

New Brunswick Board of Commissioners of Public Utilities

Hearing April 14th, 2000

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INC. DATED DECEMBER 31, 1999, FOR APPROVAL OF ITS RATES AND
TARIFFS.

Henneberry Reporting Service

INDEX

- Mr. Kumar - direct by Mr. O'Connell - page 764
- cross by Mr. Blue - page 771
- cross by Mr. MacDougall - page 921

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Chairman: David C. Nicholson, Q.C.

Commissioner: Monika Zauhar

Commissioner: Robert Richardson

Commissioner: R. J. Lutes

Commissioner: Leonard Larocque

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CHAIRMAN: Good morning, ladies and gentlemen. Any preliminary matters?

MR. MACDOUGALL: Yes, Mr. Chair. To start off with, I am told by fellow counsel that it is no reflection on the applicant that we have been forced to move back. I hope you take that into consideration.

MR. O'CONNELL: I have changed sides, Mr. Chairman.

MR. MACDOUGALL: If the hearing goes too often we might be right outside the back door.

On legitimate preliminary matters, there were three undertakings left by the applicant. One was the joint venture agreement. That will available at the break or at lunch time.

The name -- there is 28 joint ventures and each one

had a separate joint venture agreement, so we will provide the full form of the joint venture agreement with the name of the investor on the front whited out. There is one section of one appendices that has proprietary information of customers of the company, and that will have been removed, and Mr. O'Connell is aware of that and the document will otherwise go in complete.

The second undertaking was a services agreement. That as well will be available either at the break or at lunch time. It is out being copied now.

And the third undertaking, which we were reminded about by Mr. O'Connell yesterday, was the interest rate to be charged to EGNB Inc. by Enbridge Inc. And that interest rate is actually the interest rate that forms part of the application. So that is the ten year Government of Canada bond rate plus 2.5 percent.

CHAIRMAN: Thank you, Mr. MacDougall.

MR. MACDOUGALL: With respect to the cross-examination, Mr. Chair, counsel have agreed that it will be Mr. Blue, Mr. Stewart, and the applicant reserves its right to go last.

CHAIRMAN: To go last.

MR. MACDOUGALL: To go last.

CHAIRMAN: Right. Any other matters. If not, Mr. O'Connell.

MR. KUMAR:

DIRECT EXAMINATION BY MR. O'CONNELL:

Q.1 - Mr. Chairman and Commissioners. The Board counsel presents Dr. J. Kumar. Dr. Kumar -- before you start I believe you have a couple of corrections to your evidence on your answers to interrogatories that you want to --

A. Yes. The first correction is I don't have Ph.D.

Q.2 - Oh, sorry. Go ahead, Doctor.

A. The first correction is that I don't have Ph.d, anyway I thank you very much for giving me an honorary doctor degree.

I have just four or five corrections.

The first one is on page 56, 56, the first paragraph on that page, the last two sentences I need to correct because of the corrections made yesterday by Ms. McShane.

So the sentence starting from, except for one LDC -- it should read now, except for two LDCs Gazifere and Natural Resource Gas. Then it should continue to read, neither Ms. McShane recommended nor did any commission approve an equity ratio of more than 40 percent for any LDC.

Then in the next sentence, in the case of Gazifere the equity ratio was -- it should be 40.50 rather than 40.0, 40.5 percent, and then I should add, and in case of Natural Resource, the equity ratio was 50 percent.

Next one is on page 57, first paragraph of the first

answer. The second line from the bottom of the first paragraph it says, 15.80 percent, it should be 16.50 percent.

Next one is on page 65, 65, there is a paragraph that is indented on that page, it starts with, as an interesting addendum. That whole paragraph should be taken out because I misread or misunderstood Ms. McShane's testimony and when I received the interrogatory from EGNB I realized I made a mistake. So that should be taken out.

Next one is on page 70, 70, my testimony was based on -- this is the first answer on that page -- that was based on company's original class cost of service. When I got here I received a revised cost of service. So this paragraph -- this answer needs to be changed and I believe we have distributed the revised answer to the question on page 70.

And the last one I have on page 88, the first answer on top of that page, the second line, the word "special" should be out, and "given to customers on an individual basis" those words should be out.

So the sentence should read -- and I will add some more words -- sentence should read, in response to Board staff interrogatory number 11, EGNB stated that it would not advise the Board about the discounts given to a customer class.

And that completes my corrections.

Then I have a couple of corrections to the responses

--

Q.3 - To the interrogatories?

A. -- to the company's interrogatories.

Q.4 - Okay. Why don't you tell us about those now.

MR. BLUE: Excuse me, Mr. Chairman, should this revision be marked as an exhibit.

A. The first one is to the company's interrogatory number 13(c) --

MR. O'CONNELL: Just a minute, sir. Mr. Kumar, just hang on for a second. We are getting it marked as an exhibit.

CHAIRMAN: The revision testimony of Jatinder Kumar, page 70, will be Exhibit B-17.

Q.5 - Go ahead.

A. The first correction to my responses is to the company's interrogatory number 13(c), that's on the second page of the response. The third line, instead of minimum it should be maximum.

Interrogatory number 36(c), that's on the third page of that response. At the bottom of that response where it says, elective utilities, it should be electric utilities.

And that completes my corrections.

Q.6 - Now with those corrections do you confirm and adopt your

written evidence?

A. Yes, I do.

Q.7 - And do you have a summary of your pre-filed evidence that you want to deliver now?

A. Yes, I do.

MR. O'CONNELL: Mr. Chairman, may he go ahead with his summary? Carry on.

A. If I have to summarize my testimony in one sentence I would say it's very simple and very fair to everyone.

Basically in my testimony I stressed upon the factor - well established regulatory factor of balancing the interest of investors as well ratepayers.

That has been the central focus of the regulation almost everywhere where a regulation process is in place.

And other thing is that the Board should allow those expenses and investments which are prudently and reasonably incurred and they should be protection for the investors as well as protection for ratepayers generally, and this Board included has objective of setting just and reasonable rates.

There are two major issues in this case for which I try to provide the guidelines. One issue relates to the cost of service. In the cost of service there has been one major issue, capital structure and rate of return.

One thing I want to clarify that I did not -- and I am

not testifying to the -- what exactly -- what exact capital structure the Board should adopt or what exact rate -- return on equity the Board should adopt. I have given my thoughts and responses to the company's analysis on these two issues.

Basically the premises has been -- company's premises has been stand alone and small size. I pointed out stand alone is a fiction and, in spite of what Ms. McShane said yesterday, there is universal concept it is not.

Even she in the list she provided, the cases she recommended the capital structure, in 50 percent of the cases -- only in the 50 percent of the cases she recommended hypothetical stand alone capital structure. So I don't know whether she is wrong 50 percent or she is right 50 percent, but it's not universal.

And even assuming it's a universal principle, the Board is not bound by what other commissions have done, other jurisdictions have done. Each Board, and like this Board, in my opinion, should consider what are the factors which are applicable to this jurisdiction, what are the considerations, how the interest of the ratepayers and investors can be balanced.

Small size -- again the evidence and the data provided by Ms. McShane does not show any justification for adding 250 basis point.

There are certain mitigation factors even Board adopts stand alone position, like -- and Ms. McShane admitted -- there is a risk -- a reduction due to the establishment if Board approves the deferral account, there is a risk mitigation. None of those utilities the company compared has that account.

Second, if the Board allows 50 percent equity there should be consideration in establishing return on equity.

Again none of the utilities, at least Canadian utilities, whether electric or gas, may be very rare exception, has 50 percent equity ratio.

Third, rate flexibility, there is a flexibility provided, if the Commission provides that flexibility that should be considered also as a mitigation factor.

Fourth, the Board adopts light handed regulation, there should be some consideration there also.

And the next issue is rates. Again, rates should be established in such a way that it takes into consideration the risks to the company in this greenfield environment, at the same time it protects the ratepayers and results in real savings, not in some perceived savings.

The last point I have about the development period, I think there need to be some specific guideline to be approved when the period should end. Again, they should -
- I should consider there should be some flexibility

because this is a new greenfield environment, but the criteria I recommended, when the company achieves a return on equity equal to the return allowed to other Canadian LDCs, the development period should end.

It doesn't mean that companies should be allowed the same return on equity what others are allowed, but the company can come back and ask for whatever rate of return or return on equity they can justify. They can ask for it and other parties can provide their input to the Board.

And with that I conclude my summary.

MR. O'CONNELL: Mr. Chairman, Commissioners, this witness is available for cross-examination.

MR. BLUE: Mr. Chairman, for the Board and everyone to be able to follow the questions I am going to ask, I suggest you get out Mr. Kumar's direct testimony, I am sure you have that.

Also, as we did for Ms. McShane, we prepared a compendium of documents from the case that we are going to refer to, and we have given some additional ones to Mr. Kumar through Mr. O'Connell yesterday that are in this brief. So if we could have the brief marked as an exhibit we can proceed.

CHAIRMAN: C-16.

CROSS-EXAMINATION BY MR. BLUE:

MR. BLUE: Good morning, sir.

MR. KUMAR: Good morning, sir.

Q.8 - Could you please turn to the part of your evidence entitled, "Qualifications and Experience of Jatinder Kumar".

A. Yes, sir.

Q.9 - Is your résumé accurate?

A. I hope so.

Q.10 - Is it up-to-date?

A. I think it should be, maybe one or two cases maybe missed in the list of the testimony I submitted.

Q.11 - Are you university degrees in petroleum engineering and mechanical engineering?

A. What university?

Q.12 - I say are your university degrees in petroleum engineering and mechanical engineering?

A. That is correct.

Q.13 - Would you turn to page 2 of your résumé and look under the heading, "Memberships"?

A. Yes.

Q.14 - Are your professional memberships in accounting and engineering?

A. Yes.

Q.15 - Now look at the paragraph above memberships --

A. Yes.

Q.16 - -- do you see that?

A. Yes.

Q.17 - Does it describe the nature of the 200 hearings or proceedings in which you have appeared?

A. About which association?

Q.18 - This is on page 2 --

A. I am looking at page 2, yes.

Q.19 - -- yes, and you say that Mr. Kumar has appeared in more than 200 proceedings.

A. Yes.

Q.20 - My question was, does the paragraph describe the nature of the 200 proceedings in which you have appeared?

A. Almost every issue related mostly to the electric and gas industries. I have testified also to the steam, water --

Q.21 - That wasn't what I asked you, sir. I asked you --

A. What issue --

Q.22 - I asked you if the paragraph on page 2 accurately describes the proceedings in which you have appeared?

A. It may be more than 200 approximately, I think, at least 200.

Q.23 - Does it describe accurately the type of hearing in which you appeared?

A. The last count I have, it should be 21, 22 retail jurisdictions, and I believe it -- yes, I believe.

Q.24 - Sir, you say that you appeared as expert witness in the

matters relating to public utilities and energy matters, electric and gas restructuring, unbundling, competition, merger acquisition, incentive ratemaking, gas and electric power acquisition and transmission, anti-trust and price squeeze issues and competition issues. Those are the type of matters?

A. Yes. You forgot accounting, economic, regulatory and technical matters.

Q.25 - Okay. I will give you those. Now, sir, can you show me anywhere in that paragraph where the terms, capital structure, cost of debt or cost of equity appear?

A. Economic matters include -- I did not testify to the issue what capital structure should be used or what return on equity should be used. I have testified what are the -- I have analyzed these issues in various testimonies.

Q.26 - Sir, that is not what I asked you. I asked you can you confirm for me that the words, capital structure, cost of debt and return on equity do not appear in the description you have given us of the type of matters in which you have appeared?

A. These are the matters as I stated --

Q.27 - That is not what --

A. Those words don't appear, that's very clear.

Q.28 - Thank you.

A. Anybody can read that.

Q.29 - Do you have an MBA?

A. No, I don't have.

Q.30 - Do you have any advanced degree in business or finance?

A. No. I have taken courses.

Q.31 - Correspondence course and night school courses?

A. No. I have taken university courses also.

Q.32 - Well I took undergraduate courses in economics as well, but my question was, do you have any advanced degrees in economics or finance?

A. No, I don't. That's what I stated.

Q.33 - Thank you. Are you perhaps a chartered financial analyst like Ms. McShane?

A. No.

Q.34 - Are you perhaps a certified rate of return analyst like Mr. Parcell, who is with me?

A. I don't know. I have not seen his qualifications and

--

Q.35 - Are you familiar with what a certified rate of return analyst is?

A. Yes, I am.

Q.36 - Do you have that qualification?

A. No, I don't have that qualification.

Q.37 - Thank you, sir. Could we now turn, sir, to page 10 of the supplement to your evidence?

A. Page 10?

Q.38 - Yes.

A. Yes, sir.

Q.39 - It is entitled, "Testimony Submitted".

A. Yes, sir.

Q.40 - Is that list up-to-date?

A. This, sir, does not include two cases I recently testified in Nova Scotia.

Q.41 - What case in Nova Scotia, sir?

A. What cases?

Q.42 - What cases in Nova Scotia have you testified in or offered testimony that you haven't told us about in this list?

A. I'm sorry. I was looking at the wrong list. No. Both cases are listed in that list.

Q.43 - Thank you, sir. And --

CHAIRMAN: The Board is lost as to --

MR. BLUE: Page 11.

CHAIRMAN: Page 11 of which list?

MR. BLUE: Page 10 of the supplement to Mr. Kumar's testimony is a list of cases in which he has appeared. And page 11 contains the two cases from Nova Scotia.

A. This does not include one case where I recently testified before a federal regulatory commission. That was a company case, Southwestern vs. Soyland Electric Cooperative.

Q.44 - Sir, how many of these cases have you testified in in the last three years?

A. How many? I have not counted them.

Q.45 - Well, look at the list and try to give me a number?

A. This does not give the years. And I don't have any recollection how many cases I testified. But there are quite a few.

Q.46 - Mr. Kumar, I find that amazing. You are an expert witness. And you do not remember the cases you have offered testimony in in the last three years?

A. If I testified in two or three cases I would remember.

I don't even remember how many total cases I have testified. I have been testifying as '72. That has nothing to do with expertise or nonexpertise, how many cases I have testified.

Q.47 - Mr. Kumar, how many cases have you testified in in the last year?

A. Last year? Again I don't recall.

Q.48 - All right.

A. I can give you that information, if you are interested in that. I can look at it and give it to you. I don't recall.

Q.49 - Okay. Let's just start in the middle of the page.

Arka, the Arka case in Arkansas?

A. Yes.

Q.50 - What was the subject matter of your testimony in that case?

A. Oh, if I recall, that would be issues related to the gas utility in the state of Arkansas.

Q.51 - What issues?

A. Oh, there were quite a few issues raised. There were some marketing issues, cost of gas.

Q.52 - All right. Did you in fact testify?

A. I'm sorry?

Q.53 - Did you in fact testify, sit on a witness stand like you are doing today and be cross-examined?

A. No, I don't believe so. The testimony was submitted.

Q.54 - Okay.

A. And the case was settled, if I believe -- if I recall.

Q.55 - What about the Union Electric, CITS merger case before FERC? What was that about?

A. That was, as I said, as I state here, it was a merger case. And there were again several issues. And that case related basically customer protection issues, some contract issues.

Q.56 - Did you testify in that case? And were you cross-examined?

A. No. I think we settled that.

Q.57 - Okay. Then the Long Island Lighting Company, show cause notice in New York?

A. Yes.

Q.58 - What was that about?

A. I think this case related to flexible rates, incentive rates.

Q.59 - Again did you testify? And were you cross-examined in that case?

A. I think I was.

Q.60 - You don't recall whether you testified?

A. I don't recall, you know. I think I was test' -- I was cross-examined.

Q.61 - Could you check that and let us know?

A. Yes. I can check that, yes.*

Q.62 - Thank you. Now the PNM Gas Service unbundling case in New Mexico, what was that about?

A. That's about unbundling of rates, of gas rates in the state of New Mexico.

Q.63 - Okay. Did you testify in that case? And were you cross-examined?

A. I think there were two or three cases around the same time. One case was settled. Other two or three cases were litigated, I testified. I don't know whether this case included that list or not.

Q.64 - All right. So that takes care of the other New Mexico cases, PNM Gas Service collapse, rate riders, down below?

A. Yes.

Q.65 - Okay. And the bottom one, PNM Gas Service rate case in New Mexico?

A. Yes.

Q.66 - Okay. Now sir, the Granite State Transmission case before FERC, what was that about?

A. That was a case involving the installation of LNG facilities in Maine.

Q.67 - So I take it your evidence was engineering evidence, engineering type evidence?

A. No, not -- no. I did not do any feasibility study. Basically it was economic analysis of the facilities versus other options.

Q.68 - Did you offer testimony in that case?

A. The testimony, it was written testimony or affidavits that was offered.

Q.69 - You did not testify and weren't cross-examined?

A. No. This case was settled. In fact it went to the Court of Appeal after that. And some settlement was reached. Because FERC did not allow the hearing. And the case went to the District Court of Appeal. And then it was settled there.

Q.70 - Okay. Now the Exxon pipeline case before FERC, what was that about?

A. That's a pipeline in Alaska. And it involved rate issues and some other economic issues.

Q.71 - Were you cross-examined in that case, sir?

A. Again the FERC did not have any hearing in that case. They issued the order without a hearing. So no witness was cross-examined.

Q.72 - Okay. PJM Utilities in Pennsylvania, what was that case about?

A. That's unbundling at a retail level, electrical retail level.

Q.73 - All right, sir. Were you cross-examined in that case, sir?

A. Again no witness was cross-examined. This docket is still open theoretically. And the Commissioner has not set it for hearing. So no witness was cross-examined in that case.

Q.74 - Thank you. Now on page 11 there is the West Virginia American Water Company case?

A. Yes.

Q.75 - And what did that involve?

A. That case involved a rate case filed by West Virginia Water Company.

Q.76 - It is a water case?

A. Yes. That's correct.

Q.77 - Okay. Were you cross-examined in that case?

A. No. I don't believe so. I think no hearing was held in that case. So no witness was cross-examined.

Q.78 - Now then there is the Shenandoah Gas Company in West Virginia --

A. Yes.

Q.79 - -- that seemed to occur around the same time as part of the same docket, am I correct?

A. It's not the same docket. It's a different docket.

Q.80 - Yes, it is.

A. It's a gas case.

Q.81 - What was that case about?

A. That was a rate case also which involved a cost of service study.

Q.82 - Were you cross-examined in that case?

A. Again I believe the case was settled. And no witness was cross-examined.

Q.83 - Nova Scotia Power Inc., what was that case about?

A. The first one involved flexible discounted rates for electric utility.

Q.84 - And who were you appearing for in that case?

A. For the Board of Nova Scotia.

Q.85 - Okay. Did you offer testimony?

A. Yes. I offered testimony. I was cross-examined also.

Q.86 - And the second Nova Scotia case, 872?

A. That involved again electric rates, what we call real time pricing of electric power.

Q.87 - Did you testify in that case?

A. Yes. And I was cross-examined also.

Q.88 - Thank you, sir. For purposes of this hearing did you read the Gas Distribution Act 1999?

A. Yes, I did.

Q.89 - Did you read the Gas Distribution and Marketers Filing Regulations --

A. Yes.

Q.90 - -- made under the Act? And did you read the Gas Distribution Uniform Accounting Regulations?

A. Yes, I believe so, yes.

Q.91 - Okay. And did you read the RFP that the government of New Brunswick put out on December 22nd 1998?

A. I did not read the entire RFP. I did read parts of it. And I think I referred that in my testimony also.

Q.92 - You didn't read all of it?

A. I don't believe I read everything.

Q.93 - Okay. Are you aware that the Province awarded the general franchise to Enbridge Gas New Brunswick following a competitive bidding process?

A. That's correct.

Q.94 - Okay.

A. I think it was done in August '99 if I recall it.

Q.95 - And did you read Gas New Brunswick's proposal dated March 31st 1999?

A. Again I read a substantial part of that proposal,

basically related to rates.

Q.96 - Okay. You did not read all of it?

A. I don't recall that I read every part of it.

Basically I read related to -- I focused more on issues related to a proposal related to a rate plan.

Q.97 - Now are you aware that in that process the government sent out letters requesting clarification, and Enbridge Gas New Brunswick sent in letters clarifying its position in the proposal?

A. Yes.

Q.98 - Did you read those letters?

A. I think I believe so. At least I read quite a number of responses again related to rates. My focus was on rates.

Q.99 - Now did you read the general franchise agreement entered into between the Province and Enbridge Gas New Brunswick?

A. I read parts of it. Basically again my focus was on the issues related to rates.

Q.100 - Was one of the parts you read the Essential Elements?

A. Yes. That's -- in fact I repeat most of it if not all in my testimony.

Q.101 - And you are aware that the Essential Elements is part of the general franchise agreement?

A. Yes, I'm aware of it.

Q.102 - And I take it that you have read the application filed by Enbridge in this case?

A. Yes, I did.

Q.103 - And you have read the information and responses filed by Enbridge to the different parties?

A. Yes, I did.

Q.104 - Have you researched any regulatory decisions in Canada to prepare yourself for testifying here today?

A. Yes. Basically I researched the Sempra gas case. I read most of it, if not all of it. And that was not the case yet -- they have not filed the rate plan. But I read the application, both decision granting franchise.

Q.105 - All right. But what other Canadian regulatory Board decisions have you read besides the Sempra decision of the Nova Scotia Utilities and Review Board?

A. Another one I believe I read Inuvik Gas Company.

Q.106 - You have read the decision?

A. I think, yes, if I recall I read the decision.

Q.107 - Did you reach behind the decision and look at the filings?

A. No, I did not look at the filing there.

Q.108 - Have you read any decisions involving Ontario, of the Ontario Energy Board?

A. No, I did not.

Q.109 - Have you read any decisions of the British Columbia

Gas Utilities Commission?

A. No, I don't believe any of the -- there are any recent decisions related to greenfield situation.

Q.110 - Have you read any decisions of the Alberta Energy and Utilities Board?

A. No, not recently. Might have been a few years back.

Q.111 - Have you read any decisions of the National Energy Board?

A. I read parts of it related to the pipeline.

Q.112 - That's the Maritimes and Northeast Pipelines?

A. Yes. That's correct.

Q.113 - And those are the only -- that's the only decision you have read of the National Energy Board?

A. I might have read some of the old decisions but nothing to do with this case.

Q.114 - All right, sir. So I take it that you are unfamiliar with how TransCanada Pipelines is regulated in this country?

A. I don't recall. I might have read. Because I generally read quite a few pipeline --

Q.115 - I'm asking you are you familiar with how TransCanada Pipelines is regulated in this country or are you not?

A. As I said, I don't recall exactly.

Q.116 - All right. Are you familiar with how Westcoast Transmission is regulated in this country?

A. No.

Q.117 - Are you familiar with how Foothills Pipelines is regulated in this country?

A. No.

Q.118 - Are you familiar with how the Consumers Gas -- Enbridge Consumers Gas Company in Ontario is regulated?

A. I'm familiar with some of the parts of Consumers Gas regulation or how it is regulated.

Q.119 - My question was are you familiar with how it's regulated, what the regulatory decisions applying to it are on different regulatory issues?

A. Basically I am familiar with the regulation related to capital structure and return on equity.

Q.120 - All right. Thank you. And that's from the review you have done for the preparation of this case, is it?

A. That's correct.

Q.121 - Thank you. Sir, could you turn to page 5 of your testimony?

A. Yes, sir.

Q.122 - Now, sir, in paragraph (f) you are summarizing what you understand to be Enbridge Gas New Brunswick's proposal. Is that correct?

A. That is correct. I start with summary on page 4. Page 5 is continuation of the summary.

Q.123 - And in paragraph 5(f) going on to page 6 --

A. Yes, sir.

Q.124 - -- you state in (f) EGNB will provide unbundled gas distribution service, and may provide gas commodity as a regulated or unregulated operation. Do you see that?

A. Yes, I do.

Q.125 - Sir, are you aware that Enbridge Gas New Brunswick may only supply gas as a supplier of last resort?

A. Yes, that's correct.

Q.126 - Well then your statement in (f) is inaccurate, is it not?

A. No, it is not. No, it is a gas service. It's not inaccurate, gas services can be many types.

Q.127 - That's your position?

A. Yes.

Q.128 - Okay. Thank you, sir.

A. So I did not specify what type, but it's not inaccurate statement.

Q.129 - Would it have been much trouble, sir, to say that Enbridge Gas New Brunswick will provide unbundled gas distribution service and may provide gas commodity as a supplier of last resort?

A. Yes, that's correct.

Q.130 - Well why didn't you say that instead of what you said?

A. I did say it because that's -- that's where I specified here. I did not specify it but it's not

inaccurate statement.

Q.131 - I guess it's just imprecise. Sir, let's go to page 12 of your testimony.

A. Page 12, yes, sir.

Q.132 - Now, sir, here you start your discussion of the Province's rules and regulations. Is that correct?

A. That is correct.

Q.133 - And this whole discussion, I believe, goes on to the end of page 29 of your testimony?

A. That's correct.

Q.134 - No, sir, in paragraph 1 on page 12 you have quoted the definition of alternative form of regulation, which is a term defined in the Gas Distribution Act 1999. Is that correct?

A. Yes, sir.

Q.135 - Have you seen similar provisions in natural gas regulatory legislation anywhere else?

A. Anywhere else? Yes, similar. It may not be the exact language.

Q.136 - What other statutes have you seen similar language in?

A. In the other jurisdictions or --

Q.137 - Yes.

A. Basically you see in fact I quoted sort of similar language. The first, just and reasonable rates, that word is very universal in almost every --

Q.138 - I'm not talking just and reasonable rates. I'm talking about the definition of alternative regulation that says that in New Brunswick we can regulate by such things without regard to -- establish just and reasonable rates by performance based regulation without regard to methods based strictly upon cost of service rate base and rate of return, including earnings sharing, price caps, price indexing formulas, ranges of authorized rates return and reduction or suspension of regulatory requirements.

Where and what jurisdictions have you seen similar regulatory definitions?

A. I think I quoted one similar. May not be the exact language. First, you know you changed the question a little bit. But beside that point, some of that things I have quoted on page 26.

Q.139 - That talks about --

A. That's Massachusetts Department of Public Utilities.

Q.140 - Okay. So Massachusetts is a jurisdiction you would point to?

A. That's one. You know, these -- this not unusual language. If you want me to do the research, I can do the research. But this is not unusual language included here in the province.

Q.141 - All right. Sir, when did provisions like this first start appearing in regulatory laws that you are familiar

with?

A. I'm sorry, could you --

Q.142 - When did the ability to use alternative forms of regulation and not use cost of service rate based rate of return type regulation begin? When did that begin?

A. Well if you look at the history, I think you may see very, very early also -- we are talking province or outside the province, if you let me ask you a question?

Q.143 - I'm talking about jurisdictions that you are familiar with. When did that type of regulation begin to become permitted?

A. In fact I type that subject in my testimony. Incentive regulation is not a new concept. This has been very -- in late 1800s --

Q.144 - Sir, I'm not confining my question to incentive regulation. I'm confining it to generally alternative forms of regulations, light-handed regulations, the type of methods described in the definition in the Gas Distribution Act 1999 of the Province of New Brunswick.

When did those provisions start appearing in jurisdictions you are familiar with?

A. Okay. I will answer. Again my answer is same. Alternate form of regulations is not a new concept. Light-handed regulation is also not a new concept.

Q.145 - Right.

A. This concept has been there. But again it became active basically when the competition started at very rapid rate in the utility area. This concept of light-handed regulation came about, if I recall the first time this issue was discussed in detail was Federal Energy Regulatory Commission, what light-handed regulation, why they are going for it.

Q.146 - What year was that, sir?

A. I will say '95.

Q.147 - All right, sir. Thank you. So in terms of North American regulatory practice, would you agree with me that the move to light-handed regulation like we see in the Gas Distribution Act 1999 in New Brunswick is a fairly new development?

A. In -- no, I said this concept has been there for a long time, over a hundred years. But, again, it started getting the attention and focus in 1995.

In fact if you look at the history of the regulation -
- and I studied it quite a bit and I wrote also about it -
- there was very, very light-handed regulation in the beginning when the utility industry started in North America, whether in Canada --

Q.148 - Sir, I don't want a lecture. I'm trying to be specific.

A. Please let me finish my answer.

Q.149 - Yes. But answer the question that's being asked and we will get a lot further.

I want you to tell me, if you know, when did the move in North American regulatory jurisdictions towards the type of light-handed regulation that is contemplated in the New Brunswick Act begin. Was it the late 1980s or 1990s? Was that when it began?

A. No. As I said, light-handed regulation is not a new concept. It started in late 1800, early 1900. There was very little regulation that was light-handed. They may not have used the word. If your question is when light-handed word was used, that I answer you about '95.

Q.150 - Thank you. Now sir, let's refer to page 14 of your testimony?

A. Yes, sir.

Q.151 - And in the answer to the question that you pose yourself under the heading "Generally Accepted Ratemaking Principles" you say "In my opinion the Board's primary responsibility is to establish just and reasonable rates."

Do you see that?

A. Yes, I do.

Q.152 - Can we agree that when you are referring to just and reasonable rates here in the province of New Brunswick, it is in the context of the alternative forms of regulation required or permitted under the Gas Distribution Act 1999?

A. No.

Q.153 - You say that the Board should decide just and reasonable rates without regard to the governing statute?

A. No. That was not your question. And no, the answer is no to your question.

Q.154 - Then let me go through my question again. Are you saying that just and reasonable rates excludes concepts of lighthanded or alternative forms of regulation?

A. Yes. That's one part of it. And the cost of service is another part.

Q.155 - I'm sorry, sir. Your answer is not responsive. My question is when we talk about just and reasonable rates in New Brunswick --

A. Yes, sir.

Q.156 - -- we must talk about it, must we not, in the context of lighthanded or alternative forms of regulation?

A. That's one feature, yes.

Q.157 - Okay. Thank you.

A. But it's not the sole criteria for the just and reasonable rates for the province.

Q.158 - Okay. Now sir, on page 13 at paragraph 5 --

A. Yes, sir.

Q.159 - -- you make the same point in describing what the Board's powers in your view are, that the Board may fix such rates and tariffs as it finds to be just and

reasonable?

A. Yes, sir.

Q.160 - And my question is the same. When you say that you must say in the New Brunswick context, that must be done in the context of alternative forms of regulation or lighthanded regulation, is that correct?

A. It's both, as I said, alternative forms of regulations, lighthanded regulations and then cost of service -- cost of service, rate of return regulations.

Q.161 - Right, sir. Now sir, can we go to page 14?

A. 14?

Q.162 - Yes.

A. Yes, sir.

Q.163 - And here, sir, you say that the Board should take a number of generally accepted ratemaking principles into consideration, right?

A. Yes, sir.

Q.164 - And in fact you say in the third and fourth line of the answer that in fact it is essential for the Board to do so?

A. Yes.

Q.165 - And to support that position you refer to a number of treatises, is that correct?

A. That's correct.

Q.166 - All right. Now let's look at the treatises that you

refer to. The first book you refer to is Dr. Alfred Kahn's The Economics of Regulation Principles?

A. Yes, sir.

Q.167 - And sir, let's refer now to tab 2 of that brief I gave you?

A. Tab 2?

Q.168 - Yes.

A. Yes, sir.

Q.169 - Now sir, what I have given you is pages 3, 4 and 5 of Dr. Khan's volume 2 which contains the quote that you put in your submission?

A. You said page 3, 4, 5. I see pages 10, 11.

Q.170 - They are out of order in 3?

A. Yes. 3, 4, 5. Yes, sir. I'm there.

Q.171 - Okay. Now will you agree with me that the context of Dr. Kahn's remark is a discussion of the reasons why governments sometimes put restrictions on industries, that that is the context in which the quotation that you make is made?

A. That's correct.

Q.172 - Okay. Now sir, could we go to page 10 of the text that you quote from?

A. Yes, sir.

Q.173 - And by the way, I take it you accept Dr. Fred Kahn's book as an authoritative text on regulation?

A. That's correct.

Q.174 - And then at page 10 at the bottom of the page you see the final paragraph, two concluding words?

A. Which -- two concluding, yes.

Q.175 - Yes. He says two concluding words. What we have done so far is merely to list some of the outstanding historical reasons and theoretical justifications for the association of regulation with the imposition of restraints on competition. We have not yet appraised them either in general terms or in specific context. That is the first word.

The second is that the merits of the policies implied must, in the nature of the case, be constantly changing over time. For example technology is perpetually developing. So the natural monopoly of yesterday may no longer be natural today. Again the economic case for producing interests are typically better organized consumer interest to exert pressure either directly on commission or indirectly on legislatures when it comes to the public policies that bear directly on them. All of these factors have undoubtedly been influential.

A. Yes. You read it correctly.

Q.176 - Do you agree with it, sir?

A. Yes.

Q.177 - Thank you. Now sir, you also refer to an article that

you wrote in the Fortnightly -- Public Utilities
Fortnightly, volume 99. And this is on page 22.

CHAIRMAN: Where is it now?

MR. BLUE: Page 22 of the testimony, sir.

CHAIRMAN: Thank you. Again we have a similar thing to
yesterday where you had pages 3, 4 and 5 from the text.
It is out of order. That is fine.

And then you skip over to page 10. And the paragraph
that you quoted refers to all of the text that went
before. But we are missing six or eight pages.

And I don't know what were on those six or eight pages
and whether or not this reference with two concluding
words refers to something that was --

MR. BLUE: I'm telling counsel it is, sir.

CHAIRMAN: -- back on 3, 4 and 5.

MR. BLUE: I will get you the pages. And you can check.

CHAIRMAN: Okay. Thank you.

A. First I did not refer -- I did not use the word
article in my testimony. I just wanted to correct you.

Q.178 - No. Because what I wanted to draw the Board's
attention to was that although the citation appeared to be
like an article, in fact it was a letter to the Mailbag?

A. That's correct. It was and that's why I wanted to
correct you.

Q.179 - Now sir, you refer on the same page to the FERC's

decision in the Texas Eastern Transmission Corporation docket, number RP83-35 --

A. That's correct.

Q.180 - -- back in 1985?

A. No. It's 19' -- it is an '83 docket. So the decision was issued in 1985. And the docket was 1983.

Q.181 - Thank you, sir.

A. Yes.

Q.182 - But the FERC, I think you will agree, like the Susie Bogas song, changes like the weather on its principles. And there has been a lot of FERC decisions since 1985 bearing on the issues that are involved in this case?

A. There are decisions. But FERC has -- FERC still quotes of this decision in other decisions decisions. So FERC has not overturned this decision.

Q.183 - Well, sir, you will agree with me that there have been a lot of subsequent FERC decisions dealing with the competitive industries and electricity and natural gas since 1985?

A. Yes, sir.

Q.184 - Thank you. Now sir, another textbook you refer to -- and this is on page 23 of your testimony.

A. 23? Yes, sir.

Q.185 - Is Garfield & Lovejoy's Public Utility Economics 1964?

A. That's correct.

Q.186 - 36 years ago it was written, correct?

A. Right.

Q.187 - Now sir, do you consider those authors' views still authoritative?

A. Yes.

Q.188 - All right. Now I notice that on page 23 that you haven't quoted from Garfield & Lovejoy. You have paraphrased them?

A. I might have paraphrased. I don't recall exactly.

Q.189 - All right, sir. Now sir, let's see what these authors say is relevant about the issues that the Board have to decide in this case?

A. Okay.

Q.190 - And I have given you behind tab 3 --

A. Tab 3?

Q.191 - Yes.

MR. BLUE: And again, Mr. Chairman, the pages are a little bit out of order.

Q.192 - But here on page 134 --

A. 134?

Q.193 - Yes.

A. Yes. I'm there.

Q.194 - Garfield & Lovejoy are talking about pricing policies, is that correct?

A. That is correct.

Q.195 - Okay. Then if we go to page 135 which is --

A. 135?

Q.196 - Yes, which is the first page behind the tab?

A. Yes, sir.

Q.197 - On the left-hand side --

A. Yes, sir.

Q.198 - -- first full paragraph --

A. On the left-hand side, yes.

Q.199 - -- we see this, "Public utility rates are intended to accomplish much more than produce revenues equivalent to the approved cost of service. They are also intended to apportion the company-wide cost of service among consumers in a reasonable manner and to provide an effective instrument for the marketing of public utility services. This last objective has received insufficient recognition or none at all from any of the commentators on public utility rates. The proper design of public utility rates is fundamentally important to the successful marketing of public utility services. It is for this reason that commissions generally allow utility management considerable latitude in the design of rate schedules with the limitation that total revenues are not to exceed the approved cost of service. This follows from the fact the utility management which bears the entire marketing responsibility also is in the best position to achieve

detailed knowledge of market characteristics."

Do you see that statement?

A. Yes, sir. I see it.

Q.200 - Do you agree with that statement?

A. I agree. And in fact I mentioned I did not ignore it in my testimony. And so I don't think that in exception what is mentioned here. I --

Q.201 - Okay.

A. -- included some of these things in my testimony.

Q.202 - Let's go to page 137, sir?

A. Yes, sir.

Q.203 - And on the right-hand column we see a heading in bold type entitled "General Objectives of Utility Pricing Policies".

A. Yes, I see that.

Q.204 - And it says, and I quote, "A public utility's structure of rates should be designed to accomplish the following general objectives; (1), produce revenues equivalent to the approved cost of service determined by the commission --

A. Yes.

Q.205 - -- "(2), maximize utilization of fixed plant; (3), assure maximum stability of revenues; (4), distribute the total cost of service reasonably among the different classes of customers; and (5), promote and retain the

maximum economic development of its market."

A. Yes, sir.

Q.206 - "Except for the first of these objectives practical necessity often requires a balancing of objectives when the fullest achievement of one conflicts with the fullest achievement of the other."

A. Yes, sir.

Q.207 - Okay. And I take it you would agree with that statement?

A. Yes, sir.

Q.208 - And you certainly agree that one of the purpose of rates is to promote and retain the maximum economic development of its market?

A. That's correct.

Q.209 - Thank you.

A. And that's what I say in my testimony also.

Q.210 - And on page 138 --

A. 138, yes, sir.

Q.211 - -- in the first full paragraph on the right-hand side, first sentence, "rates should be designed to hold existing business" --

A. Sorry.

Q.212 - I am on the left-hand side?

A. Firsts full paragraph on the right-hand side?

Q.213 - Yes. I am on the left-hand side, sir.

A. That's right. I thought -- okay.

Q.214 - My army sergeant would be shocked. Okay. It says,
"rates --

A. I hope you did not forget what is your right-hand side
and what is your left-hand side. Okay. I'm sorry.

Q.215 - It says, rates should be designed to hold existing
business, promote new business, be just and equitable to
the customer, and it goes on, but it stresses that rates
should be designed to hold existing business and promote
new business, do you agree with that?

A. Yes, sir.

Q.216 - Thank you. Now, sir, another text that you quote from
is Bonbright's Principles of Public Utility Rates written
in 1961.

A. That's correct.

Q.217 - 39 years ago, right?

A. Yes.

Q.218 - And do you accept Bonbright as an authoritative
author?

A. Yes, sir.

Q.219 - Now, sir -- tab 4, if you turn to tab 4 you will see a
quote.

A. I am there.

Q.220 - Yes. And, sir, you will see in the context that the
author is talking about the appropriate pricing of public

utility services, is that correct?

A. That is correct.

Q.221 - And he says -- and this is the first full paragraph on the page -- in default of more clearly established terms, the four functions to be distinguished may be called, respectively, (1), the producer motivation or capital attraction function, the efficiency incentive function, the demand control/consumer rationing function and the income-distributive function.

Do you see that statement?

A. Yes, I do.

Q.222 - So you agree that one of the purposes of rates and pricing of public utility services is the producer motivation or capital attraction function, to make sure that somebody will invest in providing utility service?

A. That is correct.

Q.223 - Sir, can we look at page 20 or your --

A. 28? Yes, sir, I am there.

Q.224 - Okay. Mr. Kumar, would you -- page 20.

A. Page 20 you said?

Q.225 - Yes, of your testimony.

A. Yes, I am there.

Q.226 - And this is the point that you were talking about where you are talking about prudent expenses?

A. That's correct.

Q.227 - Okay. And you say in paragraph (d) that only those expenses are allowed to be recovered which represent normal conditions?

A. Yes, sir.

Q.228 - Okay. And that recurring, i.e., non-recurring expenses should not be included in rates?

A. That is correct.

Q.229 - Okay. Sir, isn't it true that the principle that non-normal expenses should not be included in the cost of service -- isn't it true that that principle is there to keep utilities from inflating their cost of service and rates and then staying away from the Regulator and keeping rates high?

A. That's correct.

Q.230 - And that's a principle applicable to mature utilities, isn't it?

A. It should be applicable to any place with cost of services included.

Q.231 - All right. But in a greenfield utility like Enbridge Gas New Brunswick aren't there going to be a lot of extraordinary expenses in the startup years simply because it is inherent in it being a greenfield operation?

A. Even with a greenfield operation there are certain expenses which should not be allowed.

Q.232 - Now, sir, I wasn't asking whether it should be

allowed. I just asked you as a fact, can't we foresee that in starting up operations here in New Brunswick for a gas distributor there is going to be a lot of one time extraordinary expenses?

A. They are going to be, yes, and that's why you look at all the criteria, and you cannot say, you know, all expenses should be allowed or all expenses should be disallowed.

Q.233 - But I am focusing on your criteria that says expenses should only represent normal conditions --

A. Yes, sir.

Q.234 - -- how can you apply that criteria in a situation that by definition is not normal?

A. First, normal -- the utility business is normal whether it is greenfield or mature, and normal expenses generally -- let's say it's a test period concept is coming, company has used the test period concept, and the test period concept -- for the test period you allow normal expenses. There are abnormal expenses, there are certain expenses which are abnormal, you may amortize over a period or you may allow one time again --

Q.235 - Sir, I know all that, I think everyone knows that. I am focusing on your rule here --

A. That's what I am telling you.

Q.236 - -- that you should not allow abnormal expenses to be

recovered. And I was putting to you that that doesn't make sense in a greenfield operation when you are starting up and a lot of expenses may be anything but normal, they may be one time expenses?

A. I answered you that, but your question -- previous question which I was answering you interrupted me in the middle.

Q.237 - Do you agree that that is an unreasonable rule?

A. I would appreciate if you could let me finish my answer. You ask question and I hadn't finished my answer.

So please, I will appreciate if you let me answer the question.

As I said, this criteria applies to both whether mature or greenfield operation. Again you have to look at where it's mature utility, it's not automatically you disallow abnormal expenses.

So that principle applies to greenfield also. So you look at case by case basis.

Q.238 - So what you are saying is in each case we would have to look at the expense and apply several criteria and decide whether it should go into the cost of service?

A. That's correct. That's what I stated throughout my testimony.

Q.239 - And that is always true, isn't it?

A. Yes, sir.

Q.240 - Thank you. Then what did you mean when you said that certain expenses should not be allowed? Can you be specific?

A. I'm sorry. Could you ask --

Q.241 - Earlier in your -- in one of your earlier answers you made it very clear that you thought that even in a greenfield operation certain expenses should not be allowed?

A. Yes.

Q.242 - Can you be specific about what those certain expenses are?

A. There could be some, you know, like say public relation expenses, expenses to influence legislations, there may be some charitable contributions or some social considerations. Again you have to look at it. I am not against these expenses just as a blanket statement.

Sometime it may be essential for the utility to engage with a public relation for the sake of customers, and if it is for the sake of customer it should be allowed, but if it is for investors' interest then investors should pick up that kind of expense.

Q.243 - Does that complete your answer?

A. Well I am just giving you some examples. There may be some dues to associations.

Q.244 - But I am just asking you because you are giving advice

to the Board and I have asked you if you have a specific list, and I take it from your answer by giving me some examples you do not have a hard and fast specific list of types of expenses that should not be allowed?

A. That was -- no, I did not, and that was not the purpose of scope of my testimony.

Q.245 - Thank you, sir. Could we have a look at your response to IR number 40, and I don't think that is in our brief. So better get it out.

A. My response?

Q.246 - To Enbridge's interrogatory number 40 of you.

A. Yes, sir.

Q.247 - And sir, Enbridge asked you in question B -- first the preamble is "In the description of the guidelines for the revenue requirement, specifically item (c), Mr. Kumar indicates that only those expenses are allowed to be recovered which be a recurring, i.e. nonrecurring expenses should not be included." And you talked about that.

And then they ask you "Would for example a forecast one-time income tax adjustment be considered a nonrecurring expense? Why should the distributor not be allowed to recover such an expense?"

Then your answer is yes, you would consider a forecast one-time income tax adjustment a nonrecurring expense.

You say "If the test period includes a one-time

expense such as an income tax adjustment, and the rates are based on the test period, then the rates will continue to recover this one-time adjustment every year until the rates are changed. Depending upon the nature of the nonrecurring expense, sometimes the regulatory commission may amortize the one-time expense over a period of time which is approximately equal to the time between the rate changes."

A. Yes, sir.

Q.248 - Okay. Now sir, are you aware of how often Enbridge has said it may come before this Board to seek rate changes?

A. I did not see any specific frequency. Generally they mention about annual and -- but they can come anytime they want to --

Q.249 - Well, let me help you. Let's go to tab 5 of the brief. Because there the Province of New Brunswick asked Enbridge to indicate how often it would seek rate changes?

A. What is your reference?

Q.250 - It is tab 5 of the brief. And it is New Brunswick information response schedule 6.

A. Interrogatory number 6? Yes, sir. I'm there.

Q.251 - And the question was "How often will Enbridge Gas New Brunswick want to have the right to change the rate rider? Will it be monthly, weekly or daily?"

And answer, "The concept of the rate rider is to allow EGNB to lower rates if the company is not achieving the necessary level of customer attachment and the company believes that this failure can be corrected through different price signals. Therefore the company does not require such corrections any more frequently than monthly. More frequent changes would not allow sufficient time to assess whether the price change is producing the desired result."

Do you see that?

A. Yes, sir, I see it.

Q.252 - So we have a potential of monthly changes. Now the company has said it may be quarterly.

But are you suggesting that a one-time expense would be amortized from one quarter to another, from one month to another --

A. No. This --

Q.253 - -- in your answer to Enbridge's interrogatory number 40 (b)?

A. This response does not refer to the annual cost of service. It refers to monthly rate changes based on, as I understand, based on the price of oil. It has nothing to do with the cost of service. At least that's the way I read it.

Q.254 - Your words were "It will be amortized as a one-time

expense over a period of time which is approximately equal to the time between rate changes." Is that your position?

A. No. That's what I'm trying to explain to you. You are confusing with rates and cost of service.

Q.255 - I'm not. You talked about rate changes in your interrogatory response, sir. And I put it to you that they are applying for rate changes up to one month.

Now my question is are you suggesting that a one-time expense be written off over a month or a quarter?

A. That's what I'm trying to answer. One is a cost of service aspect. One is the rates. And I explained that right in the beginning in my opening statement. Cost of service is not done on monthly basis. It's done on annual basis.

And rates are not every month based on cost of service. Rates are based on some target which is based on the price of competitive fuels. So rates could change monthly, and that's the context in this is the response to interrogatory number 6.

My response refers to the cost of service. Because if the rates are not based on cost of service, it has nothing to do with amortization or anything. But cost of service, that's where it has a relevance. And that's what I was trying to point out.

Q.256 - I'm sorry, sir. Your answer was "Depending upon the

nature of the nonrecurring expense, sometimes the regulatory commission may amortize a one-time expense over a period of time which is approximately equal to the time between rate changes."

If you are not saying that in this case the income tax was mentioned to be over the time of rate changes, what period do you say it should be amortized over?

A. As I say, I'm saying this is in the context of the cost of service.

Q.257 - Do you have a specific answer to my question?

A. This -- I am answering your question. This does not say -- the question does not say EGNB's rates.

Q.258 - I see.

A. So this is a general question. And my answer is also general, which is --

Q.259 - All right. If it is a general answer, that is no problem.

A. -- rate changes and the cost of service.

Q.260 - So this answer is not relevant to EGNB?

A. On the cost of service it's relevant but not the monthly rate changes.

Q.261 - Thank you, sir.

CHAIRMAN: The Board will take a break. And again, just because I like to see what goes before, so I have got a continuity of an article, the excerpt from Bonbright which

is under your tab 4, if perhaps you could provide --

MR. BLUE: We will get you those pages.

CHAIRMAN: -- the page or two before -- thank you.

(Recess)

CHAIRMAN: Go ahead, Mr. Blue.

Q.262 - Mr. Kumar, could you refer to page 21 of your witness statement, please?

A. Yes, sir.

Q.263 - And sir, this is a list of what costs should be allowed into cost of service that we were talking about previously?

A. Page 21. Okay. You are looking at the top of page 21?

Q.264 - Top of the page, yes.

A. Yes, sir.

Q.265 - And you say there that the Board should not allow in costs that are -- or should only allow in costs that are not speculative. Do you see that?

A. Yes.

Q.266 - Is the point here that the utility should not inflate its cost of service by speculating about costs?

A. Speculative means which, you know -- it doesn't mean that you cannot forecast properly. Speculative means here that you are not -- you are very -- you have very little confidence that this cost will be incurred. And in all

probability it will not be incurred. So those kind of speculative costs I'm talking here does not mean that no projected costs should be allowed.

Q.267 - Well, there are forecasts, and then there is just rank speculation. And you are saying that rank speculation should not be allowed?

A. No. I'm not saying that forecast speculation -- that's what I want to clarify.

Q.268 - You misunderstand me. You are differentiating between a confident forecast of costs on the one hand and pure speculation on the other?

A. Yes, sir.

Q.269 - All right.

A. I'm sorry I misunderstood you.

Q.270 - And your point is that pure speculation about costs should not be used to inflate the cost of service?

A. Yes, sir.

Q.271 - Would you agree that it would be equally as true that regulators should not speculate about costs in terms of reducing the cost of service?

A. That's correct.

Q.272 - Thank you. Now sir, you also say that costs should only be allowed that have not been disallowed by the Internal Revenue Service?

A. Yes. Income tax authority, that's what I meant.

Q.273 - Thank you. You are aware that the Internal Revenue Service has no jurisdiction in Canada?

A. I'm not talking the U.S. Internal Revenue Service. I'm talking of Canadian federal income tax authorities.

Q.274 - Yes.

A. That's what I'm referring to.

Q.275 - Okay. I think it is called the Canadian Customs and Revenue Agency?

A. So I don't want them to have jurisdiction in Canada. And sometimes I don't like their jurisdiction in United States.

Q.276 - Could you turn, sir, to page 25 to 28?

A. 25 to 28.

Q.277 - Yes, sir.

A. Yes, sir.

Q.278 - Now sir, here you appear to be addressing general guidelines for incentive ratemaking and performance-based rates?

A. Yes, sir.

Q.279 - And it is true, isn't it, that Enbridge Gas New Brunswick is not asking for either incentive ratemaking or performance-based rates in this case?

A. That's correct. I'm aware of it.

Q.280 - Pardon me?

A. Yes, I'm aware of it. They are not asking for --

Q.281 - So this discussion has no relevance to Enbridge Gas New Brunswick Inc., does it, on page 25 to 28?

A. No, it has -- you know, there is certain relevance here. Because the rate changes will be based on the competitive fuel prices.

So in that it has some relevance but not, you know, in terms of other issues which I have discussed. I agree with you.

Q.282 - Okay. We both agree that Enbridge Gas New Brunswick Inc. is not asking for performance-based rates or incentive ratemaking from this Board in this case?

A. No, I don't agree with you completely. That's what I was trying to say. Because for example EGNB does retain the right to discount rates to certain classes to provide the incentive to some customers.

Q.283 - Incentive ratemaking refers to the incentive to the utility to keep costs low and share revenues, doesn't it?

A. It has both. Incentive rates includes discounted rates also.

Q.284 - That is the context in which you are talking about incentive rates?

A. That's one of the --

Q.285 - To encourage customers?

A. Discounts to the customers.

Q.286 - Where do you say that on pages 25 to 28?

A. Where do I say?

Q.287 - That incentive rates are rates to bring in new -- to develop markets?

A. If you look at page 26, complement the trend toward competition in a market-based approach to utility operations. So competition is the market oriented --

Q.288 - Well, it says here that "EPU ruled that proposed incentive plans should (a) be consistent with existing regulation; (b) complement the trend toward competition in a market-based approach to utility operations" -- (c) (d) and (e).

And I -- sir, isn't it true that throughout the regulation business, incentive rates are understood to mean an incentive to the utility through the form of sharing some of the cost savings that they produce for customers?

A. No, it's not correct. If you look at appraisal survey, electric power research and chief use survey, of incentive rates, it includes a lot of discount rates.

Q.289 - In order to allow the utility to make more money?

A. Not necessarily to make more money. It's to allow them the flexibility -- sometimes load retention rates, that's incentive rate, just to keep the load they have. That doesn't mean they are going to make more money.

Q.290 - So sir, that is the context in which you say that

incentive rates are relevant to Enbridge Gas New Brunswick Inc., that there have got to be rates that ensure that they can attract and maintain customers?

A. Yes.

Q.291 - Okay.

A. In that context of -- that's the relevance here.

Q.292 - All right, sir. And you say we will find that thought in pages 25 to 28 of your text, if we read it carefully?

A. Find that cost?

Q.293 - That thought?

A. Yes. It's inherent in that.

Q.294 - Okay, sir. Could we turn now to page 28?

A. 28?

Q.295 - Yes. This is your guideline for greenfield utility rate plans?

A. Yes, sir.

Q.296 - Now in your answer you make an interesting statement.

You say "With increased gas supplies and decreased gas demand, mainly due to high gas prices in the early 1980's, gas supply surpluses started appearing which induced competition in the gas industry. Deregulation of the gas industry, and the unbundling of gas services further enhanced the competition. The increased gas supplies and competition resulted in bringing gas supplies to new areas both in Canada and the United States"?

A. That's correct.

Q.297 - Do you say that it was increased gas supplies and competition that brought gas supplies to new areas of Canada in the early 1980's?

A. I -- I don't recall exactly whether it happened in Canada. I'm not referring to Canada alone here. It's North America basically.

Q.298 - You were speaking generally then of the North -- generally of your experience in the U.S.?

A. Yes, sir. I'm more familiar with the U.S. market.

Q.299 - And you can't comment on what factors may have brought gas into new areas in Canada in the 1980's. And you can't -- don't even know whether there was new gas introduced into Canada in the 1980's. Is that fair?

A. I'm talking the history starting from 1980's. And I'm not just --

Q.300 - You make a statement about Canada. If you say you don't really know the Canadian situation, I can move on. If you do say something then I will have to take it up with you.

A. No. I'm referring back to the 80's situation only. I'm saying it started that. And this pipeline, especially M & NP pipeline, one of the incentives of that pipeline, which is also cause for bringing gas to Nova Scotia and New Brunswick, is the U.S. market.

Q.301 - But the Maritimes and Northeast pipeline was promoted in 1996 and 1997. You are talking about the early 1980's.

Now do you know anything about the introduction of gas into new areas of Canada in the early 1980's?

A. 1980 -- it starts from 1980. It does not say it's 1980 only. It started in the events. And this pipeline is a culmination of those events which were initiated in 1980's.

Q.302 - Do you know anything about the introduction of natural gas into new areas in Canada in the 1980's?

A. As I said, no, I don't --

Q.303 - Okay.

A. -- know specific in the 1980's.

Q.304 - Thank you.

A. But this sentence does not relate to 1980 alone.

Q.305 - It says "in the early 1980's" in the second line?

A. And the Canada part is in the second sentence, not in that sentence.

Q.306 - Thank you, sir. Now, sir, on page 28 of your testimony, would you look at that, please, under the heading -- a different aspect, and in the -- you say -- and I am reading from three lines from the bottom of the page, It is in the interest of both the utilities and regulators to establish prices in such a way which will not discourage customers from switching to natural and

will bring new customers into the service area who find gas to be an attractive source of energy. It is important to fairly reward the utilities who risk investments in the new service areas and at the same time it is essential to protect the interest of customers, especially the small and captive customers.

Correct?

A. Yes, sir.

Q.307 - Do you say in this case that Enbridge Gas New Brunswick does not propose to protect the interest of small and captive customers?

A. I have pointed out certain problems in my testimony, throughout my testimony. That is the purpose -- basic purpose of my testimony also, one of the purposes.

Q.308 - Do you say that they do not plan to protect the interest of small and captive customers, like residences or mum and pop stores? Do you say that Enbridge is not going to protect the interest of those customers?

A. Yes, sir, not fully. It does not include the full protection for those customers.

Q.309 - Okay. And in what way does it not protect the interests of small and captive customers as distinct from all customers? Can you --

A. Basically the problem comes on the rates being established on the total -- totality, means integrated

cost of service on the system basis.

Q.310 - So you say that the revenue to cost ratio of the small and captive customers is likely to be too high, more than their costs?

A. It could happen, because there is no protection there.

Q.311 - Okay, sir. Can you turn then to tab 6 of that brief, and I want you --

A. Tab 6.

Q.312 - Yes. I want you to have a look at schedule 48 -- exhibit E, schedule 48, page 2 of 10 revised. This is Enbridge's exhibit.

A. Yes, sir.

Q.313 - Do you have that?

A. Yes, I have it.

Q.314 - Now were you in the courtroom the day before yesterday when Ms. Duguay was on the stand and testified about this page?

A. At that time I was not.

Q.315 - All right. What she told us, if you look at line 6, is that the revenue to cost ratio for small general service customers, those are residences and mum and pop stores she said, was .534. In other words, the revenue from that class would recover only about half of the costs imposed by that class.

A. It's based on the company's cost of service, correct.

That's correct.

Q.316 - Right. So --

A. Which I disagree --

Q.317 - -- when you told me a moment ago that you are

concerned about the revenue to cost ratio, what is wrong with a revenue to cost ratio for residential customers of .534 if you are worried about them being protected?

A. If it is .534 -- first this -- you know, I disagree with the cost of service, and if it is done properly the ratio will be more, but beside that point -- there is nothing wrong with this thing, but there is no protection.

Tomorrow they could have 1.5. That's what I am trying to say. As long as --

Q.318 - Isn't that rank speculation which you said the Board shouldn't take into consideration?

A. It's not speculation. It's this year rates plan, but I don't --

Q.319 - Schedule 48 --

A. Let me finish.

Q.320 - Go ahead, sir.

A. I would appreciate. You get excited. Let me finish.

This year -- this is the rate for this year. They could change monthly basis. They could change the rates and there is no place, unless you can show me, where it says the company guarantees is going to be half of the cost of

service, that it is going to be less than hundred percent of the cost of service. That's what point I am making.

Q.321 - I am commenting on the evidence in the case, and I am not speculating. The evidence in the case shows us that the revenue to cost ratio is .534 for the -- for the small general service customer. Do you agree with that?

A. The Board -- no. The Board does not know what rate is going to be next month.

Q.322 - Okay. Thank you. Except it won't be higher than that, that is the position of the company?

A. That's what I am saying, it should be capped at a certain level with respect to the cost of service. If the company does better than that I have no problem with it.

Q.323 - Mr. Kumar, the company has said that the target rates will not be higher for the small general service than will recover a revenue to cost ratio of .534. If that is the case, what is wrong with that?

A. If they say -- if you show me that statement I have nothing -- no problem with it. It just says, initial rate. It did not say, ever. If you show me, I have no problem with that.

Q.324 - And in any case, sir, the target rate is going to be less than the cost of competing fuels by anywhere between 30 to 5 percent?

A. That's correct.

Q.325 - What is wrong with that --

A. No, I did not say there is anything wrong with it.

Q.326 - -- from the point of view of small and captive

customers? What is wrong with that for small and --

A. No, I did not say that it's cost -- it comes only when it exceeds. Let's say it's -- even it gives 30 percent, the rates could be managed in such a way that it could exceed cost of service substantially. That's what I am trying to provide the protection.

Q.327 - Now, sir, have you looked at exhibit A-12?

A. A-12.

Q.328 - This graph?

A. Oh, this -- no, I don't have it in front of me. I have looked at it but I don't have that in front of me.

Q.329 - What it shows, sir -- perhaps your counsel will get you a copy?

A. I don't have the copy of it. Yes, sir.

Q.330 - And what it shows is that the company is going to cap its rate at the lesser of cost of service or market based revenue.

A. Oh, the aggregate basis. It does not -- first, I don't read that it is going to be capped, that they -- it says market based revenue. In fact it says, if I read it, it's not capped at cost of service. Market based revenue, that's what they are going to charge.

But if it is -- if it is capped at cost of service -- again the company's proposal is on a total basis, not by the class basis, and that's what I am adding. I have no problem with total cost of service basis but I am saying there should be some protection on the class cost of service also.

Q.331 - So until you get to the crossover point, then it really doesn't matter whether you cap it for anybody because they are going to be getting -- or any rate, because it's always going be 30 to 5 percent less than the price of competing fuel, is that correct?

A. No, but it -- no. I have problem if it exceeds the cost of service even the first five years.

Q.332 - But the chances of it exceeding -- it will not exceed the cost of service in the first five years because we are told that the company will not be recovering its cost of service --

A. You are looking at --

Q.333 - -- are you aware of that?

A. No, I -- you are looking at the total system. It does not show the class cost of service. There is no guarantee. That's what I am trying to say.

Q.334 - Okay. So, sir, your point is simply that class cost of service ratios should be one-to-one, or no greater than one?

A. I am not saying that. I am saying it should not exceed one --

Q.335 - Okay, sir.

A. -- for any class.

Q.336 - And the evidence before the Board for small customers in this case is that it's going to be about .5?

A. That's only for the first initial rate. There is no guarantee after this first initial rate. And if there is guarantee then I have no problem. That's what my recommendation is.

Q.337 - Now, sir, let's go to page 29.

A. Yes, sir. I am there.

Q.338 - Now in the middle of the paragraph you make a -- in a sentence you say, At the same time, the main objective of a regulatory body is to protect the interest of ratepayers and to assure that the rates charged to them reflect the financial risks taken by the investors -- pausing there. That's a statement that you believe?

A. Yes, sir.

Q.339 - And then you add on the phrase -- as well as producing the results which would be achieved based on the traditional cost of service, rate of return concept and substitution of market forces.

A. Yes, sir.

Q.340 - Couldn't you drop that last phrase and the statement

would be perfectly accurate?

A. If I drop the last --

Q.341 - Yes.

A. No. Last statement should be there.

Q.342 - But, sir, we agreed earlier I thought that here in New Brunswick under the Gas Distribution Act that we have light handed forms of regulation that are not tied to the cost of service, rate of return regulation?

A. The company has proposed --

Q.343 - Didn't we agree to that? We agreed that was the situation in New Brunswick?

A. No. Company has proposed --

Q.344 - Answer my question. Did we not agree to that?

A. No, we did not agree with that. We --

Q.345 - We didn't agree that New Brunswick we have light handed regulation that doesn't require cost of service and rate --

A. No, we did not. We did not agree with that.

Q.346 - Okay. Would you turn, sir, to tab 1 of the blue brief and can we look at the definition of alternative form of regulation that is in our Act?

A. Yes, I am looking at it, yes.

Q.347 - Okay. Now let's read it together. Alternative --

A. Page 12?

Q.348 - -- alternative form of regulation means --

A. You are reading from page 12?

Q.349 - Page 5.

A. Page 5 of my testimony or --

MR. O'CONNELL: No. The blue book.

WITNESS: The blue book. Okay. Tab 5?

Q.350 - Tab 1.

A. Tab 1, I'm sorry. Okay. Yes, sir, I am there. Which page you are looking at? Page 5?

Q.351 - Yes.

A. Yes.

Q.352 - It says, alternative form of regulation means a method of establishing just and reasonable rates and charges by performance based regulation without regard to methods based strictly upon cost of service, rate base and rate of return, including earnings sharing, but it says, without regard to methods based strictly on cost of service, rate base.

Those are the rules here in New Brunswick, aren't they?

A. It's a part of the rules, but --

Q.353 - All right.

A. -- company's plan is based on cost of service, rate of return, that's the company what proposed. If they had not proposed this regulation they might have not been -- the Board might have not been able to impose on them, but

company came with a plan which is based on cost of service, rate of return concept.

Q.354 - All right, sir.

A. So they did not come under alternate regulation, they came under traditional regulation.

Q.355 - But you are not suggesting then that in this case the Board must require Enbridge Gas New Brunswick to charge rates that would be achieved based on the traditional cost of service, rate of return concept in substitution of market forces, are you, because you support their -- you support their market based rates?

A. I support market based rate but market based rate has some protection and that's why I brought in cost of service.

Q.356 - But you would agree with me --

A. And market based rates does not mean you totally ignore cost of service. In fact --

Q.357 - We agree on that, sir. But you are not suggesting that market based rates would be the result that would be achieved based on the traditional cost of service, rate of return concept in substitution of market forces, are you?

A. Market based rate cannot totally ignore the cost of service of a regulated entity. That's what I am saying. And I don't agree with you when you mean to say that market based rate means ignore cost of service completely.

It says strictly --

Q.358 - I wasn't saying that. I wasn't saying that. You are saying that you have got to produce the results based on traditional cost of service, rate of return concept, and I am saying to you, market based rates don't do that. They may do it in part but they don't do that the way you phrased it in your evidence, do they?

A. That's what I was trying to answer. Market based rates in general are capped at the cost of service, and in fact for a long time anyone -- tell you also the market based rates of any utility under the jurisdiction of FERC cannot exceed the cost of service base. So if you are trying to imply that it means ignore or it can exceed, no, I disagree with that.

Q.359 - Wasn't my question. You are agreeing with me that market based rates are not based -- are not pure cost of service, rate of return concepts. They may be based on them, they may be related, but they are not the same result?

A. They are not based on the cost of service, rate of return concept --

Q.360 - Right.

A. -- but they don't totally disassociate completely from the cost of service, rate of return concept. That's what I am trying to say.

Q.361 - Thank you, sir. We agree on that. Can we refer to page 30, please?

MR. KUMAR: 33, yes.

Q.362 - 30, 3 0.

A. I'm sorry. Yes, sir.

Q.363 - And, sir, you are discussing here system wide rates?

A. Yes, sir.

Q.364 - And will you agree with me that the context of the discussion of system wide rates is when an existing utility expands into a new area. And the issue is whether the new customers should have rates based on the incremental cost or rates based on the system cost. That's the context in which we discuss system wide rates, isn't it?

A. In a same jurisdiction, yes.

Q.365 - Yes. And you would agree that that is not relevant to Enbridge Gas New Brunswick's application before this Board because there is no existing utility here?

A. That's correct.

Q.366 - Thank you. Now, sir, you refer to a discussion on page 31 and following about incremental rates and cost based incremental rates?

A. Yes, sir.

Q.367 - The same question. The context in which incremental rates arises is when a new area is added on should the

rates be incremental or system wide, add on or roll in.

That's the context, isn't it?

A. Yes, sir. I think I responded to one of the interrogatories. It's not applicable to the rates here --

Q.368 - So that discussion has no relevance to Enbridge Gas New Brunswick in this case?

A. For establishing rates because every cost is incremental cost here.

Q.369 - Well in the sense that the cosmos was created by the big bang is incremental. But apart from that, a true discussion of incremental rates is not relevant to Enbridge Gas New Brunswick in this case?

A. In this here, everything is incremental cost and --

Q.370 - But incremental --

A. It would be in the sense if it is existing utility it has incremental cost, that has no relevance here in establishing rates.

Q.371 - I would like to talk to you about your discussion of the Sempra Gas case.

A. Yes, sir.

Q.372 - Now before we do that, can you have a look at page 57 for a moment?

A. 57 of my testimony?

Q.373 - Yes.

A. Yes, sir.

Q.374 - And in that case what you did was in your answer, for Energy Consumers Gas, what you did was you took their return on equity on their capital structure. And then you made a calculation to what the return would be on a 50/50 capital structure?

A. I took their capital structure, not their return on equity. I took the company's proposed equity -- return on equity in this jurisdiction. But I took the ECG capital structure.

Q.375 - Okay. But you thought it was a legitimate thing to do to look at what the return would be on a different capital structure?

A. I'm showing that number if that's the capital structure is used. Because I decided in the beginning -- my testimony was not to specify what capital structure should be used here. If it is used -- if ECG's capital structure is used and 13 percent internal equity is allowed, the result -- if 13 percent is allowed or 50/50 the result will be 16.50 if you use ECG capital structure.

I'm not saying the Board should approve ECG's capital structure.

Q.376 - And I'm not suggesting that you did. All I'm identifying is that you did an analytical step here to show what a return on equity would be with a different capital structure?

A. Yes. If you use ECG's capital structure this will be the end result.

Q.377 - Thank you. Now, sir, in the Sempra case you have noted -- now I want to go back to page 41 of your evidence.

A. Yes, sir.

Q.378 - Because this where you discussed the Sempra case.

A. Yes, sir.

Q.379 - And you note that Sempra Atlantic was awarded a -- the Board accepted is a better way to put it, Sempra Atlantic's projected cumulative average rate of return at 15.2 percent as a rate of return in equity?

A. Yes, sir.

Q.380 - Okay. As a reasonable rate of return?

A. I don't know. I have not analyzed. That's the Board allowed and it does not say what capital structure the Board used. And, again, I should clarify the rate plan has not been submitted to the Board. This is the -- and this isn't calculated in the general franchise agreement approved by the Board.

Q.381 - Your words were, "The Board accepted Sempra Atlantic's projected cumulative average rate of return of 15.2 percent as a reasonable rate of return in equity."

A. This is the Board wording, not my wording. I'm summarizing what the Board did in approving the general

franchise agreement in Nova Scotia.

Q.382 - The Nova Scotia Board then said it was a reasonable rate of return?

A. The rates -- no rates are established yet. This is what the Board accepted in GFA.

Q.383 - Sir, I can --

A. And it does not say what capital structure they used.

Q.384 - Mr. Kumar, I can only judge you from the words you use. And the words you used were, "The Board accepted Sempra Atlantic's projected cumulative average rate of return as a reasonable rate of return in equity." Is that a true statement?

A. It is quoted from the Board order. And I'm tell you want -- in what context they stated it.

Q.385 - Now, sir, I'm going to ask Mr. Parcell to give you a little table that we prepared based on information from Sempra Atlantic about its capital structure.

A. Okay.

Q.386 - Now, sir, the information from Sempra Atlantic is that their capital structure was 60 -- sorry. Information from Sempra Atlantic was that their capital structure was 60 percent debt, 40 percent equity, and that their -- the cost of debt that was implicit in their application was 6.5 percent. Can you accept those numbers subject to checking?

MR. O'CONNELL: Mr. Chairman, I wonder if it might be appropriate this piece of paper gets marked as an exhibit?

MR. BLUE: Yes, that is a good idea, sir.

CHAIRMAN: I don't understand where this information came from, quite frankly. Where did it come from? Was that from the Board's decision in Nova Scotia?

MR. BLUE: No. We got it from Sempra Atlantic, sir, and I will put Mr. Parcell on to testify about how he got it, if that's necessary. You can take it to the bank.

MR. KUMAR: I have not seen this filing -- I am sorry.

MR. BLUE: We are just going to get a number, sir, and then we can talk about it.

CHAIRMAN: C-17.

Q.387 - Thank you. Now do you accept those numbers subject to checking them, Mr. Kumar? I mean you can phone Sempra Atlantic if you doubt me.

A. Yes, sir.

Q.388 - Okay. Now what it shows is that in the first field that at the company's capital structure is 60 percent debt, 40 percent equity, debt cost is 6.5 percent and a 15.20 return on equity, that the -- that the overall cost of capital is 9.98 percent?

A. Yes, sir, I see that number.

Q.389 - Okay. Now in the second field, if you hold the 9.98 percent cost of capital constant, change the capital

structure to 50 percent debt, 50 percent equity, use the same interest cost, you would see that that translates to a return in equity in -- for Sempra Atlantic of 13.46 percent.

A. If you run the math, still this number is -- overall number is lower than 10.38 being requested by the company in this jurisdiction.

Q.390 - No, sir, we are not focusing on the overall rate of return, we are focusing on the return on equity for Sempra based on the 50/50 capital structure. And would you agree with me that it's 13.46 percent?

A. If the numbers are correct that's what the result is, and ratepayers are going to pay the overall return, not just the one part of the return, and overall return is still less.

And there is another factor --

Q.391 - Mr. Kumar, that's fine. Do you --

MR. O'CONNELL: I think perhaps it's time -- and I really hate to interrupt my learned friend's cross-examination, but he continually, continually interrupts the witness in the middle of an answer. Now maybe that's the way they do things in Toronto, but I suggest to you it is not the way we do things here. And I would just ask that there be some effort, some restraint, from my learned friend so that this witness can complete his answers.

CHAIRMAN: Perhaps we could try and let the witness, answer, Mr. Blue, but, Mr. Kumar, if you are cut off or Mr. Blue insists on you stopping, then Board counsel can keep a list of the questions and in redirect ask that you continue on with the explanation that was stopped, because we do have to get on with things. Go ahead, Mr. Blue.

Q.392 - Yes. Mr. Kumar, I would just say that my rule -- I will -- if you don't understand the question or it is not clear, I will be happy to repeat it. But if I ask you a question give me an answer to the question I have asked, not an answer to a question I didn't ask. Okay. Thank you.

Now, sir, could we turn to page 45 of your testimony, sir.

A. Page 45?

Q.393 - Yes.

A. Yes, sir.

Q.394 - And, sir, the point you are making -- and this is a point that you and I have discussed -- that no interclass subsidization was to be allowed a decrease in rates for one class could not be recovered by increasing the rates of the others, and you get this from the Bangor Gas case, I believe?

A. I am sorry, where are you reading from?

Q.395 - Page 45 of your testimony.

A. Yes. Page 45.

Q.396 - Item (f). And your -- this is in the context of your discussion of the Bangor Gas case commencing on page 43.

A. Yes. Okay. So where were you reading it from? Page 45 or 43?

Q.397 - I was reading page 45, paragraph (f), at the top of the page of your evidence?

A. Okay. I am there now.

Q.398 - And you made the point that -- or you say that the Maine Public Utility Commission said for Bangor Gas that no interclass subsidization was to be allowed, is that correct?

A. Yes.

Q.399 - Are you aware of any Canadian regulatory decision that requires perfect cost recovery by rate class?

A. No, I am not.

Q.400 - All right.

A. In fact no retail jurisdiction, to my knowledge, whether in Canada or United States, allow rates strictly based on class cost. There are other considerations, and this Board should take into consideration other factors also --

Q.401 - All right. Thank you.

A. -- based on what the suggestion is in New Brunswick.

Q.402 - Thank you, sir. Could we move to page 49?

A. Yes, sir.

Q.403 - Now still -- you are still talking about the Bangor case. And on page 49 in paragraph (b) you note that no interest was allowed on the earnings account as in the view of the Maine Public Utilities Commission not doing so would provide an incentive to Bangor Gas Company to build its customer base early?

A. Yes, sir.

Q.404 - And the earnings account is sort of similar to Enbridge Gas New Brunswick's deferral account?

A. That's correct.

Q.405 - Right. But you are not suggesting that Enbridge Gas New Brunswick be refused the right to earn a return on its deferral accounts, are you?

A. No, I'm not.

Q.406 - In fact you know now that Enbridge Gas New Brunswick is proposing to be allowed to earn its embedded cost of capital on its deferral accounts?

A. That's correct.

Q.407 - And you agree with that?

A. Yes, sir.

Q.408 - Thank you.

A. I do suggest another alternative that the Board could consider.

Q.409 - Sir, can we turn to page 50 of your evidence?

A. I'm sorry?

Q.410 - Page 50?

A. Yes, sir.

Q.411 - Okay. Let me ask you this. Are you familiar with the state of Maine and what gas distribution companies serve parts of the state of Maine?

A. Am I familiar with the state of Maine?

Q.412 - Yes.

A. I'm familiar with it, yes. The Commission of the State of Maine is one of my clients, sir.

Q.413 - Okay. Great. Then you will agree with me that the state of Maine has more than one gas distribution utility?

A. That's correct.

Q.414 - Okay. And you will agree with me that in the state of Maine those gas distribution utilities were or maybe still are competing for new market areas?

A. That's correct.

Q.415 - Okay. So if a gas distribution utility competes with another one for service areas, there is a real risk of imprudent costs being incurred?

A. Imprudent costs being incurred?

Q.416 - Yes. Or there may -- or risk that the cost might not be recovered due to competition?

A. That is correct.

Q.417 - Okay. And you will agree with me that that was a

concern of the Maine Public Utilities Commission?

A. Yes.

Q.418 - Okay. Now with that background let's look at page 50, paragraph (c)?

A. Page 50?

Q.419 - Paragraph (c)?

A. Yes, sir.

Q.420 - Well, let me ask you this before we do that. Here in New Brunswick we do not have the potential for duelling gas distribution companies looking for market areas, do we?

A. That's correct. I stated that fact in my testimony as one of the risk mitigation factors.

Q.421 - Great. But you -- on page 50, paragraph (c) you quote the Maine Public Utilities Commission as saying "The risks associated with the distribution company's startup and uneconomic expansion into this competitive circumstances must fall on the utility's shareholders, not ratepayers. Setting this as a ground rule for all Maine gas utilities for future system expansion to unserved areas places all LDC's on equal footing."

Do you see that?

A. Yes, sir.

Q.422 - Okay. You would agree with me that that is a statement that is applicable to Maine?

A. That is correct.

Q.423 - And that is not a statement that should be applicable to Enbridge Gas New Brunswick Inc.?

A. But there is only one utility. And that's one of the risk mitigation factors. I mentioned in my testimony also that fact.

Q.424 - So we agree that this statement is not applicable to Enbridge Gas New Brunswick Inc.?

A. I -- I think I answered your question. There are no utilities here other than one utility, gas utility. And this is one of the risk mitigation factors. So in that sense it has relevance.

Q.425 - I don't understand your answer. This is a rule applicable to competing gas distribution companies.

And I'm suggesting to you that rule is not applicable to Enbridge Gas New Brunswick where there is no -- where there are no competing gas distribution utilities?

A. The rule directly is not. But the implication --

Q.426 - Okay.

A. -- is. Because the implication is there are risks. And that's what I'm pointing out. In New Brunswick that risk is not there.

Q.427 - Thank you. And what risk is it that you are saying does not exist in New Brunswick?

A. Risk of the competition by other distribution

companies. And that's what I pointed out as one of the risk mitigation factors in my testimony.

Q.428 - But this quote is talking about the risk associated with distribution company startup and uneconomic expansion, is it not?

A. Yes.

Q.429 - And I'm saying to you or I'm asking you do you agree that that risk is not applicable to Enbridge Gas New Brunswick, because the context in which the Maine board talked about that risk was in the context of competition?

A. That's what I stated --

Q.430 - Okay.

A. -- three or four times.

Q.431 - All right. I must be not understanding you.

Now sir, can we go to page 51?

A. 51? Yes, sir.

Q.432 - And you refer the Board to the Inuvik Gas case?

A. Yes, sir.

Q.433 - And it is common ground between us, I guess, that Inuvik Gas had a capital structure of 50 percent debt and 50 percent equity, just like Enbridge Gas New Brunswick Inc.?

A. Yes, sir, I see that.

Q.434 - And the board of the Northwest Territories allowed a return on equity of 14 percent?

A. That's correct.

Q.435 - And that would be due to the risk factors applicable to Inuvik Gas?

A. I don't know -- I did not, as I stated I think to your earlier question, I did not review the details of Inuvik Gas except looking at the order.

Q.436 - All right, sir. So sir, the precedents -- Mr. Kumar, do you consider the return on equities authorized for Sempra Gas, Bangor Gas and Inuvik Gas appropriate returns on equity for greenfield utilities?

A. Do I consider?

Q.437 - Yes.

A. No, I have not done any analysis. I just quoted those decisions.

Q.438 - You don't have any opinion on that?

A. No, I have not.

Q.439 - All right.

A. Because I have not seen -- you know, I have not reviewed the details. And that's outside the scope of my testimony and assignment.

Q.440 - If it was outside the scope of your testimony and assignment, why did you include them in your testimony?

A. Why did I include? I'm sorry. I didn't follow your question.

Q.441 - You said a moment ago that assessment of the returns

on equity on the Semptra case, the Bangor case, the Inuvik Gas case was outside the scope of your testimony and your assignment?

A. Yes. Not how -- whether those are reasonable or not.

I just summarized what these three cases involved. I did not -- my testimony and scope of my assignment does not include analyzing the reasonableness of those decisions.

Q.442 - Then what use is your evidence to the Board?

A. What use? I'm presenting what others have done.

Q.443 - Well, I mean --

A. And whether they are reasonable or not, the Board has to decide. And that's -- in fact I'm not even recommending to the Board what the reasonable return on capital structure should be in this case, but to talk of the other cases.

Q.444 - All right. Thank you, sir. Could we go to page 53 of your testimony? Here you are --

A. 52?

Q.445 - 53?

A. 53? Yes, sir.

Q.446 - And this is where you address the issue of in what way would Enbridge Gas New Brunswick be compensated for its financial risks under its rate proposal?

A. Yes.

Q.447 - And sir, I judge that you wrote this section of your

evidence after reading the Essential Elements which form part of the agreement?

A. Yes, sir.

Q.448 - And sir, throughout your listing of A, B, C, D and E you used the verb "may"?

A. Yes.

Q.449 - Okay. But the Essential Elements, which is part of the legal agreement, says the company shall be entitled to those things?

A. Here I'm talking -- what the Board -- I don't know whether the Board is bound by the Essential Elements or not.

Q.450 - I see.

A. I'm just talking in the context of a rate plan.

Q.451 - I see. Okay. Thank you. With respect to G on page 54 -- this is what the company may have -- you say that Enbridge Gas New Brunswick Inc. may be able to establish its rates based on the projected test period?

A. Yes, sir.

Q.452 - Now you would agree with me that in reality Enbridge is not being regulated on a projected test year because of the deferral accounts?

A. It is.

Q.453 - Well, it is not bound by the cost in the projected test year because the deferral account lets it collect and

earn a return on the difference between those costs and its actual costs?

A. That's after the fact. But for the time involved in the projected test year, it is being regulated under the projected test year concept.

Now after the fact that's a different thing. So that's after the fact. You are adjusting it based on actual cost or actual data. But that does not take away the effect of the projected test year.

Q.454 - But in reality isn't Enbridge being regulated on what in effect is a modified actual cost of service basis?

A. After the customer has paid the rates -- it's after the fact. So the reality is they are being regulated when the rates are freely charged based on projected test period.

Q.455 - Page 54, sir?

A. 54? Yes, sir.

Q.456 - And we are dropping down from the last paragraph to the heading Monopolized Gas Distribution System?

A. Yes, sir.

Q.457 - And you talk about Enbridge's monopoly on the gas distribution system?

A. Yes.

Q.458 - All right. Firstly are you aware that New Brunswick law and the Gas Distribution Act allows for what are

called local gas producer franchises?

A. What they call single use or local producer, yes, I'm aware of it.

Q.459 - What is a local gas producer franchise?

A. If the gas producer wants to supply to a limited number of customers special single use, they can do that, and they are not covered by this exclusive franchise agreement.

Q.460 - All right. Thank you. So in that sense Enbridge does not have a monopoly?

A. They -- in that -- strictly, yes, they don't have a monopoly. And generally this is a pretty common concept.

Q.461 - Now sir, could you turn to tab 11 of the blue brief that we gave you?

A. Tab 11?

Q.462 - Yes.

A. Yes, sir.

Q.463 - And sir, what this is is a table from the Province's December 22nd 1998 RFP for gas distribution service.

And what this shows is that in New Brunswick 49 percent of homes are heated by electricity, 27 percent by fuel oil. Mr. Kirstiuk said yesterday it could be 30 percent. And about 24 percent by wood?

A. 27 percent you said fuel oil?

Q.464 - 27?

A. It does not say fuel oil. It says refined petroleum.

It could be other than fuel oil also.

Q.465 - Fair enough.

A. Yes, sir. At least you agreed with me finally.

Q.466 - Now sir, electrically heated homes have no ductwork similar to that in gas-fired furnaces or oil-fired or refined petroleum product fired furnaces or stoves? They have radiators?

A. I'm sorry. I don't follow your question.

Q.467 - You are an engineer? Okay. So I'm just asking you when you heat a home electrically --

A. Yes.

Q.468 - -- you use radiators or hot air?

A. Yes, hot air, radiation --

Q.469 - But --

A. -- convection.

Q.470 - But there are big conversion costs if you want to go from an electrically heated home to a gas-fired or gas-heated home?

A. There are costs involved, yes.

Q.471 - All right. And similarly there would be costs involved in switching from a home heated by refined petroleum products to natural gas?

A. Yes, sir.

Q.472 - Okay. And the costs of conversion from oil to

gas-fired would be a lot less than the conversion from electricity to gas costs, wouldn't they?

A. Yes, sir. But the benefits of converting from electric to gas are generally much more than from oil to gas.

Q.473 - So we would agree that Enbridge Gas New Brunswick certainly has no monopoly on the sale of energy in the New Brunswick market, does it?

A. I did not say that in my testimony. I said gas distribution monopoly. I did not say any other monopoly.

Q.474 - But the fact that it is energy -- doesn't have an energy monopoly is highly relevant to rate regulation, isn't it?

A. Well, both have relevance. That's what you pointed out, first line of question in Maine, that that -- this does not exist in New Brunswick. And that's what I have stated.

Q.475 - But my question was the fact that the energy market in New Brunswick is highly relevant to the way you regulate the gas distribution company, isn't it?

A. Both are relevant and --

Q.476 - Right.

A. -- are the competition and lack of competition on the gas distribution side.

Q.477 - Now, sir, could we turn to page 58.

A. 58?

Q.478 - Yes. And this is under the heading, "Allowance for Taxes".

A. Yes, sir.

Q.479 - In this part of your evidence you make comments about Enbridge's proposal -- sorry, sir, let me just try and interpret my note -- yes. In this comment you have made -- or this part of your evidence you have made comments about Enbridge's proposal about income taxes, is that correct?

A. Yes, sir.

Q.480 - All right. And you are aware that the requested income tax treatment has been agreed to by the government in the essential elements?

A. Yes, it was included in the essential elements, yes, sir.

Q.481 - Now, sir, it's true, isn't it, that Enbridge asked you about whether you had Canadian regulatory precedents, and perhaps we could refer to tab 12 of the blue book --

A. Tab 12?

Q.482 - Yes.

A. Yes, sir.

Q.483 - In question (a) they asked you, please provide all Canadian regulatory precedents regarding the income tax allowing for a partnership. Response, Mr. Kumar does not

have the requested documents.

A. Yes, sir.

Q.484 - And you are asked to discuss whether those precedents indicate any difference in allowed return as a result of a partnership status, and you have N/A. What is the N/A? Is that not applicable or not available?

A. Not applicable.

Q.485 - Not applicable. And you are saying -- and question (c) is, please confirm that the tax allowance calculated for Canadian utilities is generally based on the stand alone utility, not on the actual taxes corporation expects to pay. If this cannot be confirmed, please explain why?

And your answer is, yes, correct?

A. Yes, sir.

Q.486 - Okay. And so I take it you are unaware of how Canadian tax law requires partnership income to be calculated?

A. Am I unaware of it?

Q.487 - Are you aware of it?

A. Yes, sir, that general use of stand alone basis income tax calculation.

Q.488 - Sir, I guess what I am really wondering is you were really uninformed about Canadian income tax law?

A. Am I informed of Canadian income tax laws or utilities, how they calculate --

Q.489 - No. I said are you -- I said you are uninformed about the Canadian income tax law, aren't you?

A. Just approximately familiar. I am not familiar with the details of the income tax laws in Canada. I am talking of income tax law, not what is or how it is used for Canadian utilities. There are two different -- these are two different issues.

Q.490 - You are unfamiliar with Canadian income tax law but you --

A. I have some familiarity but not -- I am not very familiar with the Canadian income tax laws.

Q.491 - All right. Thank you. And do you have any information or regulatory precedents about the tax treatment in Canadian utility practice for limited partnerships?

A. I don't know how many partnerships are there in the gas utilities in Canada, and I am not familiar how that income tax is calculated in case of limited partnership involving gas utilities.

Q.492 - Okay.

A. I am familiar with how the tax is allowed for the corporation that's on a stand alone basis in general.

Q.493 - All right, sir. Do you know whether Gas Metropolitan, for example, is a partnership or a limited company?

A. What's the partnership?

Q.494 - Do you know whether -- to pick an example, Gas Metropolitan which is an Enbridge owned company, is that a partnership or is that a limited company?

A. I think that's a partnership.

Q.495 - All right. Do you know how the taxes are treated?

A. No.

Q.496 - All right. Thank you. Maritimes and Northeast, is that a company or is that a partnership?

A. Which company are you talking?

Q.497 - Maritimes and Northeast Pipeline?

A. That's a corporation. It's treated at least as a corporation, it's a corporation.

Q.498 - Is there a limited partnership that owns it, do you know?

A. I don't know exactly what the corporate structure, but as far as the pipeline structure is concerned, that's treated as a corporation.

Q.499 - And do you know how the income tax is accounted for in that company?

A. It's a stand alone basis.

Q.500 - Now, sir, on page 60 of your testimony, going on to 61 --

A. Yes, sir.

Q.501 - -- you make a point about the company using a projected test year?

A. Yes, sir.

Q.502 - Are you critical of the company about that? What is your point in mentioning that?

A. The point is the mitigation to the risks that the whole discussion up to this point.

Q.503 - Are you aware that most Canadian utilities use a forward test year for purposes of setting rates?

A. Yes, sir.

Q.504 - Okay. Are you aware of any Canadian utility that doesn't?

A. Without projected test year?

Q.505 - Yes.

A. I think there are some cases, not many.

Q.506 - Which are they?

A. I don't recall but there are some cases.

Q.507 - Sir, we looked, we couldn't find any. What are yours?

A. I said I don't recall but I have seen actual test years used, but generally it's a forward test year.

Q.508 - All right, sir. Would you agree that there is nothing special about Enbridge Gas New Brunswick using a forward test year?

A. Yes, there is no special, and that's not why I stated it. I am just talking in terms of the risk mitigation factors.

Q.509 - But isn't that sort of like noting that an automobile

has seat belts as a risk mitigating factor? Isn't that -- oh, forget it. Sir, could we go back to the portion of your appendix that's labelled, "Representative Publications".

A. Yes, sir.

(Recess)

CHAIRMAN: Go ahead, Mr. Blue.

Q.510 - Sir, do you have the page entitled Representative Publications from the back of your evidence open in front of you?

A. Yes, sir.

Q.511 - Can you point me to any of those that pertain to capital structure, cost of debt or return on equity as a discrete subject?

MR. O'CONNELL: Mr. Chairman, I allowed questions to this witness to be put earlier in this cross examination that related to his curriculum vitae.

And I must admit that I -- if the Province had tendered any evidence to this hearing and if the Province had taken an expert and made him -- had him express an opinion to this Board and made him available for cross examination, that would be one thing. And maybe we could be doing the, my expert is better than your expert, line of questioning.

But they chose not to do that. The Province has

placed no evidence. There is no expert. And I would suggest to you it is a rather significant waste of the Board's time to pursue a romp through the articles that this particular witness has written.

CHAIRMAN: This is cross-examination, Mr. O'Connell. Go ahead, Mr. Blue.

Q.512 - Mr. Kumar, could you answer the question?

A. I believe I discussed this manual which I wrote which is listed on page 5, cost of service manual for electric utilities.

It covers almost every aspect of the cost of service including capital structure and rate design and return on equity.

Q.513 - Okay, sir. But I was really -- I should make my question more precise then.

Do any of your publications constitute an assessment of the capital structure, cost of debt or return on equity of the utility?

A. Not the publication. But there are several testimonies. I have analyzed the capital structure as well as various elements of the cost of capital.

Q.514 - Okay. Can we then turn to the portion of your appendix labeled "representative program appearances"?

CHAIRMAN: Is that --

MR. BLUE: I will just find it for you, sir.

CHAIRMAN: Okay, I have got it.

Q.515 - Can you point me to any of your program appearances where you discuss cost of capital, cost of debt, return on equity for utilities?

A. I think I answered. That answer applies to all the pages from page 1 to 5 which includes this section also.

Q.516 - Have you got a specific appearance program where you talked about capital structure, cost of debt, cost of equity?

A. I think I had said that this section is included from pages 1 through 5. The only report where I discussed these issues is shown on page 5 --

Q.517 - All right. In the manual?

A. -- cost of service manual. Yes.

Q.518 - Okay. Thank you. Sir, have you ever been accepted anywhere in Canada as an expert witness on the sole issue of capital structure, cost of debt and return on equity?

A. I have not testified to these issues in Canada.

Q.519 - Okay. Have you ever been accepted as an expert before any regulatory tribunal in the U.S. where the sole topic of your testimony was capital structure, cost of debt and return on equity for a utility?

MR. O'CONNELL: Mr. Chairman, that is not an appropriate way to put that question. If he wants to limit the response to the only thing he talked about was one narrow topic,

then the witness is probably going to say no, because I would go on in the normal course to talk about other things.

CHAIRMAN: Mr. Blue?

Q.520 - Would you answer the question, sir?

A. May I have the question back?

Q.521 - Yes. Have you ever been accepted as an expert where you tendered a study similar in scope to the one that Ms. McShane has tendered here on the sole issue of the appropriate capital structure, cost of debt and return on equity for a utility in the United States?

A. Just that issue alone?

Q.522 - Yes.

A. I don't recall that --

Q.523 - Okay. Thank you, sir.

A. -- any of my testimony had just that issue alone.

Q.524 - Now sir, I take it that any comments you did make about those issues would be similar to the type of comment you have made in this case --

A. Yes, sir.

Q.525 - --- is that fair? All right. They would be general comments?

A. They are general comments.

Q.526 - Right.

A. And I did not make any specific recommendation. And

I'm not making any specific recommendation here either.

Q.527 - And you are not testifying in this case as an expert on capital structure, cost of capital and return on equity?

A. That's what I stated. I'm not recommending any specific capital structure --

Q.528 - That is not what I asked you.

A. -- on return on equity. I'm testifying to the issues related to these subjects.

Q.529 - Sir, that wasn't what I asked you. I asked you that your testimony in this case and the things you say about Ms. McShane's testimony is not given as an expert on capital structure, cost of debt and return on equity, is it?

A. I think I answered on the -- not the specific recommendation. I'm testifying to the issues involved in these areas. I'm not making any specific recommendation.

Q.530 - And any comments you are making are not made as an expert, like Ms. McShane, in capital structure, cost of debt or cost of equity, are they?

MR. O'CONNELL: Mr. Chairman, allow me to point out that no witness that has appeared before this Board this week has been qualified as or declared by the Board to be an expert, nobody, including Ms. McShane.

MR. MACDOUGALL: I have a serious reserve with that, Mr.

Chair. And if there is, I would like to qualify Ms. McShane immediately. Her testimony was filed as an expert.

If Mr. O'Connell is telling me that Ms. McShane is not an expert, then we must qualify her immediately as an expert in that area. And I would like him to explain to me if he has any problems with that.

MR. O'CONNELL: You know, Mr. Chairman, I have no problem with that. I just want to make clear that when Mr. Blue phrases his question in the terms that Mr. Kumar isn't qualifying as an expert, he is qualifying as an expert in the same sense of the word that several other people have done, including Ms. McShane.

MR. MACDOUGALL: Mr. Chair, I would require clarification on the record, at this point or later on, that Ms. McShane is an expert on the matters in which she is speaking, unless Mr. O'Connell is going to tell me differently.

And this is separate from Mr. Blue. It is being raised in another context. It is unfortunate I have to raise this. But my understanding was that Ms. McShane was --

MR. BLUE: I will yield the floor to Mr. MacDougall.

CHAIRMAN: I'm sorry, Mr. Blue. What did you say?

MR. BLUE: I just said for the sense of order I'm prepared to yield the floor to Mr. MacDougall on this issue at this

time, if the Board wants to deal with that. Or I'm prepared to continue when the comments die down.

MR. MACDOUGALL: It is just, Mr. Chair, this debate is not a part of my witness. And Mr. O'Connell though has now said my witness is not an expert. I would hope that everyone understood that.

And I apologize if this Board's procedure was such that one had to go through the specifics of reading through c.v.'s and qualifying the expert.

If that was the necessity, we did not do that with Dr. Foster either at the marketers proceeding. But I would do that here at anytime, if any party believes that is necessary.

CHAIRMAN: The Board has accepted the fashion in which we have proceeded, which is with the c.v.'s filed and giving opinion evidence based upon the c.v. that was prefiled.

So I don't think it is necessary for you to make the formal request that Ms. McShane be qualified as an expert.

Because the Board has accepted her testimony on that basis.

MR. MACDOUGALL: Thank you for that clarification, Mr. Chair.

CHAIRMAN: Now I think I will ask Mr. Blue to ask the question again that he had previously put to the witness.

And if you have an objection to the question, Mr.

O'Connell, restate it, okay.

MR. BLUE: Mr. Chairman, I will just ask -- I will ask a slightly different question that hopefully will be fair to Mr. Kumar.

Q.531 - Mr. Kumar, no one questions, sir, that you have long experience testifying in public utilities matters. And we have great respect for the things you say. I just want you to know that.

But I'm saying it is in that context, with that background, that you make your comments and not as an expert like Ms. McShane in issues of capital structure, cost of debt and return on equity.

You don't have her expertise, in other words, in those matters?

A. I don't know what -- I'm just telling you what my expertise are. So you can discuss whatever you want to discuss in the briefs.

Q.532 - Yes.

A. I have testified to these issues before. This is not the first time I'm testifying to these issues.

Q.533 - Thank you, sir. That is helpful. Now -- but let me just understand your logic and ask you do you agree that there is a relationship between risk and the rate of return required by an investor relative to that risk?

A. Yes, sir.

Q.534 - Okay. And do you agree that investors require a higher expected rate of return when risk is perceived to be higher?

A. Yes, sir.

Q.535 - Now let's go to page 61 of your testimony?

A. 61?

Q.536 - Yes, sir.

A. Yes, sir.

Q.537 - Now in the answer at the bottom of the page, about fourth line from the bottom, you say "I have already pointed out some of my concerns about Ms. McShane's analysis related to Enbridge Gas New Brunswick's capital structure and return on equity"?

A. Yes, sir.

Q.538 - Do you agree that investors expect a higher expected rate of return for a greenfield utility than for a mature utility?

A. Generally, yes. But you know, it depends on other factors also.

Q.539 - Sure. Can you show me anywhere in your prefiled testimony where you analyzed in a quantitative fashion the risk faced by Enbridge Gas New Brunswick?

A. No, I did not.

Q.540 - Thank you.

A. And that I stated right on page 61 where you started

my --

Q.541 - And as you have said several times, you have made no recommendations about capital structure, cost of debt or return on equity for Enbridge Gas New Brunswick?

A. No specific recommendation. I have given some points which the Board may consider.

Q.542 - Now sir, can we go back to page 57?

A. 57?

Q.543 - Yes.

A. Yes, sir.

Q.544 - And in this answer you state that schedule 4 of Ms.

McShane's testimony shows the average return on equity as adopted for listed Canadian LDC's was 9.6 percent in the year 1999, 9.95 percent in the year 2000?

A. Yes, sir.

Q.545 - Okay. And you are offering this information to the Board, I believe, to make some comment about rates of return?

A. The Board should know what, you know, what other LDC's have been allowed.

Q.546 - Okay. Now have you made any independent study of the risks of the utilities listed in Ms. McShane's schedule 4?

A. No, sir.

Q.547 - Can we look at her schedule 4? And you will find it behind tab 14 of the blue book.

A. Yes, sir. At tab 14, you say?

Q.548 - Yes.

A. Yes, sir.

Q.549 - And that is a schedule that I believe you also append to your witness statement?

A. Yes, sir.

Q.550 - Now here we have B.C. Gas utility at 9.5 percent?

A. Yes.

Q.551 - Pacific Northern Gas at 10.25 percent?

A. Yes, sir.

Q.552 - Union Gas at 10.05 percent --

A. Yes, sir.

Q.553 - -- et cetera? Now are you aware that both B.C. Gas utility and Pacific Northern Gas are utilities in the Canadian province of British Columbia?

A. Yes, sir.

Q.554 - Two utilities in the same province regulated by the same Board.

Do you have any idea why their allowed returns on equity are different?

A. As I said, I did not analyze any. I'm just commenting, pointing out what is shown on schedule 4.

Q.555 - But you have admitted to me that you believe that risk is material to a required return --

A. Yes.

Q.556 - -- correct?

A. Yes, sir.

Q.557 - And each of these allowed returns on equity in these cases are the product of someone, some board's analysis of risks based on expert testimony. Do you agree with that?

A. Yes, sir.

Q.558 - And you just trot those out and say, here are the numbers, in an unqualified, unassessed way, is that correct?

A. My purpose -- as I said, I did not do any risk analysis. I just pointed out what --

Q.559 - How do we know if those numbers are relevant? Do you just accept it because Ms. McShane put them in her schedule?

A. I hope these are relevant, because Ms. McShane put relevant information. I don't believe that she put irrelevant information in her testimony.

Q.560 - But you are saying you only know about those companies what she has provided?

A. She listed that information. That's what I'm analyzing here.

Q.561 - Thank you.

A. That's all I'm doing.

Q.562 - Have you read perchance the British Columbia Utility Commission's generic decision on return on equity?

A. No, I have not.

Q.563 - Okay. Have you read the National Energy Board's decision in RH-2-94 the generic hearing on returns on equities for Canadian gas transmission companies?

A. No, I have not.

Q.564 - Were you aware of those until I mentioned them?

A. No, I was aware -- I think Ms. McShane mentioned. And I'm aware of those.

Q.565 - Could we go to pages 62 and 63?

A. 62 and 63?

Q.566 - Yes.

A. Yes, sir.

Q.567 - And I'm coming, sir, to the stand alone issue. And let's just quote you.

At the top of page 62 you state "My major problem with Ms. McShane's analysis is that most of her analysis is premised upon a fiction of operating on a stand alone basis, that is looking solely at Enbridge Gas New Brunswick while ignoring the reality that Enbridge Gas New Brunswick is part of a bigger entity."

And then you say just below that "This is patently wrong"?

A. Yes, sir.

Q.568 - Okay. So is it fair to say that the defining difference between you and Ms. McShane is you say that a

stand alone basis is wrong and she says it is right?

A. I'm saying just relying on stand alone is ignoring the reality. I did not say, you know, you should not. And basically here the reference is to the cross-subsidization, and --

Q.569 - My question was is that the defining difference between you and Ms. McShane, that you say --

A. Ms. McShane says -- yes, that's the difference, that she is using stand alone with a wide cross-subsidization.

And if you use consolidated or actual capital structure, that will result in cross-subsidization. I disagree with her, yes.

Q.570 - Okay, sir. Now Mr. Kumar, where should we look to find what the appropriate principle is and how to decide who is right as between assessing the return on a stand alone basis or assessing it on the basis of parent -- what test should we look at? Who should -- who should we cite?

A. I don't think, you know, regulation is strictly based on textbooks. If it is based on textbooks, all boards will become irrelevant. You look at these things in case-specific area and what the Board's responsibility is.

Q.571 - Let's look at some textbooks first?

A. Yes, sir.

Q.572 - Okay. And I gave you through your counsel yesterday

--

A. Yes.

Q.573 - And sir, let's get it on the record. You are an American citizen?

A. Yes, sir.

Q.574 - And you took your training in the United States in this area?

A. I took training in -- in this area?

Q.575 - In economics and accounting, you said you took correspondence and night courses?

MR. O'CONNELL: No, he didn't. That is not what he said.

WITNESS: No. I attended -- I took university courses also.

I don't know where you got that impression from.

MR. O'CONNELL: And he specifically said he didn't take correspondence and night courses.

Q.576 - Just a second. Could you turn to page 1, "qualifications of Jatinder Kumar"?

A. Yes, sir.

Q.577 - And you state your education. And you give us your Bachelor of Science, your diploma in the French language, your postgraduate diploma in petroleum engineering?

A. Just a second. Slow down. Let me get it upright.

Yes, sir. I'm on page 1. Yes, sir.

Q.578 - Then in the paragraph you say "evening and correspondence courses" --

A. Yes.

Q.579 - -- "business management, corporate organization, risk analysis, economics, accounting, management and organization, business finance." Okay?

A. Yes, I do say that, yes.

Q.580 - Thank you.

A. It does not mean that's the only courses I took.

Q.581 - I didn't say it was.

A. It says I took these courses, evening and correspondence courses in these areas. It does not mean none of the above universities I attended, I did not take the courses in economics.

Q.582 - It doesn't matter. I only got back to it because your counsel said you didn't say it, and you did say it.

But I want to talk about basic -- there is an extract from a textbook --

MR. O'CONNELL: Mr. Chairman, allow me to respond to that.

It is my recollection of this witness' evidence earlier this morning was that when the question was put to him, he talked about attending regular university courses, not evening and correspondence courses.

CHAIRMAN: We can check the transcript in the next break if you want to. Go ahead, Mr. Blue.

MR. BLUE: Thank you, sir.

Q.583 - Behind tab 18, Mr. Kumar, we had given you an extract from a textbook by David Scott Jr., John D. Martin, J.

William Petty and Arthur J. Keown entitled Basic Financial Management?

A. Yes, sir.

Q.584 - And did you at my request through your counsel read over this chapter?

A. Yes, sir.

Q.585 - Okay. Could you turn, sir, to page 442?

A. Yes, sir.

Q.586 - And there is a heading there called "capital structure weights"?

A. Yes, sir.

Q.587 - Okay. And he says "We opened this chapter with a description of an investment opportunity faced by the Morristown division of Encore, Inc. A critical element in the analysis of that investment was an estimate of the cost of capital, the discount rate to be used to calculate the net present value for the project."

Do you see that?

A. Yes, sir, I see that.

Q.588 - And they are just giving an example to students here?

A. Yes, sir.

Q.589 - Okay. And they say "The reason we calculate a cost of capital is that it enables us to evaluate one or more of the firm's investment opportunities. Remember that the cost of capital should reflect the riskiness of the

project being evaluated so a firm may calculate multiple costs of capital where it makes investments in multiple divisions or business units having different risk characteristics. Thus for the calculated cost of capital to be meaningful, it must correspond directly to the riskiness of the particular project being analyzed. That is, in theory the cost of capital should reflect the particular way in which the funds are raised, the capital structure used and the systematic risk characteristics of the project. Consequently the correct way to calculate capital structure weights is to use the actual dollar amounts of the various sources of capital actually used by the firm."

A. Yes, sir.

Q.590 - Do you see that?

A. Yes, I see it. And it emphasizes actual dollar, not fictitious dollar or any -- based on any fiction. It says very clearly actual dollar amounts of various sources of capital actually used by the firm, not based on some fictions.

Q.591 - Do you agree --

A. That's what I'm saying in my testimony too.

Q.592 - Do you agree with the statement?

A. Yes, sir. That's what I said in my --

Q.593 - All right.

A. -- testimony also.

Q.594 - Okay. Now sir, I want to refer to another text book extract that I gave you. And this is behind tab 19?

A. Yes, sir.

Q.595 - And this is by Eugene F. Brigham and Louis C. Kimpenski?

A. Yes, sir.

Q.596 - Do you know their writing?

A. I know Mr. Brigham fairly well.

Q.597 - Do you accept his views as authoritative?

A. Well he -- he has his own views. And he has testified. I can tell you very rarely any regulatory commission accepted his recommended return on equity.

Q.598 - My question was do you accept his writing, his book, this book as an authoritative statement of financial principles?

MR. O'CONNELL: Mr. Chairman, my response to that would be that's not an appropriate question. And I don't know Mr. Brigham. If he has written substantially, I would suggest the proper way for my learned way to do this is to take a particular excerpt, or a view, or a quote, or some expression of opinion and put it to him.

But to ask him to sort of access overall whether this particular author or authors are right or wrong is not a proper way to put the question. Put the opinion to him.

Get him to comment on it. I have no problem with that.

MR. BLUE: Mr. Chairman, my friend procedurally is incorrect. The proper way to ask a witness in a trial about a textbook is, first, you have to ask him if he is familiar with the textbook or the authors. And secondly, does he consider their writing authoritative. If he doesn't, then there is no point in going through the textbook with him. If he does, then you go on to read the quote, which I intend to do.

Now that's written up in several books on advocacy which are public -- which are available. That's the way you do it. So that's what I was trying -- that's the way I have been taught anyway.

CHAIRMAN: Well did the witness respond to the second question, Mr. Blue, because I was busy looking for something here. As to whether or not he was familiar with the two writers, Mr. Brigham, I guess, and Mr. Kimpenski?

MR. BLUE: He says he is familiar. But I haven't -- I don't know whether he regards this as a good textbook, an authoritative textbook on financial management.

WITNESS: It's one of the textbooks. And I have said he testifies frequently on -- Professor Brigham, on return on equity. And I don't recall whether -- it has been rare occasion that his recommendation on return on equity has been accepted by any jurisdiction in the United States.

Q.599 - Well I just want to ask you about something said.

Page 371?

A. Yes, sir.

Q.600 - Quote, "As you learned in earlier chapters, the appropriate discount rate for a given cash flow stream --"

A. From where -- which paragraph are you reading?

Q.601 - The first full paragraph on the page under the heading

4. See, the heading -- there is a heading on page 371.

A. 371, yes, sir.

Q.602 - 4, compare each projects present value with its cost and accept a project if the present value of its future cash flow -- cash in flow exceeds its cost. Do you see that?

A. No, I -- the first full paragraph started, "As you learned in earlier chapters"?

Q.603 - Yes.

A. That's the one? Yes, sir, I'm there.

Q.604 - As you learned in earlier chapters, the appropriate discount rate for a given cash flow stream depends on the riskiness of the stream. The riskier the stream or the riskier the asset, the higher the discount rate. You agree with that?

A. Yes, sir.

Q.605 - Therefore the riskier a capital budgeting project, the

higher its cost of capital. You agree with that?

A. Yes, sir.

Q.606 - In this chapter we were determining the firms cost of capital for an average risk project. It should be intuitivly clear that firms take on different projects with differing degrees of risk. You agree with that?

A. Yes, sir.

Q.607 - Part of the capital budgeting process involves assessing the riskiness of each project and assigning it a capital cost based on its relative risk. Do you agree with that?

A. Not entirely. That's one of the factors. There may be some other factors. When you go for a project, there are other considerations also beside you look at the risks alone.

Q.608 - Let me get this straight. You are saying that a business, when it is in the capital budgeting process, doesn't assess the riskiness of each project and assign it a capital cost based on its relative risk? Isn't that --

A. Because one of the factors they did is to assess the risk but that's the only factor which a business entity would consider in investing money in a new project.

Q.609 - Thank you. Okay. Thank you, sir. Now, sir, are you aware of any regulatory precedents in Canada where a utility has been assigned a capital structure and a cost

of debt or cost of equity based on its parent company?

A. Based on the parent company? I think, yes, Ms.

McShane list the cases where actual capital structure have been adopted. And I think in one case she even says based on consolidated parent's capital structure.

Q.610 - Which case is that?

A. If you look at attached schedule 1 of my exhibit, which is the same thing as exhibit E, schedule 64 of the applicant. If you look at page 2 of that schedule 1.

Q.611 - Give me that reference again please, sir?

A. It's schedule 1 of my exhibit or exhibit -- applicant's exhibit E, schedule 64, page 2. The second one is actual Consolidated for PNG -- that was Ms. McShane's, I believe, recommendation was says McShane supported use of actual and next column said actual consolidated for PNG. And the Board approved or Commission -- Board approved actual subject to equity ration at 35 percent. Then you look at the other was -- target actual Alberta Power actual. And there are quite a few actual, in fact, half are actual and half are hypothetical stand alone.

Q.612 - Now do you know what she means by actual consolidated for Pacific Northern Gas. What does that mean?

A. It means the whole calculation basically the parent is the whole consolidated corporation. That's the capital

structure she is talking about.

Q.613 - Do you know that for a fact?

A. That's what she says.

Q.614 - No, her words -- where does she say that it's the whole corporation and the parent?

A. Said actual consolidated. Consolidated means --

Q.615 - Do you know anything more about the situation than what you read in that field of the table?

A. You asked me what -- I don't know anything more than that.

Q.616 - Okay.

A. Consolidated means the total system.

Q.617 - Well, Mr. Kumar, can you not confirm that consolidated in the case of Pacific Northern Gas means two divisions in one incorporation consolidated in one corporation on a stand alone basis?

A. It does not say stand alone. It says consolidated.

Q.618 - I'm asking you for your knowledge. And you have no knowledge of what that means, do you?

A. Nothing is in the record. The record shows consolidated and this is what I'm telling you what does it mean.

Q.619 - So that's the only precedent that you can cite?

A. I told you what my interpretation is.

Q.620 - Now is it your view that the proposed capital

structure of Enbridge Gas New Brunswick is fictitious?

A. It is what? I'm sorry.

Q.621 - Is it your view that the proposed capital structure of Enbridge Gas New Brunswick is fictitious?

A. I'm sorry. I'm not understanding your last word.

Q.622 - Okay. On page 62 you will recall that you said my major problem with McShane's analysis that most of her analysis is premised upon a fiction of operating on a stand alone basis.

A. Is this a fiction? Yes, it is a fiction. It is a hypothetical, which is the same thing as fiction.

Q.623 - And my question was do you consider Enbridge Gas New Brunswick proposed capital structure fictitious?

A. Fictitious?

Q.624 - Yes.

A. I don't. Hypothetical is fiction. And in that context it is fictitious, yes.

Q.625 - Is it your view that an actual promissory note between Enbridge Inc. and Enbridge Gas New Brunswick binding them both legally is fictitious?

A. There may be a promissory note but that doesn't make it a real capital structure or an actual capital structure. The promissory note stating that it's 50 percent equity, 50 percent debt.

Q.626 - Mr. Kumar, I sort of feel I am in the rubber room.

Two corporations, arms length, enter into legal relationships.

A. Yes.

Q.627 - Under which one lends money to the other. And you are saying that is a fictitious arrangement?

A. No, I'm not saying --

Q.628 - All right.

A. I'm saying as for the note is concerned but whether it will be 50 percent equity, 50 percent debt, that part is fiction.

Q.629 - Well why is it fiction if half the capital is provided by legal instruments between the two corporations and the other is provided by investment. Why is it fictitious if it's an actual capital structure?

A. Suppose -- it is not actual. That's the problem. If I borrow money at 6.8 percent and lend it to Enbridge and say 50 percent is equity and 50 percent debt, that's fiction. Just lending money is not a fiction.

Q.630 - So now, Mr. Kumar, we are told there are going to be about 28 limited partners who are going to invest their money as part of the equity. Are those investments by 28 New Brunswickers fiction?

A. No, that's not what. 67 percent, you take money at 6.8 and lend it to a subsidiary which is controlled 67 percent, say 50 percent is at 8 percent and 50 percent is

13 percent, that's fiction.

Q.631 - So are you concerned about double leverage?

A. Double leverage?

Q.632 - Yes.

A. No, double leverage is, you know, you have -- equity and debt growth, yes.

Q.633 - Thank you. But you don't know whether the investors are using equity or debt to make their investment, do you?

A. If I am borrowing money at 6.8 --

Q.634 - Do you know? Do you know how they are making their investment?

A. Yes. They borrowed money at 6.8 percent, that means they can borrow at 6.8 percent, and Ms. McShane stated it's a small investment, so if I borrow at 6.8 percent and lend it to my affiliate, which I have 67 percent control, and say 50 percent is at 8 percent and 50 percent 13 percent, that part is fiction.

Q.635 - Can you name any of the -- of the individual investors?

A. Do I -- no. I am talking of 67 percent of this.

Q.636 - Do you know whether that money is going to be borrowed or whether it's going to come from internal resources?

A. 67 percent -- if they could borrow at 6.8 percent, why they would go and borrow at 25 percent, 28 percent?

Q.637 - My question, sir, was do you know, are they going to

borrow it or put it from internal funds, do you know?

A. They have borrowed at 6.8 --

Q.638 - Do you know that?

A. Yes, sir, it is a fact. It's a response they borrowed in March 2000 at 6.815 percent. It was pointed out yesterday. And this was in response to the Province's interrogatory I believe number 34.

Q.639 - Do you know what they have used those funds for?

A. They could use it for the -- there is no prohibition use it for investing --

Q.640 - Do you know what they have used those funds for?

A. No, but there is no prohibition. That means they can borrow at 6.8 percent and that's what they should use, if they can borrow that.

Q.641 - Sir, can you turn to page 68.

A. 58?

Q.642 - 68, yes.

A. 6-8.

Q.643 - 68 of your testimony.

A. Yes, sir.

Q.644 - You say in the middle of your paragraph, the big paragraph of the answer, the second paragraph of the answer, "Therefore, the rates should be adjusted as frequently as possible to reflect the actual market prices of fuel oil. If the customers do not realize real savings

then the competitors may use this point to dissuade customers from switching to gas."

A. Yes, sir.

Q.645 - And then you go on in your answer at the bottom of page 68 to say that, "In order to avoid confusion, oil prices should be specified. In order to assure real savings, the specified prices should be the ones which would be paid by typical customers in each customer class."

A. Yes, sir.

Q.646 - Right. Now, sir, there is two points here. Firstly, on the point of rates being adjusted as frequently as possible, do you agree that the rate rider procedure that Enbridge has described to the Board meets that concern?

A. Not exactly, because it does not say -- at least I have not seen it unless you point out to me, what specific oil prices will be used.

Q.647 - No, I am not talking about oil prices, just in terms of frequency. They have said that they will come in -- we will talk about oil prices being specified in a minute.

But in terms of your comment about the frequency, do you agree that the rate rider process provides for or allows for frequent changes in rates, if necessary?

A. Yes, sir.

Q.648 - Okay. Now with respect to the rate rider not

specifying oil prices, do you not think, sir, that the market should decide -- no one is going to convert to natural gas unless they know what the oil prices are and what the savings are, are they?

A. The new customers, yes, that's correct, but --

Q.649 - Okay.

A. -- the existing customers, they are there. So rates are going to be charged -- same rates are going to be charged to new customers as existing customers.

Q.650 - But if Enbridge has the gas customer hooked, so to speak, on natural gas and the customer is concerned about the price sufficiently, isn't the customer again going to let the market determine and look at the costs and find out for himself?

A. What, is he going to shift back and forth to oil and gas? No.

Q.651 - So what --

A. Once they spend money they become captive. That's why I used the word captive. Once you are hooked with the gas it's going to become quite difficult. So this concern I raised is for the existing gas customers.

Q.652 - Well what is the purpose of putting the oil price then on the rate rider application? Is that just to make the hooked captive customer gnash his teeth or what?

A. Just to make sure that they realize the real savings,

not some perceived savings.

Q.653 - I see. Okay. Thank you. Now, sir, could you turn to page 71.

A. 71?

Q.654 - Yes.

A. Yes, sir.

Q.655 - And you say that, Enbridge Gas New Brunswick has not provided any example, nor am I aware of any case where in the development period the rates to any customer class can exceed its cost of service. And I should point out in response, that in response to Board staff interrogatory number 6, Enbridge Gas New Brunswick did not provide any example in support of its assertion.

A. Yes.

Q.656 - And then you refer I believe to the Bangor Gas case and the statement in that case about class cost of service?

A. That's correct, I did.

Q.657 - Right. Are you aware of any decision on the point of customer class cost of service other than the Bangor Gas case?

A. I believe there is a customer class cost of service study in that case.

Q.658 - Okay. But is there any other case --

A. Not yet, but it will be there, yes.

Q.659 - You have the Bangor Gas case as the one example you have cited?

A. Yes, sir.

Q.660 - Are there any others you can point to today?

A. No, I did not cite any other case.

Q.661 - Okay. Thank you. Now, sir, do you have a copy of the Bangor -- well I do anyway. Let's turn to tab 21.

A. 21?

Q.662 - 21 of the blue book.

A. Yes, sir.

Q.663 - And turn to page 14.

A. Yes, sir, I am there.

Q.664 - And you will see this is an extract from the Maine Public Utilities Commission in docket number 97-795, dealing with the same Bangor Gas Company?

A. Yes, sir.

Q.665 - And they have the heading, 5. Ability to Provide Service at Just and Reasonable Rates, do you see that heading?

A. Yes, sir.

Q.666 - And it says, Finally we reviewed Bangor Gas' proposal to determine whether Bangor Gas has adequately shown that it will be able to provide service at just and reasonable rates. The Bangor Gas proposal is unusual in one regard. Under its multi-year rate plan Bangor Gas proposes to

charge customers not on the basis of cost of service but with a rate capped at an estimated price of alternate fuel.

Do you see that, sir?

A. Yes, sir.

Q.667 - So that is what Enbridge is proposing, isn't it?

A. That's correct.

Q.668 - Consequently, rates do not depend on the startup company's cost structure. Do you see that?

A. Yes, sir.

Q.669 - And that's what Enbridge Gas is saying, isn't it?

A. That's correct.

Q.670 - Since Bangor Gas' multi-year rate plan does not tie cost to rates, a review of these aspects directly related -- is not as critical as if rates were directly related to costs.

A. I see that, yes.

Q.671 - Okay. And that's the situation here, isn't it, with Enbridge Gas New Brunswick?

A. No. The situation -- here is cost of service as related to, integrated cost of service or system-wide cost of service, and there is not strictly related -- that was the proposal by Bangor which was not based on -- strictly based on cost of service.

Q.672 - Right. Just like Enbridge Gas New Brunswick here.

The quote goes on. It says, The issue of whether Bangor Gas will be able to provide service at just and reasonable rates depends on the price cap structure that is proposed.

OPA's arguments concerning the rate plan submitted by the Bangor Gas which we have approved in our order dated June 6th 1998, imply that rates for Bangor Gas must be linked directly to cost regardless of the practical limitation on prices imposed by competition from other fuels, especially oil. We disagree.

A. Do I disagree?

Q.673 - No, no. We disagree. I am reading what the Maine Commission says, on page 15. Do you see that?

A. Well I disagree or the Commission disagreed with it? What's your question?

Q.674 - I am just reading, sir. I just --

A. Yes, you are reading right, but that -- that's just a piece of what Bangor Gas plan is and what OPA's, Office of Public Advocates comments were on their plan, that's what you are reading. That's not part of the decision.

Q.675 - But the Commission said about the Office of the Public Counsel's position, we disagree with that?

A. Yes.

Q.676 - Then the commission goes on, Applying traditional rate of return regulation to a startup gas utility whose cost in markets are at best uncertain, might easily discourage

the investment in gas distribution infrastructure that is likely to bring significant benefits to the Bangor area and ultimately through Maine. Under the Bangor Gas approach the Commission will after ten years have the opportunity to assess whether cost and prices should be linked more directly. In the meantime, customers will have the benefits of competition from a new energy source, and will be assured by the operation of the price cap that they will be no worse off than they are today.

And the Commission said that?

A. Yes.

Q.677 - And they said that, sir, in respect of the case which you cited to this Board?

A. That's correct, yes.

Q.678 - But you put in the quote you put in from that case but you didn't put in any of the quotes that I just read.

A. I -- we summarized what they are allowing and I did not say that, you know, it's based on traditional cost of service. Only thing I said was the cross subsidization and the losses incurred by the cross subsidization, and here Enbridge Gas proposal is not the same as Bangor Gas proposal.

Q.679 - And exactly how is it different, in terms that are material to that quote, since in both cases the company is asking for market based rates and in both cases the

company is not going to charge rates based on full cost of service, and in both cases they have asked for a development period? What are the material differences?

A. The material difference is here the company provided a full system-wide cost of service. In Bangor case I am not aware of that.

Q.680 - And that was because the Board asked for it?

A. Because Board asked for it?

Q.681 - Because the Maine Public Utility Commission asked for it?

A. No, Maine Commission did not ask for it.

Q.682 - Yes.

A. And here the utility agreed even in the essential elements, and that's how they filed it, based on cost of service.

Q.683 - Right. And Enbridge has now filed a full cost of service study that Ms. Duguay testified to on Wednesday.

A. Yes, sir.

Q.684 - Thank you. Now, sir, it is true that in Maine there was no cost of service study filed for Bangor Gas?

A. I am sorry, what's not filed?

Q.685 - It's true, sir, isn't it, that before the Maine Public Utilities Commission in the Bangor Gas case, Bangor Gas did not file a cost of service study?

A. That's correct.

Q.686 - And in this case Enbridge has filed a cost of service study because the Board requested it to?

A. I don't know whether the Board requested it, because the essential element says it will be based on cost of service, rate of return concept, and I think the company followed that. It's included even I believe in essential elements and even I believe in the proposal.

Q.687 - Sir, the essential elements are behind tab 10 of the blue book. Can you point out to me where the essential elements refer to Enbridge filing a cost of service study or being regulated on the basis of cost of service study?

A. I have summarised essential elements in -- on pages 6 --

Q.688 - Well I would rather look at the --

A. I'm sorry. You refer to which?

Q.689 - I would rather look at the text of the essential elements. They are behind tab 10 of exhibit C-16 of the book that we gave you.

A. Tab 10. Yes, I am there. I am sorry.

Q.690 - And can you point out to me where --

A. Where is it --

Q.691 - -- the essential elements say that Enbridge should be regulated on the basis of a cost of service study or --

A. Item number (ii), the aggregate annual requirement of the gas distributor will be based on a full cost of

service model.

Q.692 - Thank you. And then look at number 11.

A. Number 11, regulatory oversight of these terms will be light handed.

Q.693 - Thank you. Now, Mr. Kumar, let's turn to -- are we still on -- I want you to stay on page 72.

A. Page 72. Yes, sir.

Q.694 - Now you state in the second -- in the last sentence of the paragraph, "Further, in my opinion, the Board's responsibility of establishing just and reasonable rates may not be fulfilled if the rates to a customer class substantially deviates from its cost of service." You say that?

A. I am sorry. You are reading the first full paragraph?

Q.695 - I am reading your evidence, last sentence on the page, 72.

A. Last section in the second answer, "Further, in my opinion" -- okay.

Q.696 - And it says, "Further, in my opinion, the Board's responsibility of establishing just and reasonable rates may not be fulfilled if the rates to a customer class substantially deviate from its cost of service." End of quote?

A. Yes, sir.

Q.697 - Sir, we have already looked once at the definition --

or twice -- at the definition in the law, the Gas
Distribution Act, 1999, of Alternative Form of Regulation
--

A. Yes, sir.

Q.698 - -- and we agree that it means a method of establishing
just and reasonable rates and charges by performance based
regulation without regard to methods based strictly upon
cost of service, rate base and rate of return?

A. Yes. That's alternate form of regulation which
company has not sought, they are seeking --

Q.699 - Sir --

A. -- based on revenue requirement with that in the
essential element.

Q.700 - Please listen to my question. My question was, do we
agree that that is the definition of alternative form of
regulation? It says it is not based strictly upon cost of
service?

A. That is correct.

Q.701 - Okay.

MR. O'CONNELL: I think it is also fair for the witness to
point out that Section 52.5 of the Gas Distribution Act
says that the Board may adopt any form of regulation
including as one alternate regulation.

A. That's what I was trying to say, that's not the only
regulation allowed as alternate form of regulation. There

is something else there.

Q.702 - Yes. I am glad that I had Mr. O'Connell's help because I was going to read it next. But read Section 52.5, and you will find that behind tab 1, I believe, of the brief.

A. Tab 1. Yes, sir. I am there, on page 5.

Q.703 - No. It's on page 34, 35. It says, "In approving or affixing just and reasonable rates and tariffs, the Board may adopt any method or technique that it considers appropriate, including an alternative form of regulation."

A. Yes. Can I read that in French also?

Q.704 - My question to you was, sir, that that does not say that just -- rates will not be just and reasonable if the rates deviate from the class cost of service, does it?

A. It does not say that.

Q.705 - It gives the Board a discretion?

A. Yes. The Board has and should have discretion in establishing just and reasonable rates.

Q.706 - Thank you, sir. Now can we look at page 73.

A. Yes, sir.

Q.707 - Sir, can we look at the essential elements again behind tab 10?

A. Yes, sir.

Q.708 - Now, sir, what element 2 talks about is the aggregate annual revenue requirement will be based on a full cost of

service model, right?

A. Yes, sir.

Q.709 - And all that means is the annual revenue requirement has to recover in total in aggregate the utility's cost of service?

A. Yes. That's the essential element. That's not the regulations.

Q.710 - Right. And the cost of service model stands in contrast to a cost of service study done by rate class, doesn't it?

A. In contrast?

Q.711 - The concept of a cost of service model --

A. Yes.

Q.712 - -- used in article 2 of schedule E is different from a cost of service study, or a cost allocation study, isn't it?

A. No, it is not. Here you are talking of annual revenue requirement. You are not talking of risk. Class cost of service is more relevant in establishing --

Q.713 - You are not answering my question. I am asking you to distinguish, sir, a cost of service model recovering total cost of service from a cost of service study or a cost allocation study. You understand that distinction?

A. Yes, I understand.

Q.714 - Thank you.

A. I will explain it. One is determining the total revenue requirement, and that's generally the first step in establishing rates. The second step is to allocate costs to customer classes and use that class cost of service study for establishing rates for individual classes.

Q.715 - So in the State of Maine they -- the Maine Public Utility Commission said that Bangor Gas could recover no more than its total cost of service?

A. Yes.

Q.716 - Thank you.

A. And it stated also that there won't be any costs -- class subsidization, which you cannot determine without running class cost of service study.

Q.717 - But they -- and this would be Maine -- they did not -- the Maine Bangor Gas did not do a class cost of service study, as we have agreed?

A. Not yet, but they will have to do in order to meet the criteria established by the commission no cross subsidization.

MR. BLUE: Mr. Chairman, if we broke now I could probably just go through my notes and shorten things.

CHAIRMAN: I always accept that kind of invitation, Mr. Blue. We will break and try and come back at 1:30.

MR. BLUE: And for the benefit of my friends, I won't be

long in the afternoon.

CHAIRMAN: Okay. Come back at about 1:30, if we can do it.

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

CHAIRMAN: Any preliminary matters?

MR. MACDOUGALL: Yes, Mr. Chair. The two outstanding undertakings, the service agreement and the joint venture agreement. They should be with the Board secretary now and copies at the back.

So maybe if you could give them each an exhibit number. The first one would be whichever you want it to be. Let's say the joint venture agreement.

CHAIRMAN: Joint venture agreement A-14.

MR. BLUE: Mr. Chairman, which is the A-14?

CHAIRMAN: The joint venture agreement --

MR. BLUE: Thank you, sir.

CHAIRMAN: -- Mr. Blue. And the services agreement is A-15.

MR. MACDOUGALL: And Mr. Chair, that is my understanding that completes our undertakings requested to date.

CHAIRMAN: Thank you, Mr. MacDougall.

MR. MACDOUGALL: Thank you. Mr. Chair, I just want to confirm, that services agreement is stamped "draft". I believe it says April 13 or whatever. That is what was requested.

CHAIRMAN: Yes. Draft April 13, 2000.

MR. MACDOUGALL: Thank you.

CHAIRMAN: All right. Go ahead, Mr. Blue.

MR. BLUE: Thank you, sir.

Q.718 - Good afternoon, Mr. Kumar. Mr. Kumar, can we go to page 75 of your witness statement. Do you have that, sir?

A. Yes, sir.

Q.719 - You are asked "What is the problem with the EGNB allocation method?"

And your answer is that "Enbridge Gas New Brunswick allocated system capacity, related costs such as transmission and delivery costs based on the expected peak day requirements of customer classes." Right?

A. Yes, sir.

Q.720 - So your criticism is that the allocation factor, the coefficient by which you multiply cost to attribute the system cost to rate classes was done on the coefficient of expected peak day requirements, correct?

A. That's correct.

Q.721 - Okay. Now Mr. Kumar, I have been in the business of regulatory law for a long time. And wouldn't you agree with me that it is normal to allocate system capacity cost to customers based on their peak requirements or some variation of peak requirements?

A. Partly. Not -- in the gas business that's not the only factor.

Q.722 - But it is a very, very common allocation factor, isn't

it?

A. The common allocation factor -- in gas business, solely on the basis of peak is not common.

Q.723 - I didn't say only on the basis of peak. I said on the basis of peak or some aspect of peak, that is a common allocation factor, isn't it?

A. Yes. I'm not --

Q.724 - Okay.

A. -- opposed to using peak. But that's not the only factor.

Q.725 - Because if you allocate on volumes alone without regard to peak, that doesn't tell you what causes system capacity cost, does it?

A. That aspect is not allocated on the volume, yes. If it's only on volume it does not reflect the peak contribution, yes.

Q.726 - Yes. And the point is that a pipeline system must be designed to have enough capacity to meet peak day requirements, right?

A. In designing pipelines --

Q.727 - Just answer me if that question is right?

A. That's one of the factors you consider --

Q.728 - Okay.

A. -- yes.

Q.729 - Just following on this little progression with me. So

that if we have a whole bunch of customers that have coincident peaks we have to design the system so that on the day that they are all demanding gas 5:00 o'clock in the afternoon in February or January, that the system is big enough to handle it?

A. That's -- as I said, that's one of the considerations, yes.

Q.730 - Right. And that is why you allocate fixed capacity cost on the basis of system peak, right?

A. No. The --

Q.731 - That is why --

A. You consider peak as one of the factors in allocating capacity-related costs.

Q.732 - Okay. Thank you. Now just on that point, it is true that a high load factor customer could take a lot of gas, a lot of volume of gas and not contribute to the peak at all. Isn't that true?

A. They don't contribute to peak at all, high load factor customers?

Q.733 - They may not contribute as much as another customer that has a much lower load factor and takes less gas?

A. Load factor -- if you are -- I think you are combining two things. Whether high load factor or low load factor, they are both contributing to peaks.

Q.734 - But on a coincident peak the high load factor may not

be contributing to a coincident peak?

A. They may not be contributing? If they are a high load factor, in all probability they are contributing to peaks.

Q.735 - I'm not talking about in high probability. I simply say they may not be. That is true, isn't it?

A. It's conceivable they may not be contributing, even though as a matter of fact they may not be contributing to coincident peak either.

Q.736 - Now sir, are you familiar with how other gas distribution utilities allocate capacity costs in Canada, what the allocation factor is?

A. No, I'm not familiar with what the allocation factor --

Q.737 - And if I informed you that it was primarily on peak capacity costs or system peak or some variety of that, you couldn't disagree with me?

A. I couldn't agree or disagree with you.

Q.738 - Thank you. Sir, can we turn to page 78?

A. Yes, sir.

Q.739 - Now we talked about this earlier this morning. But I just want to be thorough.

You say in this answer "I already discussed Ms. McShane's recommendation of accruing deferred revenues with a 13 percent return is unreasonable."

Do you see that statement?

A. Yes, I do.

Q.740 - Now you are aware, because we talked about it this morning, that she is not saying it should be a 13 percent return that is earned on the deferral accounts, it should be the system cost of capital?

A. Yes. I understand that that's the --

Q.741 - Okay.

A. -- EGNB's proposal. The language in Ms. McShane was not clear. And she clarified in response to one of the requests.

Q.742 - And you are happy with her response?

A. Yes, sir.

Q.743 - So can we withdraw this answer from page 78, just strike it out to indicate that you have withdrawn this answer?

A. If she is making that recommendation. If she is not then it's not applicable.

Q.744 - Well, she is stating and she so testified?

A. Yes.

Q.745 - So --

MR. O'CONNELL: Well, the other aspect of this, Mr.

Chairman, is that that answer contains more than one sentence.

Now I think, without speaking for the witness, that we have no -- he is agreeable to withdrawing the sentence

that deals with a 13 percent rate of return. There is also the question of --

MR. BLUE: That is the only sentence I want withdrawn.

MR. O'CONNELL: Okay. Sorry. You were talking about the whole answer, I thought.

A. We are talking about that. And that's not applicable right now. If you want to take it out, I have no problem.

Q.746 - Thank you. Sir, on page 80?

A. Page 80?

Q.747 - Yes, sir.

A. Yes, sir.

Q.748 - And this is treatment of discounts. "What is the nature of discounts you want to discuss?"

And you say "As I pointed out earlier, in Nova Scotia in the case of Sempra, Nova Scotia Utilities and Review Board discussed two discounts. One related to the discount on transmission tolls. The other discount related to the development funds was negotiated by Nova Scotia and SOEP. If there are similar or any other discounts in the province then these discounts should be incorporated into computing the rates charged to EGNB's customers, especially for the small and captive customers whose target rates may be equal to or in excess of their cost of service."

Do you see that?

A. Yes, sir.

Q.749 - Mr. Kumar, having been involved in the Maritimes and Northeast Pipeline continuum cases, this description sounds to me like you do not have a clear idea of how those discounts work.

Can you explain to me your understanding of what discounts you are talking about?

A. There are two discounts, as I mentioned, in Nova Scotia. One is the parties have agreed with Maritime Pipeline to have discounted transmission rates. And as I take it, the target rates computed by EGNB does not take into that discount.

And I don't know whether that discount is applicable here in New Brunswick. If it is, it should be considered here.

Q.750 - You don't know if it is applicable?

A. In New Brunswick, no, I don't know. That's why I used the word conditional. It's a conditional testimony. And I use the word if.

Q.751 - Well, sir, I will tell you it is not applicable. And the fact that it isn't is a bone of contention between the two provinces. But I understand your comment now.

And now which one are you talking about there, by the way, the development funds or the discount on transmission tolls?

A. That was about transmission discount. The other one is development funds. If there is something like that in New Brunswick, it should be considered. I don't know. That's why this paragraph is, if it is there.

Q.752 - Now, sir, because of the unbundling, are you not aware that Enbridge Gas New Brunswick is not a shipper on the Maritimes Northeast system? Were you not aware of that?

A. The service is not bundled in Maritime's system, no.

Q.753 - My question is, are you not aware that Enbridge Gas New Brunswick Inc. is not a shipper on Maritimes and Northeast Pipeline?

A. No, I am not.

Q.754 - Okay. Thank you. So you would agree with me that if Enbridge Gas New Brunswick Limited is not a shipper on Maritimes and Northeast, then your point about the discount on transmission tolls would not be applicable?

A. If they don't get discount -- I am not saying they should be forced to provide the discount.

Q.755 - Okay, sir. I understand your evidence. Page 83, sir.

CHAIRMAN: I just wanted to say, the witness answered in reference to the questions that he -- that simply if those discounts were applicable to New Brunswick then they should be taken into consideration. But you indicated they weren't, and he said, well if they are not then it doesn't apply. And then you went on to ask a couple more

questions that came back around to confirm that, i.e., that transmission -- they didn't have transmission on the pipeline.

And I am just worried about time here. If you could -- you know, you had your answer, carry on to the next subject matter is what I am saying.

Q.756 - Page 83, Mr. Kumar.

A. Page 83. Yes, sir. Now, Mr. Kumar, you are objecting to the supplier of last resort service being priced at 110 percent of cost, on this page?

A. Yes, sir.

Q.757 - And do you not accept the point that the company witnesses made, that if you don't price supplier of last resort at a bit of a premium you -- the customers have no incentive to seek a marketer of their own and to make the system contemplated by the legislation in New Brunswick work. Do you not accept that point?

A. No, I don't.

Q.758 - Okay. And is that a matter of principle that you -- that makes you not accept it?

A. No. It's practical -- matter of practical, not principle. Because first I am not aware of any jurisdiction where -- even Nova Scotia, where any premium is allowed on the gas supplies when the distributor is supplying as a last resort, or even as a bundled service

or unbundled service or as a last resort. The aggregate entity. Generally the gas is supplied at cost. Only non-aggregate entity they can add whatever, you know, they could bear in the market.

Q.759 - Mr. Kumar, isn't it a fact that almost every gas utility, when customers depend on marketers and those marketers fail and the gas company is expected to provide gas on short notice out of systems supply, isn't it a fact that those gas utilities always charge those customers a premium?

A. No. It's -- you are talking two different things. One is service for last resort, okay, supplier of last resort. That is supplied as a system cost, no premium. Let's say I am a customer of a marketer and I need gas, and I am not coming back to the system, because once -- I have another recommendation that once you come back to the system as a customer of supplier of last resort, then I had to stay there for one year. But if I am a customer of some other marketer and I need gas for some only short period and I am coming to the system, yes, I should pay premium, and I explained in my testimony when that premium should be applied and when it should not be applied. And if you apply to everybody that would have disincentive and in fact it may sometime encourage the utility to maximize profit and keeping customers on their system.

Q.760 - Well in what situation do you say then that a

customer, if you take supplier of last resort service, should not pay? I am not clear on that.

A. In one situation -- I tell you two situations. One situation is if the customer is coming back and going to stay there for one year, does not gas supply for anybody, he should -- he or she should not pay any penalty.

But if a customer is coming only for a short time, look, my supplier is not supplying gas, I want gas for two days or two hours or two months, just then the customer should pay.

Q.761 - But, Mr. Kumar, the definition of supplier of last resort in the statute means a person who sells or delivers gas where a gas marketer fails to supply gas to a customer on a timely basis, and no other gas marketer is able or willing to do so. It only covers the situation in which a marketer fails.

A. Marketer fails, and that is what I am trying to clarify here. There are two situation. And if you are going to allow -- you know, going to treat both customers similarly, one customer comes because no marketer is willing to supply that customer, that customer is going to stay there for one year, that customer should not pay a penalty. This does not say you have to require penalty, the portion you read. And the other customer situation,

yes, gas company -- Enbridge will supply gas but then there should be some premium or penalty.

MR. O'CONNELL: Do you know what strikes me in all of this, Mr. Chairman, and will --

CHAIRMAN: I am sorry.

MR. O'CONNELL: -- what Mr. Kumar is saying, I think, is that he thinks that 110 charge is a bit of a penalty to the ratepayers in the province. And he thinks that there should be an alternate way of charging, which perhaps would be less. Now what in the world does the Province take issue with in that type of a comment?

MR. MACDOUGALL: Mr. Chairman, may I make a comment.

CHAIRMAN: Yes, go ahead.

MR. MACDOUGALL: I don't think, since we are the applicant and we are going to be arguing these points, that Mr. O'Connell should be telling the Board what he thinks the witness means.

CHAIRMAN: Mr. O'Connell, if you want to object to a line of questioning, then do so, sir, but -- Mr. Blue, go ahead.

MR. BLUE: Yes, sir.

Q.762 - You understand that in New Brunswick a customer is not able to come back to Enbridge Gas New Brunswick because Enbridge Gas New Brunswick is not a gas marketer, it's not a gas seller. Do you understand that?

A. I understand --

Q.763 - All right.

A. -- but they are supplier of last resort also.

Q.764 - Only. They are gas -- the only way they can sell gas is as a supplier of last resort?

A. That's correct, yes.

Q.765 - Okay. And in that situation, when a marketer fails to perform and they need gas on short notice, I take it you are saying there is nothing wrong with a penalty, or premium?

A. Yes. There are two situations I explained to you --

Q.766 - We have been through those, and the Chairman -- but only -- there are two situations, but I am suggesting to you only one is applicable here in New Brunswick?

A. No, both are applicable to New Brunswick. In one case there should be premium, in other case there should not be premium. That's what I said and that's what I said in my testimony, that's what I said in my response.

Q.767 - Yes. I just don't think you have read the statute.

But in any case, sir, aside from that, if there is going to be a premium, do you have any trouble with the 10 percent as a number?

A. If there is going to be any premium, no, I don't have.

Q.768 - Thank you. Now, sir, page 84.

A. Yes, sir.

Q.769 - This is Agency, Billing and Collection service, and

you say, quote, "I have no problem with Enbridge Gas New Brunswick offering this service to gas marketers, however, Enbridge Gas New Brunswick should not pass on any risk associated with this service to other customers."

Correct?

A. Yes, sir.

Q.770 - So what you are saying is the risk of bad debts caused by some ABC customers should not be passed on to the ABC customers that pay their accounts on time? That's your point?

A. No, no, I am not saying that, because this talks about the non-payment of customers to gas marketers.

Q.771 - Yes.

A. And what I am saying, that risk should not be passed on to the EGNB's customers through the distribution charge. That's what I am saying.

Q.772 - But, sir, isn't that just a variation of a universal argument, that the cost of bad debt shouldn't be passed on to -- generally shouldn't be passed on to distribution customers but should be -- and shouldn't have to be borne by the customers who pay on time? Isn't that just a variation of the general argument?

A. Again I -- you are mixing -- if it pays off the customers -- you know -- your own customers -- let's say they have this risk for their own customers, also for the

distribution charge, that will be either you -- that risk of non-payment, somebody defaults the payment, can't pay, that is passed to their customers. What I am saying is a default by the gas marketers' customer should not be paid to the regulated service customer. That's what I am saying. So these are two different things.

Q.773 - Well you say. Sir, can we turn to page 89 and 90.

A. 89 and 90, yes, sir.

Q.774 - And your -- these are your recommendations?

A. 89, 90?

Q.775 - 89 you are -- you say, "What are the issues related to the form of the regulations"?

A. Yes, sir.

Q.776 - And you go on to say, "my additional recommendations are", you say that on the top of page 90, then there is 1, 2, 3?

A. Yes, sir.

Q.777 - And 3 you state that Enbridge Gas New Brunswick should file annual financial and operational reports which may be similar to Form 2's filed by gas utilities with FERC and a number of state commissions in the United States?

A. Yes, sir.

Q.778 - Have you read Section 10 of the New Brunswick Gas Distribution and Marketers Filing Regulations?

A. What are you referring to?

Q.779 - They are behind tab 24 of the book.

A. 24?

Q.780 - Yes. But answer my question. Have you read Section 10 of the Gas Distribution -- Gas Distribution and Marketers Filing Regulations previously?

A. Yes, sir, I have.

Q.781 - Yes. Well then you are aware that Section 10 requires month -- quarterly and annual forms to be filed?

A. Yes, it is required, yes.

Q.782 - Yes. Do you have any trouble with Enbridge Gas New Brunswick filing these forms instead of FERC Form 2's?

A. I did not say they had to file FERC Form 2, I said similar -- FERC Form 2's, I just gave example which is quite a detailed information and it helps enlighten revelation that you don't require filing a lot of documents in the review process. So if a customer, marketer or someone -- a Board -- wants to look at, they have enough information to evaluate the company's performance, return on equity, overall return. That's what I am trying to say. I am not saying they should be required to file exactly Form 2. I did not say that.

Q.783 - Then you are happy with the filing forms required by New Brunswick law?

A. Yes, these are pretty good items, but then there are some more detailed, that's why I gave the example of Form

2.

Q.784 - Would you answer my question? Are you happy with the forms that we have here?

A. It is sufficient but it can be -- that's what I am recommending, it should be improved.

Q.785 - Specifically where? What more information would you require on these forms? Let's have a look at form -- Schedule 1. What would you add to that?

A. For example I am looking at -- 10-1 you are looking --

Q.786 - Schedule 1.

A. What is the question?

Q.787 - What other information that you say is required is not on that form --

A. Yes.

Q.788 - -- in the income summary?

A. Yes. For example, this does not provide the detail by functions. Like functions in case of a distribution system is distribution expenses, distribution plan, customer related expenses, administration and general -- that kind of detail is not here. You see -- if you want to look at the detail --

Q.789 - Well look at schedule --

A. -- if you look at their class cost of service which has much more detail, and based on this information alone, it will be difficult to run more detail cost of service,

that's what I am trying to say. That's one thing that's missing that should be behind this form.

Q.790 - Okay. So you want sufficient detail filed by the company each quarter in order to do a cost allocation study of the system?

A. Not each quarter. I said --

Q.791 - Annually?

A. Annually, yes.

Q.792 - Okay. Is there anything else that is missing from these schedules?

A. A lot of things are missing. For example, it says equity return, how that is calculated unless you know the capital structure, then overall rate of return, if you want to calculate, there is no details for the investment.

A lot of these things -- this is just a very simple -- Schedule 1 is a very simple summary sheet basically.

Q.793 - There are six schedules.

A. If you go to Schedule 2 it gives much -- little more detail about the plant, service, working capital and -- but still does not give detailed capital structure. It does not give the details of the plant and service by functions.

CHAIRMAN: Mr. Blue, would you explain to me why we are continuing on with this particular line of questioning?

MR. BLUE: To get the evidence that I require to make my

argument to the Board, sir.

CHAIRMAN: I am sorry. You know, we could go on and go line by line by line as to the FERC one and this one. This witness, as I hear it, is saying that this is not in quite as great a detail. I wonder why the Board is interested in going line by line with that right now.

MR. BLUE: I just thought you might find the witness' evidence on this useful, but if you don't, that's fine. And that's -- I quite understand why. Sir, then that -- thank you, Mr. Kumar. Thank you, Mr. Chairman.

MR. KUMAR: Thank you, sir.

CHAIRMAN: Thank you, Mr. Blue. I forget what order counsel had agreed. Mr. Stewart?

MR. STEWART: In the circumstances, Mr. Chairman, I have no questions for this witness.

CHAIRMAN: Fine. And Mr. Zed doesn't, I presume.

MR. ZED: No questions.

CHAIRMAN: Okay. So then it would be Mr. MacDougall. Oh, Mr. Holbrook is there. You were hiding, Mr. Holbrook. Do you have any questions, Mr. Holbrook?

MR. HOLBROOK: We are still here, Mr. Chair. We have no questions of this witness.

CHAIRMAN: Thank you, Mr. Holbrook.

CROSS-EXAMINATION BY MR. MACDOUGALL:

MR. MACDOUGALL: Good afternoon, Mr. Kumar.

MR. KUMAR: Good afternoon, sir.

Q.794 - Mr. Kumar, I am going to occasionally refer sometimes to your testimony in some of the IRs. Unless I say to go specifically there I might just make a comment and then ask a question. If you need to go to the document please feel free to do so. Okay.

A. Yes, sir.

Q.795 - At page 92 of your testimony --

A. Page 92.

Q.796 - 92.

A. Yes, sir.

Q.797 - -- you state that EGNB's rate plan does not follow the specific guidelines of the Board and the Province. And in response to Enbridge Gas New Brunswick's interrogatory 52 where you were asked to identify the specific guidelines that each of the Board and the Province has set, you referred us back to pages 12 and 14 of your testimony, which appear from my review, merely to be a reiteration of the statutory requirements.

So I was wondering if you could give us specific examples of guidelines of this Board or Province which Enbridge Gas New Brunswick is not following?

A. Yes, sir. Basically as I stated that's the purpose of all of my testimony. It does not result in just and reasonable rates. That's what my testimony is. So it's a

very general answer. For example, to give you example, in establishing capital structure, for example, in my opinion it does not include, for example, some of the risk mitigation factors, so it may not be a proper capital structure and it may not result in just and reasonable rates.

Q.798 - Would you agree though that the determination of whether the rates proposed by the applicant are just and reasonable is a determination this Board is going to make, i.e., the legislation states that the Board must approve rates that are just and reasonable?

A. Yes, the Board has to approve just and reasonable rates and make sure that rates are just and reasonable, and that's the purpose of my testimony. The rate plan does not propose rates which are just and reasonable.

Q.799 - But are there specific guidelines or criteria, that's what you have stated, that we are not following specific guidelines of the Board and the Province?

A. That's the guideline I refer to, basically just and reasonable. That's the guideline the Board has and the company's plan does not result in just and reasonable rates.

Q.800 - In your view, the company's plan does not result in just and reasonable rates?

A. Yes, sir.

Q.801 - Do you agree that EGNB is proposing that its target rates on aggregate be capped at cost of service?

A. On aggregate basis, yes.

Q.802 - Do you agree that Enbridge Gas New Brunswick --

A. On its own cost of service based on its own parameters.

Q.803 - Okay. Do you agree that Enbridge Gas New Brunswick is proposing to come before the Board on an annual basis for approval if it intends to increase its target rates?

A. Yes, sir, that's what EGNB's proposal is.

Q.804 - Do you agree that Enbridge Gas New Brunswick has indicated that it will inform the Board in advance of any reductions from target rates imposed through its rates rider?

A. I am sorry. I think there is some echo -- I am getting a --

Q.805 - I think that may be, I am getting it as well. I don't know if it's -- do you agree that EGNB has indicated that it will inform the Board in advance of any reductions from target rates imposed through its rates rider?

A. Yes.

Q.806 - Do you agree that this Board has general supervisory authority over the utility?

A. Yes, sir.

Q.807 - Do you agree that Enbridge Gas New Brunswick is

proposing to annually advise the Board of its costs incurred in the preceding year?

A. Yes, sir.

Q.808 - Do you agree that for the development period, Enbridge Gas New Brunswick is proposing market based rates?

A. With a capital -- a consideration given to the cost of service.

Q.809 - All right. Well would you agree that the testimony here was that the rates are to be market based? They are determined by looking at the market price and coming up with a market based rate?

A. Yes, sir. And as I understand, the relevance of the cost of service filed by the company is that on total basis its market base revenue will not exceed the aggregate cost of service on revenue requirement.

Q.810 - That's right. But the rates themselves are not driven by the cost of service, they are driven by the fact that they are market based rates?

A. Yes, that is correct.

Q.811 - Do you agree that Enbridge Gas New Brunswick will be operating in a competitive market for energy alternatives in the Province of New Brunswick?

A. EGNB will be operating in a competitive market?

Q.812 - A competitive energy service market in the Province of New Brunswick?

A. Yes. Energy market is competitive, yes.

Q.813 - Do you agree that the Province was a party -- as a party to the general franchise agreement, adopted as one of the essential elements light handed regulation?

A. The Province -- you are asking the Province or the Board?

Q.814 - The Province.

A. Yes, the Province has executed a GFA which includes essential elements.

Q.815 - When I had our discussion earlier about specific guidelines you were talking about specific guidelines of the Board and the Province?

A. I was talking basically the Board.

Q.816 - Okay. So your testimony where you said the Board and the Province, you weren't talking about the Province, you --

A. No, I don't think I mentioned Province in my testimony.

Q.817 - Let's go to page 92.

A. I am sorry. When I say Province here I meant that legislation -- the Act -- Distribution Act of '99. That's what I was referring to Province, not GFA.

Q.818 - So you are saying that you don't -- you believe that the Province of New Brunswick signed an agreement with the distributor to grant a general franchise that is contrary

to the legislation of the Province of New Brunswick?

A. I know it's certain elements which may in my opinion are in conflict with the rules and regulations. That's what I pointed out in my testimony.

Q.819 - So you believe that the Province of New Brunswick has signed an agreement contrary to its own legislation?

A. I don't know word contrary. I am just saying it's not completely consistent with the Province's rules and regulations related to the establishment of rates.

Q.820 - Okay. Then I will ask it in that form? Do you believe that the Province signed an agreement with the gas distributor that is inconsistent with its own legislation?

A. Again, you know, I don't know --

Q.821 - Well, Mr. Kumar, I am sorry, at this point that is a yes or no question, because this is very fundamental to what we are getting at here. You have said that the rates are not just and reasonable.

The Province has signed an agreement in which it has condoned the capital structure and rate of return and the other essential elements. I just wish for you when you were saying that Enbridge Gas New Brunswick did not abide by the guidelines of the Province, which you have now clarified as the legislation, whether or not you believe the Province of New Brunswick has signed an agreement with Enbridge Gas New Brunswick which is contrary or

inconsistent with the intent of its own legislation?

A. The agreement is inconsistent in my opinion with the Province's rules and regulations related to public utilities just and reasonable rates.

Q.822 - Thank you, Mr. Kumar. I am now going to refer to page 54 of your testimony.

A. 64?

Q.823 - 54.

A. Yes, sir.

Q.824 - In the bottom paragraph you indicate that Enbridge Gas New Brunswick will have an assured revenue stream. And at the top of page 55 you state that various --

A. I'm sorry. Could you read that again? Because I haven't come to that page. I'm at page 54.

Q.825 - Yes.

A. And where are you reading from?

Q.826 - Page 54?

A. 64 or 54?

Q.827 - No. 54?

A. Yes. I'm there, 54.

Q.828 - Okay. In the fourth line up from the bottom?

A. Which start with --

Q.829 - "Will have"?

A. Yes. I'm there.

Q.830 - You say -- that sentence starts "EGNB will have a firm

and hopefully expanding customer base and assured revenue stream"?

A. Yes, sir. I'm there.

Q.831 - Pardon?

A. Yes. I see that.

Q.832 - Then at the top of page 55 you state that "Various identified factors assure recovery of Enbridge Gas New Brunswick's capital to a great extent"?

A. Yes, sir.

Q.833 - Okay. However in response to Enbridge Gas New Brunswick's IR number 15A you indicated that regulatory commissions do not guarantee a utility any return on equity but provide them an opportunity to earn a just and reasonable return on equity?

A. Yes, sir.

Q.834 - And you went on to say that there may be cases where the actual ROE is less than the authorized ROE?

A. That's correct.

Q.835 - Okay. Would you agree then that Enbridge Gas New Brunswick is not assured its return on equity but bears the commercial risk of being able to achieve that return on equity no matter what it is as approved by the Board?

A. Here the situation is different. Because you have -- EGNB has a deferral account which is not there in case of other utilities.

So it has much more assurance which almost amounts to guarantee. It may not be 100 percent guarantee but it's quite close to that.

Q.836 - Okay. Let's come to that then. We have a deferral account.

Do you believe that regulatory approval of the deferral account overcomes the commercial risk of Enbridge Gas New Brunswick being able to recover rates after the development period that give it a fair rate of return at that time plus its full deferral account?

A. Not after the development period. But a deferral account, once it's booked as a regulatory asset and is allowed to be recovered, it has much more assurance than other costs.

In fact it will have more assurance than the other cost of service after revenue requirement.

Q.837 - How does it have commercial assurance of that recovery? It has regulatory opportunity to achieve that recovery, is that not correct?

A. Commercial -- after development period you will have much more customers, much more base. And you have a quite high assurance. And with respect to a deferral account you have much more assurance than other things.

Q.838 - There is no guarantee though, is there, of recovery?

A. I did not use the word guarantee.

Q.839 - Okay. Do you agree that Enbridge Gas New Brunswick faces competitive forces in the form of existing incumbent fuel oil providers?

A. Yes. But they have quite a few disadvantages. And generally electricity, fuel oil, propane -- they try to fight but generally they lose to gas.

Q.840 - So is it your view that Irving Oil will generally lose to gas --

A. Yes.

Q.841 - -- in this province?

A. Yes.

Q.842 - Do you see any benefits that any of the fuel oil providers have?

A. They have existing customer base and existing customer relationship. But it does not last very long once gas comes in a territory.

Q.843 - And so it is your evidence that in the province of New Brunswick, once gas comes the existing customers of fuel oil providers will just come to Enbridge Gas New Brunswick?

A. No. They will fight. But one thing -- they have two disadvantages. One is rates. Gas rates have been much more stable. And oil prices have not been.

And if these oil providers try to provide oil at loss, they won't last for too long. So that's the biggest

disadvantage they have.

And second disadvantage oil has, the environment. Even somebody wants to use oil, it's cheaper, sometimes environmental groups don't allow the use of oil.

Third category is the processing and feed stock. You cannot use oil for processing and feed stock. So there is absolutely no competition.

Q.844 - Do you believe that Enbridge Gas New Brunswick may face the risk of competitive price reductions from fuel oil suppliers who wish to protect their market share?

A. As I said, they will. But there is a limit they can reduce. They cannot reduce infinitely or indefinitely. Because the prices of oil are more cartelized than the prices of gas.

Q.845 - But you can't give us specifics of the anticipated price reduction by fuel oil suppliers, can you?

A. They will reduce it till they make a margin which keeps them in business. Below that they can't. And that's what I said, based on the experience in other jurisdictions, generally gas is the winner.

Q.846 - Do you expect customer resistance to conversion to get to natural gas to be a factor at play in New Brunswick?

A. Yes, that factor is there, especially of the cost basis. Generally customers like gas. And even if they have to pay a little more than oil, they will convert to

gas. And cost of conversion is a major factor.

But new developments -- new developments and new housing in all probability, and most of them, almost 100 percent generally go to gas if gas is available.

MR. MACDOUGALL: Mr. Chair, occasionally I may repeat some questions that Mr. Blue asked. It is probably because I'm going in another effort. But I will try my best not to. And sometimes I will just have forgot that he has asked them.

Q.847 - In response to Enbridge Gas New Brunswick's IR 43 you indicated that you are not aware that the Province has to date awarded five single end use franchises?

A. I'm sorry. You said 43?

Q.848 - Yes. The question was whether you were aware that the Province had awarded single end use franchises. And you stated that were not?

A. Yes. That's correct.

Q.849 - If I told you today that --

A. No. I'm aware of it.

Q.850 - Oh, okay. So now you are aware of it?

A. I -- I think I read it yesterday somewhere or maybe this morning. I don't recall. But no, I'm aware of it. That application is there.

Q.851 - And are you aware that one of the parties here today has also made application for a local producer class

franchise?

A. Yes.

Q.852 - So Enbridge Gas New Brunswick does not necessarily have the right to distribute gas to all consumers in the province?

A. All -- it's a basically exclusive franchise. There may be some exceptions here and there. But there is more of exception than rule.

Q.853 - Are the exceptions for the single end use franchises generally large volume customers?

A. That's correct.

Q.854 - Mr. Kumar, if we could turn to page 57 of your testimony?

A. 67 or 57?

Q.855 - 57?

A. Yes, sir.

Q.856 - You refer to Enbridge's 13 percent ROE on a deemed capital structure of 50 equity and 50 percent debt --

A. Yes.

Q.857 - -- resulting in an ROE of 15.8. And I think you might have corrected this morning that that was another figure.

In response to Enbridge Gas New Brunswick's IR number 16 you stated that you did not believe that Enbridge Gas New Brunswick was requesting an actual capital structure of 50/50 but rather a deemed capital structure of 50/50?

A. Yes, sir.

Q.858 - Does Enbridge Gas New Brunswick's proposal to this Board not contemplate an actual capital structure of 50 percent equity and 50 percent debt?

Is that not the proposal being made to this Board?

A. That's what my understanding is. And even if it's let's say --

Q.859 - That's fine, Mr. Kumar. That is the understanding, correct?

Do you have any evidence that Enbridge Gas New Brunswick has suggested in any way that it would manipulate its capital structure to be different from that which it has proposed?

A. That I think came this morning. EGNB is not saying it's going to manipulate.

But even assuming it's not manipulating, still the Board can look at whether the capital structure was established not only to maximize the profit of the investors but rate payers --

Q.860 - No. That is not my question. Let's stick with my question. The question is that if the applicant has come forward with a 50 percent equity, 50 percent debt, it is up to the Board to determine whether that is appropriate.

Is there anything put forward that suggests that their actual capital structure will not be 50 percent equity and

50 percent debt, any evidence to that effect?

A. No, I'm not aware of that.

Q.861 - Can Enbridge Gas New Brunswick, as it now is, as a greenfield entity with no assets, I believe, other than the general franchise agreement and some office equipment which was mentioned in the evidence, borrow at 6.8 percent?

A. Can Enbridge borrow?

Q.862 - Enbridge Gas New Brunswick Inc., the applicant?

A. I don't know. The fact is its parent can borrow and invest in Enbridge at -- they can borrow money at 6.8 percent. That is a fact.

Q.863 - No. Can Enbridge -- do you believe Enbridge Gas New Brunswick Inc., if it went out to the markets today by itself to raise let's say a portion of its capital, \$100 million to build its infrastructure, would be able to raise that at 6.8 percent?

A. First, I don't know. And second, even why they should go, why -- they are part of the --

Q.864 - That is not -- no, Mr. Kumar. That is not my question. So you don't know. You think that there is a chance that Enbridge Gas New Brunswick Inc. could raise funds at the same rate as Enbridge Inc.?

A. I don't know. Unless there is a tight market.

Q.865 - Do you think that it --

A. It may possibly.

Q.866 - Do you think that that is possible?

A. It is possible. You can go to the market. It is possible. It depends on how investors perceive the risk.

Q.867 - If Enbridge Gas New Brunswick's equity structure differed in any respect from 50 percent capital and 50 -- 50 percent equity and 50 percent debt -- would you believe this would be misleading to its potential investors?

A. I'm sorry. Could you repeat the question?

Q.868 - Sure. If Enbridge Gas New Brunswick Inc.'s actual capital structure deviates from 50 percent equity and 50 percent debt, do you believe this would be misleading to its potential investors in the limited partnership?

A. To potential investors?

Q.869 - Yes.

A. I'm sorry. I don't understand that.

Q.870 - Okay. Maybe I will -- can I try it in a different way?

A. Yes.

Q.871 - Could you refer to the offering memorandum that was put in evidence over the past couple of days? Your counsel may have a copy of it.

A. Yes, sir, I'm aware of it.

Q.872 - I need you to refer to it. So maybe if someone could

--

A. I don't have a copy.

MR. MACDOUGALL: I'm sorry. And I don't know the exhibit number, Mr. Chair.

CHAIRMAN: That was one of the undertakings.

MR. MACDOUGALL: One of the undertakings including yesterday.

CHAIRMAN: Yes. We didn't mark the undertakings, but we will.

Q.873 - Could you go to page 7?

A. Page 7.

MR. O'CONNELL: Does the Board want that marked?

MR. MACDOUGALL: The Board would have copies of this. It was an undertaking that was responded to yesterday.

CHAIRMAN: It's not marked, I can tell you.

MR. MACDOUGALL: No, I understand that. We can just refer to the document, Mr. Chair.

CHAIRMAN: Now my records indicate that it should be A-16 then.

MR. MACDOUGALL: I think that's correct, Mr. Chair.

CHAIRMAN: Okay. Sorry about that. Go ahead.

Q.874 - So Mr. Kumar, if you could go to page 7?

A. Yes, sir, I am there.

Q.875 - In the top paragraph about halfway down, it starts.

"Subject to the regulatory approval"?

A. Yes.

Q.876 - So I would just like to read that sentence into the record. "Subject to the regulatory approval of the proposed capital structure for the gas distribution utility, the financing of the capital costs relating to the establishment of the gas distribution utility, net of depreciation and amortization are expected to be funded as to 50 percent through equity and as to 50 percent through debt financing"?

A. Yes, you read it correctly.

Q.877 - Would you agree that the information being provided to local -- potential local New Brunswick investors is that the company will be expected to be funded 50 percent equity and 50 percent debt?

A. Yes. That's what they are saying to the investors here, yes.

Q.878 - Thank you. And they are saying that in the nature of an offering memorandum to those investors?

A. That is correct.

Q.879 - Would you agree that at present, Enbridge Gas New Brunswick is a pure regulated entity? It only has regulated -- regulated gas distribution business?

A. It's a pure regulated entity?

Q.880 - It has no nonregulated activities at present?

A. Yes, that's my understanding.

Q.881 - Mr. Kumar, maybe you could turn to Enbridge's IR

number 13?

A. 15?

Q.882 - 13?

A. 13. Yes, sir, I am there.

Q.883 - And you were asked to discuss the quantification of the trade-off between the level of common equity ratio and the level of required return on equity?

A. Yes.

Q.884 - Your answer appeared to only discuss the debt to equity component when the question was actually to talk about the return on equity and the equity component.

So what I would like to ask you at this time is would you agree that in determining an overall return for any given level of risk, both the level of equity and the return on equity need to be looked at as a whole?

A. Yes.

Q.885 - And I believe it's correct to say that in response to Enbridge's IR number 13(b), you indicated that a reduction in the equity component would require an increase in the rate of return on equity, all other things being equal?

A. If everything else equal, yes.

Q.886 - In your testimony at the top of page 8 --

A. Page 8?

Q.887 - Yes.

A. Yes, sir.

Q.888 - You stated that Enbridge Gas New Brunswick's actual debt cost should be equal to the cost of debt incurred by Enbridge. And in response to Enbridge Gas New Brunswick's IR 25(a), you indicated that it is your view --

A. Just slow down. Slow down.

Q.889 - Certainly.

A. You referred to me to page 8.

Q.890 - Yes. And I just wanted to make the reference --

A. Which -- which statement are you reading?

Q.891 - Mr. Kumar, I might have the reference wrong there. I apologize.

Could you indicate though that in your testimony that you asked that Enbridge Gas New Brunswick's actual debt cost should be equal to the cost of debt incurred by Enbridge?

A. Is that my testimony you are asking or what?

Q.892 - Yes.

A. No, I did not say that. I am just saying the actual cost should be looked at. As I said, I did not make any specific recommendation to any -- either capital structure or any cost component. That's what my testimony is. If I gave different impression, I am sorry about that. But that's not my testimony.

Q.893 - Okay. In response to Enbridge Gas New Brunswick's IR number 25(a)?

A. 25(a). Yes, sir.

Q.894 - Yes. You indicate that it is your view that the allowed return on equity should be determined on the basis of who owns the company?

A. Yes. That's the question?

Q.895 - Yes. That was the question.

A. If the concept of parent structure is adopted, again, as I said, in my testimony, I did not make any specific recommendations.

Q.896 - No, I acknowledge that.

A. Yes. If that concept is adopted and stand alone concept is rejected, yes, the answer would be yes.

Q.897 - Do you acknowledge that Enbridge Gas New Brunswick's business is separate and distinct from Enbridge Consumer's Gas or Enbridge Inc., that it's a discrete entity carrying out a discrete business in the Province of New Brunswick?

A. Yes, sir.

Q.898 - In response we are still on IR number 25, but 25(b)?

A. Yes, sir.

Q.899 - Where you were asked if you would recommend if a different return should accrue on the shares of Enbridge Gas New Brunswick, if it were owned entirely by individual investors, your response was that that reality should be reflected if it existed. Is that correct?

A. I am sorry, which --

Q.900 - It's 25(b).

A. B as in boy?

Q.901 - Yes.

A. Yes, sir.

Q.902 - Okay.

A. Again, the response is in that context if you are using that approach, because I want to make sure I did not make any specific recommendation in my testimony what capital structure should be used. Here I am saying reality should be also looked at. And if the Board decides to use on actual basis, this answer will apply.

Q.903 - Well let's come back to actual basis. But the actual basis, as you agreed to earlier, was 50 percent equity and 50 percent debt, is that not correct?

A. That's -- no, one way -- other ways you look at the actual or the parent also.

Q.904 - No, that's not -- well that's the issue here.

A. Yes. The Board can look at it, that too, because, you know, let me explain to you why there is a difference.

Let's say I am Enbridge, okay, Enbridge parent company. I borrow money at 6.8 percent. Create another corporation which I own 67 percent.

Q.905 - But Mr. Kumar, before you go on, we are talking only about Enbridge Gas New Brunswick Inc. in this situation?

A. But you asked me the question in context of this response. So if you disassociate, the question becomes different.

So just please tell me what you are asking then? If you are asking in context with this thing, this response, or just a separate question.

Q.906 - Okay. Well let me try and re-word the question then.

A. Yes, sir.

Q.907 - Is it your view that if Enbridge Gas New Brunswick is able to attract local New Brunswick investors that its return on equity should reflect the cost that each individual investor would incur to raise that equity?

A. I don't know. As I said, we have been through that and there are other means of attracting capital and there are possibility -- there have been instances where you can raise capital at fairly attractive rates.

Q.908 - No, but I am not saying that. I am saying that if you went to raise that capital, should the return on equity of Enbridge Gas New Brunswick Inc. reflect the cost that each individual investor would incur to raise that equity?

A. No, not -- you don't do that on an individual basis, as far as each investor is concerned, no.

Q.909 - Okay.

A. I didn't say that.

Q.910 - Thank you very much. And you are aware that the

intent of Enbridge Gas New Brunswick is to move towards a limited partnership with potential investors, be they individual or otherwise?

A. Yes, there are 30 percent shares. 67 percent are controlled by one entity, Enbridge.

Q.911 - Thank you. Is it your view that a subsidiary enterprise in a greenfield market would be expected to earn no higher a return than that of its parent that may operate in a mature market?

A. I did not say that. I said that's how you look at it, but that's not what I recommended.

Q.912 - No.

A. And I don't think in greenfield situation, they both should allow exactly what the parent is earning or what any affiliate is earning. I did not say that.

Q.913 - No.

A. And the Board should consider some risks associated with greenfield.

Q.914 - Thank you. In response to Enbridge Gas New Brunswick's IR number 25(d)?

A. 25(d)?

Q.915 - Yes.

A. Yes, sir.

Q.916 - Now you stated that the question was not applicable. As I believe the question is applicable, I would like to

re-ask it and then see if you could respond?

The question was why would a parent enterprise invest in a subsidiary in a much riskier greenfield environment and expect the same rate of return as in its businesses operating in mature markets?

A. Okay. I think I answered in continuation of (c), because (c), I did agree that it does not have to be actual rate of return.

So that's why I answered --

Q.917 - Could you give a fuller answer. Then maybe let's just ask that question. Why would a parent enterprise invest in a subsidiary in a much riskier greenfield environment and expect the same rate of return as in its businesses operating in mature markets?

A. The -- they would not invest if they are just recovering their cost of capital. There has to be some margin there, yes.

Q.918 - Thank you.

A. That's why I think I replied in response, the continuation of (c), and that's why I said not applicable. I am sorry, if I created that confusion.

Q.919 - No, that's fine. Your answers to (c) and (d) are more than appropriate, Mr. Kumar.

So you are not saying that a subsidiary must always have the exact same return, be it on debt or equity, as

its parent or as its sister subsidiaries notwithstanding the difference in risk profile, are you?

A. You have to evaluate the risk profile of the individual subsidiary also. But I'm just saying my testimony you don't ignore the reality of where the dollars are coming from, originating from. That factor should not be ignored. That's my testimony.

Q.920 - Would you agree that it is up to Enbridge Gas New Brunswick Inc. to manage its own risk?

A. Could you ask that question again? I did not --

Q.921 - Yes. Would you agree that it is up to Enbridge Gas New Brunswick Inc. to manage its own risk?

A. Not necessarily, because they are not stand alone. For example -- just give you an example.

Q.922 - Let's stop there. How are they not stand alone? Is anybody -- if Enbridge Gas New Brunswick Inc. is not managing its own risk, who is managing its risk?

A. That really is managed -- that's what I -- example I was giving. It was your testimony, one witness was from Enbridge parent company testifying on financial -- he was a financial business director, one witness is from the Consumer Gas Enbridge, so they are sharing -- they are looking at all of the bigger entity. It's not a stand alone entity somewhere when it comes to cost of capital. That's a fiction. In no other cost -- there are other

costs also. Cost of capital is not the only cost. There are other costs. And this stand alone fiction is not created there only in case of capital structure and return on equity, that fiction is clear. There are other costs also.

Q.923 - But for the purposes of raising a return on the equity involved in a greenfield situation Enbridge Gas New Brunswick Inc. is responsible for that, is that not correct?

A. If there are any risks. But risks -- everybody knows they are part of a bigger entity so that factor has to be taken into consideration in defining the risk profile. You cannot define risk profile in a vacuum.

Q.924 - No. I think I understand. Mr. Kumar could you now turn to page 87 of your testimony at point 4?

A. Yes, sir, I'm there.

Q.925 - You must have been waiting for me.

A. Sometimes I have to be.

Q.926 - Now I'm worried about asking my question.

A. Think twice.

Q.927 - Mr. Kumar, Enbridge Gas -- if Enbridge Inc. was sold tomorrow, the shares of Enbridge Inc. were sold to someone else tomorrow, would you expect this Board to change the regulated rate of return to Enbridge Gas New Brunswick Inc.?

A. They should look at. It does not mean they have to change it. They should look at whether risk profile has changed. And I'm sure if it is adverse impact Enbridge Gas will come to the Board. On the other side, they should look at it, what happened -- was happening.

Q.928 - You would think that Enbridge Gas New Brunswick Inc. would come to this Board to have its rate of return or capital structure reviewed if the Enbridge parent company was sold?

A. If Enbridge feels, believes that the risk has increased, I'm sure parent will force Enbridge to go to the Board. That's what happens when entity does not earn a return which they expect they should earn. They come to the Board or jurisdictional regulatory commission.

And I will give you actual example --

Q.929 - No, that's okay, Mr. Kumar.

A. -- if you want to.

Q.930 - No, that's okay.

A. The situation where I speak --

Q.931 - No, Mr. Kumar, that --

A. -- to actual reality. And I can give you an actual example also where it has happened.

Q.932 - Okay. If we can go to page 87 of your testimony?

A. 87?

Q.933 - Yes, please.

A. Yes, sir.

Q.934 - At point 4.

A. Point 4, yes, sir.

Q.935 - I actually want to go to -- yes, at point 4, I'm sorry. You state that the development period should end when the ROE on a cumulative basis exceeds the ROE determined on the basis described above.

A. Yes, sir.

Q.936 - And the basis described above I believe is in your paragraph 3. Is that correct?

A. There are two or three bases that I give and I would prefer average ROE of Canadian LDCs. And that's the point the Board should consider seriously to end the development period. There may be some, you know, other circumstances.

But this is the main guideline which I mentioned this morning also.

Q.937 - So your reference is mainly to LDCs, not to the parent or to Enbridge Gas or Enbridge Consumers Gas?

A. Yes. I have mentioned those. But if you go to my recommendations, summary of recommendation, I think -- I believe I narrowed it down.

Q.938 - Now if you go to number 16, Mr. Kumar, page 95. I believe that's what you are referring to. But it still seems to refer to Enbridge Consumers Gas or Enbridge?

A. Yes, that's right, number 16.

Q.939 - So is that your testimony or are you really saying that the development period in your view should end when the cumulative ROE is equivalent to that --

A. Yes, you know, the Board can look at --

Q.940 - -- of Canadian LDCs?

A. I'm sorry.

Q.941 - And I guess I would just like your clarification because you --

A. Yes.

Q.942 - -- you said it was just Canadian LDCs?

A. The Board can look at both. But my preference is out of these two is average.

Q.943 - So, Mr. Kumar, is it your testimony that as a guide to when the development period should end it would be when Enbridge Gas New Brunswick Inc. was able to -- was able to achieve the return of a mature utility on a cumulative basis?

A. That's the basic definition of development period ending is it's supposed to be like mature utility.

Q.944 - So when it's able to raise a return on a cumulative basis like a mature utility?

A. Yes. And I should clarify. I'm not saying that the Board has to allow the same return on equity. Applicant -
- you can ask any return on equity you want to and the Board can approve any. This is just for as a main

guideline for ending the development period.

So I want to make clear that I'm not saying the Board should allow only that return on equity. At that time applicant if they want a different rate of return, they can come to the Board.

Q.945 - Exactly. So the applicant at the time of the end of the development period will make application for the rate of return and capital structure that it believes is appropriate for its business at that time?

A. Yes, sir. Or any other party the Board may consider, you know, Enbridge is earning too high or some other party may consider Board is -- Enbridge is earning too high a return, they can also come and say.

Q.946 - But it would be Enbridge Gas New Brunswick Inc. at the end of the development period requesting the ongoing rate of return on capital structure?

A. Yes. They can request whatever they feel is justified.

Q.947 - I'm sorry, Mr. Kumar.

CHAIRMAN: Is it a good time to take a break?

MR. MACDOUGALL: Sure, Mr. Chair.

(Recess)

CHAIRMAN: Go ahead, Mr. MacDougall.

MR. MACDOUGALL: I ticked off 14 questions on the break, Mr. Chair, so I thought you might find that useful.

CHAIRMAN: I thought that might happen.

MR. KUMAR: Could we have another break?

MR. MACDOUGALL: I don't know if I would disagree that we shouldn't. For now, 14 is the best I could do.

Q.948 - Mr. Kumar, at page 57 of your testimony, item number 5 -- or point 5. I'm sorry, 87.

CHAIRMAN: 87.

A. 57, that's not --

Q.949 - Point 5. I will have to try to articulate better, Mr. Chair.

A. Item 5, yes, sir, I'm there.

Q.950 - You state at item 5 that the development period should have a maximum limit of 10 to 12 years unless the extension can be justified based on extraordinary events or events beyond EGNB's control.

And when asked a question in relation to that in response to Enbridge's IR number 33 you indicated that it would be justifiable to extend the development period if Enbridge Gas New Brunswick is earning an ROE equal to or less than the ROE based on the lower end of the zone of reasonableness.

A. Yes, sir, I said that.

Q.951 - Is that correct?

A. Yes.

Q.952 - So coming back to your earlier testimony, is the lower

end of the zone of reasonableness that of the cumulative rate of return for a mature LDC?

A. No. That's not the lower end. But that's the generally average of the lower end and higher end of zone of reasonableness. That's where this concept of balancing the investors', the rate payers' interests are concerned.

That rates are not allowed equal to the lower end because that would be detrimental to finance of the utility. At the same time rates are not allowed, a return is not allowed at the highest level of the zone of reasonableness because that would be detrimental to customers. So generally the rate of return allowed is in the middle.

Q.953 - Well why did you say then that the development period would end when EGNB's ROE was based on the lower end of the zone of reasonableness? Are you now saying based on the average of that zone?

A. Yes. I'm saying that because then it's beyond 10 or 12 years. We are not talking of five years, six years, seven year, eight years. I'm talking beyond let's say 10 or 12 years.

Q.954 - Okay. So if you stated that it would be justifiable to extend the development period in those circumstances if that cumulative rate of return had not been reached, then there is no magic to the 10 or 12 years though, is there?

A. No, there is no magic. You know, regulatory procedure is not based on magic. It's based on real situation.

Q.955 - So it will --

A. And that's why the Board has to look at the facts prevented to the Board on an individual basis.

Q.956 - That's great, Mr. Kumar. Could we turn now to page 68 of your testimony?

A. Yes, sir.

Q.957 - On page 68 you indicate that rates should be adjusted as frequently as possible to reflect the actual market prices of fuel oil.

And in response to Enbridge's IR number 44 you indicated that it was your view that customers are less concerned with stable prices so long as they realize savings over the alternative fuel prices.

A. Yes, sir. Which question are you reading? Which interrogatory?

Q.958 - IR 44. I guess in light of those two comments I just would like to elicit your view on whether it is that Enbridge Gas New Brunswick should alter rates upward as well as down as frequently as possible if fuel oil prices are rising or if customers are achieving greater savings than necessary?

A. Yes.

Q.959 - Do you realize that Enbridge's proposal is to adjust

its target rates upwards only on an annual basis?

A. Yes, sir, that's correct. And I'm just saying because I have concern about deferral account. If the market conditions allow to come close to the cost of service it should be done and this is beneficial to both investors as is rate payers.

Q.960 - But in a greenfield situation would constantly changing rates cause confusion and potential customer dissatisfaction?

A. That is -- in fact a mature utility's rates are changed because these have been unbundled so the gas cost goes up and down every month. That is one of the hard problem, concern of the competitive market. My point here is -- there may be some better way also. My point here is that customers should realize real savings. That's what my point here is. And there may be some other way to do it.

Q.961 - But what about, I guess -- no, I guess, Mr. Kumar, I should come back to my earlier. What about if fuel prices are going up though? Should Enbridge Gas New Brunswick be raising its prices upward?

A. I think they should consider seriously. Because I'm also concerned about deferred revenue account. I want to keep it at the lowest possible level. That is better for both rate payers as well as investors, and then it avoids

intergenerational inequity also. And investors are not also happy that they had -- they don't have much money unrecovered.

Q.962 - Mr. Kumar, could we now go to B-17? This is your revised testimony, page 70.

A. Yes, sir.

Q.963 - On the basis of this revised testimony, do you still think that the small general service class is paying higher rates than their cost of service?

A. They are not higher rates than the cost of service, based on the company's cost of service itself.

Q.964 - And that cost of service, I believe you mentioned in one of your interrogatory responses, should include the deferral amount?

A. Yes.

Q.965 - Could we maybe now go to -- I believe it is page 92? And I'm just wondering if we may be able to do as Mr. Blue did and maybe have you remove something from your testimony. But I will explain why.

At the bottom of page 92 you start out with a sentence that says "In fact Enbridge's" -- you said "its" but it is Enbridge Gas New Brunswick's -- "proposed rate plan is grossly discriminatory to the small customers and will compel them to heavily subsidize other customer classes."

I would take it you would appreciate that Enbridge Gas

New Brunswick probably has a concern with that statement.

Can that statement be removed from your testimony on the basis of the revision of your page 70?

Was that statement based on the fact that you thought those customer classes were earning more than their cost of service?

A. That's correct. The company's cost of service, class cost of service is adopted this sentence should be taken out.

Q.966 - Can we agree that that be taken --

A. That's what I said --

Q.967 - -- out now?

A. -- that should be taken out.

Q.968 - Thank you.

A. If the company's class cost of service is adopted.

Q.969 - In response to Enbridge's -- Enbridge Gas New Brunswick's IR number 36 --

A. Yes, sir.

Q.970 - -- you indicate that the cost of service study, even during the first years, provides guidelines for establishing target rates?

A. Yes, sir.

Q.971 - Would you agree, however, that a cost of service study is generally of minimum value in a greenfield situation as compared to a mature utility with full historical

information?

A. Not minimum. Basic concern is cross subsidization whether it's mature or greenfield. I agree that it may be less relevant than mature utility. But it's not totally irrelevant.

Q.972 - But would you agree, Mr. Kumar, that in the situation we find ourselves in New Brunswick now, it is very difficult to determine the allocation of the costs at this period in time?

So it is not the cost of service study. But it is the difficulty with taking those costs and allocating them to a certain class at this time that is problematic?

A. It's problematic, it depends on how good your projections area. So as you project and you correct the projection -- and I'm sure you are going to do it, based on your actual experience.

As far as the process is concerned, that's not difficult. The end results may not be reflective of the actual situation because it's a forecast year. And you are adding customers, which may not be caught into your projections. So projections will be revised hopefully annually.

Q.973 - So would it be better to look at the allocation, as Ms. Duguay I believe mentioned in her testimony, of the costs to each class closer towards the end of the

development period?

A. No. You should look at it on an annual basis so that it's not too much divergent. Basically again my concern is the rate related to certain class of customers. And there has to be some protection.

And this class will provide some guidelines. Class cost of service does provide guidelines. And it can be updated annually, maybe biannually.

Q.974 - Okay. But the proposal in front of this Board today is that there be market-based rates, is that correct?

A. That's correct.

Q.975 - And the cost of service study is there as sort of the general guideline whereas the deferral account or the allocation of that deferral account, do you believe that should be based on allocations that are determined at some later period when fuller information on actual cost allocations are available?

A. You know, as that information become available, yes, it will be better and then can be final a later period. But this provides guideline and you don't have to wait till the end of the development period.

Q.976 - Would it be true to say that in most jurisdictions, if not virtually all jurisdictions, it is the small general service class that generally does not recover its full cost of service to the utility?

A. From the small customers?

Q.977 - Yes.

A. Again, it depends how you allocate costs.

Q.978 - No. In reality, in most jurisdictions now, do utilities recover the full cost of service from the small general service class?

A. It depends on who you are talking to.

Q.979 - Well, generally. Your opinion whether or not?

A. Not necessarily. I think right now they are moving very close to the cost of service, especially in the competitive environment, when unbundled rates are especially implemented.

Q.980 - Well, in the past few years leading up to these moves, now has it generally been the small general service class that would recover or fully recover its cost of service? Or would it usually under recover?

A. Again, you know, it depends on who you are talking to.

I know some --

Q.981 - I'm just asking your view, Mr. Kumar?

A. Generally that is true, based on certain costs of service, that generally on the bundled service basis.

Q.982 - Do you think that there is any reason why New Brunswick would be different in that regard?

A. New Brunswick may be different, because first it's unbundled service. And I'm not saying you don't charge

rates below the cost of service.

What I'm saying is it provides certain mechanism protection to the small captive customers.

Q.983 - And those customers have small load factors, do they not?

A. That's right. In fact, you know, you pointed out that single use competition is more for large customers. So they have -- they may have other alternatives. Small customers don't have that.

Q.984 - But these customers have small load factors?

A. That's correct. Yes.

Q.985 - They will generally be the majority of the customers of the utility, is that correct, as a class by number?

A. That is correct.

Q.986 - So -- and because of that they contribute to a fair amount of cost to the utility, is that correct?

A. Generally that is correct.

Q.987 - You indicate that the target rates for any customer class, if we are able to determine the right cost allocation for them, should not exceed 110 percent of the cost of service.

What is the magic in the 110? What is the magic in the 10 percent?

A. Again, you know, if the regulations are based on magic, they would hire magicians rather than experts.

Q.988 - Okay. What is the reason, I guess?

A. Basically, you know, 10 percent is --

Q.989 - That is my point, is that it is just magic. I mean, is there -- why did you choose 10 percent?

A. Some jurisdictions have used 5 percent, 15 percent, 10 percent. It's just --

Q.990 - Thank you, Mr. Kumar.

A. -- general guidelines.

Q.991 - No magic. You indicated on various occasions today that Enbridge would bring advantages to Enbridge Gas New Brunswick.

And you gave examples of when people who attended this week had talked about some of these advantages with respect to --

A. What are you referring to? Are you referring to --

Q.992 - Some of your comments earlier today was that Enbridge Inc. would bring advantages to Enbridge Gas New Brunswick Inc.?

A. Yes.

Q.993 - The association between them?

A. You are talking of premium?

Q.994 - No. I'm just talking that you stated that there would be some advantages brought?

A. Yes.

Q.995 - So what I would like to go through is what some of

those may be.

So would you agree that one of the advantages that Enbridge is providing to Enbridge Gas New Brunswick is that Enbridge Gas New Brunswick will probably be able to roll out its system in a more timely and efficient manner if it didn't have that relationship?

A. Yes.

Q.996 - That Enbridge Gas New Brunswick will benefit from years of experience of Enbridge in designing and building safe and reliable systems?

A. Yes.

Q.997 - That Enbridge Gas New Brunswick will benefit from years of marketing experience and knowledge that will allow it to maximize customer attachments?

A. Yes.

Q.998 - Would you agree that these are benefits that flow through to the customers of Enbridge Gas New Brunswick Inc.?

A. Yes, sir.

MR. MACDOUGALL: Mr. Chair, Mr. Blue raised a few issues this morning. I would like to ask some questions on them. But I would just like to do this to sort of clarify the points.

Not to say that Mr. Blue or Mr. Kumar didn't. But I will go on with a couple of these questions and it is just

for clarification. Although they might seem quite similar.

Mr. Chair, I have a document which is a page from the joint public review panel report on the Maritimes and Northeast proposal.

And I would like to put a copy of that to Mr. Kumar and have it marked as an exhibit. And we have copies for everybody here.

MR. O'CONNELL: It might be fair to the witness,

Mr. Chairman, to give him some time to look at this and think about it. I don't believe he has seen it before.

MR. MACDOUGALL: That is perfectly fair, Mr. Chairman. I'm going to comment on one very small point in it. And he can have as much time as he requires. I don't believe it is going to be something that is problematic.

CHAIRMAN: It will be A-17.

Q.999 - Mr. Kumar, the part I'm going to look at is just the section under the heading "tolls"?

CHAIRMAN: Would you just wait for a second while we get our copies?

MR. MACDOUGALL: Certainly, yes. I just wanted to give him

--

CHAIRMAN: Okay. Go ahead, Mr. MacDougall.

Q.1000 - Have you had a chance to read that section, Mr. Kumar?

A. Yes, sir. I read the section on the tolls.

Q.1001 - So I would just like to start about halfway down where it says "M & NP agrees". And maybe I will just read this into the record and we can read along.

"M & NP agrees to discount firm service tolls to delivery points located in Nova Scotia by 10 percent for the initial eight years and 4 percent for each of the next succeeding two years."

And then the more important part for today, "M & NP further agrees to discount firm service tolls to delivery points located in New Brunswick for 4 percent for the initial three years. It is agreed that M & NP will reflect any revenue deficiency associated with the discounts in an adjustment to its depreciation."

A. Yes. I read that.

Q.1002 - And in relation to that discount, which I believe is one of the discounts you and Mr. Blue talked about this morning, the transportation toll discount, is it clear to you from that that discount is a discount on the Maritimes and Northeast pipeline?

A. Yes, sir. That's what I mentioned.

Q.1003 - Thank you. So that is not a discount as part of the Enbridge Gas New Brunswick distribution system?

A. No, it is not.

Q.1004 - Again, Mr. Kumar, I would like to come back now to a

discussion you had with Mr. Blue on the supplier of last resort?

A. Yes, sir.

Q.1005 - In response to IR number 51 --

A. Yes, sir.

Q.1006 - -- you indicated that you were aware of provisions in the Gas Distribution Act that would allow Enbridge Gas New Brunswick to supply gas in situations other than those narrowly defined in the definition of last resort?

That was the question. And you answered, yes, there are such provisions?

A. Yes, sir.

Q.1007 - Could you please tell me what provisions allow in the legislation for Enbridge Gas New Brunswick Inc. to supply gas, other than a supplier of last resort?

A. I'm not talking of any other thing. I'm talking of supplier of last resort. And one of them is basically balancing the system. So that is a general operation of the system which --

Q.1008 - No. That is fine, Mr. Kumar. I don't need that. If you are only talking about supplier of last resort --

A. No, no. I'm talking --

Q.1009 - -- then the answer, I guess -- your answer should have been no, should it not there?

The question was "Do you know of any provisions that

allow Enbridge Gas New Brunswick Inc. to supply gas in situations other than those narrowly defined in the definition of supplier of last resort?"

A. Yes. I'm saying my answer is yes. And it still stays yes. That's what I was trying to explain.

Q.1010 - Okay. Well, then I want to ask, if there are situations in which Enbridge Gas New Brunswick is allowed to supply gas, the commodity gas, other than a supplier of last resort, could you please point to them in the legislation for us?

A. Basically I don't accept -- but let me answer it. And if --

Q.1011 - Well, I don't think you can, Mr. Kumar. That is the problem. The question is --

A. Yes.

Q.1012 - My -- well, let me put it to you this way. I believe there are no such provisions. The legislation doesn't provide for them.

So your answer can't go on to say where it does unless you point me to it in the legislation, okay.

A. The provision which I'm referring to is the operation of system in a prudent, reasonable manner, which requires managing the system.

Q.1013 - Which provision of the legislation?

A. I don't have the Gas Distribution Act in front of me.

Yes. If you look at page 6.

Q.1014 - Page 6 of?

A. It talks about load balancing.

Q.1015 - I'm sorry, Mr. Kumar, page 6 of which document?

A. Yes, sir, chapter G-2.11. Gas Distribution --

Q.1016 - Could you maybe give the section reference just because my Act may not be the same?

A. Oh, sorry. First section 1.

Q.1017 - Is it a definition that you are reading?

A. Definition section I'm looking at under customer service.

Q.1018 - Okay.

A. That's one.

Q.1019 - Could you tell me where in there that allows the gas distributor to sell gas other than as supplier of last resort?

A. Load balancing. That's what I'm referring to, for load balancing.

Q.1020 - Oh, you are not talking about -- we were just talking about the sale of the commodity. That's all I want to talk about.

A. Load balancing involves sale of commodity because --

Q.1021 - No, I just want to talk about is there any provision in this Act other than supplier of last resort that allows sale of the commodity by the gas distributor?

A. That's what I'm answering. Because your question was is there any other way company can sell gas. And I'm saying load balancing, they have to provide gas. And that's the sale of gas on a temporary basis. And you may get it back in kind or some -- you may have some fee for it. But that involves sale of gas.

Q.1022 - Okay. Could you go to section 51.1.

A. 50?

Q.1023 - 51.1

A. I have 51.1. Yes, sir, I am there.

Q.1024 - Section 51.1?

A. Yes.

Q.1025 - Can I just read that into the record, Mr. Kumar?

A. Yes.

Q.1026 - No gas distributor shall sell gas except as a supplier of last resort. Is that correct?

A. Yes.

Q.1027 - Thank you.

A. And I pointed out to you that load balancing --

Q.1028 - No, that's fine, Mr. Kumar.

A. -- that part of the Gas Distribution Act also.

Q.1029 - Mr. Kumar, that's fine. I believe the Act speaks for itself.

Do you agree that in being the supplier of last resort -- and let's just talk about the legislative component of

the Act, supplier of last resort of the commodity -- that Enbridge Gas New Brunswick would have to incur administrative costs of arranging the supplier of last resort service?

A. Yes, sir.

Q.1030 - Were you here when Mr. Maclure and Ms. Duguay indicated that the 10 percent in that rate was to cover the administrative costs and associated costs of supplying that service?

A. She said that. And there are two things here. One is, first, I did not see any document which quantifies 10 percent. Let's assume she is right, 10 percent is correct number. Let's assume that.

The cost of service which I saw includes all the costs. And let's say this cost is not projected in the forecast of the year it happens. It would be included in the extra cost of service. So the company will be recovering that cost also, whatever cost it is.

I have not seen any separate category in the cost of service which says this is the cost for arranging the supply and we are going to recover through that premium. So the company is going to recover everything. And on top of that they are asking for 10 percent. And it's reasonable only for certain situations that 10 percent.

Q.1031 - Thank you. I'm unsure where you got to with this

area with Mr. Blue, so I will ask just a few questions with respect to the ABC service.

In response to interrogatory number 32 you indicated that you were not satisfied. Go to the interrogatory, I'm sorry.

A. Yes, sir.

Q.1032 - Your indication by the response no there was that you were not satisfied with which party was bearing the cost of bad debt. You said that after Enbridge Gas New Brunswick had indicated that the difference between the cost of the ABC service and the charge to gas marketers represented the estimated cost of bad debt.

A. Yes.

Q.1033 - And that was explained again by Mr. Maclure. So do you agree that Enbridge Gas New Brunswick's proposal is to collect a fee from marketers and submit a lower fee to the provider of ABC service, the difference being a charge to reflect bad debt?

A. The difference between the actual and the estimated?

Q.1034 - No. The difference between the charge to provide the service to Enbridge Gas New Brunswick and what it is going to charge the marketer --

A. Yes.

Q.1035 - -- is a charge to reflect the bad debt component?

A. It does reflect on the estimated basis not on actual

basis. So there is still some risk.

Q.1036 - No. And as Mr. Maclure said, Enbridge Gas New

Brunswick is bearing the risk of the forecast difference between the actual bad debt and the forecast of bad debt.

Mr. Maclure did say that in his testimony.

A. That Enbridge will bear -- Enbridge Inc. will bear the risk?

Q.1037 - No, Enbridge Gas New Brunswick Inc. would bear the

risk that it has forecast of the bad debt and the actual bad debt? So the marketer always gets paid.

A. If market pays for it, I don't have any problem.

Q.1038 - Thank you. Mr. Chair, I have a few questions

remaining. One of them dealt with Pacific Northern Gas.

And I believe there was a reference this morning, but I'm now not sure what the reference was. There was a graph that was used. I believe it's one of the appendices to Ms. McShane's testimony, schedule 4.

A. Yes, sir.

Q.1039 - No. Let me see. No, I guess I wanted to go to the document that referred to actual consolidated --

A. Yes, sir, that's exhibit E, schedule 64.

Q.1040 - Yes, that was a response to one of her IR?

A. It's also schedule 1 of my exhibit 2.

CHAIRMAN: What am I looking for, Mr. MacDougall?

MR. MACDOUGALL: Exhibit E, schedule 64, I believe, page 2.

Q.1041 - And, Mr. Kumar, when you looked at under the heading type, was it your view that only if the type of capital structure listed as hypothetical was the capital structures that were stand alone?

A. That's what it listed as hypothetical stand alone.

Q.1042 - No, there is nothing here that says stand alone. Did you -- some of them say hypothetical stand alone. But did you take that to understand that only if it said hypothetical stand alone was it on a stand alone basis?

A. That's my understanding, yes.

Q.1043 - That's your understanding. Now if I was to suggest to you, subject to check, that some of these types that are actuals were just a single entity in a single utility basis, would you not agree that they are on a stand alone basis as well?

A. I cannot check it. It would take me a long time to get all these things. So I cannot check that.

Q.1044 - Okay. Well let's just say if some of these entities are just pure utilities, let's pick Pacific Northern Gas. If it's a pure utility, it is treated on a stand alone basis. Is that correct?

A. Oh, so it's a pure utility that still is consolidated whatever their business is. That's not the issue here.

Q.1045 - Well, no. I just wanted to raise the issue of whether or not you presumed that just those where it said

hypothetical were the only stand alone ones? If any of these utilities listed or companies listed here are only -
- only have utility operations and they are using the actual capital structure, they would be essentially on a stand alone basis?

A. It's used as consolidated so it has some meaning. I don't think Ms. McShane put this meaningless word there.

Q.1046 - Well I can't put testimony in for her, so I will just leave my question there, although she did help me with the question, I have to admit.

I'm glad the witness was laughing as well, Mr. Chair.

I have very few questions left, Mr. Chair. I'm worried though because they deal with taxes. So I hope I can put them properly.

Mr. Kumar, would it be fair to say that the marginal tax rate of individuals is generally higher than that of a corporation?

A. That's true in Canada, yes.

Q.1047 - Do you know of any type of investment vehicles where the investors are asked their personal tax structure before they make an investment?

A. Any personal tax structure?

Q.1048 - Yes. Someone who has an investment, do you know of investment vehicles where people go out and ask someone their own personal tax structure before they agree that

they be an investor?

A. No. You don't need to ask. You generally don't ask.

MR. MACDOUGALL: Mr. Chair, that's my penultimate question.

But I was told by my colleagues I had to buy the beer if I didn't ask at least once today, Mr. Kumar, if that was your final answer.

MR. KUMAR: As long as you are paying for it, I will accept that.

MR. MACDOUGALL: No, now I don't have to pay for it.

However, at one time this week I was going to ask one of my witnesses if they required a lifeline, but I did hold back. Thank you, Mr. Chair.

MR. KUMAR: Thank you, sir.

CHAIRMAN: Mr. O'Connell, any redirect?

MR. O'CONNELL: Mr. Chairman, might I have a moment to consult with Board staff before I commit to that?

CHAIRMAN: Certainly. Sure. Yes. Do you want us to take a break?

MR. O'CONNELL: Yes.

(Recess)

CHAIRMAN: Mr. O'Connell?

MR. O'CONNELL: Mr. Chairman, Commissioners, I have no questions by way of redirect for this witness.

CHAIRMAN: The Board had no questions. Thank you, Mr. Kumar, for your testimony here today. You are excused.

MR. KUMAR: Thank you, your honour, and I want to make one comment, that this Canadian hospitality about drinks and water and coffee, this is unknown in the United States.

CHAIRMAN: Well somebody has got to buy you a beer, too.

MR. O'CONNELL: I believe it's Mr. Hoyt.

CHAIRMAN: Thank you. So we have some housekeeping items.

MR. BLUE: Mr. Chairman, the first thing I want to do is give you -- I have five copies for the Board of this.

Secondly, Mr. Chairman, we have provided the Board secretary, Ms. Leger, with a copy of an exhibit list. This is for all the items in the case and correspondence that we have in our files, and I would request that we designate numbers -- we don't have to do it here, but I would request the Board to have Ms. Leger designate numbers for these documents that are not inconsistent with the ones already marked, so that we could refer to them, if necessary, in argument. Some of these documents are documents which we may want to refer to.

CHAIRMAN: Mr. Blue, I had an opportunity I think at lunch time just to take a quick look at it, and I would like counsel's comment. And I have no problems at all with the correspondence that's forwarded things, et cetera, and I think I may have mentioned it before, but as far as what I would term in a civil suit sense, the pleadings themselves to mark them as exhibits, that certainly is unfamiliar

territory to me.

Now if -- but the other thing is for instance my comments at the commencement, Chairman's remarks, that's all on the record, you know. It's part of the transcript.

I read it. The only reason that the Chairman's remarks were typed out was so that all counsel could take a look at them before the transcript was available.

MR. BLUE: Yes. Sir, I am just offering my experience in practice elsewhere where the pleadings or the documents that the parties file, the formal documents, the application or the intervention of the parties, or anything that they file, are marked. The exhibit list is simply so that we all have a note of what the documents in the case are in case they become important for some future case.

You are about to start a continuum here and some of these documents that don't appear important today may be important in subsequent cases, and the Province just thinks it would be good to have a list of them all that is common to the parties in the hearing for future reference purposes. That's as far as it goes. It just proved to be a useful document elsewhere in these types of hearings.

CHAIRMAN: Other counsel have any comment? Mr. Stewart?

MR. STEWART: Mr. Chairman, despite Mr. Blue's earlier comments about communication between counsel, I don't have

the slightest idea what he is looking at or for the most part what he is talking about.

I mean I understand he is talking about changing exhibit numbers or providing a list or marking things as exhibits where up this point haven't been part of the hearing, and I am not in a position to agree to that or comment on it until I even see it to begin with, and have the opportunity to go through it, and I have done neither of those at this point.

CHAIRMAN: All right. Could I suggest something, then. Mr. Blue, if you could make it available to counsel and tomorrow before we commence summation I will have had an opportunity to assemble all those documents and I certainly will -- I will mark all the -- everything except for something that I believe is in the transcript or our pleadings, and then we will talk about those tomorrow, and if the consensus is we should add them to the list of exhibits, we will do so.

MR. BLUE: We will be happy to circulate the draft list to other counsel, sir.

CHAIRMAN: Okay. I guess the next order of business I guess is tomorrow and summation. Mr. MacDougall, I believe at one point in time you said you didn't need any -- half a day, or you were prepared to go ahead as soon as the Board sets a time.

MR. MACDOUGALL: Well as necessary. I mean if there is a little bit of flexibility, obviously we would like a little bit of time, but if mid morning tomorrow rather than at 8:30 is appropriate, that's probably plenty, but it is up to the Board. We will accommodate the Board's wishes.

CHAIRMAN: I am just wondering how long counsel think -- I am going to do it again. Last thing in the day.

MR. MACDOUGALL: I am going to start --

CHAIRMAN: I am going to do it again.

MR. MACDOUGALL: An hour and a half to two hours, Mr. Chair.

CHAIRMAN: Two hours. Okay. And Mr. Stewart?

MR. STEWART: Mr. Chairman, if I would, I would like to back up the bus just a little bit because I would like to suggest that we don't do closing arguments tomorrow in the first instance, and I am prepared to speak to that, but -- because among other things I don't know how long I am going to be tomorrow at this point because I need more time to get ready and I am not ready, and I will speak to -- should I speak to that now in terms of when we do it or --

CHAIRMAN: Yes.

MR. STEWART: All right.

CHAIRMAN: Speak to --

MR. STEWART: Both.

CHAIRMAN: -- both.

MR. STEWART: All right. Mr. Chairman, I went back and I looked in the transcript of the pre-hearing and at that time Mr. MacDougall was asking the Board for a day and a half between the close of evidence and beginning final argument I think is the term that's used in the regulation.

And I am not suggesting that he is necessarily doing an about-face, but I do think that in that context it's fair that each of us, and I am sure Mr. MacDougall would agree, be given ample opportunity to prepare.

To say that the issues here are complex and that the evidence is voluminous is an understatement, and I think even more than that, you know, a lot of these materials that is in these binders that we have had for some time, a week or two, but I think I can echo I think it was a comment of yours, Mr. Chairman, yesterday that throughout the course of this proceeding, this testimony, there have been a lot of holes filled in and a lot of new information elicited as a result of the oral testimony.

I mean for an example, Mr. Chairman, about -- on the last break I got my copy of this offering memorandum that was marked as A-16, and in it there are sections entitled The Public Utilities Board, Rate Methodology, Taxation of Limited Partners. My client is referenced by name. There

is references to debt equity ratios and other situations, references to the service agreement. And, you know, even the first part of the thing is over 50 pages long.

And I have not had the opportunity to go through that.

I do note that for example the cost of debt assumption in this document is 8.6 percent, not the 7.75 percent in the application.

And it would be unfair of us, I submit, unfair for us to be in this short a time period to close tomorrow when new evidence pertinent to what we may say and what our positions may be, are arriving in this short a time.

There have been enough changes in the course of this hearing that we need, or I need and my client needs to examine what our positions are and what submissions we are going to make to the Board, and I am not going to be able to do that between 5:00 o'clock today and 9:00 o'clock tomorrow morning.

And I appreciate that's a scheduling jam for all of us, but that in my view a proper submission to this Board has to take priority.

CHAIRMAN: Thank you, Mr. Stewart. What about -- well of course you don't know how long it will take you for your summation.

MR. STEWART: I don't.

CHAIRMAN: No. Okay. Mr. Zed?

MR. ZED: Mr. Chairman, we intend to be brief, I wouldn't imagine more than 10 or 15 minutes.

CHAIRMAN: I'm sorry. I was talking to my commissioners. You said you would be brief. Any thoughts on Mr. Stewart's motion referencing not summing up tomorrow but rather putting it off to a later date.

MR. ZED: Mr. Chairman, since you have asked, I can only say that I, having been in the situation before, have every sympathy with a solicitor who is trying to put the best foot forward for his client, and other than that I will make no other representation.

CHAIRMAN: Mr. Blue?

MR. BLUE: Mr Chairman, I have learned not to make promises such as I will be brief, because I find that I always break them, but we will be approximately an hour. We intend to address on several issues which we hope the Board will find helpful.

We can be ready for tomorrow morning. I think that despite the voluminousness of the material the issues seem to emerge and my experience is that any good counsel can be ready for one of these arguments within 12 to 15 hours.

CHAIRMAN: Okay. Now Mr. Holbrook?

MR. HOLBROOK: We would anticipate being relatively brief, I would assume no more than 10 to 15 minutes.

CHAIRMAN: Do you have any comments on Mr. Stewart's motion?

MR. HOLBROOK: Well we are sympathetic to Mr. Stewart's motion. We are prepared to make argument tomorrow morning if called upon to do so.

CHAIRMAN: Okay. The Board will retire for a few minutes --

MR. MACDOUGALL: On behalf of the applicant, if I could make a comment.

CHAIRMAN: I'm sorry. Yes, indeed. I can always trust you to haul me up short on that. Go ahead.

MR. MACDOUGALL: That was not my intent. Mr. Chair, I sympathize with Mr. Stewart, he feels there is a problem. The comments made at the pre-hearing were made. However, I do believe I raised the issue at least yesterday if not the day before of timing and that we would like to move forward.

The applicant will be ready, the applicant is generally me and -- for the purposes of this argument, and I have been preparing throughout. The applicant has to address every issue, all issues. We are willing to do that. We believe we have put material forward, we have put exhibits forward as quickly as possible, undertakings and otherwise. If something dramatic arises out of those I am sure counsel could get back to the Board on that.

I would like the argument to go ahead. I will be ready, I will be as ready as I can. I guess with more time I could be more ready, but I think the process here

is to get pipe in the ground as soon as possible.

We have a new hearing scheduled for which we have to have evidence ready on Thursday of this week, I was told by one of my colleagues, much to my chagrin, yesterday. We have IR's to our construction application. We are going to do all of that. We are going to meet the time lines put forward.

I think throughout this process there was some concern that maybe the applicant hasn't done that. Well the applicant in these proceedings is going to move as expeditiously as possible to allow for gas to flow to New Brunswick as soon as possible.

The rates application is very important. We are ready to proceed on all issues tomorrow. And in light of the fact that there are a lot of other matters that have to come up and the fact that breaking up the proceeding makes one have to leave, rethink about it, come back, try and readdress it, I would really hope that the Board would keep all those thoughts in mind.

I didn't hear any counsel except Mr. Stewart say that they couldn't go. I am sympathetic with him but not to the point that I can agree with him.

CHAIRMAN: Okay. Thanks, Mr. MacDougall. We will take a short break.

(Recess)

CHAIRMAN: All right. We have had an opportunity to discuss Mr. Stewart's motion and frankly we would like to accommodate more time if it's at all possible.

The reason we took so long is we were comparing notes as to when the Board had available with this panel over the next couple of weeks.

We find that we have the afternoon of next Wednesday, which is the 19th, is available, or anytime on Wednesday the 26th, which is the following week.

Now are there conflicts?

MR. STEWART: Not with me, Mr. Chair.

MR. MACDOUGALL: The difficulty is we do have to file evidence I think and that's the only the applicant who has to file it for Thursday on another matter.

MR. BLUE: My lord -- sorry, Mr. Chairman, I have got something that's going to go quite late until the 18th and I just don't know what time the first plane gets in on Wednesday morning.

CHAIRMAN: It will be here -- we are saying afternoon. One counsel is in the Court of Appeal at ten that morning, but -- Commissioner, rather, and he will be back down. So it won't be until after lunch, is what I am saying on the 19th, and you can get in.

Mr. Zed?

MR. ZED: Mr. Chairman, I believe I have a conflict, but in

view of our submission, I can have somebody else from our office appear, if that accommodates everybody else.

CHAIRMAN: That would be appreciated, Mr. Zed.

MR. O'CONNELL: We will accommodate the Board, whatever the Board's decision, Mr. Chairman.

MR. HOLBROOK: Mr. Chairman, are we awaiting the input back from counsel for Enbridge, before you poll counsel?

CHAIRMAN: Yes, I was, because you would have had to talk over the huddle and I didn't want to propose that.

MR. HOLBROOK: Thank you.

MR. MACDOUGALL: I apologize.

CHAIRMAN: No problem.

MR. MACDOUGALL: Mr. Chair, I guess our preference would be the next week, because we have to do so much this week and then if we are given time, then everyone has to have time to do it and I have got three or four things to prepare for Thursday.

CHAIRMAN: I could be trite and say, well you can do what you would do on Wednesday on Saturday of this week.

MR. MACDOUGALL: Well that would be fair, but if everyone else is having five days to prepare, you know, my argument was premised on the fact that we could do it till now, and you know, if everyone else is going to be having lots of time to prepare, you know, we were willing to argue to the best of our abilities.

But, you know, the difference is now --

CHAIRMAN: Okay. Let's -- the 26th. Let's go to the 26th and see if -- that would be all right with you then, Mr. MacDougall? The 26th?

MR. MACDOUGALL: Yes, Mr. Chair.

CHAIRMAN: Okay. Mr. Zed?

MR. ZED: In exactly the same position and if I can't make it, I will have somebody else.

CHAIRMAN: Thank you very much.

MR. BLUE: Is the alternative date the 26th, sir?

CHAIRMAN: 26th. Wednesday the 26th.

MR. BLUE: I am in court the day before and the day after. Could I make a phone call?

CHAIRMAN: Sure. Mr. Holbrook, is the 26th available for you?

MR. HOLBROOK: It would appear to be available at the present time. I have to double-check my schedule.

A question perhaps for the Board. If we are going to move it to the 26th, could they give consideration to whether it simply be shifted to the week of the 8th, when we reconvene the rate hearing process?

CHAIRMAN: No. No. And I will tell you why, is that the Board has got to get to work, too. I mean once we get into the next of those weeks, et cetera, why we are snowed under as well. And we have got to go ahead, because the

Board is totally tied up on the week of the 1st, okay, on other Board business.

So the two dates that we think are practical are the 19th and the 26th.

Mr. Stewart, did you have any problem with either one of those?

MR. STEWART: Either one of those days are fine, Mr. Chairman.

CHAIRMAN: Okay.

MR. MACDOUGALL: Mr. Chair, I raise this, and I know that the Board may not have any consideration of it, but would Mr. Stewart have enough time if we did it Sunday of this week or is that Sunday something that anybody is comfortable with?

MS. ZAUHAR: I go to mass Saturday.

MR. MACDOUGALL: So do I, Mr. Chair, and I will pray for a good decision when I am there.

CHAIRMAN: My Commissioners are saying no, on the other side. They are obviously not Catholics.

MR. MACDOUGALL: No, that's fair. If the Commissioners cannot do it, that's the end of it.

I also just wanted to make a statement, I was wondering if Mr. Blue was going to call a friend? It is late on a Friday, so -- and I wasn't sure we were still being transcribed.

(Recess)

CHAIRMAN: Okay. We will go back on.

MR. BLUE: Mr. Chairman, I have cleared the 26th.

CHAIRMAN: Okay. Now as to timing on that day, Mr. Blue, do you have to fly down from Toronto, it would be the night before?

MR. BLUE: I will be here the night before, so I can start as early as the Board would like.

CHAIRMAN: It will be the Board's premises then at 9:30 on Wednesday the 26th. 9:30.

Thank you very much.

(Hearing adjourned to April 26th, 2000 - 9:30 a.m.)

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

Reporter