DECISION **NSUARB-NSPI-P-886(2)**
2007 NSUARB 18

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF A SUPPLEMENTARY DECISION on the Compliance Filing Process arising from the Board's Decision approving Nova Scotia Power Incorporated's Application for Certain Revisions to its Rates, Charges and Regulations

BEFORE: Peter W. Gurnham, Q.C., Chair
Margaret A. M. Shears, Vice-Chair
Kulvinder S. Dhillon, P. Eng., Member

COUNSEL:

NOVA SCOTIA POWER INCORPORATED
René Gallant, LL.B.
Terry Dalgleish, Q.C.

AFFORDABLE ENERGY COALITION
Claire McNeil, LL.B.
Megan Leslie
Marc Dunning

AVON VALLEY *et al.*
Robert G. Grant, Q.C.
Nancy G. Rubin, LL.B.
Mark Freeman, LL.B.

CANADIAN MANUFACTURERS & EXPORTERS
Robert Patzelt, Q.C.

CONSUMER ADVOCATE
John P. Merrick, Q.C.
William L. Mahody, LL.B.

ECOLOGY ACTION CENTRE
Brendan Haley

HALIFAX REGIONAL MUNICIPALITY
Martin C. Ward, Q.C.
Julian Boyle

MUNICIPAL ELECTRIC UTILITIES OF NOVA SCOTIA CO-OPERATIVE
Don Regan

NDP CAUCUS OFFICE
Howard Epstein, MLA

PROVINCE OF NOVA SCOTIA (Department of Energy)
Stephen T. McGrath, LL.B.
Scott McCoombs
Richard Penny

STORA ENSO PORT HAWKESBURY LIMITED and **BOWATER MERSEY PAPER COMPANY LIMITED**
George T. H. Cooper, Q.C.
David S. MacDougall, LL.B.
James MacDuff, LL.B.

BOARD COUNSEL: S. Bruce Outhouse, Q.C.

WRITTEN SUBMISSIONS: February 15, 2007

DECISION DATE: **March 15, 2007**

DECISION: **Certain changes to Compliance Filing process approved**

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1.0 INTRODUCTION

[1] This is a decision on the issue of the Compliance Filing process followed by the Nova Scotia Utility and Review Board (the "Board") and arises from the Board's Decision dated February 5, 2007, and an Order of the Board dated March 8, 2007, in respect of a hearing to consider Nova Scotia Power Incorporated's ("NSPI") application for revisions to its rates, charges and regulations.

[2] At present, following a decision by the Board on a rate application, NSPI submits a Compliance Filing with the Board. The purpose of a Compliance Filing is to provide, among other things, an accurate calculation of the rates applicable to each customer class, and the corresponding revenue cost ratios (R/C) and revenue requirement allocations which result from implementing the findings set out in the Board's Decision. The Board then reviews the Compliance Filing and issues an Order approving the revised tariff. Changes to Regulations approved by the Board in its decision are also part of the Order.

[3] The Compliance Filing process was initially questioned by Avon Valley *et al.* ("Avon") in an appeal of the Board's March 10, 2006 Decision in the matter of NSUARB-NSPI P-882. Following the March 10, 2006 Decision, the Board denied Avon's request for access to NSPI's Compliance Filing and issued its Order approving the revised rates and regulations without providing an opportunity for review and comment by Intervenors. Avon agreed to hold its appeal in abeyance pending a satisfactory resolution to this issue. Accordingly, the Board included the Compliance Filing process as one of the issues to be considered in NSPI's 2007 rate application hearing. This matter was addressed by the Chair at the conclusion of the rate hearing:

THE CHAIR

... There's one issue on the issues list which really isn't covered by the Settlement Agreement or any of the discussions we've had, and that is the future Board process with respect to compliance filings. And I'm looking at Ms. Rubin. I think perhaps what we would do is we would sever that from the decision with respect to the Settlement Agreement, because we had hoped to get that decision out very quickly and allow parties -- not expect parties to make submissions on that issue today or by Friday. And as far as I'm concerned you can have till February 15th, if you want to, to make submissions on that point, and then we'd issue a supplemental decision with respect to directions on future compliance filings. So, I think we can take that off the table for purposes of today. We will deal with it but there's no urgency in dealing with it.

MS. RUBIN

Thank you, Mr. Chair. I'd spoken with Mr. Outhouse this morning and he alerted me to that process, and that would be convenient. And if it assists the other parties, we can file our earlier correspondence that we had with Mr. Outhouse which will outline the issues that we brought to the Board's attention.

THE CHAIR

Okay. Well, that would be helpful. And as I say, parties can have until the 15th of February to file on that, but that won't delay the decision with respect to the settlement ...

(Transcript, January 24, 2007, pp. 62-63)

[4] In its February 5, 2007 Decision, the Board confirmed the filing date as follows:

> Item 12 on the Issues List was the Compliance Filing process. As indicated at the conclusion of the hearing, parties have until February 15, 2007, to make submissions on that matter following which the Board will issue a decision.
>
> (Board Decision, February 5, 2007, p. 30)

[5] In addition to Avon's comments, the Board received submissions from the Consumer Advocate ("CA"); Stora Enso Port Hawkesbury Limited and Bowater Mersey Paper Company Limited ("SEB"); Municipal Electric Utilities of Nova Scotia Co-operative ("MEUNSC"); and Nova Scotia Power Inc. ("NSPI"). No rebuttal submissions were received by the Board.

2.0 WRITTEN SUBMISSIONS

Avon

[6] In its submission, Avon stated that Compliance Filings, with appropriate supporting documentation and opportunity for comment, should be available to Intervenors prior to the Board approving NSPI's tariff. Avon stated that:

> 4. In our respectful submission, revenue/cost (R/C) ratios and revenue allocations are of the utmost importance. The Board, as the public body entrusted with setting rates fairly, has a responsibility to do so consistent with administrative fairness and due process. To the extent the Board relies on information or evidence to make the final Order, in our submission, this evidence should be available to Intervenors (subject to the usual limitations in respect of confidential material).
>
> 5. Disclosure of the revenue allocation scenarios along with the R/C's by customer class is of critical importance to Intervenors who do not have access to NSPI's proprietary Cost of Service Study. Without being able to replicate the model, the Intervenors cannot connect the reductions in NSPI's revenue request and the translation into rates by customer class.
>
> 6. In a general rate case or other proceeding where inter-class adjustments are made, in our submission, in order to satisfy our concerns with respect to the transparency of the process and administrative fairness, Intervenors should be granted access to any alternative revenue allocation scenarios submitted by NSPI to the Board along with communications respecting these alternative scenarios, the Compliance Filing itself and any revisions, and should be afforded the opportunity to comment thereon all *in advance of* the Board rendering its Final Order. [Emphasis in original]
>
> (Avon-Submission on Compliance Filing process, p. 1)

SEB

[7] SEB shares the same concerns as Avon, submitting that:

> 3. SEB is in general agreement with the position put forward by the Avon Group, namely that:
>
> > . . . Intervenors should be granted access to any alternative revenue allocation scenarios submitted by NSPI to the Board along with communications respecting these alternative scenarios, the Compliance Filing itself and any revisions, and should be afforded the opportunity to comment thereon all *in advance of* the Board rendering its Final Order. [Emphasis in original]
>
> . . .

5. As such, SEB believes that Intervenors should be provided the opportunity to comment on any Compliance Filing and associated materials provided by NSPI to the Board subsequent to the rendering of the Board's Decision in a proceeding but prior to the rendering of its Final Order. In this connection we observe that, since Intervenors come at matters from different perspectives, it is often only with the full involvement of the Intervenors that issues of broad concern are brought to light.

. . .

7. SEB notes that allowing a short period of review and comment by Intervenors would not add extensively to the process, but would provide greater transparency and procedural fairness.

(SEB-Submission on Compliance Filing process, pp. 1-2)

MEUNSC

[8] MEUNSC, in its submission, also agreed with Avon, but included an additional issue as noted below:

> That should any materials or information be presented that have not been examined in the Case prior to the Compliance Filing, that Parties should be accorded the opportunity to make Information Requests respecting the same.
>
> That any orders, directives, or communications between the Board, its staff, or its Consultants and NSPI subsequent to the Order for a Compliance Filing be subject to scrutiny and comment by the Intervenors.
>
> (MEUNSC-Submission on Compliance Filing process, p. 1)

CA

[9] The CA, while endorsing Avon's position, has requested additional information on the Compliance Filing, including the cost of service study, provision for further information requests and disclosure of various calculations and assumptions made at each step of the process in the preparation of the Compliance Filing:

> Accordingly we endorse the suggestions made by Avon Valley et al in their letter to the Board dated January 31, 2007, that NSPI provide the parties information sufficient to replicate the Company's process of translating overall revenue requirements to class revenue requirements, and resulting R/C ratios. As Avon Valley et al request, the Intervenors should be given access to "revenue allocation scenarios along with the R/C's by customer class," including all "alternative revenue allocation scenarios submitted by NSPI to the Board" along

with "communications respecting these alternative scenarios, the Compliance Filing itself and any revisions..." We also support the request that Intervenors be afforded the opportunity to comment on the proposed allocation to class, as well as the Compliance Filing itself, before the Board makes its decision.

In this hearing, NSPI provided the parties and the Board Exhibit N-49, which took the last stage of revenue requirement determination by class from the filing (Figure 9.4), and supplied the numbers by class that were the result of its allocation of the burdens and benefits of the settlement. However, the parties did not get the equivalent of Figure 9.1, nor of any intermediate stages in the process of getting from the Figure 9.1 starting point to the end result. The starting point and the intermediate stages are largely unknown to the parties.

While Avon did not specify it, the Consumer Advocate requests that Intervenors be provided with the revised COSS results that lead to the initial allocation of costs to classes. This would provide the backup for the "Figure 9.1" equivalent starting point of class revenue determination. Any party wishing to propose an alternative "Figure 9.4" would need this starting point information, and would need to be confident of its correctness. Especially in a docket such as this one, in which the settlement calls for an adjustment to the allocators for at least one class, in which reasonable alternatives could be proposed for allocation of depreciation, and in which allocation of fuel costs has such a large impact on class revenue targets, it is important for all affected to understand and be confident in the starting point. In the filing of the rate increase, the Company provided the COSS run that was the basis for the cost allocation implicit in Figure 9.1, the starting point of the class revenue determination process. It should produce not only its "Settlement Figure 9.1", but the COSS run that supports it.

The Company should also disclose the steps of the progression it made to get from "Settlement Figure 9.1" to Exhibit N-49. The Company may have used a variety of decisions or rules in addition to those Dr. Stutz had proposed in his direct testimony, and which were agreed to in the settlement, to get from the unknown "Settlement Figure 9.1" to "Settlement Figure 9.4" (Exhibit N-49). The Company may have interpreted the Stutz method in a way differently from the interpretation other parties would give the method. The parties are ignorant of these potential issues, and cannot provide an informed judgment about the merits of the resulting Exhibit N-49 without understanding them.

(CA-Submission on Compliance Filing process, pp. 1-3)

NSPI

[10] NSPI indicated that it has no specific objection to the proposals for changes to the Compliance Filing process, but expressed concern regarding possible delays in the implementation of the Board's decision which could result from such changes, and the issue of confidentiality. It stated:

NSPI agrees disclosure of the Compliance Filing may be of interest to parties in a General Rate Application, subject to usual confidentiality provisions. In making this comment NSPI requests that any change in the Rate Case compliance process must preserve the ability to

> have the new rates implemented in a timely and efficient fashion, and not delay the effective date of the rates. Timely recovery of costs remains of concern.
>
> . . .
>
> Finally, it is important that any compliance process ensure that confidentiality can be maintained, where necessary and appropriate. NSPI contemplates using the usual approach to confidentiality in the compliance process, familiar to all stakeholders, that provides both confidential and redacted versions of the filing as necessary.
>
> (NSPI letter dated February 15, 2007 - Compliance Filing process, pp. 1-3)

3.0 FINDINGS

[11] The Board has carefully considered the submissions of Intervenors and NSPI in this matter. Generally, Intervenors filing submissions on the Compliance Filing process agree with the position put forward by Avon. Two Intervenors have requested more extensive information and additional steps in the Compliance Filing process than that requested by Avon.

[12] Avon has submitted that R/C ratios and revenue requirement allocations are important and should be available for comment by the intervenors. In addition, NSPI may develop and submit alternate scenarios based on various assumptions for the R/C ratios. Avon suggests that that information should be available to the Intervenors as part of the Compliance Filing process. The Board agrees. The Compliance Filing, including R/C ratios and revenue allocations, along with various scenarios utilized to finalize the Compliance Filing, are to be made available to Intervenors for comment. To the extent possible, in future rate case decisions, the Board will give more specific guidance with respect to R/C ratios.

[13] In addition, if Board Staff request additional scenarios or material from NSPI, following the Compliance Filing, those requests will be in writing and both the request and the response will be circulated to all parties.

[14] The Board believes this will provide fair and adequate disclosure while at the same time balancing the need for timely issuance of the decision. After all, the Compliance Filing is not an opportunity to re-argue the case; it is simply the implementation of a decision the Board has already made.

[15] The Board does not, as a general rule, see the need for an additional IR process or all the disclosure requested by the CA. It is of course open to the parties to request the Board allow additional disclosure in any given case, if circumstances justify it.

[16] In any individual decision, the Board will provide direction with respect to the timeline for filing the Compliance Filing and any Intervenor response.

An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 15th day of March, 2007.

Peter W. Gurnham

Margaret A.M. Shears

Kulvinder S. Dhillon