



**ORAL DECISION**

**IN THE MATTER OF an Application by TransCanada  
Energy Limited dated November 17, 2003 for a Single End  
Use Franchise**

**January 6, 2004**

**NEW BRUNSWICK**

**Board of Commissioners of Public Utilities**

New Brunswick Board of Commissioners of Public Utilities

Pre-Hearing Conference followed by Hearing and Oral Decision - January 6th 2004, 2:00 p.m.

PUB Premises, Saint John, N.B.

IN THE MATTER of an Application dated November 17, 2003 by TransCanada Energy Ltd. for approval of a Single End Use Franchise

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Jacques A. Dumont  
Alyre Boucher  
H. Brian Tingley

BOARD SECRETARY Lorraine Légère

conditions there where the franchise can be terminated.

And one is that the franchisee no longer has control over the industrial facility. Or the other one is that they no longer have access to gas.

MR. CHAIRMAN: And that would be your intention, to include a similar kind of clause in this --

MR. KNIGHT: Yes.

CHAIRMAN: -- particular franchise agreement?

I neglected to put on the record that Ms. Desmond is acting as Board counsel today. And I just wonder if you have anything you want to add, Ms. Desmond, or ask any questions on?

MS. DESMOND: Nothing for me, Mr. Chairman.

CHAIRMAN: Good. Thank you.

Okay. The Board will take a recess then.

(Short Recess)

CHAIRMAN: The Board of Commissioners of Public Utilities (The Board) has received an application for a Single End Use Franchise submitted pursuant to Section 5.1 of the Gas Distribution Act 1999, (The Act), by TransCanada Energy Ltd.

The Board pursuant to Sections 5.2 and 5.4 grants the single end use franchise to TransCanada Energy Ltd. in respect to the co-generation facility, referred to as the Grandview co-generation plant, to be constructed at the

refinery site in Saint John, New Brunswick, owned by Irving Oil Limited, subject to the following condition.

The Board requires a letter from Maritimes & Northeast Pipeline Limited confirming that it will connect its transmission line directly to the facilities owned by TransCanada Energy Ltd.

Once the Board has received this confirmation, it will issue a single end use franchise to TransCanada Energy Ltd. in respect to the co-gen facility, which I previously referred to, as the Grandview co-generation plant to be constructed at the refinery site in Saint John, New Brunswick, owned by Irving Oil Limited.

And I just -- Mr. Knight, I will turn to you before I leave the room and say the agreement will be there, but we will issue that single end use franchise. Is that a piece of paper that's actually issued or not?

MR. KNIGHT: I --

CHAIRMAN: Well if there is a piece of paper that has to issue, the Board will issue it, okay. This is our first one.

The government did it prior to that time.

MR. KNIGHT: Yes. The process, as I understood it, is that you would recommend to the Lieutenant Governor-in-Council any terms and conditions that should be applied to the franchise. And I think that's consistent with Section 5.5. And then under Section 7, it's the Minister that

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actually executes, I believe is the correct word, a franchise agreement with the applicant.

CHAIRMAN: So then basically what we do today by this, subject to the condition of filing the letter from Maritimes & Northeast Pipeline Limited, is that we grant the single end use franchise. And that of course is subject pursuant to Section 5 of the Gas Distribution Act of the Province negotiating a franchise agreement with the company. Sound good?

MR. EDDY: But, Mr. Chairman, I assume that somewhere in the process the Lieutenant Governor-in-Council issues a piece of paper, an Order-in-Council approving that grant without condition?

CHAIRMAN: Yes. Well, I presume that -- and again you correct me if I am wrong here, Mr. Knight, but in the past the Lieutenant Governor-in-Council has directed the Minister to execute a franchise agreement in form as was provided to the Lieutenant Governor-in-Council in support of that. That's -- is that not the procedure that you have followed in the past, Mr. Knight?

MR. KNIGHT: Yes. This is new for us as well. And perhaps your counsel would like to --

CHAIRMAN: I am trying to shift the onus.

MR. KNIGHT: I notice that.

CHAIRMAN: To cover as best I am able, sir.

MR. KNIGHT: My discussion with Mr. Barnett this morning before I came down was that the Board would make a grant of the franchise, whatever that means. And it would be approved by the Lieutenant Governor-in-Council. Which means that we would take your grant of a franchise to them. And, yes, I believe it would be an OIC that would come out of that. Then in accordance with that Order-in-Council we would -- it would probably direct our Minister as per Section 7 of the Act to execute the franchise agreement.

CHAIRMAN: Since we have only the one condition that we have attached to it, does that mean that the franchise agreement can't attach any more conditions?

MR. KNIGHT: Subject to legal advice, I will make the disclaimer that I am not a lawyer. Our interpretation is that we cannot change any of the -- we, nor Cabinet, can change any of the conditions that the Board would place on the franchise agreement. But that we could fill out the franchise agreement by adding additional things to it.

CHAIRMAN: And certainly it's in the Board's contemplation while making this grant that you will do with, for instance, insurance, et cetera, et cetera, et cetera, as you have done in the past with the other five.

Mr. Eddy, any comment on that at all?

MR. EDDY: No, Mr. Chairman. That's my understanding. The

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franchise agreement is to fill out the order of the Board, I believe. So we would expect it to be similar in form, and it does say form here, to the ones issued to the other single end use franchisees.

CHAIRMAN: Good. Well, if there is nothing further then we will adjourn.

Certified to be a true transcript of the proceedings of this hearing as recorded by me, to the best of my ability.

Reporter

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Lorraine Légère  
Secretary to the Board