



DECISION

IN THE MATTER OF an application by Potash Corporation of Saskatchewan Inc. for the renewal of its Local Gas Producer Franchise Agreement pursuant to subsection 11(1) of the *Gas Distribution Act, 1999*, S.N.B. 1999, c. G-2.11

(Matter No. 514)

May 6, 2022

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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(Matter No. 514)

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

Acting Chairperson: François Beaulieu

Members: Michael Costello

John Patrick Herron

Board Counsel: Katherine McBrearty

Counsel for Board Staff: Véronique Otis

Chief Clerk: Kathleen Mitchell

APPLICANT:

Potash Corporation of Saskatchewan Inc.: Peter T. Zed, Q.C.

INTERVENERS:

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

PUBLIC INTERVENER: Heather Black

A. Introduction

- [1] On December 10, 2021, Potash Corporation of Saskatchewan Inc. (PCS) applied to the New Brunswick Energy and Utilities Board (Board) for a renewal of its Local Gas Producer Franchise Agreement or, in the alternative, an extension of its terms (Application), pursuant to subsection 11(1) of the *Gas Distribution Act, 1999*, S.N.B. 1999, c. G-2.11 (Act).
- [2] In accordance with subsection 11(3) of the Act and where the Local Gas Producer Franchise Agreement, dated December 21, 2001 (Franchise Agreement), was due to expire, the Board ordered on December 20, 2021, the extension of its term until such time as an order was made under subsection 11(1).
- [3] A notice of application (Notice) was published in the Telegraph Journal and L'Acadie Nouvelle, posted on PCS's website, and provided to various entities.
- [4] A pre-hearing conference was held by video conference on January 11, 2022. Where no evidence was filed by interveners following the interrogatory process, the Board asked parties to comment on the conclusion of the proceeding by way of a written process. No party objected, and the proceeding was concluded in that manner.

B. Legislative Framework

- [5] The following provisions of the Act are relevant to this proceeding:

10(1) After January 31, 2000, no amendment to a franchise agreement is effective unless it is in writing, has been executed by the parties and has been approved by the Board.

[...]

10(2) After January 31, 2000, the Board may recommend an amendment to any franchise agreement entered into under section 7, other than a general franchise agreement, to the Province and the gas distributor.

[...]

10(3) The Board shall not make an order under subsection (1) or (2) until after it has held a proceeding on notice, to be given in such manner and to such persons as it may direct, including the surety of any security provided under a franchise agreement.

10(4) The Board may give or refuse its approval or recommendation under this section, subject to such terms and conditions as it considers necessary in the public interest.

11(1) Where the term of a franchise agreement, other than a general franchise agreement, has expired or will expire within one year, the Board may renew the franchise agreement or extend its term for such a period of time and upon such terms and conditions as it considers necessary in the public interest.

[...]

11(2) The Board shall not make an order under subsection (1) until after it has held a proceeding and notice of that proceeding shall be given in such manner and to such persons and local governments as it may direct.

11(3) Where the term of the franchise agreement has expired or is likely to expire before the Board completes the proceeding referred to in subsection (2), the Board may make such an order as may be necessary to continue the right until an order is made under subsection (1).

11(4) The Minister may assess a franchise renewal fee and require the gas distributor whose franchise is renewed to pay it.

C. Issues

[6] The Board must evaluate whether it will renew the Franchise Agreement or extend its term pursuant to the Act. Should the Board decide to extend its term, it must determine the period of time and upon which terms and conditions it considers necessary in the public interest.

D. Analysis

- [7] PCS submitted that it is in the public interest to renew the Franchise Agreement. It further submitted that all relevant licences and leases had been granted concerning its right to remove gas from a well in New Brunswick. The Minister of Natural Resources and Energy Development supported the requested renewal.
- [8] In a letter dated February 3, 2022, the Honourable Mike Holland, Minister of Natural Resources and Energy Development, confirmed that he had no intention of assessing a franchise renewal fee in accordance with subsection 11(4).
- [9] PCS seeks to maintain the same franchise area for the renewed franchise provided under the Franchise Agreement. It submits that the terms and conditions of the franchise set out in both the original decision of the Board of Commissioners of Public Utilities dated July 31, 2001 (July 31 Decision) and the Franchise Agreement be either carried forward, amended, or deleted, as set out in its written submissions.
- [10] PCS requests that the first and second conditions contained within the July 31 Decision be included, provided that the PCS facility at Penobsquis encompasses the Piccadilly mine constructed in 2010. It stated that the Franchise Agreement and the July 31 Decision no longer properly identify PCS's facilities, the general franchise holder, the Board, the applicable legislation, or the Minister and contain terms and conditions which are no longer relevant.
- [11] Liberty supported the renewal of the Franchise Agreement provided that PCS's franchise remains subject to the first and second conditions contained in the July 31 Decision. Liberty requested that section 5.2 of the Franchise Agreement remain in the agreement.
- [12] Ms. Heather Black, the Public Intervener, also supported the Franchise Agreement renewal. She submitted that it is in the public interest for the Board to grant the Applicant's request upon such terms and conditions similar to the first and second conditions set out in the July 31 Decision. She stated the conditions should be modified to accurately define the "location" to include the Piccadilly mine and to update references to Liberty. Ms. Black noted that Liberty customers would suffer no material prejudice if the request was granted.

- [13] The term of the Franchise Agreement articulated in section 4.1 stipulates that the initial term shall commence on the date it is executed and shall continue during the twenty-year term provided for in the Act, unless terminated earlier by the Board or unless renewed or extended in accordance with section 11 of the Act.
- [14] Pursuant to subsection 11(1), the imposition of terms and conditions that are in the public interest only applies to an extension of the franchise agreement's term. Furthermore, an extension of the term carries forward the existing terms of the agreement.
- [15] No party objected to the Franchise Agreement renewal, except as described above.
- [16] PCS owns potash facilities northeast of Sussex, New Brunswick. Some of these facilities, more specifically, the Piccadilly mine, have been designed and built to run only on natural gas, including potash processing and the heating of buildings, mine shafts, and the underground.
- [17] There is no pipeline infrastructure for PCS to receive finished natural gas from other gas suppliers. It requires natural gas to conduct its current salt mining operations, which provide road salt to the Province of New Brunswick. It also requires natural gas if PCS resumes potash mining and processing operations at its facilities. Therefore, the Board finds it necessary to extend the term of the Franchise Agreement.
- [18] Accordingly, the Board hereby extends the term of the existing Franchise Agreement for twenty years from the date of this decision, subject to certain terms and conditions in the public interest as set out below.
- [19] Where the Board is satisfied that the inclusion of PCS's location at the Piccadilly mine falls within the franchise area set out in Schedule A of the Franchise Agreement, the addition of a term or condition of the extension describing the franchise area is not necessary.
- [20] As noted above, PCS made a proposal for how the Franchise Agreement could be either carried forward, amended, or deleted. Where the terms of the existing Franchise Agreement will be carried forward, any requests for specific terms of the agreement itself to be amended or deleted cannot be dealt with by the Board in the context of an application under subsection 11(1).

[21] Pursuant to subsection 10(1), no amendment to a franchise agreement is effective unless it is in writing, has been executed by the parties, namely the Province of New Brunswick and PCS, and approved by the Board. Furthermore, the Board may recommend amendments only following a proceeding as set out under subsection 10(3). Consequently, the Board cannot make recommendations as to amendments in this proceeding.

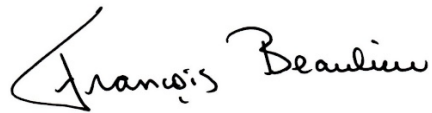
E. Conclusion

[22] The Board hereby orders as follows:

- a. Pursuant to subsection 11(1) of the Act, the term of the Franchise Agreement is extended for twenty years commencing on the date of this decision, subject to the following terms and conditions it considers necessary in the public interest:
 - i. PCS is authorized and required to distribute gas to only its location at Penobsquis which also encompasses the Piccadilly mine, hereinafter referred to as the PCS Facility.
 - ii. PCS is not permitted to distribute gas to any other location or customer other than the PCS Facility. If any person has made arrangements for a supply of natural gas and wishes to have PCS transport it, the following procedure must be observed:
 1. PCS is to notify the person that they are a potential customer of Liberty and also to notify Liberty and the Board of the request for service.
 2. PCS and Liberty are then to enter into negotiations regarding the way in which Liberty can connect to the PCS gas distribution system in order to provide service to the person involved.
 3. If Liberty does not believe that it would be economically feasible for the person to receive service, Liberty shall apply to the Board for the appropriate order.

4. If Liberty considers that it would be feasible to provide service and cannot reach agreement with PCS, the matter is to be referred to the Board for resolution.


Dated at Saint John, New Brunswick, this 6th day of May, 2022.



François Beaulieu
Acting Chairperson



Michael Costello
Member



John Patrick Herron
Member