

**NATIONAL ENERGY BOARD
OFFICE NATIONAL DE L'ÉNERGIE**



**Hearing Order RH-3-2004
Ordonnance d'audience RH-3-2004**

TransCanada PipeLines Limited (TransCanada)

NORTH BAY JUNCTION APPLICATION

**Hearing held at
L'audience tenue à**

**National Energy Board
444 Seventh Avenue SW
Calgary, Alberta**

**Wednesday, September 8, 2004
Mercredi, le 8 septembre 2004**

VOLUME 14

**International Reporting Inc.
Ottawa, Ontario
(613) 748-6043**

Canada

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as represented by the National Energy Board

This publication is the recorded verbatim transcript
and, as such, is taped and transcribed in either of the
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Printed in Canada

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Imprimé au Canada

**HEARING ORDER/ORDONNANCE D'AUDIENCE
RH-3-2004**

IN THE MATTER OF TransCanada applied to the Board
under subparagraph (60)(1)(b) of the *NEB Act* for approval
to establish a new receipt and delivery point, the NBJ,
and the corresponding tolls for services to and from the point
as well as to remove North Bay from the existing Northern Delivery Area
described in Section X, Subsection 1, of TransCanada's Mainline
Transportation Tariff General Terms and Conditions,
all effective November 2004

HEARING LOCATION/LIEU DE L'AUDIENCE

Hearing held at Calgary (Alberta), Wednesday, September 8, 2004

Audience tenue à Calgary (Alberta) mercredi, le 8 septembre 2004

BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE

J.-P. Théorêt Chairperson/Président

D. Emes Member/Membre

G. Caron Member/Membre

APPEARANCES/COMPARUTIONS

Applicant/Demandeur

TransCanada PipeLines Limited

- Mr. C.K. Yates
- Mr. D.A. Holgate

Associations

Canadian Association of Petroleum Producers

- Mr. N.J. Schultz
- Mr. B. Troicuk

Industrial Gas Users Association

- Mr. P. Thompson

Companies/Compagnies

Alberta Northeast Gas, Limited
Mr. J. Carmichael

BP Canada Energy Company
- Ms. C. Worthy

Cogenerators Alliance
- Mr. R. King

Enbridge Gas Distribution Inc.
- Mr. J. Farrell

Encana Corporation
- Mr. B. Fraser

New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation
- Ms M. Perlman

Nexen Marketing

- Ms S. Young

APPEARANCES/COMPARUTIONS

Companies/Compagnies (Continued/Suite)

Société en Commandite Gaz Métro

- Me L. - A. Leclerc
- Me L. - C. Ratelle

Union Gas Ltd

- Mr. L.E. Smith

Governments/Gouvernements

Minister of Energy for Ontario

- Mr. J. Turchin
- Mr. E. Sweet

Procureur Général du Québec/Ministère des Ressources naturelles

- Me M. Bouchard
- M. R. Richard

National Energy Board/Office national de l'énergie

- Mrs. M. Yuzda
- Ms. L. Bell
- Ms. J. Hanebury

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ERRATA

Volume 11, Tuesday, August 31, 2004:

Paragraph No.

Should read:

16224

"They should discourage, if not encourage, the actions ..."

"They should not discourage, if not encourage, the actions ..."

16551

"... correspondings."

"... corresponding."

16571

"...back to supply ..."

"... back to system supply ..."

16705

MR. ROWE

MR. FARRELL

16844

"... secondary month ..."

"... secondary market ..."

16905

"\$597,000 million ..."

"\$597 million"

Volume 12, Wednesday, September 1, 2004:

17055

"... our contract ..."

"... our contracts ..."

17245

"... franchise areas at different ..."

"... franchise areas and different ..."

17319

"MR. ROWE: On where?"

"MR. FARRELL: From where?"

17326

"... flows and isolation ..."

"... flows in isolation ..."

17485

"... the manor in ..."

"... the manner in ..."

17606

MR. CHARLESON

MR. FARRELL

ERRATA

Volume 12, Wednesday, September 1, 2004:

Paragraph No.

Should read:

17662-63

"MR. CHARLESON: I accept the correction, but we need to have the evidence from you, not from Mr. Farrell.

So I just wanted you to have an opportunity to ..."

MR. CHARLESON: I accept the correction.

MR. YATES: But we need to have the evidence from you, not from Mr. Farrell. So I just wanted you to have the opportunity to ..."

17763

"... criterionin ..."

"... criterion in ..."

17848

"... principle ..."

"... principal ..."

17884

"... delivery point does not leave a lot ..."

"... delivery point does leave a lot ..."

17932

"... laid to bear ..."

"... laid to bare ..."

LIST OF EXHIBITS/LISTE DE PIÈCES

No.	Description	Paragraph No./No. de paragraphe
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UNDERTAKINGS/ENGAGEMENTS

No.	Description	Paragraph/Paragraphe No
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--- Upon commencing at 9:00 a.m./L'audience débute à 09h00

20081. **THE CHAIRPERSON:** Good morning, ladies and gentlemen.
Mesdames et Messieurs, bonjour.

20082. Any preliminary matters this morning?

20083. Mr. Smith...?

20084. **MR. SMITH:** Good morning, Mr. Chairman and Members.

20085. I had one filing to make. It was provided electronically earlier, but as I understand, I should put a hard copy on the record. It was a letter dated September 7th, 2004. It relates to transcript corrections, and in fact the subject matter also referred to certain exhibit list corrections, as well.

20086. **THE REGISTRAR:** And this exhibit will be Exhibit C-21-20. Pièce numéro C-21-20

--- **EXHIBIT NO./N° DE LA PIECE C-21-20:**

Letter dated September 7, 2004 relating to transcript corrections

20087. **THE CHAIRPERSON:** Thank you, Mr. Smith

20088. Mr. Farrell...?

20089. **MR. FARRELL:** Thank you, Mr. Chair.

20090. I also have transcript corrections. They were filed, and I use the term loosely, with the Board electronically yesterday as a means of providing them to people. I don't propose that they be filed as an exhibit. I propose to just hand them to the transcript reporter and have them included.

20091. But there were three that my list indicated that I would speak to on the record, and I thought I'd just take the opportunity to do that now. I'm doing it because they change a positive to a negative, or vice versa, and I just want everyone to be aware of it.

20092. The first is in Transcript Volume 11, and it's on the page that has paragraph 16215 at the top or very close to the top; 16215. And the correction occurs in paragraph 16224, and Dr. Cicchetti is transcribed as saying:

"They discourage, if not encourage, the actions that would remove barriers to entry,"

and so on

20093. And if he said that, he misspoke himself. He recalls saying they should not discourage if not encourage the actions that would remove barriers. His whole point being there should not be barriers to entry.

20094. The other two occur in Volume 12. The first appears on the page that has paragraph 17653 at the top -- 17653. And the correction occurs in paragraph 17662. And this was sort of, I think, a rapid fire exchange, if I can call it that, between Mr. Charleson at first and then Mr. Yates and myself.

20095. So if we look at paragraph 17662, it reads:

"MR. CHARLESON: I accept the correction, but we need to have the evidence from you, not from Mr. Farrell."

20096. That obviously wasn't Mr. Charleson speaking after he accepted the correction, so you should insert after "correction" a period, plus Mr. Yates colon, and a capital "B" on "but". I recall Mr. Yates saying "but we need the evidence from you," that is Mr. Charleson, and not from me. And then I responded in a fit of pique.

20097. And lastly on the page that has paragraph 17883 as the first paragraph on the page in the left-hand side as you open the transcript. And it's the paragraph just below that, Mr. Chair, 17884.

20098. Mr. Charleson is quoted as saying:

"You know, just establishing" -- "just the establishing of NBJ's receipt and delivery point does not leave a lot of questions unanswered."

20099. And if you look at the context in which he was speaking, the "not" should be struck. He was saying there are questions to be answered, such as the fuel on fuel, and he was speaking in the same vein about the Enbridge proposal for Parkway. So in the second line of 17884, delete the first word, please.

20100. And Enbridge has yet to file the response to Undertaking U-26, which was an undertaking given by Mr. Charleson to Mr. Thompson. We've experienced some arithmetic difficulties in portraying the tolls Mr. Thompson asked for. He asked for the full toll. The evidence was that Enbridge paid negotiated tolls.

20101. The difficulty we're struggling with is to be able to give both the full toll and the negotiated toll without disclosing confidential information.

20102. I have spoken to Mr. Thompson and told him I thought I would have an answer for him by the break this morning. It was acceptable to him. I hope it's acceptable to you as well, sir.

20103. **THE CHAIRPERSON:** Thank you, Mr. Farrell.

20104. **MR. FARRELL:** Thank you, Mr. Chair.

--- (Short pause/Courte pause)

20105. **THE CHAIRPERSON:** Mr. Farrell...?

20106. **MR. FARRELL:** Mr. Chair, Mr. Yates and I were just having a huddle about whether I should be asking for an exhibit number for the response to the undertaking. Then I think Mr. Yates would like to ask you to close the record.

20107. So my count makes the exhibit number that could be reserved to be Exhibit C-12-2.

20108. **THE REGISTRAR:** That is right.

20109. **MR. FARRELL:** Thank you.

20110. **THE REGISTRAR:** Pièce numéro C-12-2

--- EXHIBIT NO./PIÈCE NO. C-12-2:

Response to Undertaking U-26

20111. **THE CHAIRPERSON:** And then with that expected filing, evidential portion is closed?

20112. Any other preliminary matters?

--- (No Response/Pas de réponse)

20113. **THE CHAIRPERSON:** Ms Lauren Bell, do we have any written argument that was filed? I guess we have. Please inform us which one.

20114. **MS. BELL:** Mr. Chairman, further to the Board's direction of September 1st, two parties have prefiled written argument prior to the commencement of oral argument today.

Closing argument
Alberta Northeast Gas, Limited/Nexen Marketing

20115. Specifically, written argument has been filed by Alberta Northeast Gas, Limited and Nexen Marketing both on September 7th. Copies of these written arguments are available at the back of the hearing room.

20115. Mr. Chairman, while exhibit numbers are not required for these filings, I would ask that the court reporters insert the text of these written submissions in the transcript. Such insertions should be made in the order that the respective parties would otherwise have appeared, based on the order of appearance for the proceeding.

20116. **THE CHAIRPERSON:** Yes, that will be appropriate. Thank you, Ms Bell.

Alberta Northeast Gas Limited

*Closing Argument
NEB Hearing RH-3-2004
(North Bay Junction)*

20117. *As outlined in its intervention (C-3-1), Alberta Northeast Gas Limited (ANE) is a consortium of local distribution companies located in New England, New York and New Jersey. The ANE companies have long purchased substantial volumes of Canadian gas which is transported by their suppliers on the TransCanada PipeLines (TransCanada) system and exported at Iroquois, Ontario.*

20118. *Although ANE is a registered intervener in RH-3-2004, it initially decided not to participate in either the cross examination or the closing argument phase of the hearing. However, in light of the discussions throughout the hearing surrounding the existing ANE contracts and the options that ANE has upon expiration of some of those contracts in November, 2006, the ANE consortium felt compelled to submit written closing argument.*

20119. *With the expiry of some of their existing gas supply contracts by November, 2006 the ANE LDCs have elected to diversify their supply options to include the purchase of some of their future requirements at Dawn, rather than at Empress. That decision is reflected in the letter referenced by Mr. Frew which ANE sent to TransCanada well over a month ago requesting up to 225,000 MMbtu/d of capacity at Dawn starting in November, 2006 (Exhibit B-39). It is our understanding that this short-haul route would include transporting gas from Dawn to Parkway on the Union system and then continuing on using capacity on the TransCanada system from Parkway over to Iroquois, the TransCanada interconnection with the Iroquois Gas Transmission System.*

20120. *TransCanada representatives stated in their testimony that a request for service from Dawn is really a request for short-haul service, which could, in fact, be satisfied with service from the North Bay Junction. Like many other intervenors, and like other Canadian end-users (IT454-467), ANE is not interested in purchasing gas at North*

losing arguments

Alberta Northeast Gas, Limited/Nexen Marketing

Bay; an unproven, unconnected point in an area remote from the market located to the west of Iroquois. ANE agrees with the reservations expressed in intervenor evidence about using North Bay as a purchasing point for reasons including lack of liquidity, lack of price transparency, lack of storage options and a lack of a year round (365-day) firm exchange option between North Bay and Dawn.

20121. *Also, like the Canadian LDCs, ANE's participant LDCs see the strategic importance in diversifying supply and storage options to better position themselves to meet the challenges of the future North American gas market. The TCPL witness testified that the differences between the attributes of sourcing gas at North Bay versus Dawn are minor. With respect, as Mr. Reed acknowledged, the market best knows how to meet its own requirements, and to the market represented by ANE, these are major differences [10T14215-14254]. Clearly, the Canadian LDCs view Dawn in the same way as does ANE and support expansion away from the Dawn receipt point.*

20122. *As confirmed by Mr. Frew, ANE initiated discussions with TCPL regarding the construction of short-haul capacity from Dawn. ANE expects TCPL to initiate an Open Season soon to identify all service requests for the November 2006 gas year. ANE will submit a request for service for long-term firm deliveries from Dawn to Iroquois which would coincide with the TCPL affiliate's (TransCanada Energy) request for new short-haul capacity from Dawn to Quebec to supply the Bécancour power plant, which also begins in November 2006.*

20123. *ANE expects TransCanada to take all necessary steps to contract for, seek approval for, and to build whatever facilities may be required to transport the aggregate of all service requests -- short-haul and long-haul -- commencing November 1, 2006. In this regard, ANE wishes to register its concern about the potential for preferential treatment for TransCanada's affiliate which also seeks November 1, 2006 service from Dawn. All incremental service requests for November 1, 2006 require approval of the new facilities and capacity necessary to provide the aggregate of all new and existing services on that date.*

20124. *ANE further submits that there is no basis for changing short-haul contracting practices unless such change is applicable to all shippers. The same contracting options, the same toll design, and the same provision of incremental capacity must be applied to all those seeking service on TransCanada's integrated system from Dawn on November 1, 2006. If ANE submits a service request and it meets all the criteria required for new services (creditworthy party that is able to demonstrate the existence of a market, is willing to commit to a 10-year contract, and is able to make the requisite supply demonstration), then it expects that the system will be expanded in a timely manner to meet the request, irrespective of the status of the North Bay proposal.*

20125. *ANE looks forward in the proceeding to a reaffirmation by the Board that short-haul service from Dawn remains an integral part of TransCanada's services and that incremental service must be provided on a timely basis.*

Closing arguments
Alberta Northeast Gas, Limited/Nexen Marketing

Final Argument of Nexen Marketing
RH-3-2004

20126. *Nexen Marketing ("Nexen") would like to thank the National Energy Board ("Board") for this opportunity to provide written final argument in the TransCanada PipeLines proceeding on the North Bay Junction Application (RH-3-2004).*
20127. *Nexen is an active member of the TCPL task force and a large volume, long term TCPL Mainline shipper who holds a substantial volume of both long and short haul services. Through its parent, Nexen Inc., Nexen is also an active member of CAPP and aided CAPP in its participation in this proceeding. Nexen supports the views presented by CAPP on the North Bay Junction.*
20128. *In addition to the issues of NBJ in this application which CAPP addressed, Nexen would like to highlight four points related to service that Nexen holds which were brought up in this proceeding.*
20129. *First, Mr. Fournier with the IGUA Panel said:*
- "We think that the first thing that has to be addressed, that should be addressed, is to get this -- what we consider to be an imbalance in the current toll structure, an unfair burden on long-haul shippers carrying about 90 per cent, as far as I can roughly calculate it, of the cost for only 60 per cent of the volume."
(Transcript Volume 1, paragraph 641)*
20130. *It is important to recognize that while IGUA would seem to suggest that this "imbalance" is an issue which concerns all long-haul shippers, IGUA does not speak on behalf of all long-haul shippers. To put this in perspective, while IGUA members currently account for 129,717 GJ/d of long-haul service (Undertaking U-1), this only accounts for approximately 4% of total long-haul (TCPL Response to NEB Item 1.5 Page 3 of 3). Nexen itself a long-haul shipper, does not feel there is a current imbalance and supports TransCanada and other intervenors that the existing toll design continues to be appropriate.*
20131. *Second, IGUA has stated:*
- "However, in the fall of 2002, TCPL accommodated a request for a short-haul contract for 200,000 GJ/d from Dawn to Niagara Falls, coinciding with a non-renewal of 210,449 GJ/d long-haul contract to Niagara Falls."
(Evidence of the Industrial Gas Users Association, page 11, lines 6 to 9).*

Closing arguments
Alberta Northeast Gas, Limited/Nexen Marketing

20132. Mr. Fournier with the IGUA panel further said:

"We hold that TransCanada, if it had not accommodated the short-haul of 200,000 a day to Niagara on 1 November 2002 and the majority of short-haul requests are accommodated effective 1 November last year, I believe that a significant portion of those volumes would have had to stay long-haul."

20133. Nexen is the current holder of this 200,000 GJ/d contract from Dawn to Niagara. (Undertaking U-23). As can be seen in Undertaking U-18, Nexen was not the original holder of the long haul volumes which were not renewed. While Nexen (through various previous incarnations) was related to KannGaz Energy Marketing, these volumes were small portion of the 196,991 GJ/d total. This 200,000 GJ/d of short-haul was contracted for as a result of being the winning bidder in an Open Season (Undertaking U-23, note B). Therefore, the impression that IGUA would leave the Board with, that the 200,000 GJ/d of short-haul was requested to replace a long-haul contract, is misleading.

20134. Third, Mr. Cooper with the IGUA Panel said:

*"I think with hindsight, certainly from IGUA's perspective, is we wish they hadn't done it because we've got this now, this massive amount of short-haul that isn't paying, it is free."
(Transcript Volume 1, paragraph 369)*

20135. Again, this is misleading. For example, the current interim Demand Charge for Dawn to Niagara is \$6.80501/GJ/mos (Undertaking U-22). Short-haul, just like long-haul, pays for the distance from receipt to delivery based on average cost which includes a share of all system costs including the costs of unutilized capacity.

20136. Fourth, Mr. Fournier with the IGUA Panel said:

*"So you can't say it is a direct link, no short-hauls, definite long-hauls, because there are other options, but that is how the market works."
(Transcript Volume 1, paragraph 624)*

20137. As Mr. Fournier said, it cannot be assumed that if short haul service was not offered, long-haul service would take its place. A ten percent contribution (Transcript Volume 1, paragraph 641) towards the cost of the system is better than the alternative, which could well be no contribution at all.

20138. In conclusion, while Nexen is always willing to participate in any process that works towards finding a solution to a problem, in this instance there is no problem. As numerous parties have stated, there is nothing fundamentally broken with the manner in which costs are allocated currently between long and short haul services. Nexen

**Preliminary matters
Chairperson**

therefore supports the continuation of the current toll design and supports the CAPP proposal for having a joint Dawn/NBJ Open Season.

All of this is respectfully submitted this 7th day of September, 2004

Nexen Marketing

*Shannon Young
Counsel, Regulatory*

20139. **THE CHAIRPERSON:** In regard to the process and scheduling, the Board intends to hear oral argument in a top-down/bottom-up fashion.
20140. In the top-down portion, the Board requires that parties specifically identify the relief they are requesting from the Board.
20141. In respect of timing, the Board intends to sit until 6 p.m. today with a mid-morning break at approximately 10:30; a lunch break at noon or approximately around noon for a hour and a half; and then an afternoon break at around 4 o'clock.
20142. The Board will reconvene tomorrow at 9 o'clock and will break at noon for two hours. The Board will sit until 6:00, or as required, to complete the top-down and bottom-up portion of oral argument with the exception of TransCanada.
20143. At the end of the day tomorrow, we will decide at what time we will resume on Friday to hear the reply argument of TransCanada.
20144. Regarding today's hearing transcript, I understand that the electronic version of the transcript shall be posted in the Board's electronic document repository in the public inbox sometime around midnight, assuming that unforeseen circumstances do not arise.
20145. Hard copies of the transcript will be made available to parties in the hearing room tomorrow. For further information or any specific requests that can be reasonably accommodated, parties are to contact the reporters directly.
20146. That being said, we will now proceed to hear argument.
20147. Mr. Yates, please...?
20148. And while Mr. Yates -- while I said that we'll break around 10:30, it will be up to you to let us know what will be the most appropriate time to break.

20149. **MR. YATES:** Thank you, Mr. Chairman.

--- FINAL ARGUMENT/PLAIDOIRIE FINALE BY MR. YATES:

20150. **MR. YATES:** Mr. Chairman and members, I have utilized the usual practice -- or what has become the usual practice for this Board of providing a copy of my notes to the reporters. The copy that the reporters have has all of the evidentiary references in it which I will not be reading into the record today but which I ask appear in the transcript when it comes out tonight.

20151. Mr. Chairman and members, there's a great deal less to this case than meets the eye. What meets the eye is a record that is substantial in volume. It is comprised of more than 230 exhibits, 13 days of oral evidence recorded in over 20,000 paragraphs of the transcript, and that would suggest that there's a lot of noise that you heard from lawyers and witnesses. And there was.

20152. The size of the record would also suggest that there are many issues of importance that require resolution by the Board. But there aren't. When you cut through all the chaff and the rhetoric and the posturing and the inconsistencies, you find yourself right back where this case started - with the single issue of choice.

20153. Choice is what TransCanada would have you approve in this case. Market choice. Market choice that provides balanced competition. Market choice that is consistent with the developing competitive environment in the Canadian natural gas pipeline industry. Market choice that improves the ability of the TransCanada mainline to compete to attach and retain market and throughput. Market choice that corrects a structural disadvantage that is an impediment to the ability of the mainline to compete.

20154. Choice is the simple issue. TransCanada would have you approve the North Bay Junction as an additional receipt and delivery point on its system. It would have you do that to provide the market with an additional choice for contracting and to balance competition. A point that is closer to the market. A point that provides a short-haul alternative to Dawn. A point that responds to the evident demand of the market for short-haul contracting.

20155. And that's all.

20156. Then let the market work. See what choices are made by the market. If the market chooses North Bay, then competition will be enhanced and economic efficiency will be endorsed. If no one chooses North Bay, no harm done. No harm, no foul.

20157. Now, I expect that some intervenor counsel will come to the other podium today and tomorrow to tell you that that's not all. I expect that they will tell you that the simple approval of one additional receipt and delivery point will have major deleterious effects on Mainline toll design, maybe even on competition.

20158. They may tell you that this simple step is part of a nefarious TransCanada master plan that is being unveiled "piecemeal" to increase the chances of successful implementation of the whole. I say "may" because while these assertions have been made by certain intervenors, there has been nothing on the record to substantiate those sorts of accusations.
20159. Intervenor counsel may tell you that they -- their clients -- need more information, that the matter needs to be discussed at the TTF. That the approval should not happen without a complete review of the Mainline toll design.
20160. But I ask that you remember when you are listening to those counsel that they are representing the parties who protested the TransCanada application, who went to the Board's ADR workshop and asked that additional issues be added to this hearing, [A-7], who succeeded in convincing you to add wide ranging issues to this proceeding, and then gave you by way of evidence on those issues virtually nothing.
20161. Provided with the forum that they requested, not one intervenor has come forward with a new proposed toll design for long-haul, short-haul, IT or any other service. Not one intervenor has taken the position that the existing zonal toll structure is inappropriate.
20162. Yes, there is some noise about short-haul contracting practices and there is the IGUA "independent toll design consultant" trial balloon, but ultimately what you have in this case is the issue that you started with.
20163. That issue is Issue 3 on your issues list: The appropriateness of the North Bay Junction and any alternate proposals.
20164. That is what this case is about. It's about choice and opportunity. It's about competition -- and, more specifically, balanced competition. It's about approval of a new receipt and delivery point at North Bay.
20165. You gave the interested parties the opportunity to make this case as broad as they wanted, and nobody took you up on it.
20166. On the evidence, this case is not about a new toll design for the Mainline. It's not about the zonal toll structure. It's not about the TTF. It's not about anti-competitive constraints on market access. It's about the approval of a single receipt and delivery point.
20167. Now, before speaking to the merits of the Application, the TransCanada Application, and to the lack of merit of the opposition to that Application, I want to talk briefly about the parameters within which you are considering the Application.
20168. And by that I mean the policies that the Board has established through its previous decisions and comments.

II NATIONAL ENERGY BOARD POLICIES

20169. In my submission, the Board has already made very clear the policies that are relevant to this Application. Those policies were identified and discussed in the evidence of Mr. Reed, which was filed by TransCanada, and no party contested Mr. Reed's characterizations through cross-examination.

20170. And I say that the policies turned up in the evidence of Mr. Reed, because that was the Reply Evidence of TransCanada which was responding to the allegations by the intervenors, certain intervenors, that the simple proposal that was put before this Board was anti-competitive. The intervenors raised the anti-competitive issue in their evidence. TransCanada was obliged to respond.

20171. Now, this Board has supported the concept of workable competition in the Canadian natural gas pipeline industry through various decisions. It has applied the economic and regulatory principles of the promotion of competition and economic efficiency. [See Exhibit B-20, Reply Evidence of John J. Reed, p. 8ff].

20172. The Board's corporate purpose includes the promotion of economic efficiency as part of its public interest mandate [11T15846ff]. Competition usually results in increased economic efficiency, in choice and in competitive rate structures. [B-20, Reed Evidence, p. 9 citing Vector Pipeline Decision GH-5-98]. Economic efficiency is promoted when decision makers base their choices on the true costs of each option.

20173. This Board has recognized that customers should be given the opportunity to exercise choice. [Exhibit B-20, Reed Evidence citing NOVA Gas Decision MH-2-97 and Vector Decision GH-5-98].

20174. It has identified that TransCanada has a duty to protect the long-term viability of its system. [Exhibit B-20, Reed Evidence, p. 12 citing NEB Decision RH-1-2002, p. 59; see also 5T6365-6386].

20175. The Board has specifically recognized the need for TransCanada to find -- and I quote:

"... new and innovative ways to compete ..."

with the -- and I quote again:

"... increase in competition for customers among pipelines, both out of the Mainline's supply basin and into its market areas."
[Exhibit B-20 Reed Evidence, pp. 11-12, citing Decision RH-1-2002, p. 73].

20176. The Board should be focused on promoting an efficient transportation network. [Exhibit B-20 Reed Evidence, p. 10 citing NEB 2003 Annual Report].

20177. All of these statements have been made by this regulator, and in my submission to you, they establish the parameters within which this Board is considering -- this panel of the Board is considering the competitive aspects of the North Bay Application.

20178. And with that, I'll turn to the application itself.

**ISSUE 3: THE APPROPRIATENESS OF THE NORTH BAY JUNCTION PROPOSAL
AND ANY ALTERNATIVE PROPOSALS.**

20179. I'm going to discuss four aspects of this issue.

20180. The first is the facts that are not in dispute.

20181. The second is why the North Bay Junction should be approved.

--- (Short pause/Courte pause)

20182. **MR. YATES:** They follow you everywhere, Mr. Chair, those sound gremlins.

20183. **THE CHAIRPERSON:** The recording works, though.

--- (Short pause/Courte pause)

20184. **THE CHAIRPERSON:** We are sorry about that, Mr. Yates. Feel free to rewind to Issue 3. Luckily you were just moving to Issue 3, but feel free to start all over again on Issue 3 again, if you want to.

20185. **MR. YATES:** I'm happy to do that, Mr. Chairman. Hopefully this will keep going.

20186. I was just starting to discuss Issue 3, and I was starting to tell you that I was going to discuss four aspects of that issue.

20187. The first being facts that are not in dispute; the second being why the North Bay Junction should be approved; the third being why the opposition positions should be rejected; and the fourth being alternate proposals.

FACTS THAT ARE NOT IN DISPUTE

20188. So starting with the facts that are not in dispute.

20189. This case is about whether the Board should provide TransCanada with the opportunity to offer a competitive alternative that may make better use of existing facilities.
20190. If TransCanada is allowed to do so and succeeds, all firm shippers benefit; if it is allowed to do so and fails, no one is harmed. If it is not allowed to do so, existing facilities are likely to become even more underutilized as the market goes elsewhere for the type of service it wants.
20191. And in that context, it is to be noted that after all the evidence is in, the Board has before it a long list of facts that no one has taken issue with, and those include: First, since 1998, TransCanada has faced a level of competition that goes far beyond anything experienced to that point; the advent of this competition is the single biggest development on TransCanada's system in the past ten or more years. [RH-1-2002, p. 73].
20192. Second, TransCanada has already experienced a dramatic reduction in its contract levels and revenue base. [1T281; B-12, p. 4].
20193. Third, TransCanada faces even greater erosion of its contract and revenue base in 2006 and beyond. [1T281; B-12, p.4]
20194. Fourth, the market, for many reasons, has an interest in short-haul service on the eastern portion of TransCanada's Mainline. Dawn is currently the only liquid point available and Dawn is sold out. [B-24 TCPL Opening Statement; 2T2280]
20195. Fifth, Duke and Union have recognized the market's preferences and are touting expansion of the Union system as that which best meets the market's preferences. [Duke Open Season, C-21-12] Vector is also undertaking an open season to determine if there is demand for expansion [B-57].
20196. Sixth, TransCanada has unused existing capacity on its system into and out of the North Bay Junction. It has low-cost expandability. The combination could meet at least some of the market's needs for new service. [B-12, p. 3]
20197. And seventh, TransCanada does not currently have an on-system service that competes effectively with Dawn, and TransCanada also lacks many of the competitive tools that FERC has provided to the Duke system and other U.S. pipelines. [7T10219-10223; 8T10858; 9T13009ff]

WHY THE NORTH BAY JUNCTION SHOULD BE APPROVED

20198. It is common ground that the market wants to trade at the nearest point of liquidity. It's common ground that the market values flexibility combined with reliability. It's common ground that the market wants choice.

20199. North Bay is the simple addition of a new receipt and delivery point that will, over time, offer an option to the market and benefit the long-term users of the TransCanada Mainline. It is important because it provides an additional option to the market. It provides choice.
20200. TransCanada believes that, given the choice, the market will opt for short-haul transportation from the nearest point of liquidity. In this Application, TransCanada is seeking approval to provide the market with a short-haul alternative choice. It is seeking the opportunity to allow liquidity to develop at an alternative location and to balance competition.
20201. It is seeking balanced competition. Choice is an important element of competition that is acknowledged to be valuable. [10T12404; 10T13404; 10T13669]
20202. Now, some of the intervenors, on the other hand, view the choice as being how best to provide short-haul from Dawn. They say that the market wants Dawn and point to the inquiry of ANE about access at Dawn. [B-39] That inquiry was just what it was, an inquiry.
20203. ANE said that it was in the process of examining the options available for renewal of the ANE supply contracts and that one of the options being considered is purchasing replacement gas at Dawn. And it was not surprising that the inquiry would be made about Dawn when Dawn is the only short-haul alternative that is currently available.
20204. What was surprising was that ANE has chosen to use its written argument to add evidence about its absence of interest in North Bay. This is, of course, at a time when it can't be cross-examined about that. [ANE Written Argument, p. 1].
20205. But what is interesting, though, are the reasons for the ANE position. They say in their argument NBJ is unproven, has a lack of liquidity, a lack of price transparency, lack of an exchange option between Dawn and North Bay.
20206. All of those issues can be addressed if the Board approves North Bay and provides the opportunity for it to become proven for liquidity to develop for price transparency. The exchange option may be a matter for another day.
20207. But to put this in perspective, look at the letters of support that have indicated the desire of users to have choice and to have the North Bay Junction. BV Energy Group [D-1-1] and Energy Source Canada [D-4-1] and Six Nations Natural Gas [C-5-1] view multiple trading points as being essential to optionality and market efficiency. North Bay can only serve to benefit the market.
20208. Sprague Energy tells you that it believes that the creation of a new trading point on North Bay would be beneficial, providing more optionality to gas merchants

serving the northeast markets and access to potential incremental supply through the unutilized portion of TransCanada's Mainline system.

20209. It says that this new trading point would also facilitate the process of matching more buyers and sellers at critical times. [A-26]
20210. Energy Trust Marketing is in favour of any proposal that increases transparency and liquidity to the marketplace. And Coral -- Coral tells you that appropriate enhancements to firm transportation flexibility for the TransCanada system are a worthy endeavour, especially when they can be managed within the context of the current toll design. [D-2-4]
20211. And I would also ask you in this context to remember the Southwest Zone. Nobody wanted the Southwest Zone. There were no inquiries about it. The LDCs said they wouldn't contract to it. The LDCs said their customers wouldn't contract to it, but now it's fully contracted for the summer. [B-20, A46]
20212. North Bay would improve the ability of the Mainline to attract and maintain market and with it throughput. It is abundantly obvious that the market is interested in alternatives that minimize demand charge exposure. That's evident from the Duke/Union open season document. It's evident from the Vector open season document. It was confirmed by Mr. Henning, an expert witness put forward by the LDCs. [11T5971-5986] And Enbridge itself stated that demand charges are an important factor in sourcing supply. [11T7752-7769; 8342-8346]
20213. North Bay Junction would correct the structural disadvantage and allow the Mainline to compete more effectively. It would provide a short-haul alternative link to the Northern Ontario line which would allow contracting on a short-haul basis; would tie markets to the Mainline through contracts and would promote the utilization of the long-haul Mainline system. The net result would be to reduce tolls. If markets are retained, short-haul revenue would be captured. The supply is provided to the North Bay Junction, capturing long-haul revenue.
20214. I've said to you that North Bay Junction is simple and straightforward. All that TransCanada is asking for is the opportunity to compete using a new receipt and delivery point. No one has made a case that the North Bay Junction, in and of itself, is contrary to the interests of ratepayers or to the public interest.
20215. TransCanada is not asking for North Bay Junction to the exclusion of additional service through Dawn. TransCanada has been clear that if the market prefers Dawn and is willing to support an expansion of facilities, then TransCanada is ready to deal with and accommodate those requests. [6T8875]
20216. The North Bay Junction has the ability to develop into a liquid trading point, much like Demarc on the Northern Natural system. Mr. Reed was very clear in his

opinion on that topic, and his evidence withstood the challenge of cross-examination and [B-20 Reed Evidence pp. 21-25; 2T1719-1722]

20217. Even CAPP has told that you if the North Bay Junction is offered, people will use it. [10T15301]

20218. There is no reason to delay or defer approval of the North Bay Junction. There are no other elements or approvals required. There are no interdependencies; no bigger picture that is required to be addressed. There is no cost to implement it. No regrets if it isn't used.

20219. TransCanada's contract renewals can't be put off. Vector and Union have open seasons underway. Should those open seasons result in requests for additional capacity, the result may be long-term capacity additions that cannot be undone. TransCanada submits to you, Mr. Chairman and Members, that timing is critical and that the Mainline must be allowed to compete.

20220. The North Bay Junction is a clear case of nothing to lose and everything to gain. The beauty of the proposal is its simplicity and the lack of adverse impact if it fails.

20221. The point was carefully selected. It's a comparable distance from Empress, as Dawn. It has substantial volumes flowing past it on a daily basis. It doesn't require restructuring of contracts, and it meets the needs of the market. It should be approved.

20222. TransCanada submits to you, as well, that the approval should be unconditional. There was some discussion in the record of possible conditions to an approval.

20223. CAPP used the opportunity of filing evidence in response to other intervenors to float an anti-TransCanada proposal, which was that the North Bay Junction be approved only on a pilot basis.

20224. Mr. Frew and Mr. Ferguson explained to you that if you start conditioning future options, you tend to lose those options. If only one alternative is subject to conditions, the market will tend to discard that alternative.

20225. Conditioning North Bay would stop the market from taking up the capacity. [9T12367 to 12374] There is no merit in conditioning the approval as suggested by CAPP, so don't do it.

20226. Now, then, you have the "coincident Dawn and North Bay open seasons" condition, which was also floated by CAPP. And considering that TransCanada only offers its capacity in open seasons and that its open seasons make all capacity on the integrated system available, this suggestion looks like an entirely unnecessary proposal. Approve North Bay and CAPP will have the open season it desires.

20227. The suggestion that a status report be required in two or three years along the lines of the Board's approval of the Southwest Zone is in a different category. That is an obligation that has apparently not hindered contracting to the Southwest Zone, nor could it be seen as a hindrance to the development of the North Bay Junction as a liquid trading point.

WHY THE OPPOSITION POSITION SHOULD BE REJECTED

20228. And that brings me, Mr. Chairman and Members, to why the opposition positions should be rejected.

20229. The opposition to TransCanada's North Bay proposal seems to have been premised on either a misunderstanding or a mischaracterization of the TransCanada position on whether it would oppose all attempts to expand service from Dawn to Parkway and beyond.

20230. Let's turn to the merits - or, rather, lack of merits of the opposition and deal first with the LDCs.

LDC OPPOSITION

20231. The three LDCs turn up in this case and say, first, that they oppose TransCanada's North Bay proposal for the reasons set out in the evidence of the experts who they retained. [Union C-21-5, p. 7; Enbridge C-12-16, p. 1, para 3 and 12T17424ff; Gaz Met C-19-7, Q1; 11T16141] The LDC opposition, therefore, rests primarily on the evidence of Mr. Henning, Mr. Sloan and Dr. Cicchetti. It became evident during the course of cross-examination that the evidence of these experts was nothing but quicksand that could not support the pillar of any argument, let alone the opposition of the LDCs to the North Bay proposal.

20232. I recall that it is the evidence of the LDC experts that alleges that TransCanada is "blocking expansion at Dawn," and that it is being "anti-competitive". So let's look at what happened to that evidence.

20233. Let's look first at Mr. Henning and Mr. Sloan.

20234. They say that the existence of a North Bay Junction receipt and delivery point in and of itself is not detrimental to Eastern Canadian gas markets, nor would it constrain access to market sources of supply or other services. [Exhibit C-21-5, p.5; Exhibit C-21-7, EEA Response to NEB 1.2 (a)]

20235. But then they say that the difficulties arise if current customers are constrained from accessing other markets, such as Chicago or Dawn or Parkway or LNG at St-Nicolas, or are constrained from accessing other services, such as storage at Michigan or Dawn, particularly during peak periods. [Exhibit C-21-5, page 5 lines 26ff] And Mr. Henning and Mr. Sloan then go on to allege that TransCanada's objectives,

TransCanada's objectives, concerning North Bay include constraining access to more diverse sources of supply [Exhibit C-21-5,page6] and that TransCanada -- they say that TransCanada is seeking to constrain competition.

20236. The underpinning of the position of Mr. Henning and Mr. Sloan was their response to the Board's Information Request 1.2. [Ref: 11T15790ff;Exhibit C-21-7] And there they allege that TransCanada intends to expose -- to oppose, excuse me, expansion and development, and they purport to rely on statements made by TransCanada in responses to Information Requests. The statements that they rely on include TransCanada saying that it would oppose an expansion that it regards as, and I quote, "contrary to the public interests and unjustifiable", or that is redundant in offloading existing capacity.

20237. I'm not going to quote to you the entirety of the EEA response to NEB 1.2, but I will observe that during cross-examination it became very clear that Mr. Henning and Mr. Sloan had completely misinterpreted the TransCanada position.

20238. They seem to think that there's something wrong with TransCanada opposing an application to expand the Union Dawn-Trafalgar system which was contrary to the public interest or which was unjustifiable. [11T15776] They seem to think that there is something nefarious about declining, about TransCanada declining to support a Union expansion when an alternative exists that doesn't require capital expenditures, that alternative being existing TransCanada facilities. And they seem to think -- they seem to take the position that there is no such thing as unnecessary bypass.

20239. Mr. Farrell, counsel for Enbridge, one of the clients of Mr. Henning and Mr. Sloan, put those positions to Mr. Frew in cross-examination. The responses, all of which appear in Volume 4 of the transcript, are very clear. TransCanada's position is not that the Mainline has to be full before there is expansion anywhere else. It is that it will oppose expansions that are not in the public interest and that are unjustifiable.

20240. It is TransCanada's position that it could not support a Union expansion when an alternative exists that does not require capital expenditures. TransCanada believes that it is the responsibility of the regulator to ensure that when it approves facilities that there is some balance between existing system utilization and the competitive balance that the market requires.

20241. It is critically important that the underutilization of the Mainline be considered when there are other pipelines that could move gas into the market zones that are served by TransCanada. It is the job of the regulators to consider unnecessary bypass and redundant facilities in the context of underutilization of existing facilities. [4T5668-5739] That is the TransCanada position.

20242. And all of that is entirely consistent with the Canadian regulatory regime, and it is completely inconsistent with the allegation by Mr. Henning and Mr. Sloan of anti-competitive behaviour.

20243. To his credit, Mr. Henning did say that he was -- and I'm quoting him -- "certainly encouraged by Mr. Frew's responses", though not to the point of changing his recommendation. [11T15812-15818]
20244. Mr. Henning revealed only a superficial understanding of the Canadian regulatory process, notwithstanding his, I'll say, albeit diffident statement that he considered himself to be an expert in Canadian regulation. Ultimately, he agreed that it is the regulator -- not any particular party, but the regulator -- that controls whether facilities are built. [11T 15778ff] He also agreed that TransCanada does not have the power to control or constrain market access. [11T 15782ff]
20245. Later, Mr. Henning agreed that the consideration of bypass by this Board involves a consideration of economic efficiency from a public interest point of view [11T 15893ff], that "other things being equal," it is in the public interest to use scarce resources efficiently, that is, to maximize the value of output, and that economic efficiency would permit duplication of facilities only with demonstration of overriding benefits in the public interest. [11T 15915-15916]
20246. Ultimately, Mr. Henning defaulted to the position that the Board should go through a process whereby multiple points are designated as receipt and delivery points in order to improve efficiency. [11T 15835]
20247. Then we had Dr. Cicchetti. He didn't purport to be an expert in Canadian regulation. [11T16174-16175] His absence of expertise became very apparent when he revealed that he did not have any familiarity with the National Energy Board hearing process; that he did not know that the *National Energy Board Act* empowers the Board to direct a utility to install facilities, [11T16198-16224] or that the regulator controls whether there is any constraint on the facilities of any party. [11T16183-16186]
20248. So unencumbered by these facts, Dr. Cicchetti argued that TransCanada is constraining the expansion of Union facilities at Dawn.
20249. Dr. Cicchetti even disagreed with the statements made by Mr. Henning and Mr. Sloan that the North Bay Junction is not, in and of itself, detrimental to Eastern Canadian gas markets. His position was a little bit different.
20250. But the position that he ultimately took was that competition is a good thing, that duplication of facilities is not inherently bad, and that "in order for competition to work, you need surplus capacity in the consuming regions." [11T 16194 through 16197]
20251. One point to be taken from Dr. Cicchetti's appearance and his evidence is the same point as was made with Mr. Henning and Mr. Sloan. It is the regulator that determines the public interest. It is the regulator that decides whether facilities are required or not. In the course of determining whether facilities are required in the public

interest, the regulator deals with the issue of competition. Regulators have accepted that competition is a good thing.

20252. So where does that take the LDCs who rely on Mr. Henning and Mr. Sloan and Dr. Cicchetti to make the allegation that TransCanada is acting in an anti-competitive way when it seeks to add a choice in the marketplace?

20253. If it is the regulator that determines whether facilities are to be built, and if it is the regulator that considers economic efficiency in the determination of the public interest, then the LDCs are left in the position of saying that approval by this regulator of an additional choice on the TransCanada system will lessen the likelihood of approval of an expansion of the Union system by Union's regulator.

20254. And I would suggest to you that that's an exceptionally perverse position to take, and I would also suggest to you that if I were the regulator, I would find that to be insulting.

20255. The regulator is charged with the responsibility of determining the public interest. It is charged with the responsibility of determining whether it is in the public interest for additional facilities to be constructed. And when you do that, you look at economic efficiency.

20256. Now, here the decision is easy. This Board approves North Bay Junction and gives the market additional choice. Union's regulator considers whether facilities proposed by Union to provide service from Dawn to Parkway and points east are in the public interest. And this Board may consider whether it is in the public interest for TransCanada to build facilities in the context of a Union expansion.

20257. In each case, the regulator considers economic efficiency. And there is absolutely no justification for the preclusion of the approval of North Bay Junction in this case just because of what a regulator might do with the economic efficiency argument in respect of an application that has yet to be made.

20258. I draw your attention to the fact that the assertions by the LDC experts about anti-competitive behavior by TransCanada were also refuted by Mr. Reed from an economic perspective. [REF: Exhibit B-20, Reed Evidence, pages 12ff] In his evidence, Mr. Reed set out the elements that would have to be present in a market for a service offering such as North Bay Junction to be found to be anti-competitive. There were five:

20259. First, a decrease in product homogeneity; second, a decrease in the number of buyers and sellers; third, a reduction in knowledge of market conditions; fourth, increased restraint of market operations; and/or fifth, an increase in obstacles preventing resource mobility into and out of the market.

20260. Mr. Reed's analysis led to the conclusion that the North Bay Junction proposal did not meet any of those five requirements. To the contrary. Mr. Reed

concluded that the introduction of the North Bay Junction would not be anti-competitive. It doesn't meet any of the five criteria that must be met to support a finding of being anti-competitive.

20261. In fact, it was his opinion that implementation of the North Bay Junction would have exactly the opposite impact. Rather than harming competition, the approval of the North Bay Junction would be pro-competitive and facilitate competition on the TransCanada Mainline by providing the market with an additional option that has the opportunity to enhance shipper flexibility and price transparency and allow the market to operate more effectively and efficiently.

20262. None of this evidence of Mr. Reed was contested by the LDCs or anyone else through cross-examination. I suggest to you that it is compelling evidence on this issue.

20263. The only other aspect that remained after the demise of the LDC experts' "constraint on the market" position was the assertion that the approval of the North Bay Junction would increase prices. And that position, too, was refuted by Mr. Reed. His evidence is that the only way that the North Bay Junction could increase costs to Eastern Canadian shippers is if either, one, North Bay is more expensive than other competitive alternatives and shippers are required to utilize it or, two, shippers choose to pay more for North Bay due to the market's perceived higher value.

20264. No shippers are required to utilize North Bay. The addition to the market of a new service which does not cost anything cannot, by itself, increase prices. Additionally, the North Bay Junction does nothing to degrade the quality of or increase the cost of any other existing alternatives in the marketplace. Every option that exists today will continue to exist in the future along with North Bay, and every future option will still be able to be proposed and developed if it meets the standards of review at the National Energy Board. [Exhibit B-20, Reed Evidence, pages 26 through 28]

20265. Union took the position that it would be anti-competitive for TransCanada to be able to contract from the North Bay Junction. [C-21-5, Q/A8]

20266. Union is one of the three sponsors of Dr. Cicchetti's evidence. Dr. Cicchetti says that duplication of facilities is not inherently bad, that competition is a good thing, that additional capacity is necessary in order to foster competition. Having accepted and adopted that evidence from Dr. Cicchetti, the Union witnesses were then faced with the question of whether Union would oppose a bypass of the Union system from Dawn to Parkway by TransCanada. You may remember that there are several pages of the transcript devoted to the questioning on this issue. But ultimately, the response of Mr. Baker was that Union would oppose such a bypass if it thought that such a bypass were economically inefficient. [13T19239-19246]

20267. So there you have the Union position. Union says that TransCanada is being anti-competitive if it opposes a Union bypass that TransCanada thinks is not in the

public interest or is unjustifiable or is economically inefficient. But Union would oppose a TransCanada bypass of its system if it thought that the bypass was economically inefficient.

20268. In other words, conduct by TransCanada that Union sees as anti-competitive is conduct that Union would itself undertake against TransCanada. If TransCanada is being anti-competitive, then so is Union.

20269. But the fact is that neither TransCanada nor Union would be being anti-competitive in opposing the actions of the other in a regulatory forum. And that is so because it is the regulator who determines what facilities will be built and the determination is a public interest determination. TransCanada and Union and any other party can make representations to the regulator about the public interest, about competition, about economic efficiency, about markets, about whatever. The regulator decides. By making those representations to the regulator, the parties are acting in a competitive way. That is competitive behaviour. That's how a party can strive to advance its own competitive interests within the regulatory framework, but it's the Board that is the arbiter of those competitive interests.

20270. The bottom line of all this is that the fundamental opposition of the LDCs to the North Bay Junction proposal is premised on the quicksand of the evidence of Mr. Henning, Mr. Sloan and Dr. Cicchetti. That evidence simply does not support the allegation that TransCanada is constraining market access or limiting options or blocking Dawn or any of those other things that they say. That evidence does not support a denial of the North Bay Junction application.

20271. The opposition of Enbridge to the North Bay proposal, per se, rested not only on the LDC experts but also on the positions that the TransCanada proposal doesn't go far enough and that it doesn't solve Enbridge's load balancing issues.

20272. Well, the fact that that proposal doesn't go far enough is not a reason to deny it. It might be a reason to approve something more expansive, but the onus of convincing the Board to do that lies not with TransCanada but with Enbridge. In this context, it is worth noting that during cross-examination by IGUA [12T17216-17217 and 17228] Enbridge confirmed that its position is that the Parkway -- is that Parkway and St-Nicolas should be approved but North Bay should be denied. It looks like evidence of competition to me.

20273. And then there is the load balancing question. That, with respect, is not TransCanada's problem. It is a problem that was created by the non-renewal of the Enbridge contracts. Whether those contracts were held by Enbridge for itself or were held by Enbridge for the benefit of its direct transportation customers, they were still Enbridge contracts. The evidence is that the load balancing issue arises directly from the reduction of the Enbridge FT responsibility. [12T17470-17483, C-12-16 p.29]

20274. The evidence is also that Enbridge and TransCanada are trying, outside this hearing, to find a resolution for the load balancing issue [12T17816-17831; 4T5020-5025]; and that, I suggest, is precisely as it should be. The North Bay Application is not intended to solve Enbridge's load balancing problem. It is intended to give TransCanada an increased ability to compete, to keep volumes on its system.

20275. The fact that the North Bay Application doesn't solve the problem that Enbridge created for itself is entirely irrelevant to the question of whether this Board should approve the North Bay Application.

20276. So where do we get to with the LDC opposition? No support from Mr. Henning and Mr. Sloan, no support from Dr. Cicchetti; other reasons for opposition are irrelevant. The opposition evaporates.

(b) CAPP OPPOSITION

20277. And turn to CAPP: There are three simple propositions that explain CAPP's approach to this proceeding. First, CAPP favours the status quo [10T14562 and 14563]; second, delay favours those who favour the status quo [10T14755 to 14757; 10T15482 to 14783]; and third, delay results when a simple thing is made to appear unnecessarily complex [10T14787-14792].

20278. CAPP's mantra on the witness stand was: 'we need more information'. What information? Where does CAPP identify any information relating to North Bay that has not been made available? CAPP filed a number of information requests with TransCanada; TransCanada responded.

20279. Did we see complaints about insufficient information in CAPP's Written Evidence? No. We see references to the need for, and I quote, "a broader set of ideas that should be put on the table and subject to scrutiny." [C-1-7, Written Evidence, page 5, paragraph 10]

20280. We see a concern about, and again I quote, "where TransCanada is heading and where we might all end up." [C-1-7, Written Evidence, page 3, paragraph 7] We see the conspiracy theory about piecemeal roll out of the White Paper. [C-1-7, Written Evidence, paragraphs 7 to 11] We see a shopping list of concerns. [C-1-7, Written Evidence, page 6] But conspicuously absent is any reference to missing information.

20281. Is the missing information identified in CAPP's Response Evidence? [Exhibit C-1-11] No. There's no reference there.

20282. Is it identified in the response evidence of Dr. Safir? [Exhibit C-1-11] He refers to the Southwest Zone impact study ordered by the Board in the RH-1-2002 decision, and he argues that it is required if shippers are to evaluate North Bay on a fair

economic basis, [C-1-11, Safir Response Evidence page 5, A6] although he doesn't explain how the two are connected; probably because they are not.

20283. Is the missing information identified in the oral testimony of the CAPP witnesses?

20284. Mr. Moore says it's a lack of information about alternatives considered by TransCanada, including Dawn [10 T 13439]. Dr. Safir says there is no information on the costs of expanding at North Bay compared to Dawn to provide the service contemplated at North Bay, which seems to be the same point made by Mr. Moore. Mr. Moore agreed that, if available, this information would be helpful to CAPP [10T15178]. Neither of these witnesses, nor any others on the CAPP panel, were aware that the information had been on the record since the 1st of June when TransCanada filed its response to the National Energy Board Information Request No. 10 [B-14] and that the information showed the cost of expanding at North Bay is significantly less than at Dawn.

20285. CAPP is not the regulator. TransCanada doesn't have to satisfy CAPP's appetite for information. What TransCanada has to do is satisfy the Board. If TransCanada doesn't satisfy you, the result will be a denial of the application. The result cannot be a direction to TransCanada to go give CAPP more information of a nature that has not been identified or detailed.

20286. And how puzzling is this position of CAPP? CAPP says it wants TransCanada to compete in order to maintain a high utilization of its assets and identifies the resulting high utilization as an important goal [C-1-11, CAPP Written Evidence, page 2, paragraph 6]. CAPP expects TransCanada to compete in order to maintain utilization of the system. Yet, when its presented with a proposition to enhance the competitiveness of the Mainline, the process is bogged down in a search for detail.

20287. TransCanada's position is that there is plenty of evidence on the record to support the need for the North Bay Junction now before it's too late. A call for further information means further delay, which favours the status quo by preventing a solution that is needed now and a solution that will have no adverse effects if it's not used.

20288. Now, Dr. Safir was retained after evidence and Information Request responses had been filed and after CAPP's position was on the record. His "response evidence", and I put those two words in quotes, was supposed to respond to the evidence of other intervenors, but was used more to reiterate the CAPP opposition to the TransCanada proposal and to throw in the new CAPP pilot proposal which doesn't appear to have anything to do with what any of the intervenors had to say in their evidence.

20289. In my respectful submission to you, Mr. Chairman and Members, Dr. Safir's so-called evidence added nothing of value to this record. He was obviously not familiar with the filed material - recall that he thought TransCanada was relying on Union's expert evidence [10T13721; 10T14389-14392] and that, as I've talked already

about, he complained about missing evidence on facilities costs at Dawn and North Bay which had in fact been filed months earlier. [10T15162-15167; B-14:EGD-TCPL 1.10]

20290. In retrospect, he, to use his phrase, misspoke himself on several occasions. Later he said TransCanada was not relying on the Union evidence [10T15117-15118] and Dawn was not North Bay and nor was North Bay Dawn. [12T18508-18512] And in my respectful submission, Mr. Chairman, you should ignore Dr. Safir's evidence.

20291. We will turn to the Cogenerators Alliance. The Cogenerators Alliance argues that the North Bay proposal imposes a different toll structure on the existing structure, that it results in a discriminatory toll, and that including the fixed energy charge in the tolls upstream and downstream of North Bay is a penalty. [C-9-5]

20292. TransCanada dealt with these points in its Reply Evidence and little purpose would be served by me in repeating those comments here. But I would refer you to pages 20 to 25 of 37 of the TransCanada Reply Evidence and, specifically, to Section 6.4 and 6.5. It is my submission that the points made there remain intact after cross-examination. [3T4377 to 4455; 4T4491 to 4605]

20293. The real focus, though, of the Cogenerators Alliance was on what Mr. Stauff called "equitable access" [13T19953 to 19955], which presumably refers to his conversion proposal that existing firm shippers, like his clients, should be permitted to convert to segmented service; in fact, should be able to go back and forth between segmented and long-haul service during the term of their existing contracts.

20294. You will find TransCanada's main response to this proposal in Section 7 of its Reply Evidence [B-20], but two points bear repeating.

20295. The first is that TransCanada accepts that allowing a conversion right at North Bay would have benefits in terms of adding liquidity by making it easier for more shippers to take advantage of the new point.

20296. The problem is a lack of understanding of the effect of providing the same right at other points on the system. North Bay has characteristics that are unique. That is one of the reasons why it was selected as a potential trading point in the first place. [4T4456; 4T4569]

20297. The second point concerns the value of a long-term contract. Members of the Cogenerators Alliance executed long-term contracts for commercial reasons, presumably after a risk/reward analysis of doing so. TransCanada has been careful to ensure that its North Bay proposal complies with the existing toll design and does not affect existing contracts.

20298. The "conversion right" proposal of the Cogenerators Alliance, if approved, would detract from that intention.

ALTERNATIVE PROPOSALS

20309. And that brings me to the alternative proposals. In this context, I am referring not to those who are saying no to anything but the status quo. I'm thinking about the other alternatives, and that includes the Enbridge Parkway proposal, the Union Parkway proposal, the Union Parkway Belt proposal, and the Gaz Metro St-Nicolas proposal.
20300. These proposals, all of them, must be considered in the context of the well-established Board approach to the burden of proof and to the onus that lies on an applicant and on intervenors.
20301. It was in the GH-2-97 case that the Board held that, in arriving at its decisions, it does not focus on the specific interests of two adversarial parties, but must focus its attention on the wider public interest.
20302. It, therefore, concluded that it was inappropriate to designate a burden of proof with respect to each of the issues before the Board in a public hearing.
20303. The Board accepted, in that case, that an applicant has a burden of establishing, on the balance of probability, that the relief sought in its application should be granted, whether or not that relief involves a change in the status quo.
20304. If the applicant establishing a prime facie case, the burden shifts to those parties opposed to the applicant's position.
20305. Should an intervenor not nearly oppose the position of an applicant but also propose its own alternate position, then the intervenor has, with respect to that position, a burden of proof that is identical to that of the applicant.
20306. The principle behind that is that were it not the case, the intervenors would have an unfair advantage over an Applicant. The conclusion is based upon principles of fairness.
20307. Now, this position has been reiterated by the Board in at least two subsequent decisions: RH-1-92 and RH-1-2000. [National Energy Board Reasons for Decision TransCanada PipeLines Limited Applications for Facilities and Approval of Toll Methodology and Related Tariff Matters GH-2-87, July 1988, pages 80-81; National Energy Board Reasons for Decision Westcoast Energy Inc., RH-1-92, August 1992, pages 3-4; National Energy Board Reasons for Decision Maritimes & Northeast Pipeline Management Ltd. RH-1-2000, August 2000, Tolls, pages 37-39]
20308. So it is in that context that you must consider each of the alternate proposals. In respect of those proposals, the proponents bear a burden of proof that is the same as an Applicant.

20309. Both Union and Enbridge made proposals relating to Parkway, and they differ. [B-20, p. 26; 12T12734ff] Three proposals were made by Union -- two in its responses to information requests from TransCanada [Exhibit C-21-7; TCPL 23 and 1] and one in its response to NEB's IR 2. [Exhibit C-21-12] The Enbridge proposal was made in response to NEB IR 1.1. [Exhibit C-12-11]
20310. Now, I note in passing that TransCanada has proposed changes in the past [9T13040] -- that evidence is on the record -- and that such alternatives require discussion prior to implementation to ensure that the issues are understood and addressed where necessary.
20311. Union's alternative doesn't solve the issue described by its own expert -- that being that there's a toll from Parkway to the CDA -- and neither does the Enbridge alternative since there is still a toll from Parkway to the CDAs. These alternatives simply are different ways of "aggregating" volumes to be exchanged or traded at a new point.
20312. TransCanada responded to these proposals in its reply Evidence. [B-20 TransCanada Reply Evidence pp. 25-29 of 37] The TransCanada position is essentially that the proposals of Union and Enbridge require thorough assessment by TransCanada and other stakeholders before they could be implemented. The Reply Evidence highlights the issues to be considered, including the need to restructure existing contractual arrangements amongst multiple parties. I note that even Enbridge [12T18247-17268] and Union [13T18890-18892] mention that Parkway would require further analysis prior to implementation.
20313. What is puzzling about this is that Union and Enbridge have filed joint evidence in this case, but apparently can't agree on what to do about Parkway. If the two LDCs who operate Parkway can't agree, how can TransCanada be expected to do so? Which one should it say "yes" to? Which one should the Board say "yes" to? In this case, the only answer is "neither".
20314. The focus of Gaz Métro has been on its LNG project. The Gaz Métro position is to seek an order of the Board that St-Nicolas be included as a receipt point together with a commitment to maintain the current tolling design. [C-19-7, p. 2]
20315. Gaz Métro spent a lot of time during cross-examination seeking to have TransCanada accept that now is the time for St-Nicolas and now is the time to make a toll methodology decision. [see e.g. 6T7706-7708; 6T7753ff; 6T7766]
20316. Mme Mercier, when she testified, supported the Gaz Métro position with a desire for certainty and with the argument that the approval of St-Nicolas at this point was another case of "no harm, no foul". In other words, if approved and nobody uses it, no one is the worse for the Board having done so.
20317. TransCanada can certainly empathize with the desire for certainty. Uncertainty means risk and risk means cost. But what we have in the Gaz Métro request

is the clearest indication of the difference between TransCanada's North Bay proposal and the proposals of all of the other parties.

20318. So let's go back to where the North Bay proposal started. It was discussed. It was discussed at the TTF. [9T13122-13125] The Application was filed in September of 2003. [B-4] We've been through an ADR process, an expansion of the issues to be considered, an information request and response process, and still some intervenors say that more information is required to make a decision.
20319. And you compare that to the Gaz Métro proposal, it hasn't been through any kind of a process. And on its face, it is infinitely more complicated than North Bay. It raises a multitude of issues. Recall the discussion between Maître Leclerc and Mr. Nettleton about all of the issues that surrounded the multiple years of hearings that ultimately resulted in TQM. [10T14045; 10T14382-14387] It is far too simplistic to say the toll from St-Nicolas to Dawn should be the same as the toll from Dawn to St-Nicolas once you think about the contracts that underpin the TQM system. The impact of receiving large volumes at St-Nicolas could be TQM needing to take TBO on TransCanada to move gas west.
20320. And note in particular that Gaz Métro declined to provide any more than the most rudimentary information about its project, and in doing so, it expressed the belief that TransCanada's request for information was solely to benefit the business interests of TransCanada. [C-19-8, Response to TCPL IR 1]
20321. But as became clear in cross-examination, the information that TransCanada requested is exactly the information that is required by Section 52 of the *National Energy Board Act* and by the National Energy Board Filing Manual in order to make a determination of whether the certification of facilities is in the Canadian public interest. It is information about supply and markets and economic feasibility, financial responsibility of the sponsors, costs, volumes -- all that information that the Board needs.
20322. Now, how can TransCanada tell Gaz Métro or tell you, the Board, or anyone else what the toll for St-Nicolas to Dawn would be without information to establish whether facilities are required to meet the service requests? What the cost of those facilities would be? How can TransCanada determine the impact on its system of significant volumes from an LNG project when it doesn't have any information about volumes and consequent facility costs?
20323. And remember also that major projects like Alliance, like Maritimes and Northeast, lived with toll methodology uncertainty until their pipeline facilities applications were made and decided. [12T18202ff]
20324. TransCanada is not saying that St-Nicolas should not be a receipt point on the Mainline. TransCanada is saying that it is far too early to make that decision. The LNG Project will not be a reality until 2008, if ever.
- 20325.

OTHER ISSUES

20326. I'll turn next, Mr. Chairman and members, to the other issues.
20327. By "other", I mean other than Issue 3.
20328. Issue 1: The appropriateness of the existing zonal toll structure for domestic deliveries.
20329. Is the existing zonal structure for domestic deliveries appropriate? TransCanada says yes. [B-12, Additional Information, pp. 2-5 of 9] No one else has proposed an alternative. Enough said.
20330. Issue 2: The appropriateness of the existing toll design for short-haul services and of TransCanada's short-haul contracting practices.
20331. TransCanada's evidence is that its existing short-haul toll design, including fuel costs, and its short-haul contracting practices are appropriate. [B-12 Additional Information, pp. 5-8 of 9]
20332. IGUA seems to take issue with both, and Union has raised the contracting practices during cross-examination.
20333. IGUA's concern, which appears to be the overall impact on the Mainline's tolls from reduced long-haul throughput, is perfectly valid and is shared by TransCanada. Where TransCanada and IGUA part company is with respect to how to deal with that concern. TransCanada's approach is to respond to the market's demand for short-haul in a way that will encourage higher utilization of the long-haul system to the benefit of all system users.
20334. IGUA's approach is quite different. It says that if TransCanada is to be allowed to continue to offer short-haul, then North Bay should be approved. [C-2-6 Written Evidence, page 3 line 16-18] But it goes on to say that new short-haul should be permitted only where there is physical capacity on the contracted delivery path -- a new approach that would prevent TransCanada from offering new short-haul from Dawn.
20335. It appears that IGUA would like short-haul service requests to say be denied, or at least put on hold until a complete review of short-haul tolls is completed, and that, TransCanada says, would greatly handicap TransCanada's competitive position.
20336. IGUA takes exception to the characterization that it is attempting to "prevent" additional short-haul. [1T567] It says it is not their intention. But intention or not, that's the result. IGUA has acknowledged that new short-haul could only be offered from Dawn if TransCanada were able to get an assignment of some of the existing capacity on the Union system, but that an assignment is unlikely to be available. [1T585]

And that means that IGUA must be well aware that its direct path approach will prevent further short-haul out of Dawn.

20337. Interestingly, IGUA does not apply the direct path restriction to short-haul from Parkway to points upstream. Mr. Fournier says go head and offer short-haul from Parkway [1T404] even though it would not follow a direct contract path [1T1088 to 1093] and, therefore, would be using the integrated system.

20338. IGUA goes so far as to argue that TransCanada has no obligation to provide short-haul and could have refused to do so on the basis that it needed its M-12 capacity to serve long-haul export customers. [C-2-6 Written Evidence, page 16, line 1] IGUA would prevent TransCanada from responding to the market's demand for short-haul in the hope that those who seek short-haul are captive to the Mainline.

20339. Now, the difference between the TransCanada and IGUA approaches appears to result from different views on the options available to shippers seeking short-haul service. TransCanada believes that serving the demand of the market for additional short-haul will retain volumes that could leave the system, while failure to respond to the demand will result in loss of revenue.

20340. IGUA believes that the customers who might take short-haul service if it's available are captive to the Mainline and will be forced to take long-haul or some other service, thereby, contributing revenue that keeps long-haul tolls down.

20341. But shippers have options, including bypass, which IGUA acknowledges. [CAPP-IGUA 2(a); B-20, page 15, A20] If anything is clear from the record, it is that shippers have alternatives and are not shy about pursuing them when it's in their commercial interest to do so.

20342. What would be the result if one assumed that IGUA were right and TransCanada could refuse short-haul where there was sufficient capacity on the contract path while continuing to offer all other services using the integrated system?

20343. IGUA would have TransCanada take advantage of the captivity of some customers in order to deny them a service option that's available to others. And that is a remarkable position for IGUA, considering that "captivity" of long-haul shippers is cited as the reason for TransCanada to protect them. [RH-1-2002, page 73, quoted in B-20 (Reed), page 12, lines 9-12] It's not consistent to argue that TransCanada should be required to take advantage of and yet protect the same set of customers at the same time.

20344. And nor is the suggestion that TransCanada has the right to withhold capacity [1T833 and 834] consistent with IGUA's prior position. In RH-1-99, IGUA argued that TransCanada did not have the authority to withhold even discretionary service like IT. And if refusing discretionary service is contrary to the Act (in IGUA's view), how can refusal of available firm service be condoned?

20345. TransCanada does not believe that it could have or should have refused to provide a service that it has the integrated capacity to provide and that is consistent with the tariff. [Reply Evidence B-20, page 14, A18]
20346. The other short-haul contracting practices issue, it seems, relates to concerns over preference being provided to affiliates. This surfaced in cross-examination of the TransCanada witnesses by counsel for Union, and it has also arrived in the ANE Written Argument.
20347. During his cross-examination of the TransCanada witnesses, Mr. Smith, counsel for Union, indicated that he would be arguing that TransCanada had given some sort of preference to an affiliate by allocating existing and new capacity to TransCanada Energy as a result of an open season that took place early in 2004. [6T9101 and environs] And with that message delivery, an obligation rests on me as Applicant's counsel to deal with the issue in argument-in-chief so that Mr. Smith will have an opportunity to respond to the Applicant's position.
20348. But, quite frankly, Mr. Chairman and Members, I don't know what to say about this.
20349. The reason I don't know what to say about it is I can't understand what the argument's going to be. TransCanada is required by the terms of its tariff, and specifically the Transportation Access Procedures, to make its capacity available in an open season that is equally accessible to anyone. LDC, marketer or end-user, affiliate or non-affiliate, Union or ANE or whoever. Any party has the opportunity to request capacity according to the terms and conditions of the TransCanada tariff.
20350. TransCanada made clear where capacity was available, where capacity might need to be added and then it offered that capacity to the market. Union or Enbridge or Gaz Métro or the members of the Cogen Alliance or ANE or anyone else could have bid on the capacity. The evidence is that TransCanada Energy did bid on the capacity [9T12121-12123; B-43]. The evidence is that nobody else did [9T12121-12123; B-43]. And that, I suggest, should end the matter.
20351. The evidence is that capacity has been allocated according to the terms of the TransCanada Mainline tariff that has been approved by the Board and which gives equal access to all parties.
20352. Now, it was in this context that the terms of certain contracts between Union and TransCanada were raised also by Mr. Smith. The focus seemed to be on the term by which the receipt point would change in the future. You'll recall that this led to an undertaking of TransCanada to indicate the provisions of its tariff that it relied upon to entitle it to require a change in receipt points. The response was filed as Exhibit B-45, and the response is very simple: TransCanada can only offer capacity that it has. It cannot offer capacity that it does not have.

20353. If capacity that it has today may not be there at some future date, then it cannot contract to provide that capacity after the future date. This is not rocket science. The contract provisions reflect what TransCanada is legally entitled to do.
20354. The thinking behind the contractual provision and the course of conduct in respect to these clauses is described in Exhibit B-55, in response to another undertaking given to Mr. Smith, and I will not repeat that here but commend it to you for your review and consideration.
20355. Contrast the TransCanada position to that of Union. TransCanada has a tariff that stipulates how it may offer capacity to potential customers. It has a tariff that stipulates the renewal provisions and other provisions in any contract that it enters.
20356. Capacity is offered in open seasons and allocated on a maximum revenue basis - toll times term. [3T3228]
20357. Shippers on TransCanada may renew their contracts for as little as one year upon giving six months' notice to TransCanada [C-19-12; TransCanada Mainline Tariff, FT Toll Schedule, pp. 7-8 and 10].
20358. The terms of the FT and STFT contracts are stipulated by the tariff. [C-19-12] TransCanada has no ability to discount rates [NEB Decision RH-1-99; B-23] to meet competition.
20359. TransCanada sought approval of term-differentiated tolls, service and pricing innovations, changes to its contract renewal policy, prices discretion; all in an effort to keep volumes on its system. [B-23] And those proposals were all turned down. They were all opposed by -- some or all of them were opposed by Union or others. [B-12, Appendix A; B-20, p. 17REF:]
20360. Then look at Union. There's no Union tariff. There is a series of rate schedules. Union has the ability to reduce or increase its rates, whether to meet competition or to provide a particular service to its customers or for other reasons. [13T19648-19676] It has the ability to negotiate different renewal rights for different customers. [13T1938ff]
20361. Renewal rights in TransCanada's contracts with Union vary, including requiring two years' notice to renew for a minimum of 15 years; two years' notice for a five-year renewal [B-55, p. 3; 13T19395ff; 13T19613-19618]; and complying with whatever the going renewal provisions are at any given time.
20362. Union can buy or sell exchanges [13T19692-19718], something that is valuable to its customers.

20363. So, what do we have here? Union asserting that TransCanada has not complied with its tariff when Union has virtually no constraints from its own rate schedules?
20364. This is where we come back to the Union allegations of anti-competitive behaviour by TransCanada. You will recall that I discussed this with Mr. Baker and Mr. Isherwood when they appeared on the last day of evidence in the hearing.
20365. Mr. Baker started from the position that he wasn't sure whether Union was a competitor to TransCanada. [13T19044ff] He described it to you as "channel partners"; whatever that may mean. He apparently thinks that Union and TransCanada are competitors in some places but not others.
20366. While Mr. Baker may not think that Union is a competitor to TransCanada, the evidence would suggest otherwise, as do the actions of Union.
20367. And look at the terms of the competition. TransCanada's hands are tied by its tariff. Union is here, I presume, saying that TransCanada's hands should be tied more tightly, while Union's hands are not tied at all.
20368. Union can negotiate whatever it can in respect of renewal rights, term of the agreement, receipt and delivery points and prices. Does that sound like balanced competition to you?
20369. Look at the difference in risk. To maintain its M12 capacity, TransCanada has to give two years' notice and renew for 15 years. Yet, TransCanada's shippers, whose needs inspire the need for TransCanada to have M12 capacity on Union, can leave the TransCanada system on six months' notice.
20370. TransCanada bears the risk of the difference between the 15-year term and the six months' notice. [13T19598] You will recall that Mr. Baker protested greatly to this -- I forget how many times [13T19576-19604] he said that the contractual term could be renegotiated. But that's entirely at Union's discretion.
20371. If Union doesn't want to reduce the 15-year term for the renewal, it doesn't have to. If Union thinks that it is in its competitive interest to have TransCanada on the hook for 15 years, particularly given that TransCanada's customers are only on the hook with TransCanada for one year, it can do that.
20372. All of this and I expect you'll hear Union argue that TransCanada must offer its tariff service based on integrated service from Dawn to Parkway and points east, taking assignment of contracts that Union may negotiate with other parties.
20373. Mr. Chairman and Members, it's very clear from all of this that TransCanada is at a serious competitive disadvantage to Union, and Union is seeking to maintain that competitive disadvantage by convincing this Board to decline to approve a

step that would enhance the competitiveness of the Mainline. That is one of the reasons why I submit to you that the Union position should be rejected.

20374. Short-haul contracting is not a new phenomenon, nor is it unique to TransCanada, nor is it going to disappear. A long-haul system, like the TransCanada Mainline, must adapt to the evolution of pricing points that split long-haul into multiple segments. That is what TransCanada has done and seeks to do.
20375. On the evidence in this record, TransCanada invites the Board to conclude that both the short-haul toll design and the short-haul contracting practices remain appropriate.
20376. Issue 4: The Appropriateness of offering Firm Transportation, Interruptible Transportation and Short Term Firm Transportation services using domestic delivery areas as receipt points
20377. TransCanada's position is that it's appropriate to offer IT and STFT services using domestic delivery areas as receipt points, but it is reluctant to offer FT for the reasons that it cites in its evidence. [B-12, Additional Information, pp. 8-9 of 9]
20378. No one sponsored a specific proposal on this point other than the Enbridge storage discussion, which would be problematic if broadly based. And no one has discussed cost-shift impacts. This is not an issue that can be addressed based on the record in this case.
20379. Issue 5: The potential impact of any changes to toll design on tollpayers and other services
20380. There are no changes to the Mainline's existing toll design resulting in the North Bay Application[B-12, Additional Information, p. 9 of 9] and no one has suggested that there should be.
20381. Issue 6: The appropriate process for implementing toll design changes for the Mainline.
20382. And that leaves me, Mr. Chairman and Members, with Issue 6, which, with your indulgence, I will deal with before the break, and that is the appropriate process for implementing toll design changes for the Mainline. Issue 6 did generate a fair amount of discussion on the record, if not much in the way of written evidence in advance of the hearing.
20383. IGUA has a suggestion for a toll design review. The Board, in particular, showed an interest in the operations of the Tolls Task Force.
20384. No one would disagree with the proposition that consultation before litigation is a good thing; not even lawyers.

20385. Nor should anyone disagree with the idea that a negotiated solution is better than a litigated solution. A negotiated solution, by definition, involves agreement. A litigated solution involves the imposition of a decision on the parties by the regulator. Given the choice, anyone should choose negotiation.
20386. But the choice is not always there. Sometimes the interests of parties conflict, and sometimes they are too diverse for a negotiated solution to be reached.
20387. What this record tells you is that this is one of those cases.
20388. TransCanada is committed to consultative discussions with its stakeholders. This record is replete with references to proposals and presentations, both within the TTF and outside it.
20389. Look at Appendix A to the additional information [B-12] for a description of how TransCanada has sought to negotiate changes to the Mainline toll design.
20390. The service and pricing settlement was contested by several stakeholders, although it was ultimately approved by the Board. The White Paper and the Southwest Zone faced universal opposition.
20391. Was the North Bay Junction proposal formally taken to the TTF before the Application was filed? No. Did that mean that stakeholders were uninformed? No.
20392. Recall Mr. Moore struggling to recall which of the -- and I'm using his records -- "lot of presentations with respect to North Bay" that he was being asked about. [10T15195]
20393. Recall Mr. Ferguson's evidence about his presentations and discussions of the North Bay concept and Application.
20394. Would there have been any hope that the TTF would come up with a negotiated solution to the receipt and delivery point issue? For that answer, look at the Board's facilitator's report. [A-7]
20395. The Application was the first time -- this Application was the first time that the Board's ADR process was tried for Mainline tolls, with the full support and co-operation of TransCanada. It failed and the report tells you how far apart the parties are on toll design issues.
20396. Look at the varied views of the parties to this hearing on the TTF. From TransCanada's perspective, it is a good location for discussion and the implementation of minor changes, but it is not a good location for resolution of issues, and that is because of the competing interests and the structure of the forum. [9T13085]

20397. CAPP [9T13085] and Union made positive noises about the TTF, but the Cogenerators Alliance says that the diversity of interests and philosophies amongst the Intervenor community and the pipe is a challenge, to use Mr. Stauff's word, and that the TTF has an overwhelming bias towards maintenance of the status quo, because of the way the voting mechanism works and because of the parties involved.
20398. The CoGenerators Alliance and TransCanada are on the same page in this case, saying that realistically, someone who wants to advocate significant change on the Mainline in terms of services or toll design must go to the regulatory litigation process and convince the Board. [13T20033-20039]
20399. And the experience that you have in this case, Mr. Chairman and Members, is that you don't need to include the word "significant" that Mr. Stauff included in his comment. If you want to advocate change on the Mainline in terms of services or toll design, regulatory litigation is the path that you need to follow.
20400. Does that mean that TransCanada will ignore the TTF in the future and bring all toll design or service issues directly to the Board? No. Mr. Frew told you that. [9T13149-13152] He told you, Mr. Chairman, that the Board is the last resort. But when it is abundantly obvious that the nature of the issue is one that ensures that there will be no TTF solution, the TTF would be waste motion and lost time.
20401. The responsibility of the Board is to make decisions on applications that are brought before it. Those decisions are to be made on the evidence that is adduced in the case. If the Board is persuaded by the evidence of the Applicant, it approves the application. If it is not persuaded, its recourse is to deny the application.
20402. It is not possible for a regulator to direct a negotiated solution. It is not possible for you to say to the stakeholders, "play nicely", and have them do so.
20403. You can encourage settlement, but you can't compel it. And when interests are diverse, it's for the Board to resolve the issue by a decision.
20404. If the Board were to refer matters to the TTF, it would be playing into the hands of those who seek delay and those who support the status quo. And that, in my respectful submission, is not, and should not, be the role that the regulator plays.
20405. Whatever the benefits and failures, the strengths and weaknesses of the TTF may be, it's not for the Board to send issues to that forum. It's for you to decide them.
20406. Now, you will recall that IGUA appeared first in this hearing. And as it turned out, that change in the order of appearances meant that the Montreal sessions started with a surprise announcement from IGUA that the Board should direct a full toll design review, including the retainer by TransCanada of an independent toll design consultant. [ref] That announcement was a surprise because the suggestion was not in the

IGUA Prefiled Evidence. There, IGUA expressed a view with which TransCanada would entirely agree, that while it's desirable for toll design change to be subject to the process, the TTF process, hopefully to achieve a consensus agreement on the merits of the change, that's not always feasible. [C-2-; page 30]

20407. Mr. Fournier's recommendation appeared initially to be restricted to short-haul tolling, but then expanded to the point of either recommending a full toll design review or at least recognizing that a broad review would be the result of going down the review path. [1T198 to 1201] Mr. Fournier also seemed to think that this sort of review would not have much of a timing impact, being a simple matter of a six-month toll review, followed by a consideration of the results in the 2005 toll case and a decision by the Board. [1T433] And IGUA wants this done before North Bay is approved.

20408. Mr. Fournier provided no details of the kind of toll review that he envisioned, and himself seemed unsure of how it would work. [1T1220ff] In this hearing, remember that IGUA was given the opportunity to say whatever it wanted about toll design change, and it brought forward no proposals, apart from its views on short-haul cost allocation. Mr. Fournier pleaded lack of financial resources and lack of expertise, both of which are surprising given that the IGUA membership includes large, sophisticated multi-national corporations. [1t1050]

20409. There appears to be no support for a toll design review from any party other than IGUA. Like the other participants in this hearing, TransCanada does not see a need to review its existing toll design, but if the Board believes that a review of some or all aspects of the toll design is appropriate, that review certainly should not be a prerequisite for approval of the North Bay Junction Application.

20410. The onus of convincing the Board that a full toll design review is warranted lies with IGUA as the proponent of the concept. That onus has obviously not been met. It has not been discharged by the musings of Mr. Fournier, so the concept must be rejected.

TIMING

20411. Before closing, Mr. Chairman and Members, I want to talk a bit about timing.

20412. Timing has been an issue from the start of this case. Recall that the original Application was filed almost a year ago -- almost a year ago on September 15th, 2003 -- and it asked for approval of the new receipt and delivery point as soon as practicable, to be effective November 1, 2003. TransCanada noted then that recent open season results demonstrated that the demand for short-haul transportation service in the market was greater than the supply of available capacity in the east end of the Mainline.

20413. With Dawn being full and excess capacity available at North Bay, TransCanada was positioned to use existing capacity to attach short- and long-term demand to reduce the likelihood of unnecessary bypass and better compete in the market. TransCanada's expectation was that the new receipt and delivery point would retain and attract more of the limited supply from the WCSB over the Northern Ontario line as long-haul to North Bay Junction and into the eastern market to the benefit of all shippers.
20414. Well, the 2003 winter season was lost, as the process worked its way through an ADR and the preparation of additional information to address the additional issues. TransCanada refiled the Application with the additional information on March 31st, 2004, with the request that a decision be made by September 15th, 2004 to allow for contracting before the November 1st beginning of the 2004-2005 winter season. [B-12] The way that the proceeding has unfolded has made September 15th unachievable, but it has also emphasized the need for expedition.
20415. Delay is a fact, but the time for action is now. TransCanada faces competition now. The short-haul services -- the demand for short-haul services is growing. There are some 4.4 billion cubic feet a day of renewals coming up between now and 2006, [B-24; 2T2880] the majority of which has the opportunity to go elsewhere. [2T2301]
20416. Even CAPP acknowledges that those who could reduce throughput on the system are moving in that direction "as we speak". [10T14610] TransCanada's competitors are conducting open seasons right now. Those open seasons are for capacity in 2006. Decisions have to be made very soon if facilities are to be in place for 2006, and TransCanada wants to ensure that the Mainline remains a competitive alternative for those shippers. For that to happen, North Bay needs to be approved now.
20417. The quandary that faces TransCanada consists of a problem beyond its control, which is competition, and solutions that seem to be just out of reach due to delay. If this quandary is not resolved now, the risk of reduced long-haul volumes and higher long-haul tolls will increase.
20418. TransCanada is not here to say "slow down the competitors". It is here to say: "Help us go faster. Don't let the competitors slow TransCanada down." That is not in the interests of the market or the industry.
20419. The urgencies of action -- the urgency of action has been emphasized by the open seasons of the competitors. TransCanada is asking that the Board move as quickly as possible to give TransCanada this simple tool to compete.

CONCLUSION

20420. I'll conclude by going back to where I started, which is to say that there is much less to this case than meets the eye.

20421. When you look at the record with an objective eye, you see the need for the simple approval of a receipt and delivery point that will provide market choice and balanced competition.
20422. You see your invitation to a party -- a broad toll design review -- to which none of the Intervenor chose to come.
20423. You see that the opposition to the approval of North Bay Junction is founded on misunderstanding and self-serving positions.
20424. And you see insufficient justification for the alternatives that have been proposed by others.
20425. And that means -- all that means, that you should feel comfortable in granting to TransCanada the approvals that it seeks from the Board, all effective November 1st, 2004.
20426. And those are: First, North Bay as a receipt and delivery point [B-12, TransCanada Application, p. 11, para. 45]; second, all associated tolls for services to and from the North Bay point [B-10]; third, removal of North Bay from the existing Northern Delivery Area described in Section XX, Subsection 1, of the Mainline General Terms and Conditions [B-12, Application, p. 11, para. 45]; and fourth, amendment of Sheets 6 and 7 of the Mainline General Terms and Conditions in respect of the determination of tolls.
20427. Time is of the essence, Mr. Chairman and Members, so TransCanada asks that your decision be rendered just as soon as you possibly can.
20428. That concludes my submissions, Mr. Chairman, and I'm happy to try to answer questions, if there are any.
20429. **THE CHAIRPERSON:** Monsieur Caron...?
20430. **MEMBER CARON:** Just one question of clarification, Mr. Yates.
20431. When you spoke about St-Nicolas, you made reference to Section 52 of the Act and the factors enumerated in there. I wonder if you could help me better understand your views on the importance of looking at Section 52 in the context of this decision which -- to add -- the decision to add St-Nicolas or not under part 4 of the Act?
20432. **MR. YATES:** Mr. Caron, I don't think that I would suggest that there is any importance to looking at Section 52.
20433. My discussion of that section was in the context of the information that TransCanada had sought from Gaz Metro in respect of the request of Gaz Metro as to what the tolls should be -- the toll methodology should be between St-Nicolas and Dawn.

20434. And you will recall that the response of Gaz Metro was that the information was just being asked for because of competitive position.

20435. My focus on that was solely to say that you can't get to the information about what the tolls should be without knowing what the rate base is for the facilities that would be involved in that sort of a situation.

20436. So the only point that was made in the context of Section 52 was that the information that was requested was that type of information. That type of information would be needed in order to determine what a toll would be and that was just used as an illustration -- an illustration of how premature it was to be seeking that decision -- for Gaz Metro to be seeking that decision from you today.

20437. **MEMBER CARON:** Thank you. That's clearer now, Mr. Yates.

20438. Thank you, Mr. Chairman.

20439. **THE CHAIRPERSON:** Thank you, Mr. Yates. The Board has no more questions for you. We thank you and we will break for 20 minutes.

--- Upon recessing at 10:55 a.m./L'audience est suspendue B 10h55

--- Upon resuming at 11:15 a.m./L'audience est reprise B 11h15

20440. **THE CHAIRPERSON:** Good morning, Mr. Schultz.

--- FINAL ARGUMENT/PLAIDOIRIE FINALE BY MR. SCHULTZ:

20441. **MR. SCHULTZ:** Good morning, Mr. Chairman, Members of the Board.

20442. I am pleased to present the argument and behalf of the Canadian Association of Petroleum Producers.

20443. And the critical question, from CAPP's perspective, in this case, is whether TransCanada is going to be allowed to proceed with its goal of developing an eastern market centre by rolling out small pieces one at a time or whether TransCanada is going to be required to put the entire goal on the table to be considered in an orderly and considered manner.

20444. Mr. Chairman, Members of the Board, there are many ways to approach the argument in this case. The question of where to start, in argument, is always a challenge.

20445. One could start with the open season that provoked the complaints. One could start with the September 2003 Application with the ambiguity as to what TransCanada was seeking to achieve with North Bay Junction in relation to an alternative to Dawn.

20446. One could actually begin with the Reply Evidence in which the theme of North Bay Junction as simply a choice is then clearly focused as the apparent goal of the Application.
20447. One might even be tempted to go all the way back to the 1997 and 1998 period and walk along the road to North Bay Junction, and I'm sure that would be a thrilling prospect for all of you.
20448. It would be easy to structure an argument that built on frustration or anger or in various ways was designed to point fingers or to accuse various other folks of all kinds of nefarious things.
20449. None of that is going to help you render your decision, and if we can't restrain ourselves, then certainly we would expect you to discourage that. And more importantly, none of that kind of thing is going to put one more molecule of gas into the Mainline.
20450. So my starting point is, in essence, where we left off which is your decision in RH-1-2002 in respect of the Southwest Zone.
20451. CAPP recognizes that the Board made a difficult and important decision in the Southwest Zone, and I submit it's important that we begin by understanding that decision because it represents a turn in the road; and as I say, one that CAPP recognizes the Board made with difficulty and viewed as important.
20452. In addition, Mr. Chairman, Members of the Board, that decision also provides an independent frame of reference to understand the present case, one that gets us beyond all of what Mr. Yates would characterize as chaff and posturing.
20453. Two key factors emerge from reading your Southwest Zone decision. The first is the emergence of Dawn as a market hub, what the Board recognized as the market reality; and secondly, the ability of the Mainline to compete to serve the Dawn hub, the ability of the Mainline to respond to the market reality.
20454. I would note that Chapter 8 of the RH-1-2002 decision is one of the longest chapters. The only one that I think is longer deals with operating costs and has a great many sub-parts to it.
20455. I note, as well, that there are three full pages of views of the Board preceded by a careful review of the parties' positions.
20456. There are four themes that the Board groups the concerns of the parties under: Firstly, development of the Dawn hub; secondly, competitiveness of the Mainline; thirdly, zoning principles; and fourthly, future business model of the Mainline.

20457. If we turn to the Board for decisions, then I would submit that we need to begin with the framework that the Board gives us. That doesn't mean that one should take individual words or phrases out of context without reading the entirety of the decision. I'm speaking about looking at the decision in its entirety and understanding or trying to understand what the Board had in mind.

20458. And, of course, only you know that so I don't pretend to tell you what you're thinking, but I can only tell you what appears from the decision to be the critical frame of reference.

20459. The passage that struck me is the passage at the top of page 75 of the Board's views, which contains what seems to be a critical and important finding. The Board said this:

"The Board accepts that customers are switching to local markets and short-haul capacity and that Dawn has emerged as a market hub at which transactions are occurring. The inclusion of costs downstream of Dawn puts TransCanada at a substantial competitive disadvantage relative to competing pipelines in serving this hub. If the Mainline is unable to compete effectively for market share so that there is further loss of long-haul volumes, the negative impacts on all shippers are likely to be substantially greater than the potential negative impacts on the Eastern Zone toll resulting from the SWZ."

20460. And in the paragraph or two prior to making that finding at the bottom of page 74, the Board noted the reality of Dawn and the competition in serving Dawn and made the observation that that was the current competitive reality, and the Board went on to observe that the Southwest Zone was seen, from the Board's perspective, as responsive to the current market reality.

20461. So the key points that emerge from this analysis, at pages 47 and 75 of the Board's decision, are that customers are switching to local markets. Dawn is the market hub where those transactions are occurring. The Mainline needs to be an effective competitor. Failure to compete effectively can lead to more loss of long-haul volumes.

20462. Effective competitors respond to competitive realities, and it is the shippers who bear the impact from the loss of load. It is the shipper that ultimately will pay this.

20463. In my respectful submission, the evidence in this case is clear. Dawn remains the competitive reality.

20464. CAPP's participation and evidence in this hearing has questioned how, if at all, the North Bay Junction proposal responds to the competitive reality of Dawn.

20465. A second key point in your RH-1-2002 Southwest Zone decision is that the competitive reality of competition for Dawn service, as the Board saw it, overrode all the other issues and concerns with respect to the Southwest Zone.

20466. There were other issues and concerns with the Southwest Zone. The Board recognized those issues and concerns, but the Board said that the competitive reality of Dawn overrode those concerns.

20467. So what does that mean? It means that if you take Dawn out of the equation, you would have been left with a long list of problems of discrimination, of fairness, of inconsistencies in rate design, problems of setting precedents and an issue of major change with no new over-arching objective or issue.

20468. CAPP's participation in this case has also brought out all of those problems with the North Bay Junction. The discrimination, the contract splitting, the fairness issues, the precedential effect, the significance of the change, the inconsistencies; all of the problems of North Bay Junction if you take it out of any significant over-arching context.

20469. So if we look at what the Board was telling us in RH-1-2002 and ask how TransCanada has presented the North Bay Junction, we're left with this question: Has TransCanada presented a proposal for North Bay Junction that shows how it provides an alternative to Dawn service, that shows how it responds to the market reality, the reality of Dawn?

20470. Has it given you some context, the context of a bigger issue in which to address all the other issues and concerns, or has it given you a proposal presented as no more complex than a simple receipt delivery point change, just a simple idea that gives one more choice to the market?

20471. No need to talk about access to Dawn, no need to talk about how North Bay Junction can function as an alternative to Dawn. The only need on this approach is to think of North Bay Junction as another opportunity for short-haul contracting that, if not used, harms no one.

20472. To begin with, Mr. Chairman, Members of the Board, CAPP does not see no harm, no foul as the overriding idea in RH-1-2002. Nor does CAPP see the RH-1-2002 decision as sanctioning what I would characterize as salami tactics in toll design or service changes.

20473. Salami tactics are, of course, where one is fed the entire salami one thin slice at a time without appreciating the full salami.

20474. The Board stated clearly at page 76 of its RH-1-2002 decision its preference that the Southwest Zone had been presented, along with the pieces of comprehensive change that TransCanada still planned.

20475. And we should pause there because TransCanada, at that point, was still speaking of comprehensive change, and the Board indicated its preference to deal with it. That's an aspect of confusion that I'm going to come back to shortly, because what counts as comprehensive is contextual.
20476. CAPP sees the Board's decision in RH-1-2002 as a difficult, serious decision made in the face of what was seen as a current competitive reality, the emergence of the Dawn hub.
20477. But if we imagine simply the emergence of that hub, without Vector and that aspect of competition, if we imagine no Vector, we imagine simply an emerging market centre at Dawn, and we imagine that TransCanada has responded initially to that new market reality with a Southwest Zone for the long-haul piece of access to Dawn, could you doubt that TransCanada would be here with a plan that talked about using its integrated system in a least-cost manner to meet the Dawn service demand?
20478. Would they be here simply talking about North Bay Junction as merely a choice, nothing to do with Dawn?
20479. Here we have a situation where we have a northern and southern loop of a mainline. They feed into that network of facilities commonly known as the Eastern Facilities Triangle.
20480. We have a changing pattern of demand for access to Dawn, and I submit it's obvious that we need to see how the integrated system can meet the demand in the most cost-effective manner.
20481. It is obvious and logical that the evolution of Dawn and the growth of short-haul from Dawn would lead in that direction. Yet, here we are talking about an integrated pipeline system with its Northern Ontario and Southern Great Lakes legs, but we have no integrated proposal for the problem that is as plain as the glasses on my face.
20482. It is as if we are trying to design someone to walk with no pelvis to hold the legs together.
20483. CAPP's witnesses have told you, in cross-examination by Mr. Smith and Mr. Holgate, that understanding the North Bay Junction, in relation to the real problem and in relation to the least-cost way of using the integrated system to meet the Dawn service demand, is the context CAPP needs to see because it is the reality, and that is the reality that you recognized last year.
20484. CAPP agrees that TransCanada should seek to maximize the use of its regulated transportation system. CAPP agrees that TransCanada should continue to approach the provision of service and toll design on the basis that the Mainline is an integrated system.

20485. CAPP agrees with average cost. CAPP agrees with the use of volume or energy quantity and distance as the main cost allocation driver.
20486. CAPP'S evidence did not flatly reject North Bay Junction, but listed a number of concerns of an inclusive variety.
20487. A major concern that CAPP stated was the fact that North Bay Junction was seen by CAPP as part of TransCanada's objective of creating an eastern market centre. And that's in paragraph 8 of CAPP'S Written Evidence. And CAPP noted that the North Bay Junction looked a lot like idea's TransCanada talked about last year to meet Dawn service. And that's in paragraph 10 of CAPP'S evidence.
20488. Of course CAPP is also concerned about how all this would alter the structure of the market. There are comments along those lines in evidence and information request responses. That includes issues upstream of North Bay Junction and whether the northern line would be more or less utilized with the North Bay Junction providing a real alternative to Dawn and how capacity on the long-haul to the market centre would be held.
20489. But the starting point for CAPP is the analysis and the information that focuses on the real problem, and we haven't really gotten to that in this hearing, which I think is frustrating for all.
20490. So is this idea that the operator of an integrated system would come forward with an integrated solution to a change, like a Dawn hub in one part of its system, just some wild flight of fancy? No.
20491. One of the things -- and there were many things, but one of them in the White Paper was exactly that; a proposal for the development of an eastern market centre fed from the north and the south. And CAPP notes that in paragraph 8 of its evidence.
20492. The White Paper is gone. TransCanada no longer has a White Paper. TransCanada says it is also abandoning the comprehensive change agenda that it set for itself. So what does that mean?
20493. Dawn has not gone. The problem of serving Dawn via the integrated TransCanada Mainline has not gone. The cluster of issues around Dawn have not gone. Comprehensive may no longer mean White Paper-size comprehensive, if we take TransCanada at its word, but it still means identifying the problem and examining possible solutions comprehensive. And that is the sense of comprehensive that still remains unaddressed in this proceeding -- unaddressed by TransCanada.
20494. And I would note that this should come as no surprise to anyone that CAPP had this concern, because it dates back to the very first days of this affair in its September 24th, 2003 letter to the Board, which is one of the exhibits in this proceeding.
20495. CAPP said in its third paragraph dealing with TransCanada's Application:

"It is apparent to CAPP that TransCanada had, therefore, made the business decision to develop a market hub concept by at least July 17, 2003."

20496. And that is the date of the open season, July. And then there is some support for that statement provided in the letter.

20497. And then CAPP goes on as follows -- and this is the piecemeal theme:

"It would appear that the pieces were thus set in motion as part of TransCanada's ongoing piecemeal approach to toll design methodology even before the Board had rendered its RH-1-2002 decision. In that decision, the Board determined that the creation of the Southwest Zone is responsive to current competitive realities. Nevertheless, the Board also recognized that the removal of the Southwest Zone from the Eastern Zone is a significant change to TransCanada's toll methodology and it would have preferred to assess the merits of the Southwest Zone as part of a comprehensive business plan by TransCanada. As a result, the Board directed TransCanada to file a report within two years regarding usage of the Southwest Zone, any impacts on other services and any other issues arising from implementation of the Southwest Zone. However, prior to even the commencement of service offerings to the Southwest Zone on November 1, 2003, it is clear that an additional issue is now confronting TransCanada, namely that the demand for short-haul service from Dawn exceeds the physical take-away capacity from Dawn."

(As Read)

and then the reference is provided.

20498. And then CAPP goes on a little later in this letter and says:

"This situation plainly calls for a more comprehensive examination of TransCanada's future business model of the Mainline and not the narrow focus on the North Bay Junction as proposed by TransCanada."

(As Read)

20499. In addition, if one looks at the facilitator's report, which is also on the record of this hearing, we see a long list of issues that are noted and we see that Issue I, which is identified in the report as among the most important to the parties, the following:

"TransCanada's long-term tolls and tariff plan, long-haul to hub and short-haul from the hub into market area, possible split between new services and tolling."

(As Read)

20500. We see an issue, which is the issue that TransCanada wished to have decided, the following:

"Should North Bay Junction be determined independent of other long-term toll and tariff initiatives?"

20501. Well, TransCanada has asked you to decide the issue and I am here today asking that it be decided. Are we going to have salami tactics or are we going to look at these initiatives along with the other related long-term toll and tariff initiatives. There's no denial here that there are long-term toll and tariff initiatives that relate to North Bay Junction or that are inextricably linked to the evolution of a market hub. It is simply TransCanada's desire not to talk about them here.

20502. Opposed to that were other parties who saw the issue this way:

"The North Bay Application is a part of the plan. Parties want to understand the other pieces of the plan."

(As Read)

And:

"Dealing with the North Bay Application in isolation will make it difficult to assess the effectiveness of the Southwest Zone."

(As Read)

20503. I would note as well that TransCanada has done a strategic plan for its power and its transportation business. They wish to keep that to themselves, and we have not taken exception to that in this proceeding. But it would be nice if they could share with the rest of us their strategic vision for where they are going with this system.

20504. TransCanada is here still telling you that it wants you to accept their proposals in bite-sized pieces. And my submission on that is that one slice of salami three times a day may be bite-sized, but it does not meet the requirements for good nutrition and, in my respectful submission, doesn't meet the requirements for good regulation.

20505. CAPP asked in the RH-1-2002 proceeding about the issue of service away from Dawn.

20506. Given TransCanada's goal with the Southwest Zone of increasing the flow into Dawn, CAPP asked specifically about the bottleneck out of Dawn. That was in an

information request sent in 2002 and answered at the end of 2002, CAPP 77(a) in the RH-1-2002 proceeding, which I discussed with the TransCanada witnesses at Volume 2 of the transcript of this proceeding, paragraph 1915, and this is what CAPP was told -- and this formed part of your record and TransCanada's evidence before you in RH-1-2002. And I'm reading the extract I quoted into the record of this proceeding.

"However, TransCanada can only provide limited access to and from the Dawn market hub which could cause a bottleneck for many customers wishing to access the Dawn market directly. The key to resolving this bottleneck while avoiding the cost of unnecessary facilities on the Union or Mainline systems is to provide access for TransCanada's Northern Line and North Bay shortcut and, hence, provide access to an eastern market centre for all TransCanada's customers in Ontario, Quebec and the U.S. northeast. One option that achieves this goal that TransCanada discussed with its stakeholders in early 2002 is the market inventory transfers (MITs). Other options include the creation of a market hub at or near North Bay with mechanisms to facilitate efficient exchanges between the Dawn hub and a North Bay hub. Other parties have proposed options including multiple trading points throughout the Eastern Zone. TransCanada intends to work with interested parties to explore all of the options."

20507. So let's look at that response carefully. TransCanada understood that increasing demand for access to Dawn leads to a bottleneck and a need for facilities. We have reached that point. TransCanada wishes to avoid unnecessary facilities. The key for TransCanada is the eastern market centre.

20508. There may, says TransCanada, be several ways to achieve the goal of the eastern market centre and TransCanada intends to work with interested parties to explore all of the options. And the options, of course, are linked to a goal.

20509. One of the options that TransCanada is considering is the creation of a market hub at or near North Bay with mechanisms to facilitate efficient exchanges between the Dawn hub and the North Bay hub. And I would like you to note that mechanisms is in the plural because clearly there are many possibilities to facilitate the goal of efficient exchange.

20510. Now, when one looks at that response, it sounds like something that fits the model that CAPP submits should be followed: identify the problem or the goal, consider the options and then work with people to find the option that best addresses the agreed problem or goal.

20511. Now, it's probably obvious to any experienced person, and certainly to -- in this hearing, that everybody has different problems and sometimes getting an agreement on a problem or a goal isn't the easiest; but in this case, you've solved that part

of the equation with your RH-1-2002 decision. We have the independent object of definition of the problem.

20512. And we have TransCanada's acknowledgment that it leads to something else, which is a need to consider other options for how the integrated system can meet the access to Dawn, and we don't have it.

20513. We would ask you to measure TransCanada's actions here in this proceeding against their own evidence before you in RH-1-2002 as to how one should go about these things.

20514. I would also observe that in its RH-1-2002 decision, the Board did note CAPP's concern about the disconnect between the growing demand for short-haul FT from Dawn and the means by which it is provided. And it did so at page 72 under the part of its decision that related to the future business model of the Mainline.

20515. Now, what the Board had in mind when putting it in that particular category as opposed to simply an objection to the Southwest Zone itself, I, of course, can only speculate, but I do note that it is significant that the Board apparently viewed this as an issue for future consideration.

20516. Well, this is the future consideration, and TransCanada was invited by you to be constructive in this regard and they have chosen not to, and I submit they have to accept the responsibility for what that means.

20517. Now, did TransCanada, having told us it would work with interested parties to deal with this problem, and work with interested parties to explore the options to address it? No, they did not. And I could dwell on that at considerable length, but I doubt that that's going to help you a lot because you don't have the power to force people to work together. You can simply require that they at least make the effort. But in this case TransCanada said that they would, and they didn't.

20518. And now we have TransCanada making it very clear that it will work with people only when it is a matter of fine tuning their ideas, but not if there are major points to work out. And in my respectful submission, that's completely unacceptable.

20519. Let's put the working with people thing aside for a moment. Let's park that.

20520. We're in a regulated hearing, a regulatory hearing, so what matters now is that TransCanada is not giving you the options and not exploring with you the options that address the market reality that you recognized. They aren't even presenting you with the complete option that they told you last year would address the problem of access to Dawn, namely, the combined North Bay hub with mechanisms that link it to Dawn so that the Dawn demand can be met in the most efficient manner.

20521. You have a proposal before you that is not complete and it should not be accepted on those terms .
20522. And I would note that it appears from reading the decision on the Southwest Zone as a whole that the Board saw the Southwest Zone as complete in terms of the long-haul access into Dawn and the issue of any constraint on access out of Dawn could be dealt with another day.
20523. TransCanada holds out to you the North Bay Junction as a simple receipt/delivery point, a simple option, a small change. But where is the part of this that addresses transactional capability across the Dawn and North Bay Junction points? TransCanada described that to you in the last hearing on rate design as "mechanisms to facilitate efficient exchanges between the Dawn hub and the North Bay hub."
20524. We still have the issue of Dawn, the market wants Dawn, there is a bottleneck, opening the bottleneck is a concern for TransCanada because a Union expansion could lead to less utilization on the Northern Ontario line. Those are the unnecessary facilities that TransCanada said it was concerned about in RH-1-2002, and here we are today still concerned about that.
20525. CAPP is concerned about the utilization of the Mainline as well and would like to understand how all these pieces fit together, but for our trouble we are simply insulted.
20526. Again, unacceptable.
20527. So the obvious question is how does North Bay Junction contribute to solving the problem? How is it the least cost facilities solution? How is it the most cost-efficient, integrated system solution? What mechanisms could facilitate transactions across the Dawn and North Bay Junction points to meet the customer demand? And what other issues cluster around these options?
20528. The approach of problem identification, option evaluation and implementation design would give you the information to make sound decisions, whether TransCanada can work with us or anybody else or whether you accept that we're incapable of working with them, which I submit you should not.
20529. That is the approach CAPP is advocating in its evidence and the approach works, whether there are grand plans of the White Paper size variety or whether the plan is a smaller plan like an eastern market hub, which, by the way, is not exactly a small idea in and of itself.
20530. Now, TransCanada tells us it has no grand plan, so how can you make them give you or us what they don't have? And again, put aside the fact that they have an internal grand plan that they haven't shared.

20531. But let's stop and ask what TransCanada seems to mean when it talks about plans. For Mr. Holgate's question to CAPP's witnesses, it seems that TransCanada views a "plan" as "a series of predetermined unalterable steps" as distinct from "a number of possibilities that are under consideration depending on how the future unfolds."
20532. And that's in a discussion that occurred at Volume 10 of the transcript, paragraph 14994.
20533. Do sound business plans lay out to the smallest detail predetermined, unalterable steps? Plans, by definition, are made in advance, if that is what predetermined is supposed to mean. But no business plan operates in the world of a science plan like putting someone on the moon where one has the immutable laws of physics to depend on.
20534. The means of achieving the goals of a business plan can always be adapted to fit changes and circumstances. The Southwest Zone itself was seen by the Board as a new way to meet old goals; namely, to provide the service needed for the market and to maximize the utilization of the integrated Mainline.
20535. The Southwest Zone was seen as an adaptation in relation to a long-standing goal.
20536. And last year there was no question as to the goal. The goal was to meet the customer demand for access to Dawn. And with regard to the Dawn bottleneck, TransCanada told you there were several options to achieve that goal while avoiding unnecessary facilities. The North Bay hub was one option. And embedded in the North Bay option was the obvious related goal of mechanisms to facilitate efficient exchanges. How else can a North Bay hub operate to meet Dawn demand without such mechanisms?
20537. TransCanada told you almost two years ago, in the RH-1-2002 proceeding, it was prepared to "work" with interested stakeholders on this. I'm going to park that for a moment. Again, other than to point out that whatever excuse they may have for not working with their stakeholders, there is no excuse for TransCanada not being prepared to discuss these options here before you.
20538. Dawn is an important issue, and here it is September 2004 and here we are arguing, and that is after TransCanada took five months to respond to your information for additional information that would put the North Bay Junction into a proper context and resolutely declined to accept that invitation.
20539. TransCanada tells us there are many specifics yet to be decided for an exchange service that comes through the information request responses and my discussion with the TransCanada witnesses, and we're told that perhaps an exchange service isn't even necessary because other mechanisms would do the trick.

20540. But in the RH-1-2002 -- or, pardon me, in the RH-1-2002 case, in TransCanada's Information Request response to us, it wasn't "exchange service" in some narrow technical sense that TransCanada was talking about. It was about mechanisms, in the plural, mechanisms to achieve a goal. The goal was efficient exchange in the sense of transactions across the Dawn and North Bay Junction hubs.

20541. The theme that what TransCanada does next depends on other things is not new. But that theme is not to be confused with the clarity that exists as to the frame of reference. The goal of meeting the competitive reality at Dawn and the variety of options that achieve that and the goal of linking North Bay and Dawn in a way that allows an efficient transactional capability and an efficient least-cost use of the Mainline integrated system.

20542. Now, we know that TransCanada's frame of reference is the reality of Dawn. They made that clear in their response to us, CAPP 77(a) in RH-1-2002. They repeated that in their opening statement on the Southwest Zone in the RH-1-2002 decision that CAPP refers to in its evidence at paragraph 10, and I am going to trouble you by reading it again.

"The nature and timing of the next steps will depend on the demand for capacity into and out of the hub and could include the provision of greater access to and from the Dawn hub through services that would increase utilization of Mainline facilities in Northern Ontario and avoid the need for new facilities and the development of other market mechanisms that would enhance the current market hub at Dawn and provide unrestricted access for all customers."

20543. That's the same message as was in the CAPP information response 77(a), but they wanted to impress this on the Board by repeating it in the opening statement; and that is significant.

20544. There is good reason TransCanada would want to impress that on you. It would be logical for TransCanada to have looked at how it could meet demand for access to Dawn with an integrated system, including the use of the northern route.

20545. Why would a Southwest Zone even be contemplated if there was no such strategy? It would be irrational for TransCanada, in the circumstances they are in today, not to have a strategy that does what CAPP wishes they had come to this hearing to talk about.

20546. So what is TransCanada saying to you in this hearing? TransCanada is communicating lots of anxiety and fear focused on Dawn and all the things that might be bad for the Mainline that could happen in relation to Dawn, and you know well what those are. But TransCanada is not communicating the strategy that addresses the fear.

20547. Instead, you are told in TransCanada's Reply at page 3, line 5 -- and you heard it again this morning in argument -- TransCanada's goal is to provide choice. "This case is really about choice."
20548. TransCanada, it says, is in the business of being customer responsive. Customers want short-haul and so TransCanada is providing short-haul.
20549. North Bay Junction adds one more choice, that's it, period, full stop. Don't know why we've been here for the last year talking about this.
20550. In the language of the Reply Evidence, North Bay Junction is a "alternative" to Dawn only in the sense of being simply another choice of receipt point. In this sense, of course, there are already numerous alternatives to Dawn in the marketplace.
20551. And you'll recall my discussion with the TransCanada witnesses about all the little dots that were cheerfully placed on the map that they had, some of which were agreed to offer thin soup to the marketplace; thin soup not being in the cross-examination but my characterization for argument. It was acknowledged there was at least one point that was simply someone's wishful thinking.
20552. My point simply being: Anywhere you look you can find points that you could put a star on and say, Wonderful, we have a new choice.
20553. And so when one looks across this system, we can point to numerous other possibilities for creating these "alternatives" and the LDC 3 in this hearing have made that point quite beautifully, I think.
20554. I discussed this with TransCanada at Volume 2 of the transcript, paragraph 2048 and following. This is the question in what sense is Dawn -- or pardon me, in what sense is North Bay Junction an alternative and the whole discussion revolving around choice.
20555. Mr. Ferguson said this at 2054:
- "I think what we tried to make clear in our Evidence is when you see request for service from Dawn to us, that is the market saying 'I'm looking for short-haul transportation that will get me back to a place where I can find counterparties to buy gas if I'm an end user'."*
20556. And at 2056, quote:
- "So certainly what the market has been saying is 'I want more Dawn.' To us that says 'I want more short-haul. I want to be able to get to a point where I can buy additional gas'."*

20557. So the customer responsive company reinterprets the market demand. The customer says I want a Ford -- you knew that was going to come back, I know -- and the seller says: Ah, you really want a car and I have a Volkswagen. It's the only car we have, you'll love it.

20558. And we see some of that thought in Mr. Frew's comment at 2154 where he says:

"I think again, that the difficulty with the analogy ..."

that's my car analogy --

"... is that today, as an example, there aren't any other vehicles in the lot and, therefore, we think that it makes sense to sell the last other vehicle that is there before we go and order some new ones."

20559. This is hardly a world of market choice. It is a world of the seller telling the buyer what they "really need" and providing that instead of what is asked for.

20560. Mr. Frew went on to say, at 2155, that any demand for North Bay would be a "discrete market" which, if I understand "discrete market" correctly, means a different market from the demand for Dawn.

20561. But when you go back to the Application, the original Application as filed, the issue is the demand for Dawn, and TransCanada describes its North Bay Junction proposal in the renumbered paragraphed document, paragraph 8.

20562. TransCanada describes its North Bay Junction proposal as "a solution"; hence, the ambiguity as to what we've been here talking about all this time.

20563. How can a solution to demand for Dawn be a proposal for North Bay Junction that either tells the person who wants Dawn that they can't have it -- they can have a Volkswagen instead -- or says, What we have isn't a solution, because Dawn is a different demand and our solution serves a different discrete demand?

20564. That is no solution. A solution to Dawn demand must offer a good substitute for Dawn.

20565. That is the kind of alternative that TransCanada talked to you about in RH-1-2002.

20566. The strategy talked about there was access to an eastern market centre for all and enhancing the current market hub at Dawn and providing unrestricted access for all customers. The references there are the Information Request Response 77(a) as well as the Opening Statement from the Southwest Zone proceeding.

20567. It probably does not need to be said at this point in the proceeding, but North Bay Junction is not a good substitute for Dawn. There are physical constraints on 365-day-a-year access across the two points. One cannot divert gas on a 365-day reliable basis from one to the other. One would need facilities from Dawn to Trafalgar to put that kind of reliability and transactional capability into the hardware.
20568. The question of how to transact is not resolved. It's not even addressed. A zero cost mechanism, for example, like a diversion, might be the right way to do this, but it's not even on the table for discussion.
20569. All of this is found in CAPP'S evidence as points of concern which build off the responses to information requests CAPP asked about the capabilities of the system between North Bay and Dawn and access into and out of Dawn and was confirmed in my cross-examination of the TransCanada witnesses.
20570. And all through this hearing, TransCanada talks about its fears in relation to Dawn and then it doesn't put on the table the pieces of the equation that actually address the concern.
20571. In cross-examination of CAPP, you were hearing in the questions the suggestion that North Bay Junction was very carefully selected. And you heard it from Mr. Yates in his argument this morning.
20572. Yes, it was. It was selected precisely because of Dawn. North Bay Junction and Dawn are roughly the same distance from Empress. But we aren't talking about Dawn. It is no wonder you find frustrated people in front of you. We all know the real issue is Dawn, so let's address the issue.
20573. There are parties here like CAPP that accept some key objectives; the maintenance of the integrated system, that TransCanada to should seek to maximize use of its system, and so on, but we can't address it if we don't focus.
20574. Parties such as CAPP have a right to demand better than what we are getting from TransCanada in this proceeding. It is the tollpayers who pay for TransCanada's mistakes.
20575. It was as an alternative to simply denying the North Bay Junction application that Dr. Safir suggested, the structured approach, that would look first to the marketplace for guidance.
20576. And Mr. Chairman, I am about four-fifths or two-thirds of the way through my argument, and I see it is quarter past 12. I'm happy to continue, if you wish, or to break and come back, if you prefer.
20577. **THE CHAIRPERSON:** Well, it is up to you, Mr. Schultz.

20578. If you are to complete within a half an hour, we will agree to continue, otherwise we would --

20579. **MR. SCHULTZ:** I'm happy to continue, sir, thank you. I wasn't sure what your level of tolerance was, but I know it is great.

20580. **THE CHAIRPERSON:** Honestly, you need to remember is that when I am hungry, I get angry.

--- (Laughter/Rires)

20581. **MR. SCHULTZ:** The open season concept has been put forward as a means by which one can assess, through a simultaneous process, the demand for both Dawn and North Bay Junction where the demand both for the existing and expansion capacity can be put to the market and to leave TransCanada to be free should it find, as it perhaps expects, that there will be more demand for Dawn than it can meet with existing capacity, leaving TransCanada free to bring forward proposals for how that demand for Dawn access could be met using North Bay Junction in combination with other things such as the mechanisms that allow efficient transactions across the two points.

20582. And again, the -- one should keep the possibility of a diversion at zero cost across the points as something which should certainly be examined along with the other options and issues.

20583. And there are, of course, a number of other issues that would need to be addressed, and the goal overall would be the most efficient and least cost use of the system.

20584. The alternative, Mr. Chairman, Members of the Board, is to simply dismiss the North Bay Junction Application because it fails to address the market reality.

20585. Now -- and I'm shifting gears slightly here to focus on the TransCanada theme that this is a simple thing that doesn't require a whole lot of thought.

20586. But if we go down that path and we put aside Dawn as the reality, Dawn as the competitive reality, Dawn as the market reality. We put aside the fact that there was never any question in the RH-1-2002 hearing about Dawn as the reality, and if we assess the TransCanada Application simply on the basis that is asserted in the Reply Evidence, and asserted to you again in argument this morning, that North Bay Junction is simply about choice, then there is no doubt that North Bay Junction should be dismissed.

20587. Because when you look at it on that narrow basis of simply being choice, you are robbed of any over-arching competitive reality, like demand for Dawn, to help you with all the problems that do exist with the North Bay Junction proposal. And there are many.

20588. North Bay Junction does change the toll design. It introduces domestic point-to-point service to North Bay and from North Bay Junction into a zonal structure.
20589. There are shippers in the Eastern Zone who can obtain lower tolls and leave the zonal service by taking service to and from North Bay Junction. And there are others in the Eastern Zone who do not have that economic advantage and will carry the added cost to cover the costs avoided by others.
20590. That is, in and of itself, a flat out violation of the entire idea of creating a zone in the first place. It's a fundamental violation of a zoning principle and a fundamental violation of toll design, if one is going to look at this on a narrow basis.
20591. When viewed as merely another choice, as merely another receipt and delivery point, there is nothing to recommend North Bay Junction from any of many other points on the system, and we know that any change anywhere on the system will be put to some use by someone. And TransCanada agreed with that in cross-examination and, of course, my slightly absurd example but it made the point, was Liebenthal.
20592. You could do this anywhere on the system and give somebody a choice. And in doing it, you would fly in the face of all of your decisions with respect to zoning with no greater good to be served and no -- not one iota clearer as to how and why and in what fashion this is going to advance the market reality that you spoke about in your last decision.
20593. In this narrow context that TransCanada puts this to you, North Bay Junction becomes a precedent for unraveling the entire zonal system. The me-too dynamic is already at work in this hearing with the LDC 3. And I thought, actually, that was the point they were making with their evidence when I first saw it and then realized that they were shifting to other issues, which I'll address later.
20594. And I would note, if this isn't enough, that in response to questions by Board counsel, TransCanada acknowledged it has no policy for deciding what choices of receipt or delivery point it will or won't allow. The "it's just a choice idea" sits on no solid foundation of TCPL policy and practice. And that's, I think, sufficient to dispose of that aspect of the case and to show it for what it is.
20595. If we talk about the path forward, we know that TransCanada has abandoned the White Paper. We know that TransCanada has succeeded in confusing all of us with its various statements as to its intentions with regard to comprehensive change -- and by comprehensive change, I mean White Paper-sized change. As late as the workshop which led to the facilitator's report last year regarding this North Bay Junction Application, TransCanada was saying it would still intend the more comprehensive change process to occur, they just wanted it to occur after they got the North Bay Junction approval.

20596. So it is understandable that this case has moved forward with a certain amount of confusion as to exactly what kind of plan one was expecting from TransCanada; but I would note that your invitation to them did not restrict them in any way, shape or form as to what context they were going to put this into, other than making it clear that North Bay Junction, in your view, when you set the issues, was inextricably linked to a lot of other issues.
20597. The facilitator's report provided you the flavor of those issues. And the eastern market hub was something that was well understood, well-known, clearly out there as an idea if from no other reason than the RH-1-2002 hearing, as something that would next follow on the development of the Ontario development marketplace -- Ontario and Quebec.
20598. Now, perhaps TransCanada thinks they are helping when they try to present the North Bay Junction as a "not to worry, just another receipt/delivery point." But as is obvious, they are not helping us with that.
20599. We all know that North Bay Junction only makes sense in the context of the larger issue of the eastern market hub and in relation to the demand for access for Dawn, and so CAPP has made the open season proposal to put some structure around that. Not to tell you to send it back to people that TransCanada won't talk to or doesn't want to talk to or characterizes essentially as their enemies, but to put a structure around it that will allow the matter to be tested in the market and then come back to you with an application that shows how TransCanada is going to meet the market demand in the most efficient manner.
20600. And I have no submission one way or the other as to how quickly you give that guidance to TransCanada. That obviously is in your hands, but clearly this matter has been going on for a very long period of time and some clarity as to how we are to proceed is obviously necessary, from my submissions, if nothing else.
20601. It is CAPP's submission that toll and tariff proposals for change should follow the basic logic: What's the problem? What are the options? How are they better than what we have and how does one go about implementing whatever it is one has decided to do?
20602. This logic applies even if the matter is coming directly to you. But CAPP does believe a collaborative effort should be made to address things first. That was the rationale for the task force in the first place. It was why the Board itself indicated its desire to see matters progress at the task force before coming to the Board. The task force does have recognition and sanction as an accepted part of the regulatory process and, in a sense, it's the Part 4 equivalent of the pre-application process that's expected in a facilities case.

20603. So it's not -- it's not an unheard of thing in terms of overall desire to facilitate the regulatory process by ensuring, if nothing else, that before things come to you, they are well understood by the affected stakeholders.
20604. How big or broad the examination of any issue needs to be, of course, depends on the issue. But I think it should be obvious to all that provoking a hearing in the manner that was done in this case is not the model to follow.
20605. I would submit that the evidence before you and your own experience will tell you that stakeholders have shown flexibility in the past when working issues. Issues have been worked successfully in the task force. Parties have also agreed to establish special negotiating groups, such as the S&P group, services and pricing group, and working groups of the task force are routinely struck to get into the meat of issues at the technical level.
20606. There are timelines in the task force. They can be followed. TransCanada has the ability to do that.
20607. The task force has voting rules and they do not require unanimity, but they do respect individual rights.
20608. And Mr. Moore explained to you the careful balance that was struck in those voting rules and that individual rights are respected where a party feels seriously -- is concerned sufficiently about a point to require that it be brought to you.
20609. But that does not mean that someone is blocked in bringing forward a proposal. The task force can't stop somebody from coming to you. Anyone is free to come to you and they can invoke the timelines within the task force to get here in a timely manner.
20610. What's needed, I would submit, and it should be obvious from the tenure of this proceeding, is a commitment to the process. TransCanada cannot ignore the collaborative process just because it thinks it will have a hard sell.
20611. In addition, a collaborative process also needs good information and rigor just as the regulatory litigation process does.
20612. People will push issues into hearings for that reason alone. A bunch of power point assertions may be a good starting point for a negotiation, but it does not constitute the deeper information that a thorough understanding of an issue requires, and I trust that you will look at all of the power points you have been handed here in this proceeding in that light.
20613. Moreover, if there's to be a collaborative process, people need to respect the confidentiality of that process.

20614. When we present evidence and argument in hearings, it is based on the evidence in the hearing itself. When people put "without prejudice" or "privileged and confidential" on all their documents, or use them in a confidential setting like the task force, it needs to be understood that the people who get that material are not able to use it outside that forum or talk about it here.
20615. Now, the task force rules do allow people to use documents that they have created outside of the task force. And since most documents tend to be created by TransCanada, you have seen a lot of that in this hearing. So there is no strict violation of any task force rule here, otherwise people would have been popping up and objecting.
20616. But what you have in this hearing are quite a number of documents marked "without prejudice" or "privileged and confidential" that are presentations. But when you look at those -- and I would ask you to keep this clearly in mind -- what you are getting is only one party's side of a story, because everybody else who got that document was receiving it in a privileged setting.
20617. Turning to the other matters; namely, the proposals of other parties. The Union Parkway proposal is something that evolved through the information request response process.
20618. The whole Parkway Belt idea and its two options only emerged in information request responses quite close to the start of the hearing.
20619. There is a lot that needs to be understood about how this will operate, and I explored that in my cross-examination with the Union witnesses. It's there. It was just last week. I know you're fully aware of it, I won't repeat it.
20620. In CAPP's submission, one should not be approving ideas before one knows how they would work. Things should not be approved up in the air that way, and this desire to understand how things work properly is consistent with CAPP's submission as to how CAPP would like TransCanada to be explaining its North Bay Junction proposal in terms of what it really can do as a substitute for Dawn.
20621. I would note that it's interesting that while North Bay Junction is a simple thing, TransCanada has a great need to fully understand all the implications of other people's desires for receipt and delivery point designations, because one needs to think through carefully just exactly where people might go with those things and how they might be used to game or otherwise achieve advantage that one didn't intend. So it is curious that we seem to find common ground in strange places.
20622. With respect to Enbridge's delivery area flexibility proposal, this issue is before the task force. There is a temporary solution in place, and in CAPP's respectful submission, the issue should continue at the task force.

20623. CAPP also believes that access to storage and the flexibility related to access to storage are things that are needed by the market as a whole. It is not just an LDC issue. The solution should be focusing on the broader market need.
20624. And one also should keep in mind when looking at solutions, that this is not all a TransCanada problem and that options that may not involve TransCanada should not be excluded from the consideration. And when I mean "not all a TransCanada problem", I mean the Enbridge balancing problem that arises from its Ontario operations and regulatory requirements.
20625. With respect to Gaz Métro's St-Nicolas proposal. Again, there is much about this project that is not known, and in fact there is much that could affect a decision on whether this should be a receipt point on the TransCanada system or continue as a receipt point on the TQM system.
20626. In fact, from what I heard from the examination of the Gaz Métro witnesses towards the end of their testimony last week, was that the receipt point may not even be at St-Nicolas for all we know once the final decisions are made about who is going to construct what facilities from where and where the point will be where the TQM system connects to the facilities related to the LNG project.
20627. CAPP fundamentally disagrees with Gaz Métro that TQM is just an extension of the TransCanada system. The same as if TransCanada owned it as part of the Mainline, which CAPP understands to be the crux of the TQM argument. And that was confirmed in my questions to the Gaz Métro witnesses.
20628. The TBO arrangement with TQM is a contractual arrangement and in that regard, it is identical to, in principle, the contractual TBO arrangements with Great Lakes and Union.
20629. Moreover, if TQM is to be viewed simply as a part of TCPL with TCPL as the obvious and natural provider for all things that are good, then why does Gaz Métro take any service directly from TQM and, in fact, why does TQM even provide those services?
20630. Under your statute, under the certificates that you have and under Parts 3 and 4 of the act, TQM is a distinct pipeline with an obligation to provide distinct services pursuant to the same requirements as TCPL or any other North American pipeline subject to the similar type of regulation. So we reject entirely that basis for suggesting that a receipt point should automatically be made on the TransCanada Mainline system for this kind of project.
20631. And to make it perfectly clear, once all the facts are known, CAPP will determine what its position is on that. CAPP has not determined its position. There was a lot in cross-examination of CAPP's witnesses that appeared to be designed to force people to come up with reasons why one might object. It's a pity that there hadn't been

any questions as to reasons why one might wish that gas to be on the TransCanada as distinct TQM systems, but we'll wait until we see what all the facts are and then we can see exactly what the costs and benefits are.

20632. With respect to this whole theme of competition injected into this hearing by the LDCs and, in particular, Union, everyone supports choice. Everyone supports the operation of the market and letting markets decide. However, pipelines are regulated and do not operate in an unfettered manner.

20633. Regulated local distribution companies do not necessarily operate as the altruistic consolidators of market demand. Rate-base growth, related business interests, interests of affiliates can all influence decisions, and in CAPP's submission, a regulatory vigilance is needed in such cases.

20634. With respect to the IGUA toll imbalance argument, it is CAPP's submission that short-haul pays for the distance used. This is a simple cost justified basis for establishing tolls that applies to the system as a whole.

20635. CAPP would also note that it pointed out during the Southwest Zone debate that the Southwest Zone was going to be supplied by an integrated system even though distance was done on the shortest route to the Southwest Zone via Great Lakes, and the Board confirmed the distance methodology.

20636. With respect to toll redesign, CAPP does not see the need for a fundamental redesign. The current elements discussed in CAPP's evidence, and there are a few pages that touch on that, which are essentially a pricey of key principles that have governed this system since its inception. In CAPP's submission, those principles remain robust, and I won't repeat them.

20637. With regard to the Cogenerators Alliance fairness issue. This only arises if North Bay Junction were approved and CAPP has stated its view with respect to that fully in its response evidence and the information request that's attached to that.

20638. With regard to the Union restriction on offering short-haul by the Mainline, this would appear to CAPP to make no sense other than as a device to protect Union's interest in the Dawn-Trafalgar contracts it has with TransCanada.

20639. I asked questions of the Union witnesses about exactly what they were saying about the use of the integrated system, and it appeared that TransCanada could happily use any part of that integrated system it wanted so long as it had contracts with Union and that, I submit, is no basis for imposing any restriction on TransCanada's ability to use its integrated system.

20640. With regard to Dawn expansion, that will require market support, and as noted in my earlier comments, it may be that TransCanada will find a way to meet that

demand through its integrated system. And if the Board accepts CAPP's proposal for the simultaneous open season, then that would begin that process.

20641. A word about supply. Supply is a North American issue. There is an integrated North American market. Increased demand in Ontario will pay the market price regardless of the supply basin. The suggestions in the LDC evidence that somehow Western Canadian gas is high priced or that there is cheap gas someplace else are simply contrary to reality.

20642. That brings me, Mr. Chairman, to the end of my remarks, and other than making comments on TransCanada's argument this morning, I think -- I certainly know that Mr. Yates's view is one ought to try to cover off as much as one can as the person who went ahead of you's comments rather than waiting to doing it in the reverse order, but if you would prefer me to do the cleanup on that later, I'm happy to do that. But I'm quite content to rattle away for another five minutes here and get it done. I don't know if Mr. Yates has strong feelings or you have strong feelings either way about that. I know I'm pushing your lunch break here a little bit.

20643. **THE CHAIRPERSON:** It is certainly within the time that I have agreed to.

20644. **MR. SCHULTZ:** All right, thank you. Let's get this done, then.

20645. Mr. Yates had a long theme about no one having taken your invitation to come forward with issues on evidence on all the issues you put into the hearing, and in my respectful submission, as I made clear in my earlier remarks, the obligation was and has been on TransCanada to justify its North Bay Junction proposal with the linkages that the Board recognized were inextricably related to it and it has failed to do that.

20646. CAPP was entitled to have that and the fact that TransCanada has not provided it, I have already told you what the consequence should be.

20647. Mr. Yates has listed a lot of facts that he says are not in dispute. I think virtually everything on his list is in dispute in some fashion or other, if not in this hearing, certainly in other hearings.

20648. And there was a whole lot of stuff in his argument that seemed to be laying a groundwork for hearings yet to come on things dealing with competitive tools and the degree of competition that TransCanada is exposed to.

20649. We will be getting into some of those things. Certainly, the competition issue is a big theme in Phase 2, so it will be addressed there, and I would ask you to -- I know you will -- be circumspect in terms of the findings you need to make in this case related to North Bay Junction and not presume that because people haven't chosen to go after this long theme of competition that jumped into this hearing in the Reply Evidence

by TransCanada that somehow we're not interested in that issue or have a different perspective on those things.

20650. As you know from CAPP's evidence, CAPP does not believe that -- or it's in an information request response to the Board, CAPP does not believe that a generalized discretion to discount, and that kind of thing, is appropriate for the Mainline.

20651. So that, and as well as a few other things on his list, are not things that are not in dispute, and certainly the idea that North Bay Junction does no harm and can only do good is completely contrary to the evidence in this case.

20652. We've heard, again, the analogy to Demarc on the Northern Natural system. Demarc, as you know, is the point of demarcation between a field zone and a market zone.

20653. If one was going to make an analogy with the TransCanada system and if the market zone was the eastern market hub that TransCanada is talking about -- and by the way, I would note that by continually talking about Demarc with its market zone on one side is reinforcing CAPP's argument that what we're talking about here or should be talking about is the eastern market hub and how North Bay relates to Dawn in that regard.

20654. But nonetheless, putting that to one side, if one's looking for the comparable field zone that is comparable to North Bay -- to the Northern Natural system, you've got to go 3,000 kilometres west on the TransCanada system.

20655. So there is a little issue there of how those two ends of the barbell connect each other, which CAPP does have a concern about, but which because of the way TransCanada has approached this doesn't get addressed.

20656. The whole theme about CAPP stands for three things -- the status quo, delay favours the status quo, delay results when simple things are made unnecessarily complex -- is insulting.

20657. If the implied conclusion that CAPP is here in bad faith is one that you find favour with, I trust that you will tell us so we'll know that how you view our participation, and if we see silence on that point, we will conclude that our attendance here will be viewed in terms of its merits and the strength of the position advocated.

20658. Mr. Yates had his usual theme of picking on one statement and then building a pyramid on it. The statement that "what information was not available." I think I've made it perfectly clear what the issue for CAPP is in this case. And the information that is not available is the relationship of North Bay Junction as a true alternative to Dawn, as a substitute for Dawn, and how the integrated system achieves that. None of the things he refers to touch on that.

20659. He asks you to disregard Dr. Safir's evidence, but I think if you look in Dr. -- in Mr. Reed's evidence, he actually picks up on a theme that Dr. Safir has and uses it, so I don't know how you can disregard it if TransCanada's own witnesses are picking and choosing parts of it that they like.

20660. And the suggestion that Dr. Safir's alternative proposal of the open season was an attack on TransCanada was actually an attempt to balance the objectives and desires of the Intervenor who were drawing your attention to Dawn as the reality. CAPP's sharing that same issue of Dawn as the reality and suggesting a constructive way of progressing this thing rather than simply denying the TransCanada Application.

20661. And I think I've talked about process sufficiently.

20662. And finally, with regard to the issue of the task force being only used for minor changes, even if one takes TransCanada as suggesting to you the task force can be effective with minor changes and if we link that to Mr. Yates' starting point that North Bay Junction is a simple thing, then how does TransCanada explain the fact the task force couldn't handle it.

20663. Thank you, those are my submissions.

20664. **THE CHAIRPERSON:** Thank you, Mr. Schultz. The Board has no questions for you, and you are right in the time frame. Thank you very much.

20665. **MR. SCHULTZ:** Thank you, sir.

20666. **THE CHAIRPERSON:** We will break for lunch and resume at 2:00.

20667. **MR. FARRELL:** Excuse me, before you rise, Mr. Chairman, may I make a filing that I promised earlier this morning?

20668. **THE CHAIRPERSON:** Yes, but I'm starting to be hungry.

20669. **MR. FARRELL:** This is a filing of copies of Exhibit C-12-29, Mr. Chair. Thank you for your indulgence.

20670. **THE CHAIRPERSON:** Thank you, Mr. Farrell.

20671. **MR. FARRELL:** Copies are at the back.

20672. **THE CHAIRPERSON:** Thank you.

--- Upon recessing at 12:50/L'audience est suspendue à 12h50

--- Upon resuming at 2:10 p.m./L'audience est reprise à 14h10

20673. **THE CHAIRPERSON:** Now, Mr. Thompson, everybody is going to be able to listen to you. Good afternoon, sir.

--- FINAL ARGUMENT/PLAID OIRIE FINALE BY MR. THOMPSON:

20674. **MR. THOMPSON:** Good afternoon, Mr. Chairman.

20675. Yes, I thought that TransCanada was blocking access to my argument and that would be another ten or 15 minutes of submissions.

20676. I have provided a copy of my argument to the reporters, Mr. Chairman, with references. I have cautioned the reporters that it is a work in progress and so they should listen carefully, and they have assured me that they always listen carefully to me.

20677. And so with that, let me just give you the main topic headings under which I have organized the argument on behalf of IGUA. There are seven of them. The first is an overview section. The second is entitled "Context". The third is entitled "The Toll Imbalance - Its Causes and Remedies". The fourth is "Contracting Practices". The fifth is "New Receipt and Delivery Points". The sixth is IGUA's specific response to the questions posed in the issues list. And the seventh is "Conclusion".

OVERVIEW

20678. Starting then, with the overview. The extent to which long-haul tolls have -- long-hauls have decreased and short-hauls have increased over the past six years reveals that the Mainline has changed from a highly utilized long-haul carrier to a less utilized combined long-haul and short-haul carrier. [Ex. B14, NEB 1.5 and Ex. C-2-8 - TCPL #3]

20679. This case is about the toll structure, toll design and contracting practices implications of the transition that has occurred to the Mainline's carrier status from being primarily a long-haul carrier to a mixed long- and short-haul carrier.

20680. In IGUA's submission, this case should not be viewed as an isolated opportunity for TransCanada to attempt to preserve or enhance its competitiveness by simply adding one receipt and delivery point to the Mainline. Rather, the case should be viewed as one of fundamental importance because of the transition that has occurred in the carrier nature of the Mainline.

20681. The approval of any new receipt and delivery points will tend to prompt further long-haul FT non-renewals and lead to additional segmentation and short-haul services. The costs associated with system underutilization, in conjunction with the emergence of more and more short-hauls, has given rise to a tolling imbalance between long-hauls and short-hauls which must be remedied before the opportunities for further segmentation are enhanced through the approval of new receipt and delivery points.

20682. Similarly, the contracting practices with respect to the Mainline's carriage of gas to and from all receipt and delivery points should be clarified before any new receipt and delivery points or areas are added to the transmission system.

20683. In IGUA's view, the toll imbalance issue is the matter in this proceeding to which the Board should ascribe the highest priority. In IGUA's view, none of the proposals to add new receipt and delivery points should be approved or become effective before the toll imbalance issue has been addressed and corrected.

CONTEXT

20684. Turning to my second heading: Context.

20685. The factual context for the Board's determination of the issues of fundamental importance which this case raises include the following:

20686. First, TransCanada's original commitment to, and the Board's direction in its RH-1-2002 Reasons for Decision to file by September 1, 2002, a comprehensive tolls and tariffs application for the 2003 test year, whether supported by a negotiated settlement or not, and TransCanada's subsequent decision to abandon that course of action. The initial commitment of TransCanada, in IGUA's submission, was to strategic direction transparency. That commitment has now been abandoned. [Ex. B-12 Appendix A, paras 6.7 and 19 to 20]

20687. The second item of context is, in IGUA's submission, the desirability of considering issues of fundamental importance to the Mainline's future operations in the context of TransCanada's overall business strategy for the Mainline. The Board endorsed the need for strategic direction transparency in its RH-1-2002 decision, to which Mr. Schultz referred in his argument, and in particular, at page 76 -- and I don't intend to read it into the record again.

20688. It is IGUA's submission that the Board should not countenance TransCanada's abandonment of the principle and commitment to strategic direction transparency.

20689. The third item of context we urge you to consider is the discovery in TransCanada's RH-1-2002 proceedings of the Mainline's increasing use of its integrated system to support what we call "indirect path" short-haul services and the concerns raised by IGUA during the course of those proceedings with respect to the tolling implications of such short-haul contracting practices. [Ex. C-2-6, p. 11, line 6, to p. 12, line 9]

20690. This incident, along with others, illustrates, in our submission, that the carrier status of the Mainline has been changing gradually and is being revealed gradually by TransCanada PipeLines. The transparency and disclosure that was there before is tending to become diluted.

20691. The next item of context we invite you to consider is the open season process commenced by TransCanada on July 17, 2003, wherein it offered a broad array of segmented and short-haul services about which IGUA and others complained. [Ex. C-2-1]
20692. This incident, in our submission, is an illustration of another try-on; let's see what we can get away with in terms of pursuing our strategic directives without complaint from stakeholders.
20693. The next item of context we invite you to consider is TransCanada's commitment, on August the 22nd, 2003, to file an Application to obtain Board approval for the receipt and delivery points in areas from which it offered segmented and short-haul services in its July 17, 2003 open season. [Ex. B-2]
20694. The offer was with respect to a broader array of services than the Application covered; again, an illustration of TransCanada's tendency to develop applications to this Board in a piecemeal fashion.
20695. The next item of context we invite you to consider is the attempt by TransCanada in these proceedings to limit the scope of the issues by its NBJ Application on September 15th, which was confined to only a request for approval of only one receipt and delivery point on the Mainline. [Ex. B-4]
20696. This attempt to narrow the scope of the process was rejected, and the next item of context to which I refer, which is the Board's rejection of TransCanada's attempt to confine the issues in this Application through the Board's letter of November 14, 2003, holding that the issues raised by the Application were far broader than TransCanada suggested. [Ex. A-8]
20697. That letter, in my respectful submission, constitutes a determination by the Board of the scope of the process and its broad scope, yet TransCanada, in argument this morning, continues to insist that this is a very narrow proceeding.
20698. The next item of context we invite you to consider is the filing by TransCanada of its NBJ Application Update on March 31, 2004 containing the additional information required by the Board with respect to the issues which the Board had listed for consideration during the proceedings, and the broad and diverse responding evidence to this Application from the various stakeholders, including evidence from CAPP, IGUA, the Co-Gen Alliance, the Eastern Utilities consisting of EGD, Union and GMi. [Exhibits C-1-7, C-1-11, C-2-6, C-9-5, C-12-16, C-19-7, C-21-5]
20699. The next item of context that we submit is important is the revelation during these proceedings that the NBJ proposal forms part of a broad and as yet undisclosed corporate planning and strategic initiative related to the gas and power businesses of the Mainline's holding company owner, TransCanada Corporation. [Exhibits B-14 - CAPP 18(d) Revised; B16 - NEB 1.1(9) Revised; and B-33]

20700. This disclosure and TransCanada's refusal to provide any information about the NBJ component of that strategic plan illustrates, we submit, that secrecy has now displaced the initial commitment to transparency.
20701. The next item of context we submit is important to consider is the revelation during the proceedings that it was not only internal, but also external resources that were engaged by TransCanada's owner to participate in the strategic planning process. It was revealed during these proceedings that the NBJ proposal forms part of a 240-page consultant's report dated March 31, 2004 pertaining to the broad planning and strategic initiative of the Mainline's owner with respect to its gas transmission and power businesses. [Exhibit B-33]
20702. TransCanada refuses to disclose the NBJ portions of that report despite the fact that those portions of the report were stated to be one of the inputs into the Mainline's decision to abandon the pursuit of any new and comprehensive business strategy with respect to the Mainline. [Exhibit B-33 p. 2]
20703. The next item of context we invite you to consider is the revelation during these proceedings that the NBJ proposal is only one piece of the many toll design enhancements that TransCanada is apparently contemplating. [Exhibit B-14 NEB 1.20(a) and TR Vol 9, paras 12726 to 12854]
20704. From a toll design perspective, the reality is that the NBJ proposal is very much a piecemeal proposal.
20705. The next item of context that we submit is important is the revelation during these proceedings that an unreasonably excessive amount of system underutilization costs are being allocated to long-haul shippers.
20706. Under the existing volume distance method of cost allocation, the evidence in Exhibits B-50 and B-59 indicates that some 94.4 percent of the costs of underutilization, consisting of the revenue loss attributable to FT non-renewals to the Eastern market, is allocated to long-haul shippers and only 5.6 percent thereof is allocated to short-haul shippers, despite the fact that on a GJ-per-annum basis, short-hauls now comprise about 40 percent of the annual volume deliveries to the Eastern market area [ExC-2-8- TCPL#3] and on a GJ-per-day basis, about 34 percent of those deliveries.
20707. The 34 percent I derived from page 2 of Exhibit B-50 by totalling short-hauls and long-hauls on a GJ-per-day basis [Ex B-50, p 2] and expressing the short-hauls as a proportion of the total.
20708. The reality is, in IGUA's submission, that if approved, the NBJ new receipt and delivery point proposal, and any others like it, will be yet another step in an already accelerated transition of the Mainline from a highly utilized long-haul

transmission system to a less utilized combined long-haul and short-haul carrier. [Ex. C-2-6, p.14 line 1840, p. 16, l.9; and p. 22, line 6 to p.24, line 9]

20709. In the context of the foregoing, IGUA reiterates that this case is not simply a request for the approval of one additional receipt and delivery point on the Mainline. On the contrary. This case is about the toll design and contracting practices implications of the transition that I've described in the context of a broad corporate planning and strategy initiative of the Mainline's holding company owner relating not only to its regulated gas transmission businesses, which include the Mainline and Great Lakes transmission -- gas transmission, but also its unregulated power businesses.

20710. IGUA submits that in the context of these facts, there is absolutely no doubt that TransCanada's NBJ proposal is but a part of a comprehensive business strategy for the Mainline which the Mainline's owner has not disclosed.

20711. In this context, TransCanada's NBJ proposal is indeed piecemeal and subject to rejection on that ground alone.

20712. The proposal is a further step towards segmentation and a consequential increase in the proportion of short-haul services being provided. Any proposals which have this effect, in IGUA's submission, should not be approved before the toll structure, toll design, and contracting practices issues raised by the transition have been addressed by the Board and resolved.

THE TOLL IMBALANCE - ITS CAUSES AND REMEDIES

20713. Moving to my third topic, the toll imbalance and its causes. It's IGUA's submission that the best way to focus on the causes of the toll imbalance problem and alternatives for its correction is with a simplified illustration of what happens under TransCanada's volume distance method of cost allocation.

20714. When a long-haul shipper refrains from renewing its long-haul FT service and switches to segmented and short-haul service or to short-haul service only. And to assist in the presentation of this portion of my argument, I have developed a, what I call a toll imbalance illustration, which I'll circulate in a moment.

20715. The illustration is based on the three-shipper scenario which was put to witnesses for TransCanada during the course of their cross-examination.

20716. The points of argument that I want to use this visual aid to assist in demonstrating are as follows: First, that one part of the toll imbalance problem is caused by a shedding of long-haul cost responsibility when a long-haul FT shipper opts for segmented service to the same delivery point which is cheaper than the long-haul toll to that delivery point or area, and there are a number of documents in the record that deal with that. And this topic was discussed at Transcript Volume 3 -- this three-shipper example, Transcript Volume 3, paragraphs 3618 to 3813.

20717. The other part of the toll imbalance problem that this illustration helps people focus on is that the costs of underutilization -- it's the causes of the costs of underutilization represented by the non-renewal revenue loss being allocated to long-distance shippers, which operate to make those allocations excessive and unreasonable.

20718. It's in this context that I want to use the visual aid to help conceptualize the causes for what we've seen in Exhibits B-50 and B-59 where the costs of underutilization are allocated 94.4 percent to short-haul and only 5.8 percent -- sorry, 94.4 percent to long-haul and only 5.8 percent to short-haul.

20719. I don't intend to spend a lot of time on it, but it does help, in my respectful submission, people focus on my client's submissions with respect to the toll imbalance issue, its causes and remedies.

20720. So with that, if I may be permitted to distribute my visual aid.

20721. **THE CHAIRPERSON:** Mr. Yates...?

20722. **MR. YATES:** Well, Mr. Chairman, I haven't seen this visual aid.

20723. My initial reaction is that, with the description that Mr. Thompson has given, it appears to me to be a matter of evidence rather than argument, but maybe I won't express the complete level of my heartburn about that until I've actually had a look at it.

20724. **THE CHAIRPERSON:** Why don't you, Mr. Thompson, show to Mr. Yates what you intend to use.

--- (Short pause/Courte pause)

20725. **THE CHAIRPERSON:** Mr. Yates, sir?

20726. **MR. YATES:** Mr. Chairman, what Mr. Thompson has, at least as I understand his explanation to me, is a four-page document that seems to be comprised of calculations that I think he has done. Maybe I'm misunderstanding that, but it does certainly appear to me to be a matter of evidence rather than of argument and that if we have calculations that are done about toll imbalances, the place for those to go in would have been in the evidentiary section of the case, not in argument.

20727. **THE CHAIRPERSON:** Mr. Thompson, sir, if this is a calculation of the toll imbalance that you or your client have done, this is new evidence and the Board cannot allow that.

20728. **MR. THOMPSON:** It's really not evidence, Mr. Chairman.

Final Argument
P. Thompson

20729. It's argument based on illustration, but since my friend is concerned about it, let me try and do it without the document and then, if at the end of it, you think it might help, and my friend is not exercised about it maybe we ---
20730. Why don't we just attach it as an appendix to the argument as we would have done had we submitted a written argument?
20731. But I take his point. If he's concerned about it, then let me try it the other way and see where we get.
20732. **THE CHAIRPERSON:** Try it in argument, Mr. Thompson, and we'll see how far you can go with that.
20733. **MR. THOMPSON:** We did in the evidence -- and I don't want you to turn up the transcript -- but you may recall that I put to the TransCanada panel the three-shipper example where we had Shipper No. 1's delivery point 90 kilometres from Empress, we had Shipper No. 2's 100 kilometres from Empress; and we had shipper No. 3's delivery point 110 kilometres from Empress. We had an interconnection point at 80 kilometres from Empress.
20734. And then we discussed the implications of zonal service, assuming 1 cent - - assuming one unit of volume and 1 cent per kilometre, and the total cost of service was \$3, and we had a zonal toll of \$1 in the load centre at 100 kilometres. So that's the sort of basic illustration.
20735. We then went through with the witnesses what happens when the shipper to the 90-kilometre point opts for segmented service, and what we saw there was that the toll to that particular shipper dropped from \$1 to 93 cents, and my characterization of that was offloading of zonal cost responsibility and it went onto the backs of the remaining two shippers in the zone whose toll went up to \$1.03 and-a-half cents.
20736. And all of that I discussed with Mr. Whitmore in sort of a garbled sort of way, but that's the thrust of what came out on the record.
20737. So that's one problem. That's the zonal cost offloading problem, component, if you will, of the toll imbalance.
20738. The remedy for that -- the remedy for that, and this came during the course of the cross-examination by Board counsel of Mr. Frew. The remedy for that is to approve -- and I say approve now -- the short-haul toll design principle that was put to Mr. Frew by Board counsel whereby a short-haul shipper will be charged the higher of the zonal differential or the current short-haul toll.
20739. The reference for that discussion with Mr. Frew is at Transcript Volume 9, commencing at paragraph 12344 and, in particular, I draw your attention to paragraphs

12362 and 12363 where TransCanada appeared to acknowledge that the introduction of this particular measure is appropriate.

20740. So coming back to my illustration, what does that do? It, in effect, prevents the 7 cents -- it prevents the shipper that has gone segmented from offloading the 7 cents onto the shippers that remained long-haul to the zone.
20741. Now, in terms of the evidence in this proceeding, what does that recommended remedial measure do? And in that connection, I draw your attention to -- it's Exhibit B-34. And this shows the interim tolls effective January 1, 2004 and effective August 1, 2004.
20742. What the adoption of the no offloading of zonal cost responsibility principle would do, in my submission, is to increase the short-haul toll from Dawn to Union CDA. It would increase the short-haul toll from Dawn to Enbridge CDA. It would increase the short-haul toll from Dawn to Niagara Falls, and it would increase the short-haul toll from Dawn to Chippawa. [See Undertaking U-5, Exhibit B-34]
20743. If North Bay Junction is approved, the no offloading of zonal cost responsibility remedial measure will increase the short-haul toll from North Bay Junction to the Union CDA, to the Enbridge CDA, and to the Union NCDA by the amounts shown in this exhibit, being the difference between the zone differential tolls for each of those particular deliveries and the interim tolls.
20744. So that's one remedial measure and one cause of the toll imbalance problem that, in my respectful submission, can be implemented immediately and it doesn't need any toll design study for you to find that this is an appropriate toll imbalance remedial measure to adopt.
20745. The other part of the problem, in my client's submission, relates to the costs of system underutilization attributable to FT non-renewals and the allocation of those costs of underutilization to all shippers using a volume-distance allocation factor.
20746. Coming back to the example that I put to the witnesses where we had the interconnection at the 80 kilometres out and then the three shippers 90, 100 and 110, and taking it a further step from segmented service to Shipper No. 1 having a toll of 93 cents, and then deciding I'm going to bring my supplies in at the 80-kilometre interconnect, the result of the discussions that I had with the witnesses there indicated that the loss of the 10 cents would be allocated in a certain fashion and then the loss of the 80 cents would be allocated on the basis of the allocation units that result when the shipment to the interconnect is not renewed.
20747. The upshot of that discussion -- the upshot of that discussion revealed, in my respectful submission, what you see in Exhibits B-50 and B-59; namely, that 96 percent -- 96.4, I think -- sorry, 94.4 percent of the revenue loss that's attributable to these FT non-renewals is being allocated to long-haul shippers. And why is that? Why is that?

20748. That is because, when you look at the example and you have a short-haul shipper going 10 kilometres and two going 100 and 110, when you use the volume-distance allocation factor to allocate those non-renewal revenue losses, the bulk of it will go to the shippers travelling the longest distance.
20749. Taking the B-50 example, Undertaking Response U-21, what you have shown here is a situation where the volumes being shipped short-haul, shown on the second page, of 1,497,502 GJ per day, which is about 34 percent of total short-haul and long-haul shipments, are only picking up 5.6 percent of the revenue losses attributable to non-renewals.
20750. In my respectful submission, that evidence indicates that there is a toll imbalance problem when you look at it in the context of annual short-haul shipments on a GJ-per-day basis to this eastern market area, the figure -- percentage figure, as shown in Exhibit C-2-8 and in response to TCPL No. 3, indicates that about 40 percent of volumes being shipped to the eastern market area are short-hauls.
20751. Another way of simply looking at the problem is to ask yourself: What happens if a shipper at the beginning of the line drops off? How is that revenue loss absorbed? Who gets the hit? And then you ask yourself the question: What happens if someone at the end of the line drops off?
20752. And if you go through that exercise, take my example of the three shippers at 90, 100 and 110 kilometres from Empress, if you add two shippers 10 kilometers from Empress, each of them carrying one unit of volume, you'll add 20 allocation units to the 300 that existed previously.
20753. If the shipper nearest the source drops off, you lose 10 cents of revenue. You can go through the math and ask yourself: Who picks that up? And the math will reveal that the bulk of it is picked up by the long-haul shippers.
20754. You go through the same exercise at the other end and you contemplate what happens if the shipper at 110 kilometres drops off the system, a dollar of revenue is lost, how is that absorbed? You get the same result. More than 90 percent of it is picked up by the long-haul shippers.
20755. So the result is that whether a load loss occurs at the beginning of the line or at the end of the line, the shippers that take the hit on the revenue loss are the shippers towards the end of the line, and I submit that is unfair. That is unreasonable. Load losses and the cost consequences of load losses should be distributed fairly and reasonably to all shippers.
20756. In terms of what possible remedies are there for that particular problem, well, we have in the record in this case, again, the responses to U-22 and U-27, Exhibits B-51 and B-59. And what these exhibits demonstrate is that if you allocate a portion, a portion, of the net non-renewal revenue loss on a volume basis, then you get a fairer

distribution of the burden of those revenue losses on all shippers. And you can see the impacts -- you can see the impacts of that distribution compared to the distribution on a full-volume distance basis in Exhibit B-59 at page -- well, it's the illustrative attachment for A. And this was based on a 50 percent volume allocation, 50 percent volume distance.

20757. Just for example, the Northern Zone toll would decline by about 1.973 cents per GJ, the Eastern Zone toll would decline by 4.118 cents per GJ, export tolls would decline in varying amounts and you would get increases in short-haul tolls ranging between about 1.8 cents per GJ and about 4.9 cents; slightly less than 5 cents.

20758. So that's one method of addressing the problem. Allocate a portion of the cost of underutilization represented by the non-renewal revenue loss on a volume basis rather than on a volume distance basis, and the impacts are shown in these exhibits that I have mentioned.

20759. The response to Exhibit B-59, page 5, paragraph (c) indicates that if you reduce the proportion that's being allocated on a volumetric basis only, then there will be a corresponding reduction in the -- corresponding decline in the reduction in the toll.

20760. So, for example, if you reduced the allocation on a volume basis from 50 percent to 34 percent to reconcile it with the 34 percent of total volumes that are being shipped short-haul on a GJ-per-day basis, you would get a reduction -- get a decline in the reduction in the Northern Zone toll and these other tolls; the tolls that I mentioned.

20761. You get increases in the short-haul tolls. There's no doubt about it. This is a rebalancing exercise and you will see increases in the tolls to Saskatchewan, Manitoba and the Western Zones. But this is a rebalancing exercise and it is, in our submission, one way of addressing the problem.

20762. The adoption of this type of approach, in my respectful submission, is not arbitrary, as TransCanada suggested. If you accept -- and I urge you to accept -- that the costs associated with load losses ought not to be disproportionately allocated to long-haul shippers.

20763. We submit that load losses occurring at either end of the system, and in the middle of the system, should be fairly allocated to everyone.

20764. Now, obviously the impact on shippers located in Saskatchewan, Manitoba and Western Zones of modifying this allocation factor need to be considered. The views of all short-haul shippers and long-haul shippers need to be considered, but what in the end is required is an approach that is fair and reasonable for all shippers.

20765. Other approaches to modifying this volume/distance allocation factor which is currently used to allocate the costs of underutilization include an examination of and separate allocation of individual components of the costs of underutilization, such as,

for example, the underutilization costs associated with Great Lakes Gas Transmission. Another may be to examine the incremental fuel costs associated with TransCanada's use of the integrated system to support its long-haul commitments.

20766. What the evidence in this case convincingly demonstrates, in my respectful submission, is that the allocation factor applicable to system underutilization costs needs to be modified. There is an imbalance problem. You can see that in these exhibits, and I urge you to make a finding to that effect, that there is a toll imbalance problem, and to direct TransCanada to modify the allocation factor in order to allocate a greater portion of system underutilization costs to shorter distance shippers.

20767. I urge you to direct and require TransCanada to bring the matter forward in its 2005 tolls case so that these corrections can be implemented for the test year commencing January 1, 2005.

20768. In their testimony, TransCanada's witnesses asserted that tolls on other pipeline systems will need to be taken into account when determining the extent to which short-hauls to some delivery areas can be increased. [Tr Vol 3, paras 3364 to 3384 and 3912 to 3922]

20769. Just for the benefit of the reporters, I am on 27 of my written outline. I have had to digress -- divert myself upstream. But I'm now back at paragraph 27, so if they're trying to pick up references, there's one there that they can find.

20770. And this is the reference to Mr. Frew's evidence where he talked about competitive caps and that kind of thing with their short-haul tolling.

20771. In my submission, this is a factual matter that requires further investigation. And there is also a question of weight. What is the weight to be accorded to any short-haul competitive cap evidence in the context of the cost-based toll regime which is currently applicable to the Mainline?

20772. It certainly is a factor that should be examined.

20773. IGUA submits that these issues can and should be considered promptly within the context of a Board-directed process that will lead to the implementation of the requisite corrective measures in TransCanada's 2005 Tolls and Tariff Application for the test year commencing January 1, 2005.

20774. To my client, these toll imbalance issues have to be remedied immediately, despite the fact that their impacts are measured in pennies rather than in dimes or quarters. Pennies are a matter of significance to IGUA members and to other Mainline shippers even though they apparently mean little to TransCanada. [Tr Vol 1, para 1056; Tr Vol 3, paras 3385 to 3390]

20775. And on the pennies point, I draw your attention to Mr. Frew's evidence. Transcript Volume 3, you will find this, I believe, in paragraphs 3385 to 3390, where he indicated that there appears to be up to about 6 cents of head room on this competitive cap issue. And the only reason I point that out is that 6 cents would tolerate even what's in Exhibit B-59. The short-haul toll increases there are all less than 5 cents, and that is the allocation of the nonutilization -- system nonutilization costs represented by net loss of FT or non-renewal revenues.

20776. So that gets me through my toll imbalance section. I'm sure you will all be relieved. And if you feel that this example would be of assistance, it is here, reproduced at no cost by Borden Ladner Gervais, and anybody who wants it is welcome to it.

CONTRACTING PRACTICES

20777. Let me move on to Topic 4, "Contracting Practices". The contracting practices issue encompasses not only short-haul contracting practices, but also expansion capacity contracting in response to market demands for further short-hauls. The questions to be considered include whether the Mainline's use of its entire integrated system to support its short-haul commitments should be constrained in any way, and the related question of whether the Mainline can rely on its use of its integrated system to support short-haul commitments to justify a renewal of long-term TBO contracts on Great Lakes Gas Transmission; what I would describe as another affiliate of TransCanada.

20778. Another question to be considered is whether the Mainline is obliged to contract for TBO expansion capacity on the pipeline systems of others such as Union and TQM in response to demands for incremental short-haul services. These contracting practices issues are complex.

20779. Now, in argument this morning, counsel for TransCanada indicated that IGUA advocated direct path restrictions on TransCanada's short-haul contracting practices.

20780. I'm not sure that that's what the IGUA witness panel said in cross-examination; but, in any event, a direct path restriction on the offering of short-hauls, if it was an IGUA position, it is no longer a component part of IGUA's position. The IGUA witnesses said many times that the Board should deal with the situation as it exists and not as it might have been.

20781. In their cross-examination, IGUA witnesses acknowledged that there is nothing to preclude from -- to preclude TransCanada from using its entire integrated system to support its short-haul commitments, as long as short-haul shippers are picking up a fair share of total integrated system costs, including the costs of system underutilization. And I have included a number of transcript references for that

proposition. [Tr Vol 3, paras 251 to 253; 282; 291 to 295; 412 to 414; 572 to 576; 641 to 642; 839; and 1014]

20782. This, however, does not mean that TransCanada's use of its integrated system to support short-haul commitments can justify its renewal of long-term commitments on Great Lakes.
20783. The question of the extent to which Great Lakes renewal costs will be recoverable in tolls is one that will need to be carefully scrutinized when that issue is considered by the Board, particularly when TransCanada has acknowledged in cross-examination by Mr. Smith that its Great Lakes costs are avoidable and that Great Lakes capacity is not needed to provide the level of short-haul service currently being provided. [Tr Vol 7, paras 9364 to 9366 and 9536 to 9537]
20784. The question of TransCanada's obligation, if any, to contract for TBO expansion capacity on pipeline systems of others, such as Union and TQM, is not a matter that IGUA has considered in any depth, as Mr. Fournier indicated at Transcript Volume 3, para 303.
20785. IGUA notes that market participants are free to contract expansion capacity on those other pipelines directly. From a process perspective, IGUA suggests that the question whether TransCanada should be required by its regulator to acquire expansion TBO capacity on those pipelines is a matter that should be raised in a facilities expansion case.
20786. IGUA notes that market participants have the option of applying to the Board for a Section 71 Order in the event that TransCanada refuses to provide any incremental capacity on its system to meet the incremental needs of any particular market participants.
20787. The issue of whether TransCanada should or should not be required to contract for this TBO capacity should be raised in a facilities expansion case because it is there where the supporting contracts from the market participants seeking the added capacity can be considered and examined.
20788. If TransCanada refuses to acquire or construct any incremental capacity requested by short-haul shippers, then that refusal, in our submission, from a process perspective, should be made an issue in a facilities case where the requisite contractual commitments from those demanding the incremental capacity can be scrutinized, along with all other public interest matters relevant to system expansion.
20789. Regulators responsible for considering the public interest aspects of facility expansion requests have a difficult job, particularly when gas supply is flat or in decline. In such circumstances, most regulators will probably proceed cautiously before authorizing the construction of excess pipeline infrastructure.

20790. Another issue that was raised with respect to contracting practices, and Mr. Yates mentioned it this morning, an issue again which IGUA has not probed in depth in these proceedings, is the allegation of contracting practices favouring affiliates.
20791. This issue has come up in regular proceedings -- regulatory proceedings in Ontario in which IGUA has been involved, and we have expressed some views there at a general level, and I thought it might be fairest to put these views on the record now because those who are making those allegations behind me will know what IGUA's general position is with respect to these difficult utility affiliate issues.
20792. There is no doubt that regulated utilities substantially or wholly-owned by energy conglomerate holding companies pose an ever-increasing challenge for regulators.
20793. IGUA has been faced with these challenges in Ontario where the implications of relationships between Enbridge Gas Distribution and Union Gas and their affiliates have become items of major concern.
20794. In IGUA's view -- and this view has been expressed previously in other forums -- the primary reason why such regulated utilities pose problems for regulators is because they do not act as a stand-alone utility would act. They tend to favour their affiliates because such action benefits their parent. Transparency is the key to maintaining adherence to the stand-alone regulatory principle. Transparency means full disclosure from affiliates of all matters relevant to their relationship with the utility. Anything short of adherence to the principle of transparency leads to problems.
20795. In this context, therefore, if the Board finds that there is any evidence in these proceedings that TransCanada has favoured its affiliate, then the Board should immediately sanction that conduct.
20796. However, scrutiny of the influence of parents over affiliates and affiliates on utilities should not be confined to TransCanada but should extend to actions of any regulated utility in these proceedings which is part of a wholly-owned energy conglomerate.
20797. If the evidence in this proceeding demonstrates to your satisfaction that the proposals being made by Enbridge, GMi or Union are incompatible with this stand-alone principle of utility regulation, then the requests for the relief that those utilities seek should be denied. These are the principles that IGUA suggests should guide your deliberations with respect to the affiliate favoritism allegations being made in this case.
20798. Turning to my fifth topic, if questions pertaining to the proposals to add new receipt and delivery points to the Mainline are to be decided now, rather than after the toll imbalance issue has been resolved, as IGUA suggests, then IGUA urges the Board to apply a principled approach to their resolution.

20799. As a threshold principle, IGUA submits that Mainline strategic planning disclosure and transparency should be a prerequisite for Board consideration of the new receipt and delivery point proposed by TransCanada that is clearly a component part of a broader strategic plan.
20800. Moving from there, we submit that the Board should establish the decision-making criteria that, in its view, are appropriate for determining proposals by TransCanada and others to add new receipt and delivery points to the system and new delivery areas as receipt points on the Mainline.
20801. In this connection, there was considerable cross-examination of TransCanada witnesses on the differences between the traditional receipt and delivery points on their system and the proposed North Bay Junction and other proposed new receipt and delivery points.
20802. Some of the questions of principle that we submit should be asked and answered include the following: First, whether there should be a transmission services rationale for the addition of a proposed new receipt and delivery point to the Mainline; whether the Board, as a transmission system regulator, should even be involved in establishing commodity trading points or commodity title transfer points or points to facilitate the division of responsibility for transmission services demand charges when, according to the TransCanada witnesses at Transcript Volume 3, paragraphs 3296 to 3307, and again at paragraph 4117, the gas buyers and sellers are free to establish whatever transfer points they consider to be appropriate in their private commercial arrangements and tripartite arrangements with buyers and sellers on Trans Canada can be established to do what TransCanada is trying to do with the approvals that it seeks in this case.
20803. Another question is if new receipt and delivery points are to be added for a commodity trading purpose and to segment the contracting for transmission services, then should the points be approved absent persuasive evidence from market participants who are seeking segmentation of the system at that point for those purposes?
20804. Is it appropriate for the Board to approve new receipt and delivery points as an experiment: to countenance a "pin the trading point tail on the Mainline donkey" approach to a determination of requests for approval of new receipt and delivery points?
20805. IGUA submits that the Board should decline to adopt the "what harm can it cause" approach to its determination of these requests. Absent a transmission service rationale for the proposals and convincing evidence to demonstrate the need, the proposals should be rejected.
20806. If, notwithstanding these submissions, the Board is inclined to approve, in principle, new receipt and delivery points for the Mainline, as requested by TransCanada and others, then their approval, in our submission, should not become effective before the

toll imbalance problems have been remedied and all operating aspects with respect to the new receipt and delivery points have been resolved.

IGUA'S SPECIFIC RESPONSES TO THE ISSUES LIST

20807. Turning then to Topic 6, which is IGUA's specific responses to the issues list, there is some unavoidable redundancy here, but by and large, this is a summary of IGUA's specific response to these questions.
20808. With respect to Issue No. 1, the appropriateness of the existing zonal toll structure for domestic deliveries, IGUA submits that the zonal toll structure for domestic services and the export point-to-point long-haul toll structure for export services remains appropriate, provided that the toll imbalances between long-haul and short-haul shippers are corrected immediately.
20809. Issue 2, the appropriateness of the existing zonal toll design for short-haul services and of TransCanada's short-haul contracting practices dealing, firstly, with the existing toll design for short-haul services, a summary of IGUA's submissions is as follows:
20810. First, the existing toll design for short-haul services is deficient because it countenances the offloading of zonal cost responsibility and because it does not fairly allocate to all shippers a reasonable portion of the cost of system underutilization attributable to non-renewals.
20811. Second, the inappropriate zonal cost responsibility shift can be corrected immediately by increasing the short-haul tolls to the central delivery area and to the Niagara and Chippawa export points by the amount necessary to equate segmented short-haul service to the existing long-haul tolls to the Eastern Zone and to those export points.
20812. Next, the application of a volume-distance allocator to the costs of system underutilization is unfair and unreasonable in that it allocates a disproportionate level of such costs to long-distance shippers.
20813. Next, one way of correcting for the disproportionate allocation of system underutilization costs to long-haul shippers is to change the allocation factor applicable to net FT non-renewal revenue losses.
20814. The application of a volume-only allocation factor to a portion of the net non-FT renewal loss appears to IGUA to be a reasonable approach which better allocates the burden of these underutilization costs between short-haul and long-haul shippers.
20815. Finally, in the context of the foregoing, the Board ought to direct TransCanada to allocate a greater portion of such costs to shorter distance shippers and to bring the matter forward in its 2005 Tolls and Tariff Application for tolls effective January 1, 2005.

20816. With respect to the second part of this issue, TransCanada's contracting practices, IGUA's specific response is as follows:

20817. First, as long as short-haul shippers are picking up a fair share of total system underutilization costs, TransCanada should not be precluded from using its entire integrated system to support its short-haul commitments.

20818. Next, however, TransCanada ought not to be able to justify a renewal of all of its long-term commitments on Great Lakes to support short-haul commitments.

20819. Thirdly, nor should TransCanada be automatically obliged to contract for TBO expansion capacity on the pipeline systems of Union and TQM in response to incremental demands for short-haul. If TransCanada refuses to acquire or construct any incremental capacity requested by short-haul shippers and backed by the appropriate precedent agreements, then such a refusal should be considered in a facilities case where the requisite contractual commitments from those demanding the capacity can be scrutinized along with all other relevant public interest factors.

20820. And finally, where shippers are wholly accountable for the cost consequences of underutilization, and where overall supply is either flat or on the decline, regulators should proceed cautiously before authorizing the construction of excess pipeline infrastructure.

20821. Turning to Issue 3, the appropriateness of the North Bay Junction proposal and any alternate proposals, I will deal with each of these proposals separately, and the first is the NBJ proposal.

20822. It's IGUA's submission that the NBJ proposal should be rejected for any of or all of the following reasons: First, the proposal should not even be entertained before the strategy initiative, of which it is a component part, has been disclosed by the Mainline. Mainline strategic planning transparency should be a prerequisite to your consideration of this proposal.

20823. If you agree, then the proposal should be rejected on this ground alone.

20824. Other grounds which we urge you to consider are as follows:

20825. First, the NBJ is not a point where gas can either be accepted into or delivered off the Mainline, and in that context, may not meet your definition of what should constitute a receipt and a delivery point.

20826. Second, the purpose of the NBJ proposal is simply to facilitate commodity trading and the segmentation of transmission system responsibilities at that point, and based on the evidence from TransCanada, is unnecessary because market participants

wishing to achieve such objectives can do so in their private commercial relationships with one another and with TransCanada.

20827. We submit that in these circumstances, TransCanada is free to promote its willingness to participate in such commercial relationships without a new Board-approved receipt and delivery point at North Bay.

20828. Next, we submit that there is little, if any, evidence of any demand from market participants for either commodity trading or the segmentation of transmission system responsibilities at the North Bay Junction.

20829. In these circumstances, if you endorse the principle that evidence of demand is a prerequisite, then the absence of that evidence should lead to a rejection of the proposal.

20830. We submit that the NBJ proposal is nothing more than an experiment and the Board ought not to countenance experiments as a basis for approving new receipt and delivery points.

20831. We submit that the NBJ proposal, in a rate-design context, is piecemeal and incomplete. The transmission service rationale from the point is yet to be fully developed, and enhancements to service at the proposed NBJ contemplated by TransCanada are many and are still works in progress [B-14- NEB 1.20(a)].

20832. Finally, we submit that the NBJ proposal is not a matter of urgency as TransCanada contends [Vol. 3, paras 3424 to 346].

20833. We submit that the reality is that most of the capacity on the northern line has now been sold out for the short term and that the need for the NBJ trading point, if there is one, is for availability by the spring of 2006 [Vol. 1, para 421 to 424; 429 to 434; 1097 to 1112].

20834. In these circumstances, if you're not inclined to reject the NBJ proposal, as we urge you to do, then we urge that any approval, in principle, of the proposal not become effective before the toll imbalance problem has been corrected because that problem, in our view, can be corrected, at the latest, in TransCanada's 2005 Tolls and Tariff Application.

20835. Turning next to the Parkway delivery and receipt point proposal, we submit that there is no evidence of any urgent need for a new Parkway receipt and delivery point. IGUA understands that some trading at Parkway is already taking place; and accordingly, IGUA questions whether a new gas trading receipt and delivery point at Parkway is needed.

20836. If you're inclined to approve this new receipt and delivery point, once again, we submit any approval should not become effective before the tolling imbalance problem has been corrected and before operational issues have been resolved.
20837. Finally, the St-Nicolas proposal. Once again, we can see no urgent need for the approval of a new receipt and delivery point at St-Nicolas.
20838. The evidence with respect to -- there is no evidence in these proceedings with respect to the impacts on stakeholders of the shipments of LNG gas to delivery points in the eastern market area from St-Nicolas, and for this reason, we submit St-Nicolas ought not to be added as a new receipt and delivery point to the Mainline at this time, nor should any finding be made with respect to the tolls applicable to the westerly carriage by the Mainline of LNG gas that may ultimately be injected into the TQM system at St-Nicolas.
20839. Tolling issues with respect to expanded facilities on TQM needed to deliver incremental LNG gas to delivery points in the eastern market area should be determined when all of the relevant circumstances are known, including the impacts on various Mainline stakeholders. [Ex. C-2-8, TCPL #1, Tr Vol 12, 18088 TO 18192]
20840. The other alternate proposal with respect to new receipt and delivery points -- at least I have included it here -- is the Cogen Alliance proposal to allow for the segmentation of existing FT long-haul contracts.
20841. IGUA's position on that is set out in an interrogatory response to TransCanada. I think it's in Exhibit C-2-8, TransCanada 18 and 20, where the position is that a conversion right is inappropriate at this time. The submission is that the unfair and unreasonable cost burden currently being borne by long-haul shippers should be remedied before any conversion right is approved. [Ex. C-2-8 TCPL #18 & 20]
20842. That's really a corollary of the position that there should be no new receipt and delivery points before that problem has been addressed.
20843. Issue 4: The Appropriateness of Offering Firm Transportation, Interruptible Transportation, and Short-Firm Transportation Services Using Domestic Delivery Areas as Receipt Points.
20844. Here IGUA simply reiterates its general submission that the Board should adopt what, in its view, is a principled approach to a determination of these requests. IGUA relies on the Board to apply a principled approach when determining the appropriateness of the relief requested by Enbridge.
20845. Issue 5: Potential Impacts of any Changes to Toll Designs on Tollpayers and Other Services.

20846. The impacts of allocating a greater share of the costs of system underutilization to short-haul shippers will be to increase short-haul and shorter distance tolls and to reduce long-haul tolls to the Eastern Zone and to most export points as shown in TransCanada's responses to Undertakings U-21, U-22 and U-27, being Exhibits B-50, B-51 and B-59, to which I have already referred.

20847. Issue 6: The Appropriate Process for Implementing Toll Design Changes for the Mainline.

20848. Counsel for TransCanada, in his submissions this morning, criticized IGUA's approach to the toll design issue and its request for a Board-directed review process. In his submissions, counsel for TransCanada implied that IGUA and any other Intervenor must have all the answers to toll structure and toll design implications caused by the change in the carrier status of the Mainline when they intervened in this case.

20849. By way of response to those submissions, I suggest that this puts far too high and far too heavy a burden on Intervenor which do not have either the resources, the expertise or the information to present more definitive proposals at the outset of the case. In its prefiled evidence, IGUA mentioned the difficulty that it faced, and in particular, I'm referring to C-2-6 at pages 22 through to 24, the responses to Questions 11 and 12.

20850. Counsel for TransCanada suggested that TransCanada was surprised by IGUA's suggestion that a toll design review was appropriate; were puzzled by that submission because, in a couple of places in its interrogatory responses, IGUA mentioned this concept. The first is in its response to TCPL IR 15, again, I believe, part of Exhibit C-2-8, where in Response 1, it is stated:

"IGUA hopes that the National Energy Board will instruct TCPL to engage in a full toll design with its stakeholders and to bring forward a report and recommendations in the 2005 toll proceeding."

20851. A second area in the evidence where this concept was mentioned by IGUA is in its response to NEB IR 1.4 where IGUA stated, and I quote:

"IGUA's suggestion of a need for a full review of TCPL's toll design mechanism is not to allocate revenue deficiencies but, rather, to reallocate the total burden of TCPL's revenue requirement to better balance the sharing of the system costs between long-haul and short-haul shippers."

20852. So we don't understand why TransCanada was surprised by the evidence from Mr. Fournier when he testified.

20853. It is clear we didn't have definitive suggestions at that stage of the process. Had IGUA testified in the ordinary course and had we had all of the evidence that we now have in Exhibits B-34, B-50, B-51 and B-59, we probably could have been a little more definitive.
20854. But I submit it is unfair to disparage the position that IGUA has tried to put forward here on a constructive basis because the definitive answers were not presented in the prefiled evidence.
20855. And also, bear in mind that one of the suggestions that was made -- I believe it's in response to NEB question of IGUA 1.4, was to -- and I'm paraphrasing -- to put less emphasis on distance and more emphasis on volume. That prompted some further information requests from Board staff to TransCanada and it led to a revelation that internally TransCanada has been reviewing its toll design for years. And I submit, coming back to the transparency principle and the trend to secrecy, we are seeing more of it. That review should be shared on the record with its tollpayers, and unfortunately it's not.
20856. So we're further ahead at the end of the case than we were at the beginning, and having regard to the entire record that's now before the Board, our submissions with respect to the process are as follows:
20857. First of all, we submit that the toll imbalance problem can be corrected by applying the principles upon which the existing zonal toll structures for domestic deliveries and the existing long-haul export point-to-point toll structure for export deliveries are based. We do not need to reinvent the toll methodology wheel to resolve these issues.
20858. In the context of the complete record that has emerged during the course of these proceedings, IGUA now believes that the appropriate course for implementing toll design changes for the Mainline is as follows: First, the inappropriate zonal cost responsibility shift should be corrected immediately along the lines put to TransCanada by Board counsel for implementation no later than January 1, 2005.
20859. Second, the remaining facets of the toll imbalance issue should be resolved under the auspices of a Board directed consultative process involving TransCanada and its stakeholders to commence immediately and to lead to the correction of the toll imbalance problem in TransCanada's 2005 Tolls and Tariffs Application.
20860. Any other toll design issues, including the toll design enhancements which TransCanada is contemplating and which are set out in a response to an NEB Information Request should, in our submission, be reviewed under the auspices of a Board-directed consultative process.
20861. TransCanada indicated, as we understood them, that it's not opposed to a toll design review, and as I have indicated, it has been conducting one internally for

years. IGUA believes that a direction from the Board requiring TransCanada to retain an independent toll design expert to deal with these residual matters of toll design will assist the parties in evaluating alternatives and will be beneficial. [Tr Vol 1, paras 262, 263; 1184 to 1187; 1219 to 1231; and 1292 to 1295]

20862. In response to TransCanada's suggestion that an expert is not needed because the task being performed is the Board's job, IGUA submits that such an expert is not a substitute for the Board, but an additional resource available to all stakeholders. [Vol 3, 3991 to 4006] The Board ultimately determines what the tolls will be.

20863. And we observe that many regulators are increasingly appointing independent experts to assist in the resolution of regulatory issues. That phenomenon is occurring particularly in the affiliate transaction area.

20864. My last topic, "Conclusion":

20865. In conclusion, we reiterate that this case is not simply about choice and opportunity. This case is about the changed carrier status of the Mainline and the fundamentally important toll structure and design issues and contracting practices issues which that changed status raises.

20866. IGUA believes that the manner in which these issues are decided will have a profound effect on the Mainline's stakeholders and the Mainline's future operations. The priority relief which IGUA asks you to grant is to remedy the toll imbalances which have ensued as a result in the change in carrier status that has occurred over the last six years.

20867. I hope that these submissions will be of assistance to you in your task, which we acknowledge is not an easy one.

20868. And unless there are any questions, those are my submissions.

20869. **THE CHAIRPERSON:** Thank you, Mr. Thompson. The Board has no questions for you. Thank you.

20870. Mr. King...?

20871. **MR. KING:** Good afternoon, Mr. Chairman and Members of the Board. I want to begin by saying upfront that my argument today will be restricted to TransCanada's North Bay proposal. I will not be commenting on or taking a position on any of the issues or proposals of the other Intervenor. That is the basis upon which we participated in this hearing and it is the basis for our argument today.

20872. In our view, contrary to what others might think, this proceeding and the Board's here is relatively straightforward. The North Bay Junction Application is simply a tolls matter.

20873. It's not the typical annual tolls case that we have come to know and love recently, but it is, nevertheless, just a tolls application. TransCanada is seeking to amend its tariff to create a new domestic and receipt delivery point at North Bay and establish tolls associated with that new point. Now, in this context, your role, as set out in the *NEB Act*, is as it is in any other tolls case. You need to scrutinize the North Bay proposal to determine whether the resultant tolls will be unjust, unreasonable or unduly discriminatory. That is the statutory yardstick against which you must conduct your decision-making.

20874. As you know, my client has taken issue with what we consider to be the discriminatory aspects of the TransCanada proposal. But before I get to that, let me state what, given the legal context for the Application, really ought not to be issues in consideration here.

20875. First, TransCanada's objectives behind their Application are not really a relevant consideration that we need to be concerned about. The desire to create a new market centre in order to attract and retain throughput on the long-haul portion is something I think anyone can support -- certainly my clients can -- but it doesn't tell us whether the proposal will result in tolls that are more or less just, reasonable or discriminatory.

20876. Secondly, we would submit that whether one thinks the North Bay proposal might work or not is probably not a relevant consideration for the Board. Mr. Stauff's evidence sets out his analysis of why he is skeptical about whether it will work (Exh. C-9-5, Stauff Evidence at page 7), and I think his thinking is similar to that of other parties.

20877. But that having been said, we don't think there is anything in the record that would lead the Board to reasonably be able to conclude whether the North Bay Junction proposal will be successful or won't.

20878. Now, this uncertainty about the proposal, in my view, has two implications. First, the Board cannot dismiss the Application on the basis that it might not be successful.

20879. However, the second implication is that in determining whether to approve the Application, the Board must consider the toll implications if the North Bay proposal was a resounding success and if the North Bay proposal was a complete failure.

20880. In other words, what would the toll implications be if there was significant shipper contracting to and from North Bay and what would the toll implications be if the market did not contract to or from North Bay? Both scenarios seem to be possible, both need to be considered.

20881. The third and final issue that we believe is not relevant to making a determination on the Application is the fact that this proposal continues a piecemeal approach to implementing toll and service changes on the Mainline.
20882. Clearly all stakeholders, including the Board and TransCanada, would be better off and all probably would have preferred a comprehensive, consistent set of tolling and service design principles for the Mainline, but we're told that that is no longer possible. I'm not sure that the reasons for that matter much. Our submission is simply it ought not be in any way determinative of the outcome.
20883. So with that, let me return to my client's chief concern with the North Bay proposal; namely, the concern about toll discrimination.
20884. Now, as you know, my client's position is that the TransCanada proposal, if implemented as is, will result in parallel, insistent and competing toll designs on the Mainline system. As a result, there is clear potential for unjust discrimination among different classes or groups of shippers. Our very practical concern is that the Cogen Alliance members could end up on the wrong side of those discriminatory tolls.
20885. That is a particular concern for CA members precisely because they're long-term shippers; and if there is a new toll design option being made available by TransCanada to new shippers or renewing short-term shippers, the Cogen Alliance members likely will not be able to take advantage of that for a very long time.
20886. If the new option is an attractive one or even might turn out to be an attractive one, that is unfair to the Cogen Alliance members who have supported the system with their long-term contracts.
20887. The more theoretical concern, in relation to the potential for discriminatory treatment, is with the precedent that approval of the NBJ mechanism, as filed, would create.
20888. It is my submission that if the Board approves TransCanada's proposal in its current form on the basis that the tolling differences that the NBJ mechanism would create do not actually amount to unjust discrimination, then it's hard to see how the anti-discrimination provisions of the *NEB Act* have any meaning at all.
20889. Our view is that this is a case where the Board needs to look carefully at those statutory anti-discrimination provisions and ensure that they do have meaning and that the Board's application of the non-discrimination principle is giving us the results that Parliament intended and protecting the people that Parliament intended the Board to protect.
20890. I want to emphasize that we're not saying that the North Bay Junction Application should be denied solely on the basis that implementing the mechanism could lead to discriminatory tolls. We have taken a much softer position than that, because

even though we believe that the proposal will not work, we don't want to frustrate innovative ideas and experiments that might produce benefits for shippers, including ourselves.

20891. On that basis, what we have suggested and what Mr. Stauff supported in his written testimony (Exh. C-9-5) is conditioning any approval of the NBJ Application on TransCanada, including in its tariff a provision that allows shippers to convert between conventional zoned FT transportation service and segmented point-to-point service via the North Bay Junction point.

20892. What that would do is give shippers, who would otherwise find themselves on the wrong side of a toll difference, the ability to avoid that discriminatory result by picking the toll design that best suits them on an ongoing basis.

20893. I note that this conversion mechanism does not, strictly speaking, eliminate the discrimination that arises from having the parallel competing toll designs in effect on the system. We could still end up with similarly situated shippers paying different tolls. But our position is that if all shippers are given the ability, on an ongoing basis, to avoid being adversely affected by the different toll regimes then, from our perspective, that is sufficient mitigation of the discriminatory effect of the overall NBJ scheme.

20894. Now, let me lay out the legal arguments in support of our concerns about the discriminatory aspects of the North Bay Application as is.

20895. There are four sections of the *NEB Act* that, in my submission, are relevant here. First is Section 62, which requires that
:

"All tolls be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate."

20896. Section 67 sets out an independent rule in relation to discrimination. It provides simply that:

"A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality."

20897. Section 68 provides that:

"Where it is shown that a company makes any discrimination in tolls, service, or facilities against any person or locality, the burden of proving that the discrimination is not unjust lies on the company."

20898. And the final statutory provision that is relevant here is Section 63. It provides that the Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions, as referred to in Section 62, whether in any case a company has complied with Section 62, and whether there has been unjust discrimination within the meaning of Section 67.

20899. First of all, it's obvious that we can have discrimination in tolls, i.e. different shippers paying different tolls, without that discrimination being unjust within the meaning of Section 67 and without offending Section 62.

20900. Mr. Stauff used the example of shippers with Saskatchewan delivery points paying different tolls than shippers with East Hereford as a delivery point (Tr. Vol. 13, para. 19964).

20901. The system discriminates between those classes of shippers, but it does so for a good reason. The reason is that there is a large cost difference between providing service to Saskatchewan and providing service to East Hereford and that cost difference justifies a toll difference.

20902. So a toll difference by itself doesn't tell us if there is something wrong. Rather, a toll difference begs the next question as to whether the discrimination is unjust or not.

20903. Clearly, there will be toll discrimination resulting from the North Bay Application. The fact of the matter is that if North Bay's approved, it will be possible to have two shippers located across the road from one another paying different tolls for the firm transportation of gas from Alberta to their facilities.

20904. They can have the same volume, the same load factor, the same receipt point, the same delivery point off of TransCanada, the same term; and yet, they will pay different tolls if one of them uses conventional long-haul FT service to the Eastern Zone while the other uses long-haul FT service that the shipper sets up as two individual segments through North Bay.

20905. So, the question then becomes whether the toll differences that can and will occur, if the North Bay Application is approved, are unjust or not, remembering that the burden of showing that they are not unjust falls on TransCanada.

20906. In our view, TransCanada's failed to show that the toll differences that the NBJ mechanism will generate are just or not unjust, as the statute puts it. I will, in a moment, take you through TransCanada's specific justifications for the toll discrimination. But before I do that, I think it's important for the Board to keep in mind what the objective is here.

20907. A prohibition on unjust or undue discrimination is something that is universal in statutes that govern the regulation of utilities. It is a fundamental principle of

public utility regulation, and it is a fundamental principle because it provides for meaningful protection of customers from discrimination made possible by the monopoly power of the pipeline.

20908. It is these public interest objectives that have to be front of mind in evaluating TransCanada's justifications for the discriminatory tolls that would result from the North Bay Application, as filed.

20909. Now, TransCanada's first justification for discriminatory tolls associated with North Bay seems to be that it may only result in a little bit of discrimination. That's like saying, in the *Criminal Code*, that theft is a crime but not if it's just a little bit of theft.

20910. The requirement in the *NEB Act* is a strict one, and certainly Section 62 doesn't contemplate that tolls will be charged almost equally to similarly situated shippers.

20911. It doesn't make sense and is not consistent with the purpose of the Act to allow a scheme to go into effect that might allow discriminatory results and then force individual parties who become aggrieved, sometime later, to complain. The regulatory regime itself should prevent unjust discrimination, not expressly allow it, and then force people to complain on a case-by-case basis.

20912. The second justification or theme that TransCanada offers up is that implementing the North Bay mechanism doesn't really involve any change in toll design in the sense that TransCanada will still use its tried and true volume-distance methodology and continue to calculate short-haul tolls in the traditional way (Exh. B-20, page 18, line 16. From this, they seem to argue that we have nothing to complain about because the effects that we are concerned about are already built into the existing toll design.

20913. First of all, it is not true that the NBJ Application involves no departure from the existing toll calculation methodology. It is true that the calculation of short-haul tolls will be the same, but the proposal does involve a new point-to-point rate from Empress to a single point that is geographically within the existing Northern Zone.

20914. There is no other example of that on the system, i.e. a place where a single domestic point, that would otherwise be within a larger zone, gets its own point-to-point rate (See Exh. C-9-6, Responses of the CA to TransCanada IR, Question 10, page 11)

20915. In any event, when we talk about parallel toll designs, we are talking about the relationship between tolls and distance and (Exh. C-9-6, Response to TransCanada IR Question 10(b)) the fact that the practical effect of implementing the North Bay proposal, in combination with the existing toll design and the new point-to-point toll to North Bay, will be to make it realistically possible, and in fact very probable, that situations will arise

where domestic shippers located across the street from one another pay different tolls for transportation of gas from Empress to their facilities.

20916. The difference will be that one of them will pay a zone toll that isn't distance sensitive and the other will pay a toll that is much more distance sensitive.
20917. It is true that the existing toll design has inconsistencies built into it that lay the foundation for the discriminatory effects that will be made possible by implementing North Bay (See Transcript Volume 13, paras. 20023-20025). Implementing North Bay will unlock the potential for the discriminatory effects that already exist, but that doesn't make implementing the proposal right or mean that it does not itself have the effect of creating discrimination problems that wouldn't otherwise exist.
20918. The third justification that TransCanada seems to rely on is that different tolls for different firm shippers that live across the street from each other are justified because the two shippers are somehow different.
20919. TransCanada expresses this argument in its Reply Evidence variously as stating that the two shippers receive different services (Transcript Volume 3, paras. 4387 to 4397) or that they transport gas under different terms and conditions, or different "circumstances and conditions" (Exh. B-20, TransCanada Reply Evidence, page 21, line 10) or that they somehow reflect different types of "traffic" (Exh. B-20, page 21, line 20).
20920. Intuitively, it makes sense that if there are real and relevant differences between the services being provided to two different shippers, different tolls may be appropriate and justified. The problem is one of figuring out what service differences or differences in terms and conditions of service or different kinds of "traffic" count as differences that justify differing toll regimes.
20921. In our submission, in order to justify toll discrimination, there has to be a logical connection between the service differences that we see and the toll differences that the pipeline proposes.
20922. I mentioned before that the Board accepts, and in fact exists, on discrimination between Saskatchewan shippers and East Hereford shippers because there is a logical reason for charging East Hereford shippers more. The reason is that it costs more to provide that service.
20923. Our position, following on that reasoning, is that if TransCanada wants to justify toll discrimination between consumers living across the street from each other in Ontario, on the ground that there is some difference in the service received by the two shippers, TransCanada should be required to show that the service differences are logically connected to the resultant toll difference.

20924. In the present case, what we have in practical terms are two different conceptual models for reflecting distance of haul in tolls. One of our hypothetical Ontario neighbours pays as postage-stamp-zone toll while the other pays a more distance-sensitive toll.
20925. No matter where the two neighbours are on the system, those tolls will be different.
20926. My basic submission is that in order for that toll difference to be "just discrimination", there has to be some logical connection between the toll design difference and whatever the service differences are between them.
20927. Suppose TransCanada had two firm services to the Eastern Zone, one of which carried a zone toll and the other of which carried a point-to-point toll.
20928. Suppose that the only other difference between the two services was that one had a higher allowed CO₂ content in the receipt gas. Or, suppose the only difference was that one of the services had a nomination deadline that was an hour earlier than the other. Would either of those differences justify charging one type of customer a postage-stamp toll and the other type a point-to-point toll? No sensible person would say that it would.
20929. The reason for that is that the carbon dioxide specification in the tariff or the nomination deadline have nothing to do with the distance sensitivity of tolls.
20930. The toll distinction between a distance-sensitive toll and a postage-stamp zone toll is not in any way implied by, or connected with, either type of service distinction. Neither could be used to reasonably justify the discriminatory toll treatment of shippers.
20931. So, applying that analysis to the facts of this case, the question becomes: What is it about the differences between conventional FT service and potential NBJ segmented service that justifies or calls for tolls for the conventional service to be zoned while tolls for the segmented service are distance sensitive?
20932. It is our submission that there is no difference between conventional and segmented service that justifies different toll designs.
20933. TransCanada's argument on this point is laid out in its Reply Evidence in their response to Question 26.
20934. And they attempt to draw three distinctions between conventional service and segmented service that TransCanada claims mean that the tolls that will result from implementation of the NBJ mechanism will not offend the anti-discrimination provisions of the *NEB Act*.

20935. First, in the paragraph that starts at line 10 on page 21, TransCanada says that "gas transported to NBJ would not be transported under similar circumstances and conditions as gas transported to the Northern Zone or other zones."
20936. And then the passage goes on to say that gas transported to NBJ goes to a specific point, whereas gas transported to a delivery area within the Northern Zone can be delivered to any of a number of points within the distributor delivery area, and that the ability of an LDC to allocate deliveries to different points within its delivery area "is a valuable service characteristic."
20937. All of that is true, but the question is: What does it have to do with distance sensitivity and why do those facts show that a zone toll is appropriate for deliveries to individual distributor delivery areas within the Northern Zone, but a point-to-point toll is appropriate for deliveries to the NBJ point within the Northern Zone?
20938. All TransCanada has done is describe an operational difference between service to NBJ and service to any other point in the Northern zone. It hasn't explained why that difference implies that a distance-sensitive toll is appropriate for one and not the other.
20939. The next reason TransCanada comes up with for distinguishing between deliveries to NBJ and deliveries to the Northern Zone is that those services involve different types of "traffic", because gas delivered to North Bay will be transported to some downstream point for consumption, whereas gas delivered to other points in the Northern Zone will be consumed in the Northern Zone. And my answer to that again is: So what?
20940. The appropriate toll should have nothing to do with what happens to the gas after TransCanada finishes transporting it. Whether the shipper burns the gas in the Northern Zone, uses it for feedstock, liquefies it and loads it onto retail cars, ships it further downstream is irrelevant, from a tolling perspective. Neither of these first two arguments go to the point that we are making, anyway, which is about the ultimate domestic delivery point across the whole path. Again, the basic problem is that we will have two neighbours across the street from each other in the same distributor delivery area paying different tolls for transportation from Empress to their facilities. Both of those volumes are delivered to the same distributor delivery area, both are consumed in that distributor delivery area and TransCanada's distinctions that I have just highlighted simply don't exist.
20941. TransCanada's final attempt in its Reply Evidence to justify the toll difference appears in the paragraph that begins at line 3 on page 22. And there TransCanada directly addresses the real issue, in our view, which is why it makes sense to charge different tolls to conventional shippers and segmented shippers when the same shipper transports the gas over the whole path from Empress.

20942. TransCanada makes the point that under the NBJ mechanism, there are different contractual rights associated with those two transactions. They mention, in particular, the fact that a segmented shipper, in principle, has the right to divert two volumes of gas.
20943. Once again, however, the question is: So what? In substance, the difference between the situation where a shipper transports gas from Empress to its facility in Ontario via a conventional service and where it does that using segmented service is really a paperwork difference. The net result for the shipper is the same and TransCanada uses exactly the same facilities to deliver it to our two Ontario neighbours.
20944. Even if we consider the additional diversion right to be a material service difference of value to shippers, TransCanada's analysis fails because in the NCDA, the shipper that chooses segmented service and enjoys that additional diversion right will pay a lower toll, but the shipper in the GMi EDA taking segmented service and enjoying the diversion right would pay a higher toll. This is a fatal flaw. It illustrates that there is no logical connection between the service difference and the toll difference.
20945. In summary, then, our position is that in substance, what the NBJ proposal (as filed by TransCanada) creates is different and inconsistent toll designs on the system and that those practical toll differences result in unjust discrimination.
20946. And if the Board does not insist on a rational connection between service differences and toll differences, TransCanada will be able to justify any toll discrimination simply by making minor and irrelevant modifications to its contracting structure or its terms and conditions of service.
20947. Moreover, the ability to discriminate on such a basis would render the *NEB Act's* anti-discrimination provisions irrelevant.
20948. So the conclusion that the NBJ Application raises a serious difficulty with respect to toll discrimination, brings me to the subject of what the Cogen Alliance thinks the Board should do about that difficulty.
20949. What we have said is that, at least from my client's perspective, the Board can, in practical terms, avoid the whole issue and make the North Bay mechanism fair for everyone by requiring TransCanada to provide all shippers with a right to convert their service between conventional and segmented service through NBJ.
20950. As filed, TransCanada's North Bay proposal would make available to the market a new and more distant sensitive toll design scheme, which is different from the existing scheme. However, not all market participants can take advantage of that new regime. In fact, what it looks like is that the NBJ option is really aimed at new shippers and potentially short-term shippers; in other words, those whose contracts will expire soon (see Exh. C-9-5, page 12, first paragraph, and C-9-6, CA Response to TransCanada IR #18, page 23).

20951. For long-term shippers, however, like most of the members of the Cogen Alliance, that supposedly valuable option being made available by TransCanada is not really an option at all for many, many years.
20952. On top of that, the new option actually creates incremental risk for long-term Eastern Zone shippers because of the potential for the overall mechanism to result in an eastward drift of the Eastern Zone load centre. Now, Mr. Stauf explained that phenomenon in his evidence (Exh. C-9-5, pages 12-14), and I don't think there's a dispute about the basic logic.
20953. As Mr. Stauf acknowledged, the result is uncertain, but certainly the potential is there for the Eastern Zone load centre to drift eastward. The example that was given is that of a long-term Eastern Zone shipper in the CDA potentially ending up paying an Eastern Zone toll that is essentially a point-to-point rate from Empress to the GMi EDA (Exh. C-9-5, page 16).
20954. One point that I would like to make in connection with our conversion option proposal, Mr. Chairman, is that it is not something that is aimed specifically at creating a benefit for long-term shippers as opposed to new or short-term shippers.
20955. In its evidence in argument, TransCanada seems to be suggesting that our proposal is intended to gain some undeserved advantage for long-term shippers and should be rejected because it will somehow undermine long-term contracts or people's responsibilities under those contracts, and that isn't a fair characterization of the situation.
20956. Mr. Stauf's evidence discusses the conversion option primarily in relation to the hardship that not having that option would create for long-term shippers; but as I have tried to explain, the basic problem is not one that is peculiar to long-term contracts or short-term contracts. The basic problem is that with the NBJ mechanism, we can end up with different similarly situated shippers paying different tolls, regardless of the terms of their contracts and, in fact, even if they have the same contract term.
20957. Mr. Stauf focused his discussion on the situation faced by long-term shippers because although the discrimination problem exists for everyone, the practical reality is that it is a bigger problem or a problem that is harder to avoid if you're a long-term shipper.
20958. In fact, the basic discrimination problem exists for shippers on one-year renewable contracts as well, to the extent that they are not able to themselves actively avoid that problem by recontracting for whatever toll scheme suits them best. TransCanada pointed that out (Exh. B-20, page 23) and Mr. Stauf agreed with it.
20959. For a short-term shipper to convert to distance-sensitive tolls using segmented transportation service, it has to essentially give up its renewal rights and risk losing its capacity in the TransCanada auction process. (Tr. Volume 4, para. 4535)

20960. There is no doubt that is a risk, although clearly, when there is excess capacity on the system, that risk must be small. Short-term shippers are still in a much better position than long-term shippers to avoid getting on the wrong side of a discriminatory tolling structure.
20961. In any event, that does not show that long-term shippers have no complaint, i.e. on the ground that they are in the same boat as short-term shippers. What it shows is that existing short-term shippers have the same basic complaint as the long-term shippers in that TransCanada is making an option available in the market that they might not be able to take advantage of.
20962. Their disability in that respect is less than the disability faced by long-term shippers, but it still exists and it is still unfair. That is why the conversion option set out in the Direct Evidence of Mr. Stauff would be made available to all shippers, not just long-term shippers.
20963. We are not trying to avoid the natural consequences of having long-term contracts. It is obviously true that long-term shippers have burdens that short-term shippers don't have, and if the Cogen Alliance members could switch to one-year renewable contracts, my guess is they probably would. They have more risk in relation to market loss and in relation to future levels of tolls. They may have greater obligations in relation to financial assurances, and maybe other things as well.
20964. It is not, however, a natural incident of having a long-term contract that you pay tolls that are not distance-sensitive, if everyone else that wants to pay a distance-sensitive toll is able to do that. That is like the earlier discussion about why differences in the destination of gas going through the Mainline, or nomination deadlines, or carbon dioxide specifications, have nothing to do with distance sensitivity.
20965. There are accepted and justified differences between long-term and short-term contracts, but the term of a shipper's contract has nothing to do with whether that shipper should be paying a distance-sensitive toll or a postage stamp zone toll. If a distance-sensitive toll is just and reasonable for a new shipper, or a short-term shipper who is able and willing to convert to segmented service, it is just and reasonable for short-term shippers as well.
20966. Long-term shippers do take the risk that the Board will change the toll design or the tolls that they pay, but they certainly don't expect to take a risk that the Board will subject them to a different level of distance sensitivity than everyone else, when distance sensitivity has nothing to do with contract term.
20967. Now, this brings me to a couple of conversion option alternatives that came up in the evidence that I briefly want to touch on.

20968. Now, the first of those was floated by Board staff in an IR, I believe, 1.2(b), NEB to the Cogen Alliance. (Exh. C-9-6, CA Response to NEB IR Question 1.2(b)) And that option was a limited one-time conversion option that would be made available to shippers.
20969. Now, what Mr. Stauff proposed and what we think is essential is an ongoing right to convert between the two kinds of service on a frequent basis in either direction. The one-time option is not a reasonable substitute for that. Again, the basic problem is the ongoing potential for unjust discrimination that is built into a system that has parallel toll designs operating at the same time.
20970. Actual adverse economic effects of that potential could arise for shippers at any time to any degree and in either direction. The whole idea of a conversion option is to make it possible for shippers to avoid those adverse economic consequences when and if they arise. A one-time conversion option wouldn't address that problem and wouldn't resolve our basic difficulty.
20971. Now, the other alternative was floated by TransCanada although they were careful to say that they are not actually proposing the alternative. And that option consisted of some kind of auction process where shippers who want to convert could give up their renewal rights and put their capacity on the market and then bid to get it back in segmented form if they started out with conventional service (Exh. B-20, page 24). TransCanada's thinking seemed to be that such a mechanism would mimic the option that is available to short-term shippers under the existing tariff.
20972. Again, in our view, that doesn't solve the basic problem. To the extent that the auction process created risk that was not acceptable to the shipper, whether the shipper was long-term or short-term, the practical effect would be to trap the shipper in whatever toll design option it then had.
20973. It is the fact that shippers are trapped that is the problem. Long-term shippers are undoubtedly trapped, and that is something that a conversion option would overcome.
20974. Designing a conversion alternative that would equalize the positions of both long-term and short-term shippers by making them equally trapped and equally unable to take advantage of the new toll design option wouldn't, in our view, address the underlying issue.
20975. Before closing, Mr. Chairman, there is one final question that I want to explore, and that is: Why is the conversion option a problem, just on a practical level?
20976. TransCanada, it seems to me, didn't raise any meaningful objections to the conversion option. They didn't claim that it would create some sort of administrative burden for them, and Mr. Stauff's evidence was that it would not create such a burden (See Exh. C-9-6, CA Response to TransCanada IR Question 12).

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20977. They didn't claim that it would cause significant revenue deficiencies, and our evidence was that it would not do that (See Exhibit C-9-6, CA Response to TransCanada IR Question 19).

20978. If TransCanada has concerns about operations or the availability of capacity for conversions through NBJ, obviously we'd be willing to talk about accommodating whatever physical problems they have. But TransCanada doesn't seem to be complaining about that either, at least in the specific context of North Bay.

20979. In fact, I think TransCanada agreed that a conversion option would help the North Bay Junction experiment by encouraging people to use the mechanism, thereby creating volume and liquidity at the point (Transcript, Volume 4, para. 4569).

20980. In my cross-examination, I asked the TransCanada panel why TransCanada would not just look at our proposal for the conversion option and agree with it (Transcript, Volume 4, paras. 4567-4568).

20981. Mr. Frew's answer seemed to be that they did not have a particular objection to it in the context of North Bay. They're just worried about what will happen if the principle were extended to other points (Transcript, Volume 4, paras 4570-4571).

20982. Fair enough, but we aren't asking for the principle to be extended to other points. They may become necessary or desirable later on, but that is what these cases are for; and if a problem develops, we can deal with it when the time comes.

20983. The conversion option that we've suggested is an easy, painless, fair way of avoiding what, in our view, is a very significant discrimination problem that arises out of the Application as filed. If the Board is inclined to approve the NBJ mechanism in principle, in our submission, it must condition that approval on TransCanada providing a conversion right for all shippers; and those are my submissions.

20984. **THE CHAIRPERSON:** Thank you, Mr. King. The Board has no questions for you.

20985. So it is time to break now. We'll break for 15 minutes. Thank you.

--- Upon recessing at 4:10 p.m./L'audience est suspendue B 16h10

--- Upon resuming at 4:25 p.m./L'audience est reprise B 16h25

20986. **THE CHAIRPERSON:** Mr. Farrell, good afternoon, sir.

--- FINAL ARGUMENT/PLAIDOIRIE FINALE BY MR. FARRELL:

20987. **MR. FARRELL:** Good afternoon, Mr. Chairman, Members.

Introduction

20988. I am presenting final argument, or perhaps I should say argument-in-chief, on behalf of Enbridge Gas Distribution Inc. This argument is made on behalf of the utility, in other words, and not on behalf of its parent or any other affiliate.

20989. I have given the court reporters a copy of my notes for argument. I would ask them to include the evidentiary references, case citations and marginal headings, even though I don't read them into the record.

20990. I should mention that my transcript references give the paragraph or "TR" number, followed by the volume number in parentheses.

20991. I should also mention that I will digress at times from my notes for argument.

20992. Enbridge presented a panel of corporate witnesses, as did Gaz Métro and Union Gas, and the three utilities joined forces to present two panels of expert witnesses. Counsel will present argument-in-chief and reply, if any, on behalf of each utility. The three utilities have interests that are aligned, Mr. Chair, but they may differ on the points they each wish counsel to emphasize in argument.

Scope of Proceeding

20993. I want to begin with the scope of this proceeding. It is not confined to the proposed North Bay Junction and, therefore, it is not confined to a "simple step" -- in TransCanada's words -- that the proposal is disguised to represent [Exh. B-24].

20994. The Board saw through the disguise, or so it would appear, and rejected TransCanada's attempt to limit the scope to "a narrow range of issues" -- in the Board's words -- consisting of the following [Exh. A-8, p.3]: 1. Is there a need to establish a new contracting point?

20995. 2. Should the North Bay Junction be determined independent of other long-term toll and tariff initiatives?

20996. 3. Is North Bay Junction the appropriate location?

20997. 4. Is existing toll design appropriate for the North Bay Junction?

20998. 5. What are the tolling impacts of the North Bay Junction proposal?

20999. Those were TransCanada's list of issues, and those are the ones the Board rejected as too narrow. Consider Mr. Yates's argument this morning in that context and consider also that the Board instead "formed the opinion that the related and relevant issues go far beyond those listed above", the ones I've just listed; and, moreover, that "there are broader toll design issues which are inextricably linked to the NBJ Application" (id.).

21000. The Board, accordingly, established six issues that, with a single but important modification, comprised the list of issues set out in Appendix 1 of the Hearing Order [Exh. A-10].
21001. The modification was important, from our perspective, because it added alternate proposals to Issue No. 3. Parkway and St-Nicolas are two such alternatives, although, to be sure, the purpose of each is not the same.
21002. In any event, Mr. Chair, you and your colleagues must be wary of TransCanada's effort to effectively resurrect its narrow range of issues. The NBJ Application is not a simple step because, as we shall see, it has a corollary that apparently entails a restriction on market choice.
21003. And this is not a proposition advanced by a competitor of TransCanada unless, of course, you subscribe to Mr. Frew's definition of "competitor"; namely, "probably just about everyone -- not everyone, but a large portion of people we do business with are competitors as well as shippers." [TR. 4724(4)]
21004. He went on to say a competitor was someone with "interests that are opposed to ours" -- TransCanada's -- because "when we increase a toll, as an example, I think most of the shippers would say that they would rather see it go down, and that is a competitive response." [TR. 4727-28(4)] Those are all quoting Mr. Frew's words. TransCanada's claim of affiliate preference has no more substance.

List of Issues

21005. The list of issues is broad, Mr. Chair, and Enbridge believes that you and your colleagues should examine the evidence accordingly.
21006. Enbridge has taken a position on each issue, albeit in general terms, in response to an information request from CAPP [Exh. C-12-11, response to CAPP-8].
21007. Let me summarize Enbridge's position on three of the issues with a bit more detail.
21008. Issue No. 1: The existing zonal toll structure for domestic deliveries is still appropriate. No one seems to dispute this proposition except, perhaps, IGUA as a necessary implication of its position on short-haul services and tolls.
21009. Issue No. 2: The existing toll design for short-haul services is still appropriate. So, too, are TransCanada's short-haul contracting practices. Mr. Charleson and, in particular, Mr. Rowe discussed this issue at length with Mr. Thompson. The following is a summary of their evidence in this regard:

21010. All shippers should pay their proportional share according to TransCanada's toll design where distance plays a predominant role and cost causation should be matched with cost responsibility.
21011. Non-renewing shippers do not cause costs by letting their contracts expire and, therefore, their cost responsibility ends when their contracts expire [TR 16912(11)]. A shipper whose long-haul contract expires, and who then switches to short-haul service, is not thereby responsible for so-called revenue losses [TR 17113-14, 17124-25(12)].
21012. When conducting a cost allocation study, identify the cost drivers first and allocate or assign the costs accordingly [TR 17115(12)]. In Mr. Rowe's words:
- "You shouldn't start with the conclusion you want to reach and then see if you can come up with a cost allocation study that supports it." [TR 17129(12)]*
- Issue No. 6: The existing process is still appropriate for implementing toll design changes. It needs some work, as everyone acknowledges, but is nevertheless a worthwhile process.*
- What do I mean by "it"? I mean, first and foremost, the tolls task force, or "TTF".*
21013. When the TTF cannot resolve issues, however, then the process expands to litigation.
21014. In some cases, like this one, the process starts with litigation. These litigation-only cases are, fortunately, more the exception than the rule to date. Mr. Charleson provided Enbridge's views on the TTF process. He said a major challenge is the diversity of interests [TR 17891-92(12)], and when interests are not resolved, by virtue of diversity or otherwise, the TTF process is valuable because it helps to facilitate a better understanding of all viewpoints by all interested parties, when the process moves on to litigation [TR 17899, 17921(12)].
21015. The next step, in Enbridge's view, is for the Board to provide guidance on the TTF process. What does the Board expect, for example, of this consensual body and its procedures?
21016. Mr. Charleson mentioned timelines for the TTF to resolve, or not, a particular issue [TR 17938(12)]. Is this something the Board considers worthwhile?
21017. Enbridge does not have submissions in this regard, Mr. Chair, and instead requests that you and your colleagues let us all know the Board's views. Enbridge is not asking the Board to bless the TTF, so to speak, but rather to give us all the benefit of the Board's expectations of the TTF.

21018. I turn now to Enbridge's principal concerns. They focus on the following two issues:
21019. Issue No. 3: The appropriateness of the North Bay Junction proposal and any alternate proposals. I emphasize the phrase "any alternate proposals", Mr. Chair, because Parkway and St-Nicolas qualify in this regard.
21020. Issue No. 4: The appropriateness of offering firm transportation, or "FT", interruptible transportation, or "IT", and short-term firm transportation, or "STFT" services using domestic delivery areas as receipt points.
21021. This issue is the one that Mr. Charleson identified as a "top priority" for Enbridge [TR 17203(12)].
21022. I, accordingly, plan to spend some time on Issues No. 3 and No. 4. Enbridge has proposals on each issue.
21023. You will note, Mr. Chair, that I have left Issue No. 5 to the end of my list. Enbridge takes the position that its proposals, if implemented, would not have any material impact on tollpayers and other services. The reasons are explained in detail in Enbridge's response to a CAPP information request [Exh. C-12-11, response to CAPP-8, Issue 5].
21024. They boil down to a single proposition: TransCanada's existing toll methodology would be maintained in each instance.
- Issue No. 4 - Load Balancing
21025. I turn now to a top priority for Enbridge: firm service from domestic delivery areas for load balancing purposes. Enbridge defines the term "load balancing" in a response to another CAPP information request [Exh. C-12-11, response to CAPP-1(a)].
21026. I will not repeat the definition now other than to emphasize, Mr. Chair, that Enbridge is required to provide load balancing for all customers, both direct purchase and system gas customers, who want load balancing [TR 10601-2(11)]. And all customers who want it, get it, even though direct purchase customers are not required to use Enbridge's FT service entitlements with TransCanada in order to get it [Exh. C-12-16, para. 24]
21027. And there's the rub. Enbridge has a load balancing problem because direct purchasers or their marketers have chosen non-Enbridge options to deliver their gas to Enbridge's franchise areas [Exh. C-12-16, paras. 24-25, and Appendix "F"].
21028. When these parties do so, Enbridge loses so-called "STS injection rights"; that is, the right to combine FT service with storage transportation service, or "STS", to

deliver gas to Dawn or Parkway in the summer season [Exh. C-12-11, response to NEB-1.6; TR 16609(11)].

21029. The loss is on the FT side because, when direct purchasers or their marketers don't need Enbridge's FT service entitlements, Enbridge itself has no corresponding need of its own [TR 16823-28(11)].
21030. Nevertheless, Mr. Chair, Mr. Yates had the temerity to suggest that load balancing is a problem of Enbridge's own making. Enbridge did not renew FT contracts, he told you, without indicating how renewal would make commercial sense in the absence of system gas to ship using those contracts.
21031. Issue No. 4 -- excuse me. Enbridge's FT service entitlements with Vector to ship system gas have nothing to do with this problem. Why so, you might ask. And the answer is that Vector delivers system gas directly to Enbridge at Dawn for injection into storage [Exh. C-12-11, response to CAPP-4(c); TR 16609, 16618(11)].
21032. And any suggestion that Enbridge could have forgone its Vector No. 3 capacity and, instead, renewed contracts with TransCanada to offset the migration of the direct purchase market is dispelled by Exhibit B-55.
21033. Enbridge's initial short-haul capacity with TransCanada, which matches the bulk of Vector No. 3, was acquired in the fall of 2002. The migration came to light at the end of April 2003.
21034. Issue No. 4 presented Enbridge with an opportunity to propose a solution for its load balancing problem. Issue No. 4 identifies three options; namely, FT service, IT service and STFT service.
21035. TransCanada already offers IT and STFT services from Enbridge's CDA and EDA [Exh. B-10, Attachment 3A, Sheet No. 2; TR 16657(11)]. Enbridge has used both IT and STFT for load balancing purposes; that is, to ship gas originally delivered to its CDA and EDA back to Parkway for delivery to Union and from there to storage at Dawn. [Exh. C-12-16, para. 32; TR 16661(11)] Enbridge takes the position, therefore, that it is still appropriate for TransCanada to offer IT and STFT services from domestic delivery areas.
21036. These two services are unpredictable, however, and so they are not a permanent or reliable solution for Enbridge's load balancing problem. Mr. Ferguson conceded this point, in effect, because they are biddable and therefore never certain [TR 5080-84(4)]. He also acknowledged that neither STFT nor IT "is as good as firm with renewal provisions." [TR 5087(4)]
21037. FT service is predictable and is reliable, on the other hand, so it would be a better solution. Enbridge is accordingly proposing that TransCanada offer FT service from domestic delivery areas, and from the Enbridge CDA and EDA, in particular, for

storage injection purposes. FT service, in other words, would provide a better means -- and assured means -- of load balancing in the summer season.

21038. But what about the winter season? Enbridge holds the view that STS is still available for storage withdrawal purposes. Enbridge does not share TransCanada's opinion, in other words, on the requirement for or the enforcement of STS Balancing [Exh. C-12-20, 21 for TransCanada; Exh. C-12-11, response to NEB-1.6, for Enbridge], to use TransCanada's term. This is a matter, though, for another day.

21039. But this "other day" must be sooner than the deadline for STS balancing, May 15th, 2005 [Exh. C-12-20]. That is why, in order to avoid another piece of litigation, both Enbridge and TransCanada want to develop an even better solution than FT service. And here, I am happy to say, Enbridge and TransCanada are of like mind on the concept, if not the details.

21040. This "even better solution" would be a firm service from (in the summer) and to (in the winter) domestic delivery areas. Enbridge's concept of this bi-directional service is described in a response to a Board information request [Exh. C-12-11, response to NEB-1.5]. TransCanada's concept was described briefly by Mr. Ferguson, in general terms, and it differs somewhat from Enbridge's [TR 12824-28(9); TR 17829(12)]. This does not mean, of course, that the "even better solution" cannot be accomplished by the mutual deadline of next April [TR 12832(9); TR 17820(12)].

21041. But remember, Mr. Chair and Members, that Enbridge and TransCanada are not the only parties at the bargaining table. The tolls task force comprises a diversity of interests, as you have heard on numerous occasions, and so Enbridge needs to have the "better solution" waiting in the wings: FT service from its CDA and EDA to Parkway for storage injection purposes. And the time has come to move on from the temporary, and in theory or solution, that Mr. Schultz urges you to leave in place.

21042. TransCanada's criticism of the use of domestic delivery areas as receipt points, which I canvassed with Mr. Ferguson do not seem as pointed in the case of Enbridge's proposal. I won't go into detail here, Mr. Chair, but I invite you and your colleagues to review our dialogue in Day 4's transcript [TR 4989-5064(4)]. TransCanada's primary concern, as Enbridge understands it, is having the means of tracking this gas all the way to storage at Dawn.

21043. Mr. Charleson dispelled this concern, as Enbridge sees it, when he told Ms Yuzda that tracking molecules was not an essential exercise. To what is essential, for load balancing purposes, is that gas moves away from Enbridge's CDA and EDA and that equivalent quantities of gas arrive at Dawn [TR 17843-48(12)]. TransCanada's nomination process can and would provide all the tracking that is needed in this regard [TR 4985-86(4)].

21044. Mr. Schultz told you this afternoon, Mr. Chair and Members, that access to storage was needed by the market as a whole. Enbridge simply fails to understand his

assertion in the light of its own evidence to the contrary. Enbridge provides load balancing for its entire market, as I said earlier, and so there is no indication of who else needs access to storage for this purpose.

Issue No. 3 - NBJ vs. Parkway and St-Nicolas

21045. I turn now to Issue No. 3. Enbridge takes the position that North Bay Junction is not appropriate, per se -- and the New Shorter Oxford English Dictionary defines the term to mean "by or in itself" -- and NBJ is certainly not appropriate as an exclusive alternative to the existing level of FT service from Dawn or Parkway onward.

21046. Enbridge expressed the view, in its Written Evidence, that the NBJ proposal "seems designed to preclude additional pipeline capacity into and away from Dawn" [Exh. C-12-16, para. 39]. The Board asked Enbridge, in an information request, to explain how this could occur. Enbridge provided the following explanation [Exh. C-12-11, response to NEB-1.7]:

"The NBJ proposal does not in and of itself preclude additional pipeline capacity into and away from Dawn. It is TransCanada's reluctance to provide additional capacity away from Dawn coupled with the NBJ proposal that creates this effect. In open seasons over the period September 18, 2003 to January 28, 2004, the market has requested 481 TJs per day more short-haul FT service from Dawn than TransCanada has available. However, notwithstanding the market's request, TransCanada states that adding FT capacity will result in 'redundant facilities in the Dawn/Parkway corridor.'"

21047. The Board also asked Messrs. Henning and Sloan, two of the expert witnesses on behalf of the Eastern Utilities, to do likewise. These witnesses gave a similar response [Exh. C-21-7, EEA response to NEB 1.2(a)]. The response was:

"The existence of a North Bay Junction receipt and delivery point, in and of itself, would not constrain access to markets, sources of supply or other services. It is clear, however, from TransCanada's statements that the North Bay Junction is advanced as part of a broader strategy. TransCanada's stated purpose is to avoid 'redundant' facilities and 'unnecessary bypass'. As discussed in response to NEB 1.2(b), the North Bay Junction will not achieve this objective unless access to diversified sources of natural gas supply that do not utilize the TransCanada Mainline is constrained."

21048. The two witnesses went on to provide a very detailed explanation based on TransCanada's own words, or at least their interpretation of TransCanada's own words. I won't take you through the explanation now, Mr. Chair, but I invite you and your

colleagues to give it a careful read. And when you do, I also invite you to contrast their interpretation of TransCanada's own words with Mr. Frew's explanations [TR 5675-5757(4)].

21049. I asked Mr. Frew about the individual information requests and TransCanada's responses to them, that Messrs. Henning and Sloan canvass in their response to the Board [TR 5675-5757(4)]. He seemed to carefully parse those responses. He said, for example, that "we could not support" did not mean "we would oppose" [TR 5702-7(4)]. True enough, I suppose, if you want to split hairs.

21050. Mr. Frew did agree with me, on the other hand, that as long as the Northern Ontario line had capacity, TransCanada's position was that there should be limitations or restrictions on approving new facilities [Tr 5717-18(4)]. He seemed to qualify his answer immediately, though, by talking of the Board's responsibility to ensure a balance between existing system utilization and new facilities [TR 5719-20(4)]. It is not TransCanada who would impose the restrictions, in other words, but rather the Board. But at whose behest?

21051. TransCanada's, obviously, in light of Mr. Frew's subsequent testimony [TR 5724-37(4)].

21052. In the course of his subsequent testimony, moreover, Mr. Frew used the phrase "unnecessary bypass and redundant facilities" [TR 5736(4)]. He was answering a question about constraining an expansion out of Dawn as long as TransCanada could serve the market with its underutilized facilities.

21053. But TransCanada's definition of bypass goes well beyond "underutilized facilities". Mr. Frew agreed that the following, in a summary way, would be a bypass.

"Any load that is or could be through an expansion served by TransCanada where it could be served by someone else, is a bypass of TransCanada" [TR 5745-46 (4)].

21054. There is more in the transcript, Mr. Chair, but I think it best to leave the reading of it to you and your colleagues. It may be the case, when all is said and done, that Enbridge has misinterpreted TransCanada's intention about a blockade of Dawn. It does seem clear to us, however, that TransCanada fully intends to pursue the NBJ option in preference to offering more service from Dawn.

21055. And TransCanada has this preference notwithstanding, as Mr. Frew acknowledged, that there is more capacity into Dawn than out of it [TR 5803-5 (4)]. And, further, notwithstanding market requests for 481 TJs per day of more FT service from Dawn than TransCanada has available [Exh. C-12-11, response to NEB 1.7].

21056. The market wants more short-haul service from Dawn, in short, and one consequence is that there may continue to be underutilized capacity on the Mainline.

This is a simple consequence of pipe-on-pipe competition and, in a competitive world, is not necessarily a bad consequence for the marketplace. The Board has previously said as much in the following words -- I've alerted the court reporters to be aware of some typos in my notes.

"The Board notes the potential for some duplication of facilities is inherent in the nature of competition. If commercial negotiations do not completely eliminate potential duplication, it will likely be due to the parties' judgment that they are willing to compete in certain areas. In the Board's view, duplication which results in beneficial competition may be considered to be in the public interest." [GH-3-97 Reasons for Decision, p. 39; see Exh. C-12-25]

21057. And that obviously is a quotation from the Alliance decision.

21058. The Board also favours choice and, in particular, choice by shippers on their own rather than by transporters purportedly on their behalf. The Board says as much in the following words:

"Shippers must be permitted to exercise choice to have access to alternative means of getting their products to market."
[GH-5-98 Reasons for Decision, para. 293; see Exh. C-12-26]

21059. And that is from the Vector decision.

21060. It comes as no surprise, then, for me to say that Enbridge opposes TransCanada's Application. The NBJ proposal is proffered, for the time being, as an exclusive alternative to an expanded level of service from Dawn. It is clear, however, that the market wants more service from Dawn, not just more short-haul service from anywhere, as Mr. Charleson told Mr. Thompson [TR 17402-3 (12)]. Mr. Charleson also gave Mr. Thompson the theme of Enbridge's evidence and, indeed, the theme of the evidence of all three experts presented by the Eastern Utilities.

"Be careful in terms of North Bay Junction because we want to ensure that the market is left able to work. Let the market work." [TR 17398(12)]

21061. And it is this theme, Mr. Chair, that led Enbridge and its fellow utilities to propose Parkway and St-Nicolas as alternatives to North Bay Junction. It also led them to retain Messrs. Henning and Sloan, as one panel of witnesses, and Dr. Cicchetti as another to provide the Board with expert evidence in support of Parkway and St-Nicolas [Exh. C-21-5 for their written evidence; Exhs. C-21-7, 8, 11, 14 for their responses to information requests].

21062. And at this point, I want to respond and thereby digress from my notes to respond on Mr. Yates' specious attack on Mr. Henning this morning.

21063. Mr. Yates told you, as I heard him, that Mr. Henning held himself out as an expert on the Canadian regulatory regime. Mr. Yates then took pains to point out Mr. Henning's lack of detailed knowledge of the Board's regulatory procedures for Part 3 applications.

21064. Consider for a moment, Mr. Chair and Members, that Mr. Henning and Mr. Sloan were presented as experts on the pricing implications of the NBJ Application and, as well, the alternatives proposed by the Eastern Utilities.

21065. Consider also the CVs of both Mr. Henning and Mr. Sloan in their Written Evidence, which is contained in Exhibit C-21-5.

21066. Consider, finally, the question Mr. Yates asked Mr. Henning and the answer Mr. Henning gave Mr. Yates on this subject. And here I am referring to Volume 11 of the transcript and it is the page on which paragraph 15579 is the first paragraph. And I direct your attention to paragraph 15584, and I'll quote:

"MR. YATES: Do you consider yourself to be an expert in Canadian regulation?"

MR. HENNING: We have worked in the area, Mr. Sloan and I, of Canadian regulation and..."

21067. And I'd like to emphasize this

"...in the area of natural gas markets throughout all of North America.

And, in a number of instances..."

And I emphasize this as well:

"... specifically with regard to how regulation affects natural gas pricing in both U.S. and Canadian markets, yes

MR. YATES: Don't be modest, Mr. Henning.

MR. HENNING: Yes."

21068. So that exchange, in my submission, confines Mr. Henning's claim of expertise to what he claimed in his CV, the effect of regulation on natural gas pricing.

21071. At any rate, Mr. Yates spent some time with Messrs. Henning and Sloan discussing one statement in their evidence; namely, that the existence of NBJ, in and of itself -- that is "per se" in Latin -- is not detrimental to Eastern Canadian gas markets. [TR 15864 et seq. (12)]

21072. They qualified this statement by reference to the constraints on Dawn that I discussed earlier in my argument, of course, and Mr. Yates took them to task for this qualification in the light of Mr. Frew's testimony.

21073. I won't plow that ground again, Mr. Chair, but I will ask you and your colleagues to read carefully the exchange between Mr. Yates and Mr. Henning in which Mr. Henning made the following statement: [See TR 15832-45(11) for the exchange; see TR 15834(11) for the statement]

"[E]ven if our interpretation regarding TransCanada's intent to restrict supplies is incorrect, we believe that the move of establishing multiple receipt and delivery points, including those that are the most natural receipt and delivery points and natural market hubs, such as more naturally ---"

a lot of "naturals" here,

"--- Parkway, certainly than North Bay, that that is a positive move for the overall efficiency of the gas market."

21074. Mr. Yates also spent some time with Messrs. Henning and Sloan and with Dr. Cicchetti as well discussing the topic of just who could "block" an expansion of service from Dawn; that is, TransCanada or a regulator. Not much turns on this exercise, in my submission, when one considers Dr. Cicchetti's response. [TR 16264-64(12)]:

"But the term 'block', as I am using it, is meant to imply blocking something economically, to hold capacity off the market, or to have excess capacity available over one particular route so as to make the case that it would be a waste of resources, unnecessary duplication, bad bypass, to approve the other contending player's expansion of their system. That's what I mean by 'block'.

It is the creating of the condition on one's own system with heavy investments and sunk costs so as to economically block, or at least make the argument to economically block before a regulatory entity, whether it be the NEB in the case of TransCanada or the OEB in the case of the Union expansion along the Dawn to Parkway route."

21075. Recall, if you will, Mr. Chair and Members, TransCanada's reference to underutilized facilities, unnecessary bypass and the like. The word "block" resonates in that context.

21076. Enbridge proposes that Parkway be designated as a receipt and delivery point. This trading point, at Mainline Valve 205-2, would be very similar in operation to TransCanada's proposal for North Bay Junction.

21077. Parkway would have the same operational problems to resolve that NBJ has, for example, fuel on fuel and the implications for short-haul service downstream of the trading point that Mr. Turchin so clearly identified [see, for example, TR 12481-547(9)]. There may be others, and if there are, they would affect North Bay Junction as well as Parkway.
21078. NBJ is no further advanced, in other words, than Parkway is in this regard. Both have details that need to be worked out in terms of mechanics, as Mr. Charleson testified, and so the TTF has another task. Mr. Charleson requested the Board to issue a conditional approval of Parkway and, moreover, to identify a timeline for compliance with the condition [TR17247-68(12)].
21079. Mr. Yates chastised the Parkway proposal, in effect, and Enbridge as well for failing to meet its burden of proof for this proposal. My response is the following: NBJ and Parkway are on a similar footing in terms of implementation and operation.
21080. If Enbridge fails on the basis of Mr. Yates' argument, so, too, must TransCanada fail. If TransCanada succeeds, on the other hand, so, too, must Enbridge succeed. Neither proposal, in any event, is ready to go without further work.
21081. Enbridge and not just Gaz Métro is also proposing that St-Nicolas be designated as a receipt point at the east end of the Mainline; that is, in the east end the integrated system of TransCanada and TQM Pipeline.
21082. Why now, you might ask, should the Board approve St-Nicolas as a receipt point? And the answer is regulatory certainty for the reasons Mr. Charleson explained in detail [TR 17305-11, 17858-65(12)]. Regulatory certainty includes not just the receipt points but also the toll methodology. I'd defer to Maître Leclerc to provide the rationale for the latter. Enbridge's position is that the toll methodology for east-to-west service, whatever it may be, should be the same as the one for west-to-east service.

Conclusion

21083. I come now to my concluding remarks. Enbridge asks the Board to take the following decisions: One, designate domestic delivery areas and, in particular Enbridge's CDA and EDA, as receipt points for FT service when used for storage injection purposes; two, designate Parkway as a receipt and delivery point at Mainline Valve 205-2 with implementation conditional on solutions for operational problems by a date specified by the board; and three, designate St-Nicolas as a receipt point for FT service and, in addition, approve a toll methodology for east-to-west service that is the same, whatever it may be when the time comes, as the one for west-to-east service.
21084. Those are of my submissions, Mr. Chair and Members. I will try to answer any questions you might have.

21085. I would also note that I may have additional submissions in reply, although I did try to deal with the main points of my predecessors, or at least the points that deserve a reply, this afternoon while their points are fresh in your mind.

21086. **THE CHAIRPERSON:** Thank you very much, Mr. Farrell. The Board has no questions. Thank you.

21087. **MR. FARRELL:** Thank you, Mr. Chair.

21088. **LE PRÉSIDENT:** Je vois que Maître Leclerc est prêt à procéder et nous sommes toute ouïe.

21089. **Me LECLERC:** Monsieur le président, je me retrouve dans une position très peu enviable: tenter de conserver votre attention à cette heure tardive et, en faisant ces remarques, c'est certainement pas un reflet sur votre capacité d'écoute, vous et vos collègues, au cours des années, ont certainement manifesté et démontré que vous en êtes capables.

21090. C'est beaucoup plus un reflet sur le fait que je ne suis pas une personne très drôle et, normalement à ce stade-ci, je ferais une remarque humoristique pour tenter d'alléger le débat mais j'ai remarqué, par le passé, que ça ne fonctionnait pas nécessairement toujours et je me demandais c'était peut-être un reflet de la difficulté de traduction ou des différences culturelles mais que ça avait l'effet d'un pétard mouillé.

21091. Voyez-vous, je viens de vous le prouver.

--- (Rires/Laughter)

21092. **LE PRÉSIDENT:** Je vous ferai remarquer que ceux qui avaient leur émetteur de traduction ont ri.

21093. **Me LECLERC:** Ben, c'était justement pour voir si on me suivait, Monsieur le président, c'est tout, avant de commencer.

--- PLAIDOIRIE FINALE/FINAL ARGUMENT PAR Me LECLERC

21094. **Me LECLERC:** Alors, monsieur le président, Madame, Monsieur les membres, comme mes collègues qui m'ont précédé, selon la coutume habituelle, j'ai remis au sténographe et aux interprètes un exemplaire de mon plaidoyer et je demanderais que les références à la preuve qui y sont contenues soient reproduites dans les notes sténographiques sans que je n'aie à les mentionner.

21095. Quant à la position de Gaz Métro, même si elle s'intéresse à tous les aspects du dossier, elle entend limiter son plaidoyer aux questions suivantes :la proposition concernant la JNB; la proposition concernant Parkway; la proposition d'Enbridge; et, évidemment,sa proposition visant la reconnaissance de St-Nicolas en tant

que point de réception sur le réseau intégré de TransCanada et la confirmation que la méthodologie applicable au transport sur courte distance pour les services en provenance de ce point sera la même que celle qui est applicable aux autres points sur le réseau de TransCanada.

21096. Avant de vous faire part de la position de Gaz Métro à l'égard de ces questions, je crois qu'il est important de vous entretenir brièvement du processus qui nous a menés jusqu'ici.
21097. Gaz Métro a par le passé souscrit pleinement à la nécessité d'une concertation réelle entre TransCanada et ses utilisateurs dans le but d'identifier les solutions les plus avantageuses pour résoudre les difficultés auxquelles TransCanada devait de temps en temps faire face.
21098. Gaz Métro croit toujours aujourd'hui aux bienfaits d'une telle concertation et demeure convaincue que le groupe de travail sur les droits constitue le forum tout indiqué pour identifier ces solutions et en discuter, même si l'Office doit demeurer la tribune de dernier recours en cas d'impasse.
21099. C'est cette conviction qui l'a amenée à vous suggérer au mois de mai de l'an dernier [Conclusion du plaidoyer de Gaz Métro dans l'instance RH-1-2002] d'enjoindre TransCanada de s'engager dans une concertation réelle avec ses utilisateurs et de présenter dans le cadre d'une seule instance tous les changements tarifaires qu'elle entendait proposer pour donner suite à son nouveau plan d'affaires. Cette suggestion de discuter dans le cadre d'une seule instance tous les changements envisagés par TransCanada était par ailleurs partagée par un bon nombre des intervenants dans cette cause.
21100. Malgré cette suggestion presque unanime, TransCanada a choisi de déposer sa demande concernant la jonction North Bay à l'Office sans en discuter au préalable avec le groupe de travail.[Volume 9, paragraphe 13107; paragraphes 13120 et 13136]. TransCanada nous informe aujourd'hui qu'elle a maintenant abandonné toute velléité de proposer un nouveau plan d'affaires [Pièce B-12, *North Bay Junction Application, additional information, appendix A*, pages 4 et 5], et ce, même si la preuve démontre qu'elle a reçu récemment des conseils de consultants externes visant sa planification stratégique [Pièce B-33, *TransCanada Response to Undertaking U-3*], tant au niveau de ses activités réglementées qu'au niveau de ses activités non réglementées. TransCanada affirme maintenant que la méthodologie et les principes tarifaires actuellement en vigueur ont fait leur preuve et sont suffisamment robustes pour lui permettre de faire face aux changements prévus [Pièce B-12, *North Bay Junction Application, additional information, appendix A*, pages 4 et 5], tout au moins au cours des cinq prochaines années et pouvant même s'étendre sur un horizon de 10 à 15 ans [Réponse de M. Frew, notes sténographiques, volume 5, paragraphe 6740 et suivants], à moins d'un changement majeur de circonstances.

21101. Gaz Métro entend pour l'instant s'en tenir à la parole de TransCanada et ne s'attendrait donc pas à recevoir de celle-ci au cours des années à venir une nouvelle proposition majeure visant des changements aux principes, à la méthodologie tarifaires existants, autres que les ajustements qui ont été décrits dans la réponse de TransCanada à la demande de renseignements n° 1.20 a) de l'Office [Pièce B-14] que nous l'espérons seront tous débattus devant le groupe de travail sur les droits.
21102. Dans la mesure où TransCanada tient parole en ne déposant pas de nouveau plan d'affaires au cours des prochaines années, Gaz Métro ne voit plus la nécessité de renvoyer la discussion de tous les changements proposés par TransCanada dans le cadre d'un seul débat.
21103. Enfin, puisque TransCanada a choisi de contourner le groupe de travail en présentant directement à l'Office sa proposition sur la JNB, les intervenants n'ont eu d'autre choix que d'y répondre et de proposer leurs propres alternatives, tel que l'Office les a invités à le faire. Même si certaines de ces propositions devaient, le cas échéant, faire l'objet d'un renvoi devant le groupe de travail quant à leurs mécanismes d'application, Gaz Métro est d'avis que le bien-fondé ou non de toutes les propositions mises de l'avant dans cette instance doivent être décidés par l'Office comme questions de principe.
21104. C'est à la lumière de ces commentaires préliminaires que j'entends maintenant traiter de la proposition de TransCanada concernant la JNB.

--- (Courte pause/Short pause)

21105. **Me LECLERC:** Gaz Métro s'oppose à la proposition de TransCanada visant d'une part de faire reconnaître la jonction North Bay comme point de réception et de livraison sur son réseau intégré et d'autre part à extraire ce point de la zone de l'Est.
21106. Les raisons qui ont amené Gaz Métro à s'opposer à cette proposition sont relativement simples à comprendre.
21107. Mentionnons d'abord qu'elle constitue de toute évidence une nouvelle brèche importante dans les principes tarifaires actuellement en vigueur en faisant de North Bay le seul point domestique où la méthodologie point-à-point serait appliquée comme s'il s'agissait d'un point d'exportation.
21108. Gaz Métro remarque par ailleurs que North Bay ne possède aucune des caractéristiques que l'on retrouve normalement aux carrefours de vente et d'échange de gaz. Il n'existe en effet aucun site d'entreposage à proximité de cet endroit, ni n'existe-t-il d'interconnexion avec un ou plusieurs autres pipelines comme c'est le cas à Dawn. North Bay représente tout au plus un point arbitraire sur le réseau de TransCanada situé à la jonction de deux embranchements de ce même réseau. Le gaz acheminé à cet endroit ne peut pas sortir du réseau puisqu'il n'existe même pas un point de raccordement avec le réseau d'un distributeur. Il est difficile d'envisager comment un

tel point pourrait devenir suffisamment liquide pour inciter les expéditeurs à transiger à cet endroit

21109. Gaz Métro elle-même n'aurait évidemment aucun intérêt à segmenter les volumes destinés à sa franchise via la JNB puisqu'une telle alternative engendrerait une augmentation annuelle de quelque 16 millions de dollars de ses coûts de transport. [Pièce C-19-7, réponse de Gaz Métro à la question 7]

21110. Ici, je retiens un peu les remarques que vous faisait Maître Thompson que quelques sous avec les volumes dont on parle se traduisent par beaucoup beaucoup de dollars.

21111. La preuve de TransCanada démontre clairement que le marché souhaite obtenir de la capacité additionnelle à partir de Dawn et non seulement de la capacité sur courte distance en général comme le laisse sous-entendre TransCanada.

21112. Pour bien comprendre la position de Gaz Métro, il est important de garder à l'esprit que l'Office a rappelé à TransCanada que même si elle avait le devoir de protéger la viabilité à long terme de son réseau, elle avait en contrepartie le devoir de protéger les intérêts de ses expéditeurs et particulièrement ceux qui étaient captifs de son réseau. [Décision RH-1-2002 (version française), pages 65-66]

21113. Tout en reconnaissant que Gaz Métro était captive de son réseau [Volume 5, paragraphes 6198 à 6206] et que sa clientèle majoritairement industrielle [Volume 5, paragraphes 6218 à 6228] a pour effet de la rendre particulièrement vulnérable aux augmentations du coût livré du gaz [Volume 5, paragraphes 6231 à 6236] TransCanada n'a pas hésité à mettre de l'avant des propositions qui ont pour effet de faire supporter aux seuls clients captifs de la zone de l'Est les rabais qui sont consentis aux autres utilisateurs. C'était le cas pour la proposition de la zone du Sud-Ouest, c'est encore le cas pour la proposition de la JNB.

21114. TransCanada n'a aucunement démontré, à notre avis, l'intérêt du marché pour sa proposition et a tout au plus invoqué une certaine manifestation d'intérêt de la part de quelques expéditeurs potentiels qui ne sont pas intervenus dans la présente instance. Malgré l'absence d'une telle démonstration, TransCanada s'est limitée à présenter sa proposition comme un mécanisme qui pourrait -- et je dis bien "pourrait" -- inciter les expéditeurs dont les contrats viendront à échéance en 2006 d'avoir recours à ses services plutôt qu'aux autres alternatives qui leur seront disponibles.

21115. Il ne faut jamais oublier dans ce contexte, monsieur le président, que TransCanada n'est exposée à aucune des conséquences négatives de ses expérimentations tarifaires puisqu'elle n'est pas à risque. Il en va, cependant, autrement pour Gaz Métro. En d'autres mots, puisque les volumes contractuels de Gaz Métro représentent une part sans cesse croissante de tous les volumes transitant entre Empress et la zone de l'Est [Volume 5, paragraphes 6207 à 6217], elle doit supporter une partie sans cesse croissante

du coût des expériences tarifaires faites par TransCanada, alors que celle-ci est complètement à l'abri de toutes telles conséquences.

21116. Il ne faut pas non plus perdre de vue que même si les impacts des propositions de TransCanada sur les droits de la zone de l'Est peuvent à prime abord être perçus comme relativement mineurs, ces impacts ont un caractère permanent et cumulatif.
21117. Dans l'hypothèse par exemple où les 600 Tj/j de transport ferme que TransCanada avait prévus entre Empress et la zone du Sud-Ouest devaient un jour se matérialiser -- puis on sait que ce n'est pas le cas encore aujourd'hui -- ces volumes seraient à tout jamais exclus de la zone de l'Est et ne pourraient donc plus servir à réduire les droits applicables à cette zone si la zone du Sud-Ouest en faisait toujours partie comme c'était le cas antérieurement.
21118. Il en va de même pour tous les volumes qui transiteraient entre Empress et la JNB advenant que vous acceptiez la proposition de TransCanada parce que sa proposition comporte, tel que je vous l'ai mentionné tout à l'heure, d'extraire ce point de la Zone de l'Est.
21119. Exprimé différemment, GazMétro se voit petit à petit et de plus en plus isolée par chacune des propositions de TransCanada, ce qui a pour effet d'atténuer tout espoir de voir un jour une réduction appréciable des droits de la zone de l'Est.
21120. Même s'il est vrai que les droits de cette zone connaissent pour la première fois depuis quelques années une réduction, cette réduction n'est pas attribuable aux propositions tarifaires de TransCanada, mais semble davantage résulter d'une augmentation de ses revenus discrétionnaires, des changements survenus dans les taux de change et du remboursement d'une dette particulièrement dispendieuse.
21121. Un dernier motif qui milite en faveur du rejet de la proposition de TransCanada est qu'elle aura pour effet d'engendrer une pression à la hausse sur les prix exigés dans la zone de l'Est. En effet, tel que l'a mentionné le Dr. Cicchetti [Pièce C-21-5, preuve du Dr. Cicchetti, réponses aux questions 37 à 40], les prix plus élevés à AEEO par rapport à ceux de Dawn deviendraient les prix du marché dans l'Est s'il est permis à TransCanada de bloquer l'accès à Dawn ou d'empêcher ou de retarder l'arrivée de GNL à l'extrémité est de son réseau.
21122. La seule façon d'empêcher qu'un tel scénario manifestement néfaste pour le marché ne se produise, est de prendre les mesures pour vous assurer que les intervenants dans le marché puissent avoir accès à Dawn et au GNL de la même façon et selon les mêmes règles que celles applicables aux autres sources d'approvisionnement.
21123. Voilà, monsieur le président, les raisons pour lesquelles Gaz Métro vous demande de rejeter la proposition de TransCanada à l'égard de la JNB, quelle que soit votre décision à l'égard des autres propositions. GazMétro ne croit pas en effet qu'il soit

raisonnable de lui demander ainsi qu'aux autres utilisateurs captifs de la zone de l'Est de faire les frais d'une proposition dont on n'a pas démontré, selon nous, qu'elle serait bénéfique pour l'ensemble des utilisateurs.

21124. Cela dit, je me dois de mentionner que Gaz Métro serait manifestement beaucoup plus réceptive à la proposition de TransCanada si celle-ci ne proposait pas d'exclure North Bay dans le calcul des droits de la zone de l'Est, au même titre qu'Union et Enbridge ne suggèrent pas à cette fin d'extraire Parkway de la zone de l'Est dans leur proposition respective concernant ce point.

21125. La jonction de North Bay deviendrait dans cette hypothèse beaucoup plus comparable à celle de Parkway, même si Parkway demeure plus intéressante comme carrefour puisque ce point est déjà raccordé aux installations d'entreposage de Dawn et au point d'interconnexion avec d'autres réseaux et qu'on y transige déjà des quantités importantes de gaz.

21126. Si jamais l'Office était prêt dans un tel cas à accepter la proposition de North Bay, il serait important qu'il accepte en même temps les autres propositions concernant Parkway et St-Nicolas et s'assure que l'accès à Dawn ne soit pas bloqué ou restreint, tel que l'a suggéré le Dr. Cicchetti. [Volume 11, paragraphe 16503 à 16505]

21127. J'en arrive maintenant à la proposition la proposition concernant Parkway.

21128. Tel que mentionné ci-devant, Gaz Métro appuie la proposition mise de l'avant par Union et Enbridge à l'égard de Parkway, notamment en raison du fait que ce point possède déjà un bon nombre des caractéristiques que l'on retrouve normalement à un carrefour d'échange. Le marché y effectue déjà un nombre élevé de transactions et ce point est raccordé directement aux installations de stockage à Dawn.

21129. Mais la raison encore plus fondamentale qui motive Gaz Métro à soutenir cette proposition est que ceux qui la proposent ne suggèrent aucunement d'extraire ce point de la zone de l'Est tel que je viens de vous le mentionner.

21130. En fin de compte cette suggestion ne vise qu'à accroître la flexibilité d'un certain nombre d'utilisateurs, sans pour autant créer de conséquences négatives pour les autres usagers. Ce genre de proposition est précisément ce que Gaz Métro avait en tête lorsqu'elle affirmait dans sa preuve [Pièce C-19-7, réponse de Gaz Métro à la question 13, page 18] qu'elle est toujours disposée à considérer toute proposition susceptible de générer des avantages pour les utilisateurs, à condition toutefois que les impacts négatifs d'une telle proposition ne soient pas pris en charge par les autres utilisateurs.

21131. Enfin, puisque Union et Enbridge en font elles-mêmes fait la suggestion, Gaz Métro n'aurait évidemment pas objection à ce que cette proposition soit approuvée en principe mais renvoyée au groupe de travail afin que ses modalités d'application puissent être précisées.

21132. J'en viens maintenant à la proposition de Enbridge.
21133. Gaz Métro appuie également la proposition mise de l'avant par Enbridge pour solutionner les problèmes d'équilibrage auxquels elle doit faire face dans sa franchise. Nous notons que la proposition est limitée aux injections et aux retraits des installations de stockage, impliquant de ce fait qu'elles ne pourraient être utilisées à d'autres fins.
21134. Gaz Métro n'a pas à faire face aux mêmes difficultés, mais pourrait bien y faire face de la même façon qu'Enbridge à l'avenir, si jamais ses clients choisissaient de détenir leur propre transport, comme ils ont le droit de le faire en vertu de ses tarifs. Voici encore une fois un bel exemple d'une proposition qui faciliterait la tâche d'un utilisateur sans pour autant avoir de conséquence sur les autres.
21135. J'en arrive maintenant à St-Nicolas.
21136. Je pense qu'il est important, en premier lieu, de bien comprendre que ce que demande Gaz Métro à la présente instance. Je fais cette remarque parce qu'il nous est apparu évident d'après la preuve de TransCanada que celle-ci ne faisait pas de distinction entre une demande de service sur son réseau intégré pour acheminer du gaz à partir de St-Nicolas et la demande que les promoteurs du projet seront appelés à déposer auprès de l'Office en vertu de la partie III de sa loi constitutive pour faire approuver la construction du terminal méthanier et de ses installations connexes.
21137. C'est un peu ce que vous avez remarqué ce matin, Monsieur Caron, lorsque vous avez demandé à Maître Yates si -- pourquoi il faisait la référence à l'article 52. C'est-à-dire que ce que Gaz Métro demande, ce qu'on vise, ce sera le service de transport sur le réseau intégré et ce qui n'a rien à voir dans cette cause avec l'approbation d'installation du terminal et de ses installations connexes.
21138. Je répète que tout ce qu'on demande c'est de reconnaître immédiatement le point de St-Nicolas comme point de réception sur le réseau intégré de TransCanada et de confirmer que le principe et la méthodologie tarifaires applicables au transport sur courte distance à partir de St-Nicolas seront les mêmes que ceux applicables au transport sur courte distance à partir de n'importe quel autre point sur le réseau intégré de TransCanada.
21139. Gaz Métro n'a jamais demandé ni laissé sous-entendre que les coûts du terminal devraient de quelque façon que ce soit faire partie du coût de service de TransCanada, mais demande au contraire tout simplement d'être traité comme n'importe quel autre expéditeur faisant une demande de service à TransCanada en vertu de son tarif.
21140. Il est évident que Gaz Métro entend respecter toutes les exigences du tarif de TransCanada, comme elle le fait d'ailleurs présentement pour les autres services qui lui sont rendus et comme le font tous les autres utilisateurs du réseau de cette dernière.

21141. En contrepartie, Gaz Métro s'attend cependant à ce que TransCanada ne lui fasse pas des demandes qui ne sont pas prévues au tarif ou qu'elle n'exige pas des autres utilisateurs de son réseau intégré, ce qui, de toute façon, à notre avis serait à notre avis illégal.
21142. En d'autres mots, Gaz Métro demande à l'Office de s'assurer dès maintenant que TransCanada n'adopte pas à son égard, à l'égard du GNL ou à l'égard du point de réception de St-Nicolas un traitement discriminatoire.
21143. Malheureusement, tel que j'entends le démontrer, Gaz Métro vous soumet que la preuve au dossier révèle clairement que malgré ses affirmations à l'effet contraire [Volume 5, paragraphes 7283 à 7289], c'est précisément ce que TransCanada fait et s'apprête à faire à l'égard de Gaz Métro et de St-Nicolas.
21144. Avant de vous faire cette démonstration, j'aimerais vous expliquer pourquoi il est important d'approuver la demande de Gaz Métro à ce moment-ci.
21145. La preuve au dossier est unanime à l'effet que la production du bassin sédimentaire de l'Ouest canadien a atteint son apogée et que nous entrons dans une période de déclin ou, tout au mieux, dans une période de production stable. [Volume 5, paragraphes 6538 à 6543] Tous s'entendent par ailleurs pour reconnaître que la demande en gaz naturel va connaître une croissance importante partout en Amérique du Nord au cours des années à venir, incluant dans l'Est du Canada. [Volume 5, paragraphes 6541 à 6543]
21146. Toutes les parties, incluant TransCanada et la CAPP, reconnaissent que la venue de GNL s'avère une solution valable et intéressante pour assurer la sécurité et la fiabilité des approvisionnements des réseaux nord-américains de transport. [Volume 5, paragraphes 6545-6546; volume 10, paragraphes 13749 à 13764] Cela est tout particulièrement vrai pour les marchés situés en bout de ligne de ces réseaux, tels que l'Est du Canada et le Nord-Est des Etats-Unis. [Volume 5, paragraphes 6544 à 6549]
21147. Nous soumettons respectueusement qu'en approuvant la demande de Gaz Métro, l'Office enverrait un puissant message dans le marché à l'effet qu'il voit l'arrivée du GNL comme un développement positif pour l'ensemble des utilisateurs et qu'il est prêt à accorder à cette nouvelle source d'approvisionnement le même traitement que les autres sources d'approvisionnement.
21148. Certains membres de l'Office ont déjà mentionné lors d'allocutions publiques que l'Office se devait de jouer un rôle proactif et nous vous soumettons qu'il s'agit ici d'une occasion tout indiquée pour le faire.
21149. Tel que l'ont souligné les représentants de Gaz Métro, Enbridge et Union, l'approbation de la demande de Gaz Métro doit avoir lieu maintenant si on veut faciliter la venue du GNL dans le marché canadien. Tenant compte en effet d'une mise en service

prévue pour 2008, du temps requis pour construire de telles installations et du temps nécessaire pour obtenir les autorisations qui s'imposent, il ne peut faire de doute que la requête des promoteurs du projet en vertu de la partie III de la *Loi sur l'Office* devra être déposée au plus tard à la fin de cette année ou au début de l'an prochain.

21150. Dans le but de satisfaire le test exigé par l'Office pour reconnaître la faisabilité économique de telles installations, les clients et les fournisseurs potentiels doivent d'ores et déjà être connus et engagés envers le projet.
21151. Il est tout aussi manifeste qu'avant d'investir les sommes importantes que ce genre de projets implique, les fournisseurs, les clients, les promoteurs et les créanciers doivent avoir une idée précise des règles du jeu applicable au transport du gaz à partir du terminal et doivent être confiants que ces règles ne changeront pas de façon arbitraire. Toute incertitude à cet égard, particulièrement celles résultant des gestes posés par TransCanada, ne peut faire autrement que d'augmenter la perception des risques associés à ce projet, ce qui vraisemblablement entraînerait des retards appréciables ou possiblement même son annulation pure et simple.
21152. La demande de Gaz Métro n'a rien d'extraordinaire. En somme, tout ce que nous vous demandons est de confirmer que la méthodologie applicable au transport entre deux points sur le réseau intégré de TransCanada doit être la même indépendamment du fait que le gaz transite d'ouest en est ou d'est en ouest, comme c'est le cas actuellement. Je vous invite à cet égard à relire les réponses des témoins de TransCanada qui m'ont confirmé que les droits applicables aux services offerts actuellement par TransCanada entre divers points d'exportation sur son réseau sont effectivement les mêmes. Monsieur Whitmore m'a en effet confirmé que les droits applicables aux services offerts par TransCanada, entre les points Chippawa et Iroquois, étaient les mêmes que ceux qui étaient applicables aux services offerts entre ces deux mêmes points dans le sens inverse. [Volume5, paragraphes 7174 à 7181]
21153. Et ça c'est dans les tarifs actuels. Ça existe. Vous n'avez qu'à consulter "l'Attachment 3 et l'Attachment 4" pour voir que ces taux sont établis. Ils sont là.
21154. TransCanada a par ailleurs confirmé dans sa réponse à la question n° 10 de Gaz Métro [Pièce B-14] que la méthodologie actuelle était suffisamment robuste pour accommoder les mouvements de gaz sur son réseau dans les deux directions. Elle a même prévu dans les services qu'elle entend offrir à l'avenir un service bidirectionnel [Pièce B-14, réponse à la question 1.20 a) de l'Office] et reconnaît que des mouvements de gaz dans les deux sens ont actuellement lieu sur son réseau, notamment dans le cas de la ligne de Montréal. [Volume 6, paragraphes 8030 à 8035]
21155. Gaz Métro ne vise donc en quelque sorte qu'une confirmation du *statu quo*, tout en reconnaissant le droit de toute partie de remettre en question à l'avenir, au moment de son choix, la méthodologie actuelle. La demande de Gaz Métro s'inscrit dans un contexte où toutes les parties au dossier, incluant TransCanada et la CAPP,

reconnaissent que la méthodologie existante demeure valable et est suffisamment robuste pour faire face aux changements anticipés au cours des années à venir.

21156. Nous comprenons difficilement dans ce contexte comment la CAPP et TransCanada peuvent d'une part proposer le maintien du régime actuel, mais s'opposer d'autre part à ce que l'Office confirme dès maintenant son application à St-Nicolas. Ce que ces parties vous suggèrent en fait, c'est que même si elles sont d'accord avec la méthodologie existante, elles vous demandent de ne pas approuver la demande de Gaz Métro, au cas où elles auraient des objections à l'avenir lorsque la demande de service sera déposée auprès de TransCanada.
21157. Nous vous soumettons qu'une telle approche est tout à fait déraisonnable et aurait pour effet de renverser le fardeau de la preuve. Il est évident que le fardeau de démontrer que le régime existant n'a plus sa raison d'être repose sur les épaules de la personne qui en fait la demande. L'Office a à maintes reprises dans le passé reconnu que personne -- ni lui ni les intervenants -- n'avait à démontrer le bien-fondé du régime actuel puisque cette détermination avait déjà été faite dans ses décisions antérieures. [Décision RH-R-1-2002 (version française), page 26]
21158. Alors, puisqu'on vous demande de confirmer ce qui existe à l'heure actuelle, nous n'avons pas le fardeau de démontrer ça. Ça sera à ceux qui vont vous demander ultérieurement ou au moment de leur choix de changer le système de vous démontrer à ce moment-là qu'il n'est plus valable.
21159. Or, puisque personne dans le présent dossier ne demande de changement au régime actuel, il s'ensuit que l'approbation par l'Office de la demande de Gaz Métro n'aurait aucune conséquence sur les services actuellement rendus par TransCanada aux utilisateurs de son réseau, ni sur les droits qu'elle peut exiger.
21160. Voyons maintenant les motifs -- les deux seuls motifs invoqués par TransCanada pour s'opposer à la demande de Gaz Métro -- et, j'ai bien noté dans la plaidoirie de Maître Yates que TransCanada ne s'oppose pas à la reconnaissance du point de St-Nicolas comme point de réception mais vous dit tout simplement maintenant que c'est prématuré.
21161. TransCanada mentionne dans ses réponses aux questions 38 à 41 de sa réplique [Pièce B-20] qu'il serait prématuré de reconnaître le point de St-Nicolas en tant que point de réception sur son réseau tant qu'elle n'aura pas obtenu d'information additionnelle sur les services qui seront demandés.
21162. Elle s'est bien gardée toutefois de décrire quels étaient les renseignements additionnels qu'elle souhaiterait obtenir et a eu de la difficulté à préciser ce qu'elle avait en tête lorsqu'elle a été pressée de le faire en contre-interrogatoire. [Volume 5, paragraphes 7244 à 7267]

21163. Même si M. Frew a reconnu que les renseignements demandés à la question n° 1 de la demande de renseignements adressée par TransCanada à Gaz Métro [Pièce B-15] n'étaient pas nécessairement pertinents. [Volume 6, paragraphes 8100 à 8105] Il est revenu à la charge en évoquant cette même question lorsque M^e Bell l'a interrogé à cet égard. [Volume 9, paragraphes 12680 et 12681] On ne peut donc faire autrement que de conclure que TransCanada exigerait les renseignements énumérés dans cette question avant de reconnaître St-Nicolas en tant que point de réception.
21164. Je vais vous demander -- je ne le sortirai pas tout de suite mais je vais vous demander de lire très très attentivement les renseignements qui sont demandés dans cette question. Il y a 26 ou 27 items et je vous sou mets respectueusement que la très grande majorité n'ont aucune espèce de pertinence et serait beaucoup plus reliée aux informations qui seraient demandés dans le cadre d'une requête en vertu de la Partie III.
21165. Je vous invite maintenant à comparer ces exigences au comportement qu'elle a adopté dans d'autres circonstances. Je mentionnerais tout d'abord qu'il est ressorti clairement des réponses qui m'ont été données concernant la question 2.8 de l'Office que TransCanada considère la reconnaissance d'un point de réception sur son réseau tellement routinière qu'elle n'a même pas besoin, selon elle, de l'approbation de l'Office pour ce faire lorsque le point visé est déjà un point de livraison, comme ce serait le cas pour St-Nicolas [Volume 5, paragraphes 6104 à 6114] parce que St-Nicolas est déjà reconnu dans les tarifs de TransCanada comme étant un point de livraison. Pour vous en convaincre, vous n'avez qu'à regarder l'Attachment 3 ou 4 -- j'oublie toujours lequel -- mais la liste de tous les points, vous verrez que St-Nicolas y est déjà précisé.
21166. Considérez maintenant le comportement de TransCanada quant à la reconnaissance des points d'exportation sur son réseau en tant que points de réception. TransCanada admet dans sa réponse aux engagements 11 et 12 [Pièce B-41] que les points d'Iroquois et d'East Hereford ont été reconnus en tant que points de réception dès qu'elle a reçu une demande de service à ces endroits, sans qu'elle n'ait exigé quelque autre renseignement additionnel que ce soit des personnes qui lui ont fait ces demandes.
21167. Dès qu'elle a reçu la demande, c'est reconnu: on n'a pas besoin d'autres renseignements. Alors, pour St-Nicolas, une toute autre histoire.
21168. Considérez enfin la position de TransCanada dans le cadre de cette instance à l'égard de la jonction North Bay. Monsieur Frew est venu confirmer aux questions que vous lui avez posées, Monsieur Caron, qu'il lui fallait obtenir de la personne qui demande accès aux services de transport des renseignements additionnels avant de reconnaître un point de réception [Volume 9, paragraphes 13053 à 13058]
21169. Or la preuve démontre que TransCanada n'a exigé ni obtenu aucun renseignement de qui que ce soit avant de proposer la reconnaissance de North Bay en tant que point de réception. On se demande bien par ailleurs de qui elle aurait pu obtenir de tels renseignements puisqu'elle ne sait même pas qui seront les expéditeurs à cet endroit. Deux poids, deux mesures.

21170. Nous vous soumettons respectueusement qu'en exigeant que Gaz Métro lui fournisse des renseignements dont elle ne voit pas la pertinence dans le cas de North Bay, TransCanada adopte à l'égard de Gaz Métro un comportement discriminatoire. Nous croyons au contraire que ces renseignements ne sont aucunement nécessaires pour reconnaître à St-Nicolas le statut de point de réception, d'autant plus que cette reconnaissance n'aurait aucun impact sur les droits exigibles par TransCanada ou les services rendus par celle-ci.

21171. En d'autres mots, nous soulevons à l'égard de St-Nicolas exactement le même argument que TransCanada avait soulevé à l'égard de la zone du Sud-Ouest, argument qui a été reconnu par l'Office [Décision RH-1-2002 (version française), page 85] et que TransCanada soulève encore dans cette instance à l'effet que la jonction North Bay n'aura aucun impact si le point n'est pas utilisé et que cela ne constitue pas un motif valable pour en refuser la reconnaissance en tant que point de réception. Si cet argument est bon pour TransCanada et est encore bon pour TransCanada dans ce cadre-ci, nous ne voyons aucune raison pourquoi il ne serait pas également applicable à Gaz Métro.

21172. J'attirerais par ailleurs votre attention sur la réponse à la question 3 de la réplique de TransCanada [Pièce B-20], notamment à la toute fin du deuxième paragraphe de la page 3, où elle affirme que:

« delay serves no useful purposes and would be contrary to the evolution of the market ».

21173. TransCanada fait cette déclaration dans un contexte où elle affirme qu'il est important de reconnaître dès maintenant la jonction North Bay, même si elle invoque le renouvellement des contrats venant à expiration le 31 octobre 2006 comme raison principale au soutien de sa proposition.

21174. Et vous vous souviendrez que par suite de ses "open seasons" la capacité entre cette date et aujourd'hui a à toutes fins pratiques été vendue.

21175. S'il est approprié de reconnaître en 2004 une proposition qui ne serait utilisée en principe qu'en 2006, pourquoi en serait-il autrement pour St-Nicolas?

21176. Encore une fois, deux poids, deux mesures.

21177. Nous vous soumettons respectueusement qu'il ne s'agit pas d'un argument valable et que rien n'empêche la reconnaissance immédiate de St-Nicolas en tant que point de réception, surtout encore une fois si l'on considère que ce geste n'aura aucun impact sur les usagers et qu'il faciliterait la venue du GNL dans le marché.

21178. J'en viens maintenant, monsieur le président, à la démonstration du comportement discriminatoire de TransCanada à l'égard de Gaz Métro, à l'égard de St-Nicolas et, par conséquent, à l'égard du projet Rabaska.
21179. Je vous ai déjà mentionné que TransCanada exige de Gaz Métro des renseignements additionnels pour reconnaître St-Nicolas comme point de réception alors qu'aucun renseignement du genre n'est exigé pour North Bay.
21180. Examinons maintenant les renseignements demandés par TransCanada pour répondre à une demande de service à St-Nicolas et je vous invite à cette fin à comparer attentivement les renseignements demandés par TransCanada dans la question 1 qu'elle nous a adressée [Pièce B-15] aux renseignements qu'elle exige des expéditeurs qui lui font une demande de service.
21181. Il ne faut pas perdre de vue que qu'est-ce que Gaz Métro a demandé à TransCanada ce sera une demande de service sur son réseau.
21182. Or, ces autres renseignements sont ceux qui apparaissent à la pièce C-12-18 déposée par M^e Farrell, ou encore dans l'annexe A de la *Transportation Access Procedure* -- qui n'a pas été déposée dans le dossier mais qui fait partie intégrante du tarif de TransCanada -- et que M. Ferguson a reconnu être sensiblement au même effet que la pièce C-12-18.
21183. Il est clair à l'examen de cette pièce que les seuls renseignements dont TransCanada a besoin pour répondre à une demande de service sont : l'identification des points de réception et de livraison, les dates de début et de terminaison du service, les capacités maximales et minimales quotidiennes, le type de service requis, le nom et l'adresse du requérant ainsi qu'un chèque de 10 000 dollars.
21184. La preuve révèle par ailleurs que depuis le 1^{er} juin 2004, TransCanada a été capable de vendre quelque 450 Tj/j de capacité sur la base de ces seuls renseignements [Pièce B-20, réponse aux questions 9 à 11]
21185. Si TransCanada a été capable de vendre en quelques semaines un tel niveau de capacité sur la base de ces seuls renseignements, pourquoi serait-il nécessaire d'obtenir plus d'information à St-Nicolas que ce qu'elle a exigé de ces autres utilisateurs?
21186. En formulant une telle demande, TransCanada outrepassé les exigences de son tarif, ce qui, de son propre aveu [Volume 5, paragraphes 6843 à 6851; voir également paragraphe 7227], est inacceptable, et ce qui, selon nous, est contraire aux exigences de l'article 60 de la *Loi sur l'Office* et est discriminatoire.
21187. En fait, les seules exigences requises pour avoir accès au service de transport ferme sur le réseau intégré de TransCanada sont celles énoncées à l'article 1.1 de la *FT Toll Schedule* déposée au dossier comme pièce C-19-12. Seulement trois conditions sont précisées à cet article, à savoir (i) la signature d'un contrat entre

TransCanada et l'expéditeur d'une durée minimale d'un an, (ii) des installations d'interconnexion au point de livraison spécifié dans le contrat et (iii) la fourniture de garanties quant au paiement des factures.

21188. L'article 1.2 de cette pièce stipule que TransCanada utilise son réseau intégré pour offrir le service et que, dans la mesure où la capacité serait insuffisante, elle se déclare prête à utiliser tous les efforts raisonnables pour accroître la capacité de son système intégré, à certaines conditions, incluant évidemment l'obtention d'une autorisation de l'Office en vertu de la partie III de sa loi habilitante.
21189. Nulle part n'est-il mentionné dans le tarif de TransCanada qu'elle peut exiger des renseignements autres que ceux qui sont précisés à la pièce C-19-12 et encore moins les renseignements sur le coût des installations de l'expéditeur qui sont situées en amont du point de réception.
21190. TransCanada soulève par ailleurs un faux problème lorsqu'elle a invoqué en réponse à l'une des questions du procureur de l'Office, M^e Bell, [Volume 9, paragraphes 12651 à 12670] la question de la qualité du GNL. Cet aspect est déjà couvert par l'article V des *General Terms and Conditions* du tarif, qui précise que tous les utilisateurs du réseau de TransCanada sont tenus de livrer du gaz de la qualité précisée, à défaut de quoi TransCanada est en droit d'en refuser la réception. Gaz Métro ainsi que tous les autres utilisateurs du réseau de TransCanada, incluant ceux qui pourront à l'avenir s'approvisionner à St-Nicolas, devront respecter cette exigence.
21191. Ils n'ont pas de choix. C'est prévu dans le tarif.
21192. TransCanada invoque de plus dans ses réponses aux questions 40 et 41 de sa réplique la possibilité qu'elle soulève la pertinence de continuer de reconnaître l'intégration complète du coût de service de TQM dans son propre coût de service. Même si maintenant n'est pas le moment d'engager ce débat, la preuve démontre néanmoins que TransCanada s'est depuis toujours servi du réseau de TQM dans son ensemble pour offrir des services à ses utilisateurs, puisque tous les points de livraison du réseau de TQM sont reflétés dans ses tarifs et qu'elle n'a jamais jusqu'ici proposé de changements à ses pratiques contractuelles.
21193. En effet, vous devez vous demander: Comment se fait-il que cette question n'a pas été soulevée lorsque TransCanada a accepté de rendre des services à partir d'East Hereford?
21194. Parce qu'elle a rendu des services à partir de East Hereford ce qui a été reconnu en contre-interrogatoire. Pour vous en convaincre, j'y vais de mémoire, si vous regardez la réponse à la question 4.3 de IGUA, vous allez voir un tableau qui vous indique qu'elle a au cours de l'an passé, je crois, ou en début d'année rendu des services à partir d'East Hereford. Et je crois que les témoins de TransCanada ont reconnu ce fait également.

21195. En quoi le point de St-Nicolas est-il différent de celui d'East Hereford et comment TransCanada peut-elle légitimement soulever la question de l'intégration de St-Nicolas alors qu'elle ne l'a pas fait dans le cas d'East Hereford?
21196. Personne n'a soulevé l'intégration du réseau de TQM à celui de TransCanada depuis la cause RH-3-1986 [Pièce C-19-14, extraits de la décision RH-3-86] dans laquelle l'Office a refusé de reconnaître des arguments similaires à ceux invoqués par TransCanada dans ce dossier.
21197. Il ne faut pas perdre de vue qu'East Hereford est reconnu comme point de réception et de livraison sur le réseau intégré de TransCanada, ce qui implique que TransCanada serait tenue d'appliquer son tarif à toute demande de service à cet endroit, comme M. Ferguson l'a reconnu [Volume 5, paragraphes 7213 à 7216] sans pouvoir proposer un changement de pratiques contractuelles comme elle affirme vouloir le faire à St-Nicolas.
21198. Il ne faut pas non plus perdre de vue que la désintégration -- si vous me permettez l'expression -- du réseau de TQM du coût de service de TransCanada aurait l'inconvénient de compliquer considérablement la compréhension des droits applicables aux services dans la région alors que le maintien du régime actuel aurait l'avantage non négligeable d'être simple, stable et prévisible, ce que TransCanada reconnaît elle-même comme étant un objectif valable à poursuivre [Pièce B-12, *North Bay Junction Application, additional information*, page 3 de 9]
21199. La seule explication plausible que nous avons pu identifier pour justifier un tel comportement est que les parties qui soulèvent la question de TQM veulent que le GNL soit traité différemment du gaz provenant du bassin sédimentaire de l'Ouest canadien, ou encore de Dawn, en changeant les pratiques contractuelles existantes applicables aux livraisons à St-Nicolas. L'expert de TransCanada, M. Reed, a reconnu que tel changement de pratique pouvait être perçu comme étant anticoncurrentiel [Volume 6, paragraphes 7376 à 7388 et paragraphes 8631 à 8633] et il ne peut faire de doute que si ces gestes étaient couronnés de succès, ils auraient pour effet d'assurer que Gaz Métro demeure captive du réseau de TransCanada et du bassin sédimentaire de l'Ouest canadien.
21200. Il est important de ne pas perdre de vue que TransCanada a maintenant annoncé son intention d'aller de l'avant avec son projet de GNL à Gros Cacouna et devient donc de ce fait un concurrent du projet Rabaska. TransCanada a tout intérêt à favoriser son projet plutôt que celui dans lequel Gaz Métro est impliquée. Nous soumettons respectueusement que l'Office se doit dans ce contexte d'assurer une vigilance particulière pour s'assurer que TransCanada ne se serve pas de sa position dominante en tant qu'exploitant de son réseau intégré pour favoriser son projet au détriment de celui de Gaz Métro et de ses partenaires.
21201. Nous soumettons respectueusement que l'objectif de maintenir Gaz Métro captive du réseau de TransCanada ou du bassin sédimentaire de l'Ouest canadien est tout

à fait déraisonnable et contraire aux exigences de l'article 67 de la *Loi sur l'Office*, qui impose à TransCanada l'interdiction de faire à l'égard de toute personne ou de toute localité des distinctions injustes quant aux droits, aux services et aux aménagements.

21202. Cela dit, l'article 68 prévoit par ailleurs que dans un tel cas, il incombe à TransCanada de prouver que cette distinction peut être justifiée, ce qui, nous vous le soumettons, n'a pas été fait dans ce dossier.
21203. TransCanada elle-même reconnaît que les difficultés opérationnelles peuvent être réglées par l'ajout d'installations [Volume 5, paragraphes 7244 à 7256]
21204. TransCanada mentionne enfin l'impact que pourrait avoir la venue du GNL à St-Nicolas sur les contrats existants de Gaz Métro entre Empress et la zone de l'Est ainsi que sur les droits exigibles entre ces deux points. Il s'agit à notre avis du seul enjeu vraiment important soulevé par TransCanada à l'encontre de l'acceptation de la proposition de Gaz Métro.
21205. Gaz Métro est bien au fait des impacts d'une réduction des volumes transitant sur longue distance entre Empress et la zone de l'Est puisque c'est elle qui a été appelée à absorber une grande partie des augmentations de coûts en décollant.
21206. Cela dit, monsieur le président, Gaz Métro vous soumet que la possibilité pour un intervenant dans le marché de choisir sa propre source d'approvisionnement est tout aussi, sinon plus importante que les coûts de transport.
21207. Rappelez-vous également que TransCanada n'a rien fait dans le passé pour empêcher qui que ce soit d'avoir accès à du gaz à Dawn en acceptant d'offrir un service sur courte distance à partir de cet endroit, même si ces parties ont annulé leurs contrats sur longue distance entre Empress et la zone de l'Est.
21208. TransCanada a accepté d'agir de la sorte même si les pertes de volumes transitant sur longue distance se sont avérées grandement supérieures à ce qui vraisemblablement se produira lorsque GazMétro voudra s'approvisionner en partie à partir de St-Nicolas.
21209. Nous ne voyons tout simplement pas pourquoi Gaz Métro serait empêchée de s'approvisionner à l'endroit de son choix alors que les autres intervenants dans le marché ont pu le faire. GazMétro demande tout simplement qu'on lui accorde les mêmes possibilités et les mêmes droits que ceux qui ont été offerts aux autres utilisateurs.
21210. Pourquoi serait-elle pénalisée davantage du simple fait qu'elle est captive du réseau de TransCanada?
21211. Et ça me fait penser, monsieur le président, aux remarques ou l'analogie que Madame Mercier a fait lorsqu'on discutait de la question, c'est-à-dire qu'elle se sent un peu comme Cendrillon dont les sœurs sont permises d'aller au bal et de jouir de tous

les avantages mais elle doit demeurer captive à la maison et travailler pour s'assurer qu'elles puissent y aller.

21212. Le seul inconvénient avec cette analogie c'est que, dans notre cas, les deux sœurs sont bien gentilles, sont pas méchantes.
21213. De toute évidence, même si Gaz Métro devait abandonner une partie de ses contrats sur longue distance pour les remplacer par du GNL, cette capacité sera vraisemblablement reprise en charge par d'autres expéditeurs, eu égard à l'accroissement de demande prévu dans le marché.
21214. De plus, en tant que fiduciaire des intérêts de ses usagers, Gaz Métro ne pourra placer tous ses œufs dans le même panier et devra de toute évidence s'assurer qu'elle pourra continuer de s'approvisionner aussi bien en partance d'Empress que de Dawn. Ce serait, nous le soumettons, la seule façon d'assurer la sécurité et la fiabilité des approvisionnements de ses usagers.
21215. J'ajouterai en terminant sur cette question, monsieur le président, que même si l'impact sur les droits devenait un enjeu réellement préoccupant pour TransCanada -- et je dis bien "si" -- ce n'est pas en refusant de rendre le service à Gaz Métro à St-Nicolas qu'elle pourrait résoudre cette question, ce qui, selon nous, serait discriminatoire. Ce serait plutôt, tel qu'elle le reconnaît elle-même [Volume 5, paragraphe 7227] -- et je vous invite à aller voir le paragraphe -- les propos de M. Frew au paragraphe 7227 -- en déposant à l'Office une demande pour changer la méthodologie applicable.
21216. Ce qui est important de retenir, c'est que TransCanada aurait à ce moment-là le fardeau de démontrer que les changements suggérés sont justifiés. Elle ne pourrait pas dans ce contexte arbitrairement choisir de renverser le fardeau de la preuve en refusant tout simplement d'accéder à la demande de Gaz Métro.
21217. Il est évident par ailleurs, monsieur le président, que TransCanada ne pourrait jamais se permettre d'adopter un tel comportement à l'égard de la demande de Gaz Métro si celle-ci n'était pas captive de son réseau.
21218. Pour preuve, regardez le comportement qu'elle a adopté à Dawn.
21219. En conclusion, monsieur le président, Madame et Monsieur les membres, Gaz Métro vous demande: de rejeter la proposition de TransCanada à l'égard de la JNB, d'approuver en principe la proposition d'Union et d'Enbridge concernant Parkway, quitte à renvoyer cette proposition devant le groupe de travail sur les droits pour en préciser les modalités d'application, d'approuver en principe la proposition d'Enbridge concernant ses difficultés d'équilibrage reliées au service STS, quitte à la renvoyer encore une fois devant le groupe de travail pour en préciser les modalités et, enfin, d'approuver immédiatement la proposition de Gaz Métro concernant la reconnaissance de St-Nicolas en tant que point de réception sur le réseau intégré de TransCanada et la confirmation de

la méthodologie applicable au transport sur courte distance pour les services en provenance de ce point.

21220. L'acceptation immédiate de la proposition de Gaz Métro n'aura aucun impact sur les services offerts par TransCanada, ni sur les droits exigibles par celle-ci. Cette acceptation immédiate ne ferait que confirmer le régime actuel et n'empêcherait personne de la remettre en question dans le cadre d'une instance ultérieure, tout en se rappelant cependant que c'est cette personne qui aurait le fardeau de démontrer que le changement proposé est justifié et non à Gaz Métro de démontrer que les services qu'elle demande n'auront pas d'impact sur le réseau des utilisateurs.
21221. Ce qui est le plus manifeste de ce que vous avez entendu dans cette cause c'est que TransCanada désire renverser le fardeau de la preuve en exigeant des choses qui ne sont pas prévues à son tarif. Tout ce qu'on demande c'est d'appliquer les tarifs et si jamais elle veut changer les règles du jeu mais qu'elle en fasse la demande à l'Office mais qu'elle ne refuse pas le service lorsqu'il sera demandé, de la même façon et au même titre que tous les autres utilisateurs de son réseau.
21222. L'acceptation immédiate de la proposition de Gaz Métro aurait par ailleurs deux impacts positifs importants. Elle permettrait à l'Office d'envoyer un message puissant dans le marché à l'effet qu'il voit l'arrivée du GNL comme un développement positif pour l'ensemble des utilisateurs et elle permettrait en second lieu d'envoyer à TransCanada un message puissant à l'effet qu'il ne lui est pas permis d'adopter à l'égard de Gaz Métro, du GNL ou d'un point de réception sur son réseau un traitement discriminatoire.
21223. En d'autres mots, TransCanada ne peut légitimement demander des renseignements additionnels qu'elle ne demande pas à St-Nicolas. TransCanada ne peut légitimement outrepasser les exigences de son tarif à St-Nicolas alors qu'elle ne le fait nulle part ailleurs sur son réseau. TransCanada ne peut légitimement refuser à Gaz Métro de contracter à St-Nicolas alors qu'elle a permis à tous ses autres utilisateurs de contracter à Dawn. TransCanada ne peut légitimement suggérer qu'elle va changer ses pratiques contractuelles à St-Nicolas alors qu'elle ne l'a pas fait à Dawn et ne l'a pas fait à East Hereford. Il ne faut jamais perdre de vue que TransCanada est un concurrent de Gaz Métro au niveau du GNL.
21224. Tous ces éléments, monsieur le président, démontrent clairement que TransCanada adopte à l'égard de Gaz Métro et de St-Nicolas un comportement discriminatoire et je vous suggérerais qu'il n'est jamais prématuré, ni trop tôt pour empêcher que de la discrimination n'ait lieu sur un réseau relevant de votre compétence.
21225. En terminant, j'aimerais simplement réitérer que tout ce que Gaz Métro demande est d'être traité sur un pied d'égalité avec les autres parties et que TransCanada traite le point de St-Nicolas comme tous les autres points sur son réseau.

21226. Enfin, encore une fois, votre approbation immédiate de la proposition de Gaz Métro n'aura aucun inconvénient et aura des avantages certains.
21227. Merci. Ceci complète mes remarques.
21228. J'entends faire une petite vérification de certaines décisions d'Office ce soir donc j'aurai des remarques en Réplique demain. Je n'anticipe pas qu'elles soient très longues.
21229. Je suis à votre disposition pour répondre à toute question que vous pouvez avoir.
21230. **LE PRÉSIDENT:** Merci, Maître Leclerc.
21231. Le Panel n'a pas de questions -- ou l'Office, devrais-je dire, n'a pas de questions pour vous.
21232. **Me LECLERC:** Merci beaucoup.
21233. **LE PRÉSIDENT:** Merci et bonne soirée.
21234. This completes what I will call a very -- a very good day today, a very productive day and we will adjourn and resume tomorrow morning at 9:00 o'clock.
21235. Thank you.

--- Upon adjourning at 6:00 p.m./L'audience est ajournée à 18h00