



ONTARIO ENERGY BOARD

FILE NO.: EB-2012-0406
EB-2013-0081

VOLUME: Motion Hearing

DATE: July 29, 2013

BEFORE:	Marika Hare	Presiding Member
	Ellen Fry	Member

EB-2012-0406

EB-2013-0081

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an Application by Integrated
Grain Processors Co-operative Inc., pursuant to
section 42(3) of the *Ontario Energy Board Act*,
1998, for an order requiring Natural Resource Gas
Limited to provide gas distribution service;

AND IN THE MATTER OF an order to review capital
contribution costs paid by Integrated Grain
Processors Co-operative Inc., to Natural Resource
Gas Limited pursuant to Sections 19 and 36 of the
Ontario Energy Board Act, 1998.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Monday, July 29th, 2013,
commencing at 9:30 a.m.

MOTION HEARING

BEFORE:

MARIKA HARE

Presiding Member

ELLEN FRY

Member

A P P E A R A N C E S

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Board Counsel

KHALIL VIRANEY
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Board Staff

SCOTT STOLL

Independent Grain Producers Co-
operative Inc. (IGPC)

LAWRENCE THACKER

Natural Resource Gas Limited (NRG)

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NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING

1 Monday, July 29, 2013

2 --- On commencing at 9:47 a.m.

3 MS. HARE: Good morning. Please be seated. Good
4 morning. This is a motion day for proceedings that the
5 Board has identified as EB-2012-0406 and EB-2013-0081.
6 Integrated Grain Processors Co-operative Inc., or IGPC, has
7 filed a motion seeking full and adequate responses to
8 certain interrogatories posed to Natural Resource Gas
9 Limited, or NRG, asked by both IGPC and Board Staff.

10 I am Marika Hare, the presiding member for this
11 proceeding. With me on the Panel is Board member Ellen
12 Fry.

13 May I have appearances, please.

14 **APPEARANCES:**

15 MR. THACKER: Lawrence Thacker. I am here for Natural
16 Resource Gas Limited.

17 MS. HARE: Good morning, Mr. Thacker.

18 MR. STOLL: Madam Chair, Scott Stoll here for IGPC.

19 MS. HARE: Good morning.

20 MR. MILLAR: Good morning, Madam Chair, Ms. Fry.
21 Michael Millar, counsel for Board Staff, and I'm joined by
22 Khalil Viraney.

23 MS. HARE: Thank you. So we would like to proceed
24 with hearing the motion from IGPC.

25 MR. STOLL: Okay. And Madam Chair, I am going to be a
26 little bit in your hands, and what we have done is I have
27 provided Mr. Viraney a booklet earlier this morning, which
28 is just a compendium of basically the interrogatories, the

1 responses, and then some documents that I would refer to,
2 walking through them.

3 And in this regard I am a little bit in your hands of
4 whether you want to deal with some of the high-level
5 discussion or go through them line by line. I am prepared
6 to do it either way. I do think a discussion of some of
7 the high-level concerns to characterize our position may be
8 of benefit to the Panel.

9 MS. HARE: Please proceed.

10 MR. MILLAR: Madam Chair, perhaps we should mark the -

11 MS. HARE: Yes, we should give that an exhibit number.

12 MR. MILLAR: KM for motion 1.1, and that's the
13 compendium of IGPC.

14 MS. HARE: K1.1?

15 MR. MILLAR: KM1.1.

16 **EXHIBIT NO. KM1.1: IGPC COMPENDIUM**

17 MS. HARE: So Mr. Stoll, whatever you think will best
18 represent your case.

19 **SUBMISSIONS ON IR NO. 1**

20 **SUBMISSIONS BY MR. STOLL:**

21 MR. STOLL: Okay. I appreciate that. I do appreciate
22 some of the Board is very busy, and we will maybe -- at a
23 certain point it might be beneficial if Mr. Thacker can
24 confirm a couple of things, and then we can maybe go
25 through -- just shorten the submissions on a couple
26 questions.

27 But from an overview, there are really two elements of
28 this proceeding, one being the service issue, the other

1 being the costs of the pipeline. And a couple of the
2 issues kind of cross over into both of them, but basically
3 it deals with the transparency, or the information
4 necessary to understand the costs and how those costs are
5 arrived, and we have been trying to deal with this for
6 several years now.

7 And in IGPC's perspective, the information that's been
8 requested in this regarding the costs, especially of
9 employees, just hasn't been produced, and in our minds,
10 without the cost information -- and certain of the
11 information related to employees we said could be filed
12 confidentially.

13 However, without the information, the Board's left in
14 a position where they won't be able to understand the
15 actual costs that are being incurred by IGPC -- or by NRG
16 in providing the service or in having constructed the
17 pipeline and won't be able to deal with the issues.

18 So the other aspect of the hearing goes to the denial
19 of service. And part of the contention of IGPC is trying
20 to understand what service NRG is actually providing, what
21 it is seeking from others, including its related entity,
22 Ayerswood, and some of the other people mentioned, and the
23 basis upon which it charges around the service that it has
24 supposedly provided in developing the bills, the basis on
25 which those were arrived at.

26 And if we can look at the -- it's tab 1A, and the
27 first page of that is interrogatory 1, and it's item (d),
28 and it talks about Mr. Howley and the details of his

1 salary. Mr. Howley is, I believe, the general manager at
2 NRG and one of the people that we would assume would be
3 involved in providing service.

4 However, if we flip to tab A in that, there is a cover
5 letter and an invoice from NRG, and those were originally
6 filed as Exhibit C, tab 8. And when we look at the line
7 items, there is correspondence, discussions, internal
8 discussions with management, consultant's time.

9 The hourly rates are 500, 500, and the last one is
10 750, and then there is an invoice for MIG, who is an
11 engineer who is involved in the construction of the
12 pipeline originally, and an admin charge, and down at the
13 bottom there is a statement regarding interest.

14 If we look at the question D, and regarding Mr.
15 Howley, is basically, we are assuming he is one of the
16 people that would be identified in the invoice: How is the
17 rate established? What's the cost? Because utilities
18 work, as Madam Chair is well aware, on a cost basis. It is
19 not a market basis, it's not some other base -- it's the
20 cost of providing the service.

21 So we are trying to understand the cost of the
22 employees of NRG that are involved in providing the
23 service, be it Mr. Howley or in some of the other
24 references to Mr. Graat, who we understand is working as
25 the president of NRG and is being remunerated. Given some
26 of the responses, we understand that Mr. Graat's
27 involvement in this program, project, is basically as the
28 president of NRG and not in any other role as Ayerswood.

1 However, we did, on the next page -- sorry, page 2 of
2 the IR 1 -- ask certain questions in respect of Ayerswood,
3 because we had understood that not only was Mr. Graat an
4 employee there, but that Ayerswood had provided expertise
5 in respect of some of the pipeline construction before, and
6 we assumed that they would be involved here, and that led
7 to the questions that were being asked of Ayerswood
8 involvement and trying to understand the nature,
9 relationship, the contractual provisions, so that we could
10 make a determination of what an appropriate response would
11 be regarding the costs.

12 If Mr. Thacker confirms that Ayerswood will have no
13 involvement in this project, then issue 2 drops -- or
14 IR1(ii) will drop off the table, and that was my alluding
15 to the fact.

16 MR. THACKER: Scott, I am not sure how to deal with
17 this in a most -- I don't want to be --

18 MS. HARE: Put your mic on first, please.

19 MR. THACKER: I don't want to be disrespectful --
20 sorry, I am just not sure I understand what you're asking.
21 Which project? The one -- the expansion that you are
22 seeking?

23 MR. STOLL: This is in the expansion. There were --
24 we understood there had been prior involvement with the
25 pipeline. There were some invoices from Ayerswood. I
26 think that's fairly clear. If they are not going to be
27 involved in the future work, then the issues around future
28 servicing and costs and stuff related to Ayerswood is going

1 to be a non-issue. I apologize.

2 MS. HARE: Mr. Thacker, are you prepared to answer
3 that?

4 MR. THACKER: No. I'd have to take instructions, but
5 my submission is it has nothing to do with the issues on
6 this motion in any event. If you look at the scope, the
7 issues list, which is the starting point, that is an
8 irrelevant question.

9 MS. HARE: All right. I think Mr. Stoll thought that
10 if you could answer, then that would take something off the
11 table. So in that case, Mr. Stoll, might you continue?

12 MR. THACKER: I think I would only say I didn't think
13 that was an issue for today, and it seems to me way ahead
14 of where we are.

15 MS. HARE: I think what Mr. Stoll is saying is that
16 the Ayerswood is not involved, then the motion to answer
17 fully the interrogatory is off the table. So that's fine.

18 MR. THACKER: Which interrogatory would be gone if
19 that issue is?

20 MS. HARE: We are looking at tab 1.

21 MR. STOLL: Tab 1.

22 MS. HARE: Interrogatory 1.

23 MR. STOLL: Right.

24 MR. THACKER: Of the motion materials?

25 MR. STOLL: If you want to look in the compendium that
26 I provided, if you go to tab 1, I believe it's the second
27 page. Midway down there is a number of questions under
28 2(a) and (d) regarding Ayerswood.

1 MR. THACKER: I see. All right. Why don't we move --
2 why don't we leave that one and I can phone at the break
3 and see if I can get some instructions?

4 MS. HARE: Thank you.

5 MR. STOLL: That's fine.

6 And in tab 1-3, there is a similar question regarding
7 Mr. Graat's salary, because we do know Mr. Graat has been
8 involved in the correspondence and in some of the meetings.
9 And again, we are trying to understand the basis for the
10 charges that show up in the invoice that's provided in tab
11 A, and quite frankly we are having a difficult time
12 following those charges. There's two invoices. The hourly
13 rates seem fairly significant for the NRG employees and
14 even for the consultants, so we are seeking further
15 information.

16 The other difficulty we have with that is prior to
17 some of these charges being incurred, NRG had provided a
18 letter saying it wouldn't enter into any discussions
19 regarding possible, quote, the bottom line. And this is in
20 tab B of the compendium, 1B of the compendium.

21 It says:

22 "Just to reiterate, NRG cannot enter into any
23 discussions regarding possible new businesses or
24 changing to existing business arrangements until
25 major disagreements have been resolved."

26 The one outstanding disagreement's around the capital
27 cost of the pipeline and any refund that is owing.

28 The second one is there is the lawsuit in which NRG

1 has filed a Statement of Claim in excess of \$20 million
2 against my client. That's been outstanding for almost --
3 more than five years now.

4 So that type of -- essentially an ultimatum to resolve
5 those or else, seems to contradict the fact that they turn
6 around and issue a bill for doing something.

7 So this is one of the difficulties. Either there was
8 the refusal that's contained in the letter, or they are
9 providing some sort of service and effectively trying to
10 drive my client away by charging rates that we feel are
11 exorbitant. And when we look at -- like in the OEB Act, the
12 definition of "rate" is a rate charge or other
13 consideration and includes -- it's a fairly broad
14 definition. And utilities are only allowed to charge rates
15 that are approved, and they are to be just and reasonable.
16 It's the history of the cost of service regulation.

17 So in that respect, we are having great difficulty
18 mapping these invoices to a proper charge.

19 And you can deny service, in our position, by refusing
20 to do something, or you can deny it by imposing certain
21 conditions and obligations that effectively create the same
22 result.

23 So if we go to the next tab, it was IR 3 --

24 MR. THACKER: Can I make a suggestion that might help
25 the Panel? I am in your hands.

26 MR. STOLL: Sure.

27 MR. THACKER: Can I suggest we deal with these
28 questions question-by-question? I know Mr. Stoll wants to

1 make a general introduction and I think that's a good idea.
2 I have something general to say, but it might be more of
3 assistance to you if we hear IGPC's position on a
4 particular question and then my client's, as opposed to
5 hearing 10 or 11 interrogatories upfront and then my
6 response on each.

7 I can do it either way, but it might be easier to
8 focus the discussion, because there's different positions
9 for each interrogatory.

10 MS. HARE: So is what you are suggesting, Mr. Thacker,
11 is that every time Mr. Stoll comments on the interrogatory,
12 that you respond?

13 MR. THACKER: Yes, and that way we focus our
14 discussion on that particular interrogatory and the
15 rationale for the answer given, and I guess Mr. Stoll's
16 rationale for seeking a better answer.

17 If it's better for you to hear it all upfront, that's
18 fine with me too.

19 MS. HARE: Mr. Millar, do you have any comment on
20 that?

21 MR. MILLAR: No. The process in the Panel's hands, so
22 whatever you would find of most assistance.

23 MS. HARE: We will get to -- the IGPC motion also
24 incorporated some of the Board Staff interrogatories, so
25 when we get to those, Mr. Millar, feel free to jump in.

26 MR. MILLAR: Yes.

27 MS. HARE: So why don't we do it the way Mr. Thacker
28 suggests?

1 But I think we have gone through 1(a), and you'll have
2 to get further instructions or clarifications on that.

3 MR. THACKER: Sure. We can go to the next one.

4 MR. STOLL: Do you want to deal with -- if that's the
5 case, there is Interrogatory 1(i)(d) regarding the
6 remuneration of Mr. Howley.

7 MR. THACKER: Sure.

8 MR. STOLL: And I believe also 3(c) in that regard is
9 with respect to Mr. Graat, but it's basically the same
10 question.

11 **SUBMISSIONS BY MR. THACKER:**

12 MR. THACKER: Happy to deal with that. I do want to
13 say a few general things first. I am going to hand up --
14 let me just do it all at once.

15 So what I have handed up is a photocopy of the rule of
16 civil procedure dealing with proportionality and discovery,
17 and three cases that I am going to refer to briefly, to
18 give you a framework that I hope might be of assistance to
19 you in deciding the issues.

20 So you should have a one-pager headed "Proportionality
21 and Discovery" and three separate cases. One is an OEB
22 case; one is a Patent Review Board case -- actually, two
23 are OEB cases.

24 And by way of general introduction, my client is a
25 small utility --

26 MS. HARE: Sorry, just one second. We should give
27 these exhibit numbers.

28 MR. MILLAR: Yes, Madam Chair. The Rule 29.2 from the

1 Rules of Civil Procedure will be KM1.2.

2 **EXHIBIT NO. KM1.2: RULE 29.2 FROM THE RULES OF CIVIL**
3 **PROCEDURE.**

4 MR. MILLAR: The Board's Summitt Energy case will be
5 KM1.3.

6 **EXHIBIT NO. KM1.3: OEB SUMMIT ENERGY CASE.**

7 MR. MILLAR: The Board's decision in the -- I believe
8 it's the CANDAS case, 2011-0120 will be KM1.4.

9 **EXHIBIT NO. KM1.4: BOARD DECISION IN EB-2011-0120.**

10 MR. MILLAR: And finally, I believe this is the Ciba-
11 Geigy case, KM1.5.

12 **EXHIBIT NO. KM1.5: CIBA GEIGY CASE.**

13 MR. THACKER: Thank you. My client is a small
14 utility, probably atypical from the ones you are used to
15 seeing here.

16 IGPC has a taxpayer-funded ethanol plant. It has
17 never made a profit; it consistently operates at a loss.
18 It has chosen to spend apparently a significant amount of
19 its public funding litigating against my client, and we've
20 faced a barrage of litigation that is engulfing our
21 business and threatening to destroy the operation. It's
22 got to the point now where my client is essentially willing
23 to hire an outside consultant to manage the litigation, and
24 the cost will be what the Board decides it will be. It
25 will be a direct cost arising from the approach taken by
26 IGPC.

27 So the framework of all of this -- and you heard it
28 again, some suggestion that there is -- there is a lawsuit

1 out there because of IGPC's defamation of my client. The
2 fact that it's taken quite a number of years to move
3 forward has nothing to do with my client. It's because
4 IGPC has been dragging as fast -- as much as they can.
5 They are on their third set of lawyers, and they are in
6 contempt, essentially, of the civil process. They won't
7 proceed. We are going to have to get to court and order
8 them to proceed, but they have not done what they are
9 supposed to do under the Rules of Civil Procedure for about
10 two-and-a-half years.

11 They brought a motion for summary judgment. They have
12 -- which bought them about eight months of an extension,
13 and then they abandoned it. It has nothing to do with the
14 issues before you. This is a motion to decide whether or
15 not the answers that my client has given are adequate or
16 they should be required to deliver more particular answers.
17 That is the only issue before you.

18 But the backdrop against this question has to be, in
19 my submission, and the starting point, two things: Number
20 one, the law that governs interrogatories, and which is
21 what I have given you; and number two, the procedural order
22 that sets out the issues, or the issues list for this
23 motion, and those are the two things I would ask you to
24 focus on.

25 The issues list you will find in Procedural order
26 No. 2 in this proceeding. I don't know if you have it, but
27 I may be referring to it because, in my submission, the
28 reason some of the questions that were asked were not

1 answered is that they are way outside the scope of this
2 proceeding as defined by the issues list, and it's
3 particularly important because IGPC tried to have the
4 issues expanded, and they made written submissions and they
5 lost, and that issue is done, res judicata, decided against
6 them, and cannot be reopened here, cannot be relitigated
7 here.

8 So for you, in my submission, the question for you is
9 whether or not the further and better answers that are
10 sought are within the scope of the proceeding as defined by
11 the issues list or are outside, and if they are outside
12 that ends the matter, there is nothing to discuss.

13 So I will be referring to the issues list. I want to
14 run very briefly through these cases that I have given you.
15 The starting point is the rule of proportionality in
16 discovery, and this is a rule of procedure in the Ontario
17 Rules of Civil Procedure, and my submission is you should
18 be guided by it by analogy, and to the extent that
19 proportionality is now applied in our courts to draw some
20 sort of reasonable balance between the cost of production
21 of documents and discovery and the benefit in terms of
22 fairness to both sides, you should be even more concerned
23 about the costs of production, as opposed to the benefits.

24 In other words, what has happened in litigation in the
25 last few years is that with e-mail and electronic
26 communication the cost of producing documents has
27 threatened to engulf the process, and although the theory
28 used to be that full disclosure is the best way, the

1 prevailing attitude has reversed itself, and now what
2 courts try to do is strike a balance between as much
3 discovery as a party is entitled to to fairly know the case
4 it has to meet on the one hand and the onerous costs of
5 discovery on the other side, on the other hand.

6 And that has resulted in a change to the Rule of Civil
7 Procedure, which is 29.2.03, and that rule sets out five
8 factors that you should consider or that a court will
9 consider in deciding whether or not to require additional
10 discovery or better answers or more documentary discovery,
11 and those five factors are: Whether or not the time
12 required to do it would be unreasonable; whether or not the
13 expense required to produce the answer or document would be
14 unjustified; whether or not it would require the party
15 ordered to answer or produce documents would cause that
16 party undue prejudice; whether or not requiring further
17 answers or production would unduly interfere with the
18 orderly progress; and lastly, whether or not the
19 information or document available is in the hands of the
20 other side.

21 And that's particularly important in this case, where
22 any information that's in the hands of IGPC cannot be the
23 responsibility of NRG to produce. They had an opportunity
24 to put their evidence in, and you should not impose on NRG
25 not only the cost, but the tactical job of fixing up their
26 evidentiary record if they want to improve it. They could
27 put their own evidence in. If they have not done it now,
28 it is too late, but you certainly shouldn't impose on my

1 client the cost of doing that.

2 The other factor set out at Rule 29.2.03(2) is, in
3 addition to those five factors, whether or not making
4 additional production or answers required would result in
5 an excessive volume of documents being produced.

6 And my submission is that the cases I have given up to
7 you make it clear that in an administrative context the
8 tribunal process has adopted an even lesser -- or a more
9 restrictive approach to full discovery than the courts, in
10 the interests of fairness and balancing time and cost of
11 production on the one hand, as against the fairness of
12 production on the other. In other words, they have been
13 even moving further away from the requirement of full
14 production and full disclosure, because it's unduly costly
15 and unduly time-consuming.

16 So the first case I have given you is Ciba-Geigy
17 against Canada. It's a Patent Review Board case. The
18 issue on appeal -- this is an appeal of a decision
19 requiring additional documentary disclosure. An appellant
20 sought disclosure by the Patent Appeal -- Patent -- sorry,
21 Patent Medicine Prices Review Board of additional
22 information, and the argument was that they were entitled
23 to disclosure of all documents relevant to the proceeding,
24 and the Board refused a broad scope of production, and the
25 appellant then sought judicial review in front of the
26 Federal Court, and the Federal Court judge declined the
27 appellant's review and said this:

28 "To require the Board to disclose all possibly

1 relevant information..."

2 And this is paragraph 5 of the decision.

3 "...gathered while fulfilling its regulatory
4 obligations would unduly impede its work from an
5 administrative viewpoint."

6 In other words, they said you are not entitled to full
7 disclosure if it would interfere with regulatory
8 obligations or unduly impede its work, and my submission is
9 some of the information sought here falls into that
10 category. It overwhelms my client's ability to actually do
11 its job.

12 The second case is an OEB decision in Summitt Energy,
13 which found that the OEB is not required to produce all
14 relevant documents sought by a respondent, and the test is
15 the same for the Board as it is for my client or any other
16 party before the Board. There is no different test for the
17 OEB than there is for NRG or IGPC. The law is the law, and
18 everyone is under the same law.

19 And in this case the OEB found that all relevant
20 documents need not be produced, and said this:

21 "In an administrative process..."

22 This is paragraph 10.

23 "...the Board is not necessarily required to
24 disclose all potentially relevant material."

25 That is equally true for NRG.

26 "The test is not whether a document is possibly
27 relevant."

28 That used to be the test in the civil courts. It's

1 not anymore.

2 "The test in this tribunal is whether or not
3 disclosure is required for Summitt to know the
4 case to be met and to make full answer and
5 defence."

6 So it's something less than full disclosure.

7 And lastly, I do want to show you the CANDAS case, and
8 that was an OEB decision in a motion for further and better
9 answers, and in that case the Board determined that the
10 proper test, which is exactly the motion before you, is
11 whether there already is sufficient information on the
12 record for the purpose of enabling the other -- the moving
13 party to address the issues before the Board, and that's
14 the operative test, and that is found -- I will give you
15 that cite. You will find that at page 5 of the CANDAS
16 decision, and that is the test that, in my submission,
17 should guide you: Is there already sufficient information
18 to allow IGPC to address the issues defined in the issues
19 list which defines the scope of the proceeding?

20 And I would ask you to consider just the factors that
21 I outlined at the outset, which is that IGPC operates
22 consistently at a loss. It appears to have unlimited funds
23 for litigation. It operates only because of a government
24 grant. It would otherwise be insolvent.

25 My client does not get a government grant, and is
26 forced to try to recover the costs of this litigation as
27 much as it can through the OEB's defined rate structure.

28 The rates that are charged by my client are not in

1 issue here. There was a lengthy rate proceeding. It has
2 nothing to do with this proceeding. This proceeding has
3 only two questions, in my submission, and there is an
4 issues list, but there is really only two issues: number
5 one, what is the capital cost of the pipeline; and number
6 two, did we deny service. My submission is you will see
7 that we never denied service. Not once ever did we deny
8 service.

9 After the letter my friend talked about my client
10 wrote several letters saying, What is it that you want?
11 What do you need? Tell us the information you need so we
12 can answer the questions. They were met with no answer.

13 So there has never been a denial of service. My
14 client is a small utility, has been providing service for
15 30 years. This Board found about two years ago they have
16 never once in 30 years failed or refused to provide service
17 to anybody, and they never have today, either. So my
18 submission is that issue is going to be disposed of
19 immediately at the outset of this hearing.

20 The backdrop against the information that's being
21 sought, for example, to somehow suggest that the salary of
22 an Ayerswood person is relevant because later they might be
23 involved in some construction work, has nothing to do with
24 the current motion. The only issue is whether or not
25 service was denied, not whether what service might be
26 provided in the future; that's a different day.

27 MS. HARE: But in determining capital costs, would you
28 not agree that, for example, Mr. Howley's salary is

1 included in the capital costs?

2 MR. THACKER: So let me deal with those issues one by
3 one. I want to --

4 MS. FRY: Could I interrupt you also?

5 MR. THACKER: Sure.

6 MS. FRY: You made some submissions on the principles
7 that we should apply concerning discovery, and those are
8 fairly basic principles you're making submissions on.

9 I am wondering if, at this point, if Mr. Stoll would
10 just like to briefly interject to say to what extent he
11 does or does not agree with your presentation of those
12 principles.

13 MR. STOLL: Like a lot of circumstances, we can agree
14 that there is not an absolute right to see every document
15 that may be possibly relevant, or that's not the nature of
16 the responses we received. The response wasn't the search
17 would be too onerous to secure all of the information
18 requested, and a summary, an overview of the information is
19 provided. The response in the case was this is irrelevant.

20 Those are two very different approaches to responding
21 to an interrogatory. And quite -- and we can deal with
22 this.

23 Information regarding employee salaries should be
24 pretty easy. And as Mr. Thacker said, this is a small
25 utility. This isn't -- there isn't a question about who
26 provided what service. Everybody within NRG knows who
27 provided the service, because, as he said, it is a small
28 utility.

1 So I don't think it is an overly onerous job to say
2 who is involved and how they are being remunerated.

3 But with respect to the principle, we agree with the
4 principle. It's the application of that principle in light
5 of the facts of the situation.

6 And I will stop there and we can talk about the issues
7 list and what issue 1 really is at the end -- later.

8 MS. HARE: All right. So my understanding is we are
9 now going to go through each of the interrogatories. So we
10 are on 1(d).

11 MR. THACKER: Yes. So the question was, if Mr. Howley
12 was an employee of NRG in 2012, what is his salary and the
13 value -- or the percentage of his salary in benefits.

14 So I guess my submission to you is that this can't
15 possibly be relevant. The capital cost of the pipeline was
16 incurred long before 2012, so I take it that this question
17 must only go to the allegation that we denied service. It
18 can't go to the capital cost, because the capital cost was
19 incurred long before then. It can't possibly be relevant.

20 If it is to the issue of denial of service, the letter
21 that my friend refers to -- which, as I understand it, is
22 the only thing that they say constitutes a denial of
23 service -- came from Mr. Tony Graat, who at the time was
24 the president of NRG. Ayerswood has nothing to do with it.

25 So all Mr. Graat did is say that any correspondence to
26 him should be directed care of Ayerswood, which is a
27 company that he is involved in. I am not sure of the
28 ownership structure, but it is a company he is involved in

1 that operates out -- out of a particular office. He wasn't
2 representing or writing on behalf of Ayerswood when the
3 letter that my friend referred to was written.

4 So it can't go -- Mr. Howley's salary can't possibly,
5 in 2012, have anything to do with the capital cost, because
6 the capital cost -- I am pretty sure the pipeline was up
7 and running at least in 2010. Right?

8 MR. STOLL: Mr. Howley's 2012 salary is related to the
9 invoices and the denial. It's not with respect to the
10 pipeline. The pipeline has been operational since
11 September 2008.

12 MR. THACKER: Thank you. That's what I thought. I
13 have been involved with this longer than I thought.

14 So my submission is Mr. Howley's salary is not
15 remotely relevant to the issue of denial of service.

16 The invoices -- this is an important point -- the only
17 issue is whether or not we denied service. It's not
18 whether or not those two invoices are excessive or
19 appropriate or not. There is a separate process for a bill
20 that a utility provides to a customer that a customer
21 doesn't want to pay.

22 That's not an issue in this proceeding. If they think
23 the bill is inappropriate, they can choose not to pay it,
24 and it would be up to my client to collect it and do what's
25 necessary and take the appropriate steps. Or they could
26 choose to challenge it.

27 But the quantum of those two bills, those invoices, is
28 not in issue. And so the salary, if that's the point -- I

1 didn't fully appreciate it, but if it is to investigate the
2 foundation for those two invoices and whether or not they
3 are appropriate, that is not in issue.

4 The only question is whether or not they denied
5 service, not whether or not the bill they submitted was too
6 high. If they want to challenge that bill, they can, but
7 that was outside the issues list, outside the scope of the
8 proceeding, and not relevant.

9 MS. HARE: Since we are going interrogatory by
10 interrogatory, I will let IGPC have the last word, with the
11 exception of Mr. Millar. If you have anything to add, just
12 signal to me that you want to jump in. Okay?

13 So, Mr. Stoll, do you have any rebuttal?

14 **REPLY SUBMISSIONS BY MR. STOLL:**

15 MR. STOLL: Just a short comment.

16 Mr. Howley is an employee of NRG, and as I said
17 earlier, a denial of service can be either an outright
18 refusal or basically imposing conditions that are so
19 offside or so unsubstantiated that it has the effect of
20 being a -- creating a dynamic where the customer cannot be
21 in a position to agree to provide that service.

22 And if we look at the issues list:

23 "Is an order requiring NRG to provide services
24 and gas sales to IGPC to meet its facility
25 expansion and upgrading plans necessary and
26 appropriate?"

27 To my mind, that covers this, because, quite frankly,
28 what would go in such an order? If the order is basically

1 to work with NRG or to basically -- more detailed, to say
2 that NRG should work -- it should be issuing invoices for
3 this type of service on a cost base based on hourly rates
4 or based upon Board-approved rates and their tariff
5 structure, then we have an obligation to understand what
6 those underlying costs are in order to provide the
7 specificity and the nature of the order that would be
8 sought requiring service to be provided.

9 So I think the questions are entirely relevant for
10 that.

11 The same goes for -- I am not sure if Mr. Thacker
12 dealt with Ayerswood, so I assume we are dealing with all
13 of IR 1.

14 My offer still stands on the confirmation.

15 MR. THACKER: No, I am going to skip over 2(a) and
16 (d), and I will deal with 3(c).

17 MS. HARE: That was my understanding, was that we were
18 going to skip over 2(a) and (d), waiting for Mr. Thacker to
19 get further instructions from the client.

20 So that takes us, then, to 3(c).

21 **SUBMISSIONS ON IR NO. 3(C)**

22 **SUBMISSIONS BY MR. STOLL:**

23 MR. STOLL: That's fine. And basically the analogy is
24 the same. Mr. Graat, he is the author of these letters.
25 Any of the charges from NRG should be cost-based.

26 Again, we are not seeing that. The fact that they
27 have once again gone with this -- we will charge what we
28 want to charge -- it basically creates a scenario to deny

1 service.

2 Those are my submissions on that.

3 Submissions on issue 3(c)

4 **SUBMISSIONS BY MR. THACKER:**

5 MR. THACKER: So 3(c) seeks this answer: If he was
6 employee, what was his salary in 2012 and his benefits
7 package? Essentially, the same question.

8 Again, Mr. -- and the question is preceded by saying
9 Mr. Graat is one of the principals of Ayerswood. Ayerswood
10 has nothing to do with this; it's NRG that is at issue.
11 You don't regulate Ayerswood.

12 And there is nothing nefarious about it. It just
13 happens to be an office that is jointly used -- a premises
14 jointly used. They have separate offices. It's completely
15 irrelevant to the question of whether or not service was
16 denied.

17 Service has never been -- they haven't paid the bill,
18 but they haven't asked for service either. All that really
19 happened is they came to us and said: We are thinking
20 about expanding, and my clients -- and asked us a bunch of
21 detailed questions.

22 In order to answer those questions, work had to be
23 done. And given that they hadn't yet paid for some of
24 their previous debts, my client said: If you are going to
25 ask me to incur costs, you're going to have to pay some of
26 the costs upfront. They refused to do that, but my client,
27 after that, wrote and said: I haven't heard from you.
28 Would you follow up? What is it that you want from us?

1 What can we do?

2 They have never asked for service. So there has been
3 no denial, and for that reason, in my submission, the
4 actual quantum of the bills -- there is a rate order, as I
5 understand it, that allows my client to charge for
6 services. And they have a right to do that under a rate
7 order, and there is a process for challenging a fee that
8 they render, but that isn't this process.

9 IGPC is trying to expand the scope to get around the
10 fact that they were unsuccessful doing so when the issues
11 list was finalized, and make this proceeding much broader
12 than it ought to be.

13 This really ought to be about whether or not my client
14 did or did not deny service, and I am telling you today
15 they are willing to provide service. You won't need an
16 order. When this comes down to merits, there won't be a
17 hearing on this point, in my submission. They are willing
18 to provide service. What they are not willing to do is
19 incur a substantial amount of costs upfront for an
20 expansion that might never come and face the risk of losing
21 that money and having to have the burden of that loss
22 imposed on other ratepayers. All they are trying to do is
23 ensure that they don't lose money. So I say it's
24 irrelevant.

25 MS. HARE: Okay. Mr. Stoll?

26 **REPLY SUBMISSIONS BY MR. STOLL:**

27 MR. STOLL: Again, we disagree with that. And with
28 respect to some of the commentary about my client, aside

1 from the two invoices that have been provided in this
2 proceeding, there is no evidence that we haven't paid any
3 bill or that any bill is outstanding.

4 In fact, the evidence to the contrary is the IGPC
5 pipe, even accepting Mr. Thacker's client's cost, would
6 generate a need to construct much less than what we paid,
7 in the neighbourhood of \$280,000, based on the model
8 provided with their leave to construct. We have been
9 waiting for five years to resolve that issue. And to
10 suggest that my client hasn't been paying bills is
11 disingenuous.

12 Further, the desire of NRG to lay this blame all at
13 IGPC's feet is inappropriate in the circumstances. And to
14 suggest that there's a rate order that somehow justifies
15 these rates -- then he can point to the rate order and say,
16 This is the authority. It would be simple. The case is
17 done.

18 He can't do that because the rates are inappropriate.
19 And to suggest that somehow we should say, Yeah, we will
20 accept those, even though we feel it's wrong, those rates.
21 They are not approved. We don't think you have the basis
22 for those rates, but we are just going to go merrily along,
23 that's inappropriate to expect any customer to do that.

24 There is a regulatory compact and a deal between the
25 utility and the ratepayers, and we are a ratepayer, and we
26 are entitled to be properly served.

27 So those are my submissions. Mr. Graat is an
28 employee, and as Mr. Thacker glossed over the fact, that

1 basically the preamble says it appears he was a member of
2 Ayerswood, but 3(b) says, was he an employee? If he is an
3 employee of NRG, that's fine. We didn't have a problem
4 with that. We want to understand how his employment
5 relates to any of the costs that are being charged for him.

6 MS. HARE: All right. Where do we move next?

7 MR. STOLL: If we are going to go one by one -- well,
8 I might suggest we skip IR 3 and 4 for the time being,
9 because those are fairly lengthy, and they are complete
10 denials of everything, so I would think if we can go
11 through some of the more pointed IRs later on, I could
12 maybe shorten down the submissions on 3 and 4 and not take
13 up too much time in those respects.

14 MS. HARE: Okay. So move to tab 6.

15 **SUBMISSIONS ON IR NO. 6(A), (B)**

16 **SUBMISSIONS BY MR. STOLL:**

17 MR. STOLL: So if we go to what's tab 6. And 6(a) and
18 6(b) relate to questions regarding any other estimates. We
19 have heard in this proceeding that NRG has taken the
20 position, We are lower than the estimate. You should be
21 happy. Move on.

22 Well -- and we didn't have any formal estimates of the
23 pipeline from before, and what we did have, though, were
24 some financial runs done by NRG and their consultant
25 approximately two weeks before they submitted the leave-to-
26 construct proceeding.

27 And these, if you look through some of the
28 spreadsheets attached to the e-mail, provide a capital cost

1 around six-and-a-half million. So two weeks before they
2 submit it, they had an estimate of six-and-a-half million.
3 Brought an estimate in around nine million.

4 So to suggest that somehow this estimate that was
5 provided to the Board in and of itself creates some sort of
6 magic line that says, We are under the estimate. Board,
7 don't be worried. All the costs are reasonable in the
8 circumstances, is inappropriate.

9 And one of the things I would like to discuss in this
10 is the information regarding the costs. NRG has that. A
11 lot of it's been reproduced. But we were trying to
12 understand -- and we ended up providing what we had in this
13 regard -- what other estimates were done, because it
14 appears to us that within a couple weeks prior to the
15 hearing the cost estimate dramatically increased.

16 And so to say -- so for Mr. Thacker's client to just
17 say, Well, we beat 9.1 million. You should be happy, is
18 inappropriate.

19 And if you go to the -- there is an exchange of e-
20 mails after the financial information, and it's between
21 counsel. And there is an e-mail dated September 22nd, and
22 it says:

23 "We received a quote from Aecon which came in
24 around 8.6M. You called it. Give me a call... to
25 discuss."

26 So obviously the estimate went up. That's on the
27 22nd. In October, when the leave to construct is filed,
28 it's at 9.1, so we are trying to understand what's

1 happening with the estimate, why it's going up, and that
2 goes to the reasonableness of the costs.

3 If we want, we can stop there on (a) and (b), and then
4 I will deal with (d) after.

5 **SUBMISSIONS BY MR. THACKER:**

6 MR. THACKER: The agreement in the leave to construct
7 was based on a cost estimate of 9.1. That's the deal that
8 was made. If they didn't want to construct it for that
9 budget, they shouldn't have asked for leave to move
10 forward.

11 To ask us to go back and provide preliminary cost
12 estimates that we gave to them is wrong-headed, for two
13 reasons. It's irrelevant because it precedes the agreement
14 they made and the budget that was approved and the capital
15 cost estimates that were agreed to by them.

16 What happened before that is utterly irrelevant. More
17 importantly, it's information in their hands. They could
18 have put that information before the Board. They are
19 asking us to fill in their evidentiary record, either
20 because they didn't want to do it or forgot to do it, and
21 it should not be our job, and it's certainly not your
22 function, to order my client to run around and gather up
23 information that they concede was given to them years ago.

24 They are asking for a cost estimate because they are
25 trying to figure out what to do with the truth, which is
26 that my client built that pipeline under budget, on time.
27 By contrast, their own facility was late because they
28 couldn't manage the construction properly, and over budget,

1 but the pipeline that they wanted us to build was built on
2 time, under budget, and they don't know what do with that,
3 so now they want to say, Some preliminary cost estimates
4 were lower than the budget we actually agreed to, so
5 somehow it's unreasonable, and it was 9 -- well, it was
6 2000 and, I guess 8, too long ago, and it's irrelevant, in
7 my submission, and you should not entertain this. You
8 should really draw a line here, because this proceeding
9 will expand exponentially, and my submission is when the
10 Board hears this actual proceeding they are never going to
11 look beyond what, nor should they look beyond, the budget
12 that this party, IGPC, agreed to, to try to somehow punish
13 my client for beating that budget and saying cost estimates
14 were lower.

15 Firstly, they were earlier in time. They are
16 preliminary, and they are earlier in time. Time progresses
17 and costs went up.

18 MS. HARE: I have two comments. One, I will ask Mr.
19 Millar a question in a second, but Mr. Thacker, I think we
20 should focus on NRG, and please try to refrain from making
21 comments about IGPC being over budget on their plant,
22 because I don't see the relevance of that.

23 MR. THACKER: Okay. Fair enough. I hear you.

24 MS. HARE: Mr. Millar, just confirm for us for the
25 record, the 9.1 was approved in the leave to construct; is
26 that correct?

27 MR. MILLAR: I don't have the case in front of me, but
28 I believe that was the number before the board and is

1 referenced in the decision.

2 MS. HARE: And could you please maybe over the break
3 confirm that there is normally not a true-up, so whatever
4 is approved is approved in a leave-to-construct
5 application? So if in fact the pipeline comes in under
6 budget, could you come back and tell us whether or not
7 there is normally a true-up or not?

8 MR. MILLAR: I will try, but the Board wouldn't
9 necessarily know about that, I don't think. Often this is
10 dealt with in the pipeline cost recovery agreement. But
11 let me see what I can find over the break.

12 MS. HARE: Thank you.

13 MR. THACKER: So my second point on this is they are
14 asking us for information that they acknowledge we gave to
15 them. That was their job to put that information in the
16 record; it's not for us to do it. It certainly shouldn't
17 be a cost my client incurs.

18 And I say the material that they did give you that
19 does refer to preliminary cost estimates is irrelevant.
20 There was a pipeline cost recovery agreement that was
21 agreed to, signed, and that's binding. And there was a
22 leave-to-construct based on a budget -- I think the number
23 was 9.1. It may be more specific than that, but that was
24 the range.

25 And that should end the matter, in my submission.

26 Just for the timing, the materials that IGPC filed
27 were from September 2006. The final estimate was completed
28 in October of 2006.

1 And the time -- I guess really what I am saying is the
2 time to object to that cost was then, not now, not years
3 later after my client built the pipeline and beat that
4 estimate.

5 And that is, I think, 6(a) and (b).

6 MS. HARE: 6(a) and (b), and (d)? Mr. Stoll, did you
7 address (d)?

8 MR. THACKER: I don't think you did, did you?

9 **SUBMISSIONS ON IR NO. 6(D)**

10 **SUBMISSIONS BY MR. STOLL:**

11 MR. STOLL: I didn't address them, but they are really
12 derivatives of (a) and (b). If the estimates are
13 available, they would presumably provide the breakdown
14 identified in some similar manner to capture the items
15 in (a).

16 If you are not inclined to order this, then we can --
17 (d) becomes irrelevant at that point, because it's
18 basically subsumed.

19 **SUBMISSIONS BY MR. THACKER:**

20 MR. THACKER: And on 6(d), my submission is IGPC is
21 seeking a breakdown of an estimate that is irrelevant and
22 was not a final estimate. That shouldn't be -- it wouldn't
23 be of assistance and should not be required.

24 I say in this case that, apart from that, there is a
25 very detailed breakdown of costs available, ample
26 information. There are literally hundreds of pages of cost
27 information that were filed in this -- in the rate
28 proceeding to support the costs of the construction of the

1 pipeline, hundreds of pages.

2 And my only question to you is ask yourself whether or
3 not in a pipeline that costs a capital construction cost of
4 \$9 million, if the type of breakdown that is being
5 requested here has ever been required, beyond the hundreds
6 of pages that has already been filed, and certainly with
7 respect to preliminary estimates that predate the agreed
8 budget made between the parties.

9 And my submission is you will never find a precedent
10 for that. It is vastly unproportionate to the benefit that
11 it might have to the fairness of the proceeding, and it's
12 certainly not remotely necessary for IGPC to know and meet
13 the case that is set out in the issues list.

14 MR. STOLL: 6(f)? I wasn't going to deal with 6(f).

15 MR. THACKER: Can we take it as abandoned?

16 MR. STOLL: We will deal with that in argument. I am
17 fine with 6(f) coming out. Like, argument in the
18 proceeding, when we deal with...

19 MR. THACKER: So you are withdrawing the request?

20 MR. STOLL: I will withdraw the request.

21 MR. THACKER: Thank you.

22 MR. STOLL: We will deal with that in argument in the
23 main proceeding.

24 MR. THACKER: Yes. Thank you.

25 **REPLY SUBMISSIONS BY MR. STOLL:**

26 MR. STOLL: If I could just ask a question, my friend
27 said something, when we are going to -- going to hearing.

28 However, on Friday, co-counsel, Mr. King, had

1 forwarded a letter that had been sent to the Board, and in
2 that letter from Mr. Graat, which was dated July 17th, his
3 final paragraph talks about "we are asking the Board deny a
4 -- and proceed with the capital cost determination based on
5 the evidence before it."

6 So I am a little confused with that request and my
7 friend's comment. Is the suggestion from NRG that we are
8 going to have a subsequent hearing to test further
9 evidence, or is it that this is the end of the evidentiary
10 portion? That's an issue that can be addressed.

11 However, the reason for the question on the estimates
12 was based on the fact that NRG said: The estimate, we are
13 under the estimate, so it's reasonable.

14 And to my mind, that's an incorrect proposition in any
15 manner.

16 And what we were seeking to demonstrate -- and we
17 agreed to the 9.1. We also agreed to the true-up, because
18 no party -- NRG was not willing to take the risk of
19 constructing without a true-up, and IGPC did not want to
20 have the project proceed without the true-up, and the Board
21 found that that was in the interests. So the true-up was
22 always part of the deal, and it was around actual,
23 reasonable costs.

24 And as we see in some of the other submissions, I
25 don't know of another utility that's been able to charge a
26 market rate for its general manager or president to be
27 involved in a project and to be allocated to a project. I
28 don't know another utility that files contingency money as

1 part of rate base and proceeds on to recover monies earned
2 on monies that were never spent for five years.

3 So I am having a little problem with some of the
4 thrust of my friend's submissions in that regard.

5 With respect to the estimates, we can get by and deal
6 with the actual reasonableness of the costs, but again,
7 they were the ones that sought to rely on the fact that the
8 9.1 million estimate that they provided was somehow a
9 precursor to the determination of reasonableness in the
10 circumstances.

11 It's not, in our submissions.

12 We would like the information. We are happy -- if
13 they don't have the information, that's -- they can say
14 through the passage of time no estimates are available,
15 then we will have to deal with that.

16 Again, that wasn't the nature of the response.

17 MS. HARE: So where are we going to now, Mr. Stoll?

18 **SUBMISSIONS ON IR NO. 8**

19 **SUBMISSIONS BY MR. STOLL:**

20 MR. STOLL: Interrogatory 8.

21 These series of questions deal with certain events
22 that led up to the motion in June of 2007. And part of
23 what we understand is whether the costs of that motion, the
24 subsequent appeal, are reasonable in the construction of
25 the pipeline.

26 So we are trying to provide an evidentiary basis,
27 through the questions, of what their position is regarding
28 the events leading up to that and the exchange of the

1 correspondence.

2 And part of this is we, in 6(a), for example, after
3 extensive negotiations with counsel -- and that was through
4 Mr. Moran, who is a senior counsel in the energy field. We
5 had settled on a bundled-T. That was June 15th. His
6 dockets show that he sent the agreement for execution to
7 NRG. It wasn't until the week of the 27th, a couple of
8 days prior to the motion, that we had any inkling that NRG
9 would not sign or that there was some term that was
10 inappropriate.

11 So we are trying to understand on what basis they are
12 saying there was no need for that motion. And part of that
13 goes through an understanding of why -- there has never
14 been an explanation for their behaviour in not signing
15 those agreements at that time.

16 Given the lack of explanation and the obligation, both
17 contractually and from a regulatory standpoint, to execute
18 those documents, the motion was entirely necessary. And I
19 am sure my friend will talk about some of the things that
20 came out of that motion, but quite frankly, even after the
21 review motion, there was no vindication of his client's
22 actions. There was an elimination of the penalty on a
23 procedural basis, but there is no indication that their
24 conduct was somehow appropriate.

25 So these questions go to the reasonableness of costs
26 to be included in the pipeline around that motion, and the
27 subsequent appeal.

28 Those are my comments on that.

1 **SUBMISSIONS BY MR. THACKER:**

2 MR. THACKER: This was my first introduction to this
3 relationship, was the Thursday night before the 1st of July
4 long weekend in 2007. IGPC served a motion on Thursday
5 afternoon.

6 MS. HARE: Could you speak up a little bit, please?

7 MR. THACKER: Sure. IGPC served a motion on Thursday
8 afternoon for an emergency hearing the very next morning
9 before a long weekend, and they gave evidence to this Panel
10 that if they did not have an order that NRG sign documents
11 it had no obligation whatsoever to sign, it never agreed to
12 sign, was never required to sign, but IGPC's lenders wanted
13 the documents, because IGPC otherwise couldn't find the
14 money to proceed. So they wanted this Board on an
15 emergency basis to make an order, without any adequate
16 opportunity for NRG to respond, and gave false evidence
17 that if that order was not granted the project financing
18 would collapse.

19 Now, the order was made that afternoon after a, in my
20 submission, seriously deficient hearing, procedurally and
21 substantively. My clients did not sign those agreements
22 for a few days, and guess what? Nothing happened to the
23 financing. The allegation that this was an emergency or
24 the financing was going to collapse was utterly false, and
25 it was proven to be false by subsequent events.

26 And what happened is that decision of the Board to
27 order my clients to sign those two agreements was appealed
28 to the Divisional Court, and when appeal came up the OEB,

1 before it had to answer the appeal, decided to review its
2 own motion, on its own motion, and undid everything that it
3 had done.

4 And my submission is the blame for putting the OEB
5 through that process, directing it to make seriously
6 procedurally and substantively wrong and deficient
7 decisions, was IGPC, who misdirected this Panel on the law
8 and gave false evidence.

9 Now, that's the backdrop of this motion. It was IGPC
10 who falsely alleged urgency, caused a seriously misdirected
11 Panel to make legal errors which had to be corrected by the
12 OEB later, before the Divisional Court did it themselves.

13 This motion has nothing to do with any issue on this
14 issues list. My friend hasn't shown you the issues list
15 because there isn't remotely an issue that has to do with
16 this particular motion.

17 More importantly, though, I would say -- and if you
18 just read the -- this is a good one to read, actually. If
19 you read the (a) through (i), they're essentially asking us
20 to confirm what they already know or believe. All of these
21 things are issues that they could have put evidence in on.
22 They are all issues -- in other words, did NRG settle with
23 IGPC's legal counsel? IGPC's legal counsel knows what NRG
24 did. They were the ones alleging they had communication.
25 IGPC, if it thought it was relevant, could have put that
26 information into the record, but it didn't do that.

27 So my submission is this is a perfect example of two
28 things that I say you should bear in mind. Number one,

1 this is a perfect example of what Mr. Graat said is an
2 entity that is using taxpayer money to run its litigation,
3 because this is way out of proportion, has nothing to do
4 with the litigation, and if litigation was being paid for
5 with real money it wouldn't be happening, because it's
6 uneconomic.

7 Secondly, they are asking, when their lawyers settled
8 the wording of certain documents in 2007 with NRG, that's
9 their lawyers' job to give that evidence. It's within
10 their knowledge.

11 If you look at items (c) and (e): When did NRG advise
12 IGPC of something? Why did NRG refuse to sign? Well,
13 firstly, it's irrelevant why a party chooses to do
14 something they have no obligation to do. The error here
15 that started when IGPC misled the Panel six years ago is to
16 suggest that NRG had an obligation to do something. They
17 didn't. It's a financing document that IGPC's lenders
18 wanted. So there was never an obligation.

19 But if you look at (c) and (e), this is an issue
20 within their knowledge. It's their motion. It was their
21 job to put their evidence in. And you should not be using
22 the interrogatory process to fix up a deficient record that
23 they chose not to make complete the first time round, and
24 it certainly should not be my client who bears the cost of
25 making their legal case.

26 MS. HARE: Just for more clarification on the issues
27 list, under 2, 2.1 includes legal costs. Is the issue here
28 whether or not the costs of the motion are included under

1 2.1? Is that the relevance of this discussion?

2 MR. THACKER: It is the case that some of the legal
3 costs relate to this motion and the subsequent appeal, yes.
4 But all of these questions that are framed here have
5 nothing to do with the costs.

6 If you are going to assess the costs of a proceeding,
7 you look at the bills, the dockets, my invoices, for
8 example, the itemized account of the things I did, for
9 which NRG seeks recovery, and they have all of that. They
10 have all the dockets.

11 You know, I will give you an analogy. In an ordinary
12 civil lawsuit, after a trial the parties have to argue
13 about costs, and what they do is they submit their dockets
14 from their lawyers, and argument is made that there were
15 too many lawyers on the file and the hourly rates are too
16 high and so forth, back and forth, that time was wasted,
17 research didn't have to be done, too many people were
18 attending at meetings. That's the focus of an assessment
19 of costs.

20 You don't get to say, Why did you bring the lawsuit in
21 the first place, or, Why did you break the contract that
22 led to the trial, or, Didn't you have a discussion with my
23 lawyer before you refused to sign the contract that led to
24 the lawsuit that led to the trial? You don't go backwards
25 into the issues. They are irrelevant. If you are going to
26 challenge the costs you look at the dockets, and they have
27 had those for years.

28 So to say, Why did the dispute arise in the first

1 place, it is completely irrelevant to whether or not the
2 legal costs are part of the capital cost and whether or not
3 the legal costs claimed are reasonable. That is driven by
4 an assessment of the dockets and analysis of the work and
5 argument about whether or not the work was reasonable and
6 properly priced, but the thing that led to the dispute that
7 caused the legal fees is never in issue and shouldn't be
8 here, apart from the fact that it's within their knowledge.

9 MS. HARE: Thank you. Mr. Stoll, any reply?

10 **REPLY SUBMISSIONS BY MR. STOLL:**

11 MR. STOLL: Yes, there's a few things I have to say
12 here. One, there were a couple references to my clients
13 misleading this tribunal. I take great offence to that.
14 My client did not mislead. What happened, which my friend
15 glosses over, is this Board said, Sign these documents.
16 You have made a commitment contractually to sign certain
17 documents.

18 And quite frankly, he is not completely forthcoming
19 about the nature of the documents. The one document that
20 was ordered to be signed is called a bundled-T service
21 receipt contract. There is an obligation on NRG to enter
22 such an agreement with any direct-purchase customer that it
23 serves.

24 So the obligation was there. And for my friend to
25 suggest there was no obligation to enter that contract is
26 completely misleading.

27 The legal costs are clearly relevant, and the
28 necessity for the motion, he has said, We basically served

1 it the night before. Part of this is, we could -- if they
2 had said, We are not signing -- beginning of June, We are
3 not signing any agreements, things would have transpired in
4 a much different way. Quite frankly, those things never
5 occurred.

6 It wasn't until the last minute that they said, We are
7 not signing. We know counsel settled the agreement June
8 15th, sent it for a signature, but we did not agree to it,
9 so we're not -- and we are not going to tell you we are not
10 going to agree to it. We are just going to sit there and
11 hold our powder and see what happens. That's not the way
12 parties negotiate, and it's not the way we expect a utility
13 to behave.

14 The motion, that emergency motion, is something that I
15 have never seen need to be required in front of this Board.
16 And that's part of the issue on the reasonableness of the
17 costs. If NRG was incapable or had some other motivation
18 or had some sort of legitimate reason for its behaviour,
19 then we would be able to assess and say -- make a pure
20 judgment on the reasonableness of the costs of that motion.

21 But what we have found, and what our position is, if
22 NRG had behaved appropriately that motion would never have
23 been necessary. The documents would have been signed; the
24 project would have been completed. However, we were forced
25 to meet certain deadlines, and there was a discussion about
26 the reason for those deadlines.

27 And to somehow suggest that the strength of a Board
28 order compelling NRG to do what it was obligated to do and

1 the strength of the maximum administrative penalty had
2 nothing to do with the comfort of the lenders being able to
3 say, We can try and deal with this issue, and that --
4 ignoring that reality is inappropriate. It's -- and
5 misconstrues the comfort that lenders received from the
6 Board that day that there was a regulator that would step
7 in and try and control a utility that did not seem to be
8 controllable.

9 So those are my submissions on that.

10 MS. HARE: Okay. Does that take us to No. 10?

11 MR. STOLL: That takes us to 10.

12 **FURTHER SUBMISSIONS BY MR. THACKER:**

13 MR. THACKER: Excuse me. I should have referred you
14 to the response that we actually gave. I think you will
15 see it in tab 8. You will see it's at the bottom of the
16 page.

17 We did give an answer, although, in my submission, we
18 weren't required to. This is a motion on this particular
19 question, I guess, for a better answer.

20 **SUBMISSIONS ON IR NO. 10**

21 MS. HARE: Thank you. No. 10?

22 **SUBMISSIONS BY MR. STOLL:**

23 MR. STOLL: No. 10 goes to the costs around the
24 contingency, and contingency is issue 2.2 from the issues
25 list. Up until just recently, with the provision of
26 certain legal invoices from late 2012 and 2013, NRG had
27 indicated that there was 132,000 in contingencies, which
28 were not only included in the cost calculation that it was

1 providing to IGPC, but also in its post-construction
2 report, which is included at the next tab.

3 It basically told the Board we are including
4 contingencies in our actual costs. That flows into rates,
5 either through the cash payment my client makes or the
6 rates that it pays through the monthly payments.

7 We have asked -- we have no idea on what utility has
8 ever been allowed to recover contingency monies as part of
9 rate base. So we were trying to understand if this had
10 been spent at the time of the construction of the pipeline;
11 not four or five years after its construction and operation
12 commenced, but where the basis for those contingency monies
13 were, and the rationale.

14 And it also appeared to us that it's inconsistent with
15 the provisions of the system of accounts. If there is
16 justification in the Board's system of accounts, point us
17 to it; we can't find it. And they don't do it. And the
18 response that this is irrelevant given that contingency
19 costs have transpired, I assume that he means because we
20 incurred costs four years after we put this pipe into rate
21 base, we can call that contingency.

22 That's completely inappropriate, in my mind. Those
23 costs were never part of the construction of this pipeline.
24 They may be part of this proceeding or another proceeding,
25 but not part of the construction of the pipeline.

26 Those are my comments with regard to that.

27 **SUBMISSIONS BY MR. THACKER:**

28 MR. THACKER: I would say this. Those costs were part

1 of the contingency that was foreseeable and anticipated,
2 given the conduct of IGPC at the time. It was clear there
3 was going to be a litigious relationship, and my client
4 wanted to have protection against unanticipated legal fees.
5 As it turns out, the contingency was nowhere near high
6 enough, given the onslaught of litigation we faced.

7 But that contingency was exactly contemplated, so it
8 is exactly what a contingency is. A contingency is a cost
9 you think you might incur at the time but you haven't yet,
10 and you make provision for it, and that's what they did.

11 The fact that the costs come later is true for every
12 single contingency cost that ever transpires. It always
13 comes after you plan for it; that's why it's called
14 contingency.

15 The particular questions here are (d) and (e).

16 (D) says: What proportion of the 132 in monies not
17 spent was closed to NRG's rate base? I would say that that
18 question, as well as (e), relates to ratemaking. It does
19 not relate to the capital cost. The capital cost, for the
20 purposes of NRG's rate, was adjudicated at the rate hearing
21 and decided. That is exactly what was done at the rate
22 hearing. It can't be relitigated, nor should it be here.
23 Not only is it inconsistent and violates the rule of res
24 judicata; you could end up with a conflicting decision, a
25 decision made now that conflicts with one already made.
26 And that's another example of this onslaught of litigation
27 causing duplicative proceedings.

28 The question here is the reasonable capital cost under

1 a contract. That's the only issue before you.

2 What amount of contingency is closed to rate base
3 can't possibly be relevant to that, given that the issue
4 was litigated in the rate case and decided already.

5 With respect to (e), my submission is this isn't a
6 fact; it's really argument. And that's not a proper
7 question for discovery, which is a fact -- I won't say a
8 fact-finding process, but a fact-discovering process. It's
9 really in the nature of argument, and that's really where
10 it should be made. It's not an appropriate interrogatory
11 question. Thank you.

12 MS. HARE: Mr. Stoll, any reply?

13 **REPLY SUBMISSIONS BY MR. STOLL:**

14 MR. STOLL: Yes, a couple of things. The fact that
15 NRG has now said that these costs were foreseeable I
16 believe contradicts the evidence their witness gave in the
17 rate proceeding, where he said they had no intention of
18 spending that money.

19 So I am not sure which story we are going to go with,
20 their story then that it was not foreseeable, or their
21 story now that, after the fact, it was foreseeable.

22 The decision -- and part of the reason why we are here
23 is because the aid-to-construct is a rate. The aid-to-
24 construct is based on the capital costs of the pipeline,
25 and the economic analysis using the monthly rates.

26 We are trying to understand where the costs have been
27 paid and where they are going with respect to the rates,
28 whether it be rate base as far as the utility's monthly, or

1 whether it be the rate -- and if it's not in the rate base
2 for the monthly payment, then it's directly in the aid-to-
3 construct as part of the rate that my client paid.

4 So we are trying to basically establish where these
5 monies lie within the Board's regulated charges that NRG is
6 permitted.

7 So those are my submissions.

8 MS. HARE: Thank you.

9 I think this is an appropriate time for a break and we
10 will return at 25 after 11:00.

11 --- Recess taken at 11:04 a.m.

12 --- On resuming at 11:32 a.m.

13 MS. HARE: Mr. Millar, were you able to obtain
14 additional information on the issue of true-up?

15 **SUBMISSIONS BY MR. MILLAR:**

16 MR. MILLAR: Yes, I do have some information for the
17 Board. Typically a pipeline cost recovery agreement will
18 have provisions related to true-up. The PCRA is --
19 essentially it's a contract entered into between the two
20 parties, but it is filed within the context of the leave-
21 to-construct proceedings in most cases, and it's reviewed,
22 and I am not sure if "approved" is the right word, but it
23 is recognized by the Board. So that's fairly common.

24 In the PCRA for this proceeding there are relatively
25 clear true-up provisions. I don't know you need to pull
26 them up, but they are sections 3.13 and 3.14.

27 PCRA's are largely standard form agreements. There'd
28 be slight differences from one to the other, but it's my

1 understanding that virtually all of them would have true-up
2 provisions. That's a fairly common thing that you will see
3 in them.

4 Now, when it comes to the Board's involvement in
5 these, one of the conditions that is typical -- in fact,
6 it's entirely standard for a leave-to-construct approval --
7 is that the utility after the construction is completed
8 will file a post-construction financial report. That's
9 actually filed with the manager in this case, Ms. Duguay.
10 It's -- I don't know if it goes on the public record or
11 not, to be honest. I am not sure that it does. But it is
12 certainly filed with the Board through the manager.

13 And that report details, amongst other things, what
14 the actual costs of the pipeline were versus what the
15 forecast costs had been that were approved in the leave-to-
16 construct application.

17 So that's used in a couple of ways. In most cases
18 there actually is no capital contribution, so in cases
19 where there is no capital contribution, the delta between
20 the forecast and the actual would just be reflected when
21 the asset entered into rate base. So you would ensure you
22 got the actual costs going into rate base, instead of the
23 forecast.

24 Although the financial report doesn't discuss this in
25 detail, where there is the capital contribution, presumably
26 that's the utility statement of what the actual costs were.
27 It seems that that would fit quite naturally into what is
28 described in the PCRA.

1 Now, as it happens, usually the true-up is dealt with
2 sort of not really under the Board's review. It's dealt
3 with between the two parties, as set out in the PCRA.

4 Board Staff is certainly aware that from time to time
5 there are some disputes about these costs, and generally
6 these are resolved one way or another by the two parties.

7 I believe this is the first instance where a party has
8 actually come to the Board -- a Board panel itself to seek
9 assistance in having this resolved. So I hope that's of
10 assistance.

11 MS. HARE: Thank you. That is, yes.

12 MR. MILLAR: If you have any questions...

13 MS. HARE: No, that's good.

14 Okay. Mr. Stoll, I think that takes us to
15 interrogatory number 11, or do you want to go back to the
16 two -

17 SUBMISSIONS ON IR NO. 2

18 SUBMISSIONS BY MR. STOLL:

19 MR. STOLL: I was going to suggest we go back to 2.
20 Mr. Thacker and I had a brief discussion, and I think if he
21 can confirm whether Ayerswood Development, or Ayerswood,
22 would have any involvement in the assessing the capacity of
23 the IGPC pipeline and station facilities, that would clear
24 up some of this matter.

25 MS. HARE: Thank you.

26 MR. STOLL: If they are involved and there is no
27 charge, it's not going to be a concern.

28 MS. HARE: All right. Mr. Thacker, are you prepared

1 to answer that?

2 **SUBMISSIONS BY MR. THACKER:**

3 MR. THACKER: Yes. So I want to make sure that it's
4 very clear that what I am prepared to say is that Ayerswood
5 will not --

6 MS. HARE: I'm not sure your microphone is on.

7 MR. THACKER: Ayerswood will not be involved --

8 UNIDENTIFIED SPEAKER: Your mic isn't on.

9 MR. THACKER: Ayerswood will not be involved, or, if
10 it is, will not charge for its involvement in answering
11 this question, which, as I understand what my friend says
12 IGPC wants an answer to: What is the capacity of the
13 pipeline and the transfer station to flow natural gas.

14 I say that I can't tell you Ayerswood will have no
15 involvement, because they had a role in the construction,
16 and so that whoever does answer that question may have to
17 get information from Ayerswood, but I can tell you that
18 Ayerswood is prepared to agree that it won't charge for any
19 involvement that it has in answering that question, and
20 in --

21 MS. FRY: Sorry, what question is that?

22 MS. HARE: Yes, I was going to ask you to go -- take
23 us back to --

24 MR. THACKER: As I understand it, the question is,
25 what is the capacity of the pipeline and the transfer
26 station to flow natural gas.

27 MS. FRY: I'm sorry, which number --

28 MS. HARE: Sorry, which interrogatory are we talking

1 about?

2 MR. THACKER: Oh, I'm sorry.

3 MS. HARE: Going back to number...

4 MR. STOLL: This is number 2.

5 MS. HARE: 2?

6 MR. THACKER: It's 2(a) and 2(d) are the ones that
7 were moved on.

8 MR. STOLL: Right. And basically --

9 UNIDENTIFIED SPEAKER: Sorry, your mic's not on.

10 MR. STOLL: My apologies. 2(a) and 2(d) were part of
11 the motion, and basically the confirmation that Ayerswood
12 is not involved or would not be involved at a charge in
13 respect of the capacity and the discussion of the
14 capabilities of the IGPC pipeline and facilities, basically
15 will deal with question 2.

16 MS. HARE: Okay. Thank you.

17 MR. THACKER: In other words, 2(a) and 2(d) are
18 withdrawn from the motion in exchange for the confirmation
19 I gave.

20 MS. HARE: Understood, thank you. And so there were
21 two other interrogatories that we skipped, Mr. Stoll,
22 because you thought we could deal with some of the other
23 ones first. Where would you like to go next then?

24 MR. STOLL: I was going to continue on through 11
25 prior to jumping back into the service issue.

26 MS. HARE: Okay. That's fine.

27 SUBMISSIONS ON IR NO. 11(D)

28 SUBMISSIONS BY MR. STOLL:

1 MR. STOLL: Again, issue 2.3, NRG staff costs. And
2 what we were seeking with 11(d) was trying to confirm
3 whether Mr. Graat's salary or remuneration -- and this
4 could be because Ayerswood did provide some services -- NRG
5 provided some -- we understand he has the relationship with
6 NRG, and I think that may have changed over the years, but
7 we were seeking to understand the nature of that
8 relationship leading up to 2007, so we could understand if
9 there had been a change in any of the salary or costs
10 related to Mr. Graat that made their way into the pipeline
11 costs, and we think that's squarely within item 2.3 on the
12 issues list. So I don't have anything more to say on that.

13 **SUBMISSIONS BY MR. THACKER:**

14 MR. THACKER: So my submission is that the answer to
15 question (d), interrogatory 11(d) is within the answer we
16 gave to item 11(a), which you will see under the heading
17 "response". Mr. Graat bought NRG out of bankruptcy many
18 years ago, but we have confirmed that there was no
19 consulting agreement or services agreement between NRG and
20 Mr. Graat during the relevant period, the period of
21 development construction of the IGPC pipeline, which
22 includes 2007, I think, for development, at least, and
23 whatever happened before that is completely irrelevant to
24 any of these issues. It is not the business of IGPC or
25 this Board, in my submission.

26 I can tell you that the Board is well-aware that
27 certain members of Mr. Graat are beneficiaries of the trust
28 that own the voting shares of NRG, so the ownership

1 structure is not unknown to the OEB.

2 Mr. Graat has in the past held positions, and has in
3 the past assisted NRG, whether or not he has a formal role,
4 but the answer to the question, what is his salary or
5 remuneration, he hadn't had a consulting agreement and he
6 was not an employee at those periods of time. So the
7 answer is really already given.

8 MS. HARE: Okay. Thank you. Mr. Stoll?

9 **REPLY SUBMISSIONS BY MR. STOLL:**

10 MR. STOLL: So if there is no agreement, no
11 arrangement, are we to assume that there has been no charge
12 or no payment in respect of Mr. Graat over the time period?
13 That is really the nub of the issue.

14 **FURTHER SUBMISSIONS BY MR. THACKER:**

15 MR. THACKER: The question is about salary or
16 remuneration as an employee or consultant. I can tell you
17 that he was not an employee, he was not a consultant, he
18 was not received (sic) payments as an employee or a
19 consultant. I don't know what other payments he might have
20 received, but it's not relevant, in my submission. He is
21 not an employee, did not get paid as an employee. He was
22 not a consultant, did not get paid as a consultant.

23 MS. HARE: Just so I understand, he is president of
24 NRG, is he not?

25 MR. THACKER: He is now, I believe, yes. He was not
26 then. He was not -- then he was resident in the U.K. But,
27 yes, he is now president, but has only been, I think, for
28 about a year and a half. Not at any period in issue here,

1 is my understanding.

2 MS. FRY: Okay. Just for me to clarify, so you are
3 saying that in relation to the costs we are dealing with
4 here for this project?

5 MR. THACKER: Yes.

6 MS. FRY: There are no costs included for his time as
7 an employee or as a consultant, but you are saying there
8 could be some costs included for payments made to him in
9 some other capacity? No?

10 MR. THACKER: No, the question was: Were any payments
11 made? I am not aware of any costs being included for any
12 payments made to Mr. Graat.

13 MS. FRY: Period?

14 MR. THACKER: I can tell you that no payments were
15 made as an employee or a consultant. Whether or not other
16 payments were made by NRG to Mr. Graat, I don't know, but I
17 say it's outside the scope of this proceeding anyway.

18 MS. FRY: But in terms of the costs claims filed in
19 relation to this proceeding, there is nothing for him?

20 MR. THACKER: That is my understanding. And if I have
21 that wrong, I will advise my friend.

22 MS. HARE: Thank you.

23 MR. STOLL: As part of that, part of the salary
24 remuneration, Mr. Graat is a shareholder. He owns the bulk
25 of the non-voting shares, so that is what we were trying to
26 cover off.

27 And a payment as a dividend or some other form of
28 remuneration in lieu, if it's captured in the costs that go

1 into the pipeline, that is what we were trying to
2 understand.

3 MS. HARE: But if it's not captured in what goes into
4 the pipeline, then it's not relevant; correct?

5 MR. STOLL: Right.

6 MS. HARE: Okay. Thank you.

7 So that takes us to No. 12?

8 **SUBMISSIONS ON IR NO. 12(B), (H), (I)**

9 **SUBMISSIONS BY MR. STOLL:**

10 MR. STOLL: Number 12(b), and again, this is an issue
11 2.3 question and it deals specifically with Mr. Bristoll.

12 Included in the line items of costs were almost
13 \$400,000 related to Mr. Bristoll's time, which was
14 approximately two-thirds of one year of hours claimed.

15 We have is taken the position that that's completely
16 inappropriate, and we wanted to understand the actual cost
17 NRG has incurred in paying Mr. Bristoll when he was
18 providing service or dealing with the IGPC pipeline.

19 So we had requested -- the negotiations starting in
20 2006. The pipeline was put into service in 2008. The
21 reconciliation originally envisioned happened shortly
22 thereafter; it didn't start until 2009. So that is what we
23 are seeking, details of the salary provided to Mr.
24 Bristoll.

25 The other two items under 12, we will deal with, as
26 well, because one of -- the first question is the charges
27 that have made their way into the pipeline do not appear to
28 us to be cost-based. Again, we have asked for direction

1 from NRG on how they fit within the Board's system of
2 accounts. So that's (h).

3 We have made that argument. Utilities operate on a
4 cost-based system. It's historical. I don't think there
5 needs to be a whole lot said on that.

6 The other concern we had is that Mr. Bristoll, under
7 (i), may have also been working for some of the other
8 related companies, and we are trying to understand whether
9 he was a true full-time employee of only NRG and how the
10 money and services related to Mr. Bristoll from the other
11 entities.

12 So if he was providing service to other entities as
13 part payment, we could have a better understanding of what
14 his true actual salary was, and the true amount of time
15 that would be dedicated to NRG among the Graat family.

16 So that's the basis of the question and why we had
17 sought information in that regard.

18 MS. HARE: Okay. Mr. Thacker?

19 **SUBMISSIONS BY MR. THACKER:**

20 MR. THACKER: Yes. Firstly, I would ask you if
21 anybody has ever ordered the disclosure of salary
22 information of an Enbridge employee, ever, to calculate the
23 cost of Enbridge, and my submission is you won't find any
24 such precedent. It should not be done here either.

25 The fact that my client is smaller doesn't mean that
26 it's required to produce more or different information than
27 any other utility.

28 To simply say -- can you imagine if someone came and

1 said: I don't think Enbridge costs are right. I want to
2 know what each of their employees makes. It's ludicrous.

3 I would tell you this. They already know this
4 information. Firstly, we did -- I'd say two things. They
5 have to know this information already, because they appear
6 to by virtue of one of the questions they have asked.

7 And secondly, we have explained to them exactly how we
8 came up with the rate that was charged for Mr. Bristoll.

9 They can argue that that was an inappropriate
10 methodology, but there is no mystery in their minds as to
11 how we did it.

12 There is Undertaking No. JT1.16, and this was the
13 question:

14 "To provide total wages on a fully allocated
15 basis for Mark Bristoll."

16 I think that was a Board Staff interrogatory. I
17 believe it was Board Staff Interrogatory No. 2. Perhaps I
18 can be -- correct me if I am wrong.

19 So we answered Board Staff Interrogatory No. 2. I am
20 not sure it's before you, but I will read it so it's in the
21 record:

22 "Confirming Mark Bristoll's salary, inclusive of
23 fully allocated utility overheads, yields an
24 hourly rate of 562 for 2007, 592 for 2008 and
25 \$600 dollars for 2009. We compared the initial
26 figure to a charge-out rate for a senior
27 chartered accountant within the London area,
28 which was 250 to \$350 per hour. We felt the \$295

1 rate ultimately charged to IGPC was reasonable,
2 given the fact that Mr. Bristoll was not only an
3 experienced chartered accountant but also had
4 extensive experience in the construction
5 industry."

6 So that's the rationale for the rate that was charged
7 to IGPC. They can argue with that, take issue with that.

8 My submission is they are not entitled to know the T4
9 amounts of the employees behind it, and you would never
10 order Enbridge to disclose that information, in my
11 submission, and you never have. You shouldn't do it here.
12 It's unnecessary, in my submission, disproportionate to
13 require Mr. Bristoll's T4s to be produced, and irrelevant.

14 It's actually, in my submission, formally speaking,
15 irrelevant. Whether or not Mr. Bristoll got paid \$10 a
16 year or a million is irrelevant to the question of whether
17 or not his rate is fair and appropriate. We have given the
18 methodology for how his rate is calculated, and just as you
19 would never require an Enbridge employee to have their T4
20 disclosed, you would simply look at the rate Enbridge is
21 charging and decide if it's appropriate. That is what you
22 should do here.

23 So that is for (b), which is his salary.

24 12(h) asks how the charges are consistent with the
25 uniform system of accounts. My submission is that's an
26 argument question. They can argue it's not, we can argue
27 it is, but it's not a fact that's appropriate for the
28 interrogatory process.

1 They have our position on what NRG thinks is a fair
2 rate. We have explained it in detail in response to the
3 Board Staff interrogatory.

4 They had a position at the rate case -- there is no
5 requirement for more information. They don't need any more
6 information to answer the issues set out in the issues
7 list.

8 I would only point you to Interrogatory -- IGPC
9 Interrogatory 12(i). And because what, in my submission,
10 it does is set out how IGPC calculates Mr. Bristoll's
11 costs, and my submission is they couldn't do the
12 calculation they set out without his salary, which suggests
13 another ground on which we say you should not order any
14 further information on this point. They have the
15 information already.

16 And 12(i) says:

17 "Please calculate the total amount of
18 remuneration paid to Mr. Bristoll by NRG directly
19 and/or any other entity where he was employed or
20 engaged over the same time period that NRG has
21 invoiced IGPC in respect of his services. To be
22 clear, IGPC takes the position that the actual
23 costs of Mr. Bristoll's services are to be
24 calculated using as a base, his actual
25 remuneration earned over the same timeframe as
26 NRG has invoiced IGPC, less adjustments for time
27 spent by Mr. Bristoll on other matters. Please
28 provide copies of supporting T4s confirming Mr.

1 Bristoll's total compensation during the relevant
2 years..."

3 So my submission is implicit in that is an
4 acknowledgement that they know what that number is, but I
5 really return to the analogy. You would never order
6 Enbridge to produce T4s of individual employees in order to
7 decide if costs were appropriate or fair, and you shouldn't
8 do it here. This is just a victimization of a small
9 utility.

10 MS. HARE: Mr. Stoll?

11 **REPLY SUBMISSIONS BY MR. STOLL:**

12 MR. STOLL: There is absolutely no victimization. And
13 we had indicated in the question that the information could
14 be provided pursuant to the Board's confidentiality rules
15 for such information.

16 I don't know how this Board is supposed to assess a
17 cost-based application where one party refuses to provide
18 the actual costs. To suggest that this notion that the
19 fully allocated costs of one employee out of a utility that
20 has approximately 25 to 30 employees constitutes over --
21 and if you say \$600 an hour, is what the last figure I
22 heard Mr. Thacker -- on 2,000 hours, that's 1.2 million.
23 We are probably in the range of 20 to 25 percent of NRG's
24 entire revenue requirement for distribution services. That
25 just doesn't track.

26 And for NRG to say that that provides a reason, we
27 came up with a number, and then we went and we said for the
28 market we'll bear 295 as a reasonable -- that wasn't the

1 deal in the PCRA. It was the actual costs incurred. That
2 was the deal in the PCRA. That's the expectation when the
3 Board hears from utility cost of service.

4 I would rephrase Mr. Thacker's proposition. Can you
5 imagine if a utility came to the Board and said, We are
6 just going to charge market rates for our employees for all
7 the capital work we put into rate base. Don't worry,
8 Board, that's fine. It has no bearing at all, has no
9 relation to the costs we are actually incurring, but these
10 are the market rates we feel our employees could get on the
11 open market. We want that for rate base. Completely
12 inappropriate. The information is needed to deal with item
13 2.3.

14 NRG has sought almost 400,000 in costs related to this
15 one individual for what they claim is two-thirds of one
16 year. That seems exorbitant in the circumstances. And so
17 we are trying to understand the basis on which that number
18 was arrived at and its relation to actual costs, which is
19 the requirement in the agreement.

20 MS. FRY: Mr. Stoll, just to be clear, so I take it
21 that your client's position is that an hourly rate of 295
22 might be high; is that it?

23 MR. STOLL: That's most definitely one of our
24 positions in relation to Mr. Bristoll's time.

25 MS. HARE: And if you see the actual and in fact it's
26 low, because --

27 MR. STOLL: Pardon?

28 MS. HARE: -- I am figuring that that's about -- what

1 if it is higher than 295?

2 MR. STOLL: Then --

3 MS. HARE: Are you going to be happy with that?

4 MR. STOLL: If that's the case, that's the case. But
5 I would be surprised that NRG would be so benevolent to
6 just gift us an employee at below actual cost. But again,
7 without the information we can't make any assessment. We
8 have raised an issue because the number looks high.
9 However, we have asked for detail to support that number,
10 and we have been refused at every turn, and then we have
11 been provided a fully allocated number that, quite frankly,
12 we think is meaningless in the circumstances.

13 MS. HARE: Okay. Thank you.

14 Okay. Where does that take us to? Number 12?

15 MR. STOLL: It takes us to number 12. Or, sorry --

16 MS. HARE: No, we've done 12.

17 MR. STOLL: We did 12. We are into number 13.

18 MS. HARE: All right.

19 **SUBMISSIONS ON IR NO. 13**

20 **SUBMISSIONS BY MR. STOLL:**

21 MR. STOLL: Part of the issue that we were struggling
22 with in asking these questions is, did all of this interest
23 during construction filed on the chart that's attached make
24 its way into either the capital contribution or rate base.
25 We are not sure.

26 However, when we look at the chart provided and we --
27 whether it's page 1 or the subsequent pages, we had several
28 questions, and I walked through some of these questions

1 during the rate proceeding. The -- there is a discrepancy
2 between the rate provided for in the PCRA and what appears
3 to be the rate charged. The PCRA, it talked about a prime
4 plus 1 percent. They basically had prime plus 2 percent
5 throughout this.

6 The other -- one of the other issues was the timing
7 over which interest is charged, because the first element
8 of the PCRA was basically a pay-as-you-go. NRG would
9 retain people to undertake certain services or provide
10 certain goods. They would turn around and provide those
11 invoices to IGPC. IGPC had to basically make a payment,
12 which it did, when it received those invoices.

13 However, we started to see interest being accrued on
14 that, and one of the aspects was interest was being accrued
15 on invoices that we had no way of knowing about after the
16 motion hearing. Invoices started to accrue when they were
17 presented. However, we never received those for six
18 months.

19 Contrary to the agreement that said we want monthly
20 billing, IGPC ended up not receiving several invoices, and
21 yet -- and apparently they were either held by NRG or they
22 were not held by NRG and not billed to NRG until just prior
23 to them being delivered. Either way, we don't see how
24 those invoices should accrue interest.

25 So what we are trying to do, and what we have laid out
26 in fairly specific detail, is the rates - (a) and (b) deal
27 with the rates and the time period over which the rates
28 were charged, and whether it was a simple interest

1 calculation or whether it's a compound rate. They have
2 that information. They should be able to provide it.

3 One of the issues was whether -- that we dealt with at
4 the hearing was whether there was interest on the purchase
5 of the steel pipe. We were just seeking a confirmation
6 that there was no interest charged in that regard.

7 What happened with the steel pipe is we basically made
8 a payment, I believe it was to Mr. Thacker in trust, to be
9 forwarded to the pipe company. It was paid directly, so
10 there should, in our view, be no interest. We were just
11 asking for a confirmation of that.

12 And then we were -- under (g) and (h), we were trying
13 to understand the basis on which the interest was being
14 charged. When did interest begin to accrue? If we
15 understood how they were counting their days, then we could
16 assess it against the terms of the PCRA.

17 With (h), what we were trying to understand is what
18 was the actual interest paid. They provided a calculation,
19 but what was the actual interest charged in regards to the
20 invoicing that had transpired, because there would be a
21 number of contracts. We assumed they paid interest
22 certainly on the construction contract. We were trying to
23 understand what the total amount of interest actually was
24 paid, not what they charged in accordance with the table or
25 calculated in accordance with the table, but what they
26 actually paid. So that was the basis for the question.

27 And I note that 2.4 deals specifically with interest
28 during construction, so this issue falls squarely within

1 the issues before this Panel.

2 Those are my submissions.

3 MS. HARE: Thank you. Mr. Thacker?

4 **SUBMISSIONS BY MR. THACKER:**

5 MR. THACKER: Yes. If you look at the response, this
6 information -- another example of information that all is
7 available to IGPC, and IGPC could have put it in its
8 evidence if it wanted to.

9 What IGPC's asking NRG to do is to bear the cost and
10 spend the time required to dig through the documents they
11 already have and provide the conclusions from the documents
12 and extrapolations and analysis that they could have chosen
13 to do.

14 If NRG wants to make the case that -- or if IGPC wants
15 to make the case that NRG's costs are unreasonable, that's
16 their case to make, but they can't ask NRG to assemble the
17 conclusions and analysis to support that.

18 There was an answer to undertaking J1.5, which I think
19 is a Board Staff undertaking, and I think in my friend's
20 compendium you did not get that. What it says -- you got
21 the schedules or the interest schedules that were attached,
22 but you didn't get the actual response.

23 So the response is this, and this is why I say he
24 already has the information:

25 "We have calculated the interest based on the
26 date that IGPC received the invoices from NRG, as
27 opposed to original invoice date on supplier
28 invoices. On that basis the interest calculation

1 is as follows: Aid-to-construct interest, see
2 attached table."

3 And I think you have been given the table at tab A of
4 my friend's compendium.

5 "Interest is calculated from the due date of the
6 aid-to-construct invoice to the date the amount
7 was received from IGPC. The rate applied is
8 prime plus 1 percent."

9 So he has got the answer to that question. He
10 suggested to you that he didn't know how it was calculated.
11 It's prime plus 1 percent in accordance with the PCRA, and
12 it refers to section 8 of that contract.

13 It also says:

14 "Project interest during construction, see second
15 table attached."

16 And that, I think, is attached -- there is a second
17 calculation. It sets out the calculation of interest. It
18 goes on to say:

19 "Interest is calculated from the date the last
20 aid-to-construct payment was due to the date the
21 final invoice from the primary contract was
22 received. During this payment, NRG was financing
23 the construction costs. The rate applied here is
24 prime plus 2 percent in accordance with the PCRA,
25 section 3.14(d), a reasonable rate of interest
26 during construction. NRG's position is that
27 prime plus 2 percent is a reasonable interest
28 cost."

1 So they have that answer because it was provided in
2 response to a Board interrogatory, Board Staff
3 interrogatory.

4 I would say this. This is \$100,000 in total in issue.
5 We have spent a tremendous amount of money calculating the
6 interest payment and showing them already how it's been
7 done. Enough is enough, in my submission.

8 The PCRA requires that IGPC pay interest on all
9 amounts expended by NRG relating to design and
10 construction. NRG has charged interest in accordance with
11 the PCRA. IGPC has a contractual obligation to pay it, and
12 NRG has already set out the basis on which it claims the
13 amounts.

14 What really happened here is -- and there is a reason
15 why that amount of money for the steel pipeline was paid to
16 me in trust and then forwarded to the steel company. IGPC
17 was unable to give a letter of credit to us in time to
18 start the construction of the pipeline. We had no
19 obligation to construct the pipeline without the letter of
20 credit.

21 Despite having no obligation to do so, NRG did start
22 the construction of the pipeline so it would be done in
23 time to meet the deadline that IGPC said it had. So even
24 though they had no obligation, NRG, who is being maligned
25 in this process, actually fronted the money to start
26 digging the holes and start spending.

27 Now, what happened is, with respect to the purchase of
28 the steel, they were unable to go that far in debt, and so

1 we ended up in a dispute and it was decided that because
2 IGPC had not given the letter of credit that was required
3 and the purchase of steel was required to stay on schedule,
4 that IGPC would pay for the steel to my law firm in trust
5 and we would pay it directly over to the steel company, and
6 that way the schedule would be preserved.

7 But during that period NRG was fronting the money, it
8 had no obligation to do that. It took the credit risk.
9 And that's why it claims a rate of prime plus 2 percent,
10 because it was essentially a lender who couldn't finance
11 its own operations and it chose to do so.

12 Nobody objected, by the way, to that. Nobody said:
13 Wait a minute. Don't start construction until we can find
14 a lender or until we can get your letter of credit in hand.

15 So I would say that essentially NRG took the risk of
16 fronting the money to start construction, even though they
17 did not have the required letter of credit. That was a
18 gesture of good faith. That's the only way this pipeline
19 got constructed before the due date, because NRG put its
20 own money at risk.

21 If IGPC had a letter of credit, it would have paid
22 interest on that letter of credit. So IGPC has to pay
23 interest on the money -- the PCRA requires it -- and the
24 manner in which that interest is calculated has already
25 been set out at length in some detail. They are just
26 asking us to do more calculations. They can do the
27 calculations themselves. Enough is enough.

28 MS. HARE: I do have a question about that.

1 We will hear from Mr. Stoll whether or not, in fact,
2 they have the information, but surely NRG has got the
3 information too? When you talk about, like, digging up the
4 information, surely that information is readily available,
5 isn't it? Explain to me why it's not.

6 MR. THACKER: It is in their hands. It is -- well, it
7 depends --

8 MS. HARE: Well, it's also in your hands -- sorry,
9 your client's hands, isn't it? Wouldn't it have been easy
10 to answer these questions?

11 MR. THACKER: I am looking at them. Some yes and some
12 no. Some of them require quite a bit -- if you look at
13 (h), for example, the actual amount of interest paid by NRG
14 to third parties.

15 So it's a \$9 million construction project. They're
16 suggesting we have to go through all of the sub-suppliers
17 and find out, of the cheques that we wrote, how much of
18 those cheques were an interest component or not.

19 It doesn't matter if it's zero, by the way; it has
20 nothing to do with it. They are required to pay interest
21 to us. If our suppliers gave us a break, that's for our
22 benefit. If our suppliers charged us three percent per
23 month, then that's our burden to bear. We can't pass it
24 along. It's utterly irrelevant, but it's also a very big
25 task.

26 With respect to (g), when we began to accrue interest,
27 we have answered that question. It is set out in the
28 answer to Board Staff.

1 With respect to (e), there was no interest charged in
2 the purchase of the steel pipe, that would be an easy one,
3 I think, to answer, and we could do that.

4 The rate of interest, Interrogatory 13(b), that's
5 answered. I read it out. Prime plus one and prime plus
6 two.

7 13(a), it's already answered. 13(a)(1), (2) and (3),
8 already answered.

9 So of all of those, I hear you with respect to 13(e),
10 and that would not be onerous. The rest of them are either
11 irrelevant and/or would be quite onerous and/or it's
12 already been answered by the response to the Board Staff.

13 MS. HARE: Okay. Thank you. Mr. Stoll?

14 **REPLY SUBMISSIONS BY MR. STOLL:**

15 MR. STOLL: Well, there is a bit of revisionist
16 history going on. The purchase of the pipeline was in
17 2007, well in advance of them having tendered their
18 contract. And it was part of the first concept or -- and
19 this goes back to the way the PCRA was basically set up was
20 in three stages.

21 One, during the initial phase, it would be pay as you
22 go for general services, and if NRG was required to commit
23 to a large purchase either for the station or the pipe,
24 IGPC could either provide cash, which it did, or it could
25 provide a letter of credit, so that NRG was not unsecure in
26 those payments.

27 During the fall of 2007, they said: We want to
28 purchase the pipe. We ultimately agreed. We made that

1 payment.

2 In the original evidence filed in the rate case, NRG
3 had claimed a base principle for calculating interest for
4 approximately eight months related to the purchase of the
5 pipeline, even though there would be no interest in that
6 regard because we knew the payment had been made. So we
7 just wanted confirmation on that issue.

8 The second issue, the contract says prime plus one,
9 yet this table they produce shows prime plus two. These
10 are for the costs pay as you go; it's a prime plus one.

11 The fact that they paid for the -- they have some sort
12 of calculation regarding the aid-to-construct payments, we
13 are not sure how that has a basis in what they are doing,
14 whether they are basically saying: We are giving you some
15 credit for interest, or not, because it just -- we just
16 don't understand what that table is portraying.

17 The other difficulty that we are having is if you look
18 at -- let's take line 2 of the table. It's the second --
19 it's the first page of the long list of tables, and at the
20 top it says "Natural Resource Gas Limited IGPC project
21 interest summary as of October 2008," I believe.

22 There is -- the second line provides Ogilvy Renault an
23 amount, and then total amount days and then an interest
24 rate and then the interest is zero.

25 So okay. We are not sure how they got the zero. Is
26 it because they already had the cash in hand? If that's
27 the case, that's fine. The days were not excessive. That
28 should be a reasonable and easy explanation. We do take

1 issue about the rate, and we are trying to understand how
2 this table is an appropriate calculation of the interest
3 rate and the number of days.

4 Also, as a result of the Board's decision, the
5 pipeline was put into rate base in August. We commenced
6 paying full distribution rates in July, yet we are still
7 accruing interest for some of these things. And we think
8 that is inappropriate, and we took that position.

9 So that's the basis upon which we'd asked those
10 questions. It's basically an explanation -- and this
11 happens all the time in rate proceedings, is the
12 intervenors will ask the witness to please walk them
13 through the calculations provided in their table. That's
14 simply what we were asking with the questions.

15 Those are my submissions in that regard.

16 MS. HARE: Thank you.

17 MS. FRY: I understand, Mr. Stoll, that you take issue
18 with some of the basis for the calculations, and obviously
19 that's not today's issue.

20 I am still not 200 percent clear on what the factual
21 information about the interest calculation that you are
22 asking for is that has not yet been provided. So can you
23 just walk me through that in detail?

24 I mean, obviously we have this table, we have the
25 undertaking; there is some information there. You have
26 asked a number of questions.

27 So can you just go through one more time specifically
28 what is the factual information?

1 MR. STOLL: The factual information is when the period
2 and how was the period determined over which interest would
3 be calculated and whether there was actually an interest
4 charge in respect of those costs.

5 MS. FRY: Okay. So when was the interest period?

6 MR. STOLL: So if an invoice is provided to NRG on day
7 one in the pay-as-you-go, basically they turn around and
8 would invoice us at a certain point. If that invoice is
9 held for 90 days by NRG before we become aware of it and we
10 pay that invoice, we don't think it's reasonable that we
11 should be charged interest if interest was paid by NRG if
12 they delayed in providing us such invoice.

13 So that's one of the -- that's the difficulty we are
14 having here, and we are trying to understand --

15 MS. FRY: Excuse me, Mr. Thacker, in your view is that
16 covered in the material you provided?

17 MR. THACKER: I am trying to understand what he is
18 asking for. We have said that we calculated interest from
19 the due date of the invoice we have received to the date
20 IGPC paid us. So if we received an invoice on September 1
21 that was due on October 1, interest would be calculated
22 from October 1 to the date IGPC pays. That's the answer
23 we've given.

24 MS. HARE: Mm-hmm. I think what I understood Mr.
25 Stoll to say, though, that he wants to see whether or not
26 NRG actually paid any interest, because you could be
27 charging -- if I understand your argument --

28 MR. THACKER: Yes.

1 MS. HARE: And I do want to understand this -- if IGPC
2 is paying interest but in fact NRG isn't incurring any
3 interest costs, why should they be paying it?

4 MR. THACKER: Well, the answer is they agreed to, is
5 the short answer --

6 MS. HARE: Uh-huh.

7 MR. THACKER: There is a contract --

8 MS. HARE: All right, all right.

9 MR. THACKER: So if our suppliers are prepared to
10 forgive us -- I mean, the short answer is we would be in
11 default. We can't just choose not to pay. Either there is
12 an invoice that provides for interest to be payable, or
13 it's possible, I suppose, that a supply doesn't charge
14 interest at all, even though you are past the due date.
15 But either way, the agreement says they have to pay
16 interest. It's not, they have to pay interest if and only
17 if IGPC actually incurs an interest charge. That's the
18 first point.

19 MS. FRY: So -- excuse me, so the calculation that you
20 have provided is -- has been made on that basis even though
21 Mr. -- you know, you and Mr. Stoll obviously have a
22 disagreement as to the basis that should be used for the
23 calculation. You are telling us that regardless of whether
24 NRG somehow got away without paying the interest --

25 MR. THACKER: Right.

26 MS. FRY: -- that wasn't taken account in your
27 calculation.

28 MR. THACKER: Correct.

1 MS. FRY: Okay.

2 MR. THACKER: As far as I know --

3 MS. FRY: So we understand factually the basis for
4 the calculation, although there is some debate as to --

5 MR. THACKER: Yeah.

6 MS. HARE: Because the agreement says that they will
7 pay interest.

8 MR. THACKER: Absolutely. It doesn't say they'll pay
9 interest unless NRG doesn't have to or the --

10 MS. HARE: Uh-huh.

11 MR. THACKER: -- gives us a break.

12 The second point I would make, though -- and there is
13 a reason why the contract is done that way. Can you
14 imagine how much work is involved in going back in every
15 invoice and finding out how much interest was actually paid
16 or when it was paid and how much? It would be a tremendous
17 amount of work. And that is why no contractor would ever
18 agree to that type of onerous audit, or if they did, they
19 would say, We can do it on an actual cost-plus basis, but
20 you pay the costs of figuring all that out. We are not
21 going to incur the administrative time and going back
22 through the stack of invoices that would relate to a
23 pipeline like this.

24 So it's irrelevant because of the wording of the
25 contract on which they base their claim, and it's onerous
26 and disproportionate, in my submission, and you can take
27 some notice of the fact that if the bill is due by a
28 certain date we either paid it or we paid it late and they

1 charged us interest or we paid it late and they forgave the
2 interest. And if they forgave the interest there is no
3 dispute, in my submission, that we get the benefit of that,
4 and if they for some reason didn't actually charge interest
5 on their invoices, even though it's a late -- hard to
6 imagine -- that would be for our account also, because the
7 contract says they will pay interest.

8 MS. FRY: So Mr. Stoll, I kind of interrupted you, so
9 what I am getting from that is --

10 MR. STOLL: If I can --

11 MS. FRY: -- been an answer as to --

12 MR. STOLL: How we did it.

13 MS. FRY: -- how it was done, although there is an
14 issue over whether that's the appropriate --

15 MR. STOLL: Correct.

16 MS. FRY: -- method; is that right? And --

17 MR. STOLL: I think so, and we can build on kind of on
18 the example we were working with. The bill comes in
19 September 1st, it's due October 1st, and they start
20 calculating interest. However, if they don't show us that
21 invoice til February 28th, it's accrued four months of
22 interest through no fault of IGPC, and we are saying that's
23 improper.

24 So just because they are expecting us to be able to
25 predict when these costs are going to be incurred, we can
26 only pay the invoices with which we are aware, and we turn
27 around and we paid those on a timely manner.

28 If they are holding invoices which occurred for

1 several months beyond the due date and then they turn
2 around and charge interest, we have an issue with that.
3 And so we don't think the contract would say they can just
4 hold invoices back, not produce them, and be charging us
5 interest and saying, That's fine. We are allowed to charge
6 you interest for that, regardless of whether they actually
7 incurred it or not.

8 MS. HARE: But you would have that information,
9 wouldn't you, because you would have the invoice with the
10 amount of interest that IGPC was charged, wouldn't you?

11 MR. STOLL: Well, the only thing we would have is the
12 invoice when it was dated. We have no idea when NRG
13 actually received it, so we wouldn't -- so we would have no
14 idea on that sort of thing, and we would have no idea on
15 what actual interest was ever incurred in respect to that
16 invoice.

17 MS. HARE: Wouldn't they have sent you the original
18 along with your invoice then?

19 MR. STOLL: Sorry, I am...

20 MS. HARE: Wouldn't they have sent you the invoice
21 from the supplier and then --

22 MR. STOLL: They should have -- right, but if they
23 sent it six months after it was issued --

24 MS. HARE: But then you would have the date.

25 MR. STOLL: We would have the date that it was sent to
26 NRG; that's correct. But we --

27 MS. FRY: Would you not have a date stamp on it to
28 show the date that they received it?

1 MR. STOLL: Not necessarily, I don't believe. If they
2 can point me to the invoices and say those are the dates
3 received, but I don't believe --

4 MS. FRY: You have those copies, though.

5 MR. STOLL: Pardon me?

6 MS. FRY: You have those copies.

7 MR. STOLL: We can go through and deal with that.
8 That's fine.

9 MS. HARE: Now I understand.

10 MR. STOLL: Okay.

11 MS. HARE: So it's either NRG goes through the
12 invoices or IGPC goes through the invoices --

13 MR. THACKER: I say it's their case --

14 MR. STOLL: That's fine.

15 MR. THACKER: It's their case to construct.

16 MS. HARE: All right. So where does that take us
17 then?

18 MR. STOLL: That takes us to 15.

19 MS. HARE: Mm-hmm.

20 MS. FRY: I'm sorry, let me just go back.

21 MR. STOLL: Sure.

22 MS. FRY: I did -- before we got into this, Mr. Stoll,
23 I did ask you to list for me so I was very clear the things
24 -- the information that you had asked for here that wasn't
25 being provided, and we spent a lot of time on the first
26 item on your list, and I just want to be sure there are no
27 other items on your list.

28 MR. STOLL: I think that captures it.

1 MS. FRY: Okay. Thank you, sorry.

2 SUBMISSIONS ON IR NO. 15

3 SUBMISSIONS BY MR. STOLL:

4 MR. STOLL: Interrogatory 15. You heard my friend
5 talk about the letter of credit, an inability to provide a
6 letter of credit, and all these other allegations. Simply
7 put, there were two letters -- two types of letter of
8 credits contemplated by the PCRA, the customary letter of
9 credit, and then the delivery letter of credit.

10 And the customer letter of credit was basically to be
11 alive during that first third of the PCRA, basically when
12 it was pay-as-you-go, and was intended to secure the
13 pipeline and the long-lead-time items, such as the meter
14 station. The contract also provided that we could
15 basically pay cash in lieu of providing the letter of
16 credit.

17 It's our position there was never a letter-of-credit
18 request formally made, there was never a form of letter of
19 credit ever provided at that stage, and that would
20 basically deal with the issue that my client was somehow
21 ever in breach, because those demands were never made of my
22 client. When the request for the pipeline came in we paid
23 it, cash.

24 With respect to the delivery letter of credit, that
25 has two phases to it. One, once the tender for the
26 construction is complete, the aid-to-construct calculation
27 is rerun based on the tendered price and an assumption
28 regarding contingency based on the construction contract.

1 That letter of credit was in fact provided in, I believe,
2 in early 2008 at the -- right around the commencement of
3 construction.

4 There was significant discussion to get to that point,
5 following on the motion we had in Aylmer. That delivery
6 letter of credit was to be part of the reconciliation after
7 the construction was complete.

8 That delivery letter of credit, which is in excess of
9 \$5 million, has not been reduced despite the obligations in
10 the PCRA.

11 And we made -- we are trying to deal with the issue,
12 which is under 4 in the issues list, which is the
13 appropriate amount of payment including -- or, sorry, the
14 contribution and financial assurance. We think it's
15 reasonable for NRG, because we say our position will be
16 certain things never occurred. If they have evidence to
17 the contrary, the questions were asked and they can be
18 answered as such. It should be relatively straightforward
19 for them to provide it. And part of that is the details
20 and amounts in those requests.

21 So those were the questions. They are connected to
22 issue 4. They are properly part of the subject matter of
23 this hearing.

24 Those are my comments.

25 MS. HARE: Thank you. Mr. Thacker?

26 **SUBMISSIONS BY MR. THACKER:**

27 MR. THACKER: Yeah. These are completely irrelevant.
28 Let me just give you a bit of the simple history, because I

1 don't think you need to go into the details.

2 There were two letters of credit required under the
3 agreements, the PCRA and the other agreement.

4 There was a dispute with respect to the delivery
5 letter of credit. They say that when we requested it, the
6 number that we provided was way too high so they gave us
7 nothing. They said the number that they should have been
8 required to provide was much lower, but they gave us
9 nothing.

10 As a result, we had to front the money, NRG had to
11 front the money to start construction, because they
12 wouldn't -- they didn't get the letter of credit. There
13 was a dispute over who was at fault for asking too much, or
14 whether they were at fault for not paying the amount that
15 they said it should be. And they could have done that.
16 They could have given us a letter of credit in the number
17 they thought. They give us zero. That was the subject of
18 a motion six years ago, and that issue is long behind us.

19 What is the case is that they eventually did give a
20 letter of credit because they were ordered to do so, and
21 the amount was determined and they did give that letter of
22 credit after the motion. And that letter of credit has not
23 been reduced, and the reason it has not been reduced is we
24 don't know the base on which we could possibly reduce it.
25 Until the capital cost is determined, we don't know what
26 the undepreciated capital cost is, and so we don't know how
27 much the reduction should be.

28 I think it's fair to say that, in principle, the

1 pipeline cost recovery agreement is fairly clear about
2 reductions in the letter of credit, because the idea is
3 that the letter of credit is to secure the undepreciated
4 capital cost.

5 The problem we have is we just don't know what that
6 is. Once that is done, which is going to be done fairly
7 quickly, I don't think my client has any issue with what
8 the pipeline recovery cost agreement actually says about
9 the process of reduction.

10 So to bring this all home, the only thing that could
11 possibly be relevant to any of the issues in this
12 proceeding is whether or not the financial assurance is
13 reasonable, and all that really means is: What is the
14 capital cost as it's finally determined, and how much has
15 been depreciated? And on that basis, you can determine
16 under the PCRA how much of a reduction in letter of credit
17 they are entitled to.

18 But none of questions, (a) to (g), have anything to do
19 with those issues. It doesn't make one whit of difference
20 whether or not we requested a customer letter of credit in
21 a certain amount or on a certain day.

22 I wrote my friends words down; he said these questions
23 deal with the question of whether or not IGPC was in breach
24 for not giving a letter of credit.

25 That is not an issue for this motion. It's out of
26 scope; it's not captured by the issues list. As I said,
27 when the capital cost is determined, everything else will
28 flow under the PCRA, and the reduction -- including the

1 reasonableness of what the financial assurance should be --
2 will be mathematical.

3 All of this is just asking us to go through the
4 voluminous motion materials that we filed.

5 I think it would be cheaper for us -- and they look
6 like this -- rather than to say we are going to go through
7 it and answer the questions, number one: Go dig it out of
8 your file because we served it on you in 2008. Or, number
9 two: Here it is. If you pay the photocopy bill, you can
10 rummage through it yourself.

11 But we think it's not necessary. It's
12 disproportionate. It doesn't go to any of the issues.

13 MS. HARE: Mr. Stoll?

14 **REPLY SUBMISSIONS BY MR. STOLL:**

15 MR. STOLL: Yeah. In -- there is a couple of aspects.

16 The demands for the letter of credit -- and there are
17 two letters of credit under the PCRA. There is a separate
18 letter of credit under the gas delivery contract regarding
19 the monthly delivery.

20 As a result of a letter requiring financial assurance
21 in the amount of 31.9 million from my friend to my client,
22 we ended up in the second motion. He is saying: Well, we
23 could have provided a letter of credit. We didn't have a
24 reasonable amount. We quite willingly provided the letter
25 of credit when we got to having a calculable amount.

26 To say that our response to a demand for 31 million
27 for a \$9 million pipeline is to say stop, this is wrong, is
28 unreasonable, and that you should pay the costs of the

1 lawyers to respond to a motion where we made that demand,
2 we have a problem with that.

3 If there was different letter of credit, if there was
4 a formal letter of credit -- typically when letters of
5 credit are provided, the person receiving the security
6 would have a form their bank expects to see in the letter
7 of credit, which spells out the terms upon which the letter
8 of credit would be provided and on which the draws may be
9 made in event of a default.

10 They never provided that until after the construction
11 tender, so any comments regarding the provision and us
12 being in breach are wrong.

13 But what we are trying to do with these questions is
14 understand the mechanics of the agreement and the costs
15 that flowed from the actions of the mechanics of the
16 agreement and the reasonableness of NRG's behaviour in
17 that.

18 So those were one of the questions that were asked,
19 and to say that -- in response to (g), I understand my
20 friend is taking a slightly different position than they
21 have taken before, which said the amount of the IGPC
22 pipeline in rate base is the amount in rate base forever,
23 res judicata. And what I heard him now say is: We don't
24 know what it's going to be until after this proceeding;
25 that may change.

26 Now, if that's the case that's fine, because, quite
27 frankly, given the cost structure, we are comfortable that
28 the costs would go down.

1 We went through a rate proceeding. An amount was
2 included for this pipeline in rate base. There are two
3 rates associated with the pipeline: the amount that's in
4 rate base, or the amount that's -- we paid by way of aid-
5 to-construct. It does all flow from the capital, the total
6 capital costs of the pipeline.

7 In that respect, I do have agreement. The capital
8 costs of the pipeline and the reasonableness of those costs
9 is entirely at issue for this Panel.

10 If we have not -- even under their numbers, our letter
11 of credit far exceeds what was in rate base in 2008, let
12 alone what's in rate base in 2013. My client has been put
13 to hundreds of thousands of dollars in interest expense to
14 carry a letter of credit because Mr. Thacker's client will
15 not allow him to reduce it, even to the amount Mr.
16 Thacker's client has brought before the Board to be
17 included in this.

18 In fact, when we tried to exchange the letter of
19 credit -- because our current lender is exiting the country
20 -- we said: Can we replace it? Same amount, same terms
21 from RBC? We got nowhere. So again, we incurred extra
22 costs resulting from that.

23 So we asked when this information, these demands were
24 provided, because we've heard these comments before, that
25 we were in breach. Our position is we have never been in
26 breach.

27 If we were in breach, it may have a different view on
28 the reasonableness of costs incurred by NRG in respect of

1 the pipeline. However, we weren't and are not in breach,
2 and therefore that goes to the reasonableness of the costs.

3 Those are my submissions on that issue.

4 **FURTHER SUBMISSIONS BY MR. THACKER:**

5 MR. THACKER: I should have told you that I would ask
6 you just to cast your eyes over the response that we did
7 give to Question 15.

8 The first paragraph deals with the February 2008
9 motion and the voluminous materials filed, and we said that
10 we would ask that all of that information be given to this
11 Panel on this motion, and that would answer it. We
12 shouldn't have to go through it ourselves.

13 Paragraph 2 deals with the point I just made about, in
14 principle, the reductions in the letter of credit.

15 Paragraph 3 deals with the fact that until we know the
16 capital costs it's not possible to determine the reduction,
17 and that's what I just wanted to point out. Thank you.

18 MS. HARE: So looking over the Exhibit C, tab 3, am I
19 reading this correctly, that the letter of credit is for --
20 well, how much is the letter of credit? I am looking at
21 the letter of credit. Is it 31 million-950?

22 MR. THACKER: No.

23 MR. STOLL: That was a demand made to provide the
24 letter of credit prior to the tender for the pipeline. The
25 letter of credit is in the amount of 5 million, I believe
26 200-and-some-thousand dollars, which accords with the
27 principles of what was laid out fairly closely with the
28 estimate --

1 MS. HARE: Okay. Thank you.

2 MR. STOLL: -- our --

3 MR. THACKER: You can see, though -- it's a good
4 question. You can see the letter that was sent in July 31,
5 2008 that gets you to a \$31 million number. There were
6 issues whether or not we could secure the decommissioning
7 costs of 2.8 million. There was an issue with respect to
8 the tax liability on debt forgiveness, whether or not that
9 was a cost we would incur, 5 million, and there was the
10 delivery revenue.

11 Now, in the end we won some of those issues and we
12 lost. The Panel said that a letter of credit has to be
13 given, and here is the number, and it was given. Long
14 before that happened, we started building the pipeline.

15 I don't dispute that there was a fight about it.
16 That's all a matter of public record, and there was a Board
17 hearing, but it's not for this proceeding. And to answer
18 these questions we would simply -- there was voluminous
19 materials filed. We will just give it back to them, and we
20 will have it brought before this Panel if someone wants to
21 wade through it, but my submission is it's not necessary.

22 And I guess the actual -- I assume Mr. Stoll gave you
23 the actual calculation. Maybe he didn't do it, but as I
24 recall, I can tell you that the decommissioning costs were
25 excluded, the tax liability was excluded because it was
26 thought to be contingent, and if we ended up having to pay
27 it we could recover it in rate base. They said with
28 decommissioning you could worry about that at the end of

1 the lifetime. Roughly, they secured the delivery revenue
2 and a security deposit. I think that's basically it.

3 I think the seed was around 16- or 17 million, wasn't
4 it?

5 MR. STOLL: No, we provided 5 million. That was it.
6 There was no entitlement to delivery revenue. The Board
7 made that very clear. We paid what the balance from the
8 aid-to-construct calculation generated with the numbers.
9 It was just over \$5 million.

10 MR. THACKER: Whatever it was.

11 MR. STOLL: So --

12 MR. THACKER: But it is dealt with.

13 MR. STOLL: So we have moved beyond that, but to say
14 -- so anyways, we made our submissions. I would like to
15 try and get through the last couple issues so that we can
16 leave for lunch. I am not sure that the Panel will want to
17 make a decision today, but -- or whether you intend to deal
18 with this in writing, but I think for all concerned we can
19 probably, if the court reporter is fine, hopefully push
20 through for probably ten minutes.

21 MS. HARE: Ms. Fry is reminding me, you skipped over
22 two issues earlier this morning.

23 MR. STOLL: Yes, yes.

24 MS. HARE: So we have --

25 MR. STOLL: Yes, I can deal with those fairly quickly.

26 MS. HARE: -- support staff --

27 MR. STOLL: I'll deal with those very --

28 MS. HARE: Our plan is to break for lunch at one

1 o'clock.

2 MR. STOLL: Okay.

3 MS. HARE: If we have to come back we will come back.

4 MR. STOLL: Thank you.

5 MS. HARE: We do not plan to issue a decision today.

6 We will do that in writing.

7 MR. STOLL: Thank you. That was my anticipation.

8 **SUBMISSIONS ON IR NO. 16**

9 **SUBMISSIONS BY MR. STOLL:**

10 Interrogatory 16. I will withdraw 16(b), and I will
11 deal with (a) and (e). I will deal with (e) first.

12 And there was a financial model provided during the
13 leave-to-construct proceeding. During the rate proceeding,
14 there was -- and this was later in the compendium,
15 Undertaking J2.4 in the rate proceeding. NRG provided an
16 explanation that said that that model that they had
17 provided in the leave-to-construct had some issues or
18 errors in it. Their term was "anomalies". And then they
19 produced the output from that.

20 We have never seen that live Excel model. That is
21 simply what we were requesting so we could understand how
22 the model and the calculation of the aid-to-construct
23 worked.

24 If Mr. Thacker is saying they are going to rely on the
25 earlier model, then we are content to withdraw that, or if
26 the Board feels that the earlier model is the appropriate
27 model, we will deal with that model. We have that live
28 Excel spreadsheet.

1 We do not -- have not had the revised model, and the
2 implications are fairly, from my estimation, are fairly
3 significant in what the model does and how it changes the
4 obligations, and that's fairly evident if you look at the
5 draft rate order and the summary of the numbers, which is
6 attachment 8, also provided in the compendium.

7 When you look at the relative capital costs and the
8 impact on the closing balances, there is a fairly
9 significant difference.

10 MR. THACKER: What is the difference?

11 MR. STOLL: If you look at attachment 8 and you
12 compare the first two columns, you have approximately, for
13 an \$8.6 million pipeline in both cases, you have
14 approximately \$200,000 different in the amount close to
15 rate base. That money will presumably work itself up into
16 an aid-to-construct calculation, or the contribution in
17 aid-of-construction calculation. However, that information
18 is not on this page, so we don't know the figure that would
19 be associated with those numbers.

20 So if they could provide the live spreadsheet, that
21 would be helpful. They have it. It shouldn't be onerous.
22 They have used it, so...

23 With regard to (a), again, this was related to the
24 contingency in certain cash payments, whether there was
25 actually a cost. They had included contingency, and we are
26 trying to understand the nature of the contingencies that
27 were actually included in the aid-to-construct calculation.
28 So that's where 16(a) comes in.

1 I will turn it over to my friend in the hopes that we
2 can get through this fairly quickly.

3 **SUBMISSIONS BY MR. THACKER:**

4 MR. THACKER: So I gather we are dealing with 16(a)
5 and (e). I will deal -

6 MR. STOLL: That's correct.

7 MR. THACKER: I will deal first with (a). It says the
8 actual capital costs reflect only actual cash outlays.
9 That question was answered. The answer at the bottom is
10 no. Yes, for example, the contingency costs. So there are
11 some amounts in there, but they are set out. We have given
12 them a detailed breakdown of each line item of the capital
13 cost.

14 So it's evident whether or not any particular item is
15 -- was incurred at the time or is a future item.
16 Contingency cost is a good example. Everyone looks at
17 contingency and knows it's a future cost.

18 So this is just another example of sort of spinning
19 our wheels. That's not, in my submission, going to assist
20 the Board in determining the capital cost of the pipeline.

21 With respect to (e), they want our financial model.
22 We did provide, in our answer to (e), which you see at the
23 bottom, attachment H to the draft order. And at the leave-
24 to-construct proceeding, NRG's rate consultant was cross-
25 examined and confirmed that an economic analysis was done
26 in accordance with EBO-188. The Board accepted that
27 evidence, confirmed in its leave-to-construct decision that
28 the model used was compliant with EBO-188.

1 And then there was Undertaking No. J2.4, which again
2 is a response to an undertaking given, I think, at the rate
3 hearing, and it was -- in that undertaking the anomalies in
4 the model that were accepted by the Board at the original
5 leave-to-construct proceeding were discovered and
6 described.

7 Now, my submission is that's a complete answer,
8 complete information. It's my friend's job if they want to
9 construct their own financial model, but they are not
10 entitled to have our intellectual property or the basis on
11 which -- the actual electronic calculations upon which we
12 determined amounts.

13 We have given them the factual basis. The tools that
14 we use to manipulate those facts and assemble them and
15 project them is our property. It's not our job to do their
16 work.

17 So to ask for a live copy of an Excel spreadsheet, in
18 my submission, is inappropriate, and --

19 MS. HARE: It's not unusual to have the applicant
20 provide a live Excel Spreadsheet.

21 MR. THACKER: Yes, but --

22 MS. HARE: What's proprietary about it? Maybe I don't
23 understand.

24 MR. THACKER: Because we created it; we created the
25 spreadsheet, we entered the data into it. The conclusions,
26 they can challenge, but I mean, for example, they haven't
27 given us their financial model. Right?

28 If I suggested they should give us their internal

1 financial model that projects their profitability or lack
2 thereof, nobody would suggest they should give us theirs.

3 I am sure they have one. They have been losing money
4 steadily, but they are not going to give us their financial
5 model.

6 MS. HARE: But you're a regulated distributor and they
7 are not.

8 MR. THACKER: I am, but that's exactly why we need
9 one, because their financial health imperils the health of
10 our ratepayers. That is exactly why, because if they are
11 at risk, our ratepayers or someone is going to have to pay.

12 It won't be us. We are a regulated utility. We have
13 a guaranteed return, so actually our concern over their
14 creditworthiness -- I know I keep harping on it -- is not
15 for our benefit. It is not going to make one bit of
16 difference in the end to NRG, but it will make a difference
17 to NRG's other ratepayers.

18 And all I am saying is the model that they are talking
19 about was acknowledged by the Board, accepted by the Board
20 years ago. It would be inappropriate now to require us to
21 go back and give it to them. I am not even sure we still
22 have it, to be honest with you, but...

23 MS. HARE: But I understood what they are asking was:
24 Are you still using that old model or have you updated it?

25 MR. THACKER: If that's the question -- are you using
26 the old one or have you updated it -- I can try to find an
27 answer for that, but we are refusing to give it to them.

28 MS. HARE: Right. Is that the question?

1 **REPLY SUBMISSIONS BY MR. STOLL:**

2 MR. STOLL: Not quite. We are asking which model is
3 the relevant model, and if it's the updated one, we want a
4 live version of it.

5 They gave us the prior version so that you could run
6 the different scenarios. When you --

7 MS. HARE: What if the answer is that they are still
8 using the prior one? And that it --

9 MR. STOLL: Then that's fine. We can run the
10 calculation using the prior model. That was not the model
11 that they used in the rate proceeding in responding to
12 Undertaking J2.4.

13 MS. HARE: I see.

14 MR. STOLL: They said: We found anomalies in that
15 earlier model. Here's some results from it. Carry on.

16 None of the results talked, in the draft rate order,
17 about the actual aid-to-construct or any of the amounts
18 that were of interest, and we can't understand if the aid-
19 to-construct -- or what happens to the aid-to-construct if
20 the calculation is at 8.39 million, as he suggests. We can
21 do that under the old model, in which case his client owes
22 almost 300,000 plus interest in repayment, in our position.

23 Or if there are certain costs disallowed and the
24 capital cost goes down, without the model we can't consider
25 our position in respect of the amount of aid-to-construct,
26 and there is no way that you could ever have a settlement
27 discussion or have any concept if you don't have the
28 information from which the utility is basing their

1 decision.

2 The model should be used for every new business
3 customer that's added to NRG. It's the financial model for
4 every main extension as the result of a new customer
5 connect. It should still be in use.

6 MS. FRY: So you are saying you are asking for the
7 model which is the spreadsheet with all the Excel codes.
8 It's not sufficient for you merely to have the detailed
9 breakdown of all the intermediate figures?

10 MR. STOLL: Right. We want the live spreadsheet.
11 We --

12 MS. FRY: Can you just explain for us once again why
13 that wouldn't be enough? Why a printout of all the
14 intermediate figures --

15 MR. STOLL: I'm not sure --

16 MS. FRY: Like, you have bottom-line figures. Do you
17 have all the figures leading up to that?

18 MR. STOLL: No, all we have -- the spreadsheet has
19 three or four layers to it, one being the input costs, and
20 then there is a bunch of behind-the-scenes numbers that
21 generate out a net present value and a tax shield.

22 MS. FRY: And you don't have those?

23 MR. STOLL: We have none of that information.

24 MS. FRY: What I am asking is, just to understand your
25 request: If you had those behind-the-scenes numbers in,
26 say, a hard-copy printout, would that satisfy your request
27 or is there a reason why you would need that and you would
28 need it on the live spreadsheet with the codes?

1 MR. STOLL: Well, we would have to take the hard-copy
2 printout, basically, of the formulas, I think is what you
3 are suggesting, or the cell references.

4 MS. FRY: Yes, I'm just trying to understand --

5 MR. STOLL: And we would have to try and re-create to
6 the -- my friend has raised the question of onerous. This
7 should be as easy as e-mailing the spreadsheet.

8 So this is a discounted cash flow model. It was what
9 they put before the Board. It's what they have to use for
10 new customer connects.

11 I don't think it should be that controversial. If
12 they want to provide it in confidence, we will take it in
13 confidence if that's the concern.

14 **FURTHER SUBMISSIONS BY MR. THACKER:**

15 MR. THACKER: They have the first version. In
16 Undertaking No. J2.4, they have the changes. They could
17 make those changes to the first version. They just want us
18 to do the work.

19 And all I would say is before you order my client to
20 disclose its financial model, you should order them to
21 disclose their model to ours in the same form. It should
22 be reciprocal; we both have interest in each other's
23 calculations.

24 And if the real issue is here is they need information
25 from us to come to a settlement or resolve these issues and
26 they have an informational lack of information, it's not
27 really correct. They have the anomalies. They could plug
28 it into the old electronic spreadsheet, change the

1 anomalies and run the numbers.

2 But if it's truly information required for a
3 settlement, it should flow both ways and we should get
4 their financial disclosure and their model.

5 MS. HARE: Thank you.

6 **FURTHER SUBMISSIONS BY MR. STOLL:**

7 MR. STOLL: Madam Chair, you pointed out the fact that
8 NRG is a regulated utility. Their obligations are
9 different, and quite frankly, the provision of the
10 financial assurance is what -- is the only thing that NRG
11 need care about.

12 That was intended to protect them for the capital
13 costs of this project. It's been provided in excessive
14 amounts, in our estimation, and maintained in excessive
15 amounts.

16 This notion that somehow a customer has the obligation
17 to provide their financial model to a utility, quite
18 frankly I am dismayed that that would even be a suggestion.
19 To provide reasonable financial assurance, that was always
20 the bargain, and that was captured through the various
21 letters of credit that we have provided and maintained for
22 the last six years, so...

23 I think that analogy falls away, and I think we have
24 dealt with this enough.

25 **SUBMISSIONS ON IR NO. 3 AND 4**

26 **SUBMISSIONS BY MR. STOLL:**

27 I will deal with IRs 3 and 4 together. Those are
28 basically in somewhat onerous detail, but still relatively

1 easy to do, asking for questions -- for explanations for
2 the two invoices.

3 Basically, 3 is invoice 1. IR 4 is invoice 2 that NRG
4 provided to IGPC. We walked through the invoices and we
5 said: We want some information. You are charging us 500
6 to \$750 an hour for certain people. Please explain this.
7 Please give us some indication of what you are doing and
8 who is involved, the costs that are involved, and that way
9 we can make some sort of assessment of whether it's at all
10 reasonable or within the expectation of a utility.

11 So we looked at the line item and said: Produce -- we
12 had asked for production of the correspondence, who was
13 involved, because we are trying to understand the costs of
14 those invoices, because at 500 or \$750 an hour for
15 employees, quite frankly it seems excessive.

16 There would have been an easy way, in our response,
17 for them to basically say: This charge relates to this.
18 If it's a question of the onerous amount of work, they
19 could have encapsulated that in a paragraph and said: This
20 service was provided by so-and-so in drafting the
21 correspondence, and provided a one-paragraph, simple
22 explanation.

23 Instead, they said this was irrelevant and carried
24 that through every line item.

25 Again, this goes back to the earlier theory that if
26 you throw up enough roadblocks in deciding to provide
27 service, it effectively results in a denial of service.

28 Those are my comments in respect of 3 and 4, and then

1 the only outstanding issue is the Board interrogatory.

2 MS. HARE: Thank you. Mr. Thacker, do you have a
3 response?

4 **SUBMISSIONS BY MR. THACKER:**

5 MR. THACKER: These invoices are in my friend's
6 compendium, tab 1A, I believe.

7 My submission is these questions are ridiculously
8 detailed and are irrelevant. They relate to invoices sent
9 on August 24, and those invoices, the payability of them is
10 not in issue.

11 Moreover, not only is it not in issue. When this
12 issues list was being settled and adjudicated upon, IGPC
13 submitted that it should be in issue and the Board decided
14 it was not in issue.

15 In other words, the initial application by IGPC on the
16 denial-of-service allegation requested six forms of relief,
17 and they were set out at paragraphs 3(a) through (f).
18 There was a draft issues list that was issued by the Board,
19 and there were written submissions by both sides, and in
20 its written submissions IGPC submitted that the payability
21 and the reasonableness of these invoices should be
22 included.

23 The Board rejected that. In the final issues list,
24 only one of those requests for relief was included. The
25 only thing that the Board put in issue was whether or not
26 there was a denial of service. That's the issues list.
27 The payability of these invoices is not in issue, and it is
28 a red hearing, in my submission.

1 Firstly, that should be dispositive. They are not
2 part of the issues within the scope of this proceeding,
3 which is the -- defined by the issues list.

4 But more importantly, the entire allegation of denial
5 of service is based on a letter sent on July 9. You will
6 find it at 1(b). These invoices were sent on August 24,
7 six weeks later.

8 The payability or the payment of these invoices was
9 never made a condition of providing service. This is --
10 you know what this is really an example of, and you should
11 put an end to it right here. This is a frustrated
12 president of a small utility being very annoyed,
13 essentially, that he has been subjected to this onslaught
14 of litigation, and he basically said, We need to sort of
15 get our issues resolved before we do more. He never said
16 he was going to deny service. He's a regulated utility,
17 and he knows that. He knows he can't deny service. That's
18 not a secret.

19 And then later, six weeks later, he said, You guys
20 want me to do a bunch of engineering work to answer your
21 questions. In order to do that I have to spend some money.
22 Here is the money that's going to have to be spent,
23 including money from MIG Engineering and some other people.
24 Here is an invoice.

25 Now, if they take the position that invoice is not
26 appropriate, there is a way to challenge it, but that's not
27 the issue here.

28 So I say that these lengthy questions about -- think

1 about this -- the CV of the person who assembled an invoice
2 -- can you manage if someone said that you should order
3 Enbridge or Union Gas to disclose the CV of the person who
4 prepared an invoice that is alleged to be unreasonable?
5 You would never dream of entertaining that sort of thing,
6 and you shouldn't here.

7 This is -- there is no denial of service. This guy
8 writes a letter. He is frustrated by what he has been
9 through. And if you went through the history of it for
10 five years you would be too. He is never going to deny
11 service. He knows he can't.

12 So this letter is -- and what happened is this letter
13 went out, these invoices went out after this letter, there
14 were several letters that went out saying, We haven't heard
15 from you, IGPC. What is it that you want? Give us this
16 information. The invoices went out, and that was it, and
17 then months later we get this voluminous application record
18 accusing us of denying service.

19 The record will not support the allegation. You
20 should not require us to embark upon this detailed analysis
21 of these two invoices, because they have nothing to do,
22 even with the allegation of denial of service. Those
23 invoices came after this alleged letter. That's my
24 submission.

25 MS. HARE: Thank you. Mr. Stoll?

26 **REPLY SUBMISSIONS BY MR. STOLL:**

27 MR. STOLL: These issues and interrogatories are
28 intended to understand the basis upon which the charges are

1 being made and what service was actually provided. We were
2 said -- we're not doing it -- the letter was fairly clear
3 from Mr. -- we are not doing anything until the issues are
4 being resolved. We have millions of dollars in litigation
5 outstanding. We are not doing anything. That's a denial.
6 Including exorbitant fees for staff.

7 We are saying a \$500 an hour charge for staff at a
8 small utility in rural Ontario seems exorbitant, to expect
9 us to not stick up our hand and say, We've got a problem
10 with this.

11 And if the Board decides there is some -- an order
12 regarding the denial of service, how is it to inform itself
13 of the framing that order if we don't understand the
14 problems and the way in which service is effectively being
15 thwarted?

16 Those are the reasons the questions were asked, so
17 that we could make an assessment of whether those were
18 actually costs that could have some substantiation coming
19 from a public utility.

20 So those are my comments in regards to issues 3 and 4.
21 They are basically similar questions regarding different --
22 the two invoices.

23 MS. HARE: Okay. Thank you.

24 And that takes us to Board Staff No. 2.

25 **SUBMISSIONS ON BOARD STAFF IR NO. 2**

26 MR. STOLL: It does.

27 MR. THACKER: Could I just make a preliminary
28 objection here? My submission is that my friend does not

1 have the standing to seek better answers to somebody else's
2 questions, and my submission is you should not entertain
3 this part of the motion. They were interrogatories by
4 Board Staff. Answers were provided. Board Staff has not
5 moved, has not alleged that the answers are insufficient,
6 and my submission is that another party does not have
7 standing to seek further and better answers, and that
8 should be the end of it.

9 MS. HARE: Mr. Millar, do you have a comment?

10 **SUBMISSIONS BY MR. MILLAR:**

11 MR. MILLAR: Madam Chair, I think that the issue here
12 is, would the Panel be assisted by having answers to these
13 questions, and Mr. Thacker may be right that it's unusual
14 for a party to bring a motion relating to someone else's
15 interrogatories. I am not sure it's never happened before.
16 In some cases parties work together and sort of share
17 interrogatories, so that's not what happened here.

18 But to the nub of it, the issue before you is, would
19 you be assisted by answers to these interrogatories. And
20 if so, it doesn't really matter who the moving party is.

21 MR. THACKER: The only other thing I might --

22 MS. HARE: Excuse me for a second.

23 MR. THACKER: Sure.

24 MS. HARE: Excuse us for a second. Maybe we'll take
25 two minutes.

26 MR. THACKER: Sure. I might just ask you to read the
27 answers in your --

28 MS. HARE: Yes.

1 MR. THACKER: -- deliberations also, because we think
2 we have responded fully anyway, but I am not sure what more
3 they are asking for.

4 --- Recess taken at 12:59 p.m.

5 --- On resuming at 1:04 p.m.

6 MS. HARE: Having heard the submissions of Mr. Thacker
7 about standing, the Board will take that under advisement.
8 However, we do feel that since we are here in the hearing,
9 that we would like to hear from Board Staff their views on
10 the adequacy of these responses.

11 So, Mr. Millar, do you have some comments?

12 **SUBMISSIONS BY MR. MILLAR:**

13 MR. MILLAR: Yes. I can speak briefly to that, Madam
14 Chair.

15 When Staff reviewed the responses, generally we were
16 satisfied, at least to the extent that we weren't planning
17 on bringing a motion or anything like that. Had we gone to
18 an oral hearing, we might have asked some follow-up
19 questions.

20 But I would like to point out there are two that
21 weren't answered, and they are related, or at least not
22 answered to our satisfaction.

23 And if you can turn your attention to 2(d), this
24 relates to Mr. Bristoll's salary which we have been
25 discussing. You will see the second sentence is:

26 "Please also provide the proportion of the
27 president's salary included in distribution rates
28 for the period 2008 to 2012."

1 If you look at the responses, that part of the
2 question is not answered.

3 And just to let you know why we were asking, what we
4 are trying to get a handle on is what portion of the money
5 that NRG charged IGPC for Mr. Bristoll's time was already
6 recovered through their distribution rates.

7 You will see in some of the other responses that NRG
8 did provide -- Mr. Bristoll was not paid any overtime. It
9 doesn't appear that they hired anyone else to perform his
10 duties that he would have otherwise been doing while he was
11 dealing with IGPC.

12 So we wanted to get a sense. It's possible that not
13 his entire salary was paid through distribution rates. We
14 don't know that. We sort of assume it was, but as you may
15 be aware, there are some related companies to NRG and at
16 least some of their employees do work for not just NRG
17 Limited, which is the utility, there's also those related
18 companies.

19 And it's our understanding some people split their
20 time between the two, and therefore it's possible a portion
21 of Mr. Bristoll's salary was paid outside of distribution
22 rates. If that's the case, then NRG probably has a
23 stronger case to charge some of that money to IGPC.

24 So that's the simple reason we wanted that question,
25 and it wasn't responded to. It may be as simple as that
26 his entire salary was paid through distribution rates. If
27 that's the case, that's fine, that's helpful.

28 And then 2(b) is a related question. There, we are

1 asking for the allocation, information as to how salaries
2 are allocated between NRG and related companies.

3 Again, the only reason we would want to know this is,
4 to the extent that NRG has charged IGPC for the time of
5 some of its salaried employees, we would like to know if
6 that money was already recovered entirely through
7 distribution rates, or if perhaps some of those people
8 would otherwise have been doing work for one of the other
9 corporations and therefore -- you can see that it wouldn't
10 really be double-counting. They should have been spending
11 -- if they were spending time on NRG that -- the utility
12 that otherwise they would have been spending with the
13 related companies, then I think there is a stronger case to
14 charge some of that back to IGPC.

15 It may be that nobody even falls in that category. I
16 am not sure.

17 So certainly we would be interested in having the
18 answer to 2(d), the second question, and to the extent
19 there's other people other than Mr. Bristoll who may fall
20 under that category for some of their time being charged to
21 IGPC and they are -- there is an allocation of their salary
22 between the utility and one of the related companies, that
23 would be of interest, as well.

24 MS. HARE: You are talking about historical?

25 MR. MILLAR: Well, only for the period in question.

26 We --

27 MS. HARE: Sorry, for which period are we talking
28 about?

1 Because I would assume that the cost allocation
2 between regulated and unregulated businesses came out in
3 the last rate case; did it?

4 MR. MILLAR: I think the last -- so we are looking for
5 2008 to 2012. There was a rates case a year or two ago,
6 but obviously that wouldn't cover the period we are talking
7 about.

8 MS. HARE: That would be looking forward. So you --

9 MR. MILLAR: So I believe it was 2005, the last time
10 we had those allocations.

11 MS. HARE: All right. So the time period you are
12 looking for is, again, 2000-and --

13 MR. MILLAR: We have 2008 to 2012, because we imagined
14 it would be the same allocations for that entire period.
15 Obviously, what is relevant is what was charged at the
16 time, which was 2007, 2008 and maybe a bit of 2009, but for
17 whatever period they were charging money to IGPC.

18 MS. HARE: Thank you.

19 MR. MILLAR: And otherwise, we are more or less
20 satisfied with the answers that were received under
21 Interrogatory 2.

22 MS. HARE: Mr. Thacker, do you have comments?

23 **SUBMISSIONS BY MR. THACKER:**

24 MR. THACKER: No. I think with respect to my friend's
25 comments on Interrogatory 2(b), I am pretty sure the answer
26 is there are no entities that share NRG's corporate parent.
27 And I think it's a complete answer to 2(b).

28 MS. FRY: Do you need to confirm that or are you able

1 to confirm that?

2 MR. THACKER: I am only reading the answer to (a) and
3 (b) below, where it says:

4 "No regulated or unregulated utilities share
5 NRG's corporate parent."

6 And if that's the case, I don't think there could be
7 the allocation that they are suggesting.

8 And then with respect to 2(d) -- I am just looking at
9 the answer. My only submission is that I don't see how
10 it's relevant to whether or not the cost is reasonable,
11 really is my point. And I suggest it's not. And I suggest
12 the answer won't help you in determining whether the cost
13 is reasonable.

14 MS. HARE: Anything further, Mr. Millar?

15 **REPLY SUBMISSIONS BY MR. MILLAR:**

16 MR. MILLAR: I am not sure I quite agree with that,
17 but we can leave that for argument. If NRG doesn't want to
18 provide that information, then we will assume that his
19 entire salary was paid through distribution rates.

20 MS. HARE: Mr. Stoll, anything to add?

21 MR. STOLL: I think Mr. Millar has done an adequate
22 job of explaining the rationale and why we were seeking
23 follow-up to those.

24 And if Mr. -- just so we are clear on the terminology,
25 there is reference to "the parent company." We are
26 assuming that is the Wilsher Trust, that that is the entity
27 in the questions, in which case, if it is, and the answer
28 reads, then -- basically 2(b) would have been answered, in

1 our submission, if Mr. Thacker can confirm that that was,
2 in fact, the case; the Wilsher Trust is the parent company
3 that they were referring to.

4 MR. THACKER: I am just reading (a) and (b), and it
5 says: "The Wilsher Trust holds 100 percent of the voting
6 shares." And I believe that's true.

7 MR. STOLL: Yeah. Okay.

8 MS. HARE: Thank you.

9 With that, I think we are completed, unless anybody
10 wants to raise anything else?

11 **SUBMISSIONS ON COSTS**

12 **SUBMISSIONS BY MR. THACKER:**

13 MR. THACKER: I have only one issue, and that is
14 although it is difficult to make submissions on cost
15 without knowing if I have won or lost or if success has
16 been divided, but my submission is that my client has
17 incurred the cost of me preparing for this motion and
18 coming here after what, in my submission, are fairly
19 detailed, carefully thought-out answers to questions that
20 are within the scope of the proceeding as defined by the
21 issues list, and the perfect right to not answer questions
22 that are outside.

23 And they have incurred costs in doing that, and I
24 would ask for costs to be ordered so that other ratepayers
25 don't bear that burden. Costs of a motion such as this
26 should be borne by the party who is responsible for causing
27 them, and in my submission that's IGPC. I would ask for
28 costs in the amount of \$8,000 for today's attendance.

1 MS. HARE: I am sorry, how much?

2 MR. THACKER: 8,000. All-in, inclusive, fixed at
3 8,000.

4 MS. HARE: Mr. Stoll?

5 **SUBMISSIONS BY MR. STOLL:**

6 MR. STOLL: That is unusual that we would be doing
7 this prior to a decision from the Board, quite frankly.

8 If some of the answers had have been more fulsome -
9 and that was entirely within Mr. Thacker's client's control
10 - we wouldn't have needed to bring this motion.

11 My submission is we should wait until the Panel rules
12 regarding these costs, and if we have -- and if -- we can
13 look at the results and we can make an assessment of
14 whether this motion was, in fact, necessary to bring the
15 evidence before the Board so that it may properly consider
16 the matter.

17 Eight thousand dollars, I think, for this motion for
18 my friend is somewhat excessive.

19 There were three cases referred to. We didn't dispute
20 any of the principles in those cases, so they were of
21 limited value. I would suspect -- I would submit that
22 8,000 is wildly excessive, and that assumes that Mr.
23 Thacker was 100 percent successful in his motion. Assuming
24 that he is less than 100 percent successful, I would
25 suggest that we deal with costs at the conclusion of the
26 proceeding in totality. Those are my submissions.

27 MS. HARE: The Panel will take that under advisement.

28 I took it, Mr. Thacker, what you were really doing is

1 putting IGPC on notice that you are going to request the
2 costs; is that correct?

3 MR. THACKER: Yes. Yes. There is only one other
4 issue I must raise -- I am sorry, and I will be brief --
5 and that is time within which -- if you if you were
6 inclined to order any additional answers, I would like to
7 ask for some time, given the fact that we are in the middle
8 of summertime. There are holidays. My client is a very
9 small office; his right-hand person is on holidays last
10 week and this week, and he -- Mr. Graat will go on holidays
11 next week.

12 So we are in the middle of the summertime. I would
13 ask for at least 30 days. I would say six weeks is
14 reasonable. In this case, I realize that's a long
15 timeline, given the proceeding we're on, but this capital
16 cost has been outstanding for a number of years. Nobody is
17 being held up as a result to this, and to try and put my --
18 my client is now, I think, going to have to hire someone to
19 manage this process. They are at their limit, and they are
20 just about stretched to the limits.

21 MS. HARE: We will take that into consideration.

22 MR. THACKER: Thank you.

23 MS. HARE: And we will set out the procedural -- the
24 next procedural steps with the decision.

25 MR. THACKER: Thank you.

26 MS. HARE: Thank you very much.

27 --- Whereupon the hearing concluded at 1:15 p.m.

28