

November 10, 2021

Delivered by Email & RESS

Ms. Christine Long, Registrar
Ontario Energy Board
27th Floor - 2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Long:

**MOTION BY DONALD D. RENNICK TO REVIEW AND VARY
THE ONTARIO ENERGY BOARD'S DECISION EB-2021-0251**

Please find enclosed a motion to vary the above-noted Decision and Order on Motion dated October 21, 2021 issued in connection with the rate application of North Bay Hydro Distribution Limited (EB-2020-0043).

Yours truly,

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CC North Bay Hydro Distribution Limited

**IN THE MATTER OF A MOTION TO REVIEW AND VARY
THE ONTARIO ENERGY BOARD'S
DECISION AND ORDER IN EB-2021-0251 (Decision)**

NOTICE OF MOTION

This motion is brought under Part VII s.40.01 of the Board's *Rules of Practice and Procedure* (Rules) and requests that the Board review all or part of its Decision dated October 21, 2021 and to vary, suspend or cancel the decision and order and a request to stay the decision and order pending the determination of this motion.

Grounds for the motion

The general meaning of an "error in fact" is that the presiding authority had the wrong facts or had the correct facts but interpreted them incorrectly. An "error in law" typically means that the presiding authority had the right information but interpreted the law incorrectly.

Since the evidence in the rate application is supplied is based on the requirements of the "*Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach*" (RRFE) and the OEB is basing its findings and decision on that evidence and the input of the intervenors, any alleged errors in fact or law may be found in the apparent anomalies between the evidence as presented and the final decision of the Board.

1. The Decision includes following finding:

*"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."*¹

¹ Decision – Findings – page 6

The six grounds are set out in the RRFE. The reference provided to the Handbook for Rate Utility Rate applications (Handbook) in the motion to vary was simply expediency.

The ordinary presumption is that the OEB has established rules and regulations for applicants and interested parties to follow in order to assist in arriving at its various decisions. In order to demonstrate that errors in law or in fact have occurred a motion to vary applicant must use the inconsistencies between the evidence as presented and the rules that are expected to be followed.

Furthermore, the OEB is bound by the requirement of these rules and regulations to the extent that they enable the determination of just and reasonable rates pursuant to Section 78 of the OEB Act. Section 78 of The OEB Act mandates that the Board hold the rate applicant to a burden of proof as follows:

78 (6) Subject to subsection (7), the burden of proof is on the applicant in an application made under this section. 2004, c. 23, Sched. B, s. 15.

It is submitted that the Board made an error in fact by denying the motion to vary based on the finding that the references to the OEB's rules and regulations and their use as grounds for the motion to vary could not be used to meet the threshold test..

2. The Decision includes following finding:

*"...and does not raise relevant issues that are material enough to warrant a review of the decision."*²

The issues are taken directly from the evidence and are arguably relevant. There is strong prima facie evidence of their materiality. The extent of materiality would depend on the results of any motion to vary and the resulting reduction in the amount of the allowed OM&A.

Any discussion of materiality must include the fact that the approved level of OM&A for the current year will also affect the OM&A allowed in future years. The distressing reality is that the current year's OM&A not only informs the following years' OM&A but serves as an impenetrable base. This embeds any current excesses into each and every following year and magnifies the materiality of any reductions made early in the process.

² Decision – page 6

It is submitted that it is an error in fact to suggest that the motion to vary does not raise relevant issues and that they are not material.

3. The Decision includes following finding:

*“ 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.”*³

The grounds do not request a rehearing of the evidence but are a request to re-examine the evidence that has already been heard. The suggestion that a different result is being sought is obvious as noted in the heading of the motion being “... a Motion to Review and Vary” and does not represent a reason to deny the motion to vary

It is submitted that the Board has made an error in fact by denying the motion to vary based on the assumption that it necessitates rehearing the evidence or that a different result is being sought. .

4. The OEB has also made an error of fact by stating that:

*“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.”*⁴

The statement is misleading since for the reason that the approval of the revenue requirement carried a provision for adjustment of the revenue requirement based on the settlement of the outstanding OM&A issue.

*“However, elements of the revenue requirement may need to be recalculated, pending the OEB’s determination of the unsettled issues.”*⁵

It is submitted that the Board has made an error in fact by assuming a blanket approval of the Rate Decision revenue requirement was given by the motion to vary applicant and represented grounds to deny the motion to vary.

5. The Decision quotes the NGEIR decision as follows:

“The (threshold) 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

³ Ibid

⁴ Decision– Findings – page 6

⁵ OEB staff submission on partial settlement – May 21, 2021 – page 4

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”}⁶

The ruling in the NGEIR decision⁷ allowed that issues brought in two areas did pass the threshold test. The decision to allow the issues included the statement:

“In demonstrating that there is an error, the applicant must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently.”⁸

The motion to vary satisfies this requirement by including clearly described and pertinent examples⁹ of findings in the Rate Decision which appear to be contrary to the evidence before the panel and represent failures of the Board to address material issues as well as making findings which appear to be inconsistent.

It is submitted that the six grounds listed satisfy the threshold test as described in the Rules and that the Board made an error in fact by suggesting otherwise and denying the motion to vary based on that suggestion.

6. Referring to the unsettled issues the Decision indicates:

“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 (Rate decision) as noted in the summary above.”¹⁰

While all of these issues were addressed by the hearing panel as well as in the application, in the interrogatories, the interaction was between the interested parties and did not involve the Board. This activity does not inform the argument as to whether or not the OEB made an error in their considering these issues when making their decision.

On compensation levels in the Rate Decision, the Findings section is silent and addresses “additional” staffing levels only:

⁶ Decision – beginning on page 5

⁷ Natural Gas Electricity Interface Review Decision with Reasons, EB-2006-0322/0338/0340 (May 22, 2007) (NGEIR Review Decision) - – Executive Summary following page ii

⁸ Natural Gas Electricity Interface Review Decision with Reasons, EB-2006-0322/0338/0340 (May 22, 2007) (NGEIR Review Decision) - page 18

⁹ D.D. Rennick Motion to Appeal Decision – beginning on page 2

¹⁰ Decision – Findings - page 7

*“The OEB finds that the increase to the utility’s operations and maintenance budget resulting from the additional staffing is not justified.”*¹¹

On benchmarking the findings in the Rate Decision indicates

*“The OEB finds that the benchmarking data do not support the reasonableness of North Bay Hydro’s proposed OM&A increase.”*¹²

In its rate decision the Board indicated a total rejection of benchmarking¹³ as support for the reasonableness of the proposed OM&A increase and then accepted benchmarking as the sole support for compensation levels and staffing increases required to deliver electricity in a cost effective and reliable manner as required by the OEB Act.

It is submitted that the Board had the correct facts available but made an error in fact by interpreting them incorrectly

It is submitted that the motion to vary¹⁴ was sufficient to meet the requirements of the Rules and requests that the Board reconsider its finding regarding hearing the motion to vary.

All of which is respectfully submitted

D. D. Rennick

¹¹ EB-2020-0043 – Decision and Order for North Bay’s Cost of Service Application - Findings — page 9

¹² Ibid – page 12

¹³ Rate Decision – Summary of Findings – page 27

¹⁴ D.D. Rennick Motion to Appeal Decision – page 1