

New Brunswick Board of Commissioners of Public Utilities

Pre-Hearing Conference February 29, 2000

Delta Brunswick, Saint John, N.B.

IN THE MATTER OF AN APPLICATION BY ENBRIDGE GAS NEW BRUNSWICK  
INC. DATED DECEMBER 31, 1999, FOR APPROVAL OF ITS RATES AND  
TARIFFS.

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Chairman: David C. Nicholson, Q.C.

Commissioner: Robert Richardson

Commissioner: James E. Bateman

Commissioner: R. J. Lutes

Commissioner: Leonard Larocque

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CHAIRMAN: Good morning, ladies and gentlemen. This is a  
pre-hearing conference in reference to an application by  
Enbridge Gas New Brunswick Inc. for approval of its rates  
and tariffs.

Could I have appearances, please. First the  
applicant?

MR. MACDOUGALL: Yes, Mr. Chair. Dave MacDougall from  
McInnes Cooper, counsel for the applicant. Directly to my  
right is Mr. Arunas Pleckaitis, president of Enbridge Gas  
New Brunswick Inc., to his right is my colleague, Len  
Hoyt, from McInnes Cooper, and following after that also  
from Enbridge Gas New Brunswick Inc. are Mr. Rock Marois,  
Mr. Allen Maclure and Mr. Andy Harrington.

CHAIRMAN: Province of New Brunswick, Department of Natural

Resources Energy?

MR. BLUE: Mr. Chairman, my name is Ian Blue, I appear for the Province in this case. Sitting to my immediate right is Mr. Don Barnett of the Department of Natural Resources and Energy.

CHAIRMAN: Thank you, Mr. Blue. A housekeeping item here. It would assist the shorthand reporter if you would give your name when you speak during the hearing. Of course when you are giving appearances you are going to do that anyway.

The other thing is to assist the gentlemen in charge of the audio equipment back there, perhaps if you indicated which row you were in, he could make certain that your mike is on.

Energy Source Canada?

MR. ZED: Peter Zed, Mr. Chairman, representing Energy Source Canada. Rosalie Roth will also be appearing at the hearings but sends her regrets today.

CHAIRMAN: Thank you, Mr. Zed. Alliance of Manufacturers & Exporters New Brunswick? Could you find a mike and put on the record who you are? There is one right there.

MR. LEWIS: Blaine Lewis, I am with the Alliance of Manufacturers & Exporters New Brunswick, Moncton.

CHAIRMAN: While I have you there, Mr. Lewis, my understanding is that you would like to have an informal Intervenor status but have a right to address the Board at some point during the hearing, is that correct?

MR. LEWIS: Yes.

CHAIRMAN: Okay. Do you have any preference -- I note that one of the other Intervenors -- I guess that is Saint John Energy -- had indicated that they would be prepared to make their oral statement to the Board at the end of the hearing when summation occurs, would that be all right with you --

MR. LEWIS: Yes.

CHAIRMAN: -- for you to do that as well?

MR. LEWIS: Yes.

CHAIRMAN: Great. Thanks very much. City of Saint John?

MR. BAIRD: Jim Baird with the City of Saint John.

CHAIRMAN: Thank you, Mr. Baird. Mr. Baird, my notes indicate that the City would simply like to make a comment by way of a written submission, is that right?

MR. BAIRD: That's correct.

CHAIRMAN: Good. Thank you. New Brunswick Power Corporation?

MR. GARDINER: My name is Michael Gardiner.

CHAIRMAN: Thank you, Mr. Gardiner. Now again my notes indicate that N.B. Power Corp. would simply like to submit a letter of comment, is that correct?

MR. GARDINER: That's correct.

CHAIRMAN: Good. Thank you, sir. And Saint John Energy? There doesn't seem to be a representative here today but they have written to us and simply indicate they want to

make a presentation during the time of argument at the end of the hearing.

Are there any preliminary motions? Mr. Stewart?

MR. STEWART: I would just like to give our appearance, Mr. Chairman.

CHAIRMAN: I am sorry. That's a good --

MR. STEWART: I know I am often overlooked, Mr. Chairman.

CHAIRMAN: I won't say anything. I stumbled once, that is enough. And who are you appearing for, Mr. Stewart?

MR. STEWART: Christopher Stewart, Stewart McKelvey, appearing for Irving Oil Limited. I am joined this morning by Murray Newton of Irving Oil and Debbie Hunter of Irving Oil.

CHAIRMAN: Thanks, Mr. Stewart.

MR. STEWART: Thank you, Mr. Chair.

CHAIRMAN: Any preliminary motions? Mr. MacDougall, do you have any affidavits of service or publication at this time which you want --

MR. MACDOUGALL: Yes, we do, Mr. Chair. Mr. Chair, as this is the pre-hearing, I don't know if you wish to mark that as some form of exhibit or just a note that the affidavit of publication has been filed with the Board?

CHAIRMAN: I will mark it, I won't give it an exhibit number, and it will form part of the record, Mr. MacDougall, and I won't check it all through at this time.

MR. MACDOUGALL: That's fine. We have copies that we will

distribute to the other Intervenors here today.

CHAIRMAN: Good. Thanks.

MR. MACDOUGALL: You're welcome.

CHAIRMAN: Mr. Blue on behalf of the Province wrote to the Board and quoted from a number of different sections in our regulation on procedure. He seems to be very familiar with it. But then I went back and reviewed it again as well, and frankly, it appears that by section 23(3), that we have to accept or disallow interventions. And that being the case, the Board will allow all of the interventions that have been called and are represented here today and including the Saint John Energy one.

Likewise under 23(1)(d) having to do with interventions, it indicates that each Intervenor will file a document stating the issues that the person intends to address at the hearing. The Board at this time will dispense with the necessity of doing that in reference to this hearing.

And also the second part of that same sub-paragraph, each Intervenor should state the reasons if they are not going to actively participate in the hearing, i.e., be a formal Intervenor, state the reasons why the person's interests justify the Intervenor status in the proceeding, we as well will dispense with that in reference to this hearing.

Now the Board faxed out to all of the Intervenors a

draft schedule which the Board had worked out with the applicant's solicitors a number of weeks ago. I notice that in Mr. Blue's correspondence to the Board he gave some dates as well.

I am wondering if any of you have any comment in reference to the schedule that we circulated yesterday.

MR. MACDOUGALL: Mr. Chair, we have some comments on the schedule and some associated matters. I can deal with the schedule and then some other procedural issues directly after that, or after we have had our discussion on the schedule.

CHAIRMAN: All right. Let's have discussion on the schedule and Mr. Blue has indicated he will have something to say after you, Mr. MacDougall.

MR. MACDOUGALL: Right. The schedule that the Board has proposed is the schedule that Enbridge Gas New Brunswick Inc. would propose is appropriate for the hearing. It tracks week by week and we believe it is fully appropriate for this proceeding and it allows for full interventions by the parties' interrogatories and responses prior to the commencement of the hearing, which we also think is appropriate. It also helps us with clarity in setting up our construction rates schedule which will mirror in part or carry on in part during this process. So we would commend that schedule to the Board and we would like to follow that schedule.



With respect to the comments by the Province, some of the dates seem to us to give one party or another more time than may be necessary. They also pushed some of the responses from the Intervenors off into the hearing. We would certainly like to be able to have all the responses and information in advance of the oral hearing. So again we would suggest that the Board's schedule is the appropriate schedule for this proceeding.

CHAIRMAN: Good. Mr. MacDougall, at one point in time the applicant had in a tentative schedule a technical conference. The Board said that they didn't see a reason for having that in reference to this particular application, but that we would bring it up at the time of the pre-hearing conference and if any of the parties believed that it was a beneficial thing to do, there is room in the schedule to have it, and I just note that.

MR. MACDOUGALL: I could speak to that quickly if you would like.

CHAIRMAN: Yes, go ahead.

MR. MACDOUGALL: In association with the schedule, we had previously spoke about a technical conference. Our intent with the technical conference really was to replace the IR process. We felt that that would be the best role for it. In this proceeding we wouldn't propose to have a technical conference.

Also, one of the other issues was an issue of timing

and when we could fit that in. The way the schedule is set up now and the fact that there are a limited number of Intervenors, and we think some of the formal interventions are fairly significant parties, we are not sure that a technical conference would really be of assistance.

What we would like to propose at this time though, if the Intervenors are interested, is that we could have an Issues Resolution Day and the first couple of hours of that Issues Resolution Day could involve comments directly from Enbridge on their proposal, speaking a bit more to it, and then trying to resolve issues.

We would propose that that would be somewhere in the week in which Enbridge was preparing its responses to interrogatories, and the date we would propose, if parties think it is appropriate, and we can have that discussion today, would be March 27th. And again, that is really if the Intervenors feel that there is issues that they would like to pose that they think can be resolved.

CHAIRMAN: Mr. Stewart, you are not alone in my having neglected somebody because I haven't asked for Board counsel to identify himself and herself.

MR. O'CONNELL: Mr. Chairman, my name is Bill O'Connell, Board counsel.

CHAIRMAN: Thank you. Mr. Blue, you had some comments on the scheduling?

MR. BLUE: Thank you, Mr. Chairman. Mr. Chairman, the

Province sent in its tentative schedule before it had the advantage of seeing the schedule that had been discussed between Enbridge and the Board. I note parenthetically and I make no objection, but it might have been helpful to have those discussions between the applicant and the Board in some more public forum.

Having said that, we have no trouble with the schedule proposed by the applicant. It is a bit more ambitious than the schedule that we put forward. Our thought was it takes longer to answer interrogatories than one week, but if Enbridge can do it in one week we applaud them.

So we have no problem with the schedule.

CHAIRMAN: Thank you, Mr. Blue. Do you have any comment in reference to Mr. MacDougall's comments about an Issues Day?

MR. BLUE: We think it is a helpful suggestion. Anything that may shorten the hearing and reduce the number of issues for the Board to consider we support.

CHAIRMAN: This Board has never been through an Issues Day. I kind of look on it with a bit of trepidation frankly, but maybe I am wrong to feel that way.

Mr. Stewart, do you have any comments on either the schedule or the suggestion of an Issues Day?

MR. STEWART: I am not sure I understand exactly how the Issues Day would work. But at least in principal certainly, you know, the more discussion and communication

in advance of the hearing the better, and so in principal I think, you know, we support that suggestion. And maybe we can define it a little more as we go forward if such an event is going to take place.

With respect to the schedule, we don't have any particular objection. It would have been nice to have had it a little earlier than we did, but that is always a complaint or -- you know, you can never have things too early, but that's fine, we don't have any particular comment.

CHAIRMAN: Mr. Zed?

MR. ZED: No particular comment with respect to the schedule. With respect to the Issues Resolution Day, I guess I would echo Mr. Stewart's comments that in principal if there are issues to be resolved that it certainly would be a worthwhile exercise to schedule a day now. And March 27th certainly is fine for us.

CHAIRMAN: Does Board counsel have any comment on an Issues Day?

MR. O'CONNELL: Mr. Chairman, just like all of my learned friends, I really need some definition, some assistance, from the applicant as to what an Issues Day is and how it will operate procedurally, but I have no particular objection to the idea.

CHAIRMAN: Does Mr. Goss have any problem with that?

MR. GOSS: No, Mr. Chairman.

CHAIRMAN: Good. Thank you.

MR. MACDOUGALL: Mr. Chairman, I would like to speak a bit about that right now, if people want a little more clarity on how we would perceive an Issues Day going forward.

CHAIRMAN: You have, I am sure, checked in reference to the date March 27th in reference to the tentative construction schedule. And by the way, the Board will share with any Intervenors or interested persons in the room, after this hearing, the tentative schedule that we have set up in reference to the construction application as well.

I note your comments, Mr Blue. We tried to do things this time to get things over as quickly as we could. And not having ascertained who the Intervenors would be, why we went ahead with the applicant and tried to set up a reasonable schedule.

Go ahead, Mr. MacDougall.

MR. MACDOUGALL: The thought for an Issues Resolution Day, Mr. Chair, would really be -- there hasn't been a defined set of issues in the proceeding and as we understand it we will proceed and those parties, particularly the ones who have made formal interventions, have said they will speak to all matters arising, that if those Intervenors have specific issues that they feel can be dealt with outside of the public hearing, that they could raise those issues. They could send them to the Board. If the Board felt that they were appropriate issues for this proceeding,

they

could notify Enbridge and we would have a day where we would try to deal with those issues that the Intervenors themselves have proposed, again subject to them being appropriate issues for this proceeding, on a more informal basis, and try and resolve those issues between the parties at that time.

So it would really be driven -- the commencement of it would be driven by the Intervenors, if they thought they had defined issues, if some of the Intervenors here have five or six matters or two matters or one matter, if they feel it is something that can be resolved outside of a public hearing, we would be willing to have a day that we could do that.

Again, we can't raise what issues they may have, so we would suggest that they raise those issues, advise the Board of those issues, and the Board make a determination if they are appropriate and within the context of the hearing. And as long as Enbridge agreed, we would move forward and have a day to try and resolve those issues.

CHAIRMAN: I can't think of any examples, and if you have had experience in another jurisdiction, Mr. MacDougall, with that kind of thing, the kind of issue that would have been done outside the normal hearing process in an Issues Resolution Day?

MR. MACDOUGALL: My understanding is it can be virtually any of the issues within the proceeding, Mr. Chair. So I

wouldn't want to raise specific issues here so that parties may think it is an issue, maybe some of the Intervenors could say what they would be, but any of the issues that are referable to our proceeding.

It is essentially an ADR process which is used in other jurisdictions. It is a little different. The National Energy Board has a negotiated settlement process.

I understand the Ontario jurisdiction has an ADR process. And it deals with virtually all of the issues again that fall within the parameters of the hearing.

One of my colleagues here may have been involved, not from a legal side but from a company side. I don't know if anyone has anything to add on that.

MR. PLECKAITIS: I have been involved, Mr. Chairman. I have been involved in a number of ADR processes and Issue Day conferences, and I think Mr. MacDougall has paraphrased it correctly.

Again, there may be, for example, one of the things that as an applicant, that we spent a fair amount of time is trying to figure out what -- for example, which case certain evidence belonged in, does it belong in the rates case, does it belong in the construction application. So that is an example of an issue, for example, that one party may raise. And the Board may determine that that is more appropriately dealt with in a construction application phase of the hearing rather than the rates



case portion.

But there may be other matters. As the Chair understands, there is a Working Group that has been established where we are attempting to work with industry participant to address many issues in an informal setting and then bring forward recommendations to the Board. And there may be some issues that some parties raise that we may recommend and other parties may suggest may be more appropriately addressed in the Working Group as opposed to being addressed in a formal regulatory setting.

CHAIRMAN: Any of the other Intervenors have any comments to make on issues.

MR. BLUE: Mr. Chairman, my understanding of an Issues Day/Alternate Dispute Resolution Conference requires probably someone from the Board to act as sort of Convenor.

You hear what the applicant has to say about what the issues are, the Intervenor then state what they see the issues are. There is then discussion back and forth in the hallways, et cetera, all on the record with a transcript, and if agreement is reached, that certain issues will not be raised to be pursued at a hearing, that is reduced to a written agreement.

Once the agreement is rendered in writing, then it is presented to the Board by the parties who support it. Not all parties may support it. And then it is for the Board

to decide whether it wishes not to have its light of scrutiny placed on those issues on the grounds that the parties have agreed to them. It is for the Board to decide that.

That is my understanding of how the process normally operates, at least in the jurisdictions that I have been involved in.

It is not a simple process. It does involve work for the Board staff, it involves a lot of work for the applicant and the parties. And the pay-off is that if it shortens the hearing materially.

CHAIRMAN: So if I hear you correctly, the parties would agree that certain matters will not be canvassed during the hearing, they will not become an issue in that hearing.

MR. BLUE: That is correct, and once the Board makes an order, that then the product that the Board produces after that, or the order that the Board makes after that, is a defined list of what the hearing issues are.

CHAIRMAN: Okay. That was certainly my understanding, Mr. Blue, coming in here today and what I had heard from other jurisdictions, that it basically defined the issues that would be canvassed during that particular hearing by excluding certain ones and saying, okay, here are the issues, which is not the same as I hear you saying, Mr. MacDougall. You are talking more of an alternate method

of coming to decisions.

MR. MACDOUGALL: No, Mr. Chair. I think it is consistent to the extent that the parties would come and raise issues, if some of those could be resolved in that day, you would require resolution of those issues before they came off the issues list. We are not just purporting to define what the issues are for the hearing. We would like to try and solve those issues with the Intervenors prior to the public hearing process.

So it is a full alternate dispute resolution process, which is what I understand occurs elsewhere. And to the extent we come to resolution on those issues they would not become issues for the proceeding and then the other issues, if there were other issues, would proceed, of course the Board always being entitled to raise its issues with the applicant or others.

Can I make one other comment on that?

CHAIRMAN: Yes, go ahead.

MR. MACDOUGALL: I think we do have some hesitancy with saying that this would necessarily all be on the record. My understanding is that is not the case in the Ontario jurisdiction away, that is, the ADR process is not particularly transcribed and it is in a more informal setting than that. But we can discuss that with the parties if this is something that any of the Intervenors wish to proceed with.

CHAIRMAN: Okay. Either counsel on table 11 have any comments.

MR. STEWART: Just briefly, Mr. Chairman. What is musing through my mind as I sit here is that we do already have the Working Group established. And to a large measure it creates sort of an alternate dispute resolution forum, and I think that it is part of our mandate to deal with some of those issues.

And I am a little concerned that we don't either undermine that process or duplicate that process by setting up yet another alternate mechanism.

I suspect that is not the applicant's intention but that would be -- I think that is a concern that I would have in terms of I guess in principal, if we can have a meeting or discussion to define the issues list for the hearing and/or -- I mean, if we are in agreement on an issue or can resolve an issue, there is no reason not doing so. And maybe it is an extension of rather than an addition to the Working Group, or maybe it is sort of an adjunct to that to focus particularly on the hearing issues themselves rather than the more general issues.

But that would be my only concern, that the mandate of whatever that is on the Issues Day be somewhat defined, if only not to waste our time or duplicate our efforts.

CHAIRMAN: Mr. Zed?

MR. ZED: I guess to a certain extent I will echo again Mr.

Stewart. Our concern would simply be that the process for the discussions on that Issues Day be set out in advance, if possible, just so people knew going in what the rules of the game are. And Mr. Chairman, I just offer by way of explanation, some of the discussions that we had at the Consensus Committee meetings and the Working Group meetings, we spent an undue amount of time talking about whether things should be confidential, whether there had to be a complete consensus before there was a report to the Board.

And like Mr. Stewart I am just concerned that we could spend the better part of half the day deciding the process if the process is not decided in advance.

CHAIRMAN: Board counsel have any comments?

MR. O'CONNELL: Yes, I do, Mr. Chairman, and I promise not to make a habit of this, but I am going to agree with Mr. MacDougall. I can't see how this type of Issues Day could possibly be conducted on the record.

I think if the parties are going to do this it should be off the record. And the other thing I guess it should all be carried out with the caveat that whatever the agreements are that are achieved must be submitted to the Board for the Board's approval.

CHAIRMAN: Mr. MacDougall, you suggested the 27th of March, which is a Monday. The Tuesday is the 28th and the Board will be meeting in reference to another matter altogether

on the 29th. And I am just wondering if the 28th would fit in everybody's schedule.

In other words, if I bring the commissioners in from all over the province, why the Tuesday would be better from our point of view, but --

MR. MACDOUGALL: Can I make a comment just on the rationale on our March 27th? We would only have a period of interrogatories to go to Intervenors of a week there from Intervenor evidence.

We were hoping to have the Issues Day as early as possible so that we could then issue less IR's if we resolve the issues. So the further we push it to March 30th the more difficult it is in that regard. So we tried to keep it closer to the beginning of that period and hopefully if we could resolve issues, we would issue less -- fewer IR's.

Again the process we thought would primarily involve the Intervenors and the applicant and would not necessarily involve the Board and the Commissioners, and it would be submitted to the Board after that. So this could be set up in wherever is most convenient to the Intervenors and the applicant.

And then my third point on this is just because of the nature of the discussion that has gone on, we were offering this as something that we thought was useful to the Intervenors. So to the extent the Intervenors would

wish for it to go forward, we would have discussions with them as to how to do it.

We are not mandating or proposing that it must go forward. It is something we felt the Intervenors might find valuable if they had resolutions, issues that they thought could be resolved.

CHAIRMAN: Well just a point of clarification on my part, anybody's experience in this room, what happens is if in fact there is an agreement that certain issues could be settled and agreed upon between the parties, that would come before the Board.

MR. MACDOUGALL: The agreement would come before the Board, but not the nature of the discussions leading to the --

CHAIRMAN: Yes, that is fair enough. So that the 27th would then work out because I would bring the Commissioners in on the 28th to hear what has come from your Issues Day.

MR. MACDOUGALL: We would type vigilantly in the evening to get it to you in the morning.

CHAIRMAN: Yes. You could all have your interrogatories all done, you see, and then just tear up the ones you don't want to send out. Mr. Blue?

MR. BLUE: The only point I make about it, everyone who is an Intervenor -- there has to be a formal Board hearing so that everyone has notice of it, and I guess you would have say that they must attend. Otherwise if you don't attend, you come before the hearing, the agreement is not binding

on the Intervenor who doesn't attend. And if that Intervenor wants to raise one of those issues, then I leave the question rhetorically, where are you?

When I said it should be on the record, the -- I am not talking about the informal bargaining that goes on out in the hallway, but the presentation to the Intervenors by the applicant on Issues Day should be on the record. The formal positions of the Intervenors about whether they compromise should be on the record. Otherwise you will find that when cross-examinations start and you get into issues, people just by human nature will want to trench into matters or find they have to trench into matters that have been excluded.

You then have the record to refer to to show that that was discussed at the Issues Day and they have agreed not to do that. The bare issues does not take you that far.

That is just an explanation to my submissions.

CHAIRMAN: I think subject to any comments that my fellow Commissioners will have, as I hear it, it is an Intervenor initiated matter anyhow. And the Intervenors would approach the Board with issues that they believed could be settled and then the Board would decide whether or not we should go ahead with an Issues Day on the 27th of March. And if we decided that, we would then set out in concert with the applicant and the Intervenors, we would define the rules as to how it would occur and we would go forward



from there.

So I guess all we do today is just everyone reserve the date of March 27th, if in fact there is an Issues Day required.

MR. MACDOUGALL: Could we, Mr. Chair, maybe set a date by which Intervenors would advise the Board if there are issues then we --

CHAIRMAN: Do you have a suggestion, Mr. MacDougall?

MR. MACDOUGALL: No, I don't. I have been quickly looking at the schedule. It would be nice to know -- probably at the same time they issue interrogatories to Enbridge, which would be March 9th.

MR. BLUE: Mr. Chairman, could I suggest March 23rd? That day we have got the responses to the interrogatories and the people have -- Intervenors have decided their positions by filing evidence.

MR. MACDOUGALL: That pushes it very close, Mr. Chair, to the date of the 27th, was my concern. What about after EGNB's responses, March 16th, half way between me and Mr. Blue?

CHAIRMAN: Sound like a good compromise, Mr. Blue?

MR. BLUE: I am easy. I am just trying to be practical.

People really don't know what their position is until they have prepared their evidence. But I can live with whatever date Mr. MacDougall suggests.

MR. O'CONNELL: Mr. O'Connell from table 10 would be that

the closing date be the 17th of March.

CHAIRMAN: Well, that is the Friday?

MR. O'CONNELL: Yes. That is correct.

CHAIRMAN: Okay. That is -- I think -- Mr. Stewart?

MR. STEWART: Mr. Chairman, that is too far the other way.

I mean if the point is to allow the Intervenors the opportunity to review the responses -- if they are in on the 16th, you are not going to have a chance to do that by the 17th.

You should at least push it off to the first of next week. I know you are jammed both ways. But it can't be that quick.

CHAIRMAN: Okay.

MR. O'CONNELL: Mr. Chairman, that following Monday is also fine.

MR. MACDOUGALL: That would be appropriate, Mr. Chairman, March 20th.

CHAIRMAN: March 20th. March 20th it is. I have just one last matter. And that -- I go again to Mr. Blue's letter.

And I note, Mr. Blue, under Section 21 of the Reg that the Board may call for suggestions from parties. However, we will deal with the suggestions that you gave us.

My fellow Commissioners and I chatted about the suggestions in Mr. Blue's letter. And I don't know. You didn't copy -- of course you didn't know the Intervenors.

Did the applicant get a copy of Mr. Blue's letter to

the Board dated April 14? No. I'm sorry. Not April 14, but February 23rd?

MR. MACDOUGALL: Yes, we did, Mr. Chairman.

CHAIRMAN: Did the other Intervenors?

MR. STEWART: No, Mr. Chairman.

CHAIRMAN: I will just -- anyhow the second part of the letter proposes the Board adopt the following practices in order to smooth out the proceeding. I guess that is the terminology used in the Regulation.

The first one is in order to save hearing time, all witnesses will simply adopt their written evidence. There will be no examination in chief.

The Board says that is fine. However, if any witness wishes to simply give a quick overview of paraphrasing of that testimony, not reading it but give it, then that is fine with the Board as well.

Witnesses should be permitted to make a brief opening statement no longer than two double-spaced 8 by 11 pages in length. If, however, witnesses intend to make such an opening statement, a copy of the written text of the opening statement shall be provided to all parties 24 hours previously by counsel for the party calling a witness.

Do the parties have any comment on that? The Board doesn't see any difficulty in adapting that for this hearing. But I want counsel to have the opportunity to

address it.

MR. MACDOUGALL: Mr. MacDougall at table 9. Mr. Chairman, can I address your first point too? I will address both of them together if that is okay.

With respect to filing of the evidence, particularly because we are the applicant and we believe there is some value in having some oral discussion on the record as examination in chief, our client certainly would be making a presentation.

It won't be very long. It will be very similar to what occurred in the Marketer's hearing. But it may be a little longer than that in the nature of, you know, 20 minutes to half an hour.

CHAIRMAN: The Board has no problem with that. What we don't want to see is somebody reading what we have all read before.

MR. MACDOUGALL: Fully understood, Mr. Chairman. With respect to the second point, we probably will be having one opening statement from the applicant.

Mr. Pleckaitis will likely be giving that. It will be short. And it will be generally describing Enbridge's position in the province. We wouldn't like it to be constrained to two 8 1/2 by 11 pages. It will not be lengthy. But I think we would like some latitude there.

The Regulations do provide that an opening statement must be filed within 24 hours. So that is actually set in

the Regulations. And it will be filed in advance.

I think the Board could say that they would hope that opening statements would be brief. Again, I don't see any need to constrain it to two 8 1/2 by 11 pages. That is a little tight particularly for the applicant.

CHAIRMAN: How about three? I'm being humorous.

MR. MACDOUGALL: I thought as much, Mr. Chairman. We would just like the right to make a brief opening statement, not confined to page lengths.

CHAIRMAN: Any other comment from counsel? Well, we will -- yes. Go ahead, Mr. Stewart.

MR. STEWART: Mr. Chairman, I think generally I would echo Mr. MacDougall's comment. I don't think it is necessary. I think we all know what a brief opening statement is, you know.

The Board has given some indication of what parameters it might be expecting. I don't think it is necessary to define it more than that.

CHAIRMAN: Okay. Any problem with the second part of that statement though dealing with if witnesses intend to make such an opening statement, a copy of the written text shall be provided to all parties 24 hours previously by counsel for the party calling the witness?

MR. STEWART: No problem with that. I believe it is in the Regulation in any event.

CHAIRMAN: Okay. If there is no other comments then we will

adopt what is in Mr. Blue's letter but replace no longer than two double-spaced 8 by 11 pages with brief. Okay.

The next point was all parties should bring sufficient copies of exhibits if they intend to file for Board members, Board staff and counsel and representatives of other parties.

Board should provide -- I like this -- Board should provide a table at the back of the hearing room on which copies of these exhibits can be deposited. I see no problem with that.

Any counsel have any difficulty with that?

The Board shall establish an exhibit marking system that gives each Intervenor a distinct identification letter so the parties may be able to determine which Intervenor has filed which exhibits. I agree with that.

Okay. Are there any other matters?

MR. MACDOUGALL: Mr. Chairman, Mr. MacDougall at table 9. I have a few other procedural issues to go through.

CHAIRMAN: Yes.

MR. MACDOUGALL: Mr. Chairman, I'm wondering if at this time we could just --I will raise a couple of issues with respect to the proceeding.

The first one having to do with final argument. The applicant's proposal would be that final argument be by nature of oral argument. Again we feel that gives it a better flavor to the issues that could be put forward.

However, we do believe some of the issues are somewhat complex.

So we would like to at least know that there will be not a large period of time, but a significant enough period of time to prepare oral arguments.

So we would hope there would be at least one full day in between the end of the proceeding and the date by which oral argument would be had, maybe a day, a day and a half.

If you would like we can take comments on each point as I go through, Mr. Chairman, if that would be better.

CHAIRMAN: Well, might as well. Counsel have any comment on that? I will have a comment from the Board's point of view. That certainly has always been our practice.

We are running into space difficulties, physical rooms, et cetera. And we may -- you know, I will attempt to do just what you have suggested.

However, if we are down to Thursday afternoon, and we only have the room for Friday and have nowhere to go the next week or something like that, we are going to have to do it on Friday afternoon, simple as that. In other words, physical location may be restricting in reference to that.

Mr. Blue?

MR. BLUE: Ian Blue, table 13. Can parties have the option of filing a written argument? I mean, you don't -- in other words the applicant should be allowed to argue

orally or in writing.

And some issues may be better lent to a written submission. Or some of the other parties may want to do that as well.

And as long as the written argument is filed at the time that oral argument begins, I see no reason why that shouldn't work as well.

MR. MACDOUGALL: Mr. Chairman -- Mr. MacDougall, if I could speak to that. Table 9.

This ties into an associated point of that, that we would think, unlike the Marketers' hearing, this is a formal application in which Enbridge is the applicant.

We would have -- and we do request that oral argument, that we are allowed the right to argue that there would be -- there would be argument from the other parties and that we would have a brief period of time in which to provide reply argument. We thought that would move the process along and it could all be done orally.

If other parties have the right to put in written argument and a significant period of time to rethink the issues, then the applicant would probably want to do that as well.

And then we are into either doing both or just written argument. We would also want the right to reply to written argument of other parties.

So we are trying to move this process along in a



timely fashion so that marketers know what the game is, so they can get out there and start marketing, and that we can move to construction.

We were hoping to be able to do it all by oral argument including our reply argument.

CHAIRMAN: Mr. Zed? Mr. Stewart? Any comments?

MR. STEWART: Just simply that I do acknowledge Mr. MacDougall's concern.

CHAIRMAN: Sorry. I'm having difficulty hearing you.

MR. STEWART: I'm sorry. It's Chris Stewart. Simply that I do have a concern about doing it one way or the other, if we start getting into a situation where you have oral and some people doing written.

And that is what was going through my mind when you were talking about some of the other sort of informal intervenors making written submissions at the end.

There may be something in there which the applicant or some of the other intervenors wish to address in oral argument.

It would seem to me that perhaps -- I think that can be accommodated if those informal intervenors who are going to file a written comment would do so at the end of evidence.

And so if we could look at those during that day and a half period, I think that might resolve the first issue.

The second issue is if you do do both or you have

someone doing oral on this and written on this, and the applicant wants to respond, and you go around in circles, then it is hard to keep it clear at that point.

CHAIRMAN: Mr. Zed?

MR. ZED: Again, I would agree with Mr. MacDougall that it is certainly much -- it is certainly very difficult to mix oral and written argument and still comply with sort of the time lines that we have set out for this.

Because it is going to require an extra couple of days in order to be fair to all parties, to give them an opportunity to respond. So oral argument would be in my view preferable in the normal course.

CHAIRMAN: Look unless something that we can't anticipate happens, the Board will go with oral argument. It is the past history of this Board that after the parties sum up and before rebuttal that the Board will take a break.

And particularly where I see that there are -- you know, there is no one before us except Board staff and Board counsel who will attempt to get out information that may concern the residential consumer or someone like that, that we may want to put questions to counsel for all of the parties and ask them to address particular issues that they may not have addressed in their summation in their rebuttal time or whatever. So I think that oral is the way to go.

And again I say in the past we have, if there has been

a real legal question, we may have said, okay, you can submit a brief and a reference to the law on this, but we will have oral argument as to the facts, et cetera. So we will go that way.

Now you had some other things, Mr. MacDougall?

MR. MACDOUGALL: I did. Following up on Mr. Stewart's point, Mr. Chairman, maybe we can clarify on that too. I noted the same issue with respect to some of the language on the formal/informal register of participants list about filing comments.

I would presume those summaries were going to occur at the end of the evidentiary portion and that they weren't oral argument by those parties, but essentially that they are comment by those parties which they are putting on the record, and that the formal Intervenors would then be arguing their positions.

I didn't understand that the process necessarily would allow for argument by parties who were not formal Intervenors. That would be somewhat difficult for the applicant to deal with the positions raised by those parties.

CHAIRMAN: I think first of all, the Board will communicate with those informal Intervenors who said that they will file a letter of comment. And we will set a date by which it has to be in, which will be well in advance of the end of the hearing, as far as the Board is concerned.

Secondly, it is my understanding, rather than argument, I think in previous hearings the Board has said okay, there are members of the general public who have an interest, like don't raise NB Power's rates. And that is where they are coming from.

But they wanted to be able to say that in the hearing.

And we would set aside Tuesday afternoon from 2:00 to 3:00 where they could simply come before the Board and make a presentation, and that would be it, and over and done with.

My anticipation is that the two that have said they want to address the Board in fact want to do that. And that is what they want to do.

And I would suggest -- and we will correspond with them and ascertain if that is the case. In other words, they now know what their position is and could address the Board today as to their position.

But we will write to them and indicate that they will be heard at the end or just before there is oral argument and ask them about their intention as to the nature of their presentation to the Board. Because I understand where you are coming from.

If in fact it may be argumentative, then we will try and tack it on to the end of the evidence, so that you will have a day and a half before you have to do your summation. And then you would have time to think about

what you want to respond there.

MR. MACDOUGALL: That will be fine, Mr. Chairman.

CHAIRMAN: Okay. Any other matters?

MR. MACDOUGALL: Just one other matter, Mr. Chair. In preparing our prefiled evidence and looking back at our application that was filed on December 31, we felt there might have been a little bit of inconsistency in the language of the application.

So in accordance with subsections 8, 1 and 3 of the Gas Distribution Rules of Procedure, we have made an amendment to the application document. I would like to file that with the Board and then file a copy with all of the other Intervenors today as well.

CHAIRMAN: All right. And my recollection of the rules -- or excuse me, the regulation, is that you file a new document that shows what has been amended in the original by this document, is that correct?

MR. MACDOUGALL: That is correct, Mr. Chair.

CHAIRMAN: Yes.

MR. MACDOUGALL: In accordance with those regulations we filed a replacement page 4 which has dated in the top right corner, amended as of February 28th 2000, with an asterisk next to the amendment. I believe that will track the regulations.

My colleague Mr. Hoyt points out to me that the reference to section 8, 1 and 3 should be a big 1 and a

big 3, not a Roman Numeral. But those are the right provisions. And I believe we have complied.

CHAIRMAN: Okay. I will just mark this and it will form part of the record. And you will provide us with copies at a later time, I guess, and the parties.

MR. MACDOUGALL: And we have enough copies here now for the Intervenors.

Mr. Chairman, my colleague Mr. Hoyt has one other just technical matters. On a go-forward basis, we were wondering if we could have a determination on how many copies of documents do have to be filed with the Board.

I know the regulations make some reference to that. We have been filing a lot of copies. I now know that there is a smaller panel here this time than there was last time.

And just because some of this stuff is voluminous binders, to the extent we can file what is necessary rather than 20 copies or whatever it is, if you don't need them, we could -- we will comply with whatever.

But we are sending seven or eight binders. And that is going to occur with the construction application as well.

CHAIRMAN: I think what we had better do is do a --

Mr. Goss, any idea at this time?

MR. O'CONNELL: He suggests 15 would be appropriate, Mr. Chairman.

CHAIRMAN: 15. I'm glad New Brunswick is a paper-producing province. That is all I can say.

MR. MACDOUGALL: It is hard to find tabs, my colleagues are telling me.

CHAIRMAN: Okay. Well, 15 then is what the Board staff indicates. Okay. Thank you.

Okay. This prehearing conference will stand adjourned. Oh, sorry. Mr. Blue?

MR. BLUE: Mr. Chairman, I had another issue that I just wanted to ask about.

Could I ask through you, Mr. Chairman, or ask you to ask counsel, as we sit here today -- this is not tying anyone's hands or foreclosing any options or decisions.

But apart from the applicant, which of my colleagues are going to intend to call evidence in this case, file witness statements? And specifically is the Board staff going to call any evidence?

CHAIRMAN: Well, the first part of the question, you know, the parties will not make a decision as to whether or not they are going to until they have had an opportunity to review the applicant's evidence. So I don't know.

Does Board counsel have any comment on that? I really don't see the -- I think that the parties should have the opportunity to review the evidence and make up their minds, Mr. Blue.

MR. BLUE: I fully agree with that. I was just wondering if

anyone, having done it, is in a position today to say whether or not he or she is calling evidence.

CHAIRMAN: Does any party wish to divulge whether or not that is -- the Intervenors, whether or not they are going to call evidence?

MR. O'CONNELL: Mr. Chairman, all I can say is a definite maybe.

CHAIRMAN: You are aggressively neutral. Okay. So the Board may do so, Mr. Blue.

Any other matters? If not we will adjourn to April 10 at 10:00 o'clock in the morning in salon A and B at the Courtenay Bay Inn.

Thank you very much.

(Adjourned)