

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER OF an application by Enbridge Gas New Brunswick to change its Small General Service Residential Oil, Small General Service Commercial, General Service, Contract General Service, Off Peak Service, Contract Large Volume Off Peak Service and Natural Gas Vehicle Fueling distribution rates Held at the New Brunswick Energy and Utilities Board premises, Saint John, N.B., on February 5th 2008.

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2 IN THE MATTER OF an application by Enbridge Gas New Brunswick
3 to change its Small General Service Residential Oil, Small
4 General Service Commercial, General Service, Contract General
5 Service, Off Peak Service, Contract Large Volume Off Peak
6 Service and Natural Gas Vehicle Fueling distribution rates
7 Held at the New Brunswick Energy and Utilities Board premises,
8 Saint John, N.B., on February 5th 2008.

6
BEFORE: Raymond Gorman, Q.C. - Chairman
7 Cyril Johnston, Esq. - Vice-Chairman
Edward McLean - Member
8 Steve Toner - Member
Robert Radford - Member

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NB Energy and Utilities Board - Counsel - Ms. Ellen Desmond
10 Staff - Doug Goss
- John Lawton
11 - Dave Young

12 Secretary Ms. Lorraine Légère
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15 CHAIRMAN: Good morning, everyone. This is a pre-hearing
16 matter in relation to an application by Enbridge Gas New
17 Brunswick to change its Small General Service Residential
18 Oil, Small General Service Commercial, General Service,
19 contract General Service, Off Peak Service, Contract Large
20 Volume Off Peak Service and Natural Gas Vehicle Fuelling
21 distribution rates.

22 Could I have the appearances, please?

23 MR. HOYT: Len Hoyt for Enbridge Gas New Brunswick.
24 Appearing with me is Dave Charleson, the General Manager
25 of EGNB.

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2 CHAIRMAN: Thank you, Mr. Hoyt.

3 MR. THERIAULT: Mr. Chairman, Daniel Theriault appearing as
4 Public Intervenor. And I am joined this morning by Robert
5 O'Rourke.

6 CHAIRMAN: Thank you, Mr. Theriault. Competitive Energy
7 Services? Mr. Sorenson present? And he is the only other
8 individual that had indicated that he wanted formal
9 intervenor status.

10 The New Brunswick Energy and Utilities Board?

11 MS. DESMOND: Ellen Desmond, Mr. Chair. And here from Board
12 Staff is Doug Goss, John Lawton and Dave Young.

13 CHAIRMAN: Thank you, Ms. Desmond. The Board this morning
14 is comprised of myself, the Vice-Chairman, Cyril Johnston,
15 Ed McLean, Robert Radford and Steve Toner.

16 This is a pre-hearing. Therefore, there are a number
17 of issues for us to deal with. But I think that perhaps
18 the first thing we might do is see if there is any
19 exhibits that could be marked. And I believe that there
20 may have been documents circulated in that regard. As I
21 understand it there is only probably two exhibits this
22 morning, Mr. Hoyt?

23 MR. HOYT: Yes. I have an affidavit of publication and an
24 affidavit of mailing and posting.

25 CHAIRMAN: So the affidavit of publication and affidavit of

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2 mailing and posting -- and I am assuming there is no
3 objection to marking these exhibits -- that will become
4 exhibit A-1. And perhaps you could just give those to the
5 Board Secretary.

6 And then the other material we have is your
7 application and supporting evidence dated December 19th
8 2007. And that will become exhibit A-2.

9 And I take it that there are no other documents to be
10 marked as exhibits at this time?

11 MR. HOYT: Not at this time.

12 CHAIRMAN: With respect to matters to be determined today, I
13 think the first issue arises out of your application, Mr.
14 Hoyt, where you have requested a written proceeding. The
15 Public Intervenor, Mr. Theriault, has indicated in his
16 correspondence that he would prefer an oral proceeding.
17 And I do believe that we had one other letter in that
18 regard from Mr. Sorenson. I think he also indicated that
19 he would be in favour of a written proceeding.

20 So with respect to how we should proceed, Mr. Hoyt, do
21 you have any comments on whether it should be written or
22 oral that you would like to have argument or discussion at
23 this point in time?

24 MR. HOYT: I do, Mr. Chairman. I assume in terms of the
25 interventions themselves, that there will be an

1
2 opportunity to speak to those?

3 CHAIRMAN: In what sense, Mr. Hoyt?

4 MR. HOYT: Well, we have no objection to the formal
5 interventions of either the Public Intervenor or
6 Competitive Energy Services or the informal intervention
7 of the Department of Energy. But there are some comments
8 that I would like to make in respect of both of those so
9 we can do those after.

10 CHAIRMAN: No, this might be as good a time as any to deal
11 with that.

12 MR. HOYT: All right. In terms of the intervention of
13 Competitive Energy Services, it's unfortunate that Mr.
14 Sorenson is not here to perhaps shed some light on this.
15 But there is a bit of confusion in terms of how that
16 intervention is intended to work, because he has indicated
17 that he is intervening on behalf of the City of Saint
18 John. And in Enbridge's 2005 rate application a similar
19 type of intervention was made that lead to some confusion
20 during the proceeding in that the customer whose rates and
21 consumption costs and so on that were relevant to the
22 proceeding were the City of Saint John. But Mr. Sorenson
23 also represented a number of other customers that he would
24 include a bunch of information as to their consumption and
25 their activity. But those particular customers weren't

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2 actually involved in the proceeding.

3 So what I wanted to get was confirmation from him that
4 in this case that he is actually an advocate for the City
5 of Saint John, which is fine. But that it's that
6 particular customer whose information and so on that will
7 be relevant to the proceeding.

8 CHAIRMAN: Well, I think that if we turn to his
9 correspondence -- well looking at his letter dated January
10 21st 2008, which would have been -- it would have been
11 copied to Enbridge, I am assuming, yes, I see it went to
12 Mr. Charleson, Mr. Theriault, you may not have that
13 document. Would you like perhaps somebody to share a copy
14 of that with you?

15 MR. THERIAULT: Thanks.

16 CHAIRMAN: I see in his letter dated January 21st 2008, he
17 indicates that Competitive Energy Services on behalf of
18 the City of Saint John. It seems clear to me that CES is
19 representing the City of Saint John. I am not sure,
20 however, that I fully understand the comments that you are
21 making. The fact that he is representing the City of
22 Saint John in what way would that restrict him from
23 bringing in evidence with respect to perhaps other
24 customers?

25 MR. HOYT: Well just in terms of -- I agree with your

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2 interpretation of what that says. And that would be my
3 understanding as well, but the language is eerily similar
4 to what was used in 2005 and I just know the direction
5 that that went. And it would be -- the problems became --
6 they were somewhat hypothetical scenarios that were
7 provided, but because Enbridge was -- is familiar with a
8 lot of these customers knows where the numbers were coming
9 from and it just -- it became much more than just what the
10 City of Saint John did. I mean perhaps we can wait and
11 see what evidence is lead and deal with it at that time.
12 But I just put it up as a flag that last time it did lead
13 to some confusion in the process.

14 CHAIRMAN: Well I think that's something that perhaps we
15 will have to deal with as we move forward if in fact there
16 is evidence that you feel or comments or questioning that
17 you have some objection to, then I feel pretty certain
18 that we will hear from you in that regard.

19 So then Enbridge then has no difficulty though with
20 the parties who have applied for formal or informal
21 intervenor status and the granting of that status by the
22 Board?

23 MR. HOYT: No problem with the status. But again I do have
24 some comments on some of the positions indicated in the
25 Public Intervenor's letter of intervention as well.

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2 CHAIRMAN: All right. Well, I guess before we get to that
3 point, then the Board will grant formal intervenor status
4 to Competitive Energy Services and to the Public
5 Intervenor and will grant informal intervenor status to
6 the Department of Energy as requested.

7 With respect to the Public Intervenor, you say you
8 have some comments with respect to his participation?

9 MR. HOYT: Not to the participation, but the indication on
10 page 2 of his correspondence in terms of what his
11 intervention would focus on. If you turn to page 2, the
12 first full paragraph of that letter, towards the end of
13 it, it indicates that the intervention is intended to
14 focus on the basis for the continued need for market-based
15 rates and the timing of a transition to cost-based rates.
16 Those are two of the four enumerated items set out in the
17 intervention. And I am not sure if at the time that this
18 letter was filed, the Public Intervenor had seen the
19 Board's decision on the LFO distribution rate, Motions Day
20 of January 18th. So that may or may not be relevant.

21 But I would just like to refer to a couple of
22 comments in that decision of the Board. And I would note
23 that at page 4, and I quote, "the Board said that the
24 Board based on the evidence is convinced that the
25 development period has not yet ended, nor will it in the

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2 near future." And then at page 3, and again I quote, "the
3 Board believes that market-based rates are an essential
4 element of the development period." And the Board then
5 confirmed that it will proceed to set rates in the LFO
6 application using EGNB's market-based method.

7 The Board, as you know, in the same decision
8 established a process going forward. Board Staff is to
9 convene a meeting with EGNB and other interested parties
10 to develop a proposal that would be brought forward to the
11 Board for its consideration. And this process is to
12 commence in the fall of 2008. After that process
13 concludes, the Board intends to conduct a generic hearing
14 for the purpose of determining the appropriate method that
15 will be used when it is appropriate to change from the
16 current market-based method.

17 So the Board has put a process in place moving towards
18 2010. And it's EGNB's position that the focus of this
19 current application should be the market-based rates as
20 put forward by EGNB. And with respect to that matter, we
21 are seeking direction from the Board.

22 CHAIRMAN: Mr. Theriault, do you want to address that issue?

23 MR. THERIAULT: Sure. The issue before the Board, Mr.

24 Chairman, is an application by EGNB to increase their
25 rates. Whether the ratemaking methodology, which was

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2 discussed in the LFO hearing, which is a separate hearing
3 than this particular hearing, comes up again I believe I
4 should have the right to explore that. There may be
5 different avenues. I believe that one of the comments
6 that my friend referred to was that when he quoted the
7 Board, the Board isn't convinced. Well, the Board isn't
8 convinced maybe because Mr. Lawson or Mr. Stewart on that
9 particular day didn't convince the Board. Maybe I can do
10 a better job of convincing the Board should I see the
11 intervention needing to go that way. And I would ask that
12 I be allowed the opportunity should I believe as Public
13 Intervenor that it is necessary to examine that issue to
14 examine that issue.

15 It's -- I can't imagine why the Board would want to
16 set restraints on an intervention. Obviously if the Board
17 feels that any evidence that I may submit or call is not
18 relevant, I am sure the Board will tell me it is not
19 relevant. If the Board feels that it is not convincing, I
20 am sure the Board will tell me that it is not convincing.
21 But to put restraints on the intervention at this point in
22 time, I think is definitely premature.

23 CHAIRMAN: Thank you, Mr. Theriault. Ms. Desmond any
24 comments on that issue?

25 MS. DESMOND: No comments, Mr. Chair.

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2 CHAIRMAN: All right. Well that's something that the Board
3 will have to discuss. So I am not going to make any
4 comments on that issue just at this stage.

5 Are there any other issues, Mr. Hoyt, before we get
6 into the issue of whether or not we should proceed with a
7 written hearing or an oral hearing?

8 MR. HOYT: The only thing I wanted to confirm that there
9 were no letters of comment other than one that was
10 received from Wallace Fisher. Just to make sure that we
11 have gotten everything that did come in.

12 CHAIRMAN: I believe that -- my understanding is the Board
13 may have received two or three letters and I -- those will
14 be distributed.

15 Ms. Desmond would that be correct, there are two or
16 three letters that have been received from customers?

17 MS. DESMOND: Yes, Mr. Chair. I believe that contact had
18 been made either with the Board Secretary or one of the
19 advisers that perhaps maybe the Applicant was not copied
20 on. And certainly we would undertake provide copies of
21 those letters perhaps on a break.

22 CHAIRMAN: My understanding is that there were at least
23 three letters that the Board received. Does that sound
24 correct?

25 MS. DESMOND: I believe at least three. There might even

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2 had been four, Mr. Chair.

3 CHAIRMAN: In any event, any letters of that nature that the
4 Board receives, we will see that you get copied on.

5 MR. HOYT: Thank you. No, those are the things that I
6 wanted to address.

7 CHAIRMAN: All right. Then perhaps we can move on to
8 determine whether or not this will be a written or an oral
9 hearing. So Mr. Hoyt, I will ask you to address that
10 issue?

11 MR. HOYT: Sure. As you indicated, Mr. Chair, in our
12 application we did request a written proceeding and would
13 question the need for a public hearing. The Board will
14 have just completed a full public hearing on the CLGS LFO
15 rate class, where a lot of the issues around EGNB rates
16 will have been canvassed.

17 As we see it, it's now a matter of applying the
18 Board's market-based methodology to these particular rate
19 classes. And the only other comment I would make is I
20 would note, as you indicated, that CES has indicated that
21 their preference would be to use a written proceeding.
22 And they are in fact, other than the Public Intervenor,
23 the only other party actively participating in this
24 proceedings.

25 CHAIRMAN: Thank you. Mr. Theriault?

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2 MR. THERIAULT: Thank you, Mr. Chairman. As indicated
3 earlier, I have been appointed by the Attorney General to
4 act as Public Intervenor in this matter. There are a
5 number of points that can be made to support a position
6 that the EGNB hearing should be conducted as an open
7 public hearing, rather than conducting as a hearing based
8 on written comments. First of all, I believe -- and I
9 have gone through most of the previous decisions and all
10 the earlier proceedings dealing residential and general
11 service customers, were conducted I believe on the basis
12 of written comments.

13 This may be appropriate in the early years after a
14 franchise was awarded to the Applicant, simply because it
15 would have had few if any customers in the various
16 customer classes. However, I suggest that's no longer the
17 case. Customers do have an interest in this application.
18 And they do have an interest in having the application
19 examined in a public hearing format.

20 I also believe, Mr. Chairman, that this is the first
21 time that a public intervenor has intervened in an EGNB
22 rate application.

23 In earlier proceedings, there was no intervention on
24 behalf of the residential and general service customers.
25 There is now such an intervention as appropriate from a

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2 regulatory perspective that the Board proceed on the basis
3 of an open and public hearing.

4 Thirdly, the hearing for the large contract customers
5 is proceeding as a public hearing. The reasons for
6 proceeding via a public hearing for this class of
7 customers applies equally well to the application for rate
8 changes for all other classes.

9 In other words, an application for a rate increase to
10 any customer class should be examined in a hearing -- a
11 public hearing format.

12 Now my friend, Mr. Hoyt, referred to well all the
13 issues are the same in the LFO class. Again, even though
14 I have come to that as an informal intervenor late, still
15 it is my role as Public Intervenor is totally separate in
16 these hearings than it would be in those hearings. And
17 the fact that Enbridge chose to bring a separate LFO
18 hearing, as opposed to combining them is Enbridge's
19 choice. But that should not be a reason for denying the
20 public the right to have a full and open hearing.

21 Mr. Chairman, I would intend as part of the hearing
22 process to submit IRs on the Applicant's evidence. I
23 would intend to examine the responses to IRs and issue
24 supplementary IRs where responses may be incomplete,
25 inadequate or nonresponsive. I would intend to call

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2 evidence on the issue of one, the rate increase, two, the
3 appropriate transition mechanisms from market-based to
4 cost-based ratemaking and three, the deferral account.

5 I would also intend to respond to IRs from the
6 Applicant's evidence submitted by the Public Intervenor.
7 Some of the issues I suggest that should be canvassed and
8 can only be done by an open hearing with introduction of
9 evidence, IRs and direct and cross examination are, for
10 example, one, is the formula for which market-based rates
11 are predicated working? Two, is the formula reflective of
12 the fact that costs of providing a gas distribution
13 service are largely fixed? Three, there are several
14 issues surrounding merchant gas commodity services to
15 customers. Four, I have concerns with the amount and type
16 of economic incentives EGNB feels it should offer its
17 customers. Five, it is in the public interest that the
18 whole idea of a greenfield market be examined and for
19 evidence to be presented and challenged.

20 Again, I understand there was a similar type motion
21 that my friend referred to earlier in the LFO, but that
22 should not preclude that being looked at assuming the
23 Board considers that the evidence I produce is relevant.
24 Six, we need to look at and examine the relationship
25 between oil prices and delivery rates. Seven, EGNB's

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2 implementation of the market-based rate methodology should
3 be reviewed in detail to ensure rates are fair to
4 customers and to EGNB. We need to examine the
5 reasonableness of the assumptions in the implementation of
6 the market-based rate methodology including implied
7 savings rates, assumed commodity prices, assumed basis
8 differentials, assumed foreign exchange rates, assumed
9 deficiencies, and also I would suggest EGNB's choice of
10 who gets what rate should be examined.

11 So these, Mr. Chairman, are all these aspects and
12 other issues which will form part of the intervention by
13 the Public Intervenor require that the hearing be open and
14 be transparent.

15 Quite frankly, I would suggest the hearing cannot
16 proceed in the form of a written comment when the rules of
17 evidence and cross examination come into play from a
18 procedural perspective and from a fairness perspective.
19 For the public interest, the Board must rule that it will
20 proceed by way of a public hearing.

21 CHAIRMAN: Thank you, Mr. Theriault. Ms. Desmond, any
22 comments?

23 MS. DESMOND: No comments, Mr. Chair.

24 CHAIRMAN: Mr. Hoyt?

25 MR. HOYT: Just a couple, Mr. Chair. First in terms of the

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2 type of proceeding, the Public Intervenor indicated that
3 there had never been a public hearing involving the
4 changes to these particular rate classes. The 2005 rate
5 application was handled after a full public hearing.

6 But what I wanted to look at more importantly, I
7 gather some of the items that the Public Intervenor
8 indicated that he intends to focus on, and it goes back to
9 the original comments that I made, I mean, a number of
10 those -- a number of the items that he indicates are fine.
11 They are the types of things that we would anticipate
12 dealing with in this proceeding.

13 But again some of the comments dealt with cost-based
14 rates, EGNB's market-based methodology, whether or not it
15 is a greenfield. Those are the types of issues that were
16 canvassed as recently as a month ago and on which the
17 Board rendered a very clear decision.

18 And so I think in terms of how this proceeding in
19 particular is to move forward, that it is important that
20 that issue be dealt with and clear direction be provided
21 by the Board.

22 CHAIRMAN: Any further comments with respect to whether it
23 should be a written or oral proceeding? I understand your
24 comments with respect to the nature of the issues which
25 should be canvassed at the hearing.

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2 But with respect to -- just if you could kind of focus
3 on Mr. Theriault's comments, that the very nature of this
4 type of proceeding is such that it would be preferable to
5 have it in an open sort of forum if you will so that
6 anybody who wished to participate or come in and watch the
7 proceedings would be able to.

8 MR. HOYT: No. We don't have anything further to add to our
9 initial comments on that.

10 CHAIRMAN: We will take a break here. I don't think we will
11 be too long. And we will give a determination as to
12 whether or not it will be a written or oral hearing.

13 (10:35 a.m. - 10:40 a.m. - Recess)

14 CHAIRMAN: The Board has considered the arguments as to
15 whether or not we should proceed by way of written or oral
16 hearing. And we are I guess swayed by the arguments in
17 favor of an oral hearing. So that is the manner in which
18 we will proceed.

19 With respect to the comments addressed to Mr.
20 Theriault's letter of January 23rd, in particular his
21 comments on the basis for the need of market-based rates,
22 we are not going to fetter his ability to ask questions at
23 this stage of the proceedings.

24 I guess I will just make the comment that perhaps Mr.
25 Theriault should be mindful of our recent decision on that

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2 issue. And you know, if he wishes to pursue it then we
3 will build into our schedule a Motions Day. And if the
4 Applicant feels that he is going down a road that isn't
5 appropriate for this proceeding, then we will deal with
6 it.

7 I don't think on a preliminary basis that we can take
8 sort of a general topic such as that and just say carte
9 blanche that we are ever going to exclude the ability to
10 ask any questions on it.

11 But as I have indicated, I also think Mr. Theriault
12 should be mindful of the decision. And I'm not even
13 certain whether he would have had that decision.

14 When I look at the timing of our decision, the timing
15 of this letter, it may well be that he did or didn't have
16 it. But in any event we are not going to fetter the right
17 for him to ask questions at this stage.

18 I think the next issue then that we have to deal with
19 is a schedule.

20 I wonder have the parties put their mind to a
21 potential schedule for this matter?

22 MR. HOYT: Mr. Chair, not being absolutely certain that I
23 would convince you to have an oral proceeding or not to
24 have an oral proceeding, I came with two schedules.

25 CHAIRMAN: It is always good to have a plan B.

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2 MR. HOYT: So I have got plan B which I could circulate at
3 this time.

4 CHAIRMAN: Okay. Thank you.

5 MR. HOYT: So Mr. Chair, if I could just speak to some of
6 the rationale behind the schedule. Obviously we are here
7 at the pre-hearing on February the 5th.

8 Being mindful of some of the comments from the LFO
9 proceeding, I propose that the interrogatories to EGNB
10 would not be due for two weeks, on February the 19th.
11 EGNB would respond to those IR's on February 26th. I
12 believe it is 10 days later the intervenor evidence would
13 be due on March the 6th.

14 Our interrogatories to the intervenors would be due on
15 March the 13th with the responses from the intervenors a
16 week later on March the 20th and the hearing to be held on
17 March 25th and 26th. That ties into the Applicant's
18 request that these rate changes be effective on April the
19 1st.

20 One other item. You just mentioned the Motions Day
21 and incorporating that into the schedule. It would seem
22 that as EGNB's responses are proposed to be due on
23 February 26th that perhaps a Motions Day if necessary
24 could be scheduled for February 28th or 29th, if that
25 would work for parties, at which time we could deal with

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2 either motions from the Public Intervenor or in fact the
3 motion may come from EGNB.

4 CHAIRMAN: Thank you. Mr. Theriault, have you just seen
5 this? Is this the first that you have seen it? Are you
6 able to address --

7 MR. THERIAULT: Yes. I think I can address it.

8 Mr. Chairman, I guess the only -- first of all, I look at
9 the deadline, February 26th 2008 which would be the
10 responses from EGNB and then March 6th 2008 for the
11 intervenor evidence.

12 Obviously the evidence that I would submit as Public
13 Intervenor would largely depend upon the responses. And
14 that is an awfully tight time frame. And so I would ask
15 that there maybe be a little leeway, a little more leeway
16 in there.

17 The other thing is with respect to a Motions Day, I'm
18 unavailable from February 24th until March 2nd. So any
19 Motions Day would have to, I would suggest, go after that.

20 CHAIRMAN: Well, I do know that that first week in March is
21 sometimes considered to be sacred. I believe that is the
22 school March break. Sometimes it is difficult to have
23 much occur --

24 MR. THERIAULT: Mr. Chairman, maybe I can make a suggestion.

25 If we could have a few minutes with Mr. Hoyt and

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2 Mr. Charleson, we might be able to work something out that
3 would accommodate any concerns the Board has.

4 CHAIRMAN: Ms. Desmond, before we do that, any comments you
5 have on the schedule?

6 MS. DESMOND: I just -- I'm not sure if the PI is satisfied
7 that the hearing would take two days. I know he raised
8 issues that he thought might be addressed in his evidence.
9 And it struck me that perhaps two days -- whether or not
10 that is sufficient time.

11 MR. THERIAULT: I would suggest that three would be safe.
12 Whether we would use the whole three. But rather than not
13 have enough days scheduled.

14 CHAIRMAN: Before we adjourn and allow the parties to talk
15 about scheduling issues, one other I guess issue is in the
16 Board's mind and that is -- Mr. Hoyt, you have asked about
17 whether or not we received any comments from the public or
18 any letters.

19 I think we indicated that there were a minimum of
20 three. It has been the practice of this Board in recent
21 times in electricity matters to have an opportunity for
22 the general public to come in and address the Board,
23 although not having to sort of take part in a full
24 hearing.

25 But I think -- I may be incorrect, but I do believe

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2 that all of the letters that we received were from the
3 Moncton area. And I understand that the largest
4 penetration that you would have in terms of customers in
5 these classes is probably in the Moncton area. Would that
6 be a fair comment?

7 MR. HOYT: Moncton and Fredericton. Yes. It may actually
8 be the Fredericton area. Because the PMQ's are now gas.
9 There is about 1,600 customers there.

10 On the break though Ms. Desmond shared some of the
11 other letters that had been received. And it seems as
12 though they may not necessarily be about this hearing.
13 They just were received during that time frame. The one
14 that I had referred to earlier, the one from Mr. Fisher,
15 clearly was aimed at this specific proceeding.

16 But we have been provided with the letters. And we
17 will determine whether or not they actually relate to this
18 application at all. In fact some of them don't seem to
19 relate to it in any way.

20 CHAIRMAN: All right. Well then perhaps --

21 MR. THERIAULT: If I may, Mr. Chairman.

22 CHAIRMAN: Yes, Mr. Theriault.

23 MR. THERIAULT: Sorry to interrupt. And I didn't mention
24 when the discussion -- but I have received some
25 correspondence as well. I'm sure that the Board Staff

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2 hasn't even received. Because it came directly to me.
3 And also from the Moncton area, especially one in
4 particular.

5 So if there was a public comment day -- and I think
6 that is a good idea. I think it served a useful purpose
7 with the NB Power case. And I would suggest if they were
8 looking -- if the Board was looking at that, Moncton would
9 probably be the appropriate spot.

10 CHAIRMAN: Well, what I'm going to suggest then, if we take
11 a break for purposes of allowing I guess the parties to
12 talk about some dates that might work. Perhaps you could
13 also canvass that issue amongst yourselves as well, as to
14 whether or not you believe a public day might be useful.

15 On the electricity side I think it lasted about four
16 hours. It was a good session. I think it was very useful
17 and very helpful. I don't know if the interest is out
18 there, whether people would attend or they would not.

19 And the only reason I'm throwing Moncton out as a
20 potential location for it is that is where the comments
21 would come to the Board, from people living in the Moncton
22 area. That is not to say if you held it in Fredericton
23 you wouldn't get lots of interest there as well. I don't
24 know.

25 So perhaps the parties could chat about whether or not

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2 that might be a reasonable approach this time.

3 MR. HOYT: I assume, Mr. Chair, you are talking about it
4 forming or taking place during the time that the hearing
5 is taking place, so somewhere in there and whether it is
6 for half a day or --

7 CHAIRMAN: What I think has worked well in the past are
8 evening sessions for the public. Again lots of people
9 would say well, I can't take time off work to attend a
10 hearing. But if the opportunity presented itself to me,
11 an evening or something like that, then perhaps we could
12 attend.

13 So I mean, there are lots of options. Because the
14 hearing doesn't necessarily, you know, need to be here in
15 this boardroom either. It could also be in Fredericton or
16 Moncton if it would work well with the idea of a pre-
17 hearing.

18 We haven't really made our mind up on it. I think
19 that the parties could address us on that though after the
20 break. We can then determine what might be the most
21 appropriate way to proceed.

22 So we will have an adjournment to talk about the
23 schedule, the parties to do that. But before we do that
24 are there any other issues that we should be, you know,
25 addressing at this point in time so we can make good use

1 of our time as well?

2 MR. HOYT: None from the Applicant.

3 MR. HOYT: None from the Public Intervenor.

4 CHAIRMAN: Ms. Desmond?

5 MS. DESMOND: No.

6 CHAIRMAN: All right. Well, then we will take another
7 adjournment. And perhaps someone can let us know when we
8 are ready to convene.
9

10 (10:50 a.m. - 11:25 a.m. - Recess)

11 CHAIRMAN: I understand that the parties have worked out a
12 schedule that will work for them. And I think with the
13 change of one date for the hearing, starting a day late,
14 it will also work for the Board.

15 I'm going to review the dates that I have and then
16 make sure that I have got the right dates. The first one
17 following today is Board circulates coordinates list,
18 filing schedules, et cetera February the 8th 2008.

19 Interrogatories to EGNB would be February the 14th, 2008.

20 Responses from EGNB would be February the 20th, 2008
21 at 4:00 p.m. Motions Day would be February the 22nd in
22 the morning. Intervenor evidence would be filed on March
23 the 10th 2008. Interrogatories to the intervenors would
24 be sent by March the 14th 2008. Responses from the
25 intervenors March the 20th 2008.

1
2 And the hearing we will schedule three days,
3 understanding that the parties feel they will need a
4 minimum of two and perhaps a third, for March the 26th,
5 27th and 28th.

6 So with respect to those dates, are those dates
7 agreeable to everybody?

8 MS. DESMOND: Mr. Chair, except when you noted otherwise,
9 are the filing times at noon?

10 CHAIRMAN: Yes, sorry.

11 MR. HOYT: And what time would the Motions Day be on the
12 22nd?

13 CHAIRMAN: Well, we can hold it in the morning. And I -- I
14 guess today we started at 10:00. But I'm certainly not
15 locked into that.

16 If anybody believes that it is going to take the
17 better part of the day or there is some reason, you know,
18 that you would like to be done earlier rather than later.
19 I mean, we can start at 9:00 as easily as we can 10:00,
20 quite frankly.

21 MR. HOYT: By 10:00 is fine.

22 CHAIRMAN: Okay. All right. Have that at 10:00 o'clock.

23 MR. HOYT: The only other question, just in terms of the
24 date for the hearing, have you determine when the public
25 portion would be? Would it be the evening of the 26th?

1
2 CHAIRMAN: We will -- I guess we haven't dealt with the
3 issue of location. We will advise the parties as to where
4 it will be. If there is a public session it will be on
5 the evening of the first day. So it will be the evening
6 of the 26th.

7 So Mr. Hoyt, any -- that is agreeable to the
8 Applicant?

9 MR. HOYT: Yes.

10 CHAIRMAN: Mr. Theriault, that is acceptable?

11 MR. THERIAULT: That is fine.

12 CHAIRMAN: Ms. Desmond, any comments on the schedule?

13 MS. DESMOND: That is fine.

14 CHAIRMAN: The only other comment that I would make is that
15 with respect to the Motions Day, which is set for the 22nd
16 of February, it does sound like, you know, the parties may
17 -- that is not set in here.

18 Perhaps is it possible the parties may already know or
19 have an idea as to what the subject matter or the nature
20 of that motion is. And I appreciate that arising out of
21 IRs or responses certain issues might be brought forward.

22 But if there is an issue that the parties are aware of
23 now rather than later, you know, there is no reason that
24 one needs to wait, you know, to the last minute I guess to
25 file a notice of motion. That is all -- the more notice

1
2 to the parties perhaps the better and more time for people
3 to prepare.

4 MR. HOYT: I think, Mr. Chair, again hard to anticipate how
5 it would all play out. But I would expect that the
6 Applicant's issue will be the one that I addressed on a
7 couple of occasions earlier this morning, that going to
8 the scope of the proceeding.

9 I mean, it may be handled a couple of different ways,
10 when we receive IRs that we don't believe are relevant,
11 then we likely won't respond. And in that case it would
12 be the Public Intervenor I expect would have a motion.

13 Otherwise -- well, I guess we will have to see what
14 the nature of the questions are. But I think we should
15 plan on being here on the 22nd.

16 CHAIRMAN: Let's put it this way. I don't see the word
17 "tentative Motions Day" or anything. It appears that the
18 parties believe it will occur. And every time it is
19 tentative it seems to happen. So maybe this one will work
20 itself out the other way around. Maybe that is the
21 strategy. I don't know.

22 Are there any other matters to deal with at the pre-
23 hearing?

24 MR. HOYT: I have one item. And I just discussed it with
25 Mr. Theriault. And it has to deal with confidentiality

1
2 policy.

3 And what I would suggest is or would ask the Board to
4 confirm that the confidentiality policy which both of us
5 are familiar with applies to this proceeding, and ask that
6 Board Staff provide us with the form of undertaking that
7 is to be used.

8 And the reason I'm suggesting it at this point is that
9 if Enbridge receives signed undertakings from the Public
10 Intervenor prior to the time that we respond to their
11 interrogatories, it will allow us to actually provide
12 information that we consider confidential at that time.

13 So it won't be a matter of us claiming confidentiality
14 all through our responses, then the Motions Day they won't
15 have it. It just may expedite the process. But that
16 won't take away the Public Intervenor's ability to
17 challenge whether a particular item is confidential or
18 not.

19 CHAIRMAN: Certainly the Board's confidentiality policy of
20 course would apply to all of our proceedings. And with
21 respect to getting a form of undertaking, that shouldn't
22 -- Ms. Desmond, I assume that wouldn't be --

23 MS. DESMOND: No. Certainly not. We can prepare that right
24 away. I do wonder how this will impact on CES in terms of
25 -- I'm assuming the same procedure would be appropriate

1
2 for him, that he could --

3 CHAIRMAN: Well, the process applies obviously to all
4 intervenors. And since we have two formal intervenors
5 obviously it would apply to them as well.

6 MR. HOYT: But I thought it was useful last time in the LFO
7 proceeding, when the form was sent out, there was actually
8 a cover note from the Board that explained that to be
9 provided with these things they got to be signed and sent
10 to the Board and to the Applicant.

11 So I think if Mr. Sorenson got a similar letter he
12 would know what he should do with it.

13 CHAIRMAN: So Ms. Desmond, that will be looked after. That
14 is not --

15 MS. DESMOND: Yes.

16 CHAIRMAN: -- a problem? Okay. Any other issues?

17 MR. HOYT: No.

18 CHAIRMAN: Mr. Theriault, anything else?

19 MR. THERIAULT: No. I guess so that we are clear, that
20 obviously the undertaking could be signed by any experts
21 that I would choose to engage so that they could look at
22 the documentation obviously, similar to exactly as we did
23 with the DISCO one.

24 MR. HOYT: Yes. That is fine.

25 CHAIRMAN: Ms. Desmond, anything further?

1
2 MS. DESMOND: No. I think it is understood that it is an
3 individual's undertaking, and that that really is the
4 distinction with respect to our policy, is that it applies
5 to each and every person who is going to be reviewing the
6 material.

7 CHAIRMAN: Anything further, Ms. Desmond, this morning?

8 MS. DESMOND: No.

9 CHAIRMAN: All right. We will adjourn.

10 (Adjourned)

11
12 Certified to be a true transcript of
13 the proceedings of the hearing, as
14 recorded by me, to the best of my
15 ability.

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Paul Harris
Reporter

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