NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER OF an application by Enbridge Gas New Brunswick to change its Small General Service Residential Oil, Small General Service Commercial, General Service, Contract General Service, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fueling distribution rates

Held at the New Brunswick Energy and Utilities Board premises, Saint John, N.B., on March 28th 2008.

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

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

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CHAIRMAN: Good morning, everyone. I will take the appearances starting with Enbridge?

MR. MACDOUGALL: Good morning, Mr. Chair. David MacDougall representing Enbridge Gas New Brunswick. And today I am joined with Dave Charleson, General Manager of EGNB. And Mr. Hoyt gives his regrets. I think he is somewhere closer to a golf course right now.

CHAIRMAN: Well lucky him.

MR. MACDOUGALL: Lucky him. I got to do the hearings.

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

MR. THERIAULT: Good morning, Mr. Chairman. Daniel Theriault. I am joined this morning by Robert O'Rourke.

CHAIRMAN: Thank you, Mr. Theriault. The New Brunswick Energy and Utilities Board?

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

CHAIRMAN: And for Informal Intervenors, Department of Energy?

MR. IRVINE: Patrick Irvine and Steve Roberts, Mr. chairman.

CHAIRMAN: Thank you, Mr. Irvine. So we are here this morning for final argument. Any preliminary matters prior to the commencement of final argument? Mr. MacDougall, I will ask you to proceed.

MR. MACDOUGALL: Thank you, Mr. Chair. On December 19th 2007, Enbridge Gas New Brunswick applied to the New Brunswick Energy and Utilities Board for an order approving changes to each of its Small General Service Residential Oil, Small General Service Commercial, General Service, Contract General Service, Off Peak Service, Contract Large Volume Off Peak Service, and Natural Gas Vehicle Fueling distribution rates. Also as part of EGNB's application, EGNB is proposing to reduce the relative target savings for the CGS class from 15 percent to 10 percent.

First I would like to talk briefly about the Board Approved Market-Based Rates Methodology.

In a decision dated June 23rd 2000, the Board approved EGNB's market-based approach for setting its distribution rates during the Development Period. The methodology used by EGNB in calculating its proposed rates in this application is consistent with what was done initially in 2000 and in all subsequent rate proceedings.

The Board confirmed that EGNB's market-based methodology continues to be appropriate in its recent decision dated January 18th 2008, the Motions Decision in the our last proceeding. At pages 3 and 4 of that decision the Board determined that "This method establishes rates that provide an incentive to convert to and continue to use natural gas. The rates are not based on costs..The Board continues to believe that it is appropriate to use the same method for setting rates for all classes...The board, based on the evidence, is convinced that the "development period" has not yet ended nor will it in the near future."

During the Development Period, which is currently approved to run until 2010, the Board has authorized EGNB to operate under a non-traditional regulatory framework, the primary purposes of which are to allow EGNB to establish a market for natural gas in New Brunswick, and to be able to respond quickly to competitive market developments through use of a rate rider. It is incumbent on EGNB to watch the costs of competing energy sources and move with the market. EGNB is expected to seek rate increases when there is a sustained spread between natural gas and oil prices. EGNB will not remain viable it if does not pursue rate adjustments consistent with its market-based business model. Mr. Strunk alluded to the market-based rates in New Brunswick not being consistent with how that term is in his view typically used in North American energy markets. However, the nomenclature "market-based rates" has been consistently used by this Board for describing EGNB's rates, which provide a target level of savings against the alternative fuel. This has always been, and continues to be, an appropriate approach to development of a greenfield natural gas market. As the Board stated at page 3 of its recent January 18th 2008 decision: "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."

EGNB concurs with this position.

Next, I would like to talk briefly about the Application of the Market-Based Rates Methodology. The Derivation of Distribution Rates for each of the SGSRO, SGSC, GS and CGS rates as proposed by EGNB is set out on page 4 of the written direct testimony of Mr. Charleson, which can be found in exhibit A-2. Due to the sustained change in the relationship between oil and natural gas pricing, EGNB is proposing that the cap for each of these rates be increased to reflect this change. As each of the OPS, CLVOPS, and NGVF rates are set in relation to either the CG or CGS rates, EGNB is also proposing to change these rates as set out in the Rate Schedules that are provided as Schedule 2 to Exhibit A-2 of Mr. Charleson's evidence.

It is important to keep in mind that the rates being applied for by EGNB are maximum rates, and that if market conditions change such that the spread between oil and natural gas narrows, EGNB can, and previously has demonstrated that it will use rate riders to decrease its distribution rates to stay competitive with the alternatives fuel for the applicable rates, in this case oil.

Mr. Charleson noted in his opening statement that EGNB is aware that the increases it s applying for are not inconsequential, but they are still appropriate given the significant increases that have been seen in retail oil prices. On a burner tip comparison, which is the basis of the market-based approach, EGNB's proposed rates will still deliver the target level of savings proposed for each of the rate classes in question. As Mr. Charleson indicated during cross-examination, prior rate increases have been put in place over the past number of years because they have been supported by market conditions. This application is similarly based. Further, there is no evidence that rate increases have deterred customer attachment. Rather the evidence is that customer attachment has continued, in fact at a greater pace in the last couple of years than previously, and we refer the Board to EUB-1 in this proceeding, target levels of savings to competing fuel have continued to be maintained, and absolute savings to customers have actually increased.

I would like to talk briefly about the Derivation of the Distribution Rates. Board counsel asked a series of questions around various aspects of the Derivation of

Distribution Rates. We would like to briefly address EGNB's position on these points.

In dealing with the specific elements of the Derivation of the retail oil price raised by Ms. Desmond, it is important to keep in mind, the evidence provided by EGNB in this regard. Mr. Charleson referred to EGNB's response to PI IR-12 where EGNB specifically noted as follows: "These factors, however, should not be looked at in isolation as there may also have been a change in the relationship between WPI and the No. 2 distillate New York Harbour. However, given the resulting retail prices compare favorably to market information that EGNB is able to obtain, EGNB is confident that the prices arrived at by the calculations remain a reasonable proxy for retail prices in New Brunswick."

As Mr. Charleson explained, the chart that's shown on page 2 of Public Intervenor IR-12 shows that the retail prices arrived at by EGNB through use of the formula elements of its market-based approach have been consistently below retail oil prices available in the market from NRCan, so EGNB's retail price for oil is if anything a conservative price. Following Board counsel's cross-examination, where she raised comments related to the weekly maximum prices for furnace oil set by this

Board, EGNB reviewed the EUB's recent pricing data and found it to be consistent with NRCan's information. This further verifies EGNB's conclusion that the combined elements used in its derivation of a retail oil price for the New Brunswick market is if anything conservative.

Mr. Charleson specifically noted that rather than looking at the variables in isolation, it is important to check the retail oil price against the information that is available in the market, and in doing so it is clear that the retail oil price used by EGNB is reasonable and appropriate. It would, however, not in our view be appropriate to simply choose a different approach to determining one element of the retail oil price, rather it that was to occur, all of the variables would need to be undated. Since the ultimate retail oil prices are able to be validated and verified, this is unnecessary.

For example, although Mr. Charleson indicated to Ms. Desmond where in the derivation of retail oil prices one would substitute the published New York Harbour price, if one was to do so, he made it clear that do this without also revising the average market spread could lead in his words to a misleading result. In this regard, EGNB would refer the Board to the extensive explanations it provided in its responses to each of PI IR-12 and EUB IR-13.

Furthermore, the approach taken by EGNB in this proceeding is consistent with the approach taken by it over the past number of years, and the evidence is clear that this has consistently provided customers with the value proposition target savings put forward by EGNB. EGNB submits that there is no better information in the record that would suggest a more appropriate rate would be derived by the adjustment of various elements of the formula for determination of the retail oil price.

Now I would like to briefly talk about the 21 Day Average issue. Board counsel also raised the issue of why the 21 day average was more appropriate to use than any other time period. Chairman Gorman also followed up on this line of inquiry.

As Mr. Charleson noted, the 21 day average is not an arbitrary time period, but rather it is the equivalent of one month of trading days, and is a time period that is used regularly in financial markets. The purpose for using one month of activity is to ensure that items that have short duration impacts do not arbitrarily affect the price period chosen, i.e., for example picking a given day. EGNB does nt simply file for a rate case every time the spread between natural gas and oil increases. Rather, once it becomes apparent that there is a sustained spread, it makes application, and it uses a one month time period, which is generally reflective of that sustained spread. In a rising market, which is the only time period in which EGNB applies for an increase in its maximum rate caps, the use of a longer time period would simply mute what is actually occurring in the market by taking account of prior prices which are not reflective of current market conditions.

Simply put the 21 day average is an oft used time period that balances the risk of picking arbitrary single points in time, against utilizing time periods that are not fully reflective of market conditions.

Further, as Mr. Charleson indicated, utilizing a period greater than 21 days in determining the application of the rate riders would severely limit the flexibility to use these rate riders to respond to rapidly changing market conditions, and to continue to give customers the targeted level of savings. Further detail is provided in this regard in response to Board IR-13, particularly at pages 24 and 25.

Next I would like to talk briefly about the Typical Annual Natural Gas Consumption figures. With respect to questions raised on EGNB's typical annual natural gas consumption figures found at line 9 of the Derivation Distribution Rates, Mr. Charleson indicated that it was not a simple exercise of dividing the customers by the throughput. Rather EGNB takes account of, for example, whether a residential customer is merely using gas for a barbecue or fireplace as opposed to heating and hot water, or whether customers were only attached for a portion of year, potentially without their winter heating load included.

EGNB's response to undertakings U-5 and U-6 support the figures used in its Derivation of Distribution Rates as being both appropriate and reasonable.

Next I would like to briefly talk about the Average Monthly Contract Demand. With respect to EGNB's use of an average monthly contract demand of 45.9 GJs for the CGS class, Mr. Charleson acknowledged that the actual contract demand in 2007 was 45.13, a slightly lower figure. However, he indicated that this number changes on an annual basis and could be higher or lower in 2008, and since a lower contract demand figure would actually result in higher distribution rates, the use of the 45.9 was again a conservative approach.

I would like to briefly talk about the Target Savings. Some questions were raised by Ms. Desmond related to the CGS rate, and these were followed up on by Vice Chair Johnston, regarding the proposed reduction in the target annual savings level for the CGS class from 15 percent to

10 percent. Mr. Charleson noted that it was EGNB's view that a reduction in the target level of savings for this class would not deter customer attachment, and that EGNB remains confident that the revised target savings level is not a barrier to capturing these customers. In response to Vice Chair Johnston, he noted that EGNB's field sales staff have not highlighted a specific concern in the marketplace over the reduction in the target savings level.

As well, as noted in EGNB's response to EUB IR-10, and Mr. Charleson's written evidence at page 7, at the 10 percent savings level the absolute value of the savings provided to CGS customers is actually greater than the absolute value of the savings provided when the original CGS target was established in 2000. At that time, a typical CGS customer expected savings of roughly $5,084, which is $5,272 or 51 percent less than the $10,256 in savings expected at the new savings level. And again those figures are found in EUB IR-10 in Mr. Charleson's evidence at page 7.

Further, as noted in EUB IR-10, since only 26 percent of CGS customers are using EUG for their gas supply this would support the premise that they are in fact able to access gas supply at prices below EUG. EGNB's use of the

EUG price in its derivation of distribution rates, therefore again likely under represents the savings CGS customers may attain. And that position is laid out in the EUB IR-10.

The main concern going forward in this market is that now that 70 percent of the CGS customers on oil have been attached, EGNB's focus is on the electric customers, and the impediments to their conversion have been the overall cost of conversion for large electric loads, and the market taking some time to understand that there is no impediment for switching a portion of their load under the all-electric rate. Unlike the residential electric customer, general service electric customers do not (particularly with the closing of the all-electric rate) pay artificially low electric prices, and the target savings level is equally applicable to oil and electric potential CGS customers.

I would now like to briefly talk about the Monthly Customer Charge. As EGNB indicated in response to EUB IR-4, in past applications it had brought the customer charge in the various applicable classed to a level which it felt appropriate for the New Brunswick marketplace, and for this application it did not feel a customer charge revision was warranted. Further, as stated in that IR response and by Mr Charleson under cross-examination by Board counsel, any change in the customer charge would have a direct impact on the delivery charge, and since the total cost of using natural gas delivers the value proposition, whichever of these components is adjusted will not affect the overall outcome for a typical customer. There is no evidence in the record that suggests that any customers have concern over the breakdown between the customer charge and the delivery charge, nor that any other customer charge would be more appropriate. We refer the Board to EUB IR-4 for greater detail.

Next I would like to talk about the concept of Striking the Balance. As in all previous market-based rates applications, EGNB is attempting to strike a balance between providing sufficient incentive to customers to convert to and continue to use natural gas, and recovering as much of its costs as possible during the Development Period. In maintaining that balance, EGNB should not provide any more economic incentive to customers to convert to and continue using natural gas than is necessary, because to do otherwise would add to the already significant deferral account. The Public Intervenor during his cross-examination appeared to suggest that he was concerned with the growing deferral account particularly as EGNB is entitled, as is appropriate, to a return on this regulatory asset in the same manner as all of its assets. And we will discuss this in more detail momentarily. EGNB has always maintained that it is cognizant of the need to keep the deferral account low, and in fact the purpose of this application, consistent with its previous applications, is to increase rates to a point that delivers the appropriate target savings value proposition while at the same time minimizing the growth of the deferral account.

EGNB believes the evidence in this proceeding supports its application and properly strikes this balance, and indeed there is no evidence to the contrary on this point.

The Board in its January 18 Decision, specifically stated at pages 3 and 5 that: "The Deferral Account is necessary because of the use of market-based rates. It is essential, for the long term future of the natural gas system in New Brunswick, that the deferral account not continue to grow. During the "development period" it is important that whenever circumstances permit prices should be set so as to address this issue. EGNB has demonstrated that, if market conditions change, it will apply to lower its rates and the Board expects that EGNB will continue to do so."

This is in fact how the Board has always approached EGNB's market-based rates methodology, how EGNB has always considered the market-based rates methodology was meant to operate, and it is the basis on which EGNB has put forward this application.

The Public Intervenor and Board counsel raised questions on various items related to the deferral account which bear commenting on.

First, there was some discussion about the Essential Elements. The Public Intervenor referred to the essential elements found at Schedule E - Part II of the General Franchise Agreement, which had been filed in response to PI IR-6. In particular, he referred to essential element (vii).

In fact, EGNB initially proposed two deferral accounts as described in essential elements (vii) and (x), and as Mr. Charleson indicated in response to Mr. Theriault, although EGNB initially applied for two deferral accounts, the Board in its June 23, 2000 decision at page 31 found as follows:

"Both EGNB witnesses and its counsel stated that, conceptually, these accounts could be viewed as one. The Board can find on justification for separating these accounts, particularly for regulatory purposes. EGNB is directed to establish one deferral account in which it will record the difference between the actual revenue received and the revenue requirement approved by the Board."

This decision which post-dated the essential elements, created the deferral account system under which EGNB has subsequently operated, and all of EGNB's financial statements subsequent to this decision have appropriately reflected the deferred costs, and each of these statements have been reviewed and approved by the Board. As Mr. Charleson noted, the initial hearing set the rules and EGNB complies with them.

Next I would like to discuss the issue of the Impact of Potentially No Increase on the Deferral Account. Mr. Strunk in his testimony made the bold statement that if customers were allowed to retain the savings associated with the increase in the spread between natural gas and oil prices, this would likely attract more users to the gas distribution network and that over time, having these additional customers may actually reduce the amount of deferred costs. However, Mr. Strunk did no analysis to determine how many new customers would be required in each of the rate classes to result in reducing the amount of deferred costs and provided no evidence whatsoever that such customers could be attracted.

As Mr. Charleson stated in his Opening Statement, it is EGNB's position that such a proposition would have significant negative impacts on the deferral account, as their analysis suggests that maintaining their current rates will not be able to support customer attraction such that it would in any way make up for the lost revenue.

We refer the Board to EGNB Exhibit A-13 which shows in column 9 the significant number of incremental customers which would be needed to make up for the lost revenue. As Mr. Charleson noted, these significant numbers would have to have been fully effective on an annual basis at the beginning of 2008, and would have to be on top of the 2008 forecasted attachment. A comparison of column 9 of A-13 (the number of incremental customers needed) to column 11 (EGNB's 2008 forecast additions) and to column 10 (its actual customers developed to date throughout its entire franchise history), makes it clear that these incremental customer attachments are not attainable even it one adjusted for possible conservation efforts as alluded to by Mr. Strunk. (An issue for which Mr. Strunk conceded customer response data was not even part of this record). In fact, Mr. Strunk provided no evidence to suggest that these additional customers would actually reduce the amount of deferred costs. He regularly referred to things that may occur, but which may equally not occur, and which are not supported by the evidence in this proceeding. Rather the evidence is to the contrary.

As Mr. Charleson noted in response to Mr. Theriault, the empirical evidence of new customer growth demonstrates that even with the rate increase to date -- the rate increases to date customer attachment has continued, because there has been an appropriate target level of savings provided.

As the Board noted at page 10 of its March 31, 2005 Rate Decision, "Enbridge stated that its rates must continue to provide an economic incentive to customers to convert to natural gas while recovering as much of its costs as possible. All the parties expressed concern about the future of the market and the possible effects of a rate increase. The Board notes that the recent changes in market prices and volatility of both fuel oil and gas and the evidence of Enbridge, all suggest that the forecasts provided in evidence will almost certainly be wrong. For this reason the Board considers that Enbridge is in the best position to determine at any point in time if its rates are providing the required economic incentive to customers or if rates are too high and are a deterrent to attracting or maintaining customers. The Board expects

Enbridge to use rate riders to reduce distribution rates if necessary to allow the total cost of gas for customers to be competitive with other fuels."

Next I would like to briefly talk about the Rate of Return on Equity. With respect to both the deferral account and EGNB's rate of return in general, EGNB has a 13 percent rate of return on equity approved by the Board for the Development Period. As Mr. Charleson explained, this rate of return accounts for the risks associated with the development of a greenfield natural gas distribution system during the Development Period. The 13 percent applies to the deferral account as the deferral account is one element of costs the same as any other element of costs in EGNB's cost structure. It is not an exceptional expense such as the example Mr. Strunk discussed in the State of Maine. Rather, the deferral account accumulates costs of EGNB's business that are not recovered through its revenues. These are costs of putting pipe in the ground and operating the natural gas distribution network.

Since the deferral account is a regulatory asset composed of the costs which have not been recovered through revenues, to deny a return on that asset would simply be to deny EGNB its right to recovery of the Board approved return on equity in its business.

Mr. Charleson explicitly noted on cross-examination that he did not agree that the deferral balance was any less risky than any other item of EGNB's cost and he specifically noted that EGNB is unable to commence to recover the deferred balance until it hits crossover, plus significant risks remain during the entire amortization period of the deferral as to its ultimate recovery This is exactly why EGNB strives whenever appropriate to increase its rates so that it can balance additions to the deferral account with customer conversation and take-up.

As the Board noted at page 3 of its January 18, 2008 Decision: "The deferral account is a regulatory asset of EGNB and they are permitted to earn a return equal to their overall cost of capital on this account. Once the "development period" is over, the intent is that this account will gradually be paid down from the rates charged to the customers. As this happens, the expectation is that this will allow for reduction in rates, since the financing costs associated with the deferral account will be reduced and eventually eliminated."

In this proceedings, the Public Intervenor, has not put forward a cost of capital witness nor provided any evidence that the 13 percent is inappropriate considering the financial and business risk factors posed in a greenfield natural gas development setting.

Furthermore, Heritage Gas, a comparable Atlantic Canadian greenfield natural gas distribution utility, has an approved 13 percent rate of return on equity for its development period.

In this regard we note that Mr. Strunk did not mention Heritage Gas in his comparison of the rate of return of EGNB to other Canadian LDCs and in fact the other LDCs he referred to are large significant stable utilities that have been in place in at least one instance for 160 years. There is absolutely no viable comparison between these LDCs, which include Enbridge Distribution, with Enbridge Gas New Brunswick.

As the Board has previously noted, the deferral account is essential to the growth of the business during the development period. Further, Mr. Strunk confirmed in response to a question from the Chair that "I certainly don't think there was enough evidence put forth in this hearing to make a determination on rate of return. I think it's an issue that the order could flag for future review in the context of the generic hearing."

Next I would like to comment on the Regulated Return on Equity and Distributions. Both the Public Intervenor and Board counsel posed questions with respect to EGNB's distributions to date. As Mr. LeBlanc explained on cross-examination, EGNB's distributions are essentially paid for out of its regulated return on equity found in its various approved regulatory financial statements. As was explained by both Mr. LeBlanc and Mr. Charleson, in part to questions raised Board Member Toner, if EGNB did not pay out distributions it would significantly affect EGNB's ability to raise money to maintain a sustainable business.

Although EGNB provided what deferral account would be without distributions in response to undertaking U-7 requested by Board counsel, as Mr. Charleson stated this was simply a mathematical exercise, the validity of which is highly questionable, since without distributions it is doubtful EGNB would have attracted investment to build its business in the first place. As noted and specifically written on U-7, "It is unlikely that EGNB would have been able to attract investors if the distribution policy had been that no distributions would be paid until a regulatory income was realized."

Further, non-Enbridge investors in EGNB, including numerous New Brunswickers, have invested approximately $45 million in the business (and Enbridge considerably more). All investors have based their investment on a set of characteristics, including the payment of distributions, and to change this would have dramatic impacts. Such a change is unwarranted and wholly unsupported by the evidence in this proceeding.

Next I would like to talk about Affiliates. The Public Intervenor also posed some questions with respect to amounts paid to affiliates by EGNB. As Mr. LeBlanc noted, details of affiliate transactions are set out in EGNB's financial statements, which are reviewed and approved by the Board on an annual basis. These costs are reviewed for reasonableness to ensure they are in line with market values for services provided. There is no suggestion in the record that there is any issue with the costs paid affiliates for the services provided, services which are required for the development of EGNB's gas distribution system in the Province of New Brunswick.

Next I would like to talk a bit about Board Oversight of EGNB. The Public Intervenor asked various questions with respect to the Board's oversight of EGNB. As Mr. Charleson noted notwithstanding the fact that the essential elements in the General Franchise Agreement refer to light-handed regulation, EGNB has been before the Board on numerous occasions with respect to its construction plans, rates and financial statements, and there have been numerous regulatory rate reviews for rate hearings, rate riders and reinstatements and rate reclassification. There has in fact been considerable ongoing Board oversight of EGNB's business. The Public Intervenor made specific reference to the seven year review referenced in the General Franchise Agreement, but as Mr. Butler noted, the requirement for this review was removed in a subsequent amendment to the Gas Distribution Act.

EGNB continues to be fully regulated by the Board and responds to Board directives as issued.

Next I would like to talk about the issue of the Cost of Service Study. EGNB acknowledges that they have not conducted a cost of service study since the initial Board hearing, but of course this is because EGNB is operating under a market-based rates approach approved by the Board, not a cost of service approach.

Further, in it's recent decision of January 18, the Board has put in place a process to establish the criteria that will allow it to make a determination as to when the "Development Period" will end, which process will develop a proposal to be brought forward to the Board for its consideration.

Subsequent to the conclusion of that process the Board has indicated its intention to conduct a generic hearing for the purpose of determining the appropriate method that will be used when it is appropriate to change from the current market-based method. EGNB understands that this process will deal with its overall rate structure for all rates and looks forward to participating in this process when it begins in the fall.

As Mr. Charleson indicated, it is not a trivial exercise to do a full cost of service study and it could take months to do after acquiring the necessary support and assistance.

Considering the Board has already set in place a process to determine the appropriate approach to take with respect to this issue, EGNB does not believe any further direction is required or necessary in this proceeding.

Consistent with this the Board in its January 18 decision found as follows:

"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 in this (the LFO) application using the market-based method. Should circumstances change, 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 period" sooner. If other parties consider that circumstances have changed and EGNB has not applied to end the "development period" they may apply to the Board for a review of this matter."

Again, EGNB submits that the evidence in this proceeding clearly indicates that the Development Period has not yet ended. As Mr. Charleson indicated, for various reasons, including the status of electricity pricing in New Brunswick, even with appropriate target savings levels there are other impediments in the market. Further, EGNB remains far from a mature utility. Although it continues to make significant inroads, it currently has only approximately 8,200 customers, and its costs continue to exceed its revenues. As can be noted from the various information in the record on customer attachment and throughput, progress is being made, but it is clear that the "Development Period" has not ended nor as the Board stated "will it in the near future".

Although EGNB is in support of the process beginning in the fall to start the debate on how to move forward once the Development Period ends, at the present time the market-based rates approach should continue as in the past to encourage customer attachment for the remainder of the Development Period, while at the same time minimizing additions to the deferral account. As Mr. Charleson noted in response to the Public Intervenor in Exhibit No. 4, with respect to virtually all of the elements that were in place at the time of the initial application there has been no dramatic reduction in risk, and in response to Ms. Desmond in reviewing actual versus forecast numbers, Mr. Charleson confirmed that there were still significant risks associated with EGNB's forecasting due to the vagaries of the greenfield natural gas distribution market. In discussing the cost of service issue we note Mr. Charleson's comments with respect to Mr. Strunk's comparison of EGNB to Heritage's gas system. As Mr. Charleson noted, Heritage's rates do not recover it's costs. In fact, Mr. Strunk, himself acknowledges that Heritage has a deferral account, although he is not aware of its extent. As was clear from EGNB's cross-examination of Mr. Strunk, there is no evidence that Heritage's model has in any event had any measure of success by which to compare to EGNB. Mr. Strunk provided scant little by way of evidence of what has occurred in Nova Scotia.

Next I would like to discuss Discrimination Between Rates. Mr. Strunk appeared to suggest that there is something discriminatory between the use of the SGSRO oil rate and SGSRE electric rate. In fact, under the market-based approach which tees off of the alternative fuel, nothing could be further from the case. It is perfectly appropriate to have an electric rate for residential customers, and in fact, because of their lower alternative costs, the use of the SGSRO rate would not be successful in attracting those customers, thus not putting EGNB in a position to move out of the Development Period. SGSRO customers are certainly not discriminated against under a market-based rates approach by not being provided the discount given to SGSRE customers. Each set of customers see the same level of target savings 20 percent against their alternative fuel.

Further we note that in its November 24, 2006 decision the Board specifically stated with respect to the reclassification that: "..the proposed changes would be in the public interest during the period of time that the use of the market-based rates remains appropriate. The Board anticipates that in the future rates will be based on the underlying costs."

In response to the Chair, Mr. Strunk appeared to agree with this proposition.

Next I would like to discuss Accounting Treatment. Mr. Strunk made various comments in his written evidence with respect to the appropriate accounting treatment for EGNB. We would simply note that EGNB always has and will continue to fully comply with the New Brunswick Gas Distribution Uniform Accounting Regulation and that its financial information will continue to be available for Board review as in the past.

Next I would like to make a few comments on the Partial End of the Development Period. We note that Mr. Strunk indicated in his evidence that he saw no need for the Development Period necessarily to end at the same time for all customer classes. Although there is no evidence in this case to suggest that the Development Period should end for any given class, we simply note that in its recent January 18, 2008 decision the Board also stated:

"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."

EGNB fully concurs with that decision.

In summary, EGNB respectfully submits as follows:

1. The applied for rates result from the application of the Board approved methodology to changes in market conditions and are appropriate.

2. The methodology as it is currently approved provides EGNB with the tools necessary to be responsive to changes in the pricing of fuels it is competing against.

3. The applied for rates provide the proper balance between providing a sufficient economic incentive to convert to and continue to use natural gas, and maximizing cost recovery so that additions to the deferral account will be minimized and not unduly burden the utility and future customers.

EGNB respectfully requests that its rates as applied for be approved on the basis that they are just and reasonable effective April 1st 2008.

Thank you very much.

CHAIRMAN: Thank you, Mr. MacDougall. I will see if there is any questions from the Board. Mr. Toner?

MR. TONER: No.

CHAIRMAN: Mr. McLean?

MR. MCLEAN: No.

CHAIRMAN: Mr. Johnston?

VICE CHAIRMAN: Mr. MacDougall, I just want to talk a little bit about the change in the target savings level in the CGS class. The CGS class as I understand it from the evidence of Mr. Butler runs from a consumption rate of around 2,000 to around 14,000, is that correct?

MR. MACDOUGALL: It's in that range I believe.

VICE CHAIRMAN: And the typical consumption is 4,400, which by my simple math would mean an expenditure on delivery charges for typical customers under the proposed rate of around 44', $45,000 per year. But as I understand it the largest customers in that category would be around three times that. So we would be looking at kind of the proposed rates distribution charges for the largest customers in that category would be an expense to them ballpark 120', $130,000 range.

The terminology that has been used with respect to the market-based rates is that the target savings is designed to be the amount that will permit EGNB to attract and retain customers. And that seems to be the basis on which all pricing decisions have been made by the Board up to this point in time.

I am just wondering though when we look at just and reasonable rates whether we have to give some consideration to those customers who are paying large total dollars for delivery charges, who are going to be retained by the system, but who are going to be facing I think it is in the range of a 77 percent increase on delivery charges for that class. I am just wondering from the Board's perspective whether in determining that rates are just and reasonable whether we should be giving some consideration to those customers who are going to stay on the system, who are going to be retained, but may based on economic pressures as a result?

MR. MACDOUGALL: Certainly, and I understand exactly your question, Vice Chair. I think there is a couple of comments.

The target savings levels have changed quite a few times since 2000 and in other classes, for example. I am just running from my history, but I have been around for I believe the initial target savings level for the residential class. And of course the first Board's decision was 35 percent for example -- 30 percent.

So the amounts have changed from time to time and customers who were already on the rate when the target savings levels changed, their target savings did decrease. Again, as you mentioned, the target savings is for typical customers, and that can change. The actual savings changes quite a bit within the class because in each of the classes there is some wide disparity. And granted there is more disparity in probably the CGS class than in the average of the residential classes, for example.

But I think one of the key points here, and this is why we referred back to the response to EUB IR-10, is that the absolute savings for these customers, because of the disparity between the oil and gas prices is actually significantly increased. And for larger customers, particularly in the CGS class, who have a capability to go out and get gas in the marketplace at what we believe is a lower price, since they are not taking the EUG price that is available, we believe those customers are seeing a considerable saving.

So although the percentage target may be reducing going forward, their absolute savings are not reduced. And in fact they continue to see a larger savings against their alternative fuel. And I believe Mr. Charleson had said this issue has not been an issue that has been raised by his sales staff as a concern expressed by those customers. Customers have I believe -- Mr. Charleson said expressed a concern with you know increasing in costs, but we believe that the absolute savings they are seeing against an alternative fuel, for example, if they were to do a fuel customer switch, I am just assuming that some of the CGS customers are, they would still be seeing a significant absolute savings that would keep them on natural gas and to which they would be given the benefit.

And as I say, the target level savings have reduced in the classes previously and we are not aware that that has created an issue, because customers then look at the absolute savings. The reason the methodology is set on target savings is because you can't pick the absolute savings number because for each customer it is different. So the methodology derives off of a target level of savings. But in this case, EGNB ran the figures well before the application and the change from the 15 percent to 10 percent is well documented in the evidence as to the continuing absolute savings that those customers will see both new and old.

VICE CHAIRMAN: Is there an issue though with the expectations of the existing CGS customers? Is that an issue that the Board should be considering what their target savings expectations were?

MR. MACDOUGALL: Not from our perspective again, because the absolute savings we see are still there. Some of those customers would have been saving at target savings levels for a certain period of time. If one was to maintain the target savings level ad infinitum one could never change it during the time period even if market conditions dictated that was appropriate.

So I don't think there is an expectation put out there for customers that they will all get that savings level. And in fact in the CGS class it's a fairly sophisticated class compared to, for example, residential customers. And I say that in the context of understanding natural gas prices and not the sophistication of any of us sitting in the room. But because the class spends time -- I mean the CGS customers, particularly the larger ones which you had a concern, they understand gas pricing and oil pricing. It's a significant part of their business. As I say, the evidence doesn't suggest that the field -- the field staff people have been hearing that concern, because these customers continue to see fairly significant absolute savings.

VICE CHAIRMAN: Thank you.

CHAIRMAN: Thank you, Mr. MacDougall. We will take about a 15 minutes break and then we will hear from Mr. Theriault.

(Recess - 10:30 a.m. to 10:45 a.m.)

CHAIRMAN: Mr. Theriault, are you ready to proceed?

MR. THERIAULT: Yes, I am, Mr. Chairman.

Mr. Chairman, Board members, good morning. My argument this morning. My argument this morning will be broken into three sections.

The first section I will deal with the issue of whether this rate increase in this application before this Board is just and reasonable. Secondly, the second section, I will be asking the Board for three orders, a third of which I believe conforms to the Board's decision on the motion in the LFO application.

And thirdly I would ask the Board -- I intend to read in a letter in a letter in the record from a residential customer that the Board received, and I received a copy of it, and which I believe encapsulates the frustrations held by residential customers on this issue.

But before I do that and before I proceed, Mr. Chairman, I do have a table that I prepared based on the summary of the deferrals and the gas distribution revenues from the documents in evidence.

And I would ask that Mr. O'Rourke hand that out. I have copies for everybody. So that you may follow along when I get to that point in my argument.

Mr. Chairman and Board members, before discussing the issues that are before the Board, I think it useful to review the development of the natural gas market in New Brunswick. This development is characterized by several factors.

First, EGNB's persistent application of a market-based rate making methodology has had and continues to have perverse effects on both the growth in customer acquisition and on the growth i the deferral account. Only by ignoring the basic concept of price elasticity can EGNB forecast that if its market-based rate application were approved, it would be able to recover its higher-than-anticipated revenue requirement from its smaller-than-anticipated customer base as early as next year. Clearly, this proposition makes no economic or regulatory sense in the long term.

Second, the Applicant's rate base and its deferral account have grown much more rapidly than anticipated. In its original proposal, the Company forecast having assets of $300 million in 20 years. In actuality, it has assets of $328 million after only 8 years. In the last three years, over $143 million was added to the rate base. This higher-than-forecast rate base means the revenue requirement it must recover from customers is larger than originally anticipated.

Third, the rates of customer acquisition and throughput growth have been lower than anticipated. In its original proposal, EGNB anticipated 23,000 customers at the end of 2007, and over 70,000 by 2020. at the time of this application, the figure was slightly over 6,800 customers. Equally problematic is the relatively slow growth in customer acquisition in recent years. This means there are fewer customers than forecast to bear the burden of higher than anticipated revenue requirement.

Now Mr. Chairman, I would suggest the issue before the Board is whether the rates proposed by EGNB for the various customer classes covered by this application are just and reasonable. The very real difficulty the Board has is determining what constitutes just and reasonable rates in the context of EGNB's market-based ratemaking regime.

What the Applicant is proposing are increases in the rates for its delivery service that range from 27 to 72 percent for the customer classes covered by this application.

The evidence provided by EGNB is minimal at best. The Applicant appears to assume that there is no burden of proof required for rate increases of this or any magnitude, since they are simply following a process approved by the Public Utilities Board in the initial rate application in 2000.

In each rate case since 2000, EGNB filed almost identical evidence. They simply provide evidence as to the spread between oil and natural gas and assume their calculation is just and reasonable.

The Applicant has based its case on three critical assumptions. First, it assumes that it is still operating in a "greenfield" marketplace and is therefore entitled to claim that it is in a Development Period.

What is of concern here is that there is no indication that the Utility understands, or wishes to understand, that a "greenfield" designation is really intended to give consumers in New Brunswick time to become accustomed to and to accept the concept of the availability of natural gas. The designation is not intended to permanently shield the Utility from the realities of cost-based regulation.

The second assumption that the Utility makes is that market-based, rather than cost-based, ratemaking is the only appropriate mechanism to determine rates and rate changes in a marketplace that is characterized as a "greenfield".

The third assumption is that the spread between two fuel types, light fuel oil and natural gas, is the appropriate mechanism for determining a rate increase for a delivery service.

The advantage of arguing from a set of assumptions is that one never has to prove any of them. Indeed, the

Applicant has never strayed from its initial argument:

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 have to use market-based rates, we have to use the mechanism approved by the Board in 2000, and we cannot propose any changes to that mechanism, even if market conditions change.

I submit EGNB has offered no evidence to support the "greenfield" designation and the continuation of the Development Period. In fact, it has merely asserted that the Development Period continues on, and will not even cease when the deferral account starts to decline. The latter point is in contradiction to the position that the Board took in previous rate applications. The Board should not I submit be in a position of accepting this assertion by EGNB merely because it asserted it.

The problem with the Applicant's position is that it still does not answer the fundamental questions. Are the rates requested in this application just and reasonable? If the rate proposal were based on costs, then the question would be answered by determining if the rates over-or-under-recovered costs associated with each of the customer classes.

However, EGNB's rate proposal is not based on costs.

Rather, they call it a market-based rate proposal, and the issue at hand is how one determines just and reasonable rates in this context. The answer I suggest lies in evaluating how useful this market-based rate making has been in helping the Applicant achieve its customer acquisition and throughput goals as established by their forecasts.

I would submit, Mr. Chairman and Board members, that the verdict on this issue is not very good. EGNB has consistently under-performed with respect to its targets for customer acquisition and throughput, and remains far behind in its original goals. Worse still, EGNB appears to believe that increasing rates and increasing rate instability are keys to attracting new customers and retaining current ones. This logic flies in the face of the basic principles of economics, particularly price elasticity.

Flowing from EGNB's ratemaking approach are a series of important questions that have either not been addressed in this hearing or have received only cursory attention.

1. Is it reasonable to place the full burden of EGNB's $328 million rate base on customers who number less than 7,000? An approval of this rate application would provide a maximum rate for EGNB that effectively does so.

2. Is 13 percent a rate of return that is just sufficient to attract equity capital? While the EGNB witnesses have stated that it is, they have not put forth any evidence to substantiate their statements. Rather the statements made by the EGNB witnesses were that certain risks have decreased since they first began operations. If such risks have decreased, then the 13 percent is no longer an appropriate rate of return on equity.

3. Should the deferral account portion of rate base be entitled to the same return as the non-deferral portion?

4. Is it prudent for a company with $12 million in revenues to distribute $14 million of cash to its limited partners?

These questions I submit, Mr. Chairman, call for more analysis and more investigation into whether the market-based rate methodology is yielding just and reasonable rates and whether EGNB has the proper incentives vis-a-vis its costs and new customer additions. Further, these questions must be answered in order for the Board to understand whether the size of the deferral account is reasonable and whether the growth of that account in the future will be reasonable.

The Applicant's attachment to the current ratemaking regime is understandable I submit when one views the benefits that flow from it.

The table that I had handed out here earlier demonstrates the relationship between the distributions paid, the growth of the deferral account, and the transfers to Enbridge affiliates that have taken place over the past eight years.

It is interesting to note that in a period of zero revenue, which is their first year, EGNB was able to pay distributions, and in all years, except the most recent, distributions paid exceeded distribution revenues earned by the Utility.

Now this morning Mr. MacDougall referred to the affiliate payments. I would simply note that these payments have not been subject to a prudence review and such bring up the question of whether there has been preferential affiliate dealings.

In the report prepared by Witness Strunk, he provided several conclusions about EGNB's market-based ratemaking methodology based on his research and expertise.

1. First, the use of the term "market-based rate" by EGNB is not consistent with how that term is typically used in North American energy markets. This can create the false perception that EGNB's gas delivery rate is set by willing buyers and sellers.

2. The objectives behind the use of the market-based rate methodology proposed by EGNB are different from the objectives that typically underlie rate methodologies for other LDC's. EGNB's market-based rate methodology fails to meet important ratemaking objectives that would be normally expected as part of a rate proceeding.

3. The market-based rates proposed by EGNB do not even achieve their sole objective of promoting switching. The fact that EGNB is pricing delivery service up to nearly the full price of delivered oil sharply reduces the incentive for customers to switch to natural gas. Further, the volatility inherent in the market-based delivery service rate is also likely to deter customers from switching.

4. Without verification that rates are reasonable, there is no assurance that customers are not harmed, and that the development of the natural gas sector in New Brunswick is not hindered.

The issue about whether the market-based rate methodology is in fact meeting its stated objectives of fostering the growth of the market was also raised by the Board in its December 15, 2005 rate decision. In this decision, the Board stated, in part: And I will quote.

"The Board is concerned wit the slow development of the natural gas market in New Brunswick and it is concerned that EGNB's ratemaking methodology may be a factor that impacts on customer growth. The Board noted above that EGNB amended its ratemaking methodology for the SGS class to mitigate the possible impact of any rate increase for that class. This raises the question of whether the methodology truly works to create a real economic incentive for customers in some classes to switch to gas."

I submit the Board emphasized the need for monitoring and the need for a wholesale review of the ratemaking methodology. The language of the decision, which decision is dated back in 2005, states that the Board "may hold a generic hearing to review EGNB's ratemaking methodology and the use of rate riders."

Witness Strunk believes that it is appropriate to review the ratemaking methodology for a number of reasons. In his opening statement, he commented.

"First, part of the problem with the rate methodology is that it is" -- and this is a quote -- "First, part of the problem with the rate methodology is that it is based on commodity prices that neither EGNB nor the Board can control. This introduces volatility into the rate. I note in my report that stability and predictability is traditionally an important ratemaking objective and that volatile rates can deter customers. Implementing stable, predictable delivery service rates is a necessary step to foster the development of the natural gas market, and over time increase throughput and customer attachments.

As a side note, it should be noted that, if approved, EGNB's proposed delivery service rates would be among the highest in Canada. On its face, this seems at odds with the stated objective of offering rates designed to incentivize customer attachments and increased throughput." End of quote.

On the matter of cost of service, Witness Strunk was clear. And I will quote him.

"Finally, I cannot overstate the importance of a cost-of-service study. Such a study is essential to knowing for each rate class whether EGNB's existing and proposed rates are above or below cost, which is a key gauge in the determination of whether they are just and reasonable.

"Rates that are above the cost of service can led to inefficient outcomes that are undesirable for the future of the natural gas industry in New Brunswick. For example, if large users are being charged more than the cost of service, they may inefficiently go out of business or inefficiently move to another jurisdiction. It is an ineffecient outcome if they make this decision because of a rate that does not reflect EGNB's cost to serve."

Now Mr. Chairman, as Public Intervenor, I make a request for the following decisions and orders from the Board.

First, I request a decision from the Board that EGNB has not demonstrated that the rates proposed in its Application are just and reasonable. Accordingly, I asked that the Board reject the rate increases proposed and order that the rates for each of the classes covered by this application be unchanged.

Second, I request an order from the Board that EGNB undertake a cost-of-service study and file the same with the Board by August 31, 2008.

Third, and as a modification to the Board order respecting the process established in the LFO hearing, I request an order from the Board setting a date for a technical conference to deal with issues arising out of the cost-of-service study. Such issues might include matters arising out of the cost-of-service study, including customer class classifications and reclassifications, other rate design issues, transition to cost-based ratemaking, and transition mechanisms to effect such a transition.

Now I do have copies, Mr. Chairman, of my argument for the Board. But before I ask Mr. O'Rourke to distribute them, I would like to read into the record a letter that was sent to the Energy and Utilities Board and copied to me from a Glenna Hanley in Fredericton, New Brunswick.

It is addressed "Dear Mr. Gorman and Board Members, I understand that the Board will be holding hearings this month on Enbridge Gas New Brunswick's application to increase its natural gas rates. I recently returned to New Brunswick, my home province, after a 19-year absence. My only disappointment in my decision to return is the shocking price of heating my home with natural gas. I wish to register my objections to an increase in the price for the consumption of natural gas itself, as it does not appear to be justified at this time, given the stability of the resource. IN addition I am most strongly opposed to the rate structure for delivery of the gas. The rate is excessive and unreasonable. In Alberta, where I moved from, I paid approximately $1.14 per gigajoule for the variable delivery rate charges. Enbridge is charge me $7.62 per gigajoule.

On one bill, totaling $333.90, the cost of the delivery was $111.87, almost as much as the cost of the gas itself which was $165.00. What other utility charges are structured in this way that the delivery charges are nearly equal to the cost of the product being delivered? I know the explanation will be the pipeline is a new system in New Brunswick. It is patently unfair to ask today's consumers to pay the bulk of the capital costs for the consumers of the future who will benefit from the same pipeline system. I also feel it is unfair that customers who converted from electricity pay a delivery rate less than half what I pay, for a home that was converted from oil. It is exactly the same pipeline route and system being used to carry the gas to those homes as to those converted from oil. I cannot understand how the Board allowed this two-rate system to be implemented in the first place. I am asking the Board to send Enbridge Gas back to the drawing board to restructure the financing of their pipeline delivery system and to lower the rates accordingly. The company has sold consumers on a marketing campaign that promises a 20 percent savings on home heating costs. Why should the price of gas be tied to the price of oil or electricity? Isn't this just another form of price-fixing within the resource industry? The price should be based on what it actually costs to mine, produce and deliver the gas, with a reasonable profit margin for the companies involved. I carefully chose this small, two-bedroom home in hopes that it would be reasonable to operate and would eventually be my retirement home. If the costs of the utilities are allowed to continue to escalate then that may not be possible. I have seen in Alberta how the big oil and gas companies seem to have their way with the provincial government. While this company is still a relative newcomer to the region there is still an opportunity for you, the Board, and the provincial government, to make Enbridge aware things are different here. This place is about people. While I and most in the Maritimes welcome the opportunities natural gas can bring, I hope your Board and the Province will also remind Enbridge and other gas companies the resource belongs to the people and should bring some benefits to them, not bankrupt them. Thank you for considering my submission." And it is signed "Glenna Hanley".

And I do have copies for that to go to everyone along with the argument.

Thank you very much. I will take any questions should anyone have them.

CHAIRMAN: Thank you, Mr. Theriault. I will see if anyone on the Board has any questions at this time. Mr. Toner? Mr. Johnston?

I don't believe I have any questions either.

MR. THERIAULT: Thank you very much.

CHAIRMAN: Mr. MacDougall, do you have any comments that you would like to make arising out of the closing argument from the Public Intervenor?

MR. MACDOUGALL: I think so, Mr. Chairman. I will just look at my notes. And I will just have a couple of comments.

CHAIRMAN: Perhaps, Mr. MacDougall, before you start, I just wanted to deal with one other issue. And that has to do with Informal Intervenors. And of course normally the Board would call on Informal Intervenors to address it with respect to these issues.

I understand that the Department of Energy doesn't have any comments that they wish to make. Mr. Irving, perhaps you can confirm that?

MR. IRVING: That is correct, Mr. Chairman.

CHAIRMAN: The other Informal Intervenor, Competitive Energy Services, is not here. And in a decision on a motion which the Board made I believe on February the 14th -- I may be wrong on that date -- CES indicated that they would not be attending but might file a written submission and they would have filed that by yesterday.

The Board has not received anything from Competitive Energy Services, unless the Board Secretary can advise me to the contrary. So we have nothing -- nothing has been received from them.

So Mr. MacDougall, I will now ask you for your final comments?

MR. MACDOUGALL: Thank you, Mr. Chair. Just a few comments on Mr. Theriault's comments.

First Mr. Theriault made reference to certain spending levels that haven't been achieved. But the spending that has been done has been spent to grow the business in New Brunswick. So it has been spent in order to be able to provide fuller customer attachment and to get pipe in front of potential houses for customer attachment.

So we would actually think that it is appropriate that Enbridge has been spending money in the greenfield situation to try and get pipe into the ground.

Mr. Theriault made a comment, and I have just taken it from my notes here, but I think he said "slowing growth in recent years."

In fact the growth has not been snow in recent years, as we have discussed. Many of the prior impediments, that prior era when Enbridge was not able to sell gas, there were regulatory changes, other things made that

Mr. Charleson referred to in his testimony. In fact the evidence is in recent years growth has been growing not slowing.

EGNB is fully aware of its burden of proof in this hearing. And EGNB fully believes it has met that burden of proof. And it is not our position that the evidence is in any way minimal.

Enbridge has responded to numerous information requests. And it has provided an evidentiary basis for every element of the methodology and every issue raised either in IR's or in cross examination.

And we submit that Enbridge has fully met its burden in approving that these rates are just and reasonable. However, they are just and reasonable in the context. They are in the context of a greenfield natural gas distribution system and a Board-approved market-based rates methodology. And that is how they have to be viewed. And that methodology was set up particularly for the development of the natural gas system.

And again Enbridge's view is that it has fully met its burden of proof in showing that its increases are just and reasonable in the context of the market-based methodology and the development of the greenfield natural gas system.

Mr. Theriault makes comments that Enbridge assumes that it is still in a greenfield situation. Again I think that is a mischaracterization. The evidence is clear that

Enbridge is in a greenfield situation.

We took Mr. Strunk through many of the examples he used. The utilities he referred the Board to are utilities with customers in huge orders of magnitude, greater than Enbridge Gas New Brunswick.

In fact some of his complaints were that Enbridge Gas New Brunswick was not growing quick enough. So evidence belies that situation that it is not greenfield. Currently Enbridge Gas New Brunswick has about 8,200 customers. It is very clear from the evidence in its totality that we are still in the development period and still in a greenfield situation.

Again Mr. Theriault talked about the lack of evidence on price elasticity put forward by Enbridge. But Enbridge didn't put forward any positions that required price elasticity. The issue here isn't customers who may leave Enbridge's system. Again we are in a greenfield situation where what Enbridge is trying to do is set up a system to attract new customers.

The concerns expressed by Mr. Strunk were the concerns of the possibility of people moving back or off of the system. Here we are in a situation where incentives are being used both through the target savings levels and through other incentives for conversion to actually try and have customers come to the system.

Again Mr. Theriault stated that it would be unfair to have the current customers bear the full burden of the $300 million spent to date. But that is not what Enbridge is asking to occur.

In fact the deferral account is growing significantly. Because that deferral account will be cleared over a significant amortization period by the customers of what will at some point in time, hopefully in the not-too-distant future, be a more mature utility. Because that deferral account is growing those costs are being deferred for collection at a subsequent period of time.

What Enbridge is doing in this application though is attempting to set rates that will balance, getting new customers, keeping existing customers, but also keeping that deferral account so that it won't be a continuing burden for those customers and future customers at a higher level that the Public Intervenor himself suggests is higher than was originally anticipated.

It is the balance that is important. You can't look at one side of the equation. And that has always been the basis of the market-based rates approach. And that is why we referred the Board to prior Board decisions about the importance of the deferral account. It is a absolutely essential element. They want to look at both setting the rates to attach customers but also to balance it against the growth in the deferral account.

Mr. Theriault put forward this document with some figures but made some comments about transfers to Enbridge affiliates and said that they have not been subject to review.

But again our understanding is all of the affiliate transactions are subject to a reasonableness review by the Board consultant at the time of the financial statement reviews. And our understanding is that they are tested against market conditions to ensure that all of the affiliate transactions are carried out at market value.

And Mr. Theriault made comments about various conditions that Mr. Strunk referred to, revenue stability and otherwise. But again what Mr. Theriault has attempted to do is to take criteria that generally apply to mature utilities and impose them on a greenfield situation in which the Board has particularly approved a nontraditional form of ratemaking for the very fact that a cost of service form of ratemaking would never have encouraged any investors to come to New Brunswick to build a natural gas distribution system.

So in conclusion, Mr. Chair, Enbridge suggests that the record is very clear that the rates being proposed in the context of the methodology and in the context of the development period in which we are still in are just and reasonable and they should be approved.

Thank you.

CHAIRMAN: Thank you, Mr. MacDougall.

Ms. Desmond, is there anything else that is required to complete the record?

MS. DESMOND: No, Mr. Chair.

CHAIRMAN: Well, then I guess before concluding I want to commend the parties, their counsel, their staff and the witnesses in this proceeding for the professional manner in which they have conducted themselves throughout.

As always Board Staff and the Court Reporter have provided exceptional support service to us. And we thank them for that.

We will commence our deliberations immediately. And we will render our decision as soon as possible.

So I guess that concludes this hearing. And this matter will now be adjourned.

(Adjourned 11:25 a.m.)

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

Reporter