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

December 7, 2011

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

CHAIRMAN:	Raymond Gorman, Q.C.
VICE-CHAIRMAN:	Cyril Johnston
MEMBERS:	Roger McKenzie
	Terry Totten
SECRETARY:	Lorraine Légère
COUNSEL:	Ellen Desmond

APPLICANT:

Enbridge Gas New Brunswick	Len Hoyt, Q.C. Dave Charleson

INTERVENORS:

Department of Energy	Patrick Ervin

INTRODUCTION

On October 7, 2011 Enbridge Gas New Brunswick Limited Partnership (EGNB) applied to the New Brunswick Energy and Utilities Board (Board) for an order approving changes to its Contract Large General Service Heavy Fuel Oil (HFO) distribution rate. The application was filed pursuant to sections 52 and 56 of the *Gas Distribution Act*, *1999* and includes a proposal for a change in the frequency of setting the HFO distribution rate. All gas distribution rates must be approved by the Board in accordance with the *Gas Distribution Act*, *1999.*

A prehearing conference was held on November 3, 2011 and a public hearing was held on November 25, 2011. At the hearing, EGNB filed evidence of its communications with the customers in the HFO class, which demonstrated that all customers in the class were aware of the application. The Department of Energy was the only registered intervenor. At the hearing the Department stated that it did not oppose the application.

Gas distribution rates are set pursuant to a Board approved market based formula. The formula uses data regarding the futures prices of natural gas as well as competing energy sources and seeks to set a natural gas distribution rate which will allow the typical customer in each class to achieve a target savings level. For example, the formula used to set distribution rates in the HFO class seeks to provide the typical member of the class with a savings of 5% in comparison to what their total fuel costs would be if they continued to use heavy fuel oil.

EGNB may apply for an increase in the maximum rate for each class on an annual basis. The maximum rate is not necessarily the rate charged to customers. If market conditions change and lower rates are required for customers to achieve the target savings, rates can be reduced through the use of rate riders. If market conditions change again, rates may be increased through the use of rate reinstatements, but only to the level of the maximum rate then in force.

The current HFO maximum distribution rate is $1.6689 per gigajoule. EGNB is applying to increase the maximum to $6.4324 per gigajoule effective January 1, 2012. This proposed increase would align the HFO rates with the Contract Large General Service Light Fuel Oil (LFO) class maximum rate. EGNB does not request that this rate take effect at this time but requests that the effective rate for the class to be determined on a quarterly basis through the use of the rate rider and reinstatement mechanism.

On May 26, 2009 the Board issued a decision following a detailed review of the Market Based Formula. This decision set out in precise detail how the formula is to be applied, including what data is to be used.

In this application, EGNB requests that the Market Based Formula system be used in a very different way for the HFO class. EGNB proposes three major differences:

- That the maximum rate for the HFO class not be set by the use of the Market Based Formula, but rather that the current maximum rate for the LFO class be adopted as the maximum rate for the HFO class;
- To set actual rates using the rate rider methodology, rather than following the full formula. This proposal would see rates set using 21 days of data, rather than data from two calendar months; and
- That the HFO rate be changed quarterly, based on the most current results of the rate rider methodology.

Rates in the HFO class have long been outliers in comparison with rates in other classes. In its decision of July 14, 2011, the Board stated:

> 'The Board notes that rates in this class have been significantly lower than other classes for many years. Even with this increase, the HFO rate remains about one quarter of the next lowest rate class and well below its cost of service. This is an issue that EGNB must continue to monitor. When market conditions support an increase to rates, EGNB should apply to the Board for a change to this rate to bring it more in line with other rate classes and its cost of service.'

In support of its application, EGNB points out that despite being well informed, none of the customers in the HFO class opposed the application. EGNB further argues that the system it proposes will ease its regulatory burden and potentially avoid the need for hearings in the future while enabling EGNB to increase rates if market conditions permit. With respect to the use of the LFO rate as the maximum rate, EGNB points out that the two rate classes are similar in many ways and that many of the customers in these classes will be included in one class when cost of service rate classes are implemented.

While regulatory efficiency is always a laudable goal, it should be pointed out that this decision is being rendered two months after the filing of the application and a future application which does not involve methodological change may well be completed even more quickly.

The setting of the HFO maximum rate at the current LFO rate, the move to quarterly rate settings and the use of rate rider methodology to set all rates are, collectively, a dramatic change from the Market Based Formula system approved by this Board in 2009. EGNB has not advanced any arguments which would justify such a dramatic departure from the existing system at this time, and for this class alone.

EGNB's proposal is a step in the transition toward cost based rates, to the limited extent that it creates a common maximum rate for the HFO and LFO classes. EGNB has been directed by the Board to file a transition plan by April 1, 2012. Given that EGNB will be filing a transition plan in less than four months, the Board concludes that it would be preferable to consider all such steps in the context of an overall plan, rather than approving one step in isolation.

The objectives EGNB are seeking in the present application regarding rates for the HFO class can largely be obtained with more modest variations from the current system than those they propose. To this end the Board will permit EGNB to file updated information to set rates based on the most current information available and the Board will permit EGNB to seek a new maximum rate for the HFO class as soon as July 1, 2012 should market conditions warrant. The use of rate riders and rate reinstatements will continue to be permitted.

The Board directs EGNB to file with the Board as soon as possible and no later than December 15, an updated rate derivation table for the HFO class using data from the months of October and November 2011 together with all supporting data and information. The Board will review this filing in the same manner as a rate rider application and the rate produced will become the maximum rate as well as the rate in force as of January 1, 2012.

Dated at the City of Saint John, New Brunswick this 7th day of December, 2011.

Raymond Gorman, Q.C., Chairman

Cyril Johnston, Vice-Chairman

Roger McKenzie, Member

Terry Totten, Member