

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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IN THE MATTER of an application by Corridor Resources Inc. for a Permit to Construct a pipeline to connect a new G-48 Well Pad to the existing McCully Gas Field Gathering System

Held at the Fairway Inn, Sussex, N.B. on August 12th 2008.

BEFORE: Raymond Gorman, Q.C. - Chairman
Cyril Johnston - Vice-Chairman
Constance Morrison - Member
Steve Toner - Member

NB Energy and Utilities Board - Counsel - Ms. Ellen Desmond
- Staff - Todd McQuinn
- David Keenan

Board Secretary - Ms. Lorraine Légerè

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Undertakings by Mr. Norman:

- page 5 - if original or certified copy of insurance policy
has not been filed with the Board to undertake to
do so
- page 13 - to make sure that a notification provision is put
into the insurance policy, and that notification
period would be 60 days
- page 26 - to have ambiguity clarified re the insurance
policy

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NEW BRUNSWICK ENERGY AND UTILITIES BOARD
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CHAIRMAN: Good morning. This is a pre-hearing conference
of the New Brunswick Energy and Utilities Board in
connection with an application by Corridor Resources Inc.
for a Permit to Construct one pipeline and related well
pad facilities from Well Pad G-48 to connect with existing
gathering lines and gas plant for the purpose of gathering
and transmitting natural gas in the McCully Natural Gas
Field.

Today's panel of the Energy and Utilities Board
consists of the Vice-Chair, Cyril Johnston, Connie
Morrison, Steve Toner and myself, Raymond Gorman.

Could I have the appearances, please?

MR. NORMAN: Yes, David Norman appearing on behalf of the
Applicant, Corridor Resources. And with me is Douglas --

2 sorry, I am getting tongue-tied here.

3 CHAIRMAN: Mr. Bailey.

4 MR. NORMAN: Douglas Bailey. It is the title I am looking
5 for. Production Operations Manager. And Norm Miller was
6 supposed to be here, Mr. Chairman, but he has been called
7 away on an urgent family matter and regrets that he not
8 available for this hearing. But I am sure we will be fine
9 with Mr. Bailey, who will be the primary witness if and
10 when that is required.

11 CHAIRMAN: I am sure Mr. Bailey is well familiar with the
12 facts surrounding this matter.

13 MR. NORMAN: Yes.

14 CHAIRMAN: Thank you. For the New Brunswick Energy and
15 Utilities Board?

16 MS. DESMOND: Ellen Desmond, Mr. Chair. And from Board
17 Staff, Todd McQuinn and Dave Keenan.

18 CHAIRMAN: Under the legislation various Ministers are
19 deemed to be parties to the application. Is anybody here
20 representing any of those Ministries? And the people that
21 are sitting back in the second row, who are they with?
22 Are they with the Applicant or --

23 MR. NORMAN: Yes.

24 CHAIRMAN: So that pretty much covers everybody in the room
25 then. All right. We have some pre-filed documents which

2 I will mark as exhibits. And I believe the exhibit list
3 would have been provided -- the tentative exhibit list
4 would have been provided to you, Mr. Norman?

5 MR. NORMAN: It was, Mr. Chairman. But there are a few
6 additions that will have to be in the course of the
7 hearing.

8 CHAIRMAN: Yes. I will go through the exhibits or the
9 documentation that has been pre-filed and give it an
10 exhibit number then and then we will go from there.

11 MR. NORMAN: That's fine.

12 CHAIRMAN: The exhibit list then that has been circulated,
13 exhibit 1, is the affidavit of proof of publication and
14 the affidavit of deposit of application to the designated
15 locations. And that document -- I guess -- I don't know
16 that we that? Do you have that with you today, do you?

17 Do we have that Madame Secretary?

18 BOARD SECRETARY: It was provided to me this morning.

19 CHAIRMAN: Thank you. Exhibit number 2, is a letter dated
20 July 4th 2008 from Todd McQuinn, Chair of the Pipeline
21 Coordinating Committee, know as the PCC, confirming that
22 members of the PCC agreed to issuance of construction
23 permits subject to the conditions outlined in that letter.

24 Exhibit number 3, is an Application to Construct and
25 supporting evidence dated July 8th 2008, Volume 1 of 2.

2 And I am not going to read through all of the contents of
3 that document. They are listed on the exhibit list.

4 Exhibit 4, Application to Construct, Environmental
5 Impact Assessment dated July 8th 2008, that is Volume 2 of
6 2. And again there are a number of items contained in
7 that volume. I will not list them for the record. They
8 will be part of the exhibit list.

9 Those are the documents that I have pre-filed.

10 MR. NORMAN: Yes. The additional document that I would like
11 to file at this time and I have provided copies to Ms.
12 Legere, is the Certificate of Determination, which goes
13 hand in hand with Volume 2, exhibit 4.

14 CHAIRMAN: Just give me just one moment. All right. We
15 will mark that as exhibit number 5. Certificate of
16 Determination dated July 17th 2008.

17 MR. NORMAN: And the only other document that the Applicant
18 wishes to tender is a copy of the current insurance policy
19 that is required under the conditions to the letter of Mr.
20 McQuinn and I can introduce that through the witness
21 assuming that our application to have this hearing be the
22 complete hearing is approved by the Board.

23 CHAIRMAN: Sure. Or if you would like, I don't see any
24 reason why we couldn't mark it at this time. We don't
25 have anybody here in opposition. And if anybody -- if

2 Board Counsel or any of the Board Members have any
3 questions with respect to it, they certainly can ask the
4 witness. But for purposes of marking it as an exhibit, I
5 think we can do that now.

6 So, Mr. Norman, the document is a Chubb Insurance
7 Company of Canada liability insurance policy. Now this is
8 a copy. And I believe that an original or a certified
9 copy or something of that nature will actually be filed
10 with the Board?

11 MR. NORMAN: Yes. If that has not been done, we certainly
12 undertake to do so. I should point out that this policy
13 is a policy that is currently in effect and has been since
14 January 26th of 2008. So it is the policy under which the
15 -- all of the work being done is presently covered.

16 CHAIRMAN: Thank you. That will be marked as exhibit number
17 6. Are there any other documents that you are looking to
18 tender as exhibits today?

19 MR. NORMAN: No.

20 CHAIRMAN: Thank you. The Board has received a letter from
21 you dated August 6th of this year requesting that today's
22 pre-hearing conference be treated as a final hearing for
23 approval of the application.

24 The purpose of today's hearing was to allow the
25 Applicant and Intervenors or other interested parties to

1
2 attend and make representations with respect to the type
3 of proceeding to consider the application, the procedure
4 to be followed in respect of the proceeding and any other
5 matters in respect thereto. But, of course, nobody filed
6 as Intervenors. Nobody is present here today. And so I
7 will ask counsel of NB EUB any objection to moving to a
8 final hearing?

9 MS. DESMOND: There is no objection from Board Staff, Mr.
10 Chair.

11 CHAIRMAN: Thank you. In that case, we will grant your
12 request to treat today's hearing as a final hearing with
13 respect to this application.

14 Mr. Norman, I will ask you then to proceed with this
15 matter. And I guess unlike some applications, we don't
16 have any sworn affidavit in relation to it. Some
17 applications we do, some we don't. So in that regard, I
18 would at a minimum at least ask you to swear a witness to
19 speak to the evidence and then to the correctness of it,
20 the truthfulness of it, et cetera.

21 MR. NORMAN: Yes. That's fine, Mr. Chairman. And in order
22 to satisfy that requirement, I would like to call Mr. Doug
23 Bailey.

24 CHAIRMAN: I will ask Board Counsel to come forward and
25 swear Mr. Bailey.

2 DOUGLAS BAILEY, having been duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION BY MR. NORMAN:

5 CHAIRMAN: Ms. Desmond, it may be kind of awkward for you
6 back there to watch or listen to this evidence. Do you
7 want to come forward? I appreciate we have a shortage of
8 microphones.

9 MS. DESMOND: That's fine.

10 MR. NORMAN: Mr. Chairman, I should apologize for my attire,
11 and I intended to do that earlier. I left home a number
12 of days ago, packed a suit. This morning when I went to
13 put it on, found I had no neck tie. So what you see is
14 what you get. Normally, I would have a tie --

15 CHAIRMAN: I hate to admit this, but if you hadn't pointed
16 out, I would have noticed.

17 MR. NORMAN: It goes to show how unnecessary counsel is in
18 the proceedings.

19 CHAIRMAN: Oh, I wouldn't agree with that at all. To the
20 contrary. Is it all right if Mr. Bailey sits at this
21 location. This is where the mike is?

22 CHAIRMAN: I think there is some difficulty with getting the
23 microphone over there today. So that location is fine.
24 You have got your books set out in front of you there. I
25 think that is fine.

2 MR. NORMAN: Thank you.

3 Q.1 - Your name?

4 A. Doug Bailey.

5 Q.2 - Yes. Mr. Bailey, are you employed by Corridor
6 Resources?

7 A. Yes, I am.

8 Q.3 - The Applicant in this matter. And would you give an
9 outline generally of your responsibilities?

10 A. I am the Production Operations Manager responsible for
11 the safe construction of all of the new facilities,
12 pipelines, well pad facilities and the operation of those
13 facilities once they are constructed.

14 Q.4 - How long have you held that position?

15 A. Since October of 2006.

16 Q.5 - And are you familiar with Volumes 1 and 2 of the
17 application, which are marked as exhibits 3 and 4?

18 A. Yes, I am. Yes.

19 Q.6 - And did you have anything to do with the preparation of
20 those volumes?

21 A. Yes. I spent some time preparing Volume 1 in
22 particular and reviewing Volume 2.

23 Q.7 - And are you also familiar with a letter from Mr. Todd
24 McQuinn on behalf of the Pipeline Coordinating Committee
25 dated July 4th 2008, which has been marked as exhibit 2?

2 A. Yes, I am familiar with that letter and the conditions
3 thereto.

4 Q.8 - Yes. And are you also familiar with the Certificate of
5 Determination that was issued dated the 17th of July 2008,
6 which is now marked as exhibit 5?

7 A. Yes, I am.

8 Q.9 - And you are aware of the fact that the letter from Todd
9 McQuinn on behalf of the Pipeline Coordinating Committee,
10 as well as, the Certificate of Determination contain
11 various conditions required to be completed or fulfilled
12 during the course of construction by Corridor Resources?

13 A. Yes, I am aware of those conditions.

14 Q.10 - Yes. And are you in a position to say whether Corridor
15 is able to fulfil those conditions during the course of
16 the work subject to this application?

17 A. Yes, Corridor is able to comply with those conditions.

18 YQ.11 - Yes. And who is the person who will be generally
19 responsible for overseeing the completion of those or
20 fulfilment of those conditions?

21 A. That would be myself and the staff of Corridor. They
22 are at the table behind me.

23 Q.12 - Now the conditions imposed by the Pipeline Coordinating
24 Committee, and in particular Condition 19, requires that
25 Corridor obtain and maintain liability insurance in the

1 - 10 - Mr. Bailey - Direct - Mr. Norman -

2 form acceptable to the Board. Has Corridor done that?

3 A. Yes. Corridor has the insurance policy that's just
4 been issued as I think exhibit 6.

5 Q.13 - Exhibit 6.

6 A. And on this -- sorry.

7 Q.14 - I am sorry. Continue.

8 A. And this is a policy we get annually for the work that
9 we contemplate doing within that calendar year. And once
10 the work is complete, of course, then the ongoing
11 operations of those facilities fall under our general
12 insurance.

13 Q.15 - And what is the term of this particular policy?

14 A. This policy is in effect for the calendar year 2008.
15 January 2008 to January 2009.

16 Q.16 - And has it been the practice of Corridor to renew such
17 coverage on an annual basis?

18 A. Yes. We evaluate our -- the value of our construction
19 during the calendar year end and get coverage that is
20 suitable for that work.

21 Q.17 - Now finally, Mr. Bailey, with respect to how the work
22 that is subject to this application is to be financed, can
23 you explain how that will be done?

24 A. It will be financed from Corridor's internal
25 financing.

2 Q.18 - And is there any question as to Corridor's
3 capability of doing that?

4 A. No. Corridor has more than sufficient finances to
5 build this project. And in addition we have a \$40 million
6 revolving line of credit that is -- has nothing on it
7 right now, so financing is not an issue.

8 MR. NORMAN: I have no further questions. Thank you, Mr.
9 Chairman.

10 CHAIRMAN: Thank you, Mr. Norman. Ms. Desmond, do you have
11 any questions?

12 MS. DESMOND: Yes, I do, Mr. Chair.

13 CROSS EXAMINATION BY MS. DESMOND:

14 Q.19 - Just one question with respect to insurance, Mr.
15 Bailey.

16 A. Yes.

17 Q.20 - In the certificate -- sorry, the letter from Mr.
18 McQuinn, Condition 19, if you could just turn that up?

19 A. Yes.

20 Q.21 - There is a reference to the fact that the policy will
21 be in effect and essentially will notify the Board if the
22 policy is to be cancelled or if there is any material
23 change in the policy, under that condition?

24 A. Yes.

25 Q.22 - And if I also refer you to page 12 of the insurance

2 policy itself, which is exhibit 6.

3 A. Yes.

4 Q.23 - And when I read those cancellation provisions, there is
5 nothing in that policy which confirms that the Board would
6 in fact be notified if the policy was to be cancelled.
7 Can you undertake to provide to the Board an amended
8 insurance which would in effect give the Board comfort
9 that they would be notified should the policy be
10 cancelled?

11 MR. NORMAN: I am sorry. Your question is whether or not we
12 will undertake to have the company provide notice, that is
13 Chubb Insurance, provide notice to the Board --

14 MS. DESMOND: Yes.

15 MR. NORMAN: -- in the event of cancellation?

16 MS. DESMOND: Yes. I believe in past the policy had been
17 amended to reflect that notice would be provided to the
18 Board and that 60 days notice would be provided should
19 there be a material change or should cancellation occur?

20 WITNESS: There is two sets of insurance. One is this wrap-
21 up, construction wrap-up, which deals strictly with the
22 construction. There is the second insurance policy which
23 is the one that you are probably referring to, which is
24 our general insurance, that does have the clause in and
25 remains filed with the Board. I see no reason why we

2 couldn't undertake to get that notification reflected in
3 this one as well.

4 MS. DESMOND: Thank you. Those are all of my questions, Mr.
5 Chair.

6 WITNESS: Just recognizing that this is renewed on an annual
7 basis for varying amounts based on what we anticipate our
8 work to be for the year.

9 MS. DESMOND: Yes.

10 CHAIRMAN: Just for clarification then there is an
11 undertaking to make sure that a notification provision is
12 put into the insurance policy, and that notification
13 period would be 60 days.

14 MR. NORMAN: Yes. Just to qualify that, like any other
15 undertaking it is contingent on the other party co-
16 operating. I have no reason to think that Chubb Insurance
17 should not co-operate. But if they refuse to, we will
18 certainly notify the Board of that.

19 CHAIRMAN: It is a pretty standard type of provision in an
20 insurance policy.

21 MR. NORMAN: I would think -- I would think so. But
22 insurers being insurers, Mr. Chairman, I take nothing for
23 granted any more.

24 CHAIRMAN: I don't think I will respond to that one.

25 MR. NORMAN: No. I am not asking you should.

2 CHAIRMAN: So, Ms. Desmond, you have nothing further?

3 MS. DESMOND: No, that's everything. Thank you.

4 CHAIRMAN: Any questions from the Board?

5 MR. TONER: Yes.

6 CHAIRMAN: Mr. Toner?

7 MR. TONER: You wrap-up -- you constantly keep this policy -
8 - you renew this because your construction is pretty much
9 ongoing, is that why you keep this policy in effect at all
10 times?

11 WITNESS: That's correct. We plan on doing construction
12 each and every year.

13 MR. TONER: So you renew this at the same time you renew
14 your other policies?

15 WITNESS: The other policy basically it remains unchanged,
16 our general policy. This one is the one that changes from
17 year to year.

18 MR. TONER: And I would like you to explain something to me,
19 and I am not an insurance guru, but on page 3 of your
20 policy, under Section VII, the Deductibles --

21 WITNESS: Yes.

22 MR. TONER: -- and under the Deductible, under per
23 Occurrence stating not covered, that confuses me, just
24 because of the type of work you are doing. Maybe you can
25 clear that up for me. The deductibles indicated blow

2 apply to shoring, underpinning, excavating, blasting, but
3 it is saying per occurrence not covered. Can you -- I
4 know it is referring to deductibles, so kind of explain to
5 me what that -- I am sure you will be excavating or you
6 will be doing something to that effect?

7 WITNESS: Those items would typically be covered by the
8 contractor's insurance. We physically don't do the
9 shoring. The contractors we hire would do that and we
10 would ensure that they have the appropriate coverage to
11 look after that.

12 MR. TONER: So is there like a gap there?

13 CHAIRMAN: Well, Ms. Desmond, I wonder is there an issue
14 here that Mr. Toner has raised with respect to whether or
15 not we should be also provided with a copy of any
16 contractor's liability insurance policy to ensure that
17 there is coverage for items covered under (a) and (b)? Is
18 this an issue? Mr. Toner, may have uncovered something
19 here that we hadn't contemplated.

20 MS. DESMOND: Mr. Bailey, I would have thought that with a
21 wrap-up policy the intent is to cover all of the work that
22 is to be done during the construction period on the site.
23 That is my understanding of -- I have a limited
24 understanding of wrap-up liability insurance. And for
25 that reason is there some rationale as to why that item

2 would have been excluded?

3 WITNESS: Well both (a) and (b), we don't contemplate any
4 shoring. All of our excavations at this point is -- are y
5 you know less than -- or around a meter deep. So they
6 don't require shoring. We are not close to any buildings
7 that require underpinning. And we are not going to be
8 using any blasting or explosives. So the fact that they
9 are sort of not covered at this point is I think somewhat
10 moot in that we don't contemplate undertaking those
11 activities.

12 MS. DESMOND: In the event the nature of the work changed
13 are you prepared to advise the Board of that and perhaps
14 contact the Board so that appropriate coverage can be put
15 in place?

16 MR. TONER: It doesn't have any other or below surface of
17 the ground involving 1 meter or 1 inch.

18 WITNESS: Right. We can review that and see whether there
19 is a need to cover that.

20 MR. TONER: Because the limits of your contractor could
21 easily be a million or 250, like it could be low if you
22 don't --

23 VICE-CHAIRMAN: Ms. Desmond, do you have the legislation
24 with you there for Mr. Norman? I am just wondering there
25 is a specific reference to insurance requirements in the

2 Regulations. Maybe we could have a peek at that while we
3 are discussing this topic?

4 MS. DESMOND: Mr. Johnston, I am aware that there are
5 specific insurance requirements. I believe in the
6 Regulations. I don't think it speaks to the amount. In
7 fact I think it requires the Board to be satisfied that
8 the amount is satisfactory. So the Board should be -- has
9 the onus of ensuring that they are satisfied that
10 sufficient coverage is in place.

11 VICE-CHAIRMAN: If we could just locate that section?

12 MS. DESMOND: It is Section 20 of the Act, which reads, the
13 Board shall not issue --

14 MR. NORMAN: What section are referring to?

15 MS. DESMOND: Section 20 of the Act.

16 MR. NORMAN: Yes.

17 MS. DESMOND: -- which provides that the Board shall not
18 issue a permit or license to any person unless the person
19 is insured. And then section (a) says, by a company
20 licensed to do business in New Brunswick against any
21 liability the person may incur in construction -- in
22 constructing or operating the pipeline. And (b) is in the
23 amount approved by the Board.

24 MR. TONER: Of the 14 pages, seven pages are excluded
25 including excavation.

2 CHAIRMAN: It just strikes me that it might be helpful, Mr.
3 Bailey if you could take a couple of minutes and walk us
4 through what is involved. And I this is I think a
5 relatively small project. And it may well be that the
6 entries that are excluded don't even come into play, as
7 you have indicated. But could you explain to me, you
8 know, in sort of very, very briefly what is involved in
9 laying this pipe and how big a project it is, what the
10 magnitude of it is and the process that would be followed?
11 Because it may well be that we are looking into something
12 that's not necessary. I don't know.

13 MR. TONER: Excuse me, Mr. Chair. But I don't mean to harp
14 on this. It's not the size of this project. It's that it
15 is ongoing and there is future -- expect this to be going
16 on for quite a few years and that's kind of why I am
17 harping on this now. I don't think it has to do
18 specifically with this project, as much as it has to do
19 with going forward.

20 CHAIRMAN: Well perhaps we can address both issues, but I
21 mean if you would just very briefly walk us through what
22 we are talking about here, because, you know, if you were
23 to start the project tomorrow, you know, how long would it
24 take and what is the process?

25 WITNESS: It is a relatively small pipeline project about

2 300 meters of 6-inch pipe. It should take about a week to
3 construct starting with clearing -- sort of clearing the
4 right of way, which means grading off the topsoil
5 conserving that, removing any trees. In this case, it is
6 a corn field. So there is just the minimal clearing.
7 Welding of the pipe, then we would -- along the right of
8 way, once the pipe is welded, and the coating is all taken
9 care of, we would dig the ditch and then lower the pipe
10 into that ditch, backfill it, hydrostatically test it, and
11 put it in service. In simple terms that's the process.

12 Maybe the address the question on an ongoing basis, as
13 we stated up front, we revise this construction wrap-up
14 policy on an annual basis contemplating the work we are
15 going to undertake in the coming calendar year. So if we
16 were contemplating deep excavations requiring shoring and
17 that sort of thing or doing blasting, we would look at
18 whatever additional coverage we thought and by agreement
19 with the Board was appropriate for that activity.

20 CHAIRMAN: Thank you for that explanation. Mr. Toner, maybe
21 you may have some follow-up questions?

22 MR. TONER: Yes. I guess I am concerned because it is a
23 construction liability that it excludes anything below the
24 surface of the ground and that's 100 percent of where the
25 work is. Yes, even moving the topsoil, you are below the

2 surface of the ground. So your subcontractor in this
3 case -- I guess I just have an issue with everything I
4 know that you are excluding -- they are excluding
5 everything that has to do with the work, somewhat, do you
6 know what I mean?

7 WITNESS: Yes, I am just kind of going --

8 MR. TONER: Do you see what I mean?

9 WITNESS: I don't want this to go on longer than you do,
10 okay. I have other things to do. But in this case here,
11 I find that there is a gap without knowing what the
12 contractor's liability insurance -- I am not even sure you
13 know who the contractor is going to be at this point
14 either way?

15 WITNESS: We are just in the process of selecting the
16 contractor, yes. I guess I am having difficulty sort of
17 contemplating the kind of risks associated with digging a
18 1 meter deep ditch in the middle of the corn field that we
19 would need to cover off at this point.

20 MR. NORMAN: Mr. Toner, what part of the policy are you
21 referring to? Are you able to --

22 MR. TONER: That's on page 3 of 14.

23 MR. NORMAN: On page --

24 MS. DESMOND: Mr. Chair, could I ask Mr. Bailey just a
25 couple of additional questions that might add some clarity

2 to the situation?

3 CHAIRMAN: Well if you think it would add some clarity to
4 the --

5 MR. TONER: Go ahead, yes.

6 MS. DESMOND: Mr. Bailey, is it correct that a couple of
7 years ago, the policy, the wrap-up policy itself was
8 reviewed by a Board external consultant? Do you recall
9 that whether or not it was -- there had been negotiations
10 back and forth between your insurance company and a Board
11 consultant to have reviewed the policy?

12 WITNESS: I recall the review. I don't recall which policy
13 it was. I know there was some exchange of correspondence
14 on the general liability policy that the company has. It
15 is an ongoing policy.

16 MS. DESMOND: And to your knowledge did it include the wrap-
17 up policy?

18 WITNESS: I don't know if it did or not, no.

19 MS. DESMOND: Had there been any material changes to the
20 wrap-up policy from when that review took place to your
21 knowledge?

22 WITNESS: To my knowledge, no. It has been the same sort of
23 specimen policy we filed in each application.

24 MS. DESMOND: Can I suggest, Mr. Chair that perhaps we take
25 a short break and maybe with the assistance of Mr.

2 McQuinn, we could have a discussion about you know what
3 transpired a couple of years ago to see if there have been
4 any differences from what review has taken place then?

5 CHAIRMAN: All right. We will take a short adjournment.

6 You let us know when you are ready.

7 (Recess - 10:35 a.m. to 11:00 a.m.)

8 CHAIRMAN: During the break, the Board has had an
9 opportunity to look at the construction wrap-up liability
10 policy that was submitted today as exhibit number 6. This
11 has been compared with the specimen policy, which was part
12 of Appendix G, in the pre-filed evidence. And there
13 appears to be a material difference under the Deductible
14 section in the sense that in the specimen policy there was
15 a hundred thousand dollar per occurrence deductible in the
16 one that was -- in the contract that was filed today, the
17 words, not covered, appear.

18 The Board, I guess, can't say with certainty what, not
19 covered, means but if in the event that it is intended to
20 be an exclusion -- it is not under the Exclusion section,
21 and we understand that, but if it is intended to be an
22 exclusion, then the phrase, that any other work below the
23 surface of the ground, it would appear to the Board that
24 perhaps the policy doesn't cover anything.

25 So I guess the Board has some difficulty moving

2 forward and granting a permit today based on the policy of
3 insurance that is before us. Now we haven't heard -- Mr.
4 Norman, we haven't heard any final argument from you. And
5 I really in a sense just trying to give you an idea of
6 what the Board is thinking in terms of final argument,
7 because we don't have any other issues. So just so that
8 you understand what we are looking at here. Because of
9 those words, not covered, appearing and if the intention
10 of those words was to say that there is no coverage for
11 any other work below the surface of the ground, it would
12 appear to us that the policy really doesn't cover
13 anything. And we think that it is important enough --
14 this issue is important enough that we should determine
15 whether or not that is there in error, just to ensure that
16 in fact the appropriate insurance is here.

17 Now we also understand that part of the conditions
18 that the PCC had indicated in their letter that they would
19 like to see apply here would be a 10-day notice to the
20 Board once the permit is granted. And the Board would
21 consider varying that if it takes two or three days. The
22 Board certainly would have the ability to vary that and
23 perhaps substitute what is in the recommendation with a
24 period of time that may be somewhat abbreviated.

25 So with those comments, Mr. Norman, I would invite you

2 if you have anything that you would like to say to the
3 Board that if you feel we should proceed in a difference
4 fashion. And there is no need to make, as a I say, final
5 argument with respect to anything else in your
6 application. The Board -- I can tell you the Board is
7 satisfied subject to the conditions that have been
8 outlined by the PCC in the environmental assessment.

9 MR. NORMAN: Yes. Mr. Chairman, I think you have hit the
10 nail on the head. The confusion is over the words, not
11 covered. And when I had an opportunity to look at this
12 during the break, I came to the conclusion that the words,
13 not covered, in fact are intended to mean that there is
14 not covered by any deductible. In other words, there is
15 no deductible with respect to those matters. Because
16 under the Exclusion provision of the policy, it is clear
17 that there is no exclusion with respect to underground and
18 whatnot, which tells me it is covered.

19 The other thing that tells me it is covered is that
20 you only have a deductible with respect to things that are
21 covered. There is no purpose in having a deductible with
22 respect to things that are not covered. It just wouldn't
23 make any logical sense in the structure of the policy.

24 So I think that the words, not covered, are intended
25 to mean that there is no deductible with respect to them,

2 which is really -- which really means that that policy is
3 stronger than the specimen, because there was a hundred
4 thousand dollar deductible provided for in the specimen,
5 which means that Corridor would be responsible for that
6 hundred thousand dollars. Whereas under the policy that
7 has been presented to the Board, there is no deductible in
8 that regard.

9 Now that is simply my analysis of it. And I agree
10 with you, Mr. Chairman and Members of the Board, that
11 that's something we will have to clarify with -- through
12 the insurer and that's what we will do.

13 CHAIRMAN: And I understand that that is one possible
14 interpretation though that you put forward. It is one
15 that I certainly considered that what it meant was there
16 was no deductible. But I guess unfortunately they didn't
17 put a zero in there or they didn't put the words, no
18 deductible.

19 MR. NORMAN: No. It is ambiguous. I agree.

20 CHAIRMAN: And then by using the words, not covered, it
21 certainly puts us in a position where we -- I don't think
22 that we have the assurance that we need.

23 So the outcome then that we would have for today is
24 that we would reserve our decision on this matter subject
25 to having the issue on page 3 of 14 of the construction

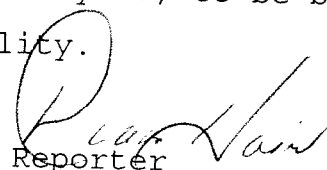
1 wrap-up policy dealing with deductibles clarified. And to
2 make sure you understand what it is we are looking for, we
3 want to be assured that the items in (a) and (b) were not
4 intended as exclusions, but that in fact there is a zero
5 deductible. Or if there is some deductible, that we have
6 an opportunity to have a look at that deductible and then
7 we will issue a decision very quickly once we receive that
8 information. It may be information that you will be able
9 to get today. I don't know. But if something -- you can
10 work with Board Staff on that. And the Board will
11 endeavour to give a decision as quickly as possible once
12 that occurs. And as I have indicated, we might be
13 inclined as well to abbreviate the 10-day notice period in
14 the event that we feel that efforts have been made to
15 obtain this as quickly as possible.

9 MR. NORMAN: We understand perfectly, Mr. Chairman. We will
10 undertake to have that ambiguity clarified just as soon as
11 we can.

11 CHAIRMAN: All right. So this matter will stand adjourned.
12 And the Board will render a written decision just as soon
13 as the issue of the insurance policy has been clarified.
14 Thank you.

15 MR. NORMAN: Thank you, Mr. Chairman, Members of the Board.
16 (Adjourned)

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

21
22 
23 Reporter
24
25

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