



## **DECISION**

IN THE MATTER OF an application by Enbridge Gas New Brunswick Inc., for a Permit to Construct a pipeline in The Local Service District of Hanwell, New Brunswick.

**May 21 , 2009**

IN THE MATTER OF an application by Enbridge Gas New Brunswick Inc., for a Permit to Construct a pipeline in The Local Service District of Hanwell, New Brunswick.

APPLICANT:

Enbridge Gas New Brunswick Inc.

Mr. Len Hoyt, Q.C.  
Ms. Andrea Richard  
Mr. Dave Charleson

INTERVENORS

Department of Energy

Mr. Alain Bilodeau

Flakeboard Company Limited

Mr. Barry Gallant

BOARD:

CHAIRMAN

Mr. Raymond Gorman, Q.C.

VICE-CHAIRMAN

Mr. Cyril Johnston

MEMBERS:

Mr. Edward McLean  
Mr. Donald Barnett

STAFF:

Ms. Ellen Desmond  
Mr. Douglas Goss  
Ms. Lorraine Légère  
Mr. David Young  
Mr. Todd McQuinn

Enbridge Gas New Brunswick Inc. (the “Applicant”) applied to the New Brunswick Energy and Utilities Board (“Board”) on April 8, 2009 for a Permit to Construct a pipeline and subsequent infill in the Local Service District of Hanwell, New Brunswick in order to provide natural gas distribution to that community. This application was made pursuant to Sections 4, 5 and 8 of the *Pipeline Act, 2005* (the “Act”).

A Public Information Program (“PIP”) had been filed with the Board and was approved on November 28, 2008. An open-house session was conducted at the Best Western Fredericton Hotel & Suites on December 8, 2008.

A pre-hearing conference was scheduled for Fredericton, New Brunswick on May 5, 2009. Notice of this pre-hearing conference had been published pursuant to the Board Order of April 9, 2009. Two parties filed Notice of Intervention with the Board, namely the New Brunswick Department of Energy and Flakeboard Company Limited (Flakeboard).

Copies of the application were filed with the Ministers and Municipalities that are parties to the proceeding, pursuant to Section 6 of the Act. The application was reviewed by the inter-agency Pipeline Coordinating Committee which recommended that a construction permit be issued subject to the conditions outlined in its report of April 2, 2009.

It is noted that letters of support for the project were received from three parties, namely Armour Transportation Systems, Perfection Paving Ltd. and Capital Spring and Suspension.

The Notice of Hearing indicated that the Applicant might bring a Motion at the pre-hearing conference requesting that the pre-hearing conference be converted to a final hearing. The Applicant did bring this Motion at the pre-hearing conference and none of the parties objected. As a result the Motion was granted and the pre-hearing conference was converted to a final hearing.

The Applicant presented two witnesses, namely Dave Charleson and Andrea Richard, to address issues regarding the application. The witnesses were cross-examined by the intervenors and Board Counsel.

Section 7 of the Pipeline Act, 2005 states;

*7 In considering an application for a permit, the Board shall take into account all matters that it considers relevant and shall consider*

*(a) the location of the proposed pipeline and its effect upon public health and safety and the environment,*

*(b) the financial responsibility of the applicant,*

*(c) in the case of a pipeline for the transmission of natural gas, the existence of present and future markets for the pipeline, and*

*(d) such other matters as it considers relevant in the public interest.*

The technical review by the Pipeline Coordinating Committee is primarily the review of the proposed route of the pipeline and the potential effects upon public health and safety and the environment. As stated above this review culminated in the Pipeline Coordinating Committee's report to the Board recommending that a Permit to Construct be issued subject to a number of conditions to mitigate any effect on the public and environment.

The Board reviews EGNB's financial results on an annual basis and is satisfied that sufficient funds will be available to complete the project

During Flakeboard's cross-examination, which mainly dealt with the economic feasibility of the project, EGNB asked to enter into evidence a spreadsheet that outlined the financial analysis that was completed as part of the applicant's decision to proceed with the project. Again all the parties were canvassed and no objections were made and the information was entered as an exhibit. Flakeboard stated they were concerned with the analysis in two areas, namely the Applicant's method of determining the number, class and timing of customer additions and the forecasted rates used to determine revenue over the first 15 years of the life of the project. EGNB

testified that the analysis was conservative and based on the best information available at the time and consistent with the methodology used in the recent rate setting proceedings.

A number of issues were dealt with during cross-examination by Board Counsel. A series of questions was asked of the Applicant aimed to provide a detailed explanation of the financial analysis exhibit.

The Board concludes that EGNB has demonstrated through the use of financial analysis that the revenue from present and future markets will support the costs associated with construction and operation of the pipeline. The Board directs EGNB to file a similar Financial Analysis as part of its evidence when applying for any Permit to Construct in the future.

The Applicant was asked to provide proof of insurance as required by Section 20 of the *Act* which prevents the Board from issuing a permit or license unless the person is insured against any liability that the person may incur in constructing or operating the pipeline in an amount approved by the Board. The Applicant provided to the Board at the hearing a Certificate of Insurance from Energy Insurance Mutual.

Board Counsel requested that the Applicant provide a full copy of the policy of insurance and an undertaking to that effect was provided by Len Hoyt, the Applicant's counsel. In addition, Mr. Hoyt undertook to provide information with respect to whether any of the policy limits or coverages may have changed since the Board's last review.

Subsequent to the hearing the Board received a letter from the Applicant that, upon review, has satisfied the Board that the insurance requirements of Section 20 have been met.

Board Counsel inquired if the Applicant would have any objection to filing, six months after the pipeline's in-service date, a report showing the actual costs incurred during the construction together with an explanation of all significant variances from the original estimates. The Applicant had no objection.

The Board has considered the application and supporting evidence for a Permit to Construct a pipeline in Hanwell, New Brunswick in order to provide natural gas distribution to that community and grants the Permit to Construct as applied for, subject to the following conditions:

1. Subject to Condition (3), Enbridge Gas New Brunswick (EGNB) shall comply with all undertakings made by its counsel and witnesses, and shall construct the facilities and shall restore the land according to the evidence of its witnesses at this hearing and in accordance with the Gas Distribution Act, 1999, the Pipeline Act, 2005 or any other applicable legislation.
2. EGNB shall comply with all written commitments and clarifications made during review by the Pipeline Coordinating Committee (PCC).
3. The Board's designated representative for the purpose of these conditions shall be the Director of Safety, or in his/her absences the Board's secretary. EGNB shall advise the Board's designated representative of any proposed significant change in construction or restoration procedures, and except in an emergency, EGNB shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed forthwith.
4. EGNB shall furnish the Board's designated representative with every reasonable facility for ascertaining whether the work has been, and is being, performed in accordance with the Board's Order.
5. EGNB shall notify the Board's designated representative of the date on which any installed high and extra-high pressure pipeline is proposed to be pressure tested at least 72 hours prior to the start of the test.
6. Both during and after construction, EGNB shall monitor the effects upon the land and the environment.
7. EGNB shall give the Board's designated representative and the Chairman of the PCC ten days written notice, in advance of the commencement of construction, unless said construction is to commence within ten days of receipt and in such an event shall be as soon as possible.
8. In the case of infill, EGNB shall file written notification in the approved format to the Board's designated representative of the pending construction of high and extra high-pressure steel and high-pressure polyethylene pipelines.

9. EGNB shall designate one of its employees as project manager who will be responsible for the fulfillment of undertakings on the construction site and shall provide the name of the project manager to the Board's designated representative.
10. Where properties or structures exist within 200 metres of the pipeline and blasting is necessary, EGNB shall:
  - i. Use restricted blasting techniques by ensuring that all charged areas are covered with blasting mats to eliminate fly rocks;
  - ii. Have the vibrations from blasting operations monitored and measured by a vibration measurement specialist;
  - iii. Notify all property owners within 200 metres of the proposed blasting in writing at least 24 hours prior to the blasting and confirmation (if necessary) of the actual day or days on which blasting will occur;
  - iv. Have buildings within 200 metres of the blasting checked by an independent examiner before and after operations to check for problem areas.
11. Where blasting is required, the well location and water quality of all wells within 200 metres of the pipeline shall be tested before and after blasting operations.
12. EGNB must immediately notify the Department of Environment, Manager of the Water Sciences Section (506 457-4844) of any complaints received regarding water quantity or quality problems.
13. In the event that domestic wells are impacted, EGNB shall provide a water supply to the homeowners until the problem is resolved. This includes, but is not limited to, the provision of potable water and the remediation or replacement of any impacted domestic wells. If an agreement as to the cause of the water problems cannot be reached between EGNB and the resident(s), Department of Environment and Local Government will provide third party arbitration.
14. No fuelling of vehicles or storage of petroleum products shall occur within 30 m of any domestic wells.

15. Any abandoned wells found during this project will be reported to the Moncton Regional Water Planning Officer.
16. EGNB shall assess all pipeline construction routes with respect to environmental requirements and develop Site Specific Environmental Protection Plans (SSEPP) as required, including for wetlands. EGNB shall obtain all required environmental permits.
17. EGNB shall monitor Total Suspended Solids (TSS) and take appropriate corrective action where appropriate.
18. EGNB shall take immediate corrective action upon being notified of deficiencies in environmental protection measures by an environmental inspector (from any agency).
19. EGNB shall conduct appropriate surveys for species of special status unless it is clear that the method of construction will have no potential impact on the critical habitat for these species.
20. In the event of construction through identified wetlands, EGNB shall ensure monitoring of wetland mitigation is conducted as part of the Environmental Effects Monitoring (EEM) program that includes at least one year of monitoring post-construction unless additional follow-up monitoring is required. The EEM program for wetlands shall not be limited to TSS monitoring.
21. Unless the Board otherwise directs, EGNB shall maintain at its Fredericton office, copies of any permits, approvals or authorizations for the applied-for facilities issued by federal, provincial and other permitting agencies, which include environmental conditions or site-specific mitigative, monitoring and restorative measures. In addition, EGNB shall maintain at its Fredericton office, an information file(s) that would include any subsequent variation to any permits, approvals or authorizations obtained prior to, or following, the commencement of construction.
22. Unless the Board otherwise directs, EGNB shall maintain for audit purposes, at its Fredericton office, a copy of the joining procedures and non-destructive testing procedures used on the project, together with all supporting documentation.
23. In areas of acid rock, EGNB shall comply with the Acid Road Drainage Mitigation Program developed by EGNB.
24. As the preferred crossing option at all crossings, EGNB shall avoid in-stream work. Any departure from this approach will require the provision of an adequate rationale to the Department of Environment.



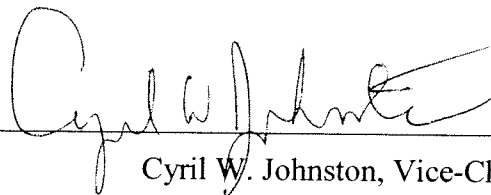
25. Unless the Board otherwise directs, EGNB shall submit semi-monthly construction reports during the construction season for systems to be constructed under this permit and such other reports as requested by the Department of Energy from time to time.
26. EGNB shall submit its Emergency Procedures Manual to the Emergency Measures Organization for review prior to filing an application for a Licence to Operate the proposed facilities.
27. EGNB shall submit the construction details of the custody transfer station to the Board prior to the start of construction.
28. EGNB shall submit design details and specifications for any boiler and pressure vessels to the Manager, Gas Inspections of the Technical Inspection Services branch of Public Safety for review prior to construction.
29. Within six months of the in-service date, EGNB shall file with the Board a written Post Construction Financial Report. The Report shall indicate actual capital costs of the project and shall explain all significant variances from the estimates adduced in the hearing.

Dated at the City of Saint John, New Brunswick this 21<sup>st</sup> day of May 2009.




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Raymond Gorman, Q.C., Chairman



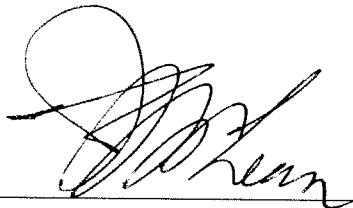
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Cyril W. Johnston, Vice-Chairman



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Donald Barnett, Member



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Edward McLean, Member