

New Brunswick Board of Commissioners of Public Utilities

Pre-hearing May 8th 2001
Quality Inn, Sussex, N.B.

IN THE MATTER OF AN APPLICATION for a Local Gas Producer
Franchise by the Potash Corporation of Saskatchewan Inc.

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CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Robert Richardson
Jacques A. Dumont
R. J. Lutes

BOARD COUNSEL William O'Connell, Esq.
Ms. Collette d'Entremont

BOARD SECRETARY Lorraine Légère

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CHAIRMAN: Good morning, ladies and gentlemen. Can you hear me? If you can't, raise your hand. Okay.

This is an application by the Potash Corporation of Saskatchewan Inc. for a local gas producer franchise pursuant to the Gas Distribution Act of New Brunswick.

Just so that you will understand, my proposed agenda is that I will go around the room and call for appearances.

After that if there are any motions, I will ask counsel or the interveners to put any motion they might have before us. And then we will talk about the timetable for the hearing itself.

So appearances on behalf of Potash Corporation of Saskatchewan Inc.?

MR. ZED: Mr. Chairman, I'm Peter Zed and I have with me Serena Newman, both of Barry Spalding Richard, solicitors for the Potash Corporation of Saskatchewan Inc., the applicant. And I also have with me Mr. Raoul Gauthier, the general manager of the mine and George Bollman, the senior project engineer.

CHAIRMAN: Thank you, Mr. Zed. We have a written intervention, or notice of intervention from Corridor Resources Inc.

MR. MILLER: Yes. My name is Norman Miller, president of Corridor Resources. And I am here just in support of the application.

CHAIRMAN: Thank you, Mr. Miller. Mr. Hansen, Chris Hansen, is he here today?

Enbridge Gas New Brunswick Inc.?

MR. HOYT: Thank you, Mr. Chairman. My name is Len Hoyt. I am counsel for Enbridge Gas New Brunswick. I'm joined by Tim Walker and Andrew Bud who is a regulatory accountant for Enbridge Gas New Brunswick.

CHAIRMAN: Thank you, Mr. Hoyt. Natural Resources and Energy?

MS. RIGBY: My name is Marion Rigby. I'm here on behalf of Don Barnett, representing the Province of New Brunswick.

CHAIRMAN: Thank you, Ms. Rigby. The Town of Sussex?

MR. FRIARS: My name is Ken Friars. I'm the mayor of Sussex. And I'm here to support the application by the Potash Corporation of Saskatchewan.

CHAIRMAN: Thank you, your worship. The Union of New Brunswick Indians? Okay.

Any other members of the public who wish to be part of this process? I won't call it three times. Okay.

Now are there any motions that -- but first of all I think the company should file with me evidence of publication, et cetera, Mr. Zed. I will mark it and it will become part of the record in this proceeding. Just give me a minute and I will -- I'm sure it's all complete, but I will take a peak at it.

That certainly seems to be in order, Mr. Zed. I will just mark it.

Now are there any motions any of the parties wishes to make in a preliminary fashion?

My understanding from the Board staff is that certain of the counsel here would like to proceed on the basis of a normal oral hearing schedule. Is that correct, ladies and gentleman?

MR. ZED: Yes, Mr. Chair.

CHAIRMAN: Yes. Okay.

MR. ZED: Certainly our wish.

CHAIRMAN: Now it's a big room and it's hard to make oneself heard. I'm going to suggest that we just go off the record for a few minutes and if we could perhaps just -- Mr. Goss will lead -- will orchestrate this if he could.
(Off the record)

CHAIRMAN: We will go back on the record now. And during the break why the representative from the Union of New Brunswick Indians approached the Board and asked that he be allowed to put in an appearance, and we will do that now. Mr. Perley?

Mr. Perley, would you like -- I have been beaten up by the shorthand reporter during the break. I'm supposed to have parties come up to the mikes so she can transcribe what is going on. So if you wouldn't mind coming up to -- I think it's an American Express sign there, reserve, up on the front.

MR. PERLEY: Thank you, Mr. Chairman. I have a resolution here that the Chiefs of New Brunswick have passed back in --

CHAIRMAN: All right, Mr. Perley --

MR. PERLEY: Yes.

CHAIRMAN: -- I'm going to stop you there. We are doing appearances and then -- we are doing appearances. So you are on the record as representing the Union of New Brunswick Indians.

I have to run it a certain way or chaos will erupt here. So we will put you on the record as representing the Union of New Brunswick Indians.

We will finish off -- you can stay right where you are. We will finish off the dates in reference to the hearing itself.

And then you didn't have an opportunity to give any motions and this would be in the form of you expressing what it is the Union wanted to put forth, I presume. And we will cover that then.

So let me just tidy up on what Mr. Goss and the parties, as I understand it, have agreed to. Is that the interrogatories are to be in to the applicant on Tuesday, May 22? May 22. Responses back from Potash Corporation on Tuesday, May 29.

Then if there is a party to the application who wishes to file evidence, then that will be filed on Tuesday, June the 5th. And interrogatories will be submitted to anybody who files evidence. And the only party here who has indicated they probably will do that is EGNB. So the interrogatories would go in on that evidence on Tuesday, June 12. And in this case EGNB or whoever else might file evidence will have the responses by Tuesday, June 19. And then we will go ahead with the hearing on Wednesday, Thursday and Friday, July 4 through 6. Anybody any

problems with those dates?

Okay. Now, Mr. Perley, back to you, sir.

MR. PERLEY: Good morning, Mr. Chairman. I'm sorry, we don't have counsel with us, so I will have to do this by myself, I guess. I do have Chief Knockwood from Fort Folly First Nation and also Norville Getty as an advisor.

In December of 1998 the Chiefs have passed a resolution. It was a notice to the Province of New Brunswick regarding the aboriginal title to New Brunswick lands and resources.

Do I read this or do I make copies available for the Board, or --

CHAIRMAN: Well you could do both, if you wanted to. That's fine with us. And I'm sure you will do every bit as good a job as a lawyer would.

MR. PERLEY: This was a resolution. And it was moved by Chief John Wallace --

CHAIRMAN: Just a second, Mr. Perley, we will let Ms. Légère pass those out to the parties. Okay. Go ahead, Mr. Perley.

MR. PERLEY: "Whereas the Mi'kmaq and Maliseet people have used and occupied New Brunswick since time immemorial and never have ceded title through a treaty or any other process or means;

And Whereas Section 35 of the Constitution Act 1982

recognizes and affirms the existing Aboriginal and Treaty Rights of the Aboriginal peoples of Canada;

And Whereas the Union of New Brunswick Indians on behalf of the Mi'kmaq and Maliseet peoples of New Brunswick have begun the preliminary work necessary for an Aboriginal Title to all New Brunswick;

And Whereas the Mi'kmaq and Maliseet peoples of New Brunswick have declared their Aboriginal Title to any and all land and resources in the Province of New Brunswick;

Therefore Be It Resolved that the Province of New Brunswick is hereby provided with notice that the Mi'kmaq and Maliseet peoples have never ceded Aboriginal Title to all lands and resources in New Brunswick

And further that the Mi'kmaq and Maliseet peoples of New Brunswick continue to declare and assert Aboriginal Title to all lands and resources in the Province of New Brunswick."

So that's what we would like to put forward to the Public Utility Board regarding all of the Province of New Brunswick which includes Sussex and the potash resources here.

CHAIRMAN: All right. Thank you, Mr. Perley. All right.

We are going to -- we are going to take a break in a couple of minutes. But I had asked Board Counsel if he could speak with you before you arrived, in that once I

read your intervention, I realized that we might be heading for this kind of matter. And I'm going to take a break and let Board Counsel speak with you concerning it.

There is one thing that in research the Board Counsel has done for the Board and my understanding of it is that you are basing this on an aboriginal claim to lands.

MR. PERLEY: Yes.

CHAIRMAN: And what we are dealing with here, it's not as if it were a pipeline application itself to construct over lands and have an easement to do so or whatever. This involves just the grant of a franchise, or no grant, depending on the Board's decision, to the applicant to then proceed to the next steps, which in my understanding, and counsel will jump on me if I'm wrong here, the next step would be it then goes to the Lieutenant-Governor in Council to be translated -- whatever our decision might be, translated into a franchise agreement with the Province of New Brunswick. That deals with, again, a further step in the licence process.

Then that clothes the applicant with the authority to proceed to apply back to the Board to lay a pipeline over the lands. And it may well be that that's the stage at which you would address this Board in reference to that. Now I don't know, and you don't have counsel with you today, so we will take an adjournment and you can have an

opportunity to speak with Mr. O'Connell and Mr. McNutt, And just so that you understand where it is the Board is coming from on this.

And we are not in any way, shape or form trying to limit your participation. If your appearance before the Board does not go to an objection to the grant of the franchise, but rather it goes to a claim to the land, then it may well be that you -- you would want to wait until we get to the next stage, or to the Province because it is the Department of Natural Resources department on behalf of the Lieutenant-Governor in Council that grants the rights to drill, not this Board, and to extract as well. So that -- but you are a resident of the Province of New Brunswick. And this Board has always welcomed any New Brunswicker or a person with interest in a proceeding to be an intervenor. So that if you didn't found your intervention on the Constitutional question, you could still be here for this.

Now having said all of that, the Board will take a break. And we will ask Board Counsel to give us a nod when he has had an opportunity to speak with you. Okay. So we will take a break.

(Off the record)

CHAIRMAN: We are back on the record. And my apologies for having kept you away from this beautiful day this long.

Mr. Perley, would you mind coming up to the mike again there? Thank you.

During the break -- I had indicated before we broke, during the break why Board Counsel met with Mr. Perley and discussed certain matters with him. And it is my understanding that pursuant to that conversation, Mr. Perley, that the Union of New Brunswick Indians does not wish to indicate a choice of method of proceeding as of today's date.

And as I said before the break, the Union of New Brunswick Indians are like many other citizens of the Province and have a right to have an interest in this matter and to be granted intervenor status which, by the way, the Board has done and does for all other people who had appearances here today to be an intervenor.

And that -- those rights mean that you can participate in all of the processes, which include filing your own evidence, filing interrogatories, cross-examination of witnesses, answering interrogatories and addressing the Board. That's the normal way that we proceed.

The second way that we could -- or the second way that would have to happen or might happen, it's your choice, is that if it's your intention to challenge the constitutionality of the Natural Gas Act, then you would be required to give notice to the Board and to the

Attorney General of Canada, and the Attorney General of New Brunswick. And that notice would have to be very specific in reference to the specifics of your claim to aboriginal title. And as well, specific as to the remedy sought. And so that's the choice that my understanding is that as of today's date that the Union that you represent here today does not want to make a choice between those two?

MR. PERLEY: That's right, Mr. Chairman.

CHAIRMAN: Okay. Thank you, Mr. Perley. Well then what the Board will do is we will just proceed in our normal fashion, Mr. Perley. And if the organization that you represent decides that you wish to specifically challenge, then the notice requirements I have outlined, et cetera. And as Board Counsel indicated to you I believe during the break, that he is available at any time to talk with you or any of the representatives concerning that.

MR. PERLEY: That's right.

CHAIRMAN: Okay. Now we shared -- did we share with you the -- I think, yes, we did, the dates that we had set up. And those are the dates that we will proceed on now.

MR. PERLEY: Okay.

CHAIRMAN: Okay. Are there any other matters that any of the parties wish to bring before the Board at this time before we actually -- well, first of all, the parties have

indicated they wish to proceed in the English language. The Board's premises are available. It will be a tight squeeze, but we can all make it in there.

That's on the 14th floor of the City Hall building. Madam Secretary, what is civic address of our new premises?

MS. LEGERE: It's in our coordinates list.

CHAIRMAN: Good. Would you tell me?

MS. LEGERE: 15 Market Square, suite 1400.

CHAIRMAN: Okay. So if there are no other matters then, we will adjourn the hearing until 10:00 o'clock in the morning of July the 4th. We will set aside three full days or however long it takes. And if it goes longer than that, we will adjourn it over to a future date after that.

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

Reporter