NATIONAL ENERGY BOARD
OFFICE NATIONAL DE L'ÉNERGIE

Hearing Order RH-001-2016
Ordonnance d'audience RH-001-2016

TransCanada PipeLines Limited
Application for Approval of Storage Transportation Service Modernization and Standardization

TransCanada PipeLines Limited
Demande visant à faire approuver la modernisation et la normalisation du service de transport assorti de stockage

VOLUME 4

Hearing held at
L'audience tenue à

National Energy Board
517 Tenth Avenue SW
Calgary, Alberta

September 23, 2016
Le 23 septembre 2016

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HEARING ORDER/ORDONNANCE D'AUDIENCE
RH-001-2016

IN THE MATTER OF TransCanada PipeLines Limited
Application for Approval of Storage Transportation Service Modernization and Standardization

EN MATIÈRE DE TransCanada PipeLines Limited
Demande visant à faire approuver la modernisation et la normalisation du service de transport assorti du stockage

HEARING LOCATION/LIEU DE L'AUDIENCE

Hearing held in Calgary, Alberta, Friday, September 23, 2016
Audience tenue à Calgary (Alberta), vendredi, le 23 septembre 2016

BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE

R. George	Chairman/Président
L. Mercier	Member/Membre
J. Gauthier	Member/Membre

APPEARANCES/COMPARUTIONS

APPLICANTS/DEMANDEURS

TransCanada PipeLines Limited
- Mr. C. Kemm Yates, Q.C.
- Mr. Matthew Ducharme

INTERVENORS/INTERVENANTS

Centra Gas Manitoba Inc.
- Ms. Helga Van Iderstine
- Mr. Brent Czarnecki

Enbridge Gas Distribution Inc.
- Mr. Dennis P. Langen
- Ms. Caitlin M. Graham

St. Lawrence Gas Company, Inc.
- Mr. Dennis P. Langen

Tenaska Marketing Canada, a division of TMV Corp.
- Mr. Tomasz Lange

Union Gas Limited
- Mr. Lawrence E. Smith, Q.C.

National Energy Board/Office national de l'énergie
- Ms. Diana Audino

ERRATA

Monday, September 19, 2016 - Volume 1

Paragraph No.:	Should read:
APPEARANCES/COMPARUTIONS Union Gas Limited - Mr. Lawrence E. Smith	Union Gas Limited - Mr. Lawrence E. Smith, Q.C.
1326: "...if the shippers like a union..."	"...if the shippers like Union..."

Tuesday, September 20, 2016 - Volume 2

Paragraph No.:	Should read:
APPEARANCES/COMPARUTIONS Union Gas Limited - Mr. Lawrence E. Smith	Union Gas Limited - Mr. Lawrence E. Smith, Q.C.
2686: "...what that would allow is to do,..."	"...what that would allow us to do,..."

Wednesday, September 21, 2016 - Volume 3

Paragraph No.:	Should read:
APPEARANCES/COMPARUTIONS Union Gas Limited - Mr. Lawrence E. Smith	Union Gas Limited - Mr. Lawrence E. Smith, Q.C.

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LIST OF EXHIBITS/LISTE DES PIÈCES

No.	Description	Paragraph No./No. de paragraphe

UNDERTAKINGS/ENGAGEMENTS

No.	Description	Paragraph No./No. de paragraphe

--- Upon commencing at 9:02 a.m./L'audience débute à 9h02

3523. **THE CHAIRMAN:** Good morning, everyone, and welcome to the oral argument phase of the hearing.

3524. Before we begin oral argument, I would like to confirm on the record that the evidentiary portion of the hearing closed on September 21st, yesterday, with the receipt of the response to Undertaking Number 3.

3525. Comme d'habitude, l'interprétation simultanée sera disponible durant l'audience et les parties qui désirent s'en prévaloir peuvent obtenir les appareils au fond de la salle.

3526. I would like to share information on how to evacuate the hearing room if this were to become necessary. There are exit doors on my right, including the main doors that you came in through.

3527. J'aimerais tout d'abord vous informer de la marche à suivre pour l'évacuation de la salle d'audience si cela devait être nécessaire. Il y a des sorties à ma droite, notamment à la porte principale d'où vous êtes entrés.

3528. As we indicated, the Board intends to sit from 9:00 a.m. until we complete oral argument. Based on the time estimates provided to Board counsel, we expect to sit up to 3:30 p.m. today.

3529. In the usual fashion, we will take a break for 20 minutes at about 10:15 a.m., at noon for one hour, or at the convenience of the party presenting argument. We will also take a five-minute break in between calling upon parties for argument so counsel will have time to get organized. In addition, the Board may decide to take a break before asking questions of the party who has completed his or her argument.

3530. The Board will be calling upon parties in the usual top-down, bottom-up approach. If you have any questions about this approach, please speak to Board counsel.

3531. The Board acknowledges receiving written argument from la Société en commandite Gaz Métropolitain -- sorry, Gaz Métro.

3532. Before I call upon TransCanada for their final argument, are there any preliminary matters requiring our attention?

--- (No response/Aucune réponse)

3533. **THE CHAIRMAN:** I don't see any.

3534. We will now begin with the Applicant, TransCanada. Mr. Yates, the floor is yours.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MR. YATES:

3535. **MR. YATES:** Thank you, Mr. Chairman. Good morning, Mr. Chairman and Panel Members. I'm pleased to present the argument for TransCanada PipeLines Limited.

3536. I should say at the outset that, in the usual -- in accordance with the usual practice, I have provided the reporter with an electronic copy of my notes, and the electronic copy includes the references to the evidence. So I will not actually be reading the references to the evidence into the record, but ask that they be included in the transcript.

3537. I would also say that the transcript should record and transcribe what I say, not what was written, and I expect that there will be a number of variations in what I tell you from what has actually been written and provided to the court reporter.

3538. And in that vein, the transcript should also not include the headings which are in the argument. More for my convenience.

3539. Mr. Chairman and Members, the theme for this case could be "ships that pass in the night". The one ship is TransCanada. Its course is mandate, by which I mean legal mandate, "mandate and principles".

3540. In discharging its obligation to manage the Mainline *[Exhibit B14-2 Reply Evidence of TransCanada, page 5, lines 6-7 [A5E7S2]]*, TransCanada has identified discrimination in services and in tolling, and has concluded that the existing STS situation no longer meets the Board's applicable tolling standards and principles *[Exhibit B15-1 TransCanada Opening Statement, page i [A5F1E8]]*, the principles in this case being cost-based/user pay, no unjust

discrimination, economic efficiency, and no acquired rights. And TransCanada has concluded that changes are required.

3541. I will note that Gaz Métro is on the same course as TransCanada in the sense of its evidence and argument that says that the application is in accordance with the Board's tolling principles and practices.

3542. The other course is "stability". That's the course that Union and EGDI and Centra are on. They ignore the seminal issue, which is whether the existing service complies with the Board's principles, and they argue that the environment in which the Mainline operates justifies delay for four years.

3543. The environment being the RH-003-2011 decision *[Exhibit C34-2 Evidence in Chief of Centra, page 17 of 26, lines 19-20 [A5D5Y9]; and Exhibit C9-4-2 STS Proceeding Written Evidence of Union Gas Limited –, pages 11-13 of 36 [A5D6C8]]*, the RH-001-2014 decision *[Exhibit C34-2 Evidence in Chief of Centra, page 15 of 26, lines 32-33 [A5D5Y9]; and Exhibit C9-4-2 STS Proceeding Written Evidence of Union Gas Limited, pages 13-15 of 36, and pages 20-22 of 36 [A5D6C8]]*, the Settlement Agreement *[TransCanada PipeLines Limited Mainline Settlement Agreement among TransCanada PipeLines Limited and Enbridge Gas Distribution Inc. and Union Gas Limited and Gaz Metro Limited Partnership; Excerpts filed as Exhibit B20]*, and, particularly, impending segmentation of the Mainline *[Exhibit C34-2 A78322-2 Evidence in Chief of Centra – A5D5Y9, page 19 of 26, lines 8-9]*.

3544. You are faced with the choice of one of these courses. It's a binary choice. Do you choose principle, or do you choose stability?

3545. I will note right now, at the outset, that this is not the first time that the Board has been faced with such a choice. And every time it's been faced with a principles or stability choice, it has chosen principle.

3546. The Board has repeatedly stated that principles trump objectives in tolling, that -- and has repeatedly stated that stability is not a principle, but an objective, and that stability should not form the basis of toll methodology. I will have more to say about that in a few minutes.

3547. The Board made a decision on the issues to be considered in this case. *[Exhibit A3-1 Application to Participate Notification and List of Issues[A4Z0D8]]*

3548. There are two. The first is the appropriateness of the proposed tariff amendments. The second is the appropriate implementation of any amendments, if approved.

3549. More specifically, the first issue is the appropriateness of proposed amendments to the Canadian Mainline Gas Transportation Tariff for STS and STS-L, with regard to any impacts of the proposed changes on the Mainline, including its revenues, other services and tolls.

3550. And the second issue, specifically, is the appropriateness of how to implement any proposed amendments to the Canadian Mainline Gas Transportation Tariff with regard to any impacts of the proposed changes on the Mainline, including its revenues, other services and tolls.

3551. So put concisely, the issues are merits, number one, and implementation, number two.

3552. And I say to you that that, too, is a binary situation. Difficulties with implementation do not go to the merits of the Application. Rate shock or timing of elections, for example, are not reasons to deny the Application on its merits. They are conditions, they are considerations to be taken into account in the process of implementing the decision on that decision has been taken on a principled basis on the merits of the case.

3553. TransCanada proposes tariff amendments to modernize and standardize STS.

3554. Those are to define a link between injections and withdrawals; to apply the STS toll to the withdrawal quantity -- the withdrawal path is the key path used to serve firm peak need that the system is designed to serve; standardize the injection and withdrawal periods for all STS contracts to coincide with the normal gas year; modify the tariff to specify contracts which allow for one market and one injection and withdrawal point; eliminate injection pooling; subject the operational flexibility offered by withdrawal pooling to a cost-based surcharge, no more free service flexibility; establish a limit or ceiling on STS Balances and institute an STS Balance by market served; apply a 25 percent surcharge to the STS daily toll for STS overrun; eliminate STS-L; and lastly, amend the existing STS contracts to reflect the Tariff changes if approved by the Board.

3555. The result of approval of this application is a service consistent with its

purpose that remains useful to shippers as intended, where shippers pay for service on the same terms as each other and shippers using other service. Shippers can still use STS to meet their transport needs, as the service was intended, as a companion to long-haul FT.

3556. These amendments are clearly consistent with the unanimous resolution of the TTF, the Tolls Task Force, in 2005, which included all three of the LDCs now challenging the filing here. That unanimous resolution made clear the purposes, appropriate use, and defining characteristics of STS service.

3557. The merits key off the legal and regulatory parameters. So let's start there. Most of these are emblazoned in the brains of everyone in the room, but it's worthwhile to review them in the context of the application, particularly when there is some disagreement on interpretation.

3558. We're dealing with Part IV of the *National Energy Board Act [R.S.C. 1985, c. N-7, as amended]*, Traffic, Tolls and Tariff.

3559. The relevant sections are 62, 67 and 68. I won't read them into the record but they are in the text of the argument that I provided to the court reporter and I would ask that the full text of the sections appear in the record.

3560. It's section 62 that requires all tolls to be just and reasonable and to be charged equally to similarly situated customers. *[62. All tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate.]*

3561. Section 67 prohibits unjust discriminations in tolls, service, or facilities. *[67. A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.]*

3562. And section 68 puts the burden of proving that any discrimination is not unjust on the pipeline. And perhaps it is worth reading section 68:

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

3563. The essence then is tolls are required to be just, reasonable, and not unjustly discriminatory. There can be no unjust discrimination in any of tolls, service or facilities. And the burden of showing that any discrimination is not unjust lies on TransCanada.

3564. And that's why we are here. TransCanada has concluded that the current STS situation results in service and tolling that are unjustly discriminatory and in tolling that is not just and reasonable. *[Exhibit B15-1, TransCanada Opening Statement, page i. lines 10-12 [A5F1E8]; and Exhibit B14-2 Reply Evidence of TransCanada, page 29, lines 15-18 [A5E7S2]]*

3565. TransCanada has concluded that the current STS service is discriminatory, and that it -- and "it" here means TransCanada -- cannot discharge the onus of proving to you that the discrimination is not unjust. *[NEB Act, Section 68]*

3566. So it has proposed changes.

3567. The essence of the TransCanada case is, first, discrimination exists, not only as between STS shippers and non-STS shippers but among STS shippers.

3568. Second, the discrimination cannot be justified.

3569. Third, modernization and standardization of STS service is proposed such that it will become non-discriminatory.

3570. Fourth, the TransCanada proposal is consistent with the tolling principles of the Board and with the public interest as it has been interpreted by the Board.

3571. And last, the Board should find that the proposal will result in just and reasonable tolling and no unjust discrimination in service or tolls; and the Board should find that approval of the proposal is in the public interest.

3572. Through its filed evidence, its responses to information requests, and the oral testimony of its witnesses, TransCanada has provided compelling evidence to support the changes that it proposes.

3573. And that takes us to the regulatory parameters. It is fundamental that for pipeline tolls and tariffs to be appropriate they must meet the Board's

standards and principles. Mr. Reed provided in his evidence a concise description of the NEB's principles and precedents: cost-based/user pay, economic efficiency, no acquired rights, no unjust discrimination, public interest. *[Exhibit B1-2 Appendix 1 Evidence of John J. Reed, pages 7-1, [A4Y2G1]]*

3574. He then provides a cogent evaluation of how the TransCanada proposal is consistent with the Board's standards and principles. *[Exhibit B1-2 Appendix 1 Evidence of John J. Reed, Q&As 29 and 30, pages 16-17, Q&As 33, 34, 35, 36, pages 18-21, Q&A 39, pages 21-23, Q&A 41, pages 24-25, Q&A 47, pages 27-28, Q&As 49 and 50, pages 29-30 [A4Y2G1]]*

3575. Mr. Reed's evidence was not shaken by cross-examination. You should find it persuasive.

3576. And this is where I come back to the choice between tolling principles and the objective of stability. There are two NEB decisions that are particularly germane to this and both are discussed in Mr. Reed's evidence.

3577. There in a decision where it decided to apply the two basic principles of cost-based/user-pay and no unjust discrimination the Board said, and I'm going to quote this:

> *"...a principle is something from which one should not be easily diverted, while an objective, although desirable, should not be accommodated at the expense of compromising overriding principles."*

3578. Continuing the quote:

> *"The Board views considerations such as simplicity and stability as desirable objectives, but not as factors which should be the foundation upon which a toll design methodology is established." [RH-4-86, page 33-34]*

3579. The Board also said in that case, and I'm quoting again:

> *"In developing a toll methodology for IPL the Board will apply the two basic principles of making the tolls, to the extent possible, cost-based and ensuring that unjust discrimination does not exist.*

> *Further, any toll methodology should apply these principles in a consistent manner to meet the test of overall fairness, as it is generally understood. If possible, certain desirable attributes such as simplicity, stability and predictability, should be applied within the context of the enunciated principles." [RH-4-86, pp. 35-36]*

3580. And finally, the Board said -- this is still in the RH-4-86 *[National Energy Board Reasons for Decision, Interprovincial Pipe Line Limited, RH-4-86, June 1987 (RH-4-86 Decision)]* case:

> *"While the Board recognizes that it must be aware of the environment in which it makes its decisions, the Board believes that any such considerations should not override the principles of toll design which it espouses. Given the circumstances in which IPL operates, the Board finds the application of the cost-based principle to be appropriate." [Reasons for Decision RH-4-86, page 34]*

3581. In a more recent case, RH-1-2007 -- that's the Gros Cacouna receipt point application that I talked to Mr. Drazen about -- in that case the Board reviewed its guiding principles and considerations.

3582. The principles cited by the Board there included the requirements of the NEB Act -- no unjust discrimination and just and reasonable tolls -- and also cost-based/user-pay, no acquired rights, and economic efficiency. It relegated toll stability to the category of "Other Considerations", saying, and I quote:

> "*Other toll methodology considerations raised by parties in past Board hearings are practicality, toll stability, and administrative simplicity. While the Board found these to be useful considerations, it did not find them to be the primary ones in arriving at just and reasonable tolls." [National Energy Board Reasons for Decision, TransCanada PipeLines Limited, RH-1-2007, Gros Cacouna Receipt Point Application, July 2007, at 21-23; RH-1-2007 TransCanada PipeLines Limited - Gros Cacouna Receipt Point Application - Reasons for Decision (A16008), page 23]*

3583. Now, this is not to denigrate toll stability. It is always seen as desirable. It is to say to you that when you are faced with a binary choice between stability and principle, that the choice to be made is principle. It is a binary choice, but I suggest to you that it's not a difficult choice in this case. Principles must govern. Principles are the essence of toll regulation.

3584. And at this point, I should deal with a couple of positions of the intervenors that I would suggest come within the "environment" category of RH-4-86.

3585. The first is the position that the TransCanada application should be denied because it is contrary to the RH-001-2014 decision. *[Exhibit C3-4-2 Evidence in Chief of Centra Gas Manitoba Section 6.1 pages 15 - 16 of 26 [A5D5Y9], Exhibit C4-4-2 Written Evidence of Enbridge Gas Distribution Inc. page 15 of 28, lines 25 -28 and page 16 of 28, lines 1 – 21 [A5D6F2], Exhibit C9-4-2, Written Evidence of Union Gas Limited, Section 5.1 pages 20 - 22 of 36 [A5D6C7], Exhibit C9-4-3 Written Evidence of Georgette Habib, page 3 lines 2-8, page 8, lines 7 to 10 and page 21 lines 10 to 13 [A5D6C9]]*

3586. And that position, in my respectful submission, is patently wrong.

3587. The RH-001-2014 decision found the tolls -- found that the tolls that were proposed in the TransCanada application, including STS tolls, and found those tolls to be just and reasonable, and approved them for the period 2015 to 2020, subject to review in 2018. *[RH-001-2014 Decision, Appendix II, Interim Toll Order TGI-001-2014. pages 93-94, [A4G2G5]]*

3588. Following a Compliance Filing by TransCanada, the Board issued order TG-011-2015, which approved the tolls as contained in the Compliance Filing as final for the period January 1, 2015 to 31st December, 2017.

3589. The intervenors argue that this application should be denied because it seeks a change to tolls that were found to be final in RH-001-2014, and this leads then to a semantic discussion -- I don’t use the word "semantic" in a pejorative sense here -- but to a semantic discussion of what is a toll.

3590. But here are the facts.

3591. TransCanada has not applied to vary the tolls that were approved in order TG-11-2015. TransCanada does not take the position that those tolls are

unjust or unreasonable, nor are they unjustly discriminatory. The STS tolls in TG-011-2015 represent a just and reasonable unit cost.

3592. TransCanada has applied for amendments to the Tariff that would change the application of the tolls. It is the application of the tolls, through the current provisions of the Tariff and the various inconsistent STS contracts, that creates unjust discrimination and that results in overall costs that are unjust and unreasonable. That is why TransCanada talks about "tolling" being unjust and unreasonable and unjustly discriminatory.

3593. The word "tolling" is used to mean the application of the just and reasonable final tolls through the Tariff and the applicable contracts. That application is what produces an overall cost result that is neither just nor reasonable nor fair.

3594. To illustrate, it is not just and reasonable or non-discriminatory for Centra to move four units and only pay the toll to move one unit. *[Exhibit B1-1, STS Modernization and Standardization Application and Evidence, Table 2-1, page10 of 42 [A4Y2G0]]*

3595. It is not just and reasonable for Union to move 10 units and pay a toll to move one unit *[Exhibit B1-1, STS Modernization and Standardization Application and Evidence, Table 2-1, page10 of 42 [A4Y2G0]]* even though the unit toll is just and reasonable.

3596. And those two LDCs have the right under their contracts -- existing contracts -- to do that.

3597. It is unjustly discriminatory for a shipper to be able to elect free service while others are paying their fair share, or to elect service attributes that impose costs on the system, and pay nothing for them. *[Exhibit B1-1, STS Modernization and Standardization Application and Evidence, Table 2-1, page10 of 42 [A4Y2G0]]*

3598. This is not semantics. This is precision. The toll is a unit cost. It is the just and reasonable cost of moving one unit. That was established in the RH-001-2014 Decision and remains. The issue is the application of the toll to the number of units moved, and to ensure that the number of units moved reflects all usage of the system that imposes costs on the system, regardless of direction of flow or location of storage.

3599. Nor does RH-001-2014 preclude new tolls being added during a period of final tolls. As explained in the TransCanada evidence *[Exhibit B14-2, Reply Evidence of TransCanada, Page 5, lines 8-14 [A5E7S2]]*, that is not an uncommon occurrence, the addition of tolls during a period of final tolls.

3600. TransCanada's position is that the surcharges that it proposes in the Application are new "tolls", as defined in the *NEB Act*, and new tolls are not precluded by the fact that the tolls that were proposed in RH-001-2014 remain final. *[Exhibit B14-2, Reply Evidence of TransCanada, Page 5, lines 8-14 [A5E7S2]]*

3601. So in my submission, Mr. Chairman and Members, the TransCanada positions are sound in law, in fact, and in precedent.

3602. Perhaps this is where I should deal with the Mainline Settlement, because it is part of the "environment" that intervenors -- in this case Ms. Habib, who was the expert for Union -- it's part of that environment that intervenors say should persuade the Board to exercise its discretion to deny the Application. *[Exhibit C9-4-3, Written Evidence of Georgette Habib, page 9, lines 21-22 [A5D6C9]]*

3603. Ms. Habib says that the Settlement was intended to be all inclusive, save for Energy East and LMCI, and therefore precludes this Application. *[Exhibit C9-4-3, Written Evidence of Georgette Habib, page 8, lines 7-9 [A5D6C9]]*

3604. Leaving aside the fact that Ms. Habib does not purport to be an expert in contract interpretation *[3T3156-3159]*, it is obvious in evidence that she misinterpreted the statement -- the Settlement, sorry. The Settlement did not resolve everything but Energy East and LMCI.

3605. It is clear from section 4.2 of that agreement that it resolved the "matters set out" in the agreement and permitted any party to come to the Board in respect of anything else. *[Exhibit B14-2, Written Reply Evidence of TransCanada PipeLines Limited, pp. 7-8; [A5E7S2]; Exhibit B20-1, Extract from the Mainline 2013-2030 Settlement Agreement Application, page 9 [A5F2S7]]*

3606. The STS Tariff was not a matter "set out" in the Settlement Agreement, so it falls in the -- and I will quote it -- "without limitation, do

anything else" category.

3607. Nor did the Settlement take away TransCanada's obligation to manage the pipeline. *[RH-003-2011 Decision, page 128 [A3G4A3]]*

3608. It didn't freeze TransCanada in time. In fact, in article 12, paragraph 12.1 (g), the Settlement Agreement specifically envisions initiatives by TransCanada to reduce the Mainline cost of service during the period 2015 through 2030. *[Exhibit B20-1, Extract from the Mainline 2013-2030 Settlement Agreement Application, page 19 [A5F2S7]]*

3609. It says:

> *"This Agreement does not preclude any other initiative by TransCanada designed to reduce the Mainline System's cost of service during the period from January 1, 2015 to December 31, 2030."*

3610. Now, recall my discussion with Ms. Habib about pricing signals and economic efficiency. *[3T3016-3041]*

3611. Remember, she gave me 100. She gave me 100 for the statement that, and I quote:

> *"So ultimately, proper price signals promote productive efficiency and allocative efficiency, maximize the utilization of the system, lower costs, lower the cost of service, and ultimately, lower the tolls." [3T3038-3041]*

3612. So what we have here is an application by TransCanada that is designed to improve pricing signals and economic efficiency which will reduce the Mainline unit cost of service. That is in Mr. Reed's evidence. *[Exhibit B1-2, A75561-2 Appendix 1 Evidence of John J. Reed, Q36, page 20 [A4Y2G1]]*

3613. This application falls squarely within subsection 12.1(g) of the Settlement Agreement.

3614. The TransCanada evidence proves the merit of the application. TransCanada identified discrimination in the existing situation, concluded that it could not discharge the onus that such discrimination was not unjust, and set

about to correct it.

3615. TransCanada has provided substantial evidence demonstrating that the numerous non-standard features of the existing STS service are clearly inconsistent with the Board's tolling principles. Certain STS shippers are provided with significant flexibility relative to other STS shippers for which they are not charged, resulting in unreasonable cross-subsidization.

3616. STS terms are not offered to all shippers on an equivalent basis, resulting in unjust discrimination.

3617. Now here, Mr. Chairman and Members, perhaps it is germane to talk about how the Board deals with the burden of proof. It's been dealt with in several cases.

3618. The most recent one that I'm aware of is RH-1-2000, which is the Maritimes & Northeast case, and that's where the Board confirmed what it had said in two previous decisions, GH-2-87 and RH-1-92, that the onus of proof, the ultimate burden of proof lies with the Applicant. It's the Applicant that must satisfy the Board on the balance of probabilities that the relief sought in its application should be granted.

3619. But the Board also says that depending upon the particular strengths and weaknesses of the Applicant's prima facie case, the onus of proof may shift to the intervenors during the course of the hearing to refute the Applicant's case.

3620. And here what you had was evidence of TransCanada that discrimination existed, that it couldn't show it to be unjust -- not unjust, and therefore changes were made -- needed to be made.

3621. At that point, I would submit to you, the onus would shift to the intervenors to show, to refute the evidence of TransCanada -- to refute the case of TransCanada that discrimination existed and could not be shown to be not unjust.

3622. But what you have here is that none of the opponents made any attempt whatsoever, even in their evidence or during cross-examination, to justify retention of the existing non-standard STS provisions. You don't have any evidence of that.

3623. They made no effort to show that the existing provisions of STS are in

any manner consistent with the Board's longstanding tolling principles. *[see, e.g., Transcript Vol. 2, para. 1874-1875 for Drazen admitting he did no analysis of the current STS situation [2T1874-1875]]*

3624. So in my respectful submission, they failed to discharge the onus that was on them to do so.

3625. TransCanada's evidence regarding the problems with the existing service was largely unchallenged. Instead, the focus of the opponent's evidence centred around the allegation that TransCanada had not provided enough evidence to support the proposed changes; the impacts of the proposed changes are too high, they say, and more time is needed for implementation if the changes are not rejected.

3626. I submit to you that it's very telling -- that is very telling. If there were arguments to justify the existing non-standard provisions, the opponents would have put them forth.

3627. In fact, Mr. Drazen agreed during cross-examination that there is currently cross-subsidization associated with STS, at least among STS shippers. *[2T1894-1896]*

3628. He attempted to justify that cross-examination with what I would suggest to you is a novel concept; while Centra is being subsidized by other shippers, those other shippers are also being subsidized in another respect by Centra, so the cross-subsidization among STS shippers cancels itself out. *[2T1894-1896]*

3629. Mr. Drazen claimed that "perhaps each STS shipper is both being subsidized and subsidizing others", but he provided no support for his speculation, and ironically has no basis for making such a claim considering he acknowledged that he was not -- he had not reviewed the STS contracts of any shipper other than Centra. *[2T2126]*

3630. There is absolutely no basis for such a claim and nor has the Board ever accepted cross-subsidization on the basis of an "everyone is subsidizing everyone" theory.

3631. Moreover, Mr. Drazen fails completely to recognize the significant variation in service flexibility among STS shippers that highlights the degree of

cross-subsidization even among STS shippers. In cross-examination, Mr. Harris clearly outlined the problem. Even among shippers west of storage, Mr. Drazen's client, Centra, has withdrawal rights that are four times their injection rights. Another has withdrawal rights 10 times its injection rights, while another has no injection rights at all on which they are tolled, yet the shipper still has withdrawal rights to two separate markets. It is very difficult to see how this is not unreasonable cross-subsidization among STS shippers. *[1T254-268]*

3632. Mr. Drazen offered zero support that such variation in flexibility eliminates or even mitigates the existing inherent cross-subsidization and unjust discrimination present among STS shippers.

3633. Likewise, such a claim completely disregards the fact that STS shippers receiving flexibility at no additional charge and/or who are not tolled on the appropriate quantity is an unreasonable subsidy borne by other Mainline shippers; it doesn't "net itself out" as Mr. Drazen attempted to suggest.

3634. So in my submission, Mr. Drazen's weak attempts at justifying cross-subsidization should be disregarded by the Board as there is no evidence that subsidies received by one STS shipper are netted or offset by subsidies received by other STS shippers.

3635. Mr. Drazen acknowledges that appropriate price signals are important. But the question he says is:

> *"Why are they important; why cost-based user pay? It's not that it's important in and of itself but it is deemed to be important because the price signals that result from that motivate customers to make more rational decisions." [2T1984]*

3636. That's what he said but he completely dismisses that STS shippers will make different contracting decisions if the Board accepts TransCanada's amendments.

3637. By contract, Union's indicative elections *[Exhibit C9-6-3, Union's Response to TC 1.2 [A5E4D8]]* clearly highlight that providing a proper price signal will result in changes in contracting behavior, which is completely contrary to Centra's arguments that there is no benefit of changing the price signal before 2021.

3638. Turning to implementation, there's been a fair bit of discussion about implementation. When? How much time is needed?

3639. TransCanada's position is clear. The time is now. There's no valid reason to delay. The effect of delay is to perpetuate unfairness and improper price signals to 2021.

3640. TransCanada of course recognizes that change has implications for shippers. Some may ultimately want an increase; some -- sorry, some experience an increase; some experience a decrease in their invoices. Some may ultimately want to adjust other arrangements related to the supply of gas. But two years' notice from initial discussion to implementation before making an election is more than reasonable for parties to adjust or build in flexibility to the extent possible.

3641. TransCanada believes that the change can be implemented fully on April 1, 2017. If the Board disagrees, TransCanada could phase in the implementation over one or two years as described in its response to NEB Information Request 1.5.

3642. What needs to be remembered, though, is that delay of implementation is a perpetuation of the unjust discrimination and improper price signals that exist today. It's not in the public interest to do that. The adage that "justice delayed is justice denied" is apposite here.

3643. TransCanada has proposed that the time to correct these anomalies is April, 2017 and that reflects more than two years of discussion, debate, and deliberation as to how to address these anomalies. *[Exhibit C4-5-3, EGDI's Response to TC 1.2a (A5E4E9)]*

3644. The three shippers have all had extensive time to consider their future service elections and conversions, and it is on the record that the correct price signals will have the effect of causing STS shippers to rethink how much of each service and additional attributes they want to pay for.

3645. TransCanada submits that the modifications it proposes will have a beneficial affect on the system, and the results of the election will inform the 2018 to 2020 tolls review.

3646. This is probably a good place to talk about Gaz Métro. It's the other Eastern LDC. It's the other signatory to the Settlement Agreement. It's the other LDC that was part of the "common position" in RH-001-2014.

3647. Gaz Métro's position, in evidence and in its written argument, is that it does not oppose the application. But its position is more than that. It says that it conducted an analysis to measure the potential impacts on its operation of the application, and to evaluate the consistency of the STS amendments with the broader tolling principles. It concluded that the proposed tariff amendments complied with the tolling principles of cost-based/user-pay and no acquired rights, as defined in the RH-1-2007 decision and elsewhere.

3648. Specifically, Gaz Métro concluded that it was able to mitigate the potential impacts so as not to cause significant impacts on gas supplies despite the loss of operational flexibility. *[Gaz Metro argument, para. 13 and 14]*

3649. It does not oppose the application, which means it does not oppose the TransCanada implementation proposal. And that, in my submission, is something that should not be lost on the Board when it is considering the implementation question.

3650. As counsel for the Applicant holding the right of reply argument, my obligation is to deal in argument-in-chief with intervenor positions that can be anticipated from the evidence. This is sometimes called the "anti-sandbagging" rule, which is to say you can't wait in the weeds and deal with something only in reply argument.

3651. So in this case, there have been a few themes that the intervenors have played and to which I have not yet spoken.

3652. One of these themes relates to insufficient evidence to support the proposal.

3653. During her testimony, Ms. Habib asserted that without a cost allocation study, the existence of cross-subsidization cannot be determined. *[3T2966]*

3654. And her position echoed claims she made in her pre-filed evidence, in which she asserted that it is unclear whether or not the provision of STS results in cross-subsidization. *[Exhibit C9-4-3, Habib Evidence, pages 18-19 [A5D6C9]]*

3655. These claims were entirely refuted in Mr. Reed's Reply Evidence, where he addressed the nature and extent of the existing cross-subsidization with STS, which is quantified at $50 million a year. *[Exhibit B14-3, Reply Evidence of John J. Reed of Concentric Energy Advisors, Inc. Q&A7-9, p 5 [A5E7S3]]*

3656. Each form of cross-subsidization discussed by Mr. Reed is also further addressed and quantified throughout the TransCanada evidence. *[See for example: Exhibit B5, TransCanada Additional Written Evidence, pages 3-4; Ex. B14-1, Reply Evidence of TransCanada, pages 18-19, 23-25, 29 [A4Z5C2]; Exhibit B1-2, Direct Evidence of John J. Reed of Concentric Energy Advisors, Inc., Q&A 12, 15, and 34 at pages 6-7, 9, 18-20 [A4Y2G1]]*

3657. A cost allocation study is neither required to determine whether cross-subsidization exists with respect to STS, nor would it provide material assistance to the Board in adjudicating this application.

3658. The reasons are explained in TransCanada's Reply Evidence, where TransCanada explained how the facilities or costs for provision of specific transportation services cannot be specifically isolated given the integrated nature of the Mainline system.

3659. And it's worth quoting from the reply evidence, so I will:

> *"To provide STS and withdrawal pooling transportation, TransCanada relies on the same integrated facilities it uses to provide FT, FT-SN, EMB, or any other standard service in the Mainline suite of services. These services attract a toll that is based on integrated system average costs which are reflective of the costs of providing these services. Even though cost responsibility cannot be definitively determined, the Board has clearly concluded that the FT tolls are cost-based and reflective of the cost of providing the service, and are just and reasonable. The same conclusion can be applied to the proposed withdrawal pooling surcharges, as there is no regulatory requirement that a surcharge can only be applied in cases where facilities or costs are discretely distinguishable." [Exhibit B14-1, Reply Evidence of TransCanada, Pages 22-23 [A5E7S2]]*

3660. The use of integrated system average costs is the appropriate method to assess the extent and magnitude of cross-subsidization. Further, the integrated nature of the Mainline is a key reason why TransCanada has generally not relied on formal Mainline cost allocation studies to support current or historical cost allocation methodology, and why such studies do not provide material assistance. *[Ex. B-17, TransCanada's response to Undertaking U-1]*

3661. And there I'm referring to the TransCanada response to Undertaking U-1, Exhibit B-17 and the decision on that cost allocation issue in the RH-003-2011 case.

3662. Another theme of the intervenors who oppose the application was "don't change now because there is change on the horizon; now is not the time to make a change; don't change now because segmentation and other big changes are coming in 2020".

3663. This argument is not supported by principle, the facts, or the Alberta Utilities Commission case the intervenors relied on.

3664. One of the positions of the intervenor witnesses was that TransCanada had "admitted" *[3T3320]* that STS would be changed again in the 2020 case. And that I suggest is a gross distortion of what Mr. Harris said. And it's worth reading an exchange from the transcript. This is Mr. Smith cross-examining Mr. Harris:

> *"1381.* ***MR. SMITH:*** *Well, if you are making all these changes, the ones you're proposing now, and they're implemented in 2018, I put it to you that you're going to have some very major changes in the post-2020 period, which is within the near term. Isn't that true?*
>
> *1382.* ***MR. HARRIS:*** *I think baked into your question is the assumption that we'll be changing STS and I don't share that assumption.*
>
> *1383.* ***MR. SMITH:*** *Well, you've indicated to Centra that changes to STS are possible.*
>
> *1384.* ***MR. HARRIS:*** *When we said "possible" we meant possible as in anything is possible, not that we had some*

> *particular idea in mind of how that service would change and why." [1T1381-1384]*

3665. And that reference that Mr. Harris is making is to the response of TransCanada to Centra 1.5(d) through (l) in which it was said:

> *"TransCanada has…not determined what further changes to STS beyond those sought in the Application, if any, may be appropriate as part of implementation of segmentation for 2021 and beyond. The changes to STS proposed in the Application, if approved, will remain in effect unless they are modified by a subsequent Board Order. Accordingly, while there will be future changes to the Mainline cost allocation post-2020, and maybe further changes to STS, the possibility of these changes has no impact on the proposed STS modifications at this time." [Exhibit B7-2, TransCanada's response to Centra 1.5 d) through l) [A5C1U6]]*

3666. The point being that the need for future changes to STS has not been determined.

3667. Centra's expert, Mr. Mikkelsen, attempted an analogy to a case before the Alberta Utilities Commission in which he had been involved: *Alberta Electric System Operator, 2010 ISO Tariff AUC Decision 2010-0606* ("2010-0606"). *[T2060-2062, 2T2307]*

3668. I'm not going to go through that decision in any detail. But I will say to you that if you read that decision you will find that it is very different from the case that's before you and because of its differences from this proceeding, it is entirely irrelevant to your considerations.

3669. In that ISO case, there were three things that do not exist here. There was certainty of change; there was certainty of the direction of change; and there was some sense of the magnitude of change. And it was those three things that underpinned a decision to refrain from changing until a later time.

3670. The bottom line is that "don't change now because there will be changes in 2020" is a "specious argument", to put Mr. Drazen's word back to him. *[specious: "superficially plausible or genuine but actually wrong or false" Canadian Oxford Dictionary]*

3671. Actually, it's worse than that, because "specious" has to have a superficial plausibility. Something that is specious has to be superficially plausible but actually wrong or false. What this argument is, is spurious, which means "based on false reasoning; not true or accurate" *[Canadian Oxford Dictionary]* and it should be rejected for that reason.

3672. Based on Ms. Habib's testimony *[TR3 3055-3057]*, you may hear that providing withdrawal pooling for free is appropriate because TransCanada would have incurred $100 million more on capital projects between 2007 and 2017. This argument, if made, is flawed and based on a distortion of the evidence.

3673. First, TransCanada is not proposing to eliminate withdrawal pooling. It is proposing to retain the feature and implement a surcharge. Therefore, no facility impacts are expected as a result of the Application. *[Ex. B7-5/A77196-5, TransCanada's response to Union 1.17]*

3674. Second, the evidence is that withdrawal pooling contributes to the firm Mainline requirements and contributed to the design of the recent $221 million Vaughan Mainline Expansion. *[Ex. B7-5/A77196-5, TransCanada's responses to Union 1.12 and 1.17]*

3675. Third, the $100 million figure is only applicable in the specific hypothetical scenario where withdrawal pooling is eliminated and replaced with separate STS contracts, which would result in an increase of 213,825 Gigajoules a day of firm Mainline requirements from Parkway. *[Ex. B7-5/A77196-5, Table Union 1.17-2]*

3676. This scenario is not credible based on the evidence of parties who currently have withdrawal pooling features.

3677. For example, Union's indicative elections on withdrawal pooling suggest that there would be no conversion of withdrawal pooling to STS, limited conversion to short haul FT in relation to the EDA and NCDA, and only the pooling allowing redirection of quantity from the NDA to the NCDA for which no surcharge would be applicable would be retained. Union would also convert its STS withdrawal quantity to the WDA to long haul and reduce its STS withdrawal quantity to the SSMDA. *[Ex. C9-6-3/A78906-3, Union's response to TransCanada 1.2]*

3678. These results are as one would expect because the charge being implemented for withdrawal pooling is expressly set below the cost of doubling up on STS service requests.

3679. As Mr. Reed has noted in his evidence, the cost of securing two separate STS service paths would serve as a cap on what the just and reasonable charge is for STS pooling. All of these conversions could to be accommodated without the need for additional facilities. *[TR1 1140-1143]*

3680. A common theme of those who oppose the Application is "rate shock", but let's be clear about two things.

3681. First, the impact of implementation of a proposal does not go to consideration of the merits of the proposal. Impact does not trump principle. You have to decide whether the proposal meets the statutory requirements. If it does, you approve it. Then, and only then, you consider whether the impact is such that transition measures would be appropriate.

3682. Put in RH-4-86 terms, the impact of approval is part of the "environment" in which the pipeline operates. Environment should not override tolling principles.

3683. This concept has been judicially recognized. In the 2004 case relating to Mainline cost of capital, the Federal Court of Appeal said that it was quite proper for the NEB to take rate shock into account provided there was no economic loss to the utility in the process. *[TransCanada PipeLines v. National Energy Board, (2004), 319 N.R. 171 (F.C.A.), at para. 43, citing Hemlock Valley Electrical Services Ltd. v. Utilities Commission (B.C.) et al. (1992), 12 B.C.A.C. 1; 23 W.A.C. 1; 66 B.C.L.R. (2d) 1 (C.A.), at 20-21 (C.A.)]*

3684. Second -- second point on rate shock is that the impact argument is a measure of the level of cross-subsidization that the beneficiaries of the existing STS service currently enjoy. Viewed from this perspective, the opposing LDCs shoot themselves in the foot -- feet, I guess -- when they give you calculations of impact.

3685. Union says that the changes would increase its STS charges by up to 330 percent *[Exhibit C9-4-2, Written Evidence of Union Gas Limited, page 27 of 36, lines 18 – 19 [A5D6C8]* and its overall payments to TransCanada by 30 percent. *[Exhibit C9-4-2, Written Evidence of Union Gas Limited, page 28 of 36,*

lines 8 – 9 [A5D6C8]]

3686. Centra says 308 percent for STS costs and 27 percent total Mainline costs. *[Exhibit B14-2, Table 3-1, page 11 [A5E7S2]]*

3687. Those kinds of numbers prove TransCanada's point. When tolling based on cost causation reveals those kinds of numbers, it becomes blindingly obvious that the level of cross-subsidization in the current tolling reflects discrimination that is unjust.

3688. These percentage numbers reflect the cost-based tolls, and what follows from cost-based tolls is the concept of user pay. The users should pay these.

3689. The percentage impacts of the changes on Union and Centra are a measure of the service that they are currently receiving for which they do not pay. It's a measure of the amounts that other Mainline shippers are paying for service that they do not receive.

3690. Yes, there is cross-subsidization in any rate design *[Exhibit B14-2, Table 3-1, page 11 [A5E7S2]]*, and yes, the Board should act when the level of cross-subsidization exceeds its tolerance. *[National Energy Board Report for Proceeding GH-001-2012, page 22 [A3F0Y9]]* The Board has not defined its "tolerance", but surely 330 percent and 308 percent must be in the realm of intolerance.

3691. Perhaps it was because he realized where this approach by his client was going that we saw Mr. Drazen flatly contradicting Ms. Stewart on this issue. It's more than ironic that while Centra claimed in its written evidence and again during cross-examination that the impacts of the proposed changes to Centra are significant, its expert stated during cross-examination that he was, and I quote, *"surprised rate shock was even an issue"* because the impacts were not significant. *[2T2375-2378]*

3692. Another point here, which might be viewed as an alternative point, is that it's not difficult to massage percentage numbers. You just change the denominator. The LDCs chose denominators of their STS payments to TransCanada and their overall payments to TransCanada.

3693. By contrast, TransCanada has shown in Table 3.1 of its Reply

Evidence that, viewed as percentages of the revenue requirements of the LDCs, the impact is well below the double digit measure that is sometimes considered as rate shock; 2.8 percent for Centra, 3.6 percent for Union North and zero to 0.4 percent for EGDI. *[Exhibit B14-2, Table 3-1, page 11 [A5E7S2]]*

3694. And similarly, a comparison of Union's response to Undertaking U-3 *[Exhibit C9-11-1, Undertaking to Union Gas Limited [A5F2U0]]* and TransCanada's Table 3.1 illustrates the impact of different denominators, the allocation of impact over Union Northwest versus evenly across Union North.

3695. As Mr. Reed told Ms. Audino *[Exhibit C9-11-1, Undertaking to Union Gas Limited [A5F2U0],* the place to measure rate shock is where those rates are ultimately paid. The STS charges are passed through by the LDCs to their customers. It is at the ultimate customer level that the question of rate shock should be considered by the regulator that establishes those rates and makes a determination of whether mitigation measures are appropriate. So that rate shock question should properly lie with the OEB and the Manitoba Public Utilities Board, and not with Union.

3696. However, as presented in TransCanada's evidence, should the Board believe a phase-in of the proposed changes is appropriate, it could be considered with respect to two proposals: (1) the application of the STS toll to the withdrawal quantity for markets currently deemed upstream of storage, and (2) the implementation of withdrawal pooling charges. *[Exhibit B8-2, response to NEB 1.5, page 2 of 2 [A5C1W1]]*

3697. Single issue ratemaking. Centra says you should reject the Application because it is "single issue ratemaking" and because the evidence of Drazen Consulting on that topic is "compelling", quote unquote. *[Exhibit C3-7-2, Opening Statement of Centra Gas Manitoba Inc., page 1 of 3 [A5F1S9]]*

3698. You shouldn't, and it's not.

3699. Mr. Drazen says that single issue ratemaking is illegal in some places and, in his phrase, "bad regulatory policy" in others. *[2T2222]*

3700. The evidence here, though, is that it is not illegal and that it is common regulatory practice for the NEB to deal with single issues in a rate-related case. *[Exhibit B14-2, Written Reply Evidence of TransCanada, page 5, footnote 13 [A5E7S2]]*

3701. In fact, the Board explicitly recognized in the RH-003-2011 Decision that the regulatory process for implementing new service and pricing proposals should be streamlined, and set up the streamline process. *[RH-003-2011 Decision, page 247 [A3G4A3]]*

3702. Mr. Drazen acknowledged that a prohibition of single issue ratemaking in the U.S. varies by jurisdiction *[2T2241]*, that he's not aware of any Canadian regulator addressing single issue ratemaking, including the NEB *[2T2241]*, and that the Gros Cacouna proceeding was an example of what Mr. Drazen would characterize as single issue ratemaking. *[2T2256-2261]*

3703. The fact that Mr. Drazen's own evidence in Gros Cacouna does not address single issue ratemaking, and that Drazen Consulting has never provided evidence on the issue before *[Exhibit C3-5-3, response to TCPL/Centra 1.8, page 1, line 17 [A5E4A5]]*, are indications of how Mr. Drazen and Mr. Mikkelsen broke their fingernails on the bottom of the barrel of regulatory arguments when they dredged this one up.

3704. As Mr. Reed stated in his Reply Evidence *[p. 20, ll. 14-20]*, I quote:

> *"Understanding the basis of why single issue ratemaking is generally prohibited by regulators is important when evaluating the specific circumstances of a proceeding, and as noted, one reason is to ensure that the rates being charged are just and reasonable. In this proceeding, the changes proposed by TransCanada to standardize STS are clearly being made to rectify a service with non-standard pricing approaches and terms and conditions that, in my view, are currently unjustly discriminatory and inconsistent with the Board's tolling principles."*

3705. This alleged issue of single issue ratemaking falls in the category of ambient noise and should be ignored by the Board.

3706. EGDI wants grandfathering of its STS balances. There are three reasons not to do that.

3707. First, grandfathering STS balances would have the same effect as denying implementation of the proposed STS balance limits. Therefore, if the

proposal has merit, which the evidence confirms, in my submission, it would be counterproductive to approve the proposal but deny its implementation.

3708. Second, grandfathering would be a violation of the "no acquired rights" principle.

3709. And third, the balances do not represent physical gas.

3710. The 2005 TTF resolution, which included EGDI, established that the concept of STS was to put gas into storage and to take gas out of storage. In cross-examination of both Centra and EGDI, it was revealed that the balances actually recorded gas that was not put into storage but was delivered to someone else.

3711. So for all three reasons, we should reject grandfathering.

3712. Some intervenors take the position that the incentive sharing mechanism that was established in the RH-001-2014 decision should not apply for the 9-month period in 2017 after implementation of the proposals, assuming approval. *[Exhibit C4-4-2, Written Evidence of Enbridge Gas Distribution Inc., page 5, lines 14 – 15, [A5D6F2]]*

3713. TransCanada's position on this is clear.

3714. First, the STS revenue impact is consistent with the intention behind the incentive mechanism. *[Exhibit B8-2, TransCanada's Response to NEB IR 1.3, page 3 of 4 [A5C1W1]]*

3715. Second, TransCanada is not proposing the amendments to increase its return. *[Exhibit B15-1, Opening Statement of TransCanada PipeLines Limited, p. 2, lines 15 – 16 [A5F1E8]]*

3716. Third, the amount would be about $2.2 million. *[Exhibit B14-2, Written Reply Evidence of TransCanada, page 13, lines 1 – 4]*

3717. And fourth, the Board can easily adjust the incentive calculation for 2017 if it deems that to be appropriate. *[Exhibit B8-2, TransCanada's Response to NEB IR 1.3, pp 2, 3 of 4 [A5C1W1]]*

3718. Now, I've come to the "Summary and Conclusion" section of this

argument, Mr. Chairman and Members.

3719. The current STS situation cannot be allowed to continue. Discrimination has been shown. There is no evidence that such discrimination is not unjust. TransCanada's evidence says the discrimination is unjust. No intervenor filed any evidence to say that the current situation is defensible under the Board's tolling principles.

3720. Both Centra and Union argue that the rate stability objective of RH-001-2014 overwhelms the cost-based/user-pay principle. But you, the Board, have made it clear that this principle should be paramount. It's a principle from which you should not be easily diverted. *[RH-4-86 Decision, page 33]*

3721. Certainly the evidence of the intervenors in this case is insufficient to persuade you to abandon the most fundamental principle in NEB toll regulation.

3722. Nonetheless, rather than trying to make the case that the existing tolling is just and reasonable, the intervenors' witnesses ask the Board to put aside principle and the statutory requirements of the Act, and focus instead on what they claim is the benefit of a bargain in the Mainline Settlement which was in fact not approved as a settlement in the RH-001-2014 proceeding. But the intervenors' argument fails on multiple counts.

3723. First, the settlement makes clear that the "bargain" doesn't preclude a filing such as that which is before the Board.

3724. Second, as even Union recognizes, the Board's ability to modify tolls and terms of service at any time is clear. *[Exhibit C9-9-1, Opening Statement of Union Gas Limited, page 1, line 17 [A79460-2]]*

3725. Third, the Board has made it clear that tolling principles are not to be lightly cast aside in pursuit of secondary objectives such as stability.

3726. And finally, we have the Act itself, which precludes unjust discrimination, and which places the onus of justifying any discriminatory toll on the pipeline. But the Applicant has come forward and conceded that there is no justification for the existing discrimination, and that the tolling and service are no longer just and reasonable.

3727. So we have a complete lack of any basis in the record that can justify

the existing discriminatory service. We are left with a clearly discriminatory service structure, tolling that does not reflect costs, and price signals that incorrectly provide incentive for shippers to hold onto services and service features because many of these features are provided for free to the detriment of the balance of TCPL's firm shippers.

3728. And the recipients of these subsidies argue that the public interest should go beyond the cost-based/user-pay principle and keep these subsidies in place until 2021 because that's how they have planned their storage contracts and supplies. Accommodating the private contracts and preferences of three shippers should not be endorsed when it is to the detriment of more than 300 other shippers.

3729. The Board should approve the Application.

3730. Those are my submissions, Mr. Chairman and Members. I'm happy to try to answer any questions you may have.

3731. **THE CHAIRMAN:** The Board only has one question here and it's a bit my fault because my notes were not precise enough and I don't have the benefits of the transcripts right now.

3732. It's under your "Burden of Proof" section where you say the onus of proof was with the Applicant and the onus can shift to the intervenors, and the onus is then on the intervenors to refute. And here's where my notes are.

3733. Could you just kind of bring me through that reasoning right after that point?

3734. **MR. YATES:** Yes. Mr. Chairman, what I was referring to was the way that the Board has expressed its position on the burden of proof issue in most recently the RH-1-2000 case. And I was using it or making reference to it particularly in the context of the complete absence of evidence from the intervenors in defense of the existing STS situation.

3735. So TransCanada turns up and provides you with evidence which, in the Board's parlance, burden of proof parlance, could be considered to be a prima facie case. A prima facie case is there is discrimination that exists; it can't be shown to unjust; and therefore, change is required.

3736. At that point I was suggesting to you that at that point the onus in respect of that issue would switch to the intervenors to show that the existing situation doesn't include discrimination and does include just and reasonable tolling, right? And they didn't do that. They didn't even try to do that. They provided no evidence that defended the existing STS situation.

3737. **THE CHAIRMAN:** Thank you. With that, the Board has no questions.

3738. At this time I notice it's 10 past 10:00, so we will take our 20-minute break right now and get back here at 10:30 with Ms. Van Iderstine.

--- Upon recessing at 10:11 a.m./L'audience est suspendue à 10h11
--- Upon resuming at 10:30 a.m./L'audience est reprise à 10h30

3739. **THE CHAIRMAIN:** Ms. Van Iderstine?

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MS. VAN IDERSTINE:

3740. **MS. VAN IDERSTINE:** Thank you.

3741. Mr. Chair, Members of the Panel, thank you for providing Centra with the opportunity to intervene on this Application, for the time and effort you and the staff have expended and will continue to expend in reviewing and considering this evidence which has been put before you.

3742. Like Mr. Yates, we have provided to the reporter a list of cites and I will, however, deviate a bit from it in terms of my oral argument as opposed to the written argument I've provided to him, so I -- please accept the oral argument as our submission.

3743. There may also be a few additional cites that I am going to add in after hearing Mr. Yates' argument, and when I do that, I will give the cites so the reporter has them.

3744. After carefully considering the oral portion of the hearing, Centra's position remains unchanged from the concerns outlined in its letter to the Board on March 4, 2016 *[Exhibit A75807-1]*, and as outlined in its opening statement

[Exhibit A79462-2].

3745. Centra opposes the Application.

3746. The proposed changes would have a significant financial impact on Centra and its customers. The application represents a major change to the STS tolling methodology which has served the needs of LDCs and which has provided benefits to TransCanada and all Mainline shippers for decades.

3747. The change in tolling methodology has been proposed without any cost-based evidence and ignores the significant differences between STS and annual FT; therefore, Centra submits that if approved by the Board it would result in tolling that is not just and reasonable or in the public interest.

3748. There are, in our submission, two aspects to the application which are quite distinct. The first is this is a request for a tolling change. You will recall that in cross-examination, I asked Mr. Reed whether the words, "TransCanada's STS tolling proposal", words which he uses in his evidence, were his own. *[RH-001-2016, Transcript Volume 1, exchange between Ms. Van Iderstine and Mr. Reed, paragraphs 424-428]*

3749. Mr. Reed responded that yes, they were his words, which, to us, provided further confirmation that the application, in Mr. Reed's own words, represents a tolling proposal or change, regardless of whether Mr. Yates has now described a distinction between "toll change" and "tolling change". This is a change to a major firm service during the six-year tolls decision.

3750. For STS west-of-storage contracts, TransCanada proposes fundamental changes to the tolling methodology by charging for the withdrawal quantity rather than the injection quantity. It is, we submit, inconsistent with the STS information in TransCanada's Compliance Filing in RH-001-2014.

3751. The second major change requested in the application is to service. TransCanada proposes to impose limits on STS Balances, restrict seasonal priority periods, prescribe injection/withdrawal ratios, eliminate injection pooling, eliminate shared STS Balances, and other changes in service attributes.

3752. I would like to begin by outlining for you the five broad areas which Centra submits are of primary concern with respect to the application before you, and which should cause the Board to conclude that this application should be

denied. These areas are:

3753. Single-issue ratemaking as articulated by Drazen Consulting in their expert opinion, including the lack of any cost data filed in support of this Application;

3754. STS is not FT and warrants different tolling considerations relative to FT including a discussion of the potential long-term fixed price service;

3755. The magnitude of the impacts on two captive shippers;

3756. The focus on standardization as a driving principle for supporting the requested change to the STS tolling methodology and TransCanada's argument that the current tolls are unjust and discriminatory; and

3757. The timing and context of the Application.

3758. Now, I was about to move on to the onus but before I do so I wanted to respond to a comment made in Mr. Yates' submission this morning with respect to discrimination.

3759. And we would submit that the essential problem with TransCanada's arguments about discrimination is that it boils down to differences are, per se, discriminatory, nothing more. They've provided no cost evidence; he has not explained why or when the differences were okay for decades and then became discriminatory. The closest they came to an explanation is that the system flows have changed.

3760. Centra's addressed that in their evidence and has showed that the situation for Centra has not changed materially and TransCanada did not respond to that nor cross-examine on that point.

3761. The claim that the STS contracts are discriminatory among ST shippers would imply that some ST shippers should see increases and others would see decreases. Instead, TransCanada has only proposed increases. Along the same lines, TransCanada has not showed that ST shippers were being subsidized and which ones are subsidizing others.

3762. I would also now like to address the issue of onus. The onus in any application, as Mr. Yates has said, in on the Applicant to prove with sufficient

evidence to the Board to convince the Board that the changes requested are reasonable and ultimately in the public interest.

3763. As Mr. Yates outlined, the Board had identified the issues to be identified in this application as two, and they are the appropriateness of proposed amendments to the Canadian Mainline Transportation Tariff for STS and STS-L with regard to any impacts of the proposed changes on the mainline including its revenues, other services and tolls; and two, the appropriateness of how to implement any proposed amendments to the Canadian Mainline Gas Transportation Tariff with regard to any impacts of the proposed changes on the Mainline, including its revenues, other services and tolls.

3764. It is Centra's position that the evidence submitted by TransCanada is not sufficient to support the requested changes to a tolling methodology that has been in place, without complaint and with the approval of the Board, over many years and through several previous regulatory hearings, including as recently as RH-001-2014. In none of the previous applications did TransCanada ever raise concerns about STS having a lack of equity or that its complexity was too cumbersome for it to manage.

3765. Earlier today, Mr. Yates suggested that the onus may shift to the respondents. But to that, you must understand that it only will shift to the respondents once the Applicant has made out it its prima facie case by filing sufficient evidence to support the application.

3766. In this application the parties tried, and I requested, cost-based information; this was not provided and is not contained in the application. Without that kind of information, the suggestion that the onus would then somehow shift to the respondents to provide reasonable alternatives to the alternatives that were submitted to this Board without that cost-based evidence becomes impossible for the respondents to meet.

3767. The Board must also consider the context in which this application has been filed, that being the period within the six year fixed-tolls period established by the RH-001-2014 decision issued on December 18, 2014. The current timeframe, until 2021, was to have been a period of toll stability in anticipation of what is likely to be a major change to the Mainline; that is, segmentation and associated changes to toll designs, services, and tariff provisions.

3768. I would now like to address the issue of single-issue ratemaking.

3769. In the written evidence of Drazen Consulting, they describe single issue rate making as a proceeding that considers a single issue – in this case, the design and tolling methodology of STS – and ignores the interrelationship of that issue with other regulatory issues. *[RH-001-2016, Exhibit A78322-3, Evidence of Drazen Consulting, paper page 7, lines 4-6]*

3770. There is no disagreement on the definition of single issue rate making, and that it generally, is not an appropriate regulatory practice. Mr. Reed's 2014 written evidence in Missouri, he stated -- his answer was,

> "*Single issue ratemaking occurs when a regulatory commission reviews and makes a rate determination with respect to a single component of the revenue requirement in isolation, without considering and reviewing all components of the revenue requirements in aggregate. The rationale behind the prohibition against single issue ratemaking was cited in Citizens Utilities Board v. Illinois Commerce Commission (1995) as 'consideration of any one item in the revenue formula in isolation risks understatement or overstatement of the revenue requirement'*".

3771. We submit there can be no doubt that this Application relates to a single issue, that is, STS. The changes to the tolling methodology are being advanced without reference to the resulting shift in balance of risks and interests among stakeholders which was struck by the Board in RH-001-2014.

3772. It is not being considered in the context of segmentation and the significant changes that will occur in 2021. It is not even being considered in the context of TransCanada's most recent announcement that it will offer long-term fixed price contracts.

3773. The RH-001-2014 decision followed a contested tolls Application, and while some of the other parties in this Application reached a settlement, Centra was not a party to that settlement. And as a result, we can only look to the Board's decision for guidance. RH-001-2014 resulted in significant Mainline toll increases, designed to recover the Mainline's cost of service.

3774. The toll increase to Centra was 8.5 percent, following which and based on the decision, Centra understood that there would be a fixed -- sorry, a period of

fixed tolls and stability. If STS costs are to now increase dramatically for Centra due to changes in STS tolling, then TransCanada's share of the under-utilized Western Mainline capacity and Western Mainline cost recovery should also be reconsidered. Additionally, TransCanada's earnings band within the Incentive Sharing Mechanism approved in RH-001-2014 should be also considered.

3775. In Drazen Consulting's response to an IR from the Board, a Virginia State Corporation Commission precedent was provided. [*RH-001-2016, Exhibit A78901-2, Information Request NEB/Centra 1.1, pdf page 16 of 29, paper page 14 of Attachment]*

3776. In that decision, a gas utility proposed to add a Weather Normalization Adjustment, or WNA, to its rates after implementing performance-based rates, referred to as PBR in the decision. The Commission's finding was as follows:

> *"The proposed WNA, however, would effectively modify the non-gas rates that customers otherwise would have paid under the four-year PBR Plan, previously requested by the Company and approved by the Commission. In effect, Columbia's application for a WNA now, after its proposed PBR Plan was approved and put in place, amounts to a request for a single-issue ratemaking, which we find is not in the public interest."*

3777. The Virginia precedent reflects that same issues that should concern this Board. As in Virginia, this Application is an attempt to modify the rates or tolling methodology, and resulting costs that customers would otherwise pay under multi-year fixed rate or tolls decision.

3778. Mr. Drazen describes this single-issue ratemaking as bad regulatory procedure. *[RH-001-2016, Transcript Volume 2, Mr. Drazen, para. 2222]*

3779. This is not in the public interest.

3780. The fact that there is a toll reset for 2018-20 period also does not address the problem of single-issue ratemaking. Changes in TransCanada's cost, risk, and other factors will not be examined in the 2017 toll reset application; rather, only TransCanada's forecast of billing determinants. If TransCanada is permitted to change tolling methodologies during a fixed tolls period to dramatically increase costs for some shippers, the concept of fixed tolls becomes meaningless.

3781. In an attempt to justify this single issue application, TransCanada's reply evidence cites a number of previous hearings in which it has brought service matters before the Board outside of a tolls application. *[RH-001-2016, Exhibit A79155-2, Reply Evidence of TransCanada, pdf page 9 of 33, paper page 5, lines 11-14 (A5E7S2)]*

3782. However, these previous cases did not involve changes to an existing Mainline firm service, particularly one that results in massive toll revenue increases levied on a small number of shippers shortly after the multi-year fixed toll application and decision.

3783. You may recall in the RH-003-2011 decision, the Board stated that it is essential that the Mainline continues to innovate and experiment with new services and service features to provide value for both shippers and the pipeline.

3784. We would submit that this application is neither innovative, nor a new service. It does not meet the benchmark of providing value to both shippers and the pipeline. In fact, there is no one here supporting the Application, other than TransCanada itself.

3785. And at this point, I would pause and reference the evidence which has been filed by Gas Metro and referenced by Mr. Yates in his argument. Gas Metro has not given an unequivocal support to the application. Rather, what they have said is that based on their own situation, that they believe the proposal is consistent with a number of features. But that reflects their own situation, not an unqualified support.

3786. The requested changes to STS would not add value; rather, they would significantly increase costs to captive shippers and provide additional earnings to TransCanada.

3787. The complete lack of cost-based evidence is a major concern in relation to this single-issue Application seeking to change the tolling of a major firm service.

3788. TransCanada has not adduced any evidence in this Application related to the actual cost of providing STS. In fact, Centra specifically asked TransCanada in an information request to identify any new costs that it now incurs to provide STS to Centra relative to years past, and TransCanada did not

identify a single new cost. *[RH-001-2016, Exhibit A77195-2, TransCanada Responses to Centra Gas IRs No. 1, Centra/TCPL 1.03 h), pdf pages 8-9 of 87 (A5C1U6)]*

3789. They also confirmed in cross-examination that Centra's STS contract was just and reasonable, and it could not identify when it became unjust and unreasonable. *[RH-001-2016, Transcript Volume 1, Mr. Harris, para. 236]*

3790. Ms. Habib testified to the inter-relationship between the cost-based/user-pay tolling principle and cost allocation. She stated that appropriate cost allocation goes hand in hand with the cost-based/user-pay tolling principle because absent cost allocation meaning a cost allocation analysis or study -- those are my words -- one would not know the costs for which a shipper should be held responsible. *[RH-001-2016, Transcript Volume 3, Ms. Habib, para. 2968]*

3791. And we know from Mr. Reed that he did not provide any such analysis.

3792. So as recently as March 31, 2015, no changes in STS billing determinants were included in TransCanada's RH-2014 Compliance Filing. TransCanada's forecast at that time included no change in STS volumes or revenues.

3793. I would now like to discuss why STS is not FT, and why changing the tolling methodology west-of-storage as proposed by TransCanada would produce discriminatory tolling.

3794. STS is a unique and restrictive service that differs from annual Firm Transportation or FT in a significant way. Accordingly, the FT toll applied to the Withdrawal Quantity should not be used as a proxy for the costs of providing STS west of storage.

3795. Centra filed evidence to demonstrate that STS is not FT *[Exhibit C3-4-2 Evidence in Chief of Centra, pdf page 13, Section 5.3]*, as it differs from FT and other firm annual services in the following important ways.

3796. STS has constraints and penalties in the form of STS Balances and Excess Withdrawal Charges.

3797. STS contracts can only be held in conjunction with a long-haul FT

contract.

3798. STS lacks diversion and alternate receipt rights for UDC mitigation.

3799. STS only provides firm service on the withdrawal path in 5 of 12 months annually.

3800. STS Balances are a particularly unique attribute of STS.

3801. As Centra stated, it is not aware of any other transportation service, whether on the Mainline or other pipelines, which has such an attribute. *[RH-001-2016, Transcript Volume 2, Mr. Kostick, para. 2079 and 2080]*

3802. If shippers do not maintain a positive STS Balance, the Excess Withdrawal Charge is severe, a 25 percent penalty above the existing STS toll. TransCanada acknowledges that STS Balances and associated Excess Withdrawal Charges are intended to incent long-haul FT contracting. *[RH-001-2016, Exhibit A79155-2, Reply Evidence of TransCanada, pdf page 24 of 33, hard copy page 20, lines 1-4 (A5E7S2)]*

3803. This provides a significant benefit to TransCanada, and Centra agrees with maintaining STS Balances and Excess Withdrawal Charges as attributes of STS in the context of the existing STS service.

3804. The unique attributes of STS clearly demonstrate that it differs significantly from FT. In fact, tolling STS west of storage on Withdrawal Quantity, as if it were annual FT, would constitute, in our submission, discriminatory tolling. That is, it is applying the same toll to significantly different services.

3805. This is the case because STS is only firm on this path in 5 of 12 months, plus STS carries the threat of the 25 percent penalty if a positive STS Balance is not maintained through the use of long-haul injections. And of course, no UDC mitigation on the withdrawal quantity is available in the form of diversions or alternate receipt points rights. All of this was discussed by Centra's witness panel earlier this week. *[RH-001-2016, Transcript Volume 2, Mr. Kostick, para. 208]*

3806. A problematic aspect of TransCanada's application is that it simplistically focuses on making STS the same east-of-storage and west-of-

storage. *[RH-001-2016, Transcript Volume 2, Mr. Kostick, para. 2332]*.

3807. TransCanada's approach is to achieve this largely by tolling west-of-storage the same as east-of-storage -- that is, on the Withdrawal Quantity -- and by eliminating firm annual injections as a standard attribute of STS east-of-storage. TransCanada has proposed these changes without any cost analysis other than to say that the changes achieve standardization.

3808. Centra's position is that given the restrictive attributes of STS relative to the annual FT, these changes would result in overcharging STS shippers both west-of-storage and east-of-storage, thereby resulting in unjust and discriminatory tolling. West-of-storage tolling would become unjust by charging for STS as if it were FT, despite STS's significant restrictions relative to FT. And east-of-storage tolling would become unjust by continuing to charge for STS as if it were FT, despite the significant reduction in firm service that would occur with the elimination of firm annual injections.

3809. So as much as TransCanada has expressed concern about the current STS being unjust and discriminatory, the proposed changes are no less discriminatory and they propose to maintain the restrictive attributes of STS.

3810. I would ask the Board to consider this question. If Centra were now to pay for STS on Withdrawal Quantity, what possible tolling justification could there be for Centra to also face a prospect of a 25 percent Excess Withdrawal Charge for not maintaining a positive STS Balance? In other words, if TransCanada is tolling STS as if it were FT, why should TransCanada also be able to keep STS Balances as an attribute of STS?

3811. There is no cost basis for this whatsoever and we certainly won't find it in TransCanada's evidence.

3812. Centra's evidence has shown conclusively that STS is a restrictive service, that it is significantly different than annual FT; and STS west-of-storage should not be tolled as annual FT. Doing so would result in unjust and discriminatory tolling.

3813. I would also like to emphasize that developing an appropriate method of assigning costs to STS relative to FT is not an impossible task as TransCanada seems to have suggested in its response to Undertaking number 1 regarding cost allocation. Mr. Drazen outlined a straightforward and logical approach during

evidence. He stated:

> *"I'll step back and say, well, what are the aspects of STS that differ from FT? We should find a way to assign a cost to those and say, 'If FT is getting an attribute that STS is not, that cost should not be included in the STS charge.'*
>
> *But without having more information about what individual costs TransCanada incurs, we can't do that definition of the pieces of costs." [RH-001-2016, Transcript Volume 2, Mr. Drazen, para. 2404 and 2405]*

3814. He then goes on to summarize the appropriate way to allocate Mainline costs as:

> *"...first to find the total cost and decide how much, if any, uneconomic cost that should include, and then divide that total economic cost, if you will, into the parts that represent the different aspects of FT versus STS." [RH-001-2016, Transcript Volume 2, Mr. Drazen, para. 2407]*

3815. So we would submit that even if the Board were to be persuaded that it is the appropriate time to adjust STS, there is simply no cost evidence as would be required, and as described by both Mr. Drazen and Ms. Habib, to support any such change.

3816. We heard from TransCanada that there will be a long-term fixed-price contract offered through an open season in the very near future, in fact, even as early as this month.

3817. It's anticipated to be a firm service from Empress to Dawn for a 10-year term; and with no diversions or alternate receipt point rights *[RH-001-2016, Transcript Volume 1, Mr. Schultz, para. 393]*. It would be offered at a discount in the range of 40-50 percent below the annual FT toll for the same path *[RH-001-2016, Transcript Volume 1, Mr. Schultz, para. 381 - 383]*.

3818. This is of course of interest in this case, because it parallels how STS differs from the annual FT and warrants different tolling considerations. If TransCanada's open season for long-term fixed-price service is successful, TransCanada may be able to justify to the Board that different tolling of the long-

term fixed-price service relative to annual FT for the same path is warranted because of the absence of diversions, the 10-year term, and other factors.

3819. Mr. Schultz's description of the long-term fixed-price service is instructive. He stated:

> *"It would be a unique service and different service but yes, it would have a toll associated with it that would be less than if a shipper wanted to take FT service between those two points and get FT service which would come with different attributes." [RH-001-2016, Transcript Volume 1, Mr. Schultz, para. 399]*

3820. That same logic or similar logic applies to warrant different tolling treatment for STS relative to annual FT. The rationale is supported by the Board's RH-004-1986 decision, which Mr. Yates referred to earlier, in which it stated that the Board can set different tolls for traffic flowing under different circumstances or of a different description. *[RH-004-86, Reasons for Decision, pdf pages 67-68 of 122]*

3821. So this is yet another reason why it is more appropriate to consider changes in tolling to the Mainline in the context of the post-2020 era when all of the information can be before you.

3822. Turning now to the third point, the magnitude of the impacts on Centra.

3823. The impact of the STS application on Centra and its customers is significant -- an $11 million annual cost increase or $41 million impact to the end of 2020. *[RH-001-2016, Exhibit A78901-2, Centra Responses to NEB IRs, NEB/Centra 1.4 (b) (A5E4A4)]*

3824. On a percentage basis, Centra's STS costs are proposed to increase by 308 percent and its Mainline costs by 27 percent. *[RH-001-2016, Exhibit A78901-2, Centra Responses to NEB IRs, NEB/Centra 1.4 (a) (A5E4A4)]*

3825. This entire impact to Centra is due to the proposed tolling methodology change for STS west-of-storage as opposed to the proposed service changes. *[RH-001-2016, Exhibit A78901-2, Centra Responses to NEB IRs, NEB/Centra 1.5 (A5E4A4)]*

3826. This increase comes on the heels of an 8.5 percent increase to Centra's tolling costs resulting from RH–1-2014.

3827. TransCanada has suggested that "STS shippers also have the ability to mitigate the impacts of the potential cost increases through their elections." *[RH-001-2016, Exhibit A79155-2, Reply Evidence of TransCanada, pdf page 13 of 33, hard copy page 9 of 29, lines 28-29 (A5E7S2)]*

3828. I would ask you to consider Ms. Stewart's evidence on this point. It was unequivocal, "Centra" -- and she stated:

> *"Centra can't mitigate the cost impacts of this proposal. We're in long-term transportation and storage contracts that don't expire until March 31st of 2020 …" [RH-001-2016, Transcript Volume 2, Ms. Stewart, para. 2383]*

3829. To make matters worse for Centra, TransCanada confirmed that, of the approximately eight million in higher costs that Centra would pay to TransCanada in 2017, not a single penny would come back to Centra and its customers in the form of lower tolls. *[RH-001-2016, Transcript Volume 1, exchange between Ms. Van Iderstine and Mr. Harris, paragraphs 219-230]*

3830. Even after the toll reset for the 2018-2020 period, Centra would only see an offsetting toll decrease of less than one-half of one percent *[RH-001-2016, Exhibit A79462-2, Centra Gas Opening Statement, pdf page 3 of 3]*, providing essentially no mitigation of cost impacts.

3831. TCPL has further suggested that the impacts to the LDCs' customers will be manageable *[RH-001-2016, Exhibit A79155-2, Reply Evidence of TransCanada, pdf page 33 of 33, hard copy page 29 of 29, line 13 (A5E7S2)]*, provided that shippers' natural gas commodity and other costs are considered. *[RH-001-2016, Exhibit A79155-2, Reply Evidence of TransCanada, pdf page 15 of 33, hard copy page 11 of 29, Table 3-1 (A5E7S2)]*

3832. If this argument holds any attraction, we ask, why stop there? The STS cost impact could be even further diluted by comparing STS cost increases to all the other utility costs for end-use customers, including electricity and water.

3833. This is, we submit, a nonsensical suggestion. You have heard Ms.

Stewart. Centra cannot mitigate the cost impacts of this Application if it is approved.

3834. Mr. Yates, in his earlier argument, suggested that Mr. Drazen and Ms. Stewart's evidence with respect to an issue of rate shock was inconsistent. And while we don't have before us the cites that Mr. Yates was referencing you to, I would suggest to you that you consider Questions 2369 through 2384 of the evidence in Volume 2 and, in particular, the following, at -- starting at 2376 through to 2378 where Mr. Drazen was being questioned by Ms. Audino, and he stated:

> *"But you don't say increases are okay without first checking what's the driving factor for the increase. And here I'd say the questions I asked -- the first question is captured in the Latin phrase cui bono, C-U-I B-O-N-O; who benefits? Who benefits from increasing the cost for all these STS shippers?*
>
> *2377. And the other question, I mean, what's the need? What benefit is going to come from doing this operationally? You know, TransCanada will get more money. And even if it flows back most of that money to the customers eventually there is no benefit in terms of the operation or the design of the system."*

3835. I will now turn to our fourth point, standardization. The focus on standardization appears to have been a driving principle relied on by TransCanada to support the requested change to STS tolling methodology. It is Centra's submission that standardization is not a compelling argument.

3836. So in this section of my submissions, I'll address cross-subsidization and the current anomalies and inconsistencies on the Mainline, both of -- both issues which, we submit, impact on this issue of standardization.

3837. Centra submits that without evidence of any complaints or concerns by those who may be nominally or minimally impacted by the alleged cross-subsidization, the concern about cross- subsidization is misplaced and unsupportable. This is particularly so in reference to STS.

3838. The STS contracts about which TransCanada is now concerned are all ones which were negotiated between sophisticated commercial parties. There is no unfairness or inequity in these transactions. It is significant that none of the other shippers have complained about STS and none of the current users of STS

have claimed any inequities, unfairness or need for standardization.

3839. In the Board's RH-1-2014 Letter Decision, it stated that it:

> *"...has considered the relevant evidence placed on the record, including the contractual commitments made by the settling parties, in reaching its decision that the resulting tolls are just and reasonable and not unjustly discriminatory." [RH-001-2014, Letter Decision, pdf page 2 of 6]*

3840. Implicit in this statement, we submit, is that tolls may be discriminatory, but only if they are not "unjustly" so. The evidence adduced in this hearing demonstrates that STS is not "unjustly discriminatory".

3841. And while I don't want to keep having to refer to Mr. Yates' argument, once again, I'm going to respond to something he said about Mr. Drazen having allegedly agreed that there was cross-subsidization.

3842. Mr. Drazen did not agree that there was cross-subsidization. What he did say, and I would commend to you questions -- paragraphs 1891 to 1893 of Volume 2 of his evidence, and also paragraphs 2000 to 2008. But I'll take you to 1891. So Mr. Yates asks:

> *"Right. So you say the impacts of the proposed changes are large to STS shippers. Am I right that you're not concerned about cross-subsidization in this proceeding?"*

3843. And Mr. Drazen's response was:

> *"Actually I am because I found it out that TransCanada and Mr. Reed both talk about the current STS grading cross-subsidization among the STS shippers. Well, if that were the case, one would expect that changes would result in increases to some STS shippers and decreases to others to reduce the cross-subsidization. Instead, all we see are increases."*

3844. And then along further, at 1896, he says:

> *"So perhaps some aspects of the differences, let's say -- some aspects of the differences are to the benefit of any particular*

> *STS shipper and some are to the detriment. So overall there's no evidence that there is a significant cross-subsidization and there's no evidence in TransCanada's application of what the amount of the cross-subsidization might be."*

3845. If the Board is truly concerned about standardization, it should also be concerned about other anomalies on the system that may have elements of cross-subsidization in conjunction with one another.

3846. For example, Centra's witness panel described the cost allocation inconsistency whereby 465,000 Gigajoules per day of Western Mainline capacity, from Emerson to North Bay Junction, is currently allocated to the Western Mainline when this capacity is being used to serve Eastern Triangle demand. *[RH-001-2016, A78322-2, Evidence in Chief of Centra, pdf page 21, lines 34-37]*

3847. This is anomalous. The intention of the RH-1-2014 decision was for Eastern Triangle tolls to recover all Eastern Triangle costs. Centra's opinion and submission, this is an issue would most appropriately be dealt with in the post-2020 period, just as we are submitting that is the appropriate time when STS be considered.

3848. The specific examples provided by TransCanada as representing non-standard aspects of STS, in our submission, only serve to demonstrate how well the flexibility of this service has met the needs of STS customers and has complemented FT, all of which should lead the Board to conclude that TransCanada's reliance on standardization as a pillar of its argument is not persuasive and not determinative.

3849. I would conclude my comments on the issue of standardization by referencing Mr. Reed's reply evidence where he states:

> *"Likewise, simply because a shipper files a complaint asserting unjust discrimination does not mean that there is unjust discrimination." [RH-001-2016, Exhibit A79155-3, Reply Evidence of John J Reed, pdf page 9 of 27, hard copy page 7, lines 23–25 (A5E7S3)]*

3850. One could easily substitute the word TransCanada in that sentence and then it would read, "Likewise, simply because TransCanada files a complaint asserting unjust discrimination does not mean that there is unjust discrimination."

3851. I'll now turn to my fifth issue, timing.

3852. As you've heard from us previously, that even if this application has merit, the timing of the application should raise a number of serious concerns for the Board.

3853. The balance of interest among all stakeholders recently established by the RH-001-2014 Decision would shift. The toll certainty and stability established under that decision would be disrupted. STS must be robust and enduring; mainline segmentation is on the horizon. And post-2020 is uncertain.

3854. I propose to address each of those very briefly.

3855. So with respect to the balance of interests, the RH-001-2014 reasons for decision of the Board established a balance of interests between TransCanada and its shippers that was intended to endure for the 2015-2020 period.

3856. TransCanada's proposal to apply the STS toll to the withdrawal quantity for markets west of storage instead of the injection quantity is an exercise in cost redistribution to the two largest captive shippers on the Western Mainline. It would result in a shift in cost responsibility for underutilized Western Mainline capacity and competitive risk from TransCanada to west-of-storage STS shippers, a topic that is clearly not contemplated in this tariff amendment application.

3857. Toll certainty and stability. The Board has heard from all of the active intervenors that of paramount importance of the RH-001-2014 decision was toll stability and certainty. Numerous references to the evidence and the decision arising from that hearing have been cited by the active intervenors relating to this issue. The application, regardless of the outcome, seriously disrupts that stability and certainty.

3858. In the RH-001-2014 Decision, the Board approved the six-year fixed-toll period as a result of TranCanada's contested tolls application. Mainline shippers are now midway through year two of this six-year fixed-toll period, and TransCanada is already attempting to disrupt that certainty and stability in relation to the costs of STS for Centra.

3859. Mr. Drazen, in his evidence, referenced a quote from Mr. Reed taken from the RH-001-2014 proceeding in which Mr. Reed stated that TransCanada

was building on the RH-003-2011 Decision with respect to toll stability and certainty, and stating that TransCanada would be:

> *"...retaining tolls that are fixed over a number of years, continuing to provide shippers with longer-term toll stability, and in fact, extending the fixed tolling period through 2020." [RH-001-2016, Appendix 1 Evidence of Drazen Consulting, pdf page 16, lines 12-15]*

3860. STS must be robust and enduring. It is not a service contemplated for use in short-term gas supply plans or to be tweaked on an annual basis. Rather, it is relied on as a critical tool for long-term gas supply plans. If that historical reliance is to be altered, it should be considered in context of all the other changes that are to occur at the end of the 2015-2020 transitional period.

3861. It is without dispute that storage plays a critical role in an LDC's gas supply plan and that it is an integrated part of a long-term gas supply portfolio. It is also not disputed that STS was specifically designed to facilitate use of the storage to allow Centra and the other LDCs to balance their market requirements for gas.

3862. In this context it's reasonable to expect that STS contracts that underpin multi-year storage contracts like Centra's should only be proposed to be altered with a suitable lead time that respects these long-term contractual commitments.

3863. Changing decades-old STS tolling and service parameters related to LDC storage operations, a primary tool in managing a gas supply portfolio, undermines the very concept of predictability and stability as has been evidenced by the proposed 27 percent increase in Centra's Mainline transportation costs.

3864. We know that mainline segmentation is on the horizon. Mr. Johannson described the Mainline as recently as May 27th, 2016 as becoming two utilities post-2020, with TransCanada's expectation that the Western Mainline would be lightly regulated, thereby having flexibility to make volumes move as TransCanada sees fit. *[RH-001-2016, Exhibit A77195-2, TransCanada Responses to Centra IRs No. 1, Centra/TCPL 1.05 (A5C1U6)]*

3865. We know the Board itself has endorsed the concept of Mainline segmentation.

3866. TransCanada further argues that the proposed changes to STS are necessary to support the cost-based user pay and economic efficiency principles.

3867. In cross-examination, Ms. Habib reviewed these principles with Mr. Yates. She confirmed that the appropriate price signals should promote economic efficiency and she agreed that economic efficiency includes the promotion of rational investment decisions. But we'd submit that the proposed STS changes will not impact any investment decisions prior to segmentation of the system in 2021.

3868. No new STS customers have come forward and no new facilities have been proposed to provide STS service. This is most assuredly so for the STS customers on the underutilized Western Mainline.

3869. As there are not upcoming investment decisions, TransCanada's proposed changes to STS are not necessary to promote economic efficiency in the period leading up to 2021.

3870. In accepting this proposition, the Board would not be the first regulator to reject as meaningless a price signal prior to major changes and circumstances.

3871. Mr. Mikkelsen described where the Alberta Utilities Commission had rejected a proposed tariff change because *"it would not provide a useful or effective economic signal"* in a period prior to significant change on the Alberta electric system.

3872. With the prospect of segmented tolling and different toll designs, service offerings and tariff provisions on the Western Mainline and Eastern Triangle, the rationale for standardizing STS now is, we submit, premature and inefficient.

3873. Post-2020 uncertainty. The landscape in 2021 is unknown to shippers. It is possible, of course, that TransCanada may have a plan that it's not yet shared with the shippers and the Board. And if so, how the post-2020 landscape will look is critical to decisions that shippers will make surrounding their use of such services as STS. That evidence is not before the Board.

3874. There is nothing to preclude TransCanada, itself, from asking for further changes to STS post-2020. *[RH-001-2016, Exhibit A79155-3, Reply*

Evidence of John J Reed, pdf page 9 of 27, hard copy page 7, lines 23–25 (A5E7S3)]

3875. What is known is that the Board has directed TransCanada to return to the Board in 2020 for a full tolls hearing, at which time TransCanada would be required to file information which would demonstrate cost of service including operating expenses, depreciation, return of capital and income and other taxes, none of which was filed in this application. It would consider such factors as the reasonable rate of return and the compendium of tolls and regulated services which are being provided.

3876. Given that this is going to take place in an environment where the segmentation of the Mainline is anticipated but the form and structure of the Mainline is unknown, Centra submits the suggestion that the Board would approve STS tolls changes in 2016 and that they would be reasonable in 2021 is speculative at best.

3877. So you'll be pleased to know I'm coming to the end. So I'd like to summarize.

3878. TransCanada has not provided sufficient evidence to justify the proposed change to the tolling methodology for STS and thus interfere with the 20152020 fixed tolls period.

3879. There is no need for the STS application.

3880. The current Mainline tolls provide TransCanada with more than reasonable assurance of Mainline cost recovery during the six-year, 2015-2020, fixed tolls period.

3881. There is no need to disrupt the certainty and stability established under RH-001-2014, particularly given TransCanada's repeated assertions at that time that approval of the contested tolls application would provide certainty and stability for shippers in years to come *[RH-001-2016, Exhibit A78322-3, Evidence of Drazen Consulting, pdf pages 13 –18 of 42, hard copy pages 12-17, section "The Recent Past: Toll Stability" (A5D5Z0)]*; and it will undo the concept of the RH-001-2014 decision as a balance of risks and interests between stakeholders.

3882. There is no material benefit to this application.

3883. There is no data to support the application. TransCanada has not adduced any evidence that it's incurring any new costs to provide STS to Centra compared to years past, and has ignored the significant differences between STS and FT that warrant different tolling considerations.

3884. The STS application is essentially an attempt to incrementally shift cost responsibility for underutilized Western Mainline capacity and Mainline competitive risk from TransCanada to its shippers, specifically the STS shippers. All of this is being done prior to the regulatory proceeding for the post-2020 period when the Board will consider numerous details regarding segmentation, including potential stranded assets.

3885. Centra opposes the application.

3886. Now before I conclude, I would like to comment a bit on the public interest. When Mr. Yates was discussing tolling principles, one of the ones that seemed to have gotten a fairly short shrift was the fundamental role of this Board, which is to act in the public interest.

3887. It will come as no surprise to you when I say that Centra represents the interests of its customers. Mr. Reed himself brought those customers up during his oral evidence.

3888. What I've asked you to do is to consider how Centra might explain a 308 percent increase in STS costs, or more specifically a 27 percent increase in Mainline costs to its customers as it will have to do in its regulatory filing with Manitoba Public Utilities Board.

3889. They will say, "I thought when you told us that there was an 8.5 percent increase in tolls that this was part of an industry-wide give and take for toll certainty until the end of 2020."

3890. They will ask, "What is the driving factor behind the cost increase?"

3891. And when we tell them that Centra will be getting more injection quantity, they will ask, "Why are we paying for something which we will never use?"

3892. And then they will ask, "Is the toll increase going to improve the pipeline's efficiency?"

3893. And the answer to that will be, "No."

3894. And they will ask, "Is this cost increase going towards enhancing the service being provided?"

3895. And the answer to that will be, "No."

3896. And they will ask, "Has it become more difficult for TransCanada to administer this service?"

3897. And the answer will be, "No."

3898. And they will ask, "Has anyone complained about this service?"

3899. And the answer will be, "No."

3900. And they will ask, "Is TransCanada's set revenue requirement or earnings suddenly deficient?"

3901. And the answer will be, "No. In fact, they're doing pretty well."

3902. They will ask, "So please tell me, what are we receiving in exchange for now paying more?"

3903. And Centra will say, "Well, we're not sure. We actually don't know. But we do understand that it will standardize and modernize the service."

3904. We anticipate that Unions' customers in Kenora and Dryden and Sault Ste Marie will all have similar questions, but I am sure Mr. Smith will address that in his closing.

3905. Centra, Union, and Enbridge collectively represent nearly 4 million end-use customers. They are the public. The interests of the end-customers of these LDCs should be foremost in the Board's consideration of the public interest in this case.

3906. The Board should reject the application in its entirety and direct TransCanada to consult with its shippers to establish a timeline for stakeholder engagement and consultation on the matter of Mainline segmentation for the post-

2020 period.

3907. Subject to any questions you may have for us those are my comments. Thank you for your attention and consideration.

3908. **THE CHAIRMAN:** Apparently, Ms. Van Iderstine, you were quite clear and we have no questions.

3909. **MS. VAN IDERSTINE:** Thank you very much.

3910. **THE CHAIRMAN:** Mr. Langen, I do have a question for you. I noticed it's 11:25. And basically the question is, what's your preference -- an early lunch and we come back at 12:30 or start now?

3911. **MR. LANGEN:** Thank you, Mr. Chairman. I'm in your hands. I'm quite happy to go for an early lunch and not break up my argument. But alternatively, if you want me to go ahead I can break it up. But I will be an hour.

3912. **THE CHAIRMAN:** We have a preference to hear it all together. But there are two options here -- 11:30 to now and take a later lunch or, as I said, take a -- we can go either way, but we would like to hear it all in one shot.

3913. **MR. LANGEN:** Again, happy to go now so it's your -- if you want an early lunch then off we go; we'll take a break for an hour. And alternatively, if you want to have a late lunch we'll take lunch now.

3914. **THE CHAIRMAN:** We do note our call. Let's go with your presentation.

3915. **MR. LANGEN:** Thank you.

3916. **THE CHAIRMAN:** We'll take about five minutes now.

--- Upon recessing at 11:27 a.m./L'audience est suspendue à 11h27
--- Upon resuming at 11:34 a.m./L'audience est reprise à 11h34

3917. **THE CHAIRMAN:** Mr. Langen?

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MR. LANGEN:

3918. **MR. LANGEN:** Good morning, Mr. Chairman, the Panel Members.

3919. As is practice before the Board and for convenience, I too have provided a copy of my speaking notes to the court reporter. Those notes contain citations to the evidentiary record and the authorities that I intend to rely on.

3920. I respectfully ask that the court reporter insert those citations into the transcript without my having to refer to them orally. In making this request, I caution the court reporter that I may deviate from my notes, particularly given what Mr. Yates said this morning.

3921. And additionally, in the course of argument, I will be relying on some authorities. I have copies of those authorities here and I've provided them to all counsel, including Mr. Yates, this morning, as well as Board counsel.

3922. Mr. Chairman, I am very pleased to present the final argument of Enbridge Gas Distribution Inc.

3923. Before getting into Enbridge's prepared argument, I want to address a few things that Mr. Yates raised this morning in TransCanada's argument-in-chief.

3924. The first is that Mr. Yates identified that Gaz Métro does not oppose the application. It doesn't support it either. It's evidence in argument is that the current flexibility of STS will be reduced. Some, including Enbridge, who are opposed to the application, completely agree.

3925. Mr. Yates this morning indicated that the focus of the intervenor evidence was not on the merits of the application or proposed changes. And with respect, I disagree. Enbridge did in its evidence address four of the proposed changes to STS in the alternative.

3926. And Mr. Yates says that the intervenor evidence failed to present any "arguments" opposing the changes using tolling principles. And I'm sure Mr. Yates would agree evidence is not argument; properly, argument uses evidence to persuade. The time for argument is now and not when evidence is filed.

3927. Mr. Yates says the theme -- he discussed a number of themes with

you. One of the themes he discussed was "don't change now because change is on the horizon." And he said this is a spurious argument, I believe. He says you have a binary decision, a context, what he referred to, I believe, as "environment", the environment, is secondary to the Board's tolling principles.

3928. I submit to you that context is rooted in the NEB Act. Tolls must be just and reasonable. Pipelines cannot unjustly discriminate context in forums, whether or not something is just or unjust.

3929. Now, if something's unjust it's not binary. You need to have the context in order to make the assessment, and for this reason, the context or the environment, as Mr. Yates indicated this morning, is of import and should be considered.

3930. Now, Mr. Chairman, I will move on to Enbridge's prepared argument. To provide you a road map, I will address the premise upon which TransCanada's application is based; the position of Enbridge; fairness, equity, and transparency; why the application is premature; why certain of the proposed changes to STS should not be approved; and finally, transitionary relief and related issues should changes to STS be approved, including issues relating to STS tolls.

3931. The Premise of the Application: TransCanada's application is premised on the concepts of fairness, equity and transparency, and asserts that given the historical and current terms under which STS shippers have been contracting for the service, standardization of the service is required *[A75561-1 Apg 13 and 20-21]*.

3932. In seeking to standardize STS, TransCanada cites and relies on the principles of: no acquired rights, no unjust discrimination, economic efficiency, and cost-causation or user pay. These principles are well known and are rooted in Part IV of the Act, as Mr. Yates referred to, notably in sections 59, 62, 63, 67 and 68 of the Act *[RSC 1985, c N-7 ("NEB Act")]. [A75561-1 Apg 13; A75561-2 Apg 10-14; A79424-1 Apg 4]*.

3933. Enbridge does not dispute the relevance of these well-known tolling principles to the Application. Enbridge does dispute how TransCanada applied these principles in making the Application. Additionally, Enbridge is of the view that the Board should not, in applying these principles, lose sight of the public interest. The public interest, as you know, has a role in all Board decisions.

3934. Enbridge's Position: Enbridge respectfully submits, for the reasons I am about to submit to you, that the Application is premature and for this reason should be dismissed.

3935. Should you conclude that this is not the case, Enbridge submits in the alternative that certain of the individual changes to STS proposed by TransCanada should be rejected.

3936. Finally, to the extent the Board approves any changes to STS, then the transition period to implement those changes should be extended beyond the April 2017 date proposed by TransCanada, and this could include grandfathering certain aspects of the current STS until the end of 2020 *[A78344-2 Apg 27-28; A79469-2 Apg 2]*.

3937. Fairness, equity, and transparency. TransCanada relies heavily on the concepts of fairness, equity and transparency. It cites these concepts many times in its evidence *[A75561-1 Apg 13, 15, 20-21, 24, 45, 53; A79155-3 Apg 9, 12, 23, 26, 34.],* the penultimate time being the concluding statement in its reply evidence, and I quote:

> *"As such, the proposed amendments will result in STS becoming a transparent, fair and equitable service." [A79155-2 Apg 33, line 23]*

3938. Interestingly, TransCanada made essentially the same statement in concluding its Application but it was qualified with the word “more", stating:

> *“The result will be a more transparent and equitable service.” [A75561-1 Apg 53, line 38]*

3939. I raise this not so much to point out an inconsistency or an apparent change in position that may have occurred as TransCanada progressed through the proceeding, but because the requirement for transparency, fairness, and equity does not simply apply as between shippers.

3940. It also applies between the pipeline and shippers *[1T449-450]*. It's the pipeline that must charge tolls, paid by shippers, that are just and reasonable *[NEB Act, s 62]* and it's the pipeline, not shippers, that must not unjustly discriminate *[NEB Act, s 67]*.

3941. TransCanada has had concerns with the equity of STS since 2011. That's their evidence, and in 2012 it went so far as to stop listing STS in open seasons because of this perceived inequity. But beyond that, it did not take any material steps to correct it until February 2015 *[A77195-3 Apg 1-5; A79155-2 Apg 16, line 4]*.

3942. At some point during this period, with apparent knowledge of this perceived inequity, TransCanada also concluded that the STS tolls were not just and reasonable. Yet, it did nothing until February 2015 to right what it perceived as wrongs. *[A77195-3 Apg 3-5; 1T234; 1T1325]*

3943. In the period between 2011 and early 2015 TransCanada continued, I submit, through its actions, to implicitly represent to existing STS shippers that STS was a completely compliant service. TransCanada went through one NEB proceeding where changes to STS were sought -- the RH-001-2013 proceeding -- and one where STS was discussed -- the RH-001-2014 proceeding *[A78335-2 Apg 11; NEB Decision RH-001-2013 Apg 14-16/HC 14-16; NEB Decision RH-001-2014 Apg 26-27/HC 9-10]*.

3944. Through 2011 to early 2015, STS Balances were permitted to accumulate for unrestricted future use without notice to shippers that TransCanada was questioning the equity of STS.

3945. On this point, Enbridge's evidence is that the current large STS Balance that it holds grew significantly following the RH-003-2011 proceeding due to the necessity to contract for long-haul FT in the absence of available short-haul FT *[A77195-3 Apg 3-5 and 72-74; A78322-2 Apg 5; A75561-1 Apg 31; 2T2573-2586]*.

3946. TransCanada also continued to permit annual STS renewals each and every year during the 2011 to early 2015 period. Those STS contract renewals were contributed to -- contributed to the accumulated STS Balances that TransCanada now calls "paper balances" and seeks Board approval to terminate *[A77195-3 Apg 66-69 and 72-74; A78344-2 Apg 17; A75561-1 Apg 28-31 and 50]*.

3947. The simple fact is that during the 2011 to early 2015 period, STS shippers relied on the implicit representations of TransCanada to contract for and use STS and to build unrestricted STS Balances for future use.

3948. More importantly, given that STS is a companion service that incents shippers to contract for long-haul FT, the implicit representation in part resulted in Enbridge making significant financial commitments by contracting for substantial amounts of long-haul FT *[A78344-2 Apg 11-12 and 17-18]*.

3949. Mr. Chairman – this case is not a situation where a shipper is raising equity issues with an existing or proposed new service *[A77195-3 Apg 3-5]*. This is a case where the pipeline asserts that there is an equity issue with an existing service it offers.

3950. Yet in doing so, the pipeline that invokes fairness and equity is the very same one that implicitly represented for years that all was fine with STS and shippers relied on that representation to conduct their gas supply planning and to make significant long-term financial commitments through long-haul FT contracts.

3951. For Enbridge, this includes its committed long-haul FT volumes under the RH-001-2014 settlement, which cannot be converted or changed until 2020. *[A78344-2 Apg 11-12 and 17-18; A79469-2]*

3952. Where is the fairness and equity in that?

3953. Similarly, TransCanada invokes "transparency" in making this Application. With respect, TransCanada's actions or inactions during the 2011 to early 2015 period were in no way "transparent". Nor, as I explored in cross-examination, is TransCanada's approach in this proceeding to the issue of the Balance Transfer Agreement between it and Enbridge *[1T831-900]*.

3954. You will recollect that Mr. Yates explored this in cross-examining Enbridge, taking the position that the nature of the six-month termination period in that agreement would not affect Enbridge's gas supply planning *[2T2645-2664]*.

3955. And with respect, that is not the point. TransCanada says this Application is about standardizing STS because various STS shippers have non-standard contracts leading to unique terms of service. It did so while only offering a fleeting reference in the Application to the Balance Transfer Agreement.

3956. Instead Enbridge had to draw that substantive nature of that balance

transfer agreement out of TransCanada through information requests *[1T831-847]*.

3957. The point is, TransCanada, although it espouses the need for transparency as the basis for the Application, failed to be transparent about the non-standard Balance Transfer Agreement when it brought the Application. And this lack of transparency continues since Enbridge still does not know whether or not the agreement will be terminated *[1T865-870]*.

3958. Mr. Schultz for TransCanada testified that transparency meant: understanding how parties are being treated and for things to be observable and or known to all participants *[1T453-454]*.

3959. I suggest to you that TransCanada did not meet Mr. Schultz's meaning of transparency throughout the 2011 to early 2015 period when it had concerns about the equity of STS but failed to act on those concerns while still allowing existing STS shippers to rely on STS in making long-term transportation commitments; and when it failed to raise the Balance Transfer Agreement in the Application.

3960. On this point, it is worth reciting here the Board's view articulated in the RH-3-2004 Decision that transparency on the part of a pipeline is a guiding principle to be considered by the Board in making decisions. And this is on hard copy page 9 of that decision, Adobe page 23, and I quote:

> *"The Board reiterates the oft-repeated principle that shippers are to know in advance of [contract] negotiations the terms and conditions of access to a pipeline. This ensures transparency and puts the pipeline and its customers on an equal footing in negotiating a business arrangement." [NEB Decision RH-3-2004 Apg 23/ HC 9]*

3961. Mr. Chairman and Panel Members, for all the reasons I just outlined, Enbridge submits the behaviour of TransCanada should inform -- it's the context and it should greatly inform your consideration of and decision on this Application. *[A78344-2 Apg 15-16]*

3962. The Application is premature. The Board's decision in the RH-001-2014 proceeding should also inform your consideration and decision on the Application, and more specifically, it should inform your decision that the

Application is premature.

3963. In the RH-001-2014 Decision the Board approved the current Mainline toll design and tolls to 2020, subject only to a limited review for the period of 2018 to 2020. *[A78344-2 Apg 15-16; Decision RH-001-2014 Apg 87-90; 107-108/HC 70-73; 90-91]*

3964. The Board did so in the context of a settlement between TransCanada and its largest shippers, including Enbridge and Union Gas who both oppose this Application. *[Decision RH-001-2014 Apg 18/ HC1]*

3965. It did so in the context of the need for Mainline toll certainty and stability during the 2015 to 2020 tolling and transition period. *[A78344-2 Apg 15-16; NEB Decision RH-001-2014 Apg 89-90/HC 72-73; 1T1283]*

3966. And it did so in the context of a future comprehensive toll application for the 2021 to 2030 period that was contemplated in the settlement. *[Decision RH-001-2014 Apg 18/HC1]*

3967. And most importantly, it did so in the context of TransCanada itself providing evidence to this Board that the tolls, the ones that were intended to provide certainty and stability during the transitionary period, were just and reasonable. *[1T1235-1306]*

3968. To use Mr. Harris's words, the toll stability and certainty was, and I quote:

> *"...a selling feature of that application." [2T1505]*

3969. Mr. Chairman and Panel Members, the RH-001-2014 Decision. The pending comprehensive toll application for 2021 and beyond, one that TransCanada has confirmed will be premised on a substantive assessment of its suite of services, including possibly STS *[A77195-1 Apg 15-16]*; the fact that Enbridge, as well as other shippers, committed to significant STS-Linked long-haul FT volumes leading up to the RH-001-2014 toll proceeding, doing so at a time when TransCanada harboured perceived concerns surrounding the fairness and equity of STS and its tolls *[A78344-2 Apg 15-16; A78322-3 Apg 19-20; A78335-3 Apg 7]*; and the fact that those committed long-haul FT volumes that Enbridge and other shippers committed to under the Settlement cannot be converted or changed under the Settlement until after 2020, thus preventing

holistic changes to transportation portfolios versus piecemeal adjustments *[Exhibit A78344-2 at 10, 16-17; 2T2681-2696]*, all militate against making changes to STS now.

3970. In defence of the Application, TransCanada cites what it calls the Board's encouragement in the RH-003-2011 Decision for TransCanada to proactively manage the Mainline. In doing so, TransCanada is suggesting that this Application is some way an example of this. *[A79155-2 Apg 9; 1T693; 1T693-696]*

3971. With respect, it has been three years since the RH-003-2011 Decision was issued in March 2013, and it took TransCanada two years from that decision before it raised its perceived concerns with STS shippers, in February of 2015. *[A77195-3 Apg 3-4]*

3972. In light of its actions in 2012 to halt offering STS to new shippers because of a perceived inequity in STS, it is more than a bit late for TransCanada to raise proactive management as a shield. Now is simply not the time for TransCanada to suggest it's being proactive. It rings rather hollow.

3973. Had TransCanada been proactive as it was encouraged to do by the Board in the RH-003-2011 Decision, STS shippers would not be facing fundamental changes to an existing service and the related toll impacts during what is supposed to be a period of toll stability and certainty that arose as a result of a settlement.

3974. In this regard, I draw the Board's attention to its Decision in the RH-002-98 proceeding relating to an application by a shipper, BC Gas Utility Ltd., for a new receipt point, service and tolls on the Westcoast System. In that case the Board had occasion to affirm its statutory mandate under sections 62 and 67 of the Act, the same sections that are in play in this proceeding.

3975. And in doing so. it noted, and I quote at hard copy page 12:

> *"The Board has a wide discretion in choosing the method to be used by it and the factors to be considered by it in assessing the justness and reasonableness of tolls." [NEB Decision RH-2-98 Apg 18/HC 12]*

3976. And this goes to my point about context that I raised at the beginning

of my argument.

3977. In respect of discrimination in service or tolls, the Board noted on the same page, and I quote:

> *"The Board continues to be of the view…that it should follow a broader interpretation of its powers under section 62 with respect to the meaning of 'traffic' and factors to be taken into consideration when determining whether there are 'substantially similar circumstances and conditions'." [NEB Decision RH-2-98 Apg 18/HC 12]*

3978. Finally, the Board concluded that any assessment under sections 62 and 67 is fact-specific and that tolls must balance divergent interests. And I quote, the same page:

> *"The Board must examine the facts of each case. The relevant factors will vary, and have varied, in each case. The tolling regime for an existing pipeline is a complex matter -- a combination of regulation and settlements today -- that evolves over time to address changing demands and needs, and always requires balancing of divergent interests." [NEB Decision RH-2-98 Apg 18/HC 12]*

3979. Again, context.

3980. Mr. Chairman, this past guidance by the Board could not be any more germane to this case.

3981. The tolling structure of the Mainline is as complex as it has ever been, having just gone through two successive and substantial structural changes in each of the RH-003-2011, RH-001-2014 proceedings, with the latter case involving a complex settlement. *[A79155-2 Apg 11; A78335-2 Apg 12-16]*

3982. Divergent interests were balanced in those proceedings. We are in a transition period for the Mainline, one that is directed at toll stability and certainty. Divergent interests, including those of STS shippers and all shippers, will again be considered in the post-2020 toll proceeding. Now is simply not the time to make changes to STS.

3983. Mr. Chairman and Panel Members, for all the reasons I just discussed, the Application is premature. TransCanada should be directed to address the proposed changes to STS as part of its post-2020 tolls application.

3984. The proposed changes: To the extent that the Board concludes that the Application is not premature, then it properly must embark on an assessment of the proposed changes to STS. And before I address those proposed changes, I want to briefly discuss two aspects of STS that were in play during the proceeding.

3985. The first aspect is whether or not STS is intended to incent long-haul FT contracting. It was a surprise to hear during cross-examination that in TransCanada's view, STS is not intended to incent long-haul FT contracting. *[1T455-465]*

3986. I was surprised when Mr. Harris told me this because in its response to an Enbridge Information Request TransCanada stated, and I quote:

> *"In TransCanada's opinion, the service overall will continue to incent contracting for long-haul FT and be non-discriminatory." [A77195-3 Apg 11-12]*

3987. Now, perhaps TransCanada thinks there is a distinction between whether STS is intended to incent, or whether STS just simply does incent, long-haul FT contracting. If so, I submit to you that this is distinction without a difference.

3988. TransCanada agrees that STS does incent long-haul FT contracting; it agrees long-haul FT contracting is preferred and should be promoted; and it agrees that long-haul FT contracting results in increased revenue. *[A77195-3 Apg 11-12]*

3989. This view is shared by Ms. Habib, Union's expert witness. *[3T3332-3334]*

3990. The point, Mr. Chairman and Panel Members, is that in its current form of STS does incent long-haul FT contracting and it will not do so to the same extent, given the reduction in flexibility and reliability of the service, if the proposed changes are approved. *[A78344-2 Apg 24; 2T2339-41]*

3991. I remind you that Mr. Harris for TransCanada confirmed in cross-examination that, and I quote, "absolutely" it is shippers and not TransCanada who are in the best position to know what will incent them to contract for long-haul FT. *[1T464-465]*

3992. The second aspect I want to touch on was raised by Mr. Yates in cross-examination of Enbridge and Centra and he raised it again this morning in his argument. Specifically, it is the implied suggestion that because certain STS injection volumes are not actually physically injected into a storage facility, that this somehow is an abuse of STS. *[2T2139-2205; 2T2515-2575]*

3993. Let's be clear, Mr. Chairman. STS is not simply a "storage service". It is a "balancing service" that allows shippers to balance daily and seasonal market demand. It says that in the 2005 TTF Resolution relating to changes to STS, and it says that in the February 2015 TTF Issue Sheet that TransCanada used when it first proposed its changes to STS shippers. *[A77195-2 Apg 22, 54, 73-6; 1T466-476; 2T2559-2587; 3T3259-3261]*

3994. Currently, the TransCanada tariff does not require STS injections to be physically injected into storage. This makes perfect sense.

3995. As Mr. Welburn stated in cross-examination, Enbridge uses STS injections in two primary ways, to physically inject gas it into storage, and the second is to fill its short-haul transportation so as to offset gas it would have otherwise taken out of storage. *[2T2522-2523]*

3996. In short, to use STS only for physical injection into storage instead of balancing would see gas molecules unnecessarily pass each other as one molecule left storage and another entered. This is simply nonsensical.

3997. Finally, the proposed changes to STS do not in any way require STS injection volumes to be physically injected into storage. What Mr. Yates raised in his argument earlier today is not being solved. The tariff doesn't require that the gas be injected into storage; it just gets delivered to a delivery point -- a defined delivery point. So his concern that he raises is not solved by the changes that they're proposing.

3998. Now, the submissions I am about to make relate to the four proposed changes to STS. As Enbridge indicated in its evidence, it takes no position in respect of the other proposed changes. *[A78335-2 Apg 5]*

3999. TransCanada proposes to limit or cap STS Balances going forward so as to prevent large balances being accumulated. In doing so, it proposes that all existing previously accumulated STS Balances in excess of the proposed cap be terminated. *[A75561-1 Apg 30-33 and 50; A77199-2 Apg 8]*

4000. TransCanada states that STS balances are *"simply paper balances that bear little relationship to the actual quantities of gas in storage"* and asserts that there is a risk that these existing accumulated STS balances could somehow be abused by STS shippers choosing to hold 1 GJ/day of long-haul FT. *[A75561-1 Apg 31-32]*

4001. First, I want to remind you of my submissions earlier on fairness, equity, and transparency. A portion of the existing accumulated STS Balances that TransCanada now says should be terminated were accumulated for future use while TransCanada implicitly represented to STS shippers that STS was a compliant service when it, itself, perceived it was not. STS shippers relied on those implicit representations in making contracting decisions and, ultimately, to accumulate the STS balances that exist today. *[A77195-3 Apg 72-74; 2T2586; 2T2652-2654]*

4002. Second, the accumulation of STS balances is inherent in the design of STS and it's necessary for STS to work as it is designed. Simply, an STS shipper cannot conduct an STS withdrawal at the STS toll without first accumulating an STS balance. *[A75561-1 Apg 28-29; 2T587-596; 2T2578-2579]*

4003. Finally, shippers paid for these balances which provide flexibility in balancing their daily load requirements through the STS demand charge, and these balances have an intrinsic future value that is equivalent to the STS excess-withdrawal fee. *[A78344-2 Apg 12, 17-20; A79469-2 Apg 1]*

4004. Whether an STS shipper realizes this intrinsic value properly turns on the choices made by that STS shipper.

4005. As an example, the intrinsic value of Enbridge's STS balance is approximately 27 million. *[A 78344-2 Apg 20]*

4006. Its actual value, should the application be approved in its entirety, is forecast to be 700,000 annually. *[A78909-2 Apg 4-8; A79469-2 Apg 1]*

4007. All of this, the design of the service, the fact that STS balances accumulated when TransCanada perceived inequity in STS, and the intrinsic value in STS balances, militates against any existing -- terminating any existing accumulated STS balances.

4008. The threat of a 1 GJ per day long-haul FT scenario combined with the large STS balance that TransCanada asserts is a risk to the operation of STS or the mainline has not materialized and it is very unlikely that it will. Although Gaz Metro suggested it might do this, it has not. *[Exhibit A77195-2 at Apg 58-9]*

4009. Further, STS has been in place for some 40 years; STS balances have been in place for 11 years and to date this 1 GJ scenario has not happened. *[A77195-2 Apg 58-59; A75561-1 Apg 20; 2T2480-2481; A77195-2 Apg 53-56]*

4010. Additionally, each of Enbridge, Union Gas, and Centra, who each hold large accumulated STS balances, have contracted for significant amounts of a long-haul FT, most of which goes through to 2020. *[A78344-2 Apg 19; A78322-2 at Apg 8; A78905-3 at Apg 6ff, 66; A77195-2 Apg 22-3; A77195-3 Apg 70ff; A78901-3 at Apg 20; A78909-3 Apg 74- 86; 2T2178-9, 2T2383]*

4011. More importantly, the STS toll design both ensures that no cross-subsidization would occur from this scenario and severely dis-incents any shipper from actually embarking on it.

4012. Specifically, TransCanada's evidence is that it reserves Mainline capacity for STS withdrawal contract volumes. *[A75561-1 Apg 27]*

4013. And, as a result, the amount of capacity that is reserved for STS service is equivalent to the STS contract demand and bears no relation to any accumulated STS balance.

4014. The STS toll is equivalent to the short-haul FT toll on the same path and, as the Board noted in RH-003-2011, because STS flows have the same system impacts as FT service, that's why the toll's the same. *[1T501-502; 1T515-533; A77199-2 Apg 2]*

4015. So notwithstanding the amount of STS balance, the fact is that the Mainline is kept whole from a revenue perspective. An STS shipper with 1 GJ per day of long-haul FT will pay the STS demand charge equivalent to the FT toll on the same Mainline path on all withdrawal volumes up to its STS contract

demand. On any withdrawal volumes above that STS contract demand it must pay STS Overrun toll which, if this application is approved, is 125 percent of the FT toll. *[1T591-609]*

4016. In this regard, the Mainline is kept whole but the shipper is not. The STS shipper is effectively using STS as FT but it does not receive all of the many attributes of FT service -- diversions, assignability, and, most importantly, annual firm service. *[2T2075-81; A77195-3 Apg 7]*

4017. If you'll recollect, STS currently only has firm service on withdrawal in the winter.

4018. For this reason, what TransCanada is suggesting with the 1 GJ per day long-haul FT scenario is simply nonsensical. It makes eminently more sense for a shipper in the 1 GJ/day scenario to contract for short-haul FT on the same STS withdrawal path as it receives much more value for the toll it pays, the very same toll as STS.

4019. In short, the toll and service design of STS currently dis-incents any shipper from doing what TransCanada has threatened.

4020. Finally, TransCanada asserts that the existing accumulated STS balances are contrary to the toll principle of no acquired rights. *[Exhibit A79155-2 at Adobe page 26]*

4021. And Mr. Yates raised this in his argument this morning.

4022. As the Board is well aware, this principle is rooted in past NEB cases where historical users of a pipeline have sought service priority or some form of toll preference over new or incremental users of the pipeline. *[Decision GH-2-87 at Apg 89-91/HC 68-70; Decision GH-5-89, Volume 1 at Apg 29-32/HC Section 2.3]*

4023. The instant case is easily distinguishable.

4024. The accumulation of an STS balance is inherent in the design of STS and it is necessary for STS to work as it is designed. An STS shipper must first accumulate an STS balance in order to obtain transportation from storage to market at the STS toll, a toll that it pays all year.

4025. Further, as pointed out by Mr. Reed in his evidence, the principle of no acquired rights does not apply when a shipper has a contractual right. *[A79155-3 at Apg 14]*

4026. That is the case here. So long as a STS shipper holds an STS contract in combination with its long-haul FT contract, and it continues to renew its STS contract, it has a right to continue to accumulate unrestricted and use its STS balance. *[1T534-586]*

4027. So in no way is the mere existence of the accumulated STS balance, given the ability to use them in the future, contrary to the no acquired rights principle. It's inherent in the system; it's inherent in how STS is designed.

4028. Simply, an STS shipper needs an STS balance to use STS and it pays the demand charge monthly to do so.

4029. On this last point, it's important to note that if the Board were to find that the no acquired rights principle were applicable to any existing accumulated STS balances, it should then equally apply to any newly accumulated STS balance. Notwithstanding the proposed cap, if the requisite long-haul FT and STS contracts remain in place, and any accumulated -- any accumulated unused STS balance will continue in perpetuity. *[1T534-586]*

4030. So if it applies to the accumulated balances that exist today, then it has to -- that that same principle has to apply to the entire premise of the service, which is you have to accumulate an STS balance that you carry forward for use.

4031. For all the reasons I just discussed with you, Enbridge respectfully submits that the existing accumulated STS balance should not be terminated, nor is it necessary to limit STS balances going forward. By the nature of the STS toll and service design, these balances have intrinsic value to STS shippers and, further, the existence of the STS balance, large or small, new or old, does not run afoul of any of the tolling principles that TransCanada relies on in the application.

4032. The priority of STS injections. TransCanada proposes to make STS injections at the storage location firm only in the summer. Its reasons for this is that currently STS shippers with markets upstream of storage only receive summer firm injection entitlement while STS shippers with markets downstream receive annual firm injection entitlement. TransCanada does not cite cross-subsidization as a ground for this proposed change.

4033. In TransCanada's view:

> *"It's not equitable that some shippers receive firm injections all year while others only receive firm injections in the summer." [A75561-1 Apg 46.]*

4034. Enbridge generally agrees that this would be ideal. Equity generally requires that firm STS injection entitlement be the same amongst all STS shippers.

4035. TransCanada says that because of the seasonal nature of STS, all STS shippers with storage upstream of market should have their current firm STS injection entitlement reduced from annual to summer only *[A75561-1 Apg 46]*. Enbridge disagrees.

4036. First, TransCanada's evidence states many times:

> *"The intent of the service is to help shippers manage both seasonal and daily fluctuations in their market demand." [A75561-1 Apg 17; A77195-3 Apg 7, 12; A79155-2 Apg 7].*

4037. In fact, Mr. Harris confirmed that STS is not so much a "seasonal service" but instead a "*firm service that has some seasonal attributes*" *[2T1588-1591]*.

4038. On this point, it is important to stress that currently those shippers using STS for markets downstream of storage have only a single attribute of STS that is seasonally dependent. Their firm withdrawal entitlement is winter only. No other attributes of STS are seasonally dependent *[A77195-3 Apg 9-10]*. The result is that although STS has a single seasonal attribute, STS is a firm service.

4039. Second, the seasonality that TransCanada asserts forms part of STS is not reflected in how STS shippers with markets downstream of storage have historically used and currently use the service. This is clearly reflected in the charts that Enbridge included in its evidence.

4040. Very often shippers like Enbridge are using STS to inject in the winter and to withdraw in the summer for the purposes of daily balancing *[A78344-2 Apg 21-24; A78344-2; A79420-2; A78909-3 Apg 3-4]*. The "seasonal nature" of

STS that TransCanada asserts as being dominant in the service does not bear out in how the service is currently used by the majority of shippers.

4041. In the words of TransCanada, the Board's assessment of the Application and STS service *"...should be focused on the present; not 25 or 40 years ago…." [A79155-2 Apg 8]*

4042. The present reality is that STS is a firm service that is both, and currently used as both a daily and seasonal balancing service, and the attributes of the service should not change to make it dominantly a seasonal service.

4043. Third, the use of STS is dominated in every way by those shippers using it for markets downstream, not upstream, of storage. That is, STS shippers with markets downstream of storage represent 57 percent of the STS shippers, 81 percent of the STS contracts, and 81 percent of the STS contract demand *[A78344-2 at Apg 25-26]*.

4044. The result is that in proposing to standardize firm STS injection entitlement to that in existence today for STS shippers with markets upstream of storage, TransCanada is reducing the reliability and value of STS for the majority of STS shippers and the vast majority of current STS contract demand *[1T477-481; 1T788-9]*.

4045. On this last point, Enbridge respectfully submits that although the proposed changes to the STS firm injection entitlement will standardize the service, absolutely no equity will result if those changes are approved.

4046. Instead, by choosing to standardize firm STS injection entitlement to what it is currently afforded the minority of STS shippers and the minority of STS contract demand, any current inequity will be replaced with greater inequity. This greater inequity can be easily avoided by simply standardizing the STS firm injection entitlement to that which is in place for the majority of STS shippers and the vast majority of STS contract demand.

4047. Mr. Chairman, that is Enbridge's submission on annual firm injection entitlement. It's the most reliable and most equitable if it stays the way it is for the majority of FT -- sorry, STS shippers.

4048. Limiting injection quantities by way of a link or relationship between injection and withdrawal quantity: TransCanada proposes to establish a link or

relationship between injection and withdrawal quantity. TransCanada's stated -- its stated need for that link is that:

> *"[It] will provide STS shippers with the ability to inject the same quantity of gas into a storage location on a firm basis in the summer as they can withdraw from the storage location on a firm basis in the winter." [Exhibit A75561-1 at Adobe page 25].*

4049. With all due respect, STS shippers can do this now. Indeed, no change is required to give STS shippers this ability. In fact, STS shippers can do more. This proposed change is nothing more than TransCanada trying to restrict shippers' use of STS, thereby making it less flexible and less reliable.

4050. TransCanada is attempting to have STS revert to nothing more than a seasonal balancing service, and this cannot be any more obvious than when TransCanada discusses its proposal for standardizing seasonal priority periods and in doing so states:

> *"TransCanada proposes to standardize and align the seasonal firm periods of injections with withdrawals for all STS contracts. Injections would be firm in the summer and withdrawals would be firm in the winter, consistent with the seasonal nature of STS as a firm service for summer and winter balancing." [A79155-2 Apg 31].*

4051. But STS is not a seasonal service. When it was conceived some 40 years ago it may have been, but today, as Mr. Harris confirmed, it is a firm service with some seasonal attributes *[2T1588-1591]*.

4052. As I just discussed with you, for shippers with markets downstream of storage, STS currently has only a single attribute that is seasonally dependent and those shippers very often use STS to inject in the winter and to withdraw the summer for the purposes of daily balancing *[A78344-2 Apg 21-24; A78344-2; A79420-2; A78909-3 Apg 3-4]*.

4053. In short, the premise for the proposed link between injection and withdrawal quantities is flawed and for this reason the proposed link should be rejected by the Board.

4054. On this point, you will recollect during cross-examination that TransCanada confirmed that the next best option for a link that it put in its application -- that being the 1-to-1 ratio of STS withdrawal to injection quantities -- is not consistent with a seasonal STS *[1T608-612]*.

4055. Now, interestingly, TransCanada views this 1-to-1 ratio as "reasonable and logical" notwithstanding at times it asserts that STS is a seasonal service *[A77195-3 Apg 24]*.

4056. In defense of the proposed link, through its reply evidence, TransCanada raises equity as a ground for the link, stating that the absence of a link has led to inconsistency in firm entitlements as between STS shippers *[A79155-2 at Adobe page19]*.

4057. STS shippers do currently have differences in firm STS injection entitlements, but it's not the absence of a link that has created the differences. It has been the lack of standardization on the STS contracts.

4058. If TransCanada were to fix the firm STS injection entitlements to the companion long-haul FT contract demand, as is the case currently for Enbridge and the majority of current STS contracted withdrawal volumes, then the current differences between shippers would be resolved. *[A75561-3 Apg 3; A78344-3 Apg 24-25]*

4059. It would be resolved in a manner that would continue to incent long-haul FT contracting since the quantity of firm entitlement would be based on the long-haul FT contract demand of the companion FT contract instead of being limited by the STS withdrawal quantity via the proposed link, which would dis-incent long-haul contracting. *[A78344-2 Apg 24-25; A78344-2 Apg 24]*

4060. Simply put, linking STS firm injection entitlements to the STS withdrawal quantity is inconsistent with incenting long-haul FT contracting, and for this reason has the potential to negatively impact the amount of long-haul FT STS shippers may contract for. *[A78344-2 Apg 24]*

4061. Finally, again in the defense of its proposed link between STS injection and withdrawal quantity, TransCanada raises in its reply evidence the spectacle of a long-haul FT shipper contracting for 1 GJ per day of STS for the simple purpose of maintaining the ability to obtain firm STS injection entitlements at its storage location as an alternate to diversions under its long-haul

FT contract. In doing so, it suggests this scenario would result in unjust discrimination to long-haul FT shippers not holding STS. *[A79155-2 Apg 20]*

4062. First, the threat of an STS shipper doing as TransCanada has suggested is exactly that; it's a threat, it's not reality. It has not borne out in the 40 years the service has been offered. If it had, TransCanada would have cited it.

4063. It is not occurring now since the lowest aggregate STS contract demand that is currently in place as amongst all of the STS shippers is 10,000 GJ per day, and currently the aggregate amount of STS withdrawal contract demand is 140 percent of the aggregate amount of companion long-haul FT. *[A75561-3]* That is, there is 40 percent more STS contract demand in place than companion long-haul FT contract demand.

4064. Second, despite TransCanada's assertion, the spectacle of discrimination to long-haul FT shippers not holding STS does not, in Enbridge's respectful submission, arise in the absence of a link.

4065. The Board has confirmed that whether or not there is unjust discrimination is a question of fact and a matter for the considered judgment of the Board. Further, the Board has affirmed that not all discrimination is prohibited under the Act, only "unjust" discrimination. *[NEB TMPL Dock Allocation Procedure 12 April 2006 Decision Apg 13-14]*

4066. Again, we're into context here.

4067. Long-haul FT and STS are distinctly different services. The firm STS injection entitlement is an attribute of the STS service, and not long-haul FT. A service attribute -- sorry. As a service attribute of STS, the firm injection entitlement that STS shippers receive is paid for through the STS toll, not through their FT toll. *[A77195-3 Apg 7; 1T503-504; 1T493-4]*

4068. Those shippers who obtain the firm STS injection entitlement pay both the long-haul FT toll and the STS toll.

4069. Long-haul FT shippers who do not hold any STS do not pay the STS toll and, therefore, do not receive the same firm entitlement as STS shippers. It is clear, then, that there is no discrimination in "tolls or service against any person or locality" pursuant to section 67 of the Act.

4070. Indeed, the fact that STS shippers receive a firm STS injection entitlement is no more discriminatory than the fact that short-haul FT shippers on the same STS withdrawal path, who pay exactly the same toll as the STS shippers, receive the ability to assign their capacity and make diversions and firm capacity all year long *[1T501-502]*, none of which is available to STS shippers. *[A77195-3 Apg7]* That's not discriminatory.

4071. Finally, if the Board were to find that discrimination is occurring in absence of a proposed link, Enbridge submits that the discrimination is not unjust. It's not unjust because, as I discussed with you earlier, the absence of a link is fully consistent with incenting long-haul FT contracting, which generates more revenue for the benefit of all Mainline shippers. *[A75561-1 Apg 29; A79155-2 pg 20; A77195-3 Apg 12, 103; A78344-2 Apg 24-5]*

4072. Limiting STS to One Injection and One Withdrawal Location. The last proposed change to STS that I intend to address is the one that would see STS contracts limited to a single injection and withdrawal location.

4073. TransCanada takes the position that this is required to align STS with other Mainline services, that it will also be more consistent with the nature of STS being a "seasonal balancing service", and that certain of the contracts that currently have this optionality result in TransCanada contracting for more transportation-by-others, or TBO, than it would otherwise, and this somehow results in additional costs that are attributed specifically to an STS shipper holding the STS contract. *[A75561-1 Apg 44-5; A79155-2 Apg 30-1]*

4074. I've already discussed with you at length how STS is not simply a "seasonal balancing service". Further, TransCanada's statement that the TBO costs are directly attributable to any particular shipper, let alone an STS shipper, is completely contrary to its current toll design and the Board's decision in the RH-003-2011 decision where the Board rejected a proposal to assign TBO costs to a specific segment of the Mainline. *[1T706-709]*

4075. And as the Board noted in that decision, quoting from the RH-3-86 Decision, and this is at Adobe page 30, and I quote:

> *"The Board agrees that cross-subsidization should be avoided to the extent possible in designing tolls. The Board notes, however, that cross-subsidies are inevitable in an integrated toll design and while their elimination could be desirable goal,*

> *it must be balanced against other principles of fairness and equity." [Decision RH-003-2011 Apg 122-3; A79155-2 Apg 30]*

4076. Enbridge does not deny having access to more than one STS injection and withdrawal location provides optionality to STS shippers holding such contracts. That is exactly the point.

4077. The flexibility associated with such contracts assists Enbridge in conducting its daily balancing. *[A78344-2 Apg 26; A77195-3 Apg 12]*

4078. It is this type of flexibility currently present in STS that makes it attractive and has the potential to incent long-haul contracting on the Mainline. Any potential cross-subsidization that arises because of this attribute is potentially offset by the incentive it may provide for additional long-haul FT contracting, which generates more revenue for the benefit of all Mainline shippers.

4079. Now Mr. Chairman, those are Enbridge's submissions in respect of the proposed changes to STS contained in the Application.

4080. For the reasons I have just outlined, Enbridge respectfully submits that the Application should be dismissed as premature. Failing that, certain of the proposed changes to several of the key attributes of STS that I just discussed with you should be rejected.

4081. In the event the Board concludes it's going to approve some or all of the proposed changes to STS, then Enbridge respectfully submits that the proposed changes will fundamentally change the character of STS resulting in the service being devalued while the toll remains unchanged. This, in turn, brings into question whether the tolls remain just and reasonable. *[A78344-2 4-5, 12-5; 1T788-9]*

4082. TransCanada has not provided any assessment or cost allocation to support maintaining the STS toll. Instead, it simply relies on the Board's tolling principles to justify changes while keeping the toll unchanged. *[2T2330-41; 2T2375-78; 2T2394-408; A79454-1]*

4083. In absence of such an assessment, Enbridge respectfully submits that, should the Application be approved in whole or in part, the Board should direct that TransCanada file a STS toll review application. This will permit the Board,

and shippers, to review the STS toll in light of the approved changes so as to determine if the toll is, in fact, after the changes, just and reasonable. *[A78344-2 Apg 15-6]*

4084. Also, should the Board approve some or all of the proposed changes, Enbridge submits that existing accumulated STS balances should be grandfathered through at least 2020. This would be completely equitable in the circumstances, as it is consistent with STS shippers, like Enbridge, having made significant financial commitments to the Mainline via certain STS linked long-haul FT contracts at a time when TransCanada was implicitly representing to shippers that STS was a fully compliant service. *[A78344-2 Apg 3-4, 28]*

4085. Further, as Mr. Reed points out in his evidence, in respect of withdrawal pooling, grandfathering service attributes can be reasonable to assist shippers with a transition. *[A75561-2 A30-32;]*

4086. This grandfathering would not in any way be discriminatory since all STS shippers going forward would have their new STS balances subject to any applicable cap the Board may approve. And in any event, if it was considered discriminatory, it would be clearly not be unjust, as it is in response to an inequitable situation created by TransCanada's actions or inaction.

4087. Finally, during cross-examination, Mr. Harris confirmed that the Application is not intended to address under-utilization of the Mainline. For this reason, and consistent with the Board's RH-001-2014 Decision, Enbridge submits that the incentive mechanism should have no application to any additional toll revenues generated from the approval of any of the proposed changes to STS. *[1T680-700; Decision RH-001-2014 Apg 106/HC89]*

4088. Additionally, the Mainline is currently in a transitionary period of toll stability and certainty, and the incentive mechanism was not intended to incent TransCanada to erode an existing service's value during that period. *[A78909-2 Apg 2-3]*

4089. Further, again, given the lack of transparency by TransCanada during the 2011 to early 2015 period leading to its implicit representation that STS was compliant, it would be inequitable to permit TransCanada to recover any benefit from the proposed changes to STS under the incentive mechanism.

4090. Mr. Chairman and Panel Members, subject to any questions the Panel

may have, those are my submissions.

--- (A short pause/Courte pause)

4091. **THE CHAIRMAN:** Mr. Langen, could you remind me where in the evidentiary record you pulled out that 2011 date?

4092. **MR. LANGEN:** Absolutely. I thought you might ask that question. Just give me a minute, please.

4093. Ms. Comte, I forget the term now. It's not exhibit number, but a filing reference number A7719-3? It's TransCanada's response to Enbridge 1.2.

4094. If you go to the next page, Ms. Comte. One more, I believe. Sorry, Enbridge 1.2. So that's NEB, I think, 1.2. Sorry, it's TransCanada's response to Enbridge 1.2.

4095. **THE REGULATORY OFFICER:** Can you repeat the Exhibit number again, sorry?

4096. **MR. LANGEN:** Hopefully I have the right one -- A77195-3.

4097. **THE REGULATORY OFFICER:** Oh, 195.

4098. **MR. LANGEN:** If you go to the next page, I believe, Ms. Comte? Thanks you. You'll see the second paragraph says, and I quote:

> *"In 2011, a shipper requested to amend their STS contract to increase the firm entitlement on a seasonal quantity not subject to the STS toll. TransCanada would not agree to the change, as concern began to emerge with respect to the equity of the current situation."*

4099. And then in 2012 it goes on to say that they stopped offering STS in open seasons for new shippers.

4100. **THE CHAIRMAN:** Ms. Comte, could you just scroll down a bit? That's fine.

4101. Thank you, Mr. Langen.

4102. It's 12:30 and we're going to take a lunch break until 1:30.

--- Upon recessing at 12:30 p.m./L'audience est suspendue à 12h30
--- Upon resuming at 1:31 p.m./L'audience est reprise à 13h31

4103. **THE CHAIRMAN:** Mr. Smith?

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MR. SMITH:

4104. **MR. SMITH:** Mr. Chairman and Members ---

4105. **MR. LANGEN:** Mr. Yates isn't here.

4106. **MR. SMITH:** Well, so much for that big wind up. My friend Mr. Langen indicates that counsel for TransCanada isn't here. I'm in your hands as to whether I should proceed.

4107. **THE CHAIRMAN:** I'll check with my colleagues to see if we need Mr. Yates or not but I think I know the answer. I think we'll wait. Maybe the confusion is that we have so many clocks in here at different times.

4108. **MR. SMITH:** I don't know what the one on his wrist says, sir.

4109. **MEMBER GAUTHIER:** Did you remember, Mr. Smith, you talked about security sooner this week?

4110. **THE CHAIRMAN:** So I'm glad to see we don't have to make a decision whether or not we should proceed without Mr. Yates.

4111. **MR. SMITH:** So I'll start over again, Mr. Chairman, Members.

4112. I would indicate that I've handed a written copy of the remarks I'm about to present, with the references in footnotes, to the court reporter and ask that they be reproduced. As counsel before me, I'd indicate that the subheadings should not appear in the transcript -- they were for my convenience in presentation only -- and that I am known to depart from the text. So what they should try to do is follow along as best they can.

4113. So Mr. Chairman and Members, this argument today presented on behalf of Union Gas and I've organized my remarks as follows.

4114. First, we'll discuss our primary objection to the TransCanada STS Application which is the fundamental inconsistency with the RH-001-2014 Decision and the serious disruption it represents to the six-year period of toll stability and certainty provided by that Decision as a transition to full segmentation of the Mainline. On this basis alone, it is Union's position that the Application must be dismissed.

4115. Second, and in the alternative, should the Board entertain the merits of the specific proposals outlined in the Application, we will discuss how TransCanada has failed to discharge its onus by, amongst other things, its unwillingness to file detailed cost data to support its assertion that the existing longstanding STS services and tolls are unjust and unreasonable; has failed to discharge its onus that the proposed new toll to be charged for the new stand-alone pooling service is cost-based, relating to identifiable, separate costs incurred in the provision solely of that stand-alone service; and has failed to discharge its onus demonstrating that any of the proposed changes will stand the test of time given the comprehensive costs, services, physical use and toll information that can be anticipated to accompany the Mainline Segmentation Application to be filed in time for implementation January 1, 2020 as contemplated by the RH-001-2014 Decision. All these factors, in Union's respectful submission, mandate rejection of the TransCanada Application outright.

4116. Finally, I will respond to individual points raised in the TransCanada argument this morning. I'll do that at the end of my prepared remarks.

4117. Now, with respect to the inconsistency with RH-001-2014, Union Gas believes it should not have had to be here before you fending off unilateral changes to TransCanada's services and tolls which would increase Union's STS costs by 330 percent, and which increase Union's overall TransCanada transportation costs by 30 percent. This is on top of the RH-001-2014 toll increases that had already increased FT short haul tolls by more than 50 percent from previous levels. *[C9-8-1, A79460-2, Union Gas Opening Statement, p. 1, line 10; C9-5-2, A78440-2, Union Gas Written Evidence Correction, p. 15, line 2]*

4118. To us, Mr. Chairman and Members, RH-001-2014 was supposed to usher in a period which we would characterize as peace in the valley. Peace in the valley, at least until 2021. No more acrimony, no more contentious litigation

for six years. Go figure. But here goes TransCanada again. Now, if we're wrong in our understanding of what you intended by RH-001-2014, please let us know so we can all play by the same rules as TransCanada.

4119. And to respond to their argument this morning, section 12.1(g) of the Settlement Agreement was cited by their counsel as justification for filing the present application. That was Exhibit B20 and this appears on hard copy page 19, and if you could put it up, Ms. Comte, that would be appreciated, but I'll proceed along. It's a short provision and it reads as follows:

> *"This Agreement does not preclude any other initiative by TransCanada designed to reduce the Mainline System's cost of service during the period from January 1, 2015 to December 31, 2030."*

4120. With respect, that provision provides no justification for the present application. This application is not designed to reduce the Mainline's cost of service. The costs here have not been reduced. They have only been reallocated.

4121. So only by ignoring the evidence TransCanada filed in RH-001-2014, which repeatedly affirmed that the primary purpose of the application was long-term toll stability and certainty, peace in the valley, can TransCanada now maintain it isn't so. *[C9-4-2, A78335-2, Union Gas Written Evidence, p. 14, lines 10-11; Transcript 1T1297; Transcript 1T1300; C9-9, A79453-1, Union Gas Aid-to-Cross, pdf pp. 3, 9, 11, 13, 14]*

4122. Only by ignoring the Board's conclusions in both RH-003-2011 and RH-001-2014 can TransCanada propose to raise Union's tolls again by double or triple digit amounts.

4123. Recall in the RH-001-2014 Decision the Board re-emphasized what it had previously emphasized in RH-003-2011 at page 43 of the latter Decision and in virtually the same words, and I quote, and this is from RH-001-2014:

> *"The Board reiterates that tolls cannot continually increase each year in response to throughput declines." [RH-001-2014 Decision, at p. 79]*

4124. In the present case there is no increased throughput or decreased throughput; just the degradation in service attributes, and rate shock to the Union

customers that primarily rely on STS. *[Transcript 3T3361-3365; C9-11-1, A79540-1, Union Gas Undertaking U-3]*

4125. When asked by Board counsel, Union provided its assessment of the rate impacts to its customers in Undertaking U-3, similar to the same questions posed to Centra Manitoba, Enbridge Gas Distribution, and, for that matter, TransCanada, by Board counsel. *[C9-11-1, A79540-1, Undertaking U-3]*

4126. What did TransCanada expect when the STS tolls are to increase by 330 percent and Union's Mainline Tolls bill by 30 percent annually? Rate shock means "rate" shock; not revenue requirement shock. *[Transcript 2T1555-1557; Transcript 3T3364; B14-2, A79155-2, TransCanada Reply Evidence, Table 3-1]*

4127. As Mr. Shorts testified, that 3.6 figure simply doesn't convey the real-life impact on the Union customers that actually rely on the STS service. *[Transcript 3T3361]*

4128. The impact of TransCanada's proposed changes on the Union customer bills are their total bills, not just the transportation or the distribution margin but the commodity as well, and it translates into rate shock levels for Union's customers in the Northwest Zone -- 18 percent for residential customers and 23 percent for commercial customers. *[C9-11-1, A79540-1, Undertaking U-3, p. 2; Transcript 3T3362]*

4129. Even the lowest possible STS costs scenario alone, which Mr. Gillett made clear, would not include the balance of the likely mitigation costs. That lowest possible STS cost scenario also results in rate impacts of 11 and 16 percent respectively. *[C9-11-1, A79540-1, Undertaking U-3, p. 2, Transcript 3T3461-3463; Transcript 3T3386-3391]*

4130. These kind of rate increases and the serious erosion of existing service flexibility are not consistent with a six-year period of toll stability and certainty *[Transcript 1T1278]* resulting from the RH-001-2014 Decision that was supposed to transition the Mainline to segmentation. So much for peace in the valley.

4131. Now, the RH-001-2014 Decision adopted almost entirely the common position presented by TransCanada and the LDCs. *[RH-001-2014 Reasons for Decision, Disposition, pp. ix to xiv; Transcript 3T3064-3065]*

4132. In its Mainline Settlement Application, TransCanada repeatedly

emphasized that its purpose was the stabilization of the significant run-up in tolls which had been the subject of such concern in RH-003-2011; the reduction of uncertainty surrounding those tolls, surrounding access to the Mainline system, surrounding TransCanada's ability to recover its otherwise stranded investment; and the confirmation that this toll stability and certainty would continue over the six-year transition period to the new, segmented world which would begin at the end of 2020. *[C9-9-1, A79453-1, Union Gas Aid-to-Cross - RH-001-2014 Application, p. 1, lines 14-24]*

4133. Referring to Mr. Harris' characterization, and as noted by counsel -- I believe it was Enbridge this morning -- in Union's view, it was the "selling point" of the Application. *[Transcript 2T1505]*

4134. Indeed, the mid-year -- sorry, the mid-term toll review itself was intended to adjust billing determinants, cost revenues, LTAA balances, and DMR forecasts to provide, as TransCanada then testified,

> "*... toll stability for the remaining three years of the tolls period*". *[RH-001-2014 Reasons for Decision, at pp. 90 and 91]*

4135. It was said, at the time, that certainty and stability were required for investment; for shippers to be incented to re-commit to the Mainline under firm service contracts; and for TransCanada to construct urgently needed incremental capacity to debottleneck access to burgeoning supply located in the Marcellus and the Utica. *[RH-001-2014 Reasons for Decision, Section 1.3.2, pp. 4-5]*

4136. But it should be obvious that toll increases of 330 percent or even an increase in a toll's bill of 30 percent would not be conducive to new investment. What is particularly galling, however, is the fact that these increases were announced shortly after the required term-up of existing contracts to the end of 2020. With great respect, the phrase "bait and switch" comes to mind. *[C9-4-2, A78335-2, Union Gas Written Evidence, Section 6.4, Pages 34 and 35]*

4137. With respect, when Ms. Audino queried the fairness of the major restructuring of STS service so soon after term-up, the somewhat -- in our respectful submission -- hollow response offered by the three TransCanada witnesses was to the effect shippers knew that TransCanada wanted to change the service; RH-001-2014 did not protect against change; that the tariff would be frozen; that there might be issues with the mid-term toll filing; or that they could

have selected other service options instead. *[Transcript 2T1501-1527; B14-2, A79155-2, TransCanada Reply Evidence, p. 8, lines 16-25]*

4138. With respect, Mr. Chairman and Members, their answers had little to do with TransCanada compelling a contract extension and then a very short time later announcing a significant reduction in the service flexibility and a great increase in the costs under those now extended contracts. There is simply no equity in that, Mr. Chairman and Members, so Union poses grandfathering.

4139. But it is important to note that the grandfathering that Union proposes is only for the balance of the term of RH-001-2014. It has been accepted throughout that things will change at the end of that period.

4140. Now, Union was a signatory to the Settlement Agreement. It supported the common position of the RH-001-2014 proceeding echoing TransCanada's own evidence that the primary purpose was a six-year hiatus from the acrimony, litigation and uncertainty that preceded it. *[RH-001-2014 Decision, Section 1.1, pp 1]*

4141. Unilateral proposals now to radically restructure a core service offering critical flexibility to the management of LDC utility operations upon which Canadian and U.S. LDCs have relied for decades are, in our respectful submission, a fundamental betrayal of the expected benefits of both the Agreement and the resulting RH-001-2014 Decision. *[C9-4-2, A78335-2, Union Gas Written Evidence, p. 9 of 36, lines 7-13]*

4142. For TransCanada to now attempt to parse or qualify the meaning of its clear evidence at that proceeding is deeply disturbing. To suggest now it was limited to resolving only specific lawsuits, regulatory applications and related disputes cannot be reconciled with the background and context of the RH-001-2014 proceeding. *[C9-9-1, A79453-1, Union Gas Aid-to-Cross, RH-001-2014 Application, p. 4 of 94, lines 29-30; Mainline 2013-2030 Settlement Application, p. 13 of 94, lines 9-12 and p. 86 of 94, lines 11-12; B14-2, A79155-2, TransCanada Reply Evidence, p. 6, lines 15-29, p. 7, lines 1-2; Transcript 1T1235-1302 ; Transcript 1T1021-1025]*

4143. Six years of toll stability and certainty should mean something given the significant burdens and benefits assumed by all parties, the balancing of which was expressly found to be in the public interest by the Board and relied upon in its Decision.

4144. Indeed, the Board emphasized its reliance upon the broader context in which its Decision was placed in Section 1.3.3 of the "Overview of TransCanada's Application" in the RH-001-2014 Decision, and I quote:

> *"The application relies on a number of contractual commitments between settling parties, commitments over which the Board has no jurisdiction to enforce but would need to rely upon in order to comprehensively evaluate whether the resultant tolls are just and reasonable and not unjustly discriminatory." (at page 6, RH-001-2014)*

4145. And at page 6 of that decision, the Board went on to detail some of those, a non-exhaustive list, concluding that they, the listed ones, were amongst many others.

4146. That "comprehensive" evaluation embraced many factors, as Ms. Habib stressed, not just one. *[C9-4-3, A78335-3, Written Evidence of Georgette Habib, p. 21, lines 1-5; Transcript 3T2978-2979 and 2992-2998]*

4147. This broader balancing of interests and the careful and deliberate fashioning of a six-year transition to a new world of Mainline segmentation is manifest on the face of the RH-001-2014 Decision describing the evidence filed in the TransCanada Mainline Settlement Application. *[C9-9-1, A79453-1, Union Gas Aid-to-Cross, RH-001-2014 Application, pdf p. 3, lines 9-13, p. 4, lines 34-39]*

4148. In Union's respectful submission, these reasons alone mandate rejection of the TransCanada application. The RH-001-2014 Decision resolved, and was intended to resolve, in our respectful submission, truly unique challenges to the Mainline. *[RH-001-2014 Decision, Section 1.3.2, pp. 4 and 5]*

4149. Precedents cited by TransCanada's counsel about the Board's discretion to change services and tolls at any time and that shippers have no right to expect that services and tolls could never change are obviously misplaced. We agree with those, notwithstanding the fact that in argument this morning, again, as in the reply evidence, TransCanada was wont to use the word "preclude" or "precluded", that Union would preclude -- it says the Board is "precluded" from making these changes.

4150. Nothing could be further from the truth, and I'll come back to this at the end. But it is admitted, as you will see in the opening statement and throughout Ms. Habib's evidence, that the Board does have that undoubted -- that undoubted ability.

4151. But when we speak of principles, the principle of regulatory certainty is relevant, and observing watershed NEB decisions establishing six-year fixed stable toll periods, they, too, must be observed. *[Transcript 1T1292-1294]*

4152. TransCanada's reliance upon tools to manage its system similarly must be read in the same context. The intention, in our respectful submission, was never to simply ratchet up tolls and degrade existing services throughout the RH-1-2014 term.

4153. In that regard, Union agrees with Mr. Drazen that TransCanada's cross-subsidization argument is circular *[Transcript 2T2000]* because they say they can increase our costs $50 million that means it represents a $50 million cross-subsidy from other shippers. In our respectful submission, Mr. Chairman and Members, that's nonsense.

4154. Inconsistency with the RH-001-2014 Decision is a primary failing of the TransCanada Application. A further aspect of the basic inconsistency with RH-001 is the new toll TransCanada seeks to institute for pooling services. *[B1-1, A75561-1, STS Application, Section 3.3.1]*

4155. Now, I won't repeat the definition of toll, Mr. Chairman and Members. You and your counsel are well aware of it. Ms. Habib also reproduced it in her evidence. *[C9-4-3, A78335-3, Written Evidence of Georgette Habib, p. 12, lines 15-22]*

4156. It's a new surcharge for a new stand-alone service; pooling. It does not appear in the Toll Order TG0-011-2015, which was issued following the RH-001-2014 Decision. *[Letter and Order TG-011-2015 [A4Q6D4]; C9-4-2, A78335-2, Union Gas Written Evidence, p. 22 of 36, lines 16-20, p. 23 of 36, lines 1-5]*

4157. And recall, Mr. Chairman and Members, section 60 of the Act stipulates that TransCanada cannot charge tolls except those specified in a tariff which is filed and in effect with the Board or which are approved by an Order of the Board.

4158. TransCanada tacitly acknowledges it is not permitted to charge new tolls within the six-year period of toll stability and certainty established by the RH-1-2014 Decision. That is why they go to great lengths in their evidence and again this morning to argue the new surcharge is not a toll. *[Transcript 1T1249-1250]*

4159. They do, however, concede it is a surcharge. *[Transcript 1T881]*

4160. As a new charge for a new transportation service, it meets the ordinary, grammatical meaning of the definition of "toll" which appears in the *NEB Act*. It is not like simply adding a new receipt toll at Lachenaie *[B7-5, A77195-5, TransCanada Response to Union 1.15 (f); B14-2, A79155-2, TransCanada Reply Evidence, p. 23, lines 5-14]* since that charge relates to an existing service and an approved toll methodology.

4161. In the present case, neither the stand-alone pooling service nor the toll exist, nor has a toll methodology been approved for it. In fact -- or sorry, in fact -- sorry, Mr. Chairman. The fact that all of these things, that is, the new stand-alone pooling service, the tool and the tool methodology to calculate it have been submitted for your approval is -- underlines the fact that it is all new, which is, in our submission, problematic within the term of the RH-001-2014 fixed toll decision.

4162. An STS shipper does not have to take the pooling service; they can elect not to. *[B1-1, A75561-1, STS Application, Section 3.3.1, p. 23, lines 25-30]* It is a stand-alone service. *[B1-1, A75561-1, STS Application, Section 3.3.1, p. 23, lines 16-24]*

4163. Now, in this regard, there was considerable discussion of the delivery pressure surcharge, which is acknowledged to be a toll for a stand-alone or custom service. *[Transcript 1T1439-1442]* When discussing its evolution with Mr. Reed, recall there had never previously been a charge for the provision of above-system average pressure. *[Transcript 1T1439-1442]*

4164. When the Iroquois situation arose, however, the Board canvassed rolled-in and incremental options, concluding a new toll should be used to recover all identifiable capital and operating costs associated with the provision of that custom service, namely, above-system average pressure. *[Transcript 1T1448-1457]*

4165. Mr. Reed agreed that the costs of the custom service were, and I quote, *"recovered by means of a new toll, which became known as a delivery pressure surcharge" [Transcript 1T1437-1438]*, a fact which he reiterated in a further exchange I had with him, which went as follows:

> *"1454.* ***MR. SMITH:*** *And the incremental costs relate to the facilities which were referred to earlier in the quote and to the other -- the incremental operating costs as well, right?*
>
> *1455.* ***MR. REED:*** *That's my recollection, yes.*
>
> *1456.* ***MR. SMITH:*** *And they were to be put into a new toll known as a surcharge, right?*
>
> *1457.* ***MR. REED:*** *The export pressure surcharge, yes."*

4166. Mr. Reed agreed the new surcharge for the new stand-alone service was a "new toll". Union agrees the delivery pressure surcharge was a "new toll" at that time. And so must be the new pooling surcharge -- a new toll for a new stand-alone service, a pooling service.

4167. Now, the issue has significance for two reasons. It makes plain the fact that the introduction of the new toll for what had been included as part of existing services within the six-year RH-001-2014 term is inconsistent that decision. If all parties agreed to it that might have been different, but they don't. This fact reinforces the basic inconsistency with the RH-001-2014 Decision as a primary basis for rejection of the present Application.

4168. In the alternative, however, should the Board decide to entertain the pooling surcharge aspect of the present Application, this discussion highlights a further failing of the Application, and that is the absence of detailed supporting information regarding the costs required to provide this custom service relative to the former service.

4169. The delivery pressure surcharge discussion and the GH-2-87 excerpt *[Transcript 1T1423-1457]* highlight the fact that such a new toll or surcharge had only ever been levied where there were identifiable costs associated with it. That was Ms. Habib's evidence, which has not been contradicted. *[C9-4-3, A78335-3, Written Evidence of Georgette Habib, A10, pp. 13-15]*

4170. Here, TransCanada has failed to discharge its onus by providing necessary information regarding these distinct costs it asserts are required to provide this particular service. For the delivery pressure surcharge, for example, the costs were identifiable, like the Nuovo Pignone Station 1401 compressor and the associated operating cost, the incremental fuel and the like. *[B7-5, A77195-5, TransCanada Response to Union 1.13a; Transcript 1T1439-1457]*

4171. TransCanada in the present instance, however, has not identified or quantified those costs it alleges are incurred to provide the new pooling service. *[Transcript 2T1621-1627; B8-2, A77199-2, TransCanada Response to NEB 1.7; B7-5, A77195-5, TransCanada Response to Union 1.7 and 1.13]*

4172. And just as significantly, it has failed to provide any concrete evidence of identifiable costs associated with this service separate from the pre-existing STS service. In that regard, TransCanada appears to again drift into a "value for service" approach.

4173. And in terms of value, Mr. Chairman and Members, consider, as Ms. Habib emphasized, that what we do know is that withdrawal pooling saved TransCanada $100 million in incremental facilities between 2007 and 2017. *[Transcript 3T3045-3057; B7-5, A77195-5, TransCanada Response to Union 1.17-2, pdf p. 62]*

4174. That is real value, productive efficiency, which saves costs that would otherwise be borne by all services, not just STS, and well beyond the expiry of all transportation contracts until those costs are recovered in the approved depreciation expense.

4175. The failure to discharge its onus to justify the nature and extent of the alleged stand-alone incremental costs associated with the proposed new service, means any costs thought to be associated with pooling must remain rolled-in with the existing STS tolls and that pooling should remain an attribute of the STS service as at present.

4176. To return to our main theme, however, the fact that TransCanada seeks to introduce a new toll and a new service commencing April 1, 2017 during the RH-001-2014 term demonstrates that this Application is inconsistent with the RH-001-2014 Decision and therefore must be rejected.

4177. Now, with respect to the failure to discharge onus more generally, in the alternative, Union submits that should the Board be inclined to consider the specific proposals outlined in the Application, Union offers the following comments.

4178. The onus, as Ms. Habib so eloquently put it, rests on TransCanada. Those services and tolls remain just and reasonable unless the contrary is proven. *[Transcript 3T2944]*

4179. That should not be surprising. A core service and related tolls which has been relied upon which has been relied upon by LDCs for decades; which was maintained throughout all the major toll and service restructurings and related proceedings over several decades; and in respect of which not a single shipper, STS or non-STS, has complained, strongly supports the justness and reasonableness and the public interest in maintaining the current service and tolls.

4180. And I'll just pause for a moment. The onus has not been budged by TransCanada. TransCanada says, "Upon further reflection, there are differences and thus discrimination so it's no longer just and reasonable." What an epiphany. The service is different as amongst different users. It's always been different.

4181. No facts or circumstances have changed since RH-001-2014, no financial hardship. TransCanada just discovered that it was no longer just and reasonable. With great respect, just saying so doesn't make it so. They have not budged the onus.

4182. Now, the existing STS service and tolls should therefore be maintained until the major review of system costs, physical use, revenue, and cost allocation is conducted as part of the Mainline Segmentation Application envisaged by the RH-001-2014 Decision. As Mr. Harris would have it *[Transcript 1T1380]*, all aspects of that review and the Decision arising therefrom will very much occur, in his words, "in the near term".

4183. TransCanada admits there are no complaints about the service or about the tolling and no requests to change STS. *[B7-3, A77195-3, TransCanada Response to EGDI 1.2c; Transcript 1T1166-1167]*

4184. As they noted, TransCanada admits there are no changed facts and circumstances arising since the RH-001-2014 Decision which was issued only a short time ago. *[B7-5, A77195-5, TransCanada Response to Union 1.1d;*

1T1322-1323]

4185. Further, TransCanada admits there are no financial drivers compelling it to file this Application in terms of threats to the financial viability of the Mainline or threats to its reasonable opportunity to earn a fair return over the balance of the RH-001-2014 term. *[Transcript 1T1331-1334]*

4186. Under the circumstances, therefore, TransCanada has a very heavy practical onus or burden of proof. It's not enough to say the service is different as amongst the different users. It's always been that way. And when we hear words like "non-standard contract" -- well, you've had non-standard contracts as part of the menu of services on TransCanada for many, many years, including these.

4187. So what's different? You have delivery pressure charges, which are different. They're custom services. So are non-standard STS contracts custom, a balancing service for individual LDCs, the cost allocation for which and the tolls for which have been subject to review; the service has been tweaked for decades right to the present time. RH-003-2011 add a further refinement. Our contention is that they're embedded in the RH-001-2014 Decision and tolls.

4188. That's why I say, "What's the epiphany that the service is different?" It's always been different. It's been custom.

4189. The standard of these non-standard contracts is that they are customized. And the tolls have been consistently found just and reasonable. So simply saying that doesn't condemn this service to being unjustly discriminatory or unduly, you know, cross-subsidized with other services. Quite the contrary.

4190. Mr. Chairman and Members, in Union's respectful submission, Ms. Habib's interpretation of the onus in the circumstances of this case was logical and compelling. I dare say her tone conveyed the fact she considered it was obvious. *[Transcript 3T2944-2946]*

4191. Shippers do not bear that onus. And in a similar vein, we would note the view expressed by the Board and Mr. Justice Rothstein as it related to an Applicant's challenge in 2008 to the long-standing 1995 Generic Cost of Capital Formula. Now, this is a slightly different context for sure, but to be clear, it gives you a sense of how onuses work. So the Board observed in the RH-1-2008 Decision, at pages 8 to 9, and I quote:

> *"This is the first time that the RH-2-94 Formula has been reviewed since TransCanada v. NEB. In that case, the Board confirmed that the Board's review procedure is the proper process for considering the RH-2-94 Formula and that as a result, the burden of proving that the RH-2-94 Formula no longer applies rests with the Applicant, which, in this case, is TQM."*

4192. As Mr. -- sorry, as Justice Rothstein set out, and then a quote by the Board, quoting Justice Rothstein, and I quote:

> *"In its 1995 decision, the Board stated that its automatic adjustment formula was reflected -- was to reflect a simplified procedure to determine annual adjustments to pipeline rates of return on common equity. It was therefore to continue indefinitely. When an affected party wishes to change the process, it has the onus to demonstrate that its proposal is preferable to the one which is the subject of a binding Board order. That is not a proper -- sorry, that is not an improper onus."*

4193. And then there's a citation. *[TransCanada PipeLines Limited v. National Energy Board et al. [2004] F.C.A. 149 at paragraph 56]*

4194. Now, the present case is stronger still since the onus regarding unjust discrimination, which did not arise in the TQM Cost of Capital case, is statutorily embedded in Part IV of the Act with which you are well familiar and I will not repeat.

4195. With respect, TransCanada can't justify its claim that a longstanding core service and corresponding tolls, which have been routinely approved by the Board for decades, represent undue cross subsidization and unjust discrimination by just saying so. The key concepts are "undue" and "unjust". They involve judgment, ultimately the Board's judgment.

4196. But ultimately when the Board considers whether cross subsidization, which always exists in any integrated system *[Transcript 3T2959]* is "undue", or whether the well-advertised and long standing differences *[Transcript 3T2847-2852]* are "unjust", it should give very significant weight to the fact that everyone on the system for many years had access to the terms of those agreements which

detailed all the differences in service; that had ample opportunity to challenge how the costs were allocated and the tolls designed; that would be aware of the service availability; the service was used not just by domestic LDCs but by the export market as well *[B7-5, A77195-5, TransCanada Response to Union 1.5a]* and could have participated in the regular review of STS services and tolls over its very long history as the record clearly demonstrates. *[B7-5, A77195-5, TransCanada Response to Union 1.1c]*

4197. In other words, the services and the tolls are current. They are not artifacts of ancient, outmoded contracts. *[Transcript 1T1409-1410]*

4198. STS balances, for example, were a relatively recent creation in the 2005 TTF Resolutions which were supported by all Mainline shippers and approved by the Board. *[1T1403-1418]*

4199. Mr. Reed details in five bullets in his Reply Evidence, alleged undue cross subsidization.

4200. Interestingly, those bullets primarily discuss differences as amongst STS shippers, yet none have complained the tolls are unjust, the cross subsidization undue, or the discrimination unjust. TransCanada, therefore, must be judged to have failed to discharge its onus to demonstrate the contrary.

4201. In addition, TransCanada failed to support its assertions with any detailed cost information. *[B17, A79454-1, Response to Undertaking U-1]* Ms. Habib stressed the importance of such information in this regard. *[C9-4-3, A78335-3, Written Evidence of Georgette Habib, p. 3, lines 13-14]*

4202. So did Mr. Drazen. You start with costs, and associate items with shared use of an integrated system, then allocate them accordingly.

4203. In circumstances, Mr. Chairman and Members, where no shippers have complained, where no shippers asked for any revisions to the service, where the service is acknowledged to be critical to the shippers *[Transcript 1T1148-1151 (Mr. Harris); C9-4-2, A78335-2, Union Gas Written Evidence, p. 7 of 36, lines 1-7; B7-5, A77195-5, TransCanada Response to Union 1.4]*, where the resultant tolls would -- that is, of the changes would constitute rate shock for some shippers; where the service has operated satisfactorily over many years, where it had been regularly reviewed and updated and recently was incorporated in its existing form and at existing tolls in the forecasted tolls which the Board

approved for the fixed toll period in its RH-001-2014 Decision, TransCanada should at least have provided detailed cost information to support claims of newfound "undue" cross subsidization and newfound "unjust" discrimination, claims which no one else appears to share.

4204. TransCanada was asked to provide that detailed cost information *[B7-5, A77195-5, TransCanada Response to Union 1.7]* but it declined to do so. Accordingly, TransCanada must be found to have failed to discharge its onus of proof.

4205. In that regard, even if the Board did not consider disruption of the stable and certain six-year RH-001-2014 toll regime sufficient justification on its own for outright dismissal of the Application, that fact -- that is, the disruption -- is a legitimate consideration for you, the Board, to take into account in the exercise of your discretion to reject all or any of the specific proposals contained therein. And when I say it's a legitimate consideration, it is obviously in combination with all the other factors which we have drawn to your attention.

4206. As noted by Ms. Habib and as made clear by the excerpt from Section 1.3.3 of the RH-001-2014 Decision I read into the record earlier, there were a very broad range of public interest factors which the Board said it relied upon,

> *"... to comprehensively evaluate whether the resultant tolls were just and reasonable and not unjustly discriminatory". [RH-001-2014 Decision, p. 6]*

4207. In the circumstances, that range of considerations should be no less broad. For the same reasons, the Board can now again rely upon those public interest considerations to reject TransCanada's specific proposals.

4208. Now, as noted earlier, TransCanada also failed to discharge its onus to demonstrate what identifiable facilities or identifiable costs underpinned its proposed new toll, the pooling surcharge. I won't repeat those submissions again, but TransCanada's acknowledgment that it had failed to identify specific costs -- that is, isolate specific costs associated with that new stand-alone service -- and that it failed to file any study or analysis which quantified the extent to which those or any costs are relative to the pre-existing storage service, is, in our respectful submission, fatal to its request.

4209. The fact TransCanada doesn't even attempt to identify or quantify the

costs -- that is, the specific costs -- of each separate service is telling. *[B7-5, A77195-5, TransCanada Response to Union 1.7]*. Unless -- accordingly, unless the contrary is shown, there is no justification for any incremental toll.

4210. Now, I said at the beginning I would speak to some extent on the fact that the proposed changes would not withstand the test of time. And that's a further factor the Board can reasonably take into account in the exercise of its discretion. Even if the changes were found to be warranted, the new toll design and services package clearly would not withstand the test of time.

4211. And some of our submissions in our participation of and our participation in this regard, Mr. Chairman, have been misunderstood as implementation questions, you know, that we'd accepted that the service was required. We're saying that this is a demonstration of why they shouldn't be accepted. And timing is important.

4212. Now, I had an exchange with Mr. Harris in the paragraph 1346:

> *"**[MR. SMITH]** 1346. Do you agree that significant changes to longstanding services and tolls should be designed to withstand the test of time?*
>
> *1347. **MR. HARRIS:** Yes. The tariff is never completed work but we certainly should create services that we feel are not going to be required to be changed any time in the near future."*

4213. Now, by any objective measure, if approved, this radical restructuring of STS, a companion service to long-haul FT, cannot be insulated against change if long-haul FT itself must be transformed to reflect the realities of a segmented Mainline system. It should be obvious. It's the very essence of segmentation. And your cost responsibility should only fall to an individual shipper for the costs related to the segments you actually use.

4214. The RH-001-2014 Decision dealt with this briefly at page 74, and I quote:

> *"There are many variables that are relevant to the specific tolls post-2020 that still need to be determined and approved by the Board in order to set future tolls on the Mainline. For*

> *example, there has been no determination on the specific cost allocation for any portion of the Mainline post-2020 (for example, allocation between the energy and energy-distance components of the toll). Further, it has not been determined whether it would be responsible to consider the Western Mainline as one or two segments for toll design purposes after 2020."*

4215. So if the fundamental long-haul service to which STS is attached has to change because now we're going to segmented serviced, how is all this going to work? What happens if you have withdrawals in one segment and injections in another? How are these rights to be managed? This is a very significant issue.

4216. And it's clear that it will require a comprehensive review, hopefully this time with the benefit of a detailed cost of service and cost allocation study. And will it be in the near term? Yes. In fact, it may well overlap with the implementation of the proposed new STS service if you, God forbid, were to approve it.

4217. Mr. Harris and I did explore several timing scenarios *[Transcript 1T1348-1374],* but I think the following conclusions about segmentation are fair to observe.

4218. First, segmentation has been approved in principle. *[Transcript 1T1348-1351]*

4219. Second, TransCanada will file an application to implement segmentation after the RH-001-2014 time period expires. *[Transcript 1T1352-1353]*

4220. Third, we do not yet know the details of segmentation. *[Transcript 1T1353]*

4221. Fourth -- and this is Union's respectful submission -- it is likely to be a major proceeding since all the shippers on the Mainline will be impacted.

4222. And fifth, though not discussed with Mr. Harris, the kinds of changes to service and tolls resulting from a Board decision on something so fundamental as segmentation will require considerably more advance notice to implement than has been the case with lesser applications. Sixty (60) days was deemed

inadequate for parties to make term-up elections, as the RH-001-2014 Decision noted *[Transcript 1T1045]*, and in our submission, it is certainly inadequate for the decisions that would result from such a radical restructuring of STS as TransCanada now proposes.

4223. Even the six months the Board said was reasonable for term-up of an existing contract for an existing service *[RH-001-2014 Decision, p. 14; Transcript 1T1045-1046]*, would be inadequate for STS.

4224. Mr. Harris agreed the STS elections involve much more complex decisions than a simple term-up decision. *[Transcript 1T1080-1081]*

4225. For segmentation, Union submits an NEB Decision will have to be available no later than Q1/2020 for implementation at the end of that year. That probably means the filing of the TransCanada segmentation application at least a year earlier, around the end of 2018 or early 2019, to allow for the normal procedural steps involved in a major hearing such as would be expected and in order to ensure the availability of a decision by the end of Q1/2020. That means the TTF or shipper consultations need to take place in 2018, well prior to the filing.

4226. Now, whether you agree with those specific time estimates or not -- and you can frame your own view of how they would probably occur -- they do demonstrate that the significant changes now proposed to STS tolls and services will be subject to reconsideration and possible revision -- we would say almost certain revision -- within the very near future. And that's really our point.

4227. As Messrs. Shorts and Gillett illustrated, it would be folly to attempt to implement a radical restructuring of a core seasonal balancing service like STS in the middle of the storage cycle. *[Transcript 3T3251]*

4228. The new evidence volunteered by Messrs. Harris and Reed as they clarified their thinking on the subject on the fly from the stand *[Transcript 2T1489-1495]*, reinforces two shortcomings in TransCanada's approach. So what they really were is that they illustrated the shortcoming in TransCanada's approach to this particular issue.

4229. First, and I'll again quote from the transcript:

> *"1088.* ***MR. SMITH:*** *Okay. So could you just point to where*

> *in the record you discuss the added complication associated with implementing far-reaching changes to an STS storage service in the middle of the storage cycle?*
>
> *1089.* ***MR. HARRIS:*** *I don't think we have adduced evidence to that effect.*
>
> *1090.* ***MR. SMITH:*** *That would be my point, thank you."*

4230. Second, Mr. Harris admitted TransCanada was not aware of the OEB practice surrounding the timing of the filing of Union's gas supply plans in September, nor was he aware of the fact that the planning cycle starts in April so that it's a four- to five-month process every year. *[Transcript 1T920-927]*

4231. In other words, Mr. Chairman and Members, TransCanada had not worked out the details of mid-storage cycle implementation of the major STS changes, and had not investigated the impact of a mid-term storage cycle change in the STS services on Union's planning cycles and operations.

4232. So when Mr. Reed tried to suggest it is only a matter of adjusting STS balances *[Transcript 2T1493-1495]*, well, it's just not that simple. Mr. Shorts, aided by Mr. Gillett, explained the complex, iterative nature of those planning processes whereby even the lowest cost STS solution itself may be rejected because it doesn't result in the lowest overall cost, including the commodity cost, cost of other transportation and storage assets and the like. *[Transcript 3T3257-3262, 3275-3276]*

4233. Ms. Mercier, you may remember the difference between a side analysis and a full assessment using the send-out program.

4234. Moreover, contrary to Messrs. Reed's and Harris' assurances, Union would no longer have only a single storage balance to deal with. Rather, TransCanada's proposal would require Union to break up its single flexible STS contract with a single STS balance into multiple STS contracts and multiple storage balances. That fact alone would add considerable complexity to an already complicated planning exercise.

4235. Mr. Chairman and Members, the entire TransCanada application was premised on implementation aligning with the summer injection period. *[B1-1, A75561-1, STS Application and Evidence, Transmittal Letter dated February 18,*

2016, p. 1; B1-1, A75561-1, STS Application and Evidence, p. 37, lines 1-2; Transcript 1T1067-1078]

4236. Recall, it was in the cover letter; it was at page 37 of the main application materials. And Union agrees with that approach. If you are going to make that change, it should be made to coincide or align with the summer injection period. *[B1-1, A75561-1, STS Application and Evidence, Transmittal Letter dated February 18, 2016, p. 1; B1-1, A75561-1, STS Application and Evidence, p. 37, lines 1-2; Transcript 1T1067-1078]*

4237. But there is -- and we would stress, there is simply no reliable information on the record available for proper testing to support implementation of the new STS services in the middle of the storage cycle.

4238. Now, Mr. Shorts did indicate that with a six-month election period, Union could elect for new service and toll options, including conversions from STS to FT. for implementation April 1, 2018. *[Transcript 3T3248-3251]*

4239. Because we know it's of concern for TransCanada, we would note that TransCanada could then factor those elections and conversions into its 2018-2020 toll update. *[Transcript 1T1108]*

4240. As noted previously, though, and in the context of withstanding the test of time, it's important to observe that no sooner would Union and the other STS shippers have implemented the new STS service and tolls than they would be discussing how they'd have to change them under segmentation.

4241. So Mr. Chairman and Members, again, from the standpoint of a toll design, a radical restructuring of services and that they shouldn't be changed frequently, they should withstand the test of time. It would be our respectful submissions that this is an important factor for you to consider in exercising your discretion whether to approve any or all of TransCanada's specific proposals, and we strongly submit that it argues in favour of rejection of those proposals.

4242. Now, a related them was that now is not the time, and those were positions advanced by Ms. Habib and Union, and I've included, for the benefit of the court reporter, at footnote 78 the relevant citations. *[Transcript 3T3335 and 3337; C9-4-3, A78335-3, Written Evidence of Georgette Habib, p. 3, lines 1-5; C9-6-2, A78905-2, Union Responses to NEB Information Request 1.2, p. 7 of 10]*

4243. Now, the corollary of that position, however, is not that there should never be a review of STS service and tolls. Union has never said that there should never be a review.

4244. Rather, what Union has said is that, given the imminent, and we say it is imminent, comprehensive reassessment of Mainline services, tolls, physical use of the system on a segment-by-segment basis, Union and Ms. Habib believe it is reasonable to wait until the appropriate cost of service and cost allocation information is available and then, in light of segmented service offerings, volume distance calculations, use factors and the like, then review the appropriateness of all services, including STS, and this is really important, relative to each other, comprehensively, at that time.

4245. As we've indicated, it's our view that that detailed information will likely will be available in the form of a Mainline Segmentation Application within less than a year from April 2018, which, in our respectful submission, is the earliest reasonable implementation date for a potential restructured STS service.

4246. Now, segmentation itself is supposed to be implemented on or about January 1, 2021, at the end of the RH-001-2014 term. And we note, for example, and exchange between Board counsel and Mr. Harris which went to the effect that, in our view, he admitted, and I think it is pretty clear, that there were no practical, procedural or administrative implications should the STS changes be delayed to 2021. *[Transcript 2T1499]*

4247. Now, that timing underscores why the RH-001-2014 objectives of toll stability and certainty over the six-year transition period ending in 2020 are critical and are not served by implementing the proposed changes now.

4248. Now, Mr. Chairman and Members, there are a few other matters such as grandfathering the term-ups until the segmentation review *[C9-6-2, A78905-2, Union Responses to NEB Information Request 1.2, p. 7 of 10]* and the limiting of the term of STS-FT conversions to the remaining term of the STS contract whether or not incremental capacity is required. They came up through the course of this proceeding.

4249. With respect to the latter, for example, there was a suggestion by the TransCanada witness that Union voluntarily chose to -- or would be voluntarily choosing to convert from STS to FT and that, as a result of that, the full 15-year contract term is warranted. That's in the event that we were -- sorry, that a

conversion was elected and that there was not sufficient capacity, so new capacity had to be built. And the thing that Union expressed concern about was, well, that means you're going to force us into a 15-year contract. And our point was, how's that fair if all of this is really coming unilaterally from TransCanada, no complaints or anything else.

4250. And the response of the TransCanada witness was, well, you would have asked for it. You would have elected it.

4251. Well, with great respect, I think that position begs credulity. *[Transcript 1T1178-1185]*

4252. It is, in our submission, TransCanada's unilateral actions prompted by none of its shippers that prompts that incremental cost which, by the way, we could avoid if we'd simply maintain the existing service as is. And to be clear, Union only voluntarily chooses to maintain its existing STS contracts.

4253. Now, apart from that supplementary comment, rather than repeat its substantive positions on those other issues, now we're content to leave them with the Board for the reasons stated in our evidence, responses to information requests and in testimony at the hearing.

4254. Mr. Chairman, I'll conclude on my prepared remarks, and then I have a few points to offer by way of reply.

4255. It is Union's respectful submission that the Board should reject the TransCanada Application and the specific proposals contained therein. Union and other Mainline shippers are entitled to toll stability and certainty, which always contemplated a mid-term true-up for post-expansion billing determinants, revenues and costs, but toll stability and certainty, until the end of RH-001-2014.

4256. Rejection of the present Application, however, should be taken in full recognition of the fact that a major review of all TransCanada costs, services, revenues and physical use, including STS, will get under way in the very near future for implementation at the end of the RH-001-2014 term on December 31st, 2020.

4257. Now, I have touched briefly on some of these points along the way, so I will endeavour not to repeat them, but just if you would bear with me. I made notes as my friend had presented his remarks.

4258. There was a suggestion that when you've juxtaposed stability, that is, toll stability with principles, principles always win. And in our view, that seriously misrepresents the context that we're dealing with. It ignores what went before. It ignores the fact that RH-1-2014 was a very significant decision that dealt with a very significant problem.

4259. And when I say "peace in the valley", I think it's apt. It was intended that we were going to end litigation, we wouldn't have more applications with egregious run-ups in toll for any of the shippers, and that we would transition into the segmentation post-2020. That decision should be observed as a matter of principle, regulatory certainty.

4260. Now, you do have the ability to change it. You're not precluded. It's your discretion. But we say that that principle should trump.

4261. With respect to -- we're a bit confused about the position that TransCanada now advances with respect to the justness and reasonableness of the service. Counsel for Enbridge earlier -- and I'm sure there were citations in his prepared remarks which we'll catch up with later, but I think he had seen the same issue. I believe that counsel for TransCanada had indicated that the RH-001-2014 tolls are still just and reasonable and that the STS tolls from RH-001-2014 are still just and reasonable.

4262. Our reading of the record had suggested that they were not. I believe Enbridge had spoken to the same point. I will identify what the basis for my confusion was, and that was an exchange we had with Mr. Harris, Volume 1. And it would start at 1322. This is where I put to Mr. Harris that there were no changed facts or circumstances which drove the filing of the application; rather, it was a re-evaluation by TransCanada.

4263. And Mr. Harris said he thought that was a "fair characterization". And then I said:

> *"Okay. So at the time of RH-001-2014 they were just and reasonable and as you sit here today they're not?"*

4264. And then he said:

> *"As we stated earlier this morning, there was no date upon*

> *which we can say that the service became unjust and unreasonable."*

4265. And then he went on to discuss the fact that there had been a concern growing over a period of time. And I won't go through all that, but I just want to flag the fact that the submissions of TransCanada's counsel this morning, to me at least, didn't seem to line up with the testimony of the witnesses. But I'll leave it at that.

4266. Our position, of course, is that those tolls -- this is consistent with our approach to the onus, that in all of the proceedings that have taken place, toll design, cost of service proceedings that have taken place while STS was an existing service, the service and the tolls went through, you know, some changes. But they were consistently reaffirmed and they remain in the tariff sheets now, and they are just and reasonable until proven otherwise. And in our view, TransCanada has fallen far short of budging that onus.

4267. Given the nature of that service and the many, many years of satisfactory operation of those services and how critical they are to the customers, and for all the other reasons I gave, it would take a lot to disturb that conclusion. And in our respectful submission, TransCanada has not managed to do so.

4268. My third point. There was a suggestion -- this had to do with the Settlement and Ms. Habib's interpretation of the Settlement and what the Settlement permitted. I've already spoken to the Section 12.1(g) of the Settlement and that it:

> *"...[did] not preclude any other initiative by TransCanada designed to reduce the Mainline System's cost of service."*

4269. Our position is that this application does not fall within that provision.

4270. And then the other point again -- I said I would come back to this -- TransCanada is -- want to attribute the Union -- the position that we say you are precluded from making changes to the tolls. And again, I just want to set that absolutely clear.

4271. And if you look at the evidence -- I'm not going to go through -- there's quite a number of different references. But the opening statement of Union, C9-8-1, starting at line 17, makes it absolutely clear we agree the Board

can exercise its discretion to change services at any time.

4272. We're saying that particularly given the nature of the RH-001-2014 decision, however, you ought not to exercise your discretion to change those STS services. So you have the authority to do it, you're not precluded, but you ought not to do it. You should exercise your discretion against it. So if there's any confusion about what our real position is, that's what it is.

4273. And I would say that Ms. Habib spoke to the same effect. And there was a suggestion that she relied on the Settlement. I would take issue with that, Mr. Chairman and Members, and I would invite your careful review of her evidence.

4274. I'm looking at, you know, pages 3, 6 -- in any event, rather than detailing every single one, Ms. Habib was very carefully focused on RH-001-2014 as what she was interpreting. She read the words of the Board, like everyone else, and she provided what her thoughts were with respect to what the Board said.

4275. It was not through her evidence -- it was never framed as an interpretation of all of the specifics of the Settlement Agreement. There were some comments on it, for example, the exclusion of Energy East and LMCI, but it was pretty limited. The real focus of her evidence was on the RH-001-2014 Decision.

4276. I've already -- my next point was just on the non-standard contracts. And the point I made to you was that the one standard that has emerged for balancing services is that they're very shipper specific. They require different attributes to manage operating circumstances for different shippers. And there's nothing wrong with that; it's a custom service.

4277. Maybe if you look at a delivery pressure charge, you know, Iroquois had to boost the pressure by a certain amount, and there were identifiable costs associated with that. At another point in the system, it might have been a lesser amount. But they were customized, you know, and they reflected the identifiable costs associated.

4278. Well, these STS contracts, similarly, were the same, and they reflected costs which were factored into tolls which have been approved routinely by the Board year in and year out, so to speak, over the many years of its operation. So

it's not an exception to the rule. The rule is that they were different.

4279. And Mr. Shorts had made the point to me, you know, standardization is kind of a popular commercial concept these days. If we standardize everything, the costs will be lower.

4280. Well, guess what? When Union read the application that was going to standardize STS, what happened to their costs? Anyway, that's an aside.

4281. My next point was the GMI -- the submissions TransCanada made with respect to the GMI argument, we agree with both counsel for Centra and for Enbridge. They were very careful to say that they based their assessment on their own situation.

4282. So if we believe that RH-001-2014 was supposed to effect peace in the valley, it may be that, at their end of the valley, the costs aren't affected that much and they can live with it. That's fine. But that doesn't mean to say that it's fair game to increase everyone else's costs by very significant amounts. So I don't think it really provides the assistance that my friend suggests it does.

4283. And then finally, on price signals, there was a comment to the effect -- and in fairness, I don't have the transcript -- but as I had understood counsel, it was something to the effect that when they had reviewed the Union IR responses, it suggested that Union would relinquish capacity, and it was due to proper price signals. Now, if I've misinterpreted that, I apologize.

4284. But assuming that was what he said, our response would be, "Well, I don't think that's fair or accurate".

4285. Mr. Gillett and Mr. Shorts, in their evidence, had indicated that what they provided in those IR responses were -- and I think the words they used were "indicative elections" -- that they were illustrative examples of the lowest possible STS cost. Ms. Mercier, I think it was the "lower bound", as you put it -- and that they considered only the STS costs. They did not represent what the utility would do in order to minimize overall costs, and it's that that the price signals would speak to.

4286. And so again, the difference in the two analyses is that the price signals would operate only if the full send-out program assessment had been run. And the evidence is clear that full assessment of all costs had not been run and

that it was really only a very limited side analysis which provided the lowest possible bound on STS costs, as they discussed with you, Member Mercier.

4287. Mr. Chairman and Members, I apologize for running longer than I had estimated, but those are my prepared remarks and my reply.

4288. **THE CHAIRMAN**: Thank you, Mr. Smith. Before we break for -- before we take a break, we just have one quick question here.

4289. You mentioned Union's customers' rates, and Union's rates are regulated by the OAB. What's our legal hand-in, or what's our -- what can we take into account here into our decision making, since we don't regulate those customer rates?

4290. **MR. SMITH**: Well, you do regulate the costs that get passed on to them, and we're telling you that those costs are excessive, unfair, and inconsistent with RH-001-2014. We are telling you that the expression of the public interest as the Board has identified it in a number of decisions, but usually the same passage -- I think it started in the Sumas Decision, it was in the Maritimes Decision -- that the appreciation of the Canadian public interest is in its broadest terms.

4291. And what we're saying is that the customers who use that service, right, the ones in the northwest and the northeast, they are very seriously and adversely affected. Be clear, the rate shock question came from Commission counsel, and so we told you how those costs would flow under approved methodologies.

4292. So it's a consideration how Canadians would be affected by those costs. And we take it very seriously.

4293. To try and suggest that this is a small number in the total revenue requirement of Union or the revenue requirement affecting those clients, we're in the land of big numbers. But when you're dealing with Canadians who have to pay bills, we're explaining to you exactly how they will see them. And we believe, Mr. Chairman and Members, that should be a significant consideration.

4294. You do not regulate those rates. We're not suggesting you do. And in fact, I think that's -- and not a disrespect to you, Mr. Chairman. Somebody who --

if they raise that as the issue, that's beside the point. It's really irrelevant. The point is that these costs should not be increased in the manner TransCanada proposes.

4295. **THE CHAIRMAN**: Thank you, Mr. Smith.

4296. We'll take a short 10-minute break, and we'll be back here at 3:00 p.m.

--- Upon recessing at 2:50 p.m./L'audience est suspendue à 14h50
--- Upon resuming at 3:15 p.m./L'audience est reprise à 15h15

4297. **THE CHAIRMAN**: Mr. Yates?

--- REPLY BY/RÉPLIQUE PAR MR. YATES:

4298. **MR. YATES**: Thank you, Mr. Chairman. I plan to be reasonably brief in reply.

4299. Much of what you've heard from my friends on the other side of this issue is -- was anticipatable, and much of it I dealt with in my argument in-chief. But there are some matters which need to be responded to, and it'll be a little bit, shall I say, scattered, which is the nature of reply.

4300. I'm going to respond to a number of issues in not any particular order, but hopefully I can convey the appropriate message in each case.

4301. There were a couple of things that Mr. Smith said today that were stunning, and I don't say stunning as in stunningly effective, but stunning as in "I can't believe that that's what he understood the TransCanada position to be".

4302. One of those was, he spent some time this afternoon talking about what he said was my argument that the new surcharge is not a toll. So he put that up there and then argued against it.

4303. And what's surprising about that is that is not what I argued. I did not argue that the new surcharge was not a toll. It was quite the contrary. It is TransCanada's position, as I said in the argument, as appears in the evidence, that the surcharge is a toll. It is a toll as defined by the *NEB Act*.

4304. It is a new toll, but the point is that new tolls are not precluded by RH-

001-2014. New tolls are not uncommon in times of final tolls. That is the TransCanada position.

4305. Secondly, he -- the second stunning one, that is -- near the end of his remarks today, he was commenting that an exchange that he had with Mr. Harris was an indication that what I had said this morning about tolls and the application of tolls was at odds with the evidence of the witness.

4306. Now, this appeared to be Mr. Smith understanding that TransCanada takes the position that the tolls that were approved in RH-001-2014, the tolls that were approved in Order TG-11-2015, were not just and reasonable. That's what they say is TransCanada's position.

4307. That is not TransCanada's position. TransCanada's position is, those tolls, the tolls that were put forward to the Board in the compliance filing and that were approved in TG-11-2015 as final tolls, are just and reasonable tolls.

4308. There is no request in this Application to change the final tolls as approved by TG-11-2015. What this Application asks for is a change in the tariff that affects the application of the toll. It is the application of the toll that creates the unjust discrimination, and it's the application of the toll that creates the unjust and unreasonable overall cost. And that has been clear.

4309. This statement of TransCanada that it does not seek a change to the tolls that were approved by TG-11-2015 has been clear since the Application was filed. It appears in paragraph 6 of the formal Application, where it's specifically stated that no changes to the STS tolls approved in Order TG-11-2015 are required to implement the changes in the Application. It appears in the additional written evidence at page 5, and it appears in the reply evidence at page 23.

4310. So from day one, TransCanada has been saying, "We seek no change in the final tolls. The final tolls are just and reasonable. We seek a tariff amendment to change the application of those tolls."

4311. And that's why, when Mr. Smith was talking to Mr. Harris, Mr. Harris' answer was couched in terms of "the service". If you look at the opening statement of TransCanada, it talks about service and tolling. They spent some time this morning talking about tolling as being the application of the just and reasonable tolls to the appropriate volumes.

4312. So that is the concept, that is the essence, really, of the TransCanada application.

4313. Still dealing with Mr. Smith, he was -- he made an argument this morning which he called the "bait and switch" argument as he suggested that TransCanada didn't daylight the STS changes until after the LDCs had been -- had termed up their contracts.

4314. STS was raised as a formal issue in March of 2015. The term-up elections were not due for another two months after that. The notice had been quite a bit earlier than that. You'll recall the wording in RH-001-2014 about additional notice. So the details of this, the details of this timing, appears in response to Union 1.20.

4315. So on that basis, Mr. Chairman and Members, TransCanada totally rejects the argument that there was some kind of bait and switch going on in respect of the STS application.

4316. Mr. Smith also talked about -- well, he was applying the R&V standards to this application. He spent some time talking about there are no new facts or changed circumstances since the RH-001-2014 decision. And at least as I heard him, he was analogizing to the return formula, the cases surrounding that.

4317. I come back again to say that Order TG-11-2015 is not being changed. The tolls approved by that Order are not being changed. There is no request to R&V RH-001-2014, or to R&V TG-11-2015.

4318. In RH-002-94, it included Order TG/TO-1-95 that, by its terms, specified how the ROE would be set in the future, and it had no expiry date. So that Order, of course, had to have an R&V application. That's what happened in RH -- was it 003-2008?

4319. It is the Order that was put into effect with RH-2-94 and the perpetuation aspect of that Order that triggered the need for an R&V and triggered the need for the burden of proof that is associated with an R&V.

4320. We don't have that here. We don't have any request to change RH-001-2014. We don't have any request to R&V that decision or the Order that fell out of it.

4321. Next, Mr. Chairman, Mr. Smith's interpretation of the Settlement. I'm not sure that he gave you any position on Section 4.2 of the Settlement, but he argued that Section 12 didn't apply.

4322. The fact is that this Application is entirely consistent with the Settlement, 4.2. We've been through that in reply evidence. I went through it in cross-examination with Ms. Habib. I went through it in the argument this morning.

4323. Mr. Smith said that the Settlement and then RH-001-2014 were intended to, and I wrote this down, "resolve unique challenges". Those unique challenges were the litigation and the disputes that fell out of RH-003-2011.

4324. TransCanada agrees that the Settlement was intended to resolve unique challenges, and the Settlement speaks to the unique challenges that it is resolving, but it's entirely, I'll say, sensible that the Settlement includes Clause 4.2.

4325. Clause 4.2 says, with these things that were resolved, you can't file anything or any applications in respect of the matters set out in the Settlement except after a certain date, after the date in September of 2013. With respect to matters not set out in the Settlement, matters that weren't part of these unique challenges that fell out of RH-003-2011, the Settlement says, "Go for it". It says that you can file, you can bring applications to the Board in respect of that.

4326. That's where you see the LMCI and Eastern -- Energy East specific exceptions, but 4.2(b) says:

> *"Nothing in this agreement shall restrict the ability of any party to take any action or commence any proceeding or to take any position with any governmental authority or third party at a regulatory proceeding [et cetera] ... including, without limitation, in respect of Energy East and the LMCI..."*

4327. So what we have here is STS, STS not being one of the unique challenges that fell out of RH-003-2011, and being one of the matters -- not being one of the matters set out in the Settlement, and being one of the matters not set out in the Settlement. So 4.2(b) is specific in permitting this application to be brought to you.

4328. Then when we get to Section 12, Mr. Smith says that doesn't apply

because we're not dealing with reductions in Mainline tolls; we're dealing with allocation, reallocation. I'll make two comments in respect of that. And these were made in my argument this morning. They were not responded to by Mr. Smith.

4329. I referred to my discussion with Ms. Habib about pricing signals and economic efficiency, and specifically to the wording that she gave me, 100 -- 100 percent for -- in her Economics class. And that wording is:

> *"So ultimately, proper price signals promote productive efficiency and allocative efficiency, maximize the utilization of the system, lower costs, lower the cost of service, and ultimately lower the tolls."*

4330. And then you have the evidence of Mr. Reed, which talks about economic efficiency and pricing signals, and ultimately lowering the tolls. And here, we have an application that lowers tolls, that lowers STS tolls, that lowers the FT tolls.

4331. In the TransCanada opening statement, there's a specific reference, and this is it:

> *"By addressing the current cross-subsidization, the Application will help reduce all Mainline tolls, which will benefit all Mainline shippers and enhance the Mainline's competitive position."*

4332. So I reiterate to you that Section 12.1(g) of the Settlement specifically contemplates what's before you today.

4333. Mr. Smith spent a great deal of time in his -- I think it was in the "Test of Time" section of his argument today, talking about segmentation and how it's going to be necessary to deal with segmentation in a particular timeframe. And underpinning that whole discussion was his argument that STS will have to change when the segmentation hearing occurs.

4334. That is not what the evidence is. The evidence from Mr. Harris -- and this was also in my argument this morning. The evidence from Mr. Harris was that he didn't share the assumption that Mr. Smith put to him that segmentation -- that STS would change in the segmentation hearing. That's what the evidence is.

That's what TransCanada's evidence is.

4335. TransCanada says, "We want to get this resolved now because we'll have certainty here and we'll facilitate the negotiations for the next hearing, that we have certainty on this issue".

4336. And recall that Mr. Harris's position was, when he said, "It's possible that there could be changes to STS." He said, "I said that in the sense of anything is possible, not ruling it out".

4337. Now, Mr. Smith and I think Ms. Van Iderstine went in the same place. They take that and say definitively, "There will be changes to STS, and that's one reason why you shouldn't change it now".

4338. And I say to you that the evidence does not support the position that it should not be changed now because it's going to be considered later. The evidence is to the contrary.

4339. And then consider what happens if you don't change it now. What happens if you don't change it now is a perpetuation of the unjust discrimination that was the genesis of this Application.

4340. I couldn't count the number of times today that counsel referred -- or argued, I should say, that there is no evidence supporting discrimination. It reminded me of the adage that if you repeat something often enough, it will become true.

4341. But the fact is, there is evidence -- there is cogent evidence before you that says there is discrimination, the discrimination is unjust, and you don't need a cost allocation study or detailed cost information in order to make a conclusion about that.

4342. And you'll recall this morning I spoke specifically to the cost allocation study. I drew your attention specifically to the reasons why TransCanada has not generally provided cost allocation studies. That's in the response to Undertaking U-2, I think it was -- or U-1, right. And it's because they aren't useful.

4343. We have a decision in RH-003-2011 that says, "We don't require a cost allocation study." RH-003-2011 is the biggest hearing about TransCanada's

tolls in decades; 72 days considering all kinds of aspects of TransCanada's tolls.

4344. And why don't you need the cost allocation study? It's because it's an integrated system. The system average costs are reflective of the costs of providing the services.

4345. And I would suggest to you that what the opponents are seeking here is to impose an impossible threshold on TransCanada. These are the -- and I'm referring to the same arguments, the arguments that TransCanada has not provided specific costs to provide STS. It's not possible to provide specific costs to provide STS.

4346. The evidence is clear that the same facilities are used to provide STS and STS withdrawal pooling. There are no distinguishable costs of providing STS that are not also used to provide FT.

4347. And we got the theme that you shouldn't do anything because nobody's complaining, or nobody has complained. And Ms. Van Iderstine cited some of the Reed reply, but ignored the paragraph that I'm about to quote to you:

> *"But the argument seems to be that there's no discrimination. You can make no finding of discrimination. There is no discrimination because no one complained."* (As read)

4348. And what Mr. Reed said about that was:

> *"The Habib evidence assumes that the Board should only find that unjust discrimination exists if a shipper complains, and I find this logic to be severely flawed. I see no reason for the Board to have a policy that it should wait for shippers to raise a complaint of unjust discrimination before the Board acts to correct the situation."*

4349. Now, that's why I was talking about section 68 this morning. Where there is discrimination, the onus falls to the pipeline to show that it is unjust. And TransCanada has concluded it cannot show that this discrimination is not unjust. That's why they're here seeking changes to the existing situation.

4350. Just another point on this cost issue. Mr. Smith, I believe it was, referred to Ms. Habib's evidence on the surcharge not being supported by cost

evidence. And I would merely point out to you that that position of Ms. Habib was entirely refuted in reply evidence. And I'll just refer you to the reply evidence; page 23, line 15 to page 25, line 22.

4351. Turning to Mr. Langen for a moment, he tried to make much of TransCanada -- well, he was accusing TransCanada of being less than transparent. This was in the context of the Balance Transfer Agreement, that they didn't share -- TransCanada didn't share this.

4352. But the fact is that TransCanada did fully disclose the existence of the Transfer Agreement in the Application and in the non-standard contracts provisions published on its website that were provided in response to EGDI 1.12. And the fact is that Mr. Harris told Mr. Langen that TransCanada hasn't decided whether they are going to terminate the contract.

4353. You'll recall that Mr Langen was showing a bit of dudgeon, I'll say, in this context. But I don't know how you can be transparent about something that you haven't decided.

4354. The fact is, the contract is there. It has a termination provision. It had the termination provision in it from day one.

4355. There is no decision to terminate; TransCanada doesn't know if it ever will terminate. So how can they be criticized for not sharing the fact that they didn't know what they were going to do about it?

4356. And remember that we had Ms. Lawler saying that they assumed -- EGDI assumed that the contract would be terminated. That's how they're operating. So why do they care about whether TransCanada has made the decision? They've made their decision on that particular agreement.

4357. The statement that no decision was made was also in the response to EGDI 1.13. And the statement of Ms. Lawler about the assumption that the contract would be terminated is at paragraph 2656 of Volume 2 of the transcript.

4358. Mr. Langen spent a fair bit of time on what he called "fairness and equity", and much of his argument about what you should do was underpinned by what he characterized as -- I won't say what he characterized it.

4359. He was criticizing TransCanada's conduct in respect of the bringing of

this application. And essentially he's saying, "You knew, TransCanada, in 2011, that you were going to do this. And then you hid in the weeds until 2015 -- 2016 before you made the application, and everybody made all these commitments in the meantime".

4360. And what I say to you is that that is a complete distortion of the evidence. And if you look at Enbridge EGDI 1.2, and the question was, "When did you" -- let's see what the specific question is:

> *"When did TCPL first become aware of any concerns about discrimination in equity in relation to offering STS service and the terms of the service on the TransCanada Mainline?"*

4361. And the answer, A, says:

> *"TransCanada management and staff have had growing concern regarding STS service for a number of years."*

4362. Growing concern. That doesn't mean they've made a decision that they're going to change anything, they're going to make this application and they're hiding that decision from everybody. They're saying, "We have a growing concern".

4363. It's not possible to provide an exact date when they first became concerned. It developed -- the concern developed over the 2011 to 2014 timeframe, and ultimately led to collaborative efforts in 2015, the subsequent filing of the Application.

4364. What happened in 2011, as you see from this response, is that a shipper requested to amend their STS contract to increase the firm entitlement on a seasonal quantity not subject to the STS toll. So they wanted to increase the quantities that they could move for free, and TransCanada wouldn't agree to that change.

4365. Concern began to emerge, and it developed over 2012 and 2013, but the decision to make the Application came very shortly before the Application was actually submitted.

4366. If you look at -- I'll just make the reference. Mr. Harris talked about that in the transcript at paragraph 1325, and that response in the transcript is

entirely consistent with the IR response.

4367. And I think it was Mr. Langen who cited Mr. Reed's evidence in the context of his response to the assertion that elimination of STS balances -- sorry, grandfathering of STS balances would be contrary to the no acquired rights principle. And Mr. Langen referred to Mr. Reed's evidence where he had a caveat about, unless there is a contract, no acquired rights -- you can't -- you don't have acquired rights unless there is a specific contract to that effect.

4368. And I would only say this in respect of that, and that is that the contract here, the STS contract, includes a clause that says that the STS shipper will pay for transportation tolls pursuant to the STS toll schedule as amended or approved from time to time.

4369. So there isn't a contractual right to retain something from a particular timeframe when you're paying STS tolls. The contract that they've signed amends the contract as the tolls are amended, as the tariff is amended. So the contracts change with NEB approval.

4370. The last comment I'll make relates to the rhetorical questions that Ms. Van Iderstine was asking at the end of her argument. She couched that in terms of customers asking, "Why did our tolls go up?"

4371. And the answer to that question would be, assuming the Application is approved, your tolls went up because the subsidy that you've been receiving for decades has been removed. Your tolls have gone up because the National Energy Board determined that there was -- you were benefiting from unjust discrimination and your tolls are going to go up because, from now on, you're going to pay the same toll as everybody else instead of paying a toll that is significantly less than everybody else. And that's going to happen because the NEB has decided, on the evidence, that it is fair for you to pay the same toll as everybody else.

4372. Now, it strikes me that the customers of Centra can understand that, that it's not fair for them to pay less than everybody else.

4373. And I'll end on that note, Mr. Chairman, unless there are questions. Thank you.

--- (A short pause/Courte pause)

4374. **THE CHAIRMAN:** Thank you, Mr. Yates.

4375. And I'd like to thank all parties for your helpful submissions and participating in the hearing. Throughout this proceeding, the Board has been assisted by the participation of parties, counsel and witnesses. The Board is appreciative of the efforts and accommodations of the parties throughout the hearing process.

4376. The Board also appreciates and recognizes the work and efforts of the court reporters, sound technicians, security personnel and the Board's own staff, including those in the hearing room and those who work behind the scenes to ensure the smooth functioning of the hearing.

4377. Et aussi un grand merci aux interprètes pour leur excellent travail qui, comme toujours, est beaucoup apprécié par l'Office.

4378. This now concludes the oral portion of this hearing. The Board reserves its decision on the Application. We will issue our decision in accordance with the Board Service Standard.

4379. Thank you. Merci, et au revoir.

--- Upon adjourning at 3:49 p.m./L'audience est ajournée à 15h49