



DECISION

IN THE MATTER of an application by Enbridge Gas New Brunswick Inc., to change its Small General Service Residential Oil, Small General Service Commercial, General Service, Contract General Service, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fueling distribution rates.

April 9 , 2008

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER OF an application by Enbridge Gas New Brunswick Inc., for approval of changes to its Small General Service Residential Oil, Small General Service Commercial, General Service, Contract General Service, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fueling distribution rates.

NEW BRUNSWICK ENERGY AND UTILITIES BOARD (“BOARD”):

CHAIRMAN: Raymond Gorman, Q.C.

VICE-CHAIRMAN: Cyril Johnston

MEMBERS: Edward McLean
Steve Toner

COUNSEL: Ellen Desmond

APPLICANT:

Enbridge Gas New Brunswick (“EGNB”) Len Hoyt, Q.C.

FORMAL INTERVENORS:

Public Intervenor Daniel Theriault

Informal Intervenor:

Competitive Energy Services

Department of Energy

On December 19, 2007 Enbridge Gas New Brunswick Inc. (“EGNB”) applied to the New Brunswick Energy and Utilities Board (the “Board”), pursuant to Sections 52 and 56 of the *Gas Distribution Act, 1999* (the “Act”), for an order or orders approving changes to its Small General Service Residential Oil (“SGSRO”), Small General Service Commercial (“SGSC”), General Service (“GS”), Contract General Service (“CGS”), Off Peak Service (“OPS”), Contract Large Volume Off Peak Service (“CLVOPS”) and Natural Gas Vehicle Fueling (“NGVF”) distribution rates.

EGNB is the general franchisee under a general franchise agreement dated August 31, 1999 (“GFA”) with the province of New Brunswick. The GFA (which was filed with the Board as part of EGNB’s 2000 rate application) authorizes EGNB to distribute natural gas and provide customer services in the Province of New Brunswick.

The 2000 rate application resulted in a decision, from the New Brunswick Board of Commissioners of Public Utilities dated June 23, 2000, wherein the Board approved EGNB’s market-based approach for setting its distribution rates during the development period. The market-based method sets delivery rates by calculating the cost of an alternative energy source, deducting the cost of the natural gas commodity and then setting delivery rates at an amount which provides the customer with savings in comparison to the energy alternative. The objective of EGNB’s market-based approach was to provide potential end use customers with the economic incentive to convert to, and continue to use, natural gas and to make use of the distribution system that EGNB committed to build in New Brunswick.

By Order of the Board dated January 3, 2008, EGNB was required to publish a Notice of the application in various New Brunswick newspapers. The Notice advised the public of a pre-hearing conference scheduled for the Board’s offices on Tuesday, February 5, 2008 and set out the procedure for parties to follow if they wished to intervene in the proceedings

Two parties indicated that they wished to become formal intervenors, namely the Public Intervenor and Competitive Energy Services (“CES”). CES subsequently requested a change in status to an informal intervenor and the Board approved this request. In addition, the New Brunswick Department of Energy was approved as an informal intervenor.

When the delivery of natural gas in New Brunswick by EGNB began in 2000, it was recognized that, given the significant capital investment required to begin operations and the limited number of customers that would initially be on the system, it would be impossible to charge rates based on the full cost of operation. This fact was recognized by both the Province of New Brunswick and EGNB, as signatories to the general franchise agreement, as an essential element and was accepted by the Board in its first rate setting decision for EGNB.

In its June 2000 decision, the Board stated that the use of a non-traditional regulatory framework would be appropriate during the period of time required to move from a “greenfield” situation to a more established natural gas industry. This period is referred to as the “development period”. Use of a non-traditional regulatory framework is permitted by Section 67(2) of the *Energy and Utilities Board Act* which states:

“67(2) in approving or fixing just and reasonable tolls and tariffs, the Board may adopt any other method or technique that it considers appropriate, including an alternative form of regulation”.

Up to the present time EGNB’s rates have been set using a market-based methodology. This method establishes rates that provide an incentive to convert to, and to continue to use, natural gas. As indicated earlier, these rates are not based on costs. EGNB has, based on the premise that a market-based method would be used to set rates during the “development period”, invested a significant amount to establish its gas distribution system in New Brunswick. The capital costs associated with this investment have been approved by the Board as legitimate expenses for regulatory purposes. Together with the

operating costs, these make up the total costs for EGNB. The revenues received by EGNB, from rates set using a market-based method, have not been sufficient to cover EGNB's total costs. The difference between the actual costs of providing service and the revenues received from the market-based rates are recorded in a deferral account. The Board has found that the use of such a method provides rates that are just and reasonable.

The Deferral Account, as approved by the Board, had a balance of \$102.2 million as at December 31, 2006. It is essential, for the long term future of the natural gas system in New Brunswick, that the deferral account not continue to grow. During the "development period" it is important that whenever circumstances permit, prices should be set so as to address this and other issues. EGNB has demonstrated that, if market conditions change, it will apply to lower its rates and the Board expects that EGNB will continue to do so. The Board finds that the use of a market-based method to set rates is appropriate during the "development period" and that it will provide the proper balance between the interests of EGNB's customers and EGNB's shareholders.

A public hearing was held on March 26-28, 2008. A number of important issues were raised by Mr. Strunk, a witness on behalf of the Public Intervenor concerning how rates should be established for EGNB. He commented on the customer class formations used by EGNB, the allowed return on equity and the need for cost of service studies to be performed. Mr. Strunk agreed that it would be more appropriate to consider these issues outside of this particular application. The Board believes that the process described in its decision of January 18, 2008 will allow interested parties to address these issues.

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 Board does not believe that the evidence in this proceeding is sufficient to make any changes to the formula, with one exception, that being, the length of the sample period used to develop the forecast for the price of oil.

The sample period selected can have a significant impact on the distribution rates charged by EGNB. The Board believes that this matter requires further discussion and that such a discussion will occur as part of a process described above.

The Board is satisfied that a one month period, using 21 days of data, is too short a sample period upon which to base maximum rates that will be in force for at least a year. The Board believes that the appropriate length of the sample period will be a subject of considerable discussion during the upcoming technical conference and generic hearing. For the purposes of this application, the Board will use a period of approximately two months – 42 days of market data – for the sample period.

EGNB proposed to reduce the target savings level to 10% from 15% for the CGS class. The Board will not approve such a change based on the fact that not enough evidence was provided to convince the Board that such a change is appropriate at this time. This decision is consistent with the Board's decision to not increase the target savings level to 15% from 10% as proposed by one of the intervenors in the hearing on EGNB's LFO rates. The appropriate target savings levels for the various classes will be discussed as part of the process discussed above.

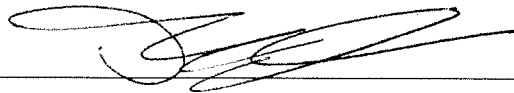
The Board has recalculated the delivery charges for the SGSRO, SGSC, GS, and CGS classes using the 42 days of forecast data included in the time period October 16 - December 12, 2008. Details of the calculations are provided in Appendices A, B and C.

The Board has also calculated the rates for the OPS, CLVOPS and NGVF classes using the rates calculated for the GS and CGS classes.

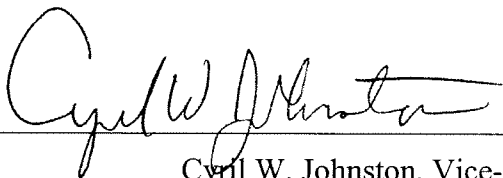
The Board approves the following rates to be effective immediately upon EGNB filing with the Board new schedules that indicate the approved rates pursuant to Section 56 of the Act.

| | |
|--------|-------------|
| SGSRO | \$9.7456/GJ |
| SGSC | \$9.3538/GJ |
| GS | \$9.6570/GJ |
| CGS | \$8.6291/GJ |
| OPS | \$7.2428/GJ |
| CLVOPS | \$6.4718/GJ |
| NGVF | \$9.6570/GJ |

Dated at the City of Saint John, New Brunswick this 9th day of April 2008



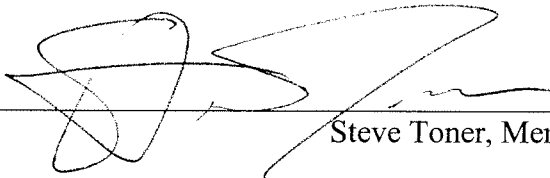
Raymond Gorman, Q.C., Chairman



Cyril W. Johnston, Vice-Chairman



Ed McLean, Member



Steve Toner, Member

CALCULATION of DISTRIBUTION RATES

| | <u>SGSRO</u> | <u>SGSC</u> | <u>GS</u> | <u>CGS</u> |
|--|--------------|-------------|-----------|------------|
| Retail oil price(\$/L) | .8259 | .7835 | .7476 | .7275 |
| Annual consumption (L) | 3,769 | 6,454 | 37,411 | 140,092 |
| Oil cost (\$) | 3,113 | 5,057 | 27,968 | 101,917 |
| Target savings (%) | 20 | 20 | 15 | 15 |
| Target savings (\$) | 623 | 1,011 | 4,195 | 15,288 |
| Annual gas cost | 2,490 | 4,046 | 23,773 | 86,629 |
| Annual natural gas Consumption (GJ) | 114 | 195 | 1,175 | 4,400 |
| Burner tip price (\$/GJ) | 21.84 | 20.75 | 20.23 | 19.69 |
| Commodity price (\$/GJ) | 10.41 | 10.41 | 10.41 | 10.41 |
| Distribution rate (\$/GJ) | 11.43 | 10.34 | 9.82 | 9.28 |
| Total distribution charge (\$) | 1,303 | 2,016 | 11,539 | 40,832 |
| Service charge (\$) | 192 | 192 | 192 | 0 |
| Demand charge (\$) | 0 | 0 | 0 | 2,864 |
| Distribution charge (\$) | 1,111 | 1,824 | 11,347 | 37,968 |
| Delivery charge (\$/GJ) | 9.7456 | 9.3538 | 9.6570 | 8.6291 |

OPS rate is 75% of GS rate $.75 * \$9.6570/\text{GJ} = \$7.2428/\text{GJ}$

CLVOPS rate is 75% of CGS rate $.75 * \$8.6291/\text{GJ} = \$6.4718/\text{GJ}$

NGVF rate equals the GS rate of \$9.6570/GJ

DERIVATION of RETAIL OIL PRICES

| | <u>SGSRO</u> | <u>SGSC</u> | <u>GS</u> | <u>CGS</u> |
|--|--------------|-------------|-----------|------------|
| WTI (\$US/bbl) | 88.028 | 88.028 | 88.028 | 88.028 |
| WTI (\$US/mmbtu) | 15.18 | 15.18 | 15.18 | 15.18 |
| Average refining ratio | 1.25 | 1.25 | 1.25 | 1.25 |
| No. 2 distillate at New York harbour (\$US/mmbtu) | 18.98 | 18.98 | 18.98 | 18.98 |
| Average market spread (\$US) | 3.82 | 2.64 | 1.65 | 1.10 |
| Retail oil price (\$US/mmbtu) | 22.80 | 21.62 | 20.63 | 20.08 |
| Average US/CDN Exchange rate | 1.01 | 1.01 | 1.01 | 1.01 |
| Retail oil price (\$CDN/mmbtu) | 22.57 | 21.41 | 20.43 | 19.88 |
| Retail oil price (\$CDN/L) | .8259 | .7835 | .7476 | .7275 |

Appendix C

| | WTI (\$US/bbl)* |
|--------------|-----------------|
| January | 91.5295 |
| February | 90.7357 |
| March | 90.0000 |
| April | 89.3310 |
| May | 88.6721 |
| June | 88.1224 |
| July | 87.5393 |
| August | 87.0164 |
| September | 86.5224 |
| October | 86.0502 |
| November | 85.6060 |
| December | <u>85.2126</u> |
| TOTAL | 1056.3376 |
| 2008 AVERAGE | 88.0281 |

* based on the 42 days of forecast data for the period October 16 – December 12, 2008.