



## **RULING ON MOTION**

**IN THE MATTER OF** an Application by New Brunswick Power Corporation pursuant to subsection 103(1) of the *Electricity Act*, S.N.B. 2013, c. 7, for approval of the schedules of rates for the fiscal year commencing April 1, 2020 and for an Order approving changes to NB Power's Financial Risk Management Policies and an Order approving changes to the Financial Risk Management Policies of NB Energy Marketing Corporation.

and

**IN THE MATTER OF** a Notice of Motion filed by New Brunswick Power Corporation.

(Matter No. 458)

March 24, 2020

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

**IN THE MATTER OF** an Application by New Brunswick Power Corporation pursuant to subsection 103(1) of the *Electricity Act*, S.N.B. 2013, c. 7, for approval of the schedules of rates for the fiscal year commencing April 1, 2020 and for an Order approving changes to NB Power's Financial Risk Management Policies and an Order approving changes to the Financial Risk Management Policies of NB Energy Marketing Corporation.

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**IN THE MATTER OF** a Notice of Motion filed by New Brunswick Power Corporation.

(Matter No. 458)

**NEW BRUNSWICK ENERGY AND UTILITIES BOARD:**

Acting Chairperson: François Beaulieu

Members: Michael Costello

John Patrick Herron

Counsel: Ellen Desmond, Q.C.

Chief Clerk: Kathleen Mitchell

**APPLICANT:**

New Brunswick Power Corporation: John Furey

**INTERVENERS:**

J.D. Irving, Limited:

Christopher Stewart

Liberty Utilities (Gas New Brunswick) LP  
(formerly Enbridge Gas New Brunswick Limited  
Partnership):

Romain Viel

Dr. Roger Richard:

Per se

Utilities Municipal:

Scott Stoll

**PUBLIC INTERVENER:**

Heather Black

## **RULING ON MOTION**

### **A. Background**

- [1] The New Brunswick Power Corporation (NB Power) applied to the New Brunswick Energy and Utilities Board (Board) on October 2, 2019 (Application) for an Order approving its proposed rates for services for the fiscal year commencing April 1, 2020. The Application specifically requests an increase in rates across all customers classes.
- [2] The hearing of Matter 458 concluded on February 13, at which time the Board advised both NB Power and other parties that it would be releasing its decision as soon as possible. As of the date of this Ruling, the issuance of the decision was imminent.
- [3] On March 19, NB Power filed correspondence with the Board requesting a delay in the Board rendering its decision. By email on March 20, NB Power confirmed that this correspondence should be considered as a Notice of Motion and that notice of its requested relief had been sent to all parties.
- [4] Upon receipt of this email, the Board advised all parties that they would be provided with the opportunity to write comments on the Motion. The comment period was extended to Monday, March 23 at noon. Three parties did comment, namely Dr. Roger Richard, Ms. Heather Black and Mr. Scott Stoll.

### **B. Issues**

- [5] The request by NB Power raises two issues:
- a. Should the matter be adjourned and if so, on what basis?
  - b. If the matter is adjourned, what rates and tariffs should apply effective April 1, 2020?

### **C. Analysis**

#### **1. Should the matter be adjourned and if so, on what basis?**

- [6] In its requested relief, NB Power states as follows:

In recent days, it has become apparent that the impact of the Covid-19 pandemic in New Brunswick will be both health-related, as well as economic. The necessary measures being taken by all levels of government, as well as private businesses, to contain and mitigate the spread of the Covid-19 virus will have economic impacts on all Canadians, including New Brunswick electricity ratepayers.

.....

NB Power has concluded that a rate increase implemented on April 1, 2020 would be counterproductive to the efforts of government, and would increase rates at a time when all of NB Power's customers are in need of support. Accordingly, NB Power does not believe an implementation of any rate increase on April 1, 2020 would be in the public interest.

- [7] The Board agrees with NB Power that the necessary measures that are being taken by all levels of government will likely have an economic impact on electricity ratepayers. The Province of New Brunswick is in the midst of a global health crisis that is still evolving. A state of emergency for the Province has been declared. The social and economic impacts of the measures taken to control the spread of COVID-19 are significant, far reaching, and without precedent. Further, the true magnitude and longevity of such impacts are yet to be determined.
- [8] Dr. Richard, in his response, suggests that simply delaying the Board's decision will lead to uncertainty in already difficult financial times. As an alternative, he suggests that this Matter be withdrawn in its entirety.
- [9] Ms. Black submits that it is in the public interest that the Board adjourn this matter, for the reasons that NB Power set out in its Motion. Ms. Black states that an adjournment of the proceeding is preferable to the Board delaying its decision, since an adjournment preserves NB Power's ability to file new evidence as may be required. She also states that an adjournment avoids the need for the Board to determine which of its orders and directions can and cannot be implemented by NB Power. She suggests that the Board adjourn this matter to a specific date and time. In her view, this would limit the duration of any adjournment, but still retain the Board's ability to extend it from time to time, if extensions are justified.
- [10] Mr. Stoll also supports an adjournment and agrees with Ms. Black's submissions.
- [11] Any decision of the Board must balance both the interests of NB Power and those of the ratepayers. The Board is independent and must adjudicate fairly and completely on the matter before it. The Board also has a wide range of procedural powers, including section 38 of the

*Energy and Utilities Board Act*, which provides that the Board is the master of its own procedures. Furthermore, section 1 of the Board's *Rules of Procedure* states, in part, that the Board may, at any time, make an order with respect to its procedure.

[12] Having considered the submissions, the Board does not believe the Matter should be withdrawn as there have been extensive efforts in the past months to file evidence and conduct a hearing. A decision should be issued, if at all possible. Similarly, a decision on any rate increase may exacerbate the economic challenges currently faced by customers of all classes, the duration of which is yet to be determined.

[13] Given our rapidly changing circumstances, the Board finds that setting this matter over, to be finalized at a future date, will best serve the interests of both NB Power and New Brunswick ratepayers. In this instance, the Board finds that it is reasonable that this Matter should be adjourned *sine die*.

**2. If the matter is adjourned, what rates and tariffs should apply effective April 1, 2020?**

[14] Section 103 of the *Electricity Act* (Act) provides, in part, as follows:

**103(1)** The Corporation shall make an application to the Board for approval of the Corporation's schedules of rates it proposes to charge for its services

(a) for the fiscal year which commences on April 1, 2015, and

(b) for each subsequent fiscal year.

**103(4)** When an application has been filed under subsection (1) by the Corporation, the Corporation is entitled to charge for its services the rates last approved or fixed by the Board until such time as new rates are approved or fixed.

[15] Given that NB Power did make an application to the Board for new rates effective April 1, and in accordance with subsection 103(4) of the Act, NB Power is entitled to charge for its services the rates last approved or fixed by the Board until such time as new rates are approved or fixed.

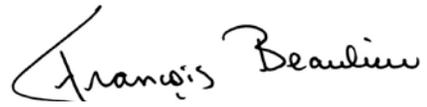
[16] Accordingly, those rates fixed in Matter 430 will apply until such time as new rates are approved or fixed, at a date to be determined.

## **D. Conclusion**

[17] Having considered NB Power's Motion and the written submissions of the parties in response to the Motion, the Board makes the following orders:

- a. The Board will adjourn, *sine die*, this matter until further notice of the Board;
- b. Pursuant to subsection 103(4) of the Act, NB Power will continue to charge the rates last approved by the Board in Matter 430, until it approves or fixes new rates; and
- c. After the state of emergency has been terminated, the Board will be in contact with NB Power and the Interveners with respect to the next steps.

Dated at Saint John, New Brunswick, this 24<sup>th</sup> day of March, 2020.

Handwritten signature of François Beaulieu in black ink.

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François Beaulieu  
Acting Chairperson

Handwritten signature of Michael Costello in blue ink.

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Michael Costello  
Member

Handwritten signature of John Patrick Herron in black ink.

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John Patrick Herron  
Member