

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



**Hearing Order RH-003-2011
Ordonnance d'audience RH-003-2011**

TransCanada PipeLines Limited (TransCanada), NOVA Gas Transmission Ltd. (NGTL) and Foothills Pipe Lines Ltd. (Foothills)

Application dated 1 September 2011 for Approval of the Business and Services Restructuring Proposal and Mainline Final Tolls for 2012 and 2013

TransCanada PipeLines Limited (TransCanada), NOVA Gas Transmission Ltd. (NGTL) et Foothills Pipe Lines Ltd. (Foothills)

Demande datée du 1^{er} septembre 2011 visant l'approbation de la proposition de restructuration d'entreprise et de services ainsi que des droits définitifs exigibles sur le réseau principal en 2012 et 2013

VOLUME 12

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

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

**June 19, 2012
Le 19 juin 2012**

**International Reporting Inc.
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Canada

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HEARING ORDER/ORDONNANCE D'AUDIENCE
RH-003-2011

IN THE MATTER OF TransCanada PipeLines Limited (TransCanada), NOVA Gas
Transmission Ltd. (NGTL) and Foothills Pipe Lines Ltd. (Foothills)
Application dated 1 September 2011 for Approval of the Business and Services
Restructuring Proposal and Mainline Final Tolls for 2012 and 2013

HEARING LOCATION/LIEU DE L'AUDIENCE

Hearing held in Calgary (Alberta), Tuesday, June 19, 2012
Audience tenue à Calgary (Alberta), mardi, le 19 juin 2012

BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE

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- Ms. Wendy M. Moreland
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- Mr. David Butters

Canadian Association of Petroleum Producers (CAPP)

- Mr. Lewis L. Manning

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- Mr. Bernard J. Roth
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- Mr. Alan Ross

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- Mme Danie Daigle

Ministry of Energy - Ontario

- Mr. Edward Sweet

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- Mr. R. Brian Wallace Q.C.

National Energy Board/Office national de l'énergie

- Ms. Diana Audino

- Mr. Parvez Khan

ERRATA

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Monday, June 18, 2012 - Volume 11

Paragraph No.:

11836, line 4:

“...Prairies and NOL facilities would...”

12101, lines 2 and 3:

“...was the point Pohlod made.”

12110, line 4:

“...it would be detriment of...”

12189, line 1:

“I’m not sure I know now to answer that.”

12281, line 2:

“...values as of December 11th.”

12289, line 2:

“...its consistent all of the National Energy Board...”

12294, lines 3 and 4:

“...there is no assets to assign the blank cheque to to allocate them...”

12317, line 2:

“...of lines for asset for the original cost site.”

12380, lines 2 and 3:

“...companies who underwrite regulation...”

12655, line 1:

“I do know I have it.”

Should read:

“...Prairies and Eastern Triangle facilities would...”

“...was the point Mr. Pohlod made.”

“...it would be detrimental to...”

“I’m not sure I know how to answer that.”

“...values as of December 31, 2011.”

“...it’s consistent among all of the National Energy Board...”

“...there is no assets to assign the blank cheque to, or allocate them...”

“...of lines for asset for the original cost side.”

“...companies who are subject to regulation...”

“I do now have it.”

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Mr. Norm Bowman	
Mr. Francis Pilley	
Mr. Larry Kennedy	
Mr. Barry Sullivan	
Mr. James K. Guest	
 - Examination by Mr. Dunberry (continued)	 12742

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B33	June 19th, 2012 Corrections to TransCanada's Evidence	13227

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--- Upon commencing at 8:30 a.m./L'audience débute à 8h30

12737. **THE CHAIRMAN:** Any preliminary matters this morning?

12738. It looks like not. So, Maître Dunberry, c'est à votre tour.

12739. **Me DUNBERRY:** ... monsieur le président ...

12740. **THE CHAIRMAN:** I don't think your mic is on.

12741. **MR. DUNBERRY:** Yes, I apologize.

STEFAN POHLOD: Resumed

NORM BOWMAN: Resumed

FRANCIS PILLEY: Resumed

LARRY KENNEDY: Resumed

BARRY SULLIVAN: Resumed

JAMES K. GUEST: Resumed

--- EXAMINATION BY/INTERROGATOIRE PAR MR. DUNBERRY:
(Continued/Suite)

12742. **MR. DUNBERRY:** So, gentlemen, we will be continuing the cross-examination of Mr. Kennedy again. Mostly Mr. Kennedy for the next hour, I believe, using references to your report.

12743. Mr. Kennedy, would you please take again your written evidence of September the 1st at page Roman i-4 starting at line 21.

12744. **MR. KENNEDY:** I'm sorry, Mr. Dunberry, I missed that reference.

12745. **MR. DUNBERRY:** Page i-4, line 21, starting with the words "In 2010
...."

12746. **MR. KENNEDY:** I have that.

12747. **MR. DUNBERRY:** All right.

12748. So you indicated here that:

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"In 2010, Gannett Fleming reviewed the appropriateness of the booked accumulated depreciation for each of the three segments as developed by TransCanada in 2006;

In the view of Gannett Fleming, the accumulated depreciation within each segment did not match the consumed service value of the assets within each segment. In particular Gannett [Flemming] noted that the Northern Ontario segment appeared to be under-recovered in comparison to the Prairies and Eastern Triangle ..."

12749. And then, you can continue, line 4 to line 8 -- that I'd invite you to read, obviously -- and then, there's a reference I'd like to emphasize perhaps by my questions:

"TransCanada ..."

12750. Starting at line 8:

"TransCanada has developed a different allocation of accumulated depreciation which has been included in the depreciation calculations of this depreciation study."

12751. So I understand from this statement, Mr. Kennedy, that it was in 2010 that you did this review of the appropriateness of the alignment of the consumed service value with the depreciation reserve for each of the three segments.

12752. Is that correct?

12753. **MR. KENNEDY:** That's correct, sir.

12754. As part of the beginning of our work, or the work that we started in 2010 for this study, one of the things that we did was to look at the booked accumulated depreciation balances.

12755. **MR. DUNBERRY:** And this exercise was performed as of December 31st, 2010.

12756. Is that correct? This review?

12757. **MR. KENNEDY:** Initially, and then -- yes.

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12758. **MR. DUNBERRY:** Now, at line 8, you refer to a different re-allocation.

12759. You indicate that:

"TransCanada has developed a different allocation of accumulated depreciation which has been included in [...] this depreciation study."

12760. I guess that here you're referring to perhaps two things. One is the actual transfer of \$1.2 billion in accumulated depreciation. And two, they split: the 60 percent/40 percent split between the Eastern Triangle and Prairie segment.

12761. This is the allocation to which you are referring here, Mr. Kennedy?

12762. **MR. KENNEDY:** Yes.

12763. I'm referring to the fact that TransCanada undertook a review of the method in which they were allocating accumulated depreciation. And as you suggest, the move from the Eastern Triangle and Prairies into the Northern Ontario segment.

12764. **MR. DUNBERRY:** And this re-allocation was developed by TransCanada itself; correct?

12765. **MR. KENNEDY:** That's correct, sir.

12766. Actually, just to clarify, I think it was done -- prepared by TransCanada in concert with my colleague here, Mr. Sullivan.

12767. **MR. DUNBERRY:** But this did not ---

12768. **MR. PILLEY:** Actually, sorry. It was TransCanada. Mr. Sullivan was not part of the initial conversation.

12769. **MR. DUNBERRY:** That was my next question. Thank you, Mr. Pilley.

12770. **MR. KENNEDY:** I apologize for that mischaracterization, sir.

12771. **MR. DUNBERRY:** And Mr. Kennedy, you personally were not involved in that determination of a different re-allocation?

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12772. It was received from TransCanada?

12773. **MR. KENNEDY:** That is correct.

12774. **MR. DUNBERRY:** So you did not and you were not asked to propose or define a methodology or a ratio to proceed with this actual reallocation between the other two segments, the Prairies and the Eastern Triangle.

12775. You were not mandated to come up with your own methodology, or formula, or ratio?

12776. **MR. KENNEDY:** I was not mandated to come up with a method.

12777. I was aware of what TransCanada was doing through ongoing discussions, but I was by no means -- it was not my area of responsibility.

12778. **MR. DUNBERRY:** I'd like to refer you to one exhibit, just to clarify one point for us. It's Exhibit B17, page 25 and 26. This is your -- that is TransCanada's answer to NEB 5.6 -- 5.6 (d).

12779. I will let you read the question appearing on page 1 of 2, subparagraph (d) and, then, I will read with you the answer that was provided.

12780. The second paragraph says, Mr. Kennedy:

"Key depreciation factors such as the estimated ..."

12781. I apologize; I will wait for the answer to appear on the screen as well.

12782. Second paragraph of subparagraph (d) says:

"Key depreciation factors, such as the estimated service lives by segment, net salvage estimates and survivor curves, are updated and incorporated into the GFI study. The study also determines an appropriate split of accumulated depreciation by segment."

12783. Would you agree with me that your study -- and I believe we're referring here, obviously, to the GFI study, which is identified in the paragraph above -- your GFI study, which is dated September 1st, 2011, does not analyze, assess, the

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appropriateness of the split of accumulated depreciation by segment?

12784. This is not something you were asked to do as you confirmed a moment ago.

12785. **MR. KENNEDY:** That's correct.

12786. I think the confusion may be, sir, the use of the word "study". There's the Gannett Fleming study and then the broader study that was, you know, a compilation of Gannett Fleming's work, TransCanada's internal work and the work of Ron Williams and maybe other internal people.

12787. So the last sentence, I think, refers to the broader study, if you will, which is used as an input into the Gannett Fleming study .

12788. **MR. DUNBERRY:** But, simply to confirm my understanding, you or Gannett Fleming did not review the appropriateness of that split as part of your mandate?

12789. You did not?

12790. **MR. KENNEDY:** We did not develop it.

12791. We looked at it just as -- because I'm using it as an input to the work that I do, I wanted to be comfortable with it.

12792. So I did review it for reasonableness, but it was not part of my mandate to develop that allocation, sir, you're correct.

12793. **MR. DUNBERRY:** Now, you will recall from memory that there is a formula in section 5 with the P-factor. P equal, and there's a formula. That formula, do we need to go to see that formula, Mr. Kennedy, or you will recall seeing it from your reading?

12794. **MR. KENNEDY:** I'd rather go to it, sir, only because my mind is full of formula.

12795. **MR. DUNBERRY:** Okay.

12796. So this would be then in section 5, I believe it's on page 15 of 22. That is

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Exhibit B5-8, page 15 or 16, Adobe. Hard copy, page 15.

12797. **MR. KENNEDY:** I'm sorry, sir, I missed the page reference again.
12798. **MR. DUNBERRY:** Page 15 of 22, that is the hard copy. It's probably page 16 or 17, Adobe.
12799. There you go on the screen. There is this formula which has been used. It's a quite important formula in this depreciation proposal. It is a formula applied to determine this 83.6 percent alignment ratio.
12800. Do you recall this formula, Mr. Kennedy?
12801. **MR. KENNEDY:** Yes, I do, sir.
12802. **MR. DUNBERRY:** I understand that you are not the author of this formula. You did not develop that formula; you received it from TransCanada?
12803. **MR. KENNEDY:** The formula was developed by TransCanada and its internal experts, our staff. I was aware of the formula and what they were doing but I did not develop the formula. This is generally a pretty standard unit of production-type formula.
12804. **MR. DUNBERRY:** And this methodology of equating usage as a primary indicator of consumed service value for purposes -- for purposes of reallocating this \$1.2 billion between two segments was also developed internally by TransCanada.
12805. This choice of primary indicator of the consumed service value, to your knowledge, was also developed internally by TransCanada. Is that correct, Mr. Kennedy?
12806. **MR. KENNEDY:** The use of a unit-based allocator was discussed with Gannett Fleming and TransCanada for a period of time. But, yes, the responsibility of the formula and the development of the formula and the application of the formula was TransCanada.
12807. As I suggested a few minutes ago, the formula itself is a pretty standard unit of production formula. To say we developed it is a kind of a -- opening a textbook and so handing you a unit of production formula is what it would amount to.

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12808. But the fact that they chose to use it was a TransCanada decision. We did have some discussions and I'm assuming they discussed with other parties as well. But it was not my area of responsibility, but I definitely agree with it, sir

12809. **MR. DUNBERRY:** I would like now to have you look at TransCanada's answer to CAPP 19, Exhibit B8-6, page 33 Adobe, or page 1 of 2 of the hard copy. The answer is at the bottom of page 1 of 2, response to sub-question (a), it starts with, "In discussions in 2006". It's CAPP 19. It would be page 33 to page 34 Adobe's number, but the Exhibit Number is B8-6. There we go.

12810. So it says here, Mr. Kennedy, that:

"In discussions in 2006, TransCanada and GFI observed that the Mainline business environment was changing which resulted in changes in the physical usage of various segments of the Mainline. For example, shippers were increasingly using Mainline services on a segmented basis and throughput levels were changing in different parts of the system. As a result, the relationship between accumulated depreciation and consumed service value was becoming even more misaligned."

12811. This is a fair statement of your recollection of events and discussions back in 2006, Mr. Kennedy?

12812. **MR. KENNEDY:** It is, sir. Its, you know, it's consistent with the fact that we've had an ongoing relationship with TransCanada and have a number of discussions.

12813. And over that 2006 period, that's where we started getting involved -- and I say we Gannett Fleming -- started to get more actively involved with TransCanada and looking at the way the system was used and how that aligns to the service value of the assets.

12814. **MR. DUNBERRY:** To arrive to that conclusion, Mr. Kennedy, that this misalignment was aggravated, I assume that you did two things; you reviewed the accumulated depreciation on the one hand, and you also reviewed the consumed service value on the other hand for each of the three segments; is that correct?

12815. **MR. KENNEDY:** Yes, we started in 2006, we, through our -- our being

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Gannett Fleming's discussions with TransCanada -- started to understand the nature of the changing business environment in which they operate.

12816. The -- at that time we were trying to, you know, over that period of '06 through '10, solidify the concept of segmentation even further than it was any time prior to that. We were trying to understand how the system would align its service value within those segments.

12817. So it was a bit of an evolutionary phase from 2006 through 2010, where we were trying to learn -- and that was myself, trying to really understand the business environment and the banner in which we could best come forward in this application with something that made sense from a depreciation standpoint.

12818. **MR. DUNBERRY:** Mr. Kennedy, the question was whether you calculated the consumed service value and the accumulated depreciation for each of the three segments in 2006, in order for you to arrive at the conclusion that this was an aggregated misalignment -- or the alignment was becoming even more misaligned; did you or did you not perform these calculations?

12819. **MR. KENNEDY:** We did not in 2006, we started them going forward from that time as we started to look at how we could better segment the system and developing a policy and procedures that would make sense. But in 2006, no we did not.

12820. **MR. DUNBERRY:** What I meant was 2005, 6 or 7, because these are years which may actually make a difference depending on the exact moment where these calculations may have been made.

12821. Did you -- between 2005 and 2007 -- perform any calculations in support of this conclusion, to arrive at that conclusion?

12822. **MR. KENNEDY:** We definitely did not do the type of allocation or look at consumed service value to anywhere near the same level that we have as part of this study.

12823. We did some work -- we again being Gannett Fleming, I need to be careful as to who the "we" is when I'm talking here, Gannett Fleming did some work -- as a result of the negotiated settlement discussions to help the company push the resulted -- or negotiated depreciation expense and rates back into different groups.

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12824. But that was more trying to implement a negotiated settlement than it was doing any type of review of the appropriateness of the consumed service value.

12825. **MR. DUNBERRY:** So the answer is that you did some calculations back in 2006-7 to determine what's the consumed service value was for each of the three segments; is that correct? The answer is a yes?

12826. **MR. KENNEDY:** The answer I think is no. What we did is we worked with TransCanada to develop a model that they used in terms of doing the allocation. So we did some consulting work with them to help them implement the negotiated settlement, sir.

12827. So I think that makes the answer a no, other than they used some of my expertise, perhaps, in helping them implement.

12828. **MR. DUNBERRY:** Were you provided by TransCanada with figures corresponding to their calculation of consumed service value for the three segments in these years?

12829. **MR. KENNEDY:** No, I don't think we were, sir, and definitely it wasn't meant to be a recognition of consumed service value. I did review some of the calculations that they had made when they -- when they implemented the negotiated settlement.

12830. I don't think I reviewed them all, but I did work with them in trying to develop a methodology to implement the negotiated settlements. So I did review some but I don't think I reviewed all the calculations.

12831. **MR. DUNBERRY:** Mr. Kennedy, with the benefit of hindsight, would you say that the fact that a single system-wide EPH value of 2027 since 2002, may have contributed to this misalignment to which you refer in the answer to this question?

12832. **MR. KENNEDY:** Sir, hindsight's always perfect. But I would not suggest that the use of the single-wide (sic) system Economic Planning Horizon and it was in place since 2002. I think it was appropriately put in place in 2002 and put in place for the right reasons after significant deliberation by this Board. I sat up at this very same table for many days in 2002 talking about the use of a single-wide (sic) Economic Planning Horizon.

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12833. The -- I think the evolution that we saw from 2002 through 2005-6-7, that period, the use of a single-wide (sic) truncation date was appropriate. I think it was in that point in time, in that era of the changing business environment when the system -- when it became at least apparent to me -- and maybe some of the TransCanada people can talk about when that -- when more precisely the use of the system changed.

12834. I think at that time, when the use of the system began to change and the manner in which the gas flowed through the system changed, that was the appropriate time to move from a single-wide (sic) Economic -- a system-wide Economic Planning Horizon to a more segmented approach.

12835. So I think everything -- the evolution from the 2002 period to where we sit today was prudent. We had the prudent and the right planning horizon from 2002.

12836. The company entered a series of negotiations at which time they attempted to recognize, when they implemented the negotiated settlement, the depreciation expense into three areas, and the first opportunity that we've had, in this proceeding now, to come forward with a more aligned approach I think is correct.

12837. **MR. DUNBERRY:** Now, as part of your work in 2006 and 2007, did you assess how the spread between consumed service value and accumulated depreciation would evolve on a going forward basis, as a result of the implementation of the rates negotiated during that process that led to the 2007 settlement?

12838. Did you forecast or assess or review how the spread between the CSV and the depreciation reserve could evolve going forward?

12839. Did you do these assessments going forward, these projections?

12840. **MR. KENNEDY:** I think the simple answer to your question is no, we did not do a forecast of how that would spread out over time. As time went forward and over that period of time, and I kind of view that whole 2006 to 2007 through current has been one evolutionary period of the development. I think over that period, it became apparent, to at least myself, that there was going to be a -- a need to do something.

12841. But at 2006, I don't think I foresaw at least the breadth of the divide between consumed service value that we had at the end of 2010. But it definitely -- and the company I think appropriately recognized when they went to implement their

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negotiated settlement expense and rates that they needed to deal with the segment that was at that time looking to have the most under-depreciated position over the shortest life. And I think they implemented the 2006 settlement in a manner that was consistent with that realization.

12842. But the breadth of the issue that we saw at the end of 2010, at least I didn't foresee it at 2006.

12843. **MR. DUNBERRY:** At what time did you start thinking that the implementation of the 2007 settlement was in fact aggravating the alignment or misalignment between the CSV and the depreciation reserve? At what point in time did you start realizing that this was going in the wrong direction according to your evidence?

12844. **MR. KENNEDY:** Oh, sir, I want to be clear. I do not think by any hint or we should not read anything into any of my responses that the manner in which the company implemented the 2007 negotiated settlement aggravated the situation to any extent.

12845. And, in fact, I think what the company did was implement the 2006 or 2007 settlement agreement in a manner that best dealt with the results of the negotiated settlement to attempt to at least deal with the Northern Ontario segment as best they could within the parameters of that settlement.

12846. So I don't think the -- obviously, maybe I misheard it, but the tone of the question I thought indicated that the implementation of the 2007 settlement aggravated the issue that we're seeing here, and I definitely want to be clear that is not the case. The company, I think, implemented it in a manner that they best could to try to alleviate this.

12847. I give the company credit for some foresight that maybe more than I had personally that there would be maybe this issue coming on by and all. And they implemented the study to allocate more of the negotiated settlement package into the Northern Ontario segment because it had a shorter life, and it was the most under-depreciated segment.

12848. I think that's clear in the review of the company's response to CAPP 19. So like I say, I don't know if I can say it any more emphatically. There was nothing in the implementation of the 2000 settlement that aggravated this situation. They implemented the results of a settlement and we are now where we are, but they

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implemented that settlement in my view in a manner that was at least attempting to most alleviate the situation that we see today.

12849. **MR. DUNBERRY:** When you calculated the alignment or you observed the level of misalignment that is alleged between the CSV and the depreciation reserve for the NOL at the end of 2010 or in the course of your work in 2011, am I to understand from your answer that you were surprised and shocked to see this alleged misalignment suddenly appearing at the end of a five-year settlement period or did you not?

12850. I was not questioning TransCanada's implementation of a settlement. I was simply asking you as an expert whether you were surprised to see the level of -- or the alleged level of misalignment. And if you were not surprised, and maybe you were totally shocked, but if you were not shocked, I'd like to know when you started thinking that this might not be going in the right direction.

12851. **MR. KENNEDY:** Well, I was not surprised nor shocked. Only because over the period of 2007 through 2010, we've had ongoing discussions with TransCanada. What I was maybe more surprised and shocked at is the extent to which the business environment had changed, and that wasn't in 2010 and 2011, sir, that was maybe something that became light -- or I became enlightened upon over the course of 2007 through 2010.

12852. But what really caught me by surprise was the change in the manners of -- in the forecasts of the usefulness of those three segments and particularly the Northern Ontario segment.

12853. So if I was shocked at anything it was not the level of misalignment, it was the change in the business environment.

12854. **MR. DUNBERRY:** Thank you for that open answer.

12855. I'd like now to change topic. And I'll refer you to your actual recommendations that is contained in your evidence of September the 1st, appearing on page i-9 of your report. It's the last bullet point on that page 9, where there is a recommendation, and it starts really on page 8 where you indicate: "Specifically" -- this is Line 13.

"Specifically, Gannett Fleming recommends:"

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12856. And then we go to bullet 4:

"-- a change in allocation of accumulated depreciation amounts into the depreciation rate calculations as of December 31, 2011 related to the assets of each of the three Canadian Mainline segments."

12857. That was your recommendation at the time, Mr. Kennedy; correct?

12858. **MR. KENNEDY:** That is correct.

12859. **MR. DUNBERRY:** Now, your recommendation is not quantified in the sense that there is no -- as far as I can see -- actual specific recommendation to transfer \$1.2 billion nor a specific recommendation to apportion this amount into fraction, one being \$480 million and the other one being \$720 million.

12860. Is that correct, there's no specific recommendation quantified in that sense?

12861. **MR. KENNEDY:** No, that was not part of my mandate to develop the amount of the allocation. That came into Gannett Fleming from the company based on the company's own internal and other expert advice that they had received.

12862. **MR. DUNBERRY:** So the extent of your recommendation was simply a change; correct?

12863. **MR. KENNEDY:** Yes.

12864. **MR. DUNBERRY:** Thank you.

12865. Now, always asking you questions about the scope of your mandate, because this is what we've been doing for a few moments now, I'd like simply to confirm that Gannett Fleming was not asked to provide an opinion as to whether this change, this reallocation of \$1.2 billion in accumulated depreciation is compliant with GAAP or not.

12866. This is not something you were asked to do or provide?

12867. **MR. KENNEDY:** No, I was not. I believe it is based on my broader experience, but that was not part of my mandate nor is it part of any evidence that I'm

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sponsoring in this proceeding.

12868. **MR. DUNBERRY:** That was the word "GAAP" does not appear a single time in your entire evidence I suppose?

12869. **MR. KENNEDY:** I'm not sure that's why, but ---

12870. **MR. DUNBERRY:** According to my computer, the words "GAAP" in the short and long form doesn't appear in your entire evidence.

12871. Mr. Kennedy, would you say that comments concerning compliance with GAAP, U.S. or Canadian GAAP, are often made in depreciation studies for all sorts of reasons, but it is not unusual or exceptional or even rare to find sections of a depreciation study addressing GAAP-related issues?

12872. **MR. KENNEDY:** Generally I'm going to agree with your comments, sir. In particular in the last two or three years, Canadian studies that have had to deal with -- Canadian utilities, that have had to deal with the issue of the implementation of international financial reporting standards -- the marriage of those standards and repertory accounting has become, quite frankly, a very big piece of business, both for my firm and other depreciation firms. So we do get into it in studies in a very narrow context though.

12873. Generally my evidence in any studies that I have a response would relate solely to Standard 16 of IFRS, perhaps Standard 37 around asset retirement obligations, and historically dealt with probably Section 3110 of the CICA Handbook around asset retirement obligations and net salvage accounting.

12874. But it's really dependent upon the company in terms of the mandate they provide to me to provide opinion on. I am not a chartered accountant and so I'm -- get uncomfortable talking about GAAP to any larger component than the manner in which it interrelates specifically with depreciation.

12875. The company, I think, has received advice from, you know, experts in that -- specifically in that area that would answer questions relating to GAAP compliance, I think.

12876. **MR. DUNBERRY:** Were you aware of the fact that TransCanada, at some point in 2012, sought -- well, first of all, elected to adopt U.S. GAAP and sought to be exempted from the application of Canadian GAAP or IFRS? You

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probably heard this when I was having a conversation with Mr. Pohlod last Friday, but previously to that were you made aware of that election and exemption?

12877. **MR. KENNEDY:** Through my ongoing discussions with TransCanada, I was aware of the things they were thinking about in that regard in terms of, you know, looking at IFRS, looking at U.S. GAAP and how they best could manage the company within the varying account guidelines.

12878. So, yeah, I think I was aware of it but I was not a part of any internal discussions in terms of a policy decision in that regard at all.

12879. **MR. DUNBERRY:** When you filed your report, initial report on September 1st, 2011, were you aware that a few weeks before that, TransCanada had been exempted from the application of Canadian GAAP.

12880. **MR. KENNEDY:** Yes. I don't know the exact -- if it was a few weeks, but I was aware that that was the case.

12881. **MR. DUNBERRY:** Thank you.

12882. Now, we heard yesterday that at the time of the settlement in 2007, segmentation was introduced for the first time, but -- and I think Mr. Pohlod confirmed that, there was no reallocation of any accumulated depreciation as part of that 2007 settlement. You heard that, and I assume you agree with this?

12883. **MR. KENNEDY:** That's correct. That's my understanding.

12884. **MR. DUNBERRY:** So at the time, it was not felt necessary to proceed with a reallocation simultaneously with the segmentation?

12885. **MR. KENNEDY:** I wasn't part of the negotiated settlement discussion so I'm not sure what was discussed and what was -- as needed as part of those discussions, but the obvious answer is, there was not an allocation made.

12886. **MR. DUNBERRY:** Okay.

12887. **MR. KENNEDY:** There was -- I want to be clear about -- the company in order to implement the settlement did do an initial push to segments of accumulated depreciation, but they did not do any type of review on the basis of CSV or anything like that, at least that I'm aware of.

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12888. So there was an initial – in order to implement this negotiated settlement agreement and, as we talked probably 25 minutes ago, the company came to me to have me provide some advice in terms of how they could best implement the negotiated settlement.

12889. So there were some calculations at that time made to -- as part of the implementation of the negotiated settlement. But there was, I don't think the -- and you'd have to talk to the company witnesses that were probably involved in that more than I was, in terms of what was thought about as part of the settlement agreement. I'm just not aware of those discussions.

12890. **MR. DUNBERRY:** Okay. So at the time these three segments were defined back in 2006-2007 by TransCanada, to your knowledge, it was not intended that these three segments would serve later on for purposes of transferring accumulated depreciation between segments to an amount of \$1.2 billion.

12891. It was not intended, to your knowledge, that they would serve for that purpose?

12892. **MR. KENNEDY:** I don't think it was part of anything that I talked about with the company as part of any of the discussions we had in that '06-'07 time period.

12893. I think it was beyond that, that when the business environment changed, that really solidified the fact that the reallocation or the allocation to, on the basis of CSV, would have to be made. But '06-'07, at least I don't think there was this idea that there would have to be a big push of a further amount into the various segments.

12894. **MR. DUNBERRY:** So to your knowledge, these three segments, in 2006, were not developed internally by TransCanada for purposes of proceeding to a transfer of accumulated depreciation through the use of consumed service value based on certain throughputs calculation?

12895. **MR. KENNEDY:** It was not part of any of the discussions I had with TransCanada, sir.

12896. **MR. DUNBERRY:** Perfect. Thank you.

12897. Now, I'd like you to simply ask you to confirm that the only two depreciation scenarios that you studied are the two depreciation scenarios that we see

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in your report; that is the status quo scenario which is well described in your report and the restructuring proposal or the depreciation proposal scenario involving segmentation and reallocation of \$1.2 billion.

12898. These are the only two scenarios that you studied?

12899. **MR. KENNEDY:** Sir, I think you and Mr. Bowman had a conversation on Friday when Mr. Bowman indicated that there was some alternative or refinement made to the calculation of CSV that the company did run past us, and we provided some rough calculations on at least a couple of other scenarios of the potential CSV calculations and I think that was done on the basis of the company trying to figure out the precise manner in which the CSV could be best calculated.

12900. And I say that on the basis of them looking at the model, trying to understand the throughput, trying to understand the changes in business needs in order to get their calculation right. So we, at various times, did at least a couple of scenarios where -- different looks at what that CSV reallocation would be.

12901. **MR. DUNBERRY:** Give me a second

12902. Mr. Kennedy, you said earlier that the last comprehensive depreciation study was actually done by yourself in 2002 in the context of the RH-1-2002 proceeding?

12903. **MR. KENNEDY:** That's correct.

12904. **MR. DUNBERRY:** And you also testified that this was based on a single system-wide depreciation rate.

12905. **MR. KENNEDY:** Yes, it was.

12906. **MR. DUNBERRY:** Now, as a matter of fact, again distinguishing intent and results, but as a matter of fact or simple maths, you will agree that the alleged misalignment has increased since 2002 when you look at the 2002 figures and the 2011 figures; correct?

12907. **MR. KENNEDY:** Yes, and I think the company is looking at the basis of that misalignment being the consumed service value a lot differently and a lot more precisely now, and very prudently doing so now than they did back in 2002, sir.

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12908. So I will agree the change of the business of the company -- the nature in which the company operates its business has changed from 2002 through now and that has largely caused this misalignment.
12909. **MR. DUNBERRY:** And again, purely from a mathematical standpoint, you will agree that a more aggressive depreciation approach, had it been implemented back in 2002, would have contributed to limit the alleged misalignment -- again purely from a mathematical standpoint?
12910. I'm referring to the NOL segment to be more specific.
12911. **MR. KENNEDY:** I'm not quite sure if I know how to answer your question, and -- and I'm not saying that in, by any way, trying to be evasive.
12912. The use of one common segment with the date -- you know, truncation date of 2027 would have provided that the Northern Ontario segment -- or has depreciated the Northern Ontario segment over a truncation date that -- or an Economic Planning Horizon date that is not materially different than the 2025 that we're using in that segment today.
12913. So when you say "a more aggressive approach to depreciation", if we're talking about "aggressive" in terms of the choice of the Economic Planning Horizons, I'm not sure that we've got much more aggressive. Two years on the Northern Ontario segment and a large extension on the other two segments, to me, that's not being a lot more aggressive.
12914. That may, in fact, be going the other direction.
12915. **MR. DUNBERRY:** My question was not precise enough. I apologize.
12916. If you -- and again, this is not a question as to whether a right decision was made or a good decision was made in 2002, I'm just trying to establish a starting point here.
12917. If the depreciation rates applied in 2002 going forward had been higher with a shorter Economic Planning Horizon, that would have led to a closer alignment than what we actually see today.
12918. **MR. KENNEDY:** Again, sir, we -- I mean, the arithmetic would be that if you had a higher depreciation rate, you'd be more depreciated today, yes. That's --

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that's the arithmetic. And again, I'm not going to try to read any intent into the question.

12919. I think the fact is, the company did not see the use of its system to be such that they needed segmentation. We didn't even enter into the thought of segmentation, really, back in 2002. That's -- the system was used on a more system-wide basis. It was when the -- the use of the system changed that the concept of segmentation really began, which then provided the -- the type of study that we have now.

12920. But again, I don't think that I would characterize what we're doing now by any extent as being more aggressive than the study we've had in prior days. I think we have a different type of study, which is appropriate given the way that the pipeline assets are used as compared to 2002.

12921. The manner in which the Economic Planning Horizons are selected is much more refined now than it was back in 2002. So I think the business environments changed the -- and because of that has caused us to look at this.

12922. So, yes, to answer your question directly, if you had a higher depreciation rate, you would have -- you would be more depreciated today than you were -- would be, you know, given -- as compared to the path that was followed.

12923. But I don't think, in my view, that there was any type of -- of inappropriateness in the way the 2002 study was approved by this Board, nor do I think that the 2007 negotiated settlement did anything that has contributed significantly to this.

12924. I think this -- the fact the business environment has changed and the way the system is used has changed that has caused this issue more than -- more than any other factor.

12925. **MR. DUNBERRY:** I was certainly not suggesting that errors were committed back in 2002, I was simply asking you to look at it from a purely mathematical standpoint. That was my question. But maybe I can ask the same question a bit differently.

12926. Reading your report, I understand that if the restructuring proposal is not approved by this Board, the Economic Planning Horizon for the NOL under the status quo scenario would be 2020; correct?

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12927. **MR. KENNEDY:** That's correct.
12928. **MR. DUNBERRY:** That would be a five-year reduction in the EPH value; correct?
12929. **MR. KENNEDY:** Correct.
12930. **MR. DUNBERRY:** So the NOL would be entirely depreciated within eight years, more or less.
12931. **MR. KENNEDY:** On average.
12932. **MR. DUNBERRY:** Yes.
12933. And I assume that this is what your opinion is about: If the restructuring proposal is not implemented, the right thing to do is to reduce by five years the Economic Planning Horizon and fully depreciate the NOL over a shorter period of time of eight years with a higher depreciation rate applied to those assets.
12934. Correct?
12935. **MR. KENNEDY:** Correct.
12936. Not to -- to drive any end result, but correct because the company's forecasts of the way the system would be used given the -- the depreciation expense would result in a need to reduce the Economic Planning Horizon by five years or so.
12937. Again, I want to be clear. The Economic Planning Horizon is developed first. The depreciation rates are calculated from that. So in the company's view -- and they can perhaps speak to it better than I can -- that given the -- the results of the status quo case or given the non-ability for the company to do what they need to to attract business on the Northern Ontario segment, that that segment will be required to have a shorter Economic Planning Horizon. That shorter Economic Planning Horizon results in the rates that you see in the status quo case.
12938. So I want to make sure that we get the cart and the horse appropriately positioned that the Planning Horizon is first determined and, then, we run the depreciation rates following that.

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12939. **MR. DUNBERRY:** Mr. Kennedy, again, from your own perspective as a depreciation expert, under the status quo scenario, it is absolutely and totally possible to recover the investment in the NOL through eight year of depreciation without first transferring any accumulated depreciation.
12940. This is entirely possible from a depreciation perspective.
12941. There is no need to transfer accumulated depreciation in order to recover the investment in the NOL within the next eight years. From your perspective as a depreciation expert, there's nothing difficult to accept about that.
12942. **MR. KENNEDY:** Oh, that's the arithmetic, sir, that if, in the circumstance, the company proposal's not accepted and business unfolds as business unfolds -- and I think Mr. Pohlod could probably talk about how business will unfold in that circumstance better than I can -- the Economic Planning Horizon, in the view of the company, would reduce by five years and that would result in a changed depreciation calculation as provided in the status quo case and we would recover the investment over that period in the Northern Ontario segment.
12943. Memory -- and again, the tolls, system-wide, is something Mr. Pohlod can talk about better than I can, but the -- those assets would have a shorter truncation date, yes.
12944. **MR. DUNBERRY:** Thank you. I'd like now to ask ---
12945. **MR. POHLOD:** Mr. Dunberry.
12946. **MR. DUNBERRY:** Sorry.
12947. **MR. POHLOD:** Could I provide one clarification to ---
12948. **MR. DUNBERRY:** Yes.
12949. **MR. POHLOD:** --- comments that were made by Mr. Kennedy?
12950. Mr. Kennedy mentioned that the shorter depreciation life or the short -- the shorter Economic Planning Horizon for the Northern Ontario Line, given the status quo, would have to be reassessed or would be reassessed given the lower -- given the higher depreciation expense.

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12951. It's really given the entire restructuring proposal. It's the entire restructuring proposal that would have the impact on the Economic Planning Horizon or on the economic life of the various segments, and not just the depreciation expense.

12952. **MR. DUNBERRY:** Mr. Kennedy, I'd like you to go to page iii-2 -- Roman iii-2 of your report, Section 3, Part 3 of your report for very short line of questions.

12953. Line 5 to 7, you say that:

"Continued surveillance and periodic revisions are normally required to maintain continued use of appropriate annual depreciation accrual rates."

12954. That is correct?

12955. **MR. KENNEDY:** That is correct, sir.

12956. **MR. DUNBERRY:** What are the possible negative impacts of a failure to perform these reviews periodically?

12957. What kind of problems can you encounter if you do not proceed with these periodic reviews?

12958. **MR. KENNEDY:** The primary impact is that your accumulated depreciation account will fall or become misaligned with the -- the manner in which it should be aligned.

12959. In other words, you get out of sync of where you should be versus where you are. It's the primary reason we suggest to utilities is that you need to look at depreciation rates on a periodic basis.

12960. Just the simple fact of a company not changing anything but undertaking normal business, adding a plant, retiring a plant and removing a plant from service can cause the need for periodic recalculations of the rates.

12961. So that's the primary negative impact.

12962. **MR. DUNBERRY:** Any secondary negative impacts?

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12963. **MR. KENNEDY:** In the circumstances of TransCanada, I'm not sure.
12964. If the company was a NIFRS-compliant company the Standard 16 requires an annual review of the appropriateness of the average service life estimates. Given TransCanada's adoption of U.S. GAAP, that provision does not apply.
12965. In other utilities, there may be other impacts. In the circumstance of TransCanada, I think that's -- it's the alignment of the accumulated depreciation actual versus theoretical that is the impact.
12966. **MR. DUNBERRY:** I'd like now to refer you to Exhibit B8-6, page 35.
12967. **MR. KENNEDY:** Sorry, I need you to put in layman's language what B8-6 is.
12968. **MR. DUNBERRY:** Exhibit B8-6, that's the exhibit number.
12969. **MR. KENNEDY:** What is it?
12970. **MR. DUNBERRY:** Sorry, it's the answer NEB -- sorry -- it's TransCanada's answer to CAPP 20 -- 2-0.
12971. Answer (b) and (c), do you see those?
12972. **MR. KENNEDY:** I'm just reading them now, sir.
12973. **MR. DUNBERRY:** So for the record, I'll simply quickly read these two answers,
12974. (b) says that:

"GFI used the throughput information provided by TransCanada and has not assessed its stability. GFI notes that depreciation studies should be conducted periodically to reevaluate any changes in depreciation parameters."

12975. And answer to question (c) was:

"GFI recommends that depreciation rates be reviewed

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periodically to reflect the changes that result from plant and reserve account activity. The frequency of such reviews would depend on the levels of plant and reserve account activity."

12976. I assume that you are in agreement with these two statements?

12977. **MR. KENNEDY:** Yes, I am.

12978. **MR. DUNBERRY:** Now, given the ongoing review of throughput forecasts that you were probably made aware of, do you think that it might be necessary for you to review your depreciation study in light of these announced change in forecasts?

12979. Considering again the nine factors that we find in your report and the entire basis for your report, do you think that there might be a need for you to review your depreciation study and your recommendation?

12980. **MR. KENNEDY:** I think one kind of step or one change like that, well, it would have maybe a very minor impact on the depreciation study results; may not require a recalculation or a full study.

12981. I think that in the environment the company is in they may find themselves having to do more frequent depreciation studies on a go-forward basis than they perhaps have done historically, just given the changing business environment and the manner in which the system is used.

12982. But I don't think one change in the throughput forecast would necessarily stimulate me having to redo the rates. I say that on the basis it's bad for my business but the fact is it would require very, very significant changes over a longer period of time.

12983. So as important as a change in throughput would be change in the profile of capital additions and retirements and cost of removal estimates as well.

12984. So I think to answer your question directly, does the announced change in throughput estimates require us to do a new study, I don't think so. If we had four or five of those laid out on top of each other in a short period of time I may change my opinion but one change I don't think it would require.

12985. **MR. DUNBERRY:** Were you provided with a copy or information

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concerning these revised throughput forecasts?

12986. **MR. KENNEDY:** I haven't seen the revised throughput numbers but I am aware that there is a revised throughput forecast, sir.

12987. **MR. DUNBERRY:** But are you in possession of information concerning the magnitude of this revision?

12988. **MR. KENNEDY:** I have seen it.

12989. **MR. DUNBERRY:** You have seen it?

12990. **MR. KENNEDY:** Yes.

12991. **MR. DUNBERRY:** When?

12992. **MR. KENNEDY:** I mean, the -- based on discussions that occurred in this hearing room, I think it was last week or perhaps the week before, in my review of the transcripts, I became aware that there was a revised throughput forecast and I think the magnitude was mentioned in the transcripts.

12993. That's basically the extent of my knowledge of it, sir.

12994. **MR. DUNBERRY:** So you say you became in possession of that information sometime last week?

12995. **MR. KENNEDY:** I think I said I've seen in, and what I saw was the transcript references and the discussions that were held in this hearing room.

12996. **Me DUNBERRY:** Monsieur le président, j'aimerais peut-être prendre trois secondes pour parler à mon client et je reviens rapidement.

12997. **LE PRÉSIDENT:** Oui, Maître Dunberry.

--- (A short pause/Courte pause)

12998. **Me DUNBERRY:** Merci, monsieur le président.

12999. Mr. Kennedy, I would now like to refer you to a list of precedence that were identified in the response to certain IRs.

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13000. This would be a response to Gaz Métro 2.50 -- 2.5-0 -- and that would be, I believe, Exhibit B10-20 at page probably 111 or 110.
13001. It is a list of State approvals that is attached to this IR 2.50. The title of the document is "Gannett Fleming - State Approvals of Reallocation of Accumulated Depreciation From 2007 to 2011".
13002. I assume that you were consulted for the preparation of this list, Mr. Kennedy?
13003. **MR. KENNEDY:** Yes, this was basically put together by our U.S. office of State cases where a question of allocation of accumulated depreciation had been involved.
13004. **MR. DUNBERRY:** Now, just -- and again these are very simple questions just to confirm a few things.
13005. Reviewing your report I noticed that none of these State cases has been referenced to or identified in your evidence -- written evidence -- before this Board. I mean, it is a reference in the IRs but, in your direct written evidence of September 1st, there is no reference to any of these State cases.
13006. Is the correct?
13007. **MR. KENNEDY:** That's correct.
13008. This list was just compiled as part of the preparation for the response to this Information Request.
13009. **MR. DUNBERRY:** Yes.
13010. And we also see that this list doesn't contain any FERC cases; correct?
13011. **MR. KENNEDY:** No, I think Mr. Sullivan can speak to the U.S. FERC experience.
13012. **MR. DUNBERRY:** Okay, but just to confirm again that I see this as being State approvals but you simply confirm again that this does not refer to any FERC cases?

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13013. **MR. KENNEDY:** This list does not.
13014. I think there was FERC cases identified in other evidence of TransCanada.
13015. **MR. DUNBERRY:** And again reviewing your report, Mr. Kennedy, there are no references in your study to any FERC cases?
13016. **MR. KENNEDY:** No, there's not.
13017. **MR. DUNBERRY:** Now, as part of your depreciation study, Mr. Kennedy, I understand that you were not asked to do any research of State or FERC precedence to determine whether TransCanada's proposed reallocation was supported or not supported by U.S. precedence?
13018. This is not something you were asked to do, to perform such research?
13019. **MR. KENNEDY:** Definitely not initially as part of the proceeding.
13020. I think as the concept evolved within TransCanada, particularly in 2010, I did provide advice to TransCanada that this is not a totally unique solution to the problems they have. Then, you know, basically -- based on that advice they chose the course of action that they did and presented in this proceeding -- I think very prudently. And, you know, Mr. Sullivan and Brown, Williams have been engaged to speak more intensely to the U.S. experience.
13021. **MR. DUNBERRY:** We'll come to that and we will have exchanges with Mr. Sullivan and with Mr. Guest.
13022. **MR. KENNEDY:** I'm sure he can hardly wait.
13023. **MR. DUNBERRY:** But again, I just want to make sure I understand the scope of your mandate and of your testimony.
13024. You are aware now I suppose that a number of FERC cases have been identified by both MAS and TransCanada dealing with issues related to the transfer of accumulated depreciation including the Kern and the Williams case; correct?
13025. **MR. KENNEDY:** I have followed with interest the documentation, yes.

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13026. **MR. DUNBERRY:** Now, can I conclude from your previous answers that you did not personally review the depreciation studies filed by the Applicants in the Kern and Williams case; is that correct?
13027. **MR. KENNEDY:** I have not, other than reading the decisions, sir. Mr. Sullivan I think can speak to that much better than I can.
13028. **MR. DUNBERRY:** And you did not personally review any of the depreciation study filed by Applicants in the state case to which we referred a moment ago; is that correct?
13029. **MR. KENNEDY:** I actually did review those proceedings in that -- I have those as part of our corporate library, I was able to review those studies.
13030. **MR. DUNBERRY:** You reviewed personally these depreciation studies?
13031. **MR. KENNEDY:** I reviewed the -- I reviewed the study. I was not involved in the studies nor was I part of any of those proceedings, but I have read the studies.
13032. **MR. DUNBERRY:** Okay. Other FERC cases were identified, including the South Carolina case, the Northern Gas case, the Equitable case; were you provided with copies of these decisions, Mr. Kennedy?
13033. **MR. KENNEDY:** I have seen extracts and bits and pieces of the various decisions, both over my career and really as part of Mr. Sullivan's work and obviously we -- I saw his work and I've read his evidence. I have seen the documents you presented to us as part of the aids for cross, and those are part of that package as well, sir.
13034. **MR. DUNBERRY:** Did you read the depreciation studies that were filed in the South Carolina, the Northern Gas and Equitable cases, or the depreciation material that was filed in support of these cases by the Applicants?
13035. **MR. KENNEDY:** No, I have not, sir.
13036. **MR. DUNBERRY:** I'd like now to refer you to a different exhibit. It's Exhibit B8-2. This is NEB 2.1, TransCanada's answers to NEB 2.1. You will see that these are all -- I'll just wait for the actual list to appear on the screen.

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13037. It's the list appended to the answer on page 2 of 2, attachment NEB 2.1a-1.1. Exactly.
13038. So you see, Mr. Kennedy, there's a first page titled, "FERC Regulated Interstate Pipelines with Segmented Approach to Depreciation Set by Settlement", and the following page same title but, "Set by Commission Order". You see this, Mr. Kennedy?
13039. **MR. KENNEDY:** I do, sir. I think Mr. Sullivan may be able to speak to these much better than I can.
13040. **MR. DUNBERRY:** Okay. But again, Mr. Kennedy, may I conclude that you did not personally review the depreciation material filed by the Applicants in these proceedings?
13041. **MR. KENNEDY:** I did not.
13042. **MR. DUNBERRY:** And may I also conclude that you did not personally review the FERC decisions to which reference is made in this exhibit?
13043. **MR. KENNEDY:** No, I did not. This -- I think you're -- Mr. Sullivan can far better answer those types of questions. I did not personally review this material.
13044. **MR. DUNBERRY:** I understand, so you are not personally able to testify as to whether these cases support, or not, the position advances by TransCanada? Personally, you're not in a position to testify as to the fact patterns or precedential value or level of support that these cases offer to TransCanada; is that correct?
13045. **MR. KENNEDY:** With regard to these FERC cases, I cannot. With regard to the last page, the Canadian cases, I may be able to help you with, sir.
13046. **MR. DUNBERRY:** Okay. Well, we can go to the last page which does refer to, "Canadian Pipeline Companies with Segmented Approach to Depreciation". That would be the page to which you're referring, Mr. Kennedy?
13047. **MR. KENNEDY:** I'm sorry; I missed that. I missed your question, sir.
13048. **MR. DUNBERRY:** Yes, if you go to the last page of this attachment, NEB 2.1a-2, you see a list of Canadian proceedings; correct?

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13049. **MR. KENNEDY:** That is correct.
13050. **MR. DUNBERRY:** And I understand that these are example where a segmented approach to depreciation was adopted, according to your testimony?
13051. **MR. KENNEDY:** That is correct, sir.
13052. **MR. DUNBERRY:** Now, you're not suggesting that these settlements -- because they're mostly if not all, they're settlements -- do you know if the NOVA Gas Transmission Limited case was a settlement or was it a litigated hearing? Because I see an asterix with all the cases except one.
13053. **MR. KENNEDY:** The NOVA Gas Transmission case was a litigated proceeding before the Alberta Utilities Commission ---
13054. **MR. DUNBERRY:** Okay.
13055. **MR. KENNEDY:** --- or at that time it may have been the EUB.
13056. **MR. DUNBERRY:** Okay. But you're not suggesting that these cases-- or that this order in the NOVA Gas case -- approved an actual reallocation of accumulated depreciation between segments or group of assets in accordance with the methodology proposed by TransCanada? These are simple examples of segmentation; is that correct?
13057. **MR. KENNEDY:** That's correct, sir. This list was -- responding to the question of both companies that had segmented depreciation rates. Although, in each of these circumstances they would be segmented accumulated depreciation accounts as well, to support these calculations.
13058. **MR. DUNBERRY:** But you're not suggesting that orders were rendered - - or settlements were concluded -- where an actual reallocation of accumulated depreciation between segments or group of assets, was endorsed or approved?
13059. **MR. KENNEDY:** There would have been -- as I suggested, a segmented accumulated depreciation provided in support of the depreciation calculations. In none of these cases was there any debate about the reallocation or about the allocation methods.

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13060. So I would suggest the scope of the issue was significantly different in these cases. But there would have to have an allocated accumulated depreciation. But there was not a reallocation or there was not an allocation from one segment to the other in these proceedings. These were provided in support of the concept of segmentation.
13061. **MR. DUNBERRY:** I understand. Now, were you personally involved in the first B.C. Gas Utility Limited proceeding? Did you write the depreciation study in that case, did you appear as a witness or were you otherwise involved?
13062. **MR. KENNEDY:** In the 1998 depreciation report, I joined Gannett Fleming at the very end of that process, so I was somewhat involved. I have been involved with B.C. Gas Utility since that point in time, most recently I testified before the British Columbia Utilities Commission in support of tariffs and gas, which is the new B.C. Gas, if you will, in support of their depreciation rate.
13063. So I'm very familiar with their processes, sir, and the historic patterns of the depreciation studies.
13064. **MR. DUNBERRY:** Now, I had the pleasure of reading all these depreciation studies, Mr. Kennedy, and ---
13065. **MR. KENNEDY:** You must not be able to sleep at night, sir.
- (Laughter/Rires)
13066. **MR. DUNBERRY:** --- you're the author of all these studies; correct?
This list -- this list of Canadian cases is a list of cases where you personally authored some depreciation material or study in all these cases; correct?
13067. **MR. KENNEDY:** That is correct.
13068. **MR. DUNBERRY:** So this is really your list, Mr. Kennedy?
13069. **MR. KENNEDY:** It is my list.
13070. **MR. DUNBERRY:** Segmentation is something you do?
13071. **MR. KENNEDY:** Something I believe in. I believe in the allocation of the assets to reflect the manner in which the assets are used and segmenting the

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assets, if necessary, to reflect the business and the operations of the companies, yes.

13072. **MR. DUNBERRY:** So when your services are retained, it is known that you are in favour of segmentation and reallocation because this is what you do, right? In all these cases and in all the other cases we will see as well, you were always involved, except perhaps a few exceptions.

13073. So this is something you're known for and something you do.

13074. **MR. KENNEDY:** Well, I think it's something that's definitely part of my portfolio. I've done many, many cases where we have not recommended segmentation, so it wouldn't be something that I always do. But it is something that I personally believe in. And ---

13075. **MR. DUNBERRY:** I'd like to review one case close to home, the TQM case. I would refer you to NEB 5.5. And I will give you the exact reference, it's B17. This is your answer to -- TransCanada's answer to NEB 5.5.

13076. There is here a short list of three cases on page 2 of 2, Mr. Kennedy. You see those three cases?

13077. **MR. KENNEDY:** I do.

13078. **MR. DUNBERRY:** Okay. I understand that you were personally involved in the -- all three of them?

13079. **MR. KENNEDY:** I was.

13080. **MR. DUNBERRY:** So again, this is your list?

13081. **MR. KENNEDY:** It's a list of companies that I was personally involved in, yes.

13082. **MR. DUNBERRY:** But it comes from you; right?

13083. **MR. KENNEDY:** I think I did provide this list, yes.

13084. **MR. DUNBERRY:** So I have copies of your depreciation study in the TQM case. This was distributed a moment ago. I'd like you to take a copy of your work.

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13085. So this was filed with the Board in a draft form, but I assume -- well, the copy I have is a draft. Was it ever filed as an original signed copy, Mr. Kennedy?
13086. **MR. KENNEDY:** I don't think it was, sir. I prepared this for the company in support of, I think, some negotiations the company was entering into with regard to the TQM pipeline.
13087. **MR. DUNBERRY:** Well, it is publicly available. It was easily accessible on the internet.
13088. **MR. KENNEDY:** Then maybe Mr. Pohlod can speak to this better, or other members of the panel, but I think this was a direct request of the Board to be entered into a proceeding to approve a negotiated settlement.
13089. **MR. DUNBERRY:** Now, I'd like to refer you to page ii-32, where there is a section dedicated to the allocation of accumulated depreciation.
13090. I understand, Mr. Kennedy, that as far as you're concerned, this is a precedent in support of TransCanada's depreciation proposal in this case; correct? Is it a precedent or ---
13091. **MR. KENNEDY:** It is an example of where a company has segmented the -- the assets and had to assign the -- a portion of its booked accumulated depreciation to each segment, so it is an allocation of accumulated depreciation by segment, sir, yes.
13092. **MR. DUNBERRY:** Okay. We'll read this together, and I have a few questions after that. If you'll allow me to read this with you, page ii-32, starting with the title, "Allocation of December 31st, 2008 Accumulated Depreciation":

"Depreciation accruals developed on the remaining life basis required the accumulated depreciation balances as at the analysis date of each depreciable group. The TQM accumulated depreciation balances are maintained on an account basis for a full system. In order to calculate the annual accrual rate for each geographic segment, the accumulated depreciation balances for each account as of December 31st, 2008 require allocation to each of the segments. In the development of the depreciation accrual rates, Gannett Fleming has allocated the December 31st, 2008

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accumulated depreciation balances basis on the calculated accrued depreciation for each segment as at December 31st, 2008. The calculations of accrued depreciation determine the depreciation requirement at the analysis date assuming the live net salvage value truncation date forecasts are realized.

Once the calculation of the accumulated depreciation requirement of each segment was determined, an allocation of the book accumulated depreciation amount was rateably made to each geographic segment based on the proportion of the segment's calculated accrued depreciation to the total system calculated accrued depreciation." (As read)

13093. Is this a fair description of what was actually done in this TQM case, Mr. Kennedy?

13094. **MR. KENNEDY:** Yes, it was. Yes, it is.

13095. **MR. DUNBERRY:** Okay. And I understand that this -- we'll call it apportionment -- was performed at the same time the segmentation was actually performed. Correct, it was simultaneously done?

13096. **MR. KENNEDY:** It was done as part of the same study, sir, yes.

13097. **MR. DUNBERRY:** And in fact, it was done in time at the same time. Segmentation and apportionment were implemented at the same time.

13098. **MR. KENNEDY:** I think you used the word "implemented", and that would be fair.

13099. **MR. DUNBERRY:** Sorry?

13100. **MR. KENNEDY:** I think you used the word "implemented".

13101. **MR. DUNBERRY:** Yes.

13102. **MR. KENNEDY:** And that would be correct. Logistically, we would have done the segmentation a matter of weeks ahead of doing the allocation.

13103. **MR. DUNBERRY:** But it was the same application asking for both the

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segmentation and the reallocation at the same time ---

13104. **MR. KENNEDY:** That ---

13105. **MR. DUNBERRY:** --- filed and asked at the same time and implemented at the same time?

13106. **MR. KENNEDY:** That is correct.

13107. **MR. DUNBERRY:** Now, I understand that some apportionment was performed and that apportionment was performed on -- was made rateably. These are the words you're using; correct?

13108. **MR. KENNEDY:** Correct.

13109. **MR. DUNBERRY:** And it was made based on the ratio that is derived from what is presented here as the calculated depreciation.

13110. Could you, in simple terms, define "calculated depreciation" as opposed to "book depreciation"?

13111. **MR. KENNEDY:** Certainly. The determination of calculated accumulated depreciation are the calculation is the amount of depreciation or accumulated depreciation you would have had the parameters, as set in the study, i.e. the average service life estimate, the net salvage estimate and the truncation dates or Economic Planning Horizon dates, been in place from -- since day one of the company.

13112. So in other words, it says had we followed this approach to depreciation with these life estimates, salvage estimates and planning horizons, this is where your accumulated depreciation would be, theoretically.

13113. **MR. DUNBERRY:** Now, in this case, the apportionment was made according to ratio, calculated by reference to the calculated depreciation over the total system calculated depreciation; correct?

13114. **MR. KENNEDY:** Yes. In other words, we calculated or we determined the calculated accumulated depreciation or the theoretical amount that -- applicable to each segment and we pro rated the booked accumulated depreciation on the basis of that theoretical number.

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13115. **MR. DUNBERRY:** Now, when I read this -- and I actually read the entire evidence -- there is no reference to the determination of a consumed service value for the Quebec portion of the TQM system, the calculation of a consumed service value for the East Hereford segment -- because there are two segments in this case -- correct? There's no such calculation of a consumed service value or a P factor or the P ratio that we saw with the equation; correct?

13116. **MR. KENNEDY:** That's correct, sir. The -- the use of the unit of production-based, if you will, or the P factor formula that we looked at half an hour ago is a different look at the determination of consumed service value.

13117. In my view, it's -- it's applicable in certain circumstances such as the Northern Ontario segment of the Mainline system and used somewhat, but the -- the more objective or this type of approach that we followed in TQM is also another widely accepted approach.

13118. **MR. DUNBERRY:** Now, Mr. Kennedy, again you will confirm that in this TQM case, there is actually no transfer of accumulated depreciation between the East Hereford segment and the Quebec segment of the TQM system? There is an apportionment based on calculated reserve, but there is no actual transfer from one segment to the other; correct?

13119. **MR. KENNEDY:** No. There was an allocation made from a one-segment system to each of the new two-segment systems, or each segment for the new two-segment system. It's an allocation made in order to do the depreciation -- do the depreciation calculations.

13120. **MR. DUNBERRY:** So the answer to my question is: Yes, there is no transfer between the segments directly?

13121. **MR. KENNEDY:** Well, this is the first time the allocation had been made so, no, there would not be a transfer between those two segments.

13122. **MR. DUNBERRY:** Now, if you continue -- and I'd like you to compare two schedules.

13123. If you look at your depreciation study, there is a schedule appearing -- this is the TQM study -- there is a schedule appearing at page iii-4. So I'd like you to take a copy of that page iii-4 in the TQM depreciation study and, then, take your report

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and go to page iii-10, where we find a similar table.

13124. So do you have both documents? I apologize if this is taking a bit of a gymnastic, but I'd like you to compare again Table iii-4 of the TQM Depreciation Study with Table iii-10 of the current Application; your depreciation study and the current application.
13125. Do you see these two documents?
13126. **MR. KENNEDY:** I have them, sir.
13127. **MR. DUNBERRY:** Okay.
13128. Now, if you look at the various titles, it's quite similar, correct?
13129. We start with the "Account". They you have your "Survivor Curve Reference", the "Awaited Average Net Salvage", the "Original Cost", the "Calculated Reserve", the "Book Reserve", the "Future Accruals", the "Annual Accrual Amount", the "Composite Remaining Life", and the "Annual Accrual Rate"; correct?
13130. **MR. KENNEDY:** That's correct.
13131. **MR. DUNBERRY:** Okay.
13132. So what was actually performed in terms of calculation for the TQM Quebec segment 250 truncation days, conceptionally, is more or less identical to what we see, for instance, for the Northern Ontario segment, the NOL segment, on page iii-10 of that study that's filed in this Application; correct?
13133. Conceptionally, it's the same process?
13134. These two charts are quite identical, Mr. Larry Kennedy? That's my question.
13135. **MR. KENNEDY:** Yeah, they are, and they were basically calculated using the same models.
13136. **MR. DUNBERRY:** Yes.
13137. **MR. KENNEDY:** Which is why they look very similar.

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13138. **MR. DUNBERRY:** Now, when I look at the title of iii-10 in this Application, this is your Status Quo case; correct?

13139. **MR. KENNEDY:** Correct.

13140. **MR. DUNBERRY:** Okay.

13141. So would you not say that, when you compare the TQM approach that was presented by yourself on behalf of TQM, and when you compare it with this calculation, it seems more accurate to say that the TQM precedent is a precedent in support of the Status Quo case in the way the mathematics work?

13142. **MR. KENNEDY:** No, I don't think it is, sir.

13143. **MR. DUNBERRY:** I thought you would say that. Anyway, I think it speaks for itself.

13144. I would like now to refer you to section 5 of the Application, Exhibit B5-8, page 1 of 22 and pages 2 of -- pages 1 and 2 of 22.

13145. Starting at line 20, it says that:

"There have been dramatic changes to the business environment since the Settlement was reached, as described in Section 3.0 to the Application. In response to these changes, TransCanada recently undertook a review of its overall approach to Mainline depreciation, taking into consideration established depreciation and regulatory principles, and the overarching objective of improving the long term economic viability of the Mainline and the WCSB. This review included the input of depreciation experts GFI and BMWQ.

TransCanada is proposing two key adjustments to the development of the Mainline depreciation expense."

13146. And then you can read (1) and (2).

13147. A very simple question, Mr. Kennedy: It is your understanding, I assume, that as it is alleged here, these *"two key adjustments to the development of the*

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Mainline depreciation expense" are responses to changes described in section 3; correct?

13148. **MR. KENNEDY:** This being Company evidence, you might have to speak to one of the Company witnesses in terms of what they're referring to where.

13149. But I would agree that these two adjustments are, at least from my viewpoint, responsive to the changing business environment that the company faces.

13150. **MR. DUNBERRY:** There is no suggestion -- and I think you referred to this earlier -- there is no suggestion in TransCanada's evidence that you reviewed, I assume, on depreciation issues, that this depreciation proposal and these two adjustments are necessary to correct errors in the application of accounting principles that would have been committed by TransCanada or yourself actually, Gannett Fleming, back in 2002?

13151. **MR. KENNEDY:** I'll speak to the second part of that. Definitely not.

13152. I don't think, and as I alluded to before, I don't think there was any errors or anything not prudent done in the evolution of the depreciation of this Company from 2002 forward.

13153. **MR. DUNBERRY:** So again, these two adjustments are not necessary to correct factual errors that, as far as you're concerned, would have been committed ---

13154. **MR. KENNEDY:** I believe ---

13155. **MR. DUNBERRY:** --- by TransCanada or Gannett Fleming in 2002 or in 2006 or 2007 in estimating the Economic Planning Horizons for these two segments or three segments or the Mainline as a whole?

13156. **MR. KENNEDY:** No, I believe these are required due to the changing business environment and the manner in which the system is used, not to correct any errors in prior depreciation expense.

13157. **MR. DUNBERRY:** I also understand that the actual depreciation methods procedure and principles that are applied in this Application -- or proposed or suggested or recommended in the Application are exactly the same depreciation methods, procedure and principles that are currently effective -- that are currently recognized and applied?

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13158. **MR. KENNEDY:** The methods, procedures and basis of the depreciation calculations are as those ordered by the Board in RH-1-2002.

13159. **MR. DUNBERRY:** Thank you.

13160. Mr. Kennedy, have you reviewed the MAS depreciation proposal?

13161. Have you looked at the evidence that my client filed?

13162. **MR. KENNEDY:** Yes.

13163. **MR. DUNBERRY:** You saw that MAS recommends the use of a 2020 -- 2020 Economic Planning Horizon for the depreciation of the NOL segment; correct?

13164. **MR. KENNEDY:** I think so.

13165. I don't have it in front of me at this moment. I wasn't expecting to be crossed on the MAS evidence.

13166. **MR. DUNBERRY:** But you've read that?

13167. **MR. KENNEDY:** I did read it, sir.

13168. **MR. DUNBERRY:** Okay.

13169. Now, this EPH of 2020 is the same EPH retained by yourself and TransCanada for your own Status Quo case; correct?

13170. **MR. KENNEDY:** For the Status Quo case; it's not the proposed case.

13171. **MR. DUNBERRY:** That's right.

13172. But this 2020 is supported by the depreciation study within this scenario, within the Status Quo scenario -- sorry, this was probably not clear.

13173. The 2020 EPH for the NOL segment is supported by your depreciation study for purposes of the Status Quo scenario?

13174. **MR. KENNEDY:** I think we need to be a little bit clearer here, Mr.

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Dunberry.

13175. The Status Quo case was presented as a case to indicate the depreciation expense if the proposal, as presented by the Applicant, is not -- not deemed appropriate by this Board.
13176. I don't -- and I want to be careful. The 2020 date was a date determined by the Company to do the calculations to provide an example of what the rates would be in that circumstance.
13177. My study does not support the use of a 2020 date. It does not calculate a date. In fact, that date comes to me from the company. So I wouldn't want to present it as the status quo case being the -- being a recommended case for the company, I think it was provided as an illustrative case to provide the Board and parties some information with regard to the level of depreciation expense that would result in these circumstances if the proposal by the Applicant is not approved.
13178. **MR. DUNBERRY:** I understand that, Mr. Kennedy, but I understand that TransCanada's position is -- well, TransCanada is seeking the approval of its restructuring proposal and its depreciation proposal, which includes a reallocation of \$1.2 billion.
13179. But the evidence of TransCanada also suggests that if this is not approved, if the actual reallocation is not approved, then as a subsidiary position TransCanada is asking the Board to retain in a status quo scenario an EPH of 2020 for the NOL segment.
13180. That is my understanding of the evidence; is it yours?
13181. **MR. POHOLD:** Perhaps I can be clear from -- in terms of what TransCanada is asking and what TransCanada's position is.
13182. TransCanada is asking for approval of the restructuring proposal overall. TransCanada is not saying that if the depreciation proposal that is being put forward is not approved that the 2020 is then the appropriate Economic Planning Horizon for the Northern Ontario section.
13183. It is saying that if -- given the status quo, if the restructuring proposal is not approved, and we're talking about the major elements of the restructuring proposal, then it would be appropriate to adjust or shorten the Economic Planning

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Horizon for the Northern Ontario section.

13184. **MR. DUNBERRY:** Thank you, Mr. Pohlod.

13185. Now, earlier on, I think it was yesterday, Mr. Kennedy, I asked you whether you were mandated to opine on the reasonableness of the EPH values developed by TransCanada, and you said -- and I read an extract of your definition of a mandate -- and you said "Well, I was not mandated initially but, yeah, sure, when I received the data I just looked at the reasonableness of the data".

13186. Did you or did you not look at the reasonableness of that 2020 in the event that the restructuring proposal is not implemented and retained?

13187. **MR. KENNEDY:** I did.

13188. **MR. DUNBERRY:** And 2020 is a reasonable number in a status quo case; correct?

13189. **MR. KENNEDY:** In the circumstances, as Mr. Pohlod just described, I would view it as being an appropriate fall-back date or a date that would be reasonable in those specific circumstances, yes.

13190. **MR. DUNBERRY:** And you understand that MAS proposal is to apply prospectively a depreciation rate established based on an EPH of 2020?

13191. You understand that, Mr. Kennedy?

13192. **MR. KENNEDY:** I think that is correct, sir.

13193. **MR. DUNBERRY:** Sorry?

13194. **MR. KENNEDY:** I think so, yes.

13195. **MR. DUNBERRY:** Yes.

13196. Now, will you agree, based on your experience over the last many years, that this approach, the MAS approach, using a shorter Planning Horizon in the event that this restructuring proposal is not accepted, is consistent with depreciation principles, practices and policies that you would recognize as being generally recognized as we saw early on in your testimony?

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13197. That's a question for you, Mr. Kennedy.

13198. **MR. KENNEDY:** I'm just debating, sir, and don't mean by any stretch to be evasive here at all, but I don't think I have reviewed the MAS proposal in sufficient detail to opine on your question.

13199. I think it unfortunately may fall into the Board's hands to make that determination at some point in time. I get very uncomfortable expressing opinions on somebody else's evidence when I haven't been involved in the determination of the policies and the reasons behind it.

13200. So I'm kind of at an unfair advantage and I think it would be unfair for all parties for me to opine on that.

13201. **MR. DUNBERRY:** Have you read Mrs. Bouchard's report from Richter Chamberland on the MAS proposal?

13202. **MR. KENNEDY:** I have read it, sir.

13203. **MR. DUNBERRY:** Have you read the MAS evidence describing its depreciation proposal?

13204. **MR. KENNEDY:** I have read it, sir.

13205. **MR. DUNBERRY:** Have you read Mr. Malkhom's evidence dealing with the depreciation component of its review report?

13206. **MR. KENNEDY:** I just wanted to make sure I was applying Malkhom's evidence to the correct party.

13207. Yes, I have read it, sir.

13208. **MR. DUNBERRY:** Now, perhaps without referring to the MAS proposal per se, just again from a conceptual perspective, would you agree that, everything else being equal, therefore, referring to the status quo scenario, a shorter Planning Horizon, that is 2020, will result in an increased depreciation charge over time?

13209. **MR. KENNEDY:** A shorter economic life will result in a higher depreciation rate. I will agree with your arithmetic there.

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13210. The reason I have a hard time opining or expressing an opinion on that is I'm not sure I understand the precise reasons for the determination of the 2020 date. In other words, as I used the analogy before, the cart and the horse, I'm not sure that the MAS evidence has the cart and the horse in the correct order, sir.
13211. **MR. DUNBERRY:** Now, would you agree as well that, from a conceptual perspective, a shorter Planning Horizon is addressing the concerns advanced by TransCanada concerning the recent and projected decline in usage of the NOL segment?
13212. **MR. KENNEDY:** Arithmetically, they are.
13213. I'm just not sure it's being done for the correct reasons from a depreciation conceptual standpoint, sir.
13214. **MR. DUNBERRY:** Would you also agree that a reduced Planning Horizon in its effect will reduce the risk of not recovering the NOL investment over its useful life?
13215. **MR. KENNEDY:** Now, you're getting me close to an area that I'm getting nervous expressing an opinion on, sir, for two reasons.
13216. One, I do not have the MAS evidence and I haven't reviewed it to the depth I'd need to, to understand the business consequences of that. And secondly, as expressed, I think Mr. Malkhom -- or in this proceeding before, what I am not is a toll design and a business risk person.
13217. **MR. DUNBERRY:** Thank you, Mr. Kennedy.
13218. Monsieur le président, je pensais passer à l'interrogatoire de Monsieur Guest. Si vous êtes à l'aise avec la suggestion que je me propose de faire, c'est-à-dire de prendre la pause maintenant ou je peux continuer pour cinq minutes, c'est comme vous voulez, à votre discrétion.
13219. **LE PRÉSIDENT:** Oui, c'est tout à fait conforme avec l'esprit de flexibilité qu'on a, Maître Dunberry, alors, nous allons commencer -- we'll take our morning break now for 20 minutes and reconvene at 10:30.
13220. Merci.

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13221. **Me DUNBERRY:** Merci.

13222. And thank you, Mr. Kennedy, by the way, I appreciate that.

--- Upon recessing at 10:08 a.m./L'audience est suspendue à 10h08

--- Upon resuming at 10:29 a.m./L'audience est reprise à 10h29

STEFAN POHLOD: Resumed

NORM BOWMAN: Resumed

FRANCIS PILLEY: Resumed

LARRY KENNEDY: Resumed

BARRY SULLIVAN: Resumed

JAMES K. GUEST: Resumed

13223. **THE CHAIRMAN:** Mr. Yates?

13224. **MR. YATES:** Mr. Chairman, I think Panel 4 might be visible as a speck on the horizon, and, given that, I'd like to file at this point some corrections that relate to the evidence to which Panel 4, I believe also Panels 5 and 9 will speak.

13225. So with your leave, I'll file as the next exhibit a document that's entitled "June 19th, 2012 Corrections to TransCanada's evidence".

13226. **THE CHAIRMAN:** That would be helpful. Thank you, Mr. Yates.

13227. **THE REGULATORY OFFICER:** B33.

--- **EXHIBIT NO./PIÈCE No. B33:**

June 19th, 2012 Corrections to TransCanada's Evidence

13228. **MR. YATES:** Thank you.

13229. **THE CHAIRMAN:** Thank you, Mr. Yates.

13230. Maître Dunberry, s'il vous plaît.

13231. **Me DUNBERRY:** Oui, monsieur le président, peut-être une simple demande quant à une information qui nous paraît pertinente de vérifier tout de suite.

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13232. Lors de l'interrogatoire tenu par Monsieur Mondrow, le 15 juin dernier -- c'est-à-dire vendredi -- un engagement a été souscrit par Monsieur Pilley. C'est l'engagement numéro 6 que l'on retrouve dans la transcription, tel que libellé à l'époque par Monsieur Mondrow.

13233. Il s'agissait, essentiellement, et je le cite:

"For TransCanada to provide the implicit economic planning horizon for each of the three Mainline segments arising from the depreciation proposal accepted by the Board as part of the 2007 settlement agreement."

13234. Je voudrais simplement demander à mon confrère, procureur de TransCanada, le moment où il pense pouvoir nous communiquer la réponse à cet engagement, idéalement, avant la fin de notre contre-interrogatoire. Peut-être à la pause si le document est prêt.

13235. Et s'il n'est pas prêt, de nous laisser savoir à quel moment nous pourrions le recevoir. C'est un engagement qui a été pris vendredi, le 15 juin. Merci.

13236. **THE CHAIRMAN:** What can you say, Mr. Yates, about the status of U-6?

13237. **MR. YATES:** Yes, Mr. Chairman, it is in the process of preparation.

13238. There's going to be some further discussion of the response later today so I don't know what that means in the context of Mr. Dunberry's cross-examination and whether it will be complete or not.

13239. I would expect to be able to file it tomorrow. That's the current timing so far as I know.

13240. **THE CHAIRMAN:** Thank you Mr. Yates.

13241. Est-ce que ça répond à votre question, Monsieur Dunberry?

13242. **Me DUNBERRY:** Ça répond à ma question.

13243. Et ça m'amène tout simplement à faire un commentaire qui est peut-être

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prématuré, on en jugera par la suite.

13244. Dans l'hypothèse où cet engagement là n'était pas satisfait avant la fin de mon contre-interrogatoire qui aura lieu aujourd'hui, à ce moment-là j'évoquerai la possibilité et je réserverai mes droits de contre-interroger -- ce sera très court je le présume -- Monsieur Pilley à une autre date sur la réponse à cet engagement, à un moment qui conviendra à tous, évidemment. Nous sommes de passage fréquemment à Calgary.

13245. Mais je voudrais simplement terminer mon contre-interrogatoire sous réserve du droit de poser quelques questions sur réception de ce document-là lorsqu'il sera disponible. S'il n'y a aucune question, on en avisera les partis par écrit et la question sera tout à fait théorique.

13246. Encore une fois, monsieur le président, on n'a pas à en décider maintenant, tout dépend de la suite, évidemment.

13247. **LE PRÉSIDENT:** Oui, votre commentaire a commencé avec l'idée que c'était peut-être prématuré de s'en préoccuper présentement, alors, nous prenons bonne note de vos commentaires.

13248. Mr. Yates?

13249. **MR. YATES:** Yes, Mr. Chairman, I think we should probably, as they say, play that by ear.

13250. I think technically speaking, right to examine on undertakings only exists in the party to whom the undertaking was given. But, normally, we don't get excited about that sort of thing. But if we can just deal with it if as and when it arises, I think that would be the best course of action.

13251. **THE CHAIRMAN:** We don't have much to chew on right now in terms of providing guidance and direction on the Board's part.

13252. So this is your suggestion, Mr. Yates, and I think your idea as well, Maître Dunberry ---

13253. **Me DUNBERRY:** Tout à fait, monsieur le président, je voulais simplement pas prendre mon ---

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13254. **THE CHAIRMAN:** --- to see what happens and we cannot rule in advance of difficulties, if any.
13255. **Me DUNBERRY:** Tout à fait, je voulais pas prendre mon confrère par surprise avec cette question; alors, voilà.
13256. Merci.
13257. **MR. DUNBERRY:** Mr. Guest, I have a few questions so I would invite you to take a copy of your report as well as a copy of Mrs. Paule Bouchard's report that was filed in support of MAS' depreciation proposal.
13258. But before we start, I have a few very simple questions. The first one is to ask you when exactly were you appointed deputy director of FERC's division of audits?
13259. **MR. GUEST:** I don't recall the specific exact date.
13260. **MR. DUNBERRY:** The year, perhaps?
13261. **MR. GUEST:** Nor the year.
13262. It was 32 years of experience at the Commission, exactly. I could take a wild guess, but that's what it would be. Might have been around 1985.
13263. **MR. DUNBERRY:** And, to your recollection, when were you appointed deputy chief accountant?
13264. **MR. GUEST:** I don't really recall.
13265. It would just be a guess and it would be, maybe, 1992.
13266. **MR. DUNBERRY:** Are you still an active member of the American Institute of Certified Accountants, Mr. Guest?
13267. **MR. GUEST:** Yes.
13268. **MR. DUNBERRY:** Would you agree with me, reviewing your c.v., when I read your c.v., would you say it's fair to say that your expertise in accounting comes essentially from your academic training in the U.S. and your work experience at

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FERC?

13269. **MR. GUEST:** Based on my c.v., I have some experience in preparation of financial statements, but it was for a non-profit organization.

13270. **MR. DUNBERRY:** But, essentially, your expertise in accounting comes from 32 years with the FERC and your U.S. training, academic training; correct?

13271. That would be essentially the source of your expertise?

13272. **MR. GUEST:** Yes.

13273. **MR. DUNBERRY:** Now, in your c.v. -- there's perhaps no need to go there, but in your report and in your c.v., we see three U.S. proceedings where you provided expert testimony as a consultant on, I would say, accounting matters.

13274. Is that correct?

13275. **MR. GUEST:** Correct.

13276. **MR. DUNBERRY:** And I also concluded, reading your c.v. and listening to certain preliminary questions asked by Mr. Yates that this is the first time you appear before the NEB to testify as an expert on depreciation or accounting matters, is that correct?

13277. **MR. GUEST:** That's correct.

13278. **MR. DUNBERRY:** And I understood that his is the first time ever you testified before a Canadian regulatory tribunal; is that correct?

13279. **MR. GUEST:** Please repeat that question.

13280. **MR. DUNBERRY:** This is the first time you appear to testify before a Canadian regulatory tribunal.

13281. **MR. GUEST:** Yes.

13282. **MR. DUNBERRY:** And this is the first time as well you are recognized as an expert to testify on depreciation or accounting matters by a Canadian tribunal; is that correct?

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13283. **MR. GUEST:** Correct.

13284. **MR. DUNBERRY:** Is it also correct to say that you have never been recognized by an American tribunal as an expert qualified to give an opinion on Canadian regulation dealing with depreciation?

13285. **MR. GUEST:** That's correct.

13286. **MR. DUNBERRY:** And you have never been recognized as an expert by any American tribunal to testify as an expert and give an opinion on accounting matters for Canadian rate regulated entities; is that correct?

13287. **MR. GUEST:** That's correct.

13288. **MR. DUNBERRY:** I'd like now to refer you to your reply report, page 4, question 8, your report being Exhibit B21-6.

13289. Question 8 is:

"What is the purpose of your testimony in this proceeding?"

13290. Mr. Guest, and we see the answer.

13291. I take it that your mandate is limited to the preparation of a response to Mrs. Paule Bouchard written evidence of March 9th, 2012 concerning TransCanada's proposed re-allocation of accumulated depreciation; is that correct?

13292. **MR. GUEST:** What I was requested to provide advice on was whether the company's depreciation proposal was consistent with United States' Generally Accepted Accounting Principles and to comment on Ms. Bouchard's testimony.

13293. **MR. DUNBERRY:** So your evidence, again, is limited to a response to Ms. Bouchard's written evidence; correct?

13294. **MR. GUEST:** Is that the same question that you just asked or is it a different question?

13295. **MR. DUNBERRY:** I'm referring you to page 2 -- page 4, Line2,

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“The purpose of my testimony is to respond to Ms. Bouchard’s testimony...”

13296. Is that a fair statement?

13297. **MR. GUEST:** That portion of the -- I mean you’re essentially reading what’s in the testimony so that’s accurate reading of what’s in the testimony.

13298. **MR. DUNBERRY:** I’m sorry, could you just speak a bit louder, perhaps

13299. **MR. GUEST:** I said that’s an accurate reading of what’s in my testimony, yes.

13300. **MR. DUNBERRY:** And this mandate was given to you by TransCanada sometime after March 9, 2012, which is the date the evidence by Ms. Bouchard was filed; correct?

13301. **MR. GUEST:** Yes.

13302. **MR. DUNBERRY:** Now, I take it, Mr. Guest, from the answers you’re giving me that you were not personally involved in the preparation of any parts of the application filed by TransCanada in September and revised in October 2011. Is that correct?

13303. **MR. GUEST:** Yes.

13304. **MR. DUNBERRY:** And that would include answers to information requests made by the NEB or intervenors, on matters relating to the depreciation. You were not personally involved in the first, second, third series -- actually all the series of information requests filed by the NEB or intervenors; is that correct?

13305. **MR. GUEST:** To the best of my knowledge, yes.

13306. **MR. DUNBERRY:** Now, were you involved in the preparation of Mr. Sullivan’s report?

13307. **MR. GUEST:** No.

13308. **MR. DUNBERRY:** And in the preparation of his reply evidence?

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13309. **MR. GUEST:** I may have read his reply evidence but I don't believe I assisted in the preparation of it, no.
13310. **MR. DUNBERRY:** Now, looking at your report we see a limited number of footnotes, Mr. Guest. And reviewing these footnotes I understand that for purposes of your report, you were provided with a copy of Ms. Bouchard's written evidence of March the 9th, and with a copy of section 5 of the application which is entitled "Depreciation"; correct?
13311. **MR. GUEST:** Yes.
13312. **MR. DUNBERRY:** Now, I take it as well from your report and your testimony that you were not provided with a copy of Mr. Bruce Henningsen's evidence regarding the MAS or TransCanada's depreciation proposal. Is that correct?
13313. **MR. GUEST:** I don't recall reviewing that material, no.
13314. **MR. DUNBERRY:** And you were not provided with a copy of MAS written evidence concerning MAS's depreciation proposal or MAS's critique of TransCanada's depreciation proposal; correct?
13315. **MR. GUEST:** I don't recall reviewing that material.
13316. **MR. DUNBERRY:** And you were not provided with a copy of Mr. Jeff Makhholm's report dealing with depreciation issues; correct?
13317. **MR. GUEST:** I don't recall reviewing that material.
13318. **MR. DUNBERRY:** And you were not provided with any of the Canadian decisions identified in Exhibit NEB 2.1A-2 of the NEB. Is there a need for us perhaps to go there?
13319. I think perhaps it would be better if you referred to the exhibit. So if you go to Exhibit B8-2 which is in answer to NEB Question 2.1, if you actually go to the last page of this exhibit, there is an attachment referring to Canadian decisions, it starts with B.C. Gas Utility Limited and there is a number of Canadian decisions referred to in this attachment.
13320. You see this, Mr. Guest?

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13321. **MR. GUEST:** Yes.

13322. **MR. DUNBERRY:** Now, may I ask you whether you were provided, before filing your reply evidence, with any of these Canadian decisions or orders or -- let's refer them to orders for the time being. Is that correct?

13323. **MR. GUEST:** I don't recall reviewing the orders issued in those proceedings.

13324. **MR. DUNBERRY:** Were you provided with copies of the intervenor's answers -- sorry I will rephrase this. Were you provided with TransCanada's answers to any of these information requests dealing with depreciation proposal?

13325. **MR. GUEST:** Yes.

13326. **MR. DUNBERRY:** Were you provided a copy of Mr. Kennedy's depreciation study?

13327. **MR. GUEST:** I don't recall reviewing Mr. Kennedy's depreciation study, no.

13328. **MR. DUNBERRY:** I'd like to ask you a few questions now on the Canadian precedents that we see here, Attachment 2.1A-2. I understand from your previous answer that you were not personally involved in any of these Canadian proceedings?

13329. **MR. GUEST:** That's correct.

13330. **MR. DUNBERRY:** So I take it that your reply evidence of May the 18, I believe, does not take into account the fact pattern or precedential value of any of these Canadian proceedings, Mr. Guest?

13331. **MR. GUEST:** That's correct.

13332. **MR. DUNBERRY:** And I would assume that you're not comfortable testifying on the fact pattern or precedential value of any of these Canadian cases?

13333. **MR. GUEST:** I don't know the fact pattern of those cases and so I wouldn't want to testify to those issues.

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13334. **MR. DUNBERRY:** So, Mr. Guest, you're not personally able to testify as to whether any of these Canadian cases support, or not, the position advanced by TransCanada concerning the allocation of its accumulated depreciation. Is that correct?
13335. **MR. GUEST:** I'm not familiar with those cases, no sir.
13336. **MR. DUNBERRY:** And you would not be personally able to testify as to whether these Canadian cases support, or not, the reallocation of \$1.2 billion in the circumstances advanced by TransCanada to make this request?
13337. **MR. GUEST:** Again, sir, I'm not familiar with the facts in those cases.
13338. **MR. DUNBERRY:** And you're not personally able to testify as to whether these Canadian cases support, or not, your own position advanced in your own reply evidence; correct?
13339. **MR. GUEST:** Again, sir, I'm not familiar with those cases.
13340. **MR. KENNEDY:** Mr. Dunberry, if I can, at risk of interrupting your flow, if you have any questions on the fact pattern of these Canadian precedents, I'd be more than happy to try to assist you in understanding the cases.
13341. **MR. DUNBERRY:** I would like now to refer you, Mr. Guest, to exhibit -- actually, NEB 5.5 and I'll give you the exhibit number. It's Exhibit B-17, page 23-24.
13342. There, Mr. Guest, we have a list of three Canadian cases or proceedings that were submitted as a response to a question asked by the NEB and this was responded on April 27, 2012.
13343. May I conclude that you were not provided with a copy of these decisions prior to the filing of your report, Mr. Guest?
13344. **MR. GUEST:** That's correct.
13345. **MR. DUNBERRY:** And I assume that for all these three cases you would give me the same answers you gave me earlier, that is you're not able to testify personally as to whether the fact pattern or precedential value of these cases support,

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or not, the positions advanced by TransCanada?

13346. **MR. GUEST:** I'm not sure of the relevance of these cases to TransCanada's position. My testimony is based upon the accounting requirements of U.S. GAAP and all the statements made in my direct testimony.

--- (A short pause/Courte pause)

13347. **MR. DUNBERRY:** I'd like now to refer you to page 9 of your Reply evidence, line 8, question 19.

13348. The question is whether you are familiar with the NEB's *Gas Pipeline Uniform Accounting Regulations* (GPUAR)? Your answer is "Yes."

13349. Is that correct, Mr. Guest?

13350. **MR. GUEST:** That's what my testimony states, yes.

13351. **MR. DUNBERRY:** Is this correct?

13352. **MR. GUEST:** Yes.

13353. **MR. DUNBERRY:** This is the first time you appear before a Canadian tribunal to give your opinion on the proper application or interpretation of any section of GPUAR -- of the regulation; correct?

13354. **MR. GUEST:** The answer to your question is correct.

13355. The -- but the *Gas Pipeline Uniform Accounting Regulations* is quite similar to the *U.S. Uniform System of Accounts for Gas Pipelines*. Many of the provisions are very much the same.

13356. **MR. DUNBERRY:** Your report does not refer to any cases or references -- Canadian cases or references concerning the proper application or interpretation of Section 56; correct?

13357. **MR. GUEST:** That's correct.

13358. **MR. DUNBERRY:** Have you done any research to try to identify cases dealing with the application or interpretation of Section 56?

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13359. **MR. GUEST:** No, my testimony is based upon my experience in interpreting similar provisions of the *U.S. Uniform System of Accounts for Gas Pipelines*.
13360. **MR. DUNBERRY:** Why did you not do any research concerning Section 56 that you interpret and give an opinion on in your report?
13361. Why did you not do any research?
13362. **MR. GUEST:** Because I felt that the instructions contained in the *Gas Pipeline Accounting Requirements* (sic) for Canadian pipelines were sufficiently similar to the U.S. accounting requirements that I could rely on my experience in interpreting those instructions over the span of my career at the FERC.
13363. **MR. DUNBERRY:** So your opinion offered as an answer to question 20 on the same page, which is an opinion dealing with the proper interpretation of Section 56, is based on your personal reading of that section and your U.S. experience; is that correct?
13364. **MR. GUEST:** That's correct.
13365. **MR. DUNBERRY:** Now, in this answer 20 to question 20, you state -- line 29, 21:
- “While Section 56 requires Board approval of material transfers of accumulated depreciation between groups, that provision does not create a general principle that transfers are not allowed.”*
13366. So, as a starting point, I guess you recognize that “material transfer of accumulated depreciation” requires a Board prior approval?
13367. **MR. GUEST:** Yes.
13368. **MR. DUNBERRY:** And your statement that this section “does not create a general principle” is based again on your reading of that section -- your personal reading of that section; correct?
13369. **MR. GUEST:** That's correct.

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13370. **MR. DUNBERRY:** Next question, question 21, lines 7 to 10, it is alleged that -- and I quote you:

“TC has also proposed, consistent with the requirements of Section 56 of the GPUAR, to subdivide or assign the accumulated provision for depreciation between the segments using the same economic assumptions.”

13371. When you indicate that TransCanada “has proposed consistent with the requirements of Section 56”, I assume that what you mean is that TransCanada is consistent with Section 56 seeking the Board's prior approval before actually proceeding with this material reallocation of \$1.2 billion; correct?

13372. **MR. GUEST:** Yes.

13373. **MR. DUNBERRY:** Okay, I'd like now to come back to the U.S. precedents with which you're perhaps more familiar.

13374. When I read your report, Mr. Guest, there are only two references to FERC precedents. One being the Kern case, the other one being the Williams case; correct?

13375. **MR. GUEST:** Those are two cases I addressed in my testimony, yes?

13376. **MR. DUNBERRY:** And you will agree with me that they are no other cases addressed in your testimony?

13377. **MR. GUEST:** Correct.

13378. **MR. DUNBERRY:** Now, the first case is dealt with the last -- well, actually, pages 13 of 17 of your report, question 27, the Kern River case, there's a reference there to the Kern River case.

13379. I understand from your answer 27 that you're not comfortable testifying on the fact pattern or precedential value of the current case for the reason given in your answer 27; correct?

13380. **MR. GUEST:** Yes, in reading the Commission's decision in the Kern River case, I didn't think the fact pattern there was articulated sufficiently in the body of the order for me to really form an opinion one way or the other.

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13381. But perhaps Mr. Sullivan could ---
13382. **MR. DUNBERRY:** Yeah, we'll come back with Mr. Sullivan, but ---
13383. **MR. SULLIVAN:** I'd be happy to explain now, if you want me to explain the Kern ---
13384. **MR. DUNBERRY:** We'll come back to this, Mr. Sullivan.
13385. **MR. SULLIVAN:** --- or the precedents case.
13386. **MR. DUNBERRY:** There's no question to you at this point, I will just complete my line of questions with Mr. Guest, please.
13387. **MR. SULLIVAN:** I think it's important to understand that, in the Kern River case ---
13388. **MR. DUNBERRY:** Mr. Sullivan, I'm not asking you a question.
13389. There's no connection between your answer and the question to Mr. Guest.
13390. I'm asking whether Mr. Guest is comfortable, the answer is "No." I will come back to you later, please.
13391. Mr. Guest, I would ---
13392. **MR. YATES:** Excuse me, Mr. Chairman, it's my understanding of the practice of this Board is that panels are presented -- witnesses are presented as panels so as to provide the best information available in respect of the topics being discussed.
13393. And that would suggest to me that Mr. Sullivan's offer to talk about the Kern River case in this context is one that shouldn't be refused.
13394. **THE CHAIRMAN:** Do you have a comment, Mr. Dunberry?
13395. **Me DUNBERRY:** Oui, monsieur le président, je suis bien au fait de la pratique qui est suivie devant l'Office permettant à certains membres du panel d'échanger.

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13396. Mais je comprends également que cette pratique en est une où des compléments de réponse qui présentent une certaine connexité avec les questions posées, sont préalablement établies ou sont visibles pour tous.
13397. La question qui a été posée à Monsieur Guest, c'est si il est à l'aise de témoigner en réponse à la question 27. Il nous indique qu'il n'est pas à l'aise de témoigner concernant le dossier Kern. Ce dossier est un dossier avec lequel il ne peut témoigner.
13398. Je fais simplement à l'heure actuelle l'inventaire des sujets sur lesquels je pourrai interroger Monsieur Guest et ceux sur lesquels je ne le pourrai pas, et pour lesquels j'aurai sans doute des questions pour Monsieur Sullivan.
13399. Il n'y a aucun lien logique, je vous le soumets respectueusement, entre la réponse de Monsieur Guest qui ne se dit pas à l'aise pour témoigner et l'offre faite par Monsieur Sullivan de nous donner son opinion sur le fond du dossier Kern.
13400. Le dossier Kern sera un dossier qui sera élaboré par d'autres témoins, qui sera plaidé, qui sera discuté, je -- j'invite, je pense, mon confrère de TransCanada à se rappeler que je suis maître du contre-interrogatoire et je ne pose aucune question à Monsieur Guest sur le fond du dossier Kern.
13401. Si on permet à Monsieur Sullivan de présenter le dossier Kern ou d'autres dossiers de la FERC sans aucune question de ma part, je vous soumets que ce n'est pas approprié en contre-interrogatoire, Monsieur. La connexité, monsieur le président, n'est pas suffisante pour les fins de l'exercice.
13402. **THE CHAIRMAN:** Anything to add, Mr. Yates, before I consult with my colleagues?
13403. **MR. YATES:** Sorry, Mr. Chairman -- there wasn't a translation of -- or I was listening to the translation of Mr. Dunberry's comments when you spoke.
13404. So I didn't hear what your question was.
13405. **THE CHAIRMAN:** I was simply asking if you had anything to add before I consult with my colleagues on the question you raised and Mr. Dunberry's comments thereon.

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13406. **MR. YATES:** The only comment I would make, Mr. Chairman, is this: that the question posed to Mr. Guest is in respect of an answer in which he specifically says that the precedential value of the Kern River case to TransCanada's depreciation proposal is best addressed by Mr. Sullivan who has first-hand knowledge of that case.

13407. So it is incorrect to suggest that the question posed to Mr. Guest doesn't have any relationship to Mr. Sullivan or his knowledge of the Kern River case.

13408. **THE CHAIRMAN:** Please give us a moment.

13409. Donnez-nous un instant, s'il vous plaît, Monsieur Dunberry.

--- (A short pause/Courte pause)

13410. **THE CHAIRMAN:** Mr. Yates and Mr. Dunberry, the question raised is for us a matter of principle, so we'd like to deliberate.

13411. So we'll take a short break and come back to you on the matter of how to best respond to this situation.

--- Upon recessing at 11:03 a.m./L'audience est suspendue à 11h03

--- Upon resuming at 11:19 a.m./L'audience est reprise à 11h19

STEFAN POHLOD: Resumed

NORM BOWMAN: Resumed

FRANCIS PILLEY: Resumed

LARRY KENNEDY: Resumed

BARRY SULLIVAN: Resumed

JAMES K. GUEST: Resumed

--- EXAMINATION BY/INTERROGATOIRE PAR MR. DUNBERRY:
(Continued/Suite)

13412. **THE CHAIRMAN:** This is our ruling under questions that arose before our impromptu break.

13413. While the Board acknowledges that Mr. Dunberry has the ability to conduct his cross-examination in the manner he so chooses, the Board recognizes that the Panel is sitting as a group to testify and provide the Board with the best

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information possible. The Board is interested in hearing about the substance and content that will assist it in this proceeding.

13414. To the extent the witnesses may assist us in providing the best information possible, we invite the witnesses to do so. In keeping with this ruling, the Board would like to hear from Mr. Sullivan now.

13415. **MR. SULLIVAN:** Thank you very much.

13416. The reason that Kern River is an applicable case and similar to the Williams case that I did cite, those two cases was where the FERC made a record that accepted a reassignment of the depreciation reserve in recognition of the changed circumstances that were affecting those assets.

13417. And the reason that Mr. Guest and -- felt uncomfortable with explaining the Kern River precedent -- and I know this because we talked about it -- was because the fact pattern that was implicit in the order cited two specific footnotes in the order to the testimony and the exhibits of a Mr. Edward Feinstein who, at the time, worked for Brown Williams, and he's an old colleague of mine. In fact, he was my boss at one time.

13418. But in Mr. Feinstein's exhibits, it is clearly shown that there was an allocation of the depreciation reserve done to properly calculate the depreciation reserve just for the gas turbine compressor assets and the depreciation rate that was recommended in that case by Mr. Feinstein was 9 percent I believe, and that was the recommendation that was approved and accepted by the Commission in the Kern River order.

13419. So that's why it was an important case, and I just wanted to explain that for you.

13420. **MR. DUNBERRY:** Monsieur Sullivan, were you personally involved in the Kern River case?

13421. **MR. SULLIVAN:** I was.

13422. At the time, I was the supervisor for the FERC staff in the litigation of that proceeding. I ran the litigation team.

13423. And, in fact, the reason that the Kern River case was so important was that

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it was the first time we recognized that there could be assets within a functional account and, in this case, assets within the gas compressor account that had different lives; similar to what TransCanada's Mainline is experiencing today where the different segments have different lives.

13424. And we felt -- FERC staff and, certainly, the Commission felt that a breakout of those different assets within the gas compressor station equipment would be a good outcome, meaning that the assignment of the depreciation cost and the record-keeping for the accumulated reserve for those accounts should recognize that there were different economic lives for those asset groups, meaning that the gas turbines had a much shorter life than most of the gas compressor station equipment.

13425. And the accrual for depreciation for the gas turbines should be at that much higher depreciation rate of 9 percent versus the remainder of the gas compressor facilities which, I believe, were depreciated somewhere around the 4 to 5 percent range.

13426. **MR. DUNBERRY:** Mr. Chairman, I would ask for a copy of the Feinstein exhibit to which the witness just referred.

13427. So could you provide us with a copy, Mr. Sullivan, of the Feinstein exhibit?

13428. **MR. SULLIVAN:** I'm not sure if I have it here. I'd be only too happy to get it within the next day or so, if that would be okay.

13429. **MR. DUNBERRY:** Thank you.

13430. **MR. SULLIVAN:** Sorry.

--- (Laughter/Rires)

13431. **MR. DUNBERRY:** I would call this a late objection, Mr. President.

--- (Laughter/Rires)

13432. **MR. YATES:** It doesn't matter how many times you say: If I stand up, stop talking.

--- (Laughter/Rires)

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13433. **THE CHAIRMAN:** So we should probably give this an undertaking number, if there is an undertaking to provide a document in the next 24 hours.

13434. **Me DUNBERRY:** Merci, monsieur le président.

13435. **THE REGULATORY OFFICER:** U-7.

--- UNDERTAKING NO/ENGAGEMENT No. U-7:

For Mr. Sullivan to provide the Feinstein Document within the next 24 hours.

13436. **MR. DUNBERRY:** Mr. Guest, back to your cross-examination.

13437. So we dealt with the Kern River case where you testified that you're not comfortable with for the reasons that were given by yourself so this leaves the Williams case, correct, as the only FERC reference in support of your report; correct?

13438. **MR. GUEST:** My direct testimony, as it relates to the Williams case, is in response to Ms. Bouchard's characterization of the case.

13439. My testimony is -- I mean, I'm here to speak to whether or not TransCanada's depreciation proposal is compliant with U.S. generally accepted accounting principles.

13440. **MR. DUNBERRY:** Okay.

13441. But, again, we'll come to these substantive issues, but my understanding is that the Williams case is the only FERC case on which you rely in support of your Reply evidence.

13442. Is that correct?

13443. When you read your report, that's the only reference we find; correct?

13444. **MR. GUEST:** My direct testimony mentions the Williams case -- the Williams case insofar as it's a response to Ms. Bouchard's characterization of the case and its precedential value.

13445. At the -- my experience at the FERC is that other cases involving similar

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issues, to the extent that it serves as precedent, that those cases are taken under advisement for purposes of rendering a decision but are not necessarily controlling depending on facts and circumstances of the case.

13446. **MR. DUNBERRY:** My question, Mr. Guest, was whether the Williams case is the only case to which you refer and discuss in your evidence in support of your response to Mrs. Bouchard's report. I think the answer is yes. Is that correct?

13447. **MR. GUEST:** The Williams case is the only case in which I respond to Ms. Bouchard's testimony regarding that case, yes.

13448. **MR. DUNBERRY:** Now, did you perform any research to find other FERC precedents dealing with a reallocation issue similar to the one proposed by TransCanada?

13449. **MR. GUEST:** I did provide -- or did do some research of U.S. GAAP attempting to identify instances in which U.S. GAAP would speak to allocations of the reserve.

13450. **MR. DUNBERRY:** What was the result of your research, Mr. Guest?

13451. **MR. GUEST:** As I stated in my testimony, I did not find any GAAP standard that addressed when or how apportionments of single composite depreciation reserves should be assigned to individual assets or groups of assets.

13452. **MR. DUNBERRY:** Now, Mr. Guest, Mr. Jeff Makholm, an expert retained by the MAS, has produced some evidence on depreciation issues, and in that evidence he refers to three FERC cases that are also referred to by Mr. Sullivan in his reply evidence. These are the South Carolina Electric decisions in 1996-1997. There are two decisions, the Equitable Gas decision in 1976, and the Northern Natural Gas decision rendered by FERC in 1995.

13453. Were you aware of the existence of these four cases when you filed your reply evidence, Mr. Guest?

13454. **MR. GUEST:** I can't recall whether I reviewed those cases before I submitted the reply evidence or subsequently.

13455. **MR. DUNBERRY:** But you will agree with me that there are no references in your report to these three or four cases; correct?

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13456. **MR. GUEST:** There are no references to those four cases in my direct testimony. My testimony is intending to respond to whether or not TransCanada's proposal is in compliance with U.S. GAAP.
13457. **MR. SULLIVAN:** And in part that was because my testimony, my reply testimony fully addressed the precedential value of the Northern Natural, Equitable, and South Carolina Electric and Gas cases.
13458. **MR. DUNBERRY:** Mr. Guest, did you read these four decisions before or after filing your evidence?
13459. **MR. GUEST:** I probably did a quick review of three cases, and then a closer review of the South Carolina Electric and Gas case, yes.
13460. **MR. DUNBERRY:** And that was before or after filing your report on May 18?
13461. **MR. GUEST:** Well, I likely read those cases while I was still at the Commission, number one, and secondly, I think I answered your question about when I reviewed them. I don't recall reviewing the cases before I filed my reply evidence.
13462. **MR. DUNBERRY:** Did you discuss these cases with Mr. Sullivan before Mr. Sullivan filed his own reply evidence?
13463. **MR. GUEST:** I was aware of the -- I read Mr. Sullivan's testimony in which he mentions those cases but I do not recall having a discussion with Mr. Sullivan regarding those cases.
13464. **MR. DUNBERRY:** And you read Mr. Sullivan's evidence before Mr. Sullivan's evidence was filed or after Mr. Sullivan's evidence was filed?
13465. **MR. GUEST:** I read a draft of Mr. Sullivan's testimony before it was filed.
13466. **MR. DUNBERRY:** So logically, all of this will allow us to conclude that you read these three cases before filing your own reply evidence, which is dated May 18, same date as Mr. Sullivan's evidence; correct?
13467. **MR. GUEST:** I believe that -- it seems like that's that same question I'm

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asked and answered now, and my recollection is I don't recall reviewing those cases before I filed my...

13468. **MR. DUNBERRY:** Do you know whether these three FERC cases -- these four FERC cases discuss GAAP issues, GAAP-related issues? Do you know if they do discuss or if they don't discuss GAAP-related issues, compliance with GAAP, U.S. GAAP? Do you know if they go into that level of discussion?

13469. **MR. GUEST:** I believe the South Carolina Electric and Gas case addresses the accounting issues associated with depreciation of reserve transfers.

13470. **MR. SULLIVAN:** If I could just add, the Northern Natural decision and the Equitable Gas decision are not really concerning U.S. GAAP accounting standards.

13471. **MR. DUNBERRY:** Now, would you agree with me -- and these cases will be argued by counsel later on. But will you simply agree with me, since you have read these cases at some point in time, that in all these cases the proposed -- and I'm going to use a broad definition here -- the proposed allocation, reallocation, apportionment or initial breakout of accumulated depreciation was refused by the FERC for the reasons given in those decisions?

13472. And, again, I don't want to enter into the depth of these decisions, we'll do this later, but do you agree with me, in all these cases the actual transfer of accumulated depreciation, or allocation, or reallocation, or breakout, depending on the word you want to use, were refused by FERC for the reasons given by FERC in these decisions?

13473. **MR. GUEST:** The -- I'll speak to the South Carolina Electric and Gas case. That case involved an electric utility which was a big difference between an electric utility and TransCanada.

13474. The South Carolina Electric and Gas provided functionally different services; they provided energy supply services, transmission services and distribution services, and they maintained their accounts based upon those functions, including their reserves for depreciation. And there were different customers who took different services at different prices, all of which influenced, to a great degree, the Commission's decision in the South Carolina case.

13475. And it were those factors, factors that are not evident in TransCanada's

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case since they provide a single service on an integrated system. But the decision ultimately reached in the South Carolina case was that the Commission, because of the concern about transferring -- actually, it was that the principle that some customers would be assigned cost that they did not cause.

13476. For example, there were some wholesale customers who just took transmission service. And so the reserve -- proposed reserve transfer was between generation assets and transmission assets and would result in -- and they had an accompanying rate proceeding in which this was the case -- that the -- some transmission customers would be asked to pay for generation costs when, in fact, they took no generation services.

13477. But the decision in the South Carolina case was not to allow the proposed transfer for the reasons I've just expressed.

13478. **MR. DUNBERRY:** Mr. Guest ---

13479. **MR. SULLIVAN:** And I would just like to follow-up with what Mr. Guest had said. The transfer of the depreciation reserve was among different functional groups, and TransCanada's application in this proceeding is not a proposal to transfer a depreciation reserve or accumulated depreciation among different functions. It's all within the transmission function. It's just an assignment to the different segments of the Mainline to reflect their different lives as appropriate.

13480. The other two cases were Equitable and Northern Natural. And the Equitable case that Dr. Makhholm had cited was not applicable in any way to the TransCanada proceeding or the transfer of accumulated depreciation in this proceeding because Equitable had over-recovered its depreciation from a period many, many years ago and it had kept it on its books, and it finally had approached the Commission and asked for an allowance by the Commission to transfer that over-recovery to retained earnings. And the Commission appropriately rejected that proposal of Equitable.

13481. The final case, Northern Natural, is a little bit unusual in that Northern Natural tried to reassign depreciation reserve for offshore natural gas pipeline plant, a pipeline plant that was not within the same functional group as their onshore transmission plant. In fact, the two facilities, the onshore facilities of Northern Natural and the offshore facilities of Northern Natural, were not contiguous, meaning that they were separated by hundreds of miles of pipeline.

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13482. And there were different customer groups that were paying the rates for the different facilities, and Northern Natural never actually explained in the testimony that they filed that they were going to do this. It was just buried in the application, and the advisory staff at FERC saw that this -- that there -- that this was an important cost item that was buried without an explanation as to why the accumulated reserve for the offshore and the onshore plant had been grouped together. And in the suspension order that's issued by the Commission, it was rejected.

13483. So those are important cases. The precedents do not tie to the -- to the facts and circumstances in this TransCanada application.

13484. **MR. DUNBERRY:** Mr. Guest, back to you, I would like you to take a copy of Mrs. Bouchard's report, page 21.

13485. **MR. GUEST:** I'm sorry; did you give me a page?

13486. **MR. DUNBERRY:** Page 21. Twenty-one (21).

13487. Now, Mrs. Bouchard refers to -- it's Line 2, the Financial Accounting Standard Board Rules of Procedure. And from Line 4 to 7, there is an extract of this document, the Rules of Procedure. And it says the following:

"The FASB is an independent, private-sector body created to serve an important public interest. Since 1973, it has been the designated organization in the private sector for establishing and improving standards [for] financial accounting and reporting that govern the preparation of financial reports by nongovernmental entities."

13488. I assume, Mr. Guest, that ULI will not have too much difficulty agreeing that the FSAB (sic) is a body serving the public interest?

13489. **MR. GUEST:** Well, they certainly believe they are.

13490. **MR. DUNBERRY:** Do you believe they serve a public interest, or you think they're not serving the public interest?

13491. **MR. GUEST:** I think it's important that there's good accounting standards that are followed by business organizations and the FASB is the -- as they indicate -- the designated private sector body created to develop those standards.

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13492. **MR. DUNBERRY:** And they serve the public interest, in your opinion, Mr. Guest?

13493. **MR. GUEST:** Based on my definition -- my own definition of what public interest means, I -- yes.

13494. **MR. DUNBERRY:** Now, the following paragraph refers to a fairly similar organization, the AcSB, and we see from Line 9 to Line 14 a definition of their mission, have defined their terms of reference. And this Accounting Standard Board:

"... serves the public interest by establishing standards and guidance for financial reporting by all Canadian entities outside the public sector and by contributing to the development of internationally accepted financial reporting standards. The mission of the AcSB shall be to support informed economic decision-making by maintaining a framework that provides a basis for high quality information about financial performance reported by Canadian private sector entities."

13495. Would you also agree with me that the Canadian counterpart, which is the AcSB, also serves the public interest for the same reasons?

13496. **MR. GUEST:** To the extent the Canadian AcSB is an organization that develops sound financial accounting standards for use by business organizations, yes, I think that would serve the public interest.

13497. **MR. DUNBERRY:** Now, the following paragraph refers to FASB Concept Number 5, which is the definition of the conceptual framework of the AcSB. You're familiar with the words "conceptual framework", Mr. Guest, in the United States?

13498. **MR. GUEST:** I'm familiar with the Financial Accounting Standards Board's conceptual framework, yes.

13499. **MR. DUNBERRY:** Now, I will let you read this entire paragraph, but there is a sentence which is emphasized. It is said that:

"It is expected [it being the conceptual framework] expected to

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*serve the public interest by providing structure and direction to
financial accounting and reporting to facilitate [et cetera] ..."*

13500. Will you also agree with me that this conceptual framework has been designed to serve the public interest?
13501. **MR. GUEST:** Well, again, since these are statements by the Financial Accounting Standards Board, they believe that there -- the conceptual framework is serving the public interest. The -- I believe the conceptual framework is a useful tool in deliberating over accounting standards or as an aid in making determinations of appropriate accounting for particular facts, circumstances or -- or transactions, rather, circumstances and events.
13502. I also think it's -- it's important to recognize that the concept statements are not generally accepted accounting principles, as noted in paragraph -- it's mentioned in a number of places throughout the -- throughout the concept statements that -- that the statements essentially just develop a number of generalizations or guidelines for making accounting choices. And it recognizes that it's important that some relative weight be given to the different qualities of accounting information that make the information useful.
13503. **MR. DUNBERRY:** Mr. Guest, will you also agree with me that accounting principles designed to implement and give effect to these concepts -- or accounting principles embedded in the conceptual framework -- that these accounting principles are also established to serve the public interest?
13504. Simply stated, would you simply agree with me that Generally Accepted Accounting Principles, sir, are designed and established to serve the public interest?
13505. **MR. GUEST:** Based upon my own definition of public interest, I think that the public interest is served by good accounting standards being in place and that Generally Accepted Accounting Principles, for the most part, do that.
13506. **MR. DUNBERRY:** I'd like to refer you now to one of the FASB concept statements; it is Concept Statement Number 2. Again, this was communicated to all panel members last Tuesday, so I assume Mr. Guest that you have a copy of the Statement Number 2.
13507. And we have additional copies, Mr. Chairman, if -- I'm not sure that copies made their way to your desk. If so, that's perfect. Est-ce que -- do you have

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copies? No.

--- (A short pause/Courte pause)

13508. **MR. DUNBERRY:** Mr. Guest, you have a copy of the Accounting Statement Number 2?

13509. **MR. GUEST:** Yes.

13510. **MR. DUNBERRY:** Ça va? So, Mr. Guest, we'll try to do this quickly because I'm sure you're very familiar with these concept statements.

13511. The Concept Statement Number 2 presents a number of -- I would say, well concepts, notions, including -- starting at page 2 of 45 of that document, and you refer in your report these notions of relevance and reliability.

13512. So if you look at page 2 of 45, there is a general description of what "relevance" mean for the FASB, and there is a first paragraph there, starting on page 3 of 45, where the first paragraph refers to "relevant account information is" and then there's a long description.

13513. I'm sure you're familiar with this document, Mr. Guest, you've seen this document before?

13514. **MR. GUEST:** Yes.

13515. **MR. DUNBERRY:** Now, could we -- perhaps for the sake of being efficient -- confirm that you agree with the concept of relevance as defined by the FASB in this section of that document?

13516. You may want to read it, but I'm just -- I'm just suggesting here that you have probably read these documents 5,000 times in the last 32 years and that you're probably quite comfortable answering my question, and the first will be whether you're comfortable with the notion of relevance as defined by the FASB?

13517. **MR. GUEST:** Well, I think your use of the term "notion" is an important one for the -- kind of the reasons that I expressed earlier, that the concept statements are broad generalizations and the issue of relevance, as its discussed in that paragraph, is just that; it's a discussion of the notion as opposed perhaps to a confined definition of relevance.

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13518. **MR. DUNBERRY:** Okay. But with this caveat being said, will you agree with me that this is a fair description of that notion for purposes of the FASB's public service mandate?
13519. **MR. GUEST:** I don't know that I'd want to address what the NEB's public service mandate is. It's a fair description of relevance as used by accountants and in the field of accounting.
13520. **MR. DUNBERRY:** Well that's good enough.
13521. If I asked you the same question concerning "reliability", as defined on page 3 of 45, I would get the same answer, Mr. Guest, with the same caveat I assume, but it would be the same answer?
13522. **MR. GUEST:** With one caveat, and that is that the notion of reliability has -- to some extent -- been superseded as the Board's terminology by Concept Statement Number 8, where reliability has been replaced, to some extent, by the term "representational faithfulness".
13523. And I think that was done because of perhaps difficulties in there being a general consensus as to how -- what reliability means in an accounting context. And the Board, in a joint effort with the International Accounting Standards Board, decided that "representational faithfulness" is -- would be a better term. But it's a nuance.
13524. **MR. DUNBERRY:** Perfect. With respect to "comparability and consistency", same question, would I get the same answer as to "relevance"?
13525. **MR. GUEST:** There are different levels in the GAAP hierarchy or in the hierarchy of the concept statements with "relevance" and "reliability" or "representational faithfulness" being the two primary characteristics that make financial accounting information useful.
13526. The "comparability and consistency" while important, are at a level, I think, below the first two.
13527. **MR. DUNBERRY:** Perfect, thank you.
13528. Now, can we move back to your report with that answer as a stepping

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stone to the next question? So, if we're back into your report -- your reply report evidence -- your reply evidence, sorry, page 8, Line 9 to 11.

13529. You allege at page...

"The FERC's Uniform System of Accounts is consistent with GAAP in large part. However FERC does not blindly follow GAAP in establishing its financial accounting requirements for the regulated industries."

13530. One of your appearances in United States was in the ITC Holdings case; correct, before FERC?

13531. **MR. GUEST:** Yes.

13532. **MR. DUNBERRY:** And I assume that you're familiar with their accounting system, Mr. Guest, since you've filed expert evidence on matters relating to their accounting?

13533. **MR. GUEST:** It depends on what you mean by "accounting system".

13534. **MR. DUNBERRY:** Are you generally familiar with ITC's accounting system, as you want to define it?

13535. **MR. GUEST:** For purposes of my testimony in the ITC case, I did not examine their accounting system.

13536. What I found necessary for purposes of testimony in that case was to have an understanding of how they did account for the transactions that were the subject of my testimony in that case.

13537. **MR. DUNBERRY:** Reviewing the evidence in this case, Mr. Guest, I found that, in fact, ITC Midwest kept a single set of accounts to comply with both GAAP and with the FERC uniform system of accounts for regulatory reports.

13538. Is that correct, to your knowledge?

13539. Do you recall, Mr. Guest?

13540. **MR. GUEST:** I'm just thinking how the most correct way to answer the

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question so if you'd just give me a moment please.

--- (A short pause/Courte pause)

13541. **MR. GUEST:** Most accounting systems keep track of the same thing and that is the economic effects of transactions, events and circumstances that affect the accounting entity.

13542. There are a number of ways in which that same economic information can be compiled or sliced or diced to meet the information needs of different users.

13543. In the -- in ITC's case, they had, as would most business organizations, a set of books in which those economic effects are recorded. And it's from those, that accounting system or books and records, from which they would prepare financial statement that are either issued to the public or prepared for their own internal use or, in that case, for financial statements to be submitted to the FERC.

13544. And so, in that case, their original books of entry were the ones that captured the economic effects of the transactions, events and circumstances that affected that entity and, then, from those single set of records, they prepared different financial statements: one for submission to the FERC, and at least one submission to their investors.

13545. **MR. DUNBERRY:** I understood your answer to be that: Yes, ITC kept a single set of accounts.

13546. And my question, then, will be: The possibility of keeping one single set of accounts for both GAAP and U.S. FERC uniform system of accounts, the reason why that is possible is because the FERC uniform system of accounts tracks GAAP, in fact; is consistent with GAAP.

13547. Correct?

13548. **MR. GUEST:** I'm -- let me try to explain it this way in the context of the ITC case.

13549. What the Commission actually requested ITC to do -- and requested or ordered -- was to compile financial statements that, for purposes of submission to FERC, that omitted assets and liabilities of that accounting entity.

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13550. And that's what FERC considered to be the FERC books and records which would not be what would be considered a GAAP books and records.
13551. That was what the -- that's how the Commission saw it.
13552. **MR. DUNBERRY:** Let me ask you the question differently, perhaps we'll have an answer there.
13553. Will you agree that the FERC uniform system of accounts is consistent with GAAP in a large part; yes or no?
13554. **MR. GUEST:** There are differences in the Commission's uniform system of accounts between those requirements and GAAP requirements. GAAP requirements go to a significant extent to preparation of financial statements for issuance to the public.
13555. And those needs may be different than the information needs of the Commission and so there will be differences, but I would agree that, in large part, the FERC's uniform system of accounts is consistent with GAAP in the big picture.
13556. **MR. DUNBERRY:** Thank you.
13557. I'd like now to refer to your Reply, page 6 of 17.
13558. **LE PRÉSIDENT:** Maître Dunberry, est-ce que ce serait malcommode pour vous de prendre une pause maintenant?
13559. **Me DUNBERRY:** Non. Non, monsieur le président ---
13560. **LE PRÉSIDENT:** Parce qu'on peut continuer un petit bout si ça vous convient.
13561. **Me DUNBERRY:** Non, non, monsieur le président, on peut prendre la pause.
13562. **LE PRÉSIDENT:** D'accord, un petit 10 minutes.
13563. **Me DUNBERRY:** Ça convient tout à fait.
13564. **LE PRÉSIDENT:** Merci.

13565. We will reconvene in 10 minutes.

--- Upon recessing at 12:02 p.m./L'audience est suspendue à 12h02

--- Upon resuming at 12:12 p.m./L'audience est reprise à 12h12

STEFAN POHLOD: Resumed

NORM BOWMAN: Resumed

FRANCIS PILLEY: Resumed

LARRY KENNEDY: Resumed

BARRY SULLIVAN: Resumed

JAMES K. GUEST: Resumed

13566. **LE PRÉSIDENT:** Maître Dunberry, s'il vous plaît.

--- EXAMINATION BY/INTERROGATOIRE PAR MR. DUNBERRY:
(Continued/Suite)

13567. **Me DUNBERRY:** Merci, monsieur le président.

13568. Mr. Guest I would invite you to take page 6 of your Reply, line 7 to 9,
where it is said that:

"Reliability and relevance are often in tension. That is, reliability must be sacrificed for relevance in some circumstances (and vice versa) for accounting information to be decision useful."

13569. By the use of the word "sacrificed", Mr. Guest -- by the use of the word "sacrificed", Mr. Guest, I'm sure you're not suggesting that relevant or more relevant information does not also need to be reliable.

13570. In other words, both reliance and relevance have to be met, have to be satisfied as characteristics of an information for it to be useful; correct?

13571. **MR. GUEST:** There has to be at least some aspect of both, I believe, in order for the information to be decision useful.

13572. What I meant by "sacrificed" is they won't always be proportional; that sometimes one has to give up a little bit of reliability for a little bit better relevance and, vice versa, a large debate in the accounting profession, as an example, is the use

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of fair value as a measurement attribute. And that it might be a little somewhat considerate to be a little less reliable in certain instances but it often is more relevant.

13573. For example, if you were preparing your own personal financial statements, would you measure your home, if you owned one, at its fair value or would you measure it at what you paid for 20 years ago?

13574. And it's that trade-off between reliability and relevance. It might be more reliable that you will be able to show exactly what you paid for the house by your cancelled cheque and, therefore, be 100 percent reliable but it would lose relevance because what you paid for the house 20 years ago may not be any kind of an indication of what your current net worth is.

13575. **MR. DUNBERRY:** Same page, lines 9 to 13, you say the following:

"In the instant case, the Gannett Fleming depreciation study shows that the NOL has exhausted approximately 84% of its economic usefulness. Therefore, accumulated depreciation for the NOL that reflects that determination, as TC has proposed, would provide more relevant and therefore more useful accounting information."

13576. Now, based on what you confirmed, I understand that this depreciation proposal, would provide more relevant and, therefore, more useful accounting information provided it is also reliable to a certain extent; correct?

13577. Both have to be satisfied to various degrees, as you explained, but this would not be more relevant and, therefore, more useful information if it weren't also reliable to a certain extent; correct?

13578. **MR. GUEST:** As I indicated earlier, I think accounting information has to have some aspect of both reliability and relevance.

13579. And by reliability, I think more in terms of what the Board has now construed as and that is representational faithfulness, that it represents what it purports to represent.

13580. And by more relevance in this instance, what I meant was that if the Board were to approve this proposal, the more -- for purposes of going forward, the more -- the information -- what would be more relevant to the Board for purposes of regulating TransCanada would be the depreciation reserves as a portion in

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TransCanada's proposal.

13581. **MR. DUNBERRY:** Now, Mr. Guest, are you aware of the impact of the depreciation proposal on the level of alignment between the consumed service value and the depreciation reserve for the other two segments, the Eastern Triangle and the Prairies segments?

13582. **MR. GUEST:** Yes, I've reviewed some of their responses to the IRs that I think illustrate what the effect of that is plus prior to ---

13583. **MR. DUNBERRY:** Now, do you know if the depreciation proposal results in a better alignment or a worst alignment for the CSV and the depreciation reserve values for these other two segments, the Prairies and the Eastern Triangle?

13584. Is it a better or worse alignment?

13585. And I see that the paper was given to you with the answer, could you read what's on the paper, Mr. Guest? The paper was given to you.

13586. **MR. GUEST:** A paper?

13587. **MR. DUNBERRY:** Yeah, you just received a piece of paper, could you read to us what is written on that piece of paper?

13588. **MR. GUEST:** It states that I'm here to speak to whether the proposal is in conformance with U.S. generally accounting.

13589. **MR. DUNBERRY:** You're being told not to answer my question, is that the purpose of the note?

13590. **MR. GUEST:** No, I don't -- no, that's not the purpose of the note.

13591. And if you repeat your question ---

13592. **MR. DUNBERRY:** Can I have a look at the note, Mr. Guest?

13593. **MR. YATES:** Mr. Chairman, we're not in police court here. What we're dealing with is a panel presentation of information to the Board.

13594. And the kind of -- what's happening now is, in my respectful submission,

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inappropriate for this forum. If Mr. Dunberry can put the questions to Mr. Guest, then he will respond.

13595. Mr. Guest is entitled to receive -- to consult with other members of the Panel. It's clear in the Board's practice, it's clear in the ruling that you made earlier today and the fact that that consultation is in writing or is oral is not a matter of relevance.
13596. **Me DUNBERRY:** Monsieur le président, je pense que ce qui a été jugé aujourd'hui c'est que des échanges entre membres d'un panel afin de fournir une information plus complète au Banc sont des échanges appréciés et valables.
13597. Lorsqu'il y a des objections à faire valoir, c'est le procureur de la partie qui habituellement les formalise. Ce que j'ai compris de cette note, monsieur le président, c'est que ce témoin a été invité -- je n'ai pas lu la note, mais j'ai compris qu'il y était là possiblement l'invitation qui était faite -- invité à ne pas répondre à la question puisqu'elle débordait le cadre du mandat spécifique qui lui était donné.
13598. Je pense qu'il n'y a rien dans ce type de ---
13599. **LE PRÉSIDENT:** Je m'excuse, Monsieur Dunberry, mais qu'est-ce qui vous permet de dire ça?
13600. Vous dites que vous n'avez pas vu la note.
13601. **Me DUNBERRY:** Bien, c'est la réponse de Monsieur Guest à l'effet -- et on pourra relire la transcription, monsieur le président -- mais j'ai cru comprendre que cette note avait pour effet de l'inviter ---
13602. **LE PRÉSIDENT:** D'accord.
13603. **Me DUNBERRY:** --- à ne pas déborder du champ de son expertise ou de déborder du champ de son mandat.
13604. **LE PRÉSIDENT:** D'accord.
13605. **Me DUNBERRY:** Je pense que ce type d'intervention là, qui n'a rien à voir avec une information de qualité supérieure pour le Banc, mais une invitation à un témoin de ne pas répondre à une question pour laquelle il y a pas eu d'objection valablement formulée, je pense qu'il est très difficile pour la partie que je représente

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de mener cet interrogatoire lorsque le témoin reçoit instruction de ne pas répondre selon ma compréhension.

13606. Si j'ai tort, j'ai tort et je retirerai tous mes commentaires mais c'est ma compréhension de bonne foi de ce qui aurait été demandé au témoin, monsieur le président.

13607. Et je pense que ça déborde la limite que vous avez spécifiquement adressée lorsque vous avez rendu la décision tantôt.

13608. **LE PRÉSIDENT:** Merci, Maître Dunberry. Je m'excuse d'avoir interrompu, je voulais juste clarifier la base de vos affirmations.

13609. Anything to add, Mr. Yates?

13610. **MR. YATES:** Mr. Chairman, my position remains the same.

13611. We're not dealing here with a question of whether Mr. Guest has been instructed to respond in a particular way, we're dealing with presentation of evidence by a panel of witnesses and the communication between the people on the panel in respect of the evidence to be presented to the Board.

13612. And it's my respectful submission that going down, as I described it, as a police court path of "let me see the note", is not conducive to regulatory efficiency and is not something that should be permitted in this forum. It's a matter of simply of communication amongst the Panel members and we leave it at that.

13613. **Me DUNBERRY:** Si je peux me permettre, monsieur le président, un dernier commentaire. Évidemment, tout ça requiert beaucoup d'équilibre.

13614. Mon principal commentaire, si j'avais à en faire un additionnel, je pense qu'il doit y avoir un certain équilibre entre la faculté d'un intervenant de contre-interroger et le droit des témoins de se consulter. Je pense que cet équilibre là est un équilibre important à préserver.

13615. Et je pense que cet équilibre est franchi lorsqu'un témoin, non pas par son procureur par la voie d'une objection formelle, mais par des membres du panel est induit à répondre autrement qu'il ne répondrait par ailleurs. Enfin bref, c'est mon commentaire.

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13616. Monsieur le président, le temps avance. Je vous avouerai que le tout est beaucoup plus long que prévu. Ce sont des questions qui me paraissent pertinentes. Si le Tribunal ne voit pas l'utilité de l'exercice, je vais simplement retirer ma demande de voir le papier. Ce qui a été dit a été dit et on pourrait peut-être éviter ce débat-là.
13617. Mais, bon, monsieur le président, je pense que la demande est fondée et je la maintiendrais dans ce cas-là.
13618. **LE PRÉSIDENT:** Je dois vous laisser le dernier mot là-dessus, Maître Dunberry, c'est votre choix de faire la demande ou pas.
13619. **Me DUNBERRY:** Oui, j'ai fait la demande ---
13620. **LE PRÉSIDENT:** D'accord.
13621. **Me DUNBERRY:** --- et je la maintiendrais, monsieur le président.
13622. **LE PRÉSIDENT:** D'accord.
13623. J'avais cru vous entendre pendant une milliseconde comme quoi vous étiez plus sûr.
13624. **Me DUNBERRY:** Non, je suis juste conscient du temps et l'efficacité que l'on tente tous d'atteindre et je pense que la demande est légitime, monsieur le président mais je sens -- je tente d'être efficace autant que faire se peut.
13625. **LE PRÉSIDENT:** Vous soulevez des questions, dans ce cas-ci, encore une fois, de principe, donc, on va prendre le temps de bien faire.
13626. Alors -- mais je vais retourner à Monsieur Yates en cas qu'il aurait quelque chose à rajouter puisque l'objection vient de lui.
13627. Mr. Yates, anything to add?
13628. **MR. YATES:** To say, Mr. Chairman, that I don't disagree that it is an issue of balance, but the issue of balance has been established in the practice of this Board.
13629. The balance is that witnesses, on a witness panel, are entitled to

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communicate with each other in an effort to provide the best responses.

13630. Whether that communication is in writing or is oral is a matter of no import. And I, therefore, maintain the objection to the production of whatever this note says.

13631. **THE CHAIRMAN:** Thank you, Mr. Yates. Merci, Maître Dunberry. Donnez nous un instant, s'il vous plaît.

13632. **Me DUNBERRY:** Merci.

--- (A short pause/Courte pause)

13633. **THE CHAIRMAN:** Thank you for your indulgence. Here's the Board's ruling on this matter.

13634. The Board's long-established practice is one of flexibility and of giving the witnesses an environment where they can give us the best available information to us without undue constraint. The Board sees no difference between exchanging notes and caucusing.

13635. We do not ask witnesses to reveal what they said, we will not ask that they produce handwritten notes. That's the Board's ruling in the matter.

13636. **Me DUNBERRY:** Alors, nous poursuivons.

13637. Now, I would like you -- well, actually, I think the last question, to be honest, I'm not sure you answered the question whether you knew if the impact of the restructuring proposal was to improve or aggravate the misalignment for the Eastern Triangle and Prairies segment.

13638. Do you know for a fact if this alignment is improved or aggravated as a result of the depreciation proposal and the transfer of \$1.2 billion?

13639. **MR. GUEST:** Before answering that question, if I might just provide some assurance to you, Mr. Dunberry, that if you ask me a question that I feel I'm qualified in answering, I will answer the question to the best of my ability despite what someone might caution me to do otherwise.

13640. **MR. DUNBERRY:** I think I just read the note.

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--- (Laughter/Rires)

13641. **MR. DUNBERRY:** I appreciate the comment.

13642. **MR. GUEST:** The realignment that I think your question goes to, I think, provides the -- I think it would be fair to say that provides the best alignment for the NOL.

13643. But, in the largest context of the integrated system, all of the pieces together, it's an improvement in the alignment of the overall system and I would invite other Panel members if they have any additional comments on ---

13644. **MR. DUNBERRY:** But, really, the question was really a question of fact.

13645. As a matter of fact, do you know whether the proposal improves or aggravates the misalignment in the other two segments?

13646. There's a ratio which has been calculated, do you know whether this ratio is going up or down and whether the misalignment is improved or aggravated?

13647. It's a matter of fact; you know or you don't. I just want to verify that fact before I go into other lines of questions.

13648. **MR. GUEST:** Can you, please, repeat the question? I'm sorry.

13649. **MR. DUNBERRY:** As a result of the depreciation proposal which is presented here, do you know if the relative alignments, in the Eastern Triangle segment and the Prairies segment, is this alignment improved or is it worse after the transfer than it was before the transfer?

13650. Do you know for a fact if it's going up or down?

13651. **MR. GUEST:** I think in some of the documents that I reviewed -- and you look at it as a ratio and you look at it in isolation, the -- and you don't consider the -- in your determination of what is better, the -- the remaining service lives of those other two segments, then -- and you look at it just as that single number, it would look as if the alignment, where one is perfect alignment, is lower after the reallocation for those two segments.

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13652. But as I said, I think the integrated system as a whole produces a better alignment.

13653. **MR. DUNBERRY:** Now, for -- again, coming back to the notion of relevance and reliability, do you know that whoever is looking at this level of alignment for the two other segments, the Prairies and the Eastern Triangle, will find the information after the transfer where an amount is transferred based on the 40/60 ratio?

13654. Would you think that information is more reliable than it was before the transfer and, therefore, more useful, or you would think that this information is less reliable and, therefore, less useful for the other segments? Not the NOL; the other two.

13655. **MR. GUEST:** I think the notion of reliability is kind of better captured in thinking of it as representational faithfulness, as I had indicated earlier.

13656. And in that -- using that as a criteria, the -- the depreciation alignment, if approved by the Board, what would be more representationally faithful going forward would be the alignment as approved by the Board.

13657. **MR. DUNBERRY:** Okay.

13658. I'd like to refer now you to your report, to page 8 of 17.

13659. The question on page 8 of 17 is the following:

"Do you believe the acceptability of TransCanada's proposed assignment of its total accumulated provision for depreciation between its three segments should be based on whether it is permitted by U.S. GAAP?" (As read)

13660. And your answer is, "No, the acceptability" -- I'm on page 19 -- on page 9 now:

"No, the acceptability of TransCanada's proposal should be based on whether it reasonably apportions the accumulated provisions for depreciation between the segment in a sound and rational way, results in more relevant accounting information needed for the regulation of TransCanada looking forward and helps achieve the

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goals held out in TransCanada's Application." (As read)

13661. Is this still a valid answer, Mr. Guest?

13662. **MR. GUEST:** Yes, I think that continues to be a valid answer. And what I was referring to there is the notion that I believe the NEB's public interest responsibilities go beyond determining whether the proposal is consistent with GAAP.

13663. In other words I don't believe their decision should turn solely on that factor; that there are larger, in my view, public interest concerns such as, you know, will the proposal result in the ability of TransCanada or other similarly situated pipelines to attract capital to build infrastructure.

13664. **MR. DUNBERRY:** Now, leaving aside the issue of relevance, that we addressed earlier, it appears that what you're suggesting here is that the acceptability of TransCanada's depreciation proposal should not be based on whether it is compliant with GAAP but based on whether it helps your client, TransCanada, to achieve its goals as defined in the application; correct?

13665. **MR. GUEST:** What I was suggesting in that passage is that I don't believe that it would be preferable to decide the fate of TransCanada's proposal on the basis of whether it is in compliance with U.S. GAAP but instead should be, in my view, based upon the broader objectives that are outlined in TransCanada's proposal.

13666. **MR. DUNBERRY:** Well, let's go just there because I think that's good reading material for us right now. I'd like you to move to Exhibit B1-8, page 17, to see what are these goals that should be pursued.

13667. So I would invite you to take this exhibit, Mr. Guest. Page 16 of 20 of this -- of the hard copy, page 17 of the electronic version, starting at Line 16.

13668. Mr. Guest, you have that? Section -- section 4, page 16. It starts with "All depreciation-related aspects", Line 16.

13669. There you go. So this is TransCanada's position, Mr. Guest.

"All depreciation-related aspects of the Application are intended to better reflect the assessment of the economic life of the Mainline assets, provide TransCanada with a reasonable opportunity to

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recover its invested capital, and provide for a timely return of that capital.”

13670. And you can continue the lecture. So if I understand your answer here is that the acceptability of TransCanada’s proposal should not be based on GAAP but should be based on whether it allows TransCanada to achieve its goal and these goals are to have a reasonable opportunity to recover its invested capital and have a timely return on its investment.
13671. So basically what you’re saying here, Mr. Guest, as a certified accountant, in charge of FERC for many years, is that the Board should not really be concerned as to whether it is compliant with GAAP for not. The Board should rule in this case, and accept this proposal if it helps your client, TransCanada, to earn money; correct? These are the goals?
13672. **MR. GUEST:** I think that’s a mischaracterization of my testimony. I think some of the goals of TransCanada’s proposal are to improve the economic viability of a significant infrastructure asset in Canada. And beyond accounting, there are, in my view, important factors that should be considered in evaluating TransCanada’s proposal.
13673. I don’t believe that while good accounting is important, and my testimony, in fact states that TransCanada’s proposal complies with U.S. GAAP, I don’t think the decision as to the acceptability of TransCanada’s proposal, should weigh or should be determined on the basis of whether it’s in line with an accounting rule.
13674. And my experience at FERC has been that the factors that the FERC considered important were whether toll setting, better toll setting would result from a proposal and the accounting was typically a secondary consideration and, in most instances, the accounting followed the toll setting determinations.
13675. **MR. DUNBERRY:** I’d like to go back to the Statement Number 2 and try to address this issue perhaps from a higher standpoint. Let’s go back to the Statement Number 2 of the FASB that you reviewed earlier, this time at page 28 and 29 of 45.
13676. There is a discussion here on neutrality, Mr. Guest, and this discussion on neutrality deals with the purpose of the information and if you read paragraph 100, it says the following:

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“Neutrality does not mean ‘without purpose’, nor does it mean that accounting should be without influence on human behavior. Accounting information cannot avoid affecting behavior, nor should it. If it were otherwise, the information [which] would be valueless -- by definition, irrelevant -- and the effort to produce it would be futile. It is, above all, the predetermination of a desired result, and the consequential selection of information to induce that result, that is the negation of neutrality in accounting. To be neutral, accounting information must report economic activity as faithfully as possible, without coloring the image it communicates for the purpose of influencing behavior in some particular direction.”

13677. I would like you to keep this statement in mind and then go to Mrs. Bouchard’s report at page 23, where there’s another quote from the Canadian equivalent which is the CICA Handbook, and if you look at page 23, there is the following extract from the CICA Handbook.

“Information is neutral when it is free from bias that would lead users toward making decisions that are influenced by the way the information is measured or presented. Bias in measurement occurs when a measure tends to consistently overstate or understate the items being measured. In the selection of accounting principles, bias may occur when the selection is made with the interests of particular users or with particular economic or political objectives in mind.”

13678. Would you agree with these general statements as to what neutrality is, Mr. Guest?

13679. **MR. GUEST:** I don’t disagree with the -- kind of the broad generalization and discussion of neutrality as articulated in Concept Statement 2 or the other passage that was appearing in Ms. Bouchard's testimony.

13680. But I also think it's important that we understand that there's a difference between a predetermined purpose and a predetermined result.

13681. And I think that what TransCanada attempted to do -- the predetermined purpose -- was to address the fact that their transmission assets were misaligned compared to when you compared their book -- their composite book depreciation

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reserve to the consumed service value. And they attempted to do so as outlined in their proposal and it's a -- that's the predetermined purpose. The result may be whatever effect that decision had on the depreciation expense.

13682. But there's a difference between a predetermined purpose and a predetermined result. And a predetermined purpose would not run afoul of the neutrality notion that's captured in Concept Statement 2.

13683. And this phenomenon, if you will, this predetermined purpose versus predetermined result is discussed in paragraph 99 of Concept Statement -- FASB Concept Statement Number 2.

13684. **MR. DUNBERRY:** Well, let me ask it perhaps a bit differently.

13685. Would you not agree with me, Mr. Guest, that transferring \$1.2 billion in rate base to achieve a goal which is -- according to TransCanada -- provide an opportunity -- all depreciated related aspect of that proposal are related to three elements?

13686. So would you not agree that to achieve these specific goals, that is proving an opportunity to earn a return, earning a timely investment -- a return on the investment, and also to achieve a specific result, which is a perfect alignment of the CSV and the depreciation reserve for the NOL for a reduction in risk recovery, is a particular economic or political objective as defined by the CICA Handbook, or a particular direction as defined by the FSAB (sic) Statement Number 2, and consequently isn't consistent with the neutrality principal?

13687. Would you not agree that in this case what TransCanada is doing is exactly that? It has a specific objective in mind, specific goals, a specific direction and it achieves a specific result of a perfect alignment. Won't you agree that reporting that information that way, would be in violation of this neutrality principle?

13688. **MR. GUEST:** I think the short answer to your question would be, no, but it was an awfully long question and it covered a lot of subject matter.

13689. **MR. DUNBERRY:** Well you can expand your answer; I'm quite pleased to hear exactly what you have to say on this.

13690. I apologize for the length of the question, but give me as long an answer as you want.

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13691. **MR. GUEST:** I think I'll just stay with my short answer, no.

13692. **MR. DUNBERRY:** Okay. I'd like you to read section 103 and 104; we'll come back with our experts with better answers perhaps, 103, 104. This is another angle which is being addressed by the FASB, so let me read this to you:

“Another argument against the acceptance of neutrality as a necessary characteristic of accounting information is that it would inhibit the Board...”

13693. And I think this is particularly relevant in this case.

“It would inhibit the Board from working for the achievement of national goals. That view raises several issues. First, there would have to be agreement on national goals. For example, should the United States work to make energy cheap and plentiful or should it conserve natural resources for the benefit of posterity? Furthermore, governments come and go, and administrations change their political color and their policies. The Board concludes that it is not feasible to change financial accounting standards that accountants use every time governmental policy changes direction, even if it were desirable to do so. Moreover, only if accounting information is neutral can it safely be used to help guide those policies as well as to measure their results. But more importantly, it is not desirable for the Board to tack with every change in the political wind, for politically motivated standards would quickly lose their credibility, and even standards that were defensible if judged against the criteria discussed in this Statement would come [and go] under suspicion...The chairman of the SEC made the point in his statement on oil and gas accounting on August 29, 1978: If it becomes accepted or expected that accounting principles are determined or modified in order to secure purposes other than economic measurement -- even such virtuous purposes as energy production -- we assume a grave risk that confidence in the credibility of our financial information system will be undermined.”

13694. Now, you probably read somewhere in the application that TransCanada is taking the position that this transfer -- this depreciation proposal is in the public

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interest. Correct, Mr. Guest, you saw that? That the depreciation proposal should be accepted because it's in the public interest?

13695. **MR. GUEST:** If you could point me to where that statement is, maybe I could agree with it.

13696. **MR. DUNBERRY:** I will try to do this, but I was -- I think it's in section 5, if you give me one second, I will go back to...

--- (A short pause/Courte pause)

13697. **Me DUNBERRY:** Monsieur le président, je veux pas retarder. J'ai lu cette référence. Peut-être je pourrai la fournir en fin de journée. Mais je pourrais peut-être poser la question sous la forme d'une hypothèse si ça peut accélérer les choses?

13698. **LE PRÉSIDENT:** C'est à votre choix, Me Dunberry; peut-être les témoins sont sur le point de vous répondre de toute façon.

13699. **Me DUNBERRY:** Oui.

13700. **LE PRÉSIDENT:** Peut-être vérifier avec eux?

13701. **MR. DUNBERRY:** Mr. Guest -- or perhaps someone else, let me start with Mr. Pohlod.

13702. Mr. Pohlod, would you agree that it is your position that this depreciation proposal is in the public interest?

13703. **MR. POHLOD:** I would say that it is in the public interest as part of the broader restructuring proposal that we brought forward.

13704. **MR. DUNBERRY:** So with this admission, Mr. Guest, that this depreciation proposal is presented as something which is in the public interest -- the Canadian public interest -- would you agree ---

13705. **MR. POHLOD:** Mr. Dunberry, my clarification was that it is in the public interest as part of the broader restructuring proposal, which we have put forward as being in the public interest.

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13706. **MR. DUNBERRY:** But if the Board were to refuse every component of your restructuring proposal, except for the depreciation proposal, would you still take the position that it is in the public interest or does it lose its public interest colour if it's taken in isolation?

13707. Actually, the quote is the following and this is section 5, dedicated to depreciation:

“The elements of the depreciation proposal are then described in detail, including illustrative calculations using forecast plant [...] balances as of December 31, 2011. This is followed by a discussion of the results of the depreciation proposal and why it is in the public interest... [so the depreciation proposal and why it is in the public interest] ...and furthers the objective of the Restructuring Proposal.”

13708. So there's both elements; the depreciation proposal is in the public interest and furthers the objective of the depreciation proposal.

13709. I assume you agree with this statement, Mr. Pohlod? That is page 4 of 21, Lines 12 to 16.

13710. **MR. POHLOD:** I believe what we stated in the application was that the proposal is in the public interest as it benefits all shippers while remaining consistent with depreciation principles.

13711. **MR. DUNBERRY:** Okay.

13712. **MR. POHLOD:** When we looked at our entire restructuring proposal and put it forward as something that we believed is in the public interest, we did not try to look at every single element and every little aspect of our proposal.

13713. And I'm not saying that that means that they are not in the public interest I'm just saying that when we looked at evaluating what is in the public interest and formulating an opinion of it, I think we looked at it from a broader perspective. And I do believe we think the depreciation proposal is in the public interest but it is in the public interest in as much as it also remains consistent with depreciation principles.

13714. **MR. DUNBERRY:** Now, Mr. Guest, the question really was after reading the Board statement with respect to national objectives and purposes,

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paragraph 103 and 104, I guess you will agree with me that whether it is or not in the public interest, whether this proposal is or is not in the public interest, you'll agree that accounting principles and their definition and application should not be varied or changed or modified to suit a company's subjective interpretation of what is or is not in the public interest; right?

13715. **MR. GUEST:** Can you ask me that question -- can you repeat the question?

13716. **MR. DUNBERRY:** Yes, I will repeat it. You will agree, I hope, that whether or not this deprecation proposal is in the public interest, and that is a matter for the Board to decide, right, whether or not it is in the public interest should not be a reason to vary, modify or change the proper application or interpretation of accounting principles to suit a client's subjective definition of what is or is not in the public interest?

13717. **MR. GUEST:** I think -- this is my own personal view, but I think what the Board sees as its mandate of the public interest would perhaps be broader than what the accounting rules would construe as the public interest.

13718. And in so much as we are looking at this question in the context of neutrality under Concept Statement Number 2, I would go back to the notion that the predetermined purpose was to address the misalignment between the existing accumulated reserve for the entire system and the consumed service value, and that the result is the result. And because they have -- TransCanada has a predetermined purpose as opposed to a predetermined result does not mean that the information is not neutral.

13719. **MR. DUNBERRY:** But really the question was whether TransCanada's interpretation of what is or is not in the Canadian public interest should lead to a change in the proper interpretation of accounting principles, should it?

13720. **MR. GUEST:** I'm going to restate. I think what I heard was should TransCanada's view of what's in the public interest determine accounting results. Was that the question?

13721. **MR. DUNBERRY:** Well please answer that one. I like that one.

--- (Laughter/Rires)

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13722. **MR. GUEST:** Well, their views might be considered, but to the extent that what any business organization might believe is in the public interest would not condone bad accounting.

13723. **MR. DUNBERRY:** I like the answer to your question. Thank you.

13724. We have one last issue to address. It's a question of prospective or retrospective application, which is addressed in your report. And for that purpose I would refer you to page 7 of your reply. And I believe starting on Line 28 of page 7, you take the position as follows:

"It does not... [‘it’ being the depreciation proposal and the accumulated -- the transfer of accumulated depreciation] ...does not revise the plant investment or accumulated depreciation reported in ... previously issued financial statements. The remaining book value of gas utility plant will be depreciated over future periods on a straight-line basis. The proposal does not change the amount of depreciation expense reported in [TransCanada’s] previously issued financial statements. [TransCanada’s] proposal is entirely prospective in nature."

13725. That is your analysis; correct? That is the gist of your opinion on this, Mr. Guest. Is that correct?

13726. **MR. GUEST:** Well when you say that's the entire gist of ---

13727. **MR. DUNBERRY:** No, you can read the answer 16. It's all there. But I just wanted to emphasize the fact that the absence of any change in the overall amount of depreciation is the factor that you identify in this answer as being the primary factor for your opinion on this.

13728. **MR. GUEST:** My answer at 16 essentially explains that TransCanada's proposal is not restating previously issued financial statements, not restating the asset values or the accumulated provisions of depreciation. And they intend to continue depreciating their assets on a segmented group basis using the same depreciation method that they previously -- that they've always used and for those reasons it's prospective in nature.

13729. **MR. DUNBERRY:** Now, let's assume that TransCanada's financial statement -- for purposes of our discussion, I'd like you to accept this hypothesis; that

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TransCanada's financial statements had to be prepared following segmentation, which is also proposed, to provide information at the segment level, for instance, the original cost and net book value of the three Mainline segments once segmentation is approved, okay.

13730. So that's the hypothesis, that the financial statements have disclosed information relating to net book value or the original book costs of these assets within these three segments.

13731. Now, in that context, Mr. Guest, you will agree that a transfer of \$1.2 billion in accumulated depreciation would have to be reported in the financial statements because it does impact the net book value of the three segments; correct?

13732. **MR. GUEST:** No, I wouldn't agree with that.

13733. **MR. DUNBERRY:** If the net book value of the NOL segment had to be reported in a financial statement, would you not agree that after the transfer, the net book value of the NOL's financial statement would have to be restated with a reduction of \$1.2 billion in reduction of net book value?

13734. **MR. GUEST:** No, I don't agree with that.

13735. **MR. DUNBERRY:** I'd like to refer you to ASC section 250 which is referred to in your report, Line 20 on page 6 of 17.

--- (A short pause/Courte pause)

13736. **MR. DUNBERRY:** So the question that was asked, Question 15, is:

"Do you consider [TransCanada] proposed assignment [...] to be retrospective?"

13737. Answer:

"No."

13738. And your answer is based on your interpretation of section 250-10-45-5; is that correct?

13739. **MR. GUEST:** Yes.

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13740. **MR. DUNBERRY:** Now, you heard Mr. Kennedy confirm that this re-allocation is not caused by some error that would have been committed in previous years. You heard Mr. Kennedy say that, Mr. Guest?

"We're not correcting errors, here, with this re-allocation."

13741. **MR. GUEST:** I think I heard him say that, yes.

13742. **MR. DUNBERRY:** Okay, well, we'll assume he's right. We'll take this as an hypothesis as well. And you also heard him say that this re-allocation is actually a response to changes in the business environment described by TransCanada in its application, probably in section 3; correct?

13743. **MR. GUEST:** Yes.

13744. **MR. DUNBERRY:** We'll also assume that Mr. Kennedy is right on this.

13745. Now, when I read your answer, I understood that this section 250 provides a definition of what is a retrospective application with the criteria that are listed here. This provides the definition to be used to assess whether this reallocation is in fact a retrospective in its nature or effect; correct?

13746. **MR. GUEST:** I just hesitate with the term "definition". These are the things that would be involved if you were applying something retrospectively.

13747. **MR. DUNBERRY:** Okay. These are the criteria that would have to be satisfied for purposes of an application to be retrospective.

13748. **MR. GUEST:** These are all the things that would happen if you are applying something retrospectively.

13749. **MR. DUNBERRY:** Okay. Now, this section 250 is in a section called "Change in Accounting Principle". If you look at the overall title, it's "Accounting Changes and Errors Correction".

13750. And then if you go down, you end up in section charging with section 250-10-45-1. And this section is within a general title called "Change in Accounting Principle"; correct? Mr. Guest, you agree that we're in the title called "Change in Accounting Principle"?

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13751. **MR. GUEST:** I'm sorry -- just -- if you could -- I was looking for the document when you were speaking and so I'm ---

13752. **MR. DUNBERRY:** Yes. I am referring to the title of that section. It's called "Change in Accounting Principle".

13753. **MR. GUEST:** The heading before -- appearing before 250-10-45-1?

13754. **MR. DUNBERRY:** That's right.

13755. **MR. GUEST:** Yes.

13756. **MR. DUNBERRY:** Okay. Now, if you look at section 250-10-45-2, it says that:

"A reporting entity shall change an accounting principle only if either of the following apply, that is: a change is required by a newly issued codification update, (b) the entity can justify the use of an allowable alternative accounting principle on the basis that it is preferable." (As read)

13757. You agree, again, that these are the two situations where an entity shall change -- actually, it's an obligation, changing the accounting principle, only if either of the following apply; you agree with this, Mr. Guest?

13758. **MR. GUEST:** I agree that you accurately read the statements that are appearing under 250-10-45-2 is it -- that was your question?

13759. **MR. DUNBERRY:** Well, we'll keep that as an answer.

13760. Now, 250-10-45-5, you will agree with me, establishes the requirements to be satisfied to give effect to a change in accounting principle; correct?

13761. **MR. GUEST:** That's correct.

13762. **MR. DUNBERRY:** And if there is no change in accounting principle, well this section doesn't apply; correct? Mr. Guest?

13763. **MR. GUEST:** Well, I don't know that the section that states,

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“Retrospective application requires all of the following, a, b, c”, would only occur in the context of a change in accounting principle. It's actually a description of what would happen if you were to apply accounting retrospectively.

13764. **MR. DUNBERRY:** Well, let me read this because there's a paragraph which you didn't include in your report, which is the introductory paragraph. It says:

"An entity shall report a change in accounting principle through retrospective application of the new accounting principle to all prior periods, unless it is impracticable to do so. Retrospective application requires all the following ..." (As read)

13765. That is the retrospective application of a change in accounting principle, would you not agree with me, Mr. Guest? And my question therefore is if there is no change in accounting principle, this section doesn't apply; correct? The way this paragraph reads.

13766. The section which is not in your report, but which is actually in the section that I just read. That's what this means, correct?

13767. **MR. GUEST:** I think you looked to the accounting literature, at least I do, look to the accounting literature for help and examining an accounting -- proposed accounting practice or an accounting practice that's already occurred. And I believe that section describes what one does or what occurs when accounting is applied retrospectively.

13768. I agree that it is in that paragraph addressing what happens when you apply an accounting principle retrospectively. But it would apply, in my view, equally to any accounting that you attempt to apply retrospectively; this is what would happen.

--- (A short pause/Courte pause)

13769. **MR. DUNBERRY:** Perhaps one last question, Mr. Guest.

13770. Were you aware of the existence of a general definition of retrospective application?

13771. Were you aware whether there is a general definition somewhere else in the FASB documentation and statements?

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13772. Mr. Guest, are you aware whether there is an actual general definition of retrospective application outside a specific section dedicated to accounting principles?

13773. **MR. GUEST:** I'm just thinking in the research that I did whether I ran across one. I'm just -- if you'll just give me a minute.

13774. **MR. DUNBERRY:** Sure.

--- (A short pause/Courte pause)

13775. **MR. GUEST:** I can't think of running across another definition of "retrospective".

13776. **MR. DUNBERRY:** Well, we provided your counsel a week ago with one. I will show it to you again.

13777. It's one of the documents that was communicated in advance of your examination. It is a general definition of "retrospective application". We will share hard copies, Mr. Guest, but you've had that somewhere in your file for the last week.

13778. I am now referring to the Financial Accounting Standard Board's "Glossary of Terms", which is a general definition section and the glossary beginning with "R"; and if you look at page 12 of 16, there is a general definition of "retrospective application".

13779. Were you -- I guess you were not aware of that definition, Mr. Guest?

--- (A short pause/Courte pause)

13780. **MR. GUEST:** I did not review that definition in the -- preparing my testimony, but if you can just indulge me for a moment so I could read it more closely.

--- (A short pause/Courte pause)

13781. **MR. GUEST:** No, I stand by my answer. I did not review that definition in the preparation of my testimony.

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13782. My quick reading of it indicates to me that it -- it's not inconsistent with the provisions that I cited in my testimony from Section -- I forget the section.
13783. Is it 350 of the Financial Accounting Standards Board Codification?
13784. **MR. DUNBERRY:** I thank you, Mr. Guest. We don't have any further questions for you at the moment.
13785. Monsieur le président, je pourrais -- il nous reste des questions pour le contre-interrogatoire de Monsieur Sullivan, qui se terminera, sans doute, demain matin. Je vois qu'il est 1h20.
13786. J'avais, par ailleurs, quelques questions -- ma fille dirait « en vrac ». Nous avons quelques questions « en vrac » qui pourraient être rapidement posées sur un sujet qui n'a rien à voir avec ce que nous avons fait avec Monsieur Guest et tout à voir avec ce que nous avons fait, il y a quelques temps, avec Monsieur Pohlod sur la question de la conversion de certaines installations pour le transport de produit pétrolier.
13787. Alors, c'est un peu du coq à l'âne mais ça nous permettrait de profiter des quelques minutes qui restent pour avancer.
13788. **LE PRÉSIDENT:** Oui, allez-y gaiement, Maître Dunberry.
13789. **Me DUNBERRY:** Merci, monsieur le président.
13790. Mr. Pohlod, I apologize for bringing you back to the oil conversion issue, but I'd like to ask you to take a copy of Table 5.2, which is a table appended to Section 5 of the Depreciation section. You will recognize this table very quickly. It was used previously.
13791. I don't have the exact number with me right now, but I'm sure you'll find it. It's Section 5, page 21 of 22. And that is probably B10-20, but I'm not sure. It's the last two pages of Section 5.
13792. For the record, Mr. Chairman, it's B5-8, probably page 19 of the electronic copy. Nineteen (19)? Twenty-two (22). Okay. Thank you, Mr. Yates.
13793. So if you'll allow me, Mr. Pohlod, I'd like to ask a number of fairly quick questions just to confirm a few things. If you look at the NOL segment, the original

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book cost as -- original book cost at December 31st, 2011 is \$5.3 billion.

13794. That is correct? Before reallocation.

13795. **MR. POHLOD:** I'm ---

13796. **MR. KENNEDY:** Yes, the original book is 5.3 and it will be the same before and after because the original book cost will not change.

13797. **MR. DUNBERRY:** That's right.

13798. Now, this amount corresponds to prudently-incurred costs for the assets identified by classes on this page; correct?

13799. **MR. KENNEDY:** Yes.

13800. **MR. DUNBERRY:** Now, let's assume that your reallocation proposal is accepted by the Board effective January 1st, 2013.

13801. The resulting net book value for the NOL, as we all saw before, would be reduced by \$1.2 billion with a resulting net book value of \$859,000 and a few cents.

13802. Correct?

13803. **MR. KENNEDY:** You mentioned 2013.

13804. **MR. DUNBERRY:** Yes.

13805. **MR. KENNEDY:** These are balances as of 2011 so, of course, there would be an application of depreciation rates to get a different balance at the 2013 date that you mentioned.

13806. **MR. DUNBERRY:** Yes, of course.

13807. That would be that adjustment as well to be made.

13808. **MR. KENNEDY:** Yes.

13809. **MR. DUNBERRY:** Now, I'd like to bring you back to this oil conversion project for certain assets of the NOL.

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13810. Let's assume for purposes of discussion that one pipe of the three -- there are three pipes, I believe -- so one of the pipe is sold, transferred to an entity, affiliated or not, for conversion to oil service, let's say in 2017, which I believe is one of the reference date mentioned in your Application.
13811. Correct, Mr. Pohlod?
13812. **MR. POHLOD:** I believe that we did mention 2017 as a ---
13813. **MR. DUNBERRY:** Perfect.
13814. **MR. POHLOD:** --- possible date.
13815. **MR. DUNBERRY:** Now, let's say that the transfer price is \$300,000, so we have a transfer of 1.2 billion January 1st, 2013, an actual conversion to oil service in 2017 and a transfer price of \$300,000.
13816. Now, my question is as follows: Would the net proceeds of that transfer, that is, the \$300,000, be credited against the remaining NOL investment only or against the three segments investments?
13817. You understood the question, Mr. Pohlod?
13818. **MR. POHLOD:** I think I understood the question, but let me put a little context into it.
13819. If TransCanada is successful in advancing a potential redeployment of assets to oil service, it is, I think, likely, if not almost a given, that we would be pursuing a transfer or a redeployment of assets across all -- you know, all -- two or all three segments of the Mainline.
13820. So we would be looking at transferring or redeploying assets across the Prairies, across Northern Ontario and across the Eastern Triangle potentially as well or across part of it.
13821. I think I addressed this in one of the earlier days in the proceeding. Like, we are not even certain if we proceed with a redeployment, given the transfer of accumulated depreciation, whether in aggregate the net book value of the facilities that would be transferred across all three sections would be higher or would be lower

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than the net book value would be prior to any transfer of accumulated depreciation because although the net book value of some of the assets in Northern Ontario would be lower, the net book value of some of the assets in some of the other segments would be higher.

13822. That coupled with the fact that we have different depreciation rates, the timing of any potential transfer would also have an impact on the transfer or the net book value at that time of all of the assets that might be considered.

13823. **MR. DUNBERRY:** Yeah.

13824. **MR. POHLOD:** So having said that, we're not certain how the net book value would be impacted.

13825. And what we do know is -- and it's something that I have addressed as well. If we are successful and we can bring forward a project, we would certainly share with the Board and make it open and transparent as to what the net book value of the assets are at the time, given the approval of a potential transfer of accumulated depreciation or what they would be if accumulated depreciation was not transferred and we would suggest or bring forward what we believe is an appropriate transfer price, and it would be subject to the approval of the Board.

13826. I don't think that we have given, at this point in time, a great deal of detailed consideration as to what we would do and how we would apportion these things.

13827. So if you're asking me for just the Northern Ontario Line portion of the assets that we would transfer, how the transfer price for that small portion of a potential larger redeployment, how it would be allocated, I'm not sure I can give you an answer to that.

13828. **MR. DUNBERRY:** No, but I would perhaps ask you two things.

13829. One is please be nice with me and don't change my hypothesis. You change my hypothesis and then you give an answer to your new sets of hypotheses.

13830. My question really -- and you heard it well I'm sure -- is: Assuming one set of facts, that is, there is a transfer of assets from the NOL to a third-party entity, and there is a proceed of \$300,000, the question is, really, whether you will apply this amount against the remaining investment in the NOL only or against investments

across all three segments.

13831. Because of the way this reallocation works, all segments are affected; right? There is a transfer affecting all three segments.
13832. If there is a transfer of the NOL assets, a portion of the NOL assets, and you receive in exchange of that transfer \$300,000, will you apply that money against investments in the NOL assets only or against the three segments, against assets in the three segments?
13833. And if you transfer assets from the Eastern Triangle segment, same question: Will you apply the proceeds of that transfer to only the Eastern Triangle segment or to all three segments?
13834. You see the difference? Are you applying the proceeds against one segment or against all segments?
13835. **MR. POHLOD:** So your hypothesis is that only assets across the Northern Ontario Line are transferred?
13836. Just so that I understand your hypothesis.
13837. **MR. DUNBERRY:** Yes. Yes, yes.
13838. Will the proceeds be applied against NOL assets or against all three assets -- all three segments?
13839. **MR. POHLOD:** I do not think that that is something that we have given a lot of consideration to at this point in time, recognizing the speculative nature of any potential transfer.
13840. But I do expect that if a situation arises where we are able to bring something forward, that that is something that would be addressed and proposed in the subsequent application that we bring to the Board.
13841. **MR. DUNBERRY:** But, conceptually -- and please bear with me -- just conceptually, would you not agree that if the proceeds of \$300,000 were applied only against NOL investments, shippers on the Prairies and on the Eastern Triangle would still be bearing costs -- because of this reallocation, earlier reallocation -- would still be bearing costs for years for assets which have been removed from gas service and

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which are no longer used and useful for gas service, because they've been converted to oil service.

13842. So these shippers would be continuing to pay the remaining un-depreciated part of that \$1.2 billion rate base, even if those assets have been removed from gas service and are no longer used and useful, would you not find that result quite unacceptable for these shippers?

--- (A short pause/Courte pause)

13843. **MR. DUNBERRY:** Mr. Chairman, these are my only questions.

13844. I realize it's five past 1:30, but I promise I have no other questions. It's the only issue that I was going to raise.

13845. **LE PRÉSIDENT:** Vous parlez de vos questions en vrac. Vous n'avez pas d'autres questions pour monsieur ---

13846. **Me DUNBERRY:** Je n'ai pas d'autres questions en vrac. Ce sera la fin pour aujourd'hui, monsieur le président.

13847. **LE PRÉSIDENT:** Oui, mais vous avez des questions pour Monsieur Sullivan vous disiez aussi?

13848. **Me DUNBERRY:** Oui, demain.

13849. **LE PRÉSIDENT:** Demain matin, d'accord.

13850. **Me DUNBERRY:** Oui.

13851. **LE PRÉSIDENT:** Donc, c'était la dernière question en vrac pour la journée.

13852. **Me DUNBERRY:** Oui.

13853. **LE PRÉSIDENT:** Et il n'y en a pas d'autres pour demain, en vrac?

13854. **Me DUNBERRY:** Non, sauf si mon client ---

13855. **LE PRÉSIDENT:** Sous réserve.

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13856. **Me DUNBERRY:** --- m'invite à en poser quelques-unes.
13857. **LE PRÉSIDENT:** Le client est toujours roi ou reine.
13858. So let's hear Mr. Pohlod's answer to the last question of the day.
Therefore, that will be the last answer of the day.
13859. **MR. POHLOD:** With pleasure.
13860. I don't think I can agree with your hypothesis or can agree with your representation. And I can't agree with it because, number one, I don't know what the transfer price would be or the transfer price that would be brought forward.
13861. But I think what's even more significant is that shippers pay for service and not pay for specific facilities. And we have an integrated system where the depreciation expense is actually looked at over the entire integrated system and not looked at on a segment basis.
13862. So shippers pay for service, not for facilities and they pay for their share of the costs across the entire integrated system.
13863. So as a result of that, I would not agree with your representation.
13864. **LE PRÉSIDENT:** C'était, donc, la dernière réponse de la journée, Maître Dunberry, ---
13865. **Me DUNBERRY:** J'aurai peut-être une première question demain matin.
13866. **LE PRÉSIDENT:** Voilà, parce que --
13867. The Board has other commitments.
13868. **MR. DUNBERRY:** No, I understand.
13869. **THE CHAIRMAN:** At 1:30, we have other commitments.
13870. **MR. DUNBERRY:** Yes.
13871. **THE CHAIRMAN:** And this was the last answer of the day. So ---

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13872. **MR. DUNBERRY:** I apologize.

13873. **THE CHAIRMAN:** So if you want another kick at the can, it's going to be tomorrow morning at 8:30 and not now.

13874. **MR. DUNBERRY:** Yes, and I promise to be completed by tomorrow.

13875. **THE CHAIRMAN:** Don't make any such promise, Mr. Dunberry.

13876. **MR. DUNBERRY:** All right. Thank you.

--- (Laughter/Rires)

13877. **THE CHAIRMAN:** I don't think you have jurisdiction to make promises of that kind.

13878. So before we adjourn, I'll share again our planning assumptions for tomorrow: Mr. Dunberry will be next.

13879. **MR. DUNBERRY:** Yes.

13880. **THE CHAIRMAN:** And if he finishes tomorrow, we'll have Mr. Manning next for CAPP; Mr. Khan, Board counsel, and Board Members.

13881. And assuming any time remaining there, we would obviously have the Panel 4 empanelled and possibly Mr. Mondrow for APPrO at the beginning. That's subject to real life realities.

13882. So we wish you good afternoon. Et on se revoit demain. Bonne soirée.

13883. **Me DUNBERRY:** Merci. Bonne soirée.

--- Upon adjourning at 1:36 p.m./L'audience est ajournée à 13h36