



# Office of the Public Intervener

A Unit of the Office of the Attorney General

## Annual Report 2020-2021

**OFFICE OF THE PUBLIC INTERVENER**

**Annual Report 2020-2021**

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, 2021.

Respectfully submitted,



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

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

Sir:

Pursuant to subsection 13(1) of *An Act Respecting a Public Intervener for the Energy Sector*, I am pleased to submit this report with respect to the activities of the Public Intervener for the period ended March 31, 2021.

Respectfully submitted,



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

### **HOW HAS THE PANDEMIC AFFECTED THE BOARD’S PROCEEDINGS?**

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

*Hearings, motions and other oral proceedings are now conducted by videoconference.*

*Intervenors can participate in Board proceedings conducted by videoconference and members of the public can observe those proceedings if they wish to do so.*

*The Board has published a Practice Directive and Participant Guidelines to assist those who participate in virtual proceedings.*

*Copies of these documents can be found on the Board’s website at [www.nbeub.ca](http://www.nbeub.ca).*

The Public Intervener, Heather Black, was the only staff member of the Office of the Public Intervener in the 2020-2021 year.

### **Activities of the Public Intervener for the 2020-2021 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, 2020 and March 31, 2021, the Public Intervener intervened in proceedings of the Board initiated under the *Electricity Act*, the *Gas Distribution Act, 1999*, and the *Petroleum Products Pricing Act*. No proceedings were conducted under the *Pipeline Act, 2005* during the 2020-2021 year. 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 otherwise initiated by the Board or industry participants.

**ARE YOU INTERESTED IN NB POWER'S LONG-TERM RESOURCE PLAN?**

*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).*

*The Electricity Act requires NB Power to update its Integrated Resource Plan every three years and requires the Board to consider NB Power's most recent Integrated Resource Plan when setting NB Power's distribution rates.*

*NB Power's planning process includes a public engagement program culminating in a report. The report is published on NB Power's website at [www.nbpower.com](http://www.nbpower.com).*

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, except for the 2021-2022 year, for approval of its proposed rates for that year. The *Electricity Act* also 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, 2020 and March 31, 2021, the Public Intervener participated in the following proceedings of the Board that were initiated in accordance with the requirements of the *Electricity Act*:



- **Matter 357 – NB Power 2017 Rate Design.** NB Power applied to the Board for approval of proposed changes to NB Power’s rate structure, rate classes and rate design. After an adjournment, the Board resumed the proceeding 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 facilitators delivered a report to the Board. The facilitators presented their report to the Board in May 2020 and participants filed written submissions with the Board in response to the report. On August 4, 2020, the Board issued a decision directing NB Power to file an application no later than June 30, 2021 addressing certain foundational issues and proposing a phased process to identify rate design options, determine a rate structure and to establish and implement a new rate design. 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 357.
- **Matter 415 – NB Power Transmission Revenue Requirements.** NB Power requested an extension of its deadline to file an application with the Board approving changes to the terms and conditions of its Open Access Transmission Tariff because of the COVID-19 pandemic and related provincial State of Emergency. The Board granted NB Power’s motion on April 16, 2020, extending the filing deadline until further notice of the Board. The Order, file materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 415.
- **Matter 452 – NB Power Application for Approval of Advanced Metering Infrastructure Project.** NB Power applied to the Board for approval of its proposed advanced metering infrastructure capital project pursuant to section 107 of the *Electricity Act*. After the completion of all interlocutory steps, an oral hearing in Matter 452 was heard January 13 to 22, 2020 in Saint John. On March 24, 2020, the Board granted NB Power’s motion seeking to adjourn the proceeding because of the provincial State of Emergency. The effect of adjournment was to delay the issuance of the Board’s decision in Matter 452 until further order of the Board. On September 4, 2020, the Board granted NB Power’s motion to lift the adjournment and issued its decision in Matter 452. The decision, rulings on motion, 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.

- Matter 458 – NB Power 2020-2021 General Rate Application.** NB Power applied to the Board for an order approving its proposed rates commencing April 1, 2020, approving proposed changes to NB Power’s financial risk management policies and granting other relief. After the completion of all interlocutory steps, an oral hearing in Matter 458 was held February 5 to 13, 2020 in Saint John. On March 24, 2020, the Board granted NB Power’s motion seeking to adjourn the proceeding because of the provincial State of Emergency. The effect of adjournment was to delay the issuance of the Board’s decision in Matter 458 until further order of the Board. On October 2, 2020, the Board granted NB Power’s motion to lift the adjournment, issued its decision in Matter 458 and ordered that the rates set by its decision would be implemented on March 31, 2021. The decision, rulings

**NB POWER RATE INCREASES 2015 TO 2021**

*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>
Matter 272	2015/16	2.0%	1.63%
Matter 307	2016/17	2.0%	1.66%
Matter 336	2017/18	2.0%	1.77%
Matter 375	2018/19	1.5%	0.88%
Matter 430	2019/20	2.5%	2.48%
Matter 458	2020/21*	1.9%	1.8%

\*effective March 31, 2021

on motion, 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.

- Matter 477 – NB Power 2021-2022 General Rate Application.** NB Power filed a preliminary Notice of Motion with the Board seeking to extend the filing deadline for its 2021-2022 general rate application until a date no later than March 31, 2021 because of the pandemic and related provincial State of Emergency. The Board granted NB Power’s motion on October 2, 2020. Matter 477 was closed on December 18, 2020 after the *Electricity Act* was amended to prohibit NB Power from applying for approval of proposed rates for the 2021-2022 year. The ruling on motion, filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 477.

- Between April 1, 2020 and March 31, 2021, 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 2020-2021</b>			
<b>Matter Number</b>	<b>Application Date mm/dd/yy</b>	<b>Reliability Standards</b>	<b>Decision Date mm/dd/yy</b>
465	04/09/20	PRC-006-NPCC-1, PRC-006-NPCC-2	06/29/20
470	05/11/20	TPL-007-3, TPL-007-4	07/27/20
472	06/02/20	CIP, PRC, PER	08/17/20
473	06/05/20	CIP-012-1	08/21/20
474	06/05/20	TPL-001-4, TPL-001-5	08/21/20
476	07/30/20	TPL-001-5, TPL-001-5.1	10/14/20
479	08/28/20	PRC-024-2, PRC-024-3	11/19/20
481	09/04/20	BAL-003-1.1, BAL-003-2	11/19/20
482	N/A	NBEUB 2021 Annual Implementation Plan	N/A
483	11/13/20	INT, IRP, PRC, TOP, FAC, MOD	01/22/21
489	02/10/21	FAC, IRO, MOD, NUC, PRC, TOP	---
490	02/12/21	PRC-006-4, PRC-006-5	---

**INTERESTED IN PARTICIPATING IN A BOARD PROCEEDING? THERE ARE MANY WAYS TO GET INFORMED AND GET INVOLVED.**

**GET INFORMED**

*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 detailed reasons for its decisions and transcripts of its proceedings. The Board website also provides information on each regulated industry, copies of relevant legislation, the Board's rules and procedures and information about the hearing process. The Board's website is available at [www.nbeub.ca](http://www.nbeub.ca).*

**GET INVOLVED**

*The Board holds public sessions as part of certain significant 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](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 Liberty Utilities (Gas New Brunswick) (“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, 2020 and March 31, 2021, 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 448 – Request to Amend the Enbridge Utility Gas (EUG) Pricing Methodology.*** By Order dated April 21, 2020, the Board granted a request by Liberty Utilities to withdraw its application for approval of its proposed modification to the Enbridge Utility Gas price setting methodology. The proceeding was closed effective April 21, 2020. 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.
- ***Matter 468 – Liberty Utilities Natural Gas Sales.*** On March 31, 2020, Liberty Utilities filed with the Board a report of its natural gas sales activities for the 2019 fiscal year in accordance with the *Gas Distributor Marketing Regulation*. The Board issued an amended decision on December 17, 2020 in relation to the proceeding. The decisions, filed materials and other documents and information related to this proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 468.
- ***Matter 478 – Liberty Utilities Application for Approval of 2019 Regulatory Financial Statements and 2021 Rate Application.*** Liberty Utilities applied to the Board for approval of its proposed changes to distribution rates effective January 1, 2021, approval of its 2019 regulatory financial statements, approval of an excess earnings sharing mechanism and approval of variance accounts for income tax, pension and COVID-19. An oral hearing was held November 16 to 18, 2020 by videoconference. 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 478.

### **LIBERTY UTILITIES: Recovery of the Regulatory Deferral Account**

*The regulatory deferral account (RDA) was established by the Board in 2000 to record the shortfall between the gas distribution utility's revenues and its actual cost of service during the period that the utility was building a natural gas distribution system in New Brunswick and developing a customer base. The purpose of the RDA was to soften the impact of significant start-up spending on rates and customer additions by allowing recovery of the shortfall over a long period of time.*

*The Gas Distribution Act, 1999 addresses the recovery of the RDA balance. \$100 million of the RDA balance is to be recovered based on a fixed straight-line amortization basis until 2045, with the remainder to be recovered over such period and in such manner as the Board determines.*

*In Matter 478, the Board approved Liberty Utilities' proposal to recover the RDA balance above \$100 million by using sharing mechanism that mirrors the mechanism prescribed in the Gas Distribution Act, 1999 for its previous earnings. Pursuant to the proposal, any earnings for 2020 and 2021 that exceed the allowed return would be credited to the RDA and applied to decrease non-residential customer rates in the following year.*

*The Board has directed Liberty Utilities to file a detailed proposal with its next general rate application describing a mechanism to address the recovery of the RDA balance above \$100 million for the longer term. Find out more at [www.nbeub.ca](http://www.nbeub.ca) under Matter 478.*

- **Matter 484 – Liberty Utilities Restructuring.**

Liberty Utilities applied to the Board pursuant to subsection 27(2) of the *Gas Distribution Act, 1999* for an Order approving a proposed change in its beneficial ownership as part of an internal restructuring. The Board issued an Order on December 8, 2020 in relation to

the proceedings. The 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 484.

- **Matter 491 – Liberty Utilities Cost of Capital.** As directed by the Board, Liberty Utilities applied to the Board on March 31, 2021 for approval of its proposed capital structure, cost of debt and return on equity. The proceeding will be conducted throughout the spring and summer of 2021. Filed materials and other documents and information related to this proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 491.

### 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.

No proceedings of the Board initiated in accordance with the requirements of the *Pipeline Act, 2005* were conducted between April 1, 2020 and March 31, 2021.

### 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, 2020 and March 31, 2021, 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 485 – Retail Petroleum Margins Review.** By Notice and Order dated December 21, 2020, 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 Board denied a motion by a participating retailer for an interim decision and an oral hearing was held March 24 to 26, 2021 by videoconference. 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 485.

- **Matter 486 – Irving Oil Application for Adjustment of Wholesale Petroleum Products Margins.** On January 5, 2021, Irving Oil Marketing G.P. and Irving Oil Commercial G.P. (collectively, “Irving Oil”) applied to the Board under subsection 12(1) of the *Petroleum Products Pricing Act* for an increase in the maximum wholesale margin for motor fuels and furnace oil. The Board denied Irving Oil’s motion for an interim decision and allowed Irving Oil to withdraw its application. Matter 486 was closed on April 9, 2021. The rulings on motion, filed materials and other documents and information related to that proceeding can be found at [www.nbeub.ca](http://www.nbeub.ca) under Matter 486.

## A Look Ahead to the 2021-2022 Year

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### Electricity Proceedings

NB Power is expected to comply with the Board’s direction to file an application no later than June 30, 2021 addressing certain foundational rate design issues and proposing a phased process to identify rate design options, to determine a rate structure and to establish and implement a new rate design. Please see Page 3 of this Annual Report for more details on the Board’s direction to NB Power.

NB Power is expected to file an application with the Board for approval of its proposed transmission revenue requirements in 2021. The *Electricity Act* requires NB Power to seek such approval every three years. The most recent proceeding was held in 2018 and was designated as Matter 415.

NB Power is expected to file an application with the Board in the autumn of 2021 for approval of its proposed revenue requirement and proposed rates for 2022-2023.

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 2022 in connection with its reliability compliance monitoring and enforcement functions.

### **Natural Gas Proceedings**

Matter 491, an application by Liberty Utilities for Board approval of its proposed capital structure, cost of debt and return on equity, is expected to continue in the 2021-2022 year. Liberty Utilities is also expected to submit its 2020 natural gas sales report to the Board in the spring of 2021 and to file an application in the summer of 2021 for approval of its proposed 2022 distribution rates.

### **Other Proceedings**

The Public Intervener will intervene in the proceedings described above, as well as any other proceedings before the Board initiated in the 2021-2022 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*