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2 New Brunswick Energy and Utilities Board

3 IN THE MATTER OF a Review of Enbridge Gas New Brunswick's

4 Market Based Formula

5 held at the New Brunswick Energy and Utilities Board, Saint

6 John, New Brunswick, on April 23rd 2009.

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New Brunswick Energy and Utilities Board
IN THE MATTER OF a Review of Enbridge Gas New Brunswick's
Market Based Formula
held at the New Brunswick Energy and Utilities Board, Saint
John, New Brunswick, on April 23rd 2009.

- PANEL: Raymond Gorman, Q.C. - Chairman
- Cyril Johnston - Vice-Chairman
- Donald Barnett - Member
- Edward McLean - Member
- Steve Toner - Member

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

Board Secretary - Lorraine Legere

.....

CHAIRMAN: Good morning everyone. I will take the
 appearances again this morning just to make sure we have
 the same cast here today. Enbridge Gas New Brunswick
 Inc.?

MR. MACDOUGALL: Yes, Mr. Chair. David MacDougall for EGNB
 and I'm here with the same cast minus one, Mr. Ervin is
 not with us today.

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CHAIRMAN: Thank you, Mr. MacDougall. Atlantic Wallboard?

MR. STEWART: And I am here this morning, Mr. Chairman, on time for a change. Christopher Stewart with Mark Bettle.

CHAIRMAN: Thank you, Mr. Stewart. Competitive Energy Services, Mr. Sorenson is not here again today. Okay. Flakeboard Company Limited?

MR. LAWSON: Good morning. Gary Lawson with Barry Gallant.

CHAIRMAN: And the Department of Energy, Mr. Roberts, you are here again as an informal intervenor?

MR. ROBERTS: That's correct, Mr. Chair. Yes.

CHAIRMAN: Public Intervenor?

MR. THERIAULT: Yes, Mr. Chairman. Daniel Theriault. I'm joined this morning by Robert O'Rourke, and eagerly awaiting his 15 minutes of fame is Kurt Strunk.

CHAIRMAN: Well we will time that. The Energy and Utilities Board?

MR. DESMOND: Ellen Desmond, Mr. Chair, and with me Douglas Goss, Dave Young and John Lawton.

CHAIRMAN: Thank you, Ms. Desmond. Last night there were a number of e-mails that went back and forth and I think all of the Panel members received those e-mails as well, in connection with a written submission that was sent in by

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Mr. Sorenson from Competitive Energy Services. So the Board will deal with that matter after Mr. Strunk's evidence.

Are there any other preliminary matters that the parties need to deal with before we move forward with evidence?

MR. MACDOUGALL: Yes, Mr. Chair. There is one. There were five undertakings given by EGNB yesterday and we have the response to those. I have actually handed them out to the other parties and I will just give those responses to Ms. Legere. CHAIRMAN: Thank you. And I think we should mark those for the record.

MR. MACDOUGALL: They are all on one single sheet, Mr. Chair, the responses.

CHAIRMAN: Okay. The five -- I think we marked exhibits 1 through 7 yesterday. So the sheet with the five responses will become exhibit number 8. And any other preliminary matters?

MR. MACDOUGALL: No, Mr. Chair.

CHAIRMAN: Ms. Desmond, do you want to come forward and swear the witness.

KURT STRUNK, sworn

DIRECT EXAMINATION BY MR. THERIAULT:

CHAIRMAN: For the record, Mr. Strunk has been duly sworn.

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Any time you are ready, Mr. Theriault.

MR. THERIAULT: Thank you, Mr. Chair. Before we start I have a confession to make. I am an ardent Montreal Canadiens fan and I was glad to see that the room has carpet because I am sure my colleagues would have had me sweeping the room.

CHAIRMAN: Our sympathies.

Q.1 - Witness, would you please identify yourself?

A. I am Kurt Strunk with National Economic Research Associates in New York.

Q.2 - And, Mr. Strunk, are you the same person who prepared exhibit number 4 which is a report dated March 26th, 2009?

A. I am.

Q.3 - And was this report prepared under your direction and supervision?

A. It was.

Q.4 - And, Mr. Strunk, attached to your report, forming an exhibit to your report, is there a copy of your CV? I believe it's exhibit 1.

A. Yes. That's exhibit 1. That is my CV, yes.

MR. THERIAULT: Mr. Chairman, I would ask that based on Mr. Strunk's CV and his past presence before the Board in various regulatory matters, but particularly with respect to EGNB, that he be declared an expert and entitled to

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give opinion evidence in utility regulation and utility pricing, which is exactly what he was qualified for previously.

CHAIRMAN: Mr. MacDougall, any objection to that?

MR. MACDOUGALL: No, Mr. Chair.

CHAIRMAN: Any objection, Mr. Stewart?

MR. STEWART: None, Mr. Chairman.

CHAIRMAN: Mr. Lawson?

MR. LAWSON: No.

CHAIRMAN: Ms. Desmond?

MR. DESMOND: No.

CHAIRMAN: Okay. Then Mr. Strunk will be declared an expert entitled to give opinion evidence on utility regulation and utility pricing.

MR. THERIAULT: Thank you very much.

Q.5 - Mr. Strunk, before we begin, if you could refer -- if I could refer you to your report, exhibit number 4, and do you have any corrections to make to this report?

A. Yes. I have two corrections. The first correction is on page 6, line number 19, the words a delivery service rate should be replaced with an effective delivery service rate. And I have another correction on page 9, line 5. Taking each EUG commodity service from EGNB should be replaced with taking commodity service from an independent

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marketer.

Q.6 - Thank you, Mr. Strunk. Now perhaps I could, before turning you over to my friends for cross examination, if I could ask you to summarize your report for the Board?

A. Yes. My evidence in this proceeding addresses four questions which are designed to assist the Board as they evaluate EGNB's proposal for a market-based rate formula.

These four questions are, one, are EGNB's stated objectives for the formula reasonable, two, can EGNB's proposed formula be expected to achieve the stated objectives, three, has EGNB's application of the formula in practice been consistent with the realization of the stated objectives, four, are there improvements that could be made to the formula proposed by EGNB, and, if so, what are they?

Let me summarize my conclusions with respect to each question in turn.

Regarding the first question, which is the reasonableness of the stated objectives, it is important to remember that EGNB has been permitted to operate under an alternative form of regulation during the development period. Hence, although EGNB's objectives are not traditional ones, they fit within the context of an alternative approach to regulation that applies during the

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development period.

That said, my evidence identifies one important shortcoming of the objectives when they are advanced by EGNB as the only objectives to guide ratemaking during the development period. The objectives fall short of being reasonable on their own because they do not take into account the regulatory test which is required by statute that the rates must -- resulting from the formula -- must meet the just and reasonable standard. A third objective therefore must be considered when evaluating EGNB's proposed ratemaking formula, and that objective is that the formula produce a just and reasonable rate.

Now yesterday an issue was raised by Commissioner McLean, how does one know whether the rate is just and reasonable.

That is an essential question for this proceeding and for all of EGNB's rate proceedings. Regulatory practice has established clear tests to judge whether a rate is just and reasonable. The most common test is whether the rate is reasonably reflective of the utility's cost to serve customers. For a distribution company like EGNB, the relevant cost would be the cost of building, maintaining and operating the distribution pipes.

Looking at EGNB's formula to judge just and

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2 reasonableness is not appropriate as it incorporates the
3 cost of numerous commodities which are not relevant to the
4 reasonableness of the distribution rate itself.

5 So when we look at the test that looks at the cost of
6 service, a rate that is very different from the cost of
7 service is unlikely to be just and reasonable.

8 There may be ways to demonstrate that a rate is just and
9 reasonable without looking at utility-specific costs. For
10 example, benchmarking of other firms can be used in the
11 context of determining just and reasonable rates. In
12 addition rates are often found to be just and reasonable
13 on the basis that they were set by the functioning of a
14 competitive market and therefore were disciplined by
15 competition. This competition, however -- this test of
16 looking at competition would not apply to EGNB's
17 distribution rates, however, because distribution service
18 is not subject to competition. Ultimately, examination of
19 the cost of service is the most common mechanism in
20 regulatory practice that is used to judge the
21 reasonableness of a utility's rate.

22 Turning now to the second question, which is whether
23 EGNB's proposed ratemaking formula is likely to achieve
24 the objectives that EGNB has identified for it, there are
25 several reasons why the formula should not be expected to
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achieve the objectives.

One reason the proposed formula should not be expected to achieve the objectives is that it is designed to meet the objectives for a typical customer. Taking EUG commodity gas service. Even EGNB recognizes that there is a diversity in the customer characteristics that drive the formula rate calculation. Exhibit 5 of my evidence shows the sensitivity of the savings to the assumed oil efficiency. For those customers whose oil efficiency is above the efficiency assumed by EGNB, the distribution rates charged under the formula will be too high to allow those customers to achieve the target savings.

Differences between the customer's load shape and the typical shape assumed by EGNB will also impact the savings achieved.

Furthermore, only a fraction of customers take EUG commodity gas service. Customers who take a fixed price service from EGNB or who take a fixed price service from an independent marketer, will not see the level of savings targeted by EGNB. Further, the fact that the EUG price includes the Purchase Gas Variance Account, while prices set by independent marketers do not, creates an additional difference in the savings levels that could be achievable by customers taking these different commodity offerings.

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2 The differences in customer characteristics and commodity
3 procurement decisions compromise EGNB's ability to offer
4 all customers the level of savings it targets.

5 A second reason the formula should not be expected to
6 achieve its objectives is due to the timing and
7 constraints inherent in the regulatory ratemaking process.

8 Due to the timing constraints the exact target savings
9 levels cannot be expected to be achieved at all times.

10 One reason for this is the lag between the fixing of the
11 proposed rate and the approval of that rate by the Board.

12 The market can move during this period and EGNB's rate,
13 when implemented, may already be disconnected from market
14 conditions.

15 Further, I understand their constraints on the frequency
16 with which EGNB can apply for an increase in its maximum
17 rate. Had EGNB applied to the Board to raise rates in
18 July or August of 2008, the application of the formula
19 would have called for a rate that was over 50 percent
20 higher than the rate that had just been approved in April
21 2008. As a result, EGNB did not achieve its objective of
22 minimizing additions to the deferral account when market
23 conditions called for higher rates under the ratemaking
24 formula. The fact that EGNB's proposal in this proceeding
25 does nothing to address these issues leads me
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2 to believe that this will continue to be an impediment to
3 achieving the stated objectives.

4 A third reason the formula should not be expected to
5 achieve the objectives is that it does not take into
6 account the possibility that another fuel will be less
7 expensive than the alternative fuel used to price natural
8 gas distribution service. For example, during parts of
9 2008 the estimated cost of heating residential homes with
10 electricity was less than the estimated cost of heating
11 those homes with oil or with natural gas taken at the
12 SGSRO rate. This is shown in exhibit 2 of my evidence.
13 Hence, during this period a customer with an oil heating
14 system wishing to convert to a less expensive fuel would
15 have looked to electricity, not to natural gas. During
16 this period EGNB's formula did not achieve the objective
17 of incentivising the conversion to natural gas. Similarly,
18 if fuel oil prices remain low in 2009 and electricity
19 prices rise, it may be the case that for customers
20 eligible for the SGSRE rate, including new construction,
21 switching to fuel oil may be more economic than switching
22 to natural gas. This is an inherent flaw in the EGNB
23 formula that needs to be fixed if the objective of
24 incentivising switching is to be achieved.

25 EGNB has offered in its response to PI IR-13 a set of
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tables showing EGNB's analysis of whether the target savings has been achieved historically. However, these tables are not applicable to customers who do not fit within the specific assumptions used by EGNB in its formula. They are not applicable to customers that take fixed-price commodity service. They are not applicable to customers who have different equipment efficiencies than were assumed for the purposes of the formula. They are not applicable to customers with different loads or load shapes. They also do not consider that alternative fuels may have been more economic than the EGNB natural gas rate at any given time. Hence --

MR. MACDOUGALL: Mr. Chair --

CHAIRMAN: Yes, Mr. MacDougall.

MR. MACDOUGALL: -- I'm very, very loathe to do this but because it has some history of this morning I just feel I must. This is no where near a summary of Mr. Strunk's evidence. We listened at the first part to his extrapolation on the just and reasonable test. We are now listening to him give evidence on aspects of the information requests that were filed some time ago, the responses before he filed his evidence. I specifically asked my friend, Mr. Theriault, this

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morning, was there an opening statement, because it's supposed to be filed 24 hours in advance. Mr. Theriault advised me that there was not and that Mr. Strunk would be simply summarizing his evidence.

This is a far cry, as I'm sure the Board can be aware, of Mr. Strunk summarizing his evidence.

The process wasn't followed of filing the opening statement. We asked our friend if there was an opening statement. He said there was not. It would be a simple summary of the evidence. It's very hard to even keep up with the number of points being made here.

So I have a serious concern that what we have here is a bunch of new evidence, and even if it wasn't, even if it was a summary, it's supposed to be filed in advance. It wasn't. I asked Mr. Theriault directly. He advised me that it was a simple summary.

CHAIRMAN: Let me see if I can determine -- first of all, how much more do you have in terms of your -- I will call it an opening statement.

MR. STRUNK: I was on question 2. There were four questions. Question 3 is rather short and the fourth question addresses my proposal. So that's a little bit longer.

CHAIRMAN: And the issue that is being raised, and, Mr.

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Theriault, perhaps you can address this --

MR. THERIAULT: Yes.

CHAIRMAN: The issue that has been raised is whether or not something new is being brought forward or whether or not this is essentially a summary of the report that has been pre-filed. I quite frankly would agree with Mr. MacDougall on the comments about just and reasonable.

That's something that the Board has to determine. I appreciate where it came from. It came from a question that arose from the Panel, I understand that. But I --

MR. THERIAULT: And it was Mr. Strunk's intention to deal with the question from Commissioner McLean in case it was not put forward today, it was asked yesterday. With respect to the last part which caused my friend to intervene, these were matters brought forward by EGNB yesterday, and if no questions were put to Mr. Strunk on that today, I would not be able on redirect to raise that, and therefore he is simply answering that.

CHAIRMAN: No, no. Fair enough. I think, and, Mr. MacDougall, I think you would agree that if there were issues that were raised yesterday by the -- by your Panel, that this witness should be able to address those.

MR. MACDOUGALL: But there weren't. PI-13 has been filed months ago. There was just references to information in

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the matters in the same way that there is always
referenced information.

CHAIRMAN: Look, I absolutely agree, Mr. MacDougall, that if
the comments are essentially bringing forth something that
could have been or should have been in the report and it
isn't in the report, this isn't the time to sort of
correct that deficiency, because it puts a party at a
disadvantage. Having said that, if Mr. Strunk is
addressing issues that were raised during cross
examination yesterday, I think that's fair. And to that
extent I would permit him to continue, provided there is
some basis for him to make these points. It's not unlike
redirect if you will. I mean it's fair to ask questions
on issues that have been raised in the course of cross
examination. You don't raise issues you should have
brought up in direct. I think it's a very similar
comparison.

MR. MACDOUGALL: I'm fine with that, Mr. Chair. I would
have appreciated knowing it in advance. I'm raising my
comments in that we were told it was a simple summary of
the evidence. And the process does call for an opening
statement to be filed so that people aren't taken unaware.
So we will deal with it on the fly and we will try and
address it as best we can. But these are new comments

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from Mr. Strunk that are not in his evidence. That's the point I make.

MR. THERIAULT: It was impossible, Mr. Chairman, for it to be in his evidence. It was raised within the last 24 hours. And as you say, those issues with respect to cross examination, that's all he is trying to deal with today. And it's direct evidence.

CHAIRMAN: It's not unusual for an expert witness maybe to give comments on evidence that they have heard that was not before them prior to the hearing. But if he is bringing things up that are outside of the scope of things that were raised yesterday, I agree with you entirely. And part of the problem here is that we don't have the statement in writing which would give you an opportunity in advance to know what it is that you would object to. I'm going to ask Mr. Strunk whether or not the remaining comments generally summarize your report and are based on responses to evidence that you heard yesterday as opposed to new comments dealing with issues in the report?

MR. STRUNK: Yes, they are. With respect to questions 3 and 4, they are summarizing my evidence, and they also address some of the issues that came up yesterday with respect to -- that were in EGNB's opening statement.

CHAIRMAN: Well I have listened to what what Mr. Strunk has

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to say. Certainly it's not unusual to have a witness summarize their evidence and to comment on things that arose after their report was filed and in the course of the hearing.

MR. MACDOUGALL: No, that's not unusual, Mr. Chair, but it's meant to be filed and I was asked for a copy and wasn't provided. Maybe I could ask -- that's the simple issue here. Maybe I could ask that we be provided a copy of the opening statement. Clearly there was an opening statement. We were asked for it. We were said there wasn't. Now that we know there is one maybe we could make copies of that document and have them available for our cross examination.

CHAIRMAN: Mr. Strunk, are you reading from a prepared text?
Is it typed?

MR. STRUNK: It's typed with some handwritten comments. I would be happy to have it copied.

CHAIRMAN: Mr. MacDougall, are you suggesting that we take a brief adjournment and that it be distributed before he completes, or you just want it for purposes of being able to review it before final argument?

MR. MACDOUGALL: That would be fine, Mr. Chair.

CHAIRMAN: Could that be reproduced at a break?

MR. MACDOUGALL: Well actually, Mr. Chair, depending on his

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comments I guess I would like a chance to review it before we complete our cross. So we would move ahead with our cross, then maybe when all the cross is done we could have a break for a few minutes and come back.

MR. THERIAULT: I would assume that before Mr. MacDougall starts his cross there may be a morning break after the other parties do their cross.

MR. MACDOUGALL: Well I think I'm going first.

MR. THERIAULT: Oh, you are going first. Okay.

CHAIRMAN: I think what we are going to do is take a break long enough to circulate copies. And I'm going to assume that that was -- just given the fact that there were comments in there on the principle of just and reasonable, and that has been generated since you arrived here, so it's on somebody's computer and could be printed here quite easy and without the comments. I'm not thinking of photocopying what you have.

MR. STRUNK: Yes.

CHAIRMAN: If you have some comments that you have written on the side somewhere that you may or may not be making, if there is a prepared text, a clean sheet if you will, that could be printed off, I think that would probably work best. So we are going to take a break and somebody let us know when that has been prepared.

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MR. MACDOUGALL: Thank you very much, Mr. Chair.

(Recess - 10:00 a.m. - 10:20 a.m.)

CHAIRMAN: So the opening statement of Kurt Strunk on behalf of the Public Intervenor I understand has now been distributed to all the parties. And, Mr. MacDougall, what you are referring to in terms of filing of the opening statement, I wasn't sure of the section number, but under the Gas Distribution Act Rules of Procedure, I think that's what you are talking about --

MR. MACDOUGALL: Correct.

CHAIRMAN: -- Rule 33, and for the record I'm just going to read it. It says, unless the Board otherwise orders, to ensure that no person is prejudiced by surprise, any opening statement that a witness to make shall, at least one clear business day before the attendance of the witness, be filed with the Board and served on all other parties by the party calling the witness. When you refer to the one day rule, I assume that's what you were referring to?

MR. MACDOUGALL: That's correct, Mr. Chair. I just didn't have the procedure section in front of me. That being said, Mr. Chair, we are fine with this proceeding. Just -- we never knew where it was going, how far it was going. We had followed up this morning. So we are not saying

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2 that this opening statement, you know, should be struck or
3 not put into the record. We are fine with proceeding and
4 we have now reviewed the remainder of the statement and we
5 have no objections to continuing on.

6 CHAIRMAN: No, but for the record I wanted to simply make
7 sure that the purpose of having it filed as set out in the
8 Act is well known to the parties so that in future if
9 there are to be opening statements that unless, you know,
10 the Board would order otherwise and would allow for an
11 opening statement other than that, then in fact it should
12 be pre-filed.

13 And I guess -- I was just a little concerned by the
14 comments. Maybe I really shouldn't delve into it, but the
15 comments about having been asked whether there was one or
16 not, and, Mr. Theriault, I don't know, perhaps I would
17 like you to address that directly.

18 MR. THERIAULT: Sure, I would. As the Board is aware in the
19 past times that Mr. Strunk has testified, I have simply
20 asked him to give I consider direct examination. So I
21 give, you know, would you please summarize, and sometimes
22 I will veer off and ask him certain other things. I'm
23 assuming even despite what is in the Gas Distribution Act
24 that direct examination in these quasi-judicial hearings
25 are still satisfactory.

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Now having said that, Mr. MacDougall did ask me this morning is there an opening statement. I reviewed last night on my computer, Mr. Strunk sent me an e-mail, what I have asked him to cover was his evidence, was the table that was referenced by EGNB yesterday with PI IR-13, and was with respect I believe to Commissioner McLean's question with respect to just and reasonable, because it went into Mr. Strunk's report, it was tied into that. So I didn't see it as an opening statement.

Now I see Mr. Strunk has labelled it opening statement, but I just got that this morning, because Mr. Strunk pointed that out to me just before we copied it. I didn't look at it as an opening statement. I looked at it -- I'm not about to tell Mr. Strunk what to say. I simply asked him to focus on these areas. He sent it through to me late last night and I reviewed it on my computer. But it didn't have opening statement.

CHAIRMAN: Just for purposes of future hearings anyway, if you weren't aware of the Gas Distribution Rules of Procedure, it's regulation 99-59. Okay. So --

MR. THERIAULT: Actually, Mr. Chairman, I did look prior, but I looked under the Board's --

CHAIRMAN: Don't take the step. Don't dig yourself in further.

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MR. THERIAULT: No. I am just saying I looked at the Board's policy last week.

CHAIRMAN: I'm not supposed to give legal advice. Don't dig yourself in further. Okay. Mr. Strunk, continue.

A. So we had just finished up a discussion of the second question. And now we return to the third question which is has the application of the formula in practice been consistent with the realization of the stated objectives.

And we have already looked at one example where it wasn't in the summer of '08 when prices went well above -- would have called for rates that were well above the maximum rate at that time.

And there is another example that is in the document we now all have which is that in the February 13th, 2009 application for rate reinstatement EGNB based the application on a single day's commodity price, not the historical average required by the formula. EGNB noted in its application that the use of the historical average would lead to higher delivery rates than those proposed. This is another instance where EGNB did not minimize additions to the deferral account.

Turning now to the fourth question which is whether there are any improvements that could be made to the formula.

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2 My evidence provides three proposals for how EGNB's
3 proposal can be improved.

4 The first proposal is to implement a structure that allows
5 for the lowest cost alternative fuel to set the rate for
6 all small general service customers. Such a proposal
7 would be beneficial in that it would fix a primary
8 shortcoming of EGNB's formula which is the fact that it
9 does not incentivise conversion when the alternative fuel
10 used for pricing is not actually the most competitive
11 alternative fuel. Since EGNB's value proposition is
12 founded on the ability to deliver savings and to
13 incentivise conversions, this proposal would serve to
14 strengthen the value proposition. If the proposal is
15 implemented I project that EGNB will be able to achieve a
16 greater level of customer acquisition.

17 In response to Board IR-3 I estimated the impacts that the
18 improvement would have on revenues and deferrals. I
19 estimate that the increase in customer acquisition rates
20 would lead to an increase in revenues for EGNB and hence a
21 decrease in deferrals. At the same time, however, EGNB
22 would be charging a lower rate to some existing customers
23 which would lead to lower revenues and higher deferrals.
24 These effects, that is, the effect on new customers and
25 the effect on existing customers, are offsetting and
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2 both need to be taken into consideration in any analysis.
3 My analysis of the historic period suggests that if EGNB
4 would have obtained an incremental eight percent of the
5 market in 2007 and in 2008, the proposal would have been
6 revenue neutral for EGNB. Incremental market share gains
7 in excess of eight percent in 2007 and 2008 would have
8 generated more revenues and lowered deferrals.

9 EGNB has offered an alternative analysis that is static
10 and only focuses on revenues for a one year period.

11 EGNB's analysis is flawed in that it fails to account for
12 the longer-term value of having additional customers
13 connected to the gas network. Just as EGNB builds pipe
14 recognizing that it may take many years to produce
15 profits, the value of having additional customers
16 connected to the gas distribution network is realized over
17 many years. And this must be accounted for in the
18 analysis.

19 The second proposal put forth in my evidence is to
20 implement a cap on the maximum allowed market-based
21 delivery service rate. The benefit of a cap is that it
22 assures that the rate does not travel outside the zone of
23 reasonableness. My evidence highlights that an
24 unconstrained rate may create unjust and unreasonable
25 results. While a rate of \$9.7456 per gigajoule was
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2 authorized for the SGSRO class on April 9th, 2008, had the
3 formula been applied for that class throughout the summer
4 the effective rate would have climbed to around \$18 per
5 gigajoule in August of that year. Unconstrained, the
6 formula can result in very high prices that raise
7 questions as to the reasonableness.

8 Similarly, the formula could result in a zero or negative
9 rate given a certain set of market outcomes, which would
10 also raise questions as to its reasonableness. The cap is
11 designed to make sure that the rate does not go so high
12 that it is unreasonable.

13 The cap would ideally be based on the embedded cost of
14 service for the rate class in question, but could also be
15 based on inflation until cost of service is defined. The
16 perceived cost of the cap is that there may be at times
17 when the cap is binding and when EGNB's formula would have
18 called for a price above the cap.

19 In this case, EGNB will argue that it is not minimizing
20 deferrals. However, EGNB has at times not met the
21 objective of minimizing deferrals under its own ratemaking
22 mechanism and the argument that a cap would compromise its
23 ability to achieve this goal is not compelling.

24 Furthermore, as I illustrate in response to EGNB IR-1(b),
25 EGNB's maximum allowed rates are among the

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2 highest in Canada. I believe that the furthering of the
3 public interest through robust market development may be
4 jeopardized by the use of an uncapped market-based rate
5 formula that has led to rates that are among the highest
6 in Canada.

7 The third proposal is to require that EGNB offer an
8 optional market-based delivery service rate designed to
9 accommodate customers who seek fixed-price delivery
10 service rates, which would increase the stability and
11 predictability of the delivery service rate. The
12 ratemaking formula that EGNB has relied upon since it
13 began operations has caused considerable volatility in the
14 resulting delivery service rate. Since the economic
15 purpose of distribution rates is to recover the costs of
16 long-lived fixed assets, such volatility is unnecessary
17 and is likely to be a deterrent for many customers.

18 In fact, nearly 20 percent of EGNB's commodity service
19 customers -- should be residential commodity service
20 customers -- have elected the fixed price option for
21 commodity. This indicates that these customers place a
22 premium on stability and predictability and would be
23 likely to respond positively to a fixed-price market-based
24 delivery service rate. As the rate would be optional,
25 customers could decide whether to stay on EGNB's
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2 traditional market-based delivery service rate or to elect
3 its fixed-price market-based delivery service rate.

4 EGNB contends that the proposal will lower revenues.

5 However, this is not the case. The proposal can be

6 structured to be revenue neutral for EGNB in expected

7 value terms. EGNB also contends that the proposal will

8 distort competition in the marketing of gas. EGNB is

9 correct that certain rate structures, to the extent that

10 they are bundled with EGNB commodity offerings, may cause

11 concerns. However, there are numerous ways to define a

12 fixed-price market-based delivery service rate that would

13 be neutral to competition for commodity supply. Hence,

14 this should not be a basis for rejecting the proposal.

15 Finally, I note that the three proposals I advance are not

16 mutually exclusive. All three could in principle be

17 implemented simultaneously and all three would in my

18 opinion advance the public interest. This is why I have

19 put all three to the Board for consideration.

20 MR. THERIAULT: Thank you, Mr. Strunk. Mr. Chairman, that's

21 all I have for Mr. Strunk. He is available for cross

22 examination.

23 CHAIRMAN: Thank you, Mr. Theriault. Mr. Stewart, any cross

24 examination?

25 MR. STEWART: I have no questions.

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2 CHAIRMAN: Mr. Lawson?

3 MR. LAWSON: No questions.

4 CHAIRMAN: Mr. MacDougall?

5 CROSS EXAMINATION BY MR. MACDOUGALL:

6 Q.7 - Yes, Mr. Chair. Thank you very much. Good morning, Mr.
7 Strunk.

8 A. Good morning, Mr. MacDougall.

9 Q.8 - Now, Mr. Strunk, you are not a lawyer -- or I guess in
10 the US where you are from you are not an attorney, are
11 you?

12 A. No, I'm not an attorney.

13 Q.9 - And you weren't qualified as an attorney to give
14 evidence on legal principles here today, were you?

15 A. No.

16 Q.10 - Now if we could turn to page 15 of your evidence, and
17 that's exhibit 4. Now starting at line 15 you propose
18 what you refer to as -- in your evidence -- as three
19 refinements to EGNB's market-based rates formula, correct?

20 A. Yes.

21 Q.11 - And your first suggested so-called refinement is at
22 line 21, and here you recommend a formula that takes the
23 minimum of the rate generated by the SGSRO rate formula
24 and the SGSRE rate formula, correct?

25 A. Yes.

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2 Q.12 - So now you are aware that currently that the SGSRE rate
3 is available to customers converting from electricity,
4 correct?

5 A. Yes. And I understand it also applies to new
6 construction.

7 Q.13 - And to new construction, correct.

8 A. Yes.

9 Q.14 - And that the SGSRO rate is available to customers
10 converting from oil, correct?

11 A. That's right.

12 Q.15 - Now your proposal is that EGNB should take the minimum,
13 i.e., the lesser of the rate generated by these two
14 formulas, and use them for all SGS customers, correct?

15 A. Well that would apply to all residential customers.
16 Obviously the commercial customers might have a different
17 profile, so there may be -- to the extent that it's
18 applied beyond residential customers. If it's applied to
19 commercial customers you might want to take into account
20 specific load shape. But the key to the proposal is to
21 set it off of whichever fuel is most competitive.

22 Q.16 - Okay. So let's just take the SGSRE and SGSRO, you
23 would run the both formulas and you would take the lesser
24 rate generated by these two formulas and apply it to each
25 of the SGSRE and the SGSRO, correct?

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A. Right.

Q.17 - Thank you. And this rate would go -- on a go forward basis would apply to all SGSRE and all SGSRO customers, including all of those that are already EGNB customers, correct? This rate doesn't just apply to new customers. It applies to all of the customers on those rates.

A. Right. On the basis that the incentive is to not only incentivise conversion but also to incentivise the continued use. So that was designed --

Q.18 - Yes, but the new rate would apply to all customers, all SGS --

MR. THERIAULT: Mr. Chairman, if the witness has an answer, he was continuing talking and Mr. MacDougall cut him off.

CHAIRMAN: Mr. MacDougall, you should allow him to finish his answer.

MR. MACDOUGALL: Certainly, Mr. Chair.

CHAIRMAN: I'm sure you didn't intentionally cut him off there.

MR. MACDOUGALL: I did not.

A. Right. So the intention is to incentivise conversion to take whichever is the most economic fuel option, and that may be fuel oil at one time and it may be electricity at another time.

Q.19 - And it would apply to all of the customers, whether

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electric or oil, whether already converted or not.

A. In order to be consistent with EGNB's incentive that it wants to provide an incentive to continue using natural gas, yes, to existing customers as well.

Q.20 - So let's take a hypothetical, for example, that the SGSE rate formula came out at a rate that is ten percent less than the SGRS rate formula, okay, do we have that? Because you ran the two formulas and the SGSRE rate came out at a rate that's ten percent less than the SGSRO rate.

A. Okay.

Q.21 - In that case using your approach, new customers converting from oil would pay a rate ten percent less than what is suggested by the SGSRO rate formula, correct?

A. That's correct.

Q.22 - Thank you. Now the SGSRO and the SGSRE rate formulas are both based on a target savings level for those customers of 20 percent, correct?

A. That's correct.

Q.23 - And are you familiar with the NB Power residential rate structure?

A. Generally.

Q.24 - Generally. Are you aware that it has a declining block rate component for some existing customers?

A. Yes.

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2 Q.25 - Thank you. Now I would like to ask you a few questions
3 on your response to EUB IR-3. And I believe that's
4 exhibit 6. So Public Intervenor response to EUB IR-3,
5 exhibit 6. And here you were asked to provide some
6 supporting analysis with respect to the proposal of yours
7 that we were just discussing, correct

8 A. That's correct.

9 Q.26 - Now if we could turn to the second page -- the pages
10 aren't numbered, I don't believe, but to the second page
11 of that IR. And here you show some numeric analyses,
12 correct?

13 A. A summary of the numeric analysis. In addition I attached
14 the model so that Board staff and other intervenors --

15 Q.27 - We are going to get to the model in a second.

16 CHAIRMAN: Mr. MacDougall, if we could just hold on for a
17 second.

18 MR. MACDOUGALL: Sure.

19 CHAIRMAN: I'm not sure we are the right IR.

20 MR. MACDOUGALL: Okay. It's PI EUB IR-3, Mr. Strunk's
21 response to EUB IR-3.

22 CHAIRMAN: I think the difficulty here is the pages are not
23 numbered.

24 MR. MACDOUGALL: They are not. The IR numbers are in order

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at the tops of the page I think, IR-1, 2. It's about the sixth page in. The reference reads -- the first line should read Report of Kurt G. Strunk, March 26th, 2009, page 15, lines 15 to 27.

CHAIRMAN: Okay. I think the Board is at the correct page now.

Q.28 - Thank you. And we are on the second page of that response. So turn it over to the second page. It has a block starting in the left hand corner, incremental market share. Now, Mr. Strunk, you were saying this was a summary and that you did file electronically supporting information, correct?

A. Yes. This looks at various different ranges of customer acquisition.

Q.29 - Correct. I'm going to get to that. I just wanted to -
- this is a summary --

A. And customer acquisition is one of the inputs to the model.

Q.30 - Okay. And I'm going to share the model briefly, okay.

A. Okay.

Q.31 - So it's just to look at this though, under the column incremental market share gained in 2007 and 2008. I'm going to use eight percent. If you look at your eight percent line, you will see if you go over on the right

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hand side you say that the net effect using eight percent incremental market share gained in '07 and '08 would yield a break-even on revenue, correct?

A. Right. Taking into account -- on a net present value basis taking into account the benefit of having the customers on the system, yes.

Q.32 - Right. And that's your so-called break-even analysis.

A. Yes.

Q.33 - Okay. Now the incremental -- let's go back. Let's talk about in order to achieve break-even. You are saying that to achieve break-even you would have had to have achieved eight percent incremental market share in '07 and '08. My understanding is that is eight percent growth in the entire available market to EGNB, correct?

A. That's right. And it's in both years.

MR. MACDOUGALL: And it's in both years. Okay. And I'm going to get into that briefly. So maybe to ensure that the Board and everyone here today understands all of this, what I'm going to do, Mr. Chair, as part of the response to EUB 2, I believe it was, and when the responses were filed there was a very -- electronic documents filed which are part of the responses, but I have printed the electronic response that responds to this query and I think we should have that marked as a separate exhibit

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2 because I don't think this -- unless the Board has all the
3 hard copies of the financial data I think it's best just
4 to hand it out to the parties.

5 CHAIRMAN: Mr. MacDougall, this already forms part of
6 exhibit number -- sorry -- EUB --

7 MR. MACDOUGALL: 2.

8 CHAIRMAN: -- IR-2, which is part of exhibit number 6.

9 MR. MACDOUGALL: Correct.

10 CHAIRMAN: So I think rather than giving it a new exhibit
11 number I will simply mark it for identification since it
12 already forms part of an exhibit. So this will be C for
13 identification.

14 MR. MACDOUGALL: Thank you, Mr. Chair.

15 Q.34 - So, Mr. Strunk, on the first page here what we were
16 just talking about, if you go over to the left hand column
17 you will see we see assumed incremental market share,
18 correct --

19 A. Right.

20 Q.35 - -- gained in 2007, that's eight percent, and then after
21 that assumed incremental market share gained in 2008,
22 that's eight percent, correct?

23 A. That's correct.

24 Q.36 - Okay. Now you have applied and carried out your
25 analysis as if that market share has already occurred in

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2 those two years, correct?

3 A. My analysis steps back to the beginning of 2007 and looks
4 forward from 2007 and looked at had the -- had this
5 minimum been in place during that time frame, what market
6 share increments would be necessary to have generated a
7 break-even level for EGNB, yes.

8 Q.37 -Okay.So the answer is yes, you stepped back and assumed-

9 A. I stepped back to 2007, yes.

10 Q.38 - -- and assumed that there was eight percent growth in
11 '07 and an additional incremental eight percent growth in
12 '08, correct?

13 A. Well I looked at it under a whole different range of
14 incremental market shares, including the possibility that
15 there would be no incremental market share, which is shown
16 in the table in the response to the interrogatory.

17 Q.39 - No, but just --

18 A. For the break-even, obviously these inputs are assumptions
19 and the assumptions can be varied and the results will
20 vary depending on the assumptions, but --

21 Q.40 - Correct. But --

22 A. -- one of the assumptions was eight percent and that was
23 the assumption that gave me the break-even.

24 Q.41 - Okay. For the purpose of the remained of my questions
25 could you take it that we are talking about the eight

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2 percent break-even analysis, okay?

3 A. Sure.

4 Q.42 - That's the one I'm focusing on, the break-even.

5 A. Sure.

6 Q.43 - Okay. But for all of your analysis, whether zero

7 percent, six, eight, ten or 16, you assumed that figure

8 was already in place in '07 and that it was then

9 duplicated and incrementally applied in '08, correct?

10 That's simply what you have done here? You have gone back

11 to '07 and --

12 A. Well I have added the customers incrementally. I haven't

13 added them all at once on January 1st, 2007. I added the

14 customers incrementally over the course of 2007.

15 Q.44 - Yes. But --

16 A. So on a monthly basis I spread out the market share again

17 over the course of the year. So if there was eight

18 percent gained in 2007 it wasn't all gained on January

19 1st. It was gained over the course of the year.

20 Q.45 - Yes. And I never said that it was.

21 A. Okay.

22 Q.46 - I mean what I said is that you have assumed an eight

23 percent incremental gain in 2007 and a further eight

24 percent incremental gain in 2008 that hasn't occurred.

25 You just made those assumptions.

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2 A. Right. I just wanted to clarify for the record that that
3 assumption wasn't that they all joined on January 1st,
4 2007.

5 Q.47 - Sure. But there was an eight percent incremental
6 market share gain within 2007?

7 A. That's correct.

8 Q.48 - And that never occurred. That's just an assumption.
9 It never --

10 A. It didn't occur because the proposal wasn't in place. Had
11 the proposal been in place it may have occurred.

12 Q.49 - Okay. We will get to that. But your analysis assumes
13 this growth in '07 and incrementally again in '08.

14 A. In order to understand the impacts of the analysis you
15 would need to make an assumption, yes.

16 Q.50 - And you made these assumptions for two prior years?

17 A. That's correct.

18 Q.51 - Thank you. Now go to the third page, and if we can go
19 to the line in the left-hand column that says total. And
20 that if we can go across the top we see headings current,
21 potential, then total, and if we can come down so that we
22 are on the two lines that say total customers and total,
23 you show that the market that you are talking about here
24 is a market with a potential of 29,958 customers, correct?

25 A. Right.

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2 Q.52 - Thank you. Now for the series of my questions going
3 forward I'm just going to pick an example, okay?

4 A. Okay.

5 Q.53 - So we will go up that list of numbers and we will have
6 the total customers for SGSRO, and there the total market
7 potential that you have used for SGSRO is 9,238 customers,
8 correct?

9 A. That's right. That was based on the potential new plus
10 the assumed current.

11 Q.54 - Correct. Because you are using the total potential
12 market here?

13 A. Right. EGNB provided estimates of how big the connectable
14 customers were and I took those into account when I --

15 Q.55 - Correct.

16 A. -- when I calculated what is the potential size of the
17 market.

18 Q.56 - And when you do your incremental market share that
19 number is a percentage of these total figures, correct,
20 that we discussed?

21 A. That's correct. Yes.

22 Q.57 - Now if we could go back to the second page, move back
23 one page. And, Mr. Chair and Mr. Strunk, I apologize for
24 those -- we guys of which I am one, but in order for Excel

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to get one page on one page, this is the best we could do. I'm going to start with the small middle block. I will be adjusting my glasses back and forth as we go. But if we could start in the small middle block here. That says historic situation percentage of max, and next to that another block, proposed situation percentage of max. Do you see that block, Mr. Strunk?

A. Yes.

Q.58 - Okay. Now again concentrating on the SGSRO, because we are going to use that as our example, the SGSRO is the middle column in each of those two blocks, correct?

A. That's correct.

Q.59 - And we will see if we look at 2006, which you haven't adjusted, you are showing a percentage -- historical percentage of 30 percent, and then a proposed situation of 30 percent because you made no adjustment, correct?

A. That's correct. I didn't look at 2006.

Q.60 - Okay. And then in 2007 you showed the historic percentage of 46 percent but then you showed a proposed situation of 54 percent, i.e., an increase of the total market share of 8 percent for that cost, correct?

A. That's right.

Q.61 - And then for 2008 you show a number of 52 percent historically and then you show a proposed situation of 68

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percent, which is an increase of 16 percent, i.e., the 8 percent incremental market share in 2007 and a further 8 percent incremental market share in 2008, correct?

A. That's right.

Q.62 - Thank you. Now if we can go over to the right-hand block, the bigger block, and this translates that information into customers is my understanding. Let me take you through a similar analysis. So we see on the left-hand side we have the historical situation and on the right-hand side the proposed situation, similar to before, correct?

A. You are on the forward column of the page?

Q.63 - I'm on the far left column.

A. Far left column. Okay.

Q.64 - The large blocks.

A. That's right.

Q.65 - Okay. And again here if we can use the middle for each one, which is the SGSRO, if you look at 2006, December 06, and this is a shaded block, you have a number there of 2,907, and that's the same number both historical and proposed, correct -- 2,807, I'm sorry?

A. That's right.

Q.66 - Okay. No change. Then under the historical situation for 2007, December 07, you have the number 4,211 historic,

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but then you have a proposed situation of 4,986 customers,
correct?

A. That's right.

Q.67 - And then if we look at 2008, December 08, by the end of
the year again we have a historic situation of 4,760 but
extrapolating using your 8 percent growth in 2007 and a
further incremental 8 percent growth in 2008 you show
customer additions of 6,310 by the end of December 2008,
correct?

A. No, that's not correct. It's not customer additions.
It's total customers.

Q.68 - Okay. Total customers. Sorry. But all the rest of
what I said was correct. You are now showing total
customer growth being total customers --

A. No, it's not total customer growth. It's the total number
of customers.

Q.69 - Yes. No, I -- total customers of 6,310 in the proposed
situation, right?

A. Right. You are not adding 6,310. You are adding the
difference between the 6,310 --

Q.70 - And the 4,760?

A. That's right.

Q.71 - Correct. And that's exactly what I intended. I'm
sorry if I misled you. So we have the historical

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situation. There is the 4,211 and the 4,760. We have your proposed situation that purports to show under this analysis that you could have customers -- total customers instead of 4,211 you would have 4,986, and instead of 4,760 you would have 6,310, correct?

A. If that were the incremental market share's growth what this spread sheet does is analyze the financial impacts.

Q.72 - Correct. So if that were the growth, then you say, going back, and we don't have to flip to it, to your response to EUB IR-3, that that would give a break-even, correct?

A. That's right.

Q.73 - So you would need that number of customers to achieve break-even if you got those customers in '07 and '08 under your analysis?

A. Under my analysis under the assumptions used in this model, yes.

Q.74 - Okay. Perfect. So now if we can go over to the right-hand column, okay, and here I understand we can derive the break-even. So if we look at the three blocks here under revenue, the first block we have lost revenue from existing customers, the next block we have new revenue from new customers, and the next block we have new revenue

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new customers customer charge, okay.

A. Right. The middle column is the usage charge for the new customers.

Q.75 - Correct. Okay. So you have lost revenue and then you are showing some new revenue and then in the net effect in that year you are showing negative \$1.3 millions, correct?

A. It looks like 1.5 to me.

Q.76 - I think it's 1.302,248. You can take my sight as being -- I'm pretty sure it's 1,302. If we do the math of the other three numbers it would be 1,302.

A. Oh, that's right. The net effect. Okay.

Q.77 - The net effect.

A. Okay.

Q.78 - I'm sorry if I --

A. I was looking at the lost revenue. Sorry.

Q.79 - So the net effect is 1,302 negative, correct?

A. That's right.

Q.80 - And then in 2008 the net effect is a minus 2.209, correct?

A. That's right.

Q.81 - And if you just take my math subject to check, so in those two years that show a negative you would have a negative \$3,510,000?

A. That's right.

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2 Q.82 - Then in the next years you start seeing positive
3 revenue, okay, but in order to reach a break-even one
4 would have to have enough positive revenue to overcome the
5 negative revenue from the first two years, correct?

6 A. That's right.

7 Q.83 - And if you would take it subject to check, I have added
8 up these numbers and the break-even does not occur until
9 somewhere in 2015, because if you add up the positive
10 numbers from 2009 to 2014 you are only at 3,360,000. So
11 somewhere in 2015 you would reach your break-even.

12 A. Right. But what your break-even is, your break-even is on
13 a net present value as I have calculated it.

14 Q.84 - So you are --

15 A. You are on a different break -- because you would have --
16 to do a break-even the way that you are doing it, you are
17 not taking into account the time value of money. What my
18 break-even does it takes into account the time value of
19 money.

20 Q.85 - Okay. But then to reach actual break-even you would
21 have to be even further out because in the initial years
22 you are funding losses, correct? The initial years are
23 negative?

24 A. I don't share your concept of break-even, but if what you
25 are trying to say is that a cash break-even --

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2 Q.86 - Correct.

3 A. -- would actually occur later, that's true.

4 Q.87 - Okay. That's exactly what I'm trying to say. And you

5 agree it would occur some time in 2015 or possibly later

6 taking into account the time value of money?

7 A. Subject to check.

8 Q.88 - Right. And that's if we had the customer attachment in

9 2007 and in 2008?

10 A. That's right.

11 Q.89 - And that's a period starting if we had customers in

12 2007 to 2015 of eight -- and we would have the break-even,

13 this is at the beginning of 2015 -- so eight or nine

14 years, correct, on a cash break-even basis, without the

15 time value of money?

16 A. I haven't performed that calculation, but if that's what -

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18 Q.90 - Subject to check?

19 A. Subject to check, sure.

20 Q.91 - Thank you. Okay, Mr. Strunk. I think that's the only

21 one with the small numbers and I think we can put that one

22 away for now. Now if we could go to exhibit 2 in your

23 report. And again I don't think it has a page number but

24 it's after the body of your report, then your CV is

25 exhibit 1, and then we have exhibit 2. And you are there,

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2 Mr. Strunk?

3 A. Just give me one sec.

4 Q.92 - Sure.

5 A. Yes, I'm there.

6 Q.93 - Okay. And I would like to start, Mr. Strunk, because

7 I'm going to do a hand-out. You sent in some revisions to

8 exhibit -- to all of your exhibits as part of your

9 responses. I want to make sure we go through this in

10 order. So I don't want to start with that document. I

11 want to start with exhibit 2 as in your initially filed

12 testimony.

13 A. Okay.

14 Q.94 - Okay. And you have that in front of you?

15 A. I have both of them in front of me.

16 Q.95 - Okay. Well the rest of us only have the one, and we

17 are going to start with the one and I will hand the second

18 one out to everybody shortly. So if we could go to page

19 15 of your report. And at lines 17 to 19, you made the

20 statement, page 15 -- I note Mr. Strunk is environmentally

21 friendly and uses both sides of the paper, so it makes it

22 harder for him to get there, but we laud him for his green

23 approach to the proceeding.

24 A. Thank you.

25 Q.96 - At line 17 it says, as I identified above the

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market-based rate formula used by EGNB has failed to reflect the lowest cost alternative fuel in recent years.

Do you see that statement?

A. That's right.

Q.97 - Okay. And you say as identified above, and if we could go to page 8, line 16 through 19, and here at line 16 you say, for example, during parts of 2008 the estimated cost of heating residential homes with electricity was less than the estimated cost of heating those homes with oil or with natural gas taken at the SGSRO rate, see exhibit 2.

Correct?

A. That's correct.

Q.98 - And then we go to exhibit 2, and exhibit 2 in your testimony was meant to represent that during parts of 2008 the estimated cost of heating residential homes with electricity was less than the estimated cost of heating the homes with oil or natural gas taken at the SGSRO rate, correct?

A. Yes. I have estimated this using EGNB's formula --

Q.99 - But that's your estimated --

A. -- and the assumptions in EGNB's formula.

Q.100 - But that statement derived out of exhibit 2?

A. Right.

Q.101 - Now what I would like to do is hand out the exhibit

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that you filed as your revised version of exhibit 2 with your information responses. And you have that document you said?

A. I do.

CHAIRMAN: Mr. MacDougall, again that's part of another exhibit. So we will mark that for identification. That will become D for identification.

MR. MACDOUGALL: Thank you, Mr. Chair. And what I would like to do is let everybody know the reference to this, Mr. Chair, because I think it's somewhat important. If we could go to PI response to EUB-2, again I believe that's exhibit 6. And if we go to the third page of the response to EUB-2, and we go to the final paragraph on page 3. And there, Mr. Strunk, you noted in the final paragraph, page 3 of your response to EUB-2 -- finally Mr. Strunk notes that he corrected several minor formula typos in the spreadsheet subsequent to the submission of his evidence.

The corrected version of the exhibits are provided in response to this interrogatory. Correct?

A. Yes.

Q.102 - So your reference was you had corrected several minor formula typos to the spreadsheets and the corrected exhibits were filed?

A. And for the benefit of the record, I would be happy to

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explain what those typos were.

Q.103 - Let me just go through the exhibit because I would like to do. Okay.

A. Okay.

Q.104 - So one of the documents -- one of the exhibits that you provided in response was exhibit 2, correct?

A. That's right.

Q.105 - So now we have a revised exhibit 2 and that's the document that I have handed out.

A. I didn't get a copy of that but I --

Q.106 - Just you had indicated that you had --

A. I just want to make sure I'm looking at the same one that you are looking at.

Q.107 - No, I understand. My apologies. This is what was provided electronically, Mr. Strunk?

A. Yes.

Q.108 - Now what I would like to go through is go through the lines here. I apologize. These aren't in colour. I'm sure they would show up a little bit better in colour. But the basis of the two -- this is a revision to exhibit 2, and what I would ask the Board to do is to have in front of them both versions. So if you could go to exhibit 2 in Mr. Strunk's proposal, the basis for which he made the statements in his evidence, and now if we could

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look at this exhibit 2. So looking at the revised exhibit 2 that was filed with the information responses, we see that there is a solid dark line which is the delivered electric cost of NB Power, correct?

A. Yes.

Q.109 - Then we see that there is a line that's sort of like Morse Code, long dash, small dash, long dash, small dash, and that's the delivered oil cost, correct?

A. That's right.

Q.110 - Then we see a solid light line, and that's the SGSRO rate, correct?

A. That's delivered natural gas at the SGSRO, that is right.

Q.111 - Correct. And then we see the bottom line, the small dash line, that's the SGSRE rate, correct?

A. That's right.

Q.112 - Now if we can go across here, the SGSRE rate is below the delivered cost of NB Power's electric power in all circumstances, correct, because it's designed to provide target savings off of that number, correct?

A. Yes.

Q.113 - Then if we go to the next line, the SGSRO rate, and I'm looking at that line and I'm also looking down at the bottom along the horizontal axis, we will see that the

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SGSRO rate is below NB Power's delivered electric cost for everything but possibly one, maybe at a stretch, two months of the period between 2007 to 2009, correct? There is a small blip where it was above that.

A. There is.

Q.114 - Correct. So at all other times during the period of the analysis in exhibit 2 the SGSRO rate was below the delivered electric cost of NB Power, correct?

A. That's right, with the assumptions that are used in EGNB's typical customer uses, yes.

Q.115 - Correct. But you used this exhibit 2 for your analysis, so you chose that data to be used and you did an exhibit and made statements based on it, correct?

A. That's correct. I also supplemented that Board IR response with an article that I had found that stated that electric heating was becoming an affordable alternative to heating oil in New Brunswick.

Q.116 - That was an article from a newspaper, correct?

A. That was --

Q.117 - Not a peer review journal or from an interview from --

A. It was from a news journal.

Q.118 - A newspaper?

A. Newspaper.

Q.119 - Thank you. Now if we take a look at the new exhibit 2

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2 and we go back to your old exhibit 2 from which you made
3 your statements in your evidence, your old exhibit 2 had
4 the SGSRO rate above the electric rate for a considerably
5 larger period of time and for a larger order of magnitude
6 than in your existing exhibit 2, correct?

7 A. That's correct.

8 Q.120 - Thank you, Mr. Strunk.

9 A. I would note that the revisions to my exhibits did not
10 change my conclusions with respect to this point.

11 Q.121 - That's fine, Mr. Strunk.

12 MR. MACDOUGALL: Mr. Chair, I think we can put that document
13 away.

14 CHAIRMAN: When you say "that document" --

15 MR. MACDOUGALL: I just mean revised exhibit 2. I think we
16 will probably keep Mr. Strunk's --

17 CHAIRMAN: Thank you.

18 MR. MACDOUGALL: -- evidence open. Sorry, Mr. Chair.

19 Q.122 - Now if we can go to line 27 on page 15 of your
20 evidence?

21 A. Okay.

22 Q.123 - And here your proposed so-called second refinement is
23 to approve the formula subject to a cap on the maximum
24 allowed market-based delivery service rate, correct?

25 A. That's right.

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2 Q.124 - And on page 16 in line 1 you state that there are two
3 potential caps that you would recommend that the Board
4 consider.

5 One is a cap based on inflation. Another a cap at the
6 fully-embedded cost of service, correct?

7 A. That's right.

8 Q.125 - Now with respect to your inflation cap, what is your
9 starting point?

10 A. I think the Board would have to decide what a just and
11 reasonable starting point would be. But my assumption was
12 that it would start at the current maximum rate.

13 Q.126 - So your starting point would be the current maximum
14 rates?

15 A. And then you would apply the inflation from there.

16 Q.127 - Okay. Even if the current maximum rates weren't the
17 rates in place you would start from the current maximum
18 rates?

19 A. That's what my evidence says. It says to approve the
20 formula subject to a cap on the maximum allowed
21 distribution rate. I'm not seeking to cap what EGNB can
22 do within the maximum.

23 I'm just trying to set a cap that would say okay, a rate
24 above this cap is unjust and unreasonable and anything
25 below it is within the zone of reasonableness.

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2 Q.128 - Okay. So you are suggesting that there be a cap
3 placed on the maximum delivery rate?

4 A. Yes. I mean, to the extent that a cost of service study
5 is available, you could set the cap based on the cost of
6 service.

7 Q.129 - What has been the general rate of inflation over the
8 past two or three years, ball park?

9 A. It really depends on what area you are talking about.
10 Inflation is calculated very locally. It is calculated
11 for the country. It is calculated --

12 Q.130 - New Brunswick, do you have a sense?

13 A. I don't have a very good estimate. I could give a ball
14 park.

15 Q.131 - And EGNB used a ball park figure yesterday of 2.5
16 percent. Would that be in the ball park?

17 A. That seems in the ball park definitely.

18 Q.132 - Thank you. So your suggestion is that notwithstanding
19 what the application of the rate formula might otherwise
20 suggest, the Board could consider capping it at a rate of
21 -- at an increase of 2.5 percent?

22 A. Right. So to the extent that the formula yields a rate
23 that is above what the Board deems to be just and
24 reasonable then the formula would be limited and
25 constrained to the zone of reasonableness.

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2 Q.133 - No. Well, that is a different proposition. Let's
3 stay away from the question of what the Board deems to be
4 just and reasonable. You are talking about caps that they
5 may consider.

6 If they considered an inflation cap, I just want to know,
7 the impact of that would be that the maximum rate would be
8 capped by the increase in inflation regardless of what the
9 formula suggested it would otherwise be?

10 A. That's right.

11 Q.134 - Thank you. So if the rate formula suggested for
12 example -- and again we will use the very simple
13 hypothetical -- that the rate for SGS, the maximum rate
14 for SGSRO could increase by 10 percent and still provide
15 the proposed target savings level, by capping it at
16 inflation, using 2.5 percent as the example, the typical
17 savings level would be that much higher for those
18 customers, correct?

19 A. Can you repeat the question? I'm sorry.

20 Q.135 - Sure. If the formula suggested that the rate could
21 increase by 10 percent and still provide the target
22 savings level of 20 percent to the SGSRO, then by capping
23 it at inflation, the typical savings level that would be
24 generated would be higher for those customers, correct?

25 A. That's right. But I don't think that savings is the

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right measure for what's just and reasonable. We are talking about savings off of commodity prices that are not subject to the regulation of EGNB's distribution service.

EGNB's distribution service is what we are talking about here. And that's what's being regulated.

And so to the extent that, you know, we are involving the commodity prices, which are largely -- which are for a large part determined by alternative marketers, fuel oil marketers.

And that was in my opinion not terribly relevant to whether the rates of a delivery service, which recovers the costs of building, maintaining and operating the pipes are just and reasonable.

Q.136 - Okay. But we aren't here today -- you understand that this hearing today is to talk about the market-based rate formula, correct?

A. Yes.

Q.137 - Okay. And I'm just indicating that the impact of your proposal would be to cap that, therefore under the market-based rates proposal yielding greater target savings for typical customers than if you didn't cap it, correct?

A. For a typical customer --

Q.138 - Correct.

A. -- taking EUG gas service.

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2 Q.139 - And you also suggest that the Board could look at
3 setting a cap at the fully embedded cost of service rather
4 than at inflation, correct?

5 A. That's right.

6 Q.140 - And this would involve knowing the fully embedded cost
7 of service, correct?

8 A. It would.

9 Q.141 - Now with respect to that form of cap, you state in
10 your evidence -- and maybe we can take a look at page 16,
11 line 6.

12 Maybe starting at line 5, "A cap at fully embedded cost of
13 service has been applied in many jurisdictions to LDC's
14 who sell gas to large industrial users at flexible rates."

15 Correct?

16 A. That's right.

17 Q.142 - Okay. Now maybe if we could turn to exhibit 6 and
18 your response to EGNB IR-8(a) in this regard.

19 And here, when you were asked in 8(a) to confirm whether
20 cost of service rates are in place in these jurisdictions,
21 you said "No. The rates to which you were referring are
22 rates that can be negotiated."

23 So let me just start first -- so the examples you were
24 using are jurisdictions where there are negotiated rates
25 for large industrial customers, correct?

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2 A. Right. They are deemed -- they are called market-based.
3 They are negotiated rates. And as such they are called
4 market-based rates.

5 Q.143 - But they are negotiated rates?

6 A. Yes.

7 Q.144 - But we had asked you a question there about whether to
8 confirm if cost of service rates are in place in the
9 jurisdictions.

10 I think your answer was with respect to the negotiated
11 rate they weren't. But I guess my question is but those
12 jurisdictions actually have cost of service studies
13 available, correct?

14 And there is cost of service rates for other rates in the
15 rate class, correct?

16 A. That's correct.

17 Q.145 - Okay. And those are generally in LDC's. If they have
18 cost of service rates those would be mature LDC's?

19 A. Well, to say that you have to be a mature LDC to have the
20 cost of service rate is certainly not the case. Heritage
21 Gas has a cost of service rate. Phoenix Gas in Northern
22 Ireland has a cost of service rate. So definitely --

23 Q.146 - No. I'm talking about jurisdictions in which these
24 negotiated large industrial rates exist?

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2 A. Right. So in those -- the rates to which I refer are,
3 yes, in jurisdictions that have -- where the gas utilities
4 were mature. But to say you need to be --

5 Q.147 - That was my question.

6 A. Okay.

7 Q.148 - I wasn't going any further than that.

8 You said that Heritage Gas -- we will get to more
9 questions on Heritage later. But just while I remember,
10 you said that they have cost of service rates.

11 Their rates don't recover, fully recover their cost, do
12 they? They have a deferral account mechanism, correct?

13 A. They have a deferral account mechanism and a forecast cost
14 of service.

15 Q.149 - Thank you. Now if we could go back to page 16, line
16 11. And here what you refer to as your third proposed
17 refinement is to include an optional delivery service rate
18 designed to accommodate customers who seek fixed price
19 delivery service rates, correct?

20 A. That's right.

21 Q.150 - Okay. And are you aware that the Enbridge fixed
22 commodity price offer only covers a period of 12 months?

23 A. That's right.

24 Q.151 - And under the current market-based rates approach for
25 distribution service in New Brunswick, EGNB can institute

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rate riders to reduce the rates chargeable between settings of the cap, correct?

A. That's right.

Q.152 - And EGNB's rates as proposed are to be set on a forward 12-month cost basis, correct?

A. Estimated cost basis, yes.

Q.153 - And I think you made allusion to it in your opening statement this morning. You are aware that there are other suppliers of natural gas in the New Brunswick market besides Enbridge?

A. Yes.

Q.154 - And are you aware of the various price offerings that they give to their customers?

A. No, I'm not. If they are anything like gas marketers in other parts of North America I would generally be familiar with the types of offerings they would have.

Q.155 - But you are not familiar with the New Brunswick --

A. I haven't researched the New Brunswick offerings.

Q.156 - Thank you. Now if we could go to the top of page 10 of your evidence.

And here you state that EGNB has not taken into account the commodity prices that it makes available in the fixed price offer when developing its proposed formula for market-based rates, correct?

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2 A. Yes.

3 MR. TONER: What number are you on?

4 MR. MACDOUGALL: Sorry. Page 10 of Mr. Strunk's report.

5 MR. TONER: What line?

6 MR. MACDOUGALL: Oh, I'm sorry. Line 1, the very first line
7 there, Mr. Toner.

8 WITNESS: Yes.

9 MR. MACDOUGALL: My apologies.

10 Q.157 - If we could turn now to EGNB's response to Public

11 Intervenor number 10. And I believe those responses are
12 in exhibit 2.

13 And here if we could look at page 2 of that response. I
14 think we have to turn our binders. If we could look at
15 page 2.

16 And here you will see that there is a table --

17 CHAIRMAN: I'm just going to stop you there for one moment.

18 We can't get to electronic hearing room fast enough.

19 Okay. Proceed.

20 MR. MACDOUGALL: Thank you, Mr. Chair.

21 Q.158 - So we have a table in the middle of the page, the

22 upper part of the page. And you will see the table in the

23 center of the page, under the line "Totals", that 57

24 percent of EGNB customers use the EUG product as the

25 commodity offering, correct?

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- 260 -

2 A. Right. For all customers. 18 percent of the residentials
3 used the fixed price offer.

4 Q.159 - Sure. Okay. But let's go down then to the bottom
5 table, okay. Let's do it that way. Let's go to the
6 "Totals" column in the bottom table on the same page. You
7 will see under "EUG", the middle column, "percentage, 15
8 percent."

9 Are you there? The same, 57 percent.

10 A. Yes. I see the 57, yes.

11 Q.160 - Okay. Now if we go over to the next column it says
12 "Fixed price offer", right, the next group of three
13 numbers?

14 A. That's right.

15 Q.161 - And the percentage there is only 12 percent take the
16 fixed price offer, correct?

17 A. If you are using the denominator of the total customers,
18 yes.

19 Q.162 - Okay. That is what I'm using.

20 And then if you go over to "Other marketers" you see 30
21 percent, correct?

22 A. Right.

23 Q.163 - And there is a similar breakdown done for each rate
24 class as you suggested, correct?

25 A. Yes.

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2 Q.164 - Thank you. Now if we look at the other marketer block

3 we see that other marketers provide commodity in varying

4 percentages to various rate classes, correct?

5 A. Yes.

6 Q.165 - And if we look at the number of customers in each of

7 the other marketer and the fixed price offer columns you

8 will see that more customers take commodity from other

9 marketers for SGSRE and SGSRO combined than they do from

10 the fixed price offer, correct?

11 A. Yes.

12 Q.166 - Thank you.

13 A. They may be getting a fixed price from another marketer.

14 Q.167 - My point is there the more customers in the SGSRE and

15 SGSRO classes take their service from another marketer

16 than take the fixed price offer?

17 A. That's correct.

18 Q.168 - Thank you. Now if we could go to your response to

19 EGNB IR-1(b). So again I think we are in exhibit 6, your

20 response to EGNB-1(b).

21 And I think you go to (b) -- (a) was a longer one. I

22 think we have to go over to page 4 of that response which

23 is numbered.

24 Okay. Are we there? Page 4 of your response to EGNB

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2 IR-1(b).

3 A. Yes.

4 Q.169 - Okay. And towards the bottom of that page you say --
5 starting 1, 2, 3 -- the sixth line down, towards the end
6 of that line, "Mr. Strunk notes that average through-put
7 per customer fell for the large customers in the LFO class
8 as EGNB increased its delivery charge in 2008." Correct?

9 A. Yes.

10 Q.170 - And LFO customers are generally larger business
11 enterprises, correct?

12 A. Yes.

13 Q.171 - And are you aware if any LFO customers ceased to
14 actively operate their business or have had to scale back
15 on their operations due to the current economic climate?

16 A. I think there was some discussion of that yesterday. But
17 I --

18 Q.172 - You wouldn't be surprised to hear that?

19 A. No.

20 Q.173 - Now if we could go to page 6 of the same IR. And here
21 you show average annual distribution charges of various
22 Canadian utilities, correct?

23 A. That's right.

24 Q.174 - Now let's just use the bottom block. I understand the
25 top block is the same utilities, some of them broken up

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more. Let's use the bottom block.

The annual average distribution charge for a 100 gigajoule residential customer on a per GGA basis, okay, for the rest of my questions?

A. Okay.

Q.175 - Okay. So with the exception of EGNB would you consider that these utilities are all fairly mature Canadian utilities?

A. Yes. This was a list of LDC's on the Canadian Gas Association's website.

Q.176 - Okay. But I'm surprised, Mr. Strunk, I have to admit that, and particularly based on your comments earlier today -- you are aware that Heritage Gas is an LDC, correct?

A. Yes. They didn't appear on the list.

Q.177 - But you knew about them?

A. I knew about them.

Q.178 - But you didn't put their rate in this list?

A. No. I had done an analysis of their rate in the last rate case, but --

Q.179 - But for the Board, for the benefit of the Board and other parties in this proceeding, you knew about Heritage Gas but you didn't use them?

A. I used the list from the Association.

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2 Q.180 - Okay. I'm just going to hand out something here that
3 we can follow up on that point.

4 So Mr. Strunk, if you can take it subject to check that --
5 I went to the Heritage Gas website. I confirmed it
6 yesterday. So the numbers I'm taking here are off the
7 Heritage Gas website as of April 22, 2009. You said you
8 did an analysis of their rates in the past.

9 And what I saw there was that they have a fixed monthly
10 customer charge of \$18 per month. And they have a base
11 energy charge of \$5.981 per Gj.

12 Can you take that subject to check?

13 A. Sure.

14 Q.181 - Okay. Now what I have tried to do is an identical
15 calculation to you. You used an average distribution
16 charge for 100 gigajoule residential customer.

17 So the bottom part under the solid line here is a
18 calculation using 100 Gj's. And what I have done is I
19 have taken the customer charge at \$18 per month. I have
20 multiplied it by 12 months. And I have divided it by 100
21 to come up with \$2.16 per gigajoule.

22 Because I understood that your analysis had included the
23 customer charge, okay?

24 A. That's right.

25 Q.182 - Okay. And then I have taken that 2.16 per gigajoule.

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2 I have added it to the energy charge per gigajoule of
3 5.981 per gigajoule. And I have come up with a figure of
4 \$8.141 -- and I know Mr. Young will be upset I only went
5 to the third decimal place there, I apologize profusely --
6 per gigajoule, correct?

7 A. That's right.

8 Q.183 - So this is a similar analysis to what you would have
9 done to come up with your table, correct?

10 A. That's right.

11 Q.184 - Okay. And if you take 8.141 per gigajoule -- and I'm
12 just going to look at the block here that says "Enbridge
13 Gas New Brunswick current rates."

14 So the rates Enbridge is charging today, using the rate
15 rider, you will see that that is below \$8, correct?

16 A. That's right.

17 Q.185 - So that rate, current Enbridge rate today, would be
18 lower than Heritage's current rate, correct?

19 A. Yes. It wasn't when it was at the maximum proof rate.

20 And Heritage has been very stable. But yes, the current
21 rate as the current market conditions --

22 Q.186 - Correct.

23 A. -- call for.

24 Q.187 - And that is the model we have?

25 A. Right.

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2 Q.188 - Thank you. Now at page 11 of your evidence, lines 18
3 to 21 --

4 MR. MACDOUGALL: Mr. Chair -- sorry, Mr. Chair.

5 CHAIRMAN: Go ahead.

6 MR. MACDOUGALL: My friend Mr. Hoyt remind me we definitely
7 should have this marked. I believe because Mr. Strunk
8 confirmed it, subject to check, that it should be marked
9 as an exhibit and not merely for identification, as long
10 as it is marked for use in the argument.

11 CHAIRMAN: Mr. Theriault?

12 MR. THERIAULT: I would say yes. It would be a document
13 that Mr. MacDougall made. And it should be -- I have no
14 problem with marking it as identification. But it
15 certainly not a document that the witness --

16 CHAIRMAN: I don't think that it makes a lot of difference
17 in the sense that the witness -- I think the record --
18 since we reviewed everything that is on the document.
19 But I think, unless you want to be subject to cross
20 examination, since you prepared it, that perhaps we will
21 mark it for identification as number -- I believe it is E
22 for identification.

23 MR. MACDOUGALL: I think I'm happier on this side of the
24 microphone, Mr. Chair.

25 Q.189 - So if we could go to page 11, lines 18 to 21 of your

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evidence. And here, starting at the end of line 18, you refer to the U.S. Census reports 67 percent of all new single family homes sold used gas as the primary source of heating fuel and approximately 32 percent use electricity as the primary source, correct?

A. That's correct.

Q.190 - Okay. Now if we could turn back to exhibit 6 and your response to EGNB number 5(b)?

CHAIRMAN: EGNB 5(b)?

MR. MACDOUGALL: 5(b), as it all seems to rhyme in that one, Mr. Chair. EGNB 5(b). And I think that is page 10.

Q.191 - And here you were asked to provide a table summarizing the names of the regions reviewed in this regard, the number of years that natural gas has been available in the region, and the commodity and delivery price of natural gas versus all competitive fuels and the price in each region.

And you stated that you did not review and do not have readily available information requested, correct?

A. That's right.

Q.192 - So you just relied on the statement there from the U.S. Census report?

A. Yes. Natural gas is pretty mature in the U.S. --

Q.193 - Yes.

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A. -- with the exception of Maine.

Q.194 - Thank you. Now again you are aware that Heritage Gas is a greenfield natural gas distribution utility in the neighboring province?

A. I am.

Q.195 - And did you look into the capture of the new home heating market in Nova Scotia for your review?

A. I did not.

Q.196 - Thank you. Now are you aware that EGNB only has gas mains in certain parts, essentially of the southern part of the province?

A. Yes. It has maps on its websites where it shows where it has gas mains.

Q.197 - So for new home construction EGNB can only capture construction in the parts of the provinces that it is in, correct?

A. That's correct.

Q.198 - Thank you. Okay. Now if we could go to your response, staying in the same document, to EGNB IR-6. And in response to EGNB IR-6 you state that EGNB has not met the objective of providing the target savings levels for all customers, correct? And you italicize "all".

A. That's right.

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2 Q.199 - You then cite three examples that you purport to
3 support this from EGNB's evidence, correct?

4 A. That's correct.

5 Q.200 - I would just like to look at these. And they are the
6 three bulleted points in the middle of the page.

7 The first bullet you quote from EGNB's response to PI IR-
8 20, correct.

9 A. Yes.

10 Q.201 - And the quote that you quoted was EGNB has

11 historically been unable to deliver target savings to HFO
12 customers as the formula would suggest a negative delivery
13 rate being required to achieve the savings levels,
14 correct?

15 A. Yes.

16 Q.202 - If we could go to EGNB's response to PI IR-20.

17 MR. MACDOUGALL: Mr. Chair, we might want to keep these two
18 documents out. Because I'm going to go back forth from
19 the quotes.

20 CHAIRMAN: Thank you.

21 Q.203 - Now your quote is in -- you take that quote from the
22 first paragraph, first sentence of the response from EGNB,
23 correct?

24 A. That's right.

25 Q.204 - Now that response goes on to read as follows. As EGNB

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has indicated in the past there are reasons beyond target savings that will drive a customer's decision to convert.

In the case of HFO customers the reasons for using natural gas typically related to environmental and/or maintenance concerns, correct?

A. That's right.

Q.205 - And you were here yesterday for Mr. Ervin's testimony were you?

A. I was.

Q.206 - Now in the second bullet -- so this is going back now to your purported examples from EGNB's testimony.

So in your response to EGNB number 6, in the second bullet you say EGNB's response to PI IR-18 where EGNB states -- it is IR-8, sorry -- where EGNB states -- it is true that if both oil and natural gas prices fall after a customer locks into a fixed price offer, they will achieve a lower level of savings than EGNB targets for a typical customer, correct? That is the quote you read?

A. That's right.

Q.207 - Now if we can go to EGNB's response to PI IR-8 (4) where that is found, again you quoted the first sentence, correct?

A. That's correct.

Q.208 - And the remainder of that provision goes on to state

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as follows. Similarly if natural gas prices rose after a customer locks into a fixed price offer, they will achieve greater savings than EGNB targets for a typical customer, correct?

A. That's correct. And in that case they wouldn't be meeting the objective of minimizing the additions to the deferral.

Q.209 - Now if we read the next part of the sentence it says, however customers choosing the fixed price offer will have reduced the risk of volatility in their natural gas commodity price. This may carry more value for a customer than achieving the target level of savings, correct?

A. That's what it says.

Q.210 - Now if we can go to your third bullet, back to EGNB IR-6. Now here you say EGNB's response to PI IR-13, which shows that estimated savings for the typical SGSRO customer was below 10 percent in five of the seven non-winter months and negative in two of those months, although EGNB takes the measurement over the year, correct?

A. That's right.

Q.211 - Let's turn to that response, PI IR-13.

A. Now I think there was a spreadsheet associated with that that I don't have a printout of.

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2 MR. MACDOUGALL: Mr. Chair, I don't know if the Board has
3 the spreadsheets as well. They are a part of the -- they
4 should be part of the response. You would have to go in a
5 few pages after the third page and advise me if they have
6 those or not.

7 CHAIRMAN: Well, the response we have only has two pages.

8 MR. MACDOUGALL: Okay. Apologies, Mr. Chair. I'm just
9 going to use one page from the document. I don't know if
10 this is a proper time for a break or not. I could copy
11 that then. Or we could save this question till later on.

12 CHAIRMAN: How much longer do you think you are going to be
13 in your cross examination? We are almost at noon quite
14 frankly. So when you talk about a break, if we break we
15 are going to break for lunch.

16 MR. MACDOUGALL: No. I think I should -- I don't think I'm
17 going to be that much longer. Certainly be finished by
18 12:30, if that is a better way to do it. Or if we break
19 for lunch I can copy this and come back.

20 CHAIRMAN: Sure. Maybe we will break a little early for
21 lunch. Because we really didn't take a morning break. We
22 took a short break to copy some material. So it has been
23 a long morning.

24 So perhaps -- it is about ten to twelve now. Perhaps we
25 will break till 1:00 o'clock. And you can get that

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copied in that period of time.

MR. MACDOUGALL: Then that would be perfect. And as I say, I apologize, Mr. Chair. It is part of that document. But I understand why people may not have it.

CHAIRMAN: We will adjourn till 1:00 o'clock.

(Recess - 11:50 a.m. to 1:00 p.m.)

CHAIRMAN: Anytime you are ready, Mr. MacDougall.

MR. MACDOUGALL: Thank you, Mr. Chair.

Q.212 - Mr. Strunk, I just have two lines of questions and I think I will be done.

The first one is just to finish off. We were looking at the reference you had made in the third bullet of your response to EGNB interrogatory number 6 where you had said -- and we had already mentioned this before the break -- but PI 13, which you stated, shows that estimated savings for the typical SGSRO customer was below 10 percent in five of the seven non-winter months and negative in two of those months, although EGNB takes the measurement over the year.

A. Sorry to interrupt you. But I don't think I got a copy of the spreadsheet.

MR. MACDOUGALL: I'm sorry. No. No one has a copy. Now we are going to go to the spreadsheet.

Q.213 - So now, Mr. Strunk, if we could go to EGNB's response

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to Public Intervenor number 13 (2). And I'm just going to read out. Because this comes out of the electronic documents.

But just so people know the reference in PI 13, section 2 (2), there is a chart. And underneath it there is some language. And this is the amended response. And then it says, copies of the spreadsheet used to calculate the 2006 through 2008 savings are attached. And this is the document that shows 2007?

A. Yes.

CHAIRMAN: I will mark that document F for identification.

Q.214 - And this is for the SGSRO rate, you will see in the upper left-hand corner?

A. Yes.

Q.215 - And if you look -- I think this is the document you must have referred to. Because if we look at the months of -- go across the top, and if we circle maybe the months of April, then June, July, August and September. If you then go down to the very last line, the savings and the percentage. And here we see percentage savings in April, 8 percent, which is below the 10 percent. And then June, July, August and September the numbers are all below 10 percent in those months, correct?

A. That's correct.

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2 Q.216 - And those are the five of the seven non-winter months
3 that you were referring to, correct?

4 A. Yes.

5 Q.217 - Then of course, as you rightly state, although EGNB
6 takes the measurement over the year.

7 So if we go over to the very final column, Annual, the
8 target savings achieved in that year, even with those
9 amounts, was 18 percent, correct?

10 A. No. The target savings is 20 percent.

11 Q.218 - I'm sorry. The actual savings is 18 percent?

12 A. The estimated for a typical customer is 18 percent.

13 Q.219 - Yes. But for on an annual basis, you were referring -
14 - using this same data, you were referring to the months
15 April, June, July, August and September as separate months
16 that were below 10 percent, but on an annual basis were
17 showing 18 percent?

18 A. That's right.

19 Q.220 - And the summer months are not the heating months in
20 New Brunswick, correct?

21 A. No, they are not.

22 Q.221 - Thank you. Now if we could go to exhibit 6 in your
23 evidence. Again if we could go to your evidence and then
24 pull up exhibit 6 toward the back of your evidence.
25 And here you show some information that you say --

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exhibit 6, Enbridge Gas New Brunswick, cumulative customers, actual versus forecast.

And then you show three blocks in the upper left-hand corner, initial forecast, updated forecast and actual, correct?

A. That's correct.

Q.222 - Okay. If we could just -- before we go through that, if we could go to page 12 of your evidence, line 6.

And here you say does EGNB believe that its proposal formula meets the objective of providing appropriate level of savings to all customers, correct?

A. Lines 5 to 6 say that, yes.

Q.223 - Now if we can go up to lines 2 and 3 on page 12, your reference here is that actual customer acquisition numbers are compared to EGNB's own forecast in exhibit 6, correct?

A. Right.

Q.224 - So your reference is that actual customer acquisitions are compared to EGNB's own forecast. That is what you are purporting to show in exhibit 6?

A. Yes. Exhibit 6, the -- I don't know if everyone has -- the column on the left would be the initial forecast. And then the middle column would be the updated forecast.

Q.225 - So what I would like to do is deal with this so-called updated forecast of EGNB, okay.

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So you have three things here. You have the initial forecast, updated forecast and actual, correct?

A. That's the intent of the graph, yes.

Q.226 - What I would like to hand out is one further page.

And again this page came from your response to EUB 2, the electronic spreadsheet backup material.

CHAIRMAN: Mr. MacDougall, we should mark that as an exhibit at this time. That will be G for identification.

MR. MACDOUGALL: Thank you.

Q.227 - Here you see up in the upper left-hand corner, Forecast and Actual Customers, and then you show three columns under customers, Initial Forecast, Updated Forecast and Actual, correct?

A. That's right.

Q.228 - And that's the data that you are using for the creation of exhibit 6?

A. That's right.

Q.229 - Okay. Now I want to go to the Notes and Sources. And I want to read the second line and the fourth line that are related. In the second line you say, forecast data obtained from 2007 Public Intervenor Interrogatories Nos. 4 and 5. Correct?

A. Yes.

Q.230 - And then you say in the bottom, updated forecast

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customers -- so that's the updated forecast column -- are cumulative customers starting in 2001, correct?

A. Right.

MR. MACDOUGALL: Now I would like to hand out a copy of EGNB -- or Public Intervenor Interrogatory No. 5 in the 2007 hearing from which this information was derived.

CHAIRMAN: Mr. MacDougall, was it your intention to offer this as an exhibit or just have it marked?

MR. MACDOUGALL: I think just marked for identification is fine, Mr. Chair.

CHAIRMAN: That will be H for identification.

MR. MACDOUGALL: Thank you.

Q.231 - Now what I would like to do, Mr. Strunk, if we could have the number -- item G for identification in front of us and H for identification, okay. And what I would like to do is if you can go down, you will see a chart at the bottom of document number H that says 2001 Budget, '02 Budget, '03 Budget, et cetera. It carries on over to the next page, correct?

A. Right.

Q.232 - Let's look at Customer Additions. So this is the EGNB budget for Customer Additions and it shows 161, correct?

A. Right.

Q.233 - Now if we can go to your Updated Forecast column in --

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2 on number G, you show the item 161, correct?

3 A. Right.

4 Q.234 - Now if we go to customer additions under Budget 2002

5 in number H, we see 3,384 in the total column, correct?

6 A. That's correct.

7 Q.235 - But then when we go to your document under Updated

8 Forecast, it is 3,545. And by my math, you took the

9 Customer Additions proposed in the 2002 budget and you

10 added them to the Customer Additions that have been

11 proposed in the 2001 budget and you came up with the

12 number of 3,545, correct?

13 A. That's right.

14 Q.236 - And then the next year, the same thing, if we go to

15 2003, Customer Budget, Customer Additions, on item H, we

16 have 2,674 customer additions were forecast by Enbridge in

17 that year. You added that to the 345 and you show an

18 updated forecast for 2003 of 6,219. The cumulative

19 numbers 161, 3,384 and 2,674, correct?

20 A. Yes.

21 Q.237 - And then you continued that out until 2007?

22 A. Right.

23 Q.238 - Correct?

24 A. Right.

25 Q.239 - But, of course, Mr. Strunk in each year that these

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budgets were done, these were budgets of customer additions on top of actuals. They weren't Enbridge's view of customer additions on top of customer addition budgets from the previous year, correct?

A. But if the budgets had been achieved, this is what the customer numbers would have been if the budgeted customer additions had been achieved in each year. So that is what the graph shows.

Q.240 - No, let's go through that, Mr. Strunk. What you were saying here is you are showing updated forecasts. My understanding of this graph, and if you go back to our statements of the evidence, you are trying to show what the actual customers are compared to the initial forecast and to the updated forecast. But I just want to confirm with you, Mr. Strunk, this column, Updated Forecast, that is in no way any forecast whatsoever ever put forward by Enbridge, correct? You simply added what they proposed to be, the customer additions in each year, regardless of what they knew in any given year what their actual numbers were. You added those up?

A. Right. So if the budget had -- if additions had been met in each year --

Q.241 - But they hadn't been --

A. -- that's what -- that's what -- right --

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2 Q.242 - I want you to confirm that these are not forecasts --

3 A. But there is more information in that second bar, than

4 there is in the first bar.

5 Q.243 - But you are saying the --

6 CHAIRMAN: Just a second. One at a time here. This is

7 going to be pretty difficult to read the transcript.

8 A. It is a different set of information.

9 Q.244 - Well, no, but you have put this forward as updated

10 forecasts of EGNB. EGNB did not forecast in year 2002,

11 3,545 customers did it? You have no data that suggests

12 that all do you?

13 A. No. It forecasted that, but added to it what it had

14 forecasted for 2001 is what you see on the chart.

15 Q.245 - But that isn't a forecast of EGNB. They don't add

16 their forecasted additions to their previous forecasted

17 additions, because if you do, you get this huge number

18 here. That's not what this EGNB data does, correct? This

19 EGNB data simply shows in each year what they were

20 forecasting their customer additions would be in that

21 year, correct?

22 A. Right. And if -- although -- so if you add that up over

23 time, then you get the -- you get what EGNB's total

24 budgeted additions would have been over a certain period.

25 And whether that has anything to do with the actual is

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2 something -- is a different question, but --

3 Q.246 - No, but you have said that these are updated

4 forecasts. EGNB did not forecast 20,910 customers in 2007

5 did it?

6 A. No. But it did --

7 Q.247 - Thank you. Now let's see what they did do, because

8 you are trying -- you know, my view of this exhibit is

9 that we are trying to show the initial forecast, but then

10 we are trying to show some updated forecasts on a regular

11 basis compared to actuals. So I would like to go through

12 what the actual situation is.

13 Now if we can go to EGNB's 2008 budget figures on number

14 H. We have customer additions of 3,093. Correct?

15 A. Yes.

16 Q.248 - And I think we have it in the record in a couple of

17 places that the customers for 2008 are I guess 9,400?

18 A. Wouldn't the relevant -- the relevant number would be what

19 they are at the end of 2007 versus what they were at the

20 end of 2008.

21 Q.249 - But I think this is forecast customer additions of

22 3,093. Correct?

23 A. Right.

24 Q.250 - Then let's --

25 A. And so that would be compared to what the actual

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additions in the 2008 period were.

Q.251 - Yes. And then you would add them to the actual customers that they had by the end of 2007. Correct?

A. That would be one way to do it.

Q.252 - Well why would you do it any other way? I mean Enbridge has customers and they forecasted additions. So by the end of the year, they would be forecasting the customers they have, plus the customers that they forecast to be added to be their forecast, correct?

A. Yes, that's one way to -- that's one figure to analyze, yes.

Q.253 - Well isn't it the only -- the only forecast that they have is their actuals, plus their customer additions?

A. Yes.

Q.254 - And their actuals --

A. No, they have forecasts for every year, which is what is shown in IR-5.

Q.255 - Maybe you could just repeat that, Mr. Strunk?

A. These, as I understand it, reflect the budget set for each year. And the budget I understand to be done on a forecast basis for that year.

Q.256 - Yes but, Mr. Strunk, could I just confirm once more that the budget here is budgeting the customer additions of that year --

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2 A. Yes.

3 Q.257 - -- on top of the customers that Enbridge would already
4 have?

5 A. Yes. The record is clear in that regard.

6 Q.258 - Thank you. But what you have done is added all of
7 these up and you have suggested in this document here that
8 Enbridge's updated forecast for 2007 was 20,910, correct?

9 A. As I have defined that to be, yes.

10 Q.259 - Okay. But Enbridge never forecasted anywhere near
11 that amount of customers for 2007 in any updated forecast
12 based on their budgets did they?

13 A. I don't know. We don't have that much forecast data from
14 Enbridge.

15 Q.260 - Well we have their budgeted forecast additions for
16 2008 of 3,093?

17 A. But I haven't seen enough data to say that they didn't
18 forecast that level ever.

19 Q.261 - No, but you don't have outstanding evidence to support
20 your figures is what I am saying. You have just added up
21 customer additions budgets from each year?

22 A. Right. So that's what this bar reflects.

23 Q.262 - Thank you.

24 CHAIRMAN: Just one moment there, Mr. MacDougall. Mr.
25 MacDougall, G for ID, was an attachment --

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2 MR. MACDOUGALL: It was part of the electronic information
3 that was filed with PI response to EUB 2.

4 CHAIRMAN: So that was prepared by Mr. Strunk for the PI?

5 MR. MACDOUGALL: It was prepared by Mr. Strunk, correct.

6 MR. THERIAULT: I believe it is part of Board IR-2.

7 CHAIRMAN: Thank you.

8 Q.263 - So now, Mr. Strunk, I want to go to that to solve the
9 ultimate question we hear of -- have of the forecast. IF
10 we can go to G, look at the bottom, it says, actual
11 customers 2007, 8,188. Correct?

12 A. Right.

13 Q.264 - So EGNB had 8,188 customers at the end of 2007,
14 correct?

15 A. That's right.

16 Q.265 - And if -- and then they forecast in the budget figures
17 that you provided in PI IR-5 for 2008, they forecasted
18 3,093 customers, correct?

19 A. Right.

20 Q.266 - And just taking the math --

21 A. But we don't know whether or not they had the final of '07
22 number at the time they made the forecast.

23 Q.267 - I am just using the --

24 A. So they might of had the '06 number.

25 Q.268 - -- I am just using your numbers for comparison here.

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2 If you take the 8,188 actual customers in '07 --

3 A. Yes.

4 Q.269 - -- and you add their forecast of 3,093, you come up
5 with 11,288 -- 11,281 by my math?

6 A. Agreed.

7 Q.270 - And their actual 2008 customers was 9,400. Correct?

8 A. That's right.

9 Q.271 - Thank you.

10 MR. MACDOUGALL: Thank you, Mr. Chair. Those are all my
11 questions. Thank you, Mr. Strunk.

12 WITNESS: Thank you.

13 CHAIRMAN: Thank you, Mr. MacDougall. Ms. Desmond, do you
14 have any questions?

15 MS. DESMOND: We have no questions, Mr. Chair.

16 CHAIRMAN: Thank you. Any questions from the Board? Mr.
17 Barnett? Mr. Johnston?

18 BY VICE-CHAIRMAN:

19 Q.272 - Mr. Strunk, this is something that may well -- the
20 parties may want to address in argument, but I thought I
21 would raise it with you.

22 There has been some discussion, you talked about it a bit
23 this morning about the time lag between the time lag
24 between the filing of an application and the rates and
25 that market conditions can have changed. Mr. Charleson

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talked about that as well.

It may well be that will change following this hearing once we have formula terms or we are more clear I guess on how we are going to apply this formula and what the inputs are supposed to be.

We have a system now where the cap rates, maximum rates, are fixed at most once a year. I believe that's by Board decision. So that potentially could be changed by this Board. And then there is a series of rate riders and rate reinstatements which is used.

I am just wondering if you have any thoughts at all as to whether it would be advantageous to modify that system to have a more frequent setting of the rate cap, perhaps quarterly or semi-annually, either with or without continuing the system of rate riders and rate reinstatements, and whether or not this would address some of the issues that customers have regarding volatility of prices? I appreciate that this wasn't an issue that you addressed, but I just raise it now, mostly so that they will address it later on.

A. Right. So if the market conditions were more rapidly incorporated in the rates, that would help to achieve these two objectives. That is certainly true. You would have to think about it also from the customer's

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2 perspective, where the customer would then see even a more
3 volatile rate. And so -- so I don't think that would
4 change -- what drives the volatility is really the
5 underlying fuel markets, right. The formula incorporates
6 the commodity price of oil, which is as I have stated in
7 my evidence is roughly 50 percent annual volatility, which
8 is quite volatile. And natural gas, which is also quite
9 volatile.

10 So I don't think so long as there is a formula in place
11 that relies on those two fuels that we are going to be
12 able to take out the volatility. But certainly in terms
13 of achieving the two objectives that have been stated, a
14 more -- something that is more formulaic and is updated
15 more frequently would seek to -- would actually serve to
16 better achieve those objectives than the current process.

17 VICE-CHAIRMAN: Thank you.

18 CHAIRMAN: Anything further? No. Mr. Toner? Mr. McLean?

19 And I have no questions. So, thank you, for your
20 attendance here today to give evidence before the Board.

21 WITNESS: Thank you.

22 CHAIRMAN: Oh, sorry.

23 MR. THERIAULT: I didn't want to say anything.

24 CHAIRMAN: You would like to have some redirect?
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MR. THERIAULT: Yes, I would. But I would ask the Board for a few minutes just to --

CHAIRMAN: How much time? 10, 15 minutes?

MR. THERIAULT: 10 minutes would be sufficient.

CHAIRMAN: Yes. Well let's say 15. We will adjourn for 15 minutes.

(Recess - 1:45 p.m. - 1:55 p.m.)

CHAIRMAN: Mr. Theriault, do you have any redirect?

REDIRECT EXAMINATION BY MR. THERIAULT:

Q.273 - Yes, Mr. Chairman, just a bit. Mr. Strunk, I would ask you to pull out exhibit 6 to your report. So that would be exhibit 6 to exhibit 4.

A. Okay.

Q.274 - And I was just following up some questions from my friend, Mr. MacDougall. I was left a little confused and I'm wondering if you could explain to me and ultimately the Board, and let's take each category and what it shows or what this exhibit represents?

A. Right. So the bar on the left -- each year has three bars. One bar is entitled Initial Forecast, another -- the second bar is entitled Updated Forecast, and the third bar is entitled Actual. So in each year the initial forecast is the forecast that was made at the time the proposal was made to the province. And the actual is what

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was recorded on EGNB's financial statements for that year in terms of the cumulative numbers of customers. The updated forecast, which is the middle column where there was some confusion as to what it represented, represents the sum of EGNB's budget customer additions for that year and all years prior -- all years prior to that year. So I mean it is a forecast made by EGNB.

Q.275 - Now, Mr. Strunk, I would just like to move on to a question posed to you by the Vice-Chairman --

A. Yes.

Q.276 - -- and just following up on that, you realize that it's the distribution that is being regulated through the formula and not a commodity rate?

A. Yes, it is.

Q.277 - Now the updated formula process, for lack of a better word, Mr. Vice-Chair, that you were speaking of -- the updated formula process suggested by the Vice-Chair, I would ask you in your opinion would this approach lead to a just and reasonable distribution rate?

A. Oh I think it could, but I would still think that -- it certainly could, but I think it would be important to set limits on what the formula can do, because as I noted the formula could take the rate to zero and I don't think a zero rate would be just and reasonable. And the formula

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can also take the rate to extremely high level, well above the cost of service, which also I wouldn't think is a just and reasonable rate. So so long as there are some bounds and that the rate can stay -- I have no doubt that the formula under certain market conditions will generate a rate that is in the zone of reasonableness, you know, and I'm sure it has over time. However, going forward to the extent that certain market conditions occur where the rate -- the formula rate travels outside of the zone of reasonableness, I think that that's cause for having some bounds to the formula.

Q.278 - Thank you. And one final question, Mr. Strunk. As a result of the discussions you had here this afternoon, has anything you discussed changed any of the opinions in your report?

A. No.

MR. THERIAULT: Thank you, Mr. Chairman. That's all I have.

CHAIRMAN: Thank you, Mr. Theriault, and again, Mr. Strunk, thank you for your attendance over the past couple of days and your evidence here today.

MR. STRUNK: Thank you, Mr. Chair, Commissioners.

CHAIRMAN: Mr. Theriault, that concludes the evidence of the Public Intervenor?

MR. THERIAULT: Yes, it does.

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CHAIRMAN: My understanding, Mr. Theriault, is that you wish to have argument tomorrow morning rather than this afternoon?

MR. THERIAULT: I would prefer it, the reason being is I know we still have to deal with the issue of dealing with Mr. Sorenson.

CHAIRMAN: Yes.

MR. THERIAULT: And then I would need some time obviously to go back and review what my friend and Mr. Strunk talked about today to see what I would like to incorporate in, if that's possible.

CHAIRMAN: Okay. No. I think that the Board quite frankly is inclined to deal with argument tomorrow morning. We will this afternoon, however, deal with the issue raised by Competitive Energy Services, and this, just for the record, the Board received an e-mail from John Sorenson addressed to all. It said, we apologize we are not in attendance at the hearings. Attached please find a final note on the efficiency factor component as it relates to the rate methodology and ASHRAE evidence submitted in 2004 proceedings regarding efficiency factors. Note, both natural gas and oil fired furnaces have improved since this time frame. And there were two attachments to that e-mail which I have not read and I understand no Members

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of the Panel have read at this point in time.

There was then a response from Mr. Hoyt, or at least from his computer, Mr. MacDougall, which says, having just reviewed this e-mail from Mr. Sorenson we would ask that Board Members disregard it until we have an opportunity to speak to it at the beginning of the hearing on Thursday.

During this past year EGNB, CES, a number of other parties to this proceeding and Board staff participated in technical sessions that attempted to deal with issues relating to EGNB's market-based rate formula. We believe that materials included in Mr. Sorenson's e-mail breaches the agreement of all participants, that those sessions were on a confidential and without prejudice basis.

That was followed up by another e-mail from Mr. Sorenson which said, thank you, Len. Please note our intent is not to breach agreements. Our intent is simple. To bring to the Board's attention that efficiency factors should be reviewed and lowered in the calculation methodology.

Frankly, it is that simple. We ask that the Board consider our request and allow the letter and submitted evidence. Best of luck tomorrow. Thank you and best regards.

So that's what we have before us and we have a request by Mr. Hoyt which I believe, Mr. MacDougall, you look like

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you are ready to address that. So I will ask you to make whatever comments you would like on the admissibility of whatever it was that was attached to that e-mail.

MR. MACDOUGALL: Certainly, Mr. Chair. There is two points we would like to make, and for the record, there was a letter and attached to the letter there was a document. In the letter there is really only one paragraph that's problematic. It's the third last paragraph. I won't read it because hopefully the Board will --

CHAIRMAN: It would defeat the purpose of this discussion.

MR. MACDOUGALL: So for that purpose I will ignore it, but the issue is the third last paragraph, taking that the last paragraph is only one sentence, and then moving up it's the third last paragraph. It's clear as to why it's a problem. It refers to issues from some of the work group sessions that were carried out. It is really only that paragraph that we take issue with. The working group sessions I did not participate in them myself, but Mr. Hoyt did, Mr. Charleson did, I believe virtually everyone else in the room did. But there were confidentiality agreements signed with those and there was a conference call, or it might have actually been a face to face meeting held where all the participants, including I believe Board Counsel was in attendance, where it was

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2 agreed in order to try and facilitate these discussions
3 they would be on a confidential and without prejudice
4 basis. This -- what I will call offending paragraph --
5 makes direct reference to them. We won't get into the
6 substance of the comments. Suffice it to say we may not
7 even agree with the substance, but it purports to derive
8 comments that EGNB made at those technical conferences.

9 Our understanding is that was not the case. Ms. Desmond
10 has confirmed that Mr. Sorenson not only stated that he
11 was subject to the confidentiality and without prejudice
12 provisions, but I believe has also signed the applicable
13 document. So our position is simply that the Board, being
14 able to take the counsel of Board Counsel, and taking a
15 look at this letter, as well as our own comments, I think
16 can determine that these fall within the bounds of that
17 confidentiality agreement, and that that one paragraph
18 should be removed.

19 So that's the only deletion and we would suggest that the
20 letter then be re-issued. We don't want to have it sort
21 of black-lined and people scrolling through it. Mr.
22 Sorenson could re-issue the letter with the attachment
23 without that paragraph, we wouldn't have a problem.
24 The second point is in the second last paragraph of the
25 letter Mr. Sorenson states that we ask that you

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consider this document as final evidence and/or a briefing from CES, but in the subsequent e-mail that he sent he just talked about it as being evidence. I don't think it can be evidence. There is no witnesses being put forward to speak to it. So if the Board was going to accept it as a letter of comment, or he refers to it as a briefing from CES, whatever that may be within the regulatory context, we are fine with that, and we are fine with it going in, not as evidence because it's not sworn by an affidavit, there is no cross-examination

So those are the two issues we have with the document, one paragraph we believe should be struck because it's in violation of a confidentiality stipulation, and that the document so excised should be accepted as a letter of comment in this proceeding.

CHAIRMAN: Just so that I am clear on what it is you are asking for, I understand that you are asking that one paragraph from his submission be removed, but what about the so-called evidence that is referred to in his -- I don't know what it says in the submission, but in his e-mail he talks about something called ASHRAE evidence.

MR. THERIAULT: Correct. It isn't evidence, Mr. Chair.

It's simply a photocopy from a document that appears to be copyrighted 2004 but it is a photocopy of a said

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document -- that was just an aside -- entitled Chapter 28 Furnaces. So it isn't evidence from actually an expert. I think it's just -- it's an attachment that's a photocopy that has some boiler information. I believe Mr. Sorenson may have put this forward in further hearings because it is simply a photocopy from a text. We believe his letter and that document should be accepted as a letter of comment. It doesn't in any way purport except for his statements, and Mr. Sorenson isn't a lawyer, to be evidence in any way. There is no -- the letter is just from Mr. Sorenson. It's not from an expert. There is no affidavit. It's nothing like that.

CHAIRMAN: Okay. And I guess really the point I'm trying to get at then is you are not objecting to the attachment, simply cautioning the Board that we can't consider it as evidence because it wasn't filed as evidence in the appropriate fashion. But you don't have any difficulty with it being attached to his letter?

MR. THERIAULT: No, Mr. Chair. No difficulty.

MR. MACDOUGALL: For the purposes of your review of this issue I don't think there is any problem. I think the Board Members agree can look -- can take a look at the attachment, as long as you don't look at the letter, everything is fine. So to make your final decision feel

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free to look at chapter 28, entitled, Furnaces.

CHAIRMAN: We will hear from other parties on this issue.

But in the event that the Board were to I guess agree with your submission, and then we may or may not get an updated letter from Mr. Sorenson before tomorrow, would a satisfactory way of proceeding be, for example, to have Board Counsel read in the letter as it would read into the record the submission as it would read with the paragraph removed, for example?

MR. MACDOUGALL: Yes, Mr. Chair. Anything that, you know, make sure the paragraph is removed.

CHAIRMAN: Well Board Counsel doesn't get to make a final submission so it may make up for that, I don't know, if we were to proceed in that fashion.

MR. MACDOUGALL: It may be punishment for that as well, Mr. Chair. I don't know.

CHAIRMAN: Mr. MacDougall, anything further on this issue?

MR. MACDOUGALL: No, Mr. Chair. And thank you very much. I know we sent an e-mail late at night and thank you very much for abiding by the comments we made.

CHAIRMAN: No problem. Mr. Stewart any comments?

MR. STEWART: I have -- we, I should say have no objection to the request -- sorry, now complete with microphone, Mr. Chairman, we have no objection to the request that has

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been made by Mr. MacDougall and his suggestion as to how this document should be treated in this proceeding.

CHAIRMAN: Mr. Lawson, now that the microphone is down at your table?

MR. LAWSON: We have no submission one way or the other, Mr. Chairman.

CHAIRMAN: Ms. Desmond, any comments?

MS. DESMOND: Mr. Chair, the only other comment we would make is with respect to the first paragraph of the letter where Mr. Sorenson makes a comment as to who he is representing. And I believe when he sent his notice of intervention, he does reference a number of potential or actual customers with whom he does work. But in this particular letter, he identifies one of those customers. And I am not sure that that customer would be necessarily in agreement with the contents of his letter. So whether or not it would be appropriate to also expunge that portion of the correspondence, it may be something the parties want to comment on...

CHAIRMAN: This would be in his letter asking for Intervenor status?

MS. DESMOND: I believe in his letter of intervention, he does have a paragraph identifying a number of customers with whom he does work. But in this recent

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correspondence, he names one particular customer. And again I am not sure whether or not that particular customer would want necessarily -- that it be on the record that they agree with the contents of that letter.

CHAIRMAN: No, just give me a moment. I am just going to see if I can go to his request to be an Intervenor. Well I note in his request for intervention status, Mr. Sorenson says, Competitive Energy Services, CES, on behalf of its customers desires to be Formal Intervenor in the hearing that is being held to review Enbridge Gas New Brunswick's, EGNB's, market-based formula. And in his final paragraph, he talks about representing many customers. And then he says including, and names a few of them.

So what you are suggesting is that this letter specifically names one, but --

MS. DESMOND: Yes. And again this customer may or may not be in agreement with the contents of the letter. And there is no indication that they were in fact consulted with respect to this particular submission.

CHAIRMAN: I guess one of the problems of being a Formal Intervenor and not attending. Mr. MacDougall, do you have any comments on Ms. Desmond's remarks?

MR. MACDOUGALL: No, we take no position on that point, Mr.

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Chair.

CHAIRMAN: Mr. Stewart, any comments?

MR. STEWART: Well I guess the only concern I would have, Mr. Chairman, is simply I am not sure it is up to us to look behind. I mean he sought Intervenor status on that basis and the letter says what it says. And I don't think it is necessarily up to us to look behind and you know -- I mean no one is checking to make sure that my client agrees with what I say today. And I appreciate that I am a solicitor and not a consultant, but I don't know if we can look behind it that way. I think we have to take it at face value the way it is. I don't have any strong feelings one way or the other, but that's the comments.

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

MR. LAWSON: No position.

CHAIRMAN: Thank you. Mr. Theriault?

MR. THERIAULT: I am starting to feel like a wall flower, Mr. Chairman.

CHAIRMAN: No, I was getting to you.

MR. THERIAULT: No, I whole-heartedly support Mr. MacDougall's approach to this. And I would agree with Mr. Stewart on -- you know, I don't think it is appropriate to look behind, if he is saying he represents an individual or a corporation, then I am assuming we have to assume

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that.

3 CHAIRMAN: Do you want to give us about five minutes and
4 then we will let you know what we are going to do with
5 that. We will adjourn for five minutes.

6 (Recess - 2:15 p.m. to 2:25 p.m.)

7 CHAIRMAN: We have considered the request made by Mr.
8 MacDougall with respect to Mr. Sorenson's submission on
9 behalf of Competitive Energy Services, and on the basis
10 that everybody present here today is in agreement that
11 that submission should go in with the -- I think you
12 indicated it was the second to last paragraph removed,
13 then the Board will accept it on that basis.
14 We do have a little bit of a concern, and we are going to
15 allow the attachment. We haven't seen it, but again
16 everybody in the room has consented to the attachment
17 going in. But we have a little bit of a concern that the
18 parties who don't attend a hearing and send a document and
19 attach it to a submission that it may be considered as the
20 way of filing evidence. We won't consider it as evidence.
21 And as I say, everybody has agreed to it going in. so
22 that's the basis on which it will. Nobody should consider
23 this a precedent that in the future they can file final
24 argument and attach documentation in the nature of
25 evidence and expect that the Board would consider it to be

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such.

I think the simplest way to proceed with this would be to have it read into the record, rather than to contact Mr. Sorenson. So the since the parties all agree on the paragraph that is to be removed, then it will be read into the record without that paragraph. With respect to the issue that was raised by Ms. Desmond concerning the -- I guess naming of one of the representative clients, I tend to agree with Mr. Stewart's comments that this is what Mr. Sorenson has written and since nobody has taken any objection to that as violating any agreement of any sort, then that can remain in the submission.

So the way that we will proceed tomorrow is that when we get to -- I guess after Mr. Stewart gives his submission, Competitive Energy Services would come next. And we will ask Ms. Desmond to read the redacted version into the record and perhaps supply us with a copy of whatever the attachment was.

Any questions on that process? Everybody understands that. Anything further then before we adjourn for the day? All right. We will reconvene tomorrow morning at

9:30 for 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