



Office of the Public Intervener

A Unit of the Office of the Attorney General

Annual Report 2018-2019

OFFICE OF THE PUBLIC INTERVENER

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Province of New Brunswick
PO Box 6000, Fredericton NB E3B 5H1 CANADA

ISBN 978-1-4605-2101-4 (Bilingual print edition)
ISBN 978-1-4605-2102-1 (PDF: English edition)
ISBN 978-1-4605-2103-8 (PDF: French edition)

ISSN 2369-6680 (Bilingual print edition)
ISSN 2369-6699 (PDF: English edition)
ISSN 2369-6702 (PDF: French edition)

The Honourable Brenda Murphy
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, 2019.

Respectfully submitted,



Hon. Andrea Anderson-Mason, Q.C.
Attorney General

The Honourable Andrea Anderson-Mason, Q.C.
Office of the Attorney General

Madam:

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, 2019.

Respectfully submitted,



Heather Black
Public Intervener for the Energy Sector

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The Role of the Public Intervener

The Public Intervener is required by law 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 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.

WHY ARE UTILITIES REGULATED DIFFERENTLY THAN OTHER BUSINESSES?

A public utility is a government-owned or investor-owned business that provides vital services to the public, including electricity, natural gas and telecommunications services.

Typically, a utility is a monopoly within its service area because utilities are so expensive to build and operate that a competitive model does not work.

Utility rates must be regulated because there is no competition among utilities to naturally keep prices low by allowing customers to “shop around” for the best rates and service.

The Public Intervener, Heather Black, was the only staff member of the Office of the Public Intervener in the 2018-2019 year.

Activities of the Public Intervener for the 2018-2019 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, 2018 and March 31, 2019, the Public Intervener intervened in proceedings of the Board initiated under the *Electricity Act*, the *Gas Distribution Act, 1999* and the *Pipeline Act, 2005*. 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 stakeholder processes 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.

INTERESTED IN LEARNING MORE ABOUT ENERGY REGULATION?

The Board's website provides valuable resources for anyone wanting to learn more about energy regulation in New Brunswick.

In addition to copies of documents filed in each Board proceeding, you can see hearing transcripts, decisions, relevant statutes and information on the Board's mandate and the processes it follows.

The Board also posts notices of upcoming hearings and public sessions, recent decisions and other relevant matters.

Find out more at 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 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.

WHY DOES MY UTILITY WANT A RATE INCREASE?

Utilities seeking rate increases are generally required to file detailed supporting evidence. The Board, with the help of other hearing participants, tests the evidence to determine whether the request is just and reasonable.

If you are interested in learning why your utility wants a rate increase or the grounds on which the Board made its decision, you can review the evidence and the decision on the Board's website: www.nbeub.ca

Between April 1, 2018 and March 31, 2019, 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 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*. After an eleven-month adjournment, the Board resumed the proceeding on October 12, 2018 by directing the parties to participate in a facilitated technical session in order to address certain fundamental issues that are required to be resolved before the hearing proceeds.
- On October 5, 2017, NB Power applied to the Board for an order approving its proposed rates commencing April 1, 2018, approving a proposed capital project consisting of the procurement and deployment of Advanced Metering Infrastructure ("AMI") and granting other related relief. Proceedings 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 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. Following a motion hearing held on July 9, 2018, the Board accepted additional evidence filed by Algonquin Tinker GenCo in the proceeding. The decision, filed materials and other documents and information related to that proceeding can be found at www.nbeub.ca under Matter 385.

- On July 6, 2018, NB Power applied to the Board for an order approving its proposed transmission revenue requirements and rates reflected in the Open Access Transmission Tariff. Proceedings were initiated by Notice and Order issued by the Board on July 11, 2018. The proceeding was designated as *Matter 415 – NB Power Application for Approval of its Transmission Revenue Requirements 2018/19*. An oral hearing was held on November 6 and 7, 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 415.
- On January 8, 2019, NB Power applied to the Board for an order approving its proposed rates commencing April 1, 2019 reflecting an average 2.5% rate increase to be applied differentially across rate classes and granting other relief. Proceedings were initiated by Notice and Order issued by the Board on January 11, 2019. The proceeding was designated as *Matter 430 – NB Power 2019-2020 General Rate Application*. An oral hearing in Matter 430 is scheduled to be heard May 21 to 31, 2019 in St. Andrews and Saint John. The filed materials and other documents and information related to that proceeding can be found at www.nbeub.ca under Matter 430.

NB POWER RATE INCREASES 2015 TO 2018

Since the Electricity Act came into force, the Board has held four NB Power general rate hearings, with the following average rate increase results:

Board Matter	Rate Year	NB Power Rate Increase Request	Board Approved Rate Increase
<i>Matter 272</i>	<i>2015/16</i>	<i>2.0%</i>	<i>1.63%</i>
<i>Matter 307</i>	<i>2016/17</i>	<i>2.0%</i>	<i>1.66%</i>
<i>Matter 336</i>	<i>2017/18</i>	<i>2.0%</i>	<i>1.77%</i>
<i>Matter 375</i>	<i>2018/19</i>	<i>1.5%</i>	<i>0.88%</i>

- Between April 1, 2018 and March 31, 2019, 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 2018-2019			
Matter Number	Application Date mm/dd/yy	Reliability Standards	Decision Date mm/dd/yy
389	01/19/18	BAL and FAC	04/19/18
391	01/19/18	PRC-012-1, PRC-015-1 and PRC-016-1	04/19/18
400	05/07/18	EOP	08/29/18
403	06/25/18	CIP-003-6 and CIP-003-7	08/29/18
414	06/22/18	PRC-025-1 and PRC-025-2	01/16/19
425	10/05/18	PER-006-01, PRC-027-1 and PRC-001-1.1(ii)	01/07/19
428	11/26/18	Annual Implementation Plan 2019	N/A
431	01/24/19	VAR-001-4.2 and VAR-001-5	04/16/19
432	01/14/19	PER-003-1, PER-003-2 and PER-004-2	04/18/19
434	02/15/19	CIP	05/15/19
439	03/29/19	TPL-007-1 and TPL-007-2	---

The Public Intervener also participated in stakeholder processes relating to electricity matters throughout the 2018-2019 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.

I CAN MAKE A VALUABLE CONTRIBUTION TO DECISIONS ABOUT ELECTRICITY RATES. HOW CAN I SHARE MY IDEAS WITH THE BOARD AND NB POWER?

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 present their concerns to the Board and to NB Power in a respectful and informal session 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 *Gas Distribution Act, 1999* prohibits EGNB from selling its gas distribution system and prohibits any person from purchasing EGNB without, in either case, first obtaining permission from the Board.

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*.

Between April 1, 2018 and March 31, 2019, 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 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 26, 2018, EGNB filed with the Board a report of its natural gas sales activities for the 2017 fiscal year in accordance with the *Gas Distributor Marketing Regulation*. The proceeding was designated as *Matter 396 – EGNB 2017 Natural Gas Sales*. The Board issued an Order on December 13, 2018 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 396.
- By application filed April 30, 2018 and amended December 21, 2018, EGNB applied to the Board for approval of its 2017 regulatory financial statements, approval of its proposed modification of the system expansion portfolio test and approval of its proposed variance account for incentive and marketing programs. Proceedings in that matter were initiated by Notice and Order issued by the Board on January 4, 2019. The proceeding was designated as *Matter 398 – EGNB Application for Approval of 2017 Regulatory Financial Statements*. An oral hearing is scheduled to be heard April 24 to 26, 2019 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 398.

- By application filed on January 21, 2019, Liberty Utilities (Canada) LP (“Liberty Utilities”) applied to the Board for leave to acquire the beneficial ownership of EGNB. Proceedings in that matter were initiated by Notice and Order issued by the Board on February 1, 2019. The proceeding was designated as *Matter 433 – Liberty Utilities LP Application for Approval to Acquire Enbridge Gas New Brunswick*. An oral hearing is scheduled to be heard May 6, 7 and 8, 2019 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 433.
- By letter dated January 25, 2019, EGNB applied to the Board for approval to implement the anticipated mandatory fossil fuel charge pursuant to the federal *Greenhouse Gas Pollution Pricing Act* to its customers commencing as of April 1, 2019. Proceedings in that matter were initiated by Notice and Order issued by the Board on March 6, 2019. The proceeding was designated as *Matter 437 – EGNB Application for Approval to Implement Fossil Fuel Charge*. Interested parties were invited to submit written comments to the Board by March 20, 2019. The Board approved EGNB’s request on March 28, 2019. The decision, filed materials and other documents and information related to that proceeding can be found at www.nbeub.ca under Matter 437.

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, 2018 and March 31, 2019, several applications were filed with the Board under the *Pipeline Act, 2005* by Irving Oil Refining G.P. and Irving Oil Terminals and Pipelines (collectively, “Irving Oil”) and by 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 2018-2019			
Matter Number	Application Date mm/dd/yy	Description	Decision Date mm/dd/yy
399	05/16/18	Irving Oil Application for Revisions to Licence	05/25/18
416	06/28/18	Potash Corp Application for Reactivation	07/12/18
423	09/11/18	Irving Oil Application for Reactivation	09/15/18
426	10/11/18	Irving Oil Application for Deactivation	10/15/18

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 on the previous page.

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. No proceedings of the Board were initiated in accordance with the requirements of the *Petroleum Products Pricing Act* between April 1, 2018 and March 31, 2019.

SPOTLIGHT ON: REGULATORY PRINCIPLES

The Board and other energy regulators guided in their decisions not only by the evidence filed in each proceeding, but also by the governing legislation, relevant case law and long-standing (but always evolving) regulatory principles.

Most regulatory principles governing utility rates are derived from a desire for fairness and, ultimately, to achieve the goal of preserving the public interest.

While there are entire specialities of legal and economic theory devoted to the study of this issue, fairness generally requires rates to be set so they:

- *allow the utility to pay its reasonably incurred costs and earn a fair return;*
- *maintain stability and predictability in utility revenue and the rates themselves; and*
- *achieve a fair apportioning of the total revenue required among different ratepayers that is clear and certain.*

Source: Principles of Public Utility Rates, 2nd edition, by James C. Bonbright et al.

Electricity Proceedings

NB Power is expected to file an application with the Board for approval of its proposed revisions to the Open Access Transmission Tariff terms and conditions in the autumn of 2019.

Matter 357, an NB Power rate design application that was previously adjourned and resumed in the autumn of 2018, is expected to continue throughout the 2019-2020 year. 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 2020-2021 in the autumn of 2019.

NB Power is expected to apply to the Board for approval of its proposed advanced metering infrastructure project. NB Power's previous application was denied by the Board in July 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 2020 in connection with its reliability compliance monitoring and enforcement functions.

Natural Gas Proceedings

In the spring of 2019, EGNB is expected to submit its 2018 natural gas sales report to the Board.

If approved, the sale of EGNB to Liberty Utilities (Canada) LP is expected to be completed by the summer of 2019, after which the new owner is expected to file an application for approval of its proposed 2020 rates.

Petroleum Products Pricing Proceedings

The Board is expected to engage an independent consultant to gather data and review the maximum retail margins for motor and heating fuel, maximum delivery costs and the full-service charge and to deliver a report to the Board. Following delivery of the report, the Board is expected to initiate a proceeding pursuant to section 14 of the *Petroleum Products Pricing Act*.

Other Proceedings

The Public Intervener will intervene in the proceedings described above, as well as any other proceedings before the Board initiated in 2019-2020 under the *Electricity Act*; the *Gas Distribution Act, 1999*; the *Petroleum Products Pricing Act* and the *Pipeline Act, 2005*.

List 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