



Office of the Public Intervener

A Unit of the Office of the Attorney General

Annual Report 2023-2024

OFFICE OF THE PUBLIC INTERVENER

Annual Report 2023-2024

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

ISBN [978-1-4605-4076-3] (Bilingual print edition)
ISBN [978-1-4605-4077-0] (PDF: English edition)
ISBN [978-1-4605-4078-7] (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, 2024.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Flemming".

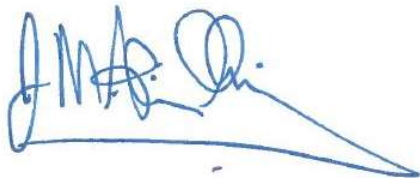
Hon. Hugh J. Flemming, K.C.
Attorney General

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, 2024.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J.M. Chiasson".

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

Activities of the Public Intervener for the 2023-2024 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. 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 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.

Electricity Proceedings

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

Beginning with an application with respect to the fiscal year commencing April 1, 2023, the *Electricity Act* requires the New Brunswick Power Corporation (“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 rates 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, 2023 and March 31, 2024, the Public Intervener participated in the following proceedings of the Board that were initiated in accordance with the requirements of the *Electricity Act*:

- ***Matter 529 – NB Power Rate Design Application Proceedings.*** The seven-day hearing took place in Fredericton, New Brunswick from June 7, 2023 to June 15, 2023. This is Phase One of NB Power's application to redesign its rates and to modify the classification of commercial and industrial customers into small, medium, large and transmission-connected classes and to modify different aspects of its service delivery and customer service options. NB Power only requested conceptual approvals for many of its initiatives sought in this application. Phases Two and Three of these hearings will take place at an undetermined future date and it is expected that NB Power will apply for the full implementation of many of the initiatives sought in Phase One. The Board issued its decision for the Phase One hearing on July 28, 2023 and they approved, in principle, the reclassifications of commercial and industrial rates and the elimination of the General Service II class by no later than April 1, 2025.

The application, evidence, other documents and Decisions/Orders of the Board can be found at www.nbeub.ca under Matter 529.

- ***Matter 541 – 2023-2024 NB Power General Rate Application.*** On October 5, 2022, NB Power filed an application with the 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.

On June 7, 2023, the Board issued its final decision and confirmed its conclusions of the Partial Decision issued on March 31, 2023.

On July 5, 2023, NB Power filed a Notice of Application with the New Brunswick Court of Appeal for judicial review of the Board decision dated June 7, 2023. NB Power applied for the said decision be quashed and that the Court fix a uniform rate increase of 8.9 percent across all customer classes. The hearing at the Court of Appeal took place in Fredericton on October 19, 2023. The Public Intervener presented arguments as a party to the proceedings before the Court of Appeal. The Court dismissed with costs the request from NB Power and upheld the Board's decision in a judgment dated March 21, 2024.

The application, evidence, other documents and Decisions/Orders of the Board can be found at www.nbeub.ca under Matter 541 and at www.courtsnb-coursnb.ca under Court of Appeal.

- **Matter 573 – 2024-25 Variance Account Recovery Filing.** On December 15, 2023, NB Power filed an application pursuant to the Regulatory Variance Accounts and Deferral Account Regulation – Electricity Act, N.B. Regulation 2022-17 (the “Regulation”), for the period ending October 31, 2023. The online one-day hearing took place on March 4, 2024 and the Board issued its decision on March 19, 2024.

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, 2023. Accordingly, the Board accepted the net balance of the Variance Accounts to be \$236.1 million to be recovered over the next six fiscal years. This resulted in a rate increase of three percent through a rate rider to be collected in fiscal year 2024-2025.

The application, evidence, other

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.

documents and Decisions/Orders of the Board can be found at www.nbeub.ca under Matter 573.

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 Liberty Utilities (Gas New Brunswick) LP ("Liberty") 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 Liberty and make orders or give direction to Liberty 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, 2023 and March 31, 2024, 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*:

- ***Matter 533 – Proceedings arising from an Application by Liberty for approval to change its distribution rates effective May 1, 2023, for approval of its 2021 Regulatory Financial Statements, approval of a Revenue Decoupling Mechanism, including a Weather Normalization Adjustment, approval of a Revenue Decoupling Mechanism Variance Account, approval of and full inclusion of Corporate Allocations, approval of amounts related to the variance account for the Large Industrial Contract Services Rate Class, approval of amounts related to the variance account for Payments from Natural Gas Distribution Fund and approval of amounts related to the Revenue Requirement True-Up Variance Account for the 2022 test year as well as approval of the use of this account during the 2023 test year.***

On March 3, 2023, Liberty applied to the Board for approval of its proposed distribution rates, effective May 1, 2023 and for approval of its 2021 Regulatory Financial Statements among other things. The 3-day hearing was held from July 4, 2023 to July 11, 2023.

The Board issued its oral decision on September 21, 2023 by approving Liberty's 2021 Regulatory Financial Statements, by approving the proposed rate modifications with minor adjustments and by denying the request by Liberty to implement a Revenue Decoupling Mechanism, including a Weather Normalization Adjustment. The Board accepted the method to calculate Corporate Cost Allocations as proposed by Liberty. The Board further approved variance account for the Large Industrial Contract Services Rate Class, the amounts related to the variance account for Payments from Natural Gas Distribution Fund and the amounts related to the Revenue Requirement True-Up Variance Account for the 2022 test year.

The application, evidence, other documents and Decisions/Orders of the Board can be found at www.nbeub.ca under Matter 533.

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

I'M INTERESTED IN PARTICIPATING IN A BOARD PROCEEDING. HOW DO 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 intervener. 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 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.

operations of a pipeline and the abandonment of a pipeline.

Between April 1, 2023 and March 31, 2024, there were no proceedings before the Board in which the Public Intervener participated in accordance with the *Pipeline Act, 2005*.

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, 2023 and March 31, 2024, 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*:

- **Matter 549 – Cost of Carbon Adjustor.** The Board was mandated under section 13.2 of the *Petroleum Products Pricing Act* and section 13.2 of the *General Regulation – Petroleum Products Pricing Act* to establish a mechanism to determine the cost of carbon adjustor which must be implemented by July 1, 2023. The Board retained Grant Thornton to prepare a written report to propose a method to appropriately calculate the Cost of Carbon Adjustor to be filed with the Board. A one-day hearing was held on April 25, 2023. On June 13, 2023, the Board issued its decision endorsing the method for calculating the Cost of Carbon Adjustment as proposed by Grant Thornton for the next six months. The Board undertook to review the said method at the beginning of 2024. In the interim, the Board closely monitored the resulting calculations, other related market conditions and the evolution of carbon credit trading systems in Canada.

The application, evidence, other documents and Decisions/Orders of the Board can be found at www.nbeub.ca under Matter 549.

- **Matter 565 – Regulated Price Spread Between Premium and Regular Gasoline.** The Board held a one-day hearing on this matter on December 5, 2023. After review the evidence of different experts from the Board and the Public Intervener, the Board issued its decision on March 7th, 2024 to establish a new methodology for calculating the spread between regular and premium gasoline prices and further ruled that the said spread between regular and premium gasoline prices should be at least six cents per litre.

The application, evidence, other documents and Decisions/Orders of the Board can be found at www.nbeub.ca under Matter 565.

- **Matter 566 – Cost of Carbon Adjustor – 6-month review.** The Board was mandated under section 13.2 of the *Petroleum Products Pricing Act* and section 13.2 of the *General*

Regulation – Petroleum Products Pricing Act to establish a mechanism to determine the cost of carbon adjustor which had to be implemented by July 1, 2023. The Board retained Grant Thornton to prepare a written report to propose a method to appropriately calculate the Cost of Carbon Adjustor to be filed with the Board. A one-day hearing was held on April 25, 2023. On June 13, 2023, the Board issued its decision endorsing the method for calculating the Cost of Carbon Adjustment as proposed by Grant Thornton for the next six months. In its decision, the Board stated it would proceed to a review of the current formula every six months, at least initially.

The hearing for the six-month review took place in Moncton on January 29-30th, 2024. The Board heard evidence from expert witnesses from the Board, the Public Intervener and Advanced Biofuels Canada Association while several interveners participated by cross-examining the experts witnesses and making final arguments before the Board.

On April 24, 2024, the Board issued its decision by ruling that an interim cost of carbon adjustor mechanism continues to be appropriate methodology pending further development of the Canadian carbon credit market in its maturity and liquidity. The Board further ruled to make minor adjustments to the original formula to calculate the Cost of Carbon Adjustor by lowering the assumed carbon intensity for renewable diesel and for the assumption that suppliers will contribute to the compliance fund.

The Board will review the ongoing appropriateness of the interim cost of carbon adjustor in late 2024 and will establish a review process with the objective of evaluating developments in the Canadian carbon credit market and examining the methodology itself.

The application, evidence, other documents and Decisions/Orders of the Board can be found at www.nbeub.ca under Matter 566.

- **Matter 567 – Reporting Agency for Regulated Petroleum Products.** The Board needed to proceed with the selection of one or more petroleum product price reports for the purpose of calculating a benchmark price for each regulated petroleum product, as required by section 2 of the *General Regulation – Petroleum Products Pricing Act*.

The Board held a hearing in this matter on December 5, 2023 and heard from expert witnesses from the Board and the Public Intervener who made submissions to the Board.

In its decision on March 7, 2024, the Board selected the reports published by Argus Media for all types of Petroleum products regulated by the Board.

The application, evidence, other documents and Decisions/Orders of the Board can be found at www.nbeub.ca under Matter 567.

- **Matter 571 – Review of Winter Blending Percentages.** The Board needed to determine the relevant percentages of each petroleum product used to calculate benchmark prices for ultra-low sulphur diesel fuel and furnace oil to maintain fuel operability in winter as required by section 2 of the *General Regulation – Petroleum Products Pricing Act*. The Board uses benchmark prices to calculate maximum retail prices for these fuels.

The Board held a hearing in this matter on December 5, 2023 and heard from expert witnesses from the Board and the Public Intervener who made submissions to the Board.

In its decision on March 7, 2024, the Board adopted the proposed blending schedule as submitted by the Board’s expert.

The application, evidence, other documents and Decisions/Orders of the Board can be found at www.nbeub.ca under Matter 571.

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
Energy Efficiency Regulation
Regulatory Variance Accounts and Deferral Account
Reliability Standards Regulation
- ***Gas Distribution Act, 1999***
Gas Distribution and 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