



DECISION

**IN THE MATTER OF an application by the
New Brunswick System Operator (“NBSO”) for
approval of changes to the Open Access
Transmission Tariff.
(Interim Rate Relief)**

June 12, 2008

New Brunswick Energy and Utilities Board

IN THE MATTER OF an application By New Brunswick System Operator (NBSO) for approval of changes to the Open Access Transmission Tariff. (Interim Rate Relief)

PARTICIPANTS:

CHAIRMAN

Raymond Gorman, Q.C.

VICE-CHAIRMAN

Cyril Johnston

MEMBERS

Donald Barnett

Roger McKenzie

Yvon Normandeau

BOARD STAFF

Ellen Desmond

Douglas Goss

John Lawton

Lorraine Légère

APPLICANT

New Brunswick System
Operator

Robert L. Kenny, Q.C.

William Marshall

Kevin C. Roherty

Marg Tracy

FORMAL INTERVENORS

Bayside Power LP

Len Hoyt

Integrus Energy
Services, Inc.

David MacDougall

Edward Howard

NB Power Distribution and
Customer Service Corporation

Blair Kennedy

NB Power Generation
Corporation

Arden Trenholm

Northern Maine Independent
System Administrator

David MacDougall

Oxbow-Sherman

David MacDougall

Public Intervenor

Daniel Theriault
Robert O'Rourke

New Brunswick System Operator (“NBSO) applied to the New Brunswick Energy and Utilities Board (“Board”) on May 1, 2008 for approval of changes to the Open Access Transmission Tariff (“OATT”). This application was made pursuant to Section 111 of the Electricity Act, as amended (“Act”).

NBSO also filed a Notice of Motion and an affidavit in support thereof requesting that the Board make an interim order pursuant to Section 40 of the Energy and Utilities Board Act, as amended (“EUB Act”) approving changes to the Schedule 1 rates, to be effective from the date of such interim order until further order of the Board.

The Board issued an order dated May 5, 2008 that required public notification of NBSO’s application and motion for interim rate relief.

A pre-hearing conference was held on June 4 at which time a number of preliminary matters were discussed. The public hearing on NBSO’s Motion for interim rate relief occurred on June 11, 2008.

The Board’s authority

Section 40 of the EUB Act states:

“ 40(1) The Board may, with respect to any matter before it, make an interim order where it considers it advisable to do so, and may impose such terms and conditions as it considers appropriate.

40(2) The Board may provide directions in the event that the interim order is different from the final order.

40(3) Section 104 of the Electricity Act does not apply to an interim order made by the Board with respect to charges, rates or tolls.”

Section 40 provides the Board with the authority to grant an interim order and to require whatever adjustments that might be necessary should the final decision differ from the interim order with respect to the amount of the revenue requirement.

The tests to be used to determine if Interim Rates should be approved

The Board has reviewed the decision of the Supreme Court of Canada in “Bell Canada v Canada (Canadian Radio–Television and Telecommunications Commission), [1989] 1 S.C.R. 1722 (hereinafter referred to as the Bell Case). As a result, the Board considers that the Applicant must, as a minimum, demonstrate that:

1. There will be a significant delay between the time of the application and the time of a final decision following a full public review of the application.
2. Such a delay will cause deleterious effects on the applicant.

Even if the Applicant demonstrates the above, the Board considers that it still has discretion with respect to the granting of an interim order. The Board considers that, in normal circumstances, rate increases should only be granted following a full public review. Therefore, the granting of rate increases on an interim basis should generally only be done in exceptional circumstances. The Board believes therefore that additional considerations should also apply. For example, are the circumstances that result in the need for a rate change beyond the control of the applicant and could the circumstances have been reasonably anticipated by the applicant.

Should NBSO be granted Interim Rate relief

Mr. Hoyt requested the Board to order changes to the Schedule 2 rates on an interim basis. There was no motion before the Board with respect to this matter and therefore the Board does not believe it is appropriate to consider this request.

All of the intervenors, except the Public Intervenor, supported the NBSO request for interim rate relief as filed by NBSO. The Public Intervenor did not oppose the granting of interim rate relief but did recommend that the amount of the increase be reduced significantly.

The current schedule for the full review has the public hearing commencing on October 20, 2008. The Board considers that this would create a significant delay between the time of the application and the time of the final decision.

Exhibit "A" of NBSO's affidavit, filed in support of its motion provides a forecast for the 2008/2009 year that shows that current rates for Schedule 1 services would result in revenues that are \$1.3 million less than the costs to provide those services. NBSO also filed evidence that contained details in support of this forecast. The affidavit stated that an implementation date of December 1, 2008 for the proposed rate increases would result in a revenue shortfall of approximately \$649,000 and a July 1, 2008 implementation date would result in a shortfall of \$57,000.

The Board considers that such losses would cause deleterious effects on NBSO. The Board therefore finds that NBSO has met the minimum requirements.

The Schedule 1 services are provided directly by NBSO and therefore NBSO has full control over the associated costs. NBSO develops the budget for the Schedule 1 services and was aware that the costs would exceed the revenues

for 2008/2009 well in advance of the start of the 2008/2009 year. NBSO presented no compelling evidence that the increase in costs was either beyond their control or something that they were not aware of. Further, NBSO has not convinced the Board that it was unable to file an application for changes to the Schedule 1 rates well in advance of the start of the 2008/2009 year.

However, NBSO is established as a not for profit organization by the Act. The Board believes that NBSO should, as far as possible, not rely on a surplus from one service to offset a loss on another service. The Board will therefore approve interim rates for the Schedule 1 services. In doing so, the Board emphasizes that it believes NBSO could and should have reacted to the requirement for an increase in the Schedule 1 rates in time to avoid the need for interim rates.

The Board considers it important to emphasize that, as stated in part by the Supreme Court of Canada in the Bell Case, decisions on interim rate applications are:

“made in an expeditious manner on the basis of evidence that would often be insufficient for the purposes of the final decision”.

It is useful to provide an illustration of the application of this principle. The Public Intervenor suggested that NBSO’s evidence on several of its proposed costs was insufficient. The Board notes that NBSO did file some evidence in support of these costs. While the Public Intervenor will no doubt want to test and challenge the evidence in the full public review, the Board considers that NBSO has met the standard set by the Supreme Court.

NBSO filed its affidavit and supporting evidence on May 1, 2008. This information supports the rates that NBSO has requested in this Motion.

The Board considers it appropriate that it should grant the full relief requested.

The reasons that the Board considers this to be an appropriate way to proceed are:

1. The Supreme Court of Canada decision referenced above supports the position that interim decisions should be made in an expeditious manner on the basis of evidence that would often be insufficient for the purposes of the final decision.
2. The Board considers that NBSO has made a “prima facie” case that its request is reasonable.
3. The fact that, if the final decision determines that the interim rates were too high, the Board will order NBSO to take the actions necessary to compensate for any over-collection of revenue. This provides protection to the customers.
4. The fact that, if the final decision determines that the interim rates were too low, NBSO would have no way to recover the lost revenue.
5. The responsibility of the Board to minimize the amount of cross-subsidy between the various customer classes while maintaining the financial viability of NBSO.

The Board considers that no compelling evidence exists, for the purpose of setting interim rates, to reduce any specific cost as proposed by NBSO and that fairness dictates that the Board must grant the full amount of relief requested by NBSO. The Board therefore finds that it is appropriate to grant the amount of interim rate relief as requested by NBSO.

This does not mean that the Board accepts the costs, as proposed by NBSO, for the purposes of the final decision. These costs will be examined during the full

public review of NBSO's application. The Board will, if appropriate, disallow some or all of certain costs.

To permit a rebate to customers, should one be necessary, the Board orders NBSO to keep appropriate records during the time that the interim rates are in effect. Further, NBSO is also ordered to file a proposal with the Board by June 30, 2008 that will address the issue of how to provide rebates to persons who are customers at any time during the period that the interim rates are in effect but who are not customers at the time the interim rates cease to be in effect.

The Board therefore approves the full amount of interim rate relief as requested by NBSO. NBSO stated that it was prepared to pay interest on any rebates that might be ordered by the Board. The actual rate of interest that would be paid was a matter of debate at the hearing. The Board believes that this matter should be dealt with at the full public hearing.

The nature of Interim Rates

The Board does not consider it appropriate to make any specific changes to the structure of the rates without providing an opportunity for interested parties to discuss this issue during the full public review of the application.

The Board therefore approves the interim rate changes as requested by NBSO. The specific rates approved by the Board are shown in Attachment A.

The timing of the Interim Rates

The Board orders that the effective date for the interim rates is July 1, 2008.

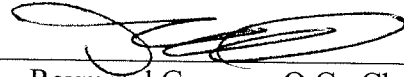
These interim rates will be in effect until a final order of the Board on the application.

ATTACHMENT A

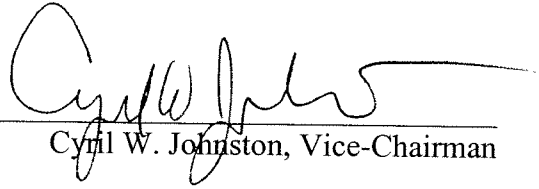
Schedule 1 Rates

<u>Service</u>	<u>Rate</u>
Yearly	2,399.69/MW-year
Monthly	199.97/MW-month
Weekly	46.15/MW-week
On-Peak Daily	9.23/MW-day
Off-Peak Daily	6.59/MW-day
On-Peak Hourly	0.58/MW-hour
Off-Peak Hourly	0.27/MW-hour
Network	0.187/kw-month

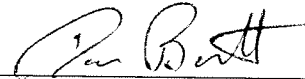
Dated at the City of Saint John, New Brunswick this 12th Day of June, 2008.



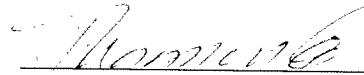
Raymond Gorman, Q.C., Chairman



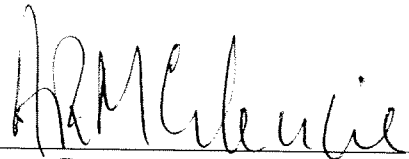
Cyril W. Johnston, Vice-Chairman



Don Barnett, Member



Yvon Normandeau, Member



Roger McKenzie, Member