



**DECISION**

**IN THE MATTER OF a Generic Hearing in respect  
to market issues and conduct related to the sale of gas  
and customer services in the natural gas industry in**

**New Brunswick**

**September 2, 2003**

**NEW BRUNSWICK**

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

THE NEW BRUNSWICK

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

IN THE MATTER of a Generic Hearing in respect to market issues and conduct related to the sale of gas and customer services in the natural gas industry in New Brunswick.

Board:	David C. Nicholson - Chairman Alyre Boucher - Vice Chairman Robert Richardson - Commissioner Brian Tingley - Commissioner  Lorraine Legere - Secretary M. Douglas Goss - Senior Advisor John Lawton - Advisor John Butler - Consultant William O'Connell – Board Counsel Ellen Desmond – Board Counsel
Competitive Energy Services	Jon F. Sorenson
Department of Energy	Donald Barnett James Knight
Enbridge Atlantic Energy Services Inc.	David Teichroeb
Enbridge Gas New Brunswick Inc.	Rock Marois Tim Walker Len Hoyt
Irving Energy Services Limited	Mark Brown Kim Ward
Maritime Natural Gas Pipeline Contractors Association Inc.	David Ross
New Brunswick Natural Gas Association	Rod MacDonald
Park Fuel Ltd.	Bill Leroy
Potash Corporation of Saskatchewan	Peter Zed
WPS Energy Services Inc.	Ed Howard Chris Stewart

The Board of Commissioners of Public Utilities (Board) issued an order dated June 12, 2003, requiring that a generic hearing be held in respect of market issues and conduct related to the sale of gas and customer services in the natural gas industry in New Brunswick.

The Board issued a draft list of questions for discussion purposes on June 27, 2003. Various parties provided comments and suggestions for additional questions. The various proposals were discussed at a pre-hearing conference held on July 22, 2003.

Parties made presentations to the Board as to why they should be granted full intervenor status. Full intervenor status was granted to the following parties.

- Competitive Energy Services
- Department of Energy
- Enbridge Atlantic Energy Services Inc.
- Enbridge Gas New Brunswick
- Irving Energy Services Limited
- Maritime Natural Gas Pipeline Contractors Association Inc.
- New Brunswick Natural Gas Association
- Park Fuels Ltd.
- Potash Corporation of Saskatchewan
- WPS Energy Services Inc.

The Board issued a final list of questions to all registered intervenors on July 28, 2003. Parties provided answers to the questions on August 1, 2003 and some parties provided comments on the answers on August 7, 2003. A public hearing to discuss the questions and responses was held on August 13, 2003. Potash Corporation of Saskatchewan withdrew from the proceeding at that time.

The generic hearing, in the opinion of the Board, was necessary because of changes to the Gas Distribution Act, 1999 (Act) and the promulgation of the Gas Distributor Marketing Regulation (2003-19) under the Act. The effect of these actions was to permit Enbridge Gas New Brunswick (EGNB) to sell gas. Previously, EGNB had only been allowed to sell gas as a supplier of last resort.

Although EGNB is now permitted to sell gas, it was not required to obtain a gas marketer's certificate from the Board. This distinction between EGNB and gas marketers, the only other parties permitted to sell gas in New Brunswick, gave rise to a number of potential issues. The Board considered it appropriate to conduct a generic hearing where all interested parties could discuss matters related to the sale of gas and customer services under the new rules.

The Board decided that the public hearing phase would be informal and without the swearing-in of witnesses or formal cross-examination. This approach was chosen to permit as open a discussion as possible and the Board thanks all parties who participated in the extensive discussions. The Board will now address the questions.

### **Question 1**

Do the parties believe that the Code of Conduct provides fair and adequate rules for marketers?

Should the Code be revised? If yes, how?

### **Question 2**

Should EGNB be required to follow rules similar to the Code of Conduct? If the answer is yes, how do you believe the Board gets its authority to establish and enforce those rules? If the answer is no, should the Board repeal the Code of Conduct for marketers?

There was consensus that the Code of Conduct (Code) as it applies to gas marketers, is appropriate and serves a useful purpose. It was recommended that the Code be revised to include definitions of “agent” and “broker”. It was noted that this would require some adjustments to the wording as there is currently no reference in the Code to either “agent” or “broker”. The Board considers that it is appropriate to add definitions for “agent” and “broker” and will do so. Also, any necessary wording changes will be made to properly accommodate the addition of these definitions. A revision will be made to the definition of “customer” to show the proper amount of gigajoules.

Certain parties asked for clarification of the Board’s role with respect to monitoring and enforcement of the Code. The Board considers its primary role is to react to any issues that are brought to its attention in writing. The Board does not consider it appropriate nor does it have the resources to perform any proactive policing functions.

Several parties stated that EGNB, as a seller of gas, should be required to follow the Code or a similar set of rules. EGNB stated that the Board does not have the legal authority to require this and that it was not necessary, in any case, due to the existing regulation of its business practices. There was considerable discussion on this matter.

The Board is of the view that the provisions of the Act requiring it to protect the public interest, would be sufficient to allow the Board to require EGNB to follow certain rules in its role as a seller of gas. However, the Board is also of the view that the clear intention of the Legislature is to allow EGNB to compete in the marketplace for the sale of gas. It is only reasonable in such a situation that competitors should aggressively seek to obtain as many customers as possible and the Board accepts this as being in the public interest.

The Board has reviewed the specific requirements of the Code and the legislative and regulatory requirements imposed on EGNB. The Board is of the opinion that, in general terms, these requirements are similar. The Board therefore will not require EGNB to comply with the Code.

There is one area where there is a clear difference between EGNB and the gas marketers. EGNB, in its role as the distributor, has access to certain customer information, concerning the sale of gas, that is not available to all gas marketers. The Board directs EGNB to establish a “firewall” between those employees who perform functions related to EGNB’s distribution business and those employees who are involved with the sale of gas. Customer information related to the sale of gas that is received from gas marketers by EGNB employees working on distribution must not be shared with EGNB employees involved in the sale of gas. EGNB is

directed to develop procedures to ensure this does not happen and to submit such procedures to the Board for its review and approval.

In addition, such information is not to be shown on the customer's bill without the written permission of the customer.

### **Question 3**

The Board currently requires gas marketers to provide a letter of credit. Should the requirements for the marketers, who can demonstrate financial stability and security, be rescinded or reduced after a period of time? Should the distribution company engaged in the sale of gas, be required to post a letter of credit with the Board?

In their responses most parties recommended the Board consider reducing the letters of credit based upon the financial stability and conduct of individual marketers over a period of time. Irving Energy Services Limited (Irving) stated that the requirement for a letter of credit should be rescinded. Others suggested the Board should consider replacing the letter of credit with bonds or financial statements.

Some parties stated that letters of credit were for the protection of the public interest and are an effective financial remedy available to the Board, when dealing with marketers.

The Board will consider reducing the amount of the letters of credit provided by the marketers. This would be done on an individual basis upon receipt of a written application. Applicants must

have been certified marketers for a period of at least two years. Current audited financial statements must also be provided. The Board will consider the applications based upon:

- a. The financial information provided
- b. The market conduct of the applicant
- c. Any other criteria the Board deems appropriate

Any reductions in the amount of an existing letter of credit would be subject to conditions that the Board considers to be in the public interest.

Most marketers were of the opinion that since EGNB is now selling gas it should be subject to the same requirements as them. The Department of Energy noted that EGNB has provided the government with a \$10,000,000 letter of credit as a condition of their franchise. WPS said that the Board could not call upon that letter of credit because the letter is in favour of the province, not the Board. The Board agrees with WPS.

EGNB stated that it has invested \$120,000,000 in infrastructure in the province to date. EGNB provides audited financial statements to the Board's financial consultant and its annual financial results are the subject of an annual public review.

As a result of these requirements, the Board is of the opinion that it is not necessary to require EGNB to post a letter of credit with the Board.



#### **Question 4**

The Board's decision on Rules and Regulations Regarding the Conduct of Gas Distributors and Marketers found that the LDC should bill for its services and for those marketers who request it to do so. Marketers were also permitted to bill for their own services. Should the marketers be permitted to bill for distribution services if their customers prefer such an arrangement?

Board staff identified four additional questions resulting from the written responses. They were:

- a. Should marketers be able to order disconnects?
- b. Should marketers be required to read meters?
- c. Should marketers be required to guarantee payment to EGNB?
- d. What effect would there be on the letters of credit of marketers?

The Department of Energy was permitted to add an additional question:

Is there additional information available to EGNB by way of the Automated Billing and Collection Service that it would not have by way of any other mechanism? Should the information be addressed through the implementation of a firewall?

There was no consensus. EGNB acknowledged that the billing process involved more functions than just sending an invoice. It stated that allowing marketers to bill for distribution service would create more market confusion and negate the benefits of the bundled service offered by the utility. The marketers stated that in recent letters and invoices sent by EGNB, customer information provided in order to obtain distribution service was being used by EGNB to promote

its gas sales. Irving stated that the distribution utility was abusing its dominant market position by misleading customers. Also, that EGNB was sending letters that biased marketer offerings in favour of utility gas.

The Board is of the opinion that the public interest will be best served if only EGNB is allowed to bill for its distribution services. Therefore, the Board will not permit marketers to bill for distribution services. The Board is concerned about any possible misuse of customer information provided to the distribution utility by marketers and customers, as discussed in response to Questions 1 and 2.

#### **Question 5**

What specific information should be provided by a gas marketer or the distributor to a customer, before that customer enters into an agreement for the supply of gas? Should the customer be required to sign an acknowledgement that confirms that this information was provided and explained?

There was consensus that the requirements of the Code are sufficient for marketers. EGNB's requirements are set by regulation.

There was discussion regarding the possible revision of Section 2.5 of the Code to make offers mandatory and that such offers be in writing. Parties were generally of the view that no changes were necessary. The Board agrees that it is not necessary, at this time, to require offers to be in

written form. The Board does consider it appropriate that Section 2.5 should clearly state that offers are required. The Board will revise Section 2.5 so that this requirement is clear.

There was consensus that signed acknowledgements are not necessary and the Board will not require them.

### **Question 6**

Should the Board require the distributor and the marketers to advise customers, in their offer to sell gas, of the potential for price variances for the commodity from the forecasted prices presented in their contract offer? If yes, should customers be required to sign an acknowledgement that confirms that the pricing information was provided and explained?

There was consensus that signed acknowledgements are not necessary and the Board will not require them.

There were different opinions on the need for information on price volatility to be communicated to customers. The Board considers that compliance with the requirements of Section 2.5 of the Code will ensure that customers receive the appropriate information.

### **Question 7**

Should the utility (EGNB) be required to notify potential customers of all possible suppliers of gas?

Marketers generally agreed that EGNB should be required to notify all potential customers of all possible suppliers of gas. EGNB currently notifies potential customers of all gas marketers through its website and its Natural Gas Buyer's Guide.

There were no additional comments offered at the hearing. The Board is of the view that sufficient information on possible suppliers is available to potential customers.

### **Question 8**

Should all gas retailers be required to remove automatic renewal clauses from their contracts? If so, should all gas retailers be required to obtain signed acknowledgements of renewals from customers?

There was consensus among those making written submissions that gas retailers should not be required to remove automatic renewal clauses from their contracts and that signed acknowledgements should not be required from customers.

It was suggested that the Code could be changed to allow the customer to opt out 30 days after their first invoice whether or not there was a change in price.

The Board does not consider such a change to be necessary and will not require the removal of automatic renewal clauses.

## **Question 9**

The Board is to satisfy itself that the prices charged by the gas distributor for customer services are reasonably and sufficiently competitive to protect the interest of customers. How should the Board determine that the prices are reasonably and sufficiently competitive?

Some parties suggested that the Board should carry out surveys and monitor the marketplace in New Brunswick and elsewhere to establish comparisons. Others suggested that EGNB should provide semi-annual reports of monthly pricing with data exclusive to the sale of molecules or that the Board call a hearing if it believes a review is necessary.

At the hearing the participants were asked to comment on the specific information that should be collected, its sources and the particular use that would be made of such information

It was apparent that there was some confusion as to the purpose of this question. It was explained that this question had been included to assist the Board with respect to its responsibilities as set out in Section 59 of the *Gas Distribution Act, 1999*. The section reads as follows:

*Section 59: The Board may make an order regulating the price charged by a gas marketer or gas distributor for gas, or a customer service if the Board is of the opinion that the price is not subject to effective competition sufficient to protect the interests of customers.*

The purpose of this question was, therefore, to allow participants to advise the Board which factors should be used to determine that price is not subject to effective competition.

The Board was urged to gather information on other greenfield markets on the M&NE Pipeline. There were suggestions that research companies be used as sources for the information so that benchmarks could be established, as it would be difficult to compare fixed prices against variable prices. It was also suggested that in addition to the gas price information that is readily available from the web, price information for the New Brunswick market could be obtained from the EGNB website and from the marketers. Also that the marketplace be surveyed to assess if competitive issues in New Brunswick are eliminating customer interest when compared to the offers in other jurisdictions.

Unfortunately, the questions on how to use the information and how to determine if effective competition exists, were not dealt with adequately during the hearing. The suggestion that the EGNB website would be an appropriate source for a reference price has limitations. Since EGNB is expected to use various tools in its purchasing plan the prices posted on the web may or may not be representative of the market in any given month. Its forecast prices will almost certainly change each month.

The Board is also concerned that information from other greenfield markets may not provide a meaningful benchmark in that conditions in those markets may be significantly different over time.

The Board is aware of many of the web locations for price information and staff does monitor a number of these sources. However, these prices are not directly related to New Brunswick and even together with the prices published on the EGNB web site, do not establish the level of competition in New Brunswick.

The Board considers that factors such as the number of retailers competing for the business of the various classes of customers, the ease with which a consumer can obtain a proposal, and customer satisfaction with the process must also be considered in forming an opinion on effective competition in New Brunswick. The Board is establishing a process whereby it will collect information related to the sale of gas in New Brunswick.

Customer complaints with respect to proposals or difficulty in obtaining proposals will be investigated. The Board will implement additional measures, if necessary, to assess the competitiveness of the market.

#### **Question 10**

Should the annual financial report required under Section 6 of the Gas Distributor Marketing Regulations be made available for industry stakeholder or ratepayer comment or input?

There was consensus that the annual financial report from EGNB should be made public. The Board will include this report as part of the annual review of EGNB's overall financial results.

### **Question 11**

What, if any, should be the role of the Board in response to customer complaints regarding the sale of gas by the distributor? Also what, if any, should be the role of the Board in response to customer complaints regarding the sale of gas by a marketer, if the code of conduct is amended or repealed?

The parties generally agreed that the Board should have the same role with marketers and EGNB in response to customer complaints for the sale of gas.

WPS stated that the letters of credit should be tied to the Board's role regarding complaints for the sale of gas. They stated that if the Board found that a customer complaint was substantiated, it might draw down on the letter of credit.

EGNB stated that the Board should act as a facilitator. EGNB has a Board approved customer complaint policy for distribution services, under which the Board has the authority to make decisions that are binding on EGNB. EGNB intends to revise the policy to include complaints regarding the sale of gas. EGNB suggested that all marketers should have Board approved customer complaint policies.

The Board is of the view that it has authority over both marketers and EGNB with respect to customer complaints over the sale of gas. The Board will handle any such complaints in a similar manner for all sellers of gas.



## **Question 12**

Given Enbridge Atlantic's plan to exit the New Brunswick market, should the Board develop additional requirements to be followed by them or any other marketer in similar circumstances?

Most parties stated that the Board should develop some additional generic rules for marketers planning to exit the market. Some said that the Board should develop some rules but only on a case by case basis.

Enbridge Atlantic stated the existing rules should be changed to allow it to find the best value for its shareholders for its book of business. Section 2.8.1 of the Code limits a marketer to only sell, assign or transfer customers to other holders of a gas marketer's certificate. EGNB was the only party that supported Enbridge Atlantic's request to change section 2.8.1. The Board does not consider it appropriate to change section 2.8.1.

The Board asked the parties whether Section 2.7 of the Code, Contract Renewals, should be changed to include requirements for a marketer who is not planning to renew a contract for any reason. The parties were divided on whether section 2.7 should be revised

The Board is of the opinion that when a marketer has made a decision to leave the market and not to renew contracts, that the marketer should immediately notify all its customers. Customers should be advised that the marketer will not be renewing contracts and be provided with the names and contact information of all parties permitted to sell gas in New Brunswick. This would

be in addition to the contract expiry notice that marketers are required to provide customers under Section 2.6.7 of the Code.

The Board will change Section 2.7 of the code to reflect the requirement for this new notification procedure. The Board will also require that the letter of credit for any such marketer remain in place for six months after the date upon which the last bill is issued to a customer.

DATED at the City of Saint John this 2<sup>nd</sup> day of September 2003.

BY ORDER OF THE BOARD

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Lorraine R. Légère  
Board Secretary