



**DECISION ON MOTION**

**IN THE MATTER OF** an Application  
by the New Brunswick System Operator for  
the Approval of Changes to the Open Access  
Transmission Tariff.

**December 22, 2010**

**NEW BRUNSWICK ENERGY AND UTILITIES BOARD**

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IN THE MATER OF an Application by the New Brunswick System Operator for the Approval of  
Changes to the Open Access Transmission Tariff

### **NEW BRUNSWICK ENERGY AND UTILITIES BOARD:**

CHAIRMAN: Raymond Gorman, Q.C.

VICE-CHAIRMAN: Cyril Johnston

MEMBERS: Pat Darrah  
Yvon Normandeau

SECRETARY: Lorraine Légère

COUNSEL: Ellen Desmond

### **APPLICANT:**

NB System Operator Kevin C. Roherty  
Ms. Marg Tracy  
George Porter  
Kevin Gibson

### **INTERVENORS:**

HQ Energy Marketing Inc. Hélène Cossette

Insight Energy Economics Inc. Michael Hon Po Wong

NB Power Holding (Disco/Genco/Transco) John Furey  
Lori Clark  
Neil Larley  
Lillian Gilbert

Public Intervenor Mr. Daniel Theriault, Q.C.

The New Brunswick System Operator (“NBSO”) has filed an Application with the New Brunswick Energy and Utilities Board (the “Board”) seeking approval of proposed changes to the Open Access Transmission Tariff (the “Tariff”).

Insight Energy Economics Inc. (“Insight”) has intervened in the Application and has brought a motion seeking funding to cover the cost of intervening. Specifically it requests \$26,000 paid in four monthly installments of \$6,500.

Intervenor funding, as is sought here by Insight, is fundamentally different from the awarding of costs. (See *Regional Municipality of Hamilton-Wentworth v. Hamilton-Wentworth Save the Valley Committee* (1985) 51 O.R. (2d) 23.) This decision will restrict itself to the issue of the intervenor funding sought and will not address the issue of the Board’s authority to award costs.

The principal of Insight is Michael Hon Po Wong. Mr. Wong was formerly the Chief Economist at NB Power. Mr. Wong’s filings with the Board on this motion and on related matters make it clear that he has considerable knowledge of the subject matter of this Application as well as strong opinions regarding the NBSO and its handling of the Tariff. Mr. Wong’s participation in this Application would no doubt bring a valuable perspective to the proceeding.

The central issue in this motion is whether the Board has the authority to award intervenor funding. The Board is a creature of statute, pursuant to the *Energy and Utilities Board Act (the “EUB Act”)*. The Board powers are conferred on it by the *EUB Act* and by other legislation, such as the *Electricity Act*, which grants the Board jurisdiction.

Mr. Wong relies on various sections of the governing legislation in support of his request for intervenor funding. Those sections include:

Section 28(1) of the *EUB Act* which states as follows:

**28(1)** The Board has all the powers, rights and privileges as are vested in The Court of Queen’s Bench of New Brunswick in relation to the attendance, swearing and examination of witnesses, the production and inspection of records or documents, the enforcement of its orders, the entry on and inspection of property and other matters necessary or proper for the due exercise of its jurisdiction.

and section 125(1) of the *Electricity Act* which states as follows:

**125(1)** In approving or fixing just and reasonable charges, rates, tolls or tariffs, the Board may adopt any method or technique that it considers appropriate, including an alternative form of regulation.

The sections cited by Mr. Wong do not provide the Board with any express authority to grant intervenor funding and the Board cannot conclude that this authority arises from these sections by necessary implication.

This is particularly true when the Board considers sections 30, 49 and 51 of the *EUB Act*.

Section 30 permits the Chairperson to engage experts to advise the Board and order by whom the experts' fees and expenses shall be paid. Section 49 permits the Attorney General to intervene in any hearing before the Board, when such intervention is in the public interest. Section 51 provides for the costs incurred by the Attorney General to be included in the Board's annual expenses and to be assessed as direct expenses. In these sections, the *EUB Act* provides means for argument and evidence to come before the Board, and provides for the funding of such participation. No such express authority exists as it relates to intervenor funding.

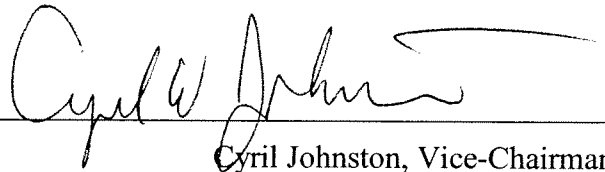
In summary, when the *EUB Act* and the *Electricity Act* are read in their entirety, the Board finds it has no express authority to grant intervenor funding. Further, the Board cannot conclude that the authority to grant intervenor funding arises by necessity from the Board's general powers. The motion of Insight Energy Economics Inc. for intervenor funding is denied.

Dated at the City of Saint John, New Brunswick this 22<sup>nd</sup> day of December, 2010.



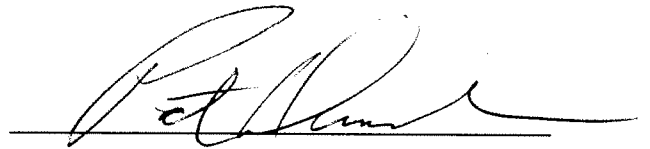
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Raymond Gorman, Q.C., Chairman



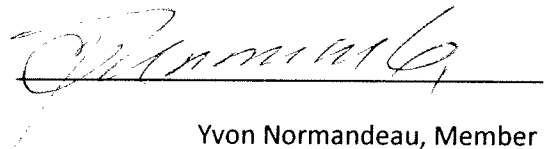
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Cyril Johnston, Vice-Chairman



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Pat Darrah, Member



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Yvon Normandeau, Member