

**NEW BRUNSWICK BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

**2003 - 2004 ANNUAL REPORT**

The New Brunswick Board of Commissioners of Public Utilities (the Board) is comprised of the following individuals:

**Chairman**

David C. Nicholson

**Vice-Chairman**

Alyre J. Boucher, Q.C

**Commissioners**

James E. Bateman

Leon C. Bremner

Joanne Cowan-McGuigan

Jacques A. Dumont

Emelien LeBreton

David Nelson

Robert Richardson

Kenneth F. Sollows

Brian H. Tingley

**Message from the Chairman, David C. Nicholson**

I am pleased to submit this annual report of activities of the New Brunswick Board of Commissioners of Public Utilities (the Board) for the fiscal year April 1, 2003 to March 31, 2004. Summaries of the many developments in automobile insurance, electricity, natural gas and motor carrier sectors regulated by the Board are outlined in the pages that follow.

The Board obtains its general regulatory authority pursuant to the provisions of the Public Utilities Act, Chapter P.27, R.S.N.B. 1973. Under that legislation, the Board of Commissioners of Public Utilities is mandated with the regulation of public utilities in the Province of New Brunswick. The Board is also charged with the regulation of automobile

insurance rates in the Province pursuant to certain provisions of the Insurance Act, Chapter I-12, R.S.N.B.

The Board regulates the natural gas industry pursuant to the Gas Distribution Act, 1999 Chapter G-2.11 RSNB and issues permits for the construction and repair of non-natural gas pipelines pursuant to the Pipeline Act, Chapter P-8.1, R.S.N.B.

The Board's regulation of public motorbuses is pursuant to the Motor Carrier Act, Chapter M-16, R.S.N.B. and the Motor Vehicle Transport Act, R.S.C. 1987. It also hears appeals of decisions of the Registrar of Motor Vehicles regarding motor vehicle dealers' licenses.

The Board operates with funds received from assessment of the industries it regulates, with the exception of the public motorbus industry, where it carries out its responsibilities with a budget from the Provincial Department of Transportation.

The following report constitutes a summary of the key activities of the Board during the past year.

All of which is respectfully submitted this 7<sup>th</sup> of December 2004,

David C. Nicholson  
Chairman

## **ELECTRICITY**

On March 13, 2003, the Board issued its decision on the Open Access Transmission Tariff (OATT). This followed a hearing process extending from August 2002 until February 2003. The decision was expedited so the tariff could be in effect in time for the anticipated opening of the electricity market on April 1, 2003. Shortly after the issuance of the decision, the government announced a delay in the opening of the market. NB Power made the changes to the tariff required by the Board's decision and the effective date of the tariff was September 30, 2003.

The OATT decision issued March 13, 2003 required NB Power to conduct 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". On August 19, 2003, the Board received a certified copy of Order in Council 2003-255 containing a request by the Lieutenant Governor in Council that the Board conduct a review. The purpose of the review was "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 NB Power".

The Board, in response, conducted a public hearing process that began in September 2003 and concluded in February 2004. The Board issued its decision on April 14, 2004.

The Board determined that the only transmission reservations that were a matter of concern were those held by NB Power on the Maine Electric Power Company (MEPCO) line between New Brunswick and Maine. The Board also found that there would be little, if any, economic benefit to the public from preserving these reservations. However, the Board did find that there might be other benefits to the public from allowing NB Power to preserve these reservations. To maximize the possibility of achieving these benefits, the Board ordered a change to the OATT that will allow non-affiliated parties access to these reservations under certain conditions.

Board staff held an information session in February 2004, to discuss the issues with respect to licensing of potential electricity market participants. Additional workshops are

planned in the near future. The licensing process is anticipated to be in place by the fall of 2004.

## **NATURAL GAS**

The Potash Company of Saskatchewan (PCS), which holds a local gas distribution franchise, held the official opening of its natural gas distribution system on April 23, 2003. PCS, in partnership with Corridor Resources Inc., owns natural gas producing wells in the McCulley Field and distributes that gas to its manufacturing facility in Penobsquis, N.B.

Legislative changes in May 2003 gave Enbridge Gas New Brunswick Inc. (EGNB), holder of the general distribution franchise, the authority to sell natural gas. This was a significant market change, as previously the company had authority to provide distribution and customer services only. With the distributor in competition with the gas marketers, the Board decided to hold a generic hearing in August 2003 in respect to market issues and conduct related to the sale of gas. After consulting with the parties, the Board issued a list of twelve questions on market issues for consideration and comment by the parties. An informal hearing day was held to discuss the questions and comments following which the Board issued its decision on September 2, 2003.

In its decision of June 2003, the Board denied a motion by the Union of New Brunswick Indians (UNBI) for an award of costs. UNBI had incurred the costs as an intervenor in applications by EGNB for approval of its rates and tariffs and permit to construct. The Board found that UNBI had not made a material contribution to a better understanding of the issues and was unable to justify the request for costs on the basis of the public interest.

In August, EGNB filed an application with the Board for approval of a rate reinstatement mechanism. The company, in an earlier decision, had received approval for the use of a 'rate rider' mechanism to reduce the rate for distribution service for a particular class of customers. A rate rider allows EGNB to reduce rates within a very short period of time unless there are exceptional circumstances. The proposed mechanism would allow EGNB to increase rates back to the approved level, after the rates had been reduced by

use of a rate rider. This process would still require Board approval but would not require a formal hearing process. The proposal was supported by the intervenors and the Board approved the application in October.

In November of 2003, the Board received an application from Trans Canada Energy Ltd. for a Single-End Use Franchise. The proposed franchise would allow the company to take gas service directly from the Maritime and Northeast pipeline for use at a proposed 88 MW co-generation facility located at the Irving Oil Refinery in Saint John. No party opposed the application. The Board approved the franchise on January 6, 2004 subject to receiving written confirmation from Maritimes & Northeast Pipelines Ltd. that the gas supply connection for the franchise would be made directly to its transmission line. The project is proceeding and is scheduled for completion in late 2004.

The Board initiated a regulatory proceeding in March 2004, to consider an application by EGNB for an increase to its distribution rates for some classes of service. This was the first rate increase applied for by the company since approval of its initial rates in June 2000.

The natural gas market continued its growth during the year with the addition of almost 1100 new customers. As of March 31, 2004, there were over 2400 total customer attachments. The Board remained busy throughout the year with regulatory proceedings and with its new responsibility resulting from legislated changes to the Gas Distribution Act, 1999. The Board staff also participated in National Energy Board's review of the Maritimes natural gas supply and in a regulatory conference regarding liquefied natural gas facilities.

## **AUTOMOBILE INSURANCE**

Entering this fiscal period the primary role of the Board, in relation to auto insurance, was to monitor rates for general compliance with the Insurance Act, ensuring that the rates were not excessive, inadequate or discriminatory.

Legislative changes were made to the Insurance Act effective May 2003, which made New Brunswick a "prior approval" jurisdiction. This meant that all insurers, including

Facility Association were required to file rates charged or proposed to be charged, before August 15, 2003. If a company did not file rates by this date, the rates charged were to be reduced by 20%. All insurers writing private passenger vehicles complied with this statute.

The Injury Regulation came into force July 1, 2003, and limited the amount recoverable for minor personal injuries not to exceed \$2500. The Board convened a Generic Hearing on August 11th, 2003, and continued it on August 27<sup>th</sup> and 28th, 2003 to review the expected impact of this regulation on automobile insurance loss costs in the province. The Board found the expected impact of the Injury Regulation on discounted loss costs for Private Passenger (excluding Farmers) vehicles for the policy year commencing July 1, 2003 would be based on a point estimate of -37% for Third Party Liability – Bodily Injury (excluding Health Levy).

The Board's 2003 Private Passenger Benchmark was released September 8, 2003. This benchmark reflected current industry claims and expense experience, the Board's 1991 decision with respect to a reasonable Industry return on equity provision, and the Board's 2003 decision with respect to the expected impact of the Injury Regulation 2003-20. Insurers had the option of adopting the benchmark instead of appearing before the Board to justify rates. There were 21 companies that elected to use the benchmark for private passenger vehicles and 18 for commercial vehicles.

On September 22, 2003 the Board held a hearing to allow interested persons to make presentations to the Board concerning the ongoing review of automobile insurance rates and charges.

A public hearing convened on October 6, 2003 for IAO Actuarial Consulting Services Inc., at the Board's request, with the sole purpose of facilitating the Class I filing option. Insurers had the option of adopting IAO rates instead of appearing before the Board to justify rates. 21 companies submitted 140 filings to adopt the IAO miscellaneous rates.

The Board commenced Public Hearings to review rate revision application from insurers on September 23, 2003 and concluded the final hearing on December 18, 2003. In total

the Board held 25 hearings and rendered 25 decisions. All decisions were retroactive to July 1, 2003.

In total the Board reviewed 355 filings for all classes of vehicles in 2003 for 47 companies.

On September 23, 2003 at the hearing to review its Private Passenger rates, Co-operators Insurance and a number of other insurance companies, filed a notice of motion with the Board indicating they wished to have the Board hold confidential certain elements of their filings. The companies indicated that the calculations contained in the filings were proprietary to the respective companies and as such were considered confidential. The Board, having heard the companies' arguments and actuarial testimony, decided that:

*...the Board is not persuaded that public disclosure of the information in question poses any significant risk...Furthermore, to the extent that there may be some slight risk of harm to the company, that risk in the Board's view, is outweighed by the public interest which requires that there be as much disclosure of information in this hearing as is reasonable in the circumstances."*

Co-operators General Insurance Company subsequently filed a Motion with the Court of Queens Bench to the effect that the financial information relating to its costs and the actuarial advice it received in formulating its rates be kept confidential. After hearing the evidence, Judge Turnbull in his decision dated Nov 27, 2003 agreed with the Board's ruling:

*"I am of the opinion the Board's decision is reasonable and is entitled to the Court's highest deferential standard. I will not quash its decision."* This decision was appealed March 16, 2004.

The Facility Association (FA) appeared before the Board on November 6 and 7, 2003. The application submitted by the FA reflected loss experience largely based on the year ending Dec 31, 2001. The filings also reflected the expected impact of Injury Regulation 2003-20 on discounted loss costs for Private passenger, third party liability, and bodily



injury as –32%, rather than the Board’s approved estimate of –37%. The Board ordered the FA to amend their filings to reflect industry loss experience data through Dec 31, 2002 and to reflect the estimated impact of Injury Regulation 2003-20 by using –37% rather than -32%. The Board’s actuary reviewed the amended filing and in his opinion there could be alternative rate change indications. The Board accepted these indications and ordered FA to implement the following rate changes effective July 1, 2003:

<u>Coverage</u>	<u>Private Passenger</u>	<u>Commercial</u>	<u>Snow Vehicle</u>	<u>Motorcycle</u>	<u>ATV</u>	<u>Interurban</u>
Liability	-21.1%	-36.8%	-16.1%	-11.2%	-15.0%	+8.9%
Accident Benefits	+0.1%	+29.5%	+21.6%	+34.0%	+60.0%	+9.6%
Uninsured Auto	-43.9% *	-24.6% *	-26.5%	-18.5%	-22.7%	+8.9%
Collision	+7.7%	+27.5%	+1.8%	+11.2%	+1.5%	+4.5%
Comprehensive	-3.8%	+1.8%	-5.6%	-1.8%	+9.3%	+2.4%
Specified Perils	-36.8% **	-5.2% **	+2.7%	+3.7%	+34.7%	+2.4%

\* The Private Passenger and Commercial rate changes for Uninsured Automobile should be modified relative to the changes shown in the above table to reflect the correct 2002 Uninsured Automobile average on-level written premiums.

\*\* The Private Passenger and Commercial rate changes for Specified Perils should be modified relative to the changes shown in the above table to reflect the FA proposed ratios of Specified Perils to Comprehensive base premiums.

During the hearing the Board heard that the number of people insured by the FA has been increasing. There were various reasons why brokers placed people in the FA. The Board recognizes that the FA does not solicit business, nor does it have the right to refuse anyone provided they hold a valid driver’s license. Facility Association pledged to depopulate market share to 2.5% by August 2004. Market share at March 31, 2004 was 3.8%.

The Board expressed concern over the substantial increase in the cost of automobile insurance. The Board has a dual responsibility with respect to approving rates for the FA. It must ensure that the rates are just and reasonable and it must ensure that the FA rates allow cost recovery.

**MOTOR CARRIER**

An application was received from S.M.T. (Eastern) Limited dated December 9, 2003 to transfer existing license # 582 to Acadian Coach Lines LP. The application was advertised in the February 4, 2004 edition of the Royal Gazette, but no objections were received. However, since SMT provided the main line-run service for the Province, a public hearing was held on March 2, 2004 to determine whether the Board would grant the transfer application. The Board issued its oral decision after the hearing, approving the transfer of license as requested, subject to receiving insurance documentation in the proper form with subsequent written confirmation from the Applicant. The following is the statistical information regarding the Board's activities concerning Public Motor Buses:

#### **Charter Applications 2003-2004**

Received 6

Opposed 1

Granted as Advertised 6

Granted with Amendments 0

Abandoned, Withdrawn or Dismissed 0

#### **Scheduled Services Applications**

Received: 4

Opposed: 2

Granted as Advertised: 2

Granted with Amendments: 0

Abandoned, Withdrawn or Dismissed: 1

#### **Licenses**

Denied: 1

Cancelled or Revoked: 4

Active at Year End: 46

Number Motor Carrier Plates Issued: 214

Number Temporary Permits Issued to Unlicensed Carriers: 2

Total Revenues: \$16,463.50

## Financial Statements Summary – 2003/2004 Budget vs. Actual

### Automobile Insurance Sector

	<b>BUDGET</b>	<b>ACTUAL</b>	<b>DIFFERENCE</b>
Salaries & Benefits	226,179	343,996	(117,817) <i>Note 1</i>
Training	5,000	4,800	200
Office & Administration	106,730	140,869	(34,139)
<u>Total Common Costs</u>	<u>337,909</u>	<u>487,927</u>	<u>(150,018)</u> <i>Note 2</i>
<u>Direct Expenses</u>	<u>195,000</u>	<u>506,604</u>	<u>(311,604)</u> <i>Note 3</i>
<b>Total Expenses</b>	<b>532,909</b>	<b>994,531</b>	<b>(461,622)</b>

#### Notes:

1. Due to the change in legislation in 2003, the Board's regulatory role expanded, resulting in a large increase in the work activity associated with the filings it received. Increased workload required an increase to the cost allocation for salary expenses.
2. The significant number of insurance hearings held in 2003-2004 resulted in increased expenses relating to hearing costs, room rental, translation, copying, etc.
3. Change in legislation resulted in increased actuarial and other associated direct costs. Because the Board can only assess the insurance sector once annually, it had to obtain an advance of \$500,000 to cover additional unbudgeted expenses. This has since been fully repaid.

## Financial Statements Summary – 2003/2004 Budget vs. Actual

### ELECTRICITY SECTOR

	BUDGET	ACTUAL	DIFFERENCE
Salaries & Benefits	486,513	379,140	107,373 <i>Note 1</i>
Training	42,000	30,169	11,831
Office & Administration	102,730	90,295	12,435
<u>Total Common Costs</u>	<u>631,243</u>	<u>499,604</u>	<u>131,634</u> <i>Note 1</i>
<u>Direct Expenses</u>	<u>625,000</u>	<u>169,628</u>	<u>455,372</u> <i>Note 1</i>
<b>Total Expenses</b>	<b>1,256,243</b>	<b>699,232</b>	<b>587,011</b>

#### Notes:

1. The change in timing of the planned proclamation of the Electricity Act deferred several significant events required to take place prior to the opening of the electricity market. As a result, salaries and other common costs were not realized. In addition, more staff time was spent on auto insurance than electricity.

## Financial Statements Summary – 2003/2004 Budget vs. Actual

### Natural Gas Sector

	BUDGET	ACTUAL	DIFFERENCE)
Salaries & Benefits	559,127	461,142	97,985 <i>Note 1</i>
Training	55,500	40,637	14,863
Office & Administration	133,809	119,071	14,738
<u>Total Common Costs</u>	<u>748,436</u>	<u>620,850</u>	<u>127,586</u> <i>Note 2</i>
<u>Direct Expenses</u>	<u>77,350</u>	<u>120,556</u>	<u>(43,206)</u> <i>Note 2</i>
<b>Total Expenses</b>	<b>825,786</b>	<b>741,406</b>	<b>84,380</b>

Notes:

1. Salaries and other common costs were less than forecast due to a greater amount of staff time being allocated to auto insurance than natural gas.
2. Direct costs exceeded budget due to the legislative changes enacted during the year. As a result, the market structure changed, authorizing the gas distributor to sell directly to consumers.