



Office of the Public Intervener

A Unit of the Office of the Attorney General

Annual Report 2021-2022

OFFICE OF THE PUBLIC INTERVENER

Annual Report 2021-2022

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, 2022.

Respectfully submitted,



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

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, 2022.

Respectfully submitted,



Heather Black
Public Intervener for the Energy Sector

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The Role of the Public Intervener

The Public Intervener is required by law to intervene in proceedings of the New Brunswick Energy and Utilities Board (the “Board”) initiated under certain provincial statutes governing participants in New Brunswick’s energy sector, specifically the *Electricity Act*; the *Gas Distribution Act, 1999*; the *Petroleum Products Pricing Act* and the *Pipeline Act, 2005*. Legislation also empowers the Public Intervener to intervene in proceedings initiated under other provincial statutes at her discretion and requires the Public Intervener to intervene in any other proceeding of the Board as instructed by the Lieutenant-Governor in Council.

HOW DID THE PANDEMIC AFFECT THE BOARD’S PROCEEDINGS IN 2021-2022?

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 throughout the 2021-2022 year.

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 indicated its intention to return to in-person hearings in the 2022-2023 year.

The Public Intervener, Heather Black, was the only staff member of the Office of the Public Intervener in the 2021-2022 year.

Activities of the Public Intervener for the 2021-2022 Year

Overview

Section 6 of *An Act Respecting a Public Intervener for the Energy Sector* requires the Public Intervener to intervene in certain proceedings of the Board. Between April 1, 2021 and March 31, 2022, the Public Intervener intervened in proceedings of the Board initiated under the *Electricity Act*, the *Gas Distribution Act, 1999*, and the *Pipeline Act, 2005*. Decisions, evidence and other documents related to proceedings of the Board are catalogued on the Board’s website at www.nbeub.ca. The Public Intervener did not intervene in any other proceeding of the Board during that period.

The Public Intervener also participated in stakeholder processes undertaken pursuant to orders of the Board in connection with previous Board proceedings or

otherwise initiated by the Board or industry participants.

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.

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.

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

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*.

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, 2021 and March 31, 2022, the Public Intervener participated in the following proceedings of the Board that were initiated in accordance with the requirements of the *Electricity Act*:

- **Matter 497 – NB Power Application for Variance of a Decision.** NB Power applied to the Board for a variance of its August 4, 2020 decision in Matter 357. NB Power sought an extension of the time required for it to file an application regarding the first phase of the rate design process from June 30, 2021 to a date no later than June 30, 2022 because of procedural fairness concerns arising from the pandemic. Following an oral hearing, the Board issued a decision on June 16, 2021 granting the extension as requested. NB Power, as directed by the Board, filed a proposal with the Board on October 27, 2021 to address identified gaps in relation to underrepresented customers. The application, evidence, Board decision and other documents related to that proceeding can be found at www.nbeub.ca under Matter 497.
- **Matter 503 – NB Power Application for Variance of a Decision.** NB Power applied to the Board for a variance of its July 16, 2019 decision in Matter 430. NB Power sought an extension of the time required for it to file the general rate application for the 2022-2023 fiscal year to a date no later than March 31, 2022 because of anticipated amendments to the *Electricity Act* that would materially affect the filing requirement for the general rate application. By order dated September 21, 2021, the Board granted a stay of the decision in Matter 430 pending the outcome of the review of the Application. Following an oral hearing, the Board issued a decision on November 25, 2021 granting the extension as requested. The anticipated amendments to the *Electricity Act* came into force on December 17, 2021, eliminating the requirement for NB Power to file a general rate application for the 2022-2023 fiscal year. The application, evidence, Board decision and other documents related to that proceeding can be found at www.nbeub.ca under Matter 503.
- **Matter 513 – NB Power Transmission Revenue Requirements.** NB Power applied to the Board for approval of its proposed transmission revenue requirements and changes to the terms and conditions of its Open Access Transmission Tariff. After completing all previous steps in the proceeding by April 13, 2022, the Board scheduled the oral hearing for July 18 to 21, 2022. The application, evidence, and other documents related to that proceeding can be found at www.nbeub.ca under Matter 513.
- Between April 1, 2021 and March 31, 2022, 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 evidence, Board decisions and other documents related to these proceedings can be found at www.nbeub.ca under the matter numbers referred to in the table.

PROCEEDINGS RELATING TO RELIABILITY STANDARDS 2021-2022			
Matter Number	Application Date mm/dd/yy	Reliability Standards	Decision Date mm/dd/yy
489	02/10/21	FAC, IRO, MOD, NUC, PRC, TOP	04/30/21
490	02/12/21	PRC-006-4, PRC-006-5	04/30/21
493	04/13/21	FAC-001-3	07/12/21
498	05/10/21	CIP	07/26/21
499	05/28/21	FAC-008-3 and FAC-008-5	08/25/21
507	10/22/21	EOP, IRO, TOP	12/29/21
510	N/A	NBEUB 2022 Annual Implementation Plan	N/A
518	02/04/22	CIP-004-6, CIP-004-7, CIP-011-2, CIP-011-3	---

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 applications, 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.

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, 2021 and March 31, 2022, 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 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. Following an oral hearing held July 19 to 22, 2021, the Board issued a decision dated October 29, 2021. The application, evidence, Board decision and other documents related to this proceeding can be found at www.nbeub.ca under Matter 491.
- **Matter 494 – Liberty Utilities Application for Approval of 2020 Regulatory Financial Statements and 2022 Rate Application.** Liberty Utilities applied to the Board for approval of its proposed changes to distribution rates effective May 1, 2022, its 2020 regulatory financial statements, costs related to its Customer First Program, costs and amortization related to its COVID-19 variance account, an excess earnings sharing mechanism, and variance accounts for payments from the Natural Gas Distribution Fund and for a revenue requirement true-up relating to the proposed effective date of the approved rates. An oral hearing was held March 28 to 31, 2022. The application, evidence and other documents related to that proceeding can be found at www.nbeub.ca under Matter 494.
- **Matter 495 – Liberty Utilities Natural Gas Sales.** On April 14, 2021, Liberty Utilities filed with the Board a report of its natural gas sales activities for the 2020 fiscal year in accordance with the *Gas Distributor Marketing Regulation*. Following the filing of reports from Board staff and their advisor and the solicitation of comments from stakeholders, the Board issued a decision on December 21, 2021 in relation to the proceeding. The reports, Board decision and other documents related to this proceeding can be found at www.nbeub.ca under Matter 495.
- **Matter 504 – Liberty Utilities and Graymont Application for Variance of an Order.** Liberty Utilities and Graymont (NB) Inc. applied to the Board for a variance and clarification of its August 30, 2021 order in Matter 496 setting a customer service charge for customers in Havelock. The Applicants sought a variance to align the approved customer service charge with the underlying contractual provisions that form the cost basis for the charge. Following an oral hearing held on November 1, 2021, the Board issued a decision dated November 15, 2021 granting the variance as requested and clarifying its previous order. The application, evidence, Board decision and other documents related to that proceeding can be found at www.nbeub.ca under Matter 504. Please see Page 8 of this Annual Report for more information on Matter 496.
- **Matter 508 – Review of Lost and Unaccounted for Gas Methodology.** At the request of Liberty Utilities, the Board initiated a review of the methodology of calculating, allocating and financially settling lost and unaccounted for gas. The Board engaged an independent consultant to facilitate a review of the current methodology by a working group of

stakeholders and to prepare a recommendation to the Board for approval. The report of the independent consultant was filed with the Board on October 18, 2021 and an oral hearing was held on November 24, 2021. By letter dated November 25, 2021, the Board approved Liberty Utilities' proposed methodology and implementation plan, as recommended in the report of the independent consultant. The Board also established a separate process to address certain additional issues that arose during the working group discussions but were not addressed in the Liberty Utilities proposal. The Board letters, report and other documents related to that proceeding can be found at www.nbeub.ca under Matter 508.

- **Matter 514 – PCS Application for Renewal of its Local Gas Producer Franchise Agreement.** Potash Corporation of Saskatchewan Inc. applied to the Board for renewal of its Local Gas Producer Franchise Agreement dated December 21, 2001 pursuant to subsection 11(1) of *the Gas Distribution Act, 1999*. By *ex parte* Order dated December 20, 2021, the Board extended the term of the Agreement pending the outcome of the application. The hearing was conducted by way of a written process and was completed on April 5, 2022. The application, evidence, Board decision and other documents related to this proceeding can be found at www.nbeub.ca under Matter 514.

I'M INTERESTED IN PARTICIPATING IN A BOARD PROCEEDING. HOW CAN I 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.

- **Matter 515 – Liberty Utilities Application for Approval of a Large Industrial Contract Service Rate.** Liberty Utilities applied to the Board for approval of a new rate schedule designated as its Large Industrial Contract Service Rate Class (LICS) and an LICS rate for its potential customer, Atlantic Wallboard Limited Partnership. An oral hearing was held April 6 to 8, 2022. The application, evidence and other documents related to this proceeding can be found at www.nbeub.ca under Matter 515.

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 or removal of a pipeline.

Between April 1, 2021 and March 31, 2022, the Public Intervener participated in the following proceedings of the Board initiated in accordance with the requirements of the *Pipeline Act, 2005*:

- **Matter 496 – Liberty Utilities Application for Permit to Construct Pipeline.** Liberty Utilities applied to the Board pursuant to the *Pipeline Act, 2005* for a permit to construct approximately 8 kilometres of pipeline running from the Headwater Exploration Inc. transmission pipeline to and within Havelock, New Brunswick. Liberty Utilities later amended the application to include a request under the *Gas Distribution Act, 1999* for approval of its proposed customer service charge to allow Liberty Utilities to recover the amount charged to Liberty for transportation on the transmission pipeline. An oral hearing was held on June 23 and 25, 2021. The Board issued a partial decision on July 7, 2021, a decision with reasons dated August 24, 2021 and an Order dated August 30, 2021. The application, evidence, Board order and decisions and other documents related to this proceeding can be found at www.nbeub.ca under Matter 496.
- **Matter 509 – NB Power Application for Removal and Abandonment of Pipeline.** NB Power applied to the Board for approval of its plan to remove and abandon approximately 3,000 metres of pipeline located in and around the Town of Dalhousie, New Brunswick. Following an adjournment, the Board ordered the oral hearing to be held on May 25, 2022. The application, evidence and other documents related to this proceeding can be found at 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.

While no proceedings of the Board initiated in accordance with the requirements of the *Petroleum Products Pricing Act* were conducted between April 1, 2021 and March 31, 2022, the Board issued its decision in Matter 485 on May 13, 2021. Matter 485 was initiated 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. An oral hearing was held March 24 to 26, 2021. The application, evidence, Board decision and other documents related to this proceeding can be found at www.nbeub.ca under Matter 485.

A Look Ahead to the 2022-2023 Year

Electricity Proceedings

NB Power is expected to comply with the Board's direction to file an application no later than June 30, 2022 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.

The oral hearing of Matter 513 is scheduled to proceed July 18 to 21, 2022. Matter 513 is NB Power's application to the Board for approval of its proposed transmission revenue requirements and changes to the terms and conditions of its Open Access Transmission Tariff. Please see Page 3 of this Annual Report for more details on Matter 513.

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 will also prepare and file an updated three year strategic, financial and capital investment plan as part of that application.

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 2023 in connection with its reliability compliance monitoring and enforcement functions.

Natural Gas Proceedings

Liberty Utilities is expected to submit its 2021 natural gas sales report to the Board in the spring of 2022 and to file an application in the summer of 2022 for approval of its proposed 2023 distribution rates.

The Board is expected to initiate a process to address certain issues that arose during the review of the methodology of calculating, allocating and financially settling lost and unaccounted for gas but were not addressed in the Liberty Utilities proposal. Please see Pages 6 and 7 of this Annual Report under Matter 508 for more details on the Board's review of Liberty Utilities' lost and unaccounted for gas methodology.

Petroleum Products Pricing Proceedings

The Board is expected to initiate 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.

Pipeline Proceedings

The oral hearing of Matter 509 is scheduled to proceed on May 25, 2022. Matter 509 is NB Power's application to the Board for approval of its plan to remove and abandon approximately 3,000 metres of pipeline located in and around the Town of Dalhousie, New Brunswick. Please see Page 8 of this Annual Report for more details on Matter 509.

Other Proceedings

The Public Intervener will intervene in the proceedings described above, as well as any other proceedings before the Board initiated in the 2022-2023 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

- ***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
Regulatory Variance Accounts and Deferral Account 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