



DECISION

IN THE MATTER OF Liberty Utilities
(Gas New Brunswick) LP's 2020 financial
report of its commodity sales activities for
the fiscal year ending December 31, 2020.

(Matter No. 495)

March 21, 2022

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER OF Liberty Utilities (Gas New Brunswick) LP's 2020 financial report of its commodity sales activities for the fiscal year ending December 31, 2020.

(Matter No. 495)

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

Acting Chairperson: François Beaulieu

Members: Michael Costello

John Patrick Herron

Board Counsel: Katherine McBrearty

Chief Clerk: Kathleen Mitchell

APPLICANT:

Liberty Utilities (Gas New Brunswick) LP: Len Hoyt, Q.C.

PUBLIC INTERVENER: Heather Black

A. Introduction

- [1] Liberty Utilities (Gas New Brunswick) LP (Liberty) is required under paragraph 3(1)(f) of the *Gas Distributor Marketing Regulation – Gas Distribution Act, 1999*, N.B. Regulation 2003-19 (Regulation) to file annually with the New Brunswick Energy and Utilities Board (Board) a financial report. The Board must satisfy itself that the financial report complies with section 6 of the Regulation.
- [2] In accordance with section 6 of the Regulation, Liberty filed on April 14, 2021, its financial report of its gas sales activities for the fiscal year ending December 31, 2020 (Financial Report).
- [3] Board staff filed on December 21, 2021, a report entitled “Report on the Purchase and Sale of Natural Gas in 2020 by Liberty Utilities (Gas New Brunswick)” (Staff Report). The Staff Report was made available to Liberty, holders of gas marketers’ certificates, and the Public Intervener, and was posted on the Board’s website on the same date.
- [4] The Board requested comments from Liberty, holders of gas marketers’ certificates, and the Public Intervener before January 18, 2022. On January 11, the Public Intervener, Ms. Heather Black, stated that she agreed with the recommendation of Board staff. No further comments were received.
- [5] On February 7, the report from Teed Saunders Doyle, dated December 1, 2021 (TSD Report), was made public and the same parties were invited to provide comments to the Board. The Public Intervener stated that she had no additional comments arising from the TSD Report on February 18.
- [6] As directed by the Board in Matter 468, Board staff developed draft minimum filing requirements, which were sent to Liberty for comment on January 24. Liberty stated on February 28 that it did not have any comments or concerns with the proposed minimum filing requirements.

B. Legislative Framework

- [7] The following provisions of the Regulation are relevant to the present matter:

3(1) The following are the terms and conditions under which a gas distributor may sell or offer to sell gas under subsection 51(2) of the Act:

[...]

(f) on or before the thirty-first day of March in each year, a gas distributor shall file with the Board for its review a financial report that complies with section 6;

[...]

4(1) A gas distributor that sells gas shall make available a standard offering having a term of one year and shall calculate the price of gas in the manner and for the period determined by the Board, which price shall be based on the cost estimated by the gas distributor for purchasing gas and selling gas to customers.

[...]

6(1) A financial report shall be in a form provided by the Board and shall include for the standard offer under section 4 and collectively for the alternative offers under section 4.1 the following information for the twelve month period ending on the thirty-first day of December prior to the report:

- (a) the expenditures related to and revenue from the sale of gas;
- (b) the expenditures related to and revenue from the provision of customer services;
and
- (c) the expenditures related to and revenue from the distribution of gas.

6(2) The Board shall review a financial report filed pursuant to paragraph 3(1)(f) to satisfy itself that

- (a) the gas distributor is not cross-subsidizing between the sale of gas and the distribution of gas,
- (b) the prices charged by the gas distributor for gas and are reasonable and sufficiently competitive to protect the interests of customers,

(c) the price to be charged by the gas distributor to customers for gas has been calculated in accordance with section 4 or 4.1, as the case may be, and

(d) the gas distributor has purchased gas for sale to customers in accordance with its Gas Purchasing Plan filed pursuant to paragraph 3(1)(e).

C. Analysis

[8] The Staff Report found that Liberty did not comply in full with the Regulation. It found two instances where Liberty did not price its standard offer gas in compliance with section 4 of the Regulation.

[9] The first instance was related to an omission in a contract with a supplier, which guaranteed a monthly fee from the supplier in exchange for excess pipeline capacity. The fee was introduced in November of 2020 and should have been considered as a source of revenue in the calculation of costs for the following 12 months. The fee was not included in the calculations in November or December. As a result, the price for standard offer gas was not in compliance. The Staff Report indicated that this omission was not corrected until the price setting of October 2021.

[10] The second instance was related to an omission of a fee that Liberty's gas sales operation pays to the distribution operation for billing and collection services, referred to as Agent Billing and Collection fees. The Staff Report stated that this is a regular and predictable cost that should be included in any forecast.

[11] The Staff Report noted that these two errors in the calculation of the gas sales would have resulted in the distributor setting a modestly different price in some months. The report states that in one case the omission resulted in a price that was too high while in the second case the price omission resulted in a lower price. The report notes that in both cases the errors have since been corrected and the difference between the price set and actual costs was captured by the Price of Gas Variance Account and the imbalance has been corrected over time.

[12] Pursuant to paragraph 6(2)(c), the Board finds that the price to be charged by Liberty to customers for gas has not been calculated in accordance with section 4. As depicted above, the Board is satisfied that this modest non-compliance has since been remedied.

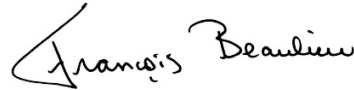
[13] The Board concludes that Liberty has complied with paragraphs 6(2)(a), 6(2)(b) and 6(2)(d) of the Regulation.

D. Conclusion

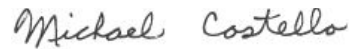
[14] The Board directs Liberty to comply with the Regulation going forward and approves the minimum filing requirements, as proposed by Board staff.

[15] The Board directs Board staff to continue to monitor the Price of Gas Variance Account and to determine whether adjustments are necessary.

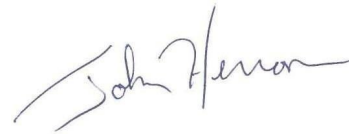
Dated at Saint John, New Brunswick, this 21st day of March, 2022.



François Beaulieu
Acting Chairperson



Michael Costello
Member



John Patrick Herron
Member