



RULINGS

IN THE MATTER of an application by Enbridge Gas New Brunswick Limited Partnership to change its Small General Service Residential Electric, Small General Service Residential Oil, Small General Service Commercial, General Service, Contract General Service, Contract Large General Service Light Fuel Oil, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fueling distribution rates

And

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

Motion's Day of January 18, 2010

REGISTERED PARTIES:

REPRESENTED BY:

Enbridge Gas New Brunswick Inc. -----	Len Hoyt, Q.C.
Atlantic Wallboard Ltd -----	Christopher Stewart
Department of Energy-----	Patrick Ervin
Enterprise Charlotte -----	Michael Rouse
Flakeboard Company Limited-----	Gary Lawson
Fundy Linen Service-----	John McNair
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
- Steve Toner

- Board Secretary: Lorraine Légère

DECISION

On January 18, 2010, the Board continued a pre-hearing conference in the matter of an Enbridge Gas New Brunswick Limited Partnership (“EGNBLP”) rate application with respect to multiple rate classes, Board Reference 2009 017 (“the multiple rate class application”). On the same day a pre-hearing conference was held in the matter of an EGNBLP rate application with respect to the HFO class, Board Reference 2010 001 (“the HFO Application”). During the pre-hearing conferences, various issues were brought before the Board which required Board rulings. This decision sets out the Board’s rulings with respect to these matters.

RATE MAKING METHODOLOGIES AND USE OF THE COST OF SERVICE STUDY

The parties seek direction from the Board regarding whether an Intervenor may adduce evidence proposing a new rate making methodology during EGNBLP’s application for new maximum rates. They further seek direction regarding the use which may be made of the recently filed cost of service study and supporting evidence. In particular, they seek direction regarding the interrogatories they will be permitted to ask on this study.

The Gas Distribution Act states as follows:

52(1) No gas distributor shall charge for the distribution of gas except in accordance with an order of the Board.

52(2) The Board is not bound by the terms of any contract between a gas distributor and a customer.

52(3) The Board may make an order approving or fixing just and reasonable rates and tariffs that a gas distributor may charge for the distribution of gas or for supplier of last resort services.

52(4) The Board may, if not satisfied that the rates or tariffs applied for are just and reasonable, fix such other rates and tariffs as it finds to be just and reasonable.

52(5) In approving or fixing just and reasonable rates and tariffs, the Board may adopt any method or technique that it considers appropriate, including an alternative form of regulation.

52(6) An order under this section may include conditions, classifications or practices applicable to the distribution of gas, including rules for calculating rates.

2003, c.16, s.4.

The Board established the current rate making methodology in 2000. This system is referred to as the “market based” system and, with some modifications, has been in place since the beginning of the gas distribution system in New Brunswick.

The Board stated in its December 1, 2009 decision that it would modify the rate making methodology “where there is a sufficient evidentiary basis to demonstrate the proposed change is appropriate.”

EGNBLP filed a cost of service study and supporting evidence on January 15, 2010. This study will become the subject of a full review by the Board in a future proceeding. It is likely that intervenors will participate in this process, putting forth their own views on the proper allocation of costs among the various rate classes, as well as on other issues.

In addition to the cost of service proceeding, the Board anticipates that a review of EGNBLP's return on investment will take place during 2010.

Developing a new rate making methodology for gas distribution in New Brunswick will be an important step for the Board, EGNBLP and its customers. It will be critical to have the best available evidence. To develop a new rate making methodology prior to completing the review of the cost of service study and the Return on Investment would not provide the Board with the best evidence. To develop a new methodology during a rate application would also provide less opportunity for EGNBLP and other parties to develop and review evidence and proposals.

The Board will not approve, during the review of these two rate applications, a rate making methodology to replace the existing system going forward.

The Board wishes to make it clear that parties may submit any evidence which is relevant for this hearing. While the present rate setting methodology begins with the Board approved formula, the Board has an obligation to inquire into whether the rates produced by the formula are just and reasonable, and if they are not, to fix rates which are just and reasonable. Any evidence which would assist the Board in determining whether the proposed rates are just and reasonable is relevant. Any evidence suggesting "such other rates" as the Board may find reasonable *in this instance* is also relevant, but evidence whose purpose was to suggest a rate making methodology for use in future applications would not be relevant.

With respect to the Cost of service study and the interrogatories permitted in relation to it, the issue is one of relevance. Questions which relate to a matter in issue in this application are relevant. Whether the rates proposed in the application are just and reasonable is a matter in issue in this application, as is what "other rates" the Board might find reasonable. The accuracy of the cost of service study and the correctness of the proposals contained therein are not matters in issue in this application.

UNDERTAKINGS

EGNBLP brought a motion for an interim order. The Board heard the motion on December 21, 2009 and a decision was rendered on December 23. During the hearing witnesses testified on behalf of Flakeboard Company and Ganong Bros. Limited and these witnesses gave undertakings to respond to certain questions in writing, on a confidential basis. They did so, and the responses were received by the Board prior to the release of the decision. The responses were not at that time provided to any of the parties as no confidentiality undertakings had been completed. Counsel for Flakeboard and Ganong takes the

position that since the Board had rendered its decision prior to providing the responses to the undertakings to any of the parties, the contents of the undertaking responses are no longer relevant or of any value to the parties.

The undertaking responses were evidence on the motion which was before the Board when it made its decision. The parties to the motion are entitled to know what evidence was before the Board, subject, of course, to the confidentiality policy. The Board directs Flakeboard and Ganong to provide to the Board five copies of each undertaking response printed on the pink paper the Board uses to indicate confidential documents. The Board will distribute the responses to parties who have filed confidentiality undertakings.

CONFIDENTIALITY

EGNBLP filed with its application a request for confidentiality with respect to certain spreadsheets, and other information relating to the calculation of the prices of EUG gas and EVP gas. These prices are inputs in the formulas which EGNBLP uses to calculate prices in the various rate classes. The Public Intervenor responded with a detailed letter dated December 15, 2009 which set out his grounds for opposing the request for confidentiality. In response to the Public Intervenor's position, EGNBLP modified its position substantially, and provided the documents in question in redacted form. The redactions are of the identities of the counterparties to contracts and to pricing terms, information EGNBLP states is commercially sensitive.

It should be noted that EGNBLP's claim goes beyond a request for confidentiality and is a request that EGNBLP not be required to disclose the information to any party, even in confidence.

The Board dealt specifically with this issue in its decision on the market based formula dated May 26, 2009 stating at item 18 of Appendix "B" that with respect to the data used to develop commodity costs

EGNB will submit these forecasts and estimates supporting these calculations to the Board in confidence for independent verification.

The Public Intervenor is requesting that the Board vary the above quoted portion of the May 26 decision and provide the data in confidence to Intervenor.

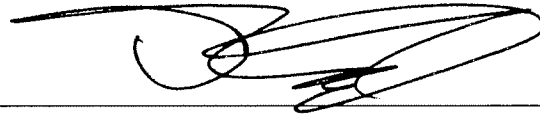
The Board remains satisfied that an independent verification by the Board is the best way to protect the confidentiality of the information and ensure the calculations, and the ensuing inputs into the formulas, are correct. Given the nature of the analysis required, the Board doubts any benefit would be derived from multiple reviews and that the cost to the regulatory system would outweigh any possible benefit. The Board will not vary its decision.

This decision applies to the HFO Application as well as the multiple rate class application.

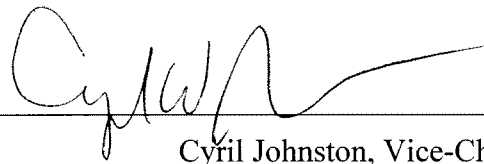
FILING SCHEDULE

The filing schedule approved by the Board is attached as Appendix "A" to this decision. The HFO Application will remain a separate proceeding but, unless ordered otherwise, will proceed concurrently with the multiple rate class application and will follow the same filing schedule.

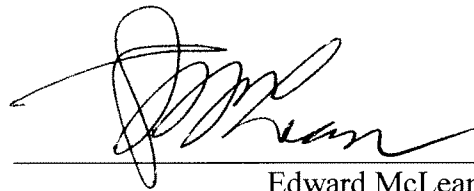
Dated at the City of Saint John, New Brunswick this 22nd day of January, 2010.



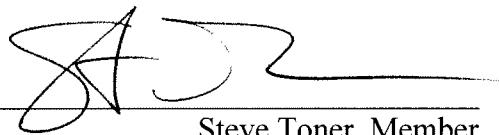
Raymond Gorman, Q.C., Chairman



Cyril Johnston, Vice-Chairman



Edward McLean, Member



Steve Toner, Member

ATTACHMENT "A"

FILING SCHEDULE

Board Reference: 2009 017

IN THE MATTER OF an application dated October 28, 2009 by **Enbridge Gas New Brunswick Inc.**, for changes to its **Small General Service Residential Electric, Small General Service Residential Oil, Small General Service Commercial, General Service, Contract General Service, Contract Large General Service Light Fuel Oil, Off Peak Service, Contract Large Volume Off Peak Service and natural Gas Vehicle Fueling distribution rates**

Application and Supporting Evidence	October 28, 2009
Board Order and Notice.....	November 10, 2009
Publication of Board Notice on or before.....	November 13, 2009
Intervenors Register with PUB & EGNB.....	December 1, 2009
Pre Hearing Conference (& Motion for Hearing Postponement by FCL & Ganong).....	December 7, 2009 10 am Board Premises
Board circulates Coordinates List, filing schedule, exhibit list etc.....	December 8, 2009
EGNB Motion for Interim Rate Relief	December 10, 2009
Notice of Opposition to Interim Rate Increase	December 16, 2009 Wednesday
Motion's Day (EGNB & Interim Rate Relief)	December 21, 2009 Monday 9am Board Premises
Board Decision on Interim Rate Relief.....	December 23, 2009
Motion's Day (Confidentiality & Alternate Rate Making Issues).....	January 7, 2010 Hearing Rescheduled to January 18, 2010
EGNB Application for change to HFO rates	January 11, 2010*
Notice of Intervention Re: HFO rate application	January 15, 2010
EGNB Cost of Service Study	January 15, 2010
Motion's Day (Confidentiality & Alternate Rate Making Issues & Pre Hearing re Appl for HFO rate increase).....	January 18, 2010 10 am Board Premises

Interrogatories to EGNB	January 29, 2010, Noon Friday
Responses from EGNB	February 12, 2010, Noon Friday
Inform Board of Motion's Day	February 15, 2010, Noon Monday
Motion's Day (if necessary).....	February 16, 2010 10 am Board Premises
Additional Evidence of EGNB (if required).....	February 23, 2010, Noon Tuesday
Intervenor Evidence	March 12, 2010, Noon Friday
Interrogatories to Intervenor & EGNB notification of Rebuttal Evidence.....	March 19, 2010, Noon Friday
Responses by Intervenor	March 26, 2010, Noon Friday
Hearing	March 29, 2009 Time & Place TBD

If Rebuttal Evidence by EGNBLP is necessary, all dates up to and including March 26 remain the same and the following is added:

Rebuttal evidence by EGNBLP	April 12, 2010, Noon Monday
Hearing	April 19, 2010 Time & Place TBD

Note: All documentation for the above-noted matter must be circulated to the Board, Applicant and All Parties to the Proceeding

Re: * For EGNB HFO application Schedule, See Board File # 2010-001 / Both hearings will run concurrently

Feb 16, 2010 Motion's Day (if necessary) Panel: Gorman Johnston, McLean, Toner

Jan 18, 2010 Rescheduled from Jan 7, 2010 Motion's Day, Panel: Gorman Johnston, McLean, Toner

Dec 21, 2009 Panel Motion's day: Gorman, Johnston, McLean, Toner

Dec 7/09 Panel Pre-Hearing: Gorman, Johnston, McKenzie, Radford