



DECISION

IN THE MATTER OF an Application by New Brunswick
Power Corporation for a Change to its Open Access
Transmission Tariff

April 14, 2004

NEW BRUNSWICK

Board of Commissioners of Public Utilities

THE BACKGROUND

On March 13, 2003, the Board of Commissioners of Public Utilities (Board) issued its decision with respect to the Open Access Transmission Tariff (OATT) which had been applied for by New Brunswick Power Corporation (NB Power). Pursuant to section 57(2)(b) of the *Public Utilities Act*, the Board issued a letter direction to NB Power on June 19, 2003, specifying the effective date of the OATT to be September 30, 2003, and approving the OATT as amended.

In its decision, the Board required that NB Power hold an open season for “all transmission capacity that is not subject to a firm contract involving a party who is not affiliated with NB Power” (page 40, OATT Decision, March 13, 2003). This specific requirement will be referred to as the Open Season in this decision. The Board gave additional direction that this Open Season was to be held no later than the fourth quarter of calendar year 2003.

On July 29, 2003, NB Power filed a Letter Application with the Board requesting approval of a change to the wording of the first paragraph of section 2.1 so that the reservations, which were to be the subject of the Open Season, would be preserved until they had originally been due to expire. In its Letter Application, NB Power stated that it was prepared to show that holding the Open Season for these reservations “would have

significant adverse financial impact on its Generation Business Unit and thus on the ratepayers of New Brunswick.”

A Certified Copy of Order in Council 2003–255 (OIC), made pursuant to section 61 of the *Public Utilities Act*, was filed with the Board on August 19, 2003. The OIC reads as follows:

“Under subsection 61(1) of the Public Utilities Act, the Lieutenant–Governor in Council request the Board of Commissioners of Public Utilities

(a) to review

- (i) section 2.1 of the Open Access Transmission Tariff (OATT), and
- (ii) The Board of Commissioners of Public Utilities’ direction contained in its decision of March 13, 2003 in respect of the OATT that all transmission capacity that is not subject to a firm contract involving a party who is not affiliated with N.B. Power be subject to open season bidding no later than the fourth quarter of calendar 2003; and

(b) in conducting such review, to determine if it is in the public interest to preserve the transmission reservations

which are not subject to a firm contract involving a third party who is not affiliated with N.B. Power.”

Upon receipt of the OIC, the Board convened a public hearing to decide if it were in the public interest to consider suspending the requirements of the Open Season direction and section 2.1 of the OATT until the requested review had been completed. A hearing was held and the suspensions were issued on September 15, 2003.

NB Power filed its evidence on September 29, 2003, and a pre-hearing conference was held October 22, 2003. Intervenors and Board staff expressed concern that there was insufficient cost information to test the assertion that there would be a significant adverse financial impact to NB Power Generation Business Unit if the Open Season were to be conducted. The Board directed NB Power to file additional information, at that time and at the re-convened pre-hearing conference on November 10, 2003. As a result, a total of 78 pages of evidence was filed. The hearing began February 2, 2004, following the interrogatory process in which NB Power provided written answers to 135 questions posed by the intervenors and the Board staff. The hearing was held over four days and 571 pages of transcripts were generated.

Emera Energy Inc. filed its evidence of 40 pages on January 13, 2004. During the interrogatory process Emera responded to 25 questions from the Applicant and intervenors.

HEARING PARTICIPANTS

NB Power presented evidence through three panels:

Panel A – Overview and Policy Framework

Stewart MacPherson

Panel B – Financial and Other Adverse Impacts of the Loss of
Transmission Access

Darrell Bishop

Bill Marshall

Panel C – Why the Transmission Contracts Should be Honoured

James Hoecker

Brian Scott

Formal Intervenors were:

Attorney General for New Brunswick

Bayside Power L.P.

Emera Energy Inc.

J.D. Irving, Limited

Nova Scotia Power Inc.

Municipal Utilities, representing Énergie Edmundston Energy, Perth
Andover Electric Light Commission, Saint John Energy

WPS Energy Services Inc.

Informal Intervenors were:

HQ Energy Marketing Inc.

Hydro Québec TransÉnergie

Canadian Manufacturers & Exporters New Brunswick Division

Maritime Electric Company, Limited

Prince Edward Island Energy Corporation

Emera Energy Inc. called a panel of witnesses consisting of Charles
Trabandt, Don Jessome and Eric Ferguson.

THE ISSUE

One element of the decision of March 13, 2003 involved reservations not supported by contracts with a third party. More specifically, there were contracts for long-term firm point-to-point service on transmission lines held by NB Power that were not subject to a firm contract involving a party who was not affiliated with NB Power. These are referred to as the

Unsupported Reservations. As noted above, the Board had ordered that an Open Season be held to give interested parties an opportunity to bid on the Unsupported Reservations.

The present public hearing has established that there is only one transmission line where the capacity is insufficient to satisfy all interested parties. That line is a link between New Brunswick and Southern Maine and is referred to as the MEPCO Line. The record in the current proceeding has also established that NB Power has arrangements for 188 MWs of firm transmission reservations on the MEPCO Line that are Unsupported Reservations (MEPCO Reservations). Unsupported Reservations have two parts – the MEPCO Reservations and all other reservations that meet the definition for Unsupported Reservations but are not MEPCO Reservations (Other Reservations). The public hearing established that there are no issues with respect to holding an Open Season for the capacity represented by the Other Reservations.

The Board believes that its decision of March 13, 2003 was appropriate in light of the evidence presented at the 2003 public hearing, including:

- government policy as enunciated through the White Paper. Numerous statements had been made by the Provincial

Government that clearly supported the development of a competitive market for electricity in New Brunswick;

- the conditions under which the first public offering of capacity was held in 1998. No regulatory body had approved the tariff under which the capacity was offered in 1998;
- no formal code of conduct existed in the transmission business unit to protect the interests of outside bidders;
- no evidence was presented regarding the possible financial impacts on NB Power of holding an Open Season.

NB Power, as part of the current proceeding, filed evidence attempting to prove that there would be a negative financial impact on customers in New Brunswick if an Open Season were to be required for the MEPCO Reservations. A summary of this evidence is provided in Appendix A. The issue evaluated in the current proceeding is: Is it in the public interest to hold an open season for the MEPCO Reservations (188 MW)?

CONSIDERATIONS

Emera Energy Inc. evidence stated that the likelihood of NB Power losing access to all 188 MW in an open season auction was an unrealistic

assumption. They also maintained that even if this were to occur, there are mitigative measures available to offset some, or all of the economic losses.

In response to Emera's evidence, NB Power stated that they had sold electricity to Hydro Québec at off-peak prices in the past and such sales could mitigate possible losses. NB Power was directed to recalculate the potential losses using the Hydro Québec sales as a mitigative measure. NB Power provided this information and the details are shown in Appendix A.

The Board notes that a number of factors could further reduce these margins. The Board was made aware of a possible 50% price increase for Orimulsion® through media reports released by the Venezuelan Government. At the time of the hearing, the Board understood that there was no firm contract price, although a price had been identified in the term sheet. NB Power stated that they had legal advice that the term sheet was a contract and therefore based its evidence on that price. The effect of the term sheet and its conditions is the subject of a lawsuit between NB Power and the Venezuelan Government agencies. At the

Coleson Cove refurbishment project hearings in 2002, the term sheet identifying the price was deemed confidential.

NB Power has stated that the Coleson Cove generating station will be a cornerstone to the export supply scenario, because of the low cost of production allowed by the inexpensive Orimulsion® fuel. The majority of the electricity generated for export is from Coleson Cove. The Board is aware of the position taken by the Venezuelan Government with respect to not honouring the terms of supply of Orimulsion® in the term sheet. As a result, the Board is concerned with NB Power's ability to obtain its forecasted margins from export sales if it were necessary to switch to another fuel.

To the Board's knowledge, NB Power will be a price-taker with respect to sales into New England. The Board is of the opinion that a 50% increase in the price of Orimulsion® would have a negative effect on margins from sales of electricity into New England. NB Power's calculations of the revised margins were based on prices for Orimulsion® without consideration of any potential increase in fuel price. The Board is concerned that the numbers used may not be realistic given present circumstances.

The Board expressed concern during the hearing on the apparent reluctance by NB Power to provide any studies on the viability of selling into the US electricity market in the future. Through cross-examination it became clear that NB Power had just commissioned studies on price and volume risk. The Board understands that NB Power is now obtaining knowledge on this important part of its business. The Board believes that NB Power staff should have been better prepared to discuss this matter at the hearing.

Another development which will affect NB Power's ability to sell into the US market, is the use of locational marginal pricing in the New England states. The locational marginal price is made up of congestion management costs, the transmission losses and the price being paid for energy at a certain location. NB Power has indicated in its evidence that because of its physical distance from the load centers in the New England states, the congestion costs and transmission losses are high relative to generators closer to the centers. As a result, the opportunity to sell is reduced because of the higher prices. NB Power agreed that there is uncertainty in the market going forward.

THE DECISION

The Board, on September 15, 2003, ordered that the requirement to hold an Open Season be suspended. The Board considers that there are no issues with respect to holding an Open Season on Other Reservations and therefore directs that its suspension of the requirement to hold an Open Season be revoked except for the MEPCO Reservations. An Open Season for Other Reservations is to be completed by September 30, 2004.

In reference to the MEPCO Reservations of 188 MW, the Board finds that:

(a) The profit margins on export sales are far less than initially indicated, and now, as a result of the uncertainty regarding the price and availability of Orimulsion[®], they are most likely even further reduced. The likely margin is not sufficient, in and of itself, for it to be in the public interest to allow NB Power to continue to hold the MEPCO Reservations.

(b) It is in the public interest for NB Power to retain the MEPCO Reservations for other reasons:

- It is in the public interest for other parties to possibly have access to the MEPCO Reservations. There could

be new power projects in New Brunswick that would bring employment or economic gain within the province but would require access to the MEPCO Reservations.

- There could even be projects that do not necessarily bring capital investment to New Brunswick, but would be beneficial to the province and its ratepayers. For example, a power project in a neighbouring jurisdiction that could supply New Brunswick's winter peak would be of value to New Brunswick.
- These projects could be more economically viable if access to the MEPCO Reservations were available for sales to New England in the summer.
- NB Power has committed to negotiate with parties for the release for part or all of the MEPCO Reservations.

The Board considers it would be, therefore, in the public interest to require that NB Power negotiate in good faith with qualified parties (as defined hereafter) for access to the MEPCO Reservations (currently 188 MW). The Board revokes the suspension of the Open Season requirement

for the MEPCO Reservations. Further, the Board cancels the requirement for an Open Season for the MEPCO Reservations.

The Electricity Act, when proclaimed, will restructure NB Power and several new companies will be created. It is anticipated that one or more of these new companies will be assigned the rights that NB Power currently has with respect to the MEPCO Reservations. The company(ies) that will receive these rights will be referred to as the Successor(s).

NB Power or the Successor(s) will have the right to the use of the MEPCO Reservations. NB Power or the Successor(s) will be permitted to enter into new contracts with non-affiliated parties that would require use of some or all of the MEPCO Reservations. Any such contracts would reduce the amount of MEPCO Reservations.

The period of time between the date of this decision and the date of proclamation into force of the Electricity Act is the "Pre-Proclamation Period". Time immediately following the Pre-Proclamation Period is referred to as the "Post-Proclamation Period".

A party which is not affiliated with NB Power or the Successor(s) which seeks to acquire some or all of any remaining MEPCO Reservations is a Qualified Party if, during the Pre-Proclamation Period, that party provides

NB Power with a viable business plan that would provide benefits to New Brunswick and has disclosed sufficient financial resources to implement the proposed utilization of the portion of the MEPCO Reservations that it seeks. During the Post-Proclamation Period a party must provide the Successor with a viable business plan that would provide benefits to New Brunswick, provide disclosure of sufficient financial resources to implement the proposed utilization of the portion of the MEPCO Reservations that it seeks and hold a Licence issued pursuant to Part V, Division A of the Electricity Act to be considered a Qualified Party.

During both the Pre-Proclamation Period and the Post-Proclamation Period NB Power and the Successor(s) are required to negotiate in good faith with any Qualified Party seeking to obtain part or all of any remaining MEPCO Reservations.

Any successful negotiations will reduce the amount of MEPCO Reservations. Any reductions to the MEPCO Reservations are to be posted on the OASIS as soon as the arrangements are finalized.

Subject to receiving any information that would convince it otherwise, the Board intends to impose as a condition of any License it issues to a Successor(s), that it shall negotiate in good faith with any party which qualifies for such negotiations.

The Board is of the opinion that a revision of Section 2.1 of the OATT is necessary to implement this decision. Proposed wording is attached in Appendix B. Parties have until May 15, 2004 to submit written comments concerning the wording. Any proposed changes must be consistent with the Board's decision as described above. The Board will finalize the wording of the revisions to the OATT which will be effective on June 15, 2004.

DATED AT THE CITY OF SAINT JOHN, NB THIS 14TH DAY OF APRIL 2004.

SGD: _____
David C. Nicholson, Chairman

SGD: _____
L.C. Bremner, Commissioner

SGD: _____
J. Cowan-McGuigan, Commissioner

SGD: _____
R. A. Richardson, Commissioner

SGD: _____
K.F. Sollows, Commissioner

APPENDIX A

EXPORT SALES – MEPCO LINE – 188 MW

	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>
Energy Sold (GWH)	700	1,019	1,040
Price (\$/MWH)	<u>57.4</u>	<u>52.3</u>	<u>52.9</u>
<u>Total Revenue (\$Million)</u>	<u>40.2</u>	<u>53.3</u>	<u>55.0</u>
Fuel Costs (\$Million)	24.8	28.7	30.0
Losses (\$Million)	<u>0.8</u>	<u>0.9</u>	<u>1.0</u>
<u>Gross Margin (\$Million)</u>	<u>14.6</u>	<u>23.7</u>	<u>24.0</u>
Adjustment Factor (\$Million)	0.4	1.0	2.6
Transmission Charges (\$Million)	<u>5.1</u>	<u>5.1</u>	<u>5.1</u>
<u>Margin</u>	<u>9.1</u>	<u>17.6</u>	<u>16.3*</u>
Mitigation effects	<u>3.8</u>	<u>2.7</u>	<u>2.6</u>
<u>Margin after Mitigation</u>	<u>5.3</u>	<u>14.9</u>	<u>13.7**</u>

* Source: Based on NBP (PUB) Supplemental IR –1 December 16, 2003

** Source: Based on Exhibit A-13

APPENDIX B

Draft Wording for Section 2.1 of the OATT

The first paragraph of Section 2.1 shall be revised to read as follows:

“Reservations made under the Tariff existing prior to the date this tariff goes into effect will be preserved and such transmission service will continue until such time as these reservations expire. However, all such service shall be taken pursuant to the terms and conditions (including applicable rates) of this Tariff in accordance with Section 2.4. The renewal rights associated with firm reservations existing as of the date the Tariff goes into effect are defined in Section 2.2.”

Insert after the first paragraph, the following:

“The 188 MW of firm transmission reservations on the line between New Brunswick and Maine made under the Tariff existing prior to the date this Tariff became effective that were not subject to a firm contract with a party that was not affiliated with the Transmission Provider will be referred to as MEPCO Reservations.

MEPCO Reservations will continue subject to the following conditions:

- All such services shall be taken pursuant to the terms and conditions (including applicable rates) of this Tariff in accordance with Section 2.4.
- The holder of MEPCO Reservations (Holder) may enter into contracts with non-affiliated parties that would require the use of part or all of the transmission capability included in the MEPCO Reservations (New Contracts). The amount of reservations acquired for New Contracts will be preserved and will continue until such time as the relevant contract expires. The renewal rights associated with firm reservations required by New Contracts are defined in Section 2.2. The transmission capability included in the MEPCO Reservations will be reduced by the amount of transmission capability included in New Contracts.
- A party which is not affiliated with the Holder which seeks to acquire some or all of the MEPCO Reservations is a Qualified Party if, during the period prior to the proclamation of the Electricity Act, that party provides the Holder with a viable

business plan that would provide benefits to New Brunswick and has also disclosed sufficient financial resources to implement the proposed utilization of the portion of the MEPCO reservations which it seeks. During the period following the proclamation of the Electricity Act such party must, in addition to providing a viable business plan that would provide benefits to New Brunswick and disclosing financial resources as in the pre proclamation period, also hold a License issued pursuant to Part V, Division A of the Electricity Act to be considered to be a Qualified Party.

- The Holder must enter into good faith negotiations for the use of part or all of the transmission capability included in any remaining MEPCO Reservations with a Qualified Party which wishes to have such negotiations. The amount of reservations acquired as a result of successful negotiations with the Holder will be preserved and will continue until such time as the relevant agreement expires. The renewal rights associated with firm reservations required by such agreements are defined in Section 2.2. The transmission capability included in the MEPCO reservations will be reduced by the amount of transmission capability included in

agreements reached as a result of successful negotiations with the Holder.”