IN THE MATTER **of an application by Enbridge Gas New Brunswick Limited Partnership to change its Contract Large General Service Light Fuel Oil distribution rates**

JUNE 3, 2010

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

REGISTERED PARTIES:	**REPRESENTED BY:**
Enbridge Gas New Brunswick Limited Partnership ----------------------------	Len Hoyt, Q.C.
Atlantic Wallboard Ltd --	Christopher Stewart
Department of Energy--	Patrick Ervin
Enterprise Charlotte ---	Michael Rouse
Flakeboard Company Limited--	Gary Lawson
Ganong Bros. Limited---	Gary Lawson
Public Intervenor---	Daniel Theriault, Q.C.
Town of St. Stephen--	John Ferguson
NB Energy and Utilities Board – Counsel---	Ellen Desmond

Panel:

Chairman:	Ray Gorman, Q.C.
Vice-Chairman:	Cyril Johnston
Members:	Edward McLean
	Connie Morrison
Board Secretary:	Lorraine Légère

BACKGROUND

Enbridge Gas New Brunswick Limited Partnership (EGNB) is the General Franchisee under a General Franchise Agreement with the Province of New Brunswick dated August 31, 1999 (GFA). The GFA authorizes EGNB to distribute natural gas and provide customer services in the province. All distribution rates must be approved by the New Brunswick Energy and Utilities Board (Board) in accordance with the Gas Distribution Act 1999 (GDA).

On October 28, 2009, EGNB applied to the Board pursuant to Sections 52 and 56 of the GDA for an order or orders approving changes to the Small General Service Residential Electric (SGSRE), Small General Service Residential Oil (SGSRO), Small General Service Commercial (SGSC), General Service (GS), Contract General Service (CGS), Contract Large Volume Light Fuel Oil (LFO), Off-Peak Service, Contract Large Volume Off-Peak Service and Natural Gas Vehicle Fueling Distribution rates.

On January 11, 2010, EGNB submitted a second rate application to the Board requesting approval of a change to the distribution rate for the Contract Large Volume Heavy Fuel Oil Class (HFO). The Board determined that it would hear the two applications concurrently.

Since the introduction of natural gas to New Brunswick, all distribution rates proposed by EGNB have been developed using a Board approved market-based formula. This formula is designed to allow a typical customer to achieve a set savings target on the combined delivery and gas costs (burner tip price) by using natural gas rather than an alternative fuel.

In a decision dated April 30, 2010, and an addendum dated May 14, 2010, the Board approved rate increases for all rate classes except the LFO class and reserved decision on the rates for that class. This decision will rule on the application to increase the rate from $4.0861 per gigajoule to $8.7786 per gigajoule for the LFO class. No change was requested to the demand charge, which will remain at $5.20 per GJ. Much of the general background to this decision can be found in the April 30, 2010 decision.

FACTS

The LFO class is made up of customers whose alternate fuel is light fuel oil, liquid petroleum gas, kerosene or electricity. The class is relatively small, with fewer than 25 customers. The class is limited to customers using more than 14,000 gigajoules (GJ) per year of natural gas. The current maximum approved distribution rate for this class is $4.0861 per GJ. This rate applies to the first 33,000 GJ per month delivered. After 33,000 GJ per month the customer enters a second block, and the rate drops dramatically to $ 0.19 per GJ. After 58,000 GJ a third block is reached, with the price dropping to $0.08 per GJ. There are vast differences in consumption levels among the members of the class. A customer who reaches the second block will have over twice as much gas delivered in one month as a customer reaching only the minimal level for class membership will use in a full year.

During a review of the market-based formula in April 2009 (the review), the Board spent a considerable amount of time reviewing the method for determining the price of light fuel oil used in the formula. Prior to the review, the price for light fuel oil was arrived at using West Texas Intermediate Crude Oil

(WTI). The average price for WTI was collected from the commodity markets and converted to a price for fuel oil using assumptions about refining yields and the margins associated with the cost of getting the product to market.

During the review, EGNB offered the evidence of MJ Ervin to support the use of the price of light fuel oil traded on the New York commodity exchange rather than using a proxy based on WTI with an added margin to account for the cost of bringing the fuel to market. This margin would take into account an estimate of volume discounts that would be available to large users like LFO customers. Mr. Ervin was not cross examined or challenged by counsel for either Atlantic Wallboard or Flakeboard on this issue. The Board, in a decision dated May 26, 2009, adopted Mr. Ervin's recommendation that the price for light fuel oil, for the purposes of the market-based formula, be based on the price for light fuel oil traded on the New York commodity exchange.

This is the first application since that change to the formula and EGNB has, appropriately, utilized the new method. At this hearing no party challenged the way the price was calculated or offered any modifications through their pre-filed evidence. On the contrary, both Mr. McAloon, who testified on behalf of Flakeboard and Mr. Ettinger, who testified on behalf of Ganong Brothers, refused to answer questions about their current price of fuel oil arguing that it was irrelevant to this proceeding. Both parties reiterated this position during cross-examination by EGNB. It was only when Mr. Ettinger was asked about plans to convert from natural gas back to light fuel oil, that he suggested that Ganong Brothers could purchase light fuel oil for significantly less than the price represented in the formula and that there may be a problem with the calculation. When asked further about this Mr. Ettinger could add few details and provided no documentation to support this assertion.

The Board cannot conclude that the current method for calculating the light fuel oil price is incorrect. No other issues were raised and the Board concludes that the formula has been properly applied. The Board must stress that if any party believes that the inputs to the formula are incorrect, the issue may be revisited by application under Section 43 of the Energy and Utilities Board Act.

ANALYSIS

EGNB is not a mature utility. In each year of its operation its costs have exceeded its revenues. Its customer base remains relatively small and spread out.

Mature public utilities generally have their rates fixed based upon what it costs them to provide service to particular customer classes. If another method is used, these costs are available to provide points of reference. To date this Board has found that the market-based formula has produced just and reasonable rates. The formula has been seen to be an appropriate way to set rates for an immature utility and the Board has not had cost data to permit it to use any method with cost-based inputs.

The first objective of the formula is for EGNB to attract and retain customers. In order for EGNB to grow its customer base it is essential that customers experience benefits from using natural gas. This is why the formula seeks to provide typical customers with a savings over the cost of using a competing fuel.

While the formula is often criticized, it must be noted that no party has established that the typical customer is not receiving the target savings. It is through the provision of target savings, together with other benefits of natural gas, that EGNB hopes to attract and retain customers.

Another objective of the formula is to minimize additions to the deferral account. This is an important objective as costs which are not recovered are deferred to be paid later by the ratepayers.

The Board finds the application of the formula will provide typical members of the LFO class with the target level of savings.

Despite the formula providing the target savings, there are still concerns as to whether the proposed rates will allow EGNB to attract and retain LFO customers. The LFO class presents particular challenges with respect to this formula. Some newer customers have businesses which would not operate without natural gas. They do not really have an “alternate fuel” and are essentially deemed to have light fuel oil as their alternative for rate setting purposes. Some customers in this class export much of their production. They are less concerned with the price of an alternate fuel, actual or hypothetical, than they are with the natural gas costs of their competitors in other jurisdictions and their ability to compete.

DECISION

The Board finds that the proposed rates will continue to provide the target savings to the customers in the LFO class, and will minimize the additions to the deferral account. The Board, however, has serious concerns that the immediate implementation of the proposed rates might not meet the goal of attracting and retaining customers. The Intervenors from the LFO class forcefully argued this goal might not be met with the proposed rates and EGNB acknowledged the significance of the argument by proposing, albeit in the alternative, a modification to the size of the first block.

As a result of the foregoing, the Board finds that the rate as proposed is not just and reasonable. Section 52(4) of the GDA states:

> *The Board may, if not satisfied that the rates or tariffs applied for are just and reasonable, fix such other rates as it finds to be just and reasonable.*

The Board finds that two important modifications are necessary to establish a rate that is just and reasonable. First, the size of the first block will be reduced giving large users access to much lower delivery costs at lower consumption levels and secondly, the increase will be phased in.

During closing argument, EGNB made an alternative proposal for an adjustment to the rate structure for the LFO class whereby the much lower 2nd block rate would be available for all GJs per month in excess of 22,000 rather than the current 33,000. This would provide significant assistance to the very largest customers and would reduce revenues to EGNB by over $2 million per year at the rate proposed for the LFO class. The Board finds that the proposed change is appropriate and approves the lowering of the 1st block size to 22,000 GJs per month.

Mr. Strunk, an expert testifying on behalf of the Public Intervenor, proposed phasing in the rate increase. The Board sees merit in this position and believes it will assist EGNB to attract and retain LFO customers. Accordingly, the Board will allow the applied for rates but phased in over time. The Board will allow 50% of the proposed increase to take effect upon the date of this decision, the remainder to take effect July 1, 2011.

The Board orders that, effective immediately the LFO rates are to be as follows:

For the first 22,000 GJ delivered per month	\$6.4324
For the next 36,000 GJ delivered per month	\$0.1900
For volumes delivered in excess of 58,000 GJ per month	\$0.0800

Additionally the rate for the first 22,000 GJ delivered per month for LFO customers will be \$8.7786/GJ effective July 1, 2011. The Board finds that the rates approved in this decision will provide the appropriate balance between the interests of customers and EGNB and are therefore just and reasonable. The July 1, 2011, rate increase will take effect unless otherwise ordered by the Board. This decision does not prohibit EGNB from making application for rate riders or new maximum rates, or any party from proposing a new rate-making methodology.

The Board is in the process of reviewing EGNB's first cost of service study ("COSS"). The COSS proceeding should conclude later this year, as should a proceeding dealing with EGNB's cost of capital. Once these proceedings are complete the Board will possess sufficient information to determine whether a cost component should be considered in fixing rates or whether a different method should be used. If a new rate making methodology is put in place it may be that rates developed under a new system will take effect before the July 1, 2011 increase occurs.

Dated at the City of Saint John, New Brunswick this 3rd day of June, 2010.

Raymond Gorman, Q.C., Chairman

Cyril Johnston, Vice-Chairman

Constance Morrison, Member

Edward McLean, Member