

New Brunswick Board of Commissioners of Public Utilities

Pre-Hearing Conference January 6th 2004, 2:00 p.m.  
PUB Premises, Saint John, N.B.

IN THE MATTER of an Application by TransCanada Energy Ltd. for approval of a Single  
End Use Franchise

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Jacques A. Dumont  
Alyre Boucher  
H. Brian Tingley

BOARD SECRETARY Lorraine Légère

..... CHAIRMAN: Happy New Year. Have a seat  
please, by all means.

This is a hearing in reference to an application by TransCanada Energy Ltd. for a  
Single End Use Franchise to the Natural Gas Distribution Act in this province.

Could I have appearances please, first of all for the applicant?

MR. EDDY: My name is Bruce Eddy, Mr. Chairman. And with me are two representatives  
from TransCanada Energy. On my left Mr. Finn Greflund. He is Vice-President of  
Power Generation Development and familiar with this project.

And just behind him is Mr. John Cashin. He is Associate General Counsel for  
TransCanada.

CHAIRMAN: Thank you, Mr. Eddy. And the Department of Energy is represented by?

MR. KNIGHT: Jim Knight, Mr. Chairman.

CHAIRMAN: Thanks, Mr. Knight. Now I don't know if you have been given a copy of the letter that Mr. Hoyt wanted to have filed on behalf of Enbridge.

MR. EDDY: Yes, Mr. Chairman.

CHAIRMAN: You do have a copy?

MR. EDDY: We have seen that letter.

CHAIRMAN: Okay. What I intend to do -- as you are aware from that correspondence, Enbridge will not be appearing today, provided that we put on the record that particular piece of correspondence. And I will do that right now. And I will call it exhibit 1. Okay. That is on the record.

Now I just want to, for the sake of the record, to indicate that in that particular document EGNB has set forth what they believe to be the rationale for the granting of single end use franchises, et cetera. The Board doesn't necessarily agree with that or not. It is just on the record, that is all.

And Mr. Knight, perhaps it would be appropriate for you to put on the record the reason for your appearance and your position in reference to this matter?

MR. KNIGHT: Certainly, Mr. Chairman. First of all, compliments of the New Year on behalf of the Department. And I bring regrets from Mr. Barnett, that he was not able

to attend today, that he was hoping to attend his last Board function before his retirement, but was unable to do so.

The Department of Energy as per our letter of yesterday to the Board Chairman is in support of this application. I'm in attendance today on behalf of the Department wishing to be granted intervenor status.

And the rationale for that is the Department is seeking such status at the hearing as it is required by the Department under Section 5.5 of the Act to take the Board recommendation to the Lieutenant Governor-in-Council for their approval.

And also at the end of that process, if such an approval is granted, the Department must then assist the Minister in the execution of the franchise agreement with the applicant as per Section 7 of the Act.

CHAIRMAN: Mr. Knight, if the Board were not to attach any conditions at all to the grant of the licence, is it the government's intention to go ahead and negotiate on a similar basis to that which they have negotiated in the past with the other five single end use franchises?

MR. KNIGHT: Yes.

CHAIRMAN: In other words, what I'm trying to do here is to ascertain whether or not I can definitely shift the onus to the government to review the insurance policies and do

things like that, so the Board won't be burdened with that.

MR. KNIGHT: Yes. I believe the applicant has indicated that they would be seeking a franchise agreement that would be very similar to the one that is currently in existence with Irving Oil Limited, between Irving Oil Limited and the Minister.

And as such we would be looking only for any additional or differing terms and conditions that the Board might wish to place on this decision.

CHAIRMAN: Well, the Board will of course grant intervenor status to -- actually Board counsel has repeatedly said it would be a representative of the Province rather than the Department, the Department having no legal standing per se. However, that is neither here nor there.

And from the point of view of Enbridge Gas New Brunswick, in that we have put on the record their letter, then there is no need to deal with them on intervenor status.

And just to show you how quickly we can do things,

Mr. Eddy, why subject to your having any problem with it, we will pass right now from the pre-hearing conference into the hearing.

MR. EDDY: Thank you very much, Mr. Chairman.

CHAIRMAN: Okay. And do you have --

MR. EDDY: Good way to start the year.

CHAIRMAN: Do you want to address the Board, Mr. Eddy? You can remain seated. That is fine.

MR. EDDY: Thanks. The application before you is fairly straightforward, at least in our view. It is an application for a single end use franchise under the Gas Distribution Act which requires that the franchisee receive its gas from the main transmission line which is governed federally or federally regulated.

This co-generation facility was contemplated, as I think Mr. Hoyt mentions in his materials and as mentioned in our application, the co-generation facility was contemplated at the time the original single end use franchise was granted to Irving Oil.

TransCanada is now applying, since the Act requires that each franchise be dedicated to a single industrial facility, the Irving Oil franchise was thought perhaps not to extend to TransCanada's facility, which is this co-generation operation, to be operated and owned by TransCanada.

So it was necessary for TransCanada to apply for its own single end use franchise to operate the refinery using natural gas directly obtained from the main line. The gas in question was already contracted for by Irving some years ago. And this is a portion of that gas that is

going to be used to drive this co-generation facility.

There were -- staff of the Board kindly gave us suggestions of one or two items that he thought the Board might be concerned about. And we have tried to deal with a couple of those.

First the insurance. We have obtained and provided to the Board copies of a certificate of insurance which actually is in the same format as the one that was required by the Minister when the Minister made the single end use franchise with Irving Oil, with this exception, that it is addressed to the Board rather than to the Minister. And it refers to this particular single end use franchise rather than the previous one.

No doubt in discussions with the Minister, should this Board grant the licence or the franchise, the Minister's representatives will be looking at that certificate as well, as you indicated.

The other point that staff raised and that we have tried to address is the financial capability of TransCanada. And actually in Section 12 of our application we have said (a) that the financing of the project itself was within TransCanada's capacity, and secondly that --

CHAIRMAN: Sorry, Mr. Eddy. When you say TransCanada, are you referring to TransCanada Energy Ltd.? Or are you

referring to TransCanada Pipelines Ltd.?

MR. EDDY: Sorry. Unless I say pipeline I mean TransCanada Energy.

So in our application we refer to a banker. Well, I now know that TransCanada Energy does not have a banker other than TransCanada Pipelines.

And as the letter that has been provided to the Board indicates, TransCanada Pipelines stands behind its wholly-owned subsidiary TransCanada Energy in funding any additional amounts that TransCanada Energy might require in order to carry out this project.

And we have provided copies of the financial statements of TransCanada Pipelines which is a publicly-listed company whose financials I think speak for themselves. It's a solid company with experience in financial stability. I think it says they have had 160 quarters consistently of dividends.

There was a third item that staff raised which is about the direct connection to the main line. And I'm not quite sure exactly what staff was looking for. But our intention was to have a letter from M&NP saying that there is a separate connection that leaves the measurement facility.

I understand that M&NP has built a second interconnect, a pipe. It is not very dramatic. It is

just a second piece of pipe that comes from the measurement facility at its custody transfer station. And then the intention is that TransCanada will connect to that second pipe.

CHAIRMAN: So that has already been constructed?

MR. EDDY: I understand that M&NP has already built the extra little piece of pipe that will ultimately be connected to the co-gen facility owned by TransCanada, but that the actual connection to TransCanada is not ready yet because the plant is not built.

CHAIRMAN: Yes. Just one question I had, Mr. Eddy, is that the legislation calls for the grant of a single end use franchise to be for 20 years?

MR. EDDY: Yes.

CHAIRMAN: And yet the agreement between TransCanada Energy Ltd. and -- I forget which Irving or sub it is --

MR. EDDY: Irving Oil.

CHAIRMAN: -- but that is, as I read it, for 15 years with the right of five-year renewals, but that being with the Irving sub. Is that correct?

MR. EDDY: I think that is right. I think that term was designed though to match the firm service agreements that I believe are also for 15 years with a five-year add-on.

CHAIRMAN: Okay. I guess -- and mine is a hearsay knowledge of it. But I guess I had always heard that when the



various other single end use franchises signed the agreements with the producers offshore, they did it for a 20-year period. And we are probably five years into that now.

MR. EDDY: True.

CHAIRMAN: Do you know anything about that, Mr. Knight?

MR. KNIGHT: No.

CHAIRMAN: So that was sort of the speculation that we had.

MR. EDDY: If there is some information I could get for you, I would be glad to. Is the question whether the co-generation agreement is for a term longer than the firm service agreement?

CHAIRMAN: Well, that certainly appears to be the case. In other words, we grant a franchise and that is good for 20 years. And it can only be revoked, as I recollect the legislation, under certain circumstances, et cetera.

I suppose if you no longer own that single industrial facility to which the gas is being delivered, then that would probably trigger the Board's ability to cancel that single end use franchise.

No. I was -- we were simply curious as noticing those differences in dates.

Mr. Knight?

MR. KNIGHT: In the existing contract with our franchise agreement with Irving Oil Limited, there are a couple of

conditions there where the franchise can be terminated.

And one is that the franchisee no longer has control over the industrial facility.

Or the other one is that they no longer have access to gas.

MR. CHAIRMAN: And that would be your intention, to include a similar kind of clause in this --

MR. KNIGHT: Yes.

CHAIRMAN: -- particular franchise agreement?

I neglected to put on the record that Ms. Desmond is acting as Board counsel today. And I just wonder if you have anything you want to add, Ms. Desmond, or ask any questions on?

MS. DESMOND: Nothing for me, Mr. Chairman.

CHAIRMAN: Good. Thank you.

Okay. The Board will take a recess then.

(Short Recess)

CHAIRMAN: The Board of Commissioners of Public Utilities (The Board) has received an application for a Single End Use Franchise submitted pursuant to Section 5.1 of the Gas Distribution Act 1999, (The Act), by TransCanada Energy Ltd.

The Board pursuant to Sections 5.2 and 5.4 grants the single end use franchise to TransCanada Energy Ltd. in respect to the co-generation facility, referred to as the Grandview co-generation plant, to be constructed at the

refinery site in Saint John, New Brunswick, owned by Irving Oil Limited, subject to the following condition.

The Board requires a letter from Maritimes & Northeast Pipeline Limited confirming that it will connect its transmission line directly to the facilities owned by TransCanada Energy Ltd.

Once the Board has received this confirmation, it will issue a single end use franchise to TransCanada Energy Ltd. in respect to the co-gen facility, which I previously referred to, as the Grandview co-generation plant to be constructed at the refinery site in Saint John, New Brunswick, owned by Irving Oil Limited.

And I just -- Mr. Knight, I will turn to you before I leave the room and say the agreement will be there, but we will issue that single end use franchise. Is that a piece of paper that's actually issued or not?

MR. KNIGHT: I --

CHAIRMAN: Well if there is a piece of paper that has to issue, the Board will issue it, okay. This is our first one. The government did it prior to that time.

MR. KNIGHT: Yes. The process, as I understood it, is that you would recommend to the Lieutenant Governor-in-Council any terms and conditions that should be applied to the franchise. And I think that's consistent with Section 5.5. And then under Section 7, it's the Minister that

actually executes, I believe is the correct word, a franchise agreement with the applicant.

CHAIRMAN: So then basically what we do today by this, subject to the condition of filing the letter from Maritimes & Northeast Pipeline Limited, is that we grant the single end use franchise. And that of course is subject pursuant to Section 5 of the Gas Distribution Act of the Province negotiating a franchise agreement with the company. Sound good?

MR. EDDY: But, Mr. Chairman, I assume that somewhere in the process the Lieutenant Governor-in-Council issues a piece of paper, an Order-in-Council approving that grant without condition?

CHAIRMAN: Yes. Well, I presume that -- and again you correct me if I am wrong here, Mr. Knight, but in the past the Lieutenant Governor-in-Council has directed the Minister to execute a franchise agreement in form as was provided to the Lieutenant Governor-in-Council in support of that. That's -- is that not the procedure that you have followed in the past, Mr. Knight?

MR. KNIGHT: Yes. This is new for us as well. And perhaps your counsel would like to --

CHAIRMAN: I am trying to shift the onus.

MR. KNIGHT: I notice that.

CHAIRMAN: To cover as best I am able, sir.

MR. KNIGHT: My discussion with Mr. Barnett this morning before I came down was that the Board would make a grant of the franchise, whatever that means. And it would be approved by the Lieutenant Governor-in-Council. Which means that we would take your grant of a franchise to them. And, yes, I believe it would be an OIC that would come out of that. Then in accordance with that Order-in-Council we would -- it would probably direct our Minister as per Section 7 of the Act to execute the franchise agreement.

CHAIRMAN: Since we have only the one condition that we have attached to it, does that mean that the franchise agreement can't attach any more conditions?

MR. KNIGHT: Subject to legal advice, I will make the disclaimer that I am not a lawyer. Our interpretation is that we cannot change any of the -- we, nor Cabinet, can change any of the conditions that the Board would place on the franchise agreement. But that we could fill out the franchise agreement by adding additional things to it.

CHAIRMAN: And certainly it's in the Board's contemplation while making this grant that you will do with, for instance, insurance, et cetera, et cetera, et cetera, as you have done in the past with the other five.

Mr. Eddy, any comment on that at all?

MR. EDDY: No, Mr. Chairman. That's my understanding. The

franchise agreement is to fill out the order of the Board, I believe. So we would expect it to be similar in form, and it does say form here, to the ones issued to the other single end use franchisees.

CHAIRMAN: Good. Well, if there is nothing further then we will adjourn.

MR. KNIGHT: One other --

CHAIRMAN: Oh, sorry.

MR. KNIGHT: -- reason for us attending today was we did want to make a short comment on the document from Enbridge Gas New Brunswick if that would be appropriate?

CHAIRMAN: Well, you go ahead. I am not going to get into that. We almost had an opportunity to discuss that in a fulsome fashion in reference to St. Stephen, didn't we, but we never did. Mr. Barnett was prepared to take the stand if I remember.

Go ahead, Mr. Knight. I won't cut you off.

MR. KNIGHT: Actually the Department appreciates that the gas distributor has put forward its position, and made it clear in these proceedings that they are in support of this particular application.

However, we would like to make a comment regarding their comment number 3 in the document filed with the Board on January the 5th 2004. Enbridge Gas New Brunswick has put forward a position that the Province intends to

reintroduce an amendment to the Gas Distribution Act 1999 affecting the availability of single end use franchises to certain geographic areas of the province.

I wish to inform the Board that no such decision has been made by the government at this time. And furthermore as was seen with the proposal made in Bill 48 in March of 2003, stakeholders in the natural gas market should not presuppose that such an amendment, even if again proposed, would be passed by the members of the Legislature.

CHAIRMAN: Okay, Mr. Knight. Appreciate that. That's a policy matter and the Board has no comment to make.

MR. KNIGHT: Yes.

CHAIRMAN: Thank you very much, Mr. Eddy.

MR. EDDY: Thank you, Mr. Chairman and members of the Commission.

(Adjourned)

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

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