



DECISION

IN THE MATTER OF a hearing concerning a Proposed Amendment to the General Franchise Agreement between the Province of New Brunswick and Enbridge Gas New Brunswick Inc., Enbridge Consumers Energy Inc. and Enbridge Inc.

June 8, 2009

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PARTIES:

Department of Energy

Patrick Ervin
Steve Roberts

Enbridge Gas New Brunswick Inc.

Len Hoyt, Q.C.
Jamie LeBlanc

BOARD:

CHAIRMAN

Raymond Gorman, Q.C.

MEMBERS:

Edward McLean
Steve Toner

STAFF:

Ellen Desmond
Douglas Goss
Lorraine Légère
David Young

The Department of Energy, Province of New Brunswick (“the Department”), with the consent and co-operation of Enbridge Gas New Brunswick Inc. (“EGNB”) applied to the New Brunswick Energy and Utilities Board (“Board”) on May 5, 2009, for approval to amend article 6.1 of the General Franchise Agreement (the “GFA”) which requires EGNB to maintain a \$10 million unconditional and irrevocable letter of credit as security for its performance and obligations under the GFA.

This application was made pursuant to section 10 of the *Gas Distribution Act* (the “Act”) which provides, in part, as follows:

10(1) After January 31, 2000, no amendment to a franchise agreement is effective unless it is in writing, has been executed by the parties and has been approved by the Board.

10(3) The Board shall not make an order under subsection (1) or (2) until after it has held a proceeding on notice, to be given in such manner and to such persons as it may direct, including the surety of any security provided under a franchise agreement.

10(4) The Board may give or refuse its approval or recommendation under this section, subject to such terms and conditions as it considers necessary in the public interest.

A hearing date in this matter was set for June 8, 2009. The Department of Energy was directed to publish notice of this application and the hearing date in the Times and Transcript, L’Acadie Nouvelle, The Daily Gleaner and the Telegraph Journal. Interested parties were invited to attend and participate at the hearing. No intervenors attended.

On May 15, 2009, the Board advised the Department of Energy that they would be required to file two documents on or before June 8, 2009, namely:

- a copy of the proposed amendment, executed by the parties; and

- an affidavit, confirming that the surety of any security under the GFA had been notified of the proposed amendment.

The proposed executed amendment was filed with the Board on June 4, 2009. It should be noted that the essential features of this amending agreement were:

- (a) the removal of the requirement to maintain a letter of credit in favour of the Province of New Brunswick;
- (b) a requirement that EGNB shall reinstate a \$10 million letter of credit upon notice by the Province of New Brunswick; and
- (c) updated contact information for the notice provisions of the GFA.

On June 5, 2009, EGNB filed the affidavit of Jamie LeBlanc, which confirmed that the Canadian Imperial Bank of Commerce (the “Bank”), the issuer of the \$10 million letter of credit, had been notified of this hearing and the possible amendment to section 6.1 of the GFA. In addition, at the time of the hearing, a further affidavit of Jamie LeBlanc was filed which confirmed that the only surety of any security provided under the GFA was the Bank.

During the course of the hearing, the Board heard from three witnesses, namely Jamie LeBlanc, Patrick Ervin and Steve Roberts. These witnesses were questioned by the Board and invited to explain the cost associated with the existing letter of credit and whether the Department believed that sufficient security was in place to protect the interests of both the Province of New Brunswick and existing ratepayers, in the event the GFA was amended.

Jamie LeBlanc explained that the letter of credit was negotiated for EGNB by Enbridge Inc. and that, in previous years, Enbridge Inc. had very favourable rates, normally paying between \$12,500 to \$30,000 per annum. This year however, the cost was likely to be in the range of \$250,000. This increase was not a result of any change in business risk but a result of the financial markets and the cost of borrowing funds. While the “necessity of retaining a letter of credit” was an issue that EGNB had been discussing with the Department of Energy for a

number of years, EGNB approached departmental staff again, given the amount of the fee now involved.

Mr. Roberts and Mr. Ervin explained that while the Province of New Brunswick is ultimately the beneficiary of the letter of credit, the ratepayers are paying this ongoing cost. They further explained that, in addition to having two guarantors who ensure the obligations of EGNB (*namely Enbridge Energy Distribution Inc. and Enbridge Inc.*), EGNB has made substantial investment in the Province of New Brunswick and these facts, taken together, provides sufficient security for the Province of New Brunswick as well as the ratepayer.

The Board has considered the application and supporting evidence from both EGNB and the Department and notes as follows:

- In prior years, the annual cost of maintaining the letter of credit was in the \$12,500 to \$30,000 range but the estimate for the ensuing year is in the range of \$250,000;
- The Province of New Brunswick, as represented by the Minister of Energy, has concluded that the amendment is in the public interest;
- EGNB has been in operation in New Brunswick for several years. It has an established base of approximately 10,000 customers and has regulated assets valued at approximately \$354 million as at December 31, 2008. Its gas distribution infrastructure in New Brunswick includes 722 kilometers of gas mains with an additional 41 kilometers planned in 2009.
- Since the inception of the GFA in 1999, there have been no circumstances that would have caused the Province of New Brunswick to consider making a call on the letter of credit.
- The Board particularly relies on the fact that the obligation of EGNB under the GFA, the *Act* and any other agreement under which EGNB is responsible to the Province of New

Brunswick are unconditionally guaranteed by Enbridge Energy Distribution Inc, and Enbridge Inc.

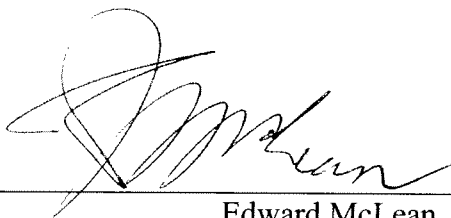
- Enbridge Inc. is a publicly traded company listed on the Toronto Stock Exchange with a quoted market capitalization of \$14.5 billion.
- The Department believes that the customers of EGNB and the Province of New Brunswick are not materially enhanced by a contractual requirement to maintain a letter of credit in any amount.

In light of these factors, the Board approves the proposed amendment pursuant to section 10 of the *Act*. The existing letter of credit will remain in place until August 15, 2009 at which time it will not be necessary to renew the same.

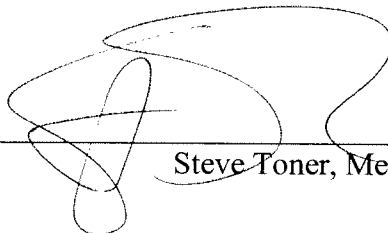
Dated at the City of Saint John, New Brunswick this 8th day of June 2009.



Raymond Gorman, Q.C., Chairman



Edward McLean, Member



Steve Toner, Member