

New Brunswick Board of Commissioners of Public Utilities

Pre-Hearing Conference - November 10th 2004

IN THE MATTER OF an application by Enbridge Gas New Brunswick Inc. to extend the Development

Period and the Deferral Account

Recovery Period

BOARD: David C. Nicholson, Esq., Chairman

David S. Nelson - Vice-Chairman

Jacques A. Dumont - Commissioner

Ken F. Sollows - Commissioner

BOARD COUNSEL: Ms. Ellen C. Desmond

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CHAIRMAN: Good morning.

MR. HOYT: Good morning.

MR. ROSS: Good morning.

CHAIRMAN: This hearing is in reference to an application by Enbridge Gas New Brunswick Inc., to extend the development period and the deferral account recovery period. And we only have the two mikes, don't we, down there?

(Off the record)

CHAIRMAN: Appearing today for Enbridge Gas New Brunswick Inc.?

MR. HOYT: Len Hoyt, acting for Enbridge Gas New Brunswick. I am joined by Andy Harrington the General Manager, and Shelley Black, who is the Manager of Regulatory Affairs & Upstream.

CHAIRMAN: Well, we have a number of parties that wish to

become formal intervenors. The first is Maritime Natural Gas Pipeline Contractors Association Inc. And who is representing them today?

MR. ROSS: David Ross, Mr. Chairman.

CHAIRMAN: Mr. Ross, I have got to point this out to you. In the proceeding with Enbridge that's running parallel to this one, you did not show up the last day, but sent in a whole pile of paper to the Board.

Now that's not the way our processes work. You have to bring that paper with you if you are a formal intervenor. And you have to have it properly introduced in evidence. And I did not read it, nor did, to the best of my knowledge, my Commissioners read it, because it wasn't properly in front of us.

But I -- some people did. And tell me again that you again were on a irrelevant stuff. So I point that out to you. Now I am not going to hold it against you in this hearing at all. But you have got to play this in accordance with the way a hearing like ours runs. And if you have any problem with it, you can talk to Ms. Desmond, our legal counsel, and she can tell you how it is you have got to do some things.

MR. ROSS: Okay. Thank you.

CHAIRMAN: Province of New Brunswick?

MR. ANDERSON: William Anderson and James Knight for the Province of New Brunswick.

CHAIRMAN: All right. And Mr. Anderson, you are appearing for the agent -- as the agent for the Attorney General?

MR. ANDERSON: The Attorney General represents the Province of New Brunswick.

CHAIRMAN: Mr. Anderson, be -- you are one of the --

MR. ANDERSON: I am not -- I am not --

CHAIRMAN: -- you are one of those few people in this province that know the difference between the Attorney General and the Minister of Justice.

MR. ANDERSON: Absolutely.

CHAIRMAN: So are you appearing as an agent --

MR. ANDERSON: That's correct.

CHAIRMAN: -- for the Attorney General?

MR. ANDERSON: Yes, Mr. Chairman.

CHAIRMAN: Good. Thank you. So you can speak for the Province of New Brunswick. And we are not dealing with ministries per se?

MR. ANDERSON: We are dealing with the Province. Not any particular department of the Province, correct.

CHAIRMAN: Thank you, Mr. Anderson. That's great. The Union of New Brunswick Indians? Have we heard from them at all, Madam Secretary?

BOARD SECRETARY: Haven't, nothing.

CHAIRMAN: Well from our view of the correspondence all the parties wish to proceed in the English language. And I presume that Enbridge Gas New Brunswick wishes to have a written hearing?

MR. HOYT: Yes, Mr. Chairman.

CHAIRMAN: And so do the other two parties who are here.

MR. HOYT: Mr. Chairman, will there be an opportunity to speak as to whether or not the intervenors are accepted as intervenors?

CHAIRMAN: Sure. Absolutely.

MR. HOYT: I would like to just -- I would like to make some comments for the record. And we will speak in opposition to the interventions, both by the Maritime Natural Gas Pipeline Contractors and the Union of New Brunswick Indians. And in doing so would refer to the notice of this pre-hearing, where it set out what a potential intervenor is required to set out. And that is to establish that the person's interests justify status as an intervenor in the proceeding.

In looking at the two letters that were received from the Union of New Brunswick Indians first, they indicate that the nature of the intervention is to protect and preserve the aboriginal and treaty rights of the Mi'kmaq

and Maliseet people of New Brunswick. Ensure that our people benefit from the development of the resources of New Brunswick. Ensure that our people are informed about the development of the resources of New Brunswick. And ensure that the health and welfare of our people are taken into account during and after the construction of the natural gas distribution pipeline.

The Maritime Natural Gas Pipeline Contractors Association, on the other hand, they indicate that the association represents the interests of dozens of New Brunswick and other businesses, who have been involved directly or indirectly in the development of the natural gas industry since 1999.

Commissioners, this hearing is about two things. It's about extending a development period, which is just a period of time during which Enbridge can operate as a mature utility. And extending a deferral account recovery period, which is an account where Enbridge records the shortfall and its actual revenues versus the revenue requirement approved by the Board.

I find it hard to think of a situation where the UNBI and the Maritime Natural Gas Pipeline Contractors could have less of a real interest in this proceeding. And I say that with all due respect. Both organizations

represent some very valid interests. But with respect to what the application that is before the Board, I would suggest that that interest has no connection with this proceeding.

And lastly, I would just like to refer to a decision of the Board in connection with Enbridge's rate application, which was issued on April 30th of this year. And in referring to the intervention of the Maritime Natural Gas Contractors in particular at that point, the Board made the decision or stated that the Board considers that intervenor status should only be granted to parties that respect the process and raise issues that are relevant.

Therefore, in future proceedings the Board will require the contractors to demonstrate that their intervention would be based on relevant matters. If this cannot be established, the Board will not grant intervenor status to the contractors.

With respect I would request that the requested interventions by both the Maritime Natural Gas Contractors and the Union of New Brunswick Indians be denied.

CHAIRMAN: Thank you, Mr. Hoyt. Mr. Ross, do you have anything to say to that?

MR. ROSS: Well, Mr. Chairman, the Association respectfully

disagrees with Mr. Hoyt. The Association does represent many New Brunswick businesses, who have been part of the development of the New Brunswick natural gas industry.

Over the years, it represents businesses who desire to be part of the New Brunswick natural gas industry. And therefore is very interested in the -- in the success of the N.B. natural gas industry.

And we just -- we would like to be part of the process to ensure that the future interests -- present and future interests of our members are represented and able to observe the proceedings.

CHAIRMAN: Well, Mr. Ross, have you met with your organization and looked at what it is that

Enbridge Gas New Brunswick is asking for of this Board? Do you have a position in reference to that at all?

MR. ROSS: Well, Mr. Chairman, we have examined the information and we see the -- we see the qualitative aspects, the business case so to speak. We see that presentation and understand that. But we are wondering if also there is a qualitative aspect that might factor into the review. Factors that might have been included, for example, in the applicant's proposal to the province at the outset when the applicant was selected as the distributor for the -- for natural gas in New Brunswick.

We are also interested to know if the -- and I guess the Province does have an interest in this hearing, so we would like to see what that interest as well, and how that might -- how that might factor on our members.

CHAIRMAN: Well, you can certainly be informed of what goes on in this hearing. It's a public hearing. You don't have to be formal intervenor in order to do that. You can also have informal intervenor status if you want it. And you are aware of that.

Some of the things that you are saying quite frankly strike me that you should be appearing before the Board when it is that we first review the franchise in I guess -- what that's another year from now.

MR. HOYT: 2006.

CHAIRMAN: Yes. 2006. But anyway, does the Province have anything they wish to say in regard to the recognition of the two intervenors?

MR. ANDERSON: No, we have no position with respect to that.

CHAIRMAN: Anything further, Mr. Hoyt?

MR. HOYT: Well, I mean, just two things with respect to the Maritime Gas Contractors. One is the history. And, Mr. Chairman, you alluded to it earlier with respect to the proceeding that we have underway and parallel to this. And the fact that the interventions tend to go off on

tangents and dredge up numerous issues that aren't relevant to the proceeding. And I don't get a sense from Mr. Ross' explanation that it's going to be any more focused this time.

One thing in particular is I think that this hearing is forward looking, as opposed to the financial review which Enbridge does every year, which is an opportunity to look at results.

This is a hearing to determine whether the forecasts that Enbridge has based this application on demonstrates efficiently to the Board that the two requested extensions are required.

With respect to the UNBI, the only other point I would make on that is that, you know, they are not here today. And, you know, they are -- the description of their intended intervention or their interest. As I say, it's an issue that has lots of merit in other forums. But this isn't -- this isn't the appropriate one.

CHAIRMAN: No. Well, Mr. Hoyt, you have heard me say before that if UNBI wants to pursue what it is that they have in their notice, then there is a very particular way in which they must proceed, which includes giving notice to the Attorney General of the Province and of the Dominion. And being particular in the remedies that they seek with very

specific pleadings.

MR. HOYT: And --

CHAIRMAN: In the past, all they -- they seem to have been satisfied with just being on the record, so that they would not be estopped in the future from -- in a constitutional matter saying we didn't protect our interests in 2000 through 2004 or something like that, which -- so we have granted them the status to -- just to keep them on the record.

But I agree with -- personally agree -- I haven't talked with my fellow Commissioners -- but if they are not interested enough to come today, then that certainly mitigates against their being an intervenor in the proceeding. No question about it.

Now are there any other preliminary matters? Any -- yes, Mr. Ross?

MR. ROSS: Well, Mr. Chairman, I would just like to note that at the financial hearing, the Association had made some comments that -- our impression was that as a result of those comments, it was suggested that it would be appropriate that the Association present itself to this particular hearing. And so we have a desire to do that. We did in the last -- in the current financial review seek direction from Board Staff, but we didn't -- we didn't

seek it clearly enough. And so we will certainly do our utmost to respect the processes and structures that the Board has in place.

CHAIRMAN: Well, thanks, Mr. Ross. We will take a -- now, do you all have a copy of the draft schedule?

MR. HOYT: I submitted the letter only to the Board, because at that time, we wouldn't have known who the intervenors were, so others may not have it. The only place I have seen it is in that cover letter that we sent to the Board.

CHAIRMAN: Well, the Secretary has some extra copies and she will leave them. Yes, Mr. Hoyt?

MR. HOYT: You just asked about any other preliminary matters. Are you going to come back to the written versus oral, or do you want to hear us to speak to that now?

CHAIRMAN: I don't think I need to hear you.

MR. HOYT: Okay.

CHAIRMAN: Well, I mean, nobody in the room has said that they want oral so --

MR. HOYT: That would have been my point.

CHAIRMAN: Yes. I am sorry. I anticipated that. We will take five minutes.

(Recess - 10:20 a.m. to 10:25 a.m.)

CHAIRMAN: The Board has taken a couple of minutes and the hearing, of course, the language will be English. It will

be a written proceeding. But the Board will retain the right if something comes up during the written proceeding that we believe should be canvassed in an oral fashion, that we will work our procedure into that, to allow that to happen.

We -- as to interventions, we will, of course, grant the Province of New Brunswick -- or sorry, the Attorney General, his common law right to appear before us. And so it will have intervenor status -- formal intervenor status.

We have carefully considered what you had to say, Mr. Hoyt. And there is a good deal of substance in what you have said. However, this Board did -- we believe it to be during the last -- the start of the financial hearing, a review -- I guess it was myself on behalf of the Board mentioned to Mr. Ross, that he was probably better off coming at this hearing, rather than pursuing that then. So therefore, we will grant the Maritime Natural Gas Pipeline Contractors Association a formal intervenor status in this one. But we will certainly abide by our directions and our words of the hearing that concluded this spring in that it has to be relevant to this proceeding.

And again, the Board makes the offer -- you can

contact staff, or Board counsel, Ms. Desmond, and she can tell you what you have to do or how you have to do it.

The Union of New Brunswick Indians, we will put the -- for some unknown reason they are not here today, but we will give them informal intervenor status so they do know what's going on.

Now I just asked staff if they have gone through this tentative filing schedule, and there are no conflicts in the Board's -- yes.

MR. HOYT: Just I guess using the written proceeding, just for the Board's information, the last item before where it says hearing commences, that item wouldn't be part of the written process?

CHAIRMAN: No.

MR. HOYT: So that the written process would end December the 8th?

CHAIRMAN: Yes. Subject to what I have just said, Mr. Hoyt.

MR. HOYT: Right. But one of the things that -- this is our schedule, so if this isn't acceptable to the Board, that's fine.

I was going to ask whether there would be an issue switching those Wednesdays to Fridays, for two reasons, one self-interest, in that in preparing our responses for the 24th, it would be better if that were the 26th. But

the other is that for intervenors that want to ask questions this week you are going to lose Thursday and most likely Friday. So if the first --

CHAIRMAN: Can we compromise?

MR. HOYT: Thursday?

CHAIRMAN: Thursday.

MR. HOYT: Sure.

CHAIRMAN: Well, staff here finds that Friday noon is always 4:30 on Friday afternoon. And that means that somebody has to work over the weekend or whatever to get things chugging along.

So anybody have any difficulty if we just put those on the Thursdays, rather than the Wednesdays? Okay.

Let me ask you, Mr. Ross and you, Mr. Anderson, as you sit here today, do you think there is a possibility that you will be putting in evidence?

MR. ROSS: Yes, Mr. Chairman.

CHAIRMAN: Yes. Mr. Anderson?

MR. ANDERSON: At this point, no.

CHAIRMAN: Any other matters?

MR. HOYT: I just have the affidavits and publication to complete the file.

CHAIRMAN: Ms. Desmond?

MS. DESMOND: Mr. Chairman, Mr. Lawton just brought to my

attention that there might be a need for a second round of interrogatories with respect to the applicant. So you may want to amend the schedule to accommodate that?

CHAIRMAN: Sorry? I can't hear you, Ms. Desmond.

MS. DESMOND: Sorry.

CHAIRMAN: We dinosaurs are getting --

MS. DESMOND: There might be a need for a second round of interrogatories?

CHAIRMAN: Yes.

MS. DESMOND: And as a result you may want to amend the schedule to accommodate that from the applicant?

CHAIRMAN: Has Mr. Lawton any suggestions on dates? Actually, I think, Mr. Lawton, that's a good idea. And, you know, with the responses coming in here on the 15th of December, the probability of this panel getting together and getting a decision out before Christmas is pretty slim, I would suggest. So that if we had another of the interrogatories back and forth that were due in on the first week of January that probably would do it.

MR. HOYT: Is there any way we could try to cause that to happen before Christmas --

CHAIRMAN: Yes.

MR. HOYT: -- just to complete that piece of the process, so then when the Board comes back the first of January --

CHAIRMAN: Yes. All right. We are going to need a --

MR. HOYT: And we don't need that 15th. The way it is now, the 8th would have been the last day of this process.

CHAIRMAN: That's always provided that --

MR. HOYT: Right.

CHAIRMAN: -- there isn't evidence. But, okay, have you got a calendar there? All right. So as we sit here right now, the last comments come back in from -- let me see, interrogatories on Thursday the 18th of November and the responses by the applicant.

Well, frankly, I don't see why if there is a need for a second set of interrogatories it couldn't be on December the 2nd, with responses on December the 8th. And then written comments from EGNB --

MR. HOYT: Normally, it would be the intervenors first.

CHAIRMAN: So that would probably hit the -- let me say when did I say -- the 8th is when it would come -- the last interrogatory, right?

MR. HOYT: Yes.

CHAIRMAN: So written comments from the intervenors on the 13th with responses from EGNB on the 16th. Okay. So that would wrap it all up before Christmas.

MR. HOYT: Thanks very much.

CHAIRMAN: I hope somebody copied that down. Okay. Good.

Then if there is nothing else, why we will adjourn the matter, and it will be proceeded with in accordance with the schedule we have just discussed in a written fashion. Thank you.

(Adjourned)

Certified to be a true transcript

of the proceedings of this  
examination as recorded by me,  
to the best of my ability.

Reporter