



THE NEW BRUNSWICK BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

**IN THE MATTER OF an application
by the New Brunswick Power Corporation
for approval of a change in its charges, rates and tolls**

D E C I S I O N

July 16, 1992

**THE NEW BRUNSWICK BOARD
OF COMMISSIONERS OF PUBLIC UTILITIES**

IN THE MATTER OF The Public Utilities Act, R.S.N.B. 1978, Ch. P-27
as amended

IN THE MATTER OF an application by the New Brunswick Power
Corporation for approval of a change in its charges, rates and tolls

Board:	David C. Nicholson	- Chairman
	<i>B. Fernand Nadeau</i>	- <i>Vice-Chairman</i>
	J. E. Stevens	- Commissioner
	Raymond Gorman	- Commissioner

NB Power: Thomas B. Drummie, Q.C., Solicitor

Major Pulp and
Paper Producers: E. Neil McKelvey, Q.C., Solicitor

Public
Intervenors: Robert L. Kenny, Q.C. and
Ivan Robichaud, Solicitors

Board: Harry G. Colwell, Solicitor

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Introduction

The New Brunswick Power Corporation (NB Power) applied, on April 15, 1992, to the Board of Commissioners of Public Utilities (the Board) for approval of a specific change in its charges, rates and tolls for services offered within New Brunswick. The application was made pursuant to Section 38 of the Public Utilities Act (the Act).

The application was amended on May 14, 1992. The amended application requested the Board to approve a proposed change in the late payment charge applied to arrears of NB Power's large industrial customers who are major pulp and paper producers.

The public hearing was held on June 24, 1992. The following group of corporations, all from the pulp and paper industry, were represented by E. Neil McKelvey, Esq., Q.C.:

Fraser Inc.
Irving Paper Limited
Miramichi Pulp & Paper Inc.
NBIP Forest Products Inc.
St. Anne-Nackawic Pulp Company Ltd.
Stone Consolidated Inc.

Mr. McKelvey stated, on the record, that Lake Utopia Paper Limited, Irving Tissue Company and Irving Pulp and Paper Limited, the three remaining corporations on Schedule "A" of the

application are all associated with Irving Paper Limited.

Robert L. Kenny, Esq., Q.C. and Ivan Robichaud, Esq., participated as Public Intervenors appointed by the Attorney General of the Province of New Brunswick.

Thomas B. Drummie, Esq., Q.C. appeared on behalf of NB Power and presented the following two witnesses:

Mr. George D. Bouchard	-	Assistant Deputy Minister of Economic Development and Tourism, Province of New Brunswick
Mr. K.B. Little	-	Vice-President, Finance and Chief Financial Officer, NB Power

Mr. Del Ferguson appeared on his own behalf and made a presentation to the Board.

The Application

Paragraph (b), as amended, of NB Power's application states:

"...applies to the Board for approval of a change in the charges, rates and tolls charged by it for services performed in the Province by providing in Section O - (fees and charges, late payment charges) of its Rate Schedules that, notwithstanding the provisions of that

section, the late payment charge during NB Power's fiscal year ending March 31, 1993 for large industrial customers who are major pulp and paper producers be equivalent to the prime interest rate from time to time plus one percent."

Section O of the Rate Schedules and Policies document currently includes the following:

"Late Payment Charge

The late payment charge for all Customers is 1½% per month (effective annual rate 19.56% per annum or .04896% compounded daily rate)."

The effect of the application, if approved, would be:

- ▶ to divide the current class for late payment charges, consisting of all customers, into two classes: one group, composed of the 11 customers listed in Schedule "A" to the application, and a second group, which would include all other customers;
- ▶ to have two different interest rates for late payment charges: prime plus one percent, which equalled 8% at the time of the hearing, for the group of 11 customers and 19.56% for all other customers; and
- ▶ to have the two different late payment charges effective for only one year, i.e., from April 1, 1992 to March 31, 1993.

The Positions of the Parties

NB Power, in support of its request, made the following statements:

"...the pulp and paper industry in New Brunswick is experiencing particularly difficult market conditions resulting in larger than usual inventories on hand and greatly reduced cash flows, and as a significant employer of New Brunswick residents and a most important segment of the provincial economy is deserving of consideration in the terms on which it meets its current obligations; ..." (Paragraph (a) of the application)

"In addition to requesting all agencies of the provincial government in general to study and recommend measures which could be adopted giving temporary assistance to the industry, the government asked NB Power specifically to investigate and identify areas of assistance provided they are consistent with good business practices." (Paragraph 19 of the application)

Appendix I to the evidence of Mr. Bouchard was a document called "REPORT FROM THE MINISTERIAL COMMITTEE ON FORESTRY TO THE EXECUTIVE COUNCIL". There is, at page 54 of this report, a recommendation that the Province authorize the respective Ministers to consider a variety of mechanisms to assist the forestry industry. One of the mechanisms mentioned was power billing deferral.

Appendix II to Mr. Bouchard's evidence is a memo signed by Mr. Bouchard. The memo states that certain recommendations were submitted to Executive Council and indicates that Mr. Bouchard was advised that they were approved by the Executive Council, subject to receiving clearance from the Department of Justice. One of the recommendations was as follows:

"Authority be granted to the Chairman of New Brunswick

Power to negotiate in a businesslike manner, deferred payment of electricity bills with the major power using clients in the forest sector." (Appendix II of Direct Evidence of Mr. George D. Bouchard)

Mr. Little made the following statement concerning the relationship between the revenues and costs associated with late payment charges:

"A rate of prime +1% is adequate to recover costs incurred by NB Power when a large mill is late in paying its bills. We have been able to borrow money at a rate which has averaged prime -.22% over the last two years (see attached Appendices III & IV). That level of mark-up is adequate to cover the administrative costs associated with monitoring and collecting arrears from a large industrial account." (Page 3-3 of the Direct Evidence of Mr. K.B. Little)

Mr. Drummie, in summation, stated:

"There is no question that what they are doing is acting as a banker for these customers, but the motives behind it, they are doing it without loss, without cost to the other customers, and the motive is to keep the mills open because they do represent a significant player in the Provincial economy." (Page 46 of the Transcript)

The pulp and paper companies supported the application.

Mr. McKelvey, in summation, made the following comments:

"So therefore, I believe it's correct to say that so long -- since we are talking about marginal costs, so long as these costs are covered by the revenue which is associated with those costs, no one is being

discriminated against. The pulp and paper industry causes certain collection costs, marginal collection costs, and they pay the late payment charge on that. And so long as that is covered, that marginal cost is covered by the marginal revenue, no one is being discriminated against." (Page 50 of the Transcript)

"My submission is that every business, whether it's a public utility or a private business, must be sensitive to the needs of its customers. And here we have a case of one customer or group of customers, the pulp and paper industry, which is clearly a customer experiencing very difficult conditions. And even at a 20 percent of the consumption of the product is a very important customer.

So I suggest to the Board that it is good business, good sound business practice to give temporary assistance to a customer in that category, if costs are recovered obviously, and they are." (Page 53 of the Transcript)

The Public Intervenor requested the Board to reject the application. Mr. Kenny, in summation, presented the following reasons:

"Number one, it will aggravate the cash flow problems of the pulp and paper producers by increasing the dollar amounts in late payment charges.

Number two, it will increase the risk of bad debt losses to the Utility, while adding to the cost of collecting delinquent accounts.

Number three, it subverts the purpose of rate regulation by catering to the perceived needs of one select group of customers.

Number 4, it creates a cross subsidy for all other customers to the pulp and paper producers and finally, it introduces rate discrimination not based on cost differences." (Page 61 of the Transcript)

Board Findings

The Board, in exercising its jurisdiction, is guided by the relevant statute and traditional regulatory practices and principles. Regulators have been setting rates for different types of public utilities for decades. As a result of this process, numerous tests (principles) have evolved which assist the regulator in setting rates which properly balance the interests of the utility, its customers and, in the case of a publicly held corporation, its shareholders. Among these principles, are that rates should be just and reasonable and not unduly discriminatory. The Board believes that it must review any application for change in the rates of NB Power in light of these principles, together with the considerations and tests set forth in the Public Utilities Act. The Board further believes that it may act contrary to these regulatory practices and principles only if there are compelling reasons to do so. Mr. Drummie clearly agrees that this is the way the Board should proceed:

"What we are here today simply saying is that you have the jurisdiction to determine this on normal public utilities principles. And that is the basis on which we have approached the Board. And that is the basis on which our evidence has been presented." (Page 66 of the Transcript)

Traditional regulatory principles are of assistance in reviewing two issues which arise from consideration of this

application. First, should customers sharing similar characteristics be treated differently (classification) and secondly, the practical implications that arise because this requested change would be effective only on a temporary basis (rate stability).

Classification

It is common practice that customers are classified into groups for rate-making purposes so that the members of a particular group or class are similar in nature. The similarity normally relates to their use of the services provided by the utility. It is not based upon the nature of a customer's business or financial situation. NB Power has, for the purposes of setting rates for the sale of electricity, grouped its customers into five classes. These classes are residential, general service, small industrial, large industrial and wholesale. Customers are assigned to a particular class on the basis of their consumption of and demand for electricity.

NB Power has established only one class of customer for the purpose of setting late payment charges. All customers are considered similar with respect to the charging of interest on any arrears.

The effect of the application, as noted above, would be to establish two classes for the purpose of calculating late payment charges. One class consists of 11 pulp and paper producers, the other consists of all the remaining customers of NB Power. Regulatory principles suggest that this would be appropriate if the members of each class were similar in nature and if the revenues produced by each class were appropriate in relation to the costs associated with each class. NB Power's evidence is that the revenues of the 11 pulp and paper producers would cover the costs associated with those customers, even at the lower rate proposed in the application. However, the other class would not appear to recover its costs, at the current rate. This is indicated by Appendices VI and VII of the direct evidence of Mr. Little. These show that for 1990/91 and 1989/90 total costs exceeded total revenues. If 11 customers, whose revenues exceed their costs, are removed then the remaining customers' costs must exceed their revenues. This would indicate that it may well be appropriate that the interest rate for the other class should be raised if this application were to be approved.

With respect to the similarity of the customers within each class the following question arises: What characteristics of a customer are appropriate to consider when classifying for the purpose of late payment charges? The Board believes that a primary consideration should be the creditworthiness of the particular

customer. If a customer is being considered for inclusion in a class that has a lower rate of interest on arrears then the likely cost of carrying that customer and collecting from him should be considered.

It is the Board's view that there are likely many customers for whom the cost of carrying and collecting arrears is similar to that of the 11 customers, that are proposed to be a separate class. Regulatory principles would suggest that these customers should be included in the same class for the purpose of calculating late payment charges. One such example is that of the other customers in the large industrial class. Mr. Little's direct evidence indicates that for 2 of the last 3 years their revenues have exceeded the costs associated with carrying and collecting their arrears. As a result of this Mr. Drummie commented as follows:

"So I guess I don't think the world would come to an end if the whole large industrial class were given this treatment, but I think that is not looking at it the way we are looking at it." (Page 74 of the Transcript)

There is no evidence on the record that a proper and thorough analysis has been conducted with respect to the classification of customers for the purpose of calculating late payment charges. Therefore, it is not possible to say that the proposed classification is the most appropriate one.

Rate Stability

NB Power has recommended that the proposed change be effective only for its fiscal year ending March 31, 1993. Commencing April 1, 1993, the 11 customers in Schedule "A" would have to pay the same interest rate on arrears as all the other customers. If this application were approved, it would be a precedent for similar applications in the future whereby it could be proposed that a group of customers would be offered preferred rates for temporary periods. It would be inconsistent with traditional regulatory principles to have rates fluctuate for certain customers simply because of general financial conditions. The fact that the current application is proposed to be in effect only on a temporary basis strongly suggests that NB Power has serious reservations about the appropriateness of the proposed classification on a permanent basis. Mr. Little expressed a concern in this regard as follows:

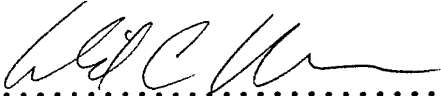
"This would not be normal in Canada and we would have to be cautious that NB Power would not inadvertently become a banker for those customers" (Page 3-4 of direct evidence of Mr. K.B. Little)

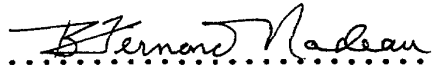
Board's Conclusions

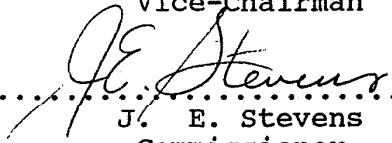
The proposed classification of customers for late payment charges is not appropriate and the temporary nature of the

requested changes would not be consistent with the objective of rate stability. Traditional regulatory principles, which are the basis on which NB Power requested the decision be made, require that the application should not be approved. The Board, therefore, denies the application.

Dated at the City of Saint John, N.B. this 16th day of
July, 1992.


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David C. Nicholson
Chairman


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B. Fernand Nadeau
Vice-Chairman


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J. E. Stevens
Commissioner


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Raymond Gorman
Commissioner