



BOARD RULING ON MOTION

**IN THE MATTER of a Review of
Enbridge Gas New Brunswick's
Market Based Formula**

April 3, 2009

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

Ruling

The New Brunswick Energy and Utilities Board (“the Board”) will hold a public hearing commencing April 22, 2009 to examine all of the elements in the market-based formula used by Enbridge Gas New Brunswick (“EGNB”) to derive the rates charged to customers. The Public Intervenor has filed as evidence to be used at the hearing the report of Kurt G. Strunk. By Notice of Motion, EGNB requests that the Board exclude from the record certain portions of Mr. Strunk’s report, specifically his report from line 15 on page 14 to line 12 on page 15 as well as Exhibits 7a and 7b to the report.

Following receipt of the motion the Board put in place a process permitting all parties to make submissions in writing. Submissions were received from the Public Intervenor and EGNB.

In its decision of April 9, 2008, the Board set out its concerns regarding the formula and the process to deal with these concerns in detail.

“There were questions raised with respect to the formula that has been used to establish the market-based rates, both at this hearing and the recently concluded hearing concerning EGNB’s application to adjust the rates for its LFO class. This has been the first time that the details associated with the various elements of the formula have been discussed at a public hearing. The results of this discussion have made it clear to the Board that there are a number of elements of the formula that require the exercise of judgement and that the choices made can have a significant impact on the distribution rates. In such cases, it is also clear that reasonable parties may disagree on the most appropriate way to proceed. Examples of such elements are the time period to be used in developing the forecast of the retail oil and natural gas prices, the method to be used in determining the price for No. 2 distillate at New York harbour, the target savings level, typical annual energy consumption and the average monthly contract demand.

The Board continues to believe that the use of market-based rates is appropriate during the development period. However, the specific elements of the formula used to develop the market-based rates need to be carefully examined. The Board therefore directs Board staff to convene a meeting with EGNB and other interested parties for the purpose of establishing a process in which the details of the market-based formula can be examined. This process will allow recommendations concerning the formula to be put before the Board prior to the next application for an increase in the maximum prices that may be charged by EGNB.”

The Order directing this hearing stated that it would be “a hearing to examine all of the elements in the market-based formula used to derive the rates charged to customers.”

The portions of Mr. Strunk’s evidence at issue are not an examination of the market-based formula or a proposal to modify the market-based formula, but rather set out a “transitional ratemaking framework” (Strunk p.14, 113). The Board has clearly stated in its March 20, 2009 ruling regarding EGNB regulatory issues that “transition issues” would be dealt subsequent to the Development Period Issues Hearing.

Mr. Strunk’s proposal for a transitional ratemaking framework cannot be put in place until EGNB has completed its cost of service study, and even then there may well be substantial issues of class composition and rate allocation to be dealt with before cost-based rates could be calculated. This being the case, Mr. Strunk’s evidence on this topic could not be helpful to the Board in addressing the issues relating to the market-based formula.

It may well be that Mr. Strunk’s evidence regarding transitional ratemaking will be relevant in some future proceeding. The Board is committed to dealing with the various issues relating to EGNB in an orderly sequence. To deal with a ratemaking proposal before the underlying evidence is available and the underlying decisions are made would not be efficient.

This Board is extremely reluctant to rule on the relevance of evidence in advance of a hearing. The present case is a rare instance where the evidence in question is not only clearly outside the scope of the hearing in question, but also falls squarely within a topic upon which the Board has stated it will deal with in a subsequent proceeding. Accordingly the Board will order that the portions of Mr. Strunk’s report from line 15 on page 14 to line 12 on page 15 as well as Exhibits 7a and 7b to the report not form part of the record in this proceeding.

Dated at the City of Saint John, New Brunswick this 3rd day of April, 2009.

Original Signed By

Raymond Gorman, Q.C., Chairman

Original Signed By

Cyril W. Johnston, Vice-Chairman

Original Signed By

Steve Toner, Member