



DECISION

IN THE MATTER of an application by Enbridge Gas New Brunswick Inc., to change its Contract Large General Service LFO distribution rate (Motions Day)

January 18, 2008

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

The New Brunswick Energy and Utilities Board (“Board”), on January 15, 2008 received notices of motion from Atlantic Wallboard LP/J. D. Irving, Limited, (“AWL”), Flakeboard Company Limited (“FCL”) and Board staff in connection with the application of Enbridge Gas New Brunswick Inc. (“EGNB”) to change its Contract Large General Service LFO distribution rate.

A motions day was held on January 17, 2008 to hear these motions.

Atlantic Wallboard LP/ J. D. Irving, Limited submitted a motion that stated:

“The within matter be adjourned and the Board conduct a hearing into the appropriate rate making methodology to be utilized to establish distribution rates for EGNB’s contract Large General Service – Light Fuel Oil class.”

This motion was the subject of considerable debate at the hearing. All parties agreed that, at some point in time, it would be appropriate to move from the currently approved market-based method of setting rates to another method. This alternate method would most likely be a form of cost-based rate setting.

The issue that arose was over the timing of when such a change should occur. EGNB maintained that it was still in the “development period” and therefore it would not be appropriate to make a change to the rate-setting method at this time. The intervenors stated that, at least for the LFO class, the “development period” was over and the market was mature. They claimed that in order for the Board to set rates for the LFO class, that are just and reasonable, they must be based on a cost-setting method or at the very least a method that recognizes the costs associated with this class.

The provision of natural gas by EGNB began in 2000. It was recognized that, given the significant capital investment required to begin operations and the limited number of customers that would initially be on the system, it would be impossible to charge rates based on the full costs of operation. This fact was recognized by the government, as an

essential element, in the General Franchise Agreement with EGNB and accepted by the Board in its first decision that set rates for EGNB.

In that decision, dated June 23, 2000 the Board stated:

”The development period is a term used to describe the amount of time required to move from a “greenfield” situation to a more established natural gas industry.”

“The Board considers that a development period, during which a non-traditional regulatory framework would be used, is appropriate.”

“The Board considers it appropriate that Board staff, in consultation with EGNB, develop specific criteria that will be used to decide when the development period shall end.”

The Board also stated that cost of service studies would be of limited value in the initial years and therefore did not require EGNB to file such studies. In addition, the Board said that this issue would be revisited near the end of the “development period”.

The Board has dealt with the appropriate length of the “development period” in two previous decisions. In the June 23, 2000 decision the Board stated:

“The Board wishes to minimize the uncertainty associated with the development period so that EGNB can proceed with confidence to develop its distribution system. The Board considers that the development period should last until December 31, 2005. Thereafter, the onus will be on EGNB to annually prove that the development period should be extended for a further year.”

This was modified by a decision dated January 21, 2005 where the Board said:

“The Board finds it appropriate to extend the development period to December 31, 2010. Should Enbridge find that the full extension to the development period is not required, it must apply to the Board for approval of an earlier end date to the development period. Any further request to extend the development period beyond 2010 must be done by application to the Board and demonstrate the need for the extension.”

During the “development period” rates have been set using a market-based method. This method establishes rates that provide an incentive to convert to and to continue to use natural gas. The rates are not based on costs. The difference between the actual costs of providing service and the revenues received from the market-based rates are recorded in a deferral account.

The deferral account is a regulatory asset of EGNB and they are permitted to earn a return equal to their overall cost of capital on this account. Once the “development period” is over, the intent is that this account will gradually be paid down from the rates charged to the customers. As this happens, the expectation is that this will allow for reductions in rates, since the financing costs associated with the deferral account will be reduced and eventually eliminated.

The Board notes that the market for natural gas in New Brunswick has not developed as was expected by many and certainly has not progressed in line with the early forecasts of EGNB. As a result, the deferral account has become much larger than the forecast. However, the size of the increase in this account has declined in recent years and EGNB now forecasts that there will be a decrease in the deferral account beginning in 2010.

The deferral account is necessary because of the use of market-based rates. Market-based rates were necessary to develop the natural gas system in New Brunswick and the Board believes that they are an essential element of the “development period”. All customers have and continue to benefit from the existence of the natural gas system. It is important

to remember that the market-based method of setting rates is designed to provide customers with savings when compared to an alternate source of energy.

The Board believes that the most appropriate way to set rates is by grouping customers into various classes and to set rates for each separate class. It would be extremely difficult, if not impossible, to set rates on an individual customer basis. The Board continues to believe that it is appropriate to use the same method for setting rates for all classes. Further, the Board does not believe that it would be appropriate for the “development period” to end for one customer class but not for the other customer classes.

This means that the Board must decide if it is appropriate, for the purpose of setting rates at this time, to change from the market-based method.

To make such a change, the Board must be confident that the circumstances are right and that the rates that would flow from such a change would allow the natural gas market to continue to exist and to grow. The Board has a responsibility to customers to ensure that rates are just and reasonable. The Board also has a responsibility to EGNB to ensure that it has a reasonable opportunity to recover its prudently incurred investment, which includes the deferral account, and to earn a return on that investment.

The Board does not consider it appropriate to make a change to the rate setting method that may turn out to have been premature. The consequences of such action could be very significant. The Board believes that any such change should be linked to the end of the “development period”. The Board, based on the evidence, is convinced that the “development period” has not yet ended nor will it in the near future. The Board will, therefore, proceed to set rates in this application using the market-based method. Should circumstances change, where it appears that the “development period” will end before 2010, it is the obligation of EGNB to apply to the Board to end the “development period” sooner. If other parties consider that circumstances have changed and EGNB has not

applied to end the “development period” they may apply to the Board for a review of this matter.

It is essential, for the long term future of the natural gas system in New Brunswick, that the deferral account not continue to grow. During the “development period” it is important that whenever circumstances permit, prices should be set so as to address this issue. EGNB has demonstrated that, if market conditions change, it will apply to lower its rates and the Board expects that EGNB will continue to do so.

For the reasons set forth above, the Board denies this motion. The Board will proceed in accordance with its previously established schedule.

The Board, however, believes that work needs to be done to establish the criteria that will allow it to make a determination as to just when the “development period” will end.

The Board therefore directs Board staff to convene a meeting with EGNB and other interested parties to discuss this matter and to develop a proposal that would be brought forward to the Board for its consideration. This process is to commence in the fall of 2008.

Subsequent to the conclusion of that process, the Board intends to conduct a generic hearing for the purpose of determining the appropriate method that will be used when it is appropriate to change from the current market-based method.

The motions of FCL, Board staff and a second motion of AWL involved the adequacy of responses by EGNB to certain written questions (“IRs”) submitted by those parties. The particular IRs at issue were:

AWL: 2(k), 8(f), 10(a), 14 and 16(b)

FCL: 1(vi), 3(a) & (b), 4(c), 4 (d), 5(2), 13 , 14, 15(b) & 16(b)

Board staff: 2

At the motions day, agreement was reached by the parties with respect to IRs AWL 2(k), 10 and 14, FCL 1(vi), 5(2) and 14 and Board staff 2. The Board accepts those agreements. Also at the hearing, EGNB, FCL and AWL were directed to discuss IRs FCL 4(d) and 15 (b) & 16(b) in an attempt to reach an agreement. If no agreement can be reached, the parties are to inform the Board and the Board will make a ruling on those IRs.

That leaves 5 IRs that the Board will rule on in this decision.

AWL 8(f) requested certain customer information. EGNB offered to provide this information in accordance with the Board's policy on confidentiality and without identifying the names of the individual customers. AWL requested the individual names so that they could identify customer locations for costing purposes. Given the above decision on reviewing the appropriate method for setting rates, the Board does not consider that the individual customer names would be of value in this process and will not require EGNB to provide them.

AWL 16(b) requested copies of all written testimony given by Mr. Charleson on utility rate matters. EGNB stated that they did not have this information but that it was publically available and provided the information on where it could be found. Further, EGNB submitted that this information was not relevant to the matter at hand. The Board accepts that EGNB does not have this information and that AWL can obtain this information on its own as easily as EGNB could. The Board, therefore, will not require EGNB to provide this information.

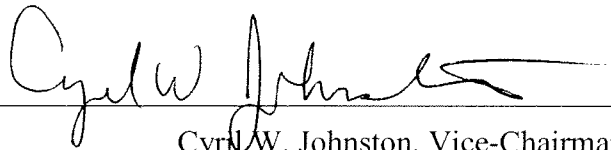
FCL 3(a) & (b) and 4(c) requested information related to the costs of serving the LFO and other classes and on the revenues associated with the installation of new pipelines. Based on the above-noted ruling the Board does not consider that this information is relevant for the purposes of the current application and therefore will not require EGNB to provide such information.

FCL 13 requested detailed financial statements. EGNB offered to provide its regulatory financial statements but not its detailed financial statements that include items that do not relate to the regulation of EGNB. The Board annually reviews the financial results of the operations of EGNB and approves financial statements for regulatory purposes. The Board finds that these statements provide the appropriate financial information for this proceeding and will not require EGNB to provide its detailed financial statements.

Dated at the City of Saint John, New Brunswick this 18th day of January 2008



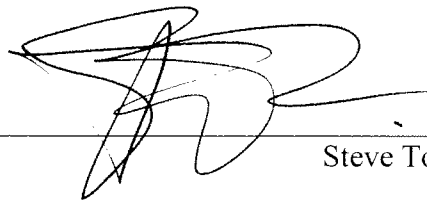
Raymond Gorman, Q.C., Chairman



Cyril W. Johnston, Vice-Chairman



Ed McLean, Member



Steve Toner, Member