



**DECISION**

**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  
(Interim Rate Relief)**

**June 1, 2007**

**NEW BRUNSWICK ENERGY AND UTILITIES BOARD**

New Brunswick Energy and Utilities Board

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 (Interim Rate Relief)

**PARTICIPANTS**

**CHAIRMAN:** Raymond Gorman, Q.C.  
**VICE-CHAIRMAN** Cyril Johnston

**MEMBERS:** Edward McLean  
Roger McKenzie  
Constance Morrison  
Yvon Normandeau  
Robert Radford

**BOARD STAFF** Ellen Desmond  
Doug Goss  
John Lawton  
Lorraine Légère  
David Young

**APPLICANT:**

New Brunswick Power Distribution and Customer Service Corporation  
Terry Morrison  
Nicole Poirier  
Neil Larlee  
Sharon MacFarlane

**FORMAL INTERVENORS:**

Canadian Manufacturers and  
Exporters, N. B. Division

Gary Lawson  
David Plante

Enbridge Gas New Brunswick

David MacDougall  
Dave Charleson

FPS Canada Inc.

Charles Baird  
Ron Beaulieu  
Jennifer Little  
Ross Gilliland

JD Irving Pulp and Paper Group

Andrew Booker  
Wayne Wolfe

Utilities Municipal

Peter Zed Q.C.  
Dana Young  
Eric Marr

Vibrant Communities Saint John

Kurt Peacock

Public Intervenor

Daniel Theriault  
Robert O'Rourke

**Informal Intervenors:**

Flakeboard Company Limited

Barry Gallant

Self-represented

Terry MacDonald

New Brunswick Power Distribution and Customer Service Corporation (“DISCO”) applied to the New Brunswick Energy and Utilities Board (“Board”) on April 19, 2007 for approval of a change to the charges, rates and tolls for its services. This application was made pursuant to Section 101 of the *Electricity Act, Chapter E-4.6, R.S.N.B., 1973* as amended (“ACT”).

DISCO also filed a Notice of Motion and an affidavit in support thereof requesting that the Board make an interim order pursuant to Section 40 of the Act approving a 9.6-percent increase to all electricity rate categories, except water heater rentals and connection fees where the increase would be 3 percent to be effective from the date of such interim order until further order of the Board.

The Board issued an order dated April 19, 2007 that required public notification of DISCO’s application and motion for interim rate relief.

A pre-hearing conference was held on May 18 at which time the date for the public hearing to review the Motion for interim rate relief was set as May 30, 2007. On that date, a number of preliminary matters were discussed. The actual public hearing on DISCO’s motion for interim rate relief occurred on May 31, 2007.

### **The Board’s authority**

At the time of DISCO’s application, Section 40 of the Act stated:

*“40 The Board may, instead of making an order final in the first instance, make an interim order and reserve further directions, either for an adjourned hearing of the matter or for further application.”*

On May 30, 2007 the above wording was repealed and the following wording for Section 40 became law.

*“ 40(1) The Board may, with respect to any matter before it, make an interim order where it considers it advisable to do so, and may impose such terms and conditions as it considers appropriate.*

*40(2) The Board may provide directions in the event that the interim order is different from the final order.*

*40(3) Section 104 of the Electricity Act does not apply to an interim order made by the Board with respect to charges, rates or tolls.”*

The parties were asked to comment on what effect, if any, this change had with respect to the Board’s review of DISCO’s motion for interim rate relief. The Board has carefully reviewed the submissions made by the parties.

As a result, the Board considers that the new wording is simply a clarification of the previous wording and therefore procedural in nature. Therefore the Board is of the view that the wording of Section 40, that became law on May 30, 2007, is what governs this decision.

The Board believes that either version of Section 40 would provide it with the authority to grant an interim order and to require whatever adjustments that might be necessary should the final decision differ from the interim order with respect to the amount of the revenue requirement.

**The tests to be used to determine if Interim Rates should be approved**

The Parties proposed different tests that the Board should use to decide whether or not to approve interim rates.

The Board has reviewed these proposals and has also considered the decision of the Supreme Court of Canada in “Bell Canada v Canada (Canadian Radio –Television and Telecommunications Commission), [1989] 1 S.C.R. 1722 (hereinafter referred to as the Bell Case). As a result, the Board considers that the Applicant must, as a minimum, demonstrate that:

1. There will be a significant delay between the time of the application and the time of a final decision following a full public review of the application.
2. Such a delay will cause deleterious effects on the applicant.

Even if the Applicant demonstrates the above, the Board considers that it still has discretion with respect to the granting of an interim order. The Board is of the view that it is open to any party to convince it that the circumstances are such that it would not be advisable for the Board to grant interim rate relief.

### **Should DISCO be granted Interim Rate relief**

The current schedule for the full review has the public hearing commencing on November 19, 2007. The Board considers that this would create a significant delay between the time of the application and the time of the final decision.

Exhibit “A” of DISCO’s affidavit, filed in support of its motion provides a forecast for the 2007/08 year that shows that current rates would result in revenues that are \$112.3 million less than the costs to provide service. DISCO also filed evidence that contained details in support of this forecast. DISCO stated at the hearing that every day without the

requested rate increases represents a loss of revenue to DISCO of approximately \$300,000.

The Board considers that such losses continued over the period of time required for a final decision would cause deleterious effects on DISCO. The Board therefore finds that DISCO has met the minimum requirements.

With respect to whether or not circumstances exist that would make it advisable for the Board to deny the requested relief the Board notes that various parties made representations to this effect. The Board considers that the comments made by the parties raise critical issues. However, the parties, with one exception, provided no evidence in support of their positions. In addition, no party filed any evidence that challenged the evidence on costs as put forward by DISCO. Further, no party demonstrated to the Board's satisfaction that any of the specific costs as proposed by DISCO are unreasonable.

The Board therefore considers that no party has established that circumstances exist that would make it advisable for the Board to deny interim rate relief to DISCO.

The Board considers it important to emphasize that, as stated in part by the Supreme Court of Canada in the Bell Case, decisions on interim rate applications are:

*“made in an expeditious manner on the basis of evidence that would often be insufficient for the purposes of the final decision”.*

It is useful to provide an illustration of the application of this principle. A number of intervenors suggested that DISCO's evidence on its power

purchase costs was insufficient. The Board notes that DISCO did file some evidence in support of these costs. While the intervenors will no doubt want to test and challenge the evidence in the full public review, the Board considers that within the standard set by the Supreme Court, DISCO has established its revenue requirement.

The Board considers that the issues raised are important and encourages the parties to bring them forward in the full public review.

DISCO filed its affidavit and supporting evidence on April 19, 2007. This information supports the rates that DISCO has requested in this Motion.

The Board considers it appropriate that, since it has not been established that circumstances exist that would make it advisable for the Board to deny the relief requested, it should grant the full relief requested.

The reasons that the Board considers this to be an appropriate way to proceed are:

1. The Supreme Court of Canada decision referenced above supports the position that interim decisions should be made in an expeditious manner on the basis of evidence that would often be insufficient for the purposes of the final decision.
2. The Board considers that DISCO has made a “prima facie” case that its request is reasonable.
3. The fact that, if the final decision determines that the interim rates were too high, the Board will order DISCO to take the actions necessary to compensate for any over-collection of revenue. This provides protection to the customers.

4. The fact that, if the final decision determines that the interim rates were too low, DISCO would have no way to recover the lost revenue.
5. The responsibility of the Board to balance the interests of customers in having rates as low as possible with the interests of DISCO in remaining a financially viable company.

The Board considers that no compelling evidence exists in this case to reduce any specific cost as proposed by DISCO and that fairness dictates that the Board must grant the full amount of relief requested by DISCO. The Board therefore finds that it is advisable to grant the amount of interim rate relief as requested by DISCO.

This does not mean that the Board accepts the costs, as proposed by DISCO, for the purposes of the final decision. These costs will be examined during the full public review of DISCO's application. The Board will, if appropriate, disallow some or all of certain costs.

To permit a rebate to customers, should one be necessary, the Board orders DISCO to keep appropriate records during the time that the interim rates are in effect. Further, DISCO is also ordered to file a proposal with the Board by June 15, 2007 that will address the issue of how to provide rebates to persons who are customers at any time during the period that the interim rates are in effect but who are not customers at the time the interim rates cease to be in effect.

The Board therefore approves the full amount of interim rate relief as requested by DISCO.

### **The nature of Interim Rates**

Vibrant Communities Saint John recommended that the Board not approve the rate increases entirely as proposed by DISCO but rather implement certain specific rate proposals. They submitted an exhibit that identified the 2007 Monthly Service Tolls (Urban) for a number of Canadian utilities.

The Board does not consider it appropriate to make any specific changes to the structure of the rates without providing an opportunity for interested parties to discuss this issue during the full public review of the application.

The Board therefore approves the interim rate changes as requested by DISCO.

### **The timing of the Interim Rates**

The Board orders that the effective date for the interim rates is June 8, 2007.

These interim rates will be in effect until a final order of the Board on the application or until March 31, 2008, should no final decision be issued by that date.

Dated at the City of Saint John, New Brunswick this 1<sup>st</sup> day of June, 2007

*Original Signed By*

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Raymond Gorman, Q.C., Chairman

I concur with the above decision dated June 1, 2007.

*Original Signed By*

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Cyril W. Johnston, Vice-Chairman

I concur with the above decision dated June 1, 2007.

*Original Signed By*

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Edward McLean, Member

I concur with the above decision dated June 1, 2007.

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Roger McKenzie, Member

I concur with the above decision dated June 1, 2007.

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Constance Morrison, Member

I concur with the above decision dated June 1, 2007.

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Yvon Normandeau, Member

I concur with the above decision dated June 1, 2007.

*Original Signed By*

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Robert Radford, Member