significant change in the
16 process and the method of analysis in order to try to make
17 a projection as to what the margins should be say six
18 months or a year from now.

19 There was much talk about what was the original basis
20 for the setting of the 11 cent margin. And there is of
21 course no hard evidence on that fact. Mr. Gardner assumed
22 that it was based on a two-year analysis of the spread
23 between the New York Harbour average price and the actual
24 retail prices charged in New Brunswick.

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2 I have my own information which again is secondhand
3 based on my discussions with staff of the Department who
4 were involved in that process at the time, which tells me
5 that the analysis was actually based on a 10-year review
6 of data both from the New York Harbour data and from the
7 actual pricing history in New Brunswick.

8 Again that is based on just what has been told to me
9 by the people who have been involved in the process. And
10 I can't verify that by any written data. But again that
11 is just put out there for your consideration. There was a
12 process. I can't speak to how elaborate it was in terms
13 of the public consultation.

14 But I think one point is clear though, is that the Act
15 itself, you know, did set out the 11 cent margin as the
16 margin. And that is what we are dealing with. And I
17 think we have to go from the point of view if that 11 cent
18 margin was intended, when it was set by the Minister under
19 the Act, was intended to reflect, you know, what a
20 "justified" margin was at the time.

21 So I don't -- and it may have been right and may have
22 been wrong. Some -- you know, some industry people may
23 have some issue with that. Some consumer groups may have
24 some issue with that on the other side.

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2 But I think we have to accept that that is kind of the
3 base line and a proper base line from which to deal. We
4 can't go back and suggest at this point, I don't think,
5 that the 11 cents was wrong in the first place.

6 Mr. Zed has suggested that the Board, you know, might
7 make some recommendations as to how to manage the process
8 or how to manage or, you know, to make suggestions as to,
9 you know, what changes could be made to the Act and
10 regulations in the future to make the process work better.

11 I'm not suggesting for a minute that the Department
12 thinks that there is something that needs to be fixed.
13 But certainly the Department is willing to participate in
14 any process that brings people together and discusses the
15 issues and seeks for better alternatives, you know,
16 obviously balancing all points of view, better
17 alternatives to come up with a fair and balanced pricing
18 mechanism.

19 I shouldn't say pricing mechanism. That is a maximum
20 pricing mechanism. You know, the whole nature of the
21 regulation really acknowledges that the free market is
22 still allowed to operate within New Brunswick.

23 And I'm pleased to hear, in some respects, based on
24 submissions that we heard this afternoon, that the free
25 market is in fact active and competition is rigorous in at

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2 least certain areas. So it is important to recognize that
3 this is not a regulation in the sense of a public utility.

4 The notion that we should perhaps examine the cost
5 structure just based on gasoline sales is getting very
6 close in my mind to the notion that we should regulate the
7 industry as a public utility. And it does not operate in
8 that fashion and should not be regulated in that fashion,
9 in my submission.

10 The retail markets operate in New Brunswick by and
11 large the same way as they do anywhere else in Canada or
12 North America. And that is that they are -- gasoline and
13 petroleum product sales are really part of an integrated
14 business which may include convenience stores,
15 restaurants, car washes and whatever have you.

16 And to suggest that we should kind of try and hive off
17 that and examine gasoline sales and regulate margins just
18 on that narrow view is a departure from really the way
19 that the businesses are actually operated both in
20 unregulated and regulated jurisdictions.

21 And I think if we were to do that, if we were going to
22 go down that route, we would find ourselves over a period
23 of years gradually departing from the way the industry is
24 evolving in other parts of Canada.

25 Thank you for your time.

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2 CHAIRMAN: Thank you, Mr. Ervin. I guess you correctly
3 point out that this is a review by the Board and not a
4 result of an application by any party.

5 And you raised the issue that it was under Section
6 14(1). And I think you read that into the record or at
7 least portions of it.

8 I'm somewhat intrigued by the use of the word
9 "justified" in Section 14(1) and I guess as regulators
10 were used to the expression just and reasonable.

11 And I don't know if you want to tackle this or not.

12 But do you have a view on what justified means?

13 MR. ERVIN: All I can say, Mr. Chairman, is that I think it
14 has to be read, as I said before, within the context of
15 Section 1.1. But, you know, the Board obviously has so
16 many other factors to take into account, the core meaning
17 of justified.

18 And then from there we are looking at, you know, the
19 meaning of the word "justified" including ensuring that it
20 will not, you know, put a significant number of retail or
21 wholesale operators out of business.

22 I think that -- you know, but it is all within the
23 context of Section 1.1. I can't really say anything more
24 than that.

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2 CHAIRMAN: No. And look, I appreciate your comments on
3 Section 1.1. But the wording there is that the Board
4 shall take into consideration. So that clearly isn't the
5 only consideration.

6 And I just wondered if the word justified, if you
7 would equate that to just and reasonable, that we would --
8 the expression we would -- there is probably lots of
9 jurisprudence on.

10 And I don't know about justified. I haven't heard
11 anybody come forward with any jurisprudence on that word
12 yet. So you have nothing further to add to that?

13 MR. ERVIN: No.

14 CHAIRMAN: All right. Any questions from the panel?

15 MR. RADFORD: No questions.

16 MR. MCLEAN: I'm not sure, Mr. Chairman, how much a question
17 as a comment. But the 11 cents has had a lot of
18 discussion here. And you made some very good comments on
19 it. And without trying to judge it, whether it is right
20 or wrong or indifferent, without as a Board knowing what
21 is included in it and what the starting point is, we are
22 trying to decide if costs have gone up, right.

23 And I won't go to the justified thing. But if I don't
24 know what the word to start with or what was included in
25 it, it is pretty hard. Because we have had this great

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debate, you know, where did the credit cards start, where did the minimum wage start?

And I guess -- I don't know how you can respond to it. But it is maybe unfortunate that that number wasn't given more profile by the Department when it was set up, to say that this is how we come to it. And like it or not, but this is what it is. That would have been fine. We would have all had a starting point.

But now I think everyone is starting in the dark. And I find that difficult. And I don't know if there is anything you can necessarily do about it. But I think it is an important point that has to be recognized as a challenge to the Board.

MR. ERVIN: I agree, sir. I think it might have been helpful frankly if we had good evidence as to -- you know, I can tell you my understanding of how the 11 cents was arrived at.

But I know I couldn't have received -- gotten good evidence of that other than perhaps calling a witness who was involved with the process at the time in order to give, you know, primary evidence of that.

But I mean, generally speaking my understanding is that there was a review of the New York Harbour average daily price. And basically the formula was used in order

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2 to come up with what is the -- you know, what was the
3 average differential between the New York Harbour price
4 and what the market naturally unregulated came to.

5 And there was some -- I'm not sure how they dealt with
6 the delivery cost for example. But there was an average
7 up over a 10-year period as I believe to -- and so the 11
8 cents was basically an approximation of what premarket
9 sources would have charged over, you know, over that
10 period of time on average, taking out all of the dips and
11 peaks.

12 CHAIRMAN: Thank you for your participation in this process
13 over the last couple of days. We really appreciate that.

14 I think that leaves us with Mr. Hoyt.

15 MR. HOYT: I feel like a guy speaking at a conference at
16 4:00 o'clock on a Friday afternoon.

17 Irving Oil Marketing Limited is in the business of
18 both the wholesaling and retailing of petroleum products
19 in New Brunswick. And as such, not only does Irving Oil
20 Marketing Limited sell directly on a retail basis, but it
21 sells petroleum products on a wholesale basis, including
22 to a large network of independent retailers. IOML has a
23 direct interest in ensuring the success of its independent
24 retail network, as well as its direct wholesale and retail
25 business.

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2 IOML appreciates the opportunity to now provide its
3 closing submission. And our submission addresses the
4 issues before the Board from the perspective of a
5 wholesaler and retailer.

6 And I would like to actually touch on the legislation,
7 the M.J. Ervin report before getting to the Gardner
8 Pinfold report.

9 So in terms of the legislation, the Board initiated
10 this process under Section 14(1) of the Act which
11 authorizes the Board to conduct a review of maximum
12 margins, maximum delivery costs or the maximum full
13 service charge to ensure that they are justified, and may
14 order such margins, costs or charges to be adjusted after
15 the review is completed.

16 A couple of other provisions of the petroleum products
17 pricing legislation need to be kept in mind as part of
18 this process. First -- and it was just referred to by Mr.
19 Ervin -- Section 1.1 of the Act provides that, and I
20 quote, "The Board shall, when making a decision under this
21 Act respecting prices, margins, delivery costs or full
22 service charges, consider the fact that consumers should
23 benefit from the lowest price possible without
24 jeopardizing the continuity of supply of petroleum
25 products", end of quote.

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2 So the Board is mandated to look at the industry
3 participants' side of the equation. And throughout the
4 past two years, wholesalers' and retailers' margins have
5 been capped while their costs continue to increase. And,
6 as alluded to in the Gardner Pinfold report, and in Mr.
7 Gardner's testimony yesterday, increasing costs without
8 increasing margins can affect the continuing supply of
9 petroleum products. In fact, Mr. Gardner said near the
10 end of his testimony, and I will paraphrase, because I
11 don't have the transcript, failing to increase the margins
12 is going to compromise the ability of a number of gasoline
13 and heating oil retailers to stay in business.

14 Also, Section 9(1) of the Regulation sets out the
15 factors for the Board to consider in a proceeding to
16 change the maximum margins that may be charged by a
17 wholesaler or a retailer -- now whether, since the maximum
18 margin was last set, there have been changes to i)
19 transportation costs, ii) volume of sales, iii) storage
20 costs, iv) inventory turnover rates, v) applicable levies
21 and insurance costs and vi) any other relevant factors.

22 And similarly, Section 11 of the Regulation sets out
23 the following factors to be considered when the Board is
24 looking at whether to adjust the maximum delivery costs

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2 -- i) fuel costs, ii) insurance costs, iii) capital costs,
3 iv) volume of sales and v) any other relevant factors.

4 I would suggest that that is exactly what Gardner
5 Pinfold did in preparing the report. It can easily be
6 seen from the Summary page of the Gardner Pinfold report
7 is that is exactly how the consultant broke down the
8 factors that it considered. It is also how Gardner
9 Pinfold's recommendations are laid out in Section 3 --
10 Adjusting the Maximum Margins and Section 4 -- Adjusting
11 Maximum Delivery Costs in its report.

12 Now before getting into the Gardner Pinfold Report, I
13 would like to address the M.J. Ervin Report which really
14 only offers a critique of the Gardner Pinfold Report.

15 However, it is very important to note that M.J. Ervin
16 did not dispute Gardner Pinfold's recommended maximum
17 increases of 0.2 cents per litre and 0.27 cents per litre
18 under Other Input Costs for maximum margins of motor fuel
19 and heating fuel, respectively, or the recommended
20 increase of 0.025 cents per litre under Applicable Levies
21 and Insurance for maximum margins of motor fuel
22 wholesalers. We also note that M.J. Ervin concurs with
23 Gardner Pinfold's proposal to increase maximum delivery
24 costs for both motor fuel and heating fuel. And although
25 M.J. Ervin takes some issue with Gardner Pinfold's

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2 recommended increase of 5.3 cents per litre for propane,
3 he confirms that Gardner Pinfold's assumptions appear to
4 be reasonable and did not really challenge the proposed
5 increase. So there is no evidence before the Board
6 contrary to Gardner Pinfold's recommendations on any of
7 those items.

8 There is little to indicate that the way the original
9 margins were established by the Province was based on any
10 hard evidence. In fact, Mr. Ervin on behalf of the
11 Province essentially just confirmed the same. In
12 addition, there is not a strand of evidence that non-
13 petroleum revenues were in any way a factor in determining
14 those original maximum margins.

15 As for Volumes of Sales, Gardner Pinfold did not
16 propose any adjustment to the marketing margin because, as
17 he said, insufficient information on sales volumes,
18 station closings, etc. was available on which to make a
19 recommendation.

20 On Storage Costs, M.J. Ervin simply poses a number of
21 possible questions as opposed to the evidence submitted by
22 Gardner Pinfold which was based on actually having spoken
23 to participants in the New Brunswick industry.

24 The M.J. Ervin report raises a number of issues with
25 Gardner Pinfold's recommendation to increase maximum

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2 margins for retail motor fuel as a result of credit card
3 fees. And the three that were talked about on a number of
4 occasions were the gasoline price used for comparison
5 purposes, the increase in credit card usage and the
6 increase in credit card fees.

7 Mr. Gardner provided a good basis for the gasoline
8 prices he used for comparison purposes. He believes that
9 future prices are more likely to be in this range than the
10 average for the past year. And he did so in the Response
11 to Department of Energy Question 3.

12 At pages 5 and 6 of the M.J. Ervin Report, it suggests
13 that Gardner Pinfold provided no basis for the assumed
14 increases in credit card usage from 30 percent to 45
15 percent between 2006 and 2008 or of credit card fees going
16 from 1.65 percent in 2006 to 1.75 percent in May 2008.

17 In fact, in response to the Department of Energy's
18 Question 1, Gardner Pinfold explained that, and I quote,
19 "Several factors account for the apparent increase in
20 credit card use: fuel prices have risen to levels where
21 few consumers carry the cash needed to fill the tank;
22 various rewards programs provide an incentive to use
23 cards; demand for convenience resulting in increasing
24 availability of a "pay at the pump" option using credit
25 cards; and general consumer trends", end of quote.

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2 As to the increases in both credit card usage and
3 credit card fees, Gardner Pinfold indicated in response to
4 Department of Energy Question 5 that the, quote,
5 "information on credit card fees has been obtained from
6 several refiner-marketers and retailers. In the absence
7 of discrepancies in the information provided, there did
8 not appear to be any reason to seek verification from
9 credit card companies", end of quote. We would note that
10 M.J. Ervin did not suggest the 1.75 percent fee used was
11 wrong. We would also note that Gardner Pinfold used the
12 lowest fee from the range of credit card fees between 1.75
13 percent and 3 percent, of which he had been made aware.

14 As for Gardner Pinfold's recommended increase as a
15 result of increases in the New Brunswick minimum wage,
16 M.J. Ervin acknowledged that many employees of dealers are
17 in fact paid minimum wage and therefore benefited from the
18 19 percent increase used by Gardner Pinfold. The fact
19 that not all employees earn minimum wage is offset by the
20 fact that Gardner Pinfold did not recommend any increase
21 in wholesale margins as a result of wage increases that,
22 by M.J. Ervin's own evidence, would likely have been in
23 the order of 10 percent. I refer you to page 6 of the
24 M.J. Ervin Report.

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2 Turning now to the Gardner Pinfold Report. In
3 preparing its report, Gardner Pinfold who has a lot of
4 experience with similar legislation in Nova Scotia and the
5 petroleum industry in that province and elsewhere in
6 Atlantic Canada had extensive discussions with wholesalers
7 and retailers in New Brunswick representing a good cross
8 section of the New Brunswick marketplace. They -- Gardner
9 Pinfold respected the fact that the petroleum product
10 industry views its proprietary information as highly
11 sensitive and confidential, and aggregated the information
12 made available to him.

13 But clearly, that information supported increasing the
14 maximum margins and delivery costs for wholesalers and
15 retailers of motor fuel and heating fuel in New Brunswick
16 as set out on the Summary page of the Gardner Pinfold
17 report.

18 No one has suggested that the current margins or
19 delivery costs are too high. As well, both Gardner
20 Pinfold and M.J. Ervin acknowledge that wholesalers' and
21 retailers' costs have increased since July 2006. I note
22 at page 9 of the M.J. Ervin Report, and I quote, "In fact,
23 there may very well be a current need to adjust those
24 margins", end of quote.

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2 Mr. Gardner testified that margins in other parts of
3 Canada have risen over the past couple of years as
4 compared to Atlantic Canada, and particularly New
5 Brunswick. Clearly, there have been general cost
6 increases in the New Brunswick marketplace since July
7 2006. The debate is as to the extent of those increases.

8 As the M.J. Ervin Report is simply a critique of
9 Gardner Pinfold's Report and more in the nature of cross-
10 examination than evidence, the only real evidence before
11 the Board as to those cost increases is contained in
12 Gardner Pinfold's Report. It is obvious from this
13 proceeding that the petroleum product industry is not
14 accustomed to being regulated. This backdrop would make
15 it difficult for any consultant to produce hard evidence
16 of specific cost increases. As noted at page 9 of the
17 M.J. Ervin Report, and I quote, "As consultants who have
18 worked in and with the downstream petroleum sector for
19 decades, we can appreciate the difficulties that Gardner
20 Pinfold likely faced in attempting to quantify the margin
21 and cost factors necessary to justify their changes", end
22 of quote.

23 M.J. Ervin's critique is easily made. But the Board
24 retained a local consultant who gathered actual
25 information in the New Brunswick marketplace which Irving

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2 Oil Marketing Limited confirms is reflective of the
3 increases it has seen in its costs since July 2006.

4 When my client reviewed the Gardner Pinfold report,
5 they saw few reasons to challenge it. IOML believes the
6 lack of concern expressed by other participants in the NB
7 industry as to Gardner Pinfold's recommended increases,
8 and the record in this proceeding, suggests that the
9 recommended increases are acceptable to the marketplace
10 and are reasonable.

11 IOML supports the increases that Gardner Pinfold has
12 recommended and reminds the Board that these increases are
13 to the maximums allowed and are not necessarily what the
14 wholesaler and retailer will charge. As pointed out by
15 Gardner Pinfold on its Summary page, making these
16 adjustments does not necessarily mean prices will rise by
17 the amount of the adjustment.

18 However, IOML does have two suggestions on the Gardner
19 Pinfold recommendations. First, a portion -- and we would
20 suggest one-half -- of the recommended increase in the
21 maximum margin under "Other Input Costs" of 0.2 cents per
22 litre for retail motor fuel should be allocated to the
23 wholesale margin for motor fuel. In support, we refer the
24 Board to the conclusion at the bottom of page 30 of the
25 Gardner Pinfold report which indicates that the 0.2 cent

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2 per litre increase is to compensate both wholesalers and
3 retailers for general price inflation since regulation was
4 introduced.

5 And secondly, IOML submits that the recommended
6 increase in delivery costs of 1.00 cent per litre under
7 wholesale heating fuel -- and I again refer you to the
8 Gardner Pinfold Summary page -- should actually be
9 available to be shared between the wholesale and retail
10 sides of the heating fuel business.

11 I would like to conclude my comments with a couple of
12 recommendations.

13 First, IOML agrees that propane should not be
14 regulated as it is not a primary heating fuel, however,
15 despite the fact that everyone seems to agree with that
16 proposition, we recognize that it is more an issue for the
17 Province because the legislation currently requires
18 propane to be regulated.

19 As Mr. Johnston might suggest, maybe I should turn
20 around and speak to the Province.

21 Secondly, we recommend that the Board look at at least
22 an annual process to review the maximum margins and
23 delivery costs under the petroleum product pricing
24 legislation. And we encourage the Board to establish a
25 process to develop a fairly transparent formula that will

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2 track and recognize wholesalers' and retailers' increasing
3 costs.

4 I have been involved in many of the -- I have been
5 involved and I'm currently involved in many of the Board-
6 sanctioned processes that Mr. Zed was alluding to and
7 would be happy to take any questions.

8 CHAIRMAN: Thank you, Mr. Hoyt. Questions from the Board?

9 VICE-CHAIRMAN: Mr. Hoyt, you are itching for more technical
10 sessions in your life? Is this --

11 MR. HOYT: Well, riveting.

12 VICE-CHAIRMAN: I come back to this question, during your
13 presentation of where the onus lies in this situation.
14 And I was reviewing the legislation.

15 And when we are conducting a review of this nature
16 brought by an applicant, participant in the industry, the
17 legislation is clear that the onus lies on the applicant
18 to demonstrate that the changes are justified, changes
19 that that applicant is proposing.

20 Here, where we are conducting a review initiated on
21 the motion of the Board, what is the standard -- and I
22 apologize. If other counsel or anybody else wants to jump
23 in on this when you are done. I didn't ask this question
24 of others.

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2 But what is the standard upon which we should be
3 basing ourselves?

4 I mean, Mr. Ervin mentioned the fact that the word
5 "justified" is used. And we go back to Section 1.1. which
6 talks about the fact that the consumer should benefit from
7 the lowest price without decreasing supply.

8 Do you have any comment on that in terms of what
9 threshold or onus issues arise in our decision?

10 MR. HOYT: Just before I go, one section that I wasn't aware
11 of until I got involved in this process is Section 25 of
12 the legislation, which again is probably more a comment
13 for the Province.

14 But there has always been mention that there is two
15 ways this can happen. The Board can initiate the process
16 or an applicant can initiate the process. But as I
17 understand Section 25 it talks about the applicant,
18 whoever the applicant is as bearing the cost of the
19 proceeding.

20 And I would suggest as long as you have got that type
21 of a provision in the legislation, that the likelihood of
22 that and an applicant picking up the cost of this is
23 unlikely. So again it is not an answer to your question.
24 But I think it is a section, as we are talking about the
25 legislation, that is worth noting.

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In terms of the onus, I don't have a great answer. I think that the word "justified" is the key. I think it is a matter of a process being put in place by the Board and everybody having an opportunity to make their submission at the end of it.

The Board's obligation is to determine whether or not that is in fact justified. And no, I don't come armed with lots of good jurisprudence on what "justified" -- what the test is.

VICE-CHAIRMAN: Thank you.

CHAIRMAN: Thank you, Mr. Hoyt. We appreciate the time and effort that you have taken over the past couple of days in the course of this hearing.

And I actually appreciate everybody's patience in allowing us to conclude tonight. I think that it was certainly beneficial for some who had to travel. But others perhaps this may have imposed a bit of a difficulty. So we certainly appreciate your indulgence in that respect.

Ms. Desmond, before we conclude are there any other matters that we need to consider to complete the record?

MS. DESMOND: Not that I'm aware of, Mr. Chair. Thank you.

CHAIRMAN: All right. Well, again I thank everybody for their participation over the last couple of days. And the

Board will endeavor to render a decision just as soon as
we possibly can. 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.

Deane Harris
Reporter

A	
abide 317:13	363:14 396:16
abided 199:19	404:19
ability 246:21 376:3	accountant 287:15
377:25 378:15	287:16 298:8
388:15 401:12	386:7,14
413:7	accounts 285:19
able 158:25 176:14	286:16
240:22 278:25	accumulated 333:5
294:6,9 298:12	accuracy 207:8
299:17 328:12	accurate 195:13
334:24 338:3	199:13 216:22
345:18 350:7	234:24 248:3
362:14 377:13	262:16 310:18
379:13,17 381:22	accurately 202:23
385:7	203:11 207:7
above 201:2 287:2	367:6
294:21 360:16	accustomed 407:14
385:20	achievable 373:25
absence 391:11	achieve 240:3 373:9
405:6	379:14
absolute 239:15,22	achieved 294:19
325:9	388:11,18
absolutely 208:3,12	acknowledge 218:7
215:25 222:4,21	220:16 406:20
223:17 253:13	acknowledged
265:14 311:20	405:16
313:22 323:16	acknowledges
324:10 326:19	394:21
328:3 335:13	acknowledging
355:14	225:19
absorb 200:22	across 194:7 217:14
abuse 298:20	243:20 251:19
Acadianne 331:21	256:20 257:22
accept 179:21,25	258:16,24 267:24
183:3 260:20	309:18 331:19
262:15 323:5	349:4
353:10 389:7,19	act 158:3 210:10
389:22 394:2	291:11,15,17,18
acceptable 408:9	291:24 292:4
acceptance 353:17	335:6 388:3,20
accepted 328:14	389:17 391:11,19
accepts 319:15	393:14,19 394:9
accommodate	400:10,19,21
211:25 273:12,19	acting 280:14
Accommodation	active 394:25
158:15 347:10	activities 271:24
accomplish 294:7	366:16
accordance 379:7	activity 164:18
391:18	249:18 270:22
according 234:22	353:4 354:12,23
237:15 262:13	actual 180:15
318:24 321:4,15	191:23 199:14
321:21 322:3	213:24 219:8
329:23 330:11	233:19 234:4,5,22
336:22	234:25 235:21,22
accordingly 335:22	235:24 253:3
342:18	256:20,23 268:3
account 177:17	314:6 318:10
251:16 252:17	392:23 393:7
300:20 305:19	407:24
	actually 164:24
	187:19 195:11,18
	196:5 198:5,14
	199:10 200:21
	204:17,24 218:4
	219:6 222:22
	224:22 232:3,4
	249:9 253:3
	254:24 257:2
	264:12 265:5
	268:16 299:17
	312:22 332:13
	335:7 353:5,13,18
	356:9 359:11
	362:22 363:2
	386:21 393:5
	395:19 400:6
	403:22 409:8
	412:15
	add 198:11 226:9
	251:8 312:13
	313:9 322:15
	397:12
	added 361:2
	adding 226:6
	334:21 335:6
	addition 193:9
	225:4 271:23
	353:14 354:6,14
	403:12
	additional 262:19
	262:25 263:15
	353:16,23
	address 240:18
	273:2 291:15
	337:8 340:12
	346:8 350:16
	356:17 378:4
	402:13
	addressed 218:18
	276:5 318:9
	349:20 375:6,7
	376:5
	addresses 400:3
	adequacy 282:18
	Adjourned 413:4
	adjust 317:20
	401:24 406:23
	adjusted 174:4
	251:2 400:14
	adjusting 335:14
	402:10,10
	adjustment 166:19
	175:19 198:24
	391:16 403:16
	408:17
	adjustments 166:18
	168:24 175:2
	391:17 408:16
	Administration
	186:8 277:6
	administrative
	380:7
	admit 215:6 226:25
	admittedly 221:4
	392:10
	adopt 225:10 374:7
	378:24 379:10
	adopted 378:10
	381:15
	adopting 259:9
	advance 350:20
	357:4,6,7,24
	379:2
	advantage 296:16
	318:17 324:4
	364:14,17 379:2
	advantages 328:10
	advent 229:12,20
	230:8,13,18,23
	231:3,10
	adversarial 389:13
	advised 348:2
	advocacy 329:20
	affect 165:23 220:7
	220:9 299:17
	324:17 401:8
	affecting 318:10
	376:2
	affects 329:12
	376:10
	afford 331:15 337:4
	337:5,14,22
	339:18 340:11
	affordability 336:19
	affordable 337:7
	343:2
	afraid 211:13
	after 167:19 177:19
	184:2 187:8 255:6
	280:15 290:11
	291:6,9 293:11
	308:8 331:17
	333:20 337:17
	357:19 400:14
	afternoon 365:11
	394:24 399:16
	afterwards 280:20
	against 349:8
	391:15
	age 277:2,3
	agencies 187:5
	329:22
	agency 297:7
	agents 185:22,25
	186:19
	aggregated 214:11
	406:11
	aggressive 328:9
	ago 194:2,3 212:23
	268:2,6 278:23
	300:23 302:23,23
	348:24
	agree 169:11 170:16
	173:20 174:15
	194:11 201:16
	208:12 230:22
	231:10 238:6
	251:7 252:14,21
	253:9,15,22,23
	254:17 259:14
	262:3 357:25
	372:15 378:6
	379:16,17,21
	386:10,11,13
	387:2 398:15
	409:15
	agreed 372:21
	379:14 382:3
	385:23
	agreement 293:12
	377:22 381:13
	agrees 180:5 390:17
	409:13
	agricultural 366:7
	agrifood 366:6
	ahead 163:5,20
	165:21 166:16
	171:3 276:7
	280:12
	ahold 278:19
	aid 333:5
	aiming 166:24
	air 209:19
	Alain 159:7
	albeit 259:6
	Alberta 187:3
	alentour 307:10
	allegedly 368:18
	aller 307:20
	allocate 316:10
	361:11
	allocated 408:22
	allow 198:17 211:14
	273:18 308:12
	323:3,14 334:18
	340:14 373:16
	allowable 231:16
	326:6
	allowed 298:13,17
	298:25 304:7,9,11
	318:24 320:11
	321:14 322:12,22
	360:12 373:12
	381:24 394:22
	408:13
	allowing 329:10
	412:16
	allows 294:25
	360:15
	alluded 247:8 401:6
	alluding 410:6
	allusions 391:21
	almost 224:17

- 235:18 267:16
337:16 380:4
alone 270:8
along 165:8 206:9
211:19 215:2,21
217:11,21 262:2
293:22 332:23
already 333:7
337:17 345:8
353:15 376:18
alternate 201:8
220:24
alternative 213:9
272:23 355:19
372:3
alternatives 394:15
394:17
although 198:4
199:3 200:5
203:18 254:21
367:16 386:11
390:14 402:24
always 166:22
175:20 183:25
222:10 261:15
267:16 277:15,15
277:16 280:6
289:13 296:13
304:23 376:11
384:9,13 411:14
amazing 335:13
amendment 378:14
America 258:23
395:12
American 176:21
179:18,21
among 342:12
375:12
amongst 194:18,22
196:10 225:18
258:12
amount 180:23,23
193:23 199:14
200:13 207:13
209:17 227:17
292:10,11 295:17
298:20 299:25
300:21 304:7
321:8 337:24
340:22 352:15,20
356:10 357:24
365:3 386:12
408:17
amounts 181:11
analysis 165:20,21
166:3 168:10
169:11 187:16
188:10 201:10,21
205:4 209:2
210:18 213:4
225:9 237:11
260:18 262:5,8
263:9 264:7
384:22 391:22
392:16,22 393:5
analyze 213:12
analyzing 263:21
ancient 163:20
165:24
ancillary 225:4
anecdotal 183:15,21
198:17,21 215:5
215:13 258:2
259:10 368:4,5,6
371:12 391:3
anecdotally 192:10
announce 350:19
357:3
announced 323:25
336:11 350:19
353:15
announcing 356:25
357:24
annual 175:5
215:19 221:19
222:9 223:19
260:19 268:20
281:24 383:25
392:12 409:22
année 307:15,16
anomalies 266:16
266:19
anomalous 269:25
another 165:16
182:8 196:18
205:8 209:25
248:9 254:4,5
273:15,15 289:3
302:10 309:9,11
322:12 338:24
339:14 340:8
374:2 380:19
answer 179:9 221:2
223:12 228:5
230:16 239:20
249:19 259:24
287:19 320:4
325:21 327:6
330:7 356:21
365:20 370:16
385:2 411:23
412:2
answered 175:18
answers 171:16
326:6 372:17
anticipate 332:20
anticipated 333:18
anxiously 337:6
anybody 158:17
160:21 161:4
176:16 189:3
221:7 239:6
260:16 280:21
304:24 320:2
371:2 373:4 385:4
397:11 410:22
anyone 184:17
anything 207:2
214:7 268:11
276:3 281:25
283:20 294:15
317:9 343:24
370:9 372:2
374:19 381:25
396:23 398:12
anyway 190:18
254:19 303:11
335:13 346:5
363:25
anywhere 196:22
310:14 316:23
353:24 358:6
395:11
anywheres 279:8
apartment 335:7
apartments 335:15
apologize 410:22
apparent 191:10
214:3 220:25
374:6 404:19
apparently 247:3
appeal 283:14
appear 257:25
323:12 361:25
403:3 405:8
appearance 254:7
appearances 158:15
appeared 256:18
368:16
appearing 190:13
appears 205:24
308:25 384:19
applicable 169:14
169:19 401:20
402:20
applicant 372:15
389:18 410:16,17
410:19 411:16,17
411:18,22
application 343:22
384:2 389:14,16
389:19 396:4
applied 197:5 207:9
apply 169:20
202:18 293:6
336:25
appointed 313:6
appreciate 210:18
274:4 290:8
292:17 311:17
329:7 346:7
387:17 397:2
399:13 407:19
412:12,15,19
appreciates 400:2
appreciation 219:19
approach 165:12,17
198:4 200:16
225:11,16,17
234:14 240:21
244:20 245:11,11
256:19 259:21,25
264:23 349:9
approached 240:15
295:15 310:23
approaches 295:4
appropriate 170:12
198:6 215:20
223:20 262:8
264:11 342:19
357:16 364:8
369:2,3 377:2
appropriately
262:20
approve 317:11
approved 344:24
approximated
166:23
approximately
162:11 185:19,23
188:2 324:23
330:3 366:14
approximation
399:8
April 172:24 174:9
174:16 203:5
204:14 205:10,17
206:4 245:7,8
252:13 332:25
337:19
après 307:3
Arab 241:23 242:4
arbitrarily 197:14
317:23
arbitrary 264:14
316:11
area 186:13 188:25
196:13 210:4,7
211:16,18,25
245:23 248:9
260:10 270:2
278:6 297:19
310:21 322:17
327:4 358:5
areas 210:22,25
263:16 319:18,20
319:23 320:2
395:2
arguably 225:5
argue 165:7
arguing 273:24
381:21 384:11
argument 224:2
273:8 319:15
321:15
arguments 367:16
ARI 354:8
arise 411:9
arises 323:23
arising 386:25
arithmetic 173:4,13
armed 412:8
arms 314:19
Army 333:2
arose 168:11
around 205:19
234:2 270:14
272:8 278:12
302:12 304:4,5
308:25 310:16,17
310:25 316:23
350:2 373:9 378:3
383:4 409:20
arrange 359:2
arrangement
311:10
arrangements
361:16
arrive 162:18,19
191:4,12,13 204:8
218:6 261:19
arrived 297:3
398:18
arriving 164:23
191:7
articulate 383:5
asked 171:15
174:18 183:24
190:25 212:10,12
215:21 220:24
245:13 246:23
257:2 274:12
282:22 289:10
301:20 322:8
361:9 365:18
368:22,22 369:15
375:18
asking 174:20
181:21 229:17
230:7 245:18
246:22 254:18
262:3 296:5
312:14,25 361:13
aspect 201:5 232:10
253:20 328:24
391:20
aspects 191:23
192:12 201:17
316:4 390:15,16
390:19,21
asserted 344:11
assess 271:15
272:14,24
assessing 175:16
assessment 168:7

- 169:3 219:12
272:5 353:4
assets 248:14
271:24
assign 208:7,8
assignment 172:3
assistance 330:4,9
336:5,9,13,20
337:23 340:5
assisted 188:10
associated 198:8
208:20 222:6
243:2,3,6 245:4
248:5 270:6,25
277:16 362:13,23
363:8,17 366:16
366:18 385:14
Associates 185:15
187:11 233:19
387:22
association 158:19
158:20 276:12,16
282:21 347:17
Association/Clark
158:24
assume 178:17
183:16 199:18
202:23 207:6
212:14 232:20
257:20 296:6
363:12,12
assumed 200:4
215:4 221:10
239:16 392:21
404:13
assumes 257:15
assuming 168:4
182:19 183:2
195:19 204:19
237:14 296:5
325:17
assumption 169:4
173:11 174:12
195:23 199:16
232:2 247:22
assumptions 191:6
196:7,21 263:4
264:16 391:2,3
403:3
assurance 291:16
292:22
assure 291:24
asynchronous 245:4
Atlantic 159:3
171:20 186:14,20
336:14 340:7
350:6,8 360:6
365:23,25 366:4
366:10 386:3
406:6 407:4
attempt 213:8
169:3 219:12
272:5 353:4
assets 248:14
271:24
assign 208:7,8
assignment 172:3
assistance 330:4,9
336:5,9,13,20
337:23 340:5
assisted 188:10
associated 198:8
208:20 222:6
243:2,3,6 245:4
248:5 270:6,25
277:16 362:13,23
363:8,17 366:16
366:18 385:14
Associates 185:15
187:11 233:19
387:22
association 158:19
158:20 276:12,16
282:21 347:17
Association/Clark
158:24
assume 178:17
183:16 199:18
202:23 207:6
212:14 232:20
257:20 296:6
363:12,12
assumed 200:4
215:4 221:10
239:16 392:21
404:13
assumes 257:15
assuming 168:4
182:19 183:2
195:19 204:19
237:14 296:5
325:17
assumption 169:4
173:11 174:12
195:23 199:16
232:2 247:22
assumptions 191:6
196:7,21 263:4
264:16 391:2,3
403:3
assurance 291:16
292:22
assure 291:24
asynchronous 245:4
Atlantic 159:3
171:20 186:14,20
336:14 340:7
350:6,8 360:6
365:23,25 366:4
366:10 386:3
406:6 407:4
attempt 213:8
attempting 365:20
407:20
attempts 320:6
328:9
attend 158:25 226:3
attendance 159:24
273:6 282:25
290:6
attended 159:7
attending 159:14
attract 254:8 353:7
attributable 217:15
251:12 252:4
264:9
attribute 200:6,11
253:2
attributed 207:3,23
215:5 225:11
285:10
attributing 215:9
audience 179:10
August 164:7
165:13 172:24
173:8 174:9,16
203:6 204:15,22
205:10,18 206:4
245:8,8 302:7
303:10 333:8,24
authority 158:2
353:21 379:12
383:3,7,14,19
authorizes 400:11
automatically
177:17,20
availability 170:19
404:24
available 209:7
213:5 249:4 254:9
256:21 267:13
331:15 346:20
360:7,8 387:5,8
403:18 406:12
409:9
avec 307:9,10
avenue 209:25
average 163:11
164:18 169:4,10
169:12,21 173:3,4
173:9,13 174:9
175:15 183:4
194:11,17,20
195:3 196:2 203:3
203:3 204:11,16
205:23 247:18
255:21 260:4,5,5
267:23 268:20
288:17 302:8
310:10,10,12
318:7 332:10
336:15 339:24
376:9 385:16,19
385:20 386:2
392:23 398:24
399:3,6,10 404:10
averages 197:25
206:10
averaging 162:17
385:15
avoid 380:10,11
avoided 381:19
awaiting 337:6
aware 193:15
203:14 229:12,16
229:19,22,24
244:10 257:24
258:4,12 280:21
295:3,5 317:17
318:12 320:3,5
323:10 325:22
346:15 357:5,8
405:13 411:10
412:23
awareness 329:20
away 241:25 245:3
266:18 273:23
289:22
awful 198:7 270:7
a.m. 184:21,21 185:3
185:3 295:23
364:9

B

Bachelor 277:5
back 158:16 163:23
165:14,24 166:3
167:4 168:19
172:2 174:22
175:9 176:7
184:25 185:19
187:19 188:4
203:22 205:3
209:12 220:3
233:3 241:7
254:24,25 257:6
261:9 270:14,16
293:9 294:8
296:10 302:19
306:19 309:5
328:22 339:6
351:24 364:4
368:25 374:13,13
374:22 376:14
379:15,21 381:13
382:2 388:2 394:4
410:12 411:5
backdrop 407:14
background 185:12
185:18 241:4
248:10 276:20
371:15
bad 215:6 302:12
303:8
bag 244:7
Baie-Ste-Anne
332:24
bakery 251:3
balance 170:16
388:11,18
balanced 394:17
balancing 394:16
bang-on 371:19
bank 177:17 294:5
300:17,19 301:17
359:22
banner 359:9
baptized 276:22
barely 364:12
barrel 205:19
barring 290:20
bars 265:16,20
base 192:20 193:10
193:16 202:21
224:19 239:8
244:13 272:15
334:13 344:18
375:9 394:3,3
based 162:23
165:23 169:4
171:16 174:4
195:22 196:7
197:10 202:22
203:9 207:5,14,15
207:15 213:4,4
224:19 231:6
233:2 236:12
246:18 249:17
252:18 264:20,23
275:20 334:8
335:19 341:7
343:10 371:8
385:21 389:23
390:23 391:3,23
392:5,13,22 393:3
393:5,8 394:23
395:5 403:9,22
basic 241:13 263:22
331:16 332:16
337:25 340:3,8
basically 186:4
187:22 188:11,13
191:2,6 192:6
193:25 194:12
195:8 197:13
200:13 201:9
203:11,24 204:10
208:6 213:3 217:9
217:17 219:2
222:25 223:2
225:18,19 227:4
242:5 246:21
254:6 256:6,10
257:2 258:17
271:24 280:11,19
351:7 377:10
398:25 399:8
basing 178:24,24,25
179:2 411:3
bay 208:15,16,16
bays 283:23,24
bearing 411:18
became 183:24
192:8,13
become 161:3
168:23 224:17
231:7 253:25
311:19 318:12
328:19 347:11,15
348:2,6,9 374:6
becomes 170:24
211:21 371:11
becuase 325:6
beef 310:7
before 158:5 172:3
190:21 210:24
269:16 270:16
273:14 274:10,25
276:24 278:4,15
279:3 283:14
289:12,12 294:18
297:3 300:25
302:16 303:4,8,11
305:10 323:25
326:23 342:8
346:13 350:23
364:6 368:16
369:14 374:15
379:22 382:2
383:10 396:14
400:4,7 402:12
403:5 407:10
411:10 412:21
beforehand 173:12
beg 339:18
began 242:11
367:13
beginning 167:4
begs 222:16
behalf 188:18
190:13 227:22
276:12 336:17
365:9,23 387:21
390:7 403:10
behaviour 254:17
255:10
behaviours 270:25
270:25
belief 198:14 221:22
222:17 349:8
372:6
beliefs 368:6
believe 158:16,19
175:14 183:19
199:12,14 222:25
228:10 234:16,24

- 236:8,12,18
238:25 248:3
268:2,5 271:17
274:11 293:6
297:12 302:15,25
319:11,24 323:23
325:16,19 326:8
326:11,14,17,19
336:21 341:24
344:7,13 346:20
357:3 358:8
367:14 368:9
375:18 381:7
389:12 399:7
believes 404:8 408:5
below 313:11,12,13
313:18,21 325:12
325:13,13 328:16
329:19,24 330:10
331:12 341:11
385:20
benchmark 187:25
228:6 235:16
248:22 266:9
benchmarking
187:24 193:14
224:16,19 227:18
227:21 228:2,4,8
228:12,20,21,22
229:4,8 248:12
255:4
benchmarks 188:5
beneficial 383:21
384:6,9,13 412:17
benefit 365:7
384:22,23 388:7
389:4 400:23
411:6
benefited 405:17
benefits 332:7
best 175:19 248:18
264:24 294:2
317:13 318:18
339:4 413:7
Bethany 160:11
329:15
bets 382:3
better 170:14
174:17 175:16
176:14 210:23
226:15 244:22
245:10 293:20
327:18 354:16
372:10 391:7
394:10,15,16
between 165:3,16
186:5 194:23
195:25 198:13
202:25 209:18
210:12 225:18
235:9,12 244:24
245:14,16,16
259:4 264:3
265:20 266:16
279:8 288:17
293:3 295:2
296:24 297:23
306:3 316:11
331:23 332:11
336:6 370:6
383:17 388:11
392:23 399:3
404:15 405:12
409:9
Beyond 285:6
bias 205:3,8
biased 205:20
big 217:23 255:24
270:6,11 271:2
331:22 341:5
bigger 211:2 302:2
biggest 310:7,20
314:12 333:17
bilingual 312:23
bill 243:15,16
262:17 278:18
281:17 291:12
337:18,18
billed 281:15
billing 194:13
bills 263:12 334:18
Bilodeau 159:8
birthday 339:5
bit 188:9 216:11
229:8 231:6,19
245:22 278:25
282:2 313:17
327:2,11 341:3
348:22 349:9
354:22 365:24
367:10 369:19
376:15 412:18
bite 216:13
Blackberry 178:6
boarding 335:6,8,13
boards 368:17,24
Board's 336:19
372:20 412:7
body 201:23 256:18
bookkeeping 287:11
287:13 300:15
316:8
books 287:17
299:12
bookwork 207:22
boot 227:2
bore 374:19
born 276:24
Bosse 158:16
Boston 266:11,13
both 163:2 218:8
223:16 237:6,9,10
238:15,21 248:7
252:5 282:25
284:20 291:6
318:6 333:23
334:10 353:3,14
366:19,22 393:6
395:19 399:18
402:24 405:2
406:19 409:2
bothered 315:12
bottle 226:21 244:7
bottom 168:9 170:6
299:9 306:7,7
324:18 408:24
bottoms 328:19
bought 289:16
305:19
box 217:23 236:16
270:6 271:2
337:18
branded 216:10
308:3
break 179:20
182:23 211:11
227:22 228:24
233:3 288:11
290:10 346:11
373:20
breakdown 180:13
180:15,17
brief 187:9 276:8
briefly 267:25 268:6
375:4
bring 163:19 220:2
227:17 231:9
241:22 291:12
296:2 310:24
328:9,17 351:16
brings 204:11
292:12 308:14
336:11 366:11
394:14
broad 173:19 219:2
222:3 244:16
257:22
broader 197:12
198:7 204:25
213:10
broadly 364:25
broke 402:7
broken 178:13
181:3 330:4
brought 168:19
205:23 217:6
242:6 279:24,25
332:22 346:3
349:12 368:3
374:18 377:5
382:15 385:17
410:16
Brunswickers
329:24
Brunswick's 332:7
bucks 289:4 302:5,5
302:22 303:12
337:21,22 341:5
building 285:8
buildings 335:7
bulk 185:22,25
186:15,19 187:3
366:18
bump 373:10
burden 336:3
bureaucrats 241:16
buses 354:9
businesses 229:19
237:12,19 338:10
350:2 366:4,18
367:23 376:10
395:19
businessman 283:19
business-related
365:19
buy 177:20 226:19
244:7 254:15
255:11,13 295:19
308:12 310:22
339:8 360:23
370:8,9,9
buying 255:16
300:24 325:24
360:20
buys 289:16 299:25
by-laws 241:11
Bénévolat 331:21
-
- C**
-
- C** 216:18 217:9
calculated 235:14
calculating 372:10
calculation 163:17
173:19 174:11
224:2 231:8
235:18 265:23
calculations 178:6
180:7 299:7
364:23
calculator 261:25
352:17
Calgary 186:24
207:16 266:15,17
267:10,20 268:17
268:20 270:2,3,8
270:18,23
call 184:22 266:22
281:15 286:15
296:15 317:3
325:24 377:9
called 186:25
187:10 215:18
235:3 383:25
calling 398:20
calls 278:17 333:7
came 192:2 283:10
293:18,23 294:3
308:4 317:19
326:23 356:2
374:21 378:23
381:18 382:2,2
399:4
Canada's 330:11
Canadian 158:17
158:18,20,23
228:9,17 229:15
270:4,24 276:12
282:21 338:13
347:13,16 354:17
Cannon 183:18
258:25 259:2,5
canvass 189:3
cap 188:13 200:20
201:14
capacity 185:21
186:3 190:14
213:22 282:20
capital 170:9 188:7
227:3 248:11,14
248:18 249:10
254:11 275:9,9
351:24 361:18
402:2
capped 401:5
caps 188:14
capture 229:5,6
captured 367:22
capturing 205:2
232:20
car 159:9 184:19
187:4 200:9
207:12 226:9
232:15 395:15
Caraquet 331:21
cards 165:6,8,23
170:25,25 179:8
179:16,25 183:20
183:20,23,23
184:4,5 209:17
257:24 272:7
288:21,23,25
289:2,17,25,25
290:3,4 300:17,18
300:20,24 305:23
308:17 339:5,5
353:6,8,9,10
354:7,8 371:17
372:22 387:14
398:2 404:23,25
care 159:9 303:3,5
304:24
carry 191:18 254:6
286:2 316:5
404:21
carrying 252:2

- 338:6 351:12
cars 241:25 242:3
cascades 172:15
case 162:19 163:24
 164:19 200:25
 201:20 202:7
 205:10 218:7
 222:14 231:5
 247:10 251:14
 254:2,4 276:22
 278:23 295:18
 297:12 309:5
 311:17 321:8
 343:21 345:5
 363:4 365:19
 369:22 373:17
 384:10 389:20
 390:3
cases 241:21 261:8
 281:10 299:10
 320:14 333:9
 350:4 351:6
 377:16 382:5
 390:24
cash 170:19 284:18
 300:16,17,17
 355:2 359:5,22
 363:7 404:21
cast 390:21
catch 222:10,11,21
catch-up 376:11
 392:11
categorically 231:5
categories 227:23
 227:25 228:3
 330:5 336:13
 340:6
categorize 374:5
catholic 315:17
cause 298:24 388:13
 389:18
caused 208:13
cautioned 219:23
ce 307:7
cease 291:20
ceased 293:16
cent 164:4 165:25
 168:19 178:10
 180:23 182:15,16
 182:20 197:22
 198:2,3 201:2
 203:7 211:9 250:8
 250:15 294:10
 302:8 306:9
 308:18 309:2,6,6
 309:11,23 311:11
 311:14 313:7,9
 317:18 318:2,10
 318:15 319:16
 321:18,22,24
 322:3 324:24
- 325:2,20,23
 328:16 352:13
 360:15 392:20
 393:15,17 408:25
 409:6
central 279:7
 370:14
Centre 160:13
 331:20 348:16
centres 211:2 350:4
 356:14
CEO 334:3
certain 183:13,16
 211:14 280:23
 285:21 290:19
 323:4 328:7 340:6
 341:12 362:25
 365:3 379:14,16
 379:17 387:24
 389:17 390:15
 395:2
certainty 253:24
 271:11
Certified 413:5
cetera 199:23
 207:12 208:6
 225:14 334:20
 354:4
CFIB 158:18
chain 242:5
chair 161:6 185:6
 232:25 233:7
 236:11 276:6
 412:23
challenge 350:13
 391:4 398:14
 403:4 408:5
change 172:10,12
 172:20 173:18
 174:9 193:23
 195:2,9 196:20
 201:25 202:5
 223:17 239:16,18
 239:23 241:13,22
 244:18,24 249:16
 249:20 250:10,11
 256:20 267:23
 270:20,20 292:17
 292:19 319:11
 323:21 325:9,10
 325:23 344:7
 357:22 364:18
 383:10 392:15
 401:16
changed 172:14,22
 173:7,16 174:13
 239:23 286:24
 287:20 327:14
 345:17
changes 172:7,8,11
 174:8 202:2
- 238:22 240:4
 249:22,25 250:18
 250:24 272:4
 282:18 291:24
 297:10 317:20
 318:13,20 326:18
 326:19 349:19
 357:13 383:2
 394:9 401:18
 407:21 410:18,18
changing 249:15
 254:4 279:16
 318:14,16 325:7
 380:22
chapter 158:3
 232:18
characteristic
 270:23
charge 158:2
 184:10 201:5
 209:15 229:19
 231:16 234:12
 251:25 285:19,21
 298:12 299:17
 302:9 304:7,8,10
 309:14 319:19,22
 321:9,19,24 322:3
 322:4 325:5
 328:23 329:2
 341:4 353:23
 400:13 408:14
charged 234:20,21
 293:16 308:22,23
 321:23 322:2
 362:18,25 363:3
 371:7 392:24
 399:9 401:16
charges 229:18,24
 234:19 238:23,25
 239:4 304:9
 322:19 337:13
 338:6 400:14,22
charging 233:23
 308:20 313:4
 318:23 319:7
 320:2 321:7 322:8
 322:16 325:12,12
 325:14 373:11
chartered 287:16
Chatham 355:25
cheaper 294:19
 355:22
check 342:2
checks 310:15
cheque 177:14
 330:23
Chevron 228:9
Chiasson 159:5
child 330:17 331:17
 331:24
childcare 334:20
- children** 330:19
 332:2,7,10
chips 200:9 207:12
 207:18 208:5
 226:2 243:18
 244:7 247:16
 255:12 284:7
choice 215:6 233:25
 279:3
choices 309:19
choose 226:11
 253:24 296:18
 319:18 322:5,7
 326:5
chooses 326:2
choosing 204:10
 323:4
chose 162:16,19
Chris 160:8
Christmas 339:4
cigarettes 200:9
 208:5 243:18
circulated 236:4
circumstance 369:2
circumstances
 163:11 166:10
 173:24 369:3
cite 257:2 269:20
 270:9,17
cited 194:9 259:5
cities 241:21 267:24
 268:3
citing 261:18
citizens 339:23
 340:16
city 211:23 245:23
 279:7
claim 309:5
clarification 176:4
 240:11 356:24
clarify 168:3 192:2
 274:15 275:7
 311:8
clarity 192:6 240:3
 240:23
Clark 158:24,25
clause 379:17
clauses 323:22
cleaned 279:2
clear 169:18 183:24
 192:8,13 197:2
 200:8 214:10
 255:10 309:20
 327:11 345:23
 356:7 369:20
 380:15 393:14
 410:17
clearly 196:25
 215:5 220:15
 243:5 379:25
 397:4 406:13
- 407:5
clerical 199:23
client 188:15 378:24
 408:4
clientele 294:13
clients 188:18 228:4
 228:8 285:23
climate 204:9
climb 231:2
close 180:3 195:24
 220:23 302:13
 326:13,18 378:18
 395:6
closed 326:13
closer 353:13
closing 326:20
 356:11 400:3
closings 403:18
closure 242:7
closures 271:23
clothe 288:12
clothing 340:10
cloud 381:23
code 381:15
codes 381:12
COHA 276:16
coin 318:6
cold 333:3
colleague 260:22
 261:25 262:18
 344:14
collect 232:14 292:8
 363:11,12,13
collected 232:17
 292:11
come 161:14 162:18
 165:4 169:21
 178:11 185:7
 196:11 212:16
 219:17 220:4
 225:20 232:21
 233:3 239:25
 244:18 254:19
 255:14 258:16,24
 259:24,24 263:9
 272:23 274:8
 279:19 286:14
 293:11 295:23
 328:22 330:15
 332:7 346:7
 350:12 354:11
 356:10 364:4
 367:21 373:2
 377:12,22 379:15
 379:21 390:4,12
 394:17 397:11
 398:7 399:2
 410:12 412:8
comes 177:17,20
 178:8,12 182:12
 195:7 200:5

- 256:16 282:3,4
287:12 298:20
334:15 357:19
comfort 352:11
comfortable 178:16
180:4,13,21
181:25 369:16
coming 158:16
193:24 222:12
270:11 279:21
318:13 357:2
370:21 374:13,13
384:14
comme 307:18,19
commencé 307:5
commendable 368:3
commensurate
204:14,18 218:12
223:8
comment 171:9
182:2 202:15
231:14 250:21
293:5 300:8
324:13 348:5
387:19 397:17
411:8,12
comments 213:6
274:4,8 282:16,17
282:24 283:6
290:23 303:16
344:14 348:17,21
350:11 356:11
379:4 397:2,18
409:11
commercial 353:8
368:23
commission 158:1
187:6 338:14
commissions 186:4
186:22
commodity 392:7
commonly 241:14
communities 185:24
333:15 334:6
350:2 366:17,22
371:19 375:24
376:4
community 294:14
297:13,14,16,16
333:16 334:6
companies 169:19
179:10 182:10
188:3 209:20
216:18 226:13
228:14,15 229:2
234:20 308:7,23
308:25 327:16,20
352:22 405:9
company 160:15
176:8 185:20,21
186:25 187:9
- 265:6 276:14
277:3 282:2,3,9
308:10 309:10,11
311:3,15 313:7
322:2 348:25,25
349:2 351:20
353:12 363:18
368:22 374:18
386:15
compare 164:10
266:2,21
compared 194:2
245:8 277:21
340:6 407:4
comparing 244:14
244:17 245:4
262:25 266:20
comparison 164:6
165:16 266:11,15
267:17 269:4,17
404:4,8
comparisons 272:15
compensate 163:17
166:4 409:2
compete 213:11
253:22,23 349:8
competition 188:16
188:20 201:12
211:4 253:17
270:6 298:11
323:5 394:25
competitive 226:20
253:21,21,25
270:22,25 271:17
271:18,20 291:13
309:17 311:2
314:8 319:18
325:22 326:4
349:15
competitor 322:7,10
competitors 303:24
320:3
complete 346:14
412:22
completed 227:21
400:15
completely 327:14
333:6 368:15
complex 312:5
complicated 312:8
361:18
components 182:24
182:24 228:22
314:22
compound 323:21
comprehensive
213:11 271:12
344:8 367:21
compromise 375:11
401:12
compulsion 391:9
- computation** 163:13
166:7 182:23
computers 288:13
323:14
concept 374:10
375:22 376:6
389:20
concern 166:20
196:19,20 207:7
314:12 317:15
344:13 408:6
concerned 315:6
332:19
concerns 196:23,24
197:4,16 206:9
247:11 292:22
333:17 356:18
concert 368:6,7
conclude 273:7
275:17 290:17,20
409:11 412:16,21
concludes 311:6
conclusion 173:18
378:16 408:24
conclusions 162:18
371:20 378:7
390:22,23
concrete 179:4
372:2,2
concur 355:4
concurred 231:18
concur 402:22
conditions 164:15
175:21 197:15
201:12 349:14
369:3
conduct 191:2,11
210:18 213:7
381:12,15 400:11
conducted 158:2
conducting 213:3
410:15,20
conference 399:15
conferences 377:20
confidence 248:24
369:13,15
confident 184:6
confidential 188:2
384:18 386:15
406:11
confidentiality
247:11 381:23
confirm 214:16
362:17 363:21
confirmed 403:11
confirms 403:3
408:2
confused 173:6
confusion 323:23
conjunction 333:13
consensus 384:3
- consequences** 242:4
consider 165:2
337:14 345:4
388:7 389:21
390:9 391:24
392:2 400:22
401:15 412:22
considerably
267:10
consideration
262:20 274:5
281:4 351:9
390:16 393:11
397:4,5
considered 164:24
195:10 331:5
353:23 401:23
402:8
considering 194:10
389:3
consisted 213:2
consistency 240:4
244:19
consistent 164:7,16
165:12 234:14
244:23 368:12
372:6 374:12
constant 172:12
379:24
constantly 355:10
constitute 192:19
193:10,15 218:4
252:7
constitutes 330:2
constrained 378:7
consult 213:14
consultant 187:13
192:18 280:18
369:9 402:7
407:15,24
consultants 407:17
consultation 374:14
376:8,19 379:12
382:15,16,17
393:13
consultations
312:10 377:8
consulted 374:17
consulting 185:16
187:9,10 246:20
337:11
consumer 203:25
242:15 263:18
291:13 356:20
366:7 388:15
390:10 393:23
404:25 411:6
consumers 170:24
255:11 257:21
336:20 338:17
344:3 357:9 388:7
- 388:12 389:4
400:22 404:21
consuming 379:23
consumption 242:2
242:14
contact 293:19
304:21 311:23
346:23 348:13
contacted 212:18
contained 407:11
contaminated 294:6
contamination
294:5
context 234:17
256:17 259:22
260:17 388:4,25
389:6 391:5
396:14,23
continue 211:21
212:3 223:13,24
275:6 281:10
297:14 299:20
302:10 303:3,4
335:15 357:23
401:5
continues 349:21
continuing 401:8
continuity 388:9
400:24
continuous 295:24
380:4,5
contract 187:20
290:19 311:2,4
315:24 328:24
368:23
contractor 278:20
contracts 361:19
contractual 361:16
contradict 373:4
contrary 256:15
367:16 403:6
contributed 194:6
contribution 218:3
control 186:11
281:6
convenience 160:5
170:22 226:10
231:25,25,25
232:4,5,5,15
242:22 243:4,21
243:23 244:2,3,6
244:11 247:19
253:16,19 255:13
255:16 261:3
284:5 315:13
316:10 395:14
404:23
conversation
275:22
conversations
329:13

- Conversely** 203:5
 204:21
Cooke's 159:2
cooperative 366:14
 366:20 368:15
 383:13
cooperatives 366:3
 386:20
COP 338:21
copies 346:20,22
 347:2 348:12
copy 346:21,22,23
 368:23 369:9
core 366:6 396:16
corner 159:25 160:3
 241:9
corners 241:21
Corp 354:8
corporate 314:4,15
 353:6 354:4,8,9
corporately 386:17
corporate-owned
 327:21
corporation 355:2
corporations 315:7
 353:9
correct 162:12,12
 162:15 176:8,9,22
 176:23 177:7
 178:17 212:8
 213:7,18,25
 214:21 220:9
 229:11 233:17
 241:6 244:15
 259:12 260:13
 298:15 299:2
 313:20 321:10
 358:17,20 359:6,9
 360:14 371:9
corrected 197:9
 199:15 358:10
correction 320:7
correctly 162:9
 176:6 194:9 234:7
 371:6 389:8 396:2
correlated 336:4
Costco 176:20
 253:17
costing 271:8
Council 330:13
 331:20
counsel 158:8
 160:19 161:6,7
 190:10,16 410:22
country 194:22
 242:8 243:21
 267:24 271:21
 338:22
countryside 350:3
couple 160:23 162:4
 184:2 224:8
 233:12 284:7
 290:7 293:11
 308:19 315:11
 317:10 329:6
 330:19 346:16
 377:18 380:16
 399:13 400:16
 407:3 409:11
 412:13,25
course 190:21 195:7
 196:3 197:3,10
 199:16 204:2,19
 206:5 220:13
 222:13 224:6
 225:23,25 228:18
 234:9,23 246:19
 246:19 248:7
 249:4 251:13
 252:6 254:10
 261:19 294:24
 308:14 309:2
 315:25 319:13
 358:3 388:19,24
 391:18 392:21
 412:14
court 254:24,25
 261:7,9 342:24
 345:8,14
courts 336:17,22
 345:10,10
cover 192:25 224:22
 245:2 308:16
covered 191:24
 248:9 263:15
 303:17
Co-op 159:2 365:23
 365:25 366:5,10
 366:21 369:5
 370:2,16 385:13
 386:3
CPP 252:19 253:2
Crabbe 278:4
crack 203:18,19,21
 203:23 204:4
 205:9,11 235:3,7
 235:12,20
create 196:19
creating 197:19
 280:19
credence 238:14
credible 258:3
 259:10 262:15
 371:21 373:7
crisis 332:20,20
 333:10,18 337:8
 340:12
criteria 236:17
 383:22
critical 197:18
 198:17 238:15
 349:20 355:14
 367:10
critique 191:15
 214:5 371:24
 402:14 407:8,23
cross 161:18,23
 162:7 168:2 170:4
 171:8 206:18,24
 208:24 212:5
 216:9 218:16
 227:15 233:6,8
 274:25 351:15
 368:5 406:7 407:9
crossover 245:16
crude 174:21
 203:15,17,19
 204:6 205:18
 206:15 235:9,16
 235:17,24,25
 376:12
crunch 170:9
crystallize 384:10
culminating 204:22
cumbersome 225:17
cup 279:3
curiosity 269:24
Curiously 223:7
current 163:11
 164:11,11 166:22
 166:23 168:23
 171:5 175:20
 182:5 249:18
 292:4 335:2 375:7
 379:8 406:18,23
currently 179:12
 221:25 335:8
 337:15 376:3
 409:17 410:5
customer 278:3,13
 278:17,22 279:9
 281:20
customers 211:7
 254:8 277:10,21
 278:10 279:5
 309:19 349:9,23
 355:7
cut 232:9 330:6
cutting 326:16
cut-off 330:11
Cyril 158:6
C'était 307:4
C-operations
 243:10
C-store 210:5
 216:12 217:16,17
 255:2,6,8,13
 261:6,21 291:3
-
- D**
-
- daily** 200:20 262:18
 277:11 300:14
 310:9,14 398:25
dairy 338:11,13
 339:4,13
dans 306:22 307:7
 307:18,19,19
dare 246:5 369:11
dark 265:15 398:10
Dartmouth 308:22
date 192:3 195:17
 197:9,25 204:7,10
 205:22 206:11,11
 206:12 212:22
 268:25 269:2,23
 306:24 347:11,23
 357:19 392:5
dated 161:2 347:14
 347:17,22 348:8
dates 185:19 204:17
 204:18 205:7
dating 187:19
Dave 158:9,10
David 160:20,20
davies 159:5 365:18
 385:14,17,19
 386:5,9,16 387:7
 387:11,13,17
day 177:18 186:10
 226:3 239:11
 253:18 261:12,13
 261:16,22 262:6
 262:21,23 273:15
 284:4 298:21,22
 300:19 302:20
 308:12 310:14
 312:13 318:13,19
 318:21 327:7
 363:6 364:13,24
 367:2 374:2
 382:24 383:14
days 177:18,18
 241:8 282:25
 286:2,5 290:7
 308:20 315:11
 317:5 329:6
 346:16 361:17
 362:22 368:25
 370:19 399:13
 412:13,25
day-to-day 163:9
 287:14
de 188:17 303:22
 307:19,20,20
 331:20,21
deal 176:17 187:13
 187:24 197:4
 209:3,24 213:21
 264:15 270:6
 311:3,15 316:24
 349:10 355:20
 377:13 382:13
 394:3
dealer 187:7 193:11
 194:19 200:20
 202:7 209:8 211:9
 228:7 238:24
 239:2 253:24
 254:10
dealers 179:2
 182:17 187:5
 193:16,18 195:20
 195:21 198:5
 199:19 200:12,22
 210:19 211:5
 224:19 226:25
 230:2 234:6,19,25
 237:25 238:14
 239:6 258:13
 308:7 312:6,10
 349:16 405:16
dealer's 184:7 186:7
 239:13 248:19
dealing 209:23
 277:10,10,16
 291:7 308:10
 335:11 393:16
dealt 355:17 399:5
death 257:8 332:22
 332:23 335:24
deaths 340:14
debate 324:17 398:2
 407:7
debating 317:19
debit 170:25 183:20
 183:23 184:4,11
 289:2 290:4
 310:13 354:24
debts 333:4 334:25
decades 187:19
 407:19
December 294:3,3
decide 225:18
 260:19 296:22
 322:18 341:2
 343:3 345:12
 391:5 397:22
decided 293:24
 339:3,6 345:12,13
decides 174:24
 373:24
deciding 368:25
decision 224:14
 298:16,17 337:9
 371:8,8 373:24
 383:15 385:10
 390:13 400:20
 411:9 413:2
decisions 226:11
 264:20
declare 190:9
declared 188:24
decline 170:10
 196:8 221:24
 222:19 224:6

- declined** 195:14,15
declining 195:12
 279:16
decrease 195:21
 223:24 294:22
decreased 230:13
 318:2
decreasing 229:20
 294:23 411:7
deem 295:13
deemed 294:13
deep 314:15
deescalator 380:8
defacto 187:17
 258:22
defence 171:16
deficiencies 191:10
 191:16,17 201:22
 214:3 220:25
define 228:15 244:5
 295:9
defined 228:18
defines 267:7
definitely 332:15
definition 173:22
 232:13 244:3
 330:8,20
Definitions 292:2
degrading 319:14
degree 192:21
 240:23 328:8
 335:24
deliver 211:17
 271:9 278:5,5
 350:5 355:6,8
 359:8,10,12
 360:13
delivered 343:10
deliverer 359:17
deliveries 277:9
 355:9,10
Delta 158:4
demand 194:25
 195:12,14,19
 196:6 241:18,23
 242:6,12,18,19
 251:20 332:18
 404:23
demands 225:7
demonstrate 410:18
denied 193:18
departing 395:23
Department 159:6
 190:14,25 212:17
 212:18,20 213:16
 383:20 387:21
 390:8,17 393:3
 394:11,13 398:6
 404:11,17 405:4
departments 250:22
departure 395:18
- depend** 166:17
 314:10 385:2
dependent 254:10
depending 165:19
 182:16 197:14
 308:12 320:18
 353:24 354:3
 363:14
depends 173:22
 179:16 244:2
 246:21 247:2
 298:7 364:18
depleted 333:6
depressed 270:7,9
 270:22
depressing 270:12
depth 272:5
derive 220:24
 235:21 248:6
 383:22
derived 192:10,10
 202:23 207:7
 228:13 233:19
 234:5 235:10
describe 202:18
 208:19 212:24
 272:2 283:22
 286:22
described 190:10
 225:22 286:19
 292:23 299:18
 357:12
description 185:13
 195:13
designed 330:12
desire 295:17
desk 339:8
desmond 158:8
 160:19,19,21
 161:6 171:7,8
 175:23,25 185:7
 190:7,8 232:23,25
 233:5,7,8 236:10
 240:6,8 274:10
 276:3,6 412:21,23
despite 223:14
 243:24 371:12,13
 376:11 409:15
detail 386:21
detailed 169:14
 312:5 390:20
determinant 234:18
determine 161:13
 250:25 256:19
 340:24 373:24
 412:7
determined 164:14
 195:18 345:14
determining 392:13
 403:13
deux 307:9,10,22
- develop** 215:22
 375:14,16 409:25
developed 381:5
Development
 331:20 333:24
devoted 208:4
died 340:13
diesel 173:15 231:7
 231:9 332:17
difference 165:3
 173:16,21,24
 182:6,7 200:22
 211:9 230:17
 235:8,11,20
 265:20 272:13,15
 306:5,6 351:20,23
 373:10
differences 181:12
 221:6 267:14,15
 328:21 384:10
different 162:16
 172:21 179:17
 185:24 188:7
 228:16 232:6
 240:17,21,24
 259:21 263:24,24
 264:3,4 267:24
 282:2 286:22,23
 295:11 300:18
 310:4 314:22
 317:25 319:24
 330:5 336:2
 342:12 343:4,7
 344:3 349:9 360:2
 362:23 363:14
 370:13 375:15,16
differential 351:17
 399:3
differentiate 316:8
 342:12 370:6,12
differentiated 370:5
differentiating
 343:16
differently 240:15
difficult 182:23
 201:18 210:19
 211:21 227:3
 239:20 241:12
 245:24,25 251:15
 253:22,23 264:9
 268:13 278:16
 343:14 350:10
 355:7 368:10
 398:11 407:15
difficulties 240:25
 247:9 293:4
 407:19
difficulty 169:7
 182:22 239:10
 240:19 246:16
 304:20 382:23
- 412:19
dig 387:9
dignity 329:18
diminish 254:24
 255:6
dip 288:11
dips 399:10
direct 185:10
 190:11 209:11
 227:18 235:2
 320:5 368:5
 399:23,24
direction 163:22
 171:4 208:18
 297:22 350:16
directive 282:21
directly 182:9
 209:15 228:13
 327:24 333:3,10
 366:13 399:20
Director 190:14
Disability 331:11
disabled 330:13
disadvantage 324:4
 364:17
disagree 386:11
disagreed 381:25
disclosed 364:15
disclosing 386:14
discounting 207:10
discrepancies 405:7
discretion 345:2
discuss 183:18
 291:8
discussed 279:24
 318:4
discusses 394:14
discussing 311:9
 318:4
discussion 208:25
 259:23 299:6
 300:9 327:2 356:2
 368:14 397:18
discussions 246:3
 339:2 350:11
 381:25 393:3
 406:6
disparate 381:20
displaying 194:15
dispute 214:22,25
 239:3,24 381:2
 402:16
disseminated 365:4
dissemination
 248:25
distance 211:22,24
 273:11
distances 210:24
distinction 184:2
 350:7
distribution 200:17
- 309:6
distributors 276:17
 282:6,7
districts 359:18
diverse 366:2
dividing 186:5
division 248:15
 264:3
doctor 331:14
document 161:16
 168:5 172:8 174:8
 219:10 233:13
 236:21,23 237:2,6
 291:10 347:12
documents 236:3
 348:12 369:15
doing 165:6,10,20
 191:3 192:25
 205:25 208:10
 211:16 214:5
 216:20 225:18
 246:20 248:5
 264:7 269:3,18
 272:5 277:4,6,9
 284:20,22 293:16
 299:7 310:15
 311:3 315:8 322:5
 328:5 344:9,19
 349:17 364:20,22
 368:13 378:2,8
 384:21 392:11
dollar 176:13,14
 180:22 239:4
 289:19,20,21
 300:12 301:2
 341:4
dollars 216:12,12
 216:15 307:8
 317:2 334:21
 370:3
dome 381:23
done 167:20 175:2
 187:25 188:9
 196:10 224:16
 225:15 226:3,22
 239:25 240:15
 246:18 255:15
 265:23 271:12
 273:13 280:16,22
 280:24 282:8
 293:25 312:9,15
 315:18,19 336:4
 338:21,22 341:21
 344:8,8 345:10
 361:14,15 372:24
 372:25 378:8
 379:6,7 381:22
 383:25 384:4
 410:23
door 226:20
doors 253:9

- doubt** 161:9 199:17
 220:11 357:11
 390:21
Doug 158:9 160:20
Douglas 291:3
 292:23
down 170:5 171:5
 177:6 178:13
 179:20,24 181:3
 182:23 195:5,7
 203:22 204:11
 205:24 210:21
 220:3 222:20
 223:22 224:5
 228:24 239:5
 242:6 251:4
 267:22 272:9
 278:25 279:10,11
 279:14 288:7,14
 291:23 295:23
 296:6,25 308:15
 309:23 312:9
 314:9 316:21
 318:15 327:17
 328:10,17 330:4
 346:8 351:2
 365:16,17 395:22
 402:7
downside 352:12
downstream 185:16
 185:18 314:18,25
 315:2 407:18
downtown 245:23
downward 296:2
 297:16 300:2
 364:19
draft 359:5,22
drain 182:11
drama 218:10
dramatic 257:18
draw 177:16 259:11
 319:20
drawn 258:2 265:5
drive 170:18 171:4
 182:25 210:23
 211:23,24 279:8
 279:10,11,14
 302:14
driven 209:21
 228:13 301:3
driveoffs 170:22
driver 240:20
 272:16 327:4,12
drivers 199:23
 340:8
drives 211:23
driving 277:3
 353:13
drop 168:14,16
 287:8 294:17
 295:24 296:20
- 313:21 341:11
dropped 201:5,11
 287:4,7
dropping 201:9
 337:3 376:12
drops 316:19
dry 278:25 330:6
due 207:10 214:18
 256:3 260:2
 270:24 278:7
 282:20 323:25
 336:3
duly 185:9
duration 164:16
Durelle 332:24
during 162:23
 261:9,16 284:4
 285:2 332:13
 336:8 410:12
duties 263:14 264:4
Dykstra 160:12
 169:23
dynamic 327:14
d'avant 307:9
d'juillet 306:22
 307:5
d'juin 307:4
d'litres 307:13
D'un 307:22
d'litre 307:10
-
- E**
- each** 165:18 169:19
 197:25 198:24
 243:14 251:14
 300:19 302:4,5
 305:13 326:4
 329:22 338:14
 352:8 370:19
 376:21
ear 333:25
earlier 180:7 235:2
 251:17 264:8
 313:7 351:14
 359:16 361:9
 364:18 387:2
early 183:24 293:14
 337:16
earn 199:4 328:12
 405:19
earners 332:9
earning 256:8 263:5
earnings 332:10
earns 220:18
ears 198:5
easier 312:9,15
 365:20
easily 166:18
 178:13 402:5
 407:23
easy 343:15
- economic** 170:8
 334:17 340:8
economies 226:6
Economists 337:11
economy 223:16
 242:13 325:23
Edmonton 267:5,10
educated 219:18
 345:18
education 329:20
Edward 158:6
 186:16 308:6
 357:3
effect 191:14 193:5
 195:5,7 201:5,24
 216:20 224:13,14
 235:8 238:12
 263:17 270:12
 299:4 310:19
 314:6,8 324:15,16
 324:16 325:9
 357:20 364:9
effective 201:13
 353:16 377:15
 382:16 383:17
effectively 186:5
 204:11 311:13
efficiencies 299:13
 355:12
efficiency 188:6
 291:21 334:3
 335:3
efficient 326:17
efficiently 299:9
effort 290:14
 412:13
eh 307:4
eight 283:23 284:21
 315:25 366:18
either 214:18
 222:20 229:13
 254:15 274:22
 279:21 282:4
 294:14 300:4,16
 303:25 316:4
 335:23 346:15
 365:4 378:14
elaborate 393:12
Eldon 159:17 291:2
electric 334:10
electrical 335:18
electricity 272:17
 287:20 333:4,8
 334:19 336:8
 339:20 377:19
element 163:8
Elizabeth 334:3
Ellen 158:8 160:19
elsewhere 406:5
elucidate 240:23
emanated 367:14
- embargo** 241:23
 242:5
embarking 347:24
 367:7
Emile 332:24
employ 248:11,14
 352:4 366:13
employable 330:8
employed 205:22
 367:17
employee 255:22,25
 262:7
employees 247:18
 264:4 284:2 287:2
 287:4,6,7 288:12
 353:10 405:16,19
employment 252:19
 252:25 260:23
employs 322:2
 366:14 377:19
empty 335:14
en 306:15,19,22
 307:18
enable 344:2
encompass 264:12
encompasses 221:5
encompassing
 205:14
encourage 351:9
 409:24
end 168:7 176:11
 177:3 204:22
 206:12 207:21
 223:25 235:9,11
 235:16,17,24
 239:11 285:21
 286:5,17 287:12
 287:17,18 288:15
 301:24 302:16
 303:8 307:4 316:9
 316:15 333:5
 371:6 382:22,24
 383:14,15 400:25
 401:10 404:25
 405:9 406:24
 407:21 412:6
endeavor 413:2
endeavour 283:3
ends 211:16 290:19
 328:19
energy 158:8 159:6
 160:15,16,17
 163:10,12 190:14
 191:2 212:17,18
 212:21 213:16
 321:16 333:20,21
 333:22 334:9
 335:3,21 336:18
 342:24 345:8
 348:19,24 382:12
 383:20 387:21
- 390:8 404:11
 405:4
Energy's 404:17
engage 222:22
engaged 210:18
 211:13 367:15
engagement 191:9
English 312:21,21
enough 181:9
 345:18 346:22
 349:15 355:25
 362:7 364:12
 383:5 385:8,9
ensure 166:5 291:13
 341:6 391:17
 400:13
ensuring 388:13
 392:3 396:19
 399:23
enter 180:17 346:19
entered 163:4
 182:10
Enterprises 159:15
entice 209:21
entire 172:18
 192:25 200:7
 224:23 263:6
 330:3,17 337:24
 365:9
entirely 166:17
 199:13 201:6
 349:2
entirety 200:11
 215:8 389:23
 390:6
entity 225:6
entry 175:8 221:9
 270:5,10 271:2
environment 194:15
 204:23 217:7
 280:8 318:8
environmental
 216:21 315:15,22
environments 350:9
EPA 242:2
equal 292:9,11
equally 202:18
 205:6
equate 397:7
equation 251:9
 401:3
equipment 282:5
 293:13 294:4
equivalent 164:9
 165:17
error 175:11 202:4
 202:8 224:11
errors 262:6
Ervin's 371:4
 375:19 405:22
 407:23

- escalation** 379:17
escalators 380:7
essential 223:18
 227:7
essentially 241:22
 403:11
Esso 159:22,24
 160:12 347:22
 348:16
establish 202:20
 203:2,6,7,12
 292:2,6 336:19
 339:19 350:6
 409:24
established 171:12
 201:14 202:9
 234:6 252:7
 316:14 336:2
 339:23 351:4
 403:9
establishing 205:8
establishment
 201:19 270:10
establishments
 179:23 293:7
estate 366:10
estimate 206:4,6
 211:20 230:17
 233:2 318:6 324:2
 324:15
estimating 372:10
estimation 244:18
et 199:23 207:12
 208:6 225:14
 334:20 354:4
etc 403:18
EUB 233:11 255:17
 323:25 357:7
evaluate 216:2
evaluated 223:18
evaluating 223:2
evaluation 191:3
 192:17 196:9
 222:6 264:13
even 182:14,14
 193:20 218:13
 222:9 234:2
 241:11 253:19
 261:11 279:9,22
 280:22 285:11
 300:22 306:13,13
 316:11 318:3
 323:21,24 331:6,8
 339:5 373:21
 374:20
evenings 284:9
event 265:13 274:5
 381:11
events 242:5 392:7
eventually 328:20
ever 181:24 286:16
 297:3 337:17
 381:25
Everett's 159:9
every 220:18 241:9
 249:16 253:24
 262:23 278:7
 279:22,24 280:5
 282:2,3 284:16
 286:18 288:13,17
 312:11,12 315:16
 315:18,19,19,19
 325:25 331:25
 338:22 341:23,25
 363:11,14
everybody 161:12
 203:13 211:23
 220:10 263:5,5,7
 273:12 280:3
 286:12 290:13,14
 298:20 310:4
 319:6 346:14
 374:11 375:22
 376:13 379:25
 380:6 412:5,24
everybodys 314:11
everybody's 412:15
everyone 158:14
 341:5 363:6
 398:10 409:15
everyones 257:10
everything 165:9
 172:14 247:18
 288:7,14 296:9
 303:17 340:10
 342:2 382:4
evidence 167:19
 180:18,21 181:9
 182:10 183:14
 190:21,23 256:6
 262:13 263:24
 264:20,22 268:2,4
 273:6 277:12
 371:21 372:15,16
 372:19,19,25
 373:6 387:20
 389:9,24 390:6,7
 390:8,21 391:3,6
 391:6,6,10,11
 392:21 398:16,20
 398:22 403:5,10
 403:12,21 405:22
 407:10,10,15
evidenced 271:21
evident 224:17
 315:10
evidentiary 273:7
 276:4
Evidently 212:15
 214:20
evolved 241:14
evolving 395:24
exactly 179:15
 212:22 240:16
 247:12 248:9
 281:23 402:4,7
examination 162:7
 168:2 170:4 171:8
 185:10 186:21
 190:11 197:21
 206:18,24 208:24
 212:5 216:9
 218:16 227:15
 233:6,8 368:5
 390:24 407:10
examinations
 351:15
examine 161:18
 191:6 395:4,17
examined 161:23
 194:8
examining 187:6
example 176:20
 194:17 195:3
 202:17 208:3
 213:20 223:23,24
 249:24 250:5
 258:15 267:6
 268:12 304:9
 308:21 328:15
 341:11 355:18
 357:2 359:14
 362:24 363:11
 380:24 389:15
 399:6
examples 339:16
 350:18
excavators 294:4
except 193:7 387:13
exception 172:11
 200:19 216:11
 267:25
excess 220:18
exchange 327:6
exclude 232:10
excluding 305:21
exclusively 207:11
excuse 230:8 257:6
 313:22
Exemptions 292:5
exercise 264:15
 344:15 351:8
 388:22
exhibit 161:2,3
 167:21 176:2
 202:19 236:7,8,12
 236:15,18,21,22
 236:24,25 237:3
 247:13 346:19
 347:11,15,19,21
 348:7,9
exist 222:24 258:6
 298:23 319:21
 323:19
existed 191:17
existing 292:10
exists 201:18
exit 388:14
expand 254:6 379:5
expect 166:10 170:7
 223:21 231:12
 237:8 247:9 259:7
 263:18 341:24
 345:13 369:12
expected 335:20
 367:21
expecting 274:17,18
 274:21
expense 200:17
expenses 222:11
 223:21 224:3
 277:15
expensive 379:22
experience 187:14
 188:22 193:14
 200:2 213:4
 243:20 244:5
 246:18 249:21,21
 313:17 320:5
 327:16 363:20
 368:7 377:5 384:8
 406:4
experienced 163:15
 293:4
experiences 249:25
 276:15
expert 188:16,24
 190:10 271:13
 341:21 367:18
 372:20
expertise 189:5
 227:17 371:15
explain 212:6 266:7
 275:12 320:10
 342:22 347:23
explained 368:5
 404:18
explanation 190:23
 206:3 235:5
 257:17
explicue 306:19
exposure 164:10
Express 159:24
 176:21 179:18,22
expressed 408:6
expression 327:9,18
 396:10 397:8
extend 253:17
extended 165:13
extensive 406:6
extensively 318:22
extent 183:13,16
 371:16 377:13
 407:7
extra 315:3
extraordinary
 257:23
extremely 340:2
e-mail 347:6
e-mailed 346:24
 348:13

F

face 165:23 169:8
 198:13 199:5
faced 211:18 369:8
 372:4 391:4
 407:20
faces 200:20
facie 390:3
facile 306:16
facilities 186:11
 255:7 349:24
 351:25 352:4,7
facility 244:6 254:6
 255:20 297:15
 359:12
facings 263:23
 330:25 371:18
factor 171:18
 174:25 192:16
 193:25 194:8,10
 195:10 196:22
 197:19 200:15
 208:20 217:20
 225:2 239:2 240:3
 251:16 310:8
 319:13 403:13
factors 163:3,3
 170:18 171:3
 194:5 196:11
 217:21 234:11
 240:2 247:2
 252:16 319:12
 386:25 396:16
 401:15,21,23
 402:3,8 404:19
 407:21
facts 280:10 281:4
factual 367:22
 391:18
fail 342:10
failing 264:17
 401:11
fails 291:15
fair 182:2 188:9
 217:2,4 221:20
 222:8 223:13
 227:16,19 228:12
 229:8 230:20
 232:16 239:17
 249:7 272:15
 329:18 354:22,22
 356:20 369:6
 385:19,20 394:17

- fairly** 203:10,19
 215:23 228:20
 252:6 260:25
 261:22 384:4
 409:25
fait 307:8
fall 203:22,23
 341:16
falling 380:8
familiar 221:7
 231:22 252:22
 265:8 343:20
 344:4 380:25
familiarity 231:23
 265:12
families 332:3
 334:20 336:25
family 328:11,11
 331:17,24 332:9
 332:12,13
family-run 349:25
famous 328:19
far 179:14 205:6
 264:8 271:15
 299:11 354:21
 369:7 380:2,3
farm 339:11
farmer 338:11
fashion 395:8,8
father 276:23 283:8
fax 312:16
Federation 158:17
 334:4 347:13
 354:18
fee 168:6,18 179:17
 180:2,14,20,22
 182:20 198:20
 302:3 360:4
 362:23 363:2,3,8
 405:10,12
feed 222:23 235:9
 235:24,25
feel 178:5,11,13,16
 180:4,12,21 181:4
 181:8 201:25
 216:18 217:2
 222:15,16 223:19
 276:4 281:21
 297:8 317:23
 357:23 369:16
 372:19 375:6,9
 378:4 385:10
 399:15
feeling 258:8
fees 163:7 169:8,14
 175:17 177:8
 178:9,10 179:14
 180:3,11,23
 181:10 224:5
 228:2 239:13
 288:16,19,20
- 289:5,11 352:15
 352:16 353:17
 362:16 363:19
 372:24 404:3,6,15
 405:3,5,12
felt 200:19 201:22
 294:9 317:9
 349:13 375:20,20
female 332:3
fess 224:3
few 178:3 227:16,22
 243:25 244:9
 256:10 267:25
 268:6 277:19
 294:18 300:10
 302:19,21 304:4,5
 367:3 373:3
 404:21 408:5
field 291:25 309:25
fight 328:17
figure 162:20
 171:21 173:2,3
 174:10 183:19
 244:13 256:2
 265:15 267:22
 269:19 286:9
 302:6 316:2
 330:14 331:6
 341:4 373:22,22
figures 173:5 176:5
 245:20 256:21
 280:10 281:5
 334:14 360:13
file 346:17 372:19
 372:19 373:15
filed 190:21,23
 245:7 369:4
 372:15,20 378:25
 387:20 389:9
 390:7
fill 318:19 404:21
fin 307:4
finally 250:21 276:7
financial 216:21
 236:4 247:12
 279:25 292:12
 301:21,22 331:10
 352:10 368:21,22
 369:10
financials 280:18
find 227:2 264:23
 266:16 278:16
 296:8 300:11
 303:7 319:5
 335:13 339:2
 340:2 342:17
 354:2 356:19
 362:6 373:15
 395:22 398:11
finding 357:9
findings 191:4,13
- fine** 246:11 274:2
 345:17 365:11
 386:21 398:8
finished 184:16
 264:21 277:5
firm 185:16 340:2
first 161:18 162:9
 162:19 174:11
 184:2 191:19
 202:20 203:12
 218:17 228:6
 233:9 248:6
 264:11,14,17
 273:19 274:6
 276:9 279:18
 293:11 308:4,5
 314:10 349:12
 356:24 367:9
 388:16 394:5
 400:18 408:19
 409:13
firstly 365:22 367:2
five 164:6 184:23
 204:15,15 222:13
 266:22 290:11
 336:8 347:9
 381:20
five-month 164:8,11
 164:14,15
fix 191:9 214:3
 220:25 283:11,11
fixed 281:18 331:11
 394:12
fixing 335:4 344:23
 345:2,4
flaws 203:9
flew 199:5
flexibility 234:11
flies 198:13
floor 183:4
flow 183:13
flows 266:25
fluctuating 203:16
focus 184:3 264:6
follow 245:6 304:12
 304:12,16 308:5
 313:16 324:21
 326:5,6
following 219:18
 241:16,24 258:10
 270:13 291:24
 318:13 324:2
 331:4 401:23
follows 185:9
 211:19
folly 392:8
food 334:19 340:9
 366:7,9
footprint 350:5
forbids 311:3
force 295:4
- forced** 210:7 276:11
 299:24
forces 298:23,24
 299:18,19 304:10
 314:9 373:24
foretell 326:3
form 164:20 165:9
 203:25 204:2,3
 212:8 373:23
 376:19 380:23
formally 365:4
formed 187:10
former 279:18
formula 215:23
 222:24 308:6
 314:11 344:24
 357:15,17 361:18
 398:25 409:25
forth 260:24 280:17
 364:23 368:3,25
 372:25 375:12
forthcoming 274:19
forward 161:14
 163:13,22 166:5,9
 166:13 185:7
 206:4,6 274:8
 370:18 373:2
 378:16 379:11
 397:11
forward-looking
 391:23,25
found 199:10 255:5
 289:13 299:12
 337:18 338:12
 367:7 368:12,12
 387:3
foundation 387:23
 389:9
four 178:8,11
 182:24 212:23
 227:25 228:3
 241:21 267:5
 284:4,17,17
 317:25,25 319:24
 323:9 334:7
fourthly 335:2
frame 164:12
 197:23 202:25
 203:13 257:19
 289:23 332:14
framed 378:3
framework 259:24
frankly 198:4
 226:15 235:14
 274:16 365:7
 398:16
français 306:15,19
Fredericton 158:4
 285:15 291:5
 293:3 294:15,16
 294:19,21 295:19
- 295:23 297:24
 328:15,16,17
Fredericton's
 333:15 334:6
free 184:18 294:25
 323:3 382:4
 389:21 394:21,24
freeze 335:24
freight 263:19
 321:5,8 376:17
French 306:14
 312:20
frequency 198:12
 249:22,25 250:18
 250:18 257:21
frequent 175:20
frequently 166:17
 236:14 249:20
Friday 314:2
 399:16
friend 339:4
friends 334:20
front 170:15 219:7
 236:6 261:7 265:3
 268:9 274:8
 329:11
frontline 278:9
froze 332:24
fuel 180:10 185:25
 207:3 214:18,18
 215:4 223:23
 242:2 250:24
 278:20 282:14,18
 289:15,16 295:20
 296:3,7 305:18,20
 305:20 318:19
 337:12 340:9
 343:10 366:18
 402:2,18,19,21,24
 402:24 404:2,20
 406:15,15 408:22
 408:23 409:7,10
 409:14
fuels 159:12 186:15
 186:19 290:21
fulfil 367:20
full 158:2 201:4
 261:6 269:3
 284:14,16 294:13
 298:13 299:22
 319:2 320:24
 331:2 337:12
 355:9,15 379:15
 400:12,21
full-time 330:22,25
 331:6 332:8
full-time/part-time
 331:5
function 163:8
 172:13 176:23
 223:25

functions 229:3
fundamental 266:22
funded 349:2
furnace 276:23
 278:24 287:25
 288:2 333:5
 334:10 335:18
 337:15,19
further 171:6 181:3
 184:15 205:3
 218:15 246:11
 258:18 259:11
 266:18 270:16
 276:3 283:20
 346:13 397:12
furthermore 253:14
 362:16
future 163:15
 170:15 173:12
 206:8 222:24
 223:9,22 297:14
 354:20 362:8
 392:4,9 394:10
 404:9

G

G 301:21 303:17
 304:4,17
Gabriel 159:11
 160:2 301:11
gain 257:23 341:2
 364:17
game 222:10,20
 392:11
games 341:2
gap 331:22 332:15
Gardner's 206:3
 207:4 219:13
 231:15 243:8
 260:2,20 262:13
 264:25 282:12
 356:4 370:16
 371:12,21 372:4
 373:6 374:8 378:6
 378:10 379:10
 385:22 401:7
gather 165:15
 265:16
gathered 407:24
gaudet 159:13,13,15
 167:9,10 189:13
 189:14 290:22,23
 290:24
gave 279:2 311:24
 312:2
GE 354:8
gees 278:18
general 165:14
 177:9,13,15
 188:13 191:20
 197:16 201:22

219:19 224:15
 226:24 229:25
 230:7 238:25
 242:17 249:17
 271:20 318:2
 324:3 338:6,7
 404:25 407:5
 409:3
generally 194:14
 195:6 203:14
 204:20 210:20,25
 218:10 221:23
 222:2 235:20
 244:21 249:3,23
 249:24 250:17
 255:7 265:16,23
 284:20 312:12
 313:18 318:13
 328:8 381:15
 382:13 398:23
generate 176:24
generated 256:25
gentleman 310:23
gets 267:8 363:6
getting 175:4
 210:15 220:5
 233:24 240:19
 241:2 246:16
 249:9 253:21
 258:5,7 287:9
 294:6 304:20
 318:6 339:12
 395:5 400:7
 402:12
give 185:12 190:20
 190:22,22 208:2
 224:14,20 235:5
 236:15 245:19
 246:6 256:12
 262:23 263:2
 278:21,22 295:5
 299:24 300:20
 301:23 304:21,25
 311:24 315:3
 328:20 330:9
 346:19 350:15
 351:9 357:6 369:9
 387:8 398:22
given 194:12 200:24
 201:23 236:8
 239:3 248:24
 253:17 267:25
 299:3,17 316:15
 318:20 324:19
 325:11,25 326:4
 327:4 337:21
 353:21 357:18
 360:11,25 362:7
 367:19 398:5
gives 215:18 342:15
giving 258:18

global 159:12
 219:24 249:3,5
 274:25 275:2
 290:21
goal 213:11
god 301:16 304:23
goes 171:25 225:25
 250:9 252:20
 289:15,16 316:20
 316:20 331:9
gone 173:23 195:5
 195:12 256:9
 270:16 288:4,5,7
 288:8,14,14 301:4
 333:4 336:5 338:9
 338:9 345:8,10
 354:15 397:22
good 158:14 171:21
 184:17 188:21
 194:17 201:19
 208:25 215:14
 240:19 266:12
 296:16 302:15,25
 332:6 339:16
 341:24 342:5
 354:19 362:12
 371:2 386:24
 397:18 398:16,19
 404:7 406:7 412:9
goods 200:10 211:3
 254:7 255:13,16
Gorman 158:5
Goss 158:9 160:20
 381:8
gotten 214:6 398:19
gould 158:22,22,23
 158:25 159:2
 167:4,6 189:6,7
 206:19,20,21
 274:7 276:2,7,8
 281:12,13,17,20
 281:23 282:2,11
 282:12,15,19,24
 283:4
governance 335:8
government 164:23
 165:2,7 171:12,19
 171:25 172:2
 187:20 241:15
 276:11 279:19
 280:11 313:6,9
 329:21 333:25
 334:8 375:2,11
 377:3 378:11
 381:7 382:24
 383:7,20
government's 337:6
gradually 395:23
Grand 291:3 293:2
grandfather 276:25
grant 383:21

graph 265:15
 270:19
grasp 362:12
gratifying 377:25
great 187:13,24
 197:3 213:21
 238:5 264:17
 270:6 273:11
 352:11 358:13
 377:18,20 382:11
 382:13 397:25
 412:2
greater 165:14
 237:17,25 238:8,9
 333:13 334:5
greatest 291:15
 377:24
greatly 239:4 367:5
Greenwood 159:15
grew 283:6
groceries 297:5,6
 370:8
gross 330:23
ground 191:11
 213:7 316:18
group 160:7 317:7
 317:11 333:16
 334:6 348:5
 381:18
groups 333:6
 336:17 346:9
 350:12 377:8,9
 390:10 393:23
grow 297:15 335:15
growing 227:7
 310:9 332:18
grown 195:14
 331:23 332:15
growth 194:3 196:8
 217:16
guestimate 296:17
 296:20
guidance 224:14
Gulf 185:21 186:9
 241:7,8,20
gut 258:8
guy 159:13 277:8
 323:8 339:4,10
 399:15
guys 323:14,17
 325:3 377:11

H

habits 318:16
 325:24
habitually 255:15
Hache 159:11
half 168:19 182:19
 216:14 232:25
 242:7 261:18,19
 279:8 317:2 321:9

328:16 370:4
Halifax 267:13
hand 216:15,15,16
 218:10,10 278:21
 278:22
handed 219:9
handle 207:21
 354:16
handout 237:15
handshake 279:2
handy 303:25
hanging 356:16
happen 206:8
 301:24 303:5
 306:10 338:20
 383:11 411:15
happened 163:18
 198:16,25 205:17
 241:22 270:3
 296:12
happening 171:20
happens 168:10,12
 195:7 286:18
 294:21
happily 226:18
happy 291:8 302:19
 302:21 303:13
 410:7
Harbour 165:4
 265:20 266:2,5,9
 266:11,14,17,19
 266:20 267:17,18
 291:3 292:23
 334:13 360:16,21
 360:23 361:3
 392:23 393:6
 398:24 399:3
hard 273:24 277:14
 278:11 281:17
 302:21 303:12
 304:6 310:5
 352:17 392:21
 397:25 403:10
 407:15
hark 388:2
harm 362:10
hate 272:3
haulage 229:6,9
 231:6,8 355:6,20
 355:21,22
having 185:9
 201:24 209:17
 210:5,24 217:20
 227:2 238:21
 240:13 244:13
 256:22 259:8
 263:11 271:11
 285:4 297:8
 304:19 310:2
 314:19 317:8,12
 317:13 358:14

- 364:17 365:2
391:5 403:22
412:5
Hawaii 188:11
head 184:19 199:13
217:2 271:16
272:3 360:10
373:18
Health 252:17,25
288:4
hear 158:17 217:3
278:10 290:14
331:2 346:13
356:9 367:16
394:23
heard 212:6 243:9
308:19 315:11
333:2 341:12
361:17 367:4
373:3 375:25
382:18 389:8,24
394:24 397:10
hearing 159:14
208:25 212:8
234:9 236:14
273:8 275:17
276:4 290:20
336:23 379:15,23
381:17 384:12
390:11 412:14
413:6
hearings 188:19
290:7 366:25
heat 158:20,23
185:22,25 186:15
276:12 282:21
331:14 334:19
335:23 337:5
339:24 343:2
heating 173:20
186:7,19 192:21
199:22 201:20
214:18 215:4
276:14,17 277:2
277:22,25 282:5,6
282:7,13,18 285:8
332:19 333:18
334:9,15 335:4
336:24 337:7,16
339:19 340:8
343:15,16,16,22
344:3,22 345:2
366:18 401:13
402:19,24 406:15
409:7,10,14
heavily 226:14
heavy 312:10
held 158:4 348:25
help 224:12 333:6,8
334:20 339:23,25
340:4,16 344:9
350:16 362:10
helped 335:10
helpful 166:2 192:5
273:20 398:16
helping 334:20
hence 328:18 350:5
her 278:24,24
281:15
high 168:13 169:2
206:14,15 217:22
238:13 293:22
316:17 331:6
406:19
higher 166:4 169:8
170:13 176:18
179:18,22 183:5,7
197:14 199:21,24
200:20 202:9
203:25 204:2,3
211:5 217:8
230:19,21 243:22
249:25 250:19,20
251:20 253:3
294:13 298:21
337:2 351:5,6
353:7 354:11
highest 194:18
203:21 205:12,13
373:10
highlight 191:16
highly 206:13
406:10
highs 205:19
Highway 297:23
highways 210:23
Hill 159:22 347:22
him 189:5,9 220:9
242:24 244:16
277:2,6 283:9
301:19 304:21
311:24 312:4
333:23 339:4
367:21 406:12
himself 391:21
hints 350:16
hire 287:6,16
hired 287:5 386:6,7
historic 205:18
historical 187:17,19
206:7 234:18
270:15
historically 166:21
194:21 206:14,15
history 163:20
165:24 242:17
294:17 316:22
393:7
hit 182:17 279:11
279:12 318:6
hive 395:16
hold 355:9
holding 383:24
holdings 366:10
holidays 262:22
Holland 159:21
holy 276:23
home 184:19 185:22
185:24 186:7,15
186:19 192:21
199:22 201:19
278:17,18 302:18
302:20,22 303:12
312:12 332:19,24
333:18 337:7
366:15,18
homeless 332:22
homelessness
333:16,19 334:7
homes 279:11,15
331:14 332:8
honest 304:23 312:3
hope 281:3 333:25
337:3,13 379:13
hopefully 362:8
hopes 292:18
horizon 332:21
Hortons 226:10
hosted 333:11
hotel 158:4 290:18
hour 226:18 232:25
263:7 279:8
323:13,18 324:8
hourly 252:20 253:3
253:8 255:19,25
256:3
hours 253:17,18
254:3 261:10,13
261:16,22 262:3,6
280:12 284:23,25
286:25 318:14
330:25 331:3
350:20 357:4
368:24
house 278:19
281:16 296:10
298:2
households 339:25
housing 333:9 335:2
335:5,14,17
366:11
hoyt 159:20,20,22
167:14,15 189:17
189:18 212:4,5
216:4,6 240:13
273:22,23 399:14
399:15 410:8,9,11
411:10 412:12
HST 309:14 313:6
313:10 321:18
huge 196:19 241:24
250:11 256:6
349:13 350:22
human 254:17
331:19
hundred 367:23
hundreds 173:17
370:2
hunter 159:17,17,18
167:11,12,13
189:15,16 208:23
208:24 212:4
245:13,22 290:24
290:25 291:2
292:16,21 293:2,9
295:13 296:8,14
297:6,10,21 298:4
298:7,10,15 299:2
299:6,19 300:8,12
301:8,9 304:8
359:10,14
Hunter's 159:16
291:2
hurt 350:23
Husky 228:9
-
- I**
-
- idea** 224:20 275:4
302:15,25 386:24
391:22
ideas 342:13
identical 347:18
identification
236:13
identified 336:15
identify 174:7
ii 401:19 402:2
iii 401:19 402:2
il 307:18
illustrated 392:8
imagine 361:17
immediate 251:20
323:21
immediately 348:14
imminent 200:21
impact 168:15
175:16 180:14,15
196:19 200:25
202:3,5,8 217:12
238:5 239:13
250:16 319:9
impacts 351:11
impartial 191:2
Imperial 228:9
241:8
implement 323:20
365:8
implementation
326:9
implemented
374:15 381:4
implies 388:10
importance 193:20
194:4
important 168:23
192:16,20 197:19
203:12 205:6
239:2 240:3,5
248:21 251:5
266:9 297:17
317:10 346:9
357:23 395:2
398:13 402:15
imposed 254:22
412:18
impossible 232:11
283:12,15 367:20
improvement
339:15
improvements
335:3,4
improving 187:22
329:17
inaccurate 202:3
215:7
inaudible 297:23
306:21,25 307:8
307:18
Inc 159:12,23
160:10 329:16
331:21
incentive 291:18
404:22
incentives 209:19
incidents 296:23
incline 221:23
include 224:12
232:7,9 247:17
248:7 395:14
included 173:5
225:2 256:6 356:9
397:21,24
includes 232:3
235:6
including 164:8
165:6 187:3 193:2
207:2 223:5
237:13 239:17
330:2 340:7
396:19 399:21
income 255:8
281:18 328:12
330:11 332:9
334:9,11,18
335:14,18,19
336:20 339:19
340:15 342:15,17
342:19 343:6,7
344:3
incomes 331:12
332:12,13 337:2
342:12,16
incomplete 391:5
incorporate 174:25
incorporated 165:5

- 166:19
incorporating
 239:17
incorrect 363:23
increased 180:20
 181:11 183:22
 195:4 199:6
 209:19,21 212:2
 214:23 220:14
 230:13,22 231:10
 255:20 256:3
 257:16 258:17
 260:3,10 262:12
 263:2,3 272:17
 278:7 287:9 290:2
 290:3,4 299:5
 300:13,13 301:5
 314:8 318:5
 332:10 336:10,24
 338:4,5 406:21
increases 200:2
 219:20 220:6
 222:12 229:13,17
 231:7 256:23
 260:3 268:11,12
 280:22 281:8
 282:13 318:5
 326:6 338:7
 402:17 404:14
 405:2,15,21 407:6
 407:7,11,16 408:3
 408:7,9,11,12
increasing 170:9
 199:3 215:23
 229:19 230:4
 231:16 238:12
 279:17 342:9
 353:3 401:7,8
 404:23 406:13
 410:2
increasingly 170:20
 170:24
incremental 216:12
incur 338:19
incurred 234:19,25
 334:25
independent 158:17
 158:18 191:2
 216:10 228:18
 276:16 280:16,18
 291:23 292:3,7,9
 292:14 294:8
 295:9 296:15
 301:15 308:3
 315:8 347:14,16
 350:24 351:4
 352:24 354:18
 364:23 399:22,23
independently
 227:24 366:3
independents 314:4
- 328:8 355:15
 356:14
indicate 347:6
 403:8
indicated 175:15
 215:11 246:14
 247:15 248:10
 249:11 271:4
 274:25 298:10
 304:8 311:10
 319:6 348:11
 405:3
indicates 408:25
indication 229:2
 258:16 259:8
indicator 175:16
indifferent 397:20
individual 228:7
 259:22 299:14
 319:21 326:5
 335:10,20 353:21
 376:21
individuals 271:9
 336:25 351:12
individual's 353:20
indulgence 412:19
industrial 336:2
industries 256:9
industry's 376:2
inextricable 251:14
inference 369:20
 370:25
inflation 173:19
 219:19 332:4
 338:6 379:19
 409:3
influx 217:22
inform 209:8
informal 188:19
informally 365:4
informed 365:2
infrastructure
 217:17 226:14
inherent 240:25
inherently 201:20
initial 317:16,18,21
 382:7
initiate 383:7
 411:15,16
initiated 372:13
 379:12 400:9
 410:20
innovative 366:2
input 290:7 301:7
 346:8 402:18
 408:21
inquiries 188:19
insignificant 193:13
 386:12
installed 293:13
instance 197:6
- 205:11 250:3
 266:14 267:3
 278:4
instances 246:6
instead 173:2,2
 264:12 377:24
institutions 352:10
instruction 172:23
insufficient 403:17
insurance 252:19,25
 302:2 315:16
 401:21 402:2,21
insurmountable
 382:10
integrated 227:23
 227:24 327:25
 366:5 395:13
integrity 214:14
intended 163:17
 280:23 393:18,19
intent 188:13
 191:14 232:19
 292:21 308:11
 310:5
interchange 179:25
interest 168:17
 170:16 241:16
 318:18 346:7
 350:11 366:24
 399:23
interested 237:5
interesting 319:6
 329:13 334:4,12
 338:12 339:2
interests 388:11
interim 374:4,7
intermingled 243:5
interplay 383:17
interpretation
 181:7 250:23
interrogatory 289:8
interruption 323:22
intervening 335:11
intervenors 213:13
 213:17 214:6
intervention 391:14
interview 172:2
interviews 178:25
 179:2 184:3
intrigued 396:8
introduce 185:11
introduced 172:4
 188:12 205:4
 255:6 256:5 409:4
introduces 205:20
 269:17
introduction 162:24
inventory 351:13
 401:20
invest 226:14
invested 352:19
- 366:23
investigations 169:6
investing 170:21
investment 315:22
 317:3 328:13
 361:18
investments 275:5
invited 334:4
 346:15
invoicing 288:13
involved 203:4
 208:10 246:17
 249:6 348:22
 386:16 393:4,9
 398:21 410:4,5,5
 411:11
IOML 399:22 400:2
 408:5,11,18 409:5
 409:13
IR 234:17 256:25
ironic 340:2
irrefutable 217:10
IRs 233:12
Irving 159:18,20
 169:17 213:19,21
 228:10 241:8
 295:14 315:6
 399:17,19 407:25
IR-1 233:13
island 186:16 296:9
 308:6 357:3
isolate 184:5
issue 174:24 175:4
 180:24 197:18
 244:16,19 258:12
 258:18,19 259:20
 259:25 263:21
 264:7 277:17
 297:2 327:3
 329:12 333:10,25
 334:22 335:14
 346:2 364:5
 368:17 370:13
 371:23 372:22,23
 373:9 375:8 376:9
 393:23,24 396:5
 402:25 409:16
issued 331:18
issuers 257:23
issues 198:19
 263:22 294:24
 318:9 319:17
 323:22 334:15
 364:7 371:18
 374:12 375:5,5
 377:21 381:2,14
 382:9,21 384:15
 394:15 400:4
 403:24 411:9
itching 410:9
item 202:11 334:22
- 356:2
items 191:24 350:17
 376:21 403:7
iv 401:20 402:3
-
- J**
- Jack** 333:20
January 195:18
je 306:16
Jean-Marie 160:2
 301:11
jeopardize 388:14
jeopardizing 388:8
 389:5 400:24
Jerry 160:8
job 186:3 264:24
 330:22 331:3,6
 345:11 362:3
 368:3 378:8
jobs 331:8 332:6
John 265:21 269:19
 269:20 308:24
 310:22,24 311:5
 331:20 355:21
Johnston 158:6
 183:9 259:16
 409:19
John's 333:14 334:5
join 334:7 365:18
joined 159:4,21
Jones 278:23
 281:15,17
journal 258:21,22
judge 397:19
judgment 234:11
juillet 307:2,3,20
July 162:10,25
 197:7 202:25
 209:5,6 229:25
 230:4 272:8,10
 293:22 301:14,24
 302:7 303:9,10,10
 305:5,5,8,8 306:4
 306:6 390:25
 406:21 407:6
 408:3
jump 410:22
June 162:11,25
 164:8 174:10,10
 175:15 203:2
 302:16 333:11,23
 348:4 367:13
jurisdiction 336:19
 336:22 337:9
 339:21 340:15
 342:25 343:2
 344:12,15,17,23
 345:6,9 382:22
 383:12
jurisdictions 274:23
 355:17 395:20

- jurisprudence** 397:9,11 412:9
jusqu'à 307:20
juste 306:22 307:3
justification 317:17
justified 213:24
 317:19 388:21,24
 389:2,3 392:4,4
 392:14 393:20
 396:9,12,17,19
 397:6,10,23
 400:13 410:18
 411:5 412:3,8,9
justify 338:18
 407:21
J'comprends
 307:23
-
- K**
- Keenan** 158:9
 160:20
keep 179:24 184:18
 253:9,9 276:8
 300:18 302:24
 314:9 325:11
 328:11 332:17
 339:11 342:2
 352:2 373:17
 374:13
keeping 180:10
 200:2 269:2 332:5
keeps 278:14 374:13
Ken 160:16
Kent 303:23
kept 400:17
key 196:24 200:6
 240:20 272:16
 353:21 366:24
 412:3
keyed 353:18
kick 257:7
Kier 333:21,23
kill 283:18
kilometers 226:18
 291:4,5 297:22
kind 164:9 165:22
 166:7 169:11
 192:10 198:22
 201:14 205:20
 222:15 249:3
 250:12 252:3
 256:11,12 265:22
 265:24 275:16
 309:20 323:24
 331:9 378:16
 384:5 388:10
 394:2 395:16
kinds 166:18 200:10
 201:22 242:4
 379:20 382:8
knew 165:7 345:22
- knowing** 229:23
 317:21 361:13
 397:20
knowledge 230:10
 361:21,25 362:2
known 165:8 252:7
 328:8 364:25
 372:22
knows 249:19
 259:13 286:12
KPMG 187:10
-
- L**
- la** 307:3,4,7 331:21
label 354:7
labour 207:2,3,4,10
 207:14,17,20,23
 207:25 208:3,4,6
 208:9,10,13,20
lack 191:25 192:2
 192:15 218:12
 296:6 327:18
 408:6
lacking 192:9
 198:21 200:6
 384:19
laid 309:25 402:9
Lake 291:4 293:2
landscape 352:5
 356:16
large 169:16,16
 228:20 229:15
 241:21 315:7
 327:16,20 328:2
 336:2 395:11
 399:22
larger 202:8 210:21
 216:18 241:25
 349:25
largest 163:7
 182:11 317:15
 366:5
last 163:18 194:7
 217:13,21 222:13
 226:13 271:22
 290:7 300:10
 301:25 302:21
 305:3,4,5 308:19
 313:23 315:11
 316:16 329:6
 332:22,25 333:3
 334:25 336:8
 337:2,5 340:13
 346:16 351:22
 352:19 361:17
 366:11 399:13
 401:18 412:25
late 185:19 290:14
 367:2,13
lately 327:3
later 356:10 362:22
- 364:13,18 365:6,8
 367:5
latter 204:18 380:23
 381:3
law 199:19 318:24
 321:21 322:4
lawyer 274:4 312:4
 386:6
lawyers 365:17
layman's 235:13
le 306:19,22,22
 307:5,19
leading 162:24
 164:6,8,11 165:13
 327:17
leads 258:25
leak 278:24
lean 242:15 299:10
learned 335:12
leases 253:20
least 194:15 196:4
 210:25 217:16
 220:17 224:25
 230:4 247:3 252:6
 315:24 332:8
 373:3,17 377:17
 384:11,14 395:2
 396:7 409:21
leave 208:16 215:19
 273:14 301:18
 355:23 391:24
leaves 291:22
 295:18 399:14
leaving 296:21
leeway 299:12
left 187:8 279:3
 294:4 295:15
 308:17 309:22
 370:25 373:7
legal 190:16 367:3
LEGERE 236:20
 347:4
legislated 351:7
legislation 215:16
 229:12,20 230:8
 230:14,18,23
 231:4,10 292:17
 292:19 294:25
 321:4 344:2,4,5,7
 345:16 349:12
 356:7 357:15
 358:4,8 360:15
 374:17 383:25
 400:6,9,17 406:4
 409:17,24 410:14
 410:17 411:12,21
 411:25
legislatively 344:24
legitimate 192:4
Len 159:20
lends 238:14
- length** 290:16
les 307:9,10,22
less 183:2 184:11
 199:15 210:20
 219:16 220:16
 226:15 233:23,24
 237:18 244:25
 250:5,6,19 259:6
 261:11 262:8
 267:19 287:6
 295:21 298:24
 300:4 301:16
 304:9 306:6,9
 319:19 327:11,15
 328:13 340:6
 355:9 363:8 369:7
lesser 192:21
let 256:17 260:16
 270:8 365:24
 367:9 370:23
letter 318:24 321:21
 347:23 363:24
letters 333:20
let's 168:13 173:2
 204:14 250:9
 266:17 267:13
 305:10,15 306:8
 363:11 385:24
level 163:19,22
 177:21 221:9
 228:24 277:20
 278:15 279:4
 281:10 291:25
 309:25 323:4
 330:11 337:23
 341:12,18,23,25
 342:17 352:13
levels 171:5 199:25
 334:11 335:19
 342:16 404:20
levied 229:24
levies 230:3 401:20
 402:20
levy 356:5,8,10
licencing 216:21
license 302:3 315:16
 315:17
lies 206:9 223:8
 410:13,17
life 329:18 410:10
light 163:12 166:13
 243:15,16 275:19
 275:20
lights 225:14
likelihood 230:24
 411:21
likeliness 319:22
likely 163:14,24
 173:11 175:6
 176:24 199:24,25
 218:22 219:20
- 237:19 238:8
 240:18 256:24
 286:11 404:9
 405:22 407:20
limit 170:22 201:3
limitations 372:9
limited 159:19,20
 160:15 384:6,6
 399:17,20 408:2
limits 241:25
line 172:10 186:5
 211:20 215:2
 222:8 223:11
 278:24 299:9
 300:18 306:7,7
 324:18 329:19,24
 330:6,11,15,18,20
 330:24 331:12
 375:9 394:3,3
lines 172:6 206:10
 215:21 315:16
 386:21
line-by-line 191:24
linked 362:19
liquor 251:4 297:7
list 161:22 274:6
 290:21 348:15
listen 329:13 356:13
listened 280:25
 350:10
lists 335:15,16
literature 258:15
litres 260:6 295:16
 310:11 341:7
 349:24 385:16,19
 386:2
little 170:25 173:6
 216:11 231:6
 245:22 278:25
 282:2 313:17
 317:17 327:11
 328:13 337:3,19
 339:10 340:25
 341:3 363:14
 365:24 367:9
 370:4 403:8
live 273:23 308:11
 309:13 310:3,4
 313:25 315:25
 316:21 330:10,16
 331:12,13 335:21
 335:21 337:21,24
 380:6
lived 199:2
livelihood 297:13
lives 278:3
living 301:14,19
 329:19,24 332:2
 338:8 342:19
load 312:10 355:9
loaded 296:24 297:2

- loads** 355:9,16
loan 301:17
local 276:13 278:19
 285:23 407:24
locally 286:11
located 291:4
 303:21 350:3
locations 210:9
 293:8 317:25
 370:14,14,19
logic 166:3,8
loi 307:3
lone 332:2
long 203:11 204:7
 206:11 209:2
 232:23 270:13
 309:25 317:24
 326:22 358:15
 365:10 376:13
 380:2,3 381:20
 411:20
longer 204:23
 210:24 212:3
 244:21 254:3
 293:24 350:19
 357:4
long-term 163:10
 352:3
looked 161:20
 171:12,19 172:17
 196:9 199:10
 238:21 272:22
 313:24 385:21
looking 162:10
 163:5,14,20,21,23
 164:2,6,18 165:24
 166:3,9,13,16
 171:3,22 175:10
 180:11,12 184:8
 193:25 203:9
 206:4,6 230:25
 231:3 237:2 256:7
 261:12,13 263:15
 277:15,15 299:21
 334:12 370:20
 380:21 392:13
 396:18 401:24
looks 311:16
loose 267:12
Lorraine 158:11
 347:2 363:24
lose 210:8 211:6,7
 301:4 316:20
losing 182:15,16,18
 296:12 314:18
 318:7
loss 208:13,17,19
 305:9,23 316:12
 316:13 318:10
 322:6 341:17
losses 351:7
- lost** 212:2 217:9
 297:3,8,9 302:22
 302:22 303:9,12
 305:6,11,14,18,21
 316:17
lot 182:21,21 187:4
 198:7,11 205:15
 211:8 213:24
 234:10,11 238:18
 253:16 255:20
 256:11 263:13
 266:16,24 270:7
 276:15,15 277:7,9
 277:10,12,17,25
 278:2,9,10,15,21
 279:7 281:9 282:6
 290:4 299:12
 300:9 301:23
 302:8 312:14
 331:7 345:22
 354:11 382:17
 386:20 387:19
 397:17 406:3
lots 397:8 412:9
Louis 303:22 304:3
love 303:2
low 166:15 168:7
 169:2,10 176:11
 177:3 218:2,8,9
 218:11,11 227:2,2
 253:19 270:2
 317:23 318:22
 319:13 323:8
 330:11 334:9,11
 334:18 335:14,17
 335:21 336:20
 339:19 340:15
 342:16 343:6,7
 344:3 388:13
lower 168:5 170:13
 174:12 176:20
 194:15 197:14
 204:8 205:2
 230:19 235:9,17
 235:24 243:22
 287:5
lowers 254:13
lowest 179:25
 194:22 249:23
 309:3,12 319:17
 320:7 337:23
 352:23 388:8,12
 389:4 400:23
 405:12 411:7
loyalty 211:8
Ltd 159:16,25 160:9
 160:13 337:11
 348:8
Ltee 159:11
lucky 278:6 279:15
lunch 233:3
- luxury** 211:5 335:23
là 306:17 307:4,8,9
 307:15,20
Légeré 347:2
Légère 158:11
l'année 307:8
l'aurais
 306:16
l'Energie 188:17
l'été 307:18,19
-
- M**
- machine** 284:6,7
Madam 236:18
Maddock 159:13
made 160:23 171:9
 172:7 174:8
 177:16 184:3
 188:17 192:18
 197:2,10 200:8,18
 205:5 221:16
 230:3 238:22
 240:13,13 244:12
 268:16 274:11
 280:12,21 289:18
 292:18 305:8
 316:9 324:15
 345:23 347:18
 348:5 356:7,24
 389:11 390:4
 391:17,17,21
 394:9 397:18
 405:13 406:12
 407:23
Magnetic 159:22
 347:22
mail 312:22
mailed 312:17
main 180:3 201:23
 256:18 327:8
 391:14
Maine 334:11,14
mains 266:25
maintain 221:21
 271:25 376:3
maintenance 193:4
 282:5 288:10
mais 306:15,19
major 211:16
 227:23 228:14,15
 258:12 276:17
 293:10 295:14,25
 295:25 296:21
 299:23,24 350:3
 356:14
majority 207:14
 218:4 282:7
majors 314:16,23
makes 200:21
 220:13 267:6
 275:4 378:16
- making** 165:16
 168:24 183:25
 211:19 226:8
 232:2 263:6,11
 274:7,22 289:21
 306:9 309:23
 314:19,21 326:16
 331:10 335:3
 340:3 371:7
 390:11 400:20
 408:15
man 313:25 332:22
 381:9
manage 342:3 394:7
 394:8
managed 185:22
 187:5 294:7 296:8
manager 186:8,13
 186:13
managerial 277:6
managers 186:18
 277:7
mandate 214:2
 222:25 250:23
 251:8 272:23
 367:8,19 371:10
 373:14,15 374:9
mandated 401:2
Manitoba 349:6
manière 307:7
manual 353:17,18
 353:23,24 354:4
 387:14
many 169:7 179:21
 179:21 182:17
 196:10 199:4,4,17
 199:21 221:7,8
 241:20 247:10
 254:22 261:8
 263:4 270:3
 271:15 273:10
 283:24 284:2
 329:12 330:25
 331:10 332:5,17
 333:3 334:24
 337:5 349:10,16
 350:3 366:8
 376:16 390:19,21
 390:23,23 391:2,2
 391:2 396:16
 405:16 410:4,5
map 218:5
Mapleton 332:23
marginal 246:8
Maritimes 366:4
mark 161:2 236:12
marked 236:11
marketers 158:18
 217:23 228:6
 248:17 258:13
 270:7,11 271:2
- 347:17 351:21
marketer's 186:6
 248:18 382:7
marketing 159:18
 159:20 185:25
 186:5,12 187:2
 192:24 194:6
 265:4,17 267:23
 268:12,14,22
 270:9 275:9 281:8
 317:18,21 319:19
 320:16 340:21
 341:13 342:9
 381:5,12 399:17
 399:20 403:16
 408:2
marketplace 170:14
 349:19,21 356:13
 406:8 407:6,25
 408:9
markets 188:25
 249:14,20,21,23
 250:19 265:22
 267:20 268:19
 270:4,24 324:2
 325:8 350:15
 355:15,23 392:7
 395:10
Mart 159:2
Mary 333:24
Mastercard 176:17
 180:2 229:18
 353:3,6,14,15
 354:3
match 210:3,6
 309:21 327:18
 328:18
material 233:12
 372:21
math 204:15 260:13
 262:2
mathematician
 256:2
Matt 159:21
matter 158:1 197:6
 227:5 251:7,11,22
 280:7 315:4
 316:16 368:2
 412:4
matters 187:14
 367:3 412:22
Matthew 159:10
maximums 408:13
maybe 197:25
 216:13 217:18
 227:3 228:5
 233:21,24 234:13
 235:5 237:18
 259:11,12 261:19
 278:22 287:19
 293:15 295:9

- 302:14 306:13
323:18 334:14
359:14 364:6
379:18 385:19
398:5 409:19
mclean 158:6
177:24,25 246:12
246:12,13 252:9
274:11,15,18
275:3,10,21,23
295:9 300:8 316:7
320:24 321:3,5,7
321:13,17,20
322:10,12,14,22
322:25 342:5,20
342:22 343:4,7,10
343:12,16,19
344:14 397:16
mean 175:12 180:14
181:23 211:10,11
215:22 247:20
254:25 257:7
261:18 275:11
303:13 310:8,25
314:15 327:21
341:12 376:9
379:20 381:9
385:4 386:11
389:3 398:23
408:16 411:4
meaning 396:16,19
meaningful 374:14
375:3
means 224:24 235:6
309:12 362:20
392:10 396:12
meant 239:16
289:24
measure 198:18
229:4 266:3,4
measurements
188:7
measures 188:5
mechanics 252:22
mechanism 380:6
382:8 394:18,19
394:20
media 357:14
364:22
meet 278:13 318:25
322:7 331:15
356:12 389:18
meeting 279:23
280:5,6 333:12
334:2 336:23
meetings 333:22
338:12 374:16,20
member 158:6,7,7
366:3
members 176:2
276:16 281:12
295:7 362:9
366:21,22,23
376:23 377:2
383:18
mention 411:14
mentioned 293:18
297:25 358:5
376:18 411:4
mere 335:20 368:2
merged 186:25
merger 187:8
merging 301:16
met 193:12 293:20
method 392:16
methodological
203:9
methodologies
191:15 192:7
202:19 213:12
methodology
191:21 197:5
198:6,22 202:15
202:25 205:22
206:9 213:9
222:21 232:19
239:10 240:18,24
355:19 356:20
metric 192:16 229:5
230:15
michael 160:25
185:9,14 189:4
201:16 204:7
214:12
Michaud 159:23
microphone 158:21
microphones
167:14
mid 364:11
middle 275:21
332:11
midnight 357:19
362:21,25
mieux 306:16
might 166:7 170:11
175:22 183:22
191:17 192:18
197:15 201:8
202:3 215:6 219:3
220:14 222:22,23
233:13 234:12
238:6,9 244:6
246:15 247:22
250:14 261:4,11
261:17 262:20
264:4 266:12
267:12 273:20
274:22 275:7
293:6 322:23,25
328:12,15 331:4,4
337:22 355:19
356:21 372:7
378:19 383:23
385:20 394:6
398:15 409:19
miles 209:19 302:14
302:14
milk 338:23 339:5,8
339:13 340:20,20
340:22 341:6,11
341:13,17
milles 307:20
millimeters 194:19
million 216:14
260:6,10,21 261:3
261:20 295:16
307:11,12,13
310:11 317:2
337:22 339:24
millions 370:2
mind 224:9 259:25
269:2 352:3 395:6
400:17
mine 228:16 312:22
minimization
352:14
minimized 352:12
minimum 198:23,25
199:3,4,7,18,20
199:22,24 214:22
218:18 220:6,11
220:19,21 221:9
221:11,14 233:21
252:12,13,20
253:5,11 256:3
262:12 263:5
287:2,9 303:6
323:3 330:22
332:4 338:5
341:15 351:14,15
351:17 358:3,9
379:18 398:3
405:15,17,19
minister 333:20,23
333:24 374:10
393:18
Ministers 334:2
minium 341:18
Mini-Poverty
336:15
mini-vans 242:16
Minto 291:4 293:3
294:18 297:23
minute 161:25
184:24 220:16
247:13 263:10
357:19 394:11
minutes 185:2
273:23 277:19
367:3
Miramichi 304:15
309:2
miss 160:21
missed 231:13
mistaken 363:16
misunderstand
245:24
misused 369:18
mix 242:23 243:11
355:10
mixture 183:20
Mmmm 343:18
359:4
model 283:22
moi 306:19
mois 306:22,22,25
307:9,10,19,22
mois-là 307:7
mom 314:14
moment 365:24
374:6
moments 268:2,6
Moncton 304:15,16
304:16 308:3,10
309:10 310:21
313:17,23 314:3
332:23 333:13
334:5 335:16
346:8
money 181:12
207:21 283:13
285:11,12 294:6
296:8 302:23
314:18,19,21,23
314:24 315:20
331:9 362:20,21
362:22,25 363:2,6
363:17,18 386:12
monitor 249:11
monitoring 187:16
month 174:4,10
197:7,8,11 249:16
269:3,3,15 285:22
287:12 288:15,17
289:5 305:11,12
306:4 316:15,17
331:13 336:11
monthly 316:12
months 162:14,20
164:6 172:18
175:12 203:3
204:15,16 244:25
279:23 280:15,19
287:18 293:25
301:25 316:15
351:22 352:19
381:19 392:18
Montreal 159:14
monumental 334:2
moratoriums
241:11
moreso 201:20
morning 158:14,25
208:25 284:25
285:3 296:25
302:18 312:12
351:3 363:9,10
364:9,11
morning's 202:12
mortgaged 296:9
mortgaging 298:2
most 179:19 197:19
201:12,17 203:6
205:20 206:14
234:24 240:3,5
243:10 247:5,6
249:21 255:22
256:25 265:6
270:24 271:20
284:10 286:11
288:21 290:16
297:12 299:10
319:6 340:16
349:23 355:6
377:20
motion 242:5 384:2
410:21
motivation 257:4
motor 214:18
402:18,21,24
404:2 406:15
408:22,23
Mountain 278:4
mouth 375:19
move 237:25 262:2
273:8 297:15
378:16
moved 186:24
200:24
movement 364:19
364:19
movies 297:6
multiple 256:9,9
municipal 338:5
municipalities
241:10
Murray's 159:23
music 198:5
must 225:7 338:3
388:24 389:2
391:10
myriad 188:7
myself 222:18
255:11 315:12
318:18 338:11
M.J 185:15 187:11
212:10,16,20
213:13 233:19
387:22 400:7
402:13,15,22,25
403:20,24 404:12
405:10,16,22,24
406:20,22 407:8
407:17,23

N	
name 185:14 242:9 290:21 291:2,20 308:2 329:15	372:19 379:21 383:9 400:17 406:23 412:22
names 171:22	needed 281:9 381:8 404:21
narrow 204:21 206:11 256:10 395:18	needs 193:11 273:20 274:13 276:4 278:13 331:16 332:16 335:25 336:13 340:3 345:16 356:12,13,15 378:4 394:12
narrowed 184:3	negative 369:20
nascent 188:11	negotiate 176:14 352:21
National 258:21 330:12 382:12	negotiated 186:3 210:12 293:21 294:2,8 320:19 328:23
natural 190:15 377:5 381:4 382:21	negotiates 176:16
naturally 399:4	negotiating 352:21
nature 188:16,20 190:24 198:21 204:4 228:7 229:10 231:22 241:2 248:23 254:11 258:24 277:14 282:20 353:11 354:10 361:19 385:3 392:12,12 394:20 407:9 410:15	negotiation 294:25
navigating 188:11	neighborhoods 366:17
NB 160:17 335:16 408:6	neighbour 321:25
near 223:22 280:14 401:9	neither 195:14 292:3
NEB 377:16	net 166:6 193:8 218:5 224:21
necessarily 192:14 196:18 201:6 216:17 243:19 245:3 254:21 265:9 319:12 323:5 324:17 398:12 408:13,16	network 185:22,24 186:17,19 312:5 331:18 399:22,24
necessary 216:2 323:17 349:18 375:11,14,15 391:12 407:21	never 181:24 255:11 258:24 283:10 304:24 329:2
necessitates 250:11	nevertheless 223:17 317:12 323:24
necessitating 271:22,23	Newfoundland 186:17 358:7
necessity 318:25 323:24 378:6 379:15	News 258:21
need 167:14 169:13 201:13 210:3 217:6 239:24 255:20 256:16 261:7 264:6,19 302:5,13,14,24 314:25 317:12 337:25 341:22 349:20 355:13 356:13,15,17 362:3 368:15	next 163:25 166:16 222:16,18 226:20 236:3,18,20 279:23 290:21 296:25 315:25 331:4 347:13,16 347:21 348:15,18 351:3 363:6,8,10 383:22 384:7
	nicholson 160:6,6,7 167:23,24 189:21 189:22 216:8,9 307:24 308:2,2 309:9 311:15,20 311:23 312:2,18 312:22,24 313:2,5 313:12,14,20,22 314:10 316:12 317:4,6 359:16
	Nicholson's 242:20
	night 207:21 273:15 285:2,3,7 296:24 302:19 312:12 350:23
	nine 279:12
	nobody 159:12,16 159:22 207:18 263:6 283:13 350:4 381:24
	nominal 235:16
	non 224:17,21 234:13 238:2,4,7 248:7 306:15 329:16 403:12
	none 213:17 214:14
	nonetheless 259:7 384:3
	non-disconnect 334:22
	non-gasoline 264:10
	non-peak 261:16
	non-petroleum 188:6 192:16,19 193:9,15,17,20,22 194:4 200:10,14 208:14 217:10 218:3,4,9,12 224:12 225:12,20 226:4,14 227:6 237:6,9,13,22,23 237:24 238:11,15 243:11 250:22 251:16,19 252:5 254:2,25 263:14 264:10,13 271:23 271:24
	non-petroleum-b... 253:15
	non-profit 333:6,12 336:16,17
	non-profits 333:17
	non-regulated 249:14 265:22
	non-rush 261:9
	non-sustainability 238:3
	norm 224:24
	normally 235:23
	north 258:23 293:2 339:11,11 395:12
	Northern 185:23
	note 268:9 274:22 402:15,22 405:9 405:11 406:21
	noted 172:20 371:14 375:24 379:25 380:2 387:2 407:16
	notes 274:25
	nothing 280:22,24
	288:7,14 305:23 314:13 316:3 326:18,19 342:20 368:8 397:12
	notice 357:6,7 364:5 364:13,16
	noticed 175:9 241:4 351:20
	notification 351:10
	noting 411:25
	notion 395:4,6
	Notre-Dame 159:24
	notwithstanding 210:11
	Nova 186:16 277:22 279:10 336:23 337:10 339:23 340:2,7 349:5 351:16,21,23 352:6,8,11 355:18 358:5 382:11 406:4
	November 334:23 353:16
	nowhere 223:4 231:24
	nowheres 280:14
	numbers 161:20 168:3,12 170:12 173:15 175:13 178:5 184:6 195:17 201:19 202:23 207:7 209:4,6,7 219:17 219:24 220:2,20 220:25 221:2 223:5 229:23 230:25 232:6,21 248:3,22 261:18 264:16 269:20 279:22,24 280:10 280:12,13 289:13 310:17 311:9 346:19 362:9 372:10 373:4
	numerous 344:11
	nutshell 213:5
	N.B 158:4,8 297:7 334:4
	O
	object 213:10
	objection 189:5,9 189:12,14,16,18 189:24 190:2,4,6 190:8 390:18
	objections 189:22
	objective 165:19,21 243:5 388:6
	objectives 388:3 391:19,23,25
	obligation 412:7
	observation 198:11 240:20 387:15
	observations 191:20 348:21
	observers 367:12
	obtain 163:14 291:22
	obtained 214:12 405:5
	obtaining 388:12
	obvious 350:21 407:12
	obviously 174:19 205:2 213:2,19 247:15 290:15 298:5 318:5,18 326:14 355:21 358:13 388:24 394:16 396:15
	occasionally 211:2
	occasions 377:18 404:4
	occupies 368:24
	occur 198:15 295:3 357:12
	occurring 351:25
	October 158:4 161:2 347:12,14 347:17
	odd 246:20
	off 175:6 178:7 182:12,19 199:12 216:13 241:7 246:6 251:18 295:20 299:10,25 308:16 318:21 335:10 377:22 379:3 382:3 395:16
	offer 240:13 253:19 281:10 282:4 371:24
	offering 244:11
	offerings 254:2,5
	offers 402:14
	official 187:17
	officials 172:2 334:9
	offset 405:19
	often 215:15 235:17 261:5 277:21 330:5 354:6 384:13
	oh 190:25 208:12 261:5,23 296:14 297:10 304:5 382:9
	okay 160:22 178:10 180:11 257:6 276:2,7 285:16 288:6 296:11

- 305:14,17 312:25
313:24 321:13
322:25 327:10
328:5 347:5
358:11,21 359:8
360:9 361:9
370:22 383:9
386:5
old 281:18 283:8
older 355:8
once 172:11,14
249:16 279:23
338:6 379:14
ones 163:15 168:21
180:3 182:18
255:23 269:16
295:15 309:3
350:4 359:8 360:3
386:19
one's 244:3
one-half 408:20
one-quarter 337:24
One-Stop 291:2
ongoing 166:19
186:10 187:15
241:18
onset 317:16
Ontario 185:23
186:9 334:11
336:17 342:23,25
343:21 344:19
345:7,13 346:3
349:6
onto 194:13 203:24
313:9 340:10
361:2
onus 389:17,20
410:13,17 411:9
412:2
onwards 242:11
opaque 201:17
open 253:9,18
261:22 262:21
311:7 381:17
opening 213:6
254:3
operate 163:20
239:6 243:21
250:3 255:19
279:6,7 283:12,15
303:19 308:18
309:23 314:25
317:25 319:23
349:5,7 350:8
358:7 370:13
373:17 386:21
394:22 395:7,10
operated 187:12
372:9 395:19
operating 186:23
188:2 193:11
200:5,12 215:5
224:18,23 248:23
293:7 338:8,9
375:8,13,22,23
operation 217:5
226:8 246:7
248:15 251:6,13
252:18 253:8
261:4,21 262:7
263:16 277:7
284:23,23,25
299:4,11 314:18
314:21 315:2,13
315:14,15,21
316:3,9,11
operational 288:9
operations 186:11
186:15 187:3,4,25
188:4,8 192:20,22
193:3 200:14
218:14 221:5
228:7 232:17,20
238:16 246:8
264:3 271:25
314:14 319:24
366:6,8,16,23
operator 243:15
350:24
operators 200:15
218:7 349:25
352:24 367:4
396:21
opinion 221:18
238:23 271:13
295:2 314:23
opportunity 161:15
318:12 323:3
329:11 365:22
377:4 400:2 412:5
opposed 170:13
183:23 197:8,12
206:7 219:25
221:24 233:25
234:6 235:25
264:16 276:23
392:2 403:21
opposite 297:22
option 170:25 201:9
279:20 404:24
options 225:22
234:2 254:9,12
331:15
orbit 267:4,12,19,21
orbits 266:23,23
order 169:11 171:2
191:12,13 194:19
207:23 209:20
217:8,9 218:22
221:20 222:23
227:3 232:21
244:18 245:3
246:7 250:12,15
254:6,8 256:24
270:18 271:24
273:16,19 294:12
299:25 324:12
338:3,20 340:24
341:22 342:2
349:20 356:12
367:14 370:16
372:13 388:4
389:18 390:9
392:16 398:21,25
400:14 405:23
organization 329:17
333:9 356:18
366:20
organizations
169:16,20 329:21
331:19
original 162:22
164:13,23 168:5
171:11 172:7,8,17
174:8 175:7 197:6
197:11,21 238:21
328:22 392:19
403:8,14
Originally 178:9
Oromocto 291:5
293:3 294:14,16
Oromocto/Freder...
298:12
others 195:17 218:3
221:5 245:21
249:20 273:19
297:21 303:24
333:3 349:10
372:24 410:24
412:18
otherwise 174:11
362:13 384:18
Oua 307:14
oui 306:18 307:6
ourselves 395:22
411:3
outcome 173:14
197:19 202:5
366:25 391:12
outlet 193:3 215:10
outlets 195:2 201:2
224:23 238:12
outlying 376:4
outset 210:17
outside 211:12
267:21 282:8
328:15
over 163:18,25
164:15,18,21
182:3,4 194:4,7
217:13,21 218:5
221:25 222:3,13
226:12 242:7
245:20 252:14
262:12 269:5
277:23 280:25
288:22 290:7
300:10,23 305:6
308:19 315:11
317:5 329:5 336:3
346:16 349:3,18
359:10 361:17
366:23 378:18
382:21,21 395:22
399:7,9,9,13
407:3 412:13,25
overall 186:10,20
191:6,18 201:25
219:18 231:8
238:24 251:5
252:20 256:23
344:20 380:21
388:2
overlooked 277:17
overnight 250:8
oversight 193:13
overtake 341:25
overtime 290:18
overturn 390:5
overview 188:21
191:19 202:10
over-complicate
181:15
own 187:10 191:13
216:24 225:6,7
259:25 262:5
267:2 277:2
279:22 280:12
291:2 299:12
300:4 332:24
339:7 344:25
349:2,7,7 364:23
368:6 382:4
386:17 393:2
405:22
owned 227:25
286:11 327:24
328:11 366:3
386:19
owner 216:17
220:11 348:25
owner/operator
351:4
o'clock 285:7
296:24 302:17,18
312:13 365:11
399:16
O.K 306:19,20
307:3,9,13,17,21
307:23,23
-
- P**
-
- pa** 184:22
package 281:25
344:8
page 170:6 172:8
233:9,10 257:9
265:2,4 290:25
308:13 402:6
405:23 406:16,22
407:16 408:15,24
409:8
pages 404:12
paid 199:18,21,24
220:11 221:9,13
253:5 287:9
337:10 341:7
359:21,21,22,23
362:19 405:17
panel 176:2 295:8
299:5 311:21
340:19 397:14
paper 280:19,23
paperwork 208:10
312:11,13
Par 307:15,16
paragraph 257:11
paraphrase 401:10
parent 330:17 332:3
parents 332:5
parse 225:21 264:9
264:12,15
parsed 225:11,13,14
part 165:9 170:21
170:22 177:4
192:8,20 193:16
210:5 213:23
220:12 224:18
230:2 231:8
240:20 243:6
245:19 246:3,8
248:12 251:5
257:21 264:13
265:6 273:7 276:4
281:21 297:10
320:13,15 329:2
346:14 349:23
352:4 355:9 356:8
357:13 361:11
368:4 370:11
374:9 377:21
395:13 400:17
partial 299:22
participant 410:16
participants 171:23
171:24 247:4
291:25 292:12
333:12 348:11
367:12 375:12,25
377:11 384:17
401:3 403:23
408:6
participate 212:10
212:12 297:13
329:6 346:15

- 365:23 394:13
participated 331:22
 377:7 382:11
participation 301:7
 317:5 365:14
 387:18 399:12
 412:25
particular 187:15
 191:13 192:15,21
 196:20 198:19
 200:19 201:10
 202:15 209:22
 218:8 233:13
 240:24 244:14
 258:11 309:5
 345:15 385:5
 391:16
particularly 163:9
 163:12 166:2
 168:21 182:18
 199:8 217:23
 261:9 407:4
parties 161:7 189:3
 273:17 346:15,21
 347:6 350:24
 368:14,18 369:6,7
 369:21 372:18
 374:3 381:13,20
parts 243:19 395:24
 407:2
party 348:15,18
 368:11 371:16
 384:3 386:19
 389:14 396:4
part-time 287:7
 332:6
Pas 306:24
passed 203:24
 280:25 319:2
 321:11 340:10
past 163:16 317:5
 318:3 401:4
 404:10 407:3
 412:13
patience 257:10
 412:15
Patrick 159:7
 212:19 273:3
patterns 242:19
 357:11
Paul 332:23
pay 176:7,20 177:13
 177:13,14 199:19
 209:22 252:24
 254:12,18,23
 255:5,7,9,12,14
 263:12,18 285:22
 285:24 286:2,17
 287:2,15 288:19
 288:20,21 289:5
 289:17,17 297:2
- 302:6 306:9
 308:25 309:9,10
 315:15 332:16
 341:5 359:5 361:3
 363:10 384:24
 404:24
paying 254:16
 305:15,15 311:11
 360:19
pays 177:12 243:15
 309:11 313:7
pay-at-the-pump
 170:21
peaked 205:19
peaks 198:8 205:16
 399:11
peers 293:7
pen 269:6
Peninsula 331:21
penny 310:25 315:4
 321:9 322:12,14
 322:18
Pension 331:11
peoples 170:9
 325:23 340:14
people's 361:16
per 168:20 184:13
 194:20 197:22
 198:2,3 200:21
 201:3 202:22
 203:7 205:19
 207:8 211:9
 239:12 244:17
 250:5,7,8,9,15
 252:18 260:3,6,10
 261:8,11,15 262:8
 270:18 293:12
 301:2,2,4 308:16
 309:10,16 311:14
 311:19 316:14
 325:23 356:8
 384:2 402:17,17
 402:20 403:2
 408:21 409:2,6
percentage 170:13
 170:13 179:6,8
 184:13 202:6,9
 209:14 220:21
 224:7 228:2 230:7
 230:12 234:20
 237:19 238:13
 250:10,17 286:6
 300:14,25 353:2
 353:17 354:23,24
 354:24 363:8
 370:3
percentages 289:18
 301:4
perdu 306:21 307:8
perform 264:5
performance
- 162:23 188:5
 366:24
perhaps 161:12,23
 167:3 184:16
 205:6 223:8 234:2
 236:11 238:6,9
 244:3 254:3
 273:18 274:7,10
 292:24 295:3
 320:10 379:16
 382:17 383:5
 384:23 385:10
 395:4 398:20
 412:18
periods 244:17
 269:18,21 380:7
person 209:13
 220:17 261:5,8,13
 261:15,17 274:6
 284:18,19 289:16
 292:3 296:14,16
 299:11,25 315:9
 330:8,13,14,22
 347:10 374:18
personal 181:23
 262:5 377:4
personally 293:5
 309:24 315:6
 317:25 335:10
perspective 248:18
 387:4 400:4
Peter 159:4
Petro 228:8 304:2
 315:7
Petrofina 241:8
peut 307:20
Peut-être 306:16,18
peux-tu 306:15
PHH 354:7
physical 266:12
physically 370:20
piastre 307:19
pick 173:8 193:3
 358:18,19
picked 339:6
picking 182:25
 206:12 411:22
pick-up 242:16
pie 227:8
Pinfold's 192:24
 257:15 402:9,16
 402:23,25 403:3,6
 403:25 405:14
 407:9,12 408:7
pipelines 190:15
pitch 378:9
place 170:24 216:16
 248:6 264:14,18
 280:9 314:13
 338:23 339:7
 349:21 353:15,16
- 356:7 358:6 365:3
 369:17 380:6
 388:16 394:5
 412:4
places 314:3 354:16
plan 334:23 337:7
 339:24 340:4
Planning 333:16
 334:6
plans 339:23
play 163:8 178:12
 182:22 327:13
 390:12
players 217:22
 328:2
playing 222:10
 291:25 309:25
 392:10
plead 339:22 340:12
 340:16
please 158:21
 185:13 340:14
 367:10
pleased 349:17
 394:23
pleasure 350:7
plenty 364:12,16
plus 242:22 262:22
 302:5 306:2,16
 309:14 313:6,6
 321:5,18,18,24
 325:14 361:3,4
pockets 314:15
pointed 408:14
pointing 247:23
points 191:22 245:4
 263:24 345:3
 353:11 356:5
 380:16 381:21
 394:16
policies 319:21
 335:2
policy 334:23
pooled 339:9
poor 330:2 331:23
 332:7
poorest 332:9
pop 200:9 207:12,18
 208:5 226:2
 243:17 244:7
 247:16 255:11
 284:6,7 314:14
populated 210:22
population 302:11
 330:3
portion 200:4,12
 211:15 215:4
 218:18 227:20
 232:10 265:15
 341:23 408:19
portions 396:7
- portrayed** 225:2
 367:7
portraying 216:23
posed 221:17
 233:11 239:21
 246:24 372:18
poses 403:20
position 175:17
 226:25 237:25
 292:2 369:5
 387:23 391:15
positive 372:25
possible 168:23
 215:22,25 222:21
 226:6 290:15
 299:10 301:19
 322:23 352:23
 368:10 371:16
 375:20 388:8,12
 389:4 400:23
 403:21
possibly 322:24,25
 382:10 413:3
post 199:19 309:15
 309:16
posted 234:2,10,13
 313:19 321:16
posting 211:5
posts 233:22
potential 384:22
poverty 160:10
 329:16,19,24
 330:6,10,15,18,20
 330:24 331:12,17
 331:24 332:2,3
 333:8,11
power 378:13
practical 367:12
practice 232:19
preceding 269:25
predecessor 377:17
predicated 242:14
predict 174:19
 290:15
predictable 203:20
 239:7
prediction 174:20
predictions 392:8
predominantly
 207:13
prefer 239:6
preferable 225:21
 233:21
preferences 242:15
preferred 378:8
prefiled 347:19
premarket 399:8
premier 307:5
 333:20
preparation 380:18
prepare 212:16,25

- 300:19 317:9
prepared 160:24
 231:4 271:14
 291:6 356:21
 374:24 384:23
preparing 212:7
 213:14 402:5
 406:3
present 187:11
 223:4 275:12
 290:13 353:22
presentation 211:19
 243:8 273:17
 299:21 342:5
 345:21,23 346:6
 367:6 378:21
 410:13
presentations
 333:21 350:10
presented 202:16,19
 204:12 223:3
 264:20,22 277:12
 282:22 334:7
presenting 206:5
 276:21
president 185:15
 329:16 349:2
pressure 296:2
 315:18
pressures 300:2
presumably 322:14
presume 292:18
 367:15
presumptions
 389:10
pretty 169:18
 178:16 181:16
 217:10 220:18
 241:17 267:6
 283:16 288:14
 297:20 302:21
 303:12 306:12
 376:14 386:24
 397:25
prevent 324:11
previous 175:18
 201:2 223:6
 336:24 364:24
 383:24
pre-regulation
 327:12
priced 234:21
 298:24
pricing 158:3 189:2
 221:23 223:14,25
 270:25 291:11
 319:21 334:13
 376:9,17 380:11
 393:7 394:17,19
 394:20 400:17
 409:23
- prima** 390:3
primary 388:6
 398:22 409:14
Prince 186:16 308:6
 357:2
principally 267:4
principle 387:2
prior 187:8 202:21
 318:17 327:15
 336:23 347:24
 367:15 384:6
private 352:23
 354:7
privately 348:24
privately-owned
 351:12
privy 246:23
probably 163:7
 166:15 183:4
 197:18 205:20
 219:16 221:19
 225:17 231:4
 240:2 246:6
 253:16 254:13
 255:22 273:10
 286:7 289:2,3
 290:17 294:22
 310:15,24 311:17
 317:2 369:6
 383:10 397:8
 411:12
problem 216:14
 239:5 273:24
 275:23 296:12
 309:24 373:25
 374:2
problems 334:15
 372:6 377:11,12
 377:14 381:2
 382:18
procedure 371:7
proceed 162:6
 185:4 190:10
 233:5
proceeding 213:13
 274:21 314:7
 384:20 401:15
 407:13 408:8
 411:19
proceedings 275:19
 365:15 367:23
 413:6
processes 380:17
 382:19 383:16
 410:6
processing 229:13
 230:9
processor 338:16
produce 168:17
 170:12,17 341:7
 407:15
- produced** 214:8
producer 338:15
produces 198:2
producing 338:23
product 177:12
 230:22 231:9
 235:11 236:25
 243:11 266:24
 267:11 292:15
 308:22,24 309:2
 310:22,24 314:3
 316:15,18 321:23
 325:22 351:5
 355:24 360:6,7,8
 360:13 395:13
 406:9 407:13
 409:23
production 338:21
 340:24 366:8
productive 377:23
products 158:2
 186:7 215:10,16
 235:22 242:12
 254:16 291:11
 299:14 342:9
 355:9 366:7,9
 370:4 388:9
 399:18,21 400:16
 400:25 401:9
professional 185:12
 221:18
profile 398:6
profiles 236:5
profit 193:4 283:11
 299:9,13 300:3
 306:6 316:12,13
 329:17
profitability 238:2
 238:3 251:3
 294:10 300:5
 319:10
profitable 237:13
 237:19 238:10
 243:10 298:5
profitably 373:17
profits 193:12
 314:16
program 283:17
 336:20
programs 283:18
 404:22
project 222:23
projection 223:5
 241:15 392:5,17
projections 222:15
prolonged 223:15
pronged 334:8
proof 178:21 206:25
propane 201:15,21
 202:6 403:2
 409:13,18
- proper** 186:14
 392:3 394:3
properly 272:13,14
 362:3
property 288:3,4
 336:3
proportion 227:8
 245:15,15
proportionate
 242:9
proposal 201:11
 212:13 240:17,25
 246:15 260:2,20
 263:2 334:8 356:4
 402:23
proposals 212:7
 381:19
propose 213:23
 291:24 403:16
proposed 214:21
 279:18 281:8
 282:13,18 381:16
 403:4
proposing 382:23
 410:19
proposition 409:16
proprietary 248:23
 406:10
protect 291:13
 314:14 357:23
provide 187:19
 192:6 201:7 212:3
 229:2 274:12
 277:20 278:20
 291:18 329:22
 352:5 353:9,11
 354:19 368:20,22
 368:23 384:17
 386:17 400:2
 404:22
provided 179:12
 202:12 228:13
 257:25 275:18
 335:25 349:14
 358:3 363:7 371:2
 380:7 404:7,13
 405:7
providers 352:20
provides 257:17
 376:3 387:22
 400:19
providing 188:4
 278:14 339:24
province 186:9,12
 200:3 251:19,22
 272:19,19 276:14
 276:17 277:25
 279:7 280:2
 314:14 315:9
 329:19 332:2
 337:14,21 338:22
- 339:21 342:15
 343:23 344:22
 345:5 348:23
 349:16 350:18
 351:16,23 352:2,5
 352:6,8,11,13
 354:8 355:18
 358:9 359:12
 377:5 403:9,11
 406:5 409:17,20
 411:13
provinces 171:20
 186:15 188:14
 339:22 344:9
 349:4 350:8
provincial 333:11
 337:6
provision 411:21
provisions 400:16
proximity 266:12
 324:3
proxy 375:12,14,16
public 187:21
 203:11 248:24
 318:12 329:21
 344:20 381:17,21
 393:13 395:3,7
publications 258:20
 258:23
publicly 367:13
publics 246:16
 318:16
puis 307:4
pull 233:13 300:3
pulled 209:12
pump 165:4 187:15
 187:16 193:7
 200:8 203:3,9,14
 204:3,5,10,11,19
 204:19 205:12
 206:13 224:7
 226:9 230:3,17
 233:19 239:5
 246:8 249:25
 250:12 254:12,16
 254:18,23 255:5,7
 255:9,12,14
 266:11,15,17,18
 284:16 296:9
 314:6 323:13
 324:11,12 404:24
pumping 200:7
 208:4 248:5
 263:19
pumps 242:21
 251:13 261:8
 283:23 288:10,11
 296:9 318:11
purchase 177:19
purchases 171:2
 308:15

purchasing 318:16
purpose 190:24
 191:9 234:9
 291:11 329:17
purposes 213:14
 236:2 319:19
 404:5,8
purvey 201:7
put 168:18 216:16
 230:15 234:16
 241:9,10,11
 256:17 278:25
 280:9,11,17,17
 281:5 283:2 296:8
 300:17 302:24
 315:21 322:18
 339:7 341:7 356:4
 356:7 367:11
 369:5,17 372:25
 375:19 380:5
 381:18 388:4
 389:5 393:11
 396:20 412:4
putting 353:16
 375:12
P-8.05 158:3
P.E.I 277:23 279:12
 303:6 349:5
 350:18 358:9
p.m 233:4,4 290:12
 290:12 346:12,12

Q

qualified 189:5,10
 368:4
qualify 275:11
 285:4 298:16
qualitative 272:2
quality 329:18
quantify 328:7
 407:20
quantifying 224:13
quantitative 277:13
quantity 172:12
quarterly 175:3
que 307:7
Quebec 188:17
questioned 317:22
questioning 214:14
 232:24 275:16
questionnaire 312:3
 312:17
quibble 372:8
quick 180:6 268:16
 274:11 310:15
quickly 262:2
Quik 159:2
quite 242:24 256:10
 261:5 274:16
 295:10 298:5
 302:19 315:8

327:2 373:8
quota 341:6
quote 192:23,23
 199:12 400:20,25
 404:18,25 405:4,9
 406:22,24 407:17
 407:22
Q-3 255:17
Q.C 158:5
Q.1 185:11
Q.10 209:8
Q.100 249:11
Q.101 249:14
Q.102 250:21
Q.103 251:23
Q.104 252:12
Q.105 252:16
Q.106 252:24
Q.107 253:6
Q.108 253:8
Q.109 253:12
Q.11 211:14
Q.110 253:14
Q.111 254:12
Q.112 254:20
Q.113 255:3
Q.114 255:17
Q.115 256:5
Q.116 256:15
Q.117 257:6
Q.118 258:4
Q.119 259:11
Q.12 212:6
Q.120 259:14
Q.121 259:19
Q.122 260:9
Q.123 260:16
Q.124 261:11
Q.125 261:22
Q.126 261:25
Q.127 262:10
Q.128 262:12
Q.129 262:17
Q.13 212:10
Q.130 262:23
Q.131 263:21
Q.132 264:19
Q.133 265:4
Q.134 265:8
Q.135 265:10
Q.136 265:12
Q.137 265:15
Q.138 265:19
Q.139 265:25
Q.14 212:14
Q.140 266:6
Q.141 266:8
Q.142 267:22
Q.143 268:6
Q.144 268:9
Q.145 268:11

Q.146 268:21
Q.147 268:24
Q.148 269:5
Q.149 269:8
Q.15 212:16
Q.150 269:10
Q.151 269:12
Q.152 269:14
Q.153 269:19
Q.154 269:22
Q.155 269:24
Q.156 271:8
Q.157 271:13
Q.158 271:17
Q.159 272:17
Q.16 212:20
Q.160 272:21
Q.17 212:24
Q.18 213:6
Q.19 213:13
Q.2 190:20
Q.20 213:17
Q.21 213:19
Q.22 213:23
Q.23 214:5
Q.24 214:10
Q.25 214:16
Q.250 162:8
Q.251 162:13
Q.252 162:16
Q.253 164:5
Q.254 164:22
Q.255 165:11
Q.256 166:12
Q.257 168:3
Q.258 168:25
Q.259 170:5
Q.26 214:22
Q.260 171:9
Q.261 171:22
Q.262 172:5
Q.263 172:16
Q.264 172:20
Q.265 173:6
Q.266 173:14
Q.267 173:20
Q.268 174:2
Q.269 174:4
Q.27 215:2
Q.270 174:7
Q.271 174:14
Q.272 175:7
Q.273 175:14
Q.274 176:4
Q.275 176:10
Q.276 176:12
Q.277 176:18
Q.278 176:20
Q.279 176:25
Q.28 215:11
Q.280 177:4

Q.281 177:9
Q.282 177:12
Q.283 177:21
Q.284 178:5
Q.285 178:16
Q.286 178:21
Q.287 178:24
Q.288 179:4
Q.289 179:6
Q.29 215:15
Q.290 179:14
Q.291 179:20
Q.292 179:21
Q.293 180:4
Q.294 180:10
Q.295 180:20
Q.296 181:3
Q.297 181:7
Q.298 181:15
Q.299 181:20
Q.3 202:11
Q.30 215:21
Q.300 181:23
Q.301 182:6
Q.302 183:13
Q.303 184:10
Q.31 216:10
Q.32 218:17
Q.33 219:12
Q.34 219:17
Q.35 219:22
Q.36 220:20
Q.37 220:23
Q.38 221:16
Q.39 221:23
Q.4 206:25
Q.40 222:2
Q.41 222:8
Q.42 223:11
Q.43 223:21
Q.44 223:25
Q.45 224:8
Q.46 224:11
Q.47 225:4
Q.48 226:5
Q.49 227:16
Q.5 207:13
Q.50 227:21
Q.51 228:12
Q.52 228:20
Q.53 228:25
Q.54 229:6
Q.55 229:8
Q.56 229:12
Q.57 229:17
Q.58 230:6
Q.59 230:17
Q.6 207:20
Q.60 230:22
Q.61 231:6
Q.62 231:13

Q.63 231:19
Q.64 232:13
Q.65 233:9
Q.66 233:21
Q.67 234:8
Q.68 235:2
Q.69 235:5
Q.7 208:8
Q.70 236:3
Q.71 237:2
Q.72 237:5
Q.73 237:11
Q.74 237:16
Q.75 237:22
Q.76 238:4
Q.77 238:17
Q.78 239:9
Q.79 240:13
Q.8 208:13
Q.80 241:4
Q.81 241:7
Q.82 242:20
Q.83 243:8
Q.84 243:19
Q.85 244:8
Q.86 244:12
Q.87 245:6
Q.88 245:13
Q.89 246:9
Q.9 208:25
Q.90 246:14
Q.91 246:25
Q.92 247:5
Q.93 247:13
Q.94 247:25
Q.95 248:9
Q.96 248:13
Q.97 248:20
Q.98 249:2
Q.99 249:5

R

rack 194:21 204:2
 235:15,22,23
 250:4,9,16 265:16
 266:4,17,20 267:9
 267:10,14,16
 268:21,22 269:25
 295:20 299:25
racking 270:5
radford 158:7 176:3
 177:23,24 240:10
 240:12 246:11
 281:14,19,21,24
 282:10 304:19
 305:2 309:7
 311:22 320:10,13
 320:17,20,23
 340:20 341:9,17
 342:4 358:12,13
 358:18,21,23

- 359:2,5,8,14,21
 360:5,9,17,19,24
 361:6,9,21 378:23
 379:4 380:14
 397:15
raise 227:3 252:19
 283:14 324:22
raised 204:19
 252:14 375:5
 396:5
raises 403:24
raising 254:11
range 164:3,4
 165:25 168:25
 169:9 170:17
 176:11 179:13
 182:17 197:12
 198:7 203:6,7
 204:7,9,11,13,14
 204:17,18,21,23
 204:25 205:7,14
 205:23 206:11,11
 206:12 218:5,11
 224:25 248:13
 257:22 260:10
 294:10 300:22
 341:15,16 355:3
 404:9 405:12
ranges 192:3
rate 168:5 169:5
 176:6,14,20
 179:22 219:8
 243:22 252:20
 253:3 255:19
 256:23 257:18
 258:25 313:4,5
 332:3 334:10
 335:18,22 336:2
 336:19 339:19
 340:21,25 342:18
 352:23 353:7,13
 354:11 355:13,21
 355:22 362:18
 377:16 379:18,19
 382:7
rates 169:18 179:18
 187:6 198:10
 219:19 221:14
 256:2,3 257:25
 258:16 287:20
 336:5,8,9 340:5
 340:15 342:25
 343:5 344:21,22
 352:22 354:15,17
 355:20 401:20
rather 163:15,19,23
 164:3 166:5,10
 170:11 174:10
 175:21 177:6
 244:14 251:18
 264:14 297:17
- 312:10 361:18
rationale 256:12
 335:22
raw 209:4,17,24
Raymond 158:5
reach 279:9
read 167:18 177:3
 257:11,13 258:15
 258:20 291:2,10
 292:19 337:15
 388:25 396:6,14
reader 192:6
readily 209:7
reading 213:2 379:2
ready 185:4 233:5
 274:7
real 160:9 172:10
 174:24 177:3
 183:2 192:15
 196:23 206:2
 263:22 264:16
 329:16 333:8
 354:17 366:10
 407:10
realistic 166:14
 181:5 196:14
reality 209:13
 291:17 324:14
 380:12,13
realize 362:5 367:20
 391:4
reason 184:18 192:8
 198:14 199:5
 248:3 299:20
 319:11 323:13
 350:21 369:23
 371:3 374:11
 384:9 391:14
 405:8
reasonable 163:2
 170:7 174:22
 200:24 239:12
 247:21 264:2
 335:5 340:25
 349:14 396:10
 397:7 403:4
 408:10
reasonably 257:20
 310:17
reasoned 385:10
reasons 222:5 247:9
 317:21 322:5
 362:9 408:5
rebate 336:24 337:3
 342:15
rebut 389:10 390:5
recall 184:8 233:11
 237:8 368:20
 381:9 383:23
receipts 370:20
receive 293:12
- 308:22,24 309:2
 321:23 330:19
 331:9,13 346:18
 348:4
received 171:17
 263:7 312:3,22
 330:16 333:7
 347:9 364:10
 398:19
receives 330:9,17,23
receiving 249:7
 319:14
recent 162:13
 163:24 166:14
 203:7 392:7
recently 272:8
 350:19 359:11
recess 184:21,24
 185:3 233:4
 290:12 346:12
recession 380:9
rechecked 175:12
recite 232:18
recited 254:3
recognition 227:6
recognize 215:23
 240:25 356:19
 372:8 395:2
 409:16 410:2
recognized 398:13
recognizing 200:14
 238:7 239:9
recommend 342:10
 374:9 378:11
 405:20 409:21
recommendation
 174:2 182:8
 196:12 197:20
 200:23 201:8
 202:4 231:15,18
 239:11 323:6
 334:17 336:16
 340:3 403:19,25
recommendations
 191:5,7 192:17
 200:18 201:24
 389:23 391:22
 394:7 402:9 403:6
 408:19 409:12
recommended
 201:5 214:17
 402:16,19 403:2
 405:14 408:7,9,12
 408:20 409:5
recommending
 324:6 334:9
reconnect 334:23
reconnected 334:24
record 190:13
 317:11 346:14
 396:6 408:8
- 412:22
recorded 251:12
 413:6
records 196:5
recourse 226:24
recovery 356:4
 380:12
redirect 273:3
reduce 292:10
 335:4 341:18
reducing 200:13
reduction 170:6
 333:11
refer 191:23 202:13
 236:13 238:17
 247:9 265:17
 314:7 354:6
 405:23 408:23
 409:7
reference 191:25
 192:15 220:13
 230:12 231:24
 235:25 240:13
 268:6,16 305:8
 354:20
referenced 235:2
references 244:12
 371:16
referencing 231:21
referred 203:18
 245:22 400:18
referring 231:20
 235:20 320:15
refers 221:3
refined 235:11
refiner 235:8,13,15
 295:21,25
refineries 242:8,9
 267:5,5
refiners 227:23,24
 327:25
refinery 296:22,25
 358:15,19 359:3,5
 360:14
refiner's 235:21
refiner-marketers
 405:6
refining 300:6
reflect 163:11,24
 170:14 184:7
 237:9,14 239:16
 291:17 335:22
 393:19
reflected 257:22
reflecting 334:10
reflection 239:13
reflective 173:12
 234:3,5,14,25
 408:2
reflects 166:9
 175:20 221:10,12
- 237:6
refuse 211:17 296:4
refusing 368:14
regard 245:13
 329:11 337:8
 339:17 373:4
regarding 196:13
 337:10
regardless 210:3
 217:4
regards 228:21
 231:14
Regie 188:17
regime 225:10
 246:5 317:14
 378:12 381:4
Regina 267:6
region 171:20
 235:17 366:6
regional 186:8,13
 227:23
regionals 228:17
regions 217:23
 266:24 318:2
 375:16
register 300:16
regular 174:5 208:2
 222:5 338:20
regularly 216:2
 258:20
regulate 201:13
 279:20 341:22,23
 395:6,17
regulated 199:20
 211:15 234:21
 280:8 338:11
 339:14 341:19
 342:2 350:9,15
 351:6 373:19
 395:8,20 407:14
 409:14,18
regulating 344:20
regulation 162:24
 172:4 189:2
 275:20 276:10
 278:5,8,12,14,15
 279:18 280:7,9,15
 280:19 293:18
 299:21,22,22
 301:16 304:11
 308:4,11 309:14
 309:24,25 310:5,7
 317:12 318:17
 326:23 327:15
 338:6 339:7,15
 341:22 374:10,15
 374:24,24 375:3,7
 378:4,14 382:14
 394:21 395:3
 401:14,22 409:3
regulations 291:7

- 292:6 294:12
335:9,12 394:10
regulators 396:9
regulatory 188:10
188:12 225:10
246:5 372:12
376:2 378:12,13
380:22 383:9,10
regulator's 195:5
rehauling 380:21
reinvesting 351:24
reinvestment 275:6
relate 180:22 228:3
related 181:17
226:4 229:14
252:2,4 257:14
259:6 263:14,19
267:18 301:14
333:10 368:11
relates 220:12 229:9
230:6 231:15
236:3 260:20
282:13 300:24
relating 180:23
181:16 192:14
387:12
relation 209:11
210:15 233:12
282:17 291:9
relationship 194:23
204:5
relative 169:10
193:23
relatively 201:24
202:4 203:20
218:2,9 267:2
300:15 309:19
350:21 379:24
release 365:6
released 365:8
relevance 166:21
268:13 275:18
relevant 163:5,21
171:13 187:14
188:21 194:10
274:20 276:19,21
367:23 401:21
402:3
reliability 390:22
reliable 240:19
relies 390:6
rely 229:9 292:14
relying 238:18
remain 217:20
323:4 326:4
remainder 265:19
remained 172:12
230:13
remarks 292:18,20
317:5
remember 312:18
remind 368:15
reminded 274:3
reminds 408:12
remote 245:23
removal 292:5
remove 237:21,23
379:21 381:2
removed 294:4
382:8
removes 292:13
removing 238:7,11
render 413:2
rent 334:19 340:10
repairs 293:14,16
293:17
repeat 309:7
repercussions 319:3
replace 288:10
replicate 213:8
reply 322:9
reported 330:12
Reporter 413:8
reports 231:23
259:3
report's 191:5
repository 370:15
represent 163:7
177:3 179:10
195:21 203:10
206:3 218:23,25
224:25 244:24
248:4 266:23
267:4
representation
198:16 333:15
representations
188:18
representative
173:3 174:16
206:13 261:20
268:18 289:4
293:23 338:14
representatives
186:12 376:24
377:2 381:7
represented 196:2
273:18 338:17,18
390:10
representing 160:2
160:16 185:23
188:15 339:18
406:7
represents 198:20
202:8 223:7
270:19 275:12
286:6 375:13
request 383:19
requested 212:7
requesting 178:9
required 281:9
317:20 332:6
345:4
requirement 195:4
216:3 351:11
379:8
requirements
194:10 349:16
requires 292:5
344:7 390:4
409:17
resemblance 374:19
Residence 335:6
residents 294:14
resides 267:19
resources 170:9
349:3
respect 161:5 172:5
175:14 187:5
188:3,9 189:4
191:16,20 192:2
196:19 197:20
198:23 201:4,15
205:9 206:10
233:9 234:17,17
237:10 255:15
267:20 282:17
293:5 344:23
345:2,3 356:25
364:5 368:18
370:10 371:17,17
371:20 374:12
375:17 376:21
377:25 379:9
386:16 387:13
412:20
respected 406:9
respectful 373:13
respecting 400:21
respectively 206:11
402:19
respects 372:21
390:8 394:23
respite 376:15
respond 245:25
257:4 398:4
responded 221:17
responding 378:3
response 160:24
199:9 218:20
219:5 227:6 234:3
254:4,5 255:17
257:3 274:17
374:18 404:10,17
405:3
responsibilities
186:20
responsibility 186:2
186:10 344:21
responsible 186:14
186:17,18 187:2
366:20
rest 340:7
restaurant 226:10
restaurantors
338:16
restaurants 395:15
restoration 270:14
270:21
restore 250:12
result 174:17
194:21 203:15,16
205:21 206:15
210:22 211:7
227:18 238:9,19
239:23 242:13,13
253:11 267:14
270:10,20,22
272:11 332:4
384:14,16 396:4
404:2 405:15,21
resulted 242:7
resulting 404:23
results 236:4,4
242:18 256:8
341:24
resume 290:10
retailer 176:7,21
177:5,12 182:25
183:25 209:25
210:2,12 216:10
234:12 245:16
253:4,20 271:8
272:18 291:19,20
291:22 292:4,8
295:2 296:3
297:11 301:15
325:20 341:11,17
360:14 361:3
362:24 400:5
401:17 408:14
retailers 179:24
193:6 210:2,15
214:13 233:23
237:18 238:8,10
248:13 263:23
291:14,16 295:4
295:25 296:2
299:24 300:5
319:14 320:13
324:18 325:25
326:11 361:12
362:18 363:7
371:18 373:16
399:22 401:4,13
405:6 406:7,15,21
409:3 410:2
retailer's 182:11
retailing 188:8
245:20 326:23
399:18
retained 212:20
371:23 407:24
retrofits 335:3
retrospective
222:25
return 174:5 188:6
225:7 248:11,14
248:18 249:7,9
273:15 275:5,8,9
315:22 317:3
328:13 349:14
returned 248:17
returning 158:19
revenue 163:3
176:24 192:20
193:6,16 217:5,9
225:20 227:8
235:10 237:21,24
238:5 250:22
253:15 260:11,19
263:3 264:13
307:19
revenue'd 222:7
revenues 188:6
191:4 192:16,19
193:8,9,15,18,21
193:22,24 194:4
217:11,11,17
218:5,13 222:6
224:12,18,21
227:7 232:2 234:5
237:10 238:15
248:6,7 251:16,19
255:6 403:13
review 158:1 191:11
213:7 221:19
222:9,9 239:19,24
280:19 290:8
336:3 337:12
349:17 368:13
379:5,7,7,24
380:3,19 383:22
383:24 384:7
388:19 389:13
390:20 391:13
392:11 393:5
396:3 398:24
400:11,15 409:22
410:15,20
reviewed 215:17
408:4
reviewing 331:17
410:14
revise 334:17
revised 168:4
202:14
revisions 238:19
revisited 374:11
378:12
revisiting 299:21
rewards 404:22
re-appear 191:21
re-establish 217:8
rich 331:23

- richard** 159:25
160:2,2,3,4
167:16,17,22
189:19,20 216:6,7
301:10,11,21,22
303:15,17,18,20
303:22 304:2,4,5
304:12,16,17,19
304:23 305:3,7,10
305:12,15,22,25
306:3,8,13,18,20
306:22,25 307:3,7
307:12,14,16,18
307:22
richest 332:12
Richibucto 159:25
160:3 303:22
304:2
rigid 367:21
rigorous 198:22
394:25
ringer 178:7
rise 198:24 203:24
250:16 258:18
337:17 408:16
risen 336:9 404:20
407:3
rising 177:8 203:14
203:14 204:10,20
204:23 376:10,17
risk 175:6 315:22
352:12,14
riveting 410:11
road 160:4 210:21
309:15,17 332:23
Robert 158:7
robust 255:8
role 187:2,4 190:15
190:17 327:13
roll 173:19
rolls 272:19
Ronald 160:14
room 335:13 339:14
377:10 381:25
rooms 335:6,8
rose 332:12,13
rough 261:18
300:20
roughly 185:23
212:23 242:8
243:9 260:8 270:5
277:24 286:6
288:18,22 324:22
325:2 386:4
round 245:19
360:13
route 395:22
roy 160:14,14,15
169:25 170:2
190:3,4 227:12,13
348:16,17,18
- rule** 177:15 341:13
ruled 336:18 345:11
rules 335:7 381:5
382:7
ruling 163:6 379:8,9
run 299:9 308:2
310:14 318:11
323:13 324:11
335:12 350:23
353:22 354:3
363:4
running 209:13
243:2,3 294:11
302:24 316:23
335:9
rural 209:25 210:19
210:25 211:4,16
211:18,25 212:2
218:7 278:2
291:16,19,22
297:11 301:12
349:15,21 351:21
351:24 352:4
355:15,22 356:15
359:17,18 366:19
366:22 376:4
390:10
rush 278:21
résumé 185:12
248:10
R2 202:19
-
- S**
- safeguards** 369:16
385:4
Safety 252:18,25
288:5
Saint 265:21 269:19
269:20 308:24
310:22,24 311:4
331:20 333:14
334:5 355:21
sake 319:15 321:15
salaries 193:4
218:24
salary 256:20 302:2
302:6
sale 215:9,10 235:10
297:7
sales 193:7,8,24
194:8 195:9 207:3
207:13 210:5
216:19,19,24
218:3,4,9 224:22
231:25 237:7,9,14
237:17,21,22,22
237:23,24 238:8
238:11 247:17,22
247:24 254:24
264:10,10 294:20
294:22 308:18
- 370:5,10,11 395:5
395:13,17 401:19
402:3 403:15,17
Salisbury 160:4
Salvation 333:2
same 164:21,21
168:6 172:24
174:11 179:22
180:10 201:22
219:22 223:11
229:21 230:13
242:9 244:25
245:2 250:16
269:21 278:14
281:10 284:3,4,13
286:23 294:20
297:12 304:13
306:3 308:6 312:6
318:8 330:14
332:14 336:4,7
341:5 348:5
355:11 356:19
381:11 382:11
395:11 403:11
sample 174:16
sampling 234:23
sanctioned 410:6
Saskatchewan
349:6
sat 279:23 280:13
satisfied 166:12
226:8
satisfies 350:12
satisfy 225:7
Saturday 278:17
Savage 158:19
228:19 362:2
378:23
save 363:18
saves 264:14
savings 363:16
saw 166:11 201:23
304:24 376:24
408:5
saying 166:4 193:3
206:5 214:10
242:24 245:9
256:15 258:6,9
276:9 280:6
296:11 298:16
305:5,17,19 306:3
313:3 320:21
325:12 343:4
357:21 378:2
380:3 382:14
385:24
says 167:13 206:25
214:20 217:2
236:16 247:20
257:12 262:19
278:18 290:18
- 298:8 308:10
369:9 371:5,5
scale 226:6
scattered 350:2
scenario 162:21
384:10
scenarios 174:15
202:16
schedule 321:15
scheme 196:14
Scholten's 160:7
348:5
Schryer 333:24
scope 190:24 211:13
246:3 366:7 384:6
392:2
Scotia 186:16
277:22 279:10
336:23 339:23
340:2,7 349:5
351:16,21,24
352:6,8,11 355:18
358:5 382:11
406:4
Scotia's 337:10
se 207:8 244:17
season 205:14
299:10
seasonal 245:2
seasonality 203:20
205:9
seasons 269:18
second 161:9
162:20 240:5
264:2 315:19
333:23 334:17
358:2 385:25
secondhand 393:2
secondly 409:5,21
Secretary 158:11
236:19
section 158:2 292:5
294:24 383:23
388:5,19,25
389:16 390:12
396:5,9,15,23
397:3 400:10,19
401:14,22 402:9
402:10 406:8
411:5,10,11,17,24
sections 245:20
sector 199:9,11,21
199:23 219:8
220:14 221:4,7,8
221:13 227:19
232:8 240:19
258:11,11,23
275:4,5 333:12
382:21 407:18
sectors 257:22
271:20 375:15
- secure** 352:23
Securities 158:1
see 168:14 170:10
185:6 189:3
194:14,20 200:3
214:6 215:22
226:20 230:20
231:24 241:22
242:11 244:8
250:17 259:9
262:5 263:3
266:19 267:14
268:11,18 270:19
273:13 274:20,23
278:22 295:16
300:2,3 302:3
303:5 309:18
342:10 345:5
346:23 352:6,7
361:15 369:15
375:3 378:9,10,13
383:8 384:22
seeing 231:2 295:22
318:19
seek 405:8
seeks 394:15
seem 164:16 315:2,8
362:12 385:6
seemed 163:2
191:21 276:21,21
seems 163:5 164:19
168:23 171:21
172:21 263:21
276:20 292:22
317:16 409:15
seen 199:7 217:14
222:3 226:12,13
230:25 256:22
258:14 270:16
282:12 314:16
349:19 402:6
408:3
segregating 370:21
selection 163:4
selective 205:25
self-serve 261:6,20
351:18
self-sufficient 267:2
sell 200:9 207:11,12
207:18,19 208:17
281:24 285:12,13
299:14 399:20
sellers 343:7
selling 208:5,9,11
208:14,15 226:2
243:17 247:16
249:12 251:24
305:16 306:8
314:3
sells 399:21
send 347:8

- sending** 347:6
seniors 331:10
 335:17
Senior's 334:4
sense 169:18 183:6
 183:21 184:7
 200:21 229:23
 263:17 315:14
 331:10 370:18
 378:17 390:11
 395:3
sensitive 168:22
 175:3 182:13
 356:15 406:11
sensitivity 168:10
 170:6 226:16
sent 300:18 339:4
separate 211:12
 225:6,24 232:4
 242:25 243:14
 380:17
September 348:9
sequestered 377:10
serait 306:16
series 312:9
serious 193:8 203:8
 224:11 329:12
 352:2
serve 293:24 294:13
 295:17 296:4
service 158:2
 159:25 160:3,12
 201:4 208:15,16
 208:16 212:3
 261:6 277:4,18,20
 277:20 278:13,15
 278:20 279:4
 281:6,11,22,24,25
 282:3,4,8 283:23
 283:24 284:14,16
 300:2 302:9
 303:11 305:12
 337:12 348:16
 400:13,22
services 200:11
 211:3 225:4 226:6
 376:3
serving 366:2
sessions 380:18,21
 383:22 384:5,8
 410:10
set 186:5 232:6
 233:16 234:9
 241:25 242:5
 295:22 303:10
 309:3 310:2
 313:23 317:23,23
 340:15,21,22
 342:18,25 344:2
 344:21 377:7
 381:12 388:5,13
 389:13 393:15,18
 398:6 401:18
 406:16
sets 244:24 309:13
 313:8 327:8
 401:14,22
setting 186:21 187:6
 317:22 327:4
 344:21,24 392:20
seven 162:14,20
 177:18 279:11
several 247:2
 308:19 310:3
 333:9 367:22
 370:2 391:21
 404:19 405:6
shape 303:8
shaped 242:18
share 247:6,10
 334:18,18,19
shared 222:17
 339:12 376:23,24
 409:9
sharing 361:20,21
Shediac 304:15
sheets 231:20
Shell 186:25 187:8
 228:9 241:8
 295:13 315:7
shift 241:24 261:9
shifted 196:16
shop 211:2 226:17
shore 339:11
shores 293:2
short 184:23 240:17
 330:15,24
shortage 360:5
shorten 204:13
shortened 367:5
shorter 204:17
 244:14,22
show 252:24 299:8
 338:22
showed 170:12
 219:6
showing 177:4
 267:23
shown 330:7
shows 170:6 214:20
 331:25
shredder 280:11
shut 291:23 296:6
shy 330:20
side 166:15 169:10
 201:20 214:21
 225:12,13 243:2,4
 243:17 250:24
 251:4,10 252:5
 255:2 263:13
 277:18,20 280:24
 281:9 282:3,8
 293:3 355:6
 377:19 393:24
 401:3
sides 318:6 409:10
sight 383:15
sign 309:15,17
 379:3
significance 225:2
 267:20 357:13
significant 173:16
 173:18,21,23
 193:16 209:9
 210:8 224:18
 231:8 238:23
 295:17 349:19
 351:20 352:19
 366:10 388:14
 392:15 396:20
significantly 199:15
 209:18 222:4
 242:6 258:17
 293:22 294:17
 297:10 300:13
 301:5 353:7
 355:22
similar 205:22
 269:19 280:16
 289:13 368:17,24
 369:6 380:19
 406:4
similarly 188:13
 194:25 401:22
simple 181:16 203:3
 235:25 250:3
 300:16 330:6
simpler 235:14
simply 170:19 172:6
 193:18 198:6
 200:12 211:17,24
 213:12 215:9
 217:5 219:15
 225:19 230:2,15
 234:23 243:13
 247:10 251:18
 254:4 255:12
 256:23 258:3
 271:14 272:3,24
 295:16 326:13
 403:20 407:8
since 163:6 172:25
 195:12 197:9
 201:7 229:12,19
 230:13,22 231:10
 276:24 283:7,9
 287:22 294:11
 296:12 301:16
 316:22 326:8,9
 337:17 339:3
 401:17 406:21
 407:6 408:3 409:3
single 163:7 182:11
 197:18 229:5
 240:2 279:9
 299:11 310:20
 330:7,14,17,22
sir 166:25 233:15
 243:13 398:15
sit 312:9
site 294:5,6,23
 297:3 302:4,5
 310:10 312:11
 321:23 351:3
sites 302:4 307:9,10
 307:22 314:4
 319:21 349:22
 351:18,24 354:10
 386:16
sitting 279:21
 316:18
situation 309:22
 337:8 339:17
 392:13 410:13
six 172:18 174:4
 204:15 212:23
 222:13 279:23
 280:15,19 307:20
 326:24 331:25
 349:4 351:22
 381:20 392:17
size 200:7 217:5
 261:3 262:7 352:9
skill 199:25
slightly 168:16
 259:21
slow 269:5
small 175:7 198:9
 201:24 202:5,6
 211:8 216:10,16
 218:7 224:20
 236:5 278:24
 283:18 297:16
 302:11 308:2
 315:8 349:24,25
 350:2 351:24
 355:8 370:3,11
 371:18
smaller 169:8
 182:18 204:25
 291:20 296:2
 349:25 363:3
 375:24
smart 306:12
 339:24
smell 278:19
snapshot 164:10
 197:13 198:9
snowplows 354:9
social 298:24
 299:18,19 330:4,8
 333:24 334:15
 335:2 336:5,9,13
 337:23 340:5
socialize 283:17,18
soft 223:16
sold 235:23 305:20
 340:22
solely 213:16
 251:12 258:2
solicit 182:9
solicitors 273:18
solid 239:25
solution 175:19
 334:8,14 350:12
solutions 372:7
 376:20,21,22
solve 377:12 381:2
 382:17
somebody 207:20
 207:22,22,24
 222:22 225:25
 261:7 277:8
 283:10 302:13
 328:20 370:19
somehow 225:24
someone 208:15
 253:9 254:14
 285:5,11 287:12
 321:7 324:2
 341:24 358:19
 359:15 390:4
something 180:17
 198:20 206:7
 216:16 220:15,18
 258:14,24 261:23
 267:25 272:20
 274:13 276:10
 280:3 302:4,20
 303:4,6 324:12
 357:16 359:6
 362:17 372:24
 373:6 375:21
 376:6 379:18,19
 391:5 394:12
sometime 230:5
 367:13
sometimes 167:14
 315:23 328:14,14
 328:16,19 365:4
 368:23
somewhat 236:2
 268:18 384:19
 396:8
somewhere 268:4
 294:10,11
son 301:11,18 303:2
 303:15
soon 376:14,17
 413:2
sophisticated 369:7
 369:8
sorry 182:20 186:6
 203:2 217:18
 233:10 237:23

- 249:11 250:18,19
 261:6 271:6
 279:13 281:14
 289:7 309:7
 312:18 325:2,2
 371:14 381:23
sort 163:6 172:5
 173:14 174:15
 209:25 211:19
 237:11 244:2,6
 258:16 259:5
 260:18 261:3,13
 273:11 328:4
 342:10 364:22
 381:9,22 383:15
sound 200:16
 260:14 261:2
 272:15 391:18
source 187:17 193:6
 196:25 200:15
 215:11 239:5
 265:6,25 339:9
 354:18
sources 192:2,3,9
 193:9,10 258:2
 333:7 364:22
 368:11,12 391:8
 399:9
Southeast 333:14
southern 187:3
so-called 391:23
speak 158:21
 202:24 214:5
 216:11 277:19
 304:14 310:12
 328:20 329:11
 340:20 365:9
 371:4 385:4
 389:10 390:3
 393:12 409:20
speaking 194:14
 195:5 221:23
 244:21 249:24
 325:2 364:6 377:4
 381:15 382:13
 398:23 399:15
specializes 185:16
specific 164:15
 177:18 179:5
 211:10 219:5
 221:2 229:4
 282:16 342:8
 345:3 407:16
specifically 174:7
 212:19 213:14
 228:5 229:14,17
 231:20,22 237:2
 240:18 272:20,22
 288:8 351:11,22
speculating 364:20
speed 241:25
- speedy** 278:25
spend 365:24
spiral 297:17
split 210:13,15
 245:14
spoke 351:14
 378:23,24
spoken 403:22
sporadic 330:25
spot 203:25 266:10
spread 203:18
 205:9 235:3,7,12
 235:20 392:22
spreads 203:19,21
 203:24 204:5
 205:12
spring 203:22,23
St 303:22 304:2
stability 291:12
 292:12
stabilization 292:9
 292:11
stabilized 326:12
stable 193:22
 373:18
staff 158:9 160:20
 199:23 298:19,21
 299:8 348:13
 384:18 393:3
staffing 299:11
stagnant 217:14,21
 226:23 271:22
stagnation 194:6
stakeholder 338:14
 374:20 376:8
 377:8 379:11
stakeholders 338:2
 350:13 356:12
 377:22 380:25
 381:6
stand 199:14 216:24
standard 261:3
 341:3 353:7
 410:21 411:2
standards 242:2
standing 201:21
start 171:9 206:18
 246:22 247:21
 259:19 276:9
 280:6 293:9
 397:24 398:2,3
started 167:4 241:7
 241:20 272:9
 276:25,25 277:3,6
 293:15 302:17
 338:7 348:24
 350:6 359:11
 383:10
starting 158:15
 172:14 182:3
 185:20 190:23
- 242:15 263:7
 269:8 397:21
 398:9,10
startled 331:22
startling 259:3
starts 328:18
stat 262:22
state 188:10,12
 191:8 197:23
 212:22 223:9
 240:16 243:6
 258:4 376:11
stated 195:11
 196:24 210:3,17
 210:20 256:18
 371:6 391:19
statement 167:18
 256:17 291:6
 301:22 316:12,13
 342:6,17 371:10
statements 167:19
 184:8 247:12
 301:21 368:21,22
 369:10
states 192:22
 198:23 210:10
 223:6,16 242:2,10
 344:9
stating 206:6
 224:24
station 159:25
 160:3 207:16
 208:2 209:13,18
 218:2 220:17,18
 225:25 226:4,7
 227:8 232:3,10
 241:9 243:3,4,15
 253:8 254:5,8,23
 255:22 260:4,5,5
 260:9,21,23 261:2
 283:7,9 285:14
 297:19 303:11,25
 305:12 308:3
 343:13 350:23
 403:18
stations 169:8,20
 170:20 179:21
 195:24 196:8
 199:18 200:8
 210:21 218:2,13
 225:5 227:25
 232:9,14 236:5,24
 241:21 243:25
 244:9 247:19
 255:8 303:19,20
 319:23 349:4,7
 385:13,15
statistical 209:2
statistically 254:14
statistician 165:11
Statistics 200:5
- 207:5 219:6,13
 221:3 236:10
 256:7,21 257:2
Stats 195:16 196:5
 199:8,10 215:11
 231:19 232:4,14
 232:18 256:22
 329:23 330:11,21
statute 378:14
statutory 374:9
 379:8 383:10
stay 211:21 273:14
 290:14 299:20
 335:10,23 401:13
stayed 229:20 336:7
stays 166:6
steadily 230:4 384:4
steady 194:3 203:15
 217:16 337:17
step 380:11,12,13
stepped 365:16
Steve 158:7
sticker 226:20
sticks 288:11
still 166:14 175:17
 197:3 207:21,22
 207:22,23,25
 238:6 254:13
 255:14 285:12
 287:9 298:5
 319:16,21,22
 322:15,16 326:14
 339:11 341:9,13
 381:13,17 394:22
stock 235:9,24,25
stop 159:16 278:25
 297:4
storage 196:9 197:7
 401:19 403:20
store 159:25 160:3
 207:24 216:19
 217:10 220:11
 226:10 231:25,25
 232:2,4,5,5,15
 242:22 243:4,23
 244:2,3,6,11
 251:4 253:20
 254:15,19 255:15
 255:24 284:5
 315:13 316:10
 326:5
stores 243:21
 247:19 253:16
 314:15 323:9
 326:12 327:21,23
 395:14
straight 318:21
straightened 360:10
strand 403:12
strategy 321:25
street 279:10,12,14
- 309:18 318:25
 319:15 324:14
 325:24,25 327:9
 327:17,18 329:3
 335:11
stress 389:12
stressed 191:9
strict 173:4,9,13
strictly 220:12
 364:6
strong 242:13
strongly 375:6,9
 378:11
struck 258:14
structure 262:4
 355:19 380:22
 395:5
structured 314:24
 315:5
struggling 315:9
 342:16
stubs 252:24
stuck 190:17 311:5
 351:5
studied 272:20
studies 246:19
 338:21,21 340:24
study 191:3,22
 211:12 212:19
 213:9,11,22
 220:12 241:2
 246:2 271:12
 272:24 280:16
studying 327:16
stuff 284:8 323:15
 345:22
subject 211:12
 230:24 239:3
 262:18
submission 171:14
 197:10 207:4
 280:21 290:25
 347:18,21 348:2,4
 348:8,15 373:14
 380:14 395:9
 400:3,3 412:5
submissions 260:24
 273:9,13 274:10
 290:16 346:13,17
 346:18 347:7,9
 348:6 389:24
 394:24
submit 212:12
 243:24 390:14
submits 409:5
submitted 193:5
 201:16 207:2
 403:21
subsequent 192:17
 372:14
subsequently

- 186:24,25
subsidize 216:19
 315:13
subsidized 217:18
substantial 227:16
 259:6 268:12
substantially 259:8
success 237:18
 251:5 377:18,20
 382:12,13 399:23
successful 246:21
sudden 311:2
suffer 218:8
suffered 201:22
suffering 333:3
sufficient 224:22
 369:16
suggest 166:13,15
 195:3 224:11
 237:12 238:6
 260:24 335:18
 345:6 357:22
 368:2 371:17,20
 373:5,14,19,23
 374:2 388:17
 389:2 390:2
 391:12 394:4
 395:16 402:4
 405:10 408:20
 409:19 411:20
suggested 169:2
 195:8 215:3
 219:22 220:8
 225:5 238:4
 240:17 394:6
 406:18
suggesting 164:22
 196:16 230:11
 261:15 361:6
 374:22 379:5,6
 391:9 394:11
suggestion 219:13
 219:23 220:6,6
 221:16,18 226:7
 342:10 355:23
 372:3
suggestions 220:20
 380:14 394:8
 408:18
suggests 166:8
 179:12 193:5
 197:22 220:10
 404:12 408:8
suitable 256:19
suitably 368:4
summarize 205:24
 375:4
summary 190:20,22
 191:18 402:6
 406:16 408:15
 409:8
- summer** 203:22
 302:7
Supertores 253:18
supervise 378:14
supervision 381:8
supplanted 368:11
supplement 201:15
supplementary
 199:9
supplemented
 371:13,14,15,19
supplied 267:4
 293:10
supplier 212:2
 291:23 292:3,8,9
 292:15 293:11,19
 293:23 294:9
 295:10 296:15,21
 328:24
suppliers 211:17
 292:7 295:14,25
 299:23
supply 266:23,23,25
 267:4,8,11,12,12
 267:15,18,21
 279:5 291:16,19
 291:20 292:13,23
 293:5 296:13,14
 342:3 359:18
 369:12,21,22
 388:9,15 389:5
 400:24 401:8
 411:7
support 162:13
 201:11 329:22
 349:15,24 366:8
 373:2 408:23
supported 202:2
 316:4 339:13
 406:13
supporter 349:13
supports 317:17
 358:8 408:11
suppose 215:19
 272:14
supposed 258:2
supposition 320:8
sur 307:22
sure 161:10 162:3
 162:22 179:6,7,15
 181:22 184:3
 196:3 207:6
 211:10 216:22
 239:6 242:24
 248:16 256:14
 272:2 275:18
 276:19 285:14
 301:18 303:5
 306:11 309:18
 312:24 313:2
 317:18 320:12
- 323:20 327:5
 328:7 329:8 357:7
 357:9 359:17
 363:22,23 364:16
 372:24 374:20
 378:15 380:15
 390:11 397:16
 399:5
surmised 219:15
 241:17
surprised 356:9
surprising 194:20
surrounding 319:20
survey 234:22,23
 369:8
surveys 233:20
survival 243:22
 335:25
survive 316:2 338:3
 339:20 342:7
 362:14 373:18
suspect 320:6
 322:20,20
sustain 246:7
sustainability
 218:14 238:2,16
 271:25
sustainable 250:12
sustained 270:12
 317:24
SUVs 242:15
swear 185:7
swings 163:9
swipe 353:20
 362:20,24
sworn 185:9
synchronization
 332:5
synchronous 205:7
 245:5
synonymous 235:19
 236:2 265:18,19
system 211:15,15
 291:18 292:13
 300:21 318:11
 327:13 338:3,15
 339:15 341:19,21
 342:3,24 345:8,14
 366:14 370:5,12
systematic 192:11
S.N.B 158:3
-
- T**
-
- table** 162:8 168:4,9
 170:5,12 171:10
 172:5,7,9,25
 173:14 174:7,12
 175:14 202:14,14
 202:17 227:17
 233:15,18 238:17
 238:19,21 255:18
- 255:19 256:5
 257:12,15 274:9
 338:15,16,17,18
 339:8 375:21
 377:22 385:3
tables 170:17
 175:10 202:19
tackle 396:11
taken 198:7 252:16
 265:9 412:13
takes 205:15 326:5
 402:25
taking 163:10 165:2
 188:2 197:13
 198:9 206:10
 215:8 240:21
 263:13 305:18
 346:7 355:15
 399:10
talk 213:19,21
 231:6,21 234:8
 252:12 312:6
 331:7 352:16
 354:22,22 367:3,9
 376:7 392:19
talked 183:15
 231:19 238:18
 260:22 300:25
 318:22 374:16,19
 404:3
talking 171:22,24
 171:25 184:4
 228:16 251:24
 259:19 278:2,3
 279:21 304:15
 327:7 343:21
 352:20 380:17,20
 381:3 382:20
 383:2 384:5
 385:23 386:3
 411:24
talks 223:7 265:4
 277:8 411:6,17
tally 370:22
tank 315:17 337:20
 341:8 404:21
tanker 310:23
tanks 294:7 296:9
 315:17 355:8
tantamount 186:22
 187:7
tap 251:18
task 368:10
Taskforce 336:16
tax 165:4 288:3,4
 292:9,10,11 338:5
 342:17
taxes 336:3
taxpayer 334:21
Taylor 295:19
tea 279:3
- technical** 377:8,20
 380:18,21 383:21
 384:5 410:9
technically 360:20
 360:22
technology 170:20
 170:21,23 323:19
Ted 160:6 308:2
tell 228:4 249:14
 268:11,19 276:22
 278:16 280:9
 292:24 323:7
 344:5 348:22
 353:2 356:6 362:9
 365:24 398:17
telling 311:13,18
tells 393:4
temperature 335:5
 335:24
Tenancy 335:6
tend 171:4 180:2
 198:24 203:21,22
 209:3 253:18,19
 254:15
tendency 254:17
 292:14
term 235:7,13
 270:15 317:24
 320:19 376:13
 388:20,24,25
terminal 353:19
 358:22
terms 162:17
 165:15 168:25
 173:6 196:13,16
 196:17,18 202:24
 205:25 214:7
 224:16 239:4,7,20
 255:8 260:23
 267:7 272:2,15
 273:16 276:3
 364:14 367:12
 368:25 385:17
 393:12 400:9
 411:8 412:2
terrific 354:18
territory 186:18
test 315:18 316:17
 412:10
testified 173:7
 185:9 407:2
testimonies 360:24
testimony 183:18
 184:17 202:12
 235:2 387:21
 401:7,10
tests 315:18
Texaco 241:8
 276:25
text 193:2

- 274:5 290:9
themselves 204:9
 308:8 334:21
theoretically 374:17
thereof 240:4
thermostats 335:5
thing 168:3 192:13
 276:2 277:18
 294:21 301:23
 302:10,10 308:5
 310:5 311:8,22
 312:7 318:22
 324:13 352:2
 369:19 370:17
 373:8 381:11
 382:2 397:23
things 181:15
 196:14 208:14,21
 209:19 217:15
 229:9 231:22
 245:23 248:6
 254:11 264:6
 277:10 288:11
 291:7 293:15
 298:19 315:11
 341:2,20 350:14
 352:10 353:11
 354:9 361:19
 365:20 377:6
 379:13,20
thinking 222:8
 223:11 303:8,9
 315:12
thinks 206:7 260:16
 376:13 394:12
third 170:5 182:15
 334:22 368:11
 371:16 386:19
thorne-dykstra
 160:11,11 169:24
 189:25 190:2
 227:10,11 329:9
 329:10,15 340:23
 341:15,18 342:14
 342:21,23 343:6,9
 343:11,14,18,20
 344:4,18 345:7,25
 346:4,10
thoroughly 258:20
though 253:15
 279:22 280:23
 288:8 299:15
 326:8 393:14
thought 173:7
 246:14 259:4
 291:6 308:5
 310:25 313:24
 329:2 354:13
 364:14 369:12
thoughts 299:3
 314:5
- threat** 291:15
three 267:5 278:7
 314:22 350:8
 375:15,16 404:3
threshold 411:9
through 161:22
 172:7 188:11
 191:21 192:12
 210:9 259:23,24
 280:18 312:4
 329:20 340:23
 341:19 342:24
 345:8,10,14 347:9
 351:7,15 352:18
 353:22 357:13,14
 376:8,8 382:17
throughout 236:14
 277:21 329:13
 338:2 360:6,6
 366:4 389:24
 401:3
throughput 194:12
 194:14,23 195:22
 196:7 217:22
throughputs 194:18
 195:3 196:3
 218:11
throwing 376:19
thrown 310:17
Thursday 295:22
 296:19 313:23
 314:2 364:10
ti 318:13
tied 359:15 379:18
 379:18,19
tight 267:11
tighten 293:15
tighter 328:13
tightness 267:15
till 187:11 285:2,3
 296:19 356:10
Tim 226:9
timeline 209:12
timelines 209:3
times 170:8 244:12
 245:5 254:22
 262:9,10 277:8,9
 277:17,25 278:2,9
 278:10,21 279:7
 282:6 302:19
 308:19 344:12
 368:17
Tire 228:9,17
title 186:14
today 158:20,24
 160:9 170:14
 197:3,10 210:23
 230:7,18 231:3
 239:18 241:13
 249:4 250:5 271:9
 273:6,11,14 274:4
- 275:17 277:12
 280:14 281:3
 283:6,17 286:20
 290:15,17,20
 301:8 302:22
 311:18,24 317:8
 318:4 328:5
 329:14 341:13
 344:12 346:6
 349:5 373:2
 382:18 385:11
 387:22 388:23
 392:4,13,14
today's 159:14
 223:5 338:12
together 217:11
 275:10 279:25,25
 281:5 334:7 339:7
 380:25 381:18,18
 384:14 394:14
told 183:16 274:3
 393:8
Toner's 183:14
tonight 362:20
 412:16
top 182:13,19
 199:12 204:22
 236:16 271:16
 272:3 278:4
 337:19
topic 265:12
topics 291:9
Toronto 194:17,21
 249:24 250:3,4
 267:11
total 218:23 219:25
 227:8 251:9 252:8
 262:6,17 300:21
 330:9
totally 216:22
touch 400:6
tough 174:19
tout 307:7
toward 293:14
 380:21 385:23
towards 208:4
 240:20 242:15
 243:16 245:20
 309:23 361:12
town 211:8
to-day 186:11
track 230:15 410:2
tracked 164:20
traffic 210:8 297:9
transaction 184:14
 353:4,18 354:3,12
 354:23
transactions 184:9
 353:6,12,17
 354:21 355:3
transcript 401:11
- 413:5
transcription
 287:14
transparency
 187:22 192:7
 324:2,4
transparent 215:23
 318:11 357:15
 409:25
transportation
 308:14 309:3
 310:21 311:12
 338:7 339:10
 360:10 361:2,4
 375:17 401:19
travel 273:20 331:8
 412:17
travelled 273:10
treatment 329:18
tremendous 298:19
 352:15
trench 277:8
trend 177:16 229:25
 257:24 258:8
 300:10
trends 166:14 258:5
 258:6 272:4
 404:25
Triathlon 354:7
tricks 341:2
tried 168:9
trouble 182:24
truck 199:23 277:3
 296:21,23
trucking 358:24
trucks 242:16 279:8
 294:4 358:23
 359:2
true 198:15,15
 325:18 360:22
 368:9 386:7 413:5
truer 234:14
truly 181:11,12,25
 305:24 375:13
try 163:17 184:5
 225:20 240:3
 259:24,25 264:23
 273:12 276:8
 278:13 290:20
 294:5 296:17
 304:16 316:8,10
 319:20 328:9
 383:22 392:16
 395:16
trying 175:21 178:5
 179:24 184:8
 203:10 206:3
 222:10 241:9
 251:8,23 259:21
 259:23 260:17,17
 260:18 262:5
- 264:12,15 266:21
 288:11 310:4
 320:24 331:12
 352:17,22 355:10
 360:9 380:10,11
 380:12 388:18
 392:8 397:19,22
Tuesday 296:18
Turbo 186:25 187:8
turn 186:18 187:21
 251:18 278:11
 314:17 378:18
 383:4 409:19
turned 178:7
Turning 406:2
turnover 401:20
twice 249:16
two-year 162:19,23
 164:17 171:10,17
 175:5 209:10
 392:22
type 164:9 179:16
 179:17 285:13,18
 388:18 389:13
 411:20
types 384:8
typical 165:17
 260:23,25 261:22
 261:24
typically 235:15
 266:3,4 354:12
 360:3
t'expliquer 306:15
-
- U**
- ultimate** 390:13
ultimately 204:2
 254:13 314:21,23
Ultramar 160:9
 169:17 228:10
 348:8
un 306:25 307:9,9
unbelievable 315:20
unbranded 359:12
uncertainty 182:3,4
uncooperative
 368:19
under 158:2 169:5
 174:14 185:25
 210:10 215:16
 225:10 246:5
 257:9,11 262:24
 292:2,4 304:11
 334:25 341:13
 350:9 369:3 372:9
 379:12 381:7,22
 383:24,24 388:19
 389:16 393:18
 396:5 400:10,20
 402:18,20 408:21
 409:6,23

- undercut** 292:14
undercutters
 299:23
underlying 164:19
 173:10
understand 162:23
 164:5,17 165:20
 176:5,12 177:2,4
 178:12 181:13,14
 184:10,11 232:13
 233:15 234:7
 242:21 245:14
 248:21 259:21
 262:14 263:10
 265:5 268:13
 295:10 303:18
 306:12 320:24
 323:14 324:9
 338:2,4,8 341:20
 342:6 378:2
 389:21 411:17
understandably
 277:13
understanding
 162:9 164:25
 177:7 206:2 260:7
 295:20 375:10,11
 398:17,23
understands 375:22
understood 171:11
 172:23 360:24
 370:24 375:23
undertake 226:11
undertaken 388:22
undertaking 162:8
 172:16 202:12,16
 223:5,10 238:20
 246:4 274:13,24
 275:8,25
undertakings
 160:24,25 161:5
undertook 212:24
unfairly 205:4
unfortunate 362:7
 398:5
unfortunately 219:7
 282:19 308:8
 322:21 362:3
unheard 280:4
uniforms 288:12
unit 334:18
United 223:16
 242:2,10 333:2,7
 333:13 334:5
units 335:5,14
university 277:5
unless 184:17
 247:20 268:14
 290:18 298:6
 324:11 339:3
 373:6 379:24
- 383:13
unlikely 171:5
 411:23
unmanned 207:17
unpredictable
 203:19
unquestionably
 272:10
unreasonable 202:2
 208:7
unregulated 172:18
 217:7 395:20
 399:4
unrelated 194:15
unreliable 391:6
unsound 198:18
unsubstantiated
 219:3
unsuccessful 212:14
until 162:11 229:25
 230:4 241:14,18
 241:19 242:6
 270:5 272:8,8,10
 301:24 302:20
 334:23 357:18
 411:11
unusual 354:2
unviable 238:12
upcoming 332:19
 333:17
update 254:7
upkeep 282:4
upper 203:6 206:12
 224:25 235:11,16
 265:15
upward 171:4
 205:21 229:25
 364:19
upwards 194:19
 252:7 270:20
urban 210:2,4,7,8
 350:3 356:14
 366:19,22 371:18
urged 389:7
usage 164:24 168:5
 168:12 170:18
 171:4 174:12,14
 178:19 179:6,12
 180:7,15,24 181:9
 181:23 182:5,14
 182:15 183:14,17
 183:22 184:5,7
 198:10,13 240:4
 257:7,9,12,16,18
 257:19,21,25
 258:3,16,25 259:6
 289:25 290:3,4
 338:5 372:23
 387:14 404:5,14
 405:2
use 164:8,16 165:12
- 165:17 166:8
 168:17 170:7,10
 170:25 172:23
 173:25 174:9
 177:21 181:24
 183:25 186:14
 187:21 196:14,17
 200:4 209:16,20
 209:21,21 215:3,7
 215:13 233:21
 234:10 235:24
 255:13 266:10,14
 267:16 300:9
 301:3 327:9
 341:17 358:23
 360:4 377:20,23
 380:23 396:8
 404:20,22
useful 247:22
users 169:16 336:3
uses 202:25 235:15
 235:16 388:20
using 163:14 168:7
 173:2 174:15
 175:15 178:6
 179:8,16,17
 195:17 196:18
 197:11,25 198:6
 203:11 204:21,25
 205:7,10 206:10
 213:9 219:23
 234:4,13,18,22
 237:24 244:14,16
 289:25 300:5
 314:12 334:12
 404:24
usually 205:12,13
 276:22 310:16
utilities 158:8
 160:17 165:9
 321:16 333:22
 336:18 342:24
 345:9
utility 163:10
 344:20 395:3,7
-
- V**
-
- v** 401:20 402:3
vagaries 245:4
 269:17
vain 340:14
valid 175:13
valleys 198:8
 205:16
value 193:25 194:2
 197:8,9 206:7
 220:15 223:8
 225:7 235:14
 239:15,22 324:16
 351:10 354:17
values 176:14
- Vancouver** 266:16
 268:13,15,17
variable 327:8
variables 164:19
 168:21 172:6,13
 178:8,11 181:7
 182:12,22 255:21
 256:7,10,11
 271:15
varies 249:19
 272:19
variety 352:22
 360:2
various 188:18
 191:21 229:2
 246:16 290:16
 319:19 322:5
 334:11 335:19
 350:11 381:21
 391:7 404:22
vary 177:19 217:25
 239:4 267:10
 338:23
vast 266:23
vehicles 210:23
verification 405:8
verify 190:16
 362:17 386:7,10
 393:10
verse 232:18
versus 197:24 205:8
 206:11 209:25
 225:19 230:18
 231:3 232:11
 243:7,17 264:10
 301:2 390:25
vi 401:21
viability 352:3
viable 291:14
 349:21
viably 163:20
Vibrant 333:14
 334:5
Vice 371:6
vice-chairman
 158:6 183:10
 259:17,18 271:3
 282:12,16,23
 298:10,23 299:3
 299:15 300:7
 313:16,21 314:5
 326:22 327:2,6,11
 327:20,23 328:2,4
 329:4 343:20
 344:11,19 345:20
 364:3,4,20 365:12
 380:15 382:19
 383:8,19 384:16
 385:12 410:9,12
 412:11
Victoria 158:16
- 347:10
view 163:21 194:11
 195:6 215:15
 223:15 226:22
 235:21 238:7,14
 241:15,15 242:13
 263:24 298:18
 300:12 339:16
 364:12 367:17
 372:12,14,20
 373:13 393:17
 394:16 395:18
 396:12
views 376:22,22
 406:10
village 302:11
virtually 367:20
virtue 230:2
Visa 176:16 180:2
 229:18 353:3,5,14
 353:15 354:2
visibility 187:22
visionary 337:7
visitors 294:23
Vis-a-vis 197:17
 198:10
vital 218:14
Voice 160:9 329:16
 333:8
volatile 206:13
volatility 203:16,17
 204:4,6 249:22
volume 169:15
 176:18 194:8,23
 195:9 210:4,6,20
 211:6 230:6 260:5
 261:3 293:21
 294:16 299:13
 309:20 319:3,20
 322:6 401:19
 402:3
volumes 169:9,21
 176:12,13 194:9
 195:11,12,16
 218:8 227:2
 318:20 355:8
 403:15,17
volumetric 169:21
 188:6
volunteer 209:16
 276:13
vulnerable 337:4
 340:16
-
- W**
-
- wages** 165:9 193:4
 198:24 199:3,6,11
 214:19 215:2,5
 218:23 220:4,14
 225:11,12,13,24
 231:21 232:7,8

- 247:15,20 252:6
256:20 261:14
262:3,25 263:23
287:4,5,8,8 332:6
338:5
wait 263:10 296:19
waiting 284:21
335:15,16 363:17
waived 323:18
walk 172:6 254:15
want 166:6 169:17
170:23 181:15
222:14 231:6
233:13 238:22
247:6,10,20
248:21 253:14
256:11 257:13,13
280:6 301:17
306:12 309:20
340:20 341:10
346:22 349:8
354:16 356:3
362:9,17 363:20
364:4 367:11
370:23,25 375:19
377:9 380:15
396:11
wanted 168:3
225:10 311:8
339:8 348:6,20
350:5
wants 410:22
war 270:12
warm 335:24
wars 294:18 328:18
wash 226:9 232:15
washes 200:10
207:12 395:15
wasn't 173:13
183:25 192:13,14
195:10 213:11
215:18 225:3
242:24 246:3
274:16,17,18
275:2 328:15
369:18 383:5
398:5 411:10
water 226:21
276:23
way 169:3 175:6
177:13 192:11
195:6 201:13
216:23 225:19,21
232:13 243:5
254:25 277:14
279:4 300:4
301:19 303:10
308:9 310:2 311:5
311:15 312:4
316:2,5 325:11
333:2,7,13 334:5
341:20 345:17,23
352:17 355:11
362:6 363:4 372:2
376:7 380:5,24
382:10 385:6
395:11,18,23
403:8,13
ways 300:15 316:19
360:2 363:18
411:15
weaknesses 387:24
wealth 361:25 362:2
wears 298:21
Wednesday 364:8
week 249:16,16
279:23,24 285:2
313:22 331:3,4,5
357:2 362:22
363:2,11,11,13,17
weekend 286:15
weekends 284:10
285:2
weekly 233:22
256:8 278:6
weeks 212:23 278:7
278:23 368:2
weight 250:25
weighted 169:12
Weir 334:3
welcome 345:25
361:22 364:2
365:13
Welfare 330:13
went 175:9 205:2
209:14 243:16
279:4 294:7,8
296:25 313:24,25
342:24
weren't 184:8 274:3
314:4
western 217:23
267:3,7,7,9 270:4
270:11,24
Westmount 160:12
348:16
whatsoever 214:15
309:20
while 168:6 332:9
335:15 336:9
373:18 401:5
Whitehorse 250:2
whole 166:6 178:10
196:13 198:11
200:3 205:15
211:8 256:11
274:20 312:8,14
323:2 347:23
355:2 362:11
372:23 374:10
375:8 376:2,9
378:11 387:19
388:4 389:23
394:20
wholesale 187:18
192:25 220:14
245:14 266:10
275:10 280:24
281:8 321:12
366:5,15 386:22
396:21 399:21,24
405:21 408:23
409:7,9
wholesaler 177:12
210:12 214:21
245:17,18,19
291:19,19 292:4,7
292:8 295:2,12,13
295:15 299:24
358:16,18 360:12
400:5 401:17
408:14
wholesalers 179:3
210:16 214:13,17
227:24 236:25
246:6 291:14
295:5 320:11,15
356:5 361:10
373:16 401:4
402:22 406:6,14
406:20 409:2
410:2
wholesaling 399:18
wide 204:10 277:25
279:7
widely 194:6
William 158:22
willing 273:18
301:22 304:25
384:17 394:13
willingness 247:3
Wilson's 169:17
295:18
winder 332:20
window 171:13
323:14,19,24
324:8 328:5
winter 203:23
332:22 333:18
334:24,25 340:13
winter's 333:3
wish 198:25 199:2
266:7 303:16
391:7
wishes 166:17
withdraw 275:23,24
witness 184:20,22
185:6,8 188:16,25
365:16 398:20
witnesses 361:10
won 246:15
wonder 202:14
300:8
wondered 397:6
wondering 162:16
172:21 231:14
273:16 299:15
365:6 383:4
wootton 160:16,16
160:17 170:3,4
171:6 190:5,6
227:14,15 232:22
232:23 348:19,20
356:23 357:9,25
358:7,13,17,20,22
358:24 359:4,7,11
359:20 360:2,8,15
360:18,22 361:5,8
361:15,22 362:15
363:4,7,14,22
364:2,4,16 365:9
365:13
word 215:13 231:24
252:23 318:14
396:8,19 397:6,11
397:24 411:4
412:3
worded 240:17
344:6
wording 397:3
words 164:2 193:23
195:17 196:17
202:21 203:21
215:7 219:16
226:17 229:18
243:15 244:23
248:23 249:15
266:25 322:19
375:19 381:12
work 188:9 193:14
208:16 211:23,25
221:8 224:16
225:25 226:2
227:18,21 228:2
246:20 248:10,11
248:12 260:17
262:24 264:22
276:13 277:4,6
294:14 296:20
308:9 312:4,11
323:3 326:16
328:20 332:6
338:4 339:6
341:22 352:17
357:17 360:21
374:24 375:2
376:7 383:18
385:7 394:10
worked 185:19
186:8,13,24
188:15 280:2,10
283:8 287:7
352:17 358:6
407:18
worker 332:8
workers 198:24
199:17 252:17
working 169:13
187:9 199:21
207:24 208:15
216:17 220:10
255:22 260:25
277:2 283:7 284:2
284:10,12,18,19
302:17 330:2,22
330:24,25 331:3
333:9 377:8
Workplace 288:4
works 308:9 350:24
385:6
worry 175:4 289:9
worst 384:10
worth 317:10
411:25
worthy 390:16
wouldn't 166:20
173:17,18 207:14
208:19 214:22,25
220:7,9 231:4
249:22 317:2
322:16 362:13
368:20 369:21
379:15
wow 310:25
write 363:23
write-off 286:16
written 259:2
260:24 346:17,18
348:6 393:10
wrong 214:7 260:16
393:22 394:5
397:20 405:11
wrote 368:8
-
- X**
-
- X** 165:4
XTR 160:15,16
295:18 348:18,22
348:24 359:12
XTR's 353:4
-
- Y**
-
- y** 307:18
year's 337:5
year-to 197:8
Yellowknife 250:2
250:14
yesterday 160:23
161:18,23 168:11
173:7,8 175:9,14
183:15,18 197:3
212:8 215:22
228:19 236:4
237:5 243:24
277:13 347:19

356:3 362:2
372:18 378:23
401:7
York 165:3 203:25
265:20,25 266:5,9
266:10,13,14,17
266:18,20 267:17
267:18,19 334:13
360:16,21,23
361:3 392:23
393:6 398:24
399:3
Young 158:10
160:20

Z

zed 159:4,4,6 161:9
161:11,15,17,20
189:8,9,11 206:21
206:22,23 273:21
275:14,15,16
365:17,18 378:21
378:23 379:2,6
380:15,23 382:19
383:5,9 384:8,21
385:13,17 387:17
389:7 394:6 410:6
zero 183:2 207:17
207:20 217:6
341:10
zone 355:18
zones 375:17 376:5
376:17
zoning 241:12

À

à 307:4

Ç

ça 306:16 307:4,7,7
307:20

É

était 306:21

Š

\$1,700 333:4
\$1.20 164:3 308:15
321:24
\$1.20.6 322:7
\$1.25 262:12 263:7
\$1.30 164:3
\$1.40 164:3
\$10,000 260:12,19
263:2 299:7
\$100 252:18 337:3
\$11,000 262:24
263:12
\$13,656 330:18
\$147 205:19
\$16,120 330:23

\$17,895 330:13,14
\$2,200 288:17 289:4
\$2,600 288:18
\$250 302:22 310:14
\$3,400 335:20
\$3,427 330:9
\$30 262:18,21
\$30,000 305:6,9,18
305:21 307:8
\$33,251 330:20
\$336,400 386:2
\$40 289:17
\$450 336:24
\$6.50 252:13
\$60 289:16,16
\$600 331:13
\$7,895 330:16
\$700 339:25
\$74,000 337:11
\$825.84 337:20
\$92 339:24

#

#8 336:16

0

0.025 402:20
0.2 402:17 408:21
408:25
0.27 402:17
005 372:8
006 372:8
04 162:10,25
05 270:5
06 162:11,25 164:9
172:4 198:13
205:14,14 209:5
209:18 214:23
250:6 256:24
259:3,4 270:5
07 250:6
07/04 205:13
08 162:14 164:7
180:14 198:13
204:22 205:17,18
209:6,18 214:23
250:5 256:24
259:2,4 269:23

1

1 160:25 233:18,18
250:9,15 291:25
295:16 302:8
306:9 318:2,10
321:24 324:24
325:2,19 334:9
351:18,19 404:18
1st 209:4,5 347:17
353:16 390:25
1,000 336:17
1,500 302:12

1,800 366:14
1.00 409:6
1.1 388:5,25 390:12
396:15,23 397:3
400:19 411:5
1.17 328:6
1.2 308:23 309:10
310:25 313:11
1.20 321:15
1.20.6 322:4
1.21 321:24 322:4
1.30 301:6
1.35 174:22
1.4 309:16 313:12
313:13,13,18
1.40 174:22 182:17
1.5 262:9,10
1.50 182:17
1.58 324:22 325:2
1.6 180:11 230:9,11
1.65 176:8 404:16
1.75 176:10 177:2
404:16 405:10,12
1/10th 325:23
1/2 295:16 314:25
321:10 351:18,18
351:19 352:13
354:5
1:15 233:3,4
10 177:18 184:13,24
218:22 219:2,14
219:16 236:22,24
237:2,3 247:13
250:15 256:24
279:13,14 289:3
297:23 302:14
330:23 332:9,12
332:14 336:12
348:24 349:3
370:3 405:23
10-minute 346:11
10-year 393:5 399:7
10:00 285:2,3,7
10:25 184:21 185:3
10:49 184:21 185:3
100 193:19 302:4
100,000 307:19
11 162:22 164:13,20
164:23 165:4,5
171:21 317:18
347:11 356:8
374:20 392:20
393:15,17 394:5
397:17 398:17
399:7 401:22
11:00 296:24
111,370 329:23
118.2 314:3
118.7 313:24
118.9 313:25
12 181:17 185:20,24

250:15 269:3,3,15
283:7,8,9 302:12
347:15 389:16
12:00 296:24
12:01 364:9
12:05 233:4
120 331:18 366:3
125 302:5
128.4 166:12 203:7
204:24
13 297:22 347:20
389:17
14 277:2 347:21
14(1) 158:2 388:19
396:6,9 400:10
140 349:3
15 184:25,25 194:7
217:13,21 226:13
271:22 297:21,22
302:23 330:3
348:7
15,000 305:13
15-minute 290:10
15.5 353:5,11
16 261:13,22 262:9
262:10 275:4
277:3 348:10
17th 348:9
17,567 330:19
18 188:2 275:4
19 199:3,11,16
214:23 219:10,13
220:16 221:12,14
252:14 277:24
405:18
19.2 253:2
1904 203:2
1960-something
339:6
1970s 185:19
1978 241:19
1990 241:14,19
242:7,11
1992 160:13
1993 332:11
1997 336:6

2

2 160:25 162:8
168:18 169:9
182:19,20 200:20
200:24 201:2
231:16 250:9,15
260:6,9,20 261:2
261:20 289:21
292:5,5 294:21
295:23 296:25
297:3 308:13,22
309:6,9 311:5,12
313:6 316:23
318:7,15 321:18

354:5 355:14,24
361:5,6 373:11
2nd 337:19
2,000,000 385:16,19
386:2
2.1 310:11
2.2 169:9 308:16
2.3 169:9 353:13
2.5 353:13
2:50 290:12
20 168:14 182:4,14
224:17 246:19
277:24 286:7
289:3 302:23
332:10
20,000 335:21
200 302:22 310:14
336:25
2000 293:15 303:8
2001 329:23
2003 268:20,25
269:9,10,24 270:4
270:16 337:18
2004 176:6 195:13
203:2,13 244:13
293:15 332:11
336:6
2005 195:14 250:6
270:14 286:22,25
287:2 293:15
305:10 306:3,4
307:9
2006 172:16,18
174:5 175:8
195:15,25 197:23
203:2 218:21
244:13 245:7,8
252:13 257:17
270:14 271:10
287:22 293:18,23
301:14,24 302:16
303:9 305:7,8
306:3,4,22 307:2
307:3 316:22
318:8 326:9
331:17 390:25
404:15,16 406:21
407:7 408:3
2007 195:15 294:3
337:17
2008 158:4 161:2
172:20 173:8
175:15 195:17,25
197:24 203:6,13
218:22 229:25
244:15 245:8,8
252:13 257:17
268:20,25 305:8
347:14,17,22
348:4,9 404:15,16
21 265:2 352:8

362:22
22 180:11,15 181:17
22,276 330:18
23 293:10
24 253:18 262:3,6
 318:14 323:13,18
 324:8 350:19
 352:8 357:3
24,550 331:25
25 173:23,25 182:4
 281:20 291:4
 331:4 356:5
 377:21 411:11,17
250 335:17
251 159:1
252 160:1
253 161:1
254 162:1
255 163:1
256 164:1
257 165:1
258 166:1
259 167:1
260 168:1
261 169:1
262 170:1
263 171:1
264 172:1
265 173:1
266 174:1
267 175:1
268 176:1
269 177:1
27 172:8 301:25
 332:12
270 178:1
271 179:1
272 180:1
273 181:1
274 182:1
275 183:1
276 184:1
277 185:1
278 186:1
279 187:1
28 241:5 316:17
280 188:1
281 189:1
282 190:1
283 191:1
284 192:1
285 193:1
286 194:1
287 195:1
288 196:1
289 197:1
29 366:17 370:13,19
 385:13,15
29th 333:24
290 198:1
291 199:1

292 200:1
293 201:1
294 202:1
295 203:1
296 204:1
297 205:1
298 206:1
299 207:1

3

3 173:23 200:24
 231:17 255:18
 273:23 289:22
 292:7 294:21
 308:15 311:13,19
 314:25 316:23
 336:10 354:5
 355:14 361:7
 373:11 402:9
 404:11 405:13
3rd 347:14
3.6 195:19,22 196:2
 199:12 219:11,12
 219:14 221:10
3.8 268:25 269:7,10
 269:24 270:8
3:00 290:11
3:12 290:12
30 182:4 209:15
 257:16 259:12
 286:2,5 294:20,22
 300:22 302:14
 370:18 377:21
 404:14 408:24
30,000 303:12 306:6
300 208:1
301 209:1
302 210:1
303 211:1
304 212:1
305 213:1
306 214:1
307 215:1
308 216:1
309 217:1
31 336:9
310 218:1
311 219:1
312 220:1
313 221:1
314 222:1
315 223:1
316 224:1
317 225:1
318 226:1
319 227:1
320 228:1
321 229:1
322 230:1
323 231:1
324 232:1

325 233:1
326 234:1
327 235:1
328 236:1
329 237:1
330 238:1
331 239:1
332 240:1
333 241:1
334 242:1
335 243:1
336 244:1
337 245:1
338 246:1
339 247:1
340 248:1
341 249:1
342 250:1
343 251:1
344 252:1
345 253:1
346 254:1
347 255:1
348 256:1
349 257:1
35 168:14 180:7,24
 181:9,18 182:14
 183:3 294:20
 300:22 335:24
350 258:1
351 259:1
352 260:1
353 261:1
354 262:1
355 263:1
356 264:1
357 265:1
358 266:1
359 267:1
36 331:3
36.9 197:22 198:2
360 268:1
361 269:1
362 270:1
363 271:1
364 272:1
365 273:1
366 274:1
367 275:1
368 276:1
369 277:1
37 301:13 305:4
370 278:1
371 279:1
372 280:1
373 281:1
374 282:1
375 283:1
376 284:1
377 285:1
378 286:1

379 287:1
38 283:9 331:4
380 288:1
381 289:1
382 290:1
383 291:1
384 292:1
385 293:1
386 294:1
387 295:1
388 296:1
389 297:1
39 330:18
390 298:1
391 299:1
392 300:1
393 301:1
394 302:1
395 303:1
396 304:1
397 305:1
398 306:1
399 307:1

4

4 292:10 351:18
 352:13 353:24
 373:11 402:10
4.1 172:5,7,9,10
 173:14
4.2 162:9 168:4
 171:10 174:7,11
 175:7,14 202:14
 202:14,17 238:17
 238:21 257:12,15
 265:15 269:19
4.25 293:12
4.3 267:22
4.6 294:12
4:00 365:11 399:16
4:48 346:12
4:55 346:12
40 179:12 183:19
 185:23 215:3
 258:25 291:4
 294:22 300:23
 310:16 355:2
400 308:1
401 309:1
402 310:1
403 311:1
404 312:1
405 313:1
406 314:1
407 315:1
408 316:1
409 317:1
410 318:1
411 319:1
412 320:1
4121 236:17,22

413 321:1
414 322:1
415 323:1
416 324:1
417 325:1
418 326:1
419 327:1
42 332:7
420 328:1
421 329:1
422 330:1
423 331:1
424 332:1
425 333:1
426 334:1
427 335:1
428 336:1
429 337:1
430 338:1
431 339:1
432 340:1
433 341:1
434 342:1
435 343:1
436 344:1
437 345:1
438 346:1
439 347:1
440 348:1
441 349:1
442 350:1
443 351:1
444 352:1
445 353:1
446 354:1
447 355:1
4471 236:23
448 356:1
449 357:1
45 179:13 180:25
 181:10,18 257:16
 259:12 310:16
 355:3 404:14
450 358:1
451 359:1
452 360:1
453 361:1
454 362:1
455 363:1
456 364:1
457 365:1
458 366:1
459 367:1
46 180:6
460 368:1
461 369:1
462 370:1
463 371:1
464 372:1
465 373:1
466 374:1

