



## DECISION

IN THE MATTER OF a Motion by New Brunswick Power  
Distribution and Customer Service Corporation for an Order with  
Respect to Certain Studies and Information Requests Previously  
Ordered by the Board of Commissioners of Public Utilities

May 31, 2007

New Brunswick Energy and Utilities Board

IN THE MATTER OF an application by New Brunswick Power Distribution and Customer Service Corporation (DISCO) for an Order with respect to certain studies and information requests previously ordered by the Board of Commissioners of Public Utilities

**PARTICIPANTS**

**CHAIRMAN:** Raymond Gorman, Q.C.  
**VICE-CHAIRMAN** Cyril Johnston

**MEMBERS:** Edward McLean  
Roger McKenzie

**BOARD STAFF** Ellen Desmond  
Doug Goss  
John Lawton  
Lorraine Légère  
David Young

**APPLICANT:**

New Brunswick Power Distribution and Customer Service Corporation  
Terry Morrison  
Nicole Poirier  
Neil Larlee  
Sharon MacFarlane

**FORMAL INTERVENORS:**

Canadian Manufacturers and Exporters, N. B. Division  
Gary Lawson  
David Plante

Enbridge Gas New Brunswick  
David MacDougall  
Dave Charleson

FPS Canada Inc.

Charles Baird  
Ron Beaulieu  
Jennifer Little  
Ross Gilliland

JD Irving Pulp and Paper Group

Andrew Booker  
Wayne Wolfe

Utilities Municipal

Peter Zed Q.C.  
Dana Young  
Eric Marr

Vibrant Communities Saint John

Kurt Peacock

Public Intervenor

Daniel Theriault  
Robert O'Rourke

**Informal Intervenors:**

Flakeboard Company Limited

Barry Gallant

Self-represented

Terry MacDonald

## DECISION

As the result of previous hearings before the New Brunswick Board of Commissioners of Public Utilities (the “PUB”), the New Brunswick Power Distribution and Customer Service Corporation (“DISCO, or the Applicant”) was ordered to undertake a number of studies and comply with a number of directives, hereinafter referred to as the outstanding matters. The majority of these orders arose from the Cost Allocation and Rate Design (“CARD”) Ruling of the PUB dated December 21, 2005 and the Rate Decision of the PUB dated June 19, 2006.

A number of events have occurred since these orders were made. Most significantly, an Order-in-Council was issued pursuant to section 105 of the *Electricity Act S.N.B. c. E-4.6* on June 23, 2006 (Exhibit A-3). This Order-in-Council had a significant impact on the rate decision of the PUB and the rates to be implemented by DISCO.

On July 10, 2006, the then Minister of Energy sent a letter advising DISCO “to take no action on the directives and orders of the Public Utilities Board as set out in the decision of June 19<sup>th</sup>, 2006 until such time as DISCO receives direction to proceed from the new Energy and Utilities Board” (Exhibit A-6).

The New Brunswick Energy and Utilities Board (the “Board”) was established on February 1<sup>st</sup>, 2007. Following discussions with Board staff, DISCO filed a motion with the intent of seeking direction with respect to the outstanding matters (Exhibit A-2).

At the outset, it should be noted that DISCO initiated this motion and took no issue with the Board’s jurisdiction to deal with this matter. Similarly, no intervenor took issue with the Board’s jurisdiction or identified any concerns in this regard. Moreover, sections 3, 43 and 90 of the *Energy and Utilities Board Act S.N.B. c. E-9.18* provide as follows:

### ***Continuation of Board***

3. The board known as the Board of Commissioners of Public Utilities established under section 2 of the *Public Utilities Act*, chapter P-27 of the

Revised Statutes, 1973, is continued as the New Brunswick Energy and Utilities Board.

***Board may review, rescind or vary order***

43. The Board may review, rescind or vary any order made by it.

***Decisions, orders, etc.***

90. Every decision, order, licence, permit, rule, regulation and direction made or issued by the Board of Commissioners of Public Utilities that was in force immediately before the commencement of this section continues in force as if it were a decision, order, licence, permit, rule, regulation or direction made or issued by the New Brunswick Energy and Utilities Board.

In light of these legislative provisions, it is clear that the PUB is now continued as the Energy and Utilities Board and as such the Board has the authority to review, rescind or vary any order made either by it or by the then existing PUB.

The purpose of this motion was to determine the status of these outstanding matters and whether a variation was required.

In its motion, DISCO identified twenty-four matters that required address. For ease of reference and continuity, this decision will adopt the identification system used by DISCO in its motion.

## **1 Classification of Distribution Costs**

*DISCO is ordered to classify its distribution costs as either demand or customer-related in a manner consistent with the April 1992 decision. DISCO is directed to file with the Board detailed information on the results of using various methods to classify its distribution costs within 12 months of the date of this ruling. This review should clearly address the use of capacity factor in classifying costs as either demand or customer-related. (p. 25 CARD ruling)*

## **2 Residential Usage Profiles and Classification**

*DISCO is ordered to do research on the residential class to identify those customers whose usage profiles are inconsistent with a normal residential customer. DISCO is also to develop proposals for how those customers should be reclassified and the impacts of reclassification. This information is to be filed with the Board within 12 months of the date of this ruling. (p. 30 CARD ruling)*

## **3. Characteristics of GS I and GS II Customers**

*We direct Disco to do a study on the usage profiles of the GS I and GS II customers and to file it with the Board within one year of the date of this ruling. (p. 31 Rate decision).*

## **4 Interruptible Rate Option for all Classes**

*There was discussion on whether an interruptible option should be made available to other customer classes. The Board considers that equity dictates that this option should be available but that there are various factors that must be considered. We therefore direct Disco to submit a study within one year of the date of this ruling on the costs and issues associated with providing this option. (p. 33 CARD ruling).*

## **5 Study Maximum Amount of Surplus/Interruptible Power for Customer Purchase Energy**

*If there were a limit on the amount of interruptible energy that each customer could purchase, it would reduce the impact that would occur if one or more customers switched to firm service. We therefore direct Disco to do a study on the maximum amount of interruptible/surplus energy that should be available to each customer and to file it with the Board within 12 months of the date of this ruling. (p. 33 Rate decision).*

**6 Balance in the Demand/Energy Charge**

*Dr. Sollows: I understand that and I guess what I'm looking -- asking and if you haven't done it I'm just wondering if you could do it and report at some future date, not as an undertaking in this hearing -- undertake the analysis to see whether you have struck the right balance in the demand charge and the energy charge in order to eliminate any -- to the degree that you can with the rate structure you have eliminate any subsidy from the high load factor customers to the low load factor customers, or to limit that subsidy to an appropriate value, if you think it should be one? (p. 5792 transcript)*

**7 Allocation of CTs and Emergency Purchase**

*The Board directs DISCO to file a study at the time of the next general rate application that provides an analysis of whether peak demand or energy is the most appropriate method to use in allocating these costs (for combustion turbines and emergency power purchases). (p.65 Rate decision)*

**8 Interruptible and Surplus products**

*The Board therefore orders DISCO to review the provisions of its tariff relating to surplus and interruptible service to ensure that they provide adequate and appropriate benefits and protection to firm service customers. (p. 63 Rate decision)*

With respect to each of these eight matters, DISCO submitted to the Board that consultants have been retained and studies are currently in progress. DISCO submits that the reports will be filed as soon as possible but no later than July 1, 2007. The Board notes that July 1 is not only a statutory holiday, but falls on a Sunday. The Board considers July 3, 2007 an appropriate filing date.

It was submitted by several intervenors that the studies and information would have to be available to them, at the same time it is filed with the Board so that they may have sufficient time to review the material and prepare for the upcoming hearing.

**Having reviewed matters one to eight, the Board varies the orders and directives so as to require DISCO to comply with them by July 3, 2007. Further the Board orders the Applicant to make available to the intervenors, any reports as they become available.**

## 9 Seasonal Rates

*The Board considers that seasonal rates may be an appropriate concept for New Brunswick but that implementation is not desirable at this time because of the possible customer impacts together with the other changes that are occurring. We direct DISCO to provide a proposal for seasonal rates at the time of the next review of rates. (p. 34 CARD ruling)*

DISCO has requested that the proposal be deferred to the next review of rates after the 2007/2008 fiscal year.

EGNB has requested that DISCO be directed to file the proposal in connection with the review of rates for the 2007/2008 year. They stated that the proposal was intended to be a rate design that would segregate rates between winter, summer and shoulder seasons. The Board considers this to be a reasonable interpretation of “proposal”.

The Public Intervenor submitted that DISCO should comply with this order as stated.

This difference of opinion is over the timing of the proposal. The Board believes that this matter raises a more fundamental issue; the appropriateness of directing DISCO to propose specific rates.

Regulated monopolies have an obligation to provide service. It is management’s responsibility to organize the utility in a cost effective and efficient manner so as to provide service of a reasonable quality at the lowest cost possible.

It is also the responsibility of management to develop and implement prices for its services that recover the costs of providing those services in a fair and reasonable manner.

Management has an obligation to present and to defend both its cost to provide service and the specific prices that it proposes to charge each time that it requests changes to its prices.



Interested parties have an opportunity to examine the proposals put forward by the utility and to test their reasonableness in a public hearing. Parties also have the right to provide their own evidence on any relevant topic.

The regulator has the obligation to carefully review all of the proposals and evidence prior to making its decision.

Generally, the utility is permitted to present its view on the costs necessary to provide service and to defend such costs as best it can. It is also allowed to propose the specific prices that it considers to be the most appropriate and to defend those proposals.

A regulator should only require a utility to include certain specific rates in their evidence if the regulator is certain that it will approve some form of those specific rates in its decision. Otherwise, there is a significant risk that the rate design phase of the hearing will need to be repeated. This is because all of the proposed rates form a package that is intended to jointly recover the costs of operation. If a significant change is made to one element of the package there will be a need to make other changes in order to compensate.

Given the significant length of time since this directive was issued and the events that have occurred during that time this Board does not possess any such certainty that seasonal rates will be found to be appropriate for 2007/2008. The Board will only make a decision on seasonal rates after having the benefit of a public examination of the issues that are involved.

To order DISCO to file a proposal on seasonal rates for the upcoming hearing may be interpreted as saying that the Board is convinced that seasonal rates are appropriate for 2007/2008 and that it will order their implementation.

**For these reasons, the Board will not require DISCO to comply with this directive and rescinds it.**

**This decision does not preclude any party, including DISCO, from presenting evidence on seasonal rates at the public hearing on the review of rates for 2007/2008. The decision only removes the obligation of DISCO to do so.**

## **10 Standby-Rate**

*The Board considers that a standby rate may well promote the development of co-generation consistent with the goals of the White Paper. We therefore order DISCO to develop a proposal for a standby rate for co-generators and to include it in the evidence for its next rate application. (p. 35 CARD decision)*

This matter raises the same issues as did the matter of seasonal rates and the Board has reached the same conclusion for the same reasons.

**The Board will not require DISCO to comply with this order and rescinds it.**

**This decision does not preclude any party, including DISCO, from presenting evidence on a standby rate for co-generators at the public hearing on the review of rates for 2007/2008. It simply removes the obligation of DISCO to do so.**

## 11 Costs Caused by Miscellaneous Services

*We also direct the applicant, at the time of the next review of the cost allocation methodology, to provide whatever information is available concerning the costs caused by its providing each of the various miscellaneous services. (p.28 CARD Ruling)*

DISCO stated that it had been directed to file information concerning its costs, caused by providing various miscellaneous services, at the time of filing for the next review of its cost allocation methodology. The Applicant advised that it had retained a consultant who was working on this matter.

This Board noted Exhibit A-2 indicated that the available information would be provided in the next rate application and asked DISCO to explain what was meant by that comment. DISCO replied that this Board had not ruled on whether there is going to be a cost allocation methodology review and generic hearing in connection with the upcoming rate case.

DISCO stated that it was just making the point that the information was not really due until another CARD hearing was held. It continued and stated that in any event, it would file the information by July 1, 2007.

None of the intervenors commented specifically on this issue.

**Having reviewed the matter, the Board varies the directive so that the costing information on miscellaneous services is to be filed with the Board by July 3, 2007.**

## 12 Residential declining block

*The Board has analyzed the likely impacts and believes that it is appropriate to eliminate the declining rate block in three stages. Each stage should bring the declining rate block one-third of the way to the rate for the first block. The first adjustment should occur as part of the rate changes for the 2006/07 year. The remaining two adjustments can occur at the time of future general rate changes but the Board orders that the process must be completed within five years of this date (p. 29 CARD decision)*

DISCO has requested a one year extension to this order.

EGNB submitted that the original timetable ordered by the Board should not be changed and that the process should be completed by December 21, 2010.

Vibrant Communitites Saint John supported the prompt removal of the declining block rate.

The Public Intervenor submitted that the order should stand as is.

**The Board considers, given that the timeframe set in the earlier decision required completion by December 2010, DISCO is not in a position of non-compliance at this time.**

**The Board expects that the residential declining block will be a topic of considerable discussion at the public hearing to review the rates for 2007/2008. The Board therefore does not consider it appropriate to vary the order at this time.**

### **13 Capital Justification Criteria Manual**

*The Board orders DISCO to compile a comprehensive Capital Justification Criteria Manual and file it with the Board within six months of the date of this decision. (p.36 Rate Decision)*

The Board's rate decision ordered this information to be filed by December 19, 2006.

DISCO stated that the manual was being compiled and that it would be filed by July 1<sup>st</sup>.

None of the intervenors made any specific comments with respect to the outstanding manual.

**Having reviewed the matter, the Board varies this order to require DISCO to file the Capital Justification Criteria manual by July 3, 2007.**

#### **14 Amortization Study**

*The Board directs DISCO to complete a study on its amortization practices and that it be filed with the Board within six months of the date of this decision. (p. 36 of the Rate decision)*

With respect to this item, DISCO confirmed that a study on amortization practices was completed by Gannett Flemming and filed with the Board on April 16<sup>th</sup>, 2007. No comments were offered by intervenors on this matter.

**The Board varies this directive to accept a filing date of April 16, 2007.**

## 15 Capital Expenditures

*DISCO is therefore directed to provide to the Board, on or before October 1, 2006, for the fiscal year 2007-2008 and annually thereafter, a statement outlining in detail its proposed capital expenditures. In addition, the Board directs DISCO to provide the same information in respect of GENCO's proposed capital expenditures for the same periods to the extent that they have been disclosed to DISCO by GENCO.  
(p.100 Rate Decision)*

DISCO stated that the information on its capital expenditures and those of GENCO's proposed capital expenditures that would impact on DISCO through the PPA, were filed as part of its initial evidence.

**The Board acknowledges that DISCO filed supporting evidence for an application to approve a change to its charges, rates and tolls on April 19, 2007. An attachment to Section 4, Volume 1 of that evidence provides information titled Capital Expenditures.**

**Having reviewed the matter, the Board varies the directive to accept the filing date of April 19, 2007 with respect to the information for the fiscal year 2007-2008.**



**16. Energy Efficiency & DSM**

*The Board directs DISCO to undertake a review of Canadian utilities' energy efficiency and DSM programs including evaluation methods used to identify the cost benefits. This review is to be filed with the Board within six months of the date of this decision. (p. 32 Rate decision)*

The Applicant has indicated that it is conducting this study using DISCO staff and that the report will be completed and filed with the Board by July 1, 2007.

**Having reviewed the matter, the Board varies the directive to require DISCO to file the required report by July 3, 2007. Further, the Board orders the Applicant to make available to the intervenors, the report when it is available.**

## 17 Credit and Collections

*Initiatives should be undertaken to find ways to evaluate staffing levels. Modifications of the collection policies and procedures could reduce payment problems and reduce the associated costs that must be recovered from customers.*

*DISCO is directed to undertake an investigation into current utility practices relating to credit and collections. It is to file its findings prior to the hearing on Customer Service and Policies. The Board directs DISCO to discuss this matter with Board staff prior to undertaking this investigation. (p.34 Rate Decision)*

The PUB's hearing into DISCO's Customer Service Policies commenced on December 4, 2006 with its decision rendered on January 29, 2007.

Representatives from DISCO met with Board staff on April 5, 2007 to discuss this matter. At the motions hearing on May 15, 2007 DISCO stated that Ernst & Young, an independent consulting firm, was preparing a report on current utility practices. It expects that the report will be filed by July 1, 2007.

None of the intervenors made any comments with respect to this matter.

**Having reviewed the matter, the Board varies the directive to require DISCO to file the report on utility practices relating to credit and collections by July 3, 2007.**

## 18 Payments in Lieu of Taxes

*The Board orders DISCO to formulate a strategy that would utilize all aspects of the applicable income tax acts in order to minimize PILT. (p.41 Rate Decision)*

DISCO stated that it was important to note that the Board had not ordered that the strategy be completed by a particular time. The Applicant also stated that considerable work had been done which essentially would allow it to determine if the difference between the way it currently calculates Payments in Lieu of Taxes (PILT) and the method that is more in line with the income tax acts, would produce any material differences.

DISCO went on to state that once the differences, if any, are identified, then it could properly consider whether it would be cost effective to change from its present methodology. As well, DISCO stated that it had retained an outside consultant to review the work that it now anticipates to be complete in approximately three months.

In Exhibit A-2, DISCO indicates that it is exploring with its external consultants the cost/benefit of efforts to incorporate tax minimization opportunities into its revenue requirement. Further, that it and the Electric Finance Corporation believe that the cost outweighs the benefit to the ratepayer and to DISCO.

The CME stated that it would encourage the utility to proceed on an expeditious basis so as to allow the Board to consider it if at all possible in the upcoming rate application. JD Irving Pulp and Paper Group agreed with the CME's position. The Public Intervenor submitted that the order of the previous Board should be complied with.

The topic of PILT was discussed at length during the last rate hearing and in the PUB's decision. The Board is concerned that DISCO may be misinterpreting the order by preparing only a cost/benefit analysis and not a strategy that would utilize all aspects of the applicable income tax acts to reduce PILT.

**The Board will review DISCO's estimate for PILT in the upcoming rate hearing and in order to assist this review, the Board varies the directive to require DISCO to file this strategy by August 27, 2007. Parties will be able to submit interrogatories on this strategy at the time of the second set of interrogatories.**

## **19 Universal System of Accounts**

*The Board believes that parties would have been better served had a USOA been available. The Board is aware that the Canadian Electrical Association is developing, with its members, a USOA for use by its members. The Board will require DISCO to implement a USOA. DISCO is ordered to work with Board staff to propose an appropriate USOA and a time period for its implementation. (p. 35 Rate decision).*

Representatives from DISCO met with Board staff on April 5, 2007 to discuss this matter. In Exhibit A-4, DISCO outlines the actions it has taken in addition to the meeting with Board staff and recommends the following:

*It is proposed that NB Power and the EUB continue to monitor progress in this area. Periodic meetings should be held between the parties to assess the Canadian progress to date and appropriate timing of any implementation to ensure the requirements and expectation of all parties are met.*

**The Board expects such consultation to continue.**

## 20 Variance/Deferral Account

*Accordingly, the Board directs DISCO to file with the Board a proposal outlining how such an account could be established together with suggested terms and conditions for its operation at the time DISCO next makes application to the Board for approval of rates and revenues. (p. 98-99 Rate decision)*

DISCO stated that it intends, upon the conclusion of the present rate application, to apply to the Board for approval of a hydro adjustment account. DISCO, based on that intention, asked for a deferral of this matter until the conclusion of the present rate application.

The CME stated that the matter should be dealt with quickly and that they would prefer to deal with it in the present rate application.

The J.D. Irving Pulp and Paper Group supported the position of the CME.

The Public Intervenor strongly encouraged the Board to require DISCO to comply with the original order.

DISCO, in response, stated that the hydro adjustment has no impact on rates because the rates are always based on average water flows.

The Board considers that this matter is similar in nature to the matter of seasonal rates. The Board has reached the same conclusion for the same reasons.

**The Board therefore will not require DISCO to comply with this directive and rescinds it.**

**This decision does not preclude any party, including DISCO, from presenting evidence on a variance/deferral account at the public hearing on the review of rates for 2007/2008. It only removes the obligation of DISCO to do so.**

## 21 Pole Attachment Rates

*The Board directs DISCO to undertake a study into its poles, equipment and related costs that will be used to review attachment rates at a future hearing. DISCO is instructed to consult with Board staff, Rogers and the Municipals to determine the scope of the study. (p. 29 Rate Decision)*

In Exhibit A-5 the Applicant's Director of Engineering and Operations wrote to the Board requesting a meeting to establish the parameters for the Board-ordered study.

The Applicant notes that it has failed to notify either Rogers or the Municipal Utilities of its meeting request. However, the Board believes the company is rectifying this matter.

Utilities Municipal stated that they believed the matter should proceed with dispatch.

**The Board continues to believe this study is important and therefore varies the directive to require DISCO to complete it by April 30, 2008.**

## 22 RSP Manual updates

*... the Board orders DISCO to immediately update the manual to include the appropriate pole attachment rate.*

*... despite this written policy, the DISCO panel testified that DISCO does not charge a customer if DISCO's equipment is damaged or destroyed for reasons beyond the customer's control. As such, the Board orders DISCO to amend this portion of the manual to reflect its current practice and to affirm, in writing, that customers would not be expected to make such payment. (p. 4 Customer Service Policy decision)*

The Applicant informed the Board that this has been completed. The Board was notified of the changes in the Rates, Schedules and Policies Manual in March 2007.

No intervenors commented on this matter.

**The Board considers these orders to be complied with.**



## 23 General Service Rate I and II

*...the Board directs that any existing or new customer who uses electricity for purposes not specifically covered under the residential, small and large industrial, street lighting or unmetered categories may choose either class of General Service. DISCO is further ordered to inform all existing General Service customers of their right to switch from General Service I to General Service II or vice versa. (p. 60 Rate decision)*

DISCO submitted that the Lieutenant Governor-in-Council set aside this order when in Order in Council 2006-242 dated June 23, 2006 (Exhibit A-3). As a result the company did not follow the directive from the Board.

EGNB agreed with this interpretation. No other comments on this matter were received.

**The Board finds that Order-In-Council 2006-242 has rescinded this order. This does not preclude any party, including DISCO, from presenting evidence on General Service Rates I and II at the public hearing on the review of rates for 2007/2008.**

## 24 Interruptible Adder

*The Board affirms its ruling of December 21, 2005 and orders that DISCO's surplus and interruptible rates be modified to include an additional contribution to fixed costs of \$1.60 per MWh. This total contribution is to be credited to the rate class to which the sales are made. DISCO is directed to:*

- 1. Calculate the additional revenue that arises from this order and adjust the revenue requirements for relevant classes downwards from the values given in Table C,*
- 2. Adjust the approved demand and energy prices accordingly, and*
- 3. Submit the calculations and adjustments to the Board for review and approval. (p. 62-63 Rate decision).*

The applicant submitted that the Lieutenant Governor-in-Council set aside this order when in Order in Council 2006-242 dated June 23, 2006 (Exhibit A-3).

The CME, Fraser Papers and J.D. Iving Pulp and Paper Group, agreed with this position. Other intervenors had no comment.

**The Board finds that Order-in-Council 2006-242 has rescinded this order. This does not preclude any party, including DISCO, from presenting evidence on changes to surplus and interruptible rates at the public hearing on the review of rates for 2007/2008.**

Dated at the City of Saint John, New Brunswick this 31<sup>st</sup> Day of May, 2007.

Original signed by

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Raymond Gorman, Q.C., Chairman

Original signed by

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Cyril W. Johnston, Vice-Chairman

Original signed by

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Edward McLean, Member

Original signed by

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Roger McKenzie, Member