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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 by Nova Scotia Power Incorporated for approval
of a Load Retention Rate**

**CLOSING SUBMISSION
OF
STORA ENSO PORT HAWKESBURY LIMITED**

This Rebuttal Brief focuses mainly on the Sempra Atlantic Gas. However, many of the points made below apply to similar arguments advanced by other parties.

I. REBUTTAL TO CLOSING SUBMISSION OF SEMPRA

A. *Does the Load Retention Rate Provide a “Benefit” or is it a “Discounted Rate”?*

In Section 2 of the Sempra Closing Submission, reference is made in the third full paragraph to “the cost of these discounts”, referring to the lower electricity rate for a customer who negotiates a Load Retention contract, the burden of which will be placed upon “the remaining residential, commercial and industrial customers of NSPI”.

Similar phrasing appears at the top of page 4, line 2, where reference is made to “deep discount rates”.

In Sections 4B and 4C of the Sempra Closing Submission, there are similar statements. In Section B, second paragraph, (Page 10), reference is made to customers having to “make-up” for the “losses” that occur when a customer goes onto a Load Retention Rate. The first paragraph of Section C (Page 11), which argues for minimum take provisions, colourfully imagines that “captive customers of NSPI are expected ... to foot the bill”.

It is important to recognize that, in the context of a Load Retention Rate, we are not dealing with “discounts” or “losses” or “footing the bill”. Rather, we are dealing with gains to NSPI’s other customers. The whole premise of the Load Retention Rate is that, without it, the customer can and will remove its load from the system. But clearly that cannot and will not happen unless the Rate provides a **benefit** to the other customers. It is not correct to imagine that the Load Retention Rate provides a “discount”; one cannot compare the benefits to the other customers with the contribution made if the customer were to stay on its present rate. Staying on the present rate is not an option; it is not part of the premise on which this Load Retention Rate Application is proceeding.

It is important for the Board in its Decision to be clear that by applying for the Load Retention Rate the utility is asking for permission to offer a rate that will **benefit** NSPI’s other customers, not penalize them. The pejorative language of “discounts”, “losses” and (in other testimony and argument) “secret” or “special” rates does nothing to advance public understanding or acceptance of a rate offering that **all** parties to this hearing believe it is appropriate for the utility to have, in one form or another.

Sempra’s Closing Submission also states on page 6:

“Ratepayers have a right to know that they really do benefit from these LR Rate contracts and NSPI’s assurances alone will not satisfy those concerns.”

That is, of course, exactly why (under the NSPI proposal) the UARB is required to approve the Rate as negotiated. Knowing that the UARB has this role on behalf of the public, it is submitted, fully meets this requirement – as is the case in all other jurisdictions examined during the course of this Hearing. (Indeed in some jurisdictions, the Board is not even required to grant approval, receiving only a copy of the Agreement as negotiated. This practice is based on the sound principle that there is already adequate incentive on the part of the utility to negotiate hard for the best possible rate for itself and its other customers.)

Give a dog a bad name and the world will think it is bad, regardless of the facts. It is important for public acceptance reasons that the Board label the LR Rate for what it is: a benefit to all customers.

B. The Question of a Floor Price

Section 4A of Sempra's Closing Submission, entitled "The need for a clearly stated price floor", (pages 6 to 10) are, with respect, mystifying. The evidence of Dr. Chamberlin from the 1996 Rate Hearing to the effect that prices should reflect marginal costs, and that there should be price floors, is cited with approval. So is Dr. Rosenberg's statement in the present case, as follows:

"Regulators require that other customers be **better off** as a consequence of the CAR than they would have been absent the special rate. Sometimes this is stated explicitly. Other times it is expressed as a condition that the rate should be **greater than the incremental cost** of providing the service. Occasionally the regulators will stipulate a minimum amount by which the Rate **must exceed the incremental (or marginal) cost**. Sometimes the rate requires that the customer **make a positive contribution** to the utility's fixed costs. **These are all different ways of saying the same thing.**" (Emphasis added)

The Sempra Submission proceeds on a misapprehension. Sempra seems to believe that there is no floor stated in the NSPI Application. But there is. It is bullet No. 2 in Availability Condition (1):

"(1) This Rate shall be granted only in circumstances where it can be shown that:

...

- Retaining the customer's load, at the price offered by this Rate is **better for other electric customers** than losing the customer load in question."

As Dr. Rosenberg says, this means exactly the same as stipulating that the Rate must be "greater than incremental cost" (which is what Alliant Energy and El Paso Electric, cited at page 9

of the Sempra Submission, say), or the Rate “must make a positive contribution to fixed costs” (which is what the PPL Rate, cited at page 9 of the Sempra Submission, says), or “price floor at marginal cost” (which is what SoCal Edison, cited by Sempra, at page 9 says).

In short, Section A of the Sempra Submission (pages 6 to 10) and the authorities favourably cited therein by Sempra fully support exactly what NSPI is proposing. They stand as powerful evidence that the right floor for a Load Retention Rate is the marginal cost, and not some higher number as recommended by Mr. Kumar and adopted by Sempra. Even at that, it must be remembered that Mr. Kumar himself, in cross-examination, backed off his 10% figure, and at the end of the day would be content so long as there is a “significant positive contribution” to fixed costs (See Evidence, page 503).

C. The Question of Guidelines or Conditions

Sempra argues for guidelines for minimum and maximum length of LR Rate contracts (Section 4B of the Sempra Submission, page 10), and for minimum and maximum take provisions (Section 4C, pages 10 - 11). For the reasons argued in Stora Enso’s Post-Hearing Brief, such conditions would only serve to inhibit negotiations, and thus to render it less likely that a negotiated Load Retention Rate could be arrived at. These conditions (and others like it) can therefore never act for the benefit of NSPI’s other customers, as Sempra argues, but could only act to their detriment. After all, the objective agreed to by all witnesses in this case, and by Public Utility Boards in other jurisdictions (cited with approval by Sempra in the present case), are all based on one simple idea: namely, that as long as some benefit accrues to the utility, a Load Retention Rate is preferable to having the customer exit the system altogether. Given this objective, on what public interest basis should a regulator preemptively prescribe preconditions to negotiations, which could only have the effect of inhibiting the negotiations, perhaps to the point where no agreement on a Load Retention Rate is possible?

With respect to Section 4D of the Sempra Submission (page 11) on unbundling the LRR Rate, a number of suggestions are made, all of which would once again reduce flexibility in negotiations. These suggestions are, therefore, not in the public interest, which is clearly in favour of maximizing the opportunity for the parties to come to an agreement.

D. The Question of Confidentiality

Section E of the Sempra Submission (pp. 11 - 12) states that the confidentiality provision needs to be “weighed more towards the public interest”. Stora Enso agrees. But the question is, what is in the public interest?

As stated above, the public interest is best served when the utility and the exiting customer have the best opportunity to come to an agreement. The evidence is clear that customers are very reluctant to enter into negotiations if they know their private, commercially sensitive information can become public. This is also the case even when the only publicity relates to the fact that customers are on the Rate, or what the Rate amounts to.

Properly understood, therefore, the public interest most assuredly requires confidentiality – as indeed all other jurisdictions (so it would appear) that offer a Load Retention Rate already recognize. The pejorative notion of “secret rates for secret customers” raises the spectre of privilege and discrimination. But we have a Utility and Review Board precisely to act as a watchdog on behalf of the public to ensure fairness. That is why the Board is being asked to be involved through the approval mechanism in the Rate applied for.

E. Competitiveness

Section 5 of the Sempra Submission (pp. 13 - 18) is presented under the heading “The LR Rate should be Pro-Competitive and not Anti-Competitive”. From this general proposition, Sempra draws the conclusion that the NSPI shareholders should bear a share of the so-called “discount” being offered to load retention customers. In so doing, it argues, NSPI would be putting itself in the position of all “normal businesses”, which accept the risk of such losses.

With respect, this analysis is flawed. In the first place, NSPI is surely correct when it stated in its response to Sempra Atlantic IR-13(5) that it is not seeking approval for a Load Retention Rate in order to take on some risk in exchange for some potential benefit to its shareholders. Rather, the whole idea is to reduce the real risk to its customers. Here again it is important to point out that we are **not** dealing with “losses” or “discounts”. We are **not** comparing a customer’s pre-existing rate with its new (lower) Load Retention Rate. Rather, the whole premise is that the customer has the

choice of exiting the NSPI system altogether. Therefore, the only proper comparison is between the net positive benefit the utility's other customers will receive if a Load Retention Rate is successfully negotiated, with the 100% loss of revenue that will result if the customer goes off line. Why should NSPI accept a risk to its shareholders, when all it is doing is acting to reduce the risk to its customers?

Second, the "normal business" analogy is false. In any such business (i.e., an unregulated business), a party in NSPI's position should and could plan for gains beyond the regulated return, in exchange for assuming risk. That is not possible under a regulatory system. Why, then, should it be asked to accept extra risks?

In Sempra's Submission the following appears at page 16:

"The notion that other ratepayers should finance the **costs** of these LR contracts is inconsistent with a truly competitive marketplace. Real competition requires that businesses be at risk. Allowing one player the ability to **discount competitively** but not suffer any consequences to its shareholders creates an unfair playing field. The incentive for NSPI would be to **discount more than is necessary** because its captive ratepayers will have to provide additional revenues leaving the shareholders of NSPI indifferent." (emphasis added)

But, for the reasons stated above, this analysis is incorrect. There are no "costs" of LR contracts; there is only a benefit. It may be correct to say that "real competition requires that businesses be at risk", but "real competition" also requires that the company be offered a commensurate opportunity for reward. Finally, there is no incentive for NSPI to "discount more than is necessary"; the incentive is, rather, the other way. In the first place, NSPI – and not its "captive ratepayers" – will bear the brunt of the revenue reduction, at least until a general rate hearing. Secondly, at that rate hearing (if not before, at the LRR approval stage) it must demonstrate to the Board's satisfaction that it has negotiated properly, failing which the utility's shareholders will bear the consequences.

F. Summary

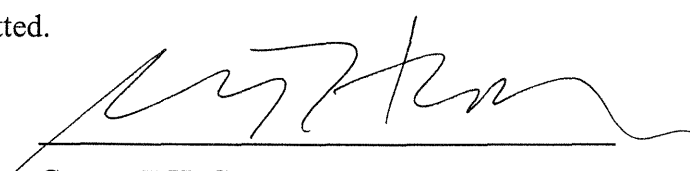
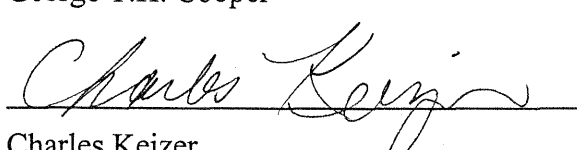
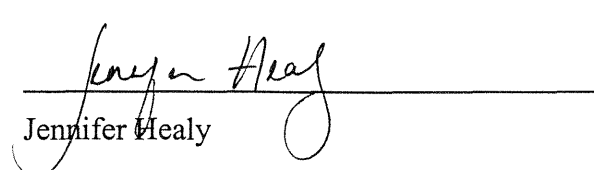
It is in the interest of potential Load Retention Rate customers such as Stora Enso that the Load Retention regime approved by the Board does not inhibit the utility from entering into serious negotiations for a Load Retention Rate; NSPI's "captive customers" should logically be of the same view. After all, it is obviously in their interest that NSPI have a successful negotiation with the exiting customer, and thereby save some part of revenues that would otherwise be lost to the system.

II. IRVING OIL LIMITED

A. The Issue of "Self-Generation"

At page 7 of the Irving Oil Submission, paragraphs 1 - 4, the suggestion is made that the availability section of the Rate should restrict the LRR to cases of "self-generation". Obviously, many reasons -- usually related to the financing of large projects such as the kind of combined cycle cogeneration facility that Stora Enso and perhaps other NSPI customers are contemplating -- why the possibility of having the plant built by a third party to serve the customer in question must be left open. The phrase "self-generation" would pose no problem if it were intended to include this situation; but given the ambiguity inherent in these words, the wording in the NSPI Application should be retained.

All of which is respectfully submitted.


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