

## NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER of an application by Enbridge Gas New Brunswick Limited Partnership regarding the approval or fixing of rates and tariffs pursuant to section 52.2 of the *Gas Distribution Act, 1999*

### RULING ON MOTION

This is a decision of the New Brunswick Energy and Utilities Board (“the Board”) regarding a motion brought by Board Staff in the matter of an application by Enbridge Gas New Brunswick (“EGNB”) for changes to its current rate class structure and the establishment of distribution rates.

The issue before the Board on this motion is whether the Gas Distribution Act 1999, as amended, and specifically section 52.4 of that Act, together with Regulation 2012-24 49, require the Board to approve and fix a rate for the Contract Power Plant Service class and therefore require EGNB to propose a rate for this class.

The Contract Power Plant Service Class has been described in Enbridge Gas New Brunswick's rate handbook since 2000 but no rate has ever been fixed for this class. EGNB has never had any customers who would fall within this category and no customers who would fall within this category are on the immediate horizon.

Section 52.4 of the Gas Distribution Act 1999 read as follows:

*The Board shall on or before September 30th 2012 make an order approving or fixing rates and tariffs in accordance with section 52 and the order shall take effect on or before October 1, 2012.*

Paragraph 3 of Regulation 2012-49, includes as item (g) Contract Power Plant Service as one of the classes of customers prescribed for the purposes of section 52 of the Act.

Section 4(1) of that same regulation, directs the Board as to the methods and techniques to be used to set rates. The cost of service method must be used subject only to the caveat that the rate not exceed the rate as determined by the market-based rate technique.

Counsel for the Department of Energy argued that the Act and Regulations do not require a rate to be set for the Contract Power Plant Service class. He stated that no method other than those described in section 4(1) of the regulation is permitted to be used by the Board and that it would not be appropriate to establish a pro forma rate using some other technique. He also argued that given that there is no existing or proposed customer for this class, there is no information upon which such a rate could be based.

The Board has determined that reading the legislation as a whole the Act does not require the Board to approve or fix a rate for a class which has no customers and for which consequently EGNB cannot provide the Board with the necessary information to determine and set rates in the manner described by section 4(1) of the Regulations.

The Board will not direct EGNB to propose a rate for the Contract Power Plant Service class and the motion is dismissed.

Dated at the City of Saint John, New Brunswick, this 4<sup>th</sup> day of July, 2012.

**BY THE BOARD**