



**DECISION**

**IN THE MATTER of a Review of  
Matters Related to the Regulation of  
Enbridge Gas New Brunswick  
March 20, 2009**

**NEW BRUNSWICK ENERGY AND UTILITIES BOARD**



The New Brunswick Energy and Utilities Board (The Board) regulates Enbridge Gas New Brunswick (EGNB). It is apparent to the Board that in the next two years a significant number of regulatory decisions will need to be made. It is important that the hearings leading up to these decisions be as efficient as possible.

The Board convened a hearing in the nature of a case management session, which was held on January 22, 2009, where it heard from all interested parties. These parties presented their positions regarding what issues required consideration by the Board, in what order and what issues could conveniently be considered in the same hearings. This decision sets out the Board's initial orders for the hearing of issues and gives direction with respect to subsequent hearings.

EGNB is presently involved in two proceedings before the Board. The first of these proceedings is the review of the Market Based Formula for determining distribution rates. The need for this hearing was identified by the Board in a decision dated April 9, 2008. Pre-Hearing proceedings are currently underway in this matter and the Public Hearing will begin on April 22, 2009. The second proceeding is the Board's review of EGNB's 2008 financial results. These results have been filed with the Board and are currently being audited pursuant to the Board's direction. The Board will be issuing further directions regarding this proceeding in the near future, in accordance with its decision regarding EGNB's 2007 results, dated February 13, 2009.

The issues surrounding the Development Period dominate the issues facing EGNB and the Board. As part of establishment of the natural gas distribution system in New Brunswick, the Public Utilities Board (as the Board was then known) approved a period of time called the Development Period to allow EGNB to develop a customer base. Among the features of this Development Period was a method of setting rates based on the cost of competing fuels rather than the more traditional method of cost of service rates. EGNB was instructed to record the losses resulting from these incentive rates in a deferral account and are allowed an approved rate of return on the value of the deferral

account. The development period was initially approved to the end of 2005 but was extended by the Board to the end of the 2010 in a decision dated January 21, 2005.

In its decision of January 18, 2008, the Board directed that a hearing take place to establish the criteria which will enable it to determine when the Development Period should end. This hearing was to be preceded by technical conferences on this subject. Meetings were held in 2008 and while some progress was made, the Board believes that the hearing on this issue should now be held, particularly in light of the fact that the Development Period is scheduled to end on December 31, 2010.

The Board will define the issues to be dealt with in the first hearing and only more generally outline the proceedings which will follow.

### ***Issues Related to the Development Period***

It is crucial to deal with the issues surrounding the Development Period. The decision about how the development period is defined and when it ends will have an impact on many of the other matters to be determined. As a result, the Board will begin with a hearing to examine the issues related to the Development Period.

The issues to be addressed in this hearing include:

- What are the essential elements that define the development period?
- Can the approved Return on Equity be altered prior to the end of the development period?
- Can the development period end for one customer class without it ending for all customer classes?
- What are the criteria for determining the end of the development period and how should those criteria be measured?

The Board orders EGNB to file evidence for this hearing on or before June 26, 2009. The Board will hold a pre-hearing conference on July 13, 2009 and the full hearing will commence in the Fall of 2009.

Should the Board receive an application to extend or terminate the development period, the criteria and measurement methods developed in this proceeding will be the primary elements to be considered.

### ***Prudency Review***

Interested parties have suggested that a prudency review is required. It should be noted that each year the Board has reviewed and approved EGNB's regulatory financial results. As part of this review the Board approved the resultant additions to the deferral account. As part of the same process EGNB's natural gas sales were reviewed for compliance with relevant Board orders and regulations beginning in 2003.

In the event an interested party wishes a review of any of the Board's previous decisions, the party will be required to demonstrate that a review is necessary and provide reasons as to why this matter should be re-visited. The Board draws attention to section 43 of the *Energy and Utilities Board Act*, which states as follows:

*43. The Board may review, rescind or vary any order made by it.*

In future years, the Board will continue its annual review of both the regulatory financial results and the natural gas sales. EGNB will be required to provide sufficient documentation to assure the Board that its expenditures are prudent.

All parties will continue to have the opportunity to intervene and review the prudency of system expansions when EGNB files with the Board any application to construct. When dealing with these applications, the Board will consider, in detail, the financial implications of the proposed construction.

### *Remaining Issues*

Additional issues will require consideration following the Development Period Issues Hearing. Priorities will depend significantly on the outcome of the first hearing.

Other issues that will be dealt with in subsequent proceedings include:

- Cost Allocation and Rate Design
- Transition Issues
- Filing Requirements
- Recovery Period for the Deferral Account
- Incentives for Growth

The Board believes that the process described in this decision will allow for an efficient resolution of the issues. The Board recognizes that in the coming months, developments may occur which will require that certain issues be dealt with sooner than others.

In conclusion the Board wishes to acknowledge the valuable input from the parties involved in this matter and looks forward to their continued involvement in the upcoming proceedings.

Dated at the City of Saint John, New Brunswick this 20<sup>th</sup> day of March, 2009.

***Original Signed By***

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Raymond Gorman, Q.C., Chairman

***Original Signed By***

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Cyril W. Johnston, Vice-Chairman

***Original Signed By***

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Roger McKenzie, Member

***Original Signed By***

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Edward McLean, Member