New Brunswick Board of Commissioners of Public Utilities

Hearing May 8th, 2000

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

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Chairman: David C. Nicholson, Q.C.

Commissioner: Monika Zauhar

Commissioner: Robert Richardson

Commissioner: R. J. Lutes

Commissioner: Leonard Larocque

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CHAIRMAN: Good afternoon. This is a continuation of the rates application. And I think that the last time we sat was a Wednesday sometime in late April. I stand to be corrected. It was adjourned over until now.

Before I call for appearances, I see we have numbers on the table now. So you want whoever is speaking to say the number first? No?

Appearances for the applicant please?

MR. MACDOUGALL: For the applicant Enbridge Gas New Brunswick Inc., counsel David MacDougall and Len Hoyt.

CHAIRMAN: Irving Oil Limited?

MR. STEWART: Chris Stewart, Mr. Chairman.

CHAIRMAN: MariCo?

MR. HOLBROOK: Dennis Holbrook.

CHAIRMAN: Province of New Brunswick?

MR. BLUE: Ian Blue. And with me is Don Barnett from the Department of Natural Resources and Energy.

CHAIRMAN: Union of New Brunswick Indians? And Sempra Energy Sales Limited, Energy Source Canada?

MR. ZED: Peter Zed, Mr. Chairman.

CHAIRMAN: And I will just ask if there are any informal intervenors here? If so, identify yourself. Okay. There is no response.

And Board counsel?

MR. O'CONNELL: Thank you, Mr. Chairman. William O'Connell appearing on behalf of the Board, Mr. Chairman.

CHAIRMAN: Right. Any preliminary matters?

MR. MACDOUGALL: Mr. Chair, just one thing from the applicant. We have a document that we are going to file. It will be referred to probably sometime during the proceeding. And we can file with the Board secretary now and give it an exhibit number if that is appropriate.

CHAIRMAN: All right. Exhibit number will be A-27. All right.

MR. O'CONNELL: Mr. Chairman, I can get copies of that for the rest of us.

MR. MACDOUGALL: There were copies for everybody. I'm sorry if Mr. O'Connell didn't get one.

MR. O'CONNELL: Mr. Chairman, just one other thing, if I may. One of the things that was filed by the applicant with the Board sometime between the conclusion of the last hearing and argument was that service agreement dated the 13th of April, year 2000.

A quick scan of the exhibit list, it doesn't appear to be here. And I'm wondering if it should be added to the exhibit list as well?

CHAIRMAN: I will look at that the first break, Mr. O'Connell. Thank you for bringing it to my attention.

Let the record show that the panel is sworn.

Mr. MacDougall, I don't think there is anything else preliminary?

MR. MACDOUGALL: Maybe, Mr. Chair, I will start by just identifying the panel for the Board members. There is a new panel member from before.

So starting farthest from you and going toward the Board is Mr. Rock Marois, Mr. Allen Maclure and Mr. Andy Harrington, all of who were previously witnesses in this proceeding and whose testimonies were filed with the original rates application.

Joining them today is Mr. Gerard Forget who is closest to the panel. And Mr. Forget's c.v. was filed under cover of a letter to the Board dated May 4th.

I would ask now if Mr. Harrington and Mr. Maclure could turn to exhibit I and if each of the gentlemen could indicate if that testimony was prepared under their direction and control?

MR. MACLURE: Yes, it was, Mr. MacDougall.

MR. HARRINGTON: Yes, it was, Mr. MacDougall.

MR. MACDOUGALL: And do you adopt that testimony as your testimony and that of Enbridge Gas New Brunswick Inc. in this proceeding?

MR. MACLURE: Yes, sir.

MR. HARRINGTON: Yes, sir.

MR. MACDOUGALL: Mr. Chair, at this point I would like for Mr. Harrington to do a brief summary of the evidence as it relates to the M & NP contract issue. Then after that Mr. Maclure do a brief summary of the evidence as it relates to the wholesale rate issue, if that is appropriate.

CHAIRMAN: Yes. Go ahead.

MR. HARRINGTON

MR. HARRINGTON: Thank you, Mr. MacDougall, Chairman, Commissioners. On April 13th Enbridge Gas New Brunswick entered into a contract with Maritimes and Northeast Pipeline for 11,785 gigajoules a day of firm transportation for capacity on their system.

Since Enbridge Gas New Brunswick cannot sell gas and therefore has no specific use for this transportation, the logical question that arises is why don't you enter into a contract for this transportation?

This contract provides the necessary economic justification that Maritimes and Northeast requires to construct facilities that allow for the interconnection of our proposed distribution network and the main line for the communities we have plans to serve this year.

These facilities include seven custody transfer facilities, four in Saint John, one in each of Moncton and St. George and one to provide service to both Oromocto and Fredericton.

In addition, Maritimes and Northeast will build two laterals from the main line to the custody transfer facility in each of Moncton and St. George.

The next question that arises from this proposal is why would EGNB want to allow the pipeline to construct facilities that Enbridge Gas New Brunswick may otherwise build and generate a return on?

First, as per our discussions with the pipeline, they will not permit others, including Enbridge Gas New Brunswick, to build custody transfer facilities, which to date they have or are under contract to build for all of their customers.

Second, while we could build the two lateral facilities, Enbridge Gas New Brunswick is convinced that having Maritimes and Northeast build these facilities is the most economical approach to take at this point in time for its customers.

Enbridge Gas New Brunswick could have paid Maritimes and Northeast for these facilities in a contribution in aid of construction, or constructed a portion of the facilities themselves and reasonably included these costs in our cost of service, and collected those costs from customers in the form of rates.

However, the pipeline will build facilities without an aid to construct if a customer of theirs takes long-term firm service from the pipeline.

In our case, Enbridge Gas New Brunswick has elected to take the capacity, even though as mentioned before, we have no specific business use for it. However, all end use customers of Enbridge Gas New Brunswick's distribution system do require upstream transportation.

Enbridge Gas New Brunswick's fundamental logic in pursuing the approach before you in evidence is that Enbridge Gas New Brunswick looked to avoid having their customers pay for facilities twice.

What do I mean by this? Well, as mentioned before, if Enbridge Gas New Brunswick paid Maritimes and Northeast the upfront capital cost for constructing these facilities or constructed a portion of them themselves, Enbridge Gas New Brunswick would recover these expenditures through its deferral accounts and ultimately through rates from end users.

In addition ratepayers will still have to have upstream capacity on the pipeline which their marketers will charge them for in their marketers price.

In our proposal Enbridge Gas New Brunswick avoids an upfront capital expenditure and resells the capacity to marketers. The facilities get built. And end users get a service they require without paying for it twice. This proposal is therefore good for ratepayers.

If I could please direct you now to exhibit I, schedule 5.

It is a graph that looks like this. On this graph you will see five curves that depict the forecast size of EGNB's deferral account over time.

The green curve is EGNB's forecast of deferral account balance in the situation where EGNB pays Maritimes and Northeast outright for the facilities.

The rest of the curves represent the forecast size of the deferral account if EGNB is able to recover varying amounts of the cost of the capacity.

What this shows is that as long as we are able to recover more than 18 percent of this cost, an outcome we think is very likely, the deferral account will be less than if we made the contribution. This is of course passed along to ratepayers in the form of lower rates.

I recognize from some of the questions we received that it was not completely clear what has changed between the time we submitted our proposal to the Province through to now.  In particular, there seemed to be some question about the changes for the City of Moncton.

So if I could ask you to please turn to exhibit I, schedule 3 and to the map of Moncton, I will try to clarify these changes.

In some communities, Moncton being one of them, it was assumed in our original proposal that single end use franchises would arise and that these franchises would justify the construction of facilities by Maritimes and Northeast Pipeline from which we could interconnect and provide our distribution service, as is the case in Saint John.

With Moncton as the example, referring to the map, it was assumed that the pipe highlighted in both, and that is important, pink and green would be built by Maritimes and Northeast Pipeline.

Since this hasn't transpired, EGNB took into consideration two objectives, (1) the ability to serve end use customers, that is maximizing access to Enbridge Gas New Brunswick's distribution pipe and (2) minimizing early costs that go into the deferral account and end up with carrying costs in customer's rates.

The result is the map you see before you that illustrates the balancing of these objectives. Have Maritimes and Northeast Pipeline build the portion in which there are few or no potential distribution customers, the green line, and we build the rest. I hope that clarified things somewhat.

In addition to the facilities questions, it seemed that intervenors were interested, some more than others, in specifically how we intend on marketing this capacity.

In dealing with this I would like to point out that no other party has contracted for firm capacity to the delivery points named in our contract with the pipeline.

If I could now ask you to please refer to exhibit I, schedule 1, page 8. Referring to the contract, EGNB has taken firm service to these primary delivery points. You will hear some discussion about primary and secondary delivery over the course of the hearing.

What is important to understand is that to a pipeline these are two different services. Barring a few specific reasons, the pipeline will deliver gas to a shipper's primary delivery points.

However, if a shipper, let's say Irving Oil, wants to divert gas from their refinery, one of their primary delivery points to one of EGNB's delivery points, a secondary delivery point to Irving Oil, this will be done on a best efforts basis. If the pipeline cannot accommodate these deliveries, the gas will not be delivered.

Secondary transportation in this regard is not like subletting an apartment. It is more like flying standby. If the airline can accommodate you, given the level of traffic and desirability of the route, they will.

If they can't they may offer to fly you somewhere else. But chances are you are not going to get where you want to go when you want to be there.

Now I would like to deal specifically with the objective of marketing capacity. It is important to remember that in this approach Enbridge Gas New Brunswick has one objective, maximizing cost recovery.

In doing this we need to preserve flexibility to respond to market needs. No other holder of transportation, including the existing pipeline shippers in New Brunswick, have restrictions on how they deal with the resale of their capacity.

Enbridge Gas New Brunswick intends on participating in the secondary market on a level playing field with other capacity holders, to ensure that cost recovery is maximized to the benefit of all of Enbridge Gas New Brunswick's customers.

We should not be restrained beyond other market participants or it is likely that we will miss opportunities to meet our objective, leading to higher amounts in our deferral account than may otherwise be the case.

That being said, Enbridge Gas New Brunswick supports to the extent reasonable the use of open and transparent processes such as the issuance of an RFP for the resale of its capacity, as long as it does not preclude Enbridge Gas New Brunswick from responding to market opportunities as they arise.

An example may help illustrate this. Let's assume that Enbridge Gas New Brunswick receives approval from the Board for our proposal and everything proceeds as we expect such that Enbridge Gas New Brunswick is in a position to issue an RFP on September 1 for the resale of its capacity.

Bids come in. And at the end of this open and transparent process Enbridge Gas New Brunswick has successfully relieved itself of 5,000 units of its roughly 12,000 units of capacity, at the best possible terms. Enbridge Gas New Brunswick is left with 7,000 units for which it continues to pay.

Enbridge Gas New Brunswick embarks on other open and transparent processes to alleviate itself of all or part of the cost of this remaining amount. But on January 1st

2001 Enbridge Gas New Brunswick is still holding those 7,000 units.

On this day Enbridge Gas New Brunswick receives a call. A marketer with customers in Enbridge Gas New Brunswick's franchise is on the line. They, for whatever reason, find themselves short of capacity and are willing to pay 140 percent, 150 percent.

Let's say they are willing to pay 200 percent of the value for 3,000 of the 7,000 remaining units for four months. However they need it now.

Should our response be we will have to hold an open season and see if anyone else would like those units and are willing to match or beat the price, and we will get back to you in a week or two? Or should we be able to respond to the market need? I think the answer is clear.

It is also important to note that the Board will have the opportunity to review the net cost associated with the marketing of this capacity, just as they have the right to review all costs that go into our cost of service.

Further, they will be able to assess whether, given the situation at the time, Enbridge Gas New Brunswick made the most prudent decisions in marketing this capacity on an annual basis.

In conclusion we are asking the Board first to approve the inclusion into the cost of service all the cost of the firm service agreement with the pipeline.

And second, we are asking the Board to approve our right to alleviate the cost by marketing of this capacity on an unfettered basis to the benefit of all Enbridge Gas New Brunswick's ratepayers.

That concludes my summary of my evidence.

MR. MACDOUGALL: Maybe Mr. MacLure can give his summary.

MR. MACLURE

MR. MACLURE: Mr. Chairman, Commissioners, the wholesale rate was identified as an outstanding issue during the rate proceeding last month. The wholesale rate is the rate a gas distributor would charge for a wholesale service.

So as the company sees it, the issue before the Board is not a rate or rate design, but that the company is not proposing to offer a wholesale service. While Irving Oil's evidence does not explicitly say so, EGNB assumes that it wishes the Board to order the company to provide such a service.

Since wholesale service is not offered anywhere in North America, my comments are not based upon any existing example of wholesale service. In theory, the wholesale service would be a service where a gas marketer contracts directly with the gas distributor for capacity on the distribution system, which would allow it to have gas delivered to multiple delivery points.

It is likely that there would be a minimum contracted quantity that would be required which would supply aggregate requirements of, for example, 200-plus residential sized end use locations.

The aggregated demand would be for a mixture of residential, commercial and industrial customers, and the rate for such service would not distinguish between serving these different classes of customers.

Under wholesale service the distributor would deliver gas to the gas marketer at the customer's meter where the marketer would sell gas at the meter and bill customers at whatever price had been negotiated with that customer. It would not be possible to identify separately the regulated distribution price on the end user's bill because the charge to the marketer would be based upon the aggregated demand and there would be no distinction between the portion of the charge that, for example, serves residential customers with that that serves commercial or industrial customers.

The charge to the marketer would be derived by applying the rate to the accumulation of all the volumes delivered to the marketer's end users. The marketer thus could charge end users the marketers' own apportionment of the wholesale costs rather than any specific charge that is approved by the Board.

The contractual relationship between the end user, the gas marketer and the distributor would be different under a wholesale rate than under end user rates as proposed by the company. When contracting for wholesale service, the gas marketer contracts with the distributor as a principal, not as an agent for the customer.

Under the rates proposed by EGNB in this proceeding the gas marketer acts as an agent for the customer. Contracting as principal by the marketer eliminates the company's relationship with the end user, a relationship that the company believes is vitally important in the greenfield environment.

EGNB has indicated that it has concerns with the elimination of the relationship between the end user and the company, and does not support the introduction of a wholesale service.

Firstly there is the issue of safety. This includes both the potential lack of knowledge of the identify of the customer under wholesale service and the reduced ability to communicate with that customer, as well as the customer being aware of who they should communicate with in the event of a safety concern.

Under wholesale service the company will not be able to pass through its pricing flexibility mechanism requested in the rate proceeding to customers on the wholesale rate. This will lead to some customers getting the advantage of this mechanism while those on the wholesale rate would not. This is a crucial point for the Board to understand. The regulated rate is to the marketer only, not the end user, residential or otherwise.

Wholesale service would also remove the distributor as being the initiator of disconnection procedures, since it assumes that the marketer would need to request that the utility -- that the utility disconnect customers for non-payment.

The company continues to believe that this is a billing issue and that the Board made that -- made the determination in the marketers hearing that EGNB should bill end users for the delivery service that would be required to serve them. It is only through company billing to end users that posted stamp rates can be preserved and that all customers of a given type pay the same amount for the regulated delivery service.

What I mean by this is that wholesale rates would cause similar customers to have different charges for distribution services, depending whether they are served under wholesale rate or not. In fact, I believe that under a wholesale service the customer would not know what its distribution cost actually is.

And with that, those are my opening remarks.

MR. MACDOUGALL: Mr. Chair, the witnesses are available for cross-examination.

CHAIRMAN: Thank you, Mr. MacDougall. The Chairman will operate his prerogative here. There is one matter I wanted to question the panel on before I ask counsel opposite to get involved.

Mr. Harrington, in your pre-filed evidence and just now, you said that Maritimes and Northeast Pipelines will not permit EGNB to build custody transfer facilities. That is my understanding.

MR. HARRINGTON: That's correct.

CHAIRMAN: My understanding also is across this country that on occasion local distribution companies will build the custody transfer facilities and other jurisdictions only the pipelines like

TransCanada will build them, and on other occasions I was told by an individual who shall go nameless that when the companies had lots of money, why the pipeline company would build one and then right across the fence the local distribution would build one. Is my understanding correct to your knowledge?

MR. HARRINGTON: Yes, it is correct.

CHAIRMAN: Now Maritimes and Northeast has not permitted EGNB to build those custody transfer facilities, as I understand it.

MR. HARRINGTON:  That's correct.

CHAIRMAN:  Has this question ever been visited by the National Energy Board as to who should -- who should build these or be allowed to build them?

MR. HARRINGTON:  To my knowledge not as of yet.

CHAIRMAN:  Do you think that it may be?

MR. HARRINGTON:  I think that it may be and possibly should be.

CHAIRMAN:  Is there any intention on the part of EGNB to pursue that?

A.  I think in general we want to pursue more flexibility in Maritimes and Northeast tariff and in their -- in their internal policies in general.  We were faced with a relatively short window in order to get facilities established this year, and our real objective was to find an economical -- the most economical way to get those facilities constructed so that we could interconnect.  We thought that potentially we could get changes in policy, that we could go before the NEB, but we didn't think that we would be able to meet our time lines as we see them for this year.

CHAIRMAN:  Well --

MR. HARRINGTON:  And that being said -- if I might just might for a second.

CHAIRMAN:  Yes, sure.

MR. HARRINGTON: Even still the concept that we have come forward with here, the economics we believe are more favourable for this particular approach, avoiding those capital costs completely, assuming we can market sufficient amount of that capacity.

CHAIRMAN: Okay. Thank you, Mr. Harrington. If I remember correctly from the adjourned hearing, Mr. Stewart, you are first.

CROSS-EXAMINATION BY MR. STEWART:

MR. STEWART: I am just as happy to leave table 13, Mr. Chairman. And what is worse is I actually chose that table when I walked in. I hope that wasn't prophetic in any way.

CHAIRMAN: There must be some reason why the numbering starts at 8 and goes up. I don't know what it is. I was sitting looking at it, wondering myself.

Q.1 - Mr. Harrington, I would just like to back up a little bit and review the nature of this agreement that you have entered into with the pipeline and some of the important issues surrounding it.

Now it is for 11,755 gigajoules of capacity per day, is that correct?

MR. HARRINGTON: No. It's 11,785.

Q.2 - 85?

MR. HARRINGTON: Yes.

Q.3 - Well there you go. I am glad I asked the question. Gigajoules per day. And that is to allow you to move that volume of gas through the system, or the ability if you choose to, to use that volume, move that volume of gas through the pipeline on a daily basis, is that correct?

MR. HARRINGTON: That's correct.

Q.4 - Right. And --

MR. HARRINGTON: If I might though, I am not sure whether you are asking about the capability of the facilities or that contract allows us to move 11,785 gigajoules per day.

Q.5 - The latter, not the former.

MR. HARRINGTON: Okay, you are correct.

Q.6 - So you have contracted for 20 years for that portion of the ability that the pipeline has to move gas through its system?

MR. HARRINGTON: That's correct.

Q.7 - And for that you pay the toll -- a toll?

MR. HARRINGTON: That's correct.

Q.8 - And the toll is, or may soon be, 70.43 cents per gigajoule?

MR. HARRINGTON: That's the hundred percent load factor usage rate. The toll is actually $21.4239 per gigajoule per month of capacity.

Q.9 - Right. So in any event, depending on -- I guess in the early years I guess you are suggesting there is a discount because it may be going to New Brunswick, but anywhere from 2.9 to $3 million a year?

MR. HARRINGTON: That's correct.

Q.10 - And so that's going to be the cost that Enbridge Gas New Brunswick is going to pay for this capacity and the cost that you are going to attempt to recoup when you market the capacity.

MR. HARRINGTON: That's correct.

Q.11 - So we are talking 2.9, $3 million a year?

MR. HARRINGTON: Yes.

Q.12 - Okay. Now -- and if I am looking at the numbers correctly, hopefully I wrote this one down properly, over the life of the 20 year contract that is $60,591,281?

MR. HARRINGTON: Subject to check that sounds correct.

Q.13 - It sounds about right? Okay. Now can I refer you please to schedule 2 of exhibit J, which is Board staff IR number 2.

MR. HARRINGTON: I am there.

Q.14 - Fine. I guess in fairness I probably should have asked -- the last few questions I asked -- or referred you to this document first, but these are the -- you know, as we see, the bottom line 6 is the annual cost and the monthly cost of this capacity. These represent the amounts that you will be paying Maritimes Northeast going forward?

MR. HARRINGTON: Excuse me for one second. I think I might have turned to the wrong exhibit.

Q.15 - Sure. Page 2 of 3, exhibit J.

MR. HARRINGTON: I am there now.

Q.16 - Are you there now? Great. So $250,000 a month or 2.9 or $3 million a year?

A. That's correct.

Q.17 - Now these dollar amounts projected forward through year 20 are running on the assumption that the National Energy Board does not change the toll, is that correct?

MR. HARRINGTON: That's correct.

Q.18 - And if the toll increases, then these amounts will increase accordingly?

MR. HARRINGTON: That is correct.

Q.19 - So all we can do is know that -- and your agreement commits you to pay whatever toll is set by the National Energy Board?

MR. HARRINGTON: That's correct.

Q.20 - So you have only agreed to take the capacity. You haven't agreed on a firm price with the pipeline, or only firm to the extent that it is established by the regulator?

MR. HARRINGTON: Could you repeat that.

Q.21 - Well you don't have a guaranteed price with the pipeline for the capacity?

MR. HARRINGTON: No.

Q.22 - The only guarantee is that you will pay whatever the National Energy Board says?

MR. HARRINGTON: That's correct.

Q.23 - And that may vary based upon the circumstances of Maritimes Northeast?

MR. HARRINGTON: That's correct.

Q.24 - Now I promised my client that I wouldn't go through this cross-examination without referring -- without at least referring somebody to schedule 7 of exhibit A of the original testimony. Do you have a copy of that there with you?

MR. HARRINGTON: No, I don't.

Q.25 - Do you have a copy, Mr. Harrington?

MR. HARRINGTON: Thanks.

Q.26 - Now this schedule 7, you will remember we talked about it at some considerable length when we were talking about the deferral accounts in the last year, but as I understand it, again these are your -- or Enbridge Gas New Brunswick's projected cost of service, cost of capital, revenue requirement numbers going forward?

MR. HARRINGTON: That's correct.

Q.27 - Okay. So if I could refer you to line 9 --

MR. HARRINGTON: Yes.

Q.28 - -- which is your cost of service. Now as I understand it, you are asking the Board to include the cost of this firm capacity, I guess at least to the extent that you are not able to recover them when you try to resell it, into your cost of service going forward?

MR. HARRINGTON: The net cost, yes, as you have described it.

Q.29 - The net cost. Right. And you are asking the Board to confirm the inclusion of those numbers in your cost of service not just for this year, but for each of the 20 years going forward?

MR. HARRINGTON: That's correct.

Q.30 - Right. So you are asking the Board today to rule that you are entitled to include the net cost in your year 20 cost of service -- unrecovered cost, I am sorry?

MR. HARRINGTON: Yes.

Q.31 - Okay. Now back to line 9. Your projected cost of service prior to this issue was $3.77 million?

MR. HARRINGTON: That's correct.

Q.32 - Right. And --

MR. MAROIS: Well that does not include the cost of capital. The cost of capital is really part of the cost of service. The cost of service in traditional terms would be lines 3 plus line 9. For presentation purposes the cost of capital on lines 1, 2, 3 were shown separately, but it is a cost of service element.

Q.33 - So are you going to include it in the cost of service?

That is what you have asked for.

MR. HARRINGTON: Yes.

Q.34 - All right. And at the very least, whether it's one version of what the cost of service is or -- and I am only going to go by what you have here on the document you presented to the Board, but at least in terms of your operations and maintenance expenses, depreciation and amortization, municipal taxes, capital taxes, large corporation tax, your cost of service, whether that is your true cost of service or not, is $3.77 million?

MR. HARRINGTON: Correct.

Q.35 - Right. And there is, heaven forbid, at least the potential of another $2.9 million being added to the cost of service if you are unable to market any of this capacity?

MR. HARRINGTON: Yes, or a 12.2 million dollar capital expenditure.

Q.36 - Well which are you asking the Board to do?

MR. HARRINGTON: The 2.9, as you have referred to it.

Q.37 - Yes. And equally going forward in year 2, the total of all your operations and maintenance and depreciation and taxes is 6.4 million, and the same thing going through. You are now about -- instead of doubling the amount you are adding -- potentially increasing it by 50 percent?

MR. HARRINGTON: Correct.

Q.38 - Right. And then if we go forward we can compare the figures throughout the year.

MR. MAROIS: Well I think -- I think -- again I just want to stress that the total cost of service of the company or the total revenue requirement for 2001 is really the line 11 of column 1 which is 10 million 749.7. So the 3 million represents roughly 30 percent of the revenue requirement. That is a better expression of this cost on our total revenue requirement.

Q.39 - Well you can express it your way and I will express it mine. How long will it be before the total through-put of your system equals 11,785 gigajoules?

MR. HARRINGTON: If I could refer you to -- just give me one second. Exhibit I, schedule 4.

Q.40 - Right.

MR. HARRINGTON: As you can see, based on our forecast, we hope to be at this level of demand prior to the end of our first fiscal year.

Q.41 - So if we try to put a label on where we are here, is that level of demand or that level of through-put?

MR. HARRINGTON: That's on an average day basis the level of through-put.

Q.42 - Okay. So this represents then all of the capacity that your system will need at least for the first year?

MR. HARRINGTON: Correct.

Q.43 - And I guess just so we are clear, this charge on the pipeline -- and again I'm a little bit new to the natural gas industry -- but I know that it has attached to it the label -- is it like take or pay, that is that you pay for this capacity whether you use it or not?

MR. HARRINGTON: That's correct.

Q.44 - So even if no one is moving gas or actually utilizing the capacity of the pipeline, Maritimes Northeast still gets paid?

MR. HARRINGTON: That is correct. I do want to point out however that this capacity is not only of value to end users on Enbridge Gas New Brunswick's distribution system. In the secondary market, it could have value to other shippers including single end use franchisers and other LDC's.

Q.45 - That's right. Because -- well, let's just back up a little bit. The facilities that you are -- these customer transfer stations and these laterals that you are proposing to have built either by -- some by yourself and some by the pipeline --

MR. HARRINGTON: Correct.

Q.46 - -- to what level of demand or capacity are they being built?

MR. HARRINGTON: They are being built based on our -- I don't want to get the number wrong -- but I believe on our

20-year forecast of demand.

Q.47 - Right. So in other words they are going to be big enough to cover peak day or peak hour in year 20?

MR. HARRINGTON: I believe the engineers are designing on peak hour.

Q.48 - So these facilities will be big enough, if I can use that term, to handle your forecasted maximum volume for the busiest hour you will have at the end of 20 years?

MR. HARRINGTON: That's my understanding.

Q.49 - Right. So if it -- I just want to talk about the analogy raised in your examination in chief.

I mean, you said that other people may be interested in buying this capacity because they would then potentially use it somewhere else, drop it off earlier on the pipeline, is that correct?

MR. HARRINGTON: That's correct.

Q.50 - So it may have some value to them?

MR. HARRINGTON: Correct.

Q.51 - Right. But the only time the pipeline would not allow the earlier diversion of the gas would be if the facility wasn't physically capable of doing it, isn't that correct?

MR. HARRINGTON: That's correct.

Q.52 - Right. So if it is like flying standby, it is like flying standby in a plane that is never full, isn't it?

MR. HARRINGTON: Maybe Mr. Forget would like to handle this line of questioning.

MR. FORGET: If you read the M & NP tariff, what they said is they will allow diversion to a gate station as long as the capacity of the gate station is able to accept the diversion.

But on another document they also stated that someone who has a firm commitment to that gate station will have the privilege of coming first to that gate station.

So you are right, saying that if the gate station is big enough to provide the service, they will -- they will do so. But they still are able to, for whatever reason, decided to change their vision on that.

If you are not -- if you don't have a firm commitment with the firm service there, they may decide it elsewhere. That is what they call the priority of service.

Q.53 - But you will agree with me that until you are in a situation where you would see the capacity of that gate station which is being designed for the peak hour capacity of your year 20, that won't be an issue?

MR. FORGET: It may not be an issue.

Q.54 - Now Mr. Harrington, I think as I understand your proposal -- and I appreciate in my client's own evidence they in essence support the proposal that you have made, the idea here is that it is a win-win, you know.

We get the pipeline to build some of the capacity.

And Enbridge has to sign to take that -- excuse me, the pipeline agrees to build some facilities in exchange for Enbridge contracting for some capacity.

But as long as you can resell the capacity and make yourself whole or at least recover those costs so it is cheaper in the long run, everybody is happy. And the deferral accounts are lower and rates are lower. And that is all good for everyone?

MR. HARRINGTON: I would agree with that characterization.

Q.55 - All right. But it is true that to the extent that you are unable to market all of -- or remarket or resell or release, whatever the proper term is, that capacity, and you don't recover all your costs, you are asking the Board to allow you to be able to recover those amounts from your New Brunswick ratepayers?

MR. HARRINGTON: That's correct.

MR. MACLURE: Mr. Stewart, remembering of course that the ratepayers are still better off as long as we recover at least 18 percent of it.

MR. STEWART: I haven't forgot that at all. I'm just asking --

MR. MACLURE: I just don't want to leave the impression out there that they would somehow be not better off.

Q.56 - Well, none of these amounts at all were considered in your previous forecasts.

I mean, I think your own evidence is you thought that somebody else or the pipeline would be building these things because of single end use franchisees or something.

So none of these expenses were in your previous analysis, were they?

MR. HARRINGTON: That's correct.

Q.57 - So anyway the bottom line is to the extent that you can't resell this stuff, this capacity that you have agreed to, this $60 1/2 million over 20 years, the ratepayers are -- you are asking the Board to in essence guarantee that you can recover those amounts in your revenue requirement or your cost of service?

MR. HARRINGTON: That's correct.

Q.58 - All right. Now --

MR. MACLURE: Again though -- I mean, you are creating a hypothetical that to some extent this capacity has no value and that nobody would want it. And I think that to put forward that characterization is an unreasonable characterization.

I mean, the fact is that if you look at the graph at schedule 4, very clearly participants who are going to be supplying into the market in New Brunswick will need capacity.

The ability of Enbridge to sell capacity at market prices would suggest that the capacity will have value because somebody, be it Irving Oil, be it Sempra, be it Engage Energy or any other marketer that is trying to participate in the New Brunswick market will need to bring gas and use capacity. So it has value.

Q.59 - I don't deny that, Mr. Maclure. But the bottom line here is whether the unrecovered cost is $1 or $2.9 million, you are asking the Board to allow you to recover those costs from the ratepayer?

MR. MACLURE: That's correct.

Q.60 - Right.

MR. MACLURE: We are asking them to recover the ratepayer. Because absent that contract or some other mechanism, there would be a no connection between the distribution system and the transmission system. And no customer would get gas.

Q.61 - Now as I understand it, Mr. Harrington, you have set out two basic principles for how you are going to govern your remarketing on this capacity.

The first one is that you are going to seek to maximize your actual cost recovery, is that correct?

MR. HARRINGTON: That's correct.

Q.62 - And the second is that you want flexibility to respond to market demands?

MR. HARRINGTON: That's correct.

Q.63 - Okay. Well, I can hardly take any issue with the first one certainly.

And just generally what is your projection of what you will be able to recover at this time?

MR. FORGET: We have addressed that issue on the exhibit K, schedule 4, page 2 of 16 where we have said that our expectation is based on the fact that the market will develop.

And the market will develop where we believe between 60 and 75 percent of the capacity will be recovered.

Q.64 - So if the market develops you are hoping that -- projecting that you will be able to recover 60 to 70 percent of the cost of this capacity on the pipeline?

MR. FORGET: Mr. Maclure just pointed out that the market demand for the franchise will grow rapidly. This contract is for about -- the market requirement for a year, a year and a half. So Mr. Maclure is right when he is saying that the market will develop here.

And as we have pointed out in the exhibit K, the market will develop elsewhere also. Where we have pointed out that Maritimes & Northeast expect to double the facility on Maritimes, it means that the market will require additional capacity pretty soon. So by doing so the value of the transportation will have value.

Q.65 - So you will agree with me then that development of the market is essential to maximizing your cost recovery of this -- the cost of the Maritimes and Northeast capacity?

MR. FORGET: That's our assumption too.

Q.66 - Yes. And it is important to have the market developed so you can recover these costs. So there is a demand for the capacity?

MR. FORGET: Correct.

Q.67 - And you will agree with me that then the more marketers there are participating in the New Brunswick system, in your system, where this capacity, this firm -- this capacity is at least firm to, the more likely you will be able to maximize your recovery, your first guiding principle?

MR. HARRINGTON: That's correct. And we think that this proposal creates a good environment for marketers to come in and participate in that it will ultimately lower rates for end users and make natural gas that much more attractive for end users.

Q.68 - Right. And it is essential then that we create or establish an environment which makes it, I guess, as easy as possible for new marketers to enter the market?

MR. HARRINGTON: That's correct.

Q.69 - Not only just to grow the system, but particularly now, because you have got $3 million worth of capacity you need somebody to buy?

MR. HARRINGTON: That's correct.

Q.70 - I have a little more concern with respect to this second part of your guarding principal in terms of your disposition of this capacity. And am I correct in saying that you don't want to set a minimum price for the resale of this capacity?

MR. HARRINGTON: You are correct. And the reason is is that in times when demand is low recovering some amount is better than recovering no amount, and this is in line of trying to maximize cost recovery again for the benefit of ratepayers.

Q.71 - You won't set a minimum or maximum piece or portion of the 11,855 that you can sell to any one individual?

MR. HARRINGTON: 11,785?

Q.72 - 85.

MR. HARRINGTON: No.

Q.73 - And you won't set a minimum floor price?

MR. HARRINGTON: We don't think that is in the best interests of ratepayers.

Q.74 - You won't rule out private pre-arranged deals?

MR. HARRINGTON: No.

Q.75 - You won't rule out selling to an Enbridge affiliate, if one exists in the future, by private pre-arranged deal?

MR. HARRINGTON: I am not -- I am not always that good with remembering exact sections of the Gas Distribution Act, but I believe that we cannot discriminate against any marketing firm in terms of sale -- in terms of the sale of upstream capacity.

Q.76 - So if you are going to offer any discount to a marketing affiliate you will advise all of the other marketers beforehand before you do?

MR. HARRINGTON: I don't think that's part of our proposal.

Q.77 - I don't think so either. So what will you do? What is your plan?

MR. HARRINGTON: I think as we have indicated in some of our responses to interrogatories, that at this point we don't have a specific plan for the resale of this capacity. We have indicated that we want to work with the market participants and definitely those potential marketers who want to be marketers in the Enbridge Gas New Brunswick franchise. So we hope to develop these -- the plans over time.

As I have indicated, we are not -- we are not rejecting open and transparent processes. However, we need to be able to respond to market needs. This is a changing marketplace. Maritimes and Northeast has only been in operation for a few months. Enbridge Gas New Brunswick is just getting ready to be in operation. Things are going to change quickly and market participants, including marketers, will learn about their requirements on the fly. We want to be able to respond to those market requirements when they arise.

Q.78 - Mr. Harrington, would you agree that the disposition of this capacity, particularly in the early years, depending on how and to whom and where it's sold, could have fundamental effects on the New Brunswick marketplace?

MR. MACLURE: Mr. Stewart, I guess from our point of view, in terms of having fundamental -- a fundamental effect on the marketplace, we would agree with that. The fundamental effect we see is it facilitates the market and facilitates marketers having access to the transmission system.

Q.79 - Right. But you agree with me that all marketers -- or you will agree with me, I assume then, that all marketers should have access to an opportunity to purchase this capacity?

MR. MACLURE: And all marketers will have access to an opportunity to purchase that capacity.

Q.80 - All right How will all marketers have access to the ability to purchase this capacity if you won't rule out a private pre-arranged deal?

MR. MACLURE: Well I think what you are trying to get at is the open and transparent process that Mr. Harrington alluded to earlier. You are presupposing I think that somehow at the upside, at the very start of this, we will of necessity go out and assign this to some third party or some affiliate as was posed in one of your questions.

We as a company are going to have to demonstrate to the Board that the decisions that we make with respect to this capacity were prudent and were in the best interests of the consumers and the ratepayers will be --

Q.81 - Where and how will you do that? Where and how will you do that?

MR. MACLURE: At the end of the year.

Q.82 - No, because you are already asking the Board to confirm that it is included in your cost of service now?

MR. MACLURE: I am sorry, Mr. Stewart, but asking them to include it in the cost of service does not rule out the Board at some future time having an impact on and having an influence on how you deal with your cost of service.

Q.83 - So you will agree with me then to the extent that the Board finds that you are dealing with this capacity wasn't up to snuff or something, or not handled properly, that the Board could then exclude those amounts from your cost of service going forward?

MR. MACLURE: The Board has the opportunity to do all sorts of things. We are trying to persuade the Board that we believe that entering into these contracts and the costs associated with entering into these contracts was the prudent thing to do in the interest of the marketplace. Absent those contracts and this contact with Maritimes and

Northeast, there would be no connection between the distribution system and the transmission system and no market would develop.

We were left we believe with no choice but to enter into a contract such as this and as a consequence of that it is only fair that we are entitled to recover those particular costs, just as in the same way as any other cost that we incur.

Q.84 - But you are asking the ratepayers to guarantee the bottom line here, are you not?

MR. MACLURE: Not really.

Q.85 - So to the extent you don't have recovered costs, Enbridge is prepared to cover those? I mean I don't think that is what you are saying?

MR. MACLURE: We have -- what happens, Mr. Stewart, is just as we have discussed in the earlier proceeding, the rate proceedings. To the extent that we cannot recover these costs in a reasonable fashion and this ends up increasing our deferral account beyond that which the market can support, the company will continue to be at risk for those costs just as it will be no matter what costs we incurred to meet market needs.

Q.86 - Okay. Let's see if we can agree on a couple of points. Do you agree that the first approach at a minimum should be that your capacity should be marketed in some sort of open bidding public auction sort of process?

MR. MACLURE: I am just trying to think of an example why one might not want to do that, and again it's a function of a pre-arranged deal. If somebody came to us and said, we would like to take your capacity for, or a portion of your capacity for five years and we will pay you full toll, and we go out and say, oh well, we are going to have to go out and arrange tender and see whether that's a good deal. And as a consequence of the delay that it takes to go out and bid, they lose interest and we end up having the opportunity of selling that same capacity for 80 percent of full toll.

There are situations in which a business has to make a decision that that is in the best interest of the customer.

Q.87 - Okay. Point well taken. What if I limit my question to circumstances where you are selling the capacity at a discount. I mean I could see if somebody walks in and says, I will pay full price, not much need to go to tender then or having a public process, you are getting full recovery. What about where somebody comes in and says, I want to buy for 50 cents on the dollar, or anything less than a dollar, and you know therefore that you are not going to have full recovery, do you think that that should only be sold on a public process?

MR. MACLURE: No, I don't even agree with that, because again if you look at the kind of experience that we have in Ontario on TransCanada, that generally it becomes knowledgeable amongst people who are working on the transmission -- working on the pipeline as to knowing what the value of transportation is at any particular point in time. The transportation simply becomes a commodity like any other commodity.

And there will be circumstances in which it becomes generally -- you generally are knowledgeable that capacity is trading at 30 cents on the dollar, or capacity is trading at 50 cents on the dollar for certain terms, and that is -- that is a knowledge that happens within the industry.

So that if you have somebody that calls you up and says, well I will give you 60 cents on the dollar, you know that that is a good deal because you happen to know that generally speaking, capacity is trading at 50 cents on the dollar by other transactions that have taken place with other market participants in the recent past.

So you don't have to go and necessarily have a full transparent bidding process on that particular block of capacity that somebody is offering on at that point in time.

Q.88 - But isn't the difference, Mr. Maclure, in that situation that there you are dealing in a regular commercial arrangement where commercial companies are making deals or agreeing to buy and purchase a commodity based on what the given market is, and in your situation here, I think as your own evidence indicates, this is a unique circumstance where to the extent that you don't get full recovery you are asking to recover that amount in your rates?

MR. MACLURE: Yes. It's a unique circumstance because of that particular element but it's not a unique circumstance in trying to maximize the revenue that you can make for that particular capacity and thereby minimize the deferral account and minimize the cost to the customer. That's our objective is minimizing costs. If we are tied down to a particular procedure that ends up not allowing us to minimize those costs it gives us some concern.

MR. FORGET: Mr. Chairman, one comment. I used to work for Gaz Metro in Montreal and we have been through the Board of Quebec to ask the Board to approve transportation agreement several time. As Mr. Maclure said, it's not an exception out here where we ask the Board to approve the transportation contract, and we have been through several exercise like that where the company was faced with some excess transportation from time to time.

And as Mr. Maclure pointed out, it's up to the LDC to develop some internal mechanism to follow the market, making sure that the transaction that they are putting into the market are on -- will be the best commitment that they will do. And that's how the secondary market do operate, where you have to keep track of what is going on and making sure that you do your best in taking everything into account, not only one specific open season bid but several mechanism to address the market needs.

Q.89 - All of which are open and subject to scrutiny?

MR. FORGET: As Mr. Maclure pointed out, at the end of the year the Board is allowed to revisit your result and look at your year-end figure I believe.

Q.90 - Do you agree that to the extent that the rates are sold at a discount, that whatever process is used it should be such that the ratepayers who will have to cover that discount will be allowed to examine it and determine for themselves whether it was a good deal or not?

MR. MACLURE: I guess that I don't -- Mr. Stewart, I really don't see any difference between that and any other component of our cost of service.

Q.91 - Mr. Maclure, the wholesale service, a couple of questions. First off, I notice in your evidence in chief, because I think it is an important point, you talked about what the Board's previous ruling was with respect to billing. And I just want to clarify exactly what the

Board said, because I think what you have said may have been sort of inadvertently in error, because I think it's an important distinction.

I am looking at page 23 of the Board's decision in the marketing case, and I am just going to read it to you here.

"The Board finds that the LDC should bill for its services and for those marketers who request it to do so." And I know you may not have a copy in front of you, you can look at mine if you would like.

MR. MACLURE: No. Mr. Hoyt has a copy.

Q.92 - The top of the page, you have that?

MR. MACLURE: Mmmm.

Q.93 - Did I read it correctly?

MR. MACLURE: Yes.

Q.94 - "The Board finds the LDC should bill for its services and those marketers who request it to do so."

MR. MACLURE: Yes.

Q.95 - Okay. The Board did not rule, or at least the words aren't here, in any event, that the LDC should bill all end users, isn't that correct?

MR. MACLURE: No, the words are not there, Mr. Stewart, but I would, having been part of that hearing and my understanding of the discussion within that hearing was I believe that the impression that was given to the Board was one that we were talking about billing end users. We were talking about the ability to communicate with end users and so it was my interpretation, my belief, that when the Board wrote that decision that they were implying end users.

Q.96 - That is my point precisely. That may be your interpretation of the decision, but the words end users are not there?

MR. MACLURE: I can't deny that.

Q.97 - Correct. And your earlier comment that at least to your knowledge there is not a wholesale service being offered in -- anywhere else in North America --

MR. MACLURE: Yes.

Q.98 - -- is that correct? But there are a whole bevy of jurisdictions wherein marketers are allowed to bill LDC charges as well, is there not?

MR. MACLURE: There are jurisdictions where that is occurring, but the issue here is a wholesale service. The Board has already, to my mind, ruled on billing the LDC services, so we are dealing with the wholesale service.

Q.99 - Right. And so you will agree with me that if the marketer was allowed to bill the LDC distribution charges, like it is in New York and Georgia and a bunch of other places, then you don't need to talk about a wholesale service?

MR. MACLURE: I guess I would not completely agree with that, because the wholesale service, as I described in my opening remarks, is a different service than a billing service.

Q.100 - Well I will agree with you there. Wholesale service is different than billing. All right. First off the wholesale service was part of you original proposal to the province, is that correct?

MR. MACLURE: Yes.

Q.101 - And I take it at least this element of your proposal to the province is not one of the so-called essential elements then?

MR. MACLURE: No. There are a number of things with respect to the rate proposals that we did not bring forward into the rate proceeding. That was one of them.

Q.102 - All right. In the -- I think it's actually even the last line of your evidence -- your pre-filed evidence -- you say, the company -- I assume that's Enbridge Gas New Brunswick -- does not believe that the wholesale service for marketers is appropriate for the market at this time.

MR. MACLURE: Yes.

Q.103 - Does that sound familiar?

MR. MACLURE: Yes.

Q.104 - Okay. So I take it from that that it is not that you are objecting to the -- offering a wholesale service in principle, it is that you don't think it's appropriate to do so now?

MR. MACLURE: I don't think it is appropriate in the greenfield environment that we currently have in New Brunswick. I am not sure when it would be appropriate, if ever. I see a number of issues with wholesale service that I think I tried to allude to earlier.

Q.105 - Okay. Well we are going to talk about those, after I get a glass of water. But just so I am clear, you offered it in your original proposal. Do you object to it in principle or it's just that you don't think it's appropriate for this current greenfield start-up situation?

MR. MACLURE: Well if I go back and I am -- obviously I wasn't part of the original proposal, but if I look at why I believe that it was in the original proposal there are, as we got into the environment that are going on in a number of jurisdictions, the concept of a wholesale service is one that has enjoyed -- well maybe not enjoyed, but has had some level of discussion in other jurisdictions. And I suspect that in terms of going forward it was something that was included in the illustrative rates as being a possibility in New Brunswick as we came forward and got on the ground here.

We believed that it was not an appropriate service for this market. And again I think that if we go back to the proposal, all of our rates in that were illustrative rates. They were concepts with the final rates to be brought forward to the PUB for approval.

Q.106 - All right. Can I refer you to exhibit K, schedule 9. That is Irving Oil interrogatory number 9.

MR. MACLURE: Yes, I have that.

Q.107 - Okay. Now I think I understand your position. You are saying, well the Board ruled that we should be able to bill the customer and we think that means we should be able to bill every end user. I think I am with you there.

But I want to talk about what you indicated might be some of the other reasons why it could do that. And as I read it, I am looking at the response to question 1, or small Roman numeral 1 --

MR. MACLURE: Yes.

Q.108 - -- and you talk about somehow being disconnected from the end use customer.

MR. MACLURE: Yes.

Q.109 - And you think that's going to result in a series of problems?

MR. MACLURE: Yes.

Q.110 - Okay. How are you disconnected from the customer if you instal the yard line and instal the meter just like you do with every other customer, or you receive phone calls at your call centre from this customer like any other customer?

MR. MACLURE: Why would we receive a phone call from that customer at our call centre?

Q.111 - All right.

MR. MACLURE: I don't know why we would.

Q.112 - All right. What if your wholesale service was designed that you were still doing the yard line maintenance? Would you still have that connection then? You would be putting in the yard line, installing the meter like you normally do?

MR. MACLURE: We would instal the meter. We would probably be doing it. I mean, what I am talking about is completely hypothetical because we haven't actually had any levels of discussion about it in any level of detail anyway.

The disconnect is the fact that any contractual relationship that the Enbridge Gas New Brunswick would have under wholesale service is with the marketer. It has no relationship, contractual or otherwise, with the customer.

Q.113 - Okay. Have you got the Board's decision from the marketer case there still in front of you?

MR. MACLURE: Yes.

Q.114 - Look at page 22.

MR. MACLURE: Yes.

Q.115 - The Board wishes to ensure a safe and efficient natural gas -- I am looking at the response to 7.2, or at least the -- you know, the Board sort of ruling that is involved. "The Board wishes to ensure a safe and efficient natural gas industry in New Brunswick. The Board believes that the LDC should have the responsibility for reading meters and for providing appropriate information to interested parties."

So under a wholesale service, I mean it looks to me like the Board has already ruled, that you would still be reading the meters?

MR. MACLURE: Well reading the meter -- yes, we would, and reading the meter does not necessarily mean that you are coming in contact with the customer. You are reading the meter on behalf of the wholesaler.

Q.116 - Right. So you understand that's no different than any other customer that you might have a direct contractual relationship. You go, you instal their yard line, you read their meter. On a wholesale service you would go in, instal the yard line and read that meter too. Correct?

MR. MACLURE: Yes, that is correct, and you would end up sending them the bill. You would have the ability to communicate. You would end up putting on the bill your actual distribution charges for the use of your facilities to them, and that would all go on their bill.

Q.117 - Okay.

MR. MACLURE: So that you would have a communication link back to the end users through your billing mechanism.

Q.118 - All right. So you want to be able to send something in an envelope once a month to the end user along with your bill?

MR. MACLURE: Well I am not saying that. I think --

Q.119 - Well you said you had a connection with sending the bill.

MR. MACLURE: Well you have the connection, you have a contractual connection with the customer.

Q.120 - All right. Well let's talk one thing at a time. You have a connection with the customer where you send them something in an envelope once a month, right?

MR. MACLURE: Yes.

Q.121 - So you can still send -- lord knows, I get enough stuff in the mail with people I don't have contracts with, you could still send notices to every end user of your system once a month, twice a month, three times a month, whether they have a contractual relationship with you or not. Can't you?

MR. MACLURE: Yes, you can, and if you are like me if I don't really know who these people are I throw their stuff in the mail before I open it. So if you haven't developed a relationship that causes the customer, for whatever reason, to begin opening the bill and looking at the material, often it gets tossed. It's unsolicited mail.

Q.122 - Okay. What if whatever it is that you are going to -- what if the marketer is required to then include whatever you want communicated to the customer along with its material?

MR. MACLURE: Well that is a possibility, and how would we enforce it is certainly a big issue, because the Board I don't believe has any intention or would have any desire to regulate the marketer sending out the bill.

Q.123 - Do you accept that the Board can regulate sending out of your bill in its format?

MR. MACLURE: Absolutely.

Q.124 - Okay.

MR. MACLURE: In fact, in must jurisdictions the Board orders the utility to include certain things within its bill.

Q.125 - Other than being able to communicate with the individual end user, what -- and I think I see your comment is that I need to be able to communicate with the end user, all right. What difference does it make as a practical matter whether you have a contract with that end user or not?

MR. MACLURE: Well there are a couple of things in terms of the communication. If we don't have a contract with the end user we actually don't know who the end user is.

Q.126 - Sure you do. You were there and you installed their meter?

MR. MACLURE: Oh, but they moved, and now you don't know who the replacement end user is at that same location, if it happens that -- Irving Oil is an example -- re-signs the new -- the new person who has moved in. You lose track of who that customer is.

Q.127 - What if Irving Oil is required to keep you up to date on all that information?

MR. MACLURE: Again that would require the Board regulating Irving Oil in order to require them to provide that information. The other thing --

Q.128 - What about if it is in your agreement with the marketer that they do that under your wholesale service?

MR. MACLURE: Well if that were in the agreement I would have some issues in terms of how do you enforce it. You have a contractual commitment to provide certain levels of information. I guess one way of enforcing that would say if you didn't provide us the information we get to withdraw the wholesale service. I don't know what the quid pro quo in terms of that particular contractual commitment would be.

One of the other issues though in terms of your question around the overall wholesale rate and acting as with the marketer as principal as opposed to the customer as principal, is an issue in terms of how we manage and how we deal with the -- it's an issue that we would have to address, but it's how you manage and how you would deal with the security for that wholesaler.

Q.129 - Well it's a matter of contract, isn't it?

MR. MACLURE: It could be, but not if they go bankrupt.

Q.130 - Any one of your customers whether -- could go bankrupt, just like a marketer could go bankrupt.

MR. MACLURE: But it's a lot easier to go after one bankrupt residential customer than 5,000 that are attached to a wholesaler.

Q.131 - But it's no different than if you go after a bankrupt -- and who is more likely to go bankrupt than a heavy use industrial or commercial customer?

MR. MACLURE: I am just saying there are all sorts of issues.

CHAIRMAN: Is this is a good spot to take a break?

MR. STEWART: Yes, Mr. Chairman.

(3:30 p.m. - 3:45 p.m. - Recess)

CHAIRMAN: Go ahead, Mr. Stewart.

MR. STEWART: Thank you, Mr. Chairman.

Q.132 - Mr. Maclure, I take it it is common ground between all of us here, or at least Enbridge would agree that fundamental to the success of your system and all the marketers efforts are -- or is the growth or the actual conversion in use of natural gas by New Brunswick customers?

MR. MACLURE: Yes. That's true.

\Q.133 - And particularly in the very initial period, this will be the so-called greenfield market where you will be dealing with customers who may be sophisticated in the commercial world but will be unsophisticated in the world of natural gas, most likely?

MR. MACLURE: Yes. I think that's a fair statement.

Q.134 - And you will agree with me if -- oh, I don't know -- for example say I -- say I own all the Tim Horton franchises in Saint John and I use propane or I use electric heat or oil or I have a variety of energy uses in my various locations all around the city, that I might want to go to a single marketer and make arrangements for my 12 or 13 Tim Hortons' locations in Saint John?

MR. MACLURE: Yes.

Q.135 - And just like I do with my other suppliers, I might want to negotiate a single arrangement to govern all 12 of my stores?

MR. MACLURE: Yes. I guess -- I guess so.

Q.136 - And since I have 12 stores, I might be looking for that marketer to make me a unique arrangement or some sort of volume discount or something of that nature because of the scope of my purchase or the volume that I will be consuming?

MR. MACLURE: You might request that on a commodity basis, on the distribution component of the cost of providing the service. Those distribution costs are based on the cost to customers.

So I don't believe that it is appropriate to discount those particular components of the price.

Q.137 - Well, what if the marketer is your customer? Just like you pay the full charge to the Maritimes and Northeast toll, and they resell it at a discount, because you find it most advantageous economically for you to do it that way with your construction project, maybe a marketer might find it the most advantageous way to get that customer and do that business is to enter into an agreement with you, and then if economics dictate, agree on a fixed price for the customer that includes your distribution charge?

MR. MACLURE: Yes. Although I think that -- well we are not exactly dealing with apples and applies in those particular comparisons. Because what we are dealing with is in the case of Maritimes and Northeast, capacity that is going at a discount simply because there is surplus capacity available.

Ideally and preferably, naturally we would love to sell that at full toll, just as one would assume that the customer, the Tim Hortons' customer, should in fact be paying full toll just like every other like commercial customer.

If you had another doughnut franchise that had 12 locations and were all paying similar volumes, under our proposal they would all be paying the same rate, which is the fairest way of providing them a level of service.

Q.138 - Well, first off I agree it is not apples and apples, because the marketer won't have a deferral account to recover any losses that he might have.

But why should the owner of the 12 Tim Horton franchises not be able to make the best deal he can?

MR. MACLURE: I think the question is why should the owner of the 12 other doughnut factory or doughnut location subsidize that particular Tim Hortons franchise?

Q.139 - But they won't. Because won't the marketer still be paying you? Won't the marketer be your customer and will still be paying you full toll?

MR. MACLURE: Depending on what kind of toll that is.

Q.140 - I agree.

MR. MACLURE: So the whole --

Q.141 - So the service itself does not result in inequity or subsidization around the customer?

MR. MACLURE: Absolutely it does. Because what you have got is you have a service that is designed and will be designed to aggregate a number of different customers of different types and different profiles to -- which takes the diversity benefits of operating on the distribution system to one marketer as opposed to those diversity benefits being shared by all.

Q.142 - Well, what is so diverse about 12 doughnut shops? Aren't doughnut shops doughnut shops?

MR. MACLURE: Well, if you limit it to 12 and if you limit the 12 doughnut shops with 250 residential customers and let's say a pulp mill that happens to be on the distribution system as opposed to a single end use franchise or some other very large customer, you are aggregating all those customers together under one rate.

Q.143 - But that wouldn't be true if the customers aggregated would have otherwise fallen within a single rate class?

I mean, if I aggregate only residential customers or I aggregate light commercial customers like doughnut shops or heavy use industrial customers?

MR. MACLURE: Sure it will. I mean -- because each one of those individual customers has unique consumption characteristics.

Q.144 - Well -- but what difference does it make to Enbridge as long as Enbridge gets paid? I mean, your toll is either paid by the marketer or paid by the end user. Your toll is your toll.

MR. MACLURE: The difference to Enbridge is one that Enbridge is interested in fairness and equity to all customers.

And we believe that the fairest and the most equitable way of providing service to all customers is through a unique rate that provides service to light customers under one rate where each of those individual customers pays for the capacity and the cost of distribution service that it imposes on that particular system.

MR. MAROIS: I guess another way of looking at it is from the end user perspective, if you go with a wholesale rate, the distribution rates of the distributor are really no longer regulated.

Because the marketer can repackage those -- that cost any way they can and can charge any price it wants to the customer. So it could be bundled with all the other components of the distributor -- of the marketer.

And I guess just coming back to the analogy with the pipeline, I think it is not really comparable. Because the only rate the pipeline has is really a wholesale rate, with the rare exception of the single end use franchise, the customers of the pipeline are the LDC's.

So in the case of the distributor, if you have part of its rates which are really retail rates and part of the rates which are wholesale rates, this is what contributes to this issue of fairness or lack of.

Q.145 - All right, Mr. Marois. But you will agree with me that when it came to your wishing to market your Maritimes and Northeast capacity, you wanted a complete flexibility to deal with it, to maximize your recovery.

And you didn't want to set minimum prices. And you didn't want to set minimum terms. And you didn't want to set floor prices or elements or portions of the capacity.

But when it comes to the marketers dealing -- trying to do deals with customers, to actually get the people to convert and use the natural gas, that you want to limit them by insisting that they pay the distribution rate?

MR. MAROIS: You are really comparing -- your comparison is really weak there.

Q.146 - No. I'm comparing the two elements of your evidence.

MR. MAROIS: No, sir. You have really misinterpreted what I have tried to say. The marketer is not the regulated utility. The Board will not have the power at the end of the year to go to the marketers' books and look at what they have charged to the end users.

While us, the distributor, we are the regulated natural monopoly, our rates need to be approved by the Board. And there is also going to be a review at the end of the year to determine for example how much money were we successful in recovering from the capacity we have released in the market. So that is a substantial difference.

The other thing is we are going to be selling this capacity to educated parties in the marketplace. We are talking about marketers, potentially other LDC's. While the marketer can repackage our distribution services and sell that for example to a residential customer without even splitting that on its bill.

So at the end of the day the residential customer might not even know what is the distribution component of its price. So I think you are really comparing apples with oranges.

Q.147 - You will agree with me that every marketer in the province of New Brunswick will need to have a certificate from this Board and will be regulated by this Board in the context of its gas marketing business?

MR. MAROIS: Yes.

Q.148 - And you will agree with me that your original rate proposal says that you don't have any contracts directly with residential customers? You don't have a provision for a written contract with a residential customer?

MR. MACLURE: There is an implied contract.

Q.149 - An implied contract.

MR. MACLURE: And in fact there is actually, because the nature of agency is one in which the marketer as agent for the end use customer signs a contract on behalf of that customer.

Q.150 - So you will be contracting with the marketer as agent. But you don't want a contract with the marketer as marketer?

MR. MACLURE: As principal.

Q.151 - As principal. So you will still be dealing with the marketer?

MR. MACLURE: That's correct.

Q.152 - Right. So you will still be dealing with the middleman or middleperson between your end use customer and the marketer, even under your own proposal?

MR. MACLURE: The nature is is that when you are dealing with the marketers' agent, the marketer is selling gas to the customer at the city gate station. And the customer is being transported across the distribution system in the name of the customer.

As a principal relationship with the marketer, the marketer is selling gas to the customer at the meter. So in the case of agent the customer has the contract, in quotes -- "the contract" signed on behalf -- on their behalf by the agent to have that gas transported on a stand-alone basis so that they end up paying the actual cost that is imposed on the distribution system from moving the gas from the city gate station to their meter.

Q.153 - As long as the marketer paid it's obligations to Enbridge under the wholesale service, will Enbridge in any way be prejudiced if the actual end consumer of the gas pays less than your distribution rate?

MR. MACLURE: Enbridge itself would not be prejudiced. However, if one party pay less, another party pays more.

Q.154 - What if the marketer pays the full distribution rate?

MR. MAROIS: I'm not sure too sure I understand, is it a question or a comment, Mr. Stewart?

Q.155 - A question. Will you be prejudiced if the marketer pays -- let's say you had -- to continue my example, the gas consumed by 12 Tim Horton donut shops. On the month of May 2000 those 12 Tim Horton donut shops consume, I don't know, 100 gigajoules of gas for which you would charge distribution services by whatever your predetermined rate is, and you would have -- and they would pay that to you. How will Enbridge be prejudiced if the marketer pays you that same amount?

MR. MAROIS: Well the question here is -- first of all we don't know what the wholesale rate would look like. And all the issues we have raised up to now are not as much to prejudice -- or to short term prejudice or lack of a distributor would face. We need to look at the marketplace.

And we are concerned when we know that our rates, because we are a natural monolopy, have to go to a regulatory process to be approved. And then those rates could for all practical purposes be fully buried in the marketer's price for which a customer has no idea what they are paying for. So that's where there is a potential -- a real potential for fairness and equity concerns, especially in a green field market.

We are not saying it would happen. But there is that potential. We feel that there is real benefit in ensuring that the customer gets to understand what is the distribution component of the natural gas prices.

And I think -- and maybe I won't get the translation right, but coming back to your point earlier that in a marketer's hearing the issue that was dealt with was billing and not necessarily billing of the end users. I think you almost have to have a kind of a twisted mind to think that's the case. Because we don't need the Board to give us guidance if we can bill for our services or not. We know we will have to bill our services sooner or later.

The issue is we wanted clarification that we could bill the end user. That's the only value of the decision that came out of the marketer's hearing. So I think it's fully consistent with the concerns that were raised then.

MR. MACLURE: Mr. Stewart, one other comment with respect to your question in terms of if you billed the -- I think it the way you phrased it, I think it was a concept of billing the X number of customers or 12 customers at the distribution rate. And to my way of thinking that just no longer is a wholesale service. That simply takes you right back to the billing issue of having a statement that is a statement of each individual location that is underpinning that contract. Providing that bill to the marketer so that they can turn around and rebill the customer, which is the -- back to the issue that we dealt with in the marketer's hearing.

Q.156 - Thank you for all that. My question was will Enbridge Gas New Brunswick suffer any financial prejudice if the marketer pays the distribution rate that its aggregated customers would normally have had to pay?

MR. MACLURE: It would. I guess in the short term, just a strict translation of "right through the marketer", likely the LDC would not be prejudiced. Although in the longer term it very well may be, depending on how that particular repackaging of those charges back to the customers take place. So that's my sense of that.

MR. STEWART: Those are my questions of this panel, Mr. Chair.

MR. CHAIRMAN: Thank you, Mr. Stewart. Mr. Holbrook?

CROSS-EXAMINATION BY MR. HOLBROOK:

MR. HOLBROOK: Good afternoon, Mr. Chairman, Members of the Board. Good afternoon members of the panel. You are getting to be very familiar faces these days. I think I see more of these panellists than I see of my wife.

Q.157 - There has been some discussion today here in reference to the Maritimes North East agreement. Is it fair to characterize that as a preceding agreement in the sense that while it has been executed it has conditions that have yet to be satisfied before the parties are actually bound?

MR. HARRINGTON: I would agree that there are conditions in this term service agreement that have not been waived.

Q.158 - Just as a general overview there are conditions under which as I recall -- and you can refer to it if you need to, the pipeline has reserved the condition that they need to receive the necessary regulatory approvals to construct. And also, I believe, to get the corporate approval from their Board. And there are similar conditions under which Enbridge has, I believe it's correct, until September to receive the necessary Board approval from your own Board?

MR. HARRINGTON: The Enbridge condition is September 1. And you are correct that there are other conditions for the benefit of the pipeline.

Q.159 - Is it fair to assume that as we speak here today that you assume that the conditions precedent will be satisfied. And that as a practical matter you anticipate executing the agreement effective September, or at least receiving the necessary Board approvals by that date?

MR. HARRINGTON: As it stands we are -- we are optimistic that the conditions will be waived in the time frame set out.

Q.160 - Is there anything that you envision as we sit here today that would cause Enbridge to take a different position in terms of their intent to go forward and receive the necessary Board approval by the deadline?

MR. HARRINGTON: Sorry, can I ask you just to restate that?

Q.161 - Sure. You have given yourself until September. I believe there was testimony earlier today that that gave you some additional time to see how the market conditions shape up. I'm just curious if I understood you correctly, what if anything would cause you as Enbridge to have a different perspective on executing or getting the final Board approval?

MR. HARRINGTON: Waiving that condition?

Q.162 - Yes.

MR. HARRINGTON: I don't -- just to clarify, I don't think that there was anything said about market conditions firming up that we put into consideration with regard to that condition. I think the matters that we will pay attention to with regard to whether that condition gets waived or not are those matters that are beyond our control. Primarily those actions which are taken by the National Energy Board or by this Board before us or Maritimes and North East as the -- they are the third party.

Q.163 - In reference to exhibit I, schedule 4, and there has already been some discussion on this. If I understand correctly, this is -- this is caption forecast average daily volume?

MR. HARRINGTON: That's correct.

Q.164 - Help me out with this chart, if you would. When you refer to forecast average daily volume, is that a peak -- a peak day number as opposed to -- or is it truly what you anticipate to be the average throughput on the system year around.

MR. HARRINGTON: That is truly what we see as the average throughput on the system.

Q.165 - So put another way, if -- well maybe it would be better to ask you. What load factor do you assume right now that you expect to be operating at at least in the early years of this projection?

MR. HARRINGTON: Subject to check, my recollection is that the load factor is in and around 30 percent.

Q.166 - So to put it another way, just looking at this graph here, as I read it you anticipate exceeding the figure we have in here of 11,785 gigajoules per day. You anticipate exceeding that within the next year?

MR. HARRINGTON: That is correct.

Q.167 - And if you assume the load factor that you have just articulated, then as a practical matter you anticipate on peak day what figure?

MR. HARRINGTON: I'm just referring to some of my notes here. Just -- I just wanted to make sure I was going to be responsive to that.

In the early years it would be roughly three times that.

Q.168 - So is -- do I understand your statement to be that you assume that within the next year that the peak day throughput would be roughly three times that figure or thirty some thousand a day, gigajoules a day?

MR. HARRINGTON: Approximately, yes.

Q.169 - Where do you anticipate the additional throughput -- better put, how do you anticipate the additional throughput to be sourced? In other words, you have contracted for 11 and some change?

MR. HARRINGTON: Do you want to --

MR. MACLURE: Yes, I will take that, because this is one of the issues that is of course is being addressed by the

Working Group. And the source of that is to -- is a requirement of the marketers to manage the transportation that is available to buy a variety of different services to deliver their contractual needs to the city gates in the Enbridge Gas New Brunswick delivery area on a daily basis. And the manner in which the marketer would do that is entirely up to them.

There is a certain amount of capacity that we have available. In addition to that, I would expect that they would be going to industrial customers to get curtailment of other loads that can be dual fuelled. They will be buying additional -- they will have to buy additional volumes on-the-spot market as delivered volumes with EGNB delivery points being nominated as secondary -- secondary delivery points.

So that would be the way in which we would see this particular market developing.

MR. HARRINGTON: And just to follow-up on that particular comment, I just want to be really clear that the contract that we have, the 11,785 was not picked with regard to the needs of the marketplace. Rather it was picked or specified by Maritimes and Northeast as the amount that would underpin the facilities that were required for interconnection.

Q.170 - Back to Mr. Maclure's statement. When you made reference to the flexible receipt points and the ability to, as I believe you have indicated, you spot purchases to make up the difference between what capacity is contracted for right now through Enbridge?

MR. MACLURE: Yes.

Q.171 - As a practical matter though, when you refer to the secondary points and the use of spot that still doesn't allow a marketer utilizing your capacity to exceed the 11,000 a day, the 11,785. Correct?

MR. MACLURE: No. No.

Q.172 - So as a practical matter in one form or another, the other two-thirds within the next year of the peak day requirements are going to have to come from some other means than Enbridge, is that correct?

MR. MACLURE: They will have to come from some other means of Enbridge and we don't even know whether maybe some other marketers will end up signing their own FSAs.

Now hopefully before they do that they will take an assignment of ours first if they need a firm service agreement.

Q.173 - Right. And I appreciate why you would like that since you have made this investment --

MR. MACLURE: Yes.

Q.174 - -- are proposing to make it, but I guess getting back to my question, which is that if 30,000 is the peak day number a year from now, roughly, the other two-thirds has to come from somewhere. They could pick up all of what you have and that only takes care of a third of it. Correct?

MR. MACLURE: Yes.

Q.175 - Now there has been a lot of discussion today about the cost of this. I believe we were using a number of about 2.9 million annually. Those are awfully big numbers for me. I tend to want to break it back down to more of a unit basis that reflects either a rate per gigajoule or something else on a typical day.

As a practical matter, correct me if I am wrong, if we are talking about .70 cents per gigajoule and you assume a 30 percent load factor, aren't we talking approximately $2.10 per gigajoule, which is actually what is going to be incurred as a cost for each unit transported?

MR. MACLURE: The mathematics of that is correct assuming that the party or the gas marketer operating and delivering gas would have to contract for its full requirements as deliveries off the pipeline using a firm service agreement. To the extent that they are able to access, as an example, spot purchases that would shave off 20 days of that, 40 days of that, they end up operating at a higher load factor and therefore the sum of those two parts will in all probability be less than 2.10.

But you are correct that if in fact a -- mathematics is such, that if in fact the only source was operating on the pipeline at 30 percent load factor, you are dealing with roughly three times the toll at a 100 percent load factor.

Q.176 - And while I appreciate that in terms of other capacity arrangements for the other marketers that are making up that other two-thirds, the third that we are talking about right now in this first year that is Enbridge, the 11,785 a day, to the extent that that represents a cost to Enbridge, which Enbridge is then passing on to its customers, effectively, if I served all the customers that that 11,785 represented, it would add as I understand it then $2.10 for each unit that I actually serve those customers with?

MR. MACLURE: I am a little fuzzy on the question.

Q.177 - One way or the other, you are going to collect effectively $2.10 for each unit that actually is delivered, because you are paying for .70 cents at a 100 percent load factor, but operating a system at 30 percent approximately?

MR. MACLURE: No. No, we are -- we are collecting -- we are planning on collecting roughly $3 million period. Now -- from the customer and trying to generate revenues that will offset that particular cost to the tune -- to the extent that we can sell 11,785 Gjs a day in the wintertime for something higher than full toll, we will end up taking that higher than full toll price and putting it in the deferral account. To the extent that we cannot sell it for full toll in the summer, we will only be able to sell it for whatever the market will bear in the summer and that will go in the deferral account.

But there is no -- there is no -- there is no revenue or cost that comes back -- I mean the cost is -- the cost is $3 million.

Q.178 - If I understood your statement, to the extent that you can exceed the cost during periods of demand, you effectively can reduce the impact of that cost across your customer base, is what you are saying?

MR. MACLURE: Sure.

Q.179 - Okay.

MR. MACLURE: And I mean we would like -- if we would end up being able to sell it at 110 percent every year for 20 years that would be a great deal for the customers and for us.

Q.180 - Right. As a practical matter is there any way to estimate right now, I know there was some discussion on this earlier, what the actual impact is going to be of this cost in terms of the customers being served?

I mean I realize that you are making projections right now of what your base is going to be. But say a year from now based upon what you assume to be your customer throughput, how much is this going to add to the cost of service on your system on a unit basis?

MR. MACLURE: I guess it all depends on how much we can sell it for. And we haven't -- I mean, over time we had an expectation that we would be able to sell it for something in the order of 65 to 70 percent of its cost.

But I think the fundamental issue is, beyond what we can sell it for and what it is going to cost, is absent it the customers would not have access to gas. That it is only through the contract that customers will in fact be able to connect to the transmission system and get access to natural gas.

So I guess the extent to which -- what we have tried to do is minimize the access charged that is associated with getting access to the transmission system. That is all we have tried to do.

Q.181 - I believe it was in your testimony that you indicated that you considered mandatory capacity assignment and then elected not to go that route.

And I believe you provided as an explanation that you felt that it might -- the market might work more efficiently if marketers were permitted to make their own arrangements for capacity?

MR. HARRINGTON: That's correct.

Q.182 - I guess in my simple way of looking at this, I still come back to the concept that to the extent you collect these costs that you aren't recovering, to the extent -- whatever costs are out there right now that you are not able to fully recover through capacity assignment, whoever is selling to customers on your system effectively is incurring that cost as well. Is that a fair statement?

MR. HARRINGTON: I think my answer is no. I hope I'm understanding your question. And if you don't mind, I might just recharacterize.

Q.183 - Go ahead.

MR. HARRINGTON: I think you are asking -- or maybe actually -- let me ask you to ask the question again.

Q.184 - Would you like me to rephrase it?

MR. HARRINGTON: I sure would.

Q.185 - I'm selling 100 units on your system to a customer. And I don't use your capacity to serve that customer. You, just for the sake of this hypothetical, haven't been very successful in recovering your costs.

So we will say that 10 percent of your costs right now are actually being collected from marketers, other parties picking it up. So the other 90 percent is being allocated back to your customer base.

Whatever my 100 units represent of your customer base, I'm effectively going to be picking that cost up as well, in the theory that it is a netback, that whatever the customer pays for transportation to Enbridge is a reduction in what I otherwise collect?

MR. HARRINGTON: When you start your assumption that we are recovering 10 percent of our costs --

Q.186 - Just as a hypothetical.

MR. HARRINGTON: And we think that is a very unlikely hypothetical. If I was to change that around and say that you were recovering 19 percent -- or that we were recovering 19 percent of our costs, all customers regardless of who is their marketer are going to be better off.

And the reason is that in the absence of taking this contract we would be making a capital contribution in aid of construction to Maritimes and Northeast for $12.2 million, which would result in higher rates than customers would otherwise see, as long as we can recover more than 18 percent of the value of that capacity.

Q.187 - I guess put differently, if marketers already had sufficient capacity to meet the anticipated load requirements on your system, as I understand your testimony, you wouldn't have had to go down the path of contracting with Maritimes Northeast?

MR. MACLURE: That is correct. If marketers -- if marketers had come forward and contracted with Maritimes and Northeast identifying Moncton, Oromocto -- or Moncton, Fredericton, Oromocto, other delivery points off the Saint John lateral, and St. George, as primary delivery points, they would have been entering into firm service agreements with Maritimes and Northeast.

Facilities would have been built and paid for by those FSA's. And we would not have had to enter into those contracts.

Q.188 - I guess another scenario could have been, as long as we are into the hypothetical here, had there been a local supply source available to your system in sufficient quantities to meet your requirements, the same analogy would apply, would it not?

MR. HARRINGTON: I think speaking hypothetically, where that may have an impact for instance is on the size of the facility that we may have specified for the City of Moncton, if we are dealing with an example.

If we knew what the delivery capability and the timing of such local production may be available for the Moncton area and had some sense of how reliable that supply may be, we may have been able to reduce the capability requirements of the Moncton custody transfer facilities and therefore had to have taken less in terms of a commitment to the pipeline to underpin those facilities.

Q.189 - Stated differently, if the local production proved up to represent 11,785 gigajoules a day, there wouldn't have been the requirement, would there, for the contract with Maritimes Northeast?

MR. MACLURE: It would seem to me it would depend on where. If the local production proved up to be 11,785 units a day and only came into one spot, there still needs to be facilities built to interconnect the distribution system in Saint John.

That still would have been a contractual requirement with Maritimes and Northeast. There still would have been a need to interconnect in Fredericton. And there may have been -- so depending on where --

Q.190 - Okay.

MR. MACLURE: -- it has to be spread out throughout the franchise area.

And again as we pointed out, the facilities that are -- the facilities had been constructed and for which we have entered into this contract are facilities that will supply far more than 11,785 gigajoules per day.

So the actual facilities are available to handle the market of the future with actually a fairly limited contract that has had to be put into place to get those facilities built.

Q.191 - But to the extent that that supply does develop, does it not reduce the necessity -- I realize it is not part of your present intent -- but it would reduce the necessity of you contracting for any additional deliverability upstream if that volume could be presented to your system, subject to operational constraints, in comparable quantities under comparable conditions?

MR. HARRINGTON: No is the answer.

Q.192 - I'm sorry. What was the answer?

MR. HARRINGTON: No.

Q.193 - Okay.

MR. HOLBROOK: And I think you might just be misunderstanding the basis of the 11,785. The 11,785 is a figure which underpins the construction of the present facilities that we are discussing, so the seven custody transfer facilities into laterals.

It has no specific relation to the market demand. That is all.

Q.194 - Let me see if I can rephrase what I believe your answer to be. To the extent that additional demand develops beyond the 11,785 it is Enbridge's position, as I understand it here, that you have no interest in signing up additional upstream capacity.

You have basically gotten the facilities put in place. Is that a fair statement?

MR. MACLURE: That is a fair statement. There is no need for additional facilities within those geographic areas that we are serving in the first year.

Q.195 - So is it also your position that the presence of additional local supply made available to your system doesn't provide any perceived benefit to you in terms of future operational considerations?

MR. HARRINGTON: I think in general, and we have said this before, that Enbridge Gas New Brunswick supports supply and supply competition.

And we think it is a good thing for all participants. It will not affect the level or the size of this contract at this point in time.

Q.196 - And I believe I have asked this question previously. But I will raise it here just for clarity. To the extent that I use, as a producer of indigenous gas in New Brunswick, that I utilize the Enbridge system, as your rates are presently proposed, I will be allocated a portion of this capacity cost, whatever is not recovered from other marketers?

MR. HARRINGTON: As an end user of Enbridge Gas New Brunswick's system?

Q.197 - The customers that I serve, the end users that I serve, will have that cost reflected in their rates, is that correct?

MR. HARRINGTON: Yes. And just to state it one more time, that is opposite the alternative, which would have had us making a contribution in aid to construct the Maritimes and Northeast pipeline, which would have been the more costly from a customer perspective alternative.

Q.198 - In terms of how you are going to address the auctioning of capacity, I guess the immediate question, I think there has been some discussion on this earlier today, is not what incentive do you have to try and achieve the highest price, but how do you intend to go about it?

I guess the immediate question with that preface is, how do I find out about the availability of that capacity? How do you envision putting interested parties on notice?

MR. HARRINGTON: I think the simplest way is once September 1 comes around and that condition is waived, I think all parties will know that Enbridge Gas New Brunswick has capacity up for sale.

Q.199 - Are you envisioning operating from at least the available marketer list, faxing, e-mailing, posting information on your electronic bulletin board, of the availability of the capacity and any applicable terms?

MR. HARRINGTON: I think as we mentioned before, we have no specific plan at this point in time to deal with the capacity. As I have indicated already, we will be talking to market participants as we go forward to see what their needs and their wishes are in this regard. But at this point in time we have no specific plan.

MR. MACLURE: I think though, Mr. Holbrook, it certainly is fair to say if -- as a company our objective is to maximize the revenues, that very clearly in the initial circumstance that any gas marketer who is operating in our franchise, and any other potential purchaser of capacity would be advised by us and it would be made known to them that we do have this contract capacity, and that it will be available, and so that we will know who those particular players would potentially be interested in that capacity.

That doesn't mean that there are not always maybe somebody else that you didn't initially identify, but certainly the players that are operating within our franchise area we would know who they are.

Q.200 - I believe you used the expression open and transparent process for the -- whether you have figured out exactly what you are going to do you have used that expression because I understand it to acknowledge the importance, at least for the perception of fairness, that the process be open and transparent, is that a fair characterization?

MR. MACLURE: Yes, I think that's a fair characterization.

Q.201 - And as a practical matter, for the reasons you have stated you have an incentive to try and get the highest cost recovery to simply reduce your deferral accounts and the impact to your ratepayers, I think in that sense you are not dissimilar from other utilities that have also auctioned capacity.

The concern generally comes up in the area of affiliate relationships. And I guess the question here is, to the extent you can discuss it -- I realize you are still formulating your strategy, but to the extent you can discuss it, have you given any thought to what safeguards you would put into place to assure that there is not a perception of any favouritism for a marketing affiliate to the extent you decide to form one?

MR. MACLURE: Well I guess my personal view is that the safeguards are legislated safeguards in the Province of New Brunswick, where we have a statutory requirement to treat the affiliate no differently as we would treat any other marketer, and I think that we would be -- my guess would certainly be that we would certainly make sure because of that relationship that that is particularly looked after.

But I would be -- I mean if we ended up having an affiliate operating in this area I would be very -- I would not want to necessarily put them at a complete disadvantage to any other marketer when that affiliate could in fact bring benefits overall to the cost of service and reduction.

So I don't want to put onerous terms on an affiliate that are not out there for other marketers. I would like to treat everybody the same.

Q.202 - I would suggest to you that in addition to whatever

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the one that the particular marketer may have submitted.

Are you concerned at all, and you are welcome to comment on that if you would like.

MR. MACLURE: Well I mean I don't -- I guess I hear what you say and I think it is something that we would -- that we would probably take under advisement. But again, coming up with a methodology that ends up treating all parties in a similar fashion is what I believe is ultimately the fairest way to go. And I don't think that that proposal necessarily has much to do with it being an affiliate or not an affiliate.

Q.203 - No. I think in that last scenario -- I'm sorry, did you finish --

MR. MACLURE: Yes.

Q.204 - -- it was not geared toward setting a different rule for the affiliate, it was rather that as an ultimate safeguard if the parties are all on notice of what ultimately was agreed to, then at least you -- there is not a question of whether or not my bid was superior to the one you picked for some reason. As we know, it is not always just price, there also can be other conditions that would be attached to capacity from time to time.

MR. MACLURE: Yes, which sometimes makes it difficult to assess that this particular price was the best -- was -- you may pick a higher price because of other terms and conditions.

So I think the other thing -- and it comes back to one of the points that Mr. Harrington made earlier, is in terms of dealing with the market participants and the market players in this area, I would certainly before I commit to anything like that would want to know whether every market participant is as willing to have whatever price they are paying for the transportation available in public.

So there are a number of issues around that as well.

Q.205 - Right.

MR. MACLURE: It is not -- it is not that we are the only player out there, the affiliate would be the only player.

Q.206 - And I believe you had with Mr. Stewart some discourse on the question of are you going to set minimums or maximums. I think when I heard you you want -- you are asking for this Board to provide you complete flexibility to adjust to the market as you see it?

MR. MACLURE: Yes. As the market is there if we have -- if we have capacity at a point in time that there is only one person out there and they are willing to offer us a very low price, it happens that -- but it still is the best price, then it would not make sense to have a floor that is higher than that price that says that you can't even sell at that price for the benefit of ratepayers.

So it doesn't make sense, to my way of thinking, to actually have a floor in this kind of a market.

Again we would have to demonstrate prudence that in selecting that and for the price and the term was the appropriate way to go, but that would be -- the onus would be on the distributor to demonstrate that to the Board.

Q.207 - Right. There also was some discussion on pre-arranged deals and your desire to be able to continue to have that ability. I believe there was also discussion about whether there might be some means by which a pre-arranged deal could have certain borders on it that might assure that you either received a minimum amount -- I think it was probably stated primarily the minimum, do you recall that discussion earlier?

MR. MACLURE: I remember the discussion around pre-arranged deals. I am not certain I specifically remember the arrangement of having a border and the specified minimum on a pre-arranged deal, but maybe --

Q.208 - Okay. Well let me offer you a suggestion which I would like your reaction to, which is that at least from my experience pre-arranged deals have worked most successfully in a manner in which you at least assure your full cost recovery. Anything short of that obviously gives rise to the question of why was it not put out for the public as a whole?

MR. MACLURE: Well I guess that in response to that, I think that was precisely some of the points that Mr. Harrington was raising earlier, that if you -- if you have a sense of the market and you have a sense of time constraints that do not allow you to get a public price, or a bid process in place, but you do feel confident that what you have been offered is a fair market price at the time and for the term of that service, then to not take that when you can sell that capacity may not be the most prudent course of action.

Q.209 - I see you are nodding, Mr. Harrington.

MR. HARRINGTON: You did a good job of characterizing my comment.

Q.210 - That's the beauty of a panel. Are you concerned at all about -- well let me ask you this question. As I understand it, Maritimes Northeast would have the ability to offer interruptible services, is that correct?

MR. HARRINGTON: That's correct.

Q.211 - One of the problems that I have observed at times in a utility trying to achieve full value at least cost recovery for capacity, is the ability of the pipeline to offer that same capacity when it's not being utilized as an interruptible service to others.

Have you given any thought to how you are going to safeguard against being underbid, so to speak, by the very pipeline that you have signed up for firm capacity with?

MR. FORGET: Normally when the pipeline offer interruptible services it's mainly to address specific market need. Sometimes it would be for a peaking requirement. We haven't seen anybody going for an interruptible service to answer a base load requirement.

Q.212 - Right.

MR. FORGET: So -- and we -- I am still going back to the schedule 4 on the evidence where we have seen that the market -- the way the market will grow. We don't see any problem there trying to offer our capacity on the secondary market. We think there is going to be -- there is going to be some demand for that capacity.

And even if Maritime and pipeline offered interruptible service, I believe that this interruptible service offered by Maritime and Northeast will not stop us of providing service on the secondary market to try to recuperate as much as possible of our cost.

Q.213 - I am not sure I filed -- Mr. Forget, the question gets to be one of the -- let's use as an example right now, you have underutilized capacity because you have got a greenfield situation where the market is still developing, at least for this first year.

To the extent that capacity isn't being utilized by Enbridge and therefore is put out there for parties to bid on, I either can pick up -- if I am a marketer looking for capacity, I can either pick up your capacity or I could go back to the pipeline and pick up their IT, depending on obviously the relative price.

I didn't quite catch, if you were addressing it, what if any safeguards exist to prevent you from being underbid and basically having difficulty recovering your FT?

MR. FORGET: One point you are right, we will have to compete if ever Maritime offered interruptible service.

But I was referring to schedule 4 on taking into account the chart where the -- we have referred previously where the peaking requirement will be three times that capacity. So normally if you want to serve peaking requirement without going out and signing for a one year or long-term annual service, you may want to go for just short-term interruptible service on the main line.

So I don't think that the interruptible service will compete in the same fashion with a firm commitment all the year around for a service like the one that we have.

Q.214 - Okay. Is there any scenario that you envision under which Enbridge would seek to contract for additional upstream capacity?

MR. HARRINGTON: I think the answer to that question is yes, and it would be those situations where in the light of all other available options it made sense specifically for the procurement of additional facilities.

Q.215 - Would it not also be true -- I mean if you go back to your current situation which is that marketers aren't always as eager as utilities historically have been to sign up for firm long-term upstream capacity, if you determine that the market wasn't being served because those marketers weren't stepping forward and making that commitment, isn't that really the scenario we are dealing with today?

MR. HARRINGTON: I think in that -- in the future as you are speaking we will have a much better understanding of how well we are able to recover the cost associated with this capacity from this particular experience.

We will also know how the needs of the market place are being met outside of this particular capacity entitlement.

So I think if we did get into that next round we would be getting into it with a different set of considerations and knowledge.

Q.216 - I know we have had this discussion before, but as I have asked you to address in I believe some of your earlier panels, I would ask you again speaking on behalf of the producer interests that MariCo represents, to consider looking at that local supply source as an alternative to the necessity for upstream capacity and to reflect the value that that represents in terms of the rates that would be allocated to that supply source moving through your system.

MR. HARRINGTON: I'm sorry. Is there a question?

Q.217 - Yes. The question was, based upon the discussion we are having here can you envision a circumstance under which you can in fairness, without cross-subsidization, provide incentives for local gas recognizing some of the benefits that it will provide you, not the least of which is that you -- for that load that that local gas supply source is capable of serving, may not require upstream capacity commitments?

MR. MAROIS: Maybe I can try to answer that. I think the issue here is once the gas distribution industry is up and running, the party that is going to be able to pass this advantage along to the customer will be the marketer. Because if the marketer, for example, is marketing local gas and doesn't need to use capacity to get the gas to the distribution system, they will be in a position to offer -- or to have an advantage compared to another marketer. But to date we the distributor, we have capacity but this is almost an unique situation. It's to get the industry up and running. But once the industry is up and running, it will be the marketer that will make arrangements to use -- to get capacity to bring gas to our system.

So I guess you are almost talking to the wrong party in the sense that if the marketer is able to get their hands on local gas, they will be in a position -- or they will have an advantage maybe over another marketer that has to get capacity to bring the gas to the distributor to market.

Q.218 - But the rates that we are discussing here today are rates that you are incurring for upstream capacity.

MR. HARRINGTON: And I just want to remind you that this capacity again has nothing to do with the needs of the marketplace, except that it underpins the construction of those facilities.

So if we knew for instance that there was local production available for one of the communities that we were speaking about, it is doubtful that this capacity would change because of that. This capacity is specifically there to underpin the construction of these facilities and does not have to do with what the market will require.

Q.219 - But to the extent -- isn't it correct to say that to the extent that the market needs in the future may require additional throughput, and it can either come from upstream or it can come from a local supply source, to the extent Enbridge would otherwise have to at least consider as they are presently, picking up that capacity and reflecting it in their rates, a local supply source would allow you, would it not, the ability to avoid that upstream capacity cost just as we speak today and had that been available today to you?

CHAIRPERSON: This is the third time you have asked that question. If they don't answer you this time, that's it.

MR. HOLBROOK: All right, fair enough. Just don't encourage --

MR. MAROIS: Well, I guess one way of answering that is if our long term forecast is accurate and the size of the facility that are currently being built are adequate for long term needs, and unless we need to serve new communities, there will not be a need from our perspective to get additional -- to commit to additional capacity to get additional infrastructures built.

The infrastructures are there. We are connected to the main line. And like I say, as long as our forecast is accurate, these facilities will be sufficient for our long term needs. So any additional capacity that will be required is going to be from the marketer's perspective to bring this gas to us. But the facilities will be in place for the long term.

Q.220 - All right. And with deference to the Chairman, to the extent that the other two-thirds that we have talked about here are going to get served from some source, just using the example of the present, and to the extent that marketers don't step forward and pick up all that as upstream capacity, does not the distributor still face the question of whether, once again, the distributor steps in and picks up upstream capacity to make that capacity available to your market?

MR. MACLURE: The hypothetical that you just imposed there is that is a much broader one than your question might seem.

And what it really gets back to is the marketers will not be serving the market. And if the marketers are not serving the market, then to my way of thinking that's a completely new ball game.

But that is not our view at this point in time. Our view is that the marketers will serve the market. And by doing so there is -- the need for additional capacity is a marketer need. It is not a distributor need.

MR. HOLBROOK: Okay. Thank you, Mr. Chairman. Thank you, panel. Thank you, Board.

CHAIRMAN: Mr. Zed, do you have any questions of this panel?

MR. ZED: I do not have any questions of this panel, Mr. Chairman.

CHAIRMAN: Okay. I think it is appropriate that we break until tomorrow morning then at 9:00 o'clock.

(Adjourned)

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

Reporter