

New Brunswick Board of Commissioners of Public Utilities

Hearing January 17th 2002

2:00 p.m.

Sussex, N.B.

IN THE MATTER OF AN APPLICATION for a Permit to Construct a
Pipeline by the Potash Corporation of Saskatchewan Inc.

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CHAIRMAN: David C. Nicholson, Q.C.

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BOARD COUNSEL William O'Connell, Esq.
Ms. Ellen Desmond

BOARD SECRETARY Lorraine Légère

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CHAIRMAN: This is a prehearing conference in reference to an application by the Potash Corporation of Saskatchewan Inc., which is dated the 21st of December 2001, for a permit to construct a pipeline and transport natural gas to its potash, mining and processing facility located at Penobsoquis, New Brunswick.

Could I have the appearances please?

MR. ZED: Yes, Mr. Chairman. Peter Zed and Serena Newman on behalf of the applicant. And we are joined by Raoul Gauthier and George Bollman, both of PCS.

CHAIRMAN: Intervenors, Enbridge Gas New Brunswick.

MR. HOYT: Len Hoyt appearing on behalf of Enbridge Gas New Brunswick. I'm joined by Tim Walker who is the manager of corporate affairs for Enbridge Gas New Brunswick.

CHAIRMAN: Thank you, Mr. Hoyt. The Province of New Brunswick, the Department of Natural Resources and Energy?

MS. RIGBY: Marion Rigby appearing on behalf of the Department of Natural Resources.

CHAIRMAN: And the Union of New Brunswick Indians?

MR. GETTY: Norville Getty representing the Union of New Brunswick Indians.

CHAIRMAN: And you have with you?

MR. GETTY: Well Ron Perley is not with me today. He had another meeting he had to be at.

CHAIRMAN: This is very important. Okay. That's fine, Mr. Getty. Now I don't remember, Mr. Getty, if you were present at the prehearing conference that we held in Potash Corporation's application to become the local producer or not, whether you were actually present. But I will just attempt to repeat what I said at that time is that if the Union of New Brunswick Indians wishes to challenge the constitutionality of the New Brunswick Gas Distribution Act, then there is a very specific procedure that has to be followed, which includes giving notice to the Board in a very specific fashion setting out precisely what it is you are claiming. And as well, serving that

notice on not only the Board but the applicant and the Attorney Generals of Canada and the province of New Brunswick as a minimum. Okay.

So that's the choice that the Union of New Brunswick Indians has to make, otherwise, you are an Intervenor like any other resident or citizen of the province of New Brunswick. Okay. That's how you would challenge the constitutionality. All right.

And I'm supposing that you -- since we have received no documentation you are not proceeding in that fashion and you just wish to be a regular Intervenor, is that correct?

MR. GETTY: That is correct.

CHAIRMAN: Thanks then, Mr. Getty. And Board counsel?

MR. O'CONNELL: William O'Connell appearing as Board counsel. And appearing with me is Ellen Desmond, Mr. Chairman.

CHAIRMAN: All right. Thank you. Now I think all of the parties have gotten the tentative schedule that the Board worked out with the applicant. Anybody who didn't get a copy of that? Okay. Anybody any problem with any of the dates that are set out in that? No. Okay. Great.

MR. GETTY: Mr. Chairman?

CHAIRMAN: Yes.

MR. GETTY: Mr. Chairman, the schedule outlined by the Board

seems to be a rather tight one. And the Union of New Brunswick Indians feels that there should be more time allowed to people to participate in the hearing. It would appear that the object is to try and proceed with this as quickly as possible and not allow people as much time because of the tight schedule that has been set up.

And we would request the Board to lengthen out the period so that the proposed hearing date is not February the 18th, but a longer time away, such as March the 18th, to allow more time for people to prepare and participate.

CHAIRMAN: All right. Does the applicant have anything to say to that?

MR. ZED: Yes, Mr. Chairman. From the applicant's point of view of this matter, we have already lost one construction season and with a hearing in late February it's going to be still touch and go. I mean, I think we can certainly accomplish starting construction and completing it during this construction -- the upcoming construction season. But if the matter is delayed too much longer we are -- you know, we would hate to find ourselves in the position where we are into next winter.

We would note that this matter was advertised publicly about a year ago, almost a year ago. And that UNBI certainly has been involved with the process, and has been advised of the process and the progress of the process all

along.

They were Intervenors in the initial hearing for the franchise application. We published the notice on the 28th day of December. We attempted to personally serve UNBI with a copy of the application, as we undertook to the Board Chair that we would try to do. Their offices were closed until just after the new year. And I think the first day they were open for business we had somebody attend and deliver a complete copy of the application.

And we would ask that the Chairman take and the Board take that into consideration.

CHAIRMAN: Mr. Zed, I don't know anything about construction of pipelines, however, if the hearing were to occur as UNBI has requested sometime in March, when would Potash look to the start of construction? When would the construction season start normally? Can you inform the Board of that?

MR. ZED: There are some restrictions, formal restrictions with respect to construction in spring, but the real issue is the lead time for ordering some of the equipment is anywhere from four to six months. And if we were to get in to a March hearing, which for some reason was delayed until April -- and we have seen delays through nobody's fault, I'm not casting any blame or anything but things usually take longer than we originally anticipate. And we

just may be in to -- if we run into any kind of problem whatsoever, we may be back into the fall and who knows.

But, you know, Mr. Chairman, we would like to construct and have construction completed in accordance with some agreements we have in place by the end of July, is that -- by the end of July. And that is in accordance with at least one of the landowners, the agreements require that certain of the construction be completed by the end of July, and it's virtually impossible to accommodate that time schedule if we can't start as soon as the ground and the water levels and everything permit in the spring. So any delay is potentially fatal to those plans. I can't be any more specific than that.

CHAIRMAN: As you mentioned, I had requested that as soon as you were able to do so that you serve the Union of New Brunswick Indians with a copy and you have indicated that you did so on the first working day and that their office was open. Have they been involved in any other process leading up to this?

MR. ZED: There have been no formal contacts since the application for the franchise, Mr. Chairman. We wrote them subsequently just to advise them that we were continuing with our plans to proceed with the construction application, and had no response.

CHAIRMAN: Mr. Getty, can you assist the Board a bit by

indicating what it is that you wanted to do or have more time to do? Is it your intention to call witnesses?

MR. GETTY: Mr. Chairman, the date for preparing interrogatories is tomorrow, January the 18th. And in order to analyze the documentation -- there was a considerable amount of documentation that was dumped on our desk -- we need to engage the services of some expertise in order to properly analyze it and properly prepare.

At this stage we haven't even been able to make a decision as yet as to whether or not we would be preparing interrogatories, and yet we are faced with tomorrow being the deadline. Not only do -- with our limited capacity, staff capacity we have to carry on a lot of different activities, not just the hearing with Potash Corporation.

And we try to juggle it all and keep it all going. But the tight deadline that has been set is just a little bit too tight.

CHAIRMAN: There is no question, Mr. Getty, that it is tight and it was planned that way. I believe the public notice indicated that you could obtain a copy of the evidence immediately.

MR. ZED: At the Board or at PCS's office.

CHAIRMAN: Yes.

MR. ZED: Yes, Mr. Chair.

CHAIRMAN: And you served a copy of the evidence on the Union on what date?

MR. ZED: It was the 8th of January.

CHAIRMAN: The 8th of January. That was a good New Year's holiday, I guess.

MR. ZED: Well I think -- but I think, Mr. Chairman, in fairness they were closed until the 7th. And we missed them on the 7th and went up again on the 8th. We sent somebody to Fredericton on three occasions to serve the evidence.

CHAIRMAN: All right. Mr. Hoyt, do you have any wisdom for the Board?

MR. HOYT: None to share at this time, Mr. Chairman.

CHAIRMAN: Okay. Ms. Rigby?

MS. RIGBY: No, Mr. Chairman.

CHAIRMAN: The Board will take that under advisement, and we will go through the rest of the things that we have to go through and then we will retire to discuss that particular matter, Mr. Getty.

Mr. Getty, you might as well stay right there so that you do have a mike and if you want to participate then you will get on the tape.

MR. GETTY: I don't think I have anything else to contribute.

CHAIRMAN: You never know in these things. Suit yourself

though. Okay. Let's go back to the formal aspects of it.

Mr. Zed, do you have affidavits of service or publication that you want to file with the Board?

MR. ZED: Mr. Chairman, I have an affidavit of -- relating to the Board order and the notice, publication requirements. And I also have two affidavits relating to the service on the various ministries as set out in section 18 (2) of the Act. And as well, the representative of the regional municipal district, all of which are required by the Act. I would file those with the Board.

CHAIRMAN: Okay. Now we haven't received any further written intentions to intervene from any parties, but I'm just wondering if there is anyone here today who wanted to intervene or to be able to address the Board at any time? Yes. Tell us your name.

MR. FRIARS: My name is Ken Friars. I'm the mayor for -- no, I was the mayor of Sussex. I'm now a councillor. But I wanted to state that the Town of Sussex is very supportive of the application and that anything that would enhance the ability of PCS to reduce its costs, makes the mining more viable and it provides employment for many of our people in the town and also people from outside the community. And if they are -- be able to -- or are able to reduce their cost that means that the viability of the

mine is enhanced and therefore the employment would be continued. So on that basis, we very much would support any of the application that leads up to the landing of --

CHAIRMAN: And councillor, your name is? I'm sorry.

MR. FRIARS: Friars. Ken Friars.

CHAIRMAN: I thought that was it. I didn't want to embarrass myself.

MR. FRIARS: No, that's --

CHAIRMAN: And you are here on behalf of the Mayor and Council of the Town of Sussex?

MR. FRIARS: Yes.

CHAIRMAN: Good. We appreciate your remarks. You simply wanted to indicate to the Board your Council's support for the application?

MR. FRIARS: Yes.

CHAIRMAN: Thank you very much. You don't wish to be a party though on the ongoing proceedings?

MR. FRIARS: No. I think everybody here would understand our position, so if we had anything to say further, we could write and communicate with you but we don't feel that we have anything to say other than we do support the application.

CHAIRMAN: Okay. Well than you very much, Councillor.

Appreciate that, and the Board will note it. Then I will mark the various affidavits and they will form part of the

record after the hearing is over, Mr. Zed. They appear to be fine with me right now.

MR. ZED: Mr. Chairman, if I might just for the record. We have as well served the original Intervenors in the application with copies in terms of Enbridge obviously. UNBI, that's why they received a copy. The Department of Natural Resources. The Mayor of Sussex. All of whom appeared. Corridor Resources, and a Mr. Chris Hansen, all of whom intervened in the application. And as well we provided copies to the pipeline co-ordinating committee.

CHAIRMAN: That's pursuant to the legislative requirements plus the list that Board staff gave you?

MR. ZED: Yes.

CHAIRMAN: Okay. When you went in -- what you just said when you say "application", you mean the --

MR. ZED: The original application for the franchise.

CHAIRMAN: -- original application for the franchise.

MR. ZED: And the other comment I might make, I have spoken with Mr. Gauthier, and partly in response to Mr. Getty's request is we would ask that you keep to the present schedule if it's at all -- if they do file IRs late we will do everything we can to accommodate them if that's possible. But we would like to stick to the original schedule.

It may be because if they file none it's not an issue,

or it may be because of the nature of the IRs they file it's impossible to keep to the original schedule. But we would ask in the meantime that the Board maintain the schedule, and as I say, we will try to accommodate any late filings on their behalf as best we can.

CHAIRMAN: Now it's my understanding and I just -- I haven't had an opportunity because of the other hearings the Board has been involved in in going through your application, but staff has gone through it with a fine tooth comb. And as I indicated to you prior and to Mr. Hoyt prior to the commencement of the prehearing conference, that by the application you have asked for the Board to grant you exemption from some of the filing regulation requirements. And I believe those are sub-sections 5 (2) through (11) and sub-section 5 (23) and (26). Is that correct, or am I missing something or is there more to it?

MR. ZED: No, I don't think. I think that is correct. 5 (2) through (11). And (23) through (26).

CHAIRMAN: Mr. Zed, you -- well first of all, would you like to address the Board as to why you believe that we should grant that exemption?

MR. ZED: Well, basically, Mr. Chairman, the exemptions under 5 (2) and 5 -- through 5 (10) relate to provision of service to customers other than PCS in our respectful submission. And we will not be entering into

transportation service contracts with marketers. And we feel that it would be appropriate for the Board to grant the exemption in that -- those particular situations.

The section 5 (11) really deals with the fact that the only customer PCS will be serving is in fact PCS. And while we understand that you have an appreciation -- or sorry, we appreciate your concern with respect to the long term utilization of the project, PCS believes that such a concern is not applicable to their situation in that really if the use or the resource becomes not a viable proposition and we discontinue the use, then our franchise is terminated in accordance with the terms you set on our franchise. That is, I think that we must use -- we must not go more than a year without using gas for the project.

So sections (23) and (26) really relate to financial risk and in those cases PCS is bearing all the risk of the project and once again is a sole customer. Those particular provisions really, we would suggest with respect, would be of more interest to the Board if they impacted on rates or tariffs. And since the only impact of any internal rate or tariff we charge is on PCS internally, then we have respectfully requested such an exemption.

CHAIRMAN: And, Mr. Hoyt, you had some small difficulty with some portion of that request?

MR. HOYT: There is only one specific exemption that PCS is requesting we have issue with. The only exemption that PCS has requested that we have got a specific issue with is the exemption requested under section 5 (23). But I do have a general statement that I would like to make on behalf of EGNB that addresses this issue and also the level at which EGNB is reviewing all of their requirements under the following regulations, so perhaps it would be appropriate for me --

CHAIRMAN: Sure. Go ahead, Mr. Hoyt.

MR. HOYT: -- to do that?

CHAIRMAN: Yes, please.

MR. HOYT: EGNB has requested formal intervenor status in this proceeding. And as the Board is aware, EGNB is concerned with all aspects of gas distribution in New Brunswick and in particular anything related to safety. Construction and operation of natural gas facilities by any company impacts the public's perception, and the development of the natural gas industry in New Brunswick.

EGNB had intended, and quite honestly continues to prefer, just monitoring this proceeding recognizing that it's the Board's role, particularly from a safety point of view, to ensure that the application by PCS satisfies the requirements of the Gas Distribution Act and the Regulations. So on the specific point that you have asked

in terms of these exemptions, we don't see EGNB's role as ensuring that PCS is meeting the specific requirements.

But after reviewing the application, EGNB has decided to reevaluate its role on an ongoing basis as the proceeding moves forward.

Although EGNB has not done a detailed review of the specifications or the environmental report, it finds the application to be incomplete in at least three respects. All of EGNB's concerns stem from PCS's approach, which is best exemplified on the first page of the application where it states, "PCS is the only customer proposed to be supplied with natural gas and therefore the facilities will be designed and constructed to meet the unique energy needs of PCS."

EGNB's concerns are in the following areas. First, interconnection. The Board's decision to grant PCS a local gas producer franchise clearly gave EGNB the right to connect to PCS's pipeline in certain cases. EGNB is also aware of the interest by the Town of Sussex in obtaining access to natural gas finds in the area. Interconnections may be required to serve these customers of EGNB, however, no consideration is given in the application to how these connections are to be made or whether the pipeline or related facilities are designed to be able to accommodate future potential interconnection

from a capacity or other design perspective. In fact, there is no suggestion that such connections can be made.

These practical and design methods must be considered early in the process. It's too late once the pipe is in the ground.

Secondly, operation of the pipeline. It appears that operating manuals and operating personnel do not currently exist. EGNB is concerned about PCS's lack of experience operating a natural gas pipeline and the application provides no information on how the pipeline will actually be operated. How can PCS's ability to operate a pipeline be assessed in the absence of such information?

Thirdly, construction costs. And this is the specific exemption 5 (23) that I refer to. PCS is seeking an exemption from providing the costs of construction. In the event that EGNB connects to the pipeline, the construction costs will be relevant for rate-making purposes. Costs of construction should therefore be produced.

EGNB decided to raise these issues for PCS's benefit at the outset of this proceeding. EGNB has no interest in preventing or delaying the construction of PCS's pipeline provided its concerns are addressed. Rather than establishing a case that the application is inadequate and should be rejected, EGNB has opted to alert PCS and the

Board to its concerns so that answers can be provided.

Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Hoyt. Just one quick question on that. Would your concern on construction costs -- and again, I haven't thought this through at all -- but that would be if and when interconnection occurred. Would that not be the time at which those costs would be discussed? So as long as PCS captures and retains the information then -- and it would be available -- that would suffice for that concern, would it not?

MR. HOYT: Yes. The issue is -- that's when it would likely arise. But the opportunity to assess the reasonableness is before the expenses are actually incurred, I would suggest. And there may be an opportunity to have some direction given by the Board along those lines. But you are right, if no interconnection is ever made the issue is moot.

CHAIRMAN: It's moot, yes. All right. Ms. Rigby, do you have any comments you wish to make on that?

MS. RIGBY: No, Mr. Chairman.

CHAIRMAN: Okay. Mr. Getty?

MR. GETTY: No, Mr. Chairman.

CHAIRMAN: Does Board counsel have anything they wish to share with us?

MR. O'CONNELL: Nothing to add, Mr. Chairman.

CHAIRMAN: Just so I'm absolutely clear then, there is no difficulty with any of the parties in allowing the exemption from 5 (2) through to 5 (11)? Is that -- okay. There is no problem there. I apologize, but I haven't had an opportunity to look at these in detail. So it would be under 5 (23) that basically your concerns are in that particular sub-section?

MR. HOYT: That's the section that requires the construction costs be disclosed, yes.

CHAIRMAN: Yes. Now are there any other matters that any of the parties wish to bring to the Board's attention, or we will retire and deal with the two things that we have to, which is number 1 the scheduling and number 2 about this exemption. Anything else?

MR. HOYT: I just wanted to clarify that copies of the materials as we go forward will be produced to all the names on that list of Intervenors, so in our case, both Mr. Walker and I would receive them?

CHAIRMAN: The applicant's solicitor is nodding yes.

MR. ZED: Yes. We have no trouble doing that.

CHAIRMAN: Yes. All right. We will take a break.

(Recess)

CHAIRMAN: The Board had two matters that it needed to consider when we took our break. And the first one was the request by the Union of New Brunswick Indians that the

hearing schedule be elongated as they didn't believe there was sufficient time to prepare properly. The Board will grant that request.

One thing, Mr. Zed, is that we note in your own filing on the construction schedule, you have the Public Utilities Board decision taking one week but it's Monday the 18th of March that week. So it seems that if we were to have the hearing in that week and undertake to do our utmost to give our decision in that week, you would still be on your original schedule.

So subject to the timing that may cause some difficulties with other parties, why we will hear it and I have got -- somewhere in here I have got the calendar. So we will have the hearing commencing on Wednesday the 20th of March.

Now anybody any difficulties with that? I don't see this hearing taking more than two, possibly three days at the most. Anybody -- the Board will be available for the Wednesday, Thursday, Friday of that week. And again, on the Monday the 25th. But I really don't -- I would anticipate a couple of days will probably do it. I could be wrong but -- so we will go ahead on the 20th. And if you want to dig out your schedules, we have done up a tentative revision to the original schedule of dates. And of course we are at today's date and we can't change

anything behind that.

So interrogs to the applicant, PCS, will be Friday, the 15th of February. Now I want to point out that these -- it's noon hour. It's not 5:00 o'clock on Friday. It's noon hour that they have to be in. Okay.

The answers by PCS will be Friday the 22nd of February. Intervenor evidence, if any, is to be filed on Friday, the 1st of March. Interrogatories to the Intervenor evidence -- or sorry, the Intervenor that calls evidence, those interrogatories will be filed on Friday, March the 8th. And then the answers by the Intervenor would be Friday, March the 15th, with the hearing commencing on Wednesday the 20th. Anybody have any difficulties with that rescheduling? Okay.

Now I note that, you know, the parties I don't think -- I'm thinking of costs, et cetera, that sort of thing. But there doesn't appear to be anybody locally from the Sussex area who wants to appear as an Intervenor, et cetera. So I would propose, subject to what the parties have to say, is that the Board's hearing room in Market Square in Saint John is available on those dates and we could hold it there, so we wouldn't have to rent premises.

I'm sure that would please the applicant. But does anybody have any difficulty with that? Okay.

All right. So then it will be there. We will start

at 10:00 a.m. on Wednesday the 20th at the Board's premises.

Now the second part was a request from an exemption, having to comply with certain of the filing rates and the -- which was, in a general way, objected to by EGNB. The Board has considered it. But for instance, one of the things that Mr. Hoyt mentioned -- and I'm not saying that that was part of the 5 (23) -- but operating manuals and as well as I think four other manuals are due by the time that the Board would grant the licence to operate. It's not at the -- and I think in the case of EGNB that's when it occurred, as well, too, so that -- as the construction cost. We hear what you are saying, Mr. Hoyt, and rest assured that in our decision in this matter, if we in fact do grant the application, is that we will have a requirement that all of the costs that are envisaged in section 5 (23) will have to be retained by the applicant in case in the future sometime there is some nature of interconnection.

As to the other matters that you bring up as to the ability to interconnect, et cetera, et cetera, et cetera, I think all of that is better left to a discussion during the hearing itself. So we will grant the applicant its exemption from those sections that we discussed earlier.

Any other matters? Everybody has provided the

secretary with -- as she so aptly says -- their coordinates. I'm just wondering, Mr. Getty, do you know if -- perhaps the secretary already knows but I don't, are you able to receive things by E-mail?

MR. GETTY: Yes, we are.

CHAIRMAN: Are you?

MR. GETTY: The E-mail is lobby at UNBI. org.

CHAIRMAN: And the Union of New Brunswick Indians has no difficulty in being served or serving things by E-mail?

MR. GETTY: None at all.

CHAIRMAN: Okay. So the secretary will be issuing a list of all the addresses, et cetera, but all of the other parties here are able to be served by E-mail, so we will proceed in that fashion with hard copies for the hearing, et cetera, but the secretary will be in touch with you about that. Okay. Thank you, Mr. Getty.

Any other matter? Well thank you very much. We will see you on March the 20th.

(Adjourned)

Certified to be a true transcript of the proceedings of
this hearing as recorded by me, to the best of
my ability.

Reporter