

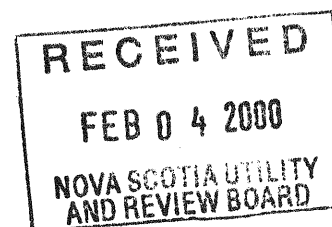
P-871.9
(A-11)

Nova Scotia Utility and Review Board

IN THE MATTER OF The *Public Utilities Act*, R.S.N.S., 1989
c. 380, as amended

- and -

IN THE MATTER OF an Application of Nova Scotia Power
Incorporated for approval of a Load Retention Rate



**REBUTTAL BRIEF
OF NOVA SCOTIA POWER INC.**

DATED: February 4, 2000

LOAD RETENTION RATE REBUTTAL BRIEF

Nova Scotia Power Inc. ("NSPI") has had an opportunity to examine the briefs filed by other parties to the proceeding. Generally speaking the issues canvassed in the briefs have been dealt with in our post-hearing submission or in the pre-hearing brief filed on January 10, 2000.

There are however, several matters upon which NSPI would like to make further comment.

IRVING OIL LIMITED

The principal thrust of Irving's submission is that they wish to see a timetable for the implementation of retail competition. With respect, that is a matter outside the scope of this hearing to be decided by policymakers in Government presumably in consultation with various stakeholders.

On Page 2 of its brief Irving suggests NSPI is acting contrary to Section 66 of the *Public Utilities Act*. The rate as applied for will, if approved in this hearing, be included as part of NSPI's tariff and will, with the balance of the tariff, be available in compliance with Section 66 of the *Public Utilities Act*.

CAPE BRETON REGIONAL MUNICIPALITY

Cape Breton stresses the need for lower electricity prices. The Board will be aware the single biggest input into NSPI's cost is fuel. NSPI anticipates receiving more competitive coal prices in the future which will help keep rates from increasing.

Cape Breton makes the point that with the advent of competition load retention rates are being phased out in other jurisdictions. There is no disputing that fact. NSPI accepts that once

the electric power industry is deregulated, load retention rates may become redundant. However, deregulation has not happened in Nova Scotia.

It is Cape Breton's position that the rate violates Section 67 of the *Public Utilities Act*. That issue was dealt with thoroughly in NSPI's pre-hearing brief filed on January 10, 2000. Cape Breton makes no reference to that brief.

Cape Breton also raises the issue of predatory pricing and Section 50 of *Competition Act*. Again this issue was dealt with extensively by NSPI in UARB-IR #5. Again, this was not referred to by Cape Breton. That response in part reads as follows:

One important factor in assessing predatory pricing is a comparison between the price and the cost of the product sold. The proposed rate is not below costs; it will cover marginal costs and contribute to fixed costs. NSPI does not have a policy or intend to offer prices that are below cost so as to eliminate competitors or deter market entrants. Rather, the express intention is to price in such a way so that it is better for other electric customers to retain the particular purchaser's load than losing the load in question. Accordingly, the pricing mechanism is reasonable.

ELECTRICITY CONSUMERS ALLIANCE OF NOVA SCOTIA ("ECANS")

ECANS filed a lengthy submission that is in part argument, part evidence (which cannot be cross-examined) and deals with a number of issues beyond the scope of this hearing including the future of non-utility generation, environmental issues, etc.

Nowhere in the ECANS submission does ECANS disclose who they represent. It is not known what, if any, customers of NSPI ECANS speaks for.

ECANS in its submission says there is no reasonable justification for keeping the rate confidential once it is determined. As noted by Dr. Rosenberg there is every reason to keep the price confidential.

It is an advantage to the utility because it does not want other applicants to use the price extended to one customer as a bargaining point for its negotiations. (Exhibit P-14, Page 19).

Dr. Rosenberg stresses the same point in his evidence (Transcript - Rosenberg #89).

SEMPRA ATLANTIC GAS

Sempra makes several suggestions in respect of rate design. At Page 6 of the brief Sempra indicates the requirement for a price floor. As noted in the post hearing brief of NSPI there is a price floor in that the rate must recover incremental cost plus a contribution to fixed costs.

At Page 10 of the brief Sempra says that the load retention rate should include a minimum and maximum take provision. It's not readily apparent to NSPI why such a restriction is required. There will clearly be a block of energy that will be negotiated pursuant to the load retention rate.

At page 11 of the brief Sempra states that the rate should be unbundled. They go on to say:

“Other services such as ancillary or back-up services should not be bundled into this rate.”

If the customer leaves the system there will be no load retention rate and ancillary or back-up services will be provided to the departing customer pursuant to NSPI tariff rates (i.e. the generation replacement and load following rate, or some modification to this if firm backup is

required). If the customer stays and there is a load retention rate then there will be no ancillary or back-up services provided. Bundling does not seem to NSPI to be an issue.

Sempra makes the point throughout its brief, in its questioning of witnesses and in the round of media interviews given by Sempra counsel that:

“NSPI should be required to play on a level playing field by the same rules as all other competitors. To do otherwise will not be reasonable or just.”

This statement is made in the context of whether shareholders should bear risks associated with the rate.

It should be noted that under the *Gas Distribution Act* Sempra enjoys very light-handed regulation versus the oversight provided to NSPI under the *Public Utilities Act*;

1. Sempra has a 20 year rate plan during which time its tariff will not be adjusted. NSPI must apply to the Board to adjust any of its rates;
2. Sempra can negotiate contracts with individual industrial customers without Board approval or oversight;
3. Sempra can earn up to 20% return on common equity without sharing any earnings and in excess of 20% with sharing provisions. NSPI's return is 10.5% to 11%.

⇒ The playing field is far from level.

CONFIDENTIALITY

Finally, a number of intervenors raised again the confidentiality issue.

NSPI understands this concern however, the rate will not work unless confidentiality is respected. We state again what Mr. Huskison said at Page 3 of his evidence:

“The big concern that customers have, however, relates to the implementation of this principle, particularly with respect to confidentiality of data. Establishing that the fundamental principle is satisfied requires the customer to share sensitive market information and most customers have indicated a refusal to participate in a public process requiring public disclosure, preferring instead to simply go to the alternate supply route.”

Mr. Kumar did not oppose the confidentiality provisions proposed by NSPI.

The prevailing practice with rates in other jurisdictions is that the terms and conditions of service to individual customers are kept confidential.

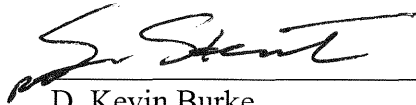
For the rate to work in the best interests of all customers the implementation phase must be kept confidential.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED this 4th day of February, 2000.



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