

New Brunswick Board of Commissioners of Public Utilities

Hearing

In the Matter of an application by Enbridge Gas New Brunswick for approval of proposed changes to rates for its Small General Service, General Service and Contract Service, Contract General Large General Service LFO, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fueling

PUB Premises, Saint John, N.B.
January 6th 2005, 10:00 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Jacques A. Dumont
James E. Bateman
H. Brian Tingley

BOARD COUNSEL: Ellen Desmond

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Good morning, ladies and gentlemen. This is in the matter of an application by Enbridge Gas New Brunswick for the approval of proposed changes to its rates for Small General Service, General Service and Contract Service, Contract General Large General Service LFO, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fueling. That is all of them, isn't it, Mr. Hoyt?

MR. HOYT: No.

CHAIRMAN: No?

MR. HOYT: The heavy fuel oil is not included.

CHAIRMAN: Okay. All right. We have got a problem. Because we are using a shorthand reporter and we don't have that many mikes. So if anybody wants to speak why next door to Ellen Desmond, Board Counsel, there is that mike. And you can come up to that chair and speak.

So appearances today for Enbridge Gas New Brunswick Inc.?

MR. HOYT: Len Hoyt from McInnes Cooper representing Enbridge Gas New Brunswick.

I'm joined by Shelley Black who is the Manager of Regulatory Affairs & Upstream.

CHAIRMAN: Thank you. Now we have three intervenors who have asked to be recognized as formal intervenors. One is the City of Saint John.

MR. EDWARDS: William Edwards. And I'm also here with Samir Yammine, our Energy Manager.

CHAIRMAN: Yes. Thanks, Mr. Edwards. And Competitive Energy Services?

MR. SORENSON: John Sorenson here.

CHAIRMAN: Thank you. And Flakeboard?

MR. NORTON: Mel Norton here on behalf of Flakeboard.

CHAIRMAN: You are with Lawson & Creamer?

MR. NORTON: That is correct. Yes.

CHAIRMAN: Where is Mr. Lawson? We so enjoy him.

MR. NORTON: Mr. Lawson has another hearing. But he really, really wanted to be here.

CHAIRMAN: I have heard that. Thank you. And then the following have requested intervenor status but informal. And there is the Province of New Brunswick as represented by the Department of Energy. And I see Mr. Knight here.

Fredericton Residential Properties Association? Light House Self Storage? Maritime Natural Gas Pipeline Contractors Association Inc.? Mr. Ross. New Brunswick Natural Gas Association? Mr. Gordon wrote the letter.

Just go through a couple of matters here. From what I can gather from reading the interventions, the language of the hearing, everyone has chosen that we proceed in the English language.

Secondly, of the three who have chosen to ask for formal intervenor status, two of the three have asked for an oral hearing.

MR. HOYT: I understand, Mr. Chairman, that one of those intervenors may support a written hearing.

CHAIRMAN: One of those two?

MR. HOYT: Yes.

MR. NORTON: Mr. Chairman, I'm not sure at what point you would like me to bring this up, but --

CHAIRMAN: Right now.

MR. NORTON: Perfect. Originally Flakeboard had requested an oral hearing. But at this point they are satisfied that a written -- the written interrogatories would satisfy them in terms of the process. So they are changing their position from what it was previously.

CHAIRMAN: Okay. Thank you. Okay. The Board will huddle up here on these two matters I have already done and make a decision. But the Fredericton Residential Properties Association is not represented. We always like -- when you got an Association we always like to know who in fact it is you are representing. And Light House Self Storage, again Maritime Natural Gas Contractors Association Inc. is a body, incorporated body. So we don't have to go there. The Natural Gas Association is not represented either. However they are all informal. There is -- Mr. Sorenson, there have been a number of parties that have submitted letters indicating to this Board that you can speak on their behalf. Would you like to address that?

MR. SORENSON: Yes, sir. The following have submitted in writing to you or to the Board, to the Public Utilities Board the Delta Hotel which is Chipreit Hotels in Fredericton, the HoJo property in Moncton, the City of Saint John, the purchasing area which is represented by Dave Logan, the Province of New Brunswick Supply Services,

LaFarge located here in Saint John. The Aquatic Centre also is going to be submitting a letter on my behalf as well.

CHAIRMAN: Okay. Mr. Sorenson, I think that I'm going to ask Mr. Knight or someone of the Department of Energy to contact whoever it was in the Department of Supply and Services to have the agent of the Attorney General if necessary here to speak on behalf of the Province of New Brunswick if they want to do that. We understand it was Supply and Services simply saying they support your position.

MR. SORENSON: That is correct. That is correct.

CHAIRMAN: They are a customer of yours.

MR. SORENSON: That is correct.

CHAIRMAN: I guess I'm being legalistic. But if you are going to speak on behalf of the Province of New Brunswick then you --

MR. SORENSON: It will not necessarily be for specific. However, we do want to provide formal evidence. So we want to address that sometime today here. We do want to submit formal evidence. And each party would have some type of economic analysis as it relates to the Province of New Brunswick and their buildings that we manage, City of Saint John, HoJo's in Moncton.

CHAIRMAN: I see absolutely nothing -- and I'm splitting hairs here. I see absolutely nothing wrong with you calling a witness from the Department of Supply and Services who is a customer of yours and taking their specific economic case and putting it before the Board. That is not my point.

MR. SORENSON: That is fair.

CHAIRMAN: My point is that --

MR. SORENSON: That is fair.

CHAIRMAN: -- to speak for the Province of New Brunswick you should be the agent of the Attorney General.

MR. SORENSON: That is fine. That is fair.

CHAIRMAN: And you have a lot of talents, Mr. Sorenson, but that is not one of them. Mr. Hoyt?

MR. HOYT: Just a couple of things. First we don't have copies of any of that material. So I would just ask that anybody that is involved in the process going forward just provide us with copies so that we can --

CHAIRMAN: Yes. Mr. Hoyt, we have actually -- Mr. Lawson and I yesterday -- Lawton rather -- yesterday worked on some guidelines for intervenors. Because there are a number here who are not used to our process.

And that is one of the points, is that if you do send something to the Board, it is your responsibility to copy

all of the parties as well. And we will hand that out when this hearing is over.

Secondly, we have received a letter which is basically a complaint from a customer. And we noted that -- and we just got that in yesterday, I think. We noted that you haven't got a copy of that. You will be given a copy of that as well.

MR. HOYT: On that, Ms. Légère did provide us with a copy of that just prior to the hearing.

CHAIRMAN: Okay.

MR. HOYT: But just on the point, your questions to

Mr. Sorenson, I would have the same question with the City of Saint John, where that is one of the parties that you have indicated Mr. Sorenson is authorized to speak on behalf. But they are also a formal intervenor. So I don't understand the relationship there.

CHAIRMAN: Well, I don't either. Mr. Sorenson, would you care to address that or Mr. Edwards?

MR. SORENSON: Yes. I think we both will. First I have been contracted for the past three years with the City of Saint John on the procurement or the purchasing side through Dave Logan. The buildings and maintenance and engineering side is represented by Bill and Samir over here. And they can speak on that behalf.

So my representation, my economics that will be presented to you will be associated with that department, if you will. No different than there is a Department of Energy, there is Supply and Services at the provincial level. There are these various departments at the City level as well.

CHAIRMAN: Anticipating Mr. Hoyt's objection to that is that we want to make sure that you are not going to have two kicks at the can as it were in reference to questioning.

And so if the City of Saint John is content to allow, even though they are a formal intervenor, content to allow you to question and speak for them or do the questioning on their behalf, why then that is -- you can make that choice as the time arrives. But I just want that clear now we don't want to have two intervenors who effectively are --

MR. SORENSON: Saying the same thing.

CHAIRMAN: -- saying the same thing.

MR. SORENSON: That is right.

CHAIRMAN: Okay. Is that okay, Mr. Hoyt?

MR. HOYT: Yes. Just on the informal intervenor and the point you made about, you know, making sure everybody knows what the obligations are with respect to informal intervenors, I recall that a couple of years ago now the

Board had, I think it was a one-page summary of what it meant to be formal versus informal and so on.

And the question came up in my mind, when I read the Maritime Natural Gas Pipeline intervention, in that it made the point that as long as they are copied on IR's and so on, that they are content to be an informal intervenor, which is fine with us.

But just for our sake and everybody else's sake in terms of copying material, it would be useful either to circulate those instructions as to what an informal intervenor - - what we have to provide and what we don't. That would be useful.

CHAIRMAN: Okay. Well, we will send that out tomorrow at the same time as we send out the coordinates list,

Mr. Hoyt.

The other thing is that in my reading of the interventions there appears -- to me it almost asks for an hour or so that the informal intervenors could address the Board.

We have a fair number of people who are making a case in their intervention.

And I think that -- I haven't spoken to my fellow Commissioners about it. But as you know, in the past we have set off a block of time depending upon the number of people who just want to make a presentation to the Board,

make their presentation, and set it up for instance if we have an oral hearing it would be on a specific date set in advance.

And they could just -- and we would give it -- since they weren't calling witnesses we would give it the weight that it deserves. And it would be before your summation or anybody else's. So you could comment on it if you wanted to.

MR. HOYT: Just on that though, if there is not an oral hearing -- and I would like the opportunity just to speak to that. Because in addition to the intervenor's position, obviously Enbridge prefers a written proceeding. I just -- I'm wondering if that could be handled in a written fashion as well.

Because I took from some of those interventions -- I agree that the informal intervenors have points and comments that they want to make. But they may equally be able to make those in writing.

CHAIRMAN: Oh, if it is written it is written. It is as simple as that.

MR. HOYT: So will I have the opportunity to speak to that?

CHAIRMAN: You can right now, as a matter of fact.

MR. HOYT: Just on it, I guess the first thing I would note is there is actually only one formal intervenor now who is

requesting an oral proceeding. And I would characterize it as having a narrow interest.

It is looking at the City of Saint John and the amount it pays for natural gas. I mean, it is not talking about in the public interest. It is looking at it from that narrow perspective.

I note that the notice of the proceeding that was published in the newspaper said that the Board intends to proceed by way of a written proceeding, and that any party who considers that the public interest would be better served by an oral hearing must provide the reasons why to the Board and EGNB with its notice of intervention.

And I would note that in terms of all of the customers that Enbridge serves that one person that read that notice where there was an indication that there would be a written proceeding has indicated that it would prefer to proceed in an oral fashion.

And I'm not -- it is not clear to me how a written process would not allow the City of Saint John to participate in an equally effective fashion.

Two other things just to note. One is that Enbridge in this application is not looking to change or alter in any way the Board's approved market-based methodology of setting rates. What it is doing is simply updating the

economics that determine how much those rates in fact will be.

And the last point is just that we have used written proceedings successfully in the past, most recently with Enbridge's application for extensions of the deferral account and the recovery -- the deferral account recovery period and the development period.

And again in last year's rate application where intervenors such as Irving, Competitive Energy and the Maritime Natural Gas Pipeline Contractors all participated in a written fashion, and I think quite capably got their arguments and issues before the Board.

CHAIRMAN: Yes. Thank you Mr. Hoyt. I must add we have also had one where the written proceedings didn't work.

MR. HOYT: But I'm not so sure that proceeding wouldn't have run off the rails no matter how we had gone at it.

CHAIRMAN: Well, I think you are probably right on that. Are there any other matters that any of the parties want to bring up at this time before the Board retires for a few minutes?

MR. SORENSON: I do want -- Mr. Chairman, I do want to concur with Mr. Hoyt that again we do support a written hearing. Secondly though, we do want to have a vehicle to be able to submit formal evidence.

CHAIRMAN: That means you are aggressively neutral, does it not, Mr. Sorenson? In other words, are you in favor of a written proceeding or are you in favor of an oral?

MR. SORENSON: I'm in favor of a written proceeding.

CHAIRMAN: But if it is written you want the Board to accommodate what?

MR. SORENSON: We want to be able to submit formalized evidence.

MR. HOYT: But I think, Mr. Chairman, that has been done in the past in the written proceeding. Intervenors have the opportunity to submit written evidence.

CHAIRMAN: Oh, absolutely.

MR. SORENSON: That is correct. And if we can do exactly how we did -- last year I thought went extremely smooth as well, so --

CHAIRMAN: All right. The Board will retire for a few moments.

(Short recess)

CHAIRMAN: Well, the Board has taken time to consider all of your input. The language of the hearing will be English. We are going to have an oral hearing. And I do apologize because you have all supported a written.

But we have just had a long conversation among ourselves. You folks represent the marketplace. And that

marketplace did not exist when we first looked at the rate structure. So therefore it might prove beneficial if we hear viva voce testimony concerning the logic and rationale behind it.

The second thing is that we ourselves -- you know more about the marketplace than we do. And so if we have an opportunity, if there is a question arises in our minds about that marketplace and the impact, et cetera of various things that may or may not be done, we can put it to the participants who in fact form that marketplace. So from that aspect.

The third thing is that who knows? The press might even get interested. And if they were to do so, that broadly indicates the nature of the natural gas marketplace. And that certainly can't do any harm. So on that basis we will have an oral hearing.

Now Mr. Lawton, you have -- oh, the Secretary has the tentative -- any problem with any of the dates, Mr. Hoyt?

MR. HOYT: The first comment would just be the second set of interrogatories and whether that is actually necessary in light of the fact that it is an oral hearing. I know that has become part of the last two proceedings.

I believe in the case of the application for extensions it was put in as part of the process because

Enbridge didn't include forecasts with its evidence originally. So there was a thought that there would be a need for a second set if those forecasts provided in response to the first set led to anything further.

But it would seem to me that really the second set of IR's are going to be things that can be asked to Enbridge witnesses at the hearing. So I would comment on those.

The other though is, as you know, the application requests approval of the rates as of February 1st. And I think no matter how this might be adjusted, that it is going to result in a hearing day sometime in February with a decision sometime after that.

So Enbridge would request, as set out in its application and pursuant to Section 77 of the Gas Distribution Act that those rates be approved on an interim basis.

CHAIRMAN: We do have that --

MR. HOYT: Section 77.

CHAIRMAN: Okay. Let's go back to the dates. And I will deal with that later. Mr.

Lawton, do you see any difficulty if we were simply to take the second set of interrogatories, as suggested by Mr. Hoyt, out of there and just move the dates back into the previous slots that have been vacated? Do you see any problem with that?

MR. LAWTON: No, Mr. Chairman. I don't see from Board staff any difficulty with that as long as the intervenors were satisfied.

CHAIRMAN: Any of the parties have a problem?

MR. SORENSON: I again agree with Mr. Lawton and Mr. Hoyt. No problem with the second interrogatories. However would like to push this back, if we do that, that the first set of interrogatories is not due until the 20th. So we push everything back a week.

CHAIRMAN: Okay. Well, the Board has no preferences on that at all. What I'm going to suggest here is that we will break for a minute and give the parties an opportunity to sit down and see what those dates are and Board staff as well and come up with a compromise way of going at it. And we will leave it at that. Now -- yes?

MR. HOYT: The only thing on that though is until we know what the Board's decision is on the interim rates -- I mean, whether it is pushed back a week or so is of a lot less concern to us if those rates are in fact approved as of February 1st.

CHAIRMAN: I have got a problem. And I will tell you why, Mr. Hoyt. And I'm going back to -- we had in the early '90's an interim rate section in the Public Utilities Act which was applicable to an interim rate hearing that we

had for NB Power.

And in that decision this Board I think had two or three criteria that had to be met before we would operate on an interim rate. So that it is not as simple as we are talking about here.

I think while you folks are talking about scheduling, and that is tentative, we will go back and see what we can do, you know. I mean, it is going to take just more than you making a motion here.

For instance, in the NB Power matter there was -- and correct me if I'm wrong, Mr. Goss -- but my recollection is the Vice-president of Finance for NB Power filed an affidavit in that proceeding that was five or six pages long, outlining the urgency of the matter, et cetera, et cetera, et cetera.

So we may have to slot something in here to give you an opportunity to do that, if you feel that one month's difference in the rates is a matter of that kind of urgency.

MR. HOYT: That is fine. And we would be able to provide evidence as to the financial consequences that we feel demonstrate the importance.

CHAIRMAN: Okay. All right. We will take a break. And you can let us know when you come up with a schedule. And

also I might suggest that you take a look at the filing guidelines for intervenor evidence that we have handed out as well. If you have any questions on that we will deal with them when we come back in.

(Recess - 10:45 a.m. - 11:10 a.m.)

CHAIRMAN: I apologize. I didn't tell the parties all of what I had proposed during the break. And you all can comment on this if you wish. But I intended that that would be written. The interim motion request will be written.

So that I'm suggesting as follows, that on the date on your original draft filing schedule for the first set of interrogatories to the applicant, that is the 13th of January, that will be the date that Enbridge will file with us and with the parties on the coordinates list the affidavit in support of their motion for an interim rate increase.

And I might add, Mr. Hoyt, please put in if you want the actual amounts or if you wanted a percentage of the actual amounts. And then any of the other parties who wish to respond to that affidavit will file with the Board on the next date, which is the 20th, their responses in writing to us and to the applicant.

And this panel will be here in Saint John on Friday

the 27th on another matter. And anyway for sure we will be here on the Friday which is the 28th. And we will have a decision out that day or on the Monday concerning the interim rate increase.

Then my suggestion, subject to what you have to say now, is that staff will -- and we will set the oral hearing for -- Mr. Sorensen says Thursday is the best for him. And that week, which has Thursday, March the 17th, is okay for everybody. So we will set the oral hearing for 10:00 a.m. here on March the 17th and reserve Friday in case we go over into Friday.

And what will happen is tomorrow when we send out the list of coordinates, staff will have taken the dates between the 27th of January and the 17th of March and just spread out the times between those various things, get a new schedule with one set of interrogatories.

Any problem with that?

MR. TINGLEY: Mr. Chairman, that was March the 17th?

CHAIRMAN: March 17th. Now we have handed out to you these filing guidelines for intervenor evidence. This is -- point number 1 on that, normally if you have expert witnesses, et cetera, we would require that you file a question and answer, written testimony and then you put your witness on the stand and simply give an overview of

that, which is similar to what Enbridge has done here.

That is a little bit onerous for the nature of the proceeding and the intervenors that we have going now. What we are saying is, as long as you put in two or three paragraphs describing the nature of the evidence that your witness will testify to -- and if you have got the mathematical examples I ask that you put them in, so that Enbridge will not be taken by surprise at the time of the hearing, and they can ask questions in the interrogatories when you do file that explanation of your evidence.

Any questions on that? So we are making it a little less onerous for the intervenor. But still Enbridge will have the opportunity to know the nature of what it is you are going to be testifying to.

Now again we have tried to put in here that if you try and bring up something new on the stand, we won't allow it. Because it hasn't been given in advance to the applicant or perhaps to another intervenor, I don't know.

Then anything else? You have all had an opportunity to read through that? Have you got any questions about it at all? Okay. If you do, as we proceed on, again because a lot of you are not familiar with the process, why feel free to call staff. And they will get an answer to you. Any other matters?

MR. HOYT: Just two things. One, I have got an affidavit of publication which I can provide to the Secretary just confirming that the notices were in the paper as required.

The second thing though is on December 9th Enbridge filed amended evidence and rate schedules together with a black line version showing the changes that have been made from the original application. I don't know if the Board needs to do anything in respect of that or not.

CHAIRMAN: No. I think when you put your witnesses on the stand, Mr. Hoyt, you just simply say these amendments, and is this your final form? And I think that will do it fine.

MR. HOYT: Okay. But I believe all the parties have the corrected version.

CHAIRMAN: Anybody not have the corrected version?

MR. SORENSON: I believe we do.

CHAIRMAN: Yes. Good. Okay. Nothing else? Good. Thank you very much. See you on March 17th.

(Adjourned)

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

Reporter