New Brunswick Board of Commissioners of Public Utilities

Hearing

In the Matter of a Board Order to Review Enbridge Gas New Brunswick Inc. Financial Results at December 21, 2002 and December 2003

PUB Premises, Saint John, N.B.
September 30th 2004, 10:00 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Alyre Boucher
Ken F. Sollows
H. Brian Tingley

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: This is sort of a unique experience. We have had a written proceeding. But this panel, when reviewing what had come in, decided that we would like to have some people here to explain to us perhaps in more detail and lead we laymen through by the hand in an explanation of what appears to be or should be a very simple straightforward mechanical process. But it turns out that it isn't. So that is why we are all here today.

Let's have some appearances for the company, Enbridge Gas New Brunswick Inc.

MR. HOYT: Len Hoyt of McInnes Cooper acting for or representing Enbridge Gas New Brunswick. I'm joined by Andrew Harrington, the newly minted General Manager of Enbridge Gas New Brunswick, Shelley Black who is the Manager of Regulatory Affairs and Upstream, and Kathy McShane who is the Senior Vice-president of Foster & Associates, an economic consulting firm.

CHAIRMAN: Thank you. Is there anyone here representing Competitive Energy Services? Irving Energy Services? Maritime Metro Gas Pipeline Contractors Association?

MR. ROSS: David Ross representing the Association.

CHAIRMAN: And staff of the Board, Mr. Goss and Mr. Lawton. And that is I guess it for the record purpose anyway. Okay. Well, nobody will be sworn today.

And I had asked staff to approach Enbridge and find out from the report of Mr. Easson which forms the substance of this matter what you are objecting to by way of the recommendations made by Mr. Easson.

Are there just -- are there two items? Or are there more than that? Or what might they be, Mr. Hoyt?

MR. HOYT: I guess the first thing, I have a couple of affidavits of posting of publication that I can leave with Ms. Legere, if that --

CHAIRMAN: Okay. That would be a great help.

MR. HOYT: There is actually three, Mr. Chairman. One is

AFUDC which, you know, I think the Board is looking forward to an explanation from the parties.

The second one is the amortization period for the capitalization of -- or certain capitalized expenses. And the third is the retirement of the Vanier Highway pipeline.

CHAIRMAN: Yes. Can we start with the last first? And would you sort of outline to us what happened with the Vanier Highway pipeline?

MR. HOYT: Yes. I have actually got a submission, a short submission that I will distribute. It also attaches an excerpt from the Uniform Accounting Regulation under the Gas Distribution Act on which we feel the direction in terms of how it is supposed to be accounted for is dealt with. So I will distribute that now.

CHAIRMAN: Refresh my memory while you are handing that out. Did that portion of the regulation, et cetera or the Uniform Accounting Regulation, did that form part of the evidence or discussions back and forth in the documentation that had been filed?

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

CHAIRMAN: So it is sort of a new argument that is --

MR. HOYT: Well, it is an argument actually based on --

CHAIRMAN: Go ahead, Mr. Hoyt.

MR. HOYT: Yes. On this particular issue I believe it is really an argument issue. There is no dispute or additional evidence that we would have to provide in terms of the pipe that was relocated in terms of the Vanier Highway in Fredericton. The issue really is just -- it is a question of accounting.

CHAIRMAN: All right. But I -- being curious as I am, you put that pipe in the ground in 2000?

MR. HOYT: Correct.

CHAIRMAN: That was the main line going into Fredericton --

MR. HOYT: Into Fredericton.

CHAIRMAN: -- to service Fredericton. You know, my recollection is kind of dim these days. But I think you were to comply with all requirements vis-a-vis permits from whatever department of government. It would have gone before the Pipeline Coordinating Committee as well.

So I would have to think, with the size of that interchange and all that has gone on there, that you were aware that there would be a possibility of that happening. Is that a fair assessment? In other words, that that pipe might have to be moved?

MR. HARRINGTON: I'm not sure that we were aware that that -- I wasn't specifically involved in the permitting for that.

But you are correct. We had a series of processes to go through with the various authorities to get permission to lay a specific pipeline, regardless of where we are doing that. And we did that with the Vanier pipeline.

As I understand it, there has always been some discussion, or had always been some discussion about a future expansion of the highway. As I understand it, it was not specifically raised as a concern through the permitting process.

CHAIRMAN: Have you required compensation from the Province?

MR. HARRINGTON: No. And I was at meetings where we requested such compensation and were refused.

CHAIRMAN: Well, if you can get your legislation changed, surely you can get a settlement. Sorry, I'm being trite here.

MR. HARRINGTON: In the normal course, in my experience, that is the normal approach, is to request compensation for any movement of pipeline caused by a third party's action and to receive it.

Unfortunately that was not the case here. It was DOT who is the party, Department of Transportation. And they refused to compensate us for our actions.

MR. SOLLOWS: That would be the normal end of a request? Or is there any potential for action to compel them to make

good your loss?

MR. HARRINGTON: As I'm aware, no. There is no further proceeding. I imagine -- I will defer to the lawyer here. But I imagine we could try to take them to court to recover those costs.

However the DOT does have, you know, specific powers as it relates to the highway. And it appeared to us at the time that if they were unwilling to make such monies available, that they did not have to.

CHAIRMAN: Did Mr. Hoyt give you a legal opinion? And the reason I'm going after this frankly is that it is a question of whether or not your customers should pay for it or if the Province should pay for it. It is as simple as that.

MR. HARRINGTON: Correct.

CHAIRMAN: And Mr. Hoyt, did your firm give an opinion that the probabilities were that Enbridge would not be successful in recovering any of their damages?

MR. HOYT: They weren't consulted on that particular issue.

CHAIRMAN: And Mr. Harrington, you don't know if in fact your company got an opinion?

MR. HARRINGTON: Sorry?

CHAIRMAN: You don't know if your company actually asked for an opinion from head office, legal branch there or anybody?

MR. HARRINGTON: I'm not sure whether we asked for a legal opinion.

CHAIRMAN: Would you --

MR. HARRINGTON: Undertake to do so?

CHAIRMAN: -- undertake to do so please?

MR. HARRINGTON: Absolutely.

CHAIRMAN: All right. Mr. Hoyt, go ahead with -- you know, what really brings up questions in my mind is that the pipe went in the ground in 2000.

Work on that interchange started in 2002, I think it was. They cleared the ground up there in the fall of 2002 as I recollect it. The majority of work was done last summer and was completed this year. And it joins up with the four-lane that goes out and joins up with the new Trans-Canada.

MR. HARRINGTON: Correct.

CHAIRMAN: So that wasn't being very actively pursued. The exact location may be a real question. But I find it difficult that (a) DOT didn't say something in the Pipeline Coordinating Committee to you and -- you know. Because that had to be in the advance planning stage.

I mean, I'm prepared to bet that most of the cloverleafs between here and St. Stephen on Route 1 are already planned. They may not be laid out on the ground or anything. But they are planned.

MR. HARRINGTON: And as I understand it, the plans were, at least at a high level, were completed. However there was no specific information about when or if that project would ever go ahead.

CHAIRMAN: Yes. Oh, I can -- yes, okay. Go ahead, Mr. Hoyt.

MR. HOYT: I would suggest that you turn to page 7 in Mr. Easson's 2003 report. That is where this issue is raised.

And in the material that I just distributed, under tab 1 -- well, perhaps take a moment, if you would like. It is the bottom third and the top of -- bottom third of page 7 and the top of page 8.

CHAIRMAN: Okay.

MR. HOYT: So as we discussed, Enbridge was required to retire this section of the distribution pipeline to accommodate the construction of the four-lane highway at the Vanier in Fredericton.

And Mr. Easson is suggesting that the accounting treatment by Enbridge wasn't appropriate since it had only been used for 30 months. And because of that Enbridge should not be able to leave it in rate base and recover it from its ratepayers.

Specifically Mr. Easson is suggesting the costs associated with the pipeline be disallowed from rate base and that EGNB investors would be required to bear those costs.

I would ask you to turn to tab 1 of the material that I just distributed, which is an excerpt from the Gas Distribution Uniform Accounting Regulation under the Gas Distribution Act.

I apologize. These pages aren't numbered. I didn't realize when you print them off the Internet that there is no page numbers. So the relevant page is the second to the last one. There is a heading "Number 5, Depreciation."

And I would just refer you to item B under "Depreciation". It talks about the charges for depreciation are to be computed in conformity with the group system under the straight line method or other methods approved by the Board. The group system contemplates that probably there will be variations in the service lives of the assets constituting the group even among assets of the same class. The depreciation provision determined for the group is a weighted average of the various provisions for the respective assets in the group.

And then more specifically on the following page, dealing with retirement of assets, second paragraph, when the retirement of any individual asset in a group occurs under circumstances reasonably provided for through accumulated depreciation, it may be assumed that such provision has been made.

Thus whether the period of service life is shorter or longer than the average service life, accumulated depreciation attributable to an asset at the time of retirement under such circumstances is equal to the cost, except for that portion reasonably assumed to be recoverable through salvage realization.

Assets remaining in use after reaching the average life expectancy are not regarded as fully depreciated until actual retirement. There is a reference to section 3 which I will refer to in just a moment.

So what it is saying is that in the case of distribution pipeline, depreciation is to be based on the average life of all distribution pipeline. The average accepts and provides for the reality that some sections of distribution pipe will have a shorter than average service life and some will have a longer than average service life.

Whether the period of service life is shorter or longer than the average service life, accumulated depreciation attributable to a particular section of distribution pipe at the time of retirement is equal to the cost less salvage realization.

On this basis, at the time of the retirement of the Vanier distribution pipeline in question, the accumulated depreciation attributable to it was equal to its cost less any salvage value. There was no salvage value. Essentially the useful life of that particular section of distribution pipeline was 30 months.

In terms of Enbridge's accounting treatment, it is consistent and in accordance with section 3 (a) of this regulation, again found under tab 1, two pages prior to the page that we just looked at. There is a section entitled "Retirements". And I have highlighted the relevant provisions. So the section entitled --

CHAIRMAN: Say again.

MR. HOYT: Pardon?

CHAIRMAN: You are tearing along there, Mr. Hoyt.

MR. HOYT: Sorry.

CHAIRMAN: All right.

MR. HOYT: It is under tab 1 --

CHAIRMAN: Right.

MR. HOYT: -- page 4, item 3 headed "Retirements".

CHAIRMAN: Right.

MR. HOYT: Under the section "Depreciable Plant", "When a plant unit is retired from gas operations the book value shall be eliminated by crediting the appropriate plant accounts."

Further down in the same paragraph, "When a plant unit is retired the book value less the net salvage value and/or insurance recovered if any shall be charged to accumulated depreciation."

And I have just noted that book value is defined to actually be the cost of the plan.

CHAIRMAN: Would you go back. I was having difficulty in following you this morning. It is my problem. But the report -- Mr. Easson's report that you quoted from --

MR. HOYT: Right.

CHAIRMAN: -- that was for which year?

MR. HOYT: 2003, page 7, at the bottom of page 7.

MR. SOLLOWS: Excuse me. I'm wondering if I could ask a question or two while we are here. I -- looking at the Gas Distribution Uniform Accounting Regulation, Gas Distribution Act, the section that you listed on Retirements, and I see the highlighted section.

But I move to the next page. They are numbered. And

I see two titles highlighted Extraordinary Retirements and See Pipe Relocations.

I'm wondering which you would consider this to be, a pipe relocation or an extraordinary retirement? And how -- since you have not highlighted these, I'm wondering how you think these sections would apply?

MR. HOYT: In terms of the pipe relocation section, I don't believe that it is a relocation. I think that that is designed for a situation where a pipe is taken from here and moved aside.

MR. SOLLOWS: This pipe wasn't replaced at all?

MR. HOYT: It was -- yes. But it wasn't the same pipe. It is a new pipe that couldn't be recovered or couldn't be salvaged.

CHAIRMAN: Quite often that is the case.

MR. SOLLOWS: That is the normal case in construction, that it would not be simply removed from the ground or relocated. It is the location of the pipeline would have changed. But it doesn't mean you would reuse an old pipeline.

MR. HARRINGTON: Actually there are circumstances where the pipes --

MR. SOLLOWS: You may.

MR. HARRINGTON: -- are relocated. And we believe that that is where that particular --

MR. SOLLOWS: So this section in your view would only apply where you are reusing. And you would never apply this section where you are using new material?

MR. HARRINGTON: That is our interpretation, yes. We often, in terms of relocations --

MR. SOLLOWS: Is that the same interpretation that you would find in other jurisdictions for such a section?

MR. HOYT: Just on that, tab 2 to the material is the Ontario equivalent, the uniform system of accounts. And we have done a comparison of it.

And aside from changing the word company to utility and so on, it is essentially identical particularly to the relevant paragraphs.

And we have checked with Enbridge Gas Distribution to determine if they would in fact have accounted for this in a manner similar to what EGNB did and have been told that they would.

MR. SOLLOWS: Okay.

MR. HOYT: And if the Board would like additional information or confirmation of that from Enbridge Gas Distribution we would be happy to provide it.

MR. SOLLOWS: Well, we could consult the regulator as well in Ontario.

MR. HOYT: Sure.

CHAIRMAN: Okay. For the purposes of identification on the transcript, how many pages have we got here, Mr. Hoyt? Have you counted them?

MR. HOYT: I haven't but I --

CHAIRMAN: That is okay.

MR. SOLLOWS: Can I just deal with the second half of my question?

CHAIRMAN: Just a minute now. Just have a little patience. And I apologize to Mr. Sollows. For the purposes of someone reading the transcript --

MR. SOLLOWS: Yes.

CHAIRMAN: -- and following along, I think even though it is -- I'm just going to mark it as exhibit 1 for argument purposes and put that on. And it is 22 or 20' -- it is either 21 or 22 pages. I'm not going to count it again. But that would be exhibit 1.

And the references, Mr. Hoyt, that you have been referring to are contained in that exhibit 1.

Okay. Commissioner Sollows, go ahead.

MR. SOLLOWS: Okay. On the understanding that we don't consider this a relocation, why is it not an extraordinary retirement?

MR. HOYT: Well, again I looked at that provision. To me this regulation far from flows in terms of how it fits together and so on. In terms of the extraordinary requirement though it seemed to be dealing with natural disaster type of events.

And again we raised this with the affiliate in Ontario. And the response always came back on the particular fact situation as we provided they would account for it in the identical manner that Enbridge did. I think the examples that are given -- I mean, it says such causes include casualties due to fire, storm, flood, et cetera.

MR. SOLLOWS: This I see. I'm really focusing on the first sentence which said "Results from causes that the owner cannot reasonably be assumed to have anticipated or contemplated prior to depreciation."

So in this sense it does apply. And I'm wondering, you know, why -- anyway that is just -- as I read this, it would seem to be yes, their examples are basically the acts of god or natural disaster.

But the intent here was it was an out of the ordinary retirement. It wasn't -- you wouldn't ordinarily put in a million dollar pipeline and anticipate that it would be depreciated over 30 months. So it really is an extraordinary event.

MR. HOYT: No. And it is a fair question. And as I say, I understand that the accounting treatment would be the same. But it is not the section that, I mean, I addressed my mind to. And it just didn't feel -- it didn't -- I didn't find that we got into the section clearly.

CHAIRMAN: I think one of the difficulties, Mr. Hoyt, that you have pointed out is not flowing is as a result of those who drafted that reg are transmission pipe experts, not distribution.

MR. HOYT: Well, it is a problem we have encountered many times under the Act. And I think it flows here as well.

CHAIRMAN: Yes. Okay. Any Commissioners -- any further questions on that at all?

MR. HOYT: There is just -- there is one other point though that I did want to make. And it is getting away from the regulation.

And it is really more -- it just goes to the fairness of the issue, in that Enbridge constructed the pipe with the intention of using it to distribute gas. And the costs were prudently incurred.

And it just doesn't seem reasonable to suggest that since they didn't get to use it as long as anticipated, that Enbridge can't collect the cost from its ratepayers.

CHAIRMAN: I agree with that subject to when you say prudently, if in fact there was plenty of warning that that pipe could have to be moved and moved shortly, then is it or is it not prudent?

I don't know. That is why I have asked Mr. Harrington to undertake to find out exactly what is going on.

MR. SOLLOWS: So that I'm clear, the basis of your point here is that this is neither an ordinary nor an extraordinary retirement?

MR. HOYT: No. It would be an ordinary retirement.

MR. SOLLOWS: Because under an ordinary retirement then can reasonably be assumed to have contemplated in prior depreciation provisions, and normally may expect to occur when plant reaches the end of its expected service life. In the case of such a retirement, accumulated depreciation shall be charged with the book value of the asset and the cost of removal and credited with any amounts realized for salvage and insurance. There is no charge or credit to income for an ordinary retirement.

So that is the provision that you are following?

MR. HOYT: Yes. Which I think is consistent with the treatment that is outlined in the first paragraph under 3 A.

MR. SOLLOWS: Okay.

MR. HOYT: And the effect of those two entries leaves the rate base as the same number.

CHAIRMAN: Mr. Ross, do you have any questions on that matter?

MR. ROSS: No.

CHAIRMAN: As I remember it the -- I don't know. AFUDC was the first one that you brought up as being contentious. And we will save that for awhile.

And the second one had to do with Mr. Easson's recommended report for depreciation purposes, et cetera. And so if we could turn to that.

MR. HOYT: That is correct. It really just involves a commitment from the company. So I will ask Mr. Harrington to address it at that --

CHAIRMAN: And let me -- again I'm stretching my memory here.

MR. HARRINGTON: Page 8 and 9 of his 2003 report.

CHAIRMAN: Yes. Just a minute. 2003, page 8 of --

MR. HARRINGTON: The bolded section. The recommendation is bolded down at the bottom of his -- at page 8.

CHAIRMAN: So it is on page 8?

MR. SOLLOWS: Page 8 of 13, this part here.

CHAIRMAN: I have got the wrong --

MR. HARRINGTON: Well, in 2002. It is on page 7, if that is where you are.

MR. SOLLOWS: Okay. Which one are you --

MR. HARRINGTON: It is in either. There is different pages.

CHAIRMAN: It is in both. Yes. And Mr. Easson is recommending that you do a comprehensive analysis --

MR. HARRINGTON: Correct.

CHAIRMAN: -- of them. And the second part is to make it retroactive. So when you address this matter would you deal with both a) whether or not there should be that analysis and b) whether or not it should be retroactive?

MR. HARRINGTON: Absolutely. Statement prepared here. In his reports on EGNB 2002, 2003, Regulatory Financial Statements, Jim Easson, and I quote, recommends to the Board that "EGNB should be directed to carry out a comprehensive analysis of the cost capitalized in order to determine those which are not directly attributable to the construction or acquisition of property, plant and equipment. Expenses which are similar in nature should be grouped and a determination made of their realistic expected period of benefit to the utility. In turn this would establish a reasonable period of amortization. The cost should continue to be included in rate base. A report on this matter and EGNB's recommendations should be submitted to the Board for approval as soon as possible so that they can be included in the regulatory financial information for 2004. Application of the Board's order should be made on a retroactive basis." That is the end of his quote.

As indicated at the end of PUB Supplementary Interrogatory Number 3 -- and I don't ask the Board to turn there right now -- but "EGNB is committed to working with Board staff to resolve any outstanding matters on this issue, taking into consideration the concerns EGNB expressed in its response. EGNB will submit a report including its recommendations to the Board for approval as soon as possible."

And about the only caveat we have there is about being able to conclude that within the balance of fiscal 2004. We are not sure that we can get it done in that time frame. But we will do it as soon as possible.

CHAIRMAN: Okay. The second part, retroactivity.

MR. HARRINGTON: This will deal with retroactivity. So we are not disputing his assertion regarding retroactivity.

CHAIRMAN: Okay. So we are down to the AFUDC. How do you wish to proceed? Sorry. Again Mr. Ross, did you have anything that you wanted to say on that?

MR. ROSS: Mr. Chairman, the only -- we just have some general comments to share at the end of the session.

CHAIRMAN: Hopefully it is not those general comments that you have made previously.

MR. ROSS: No. Correct.

CHAIRMAN: Okay. Good. All right. Mr. Hoyt?

MR. HOYT: In terms of AFUDC we are ready to proceed today. We are disappointed that Mr. Easson is not here, but understand that --

CHAIRMAN: So are we. And so is he.

MR. HOYT: -- through unfortunate circumstances. So we will proceed albeit a bit reluctantly. We have brought Ms. McShane in because --

CHAIRMAN: Mr. Hoyt, I will stop you with that. If you want to say look, let's adjourn over until Mr. Easson can be here in order to cover this, by all means you tell me that and we will do so.

MR. HOYT: No. We will take the opportunity to provide the information that the Board is looking for. We think that it is productive to try to identify what the issue is here that is causing the AFUDC matter to remain.

But we would like, you know, to reserve the opportunity that if Mr. Easson does not agree with the conclusions of our submission today that consideration be given to asking him to come back and to go through this process again, so that we have a similar opportunity and you have a similar opportunity to ask questions about the report.

As you describe, this is a little bit different process. I don't see it as particularly adversarial. It is trying to figure out the proper way to deal with this issue.

CHAIRMAN: Yes. Well, Mr. Hoyt, my understanding is on principle there is really no disagreement between Enbridge and Mr. Easson on the principles involved. It is just the mechanics of taking it from the page of theory to practical use of it. That is my appreciation of it.

MR. HOYT: Well, at various points in our preparation I would have agreed with that. It really appeared to us in the decision last year that there had been a determination by the Board and a couple of accounting firms that there was no double-charging of customers, which I understand to be the Board's primary concern.

But just through this process and the preparation, it appears that may not be the case. And perhaps as we go through our example we can determine if that is in fact the issue. We think it is really just a presentation issue.

We don't think the parties have much disagreement on AFUDC for the most part. But the issue is how should it appear on these regulatory statements? And hopefully the process today will help us get there.

CHAIRMAN: Good. Carry on, sir.

MR. HOYT: I would just also like to put on the record that we do appreciate the Board making the Ernst & Young report available.

We are in various stages of going through it as we do this, and suggest that if we are able to conclude this proceeding by lunchtime for example that it may be worth us taking the lunch hour and going through it and seeing if there is anything that would be worth coming back to the Board on, or alternatively discussing with Board staff.

The initial reaction that I'm getting is that it may assist in clarifying where the differences are.

CHAIRMAN: Well, if there is anything I think that you can do to assist in that regard, we will go for it, yes.

MR. SOLLOWS: If a late lunch would help it would be good for me to rise a little later. And I could give another course and come back here, from 1:30 to 2:30.

CHAIRMAN: I will take that into consideration. But a late lunch is asking a lot.

MR. SOLLOWS: I know.

MR. HOYT: So at this point I would like to ask Kathy McShane to lead us through --

CHAIRMAN: Okay. But just before we do that, I want to put on the record -- and I expressed this to you outside the hearing room -- that the Ernst & Young report which was received by the Board of course has private and confidential splashed all over it.

And Mr. Goss and I chatted about it. And our vague recollection is that that is probably just a normal accountant's disclaimer. Because they were Enbridge's books that in fact, figures that were reviewed.

And I presume that -- our presumption is that they were -- Ernst & Young was trying to protect that confidentiality there. And obviously you folks have no objection to it being used in this public hearing concept, that is the report itself. Because there are no actual figures. They are simply illustrative and that is it.

MR. HOYT: That is my understanding. It is a report, discusses the concept of AFUDC and then uses examples for illustration purposes. So we are okay with it being public.

CHAIRMAN: Okay. Thank you. Now if Ms. McShane is going to lead us through -- she is at a back table. So if you would take -- perhaps, Mr. Ross, you could loan her your --

MR. ROSS: Absolutely.

CHAIRMAN: No, no. Just move the mike back to her. That is great. Thank you.

MS. MCSHANE: I should start by saying that this was a team effort putting this together. And also that you should feel free at any point as I go through this to stop and ask questions or, you know, if you think it is going off in a direction that is not helpful, feel free to just stop and -- or stop me and ask anything you like.

CHAIRMAN: Okay. Ms. McShane, you have some hard copies of --

MS. MCSHANE: We do. We have some hard copies. Would you like to have them now to --

CHAIRMAN: Yes. Let's see if there is a logical way to mark them so that -- and that you can refer to what is on the screen as being whatever.

Okay. I will call this -- prints of sides is what they are.

MS. MCSHANE: I thought we would start out -- is everybody ready to go?

CHAIRMAN: No.

MS. MCSHANE: No? Okay. Give me the go-ahead when --

CHAIRMAN: This will be exhibit 2. And there are nine pages of it which, as I would appreciate, are the slides that you are putting up on the screen in the back of the room for assistance of the Board.

And I would just caution you that you are taking us through the evidence which has been put in in written form, okay. I don't want us going off on, as the American court system calls it, a sidebar, if you get my meaning. Go ahead.

MS. MCSHANE: So we thought we would just simply start by explaining what it is that we are trying to accomplish here.

When a company constructs Plant they incur financing costs in conjunction with spending the money to build the plant. And those costs of financing or carrying costs which are incurred while the plant is under construction must be recovered from ratepayers.

And just briefly there are, as has been recognized in the testimony and answers to IR's before the Commission, two approaches to doing this. There is the inclusion of the Construction Work in Progress or CWIP in rate base under which you as a utility have a current recovery of those construction financing costs.

Or the second approach is called the Allowance for Funds Used During Construction. Under the second approach, which is the typical approach that is used by Canadian utilities, the carrying costs that are incurred while the plant is under construction are capitalized.

And I would just point you if you would to Enbridge's response to Public Utilities Board Interrogatory Number 2 in which the company was asked to describe how the amount shown as Allowance for Funds Used During Construction was calculated.

And in response to Interrogatory Number 2, Enbridge explained that they calculate the AFUDC using the weighted average cost of capital and applies that to the average monthly construction work in progress amounts.

CHAIRMAN: There is no dispute as to the propriety of that, is there?

MS. MCSHANE: Fine. So we will move on from there. And then once the Construction Work in Progress becomes -- is ready to become operational that amount is transferred into rate base, into plant in service or property, plant and equipment. And at that point it starts earning the allowed rate of return on the rate base.

CHAIRMAN: It is added to the capital cost of the project.

MS. MCSHANE: Correct.

CHAIRMAN: Therefore it gets its return in that fashion.

MS. MCSHANE: It will -- yes.

CHAIRMAN: Yes.

MS. MCSHANE: It will get the return -- it will begin to recover those capitalized costs in the future through amortization of property, plant and equipment.

MR. SOLLOWS: So that I'm clear, the difference between the two methods seems to be that your Construction Work in Progress is recovered from current ratepayers when the construction work is being done as opposed to the AFUDC is recovered from future ratepayers as those where the asset is used and useful, is that correct?

MS. MCSHANE: That is correct. Yes.

MR. SOLLOWS: Okay.

MS. MCSHANE: Just Mr. Harrington wants to make clear that under equipment that you are not collecting the entire Construction Work in Progress.

MR. SOLLOWS: No.

MS. MCSHANE: You are collecting the carrying costs on that from current ratepayers.

MR. SOLLOWS: Yes, that's right.

CHAIRMAN: Yes. The only difference is that in one the carrying costs are capitalized. And it is recovered from the customer by amortization. And in the other one the carrying costs for the current year is borne by the current customer.

MS. MCSHANE: Correct. And if you took an example of the two methodologies and worked out where the cash flows to the investor came from over time, you would see that those two methodologies should give you the same present value of future cash flows. The only difference is in the timing.

CHAIRMAN: Yes.

MS. MCSHANE: So if we could go on to slide 2. You all recognize that Enbridge uses the AFUDC method. And that is similar to what most if not all Canadian utilities use.

We understand that it is the Board consultant's position that Enbridge, by including AFUDC in property, plant and equipment, by capitalizing the cost of financing during construction, and excluding AFUDC revenue from the regulatory revenue, causes the AFUDC amount to be included twice in rate base, once in the property, plant and equipment and once in the revenue deficiency deferral account.

And that is what our understanding is of the major difference between Enbridge and Mr. Easson.

In the first instance Enbridge and I do not believe that it is appropriate to include AFUDC as a revenue in the regulatory income statement.

CHAIRMAN: What happens -- and I'm sorry for interrupting, but I probably will. Mr. Easson shows the treatment in NB Power and NB Tel.

Could you refer -- I forget which Interrog' that is -- refer to that in light of what you have just said?

MS. MCSHANE: I will refer to that. That would be his response to --

MR. HOYT: It is IR 3.

MS. MCSHANE: IR 3?

MR. HOYT: Yes. Enbridge's IR 3.

MS. MCSHANE: Maybe we could talk about the NB Power first.

CHAIRMAN: Okay. I have got to find it first.

MS. MCSHANE: Pardon me?

CHAIRMAN: I have to find it, Ms. McShane. I have got too many pieces of paper hanging out of my binder here.

MR. HOYT: It is actually IR 1. Sorry. The attachments are at the end.

MR. SOLLOWS: NB Tel and NB Power, tab 4.

CHAIRMAN: Tab 4, the first set of Interrog's. And it is Interrog' what? 1, yes.

MR. SOLLOWS: We are looking at the tables. Table 2-1, is that -- or are we looking at his response?

MR. HOYT: Actually in IR Number 1 in the response there is a heading NB Tel and NB Power I believe. That may be what he is referring to.

MS. MCSHANE: Yes. Actually with the NB Power there is no attachment to that. There is simply a discussion within the response to IR Number 1 which is on the second page of IR Number 1. There is a heading that says NB Power. And it says "With reference to the published annual report for the New Brunswick Power Corporation."

And it goes through and it says -- it explains how NB Power accounts for additions to property, plant and equipment. And it says that they include interest on funds used during construction. It goes on to say on page 42 of the annual report under Note 5, "Finance Charges".

And it says that they have a credit for finance charges under the heading "Less Interest Capitalized." And then the conclusion is "This is a further example of a utility including the credit for AFUDC in its revenue requirement."

My response to that is this is simply an extract from NB Power's financial statements. This is not --

CHAIRMAN: Can I pause you right there. Mr. Goss, would you go round up some 2003, 2004 annual reports for NB Power? And we will take a brief respite.

We will take a brief recess. Ms. McShane, you might take a look at the report and see if there are some pages that just take a xerox.

MS. MCSHANE: Okay.

CHAIRMAN: We want to follow these things right straight through.

(11:35 a.m. - 12:00 p.m. - Recess)

CHAIRMAN: Ms. McShane, we are going to interrupt your presentation or really just cause the recess to go a little further on that. We want to go back to the -- it is not Willsey Road --

MR. HOYT: Vanier.

CHAIRMAN: -- the Vanier pipe for just a second. Because I heard you to say that it would become a shareholders' expense if we proceeded in the fashion that Mr. Easson recommends.

We have gone back and looked at the 2003 report again, page 7 of 13, the top of 14. It says "In my opinion this item should be removed from the rate base for regulatory purposes. Accordingly I recommend to the Board it should be directed that EGNB to calculate the net book value of the pipe in question and to remove it from the rate base on a permanent prospective basis."

That doesn't mean it shouldn't be written off. And in my layman's appreciation of what would happen is that it would be written off as a loss in the year in question. And that would then go into the deferral account.

MR. HARRINGTON: Would still be part of the revenue requirement.

CHAIRMAN: Would be still part of the revenue requirement. So you know, Mr. Easson, from our reading of it, was not recommending that it be a shareholders' expense. It is just that it wouldn't be amortized over the normal useful life of pipe.

I just wanted you to consider that. And if you have got any further comments on it make them now.

Mr. Harrington has some.

MR. HOYT: No. We take the Board's comments. And obviously that would be a much improved treatment insofar as the utility is concerned. That isn't our understanding of what would have happened in that case. But if that is the intention --

CHAIRMAN: Certainly that is the way -- Mr. Easson will have an opportunity to say, you have read it wrong, Board, or you haven't, et cetera. Okay. It would be part of the revenue requirement for the current year.

I liken it unto what the accountants for NB Power did with the boiler and tube replacement. And then they had the wooden manhole cover. The cost of doing that the first time, i.e. the repairs, et cetera that were done at Lepreau were quite legitimately capitalized.

But then when through negligence they forgot about a wooden manhole cover and turned the system on and it churned through, the cost of repairing that damage should not have been, in our opinion, or those of us who sit here, shouldn't have been recapitalized. It should have been written off in the year that it occurred. But that is NB Power.

Fine then. Ms. McShane, carry on. We are back at exhibit 2 on page 2 or the slide that is page 2.

MS. MCSHANE: So before we broke you had asked the question with respect to comments on the examples of Mr. Easson, those being NB Power and NB Tel.

CHAIRMAN: Right.

MS. MCSHANE: And with respect to NB Power, Mr. Easson had in response to IR Number 1, second page of that, had quoted or published 2003, 2004 annual report for New Brunswick Power Corporation.

And specifically he quoted how NB Power adds interest on funds used during construction into the cost of its property, plant and equipment and also how they deduct the interest capitalized from the finance charges that appear on their income statement.

And the conclusion following the quotes, where "This is a further example of a utility including the credit for AFUDC in its revenue requirement."

This is not a revenue requirement. This is simply a financial statement. What Enbridge would do in its financial statements is similar to what NB Power would do in its financial statements.

What Enbridge has gone on to do is taken its financial statements and made the requisite adjustments to turn them into regulatory statements.

So I don't see that Mr. Easson's example of NB Power is relevant to what we are discussing, since it is simply their consolidated financial statement.

With respect to the example of NB Tel, which does have some attachments, two pages of attachments, those being table 2-1 and table 4-1 -- and although I don't have any -- yes, these are from a filing before this Board in 1989 in application for a rate increase.

So these are in the nature of utility filings. And what I understand that NB Tel has done, although I have not studied their filing in any detail, is that when they determine their level of earnings for any given year, they do -- they start with their financial statements, which apparently would be what is on table 4-1.

And they would include in their other income their allowance for funds used during construction. And at the end of the day they have all of the income available for interest, dividends and retained earnings.

So when we go to table 2-2 -- pardon me, 2-1, I'm sorry, they are calculating what they need to achieve a return which -- on the actual common equity. So they are looking at 100 percent of the financing of NB Tel. They are looking at -- they are looking at it including the financing that would underlie both their Construction Work in Progress and their rate base.

So when you look at that average common equity for example, which is 1, 2, 3 -- the fourth line down on table 2-2, it is my understanding that that is their actual common equity per their financial books, which is different from what Enbridge is doing when it looks at its return on common equity for regulatory purposes, where it is only looking at the return that is allowed on the common equity underlying the rate base. It is effectively keeping the financing costs of Construction Work in Progress and rate base separate.

Maybe I can -- if you would look at -- and I'm not sure if this has an exhibit number. This would be Enbridge Gas New Brunswick's statement of income for regulatory purposes for the fiscal year ended December 31st 2003.

CHAIRMAN: Where would we find that?

MR. GOSS: That would be in -- sorry, Ms. McShane --

MS. MCSHANE: No. Tell me where it would be.

MR. GOSS: -- Mr. Easson's reports in 2003.

CHAIRMAN: You are going to have to speak up, Mr. Goss. It won't go on the tape.

MR. GOSS: That would be in Mr. Easson's report for 2003. I'm just looking at the page.

MR. SOLLOWS: Which page of 13? 2003? So it is pages numbered 1 to 13. Which page?

MR. GOSS: Yes. But Mr. Hoyt is right. It is Enbridge's filing, sorry.

MR. HOYT: For 2003. Page 1 of 14.

CHAIRMAN: That is under tab B?

MR. GOSS: Yes. Tab B as in Bob.

CHAIRMAN: Right. And it is what page of that?

MS. MCSHANE: It would be schedule A, page 1 of 14.

CHAIRMAN: Great. Got it.

MS. MCSHANE: And I would just point you to lines 20' --

CHAIRMAN: Hang on. We are still struggling to catch up here. We have learned a lesson here. We will not bind two years in one again. We are fine. Go ahead.

MS. MCSHANE: I would point you to lines 25 to 27.

CHAIRMAN: Yes.

MS. MCSHANE: And just indicate that when -- we are looking at what cost of capital is being calculated here. It is only the cost of capital that applies to the dollars that are in rate base.

Whereas when you look at the 13 percent return that NB Tel was referring to, they are talking about a return on the total common equity of NB Tel, which would include any common equity that is underpinning their Construction Work in Progress.

CHAIRMAN: I'm sorry. I'm gelling because I lost that.

MS. MCSHANE: Okay. Well --

CHAIRMAN: I mean, you know --

MR. SOLLOWS: I think I -- what you are saying here is this cost of capital under a debt on 26 and equity on 27 is entirely attributable to rate-based property and no property that is in construction or has not yet entered the rate base?

MS. MCSHANE: That is exactly correct.

CHAIRMAN: 26?

MS. MCSHANE: Yes.

MR. SOLLOWS: Yes. As opposed to the situation for NB Tel which you maintain is for their whole equity which is distributed otherwise?

MS. MCSHANE: That is correct. In other words my understanding of what NB Tel did was not attempt to really separate the capital structure, if you will, that underlies their rate base and the capital structure that underlies their Construction Work in Progress.

But that is what Enbridge does. And that is what I would say the majority of Canadian utilities do. And perhaps --

CHAIRMAN: I am going to have to caution you there. Let's not get into opinion evidence here.

MS. MCSHANE: I'm not.

CHAIRMAN: Well, it is your opinion that that is what the majority of Canadian regulated utilities. And I'm sorry, ma'am. That is your opinion.

Anyway it doesn't really matter from the point of view that you are explaining what these differences are. Okay.

MS. MCSHANE: Would it be helpful if we looked at a couple of examples of the presentation that is made by some of the other utilities, in particular -- I think it is useful. And again --

CHAIRMAN: Well, my difficulty here is the evidence portion is closed. Go ahead, Mr. Hoyt.

MR. HOYT: Mr. Chair, I think Ms. McShane was referring to the three examples that were attached to Enbridge's response to PUB IR 4.

CHAIRMAN: That is fine.

MS. MCSHANE: That is fine.

MR. HOYT: And those are the three that I think she is going to refer to.

CHAIRMAN: Oh, no. I have no problem there at all. You see what I'm trying to do.

MS. MCSHANE: I understand --

CHAIRMAN: And I'm being legalistic here.

MS. MCSHANE: Yes. I understand exactly --

CHAIRMAN: But I have to do this.

MS. MCSHANE: -- what you are saying. And I would only refer to ones for which information has already been provided.

CHAIRMAN: Okay. No. That is fine. But again so it becomes clearer, the difference here is that -- of course the purposes of the NB Tel statement are different from the purposes of Enbridge's statements now, as I understand it.

Because as I recollect this whole process, and being a dinosaur, I was around when we regulated NB Tel, is that this is all sort of in reverse and has to work that way, so that you can come up with what the revenue requirement will be in a future test year, which is what this is going toward. However, Mr. Easson will have --

MS. MCSHANE: True.

CHAIRMAN: -- an opportunity to chat to that.

But the important thing from my perspective is what you have just said is that 26 does not include the carrying charges of any construction work in progress that has not joined plant as being used and useful.

MS. MCSHANE: Yes. That is correct.

CHAIRMAN: Okay. So I'm sorry for all the major interruptions.

MS. MCSHANE: So if I could take you to Enbridge's response to Public Utilities Board Interrogatory Number 4.

CHAIRMAN: And that is tab -- under tab 3?

MR. SOLLOWS: The first set of Interrogatories?

MR. HOYT: Yes.

CHAIRMAN: And which Interrogatory again, sorry?

MR. HOYT: 4.

CHAIRMAN: Number 4? I have 4.

MR. HOYT: These should be three exhibits, IR 4. And it is those three exhibits that I believe she is going to refer to.

MR. SOLLOWS: By exhibits you mean the examples that are --

MS. MCSHANE: Yes. And I was going to refer you to page 2 of that at which there is -- it says "As an illustration EGNB has attached a copy of filings of Enbridge Gas Distribution, Heritage Gas and Atco Gas as exhibits A, B and C respectively."

CHAIRMAN: Are these all Enbridge affiliates?

MS. MCSHANE: No. Enbridge Gas Distribution is -- it would be regulated under the rules put forth by the Ontario Energy Board. Heritage Gas is the Nova Scotia greenfield utility which is owned by Sask Energy and Alta Gas.

CHAIRMAN: That should certainly be a simple statement.

MS. MCSHANE: Excuse me?

CHAIRMAN: That should be a simple statement.

MS. MCSHANE: Well, in fact it is a simple statement. Because it has not been in business for very long. But the very fact that it is a simple statement makes it one of the three that is perhaps the clearest in terms of presentation.

CHAIRMAN: And Atco, is that Albertan?

MS. MCSHANE: Atco Gas is -- yes. It is an Alberta gas utility.

CHAIRMAN: And that is regulated by the --

MS. MCSHANE: AEUB.

CHAIRMAN: -- AEUB. Okay.

MS. MCSHANE: Yes.

CHAIRMAN: Okay. Carry on.

MS. MCSHANE: So if it works for everybody I thought perhaps we could look at the Heritage Gas example which would be exhibit B in this response. And exhibit B --

CHAIRMAN: Mr. Goss, could you help us out? When she refers to something under tab -- you have got the same binder as we have, right?

MS. MCSHANE: Yes, I do.

MR. GOSS: That would be under tab B behind the actual responses. There is three tabs, A, B and C. Each one has a -- tab B is the Heritage Gas one. Behind all of the IR's there should be --

CHAIRMAN: The reason I can find it is I don't have it.

MR. GOSS: That is the one there.

CHAIRMAN: I don't have A, B, C. Okay. Sorry about that.

MS. MCSHANE: That is okay. So the first page of exhibit B is simply the introduction to the revenue requirements. And the second page, which is the first page I would like you to look at, schedule 3.1 shows the actual revenue requirement for 2003. And then the other years are forecast. But 2003 actual would be the corresponding actual of Enbridge Gas.

And what I wanted to focus you on in that particular schedule is that on line 4 there are income taxes that were in the revenue requirement and the proposed return on rate base, which is the cost of capital applied to rate base. And the only revenue requirement is the income taxes plus the proposed return on rate base.

Now there were no sales, if you follow down to line 7. There is nothing under "Other Revenue". So the revenue deficiency is simply the -- which is on line 10 -- is simply the sum of the income taxes and the total proposed return on rate base.

And a couple of pages behind that, page 7, 8 and then page 37 and 38 were just the backup sheets to show what the rate base calculation was, what the proposed return on rate base numbers were in terms of background. And they follow through to the return on rate base number that was at line 5 on schedule 3.1.

So at no point on this regulatory actual statement for 2003 did we see an AFUDC number.

MR. SOLLOWS: Well, on page 43 we have allowance for funds used during construction in the revenue, earnings and retained earnings statement.

MS. MCSHANE: Yes. I was going to get there. That is the financial statement of the company. So this is the Heritage Gas Limited's financial statement of income for financial reporting purposes.

And you see on that statement that there are two revenue items. There is the revenue deficiency accrual which comes -- which you can match up directly with the revenue deficiency from the regulatory statements from schedule 3.1 plus the allowance for funds used during construction.

But the revenue deficiency itself was calculated without regard to the AFUDC revenue. It was calculated solely with respect to the allowed return on rate base.

CHAIRMAN: Who did the audit of Heritage? Do you know? What firm?

MS. MCSHANE: I don't know. I could find out for you.

CHAIRMAN: Well, for instance I'm curious to know if it is Ernst & Young.

MS. MCSHANE: I can find out.

MR. SOLLOWS: You have included just portions of the filing?

MS. MCSHANE: Yes.

MR. SOLLOWS: The missing pages would be available?

MS. MCSHANE: They would be. I have the entire filing on A, C, D in my office, which I can certainly send if that would be of interest. It can be sent as, you know, electronically by e-mail.

MR. SOLLOWS: If I think it is necessary then --

CHAIRMAN: Well, I guess that is part of our job is to want to look in the context of everything around it.

MR. HOYT: So you would like the full filing?

CHAIRMAN: If we could, yes. Just the printed word. I don't need the glossy photographs. And the sooner we get that the better. However, I understand that the dates that we had discussed, Mr. Hoyt, are not available in October. That is my understanding.

MR. HOYT: In connection with?

CHAIRMAN: An adjourned date.

MR. HOYT: Oh, the 22nd. That is right.

CHAIRMAN: So the urgency isn't quite as urgent. Okay. Go ahead, Ms. McShane.

MS. MCSHANE: And I just point out that the other two examples that had been included in response to this IR, the Enbridge example, Enbridge Gas Distribution which is exhibit --

MR. HARRINGTON: It should be under your A tab.

CHAIRMAN: Under my A tab. Yes. There is the Enbridge.

MS. MCSHANE: And this for a historical year. And it is a reconciliation of the revenues from the consolidated statements to the regulated statements. And you can see there that the interest during construction is removed from the consolidated statements.

I have been informed that the Heritage Gas statements are audited --

MS. BLACK: No. The Enbridge statements.

MS. MCSHANE: Enbridge statements. Oh, sorry. The Enbridge statements are audited by Price Waterhouse.

Did you want to know who -- you wanted to know who the Heritage gas statements are audited by?

CHAIRMAN: Well, frankly I just would like to have the full statement.

MS. MCSHANE: Fine.

CHAIRMAN: And that will show. And that is no problem. And likewise probably the Enbridge one as well, the ones that you are using as examples, just so we have the full document, that is all, which is our normal practice when we get down to something like this, at least to know the context in which all the pages were set forth. So there is nothing jaundiced in my request.

MS. MCSHANE: Were there any questions that you had on the Enbridge Gas Distribution example?

CHAIRMAN: No.

MR. SOLLOWS: No, I don't think so.

MS. MCSHANE: And the third example that we provided was -- which is under the C tab, is the Atco Gas South example which was an actual as well.

CHAIRMAN: What on earth is that column "Adjusted For Temperature"?

MR. SOLLOWS: It is heating fuel. It is all adjusted for temperature variations.

CHAIRMAN: Would you swear Mr. Sollows please.

MR. SOLLOWS: Oh, the electric utility does this all the time.

CHAIRMAN: No, no. I'm just -- in the financial statement or income summary, what -- okay. Curiosity just got the better of me.

Go ahead, Dr. Sollows. How do you adjust your actuals for temperature?

MR. SOLLOWS: Well your revenue -- you deal with the number of degree days in the year versus the normal number of degree days. And we would adjust it that way.

CHAIRMAN: Well, I understand how you can adjust for temperature. But I would expect that whatever temperature was was. And the financial results would be based upon what the temperature was.

MR. SOLLOWS: Well, except it isn't. They often -- they normalize --

CHAIRMAN: Okay.

MR. SOLLOWS: It is because, you know, nobody has control over the weather.

CHAIRMAN: But this is historical.

MR. SOLLOWS: Well, it was the current actual, adjusted for temperature, previous year normalized. And so you have a big difference that isn't attributable to the variation in weather. You are trying to eliminate the variation in weather to find the variation due to other things.

CHAIRMAN: Okay. But I see that there is no closing retained earnings under the -- after the adjustment for temperature and that sort of thing. It is just for comparative purposes then.

Sorry about that. Thank you.

MS. MCSHANE: You are looking at schedule 1 out to the right of the actual financial results?

CHAIRMAN: Yes.

MS. MCSHANE: You have the --

MR. SOLLOWS: You just want to focus on the first column.

MS. MCSHANE: I mean, they would not obviously change their financial statements for purposes of --

CHAIRMAN: I just have this terrible habit. If I see something and don't understand it I ask a question. I don't mind if I look foolish. It is okay. Because I learn things that way.

MS. MCSHANE: In the case of Atco Gas I would say two things. One, that the reason that there is adjustment for temperature in the first instance is because the Board wants to see whether the company is really under or overearning or whether it is just a function of weather.

CHAIRMAN: Yes. I can appreciate that.

MS. MCSHANE: So that is the first thing.

CHAIRMAN: Yes.

MS. MCSHANE: And the second thing is that the Board wants to be comfortable that there is not unexplained differences between what is on the financial statements and what is on the regulated statements.

They had some issues in the past with respect to big differences between the actual capital and the rate base capital. So they are very careful about reconciling the two.

So my purpose in putting the Atco Gas example in here was to have you really focus on schedule 9, page 2 of 2 where there is a reconciliation. This would be one -- the sixth page in of this exhibit.

And you can see in their particular case they start with their utility income and add and subtract back the various nonutility items to get back to their financial statement.

And in this case you can see the utility income on line 4 excludes the AFUDC. And it is added back on line 7 to come up with the actual financial earnings.

The other way would be to start with the actual and subtract it out to come up with utility.

CHAIRMAN: Okay.

MS. MCSHANE: So if there are no questions about that particular exhibit then we can proceed to --

CHAIRMAN: Lunch.

MS. MCSHANE: -- lunch.

Would you like to stop here and --

CHAIRMAN: Yes. I think this is a good --

MS. MCSHANE: This is a good place to stop.

CHAIRMAN: It is 12:30. And it is a good spot. We will break for lunch and come back -- let's see if we can come back at 1:30. If not -- if we can't all make it back by then well, whenever we all get back.

Thank you.

(Recess - 12:30 p.m. - 1:55 p.m.)

CHAIRMAN: Anybody want to bring up anything before we go back to the presentation?

MR. HOYT: The only additional information we have got is we checked and Heritage Gas' statements are audited by Deloitte. So it is a --

CHAIRMAN: Thank you.

MR. HOYT: It is a different accounting firm.

CHAIRMAN: Right.

MS. MCSHANE: I think we have pretty much finished with this slide. So the next slide was simply quoting the Board's decision in October 2003 with respect to what the Board had requested that Enbridge do for purposes of its next financial statements, and adding the comment that the presentation that had been made for purposes of the statements for this year were in an attempt to comply with the Board's direction in that decision.

What I would like to do with this next slide is -- first of all this slide is a reproduction of Mr. Easson's response to EGNB's IR Number 3. And what we did with it was we actually retyped it and put it on a slide. Because trying to scan it and putting on a slide, it was totally impossible to read.

So if you want to compare this to the actual document that Mr. Easson provided --

CHAIRMAN: Yes. I don't --

MS. MCSHANE: You don't care? Okay.

CHAIRMAN: We have no problem. If you tell us that is a reproduction we will go from there.

MS. MCSHANE: So basically the point of the initial filing by Mr. Easson was to show that the two approaches, Construction Work in Progress in rate base and the AFUDC method would give you equivalent present value of revenue requirements.

And I think we discussed a little bit earlier that that is a concept that everybody here seemed comfortable with. And so in this particular page you can see that in the first instance the present value at 11 percent under the CWIP method is $27.77 and under the AFUDC method is $27.77.

So we basically used that filing as a point of departure to produce the next slide which essentially translates these same number into the approach that Enbridge uses for AFUDC.

And what I would like to go through is just to show what these numbers represent and then compare the result to what Enbridge understands Mr. Easson wants us to do or wants them to do.

The first line where AFUDC is the 11 percent return on $100 of capital expenditures. And that ties back to Mr. Easson's response.

And then we have another year of booked AFUDC in 2001 which is equal to 11 percent on $100 capital expenditure in 2000 and $100 capital expenditures in 2001 plus an 11 percent return on the AFUDC that was booked in 2000.

The next line actually is probably mislabeled. It says it is additions to rate base. And in fact what it is is amounts in rate base.

So in 2002 the 34.21 is the sum of the AFUDC amounts in 2000 and 2001. And then the years subsequent to that represent the unamortized amounts. Because we are amortizing the total of $34.21 over three years.

So we come down then to the third line. You can see that because we don't have the Construction Work in Progress in rate base in 2000 and 2001 there is no return on rate base from the AFUDC in those two years.

When the Construction Work in Progress plus the booked AFUDC is put into rate base, we get the return on the rate base plus the amortization of the AFUDC.

And if you follow this through you will see that this is the same result as in Mr. Easson's example which gives us a net present value of the cash flows from just the AFUDC of $27.77.

This is what Enbridge does for purposes of booking AFUDC and collecting it over the life of the assets. And I would say that there are some additional complexities. But they don't do it exactly this way. I mean, there would be some averaging involved. But this is effectively the approach they use.

Our understanding of what Mr. Easson wants to have happen is found on the next line. In this case the major difference is if you focus on the two columns, 2000 and 2001, where --

CHAIRMAN: Should that be relabeled "amounts in rate base" as well?

MS. MCSHANE: Yes. I'm sorry. The same relabeling would occur there as well.

Our understanding of what Mr. Easson wants Enbridge to do is that in the years 2000 and 2001, where the AFUDC is being accrued and on the financial statements there is an AFUDC revenue item, that he would like the credit to be applied so that the revenue deficiency is reduced by the amount of the AFUDC revenue.

So since what we are doing in this example is stripping out the revenues only from AFUDC. In the line entitled "Annual Revenue Requirement" we took out the $11 in revenue that would appear on the financial statement. And likewise we did so in 2001.

So that you effectively from AFUDC have a negative revenue requirement in 2000, a negative revenue requirement in 2001. And then as you start to actually recover from customers the AFUDC amounts you get the same inflows that you get under the Enbridge approach.

The present value then of these five years of cash flows is a negative number. And it shows clearly that the net effect of AFUDC is to negate the recovery of the cost of financing the construction. Because there is no causative present value as there was under both of the other examples.

And if there are any questions with respect to that feel free to ask. Otherwise I'm going to go on to the next slide.

I was asked to make the further point that effectively what happens under the case of including the AFUDC in the regulatory income statement is to increase the revenue that is reported by the amount of the AFUDC and therefore lowers the calculation of the utility revenue requirement. And therefore it would follow that it would lower the calculation of the revenue deficiency.

But the revenue requirement in the first instance doesn't include any amount for AFUDC. The revenue requirement is simply the dollars that are related to the operations of the rate base part of the utility.

Okay, Shelly?

MS. BLACK: Yes.

MS. MCSHANE: All right. So going on to the next slide, this was simply intended to show what Enbridge and I would view as the difference between -- the basic differences between a financial statement and a regulatory statement.

And simply put, that is that the financial statements would contain all the assets, all the income, both the revenue part and the expense part and all the capital that is related to the consolidated operations of the firm.

And the regulatory statements, either through a reconciliation from the financial statements or as a stand-alone statement reflect only the operations of -- that are related to rate base. And they would exclude all items that are not related to the revenue requirement.

MR. SOLLOWS: I guess the question that I have then is where in the regulatory filings would we pick up on the cost of work in progress in anticipation of what is coming into the rate base?

MS. MCSHANE: Well, certainly you can do that through a reconciliation statement.

MR. SOLLOWS: Okay.

MS. MCSHANE: So that ultimately you end up just with what is revenue requirement related income. You can also just ask for a separate statement related to AFUDC --

MR. SOLLOWS: Right.

MS. MCSHANE: -- so that you can see what is --

MR. SOLLOWS: Coming.

MS. MCSHANE: -- exactly in Construction Work in Progress without the complication of making the reconciliation between the two statements.

But having said that, I mean, there is nothing that is uncommon about having a reconciliation statement as long as it is done in such a way that it doesn't double-charge or underrecover these construction financing costs.

So I will move on to the next slide and say that what should end up, as I said before, in the statement of income for regulatory purposes is just the amounts that are related to the revenue requirement, which would include only the cost of capital that relates to the rate base.

Construction Work in Progress is not part of the rate base. So if you include the AFUDC revenue in the statement of income without reflecting the corresponding financing costs, then you have overstated the regulatory income.

So the inclusion of the AFUDC revenue without including the corresponding costs of financing will understate your revenue requirement. It will understate your revenue deficiency. And you won't be able to recover the actual cost of financing Construction Work in Progress.

And ultimately if you do exclude the AFUDC from the regulatory statements you end up charging ratepayers the actual cost of financing the rate base. And you give the investor the appropriate return or appropriate opportunity to earn the return you have authorized on rate base.

And in contrast, if you include the AFUDC revenue in the statements without also reflecting the cost, you will undercharge ratepayers the actual costs that have been incurred for financing. And investors will not earn the authorized return.

Now we did put together a more complex example to show that you won't earn the allowed rate of return. I don't propose to go through that. But I would like to, if you are interested, leave it with you as something that you could study at bedtime when you really need to fall asleep.

MR. SOLLOWS: He is always accusing me of taking --

MS. MCSHANE: What is that?

MR. SOLLOWS: He is always accusing me of taking this stuff home to read to make me go to sleep. But I would like to see the --

MS. MCSHANE: You would like to see --

CHAIRMAN: I would like to see it.

MS. MCSHANE: Okay.

CHAIRMAN: We may well ask you about it.

MS. MCSHANE: Okay. Would you like to see it --

CHAIRMAN: That is new stuff though, isn't it? It wasn't --

MS. MCSHANE: Yes. It is new stuff.

CHAIRMAN: I'm going to ask that you give it to staff. We will share it with Mr. Easson and see if he has any difficulty with us discussing it when we reconvene.

I'm sure, Mr. Hoyt, you understand why I'm trying to limit these things to what was actually put on the record. I don't mind things put on for illustrative purposes. If that is what this is and it goes on and shows, it clarifies the issues for us, then so much the better.

MR. HOYT: I realize that is the case. As I understand the process, the transcript and anything presented here is going to Mr. Easson.

CHAIRMAN: Yes, it is.

MR. HOYT: So the three parties who are interested --

CHAIRMAN: I don't want him to get ahold of it until later. No. I would prefer doing it that way if that is okay.

So Mr. Goss, you can take custody of it, if you would.

MR. HOYT: There is one other matter though that we would like to do. We would need a recess of 10 or 15 minutes.

What we would like to do though is to address some of the points that are made in that Ernst & Young report and actually take one of their examples using Enbridge's actual numbers to try and demonstrate how consistent Enbridge's approach is to what they were describing.

CHAIRMAN: Yes.

MR. HOYT: I don't think the process will take very long.

CHAIRMAN: Okay. We can do that. However since I lost a

Commissioner at lunch I didn't have an opportunity to have them review that report. So it may be more than 15 minutes.

And Mr. Goss, do you have copies of the report that was shared with them for the Board or I do have to make some copies.

MR. GOSS: it should be sufficient. I think everybody has one.

CHAIRMAN: All right. And you let us know when you are ready. And then we will let you know when we are ready. (Recess)

CHAIRMAN: Before we start, I shared with you, Mr. Hoyt, your party, the decision of the Connecticut Public Utilities Control Authority in reference to Connecticut Light & Power Co. which is reported in 17 Fourth Series PUR 1997. And the excerpt is from page 20, 21 and 22.

All I wanted to do was -- I had a chance to read through that briefly. And though this seems to characterize what we have been talking about here today, and just ask any comment that you or your party might have.

MS. MCSHANE: I did get a chance to read this. And my understanding from this portion of the decision is that the Commission in Connecticut set forth three different options for recovery of financing costs of construction, two of which were to include CWIP in rate base.

And one of those was deemed not to collect the cost from the customers who should pay the costs. And the third option was to exclude CWIP from rate base, allow the company to capitalize the AFUDC but not to include the AFUDC in the net operating income used to determine total revenue requirements. And that is indeed the alternative that Enbridge is using.

CHAIRMAN: Thank you. As I said before, I will share all that with Mr. Easson for his comments. But I have trouble using those PUR digests, I must admit. They are not as good as Canadian abridgements, et cetera. There you have it. Carry on.

MR. HOYT: Thank you, Mr. Chair. What we would like to do at this point is to take a look at the Ernst & Young report that was made available to the Board in its review of the 2001 financial statements of EGNB, focus on an example or their description of the traditional method and apply some of Enbridge's -- or apply Enbridge's numbers to that example and to demonstrate how we see the AFUDC issue being treated.

So I will ask Shelly Black to go through that.

MR. SOLLOWS: Which? Oh, the Ernst & Young.

MS. BLACK: Yes. I would just like to refer to the Ernst & Young letter. And it is page 3, their conclusion.

CHAIRMAN: Hang on. I think I got one here. No. Carry on. We just keep leaving things everywhere.

MS. BLACK: So referring to the conclusion on page 3, they make the statement that "As Enbridge's Statement of Income for Regulatory Purposes excludes a rate of return on work in progress, it is appropriate that the AFUDC is added to the asset base and amortized once it is put in service. It is also appropriate that the AFUDC capitalized in the current year be excluded from Enbridge's Statement of Income for Regulatory Purposes."

They continue on. "Although Enbridge's method of preparing its Regulatory Statements is not the traditional method it results in the same recovery from ratepayers and therefore does not result in an excess recovery from ratepayers."

So this particular report does refer to the 2001 financial results. But EGNB's methodology for the treatment of AFUDC has not changed in 2002 or 2003.

And they refer to two examples in their report. Examples number 1 is Enbridge's method. Example number 2 is the traditional method of preparing regulatory statements.

So we have quickly sort of taken our statement of income --

CHAIRMAN: I'm having trouble hearing you.

MS. BLACK: Oh, sorry.

CHAIRMAN: Just slow down a tad.

MS. BLACK: I have had too much coffee.

CHAIRMAN: We old fellows here. Go ahead.

MS. BLACK: What we have taken it as a statement of income for regulatory purposes for the year ending 2003. That was filed on page 1 of schedule A.

MR. SOLLOWS: Page 1 of schedule A, statement of income.

MS. BLACK: Yes. So I started with that schedule. And if I could just refer you to this screen at the back of the room.

MR. SOLLOWS: Is it possible to make that bigger?

MS. BLACK: I'm sorry. I tried.

MR. SOLLOWS: I'm wondering if we could maybe close the curtains so that I get a little bit more contrast. Oh, that is better. Okay.

MR. HOYT: Although we can't print that --

MR. SOLLOWS: You can leave the numbers off or you can give me the text.

MR. HOYT: -- we will send this electronically so that you can have a hard copy.

MR. SOLLOWS: Just closing the things has made it better. Thanks.

CHAIRMAN: All right. So this -- just so that we will know, this is in your annual review for the 2003 year?

MS. BLACK: Yes.

CHAIRMAN: Okay. And so that in fact we have in our binders. All right. And you are just referring to it up there so we have a better view. Okay. Carry on.

MS. BLACK: No, sorry. Actually I have taken that schedule and I have modified it slightly and presented it in the traditional manner that is referred to in the report.

CHAIRMAN: Say that another way. You have made changes to what is page 1 of schedule A in the 2003 report?

MS. BLACK: Yes.

CHAIRMAN: Okay. And the result of those changes is shown on the screen now. And you will be providing that in electronic form at a later date.

MS. BLACK: Yes.

CHAIRMAN: And you can't print it?

MS. BLACK: Not at this time.

CHAIRMAN: You sound like an insurance company -- our systems won't allow that. Go ahead Ms. Black.

MS. BLACK: Okay. So this is basically our original statement of income. But we have taken it and traditionalized it as referred to in our report and demonstrated that we can come to the exact same deficiency for the year.

So we have our revenues. We have all our expenses for financial purposes and recognize the gas sales and customer service. So basically you come to net income for accounting purposes which includes actual interest expense and actual interest revenue. And it also includes AFUDC revenue. You didn't see this on 1 and 3. So that is net income for accounting purposes.

Now to continue on in the traditional method we will take -- we will add back the actual interest expense, remove the interest revenue. We will include the regulated interest expense which includes the return on rate base plus the allowance for interest during construction.

And we will make a few other regulatory adjustments, capital, taxes, the risk-sharing mechanism for the firm service, a few disallowed items such as goodwill. And we come to net income for regulatory purposes which shows a loss of 9.8 million.

You add back your authorized return on equity which includes your allowance for equity used during construction and you come to a deficiency which is the equivalent to our deferral account of 16.2 (inaudible).

CHAIRMAN: In the future we are not going to see that gas sales on there at all, are we?

MS. BLACK: No. We will remove that.

CHAIRMAN: With frankness I have no question having trouble seeing it. But that is okay.

MR. HOYT: As I say, we will make this available so that you can -- just to be clear, what we are trying to do is to take the 2003 figures and put them into the so-called traditional method of Ernst & Young, to demonstrate what they describe as the conditional -- or traditional method, and how Enbridge proposes to deal with AFUDC gets you to the same place.

CHAIRMAN: Okay. Good.

MS. MCSHANE: I might just add one point here. The key difference between what Ernst & Young describes as the traditional method and their other example which is consistent with what Enbridge does is that when they look at the regulated cost of capital, they are including both the cost of capital related to rate base and the cost of capital related to CWIP.

So that if you put in that schedule the cost that is related to both pieces, obviously you need to put in the income that applied to the CWIP as well.

But if you are only going to have the pieces of the cost of capital and debt and the equity that applied to rate base, it is inappropriate to include the income, the AFUDC income that applies to the CWIP.

CHAIRMAN: Yes. Anything else, Mr. Hoyt? Sorry. We are waiting on you, sir.

MR. HOYT: Oh, sorry about that. No, nothing further on the AFUDC issue.

MR. SOLLOWS: I'm just wondering if you could help me understand. It is in the EGNB/PUB response to the first set of Interrogatories. And it is the response to Interrogatory number 2, page 2 of 2.

Now I'm wondering if you could just walk me through how that calculation progresses. It starts with the opening balance of CWIP December 1st 2003.

CHAIRMAN: Yes. Okay. I'm sorry. It is 2 of 2. It is Interrogatory Number 2.

MS. BLACK: So page 2 of 2. And this is basically illustrating how AFUDC is calculated in any given month. So the first section basically determines what the average balance of construction work in progress is for any given month, the 1.4 million.

MR. SOLLOWS: Yes. And I guess going into that, if I look at that, you started with 1.1 million at opening balance. And then you had during the month 2.25 million?

MS. BLACK: In activity during the month, yes.

MR. SOLLOWS: And from that you subtract 445'?

MS. BLACK: Yes.

MR. SOLLOWS: I guess when I read this -- I'm trying to figure out what the -- I have got these numbers subtracted including the system calculated AFUDC and then a number. That 589,583, that is not the sum of those numbers, is it, or is it?

When I quickly did it I just couldn't make sense of where the numbers came from. I sort of added and subtracted and didn't get it. Maybe I made a mistake.

CHAIRMAN: We try to keep his calculator away from him. But it doesn't work.

MR. HARRINGTON: That is the sum of those numbers.

MR. SOLLOWS: It is. Okay. So when you take the 2.2 million and you subtract the -- so you ended up with the 589,583?

MS. BLACK: Yes.

MR. SOLLOWS: Is the sum of those numbers including the opening balance?

MS. BLACK: Not including the 1.1, no.

MR. SOLLOWS: So then you took one-half of that 589,583 and added that to the opening balance?

MS. BLACK: Yes.

MR. SOLLOWS: Is that what has been done?

MS. BLACK: Yes. We took half of the 589' to represent the average activity during the month.

MR. SOLLOWS: Okay. I got you. And then from there on down you are just taking then that new balance of work in progress and allocating the monthly interest, just simply taking it by one-twelfth?

MS. BLACK: That is right, to represent one month. I think when they actually do it in the system they narrow it down to the number of days in that month and --

MR. SOLLOWS: Okay. Yes. All right. That's helpful.

CHAIRMAN: And my understanding is Mr. Easson has no quarrel with that method of --

MS. BLACK: No.

MR. SOLLOWS: No. I was just confused, that is all.

Now the other questions related to gas costs and things like that. And it is all here. So that's fine.

CHAIRMAN: Mr. Ross, do you have any questions about any of the presentation that has been made on AFUDC?

MR. ROSS: No, sir.

CHAIRMAN: Do we have anything else left to cover, Mr. Hoyt? I think that is the third of your three items.

MR. HOYT: Yes. I just got a comment to make, kind of unrelated. It is not -- it is just something that, in answering the Board's IR at this time, we came across a couple, particularly IR 9 which asks us to provide revenue numbers for GJ and compare them to Gazifere and EGD.

When we get questions like that sometimes, we know that it is going to involve a tremendous amount of work to try to get those numbers, to get some kind of apples to applies comparison. And in that situation knew that at the end of the day that it wouldn't be that valuable, the information.

They -- different utilities -- those ones are mature. There are just a lot of differences in terms of the rate classes and so on. And I guess really more just looking for direction.

You know, when a question like that is asked our approach is always to try to be as responsive as possible. And I don't think -- well, I may be wrong. But I don't think anybody would have envisioned the amount of effort that would be involved to try to answer it.

CHAIRMAN: You would pick up the phone and phone Mr. Goss, simple as that.

MR. HOYT: Okay. That is fine.

CHAIRMAN: And it may be that we did not truly appreciate what was coming. Or it may be that you have misinterpreted our question to you, any number of things.

But as you are fully well aware I'm sure, we are not out to make you gather information that (a) won't have a useful place in the hearing process, and (b) is very expensive. Because the ratepayer then has to pay for that.

MR. HOYT: Okay. Thank you.

CHAIRMAN: All right. Now so we are out of any appropriate time in the month of October then I guess.

MR. HOYT: No. Actually -- and I don't recall the dates that Mr. Easson might have been available. But we have checked our schedules in October 14th, 15th, 19th, 20th, 26th, 27th, 28th and 29th. Any of those would work.

MR. SOLLOWS: As long as it is not all of those.

MR. HOYT: Any one of those would work.

CHAIRMAN: First of all we have to check with Mr. Sollows and see what lectures he is going to cancel now.

Again Mr. Easson has indicated the week of October the 11th except the 14th. Now from --

MR. HOYT: That would leave the 15th.

CHAIRMAN: And that leaves the 15th.

MR. HOYT: It fits with us as well.

CHAIRMAN: Yes. That is Friday.

MR. SOLLOWS: That is not a good day for me. But if that is what it has got to be, you will make a lot of students happy. A Monday or a Wednesday is much better.

CHAIRMAN: Well, I'm on the Miramichi on the 12th and the 13th. That is sacrosanct. I'm sorry. It is almost as good as moose draw. Not for me but for some people.

And then the 18th I'm closing the cottage on the Island. So I'm sorry. And the 19th --

MR. HOYT: No. I'm just told that doesn't work. The 20th would.

MR. BOUCHER: The 20th, I have got a trial all day.

CHAIRMAN: The 20th he has got a trial all day. And we have a licenced stakeholder consultation on the electricity side in Fredericton.

MR. SOLLOWS: And my students have a Friday off is what you are saying.

MR. HARRINGTON: The other chunk is the 26th to the 29th, if any of that works.

CHAIRMAN: Yes. He hasn't got that down. He has got the week of the 18th which sounds to me as if he has got an audit on the week of the 25th.

Let's tentatively say the 15th. And what I will do is go back to Mr. Easson and talk to him about that last week. NB Power is having a workshop for our full Board in

Fredericton on the 26th and 27th on the new market.

But the 25th, 28th and 29th are open on our calendars. Is there anything there that would fit with you folks?

MR. HOYT: Yes, the 28th or 29th.

CHAIRMAN: Okay. So it is okay for everybody here. And the only thing would be Mr. Easson. I think that if we put it in that last week it is better.

Because the shorthand reporter then has time to do up the transcript in a reasonable time. We can get that stuff off to Mr. Easson. And you can fulfil your undertakings, et cetera, that sort of thing.

And I think we would appreciate your making certain that the undertaking that was made this morning in reference to the Vanier pipe be done in plenty of time so that we can look at it and discuss it whenever we reconvene.

And it may well be that -- and you are certainly planning on having Ms. McShane back again I guess?

MR. HOYT: Unless you tell us that Mr. Easson has accepted our position.

CHAIRMAN: I could go out on a limb and suggest that she will be back.

MS. MCSHANE: That's fine.

CHAIRMAN: But if that is the case, again attempting to pursue to get to the bottom of it and get the best argument in front of us, we might ask Ms. McShane to be subjected to a few questions as well.

MR. HOYT: That is fine. That is the process we expected today, so --

CHAIRMAN: Sure. Absolutely. Good. Thanks to -- oh, sorry. Mr. Ross has sat there patiently all day. So we will let him say what he wanted to say and to sit through all this.

I'm sure you learned a lot about AFUDC though?

MR. ROSS: I did, Mr. Chairman. I have put our remarks in writing. So in the interest of succinctness, as you would appreciate.

CHAIRMAN: Right. Thank you. I appreciate you putting this in writing to us. I can say frankly that it is different from that which you have spoken to us previously. I just think we have got the right church but the wrong service.

I think that Enbridge is considering an approach to the Board sometime in the fall/early winter period to talk about its franchise and its account, deferral account, et cetera and that sort of thing.

And I really -- to me it is more appropriate that you come at that time. And that would be a proceeding where the concerns that you are expressing in here that I have read would be -- I can't say they are all relevant.

But certainly that is the kind of information that I think will be discussed in our forum at that time.

MR. ROSS: Thank you. We weren't aware of that upcoming proceeding, so --

CHAIRMAN: You weren't, no.

MR. ROSS: We were not aware of that.

CHAIRMAN: No, no. Of course not. And that is just in the preliminary stages right now. But Mr. Ross, that certainly -- and I will ask the Secretary of the Board to ensure that Mr. Ross be given a heads-up when that notice is finally done, so that you can be informed and enter into that process.

MR. ROSS: Thank you.

CHAIRMAN: But what we are doing now is a review of past years experience financially. And we are reviewing that and looking at the appropriateness of the accounting, et cetera, that sort of thing. But we will be looking into the future in that next hearing.

MR. ROSS: Thank you, Mr. Chairman.

CHAIRMAN: Okay. Thank you.

All right. We will adjourn over tentatively for the 15th which may be put over, and we will tell everybody, to the 28th or the 29th, if we can arrange that. That is a little better timing I think.

Good. Thank you very much. And of course, in a tradition of the Board, if you want to read that full case why go ahead.

(Adjourned)

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

Reporter