



DECISION

**IN THE MATTER OF a Review of Enbridge Gas
New Brunswick Inc. Financial Results and
Natural Gas Sales at December 31, 2008**

November 13, 2009

New Brunswick Energy and Utilities Board

Introduction

This is a decision of the New Brunswick Energy and Utilities Board (Board) following a review of Enbridge Gas New Brunswick Limited Partnership's (EGNBLP) regulated financial results and natural gas sales for the period ending December 31, 2008.

The Board has been conducting annual reviews of the financial results since 2000. In addition the Board has conducted annual reviews of EGNBLP's natural gas purchase and sales since the distribution company was permitted to sell natural gas in 2003. These reviews have always been conducted with the assistance of independent consultants hired by the Board.

EGNBLP filed its regulatory financial results and gas sales report for the fiscal year ended December 31, 2008 in March, 2009.

With respect to the regulatory financial results, the Board retained the accounting firm of Teed Saunders Doyle (TSD) to provide an independent review. More specifically, TSD was instructed to conduct an audit in accordance with Section 5815 of the Canadian Institute of Chartered Accountants Handbook. TSD was further instructed to:

- determine if the 2008 financial results were in compliance with the *Gas Distribution Act 1999 (the Act)*, associated regulations and subsequent Board orders;
- review expenditures and comment on those expenditures that require further review;
- examine transactions with companies that are affiliated with EGNBLP (affiliate transactions) for both accuracy and reasonableness; and
- review the firm services agreement with EGNBLP and Maritime Northeast Pipeline to provide comment on the accuracy of the amount recorded by EGNBLP for this expense.

The review by TSD consisted primarily of enquiry, analytical procedures and discussion related to information supplied by EGNBLP. Beginning with the audited financial statements of EGNBLP,

TSD conducted a variance analysis reviewing capital assets, deferred charges, income statement, return on equity and affiliate transactions.

With respect to the purchase and sale of gas by EGNBLP, John Butler of J.C. Butler Management Ltd. (Butler) was retained to independently review the relevant transactions. Mr. Butler was retained to review the accounts to ensure that Enbridge Utility Gas (EUG) sold by EGNBLP as a standard offer was priced and displayed according to the *Gas Distributors Marketing Regulation* (GDMR). As well Butler was directed to:

- conduct a review to ensure that EGNBLP purchased gas in accordance with its gas purchasing plan;
- ensure that there was no subsidization between the sale of gas and the distribution of gas; and
- ensure that EGNBLP had followed Board approved policies with respect to the provision of customer information.

The Butler and TSD reports were filed on April 29, 2009 and May 4, 2009 respectively. It should be noted that EGNBLP filed amended regulatory financial results on May 5, 2009, followed by pre-filed evidence dated July 7, 2009. A Public Intervenor was appointed by the Attorney General to represent consumers in this matter. There were no other intervenors.

On April 30, 2009, the Board issued an order directing EGNBLP to notify all gas marketers and all customers that EGNBLP's 2008 regulatory statements, its gas sales report and the consultants' reports were available for review and comment. The Board also held a procedure conference on June 17, 2009 at which time the Board allowed interested parties to make submissions as to the appropriate procedure to be used in this review. Thereafter, the Board set a filing schedule that allowed for the filing of Information Requests (IRs), a Motions Day (if required), the filing of expert evidence and additional IRs.

A public hearing was held on September 14 and 15, 2009. David Charleson and Jamie LeBlanc testified on behalf of EGNBLP and Kurt Strunk testified on behalf of the Public Intervenor. Andrew Logan and Jeff Aucoin of TSD together with John Butler testified as well.

In light of the procedure that was established, the Board considers that intervenors had ample opportunity to raise issues or question any particular expense for which EGNBLP would be required to respond. No further review of the issues related to the 2008 results is required.

Prudence

The Board has recognized that EGNBLP has all of the relevant information in its possession and that any intervenor would require full and complete disclosure if attempting to challenge the reasonableness of any expense. As a result, the Board has required EGNBLP to provide all relevant information and to have such information tested through the IR process. Similarly, the TSD report and the Butler report may identify issues of concern, which are then the subject of IRs and subject to debate during the course of the hearing. In its decision of March 20, 2009 the Board offered as follows:

In future years, the Board will continue its annual review of both the regulatory financial results and the natural gas sales. EGNB will be required to provide sufficient documentation to assure the Board that its expenditures are prudent.

This disclosure of information, together with the public process that has been conducted in this instance, has allowed parties the opportunity to conduct a review of expenditures and formulate arguments of imprudence. Ultimately, the Board during this review process will determine, having considered all of the evidence and all of the arguments, if expenses are prudent.

Financial Matters

The Board will comment on some of the expense items and details of the regulatory financial results raised during this process.

Installation Services

EGNBLP witnesses testified that the company includes the revenues and costs related to installation services in the regulated financial results because it considers these services to be part of its regulated operations. The Board notes however that it does not regulate the rates charged by EGNBLP for these services. Installation services are subject to competition and the resulting market pressures. As a result the Board would be concerned if installation services were subsidized by the distribution operation. This would result in unfair competition and increases in the deferral account.

While the regulatory results presented by EGNBLP show that installation revenue exceeded the cost of installation by \$1,631,000, these costs only include the direct costs of equipment and associated labour. The costs do not, for example, include bad debt, interest on financing or an allocation of overhead. The Board must be assured that all costs related to installation services are properly identified and charged to installation services revenue. The Board therefore orders EGNBLP to file all costs related to installation services and how these costs were determined for 2008. These costs will be filed with the Board no later than 180 days from the date of this decision. Should the review of this information indicate that installation services are not covering their full costs the Board will make the appropriate adjustments.

Agent Billing and Collection

The Board has approved two services that EGNBLP offers to gas marketers. The first service is Agent Billing and Collection where EGNBLP bills its customers for the sale of natural gas sold by a gas marketer. As part of this service EGNBLP assumes the risk associated with non-payment. This service is offered in relation to customers in the SGS classes as well as GS and CGS. The service has not been approved for the HFO and LFO classes. The second service is Agent Billing

where EGNBLP, on behalf of a gas marketer, bills customers for the sale of natural gas. In this case EGNBLP does not assume the risk associated with non-payment. The rates charged for these services were approved by the Board.

In its report TSD commented that, given the amount of bad debt that EGNBLP assumes as a result of the Agent Billing and Collection service, the fee charged may not recoup the costs of the service provided. TSD recommends a review of the fee. EGNBLP witnesses testified that while a review of the fee may be warranted, they also believe that the rate is appropriate. EGNBLP suggests monitoring the costs and reviewing the fee at some point in the future.

The Board orders EGNBLP to analyze the revenues and costs associated with its Agent Billing and Collection Service for each rate class and provide a report to the Board within 180 days of the date of this decision.

With respect to Agent Billing and Collection, TSD reported that EGNBLP does not have signed Collection Service Agreements (CSAs). The Board orders EGNBLP to provide it with copies of the executed CSAs by December 31, 2009. Failure to do so will result in the disallowance of any bad debt related to the sale of the natural gas commodity from January 1, 2010 forward. Additionally EGNBLP is ordered to include the rates for these services and a description of the service in the Rates and Tariff Handbook immediately.

Finally the Board notes that the Agent Billing and Collection service results in bad debt being assumed by EGNBLP. In his testimony, Mr. LeBlanc stated that \$142,000 of the bad debt charged is related to bad debts from gas sales to the LFO class. However in the approval of rates for Agent Billing and Collection, the LFO and HFO classes are specifically excluded from collection. As a result bad debt related to LFO customers is not properly included in EGNBLP's regulatory results.

The Board finds that \$142,000 related to bad debt expenses from gas sales to the LFO class is disallowed and that amount will not be added to the deferral account. The Board further orders EGNBLP to provide a detailed breakdown of bad debt expenses in future annual reviews.

Allocation of Costs from Affiliates

EGNBLP is billed annually for costs allocated to it from its corporate head office. In 2008 this amounted to \$1.024 million. These bills are then allocated between EGNBLP's regulated and non-regulated business according to a cost allocation methodology originally developed in 2002. This methodology was not reviewed by this Board. The TSD report recommends reviewing this allocation methodology. EGNBLP believes the methodology remains appropriate but agrees that a review may be warranted. The Public Intervenor also supports a review of the allocation methodology.

The Board will accept the costs as presented in the 2008 financial results but orders EGNBLP to file a report that describes the current methodology and any proposed changes within 180 days of this decision.

Lead-Lag Study

Normally there is a period of time between when a company pays for services it requires and when it receives payment from its customers. This delay between spending money and receiving reimbursement requires working capital to finance the transactions. A lead-lag study examines the timing and amount of various transactions and based on that analysis makes recommendations concerning the amount of working capital that is necessary.

With respect to the lead-lag study the Board heard testimony that such a study may more accurately determine the amount of working capital required by the company. The Board also heard testimony that such a study would be cost-prohibitive. The Board directs EGNBLP to investigate the costs and benefits of such a study, along with any alternative methods that it thinks might be appropriate, and report back to the Board within 180 days of this decision.

Uniform System of Accounts

EGNBLP is required to keep a system of accounts as prescribed in the Gas Distribution Uniform Accounting Regulation (Regulation 99-62). TSD reported that the company does not comply

with this regulation in that the company does not keep its accounts in the manner set out in the regulation. EGNBLP witnesses testified that moving from the current system of accounts to those described in the regulation would be a significant cost in terms of allocation of resources.

The Board finds that non-compliance with the regulation has no impact on costs for 2008. Additionally the Board is aware that moving from the current system of accounts to the Uniform System of Accounts will be costly and, according to TSD, add little to the available information about the company's spending. The Board has the authority pursuant to Section 96(3) of the Act to exempt a gas distributor from the application of any Board regulation. Until further notice, the Board exempts EGNBLP from the application of Regulation 99-62 with respect to the keeping of accounts in accordance with the Uniform System of Accounts.

The Public Intervenor, during final argument, recommended the acceptance of all spending with the exception of the spending items highlighted in the TSD report. He suggested that those items be subject to further review. No further review is warranted. The very purpose of this proceeding is to review such items. Ample opportunity was afforded to intervenors to raise issues and challenge the prudence of expenditures. The Board set this proceeding to review such items and concludes that no further review is warranted. With the exception of items already discussed, the Board accepts, the May 5, 2009 amended regulatory financial results.

Issues related to the Sale of Natural Gas

Gas Purchase Plan

Section 5 of the GDMR requires that EGNBLP prepare a Gas Purchase Plan that indicates the estimated gas required together with a plan for purchasing that gas and pricing strategies. Such a plan was filed confidentially in 2003. Section 6(2)(d) of the GDMR requires that the Board satisfy itself that the gas purchased by EGNBLP was in accordance with the gas purchase plan. The Butler report concludes that EGNBLP was in compliance in 2008 but notes that the plan

contains no information on gas requirements beyond 2008. The Board directs EGNBLP to file an updated gas purchase plan prior to the next review.

Term and Price of the Standard Offer

EGNBLP sells gas subject to the conditions of the GDMR. This regulation dictates the terms and conditions by which gas is sold including how the price is set. Section 4(1) of the GDMR states that EGNBLP “shall make available an offering having a term of one year.” However, for convenience and efficiency, the company renews all contracts on April 1st. The consequence of this practice is that when customers first sign up for gas they are offered a contract that expires on April 1st. The Board finds that the term of the standard contract is actually one year and in order to join the system part way through the year customers sign up for the remaining portions of the one year contract.

The GDMR requires EGNBLP to calculate a price for its standard offer gas EUG for the coming 12 months. This price however is recalculated each month and is to be adjusted each month taking into account changes from the previous month. Butler states that, in practice, EGNBLP does not adjust the price for EUG unless the change is greater than 3%. Butler concludes that this is not in compliance with the regulation which requires changes regardless of the magnitude. EGNBLP acknowledges this and argues that the practice provides some rate stability for consumers and makes no significant difference. The Board finds the practice of only changing the price when the change is greater than 3% is in the public interest.

Alternative Offers

EGNBLP is prohibited from pricing its alternative offer product below the cost of supply. However it may price this product above the cost of supply. The Public Intervenor argued that in such a case excess revenue must not be added to the price gas variance account (PGVA) that is used for the Standard Offer Gas. Mr. Strunk testified that credits to the PGVA could artificially lower the cost of Standard Offer Gas thereby providing a cross-subsidy and potentially reducing competition. The Board agrees that the potential for cross subsidy exists. The Board prohibits

EGNBLP from depositing excess revenue from the Alternative Offer gas in the PGVA after January 1, 2010.

Cross-Subsidy

Section 6(2)(a) of the GDMR requires the Board to satisfy itself that “the gas distributor is not cross-subsidizing between the sale of gas and the distribution of gas”. Butler in conjunction with TSD investigated the EGNBLP and EUG accounts. Butler concluded that with respect to EGNBLP activities in 2008, no evidence of cross-subsidy was found. The Board finds that EGNBLP was in compliance with Section 6(2)(a) of the GDMR.

Firewall Policy

In 2004, the Board adopted a firewall policy to protect the personal information of customers and ensure EGNBLP did not use its position as a seller of gas and the distributor of gas to reduce competition in the market for natural gas sales. Butler found no evidence that customer information was being used improperly but concluded that because of a change in company policy to promote competitors marketing gas, that employees were unaware the firewall policy existed or its purpose. Additionally Butler concluded that with respect to the conditions set out by the Board for the firewall policy, the company was not technically in compliance. Specifically the Board originally ordered that the firewall policy be placed on the website. Butler found that the policy is no longer on the website.

The Board believes that the spirit and intent of the policy is critical to ensure that customer information is not used improperly. As a result the Board directs EGNBLP to ensure those employees with access to customer information are aware of the firewall policy and its purpose. The Board will no longer require the firewall policy to be posted on the website.

Procedural Issues

As a result of this review the Board has determined that changes are warranted. The Board orders EGNBLP to file the audited financial statements of the Enbridge Gas New Brunswick Limited Partnership as part of the 2009 annual review. The financial statements of the partnership are to be accompanied by the regulatory statements and details of the adjustments made to move from the partnership statements to the regulatory statements. The company will file both sets of statements and the gas sales report with the Board on or before March 15th. .

Conclusion

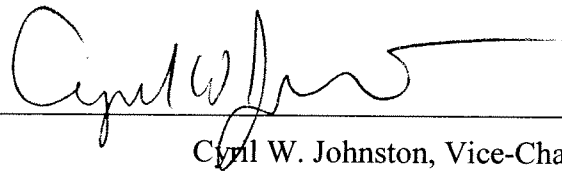
The Board finds that with the exception of \$142,000 in bad debt, the expenditures of EGNBLP as detailed in the financial results of May 5, 2009 were prudent and approves the addition of \$14,827,000 (\$14,969,000 - \$142,000) to the deferral account.

In addition the Board is satisfied that, with respect to the sale of gas, EGNBLP has met the requirements set out in Section 6(2) of the Gas Marketers Distribution Regulation for 2008 and was in compliance with relevant Board orders.

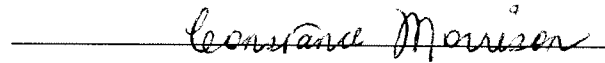
Dated at the City of Saint John, New Brunswick this 13th day of *November* 2009.



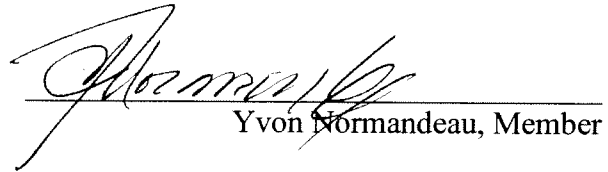
Raymond Gorman, Q.C., Chairman



Cyril W. Johnston, Vice-Chairman



Constance Morrison, Member



Yvon Normandeau, Member