



DECISION

**IN THE MATTER OF an Application dated June
25, 2002 by Enbridge Gas New Brunswick Inc.,
To Amend its Permit to Construct 2000-1**

October 1, 2002

NEW BRUNSWICK

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

Introduction

Enbridge Gas New Brunswick Inc. (EGNB), on June 25, 2002 made an application to the New Brunswick Board of Commissioners of Public Utilities (the Board), pursuant to subsection 22(1) of the *Gas Distribution Act, 1999* (GDA), to amend its Permit to Construct 2000-1. The amendments requested were for permission to construct high-pressure steel pipelines in specified areas of the City of Saint John in the year 2002. Also, to be allowed to install high and extra-high pressure pipelines as infill in the municipalities presently listed in the existing permits. Infill allows EGNB to expand its distribution system without the necessity of a public hearing. Permit to Construct 2000-1 allows EGNB to construct on an infill basis, all pipe at or below intermediate pressure. EGNB's pre-filed evidence was also submitted on June 25, 2002.

Notice of the application was first published on July 5, 2002 and again on July 10, 2002. The deadline for intervenor registration was July 29, 2002 and only one party requested formal intervenor status. This party was the Maritime Natural Gas Pipeline Contractors Association Inc. (the Contractors). It should be noted that the Contractors filed for formal intervenor status on July 26, 2002. They did not engage a solicitor to represent them until Friday, August 16, 2002.

The Public Notice stated that a pre-hearing conference would be held on August 19, 2002 at the Board's Offices in Saint John to hear representations on the following:

- (a) the type of proceeding to consider the Application

- (b) the procedure to be followed in respect of the proceeding; and
- (c) any other matters in respect thereto.

At the pre-hearing conference, formal Intervenor status was granted to the Contractors and Informal Intervenor Status was granted to the Construction Association of New Brunswick Inc. (CANB).

CANB expressed concern that member firms who had worked on the pipelines could not file mechanics' liens as the piping was located on municipal property. CANB submitted a position paper on behalf of their association.

The Contractors stated that they had concerns about safety related to the natural gas pipeline installations of EGNB. EGNB stated they were involved in ongoing litigation with three of the member firms of the Contractors. EGNB asked the Board to schedule a timely proceeding. The Contractors requested time for their solicitor to prepare and requested an oral hearing.

The Board considered the submissions and materials of all parties and directed that the review of the application would proceed by way of a written hearing as permitted under Section 72(a) of the GDA. The specific process established by the Board, provided an opportunity for the Contractors to submit questions in writing to EGNB, to receive written responses from EGNB and to submit their own evidence. EGNB would have an opportunity to submit written questions to the Contractors and to receive responses from

them. Both parties were to submit final comments in writing to the Board on or before September 16, 2002 which was 28 days after the pre-hearing conference.

The Contractors chose not to follow the dates as scheduled. The Contractors applied to the Court on three separate occasions to have the Board's hearing process changed. These applications included a Notice of Application for Judicial Review of the Board's decision to proceed by way of a paper hearing before the New Brunswick Court of Queen's Bench, Trial Division on August 21, 2002; a Notice of Motion for Leave to Appeal before the New Brunswick Court of Appeal on August 23, 2002; and a Notice of Motion for Leave to Appeal before the New Brunswick Court of Appeal on September 10, 2002. They were unsuccessful on all three occasions and as a result, requested the Board on September 10, 2002, to amend the schedule to allow them to participate in the written hearing. The Board revised the dates and extended the date for final comments to September 20, 2002.

Safety

The Contractors submitted their written evidence on September 17, 2002. The evidence included references to construction materials that were removed or not installed as they did not meet the construction standards. In interrogatory MNGPCAI (PUB) 1, the Board asked the Contractors for evidence showing that the pipeline construction did not meet the standards required by the GDA and the National Safety Code, CSA Z662. The Contractors referred the Board to their previously filed evidence which indicated that some defective material had been removed.

In interrogatory MNGPCAI (PUB) 2, the Board asked the Contractors for documentation with respect to any safety issues which they had raised with Board staff during pipeline construction. The response was that the contractors notified EGNB of their concerns pursuant to their contracts, but not the Board.

Part of the Board's mandate is to ensure that operators of natural gas distribution systems provide safe and reliable delivery of gas within the Province of New Brunswick. The Board is very concerned with the safety of the natural gas distribution lines. The Board is of the opinion that the evidence presented by the Contractors confirms that proper procedures were followed. Defective materials were removed as required and installations were repaired as necessary to meet the applicable construction and safety standards.

The Board has established a safety inspection process to ensure that standards are met. The Board's Safety Division conducts comprehensive on-site inspection and compliance audits. The Board is not aware of any instances where pipe is installed which does not meet the requirements of the GDA and its regulations which includes CSA Standard Z662.

In light of the evidence introduced in this hearing, the Board is concerned with the work and safety practices of the Contractors. The Contractors alleged that they were involved with the installation of gas lines that did not meet the safety requirements of the GDA or of CSA Z662. There is no evidence of that fact, but if it were the case, it is the Board's

opinion that the Contractors may well be negligent by not having previously informed the Board's Safety Division.

The Board encourages any entity with safety related concerns to communicate these concerns to the Board. The Board will fully and completely review any submissions with respect to safety issues. These will be investigated and, if it is deemed warranted, a generic hearing concerning safety will be held to thoroughly review any and all labour and material procedures of any owner, contractor or sub-contractor involved in the construction of natural gas pipelines.

The Board points out that its entire administrative and hearing processes, including all inspection reports, correspondence, hearing evidence, interrogatories, answers to interrogatories, etc. are open for any party to review. The Contractors reviewed the information on file for the EGNB financial results for the year ending on December 31, 2000, after the pre-hearing conference. The Contractors neither before, nor afterward, took advantage of the opportunity to review the Board's safety guidelines or safety documents related to EGNB's pipelines. The Contractors expressed no interest in any documentation other than EGNB's financial information, save and except the documentation sent to the Contractors' solicitor by the Board's Director of Safety, Mr. McQuinn.

The Pipeline Coordinating Committee, which is comprised of representatives from various provincial government departments, sent a letter dated August 19, 2002 to the Board. It stated that the committee expected EGNB to continue to be subject to the conditions (including environmental protocols and safety considerations per the Z662 Oil

and Gas Pipeline Systems Standard), set out in the existing permit should the amendment be permitted. EGNB, in its final comments, stated that it will continue to comply with the GDA, all regulations under the GDA, industry standards and the existing conditions of the Permit to Construct 2000-1.

Board Conclusions and Decisions

Having taken into consideration, all of the evidence submitted by the Applicant and Intervenors, whether it was submitted in a manner consistent with the schedule or amended schedule or otherwise;

And having taken into consideration all of the interrogatories and answers to interrogatories submitted by the Applicant and Intervenors, including final submissions, THE BOARD CONCLUDES AND ORDERS AS FOLLOWS:

Lien Issue

The Board is aware of the concerns that CANB has in regards to lien rights. However, these issues are not within the Board's mandate. The Board recommends to CANB that it pursue its concerns with the appropriate provincial government department and EGNB.

Construction Extension

There was no evidence presented that addressed EGNB's specific application for the extension of high-pressure lines in Saint John. The Board will, therefore, amend EGNB's Permit to Construct 2000-1 to allow it to construct high pressure steel pipelines on

Expansion Avenue, Old Black River Road, McIlveen Drive, Whitebone Way, Fairvale Blvd. and Connector Street in Saint John.

Infill

There has been no evidence presented that addressed EGNB's specific application to be allowed to install high and extra-high pressure pipelines, as infill piping, in municipalities presently subject to the existing permit to construct. Therefore the Board will amend EGNB's Permit to Construct 2000-1 to allow the construction of high pressure polyethylene pipelines and high and extra-high pressure steel pipelines as part of its infill program in the municipalities listed in that permit, without the necessity of a public hearing process, subject to existing protocols and conditions set out in the existing permit. EGNB will be required to file with the Board information prior to such construction. The Board directs EGNB to work with Board staff to establish the specific information to be provided and the process to be followed.

DATED at the City of Saint John this 1st day of October 2002.

BY ORDER OF THE BOARD

Lorraine R. Légère
Board Secretary