



Ontario
Energy
Board

Commission
de l'énergie
de l'Ontario

DECISION ON MOTION

EB-2021-0299

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

BEFORE: Lynne Anderson
Chief Commissioner

Michael Janigan
Commissioner

December 13, 2021

1 OVERVIEW AND DECISION

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). Mr. Donald Rennick (Mr. Rennick) was one of the parties granted intervenor status in that proceeding.

Parties to North Bay Hydro's 2021 rates proceeding, including Mr. Rennick, partially settled the issues in the Rate Application. The OEB issued a Decision and Procedural Order No. 3 on May 31, 2021 that accepted the partial settlement proposal and made provisions for an oral hearing and written submissions on the unsettled issues. The OEB issued a Decision and Order on the unsettled issues on September 9, 2021 (September Decision).

Following the September Decision, Mr. Rennick brought a motion before the OEB requesting the OEB review and vary, suspend or cancel the September Decision. This motion was assigned OEB File No. EB-2021-0251. In the motion, Mr. Rennick asserted that the September Decision failed to follow the policies set out in the OEB's *Renewed Regulatory Framework for Electricity Distributors* as summarized in the OEB's *Handbook for Utility Rate Applications*.

The OEB issued a Decision and Order dismissing Mr. Rennick's motion on October 19, 2021 (October Decision). In the October decision, the OEB found that no grounds justifying a review of the September Decision had been advanced by Mr. Rennick. Pursuant to Rule 43.01 of the OEB's *Rules of Practice and Procedure*, the OEB dismissed the motion without a hearing or a review on the merits.

On November 9, 2021, Mr. Rennick filed a second motion, which is the subject of this decision. In this current motion, Mr. Rennick requested the OEB review and vary its October Decision wherein the OEB had dismissed his original motion. In this current motion, Mr. Rennick contended that the OEB had erred in its October Decision to dismiss his motion, and that his original motion had raised relevant and material issues that justified a review of the September Decision.

Findings

The OEB is first considering the threshold question of whether the applicant's motion to review the October Decision should be reviewed before conducting any hearing on the merits. The applicant filed a motion to review the OEB's September Decision on the unsettled issues in the EB-2020-0043 proceeding. The OEB's October Decision found that the applicant's motion to review did not meet the threshold to be heard on the merits.

The current motion alleges errors of fact and law in the October Decision because of "anomalies between the evidence presented and the final decision of the Board". The OEB does not find that the applicant has raised new issues of fact, law or jurisdiction that would be expected to result in a material change to the October Decision. The OEB accordingly finds that the applicant's current motion does not pass the threshold described in Rule 43.01 and is dismissed.

The applicant's current motion, similar to the original motion dismissed by the OEB in October, seeks to replace the OEB's judgment as to the appropriate resolution of the outstanding issues in the September Decision with the applicant's own positions on those issues. There are no new facts or errors of law that have been raised in this current motion to justify such a substitution. As well, some facts or conclusions are misstated by the applicant in his Notice of Motion of November 10, 2021. The applicant again claims that the OEB "indicated a total rejection of benchmarking". In fact, while the September Decision rejected North Bay Hydro's submission on the effect of benchmarking, it applied the benchmarking evidence to obtain a different result from that urged by North Bay Hydro. In asserting deficiencies of support for the September Decision findings, the full record of evidence that supported the OEB's determinations on each of the issues is largely ignored. As well, while the applicant claims otherwise, it is clear that the granting of his motion to vary would engage the OEB in a rehearing, oral or written, of the evidence.

The October Decision found that the hearing panel in the September Decision had made no errors in the consideration and determination of the issues that the applicant claimed, and continues to claim, were ignored or wrongly decided.¹ This current motion does not provide a basis to now conclude that the October Decision had errors of fact or law to require the OEB to proceed to a hearing on the merits.

The applicant has now attempted to re-argue the September Decision twice, and both motions have been dismissed. The OEB does not expect to receive further motions to review from the applicant related to the issues dealt with in the September, October, or the current Decision. The OEB cautions that a further motion by the applicant raising the same issues determined in the previous decisions may engage the exercise of the OEB's powers to direct the applicant to pay the OEB's costs pursuant to the provisions of the *Ontario Energy Board Act 1998*.²

¹ EB-2021-0251, Decision and Order on Motion, p. 7

² S.O 1998, c. 15 Schedule B, section 30

DATED at Toronto, December 13, 2021
ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar