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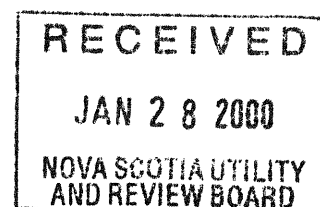
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January 28, 2000

Nova Scotia Utility and Review Board
3rd Floor 1601 Lower Water Street
PO Box 1692 Unit "M"
Halifax NS B3J 3S3



Mr. Chairman and Members of Board:

Re: Nova Scotia Power Inc. Application for Approval of Load Retention Rate - NSPI-P-871

Please accept this letter by way of a post-hearing submission on behalf of Irving Oil Limited.

Irving Oil's Position

1. The load retention rate as proposed is an attempt by Nova Scotia Power Inc. (NSPI) to address a competitive threat without embracing true competition in the energy market place. This would allow some large customers to obtain lower electrical bills. NSPI proposes that the revenue deficits created by this rate be borne by its captive ratepayers - the same ratepayers who do not have access to alternative supplies of electricity. Only a truly competitive market place will provide the greatest benefits to Nova Scotia and to Nova Scotia consumers. The load retention rate, therefore, should be permitted only, if at all, on a temporary basis until customers have choice in their electrical purchases.
2. Any approval by the Board of the load retention rate should be tied to a concrete schedule for considering and permitting customer choice in electric purchases including wheeling or electric on electric competition so that all Nova Scotia consumers and not just the largest electrical users can experience the benefits of competition.
3. Conditions attached to the rate respecting its availability and the length of the term of any contracts negotiated pursuant to the rate should be imposed in order to ensure that the load retention rate does not become an impediment to the implementation of competition in the Nova Scotia electricity market.

4. NSPI shareholders and not the captive ratepayers should absorb any revenue shortfalls due to the application of any load retention rates.

Concerns About the Proposed Load Retention Rate

1. NSPI's proposed load retention rate represents an effort by a regulated monopoly to appropriate for itself the benefits of competition while avoiding the obligations associated with either being a regulated utility or a player in the free market and simultaneously denying its customers the benefits of true competition. NSPI requests that it have the competitive ability to negotiate freely contracts with its customers in confidence and that it not be required to subject the terms of the sale of electricity to public scrutiny as is fundamental to the regulation of a public utility. At the same time, NSPI seeks the continuation of the benefit accorded to it as a regulated utility from having to compete against other sellers of electricity. It also seeks to protect its shareholders from having to bear any risks associated with its negotiation of contracts pursuant to the load retention rate.
2. NSPI's rationale for the rate is that it is required in order to remain competitive and to keep its customers competitive. NSPI continues, however, to promote a regulatory structure which prevents true competition in the electrical industry.
3. It is inappropriate for NSPI as a regulated public utility to operate under a shroud of confidentiality. Under the proposed load retention rate, the actual charges by the utility to a load retention rate customer will be confidential contrary to the intent of Section 66 of the *Public Utilities Act*.
4. The proposed load retention rate may result in two customers in similar circumstances paying different charges (Exhibit P-2, Irving Oil Limited, IR-5(b)). The concern regarding the public perception of mistrust created by the regulatory approval for a protected monopoly of a secret rate for a secret customer with unknown costs being passed on to the other captive customers is not misplaced. (Transcript, page 396)
5. The competitive threat to which NSPI responds with the proposed load retention rate is the introduction of natural gas as an alternate energy source for generating electricity. The use of natural gas for this purpose in Nova Scotia has not yet begun. The natural gas industry is in its formative stages of development. Sempra Atlantic has indicated clearly that its shareholders will bear the full risk associated with its commitment to provide access to natural gas in a competitive market place for energy. To respond to the challenge posed by this competing energy source, NSPI's shareholders should similarly bear the risks associated with competing against other sources of energy. It is only with such a level playing field that one can create the environment to foster the right economic decisions and time frames for the Nova Scotia economy to benefit fully from the introduction of natural gas.
6. For NSPI shareholders, competition with natural gas for customers in the energy market has been inevitable for the last five years or more; it has been a likely and foreseeable occurrence since at least the early 1980's when the Venture project was proposed. Under the circumstances, it is not unreasonable for

NSPI's shareholders to bear the risks associated with measures undertaken by NSPI to compete in this marketplace.

7. In support of its application, NSPI relies upon decisions of regulatory authorities in the United States from the period 1987-1988. These cases must appear particularly dated in light of changes in the US electrical industry in the interim. These cases must be seen as precursors to full deregulation. The tide of deregulation and the increased opportunities for lowering energy prices associated with it is of particular significance to the competitiveness of Nova Scotia industry. Each day of delay towards deregulation hinders Nova Scotia industry as it deprives it of additional opportunities.

Benefits of Competition

1. "The advantages are obvious - increased efficiency and lower costs to consumers".

Exhibit P-16 Direct Testimony of Jatinder Kumar
before the Pennsylvania Public Utility Commission at
page 22.

2. "...in Sweden, Finland and Germany (where the majority of the Stora Enso Group plants are located), there already exists a completely free market in electricity. Plants located there are free to negotiate the best possible electricity prices from, any provider. This provides other companies in the Stora Enso Group with further opportunities for savings which are not now available to Stora Enso Port Hawkesbury Limited."

Exhibit P-11, Direct Evidence Fred Hussey, page 5.

3. "I think a customer in Nova Scotia would have more options and more choice if industry restructuring occurred?" [The question mark at the end of this statement is a typographical error and should be a period.]

Christopher Huskilton, Transcript, page 44

4. "Q. In the Strait region. And so Stora Enso is competitive at that location?

A. Yes. But we have to retain our competitiveness. It's a very dynamic world and even, say, the route of comparisons to other regions of the world, their positions have changed, as well with deregulation and - - such as deregulation in Europe has made a tremendous change to energy prices there."

Fred Hussey, Transcript, page 271

5. “Obviously, yeah, we would like to see an open market in all areas of our business.”

Fred Hussey, Transcript, page 273

6. The economics of utilizing a co-generation plant as an alternate supply of electricity can be enhanced if the owner of the plant has the opportunity to sell electricity surplus to its needs to third parties.

Fred Hussey, Transcript, page 283-4
Jatinder Kumar, Transcript, page 477

7. “Good regulation is pro-competitive, not anti-competitive. Regulation itself is intended as a surrogate for competition. It stands to reason that when regulators can encourage authentic competition, that - almost by definition - is regulation carried to its ideal.”

Exhibit P-13, Direct Testimony of Dr. Alan
Rosenberg, page 6

8. A free market for electricity is most efficient and provides the greatest opportunity for savings.

Jatinder Kumar, Transcript, page 610

9. Residential consumers ought to gravitate to the energy form which makes the most sense independent of artificial subsidies and/or regulations which may inadvertently promote economic inefficiency. Prolonging the behavior of consumers to choose energy forms which make less sense will erode the proper functioning of the Nova Scotia economy.

Nova Scotia Has Not Yet Joined the Global Movement Towards a Competitive Market for Electricity

1. “In my view the electric industry is slowly, but surely, restructuring towards free and open competition for the supply, (i.e., production or generation) of energy and capacity.”

Exhibit P-12, Direct Evidence of Alan Rosenberg,
page 3

2. The Staff Report of the Illinois Commerce Commission regarding load retention rates as of 1994 attached to NSPI response to Board IR-20 (Exhibit P-2) identifies state positions on “two issues of increasing importance (competitive bidding and electric retail wheeling) that have extensive economic development implications.”

3. "In a number of European countries there already exists a completely free market in electricity."

Exhibit P-11, Direct Evidence of Fred Hussey, page 5

4. Even since Stora made its most recent major capital investment in the Strait region, there have been additional competitive pressures from other regions.

Fred Hussey, Transcript page 275

5. In its 1996 decision regarding the application by NSPI for approval of revisions to its rates (NSUARB-P-868), the Board made the following comments respecting competition and regulation (at page 94):

Mark Drazen made the comment that "trying to make a monopoly provider act "competitively" is not only frustrating but ultimately fruitless". He noted that competition requires many players. A monopoly company does not feel the same pressure to be innovative in reducing costs and increasing service. Mr. Drazen stated that the main point of his evidence is that "restructuring NSPI (and regulation) for competition will provide more satisfactory answers to the problems of planning and pricing than regulation. Discussions about cost allocation and rate design should be consistent with the expected move to competition".

At the present time NSPI does not face any direct electricity competition. However, it is only a matter of time until NSPI is confronted with external competition from other utilities. It is a reality in other parts of North America. As noted above, there is a body of opinion that believes the spread of competition will mean the demise of IRP and DSM.

The immediate consequences of such discussion is whether there is a continuing need for NSPI to continue with integrated resource planning and demand side management programs. It is obvious that a decision in this matter will take time and involve discussions with NSPI and customers of the utility. There does not appear to be any immediate threat from external electric competition. At the same time, the Board must also consider the effects of the emergence of a competitive market where generation and possibly transmission will be subject to some form of deregulation in order for a utility to remain competitive in a changed market structure.

6. In the meantime, there has been no progress towards a competitive electric market in Nova Scotia.
7. NSPI recognizes that both it and its customers are operating in markets no longer confined to geographic areas. Its customers need to be competitive in the global marketplace.

Christopher Huskison, Transcript, page 18-19

8. NSPI's representative nevertheless was unable to support the proposition that the Board, in exercising its regulatory authority, should attempt to enhance competitiveness rather than inhibit it.

Christopher Huskilson, Transcript, page 20

9. NSPI's representative considered it premature to have any of its customers resort to self-generation prior to the period of 2008 to 2010.

Christopher Huskilson, Transcript, page 37

10. In the meantime, every state in the United States has either restructured its electric industry or is in the process of doing so.

Exhibit P-15; Jatinder Kumar Transcript, page 478-9

11. Furthermore, the US Federal Energy Regulatory Commission has issued an order promoting wholesale competition through open access non-discriminatory transmission services by public utilities.

Christopher Huskilson, Transcript, page 31-32

12. Other electrical generation should be encouraged now, if nothing else, for environmental reasons but also for investment and economic development to occur in Nova Scotia and not other jurisdictions. By preparing for Nova Scotia's energy future now, benefits will accrue to all ratepayers sooner and more substantially than if the inefficiencies associated with the current regulated monopoly continue.

Load Retention Rates are Temporary

1. "As restructuring towards the free and open market for electricity occurs, load retention rates evaporate because they are redundant."

Exhibit P-12, Direct Evidence, Alan Rosenberg,
page 3

2. "Most of the load retention and economic development rates [cited by NSPI] will not be offered after the implementation of retail choice."

Exhibit P-14, Direct Evidence, Jatinder Kumar,
page 12

3. The load retention rate is at best only a stop gap solution for Nova Scotia electrical customers seeking to be competitive in a global marketplace. The real and permanent solution is to permit customer choice for electrical services through electric on electric competition in an environment where electrical

wheeling is permitted. With natural gas coming to the region, it is in the public interest that this customer choice solution be implemented as quickly as possible in order to attract and retain industry and commerce in the region and to provide competitive rates to residential customers.

4. Irving Oil refers to Section 21 of the *Public Utilities Act* and requests that in the event the Board accepts the NSPI proposed load retention rate that the Board implement a concrete schedule for considering and permitting customer choice in electric purchases including wheeling or electric on electric competition in Nova Scotia.

The Load Retention Rate Should not Become an Impediment to Competition

Availability

1. The evidence before the Board points to the load retention rate being restricted to circumstances in which the customers have the real and economically viable opportunity to supply their own electrical load through self-generation.

2. As noted by Mr. Harris, however, the terms and conditions of the load retention rate do not use the term "self-generation" in the rate availability provisions although as confirmed by Mr. Huskison this was NSPI's intent. (Transcript, page 403).

3. The intent that the rate apply only to self-generation circumstances should be reinforced in the rate availability section.

4. The utilization of the load retention rate for circumstances in which electricity is potentially displaced other than by self-generation of electricity was not considered adequately in the course of the hearing.

5. In view of the proposed confidential nature of application for approval of contracts under the load retention rate, we would submit that the Board should not permit the load retention rate to be used for purposes of retaining load other than that which may be potentially displaced by self-generated electricity without a further public hearing which gives the opportunity of interested intervenors to consider the merits of such a proposal.

Length of Term of Contracts under the Load Retention Rate

6. Mr. Kumar regards the precedents from other jurisdictions regarding the adoption of load retention rates to apply only so long as retail competition has not come to Nova Scotia.

Jatinder Kumar, Transcript page 529-530

7. Mr. Kumar recommended that contracts negotiated pursuant to the load retention rate not extend beyond the time when retail choice becomes available. In fairness to the customer, the customer should be permitted to exercise retail choice when other customers in the market place have that choice. In addition, the existence of contracts with extended terms under the load retention rate may actually inhibit or impair the move towards deregulation of the electrical industry in Nova Scotia.

Jatinder Kumar, Transcript page 480-481

8. Mr. Kumar pointed out his concern that if a contract extended beyond the advent of retail competition that competitors would be "shut-out of a big chunk of the load".

Jatinder Kumar, Transcript page 559

9. Mr. Kumar expressed his concern that the load retention rate not become a tool to inhibit competition, to tie up customers in advance in advance of open access.

Jatinder Kumar, Transcript page 604

10. If this were to occur, competitors may not come to Nova Scotia to provide the competition that will drive the prices down for all consumers.

Jatinder Kumar, Transcript page 606

11. Mr. Kumar advocated that this principle be established at the time the Board approved the load retention rate so that it is clear that the rate will not be used to inhibit competition.

Jatinder Kumar, Transcript page 607

Summary

In summary, Irving Oil submits that:

1. the load retention rate be permitted only, if at all, on a temporary basis;
2. that any approval by the Board of the load retention rate be tied to a concrete schedule for considering and permitting customer choice in electric purchases including wheeling or electric on electric competition;
3. that the conditions attached to the rate respecting its availability and the length of term of any contracts negotiated pursuant to the rate to ensure the load retention does not become an impediment to the implementation of competition in the Nova Scotia electricity market; and

4. NSPI shareholders and not the captive ratepayers should absorb any revenue shortfalls due to the application of any load retention rates.

All of which is respectfully submitted.

Yours truly,



Robert G. Grant

RGG/sd

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