



VARIANCE OF A DECISION

IN THE MATTER OF an application by New Brunswick Power Corporation requesting a variance of the decision in Matter 430, in accordance with section 43 of the *Energy and Utilities Board Act*, S.N.B. 2006, c. E-9.18 and Rules 8.1.1 and 1.2.5 of the Rules of Procedure.

(Matter No. 503)

November 25, 2021

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
Board Counsel:	Katherine McBrearty
Counsel for Board Staff:	Matthew Letson
Chief Clerk:	Kathleen Mitchell

APPLICANT:

New Brunswick Power Corporation:	John Furey
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PARTICIPANTS:

Dr. Roger Richard:	Per se
J. D. Irving, Limited:	Christopher Stewart
Utilities Municipal:	Scott Stoll

PUBLIC INTERVENER:	Heather Black
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A. Introduction

- [1] This decision arises out of an application by the New Brunswick Power Corporation (NB Power) filed with the New Brunswick Energy and Utilities Board (Board) on September 7, 2021 (Application). This Application is made pursuant to section 43 of the *Energy and Utilities Board Act*, S.N.B. 2006, c. E-9.18 (Act) and Rules 8.1.1 and 1.2.5 of the Board's Rules of Procedure (Rules of Procedure).
- [2] In its Application, NB Power requests a variance of the Board's decision of July 16, 2019, in Matter 430 (Decision). It is seeking an extension to file the general rate application for the fiscal year 2022/2023 (GRA) to a date no later than March 31, 2022.
- [3] In a subsequent application dated September 17, NB Power requested an order staying the Decision in accordance with Rule 8.3 of the Rules of Procedure. By order dated September 21 (Order), the Board granted the stay, pending the outcome of the review of this Application.
- [4] On September 29, the Board ordered that NB Power serve the Application and supporting materials on all parties in Matters 430 and 458 and post them on its website. The utility complied with the Order.
- [5] Written submissions were received from Dr. Roger Richard, Mr. Scott Stoll, counsel for Utilities Municipal, and the Public Intervener, Ms. Heather Black. NB Power filed a written response to these submissions.
- [6] The Board held a virtual hearing on November 23 and heard oral submissions from Mr. John Furey, on behalf of NB Power, Dr. Richard, Mr. Stoll and Ms. Black. While J.D. Irving, Ltd. Limited (JDI) did not file any written submissions, Mr. Christopher Stewart, counsel for JDI, was permitted to make oral submissions.

B. Legislative Framework

- [7] The following provision of the Act is relevant to this proceeding:

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

[8] The following Rules of Procedure are also relevant:

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.

C. Issue

[9] The issue in this matter is whether the Board should vary its decision related to NB Power's filing requirement for the GRA.

D. Analysis

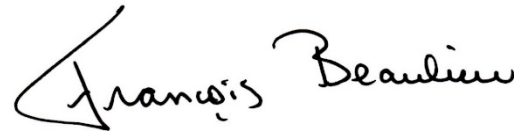
[10] In its Application, NB Power submitted that the government intended to introduce amendments to the *Electricity Act*, S.N.B. 2013, c. 7, in the fall session of the Legislative Assembly of New Brunswick (Legislative Assembly). It further submitted that the amendments will materially affect the filing requirement of the GRA.

- [11] NB Power submitted that the amendments were new facts and constituted changed circumstances that have arisen since the Board rendered its Decision. This information had previously been filed on a confidential basis; however, NB Power withdrew its claim for confidentiality once Bill 77, *An Act to Amend the Electricity Act*, was introduced in the Legislative Assembly on November 10 (Bill 77).
- [12] Mr. Furey submitted that Bill 77 is currently before the Legislature, it would still be appropriate for the Board to grant the request for a variance. He argued that it would not be in the public interest for NB Power to expend resources preparing an application for a GRA proceeding that would likely not be required by virtue of section 43 of Bill 77.
- [13] Ms. Black submitted that the facts outlined in the Application raised sufficient grounds to warrant the requested variance. She stated that these grounds constituted new facts and changed circumstances as contemplated by Rule 8.1.1. b) of the Rules of Procedure. In addition, she submitted that it is in the public interest for the Board to grant the Application.
- [14] Mr. Stoll did not object to NB Power's request for a variance. If Bill 77 passes, he submitted that there would be a significant expense to interveners should the Board order NB Power to file its GRA.
- [15] In contrast, Dr. Richard objected to NB Power's request for a variance citing concern for the public interest. He submitted there will be further arguments against Bill 77.
- [16] Pursuant to section 43 of the Act and Rule 8.1.1 of the Rules of Procedure, the Board has the discretion to vary its Decision. In this matter, the Board can grant an extension of time required for NB Power to file its GRA.
- [17] The Board is satisfied that the introduction of Bill 77 constitutes new facts and changed circumstances that have arisen since the Decision. Without the requested variance, the public interest may be harmed as significant resources may be wasted conducting a proceeding should Bill 77 pass.

E. Conclusion

- [18] Accordingly, the Board varies its Decision and directs NB Power to file its 2022/2023 GRA no later than March 31, 2022, subject to further order of the Board.

Dated at Saint John, New Brunswick, this 25th day of November 2021.



François Beaulieu
Acting Chairperson



Michael Costello
Member



John Patrick Herron
Member