



Office of the Public Intervener

A Unit of the Office of the Attorney General

Annual Report 2017-2018

OFFICE OF THE PUBLIC INTERVENER

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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, 2018.

Respectfully submitted,



Hon. Brian Gallant, Q.C.

The Honourable Brian Gallant, 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, 2018.

Respectfully submitted,



Heather Black
Public Intervener for the Energy Sector

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The Role of the Public Intervener

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*. Legislation 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.

HOW DOES THE BOARD SET ‘JUST AND REASONABLE’ RATES?

The Board is obligated to exercise its rate setting authority in a way that results in the establishment of just and reasonable rates.

In the case of electricity and natural gas distribution rates, the applicable statute sets out certain specific parameters which the Board is required to follow in setting rates. Beyond these specific statutory requirements, the Board is guided by a number of regulatory principles that have evolved in Canada over more than one hundred years.

According to one fundamental regulatory principle, rates should be set so that the utility will have a reasonable opportunity to recover its prudently incurred costs and earn a fair return.

The Public Intervener, Heather Black, was the only staff member of the Office of the Public Intervener in the 2017-2018 year.

Activities of the Public Intervener for the 2017-2018 Year

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, 2017 and March 31, 2018, 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. The Public Intervener did not intervene in any other proceeding of the Board during that period. 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 or initiated by utilities in order to facilitate hearing efficiency.

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?

The Board is responsible for ensuring the safe construction and operation of various pipelines in New Brunswick.

Pursuant to the Pipeline Act, 2005, the Board has authority over permitting and licensing of pipeline construction and operation, as well as supervisory powers over the activities of permittees and licensees.

These powers allow the Board to inquire into accidents involving pipelines under the Board's supervision to make findings, recommendations, and/or other decisions and orders in relation to the accident.

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 capital cost of \$50 million 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.

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 through auditing and other measures.

BOARD PRE-APPROVAL OF NB POWER'S PROPOSED LARGE CAPITAL PROJECTS

Section 107 of the Electricity Act prohibits NB Power from incurring capital expenditures in excess of 10% of the total projected capital cost of a project having a total projected capital cost to NB Power of \$50 million or more, until the Board has approved the application.

The Board will approve the capital project if it is satisfied as to the prudence of the capital project.

Between April 1, 2017 and March 31, 2018, the Public Intervener participated in the following proceedings of the Board that were initiated in accordance with the requirements of the *Electricity Act*:

- On May 1, 2017, NB Power applied to the Board for approval of a number of proposed changes to NB Power's rate structure, rate classes and rate design. The proceeding was designated as *Matter 357 – NB Power 2017 Rate Design*. By Notice of Motion filed September 12, 2017, NB Power applied to the Board for an order adjourning the proceeding effective November 1, 2017 on the primary grounds that the upcoming

hearing schedule was too congested and that no prejudice to the parties or to the public interest would result from the adjournment. The Board granted NB Power's motion by oral decision delivered on September 21, 2017. The proceeding is expected to resume in late 2018.

- On October 5, 2017, NB Power applied to the Board for an order approving its proposed rates commencing April 1, 2018 reflecting an average 2% rate increase to be applied differentially across rate categories, approving a proposed capital project consisting of the procurement and deployment of Advanced Metering Infrastructure ("AMI") in the amount of \$122.7 million, allowing the implementation of a rate adjustment mechanism for extraordinary events or circumstances beyond the control of management, approving the process by which NB Power is required to apply for use of the proposed rate adjustment mechanism and granting other related relief. Proceedings in that matter were initiated by Notice and Order issued by the Board on October 6, 2017. The proceeding was designated as *Matter 375 – NB Power 2018-2019 General Rate Application*. An oral hearing in Matter 375 was held over 31 hearing days between February 7 and May 10, 2018 in Saint John and Fredericton. During the course of the hearing, NB Power was granted leave to withdraw its request for approval of its

proposed rate adjustment mechanism and to revise its proposed rates to reflect an average 1.5% rate increase to commence following the Board’s decision. The decision, filed materials and other documents and information related to that proceeding can be found at www.nbeub.ca under Matter 375.

- On November 28, 2017, Algonquin Tinker GenCo applied to the Board for approval of its proposed transmission revenue requirements. Proceedings in that matter were initiated by Notice and Order issued by the Board on December 14, 2017. The proceeding was designated as *Matter 385 – Algonquin Tinker GenCo Application for Approval of its Transmission Revenue Requirements*. An oral hearing in Matter 385 was held May 15 and 16, 2018 in Saint John. The decision, filed materials and other documents and information related to that proceeding can be found at www.nbeub.ca under Matter 385.
- Between April 1, 2017 and March 31, 2018, NB Power filed several applications for approval of new reliability standards and modifications to or retirement of certain existing Board approved reliability standards, all pursuant to the *Electricity Act* and the *Reliability Standards Regulation*. Proceedings were initiated with respect to each of these applications and 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 in which the Public Intervener participated 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 under the matter numbers referred to in the table.

PROCEEDINGS RELATING TO RELIABILITY STANDARDS 2017-2018			
Matter Number	Application Date mm/dd/yy	Reliability Standards	Decision Date mm/dd/yy
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
367	05/26/17	BAL-002-1 and BAL-002-2	08/25/17
369	06/09/17	IRO-002 and TOP-001	09/03/17
381	11/17/17	VAR	03/02/18
382	12/06/17	NBEUB Annual Implementation Plan 2018	N/A
383	11/24/17	BAL	03/16/18
389	01/19/18	BAL	04/19/18
391	01/19/18	PRC	04/19/18

The Public Intervener also participated in a number of stakeholder processes relating to electricity matters throughout the 2017-2018 fiscal year. These processes have been undertaken pursuant to orders of the Board in connection with previous and upcoming Board proceedings or by utilities in order to facilitate hearing efficiency.

INTERESTED IN PARTICIPATING IN A BOARD PROCEEDING?

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 by the Board to comment on the application or to submit their comments in writing to the Board.

If you are interested in participating in a proceeding of the Board in a more formal way, you may request to participate as an intervener. The Board decides whether to grant intervener requests.

As an intervener, you participate in all aspects of a proceeding. Proceedings typically involve submitting written interrogatories to the applicant, participating in procedural motions, filing written evidence and responding to written interrogatories on your evidence, making yourself available for cross-examination on your evidence, cross-examining other parties' witnesses and making final submissions to the Board.

Formal interveners are required to follow the Board's Rules of Procedure when participating in Board proceedings. The Rules of Procedure are available on the Board's website www.nbeub.ca. The Board's website also has other resources that may be helpful to interveners, including links to relevant legislation and copies of all filed documents, transcripts and Board decisions in connection with proceedings of the Board.

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 Board is also responsible for the issuance of gas marketer certificates in accordance with the provisions of the *Gas Distribution Act, 1999* and the *Gas Marketers’ Filing Regulation*.

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. Between April 1, 2017 and March 31, 2018, the Public Intervener participated in the following proceedings of the Board that were initiated in accordance with the requirements of the *Gas Distribution Act, 1999*:

- On July 19, 2017, EGNB applied to the Board for approval of a proposed increase in its Small General Service class distribution rates effective January 1, 2018 and January 1, 2019 by 3% each year, approval of its 2016 regulatory financial statements and approval of its Handbook of Rates and Distribution Services. Proceedings in that matter were initiated by Notice and Order issued by the Board on July 20, 2017. The proceeding was designated as *Matter 371 – EGNB 2018 and 2019 Rate Application*. An oral hearing was held November 6 and 7, 2017 in Saint John. The decision, filed materials and other documents and information related to that proceeding can be found at www.nbeub.ca under Matter 371. On January 26, 2018, EGNB filed an application pursuant to section 43 of the *Energy and Utilities Board Act* seeking review and variance of certain parts of the Board’s decision in Matter 371 relating to EGNB’s residential incentive program and the application of the system expansion portfolio test. An oral hearing was held on April 16, 2018 in Saint John. The decision, filed materials and other documents and information related to that review and variance application can be found at www.nbeub.ca under Matter 371.
- By letter dated March 31, 2017, EGNB filed with the Board a report of its natural gas sales activities for the 2016 fiscal year in accordance with the *Gas Distributor Marketing Regulation*. The proceeding was designated as *Matter 374 – EGNB 2016 Natural Gas Sales*. The Board issued an Order on October 26, 2017 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 under Matter 374.

Pipeline Proceedings

The *Pipeline Act, 2005* prohibits any person from constructing a pipeline unless that person holds a permit issued by the Board and prohibits any person from operating a pipeline unless that person holds a licence granted by the Board. Pursuant to the *Pipeline Act, 2005*, licensees are required 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, 2017 and March 31, 2018, a number of applications were filed with the Board under the *Pipeline Act, 2005* by EGNB and Potash Corporation of Saskatchewan ("Potash Corp"). 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 2017-2018			
Matter Number	Application Date mm/dd/yy	Description	Decision Date mm/dd/yy
361	05/19/17	EGNB Application for Relocation/Abandonment	05/23/17
368	05/29/17	EGNB Application for Relocation/Abandonment	06/02/17
379	10/12/17	Potash Corp Application for Discontinuance	10/19/17
380	---	EGNB Application for Relocation/Abandonment	11/15/17

The decision letters, filed materials and other documents and information related to these proceedings can be found at 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, 2017 and March 31, 2018, 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 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. Following a written procedural hearing, the Board dismissed Matter 341 by order dated September 13, 2017.

HOW DOES THE BOARD SET MAXIMUM PETROLEUM PRODUCT PRICES?

The Board sets maximum prices for petroleum products sold in New Brunswick pursuant to the Petroleum Products Pricing Act and its attendant regulation.

The Board sets the maximum prices for motor fuels and heating fuels each week, using the weekly average spot price for refined petroleum products traded at the New York Harbour division of the New York Mercantile Exchange (NYMEX).

The new maximum prices come into effect at 12:01 AM each Thursday morning. The prices are set using a strict formula set out in regulation and include wholesale and retail margins, delivery costs and all applicable taxes. The Board exercises no discretion when setting maximum petroleum prices.

The Petroleum Products Pricing Act authorizes the Board to make adjustments to the maximum wholesale and retail margins, the maximum delivery costs, and the maximum charge that motor fuel retailers can charge for full service.

Source: www.nbeub.ca

Electricity Proceedings

NB Power is expected to file an application with the Board for approval of its transmission revenue requirements in the summer of 2018. The *Electricity Act* requires NB Power to seek such approval every three years. The most recent proceeding was designated as Matter 256 and was held in 2015.

Matter 357, an NB Power rate design application which was adjourned by Order of the Board effective November 1, 2017, is expected to resume in the autumn of 2018. Please see Page 3 of this Annual Report for further details regarding Matter 357.

NB Power is expected to file an application with the Board for approval of its proposed revenue requirement and proposed rates for 2019-2020 in the autumn of 2018.

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.

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 2019 in connection with its reliability compliance monitoring and enforcement functions.

Natural Gas Proceedings

In the spring of 2018, EGNB is expected to submit its 2017 natural gas sales report to the Board and apply to the Board for approval of its 2017 regulatory financial statements. Pursuant to the *Gas Distribution Act, 1999*, the distribution rates implemented by the Board as a result of Matter 371 will be in force until January 1, 2020. Please see page 6 of this Annual Report for further details with respect to Matter 371.

Other Proceedings

The Public Intervener will intervene in the proceedings described above, as well as any other proceedings before the Board initiated in 2018-2019 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

- ***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 Marketers' Filing Regulation
Gas Distribution and Marketers' Schedule of Fees Regulation
Gas Distributor Marketing Regulation
Single End Use Franchise Fee Adjustment Regulation
- ***Petroleum Products Pricing Act***
General Regulation
- ***Pipeline Act, 2005***
Pipeline Regulation
Pipeline Filing Regulation