

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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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 14th 2008.

1 NEW BRUNSWICK ENERGY AND UTILITIES BOARD
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 14th 2008.

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

9
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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14

15 MR. SORENSON: Jon Sorenson.
16 CHAIRMAN: Mr. Sorenson?
17 MR. SORENSON: Yes.
18 CHAIRMAN: It's Ray Gorman from the Energy and Utilities
19 Board in New Brunswick.
20 MR. SORENSON: Hi, Ray. How are you?
21 CHAIRMAN: Very good.
22 MR. SORENSON: Let me pull over. I am going to pull over
23 here to the side of the road. Is that better?
24 CHAIRMAN: That is better. And it's probably a better idea
25 to pull over and do this on the side of the road anyway.

1
2 MR. SORENSON: Okay.

3 CHAIRMAN: I have a Panel of the Energy and Utilities Board
4 here consisting of myself, Vice Chair, Mr. Johnston, Mr.
5 Radford, Mr. Toner and Mr. McLean. And we are treating
6 your letter of February 12th as a motion.

7 So the other parties are present, but perhaps I will
8 just for the record take appearances starting with the
9 Applicant?

10 MR. HOYT: Len Hoyt for Enbridge Gas New Brunswick.

11 CHAIRMAN: Thank you. And the Public Intervenor?

12 MR. THERIAULT: Daniel Theriault.

13 CHAIRMAN: And for CES?

14 MR. SORENSON: Jon Sorenson.

15 CHAIRMAN: Thank you, Mr. Sorenson. As I had indicated, I
16 have your letter of February 12th indicating that I guess
17 you are not particularly please with the hearing schedule
18 that has been set and you are asking the Board to consider
19 some changes?

20 MR. SORENSON: Correct.

21 CHAIRMAN: In front of me I have some documentation. I
22 believe that it was e-mailed and faxed to you. And the
23 same documentation has been provided to the other parties
24 who are present. And I will just go through it very
25 quickly.

1
2 There is your letter of February 12th of this year.
3 There is a letter of the same date signed by Len Hoyt
4 addressed to the Board and copied to the Intervenors,
5 which would have included you. A letter dated February
6 12th from Dan Theriault, the Public Intervenor. A letter
7 dated February 11th from you to the Board. And a letter
8 dated January 21st of this year from you to the Board. Do
9 you have that documentation or have you received it?

10 MR. SORENSON: I have received it. I do not have it in
11 front of me. I am travelling.

12 CHAIRMAN: Well the only reason I mention it is that during
13 the course of this motion that's the documentation that I
14 would assume the parties might refer to.

15 So if I can go to your letter of February 12th, and
16 perhaps since -- we will treat this as your motion, I will
17 ask you to perhaps go first and advise us as to what it is
18 you are looking for and what your reasons are?

19 MR. SORENSON: It seems important we had asked for an
20 extension to revise the schedule of the hearing, because
21 it came to me over the schedule that both myself and our
22 staff would not be able to comply with based on our
23 current work managed schedules, we would not be able to
24 comply and meet the requirements outlined in that
25 schedule. It's that simple.

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2 CHAIRMAN: All right. I believe that in some of your
3 correspondence that you had indicated that perhaps you did
4 not have notification with respect to the pre-hearing
5 conference.

6 I do note that on January 21st of this year though you
7 did write to the Board and sent a copy to the Applicant
8 indicating that you wished to have Formal Intervenor
9 Status?

10 MR. SORENSON: Correct.

11 CHAIRMAN: So can I take from that that in fact you -- that
12 you would have been aware of the pre-hearing conference,
13 or what I am -- is there some kind of disconnect here that
14 --

15 MR. SORENSON: There is a disconnect. I did not have that.
16 And simply we got a copy of the newspaper article about
17 the conference and had some communication with John Lawton
18 I believe, yes, there was -- had filed another
19 application for to address -- to increase their rates that
20 were non-LFO. And so that's why we intervened. I did not
21 have any documentation except for that at that point.

22 CHAIRMAN: The newspaper -- just one moment there till I see
23 if I can come up with the newspaper advertisement.

24 MR. HOYT: It would be attached to --

25 MR. SORENSON: The newspaper article was scanned and

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2 e-mailed to me and so when we got it, we had our
3 discussions with the City of Saint John and then sent in
4 the intervention.

5 CHAIRMAN: I am looking at the copy of the notice, which
6 would have been published in the newspaper indicating --
7 the very first thing in the notice after our recital
8 indicates that there is a pre-hearing conference scheduled
9 for the Board's office on February 5th 2008. You don't
10 have that notice in front of you at the present time then?

11 MR. SORENSON: I do not. And as I mention unfortunately
12 that day is also a holiday in the United States.

13 CHAIRMAN: All right. The Board was not in receipt of any
14 correspondence from you from the date of your initial
15 letter until after the pre-hearing conference, at least
16 there is nothing that I have in front of me, was there any
17 correspondence sent by you indicating that your inability
18 to attend that?

19 MR. SORENSON: I don't believe so. I did not -- I don't
20 believe we did send a notice on that. Again we -- the
21 schedule would have been noted with myself, my partner and
22 our staff when we received it last Friday.

23 CHAIRMAN: So specifically I just want to make sure I
24 understand what it you are looking for. You want -- I
25 think you say that the schedule be delayed at a minimum of

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2 two weeks. Are you asking for every step in the
3 proceedings to be pushed back by two weeks or the hearing
4 itself or --

5 MR. SORENSON: Everything.

6 CHAIRMAN: I also note in your initial correspondence and
7 that would be the January 21st correspondence that your
8 preference at that time was for a written hearing?

9 MR. SORENSON: Correct.

10 CHAIRMAN: I am just wondering if there is any sort of --
11 any compromise that might be available here to the parties
12 in the event that the hearing were to proceed as
13 scheduled, you would be -- just in case you are not aware
14 of the Board rules, for example, as an Informal Intervenor
15 -- I appreciate that you are a Formal Intervenor, but
16 Informal Intervenor can make presentations either oral or
17 written after the close of evidence. So that would be an
18 option open to you. And given that you were interested in
19 proceeding in that fashion back in January would that look
20 after your concerns?

21 MR. SORENSON: I guess the answer to that if the schedule
22 cannot be moved, then yes we would change our intervenor
23 status to informal. We have a couple of issues here again
24 -- although I have a staff of 30 people, we have two
25 people who would be focusing on this, myself and Rich

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2 Silkman. And then I have a couple of support staff people
3 who would be assisting us as well. And I believe it is
4 scheduled or alluded to in my meeting that I did not want
5 to get into this, but I am also going in for surgery on
6 February 28th to replace my right hip and that was also
7 some of the rationale speaking to that.

8 CHAIRMAN: None of this rationale I guess was put before us
9 prior to the pre-hearing. I think that's what you are
10 telling me?

11 MR. SORENSON: Correct.

12 CHAIRMAN: And do you have any specific dates in mind that
13 you are -- you say a minimum of two weeks? So are you
14 saying --

15 MR. SORENSON: I would believe we could adhere if everything
16 was pushed back two weeks.

17 CHAIRMAN: Anything further that you want to add with
18 respect to this matter?

19 MR. SORENSON: Well again we obviously desire and the City
20 of Saint John desires to be a Formal Intervenor in this
21 process. But as I said if the schedule cannot change,
22 unfortunately we will go to an informal status.

23 CHAIRMAN: And I guess maybe I will throw one more question
24 out to you in terms of status. If you remained as a
25 Formal Intervenor that would give you the right to file

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IRs?

MR. SORENSON: Correct.

CHAIRMAN: But it doesn't create an obligation to attend the hearing. I guess that's a choice you could make. So that might be a -- that's a bit of a compromise. Would you be interested in participating in that fashion?

MR. SORENSON: We do find that you know that there has been some, as a Formal Intervenor, as attending those hearings, and I personally have attended other as CES -- or WPS since 2000. And my -- I believe my preference is again to remain formal to be able to attend, but again I cannot again the 27th through the 29th of March.

CHAIRMAN: And just so I am clear, you say two weeks beyond that. So about mid-April is your earliest availability?

MR. SORENSON: Correct.

CHAIRMAN: Are there specific dates you are not available from that point forward?

MR. SORENSON: Again the entire week before does not work, it would be I believe the 10th. It's that simple.

CHAIRMAN: The 10th of April.

MR. SORENSON: Yes.

CHAIRMAN: And is there any time frame from the 10th of April going forward that you are not available?

MR. SORENSON: Not that I am aware of right now. And I

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2 apologize, but I am travelling. I just got noted that you
3 want to have this call yesterday afternoon.

4 CHAIRMAN: Thank you. Mr. Hoyt, anything that you would
5 like to say with respect to this matter?

6 MR. HOYT: Yes. Just reiterate a couple of the points that
7 I made in my correspondence. First of all, is that EGNB
8 does oppose any change in the schedule that results in a
9 delay of the hearing. I mean if there was fiddling that
10 could be done with the schedule that kept the hearing at
11 the end of March then, you know, it's something that you
12 know might be considered. The key is that the hearing
13 start on March 26th.

14 As you know, the request in EGNB's application is for
15 a rate increase effective April 1. You know, I could
16 debate the method by which Mr. Sorenson first became aware
17 of the pre-hearing, but I think it's obvious from the
18 exchange you just had with him that to intervene on
19 January 21st, the response to a newspaper notice, he
20 obviously had the information at that time that there was
21 a pre-hearing on February 5th and for whatever reason
22 didn't come.

23 The Public Intervenor may echo these comments. We
24 worked quite co-operatively actually the day of the pre-
25 hearing to get a schedule that fit given everybody's

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2 schedules and plans for the March Break. I think it will
3 be very difficult to adjust that schedule to do much in
4 the way of accommodation given the number of parameters
5 that appeared to be relevant in setting it up.

6 So I support the Chair's suggestion or question to Mr.
7 Sorenson that you know if the schedule can't change, and
8 to me I would think that would be unlikely that he can
9 participate as an Informal Intervenor.

10 MR. SORENSON: Can I respond?

11 CHAIRMAN: Well I am going to ask the Public Intervenor for
12 his comments as well and then since it is your motion, I
13 will let you respond to both of them at the same time.

14 MR. SORENSON: Thank you.

15 CHAIRMAN: Mr. Theriault?

16 MR. THERIAULT: Thank you, Mr. Chairman. As I set out in my
17 letter, I have no problem with the two week request or
18 with the suggestion that Mr. Hoyt just made with respect
19 to tweaking the schedule within that time frame.

20 I do have a real concern with Mr. Sorenson's second
21 request that the hearing be postponed until after the LFO
22 hearing and decision comes out, because that it is not a
23 set time frame and I think the matter must proceed on.

24 So again, I have no problem with the two weeks, if
25 everything were postponed by two weeks and I will leave it

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2 to the Board and the other parties to decide that.

3 CHAIRMAN: Thank you, Mr. Theriault. Ms. Desmond anything
4 you wish to add?

5 MS. DESMOND: No. Thank you.

6 CHAIRMAN: I don't know if I indicated at the beginning that
7 you were present or not. Mr. Sorenson, you said that you
8 wanted to respond?

9 MR. SORENSON: Just one comment. In the past we have
10 actually had a rate hearing with Enbridge on an
11 application where we make the -- the final hearing was
12 after the date in which the rates were retro' -- in other
13 words, made the rates retroactive back. So I would have
14 no problem if there are going to be some rate changes, if
15 they can still be retroactive to April 1st.

16 CHAIRMAN: I think that may create some difficulties in
17 terms of retroactive effect for rates.

18 MR. HOYT: Just for the record, I assume Mr. Sorenson is
19 referring to the 2005 rate case. And I think the hearing
20 was in mid-March and the rates were made effective April
21 1st. There was an exchange of argument in late March, but
22 a day or two later there was a decision. So that there
23 actually had been a decision before the rates became
24 effective.

25 CHAIRMAN: In any event, Mr. Sorenson, you wouldn't have any

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2 objection to a retroactive effect for rates?

3 MR. SORENSON: Correct. We would not.

4 CHAIRMAN: Now you did indicate as well I think that you
5 have a staff of about 30?

6 MR. SORENSON: Four people, but there is only going to be
7 two primary and two support people focusing on this.

8 Myself, Rich Silkman, Marion William and Andrew Price.

9 CHAIRMAN: Essentially you are saying that your schedule,
10 and the schedule of the others would not permit
11 participation for a hearing set to commence on March 26th?

12 MR. SORENSON: Correct.

13 CHAIRMAN: Anybody -- any of the Panel Members have any
14 questions for Mr. Sorenson?

15 VICE CHAIRMAN: It's Cyril Johnston, Vice Chairman speaking.

16 I just have one question, which is really addressed more
17 to Mr. Hoyt. I note on the filing schedule that today is
18 the date for interrogatories to be filed to EGNB and that
19 the date for responses is February 20th. If the hearing
20 were kept at the same date, do you see any possibility
21 that any extension at all could be granted to Mr.
22 Sorenson, if he wanted to file some IRs?

23 MR. SORENSON: The question is -- we would not be able to
24 comply with the IRs today or tomorrow and providing those
25 to the process. So is that your question?

1 VICE CHAIRMAN: Well, it was really addressed to Mr. Hoyt.

2 But I mean are you suggesting you couldn't get any IRs in
3 for at least two weeks?
4

5 MR. SORENSON: That is correct.

6 MR. HOYT: I would be interested to know though if that -- I
7 took that perhaps Mr. Sorenson could get them in more
8 quickly.

9 CHAIRMAN: Mr. Sorenson, perhaps you could address the issue
10 as to -- let's for a moment set aside the hearing date,
11 let's not talk about that issue. Let's talk about the IR
12 issue. IRs were due I guess an hour ago. What would be
13 the earliest -- I think that's really the question that
14 Vice Chair Johnston has put to you. What would be the
15 absolute earliest that you feel you could submit IRs on
16 behalf of your client?

17 MR. SORENSON: The preference would be -- I would say the
18 earliest would be February 26th. But my preference would
19 be February 28th.

20 CHAIRMAN: But you are saying the 26th would be the absolute
21 earliest?

22 MR. SORENSON: That is correct. That is correct. We
23 unfortunately have -- and again in Massachusetts, next
24 week is our break. It's our vacation week. And a few of
25 us will not be available.

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2 CHAIRMAN: Mr. Hoyt, do you want to -- do you have any
3 comments on that?

4 MR. HOYT: One of the restraints we had in putting the
5 schedule together is that Mr. Charleson is away after the
6 28th and he is obviously a key on our side in terms of
7 providing any kind of responses.

8 So I mean if there was some way that we could get the
9 IRs by the 20th, which would be next Wednesday and have
10 until the 28th -- is it the 28th or the 27th?

11 MR. CHARLESON: The 28th.

12 MR. HOYT: We could have until the 28th to respond to those
13 and recognize that the only Motions Day that there is
14 going to be on IRs is the one next Friday, because that
15 accommodates the Public Intervenor's schedule, because I
16 understand that he is away after the 23rd, and that's why
17 we had to use the 22nd. So that if Mr. Sorenson poses
18 IRs, and we will, as we always do, try to respond with
19 fulsome information, he will have the opportunity at an
20 oral hearing to do follow-up. And Mr. Sorenson only
21 wanted a written proceeding to start with. I mean we
22 participated in those before. And there is one round of
23 IRs. That was the shot you got. And then you exchanged
24 arguments at the end. So that was the proceeding that Mr.
25 Sorenson originally indicated he was interested in.

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2 So it would seem to me that if we do accommodate his
3 second tier of IRs, it is enabling him to do that, plus he
4 has got the bonus at the end of a public hearing
5 opportunity to do follow-up questions to our witnesses on
6 the stand.

7 CHAIRMAN: Mr. Sorenson, any comment on that?

8 MR. SORENSON: Again, I cannot -- I am not available, I am
9 away next week. So I would have to consult my partner,
10 Rich Silkman, to see if he could possibly assist in the
11 process of generating those IRs. But I am not available
12 to do so.

13 MR. HOYT: Can I just make one more point, Mr. Chair? The
14 other thing, the evidence that is submitted here is very
15 similar in format to the information that was provided in
16 the previous rate applications that Mr. Sorenson has
17 indicated. Granted there will be other issues and there
18 are some different factors involved. But essentially it
19 is the same 10 or 12 pages of evidence, the same
20 methodology in which they have posed extensive IRs in the
21 past and you know we are happy to answer them. And you
22 know I would think that given the circumstances and trying
23 to be somewhat accommodating, that they should make every
24 effort to fit into a schedule that's being done for them.

25 CHAIRMAN: Any questions from anybody else? Mr. Johnston,

1 anything further? Any other Members of the Panel have any
2 questions? Any concluding remarks that you might have,
Mr. Sorenson?

3 MR. SORENSON: Well, I appreciate, you know, all the
4 comments, you know, made by all. And I would like to
5 apologize, but that there are, you know, vacation and
6 medical reason for the request for the delay. And
7 obviously we always want to adhere to the schedule, but
8 unfortunately the schedule as is would be difficult or we
9 would not be able to comply. So in the end, if you can't
move the schedule, we would have to move to an informal
status.

10 CHAIRMAN: All right. Mr Sorenson, we will consider your
11 motion and we will advise you and the parties as soon as
12 possible, hopefully later today by fax or e-mail.

13 MR. SORENSON: I appreciate it. Thank you.

14 CHAIRMAN: Thank you.

15 (Adjourned)

16
17 Certified to be a true transcript
18 of the proceedings of this hearing
19 as recorded by me, to the best of
20 my ability.

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Reporter

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