

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE GAS DISTRIBUTION ACT**

- and -

**IN THE MATTER OF A Franchise Application by Strait Area Gas Corporation for the  
Distribution of Natural Gas in the Province of Nova Scotia - Phase II Hearing**

**BEFORE:** John A. Morash, C.A., Chair  
John L. Harris, Q.C., Member  
Kulvinder S. Dhillon, P. Eng., Member

**APPLICANT:** **STRAIT AREA GAS CORPORATION**  
Leonard MacDonald, Mayor, Town of Mulgrave  
Colin MacDonald, CAO, Town of Port Hawkesbury  
Thomas Hartline, Director, Rock Creek Energy Canada, Inc.  
David Keeling, Hetek Solutions Inc.

**HEARING PARTICIPANTS:**

**GasWorks Energy Corp.**  
Dwight J. Jeans  
John Peters

**Municipality of the County of Richmond**  
Gail Johnson

**Province of Nova Scotia  
Department of Energy**  
Stephen T. McGrath  
William O'Halloran  
Allan L. Crandlemire

**Quetta Inc.**  
John H. Reynolds, P. Eng.

**INTERVENORS:** see Appendix 'A'

**BOARD COUNSEL:** S. Bruce Outhouse, Q.C.

**BOARD COUNSEL'S  
CONSULTANT:**

Richard G. C. DeWolf, P. Eng.

**HEARING DATES:**

Heard at Halifax, Nova Scotia, on  
March 29, 30, and 31, 2004

**FINAL SUBMISSIONS:**

June 14, 2004

**DECISION DATE:**

**September 29, 2004**

**DECISION:**

Subject to meeting certain conditions precedent and  
subject to the approval of the Governor in Council,  
the Board grants a full regulation class franchise to  
Strait Area Gas Corporation

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## INTRODUCTION

[1] This decision is with respect to a public hearing (the “Phase II hearing”) held by the Nova Scotia Utility and Review Board (the “Board”) to hear further evidence and representations from Strait Area Gas Corporation (“Strait” or “the Applicant”) concerning its application for a franchise to distribute natural gas in Nova Scotia. Strait filed its original application in August 2002 for a franchise consisting of areas in Antigonish, Inverness, Richmond and Guysborough Counties. Following a public hearing (the “Phase I hearing”), the Board issued its decision on February 7, 2003 in which it determined that

. . . it is appropriate to approve the grant of a franchise to Strait, in principle, subject to the approval of the Governor in Council and subject to the directives and conditions outlined in this decision. The directives include Strait filing documentation, to be reviewed in a second phase of the hearing into Strait’s franchise application, which satisfies the Board that Strait meets the statutory and regulatory requirements for a franchise.

(Board Decision, February 7, 2003, para. 210)

[2] By Order in Council dated February 21, 2003, the Governor in Council “approved the granting, in principle, of a full [regulation] class franchise to Strait Area Gas Corporation for a franchise area approved by the Board”. The franchise area approved by the Board consisted of the areas in the above counties proposed by Strait.

[3] The purpose of the Phase II hearing was thus to review certain filings made by Strait in October, 2003 in compliance with the Board’s directives and to permit Intervenor and the Board to cross-examine witnesses for Strait with respect to its filings and related issues arising from the Board’s decision. The Board’s directives included in its February 7, 2003 decision are set out in Appendix B.

[4] In its Order dated January 20, 2004 the Board directed Strait to file an executed and legally binding BOOT agreement with the Board, as ordered in its February 7, 2003 decision, directed that Strait respond to information requests issued by the participants and that the hearing commence on March 29, 2004. Strait filed an executed agreement with the Board on February 16, 2004. The Nova Scotia Department of Energy (“NSDOE”) and the Board issued information requests to which Strait responded.

[5] At the time the Board issued its Phase I decision Strait had no separate legal status. It was a joint venture of the Towns of Port Hawkesbury and Mulgrave whose purpose was to seek a natural gas franchise. Prior to the Phase II hearing, the Towns incorporated “Strait Area Gas Corporation” pursuant to the provisions of the **Municipal Government Act**, S.N.S. 1998, c. 18. The Board comments on this incorporation under the heading “The Intermunicipal Service Agreement”.

[6] The Phase II public hearing was held at the offices of the Board in Halifax on March 29, 30 and 31, 2004, following public notice. Closing submissions were filed on April 15, 2004 and rebuttal submissions on April 27, 2004. Strait filed its last undertaking on June 14, 2004.

[7] The Board’s role with respect to an application for a franchise to construct and operate a gas delivery system is set out in the **Gas Distribution Act**, S.N.S. 1997 c. 4, as amended, (“the **Act**”), the **Gas Distribution Regulations (Nova Scotia)**, N.S. Reg. 86/98, as amended by N.S. Reg. 72/02 (“the **GIC Regulations**”) and the **Board Gas Distribution Regulations (Nova Scotia)** N.S. Reg. 85/02. **Section 2** of the **Act** states that the purpose of the **Act** is to:

(a) provide a framework for the orderly development and operation of a gas delivery system in the Province; and

(b) allow for fair competition in the sale of gas for consumption in the Province.

[8] There were 12 formal Intervenors in the Phase II proceeding. A list is provided in Appendix A. Four Intervenors appeared at the commencement of the hearing but NSDOE was the only active participant at the hearing apart from Board Counsel.

[9] **Section 8(2)** of the **Act** states that the Board must be satisfied that the granting of the franchise is in the public interest and sets out a number of factors which the Board must take into consideration in reaching its decision. The Board's decision is subject to approval by the Governor in Council.

[10] This decision should be read in conjunction with the Board's earlier February 7, 2003 decision. A principal focus of this decision is on the System Agreement which has been filed by Strait and replaces the earlier BOOT agreement discussed at the Phase I hearing. One of the features of the System Agreement which distinguishes it from the former BOOT agreement, is that there is no automatic transfer of the distribution system from the builder, owner and lessor of the system, Rock Creek Energy Canada ("Rock Creek") to Strait. While the former lease arrangement under the BOOT agreement was characterized as a capital lease, the current lease arrangement set out in the System Agreement is intended to be an operating lease.

[11] In this decision the Board will address Strait's evidence and filings in the context of the statutory factors which the Board must consider in evaluating a franchise application.

## EXISTENCE OF MARKETS

[12] **Section 8(2)(a)** of the **Act** requires the Board to consider the existence of markets. The section reads as follows:

8(2) Before granting a franchise, the Board shall be satisfied that the granting of the franchise is in the public interest and shall take into consideration

(a) the existence of markets, actual or potential;

[13] In its original application and at the Phase I hearing Strait described the market potential of natural gas in the proposed franchise area. It emphasized the pending expansion of port facilities at the Strait of Canso and other likely developments in the area. It placed considerable emphasis on the possibility of a combined cycle generation facility being developed in a proposed Mulgrave Industrial Park. Strait agreed that the load from this plant would be required to justify extending the distribution system into the Town of Mulgrave.

[14] In its February 2003 decision, the Board expressed concern with respect to the Applicant's heavy reliance on the proposed combined cycle facility at Mulgrave "which may or may not materialize in the future". It concluded, however, that a "viable market for natural gas may well exist in the Strait area" although the record was far from complete in this regard. The Board noted that the proposed BOOT operator had expressed confidence that a viable market could be developed in the absence of a generating facility at Mulgrave and therefore the Board did not make a definitive finding on the markets question pending the receipt of further information in the Phase II proceeding.

[15] At the Phase II hearing, witnesses for the Applicant indicated that they are still confident that a generating plant will be developed at Mulgrave by year four of the



franchise. The focus of the hearing as it related to the existence of markets, however, was with respect to the Port Hawkesbury area. In particular, there was much discussion with respect to the possible installation of a small co-generation plant at the Nova Scotia Community College campus at Port Hawkesbury. While the status of this project remains uncertain, Thomas Hartline, a director of Rock Creek Energy Canada Inc., and Rock Creek's witness at the hearing, testified that if the co-gen facility were to be built it would be economic to extend the distribution system to the Community College. In the absence of the co-gen plant it could still be economic to run the main pipeline as far as the new Civic Centre.

[16] NSDOE questioned Strait with respect to the likelihood that the Community College would become a customer:

- Q. And do you have any form of commitment from the Nova Scotia Community College at this point in time that they will definitely take gas?
- A. No. That gets back to the point that Mayor MacLean discussed as well, in that it's very difficult to go to a customer when we don't have a franchise, we can't tell them what the price of gas is going to be, all of those things. So, we've got a – we've got more than a preliminary discussion with the community college, they definitely intend to take gas, they definitely intend to move their gas-fitting programs to the Strait and to double that cogen unit as both power and a classroom. So, that said, I think their commitment is definitely there to take gas. They've said yes, they do intend to take it.

(Transcript pp. 42-43)

[17] In its Closing Submission, NSDOE expressed a degree of skepticism with respect to the evidence relating to markets but suggested that notwithstanding the lack of certainty the Board could still find that it is in the public interest to grant the franchise:

7. The information relating to the existence of markets is uncertain and relies considerably on assumptions surrounding the development of cogeneration facilities...It is insufficient to simply indicate that efforts to define relative details of the application have not yet been undertaken because the franchise has not yet been

awarded...Conditional contracts in areas such as gas supply and services could have been more fully developed without a franchise.

11. Notwithstanding the foregoing, as long as there is nobody else with more immediate prospects to serve the communities involved in the application, allowing the applicant further time to nurture its plans may not be contrary to the public interest. If the Board is willing to consider allowing the applicant to proceed further, the public interest may be protected through the imposition of appropriate terms and conditions. To a great degree, this would require that current information gaps be addressed by providing the Board with opportunities to review and approve plans as more detailed information becomes available. These approvals may not require public hearings, but the Board should retain the discretion to solicit stakeholder input or direct such hearings if need be.

(NSDOE Closing Submission)

## Findings

- [18] In its February Decision the Board stated:

The Board is not satisfied that Strait has met the statutory test with respect to the actual or potential market for natural gas in the proposed franchise area. However, the Board is mindful of the effort which has been made by Strait and is generally cognizant of the potential for a natural gas market in the Strait area.

(Board Decision, February 7, 2003, para. 212)

- [19] The Board appreciates the difficulties involved in trying to secure commitments from potential customers to take natural gas before a franchise comes into existence. The evidence indicates that Strait has had extensive discussions with a number of potential customers who would provide anchor loads to the franchise holder, including the Community College, and the new Civic Centre and Justice Centre, both of which are currently under construction. These customers would justify a construction program which would lead to gas service to at least part of the Town of Port Hawkesbury.

- [20] Based on the evidence before it, the Board is satisfied that Strait has identified potential gas customers should the Board grant the franchise. Further, the Board is generally aware of the economic activity in the Strait area, both underway at the present

time and planned over the next several years, to which Mayor MacLean alluded in his opening remarks.

[21] This application is for a relatively small distribution system, the construction of which will be financed by Strait's partner, Rock Creek, pursuant to the System Agreement. The Board is satisfied after hearing Mr. Hartline, and reviewing the System Agreement, that Rock Creek will not agree to the build-out of the system without having assured itself that the build-out will be financially viable. The Board is also of the view that potential customers in at least the Port Hawkesbury area are more likely to receive gas service at an earlier date if a franchise is granted than if it is refused and the area is forced to wait for another applicant to come along at some indefinite point in the future. After taking all the evidence and representations into consideration, the Board is satisfied that there is at least a sufficient *potential* market to justify granting the franchise.

#### **AVAILABILITY OF ADEQUATE GAS SUPPLY**

[22] The relevant Section of the **Act** governing the Board's responsibility in making a determination on the issue of adequate gas supply is as follows:

8(2) Before granting a franchise, the Board shall be satisfied that the granting of the franchise is in the public interest and shall take into consideration...

(b) the availability of adequate gas supplies;

[23] The Board in its February 2003 decision concluded that Strait will more likely than not have access to an adequate gas supply as a franchise holder but the Board wanted assurances that there would be a supplier of last resort. Accordingly, the Board

instructed Strait to demonstrate to the Board that either Strait or its gas marketers have access to sufficient gas supply to provide service under its franchise, and that supplier of last resort, ancillary services and backstopping arrangements are in place.

[24] In its Phase II submission to the Board, Strait included letters from Emera Energy Inc., signed by Ian Johnston, Director, Origination, dated September 24, 2003, and from StoraEnso, signed by Fred Hussey, Vice President, Engineering, also dated September 24, 2003. The Emera letter expressed a willingness to manage Strait's transportation requirements and gas supplies on "Maritimes & Northeast Pipeline (M&NP)" and indicated that, "As a minimum Emera is prepared to manage the Strait's gas load daily, by selling excess gas in a timely fashion to minimize imbalances". Emera indicated, however, that it is not prepared to "manage any transportation and/or natural gas supplies off the M&NP system".

[25] The StoraEnso letter advised that it is prepared to supply gas to the Strait distribution system through an assignment of a portion of its contracted gas supply. In a revised letter dated July 28, 2004, StoraEnso indicated that it would supply up to 1,000 GJ per day. It was careful to point out that "StoraEnso is not an agent or marketer so these services will have to be provided through a licensed marketer". It went on to specify the following "conditions precedent":

- Confirmation of demand profile, growth and term
- Agreement on firm transportation and gas supply
- Confirmation of credit worthiness
- Mutual acceptance of a licensed marketer

[26] Throughout these proceedings, Strait has emphasized that it does not want to sell gas to its distribution customers. It confirmed this approach at the current hearing. Strait also confirmed that it has held discussions with several potential marketers and is optimistic it will not have to assume the role of gas marketer. David Keeling of Hetek Solutions Inc. emphasized that Strait would want any marketing arrangements to extend to Strait's residential and small commercial customers as well as the larger institutional customers. He agreed that neither Emera nor StoraEnso contemplate marketing gas to consumers. In response to Board IR-25, Strait stated that in the event it did not receive a satisfactory marketing proposal, it would be prepared to take the marketing function on itself, using the services of Gas Alberta Inc., a wholly owned subsidiary of the Federation of Alberta Gas Co-ops, to assist it in managing its gas commodity activities.

## **Findings**

[27] It is apparent that Strait has much work ahead of it in order to conclude arrangements for gas supply, the transportation of the gas and for suitable ancillary, supplier of last resort and backstopping services. On the other hand, the Board believes that Strait has considered the issues that must be resolved in achieving these arrangements and the letters referred to above are evidence of the work which has been accomplished to date. It accepts Mr. Keeling's point that it is difficult to conclude arrangements with potential gas suppliers and marketers until it actually has a franchise and has obtained customer commitments to take service. The Board is optimistic that the difficulties yet to be overcome with respect to the supply and transportation of natural gas

will not prove to be insuperable. The Board notes that the July 28, 2004 letter from StoraEnso meets the concern expressed at the hearing that Strait would require more gas than StoraEnso is prepared to supply. The Board understands that a supply of 1,000 GJ a day, or 365,000 GJ a year, should meet Strait's requirements for several years.

[28] The Board has noted the discussion at the hearing concerning the possibility that suppliers of gas and transportation services may require Strait to provide evidence of creditworthiness, most likely in the form of letters of credit, particularly if Strait has to become a gas marketer. Procuring letters of credit is likely to be costly to Strait, and the Board surmises that Strait may have to resort to external sources of financing or guarantees in order to secure letters of credit.

[29] It should also be pointed out that pursuant to s. 4.8 of the System Agreement, Rock Creek is not responsible for supplying gas to Strait's distribution system. While Rock Creek has no direct responsibility for gas supply and transportation matters, the Board expects that Rock Creek will exercise due diligence in assuring itself that the arrangements Strait enters into in this regard are prudent.

[30] In its Closing Submission, counsel for NSDOE made the following points:

65. Without firm gas supply, transportation and related services there is no point in building anything. Whenever a System Agreement may be developed, before any construction SAGC must satisfy the Board that such arrangements are in place, and that the costs of these arrangements do not render the project uneconomic.

(NSDOE Closing Submission)

[31] The Board finds that Strait has met the criteria for availability of gas supply as outlined in the **Act**. However, not less than 60 days before the date it first applies for a Permit to Construct, Strait shall provide evidence satisfactory to the Board that it has

made acceptable arrangements for a supply of gas, the sale of gas to system customers, the transportation of the gas and all ancillary matters related thereto, including in particular suitable backstopping and supplier of last resort arrangements and that funding arrangements for all of these services are in place.

## **PLANS FOR SERVICE AND SYSTEM AGREEMENT**

[32] The relevant section of the **Act** governing the Board's responsibility to make a determination on the issue of plans for service states:

8(2) Before granting a franchise, the Board shall be satisfied that the granting of the franchise is in the public interest and shall take into consideration . . .

(f) the plans of the applicant to provide service in the franchise area;

[33] The Board found in its February 2003 decision that Strait's plans for service were uncertain because they were dependent on a BOOT agreement which did not yet exist.

[34] The Board directed Strait to file an executed and legally binding BOOT agreement within six months from the date of acceptance of the Board's decision by the Governor in Council. The following extract from the Board's decision sets out the Board's expectations with respect to the information to be provided and the process which the Board would then follow.

Since the application by Strait is preliminary in a number of respects, the Board finds it is reasonable to approve the granting of a franchise to Strait on an "in principle" basis. The conditions applicable to such approval, as it relates to the BOOT agreement, are as follows:

1. Strait shall provide to the Board, within six months from the date of acceptance of the Board's recommendation by the Governor in Council, an executed and legally binding copy of a BOOT agreement. The Board will review the agreement, and supporting documentation, to determine whether the agreement is reasonable,

adequate, and in compliance with the requirements of the **Act and GIC Regulations**. In particular, the Board will look for clarification and specifics concerning:

- (a) the BOOT fee/schedule of payments
- (b) bridge financing
- (c) operating costs
- (d) regulatory costs
- (e) decision making - in particular with respect to system build-out
- (f) staffing
- (g) maintenance of the system
- (h) public safety
- (i) insurance
- (j) responsibility for financial losses
- (k) contractor selection/NS content
- (l) bidding process
- (m) transfer of assets to Strait

The above is not intended to be an all-inclusive list. There may be other issues that require review and Strait will be required to provide such additional information as may be necessary. The Board agrees with the Province that the filing by Strait should be the subject of review and comment by the Intervenors.

(Board Decision, February 7, 2003, para. 137)

[35] Strait filed an executed agreement between itself and Rock Creek with the Board on February 16, 2004. The first paragraph of the introductory section of the agreement describes the agreement as a “Construction and Operations Agreement, the ‘System Agreement’”. Item C in the introductory section states that:

C. The structure of this agreement is an operating lease for the System whereby RCEC develops and owns a natural gas distribution system within the Franchise Area which is leased to SAGC [Strait Area Gas Corporation] for the provision of local gas distribution service.

[36] The System Agreement provides that Rock Creek will be responsible for the construction of the distribution system, will own the system and will lease it to Strait which will operate the system in its capacity as the franchise holder. As pointed out above, the agreement no longer meets the test of a “BOOT” agreement, as the term is commonly understood, as it does not require Rock Creek to transfer the system to Strait, (for the



reason, as Mr. Hartline explained at the hearing, that Rock Creek wishes to ensure that the lease will be treated as an operating lease and not a capital lease). Further, unlike a conventional BOOT arrangement, s. 4.3 of the System Agreement specifically states that “SAGC shall be the natural gas utility system operator”.

[37] The System Agreement sets out the responsibilities and obligations of each of the parties. It provides that each phase of the system will be constructed pursuant to a “Schedule Agreement” which the parties will enter into when they are mutually satisfied that the proposed construction will be economically viable based on a balancing of the installation costs versus the customer revenue to be derived from the construction.

[38] In the following paragraphs the Board will address several of the items in the above extract from the Board’s earlier decision. A number of the items are covered in other sections of this decision.

### ***Schedule Payments***

[39] In its Closing Submission, NSDOE makes the following argument with respect to the fees (schedule payments) to be paid by Strait to Rock Creek pursuant to the Schedule Agreements:

14. In closing submissions for the Phase I Hearing, the Province noted that the proposed boot fee, based upon a flat 15% of the boot operator’s capital investment amounted to \$4,936,918.00 at year 15. This was identified as an extremely material component of the overall financial operation proposed by SAGC.
15. The most recent *pro forma* financial projections filed on April 13, 2004, show Schedule Payments (the boot fee) now reaching \$6,208,805.00 in year 15 and \$10,691,883.00 after 25 years. These Schedule Payments now apparently include capitalized maintenance costs for the first six years, but through the Phase II Hearing additional items were identified as possibly being capitalized, and therefore to be included in Schedule Payments. These consist of things like conversion marketing

payments made under Section 4.4 of the System Agreement, and HST if any obligation to make such payments exists.

16. The Schedule payments are significant to the financial viability of the project. There is [a] direct connection between the amount of the Schedule Payments and capitalized costs, as contemplated under the System Agreement (Exhibit S-3), but to date capital costs have only been put forward on a preliminary basis. Given the Board's statutory responsibility to assess the economic feasibility of the proposed gas delivery system (*Gas Distribution Act*, s.8(2)(c)), the finalization of capitalized costs under a Schedule Agreement should be subject to Board approval.

(NSDOE Closing Submission)

### ***Findings***

[40] The Board has concerns about the increased level of schedule payments, given that there is no approved financing in place for Strait. More will be said of this in the section "Financial Capability and Related Experience".

[41] Throughout the life of the franchise, in any given year Strait will have to cover its own operating costs incurred for such things as metering, billing and revenue collection. In addition, Strait will have to pay Rock Creek an annual schedule payment, as determined in the Schedule Agreements, which will enable Rock Creek to recover the capital cost which it incurs to build out the system plus a rate of return of 15%. The expected schedule payments will be significant but the Board is of the view that it should be left to the parties to determine whether the revenues from customers will cover the costs of constructing and operating the system. The Board declines to implement NSDOE's suggestion that "the finalization of capitalized costs under a Schedule Agreement should be subject to Board approval". The Board believes that Strait and Rock Creek should bear the ultimate responsibility as to whether the system succeeds or fails, and that the Board should not

place itself in the position where it may be perceived as the guarantor of the system's success.

### ***Operating, Maintenance and Staffing Costs***

[42] NSDOE provides a useful critique of Strait's proposed operating and maintenance costs, and its intentions with respect to staffing in light of the responsibilities it must discharge:

17. A comparison of the projected annual operating costs included in the original application (Table 3, Exhibit S-11) with those prepared as part of the revised *pro forma* projections (Table 3, Exhibit S-6) show that SAGC's annual operating costs, over the 25 year franchise, have been reduced by nearly 60% from \$6,549,000 to \$2,680,000. For the most part, these reductions are achieved through the elimination of the "general manager" position over the entire 25 year life of the initial franchise, and the associated vehicle and gas/maintenance expenses tied to that position.
18. While there is a detailed discussion about this beginning on page 274 of the transcript and running through to about page 294, as the Province understands the testimony SAGC was encouraged by Mr. Hartline to reduce its staffing requirement based essentially on his experience with a project in Mammoth Lakes, California. It was also noted that responsibility for emergency repairs and maintenance of the system was the responsibility of RCEC and that charges associated with that would be flowed through to RCEC, either in its own right, or to be added as capitalized costs and recovered in Schedule Payments (Transcript, March 30, 2004, pp. 289-291).
19. The projected annual operating costs shown on the most recently revised *pro forma* projections filed on April 13, 2004, now reflect that SAGC will be responsible for all maintenance costs (through an increase in Schedule Payments as a result of capitalization in the first six years, and as a direct responsibility following year six). The most recent version of the financial statements show SAGC's annual operating costs, over the 25 year franchise, as \$3,251,172.00. This is an increase from the costs presented on Table 3, Exhibit S-6, but is still only half of the projected annual operating costs included in the original application (Table 3, Exhibit S-11). "System Maintenance" costs are now projected and identified as a "Third Party Service" on Table 3. There are no details for the amounts set out, other than the general assumption that appears to have been made that maintenance costs will be 0.5% of the facilities in the ground (Undertaking U-8 amended).
20. The new projected annual operating costs directly attributed to SAGC (Table 3) reflect the commencement of a \$10,000 per year clerical position in year 10, a \$20,000 per year field staff position in year 15, another \$20,000 field staff position

in year 18 and a third \$20,000 per year field staff position in year 23. For the first ten years of the franchise, SAGC proposes to have no employees at all, and it is not until year 15 that there is a staff position for other than clerical responsibilities.

21. It is contemplated that operational tasks will be provided for SAGC by existing personnel employed by a municipal utility operated by one of SAGC's municipal owners. SAGC's annual operating costs contemplate \$20,000 of such shared services in year one, \$10,000 per year in years 2 - 5, and then \$20,000 per year for the remaining years of the 25 year franchise. The shared service figures in the revised annual operating costs were increased from \$135,000 in the original application to \$460,000 over 25 years. There has been no increase in costs expected to be incurred for training of municipal employees.
22. With the costs projected for staffing and shared services, SAGC will have to fulfill the following responsibilities and obligations (from SAGC response to Board IR 8) (Exhibit S-4):

SAGC responsibilities and obligations include:

- Pay for the use of the system
- Bill and collect the delivery charge
- Monitor potential load changes and keep RCEC informed
- Acquire start-up capital (CEDIF, grants etc.), without incurring tax payer liability
- Consult on system design
- Seek aids to construct where desirable and applicable
- Administer quality of system inputs
- Execute schedule agreements each year of new construction
- Contact point for system users (including service inquires, disconnects, emergencies, other customer questions and concerns)
- System marketing and public awareness
- Read meters and forward information to RCC
- Participate in system inspections
- Ensure emergency response capabilities
- Co-development, compliance and fees, taxes and costs associated with being a utility
- Locating the utility when requested

23. In addition to the foregoing, it now seems that SAGC is responsible for maintenance, beginning in year seven. It appears as though it has been contemplated that this work would be contracted to third parties, but SAGC would have to supervise and manage such contracts.

24. The operating costs also do not appear to have taken into account the following:

1. Marketing costs (there are only \$70,000 per year for "marketing" costs to year 5 and none after that; "g
2. Supervisory costs associated with construction;
3. Municipal taxes (though it was suggested that these could potentially be repaid back to the utility as some form of grant from its municipal owners);

4. Costs associated with gas supply arrangements. . . ;
25. The operating cost projections appear thin. If the project moves forward, and Schedule Agreements are developed, more detailed operating cost projections for the facilities to be constructed under the Schedule Agreements should be presented to the Board for review and approval.

(NSDOE Closing Submission)

### ***Findings***

[43] As stated by NSDOE in paragraph 42 above, the projected expenditures in the revised pro forma projections have declined significantly from those set out in the original application.

[44] Paragraph 19 of the NSDOE Closing Submission (see paragraph 42 above) discusses the change in treatment of maintenance costs. Much time was expended during Phase II of the hearing discussing how these costs will be treated, and who will pay for them. It was the Board's understanding that all maintenance costs, except those incurred during periods of active system build-out, were to be the ultimate responsibility of Rock Creek. However, upon the filing of the Undertakings, this apparently has changed so that all such expenditures subsequent to year 6 will be the responsibility of Strait.

[45] The Board notes that in Undertaking U-8 Amended there is no projected salary expense for a general manager and that there is no provision for a clerical position until year 10. The only salary provision in the projected annual operating costs is the shared service with the Towns in the amount of \$23,000 in year 1, and \$11,500 in each of the years 2 to 5, increasing to \$23,000 during years 6 to 9. In year 10, a clerical position is added at a projected cost of \$11,500 per year. Even here, however, at a projected cost of \$11,500 per year, this person is likely only a part-time worker.

[46] The Board understands that these salary figures (and other operating expenditures) have been reviewed with and approved by Rock Creek. This notwithstanding, the Board finds it difficult to understand how a new business venture can be successful with no general manager “*at the helm*” to ensure that business and operational plans are prepared and implemented. Accordingly, the Board directs Strait to appoint a qualified individual as a general manager who will have overall responsibility for the operations of Strait. The general manager must be knowledgeable concerning all aspects of the business and shall be Strait’s principal contact person for the Board, Rock Creek, customers, suppliers, and the public. The Board further directs that this appointment be made not less than 90 days prior to the filing of its first application for a Permit to Construct.

[47] The Board has reviewed the evidence concerning the adequacy of the projected annual operating, maintenance and staffing costs set out in Undertaking U-8 Amended. However, the Board is not in a position to determine whether these costs are reasonable and, in the final analysis, these costs are only estimates. It will be the responsibility of Strait to ensure that it has adequate funding to enable it to pay these costs as well as any other unexpected costs which may materialize. The Board’s concerns about the ability of Strait to finance its operations are exacerbated given that to date Strait has been unable to demonstrate that it has sufficient financing arrangements in place. The Board discusses this issue further in the section entitled “Financial Capability and Related Experience”.

**System Build-out**

[48] Section 3.2 of the System Agreement provides that Rock Creek is not required to enter into a Schedule Agreement for the development of any phase of the distribution system unless it is satisfied that the construction will be viable. While the System Agreement is silent on the point, Strait advised in its answer to NSDOE IR-1.9 that it too is not required to enter into a Schedule Agreement in the event that it deems that the construction would not be economically viable. In its responses to NSDOE IR-1.7 and 1.8, Strait pointed out that construction might still proceed in a given area if sufficient “aids-to-construct grants” could be secured from public agencies such as Enterprise Cape Breton, the Strait Area Development Fund and the Atlantic Canada Opportunities Agency to make the construction viable.

[49] The System Agreement does not contain a formula which would be used to determine the financial viability of extending gas service to a particular area. In its filing with the Board dated September 30 , 2003 Strait proposed such a formula. Mr. Hartline indicated at the Phase II hearing that while the formula previously submitted might well be used as a starting point, it is not “robust enough” to capture all potential variables. He expressed Rock Creek’s position as follows:

Now, given that Rock Creek Energy and Strait Area Gas have an interest in building this system because we’ve expended, you know, significant sums of money, obviously we’re going to both make prudent business decisions to move forward when it is economically feasible. And I would suggest that a starting point for testing that economic feasibility will be similar to the formula that was submitted in October but we will not commit to that because it cannot take into account every possible scenario and it wouldn’t be prudent to commit to that.

(Transcript, p. 50)

Mr. Hartline and Mr. Keeling both testified that there could be limited cases where the system might be built out in advance of receiving actual commitments to take service by potential customers. The example they cited was a new subdivision where it would be logical to install pipe to all of the subdivision in advance of actual house construction.

[50] In its Closing Submission, NSDOE recommends that, in the absence of a clearly defined and binding system expansion test, Schedule Agreements developed by Rock Creek and Strait should be subject to Board review and approval.

### ***Findings***

[51] The Board has carefully considered NSDOE's suggestion, but is not persuaded that Board approval of Schedule Agreements is required. The Board has confidence that Rock Creek and Strait will act prudently in making decisions to roll-out the distribution system. It is in their joint interest to ensure that revenues from the system will cover the schedule payments that Strait must pay Rock Creek as well as Strait's other operating expenses. The Board does not perceive its mandate to be to guarantee the financial success of the franchise. It would come perilously close to taking on this responsibility if it were required to evaluate and approve each Schedule Agreement. Having said that, the Board will of course have to approve applications for Permits to Construct and will monitor actual construction activity so as to ensure that the infrastructure being installed is safe to operate.



### **Public Safety**

[52] NSDOE in its Closing Submission defined the need for training and safety by

Strait staff:

35. The training that certain individuals might receive to be able to maintain the system or deal with emergency situations when there is no RCEC presence in Nova Scotia has been generally described as consisting of on the job training/technology transfer from ARB/RCEC during construction of the system, training sponsored by the Federation of Alberta Gas Coops and a suggestion that staff members from the Town of Port Hawkesbury would complete a gas utility operators certification program through N.A.I.T. (Transcript, March 31, 2004, pp. 393-394).
36. This is an extremely important public safety issue and more detailed information on the specific training programs, the number of individuals who will be trained in any given program and the availability of those individuals to respond in emergency circumstances, are necessary prerequisites before any system can be built. Such information needs to be presented to the Board for review and approval before anything can be built.

(NSDOE Closing Submission)

### **Findings**

[53] The Board concurs with NSDOE's comments. Strait will be required to demonstrate to the Board that it and Rock Creek have adequate human resources in place to ensure a safe and reliable gas distribution system, which must be constructed and operated in accordance with the provisions of the **Gas Distribution Act**, the **Pipeline Act** and all related regulations. In particular, the Board will instruct its Certifying Authority to review the level of training and availability of the personnel who are proposed to construct, operate and maintain the system as part of the "Permit to Construct" and "Licence to Operate" processes.

## **Insurance**

[54] Section 4(4) of the **Pipeline Regulations (Nova Scotia)** states that:

4(4) It is a term and condition of every permit and licence to construct or operate a pipeline that each holder of the permit or licence shall

- (a) carry adequate personal injury, property damage and third party liability insurance for losses suffered in the construction and operation of the pipeline on such terms and in such amounts as is determined by the Board.

The provisions of the **Pipeline Act** and regulations apply to gas distribution systems.

[55] The topic of insurance is addressed in the System Agreement at Section 10.

Section 10.1 requires Strait to “maintain insurance in accordance with terms similar to those provided to the Federation of Alberta Gas Co-ops”. Subsequent sub-sections deal with the insurance coverages to be maintained by Rock Creek.

[56] NSDOE raised the following concerns in its Closing Submission:

37. The System Agreement, at Section 10.2(e) obligates RCEC to “maintain Comprehensive or Commercial General Liability Insurance with reasonably acceptable deductibles with a combined single limit for bodily injury and property damage of \$2,000,000....”. This is substantially below the insurance requirements required of Heritage Gas. Mr. Hartline was also not sure whether the insurance he had been quoted included environmental/pollution coverage (Transcript, March 31, 2004, p. 390).
38. SAGC’s new financial projections (April 13, 2004,) show an increase in its own insurance costs (Table 3, Annual Operating Costs), however, no explanation for this has been given. We do not know what this insurance is for, how these costs have been estimated, or how it might affect RCEC’s obligation to obtain insurance under the System Agreement. Insurance expectations need to be clarified.

(NSDOE Closing Submission)

## **Findings**

[57] The Board concurs with NSDOE that there are a number of uncertainties with respect to the coverages to be maintained by Strait and Rock Creek. In particular, the

Board is not persuaded that Rock Creek's proposed coverage of \$2 million for bodily injury and property damage is adequate.

[58] Accordingly, not less than 60 days prior to filing its first application for a Permit to Construct, Strait shall file a report with the Board prepared by a licensed insurance broker recommending the appropriate insurance coverages, including coverage amounts and estimated costs, which should be obtained by both Strait and Rock Creek. The report should address appropriate insurance coverages with respect to both the construction activities to be carried on by or under the direction of Rock Creek and the operation of the distribution system by Strait and Rock Creek.

### ***Transfer of Rock Creek's Assets to Strait - Overview and Findings***

[59] The BOOT scheme proposed by Strait at the Phase I hearing contemplated that the distribution system would be owned by the BOOT operator, would be leased to Strait under a capital lease and would transfer to Strait with the completion of the lease payments at the end of the franchise period. Thus, the expression "BOOT" was appropriate, standing as it does for "build, own, operate and transfer". Under the System Agreement before the Board in Phase II of the hearing, the lease now takes the form of an operating lease and there is no obligation upon Rock Creek to transfer the assets to Strait at any time, although Mr. Hartline did say that the "underlying intent" of the parties is that the assets would be purchased by Strait at the end of 25 years. In short, at the end of the franchise period the lease comes to an end, and Rock Creek is left owning the system assets with no obligation to continue leasing them to Strait or even to sell them. As noted

below, Strait does have a limited right of first refusal in the event that Rock Creek should decide to sell the system.

[60] Given Rock Creek's expressed intent to sell the system to Strait at the end of 25 years, if not before, Board Counsel suggested at the hearing that the System Agreement be amended by adding a provision that would act as an incentive for Rock Creek to sell the system at the end of the 25 year franchise period or as a penalty for not selling. The Board agrees with this suggestion, and directs Rock Creek and Strait to jointly develop an incentive/penalty mechanism which can be added to the System Agreement and which will encourage Rock Creek to sell its system assets to Strait at the end of the franchise period, if not before. The Board further directs that the proposal should be submitted to the Board for approval and that this is a condition precedent to the granting of the franchise.

[61] The System Agreement deals with the possibility that Rock Creek may sell the system to a third party rather than to Strait. If the third party offers to buy at a price which is lower than the sale price generated by the formula in the System Agreement, then Strait has a right of first refusal and can purchase the system for the lower price. However, if the proposed sale price is equal to or higher than the sale price generated by the formula in the System Agreement, Strait has no right of first refusal.

[62] In response to questions by counsel for NSDOE, Mr. Hartline agreed that he had no objection to amending the System Agreement to give Strait a "right of first refusal in either direction". The Board directs that the System Agreement be amended to give Strait a right of first refusal to purchase Rock Creek's system assets whether the price

offered by a potential third party purchaser is higher or lower than the price generated by the formula as currently provided in the System Agreement. This requirement must be completed prior to the granting of a franchise to Strait.

[63] Rock Creek indicated that it intends to obtain debt financing and this raises the possibility, hopefully remote, that Rock Creek's assets could fall into the hands of a creditor. NSDOE submits that should Rock Creek's assets be transferred to a third party, it is important that the Board be in a position to ensure that the third party not withhold the assets from use by Strait or demand an inappropriate price for their continued use. In response to NSDOE IR-1.30 Strait noted that "It is assumed that the URB would have jurisdiction over this transaction", (meaning the sale of the system to a "private entity"). The Board shares NSDOE's concern and directs the parties to amend the System Agreement to provide that any transfer of Rock Creek's assets to a third party is to be subject to the approval of the Board. Again, this requirement must be completed prior to the grant of a franchise by the Board.

[64] NSDOE pointed out in its Closing Submission that, based on the last set of pro forma financial statements filed with the Board following the Phase II hearing, it appears that capital expenditures beyond year six will be paid for by Strait and that the new facilities appear on Strait's balance sheet as assets. It would follow, then, that Strait contemplates that it will own these assets while at the same time Rock Creek will continue to own the facilities which it has constructed pursuant to Schedule Agreements entered into by the parties pursuant to the System Agreement. Mr. Hartline initially expressed concern at the hearing at the possibility that a such a situation could arise, that is, that there would

be a “split ownership” of the system assets, as between Rock Creek and Strait. In response to questions from Board Counsel, he conceded that the assets built by Strait could be separately identified and severed from any security interest vesting in a creditor of Rock Creek.

[65] The Board sees no reason why the split ownership of the system assets should be prohibited. It is not persuaded that Rock Creek’s financing ability will be impaired. It is likely that the portion of the overall assets owned by Rock Creek will far exceed those owned by Strait as the construction proceeds over the life of the franchise. The parties are directed to ensure that each Schedule Agreement clearly and precisely identifies the scope of the construction work to be performed under the Schedule Agreement. The parties are further directed to prepare and submit to the Board an amendment to the System Agreement which shall expressly acknowledge that Strait owns the facilities which it constructs at its own expense. These amendments to the System Agreement must be completed to the satisfaction of the Board prior to the grant of a franchise.

## **ECONOMIC FEASIBILITY - OVERVIEW AND FINDINGS**

[66] The Board is required to consider the question of the economic feasibility of a proposed franchise pursuant to **s. 8(2)(c)** of the **Act**.

8(2) Before granting a franchise, the Board shall be satisfied that the granting of the franchise is in the public interest and shall take into consideration . . .

(c) the economic feasibility of the proposed gas delivery system;

[67] The Board stated in its February 2003 decision that it was unable to find that Strait had met the test of economic feasibility given the information before it. At the Phase II hearing, in addition to filing the completed System Agreement which gives the Board a better understanding of how Strait and its partner, Rock Creek, propose to proceed, Strait filed new financial schedules, which were followed with yet another set of statements in response to undertakings given at the hearing.

[68] The Board has carefully reviewed the new financial evidence. The pro forma projections filed as Undertaking U-8 Amended indicate that the proposed distribution system is economically feasible. The Projected Statement of Operations shows that, after incurring an operating loss of \$32,310 in year 1, subsequent years are projected to show significant profits. Retained earnings (i.e. accumulated profits retained in the business) are projected to be \$2,342,000, \$4,427,000 and \$6,780,000 as at the end of year 10, year 15, and year 20 respectively.

[69] However, as with any pro forma financial statements, the indicated results depend entirely on the reasonableness of the estimates upon which the pro forma financial statements are based. At the best of times, notwithstanding that the indicated results are based on plausible estimates, the actual results are frequently significantly different from the projected results due primarily to the fact that it is difficult to forecast future events. This is particularly so if the forecast covers an extended period of time, such as 10, 15, or 20 years.

[70] The Board notes that a significant component of the expenditures to be incurred by Strait are the schedule payments it must pay to Rock Creek, and these will be

based on the construction costs incurred by Rock Creek in building-out the distribution system. If these costs are not prudently incurred, it will make it more difficult for Strait to operate the system on a financially sound basis. However, it is the responsibility of Strait and Rock Creek, not the Board, to ensure that this franchise operates on an economically sound basis. Due to the nature of the System Agreement, the activities of Strait and Rock Creek will be inextricably linked and this will require a close working relationship between the two parties to ensure the success of the franchise.

## **FINANCIAL CAPABILITY AND RELATED EXPERIENCE**

[71] The related statutory provisions in the **Act** governing the Board's responsibility in making a determination on the issues of financial capability and experience are as follows:

8(2) Before granting a franchise, the Board shall be satisfied that the granting of the franchise is in the public interest and shall take into consideration ...

- (d) the financial capability of the applicant;
- (e) related experience of the applicant in the delivery of gas;

[72] In its February 2003 decision, the Board directed Strait to provide further information respecting its arrangements for "bridge financing". Strait pointed out at the Phase II hearing that it has reduced its annual operating and maintenance expenditures very considerably throughout the 25 year franchise period, largely by eliminating the position of general manager. Whereas at the earlier hearing it had anticipated a first year deficit of approximately \$175,000 and a second year deficit of \$116,000, the financial



information provided in Undertaking U-8 Amended indicates that the first year deficit will only be approximately \$32,000 and in each subsequent year Strait will be profitable.

[73] Mayor MacDonald expressed optimism that Strait's need for funding in the start-up phase of the Company's operations will be minimal. When asked how much start-up capital he anticipated needing to raise, he responded:

I really don't see a large figure there. It would certainly be under fifty thousand dollars (\$50,000). I expect it would probably be in the vicinity of ten to fifteen thousand.

(Transcript, p. 368)

[74] Mr. Hartline said that for companies "that we are used to dealing with" the minimum capitalization, "is in the range of \$50,000. We typically capitalize the single-purpose entities that we have established at a \$60,000 amount". He went on to comment:

I mean, I don't think they need a tremendous amount of capital to move forward, but I do expect that they would have enough working capital at the outset to move forward for at least a year.

(Transcript, p. 240)

[75] Board Counsel drew Mr. Hartline's attention to the following provisions in an earlier version of the System Agreement:

#### 2.7 SAGC start-up capital

Given the overriding parameter that SAGC is not to incur unfunded liabilities that could ultimately fall back on the taxpayer, RCC will lend SAGC working capital. Outlined below are the parameters on these working capital loans.

RCC expects that SAGC will be sufficiently capitalized and competently managed to cover other budgeted shortfalls, with the exception of the agreed to working capital loan limits. In the event that SAGC either experiences or expects to experience shortfalls beyond the limits of these working capital loans, to the point that SAGC is unable to make the Schedule Payments, then SAGC must either substantially cut its operating budget, or raise capital, or both.

##### 2.7.1 SAGC operations

On each October 31<sup>st</sup> during the Initial Build-out Period, SAGC may request up to \$50,000 of working capital to cover anticipated operating shortfalls over the coming year. The amount

requested will be added to the Capitalized Cost of the Schedule Agreement that year. The maximum cumulative working capital transferred to SAGC shall not exceed \$250,000.

(Undated and unsigned earlier version of System Agreement included as part of Exhibit S2)

Mr. Hartline confirmed at the hearing that the above provisions no longer appear in the executed System Agreement before the Board in this proceeding and said the following:

The reason we dropped this had to do a lot with the issue that we've brought up to you, and that is the uncertainty we have were Strait Area to default. And since we didn't feel comfortable, completely comfortable with that position, we decided, well, we don't want to make the hole any deeper if we end up falling into the hole, so we dropped the working capital provisions. Until such time as we are comfortable with our position throughout - in the event of a default by Strait Area Gas - we're not currently able to offer working capital loans.

(Transcript, p. 386)

[76] In its Closing Submission, NSDOE expressed its concern with respect to Strait's ability to raise start-up capital:

26. Even after scaling back the operating costs as part of the evidence on the Phase II Hearing, SAGC still shows an operating deficiency in year one of its pro forma projected financial statements. If the projected operating costs are too thin, then operating deficiencies could be greater and could continue into other years. SAGC projects an interest payment of 8% to cover the operating loss in year one. The source of bridge financing has not been specifically identified.
27. While SAGC has identified a number of potential sources of bridge financing or capital in various parts of its evidence, none of these are committed sources of financing. None of them have been sufficiently explored to determine whether they are viable funding sources. Given the requirement of SAGC's owners that they will not put their residents at risk by guaranteeing loans to SAGC, it is likely that sources of financing will be limited, if any. To the extent that SAGC plans to utilize any public funding programs, reliance on the existence or availability of any such programs at this point is speculative and would amount to a passing of risk to tax payers outside of the municipalities involved.

(NSDOE Closing Submission)

[77] Strait emphatically confirmed at the Phase II hearing that its shareholders, the Towns of Mulgrave and Port Hawkesbury, will not be called upon to bear or guarantee any

debt or financial losses incurred by Strait. The ratepayers of Mulgrave and Port Hawkesbury are not to be saddled with any financial losses incurred by Strait. NSDOE expressed its concern in this regard as follows:

40. . . . The System Agreement does not require any form of guarantees or indemnities from SAGC's municipal owners, so municipal citizens do appear to be protected from responsibility for financial losses relating to the System Agreement. However, there is a bigger picture.
  
41. The System Agreement only relates to the construction and maintenance of the physical assets (though now only for the first six years). There are other operational costs that will have to be borne by SAGC, as discussed above and gas supply arrangements will also need to be made . . . The likelihood that SAGC will be able to arrange for financing to cover its operational needs and necessary gas supply arrangements without its municipal owners incurring some form of liability is questioned.

(NSDOE Closing Submission)

[78] The Board in its February 2003 decision also indicated that Strait is deficient in financial and related experience as required under the **Act**. The Board directed Strait to file the financial capabilities and experience of the selected BOOT operator. In addition, the Board had concerns about the financial resources of Strait.

[79] Strait filed 2002 financial statements for ARB, Inc. (ARB) and Stockdale Investment Group, Inc. (Stockdale) with the Board in confidence. Rock Creek Canada is a subsidiary of Stockdale and ARB is affiliated with Stockdale. Their head offices are at Lake Forest, California. Stockdale describes itself as "a diversified international investment company" and ARB describes itself as "a diversified international construction company". Rock Creek intends to contract with ARB for the construction of the distribution system. Strait also filed information on the activities of these companies over the years.

[80] Strait will require financing to enable it to meet its regulatory and contractual obligations. As pointed out by NSDOE above, Strait has not yet identified how it will provide this financing.

## **Findings**

[81] The Board has reviewed the information filed in confidence setting out the financial information and experience relating to ARB, Inc. and Stockdale Investments Group, Inc. The Board is satisfied that Rock Creek, with the support of ARB and Stockdale, has the necessary financial capability and related experience to undertake this project.

[82] The Board recognizes that Strait has overcome many obstacles to get to the point where it is now, and that this achievement was made possible by many hours of volunteer labour contributed by its directors and others. However, if this franchise is to be successful, Strait cannot operate on a shoestring. There will be many time-consuming tasks which will have to be performed by Strait in the start-up phase and many of these tasks will have to be performed at approximately the same time and well prior to the first application for a Permit to Construct, let alone the receipt of revenue from the first flow of gas. Such tasks could include the legal advice Strait will require as it negotiates its first Schedule Agreement with Rock Creek, the engineering advice it will require as the first year construction plan is developed and the costs it will incur to meet various regulatory requirements including those of the Board. While all this is going on, Strait will have to negotiate gas supply and transportation contracts, enter into a contract with a retail gas

marketer if it can find one, apply to the Board for a schedule of rates, and negotiate with and secure commitments from potential customers. The Board is skeptical that these and other tasks can be discharged on the basis of the first year budget presented at the Phase II hearing.

[83] Given its concern that Strait be adequately funded at its inception as the operator of a gas distribution system, the Board directs that not less than 60 days prior to its first application to the Board for a Permit to Construct, Strait demonstrate by way of evidence satisfactory to the Board that it has secured financing in an amount not less than \$150,000 for working capital purposes.

#### **SOCIO-ECONOMIC IMPACT STATEMENT AND BENEFITS PLAN**

[84] **Section 5(c)** of the **Gas Distribution Regulations (Nova Scotia)** requires an applicant for a franchise to submit a Socio-Economic Impact Statement which includes, *inter alia*, a benefits plan, an undertaking to implement the benefits plan and a description of the probable benefits of the construction and operation of the gas delivery system. The Board found in its Phase I decision that the benefits plan filed by Strait generally meets the requirements of the **GIC Regulations**. However, the Board was not satisfied that Strait would be able to implement the proposals outlined in the benefits plan in the absence of a definitive BOOT agreement. The Board's decision directed Strait to identify "what, if any, components of the proposed benefits plan will be modified by the executed BOOT agreement".

[85] Schedule B of the System Agreement sets out Strait's commitments with respect to its benefits plan. It states that it is Strait's "intent to meet or exceed the requirements under the Regulations of the **Gas Distribution Act**". Mr. Hartline agreed in his testimony that there will be no change in the existing benefits plan as a result of the System Agreement and that the System Agreement incorporates the benefits plan previously filed with the Board.

[86] Section 11.2 of the System Agreement states that Rock Creek "will conduct its operations in accordance with the provisions of the Benefits Plan attached as Schedule B". In response to a question by Board Counsel, Mr. Hartline confirmed that Rock Creek considers that it is obligated under this section to require its affiliated company, ARB, which will actually do the construction work for Rock Creek, to adhere to the terms of the System Agreement including the benefits plan. NSDOE submitted that the Board should direct Rock Creek to confirm this interpretation before any construction begins.

## **Findings**

[87] The Board is of the view that the benefits plan submitted by Strait meets the requirements of the **GIC Regulations**. The Board directs that not less than 60 days before Strait applies for its first Permit to Construct, Rock Creek shall provide evidence to the Board that its contractor agrees to be bound by the benefits plan filed by Strait.

[88] Strait shall take all reasonable measures to implement or cause to be implemented all of the commitments, policies, and practices set out in its Socio-Economic

Impact Statement and Benefits Plan included in or referred to in its application, and as adduced in evidence before the Board.

[89] Strait shall file a report with the Board on its benefits plan at least every six months commencing 180 days from the date the Governor in Council approves the grant of franchise by the Board.

[90] The Board intends to request NSDOE to review progress reports filed by Strait with respect to its compliance with the benefits plan and to report the results of its analysis to the Board. NSDOE is providing this service to the Board with respect to the benefits plan reports prepared by Heritage Gas Limited.

## **OTHER MATTERS**

### ***The Intermunicipal Service Agreement***

[91] As part of its submission in the Phase II proceeding, Strait filed an undated “Intermunicipal Service Agreement” executed by the Towns of Mulgrave and Port Hawkesbury. The agreement created a body corporate as provided for by **s. 60** of the **Municipal Government Act**, S.N.S. 1998, c. 18, to be known as Strait Area Gas Corporation.

[92] The Board notes that the agreement does not state whether the liability of its two shareholders is to be limited or unlimited. Mayor MacDonald stated at the hearing that the intention of the shareholders was that liability is to be limited. This being the case, the Board directs the respective parties to amend the agreement to make it clear that the liability of the shareholders is to be limited.

[93] Section 5.01 authorizes Strait to borrow money and states that Strait is a municipal enterprise for purposes of the **Municipal Finance Corporation Act**, R.S.N.S. 1989, c. 301. It was suggested at the hearing that the towns would be liable for any loans to Strait from the Municipal Finance Corporation. Mayor MacDonald stated that Strait does not intend to borrow from the Municipal Finance Corporation and further re-iterated that it is not the intention of the towns to assume any liability for Strait's borrowings.

[94] Section 6.01 states that the agreement is terminated if one party gives the other party at least 18 months notice. However, if the other party intends to have Strait continue as a separate legal entity, then it must arrange to purchase the ownership interest of the withdrawing party. Board Counsel pointed out at the hearing that if both parties elect to terminate the agreement then Strait ceases to exist and there will be no franchise holder. The Board is concerned that there not be a break in the ownership of the franchise without Board involvement. The Board directs Strait to arrange to have the agreement amended to provide that the agreement shall not be terminated without the approval of the Board.

[95] The two items above are conditions precedent to the grant of a franchise and must be addressed to the satisfaction of the Board prior to the grant of franchise.

### ***Legal Status of Rock Creek***

[96] Board Counsel noted at the hearing that "Rock Creek Energy Canada Inc.", a limited liability corporation, was incorporated in the Province of Nova Scotia on March 22, 2004. The System Agreement, although undated, was clearly signed by the parties before this date. As a technical matter it appears that the signatory to the agreement, "Rock



Creek Energy Canada”, was not a legal entity at the date the contract was signed and therefore there is no legally binding contract between Rock Creek and Strait. Mr. Hartline testified that Stockdale intends to incorporate an unlimited liability company in Nova Scotia if the franchise is granted to be known as “Rock Creek Energy Canada” and that it will then formally adopt the contract.

[97] The Board directs that as a condition precedent to the grant of a franchise the owners of Rock Creek either incorporate an unlimited liability company in Nova Scotia which shall formally execute a dated System Agreement with Strait or that the limited company, “Rock Creek Energy Canada, Inc.”, formally execute a dated System Agreement with Strait.

[98] The Board further directs that, as a condition precedent to the grant of a franchise, the Board of Directors of Stockdale formally adopt a resolution, a copy of which shall be filed with the Board, authorizing its officers or the officers of one or more of its subsidiaries to enter into the System Agreement with Strait, and undertaking that Stockdale will provide or guarantee all necessary funding required to construct the distribution system as provided for in the Schedule Agreements.

**Regulatory Costs**

[99] The issue of whether Strait should be required to pay the costs incurred by the Board in respect of Strait's application for a franchise was the subject of discussion at the 2002 hearing. In its February 2003 decision the Board stated:

Strait should be aware that, as the applicant for a franchise, it will be expected to cover the Board's regulatory costs as a result of this proceeding.

(Board Decision, February 7, 2003, para.137)

The Board confirmed this intention in its decision summary at paragraph 216:

The Board will be conducting a second phase of the hearing into Strait's application at which time Strait's evidence will be the subject of review and comment by Intervenors. Strait should be aware that, as the applicant for a franchise, it will be expected to cover the Board's regulatory costs as a result of this proceeding.

[100] In a letter to the Board dated September 23, 2003 Strait submitted that it is exempt from any costs "relating to the completion of the franchise application" on the ground that the towns are municipalities and municipalities are exempt from the payment of application fees and "costs from the first phase of the hearing" and "therefore should be exempt from any costs relating to the continuation and completion of this hearing".

[101] The Board agrees that Strait is exempt from the payment of the \$250,000 application fee prescribed in the regulations on the ground that at the time the application was filed Strait was not a separate incorporated legal entity but was simply a joint venture by two municipalities and thus fell within the exemption provided in the regulations for municipalities and co-operatives. However, the Board is of the view that it does have the jurisdiction to recover from Strait the costs incurred by the Board in Phase II. Upon consideration, however, the Board notes that it has the discretion to waive the payment of

such costs and in the circumstances of this proceeding has elected to do so. In reaching this conclusion, the Board has taken into account the current limited financial resources of the applicant, the conscientious efforts the applicant has made to respond to the information requests which were addressed to it in advance of the Phase II hearing, the patience, courtesy and co-operation it exhibited at the hearing itself and the fact that its accomplishments to date have been made possible by the efforts of a dedicated group of volunteers.

[102] With respect to ongoing matters, the Board wishes to emphasize to Strait that it will be required to pay its share of the Board's annual operating costs similar to other utilities. In addition, Strait will be required to pay all the regulatory oversight costs associated with its construction program and operations, such as costs of the "Certifying Authority" who will report to the Board on Strait's compliance with the **Pipeline Act** and all relevant regulations.

[103] The Board recognizes that if this application is approved, there will be a considerable demand on the Board's resources and the Board will not waive any costs applicable to Strait. A primary source of this demand will result from the consideration of applications for Permits to Construct the various phases of the distribution system and the consideration of applications for Licences to Operate the components of the distribution system as they are developed. In the shorter term, the Board will very likely be required to consider an application or applications for a licence to sell gas, and the approval of a code of conduct and a schedule of rates for Strait. It will also have to consider Strait's responses to the various conditions set out in this decision which Strait must file prior to

the grant of franchise or before the grant of the first Permit to Construct. Based on the Board's experience to date, significant liaison will be required between the Board's staff, its legal advisors, and its Certifying Authority and Strait and Rock Creek.

### ***Rates, Tolls and Conditions of Service***

[104] While an appendix to the System Agreement sets out certain minimum delivery and "meter rent charges", Strait understandably did not ask the Board to approve them at this time as it will undoubtedly have to give more consideration to the definition of its rate classes and the rates to be charged to each rate class as it comes closer to commencing construction. The Board would note that it permitted Heritage Gas to charge interim rates for a short period of time but that it held a full public rate hearing to finalize Heritage's rates. The Board contemplates that a similar approach would work for Strait. The Board will require adequate time to consider an application for interim approval of rates and will hold a public hearing before approving a final schedule of rates. Strait is directed to file a rate application with the Board well in advance of the first flow of gas.

### ***Franchise Description***

[105] Strait is directed to file as a condition precedent to the grant of a franchise, a narrative description of the boundaries of the franchise area which corresponds to the area shown on the plan attached as Schedule A to the System Agreement dated February 16, 2004.

***Construction and Operating Manuals***

[106] Strait is directed to submit its manuals which address construction standards and all matters relating to construction including but not limited to, manuals addressing technical specifications, quality assurance, occupational health and safety, environmental protection and standard practices, not less than 90 days prior to making its first application for a Permit to Construct, to the Board for review and comment by the Board's Certifying Authority, where required.

[107] Strait is further directed to submit its operating and maintenance manuals including, but not limited to, manuals addressing technical specifications, quality assurance, occupational health and safety, environmental protection, standard practices including a "Call Before You Dig" program, and emergency procedures not less than 90 days prior to making its first application for a Licence to Operate, to the Board for review and comment by the Board's Certifying Authority, where required.

***Code of Conduct***

[108] At the Phase II hearing, Strait reiterated its intention not to engage in the marketing of natural gas to its customers. In the event, however, that Strait should in fact elect to sell natural gas to its customers, it will have to apply for a gas marketers licence pursuant to the **Board Gas Marketers Regulations (Nova Scotia)**, N.S. Reg.138/2003, and will be required to use customer contracts which are approved by the Board "for customers using 500 gigajoules per year or less" and "adhere to the most recent applicable code of conduct which has been approved by the Board".

[109] By Order dated December 19, 2003 the Board approved an “Interim Code of Conduct for Gas Marketers”. Strait will be bound by this code if it obtains a gas marketers licence.

[110] Strait shall submit an interim distributors’s code of conduct to the Board for approval not less than 90 days before it makes its first application for a Licence to Operate, unless in the meantime the Board has adopted a uniform distributor’s code of conduct applicable to all holders of natural gas franchises in Nova Scotia.

### ***Amendments to System Agreement***

[111] This decision requires a number of amendments to the System Agreement prior to the grant of a franchise by the Board. When asked whether future amendments to the System Agreement should be subject to Board review and approval, Mr. Hartline had reservations. He expressed concern that Board involvement could slow down the development of the distribution system, especially if hearings are required.

[112] The Board understands Mr. Hartline’s concern but is of the view that in many ways Rock Creek can best be viewed as a partner of Strait and the nature of the relationship between the two parties is fundamental to the roll-out and operation of the distribution system. Given its importance to the overall success of the franchise, the Board considers that any changes to the System Agreement must be subject to Board review. Accordingly, as a condition of the franchise, Strait is directed to submit any proposed changes to the System Agreement to the Board for review and approval in advance of their

adoption by the parties. The Board would note that such review is very unlikely to require a hearing.

## **CONCLUSION**

[113] After careful review of the evidence and for reasons given in this decision, the Board has determined that, subject to the conditions noted in this decision, it is appropriate to grant to Strait a full regulation class franchise for a period of 25 years, subject to the approval of the Governor in Council. The franchise area will consist of the areas in Inverness County, Antigonish County, Guysborough County and Richmond County shown on the plan attached to the System Agreement filed with the Board on February 16, 2004.

[114] **Section 8(2)** of the **Gas Distribution Act** states that “before granting a franchise, the Board shall be satisfied that the granting of the franchise is in the public interest”. The subsection then sets out the various factors which shall be considered by the Board.

[115] The Board is of the view that it is in the public interest to grant this franchise. At present no other application is before the Board to serve the natural gas market in the geographic area applied for. Strait is more likely to bring natural gas to the Strait area within a reasonable time than would be the case if the Board were to deny the franchise to Strait. Having access to another fuel option is in the public interest.

[116] The Board has considered the evidence relating to the existence of markets, availability of adequate supply, plans for service, the system agreement, financing arrangements, financial capability, economic feasibility, and public safety aspects. Based

on the evidence, the Board is of the view that a full regulation class franchise ought to be awarded to Strait. While the Board does have concerns about a number of matters, as set out in this decision, it is of the view that the public interest is better served by awarding the franchise to Strait, provided the terms and conditions set out in this decision are complied with. Notwithstanding the considerable number of directives in this decision, the Board does not believe that its role is to micromanage all aspects of the franchise operation, and it is the responsibility of Strait, not that of the Board, to ensure the success of this business venture. The Board's primary concern is the public safety aspect of the distribution system, and the Board, with assistance from the Certifying Authority, will closely monitor this aspect.

[117] The Board is aware that there is a committed group of dedicated people who have worked hard to obtain the franchise, and undoubtedly significant sums of money have been spent on the current application, including preparing for and attending two hearings before the Board.

[118] There are two matters which are of particular concern to the Board. First, there is the question of Strait's financial capability. It is the Board's view that Strait has not put in place sufficient financing in order for it to commence operations. To expect to build a successful distribution system without having arranged necessary financing is, in the Board's view, "wishful thinking", notwithstanding that the system build-out will be paid for by Rock Creek during the first six years. While the Board has directed Strait to obtain short-term financing of \$150,000 for working capital purposes as a condition of the franchise, Strait will likely ultimately require a combination of short-term financing and long-



term financing. It will be up to Strait to see that the necessary financing arrangements are put in place.

[119] Second, Strait indicated at the Phase II hearing that it is not planning to employ a general manager. The Board considers a general manager to be critical to the success of the franchise and has directed Strait to engage a qualified individual to assume this position.

[120] The Board will grant a franchise to Strait upon Strait's completing the conditions precedent as set out in the decision and summarized in Appendix C. Strait is directed to file all other information in accordance with timelines set out in this decision.

[121] Finally, the Board will closely monitor the impact of the operation of the distribution system upon customers and potential customers. Strait must recognize that once it commits to serving customers, many of whom will have spent considerable sums to enable themselves to obtain natural gas, a heavy duty falls upon it to provide safe and adequate service at all times.

[122] The term of a franchise under the **Gas Distribution Act** is 25 years. However, the Board does not believe that a franchise, once granted, should continue indefinitely if the franchise holder fails to commence the installation of its infrastructure within a reasonable time after the franchise is granted. Accordingly, it shall be a condition of the franchise that construction of the distribution system shall commence within three years of the date the grant of franchise to Strait receives the final approval of the Governor in Council. The Board reserves the right to hold an inquiry pursuant to **s. 33** of the **Gas Distribution Act** should this condition be breached.

**CONDITIONS PRECEDENT AND OTHER TERMS AND CONDITIONS**

[123] The Board directs Strait to comply with the directives and terms and conditions set out in Appendix C. These directives and terms and conditions, for the most part, are based upon the findings contained in this decision. The first set of directives are conditions precedent to the award of a franchise to Strait. Upon complying with these directives to the satisfaction of the Board, the Board will grant the franchise and will advise the Governor in Council accordingly. The Board will not hold a hearing with respect to these conditions precedent. The other terms and conditions apply to the period following the award of a franchise and are considered by the Board to be the terms and conditions of the franchise. The Board advises that it will treat all responses by Strait or Rock Creek to the conditions precedent and to the other terms and conditions as being in the public domain.

An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 29<sup>th</sup> day of September, 2004.

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John A. Morash, Chair

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John L. Harris, Member

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Kulvinder S. Dhillon, Member

**APPENDIX A  
LIST OF FORMAL INTERVENORS**

**Town of Berwick**

Don Regan  
Superintendent, Berwick Electric  
Commission

**Electricity Consumers Alliance of Nova  
Scotia**

John Woods, P. Eng.  
Executive Director

**Emera Energy Inc.**

Jennifer Feron  
Manager, Regulatory Affairs  
James L. Connors  
Vice President, Regulatory Affairs

**Gas Works Energy Corp.**

Dwight J. Jeans  
President  
John Peters

**Heritage Gas Limited**

Marilyn P. Wappel  
Senior Legal Counsel  
John C. MacPherson, Q.C.  
Patterson Palmer

**Liberal Caucus**

David MacRury

**NDP Caucus**

Paul Black  
Energy Researcher

**Nova Scotia Power Inc.**

Mel Whalen  
Director, Regulatory Affairs, Rates, Forecast  
James L. Connors, Q.C.  
Vice President, Regulatory Affairs  
Emera Inc.

**Province of Nova Scotia - Dept. of Energy**

Stephen T. McGrath  
Nova Scotia Department of Justice  
Allan L. Crandlemire  
Nova Scotia Department of Energy  
Bill O'Halloran  
Nova Scotia Department of Energy

**Quetta Inc.**

John H. Reynolds, P. Eng.

**Municipality of the County of Richmond**

Louis Digout, CAO  
Gail Johnson

**Union of Nova Scotia Municipalities**

Kenneth R. B. Simpson

## APPENDIX B

### STRAIT AREA GAS CORPORATION

#### DIRECTIVES CONCERNING APPROVAL, IN PRINCIPLE, OF GRANT OF FRANCHISE

February 7, 2003

The Board imposes the following directives on the approval to grant, in principle, a franchise to Strait Area Gas Corporation.

1. The directives set out below are in addition to the terms and conditions contained in the **Act** and **GIC Regulations**.
2. Unless the Board otherwise directs, the full regulation class franchise granted in principle by the Board, subject to Governor in Council approval, shall be held and operated by Strait Area Gas Corporation for a term of 25 years.
3. Strait Area Gas Corporation shall provide to the Board, within six months of approval of the Board's recommendation by the Governor in Council, an executed copy of a BOOT agreement. The Board will review the agreement, and supporting documentation to determine whether the agreement is reasonable, adequate, and in compliance with the requirements of the **Act and Regulations**. In particular, the Board will look for clarification and specifics concerning:
  - a) the BOOT fee/schedule of payments
  - b) bridge financing
  - c) operating costs
  - d) regulatory costs

- e) decision making - in particular with respect to system build-out
  - f) staffing
  - g) maintenance of the system
  - h) public safety
  - i) insurance
  - j) responsibility for financial losses
  - k) contractor selection/NS content
  - l) bidding process
  - m) transfer of assets to Strait
  - n) any additional information as may be required by the Board.
4. Strait Area Gas Corporation shall file with the Board detailed information with respect to the experience and financial capability of the BOOT operator ultimately selected by Strait Area Gas Corporation.
5. Strait Area Gas Corporation shall identify what, if any, components of the proposed benefits plan will be modified by the executed BOOT agreement.
6. As part of the information required in its BOOT filing Strait Area Gas Corporation shall provide confirmation that gas supply and ancillary services, supplier of last resort and backstopping arrangements are in place.
7. As part of the information required in its BOOT agreement filing, Strait shall file a copy of a shareholders' agreement and the operating agreement governing the relationship between the Towns and Strait and the BOOT operator.

8. Strait's BOOT agreement filing, together with the information noted above will be the subject of Phase II of the hearing into Strait's franchise application.

## **Appendix C**

### **Strait Area Gas Corporation**

**Board Decision dated September 29, 2004**

#### **Franchise Conditions Precedent and Other Terms and Conditions**

##### **Conditions Precedent**

[1] Strait shall comply with the following directives prior to the grant of a franchise. They should be viewed as “conditions precedent” to the grant of a franchise. Upon the filing of responses to these conditions precedent which are satisfactory to the Board, the Board will grant a full regulation class franchise to Strait for a term of 25 years and shall so notify the Governor in Council.

[2] The System Agreement shall be amended to:

- 4.1 include an appropriate incentive/penalty mechanism to be added to the System Agreement which will encourage Rock Creek to sell its system assets to Strait at the end of the franchise period, if not before. [para. 60]
- 4.2 give Strait a right of first refusal to purchase Rock Creek’s system assets whether the price offered by a potential third party purchaser is higher or lower than the price generated by the formula as currently provided in the System Agreement. [para. 62]
- 4.3 provide that any transfer of Rock Creek’s system assets to a third party shall be subject to Board approval. [para. 63]
- 4.4 expressly acknowledge that Strait owns the facilities which it constructs at its own expense. [para. 65]

[3] The parties are to ensure that each Schedule Agreement clearly and precisely identifies the scope of the construction work to be performed under the Schedule Agreement. [para. 65].



[4] The “Intermunicipal Service Agreement” between the Towns of Mulgrave and Port Hawkesbury, shall be amended as follows:

- 1.1. To indicate that the liability of the shareholders, the Towns of Mulgrave and Port Hawkesbury, is limited. [para. 92]
- 1.3 A provision is to be added to provide that the Agreement shall not to be terminated without the approval of the Board. [para 94]

[5] Rock Creek is to cause a new corporate entity to be formed with unlimited liability and this company shall execute the System Agreement with Strait. In the alternative, the existing limited liability company, Rock Creek Energy Canada, Inc., shall execute the System Agreement with Strait. [para. 97]

[6] The Board of Directors of Stockdale shall adopt a resolution, a copy of which shall be filed with the Board, formally authorizing its officers or the officers of one or more of its subsidiaries to enter into the System Agreement with Strait, and undertaking that Stockdale will provide or guarantee all necessary funding required to construct the distribution system as provided for in the Schedule Agreements. [para. 98]

[7] Strait shall file a narrative description of the boundaries of the franchise area, which corresponds to the area shown on the plan attached as Schedule A to the System Agreement dated February 16, 2004. [para. 105]

### **Other Terms and Conditions**

[8] The following directives are terms and conditions of the franchise and are in addition to the terms and conditions in the **Act** and in **GIC Regulations**.

[9] Not less than 60 days prior to the filing of its first application for a Permit to Construct, Strait shall provide evidence satisfactory to the Board that it has made acceptable arrangements for a supply of gas, the sale of gas to system customers, the transportation of the gas, and all ancillary matters related thereto, including in particular suitable backstopping and supplier of last resort arrangements and that funding arrangements for all of these services are in place. [para. 31]

[10] Not less than 90 days prior to filing its first application for a Permit to Construct, Strait shall appoint a qualified individual as a general manager who will have overall responsibility for the operations of Strait. The general manager must be knowledgeable concerning all aspects of the business and shall be Strait's principal contact person for the Board, Rock Creek, customers, suppliers and the public. [para. 46]

[11] Strait shall demonstrate to the Board that it and Rock Creek have adequate human resources in place to ensure a safe and reliable gas distribution system. The Board will instruct its Certifying Authority to review the level of training and availability of the personnel who are proposed to construct, operate and maintain the system as part of the "Permit to Construct" and "Licence to Operate" processes. [para. 53]

[12] Not less than 60 days prior to the filing of its first application for a Permit to Construct, Strait shall file a report with the Board prepared by a licensed insurance broker recommending the appropriate insurance coverages, including coverage amounts and estimated costs, which should be obtained by both Strait and Rock Creek. The report should address appropriate insurance coverages with respect to both the construction

activities to be carried on by or under the direction of Rock Creek and the operation of the distribution system by Strait and Rock Creek. [para. 58]

[13] Not less than 60 days prior to the filing of its first application for a Permit to Construct, Strait shall demonstrate by way of evidence satisfactory to the Board that it has secured financing in an amount not less than \$150,000 for working capital purposes. [para. 83]

[14] Not less than 60 days prior to the filing of its first application for a Permit to Construct, Rock Creek shall provide evidence to the Board that its contractor agrees to be bound by the benefits plan filed by Strait. [para. 87]

[15] Strait shall take all reasonable measures to implement or cause to be implemented all of the commitments, policies and practices set out in its Socio-Economic Impact Statement and Benefits Plan included in or referred to in its application, and as adduced in evidence before the Board. [para. 88]

[16] Strait shall file a report with the Board on its benefits plan at least every six months commencing 180 days from the date the franchise is granted in accordance with **s. 9 of the GIC Regulations**. [para. 89]

[17] Strait shall pay its share of the Board's annual operating costs similar to other utilities and shall pay all regulatory oversight costs associated with its construction program and operations, such as costs of the Certifying Authority who will report to the Board on Strait's compliance with the **Pipeline Act** and all relevant regulations. [para. 102]

[18] Strait shall file an application with the Board for approval of rates, tolls and conditions of service well in advance of the first flow of gas. [para. 104]

[19] Strait shall prepare and submit to the Board the respective manuals relating to construction standards and all matters relating to construction not less than 90 days prior to making its first application for a Permit to Construct and submit its operating and maintenance manuals not less than 90 days prior to making its first application for a Licence to Operate. [paras. 106 and 107]

[20] Strait shall submit an interim distributor's code of conduct to the Board for approval not less than 90 days before it makes its first application for a Licence to Operate, unless in the meantime the Board has adopted a uniform distributor's code of conduct applicable to all holders of natural gas franchises in Nova Scotia. [para. 110]

[21] All amendments to the System Agreement shall be subject to the approval in advance by the Board. [para. 112]

[22] Construction of the distribution system shall commence within three years of the date the grant of franchise to Strait receives final approval of the Governor in Council. The Board reserves the right to hold an inquiry pursuant to **s. 33** of the **Gas Distribution Act** should this condition be breached. [para. 122]

[23] Strait shall file with the Board, in a timely manner, all required applications pursuant to the **Pipeline Act** and **Regulations**, and any other applicable enactments, with respect to the construction, operation, maintenance and inspection of its gas delivery system.

[24] Strait shall file a quarterly progress report with the Board which shall describe its activities (including the activities of Rock Creek) in the previous quarter and plans for the present and subsequent quarters.

[25] Strait and Rock Creek shall file audited annual financial statements with the Board within 90 days subsequent to their fiscal year ends.

[26] Strait shall file such other reports with the Board as required by the Board.