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DECISION AND ORDER ON MOTION

EB-2021-0251

**MOTION BY DONALD D. RENNICK TO REVIEW AND VARY
THE ONTARIO ENERGY BOARD'S DECISION AND ORDER IN
EB-2020-0043**

BEFORE: Michael Janigan
Presiding Commissioner

October 21, 2021



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1 INTRODUCTION

North Bay Hydro Distribution Limited (North Bay Hydro) filed a cost of service application for 2021 distribution rates on January 5, 2021 which was assigned Ontario Energy Board (OEB) File No. EB-2020-0043 (Rate Application). Consumers Council of Canada (CCC), Mr. Donald Rennick (Mr. Rennick), Hydro One Networks Inc. (Hydro One), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) were granted intervenor status.

Parties to the proceeding, with the exception of Hydro One, participated in a settlement conference on April 20 and 21, 2021. Following the settlement conference, North Bay Hydro filed a partial settlement proposal. The OEB issued its Decision and Procedural Order No. 3 on May 31, 2021, which accepted the partial settlement proposal and made provisions for an oral hearing and written submissions on the unsettled issues.

An oral hearing was held over one day in a virtual format on June 22, 2021 and was attended by North Bay Hydro, OEB staff and all intervenors except Hydro One. The OEB issued its Decision and Order on the unsettled issues on September 9, 2021 (Decision).

The motion before the OEB is brought by Mr. Rennick, one of the intervenors in the rate application, and requests that the OEB review and vary, suspend or cancel the Decision. The motion asserts that the Decision failed to follow the policies set out in the OEB's *Renewed Regulatory Framework for Electricity Distributors* (RRFE) as summarized in the OEB's *Handbook for Utility Rate Applications* (Rate Handbook). The grounds for the motion and the OEB's findings are discussed in more detail in section 3 below.

2 THE PROCESS

Rule 43.01 of the OEB's [Rules of Practice and Procedure](#) (Rules)¹ provides that the OEB may, with respect to a motion to review, determine a threshold question of whether the matter should be reviewed before conducting any review on the merits of the motion. This determination may be made with or without a hearing.

For the reasons discussed further in section 3, the OEB finds that the motion does not meet the threshold test and is dismissed without a hearing or a review on the merits.

¹ Ontario Energy Board *Rules of Practice and Procedure*, revised July 30, 2021

3 DECISION

3.1 Summary of Decision in EB-2020-0043

The Decision that is the subject of Mr. Rennick's motion made determinations on five unsettled issues in the rate application. The grounds set out in the motion refer specifically to the unsettled OM&A issue.

North Bay Hydro had requested a test year OM&A budget of \$8.57M. Intervenors and OEB staff recommended reductions to this amount ranging from \$0.72M to \$2.14M. The hearing panel found that the OM&A budget should be reduced by \$0.75M to \$7.82M.

In making its determination on OM&A reductions, the hearing panel provided findings which can be summarized as follows:

- 1. Staffing and Compensation:** The increase to the OM&A budget for additional staffing was not justified and the proposal for the one FTE for succession planning was not reasonable given the large rate increase for customers.
- 2. Benchmarking:** The hearing panel found that the benchmarking data did not support the reasonableness of the proposed OM&A increase and did not accept North Bay Hydro's explanations for its high 2021 OM&A per customer relative to the benchmarking comparators
- 3. Customer Engagement:** A reduction in the budget for customer engagement was justifiable. North Bay Hydro had proposed a \$100k increase in addition to adding a new customer engagement resource (Communications Officer). The hearing panel noted that North Bay Hydro had experienced limited growth and expected that with the new resource much of the required work can be completed internally.
- 4. Corporate Policies:** The forecasted incremental budget of \$150k annually for external consultants to advise on policy and strategy initiatives was not justifiable.
- 5. Vegetation Management:** During submissions, North Bay Hydro agreed to modify its request from a 5-year cycle to a 6-year which reduced its proposed vegetation management budget by \$130k. The hearing panel accepted this reduction.
- 6. Operations and Maintenance:** North Bay Hydro requested a \$110k budget to complete an ARC Flash study and stated that it would continue to use the budget in future years to complete other studies. The hearing panel found that the

budget can be reduced as the ARC Flash study is a one-time cost, and future studies have not been fully justified.

7. **Bad Debt:** The hearing panel accepted North Bay Hydro's amended bad debt using a six-year average, which resulted in a reduction of \$72k.
8. **Regulatory Costs:** The hearing panel accepted North Bay Hydro's updated forecasted regulatory costs, which were reduced by \$80k.

In summary, the hearing panel found that a reduction of 10%, or \$857k, to the proposed OM&A budget was reasonable. However, taking into consideration programs essential to the safe and reliable operation of the distribution system, such as vegetation management, the hearing panel lowered the total reduction to \$750k.

3.2 Summary of Grounds for Motion

Mr. Rennick's motion asserts that the Decision failed to follow the policies set out in the RRFE as summarized in the Rate Handbook and sets out six grounds for the motion which are summarized below.

1. **The utility has not demonstrated value for money by delivering genuine benefits to customers and the OEB has not held the utility to that standard.**

Mr. Rennick asserts that the OEB's \$750k reduction to North Bay Hydro's OM&A budget does not take into account the Decision's general finding that the benchmarking data does not support the reasonableness of the total OM&A increase and that the Decision does not provide a discussion with respect to the utility's compensation levels.

2. **The utility has not demonstrated that the rate proposals are just and reasonable and the Board has not held the utility to that standard.**

Mr. Rennick argues that North Bay Hydro's proposed staffing levels are not justified and that there is an apparent lack of evidence to support the proposed staffing levels.

3. **The utility has not demonstrated that its business plan has been informed by its engagement with customers and the Board has not held the utility to that standard.**

Mr. Rennick's motion criticizes North Bay Hydro's expenses associated with creating a secure mobile app despite the lack of customer preferences for more self-serve options. Mr. Rennick also alleges that North Bay Hydro's customer engagement on social media platforms represent little benefit to most customers and therefore the cost of these initiatives is not justified.

4. The Board has not properly considered the benefits to customers following from the resultant costs and revenue requirement.

Mr. Rennick argues that any benchmarking done within electricity distribution should be confined to performance statistics, such as outages or customer satisfaction and that the Decision erred in not assessing the benefits following from the resultant costs or cost increases.

5. The Board failed to provide the scope of the consideration given to customers' views received during the application process.

Mr. Rennick alleges that the Decision largely ignored intervenor submissions that recommended much higher levels of OM&A reduction, as well as two letters of comment that voiced concerns about North Bay Hydro's proposals.

6. The Board has not considered the rationale for OM&A and compensation costs that have increased faster than the rate of inflation nor the outcomes expected from the proposed expenses.

Mr. Rennick argues that the Decision did not consider the rationale for compensation costs have increased faster than the rate of inflation. Mr. Rennick's also reiterates his submission in the rate application that North Bay Hydro's employee compensation should be benchmarked to Statistics Canada data.

In addition to the above-noted grounds for the motion, Mr. Rennick also alleges that North Bay Hydro's proposed new hire of an administrative assistant is not justified, nor are the regulatory costs of the application. In both respects, Mr. Rennick alleges that the Decision failed to address how these items provide value, or lack thereof, to customers.

3.3 The Threshold Test

Rule 42.01(e) of the Rules requires that every notice of a motion made under Rule 40.01 shall, among other things, "provide a clear explanation of why the motion should pass the threshold described in Rule 43.01."

Rule 43.01 of the Rules states that, where a motion to review is filed, "the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits."

The OEB threshold test associated with motions for review has been considered in several OEB decisions. The test requires that the motion applicant identify grounds that raise a question as to the correctness of the decision and demonstrate that there is

enough substance to the issues raised such that a review based on those issues could result in the OEB varying, cancelling or suspending the decision.²

Findings

For the reasons set out below, the OEB finds that the motion does not provide a clear explanation of why the motion should pass the threshold described in Rule 43.01³ and does not raise relevant issues that are material enough to warrant a review of the decision. In doing so, the OEB finds that the motion does not raise new facts or questions of law or jurisdiction that would reasonably be expected to result in a material change to the Decision. The grounds of the motion amount to a request for a rehearing of the evidence in the rate application with a view to urging a different result based on the motion applicant's view of the weight of the evidence and his disagreement with the exercise of discretion by the hearing panel.

The six grounds set out in Mr. Rennick's motion are derived from the Rate Handbook that provides guidelines to distributors concerning the filing of their rate applications. These guidelines do not bind the OEB in the determination of just and reasonable rates pursuant to section 78 of the *Ontario Energy Board Act, 1998* (OEB Act), but are meant to enable the filing of relevant evidence for the OEB to consider when determining rate applications.

A partial settlement proposal of most issues engaged by North Bay Hydro's rate application was filed with the OEB on May 14, 2021. The terms of that proposal included the approval of the intervening parties that capital expenditures were appropriate and in accordance with the business plan and customer engagement. Similar approval of the parties was given to the revenue requirement, among other issues. Mr. Rennick was among the parties as a signatory to the settlement proposal. The proposal was approved by the OEB by Decision and Procedural Order No. 3 which provided a final decision concerning those issues settled by the proposal.

² Natural Gas Electricity Interface Review Decision with Reasons, EB-2006-0322/0338/0340 (May 22, 2007) (NGEIR Review Decision) at page 18

³ Section 42.01 of the Rules states:

42.01 Every notice of a motion made under Rule 40.01, in addition to the requirements under Rule 8.02, shall:

...

(e) provide a clear explanation of why the motion should pass the threshold described in Rule 43.01;

...

The motion applicant's grounds must thus be taken to apply to the unsettled issues, primarily in the subject areas of OM&A, including staffing levels, compensation and customer engagement. These issues were addressed by the hearing panel in the Decision as noted in the summary above. The motion applicant does not present any new facts or allege errors of fact or law associated with findings made on those issues. Following consideration of evidence and submissions, the hearing panel made significant reductions to the proposed OM&A expenditures and rejected North Bay Hydro's benchmarking evidence. Budget reductions were also made to North Bay Hydro's proposed staffing levels. As well, the hearing panel required expenditures related to proposed additional consulting, planning and management initiatives to be absorbed within the rest of the OM&A budget. Customer engagement strategy was scrutinized and approved by the hearing panel. The panel's determinations overall were directionally consistent with the views of North Bay Hydro's customers regarding price.

The OEB finds that no grounds justifying a review of the Decision have been advanced by the motion applicant. The issues raised by the motion grounds were considered by the hearing panel and determined based on their assessment of the evidence. The OEB does not find any error of fact or law, or any unreasonableness in the determinations of the hearing panel. In accordance with its responsibility pursuant to the Rules, the OEB dismisses the motion of the applicant for failure to raise relevant issues that would warrant a hearing on the merits.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Mr. Rennick's motion to review and vary, suspend or cancel the OEB's Decision and Order in EB-2020-0043 is denied.

DATED at Toronto October 21, 2021

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar