ONTARIO ENERGY BOARD

FILE NO.: **EB-2012-0433**
EB-2012-0451
EB-2013-0074

VOLUME:	**9**	
DATE:	**October 10, 2013**	
BEFORE:	**Cynthia Chaplin**	**Presiding Member and Vice-Chair**
	Marika Hare	**Member**
	Peter Noonan	**Member**

EB-2012-0433
EB-2012-0451
EB-2013-0074

THE ONTARIO ENERGY BOARD

IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for: an order or orders granting leave to construct a natural gas pipeline and ancillary facilities in the Town of Milton, City of Markham, Town of Richmond Hill, City of Brampton, City of Toronto, City of Vaughan and the Region of Halton, the Region of Peel and the Region of York; and an order or orders approving the methodology to establish a rate for transportation services for TransCanada Pipelines Limited;

AND IN THE MATTER OF an application by Union Gas Limited for: an order or orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Parkway West site; an order or orders granting leave to construct natural gas pipelines and ancillary facilities in the Town of Milton; an order or orders for pre-approval of recovery of the cost consequences of all facilities associated with the development of the proposed Brantford-Kirkwall/Parkway D Compressor Station project; an order or orders for preapproval of the cost consequences of two long term short haul transportation contracts; and an order or orders granting leave to construct natural gas pipelines and ancillary facilities in the City of Cambridge and City of Hamilton.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Thursday, October 10th, 2013,
commencing at 9:04 a.m.

VOLUME 9

BEFORE:

CYNTHIA CHAPLIN	Presiding Member and Vice-Chair
MARIKA HARE	Member
PETER NOONAN	Member

A P P E A R A N C E S

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JOSH WASYLYK ZORA CRNOJACKI	Board Staff
FRED CASS SCOTT STOLL	Enbridge Gas Distribution Ltd.
CRAWFORD SMITH MYRIAM SEERS	Union Gas
ELISABETH DeMARCO JOHN WOLNIK	Association of Power Producers of Ontario (APPrO)
TOM BRETT	Building Owners and Managers Association (BOMA)
VINCE DeROSE KIM DULLET	Canadian Manufacturers & Exporters (CME)
JULIE GIRVAN	Consumers Council of Canada (CCC)
STEVEN SHRYBMAN	Council of Canadians
ROGER HIGGIN	Energy Probe Research Foundation
KENT ELSON	Environmental Defence
DWAYNE QUINN	Federation of Rental-housing Providers of Ontario (FRPO)
IAN MONDROW	Industrial Gas Users' Association (IGUA)
DAVID POCH	Green Energy Coalition (GEC)
JAMES GRUENBAUER	City of Kitchener
RANDY AIKEN	London Property Management Association (LPMA)

A P P E A R A N C E S

DAVID GERMAIN	Markham Gateway
MARK RUBENSTEIN	School Energy Coalition (SEC)
GORDON CAMERON	TransCanada Pipelines Ltd.
MICHAEL JANIGAN	Vulnerable Energy Consumers' Coalition (VECC)

ALSO PRESENT:

MARION FRASER	BOMA
SHELLEY GRICE	Energy Probe Research Foundation
KAREN HOCKIN MARK KITCHEN	Union Gas

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Thursday, October 10, 2013

--- On commencing at 9:04 a.m.

MS. CHAPLIN: Please be seated.

Good morning, everyone. We're continuing with the joint panel today. Are there -- I believe, Mr. Poch, you are first up this morning. Are there any preliminary matters before Mr. Poch begins? No? Okay.

Oh, and just for everyone's information, given I think we have at least five hours expected today, we'll sit and take a break -- take breaks as we would in a normal sort of full-day hearing, so we'll break around 10:30 for 15, 20 minutes, and have a break for lunch around 12:30 or so for an hour, and then an afternoon break if that looks like it's needed.

Mr. Poch?

MR. POCH: Thank you, Madam Chair. Good morning, members of the Board and panel.

UNION GAS, ENBRIDGE GAS DISTRIBUTION, GAZ MÉTROPOLITAINE, TCPL – JOINT PANEL

David Schultz, Previously Sworn

Stephen Clark, Previously Sworn

Malini Giridhar, Previously Sworn

Mark Isherwood, Previously Sworn

Dave Rheaume, Previously Affirmed

CROSS-EXAMINATION BY MR. POCH:

MR. POCH: I think it will be -- the documents I'll be referring to are ones that were included in the SEC book. They are J4.5, J6.X, the terms sheet, for the most part. I may make a few other references, but I'll be able to read them to you.

And indeed, in that light, in TCPL.GEC.1 -- this is for the TCPL witnesses -- TransCanada indicated that it has not included any effects of the Energy East proposal in its analysis of the GTA project, and this was at the time of your supplementary evidence.

> "The impacts of lost revenue to the Mainline from shippers switching from long-haul to short-haul service, the additional capital spend to accommodate short-haul service, and any potential negative consequences to Ontario consumers of the LDCs purchasing supply at a more expensive supply basin will occur regardless..."

And that was regardless of the, in your words, beneficial impact of the Energy East project. Is that still true?

MR. SCHULTZ: Yes. I think the net influence of the Energy East project we don't think is -- changes anything relative to the projects that are being considered here.

MR. POCH: All right. And it's still true that there will be -- well, rather than go through that long list, I think we've dealt with that repeatedly, the sort of zero-sum gain aspect.

You would agree, TCPL, that that's the intent of the terms sheet? The terms sheet's intent, apart from the 20 million a year that you've referenced -- and we can have a debate about the ROE -- apart from those features, the intent of the terms sheet is to put TCPL back on track, allow you to return your costs to a full cost of service, although you've structured it in a way to ease the toll impact in the near term. Is that a fair summary?

MR. CLARK: Mr. Poch, I disagree with your characterization this is a zero-sum game. I think Ms. Giridhar's remarks yesterday made it clear it is not a zero-sum gain, it's actually an improvement.

I take the Board's -- Madam Chair's instructions from yesterday --

MR. POCH: Fair enough. I didn't --

MR. CLARK: -- there is no value in repeating the positive attributes of the settlement that I described in my opening remarks.

MR. POCH: Fair enough. I didn't really want to trigger that discussion with that phrase. My apologies. I was trying to use shorthand to keep moving here.

Just the question then; if you would answer to my question, which is, the intent of the terms sheet in broad sweeps is as I've described it?

MR. CLARK: No, I think your statement understates the benefits of the settlement, and I guess I will repeat my comments.

One of the things that comes out of the settlement is that it does help the Mainline to become more viable in the near term as it resolves some of the issues that result from the RH-003-2011 decision. However, it does -- I mean, TransCanada just steps up and takes some of the longer-term risks more explicitly as a result of the settlement, but as we described yesterday, there are a number of attributes about security of supply, flexibility of supply, providing the market with the service that it is looking for. So I think there are a spectrum of positive attributes that come from the settlement.

MR. POCH: All right. But I'm not wrong that the intent is, in addition to these matters you've listed, the intent is to put TCPL back on track to get full cost of service, subject to those concessions you've made?

MR. CLARK: Okay. I guess we're driving past each other here a little bit. In the near-term I would agree with you. But you have to think about this deal in a more long-term context as well. And one of the things that TransCanada is doing is, we are acknowledging or agreeing to separate and segment the Mainline so that post-2020 shippers in the Eastern Triangle clearly have no residual obligation for costs associated with the Prairies and NOL unless they are actually using those facilities.

So to the extent the market wishes to become supplied by gas through exclusive or sole use of the Eastern Triangle, they shed exposure to costs resulting from operation of the Prairies and NOL, so it's a transition -- one of the things that results from the arrangement is it's a transition from the world as we know it to a future state. That is where the market seems to want to go.

MR. POCH: All right. Two points there. First of all, the date 2020 is no coincidence. It's the date that you're -- those pipelines are fully depreciated, correct, the end of 2020?

MR. CLARK: It is the date at which the NOL component of the system is forecast to be fully depreciated.

MR. POCH: Right. Right.

MR. CLARK: So the Prairies line -- the appreciation horizon for the Prairies line is significantly longer than 2020.

MR. POCH: Because depreciation ends at least on the NOL line, at that point, all else being equal, the differential between short-haul and long-haul would shrink somewhat because that long-haul costs borne in tolls would fall.

MR. CLARK: I don't think you can draw that conclusion. The billing determinants on the Prairies/NOL at that point in time are difficult to forecast at this point.

MR. POCH: No, perhaps my question about all else being equal, I'm just saying the impact of the end of depreciation, obviously, would lower tolls. Other features, other dynamics, may raise them, as you indicate. But you agree with me there.

MR. CLARK: All I can say is that it's difficult to forecast where that differential will be there at that point in time.

MR. POCH: The 2020 date was -- I assume the end of the 2020 date, it's not a coincidence that it aligns with the end of depreciation, though. Is that fair?

MR. CLARK: I agree with you --

MR. POCH: All right. Thank you.

MR. CLARK: -- that the 2020 date was used because that is when the northern Ontario line is forecast to be depreciated.

MR. POCH: And your terms sheet makes clear the cost-of-service approach endures past 2020. That's at the top of page 4.

MR. SCHULTZ: That's correct, in terms of how it's --

MR. POCH: Okay. Thank you.

MR. SCHULTZ: -- viewed to be for the Eastern Triangle, at least.

MR. POCH: Right. And on September 13th at page 35 of the transcript you said -- your colleague said:

> "We are agreeing to amortize or collect this bridging charge over a period of 16 years, which means that we have somewhere in the order of $1.2 billion between 2015 and 2020 that we need to recover."

And then further, on page 36:

> "That's a potential surcharge risk that TCPL has, in terms of recovering this costs over a period of 16 years."

That's an example what you were just talking about, is it not, of the -- some of the risks that you are picking up in this deal. Is that fair?

MR. CLARK: I'm sorry, I don't have that transcript in front of me. Do we have the ability to...

MR. POCH: If you wish, I could ask my --
MR. CLARK: It's now on the screen. Thank you.
MR. POCH: You were referring here to the kinds of --
MR. CLARK: If you could just --
MR. POCH: -- some of the things you've given in this deal.
MR. CLARK: I'm sorry, sir, if you could just give us a moment to read the transcript.
MR. POCH: Sure.
[Witness panel confers]
MR. CLARK: Mr. Poch, perhaps I can -- I don't have the full context here, but perhaps I can help clarify a little bit, I think, what Mr. Bell was talking about. To the extent there is an under-collection on the system between -- during the 2015 to end of 2020 term, the shortfall that is recovered from Eastern Triangle shippers is spread out over the 16-year period; it's not all collected during that six-year period. That was done to try and manage the actual cost implications with triangle shippers.
MR. POCH: yes. The term sheet's very clear about that. My question was: This 1.2 billion estimate that Mr. -– is it Mr. Bell gave? Is that the amount of the shortfall that is being deferred into the latter 10 of the 16-year period?
[Witness panel confers]
MR. SCHULTZ: Yes. So that's the effect of deferring over a 16-year period the revenues from the six-year

period. So it's basically accumulated a 1.2 billion deferral that will then be paid off over the next 10 years.

MR. POCH: Okay. Thank you. That's clear.

You provide the LDCs with, I think, what they referred to or your referred to as "indicative tolls." I think you said they were kind of an attempt to have -- provide a levellized indication of what their tolls would be in the first six years; is that correct?

MR. SCHULTZ: That's correct, yes.

MR. POCH: So that, those first six years' tolls, then, wouldn't include the full eventual bridging payments? That is, this 1.2 billion that we just spoke of wouldn't be included in the first six years? That will be picked up in tolls in subsequent periods?

MR. SCHULTZ: That's right. So the tolls calculated for the first six years contemplate that that -– they're set lower because you're deferring to the subsequent 10 years that additional amount. So the subsequent 10 years is where that amount would be recovered.

MR. POCH: The term sheet speaks of it -- I think it's a goal, is maybe the fairest way to describe it, that everyone is going to work together and try to get tolls so that there's a -- roughly a 50 -- I think now said a 45 to 55 percent increase in tolls in this initial period, and that 15 to 20 percent -- 15 to 20 basis points of the 50 basis points would be attributable to -- well, 30 to 35 percent would be attributable to getting back to cost of service, and then the balance, 15 to 20 percent, would be attributable to this -- in this bridging cost in the first six years; is that a fair summary?

MR. SCHULTZ: Yes.

MR. POCH: First of all, given the commitment to full cost of service, to the extent that the bridging at that level proves inadequate, is it fair to say that you, then –- the sort of cost of service resets will be the mechanism by which TCPL will attempt to regain or attain full cost of service return?

MR. SCHULTZ: I think we indicated that after the first three years we would revisit the assumptions that were made currently to set those rates, and adjust for any differences between what we assumed and what was actually occurring.

MR. POCH: Okay. The term sheet obliges that the three LDCs that are party to the term sheet to keep at least 13 percent of their -- on your long-haul system, 13 percent of their gas, system gas, on their long-haul system til at least 2021.

Can I just ask -- I'll ask the whole panel this, if you would -- is the expectation that you're likely to keep, in fact, keep more than 13 percent?

MR. ISHERWOOD: On Union's behalf, we're still looking at that, actually. It would be no less than 13 because of our obligation, but we're looking at higher numbers actually for a bunch a different reasons, including diversity of supply and meeting system demands, et cetera.

So 13 is a threshold minimum. It could be higher than that.

MR. POCH: Perhaps I can ask Enbridge the same question.

MS. GIRIDHAR: My answer is exactly the same. We are looking at retaining a little more 13.

MR. POCH: It is reasonable to suspect that post-2021 -- of course we're getting into some pretty far crystal ball gazing, so with that caveat -- we can expect you'd also be keeping some significant portion of your gas supply on long-haul unless things change very dramatically?

MS. GIRIDHAR: From Enbridge's perspective, just given the size of our franchise and how much gas we purchase, we believe in maintaining diversity of supply, and it's inherently attractive to us to maintain a path along TransCanada's long-haul path. Obviously if the benefits of diversity are outweighed by the costs, then we would revisit the amount that we retain.

MR. ISHERWOOD: The only thing I would add is in our case, the WDA, which is kind of northwestern Ontario, is actually closer to Empress than it is to Dawn, so economics come into play as well.

MR. POCH: Sure. Back to you, TCPL witnesses.

The U.S. shippers on your system are not so obligated. There's no 13 percent provision for them; correct?

MR. SCHULTZ: That's correct.

MR. POCH: So as their contracts with you expire, they can reduce their use of the Mainline to the extent they have alternatives?

MR. SCHULTZ: That's correct.

MR. POCH: Okay. If that were to occur -- for example, some of the U.S. northeast shippers, I understand their contracts expire the next couple of years -- the revenue that you would need to make up for that would be obtained from both short-haul and long-haul tolls to your EOT shippers; is that fair?

MR. SCHULTZ: One thing maybe I'll just point out is the A&E shippers have already converted from long-haul to short-haul some number of years ago. So they currently only use short-haul services to meet their requirements.

MR. POCH: Okay. There are other shippers using long-haul?

MR. SCHULTZ: Yeah. There's other more -- people that doesn't hold annual firm contracts that -- or traditionally kind of come and go to marketers. Others that are serving loads for more defined periods of time, so...

MR. POCH: If there is a reduction in your revenue because some who are able to leave your system give -- facing these increased tolls, would the shortfall in your revenues, then, whenever you have the next opportunity to adjust your tolls, would that occur -- would that be borne both in short-haul and long-haul tolls to EOT shippers, in all likelihood?

MR. SCHULTZ: So the adjustments that are going to occur in three years' time would be to reflect any changes that occur, and cost of service is going to be included in the determinations of those adjustments to the tolls.

But at the same time, I think we've already tried to anticipate what volumes we think are still going to be flowing long-haul or even to those northeast U.S. markets in three years, after the -- so basically in 2018 and beyond or through the entire -- out to 2020 period.

So we've already made some adjustments in the rates that we've calculated so far, with anticipation of some amount of the load to those U.S. northeast markets probably sourcing their supply from the Marcellus, which is basically right where they already are.

MR. POCH: Okay. In your supplementary evidence -- this is at page 9 and I don't think you have to turn it up -- TCPL pointed out that with the GT project, Enbridge would be -- 83 percent of Enbridge contracts on the Dawn-Parkway -- would be on the Dawn-Parkway system, which you described there as a net decrease in supply diversity. That's still true, is it not?

I'm asking TCPL's opinion, if your opinion has changed on that.

MR. SCHULTZ: Well, I think basically it depends on how you define what diversity of supply means. So I think from that perspective of utilizing different basins or different flow paths, the --

MR. POCH: I'm asking if your evidence has changed on that point, that with respect to supply path, you're making a point about supply path diversity and the importance of that. Nothing's changed on that front, has it?

MR. SCHULTZ: Maybe if you can point me back to which part of the...

MR. POCH: Your supplementary evidence, page 9. That's -- in fact, I don't have the exhibit number, I apologize.

MR. CLARK: Mr. Poch, could you tell us which line you are referring to?

MR. POCH: It's section 6. It's the whole section:

"GTA project exacerbates a narrow supply path diversity for Enbridge."

I'm wondering if anything in the terms sheet changes your observations in that section.

MR. CLARK: I would like to make a couple comments just at a high level, from a high-level perspective, and Mr. Schultz can supplement this.

One of the things the settlement does is it essentially preserves or enhances flexibility over what it might otherwise be in the absence of the settlement. Without the settlement, if we get into a circumstance where people do pull volumes off long-haul, we will do whatever we can to optimize the use of our facilities to make sure that they are productively used, and if that means we look for other uses for the system we'll do so.

What the settlement does is it maintains at least a certain level of long-haul volume on the system which preserves access to the WCSB supply to the extent the market wants to use it from time to time. In the absence of the settlement there is no assurance that that capacity will be made available for gas service. We may well look for other purposes for it.

MR. POCH: All right. And that is going to be true because of the 13 per cent commitment with or without the GTA project, correct?

MR. CLARK: Well, I think yesterday we talked about this -- the settlement incorporates a variety of things, including the expectation that the GTA project will go ahead. So I know we had a conversation yesterday about, well, gee, does the settlement survive in the event that this Board decides not to approve the GTA projects. And I think from a mechanical point of view there's no obligation to terminate it. But it's certainly -- the spirit and intent of the deal is for these things all to march together in unison and proceed as described in the settlement.

MR. POCH: Yes, but the terms sheet says, and the evidence earlier in the hearing was, that if this project is -- parts or all of the GTA project and Union's projects are not approved, that does not terminate the terms sheet. Agree with...?

MR. CLARK: I agree with that.

MR. POCH: All right. So the point you just made that -- about the 13 per cent preserving some diversity obtains whether or not GTA is approved.

MR. CLARK: Well, my expectation is that if this project was denied that the market would still press for projects of the same scope --

MR. POCH: Would you answer my question, though?

MR. CLARK: I'm trying to answer the question, Mr. Poch, if you'd just give me a moment, please. My expectation is that the market would still press for projects that would connect supply at Dawn, so whether or not this project goes forward, if the settlement is not approved and the projects don't go forward, I expect some other version of the projects will materialize and -- but that 13 per cent wouldn't be there if the settlement isn't approved. Therefore, that loss of diversity might materialize in that circumstance.

MR. POCH: Supplementary evidence, TCPL said -- took the position that it thought there were ample volumes of western gas available despite the possibilities of LNG and tar sands. Do you recall that?

MR. CLARK: Yes, I would be surprised if we used the word "tar sands", but...

[Laughter]

MR. POCH: Yes. Fair enough. My words. That hasn't changed in the last few weeks? Your view on that?

MR. SCHULTZ: No.

MR. POCH: No. And I just had further question for you, gentlemen. If Enbridge Gas is prepared to enter into a suitable contract -- a contract with suitable term, will you be in a position to assure them that you could provide their existing 943 cubic metres, whatever it is, at Victoria Square, whether or not Energy East proceeds?

MR. SCHULTZ: Yes.

MR. POCH: All right. Thank you. I have some questions for Union. On J4.5 --

MS. GIRIDHAR: Excuse me, Mr. Poch. You wanted to hear from TransCanada on their views of the --

MR. POCH: I have very limited time, Ms. Giridhar. So I'm going to -- I wanted to get their opinion, and perhaps if there is time at the end we can --

MS. GIRIDHAR: I'd just like to --

MR. CASS: Madam Chair, the very point of having a joint panel is to get differing perspectives. It's not just to isolate particular witnesses and exclude others from the answers. It's the whole point of having a joint panel, in my submission. And certainly it'll be a re-examination question if Mr. Poch doesn't allow it now.

MR. POCH: I think I'm going to spend more time arguing. Go ahead, Ms. Giridhar.

MS. GIRIDHAR: Enbridge has taken a more nuanced view about diversity of path and diversity of supply, and I just wanted to take a few minutes to explain that. We did in fact have system reliability, or we had a task force to assess the reliability of supply and path prior to making the decisions we did on the GTA project.

So in looking at diversity of path, we looked at the number of lines that feed us, what proportion of total volume we are on the shipper's system. So when we look at it that way, currently there's three lines from western Canada, there's at least three lines from Dawn, and some places a fourth. There's also two lines from Niagara.

So we were looking to maximize the number of lines that served us, recognizing that our volumes are going to grow seasonally, and therefore certain types of contracts are better than others.

But overall, when we look at the fact that the settlement agreement results in the increased financial viability of western Canadian supply reaching us on the TransCanada long-haul path, the addition of the domestic line from Niagara and the number of total lines that will be serving us will actually go up relative to before, so, you know, we think that we look at diversity of path in a much more nuanced and detailed manner than what was presented in the TransCanada supplementary evidence. I just wanted to make that point.

MR. ISHERWOOD: The GTA project also -- or the Parkway projects also include the LCU, which increases security of supply. In the Brantford-Kirkwall loop on the Union system it's the last piece between Dawn and Kirkwall that's missing the 48-inch, which also increases security of supply for Enbridge.

MR. POCH: Okay. Turning to J4.5, in -- I think yesterday it became apparent that Part A is simply not applicable, and your analysis that's -- may be applicable is in Part B on page 2, Mr. Isherwood.

The 50 per cent and the 15 basis points there that you've used, that simply comes from the terms sheet; correct?

MR. ISHERWOOD: That's correct.

MR. POCH: All right. And in fact, the terms sheet says 30 to 35, to get back to cost of service, and so leaving 15 to 20 basis points --

MR. ISHERWOOD: That's correct.

MR. POCH: -- and you've chosen 15. I just reran your numbers with -- if the amount attributable to the shortfall is the 20 basis points, so the math is twenty-fiftieths, times your 12-and-a-half cents, which is the 50 per cent increase. That comes out to a nickel. And when you multiply that by the 530,000 gigajoules per day and 365 days, that's 9 -- roughly $9.7 million a year.

MR. ISHERWOOD: Just on the nickel, what the analysis shows here was that 15 per cent, or 30 basis points -- or, sorry, 15 basis points; 30 per cent, basically. It shows the 3.75 cents, and the calculation then assumes a large part of that, three of the 3.75 cents is really the transition cost of going long-haul to short-haul.

There's still some under-recovery on the Prairies and the NOL line, so it's not 100 per cent of the nickel. It might be 4 cents or 4.1 cents of the nickel.

MR. POCH: Right. You took .75 cents off on your analysis and you attributed 3 cents, right?

MR. ISHERWOOD: I did.

MR. POCH: Okay. So let's do the same thing. First of all, you can check my math later if you like, but that brought your 15.4 million -- at a full nickel, it brought your 15.4 million in gas savings down to 5.73 million. I take it that would be a very low PI if that were to be the analysis.

MR. ISHERWOOD: Should we go to the PI?

MR. POCH: I don't think it's necessary. I think I'm just looking directionally. We're certainly well below one then, aren't we?

MR. ISHERWOOD: The thing I never mentioned yesterday, and the PI -- and I kind of thought about this more last night as I was studying for it today, but PI analysis is primarily driven by the revenue on the Dawn-to-Parkway system, so we look at what's supporting the economics of the capital build for Parkway D unit, as well as Brantford-to-Kirkwall. It's largely driven by the M12 revenue from Enbridge and from Gaz Métro, and the implied revenue, I guess, from Union Gas's portion, and that gives a PI in the .74, .75 range, which is not unusual for Dawn-to-Parkway build.

What's happening this time or this year, a little bit unusual, is Union Gas is also changing long-haul to short-haul, and there's also some gas cost savings that we're attributing to the project.

But we're 10 per cent of the flow, which is a, you know -- in terms of what Enbridge is flowing, Gaz Métro and Union -- we're 10 per cent of the flow, and we're allocating our savings to the economics of the project.

As I mentioned yesterday, lots of other things happening. Gaz Métro savings, Enbridge savings, open access is being made available, et cetera. So it's really -- when I look at the PI calculation, it was a sensitivity we were asked to run. Firstly speaking, I think you need to look at the stage 2-type benefit this project is driving.

MR. POCH: Fair enough. I just wanted to look at the page 1, PI. If we take the 0.75 off my nickel and make it 4.75 -- 4.25, rather, the number I get is an $8.2 million reduction to the 15.4, which brings you down close to 7 million. So again, your PI is certainly going to be well below 1?

MR. ISHERWOOD: It would be below 1 in that case.

MR. POCH: All right. In addition, we just heard that the tolls you've used, the indicative levellized tolls, don't capture the full bridging, do they? Because there's the last 10 of the 16 years of bridging?

MR. ISHERWOOD: It includes the cost of the gas landing in Ontario during the period we're talking about.

MR. POCH: Right, but it doesn't --

MR. ISHERWOOD: It does include it, because it includes, over the 15 years, the bridging for 15 years.

MR. POCH: Except you've based this on a 50 percent increase, which is only in the first six years. And that 50 percent increase is being held down by the fact that these bridging costs are amortized to a subsequent period.

MR. ISHERWOOD: The calculation here is on the amount of bridging, which is the 5 cents you calculated, the 3.75 I calculated, and that carries on for 16 years.

And the DCF analysis is over 15, so let's call it a wash.

MR. POCH: Now, just turning to Enbridge briefly, I'm pretty much out of time here.

In your Exhibit 6.X, J6.X, part of your analysis there takes a look at the utilization factor on long-haul, and of course then if you don't have a high-utilization factor, you pay demand charges, regardless? That's your point?

MS. GIRIDHAR: Correct.

MR. POCH: Is it not the case, though, that in -- and pursuant to the term sheet, where TCPL's going to get its cost of service through the bridging charge and through its cost of service opportunities, to the extent that you pay less in demand charges, TCPL's revenues fall? And they are going to be in a position of trying to make that up in toll changes going forward?

MS. GIRIDHAR: I don't agree with that. What this is showing is that because we run our distribution system at a 30 percent load factor, making the assumption that we utilize all of our contracts at a hundred percent load factor, given that we have to firm up for seasonal load, is unrealistic.

So the right assumption to make is that we will be using these contracts at a less than hundred percent load factor.

To the extent that we're displacing long-haul with short-haul -- and that has been factored into the term sheet and the indicative tolls that we're using -- so I wouldn't agree with you that the lower utilization than 100 percent is going to result in additional toll impacts with the term sheet.

MR. POCH: No, but all I'm saying is you're trying to make a distinction here that you're -- that depending on what utilization factor you have, your -- the net benefit of your project changes?

MS. GIRIDHAR: Correct.

MR. POCH: But as your utilization factor changes, so too does TCPL's revenue and that cycles back. It's an offset, is it not? How does it change your --

MS. GIRIDHAR: No. For a given contracting path, reduced utilization results in unmitigated demand charges for Enbridge, because we're not able to use that capacity.

It results in no change in revenues for TransCanada, because we pay demand charges year-round irrespective of utilization.

MR. POCH: If you adjust your portfolio and thereby avoid these demand charges going forward, then TCPL's revenues going forward decline?

MS. GIRIDHAR: But that's been factored into the term sheet already, so in the absence of the GTA project, we would be paying year-round demand charges on long-haul transport that -- at a buck 60. The GTA project allows us to pay short-haul demand charges ranging from 10 to 20 cents, so a fraction of those costs.

And the term sheet already reflects the use of short-haul for seasonal demand. Therefore there is no impact.

MR. POCH: I don't want into argument about the number-crunching exercise here, fun with numbers, because -- my words, not yours -- because I'm trying to stick to the high-level principle that the term sheet is basically giving TCPL the opportunity to make its necessary return, given its sunk costs.

So the demand charge savings are just like the savings from switching from long-haul to short-haul; TCPL is going to have to make that up somehow.

That's my point, and I'm having -- I still haven't heard anything other than you're hinging -- other than you're saying the indicative tolls somehow are a cap. And I think we've already heard they aren't a cap.

MS. GIRIDHAR: I think your presumption, Mr. Poch, is that Enbridge's ratepayers should engineer a transfer of wealth from them to other shippers in the TransCanada system by seeking to contract a path that does not make any sense for their seasonal load.

The Ontario Energy Board has always told us to use our long-haul contracts at a hundred percent load factor. Our PGVA mechanism penalizes Enbridge's shareholder if we run our long-haul contracts at anything less than a hundred percent load factor.

To suggest the fact that we are contracting appropriately for our seasonal loads is somehow a problem is something that I just don't understand. This is how this Board has regulated and required us to contract for gas supply.

MR. POCH: A couple more quick questions.

Mr. Henning in his recent evidence suggested that 0.91 cents was the differential value used for landed cost analysis. Does Enbridge differ in that conclusion?

MS. GIRIDHAR: Excuse me? Sorry, I didn't get that.

MR. POCH: Mr. Henning, witness for Union, suggested in his most recent update that 0.91 cents is the suitable differential value for Dawn-to-Empress to use in landed cost analysis. Do you differ from that conclusion?

I know you've given a range, 50 cents to a $1.50, but...

MS. GIRIDHAR: Enbridge's own third-party service provider gave us a number, which is 50, 51 cents, which was used in our preliminary analysis. We really -- I think the point is nobody has a crystal ball that says exactly what the forecast differential is going to be. That's why we've provided a range.

MR. RHEAUME: If I may, very briefly, for the sake of knowledge, I guess, the number used by the Régie when calculating the savings was around 65, 66 cents.

MR. POCH: If the differential between short-haul and long-haul remains the same, whatever you're forecasting, your $1.40 or $1.60, whatever it is, but both short-haul and long-haul tolls have to rise to compensate TCPL for revenue losses, however they may arise -- but let's say revenue losses facilitated by the GTA project -– is it not true that holding the differential constant isn't a complete assessment of what the economic impacts of that GTA project are?

It's not just -- we can't just look at the economic impacts of switching between short-haul and long-haul and having regard to the differential. If the level of tolls of both rise and differentials maintain the same, and if some of that rise is due to lost revenue precipitated by this project, then that is another factor we have to consider; is that fair?

MS. GIRIDHAR: So J6.X has taken all of those factors into account, because our starting point in J6.X is to take those indicative tolls and apply them to our entire gas cost portfolio. And we have an estimate, based on whether it's a 45- or 55 percent increase in tolls, in terms of what the impact on our gas cost portfolio is. That is -- we have estimated to be between 50 million and $68 million.

MR. POCH: I think you are saying yes. You're saying you've included that, you've attempted to include that effect.

MS. GIRIDHAR: I've included that in the analysis.

MR. ISHERWOOD: The one point I would add -- and this is consistent with the discussion you and I had earlier, Mr. Poch -- I've always talked about Parkway-to-Union's EDA, the 12-cent increase. You have to go back to the fact that two-thirds of that increase is just to get the Eastern Triangle back to cost of service.

So the impact of the term sheet in terms of open access is not the 12 cents; it's a third of that. It's the 4 cents, 5 cents that you and I were talking about. That is the true cost of the term sheet providing open access.

MR. POCH: Okay. Thank you.

Finally, Ms. Giridhar, at the bottom of page 3 of this

Exhibit, J6.X, you say:

"The absence of short-haul supply will result in ever-increasing demand utilization of long-haul transport increments, resulting in a transfer of wealth from Enbridge ratepayers to other shippers."

Am I correct that that suggests that there should be higher avoided costs for DSM that lowers heat-sensitive load; that is, in addition to possibly avoiding distribution facilities, it can reduce transportation costs?

MS. GIRIDHAR: This was very specifically in reference to the use of long-haul to meet seasonal load, as opposed to short-haul to meet seasonal load, so I don't think it has any relevance, in terms of what you should use for -- in any IRP approach, for instance. This is talking strictly about being required to use long-haul rather than short-haul, which is really what the combination of the GTA project and the terms sheet allows us to do. It allows us to match our gas-supply portfolio for the profile of use for our customers.

MR. POCH: I was just observing that buried in your comment was the observation that the system -- I think I'm reading it right -- that the system is growing more peaky, and so you would expect to have even more demand charges going forward, which are higher on the long-haul than on the short-haul, right?

MS. GIRIDHAR: We would expect to incur more transportation costs that will be utilized at lower load factors, because the system is growing --

MR. POCH: Right. And so my simple question was, isn't that something else that DSM that's aimed at heat-sensitive load should get credit for avoiding?

MS. GIRIDHAR: I would not be able to talk to DSM issues --

MR. POCH: All right. Thank you. Those are my questions. Madam Chair, thank you for the indulgence. I went a little long.

MS. CHAPLIN: Thank you, Mr. Poch.

Mr. Wolnik, I believe APPrO was going to be next.

CROSS-EXAMINATION BY MR. WOLNIK:

MR. WOLNIK: Yes, thank you. Good morning, panel. John Wolnik with APPrO. I've got sort of three short question areas I would like to talk to you about, and also one follow-up question from this morning. And those three areas include -- I just want to talk about the renewal provisions a little bit, some of the tolling impact, and one process issue.

So maybe starting with the renewal provision, and maybe, Mr. Isherwood, I could probably maybe just rely on your knowledge a little bit, because I want to talk about this in the context of some of the non-utility generators, or NUGs, and as you know, many of these have had long-term contracts on TransCanada, as well as long-term power purchase agreements, or PPAs, and some of these are coming to the end of the term, so -- and this -- one of the provisions in the settlement agreement talks about the requirement for all shippers along the path that is expanding, all of those shippers will have to renew for five years; is that right?

MR. ISHERWOOD: That might actually be a better question for TCPL.

MR. WOLNIK: Okay.

MR. SCHULTZ: So I think it's the term of the contract would need to be extended for five years from the in-service date of the new facilities that are being added to accommodate the expansion you referenced, and then -- or alternatively, they could just go to the end of their current term and expire then.

MR. WOLNIK: Right. So let's talk about an example. So let's talk about one of these NUGs that, let's say is in year 17 of a 20-year contract, and TransCanada is expanding in that period to accommodate, whether it's Energy East or new load or whatever. It seems to me that these NUGs are going to either have to, as you say, Mr. Schultz, either renew for five years, which would take it from year 17 to year 22, so put it two years beyond its ability to cover or generate revenue, because it doesn't have a PPA contract, or it will have to basically terminate its contract early and not be able to meet its PPA requirements. So let's just use that as a backdrop.

And Mr. Isherwood, most of those are in your franchise area, so what advice would you give these customers?

MR. ISHERWOOD: Actually, it was an interesting discussion we had with APPrO when we took this element to their offices, and I think you were there, Mr. Wolnik. And that was certainly one of the issues that was presented to us to give some thought to.

And I think as a team we need to give that some thought, but the issue is not necessarily -- they will have a choice, for sure, to continue on to the end of the 20 years or to contract up by five years from the start date.

One option to consider, I guess, is to let the contract term out, and they can buy a delivered service from the secondary market as one option. I'm not suggesting that is the best option, but there are probably some options available, and I think we as a team need to give that some more thought as well.

MR. WOLNIK: I guess a question for the utilities. I mean, I think this problem could actually occur not just to this particular example that I put on the table here, this one NUG, but to the extent that TransCanada expansions occur over time -- and they have, over the last number of years, and I would expect that they would continue to -- each one of these gas-fired generators within Ontario is going to face this problem eventually, assuming that TransCanada does expand. It'll create or force this mis-match between its off-take commercial agreements, or PPAs, and its upstream transportation contracts.

So that is going to create a problem eventually for all of them. So I do think that needs better thought, but I guess a question maybe at this time for both the utilities, do you see as part of your service portfolio providing some sort of modification to your purchase arrangements where generators and all customers potentially could perhaps buy at a liquid point, be that Dawn or be that Empress, where the utility would then hold the downstream transportation contract between that liquid point and the customer?

MR. ISHERWOOD: I'll speak on behalf of Union, and then Ms. Giridhar can talk about Enbridge, but actually, this last summer we did go out into the market and offer just the transportation part of the path you described between Parkway and either the NDA or the EDA, and we had about 50,000 a day of industrial load come back to us wanting us to go into the Enbridge and in the future the TCPL open seasons to do exactly what you are asking for, and that would be managed in terms of all the customers.

MS. GIRIDHAR: Thank you. So Enbridge -- as you may recall, Mr. Wolnik, the GTA project is reserving 200 tJs per day for our direct-purchase customers for delivery into the system, into the GTA system, and so we have had some level of contact with our direct-purchase customers already, and we have a commitment on approval of these facilities to initiate a more full consultative with our direct-purchase customers to understand what their needs are and how we can ensure the delivery arrangements work for them, so we would certainly look at doing that.

And, you know, we don't prevent our current unbundled power customers from becoming bundled if they so choose or want some aspect of our bundled service. So, you know, we definitely would take all of that into consideration.

MR. WOLNIK: You would be open to change then and probably still within the bundle context? Or unbundled context, I'm sorry, but --

MS. GIRIDHAR: I think we are certainly willing and wanting to engage with all of our customers to understand how best we can meet the delivery requirements in this changing environment. We explicitly factored that into the GTA project. To the extent that we need to do more of that, we are -- the terms sheet certainly allows us to do it.

MR. WOLNIK: Okay. Thank you.

MR. ISHERWOOD: I will just add, though, the situation you are raising is interesting, because NUGs are in a unique position, because they don't have the power purchase agreements extending beyond the current agreements, so that definitely puts them at risk, and I think the utility need to be careful as well that we're not into a 15-year contract knowing we may only have a one-year or two-year -- so to Ms. Giridhar's position, we need to consider that and try and help --

MR. WOLNIK: I understand.

Maybe just another question, and perhaps for TransCanada on this issue. One of the changes in here is the renewal provisions for those contracts, changing from six months' notice today to two years; is that correct?

MR. SCHULTZ: That's correct.

MR. WOLNIK: And I know this issue has been out there for some number of months, if not much longer, and my understanding of sort of the need for that was the concern about -- that TransCanada had about building facilities that -- wanting to know what its customers were doing so that it didn't build facilities that weren't necessary. Is that part of the genesis of this issue?

MR. SCHULTZ: I think that contributes to the issue, yes.

MR. WOLNIK: So, I mean, with this provision, the five-year provision, where basically you are expanding so that all customers have to renew for at least five years, I don't understand the relevance of the requirement for all shippers to also give you two years' renewal notice, especially in an area where it's not expanding. Can you just help me with that?

MR. SCHULTZ: Yeah, I think -- well, there's other activities where we need to plan for what amount of capacity we're making available and ensuring we have, and that would go to pipeline integrity work, other maintenance activities, so it may not be that we're trying to establish what the requirements are for new and incremental load, but also just to get better clarity of what is the ongoing need for capacity to understand should we be investing incremental dollars into pipeline integrity. So that would be another example.

I think it just leads to better ability to plan, to have some foresight into what is going to be the needs of our customers and to be best positioned to provide for those needs in the most economic fashion.

MR. WOLNIK: And you would appreciate for some of, again, some of these generators perhaps that are coming to the term of their PPA, that they may not have that sort of two years' notice, to be able to actually provide you that information.

MR. SCHULTZ: I think the thing is, depending on where you are in the system, that ultimately you could choose to not have that renewal option and just contract on a year-to-year basis. So if you're coming to the end of your contract and you have no foresight or clarity as to whether or not you will need service in the future, you could just allow it to expire and just enter into a new contract.

MR. WOLNIK: Thank you.

Mr. Schultz, just -- I think you were talking with Mr. Quinn yesterday, and I had some similar questions. And I think you were pretty clear on a number of areas, but I just want to double-check what is going to be included in these tolls. You talked about the Kings North pipeline; you said clearly that was in. I understood that.

And I assume the TBO costs on Enbridge that you would incur from moving on segment A, that they would be included?

MR. SCHULTZ: That's correct.

MR. WOLNIK: And Enbridge has also indicated that there was something in the order of a further -- their open season resulted in a further 600,000 gJs a day of interest in that path. And my understanding is anything beyond the GMI and the Union volumes you would have to expand downstream of Kings North pipeline.

So would those costs or -- have some of those volumes been included?

MR. SCHULTZ: Yeah. In these preliminary numbers, we have made the presumption that there would be subsequent expansions, and we've included capital estimates for that. At this time, I think we will be -- as noted in the settlement agreement, we're going to run an open season to crystallize what those numbers are, so that then we have better -- before we actually finalize these rates for 2015.

But as it stands today, we've made the presumption that there would be subsequent capital additions added in the 2016 time frame.

MR. WOLNIK: Thank you.

With regard to Energy East, I know that's not part of the settlement agreement and I know it's a bit of a crystal ball and we're not there yet, but is it fair to assume that there could be a higher rate base after Energy East is in service and you've replaced whatever gas service is necessary?

MR. CLARK: It's not clear whether it will be a higher or lower, on an overall basis.

MR. WOLNIK: But it's possible?

MR. CLARK: It's possible it could be higher, it's possible it could be lower.

MR. WOLNIK: That's fine. And lastly, in this area of questions, I know the TransCanada has an application in front of the NEB right now regarding pipeline abandonment costs. And I think that was filed on the basis of a -- the old system, if I can call it that, and currently under the settlement agreement you're looking at segmenting costs.

Do you anticipate making any changes to that application? And if so, how will those settlement costs impact the tolls? And I guess further, how have those been incorporated into this tolling arrangement, in addition to that?

MR. SCHULTZ: The LMCI, as we noted in the term sheet, is not part of this settlement, so the effects of those tolls have not been included in the indicative rates.

And similarly, there's no changes being contemplated as a result of the settlement, so the application that's in front of the NEB, we will continue to process as filed.

MR. WOLNIK: How does that --

MS. GIRIDHAR: With respect to the LDCs, our interventions in that proceeding will be to advocate for an allocation methodology for this abandonment cost that reflect what we believe is the spirit of this agreement, and to advocate for our customers.

MR. WOLNIK: Thank you.

And just my recollection of the tolling impact of that was in the order of -- I know it depends on volume, but roughly, at the current volume, the tolling impact to all shippers was in the area of 5 or 6 cents a gJ; is that about right? Would you agree with that?

MR. SCHULTZ: To be honest, I can't recall the number.

MR. WOLNIK: Thank you.

On the process issue, I take it that this is -- when this was filed with the NEB, this is an all-or-nothing application? The board, if the board tinkers with the decision, then, from the utility perspective, it falls apart; is that fair?

I know there's some provisions in here in terms of what if, if that happens.

MR. CLARK: The settlement will be filed as an omnibus arrangement, if you will. I expect it will contain those familiar words, that it's a balance of interests and there are puts and takes and all that sort of stuff, so...

MR. WOLNIK: I just want to -- really just the reason to get into this line of questioning was really just to talk about timing. I know your plan is to file this very soon, probably in the next month or six weeks or thereabouts, and there will be a process to deal with that.

But in the event that the board doesn't agree or it doesn't approve it in its entirety, that there's some modifications it makes, I guess the way I read page 9 on the agreement itself, it appears that there's -- you may need to renegotiate and file a new application at that point. I guess I'm just trying to get a handle on the timing.

How long will it take, if the board doesn't approve it, how long will it take to refile? We could be into quite some time, potentially, here.

MR. CLARK: I think you can take from the presence of all us here and the amount of effort that's gone into it, we will do everything we can to deal with it as expeditiously as possible.

However, as we all know, these processes are unpredictable and so it's hard to forecast, but I can tell you there will be vigorous and energetic --

MR. WOLNIK: Understood, but I -- but there could be just another iteration after the Board decision, to renegotiate whatever may be necessary and refile?

MR. CLARK: There could be. And if the Board decision is just a minor tweak that we can tolerate, there may no process.

MR. WOLNIK: Sure.

MR. CLARK: It's hard to say.

MR. WOLNIK: Thank you.

And just the one follow-up question. Mr. Schultz, I think you were talking to Mr. Poch today, and what would happen after year 3. I thought I heard you say that after year 3 when you would adjust the rates, you would update all the assumptions.

But when I look at the settlement agreement on page 4, it appears that that only provides for the billing determinants to be updated. So I wasn't quite clear on -- and I know you're into the definitive agreements and maybe this is a tweak that you are making.

MR. SCHULTZ: I think the plan is that we will review at that time frame -- so after three years -- whether there is any serious gaps and whether there's any adjustment at all required. So if, in effect, the net of all the changes doesn't result in a material -- that if you were to bother recalculating the rates, it wouldn't change things to any material degree, we may choose to not change anything at all.

So I think we will assess the aggregate of both the cost and the billing determinant sides of the equations, just to see how well we're tracking to meeting the requirements.

MR. WOLNIK: That's what I thought you said, but that's not -- you would agree that that's not what this clause says?

MR. CLARK: Could you just give us a moment, please?

MR. WOLNIK: Sure.

[Witness panel confers]

MR. CLARK: Perhaps I can just help a little bit here. You have to –- I just want to point out this is a terms sheet. So this is heads of agreement, principles, and we're working through the details.

When we were developing this, the area where there is the potential for some unforeseen circumstances is more likely in the billing determinants area, rather than cost side. I think the idea is that three years out, we'll take a look at where both the cost and billing determinant side is.

The return this focuses on billing determinants is because if there is going to be some volatility, that's probably where it will show up.

MR. WOLNIK: No, I appreciate that this is just in its -- the minutes of settlement, and as you get into negotiations things can change. I just wanted to understand what the intention was here. That's all.

So it really is a refreshing of all of the major assumptions going into it?

MR. SCHULTZ: Yes.

MR. WOLNIK: Thank you. Those are my questions.

MS. CHAPLIN: Thank you. Next on my list, Ms. Dullet. I believe CME, CCC, were going to go next.

CROSS-EXAMINATION BY MS. DULLET:

MS. DULLET: Yes, thank you. I'll be very brief at this point.

If I could have the panel turn to J4.5, just with respect to number 1(a) here, the toll benefits of the settlement. Does TransCanada agree with Union's calculations here at 1(a), so that would be namely that the $330 million in relief will be provided by TCPL? Are you in agreement with that?

MR. SCHULTZ: I don't think we specifically went through and reviewed this math to -- for me to be able to comment that I would agree with the specific number or not. I didn't see anything in the approach that I was concerned with, but in terms of the exact calculation I don't really have a comment one way or the other.

MS. DULLET: So these aren't numbers that have been finalized? They could be subject to change before the settlement agreement is finalized?

MR. SCHULTZ: Again, this isn't my evidence, so I would need Union to respond to that question.

MR. ISHERWOOD: There's two numbers in this calculation. One is around the impact of the ROE from 11.5 to 10.1, and the other is a $20 million contribution that is in the terms sheet, so I would assume the 20 million is solid.

The 35 million, which is a calculation of 11.5 percent down to 10.1 percent, is based on some early versions of tolls that I've seen, so it's probably in the range. It's indicative. It may not be exact dollar, but probably -- I'm assuming it's close.

MS. DULLET: Okay. So you said it's within the range, but will this $35 million-per-year number over six years, will that be -- will there be -- will that be finalized before the settlement agreement is filed? Will that be --

MR. ISHERWOOD: The commitment is a 10.1 percent.

MS. DULLET: Okay.

MR. ISHERWOOD: The 35 million is my estimate of what that means.

MS. DULLET: Okay.

MR. CLARK: So the 10.1 and the $20 million numbers have been -- those have already been negotiated. Where there may some volatility in the result is depending on what the actual rate base in the system is at any given point in time. As you're aware, as capital projects come and go the numbers vary a little bit, but they won't be changing materially.

MS. DULLET: Okay. Thank you.

In their undertakings both in the undertaking response Union and EGD have both used the range of 45 percent to 55 percent as the increase in the short-haul -- for the short-haul tolls. In TCPL's view could it go beyond the 55 percent, or is that the upper limit that's been negotiated as of this time?

MR. CLARK: We're working through the final details of all that. We tried to give an indicative range of where we expected the numbers to come out. You will recall in the settlement terms sheet itself we identify a 50 percent target, but the numbers are still being worked, and it's possible they fall outside of that range, but that's what we're driving towards.

MR. ISHERWOOD: If I could just add to that. And I agree with Mr. Clark, and the example I've always used is Parkway EDA increasing by 12 cents at 50 percent level. So you have to appreciate, the price of gas has gone from $8 to 3 or $4 since 2008, so we're talking about a few pennies either way here. We're not talking about dollars and -- so we certainly expect or hope it stays in that range. We're targeting 50 percent, but we're talking about a penny or two either way. It's not -- we're not talking about a lot of dollars.

MR. CLARK: Maybe I could just add one comment. We've talked about this a fair bit through the course of the last day or two. The final calculation of these numbers is, in effect, like preparing a full-blown rate application. It's a very complex exercise and takes a lot of -- there's a lot of effort and time that has to go into it.

So I appreciate we would all love to have a much sharper pencil on these numbers, but it is an enormous undertaking to crank through a system that covers the entire continent here and get back to the kinds of numbers, the quality that you would expect to see in a rate filing.

So I apologize for the breadth of the -- or the thickness of the pencil, if you will, but it just takes a bit of time.

MS. DULLET: Thank you.

Now, we wish to better understand the customer rate impacts that will result from the leave-to-construct application and the toll impacts that flow through the settlement agreement, and I haven't been able to find anything that sets out the customer rate impacts.

So are you able to provide anything that would provide us with the expected annual total bill impact for charges by rate class that flow from these applications and the settlement agreement?

MS. GIRIDHAR: I would have to take an undertaking to do that --

MS. DULLET: I would appreciate that. And that's it for -- sorry.

MR. ISHERWOOD: I was just going to say, on the Union side we have lots of evidence around the impacts of our facility expansions, in terms of the cost, different rate classes, and customer impacts.

MS. DULLET: Could you point me to that?

MR. ISHERWOOD: May I get that at the break?

MS. DULLET: Thank you.

MR. MILLAR: The undertaking from Enbridge will be J9.1.

UNDERTAKING NO. J9.1: EGD TO PROVIDE THE EXPECTED ANNUAL TOTAL BILL IMPACT FOR CHARGES BY RATE CLASS THAT FLOW FROM APPLICATIONS AND THE SETTLEMENT AGREEMENT

MS. DULLET: So my colleagues here are just informing me that, does it have the toll settlements impact into the actual analysis that you've done?

MR. ISHERWOOD: Just the impact on our facilities, on our customers.

MS. DULLET: But not with the settlement agreement?

MR. ISHERWOOD: No, our evidence was filed well in advance of the settlement agreement.

MS. DULLET: So could you update it? Could you give us an undertaking to update it now with the terms sheet and the settlement agreement?

MS. GIRIDHAR: So neither of us have done it by rate class, and, you know, these are still indicative tolls that we're talking about, so I suppose I will have to talk to our rates group to understand exactly how much effort is involved, but I'm assuming that we could do a point estimate; for example, take, you know, some number in between what we've already provided here and then run it through. So that's -- I'm just speaking for Enbridge here.

MS. DULLET: And I understand it's indicative at this point, but, you know, from our perspective indicative is better than no analysis at all on the rate class, so --

MR. ISHERWOOD: We'll take our best shot.

MS. DULLET: Thank you.

MR. MILLAR: So we'll assign a separate undertaking for Union, J9.2.

UNDERTAKING NO. J9.2: UNION TO PROVIDE TOLL SETTLEMENT IMPACTS INTO THE ANALYSIS

MS. DULLET: Thank you. Those are my questions. Thank you.

MS. CHAPLIN: Thank you.

Mr. Shrybman? I have you next on my list, if you are ready to go.

MR. SHRYBMAN: Yes, I am, thank you very much, Madam Chair, Panel.

CROSS-EXAMINATION BY MR. SHRYBMAN:

MR. SHRYBMAN: I would like to direct your attention to TCPL's response to our information request, question 2, which is Exhibit M.TCPL.COC.2. There it is.

This question begins by reciting some of the evidence filed concerning the Energy East project, and then asks a question of -- referencing a question that was asked to both Enbridge and Union Gas about the potential reduction or loss of gas supply service on the TCPL Mainline and whether that would undermine supply diversity to the GTA.

And in response to that question both Enbridge and

Union Gas -- and I'll allow you an opportunity to comment, but I would like to first hear from TCPL. In response to that question both Enbridge and Union Gas indicated that, no, there would be no loss of supply diversity to the GTA.

And we asked that TransCanada comment on that response, and it disagreed. and if I can take you then to -- it's up on the page there I see -- page 2 of 2. I would like to ask you about your response and whether or not it still holds.

So in the first paragraph you indicate that:

"Any loss of firm gas supply service on the TransCanada Mainline is entirely the choice of Enbridge and Union. Enbridge and Union supply from the Western Canadian Sedimentary Basin through TransCanada will be reduced as a result of the contractual changes proposed by Enbridge and Union in these proceedings. Both LDCs will be more reliant on supply from Dawn and Union's Dawn-Parkway system."

Has your response changed in consequence of the terms sheet being negotiated? This is for TCPL.

MR. SCHULTZ: So I think the -- you know, we've gone over that a little bit already this morning, but the 13 percent commitment to now maintain long-haul volumes, and to the extent it's -- 13 is the floor versus it could be higher, we've already heard.

So I think that implies that we will continue to maintain the capacity necessary to meet those volumes from a long-haul perspective.

So I think that it somewhat is just a nuance of this response, which is the amount of capacity we retain and maintain to provide access for long-haul from the WCSB is a function of how much contracts that we have for that service.

MR. SHRYBMAN: Is that a yes or a no?

MR. SCHULTZ: I think it changed to some extent based on the 13 percent.

MR. SHRYBMAN: And can you help me understand the extent to which it has changed?

MR. SCHULTZ: Well, 13 is bigger than zero, so...

[Laughter]

MR. SCHULTZ: Like, you're asking me to quantify something that I don't know what I'm comparing it against. So this is not a quantitative answer; it's a qualitative answer that says to the extent you want access to WCSB supply, if you contract for it, TransCanada will ensure that that capacity is maintained and kept available to accommodate those requirements.

MR. CLARK: Perhaps I can help a little bit here.

I think your question goes to what would the world look like without the settlement, and what would the world look like with the settlement, and how would that manifest itself in terms of security of supply for the LDCs.

It's hard to know where the world would go in the absence of the settlement. We talked a little bit about that yesterday. Pretty clear to us that prior to the settlement there were lots of applications to bypass the system, to try to move off long-haul. Where that would ultimately -- what that would ultimately result in is hard to forecast, because I can assure you we would have taken whatever steps we could to protect our system.

And that would inevitably mean we'd be spending some more time here, I expect. We'd probably be spending some time in the courts. We'd probably be spending more time before the National Energy Board.

Again, where that would ultimately take us we don't know, but clearly there was a drive to become more short-haul-centric than long-haul-centric without the settlement.

What the settlement does is it gives certainty, and it assures us that we'll have minimum of 13 percent of the long-haul, of the LDCs market on long-haul, which will increase the security, or the certainty that supply will be available from the WCSB.

So I think directionally our position has evolved. We expect that we will see a greater flexibility and a greater diversity of supply as a result of the settlement, so I think the answer to your question is really a yes.

MR. SHRYBMAN: It wasn't really so much the comparison of the state of affairs now and then. It was whether, at the end of the day, your view that what is before this Board puts at risk diversity of supply still holds.

So given the term sheet, are we still -- is security of supply through to the GTA through the Mainline still at risk in consequence of this project, given the term sheet?

MR. CLARK: I think the answer is there's less risk as a result of this than there is in the absence of this.

MR. SHRYBMAN: And this is the term sheet or the entire endeavour?

MR. CLARK: I would say the entire endeavour, because as I've stated earlier, we consider this a collective solution for the marketplace.

MR. SHRYBMAN: Can I ask you just more specifically about the first sentence in this paragraph? Which is that:

> "Any loss of firm gas supply service on the TransCanada Mainline is entirely the choice of Enbridge and Union."

And explain that answer in terms of your plan to proceed with the Energy East project.

MR. CLARK: Well, we've said, both here within this proceeding and externally, that to the extent the market has firm contracts with us and is prepared to make the commitment to use and pay for the facilities, through firm service or firm contracts, we'll make sure that capacity is available and reliable for the marketplace.

MR. SHRYBMAN: And how would you do that if the largest of the pipelines that now comprise the TransCanada Mainline is converted to oil service?

MR. CLARK: We have adequate capacity net of the removal of the pipe for Energy East to meet those firm markets. In the Eastern Triangle there may be a marginal shortfall. We talked about that yesterday. That remains to be seen once we know how people renew. But if the current firm contracts all renew, we're short potentially a couple hundred million a day, but we can add back that capacity at a cost that is less than the amount of capital that will be removed from the rate base of the Mainline.

So I think we'll be able to make sure firm contracts receive the service they have contracted for.

MR. SHRYBMAN: Union Gas, do you agree with that response?

MR. ISHERWOOD: On Energy East?

MR. SHRYBMAN: Yes.

MR. ISHERWOOD: Our view on Energy East is it's not part of the settlement. It's been excluded for a reason. And as we mentioned yesterday, we'll be taking it to the NEB and we'll have that debate there.

MR. CLARK: I should qualify my comments, that this is all based on our current information. And as I said yesterday, there is a lot of water to go under the bridge still, to address all the type of issues you are talking about.

So I think Mr. Isherwood's comments are correct. This will be an issue really for another day.

MR. SHRYBMAN: But Mr. Isherwood, in response to information requests from the Board about the impact of the Energy East project, I believe it was Union Gas's position that the crude oil pipeline conversion would leave Ontario and Quebec markets short of natural gas pipeline capacity to meet current market needs. Wasn't that your position?

MR. ISHERWOOD: I think it really depends on the configuration of the project, which is why it's outside the scope of this agreement.

MR. SHRYBMAN: Well, the Board asked a question and you answered it. Is this still your view, or not your view?

MR. ISHERWOOD: It depends on the configuration of the Energy East project, how it gets built.

MS. GIRIDHAR: I think the point is, Mr. Shrybman, we don't have enough information at this point in time to evaluate the Energy East project and we're looking to receive more information, and TransCanada has indicated that they need to do some more work.

So it's an evaluation for another day.

MR. SHRYBMAN: We have heard evidence in this proceeding that the Energy East project would remove a particular -- the newest and largest of the pipes that now comprise the pipeline. We know that, or do we?

MS. GIRIDHAR: Yes. So Enbridge did respond to say that to the extent that the GTA project -- in the event the GTA project did not proceed and we were left with no option but to contract for long-haul service to the tune of 700 a day -- which is what we've identified as the uncommitted portion of our 2016 peak day requirement -- that TransCanada had indicated that the capacity could be made available but that it would require remediation of their line, too.

So I do not believe there was a suggestion that the market could not be served. The point was there would be costs incurred.

MR. SHRYBMAN: Okay. Thank you. Can I next, then, TCPL, direct your attention to the second paragraph of your answer on this same page? And that is you state:

> "To the extent that the eastern LDCs choose not to contract for long-haul service on the Mainline, TransCanada may not maintain capacity that addresses WCSB supplies over time. Also please refer to the response to SEC 1. There is no requirement for TransCanada to maintain capacity above the level required for firm contracts."

Is this still your answer following the term sheet?

MR. SCHULTZ: Yes. Basically, we will ensure that the required capacity to meet our firm obligations to our customers is there, but that we won't necessarily if it costs money to maintain or create excess capacity. That's not the capital that we would be spending.

MR. CLARK: Perhaps I can add to Mr. Schultz's comments.

We talked yesterday about the NEB RH-003-2011 decision. In that decision the board said TransCanada does not have an obligation to serve. We fully acknowledge, though, we will serve firm contracts. We'll make sure the capacity is there. But to the extent we don't have firm contracts, we do not have an obligation to serve.

The board also instructed us to maximize our net revenues, which has two dimensions to it. First to try and increase revenue, but also to try and reduce costs, and to the extent we can reduce costs by reducing expenses through -- maintenance expenses on certain pieces of pipe that we don't need, we will do that. That's what the board expects us to do.

So I think what we're trying to -- the message we're trying to make clear here is that, to the extent people do not sign firm contracts, they should not expect that capacity -- that surplus capacity to be available in perpetuity. We will look at ways to either redeploy or to minimize costs, and that has some consequential impacts, in terms of availability of uncontracted supply.

MR. RHEAUME: If I may just add a quick comment from Gaz Métro's perspective. The LDCs and most intervenors in the RH-003-2011 case supported the fact that there was some under-utilized assets on TransCanada's system. TransCanada recognized that. And I think the board decision is clear, and everybody pretty much supports the idea that TransCanada would find more optimal use for assets that are under-utilized.

The reason why Energy East is not part of this terms of settlement is that it becomes difficult, then, to identify what's under-utilized, what isn't, what is necessary, what isn't. And if we knew exactly what the board -- if TransCanada had all the details about Energy East and we knew exactly what the board would decide upfront, then it would be part of the settlement. It isn't because there is uncertainty about that.

The thing from Gaz Métro's perspective is very clear is that we do recognize that TransCanada will -- and it's adequate that they would transfer assets to be better utilized if they are not necessary to serve the gas market.

The Régie at the issue right now, the Régie is aware that we do expect that from now on after Energy East there would be less extra capacity available, because TransCanada will try to minimize cost through more optimal use of its assets.

MS. GIRIDHAR: Mr. Shrybman, if I may just conclude by saying, you know, when we filed our evidence in December of 2012 we hadn't yet received the decision from the NEB, but it was pretty clear to us that the days of freewheeling capacity on the TransCanada system were likely over, and the Enbridge system is, you know, as I've mentioned a number of times, still relies on that kind of contracting for up to 25 percent of its peak day requirements.

So it's clear to us that we need to replace capacity that we were using on a discretionary basis, non-renewable basis, partial-year basis, with capacity that's year round and firm, because the NEB has confirmed that TransCanada does not need to serve customers, has no obligation to serve, first; and two, does not need to maintain capacity if customers won't sign up for it.

MR. SHRYBMAN: Thank you.

Can I ask you -- we are in the terms sheet. I can't find the obligation to provide service that you're describing, where shippers contract for long-term service.

MR. CLARK: I'm sorry, could you -- maybe I didn't understand your question. Are you referring to the comments I just made?

MR. SHRYBMAN: Yes.

MR. CLARK: Oh, I don't think you'll find that in the settlement. What I'm telling you is that TransCanada affirms that it will ensure that there's -- I guess the monkey wasn't listening to the organ grinder here.

[Laughter]

Yes, so in the settlement terms sheet on the front page -- first page, the second bullet under "high-level principles", and I'll read it to you:

> "Capital expansions in the EOT will be promptly pursued to meet market needs and will be added to the EOT rate base. TransCanada agrees to accommodate the request of EOT shippers that request additional short-haul capacity during the term of the settlement and reasonably thereafter, according to industry practice."

So I think that's a partial answer to your question. But as TransCanada's representative, or one of TransCanada's representatives on the panel here, what I am telling you is that as a gas transmission service provider, to the extent we have firm contractual arrangement -- or contractual arrangements for firm service, we will ensure that that capacity is available and provide it in a safe and reliable manner to the market to the extent they have contracted for it. It's as simple as that. It's a contractual obligation.

MR. SHRYBMAN: All right. Thank you.

I did see this in going through this document, trying to find the commitment that you are speaking of, "re" this provision. It doesn't seem to me to be very precise, and I am --

MR. CLARK: Yeah, I think the point you're focusing on is really one about the words I used rather than what's in the settlement. And as I say, it's a contractual arrangement with our customers, and to the extent we have a firm -- a contractual arrangement for firm service we will provide firm service.

MR. SHRYBMAN: Okay. I would like to ask you then, finally, to direct your attention to the last of the paragraphs in response to this information request from the Council of Canadians, in which you state:

> "As a result of the potential reduction of Mainline capacity, accessing WCSB supplies, the eastern LDCs become almost totally dependent on Union Gas system for gas supply. Although the Union Gas system accesses gas supplies from different basins, an operational incident on the Union system or on the Vector pipeline could make these supplies unavailable to eastern LDCs. This is a reduction of supply diversity."

So you haven't already answered this question, and with specific reference to the possibility of an operational incident, can you tell me whether or not this is still your view or how it has changed as a result of the terms sheet?

MR. CLARK: I think we have covered this ground, and as we observe, with a terms sheet there is a contractual commitment to maintaining long-haul contracts. Therefore, there will be a greater level of supply diversity versus a circumstance that would exist in the absence of the settlement agreement.

MR. SHRYBMAN: The settlement agreement lasts only through, as I understand it -- is it through 2020, in terms of the economic underpinnings to maintaining service on the Mainline?

MR. CLARK: The settlement essentially has two time horizons, in that one is to the end of 2020, the other is to the end of 2030. The contractual commitments to maintain long-haul service continue through to the end of 2020.

To the extent the LDCs choose to extend their contracts or renew them post that period, they will have that opportunity, and how they -- what they choose to do at that point in time will determine what level of supply diversity exists post-2020.

MS. GIRIDHAR: In addition, Mr. Shrybman, the commitments to the Eastern Ontario Triangle continue until 2030. So the eastern LDCs are making commitments to the TransCanada system until 2030 and until 2020 for just the long-haul path, with the option to reassess at that point.

MR. SHRYBMAN: Okay. Thank you very much. Those are my questions, Madam Chair.

MS. CHAPLIN: Thank you. We will take the morning break now for 20 minutes.

--- Recess taken at 10:33 a.m.

--- On resuming at 10:55 p.m.

MS. CHAPLIN: Please be seated. Mr. Mondrow, I think you're next.

PRELIMINARY MATTERS:

MR. CAMERON: Madam Chair, if I could make a just a preliminary –-

MS. CHAPLIN: Sorry, Mr. Cameron. Yes?

MR. CAMERON: A logistic request. We've looked at the time estimates, and cognizant of your announcement this morning of having to get through the day, what we would -- certainly TransCanada would very much appreciate is if this panel could get done before we break for lunch. Everybody here is flying back to Calgary, and it is doable. There is about an hour and a half of time.

MS. CHAPLIN: Okay. Let's press on, then, Mr. Cameron.

Mr. Mondrow? Oh, Mr. Brett, are you going to go next?

MR. BRETT: We made a switch, subject to your approval.

MS. CHAPLIN: Please proceed.

CROSS-EXAMINATION BY MR. BRETT:

MR. BRETT: Morning, panel. I have three brief informational questions to begin with.

Last week, Mr. Bell told us that you were going to have an open season that would be launching very soon, and I think he said at the technical conference that the earliest it would be over would be the end of October.

Now, I detect a certain slippage from yesterday and the comments made yesterday about the schedule from what Mr. Bell told us last week. That's probably par for the course, but can you give us a -- Mr. Schultz, could you give me just a quick, high-level update on the open season?

Have you started? Have you issued documents? When do you expect to have the replies and when do you expect to be able to tell us -- or tell us when you have the results of the open season?

MR. SCHULTZ: Yes. It probably has slipped a little bit in our minds. The -- and I think the open season I'm assuming you are referring to is the 2016 new capacity open season.

MR. BRETT: That's correct.

MR. SCHULTZ: So we don't a specific, concrete date that we're targeting. I think we're -- we will run it for sure prior to the end of the year, but it will be either late October or probably most likely in November.

MR. BRETT: So you would expect to have -– then how long do you have to leave it out under your tariff?

MR. SCHULTZ: To be honest, I don't remember the exact amount of time. It's not a lengthy process.

MR. BRETT: You expect you would have results by the end of the year, then. You'd know who has responded to your 2016 open season. You'd know how much capacity had been asked for. Is that fair?

MR. SCHULTZ: Yes. We would have the results to us. However, successful bidders then have a length of time to enter into precedent agreements, and that tends to be a somewhat lengthier process.

The actual formal knowledge of who was willing to sign a contractual obligation or enter a precedent agreement with us typically would take six weeks or so, so in all likelihood --

MR. BRETT: After the --

MR. SCHULTZ: -- after the close of the open season.

MR. BRETT: When do you typically make announcements of this? Do you make announcements at the close of the open season or after the precedent agreements have been signed?

MR. SCHULTZ: Only after the precedent agreements have been signed.

MR. BRETT: Just as an aside, I take it you never -- after the precedent agreement's signed, then you have a -– you begin planning your construction, but you don't start to construct until after a contract has been signed; is that right?

MR. SCHULTZ: That's right. The precedent agreements, part of what they cover is the financial accountability for the development costs should the shipper choose to basically withdraw from the --

MR. BRETT: My second question is to --

MR. CLARK: Mr. Brett, could I just clarify one of Mr.

Schultz's answers? I don't want to give you a misunderstanding.

We wouldn't actually start construction until receipt of permits from the National Energy Board. We would commence field consultation, that sort of thing, but the actual moving of dirt, et cetera, would not occur until we've got regulatory approvals to construct the facilities.

MR. BRETT: And for that, you would have signed contracts?

MR. SCHULTZ: Absolutely, yes.

MR. BRETT: With respect to the payments that you talked to Mr. Poch about earlier, the payments to TransCanada over the 16 years, are all those payments of equal amount, Mr. Schultz? Is that the plan?

It is sort of a principal and interest amortized over 16 years, 16 equal payments?

MR. SCHULTZ: No, I think it's just that the -- the amount that is being deferred through the 15 to 2016 is actually increasing, and then there's an amortization effect. But the actual specific maths in terms of how that works out into an annual amount, I don't really have that knowledge.

MR. BRETT: You haven't determined that yet?

MR. SCHULTZ: Certainly I specifically don't have that knowledge.

MR. BRETT: Okay. I guess that's one of the things that you would be firming up in the next little while.

The last informational question was that you had --

you had mentioned that when you were putting together the indicative tolls for the next five years, you had assumed a certain level of non-renewal of contracts by northeastern U.S. shippers. Do you recall that?

MR. SCHULTZ: I think we said of shippers, some of which would be to the northeast U.S..

MR. BRETT: Could you advise us what level of non-renewal did you assume with respect to those shippers?

MR. SCHULTZ: I don't have the specifics.

MR. BRETT: Would you be able to do that, get that for us, an undertaking?

MR. SCHULTZ: I don't know that there's a lot of merit in that. Ultimately, the -- I think we're using our best estimates, and that's one of the parameters that we're probably looking to continue to refine over the next while. So I don't know that we even have a specific value that we could --

MR. BRETT: But in terms of putting out tolls that are more than indicative, or even indicative tolls, you've said that you made an assumption about that. So you must have taken a number to put into your indicative tolls; is that right?

MR. SCHULTZ: Yeah. There's assumptions embedded in this.

MR. BRETT: All I'm really seeking to get is that number that you put in. Like, say, thousands of --

MR. SCHULTZ: Again, we will produce those numbers once we've consolidated and come up with a formalized, final result.

I don't think we're prepared to provide interim estimates of things that we're refining. I don't think there's a lot of specifics to this application or this proceeding. The differences are -- the nuances there, I don't think are material to what's being discussed.

MR. BRETT: When would you expect to be able to provide those numbers, that number?

MR. SCHULTZ: When we provide the final settlement agreement, there will be schedules included in that that we're contemplating, that would basically identify the billing determinants and the volume assumptions that are being utilized.

MR. BRETT: I think you said you do that in early November, is it, was your best estimate? Or...

MR. SCHULTZ: Yeah, towards the end of the month or early November. That would be the time frame.

MR. BRETT: Okay. If I can ask you to turn up the settlement agreement, most of my questions will relate to the settlement agreement and its impacts on the case here.

And the first -- I would like you to turn up page 6, please, of the settlement agreement.

Do you have that?

MR. SCHULTZ: Yes.

MR. BRETT: I'm looking at the fourth bullet on page 6. It says -- Mr. Schultz, this question is to you initially. I would like your answers on a short series of questions here.

It says here:

"Enbridge will continue with its open season for segment A, but will not award transmission capacity until one of three conditions occur."

And then it lists the three conditions, and the first one is the settlement agreement is approved by the NEB, the second one is that a mutually acceptable alternative is approved by the NEB. Those are clear enough.

The third one is:

"The NEB delivers an alternative ruling on market access and the associated terms and conditions that all parties" -- I emphasize "all" -- "agree is inconsistent with the principles of this settlement, and the parties agree that this settlement should therefore be terminated."

So I'm reading this to say that all four parties, with respect to condition 3 all four parties must agree on the characterization of the NEB's decision. So that if, for example, TCPL were not to agree that the board's decision was inconsistent with the principles of the term sheet, but the LDCs were to agree -- or some of them were to agree -- then my reading of this is that Enbridge could not proceed with its open season. In other words, they could not allocate transmission capacity. Am I right in that? Is that your view how this reads? Mr. Schultz, I would like your view first, perhaps, and then we could -- I'm going to ask Ms. Giridhar to comment later.

MR. SCHULTZ: Yeah, I'm sure we can consult each other before we provide you...

[Witness panel confers]

MR. SCHULTZ: Yes, I think -- and maybe it's a bit of a similar comment to what Mr. Clark provided earlier today, but ultimately this is a terms sheet, this isn't a formal legal agreement, and as we're translating this agreement into better language, more precise language, I think the clarity of that, how to interpret a clause like this one, will become more clear, so I think this is one of those issues that's probably still being refined into the formal agreement.

MR. BRETT: All right. But you are saying -- as it reads now would you agree with me that all parties have to agree on the character of the NEB decision before Enbridge could proceed to release capacity?

MR. SCHULTZ: Again, those are the words, but I think ultimately the intent here was to ensure that we, as a group, all were committed to trying to find alternative solutions; to the extent that we made an application to the NEB and for some reason the NEB didn't approve that application, that the group was committed to trying to continue to find alternative solutions --

MR. BRETT: Yes, I understand --

MR. SCHULTZ: -- that's what we're trying --

MR. BRETT: All right.

MR. CLARK: Mr. Brett, I think really the issue that you're describing is, it illustrates a commitment that the collective four organizations have to the high-level principles that are described at the beginning of the document, so we are motivated and driven to find a solution that delivers on those principles.

MR. BRETT: I understand that. And we'll get into that a little bit more as we go forward here.

If you could turn up page 9 of the settlement agreement next, bullet two in particular. And this is -- this discusses the -- what happens in the event that the settlement agreement is not approved by the OEB (sic), and it makes two points here, which I just want to cite and ask you about.

It says first of all:

> "The settlement agreement will terminate 90 days after the decision."

And then it goes on to say the parties will use that 90-day period to do two things, one of two things. First is to try and devise an alternative plan that they think would get NEB approval, and/or they would file a joint letter at the NEB regarding the framework necessary -- I'm going to read this:

> "...to allow for market access for new supplies in eastern Canada and new capacity requirements on the eastern TransCanada Mainline in a manner that balances market access with cost recovery associated with new infrastructure investments. The LDCs commit to remain consistent with principles of this terms sheet in which the LDCs support TransCanada having a fair opportunity to

recover its costs, including lost revenues associated with ships from long-haul to short-haul service over an appropriate period of time. TransCanada commits to remain consistent with the principles of this terms sheet in which TransCanada supports the need for market access to new supplies under a reasonable and fair tolling framework."

Now, then it goes on to say, if we just scroll this up a little bit, whoever is working the screen -- okay. It goes on to say -- sorry, the other way, down, yeah.

The last little proviso here is:

"Provided that the obligation of Enbridge to not award any transmission capacity on segment A will survive until one of the conditions described in the Parkway-to-Maple issue section", which is the section we were just dealing with, "is fulfilled."

So I would read that -- I'm reading that, Mr. Schultz, to say that, in any event, regardless of what happens, whether the agreement is terminated, this commitment -- Enbridge is not able to proceed to award any transmission capacity until all four parties agree, as we saw back on page 6, that the -- that whatever the NEB came up with is acceptable, or is an acceptable proposition. If there is any disagreement, then Enbridge can't proceed. Do you share that view?

MR. SCHULTZ: I think it's basically the same comments

I just gave you previously, which is that functionally this is a commitment of the four parties to continue to try and work together to find a resolution that is acceptable to the NEB and to not kind of embark on a unilateral path prior to exhausting those efforts.

MR. BRETT: All right. The -- can I ask you then to -- I would like to ask you to go back to page 1 and bullet two, the high-level principles. And the second of your high-level principles on page 1 says that capital expansions -- I'll just read that:

> "Capital expansions in the EOT will be promptly pursued...

This is one of TransCanada's commitments, obviously.

> "...to meet market needs and will be added to the EOT rate base. TCPL agrees to accommodate the requests of EOT shippers that request additional short-haul capacity during the term of the settlement and reasonably thereafter."

Now -- so you're basically saying there that in the new world you're going to -- as you said, everything changes, and one of the things that changes is that you're going to sort of return to your traditional business of building transmission, and you will build promptly to meet market needs, based on having reasonable tolls; correct?

MR. CLARK: Yeah, I think that's part of it, Mr. Brett. Really what we've done with the settlement is we've addressed a number of the issues that were emerging as a result of the restructuring proposal decision, as well as some of the applications that were made by the LDCs. Later in the settlement document you'll observe that there are -- GMI and Union withdrew their application for an interconnection at Vaughan, a variety of other things that we're staging for what we considered an unacceptable business circumstance for the Mainline.

MR. BRETT: And I think that --

MR. CLARK: So what we have agreed to do in the settlement is to put together an arrangement that allows for increased short-haul capacity to be made available and to access our pipeline, provided that the financial circumstance of the Mainline is taken into account. One of the threats --

MR. BRETT: I understand that. I think that's the basic deal, and I think that's --

MR. CLARK: Yes, excuse me, I would like to just finish --

MR. BRETT: Well, I'd just -- I would like you not to take five minutes, if you don't mind, because we have -- we're under very tight timelines here. I'm asking specific questions. You have been making a lot of interesting commentary on the way along, but I don't have time to listen to lengthy. We all understand the basic nature of the deal, I think.

MR. CLARK: That's my concern. I don't know everybody does, so I'm here to try and help yourself and the Board understand the details, to explain the --

MR. BRETT: Well, I understand the nature of the deal, and I think the Board does by now too. But if I can go along here, I want to ask you to take a hypothetical case, Mr. Schultz. And that is that, given your commitment to build -- and you've been build -- you have a commitment to build; you talked about building the Kings North pipeline, and I understand that you're already working on that -- I want you to assume with me that the Board -- let's assume for the moment that the Board were to decline to approve the transmission portion of Enbridge's segment A, despite your support and everybody else's support. You've all supported each other's projects. I understand that.

But let's suppose the Board declined to approve the transmission portion of segment A or all of segment A. I take it in those circumstances TCPL, if requested, would build on the Parkway-to-Maple route to accommodate the LDCs' needs; is that correct?

MR. SCHULTZ: Well, I think in that hypothetical scenario we would go back to our customers to find out what solutions they would like us to continue to pursue. So I don't know that we would be unilaterally making that choice.

The customer contracts, the Union and GMI capacity that we're intending to build Kings North for, we would need to revisit with them what kind of solutions we should --

MR. BRETT: No, fair point, but I'm assuming that you did you that and that you were –- and that they were to give you some sort of a request.

You would not -- you would not refuse to build in that circumstance? In fact, would it not be the case that you would ensure -- you would take it upon yourself, if requested, to ensure in some fashion that Enbridge would be able to obtain gas from TCPL at Albion; is that right? By one method or another?

MS. GIRIDHAR: Mr. Brett, I think we need to understand --

MR. BRETT: Excuse me. I would like to get Mr. Schultz's reply first, and then you certainly can chip in your 2 cents' worth.

MS. GIRIDHAR: I just wanted to say Albion is not a point of the TransCanada system. It is a gate to --

MR. BRETT: I understand that. We all understand that, but I'm asking them a question.

[Witness panel confers]

MR. SCHULTZ: So I think ultimately we would look to find a solution that met the needs of our customers. We would attempt to ensure that we understood what those needs were, but to the extent that we continued to have shippers who wanted us to add capacity, we would try to find a solution that would accommodate that.

It may or may not look like the proposal that's in front of this Board now, as in it may not extend down to Albion or not. That would be something that would have to be determined. So there may be some differences if the projects weren't approved as applied for, that would affect the overall solution.

MR. BRETT: So it -- all right. I understand that. Now, you are -- so that you would have -- I take it you would look at different options, and you would look at the cost-effectiveness of the relative options that you had to provide that service; is that right?

MR. CLARK: Mr. Brett, you started your question with a -- the word -- this is a hypothetical.

MR. BRETT: It was very expressly a hypothetical; that's the basis of my question.

MR. CLARK: I understand that, and frankly it's a scenario that doesn't actually make a lot of sense to me.

We've agreed to move forward on the Kings North project, predicated on the assumption that our customers want us to do that. And we'll certainly discharge our obligations under the arrangement, we'll make sure that happens, but to the extent our customers are reliant on capacity that would be made available through the full scope of the Enbridge project, and if that full scope wasn't available for them, I expect customers might say: Gee, we don't want to move forward on that project at that point in time, until they have developed some alternative solution.

All that sort of thing would be factored into any NEB decisions on the Kings North project in any event.

MR. BRETT: That's one potential scenario, but let me suggest to you this.

In your initial -- a couple of points. One, would you agree that your initial -- one of your initial plans; there have been many, but one of the initial plans with Enbridge was to construct a jointly owned pipeline on the Bram West-to-Albion route; correct?

MR. CLARK: Yes.

MR. BRETT: And you started that plan after some analysis, as I understand your evidence and Enbridge's evidence, because it would be complicated from a regulatory point of view. Two different owners of a pipeline with two different regulators; right?

MR. CLARK: That's correct.

MR. BRETT: So you then settled on taking transportation capacity on a line that was built by -- to be built by Union, but you were going to take it on an exclusive basis and that turned out not to be consistent with the STAR guidelines.

MR. CLARK: I'm not sure I agree with you there. That's a matter of --

MR. BRETT: Well, that's the case. That was decided by this Board, and it was admitted by Enbridge at a certain point.

MR. CLARK: I'm just telling you I disagree with your characterization. That's all.

MR. CAMERON: I don't recall a decision by the Board on that.

MR. BRETT: Well, I recall an admission by Enbridge. I recall a motion by -- I don't want to get into a big debate about this, because it's history that's very well known.

So let's say the Board didn't undertake a decision, but Enbridge certainly made an admission that it had made a mistake and that its pipeline had to qualify and it did not qualify with the STAR guidelines. The STAR guidelines applied, so it proceeded for that reason and some others to terminate -- purport to terminate the MOU. So let's move beyond that, because the question I really have for you had nothing to do with that.

Would you agree that the TCPL build, let's suppose that you built as we discussed, you, working with your LDC partner, with Enbridge, to put together an alternative build, whereby you could help them, you could get gas to them at Albion.

I'm not going to try and designate, obviously, how do you that. That's your business. It might involve building a spur line from Vaughan down to Albion, sort of a reversal of the Kings North. It might involve your seeking to use Enbridge's utility corridor to build from Bram West over to Albion, as I think you intended to do initially.

But never mind how.

But in the event that you did that, would you agree with me that that solution, with you building, would permit Enbridge to access gas supply at Dawn or Niagara, the advantage it seeks from doing that, and also without having to build its own transmission system or distribution system, without having to build its own transmission line.

In other words, you could work out, as I understand it after -- would a solution where you built in one fashion or another from Parkway to Albion allow Enbridge to get the advantages it seeks in terms of gas supply diversity and transportation cost reduction, without having to build the transmission line themselves? Is that a fair characterization?

MR. SCHULTZ: Well, I think that was very long. I didn't know that I can agree with everything that was in there, but ultimately I think the -- maybe what I would suggest is that the settlement agreement we have, the agreement that we've come to, has a number of components. And having Enbridge build and provide transportation capacity to us is one of those aspects of that agreement. So that's what we would be intending to adhere to.

In the event that certain aspects, facility applications, weren't approved, I think there are other solutions that could be explored. I don't know what the form of them ultimately might be. I think we would try to find a rational, logical outcome that met the needs of everybody, TransCanada shippers and stakeholders, as well as Enbridge's.

But really it is a lot of speculation to sort of go through the various scenarios.

MS. GIRIDHAR: At the risk of repeating myself, I think we have a lot on the record that demonstrates that the design of segment A provides for the rational expansion of the transmission and distribution system in Ontario, and is entirely consistent with the Board's statutory objectives.

MS. GIRIDHER: All right. Well, that is your view and I thank you for that.

I think you would agree that -- all of you, I suppose, but TransCanada, because of your intimate knowledge and experience with the NEB -- that this agreement that you've struck, this settlement term sheet, as you keep saying, it changes everything. And as Mr. Cameron said the other day, it's near miraculous that the agreement was reached.

Be that as it may, it is a significant, comprehensive agreement and it rewrites -- it would rewrite, if agreed to by the NEB, substantial parts of that decision, of the NEB's RH-003-2011 decision; correct?

MR. CLARK: Yes. I think that's consistent with what we've already described.

MR. BRETT: In other words, this isn't a matter of -- this isn't a matter of a plain vanilla proposal to change tolls -- the normal sort of TransCanada toll application or the LDC toll application as we understand it where they come in and say, Well, we have to have bump our tolls because our costs have increased somewhat or our billing determinants have decreased somewhat. This is different than that. This is very different than a, what I'll call a plain vanilla toll case. In fact, it's not a toll case, I guess, at all in a way. But it's different -- in any event, it's different from a plain vanilla toll case. Is that not fair?

MR. CLARK: Well, I'm just not quite sure how you define a plain vanilla toll case.

MR. BRETT: Well, I mean --

MR. CLARK: It's different than a general rate application.

MR. BRETT: All right. That's good enough. And the NEB has -- we don't know, of course, no one knows what the NEB will do with this. Your terms sheet provides that one of the things you're going to do in your -- in transposing from a terms sheet to a settlement agreement is to address circumstances where the NEB approves part of this but not all of it; correct?

MR. CLARK: I think that would be a bit of a mischaracterization. I think this --

MR. BRETT: Well, I think we should read that, then. I think there is a section in here that says just that, and I guess the question will be --

MR. CLARK: Mr. Brett, maybe I can just truncate this.

MR. BRETT: Well, maybe --

MR. CLARK: What I'm trying to describe is that will be one component. I don't think the transposition of the terms sheet to more fulsome documentation will be focused particularly on that. That would be a relatively small component. There's much larger scope to be dealt with, so I --

MR. BRETT: Fair enough, fair enough, but also, is it not -- it's quite possible, is it not, that the NEB would look at all of this and say, Well, we like this part and this part, but not this part? It's quite possible that they wouldn't approve all of it.

MR. CLARK: I don't know. The --
MR. BRETT: So far we don't have any agreement from you or any words from you, certainly in the terms sheet, that says -- like we use here in our settlement agreements in Ontario that we submit to the Board that says, If you don't accept part of this it's no deal. That doesn't -- those words don't exist.
MR. CLARK: Well, I think I said earlier today that I fully expect there will be words in the application that say this is presented as a comprehensive settlement that contains balance of interests of the parties that agreed to it, and there are puts and takes; therefore, it needs to be considered as a whole. So I fully expect those words to be in there --
MR. BRETT: Fair enough. They're not in here now, is all I'm saying.
MR. CLARK: Well, I'm telling you -- I'm giving you my opinion of what I expect to be in there.
MR. BRETT: That's fine.
MR. CLARK: I want to go a little step further here. We've got a long history with the NEB and how they approach settlements, and just recently -- we were recently before the board, and the panel Chair -- the board Chair actually -- the board panel Chair went out of his way to observe that the board very much encourages settlements and sees that as a desirable way to go about business.
So my impression is that you're seeding doubts about whether the board would approve this settlement, and I

think there's a good probability the board will approve the settlement, given that the parties to the agreement include the majority of the ratepayers on the Mainline.

MR. BRETT: Do you agree with me that the -- let me ask it this way, and I'm going to finish up with this, because I've only got a couple of minutes.

Are you familiar with something called the Halloween agreement of October 31st, 1985? You've been around for a while. Are you -- or Mr. Isherwood maybe is another one that might be familiar with it. I don't know that all of you would, but --

MR. CLARK: Well, unfortunately, despite the grey hair on my -- on the roof, my youthful appearance is somewhat disguised. That was well before my time. I'm aware of it, but I don't know a lot of the details.

MR. BRETT: All right. Mr. Isherwood, were you aware of it?

MR. ISHERWOOD: Yes, I am.

MR. BRETT: Are you fairly comfortable discussing it at a very high level?

MR. ISHERWOOD: I would say it's 25 years ago, so I --

MR. BRETT: Yeah.

MR. ISHERWOOD: -- level of comfort would be a bit --

MR. BRETT: All right. Well, it's 25 years ago for me too. But the only reason I raise it is that it was a sort of a broad agreement in some ways similar to this in the following way. Now, in the following way, it was an agreement that was initially reached among governments, excluding the Government of Ontario, I might add. Do you recall that much?

MR. ISHERWOOD: Yes.

MR. BRETT: And then the NEB held a decision -- held a hearing at which they basically allowed direct purchasers to displace gas that had been previously bought by LDCs without, shall I say, putting penal provisions in the transportation toll.

Is that sort of a high-level affair, characterization at a high level?

MR. ISHERWOOD: I think it took several decisions to get there, but -- it took a year or two for -- and two different NEB decisions to get there --

MR. BRETT: That's right.

MR. ISHERWOOD: -- but ultimately it got there.

MR. BRETT: Well, that's right. And I'm sure you know a good deal more about this than I, Mr. Isherwood. But then what happened is this Board -- this Board -- you'll agree with me this Board had two hearing -- two series of hearings, one in 1986 and one in 1987, where they looked at the impact of the NEB decision and the impact of the decision -- the Halloween agreement, which really had to do with making market -- opening market access. It was all about market access for the customers of utilities.

And it was secondly, I think you would agree, all about, for want of a better word, security of supply for eastern Canadian buyers. In other words, it also dealt with the export issue.

MR. ISHERWOOD: I don't recall the export issue or --

MR. BRETT: All right. Well, I don't -- it's not central to what I was going to say. But I take your point.

But in any event, this Board felt that it should have hearings to examine the detailed implications of that agreement and the NEB's decisions on the welfare of customers in Ontario, and you agree that they held a series of -- two hearings, one in '86 and one in '87 -- one they called an interim proceeding, the other they called a final proceeding, I believe.

MR. ISHERWOOD: So coming out of the Halloween agreement, as you mentioned, was the ability for customers, largely at that point industrial customers, to go direct purchase, and to enable that to happen there had to be new services created within the utilities. In our cases we had a T service -- or transportation service agreement or arrangement and a buy/sell arrangement, which facilitated that. But it was really trying to find the right service, if you want, within the utility to allow that transaction -- or that transition to happen.

MR. BRETT: There was a -- there was a -- it was -- yeah, I think that your last phrase, to allow the transition to happen, is one I would pick up on. And my question really is -- and it's to anybody on the panel -- why would it not be inappropriate -- wouldn't it be appropriate for the NEB -- for the OEB to hold its hearing on the consequences of this comprehensive, everything changes, near-miraculous agreement among the parties?

Wouldn't that make sense?

MR. ISHERWOOD: I would disagree, Mr. Brett, and I think a lot of the hearing that was taking place back in '87-'88 was really around the cost of gas, the gas supply side of things. There was really no work being done at that time, in terms of TransCanada toll levels. It was not within the jurisdiction of this Board to do that.

What was in the jurisdiction of this Board, to set gas supply -- the gas cost in Ontario, and a lot of the hearings back then were dealing with that aspect of it.

MR. CLARK: Mr. Brett, I observed you've craftily chosen some words that we've already used here to try and draw some sort of similarities between the arrangement you described and what is a simple facilities application here, and I think that's a bit of a long reach. The Halloween agreement has -- as you describe it, was fundamental restructuring of how customers have commercial access to a commodity. We're talking about the construction of some facilities here.

So we're talking about physical access to markets and physical access to supply, versus a complete restructuring of how commerce is undertaken. So I think --

MR. BRETT: You're also talking about billions of dollars of transfer, financial transfer, from eastern customers to TransCanada.

MR. CLARK: Well, we're here talking about a facilities application. So as I said, I think it's a long reach.

MR. BRETT: All right. Those are my questions. Thank you very much.

MS. CHAPLIN: Thank you. Mr. Mondrow, are you...

MR. MONDROW: I think so, Madam Chair. Thank you.

CROSS-EXAMINATION BY MR. MONDROW:

MR. MONDROW: Good morning, panel. Mr. Clark, Mr. Schultz, and Mr. Rheaume, perhaps, to be clear, I'm here representing IGUA today. This is not APPrO second-questioning at the NEB for APPrO, so just so we're clear for the record.

MR. SCHULTZ: The ghost of Christmas past, perhaps?

MR. MONDROW: You could see it that way, I suppose. Which ghost? Past? Better than future.

Gentlemen, I just want to follow up on one thing, Mr. Clark, you were just talking about, and that is the prospect of approval of the settlement agreement by the NEB. And you said there's a high probability of that, and in support of that, you cited the agreement of the major shippers in the east.

And I don't dispute that characterization, except to ask you to acknowledge that those major shippers supporting you don't actually pay any portion of the costs resulting from these agreements.

MR. CLARK: I'm not sure I can quite go that far. I mean, the LDCs have to obtain approval from their respective regulators to recover costs, and that's always a matter of debate. So subject to regulatory approval from their regulators, I would agree with you.

MR. MONDROW: Thank you.

And I think Mr. Brett attempted and fairly did characterization the RH-003-2011 decision of the NEB and the extent to which your agreement effectively rewrites it. And I think you agreed with that.

And you would agree, I hope, that that decision was a major, perhaps unprecedented decision?

MR. CLARK: I would agree with that.

MR. MONDROW: Thanks. I want to follow up on another matter, Mr. Clark, that you spoke about yesterday with Mr. Elson. And as I listened to your discussion and read the transcript, Mr. Elson confirmed with you in reference to your earlier prefiled evidence that prior to the settlement agreement, the situation that we were in regarding these projects was that -- according to TransCanada and your prefiled evidence -- was that the shift from long-haul to short-haul sought by your eastern shippers would result in a revenue shortfall to TransCanada, and ultimately recovery of that revenue shortfall by TransCanada would increase tolls and render the projects uneconomic. And this was before the settlement agreement. And you agreed with that.

Would you accept that characterization of your evidence?

MR. SCHULTZ: I think, in principle, that's correct. Prior to the settlement, that was our position. I'm not sure I can agree with the precise words you used. I just --

MR. MONDROW: Well, that's fine. In principle is fine. Thank you.

And then you were anxious to move to the post-settlement world with Mr. Elson, and you did eventually do that. And I'm not sure I quite caught the nuance.

Mr. Elson did confirm with you that now, with the settlement, the revenues that TCPL would otherwise lose as a result of the same shift from long-haul to short-haul will be recovered. And I'm not sure I understand why the projects are now not uneconomic if they were uneconomic before.

MR. CLARK: Let's go step by step here.

I think the discussion I had yesterday noted that on the near term, the consequence of a shift from long-haul to short-haul would be addressed by virtue of the settlement.

Post-2020, that's not so clear, whether we would be able to recover the costs of a shift from long-haul to short-haul, particularly on the Prairies and the NOL, because now with the settlement or the certainty of recovery of those costs -- well, our ability to recover those costs from Eastern Triangle shippers is -- has been truncated.

I think without the settlement, we would still be making the arguments that our shippers overall have the responsibility for -- responsibility for provision of a reasonable opportunity to recover our prudently incurred costs. Just rolls off your tongue, doesn't it?

So what we've done with the settlement, we've given the markets certainty that they will no longer have accountability for those costs to the extent they do not use the Prairies and NOL.

So I think the point I'm trying to make is in the near term we have addressed our concerns about the shift from long-haul to short-haul. Over the longer term, though, those issues are still there. In fact, the -- part of the value that the settlement brings to the Eastern Triangle is that it's clear that markets there will no longer have accountability for those costs post-2020.

MS. GIRDHAR: Maybe I have to –

MR. CLARK: So –- sorry. We're at an impasse here.

[Laughter]

MS. GIRIDHAR: I wasn't sure if you had finished, but I was going to jump in with a really quick comment. Thank you.

Again, without repeating anything that was said in the past, I just want to direct you to a couple of things, Mr. Mondrow.

One is our undertaking response, J6.X, that factors in the implications of the settlement agreement in terms of the impact on our gas supply portfolio in the context of the savings that the project brings around, and access to the EDA. And you will see under a range of scenario the project is economic.

I just do want to also point out this undertaking response very comprehensively addresses clause number 14 of the amendment to the EBO-134, that we take into account explicitly the impact on transmission systems of facilities that are planned in Ontario.

So for all of those reasons, I would suggest that we have provided on the record evidence that the combination of the term sheet does preserve the economics of the GTA project.

MR. SCHULTZ: Mr. Mondrow, what I was going to just wrap with was when I talked to Mr. Elson yesterday, we were discussing whether the settlement reduces costs, and my position is that it does, because we've reduced our return on equity as well as made the contribution of $20 million a year for a period of six years.

So we had a little go-round this morning about a zero sum game, and I think Ms. Giridhar had described this as a gain because there is a reduction in the overall costs of the system that is delivered with the settlement.

We can go back and forth about, Gee, what does the analysis look like? To really do that, you have to some have certainty about what would have been the world in the absence of the settlement, and I think we've talked about we really don't know what that would -- where we would have been, say, post-2017 when things like the TSA and the long-term adjustment account was dealt with.

MR. MONDROW: Let me see if I understand this.

Prior to the settlement agreement, you acknowledged yesterday, the recovery of TransCanada's revenue loss from the shift from long-haul to short-haul would result in the projects being uneconomic.

Now there's a settlement agreement. Is it

TransCanada's position that the projects that -- that the settlement agreement provides for recovery of those lost revenues resulting from the shift long-haul to short-haul? Same revenue loss?

I understand your position as you've just stated it to be: Because we're contributing 20 million a year and dropping our ROE from 11 and a half to 10.1, the projects are no longer uneconomic as a result of our revenue loss recovery; is that your evidence?

MR. CLARK: I can't comment on the economics of the projects. I'll leave that to the LDCs to --

MR. MONDROW: Well, sorry, you commented on it before. You said they would be uneconomic.

MR. CLARK: I agree.

MR. MONDROW: And are they economic now in light of the settlement agreement?

[Witness panel confers]

MR. CLARK: Mr. Mondrow, I'm not sure we actually said the projects were uneconomic. The discussion yesterday took us through the analysis that we had filed in our supplemental evidence. And we said, given the circumstances prior to the settlement, we felt that was a reasonable --

MR. MONDROW: Mr. Clark, I don't have the time for going back and forth. Your evidence said, and I quote -- and you talked about this yesterday:

> "The savings that Enbridge and Union and Gaz Métro hope to realize with lower transportation

costs will evaporate, and Ontario consumers will have paid for more expensive Dawn-sourced gas to no benefit, resulting in a net loss."

Is that no longer the case?

[Witness panel confers]

MR. CLARK: Mr. Mondrow, the reason we were struggling here is I thought you attributed that as a quote to me.

MR. MONDROW: That was a quote in your evidence.

MR. CLARK: That's where we were getting crossed up, because I thought you had characterized those as my words.

MR. MONDROW: Sorry about that. That's what your evidence said. Was that true at the time? I think you acknowledged yesterday that you felt it was.

And I think you also said that it's no longer true because of the settlement agreement, and I'm trying to confirm what is it about the settlement agreement that makes that no longer true. Is it the $20 million and the ROE decrease? Are those the two factors we should pay heed to?

[Witness panel confers]

MR. SCHULTZ: So I think the issue is, is that we haven't -- and I think we did talk about this yesterday -- is that we have not rerun the analysis. TransCanada hasn't. Malini mentioned that Enbridge has looked at it from their own perspective, but ultimately the analysis that we did do, I think we commented that it was a marginal analysis looking specifically at those contracts and the revenues attributed to those contracts. It wasn't a comprehensive analysis that looked at the full implications of all of our revenues and costs, the changes to the costs being part of the equation, but I think there's redistribution, the allocation of revenues, who's paying for which of the increased toll charges, what percentage are being borne by which constituents, which customers of TransCanada.

So I think the perspective has changed, and I don't think it's -- the ability to sort of just do it quick, is this still true -- I think we commented yesterday that we felt things have changed and that the net result of doing the settlement is positive overall, compared to what it was previously.

MR. MONDROW: Mr. Schultz, you said three things. You said the costs being, I assume, the 20 million per year for six years, and the ROE decrease. That's what I pointed out to you a minute ago. And the third thing you said, although you said it in at least three ways, is a reallocation of the burden, and I'm using the word "burden". You didn't.

Are those the three things that make these projects now economic when they weren't before, or were you simply wrong before? It's okay. I just need to know. Has something changed or not? And if so, what is it?

MR. SCHULTZ: I think I was also saying that we haven't rerun the analysis to establish what we would call the economic threshold, and that that has been done by the LDCs.

MR. MONDROW: Okay. So you were right before and you're not sure now. Is that what you're telling me?

MR. SCHULTZ: Well, I think that's probably fair. We said that things have changed. We haven't rerun this analysis, so we don't know what the actual result would be.

MR. MONDROW: Okay. So you were right before, and you're not sure now?

MR. SCHULTZ: Yes. Yes.

MR. MONDROW: Thank you.

Now, Enbridge, Union, Ms. Giridhar, you're not seeking any approval or endorsements from this Board for the settlement agreement or for the delivery rate impacts resulting from the tolls that fall out of the settlement agreement; is that right, Mr. Isherwood? Ms. Giridhar?

MR. ISHERWOOD: That's correct.

MR. MONDROW: And you'll agree that on behalf of your customers you've each assumed -- you've each agreed to assume significant costs of under-utilized TransCanada capacity through this settlement agreement.

MR. ISHERWOOD: I disagree with that statement, actually. There's an increase in cost on the short-haul for sure, the 50 percent we've talked about. As I mentioned earlier this morning, two-thirds of that is just to recover the costs of service in Eastern Triangle, which I think is a cost we need to always assume that we have that cost anyways. The incremental costs we're really talking about today is the one-third part of that increase --

MR. MONDROW: Well, let's examine what you just said. You said you always assumed you would have that cost anyway. And so what you're assuming is that any revenue shortfall resulting from under-utilized TCPL assets would ultimately be borne by TCPL shippers, as opposed to TCPL shareholder. Is that what you're assuming? Because that's not what you said last year at the hearing.

MR. ISHERWOOD: What I said at the hearing last year was that we supported TCPL recovering their costs. They had made a small contribution. In our evidence, they would provide a small contribution, but they'd otherwise recover their cost.

MR. MONDROW: What you said last year is TransCanada should forego return on the NOL, or at least half of it. Wasn't that the LDC's position?

MR. ISHERWOOD: It was not.

MS. GIRIDHAR: Mr. Mondrow, the LDC's position at the NEB tolls hearing was that TransCanada should be able to recover the costs of the NOL system. The LDC's position was that TransCanada should make a contribution, as should the shippers, and the contribution equated on average, I think, $45 million per year for nine years. That was the position of the MAS -- or the market-area shippers, which was the three LDCs, at the NEB proceeding.

MR. MONDROW: Is that what they are contributing under the settlement agreement?

MS. GIRIDHAR: Well, under the settlement agreement they make a 20 million post-tax contribution. The rate of return goes down from the NEB-approved rate of 11.5 to 10.1. The eastern shippers are not responsible for the Prairies section, which when I last looked was approximately 30-odd percent of the total revenue requirement of TransCanada post-2020.

So I would suggest that the settlement agreement or the terms sheet does allow for the same sort of concept of balance between TransCanada and its shippers and contributions by all in order to have a structured transition to a market where there is more certainty, access to supply from multiple supply basins, at a cost for Enbridge's shippers that ranges from 2 cents to 5 cents for basis upside that would be a huge multiple of that number, Mr. Mondrow.

MR. MONDROW: Okay. When should -- when will this Board on behalf of your customers consider whether this deal is in the best interests of your customers? Will there come a time when this Board will have to make a decision about this settlement agreement or the toll impacts flowing into delivery rate impacts flowing from the settlement agreement?

MR. ISHERWOOD: As the NEB determines the tolls, and those tolls will be rolled through our next -- our QRAM, which is the normal process, as it has been in the past, nothing unusual.

MR. MONDROW: So the Board will be asked through your -- a QRAM process at some point to approve the delivery rate impacts of this settlement agreement?

MR. ISHERWOOD: Our costs are always approved through QRAM, and we've also undertaken in our IRM framework that we would come before intervenors and the Board to do an annual update in our gas supply cost. That's more of an update, not necessarily an approval. It would be more through the QRAM, in terms of the final approval.

MR. MONDROW: So pending that review and approval by this Board, whether through your gas supply plan or through a quick QRAM process, you understand and agree that you are each taking a risk in respect of the prudence of this resolution.

MS. GIRIDHAR: Mr. Mondrow, the NEB judges the public interest in setting tolls for TransCanada. The practice of this Board has been to accept the decision of the NEB as being in the public interest, in terms of the tolls that have been charged by TransCanada. And we then come forward to this Board with our gas supply portfolio and seek approval for recovery of costs of the gas supply portfolio. Implicit in that gas supply portfolio is obviously two things: Our own contracting decisions that are being approved and the cost consequences from the tolls that TransCanada as an NEB-regulated company charges us.

MR. MONDROW: But Ms. Giridhar, you are participating actively in resolution of this impasse and assuming on behalf of your customers cost responsibility, as is Union, Mr. Isherwood. That's not in the normal course. Normally you're at a distance from TransCanada's cost-based tolls. That is no longer the case. You are constructing, indeed, you are fashioning a solution, including an allocation of costs, and you are agreeing to that, and then you're going to go to the NEB and support it on behalf of your eastern customers.

MR. ISHERWOOD: I think you're assuming, Mr. Mondrow, that the current environment is sustainable, and we have lots of testimony, not to repeat it all again. The current environment is not sustainable. It's just not a spot we can stay in.

And Gaz Métro has talked about potentially losing a large industrial plant in Quebec. That's not sustainable. There's lawsuits. Not sustainable. There's complaints, and section 71's at the NEB, not sustainable.

We're into a period where IGUA customers, other customers, have come to us, Union, and said, All this noise in the background, it's confusing, it's causing uncertainty in the market. You need to find a way to get rid of the uncertainty and create some certainty, create some access to Dawn, and that's exactly what we've done.

MR. MONDROW: Mr. Isherwood, in --

MS. GIRIDHAR: Mr. Mondrow, I would just like to add, though, that IGUA has been part of MAS at the NEB in the most recent tariff proceeding. IGUA did support a complaint letter that the LDCs had filed about the -- had -- the LDCs had submitted to the NEB about the unacceptability of the status quo situation prior to the settlement agreement.

I would suggest to you that IGUA has participated with the LDCs in at least demonstrating why the status quo does not work for industrial customers.

MR. MONDROW: Yeah, I appreciate you educating --

MR. RHEAUME: Can I, Mr. -- I understand -- I know there's a time limit, but I have not been the one exaggerating with the mic, I guess.

Just one comment you made, saying that basically this is very different this time. TransCanada, prior to coming up with any rate cases, has always been working, trying to get to settlements. We've always been part of these discussions.

The main difference this time, the reason why we're standing here with TransCanada, is we want to make sure that the transition from a situation that we believe is unbearable is structured. We do not believe that it's appropriate right now for TransCanada to come up with a rate case and then everybody trying to get the advantages that they can get out of it.

We think that it's much more important to do it in a rational -- this expansion needs to be done in a rational way.

The main thing we've been defending in front of the Régie in our case is we don't want to be the last man standing. That's the expression we use, which should be the opposite because I guess the last man standing is a positive thing, and -- meaning that we don't want to be the woman who gets dumped at the church or something. The last --

[Laughter]

The person who doesn't --

MS. CHAPLIN: Please stop while you're ahead, Mr. Rheaume.

[Laughter]

MR. RHEAUME: We believe this proposal allows the market, every participant, not just LDCs but as well IGUA members, APPrO members, major --

MR. MONDROW: Mr. Rheaume, I'm sorry, I've heard this rationalization. I understand.

I'm not suggesting that IGUA opposes a settlement that brings a rational approach to moving forward. In fact, I think IGUA supports the settlement in principle.

But on behalf of your customers, and your customers, and your customers, you have agreed to an allocation of risks; your customers haven't agreed to that allocation.

I asked you the question, Mr. Isherwood, Ms. Giridhar: When will the Board approve this? And until then, are you at risk for the prudence of your acceptance on behalf of your customers of these costs?

That's the question I asked. Can you answer the question?

MR. CASS: Madam Chair, I would say on behalf of Enbridge that the issue of prudence can be addressed in argument. I don't think that's an appropriate question to ask these witnesses about. It's a legal test.

MR. MONDROW: I want to know what Enbridge's position is, Mr. Cass.

MS. CHAPLIN: Wasn't the answer that it's in their QRAM proceeding? I believe that was the answer. Was there --

MR. MONDROW: Ms. Giridhar kind of gave an answer that I understood to be: Traditionally, this Board defers to the NEB on TCPL tolls.

MS. CHAPLIN: She may have been speculating on what the outcome of have process would be, but I think the answer was that in the QRAM proceeding, that is where the costs are reviewed.

MR. MONDROW: I'll move on. Thank you, Madam Chair.

If the Board approves your projects, Mr. Isherwood and Ms. Giridhar, and the NEB rejects the settlement, what happens to the approvals given here? Anything?

MR. ISHERWOOD: I think to the extent that the NEB doesn't approve the settlement, then I think the only project that would be potentially at risk of going forward would be Union's Brantford-to-Kirkwall.

We've asked for -- in that application we've actually asked for an extra year to construct, out to '16, so I think the rest of the projects would still be required.

MR. MONDROW: Thank you.

MR. SCHULTZ: Mr. Mondrow, I'm sitting here listening or standing here listening to this to-ing and fro-ing. The reality is the way the gas transmission and the LDC business works is there's always another issue on the horizon for consideration.

It's just not practical to say: Well, let's all wait until all the ducks are in a row and we'll make one big decision at the end of it. The world just doesn't work that way. There's always something that comes up, and these processes and these projects take a long time to build.

If we're going to deal with these issues, we have to deal with them on the basis of the information we have at the time. It's just not practical to try and wait for everything to be all neatly tied up with a bow on it.

MR. MONDROW: Mr. Isherwood and Ms. Giridhar, you are not asking this Board for approval of this settlement agreement in this process, yet we've spent a lot of time talking about it. Maybe that's the intervenors' doing rather than yours, but what is the relevance of the settlement agreement, precisely, to the applications that this Board is being asked to approve?

MS. GIRIDHAR: Mr. Mondrow, I believe I addressed this in my opening remarks yesterday. The relevance the settlement agreement is that it has charted a path forward for market access. This Board, in a ruling to Union Gas last year or the year before -- last summer, urged the LDCs to work with TransCanada on a rational expansion of our systems.

We have done that. We have identified a path forward from market access. The GTA project was originally filed as a distribution project of an NPS 36. It is now an NPS 42. For less than a 10 percent incremental cost, we're able to accommodate that market access and provide significant cost savings to our customers that's identified in an undertaking response to Energy Probe.

So the relevance the settlement agreement is that it provides comfort to the Board that we have gone and done what you asked us to do, which is to consult on a set of infrastructure additions that make sense for distribution and transmission for our customers.

The evidence on the record shows that.

MR. MONDROW: Thank you. That's clear and helpful.

It also, I assume, "it" being the settlement agreement -- and I think you referred to this a number of times during these proceedings -- clarifies or fixes the differential between long-haul and short-haul tolls on which your project economics are dependent? That is, they're dependent on that differential, and the settlement agreement fixes that differential?

MR. ISHERWOOD: The expectation is that over the term of the settlement, over the 16 years, the differential will be the same, all things being kept equal.

What is happening, as we mentioned yesterday, is over the first six years, the --

MR. MONDROW: No, I'm going to interrupt you, because I know that.

MR. ISHERWOOD: Okay. Fair enough.

MR. MONDROW: And you said that, and I think the Board understands that.

MS. GIRIDHAR: I just wanted to add, Mr. Mondrow, that the project economics for Enbridge also is derived from the fact that we are fulfilling a seasonal need through firm contracts, and we're seeking the appropriate kind of contracting for the kind of load that we need.

MR. MONDROW: Isn't it fair for me to conclude, however, that, Mr. Isherwood, the settlement agreement reflects more than an expectation that the differential will be maintained? It actually codifies that effect?

MR. ISHERWOOD: Do you have a reference you could --

MR. MONDROW: No, I don't. I'm sure it's in here, but -- I was looking for it, but I thought I'd --

MR. ISHERWOOD: I would assume. My own view is it's a principle.

MR. MONDROW: It's a principle of the settlement agreement?

MR. ISHERWOOD: Yes.

MS. GIRIDHAR: If I might add, it's a principle resulting from the idea that all shippers in -- on the Eastern Ontario Triangle pay for the cost of the Eastern Ontario Triangle, whether long-haul or short-haul.

MR. MONDROW: And the stranded costs of the northern Ontario line and the Prairie section?

MR. ISHERWOOD: For the first six years.

MR. MONDROW: Okay.

MR. ISHERWOOD: Very important.

MR. MONDROW: NOL will be gone after the first six years. Mr. Clark already agreed to that, right? So all of that will be taken care of?

MR. ISHERWOOD: Just depreciation. There's other costs of operating the pipeline.

MR. MONDROW: The operating costs?

MR. ISHERWOOD: Integrity work, operating costs, whatever.

MS. GIRIDHAR: The eastern shippers will not be required to pay for those costs post-2020. And I also indicated that the Prairies is a good 30 percent of the revenue requirement.

MR. MONDROW: Mr. Clark, when is the Prairies line fully depreciated?

MR. CLARK: Mr. Mondrow, before we go there I think you maybe mischaracterizing the words that I provided.

I said the forecast, the -– the depreciation horizon for the NOL is the end of 2020.

Things may change. There may be new projects that emerge that are unforeseen, but what I said to you -- or I said earlier is that the NOL is forecast to have -– the depreciation is forecast to have been fully recovered at the end of 2020.

MR. MONDROW: When is the Prairies depreciation forecast to be fully recovered?

MR. CLARK: 2035.

MR. MONDROW: After 2020, when the bridging payment on long-haul tolls falls off, because you are not stretching that over 16 years, but remains on short-haul tolls for the balance of that 16-year period, will the differential between long-haul tolls and short-haul tolls narrow?

MS. GIRIDHAR: I think it depends on what you are comparing it to. So the comparison is with compliance tolls, and the way we've explained it is that the amortization -- to the extent you're adding a different amortization for long-haul relative to short-haul, in the first six years the differential would grow relative to the compliance tolls and then it would shrink, but overall over the term of the settlement it's approximately the same.

MR. MONDROW: So that change after the first six years is already incorporated into the calculations justifying the projects, in light of the differential?

MR. ISHERWOOD: We're assuming the same impact as if the 12 cents –– I go back to the Union Gas case, but the 12 cents over the 15 years, so I say it's levellized.

If we added the --

MR. MONDROW: Maybe you are answering me and I'm just not getting it. It's quite possible.

The project economics are justified on the basis of the differential?

MR. ISHERWOOD: Yes.

MR. MONDROW: And that differential will change after the first six years; we know that. Are the project economics -- do the justifications for the projects take that change into account?

MS. GIRIDHAR: Mr. Mondrow, the justification for the projections have assumed that the differential remains the same as the compliance tolls over the period that we have considered. So in other words, we have not increased the differential in the first six years, and we haven't correspondingly reduced it for the remaining term. Instead, we have maintained the differential.

There's a good reason for it: We don't know what the tolls are going to be post-2020, so we don't actually have indicative tolls post-2020.

MR. MONDROW: When you say you've maintained it, you mean for the purposes of your calculation?

MS. GIRIDHAR: Correct.

MR. MONDROW: But we know that the differential will change after six years?

MS. GIRIDHAR: As a result of the different amortization, yes, but as I had said again, over the term we expect it to be approximately the same as the compliance tolls.

MR. MONDROW: So that changes --

MR. SCHULTZ: Maybe I'll just add in. I think, just to be clear, from TransCanada's perspective, we haven't run the tolls out that far to -- like, there is uncertainty, so I don't think we would be representing that we know what the differential would be that far into the future.

I think the assumptions that are being made are being based on the best available information at this point in time, but I don't think we feel we have any comfort or confidence into understanding. We know that the NOL will be depreciated. We know we're still going to have a significant amount of undepreciated capital in the Prairies, but we don't know what our throughput is going to be. So to calculate tolls, one of the biggest things you need to understand as well is how much volume are you going to be transporting. So I think that's a significant uncertainty for us at this point.

MR. MONDROW: Thank you, Mr. Schultz.

Mr. Clark, you've talked about this a couple of times. The settlement accepts the TransCanada ROE reduction from 11.5 to 10.1. You also have agreed, Mr. Clark, that the settlement de-risks TransCanada's position relative to having no settlement in place. Is that a fair read of your evidence?

MR. CLARK: No, I think the words that I used was the settlement addresses the risks of cost recovery through to the end of 2020. I would say it's -- I'm not sure I would say it increases risks post-2020, but what it does is it eliminates the argument that Eastern Triangle shippers who are not using the Prairies and NOL post-2020 will have any accountability for those costs.

So on a net basis I can't answer the question as to whether it increases or decreases TransCanada's risk overall. I would say it shuffles the risk around, if you will, and addresses it in the near term, but I think it actually catalyzes or eliminates some potential avenues for cost recovery post-2020. So on a net basis I don't think I can agree with the statement you made.

MR. MONDROW: Which of your two segments, Prairies and NOL, is more fully utilized at present?

MR. CLARK: Utilization is a very difficult concept to actually quantify.

MR. MONDROW: FT contracted, based on design capacity.

MR. CLARK: We don't have that information with us, Mr. Mondrow.

MR. MONDROW: Can you get it for us?

MR. CLARK: I fail to understand how that bears on a facilities --

MR. MONDROW: It bears on the extent to which this deal de-risks you. If NOL is going to be fully depreciated on a forecast basis by the end of 2020, and Prairies is not, I would like to understand, and suggest this Board might like to understand, the relative risks between those two segments to evaluate whether your risk is higher or lower under this agreement.

MR. CLARK: Well --

MR. MONDROW: That does to whether your ROE proposal is in fact a contribution --

MR. CLARK: -- Mr. Mondrow, what we've just finished saying is it's difficult to forecast what flows will look like post-2020. It's even more difficult to forecast what contracts will look like post-2020, because that's --

MR. MONDROW: You can caveat the response however you want.

MR. CLARK: Excuse me --

MR. MONDROW: What I've asked is -- you can caveat your response however you want. What I've asked is whether we can have a undertaking to provide --

MR. CLARK: What I'm telling you is I don't think I can give an answer to the question. I don't know.

MR. MONDROW: I asked for your current utilization of your Prairies and NOL --

MR. CLARK: How is the current utilization of the Prairies section, how does that have any bearing on --

MS. CHAPLIN: Sorry, Mr. Clark, can you answer the question or not? You can caveat the answer or you can also address it in argument as to whether it's relevant or probative. However, Mr. Mondrow has asked current utilization, and I believe he even defined how he would like you to measure utilization. Can you do it?

MR. CLARK: I can provide the level of firm contract on the Prairies section today. I can provide that information --

MR. MONDROW: As a percentage of its capacity.

MR. CLARK: Yes.

MR. MONDROW: And the same for the NOL?

MR. CLARK: Yes, I can do that.

MR. MONDROW: Thank you. And whatever caveats you feel are appropriate is -- will be fine.

MR. MILLAR: The undertaking is J9.3.

UNDERTAKING NO. J9.3: TCPL TO PROVIDE THE LEVEL OF FIRM CONTRACT ON THE PRAIRIES AND NOL SECTIONS

MR. MONDROW: And Mr. Clark, it is fair, and I think you've agreed, that your revenue under-recovery, at least during the fixed-toll period set by the NEB, has, pursuant to the settlement agreement, been solved from TransCanada's perspective if the NEB accepts the agreement.

MR. CLARK: No, I don't think that's a fair characterization. There will still be a significant component of the arrangement that will rely on discretionary pricing and the recovery of revenues through discretionary service, and that will affect the total amount of revenue that is recovered from the system, so --

MR. MONDROW: Sorry, is that -- a significant portion of the arrangement? What arrangement are you talking about?

MR. CLARK: I'm talking about the settlement itself.

MR. MONDROW: A significant component of the settlement agreement that we're talking about?

MR. CLARK: Yeah, what I'm trying to describe is, the way the calculations are being completed will incorporate assumptions around discretionary revenue collections, and the extent to which we are successful will determine whether or not -- how -- where we are in that bandwidth of return on equity, so they're still at risk within the deal that TransCanada bears.

MR. MONDROW: Okay. Correct me if I'm wrong. I thought that, according to this settlement agreement, you will develop tolls to provide you with a 10.1 percent ROE based on your forecasts of billing determinants, and those discretionary revenues will be one element of your forecasts.

MR. CLARK: Right. That's correct.

MR. MONDROW: And what you're saying is --

MR. CLARK: Discretionary revenue -- our ability to collect discretionary revenues is speculative. There is risk associated with that.

MR. MONDROW: Right. But you are going to define the parameters of that risk in your proposed tolls; right?

MR. CLARK: Yes, we will be doing that.

MR. MONDROW: Great.

MR. CLARK: But the point I'm trying to make is, inherent in the making of those assumptions, there is risk, and our ability to capture that revenue will be determined by market conditions as they exist from time to time through the course of the settlement term.

MR. MONDROW: Okay. That's fine. I understand that. Thank you.

Your earnings-sharing formula will allow you, to the extent you make earnings subject to sharing, to claw back off the top towards your 11.5 percent ROE; right?

MR. CLARK: Yes, starting with a floor of, what is it? 8.7 or 8.5? I can't remember.

MR. MONDROW: 8.7, I think.

MR. SCHULTZ: 8.7.

MR. MONDROW: What was your ROE prior to the NEB's toll restructuring decision?

MR. CLARK: Yeah, I don't recall the number. It was the result of the NEB formula. I would observe that was in a different economic climate, so --

MR. MONDROW: I appreciate that. Could you get us the number, please?

MR. CLARK: Yes, we can do that.

MR. MONDROW: Undertaking, please.

MR. MILLAR: J9.4.

UNDERTAKING NO. J9.4: TCPL TO PROVIDE THE ROE PRIOR TO THE NEB'S TOLL RESTRUCTURING DECISION

MR. MONDROW: I want spend a minute on Energy East. I know you've talked about that a lot today. I will try not to repeat that, but I would like to try to get some clarification of the issue that has been generically referred to as Energy East.

As I understand it, Energy East, as proposed, is expected to include -- so let me back up. Energy East entails taking significant lengths of the TransCanada Mainline gas system from Empress to the east end and converting those facilities for shipping oil sands or some processed oil sands from west to east, correct?

MR. CLARK: No, that's not quite correct. The terminus of the assets that would be transferred is at Waddington -- or Iroquois junction. And the pipeline, I understand it to carry a variety of supplies --

MR. MONDROW: Okay. That's fine. Sorry, we'll take it to Iroquois. That's fine.

The last piece of that conversion is expected to entail the pipeline that runs from North Bay to Iroquois, commonly referred to as the North Bay shortcut.

MR. SCHULTZ: That's correct.

MR. MONDROW: And if and when the North Bay shortcut is taken out of gas service, it will leave only what's called the Montreal line, which I think runs from Maple to Iroquois, to provide gas service east of Dawn; correct?

MR. SCHULTZ: No. On the North Bay shortcut there's currently two pipelines, a 36- and a 42-inch, and so the 42-inch line will be taken out of service. The 36- will continue to be available in addition to the Montreal line that you --

MR. MONDROW: Okay. That is helpful for me. Thank you.

The concern with Energy East, to the extent there is concern, and I know the governments are all in favour of it, but there has been some eastern concern, and that eastern concern, Mr. Clark, you talked about earlier. If those facilities are converted as currently proposed, at least, or being talked about, there could be a shortfall of up to 200 teraJoules a day of capacity for existing firm gas shippers in the east; correct?

MR. CLARK: I think I've already stated a few times that we will ensure --

MR. MONDROW: I'm going to get to that. I'm going to let you do that, but that's the concern, that there could be a shortfall?

MR. CLARK: No. There should no concern, I've said.

MR. MONDROW: Because TransCanada has indicated it will assure capacity to provide its firm shippers with service?

MR. CLARK: Yes. We will ensure there's capacity in place to serve firm markets prior to the removal of the facilities for use in Energy East.

MR. MONDROW: But you've also said provided that your firm markets are willing to pay for that capacity?

MR. CLARK: Yeah. I don't think it would be reasonable for us to be expected to keep capacity in place for those who are not willing to pay for it.

MR. MONDROW: Well, no, but let's get to the real issue, Mr. Clark. The real issue, I think, is a concern that TransCanada's is going to transfer the facilities at net book value; it's going to have to build something more to keep gas shippers flowing; and the incremental costs of that new build are going to charged to gas shippers.

Isn't that the concern?

MR. ISHERWOOD: Mr. Mondrow, this is all outside the scope of this hearing.

MR. MONDROW: Well, I don't think it is, and I'll get to that in a second, Mr. Isherwood. Could I get – sorry --

MR. ISHERWOOD: It's outside the scope of this hearing --

MR. MONDROW: I've asked Mr. Clark a question.

MR. CASS: Madam Chair, just for myself, I think this is completely irrelevant to Enbridge's application. I've been sitting here patiently just trying not to use up time, but in my submission this notion that counsel have a limited amount of time for their examination should not allow them to go on in irrelevant matters without the right of parties to object to things that are just very irrelevant to the application before the Board.

MR. MONDROW: Madam Chair, if counsel wants to object, that's fair game. And he has, so I will explain why I think this is relevant.

The concern, as I understand it -- which I'm trying to get Mr. Clark to crystallize for us, and other counsel have asked about it more generally -- is that Energy East will present an additional layer of costs on Eastern Ontario Triangle shippers, which may well impact the economics of these projects.

The projects are justified based on eastern TCPL tolls versus basis differential of gas sourced from Marcellus as opposed to the WCSB, and I'm trying to understand and get some evidence on why Energy East should be a concern to that, if at all.

And the media has reflected concerns, and I think TransCanada has made clear that as long as shippers are willing to pay the cost of replacement facilities in the east, they will continue to ship in the east. What I'm trying to establish is that position will entail an additional cost burden over and above the settlement agreement costs on east shippers.

That's why I think it's relevant.

MR. ISHERWOOD: If I could just add, we talked about this yesterday, actually, but Energy East, in or out, will have the same impact with or without the settlement. If there is incremental costs or incremental savings, either way, it will have the same impact with or without the settlement.

MR. MONDROW: I'm sure that is true, but the issue isn't, Mr. Isherwood, with respect the impact on the settlement. The issue is the impact on your projects.

MS. GIRIDHAR: If I could just add ––

MR. MONDROW: Yes, absolutely. That's what I'm seeking clarification ––

MR. CASS: Madam Chair, could you --

MS. CHAPLIN: Sorry. Sorry. Let's just stop for one moment. As to the question of whether or not the issue is relevant, at this point I don't think it's necessarily irrelevant. Parties will certainly be able to argue the probative value and the level of relevance in their arguments.

In the meantime, Mr. Mondrow is asking factual questions or questions regarding the consequences. They seem fairly straightforward, and they seem to be amendable to fairly fact-based answers with whatever caveats the witnesses choose to give. Let's proceed on that basis.

Mr. Mondrow, do you want to repeat your initial question -- or not your initial question but your most recent question?

And then perhaps amongst the witnesses, you can decide who is going to answer, at least to start with, and then the others can decide if it's really important to augment those answers.

MR. MONDROW: Thank you, Madam Chair.

Mr. Clark, perhaps starting with you, I understand TransCanada's position to date to be that replacement of gas transmission facilities in the event of conversion of the North Bay shortcut, or part of it, to oil service will be at the expense of eastern gas shippers; is that TransCanada's current position?

MR. CLARK: Both the benefits of removal of likely a billion dollars, plus or minus, of rate base, those benefits will go to gas shippers.

There is the possibility, if all existing firm markets renew and extend their contracts, that we will have to add back some facilities in the triangle. Our expectation is that the cost of doing that will be less than the net book value that is removed from rate base, so there would be a potential for reduced costs for gas shippers. There is the possibility that new markets will sign up, and if that's the case, we'll deal with that if and when that occurs.

And all of that will be adjudicated by the NEB when the facts are known.

This is an unknown circumstance at this point in time, so it's very difficult for us to provide anything more than high-level answers.

MR. MONDROW: Thank you.

Mr. Clark, did anyone want to add to that yet?

MS. GIRIDHAR: Mr. Mondrow, I just wanted to respond to a statement that you had made that the economics of this project would be impacted by the removal of line between North Bay and Iroquois.

I just wanted to say that that is not the case, for two reasons.

First of all, the GTA project, in terms of serving the GTA, is not served by the piece from North Bay to Iroquois.

Therefore it is not relevant to the economics of the GTA project as presented.

To the extent that Undertaking J6.X also addresses the add-on benefits to the EDA for market access, Ottawa needs infrastructure to be served whether it's long-haul or short-haul. So the removal of the line from North Bay to Iroquois will impact the Ottawa area equally, whether it's sourced long-haul or short-haul.

Therefore the economics of this project are not impacted by the removal of the line from North Bay to Iroquois.

MR. ISHERWOOD: If I could add two things, the first is one thing this element does do is it allows the market in the east to access Dawn and Niagara. So without this settlement -- and assuming there is a need for some customers to contract –- get new contracts on TransCanada to meet their loads, without the settlement the only option they would have would be back to Empress.

What the settlement does is provide an option to go back to Dawn, which is one, I think, positive impact of the settlement on an Energy East project.

MR. MONDROW: Mr. Isherwood, I've got to take you up on this. I appreciate that the settlement provides rationality and cooperation, and all of that's positive and I expect that you all will support all of that, but you keep saying without the settlement, everyone is going back to the Empress.

Prior to the settlement, you were before this Board in this proceeding with a plan to fix the bottleneck. So there are other ways to address this, which might have included TransCanada bearing more risk than they're bearing under this agreement. It might not have.

That's a judgment call, right?

MR. ISHERWOOD: Let me share my view on that, Mr. Mondrow.

MR. MONDROW: Please.

MR. ISHERWOOD: Because the Energy East project is scheduled to be built in '15-'16, and in service in '17, TransCanada will need to get a market interest in their next open season, which we heard today was going to be sometime this year. And in that open season, customers will have to commit then to what they want to do in terms of replacing capacity on the Eastern Triangle.

And we've talked so far about the 2- or 300 a day of firm. A lot of your members aren't using firm capacity on TransCanada; they're using the secondary market, and they will need to firm up their volume if they want to maintain service.

What the settlement agreement does is gives them a choice to go back to Dawn or Niagara, instead of just Empress.

And although we had a project on the books and we thought -- we think today it is still a viable project, TCPL had also mentioned they're in dispute.

So that would be challenged at the NEB. It would be challenged beyond NEB, potentially.

MR. MONDROW: No, I appreciate that. We've got all that history, and I appreciate that.

MR. ISHERWOOD: So what the settlement does is provide the certainty to go forward.

MR. MONDROW: Yes, I agree. The settlement agreement provides certainty, and that's your evidence and I understand that.

Mr. Clark, just on Energy East, I'm trying to understand your testimony a minute ago. Is it your expectation, based on what you know now, that the decrease in tolls resulting from the removal of assets from rate base will more than offset, for eastern Ontario shippers under the segmented approach in the minutes of settlement, any increase in tolls resulting from the need to build new facilities?

MR. CLARK: I'll repeat myself. It's unclear at this point in time. Until we complete the open season and see what market subscribes, we can't answer that question.

MR. MONDROW: Thank you.

Ms. Giridhar, I would like to --

MS. CHAPLIN: Are you close to finishing?

MR. MONDROW: I am, and I'll be finished by 12:30, if that's okay.

I would just like to go to something you said yesterday in the transcript, to understand it. This was in respect of the 13 percent minimum commitment for long-haul, and it begins at page 112 of yesterday's transcript at the bottom of the page. Yes. Thank you.

So I'm going to start reading at line 24. It says:

"What the terms sheet has established as a target is that we would...

I think it -- it says "persevere", but I think you meant to say "preserve".

MS. GIRIDHAR: Persevere.

MR. MONDROW: Persevere? Okay:

"...to have short-haul tolls go up by no more than 50 percent. That is the objective. The whole purpose is to make sure that the three LDCs and TransCanada work together to retain enough long-haul volumes on the system to ensure the financial..."

That should be "viability"?

MS. GIRIDHAR: Viability, yes.

MR. MONDROW: Thank you:

"...of the TransCanada system and manage the rate impacts for our customers through this transition period, where we are accepting additional cost responsibility for recovery of costs in the TransCanada Mainline. So it would be an entirely theoretical exercise for us to calculate, for example, that the short-haul toll impact would be higher than 50 percent if we all came down to the bare 13 percent minimum, because the intent is to manage the short-haul toll impacts as well. That's why it's a transition. It's a structured transition."

I take that to mean, Ms. Giridhar -- and this is what I wanted to ask you to confirm -- that the 13 percent imbedded in the minutes of settlement is a number that is derived with an intention to balance TransCanada's revenue under its resulting tolls on the one hand and the rate impacts to eastern shippers on the other hand. Is that how you got to 13 percent to make the math work?

MS. GIRIDHAR: So we do have indicative tolls at this point, and I think -- I'm just trying to recall. I think the LDCs came to the conclusion that that 13 percent number or minimum of 13 percent number would allow us to get to the no more than 50 percent impact...

MR. MONDROW: No more than 50 percent impact.

MS. GIRIDHAR: Thereabouts, yes.

MR. MONDROW: Thanks. And the current number for Enbridge long-haul as a percentage of your system gas portfolio is, I think you said yesterday, something a little bit higher than 13 percent, but not much higher.

MS. GIRIDHAR: My understanding is it's between 13 and 20 percent as a percentage of our TransCanada portfolio.

MR. MONDROW: And Mr. Isherwood, for Union you said it was about the same, as I recall your testimony.

MR. ISHERWOOD: Current or proposal for 2015 or '16 --

MR. MONDROW: Current.

MR. ISHERWOOD: Okay. It would be higher currently. I don't know the number. The 13 is our expectation where we will get to by, say, November 1 of '16. But we'd be higher than that today.

MR. MONDROW: order of magnitude today?

MR. ISHERWOOD: Actually, I think I gave that number in the technical conference. I don't...

MR. MONDROW: Okay. Well, I can find it.

MR. ISHERWOOD: In the technical conference.

MR. MONDROW: Okay. Thank you. And the 13 percent, Mr. Isherwood, includes system volumes in the WDA and NDA?

MR. ISHERWOOD: It does.

MR. MONDROW: And those customers have no option but to ship long-haul, given their location.

MR. ISHERWOOD: I would stay the NDA has choice. Our objective would be to give the NDA some short-haul and some long-haul.

MR. MONDROW: Okay.

MR. ISHERWOOD: EDA makes the most sense for it to be short-haul, and WDA makes the most sense for it to be long-haul.

MR. MONDROW: Okay. The commitment is that, however, on a franchise-wide basis, the percentage, in both cases, Ms. Giridhar?

MR. ISHERWOOD: Yes.

MS. GIRIDHAR: Sorry?

MR. MONDROW: The commitment to 13 percent is a franchise-wide commitment?

MS. GIRIDHAR: Yes.

MR. MONDROW: Okay. I have one more question on the minutes of settlement on diversion rights, which you can find at page 5 of the settlement agreement. And the first bullet says:

"In addition to in-path diversions as provided", et cetera, et cetera, "out-of-path diversions will be permitted within a segment in a manner that is consistent with the principle of segmentation at FT tolls."

Can anyone explain what that means or what they think it means?

MR. SCHULTZ: I'll give you a response to that. So basically the -- you will be allowed to -- or shippers will be allowed to divert anywhere within one of the segments, so if their delivery point today is a long-haul contract from Empress to a point in the eastern zone or the Eastern Triangle they would be allowed an out-of-path diversion to any alternative delivery point in the Eastern Triangle. If their current path is from Empress to the Centra Man. MDA, then they would only be able to divert within the Prairies segment. So it's basically, your ability to divert to out-of-path locations is only within the segment that your primary delivery point is contracted to.

MR. MONDROW: But it's to any delivery point in that segment.

MR. SCHULTZ: That's correct.

MR. MONDROW: Thank you very much. Thank you, Madam Chair, for your patience. Those are my questions.

MS. CHAPLIN: Thank you. Mr. Millar?

MR. MILLAR: Yes, thank you, Madam Chair. I don't plan to be very long.

CROSS-EXAMINATION BY MR. MILLAR:

MR. MILLAR: Panel, could I ask you to turn up Exhibit K8.1? This is the chart that was filed yesterday that shows the interdependencies between the projects and some of the timelines. And this was filed through this panel, but we didn't really go through it much, so I just had a few questions about it.

First of all, you can confirm for me without going through every detail, page 1 is the chart that shows the interdependencies between the six projects, and you'll see there are a variety of footnotes below that describe, at least at a high level, what those interdependencies are; is that correct?

MR. ISHERWOOD: That's correct.

MR. MILLAR: And in the second page is a timelines chart which shows, as I understand it, the estimated construction timelines for the various projects. It shows them all coming into service in November 2015, and as I understand the coloured bars there show the actual construction time, but not the lead-up; for example, approvals or EAs or whatnot. Is that fair?

MR. ISHERWOOD: The footnote below covers that. That is in-field construction time.

MR. MILLAR: So that's shovel-in-the-ground time?

MR. ISHERWOOD: Yes.

MR. MILLAR: Thank you. A couple of questions to TCPL to start. Again, if we stick with page 2 we see that the Kings North project is scheduled to come into service in

November of 2015. That project will approved by the NEB. Did I hear that the application will be filed in November; is that correct?

MR. SCHULTZ: No, that's the application relative to the settlement. This would be a facilities application that would be filed sometime next year.

MR. MILLAR: And do you have a guesstimate of when that would be? What are you targeting?

MR. SCHULTZ: I personally don't know. I think we have a project manager that knows that, but I don't know what that --

MR. MILLAR: Do you know which quarter? I it early 2014? Mid? Late?

MR. SCHULTZ: I suspect it will be mid, because we're going to have to do some environmental, seasonal studies and such.

MR. MILLAR: Maybe it would be easier, if you don't mind. Could I get an undertaking with the best information you can provide as to when you expect to file the facilities application before the NEB?

MR. SCHULTZ: Yes.

MR. MILLAR: So that would be J9.5.

UNDERTAKING NO. J9.5: TCPL TO PROVIDE THE BEST INFORMATION AS TO WHEN THEY EXPECT TO FILE THE FACILITIES APPLICATION BEFORE THE NEB; TCPL TO INCLUDE AN ANTICIPATED APPROVAL TIMELINE FROM THE NEB

MR. MILLAR: And I see from the chart that you anticipate beginning construction in approximately May of

2015; is that right?

MR. SCHULTZ: Yeah, I think May, June, sometime in there.

MR. MILLAR: And it's going to take about six months to build?

MR. SCHULTZ: That's what this shows, yes.

MR. MILLAR: Okay. I take it you are not the facilities guys, though. You're reading the chart the same way I am.

MR. SCHULTZ: No. Yeah.

MR. MILLAR: I may be getting this -- I know that this project in one form or another has been through a number of iterations, and I may be confusing some of them. Is the Kings North project a single phase, or are there two phases to that project?

MR. SCHULTZ: As scoped here it's a single phase. It's 13 kilometres, roughly 36-inch-diameter pipeline.

MR. MILLAR: And assuming this is built on schedule, it will carry all the volumes that we're discussing with respect to the interdependencies. You don't need a second phase to carry the GMI or Union volumes?

MR. SCHULTZ: That's correct, for the 2015 time frame.

MR. MILLAR: Yes.

MR. SCHULTZ: The 2016 open season that we talked about previously would be the next --

MR. MILLAR: That would be the second phase.

MR. SCHULTZ: -- the second phase, if you want to call it that, yeah.

MR. MILLAR: Thank you. But that's not necessary for the volumes that are relevant to this application?

MR. SCHULTZ: That's correct.

MR. MILLAR: Thank you. Some questions for Union, so you, Mr. Isherwood, I think. Again, we've covered this before, but I just want to make sure that everything still holds true with the revisions to the applications.

You indicated previously and I think even today that Union doesn't intend to build the Brantford-to-Kirkwall loop unless Kings North is built. Is that fair?

MR. ISHERWOOD: That's correct.

MR. MILLAR: And the reason for this is that you -- generally speaking, you don't need it unless Kings North is there to move those volumes further north; is that right?

MR. ISHERWOOD: Yeah, the GMI and Union Gas volumes are intended to go to the Eastern Triangle, so you need the Kings North project to make that happen.

MR. ISHERWOOD: How far along does Kings North have to be before you're confident enough to start construction? Would it be application filed, application approved? Or are there some other milestones that Union would be looking at before it begins construction of Brantford-Kirkwall --

MR. ISHERWOOD: We would stay in close contact with TransCanada, but I would think when the NEB provides their decision then that would give us the confidence to go forward. I think once the NEB gives approval to the settlement agreement, we may start doing some preliminary things like buying pipe or work on easement and that type of thing.

MR. MILLAR: But the approval would be the milestone you would look to to --

MR. ISHERWOOD: Shovel in the ground.

MR. MILLAR: -- to say "go"?

MR. ISHERWOOD: Again, need to stay co-ordinated with TransCanada without the sort of the indication.

MR. MILLAR: Okay. Mr. Schultz, I neglected to ask you this before. Could you add to the undertaking, please? I know you won't be able to give a certain answer, but could you include an anticipated approval timeline from the NEB? I don't know how long their facilities applications typically take. So whatever caveats you want to put on are fine. I'd just like to have a ballpark figure of when you anticipate getting approval. Is that okay?

MR. SCHULTZ: Yes.

MR. MILLAR: Thank you. Mr. Isherwood, in the event that you built Brantford-to-Kirkwall, and for whatever reason Kings North was not operational -- there was some delay in construction or whatever the reason -- I take it that would result in passing on the costs of Brantford-to-Kirkwall to a smaller base, to your existing shippers and customers; is that right?

MR. ISHERWOOD: To the extent we actually went ahead to build it, we would have high certainty that the Kings North project would be built. So I think to the extent that we miss a timeline -- either we're a little bit late or TransCanada's a little bit late –- we're probably talking weeks or a month; we're not talking about a long period of time.

MR. MILLAR: Fair enough, but imagine for whatever reason there's a year-long delay in the Kings North project.

MR. ISHERWOOD: I don't think we would be building a pipe if that situation could even exist. I would be surprised. You wouldn't start building --

MR. MILLAR: You can't conceive of any situation, some natural dis -– I mean, anything could happen. There could be a delay to this project. There have been delays in the past. I know everyone thinks and hopes and expects it will go forward more or less as planned, but surely there's a possibility of delay.

In the event that happened, no mother how unlikely it is, what would happen to the cost of Brantford-to-Kirkwall?

MR. ISHERWOOD: I would have to go back and look at that. Our typical experience has been that -- a mismatch of a week or a month or a couple months. It's never been a whole year. By the time we're building and TCPL would be starting to build as well, we'd have a similar schedule.

If you look at that map, in terms of our Brantford-to-Kirkwall loop, it starts maybe a month sooner than TCPL. So we're not going to be missing it by a year; we're going to miss it by a few weeks or a month.

MR. MILLAR: Brantford-to-Kirkwall will go into rate base once it's completed and used and useful; is that right?

MR. ISHERWOOD: Yes.
MR. MILLAR: Those costs will be spread over whatever customers you happen to have at that time; is that fair?
MR. ISHERWOOD: That's fair.
MR. MILLAR: Thank you. What is Union's view on a condition imposed by the Board to any approval it grants of the Brantford-to-Kirkwall project relating to approval of the Kings North pipeline? Would you support that?
MR. ISHERWOOD: I don't know what the timeline is for that approval, so I think our concern is, or our trigger point, if you want, would be the approval of the settlement agreement. At that point, I think all parties -- TransCanada, Union, Enbridge -- have a clear path in terms of facilities.
MR. MILLAR: So you don't support a condition imposed by the Board that would say: Don't start construction until the NEB has approved the Kings North project?
MR. ISHERWOOD: Don't start construction?
MR. MILLAR: Sorry, just to repeat, the condition I'm suggesting or asking you to consider would be the Board says do not start construction until the NEB has approved the Kings North project.
MR. ISHERWOOD: We would not start construction, but we may be incurring costs before that, in terms of buying pipe or creating easement, that type of thing, which you would have to do to be ready for a '15 in-service.
MR. MILLAR: Yes, and none of those are -- you don't require a leave-to-construct to start buying things. You

require a leave-to-construct to put a shovel in the ground, so my question is: Would you support that type of condition, or do you think it's unnecessary? What's your view?

MR. ISHERWOOD: I think to the extent that TCPL applies for their facility application in first or second quarter of next year, they would get a decision -- maybe asking a question, but getting a decision in 2014. And we're not expecting to build this until spring of '15.

MR. MILLAR: So what is your view on a condition like that?

MR. ISHERWOOD: My only caveat is we would be incurring costs before, say, December of '14. We'll be buying pipe probably in the spring of '14.

MR. MILLAR: All fair enough. Do you support that type of condition or not?

MR. ISHERWOOD: I would look to my --

MR. KITCHEN: Mr. Millar, in terms of the condition, I don't think it's necessarily a question of support. I don't think it's necessary. I think that's what Mr. Isherwood is saying, because the Brantford-to-Kirkwall project won't proceed until it can line up with the Kings North project.

MR. MILLAR: So Union's view is it would be redundant?

MR. KITCHEN: Correct.

MR. MILLAR: I'll move on. Quickly for Enbridge -- Ms. Giridhar, I guess -- the chart shows some interdependency between Kings North and segment A.

Without going through all the background again, first of all, I understand you would build segment A even without Kings North; is that right?

MS. GIRIDHAR: That is correct.

MR. MILLAR: But there are some interdependencies between them, the same way. What would Enbridge's view be with respect to a condition saying wait on Kings North before you start GTA segment A? I assume your position will be you don't support that?

MS. GIRIDHAR: We would not support that.   I think the evidence in this case has been quite clear that Enbridge needs segment A to meet the distribution needs in the GTA.

The Kings North project facilitates market access for the rest of Ontario and Quebec. It is Enbridge's position that the NPS 42 is justified, can be justified even on distribution needs to be economically feasible.

And Enbridge wishes to proceed with segment A for an in-service date of 2015.

MR. MILLAR: Thank you. That's fine. I understand.

Just one very quick follow-up question from the transcript yesterday. I'm wondering if we could have that pulled up, at page 56.

I believe these were some of your opening comments, Ms. Giridhar. I don't know if you have it handy, but I think we saw the transcript a moment ago, so hopefully we can have it pulled up. Yes, here we are.

Just down to page 56, please, at the top, and you said

Ms. Giridhar, first of all:

"Enbridge first applied for the distribution-only pipeline, the December 2012. It was scoped as an NPS 36 at the time. We must remember that even with the current scope, over 90 percent of the projected spend is associated with the distribution need."

Do you see that?

MS. GIRIDHAR: Yes.

MR. MILLAR: If I recall correctly, the way you're allocating the costs on this are 60-40 in favour, or -- the 60 being for transportation and only 40 for distribution.

Can you help me with that? Maybe I'm misreading it, but I want to make sure that those numbers can be reconciled.

MS. GIRIDHAR: Sure. In making that statement, I was looking at the facilities set that would be required for pure distribution purposes only, versus the facilities set that we are proposing for distribution and transmission purposes.

Ignoring the fact that we believe that the NPS 42 is justified even if it was just distribution needs, what I was comparing there was the cost differential between an NPS 42 and an NPS 36. And I believe we have an undertaking response that indicates it's approximately $55 million, which is less than 10 percent of the total spend.

MR. MILLAR: I see. Okay. Given where we are, I'll leave it at that. Thank you, panel. Those are my questions.

MS. CHAPLIN: Thank you.

Ms. Hare has some questions.

QUESTIONS FROM THE BOARD:

MS. HARE: Just two short questions on K8.1.

The first is I don't see Enbridge Parkway West gate station on the timelines chart.

MS. GIRIDHAR: I -- perhaps you could ask that question of the next Enbridge panel, Ms. Hare. I don't know exactly when we're starting construction of the gate station.

MR. CASS: Yes, Ms. Hare, this exhibit happened to go in just immediately prior to this panel, but it's not as if this panel was really responsible for the exhibit.

If you are asking can that be added to Exhibit K8.1, I can't think of any reason why it couldn't be added and refiled with that.

MS. GIRIDHAR: I'm sure we can.

MS. HARE: Thank you. The second question is: I thought I heard this morning in response to a question from Mr. Mondrow that the Brantford-to-Kirkwall loop has been pushed back a year to 2016. Did I hear that correctly?

MR. ISHERWOOD: No, sorry, I may have misspoke. We are asking the Board for a leave-to-construct timeline out to 2016, in case it gets delayed a year. Our intent and our expectation is it would be built in 2015, but if there's delays at the NEB for any reason, then we just want to have an extra season to put it in place.

But our project as filed is 2015.

MS. HARE: Thank you.

MS. CHAPLIN: Let's give it an undertaking number for the modifications or the addition to the K8.1.

MR. MILLAR: Yes. J9.6.

UNDERTAKING NO. J9.6: UNION TO MODIFY TIMELINES IN EXHIBIT K8.1 TO INCLUDE PARKWAY WEST GATE STATION.

MS. CHAPLIN: Do any of the counsel for the witnesses have questions in re-examination?

MS. SEERS: Madam Chair, Myriam Seers for Union. I have one question.

MS. CHAPLIN: All right.

RE-EXAMINATION BY MS. SEERS:

MS. SEERS: Mr. Isherwood, if you could turn up the term sheet, please, at page 3 -- it's K1.1 -- at the very bottom of the page 3 there's a bullet that says:

"Loss of revenues on long-haul paths will not be used at assess the liability of a new build to serve the market via short-haul."

Yesterday Mr. Elson asked the panel to explain that clause, and Mr. Schultz explained it from TCPL's perspective.

Could you explain it from the LDCs' perspective, and Union's?

MR. ISHERWOOD: From the LDCs' perspective, what that clause is really saying is what the term sheet is doing is opening up access to Dawn and to Niagara. And unlike the current environment, prior to the term sheet, where short-haul paths were being evaluated based on loss of revenue, what the term sheet does is provide TCPL with a reasonable opportunity to earn those revenues. So they no longer will need to evaluate lost revenue as part of their viability of building.

MS. SEERS: That was my only question, Madam Chair.

MS. CHAPLIN: Thank you.

MR. CAMERON: I have no redirect.

MS. CHAPLIN: Thank you very much. This panel is excused with the Board's thanks.

We will break now for lunch. It's quarter to one. We'll resume at quarter to two with Enbridge's panel 3.

--- Luncheon recess taken at 12:45 p.m.

--- On resuming at 1:47 p.m.

MS. CHAPLIN: Please be seated.

PRELIMINARY MATTERS:

The Board has one preliminary matter before the Enbridge panel is introduced, and that is to put on the record the proposed dates for the argument schedule. I believe Mr. Millar has had an opportunity to speak to some people about the schedule, but we'll put the dates here now, and then we'll re address it at the end if there are any concerns that people want us to be aware of or take into account.

So we would have argument in-chief due Friday, October 18th, submissions from intervenors and Board staff would be due Friday, November 1st, and reply submissions would be due Friday, November 15th.

Are there any other preliminary matters before the Enbridge panel is introduced? Okay. Mr. Stoll?

MR. STOLL: Thank you, Madam Chair. This is the, as you said, the Enbridge panel 3. We have six people, and we'll have to go by swearing them. Their CVs have been filed in the evidence already, so I don't intend to go through those. So if we could...

ENBRIDGE GAS DISTRIBUTION - PANEL 3

Byron Madrid, Sworn

Tyler Horton, Affirmed

Brian Wikant, Sworn

Joel Denomy, Sworn

Anton Kacicnik, Sworn

Stuart Murray, Sworn

EXAMINATION-IN-CHIEF BY MR. STOLL:

MR. STOLL: Just a very quick introduction and a very short examination in-chief. The panellists from furthest from me: Mr. Madrid, Mr. Horton, Mr. Wikant, Mr. Denomy, Mr. Kacicnik, and then Mr. Murray, just for your reference.

Mr. Wikant, can I ask you to -- if you were involved in the preparation of the evidence and the responses to the interrogatories on the evidence for this panel? Or the panel members were?

MR. WIKANT: Yes.

MR. STOLL: And do you adopt that as your evidence here?

MR. WIKANT: Yes, we do.

MR. STOLL: And I understand there is one or two corrections Mr. Denomy would like to make to the evidence?

MR. DENOMY: That's correct. If you could turn up the response to Undertaking J6.10. Under the column "2015/2016", that's the second from the left, and in the row entitled "Enbridge transmission requirement - EDA", the first 170,000 gJs a day should be zero.

And there are two minor corrections to the undertaking response to J6.X.

MR. STOLL: Okay. It's up.

MR. DENOMY: Good. If you go to the second-to-last paragraph, second line, there's another reference to 170,000 tJs a day. That should be pJs a day, not tJs.

MS. CHAPLIN: Sorry, which page are you on?

MR. DENOMY: Sorry, page number 2. My apologies.

MS. CHAPLIN: That's okay. Thank you.

MR. DENOMY: Then if you go over to page number 3, the last paragraph, second-to-last sentence, there is a reference to 260 tJs a day. That should actually be 360 tJs a day. Thank you.

MR. STOLL: Thank you, Mr. Denomy.

I'm not going to go into any of the gas delivery costs. I do have two quick questions on the costing or estimating approach. And Mr. Wikant, I'll leave it to you to answer.

Can you just describe the estimating process used by Enbridge?

MR. WIKANT: Good afternoon. There's a correlation between upfront spend and estimate accuracy, and the company believes that it has struck the right balance. The company is comfortable with its cost estimate, which has been developed with a bottom-up risk-based approach that reflects a sufficient level of project definition on which to evaluate the feasibility and public interest of the project.

Having said that, the complexity of urban construction creates unique challenges. For our project that includes an extensive horizontal directional drill program, limited working room, and hundreds of time-sensitive permits.

The company also expects substantial competition for specialized contractor resources in 2015.

While the contingency and escalation models account for some portion of these risks, variability in the final cost outcome is almost a certainty. Inclusive of contingency, which is expected to be spent, there is equal probability that the final project costs will be over or under the estimate, which is why the company has requested a variance account as part of the EB-2012-0459 proceeding.

MR. STOLL: And what are the company's expectations in regards to recovery of the costs for this project?

MR. WIKANT: The company is seeking cost recovery and variance treatment through its rate application EB-2012-0459 rather than in this proceeding. However, the company expects that if the Board finds the important gas supply and distribution needs that the GTA project addresses are actually in the public interest, the cost will be approved into rates, as has been the case in previous leave-to-construct applications.

The company understands that any cost overruns will certainly be subject to a prudence review by the Board, but provided that prudence is demonstrated it's the company's expectation that these costs would also be recoverable through rates.

MR. STOLL: Thank you, Mr. Wikant.

The panel is available for cross-examination.

MS. CHAPLIN: Thank you. Mr. Higgin, I believe Energy Probe is going first?

DR. HIGGIN: Yes, thank you, Madam Chair.

CROSS-EXAMINATION BY DR. HIGGIN:

DR. HIGGIN: Good afternoon. I draw the short straw here. So I hope we won't get our gJs and our pJs mixed up again. And I'll try.

Okay. Just to start, I'm going to cover three areas. One is just a very short follow-up to an undertaking response, and then I'm going to talk a bit about the economic evaluation framework, and then finally a bit about the rate impacts of the various projects and how they all interconnect, not only from the interdependence table 8.1, but from a rate point of view. So that's my scope. Thank you.

So could we just start by drawing up the response to J6.8. That's the operating system map. So we'll flip it round.

And basically my problem is just to get a couple of clarifications. If it's not your bailiwick, then you can perhaps take it home and get it fixed.

Basically, one of the concerns I have, if you look at Albion Road gate station, you'll see there that the I is now 4,729, if you can read it. It was 5,909, so I would like to understand why that has happened, given that there is no change to the set point of the volume. So that would be one question I would like clarification of.

And then the other one is that I had thought you would have put the new Parkway West gate station in the same units as the rest of the map, which would be I, S and V, so I would like if those could be put on this so we can have a full situation, we can look at the whole map.

So just to repeat, that would be a request to you to explain the change in the I for Albion Road, and secondly, to add the I, S and Vs for the new Parkway West gate station. And I think this is all in KPas and 10^3 m^3s, and it will confuse us all, I'm sure, but anyway... Okay. Could I have an undertaking for that, please?

MR. DENOMY: Yes, you may.

MS. CHAPLIN: Do we have a number?

MR. MILLAR: Yes. J9.7.

UNDERTAKING NO. J9.7: EGD TO EXPLAIN THE CHANGE IN I FOR ALBION ROAD, AND ADD I, S AND V FOR THE NEW PARKWAY WEST GATE STATION.

DR. HIGGIN: Thank you.

I'm going to move on now to my main area, which is to talk about the economic evaluation framework that Enbridge has used.

So just as a segue in here, if we could look at your EB-2012-0451 exhibit, E, tab 1, schedule 1 paragraph 5.

So just looking at paragraph 5, it says here very clearly segment A and B are required for ratepayers to realize the benefits. Correspondingly, and this is the key:

"The overall economics combine the costs and quantifiable benefits of both segments. As a result, the discounted cash flow of DCF was prepared on the basis of the entire project over a 40-year horizon, which is in accordance with both EBO-188 and EBO-134."

So that's the framework that you've adopted; correct?

MR. MURRAY: That's correct.

DR. HIGGIN: Now, there are those others that think that there should have been two economic evaluations, one for segment A, which is a combined distribution and transmission line, whereas segment B is clearly a distribution reinforcement line. But that's probably a matter for argument, so we won't spend time here debating that.

However, the question, I think, is: Is there a material difference if it was done differently? And I think that's the question I would like to explore.

So I put together, to help this discussion, a schedule that I sent your counsel, that lists the evaluation methodology for Union's Brantford-to-Parkway and compressor D base case and also your evaluation base case for the combined segment A and B.

So perhaps we could pull that up, and perhaps start with giving this an exhibit number, if possible.

MR. MILLAR: Yes. It will be K9.1.

EXHIBIT NO. K9.1: EVALUATION METHODOLOGY FOR BRANTFORD-TO-PARKWAY AND COMPRESSOR D BASE CASE, EVALUATION BASE CASE FOR COMBINED SEGMENT A AND B.

DR. HIGGIN: Thank you. So I don't want to spend --

MS. CHAPLIN: Sorry, one moment. Do you have hard copies, Mr. Millar?

DR. HIGGIN: I did suggest that, yes.

MS. CHAPLIN: It just would be helpful for us to have those in front of us at the same time. Please proceed.

DR. HIGGIN: So I don't want to go through all of these, but just -- there are a few updates that should be made, and I'll just note a few of those. And I see you've made some of those updates.

For example, in 687 -- for the capital cost, 687; correct? Is on here, is the update. Is that the correct new number for the total capital?

MR. MURRAY: On an escalated basis, the number is 686.5. And the other figure that you had in brackets, which we take to mean the cost escalated for NPS 36 --

DR. HIGGIN: Correct.

MR. MURRAY: -- to be 632.

DR. HIGGIN: That's from J6.9. If you -- the source of those updates is J6.9; correct?

MR. WIKANT: That's correct.

DR. HIGGIN: Thank you. Now, looking at a couple of other updates that we need to do, let's go to the "Other benefits," which is the gas transportation and gas supply costs.

Union has put on record -- we don't need to ask them, but that it could be $9.6 million under one scenario or that main scenario, 9.6 million.

What is the new number for Enbridge? It comes, I believe, from J6.X. What is the new number?

MR. DENOMY: That's correct. So the -- just let me turn it up.

DR. HIGGIN: It's 49 or 68, depending on how the tolls are calculated; correct?

MR. DENOMY: The new number on an annual basis in terms of gas supply savings is -- as we had originally filed in terms of our supply plan with the GTA project facilities in place, would be $173 million per year.

DR. HIGGIN: 173? Okay.

MR. DENOMY: Then there would be, pursuant to the terms of the term sheet, there would be an additional amount of approximately 49 million per year, which is the displacement that occurs with long-haul to short-haul to the Enbridge EDA.

DR. HIGGIN: Right. So that 49 -- and that is under one of the toll scenarios, and the other number is 68 million; correct?

MR. DENOMY: I'm sorry, sir, I'm not sure where you are getting that $68 million number from. Probably have a --

DR. HIGGIN: It comes from J6.X, specifically.

MR. DENOMY: Oh, sorry. 68 million, yes, that's correct.

DR. HIGGIN: Thank you. So those, I think, are the main updates. Do you have any other updates that you would like to make at this point, or is that --

MR. MURRAY: The reinforcement capital total is 50.65.

DR. HIGGIN: 50.65? Thank you. And that I don't suppose you've run any change to the NPV or the 173 since this was done; correct?

MR. MURRAY: Correct. We have not.

DR. HIGGIN: Directionally, can you give us an idea if these amendments -- particularly the capital, obviously -- are going to have a significant or -- what type of increase would you see to the NPV change? Any ideas, directionally? I don't want to ask you to run them again, but... with an increase in capital of 30, 35 million, et cetera?

MR. MURRAY: We did some preliminary calculations and I don't have the exact number, but it would be in the neighbourhood of raising the PI to closer to 2.

DR. HIGGIN: Okay. Thank you. So just look at a few of the differences between the two approaches. As you well know, on the left, Union's is a 134 analysis; yours is a combined 134, 188 analysis, both agreeing on that framework?

MR. MURRAY: Yes, both parties, as I understand it, have used a discounted cash-flow analysis.

DR. HIGGIN: Right. So one of the differences that you can see on here is, of course, dealing with the line that deals with the transportation revenue and also with the transportation revenues horizon. And if you look at that you'll see Union has used 30 years for its integrated Dawn-to-Parkway, and that's its tradition to do that. And you've used 40 years, which, I'm going to ask you: Where did the 40 years come from, as in the concept of transmission? We know 40 years is customer horizon for distribution projects.

MR. MURRAY: Correct. So I guess two points on that. The period that we chose for the transmission segment was determined based on the used and useful life estimate for the line, and we believe that to be 40 years. However, the actual annualized transportation savings that are included are only run out until 2025. So they are within the 30 years, regardless.

DR. HIGGIN: Yes, if you look at the line on the transportation revenue, you are correct, that runs out only to -- for 11 years, basically.

MR. MURRAY: Yes.

DR. HIGGIN: Okay. Now, one other question here, just in terms of the analysis, is, can you tell me why the discount rate is different for yours and Union?

MR. MURRAY: I can't really speak to the assumptions behind the capital-cost inputs for Union. I can say and confirm that EGD's number is derived from the 2013 Board-approved capital structure.

DR. HIGGIN: And what's the significance of that with respect to the analysis? What does a difference of .8 in discount rate -- what's the significance?

MR. MURRAY: You mean at a general level?

DR. HIGGIN: Yeah, just directionally, what does that do to the DCF and the NPV?

MR. MURRAY: To lower the discount rate would have a positive effect on the NPV.

DR. HIGGIN: Okay. Thank you. Now, just on the 20.2 million, which is the transportation revenue number, just a question there. This assumes 100 percent utilization of the 1,200 capacity for transmission. Is that the assumption that's there for that 11-year period?

MR. KACICNIK: The 20.2 million per year was based or pro-rated based on capacity utilization between Enbridge Gas Distribution customers and merchant shippers, so it's that 60-40 split between EGD and merchant shippers.

DR. HIGGIN: Yes, however, I'm asking within the 60 how -- what was the assumption you utilized here regarding the revenue from that 60?

MR. KACICNIK: The assumption is that 20.2 million per year will be recovered from merchant shippers, pretty much regardless of the level of subscription.

DR. HIGGIN: So if the pipes fall 100 percent that's the assumption. If it's not then what happens?

MR. KACICNIK: If it's 50 percent full we still recover 20.2 million from those shippers and so forth.

DR. HIGGIN: So you actually will recover the money from shippers that have contracted for that capacity, so then the assumption must be it's fully contracted for 11 years to get that revenue; correct?

MR. KACICNIK: Yes, I would put it that the assumption can be that the total revenue requirement from -- of 20.2 will be recovered from merchant shippers.

DR. HIGGIN: Okay. Thanks. We'll leave this one for now, and I said I considered whether to ask for a separate economic analysis of segment A, but decided this would be time-consuming and may not clarify the record. So we'll leave it there for now. Thank you.

I would like to move on to my second area, which is looking at the overall costs, particularly, and the rate impacts. So as a segue into this, basically, I tried to put all the costs together. If you take -- for example, if you could pull up and just look at K8.1, which was the interdependency table, briefly, you'll see that all I'm saying is that all these projects come together in here, with the perhaps exception of Kings North, and also then there are cost streams, revenue requirements, and so on associated with each of these components.

So what I tried to do was to put these together into one schedule and see what was driving the various increases. So if you could pull up a schedule that I sent last week to you, then we could discuss this, and I'm here to try and get your input to it, as well as hopefully at the end to complete the data.

So this schedule, we should give it a number. Do we have one for...

MR. MILLAR: K9.2.

DR. HIGGIN: K9.2? Thank you.

EXHIBIT NO. K9.2: SCHEDULE FROM DR. HIGGIN

DR. HIGGIN: So this is looking at these same project segments. If we -- at the left we have the base average distribution rate. I used it in dollars per M cubed but, as you know, some rate classes have a demand charge and therefore wouldn't be applicable, but I used it in that just to keep it simple.

And then on the first column we see the Parkway West LCU and the rate impact of that. Now, you've already told me that, and so we can add $9.9 million as the impact into that column, because in 611 you provided that number to me.

So in 611 -- I don't know whether we need to look at 611, but just take it from subject to -- that is it 9.9 million.

And so then what I would like to know is, can you add in these other costs, which would then flow into revenue requirement and therefore would cause incremental changes to the rates, the distribution rates for the classes.

So for example, do you have a lease now for the station, for the EGD Parkway West station, and do you have a cost for that?

MR. MADRID: We do have an estimated cost that we used in the overall estimate, but in absence of having the detailed design done for the facility and firming up the actual land requirements with Union Gas, we don't have a final number yet.

DR. HIGGIN: But you do have an estimate that you could use?

MR. MADRID: Correct.

DR. HIGGIN: Thank you. The same for the Brantford-to-Parkway CD compressor D. Then the rate increase comes out of Union's schedules, is so much a year that -- which is the M12 C1 rate, correct? Do you have those data?

MR. DENOMY: We have those data, just not handy with us.

DR. HIGGIN: Right. Then if we go across we see segment A revenue requirement. Now, just to be clear, that's the gross amount. It's not the 60 percent, it's the gross 100 percent. I'll ask you if that's correct for the gross amount.

MR. KACICNIK: Yes.

DR. HIGGIN: Then we have the transportation charge that you are going to charge yourselves to transport the 170 to the EDA, and I couldn't find what that was.

MR. KACICNIK: That will be a function of the total volume that will be subscribed on the Albion transmission pipeline. To populate this table we can make some assumptions.

DR. HIGGIN: Right. Okay. So it's the 170 times whatever the rate, 33, 32. So you would charge yourselves the same rate, 33, 32, based on 170 design; correct?

MR. KACICNIK: That could be the case, or we could be contracting with TCPL to move those volumes for us and then

TCPL would be charging us.

DR. HIGGIN: So that would be a different toll structure. I'm trying to clarify that, because at the moment there has been no suggestion that TCPL was a shipper on the Albion line. So I was assuming that you would charge yourself whatever the Rate 33, 32 was going to be on a volume basis.

MR. KACICNIK: Could be a sensible assumption to fill out this table.

DR. HIGGIN: Then looking at segment B, I have the revenue requirement, if I've got it right, of 34 million for segment B; correct?

MR. KACICNIK: That's correct.

DR. HIGGIN: So then what I'm trying to do in these next two columns is to add the total dollars and the total increase by rate class for -- so that I can have a breakdown of the impact of each of the project components on rates. And I'm now going to put it to you.

Is this a reasonable framework to do what I'm trying to do, or do you have any suggestions or changes that you would like to make to this framework that you think would be more helpful to me, and hopefully to the Board and everyone else?

MR. KACICNIK: It seems like we will have all of the information that's needed to populate this column, so we'll do it.

DR. HIGGIN: Thank you. Then looking at the right-hand two columns, these are –- so on the one side, on the left side, we have the costs. These are what the ratepayers are going to see in terms of increased costs.

On the right are the benefits, and the benefits are the transportation revenue.

Now, I have a little concern that we may be double-counting for the 170 that you're going to charge. That's the transportation charge, that we may somehow be double-counting there; am I correct?

MR. DENOMY: We could be double-counting there and you could be double-counting in the M12 C1 impact, along with the Parkway C and D, because the expected gas supply benefits for the 400,000 gJs a day that we will be contracting for on Union's pipeline, the incremental 400,000, actually include the impact of Parkway West, Parkway D and Brantford-to-Kirkwall.

DR. HIGGIN: Right. I had realized this possible double-counting. So the question is, then: What should we use to be the, quotes, net revenue from other shippers? That's not you. What should we use as the number instead of 20.2? Can I ask you to get an estimate for that, what the number should be?

MR. KACICNIK: We would certainly list all of our assumptions as we are going about to populate this table, but one possible assumption would be to reduce the 20.2 million revenue from Rate 33, 32 by the amount that we would charge ourselves for 170 tJs.

DR. HIGGIN: Thank you. That's very helpful.

On the right-hand side, that's, then, the long-haul transportation costs and gas savings. And I used A5, your original schedule, which is -- let me see. I have the full reference here, which is -- yes, that's Exhibit A, tab 3, schedule 2 -- sorry, schedule 9, attachment 1, table A5, as being the source.

So would you think that if that was updated, that that would provide an estimate of those benefits?

Here it is. You haven't updated that since the tolls?

MR. DENOMY: Yes, we can update with this table, plus the EDA benefit as well.

DR. HIGGIN: Okay. That would be helpful. So if you are, then -- we're on the same page, then I think it would be very helpful to me and hopefully others to be able to see all of these rate impacts and how they come from the different projects.

That's it. I think those are my questions. So thank you very much, panel, and thank you, Madam Chair.

MR. MILLAR: Mr. Higgin, were those -- it seemed to me those were undertaking requests that were --

DR. HIGGIN: Yes, you're correct. Because it was a -- K was the exhibit, so we need a J number.

MR. MILLAR: Could you repeat it, please? Because I heard two possible undertakings which I think are related to the same thing.

The undertaking will be J9.8, but could you repeat what the undertaking is?

UNDERTAKING NO. J9.8: TO POPULATE THE CHART AT K9.2 WITH DATA FROM EXHIBIT A, TAB 3, SCHEDULE 9,

ATTACHMENT 1, TABLE A5

DR. HIGGIN: Yes, it's to populate this chart -- which is K9.1; is that right?

MR. MILLAR: 9.2.

MR. STOLL: 9.2.

DR. HIGGIN: 9.2, sorry. Thank you, Mr. Stoll.

And to add any references, comments, et cetera, that will help with explanations of the assumptions and the rate impacts.

MR. MILLAR: Thank you.

MR. STOLL: I think there was a second part, which we had agreed to, which was the update of the table A5. Was that not –- or is that captured in here? Is it the same?

MR. DENOMY: It was my understanding that table A5 would simply be used to populate the table that we now have up on the screen.

DR. HIGGIN: I didn't specifically ask for an update of A4, if incomplete.

MR. MILLAR: Sounds like we're good with one undertaking.

DR. HIGGIN: Thank you.

MS. CHAPLIN: Thank you.

Mr. Wolnik?

CROSS-EXAMINATION BY MR. WOLNIK:

MR. WOLNIK: Yes. Thank you. Good afternoon, panel. John Wolnik, representing APPrO. I just have a couple questions and they both relate to Rate 332. So maybe if you could just help me with this.

I understand this is the transmission rate for segment A. And Enbridge has other transmission rates, do they not, in and around Tecumseh?

MR. KACICNIK: We have one transmission rate and that is Rate 331. It's transmission service from Tecumseh to Dawn.

MR. WOLNIK: And the derivation of 332, have you used the same principles as 331?

Or maybe to ask it slightly differently, are there any differences between what you're proposing for 332 and what you traditionally have done with 331?

MR. KACICNIK: Both of those rates are derived on a standalone basis. Where I see the main difference is that Rate 31 (sic) is capacity that we would have un-utilized for Enbridge Gas Distribution purposes, to move utility volumes from Tecumseh to Dawn.

So if there is some spare capacity, we go out to the market and get shippers that would fill that capacity. And that is rate 331.

On the other hand, Rate 332 would be derived based on revenue requirement of the Albion pipeline, and we would be recovering 60 percent of the revenue requirement of segment A from merchant shippers they can service under Rate 332.

MR. WOLNIK: Sorry, I didn't fully catch the 331 again. Could you just explain that again? Perhaps I missed what you were saying.

MR. KACICNIK: Rate 331 does not have, let's call it, a reserve capacity; right? But the transmission pipelines from Tecumseh to Dawn are primarily used to transport utility storage volumes from Tecumseh to Dawn, and if there is some spare capacity that's not used for utility purposes, we make that capacity available to shippers to transport their volume from Tecumseh to Dawn under Rate 331 service.

MR. WOLNIK: So is that a firm service or a more discretionary type of service?

MR. KACICNIK: Rate 331 is both firm or interruptible service.

MR. WOLNIK: When you derive the rate, do you use a fully allocated rate design for that as well?

MR. KACICNIK: Correct.

MR. WOLNIK: That's what I was looking for.

And the second question goes to the lost and unaccounted-for requirements. In Exhibit E, tab 1, schedule 2, attachment 2, I think that's the rate description that you would include in your rate handbook.

And when I looked through that, I didn't notice any provision for lost and unaccounted-for that you would often have in these rate schedules. So perhaps you could just comment on that?

MR. KACICNIK: Yes. There will be a separate tariff provision that will go with this Rate 332 service, and any unaccounted-for gas obligations would be spelled out in that tariff provision.

MR. WOLNIK: And how would you anticipate calculating that?

MR. KACICNIK: We would derive the forecast amount for unaccounted-for gas on this pipeline based on our operating experience with the pipe.

MR. WOLNIK: So you would do it strictly for the pipeline itself.

MR. KACICNIK: That's correct.

MR. WOLNIK: And some of that would be allocated to the, I guess the distribution segment and some to the transmission amount? Would that be a reasonable assumption?

MR. KACICNIK: Yeah, that would be a reasonable assumption. The unaccounted-for gas percentage would be the same both for merchant shippers and from Enbridge Gas Distribution use of that pipeline.

MR. WOLNIK: And how would you actually determine that from time to time?

[Witness panel confers]

MR. KACICNIK: Well, let me try and give an answer, and if you are not happy perhaps we'll need to take an undertaking.

Generally speaking, the unaccounted-for gas would be the difference between the volumes that flow through the receipt point at Parkway versus what flows through the delivery point at Albion, right, and that based on that we would be estimating our unaccounted-for gas percent.

MR. WOLNIK: Okay. So all of the -- you haven't -- a meter at Albion then, and all the volumes will be at the meter, including the volumes going into Kings North?

MR. KACICNIK: Yes, I believe so.

MR. WOLNIK: And you would just make periodic rate adjustments based on sort of an updated forecast?

MR. KACICNIK: Correct.

MR. WOLNIK: Okay. Thank you. Those are my questions.

MS. CHAPLIN: Thank you. Ms. Dullet?

CROSS-EXAMINATION BY MS. DULLET:

MS. DULLET: Yes, thank you, just a couple of questions remaining. In Exhibit I.A3.EGD.Staff.13, Enbridge states that in the period of 2003 to 2012 there was only one project in excess of $50 million, and that was the Portland Energy Centre. The project that we are dealing with is in the range of $650 million. So would you agree that Enbridge does not have a great deal of experience managing capital projects of this magnitude?

MR. WIKANT: Enbridge Gas Distribution does not have a lot of experience managing projections of this magnitude; that's correct.

MS. DULLET: Thank you. In the same interrogatory it states that the Portlands project, which was budgeted at 41 million, actually cost 61 million. With respect to this project, how will ratepayers be protected from significant cost overruns?

MR. WIKANT: I'm going to start, and then I'll let Mr. Horton perhaps add on.

As I stated in the preliminary -- you know, the accuracy of the estimate's dependent on the amount of project definition you have upfront, and we're quite comfortable with the level of definition we have here and the cost estimate we've provided.

In terms of the PEC extra spend, the reasons for it were also laid out in the interrogatory for Staff 13, and the primary two reasons were land-related, in terms of the method for assessing land, and increased contractor costs due to the volume of contractor activity or pipeline activity in 2007 and -8.

In terms of the land component, our particular project uses over-the-fence land valuation to determine the land costs, so that's something we've learned from PEC and is incorporated in our estimate.

In terms of the other issue, in terms of contractor cost, we actually are in the process -- now we've expedited some detailed engineering work, because that certainly is one of our risks as well.

We have expedited the detailed engineering work on the project because we want to get to market sooner rather than later with a bid for both our HDD contractor and our main line contractor, so that we can tie up those resources sooner rather than later, because we're also expecting a lot of construction activity in 2015.

So we started that work to allow us to do it. We expect to be in market prior to a Board decision with tenders so that we can secure those resources sooner rather than later, with an expectation that we would actually award those contracts in January shortly after we receive Board approval, but it's one of the reasons we requested a December 15th decision, because we do want to secure those contractor resources as soon as possible to mitigate a similar situation to what happened at PEC.

MS. DULLET: Anyone adding anything to that? No?

MR. HORTON: Sure. In addition to that, since the PEC project was constructed, Enbridge has implemented a project-management framework that does deal with large-scale capital projects. It's a rigorous approach that utilizes standardized deliverables with check points all along the way to make sure that the projects are still on track and going according to plan. So that has been implemented since the Portlands Energy Centre project, and we are following that as well.

MS. DULLET: Thank you for that.

Now, you'd mentioned that -- it's table A5 that you had mentioned was latest project benefit analysis. Could this be updated, considering -- rerun assuming some cost overrun figures, so 10 percent, 25 percent, or 50 percent, just so that we have an analysis with reference to that?

MR. WIKANT: One thing we do have, if you actually go to our evidence, A3.9, we did do a sensitivity analysis with a 10 percent cost overrun. It is number 7, if you can look at number 7 here. And that 10 percent was actually on all capital, it wasn't just the capital associated with the project, it was also capital associated with the services and mains and the reinforcements contemplated in the future. So with all capital increased by 10 percent the PI of the project was still 1.6. If you would like us to update this with, say, 20 percent, would that satisfy your request?

MS. DULLET: 25 percent, would that be reasonable?

MR. WIKANT: Sure, we can do that.

MS. DULLET: Thank you. Now, my next question deals --

MS. CHAPLIN: We need a number.

MS. DULLET: Oh, sorry.

MR. MILLAR: J9.9.

UNDERTAKING NO. J9.9: EGD TO UPDATE SENSITIVITY ANALYSIS WITH 25 PER CENT PI

MS. DULLET: Can you explain how, in the context of your proposed IRM that has been filed, this project is being treated, in terms of cost recovery? How do the costs of segment A and B flow through to rates?

MR. KACICNIK: First, I would like to say that as part of this proceeding we are not asking for recovery of any cost or for specific rate impacts. In the application that was filed for our 2014 through '18 rates, what we have there, it's allowed revenue that we will recover through rates in each of the five years, and the revenue requirement from this project would be part of that allowed revenue, and the allowed revenue will be allocated to the various rate classes based on Board-approved principles and conventions for cost allocation and then recovered from the same rate classes, using rate design principles.

MS. DULLET: Okay. Just a minor clarification point.

At EGD.CCC.26, you set out language for the Board order approving the rate, and that was under the shared ownership model. Has this been updated to reflect the current arrangement?

MR. KACICNIK: Yes. The Rate 332 rate schedule has been updated to reflect the new proposal, which is to have shippers through the open season.

MS. DULLET: I'm sorry, where would I locate that?

MR. KACICNIK: I think it's part of -- give me a second, please.

You can find that at Exhibit E, tab 1, schedule 2, pages 1 and 2 plus attachment. That was filed on July 22nd of this year.

MS. DULLET: Thank you very much. Those are my questions.

MS. CHAPLIN: Thank you. Mr. Quinn?

CROSS-EXAMINATION BY MR. QUINN:

MR. QUINN: Thank you, Madam Chair. Good afternoon, panel. My name is Dwayne Quinn. I'm here on behalf FRPO.

I guess I have questions that all revolve around one area, and I don't know, Mr. Kacicnik, if this is directed to you or there's other people on the panel that would answer the question.

First, in a very broad way, I'm trying to get a concise definition of cost causality. And I would define it as: Those who benefit from a service pay for the service.

Would you agree with that, Mr. Kacicnik, or do you have a more effective definition?

MR. KACICNIK: Generally I would agree with that definition. Perhaps I would state it as those customers who cause us to incur the cost to provide service would pay for those costs.

MR. QUINN: Thank you.

Now, you're likely aware that we've had some discussion in this area because you answered an undertaking, and I'm not going ask you to bring the undertaking up just yet, because I want to make sure -- we had to truncate some discussion with the previous panel.

And if I may ask for volume 6 of the transcript from September 26th, page 131 to be brought up, if you would, please?

As it's being brought up, I'll give the background. I was discussing it with the panel at the time, trying to isolate the decision to move back from Bram back to Parkway West as a starting point for segment A.

Because of the time frames, I had asked Mr. Fernandes to focus on the part that I was interested in at the time.

And at the top of 131, he offered the fact that one of the benefits of moving back from Bram to Parkway West was that you would forego having to pay TransCanada $26 million in terms of a transportation service for that portion.

But in the middle of the page, starting at line 12, he had offered there were other reasons that he was going to get to, and I asked him to focus on that one reason because that was our area of concern.

Would you like to –- I throw this out to the panel, or you could take it by way of undertaking -- provide other reasons why it would be a benefit to have the starting point of segment A at Parkway West as opposed to Bram?

MR. STOLL: Subject to anybody jumping in, it might be best if we deal with that by way of undertaking.

MR. QUINN: I would accept that, Mr. Stoll. One of the things that I said as we -- if you follow down further on the page, I had asked -- when there was other benefits offered, I asked if they could be quantified in terms of their value. So to make sure we have a fulsome undertaking, if it would be what the benefits are and what the value of those benefits would be, if Enbridge would -–

MR. WIKANT: Mr. Quinn, my recall of the evidence from the earlier panel was that in addition to the approximately $26 million savings on the toll, an incremental benefit would be that additional capacity would be freed up on TransCanada's system, that may actually defray some of the cost on their build from Vaughan to Maple.

That was my recollection of the earlier testimony. I think we indicated that in terms of what that defrayal might be, TransCanada would have to perhaps answer that. But that would be an offset, is the expectation.

MR. QUINN: I would be satisfied with that answer. I just want to make sure that Enbridge is satisfied that you have identified the benefits.

MR. WIKANT: Would you like an undertaking for me to confirm that so that's on the record?

MR. QUINN: No, I just -- if you can --

MR. WIKANT: I'm comfortable that that was the evidence of Ms. Giridhar and Mr. Fernandes, and that is our evidence.

MR. QUINN: So we have two benefits, then. You forego a $26 million payment, and it adds transportation capacity and defrays some costs that TCPL might incur?

MR. WIKANT: Correct.

MR. QUINN: Thank you. So now I want to get back to the undertaking, and that's J6.12, J6.12, if that could be brought up?

Now, I'm going to try to walk through this at a high level, because it is marked confidential. I think being brought up on the screen, I think I'm going to maybe ask the Chair if that is acceptable for -- to be brought up on the screen, but I'll stay away from the numbers. I'm going to focus on the principles, for the record.

MS. CHAPLIN: What I see on the screen is not marked confidential, so it's redacted.

MR. QUINN: That's great. Thank you. I'm looking at the confidential one myself, and I want to make sure we respect the confidentiality.

Just in reading the principles, in response, the answer to my request to look at the portion from Parkway West to Bram being paid for by transmission customers, the answers that are received from the company, starting in the second line, is:

"The company does not support this scenario as it believes this scenario is inconsistent with the regulatory principle of cost causality."

I struggled with that, because what I'm looking at this from -- and clearly from a distribution customer's point of view -- I understand that distribution volumes will flow the entire length of the pipe, but would you agree with me that customers would be indifferent to the quality of service, independent of the length of the pipe it travels through?

MR. KACICNIK: I'm not sure what you mean by "the quality of service." What does that mean?

MR. QUINN: What your answer seemed to provide was the customers' gas was flowing through the entire length of the pipe, so therefore they should to have pay for the entire length of the pipe.

I'm asking you: If I can be served with a -- by a shorter pipe than a longer pipe, and I'm still getting the same quality of service, am I indifferent from a quality point of view?

[Witness panel confers]

MR. KACICNIK: If the customers receive same service, the same quality, they should be indifferent. It's the understanding here that they will have to pay or they would pay another 26 million through TCPL tolls if we were shipping their gas from Parkway to Bram West.

MR. QUINN: And I want to deal with that issue separately. I just wanted to stick with the quality question. Would you agree to it being different in terms of quality?

MR. KACICNIK: Yeah, I agreed with that.

MR. QUINN: Okay. But what I hear you pointing out is they would not be indifferent if there was a different cost for that same quality of service. If they had to pay a higher amount, they would not be indifferent.

MR. KACICNIK: They would not be indifferent between the two options; correct.

MR. QUINN: Okay. So in the situation we have here, we have your responses saying that essentially you're going to eliminate a transmission cost. Your investment will increase transmission capacity; in other words defraying costs by TransCanada. Why would we not expect that the rate 332 should absorb those costs?

MR. KACICNIK: Because we priced our rate 332 based on the cost of this segment A pipeline. Rate design does not look at factors beyond the cost of the pipeline.

MR. QUINN: I understand that's the way you priced it, but what I was asking -- and it is started with the technical conference, and I don't need to go back through that transcript. We're concerned about the fundamental decision that you could have gone back to Bram, thus reducing the impact for distribution customers. You have chosen to go back to Parkway West from what has been deemed twice to be transmission benefits, but now you're expecting a distribution customer to pay that incremental amount, and we have the numbers on the record, and because of the confidentiality I won't put that number on the verbal record, but this is a choice that Enbridge is making. It's a choice on behalf of its distribution customers. And if, Mr. Kacicnik, you are saying that you priced it that way because it's one length of pipe, I'm suggesting to you that a distribution customer is not indifferent to a shorter piece of pipe if they get the same quality of service, and I think you agreed with me on that, did you not?

[Witness panel confers]

MR. KACICNIK: Mr. Quinn, we would agree that the ratepayers would have been different between the two options if the -- if it was same service, same quality, same price. What we are saying is that distribution ratepayers would avoid paying the Parkway-to-Bram-West tolls of 26 million. So they are not indifferent, in our view.

MR. QUINN: On their transmission rate?

MR. KACICNIK: That's what the evidence says, I think.

MR. QUINN: Okay. So -- but that's their transmission rate. I'm talking about their distribution rate. And so they avoid paying $26 million in transmission charges, and your classes of customers pay differently for transmission versus distribution, in terms of the allocation methodologies, and would you agree with me then would be a purer application of cost causality principles that this be viewed as the avoidance of $26 million and the commensurate costs with it would be better categorized as transmission cost?

MR. KACICNIK: I am not certain if I understand your question again.

MR. QUINN: I think I have asked enough questions, and I think I'll take what we have on the record. We may agree to disagree at the end of the day, and I respect your principles, sir, but I think I'm satisfied with the answers I've got to this point. So those are my questions. Thank you.

MS. CHAPLIN: Mr. Rubenstein?

MR. RUBENSTEIN: I have no questions for this panel.

MS. CHAPLIN: Any other counsel? I don't believe anyone has. Mr. Millar, did you have questions for this panel?

MR. MILLAR: No.

MS. CHAPLIN: Mr. Stoll, do you have any re-examination?

MR. STOLL: My apologies. I have no redirect.

PROCEDURAL MATTERS:

MS. CHAPLIN: So I think that concludes this panel. The panel is excused, with Board's thanks.

And so we have argument schedule. At this point there's a number of undertakings that are outstanding, that --

MR. MILLAR: Madam Chair, I think your mic has been turned off inadvertently.

MS. CHAPLIN: Is it on now?

So we went over the argument schedule earlier. I think there are now a number of undertakings which are outstanding from each of the parties. I guess it's the Board's expectation that those answers would be in reasonably promptly.

SUBMISSIONS BY MR. RUBENSTEIN:

MR. RUBENSTEIN: Madam Chair, if I --

MS. CHAPLIN: Yes, Mr. Rubenstein.

MR. RUBENSTEIN: -- may raise an issue before we get into sort of the schedule?

MS. CHAPLIN: Okay.

MR. RUBENSTEIN: I think this would be the appropriate time while we're at the end of the oral hearing.

There's one of the issues of great concern to SEC is that we don't have in evidence in this proceeding currently the final settlement agreement between the utilities. We have the settlement terms sheet, but not the final settlement agreement, and it's our belief that this leaves a significant gap in the evidence, which I will go through and explain why it's necessary.

And it would be our position that the Board should not close the evidentiary portion of this hearing until the settlement agreement is finalized and, if necessary -- I stress if necessary -- recall the applicants to speak to it.

There's a number of reasons why the settlement agreement is important to the Board's decision and important to its determination of this project. The first is, while we have the estimated or indicative tolls that will be included in that and will be presented to the

National Energy Board, we don't have the finalized tolls.

As we heard from a number of the parties yesterday and today on the witness stand, they're still refining the work towards this.

And as than example, Ms. Dullet was asking that if the range of the short-haul tolls that were presented, the 45 to 50 percent or the compliance tolls, if it could be guaranteed that it won't be higher than 55 percent, and the witness panels couldn't make that guarantee.

And as we saw from yesterday's evidence and from the undertakings that were in our -- SEC's compendium, the PI for the EB-2013-0074 project is at 1.01. So even a very small change in the toll differential or any small change in the gas savings cost which the parties -- which especially the Brantford-to-Kirkwall project, but all the parties and all the projects have some relevance to, you know, slip it below what is -- what would be the profitability index under 1, and by the nature of the Board's EB-134 and the transmission expansion guidelines it's an important part, is the PI test, the first step, and we think that's important.

Another second reason is that since the Board's decision in this will precede the NEB's decision approving the settlement and approving those tolls, it's important to understand what the proposed benefits would be, and because this will be before not only the NEB's settlement -- approving the settlement, but more importantly, approving the Kings North project, it's important to understand what in that settlement agreement -- how it will deal with, if the NEB doesn't agree in full or in whole with that settlement agreement.

And I believe there was -- on page 9 of K.1.1 -- and I'll just read it:

"The terms sheet, if executed by all the parties, shall be transposed onto a settlement agreement with all the necessary terms and conditions, including terms and conditions regarding the impact of a decision by the NEB which would not approve the settlement agreement in its entirety."

I think this is a key provision that the Board would need to understand.

And Mr. Brett, in his cross-examination today, brought out another important aspect of this. That would be on page 6 of the settlement agreement, where Mr. Brett, in his discussions with Mr. Schultz, was asking about the conditions with respect to when EGD will award capacity on its segment A, specifically the third condition, which reads -- and I'll read it:

"The NEB delivers an alternate ruling on market access with the associated terms and conditions that all the parties agree is inconsistent with the principles of this settlement, and the parties agree that this settlement should therefore be terminated."

And Mr. Brett was asking what exactly would that entail, specifically. And what we heard from the panel is that this term sheet is in its –– you know, is a high-level discussion and those specifics will be included in the final settlement agreement. Clearly, the awarding of –– when the awarding of transmission capacity on segment A is an important part of this.

We would submit that the Board should understand what exactly that third bullet point and that third condition would entail.

Further, there could still be changes that are mutually agreed upon by all the parties, from transposing the term sheet into the settlement agreement. I believe it was in the technical conference that it was discussed that originally the term sheet was going to be provided by -- was going to be finalized by the beginning of October to the middle of October. And then we heard yesterday that it will be the end of October.

So clearly it's not just a simple task of transposing the principles and the terms of the settlement sheet into this settlement agreement. Clearly it takes a lot of work. There might be some changes that could materially affect how the Board decides, and how it could affect the projects that are under consideration.

I was just sort of -- as we were going through today's hearing, there was just a number of different discussions that sort of explained, sort of brought into focus why this settlement agreement is needed to be seen. And I explained the discussion with Mr. Brett, Mr. Schultz and Ms. Dullet.

There was also discussion with Mr. Schultz in his discussion with Mr. Brett about how the settlement agreement will contain the detailed schedules, understanding a lot more of the financials and the assumptions that are going into them. I think clearly it would benefit the Board and all parties from seeing that.

Then Mr. Clark in his discussions and questioning by APPrO, was discussing that there will be review after three years. And questioning by APPrO was: Would that only be the billing determinants, or all the assumptions? Because the settlement agreement talks about just the billing determinants.

And Mr. Clark said no, it would include all the assumptions, and Mr. Wolnik brought him to the settlement agreement, where it didn't say that. And he said: Well, this is a high-level agreement; these sorts of things will be discussed in the settlement.

So it's our belief that it's important that the Board has that settlement agreement on the record in this proceeding so all the parties can review it and understand its implications. And if necessary -- and I stress, if necessary -- that there is a chance to recall the Applicants to speak to certain elements if they do differ from the term sheet.

MS. CHAPLIN: All right. Are there any other -- before I have hear from the Applicants, are there any other parties that wish to add anything to that? If you agree, you don't need to say anything. Just whether or not there's anything -- okay. Mr. Brett?

SUBMISSIONS BY MR. BRETT:

MR. BRETT: Yes. I think I would just add two points. One, that the term sheet is inconsistent and incoherent in many respects. That would be my first point.

And the second point is that Mr. Clark tried to sort of gloss over these problems with ex cathedra statements that, Well, we'll fix it up; We will make a presentation to the NEB; it will all be fine.

I don't think that's good enough, should be good enough for this Board.

Number one, I suspect it's highly unlikely that he has the authority do that. Those would be matters for the TCPL board of directors, the president. I think that you should have the document in front of you, not rely on assurances of a TCPL executive that he can sort this all out.

Thank you.

MS. CHAPLIN: Mr. Cass? Mr. Smith?

MR. QUINN: Sorry, Ms. Chaplin. I want to speak in favour of that.

MS. CHAPLIN: No, that's –- I assumed all were in favour unless they...

MR. QUINN: I had something to add, though.

MS. CHAPLIN: All right. Go ahead.

SUBMISSIONS BY MR. QUINN:

MR. QUINN: And I'm not going to repeat what Mr. Rubenstein said.

My concerns fall into three areas.

Economics Mr. Rubenstein has covered. I just wanted to add that yesterday I directly asked the witness panel: Is there anything in the term sheet that would cap the surcharge to the order of 45 to 55 percent? And the answer was clearly no. So we have economic risk.

We have commercial risk in the establishment of a settlement agreement, which frankly -- we don't have to cast ourselves too far back, where we actually had a memorandum of understanding, a legally binding document that was in place during the course of this proceeding, which was subsequently breached, put aside, and potentially put ratepayers at risk for billions of dollars of litigation costs.

So in addition to that, we have fundamental risk, which is there with the Energy East program. Now, the Applicants and TCPL can say Energy East is outside the scope of this agreement, but clearly it is something that is going to have an impact.

And while we may not know the actual impact, implications of the long-term -- the LTAA, which is going to have hundreds of millions of dollars of cost consequences in it, if those costs consequences are going to follow the assets that go to oil or they're going to stay with gas, those are principles that are likely to be in the settlement agreement. And I believe that we ought to have opportunity to compare what the witnesses have said in this proceeding and compare it to what actually comes out in the settlement agreement.

To say something different from Mr. Rubenstein, in fact, on page 98 of the technical conference on lines 24 to 28, we were given the expectation that the settlement agreement would be available at the end of September or early October.

I have also -- Ms. Dullet had to leave. I've spoken to Ms. Dullet, and she, on behalf of CCC and CME, supports this position. Thank you.

MS. CHAPLIN: Thank you. Mr. Wolnik?

MR. WOLNIK: I'd just like to point out I don't have instructions from my client, so I take no position at this time.

MS. CHAPLIN: All right. Thank you.

Mr. Cass, Mr. Smith?

SUBMISSIONS BY MR. CASS:

MR. CASS: Thank you, Madam Chair. I do have least four submissions to make in response to this.

I will first just lay out what they are and then explain them very briefly. These are from are the perspective of Enbridge Gas Distribution, obviously.

From that perspective, my first submission is that at this juncture, where we are now in 2013, further delay in this proceeding is effectively denial of what Enbridge Gas Distribution has requested. And I will comment and elaborate on these points a bit later.

My second submission is that the settlement agreement is not needed.

My third submission is there really is no clear line or outcome to support the notion that it is the settlement agreement that is so important that one ought to wait for that.

And then my final submission is that if this point raised by SEC does matter at all -- which I submit that it doesn't -- it's something that can and should go to onus, rather than causing what would essentially be quite a significant delay in this proceeding at a time where getting on with matters is crucial for Enbridge Gas Distribution's project.

So to elaborate briefly on the first of those four points, the Board has heard this repeatedly so I will not go over things that have been said many times before. But of course Enbridge's proposed project is primarily for distribution purposes. Ms. Giridhar went over some of the points in that regard just yesterday. That's at volume 8 of the transcript, pages 55 to 56.

Enbridge's evidence is that it needs to get started on this project as quickly as possible, by the beginning of next year, to have the in-service date of late 2015 that it's aiming for.

Of course the Board needs to consider that evidence, and it's not accepted by Board at this point in time. The Board will consider that in due course. However, to, at this point, accede to the sort of delay that's now being talked about effectively means that Enbridge cannot achieve what it's proposing.

It is effectively denial of the application by default at this juncture, to have that sort of a delay that's being talked about.

My second point is that the settlement agreement is not needed for the purposes of the hearing. I would suggest to the Board that it's indeed an extraordinary suggestion at the very end of the last day of a lengthy hearing to suggest that there should be more time left and the hearing should be left open for more evidence.

I submit to the Board that in support of that sort of extraordinary request that surely there's a need for some ground work to have been laid in the evidence as to why the particular document is needed to support such an extraordinary outcome.

In my submission, this ground work was never laid. The terms sheet has been the subject of extensive questioning, both during the technical conference and throughout the course of this oral hearing. The evidence that has been given on that terms sheet by the witnesses for the utilities has not shaken their position and the utilities' position that the -- having the settlement agreement is not going to advance anything that's relevant to this project -- to the projects.

In fact, that question was directly put to Ms. Giridhar today, if I recall, by Mr. Mondrow -- I'm sorry, I don't have the transcript yet, but I believe he directly asked her about the relevance of the settlement. There was nothing that came out of that answer to suggest that there's some relevance or some necessity of having a settlement agreement for what the Board needs to decide in this case, in this facilities case.

So in my submission, if this was to have been raised it should have been raised when the joint panel was on the stand. There should have been a further discussion and some ground work laid for this request that comes up at the very end of the hearing.

In any event, to the extent that the witnesses have testified about it, they have been very clear in their evidence that the Board does not need this for the purposes of deciding about the projects.

I can talk a little more specifically about Enbridge's project. Again, the Board is aware that it's a distribution project. The Board has heard repeatedly, and Ms. Giridhar has emphasized this again over the last couple of days, that as a distribution project even at 42 inches the project is -- justifies itself on the basis of economics.

So there's no need to have this further examination of issues that relate to the settlement agreement and the broader issues that will get sorted out at the NEB.

As Enbridge has pointed out, the -- there are market access issues that will resolve themselves in due course. The terms sheet sets out a path for that, but regardless of the terms sheet, regardless of the path that ultimately gets to market access, Enbridge's proposed pipeline meets the distribution needs, it does so economically even at 42 inches in pipeline size, and it is available there with that size to meet whatever future transmission needs may arise out of the market access that occurs in the future.

So in short, there's no basis laid here in relation to Enbridge's project that this particular document is needed to advance the Board's consideration of whether Enbridge's facilities should be approved.

The other comment -- the third comment I made was that there was no clear line or outcome as at the time of the settlement agreement that suggests that at that point there's going to be some sudden burst of clarity that will assist the Board.

In fact, I believe this came out from Mr. Rubenstein's submissions. Not only did he talk about the settlement agreement. He also talked about, well, what will happen with that agreement when it goes to the Board, he talked about, well, what will happen in three years when the review occurs.

There are certainly events that will happen in the future. Having the settlement agreement is not significantly different than any number of other events that could happen in the future, that in my submission one can't continue to wait for and have any sort of effective decision-making.

In fact, Mr. Clark did address that today in his testimony. He pointed out that in this industry there are often uncertainties and events yet to happen in the future, and one can't proceed with decision-making -- I think his express was, on the basis that one waits for all to get wrapped up and tied with a bow. It's just not effective or practical decision-making.

So once you start down the slope of, let's wait for the settlement agreement, then it's, all right, let's wait for the NEB to consider the settlement agreement. Let's wait for the Energy East project and the NEB's consideration of that.

In my respectful submission, that is neither effective nor practical decision-making to expect that these things have to fall into place for this Board to make a decision. On the contrary, I think this Board has what it needs to make a decision in respect of Enbridge's project.

My fourth point was --

MS. CHAPLIN: Just on that point, Mr. Cass.

MR. CASS: Yes. Mm-hmm. Yes.

MS. CHAPLIN: My understanding was that the terms sheet establishes some principles for -- how I can characterize it? The framework -- like, the contingency framework in the event certain things aren't approved or are approved, and the witnesses said that would be clearer, that framework would be clearer as part of the settlement agreement. So I don't see that as being kind of in the same nature as the fact that there will be inherent -- other inherent uncertainties going through time --

MR. CASS: Well, the next step, Madam Chair, is, if we wait for the settlement agreement, as Mr. Rubenstein himself alluded to, then it would be logical to wait for the NEB's consideration of that settlement agreement and wait for the NEB's decision on the settlement agreement, and then the next logical step would be to see that decision and what comes out of that and wait for that. It's a never-ending slope, in my submission, if one accepts this proposition that one has to wait for everything to fall into place to make a decision.

I don't see the distinction between waiting for the decision and waiting for the NEB's ruling on the decision and waiting for the outcome of the NEB's ruling. I really doesn't see a distinction.

MS. CHAPLIN: Thank you. I have your answer.

Ms. Hare has a question.

MS. HARE: I didn't understand Mr. Rubenstein to say that. He said he wanted to see what was filed with the NEB, in which case I don't really understand the extensive delay that you're talking about, because what we heard in the evidence was that the latest date given to file it was the end of October.

MR. CASS: Yes, the extensive delay, Ms. Hare, is the suggestion that once this document is filed then there's the potential for questions and to come back here, and with that being the case, there's not an evidentiary record that's complete to even start argument at that point.

Now, I hesitate to state it in these terms, but I think the Board is aware that Enbridge's -- to meet Enbridge's timeline, it's hoping for a decision somewhere in the mid-December time frame. That's certainly Enbridge's hope, to be able to meet its timeline for in-service by the end of -- by late 2015.

To leave the evidentiary record open with the potential for questions to arise as of the end of October, in my submission, it just -- it means that sort of schedule can't be met. That's why I'm saying allowing this sort of delay is effectively denial of what Enbridge is saying.

And that perhaps does bring me back to the onus point, which was my final point. The onus is on the applicants. The onus is on Enbridge to convince the Board that there is sufficient evidence for the Board to approve its proposal and to accept the time frame that Enbridge is suggesting, and the Board will consider that.

To the extent that there is a suggestion, well, the Board should have had more evidence, either because there's missing information or there is uncertainty, which I don't accept, but to the extent that there is that suggestion, that can certainly be part of an argument that SEC or others could make would go to the onus.

It can certainly be their argument that if there is any uncertainty arising from the terms sheet in relation to whether this Board should approve Enbridge's project then that is something that falls within the onus that Enbridge has to meet in this case.

So if you look at the two sides of it, where does the prejudice land in the event that this request were to be accepted by the Board. On the one hand, in my submission, it effectively means that Enbridge can't meet the schedule that it's put in front of the Board, and that happens without the Board even taking the case away to consider that and consider whether it would have agreed with Enbridge or not. Whereas, on the other hand, if the suggestion is not accepted, that it does not deprive any of these parties of the opportunity of saying, Here's the reasons why we think there is some missing information or some uncertainty without the settlement agreement, and that is a gap in the -- in Enbridge's ability to meet its onus.

So in my submission, the prejudice in this particular situation falls much more on the one side of not causing -- the prejudice arising from delay than it does of any prejudice to intervenors if they don't have this particular document.

MS. CHAPLIN: Does that complete your submission?

MR. CASS: It does, Madam Chair. Thank you.

SUBMISSIONS BY MR. SMITH:

MR. SMITH: I just had my notes disappear, but let me say this. I adopt Mr. Cass's submissions. I do want to add a couple of points, from Union's perspective, obviously. We're not prepared to agree to the request, and that's why I adopt Mr. Cass's submissions in their entirety.

It is important to bear in mind -- and I will lay them out. There are two applications by Union. There has not been, nor, in my submission, could there be a connection or a need to see the settlement agreement to the Parkway West project, which is a reliability project, and, in my submission, stands on its own. There hasbeen very little questioning in respect of it, and Union obviously is keen to proceed with that and to obtain the requisite Board approval and to complete building the project. That's Parkway West.

As to Brantford-Kirkwall and the 0074 case, I want to make a couple of points.

The first is it is -- I heard Mr. Rubenstein refer to the Undertaking J4.5 and the PI filed in respect of the project.

It is, in my submission, a good fact that the PI is over 1, but it should not be lost that it is regularly the case and it has regularly been Union's experience in connection with its Dawn-Trafalgar or Dawn-Parkway expansion that the PI would be less than 1. It's extremely common for the PI to be in the range of the 0.74 that you heard from Mr. Isherwood before. And of course, then there would be justification for the project, and a variety of different benefits. And there was questioning in respect of that.

And Mr. Isherwood indicated in respect of that we believe there is ample evidence which would justify that, even if the PI were below 1.

So in my submission, a focus on the proximity of the PI to 1 is entirely misplaced, and is not itself a basis to require the settlement agreement.

I would also say that in relative terms -- sorry, not only it is well within Union's experience, but it is always the case that TransCanada's tolls are uncertain into the future. We have a situation here where we're talking about -- the witnesses have said -- well, they haven't provided a guarantee. A strong expectation that the tolls will be within that 145 to 155 range, but it is important to bear in mind, even though there is not a guarantee, the witnesses could never provide a guarantee in any case as to the future of a TransCanada toll which will always be set in a different regulatory forum.

And when we're talking about a potential increase or decrease outside of that range of what you have heard is relative pennies, that is, in my submission, not a basis for delay and well within what would be historic norms for areas of future potential uncertainty with respect to TCPL tolls.

And I would also say that it's important to bear in mind, in thinking about that evidence, Ms. Giridhar's evidence, Mr. Isherwood's evidence and Interrogatory J3.5, which talked about the relative importance of the basis differential, which is a matter that of course is outside the control of the utilities. It will be what it is, and it is far in excess of a penny here or a penny there either way.

So in my submission, when you take all of those things together, there is no reason to accede to the request, and obviously from Union's perspective we would very much look forward to moving forward with the argument.

MS. CHAPLIN: Thank you.

Mr. Rubenstein?

REPLY SUBMISSIONS BY MR. RUBENSTEIN:

MR. RUBENSTEIN: A number of point, but I'll just start with this premise, that these are infrastructure projects of roughly a billion dollars, so very, very large capital projects that are being undertaken. From, I believe, earlier evidence, the largest that each of those, each of Enbridge and Union, have ever done.

With respect to some of the arguments made by Enbridge about this is a further delay and that means denial, well, I would start off by saying a lot -- essentially all the delays in this proceeding are because of actions of the Applicants. And I don't mean that in sort of a derogatory way.

It was Union who brought a motion to unseed (sic) the MOU between Enbridge and TCPL, which led to -- the night before that motion was supposed to have been heard, and essentially Enbridge taking a different position in the motion and Union's motion to be withdrawn, which led to a delay. Followed by, on the eve before the hearing was supposed to begin, essentially a fundamental change in this application, which was the term sheet being presented. So I think that's important.

Also important to remember -- and I don't have it offhand, but there were letters filed in the spring for both parties about the necessity to have this hearing in the beginning of July, because if they didn't meet certain deadlines and they couldn't do it, you know, these projects would be at risk.

To some degree, clearly, that hasn't happened. The Board didn't accede to those demands, and we are where we are.

The second point Enbridge raised was there needs to be a show that there's a need, and that there's no groundwork that has been laid.

Well, first, I disagree. I think I laid the groundwork today in the discussions that were had today about how the issues do affect, and how the settlement agreement would be of -- would help understand.

Also, well, we're raising this at the end of the hearing. The joint panel only finished at lunch, so that -- a lot of the issues that came out about the need for the settlement arose today.

With respect to there not being relevance -- and Mr. Cass pointed to a discussion between Mr. Mondrow and the panel about the relevance when it was specifically put. And I remember what the panel said slightly different.

Ms. Giridhar talked about how the relevance was this charted a path forward for market access. That's part of why there's a transportation capacity component for segment A. It's part of the reason that we -- of the EB-2013-0074 project that's being proposed.

And Mr. Isherwood talked about how this helped solve the issues of long-haul and short-haul tolls, which are -- the project economics rely on.

We agree, and understanding the settlement agreement will let us see this in more clarity.

And I would simply say this as well, and this goes to Mr. Cass's fourth point about you're never going to have final clarity and there will always be something else and we could always wait.

First of all, we're not seek a delay until all those other contingencies happen. We're seeking a delay until we see the settlement agreement, which sets this up. And the reason why that is so important is that, first, the settlement agreement, as we've heard from the panel talk –- from the witness panels talk about the importance and how it brings all these sorts of things together, and from all these different disputes of all these market access point have now been solved in this issue.

More importantly, it helps the Board and the parties understand what happens in contingency if the NEB doesn't approve it, how does that change.

And I talked about -- you know, there was Mr. Brett's conversation, as I raised earlier, about what exactly do they mean with respect to -- that if the NEB makes an alternative ruling on market access and that's inconsistent with the principles of the settlement agreement we're expecting to see in the settlement, but also what happens in part if the NEB doesn't approve it.

You have to remember that what is happening is this settlement agreement is rewriting the NEB's -- the TCPL's tolling framework, and it's only agreement with some of the parties, not all of the parties.

I don't know what part other parties will take, other shippers take at the NEB, but it is possible that the NEB won't approve it in full. And I think this Board can have a comfort in understanding what are the contingencies. And if they don't approve it, what exactly is being proposed?

On the issue of onus, I mean, at the end of the day the Board wants the best decision with the best information. And I think that should be paramount in its decision, and this would allow that.

With respect to Union's -- I'll just say this. Mr. Smith said that regularly, the Dawn-to-Parkway projects have a PI below 1. I would just state that it's important to recognize that the PI is only one part of the reason that we're talking about here, but second, it's an important reason because it allows us to understand what the actual test -- using the EB-134 and how the Board will progress through that test, and what the onus that the Board needs -- what Union needs to satisfy itself if it doesn't pass.

And then lastly about TCPL tolls will always be uncertain, clearly that's the case, but this is a very different situation.

We're seeing, really, a rewriting of the current framework that exists, which itself is rewriting a decision which, you know, as the panel discussed earlier, the TCPL main line restructuring itself was a very huge change in the way TCPL had been regulated.

As I said before, I don't know what the board of the NEB will do, but allowing to see the settlement agreement will allow for all the parties here and especially the Board to understand, what are the contingencies and what happens if certain things do happen at the NEB, what are the positions that the parties take with respect to the settlement agreement, which deals with the import and tolling.

Those were my reply submissions.

MS. CHAPLIN: Mr. Rubenstein, what about Mr. Cass's argument that the onus rests with the applicants and therefore the parties can argue that there is gaps in the application and on that basis it should be denied or conditioned in some way?

MR. RUBENSTEIN: It's not a traditional gap, in the sense that we could say, Well, what if this happen -- you know, because we don't have this evidence, we'll sort of make an assumption that this doesn't happen. I don't -- there could be many different things that could come out of that settlement agreement that the parties in this room -- putting aside the utilities, but the Board and the parties would not have considered, because there are many aspects that touch on a number of different things, and I think that's important.

But at the end of the day, you know, we want the best evidence, and, you know, I think if the day -- if the settlement terms sheet does provide benefits to ratepayers, and we see from it and we can confirm these many things, I think it's beneficial, and possibly there will be support from it, I think everybody does benefit from that.

MS. CHAPLIN: All right. Well, we will take those submissions under consideration. I think at this point we will render a decision and issue a procedural order with a decision on this question and therefore the consequential steps.

Is there anything else before we -- Mr. Smith?

MR. SMITH: I had one request, and it's with respect to the arguments schedule. You had, I believe, Madam Chair, indicated the dates as being next Friday, the 18th, and the 1st of November, and then the 15th of November. I would like to make a request that our argument in-chief be due on the 21st, which is the following Monday. This being the Thanksgiving weekend, we're going to lose some time.

We would then have a roughly ten-day, ten-day, and then there would be a bit more time for reply. But I would ask for that request. Sorry for that brief extension.

MS. CHAPLIN: All right. Anything else before we break?

All right. We rise for today. Thank you very much. Thank you as well to the court reporter.

--- Whereupon the hearing adjourned at 3:33 p.m.