



VARIANCE OF A DECISION

IN THE MATTER OF an application by New Brunswick Power Corporation requesting a variance of the decision in Matter 357, in accordance with section 43 of the *Energy and Utilities Board Act*, S.N.B. 2006, c. E-9.18 and Rules 1.2.5 and 8.1.1 of the Rules of Procedure.

(Matter No. 497)

June 16, 2021

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

IN THE MATTER OF an application by New Brunswick Power Corporation requesting a variance of the decision in Matter 357, in accordance with section 43 of the *Energy and Utilities Board Act*, S.N.B. 2006, c. E-9.18 and Rules 1.2.5 and 8.1.1 of the Rules of Procedure.

(Matter No. 497)

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

Acting Chairperson: François Beaulieu

Members: Michael Costello

Patrick Ervin

John Patrick Herron

Board Counsel: Katherine McBrearty

Counsel for Board Staff: Matthew Letson

Chief Clerk: Kathleen Mitchell

APPLICANT:

New Brunswick Power Corporation: John Furey

PARTICIPANTS:

David Amos: Per se

Liz Kramer: Per se

Dr. Roger Richard: Per se

Utilities Municipal: Scott Stoll

PUBLIC INTERVENER: Heather Black

A. Introduction

- [1] This decision arises out of an application filed by the New Brunswick Power Corporation (NB Power) on May 5, 2021 (Application) pursuant to section 43 of the *Energy and Utilities Board Act*, S.N.B. 2006, c. E-9.18 (Act) and Rules 1.2.5 and 8.1.1 of the Board's Rules of Procedure (Rules of Procedure).
- [2] NB Power requests that the Board vary its decision of August 4, 2020 (Matter 357 Decision), by granting an extension of the time required for it to file an application regarding the first phase of the rate design process from June 30, 2021, to a date no later than June 30, 2022.
- [3] In the Matter 357 Decision, the Board directed NB Power to commence a new proceeding to include three distinct phases: first, to file an application by June 30, 2021, to address certain issues identified in the decision; second, to provide details of the timing and issues to be resolved, which would identify rate design options and determine the rate structure; and third, to establish and implement a new rate design.
- [4] On May 12, the Board ordered that NB Power serve the Application and supporting materials on all parties in Matter 357 and post them on its website. NB Power filed an affidavit, sworn on June 3, confirming that the Application and the Notice of the Application were posted in accordance with the Board's Order. The Notice of the Application was also published on May 13 in four daily provincial newspapers.
- [5] At the hearing on June 8, Mr. Furey confirmed that NB Power complied with Rules 8.2.3 and 8.2.6 of the Rules of Procedure with respect to service and filing.
- [6] Written submissions were received from Mr. Scott Stoll, as counsel for Utilities Municipal, and Ms. Heather Black, the Public Intervener.
- [7] Written submissions were also received from Mr. David Amos, Ms. Liz Kramer, and Dr. Roger Richard. The Board finds that none of these written submissions addressed the merits of the issue at hand, whether the Board should vary the Matter 357 Decision, as described in the Application.

B. Issues

[8] The key issue in this matter is whether the Board should vary its Matter 357 Decision as described above and, if so, under what conditions.

C. Analysis

[9] The Board held a hearing on June 8 by video conference and heard oral submissions on behalf of NB Power, Dr. Richard, Utilities Municipal, and the Public Intervener.

[10] Mr. Furey submitted that there are new facts since the Matter 357 Decision that have resulted in changed circumstances that, in the overall context of these rate design proceedings, make up sufficient grounds to vary the decision. He further submitted that the expected easing of restrictions, referred to by the provincial government as the “Path to Green”, is not the end of business impacts as a result of the pandemic.

[11] Mr. Furey stated that the Board should consider the following “four contextual factors” in its decision to extend the time to file an application with respect to rate design:

- (1) In the Matter 357 Decision, the Board identified that rate design proceedings will move forward in a three-phase approach and that, in NB Power’s submission, the Board correctly characterized this first phase as laying a foundation for future rate design proceedings.
- (2) The Board has recognized that decisions in this round of rate design proceedings would likely have long-term impacts for all customers, in particular, the commercial and industrial classes. Mr. Furey submitted that NB Power is required to bring forward proposals with respect to customer classification, including an action plan for the elimination of the General Service II class.
- (3) Proposed changes to rate design impacts on the rates and bills of certain customers, especially in the commercial and industrial classes.
- (4) The importance assigned by the Board to the ability, through advocates, of under-represented customers, to make submissions, which would contribute to the rate design process.

[12] Dr. Richard submitted that he had no objection to extending the time to file an application to June 30, 2022.

[13] Utilities Municipal supported the Application, subject to two comments. First, Mr. Stoll expressed a concern that there may be a strain on the resources of some regular participants in Board proceedings, given the number of potential hearings within the next 18 months. Second, he stated that he does not wish to see this proceeding “languish for another year.” Mr. Stoll suggested that NB Power continue with any work using an “[...] incremental approach to the rate design process so that we don’t inadvertently end up circling back or redoing certain things [...].”

[14] In its submission, Utilities Municipal stated that it was not able to identify specific work, but rather requested that the Board seek input from NB Power about what would be possible to advance the proceeding during any extension of time.

[15] In its reply of June 4, NB Power responded to Mr. Stoll’s comments, agreeing that efforts should be made to avoid overlapping of proceedings before the Board. It suggested that its proposed deadline of June 30, 2022, would accomplish that objective. It noted that, in the meantime, it could advance work on certain issues and utilize a more up-to-date budget and load data.

[16] In her written submission dated May 27, Ms. Black supported the Application stating that she had no objection to the extension of time requested. Ms. Black stated that she supported the suggestion that NB Power file a plan to overcome what was referred to as the “representation gap” to ensure that, for example, residential customers’ interests are adequately represented.

[17] Section 43 of the Act states:

43 The Board may review, rescind or vary any order made by it.

[18] Rules 1.2.5 and 8.1.1 of the Rules of Procedure state:

1.2.5. The Board may in its discretion extend or abridge the time fixed by these Rules or by the Board, on its own initiative or in response to a request by a party, either before or after the time so fixed has expired.

8.1.1. An application to review, rescind, or vary an order under section 43 of the Act, or to rehear an application under section 44 of the Act shall contain:

- a) a concise statement of the facts;
- b) the grounds that the applicant considers sufficient, including:
 - i. any error of law or of jurisdiction,
 - ii. changed circumstances or new facts that have arisen since the close of the original proceeding, or
 - iii. facts that were not placed in evidence in the original proceeding and that were then not discoverable by reasonable diligence;
- c) any prejudice or damage that has resulted or will result from the order;
and
- d) the relief sought.

[19] Accordingly, the Board has the discretion to vary its Matter 357 Decision by granting an extension of the time required for NB Power to file its rate design application.

[20] In making a determination with respect to a variance, the Board must consider the criteria set out under Rule 8.1.1 of the Rules of Procedure, and owes a duty of fairness to those who are affected by its decisions.

[21] As stated in the Matter 357 Decision, the Board needs to consider how the views of consumer groups will be represented in relation to rate design. The Board's hearing procedure encourages public participation to provide a meaningful opportunity to present their case fully and fairly.

[22] Due to the continuing impacts of the COVID-19 pandemic, however, the Board recognizes that some people may not have this opportunity, should the proceeding continue as currently scheduled.

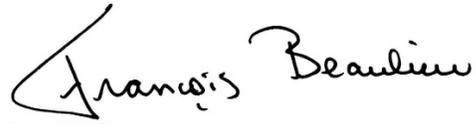
D. Conclusion

[23] In light of these circumstances, the Board varies the Matter 357 Decision and grants an extension of time, as requested. NB Power is to file an application to address the issues

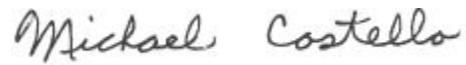
identified as the first phase in the Matter 357 Decision to a date no later than June 30, 2022, subject to the direction below.

- [24] The Board directs NB Power to file a proposal to address any gap in relation to under-represented customers, as referenced in the Matter 357 Decision, by October 31, 2021.

Dated at Saint John, New Brunswick, this 16th day of June, 2021.



François Beaulieu
Acting Chairperson



Michael Costello
Member



Patrick Ervin
Member



John Patrick Herron
Member