



RULING ON MOTION

IN THE MATTER OF an application by the 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 the rates for the fiscal year commencing April 1, 2020.

and

IN THE MATTER OF a Motion filed by Dr. Roger Richard pursuant to Rule 4.3 of the *Rules of Procedure* of the New Brunswick Energy and Utilities Board.

(Matter No. 458)

September 25, 2020

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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IN THE MATTER OF a Motion filed by Dr. Roger Richard pursuant to Rule 4.3 of the *Rules of Procedure* of the New Brunswick Energy and Utilities Board.

(Matter No. 458)

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

Acting Chairperson:

François Beaulieu

Members:

Michael Costello

John Patrick Herron

Counsel:

Matthew Letson

Chief Clerk:

Kathleen Mitchell

APPLICANT:

New Brunswick Power Corporation:

John Furey

INTERVENERS:

J.D. Irving, Limited:

Christopher Stewart

Liberty Utilities (Gas New Brunswick) LP:

Romain Viel

Dr. Roger Richard:

Per se

Utilities Municipal:

Scott Stoll

Public Intervener:

Heather Black

Ruling on Motion

[1] This ruling arises out of a Notice of Motion (Motion) filed by Dr. Roger Richard on September 9, 2020, pursuant to Rule 4.3 of the *Rules of Procedure* of the New Brunswick Energy and Utilities Board (Board). This Motion was heard on September 10.

[2] Matter 458 was commenced in 2019 and culminated in a hearing lasting 7 days in February 2020. On March 24, the Board granted New Brunswick Power Corporation (NB Power) a motion to adjourn this matter *sine die* due to the State of Emergency declared surrounding the COVID-19 pandemic.

[3] Dr. Richard is seeking an order from the Board that would cancel and start anew (“recommencer à zéro”) Matter 458 with the 2021-2022 General Rate Application (Matter 477), yet to be filed by NB Power.

[4] NB Power opposes the Motion. It submits that Matter 458 cannot be cancelled as it is not permitted under the *Electricity Act* (Act).

[5] Dr. Richard listed a number of arguments in support of his Motion. For the reason set out below, none of those arguments can justify the Board’s cancellation of Matter 458, as requested by Dr. Richard.

[6] Subsection 103(1) of the Act requires NB Power to make an application to the Board for approval of its rates for every fiscal year. Subsection 103(5) requires the Board, upon receipt of such an application, to proceed under section 127 of the Act. Subsection 127(2) states:

127(2) When an application has been made and notice of the hearing is given, the Board shall conduct the hearing.

[7] Subsection 103(6) of the Act states:

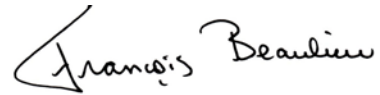
103(6) The Board, at the conclusion of the hearing under section 127, shall:

- (a) approve the rates applied for, if satisfied that they are just and reasonable or, if not so satisfied, fix other rates that it finds to be just and reasonable,
- (b) set the time at which any change in the rates is to take effect, and
- (c) require the Corporation to file with the Board, before the time set under paragraph (b), updated schedules of rates approved or fixed by the Board.

[8] Based on the above provisions, and in particular, subsection 103(6), the Board concludes that it lacks the jurisdiction to simply cancel Matter 458. In short, the Board must approve either the rates applied for, or such other rates that it finds to be just and reasonable. The Board must also set a time that any change in rates will take effect.

[9] For the above reasons, the Board will not order NB Power to cancel Matter 458 or to start anew this matter. The Motion is dismissed.

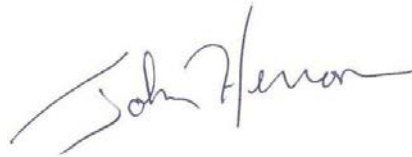
Dated in Saint John, New Brunswick, this 25th day of September, 2020.



François Beaulieu
Acting Chairperson



Michael Costello
Member



John P. Herron
Member