NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER OF an application by Enbridge Gas New Brunswick Inc. to change its Contract Large General Service LFO distribution rate

Held at the New Brunswick Energy and Utilities Board premises, Saint John, N.B., on February 14th 2008.

Henneberry Reporting Service

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IN THE MATTER OF an application by Enbridge Gas New Brunswick Inc. to change its Contract Large General Service LFO distribution rate

Held at the New Brunswick Energy and Utilities Board premises, Saint John, N.B., on February 14th 2008.

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

NB Energy and Utilities Board - Counsel - Ms. Ellen Desmond
Staff - Doug Goss
- John Lawton
- Dave Young

Secretary Ms. Lorraine Légère
Assistant Secretary - Ms. Juliette Savoie

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CHAIRMAN: Good morning, everyone. We seem to have a little bit of noise in here. I will ask our court reporter, is that going to be okay?

Are you going to be able to -- all right. We will look for cues from you if we are not speaking loud enough then.

All right. Well, I will take the appearances this morning starting with the Applicant.

MR. HOYT: Len Hoyt and David MacDougall for Enbridge Gas New Brunswick.

CHAIRMAN: Thank you, Mr. Hoyt. Atlantic Wallboard/JD Irving Limited?

MR. STEWART: Christopher Stewart and Sarah Price.

CHAIRMAN: Thank you. CME. Flakeboard Company Limited?

MR. LAWSON: Mr. Chairman, Members of the Board. Gary Lawson for Flakeboard.

CHAIRMAN: Thank you. NB Energy and Utilities Board.

MS. DESMOND: Ellen Desmond, Mr. Chair. And from Board Staff, Dave Young, Doug Goss and John Lawton.

CHAIRMAN: And for the informal intervenors, Canadian Restaurant and Food Services Association? Competitive Energy Services? Department of Energy? Ganong Bros. Limited?

MR. LEFEBVRE: Mark Lefebvre for Ganong Bros.

CHAIRMAN: Thank you, Mr. Lefebvre. Public Intervenor?

MR. THERIAULT: Good morning, Mr. Chairman. Daniel Theriault.

CHAIRMAN: And Sucor Limited? With respect to the informal intervenors, the Board's procedure policy entitles informal intervenors to make a written or oral submission to the Board at the conclusion of the evidentiary portion of the hearing. And we would anticipate that the evidentiary portion of the hearing will conclude today, perhaps even this morning.

Would both of the informal intervenors be in a position to address the Board this morning? Or would you want to do it this afternoon? Mr. Theriault?

MR. THERIAULT: Whatever is convenient.

CHAIRMAN: Mr. Lefebvre?

MR. LEFEBVRE: This morning would be fine.

CHAIRMAN: Okay. Well, I guess that depends on how far we get with respect to the evidence this morning. The other preliminary matter of course is closing argument from the Applicant and the formal intervenors.

And perhaps I could hear from the parties with respect to what their preference would be in the event that we do conclude the evidentiary portion of this hearing this morning.

The Board, if at all possible, would very much like to get into argument today. We are not sure how long argument is going to take. And if we wait until tomorrow there is going to be -- we certainly have a lot of difficulty if we needed to get some time next week to conclude this matter. I think it would put us in a very difficult situation.

Mr. Hoyt, how would that work for you?

MR. HOYT: The Applicant's preference, and recognizing the concern of the Board, would be to do it Friday morning, but to start it as early as the Board was able.

CHAIRMAN: Well, if we were to finish -- again I don't know what time we are going to finish this morning. We haven't started yet. But if we were to get done this morning, say mid morning, would 2:00 o'clock this afternoon be a possibility?

MR. HOYT: It would be difficult.

CHAIRMAN: You feel you need the transcript in order to do your closing argument?

MR. HOYT: Yes. We only received last night -- or yesterday's transcript at midnight last night. So we haven't really had a chance to go through that either.

CHAIRMAN: All right. Well, we will address that issue then before we -- or at the end of the evidentiary portion as to when we will start argument. And we will take that into consideration.

What about the formal intervenors? Mr. Stewart, do you have a preference?

MR. STEWART: We could go -- I mean, I would like a little break, you know, in terms of just -- you know, after what happens today, this morning and to that extent.

But I mean, we could be ready to go at 2:00 provided we were done, as you said, mid morning, this morning.

CHAIRMAN: And Mr. Lawson?

MR. LAWSON: The sooner the better, Mr. Chairman. And while it might be complicated for the Board to sit next week, it is impossible for me to. I'm actually out of town starting Saturday.

CHAIRMAN: Well, what about closing argument, Mr. Hoyt, in terms of length? I don't really want to pin you down. But can you give me -- do you have any idea as to perhaps how long you might be?

MR. HOYT: It would be an hour at the most.

CHAIRMAN: Mr. Stewart, are you able to give me an estimate?

MR. STEWART: It won't be more than an hour.

CHAIRMAN: Mr. Lawson?

MR. LAWSON: Less than an hour.

CHAIRMAN: Well, that sounds like a half-day. All right. Well, we will probably then deal with final argument tomorrow morning.

So I suppose at this point in time the evidentiary portion of the hearing won't get concluded unless we get on with the matters this morning.

So Mr. Lawson?

MR. LAWSON: Thank you, Mr. Chairman. Mr. Barry Gallant is on the stand. Perhaps we could have him sworn.

CHAIRMAN: I will ask Board Counsel to come forward and swear Mr. Gallant.

BARRY GALLANT, sworn:

DIRECT EXAMINATION BY MR. LAWSON:

Q.1 - Mr. Gallant, you are the Manager of Finance and Purchasing for Flakeboard Company Limited's St. Stephen plant, is that correct?
A. Yes, I am.
Q.2 - And before I ask you if all of your evidence is true that you have submitted in FCL-1 as a result of the evidence having been prepared under your direction but by my control, did I screw up in some fashion?
A. I believe Question 14 would need to be addressed.
Q.3 - And is it my understanding Question 14 is tied to something that wasn't connected and should be removed from your evidence?
A. That is correct.
Q.4 - And so for the Board, wishes to have Question 14 and Answer 14 extracted. Because the answer to the preceding question didn't get done. So when we deleted the answer to the preceding one, I forget to delete the follow-up question which is 14. So that should be deleted.

And Question 15 -- as a result the introductory words of Question 15 should probably read instead "What comments if any do you have" instead of "What does this analysis tell you."

I don't think anything rides on it. But anybody reading the evidence might wonder what three dates are being referred to. And that work wasn't able to be completed so it wasn't with the evidence.

So it wasn't -- so with that modification, was this evidence prepared by you or under your direction?

A. Yes, it was.

Q.5 - And is the evidence true?

A. Yes, it is.

Q.6 - Perhaps if you could give us a brief summary of the evidence for the Board. And then I will offer you up for cross examination.

A. Good morning, Board or Chair and fellow Board members. Flakeboard Company Limited manufactures composite panels in St. Stephen, New Brunswick. In addition to that, we have seven other manufacturing facilities through North America.

It is our concern with this application that the costs that we are currently paying for gas distribution to our site in St. Stephen is significantly higher than, as we understand the cost, to provide that service.

And it is further to our concern that the rate application in front of the Board today is higher than the cost to provide to the whole LFO class.

And thereby we would -- we object to the application in front of the Board.

MR. LAWSON: Mr. Chairman, he is available for cross examination.

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

MR. STEWART: I have no questions for Mr. Gallant.

CHAIRMAN: Mr. Hoyt?

MR. HOYT: Thank you, Mr. Chair.

CROSS EXAMINATION BY MR. HOYT:

Q.7 - Mr. Gallant, at Q. 10 of your evidence it asks "Has Flakeboard's gas usage resulted in it having charges from the LFO tier 2 and tier 3 rate classes 2005?" And the response was "Yes".

Is that correct?

A. That is correct.

Q.8 - And at A-5 of your evidence you indicated that Flakeboard uses approximately 650,000 GJ's of natural gas annually, is that correct?

A. Correct.

Q.9 - And that would be an average of over 54,000 GJ's per month, correct?

A. Correct.

Q.10 - So a significant amount of the gas Flakeboard uses is in the second and/or third block, correct?

A. I think if you do the numbers out, 400' -- roughly 400,000 would be in the first tier. And then the remaining would be in the other two tiers.

Q.11 - So the remaining would be 250,000?

A. That would be the calculation, correct.

Q.12 - And does Flakeboard use a similar amount of gas each month? Or does it fluctuate?

A. Definitely there is some seasonality to our usage. Heating load in the winter would probably drive more gas usage in the winter period than in the summer.

Q.13 - Well, what typical usage would be in the winter?

A. Oh, probably in the neighborhood of maybe 60' to 70,000 GJ's.

Q.14 - Sorry?

A. In the neighborhood of 60' to 70,000 GJ's. I don't have the exact calculation. And it does fluctuate, but --

Q.15 - That is fine. And you confirmed in your evidence that EGNB is not requesting any increase for the second or third blocks or the demand charge of the CLGS LFO rate, correct?

A. Correct.

Q.16 - And yesterday there was discussion about the Board's January 18th decision in relation to motions made by AWL and Flakeboard in this proceeding.

Did you have a chance to review that decision?

A. Yes.

Q.17 - And if I tell you that in that the Board concluded that it will proceed to set rates in this application using the market-based method, would you agree with that?

A. I understand that that was the ruling in that case, yes.

Q.18 - So let's look at EGNB's market-based method. And what I would like to ask you to turn to is EGNB's evidence which is A-3.

And I would like you to turn to page 2. So if you look at the last paragraph on page 2 it indicates that EGNB has adopted targeted annual savings for the market categories that should provide sufficient incentive for customers to switch to and continue to use natural gas for the LFO sector, 10 percent light fuel oil has been established as the annual savings target.

Do you see that, Mr. Gallant?

A. Yes, I do.

Q.19 - So would you agree that EGNB's market-based methodology is to allow customers to see savings as against an alternate fuel?

A. Based on what is stated there it would be, yes.

Q.20 - I would now like to refer you to Flakeboard's response to EGNB IR number 6 from EGNB's 2005 rate application. I have copies.

MR. HOYT: How many would the Board require?

CHAIRMAN: Well, I guess we will need five for the panel and one at least for the Secretary. I guess we need eight, I have been told.

MR. HOYT: I think that should be marked as an exhibit, Mr. Chair.

CHAIRMAN: Any objections from any of the parties? I don't see an up-to-date exhibit list. What was the last exhibit number?

MR. HOYT: A-11.

MRS. LEGERE: A-11. It would be A-12.

CHAIRMAN: This will become exhibit A-12. It is EGNB interrogatory number 6 for Flakeboard from the 2005 -- 2004 hearing.

MR. HOYT: Well, it is dated 2004. But it is in respect to the increase that was approved in March of 2005. So I always refer to it as the 2005 rate case.

CHAIRMAN: Thank you.

Q.21 - And have you had a chance to look at that, Mr. Gallant?

A. Just since I have -- just since I have sat here.

Q.22 - What I would like to ask you to confirm is that in response to EGNB's questions in that interrogatory that you provided Flakeboard's dollar savings from using natural gas as compared to displaced oil and propane cost for November and December 2004 and January of 2005.

And the two questions in particular to look at would be (b) and (c).

A. What numbers again were those that we had --

Q.23 - (b) and (c)?

A. Page 3 and 4 of 5?

Q.24 - The responses would be the charts -- they are headed up "interrogatory 6(b)" and then "interrogatory 6(c)".

A. Okay.

Q.25 - And so what I'm asking is whether those provided Flakeboard's dollar savings from using gas as compared to displaced oil and propane for November and December 2004 and January 2005?

A. Right off I don't remember. Providing the numbers? It has been a couple of years. But I couldn't confirm that I did or I didn't I guess at this point without going back.

Q.26 - But in terms of -- if you go back just to the question. If you go back to page 1 and look at Question (b) it asks that you provide the percentage in absolute dollar savings for each month using Flakeboard's actual propane and oil displacement.

And if you go to (b) and work down through the page, at the bottom there is a line called "Total Savings".

What would that indicate?

A. If you look -- if we start for January '05 --

Q.27 - Right.

A. -- $81,726.94.

Q.28 - So would it be fair to say that that represented your calculation at that time of the total savings in January 2005 from using natural gas as opposed to oil and propane?

A. I would say that would be correct.

Q.29 - And similarly you provided similar savings information for December 2004 and November 2004, correct?

A. Correct.

Q.30 - So now I would like to show you Flakeboard's response to EGNB IR number 1 in EGNB's 2006 rate application.

Maybe I would ask Mr. MacDougall to do the honors.

MR. HOYT: And again, Mr. Chairman, I suggest it should be marked as an exhibit.

CHAIRMAN: Any objections to that? And that will become exhibit A-13. And that is Flakeboard Company Limited interrogatory number 1 in the EGNB 2006 rate application.

Q.31 - I would like you to look at Question 1(a). And if you turn to your response, you indicated that "The chart has been completed by Flakeboard. However, as it contains confidential information we have not provided the details."

And then you set out the monthly savings from using natural gas rather than alternate fuels between October 2004 and October 2005, correct?

A. Correct.

Q.32 - And those were the -- those were Flakeboard's response to the request as to what your savings had been from using natural gas during that period of time, correct?

A. It would have been based on the formula that would have been in place with regards to oil versus number 2 fuel.

Q.33 - And what formula is that, Mr. Gallant? Not the specifics of the calculation. But just generally what formula are you referring to?

A. The formula would be based on the current -- or the price of number 2 fuel versus the relative price of natural gas.

Q.34 - But did you and EGNB have a manner of calculating savings?

A. There was -- there was a form, a form or a document that laid out the manner to calculate that savings, correct.

Q.35 - And that is a form that EGNB and Flakeboard had worked out over some period of time and was used to determine these savings?

A. It was used to determine -- it was used to determine the savings as part of the -- yes, it was to determine the savings with regards to the relationship between oil and natural gas, the balance between the two of them -- or the difference between the two of them.

Q.36 - And you wouldn't disagree if I told you that those total monthly absolute savings totaled $2,217,618, would you?

A. I believe your math that that is --

Q.37 - Thank you. Now in A-8 of your evidence which is FCL-1 you have set out Flakeboard's annual increased distribution costs for 2005, 2006 and 2007, correct?

A. Correct.

Q.38 - And in A-5 you indicated that Flakeboard's annualized distribution charges with the new rate will be $2.1 million, correct?

A. Correct.

Q.39 - And if I could ask you to turn to the end of A-15 of your evidence.

Can you just read that last sentence?

A. Using data on a single date during the period of such an extraordinary fuel price difference for the purpose of this application does not give a fair reflection of the true savings that a customer is likely to have during

2008.

Q.40 - Now in response to Flakeboard's -- or in Flakeboard's response to EGNB IR number 2(a) you were asked to complete a form for each of the months since October 2004 that Flakeboard has been using natural gas and provide Flakeboard's monthly savings from using natural gas rather than alternate fuels, as you did in 2006, correct?

A. Correct.

Q.41 - And in your response you indicated that you have achieved savings of at least 10 percent by burning natural gas over the cost of using light fuel oil, correct?

A. Correct.

Q.42 - And you did just confirm that EGNB and Flakeboard had a similar spreadsheet and methodology to determine Flakeboard's savings, correct?

A. Correct.

MR. HOYT: I have a document that I would like to put to Mr. Gallant that had been prepared by EGNB in terms of EGNB's calculation of Flakeboard's savings between October 2004 and December 2007. Mr. MacDougall can just hand them out.

CHAIRMAN: Are you asking that this be marked as an exhibit?

MR. HOYT: Please, Mr. Chair.

CHAIRMAN: Again I will ask the parties, any objections to that?

MR. LAWSON: Mr. Chairman, I think perhaps before it gets marked there should be some foundation built for it. Because there are no supporting calculations or anything. I just -- I would really question its value.

MR. HOYT: The reason that there are no calculations was because of the preference expressed by Flakeboard in previous proceedings not to provide those calculations.

And we in posing the IR attempted to accommodate Flakeboard's preference as demonstrated in some of these previous proceedings in terms of determining what that total calculation is without delving into the numbers such as the commodity price and so on and putting that type of information on the record.

So it has been done in an attempt to accommodate some concerns that Flakeboard has expressed in the past.

MR. LAWSON: Again, I don't know what the numbers are. I mean, these take calculations which I presume are founded on some costs of Flakeboard.

I don't know. Does EGNB have Flakeboard's costs to be able to have done this calculation? I just don't know.

CHAIRMAN: The difficulty with marking that as an exhibit is that there has been no -- certainly it wasn't prefiled as most of the exhibits are. There is no evidence to sort of back up where this information came from. You are making a statement as to where it came from. But there is no evidence.

I can mark it for identification if you wish to use it as an aid to cross examination. I think at this point in time I wouldn't want to give an exhibit number. I will mark it 1 for identification. Sorry. We will mark that number 2 for identification.

Q.43 - So Mr. Gallant, have you had a chance to look at EGNB's determination of Flakeboard's savings from November 2005 -- well, from October 2004 to December 2007?

A. I have -- yes, I have looked at that.

Q.44 - So you received this earlier this week?

A. Yes, I have.

Q.45 - And when did you receive it?

A. I believe I received it Tuesday morning, if I'm not mistaken.

Q.46 - So would you confirm that the savings numbers that are shown in that chart from October 2004 to October 2005 are the same numbers you provided in response to EGNB IR number 1 in the 2006 rate application?

A. I would agree.

Q.47 - So those are the same numbers. So in terms of the numbers set out there between November 2005 and December 2007, have you had a chance to consider those numbers since Tuesday?

A. I would have had a chance to consider them, yes.

Q.48 - And would they be in the order of magnitude of the savings that Flakeboard has realized from using natural gas during that period of time?

A. I would have to say that in order of magnitude that it would be in the ballpark of what we would do. But I would also argue that our competitors would be able to cite the same cost savings over number 2 fuel in that same time period as well.

Q.49 - But you would indicate that $9.6 million is in the ballpark?

A. Without -- in the ballpark, correct.

Q.50 - And do you know what percentage level of savings that would represent?

A. Right off, no, I would not.

Q.51 - But it is more than 10 percent?

A. We have already admitted that. We have definitely -- they saved more than 10 percent through that time period.

MR. HOYT: Mr. Chair, given the response, would it be appropriate to have this document marked as an exhibit?

CHAIRMAN: Mr. Lawson, any comments?

MR. LAWSON: Mr. Chairman, I don't think the document itself -- the evidence is that the number represents a ballpark figure, I believe the evidence was. But I don't think the document itself has been established in any fashion. So I don't think it is appropriate, Mr. Chairman.

In fact I'm looking at -- just comparing numbers. I don't know. I'm looking at the numbers on A-12. And the November and December numbers I can't reconcile. I don't know.

MR. HOYT: Well, just in terms of that we better go back to Mr. Gallant.

Q.52 - Let's look at A-12. So, Mr. Gallant, if you could turn to A-12 -- sorry -- A-13 is the one you should be looking at. If you go to A-13 and look at your responses under total monthly absolute savings, what is the number for October 2004? Sorry, Mr. Gallant, that's A-12.

A. Okay. A-13. $25,160.

Q.53 - And what is the number for October 2004 on the item 2 marked for identification?

A. 25,160.

Q.54 - And if you look at November 2004 what is the number on exhibit A-13?

A. 66,514.

Q.55 - And what is the number on item 2 for identification?

A. 66,514.

Q.56 - Could I ask you just to look at from December 2004 up to October 2005 on both of those documents and confirm that the numbers are identical?

A. What date was that again that you wanted me to --

Q.57 - If you go from December 2004 --

A. Okay.

Q.58 - -- up to October 2005.

A. I have checked.

Q.59 - And they are identical?

A. They are the same, yes.

Q.60 - Thank you. So, Mr. Gallant, if I could ask you again to just turn to the end of A-15 of your evidence, and on page 6 you indicate that -- and I quote -- "This application does not give a fair reflection of the true savings that a customer is likely to have during 2008." End quote. Is that correct?

A. Could you just repeat that again.

Q.61 - Sure. Just at the end of A-15 --

A. Yes.

Q.62 - -- on page 6, it says, "This application does not give a fair reflection of the true savings that a customer is likely to have during 2008." Correct?

A. Correct.

Q.63 - So at this time I would like to circulate another document that I will ask be marked for identification, and it's EGNB's calculation of Flakeboard's forecast savings for January 2008 to December 2008.

CHAIRMAN: EGNB's forecast of Flakeboard's savings 12 months' forecast January 2008 to December 2008 will become number 3 for identification.

Q.64 - So, Mr. Gallant, when did you first see this document?

A. I think it accompanied the other document that you had just passed out on Tuesday morning.

Q.65 - And have you had a chance to consider the numbers that are presented in that document?

A. Generally consider them, yes.

Q.66 - And if I were to tell you that these forecasts of Flakeboard's monthly savings for 2008 were calculated using the same methodology and spreadsheet as were used to determine the actual savings from 2004 to date, do you have any reason to doubt EGNB's projection of Flakeboard's savings of $4.2 million for 2008?

A. I would take your word that if they were calculated the same way, but I have no idea of proving that.

Q.67 - But again so they would seem -- appear to be in the ballpark?

A. Like I say I would have -- they would appear to be in the ballpark but I can't make an absolute determination that that's what they would be.

Q.68 - Thank you, Mr. Gallant. Now, Mr. Gallant, I would ask you to turn to A-12 of your evidence where you say, as such like Flakeboard they pay for both product being natural gas as well as the cost of distribution, correct?

A. Correct.

Q.69 - So you would agree that as a natural gas user, Flakeboard pays EGNB's distribution charge and for the natural gas itself, correct?

A. Flakeboard pays EGNB for distribution. It does not pay -- it does not pay for the product itself to EGNB.

Q.70 - No. Correct. It pays EGNB for the distribution charges and it pays somebody else for natural gas, the commodity?

A. Correct.

Q.71 - And I would ask you to turn to A-13 which is the next page of your evidence, where you indicated that energy costs represent one of the most significant components of operating costs for a number of businesses including Flakeboard's, correct?

A. That is correct.

Q.72 - Now let's go to Flakeboard's response to EGNB IRs-3 (a), (b) and (c) which are in exhibit FCL-3.

CHAIRMAN: Mr. Hoyt, what was the IR number?

MR. HOYT: It's IR number 3.

CHAIRMAN: Thank you.

Q.73 - If we were to look at question (a), could you just read the question and your response?

A. For each of 2007 -- is that the start of it?

Q.74 - No. 3(a), what proportion.

A. Sorry. I must have the wrong -- would you say that again?

Q.75 - Yes. It's EGNB IR number 3.

A. Okay. Question (a)?

Q.76 - Yes, please.

A. Okay. What proportion of the total cost of using natural gas including commodity costs do distribution costs represent? Please provide all data, details and calculations.

Q.77 - And would you read your response?

A. The cost of natural gas is not relevant to this matter.

Q.78 - Now given that just a moment or two ago you indicated that in addition to paying natural gas distribution charges Flakeboard also pays commodity costs, would you be prepared to provide us with a ballpark as to the proportion of total cost of using natural gas -- or the proportion of the total cost that distribution costs represent?

MR. LAWSON: Mr. Chairman, again I would object on the basis of relevance. What relevance does that have to this hearing?

MR. HOYT: I think, Mr. Chair, it just goes to the methodology. Mr. Gallant just confirmed that natural gas costs are -- commodity costs are part of having natural gas available. And again we are not looking for the calculations. We don't want their price. We just want to get a sense of the order of magnitude that the distribution charges represent of their total gas cost.

CHAIRMAN: I take it you are not looking for precise figures and I take it you are not looking for any confidential information to be disclosed.

MR. HOYT: Not at all.

CHAIRMAN: You are simply looking for, as you say, an order of magnitude. I think the question is reasonable.

MR. LAWSON: Mr. Chair, it may be reasonable but I don't think it has any relevance except for the purposes of establishing the market-based price formula, and there has already been an agreement that there has been more than a ten percent savings. That's the objective. And how much it represents of the total cost is I submit completely irrelevant to what the Board has to consider here today. And I do submit that any disclosure will probably give some relative cost advantage to competitors.

CHAIRMAN: Well if there is some issue here with respect to confidentiality and perhaps some harm to your client's business, that's a different issue and we can certainly deal with this question on an in-camera basis, if that's necessary. I took it that Mr. Hoyt's question was not asking for specifics that would disclose that kind of information.

MR. HOYT: Perhaps it may be of assistance. Given Mr. Lawson's concern, I won't proceed with (b) which deals with the percentage of distribution costs representative of production costs, if that helps any, again because that's where I was going next, but recognizing the concern in terms of the production costs that his client has I won't go there. But I do think it's highly relevant in this proceeding to ask a question about what proportion the distribution costs represent of the total gas costs of Flakeboard.

CHAIRMAN: And, Mr. Lawson, again in terms of whether or not you feel there is some confidential information there that in some way might cause some harm to your client's business, I --

MR. LAWSON: Without question, Mr. Chairman, even I, a not very astute mathematician --

CHAIRMAN: So we have heard.

MR. LAWSON: -- witness evidence preparer -- managed to -- would manage to be able to figure out very quickly what Flakeboard's costs are and energy costs in total, which would be of great interest to the competitors of Flakeboard. How much they in fact pay for gas or for energy is obviously going to be relevant to competitors. Business is competitive enough as it is.

CHAIRMAN: Mr. Hoyt, I guess given Mr. Lawson's response, and I don't want to put Flakeboard in a position where they are going to disclose information of a confidential nature that might be harmful to their business, but we do have an option of treating this part in confidence and sort of going in-camera. What I would ask is if you feel that the response to that question is necessary for your case we certainly can go in-camera and deal with it in that fashion.

MR. HOYT: A couple of things. Again I think the discussion has moved now more from relevance to confidentiality, and --

MR. LAWSON: I'm not conceding on relevance, Mr. Chairman.

CHAIRMAN: I appreciate there is no -- that's right -- I don't believe there is any concession on Mr. Lawson's part. I'm really quite frankly pushing it on the confidentiality side.

MR. HOYT: And I would like to confirm that EGNB has no objective of putting this confidential information on the record and understand the company's concern, and would be prepared to take it in confidence, either through an undertaking to just provide that percentage without having to turn the whole proceeding into an in camera proceeding, and could deal with it appropriately once we had that information.

CHAIRMAN: Mr. Lawson, are you prepared to handle it in that fashion, an undertaking that is responded to on a confidential basis?

MR. LAWSON: If, and only if, the Board rules that it is relevant.

CHAIRMAN: I believe it's relevant and that's our ruling. So you are prepared to do that by way of undertaking rather than have it --

MR. LAWSON: Yes, Mr. Chairman.

CHAIRMAN: Now just to be sure what that undertaking is, perhaps the question should be repeated. Sometimes we get undertakings we are not 100 percent sure precisely it is that has been asked for.

MR. HOYT: So the specific question is EGNB interrogatory number 3 to Flakeboard, the first part of it, excluding the references to calculations and so on -- the question is what proportion of the total cost of using natural gas, including commodity costs, do distribution costs represent?

MR. LAWSON: And for what year?

MR. HOYT: Now.

MR. LAWSON: Today or 2007?

MR. HOYT: 2007 would be the actual, so that would be fine.

CHAIRMAN: Mr. Lawson, you are clear on what the undertaking is?

MR. LAWSON: I believe so, but I don't know the answer, so I think -- I know the question. Hopefully the undertaking can be answered by somebody that knows the answer.

CHAIRMAN: Perhaps you should ask Mr. Gallant so that you are clear as to what you are being asked to do.

A. Yes, I am.

Q.79 - Mr. Gallant, would you please turn to Flakeboard's response to EGNB IR number 2(b). And in that response you indicate that the approximate cost of Flakeboard's conversion from light fuel oil to natural gas was $2.3 million, correct?

A. Correct.

Q.80 - And you confirmed earlier this morning that Flakeboard had savings of $2,217,618 between October, 2004, the month you started using natural gas, and October 2005, correct?

A. Correct.

Q.81 - So Flakeboard essentially recovered its full cost of conversion within one year, correct?

A. That would be the calculation, correct.

MR. HOYT: No more questions, Mr. Chair.

CHAIRMAN: Thank you, Mr. Hoyt. Ms. Desmond?

MS. DESMOND: No questions from Board staff, Mr. Chair.

CHAIRMAN: Any questions from the Board?

BY MR. TONER:

MR. TONER: Yes, I have one question. And I'm not sure if the question is for you or Mr. Hoyt, but this document number 3 for identification, was this created using the budget after the rate increase number or before the rate increase, the 4.249 million?

MR. LAWSON: Mr. Chairman, if I might, I hate to interject, but that's part of the reason why this should not be as an exhibit or even considered is that there is no evidence as to what was used for this. That's part of my redirect.

CHAIRMAN: Mr. Lawson, your objection was noted and that document was not marked as an exhibit, simply marked for identification, and I think certain questions and answers were put to the witness where he agreed to certain propositions, if you will. I think this is really just a clarification as to what was intended by those numbers. But I appreciate it's not an exhibit.

MR. LAWSON: My concern is though that the questions might try to establish the credibility of a document that hasn't been established otherwise by the Applicant.

CHAIRMAN: That document has not been marked as an exhibit and unless there is some evidence to establish where those numbers came from, it won't be.

MR. HOYT: In answer to the question, those calculations do include the rate increase.

CHAIRMAN: Any redirect, Mr. Lawson?

MR. LAWSON: Yes, Mr. Chairman. And I will start with -- oh, I'm sorry.

CHAIRMAN: Mr. Radford. I'm sorry.

BY MR. RADFORD:

Q.82 - Mr. Gallant, on your opening remarks you said the rates here in New Brunswick, as proposed, would be significantly higher. I think you used the word significant?

A. Yes, I did.

Q.83 - Yes. And so I flipped over to your chart which is -- it's a coloured chart --

A. Yes.

Q.84 - If I understand the chart correctly, the blue represents what the cost would be to your company for using the services of Enbridge here in New Brunswick compared to what it is presently with the red, is that correct?

A. Yes. Actually mine is not in colour, so I guess maybe --

Q.85 - Okay. The first one is blue.

A. Okay. That's the 2,000,000. Okay. Sorry.

Q.86 - The second one is red.

A. Correct.

Q.87 - Then we drop down and everything looks a lot lower.

A. Correct.

Q.88 - But where are the volumes? Are your volumes -- are we comparing apples to apples here or apples to oranges?

A. If you -- there is a little box in the middle -- roughly in the middle to the right --

Q.89 - Yes.

A. -- where it says it's based on 50,000 gj's per month.

Q.90 - And are you using that --

A. That is the number that has been used to calculate.

Q.91 - That's constant through. So then I look at it, it's all --

A. That's correct.

Q.92 - Thank you very much.

CHAIRMAN: Anything further, Mr. Radford?

MR. RADFORD: No. That's it.

CHAIRMAN: Mr. Lawson, redirect.

REDIRECT EXAMINATION BY MR. LAWSON:

Q.93 - Thank you, Mr. Chairman. Just to look at IR number 3, which Mr. Toner just asked a question of EGNB, have you seen any of the figures used to support this calculation?

A. I have not seen any of the figures, no.

Q.94 - Did you know before the question was asked by Mr. Toner today whether or not it was with or without the rate increase requested?

A. No, I did not.

Q.95 - So could you in fact address the question accurately of whether or not that is a fair reflection of the savings anticipated in 2008?

A. No, I could not.

Q.96 - I'm going to refer you also back to I number 2, and at the same time A-12. A-12 identified on page 3 of 5 what the savings were that were calculated in the 2004/2005 rate increase application

CHAIRMAN: Mr. Lawson, that may be A-13.

MR. LAWSON: A-13. Looking at A-12 which is actually the 2004 - 053? I thought that was marked as A-12.

CHAIRMAN: Yes. It is A-12. Okay.

Q.97 - So as I look at the number on page 3 of 5, the numbers for each of the three months there for savings, and my confusion is that for example in the November '04 calculation the number comes up at $65,923, correct?

A. Correct.

Q.98 - When I look at the chart that was marked I-2 it's identified as $66,514, correct?

A. Correct.

Q.99 - When I look for example at January of '05, the figure shown on A-12 is $81,700 and the figure shown on I-2 is is $88,900, correct?

A. Correct.

Q.100 - So they aren't consistent, although I will admit they were consistent with A-13.

A. Correct.

Q.101 - You don't recall why there would be some discrepancy in those calculations?

A. No, I don't.

Q.102 - Now there was also a question with respect to the cost of conversion of $2.3 million. That would be described by an accountant as the direct costs -- maybe not by an accountant -- by me as the direct costs as opposed to other costs, is that right?

A. Correct.

Q.103 - What other costs might the company have incurred as a result of doing the conversion?

A. We would have incurred down time which would have meant lost production time, which wouldn't have been captured in that 2.3 million dollars for example.

MR. LAWSON: Those are all the questions I have on redirect. Thank you.

CHAIRMAN: Thank you, Mr. Lawson. Thank you, Mr. Gallant.

MR. HOYT: Mr. Chair, if I could just ask to get a sense from Mr. Lawson in terms of timing on that undertaking?

MR. LAWSON: I have no idea.

MR. GALLANT: Probably before the morning.

MR. LAWSON: Thank you. Is it something that with a break --

MR. GALLANT: Probably in a break I can probably make it --

MR. HOYT: I don't know what the wishes of the Board would be or the Applicant. We could break now and obtain the information.

MR. LAWSON: No, I don't think we need it for Dr. Gaske. We may as well --

MR. HOYT: You don't anticipate recalling the witness. Okay. That was the reason. That's fine.

DR. STEVEN GASKE, sworn:

DIRECT EXAMINATION BY MR. LAWSON:

CHAIRMAN: The witness has been sworn.

Q.1 - Dr. Steven Gaske, is that correct?
A. Yes.
Q.2 - And the evidence that has been marked as FLC number 2 is a report or written testimony that you have provided in this matter, is that right?
A. That is correct.
Q.3 - And that was prepared by you?
A. Yes.
Q.4 - And is the evidence true?
A. Yes, it is.
Q.5 - On the back of your document is a curriculum vitae. Have you worked in matters of economic -- regulatory economics in the past?
A. Yes. I have approximately 30 years of experience.
MR. LAWSON: I would ask that Dr. Gaske be identified as an expert in regulatory economics.
CHAIRMAN: Any objection? All right. He will be so declared as an expert witness in regulatory economics.
Q.6 - Dr. Gaske, could you provide the Board a brief summary of your evidence and also any comments you might have with respect to any of the other evidence you have heard at the hearings this week?
A. Yes. Good morning, Board. My evidence has two fundamental recommendations. One is that you all use your

discretion and authority to reject this rate increase and that you order EGNB to set up an accounting system so that it can track over charges and amounts provided as incentives to various customers, so that they would be kept for smaller customers on a class basis and for larger customers on an individual customer basis.

The reason I am proposing that you reject the rate increase is that the proposed LFO rate is not just and reasonable under any economic or regulatory standard that I am aware of.

The stand-alone cost for Flakeboard to construct its own line is on the order of about 300 to $350,000 a year. Currently they are paying $1.2 million for the service and if the rate increase goes through they will be asked to pay more than $2,000,000 for a service that shouldn't cost more than $350,000.

EGNB is a franchise monopoly. It has been granted a monopoly to provide gas distribution service. And the reason typically that you would grant the franchise monopoly is that one company serving the entire market will have huge economies of scale. You could do it cheaper than any individual customer could do it for themselves.

So grant them the monopoly, use the Board though stand in place of competitors you ensure that the rates that they charge to companies are not excessive, that indeed the public and the customers get the benefits of these economies of scale. And in fact in data responses provided by EGNB they have indicated that the St. Stephen lateral where Flakeboard takes service costs approximately $250,000 a year. You can throw on some overheads on that, maybe say $350,000 a year for them to run that lateral.

Well they are using that lateral to serve Flakeboard and the rest of St. Stephen. So you break it up and perhaps -- perhaps it costs $200,000 a year to provide service to Flakeboard. They want to charge $2,000,000 for that service.

So as a Board you are in a position to look at the rates and determine whether or not they are just and reasonable. There is a formula in place based on the cost of oil and the cost of natural gas, and that margin, and the rate stays ten percent under the cost of oil. That's fine in some circumstances. In the current circumstances it's not good and it's not appropriate.

I would submit to you that given a franchise monopoly, if this Board did not exist, if there were no regulation whatsoever on the rates, that EGNB most likely would be charging the rates that they are asking to charge today to

Flakeboard and American Wallboard and the LFO customers. They would try to charge as much as they possibly could to just barely get under the cost of using oil.

Now in my testimony I say that the market-based rate tied to oil is not an appropriate measure for this company, that the appropriate market-based rate is the cost of an alternative transportation provider. In fact the evidence is that the company trying to build its own line would have a cost of 300, $350,000 a year for the distribution cost. That's the alternative market-based price for distribution.

When you incorrectly think of it in terms of what is the cost -- alternative cost of oil, you are missing the real economic point, which is when you measure it against oil, EGNB comes in and it will provide a ten percent savings over oil. With EGNB you get that ten percent savings. Without EGNB, if EGNB did not exist, Flakeboard would not be using oil. They would be using natural gas. They would have built their own line for 300, $350,000 a year and they would be using natural gas. So the appropriate market-based measure would say, all right, with EGNB they are using gas, without EGNB they are using gas. There is no savings in the cost of gas. With EGNB they are paying $2,000,000 a year for distribution.

Without EGNB they are paying $350,000 by building the line themselves or having somebody else build it for them. So it is fundamentally flawed to even think of it in terms of their saving money on the price of oil. They wouldn't be using oil if EGNB were not there.

So rather than think of it in terms of all the money they have been saving, it's only appropriate to look at it in terms of how much excess cost are they actually paying, because that's the real economic alternative if EGNB were not here.

Now my second recommendation in terms of keeping track of the deferrals has to do with the fact that EGNB is being charged far more than cost right now. And it has been suggested that the reason to charge them more than cost is to keep the deferral account down.

So for example, if they are overpaying by a million dollars this year, a million dollars more than their stand-alone cost, EGNB will have deferrals of 18,000,000. If they charge $300,000 to Flakeboard, they will have $19,000,000 in deferred costs. So this overcharge is the equivalent of asking Flakeboard to currently pay down the account, the deferred cost account.

So I am recommending that they be -- that an account be set up to keep track of how much of the deferred costs that otherwise would occur are being charged to Flakeboard now so that they can get credit for that later when it's time to collect the deferred costs.

So in a nutshell that's my testimony.

MR. LAWSON: Thank you. The witness is available for cross examination.

CHAIRMAN: Thank you. Mr. Stewart, any questions.

CROSS EXAMINATION BY MR. STEWART:

Q.7 - Dr. Gaske, to your knowledge does Flakeboard buy its natural gas from Enbridge Gas New Brunswick?

A. It's my understanding that they do not.

Q.8 - And so to the extent that they save money by buying natural gas, that's a saving brought to them by whomever they buy the gas from and not from Enbridge Gas New Brunswick, isn't that correct?

A. That's correct.

Q.9 - And in fact Enbridge Gas New Brunswick is trying to significantly increase its charges to Flakeboard and not to hand them additional savings in this proceeding, correct?

A. That's correct.

MR. STEWART: Thank you.

CHAIRMAN: Thank you. I think we will take a 15 minute break at this point in time. So we will be back at about

25 to 11:00.

(Recess - 10:20 a.m. - 10:40 a.m.)

CHAIRMAN: Are you ready to proceed with cross examination, Mr. MacDougall?

CROSS EXAMINATION BY MR. MACDOUGALL:

MR. MACDOUGALL: Yes, Mr. Chair. Thank you. Good morning, Mr. Chair, Panel Members. Good morning, Dr. Gaske. I am going to be referring primarily to FCL-2, which is your evidence, and to FCL-3, which are your IR responses.

Now, Dr. Gaske, if we could refer in your evidence, FCL-2, at page 3, question 4. In here you indicate that the rate described on page 3 of Mr. Charleson's testimony has been referred to as a market-based rate, but then you state that you will explain that it is based on the relationship between the markets for oil and gas, when in your view a true market-based rate for pipeline transportation services would be based on -- some way on costs and/or prices in the pipeline transportation market, correct?

A. That's correct.

Q.10 - Now whatever the nomenclature of the derivation of the CLGS LFO rate being proposed, would you acknowledge that the derivation of the distribution rate that is set out in Mr. Charleson's evidence is generally the method of derivation of this rate that has been used for a number of years in New Brunswick, the methodology?

A. Yes.

Q.11 - And this derivation of the LFO rate is consistent with the derivation of all of EGNB's general rates, correct? The same methodology is used?

A. Yes.

Q.12 - And it's based on providing a discount to an alternate fuel, correct?

A. Depends on your definition of alternate fuel. As I explained earlier, for Flakeboard the alternate fuel would be natural gas delivered by their own system. So it is not really based on their alternate fuel, it's based on the cost of oil which is not an alternate for them. It might as well be coal from England, to the extent that you are using a hypothetical alternate fuel.

Q.13 - Is Flakeboard a dual fuel customer?

A. That's my understanding.

Q.14 - And the other fuel is light fuel oil, at least in part?

A. They could switch to light fuel oil, yes.

Q.15 - And prior to using natural gas do you know what Flakeboard used?

A. I understand that they used some combination of propane and oil.

Q.16 - And the approach in the LFO class -- the use of the methodology in the LFO class -- has always used the comparison to LFO, correct? That has been the alternate fuel that has been used for that methodology as long as it has been used in New Brunswick, correct?

A. Yes, that has been the assumed alternate.

Q.17 - And that approach has been referred to as the market-based rate approach, right?

A. That's my understanding, yes.

Q.18 - Okay. Now if I could show you an extract -- Mr. Hoyt can hand the document out. This is going to be an extract from the initial decision of this Board dated June 23rd 2000, dealing with EGNB's rates and tariffs. And, Dr. Gaske, you see on the front here, you see In the Matter of an Application by Enbridge Gas New Brunswick Inc. for Approval if its Rates and Tariffs, June 23rd 2000?

A. Yes, I see that.

Q.19 - And if you could turn -- and I have just given you an extract because it's just the relevant pages of the decision dealing with rates -- if you go to page 10 and you will see a heading "Rates", followed by a heading "Target Rates", correct?

A. Yes.

Q.20 - Now directly under the heading "Target Rates" you will see that it says, EGNB proposed that a market-based approach be used for setting target rates during the development period, correct?

A. Yes.

Q.21 - And then if we go to the next paragraph, in the first sentence, it says, the market-based approach starts with the premise that the total delivered price of natural gas to the customer must be below the equivalent price for fuel oil, correct?

A. Correct.

Q.22 - And then if we can continue on with the paragraph at the bottom of the page, the starting point, therefore, is to estimate the burner tip prices by rate class for the competing fuel and to apply the appropriate discount. This provides the estimated total delivered price for natural gas to the customer, correct?

A. Yes.

Q.23 - And then you turn the page, the next step is to back out from this total delivered price, by rate class, the forecast costs of the commodity, transportation tolls, load balancing costs and gas marketers' profit margin. The residual amount is the target price, by class, for distribution, that EGNB proposed to charge, correct?

A. That's correct.

Q.24 - And this is generally what EGNB has done in all of its rate cases up to this one and what it is doing in this rate case, correct?

A. That's my understanding.

Q.25 - Okay. And then if we can go over to page 12, and in the last paragraph, first sentence, it says, the Board will approve the market-based methodology of setting target rates as proposed by the Applicant, correct?

A. Yes.

Q.26 - So for the purposes of EGNB's applications from the very outset of its development of a gas distribution system in New Brunswick through to and including today, EGNB and the Board have always understood market-based rates to be as per the methodology first put forward by EGNB back in 2000 and as it is being put forward today, correct?

A. That is the definition of market-based they have used and that is the point of my testimony, that the definition is inappropriate.

Q.27 - That's what has been used since the outset, continues to be used and has been consistently approved by the Board, correct?

A. That's the method. If your question goes to market-based that's a different question.

Q.28 - No. That the rate has been called by the Board a market-based rate, correct? We just went through it. The Board will approve the market-based methodology. So what they approved they considered and have always considered a market-based methodology, correct?

A. For some customers that's probably correct. For others it's not correct.

Q.29 - Well let me go back. I just want you to -- let's talk about what the Board has approved.

A. Yes. No, I'm agreeing with you that the terminology, market-based rate, is what they have called this, and the point of my testimony is it's a misnomer in some cases.

Q.30 - But the methodology Enbridge Gas New Brunswick has put forward -- and I said right at the beginning, regardless of the nomenclature -- has been the methodology that this Board has always approved.

A. Yes.

Q.31 - And the Board has always approved it as a market-based rate, their terminology.

A. They have always used that terminology, yes.

Q.32 - Thank you. Now if we can go back to page 10. And again the market-based rate is what EGNB has proposed, correct?

A. Yes.

Q.33 - Now we can tell from your testimony from the discussion that we just had that you are disputing the terminology market-based. But also my understanding, if we flip back to your evidence at question 9, page 7, here you are also stating, if I understand it correctly, that in your view the development period for LFO service is over and there is no longer a need for a commodity price market-based rate to induce conversion, correct?

A. That's correct.

Q.34 - Now did you read the Board's January 18, 2008, decision in the motion for this proceeding?

A. Yes, I did.

Q.35 - And I would just like to hand you a copy of that. Yesterday the Board said it had -- and probably other parties -- and if we could go to page 2 of the decision. Here you will see in the second paragraph that the Board quotes back to its original June 23, 2000, decision that we were just discussing, correct?

A. That's correct.

Q.36 - And in the first two paragraphs they say as follows, the development period is a term used to describe the amount of time required to move from a greenfield situation to a more established natural gas industry. The

Board considers that a development period during which a non-traditional regulatory framework would be used is appropriate, do you see that?

A. Yes, I do.

Q.37 - And the reference was to a non-traditional regulatory framework, correct?

A. That's correct.

Q.38 - And that's what the Board approved at the outset on June 23, 2000?

A. Under the circumstances then, yes.

Q.39 - And then you will see that the Board goes on to state in the second last paragraph that it has dealt with the appropriate length of development period in two previous decisions, the June 23rd, 2000, decision, which we were just talking about, which was modified by a decision dated January 1, 2005, where the Board -- January 21, 2005 -- where the Board stated -- and if we flip to page 3 -- that it finds it appropriate to extend the development period to December 31, 2010, correct?

A. That's correct.

Q.40 - And then if we can go to the first full paragraph on page 3, the Board then concluded on January 18 of this year, that during the development period rates have been set using the market base method. This method establishes rates that provide an incentive to convert and to continue to use natural gas. The rates are not based on costs. The difference between the actual costs of providing service and the revenues received from the market-based rates are recorded in a deferral account, correct?

A. That's correct.

Q.41 - Okay. And from what we have recently just gone through there, it is clear that the market-based method that the Board is referring to in this decision is the same approach that EGNB has used since 2000 and is putting forward in this case, correct?

A. It's the same method. The circumstances have changed.

Q.42 - And the Board has as recently as January of this year ruled that those rates are not cost-based, correct?

A. That the rates that were in effect in January this year were not cost-based, that's correct.

Q.43 - It was during the development period.

A. Right. And those are the rates that I have recommended that they keep in place.

Q.44 - No. They said that the market-based method -- and then we can just go back to the quote on page 3 -- this method establishes rates that provide an incentive to convert and to continue to use natural gas. The rates are not based on costs. So the rates that derive out of the method the Board has confirmed are not based on costs, correct?

A. That's correct.

Q.45 - And in fact from the quote there we can see that the Board found that in its view not only does this market base rates methodology provide an incentive to convert but an incentive to continue to use natural gas, correct?

A. That is correct.

Q.46 - And now if we could go to the last paragraph on page 3, starting with the second sentence --

A. If I could stop you for just a moment, I should clarify my last response.

Q.47 - Certainly.

A. It does provide an incentive to convert. It provides less of an incentive than if a cost-based rate were in place. So when this was first adopted in 2000 it -- my understanding is that the rate was considerably less than a cost-based rate, and therefore provided a large incentive. Now as opposed to a cost-based rate it provides a disincentive, if your comparison is to a cost-based rate. So --

Q.48 - What evidence on a cost-based rate was provided in the initial hearing?

A. Well earlier Mr. Charleson said that the reason for a -- an important reason for adopting this rate which is tied to the cost of oil, was the fact that in the start-up period you initially put a lot of costs in the ground, you know, millions of dollars. And if I remember his testimony correctly, the first person who comes along, if you charge that person the cost-based rate, it would be enormous.

Q.49 - Correct.

A. And they would never convert. So you used this rate tied to oil. Now I would submit that the circumstances you are under right now are just what he was talking about, that you are using a rate tied to oil, you are paying a distribution rate that is absolutely enormous compared to costs, and that the rationale for providing an incentive to switch is that this is better than a cost-based rate, and I think that was his testimony, that -- and so the circumstances then as opposed to now are enormously different.

Q.50 - If we can go -- let's follow-up -- if we can go to the last paragraph on page 3, okay, starting with the second sentence. And the Board stated there that market-based rates were necessary to develop the natural gas system in New Brunswick, and the Board believes that they are an essential element of the development period. All customers have and continue to benefit from the existence of the natural gas system. It is important to remember that the market-based method of setting rates is designed to provide customers with savings when compared to an alternate source of energy, correct?

A. Yes. And that's what I am taking issue with.

Q.51 - And the Board stated that on January 18, 2008, correct?

A. That's correct.

Q.52 - Okay. And now we will come to the Board's more specific recent commentary on the issue that we are talking about here that you raised in your evidence, whether in your view the development period for LFO services is over. And in the first full paragraph on page 4, the last sentence, the Board states, the Board does not believe that it would be appropriate for the development period to end for one customer class but not for the other customer classes, correct?

A. That's correct.

Q.53 - And then the Board goes on in the next paragraph to say that this means that it must decide if it is appropriate for the purposes of setting rates at this time, less than a month ago, to change from the market-based method, correct?

A. That's correct.

Q.54 - And then if we can just flip down to the last paragraph on this page you will see, and again I quote, "The Board does not consider it appropriate to make a change to the rate setting method that may turn out to have been premature. The consequences of such action could be very significant. The Board believes that any such change should be linked to the end of the development period. The Board, based on the evidence, is convinced that the development period has not yet ended nor will it in the near future. The Board will therefore proceed to set rates on this application using the market-based method", correct?

A. That is correct.

Q.55 - And the market-based method again being referred to here is the market-based method as always understood in New Brunswick from the onset of EGNB's greenfield natural gas distribution development, correct?

A. That is correct.

Q.56 - Now in response to -- and I don't think you have to turn this up, it's very quick. In response to EGNB IR-7(b) you confirm that EGNB's rate application is with respect to the CLGS LFO class as a whole, correct?

A. That is correct.

Q.57 - And if we could turn again to the Board's January 18 decision at page 4, in the first full paragraph, and here the Board stated, "The Board believes that the most appropriate way to set rates is by grouping customers into various classes and to set rates for each separate class. It would be extremely difficult, if not impossible, to set rates on an individual customer basis. The Board continues to believe that it is appropriate to use the same method for setting rates for all classes. Further, the Board does not believe that it would be appropriate for the development period to end for one customer class but not for the other customer classes", correct?

A. That's what the Board says here and I have some clarifications of that.

Q.58 - But that's what the Board found a month ago?

A. Yes.

Q.59 - And now if we can go to your evidence at question 3, page 2, in the fourth line of your response you make the statement that the existing rates for service to Flakeboard are excessive, correct?

A. That is correct.

Q.60 - And you are talking about the current Board approved rates for Flakeboard there, right?

A. That is correct.

Q.61 - And the current rates were approved by the Board in its decision of December 15, 2005?

A. That is correct.

Q.62 - And they were approved consistent with the market-based approach that have been used throughout by EGNB?

A. That is correct.

Q.63 - Now if the Board approves market-based rates during the development period then those rates are the rates to be chargeable and collectible from the customers during that period, correct?

A. The Board sets rates, yes.

Q.64 - And that's what EGNB charges?

A. And EGNB charges that, yes.

Q.65 - And they can't charge any more than the maximum rate approved by this Board?

A. That's correct. And the Board holds hearings to determine what are just and reasonable rates, what are excessive rates.

Q.66 - And the Board found the rates that are currently being charged to be just and reasonable in its December 15, 2005, decision, correct, or they approved those rates?

A. They approved those rates.

Q.67 - And as we have previously discussed, the Board recently reiterated in its January 18 decision that the market-based rates are specifically not based on costs, correct?

A. That is correct.

Q.68 - Now, Mr. Gaske, using the CLGS LFO methodology to date, the methodology that has created the rates to date, would you concur that there has been significant take up by LFO customers of natural gas in the Province of New Brunswick?

A. I'm not sure that I can answer that.

Q.69 - Okay. Well let's go to an IR then, Flakeboard IR 2(c). This is EGNB's response to Flakeboard IR 2(c).

VICE CHAIRMAN: What volume is that in, Mr. MacDougall? I get these confused sometimes.

MR. MACDOUGALL: Let me just check my exhibit list here.

MR. LAWSON: A-4.

VICE CHAIRMAN: Thank you.

Q.70 - It wasn't the second copy, it was the first.

A. I may have the wrong item.

Q.71 - This would be EGNB's response to Flakeboard IR number 2. You may not have that. Maybe Mr. Hoyt could show you his copy. That's it.

A. Yes, I have it.

Q.72 - So here my question was whether you could concur there has been significant take up by LFO customers of natural gas in the province, okay.

So maybe if we could just go to the second page of this response, item (c), and here we are talking about LFO total market potential, correct?

A. Yes. The problem I had with your initial question was the Province of New Brunswick, the province is large geographically. I believe this is probably confined to those portions that are -- I just don't know whether we could in the far western part of the province there is significant --

Q.73 - Sure.

A. -- potential -- that's where my problem lies.

Q.74 - Okay. Well in the area in which Enbridge Gas distribution system is available, or close to that area, would you say there has been significant take up where natural gas has been available?

A. Yes.

Q.75 - And that take up has occurred based on the rates that have been provided for those customers based on the approved methodology from the beginning of EGNB's gas distribution system up to today, right?

A. That is correct.

Q.76 - Thank you. So the market-based approach used to date has been successful in the LFO class, correct, in achieving its goal?

A. I would have to ask you what the goal is.

Q.77 - The goal of getting customers to convert to natural gas.

A. If that's the goal, yes.

Q.78 - And to continue to use natural gas.

A. For the most part, yes.

Q.79 - Thank you. And consistent with that EGNB's approach, and you would have heard this from Mr. Charleson yesterday, has been to try to maximize conversions consistent with keeping the deferral account as low as possible, correct? There is a balance, maximize conversions but keep the deferral account?

A. Yes. That's the part of my testimony that addresses the rates that are being asked of Flakeboard to keep the deferral account down.

Q.80 - Now if we could flip back to the January 18, 2000, decision. And if we could go to the third full paragraph, the last sentence.

A. Is that January 18, 2008, or --

Q.81 - Yes.

A. Okay.

MR. TONER: What page?

MR. MACDOUGALL: Page 4.

Q.82 - And again if we can go to the third full paragraph, and in the last sentence on page 4, third full paragraph, it states that the Board also has a responsibility to EGNB to ensure that it has a reasonable opportunity to recover its prudently incurred investment which includes the deferral account and to earn a return on that investment, correct?

A. That's what it says, yes.

Q.83 - And it's generally understood, is it not, in regulatory theory that utilities are entitled to earn a reasonable opportunity -- or entitled to a reasonable opportunity to recover their costs and earn a fair return on their capital?

A. Yes. And so there is no misunderstanding, I'm not -- nothing in my recommendation would challenge that or in my view even endanger that. So to the extent there is some misinterpretation that my testimony suggests such a thing, it absolutely does not.

Q.84 - There is no misinterpretation. I just wanted to confirm to the Board that that's generally understood. Now, Dr. Gaske, if we could go to your response to EGNB IR-7(c). That would be FCL-3.

Q.85 - EGNB -- Flakeboard response to EGNB 7(c). Here you were asked to identify all other jurisdictions in which you had worked which had a rate setting methodology substantially the same as that currently used in New Brunswick. And you stated that you do not recall any jurisdictions that set regulated rates in the same manner as the CLGS LFO rate, correct?

A. That is correct.

Q.86 - And you were not involved in any of the processes leading to the development of the initial rates approach taken in New Brunswick, were you?

A. No.

Q.87 - Now at the bottom of your response to 7(c) you state that in contrast EGNB's customers do not voluntarily pay the LFO rate in the short run because no cost-based rate is available to them, and it may be the case that no competitive transportation service is available to them either, correct?

A. That is correct.

Q.88 - What I am just struggling with here is the first part of that. You say EGNB's customers do not voluntarily pay the LFO rate, but EGNB's customers do voluntarily pay the LFO rate that is currently in place, do they not? No one has forced them to pay that rate?

A. As I understand it, Flakeboard tried to build its own line and was involuntarily prevented from doing so, which means that involuntarily they -- the only -- or the best -- next best alternative available to them was the EGNB rate, and through EGNB's strong and aggressive intervention and their attempt to build their own line, they ultimately concluded that they would not get approval for it, so involuntarily they chose the next best alternative. So --

Q.89 - But they do voluntarily pay that rate, don't they? They could use what they were using. They could have stayed on what they were using. They were in business previously, correct?

A. That's part of the point of my testimony, is that they would not have continued doing what they were doing. They were going to build their own line.

Q.90 - You are not a lawyer? You are not qualified to be a lawyer? You are not putting any legal testimony forward here?

A. No, no. This is economic testimony.

Q.91 - But you are not making any comment on the regulatory regime in New Brunswick as to the rights or not rights of any party to build a gas distribution system?

A. No. This is an economic and ratemaking question.

Q.92 - Here you say in contrast, EGNB's customers do not voluntarily pay the LFO rate. What other customers were you talking about?

A. Well I believe American Wallboard --

Q.93 - Atlantic Wallboard.

A. -- I'm sorry -- Atlantic Wallboard has basically been through the same process. They -- if they had their preferred voluntary option, they would have built their own line and taken their own service.

Q.94 - But you can't legally state whether they have that preferred option?

A. It's not -- it's not a legal opinion. It's a factual opinion or a factual statement that these are companies that wanted to build their own, they were denied or perceived that they would be denied that opportunity, and so they involuntarily went to their next best option.

Q.95 - They both freely of their own volition signed up as customers with Enbridge Gas New Brunswick, correct?

A. Well --

Q.96 - I think that's a yes or no question.

A. I guess in the context of my prior answer the answer is no. That was not -- that was not their preferred option.

Q.97 - It was not their preferred option but they voluntarily chose to go with EGNB. No one forced them to do that.

A. They took -- they involuntarily took their second best option, yes.

Q.98 - And I think we had testimony yesterday from various parties, the parties were aware of the existing regulatory regime in New Brunswick and the rate setting methodology when they entered into their contract.

A. That is correct.

Q.99 - Now if we could go to EGNB IR-8, your response to EGNB IR-8. And here we refer to your evidence that EGNB had already achieved 100 percent conversion of all accessible LFO customers, correct?

A. Yes.

Q.100 - And then we asked, would Flakeboard have been considered an accessible customer prior to the construction of the St. Stephen lateral, and you said that it would because accessible means a location that can be easily reached, correct?

A. Easily reached and economical.

Q.101 - And yesterday do you remember Mr. Charleson stating that the distance from the main line to Flakeboard was approximately 13 kilometres?

A. Yes.

Q.102 - Do you also remember the testimony from Mr. Charleson either yesterday or the day before talking about the other five customers who remain potential LFO customers?

A. Yes.

Q.103 - And that at least four of those customers were closer than 13 kilometres?

A. I recall that and it didn't seem to provide enough information to determine whether they were in fact accessible.

Q.104 - Well you base your decision here for Flakeboard -- you said they would be accessible means a location that can be easily reached. What analysis had you done to determine how easily reachable St. Stephen was compared to any other customer?

A. The point of easily reached on an economical basis, and some of the missing data, have to do with the size of the customer. In pipelines there are enormous economies of scale. So for example, if you double the size of the pipe you probably won't even double the cost, but you will get four times the volume.

If you have a pipe that is five times as large you might have three times the cost and 25 times the volume. So on a per unit basis the costs become quite low and certain customers become highly economical. Flakeboard was economical. They had a price of around $300,000 to do it themselves. As I understand it they offered to build the line and also throw in enough capacity and give the line to EGNB, so that EGNB could serve Saint John with zero cost investment.

Now in contrast you would have the five other customers. I don't know the volumes for those customers, whether you are talking about customers who are nearby but would be served by an extremely small diameter pipe with huge costs per unit, or per unit kilometre. But what is very clear from Mr. Charleson's testimony is that, if I remember correctly, a few of these customers you are not even negotiating with, that one customer you have been talking to for four or five years and haven't been able to sign up.

So -- and I believe there was some testimony that they have gone out and they have signed up -- the low hanging fruit was the term used. So you have got five customers listed here that, for whatever reason, haven't been signed up and there could be any number of reasons why they are not signed up, but I would assume if it's economical to do so it would have happened.

Q.105 - But you are assuming that all customers -- so when do all customers make a decision to sign up? There is never any potential? Like if it's economical to do so you will get all the customers? Where in the greenfield situation?

A. In my experience one of the first things that you do is you could go out and you sign up the big customers because they make a great anchor. And when it's economical to do so, they will sign up pretty quickly because the big customers tend to be businesses. So you will probably get switching faster out of most businesses and large customers than you will for residences.

Q.106 - You will acknowledge that there is five remaining customers shown in the potentiality column for Enbridge Gas New Brunswick?

A. Yes. And they are listed as not signed up regardless of their location as opposed to on the natural gas main or as opposed to in close proximity. So they are not listed as in close proximity, they are not signed up. I -- the testimony of Mr. Charleson really didn't suggest that you were on the verge of actually signing any of them.

Q.107 - No. I'm just saying they are in the potentiality column.

A. That's correct.

Q.108 - So now if we could go to EGNB IR-9(c). You were asked if the delivered cost of natural gas is less than that of light fuel oil, would you agree that this would give the customer an advantage by switching from light fuel oil to natural gas?

And in your response you gave a series of qualifiers before you concluded that the company would achieve a partial advantage by switching from light fuel oil to natural gas, and because of your response I just want to revisit it. Maybe we have to clarify the question.

The question really is, all else being equal, the manufacturing facility has access only to light fuel oil but then -- or any fuel oil product -- but then has access to natural gas at a cheaper price than the fuel oil product, is it not in a better position than before the natural gas became available to them, all other things being equal?

A. Not necessarily.

Q.109 - Okay. So all things being equal, you have to pay for an alternative fuel say $10 a gigajoule, and nothing else changes, but you have a new fuel at $9 a gigajoule, that is -- you are not better off, all other things being equal?

A. Flakeboard is in a position where --

Q.110 - That's not my question, if I just could, Dr. Gaske -- that's not my position. I'm not talking about Flakeboard. I'm just giving a hypothetical.

A. And I said not necessarily and I was going to explain why I said not necessarily.

Q.111 - Okay.

A. Flakeboard is in a position where it competes with other companies in North America, primarily companies who are on natural gas. Those companies buy natural gas, they pay a distribution charge, and they produce.

Now in theory if Flakeboard goes to natural gas and it's cheaper, they can compete with those customers. They pay for natural gas and then they pay a reasonable distribution charge on top of it. Now the competitors in North America, their cost of gas have gone up some, but their distribution charge didn't go up. What -- in Flakeboard's case, the price that it's being charged is tied to the price of oil.

Q.112 - I think, Dr. Gaske, you are way past my question.

A. I am explaining why not necessarily.

Q.113 - No.

A. There has been a huge divergence between gas and oil costs, so that EGNB is soaking up the difference. So --

Q.114 - That's not my question, Dr. Gaske.

A. -- having switched to natural gas in order to match its competitors, it's at a disadvantage because it's -- the price that it pays for its fuel is still tied to the price of oil. And so for them making the switch and seeing the competitors have a constant -- well for your hypothetical purposes -- a constant price of gas, and them being in the position where they pay for gas and then their distribution charge, keeps them tied to the oil price which is diverged by in essence being on EGNB's current rate structure they might as well be on oil, they get a small advantage but they are highly disadvantaged against the other -- the people they compete against.

Q.115 - Dr. Gaske, turn to your evidence at A-9. And also in response -- and you don't have to pull it up -- in response to EGNB IR-11(a) you appeared to be insinuating that EGNB is no longer trying to build the business by attracting new customers, correct?

A. That's what this pricing would suggest, yes.

Q.116 - If we could turn to EGNB's response to Flakeboard IR-1. Again, that is in A-4.

A. I'm sorry. I'm going to have to look for it here.

Q.117 - Counsel may have it. It is EGNB's response to Flakeboard IR number 1.

A. I do have it.

Q.118 - It doesn't matter if you are using table 1.

MR. LAWSON: A-6 is correct, I believe. A-6 I think is the one.

A. That was my problem. I had A-6.

Q.119 - Now if we could see here, and just to start out, you will see in the SGS --

A. Which -- where was it?

Q.120 - IR number 1. The CGSGS class runs out to 2006. And I just wanted to make sure that we are all on the same page here.

But then you will see there is three SGS or four SGS numbers that follow below that for 2007?

A. Yes.

Q.121 - Do you see that? And is it your understanding that the class was broken up between '06 and '07 so that those numbers would be reflective of the SGS class?

A. Yes.

Q.122 - So with that in mind, could you confirm that this chart shows that clearly from the beginning till now there has been an increasing number of conversions in the various classes?

A. Yes.

Q.123 - And you will see in LFO tier 1 in 2006 there were 18 customers. And by 2007, following the most recent rate decision, we have 20 customers, correct?

A. That is correct.

Q.124 - Okay. And you understand, don't you, Dr. Gaske, that EGNB's development period did not propose to exist in perpetuity, but eventually it is anticipated that EGNB will be more like a mature gas utility, correct?

A. That is correct.

Q.125 - And to get to that period EGNB needed to develop a base of customers. It is that discussion you were relying on, about Mr. Charleson's discussion yesterday, correct?

A. That is correct.

MR. MACDOUGALL: Those are all my questions, Mr. Chair. Thank you very much. Thank you very much, Dr. Gaske.

CHAIRMAN: Mr. MacDougall. Ms. Desmond?

MS. DESMOND: Mr. Chair, we have just one question for Dr. Gaske.

CROSS EXAMINATION BY MS. DESMOND:

Q.126 - Sir, given that the Board has decided that the method for setting rates is to be the same for all classes -- at least it has made that decision in previous Board rulings -- what would be the market-based comparison for the other rate classes other than the LFO class?

A. I want to make it clear that I'm not proposing to change the method. The rates that are currently in place are based on this method.

However, the Board can choose to keep these rates in place and continue them and take notice of the fact that the divergence between gas and oil costs has become enormous compared to its historical relationship, and simply say the rates will be based on this methodology, but the rates that are currently in place based on this methodology will continue.

And so I hope that answers your question. I'm not really saying change the method for them at this point in time. I'm saying simply keep the current rate in place, which is based on the current method.

Q.127 - I had understood from your evidence that for the purpose of determining a market-based rate the Board would look at competitive cost?

A. Yes.

Q.128 - How would that proxy be determined for other rate classes?

A. For large customers you could -- if you were to do a stand-alone cost -- normally you wouldn't -- you wouldn't necessarily do a stand-alone cost, but that would give you the upper limit on what you should be charging. You would do an analysis of the specific cost to serve that customer.

And I think the testimony of the EGNB witnesses was that they go out and they do something like net present value analysis to determine the cost of serving a particular customer.

And so they are doing a calculation already for large customers. And so you can use that calculation to figure an upper limit on what that customer should be charged, for the large customers.

Normally when you go to a cost-based method you do a cost allocation. Because there are a lot of customers who serve jointly on a common basis, using a lot of the same facilities. And you can't attribute those facilities solely to any one of them.

Q.129 - Proxy for the residential class then would be a cost-based method, is that --

A. At some point I understand it is anticipated that you will move to a cost-based rate. Yet you wouldn't take them off of the market-based proxy.

However it is probably just as true for them that this huge differential in oil and gas prices that has developed recently is something that didn't exist before.

And the Board for them could take the same option and say, we are not changing the method, we are just using our authority to deny a rate change at this time, and continue in place with what were perfectly satisfactory rates four months ago or even today.

MS. DESMOND: Thank you.

CHAIRMAN: Thank you, Ms. Desmond. Any questions from the Board? Mr. Toner?

BY MR. TONER:

Q.130 - Good morning. A few things that you said struck me during your testimony. And I just want you to clear them up. Because I do understand your position as an expert.

So at one point in your testimony you interrupted him.

And you wanted to clear up yourself. And you stated that the market-based method to calculate would create a disincentive for LFO customers. Is that --

A. The context of the question was that going back to an earlier Board decision where it was stated that using the market-based approach instead of a cost-based approach would give an incentive for customers to switch over.

So my clarification was that in fact you are probably in a position now where this market-based approach is a disincentive if you were to compare it to a cost-based approach.

Q.131 - For the distribution rate or for the burner tip?

A. For the distribution rate then, that if -- I will use Flakeboard as an example. If six years ago a company like Flakeboard had come along and then offered a $2 million rate, that would have been a disincentive, if it was a cost-based rate. That would have been a disincentive.

So there was a decision that let's tie it to the price of oil. And maybe the rate would have been 500,000. So that gave them a big incentive to switch instead of having a cost-based rate.

Q.132 - Compared to?

A. Compared to a cost-based rate.

Q.133 - For using?

A. For using gas versus oil. You wouldn't use a cost-based rate because nobody would switch. So you used a market-based to get people to switch.

Q.134 - Now when you are using -- when you are saying cost-based you are taking into account their distance of 13 miles from the line?

A. I am taking that into account.

Q.135 - So if another customer was 100 feet from the line he should pay nothing for the distribution system across the province?

A. Now initially back then they had a lot of costs sunk in the ground but very few customers. So I think the testimony was if you have $2 million then the first customer comes along. If you take that customer you will have to charge that customer $2 million, the whole cost. So that customer will never come along.

So to start out, to get things going and attract customers, we will charge just a little bit less than the oil price in total, maybe $500,000 for those big customers and we will sign a bunch of them up.

And after you get a bunch of them signed up you have got millions of dollars. You divide 20 customers into these millions of dollars. And maybe your cost-based rate now is $300,000 apiece. Your market-based rate started at

500,000 because you didn't have customers. And you would have charged them 2,000,000.

It is all these years later there is this huge gap in oil and gas prices that just developed recently. And suddenly you are asking them to pay $2 million. You could have asked them to do that in the beginning when they were the only customer hypothetically.

So $2 million does give you a key incentive to switch, but --

Q.136 - Well, 10 percent?

A. Yes, 10 percent. But if you were to go to a cost-based rate I'm convinced it would be much, much lower. So the crux of my testimony was eight years ago the cost-based rate would have been way too high. And so they went to this method.

Now I think circumstances probably flipped considerably. And the cost-based rate would be the lower one. And if you are talking about incentives to switch, the cost-based rate is a much better incentive now than the rate that's tied to oil.

Q.137 - Do you believe that your customer -- and I'm saying Flakeboard because you are basically representing them --

A. Sure.

Q.138 - -- right. And so you are familiar with their operation somewhat?

A. Somewhat.

Q.139 - All else being equal, if they were to open for business today, would they not locate where they are located now, just strictly because of the market-based? And I'm pushing you all the way to the burner tip.

Would they go to another jurisdiction because there is a significant savings? Or is it still a just and reasonable burner tip rate --

A. I don't --

Q.140 - -- everything else being equal?

A. Everything else being equal, I think what they would do is locate along the Maritimes and Northeast Pipeline and tap directly into it and get that rate.

Q.141 - So not necessarily in this jurisdiction?

A. It would be -- yes. It would be in this province.

Q.142 - Still in New Brunswick?

A. It would be in the province of New Brunswick. But it would be under NEB jurisdiction. And they would tap right into that. And they would get a cost-based rate.

MR. TONER: Thank you. That is all the questions.

CHAIRMAN: Mr. Johnston?

VICE CHAIRMAN: Thank you.

BY THE VICE CHAIRMAN:

Q.143 - Dr. Gaske, I have a couple of topics I want to talk to you about.

You make two recommendations to the Board. The first is to keep rates where they are now. And the second, if I understand correctly, is to set up and to order a cost allocation study which would then be used, among other things, to deal with the existing deferral account, among other purposes.

You have seen our decision from last month. And it has been reviewed with Mr. MacDougall here quite a bit this morning.

And you are aware that the Board has ordered that we will be holding a generic hearing into the material dealing with the -- to the matters dealing with the end of the development period, what the criteria will be and what the transition will be.

Given that, I'm just wondering why you believe it will be appropriate in this proceeding to order the cost allocation study?

A. Simply for accounting purposes to keep track of those dollars. I think as I indicated, a lot of the testimony here is that Wallboard and Flakeboard need to pay very, very high prices, much higher than they could do it themselves, because it will hold down the size of the deferral account.

So the cost study at this point would be fairly simple. But it would be based on stand-alone costs. EGNB probably has a calculation of the cost that it took to connect these customers.

And you simply account for and keep track of how much excessive costs are they paying now in order to hold down the deferral account. Because later on that deferral account is going to be collected from customers.

But you have some customers that are paying less than cost. And that is why it is building up. But you have a few large, very large customers who are paying far more than cost. And it would almost be adding insult to injury.

First charge them $1 1/2 million more than cost now to hold down the size of the deferral account, and then turn around in a couple of years and start charging them for the deferral account along with everyone else.

Q.144 - I understand what you are saying, Dr. Gaske. But I guess my point is that the Board has put in place a process for ending the development period, which presumably is going to have some directions with respect to cost allocation throughout the whole system.

And your suggestion, if I understand you correctly, is that we order cost allocation for the LFO class only, is that right?

A. Yes, just for purposes of accounting.

Q.145 - But wouldn't the same argument be equally true with respect to every other class requiring cost allocation study, the same purposes, who should pay and who should not?

A. Right. And let me clarify one thing. With the large customers it should be a relatively simple exercise. Because -- and it should be done on an individual company-by-company basis.

As EGNB indicated, when they build a line out to a large customer they usually will do the analysis in-house. They know what the cost of the lines are to connect those customers.

Within the LFO class you have -- in fact you got into this discussion the other day -- you have got 20 customers. But in a lot of the data EGNB pulls out the two really big ones because they are 20 times the size of the average of the other 18. And so a lot of data they actually pulled them out and treated them separately.

Later when you move to cost-based rates you probably won't define a class as LFO. The LFO is based on the fact that all these customers have one thing in common, alternate fuel oil. If you -- so that's their alternative market. It has nothing to do with their costs.

When you go to the cost-based rates you will probably redefine. There won't be an LFO class. It will be some class that is grouped together based on similar cost characteristics.

And so by keeping track of how much these large customers are overpaying now to hold down the deferral account, when you split the LFO class say into really large customers who have a low per unit cost and much smaller LFO customers who might have a higher unit cost, you would like credit for the deferrals to follow whoever is going to what class, so you can make those allocations.

Q.146 - Mr. Reed testified yesterday -- and I think I had some questions with him -- he suggested that there should be a separate class for the two formal intervenors in this case.

Is that what you would foresee as well? Because you seem to be going one step further and talking about individual rates for the individual customers.

A. Right. Now I would see that the basic rate would be a class rate, say the two customers would be lumped together.

And then some decision would have to be made on the amount of deferrals that have been paid down in advance by these customers, the amount of incentives that were given to these customers.

Those would be recovered as a surcharge. And the Board would have to make a decision on how to levy the surcharges to get the deferral costs and whatever incentive costs there are in the class.

Q.147 - I may be getting off the topic of this hearing. But it is in the evidence.

Are you opposed in general to the idea of the postage stamp rates for distribution of gas to large customers? Is that what I take from your evidence?

A. Not -- not as an absolute principle, no.

Q.148 - Let me ask you this question, Doctor, and soon. If we have another customer -- there has been another customer discussed in these proceedings, customer X, which -- let us hypothetically say that they would be similar in usage to the two Formal Intervenors in this case.

We know that they are approximately double the distance away from the line, as slightly more than Flakeboard.

Would you see their cost as being doubled? Should they be brought on as a customer as compared to

Flakeboard's costs?

A. The real question, the additional variable in that, would be the size of the customer and the diameter of the pipe.

Q.149 - Well, I'm hypothetically suggesting that they are a similar --

A. Similar size.

Q.150 - -- size customer to Flakeboard?

A. If the allocated cost -- if you lump them all together and you have an allocated cost, you often will test it to make sure that there is no customer in the group that is paying more than their stand-alone cost.

So for example if Flakeboard's stand-alone cost is $350,000, you lump these people together, and Flakeboard is paying an average price of $320,000, then they call belong in the same class.

The big test is whether or not you have some customers you are charging really excessive rates relative to their cost. And when you have that then you need to separate them out.

So to answer your question, you would probably do an analysis where you lump them together, see what the answer is and then test it for reasonableness for each of the big customers.

Q.151 - I'm going to summarize. There would be a substantially different rate, correct?

A. Yes.

VICE CHAIRMAN: Thank you.

CHAIRMAN: Mr. Radford?

BY MR. RADFORD:

Q.152 - Over the last three days I have been listening very closely to the evidence presented. Because I'm getting myself an education out of this. And obviously you have a tremendous background.

I believe I understand the economics of it. But then when Mr. MacDougall took you through step by step through the decisions of this Board, long before I was ever involved, and he took you carefully through it -- and if this Board is consistent with what it has been doing for the last eight years, what choices do we have?

Would you just outline what choices you think we have?

A. Well, I believe the Board has already ruled that this hearing will not involve a change in the methodology. But I also believe that the Board has the ability to, even within that context, to give thumbs up or thumbs down on this rate change, to continue using the market-based method but continue in place the existing market-based rates, and in essence to say no to the application.

I think that would be consistent with what you have done in the past. But at the same time I would guess that you probably never said no to one of these applications before. But the circumstances are pretty unusual right now, where the spread between gas and oil prices has become enormous.

So a company like Flakeboard is currently paying about $1.2 million a year, which is a big rate for this service. You can say no to the increase and they will continue to pay $1.2 million a year. Or you can give it thumbs up and say that they should pay $2 million a year and that is reasonable.

So I think you are consistent with past decisions if you exercise your authority to say no. I think that has always been one of -- every time it has come up before the Board that has always been an option.

MR. RADFORD: Thank you.

BY MR. TONER:

Q.153 - I would like your thoughts on the 21-day average that they have used to come up with this rate versus 365 or 90 or 60, like two months, three months of past to extrapolate what the future is going to give.

What are your thoughts on that?

A. I think a fairly long period of time is appropriate.

This -- I believe one of the EGNB explained the other day, the idea to use the margin between oil and gas was adopted because the two tend to correlate with each other. They will move together.

Q.154 - But you know that it has been higher then? Natural gas has been higher then?

A. Yes, yes. And so --

Q.155 - In the recent past?

A. Right. And so what you really want is some kind of a margin that will stay fair constant, so that -- you know, gas prices go up and oil prices go up, they are still 50 cents apart. Or they go down, they are still 50 cents apart, something fairly close to that.

And I think -- so you would want a much longer term average to look at. And when people go out and make their investments to buy equipment to switch to gas, they do it based -- not based on what the last 21 days were, but they do it based on a longer term average. So if the last 21 days it slips or what not, that doesn't have a big impact on their decision.

So I think a much longer term average is appropriate for setting this rate. It would certainly give EGNB a little more certainty as to what the rate is going to be. And it would very much give the customers a little more certainty as to what the rate is going to be.

Q.156 - But if you were to take a 365 day average of the U. S. exchange rate --

A. Yes.

Q.157 - -- would that give you a realistic future right now?

And I don't think -- I don't know if you are an expert on the U. S. exchange rate, but you must be familiar with it. A 365 day average of the U. S. exchange rate would not give you a precise future?

A. No.

Q.158 - But a 21 day it would?

A. The thing here though is that you are not trying to get an accurate estimate of say the exchange rate or even an accurate estimate of the oil price. You are trying to get an accurate estimate of the spread between the two.

And so you can take a long-term average and you can come up with a number like 50 cents and say, we don't need to know absolutely where oil and gas prices are going but we will keep the spread at 50 cents.

This proceeding now is about the fact that you have got an existing spread in place. Are you going to change that spread or continue with the existing spread?

And I would submit that a 21-day average to increase the spread as much as they are asking to increase it isn't a very good indicator of what the market for the distribution service ought to be.

Nor do I think it has a huge impact on people switching in the long term -- that the 21-day average isn't driving people's decisions to switch.

I don't -- to the extent they want to attract any more customers, I don't think those customers are looking at the 21-day average and saying yes, we will spend $3 million to convert our equipment because of this average.

They probably look at the last two or three years and say would that kind of average justify switching over.

CHAIRMAN: Mr. Lawson, any redirect?

REDIRECT EXAMINATION BY MR. LAWSON:

Q.159 - Just for clarification, in reference to providing service free to St. Stephen, you indicated in your testimony that the offer was made to Flakeboard to provide the lines so that they could provide free service to Saint John.

I'm assuming you meant St. Stephen, for clarification?

A. Yes. Yes, I did.

Q.160 - It would be along the extra line?

A. New Brunswick has a lot of saints.

Q.161 - In cross examination by Mr. MacDougall reference was made to IR number 9 on this question of the switch to competitive advantage. I'm just going to refer you to that if I could please.

And the question that is in that interrogatory -- and it is FCL-3 if you want to turn to it, number 9 -- the question was "If the delivered cost of natural gas is less than light fuel oil, do you agree that this would give the customer an advantage by switching?"

Now am I correct that your answers are an advantage with respect to competitors?

A. Yes.

Q.162 - Okay. What would your answer be with respect to an advantage of one fuel over the other, bearing in mind that this doesn't address the issue of distribution rates?

A. I'm not sure I totally understand your question the way you qualify it.

Q.163 - All right. I just wanted to make sure it was clear. Because when I read this question I read it differently than you answered it. And that is the reason why I was phrasing it.

And I'm going to have stand beside you for the next question because we have to share the book, the interrogatories in.

There was a reference in A-6 again to the level of customers. I'm not sure if Mr. MacDougall referred to the number of customers. Or was it --

MR. MACDOUGALL: Chart I.

MR. LAWSON: Chart I?

MR. MACDOUGALL: Correct. Yes.

Q.164 - With the actual number of customers. So there has been a substantial growth in the number of customers, wouldn't you agree?

A. Yes.

Q.165 - Can you comment about that growth is and how it relates to the distribution -- I'm sorry, the growth and incentives?

And just for your reference, the incentives sheet details -- I would have had this sooner but I didn't have the book -- is in Flakeboard interrogatory number 5, the answer there.

A. Mmmm. That is where it says the financial incentives provided by EGNB to the customers who are identified in the table below. And the dollar amount of incentives has increased considerably from one year to the next.

So I presume that they are providing larger and larger incentives to continue to grow. So they were --

Q.166 - And how does that correlate to the numbers in the number of customers in the growth as you see it?

A. Well --

Q.167 - Just generally, not --

A. Yes.

Q.168 - -- specifics.

A. Yes. From 2006 to 2007 the incentives almost doubled, a little less than doubled. And the number of customers went up somewhat less than that. So the incentives seem to be growing faster than the customers.

MR. LAWSON: Those are all the questions I have. Thank you.

CHAIRMAN: Thank you, Mr. Lawson. Thank you, Dr. Gaske for your attendance here today and your evidence.

WITNESS: Thank you.

(The witness stepped down)

CHAIRMAN: We will adjourn until I think 2:00 o'clock. We have a motion at 1:00 o'clock. And I don't really know how long that is going to take. The Public Intervenor and Mr. Hoyt are both involved in that.

So we will adjourn until 2:00 o'clock at which time we will hear the comments from the informal intervenors and then argument from the applicant. And the intervenors will be heard tomorrow morning commencing at 9:00 o'clock.

So for now we will adjourn this hearing till 2:00 o'clock this afternoon.

(Recess - 12:00 p.m. - 2:00 p.m.)

CHAIRMAN: Good afternoon. This afternoon we have set aside to allow the informal intervenors an opportunity to address the Board with respect to this application.

And I understand that we have two informal intervenors present, at least this morning we did. Mr. Lefebvre and Mr. Theriault. Are there any other informal intervenors present?

I will ask Mr. Lefebvre to come forward them, please.

MR. LEFEBVRE: Thank you, Mr. Chairman and Members of the Board for the opportunity for to make our presentation.

My name is Marc Lefebvre. I am Vice-President of Supply Chain for Ganong Bros. I have held that position for the last five years. Prior to that I was Vice-President of Finance for 14 years. And I am also a corporate secretary for the company.

The presentation that I have here was prepared by Mr. David Ganong. And the intent was to have Mr. Ganong present to present it himself, however, yesterday's weather prevented his return from Ontario. So here I am.

To the extent that this was written in the first person from Mr. Ganong, I will present it in that way. For those of you that know David will understand that I am not David Ganong. And for those that don't, then you will have to bear with me.

I will now proceed. My name is David Ganong. I am

President and C.E.O. of Ganong Bros. Limited in St. Stephen, New Brunswick, a position, which I've held since 1977. In addition to Ganongs, I am currently a member of the Board of the Canadian Council of Chief Executives, Sun Life of Canada, a member -- sorry, the University of New Brunswick and a Member of the North American Competitiveness Council that provides direct advice to Prime Minister Harper, Presidents of the United States and Mexico on competitive matters. I am the founding Chairman and currently a Member of the New Brunswick Business Council that also deals with the issue of competitiveness and improving the economic prospects for our province. A complete c.v. with further details on my background is attached to the presentation.

Ganong Bros., is a confectionery manufacturing company established in St. Stephen in 1873 and manufacturing continuously since that time. The company currently employs 307 New Brunswickers, most of which are employed in the St. Stephen manufacturing facility and is currently recruiting for additional employees. The company must compete globally and since Free Trade has invested in a new plant, equipment and systems in order to service major companies, such as Wal-Mart, Loblaws, Shoppers Drug Mart and major customers in the United States. The competitive environment for confectionery manufacturing in Canada has become much more difficult due to the appreciation of the Canadian dollar and this has resulted in the closure of four major confectionery plants in Canada, in the course of the last 15 months. At the moment, the majority of the manufacturing of confectionery takes place in the greater Toronto area, with some operations in Quebec and British Columbia, in addition to Ganongs in St. Stephen. There are no other significant manufacturers of confectionery products in Atlantic Canada.

Ganong converted to Natural Gas in 2005 when Enbridge came to St. Stephen. At that time, our delivery charge was 79 cents. In 2006 the delivery charge increased by 149 percent followed by a further 21 percent in 2007 and the now proposed increase of 90 percent in 2008. IF the current proposal is accepted, the cumulative change for four years since Ganongs began using natural gas would have a 475 percent increase in the delivery charge rate.

During the period in which we could experience a 475 percent increase in the delivery charge for gas, the consumer price increase in New Brunswick has been approximately 6.4 percent. Our ability to pass on pricing increases to our customers generally is restricted to the CPI unless they are very unusual circumstances. The dramatic increase in price of natural gas distribution there is almost completely absorbed by Ganongs as reduced profitability and therefore reduced competitiveness.

Flakeboard has already laid out a compelling case for the extremely high distribution charges for natural gas in New Brunswick even prior to the 2008 proposal and has indicated the competitive disadvantage in which it leaves their plant in St. Stephen. Ganong would be no different, with virtually all of our major competition being in Ontario or the United States, where natural gas distribution charges are much less. In addition to other competitive challenges, such as the exchange rate, Ganong is faced with an uncompetitive distribution charge on natural gas; the proposed increase will result in our cost increasing by $78,000 in this year along.

The increase in oil prices is seen on the impact on our freight charges as well, which since 2005 have increased by 63 percent, which pales in significance to the proposed increase in natural gas distribution charges.

New Brunswick is embarking upon an aggressive goal of self-sufficiency by 2025. Underlying the self-sufficiency goals is an increase in employment, increasing industry and improved immigration. I would submit that the dramatic increase in the distribution cost of gas will directly and negatively impact current business in New Brunswick that requires natural gas in its processing, while at the same time discouraging new industry from coming to New Brunswick, as they would have the opportunity to locate new plants in jurisdictions with much loser costs, including the distribution costs for natural gas as already submitted to this panel.

The cost of laying the pipe from the main pipeline to Ganongs in St. Stephen has not changed since it was put in the ground in 2005 and the maintenance cost would not have changed significantly in that period of time. The resulting increase of 475 percent since Ganong's conversion to LNG is an unreasonable burden to place on the large users in New Brunswick including Ganongs.

The competitiveness of industry is critical to the future of New Brunswick and the available competitive sources of energy are critical to our industrial development as well as prosperity and viability of those industries currently here. The distribution rate increase to $4.54 requested by EGNB, currently being considered by the Board, is contrary to the self-sufficiency agenda of the Province of New Brunswick and will be detrimental to the long term growth of businesses such as Ganongs in St. Stephen.

I respectively submit the increase should not be allowed. Thank you.

CHAIRMAN: Thank you, Mr. Lefebvre. I guess this being Valentine's Day, I must say that we all certainly appreciate the product that you manufacture. Perhaps it has gotten some of us out of trouble today.

Any of the Panel Members have any questions for Mr. Lefebvre? Mr. Toner?

MR. TONER: I wasn't sure I was going to be allowed to ask questions. But not right now, no.

CHAIRMAN: Mr. Johnston?

VICE CHAIRMAN: I just have a couple of questions.

BY VICE CHAIRMAN:

Q.169 - What type of fuel was Ganong using before natural gas.

MR. LEFEBVRE: Light oil.

Q.170 - It was using light oil?

MR. LEFEBVRE: Yes.

Q.171 - For all applications?

MR. LEFEBVRE: We were using propane as well.

Q.172 - What kind of a -- I am just curious as to what their mix was between propane and light oil?

MR. LEFEBVRE: Very small amount of propane. We had a few kettles that required propane versus light oil. So a majority would have been oil.

VICE CHAIRMAN: Thank you. That's all the questions I have.

CHAIRMAN: Mr. Radford or Mr McLean? Just one question, Mr. Lefebvre. Your final -- I guess in final analysis you respect that the increase should not be allowed. And I am just wondering are you suggesting the magnitude of the increase should not be allowed, or is your suggestion that there be no increase allowed?

MR. LEFEBVRE: Well in deference to a comment made earlier, I am not familiar with the law terms of the latitude you made have as to -- obviously no increase is -- would be a nice start, but probably unreasonable to expect. But something less than 4.54 certainly would be something that we would be looking for.

CHAIRMAN: Thank you for taking --

MR. RADFORD: Sorry, I didn't hear his last four words. Could you say that again?

MR. LEFEBVRE: Well our expectation would be to have no increase, which would be a continuation of the current mode. However, I feel that something between the current rate around the 4.54 is likely to be in the range.

MR. RADFORD: Well, I would like to thank you for taking the time to participate as an informal intervenor and attending today's session. So thank you.

MR. LEFEBVRE: Thank you. I have copies for you.

CHAIRMAN: Mr. Theriault.

CROSS EXAMINATION BY MR. THERIAULT:

Q.173 - Good afternoon, Mr. Chairman, Board members. As Public Intervenor I was appointed as an informal intervenor in the matter of an application by Enbridge Gas New Brunswick for approval to change its Contract Large General Service-Light Fuel Oil distribution rates.

My role in this proceeding is limited to providing a brief to the Energy and Utilities Board with respect to the evidence presented by the Applicant and the intervenors and to comment on any rulings that may have been made during the course of the hearing.

While the application to change LFO distribution rates is being dealt with separately from an application by EGNB to change distribution rates for their other customer classes, many of the rulings made in this application could have an impact on both the process and the outcome of the second proceeding in which I am a formal intervenor.

By letter to the energy and Utilities Board dated November 5, 2007, EGNB filed an application and supporting evidence to change its LFO distribution rate. What the Applicant is proposing is a 90 percent increase in the first block delivery charge, while leaving the demand charge and the remaining delivery blocks unchanged.

The application, and the evidence that accompanies it, is a minimal one since there appears to be limited burden of proof required to change market based rates. Nevertheless, several points about the Applicant and this application and the evidence adduced by the Applicant that should be examined in light of the potential impact of the proposed increase on the Large Contract General Service-Light Fuel Oil customers should be made. And first off I would like to point out that the Gas Distribution Act, which was passed in 1999, separates the distribution of natural gas from the sale of natural gas. a gas distribution company is responsible for transporting natural gas to consumers. EGNB is a gas distribution company and its charges are for the delivery of natural gas.

Secondly, the Applicant is a monopoly service provider with a General Franchise Agreement awarded by the Province of New Brunswick. The General Franchise Agreement is a privilege, not a right, and it can be revoked if the Applicant fails to meet its responsibilities under the agreement.

Thirdly, the Applicant has based its case on three maintained hypotheses. First, it is still operating in a

Greenfield marketplace insofar as the LFO customer class is concerned. Two, market based, rather than cost based, rate making is appropriate. And, three, the spread between the two fuel types, light fuel and natural gas, is the appropriate mechanism for the determination of a rate increase for a delivery service.

The advantage, I submit, of arguing from a maintained hypothesis is that one never has to prove it. It is accepted as fact and the debate proceeds from there. this is, in essence,what the Applicant has done in this case.

EGNB I submit has offered no evidence to support the Greenfield designation. In fact it has merely asserted that the development phase continues for the LFO class, in contradiction to the evidence that suggests that all of the potential customers have been completely captured by the Applicant. the Board should not accept this assertion by EGNB merely because it asserted it.

The position of the Applicant on market-based rate making proceeds from the first hypothesis. If the market is still in the development phase, then market based ratesetting mechanisms are appropriate. Again there is no evidence offered by the Applicant to support this position other than an assertion that market based rates meet the Applicant's objectives.

The use of a commodity-spread mechanism to justify a rate increase for a transportation service is merely squaring the circle in the Applicant's case. The Applicant's entire proposition can be restated as, we are still in a development phase, and because we are in a development phase we need to use market based rates, and because we need to use market based rates we have to go to the futures market for commodity energy spreads to develop a rate increase.

There is nothing in the Applicant's case that elevates it above a series of assertions, assumptions and maintained hypotheses. The Applicant's case is not about evidence. rather it is about opinion, and opinion I submit is not a basis on which this Board can rely when rendering a decision in this matter.

There are two formal intervenors in this application, Flakeboard and AWL.

With respect to AWL, Witness Power gave an overview of the economics of the AWL plant, the need to access export markets, the impact of the rate increase on the ability to compete in distant markets, the predication of the application on the basis of spreads between oil and natural gas, and the fact that AWL was never structured to use any other fuel type other than natural gas.

Witness Reed challenged the time interval used for the averaging calculations. Additionally, the witness focused on the lack of cost data and the need for any market based rates to be positioned in the interval between marginal costs as a floor and fully allocated costs as a ceiling.

With respect to Flakeboard, Witness Gallant discussed the impact of the rate increase on company production costs and traced the history of rate increases for gas distribution services over the years in which EGNB provided services to Flakeboard.

Witness Gaske discussed in his written evidence the standards for reasonable rates and noted that the gas distribution rates were greater than market based rates. He argued that using energy commodity spreads for rate increases for a distribution service was not a valid approach. A significant point raised by this witness was that of inter-class equity and the role to be played by the deferral account, as well as the proper accounting for costs between customer classes.

In summary, Mr. Chairman, Board members, the intervenors' case rests on two interconnected issues. First, the negative impact on operations and the ability to compete that such a large rate increase will have, and, secondly, the apparent disconnect between the price for the service provided and the cost of providing that service. I submit the Board needs to address both of these issues when rendering its decision in this application.

In its decision of January 18th, 2008, the Board made several rulings with respect to a motion brought before it by the intervenor Atlantic Wallboard. And the motion was as follows, and I will quote from Mr. Stewart's letter, The within matter be adjourned and the Board conduct a hearing into the appropriate rate making methodology to be utilized to establish distribution rates for EGNB's Contract Large General Service-Light Fuel Oil class.

I submit the opinions and the rulings of the Board that were articulated in its decision on the motion require both evaluation and comment.

In its decision on the motion, and in apparent agreement with the Applicant, the Board has asserted that a market based rate setting methodology is appropriate for this application.

However, in its application and evidence,the Applicant has advanced a case for only one type of market based rate methodology - that being a commodity spread methodology that uses the differentials between future prices for light fuel oil and natural gas as the basis for setting rate increases. This reduces the debate at the bearing to one of focusing on the length of the averaging period to be used to calculate the spread.

This debate I submit is a sterile one, because the assumption underlying the market based rate methodology is incorrect. EGNB is providing a delivery service, nothing more. If a market base rate setting mechanism is to be used it must focus on the delivery service, not on the spreads between two energy commodities. The Board must not allow EGNB to define, without challenge, what is an appropriate market based rate setting mechanism. It is the Board's duty I submit and responsibility to determine the appropriate rate setting methodology -- rate making methodology -- and not to restrict itself to adjudication over calculations on an averaging process associated with a rate setting mechanism that I submit is not appropriate.

I submit with the utmost respect, Mr. Chairman, there is an underlying theme that comes through the decision of the Board on the motion. This theme is one of reverse onus. It appears that the Applicant can state that it is still in a Greenfield situation with respect to the development of the natural gas marketplace in New Brunswick, and the onus is then placed on the intervenors to demonstrate otherwise.

The Greenfield designation is not a right that belongs to the Applicant. It is a privilege extended by the legislation and the General Franchise Agreement and it is administered by this Board. At any time the Board has the right and the responsibility to evaluate this designation and to remove it from any customer class market for which it is no longer appropriate.

The burden of proof of this Greenfield assumption belongs to the Applicant, and for each rate application made. EGNB must make the case for the continued application of the rate setting methodology based on this assumption. Mere assertions that the designation is appropriate are not evidence and do not constitute a basis for the Board to render a decision affirming the designation.

In the motion the Board ruled that it was appropriate to use the same method for setting rates for all classes. A review of the rate case filing indicates that there is nothing on the record to support this position. In point of fact the position may be in contradiction to regulatory practice elsewhere. There are decisions made by other regulators that allowed different rate setting methodologies for various customer classes served by gas distribution companies, particularly where the degree of market penetration differed by customer class.

In its motion the Board ruled that it was not appropriate for the development period to end for one customer class but not for other customer classes. This I suggest is a corollary of the first ruling. Again thee is nothing on the record to support this position. If the market for one customer class has been completely penetrated by the gas distribution company, then it cannot be said that that particular customer class market is still in the development phase. In the literature there are a number of cases where regulatory Boards have terminated the development period for one customer class, while maintaining it for other classes. This practice is nothing more than recognition that each customer class market may develop and mature at a different pace, and this requires regulatory oversight and judgment as to the timing of the termination of the development phase.

MR. THERIAULT: In this motion, the development has not yet ended nor will it end in the near future. This position can only be appropriate if one ignores the differences between the various markets served by EGNB.

It is clear from the evidence on the record that the LFO customer class has been completely penetrated by EGNB, that all of the customers in the class that could be -- that reasonably could be served are being served, and that all of the customers have made the necessary investments to take natural gas from the monopoly supplier.

I submit it is not appropriate for the Board to ignore this market reality when considering whether a development period has come to an end.

The Board stated on page 4 of its decision on the motion that -- and I will quote, "..where it appears that the development period will end before 2010, it is the obligation of EGNB to apply to the Board to end the development sooner."

This creates, I suggest three problems as it relates to EGNB.

First, there is absolutely no incentive for EGNB to apply to the Board for removal of the "Greenfield" designation. This designation allows EGNB to continue to propose market-based, rather than cost-based rate setting mechanisms, not only to the year 2010, but also beyond 2010, provided it can make a case for the same. In other words, EGNB has, and continues to have the freedom to continue its monopoly-pricing practices.

Second, given the Board's position it is not appropriate for the development period to end for one customer class, but not for the other customer classes, the probable outcome is that EGNB will propose that one class is still in the development phase and, therefore, the "Greenfield" designation must apply to all.

Third, and without utmost respect, I submit the Board is abdicating its responsibility in this matter. It is the Board that has the duty to determine when the "Greenfield" must come to an end. This position is consistent with earlier rulings by the predecessor board on the establishment of the timelines for the development period. Unless this Board is prepared to repudiate these earlier rulings, the responsibility for managing all aspects of the "Greenfield" designation, from timelines to customer class distinctions, belongs with the regulator, not EGNB.

Insofar as the Applicants case is concerned, I would argue that its case is nothing more than the opportunistic application of monopoly-pricing strategy. There is no evidence to support the hypotheses advanced by the Applicant to justify either the magnitude or timing of this rate increase. The application should be rejected by the Board on the basis of a lack of any substantive evidence to support it.

The intervenors have made a case for rejecting the application in its entirety, although neither has advanced this particular position. Both intervenors have demonstrated that a rate increase cannot, and should not, be evaluated in isolation from the impact that the rate increase would have on operations and competitive position. The costs of providing gas distribution services are largely fixed in nature. Distribution rates should be stable and predictable over time, given the fixed nature of distribution services. The market-based methodology put forth by EGNB introduced undue volatility into the distribution rate, making it difficult for LFO customers to operate in New Brunswick and maintain their competitive position. If the application has been based on cost considerations, then the Board might be guided by the regulatory principle that those who incur the costs must pay. However, this is not a cost-based rate application. It is a market-based one. Therefore, the Board is entitled to consider the impact on the intervenors of the application of a market-based methodology.

With the utmost respect the Boards opinions and rulings in this application give rise to considerable concern. These concerns have been articulated earlier and I do not intend to repeat them again. However, I wish to advise the Board that, with respect to the second application by EGNB, I have taken note of these positions and reserve the right to challenge any or all of them in the function of my responsibilities as Public Intervenor. I will vigorously challenge any fettering of my role as representing the public interest in this second application. Thank you.

CHAIRMAN: Thank you, Mr. Theriault. Any questions, Mr. Toner? Mr. Johnston? Mr. McLean? Mr Radford?

BY MR. RADFORD:

Q.174 - Following through with this morning, my comments, I am trying to gain an education here of just what we can do and what we can't do. But as a Public Intervenor, you are speaking for all the other customers including the 18 that are not represented here today?

MR. THERIAULT: My role as Public Intervenor, sir, is I see it as representing the public interest. The public interest represents all the other classes, as well as, the LFO class.

Q.175 - Right.

MR. THERIAULT: And what I try to do in my position is to strike a balance.

Q.176 - And as I said this morning, I believe I understand the economics of it, both the economics of the Applicant and the economics of those formal intervenors. But where I am wrestling with is the previous decisions made by this Board and you seem to have gone further in your comments that I heard up until now what we can do.

First of all, I would like a copy of your --

MR. THERIAULT: I will be e-mailing to the Board and to all the parties copies of it.

Q.177 - Yes. But again it is for an educational purpose, I am trying to understand what we can do here. And you seem to say in a nutshell say we can do basically whatever we think is --

MR. THERIAULT: Just and reasonable.

Q.178 - Just and reasonable.

MR. THERIAULT: And in approving the rates. And I think Mr. Stewart -- and I had the opportunity to sit in on the motion, and I think Mr. Stewart put it best when -- and I will paraphrase is argument. I am sure I won't say it as well, but in determining what is a just and reasonable rate, the Board I submit should be reviewing -- I am not saying changing the ratemaking methodology every time, but should be reviewing the circumstances surrounding the ratemaking methodology in every application for increase to keep current with it, to keep current on the deferral account.

I mean there has been lots of discussions over the week with respect to the deferral account in broad strokes, but I certainly haven't seen anything as to what's gone into the deferral account. I can guarantee that will come in the next one. But I think the Board has the latitude to do what it wants. I think the Board could even revisit its January 18th motion if it so chose, but I don't think -- and I will be making that argument at a later time that that application or that motion doesn't apply to any further proceedings, because it was part of the LFO application. And that application was brought by EGNB. Why they split the various classes, rather than dealing with one, I don't know. But that was their choice. But I do believe the Board has very wide latitude and can revisit previous rulings of the Board, from the predecessor Board with respect to the ratemaking. But I am not even going that far. I am just saying a review of the ratemaking methodology should be conducted. I believe that was the -- and that's why I specifically quoted from Mr. Stewart's motion. That's what he was asking for. He wasn't saying we think it should be -- or at least I didn't read it that way, it should be cost-based or it should be market-based. He said let's review it to see what form there is.

All I am suggesting is there may be -- and you know obviously there is no evidence, but there may be other forms of ratemaking methodology that are available. Even other forms of market-based methodology that I heard from the experts over the last couple of days.

Q.179 - What about changing the tier system?

MR. THERIAULT: That's always -- if the Board feels that that is something that should be done, then obviously I suggest that the Board has the power to do that. I brought you the legislation, the Gas Distribution Act and the Energy and Utilities Board Act.

Q.180 - And I will just ask you this, because I perhaps should have asked you before, have you seen contracts been customers and Enbridge?

MR. THERIAULT: I have seen very little here in my role as an informal intervenor. I am hoping that -- if you want to ask me that questions towards the end of March, I would be pleased to answer it. But I haven't at this point.

MR. RADFORD: And Mr. Chairman is the original franchise agreement somewhere filed here with this office?

CHAIRMAN: Yes.

MR. RADFORD: Thank you.

CHAIRMAN: Thank you, Mr. Theriault for taking the time to address us today.

MR. THERIAULT: Thank you.

CHAIRMAN: Mr. Hoyt, is there anything further that we need to -- I guess from your perspective that we need to do prior to final argument?

MR. HOYT: No, I don't believe so.

CHAIRMAN: Mr. Stewart, anything?

MR. STEWART: I don't believe so, Mr. Chairman.

CHAIRMAN: Mr. Lawson?

MR. LAWSON: No, Mr. Chairman.

CHAIRMAN: Ms. Desmond? All right. Then we will adjourn until 9:00 a.m. tomorrow morning at which time we will commence final argument.

(Adjourned)

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

Reporter

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