

DECISION

**NSUARB-E-RIV-C-08
2008 NSUARB 107**



NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF AN APPLICATION of RIVERPORT ELECTRIC LIGHT COMMISSION for a decision to settle a Rate Group dispute with one of its customers

BEFORE: Murray E. Doehler, CA, P. Eng., Member

APPLICANT: **RIVERPORT ELECTRIC LIGHT COMMISSION**
Valerie Romkey, Clerk-Treasurer
Albert E. Dominie, Consultant

RESPONDENT: **DEAN SCHMEISSER**
David R. Hirtle, LL.B.

HEARING DATE: July 16, 2008

DECISION DATE: September 15, 2008

DECISION: The billings as issued by the Utility stand.

INTRODUCTION

[1] The Riverport Electric Light Commission (the "Utility"), in a letter dated March 25, 2008, requested the Board's assistance in settling a rate group dispute with Dean Schmeisser (the "Customer").

[2] The Utility was represented by its consultant, Albert Dominie, and Valerie Romkey, the Clerk-Treasurer. Mr. Schmeisser was represented by David R. Hirtle, LL.B.

[3] At a preliminary hearing on May 9, 2008, the parties agreed that the dispute centred on two specific issues described by Mr. Hirtle as follows:

1. Has the utility placed Mr. Schmeisser in the right rate group category for his usage?
2. Has Mr. Schmeisser been overcharged?

[Exhibit R-6, IR Response to Utility]

[4] The Customer requested an oral hearing. Accordingly, the Board directed the Utility and the Customer to file their respective evidence and to respond to various Information Requests ("IR's") in advance of the hearing held on July 16, 2008.

BACKGROUND

[5] Mr. Schmeisser is a carpenter, resident in the Riverport area, who produces various wood products for sale, including moldings and floorings. He applied to the Utility for a single phase electric service for his shop and was connected on March 10, 2000.

[6] Mr. Schmeisser had procured a wood milling machine for the shop. This machine requires three-phase power. Accordingly Mr. Schmeisser installed a 1-phase to 3-phase converter. Some of the electrical ratings on the machine are as follows:

Supply voltage	3 x 600 v
Control voltage	115 v
Connected load	23 kw
Full load amps	42 A
Main fuse amps	45 A
Largest motor	7.50 kw

[7] Since May, 2000 to the date of the hearing, the electric rates have changed five times, however, the classification of service class has not changed. There are six service classes, of which two are the subject of the dispute. They are the "Small General Service" and the "General Service". The Small General Service availability is defined as:

This rate shall be applicable to non-domestic single-phase services where energy use does not exceed 10,000 kilowatt-hours per year and demand does not exceed 6 KW.

The General Service availability is defined as:

This rate shall be applicable to all services not eligible for other rates in this Schedule.

[8] The customer believes he should be in the Small General Service class.

[9] A review of the customer's account reveals that for the first two months he was billed at the Small General Service, which does not have a demand component. For the June, 2000 billing a new meter was installed, which measured demand, and the calculation of the monthly billing changed. From this time to November 1, 2005, various billing errors were made by the Utility. The bills from November 1, 2005 to the date of the hearing are correctly calculated using the General Service rates.

[10] The billing calculation errors, as agreed to by both parties, resulted from a combination of using the wrong "multiplier" and the wrong rates. The multiplier is calibrated

for each meter and is the figure applied to the meter reading to get actual usage. The correct multiplier for the customer's meter is "60", but had been entered as "40" in the Utility records for the period September 1, 2003 to October 31, 2005. The Utility, for the period May 1, 2000 to March 31, 2005, had substituted the Small General Service monthly Service Charge as the General Service Demand Charge, and the first block of the Small General Service Energy Charge as the first block of the General Service Energy Charge. These billing errors can be summarized as follows:

Period	Error
June/00 to Aug/03	wrong rate
Sept/03 to March/05	wrong multiplier wrong rate
March/05 to Oct/05	wrong multiplier

[11] The customer states that the Small General Service Rate (correctly calculated) should be applied to all his bills. Failing that, and knowing that the bills were incorrectly calculated, the customer wants to know what are the correct amounts that should have been charged?

IS THE CORRECT RATE GROUP BEING APPLIED TO THE CUSTOMER?

[12] The Utility's evidence is that the customer's usage indicates his service class should be "General Service" because his service is not eligible for another class, specifically "Small General Service".

[13] The Utility's billing records show that the customer's usage does not exceed 10,000 kilowatt hours per year, but the demand, on occasion, exceeds 6 KW. It is the Utility's position that in order for the customer's usage to be billed using the "Small General Service" rates, both conditions must be met, i.e., the energy consumption must be less than 10,000 kilowatt hours per year and the demand must not exceed 6 KW. In testimony at the hearing, Mr. Dominie informed the parties that similar language is used for these rate classes by Nova Scotia Power Incorporated ("Nova Scotia Power") and by other municipal utilities.

[14] In the evidence given by Mr. Hirtle, on behalf of the customer, it was noted that the demand may have been incorrectly read. This had to do with the customer's understanding of how the machine that drew the power creates a demand. As stated in the evidence:

In some billing cycles, the machine may not be used at all and other billing cycles it may be used more frequently. The difficulty with this milling machine is that it draws additional power in two situations over and above the power required for its normal usage. The first is on start up, and the second is when a piece of stock gets jammed into the machine. When either of these two events happen, the amount of electricity that the machine draws is greater than the amount of electricity required to operate the piece of machinery on a routine basis.

[Exhibit R-4, p. 2]

[15] At the hearing the Utility entered a booklet entitled "Understanding your Demand Meter" published by Nova Scotia Power, which describes how the meter measures demand. In particular, it stated that as power flows through the meter a coil is heated, which expands and moves the red pointer of the meter up the scale. This red pointer pushes the black pointer, as it comes in contact, to show the maximum demand for

the monthly period. This black pointer is reset to zero upon the monthly reading. The booklet then goes on to describe the action of the heating coil as follows:

... This heating and cooling of the coil does not happen instantaneously. There is a time lag. After two minutes, the demand reading is 25% of the actual demand; after 4.5 minutes, it registers 50% of the actual demand; after 15 minutes, 90%; and after 30 minutes, 99%. ... Because of this time lag in recording demand, customers are not penalized for momentary surges of power that might be required, for example, to start motors. Only sustained demands will fully register on the meter, with the black pointer indicating the maximum demand during the billing period. ...

[Exhibit R-9, p. 6]

[16] Mr. Hirtle also disagreed with the interpretation of the Utility that the customer is in the general rate. As was stated in his evidence:

It appears that the position of the Commission is that Mr. Schmeisser does not qualify for the "small general service" because his demand peak exceeds 6kW, even though his annual usage of kilowatt hours falls far below the 10,000 kilowatt hours as stated in the small general service regulations. It appears that the interpretation as taken by the Riverport Electric Light Commission is that if the customer exceeds either 6kW or 10,000 kilowatt hours, the customer does not qualify to be in that particular service group. This position appears to treat the word "and" as alternative, such as the word "or", and not conjunctive as would be the ordinary dictionary definition for the word "and".

[Exhibit R-4, p. 3]

Findings

[17] No party is disputing that the customer usage does not exceed 10,000 kilowatt hours per year. The customer states that the demand exceeds 6 KW on a few occasions when either one of two events occurs: upon start-up, and when a piece of stock gets jammed. At the hearing Mr. Hirtle, on behalf of his client, stated his understanding of what happens upon start-up. When asked how long this might take his response was as follows:

No, my understanding is it's almost instantaneous, it's almost just, you know, that quick. It wouldn't be a minute or two.

[Transcript, pp. 30-31]

[18] Mr. Schmeisser, when asked what happens when a piece of wood jams in the machine, in response to questions stated as follows:

Mr. Hirtle: - - - does the motor shut off or does it just keep turning up?

Mr. Schmeisser: No, you have to hit the emergency and shut it down.

By the Chair:

Q: When it jams inside the thing?

A: Yes.

Q: So, there could be a spike there for a bit of time?

A: Yeah, it depends on - - -

Q: How long it takes to shut it off?

A: - - - [inaudible] the machine till you get to it. Sometimes it could be 10, 15, 30 seconds until you get to it.

[Transcript, pp. 35-36]

[19] The Board finds that the demand spike created by the customer in the two instances of either start-up or jamming, has a duration that does not exceed a couple of minutes. In accordance with the evidence filed on how demand meters work, a continuous demand of over 15 minutes is required before a "spike" is registered. Therefore, the Board finds that the act of starting the machine, or a piece of wood jamming the machine, does not create the demand as recorded. The Board also notes that the largest motor in this machine is 7.50kW. Depending on the work being required, it is quite conceivable that the machine could be operating at this 7.50kW range for a period of time longer than 15 minutes. It is this usage of the machine, not the start-up and jamming, that is creating the demand. As this is the largest motor in the machine, it is conceivable that the demand could exceed 7.50kW at any one period of time while it is in use. The Board finds,

therefore, on the balance of probabilities, that the demand for the customer can exceed 6 KW during a billing period. The Board also finds, based on the balance of probabilities, that the demand usage as recorded in the billing history for this customer is correct.

[20] As to the rate class to which this customer belongs, most of the argument seems to revolve around the use of the word “and”. The concern, as expressed by Mr. Hirtle, is that the rate classification has been incorrectly interpreted. The phrase that is of interest is as follows: “... where energy use does not exceed 10,000 kilowatt hours per year and demand does not exceed 6 KW.”[emphasis added] The Utility has interpreted that for someone to qualify for the small general service rate both these conditions must be met, i.e. less than 10,000 kW-hours per year and demand not exceeding 6 KW.

[21] This is essentially a logical statement where the two conditions, “6 KW demand” and “10,000 kW hours per year” are compared using the operator “and”. The state of the two conditions must be to “not exceed”. Mr. Hirtle has restated what he believes the Utility is doing to the logical statement equation by changing the state of the conditions to “exceed”, removing the term “not”, and assuming that the operator changes to “or”.

[22] The Board finds that if the state is changed to “exceed”, then the operator does become “or” with one additional interpretation. That is the case when the customer exceeds both of the conditions, not just one. In this interpretation the customer is still not eligible for the Small General Service Rate.

[23] In the case of Mr. Schmeisser only one condition, that the energy use does not exceed 10,000 kW-hours per year, is met. The demand condition for that service class (less the 6 KW) is not met.

[24] The general service class is, by default, to be used if a customer does not meet any other service class. All other service classes are carefully defined by meeting certain conditions.

[25] The Board finds that the customer has been correctly classified under the general service class, and the appropriate rates should be applied.

HAS MR. SCHMEISSER BEEN OVERCHARGED?

[26] Mr. Hirtle, on behalf of his client, Mr. Schmeisser, recalculated all the bills that have been issued by the Utility using three different assumptions. The first assumption was that the small general service class rate would apply, the second is that the energy charge for the first block had been incorrectly applied, and the third applies the energy charge for the first block correctly, but uses the approved rates for general service. As the Board has found that the small general service class rates do not apply, no further consideration is given to that calculation. As for the calculation assuming that the energy charge for the first block had been incorrectly calculated, Mr. Hirtle had been notified by the Utility of the correct methodology. As was admitted in the responses to the IR's:

- ©) The figure of \$1,822.16 was calculated based upon the methodology set out in the first full paragraph at page 6. As conceded in answer to 4A above, the methodology of calculation as set out in the said paragraph does not reflect the regulation. Therefore the amount of \$1,822.16 can not be valid

[Exhibit R-6, p. 3]

[27] In recalculating the bills assuming the higher charge for the first block, Mr. Hirtle has stated:

That even if all of the kilowatt hours are to be billed at the high rate, Mr. Schmeisser has still been overbilled and entitled to a refund from the Commission in the approximate amount of \$561.68, not including interest already paid based upon the incorrectly calculated amounts.

[Exhibit R-4, p. 7]

[28] The Board notes that in the recalculations done by Mr. Hirtle there are differences for all bills for the period June 4, 2000 to March 4, 2005. The recalculations of the bills from April 4, 2005 to present are the same as the Utility's bills. The total difference between the original billings and the recalculated amounts totals \$561.68.

[29] The Utility acknowledged that the billings were incorrectly calculated. In its rebuttal evidence the Utility stated as follows:

... In essence the Small General Service Charge was used as the General Demand Charge and the Small first block energy rate was substituted for the General first block charge. Since the energy levels never exceeded the first block provision under the General Category, second block calculations were not an issue. With the exception of calculations for September, October, and November of 2003, where Mr. Hirtle continued to use a multiplier of 60 and the Utility changed it to 40, Mr. Hirtle's calculations appear to be an accurate reflection of this error. Mr. Hirtle's use of the Utility's incorrect multiplier did not occur until implementation of the rate change for the December 2003 billing. This would add \$109.71 plus HST of \$16.46 to the difference he has calculated, bringing it to a total of \$687.85.

[Exhibit R-7, p. 2]

[30] As a counter to this, the Utility also calculated that since the wrong multiplier had been used, the wrong demand charge had been calculated. The Utility has calculated the loss of revenue from the incorrect calculation of the demand charge as follows:

The incorrect multiplier was applied, by the Utility, for the period September 4, 2003 to October 4, 2005 inclusive. This resulted in reduced demand determinants totalling 111.8 KW. They are broken down as follows:

1. September, October, November 2003, 4.6 KW per month at March 2003 rates (13.8 x \$7.95 = \$109.71).

2. December 2003, January 2004, 4.6 KW per month,	total 9.2 KW
February 2004, 4 KW,	total 4.0 KW
March 2004 to February 2005, 4.4 KW per month	total 52.8 KW
March, April, May 2005, 4 KW per month	total <u>12.0 KW</u>
	<u>78.0 KW</u>

Total at November 1, 2003 rates (78 KW x \$8.24 = \$642.72)

3. June to October 2005, 4 KW per month at May 1, 2005 rates (20 x \$8.66 = \$173.20)

[Exhibit R-7, p. 2]

[31] It is noted by the Board that the undercharge from the wrong multiplier for the months of September, October, November 2003 is the same as the increase in over-billings that had been identified by the Utility outlined in the above paragraph.

[32] The under-billing, that had been created by the Utility from using the incorrect multiplier for the demand charge amounts to \$925.63 plus HST of \$138.84, for a total of \$1,064.47. When this is combined with the over-billing of \$687.85 as determined above, there is a net saving to Mr. Schmeisser of \$376.62.

[33] The Utility, in response to a question about the status of this net under-billing, stated:

The Utility has not at this time, Mr. Chair, proposed any re-billing to Mr. Schmeisser to collect the under-billing as a - - or the net under-billing as a result of the errors associated with the initial billings....

[Transcript, pp. 42-43]

[34] The Board notes that in the billing calculations as performed by Mr. Hirtle and confirmed by the Utility, for the period September 2004 to October 2005, the energy usage recorded in the original billings was applied to the rates. This energy usage was calculated at the incorrect multiplier of "40" rather than the correct multiplier of "60".

Findings

[35] The Board finds that the Utility had incorrectly charged Mr. Schmeisser for both demand and energy usage for the period from June 2000 to October 2005. In the evidence filed, the Utility only acknowledges the under-billing for demand usage. The under-billing for energy usage, which by the Board's calculation, could exceed 3,000 kW hours over the period September 2003 to October 2005, had not been identified. Accordingly, the Board finds that the advantage to Mr. Schmeisser of under-billings by the Utility exceeds the \$376.62 as identified by the Utility.

[36] The Utility, by its representation, has stated that they will not be pursuing the potential under-billings for demand usage.

[37] Accordingly, the Board finds that the billings which have already been issued by the Utility are to be fully paid by Mr. Schmeisser.

[38] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 15th day of September, 2008.



Murray E. Doehler