



DECISION

**IN THE MATTER OF an Application by
Enbridge Gas New Brunswick Inc. for a Permit or
Permits to Construct Pipelines in Order to Provide
Natural Gas Distribution Service**

June 23, 2000

NEW BRUNSWICK

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

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IN THE MATTER OF an application by Enbridge Gas New Brunswick Inc. for a Permit or Permits to Construct Pipelines in Order to Provide Natural Gas Distribution Service.

Board:	David C. Nicholson - Chairman John Chenier - Commissioner Jacques A. Dumont - Commissioner Monika Zauhar - Commissioner Lorraine Légère – Secretary M. Douglas Goss – Senior Advisor Carol Nykolyn – Advisor Gary Highfield – Director of Safety John Butler – Consultant James Easson – Consultant William O’Connell - Board Counsel
Enbridge Gas New Brunswick Inc.:	David MacDougall - Solicitor Len Hoyt - Solicitor
Province of New Brunswick:	Ian Blue - Solicitor
Irving Oil Limited:	Christopher Stewart - Solicitor
City of Fredericton:	Bruce Noble - City Solicitor
City of Moncton:	Don McLellan - Director of Corporate Support Bill Cooper - Solicitor
City of Saint John:	Jim Baird - Manager, Community Planning
Union of New Brunswick Indians:	Juli Abouchar - Solicitor
MariCo Oil and Gas Corporation:	Dennis Holbrook – Solicitor
Saint John Energy:	Eric Marr – Manager of Engineering Jennifer Coughlan – Commercial Account Representative
Town of Dieppe:	Roland Richard - Director of Engineering and Public Works

PERMIT TO CONSTRUCT

Enbridge Gas New Brunswick (EGNB) proposed that a permit be issued for the extra high pressure (XHP) and high pressure (HP) pipelines or mains shown in Exhibit A-5 for construction and distribution in the year 2000. It also applied for infill mains within the municipal limits of Moncton, Riverview, Dieppe, Fredericton, Oromocto, Saint John and St. George ("The Municipalities") over the 20-year life of the franchise.

EGNB proposed that in the spirit of light handed regulation and similar to other jurisdictions, that it not be required to apply for a permit to construct the infill mains each year, but that the issuance of this permit would provide "blanket" coverage for any main it chose to install over the next 20 years within The Municipalities. EGNB proposed that it would file the following information before and at the end of each fiscal period.

Prior to a Fiscal Period

- Customer Additions – Forecast
- Proposed In-fill Areas
- Proposed New Communities to be Served
- Capital Expenditure – Forecast
- Distribution Mains

- Services and Meters
- Other Facilities Required

At the end of a Fiscal Period

- Customer Additions – Actual
- Construction Update
- As Built Drawings
- Capital Expenditure – Actual

Finally, EGNB stated that it would submit an application for a permit to construct for any new community (other than The Municipalities) or for any extension of its XHP or HP mains. It also pointed out that it had completed Public Information Program's ("PIPs") for The Municipalities and therefore would not conduct further PIPs in the Municipalities for infill mains.

EGNB, in a letter dated May 15, 2000 and marked as Exhibit A-3, made a series of commitments as a result of its consultation with provincial departments and other interested parties. In addition, it also agreed to the permit conditions put forward by Board staff, subject to changes proposed by Mr. Harte, and as well, the additional conditions put forward by the Province.

During the hearing, the Board recessed the proceeding to give EGNB and the Union of New Brunswick Indians (UNBI) some time to negotiate an agreement. The parties were able to reach an agreement and as a result the UNBI supported EGNB's application. The main points of the agreement were:

- EGNB will present to UNBI for comment the design of the survey on medicinal plants, plants for traditional uses and archaeology.
- EGNB will present the results of these surveys to UNBI for review and comment.
- EGNB will fully consider and address all comments received from UNBI respecting these surveys.
- EGNB will provide \$15,000 to fund the UNBI's involvement with this process.
- EGNB will enter into good faith negotiations with the UNBI to work towards an agreement for the UNBI involvement in the development of the natural gas industry.
- EGNB will include in its annual report to the Board the status of the commitments in the agreement.
- EGNB will inform and work in conjunction with UNBI if any sites of archaeological significance to the aboriginal people are found during construction.

At the beginning of the hearing, EGNB spoke with representatives of various municipalities to address the issues surrounding the lack of a Standard Construction Regulation proposed by the Province as well as other issues. As a result of these discussions, The Municipalities agreed not to pursue their concerns during the hearing, with the understanding that they would reserve all their rights to appear before the Board at a future date. The hearing was reconvened on June 15, 2000 to permit EGNB and The Municipalities to address these issues. The Municipalities of Saint John, Moncton, Fredericton and Dieppe reached an agreement with EGNB during off camera discussions held at the suggestion of the Board. The text of this agreement is presented in Attachment A. The Board permit will be issued consistent with this agreement.

Irving Oil Limited (Irving), supported the granting of a permit for the XHP and HP mains proposed to be constructed in the year 2000. It argued that EGNB be required to apply each year for a permit for all pipe, including infill mains, it wished to construct that year. By requiring EGNB to apply for a permit each year, all affected parties would be able to review EGNB's construction plan for the following year and have input into the process. Addressing EGNB's desire to avoid oral hearings, Irving suggested that an oral hearing might not be required in their proposed process, but that the Board should not rule out that option.

MariCo Oil and Gas Corporation Inc. (MariCo) did not put forward a position regarding the requested permit, other than to recommend that the Board maintain sufficient regulatory oversight to ensure that EGNB's costs be prudently incurred.

The City of Fredericton did not put forward a position with respect to the granting of the permit.

The City of Saint John supported the granting of a permit for the XHP and HP mains for the year 2000 only. It suggested that a permit for one year, or other "short duration", was appropriate to allow the City of Saint John the opportunity to review EGNB's proposed construction for the following year.

No party objected to the Board granting a permit to construct to EGNB for the year 2000.

DECISION

PERMIT TO CONSTRUCT

Based on the evidence before it, the Board will issue a permit to construct the XHP and HP system as filed in Exhibit A-5 (Attachment B) and to construct infill mains in The Municipalities.

The Board finds that the permit for the XHP and HP facilities should expire on December 31, 2001. The Board further finds that the permit to construct infill mains will expire at the end of the development period.

Some parties requested the opportunity to review and comment upon EGNB's construction plans for an upcoming year. The Board directs EGNB to make annual filings in accordance with its commitment. This information will be made available by EGNB to the Board and to any interested party to review. The Board directs EGNB to work with Board staff to develop the details of this process. The Board expects this process to develop over time.

PUBLIC INFORMATION PROGRAMS ("PIPs") AND OPEN HOUSES

PIPs for new communities are required by the regulation. The Board is concerned that the PIPs held in connection with this application may not have provided much relevant information to the public on infill mains proposed beyond the year 2000. Therefore, the Board requires EGNB to hold an annual public

open house, prior to the construction season, in each of the seven municipalities. This open house should be well publicized and give interested parties an overview of the construction plan for the municipality for the coming year. The particulars of these open houses are to be discussed with Board staff.

PERMIT CONDITIONS

The permit to construct will be subject to EGNB complying with the conditions set forth in Attachment C. The Board recognizes that some of these conditions result from requests from various provincial departments with expertise in different fields. These departments shall determine if these conditions have been met. The Board requests that the Province indicate to Board staff which department is responsible for each condition.

As per EGNB's commitment, it shall ensure that the required environmental reviews are completed for all future construction projects, whether new communities or infill mains. EGNB shall initiate and complete this process in a timely fashion. This is intended to allow the necessary departments the opportunity to provide input prior to the start of construction.

The Board accepts the agreement made between EGNB and the Union of New Brunswick Indians. The commitments made by the applicant were put on the record and accepted by the Board as they were consented to by the parties. This Board is making no ruling in reference to treaty rights, aboriginal rights or aboriginal title.

EGNB Construction Application Municipal Issues

- Enbridge and the municipalities (Saint John, Fredericton, Moncton and Dieppe) agree that there are two areas for Enbridge and the municipalities to discuss at this time. 1) Technical issues which would be included in a Municipal Operating Agreement. Agreements can be reached on these issues over a reasonable period of time. The four municipalities are meeting among themselves on Friday. The municipalities and Enbridge have scheduled full day meetings next Tuesday and Thursday. 2) Municipalities' right to compensation for use of their streets. The parties disagree on this issue. Municipalities have agreed to provide Enbridge with the amount of compensation they believe they are entitled to.

- The parties agree that the Board may issue a construction permit next Friday provided that before construction starts in each municipality either a) a Municipal Operating Agreement is signed by Enbridge and that municipality or b) Enbridge and/or the municipalities that have not signed Municipal Operating Agreements appear before the Board to argue the question of jurisdiction to allow construction in a municipality without a Municipal Operating Agreement.

- The parties preference is for Enbridge and the year one municipalities to conclude Municipal Operating Agreements. For this reason, we request that the Construction Hearing be adjourned at this time. If Enbridge and one or more municipalities are unable to reach a Municipal Operating Agreement, the parties involved are entitled to come back to the Board to argue the Board's jurisdiction to deal with municipal issues.

- By agreeing to this statement, the municipalities are not acknowledging the Board's authority to determine issues relating to Municipal Operating Agreements or permission to access municipal streets.

The foregoing is subject to confirmation by the four municipalities which is to be provided to the Board and Enbridge by next Tuesday at 12:00 noon. Any municipality that does not respond by that time shall be presumed to have confirmed this statement. If this statement is not confirmed, we understand that the Board may reconvene this hearing.

Conditions

1. Subject to Condition (2), Enbridge Gas New Brunswick (EGNB) shall comply with all undertakings made by its counsel and witnesses, and shall construct the facilities and shall restore the land according to the evidence of its witnesses at this hearing and in accordance with the Gas Distribution Act or any other applicable legislation.
2. The Board's designated representative for the purpose of these conditions shall be the director of Safety, or in his/her absences the Board's secretary. EGNB shall advise the Board's designated representative if any proposed significant change in construction or restoration procedures, and except in an emergency, EGNB shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed forthwith.
3. EGNB shall furnish the Board's designated representative with every reasonable facility for ascertaining whether the work has been, and is being, performed in accordance with the Board's Order.
4. EGNB shall notify the Board's designated representative of the date on which any installed high pressure pipeline is proposed to be pressure tested at least 72 hours prior to the start of the test.
5. Both during and after construction, EGNB shall monitor the effects upon the land and the environment, and shall file ten copies of both an interim and final monitoring report in writing with the Board. The interim monitoring report shall be filed within six months of the in-service date and the final monitoring report shall be filed within 15 months of the in-service date.
6. The interim monitoring report shall confirm EGNB's adherence to Conditions (1) and (2) and shall include a description of the effects noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the construction upon the land and the environment. This report shall describe any outstanding concerns identified during construction.
7. The final environmental monitoring report shall describe the condition of the rehabilitated right-of-way. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Further, a final environmental cost report shall be filed with the Board and shall include a breakdown of external costs incurred for the authorized project, with items of cost associated with particular environmental measures delineated and identified as pre-construction related, construction related and restoration related. Any deficiency in compliance with undertakings shall be explained.

8. EGNB shall give the Board's designated representative and the Chairman of the Pipeline Coordinating Committee ("PCC") ten days written notice, in advance of the commencement of the construction for each community, unless said construction is to commence within ten days of receipt and in such an event shall be as soon as possible.
9. Within fifteen months of the in-service date, EGNB shall file with the Board a written Post Construction Financial Report. The Report shall indicate actual capital costs of the project and shall explain all significant variances from the estimates adduced in the hearing.
10. Permit to Construct shall terminate December 31, 2001, unless otherwise ordered by the Board.
11. EGNB shall designate one of its employees as project manager who will be responsible for the fulfillment of undertakings on the construction site and shall provide the name of the project manager to the Board's designated representative.
12. EGNB shall attach to its interim and final monitoring reports a log of all complaints that have been received during construction. Such logs shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
13. Where properties or structures exist within 200 metres of the pipeline and blasting is necessary, EGNB shall:
 - i. Use restricted blasting techniques by ensuring that all charged acres are covered with blasting mats to eliminate fly rocks;
 - ii. Have the vibrations from blasting operations monitored and measured by a vibration measurement specialist;
 - iii. Notify all property owners within 200 metres of the proposed blasting in writing at least 24 hours prior to the blasting and confirmations (if necessary) of the actual day or days on which blasting will occur;
 - iv. Have buildings within 200 metres of the blasting checked by an independent examiner before and after operations to check for problem areas.
14. Where blasting is required, the well location and water quality of all wells within 200 metres of the pipeline shall be tested before and after blasting operations. Results of well testing shall be included in the post construction monitoring reports.
15. EGNB shall prepare and comply with timely Site Specific Environmental Protection Plans (SSEPP) as required,

including for wetlands. SSEPPs shall be developed in a timely manner that allows for adequate review and approval by regulatory agencies prior to construction (a minimum of 10 working days).

16. EGNB shall complete all required fish and fish habitat assessments and provide designs and drawings for all watercourse crossings. This information shall be approved by regulatory agencies prior to construction. This information should include the proposed crossing technique, contingency crossing technique, erosion/sedimentation control plan, streambank/channel restoration measures, etc. Once approved, they must be included as appendices in the Environmental Protection Plan (EPP). The determination of crossing method should be made in a timely manner to allow adequate time for the review of proposals by regulatory agencies and for EGNB to carry out any pre-construction assessments.
17. EGNB shall develop and implement an approved Environmental Effects Monitoring (EEM) Program prior to construction where required.
18. EGNB shall monitor Total Suspended Solids (TSS) and take appropriate correction action where appropriate.
19. EGNB shall include in its construction manual, and other documents as appropriate, information that specifically, and adequately, addresses the prevention of siltation/sedimentation related to trenching and other associated activities in road ditches that lead to watercourses.
20. EGNB shall take *immediate* corrective action upon being notified of deficiencies in environmental protection measures by an environmental inspector (from any agency).
21. EGNB shall ensure that there is appropriate environmental training of contractor personnel.
22. EGNB shall comply with all commitments made in the May 8, 2000 Detailed Response Document with respect to watercourses.
23. EGNB shall construct appropriate surveys for species of special status unless it is clear that the method of construction will have no potential impact on the site.

24. EGNB shall ensure monitoring of wetland mitigation is conducted as part of the Environmental Effects Monitoring (EEM) program that includes at least one year of monitoring post-construction unless additional follow-up monitoring is required. The EEM program for wetlands shall not be limited to TSS monitoring.
25. Unless the Board otherwise directs, EGNB shall file with the Board, the Department of Environment and the Department of Natural Resources and Energy, at least fourteen (14) days prior to the commencement of ground-breaking activities in each community, a detailed construction schedule or schedules identifying major construction activities, including clearing, and shall notify the Board, the New Brunswick Department of Environment and the New Brunswick Department of Natural Resources and Energy of any substantial modifications to the schedule or schedules as they occur.
26. Unless the Board otherwise directs, EGNB shall maintain at its Fredericton office, copies of any permits, approvals or authorizations for the applied-for facilities issued by federal, provincial and other permitting agencies, which include environmental conditions or site-specific mitigative, monitoring and restorative measures. In addition, EGNB shall maintain at its Fredericton office, an information file(s) that would include any subsequent variations to any permits, approvals or authorizations obtained prior to, or following, the commencement of construction.
27. Unless the Board otherwise directs, EGNB shall maintain for audit purposes, at the Fredericton office, a copy of the joining procedures and non-destructive testing procedures used on the project, together with all supporting documentation.
28. Unless the Board otherwise directs, EGNB shall file with the Department of Environment for approval, at least fourteen (14) days prior to the commencement of ground-breaking activities, in areas of acid rock, its Acid Rock Drainage Mitigation Program and the results of its Acid Rock Sampling and Assessment Program.
29. As the preferred crossing option at all crossings, EGNB shall avoid in-stream work. Any departure from this approach will require the provision of an adequate rationale to the Department of Environment.
30. Unless the Board otherwise directs, EGNB shall file with the Department of Environment, at least fourteen (14) days prior to the commencement of construction, a detailed waste management plan to be developed in consultation with the Department of Environment and municipal authorities.
31. Unless the Board otherwise directs, EGNB shall submit monthly construction reports during the construction session for construction of the extra high-pressure and high-pressure systems to be constructed under this permit and such other reports as requested by the Department of Natural Resources and Energy from time to time.