

NOVA SCOTIA UTILITY AND REVIEW BOARD

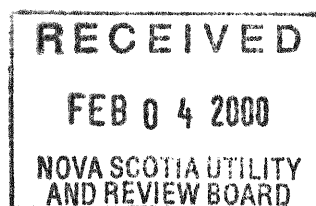
P-871.9
(F6-4)

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

- and -

IN THE MATTER OF: An Application by Nova Scotia
Power Incorporated for approval of a
Load Retention Rate.

RESPONSE OF SEMPRA ATLANTIC GAS



NSPI at p. 2 of its Post Hearing Brief says:

Since there was no opposition to the granting of the rate expressed at the hearing...

While it is true to say no one opposes the idea that NSPI should be allowed to have rate offerings that allow it to properly respond to competitive situations, the Briefs filed by many parties suggest that there is considerable opposition to the specific rate put forward by NSPI:

Sempra Atlantic (p. 1):

...in its present form, the LR Rate proposed by NSPI neither offers adequate ratepayer safeguards nor promotes real competition. Without amendments, the proposed LR Rate is not in the public interest.

Irving Oil (p. 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...The load retention rate, therefore should be permitted only, if at all, on a temporary basis...

NS Municipal Electric Utilities Cooperative (p. 1):

NSPI presented no documented evidence that other customers will be worse off if load leaves and all possible economies are taken to reduce fixed costs than they would be subsidizing a discounted Load Retention rate.

Cape Breton Regional Municipality (pp. 16-17):

Undermining competition is not the appropriate response to a situation in which energy customers are experiencing the emergence of new opportunities. NSPI has sufficient flexibility to offer all customers competitive power rates. It does not need to erect another artificial barrier or another protective shield...this measure is inconsistent with the public interest and inconsistent with the legislation governing the operations of Nova Scotia Power Incorporated. Therefore, the application by Nova Scotia Power Incorporated for a generic load retention rate should not be approved.

Even ECANS, while not objecting “to the principle of customer-specific Load Retention Rates” predicated its lack of objection on eleven provisos.

There is considerable objection from many quarters to the specific LR Rate proposed by NSPI as:

- not having adequate rate payer safeguards, and
- not being a truly competitive measure.

NSPI has not responded to the concern raised by virtually all of the other Parties (save that of Stora Enso, the only clear beneficiary of the presently proposed LR Rate) that while NSPI should be able to respond to competitive situations the terms and conditions of the LR Rate need to be tightly controlled by the Board.

Clearly there is considerable opposition to granting the LR Rate in the form sought by NSPI.

Not only has NSPI not acknowledged that there is a widespread call for a significant rewriting of the terms of the Load Retention Rate in order to protect other NSPI customers, NSPI has not addressed the criticism that the LR Rate in its present form is anti-competitive.

Some of these unaddressed concerns include:

CBRM (pp. 10-11):

In other jurisdictions,...load retention rates are provided to enable a utility to retain significant industrial or commercial loads threatened by economic hardship. This is not the case in the current application. Thus, NSPI has made a distinction between the types of large load it wants to retain. For the utility why a large load is leaving the system is irrelevant. NSPI's response in a competitive market would be to provide the lowest possible costs to retain all customers. In many ways, for example, it should be as important to retain a company like SYSCO as it is to retain Stora Enso's load.

Clearly, through this current application, NSPI is more concerned about losing load to large industrial and commercial customers who have the ability to generate their own electricity by using natural gas in a combined cycle generating facility. This suggests NSPI is concerned about competition and not simply about losing load.

NS Municipal Electric Utilities Cooperative (p. 5):

The application before the Board is a response to competitive force entering a regulated, monopolistic jurisdiction. It is an ad hoc response, and may be a necessary short-term remedy. It is essentially anti-competitive. The existence of gas fired co-gen plants in Nova Scotia would create pressure to open the market.

Irving Oil (p. 1):

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.

Sempra Atlantic (pp. 16-18):

It is noteworthy, that during cross-examination of NSPI, it became apparent that while the NSPI witnesses understand that other companies now offering other forms of energy come to the market with the shareholders of those companies accepting the risks of price discounts, NSPI chose not to structure its LR Rate proposal so that its shareholders could both accept the risk but also take the benefit of any upside. Such a proposal would have been far more consistent with the desire to operate in a truly competitive marketplace than the proposed scheme that captive customers bear the risk...

Mitigative measures to limit the cost of the discounts that will be incurred through the implementation of an LR Rate are entirely within the control of NSPI and its shareholders. The captive ratepayers of NSPI have no ability to influence the business decisions that NSPI may take with regard to measures such as those outlined by Mr. Kumar and others during this Hearing. Given the lack of ability by captive ratepayers to influence NSPI's actions, and given that NSPI wishes to now act in a competitive marketplace, NSPI should not be able to use its monopolistic power to gain an unfair competitive advantage.

As Mr. Kumar summarized in his Pre-filed Evidence at p. 14:

In a monopolized utility market regulators generally make sure that a utility does not use rates solely to strengthen its monopoly power and inhibit competition, especially at the cost of its captive customers.

NSPI has not, either in the wording of its proposed LR Rate nor in its closing submission convincingly responded to each of these very real concerns.

Competition is not the problem. Using one's monopoly power to prevent competition, however, is a problem.

In the face of the many concerns raised about both the anti-competitive nature of the LR Rate, in its present form and the absence of ratepayer protection, the Board's public interest duty is such that these shortcomings must be addressed through a significant revising of the LR Rate offering before it is approved.

All of which is respectfully submitted this 4th day of February, 2000.



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