

1 decision.

2 So if we could adjourn now, and reconvene at 12:15?

3 MR. STOLL: Thank you.

4 MS. TAYLOR: Thank you.

5 --- Recess taken at 10:10 a.m.

6 --- Upon resuming at 12:15 p.m.

7 **DECISION**

8 MS. TAYLOR: The Panel has considered the motion to
9 vary submissions, and the Board agrees with Board Staff's
10 submission that pursuant to Rule 45.01 of the Board's Rules
11 of Practice and Procedure, the Board may determine the
12 threshold question of whether the matter should be reviewed
13 before conducting any review on the merits.

14 In considering the threshold question, it the Board's
15 view that the tests, as set out in the Board's decision in
16 the NGEIR case issued May 22nd, 2007, EB-2006-0322, -0338
17 and -0340, need to be met.

18 Board Staff sets out the tests in its submission,
19 which include the following:

20 "The grounds must raise a question as to the
21 correctness of the order or decision;

22 "The issues raised that challenge the correctness
23 of the order or decision must be such that a
24 review based on those issues could result in the
25 Board deciding that the decision should be
26 varied, cancelled or suspended;

27 "There must be an identifiable error in the
28 decision as a review is not an opportunity for a

1 party to reargue the case;

2 "In demonstrating that there is an error, the
3 applicant must be able to show that the findings
4 are contrary to the evidence that was before the
5 panel, that the panel failed to address a
6 material issue, that the panel made inconsistent
7 findings, or something of a similar nature; it is
8 not enough to argue that conflicting evidence
9 should have been interpreted differently;

10 "The alleged error must be material and relevant
11 to the outcome of the decision, and that if the
12 error is corrected, the reviewing panel would
13 change the outcome of the decision."

14 In her submissions, counsel for Board Staff argued
15 that the threshold test has not been met, as the applicant
16 has failed to establish that the original Panel erred in
17 its decision.

18 The Board agrees with the position of Board Staff, for
19 reasons which will be addressed shortly, and finds that the
20 applicant has failed to identify an error in the original
21 Panel's decision which is of sufficient materiality that it
22 would cause this reviewing Panel to vary the original
23 order.

24 As a matter of principle, the Board's position on a
25 motion for review is not, as a reviewing Panel, to
26 interfere with an original Panel which was best able to
27 assess the facts on which the decision is based.

28 It is clear that the evidence being put forward by the

1 OWA today is the same evidence that was before the original
2 Panel.

3 Although the Board has determined that this motion
4 fails at the threshold level, the Board would like to
5 address the issues and expectations of the OWA relating to
6 the interim relief raised in the OWA submissions.

7 The OWA argued that it requested immediate interim
8 relief for the requirements of the Distribution System Code
9 in its March 10th application with respect to all the
10 waterpower projects listed in the application, including
11 the four that are the subject of this motion.

12 The OWA further argued that it was not until March
13 30th, 2011, the notice of application and hearing, that the
14 Board responded to the request for interim relief and
15 indicated that additional information would be required to
16 grant interim relief.

17 Further, the OWA submitted that it was not appropriate
18 for the OWA, under the circumstances, to request interim
19 relief for such projects, when the ultimate determination
20 by the Board was not yet known.

21 The Board finds that the Panel in EB-2011-0067 did
22 consider the interim relief requested by the OWA in its
23 March 10th application. Specifically, in the notice of
24 application and hearing and Procedural Order No. 1 issued
25 on March 30th, 2011, the Board indicated that it did not
26 have sufficient evidence before it to consider the granting
27 of the interim relief sought by the OWA.

28 The Board further specified the types of evidence that

1 the Board would need to consider such a request. It is
2 clear from the record of proceeding EB-2011-0067 that after
3 the issuance of the notice of application and hearing and
4 Procedural Order No. 1, the OWA applied for, and the Board
5 granted, interim relief with respect to seven waterpower
6 projects. Specifically, as requested by the OWA, the Board
7 issued three interim decision and orders granting interim
8 relief for seven individual projects as follows.

9 On April 7th, 2011, interim relief was granted with
10 respect to the Kagawong Power Incorporated Project, 11,730.
11 On April 20th, interim relief was granted with respect to
12 the following waterpower projects: 11,780 Big Beaver Falls
13 project; 11,760 Camp Three Rapids Project; 11,750 White
14 Otter Falls Project; and 11,740 Old Woman Falls Project.

15 On April 29th, 2011, interim relief was granted with
16 respect to 12,150 being McGraw Falls, and 12,650 At Soo
17 Crossing GS.

18 In this regard, the Board notes that the OWA chose not
19 to seek interim relief as per the March 30th notice and
20 procedural order of the Board for the four projects that
21 are the subject of this motion.

22 Finally, the Board agrees with the applicant and Board
23 Staff that the Board's decision and order in EB-2011-0067
24 was prospective and, as such, the exemption and request for
25 relief from the obligation to pay 100 percent of the
26 connection cost deposit at the time of executing the
27 connection cost agreement was granted effective May 5th,
28 2011 on a go-forward basis for these projects that had not

1 yet paid.

2 So the motion is dismissed.

3 Are there any issues or questions arising from this
4 decision?

5 MR. STOLL: I have none.

6 MS. TAYLOR: Thank you. And, if not, then we are
7 adjourned.

8 --- Whereupon the hearing concluded at 12:26 p.m.

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