



# Office of the Public Intervener

A Unit of the Office of the Attorney General

# Annual Report 2022-2023

**OFFICE OF THE PUBLIC INTERVENER**

**Annual Report 2022-2023**

Province of New Brunswick  
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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, 2023.

Respectfully submitted,



Hon. Hugh J. Flemming, K.C.  
Attorney General

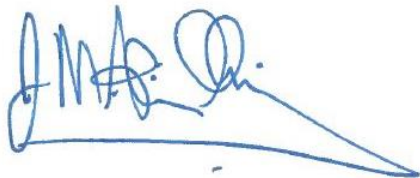
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The Honourable Hugh J. Flemming, K.C.  
Office of the Attorney General

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, 2023.

Respectfully submitted,



J.M. Alain Chiasson  
Public Intervener for the Energy Sector

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## The Role of the Public Intervener

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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 his discretion and requires the Public Intervener to intervene in any other proceeding of the Board as instructed by the Lieutenant-Governor in Council.

### **HOW DID THE PANDEMIC AFFECT THE BOARD’S PROCEEDINGS IN 2022-2023?**

*The Board transitioned to a virtual hearing model in 2020 in response to the COVID-19 pandemic.*

*Hearings, motions and other oral proceedings were conducted by videoconference for the first 9 months of 2022.*

*Applicants, interveners and Board staff participated in Board proceedings conducted by videoconference pursuant to practice directives and participant guidelines published by the Board.*

*Members of the public and the media were able to observe those proceedings if they wished to do so.*

*The Board has now returned to in-person hearings.*

## **Activities of the Public Intervener for the 2022-2023 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. 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 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.

**ARE YOU INTERESTED IN NB POWER'S LONG-TERM PLANNING DOCUMENTS?**

*NB Power's Integrated Resource Plan is the utility's 20 year "roadmap" for how it plans to meet its customers' energy needs using a mix of supply-side and demand-side resources. NB Power's 2020 Integrated Resource Plan has been published on NB Power's website at [www.nbpower.com](http://www.nbpower.com).*

*NB Power also periodically prepares a strategic, financial and capital investment plan. The plan provides a multi-year financial forecast along with underlying assumptions and scenario modelling. The Electricity Act requires NB Power to prepare and file the plan with the Board as part of every rate application. NB Power's most recent strategic, financial and capital investment plan has been published on NB Power's website at [www.nbpower.com](http://www.nbpower.com).*

*The Board considers both planning documents when setting NB Power's rates.*

## Electricity Proceedings

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

As permitted by subsection As permitted by subsection 44(1) of *An Act to Amend the Electricity Act*, S.N.B. 2021, c. 42, NB Power imposed, across all rate classes, a uniform increase of 2% in its rates for the fiscal year commencing April 1, 2022 without applying to the Board for approval.

Beginning with an application with respect to the fiscal year commencing April 1, 2023, the *Electricity Act* requires NB Power to apply to the Board for approval of its proposed rates for each fiscal year. NB Power may apply for approval of its proposed for a longer period, up to a maximum of three fiscal years.

The *Electricity Act* requires NB Power 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.

Between April 1, 2022 and March 31, 2023, the Public Intervener participated in the following proceedings of the Board that were initiated in accordance with the requirements of the *Electricity Act*:

- **Matter 513 – NB Power Open Access Transmission Tariff Revenue Requirement.** On December 10, 2021, NB Power filed an application and supporting evidence in support of various claims for relief, including the approval of a transmission revenue requirement of \$145.5 million for transmission services. After completion of all interim steps in the proceeding by April 13, 2022, the Board scheduled a hearing for July 18 to July 21, 2022. Final argument was held on September 9, 2022.

After hearing the evidence of the various parties, expert witnesses and other witnesses, the Board largely upheld NB Power’s application, only reducing NB Power’s transmission revenue requirement by \$0.9 million in relation to claimed OM&A expenses.

The application, evidence, other documents and Decisions/Orders of the Board can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 513.

- **Matter 541 – NB Power General Rate Application for the fiscal year commencing April 1, 2023.** On October 5, 2022, NB Power filed an application with the New Brunswick Energy and Utilities Board (Board) seeking approval as follows: (a) An 8.9 percent increase in rates across all customer classes based on a revenue requirement of \$2,314.6 million; (b) The proposed schedule of rates, effective April 1, 2023; (c) An increase of \$1.00 per month in the rental fee charged for hot water heaters; (d) An increase of \$11.11 in the service call fee charged to customers for certain service calls; and (e) Changes to NB Power's Financial Risk Management Policies and Financial Risk Management Policies to which New Brunswick Energy Marketing Corporation is subject.

A hearing was held from February 13 to February 24, 2023 in Fredericton. In a Partial Decision issued March 16, 2023, the Board found that the rates, as applied for, were not just and reasonable. In particular, with respect to commodity prices, the Board, over the objection of NB Power, utilized the 2022/23 Q3R1 Forecast (January 2023 to March 2024) PROMOD Forecast dated January 2023 (PROMOD Update). In recognition of the effect on the total margin resulting from the calendar year contract period of the ISO New England standard offer service contracts, the Board approved a downward adjustment of \$31.5 million to the Export Gross Margin for the test year, resulting from the PROMOD Update.

On March 31, 2023, the Board followed up the Partial Decision with an Order allowing NB Power to increase rates charged to all user classes by 5.7 percent, effective April 1, 2023.

The application, evidence, other documents and Decisions/Orders of the Board can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 541.



- **Matter 545 – 2023-24 Variance Account Recovery Filing.** On December 15, 2022, NB Power filed an application pursuant to the Regulatory Variance Accounts and Deferral Account Regulation – Electricity Act, N.B. Regulation 2022-17 (Regulation), for the period ending October 31, 2022.

Subsection 117.4(8) of the *Electricity Act* provides that the Board shall ensure that the balances in each of the regulatory variance accounts, namely, the Energy Supply Cost Variance Account and the Electricity Sales and Margin Variance Account (Variance Accounts) are: (a) Recovered by NB Power or reimbursed to customers in accordance with the Regulation; and (b) Reflected in rate riders established under the Regulation for each rate class. Under sections 11 and 12 of the Regulation, the Board shall determine if there is a recovery or reimbursement of balances regarding the Variance Accounts and determine the rate riders for each rate class for the next fiscal year.

In accordance with subsection 12(7) of the Regulation and 117.4(6) of the Act, the Board accepted NB Power’s calculations of the variances in each of the accounts for the period ending October 31, 2022. Accordingly, the Board accepted the net balance of the Variance Accounts to be negative \$28.5 million. The Board set the amount to be reimbursed in the fiscal year 2023-2024 to the minimum amount of \$15 million. This amount was directed to be refunded by NB Power to ratepayers.

The application, evidence, other documents and Decisions/Orders of the Board can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 545.

***I'M INTERESTED IN MY UTILITY. HOW CAN I LEARN MORE ABOUT WHAT IT DOES AND HOW IT IS REGULATED?***

*The Board website provides information on each regulated industry, copies of relevant legislation, the Board's rules and procedures and information about the hearing process.*

*Most applications to the Board by a utility are supported by a significant amount of evidence filed by the utility. Other participants in the proceeding may also file evidence. Evidence typically consists of financial and operational information about the utility, expert evaluations of the utility's data and other detailed information. The board posts most of this evidence on its website, where it is freely available to the public. The Board also posts written reasons for its decisions and transcripts of its proceedings.*

*A utility's application, the evidence filed in a proceeding, the Board's decisions and other documents and information published on the Board's website provide a rich source of information for anyone interested in learning about their utility. The Board's website is available at [www.nbeub.ca](http://www.nbeub.ca).*

**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*.

Between April 1, 2022 and March 31, 2023, 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*:

- ***Matters 491, 494, 530 and 540 – Various proceedings arising from an Application by Liberty Utilities for approval to change its distribution rates effective May 1, 2022, for approval of its 2020 Regulatory Financial Statements, approval of costs related to its Customer First program, approval of costs and amortization period related to the variance account for COVID-19, approval of variance accounts for Payments from the Natural Gas Distribution Fund and Revenue Requirement True-Up, and approval of an excess earnings sharing mechanism.*** On November 22, 2021, Liberty Utilities applied to the Board for approval of Liberty's proposed distribution rates, effective May 1, 2022. The hearing was held from March 28 to March 31, 2022.

The Board issued a Partial Decision on May 19, 2022. In its Partial Decision, the Board made several findings concerning the 2022 revenue requirement and ordered Liberty to refile its 2022 test year budget with some adjustments.

An Order was issued by the Board on June 23, 2022 approving the distribution rates for each customer class, effective July 1, 2022. On the same date, the New Brunswick Court of Appeal allowed Liberty's application for judicial review of the Board's decision in Matter 491, which had reduced Liberty's return on equity (ROE) from 10.9 percent to 8.5 percent.

On June 29, 2022, Liberty filed an application (Matter 530) with the Board requesting an order varying the June 23, 2022 Order and staying the Order pending the outcome of a review by the Board. In the Matter 530 Application, Liberty stated that the rates set out in the June 23, 2022 Order were calculated based on Liberty's ROE, as a component of its cost of capital, being 8.5 percent. Liberty took the position that, because of the New Brunswick Court of Appeal's decision, the Board determined ROE of 8.5 percent was quashed, remitted to the Board for rehearing, and that Liberty's ROE should be 10.9 percent until ordered otherwise by the Board. On July 5, 2022, the Board stayed the June 23, 2022 Order pending the outcome of a review by the Board with respect to the Matter 530 Application. The Board also Ordered that until further direction was provided, the rates would remain fixed as set out in Appendix A as ordered by the Board in Matter 478 on December 23, 2020 .

The Board stated that: "Where there have been no further findings or orders in relation to Matter 530 beyond the July 5, 2022 Order that affect the decisions made in relation to Matter 494, the Board's reasons for its findings on Matter 494 are detailed below. Furthermore, references to the reduction of the allowed ROE resulting from Matter 491 remain within. Matter 530 will address anything further in relation to the requested variance as a result of the New Brunswick Court of Appeal's decision."

The Board conducted a hearing on December 5 and 8, 2022 in relation to these issues and held that: “(a) Liberty’s application to review and vary the Rates Order and to calculate the 2022 rates based on the 2022 revenue requirement approved by the Board in Matter 494, as adjusted for ROE being 10.9 percent until November 30, 2022, and 9.8 percent as of December 1, 2022 (the Varied 2022 Rates) is granted; (b) Liberty’s application to vary the Matter 494 Decision to allow the Capitalized O&M Variance and related additions to the 2022 revenue requirement is denied; (c) Liberty’s application to vary the Matter 494 Decision to allow its entire \$1.5 million budget for the Retention and Incentive Program is denied; (d) Liberty’s application to vary the Matter 494 Decision concerning the True-Up Variance Account is granted; and (e) The True-Up Variance Account will record the difference between the revenue Liberty received from its 2021 rates from January 1, 2022, until December 31, 2022, and the revenue that would have been received under the Varied 2022 Rates if those rates had been in effect during the same period.”

The application, evidence, other documents and Decisions/Orders of the Board can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matters 491, 494, 530 and 540.

- ***Matter 521 - Review of outstanding issues pertaining to the methodology of calculating, allocating, and financially settling lost and unaccounted for gas.*** The Board held a hearing on September 8, 2022 in relation to the issue of how lost and unaccounted for natural gas should be accounted for. All natural gas systems lose small amounts of gas, which is known and accepted in the industry. Such loses generally pose no risk to the public.

This review was initiated in Matter 508. At the conclusion of that proceeding, the Board issued a letter dated November 25, 2021 approving a proposal from Liberty, for new methodology for calculation and settlement of lost and unaccounted for gas volumes. This approval also included an implementation plan. The new methodology resulted from a working group facilitated by independent consultant, who filed a report on October 25, 2021 That report included views of the members of the working group on a set of outstanding issues that were not addressed in the Liberty proposed methodology. In the November 25, 2021 letter, the Board initiated a separate process to resolve the outstanding issues.

In an Order dated May 24, 2022, the Board indicated that it would review the outstanding issues and directed Liberty Gas to prepare written responses to several questions. Liberty filed its written responses on June 10, 2022.

One Intervener objected to the methodology proposed, however, it filed no evidence in support of its position at the hearing. As a result, the Board determined that no additional adjustments to the methodology were necessary.

The application, evidence, other documents and Decisions/Orders of the Board can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 521.

### ***I'M INTERESTED IN PARTICIPATING IN A BOARD PROCEEDING. HOW AN I GET INVOLVED?***

*The Board holds public sessions as part of certain hearings. 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 intervenor. As an intervenor, 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 intervenors are required to follow the Board's Rules of Procedure and are expected to participate in a responsible, civil and respectful manner. The Rules of Procedure are available on the Board's website at [www.nbeub.ca](http://www.nbeub.ca).*

### **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, 2022 and March 31, 2023, there was one proceeding before the Board in which the Public Intervener participated in accordance with the *Pipeline Act*, 2005:

- **Matter 509 - NB Power Application for an Order approving the removal and abandonment of the Dalhousie Fuel Pipeline.** On October 29, 2021, NB Power applied to the Board seeking approval for the abandonment of the Dalhousie Fuel Pipeline, consisting of 3660 meters of pipe. The hearing was held on May 25, 2022. The Public Intervener submitted that the relief requested by NB Power met the requirements under the Act and was in the public interest. By Decision dated June 29, 2022, the Board approved the removal and abandonment, as requested by NB Power, subject to various conditions.

The application, evidence, other documents and Decisions/Orders of the Board can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 509.

### **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 charges to be initiated by a wholesaler, retailer or the Board.

Between April 1, 2022 and March 31, 2023, there was one proceeding before the Board in which the Public Intervener participated:

- **Matter 523 - Review of maximum retail margins, maximum delivery costs, and maximum full service charge for motor fuels and furnace oil.** The Board initiated a review to determine whether motor fuels and furnace oil margins, costs and the maximum full service charge were justified for 2022. A previous review (Matter 485) was held in 2021.

The Board engaged a consultant, as did the Public Intervener, to assess the adequacy of the current margins.

A hearing was held on October 12 and 13, 2022. Various Interveners participated in the hearing, along with Board Staff and the Public Intervener.

A Partial Decision was issued by the Board on December 15, 2022, where the Board held as follows:

“The Board makes the following findings: a. The maximum retail margin for motor fuels is adjusted from 7.33 cents per litre (cpl) to 8.46 cpl, an increase of 1.13 cpl. b. The maximum retail margin for furnace oil is adjusted from 23.56 cpl to 27.21 cpl, an increase of 3.65 cpl. c. The maximum delivery costs for motor fuels is adjusted from 3.50 cpl to 3.75 cpl, an increase of 0.25 cpl.”

The Board’s Final Decision was issued on January 26, 2023 and was consistent with the Partial Decision.

The application, evidence, other documents and Decisions/Orders of the Board can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 523.

## List 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 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*