

## **Schedule 5**

### **Letter to Chair of The Board of Commissioners of Public Utilities**

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Mr. David C. Nicholson  
Chairman  
Board of Commissioners of Public Utilities  
P.O. Box 5001  
Saint John, New Brunswick  
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Dear Mr. Nicholson:

**Re: Follow-up to our meeting of May 26, 2003**

Thank you for meeting with us yesterday to discuss the important changes that are taking place in the natural gas industry and their impact on the role of the Board of Commissioners of Public Utilities (“Board”).

More specifically we discussed changes to the Gas Distribution Act, 1999 (“Act”) proclaimed on May 22, 2003 that allow Enbridge Gas New Brunswick (“EGNB”) to sell natural gas (as per regulation) and offer customer services without having to get prices approved by the Board. This recognizes the competitive nature of these activities and the need to be able to offer competitive and responsive pricing.

These changes to the Act were introduced as a result of the obvious failure of the “unbundled” model in a greenfield market such as New Brunswick’s. The “unbundled” model has frustrated the marketplace and failed to deliver a value proposition required to get customers to switch to natural gas. Worse yet, many of those who have switched to natural gas have had a far from positive experience.

As a result of the slower than expected development of the industry, EGNB now forecasts a peak deferral, i.e. shortfall between revenues and costs during the Development Period, of approximately \$70 million. This is significantly higher than the original estimate of \$13 million and again highlights the considerable risks faced by EGNB.

EGNB’s involvement in the sale of natural gas and retail services (sale, installation and servicing of equipment) must be viewed in this context, i.e. these activities are part of the “utility” and their sole objective is to help develop and sustain the industry in order to improve the viability of the gas distribution activity. In other words, their sole function is to help “fill the pipes”. As a

result, EGNB embarks in these activities with the clear expectation that any surplus or shortfall resulting from these activities will be integrated with the results of the distribution activity, i.e. added to or deducted from the deferral account. From the investors' perspective who have already invested in excess of \$100 Million in order to develop a brand new industry from scratch, the purpose of these activities is to reduce their risk exposure not increase it. Naturally, EGNB will keep separate accounting records that will allow it to report separately on these activities.

We must remember that natural gas is still in its infancy in the Maritimes. Like I said during our meeting, what is unique with the Maritimes is that the natural gas industry is in its infancy<sup>1</sup> from the wellhead to the burner tip. This significantly contributes to the challenges faced by EGNB and other industry players. In particular, natural gas has a negligible market share and must compete with well established, and often bundled and less regulated, energy sources. As a result, EGNB does not have any of the market power typically associated with public utilities (see attached study prepared by Dr. Pierre-Marcel Desjardins). This reality should give the Board comfort that EGNB's business practices will need to be conducive to attracting and keeping customers. This naturally includes fair and equitable treatment of its business partners that are an integral part of the longer-term sustainability of the industry.

The Act does provide the Board with broad oversight powers. However, EGNB respectfully submits that due to the competitive nature of the sale of gas and retail services, regulatory oversight should be limited to specifically what is in the new regulation (see below). In addition, EGNB should be required to attempt to resolve issues with customers or industry participants dealing with the sale of gas and the provision of retail services rather than the Board getting involved. In this regard, the Board's role should be similar to the role it plays vis-à-vis Gas Marketers.

The Act deals differently with the sale of gas than it does with customer services (or retail services). EGNB is allowed to sell gas as per the newly adopted regulation. EGNB respectfully submits that any terms or conditions that the Province felt necessary to impose on EGNB in this regard are either contained in the Act or in the said regulation. Specific relevant provisions of the regulation are:

- EGNB may enter into a contract for the sale of gas on or before September 1, 2008;
- a contract for the sale of gas shall not exceed one year;
- there is a specific section that deals with the price of gas and the Board is to satisfy itself that the price charged by EGNB for gas was properly calculated;
- there are specific pricing transparency provisions;
- the Board may determine the manner in which the price shall be publicized;
- EGNB needs to file with the Board a Gas Purchase Plan within six months and the Board is to satisfy itself that EGNB has purchased gas in accordance with that plan;
- the price of gas will be shown separately on the customer's invoice;
- EGNB must indicate the expiry date of each one year contract and advise customers of all their gas supplier options prior to the expiry date;

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<sup>1</sup> Mr. Pierre Alvarez, the President of the Canadian Association of Petroleum Producers ("CAPP") used the expression "embryonic" in a recent presentation to describe the state of the natural gas industry in the Maritimes.

- on or before December 31, 2007 EGNB must file with the Board a Customer Management Proposal presenting its proposed exit strategy for when it can no longer sell gas;
- the Board may order the transfer of EGNB's customers for the sale of gas on or before September 1, 2009.

As for customer services, the new regulation limits the role of the Board to reviewing the financial information to satisfy itself that "the prices charged by the gas distributor for gas and customer services are reasonable and sufficiently competitive to protect the interests of the customers." EGNB respectfully submits that the Province considers customer services to be competitive in nature, and as such require minimum regulatory oversight. This is consistent with the definition of customer service under the Act. "Customer services" by its definition "is a service that is not a natural monopoly".

EGNB must file a financial report with the Board before the end of March of each year dealing separately with revenues and expenses from the sale of gas, the provision of customer services and the distribution of gas.

Under section 59 of the Act, the Board may regulate the price charged by EGNB for gas or a customer service if in its opinion the price is not subject to effective competition to protect customers' interests.

In addition to the above, section 69(a) of the Act states that EGNB must apply the terms and conditions of its tariff and other tariff provisions related to the distribution of gas and provision of customer services without unjust discrimination and without regard to the supplier of gas. EGNB already has well established business practices of sharing information with marketers and other market participants and treating them fairly. EGNB's Permit to Construct requires it to provide all gas marketers with its annual construction plans prior to the beginning of each year.

At our meeting, a comment was made that there could be a perceived injustice due to the fact that Gas Marketers are bound by a Code of Conduct while such a code does not exist for the sale of gas by the utility. Typically Codes of Conduct for Gas Marketers originated from concerns regarding questionable business practices, commonly referred to as "trunk slamming". EGNB respectfully submits that all of its activities, including the sale of gas and retail services, are already subject to the highest standards. For example, the General Franchise Agreement provides that EGNB must run its business in a "first class" manner (section 5.1). Unlike Gas Marketers, EGNB's overall performance will be reviewed by the Board at least every seventh year. The consequences of EGNB not meeting its obligations could be significant (including the possible termination of the General Franchise Agreement and the drawdown of a \$10 Million letter of credit). This should provide more than enough comfort to the Board that EGNB will apply the same care, ethics, professionalism and long term view in the sale of gas and the provision of retail services as it does in its more traditional distribution activities.

We also discussed yesterday our plans to introduce shortly an Authorized Dealer network. This is an important component of our strategy to accelerate the development of the industry. An Authorized Dealer network will allow us to work closely with those heating contractors who are willing to develop their skills and knowledge to meet the minimum standards set by EGNB. The

objective is to bring productivity levels, quality of workmanship and selling and technical skills up to the industry standards in other jurisdictions where natural gas is well established. An Authorized Dealer network is truly based on the win-win concept. EGNB wins by having aligned and competent contractors. Contractors win by obtaining support from the utility to grow their business in a sustainable manner. Customers win by having access to more consistent value added services. EGNB's longer-term vision is that it will be able to reduce its own participation in retail services as the industry is able to take over.

Again thank you for meeting with us yesterday. Such meetings are always of value, but even more so in times of change. We strongly encourage ongoing dialogue as we continue to break new ground. We would be pleased to meet with you and/or your staff at your earliest convenience to pursue yesterday's discussion. In particular, we would be pleased to further explore with you your idea of having the Board and/or the Province play an enhanced role in educating the public regarding the Board's new role as a result of the changes made to the industry model.

Yours very truly,

Rock Marois  
General Manager

Enclosure