



DECISION

**IN THE MATTER OF a Review of Enbridge Gas
New Brunswick Inc. Financial Results and
Natural Gas Sales at December 31, 2007**

February 13, 2009

New Brunswick Energy and Utilities Board

New Brunswick Energy and Utilities Board

IN THE MATTER OF a review of Enbridge Gas New Brunswick's 2007 Financial Results and Natural Gas Sales.

PARTICIPANTS:

BOARD

Chairman
Vice-Chairman
Member
Member

Raymond Gorman, Q.C.
Cyril Johnston
Constance Morrison
Yvon Normandeau

BOARD STAFF

Ellen Desmond
Douglas Goss
John Lawton
Dave Young
Lorraine Légère

BOARD CONSULTANTS

Andrew Logan
Jeff Aucoin
John Butler

APPLICANT:

Enbridge Gas New Brunswick Inc.

Len Hoyt Q.C.
Dave Charleson
Jamie LeBlanc
Lori Stickle

PUBLIC INTERVENOR

Daniel Theriault, Q.C.
Robert O'Rourke
Jacquelyn Oakley

INTERESTED PARTIES

Atlantic Minifridge
Department of Energy
Huggard Properties Limited
Residential Natural Gas Customer

Dollard Landry
Steve Roberts
Philip Huggard
Kristin Colwell

DECISION

Introduction

This is a decision of the New Brunswick Energy and Utilities Board (“Board”) following a review of Enbridge Gas New Brunswick’s 2007 Financial Results and Natural Gas Sales.

The Board has been conducting annual reviews of Enbridge Gas New Brunswick’s (“EGNB”) financial results since 2000. These reviews have always been conducted with the assistance of the Board’s financial consultant. In addition, the Board has, concurrent with its financial review, conducted a review of EGNB’s gas purchase and sales since 2003. This aspect of the annual review has also involved the assistance of a consultant.

EGNB filed its regulatory financial results for the fiscal year ended December 31, 2007. The Board then retained the accounting firm of Teed Saunders Doyle as its financial consultant to review these statements. In particular, the financial consultant was instructed to review EGNB’s compliance with the Gas Distribution Act, 1999 and with subsequent Public Utilities Board and Energy and Utilities Board Orders for the preparation of their financial statements for regulatory purposes as at December 31, 2007. The review consisted primarily of enquiry, analytical procedures and discussion related to information supplied to the consultant by EGNB and was done using Canadian generally accepted standards for review engagements in accordance with Canadian Institute of Chartered Accountants’ Handbook, Section 8600. Mr. Logan conducted a variance

analysis. His review included capital assets, deferred charges, income statement, return on equity and affiliate transactions.

John Butler of J.C. Butler Management Ltd. was retained as the Board consultant to review the purchase and sale of natural gas by EGNB in 2007. The purpose of the Butler Report was intended to review and ensure the Board that:

- there was no cross-subsidy between the sale and distribution of gas;
- the prices charged for system gas and customer services were reasonable and sufficiently competitive to protect the interests of customers;
- the price charged for system gas was calculated in accordance with Section 4 of the regulation;
- the system gas had been purchased in accordance with its gas purchase plan filed with the Board; and
- the commodity price was posted on the EGNB website in accordance with the existing policy.

The reports from both Teed Saunders Doyle and John Butler were filed with the Board.

On July 24, 2008 the Board issued an order directing EGNB to notify all gas marketers and other interested parties that the 2007 regulatory statements and consultants' reports were available for review and comment. EGNB was further ordered to notify all customers, through monthly bills, that the said information was available. All interested parties were asked to submit comments to the Board and EGNB by September 30, 2008.

The Board received written comments from three customers and a detailed submission from Mr. Daniel Theriault as Public Intervenor (“Public Intervenor”). The Public Intervenor requested a public hearing into a number of issues and EGNB was given the opportunity to respond to this request. On October 24, 2008, after considering the Public Intervenor’s request and EGNB’s response, the Board directed that a public hearing be set for December 17, 2008. The Board determined that it would consider the following issues at the hearing:

- the reasonableness of the capital expenditures for 2007;
- the reasonableness of amounts paid for services provided by affiliate companies in 2007;
- the reasonableness of the amount paid for marketing in 2007;
- the purchase and sale of gas by EGNB in 2007; and
- the impact on EGNB’s customers of cash distributions to its investors for 2007.

EGNB was directed to attend this proceeding and answer all inquiries from interested parties. Andrew Logan and Jeff Aucoin, of Teed Saunders Doyle and John Butler were also directed to attend the hearing and answer questions.

Review of Financial Statements for 2007

In his final argument following the hearing, the Public Intervenor submits that a prudency review is necessary as it relates to the 2007 financial results. In his view, the process established by the Board did not permit him the opportunity to explore the prudency of

various EGNB expenditures and that a more detailed and comprehensive review is required.

The Board believes that the process provided both the Public Intervenor and other interested persons with sufficient opportunity to explore the matters at issue. The Public Intervenor questioned EGNB witnesses and the authors of both expert reports at the public hearing. The Board was not asked to consider any amendment to the process that had been established in conducting this review. A request for interrogatories or undertakings was not made.

The Public Intervenor questioned Mr. Logan as to whether the Teed Saunders Doyle Report had expressed an opinion on the prudence of the various expenses. The Public Intervenor defined prudence as “*whether they are prudent costs leading to just and reasonable rates.*” (Transcript; page 65, line 24). Mr. Logan stated that determining prudence, as defined by the Public Intervenor would be “*a little bit beyond the context of what we have been employed to do.*” (Transcript; page 66, line 11). Mr. Logan later clarified his position:

“I think that we would be assessing the prudence of a figure in the context that you are describing if there was a significant variance from either from what we would expect or what we’ve seen in other years.

So if, for example, EGNB was purchasing a service from an affiliate and all of a sudden the same service tripled in value or quadrupled in value from one year to the next, we would want to know why that was the case. And we would want to see additional evidence and supporting information to support that particular

increase. And, if they were unable to provide that, or unable to satisfy us as to the need for an increase of that magnitude, and if it was a material balance, then we would have a reservation in our review engagement opinion expressing that."

The determination of the prudence of expenditures is the responsibility of the Board. Teed Saunders Doyle quite properly saw its role not to determine prudence, but rather to bring to the Board's attention any concerns it might have regarding EGNB's expenses. Had Teed Saunders Doyle expressed any reservation in its report regarding EGNB's expenses, these expenses would have been thoroughly reviewed by the Board at the hearing. Following a full review the Board would have determined whether or not the expenses were prudent. The same process would have applied to any expense questioned by the Public Intervenor. It is noteworthy that while the Public Intervenor requested the Board inquire more closely into certain expense areas, he did not assert that any expense was imprudent or suggest that any specific dollar amount be disallowed.

The review engagement report filed by Teed Saunders Doyle on June 26, 2008 concluded that, based on their review, nothing has come to their attention that causes them to believe that EGNB is not in compliance with the Gas Distribution Act, 1999 and subsequent Board Orders.

On the evidence before it the Board finds that EGNB's expenditures should be accepted. The Board is satisfied that EGNB's expenditures for 2007 were prudently incurred and approves EGNB's 2007 regulatory financial statements as presented. The Board also

accepts the Teed Saunders Doyle report on those statements. The Board therefore approves the addition of \$15,741,000 to the deferral account.

Review of Gas Purchase and Sales for 2007

The Butler report contains a review of the activities of EGNB with respect to the purchase and sale of natural gas in New Brunswick. Based on an examination of the EGNB gas purchase and sales activities during 2007, as well as a review of natural gas sales accounts, the calculation of future natural gas rates and discussions with the Board's financial consultant and EGNB staff, the Butler report concludes EGNB was in compliance with consolidated regulations throughout 2007.

Having reviewed the evidence before it and having considered the Butler report, the Board is satisfied that EGNB was in compliance in 2007.

EGNB must comply with the Firewall Policy filed with the Board in April, 2004. This policy was approved by the Board to ensure that EGNB's gas sales representatives have no access to customer information that could provide them with a competitive advantage in the sale of natural gas. The Butler report concludes that EGNB's natural gas prices were sufficiently competitive and that the interests of the customers were protected in 2007.

During the course of this review, there was no evidence before the Board that the Firewall Policy was violated during 2007. There were no complaints from gas marketers

or any evidence that a lack of competition exists in the marketplace. The Board finds that EGNB was in compliance with the Firewall Policy in 2007.

Other Matters

In his final argument, the Public Intervenor suggests that the Board should review expenditures from previous years. In separate proceedings before the Board other parties have also suggested that such a review take place. This matter was not one of the issues that the Board stated it would consider at this hearing. The Board will make no ruling in this decision as to whether such a review should take place. The Board will consider the issue during the Review of EGNB Matters Related to Regulation (Proceeding 2008-17) where all interested parties will have an opportunity to make submissions.

In his final argument the Public Intervenor asserts that there is a need for greater scrutiny of EGNB's spending. The Board finds that the process established for the 2007 review provided ample opportunity for scrutiny and the Board will continue to conduct a public hearing process in future years.

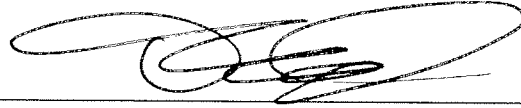
As EGNB moves forward towards a "cost-based" system, the Board anticipates changes to the annual reviews. Of particular note is the underlying financial information on which the regulatory statements have been constructed. EGNB is a limited liability private partnership. EGNB asserts its audited financial statements are confidential. As a regulated entity it is required to prepare and file public regulatory financial statements. The Teed Saunders Doyle report is a review of EGNB's regulatory financial information.

Although the regulatory statements are not audited, they are based on the audited financial statements of the limited partnership. The Teed Saunders Doyle report provides assurance that the financial information provided in the regulatory statements is correctly stated.

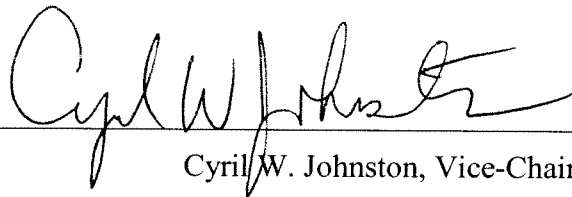
During the course of the hearing, the Public Intervenor pointed out that the partnership's audited financial statements were not available for review. The Board orders that EGNB now file annually, as part of its review, audited regulatory financial statements or, in the alternative, the audited statements of the limited partnership. EGNB is reminded that the Board can entertain requests under Section 34 of the Energy and Utilities Board Act to keep information confidential.

In his final argument the Public Intervenor also requested that the EGNB be required to file its regulatory statements in more detail. The Board notes that the EGNB is required to track its accounts according to Regulation 99-62 and the Board will ensure that participants have access to this information if requested.

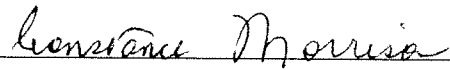
Dated at the City of Saint John, New Brunswick this 13th day of February 2009.



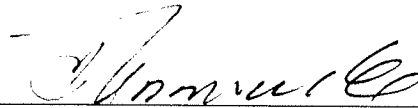
Raymond Gorman, Q.C., Chairman



Cyril W. Johnston, Vice-Chairman



Constance Morrison, Member



Yvon Normandeau, Member