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New Brunswick Energy and Utilities Board

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)

Delta Hotel, Saint John, N.B.  
June 1, 2007

1 New Brunswick Energy and Utilities Board

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10 Delta Hotel, Saint John, N.B.

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13 CHAIRMAN: Raymond Gorman, Q.C.

14 VICE-CHAIRMAN Cyril Johnston

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16 MEMBERS: Yvon Normandeau

17 Constance Morrison

18 Robert Radford

19 Edward McLean

20 Roger McKenzie

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22 BOARD COUNSEL: Ellen Desmond

23

24 BOARD STAFF: John Lawton

25 Doug Goss

26 David Young

27

28 BOARD SECRETARY: Lorraine Légère

29 ASSISTANT SECRETARY: Juliette Savoie

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31 .....

32 CHAIRMAN: Good afternoon everyone. The purpose of this

33 afternoon's session is for the Board to issue an oral

34 decision with respect to the motion brought by DISCO for

35 rate relief.

36 You will note that the full panel is not present this

37 afternoon for the giving of this oral decision. For your

38 information, the full panel did -- were involved in the

39 deliberations, which resulted in the decision, which is

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unanimous.

This oral decision will be followed by a written decision, which will be released once it is translated. In the event that there is any discrepancies between the eventual written version and the oral decision today, then the written version will govern.

So we will start with the oral decision. 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, hereinafter referred to as the ("ACT").

DISCO 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 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 under further order of the Board.

The Board issued an order dated April 19th 2007 that required public notification of DISCO's application and

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motion for interim rate relief.

A pre-hearing conference was held on May 18th at which time the date for the public hearing to review the Motion for interim rate relief was set as May 30th 2007.

On that a date, a number of preliminary matters were discussed. The actual public hearing on DISCO's motion for interim rate relief occurred on May 31st 2007.

THE BOARD'S AUTHORITY

At the time of DISCO's application, Section 40 of the Act stated:

"The Board may, instead of making an order final in the first instance, make an interim order and reserve further directions, either for an adjourned hearing of the matter or for further application."

On May 30th 2007 the above wording was repealed and the following wording of Section 40 became law.

"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

1  
2 apply to an interim order made by the Board with  
3 respect to charges, rates or tolls."

4 The parties were asked to comment on what effect, if any,  
5 this change had with respect to the Board's review of  
6 DISCO's motion for interim rate relief. The Board has  
7 carefully reviewed the submissions made by the parties.  
8 As a result, the Board considers that the new wording is  
9 simply a clarification of the previous wording and  
10 therefore procedural in nature. Therefore the Board is of  
11 the view that the wording of Section 40 that became law on  
12 May 30th 2007 is what governs this decision.

13 The Board believes that either version of Section 40 would  
14 provide it with the authority to grant an interim order  
15 and to require whatever adjustments that might be  
16 necessary should the final decision differ from the  
17 interim order with respect to the amount of the revenue  
18 requirement.

19 THE TESTS TO BE USED TO DETERMINE IF INTERIM RATES SHOULD BE

20 APPROVED

21 The Parties proposed different tests that the Board should  
22 use to decide whether or not to approve interim rates.

23 The Board has reviewed these proposals and has also  
24 considered the decision of the Supreme Court of Canada in  
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"Bell Canada v. Canada (Canadian Radio - Television and Telecommunications Commission), [1989] 1 S.C.R. 1722, which hereinafter will be 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 is of the view that it is open to any party to convince it that the circumstances are such that it would not be advisable for the Board to grant interim rate relief.

SHOULD DISCO be granted INTERIM RATE RELIEF

The current schedule for full review has the public hearing commencing on November 19th 2007. 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 DISCO's affidavit, filed in support of its motion, provides a forecast for the 2007/08 year that

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shows that current rates would result in revenues that are \$112.3 million less than the costs to provide service. DISCO also filed evidence that contained details in support of this forecast. DISCO stated at the hearing that every day without the requested rate increases represents a loss of revenue to DISCO of approximately \$300,000.

The Board considers that such losses continued over the period of time required for a final decision would cause deleterious effects on DISCO.

The Board therefore finds that DISCO has met the minimum requirements.

With respect to whether or not circumstances exist, that would make it advisable for the Board to deny the requested relief, the Board notes that various parties made representations to this effect. The Board considers that the comments made by the parties raise critical issues. However, the parties, with one exception, provided no evidence in support of their positions. In addition, no party filed any evidence that challenged the evidence on costs as put forward by DISCO. Further, no party demonstrated to the Board's satisfaction that any of the specific costs as proposed by DISCO are unreasonable. The Board, therefore, considers that no party has

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established that circumstances exist that would make it  
advisable for the Board to deny interim rate relief to  
DISCO.

The Board considers it important to emphasize that as  
stated in the Supreme Court of Canada decision referenced  
above 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. A number of intervenors suggested that  
DISCO's evidence on its power purchase costs was  
insufficient. The Board notes that DISCO did file some  
evidence in support of these costs. While the intervenors  
will no doubt want to test and challenge the evidence in  
the full public review, the Board considers that within  
the standard set by the Supreme Court, DISCO has  
established its revenue requirement.

The Board considers that the issues raised are important  
and encourages the parties to bring them forward in the  
full public review.

DISCO filed its affidavit and supporting evidence on April  
19th 2007. This information supports the rates that DISCO  
has requested in this Motion.



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2 The Board considers it appropriate that, since it has not  
3 been established that circumstances exist that would make  
4 it advisable for the Board to deny the relief requested,  
5 that it should grant the full relief requested.

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

8 1. The Supreme Court of Canada decision referenced above  
9 supports the position that interim decisions should be  
10 made in an expeditious manner on the basis of evidence  
11 that would often be insufficient for the purposes of the  
12 final decision.

13 2. The Board considers that DISCO has made a "prima  
14 facie" case that its request is reasonable.

15 3. The fact that, if the final decision determines that  
16 the interim rates were too high, the Board will order  
17 DISCO to take the actions necessary to compensate for any  
18 over-collection of revenue. This provides protection to  
19 its customers.

20 4. The fact that, if the final decision determines that  
21 the interim rates were too low, DISCO would have no way to  
22 recover the lost revenue.

23 5. The responsibility of the Board to balance the  
24 interests of customers in having rates as low as possible  
25 with the interest of DISCO in remaining a  
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financially viable company.

The Board considers that no compelling evidence exists in this case to reduce any specific costs as proposed by DISCO and that fairness dictates that the Board must grant the full amount of relief requested by DISCO. The Board therefore finds that it is advisable to grant the amount of interim rate relief as requested by DISCO.

This does not mean that the Board accepts the costs, as proposed by DISCO, for the purposes of the final decision.

These costs will be examined during the full public review of DISCO'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 DISCO to keep appropriate records during the time that the interim rates are in effect. Further, DISCO is also ordered to file a proposal with the Board by June 15th 2007 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 DISCO.

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3 THE NATURE OF INTERIM RATES

4 Vibrant Communities Saint John recommended that the Board  
5 not approve the rate increased entirely as proposed by  
6 DISCO but rather implement certain specific rate  
7 proposals. They submitted an exhibit that identified the  
8 2007 Urban Monthly Service Tolls for a number of Canadian  
9 utilities.

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

15 The Board therefore approves the interim rate changes are  
16 requested by DISCO.

17 The Timing of the Interim Rates

18 The Board orders that the effective date for the interim  
19 rates is June 8th 2007. These interim rates will be in  
20 effect until a final order of the Board on the application  
21 or until March 31st 2008, should no final decision be  
22 issued by that date.

23 That is the decision of the Energy and Utilities Board on  
24 the motion by DISCO for interim rates. And as I had  
25 indicated, a written decision will follow which will be  
26 issued in both official languages.

27 Thank you.

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

31 Reporter