



RULING

IN THE MATTER OF an application by New Brunswick Power Distribution and Customer Service Corporation (DISCO) for approval of changes in its Charges, Rates and Tolls

(Motions with respect to Responses to Interrogatories by Disco)

October 22, 2007

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

PARTICIPANTS:

IN THE MATTER OF an application by New Brunswick Power Distribution and Customer Service Corporation (**DISCO**) for approval of changes in its Charges, Rates and Tolls (Includes Interim Rate Proposal) – MOTION WITH RESPECT TO RESPONSES TO INTERROGATORIES BY DISCO

NB ENERGY AND UTILITIES BOARD -----

Panel:

Chairman: Mr. Ray Gorman, Q.C.
Vice Chairman: Mr. Cyril Johnston
Members: Mr. Don Barnett
Mr. Roger McKenzie
Ms. Constance Morrison
Mr. Yvon Normandeau

Secretary to the Board: Ms. Lorraine Légère
Assistant Secretary: Ms. Juliette Savoie

Board Counsel: Ms. Ellen Desmond
Staff: Mr. Doug Goss
Mr. John Lawton
Mr. Dave Young

APPLICANT:

NBP Distribution & Customer Service Corporation-----

Mr. Terry Morrison
Mr. Edward Keyes
Ms. Lori Clark

PUBLIC INTERVENOR -----

Mr. Daniel Theriault
Ms. Jayme O'Donnell

FORMAL INTERVENORS

Canadian Manufacturers & Exporters NB Division-----

Mr. Gary Lawson

Irving Oil Limited -----
(Bayside Power L.P. / Grandview Cogeneration Corporation)

Mr. Gordon Nettleton

J.D. Irving Pulp & Paper Group -----
(J.D. Irving Ltd / Irving Paper Ltd / Irving Pulp and Paper Ltd)

Mr. Wayne Wolfe

Mr. Ken Sollows-----

Self-Represented

Utilities Municipal -----
(Saint John Energy, Edmundston Energy, Perth-Andover Electric Commission)

Mr. Peter Zed, Q.C.
Mr. Dana Young
Ms. Marta Kelly
Mr. Darrell Shonoman

Vibrant Communities Saint John -----

Mr. Kurt Peacock

RULING

New Brunswick Power Distribution and Customer Service Corporation (“Disco”) has applied to the New Brunswick Energy and Utilities Board (“the Board”) for approval of a change to its charges, rates and tolls. The Board has scheduled a hearing to begin on November 26th, 2007. The Board has put in place a pre-hearing process, which includes a schedule for the filing of evidence and permits the parties to pose written questions, which are referred to as “IR’s”. If a party is not satisfied with the response to an IR it may, by way of a Motion, seek an order from the Board.

Motions were filed by the Public Intervenor and the Canadian Manufacturers and Exporters. The Motion filed by the Canadian Manufacturers and Exporters dealt with that party’s IR 56 (CME 56). The Public Intervenor’s Motion dealt with the Public Intervenor’s IR’s 30, 40, 42, 43, 45, 46, 47 and 56. The Public Intervenor’s Motion also raised certain procedural issues relating to the handling of confidential information during the hearing process, but that portion of the Motion was withdrawn and this issue will be dealt with by way of a meeting between Board staff and the parties.

The Motions were heard by the Board at a Motions Day Hearing on October 22, 2007.

With respect to the Public Intervenor’s IR 30 (PI 30), the Public Intervenor’s position was that the Applicant’s response was incomplete as it did not provide information regarding any shareholders’ equity accounts maintained by NB Electric Finance Corporation. The written response by the Applicant was that NB Electric Finance Corporation is not a part of the NB Power Group. At the hearing, counsel for the Applicant stated that the Applicant does not have, or have access to, any such information regarding NB Electric Finance Corporation. The Board therefore concludes that the Applicant has responded to IR PI 30 as completely as possible and makes no further Order respecting this item. The Board does note that it would have been preferable had the Applicant indicated in its written response that it had no access to the information sought.

IR PI 40 requested that the Applicant provide certain information relating to the lawsuit against PDVSA. During oral argument it became apparent that the Public Intervenor was seeking a copy of a Statement of Claim he understands to have been filed by PDVSA against an NB Power company. Counsel for the Applicant, following consultation with his client, advised that he was unaware of such a document. The Board makes no Order with respect to this item.

The remaining IR's at issue deal with the timing of the filing of the IR's. In order to properly understand this issue, a brief overview of the scheduling process is necessary.

Disco's application was received by the Board April 19, 2007. The Board directed that appropriate notice of the application be given to the public and scheduled a pre-hearing conference which was held on May 18, 2007. At that pre-hearing conference, a schedule for the necessary pre-hearing procedures was established. The schedule is detailed and it includes, *inter alia*, the dates for filing of evidence by the Applicant and other parties, the dates for filing and responding to IR's and the dates for Motions Days to hear matters arising out of the IR process.

The schedule has had to be amended on several occasions due to events which could not have been foreseen at the outset of this process. The most important such event was the settlement of the PDVSA lawsuit which benefited the Applicant and caused them to reduce their revenue requirement for the test year. This necessitated the filing of additional evidence with respect to rate design. Previous rulings of this Board have also had an impact on the schedule, requiring the filing of further evidence. Each time that circumstances or a Board Order required the filing of additional evidence, the schedule for IR's and responses to IR's had to be modified.

The IR's which remain at issue were all filed on October 12, 2007. Disco has objected to responding to these IR's on the grounds that, pursuant to the filing schedule, IR's filed on October 12th were to address only matters relating to the revised rate design evidence,

matters arising out of Disco's IR responses filed on September 28, 2007 or matters covered in the Board's ruling of October 2, 2007.

The Board has carefully considered Disco's position in this regard. The Board believes that it is important that parties adhere to the filing schedule. At the same time, the Board wishes to ensure that it is in possession of all relevant information and that all parties are able to present their cases as completely as possible. The Board must balance these two competing factors in coming to its decision. The Board considers that the changes to the filing schedule and the complexity of that schedule constitute extenuating circumstances that cause the Board to permit questions during the most recent round of IR's which it might not ordinarily permit.

Disco's objection to answering PI IR's 45, 46, 47, 56 and CME IR 56 rested solely on the grounds that these questions were posed too late and that they should have been posed in an earlier round of IR's. For the reasons outlined above, the Board will permit the posing of these questions at this time and directs Disco to answer them.

With respect to PI IR's 42 and 43, the Applicant raised the additional argument that the material, while "technically relevant", would not be of assistance to the Board and was so voluminous that Disco should not have to produce it.

The Public Intervenor submitted that the requested information was relevant because it would assist the Board in determining if the costs that Disco seeks to recover from its customers have been prudently incurred.

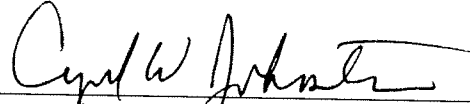
The Board is of the view that the requested information may assist in reviewing Disco's prudence in incurring costs. The Board therefore directs that Disco provide the invoices requested in IR 42 Part 1 and IR 43 Part 1. Disco is directed to provide an answer to IR 42 Part 3, as no reason, beyond time lines was provided for not responding.

With respect to IR 42 Part 2 and IR 43 Part 2, Disco is directed to provide any supporting documentation that it has in its possession relating to the invoices, but is not required to conduct any analysis or prepare any additional documentation.

Dated at the City of Saint John, New Brunswick this 22nd day of October, 2007.



Raymond Gorman, Q.C., Chairman



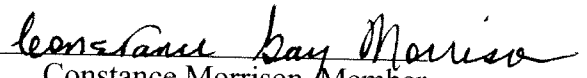
Cyril W. Johnston, Vice-Chairman



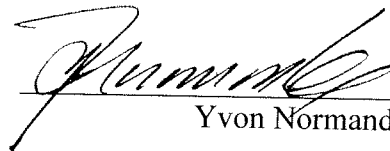
Don Barnett, Member



Roger McKenzie, Member



Constance Morrison, Member



Yvon Normandeau, Member