



# Office of the Public Intervener

A Unit of the Office of the Attorney General

## Annual Report 2016-2017

**OFFICE OF THE PUBLIC INTERVENER**

**Annual Report 2016-2017**

Province of New Brunswick  
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The Honourable Jocelyne Roy Vienneau  
Lieutenant-Governor of New Brunswick

May it please your Honour:

It is my privilege to submit the Annual Report of the Office of the Public Intervener, Province of New Brunswick, for the fiscal year ended March 31, 2017.

Respectfully submitted,



Hon. Serge Rousselle, Q.C.  
Attorney General

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The Honourable Serge Rousselle, Q.C.  
Office of the Attorney General

Sir:

Pursuant to subsection 13(1) of *An Act Respecting a Public Intervener for the Energy Sector*, I am pleased to submit this report with respect to the activities of the Public Intervener for the period ended March 31, 2017.

Respectfully submitted,



Heather Black  
Public Intervener for the Energy Sector

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## **WHO DOES THE PUBLIC INTERVENER REPRESENT?**

*The Public Intervener does not represent the interests of a party to the proceedings, a customer, a class of customers, a government department or agency or any other interested group.*

*The Public Intervener assists the Board by advocating in the public interest in Board proceedings. The public interest has many facets and requires consideration of the interests of ratepayers, utilities, safety, the general public and the environment, among other factors.*

*The Public Intervener must advocate in the public interest while intervening in Board proceedings and, in doing so, may present evidence, call and cross-examine witnesses and make such submissions and representations as she considers to be in the public interest.*

## **The Role of the Public Intervener**

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By law, the Public Intervener is required to intervene in proceedings of the New Brunswick Energy and Utilities Board (the “Board”) initiated under certain provincial statutes governing participants in New Brunswick’s energy sector, specifically the *Electricity Act*; the *Gas Distribution Act, 1999*; the *Petroleum Products Pricing Act* and the *Pipeline Act, 2005*. The Act also empowers the Public Intervener to intervene in other proceedings initiated under other provincial statutes at her discretion and requires the Public Intervener to intervene in any other proceeding of the Board as instructed by the Lieutenant-Governor in Council.

The Public Intervener, Heather Black, was the only staff member of the Office of the Public Intervener in the 2016-2017 year.

## **Activities of the Public Intervener for the 2016-2017 Year**

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### **Overview**

Section 6 of *An Act Respecting a Public Intervener for the Energy Sector* requires the Public Intervener to intervene in certain proceedings of the Board. Between April 1, 2016 and March 31, 2017, the Public Intervener intervened in proceedings of the Board initiated under the *Electricity Act*, the *Gas Distribution Act, 1999*, the *Pipeline Act, 2005* and the *Petroleum Products Pricing Act*. Decisions, filed materials and other documents and information related to

proceedings of the Board are catalogued on the Board's website at [www.nbeub.ca](http://www.nbeub.ca). The Public Intervener also participated in a number of stakeholder processes that were undertaken pursuant to orders of the Board in connection with previous Board proceedings.

The Public Intervener did not intervene in any other proceeding of the Board during that period.

For financial information relating to the Office of the Public Intervener, please see the Annual Report of the Office of the Attorney General.

### ***DID YOU KNOW?***

While most of the activities of the New Brunswick Energy and Utilities Board relate to its regulation of the energy sector, the Board regulates the motor coach sector, as well. Subject to the *Motor Carrier Act*, an operator of a public motor bus within New Brunswick must hold a license from the Board.

The Board licenses charter buses and it also approves the routes, schedules and fares for scheduled intercity bus service.

The Public Intervener is not required to participate in Board matters related to the *Motor Carrier Act*.

Source: [www.nbeub.ca](http://www.nbeub.ca)

## **Electricity Proceedings**

Proceedings of the Board relating to electricity are held pursuant to the *Electricity Act* and the *Energy and Utilities Board Act*.

The *Electricity Act* requires NB Power to apply to the Board each year for approval of its proposed rates for that year, to apply for approval of its transmission revenue requirements at least once every three years and to apply to the Board for approval of any capital projects with a projected cost of 50 million dollars or more.

The *Electricity Act* also allows a transmitter other than NB Power to apply to the Board for approval of its transmission revenue requirements, which form part of the approved transmission tariff, and to seek the Board's pre-approval of its capital projects.

### **PUBLIC PARTICIPATION IN HEARINGS OF THE BOARD**

*The Board holds public sessions as part of certain significant hearings, such as NB Power's annual rate applications. Interested members of the public are invited to comment on the application or to submit their comments in writing to the Board.*

*Raymond Gorman, Q.C., the Chairman of the Board, described the importance of finding ways to facilitate public input as follows:*

*"We understand that not everybody has the ability to dedicate several working days to attend the full hearing and yet still have valuable contributions they can make to the process through their comments... [I]t has been a tradition for this Board for some time and we find that we get a lot of valuable input from participants."*

Source: [www.nbeub.ca](http://www.nbeub.ca)

Authority to approve reliability standards for the bulk power system is granted to the Board by the *Electricity Act*. The Board is also responsible for ensuring compliance with those standards.

Between April 1, 2016 and March 31, 2017, the Public Intervener participated in the following proceedings of the Board that were initiated in accordance with the requirements of the *Electricity Act*:

- On December 28, 2015, NB Power applied to the Board for approval of its proposed rates for the 2016-2017 fiscal year, as well as an interim order pursuant to section 40 of the *Energy and Utilities Board Act* for approval of an interim schedule of rates to be effective April 1, 2016 until further Order of the Board. Proceedings in that matter were initiated by Notice and Order issued by the Board on December 29, 2015. The proceeding was designated as *Matter 307 – NB Power 2016-2017 General Rate Application*. The Board denied NB Power's request for an interim order following an oral

motion hearing held February 24, 2016 in Saint John. An oral hearing in *Matter 307* was held May 9 to 12, 2016 in Saint John. The decision, filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under *Matter 307*.

- On October 4, 2016, NB Power applied to the Board for approval of its proposed rates for the 2017-2018 fiscal year. Proceedings in that matter were initiated by Notice and Order issued by the Board on October 4, 2016. The proceeding was designated as *Matter 336 – NB Power 2017-2018 General Rate Application*. An oral hearing in *Matter*



336 was held February 20 to 24, 2017 in Fredericton. The decision, filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 336.

- Between April 1, 2016 and March 31, 2017, NB Power filed several applications for approval of certain new reliability standards and modifications to or retirement of certain existing Board approved reliability standards, all pursuant to the *Electricity Act and Regulation 2013-66* thereunder, being the *Reliability Standards Regulation – Electricity Act*. Proceedings were initiated with respect to each of these applications, as well as other matters relating to the Board’s authority over the bulk power system and its responsibility to ensure compliance with approved reliability standards. None of these proceedings resulted in oral hearings. A list of these matters is set out in the table below. The decisions, filed materials and other documents and information related to these proceedings can be found at [www.nbeub.ca](http://www.nbeub.ca) under the matter numbers referred to in the table.

PROCEEDINGS RELATING TO RELIABILITY STANDARDS 2016-2017			
Matter Number	Application Date mm/dd/yy	Reliability Standards	Decision Date mm/dd/yy
308	01/12/16	BAL, COM and VAR	04/07/16
309	01/18/16	PRC-004-4 and PRC-004-5	04/08/16
310	01/22/16	PRC-005	05/17/16
311	01/22/16	PRC-002 and PRC-018	05/17/16
312	02/02/16	PRC-004	05/24/16
313	02/02/16	IRO-006 and IRO-009	05/24/16
318	03/24/16	TOP and IRO	07/12/16
319	03/24/16	EOP and PRC	07/12/16
321	04/15/16	MOD-031-1 and MOD-031-2	07/12/16
322	04/25/16	CIP-003-5, CIP-004-5.1, CIP-006-5, CIP-007-5, CIP-009-5, CIP-010-1, CIP-011-1	06/30/16
325	30/05/16	CIP	09/07/16
328	06/24/16	FAC-003-3, FAC-003-4	09/07/16
329	07/18/16	PRC-026-1	10/12/16
337	10/07/16	PRC-002-NPCC-01	12/22/16
340	11/14/16	IRO-018-1 and TOP-010-1	02/09/17
342	12/07/16	NBEUB Annual Implementation Plan 2017	N/A
343	12/20/16	COM-001-2.1 and COM-001-3	03/16/17
347	01/20/17	TPL-007-1	04/18/17
350	02/03/17	IRO-018-1, TOP-010-1	05/12/17
353	02/17/17	CIP-002-5.1 and CIP-002-5.2a	06/07/17
354	03/02/17	BAL-004-0	06/02/17

The Public Intervener also participated in a number of stakeholder processes throughout the 2016-2017 fiscal year. These processes have been undertaken pursuant to orders of the Board in connection with previous and upcoming Board proceedings.

## **WHAT'S NEW WITH THE MACTAQUAC GENERATING STATION?**

*NB Power has warned that the Mactaquac Hydroelectric Generating Station is nearing the end of its life due to a chemical reaction called alkali-aggregate reaction. The reaction causes the concrete portions of the station to swell and crack and has required significant maintenance and repairs over the years.*

*Since 2013, NB Power has been consulting with experts, stakeholders, First Nations and the general public to identify and evaluate potential future options for addressing the early retirement of the station. NB Power has considered a number of options, including building a new station, removing all structures except for the earthen dam and spillway, or removing all structures and restoring the Saint John River to a natural flow.*

*On December 20, 2016, NB Power announced that it is recommending the life extension option. This project involves using a modified approach to maintenance and replacing equipment over time in order to extend the life of the station's concrete facilities, thereby maintaining the station to its intended lifespan of approximately 2068. NB Power has stated that its recommended option has the lowest cost estimate of the options under consideration.*

*The Electricity Act requires NB Power to seek the Board's approval of any capital project if the total projected capital cost to NB Power is \$50 million or more. The current estimated cost of the life achievement option is between \$2.9 and \$3.6 billion, so NB Power will require Board approval before proceeding with the project to any significant extent.*

*The Board will develop a detailed process which NB Power will be required to follow in seeking approval of the project. It is expected that this process will culminate in one or more public hearings.*

Source: [www.nbpower.com](http://www.nbpower.com)

## Natural Gas Proceedings

Proceedings of the Board relating to natural gas are held pursuant to the *Gas Distribution Act, 1999* and the *Energy and Utilities Board Act*. The *Gas Distribution Act, 1999* requires Enbridge Gas New Brunswick (“EGNB”) to apply to the Board for approval of its proposed distribution rates and, in combination with the *Gas Distributor Marketing Regulation*, allows the Board to periodically review the sale of gas by EGNB and make orders or give direction to EGNB in relation to those sales.

The *Gas Distribution Act, 1999* was amended effective December 16, 2016 to remove some restrictions on the discretion of the Board in fixing rates, establish parameters for the recovery of EGNB’s regulatory deferral account and prescribe certain additional requirements for the fixing of rates by the Board, among other things.

- On December 21, 2015, EGNB applied to the Board for approval of its proposed changes to its rates, approval of its 2014 regulatory financial statements, and confirmation that EGNB remains in the development period. Proceedings in that matter were initiated by Notice and Order issued by the Board on December 21, 2015. The proceeding was designated as *Matter 306 – EGNB 2016 Rate Application*. An oral hearing was held April 4 to 6, 2016 in Saint John. The decision, filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 306.
- By letter dated March 30, 2016, EGNB filed with the Board a report of its natural gas sales activities for the 2015 fiscal year in accordance with the *Gas Distributor Marketing Regulation*. The proceeding was designated as *Matter 320 – EGNB 2015 Natural Gas Sales*. The Board issued an Order on November 16, 2016 in relation to the proceeding. The Order, filed materials and other documents and information related to this proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 320.
- On July 25, 2016, EGNB applied to the Board for approval of its proposed changes to its rates and approval of its 2015 regulatory financial statements. Proceedings in that matter were initiated by Notice and Order issued by the Board the same day. The proceeding was designated as *Matter 330 – EGNB 2017 Rate Application*. An oral hearing was held October 24 and 25, 2016 in Saint John. The decision, filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 330.
- On August 12, 2016, EGNB applied to the Board pursuant to subsection 27(2) of the *Gas Distribution Act, 1999* for an Order approving a proposed change in its beneficial ownership as part of an internal restructuring. The proceeding was designated as *Matter 333 – EGNBLP Restructuring*. The Board issued an Order on September 1, 2016 in relation to the proceedings. The Order, filed materials and other documents and

information related to this proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 333.

## Pipeline Proceedings

The *Pipeline Act, 2005* prohibits any person from operating a pipeline unless that person holds a licence granted by the Board and requires licensees to seek the Board’s approval for the suspension and resumption of normal operations of a pipeline and the abandonment of a pipeline. Between April 1, 2016 and March 31, 2017, a number of applications were filed with the Board under the *Pipeline Act, 2005* by Enbridge Gas New Brunswick (“EGNB”) and Irving Oil Terminals and Pipelines GP (“Irving”). Proceedings were initiated with respect to each of these applications, though none resulted in oral hearings. A list of these matters is set out below:

PIPELINE PROCEEDINGS 2016-2017			
Matter Number	Application Date mm/dd/yy	Description	Decision Date mm/dd/yy
327	06/21/16	EGNB Application for Relocation	06/28/16
331	08/02/16	Irving Application for Change of Substance	08/23/16
332	08/16/16	EGNB Application for Relocation	08/22/16
339	10/28/16	EGNB Application for Abandonment	11/01/16
346	01/18/17	Irving Application for Reactivation	01/19/17
351	02/06/17	Irving Application for Suspension	02/07/17
352	02/07/17	EGNB Application for Licence to Operate	02/15/17

The decision letters, filed materials and other documents and information related to these proceedings can be found at [www.nbeub.ca](http://www.nbeub.ca) under the matter numbers referred to in the table above.

## Petroleum Products Pricing Proceedings

Proceedings of the Board relating to petroleum products pricing are held pursuant to the *Petroleum Products Pricing Act* and the *Energy and Utilities Board Act*. The *Petroleum Products Pricing Act* provides for the Board to set maximum wholesale and retail margins for the sale of petroleum products and allows for a review of margins, delivery costs and/or full service changes to be initiated by a wholesaler, retailer or the Board. Between April 1, 2016 and March

31, 2017, the Public Intervener participated in the following proceedings of the Board that were initiated in accordance with the requirements of the *Petroleum Products Pricing Act*:

- By Notice and Order dated October 27, 2016, the Board initiated a proceeding pursuant to subsection 14(1) of the *Petroleum Products Pricing Act* to review the maximum margins for petroleum products retailers, the maximum delivery costs that can be charged by retailers and maximum full service charge that can be charged by retailers. The proceeding was designated as *Matter 338 – Retail Petroleum Margin Review*. An oral hearing was held January 23 and 24, 2017 in Fredericton. The decision, filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 338.
- By Order dated November 15, 2016, the Board initiated a proceeding pursuant to subsection 14(1) of the *Petroleum Products Pricing Act* to review the maximum margins for petroleum products wholesalers and the maximum delivery costs that can be charged. The proceeding was designated as *Matter 341 – Wholesale Petroleum Margin Review*. The Board engaged an independent consultant to gather data and review the maximum wholesalers' margins and delivery costs. On March 27, 2017, the consultant reported to the Board that he was unable to deliver a recommendation to the Board because no wholesaler provided data to the consultant. The Board will consult with parties before determining whether and how to proceed with this matter.

## A Look Ahead to the 2017-2018 Year

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### **WHAT IS RATE DESIGN?**

*Rate design is the final stage of the ratemaking process. Once the regulator has allocated the approved revenue requirement among the utility's customer classes in accordance with an approved cost allocation model, the regulator sets the various components of the rate within each class.*

*Pursuant to traditional regulatory principles, rates should be structured in a way that results in fairness to customers within each class, such that certain customers are not unduly favoured over others, while enabling efficiency by giving customers proper price signals.*

### **Electricity Proceedings**

Pursuant to an Order of the Board, NB Power filed an application for approval of its rate design proposal on May 1, 2017. The proceeding was designated as *Matter 357 – NB Power 2017 Rate Design*. Proceedings in that matter are expected to be initiated by the Board and an oral hearing is anticipated to be held early in 2018.

NB Power is expected to file an application for approval of its revenue requirement and proposed rates for 2018-2019 in the autumn of 2017. NB Power has also expressed its intention to apply for the approval of a rate adjustment mechanism which would apply to its approved rates.

NB Power is expected to apply to the Board for approval of its proposal to undertake a project to extend the life of the Mactaquac Generating Station, as required by the *Electricity Act*. It is anticipated that this application will result in one or more public hearings over the next two to three years.

NB Power is expected to file other applications in the upcoming year, including applications for approval of its transmission revenue requirements and for approval of its advanced metering infrastructure project.

It is expected that NB Power will apply to the Board for approval of new reliability standards and modifications to or retirement of certain existing Board approved reliability standards and that the Board will invite interested parties to comment on its draft Annual Implementation Plan for 2018 in connection with its reliability compliance monitoring and enforcement functions.

## **Natural Gas Proceedings**

Enbridge Gas New Brunswick is expected to apply to the Board for approval of its 2018 rates in the autumn of 2017. Pursuant to the requirements of the *Gas Distribution Act, 1999*, the application will seek approval of a 3% increase in the variable portion of the rate applied to the Small General Service class of customers.

## **Other Proceedings**

The Public Intervener will intervene in the proceedings described above, as well as any other proceedings before the Board initiated under the *Electricity Act*; the *Gas Distribution Act, 1999*; the *Petroleum Products Pricing Act* and the *Pipeline Act, 2005*.



## Listing of Relevant Legislation and Regulations

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- ***An Act Respecting a Public Intervener for the Energy Sector***
- ***Energy and Utilities Board Act***  
*General Regulation*
- ***Electricity Act***  
*General Regulation*  
*Transitional Transmission Tariff Regulation*  
*Electricity from Renewable Resources Regulation*  
*Reliability Standards Regulation*
- ***Gas Distribution Act, 1999***  
*Gas Distributor Marketing Regulation*  
*Gas Distribution and Marketers' Filing Regulation*  
*Gas Distribution Uniform Accounting Regulation*  
*Gas Distribution and Marketers' Schedule of Fees Regulation*  
*Single End Use Franchise Fee Adjustment*
- ***Petroleum Products Pricing Act***  
*General Regulation*
- ***Pipeline Act, 2005***  
*Pipeline Regulation*  
*Pipeline Filing Regulation*