



# Office of the Public Intervener

A Unit of the Office of the Attorney General

## Annual Report 2019-2020

**OFFICE OF THE PUBLIC INTERVENER**

**Annual Report 2019-2020**

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, 2020.

Respectfully submitted,



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

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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, 2020.

Respectfully submitted,



Heather Black  
Public Intervener for the Energy Sector



## Table of Contents

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The Role of the Public Intervener for the Energy Sector	1
Activities of the Public Intervener for the 2019-2020 Year	
Overview	1
Electricity Proceedings	2
Natural Gas Proceedings	7
Pipeline Proceedings	9
Petroleum Products Pricing Proceedings	10
A Look Ahead to the 2020-2021 Year	
Electricity Proceedings	10
Natural Gas Proceedings	11
Other Proceedings	11
List of Relevant Legislation and Regulations	13



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

### **WHAT IS THE PUBLIC INTEREST, ANYWAY?**

*Generally, the public interest represents the values and objectives that will maximize the well-being of a group. In terms of energy regulation, the public interest is what is best for the whole regulated system and everyone who uses it or is affected by it.*

*Section 6 of An Act Respecting a Public Intervener for the Energy Sector reflects the breadth, inclusiveness and dynamic nature of the concept of the public interest by declaring that the Public Intervener does not represent the interests of nor advocate on behalf of a party to the proceeding, a customer, a class of customers, a government department or agency or other interested group.*

The Public Intervener, Heather Black, was the only staff member of the Office of the Public Intervener in the 2019-2020 year.

## Activities of the Public Intervener for the 2019-2020 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, 2019 and March 31, 2020, the Public Intervener intervened in proceedings of the Board initiated under the *Electricity Act*, the *Gas Distribution Act, 1999*, the *Petroleum Products Pricing Act* 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](http://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 to facilitate hearing efficiency.

***I DON'T UNDERSTAND WHY THE BOARD ALLOWED MY UTILITY TO RAISE ITS RATES.***

***HOW CAN I LEARN MORE?***

*To learn more about any decision of the Board, go to the Board's website: [www.nbeub.ca](http://www.nbeub.ca).*

*The Board posts full copies of its decisions, which often include a detailed discussion about the application, a review of the evidence and the Board's reasons for making its decision.*

*You can also find copies of most evidence that has been filed in a proceeding, as well as copies of transcripts of the oral hearing.*

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*.

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.

Between April 1, 2019 and March 31, 2020, 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 series of facilitated technical sessions to address certain fundamental issues that are required to be resolved before the hearing resumes. Those sessions were conducted in the summer of 2019, following which the facilitator delivered a report to the Board. Submissions relating to the sessions and the report are scheduled to be heard by the Board in May 2020.

- 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, approving the creation of a regulatory deferral account for certain demand side management expenses 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 was heard May 21 to 28, 2019 in St. Andrews and 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 430.
- On August 1, 2019, NB Power applied to the Board for approval of its proposed advanced metering infrastructure capital project pursuant to section 107 of the *Electricity Act*. Proceedings were initiated by Notice and Order issued by the Board on August 6, 2019. The proceeding was designated as *Matter 452 – NB Power Application for Approval of Advanced Metering Infrastructure Project*. An oral hearing in Matter 452 was heard January 13 to 22, 2020 in Saint John. The decision in that matter was delayed because of the provincial State of Emergency. Filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 452 and the decision will be posted there once it is rendered.

- On October 2, 2019, NB Power applied to the Board for an order approving its proposed rates commencing April 1, 2020 reflecting a 2.0% rate increase to be applied uniformly across rate classes, approving proposed changes to NB Power’s financial risk management policies and granting other relief. Proceedings were initiated by Notice and Order issued by the Board on October 4, 2019. The proceeding was designated as *Matter 458 – NB Power 2020-2021 General Rate Application*. An oral hearing in Matter 458 was heard February 5 to 13, 2020 in Saint John. The decision in that matter was delayed because of the provincial State of Emergency. Filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 458 and the decision will be posted there once it is rendered.

**NB POWER RATE INCREASES 2015 TO 2020**

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

<b>Board Matter</b>	<b>Rate Year</b>	<b>NB Power Rate Increase Request</b>	<b>Board Approved Rate Increase</b>
<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>
<i>Matter 430</i>	<i>2019/20</i>	<i>2.5%</i>	<i>2.48%</i>
<i>Matter 458</i>	<i>2020/21</i>	<i>2.0%</i>	<i>decision delayed</i>

- Between April 1, 2019 and March 31, 2020, 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](http://www.nbeub.ca) under the matter numbers referred to in the table.

<b>PROCEEDINGS RELATING TO RELIABILITY STANDARDS 2019-2020</b>			
<b>Matter Number</b>	<b>Application Date mm/dd/yy</b>	<b>Reliability Standards</b>	<b>Decision Date mm/dd/yy</b>
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	06/18/19
447	05/29/19	TPL-007-2 and TPL-007-3	09/17/19
454	08/15/19	CIP-008-5 and CIP-008-6	11/29/19
455	08/23/19	IRO-002-5 and IRO-002-6	11/29/19
456	09/20/19	CIP-003-7 and CIP-003-8	12/19/19
461	N/A	NBEUB 2020 Annual Implementation Plan	N/A

The Public Intervener also participated in stakeholder processes relating to electricity matters throughout the 2019-2020 fiscal year. These processes have been undertaken pursuant to orders of the Board in connection with previous and upcoming Board proceedings or by utilities to facilitate hearing efficiency.

**THE COVID-19 PROVINCIAL STATE OF EMERGENCY,  
THE EUB AND THE PUBLIC INTEREST**

*When the provincial State of Emergency was declared on March 19, 2020, the Board was engaged in deliberations on two outstanding NB Power matters: NB Power's application for approval of its proposed Advanced Metering Infrastructure project (Matter 452) and NB Power's 2020-2021 general rate application (Matter 458). At the time, it had been expected that the Board would render its decision in each of these matters within days.*

*Once the State of Emergency was declared, NB Power filed a motion asking the Board to delay rendering its decision in each of these matters on the grounds that a delay would be in the public interest. NB Power stated as follows in its request for relief:*

***In recent days, it has become apparent that the impact of the Covid-19 pandemic in New Brunswick will be both health-related, as well as economic. The necessary measures being taken by all levels of government, as well as private businesses, to contain and mitigate the spread of the Covid-19 virus will have economic impacts on all Canadians, including New Brunswick electricity ratepayers.***

*.....*

***NB Power has concluded that a rate increase implemented on April 1, 2020 would be counterproductive to the efforts of government, and would increase rates at a time when all of NB Power's customers are in need of support. Accordingly, NB Power does not believe an implementation of any rate increase on April 1, 2020 would be in the public interest.***

***With respect to Matter 452, assuming the Board approved the capital project, NB Power would be unable to immediately begin the work necessary to successful implementation of the AMI Capital Project. NB Power has recently taken the unprecedented step of moving its operations to mission critical work only until further notice...***

*The Board granted NB Power's request and adjourned both proceedings, noting that its decision must balance the interests of NB Power and its ratepayers. The Board ordered NB Power's existing rates to continue to apply until further order 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*.

After receiving Board approval in accordance with the *Gas Distribution Act, 1999*, Liberty Utilities (Canada) LP acquired Enbridge Gas New Brunswick Limited Partnership (“EGNB”) and its general partner, Enbridge Gas New Brunswick Inc. on October 1, 2019. By virtue of this acquisition, EGNB became Liberty Utilities (Gas New Brunswick) LP (“Liberty Utilities”) and its general partner became Liberty Utilities (Gas New Brunswick) Corp. For more information on the Board’s approval of this acquisition, please see the discussion of Matter 433 below.

The *Gas Distribution Act, 1999* requires Liberty Utilities 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 Utilities and make orders or give direction to Liberty Utilities 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, 2019 and March 31, 2020, 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*:

- 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 was held April 24 and 25, 2019 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 398.
- By application filed on January 21, 2019, 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 was held May 6, 2019 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 433.

- By letter dated March 27, 2019, EGNB filed with the Board a report of its natural gas sales activities for the 2018 fiscal year in accordance with the *Gas Distributor Marketing Regulation*. The proceeding was designated as *Matter 440 – EGNB 2018 Natural Gas Sales*. The Board issued a decision and Order on February 25, 2020 in relation to the proceeding. The decision and 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 440.
- On April 30, 2019, EGNB applied to the Board for approval of its 2018 regulatory financial statements and approval of its proposed allocation methodology for using its excess earnings to reduce future rates pursuant to section 52.03 of the *Gas Distribution Act, 1999*. Proceedings in that matter were initiated by Notice and Order issued by the Board on August 8, 2019. The proceeding was designated as *Matter 443 – EGNB Application for Approval of 2018 Regulatory Financial Statements* and was later merged with Matter 453. An oral hearing was held November 21 and 22, 2019 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 Matters 443 and 453.
- By letter dated June 12, 2019, EGNB applied to the Board for approval of its proposed modification to the Enbridge Utility Gas price setting methodology. Proceedings in that matter were initiated by Notice and Order issued by the Board on August 8, 2019. The proceeding was designated as *Matter 448 – Request to Amend the Enbridge Utility Gas (EUG) Pricing Methodology*. EGNB held a technical session on September 20, 2019 to explain the details of the application. Filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 448.
- On August 2, 2019, EGNB applied to the Board for approval of its proposed changes to distribution rates effective January 1, 2020, approval of its revised Handbook of Rates and Distribution Services and its 2018 regulatory financial statements, and approval of an income tax variance account. The proceeding was designated as *Matter 453 – EGNB 2020 Rate Application*. An oral hearing was held November 21 and 22, 2019 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 453.

### **SOMETHING NEW IN 2019-2020: THE BOARD APPLIES THE NO-HARM TEST**

*Liberty Utilities (Canada) LP applied to the Board in 2019 for an order granting leave to acquire the beneficial ownership of Enbridge Gas New Brunswick Limited Partnership.*

*This was the first time that the Board considered such a request. In doing so, the Board applied the “no-harm” test, which examines whether a proposed transaction will have a positive or neutral effect. If there is no harm arising from the sale of the utility, then leave should be granted.*

*The Board considered the impact on customer rates, any operational benefit or risk, any change in the utility’s ability to attract capital, any erosion of regulatory oversight, any loss of organizational expertise or any other impacts that may negatively affect customers.*

*The Board determined that no harm would arise from the proposed transaction and granted the request for leave.*

*Find out more at [www.nbeub.ca](http://www.nbeub.ca) under Matter 433.*

### **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, 2019 and March 31, 2020, the Public Intervener participated in the following proceedings of the Board that were initiated in accordance with the requirements of the *Pipeline Act, 2005*:

- By letter dated December 14, 2018, Irving Oil Terminals and Pipelines applied to the Board for approval of its proposed amendment to Pipeline Licence PLL 86-1. A proceeding was initiated and was designated as *Matter 462 – Irving Oil Terminals & Pipelines G.P. Revision of Pipeline Licence PLL 86-1*. The Board issued a decision letter on December 18, 2019. The decision, filed materials and other documents and information related to this proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 462.

### **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, 2019 and March 31, 2020, 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 July 3, 2019, the Board initiated a proceeding pursuant to subsection 14(1) of the *Petroleum Products Pricing Act* to review the maximum margins for petroleum products, the maximum delivery costs that can be charged and the maximum full-service charge that can be charged by retailers. The proceeding was designated as *Matter 444 –Petroleum Margin Review*. An oral hearing was held September 24 and 25, 2019 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 444.

## **A Look Ahead to the 2020-2021 Year**

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### **Electricity Proceedings**

The Board's decisions in Matter 452 and Matter 458 were delayed because of the COVID-19 outbreak and may be rendered in the upcoming year. Please see pages 3 to 6 of this Annual Report for further details regarding these matters.

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 2020.



Matter 357, an NB Power rate design application that was previously adjourned and resumed in the autumn of 2018, is expected to continue in the 2020-2021 year. Please see Pages 2 and 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 2021-2022 in the autumn of 2020.

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

***DO ALL RESIDENTIAL CUSTOMERS WANT THE SAME THINGS FROM THEIR UTILITY AND ITS REGULATOR?***

*Customers within a single rate class, even the residential class, do not have fully homogeneous interests.*

*Some residential customers use their utility's service to heat their homes, contributing more to higher winter demand than non-heating customers.*

*Other residential customers may use more energy throughout the year than an average customer uses.*

*Still other residential customers may want their utility to provide incentives to allow them to generate their own energy or to maximize their energy efficiency.*

*Making decisions in the public interest requires consideration of all these different residential customer usage profiles and competing residential customer priorities.*

the Board will invite interested parties to comment on its draft Annual Implementation Plan for 2021 in connection with its reliability compliance monitoring and enforcement functions.

### **Natural Gas Proceedings**

Matter 448, a request by Liberty Utilities for Board approval of its proposed amendments to the Enbridge Utility Gas (EUG) price setting methodology, may continue in the 2020-2021 year. Liberty Utilities is also expected to submit its 2019 natural gas sales report to the Board in the spring of 2020 and to file an application for approval of its proposed 2021 distribution rates in the summer of 2020.

### **Other Proceedings**

The Public Intervener will intervene in the proceedings described

above, as well as any other proceedings before the Board initiated in the 2020-2021 year 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

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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*