



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 the New Brunswick Power Corporation pursuant to Rule 4.3 of the *Rules of Procedure* of the New Brunswick Energy and Utilities Board.

(Matter No. 458)

October 2, 2020

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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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

A. Background

- [1] The New Brunswick Power Corporation (NB Power) applied to the New Brunswick Energy and Utilities Board (Board) on October 2, 2019 for approval of the schedules of rates for the fiscal year commencing April 1, 2020.
- [2] A public hearing of the rate application was held from February 5 to 13. At the conclusion of the hearing, the Board informed the parties that it would release its decision as soon as possible.
- [3] On March 19, NB Power requested that the Board delay rendering its decision. In support of its request, it cited the State of Emergency that was declared by the Province of New Brunswick on March 19, and related limitations, caused by the COVID-19 pandemic in support of its request. NB Power confirmed that the request should be considered as a Notice of Motion.
- [4] On March 24, the Board issued a Ruling on Motion granting an adjournment, *sine die*, until further notice. The Board agreed that the necessary measures taken by all levels of government would likely have an economic impact on electricity ratepayers. In its ruling, the Board stated that the social and economic impacts of the measures taken to control the spread of COVID-19 were significant, far reaching, and without precedent. At the time, the true magnitude and longevity of such impacts were yet to be determined.
- [5] The Ruling on Motion also stated that after the State of Emergency has been terminated, the Board would be in contact with NB Power and interveners with respect to next steps.
- [6] On August 5, NB Power filed a Notice of Motion (Current Motion) requesting that the Board: (a) render a decision in Matter 458 in the normal course, lifting the adjournment granted on March 24; and (b) set March 31, 2021 as the date for the approved rates to take effect.
- [7] The Current Motion was accompanied by copies of: (a) the Declaration of a State of Emergency and Mandatory Order dated March 19; and (b) a Renewed and revised Mandatory Order COVID-19 dated July 31, as issued by the Minister of Public Safety for

the Province. Whereas the March 19 declaration and order limited all workplaces in the Province to “critical functions”, the July revised order had no such limitation.

- [8] The State of Emergency remains in effect. The Board notes that, in accordance with section 17 of the *Emergency Measures Act*, there have been several renewals of the declaration of the State of Emergency, the latest being a Renewed and revised Mandatory Order – COVID-19, dated September 25. This order contains no relevant differences from the July 31 order.
- [9] The Current Motion states that NB Power’s business activity is no longer restricted to critical functions. It indicates that it is at a “steady state of operations” in which normal business functions are being performed, subject to directives and policies aimed at minimizing transmission of the COVID-19 virus.
- [10] On August 7, the Board issued a letter to all parties, directing that any party wishing to respond to the Current Motion to file and serve a response by August 21, with an indication of any evidence upon which it seeks to present or rely upon.
- [11] Responses were received from J. D. Irving, Limited, Dr. Roger Richard, Utilities Municipal and the Public Intervener. No interveners submitted evidence in relation to the motion. The Public Intervener however, stated that she would rely on evidence previously filed in this proceeding.
- [12] J.D. Irving, Limited stated that it had no objection to the Current Motion.
- [13] Utilities Municipal supported the issuance of a decision, and took no position in relation to the date for any rate changes. Mr. Stoll submitted that the Board should not “...complicate the matters or make the situation more cumbersome going forward than it needs to be...”
- [14] Dr. Richard in his written submission dated August 21, expressed concerns on a number of issues related to the regulation of NB Power. He did not however, directly address the issues raised in the current motion. Dr. Richard agreed that a later implementation date was better for the public, but did not support a change in rates.

[15] Dr. Richard also filed a Notice of Motion on September 9 seeking an order that would cancel and start anew Matter 458 with the 2021-2022 General Rate Application (Matter 477), yet to be filed by NB Power. The Board has addressed that motion in a Ruling on Motion dated September 25.

[16] The Public Intervener supported NB Power's motion to lift the adjournment. However, Ms. Black took issue with deferring the effective date for the rate increase to March 31, 2021. In her Response to Notice of Motion dated August 21, she submitted:

While the most recent Mandatory Order demonstrates some improvement in the uncertainty and economic impact of the COVID-19 pandemic since the date of the [March 24] Ruling, it does not provide evidence of stability and improvement for the remainder of the rate year sufficient to ensure that any rate increase that is not just and reasonable now will be just and reasonable on March 31, 2021.

[17] Ms. Black concluded by stating:

If the Board agrees with NB Power that it is just and reasonable to forego any rate increase until the end of the rate year, then the Board should fix rates accordingly and then await an application by NB Power for interim rates (if the Board grants NB Power's pending motion in Matter 477).

[18] The Current Motion was heard via video conference on September 10. The two Mandatory Orders attached to the Notice of Motion were not filed as exhibits. NB Power did not present additional evidence.

B. Issues

[19] The Current Motion raises the following issues:

- a. Should the *sine die* adjournment be lifted, and a rate decision rendered? and
- b. If the adjournment is lifted, should the Board defer the setting of rates to March 31, 2021?

C. Analysis

1. Should the *sine die* adjournment be lifted?

[20] It is apparent that, as of March 24, when the Board granted the adjournment, information about the nature of the pandemic and its various impacts were still evolving. As it currently stands, the State of Emergency may remain in effect for an indeterminate period.

[21] The Board finds there is no reason to continue the adjournment of this matter.

2. Should the Board defer the setting of rates to March 31, 2021?

[22] The Board is required to set the time at which any change in the rates is to take effect. Subsection 103(6) of the *Electricity Act* (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.

[23] NB Power provided a limited amount of evidence in support of its motion. Mr. Furey argued that the financial impact of deferring the implementation date to March 31 would be approximately \$13 to \$14 million. This was supported however, by reference to evidence submitted in previous hearings and this matter about the approximate revenue attributed to a 1% increase in rates. None of his assertions were disputed by the parties.

[24] There was no evidence of the impact that deferring a rate change for the next six months would have on future general rate applications. Mr. Furey indicated that it would not "move the needle" on future rate requests. He submitted however, that NB Power believes it can withstand foregoing that revenue. This was not supported by any data, analysis or evidence.

- [25] Additionally, there was no evidence to support the assertion that deferring the implementation date is a needed benefit for ratepayers, or that ratepayers would continue to suffer economically as a result of the COVID-19 pandemic.
- [26] In order for the Board to defer setting rates, it must have an evidentiary basis to set a time to implement the rates. Given the limited evidence, the Board is required to make certain inferences, which are discussed below.
- [27] As previously mentioned, the March and July Mandatory Orders were not filed as exhibits, but in the Board's view, they are uncontroversial and beyond reasonable dispute. They explain the background for the *sine die* adjournment and the Current Motion to lift the adjournment. They were not the subject of debate among the parties.
- [28] There was also no dispute that the financial impact of deferring the implementation date would result in revenue being reduced by an estimated \$13 to \$14 million. This presumes that many factors affecting NB Power's revenue are consistent with the years from which the data is derived. Given the economic impact of the COVID-19 pandemic, the Board must assess whether this is a reasonable assumption.
- [29] No other party challenged the estimated financial impact or presented contrary evidence that would demonstrate a significant change in the factors affecting NB Power's revenue for the next six months.
- [30] NB Power is asking the Board to conclude that the potential impact on ratepayers of a rate increase outweighs NB Power's need for additional revenue.
- [31] It was reasonable to infer that the Mandatory Order of March 19 would have a profound impact on the economy. The July 31 Renewed and revised Mandatory Order – COVID-19 has permitted most businesses to reopen. As stated above, the most recent iteration of the Mandatory Order does not alter this situation.
- [32] Unlike in March, the continuing economic impacts of both COVID-19 and the restrictions under the current Mandatory Order are more difficult to assess. It is not as easy to conclude that the current environment will have significant and far reaching economic impacts on ratepayers. While under normal circumstances the Board would

have preferred more direct, primary evidence, the Board is left to assess the current environment with limited evidence.

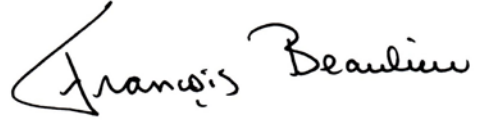
- [33] As submitted by Mr. Stoll, there is no perfect decision in these very special circumstances. The Board must balance the financial interests of NB Power versus the need to provide relief to ratepayers.
- [34] The Board accepts the assertions that the measures taken by all level of governments, as well as private businesses, to contain and mitigate the spread of the COVID-19 pandemic has had social and economic impacts on ratepayers. There remains a great deal of uncertainty with respect to the trajectory of the pandemic and the financial impacts that it may cause to ratepayers in the coming months.
- [35] As stated earlier, NB Power is making the request to defer the implementation of the rates to March 31, 2021. Mr. Furey submits that NB Power will be able to withstand the \$13 to \$14 million loss of revenue for the rest of the 2020-2021 fiscal year.
- [36] The Board concludes that the need for financial relief to ratepayers is greater than the risk of financial harm to NB Power. Therefore, the Board accepts that the request to implement rates on the last day of the fiscal year is an appropriate balance in these unusual circumstances. In accordance to paragraph 103(6)(b) of the Act, the Board shall set March 31, 2021 as the time at which any change in the rates is to take effect, in the event that a change in rates is approved.
- [37] In the event that there is a material change in circumstances relating to the COVID-19 pandemic in the coming months, the Board may review, rescind or vary the current order pursuant to section 43 of the *Energy and Utilities Board Act*, by way of a motion.

D. Conclusion

[38] Having considered NB Power's Current Motion and the oral submissions of the parties in response to the motion, the Board makes the following orders:

- a. The Board grants NB Power's motion to lift the *sine die* adjournment originally granted on March 24; and
- b. The Board sets March 31, 2021 as the date for rates in this matter to take effect.

Dated in Saint John, New Brunswick, this 2nd day of October, 2020.



François Beaulieu
Acting Chairperson



Michael Costello
Member



John P. Herron
Member