



**NEW BRUNSWICK**  
ENERGY & UTILITIES BOARD

COMMISSION DE L'ÉNERGIE ET DES SERVICES PUBLICS  
**NOUVEAU-BRUNSWICK**

## **DECISION**

**IN THE MATTER OF** an Application by  
New Brunswick Power Corporation pursuant  
to subsections 113(2) and 113(3) of the  
*Electricity Act*, S.N.B. 2013, c. 7.

(Matter No. 513)

December 9, 2022

**IN THE MATTER OF** an Application by New Brunswick Power Corporation pursuant to subsections 113(2) and 113(3) of the *Electricity Act*, S.N.B. 2013, c. 7.

(Matter No. 513)

**NEW BRUNSWICK ENERGY AND UTILITIES BOARD:**

Chairperson: François Beaulieu

Members: Christopher Stewart

Stephanie Wilson

Counsel for Board staff: Abigail Herrington

Chief Clerk: Kathleen Mitchell

**APPLICANT:**

New Brunswick Power Corporation: John Furey

**INTERVENERS:**

Houlton Water Company: Peter Hyslop

Edward Howard: Per se

Liberty Utilities (Tinker Transmission) Robert Blank

L.P.:

Northern Maine Independent System  
Administrator:

Kenneth Belcher

Utilities Municipal:

Scott Stoll

W.K.M. Energy Consultants Inc.:

William Marshall

**ACTING PUBLIC INTERVENER:**

Richard Williams, K.C.

## A. Introduction

- [1] Under subsection 113(3) of the *Electricity Act*, S.N.B. 2013, c. 7 (Act), the New Brunswick Power Corporation (NB Power) is required to apply at least once every three years to the New Brunswick Energy and Utilities Board (Board) for approval of its transmission revenue requirements.
- [2] NB Power's transmission revenue requirement and the resulting rates under the New Brunswick Power Corporation Open Access Transmission Tariff (NB OATT) were last approved in 2018 (Matter 415).
- [3] On December 10, 2021, NB Power filed an application and supporting evidence (Application). In the Application, NB Power is seeking the following approvals:
- (a) NB Power's transmission revenue requirement of \$145.5 million for transmission service;
  - (b) Rates for transmission service contained in Schedules 7, 8, and Attachment H of the NB OATT;
  - (c) The revenue requirement of \$15.6 million for Schedule 1 of the NB OATT;
  - (d) The non-capital support charge rate of 5.03 percent as contained in Schedule 9 of the NB OATT;
  - (e) The revenue requirement of \$5.9 million for Schedule 2 of the NB OATT;
  - (f) The rates contained in Schedules 3, 5, and 6 of the NB OATT;
  - (g) Changes to the NB OATT as set out in Part B – Attachment 1 of the accompanying evidence; and
  - (h) The Transmission Real Power Loss Factor (TRPL) value of 3.3 percent, as well as a change in the calculation methodology for the TRPL.
- [4] By Order dated December 21, a notice of the Application was published in several newspapers. In addition, NB Power provided the notice to existing transmission customers,

interconnection customers, neighbouring transmission providers, and other interested parties. The notice was also placed on the NB Power and Board websites.

- [5] A pre-hearing conference was held via videoconference on January 25, 2022. The Houlton Water Company (Houlton Water), Liberty Utilities (Tinker Transmission) LP (Liberty), Northern Maine Independent System Administrator (NMISA), Utilities Municipal, and W.K.M. Energy Consultants Inc. (W.K.M.) were granted intervener status. Later, Mr. Edward Howard sought intervener status, which the Board granted on March 8.
- [6] Written evidence was submitted by Mr. Howard, the Public Intervener, Utilities Municipal, and W.K.M. The other interveners did not file any evidence in this proceeding.
- [7] On his own behalf, Mr. Howard submitted written evidence. He sought to be declared an expert in transmission OATT development, power generation, and power marketing.
- [8] NB Power challenged Mr. Howard's qualification as an expert. In an oral decision dated July 20, the Board did not qualify Mr. Howard as an expert witness as he did not meet the threshold required of an expert witness.
- [9] Utilities Municipal submitted the written evidence of Mr. John Dalton, President of Power Advisory LLC. Mr. Dalton was qualified as an expert in the subject matter of electricity markets and of generation technologies and projects within these markets.
- [10] W.K.M., a consulting firm that provides power system-related consulting services affected by the NB OATT, also submitted written evidence. The evidence was prepared by Mr. William Marshall, the principal of W.K.M. Mr. Marshall sought to be declared an expert witness in power systems planning, operations, and transmission tariffs.
- [11] NB Power also challenged Mr. Marshall's qualification as an expert on the issue of independence; however, Mr. John Furey, counsel for NB Power, did not challenge his education, experience, or technical qualifications. Mr. Marshall withdrew his request to be qualified as an expert during the proceeding, which the Board accepted.
- [12] The Public Intervener submitted the written evidence of Mr. Marc Montalvo, President of Daymark Energy Advisors, Inc. Mr. Montalvo was declared an expert in the areas of the

U.S. Federal Energy Regulatory Commission (FERC) *pro forma* open access transmission tariff and the development of utility revenue requirements.

- [13] In response to issues raised by interveners in their evidence, NB Power filed rebuttal evidence on April 13.
- [14] The hearing was initially scheduled to begin on April 19. In a letter dated April 5, the Board informed the parties that the hearing could not be held on the scheduled dates due to unforeseen and exceptional circumstances. The hearing was rescheduled and held via videoconference on July 18, 19, 20, and 21.
- [15] In support of its Application, NB Power presented four witness panels. Two of its witnesses were declared experts. Ms. Suedeen Kelly, a lawyer with Jenner & Block LLP, was qualified as an expert in energy regulation, particularly in respect of the FERC *pro forma* open access transmission tariff and FERC's reciprocity policies and requirements. Dr. Joe Chow, an Institute Professor at the Rensselaer Polytechnic Institute, was qualified as an expert in electrical engineering with specific expertise in the design, operation, and modeling of power systems, which includes the state estimation methods used in deriving consistent system models for use in security monitoring, analysis, optimization, and control of power systems.
- [16] On July 22, NB Power filed a notice of motion seeking an order declaring that W.K.M. breached Rule 3.2.4(b) of the Board's Rules of Procedure. In its notice, NB Power submitted that W.K.M. failed to disclose the interests of unknown represented third parties during the proceeding. It sought that W.K.M.'s intervener status be rescinded, and the evidence of W.K.M. and the testimony of Mr. Marshall be struck from the public record.
- [17] Consequently, the Board set aside August 10 to hear oral submissions. Parties were asked to participate in an alternative dispute resolution session, to which the parties agreed. The parties were able to reach an agreement on various settlement terms that the Board accepted. As a result, the notice of motion was withdrawn by NB Power.
- [18] The final arguments were heard on September 9.

## B. Legislative Framework

[19] The following provisions of the Act are relevant to this proceeding:

**68** It is declared to be the policy of the Government of New Brunswick

(a) that the rates charged by the Corporation for sales of electricity within the Province

(i) should be established on the basis of annually forecasted costs for the supply, transmission and distribution of the electricity, and

(ii) should provide sufficient revenue to the Corporation to permit it to earn a just and reasonable return, in the context of the Corporation's objective to earn sufficient income to achieve a capital structure of at least 20% equity,

(b) that all the Corporation's sources and facilities for the supply, transmission and distribution of electricity within the Province should be managed and operated in a manner that is consistent with reliable, safe and economically sustainable service and that will

(i) result in the most efficient supply, transmission and distribution of electricity,

(ii) result in consumers in the Province having equitable access to a secure supply of electricity, and

(iii) result in the lowest cost of service to consumers in the Province, and

...

**113(2)** The Corporation may at any time apply to the Board for approval of changes to the provisions of the approved transmission tariff.

**113(3)** Following the decision of the Board with respect to the application under subsection (1), the Corporation shall, at least once every three years, make an application to the Board for approval of its transmission revenue requirements.

...

**113(13)** In the case of an application under subsection (2), the Board, at the conclusion of the hearing, shall

(a) approve the changes that it is satisfied are just and reasonable,

(b) make any other changes to the approved transmission tariff that it finds to be just and reasonable, and

(c) set the time at which any change in the approved transmission tariff is to take effect.

**113(14)** In the case of an application under this section in which a transmitter applies for approval of its transmission revenue requirements, the Board shall, at the conclusion of the hearing, approve or fix just and reasonable rates pertaining to the provision of transmission service and ancillary services and set the time at which any change in the approved transmission tariff is to take effect, and the Board shall base its decision on the following:

(a) if only one transmitter is a party to the proceedings before the Board,

(i) that transmitter's transmission revenue requirements as approved or fixed by the Board, and

(ii) the other transmitters' transmission revenue requirements that were last approved or fixed by the Board; and

(b) if more than one transmitter is a party to the proceedings before the Board, all those transmitters' transmission revenue requirements as approved or fixed by the Board.

**113(15)** Subject to subsection (16), in making any order or decision in respect of an application under this section, the Board shall take into consideration

(a) the policy set out in section 68,

(b) the most recent integrated resource plan approved or deemed to be approved by the Executive Council under section 100,

(c) the most recent strategic, financial and capital investment plan filed with the Board under section 101,

(d) any requirements imposed by law on the Corporation that may be relevant to the application, including, without limitation, requirements regarding demand-side management and energy efficiency plans and renewable energy requirements,

(e) any directive issued by the Executive Council under section 69 that may be relevant to the application,



(f) any policy established by a regulation made under paragraph 142(1)(f) that may be relevant to the application, and

(g) any other factors that the Board considers relevant.

[20] The Board is also guided by the following:

**128** In an application under this Act or the regulations, the burden of proof is on the applicant.

### **C. Issues**

[21] In this decision, the issues to be determined by the Board will be addressed under the following categories:

(a) Transmission Revenue Requirement;

(b) Transmission Services – Schedules 7, 8, 9 and Attachment H;

(c) Ancillary Services;

(d) NB OATT Changes; and

(e) Miscellaneous Issues.

### **D. Analysis**

[22] This Application is the third since 2013 whereby NB Power seeks approval of its transmission revenue requirements and transmission tariff. As stated earlier, NB Power is required to apply for approval of its transmission revenue requirements at least once every three years. It may apply, however, at any time for approval of changes to the provisions of the approved transmission tariff pursuant to subsection 113(2) of the Act.

[23] While NB Power is responsible for the NB OATT, it is important to note that a "transmitter" is defined as NB Power and any other person who, at the time of the Act coming into force, owned a transmission system within the province (or a subsequent

owner). Liberty is the only other transmitter with approved revenue requirements in the Province of New Brunswick.

[24] In this proceeding, NB Power is the only transmitter seeking approval of its revenue requirements. When approving or fixing new rates under the tariff, the Board must consider the revenue requirements of NB Power and Liberty, as they were last fixed by the Board. Liberty's revenue requirement is \$2.8 million per the evidence filed in this proceeding.

[25] This decision will deal first with the request for approval of the transmission revenue requirement, which is addressed below.

### 1. Transmission Revenue Requirement

[26] NB Power has requested the approval of a total transmission revenue requirement of \$145.5 million. These costs reflect the amounts required to operate the transmission system to cover projected operation, maintenance, and administrative expenses, depreciation and amortization expenses, taxes, finance costs and other income, and an allowable return on equity. The particulars are set out in the following table:

<b>NB Power Transmission and System Operator Division Revenue Requirement Fiscal Year Ending March 31, 2023 (in millions \$)</b>	
<b>Component</b>	<b>Amount*</b>
Operations, maintenance, and administration	\$57.7
Depreciation and amortization	\$30.8
Taxes	\$15.1
Finance costs and other income	\$17.0
Allowable return on equity (net earnings)	\$25.0
<b>Total Revenue Requirement</b>	<b>\$145.5</b>

\* Numbers may not total due to rounding.

[27] No other party took issue with the above amounts relating to depreciation and amortization, taxes, finance costs and other income, and the allowable return on equity. The Board accepts the reasonableness of the forecast of these four revenue requirement components and are accordingly approved.

[28] Issues were raised during the proceeding concerning controlling costs and achieving the allowable return on equity, which will be addressed later in the decision. The Board will review the operations, maintenance, and administration (OM&A) relating to labour and benefits in the following section.

**a. Operations, Maintenance, and Administration**

[29] Several components form part of the OM&A. Labour and benefits is the most significant single component making up approximately 80% of the total OM&A. NB Power has budgeted \$45.9 million for 378 employees for the 2022-2023 test year. This is an increase of \$7.5 million from the amount approved by the Board in 2018.

[30] Under cross-examination, Ms. Nicole Poirier, Executive Director, Transmission and Distribution Operations at NB Power, testified that, on average, ten positions were left vacant during the preceding three years. She also testified that this was due to several changes that occurred within NB Power, including employees changing positions and retirements.

[31] In final argument, Mr. Peter Hyslop, counsel for Houlton Water, argued that NB Power had increased its number of budgeted employees by 55 since its last transmission revenue requirement application. He also argued that this was significant, especially considering that NB Power had fewer employees in the last three years than they had budgeted.

[32] Mr. Scott Stoll, counsel for Utilities Municipal, submitted that his client was concerned about vacancies. He argued that while NB Power will continuously have vacant positions, like all companies, there was no need to provide revenue to unfilled jobs because open positions do not require the expenditure of money. Accordingly, Mr. Stoll requested that the Board reduce the revenue requirement to reflect the average of ten vacant positions per year, which he quantified at \$1 million.

- [33] In an interrogatory response to Houlton Water, NB Power stated that the average salary for a new position was \$75,000 plus 21.37 percent for benefit cost, for an average of approximately \$91,000 per position.
- [34] In final argument, Mr. Furey stated that a \$645,000 vacancy credit was built into the filing, which was intended to address the recognition that there will be vacant positions over time. At that time, however, he could not point to the credit in the evidence.
- [35] NB Power did confirm in response to an interrogatory to Utilities Municipal that as part of the budgeting process, a labour vacancy credit was incorporated, within the labour cost category to account for the timing of the filling of vacant positions. The utility, however, did not quantify the credit or provide any information on how this credit was determined or applied. Furthermore, none of NB Power's witness panel members testified to the application of such a credit during cross-examination on the issue.
- [36] The Board finds that the application of such a credit is not apparent on the face of the record. Additionally, no party had the opportunity to test Mr. Furey's assertion referencing the credit during his rebuttal closing argument.
- [37] According to section 128 of the Act, the burden of proof is on NB Power. The Board finds that a simple reference in argument to a credit without clear evidence of how such credit is quantified, derived, or applied, is insufficient evidence of the credit.
- [38] The Board notes that, on average, ten positions have been left vacant over the three years prior to the test year, and these costs were not incurred. Therefore, the Board concludes that vacant positions do not require the expenditure of money in any test year. A reduction in the revenue requirement to reflect the average of ten vacant positions is justified.
- [39] As a result, the Board will disallow \$0.9 million (i.e., \$91,000 x 10 positions) of the OM&A expense from the revenue requirement.

#### **b. Return on Equity**

- [40] In its Application, NB Power requested a return on equity (ROE) of 10 percent, which is similar to the two previous matters (Matters 256 and 415).

[41] In his report, Mr. Montalvo's assessed the reasonableness of NB Power's requested 10 percent ROE. He performed an independent ROE analysis, which suggested that the requested 10 percent ROE was within the range of reasonable ROEs, but also supported a request for a higher ROE.

[42] In Matter 256, the Board addressed the issue of the acceptable range for the ROE and the nature of the evidence required to establish an ROE "above" the lower end of the prescribed range. As noted in the decision, the Board finds that a 10 percent ROE is a "floor" and does not require any supporting evidence. The requested ROE of 10 percent is therefore approved.

[43] The Board, however, reiterates that if NB Power applies for an ROE over 10 percent in future proceedings, it must provide evidence based on standard regulatory practice.

**c. Conclusion – Transmission Revenue Requirement**

[44] The Board approves the revenue requirement as filed less the disallowance of \$0.9 million described above. In addition, Liberty's most recent approved revenue requirement of \$2.8 million must be added to the approved amount to arrive at the final revenue requirement.

[45] The following table summarizes the approved revenue requirements for NB Power and Liberty:

<b>Component</b>	<b>Proposed NB Power Revenue Requirement * (in million \$)</b>	<b>Less Disallowance (in million \$)</b>	<b>Liberty Utilities (Tinker Transmission) LP Revenue Requirement (in million \$)</b>	<b>Approved Revenue Requirement (in million \$)</b>
Operations, maintenance, and administration	\$57.7	\$0.9	\$0.8	\$57.6
Depreciation and amortization	\$30.8		\$0.4	\$31.2
Taxes	\$15.1		\$0.5	\$15.6
Finance costs and other income	\$17.0		-	\$17.0
Allowable return on equity (net earnings)	\$25.0		\$1.1	\$26.1
<b>Total Revenue Requirement</b>	<b>\$145.5</b>	<b>\$0.9</b>	<b>\$2.8</b>	<b>\$147.4</b>

\* Numbers may not total due to rounding.

[46] The approved revenue requirement will impact the proposed associated rates for transmission services, namely, Schedules 7, 8, 9, Attachment H, and Schedule 1 of the ancillary services as discussed below. All other schedules will not be impacted by the above disallowance.

## **2. Transmission Services – Schedules 7, 8, 9, and Attachment H**

[47] The rates associated with Schedules 7 and 8 relate to the long-term and short-term point-to-point transmission services and the non-firm point-to-point transmission service under the NB OATT, respectively.

- [48] NB Power also sought approval of a Schedule 9 rate for its non-capital support charge and a rate for Attachment H for network integration service.
- [49] In this Application, NB Power used the same cost allocation and rate design methodology as used in Matter 415. The Board accepts NB Power's cost allocation, system usage forecast, and rate design methodology as filed.
- [50] NB Power is directed to file for approval a revised revenue requirement and resulting associated transmission rates for Schedules 7, 8, 9, and Attachment H, flowing from the Board's conclusion on the transmission revenue requirement.

### **3. Ancillary Services**

- [51] Ancillary services include services provided by NB Power required to schedule the movement of power through, out of, within, or into a control area in a reliable manner. They also include generator-supplied services that can be acquired from NB Power, purchased from a third party, or self-supplied.
- [52] NB Power is seeking approval for the proposed revenue requirements and rates associated with ancillary services that are found in Schedules 1, 2, 3(a), 3(b), 5, 6(a), and 6(b). The utility is also seeking approval of the rate relating to Schedule 3(c).
- [53] The proposed revenue requirements and rates associated with these services are summarized in the following table:

<b>Ancillary Services</b>	<b>Schedule</b>	<b>Proposed Revenue Requirement (in millions \$)</b>	<b>Proposed Rates</b>
Scheduling, System Control, and Dispatch	Schedule 1	\$15.6	Network: \$0.337/kW-month Point-to-Point: \$0.389/kW-month
Reactive Supply and Voltage Control	Schedule 2	\$5.9	Network: \$0.127/kW-month Point-to-Point: \$0.146/kW-month
Automatic Generation Control	Schedule 3(a)	\$2.1	\$10.572/kW-month
Load Following	Schedule 3(b)	\$5.8	\$10.535/kW-month
Automatic Generation Control and Load Following for Wind Power Generators	Schedule 3(c)	-	\$2.05/MWh
Operating Reserve – Spinning	Schedule 5	\$9.5	\$10.523/kW-month
Operating Reserve – Supplemental (10 min.)	Schedule 6(a)	\$14.4	\$6.268/kW-month
Operating Reserve – Supplemental (30 min.)	Schedule 6(b)	\$11.9	\$6.268/kW-month

**a. Schedule 1**

[54] Schedule 1 is an ancillary service provided solely by the NB Power system operator and is mandatory for all transmission customers. This service schedules the movement of power through, out of, within, or into a control area.

[55] Given the Board's ruling on the transmission revenue requirement, NB Power is directed to file a revised Schedule 1 revenue requirement and resulting rate for approval.



**b. Schedule 2**

- [56] Reactive supply and voltage control, Schedule 2, is another mandatory ancillary service provided solely by NB Power's system operator. This service is required to maintain, within acceptable limits, transmission voltages on the transmission facilities in New Brunswick.
- [57] No party took issue with Schedule 2 methodology or its revenue requirement. The Board accepts the revenue requirement and approves the resulting rates as filed.

**c. Schedules 3(a), 3(b), 5, 6(a) and 6(b)**

- [58] These schedules relate to capacity based ancillary services (CBAS), which are necessary to support the transmission of capacity and energy from resources to loads while maintaining the reliable operation of the transmission system. These ancillary services can either be self-supplied or purchased through the NB OATT.
- [59] Regulation and frequency response is offered under Schedule 3 of the NB OATT. It consists of: automatic generation control (Schedule 3(a)); and load following (Schedule 3(b)).
- [60] Three operating reserve ancillary services are available under Schedules 5 and 6 of the NB OATT. They are as follows: a 10-minute spinning (Schedule 5), a 10-minute supplemental (Schedule 6(a)), and a 30-minute supplemental (Schedule 6(b)).
- [61] The rates sought for CBAS are based on a proxy pricing model designed to estimate the long-run marginal cost of providing services. The model uses two proxy generation units as the basis for developing the revenue requirement and rates for the services.
- [62] In his view, Mr. Montalvo submitted that using the above proxy model for a system such as NB Power's with no expected load growth or changes to point-to-point service requests was inconsistent with cost causation principles. He recommended moving away from this methodology by utilizing modelling software to calculate the cost to supply the service as the basis for setting these rates.
- [63] Mr. Kenneth Belcher, President and Chief Executive Officer at NMISA, and Mr. Marshall also raised concerns regarding NB Power's proxy model.

- [64] The Board notes that the proxy analysis used in this proceeding was first approved in 2003. The Board concludes that the use of the current proxy model by NB Power remains appropriate. The revenue requirements and rates as set out in the above table for Schedules 3(a), 3(b) 5, 6(a), and 6(b) are approved as filed.
- [65] The Board, however, recognizes the concern raised by Mr. Montalvo that "[...] The use of proxy resources is inconsistent with the expected cost of providing capacity-based ancillary services from NB Power's generating resources over the next three years."
- [66] In its written final argument, NB Power agreed that for the next application, it will produce a study that evaluates the current embedded cost of CBAS and the expected long-run marginal cost of such services.
- [67] The Board agrees that an embedded cost study and an evaluation of the expected long-run marginal cost of CBAS, is required. The Board directs NB Power to file within six months of this decision, a proposal outlining a detailed approach for conducting such a study. Once filed, the Board will review the proposal and provide further direction.

**d. Schedule 3(c)**

- [68] Schedule 3(c) of the NB OATT contains the rates for the ancillary service of automatic generation control (AGC) and load following (LF) for non-dispatchable wind power generators. This ancillary service is required to address the aggregate impact of non-dispatchable wind generation.
- [69] In its Application, NB Power proposes a rate of \$2.05/MWh, an increase from the current rate of \$0.44/MWh. The requested rate is based on a cost-of-service study undertaken by NB Power at the Board's direction.
- [70] NB Power utilized its PLEXOS economic dispatch software to run three scenarios. The first scenario used actual hourly wind profiles and the corresponding actual AGC and LF requirements; the second used actual wind profiles and excluded the actual AGC and LF requirements caused by wind generation; and the third used actual AGC and LF requirements but used forecasted hourly wind profiles.

- [71] The results indicated a cost of \$0.18/MWh for AGC and LF due to the inherent variability of energy production from wind generation. The results further indicated a cost of \$1.87/MWh caused by the inherent error between the forecast and actual wind generation. These costs were added together for a potential total cost of \$2.05/MWh.
- [72] Mr. Montalvo raised a concern regarding the use of the combustion turbine price as the proxy price for regulation shortages occurring in the PLEXOS modelling. This concern was based on the potential that in actual operations, system operators may take manual actions to avoid regulation shortages, which may be less costly than combustion turbines.
- [73] On this issue, he testified that because the operators were taking a series of manual actions which could be of a lesser cost than using the model proxy of a combustion turbine, the \$2.05/MWh appeared to him to be an upper bound. From the information available, he could not discern what manual actions were taken and their cost.
- [74] In its written final argument, NB Power agreed "[...] to review the historical data surrounding manual operator interventions used to avoid regulation shortages and, in future applications, to update the proxy price used in the Schedule 3(c) modeling for such potential shortfalls."
- [75] Mr. Stoll raised another concern with the modelling inputs. He stated the amount of wind that will be present on the system during the test year is overstated. In final argument, he argued that Mr. Craig Church, a Senior Corporate Modeler at NB Power, had confirmed the model included 654 megawatts of wind even though 20 megawatts for the LORESS projects will not be built. He also argued that 100 megawatts associated with Kent Hills will be offline in 2023. In his client's view, the cost related to the provision of Schedule 3(c) service was overstated.
- [76] Even in cases where a regulator accepts the result of a cost-of-service study, it may move rates gradually in the direction of the study results to avoid rate shock and foster rate stability. Cost-of-service studies are invaluable but are inherently only a snapshot of a particular moment. The proposed rate would represent a 366 percent increase from the current rate. The Board finds such an increase is not just and reasonable.
- [77] The Board recognizes that the current \$0.44/MWh rate is too low, and the evidence indicates an increase is in order. Study results may vary over time as assumptions and

inputs built into such studies are corrected and refined, particularly given that this is the first application where NB Power has used the proposed methodology. Ensuring equity and balancing the interests of the utility and the ratepayer are core principles of ratemaking and involve a subjective element.

[78] The Board accepts the Schedule 3(c) rate initially proposed by Mr. Montalvo of \$1.25/MWh (the mid-point between the current rate and the rate sought) as just and reasonable. A rate of \$1.25/MWh represents a 184% increase in the rate, which, in the Board's view, is a substantial increase.

[79] To the extent the data is not already being recorded, the Board directs NB Power to ensure manual interventions and associated costs related to wind ACG and LF, as well as other pertinent information, are recorded for refining the cost study before its next application.

#### **4. NB OATT Changes**

##### **a. Energy Imbalance Service**

##### **(1) Schedule 4**

[80] Schedule 4 relates to energy imbalance service. This service is provided when a difference occurs between the expected and the actual hourly injection or withdrawal from the transmission system. As approved by the Board of Commissioners of Public Utilities in 2006, energy imbalance is settled at the marginal system cost.

[81] In Matter 256, NB Power acknowledged that this approach deviated from the FERC *pro forma* OATT. The Board directed NB Power to submit an analysis concerning Schedule 4 by December 31, 2015.

[82] A report was filed and updated in February 2018. In Matter 415, the Board directed NB Power to include evidence concerning the energy imbalance service methodology as part of its next application.

[83] In this proceeding, NB Power proposed to maintain its current methodology even though it deviates from the FERC *pro forma* approach. NB Power's evidence indicated that its methodology was broadly consistent with FERC principles and adopting the FERC *pro*

*forma* OATT penalty-band-based generator imbalance charge methodology would not provide many of the benefits it is designed to provide.

[84] NB Power cautioned that the FERC *pro forma* approach could create unfairness because penalties would likely only be collected from a subset of NB Power customers. At the same time, the proceeds would be redistributed to all other customers. It expressed a concern that changing methodologies would increase its administrative burden with no significant corresponding benefit to the system users.

[85] Mr. Montalvo recommended that NB Power adopt the FERC *pro forma* OATT penalty-band-based generator imbalance charge methodology based in part on his view that doing so could lower transmission costs for the benefit of native load customers. He testified that if the analysis showed that native load customers would benefit more from maintaining the status quo, then his recommendation would change.

[86] The Board accepts NB Power's submissions and concludes that the utility should continue using its current methodology regarding Schedule 4.

#### **b. Transmission Real Power Loss**

[87] NB Power requested approval of its proposal to calculate TRPL using a State Estimator methodology rather than the Historical Data methodology, which was previously used.

[88] Dr. Chow submitted that the State Estimator methodology is accurate and reputable and calculates real-time losses on each transmission element using modelling information for each element. Using Historical Data methodology, potential shortfalls may exist as some data is not readily available, and calculations are difficult to repeat.

[89] No party questioned Dr. Chow or raised any concerns related to the proposal to change the methodology. The Board accepts the proposal and approves using the State Estimator methodology to calculate TRPL.

[90] The 3.3 percent value for losses as the result of the application of the State Estimator methodology in this matter is also approved.

**c. Other Proposed Changes**

[91] NB Power requests the approval of certain amendments to the textual provisions of the NB OATT. The proposed amendments are designed to align the NB OATT as much as possible with the current text of the FERC *pro forma* OATT.

[92] The amendments proposed are to address the following FERC Orders:

(a) FERC Order 676-H, 676-I & 676-J – Standards for Business Practices and Communication Protocols for Public Utilities;

(b) FERC Order 827 – Reactive Power Requirements for Non-Synchronous Generation;

(c) FERC Order 828 – Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities;

(d) FERC Order 842 – Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response; and

(e) FERC Order 845 & 845-A – Reforms of Generator Interconnection Procedures and Agreements.

[93] Ms. Kelly confirmed that NB Power had addressed the relevant and appropriate FERC Orders. She confirmed that the proposed amendments to the text of the NB OATT substantially conform to the FERC *pro forma* OATT and to the extent there are deviations, she believed these would be acceptable to FERC under principles of reciprocity.

[94] None of the participants in this proceeding raised any concerns regarding the proposed amendments. Consequently, the Board approves the amendments as filed.

[95] The Board notes that NB Power has filed in this proceeding a list of the proposed changes to the NB OATT. The Board directs NB Power to file a similar table including existing tariff text, the approved amended text, and the date the amended provision came into effect. This table is to be filed within six months of this decision and posted on NB Power's website.

## 5. Miscellaneous Issues

### a. Recovery of Return on Equity

- [96] In final argument, Mr. Stoll referenced subsection 68(b) of the Act. In his view, the intent of this provision is that NB Power should be an efficient well-run utility concerned not only about customer cost but also their financial well-being.
- [97] Mr. Stoll submitted that NB Power had fallen short of a 10 percent ROE by approximately \$30 million over the last four years. The Board notes that the allowable ROE for the fiscal years 2019-2020, 2020-2021, and 2021-2022 were below the Board-approved ROE for 2018-2019 of \$20.2 million.
- [98] The evidence shows that the asset base has increased by \$148 million from \$650 million in 2018-2019 to \$798 million in 2022-2023. The capital projects under \$50 million to address aging infrastructure and the condition of transmission line assets drove significant increases in depreciation and amortization, taxes, and finance expenses for the test year.
- [99] In this proceeding, NB Power's repeated failure to recover its full allowable ROE was the subject of considerable discussion. What was particularly telling of NB Power's current approach to recovering the allowable ROE was the acknowledgment by Ms. Ramani Anupindi, Manager, Special Accounting at NB Power, that the ROE is just a fallout at the end of the process.
- [100] Ms. Anupindi testified that NB Power has a very vigorous process in budgeting its costs and has a target it has to meet to maintain system reliability and safety of their customers. She acknowledged, however, that the "[...] budget is concentrating more on the business needs and the cost requirements to meet those needs and return on equity is a fall out at the end of the process."
- [101] Mr. Stoll further argued that when the ROE is not met, it reduces the contribution to ROE for the entire operations of NB Power. He submitted that when the Transmission & System Operator division achieves the approved ROE, this impacts the larger utility and its ability to meet its statutory objective of 80 percent debt and 20 percent equity capital structure.

- [102] Mr. Stoll submitted, however, that NB Power might continue to fail to achieve its 10 percent ROE. He stated that the approach to spending by the utility seems to be backward as there is inadequate control on some of the utility's costs. He submitted that the utility is not operating within a spending envelope to ensure the return is earned. He stated that if the utility cannot manage its spending within the amount available to ensure that an appropriate level of return is available in future test years, it is inconsistent with the objectives set out in section 68. In his view, it seemed that ratepayers are an endless source of funds.
- [103] The Board finds that the purpose of the inclusion of the ROE in the approved revenue requirement is not to, in essence, create room in the NB Power's budget to cover cost overruns or revenue shortfalls as they "fall out" from operations. Recovery of the allowable ROE is essential to pay down NB Power's debt obligations. In addition, the Board is concerned that the evidentiary record indicates that the ROE may not be achieved.
- [104] During cross-examination, Ms. Poirier and Ms. Anupindi testified that NB Power assumed that inflation would be 2 percent on a go-forward basis. Ms. Poirier also testified that global changes and events are occurring at the time of this proceeding, which impacts NB Power and have not been considered. The evidence shows that the proposed capital project budgets did not consider inflationary pressures in future years.
- [105] The Board is also concerned about actual costs being higher than initially anticipated and the impact higher costs will have on future net earnings and rates. Rates have been set based on a revenue requirement designed to recover an ROE of \$25 million. Going forward, the Board will monitor NB Power's financial results on an annual basis to determine if this is occurring.
- [106] Consequently, NB Power is directed to file a report that includes its annual results, including the allowable rate of return for the transmission operation, within 45 days of the end of the fiscal year. The report should include an update on the cost of all capital projects with a total budget exceeding \$5 million. Additionally, the report should include the estimated annualized costs of the projects and an explanation of any variances.



## **b. Claim Advanced by Mr. Edward Howard**

[107] In this proceeding, Mr. Howard advanced a claim that the New Brunswick Energy Marketing Corporation held an unfair marketing position on the AC radial at Madawaska to the load in Northern Maine.

[108] In his written closing submission, Mr. Howard stated that the AC radial load served through Madawaska had no Available Transfer Capabilities capacity remaining. He argued that the full reservation by New Brunswick Energy Marketing provided zero capacity for any other party to serve load in Northern Maine and disallowed any advantage that a party would gain by hedging supply with Hydro Quebec.

[109] Mr. Howard sought an annual payment of \$216,000 payable by the New Brunswick Energy Marketing Corporation to Versant Power Maine Public District or via NMISA. He also sought a retroactive payment for ten years, totalling \$2.16 million. Additionally, in his final argument, he requested a yearly payment of one half million dollars to the owner of the system should this configuration remain.

[110] During the proceeding, Mr. Howard acknowledged that the relief he sought was compensation payable by New Brunswick Energy Marketing Corporation to Versant Power, neither of whom is a party to this proceeding. As a result, Mr. Furey argued that Mr. Howard did not have the necessary legal standing to advance the claim. The Board agrees. Neither IEP Canada Ltd. nor Mr. Howard has a direct or personal interest in the subject matter of the claim. In addition, Mr. Howard did not advance any arguments purporting to represent a broader public interest. The Board concludes that Mr. Howard did not have the necessary legal standing to advance the claim based on a broader public interest.

## **E. Conclusion**

### **1. Approval of Revenue Requirement and Rates**

[111] The Board concludes that:

- (a) NB Power's 2022-2023 transmission revenue requirement is approved, subject to a disallowance of \$0.9 million of the OM&A expense;

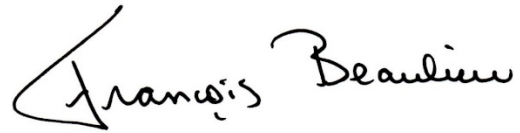
- (b) NB Power is directed to file, for approval, its 2022-2023 transmission revenue requirements and resulting transmission rates under the NB OATT following the decisions made in this proceeding. These revisions are to include the last-approved Liberty revenue requirement of \$2.8 million;
- (c) Following its review of the above filing, the Board will approve the transmission revenue requirement and fix rates pertaining to the provision of services in Schedules 1, 7, 8, 9, and Attachment H;
- (d) The revenue requirement and associated rates relating to ancillary services in Schedules 2, 3(a), 3(b), 5, 6(a), and 6(b) are approved;
- (e) The rate relating to ancillary services in Schedule 3(c) is set at \$1.25/MWh; and
- (f) The use of the State Estimator methodology and the 3.3 percent value for losses are approved for the transmission real power loss.

[112] Once NB Power has filed the necessary additional information, the Board, subject to the above approvals, will issue an Order setting rates and a time at which the changes are to take effect.

## **2. Approval of Amendments to OATT**

[113] The Board approves the amendments to the text of the NB OATT as filed.

Dated at Saint John, New Brunswick, this 9<sup>th</sup> day of December 2022.



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François Beaulieu  
Chairperson



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Christopher Stewart  
Member



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Stephanie Wilson  
Member