



**DECISION**

**IN THE MATTER OF an application  
by the Atlantic Wallboard Limited,  
for a Single End Use Franchise (SEUF)**

**April 28, 2006**

**NEW BRUNSWICK**

**BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

Henneberry Reporting Service

New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by the Atlantic Wallboard Limited, for a Single End Use Franchise (SEUF)

Board Premises, Saint John, N.B.

April 28th 2006

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Jacques A. Dumont  
James E. Bateman  
H. Brian Tingley

BOARD COUNSEL: Ellen Desmond

BOARD STAFF: Doug Goss  
John Lawton

BOARD SECRETARY: Lorraine Légère

The Board has, over the lunch hour, considered this matter. Prior to the hearing today, we of course, read all of the written evidence. This morning we heard all of the arguments from both counsel and have taken note of those arguments which were, I might add, ably put forward by both. You gentlemen have very thoroughly covered the waterfront.

The Gas Distribution Act is silent as to any criteria against which this Board is to judge any application for a Single End Use franchise.

With respect to Mr. Hoyt's argument that we should look at any number of other source documents to decide what is in the public interest or what is the criteria against which we must measure the application, we don't believe that is necessary.

We need only to look at a well-established principle in regulatory law, which is, if the state sees fit to grant a monopoly franchise to a utility, then the regulator will require a very high standard of proof to be met by any applicant for another franchise in the same territory, which will diminish the value of that existing franchise holder.

Why? Because the existing franchise holder must service all of its existing customers in the franchise area, even if to do so may be at great cost. A perfect example of that is in reference to the Board's jurisdiction over public motor buses. We grant a franchise to Acadian Lines and they operate a service all around the Province of New Brunswick on a scheduled basis. We will require any applicant that wishes to be in any kind of competition to Acadian, or diminish the value of its franchise, meet a very high standard that the grant is in the public interest. We

believe it to be very decidedly in the public interest that New Brunswick have a viable and well-maintained public motor bus system serving all areas. In the present matter the applicant has simply not met the onus upon it to prove that the grant of the new Single End Use franchise would better serve the interest of the public more than giving Enbridge Gas New Brunswick an opportunity to expand its customer base.

At last count, EGNB had a deferral account of \$72 million and growing. We believe it is very much in the public interest that, as the regulator, we do all we can to foster a viable local distribution system in this province. The key differences between this and the TransCanada application are that that project was specifically known at the time of the grant of the general franchise itself.

Secondly, the general franchise holder which, as I have just said, we believe to be in the public interest to protect, decided for reasons they have given us and reiterated today, not to object in the TransCanada hearing.

For those reasons the application for the Single End Use franchise is denied.

By Order of the Board

Lorraine Légère

Secretary to the Board