

New Brunswick Board of Commissioners of Public Utilities

Hearing - May 18th 2000

IN THE MATTER OF AN APPLICATION BY ENBRIDGE GAS NEW BRUNSWICK  
INC. DATED DECEMBER 31, 1999, FOR A PERMIT OR PERMITS TO  
CONSTRUCT PIPELINES IN ORDER TO PROVIDE NATURAL GAS  
DISTRIBUTION SERVICE

Henneberry Reporting Service

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Chairman: David C. Nicholson, Q.C.

Commissioner: Monika Zauhar

Commissioner: John Chenier

Commissioner: Jacques A. Dumont

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APPEARANCES:

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David MacDougall, Esq. } Brunswick Inc.

Ian Blue, Esq., Q.C. } for the Province of New  
Brunswick

Donald Barnett, Esq., Assistant Deputy Minister, Province  
of New Brunswick Department of  
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S. Dennis Holbrook, Esq., for MariCo Oil & Gas Corporation

Christopher J. Stewart, Esq., for Irving Oil Limited

Bruce A. Noble, Esq. for City of Fredericton

Ms. Juli Abouchar for Union of New Brunswick Indians

William F. O'Connell, Esq., }for Board Staff  
Ms. E. Ann Mowatt }

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CHAIRMAN: Good morning, ladies and gentlemen. Just one quick matter from the Board before I ask counsel if there are any preliminary matters.

A week or so ago, and I can't remember how long ago it was, we indicated that if this hearing were to conclude today, that we would allow counsel to exchange ideas with the Board in reference to costs tomorrow.

From everything that I see, that is going to be impossible. So after summation, which I hope will occur tomorrow probably afternoon, the Board will set up a timetable for your comments in reference to concluding the discussion on costs in writing.

Now are there any preliminary matters? Mr. Stewart?

MR. STEWART: Mr. Chairman, just one small matter. There was I think -- I don't know if an undertaking is the word, but perhaps it is, given day before yesterday by Mr. Harte, which I believe was complied with or at least in part by the provision of the documents which have been marked as A-13. That is the distribution plans on the Stoner software system.

And when I looked at these yesterday afternoon, it occurred to me that these appear to be the plans from the software system for the grid mains.

And my understanding is, I just -- and I wanted to go back and check the transcript, which I did, that the

undertaking was to provide the in-fill distribution plan to the extent that that was done.

Mr. Harte said that it was done at least for the communities or partially done for the communities that will be served this year.

And what has been provided was the mains, not that. And maybe nothing else exists, whatever. But I just wanted to clarify that. Because these documents don't seem to answer the undertaking, that's all.

CHAIRMAN: Either Mr. MacDougall or Mr. Harte, can you comment on that?

MR. HARTE: The actual specifics of the in-fill that is going to be constructed next year, we won't know about until such time as the marketing people come back after their surveys.

But what we have done is we have added all of the homes, if you would like, within the in-fill areas and the loads for those homes onto the system, to make sure that we have pipeline size sufficiently to supply the gas on the forecast.

MR. STEWART: And I guess, Mr. Chairman, can we confirm for the record that -- and I'm just looking at page 201 of Tuesday's transcript.

Mr. Harte says in answer to question 266 "We haven't fully completed in-fill designs. We have done partial

in-fill designs. But there have been no design on the Stoner software system for any of the in-fill."

Is that --

MR. HARTE: Apart from the loads being added to the main grid system to make sure we can supply the gas to those in-fill areas.

MR. STEWART: For the purposes of ensuring that you properly sized the main grid system?

MR. HARTE: That's correct.

MR. STEWART: But there has been no design of the actual in-fill distribution system to date?

MR. HARTE: Not in sufficient detail that I could file it today, no.

MR. STEWART: Okay. Has there been any done other than the pipe-sizing on the Stoner system?

MR. HARTE: No. Just the pipe-sizing on Stoner.

MR. STEWART: That's fine. Thank you, Mr. Chair.

CHAIRMAN: Good. Thank you, Mr. Harte. Any other preliminary matters?

MR. HOYT: Just on undertakings I would like to point out on that, at page 202 of the same transcript Mr. Harte had indicated they should be able to provide that for tomorrow.

This is similar to Mr. Blue's question on the distribution design that the Province requested. It would

be the same information. So I think it had been Mr. Harte's intention to provide that one set of plans that was provided yesterday.

We have one additional response to an undertaking. That is a general guide to resistance of polyethylene to various chemicals which I have provided to the Board Secretary.

And copies are available at the back. And Mr. Harte is prepared to comment further on that.

MR. HARTE: I have provided the chemical resistance that polyethylene has to various chemicals. This was in regard to a question on creosote in the creek.

And if you would like to refer to the particular sheet on chemical resistance, in the bottom right-hand corner it has creosote. And it says that it is nonresistant.

But checking with our Lab Services, they have told us that the polyethylene coating, if it comes in contact with creosote, could soften the coating.

CHAIRMAN: As a result of Board counsel's questioning, was it not?

MR. O'CONNELL: That's correct, Mr. Chairman. And my recollection was, or my recollection is I should say, that the question was put with respect to yellow jacket. Now I don't know whether yellow jacket and --

CHAIRMAN: Is clear pipe yellow jacket?

MR. HARTE: It is similar material.

CHAIRMAN: Pardon me?

MR. HARTE: It is similar material.

CHAIRMAN: Similar.

MR. O'CONNELL: I guess my recollection is -- I was interested in whether or not yellow jacket itself was resistant to creosote. And I'm not sure whether we are talking about yellow jacket in this material or not, to be honest with you.

CHAIRMAN: Help us out, Mr. Harte.

MR. HARTE: The yellow jacket coating is not resistant to creosote and could soften the yellow jacket coating if it comes in contact with it.

MR. MACDOUGALL: I think, Mr. Chair, Board staff's concern was was it not resistant. So to the fact that Mr. Harte is saying it is not resistant, that probably should satisfy the question.

They might have a bigger concern if he had said it was resistant if they thought it wasn't. I think what Mr. Harte is saying is he is admitting that this report and the follow-up lab tests had said that it is not resistant.

CHAIRMAN: Right.

MR. O'CONNELL: I guess the follow-up question, Mr. Chairman, would be whether or not the fact this stuff is not resistant is a concern to Enbridge Gas.



MR. HARTE: I don't have a major concern. If I can elaborate a little, when we directionally drill the creek, we directionally drill with a bentonite clay.

And a bentonite clay actually would provide a coating on the pipe that would actually protect the pipe from other materials that would actually be in the borehole.

Now if there is some chemical that does come in contact with the coating that could soften the coating, if there is a crack in the coating or a crack happens to occur, then that is why we install sacrificial magnesium anodes on the pipeline, to protect the pipeline in the event there is cracks in the coating.

But I'm willing to pursue it with Lab Services to look at the possibility of another coating if there is a better protective method.

MR. O'CONNELL: That's fine, Mr. Chairman. I would only ask that Mr. Harte deal with Board staff with respect to this particular issue and how they plan to assure themselves of the integrity of the pipe in the Marsh Creek area.

MR. HARTE: I will do that.

MR. O'CONNELL: Thank you, Mr. Chairman.

CHAIRMAN: Okay. I will give that B-2. Any other matters?  
Mr. Blue?

MR. BLUE: Mr. Chairman, perhaps this could be off the record, but --

(Off the record)

CHAIRMAN: Any other matters, on or off the record? If not, Ms. Abouchar.

CROSS-EXAMINATION BY MS. ABOUCHAR:

Q.229 - Thank you, Mr. Chair, members of the Board. Good morning, gentlemen.

My questions today will be from the perspective of aboriginal concerns that this project may have impacts on medicinal plants and plants used for traditional purposes and on sacred sites. That is just my perspective, it might help just to keep that in mind through today.

I would like to start with some policy questions about your approach to environmental and socioeconomic assessment. And if we find that we are in agreement on -- about the approach going forward over the next couple of months, that will greatly reduce the number of questions that I have for you today.

We take the position -- the Union of New Brunswick Indians takes the position that the material that has been filed to date is not sufficiently detailed to determine the actual site-specific impacts on those aboriginal concerns mentioned earlier, and you have undertaken to carry out two studies that will hopefully address this concern.

One is a survey of medicinal plants and plants used

for traditional purposes, and the reference to that commitment is the interrogatory 15 in exhibit L, that response to the Union of New Brunswick Indians IR 15. Exhibit L, schedule 15.

So I just want to confirm that you do intend to undertake a survey of medicinal plants and trees and plants and trees that are used for traditional purposes by aboriginal people?

MR. GILLIS: Yes, we will undertake that survey. The survey will -- the first thing we do in impact analysis is look for a pathway, a pathway between the project activity and the issue of concern, and where there is a pathway, or in areas adjacent to the route in other words, we will do that survey.

Q.230 - So once you determine the exact route, like the exact footprint, my understanding is that you will be doing a survey of medicinal plants and plants used for traditional purposes on that footprint, is that --

MR. GILLIS: That's correct. It will actually be outside the precise footprint but within that area, yes. It will be a wider area than the precise footprint surveyed.

Q.231 - Thank you. And I also note that you have made a commitment to do further archeological studies?

MR. GILLIS: Yes, that's correct.

Q.232 - And just to be sure exactly what you are proposing to

do, could I refer you to the commitment letter which is exhibit A-3. Do you have that, Mr. Gillis?

MR. GILLIS: I don't have that, I'm sorry.

Q.233 - Just on page 2 of the commitment letter, the second bullet down --

MR. GILLIS: Yes, that's correct. That's what we are doing.

Q.234 - -- it says, a stage I archeological assessment of the preferred routes and a stage II assessment as required on results of the stage I assessment.

MR. GILLIS: That's correct.

Q.235 - Could you just briefly tell me what is a stage I assessment?

MR. GILLIS: Stage I is a reference primarily to literature sources and we look for high potential areas.

We move on to stage II if we find high potential areas and we do a preliminary field investigation, which then grows in more level of complexity or actual -- we go out and we start doing shovel tests at various areas if the conditions warrant that based on our field observations.

Q.236 - And have you completed the stage I assessment at this point?

MR. GILLIS: We have completed the stage I assessment and are working through the stage II assessment right now.

Q.237 - And could you just explain to me exactly where you are doing the stage II assessment work?

MR. GILLIS: Stage II assessment work would be done on the areas identified as high potential areas on the mapping, the constraint mapping that has been provided.

Q.238 - I guess my question is, do you intend to also do a stage II assessment on the precise route of the pipeline, the precise footprint area of the pipeline?

MR. GILLIS: Yes, that's exactly what we are doing.

Q.239 - So the stage II assessment won't be restricted to the marks on the map that say HP and a number?

MR. GILLIS: It will be -- it will be undertaken along those sections of the route which intersect the high potential areas. That's what we have done.

Q.240 - So the stage II assessment will only be done on the preferred route on the areas that are marked on the map with an HP?

MR. GILLIS: High potential areas, that's correct.

Q.241 - So you don't intend at this point to do a stage II -- a shovel test, anything -- any field work type of assessment for the rest of the route?

MR. GILLIS: No. No.

Q.242 - Would you consider doing a --

MR. GILLIS: Well, to be very clear here, our archeologists have travelled all the routes by vehicle. This is done -- we are talking the outside, in the rural setting, probably 30 kilometres which is all along road allowance. So they

are very familiar with all the sites. So -- and they have indeed traversed all the urban setting routes as well.

The stage II would be a focus on those areas that, as I said before, have been identified as high potential areas.

Q.243 - I notice in your assessment of Moncton, for instance, that you identified the entire City of Moncton as a high potential area?

MR. GILLIS: That's correct.

Q.244 - So are you -- will you -- are you going to do a stage II assessment for the entire City of Moncton?

MR. GILLIS: Just along that portion of the City of Moncton that the routes traverse.

Q.245 - So the entire route in the City of Moncton?

MR. GILLIS: That's correct.

Q.246 - And then in addition to that you propose to do a stage II assessment for areas that are marked with HP, high potential?

MR. GILLIS: That's correct. And the reason for identifying the entire City of Moncton and large sections of the City of Saint John as high potential areas is pre-confederation potential for heritage resources, heritage buildings, those kinds of things.

Q.247 - Okay. And I would actually like to spend a little bit of time later getting into a little bit of the individual

sites.

MR. GILLIS: Sure.

Q.248 - But you have used the word predictive modelling to describe your assessments. Could you tell us where that comes into play?

MR. GILLIS: Predictive modelling is an approach that we have used consistently I guess for the past, let me see, 15 years perhaps, with particular reference to archeological and heritage resource assessments.

And what you do is you look at the information on sites that have been developed and areas that have been found to contain information of interest, i.e., heritage resource information or archeological information in the past, and then you identify the particular characteristics or attributes of those locations.

Then you look at the outline of the project that you are -- or the study area that you are looking at, and determine where within that study area these sorts of characteristics are located. And that is -- that's the kind of areas that you would identify for further information.

Examples are historical pre-glaciation shorelines, for example, have been identified as high potential areas for relics and ancient relics and those kinds of things for settlement.

Our shorelines are very much different historically and our archeologists understand that and they look at the kind of patterns that were in place eons ago or whatever and look for those kinds of areas.

Q.249 - So as I understand it then you -- is it a computer model?

MR. GILLIS: It's not really a computer model. It's more based on the information and the experience of the archeologists that are undertaking the work. It has been a tried and tested approach that we have used consistently.

Q.250 - And is it a stage I assessment tool?

MR. GILLIS: It leads to a stage I, yes.

Q.251 - So it is a pre-stage I assessment tool?

MR. GILLIS: That's right.

Q.252 - And the stage II assessment that your archeologists are now embarking on, since we don't know exactly where the route is going to go in the corridor -- for instance, take route 15 in Moncton. We don't know whether it is going to go -- you haven't filed evidence to show whether it is going to go on the left or right-hand side of the road or down the middle of the road -- the highway.

So how is your archeologist proceeding without knowing exactly where it will be?

MR. GILLIS: Environmental impact assessment planning, as



you may well be aware, is an iterative process that you begin -- are you all right?

Q.253 - Thank you.

MR. GILLIS: It's an iterative process where you begin with the project concept and test that project concept against an environmental setting.

And as you refine the project concept, you continue to test that against the environmental setting until you come up with the project definition that matches the environmental setting together with the mitigation that you have.

What we did originally, and you are correct in the filing -- in the filed evidence, is that we identified route 15 as the preferred corridor for the location between the Maritimes and Northeast main line and the town of Dieppe.

Subsequent to that, the Enbridge field staff have been out and done a line locate for us, which is on the northern side of route 15. And that is the area which we will be focusing on for -- which we have focused on for the field investigations.

Q.254 - When will interested parties --

CHAIRMAN: Would you like a Fisherman's Friend?

MS. ABOUCHAR: If you have one.

MS. ZAUCAR: Only our chair would have a Fisherman's

Friend.

Q.255 - Thank you, Mr. Chair. So, Mr. Gillis, when will interested parties be provided with those detailed maps? Will that be on May 23rd when the 1:1000 maps are provided?

MR. GILLIS: Yes.

Q.256 - The map that shows that it's on the north side?

MR. GILLIS: That's correct. It will be provided then. I will defer to Mr. Harte.

MR. HARTE: The maps -- the drawings will be completed by May 23rd and they should be provided that week.

Q.257 - Okay. Can you confirm that these surveys, the plant study and the archeology study will be completed prior to the start of construction?

MR. GILLIS: Yes, that's the intention and that's what will happen.

Q.258 - And will these surveys include an assessment of the impact and also proposed mitigation measures?

MR. GILLIS: That's correct. If you -- if you recall the information that we discussed yesterday about site-specific environmental protection plans, endangered plants, those kinds of plants or archeological sites are candidates for development of site-specific environmental protection plans. And that would include the mitigation on those sites.

In addition to that we are currently developing a protocol which we will vet through the Archeological Services Branch in the event that we encounter unforeseen archeological information along the course of the construction.

Q.259 - So the mitigation measures will be included in the site-specific environmental plans?

MR. GILLIS: For those areas which have been identified to require mitigation, yes.

Q.260 - Will you put -- will you be preparing a site-specific environmental plan for every high potential area?

MR. GILLIS: No. The high potential areas are talked about as if we can regard them as probabilistic. There is potential for information to be there.

Q.261 - Okay. I'm sorry. I understand now.

MR. GILLIS: It's only -- it's only those sites that are --

Q.262 - So as a result of your stage II assessment --

MR. GILLIS: That's correct.

Q.263 - -- you will decide which areas require site-specific environmental plans?

A. That's correct, yes.

Q.264 - And will you be providing the site-specific environmental plans to any interested party?

MR. GILLIS: Yes.

Q.265 - And will you consult with the Union of New Brunswick

Indians regarding the scope of the medicinal plant survey and the stage II archeological surveys?

MR. GILLIS: What we have done for medicinal plant survey is we have retained the services of an individual from the Aboriginal Heritage Garden Project who is experienced in medicinal plants. And they will be assisting us when we commence our plant survey starting next week. As I mentioned, we are a bit late because of the season.

With respect to the archeological surveys we retained the services of an aboriginal archeologist that we have worked with in the past to assist us in that regard.

Q.266 - And could you tell us the name of the individual at the Aboriginal Heritage Garden that has been retained?

MR. GILLIS: The arrangement was made through Mr. Giles Soucey who is associated with the Aboriginal Heritage Garden Project. And the individual who will be working with us is Ms. Nora LaBillois. The Heritage Resource consultant or the archeologist is Mike Nicholas.

Q.267 - I'm pleased to hear that. I'm just wondering -- still back to my question about whether you would consult with the Union of New Brunswick Indians regarding the scope of your surveys?

MR. GILLIS: We will be pleased to provide the information about the design of our project to anyone, including the Union of New Brunswick Indians, sure.

Q.268 - And would you take comments from them about the design of your -- can we use the word, scope? When you are saying design, is that the same thing as scope?

MR. GILLIS: Yes. I guess my concern here is that we have gone through a process which we feel is fairly -- fairly rigorous. And I would be somewhat reluctant on behalf of -- sitting here, on behalf of the archeologists that work with us who are professionals in their own right, to indicate that we are going to go back to a pre phase I assessment to reconsider all the things that they have done. That's only my reluctance.

Q.269 - I understand your reluctance. And the Union of New Brunswick Indians as you know has worked with Nora LaBillois.

MR. GILLIS: Yes.

Q.270 - Very effectively in the past. And what I'm proposing is not a revisit of the work you have done. I'm just -- the question is simply whether you would include and consult the Union of New Brunswick Indians in the design and scope of that project?

MR. BROPHY: Maybe I can just respond to that. I'm quite free to say that we consider all comments that are forwarded to us in either a meeting setting or written comments as well for not just the archeological survey, but any comments that are forwarded to us in any form

for --

Q.271 - I understand that. From the perspective of First Nations I would like to know whether you are prepared to facilitate that kind of comment?

MR. BROPHY: Yes, we can do that.

Q.272 - So just to be clear about what we are talking about. The commitment that you just made, is that a commitment to consult with the Union of New Brunswick Indians about the design and scope of the study, the plant study?

MR. MACDOUGALL: Before we go on, the point before that, I think the gentleman said they would facilitate comment. Consult in the circumstances of a hearing like this sometimes has a very legalistic meaning.

Maybe Ms. Arbouchar could define what she means by consult so that the witnesses can particularly respond. I'm just concerned that it does have a legal connotation and consult can be very broad.

Q.273 - I would be happy to. By consult I mean -- and by facilitate comment what I mean is would you be prepared to provide the scope and design of the plant survey?

And I also -- and I'm going to get to the same questions with the archeology stage II assessment. So if we can do that in one question that would -- you know, that would shorten things. So we can approach it from one -- as one question.

Would you be prepared to provide information on the design and scope of both of these areas of study, both of these surveys to the Union of New Brunswick Indians, specifically inviting them to comment with a meeting in which they can give their comments to you, from the approach that you would -- your intention through this process is to address their concerns?

MR. BROPHY: We will provide the information to UNBI. And should they choose a form of a meeting to relay their comments to us instead of say a written form, then we could do that.

But we are open to them providing comments on that to us prior to construction.

Q.274 - Okay. Now we are talking about the design of -- right now I'm talking about the design of the survey. So it has to be a lot more than prior to construction, just to be clear.

MR. BROPHY: Well, as Mr. Gillis mentioned, some of these surveys are being conducted --

Q.275 - I understand that. And notwithstanding, the Union of New Brunswick Indians is still eager to participate and be consulted about the scope and design of the surveys, of the studies.

So from what I understand, just to recap -- and please correct me -- I know you will correct me if I'm wrong.

You have committed to -- with regard to the design and scope of the plant study, the medicinal plant study and the archeology study, to provide information about the design and scope of these studies to the Union of New Brunswick Indians, invite them to comment in a meeting, if that is their choice.

And finally, and I think this is a very important aspect of consultation, with the intention -- and this isn't predetermining the results -- but with the intention of addressing their concerns.

Is that something you feel you could commit to? And maybe this is a question for Mr. Harte.

MR. HARTE: We have retained specialists that have designed the scope both from the surveys that would be required in the field, and we would be willing to provide them with the scope and design of that.

And if they have -- my concern is that we have professionals that have already scoped out what they are going to do and how they are going to go about it.

And that I would not want the Union of New Brunswick Indians to come back and -- now come back to question what they are doing and why they are doing it, to hold up the process.

And but from the results of the surveys that we do, we would certainly give them copies of the results and ask



for comment.

Q.276 - With respect to -- with the greatest of respect, Enbridge has known that the Union of New Brunswick Indians is interested in these issues for at least six months.

Would you agree with that statement?

MR. HARTE: We have had dialogue with them over the last four to five month period, yes.

Q.277 - Four to five months?

MR. HARTE: Yes.

Q.278 - And would you agree that during that four to five months there would have been time to have your experts ask the Union of New Brunswick Indians what they thought of the design and scope of the studies?

MR. HARTE: We haven't received anything from UNBI in regard to scope and design of those studies.

Q.279 - But have you provided your proposals to UNBI? No. I mean, I know you haven't.

MR. HARTE: We provided the intent that we were moving ahead to do these surveys with UNBI. They were aware of that.

Q.280 - Well, I'm just -- but my question is specifically have you sought their input into -- specifically into the design and scope of the surveys?

MR. HARTE: Not specifically.

Q.281 - Right. And there has been time to do so?

MR. HARTE: But we have specifically informed them about the

proposal and what we intend to go forward with.

Q.282 - I'm not trying to be adversarial here. I started this question by saying I am sure that the Union of New Brunswick Indians could work with the aboriginal individuals that you have hired.

All I'm asking for is for an opportunity for them to give their input, not redesign the surveys, give their input, through the consultations that I outlined, into the surveys.

Is that a commitment that you are willing to make?

MR. HARTE: We would -- I will give them the opportunity to give us input on the design of the proposal. But we have also made commitments to the Board during these hearings about commitments that we have made as to when we are going to get things done to make sure that we are on schedule.

Q.283 - Yes. I'm aware of that.

MR. HARTE: And as long as we -- they don't hold up the commitments that we have made to the Board at these hearings.

Q.284 - So long as the UNBI is given a reasonable amount of time to respond and responded within that amount of time, would that work for you, Mr. Harte?

MR. HARTE: A reasonable amount of time would have to be if we have given them the information let's say tomorrow,

that they would respond by the end of next week.

Q.285 - Okay. Thank you, Mr. Harte.

MR. HARTE: Okay.

Q.286 - And I did just hear you say that you committed to filing these surveys with the Board?

MR. HARTE: I committed to filing the surveys with UNBI.

Q.287 - I'm sorry. There was reference made to commitments to the Board. Are you intending on filing these surveys with the Board?

MR. HARTE: With the Board and with UNBI.

Q.288 - And will there be -- this is -- we are talking now about the results of the surveys that you will file with the Board and with the UNBI?

MR. HARTE: That's correct.

Q.289 - And will you provide some opportunity -- and I assume with any interested party as well?

MR. HARTE: That's correct.

Q.290 - And will you provide a reasonable period for any interested party to review and make comments on these surveys to the Board?

MR. HARTE: Yes, we will.

Q.291 - And earlier we were talking about -- well, what kind of period would you have in mind here? Would 30 days be a reasonable time to review and comment?

MR. HARTE: I don't think that would be reasonable. Because

of the construction schedule and where we are going, I think that a one week to two-week time frame should be sufficient.

Q.292 - So you would agree that this, what we are talking about here, reviewing the results, is a little bit more time-consuming than the input into the design and scope.

So perhaps more on the two-week side is appropriate, is more reasonable, a little bit more time than we have been discussing earlier?

MR. HARTE: Depending on the content of the results.

Q.293 - Of course. And I understand that time is tight here.

But you know, with respect, it is Enbridge's -- Enbridge is running the show, and one more sort of time constraint to get dealt with.

How much prior to the start of construction do you expect to be providing these surveys to the Board?

CHAIRMAN: Just so the record is clear, I think that the site-specific surveys, et cetera were to be filed with the Department of Natural Resources and the Environment, not the Board. Is that correct, Mr. Blue?

MR. BLUE: That was my understanding. That was a commitment that I thought that I had wrung from the panel.

Q.294 - I believe then, and what we are discussing here, are the site -- includes those site-specific environmental plans, but also includes surveys with proposed mitigation

measures on plants and archeology?

CHAIRMAN: That's fine. I just wanted to say that the reporting is not to the Board. It is to the two provincial government departments.

MR. MACDOUGALL: Mr. Chair, maybe we can just try to clarify some of the questions in that regard though. Because the site-specific environmental protection plans are for such areas as wetlands and water courses as well. None of the questions till now were directed towards that. If they are to be, they should be.

But on a second matter too with the surveys, sometimes we seem to be talking about the survey and other times the survey results is the response. And I'm not sure if all the undertakings getting through are making clear.

So if we talk about the survey, maybe that could be the document being prepared and the survey results, as the findings arising therefrom, just so that the record can be consistent on the undertaking.

MS. ABOUCHAR: Is there a need for clarification, Mr. Chair, on this point?

CHAIRMAN: There probably is. Because I said something about site-specific, just tossing it in. And I will withdraw all those comments and simply say the reporting on these matters was to be to the two government departments.

Now Mr. MacDougall seems to feel that there should be some clarification on it.

Q.295 - Okay. Well, in my use of the word "surveys", it is a general word to -- that is in my mind the same as the studies, the reports that are going to be done on (a) medicinal plants and traditional plants used for traditional purposes, and (b) the archeological stage 2 assessments.

And what we were talking about with -- what I have, to use Mr. Blue's language, wrung from this panel, is a commitment to two things.

(1) is to provide an opportunity to comment to the Union of New Brunswick Indians on the design and scope of these studies, and (2) to provide an opportunity to be consulted on the results of the studies.

MR. MACDOUGALL: I don't think we used the word consult in any of the commitments made by the panel. Then we can move on to the question that was posed.

MR. BROPHY: I think maybe it is useful to separate them out because of the points that were made by Mr. Chairman regarding the differences in the surveys.

So for example if you are looking at the archeological survey, there is a regulatory body in the province, Archeological Services that deals with those issues.

And we wouldn't provide the plant surveys to them.

But we would be providing the archeological. And that would be the final results as well. They would need a reasonable time period, just as you have indicated to review those.

And I believe whatever people you would use to review it, it would be an adequate amount of time for whatever the government body has to review it. And I believe that is a few weeks prior to construction.

Q.296 - Can we agree then, just to keep things clear, that the Union of New Brunswick Indians should be provided a similar time to review studies as the provincial government?

MR. BROPHY: Yes. That's fine.

Q.297 - Thank you. And are we at one mind as to the commitments that have been made? Do you agree with the way I summarized it a few questions back?

MR. BROPHY: Perhaps you can clarify what that question was.

Q.298 - Well, it was on the issue of the surveys, the language of surveys and studies. Are you in agreement that we are talking about one thing, which is a study, a plant -- two types of studies/surveys?

One is on medicinal plants and plants used for traditional purposes. And the other is on the stage 2 archeological --

MR. BROPHY: Yes.

Q.299 - -- studies?

MR. BROPHY: What we are talking about is providing UNBI an opportunity to comment on the archeological surveys, which is the one, and then the two plant surveys --

Q.300 - Right.

MR. BROPHY: -- which is correct, yes.

Q.301 - And on both the design and the scope as well as the results?

MR. BROPHY: Well, as we said, the surveys, because of the time of year -- for example the plants surveys has to be conducted next week.

So if there is -- the original design is there. If there is a change due to concern by UNBI then we would look at that as well.

Q.302 - Okay. Now Mr. Brophy, I don't mean to be difficult, but I'm hearing something different right now. What I heard -- the commitment that -- and it is all on the record. Maybe this is unnecessary.

But I just don't want there to be a slip between now and -- we are dealing with a short time period. We are talking about next week.

It seems that Mr. Harte has made a commitment to allow the Union of New Brunswick Indians a week to review the present design and scope of those studies and give some input into -- have a meeting to give some input into that,



into the design and scope.

Are we still on the same page?

MR. HARTE: That's correct. I'm not going to hold up the start of the survey. The survey will start next week. But they will have the opportunity to comment on the scope and design of the survey.

Q.303 - And have you committed to attempting to address their concerns that are raised, if any concerns are raised, attempting to address those concerns?

MR. HARTE: We would attempt to address the concerns, whatever concerns they raise.

Q.304 - About the design and scope of the surveys?

MR. HARTE: Yes.

Q.305 - Thank you. Okay. I would like to switch gears a little bit. We have been talking about the process for the next month and a half.

I would now like to talk about the process that you foresee in your lighthanded regulation scenario for the next -- for the development period of the project.

Mr. Harte, in the policy panel you indicated that there would be an environmental screening done for all future construction.

MR. HARTE: That's correct.

Q.306 - And you indicated that where there are sensitive sites you would do a full socioeconomic environmental

assessment?

MR. HARTE: That's correct.

Q.307 - And at the time I asked you what you included in your concept, and I know that the Board has something to say about the definition of sensitive sites, what your understanding is of sensitive sites.

Could you answer that question today? Maybe I could just ask you what it includes. Does it include archaeology and heritage sites?

MR. HARTE: Yes, it does.

Q.308 - And would it include sites of traditional use of land by aboriginal people?

MR. GILLIS: The approach that we have taken to environmental impact assessment and planning is consistent which was put out by Gordon Beanlands and Peter Duinker in 1983, Framework for Environmental Impact Assessment in Canada, and in doing that the attempt then is to focus on valued ecosystem components which are drawn from environmental components of concern --

Q.309 - Okay.

MR. GILLIS: -- and the approach that you take when you do this, is you identify a long list and a broad scope of environmental components of concern from a variety of sectors.

Having done that, you then test that list against the

activities that are undertaken through the project. If that test identifies that there is indeed a pathway between the project and the environmental component of concern, you change the terminology and call that environmental component of concern a valued ecosystem component.

And that is the kind of thing that we would go through to identify sensitive areas and sensitive sites for further investigation.

If there is no risk to the population and the community, then in my own experience I don't see any need for including that as a sensitive area or a sensitive area of concern.

This is -- the reason for this is to get away from the way that environmental impacts were done traditionally in the early 70's and mid 70's where you had 68 volumes of background data and about a half-inch volume of analysis.

Q.310 - Okay. Mr. Gillis, let's talk about the valued economic component approach a little bit. From my understanding of what you just said, if a plant is rare, then that is a valued economic component, is that correct?

MR. GILLIS: We tend to term -- use the term valued ecosystem component.

Q.311 - Okay.

MR. GILLIS: Yes, that's correct. If it is certified or

identified as being rare regionally or --

Q.312 - And what about if a plant isn't rare in New Brunswick, but what about if this plant is used by aboriginal people and is important to their culture and is harder to reach because of development or because of some other reason, and your construction is going to cross the pathway of that plant or area of plants?

MR. GILLIS: If we are talking about a plant, a species, that has a fairly widespread distribution and yet there is one area in particular that is being used by individuals and is being harvested, that would show up as an environmental component of concern, that particular area, were it to be identified to us.

We would then look to see if our project would interfere with that particular grouping of plants, and if indeed it would and there was some element of concern associated with it, that would kick that into a valued ecosystem component.

We would then go on and attempt to determine through the impact analysis what the likelihood of a significant adverse impact was on that community, and if indeed it was -- there was a high potential for that we would recommend mitigation.

Q.313 - Okay. And how -- back about four steps in your explanation, the very beginning, how would you identify

these plant sites?

MR. GILLIS: First of all through understanding of the biology of the plant, but also through communications with individuals who may be harvesting. We do the same thing for fisheries or anything else.

Q.314 - Okay. Mr. Harte, this is a question for you now. Will you undertake in the screening process in future construction to provide to the Union of New Brunswick Indians -- well to include the Union of New Brunswick Indians in the screening process in order to identify areas of plants and -- medicinal plants and traditional plants?

MR. HARTE: Yes, I will.

Q.315 - And would you also involve them in the design of the process -- of the screening process?

MR. HARTE: I will take comments on the design of the screening process from them, yes.

Q.316 - So would you then undertake to involve -- I mean that means you are involving them at an early stage which is exactly what -- you know, in order to address their concerns.

We were -- just to again talk about timetables just to see how it would work out. We were talking with the policy panel, there was a discussion about when for instance in the future lighthanded regulation -- how that

would all roll out, and the example was used that the annual report would be going in in December and you would expect an answer from the Board within about four months, like going forward, so around April you would want to hear back from the Board.

Now prior to December, going back from December, there had been a commitment, as I understood it, to provide any studies with -- given a 30 day comment period, so that would be, you know, 30 days previous to when you made your application to the Board.

Would that time frame be a time frame in which you would be able to include them in the design of the screening process, or would we have to give them an additional -- give the parties an additional time to be involved in the screening process -- involved in designing the screening process?

CHAIRMAN: I am going to interrupt you, Ms. Abouchar. This -- you know, what is happening here is you are negotiating with the applicant as to the participation of UNBI in these processes.

Frankly I don't understand, and I am prepared with your panel to question why these things haven't been done in advance, but I almost think we should take a break and off the record you should speak with this panel, explain what it is that you want, and then we will come back into

an open session and if they can commit to something they will and if they can't they won't, rather than have the entire room wait while you try and define the terms.

MS. ABOUCHAR: I agree with you, Mr. Chair, that this is not where this ideally should be taking place. Our concern is that this panel has asked for lighthanded regulation and has asked for -- and we are seeing possibly that this is going to be -- this might be the last oral hearing if the Board --

CHAIRMAN: Well it might be the last oral possibly, but there would be a hearing at which time it -- you know as well as I do it would happen on paper rather than orally.

However, let's go back to the point of this morning. I am going to take a recess, and I will take as long as you want, but I would like you frankly if you -- it sounds to me as if you haven't discussed these matters -- the Union of New Brunswick Indians --

MS. ABOUCHAR: No.

CHAIRMAN: -- hasn't discussed the matters with the panel, with Enbridge.

MS. ABOUCHAR: No.

CHAIRMAN: Well my suggestion is you --

MS. ABOUCHAR: This is the first opportunity they have had to get into these issues.

CHAIRMAN: All right. I am not going to get into that. But

I am just going to simply say, we will take a break, you talk to the panel off the record, and the Board certainly allows you, even though you are under oath, et cetera, to do whatever you want to in that regard. See if you can have a meeting of the minds.

MS. ABOUCHAR: I don't see this discussion going on too much longer. I was about to wind it up.

CHAIRMAN: Ms. Abouchar, I don't either, and that is why we are taking the break.

MR. MACDOUGALL: Mr. Chair, just -- that's fine. For the applicant -- Ms. Abouchar did just make a comment there that this is the only opportunity UNBI had to discuss these matters -- I would like to just say for the applicant's perspective I don't think that that is the way they perceive it and I don't think we should just be making comments on the record or arguing the process now. We fully support your comment.

CHAIRMAN: So be it. Now in this break, however long it takes, any members of the panel have the Board's permission to speak with Mr. MacDougall, et cetera, so that you can in fact feel that you can commit yourself, et cetera.

MS. ABOUCHAR: Thank you, Mr. Chair.

MR. MACDOUGALL: Thank you.

CHAIRMAN: Let us know.



(Recess - 10:15 a.m. - 11:00 a.m.)

(Adjourned until 1:00 p.m.)

(Recess - 1:00 p.m. - 2:00 p.m.)

CHAIRMAN: That is ominous. There is no one at that mike.

Okay. Mr. MacDougall?

MR. MACDOUGALL: Mr. Chair, I would like to start by thanking the Board to give the applicant and UNBI an opportunity to address some of the issues that were before this Board, and in some way I hope have been addressed between the parties.

I would like to read a statement that has been agreed to by both the applicant and the UNBI which covers commitments and conditions dealing with this proceeding. There is a few items. And I would like to read them into the record.

With respect to the issue of medicinal plants, plants for traditional uses and archeological issues, Enbridge Gas New Brunswick shall for this permit application (1) present the design of surveys for medicinal plants, plants for traditional uses and archeology to the UNBI's chosen representative by Tuesday or Wednesday of next week.

Enbridge Gas New Brunswick will start its surveys and studies. The UNBI representative will provide comment to Enbridge Gas New Brunswick within one week of receipt of the design of the surveys. Enbridge Gas New Brunswick

will consider and discuss any concerns raised with the UNBI.

Enbridge Gas New Brunswick will then present the results of surveys and any required mitigation plans to the UNBI representative for review and comment in early June. The UNBI will prepare a response within two weeks with any comments they may have.

Enbridge Gas New Brunswick will review and fully consider comments raised and provide an explanation to the UNBI for any issues not addressed by Enbridge Gas New Brunswick, always keeping in mind regulatory requirements.

With respect to the comment of presentation of the design of the surveys and of the results, Enbridge Gas New Brunswick commits to include in its presentation the aboriginal consultants retained by Enbridge Gas New Brunswick. So they will be part of the presentations of the survey and of the results of the survey.

Enbridge Gas New Brunswick and the Union of New Brunswick Indians agree that Enbridge Gas New Brunswick shall provide the UNBI with \$15,000 to fund the UNBI's involvement including internal and external resources in the above-noted processes.

The above-noted commitments of Enbridge Gas New Brunswick are based on the understanding that the only environmental concerns of the UNBI with respect to this

permit application, other than those issues addressed by provincial regulatory authorities, are those addressed by the above-noted commitments.

Mr. Chair, both the UNBI and Enbridge Gas New Brunswick took the opportunity to try and address the other concerns that may have been raised by Ms. Abouchar or may have been raised by Enbridge Gas New Brunswick with respect to the UNBI's witnesses.

Accordingly Enbridge Gas New Brunswick, with the understanding that the UNBI will work in good faith with Enbridge Gas New Brunswick, shall enter into good faith negotiations with the UNBI towards an agreement that will (1) contain commitments for socioeconomic benefits related to the nature of Enbridge Gas New Brunswick's operations in the province of New Brunswick and (2) processes or future consultation from the UNBI with respect to construction activity of Enbridge Gas New Brunswick not covered by this permit application.

EGNB shall also report to the Board on the status of the commitments set out in the agreement to be negotiated in its annual year-end reporting to the Board.

Thirdly, if during construction Enbridge Gas New Brunswick encounters archeological resources, it will inform Archeological Services. And if those resources are found to be of an aboriginal nature, Enbridge Gas New

Brunswick will inform the UNBI and work in conjunction with the UNBI to develop a protocol for the site if necessary.

The UNBI agrees that the above undertakings or commitments replace any undertakings made to the UNBI by the EGNB environmental panel. So to avoid any confusion with earlier undertakings, these undertakings replace those made this morning.

The commitments and undertakings made by Enbridge Gas New Brunswick are made on the understanding that one, the UNBI has authority to act on behalf of the 13 Chiefs who are the board of directors of the UNBI, that the UNBI indicated it represents in its prefiled evidence and in response to EGNB's IR's.

And secondly that the UNBI will not be asking this Board for any other relief or conditions to be imposed on EGNB's permit for this application for the purposes of this permit application.

We have also agreed that the UNBI will only be putting forward Dr. Wicken and Elder Solomon to present their evidence for the purpose of background to the UNBI's position in this proceeding.

We would request, because Dr. Wicken is from away and because Elder Solomon has been here for a few days, that this panel be released for the time being and that both

Dr. Wicken and Elder Solomon be able to present their evidence.

The applicant will have if anything two or three questions for those gentlemen during their cross-examination.

Ms. Abouchar may have some comments. We had agreed to this statement. I hope I read it the way I was supposed to. It was quickly handwritten. So she should be allowed to make any comments at this time.

MS. ABOUCHAR: If I may just have a word with Mr. MacDougall.

MR. MACDOUGALL: Mr. Chair, in the context of relief or conditions, that was in the context of those specific to this permit, the UNBI has made a costs, as in legal costs according to this Board, for its construction application.

It will likewise make a cost application I am presuming for this application. Those matters are separate from this proceeding for purposes of the statement we just made and that does not preclude the UNBI from making its applications for the "costs" of these proceedings.

CHAIRMAN: That was your only comment then, Ms. Abouchar.

MS. ABOUCHAR: That was my only comment, and so I am through with this panel. Thank you.

CHAIRMAN: All right. I have a question. Mr. MacDougall, you want this panel to step down. What sort of timing are

we talking about here, because -- Ms. Abouchar?

MS. ABOUCHAR: We would hope to be through with our witness panel in an hour -- within an hour, depending on of course cross-examination. But in terms of opening statements I believe that the Elder will be speaking for 20 minutes to half an hour, and Mr. Wicken for ten minutes.

MR. MACDOUGALL: And, Mr. Chair, as I said, the purpose of that is to provide some background to the UNBI's position in this application. The applicant has no problem with that. We will be asking one or two questions, if any questions.

CHAIRMAN: I personally had some questions. I will think about that for a minute. Just taking them out of order, that I was wondering what time do your witnesses have to be away from here? Is that the purpose for standing this --

MS. ABOUCHAR: I believe that one of my witnesses has a plane to catch at 5:15.

CHAIRMAN: That's 20 minutes from here to there -- I mean from here to the airport.

MR. O'CONNELL: Mr. Chairman, if it helps at all, my questions for the environmental panel will take five minutes, ten minutes, something like that. I don't have a great deal to ask them.

CHAIRMAN: I guess where I am coming from, Mr. MacDougall,

is that my sense is within half an hour we would be through with this panel.

MR. MACDOUGALL: Mr. Chair, we are totally in your hands. We are trying to accommodate Ms. Abouchar, so any way is fine with us.

CHAIRMAN: Okay. Let's try to conclude with this panel and I think we can do it in half an hour, Ms. Abouchar, and then have your panel on. And if it is an hour then of course that would be 4:00 o'clock and that's plenty of time to get to the airport in Saint John, New Brunswick.

MS. ABOUCHAR: Thank you.

CHAIRMAN: Having lost track of who has crossed and who hasn't, I think Board counsel is the only counsel left.

MR. O'CONNELL: I think I am the bottom of the barrel here, Mr. Chairman, and the last one for this panel.

CHAIRMAN: Go ahead, Mr. O'Connell.

CROSS-EXAMINATION BY MR. O'CONNELL:

Q.317 - Thank you, Mr. Chairman. Gentlemen, you will need two things, one is exhibit D-1 which is the letter from the Environmental Protection Branch to Lorraine Legere dated May 12th, and the other one is exhibit H, section 5.1, page 39 of 48.

And as you look at exhibit D-1, I will assume you all have it, that is a letter from Mr. Lindsay of Environment Protection Branch -- Environmental Protection Branch, and

he has merely asked me to ask Enbridge Gas and its consultants if they will provide copies of any reports or studies generated during the course of the project that brings us here today, that they will be provided to Mr. Lindsay at Environmental Protection Branch in Fredericton?

MR. GILLIS: Yes, they will.

Q.318 - If you look at exhibit H, section 5.1, page 39 of 48

--

MR. DUMONT: Would you repeat that?

Q.319 - Exhibit H, section 5.1, which is on page 39 of 48.

And that section deals with the generation of a report and the question from Archeological Services, Heritage Branch, is Enbridge Gas New Brunswick and its consultants prepared to generate a specific report on the same subject with respect to urban sections of the development?

MR. HARTE: That's our intent, yes.

Q.320 - Okay. Thank you. Now, Mr. Chairman, there is one more thing and it is a letter from Mr. Ferguson, Albert Ferguson of Archeological Services, Heritage Branch, directed to Gary Highfield of the Board, dated May 10th 2000, and I would like to have a copy of this marked as an exhibit.

CHAIRMAN: That will be B-3.

Q.321 - Gentlemen, to do this as quickly as possible, if you can look through the various standards and commitments



that are outlined by Archaeological Services, Mr. Ferguson, on D-3, and let me know if any of you have any difficulty with any of those?

MR. GILLIS: Yes. With respect to number 4, we would propose the addition of the following words, "at all site-specific environmental protection plans (SSEPP) for sites with archeological concerns, prior to the start of construction at these sites".

MR. O'CONNELL: That's fine. Thank you very much. That's all I have, Mr. Chairman.

BY THE CHAIRMAN:

CHAIRMAN: A question for Mr. Gillis, I think. Can you dig out exhibit C-8 which is the response of EGNB to the interrogatory 102 from the Province during the proposal stage.

A simple question. What salary range would the individual that would have the minimum qualifications that are set forth in the bottom of that demand in the New Brunswick marketplace?

MR. GILLIS: The range would be between -- it's a pretty broad range, depending upon what the experience base they have and what it applies to, but it would be in the range between 40' and \$55,000 a year is my experience.

CHAIRMAN: Thank you. Mr. Harte, I listened to Mr. Blue's cross-examination in reference to this interrogatory and

it's pretty obvious why I just asked this question.

Has the applicant done any calculations as to how much money they could save by outsourcing this job to Enbridge Consumers Gas of Ontario vis-à-vis having somebody hired and living in New Brunswick in that pay range?

MR. HARTE: I believe that the only requirement we would have for this position would be during the construction process, and after the construction is complete then we would not require this individual until we get into the next phase of our construction process. So therefore I think that it would be an annual savings not this year but each subsequent year as we move forward.

CHAIRMAN: Okay. Thank you. I have no further questions.

Mr. MacDougall?

MR. MACDOUGALL: It moved so quickly after the break, Mr.

Chair, I am not sure.

MR. BLUE: Mr. Chairman, while Mr. MacDougall is doing that, I put a letter on everyone's desk dated today from myself.

It simply is a notice that in final argument of this case, which I hope will be later this afternoon, or early tomorrow, that I intend to rely upon the record of the Board's proceeding under docket number PUB 299, the hearing on rates and tariffs, that we finished on April 26th.

I will be referring -- I will be relying on that

evidence and asking that you refer to that in your decision for certain things that I am going to make submissions on.

CHAIRMAN: Okay. Thank you, Mr. Blue.

MR. BLUE: Rule 12(b) permit me to make that application.

May that be marked as the next exhibit?

CHAIRMAN: Okay. I will have to look it up.

MR. BLUE: I can read it to you. I have it right here.

CHAIRMAN: All right. Go ahead. Oh, as to what is the record?

MR. BLUE: Yes. Rule 12(b) says, unless the Board otherwise orders, where at any time during a proceeding a person intends to rely on a document other than a decision or order of or document released by the Board, the person shall (b), where the document is already in the Board's possession, file a statement identifying the document and the circumstances under which it came into the possession of the Board.

CHAIRMAN: Well the Board acknowledges your notice, Mr. Blue.

MR. BLUE: Thank you, sir. May I have an exhibit number for it.

CHAIRMAN: I believe that is C-9.

MR. BLUE: Thank you, sir.

MR. MACDOUGALL: Mr. Chair, I find I didn't have any

redirect, but I think I have a redirect arising out of the Chair's questions.

CHAIRMAN: Okay.

REDIRECT EXAMINATION BY MR. MACDOUGALL:

Q.322 - Mr. Harte, I believe there was an undertaking yesterday that you were going to provide a flow chart -- said you were going to provide this Board with a flow chart showing the environmental responsibilities. And yesterday you referred to outsourcing using local consultants.

Could you explain maybe the process of the requirements for the individual who would be in the position whose salary was identified as opposed -- by the chair as opposed to what local consultants could do on an ad hoc basis with respect that position?

MR. HARTE: The individual that we would be using would be a local consultant that we would hire for the duration of the project. And also as we required additional environmental assistance or help, we would bring on the part-time help to -- that would work under the direction of the environmental consultant that we had on the job site.

So that I would see that their position would be -- would be from start of construction or actually from now through to the end of November. And then we would not

require them to come back until we started into another new community.

And without the plans or definite plans to construct a northwest and northeast laterals then I don't see a full-time position being readily available at this time.

Q.323 - So, Mr. Harte, would those be considered the reasons why you have taken this route as opposed to what was initially outlined in your proposal?

MR. HARTE: That's correct.

MR. MACDOUGALL: Thank you, Mr. Chair.

CHAIRMAN: Can I ask one so I completely appreciate the answer?

MR. MACDOUGALL: I don't think I have the right to stop you.

BY THE CHAIRMAN:

CHAIRMAN: No. I recall you talking about outsourcing to Enbridge Consumers Gas. And from what I -- the answer I have just heard, it was if you were going to have the position that was described in that interrogatory will be filled by local environmental consultants?

MR. HARTE: That's correct.

CHAIRMAN: So where is the outsourcing to Enbridge Consumers Gas? I didn't follow that.

MR. HARTE: It's more management services that they would provide or guidance.

CHAIRMAN: Okay. So in effect you are not getting your

environmental director, et cetera, from Enbridge Consumers Gas?

MR. HARTE: We are under contract with Enbridge Consumers Gas that they would provide that guidance or assistance as required. But for the local content work that we would have in the province, we would depend on the consultants in the province to provide that field work.

CHAIRMAN: Okay. Thanks. I will go back and look at the transcript on that.

MR. MACDOUGALL: You are going to get that flow chart in too, and I think I saw it in a handwritten draft. It will -- organization chart which will show the reporting requirements and the individual.

CHAIRMAN: Okay. Thank you. Thank you, gentlemen. You are excused.

Ms. Abouchar, just so I understand, your proposal now is just to have a panel of two. Is that correct?

MS. ABOUCHAR: Yes.

CHAIRMAN: I did have a couple of questions and I won't worry about it right now. But I see at least one additional member of your panel is still here, sitting to your right. Are the rest of the members of that panel still present here?

MS. ABOUCHAR: Yes, they are.

CHAIRMAN: Okay. That's great. Why don't we just take a

five minute break, as if we have -- as if we need one, and let you put your panel up.

(Recess)

MR. CHAIRMAN: Ms. Abouchar, give me a little assistance in this matter, will you, as it is unique to me.

MS. ABOUCHAR: Certainly.

MR. CHAIRMAN: And the normal procedure, as you know, before this Board, witnesses are sworn. But I don't know whethr that is appropriate in this circumstance or not.

MS. ABOUCHAR: They will swear. That is appropriate.

MR. CHAIRMAN: Okay. All right. Secretary?

(Panel sworn)

DR. WICKEN, ELDER CHARLES SOLOMON:

(Translator, Imelda Perley sworn)

MR. CHAIRMAN: Go ahead.

MS. ABOUCHAR: Okay. Mr. Chair, I would just like to introduce the panel. We have Dr. Bill Wicken closest to the Board. And closest to the audience is Elder Charles Solomon.

And along with Mr. Solomon is Imelda Perly who is Mr. Solomon's translator. Mr. Solomon will be speaking in Maliseet today.

MR. CHAIRMAN: Our environment here, we have to turn the air-conditioner off because the shorthand reporter can't hear anything. Excuse us. I didn't know that Ms. Legere

controlled the air-conditioning.

DIRECT EXAMINATION BY MS. ABOUCHAR:

Q.1 - Okay. Beginning then with Dr. Wicken, I will just have each of you swear to the truth of the written evidence that you have provided. And then you can make your statements.

Dr. Wicken, do you confirm that the written evidence that you have prepared for this hearing was prepared by you or under your direction and control and is accurate to the best of your knowledge and belief?

DR. WICKEN: Yes, it is.

Q.2 - And Elder Charles, can you confirm that the written evidence that you have prepared for this hearing was prepared by you or under your direction and control and is accurate to the best of your knowledge and belief?

ELDER SOLOMON: Yes.

MS. ABOUCHAR: Okay. Then Dr. Wicken -- I think what we will do is tradition in Mi'kmaq and Maliseet culture for the Elder to have the last word.

So I think how we will proceed is with Dr. Wicken first and then Elder Charles.

DR. WICKEN: Thank you, Ms. Abouchar. Mr. Chairman, Board members and other interested parties to the proceedings, my name is William Wicken. Ms. Abouchar has introduced me as Bill Wicken. But I also have two names. So I will use



William in this capacity.

I'm am an historian and assistant professor at York University in Toronto. My experience is in aboriginal history of the Atlantic region from pre-contact to the early twentieth century.

I have testified in a series of court cases, providing historical evidence which has been used by legal counsel in Atlantic Canada over the last six or seven years, starting with R. versus Donald Marshall Jr. and continuing on with other court cases, both before the Nova Scotia Provincial Court, the New Brunswick Provincial Court as well as the Federal Tax Court of Canada.

I will just address two matters here very quickly and I hope in an expeditious manner. One is the use and occupancy of southern New Brunswick and New Brunswick generally by aboriginal people.

And secondly is the treaty relationships formed between the aboriginal people of Atlantic Canada, what became Atlantic Canada and colonial and federal governments during the eighteenth centruy -- sorry, specifically between 1725 and 1779 which has been the subject of much litigation over the last seven years here in Atlantic Canada and resulting in the Supreme Court decision in R. versus Donald Marshall in September of last year.

First of all I will just deal with use and occupancy very quickly. New Brunswick is an area that was traditionally used and occupied by aboriginal people. Generally here the three principal aboriginal societies, that is the Mi'kmaq, the Maliseet and the Passamaquoddy were seminomadic people.

During the warm weather months, several families lived together in an area adjacent to a river or to coastal areas. From there, marine and/or riverine resources could be harvested. Along the major river systems such as the Petitcodiac in southern New Brunswick, what is now southern New Brunswick, and the St. John River valley, one would expect to find village sites used by aboriginal people during the warm weather months, and evidence of their activities. This would include for instance farming, burial sites, fishing and other activities of their social and political life. As well you would find instances or at least evidence of trade between these aboriginal societies and other aboriginal people within the region of the Atlantic.

During the winter months however the pattern of living changed as communities tended to disperse into smaller groups. These areas were called winter hunting territories and were generally located adjacent to the major river systems.

It is my conclusion, and I think it is shared generally by historians, anthropologists, archeologists as well, is that there is a high probability that archeological material will be found along the river systems and in the traditional hunting territories in what is now the province of New Brunswick.

A useful method for evaluating archeological sites in New Brunswick is for instance to map the location of these winter hunting territories which were used and occupied by aboriginal people. And to my knowledge this has not been done by Enbridge Gas New Brunswick.

As well, southern New Brunswick was an important travel route for aboriginal people from throughout the Atlantic region. And this is not only during the period before contact -- and before contact, I mean the period about 1500 down until the early part of the twentieth century -- that we would find aboriginal people traveling through the southern part of what is now the province of New Brunswick.

For this reason there is a high probability that archeological evidence resulting from this travel and through this territory will be found in this area. One could find evidence for instance of the Mi'kmaq of Nova Scotia who were traveling through this area during the pre-contact period on into the early part of the twentieth

century through Penobscot of what is now the present day state of Maine, and other aboriginal groups.

Knowledge about traditional hunting areas and travel routes is not widely published. And this is a major methodological problem for historians and I think the general public generally.

Traditional knowledge such as travel routes, hunting territories, village sites, burial sites, all of that information in fact is passed down and was passed down from generation to generation among aboriginal societies in southern New Brunswick. And this would include of course the Maliseet, Passamaquoddy as well as the Mi'kmaq of New Brunswick.

And thus oral history or that knowledge and information which is retained within the communities is very valuable information and one that historians and anthropologists use quite -- try to use quite extensively.

Because in fact documentary evidence is very sparse and in many cases is just not available.

Now that is very quickly a brief look at those issues. The second issue I just want to look at is treaty relations. And these are the treaties that I referred to earlier as signed between the Mi'kmaq, the Maliseet, Passamaquoddy as well as between them and the British Crown during the period between 1725 and 1779.

These treaties recognize, at least it is my opinion, that these treaties were signed during this time period recognize that aboriginal people would continue to occupy their lands in what is now the province of New Brunswick and would continue to harvest resources found on their lands.

Each of these treaties, the initial ones signed in 1725, later renewed in 1749 and later again renegotiated in 1760 and 1779, each of these treaties implicitly recognized, at least that is my opinion, that British settlements or commercial endeavors would not encroach upon Mi'kmaq, Maliseet as well as Passamaquoddy lands.

Finally each of these treaties -- in none of these treaties which were signed in this time period between 1725 and 1779 the Mi'kmaq, Maliseet and the Passamaquoddy did not surrender or cede any part of their land or territory to the British Crown.

And in my opinion that is an important historical fact which needs to be factored into any proceedings or in fact any examination of aboriginal people in what is now the province of New Brunswick.

And my final point here is this is very different. And I realized that there has been a great deal of public interest and public outcry regarding the Marshall decision which was in September of 1999, both in the public press

as well as outside.

What is important to recognize in this respect is that these treaties were signed before the industrialization of the Canadian economy, because they are signed between 1725 and 1779.

Most of the treaties, when we talking about between the federal government of Canada and aboriginal groups, those are the western treaties, what we know as the numbered treaties.

And they are very, very different. Because in that instance we find within the language of the treaty, of those western treaties, those numbered treaties, an explicit surrender of land.

Now you might question whether or not that the aboriginal groups there in western Canada agreed to surrender their land. That is a valid historical point.

But that kind of language is not found in any of the treaties that are signed between the Mi'kmaq, the Maliseet and the Passamaquoddy and the British. There is no explicit surrender of land. And to me, at least in my opinion as a historian, that is an important historical fact.

And that is the end of my statement. Thank you very much, Mr. Chairman and other Board members.

ELDER SOLOMON: I welcome all of my brothers and sisters in

the room. I appreciate the opportunity to come and share my wisdom with you.

I would like to begin with telling you about the power of the four winds. From the north come the winds and the snow.

He has noticed through his years that many people always complain about the snow but they should remember they should be grateful because it's the snow that cleans the air that we breathe.

And the gift from the east is that's where the sun rises. And each day is given to us to walk upon our earth in harmony. And that's where we feel the warmth from the sun.

And from the south also comes the warmth and also the rains.

Each of these directions bring a gift to all of humanity and it's these things that he wants to address today in his -- there is a lot of things that he is concerned about. For example, people forget that the trees are standing elders, also gives us much to be thankful for. For example, they provide us with the oxygen to breathe with.

Have we forgotten that it's also the four leggeds that provide food for us and how often do we forget to give thanks to them for their -- and the winged people, the

birds also bring us gifts that we should be grateful for.

I give thanks to my grandmother who gave me the knowledge to carry on traditions of traditional medicine and how to pick it and how to harvest it.

I have always been worried whenever there has been developments that our traditional medicines begin to decrease, and I have seen through the generations that there is less medicine.

When he was invited here his concern was that traditional medicines would be further destroyed and he was worried that there would be none for him to share with his grandchildren and their grandchildren.

His concern also was with the sacred sites. Sacred sites go beyond just burial sites. Sacred sites are also sites where our people used to gather and he was quite concerned that another development would again not address or even care about preserving or at least contacting us about our protocol and what we do with sacred sites.

My heart is light now because I have heard that the company is willing to hire aboriginal people to oversee traditional medicines and sacred sites.

We have trust in our people. We know that the ones that are appointed to take care of the traditional sites and the medicines will contact us so that it will be protected for all.



I am also happy to hear that there will be jobs available for our people, they have been excluded for so long that it makes him feel good that in his lifetime he is able to see a company come forward to actually address and give opportunities to our young men and women.

That makes it so much better when there is a partnership as opposed to an exclusion. And in this sense he feels that there will be a good relationship because of the inclusion.

For him one of the -- as a basketmaker he has seen in his lifetime that the ash tree alone has become so scarce because of all the clear cutting. There was a time that he could go not very far from his yard to go get the ash tree, and now because of development, he has to travel further and sometimes he has no luck in getting any ash trees that he has to use other materials to make his baskets.

I hope that another development will be courteous enough to allow us to -- if there are ash trees that are present in the area of construction, to let the people know and they will be able to utilize the ash trees for the purposes of our people.

It shows him if the company is willing to include native people then it's a good start to living in harmony, because all of our people should be walking upon the earth

in harmony and he sees that as a powerful message and a good thing to see.

He would like to meet with the ones who are a head of the construction or the company so that he can touch their hands in promise that their people -- our people won't be excluded. That not only serves the purpose of this generation but it will also benefit the ones who are not born yet and of which it is his responsibility to ensure that the traditions are preserved for the ones who are not born yet. And he sees this as a good thing.

He says that in the time since he has been here for the past few days, he has heard bits and pieces but he is grateful for the fact that he was able to come and share his wisdom and he is thankful that there will be inclusion and he wants to thank whoever to -- that we are included.

And he thanks you for listening to him.

MS. PERLEY: The elder has brought some baskets and he has brought some medicine, which is only a fraction of what he actually picks during the year. He is known as the traditional medicine man in our area which is in Kingsclear, but he is known across Canada as the Wolastoq elder.

And Wolastoq is the name that we call ourselves. We are Wolastoq Geliad. We have been named Maliseet People because it was the Mi'kmaq People who refer to us as

maliseegic which means slow speakers. And of course the missionaries heard the maliseegic and ever since then we have been referred to as Maliseet People. But it is our tradition to remind people that we are people of the river, the Wolastoq Geliad.

And so the medicines that he has picked is close to the Wolastoq and that's why we call the river the bountiful river because that's where most of our medicines come from along the river. So he has brought some today.

And each of the medicines have a purpose. There is something there for diabetes. There is something there for arthritis. There is something there if you have swelling of the ankles or any of the joints.

There is also medicine that he wants to give away today and it's called Kilhusuwasq in our language, which means muskrat root. And I think the English terms is called calmous root. And I think other places call it flag root. And it's like penicillin. It's used as a preventative.

And in our culture we use the medicines to prevent from catching any of the bugs that may be going around. And so he has brought some today so that -- he is just going to give you a little piece of it. It's very bitter.

It's like penicillin but it's a good preventative if you happen to have a sore throat. You can just chew a little

bit of it and chew it real fine. Some people will make teas out of the root and it will -- if you happen to have a really bad fever and cold, then that's when you would drink that. But he prefers that you chew it to prevent you from getting sick in the first place. So he would like to offer people a little piece of that, so you will remember the power of that.

He also wanted me to include our traditional knowledge of why we are responsible for the earth. It has been told to us generations, and I think as our colleague had mentioned, that oral tradition still remains very strong.

And in our tradition it is our belief that everybody was in the spirit world before they became physical.

When your physical Earth walk is complete, then you return to the spirit world. And that's why everything is done in a cycle or in a circle. Within this -- within that cycle, four families were appointed to come and help make the world physical. Each family was given a gift to take care of and to share with the other families.

The first family to leave the spirit world was the white family. The white family was given the gift of fire. Their instruction was to help take care of the fire and to share it with the other families that were coming.

The second family to leave the spirit world was the yellow family. They were given the gift of air, again

with the instructions to take care of the gift and to share it with the other families.

The third family to leave the spirit world was the black people. They were given the gift of water, again with the instructions to take care of it and to share it with the other families.

When it came to the family that I come from, the red family, they didn't want to leave the spirit world. They asked the creator please can we stay here in the spirit world with you. But the creator said you must go as well because your brothers and sisters cannot survive without your gift of earth. But before you go, I will place medicines in the four directions, so that you will teach the people in case they have forgotten how to live in harmony with creation, that they will have to come together in ceremony, so we have been given sweet grass, and tobacco, and sage and cedar, which we usually bring together in a smudge bowl. And we bring that together to pray for all of humanity to once again take care of the gifts that they have been responsible for and to respect each other's gifts.

So it is the elder's responsibility to pass that knowledge on as he has done to me and of course I in turn have to pass that on. But when we talk of the Earth anytime that we place or even make a hole in Mother Earth,

we have to offer tobacco and apologize to Mother Earth for having to use her for a purpose.

And I think anytime there has been development, we have always done ceremony in our communities and we ask for forgiveness in harming Mother Earth during this phase.

And he has asked then -- said that we will continue to do ceremony whenever there is construction that obstructs the habitat for the animals, the four leggeds, the water creatures and all that. And so ceremony is still continuous to this day.

CHAIRMAN: While Elder Charles continues to pass that around, I should say that he should have been giving some of this root to your counsel this morning.

MS. ABOUCHAR: Darrell is always trying to give this to me.

CHAIRMAN: You should take it.

ELDER SOLOMON: He wants to know if there is any questions.

MR. MACDOUGALL: I'm sure the applicant wants to reserve its right to go first in this case. And with great pleasure not having any questions, but responding to Elder Solomon and also Dr. Wicken, we would like to thank both of them, and particularly Elder Solomon for sharing the experience, history and concerns of his people.

And Enbridge Gas New Brunswick will certainly hope to work in concert with UNBI and with the First Nations in New Brunswick to try and address any concerns they may

have with the development that is proposed.

And Mr. Pleckaitis would like at this time in this proceeding to touch hands as said with Mr. Solomon to confirm those commitments.

ELDER SOLOMON: The reason that the left hand is more significant in our culture is because that's the side of your heart and so the handshake is more directed at true friendship because your hearts are then connected.

CHAIRMAN: I was certainly aware of that being a Boy Scout leader for 15 years and president of the Boy Scouts for the Province of New Brunswick for five. Which leads me to a question that I do have. And that is we had two jamborees at Woolastook and I did not know the history that you just gave me, which is very interesting.

Is there a Woolastook stream as well? You speak of gathering near the river. Are you talking of the river St. John?

TRANSLATOR: Yes. Yes. Because it has been renamed St. John, but to us it has always been Woolastook.

CHAIRMAN: It was Woolastook.

TRANSLATOR: It was Woolastook.

CHAIRMAN: I see. Well I noted in some of the maps that have been put in here there are people who don't even know how to spell Saint John. It's S-t. not Saint John.

Anyway, any other questions from the panel? Mr. Blue?

CROSS-EXAMINATION BY MR. BLUE:

Q.3 - Dr. Wicken, I just have one question. The treaties that you spoke of between 1725 and 1779 between aboriginal communities and the British government, am I correct that the British government's view was that each treaty was local, that one community could not bind another community to a treaty?

DR. WICKEN: There is a difference between -- among the treaties, I should say. And I think that's a complicating factor, is that when you talk about the 1725 treaty, which is the first one which was signed, you do have a general assembly of Mi'kmaq, Maliseet as well Passamaquoddy who gathered in Annapolis Royal in the summer of 1726.

Q.4 - I'm aware of that. But in the treaty subsequent to say 1749, was it not the view of the British government that each of those -- they had to contract, so to speak, or enter into a treaty with each community separately?

DR. WICKEN: Yes, that is -- that becomes the policy of the British government and their view.

Q.5 - And do you agree with the view that subsequent to 1749 the treaties were local and the reciprocal benefits were local? For the --

CHAIRMAN: Could you repeat that?

Q.6 - Subsequent to 1749 the treaties were local and the reciprocal benefits under those treaties were local?



DR. WICKEN: Well what I would say is I think when you look at any treaty relationship, whether it's 1749 or 1760, '61, that you have to understand both parties' understanding of their relationship. So that if you understood it from the aboriginal side, that is from the Mi'kmaq as well as from the Maliseet and Passamaquoddy side, and try to integrate that into your analysis, that they would see it as one. That they don't see themselves as local communities. They see themselves as communities of distinct societies. So I would speak of the Mi'kmaq society in 1760, '61 as the Maliseet would think of themselves as a one society and not composed of what the British would consider to be local communities.

MR. BLUE: Thank you, Doctor. Thank you, sir.

CHAIRMAN: Any other? I don't presume you have any redirect?

MS. ABOUCHAR: No, you would be right on that one.

CHAIRMAN: Okay. Just before I release the panel, I had a number of questions, but basically they dealt with the testimony, I believe, of Mr. Paul concerning the Royal Commission on Aborigines. And, as well, the NEB decision in reference was it Iroquois? I'm speaking off the top of my head from memory.

You may -- and just to try and get a train of -- well, trying in my own mind to sort out from a legal point of

view and otherwise, how a creature of the New Brunswick Legislature is charged with doing whatever is in our statute. But then how the Royal Commission may have an impact on that, and what precedent is actually in that NEB decision that has been filed.

I have shared with you a Supreme Court of Canada case and that sort of thing. You may want to cover all of that in your summation, Ms. Abouchar.

MS. ABOUCHAR: Mr. Chair, I had intended on going into further detail on those decisions in my summation, in my legal argument, so if we could do that, that would be great.

CHAIRMAN: That will be fine then. Well Elder Charles and Dr. Wicker and Ms. -- I am sorry, I can't read my own writing -- Perley, thank you very much for your testimony and you are released. Thank you.

MS. ABOURCHAR: The Elder has wanted -- the Elder wants to leave with some humour, if he may.

CHAIRMAN: Good.

ELDER CHARLES: My son was going to college in the States, and he wrote me a short note. He said, No mon, no fun, your son. So I sat down and I wrote him a reply. I said, How sad, too bad, your dad.

CHAIRMAN: I guess the only thing left to discuss is summation. I know there are some folks who want to catch

aircraft tomorrow at -- well I will say leave the room at 3:00, I guess is what they are saying. So what is your pleasure? How long do you think it will be for the applicant, Mr. MacDougall?

MR. MACDOUGALL: I would think no more than an hour, Mr. Chair, and I spoke to Mr. Blue who I would think is probably the one who would also be pretty extensive in this process, and I also spoke to Ms. Abouchar a bit about her argument. So in talking to Mr. Blue though, we suggest that we could start at 10:30. I wouldn't want to start any earlier, just to have an hour or so in the morning. So that was our suggestion. I believe Mr. Blue is in agreement with that and I haven't talked to Ms. Abouchar about timing nor about proceeding tomorrow. I just talked a bit about her argument.

CHAIRMAN: Okay. Anybody have any problems starting at 10:30 then? All right. We will reconvene at 10:30 tomorrow morning. Thank you.

(Adjourned)

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

Reporter