



EB-2015-0334

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by Jim Babirad under section 38(3) of the *Ontario Energy Board Act, 1998*, S.O. 1998 for an Order of the Board determining the quantum of compensation that Jim Babirad is entitled to receive from Enbridge Gas Distribution Inc.

AND IN THE MATTER OF a Motion to Review and Vary by Jim Babirad pursuant to the Ontario Energy Board's *Rules of Practice and Procedure* for a review of the Board's Decision and Order in proceeding EB-2014-0351.

DECISION ON THRESHOLD QUESTION AND PROCEDURAL ORDER

NO. 2

March 3, 2016

Jim Babirad (Mr. Babirad) filed a Motion to Review and Vary (Motion) the Ontario Energy Board's (OEB) Decision and Order dated October 29, 2015 (EB-2014-0351) (Decision). The Motion is for a review and variance of the Decision in which the OEB did not award compensation to be payable to Mr. Babirad by Enbridge Gas Distribution Inc. (Enbridge) for the period of 1965 to 2014.

Under Rule 42.01 of the OEB's *Rules of Practice and Procedure* the OEB may determine, with or without a hearing, the threshold question of whether the matter should be reviewed before conducting any review on the merits. The purpose of the threshold question is to determine whether the grounds put forward by the moving party raise a question as to the correctness of the order or the decision, and whether there is enough substance to the issues raised that a review could result in the OEB varying, cancelling, or suspending the decision.

By way of Notice of Motion to Review and Vary and Procedural Order No. 1 issued on February 3, 2016, the OEB determined that the most expeditious way of dealing with this Motion is to consider concurrently the threshold question of whether the matter should be reviewed and the merits of the Motion. The OEB provided for any party to request an oral hearing and for Mr. Babirad to file additional materials supporting the Motion. No party requested an oral hearing. The OEB will proceed by way of a written hearing.

In written submissions filed on February 18, 2016 Mr. Babirad argued that the Motion meets the threshold test because the Decision failed to address a material issue regarding storage rights compensation to Mr. Babirad's from 1965 to 2014. Mr. Babirad suggested that the OEB may wish to provide an opportunity for parties to file additional submissions on the issue of compensation from 1965 to 2014.

The OEB finds that the Motion meets the threshold test.

Rule 42.01(a) of the OEB's Rules of Practice and Procedure (Rules) provides the grounds upon which a motion to review and vary may be made to the OEB:

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

- (a) Set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
 - i. error in fact;
 - ii. change in circumstances;
 - iii. new facts that have arisen;
 - iv. facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

The OEB recognizes that the list of grounds noted above is not an exhaustive list. However, the grounds supporting a motion to review must raise a question as to the correctness of the order or decision.

The Decision is silent on the issue of whether Mr. Babirad is owed past compensation for the years 1965 to 2014. Based on the materials filed by Mr. Babirad, the issue of past compensation is one which Mr. Babirad raised in his application. The OEB is of

the view that the OEB's failure to address the material issue of past compensation between 1965 and 2014 constitutes an "identifiable" error and therefore the Decision warrants a review. The Motion is granted.

By way of this procedural order the OEB will set the timeline for written submissions by Enbridge and OEB staff and for reply submission by Mr. Babirad. The scope of submissions should be limited to the issue of whether Mr. Babirad's claim for compensation from Enbridge for the period from 1965 to 2014 should be granted.

THE BOARD ORDERS THAT:

1. Enbridge and OEB staff may file written submissions with the OEB and deliver them to Enbridge and Mr. Babirad no later than March 29, 2016.
2. Mr. Babirad shall file with the OEB and deliver to Enbridge reply submission by April 12, 2016.

All filings to the OEB must quote the file number, EB-2015-0334, be made through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the OEB Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Attention: Board Secretary

E-mail: boardsec@ontarioenergyboard.ca

Tel: 1-888-632-6273 (Toll free)

Fax: 416-440-7656

DATED at Toronto, March 3, 2016

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary