



RULING

IN THE MATTER OF an application by New Brunswick Power Distribution and Customer Service Corporation (DISCO) for approval of changes in its Charges, Rates and Tolls (Includes Interim Rate Proposal)

**Motion on Confidentiality
August 16, 2007**

RULING

New Brunswick Power Distribution and Customer Service Corporation (“DISCO”) applied to the New Brunswick Energy and Utilities Board (“Board”) on April 19, 2007 for approval of a change to the charges, rates and tolls for its services. This application was made pursuant to Section 101 of the *Electricity Act*, Chapter E-4.6, R.S.N.B., 1973 as amended (“the *Act*”).

DISCO also filed a Notice of Motion and an affidavit in support thereof requesting the Board to make an interim order pursuant to Section 40 of the *Act* approving a 9.6 percent increase to all electricity rate categories, except water heater rentals and connection fees where the increase would be 3 percent to be effective from the date of such interim order until further order of the Board.

A public hearing on DISCO’s Motion for the interim rate relief was held on May 31, 2007. The Board approved the full amount of interim rate relief as requested on June 1st, 2007 and the new rates became effective on June 8th, 2007.

In a Notice of Motion filed with the Board on August 8th, 2007, DISCO stated that the settlement of a lawsuit involving New Brunswick Power Holding Corporation and Petroleos De Venezuela, S.A. (“the settlement”) will result in a reduced fixed charges to New Brunswick Power Coleson Cove Corporation (“Coleson Cove Corp.”). The benefits of such reduced charges will be passed through to DISCO by way of reduced charges flowing to DISCO through the Coleson Cove Tolling Agreement (“Tolling Agreement”). DISCO proposed the establishment of a deferral account to levelize, on an annual basis, the financial benefit that would accrue to DISCO. The Notice stated that DISCO would apply to the Board for the following:

- (a) Approval of the establishment of the Deferral Account;
- (b) Subject to and conditional upon approval of the Deferral Account, leave to amend DISCO’s application for a change in its charges, rates and tolls dated April 19th, 2007 to request recovery of a forecasted revenue requirement shortfall of \$83.1 million;

- (c) If the Deferral Account is approved then an Order pursuant to Section 43 of the *Energy and Utilities Board Act* varying the Board's Interim Rate Decision by reducing the interim rate increase to 7.1 percent to all electricity rate categories except water heater rentals and connection fees which will remain at the approved interim rate of 3 percent to be effective as of the date of the Board's decision with respect to this Motion in accordance with the revised rate schedules attached to the affidavit of Sharon MacFarlane sworn to on August 8th, 2007 filed in support hereof and marked as Exhibit "C";

- (d) An Order that Exhibit "A" attached to the affidavit of Sharon MacFarlane sworn to on August 8th, 2007 be held in confidence by the Board pursuant to Section 34 of the *Energy and Utilities Board Act* and that any hearing or deliberation by the Board with respect to the establishment and approval of the Deferral Account be held in camera such as to preserve the confidentiality of the information set out in the said Exhibit "A".

Exhibit "A" was filed in redacted form with all parties. An un-redacted confidential copy of the exhibit was filed with the Board pursuant to Section 34 of the *Act*.

On August 9th, 2007, the Public Intervenor filed a letter in which he stated that all documents, such as the exhibits contained in Ms. MacFarlane's affidavit, should be subject to a full and open hearing. The Public Intervenor agreed with DISCO's request for a confidentiality hearing.

The Board reviewed DISCO's Notice of Motion and the supporting affidavit of Ms. Sharon MacFarlane. On August 9th, 2007, the Board advised all the parties that it would hold an oral hearing to review DISCO's request for confidentiality on August 16th, 2007. It also advised that an oral hearing on DISCO's request for a Deferral Account and a reduction to the interim rate increase would be held on August 17th, 2007.

The Board Requested DISCO to provide the following information by August 10th, 2007, to assist in the conduct of the confidentiality hearing.

- (a) A copy of the sections in the fuel supply agreement that specifically address the matter of confidentiality;
- (b) Exhibit “A” wherein the only information that has been redacted is the specific information that is identified in the fuel supply agreement as being confidential;
- (c) A summary as to the nature of the redacted information;
- (d) A rationale as to why the redacted information should be kept confidential including the nature and extent of the specific harm that would result if the redacted information were disclosed.

On August 10th, 2007, DISCO filed the information as requested. DISCO also advised that a written expert opinion with respect to the appropriateness of the Deferral Account that was identified in Ms. MacFarlane’s affidavit and was to have been filed on August 10th, 2007, would not be filed until August 13, 2007. A report prepared by Mr. John Todd entitled “Treatment of the Petroleos De Venezuela, S.A. (PDVSA) Settlement in Setting Rates for NB Power Distribution and Customer Service Corporation”, was filed in redacted form with all parties on August 13, 2007. An un-redacted confidential copy of the report was filed with the Board on the same date and DISCO made a request that it be held in confidence pursuant to Section 34 of the *Act*.

A public hearing was held on August 16th, 2007 to consider DISCO’s request that certain information be kept confidential.

Board’s Authority

The following section of the *Act* provides the Board with its authority to hear DISCO’s Motion.

Confidentiality

Where information obtained by the Board concerning the costs of a person in relation to the operations of the person that are regulated under this or any other Act, or other information that is by its nature confidential, is obtained from such person in the course of performing the Board's duties under this or any other Act, or is made the subject of an inquiry by any party to any proceeding held under the provision of this or any other Act, such information shall not be published or revealed in such a manner as to be available for the use of any person unless in the opinion of the Board such publication or revelation is necessary in the public interest.

THE CANADIAN BROADCASTING CORPORATION and BRUNSWICK NEWS INC. (Telegraph Journal) ("Media")

By way of a letter dated August 13th, 2007, the Media advised the Board that they intended to appear at the hearing on August 16th, 2007 to make representations in opposition to DISCO's request for confidentiality. A copy of this letter was forwarded to the parties by the Board.

At the opening of the hearing on August 16th, 2007, the Board, with the consent of DISCO and the formal intervenors, granted the Media formal intervenor status for the purpose of making representation to the Board on DISCO's request that certain information be kept confidential pursuant to Section 34 of the *Act* and that any hearing involving such information be held in camera.

Confidential Information

DISCO, on August 8th, 2007, filed with all parties a redacted version of Exhibit "A" that was attached to the affidavit of Ms. MacFarlane. On August 10th, 2007, DISCO filed an amended version of Exhibit "A" that provided additional information but still had certain information redacted.

On August 13th, 2007, DISCO filed with all parties a redacted version of a report by John Todd.

DISCO provided to the Board an un-redacted version of both Exhibit “A” and the report of Mr. Todd. DISCO requested that the information that had been redacted be kept confidential pursuant to Section 34 of the *Act*.

At the hearing on August 16th, 2007, it was noted that further information would be necessary in order for parties to verify the amount of benefits that would flow to DISCO as a result of the Settlement. This additional information is: the sections of the Settlement agreements that describe the amount and the time of the benefits that will flow to the NB Power group of companies; and the forecasts that were used by DISCO to calculate the actual annual reductions in charges to it under the Tolling Agreement that will result from the Settlement.

DISCO stated that it was prepared to provide this information to the Board’s expert for use in verifying the particular amounts but did not wish to provide any copies on the record, either redacted or un-redacted.

The Board considers the redacted portions of Exhibit “A” and the redacted information from Mr. Todd’s report to be the subject matter of today’s Motion and will be referred to by the Board as the “Confidential Information” in this decision.

The Issue

Information filed with the Board is normally considered to be public and available to any interested party. However, Section 34 of the *Act* does allow information to be filed on a confidential basis and requires that such information shall not be published unless in the opinion of the board such publication is necessary in the public interest. The Board must therefore weigh the possible benefits of public disclosure against the possible harm that might arise.

DISCO has stated that the nature and extent of the harm that would result if the Confidential Information was publicly disclosed, in violation of the confidentiality provisions of the fuel

supply agreement, is that this could precipitate a claim by Petroleos De Venezuela, S.A. that the terms of the agreement have been breached thereby putting the benefits of the fuel supply agreement in jeopardy. Although DISCO made this claim, it did not provide any evidence on the specific harm that may result.

A number of parties stressed the importance of a public review of all information and the benefits that result from such a transparent and open process.

The Board has carefully considered the submissions of all parties.

Ruling of the Board

The board considers that it is in the public interest that whenever possible, a public review should occur. The Board notes that the Settlement agreements clearly contemplate that a government authority, such as the Board, may see fit to order public disclosure of the confidential information in question.

The board has reviewed the information that has been redacted from both Exhibit "A" and the report of Mr. Todd.

The Board does not consider that any harm would arise from public disclosure of the information that has been redacted.

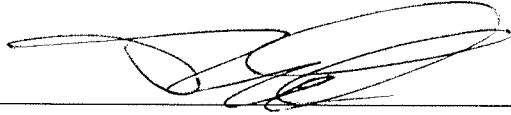
In addition, it is important to remember that DISCO intends to use both Exhibit "A" and the Todd report as evidence to support their case for a general rate increase. The Board also notes that the proposal by DISCO would have impact over the remaining term of the Tolling Agreement.

The Board considers that the very nature of its responsibilities and the tradition of public agencies dictate that, in the absence of the identification of specific harm that might arise, it is necessary and in the public interest that the confidential information be made public.

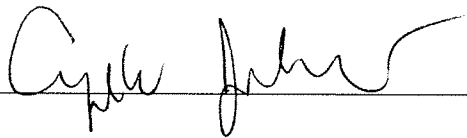
The Board therefore orders DISCO to place un-redacted versions of Exhibit “A” and Mr. Todd’s report on the public record forthwith.

The Board also orders DISCO to make the additional information, as described above, available to the Board’s consultants subject to the consultants signing a confidentiality agreement.

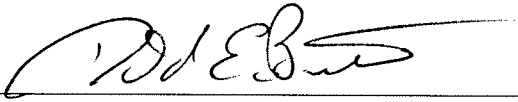
Dated at the City of Saint John, this 16th day of August, 2007.



Raymond Gorman, Q.C., Chairman




Cyril W. Johnston, Vice-Chairman



Donald Barnett, Member



Edward McLean, Member



Roger McKenzie, Member