DECISION

IN THE MATTER OF a Review of Enbridge Gas New Brunswick Inc. Financial Results and Natural Gas Sales at December 31, 2009

May 16, 2011

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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IN THE MATTER OF a Review of Enbridge Gas New Brunswick's Financial Results for the fiscal period ending December 31, 2009

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

CHAIRMAN:	Raymond Gorman, Q.C.
VICE-CHAIRMAN:	Cyril Johnston
MEMBERS:	Constance Morrison
	Edward McLean
SECRETARY:	Lorraine Légère
COUNSEL:	Ellen Desmond, Counsel

APPLICANT:

Enbridge Gas New Brunswick LP	Len Hoyt, Q.C Dave Charleson

INTERVENORS:

Atlantic Wallboard LP and Flakeboard Company Ltd	Christopher Stewart
Department of Energy	Stephen Waycott
Public Intervenor	Daniel Theriault, Q.C.

Introduction

The New Brunswick Energy and Utilities Board (Board) conducts an annual review of Enbridge Gas New Brunswick Limited Partnership's (EGNB) Regulatory Financial Statements and has done so since 2000. This decision relates to EGNB's Regulatory Financial Statements for the year ending December 31, 2009. An important result of these reviews is to approve the amount, if any, that will be added to the regulatory deferral account.

Since 2003 the Board has also conducted annual reviews of EGNB's natural gas purchase and sales. The purpose of the gas sales review is to ensure that EGNB's gas sales are in compliance with the Gas Distributors Marketing Regulation (GDMR) and any relevant Board orders.

For the first time during the annual review the Board will address two additional issues namely: a review of EGNB's prospective revenue requirement for 2011 and the application of the test for the end of the development period.

This decision will discuss each of these four subject areas in turn.

Review of 2009 Regulatory Financial Statements

In previous years the Board retained an accounting firm to conduct an independent review of the annual audited financial results and Regulatory Financial Statements. A report was provided to the Board and became evidence in the proceeding.

The process for 2009 proceeded somewhat differently. In a decision dated November 13, 2009, for the year ending December 31, 2008, the Board ordered EGNB to file the partnership's audited statements, in addition to the regulatory statements. These audited financial statements had not been available to parties in the past. In addition, EGNB was directed to provide details of the adjusting entries required to reconcile the partnership statements to the regulatory statements. Given the additional filing requirements now in force, the independent accounting review was no longer necessary.

Apart from the above noted changes the review of the 2009 results followed the usual Board process, with interrogatories from intervenors and Board staff. A public hearing took place on February 9-11, 2011.

The decision will deal first with revenue and then with the expenses for 2009.

REVENUE

The revenue portion of the income statement is approved as presented in the 2009 Regulatory Financial Statements.

An issue related to the disclosure of costs connected to installation services requires consideration. EGNB includes only the revenues and cost of goods sold for installation services in its Regulatory Financial Statements. It does not allocate any overhead expenses to the installation business. The Board addressed this issue in its decision following the annual review of EGNB's 2008 Regulatory Financial Statements. At page 4 the Board stated:

> *"The Board must be assured that all costs related to installation services are properly identified and charged to installation services revenue. The Board therefore orders EGNBLP to file all costs related to installation services and how these costs were determined for 2008. These costs will be filed with the Board no later than 180 days from the date of this decision. Should the review of this information indicate that installation services are not covering their full costs the Board will make the appropriate adjustments."*

EGNB responded to the Board's direction by filing a report in May of 2010. The report allocated a portion of Operation and Maintenance expenses, capital costs, depreciation and bad debt expenses to the installation business. That report indicated that installation services were covering their full cost and no adjustment was necessary.

The Board continues to be concerned that all costs related to installation services are properly identified and charged to installation services. As a result the Board directs EGNB to include the results of installation services on a full-cost basis in all future Regulatory Financial Statements. The Board also directs EGNB to include the details of this cost allocation in the notes to the Regulatory Financial Statements in a format and manner similar to the report filed in May of 2010.

EXPENSES

Operating Expenses

Payments to Affiliates

EGNB is affiliated with the Enbridge group of companies and incurs expenses from affiliates as listed in Note 12 of the Regulatory Financial Statements. These expenses take two forms: expenses under Service Level Agreements (SLA) and expenses pursuant to a Corporate Allocations Policy.

EGNB purchases certain services from affiliated companies under the SLAs between EGNB and these affiliates. During 2009, the total payment for services purchased under these SLAs – including flow-through costs - was $2,395,786. Flow-through costs include a variety of items such as the cost of pipe, equipment and vehicles acquired on EGNB's behalf.

The SLAs were reviewed in great detail during the hearing. There was no evidence that any of the services could have been obtained more economically elsewhere. The Board finds the expenditures pursuant to the SLAs to be prudent.

In addition to the SLAs, EGNB is charged amounts pursuant to Enbridge Inc.'s corporate allocation policy. These payments were described by David Charleson, a witness for EGNB, in his opening statement at page 161 of the transcript:

> "*These costs are related to services provided by Enbridge Inc. and overheads associated with the operation of Enbridge that support the business units owned by Enbridge.*"

EGNB is billed for costs allocated to it by Enbridge Inc. For the 2009 year, these allocated costs totaled $2,191,104. Since 2004, the amount allowed in the Regulatory Financial Statements has been less than EGNB's total allocation by Enbridge Inc. The methodology to determine the reductions was based on findings made by James Easson CA, acting as the Board's independent financial consultant, during the Board's annual review of the 2004 Regulatory Financial Statements.

The methodology excludes certain charges from the Regulatory Financial Statements on the basis that they would not be incurred if EGNB was a stand-alone business. There are also limits on the increases to certain allowed charges.

EGNB has accounted for the corporate allocations in their Regulatory Financial Statements consistent with this method up to and including the 2008 fiscal year.

During the review of the 2008 EGNB Regulatory Financial Statements, the Board directed EGNB to file a report describing the then current methodology for the allocation of these costs. EGNB was directed to propose changes it felt were appropriate. The resulting report, filed by EGNB in May 2010, did not address the Easson methodology but simply proposed to eliminate it. As a result EGNB filed its Regulatory Financial Statements using 100 percent of the Corporate Allocations assigned to it by Enbridge Inc's Cost Allocation Methodology. The methodology is described in detail in a 28-page document filed with the evidence.

EGNB requests that the Board allow the entire amount of its allocation from Enbridge Inc. to be included in its Regulatory Financial Statements. The difference between EGNB's current proposal and the methodology adopted after the 2004 annual review would result in an increase in expenses of $1,026,994.

EGNB maintains that all of the amounts allocated to it by Enbridge Inc. are prudent and should be included in its Regulatory Financial Statements. Counsel for Atlantic Wallboard Ltd (AWL), in contrast, argued that no corporate allocations should be allowed. AWL's position is that EGNB spends significant amounts on services it requires through the SLAs and that there is no evidence of benefit flowing from the other corporate costs. Moreover, AWL asserts that there is no evidence that the corporate allocations are prudent expenditures.

While Enbridge Inc. may have developed a system which it considers to be fair within its group of companies, this does not lead to the conclusion that such corporate allocations are thereby prudently incurred. This Board has two broad concerns with the prudency of the corporate allocations. The first concern is that some of the allocated items may not give any benefit to EGNB. An example of this would be the allocation for corporate aviation.

The second concern relates to the overlap between payments under the SLAs and the corporate allocations. By way of example, EGNB expended $25,970 - in addition to flow-through costs related to staff benefits purchased for EGNB - pursuant to the SLAs on Human Resource Consulting. EGNB paid a further $33,679 for human resources under the Corporate Allocation Policy. EGNB has not demonstrated that it receives any benefit from the additional allocations under the Corporate Allocation Policy nor is there evidence that EGNB questioned the charges.

While Enbridge Inc. imposes its corporate allocation policy on all of its companies, the prudence of an expense for regulatory purposes may well vary between affiliates.

As a result of the forgoing, the Board will not approve the proposed methodology. The Board finds that expenditures of $1,026,994 relating to additional corporate allocations are not prudent and will disallow this amount. The Board will allow the remaining $1,164,110 for corporate allocations in 2009. The Board directs EGNB to re-file its Regulatory Financial Statements to reflect this change.

The Board will continue to scrutinize the expenses under the corporate allocations policy in future reviews.

Prudency of expansion costs

The Board heard a significant amount of testimony and reviewed significant evidence on the topic of expansion costs.

Robert Knecht, the expert witness for the Public Intervenor, testified that if costs are being expended to support growth it is only reasonable to have those costs included in any calculation that determines the prudence of capital expansion. According to Mr. Knecht all amounts capitalized to Development O&M, as well as to Property, Plant and Equipment should be included in any prudency assessment. Using his analysis Mr. Knecht concludes that $17.983 million of expenditures in 2009 were imprudent. The Public Intervenor argued that the Board should disallow half of the $17.983 million.

EGNB disagrees with this position and argues that only those incremental costs related to the expansion should be considered in the justification of capital expansions. EGNB states that many of the costs being considered by Mr. Knecht would not be decreased had the expansion not occurred. Further these are costs to develop future customers, not solely the customers added in 2009.

The Board agrees with the basic principles set forth by Mr. Knecht. Capitalized costs such as Development O&M should be included in the calculation of whether a capital expansion is prudent.

The Board does not accept Mr. Knecht's assumptions and calculations either with respect to the revenues produced by expansion or the calculation of capitalized costs to be included in the prudency analysis. Mr. Knecht acknowledged during his testimony, that his estimate of the annualized revenue from expansion are based on averages for the year not specific projects or expansion projects. The Board finds that EGNB's calculation of revenue from expansion is more appropriate.

Various calculations and scenarios relating to revenue and capitalized costs were submitted by Mr. Knecht and EGNB. None of these calculations comply with the manner in which the Board would calculate these amounts. The best evidence before the Board leads to the conclusion that the revenues produced by the expansions very nearly match the appropriately calculated costs. Under these circumstances the Board accepts the expansion costs as being prudent for 2009.

This issue will be addressed further in the section of the decision relating to EGNB's prospective revenue requirement for 2011.

Other expenses

EGNB's other expenses are, to a large part, fixed. These include Amortization of Property, Plant and Equipment, Municipal and Other Taxes, Interest on Amounts Due to Associates and Affiliates and Other Interest and Amortization of Deferred Development Costs. The Board has reviewed these items and finds them to be prudent.

Conclusion

The Board must, as part of this proceeding, determine the appropriate amount that is to be added to the deferral account as a result of EGNB's prudent spending. The Board will require EGNB to re-file its 2009 Regulatory Financial Statements within 30 days of this decision with the adjustments to the corporate allocation expenses set out above. The Board will confirm that the adjustments comply with this decision and will then issue an addendum confirming the appropriate amount to be added to the deferral account.

Gas Sales

In 2003 the provincial government introduced regulations that would allow EGNB to sell gas to its customers under certain conditions. Annually the Board is required, by the Gas Distributors Marketing Regulation, to review the sale of Standard Service Gas, referred to as Enbridge Utility Gas (EUG) and alternative-offer gas products. The review is meant to ensure that the regulations and any relevant Board orders are complied with.

The Board hired John Butler of JC Butler Management Ltd. to conduct an independent review of the gas sales. Among Mr. Butler's tasks was to ensure that EGNB complied with Section 6 of the regulation prohibiting cross-subsidization between gas sales and the gas distribution operation.

In his report filed in April of 2010, Mr. Butler had one observation related to the charges of Enbridge Operation Services (EOS). EOS is an arm of the Enbridge group of companies which handles gas nomination and other services for both the gas sales and gas distribution operations.

Mr. Butler noted that the allocation of EOS fees between the two operations changed in 2009. In prior years, 25 percent of the EOS fees were charged to EUG but, in 2009, 62 percent of the fees were charged to EUG. Mr. Butler stated that were was no documentation to support this change and that it raised the possibility of cross-subsidization. EGNB explained that this was the result of a reassessment of activities by EOS and that the new allocation was more accurate.

Mr. Butler recommended that the Board:

1. *Accept the explanation offered by EGNBLP in which case no further action is required.*
2. *Require EGNBLP to obtain justification from EOS for such changes.*

The Board will accept EGNB's explanation for the change in allocation in 2009. If the allocation continues to deviate from the terms of the SLA, the Board will require EGNB to obtain detailed justification from EOS for such changes.

The Board finds that EGNB complied with all relevant regulations and Board orders for 2009.

2011 Revenue Requirement

For the first time the Board is considering a prospective revenue requirement for EGNB. On October 22, 2010 EGNB filed its budgeted revenue requirement for 2011. This was revised and re-filed on February 7, 2011 to take into account changes in the Cost of Capital as ordered by the Board in a decision dated November 30, 2011. The February 7, 2011 version also corrected errors in an earlier version.

REVENUE

This is the first prospective hearing the Board has undertaken regarding EGNB revenue requirement. As a result, there are many issues to be resolved, including to what extent EGNB must be required to meet or exceed its revenue forecast. In more traditional utility regulation the applicant would produce a forecast of estimated sales that would be integral in setting the cost-based rates. In that traditional situation the rates are set to ensure the utility has a reasonable opportunity to earn its rate of return. In EGNB's particular situation, the rates are not cost-based at this time and so the forecasts are not instrumental in setting rates. In the past EGNB's forecasts of customer additions and throughput have been optimistic; however, EGNB told the Board it believes the forecasts for 2011 are reasonable estimates.

The projected revenue requirement of $54.2 million for 2011 is a product of the forecasted throughput and the rates predicted. Unlike a traditional utility, EGNB's market-based rates are not predictable. The rates are dependent on relative prices of natural gas and the competing fuels. These prices are neither predictable nor are they within EGNB's control.

While the rate component of the revenue forecast is beyond the company's control, the accuracy of the throughput forecast is to a large extent within EGNB's control. As a result the Board finds that the forecasted throughput of 5,814 Terajoules must be factored into any discussion of prudent spending. This will be discussed below.

EXPENSES

In its revised 2011 budget, EGNB forecasts expenses of $35.91 million. In addition, as set out in Note 8 to the 2011 budget, the applicant proposes to capitalize another $15.91 million.

The expenses include budgeted amounts for Amortization of Property, Plant and Equipment, Municipal and Other Taxes, Interest on Amounts Due to Associates and Affiliates and other Interest, and the Amortization of Deferred Development Costs. The Board heard no evidence to challenge these items. The Board has reviewed these items and accepts them as prudent.

This budget includes a provision for the adoption of the proposal for corporate allocations as proposed in the 2009 Regulatory Financial Statements. As discussed above the Board does not accept that the proposal for 2009 is prudent nor does it find, for the same reasons, that the proposal for 2011 to be prudent. The Board disallows $1,359,769 from the revenue requirement.

Capitalization

EGNB capitalizes a portion of its Operation and Maintenance expenses pursuant to a policy that was last reviewed in a decision issued in 2005. During the review of the 2002 and 2003 Regulatory Financial Statements the Board's financial consultant Mr. Easson took issue with EGNB's practice of capitalizing a portion of its operation and maintenance costs in the "distribution mains" category of its property, plant and equipment assets. EGNB subsequently filed a report prepared by Price Waterhouse Cooper and the Board, in a decision dated September 2, 2005, stated at page 4, the following:

1. *The operation and maintenance (O&M) cost categories identified by Enbridge are not costs directly incurred in the construction of its physical assets and do not meet the Canadian Institute of Chartered Accountant's definition of property, plant and equipment (PP&E).*
2. *That the subject O&M costs that were capitalized by Enbridge are not tangible assets. They should not be included with the distribution mains category and reported under Property, Plant and Equipment (PP&E) on Enbridge's regulatory financial statements.*
3. *The O&M capitalized costs may be appropriately considered as investments by the utility while it develops the gas market in New Brunswick. These costs, past and future, are to be recorded in a separate account by Enbridge and reported separately on its regulatory financial statements. The account may be described as "Development O&M Capitalized Costs" with a footnote identifying the account as an intangible asset and specifying the rate of amortization.*
4. *It is anticipated that future amounts of capitalized O&M costs should decrease as distribution revenue increases and the utility nears the end of its development period. The annual capitalization of a portion of O&M costs should end co-incident with the end of the development period. Justification should be provided by the utility if it proposes to capitalize any future O&M costs beyond the end of the development period.*

5. *To accelerate the amortization of the capitalized O&M costs at this time would only increase the amount of Enbridge's deferral account. The Board directs Enbridge to continue to depreciate the capitalized O&M account at the rate of 2.43% until the end of the development period.*
6. *Prior to the end of the development period, the Board will require that a review be undertaken to determine an appropriate amortization period for the capitalized O&M costs.*

The method of capitalization is to set a percentage of the O&M expense in each expense category to be capitalized. These percentages are referred to as the capitalization rates. EGNB proposes to alter its capitalization rates for the 2011 year, reducing the rate in most categories but increasing the rate in two categories. EGNB analyzed its various operations, assessing the proportion of activities related to growth, to arrive at the new rates.

The regulation of EGNB has been predicated upon principles set out when the franchise began ten years ago. Among these principles is the concept of the development period. The underlying understanding is that during a development period the expenses of the operation will exceed the reasonable revenues that can be obtained. Such shortfalls are captured in the deferral account to be repaid by future customers. Implicit in this concept is the idea that the company's growth will be rapid enough to eventually generate revenues which exceed its costs to such an extent that it can pay its expenses, a return on investment and pay down the deferral account.

EGNB's growth in recent years has not met its targets. In this hearing EGNB predicts its customer growth to be eight per cent in 2011. Throughput growth during this period is forecast to be modest. This follows approximately six percent customer growth in both 2008 and 2009 and no net increase in throughput in 2009. The Board understands that throughput and customer growth are moderated by economic and weather conditions but believes EGNB's viability depends on growth being significant enough to overcome such negative factors. EGNB is not in a period of rapid growth. A slowdown in growth does not trigger the end of the development period. However, EGNB's business plan and financial reporting must recognize that attachments and throughput are not growing rapidly.

The Board has concerns as to whether the amounts proposed to be capitalized can still be appropriately considered by EGNB as investments to develop the gas market in New Brunswick given the slow growth rate referred to above. The Board will accept the capitalization rates proposed for 2011. The Board understands these rates to be a maximum and that EGNB may determine that a lower rate is appropriate under the circumstances.

In its consideration of EGNB's 2012 revenue requirement, the Board will consider if it is still appropriate to capitalize any operation and maintenance expense beyond those costs allowed by generally accepted accounting principles (GAAP). If EGNB proposes to continue to capitalize any operation and maintenance expenses it should file supporting evidence to justify any extraordinary exception to GAAP.

Operating Expenses

EGNB's proposed budgeted operating and maintenance (O&M) expenses for 2011 is $25.81 million, of which $15.91 million is to be capitalized. This leaves $9.9 million to be expensed in 2011.

Mr. Knecht proposed that a target be set for the operation and maintenance expenses. Such a target would be based on an average of past years expenses and exclude any amount for success-sharing payments to employees. Mr. Knecht would also remove amounts for capitalized incentives and for amounts capitalized to Property, Plant and Equipment. The target would further be adjusted to account for his recommendation that the Board reject EGNB's proposal to increase the corporate allocation. Mr. Knecht's recommendation for the O&M target, after the adjustments, would be $15 million in 2011. A feature of Mr. Knecht's target proposal is an incentive mechanism. Should EGNB spend less than the target it would be permitted to fund the success-sharing program. Additionally, the shareholder could keep half the savings in the form of an increased return on equity. However, should spending exceed the O&M target, only half of the excess would be added to the deferral account.

The Board finds it would be inappropriate to offer the incentive of an increased rate of return to shareholders when such an incentive would only add to the deferral account.

The Board does, however, believe there is merit in establishing targets and benchmarks for EGNB.

The challenge is to establish an appropriate target for EGNB. As discussed earlier, under the market-based rates system, the rates charged by EGNB are, to a large measure, outside its control. As a consequence a target related to revenue would not be appropriate. On the other hand, the forecasts of throughput produced by EGNB should be reliable and an important factor in EGNB's spending decisions. The Board finds that a target based on throughput is appropriate and will establish such a target.

With this principle in mind, the Board has determined that EGNB must be responsible for its throughput forecasts. The Board will assess EGNB O&M spending on a per GJ basis. This "spending per throughput" target will be a significant indicator of prudence in assessing the 2011 O&M spending. The target will be determined using an O&M expense of $8,537,231 - which is the proposed budget of $9,897,000 less the adjustment for disallowed corporate allocations of $1,359,769. This amount, divided by the current throughput target of 5,814,000 Gigajoules, produces an O&M target of $1.47/GJ.

Should EGNB's per GJ spending be above the target, without sufficient justification for variances in throughput or expenses, the excess may not be considered prudent.

The Board will use the O&M target of $1.47/GJ for the 2011 annual review. The Board anticipates that the "spending per throughput" targets may be very different in future years should there be significant changes in EGNB's accounting policies.

The Board also finds that "expenses per GJ" metrics are useful not only for O&M spending but for a variety of items on the income statements. The Board orders EGNB to add to their income statement a column showing expenses on a per GJ basis as part of its regulatory filing.

Capital Additions

The prudency of expansion was a topic of significant discussion during the hearing. The issue was considered both in the review of 2009 spending and in examination of the 2011 revenue requirement.

EGNB proposes to continue to measure the prudency of expansion on a portfolio basis. Under this proposal EGNB would sum the incremental costs for all the expansion during the year and compare those total costs to the annualized revenue expected from the year's expansion. Witnesses for EGNB testified that the revenue would be calculated using the rates in place at the time of the decision to expand. Mr. Charleson told the Board that the advantage of such a process allowed management the judgment to expand to some areas that were strategic but not as profitable at this time. In essence more profitable expansions would subsidize less profitable but strategic projects.

For 2011, Mr. Knecht proposed a target mechanism be used for expansions. As part of this proposal he suggests an incentive mechanism, similar to the one for the operation and maintenance expenses.

The Board does not believe an incentive is appropriate at this time. Without the incentive, Mr. Knecht's approach is not significantly different than the portfolio method EGNB currently uses.

The Board will accept the portfolio method with the following modification: The Board orders EGNB to include all capitalized expenses directly attributable to the expansion or growth of the company. Any capitalized costs excluded from the expansion prudency analysis must meet the guidelines established by GAAP for capitalization such as operational assets classified as "General Plant" in Note 1 to the Regulatory Financial Statements.

The second modification is related to an allowance for unforeseen circumstances. The company's calculation is such that, should the annualized revenues exceed annualized costs by one dollar, the project is deemed prudent. Not only does this approach leave no room for unforeseen circumstances, it doesn't require a project to improve the utility's financial position. The Board finds that it is in the best interests of the rate payers and the utility to ensure that expansion improves the financial health of the utility.

The Board directs that projected annualized revenue from expansion must exceed cost by at least two percent. The Board may alter this margin in future years. The Board will determine the prudence of expansion costs on this basis. This calculation for the prudence of expansion costs is to be included in the notes to the Regulatory Financial Statements.

Development Period Test

This is the first hearing in which the test for the end of the Development period is being used. In its December 1, 2009 decision the Board set out two tests to determine the end of the development period. The excerpts from page 4 of the decision summarize the tests:

> *"Determining if revenues can recover full costs requires a comparison of the full costs to the revenues that are available from the current rates. If the costs are equal to or less than the revenues then the first test has been met.*
>
> *The question then becomes whether those revenues are sustainable. This requires another test. It must be determined if the revenues, in total for all of the customer classes, will be equal to or greater than the full costs going forward….*
>
> *….With respect to the appropriate period of time, the Board believes that use of a forecast period of two years is reasonable. The Board finds that the rates that could be charged on a sustainable basis are to be determined by using the approved rate setting method in force at the time of performing the test. If the rates that can be sustained provide revenues equal to or greater than the full costs the second test is passed and EGNBLP's Development Period would be over."*

It was suggested during this hearing the first test may be interpreted in more than one way. The Board will therefore clarify its intent with regards to the development period test.

To be clear, the first test is retrospective. The test considers the year in review and determines if the revenues exceed the full costs. For the purposes of this hearing, the year to be assessed is 2009. In filing its evidence EGNB proceeded on the basis that the first test would be performed prospectively on the 2011 year's forecasted budget. This was incorrect but does not affect the Board's ability to apply the test since all the necessary information from 2009 was available.

It is clear that for 2009 expenses exceeded revenue and therefore the first test is not met. There are however some further issues requiring clarification, particularly involving the appropriate expenses to consider in performing the test.

One such issue is the matter of capitalized O&M expenses. During the hearing Mr. Charleson suggested that the first test was complicated by the amount of O&M capitalized. He suggested that any accounting of full costs would need to add some amount for O&M expenses that would no longer be capitalized. As described above, in the next annual review, the Board will consider what, if any, portion of O&M expenses may be capitalized going forward. For the application of the first test to the 2010 and 2011 years the Board directs EGNB to include in its expenses any capitalized O&M expenses which will remain as ongoing costs after the development period ends.

There is also an issue related to the cost of recovering the deferral account. Mr. Charleson testified that the tests should include a return of the deferral account. The Board agrees and finds that the revenue must include an allowance for the pay down of the deferral account.

It is inherent, therefore, that there must be a calculation of the amortization of the deferral account. The depreciation period for paying down the deferral account has not been determined by the Board. In recent hearings, however, EGNB has used previous decisions from the Board to set a period of 30 years. This method is appropriate for the purpose of this test. EGNB is to include its calculation for this test in its Regulatory Financial Statements presented to the Board annually with appropriate explanations in the notes to the financial statements.

The Board wishes to make clear that it will determine the appropriate amortization period for the deferral account after a full review at a future hearing and that the period of 30 years set out above is solely for the purpose of the development period tests and is subject to change.

The second test is prospective and is to include a forecast of expenses and revenues for the next two years. The second test is to be calculated when the first test is passed. The result is that by the time the first test is passed EGNB will have had one profitable year at the time the second test is calculated.

There was concern the second test would overlap the first test and provide less sustainability than was intended by the Board. As a result EGNB has applied for a variation with respect to the second test.

This clarification may remove the need to reconsider the second test and the Board will not alter the second test at this time. Should EGNB, or any other party, still wish the Board to reconsider the second test, the Board will, upon further motion, conduct such reconsideration in conjunction with the next annual review.

Conclusion

This was the first year in which the Board conducted both a retrospective annual review and a prospective consideration of a revenue requirement.

One objective of this proceeding was to give EGNB some guidance regarding its spending without fettering the Board’s discretion or unduly increasing the regulatory load on the utility. The parameters around O&M spending established by the Board as well as the clarification of the test for capital additions should give clear instructions to all parties about what is expected in the review of 2011 spending. The Board expects to continue to modify this process and will welcome submissions regarding this process during the 2010-2012 proceeding.

Dated at the City of Saint John, New Brunswick this 16th day of May , 2011.

Raymond Gorman, Q.C., Chairman

Cyril Johnston, Vice-Chairman

Constance Morrison, Member

Edward McLean, Member