



NEW BRUNSWICK
ENERGY & UTILITIES BOARD

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

DECISION

IN THE MATTER OF the setting of the annual rate riders for New Brunswick Power Corporation pursuant to subsection 117.4(8) of the *Electricity Act*, S.N.B. 2013, c.7 as a result of its annual variance account filing pursuant to subsection 10(1) of the *Regulatory Variance Accounts and Deferral Account Regulation – Electricity Act*, N.B. Reg. 2022-17 based on account balances to October 31, 2022.

(Matter No. 545)

April 21, 2023

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

Chairperson: François Beaulieu

Members: Heather Black

Stephanie Wilson

APPLICANT:

New Brunswick Power Corporation: John Furey

INTERVENERS:

J.D. Irving, Limited: Nancy Rubin, K.C.

Utilities Municipal: Scott Stoll

ACTING PUBLIC INTERVENER: Richard Williams, K.C.

A. Introduction

- [1] An amendment to the *Electricity Act* (Act) in 2021 established the requirement for the New Brunswick Power Corporation (NB Power) to create two regulatory variance accounts: the Energy Supply Cost Variance Account and the Electricity Sales and Margin Variance Account.
- [2] The details pertaining to the calculation of each variance account balance are established by the *Regulatory Variance Accounts and Deferral Account Regulation - Electricity Act* (Regulation) and are prescriptive.
- [3] The net balance of these regulatory variance accounts will be either reimbursed to ratepayers, if a negative balance, or recovered from ratepayers, if a positive balance, through rate riders. The reimbursement or recovery is subject to minimum and maximum limits as set out in the Regulation.
- [4] With the exception of this year, the variance accounts balances will be calculated as the difference between the actual results for a fiscal period between November 1 to October 31 and the forecast for that same period.
- [5] Subsection 117.4(8) of the Act provides that the New Brunswick Energy and Utilities Board (Board) shall ensure that the balance in each of the regulatory variance accounts is:
- (a) recovered by NB Power or reimbursed to ratepayers in accordance with the Regulation; and
 - (b) reflected in rate riders established under the Regulation for each of its rate classes.
- [6] Each rate rider is calculated based on the net balance of the variance accounts as of October 31 of each year. NB Power is to file its results and supporting materials setting out the outstanding balance no later than December 15 of that year.
- [7] The Board determines what portion of the net balance is to be recovered or reimbursed and establishes the necessary rate riders that will remain in effect for the entirety of the next fiscal year, that is, from the following April 1 to March 31. Additionally, the Board sets the time period for which any remaining balance will be reimbursed or recovered.

B. Current Matter

- [8] As required by subsection 10(1) of the Regulation, NB Power filed its variance account recovery filing on December 15, 2022. In its filing, the balance of the Energy Supply Variance Account was \$40.5 million, and the balance of the Electricity Sales and Margin Variance Account was a negative of \$69.1 million. As indicated in the evidence, this amounts to a negative net balance of \$28.5 million.
- [9] As part of the same filing, NB Power submitted its proposed reimbursement schedule and proposed rate riders for certain rate classes that are billed for energy consumption.
- [10] As this is the first year the Regulation is in effect, the Board invited interested parties to make written submissions on the Board's obligations under the Regulation.
- [11] The scope of the Board's jurisdiction for the establishment of the rate rider is set out primarily in sections 11 and 12. The Board is required to do the following:
- (a) Determine what portion of the net balance of the variance accounts as of October 31 will be recovered or reimbursed to ratepayers during the next fiscal year. The amount must be, at a minimum, the greater of 40% of the balance and the lesser of the total balance or \$15 million.
 - (b) Determine a period of fiscal years over which the amount calculated under the Regulation is to be recovered or reimbursed.
 - (c) Allocate the amount involved for the next fiscal year to each rate class in the same proportion as energy supply costs are allocated in the most recent class cost allocation study approved by the Board.
 - (d) Establish rate riders to apply to the energy consumption charge for each rate class necessary to recover or reimburse the allocated amount for the next fiscal year.
- [12] Subsection 12(7) provides that for the purposes of determining the variance account rate riders "[...] the Board shall accept the calculations filed with the Board..." by NB Power each December 15. Additionally, subsection 117.4(6) of the Act provides that "[...] the variance in each of the accounts that is calculated in accordance with this section and the regulations shall be deemed to be prudent and necessary."

- [13] Section 14 of the Regulation establishes the process for an independent auditor, following the end of the fiscal year, to verify the accuracy of each of the regulatory variance accounts. Additionally, the Regulation provides that the Board may make adjustments in accordance with the recommendations of the auditor.
- [14] The Board issued a Partial Decision on March 17, 2023 and made several findings as follows:
- (a) the net balance of the variance accounts;
 - (b) the required amount to be reimbursed by NB Power to customers through rate riders in the fiscal year 2023-2024; and
 - (c) the period for reimbursement of the outstanding net balance to be applied to future years.
- [15] On March 31, the Board ordered NB Power to implement the established rate riders as of April 1st, for the entirety of the fiscal year 2023-2024.

C. Analysis

- [16] As stated earlier, NB Power calculated the net balance of the variance accounts to be a negative \$28.5 million to be refunded to ratepayers through the variance account rate riders. For purposes of establishing the rate riders, the Board is required to accept the calculation of this amount which is statutorily deemed to be prudent and necessary.
- [17] For the establishment of the initial rate riders, subsection 117.4 of the Act provides that the calculation of the variance in each of the variance accounts shall be based on the revenue requirements approved by the board of directors of NB Power. Once approved by its board of directors, NB Power was required to file its 2022-2023 revenue requirements with the Board, which was filed on February 23.
- [18] At the hearing held on February 28, a witness panel of NB Power gave evidence concerning the revenue requirements approved by its board of directors. Mr. Jeff Good, Director, Treasury & Risk Management, testified that the revenue requirements filed were based on a June 2021 PROMOD report. The Board accepts the revenue requirements, as filed, which forms the basis for the variance account calculations.

1. Reimbursement 2023-2024

- [19] Applying the Regulation to the current variance account net balance of \$28.5 million, the amount to be reimbursed during fiscal year 2023-2024 must be between \$15 million and the entire \$28.5 million.
- [20] In NB Power's view, only the minimum balance of \$15 million should be reimbursed. Both the Acting Public Intervener and Utilities Municipal agreed.
- [21] The Acting Public Intervener, however, submitted that the variance account balances do not represent a reasonable picture of NB Power's cost recovery. He identified a mismatch in timing between the recognition of gains on hedge transactions before October 31, and the offsetting costs associated with the hedged volumes recognized later during the winter of 2022-2023.
- [22] The Board shares the Acting Public Intervener's concern that the variance account mechanism will result in the "yo-yo" recovery-reimbursement effect described by NB Power. As indicated in the evidence in Matter 541, NB Power anticipates a material net under-recovery of margins by the end of the 2022-2023 fiscal year. The Board recognizes the counter-intuitive nature of the current statutorily required reimbursement.
- [23] Accordingly, the Board concludes that the reimbursement should be set as low as possible for the fiscal period 2023-2024. This setting is to minimize the worsening of NB Power's under-recovery of its costs resulting from the rate rider.
- [24] The Board sets the amount to be reimbursed to ratepayers at the minimum amount of \$15 million for 2023-2024.

2. Period for Reimbursement

- [25] NB Power submitted in its filing that the remaining portion of the October 31, 2022 balance of \$13.5 million should be reimbursed over two additional fiscal years. During the hearing, Ms. Janice Hicks Gesner, Director, Financial Reporting, testified that the recovery period was only an indication of over what time period NB Power believes the amount would be recovered or reimbursed. The panel stated that the balances would be combined and rolled over from year to year and not kept in a separate account.

[26] For the purposes of proposing rate riders, NB Power intends to submit variance account balances as of October 31, including total amounts outstanding for reimbursement or recovery from previous Board assessments.

[27] NB Power is directed to track specific outstanding balances from each fiscal year and progress of reimbursement or recovery of each balance. For the outstanding balance from the 2023-2024 fiscal year, the progress toward reimbursement amount of \$13.5 million shall be tracked separately from the ongoing running balance of the variance accounts for purposes of ensuring timely recovery or reimbursement of outstanding balances.

[28] The Acting Public Intervener submitted that reimbursing the remaining balance of \$13.5 during the fiscal period 2024-2025 is appropriate because:

(a) The \$28.5 million balance is an accounting anomaly that does not reflect any real over-recovery of costs and it is best to get it off the books as soon as possible.

(b) Over half is being reimbursed in fiscal year 2023-2024 and this approach would result in a reasonable balance of credits for two years.

(c) This approach would avoid the need for tracking three separate balances when establishing the 2025-2026 rate riders.

[29] While recognizing the principle of rate stability, the Board favours the recovery or reimbursement of balances in a timely fashion. Consequently, the Board directs that the remaining \$13.5 million be applied in full to the October 31, 2023 balance of the variance accounts as a separate line item to be reimbursed to ratepayers as a credit which will affect the rate riders for the 2024-2025 fiscal period.

3. Establishment of Rate Riders

[30] The Board has reviewed and accepts NB Power's calculation for the allocation of the \$15 million to be reimbursed amongst the rate classes and the calculation of the rate riders proposed for each rate class necessary to reimburse the respective amounts to each rate class based on the latest Board approved load forecast.

[31] The Board has established the rate riders in the Order of March 31, 2023.

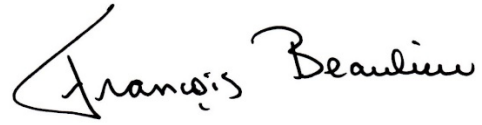
4. Miscellaneous Issues

- [32] As the Regulation mandates complete recovery or reimbursement of variance account balances from ratepayers, it is in the public interest that the monthly changes to the balances of the variance accounts is filed with the Board. The Board directs NB Power to file copies of its monthly variance account calculations pursuant to sections 5 and 7 of the Regulation no later than the last day of the following month.
- [33] The Board acknowledges that the results of individual monthly calculations will need to be seen in context. The Board, however, believes it is in the overall interest of ratepayers that they are aware of the balances of the variance accounts as the year proceeds to plan for the mandatory rate riders which will be imposed during the next fiscal year.
- [34] During the hearing, NB Power recognized the importance of transparency with respect to the effect of the rate riders and committed to providing the rate rider and resulting charge as a separate line item on customer invoices.
- [35] Finally, as this is the initial year for establishing rate riders, the Board may adopt different approaches and interpretations in the future.

D. Conclusion

- [36] The Board accepts the net balance of the Variance Accounts to be negative \$28.5 million.
- [37] The Board sets the amount to be reimbursed in the fiscal year 2023-2024 to the minimum amount of \$15 million. This amount is to be refunded to ratepayers.
- [38] The Board does not accept NB Power's proposal for the period for reimbursing the net balance of the Variance Accounts. NB Power is directed to apply the remainder of \$13.5 million of the net balance to the October 31, 2023, balance for reimbursement in the rate riders established for the fiscal year 2024-2025.
- [39] The Board established the rate riders in the Order of March 31, 2023 and set an implementation date of April 1, 2023.

Dated in Saint John, New Brunswick, this 21st day of April 2023.



François Beaulieu
Chairperson



Heather Black
Member



Stephanie Wilson
Member