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Our File: G-2927
November 29, 2006

HAND DELIVERED

Ms. Nancy MacNeil
Regulatory Affairs Officer/Clerk
Nova Scotia Utility and Review Board
1601 Lower Water Street
Suite 300, Summit Place
Halifax, NS B3J 3S3

RECEIVED
NOV 30 2006
Nova Scotia Utility and Review Board

Dear Ms. MacNeil:

Re: Nova Scotia Power 2007 Rate Application
NSUARB – NSPI – P-886:
Late Filed Evidence

On Friday, November 24, 2006, Nova Scotia Power Incorporated ("NSPI") filed the following evidence with the Board and all parties to the above-noted proceeding:

1. Evidence of Michael O'Sheasy, Christensen Associates Energy Consulting LLC; and

2. Report of JT Browne Consulting (NSPI Lead/Lag study).

Stora Enso Port Hawkesbury Limited and Bowater Mersey Paper Company Limited ("SEB") have the following comments with respect to NSPI's filing of this evidence which we would ask that you bring to the attention of the Board.

1. O'SHEASY EVIDENCE

SEB is strongly of the view that this evidence should not be admitted as part of the record in this proceeding. To the extent that any part of this evidence is allowed to form part of the record, SEB requests that the Board provide a revised Schedule giving all parties appropriate opportunity to deal with such evidence.

NSPI filed its Application and supporting Direct Evidence with the Board on October 10, 2006. As part of its Application, NSPI sought directions from the Board on pre-hearing procedures and the date for the hearing, including a process for the establishment of an Issues

List. No mention was made in the Application or Direct Evidence of NSPI's intention to file subsequent evidence with respect to the issues covered by the O'Sheasy evidence.

The Board issued a Hearing Order on October 16, 2006, together with a Preliminary Issues List. Intervenors and NSPI were given the opportunity to comment on the Preliminary Issues List. As part of that process, the Board issued a letter dated October 27, 2006, addressed to counsel for SEB and NSPI, dealing with the proposed ELI 2P-RTP true-up mechanism. The final Issues List came out on November 3, 2006.

In light of the Issues List, the Board correspondence of October 27, and the late filing of the purported evidence, SEB respectfully requests that the Board not accept this evidence into the record for this proceeding for the reasons explained in detail below.

SEB notes that Board Regulatory Rule 7(7) provides in part that the Board may reject submissions of evidence and any other documents which are not filed in accordance with the schedule set up by the Board for an application, and that the Board is entitled pursuant to Board Regulatory Rule 17(1)(c) to determine any question as to the admissibility of any evidence as a preliminary matter.

The O'Sheasy evidence deals with three broad topic areas described in the evidence as follows:

1. The flat customer base line ("CBL") used in the 2P-RTP requires a change to fuel forecasting;

2. The incremental export benefit credit ("IEBC") set out in the 2P-RTP may over-compensate the customers; and

3. The marginal pricing mechanism utilized in the 2P-RTP would benefit from a true-up.

We will deal with each of these items in turn.

1. The flat customer base line ("CBL") used in the 2P-RTP requires a change to fuel forecasting

This item was not identified as an issue in the final Issues List, and therefore has not been filed in accordance with the mandated process. In any event it is inappropriate for NSPI to lead evidence in this regard at this time.

In its own Direct Evidence, NSPI stated the following at Section 1.4 "Replacement for Extra-Large Industrial Interruptible Rate (ELIIR)":

> "Because of the timing and complexity of the ELIIR-2 Decision, this Rate Application has been prepared using a preliminary estimate of the ELIIR-2 rate. NSPI will not have certainty about the ELIIR-2 rate until the Compliance Filing has been approved and the customers select their new rate. The ELIIR-2 rate, and the relevant portions of this Application, will be adjusted during this proceeding

in order to reflect the rate(s) ultimately selected by the ELIIR-2 customers. **This may affect the percentage rate increase for other customers; however, changes to the ELIIR-2 rate do not change NSPI's 2007 revenue requirement.**" (Emphasis added)

And at Section 8.2 "New Rate Replacing ELIIR and 2P-RTP", NSPI also stated:

"However, at the time of this Application, ELIIR-2 has not been finalized, and the customers have not selected their rates. Revisions resulting from the Board's pending Order regarding ELIIR-2 will be reflected in a future filing during this proceeding."

NSPI was clear in its Direct Evidence that "changes to the ELIIR-2 rate do not change NSPI's 2007 revenue requirement".

However, in response to UARB IR-48 filed November 20, 2006, NSPI stated that the Board's ELIIR-2 Order **would** result in revisions to the 2007 revenue requirement to reflect the effect on the fuel forecast of the customers' choice of the ELI 2P-RTP rate and the associated use of a flat line CBL for these customers. NSPI went on to state that the 2007 CBL for each customer, once both are established, will be used in calculating the revisions.

Mr. O'Sheasy's evidence was apparently filed in part to support the position put forward in NSPI's response to UARB IR-48.

SEB submits that it is inappropriate for new evidence to be filed at this late stage regarding the issue raised in NSPI's response to UARB IR-48. NSPI was well aware at the date of the filing of its Application that the ELIIR-2 customers had the option of choosing the ELI 2P-RTP rate, and in fact it was this type of rate form which the customers had been advocating throughout the ELIIR-2 proceeding. It must have come as no surprise to NSPI that this was the customers' ultimate choice.

SEB is also concerned that NSPI will not be filing its proposed revisions until presumably the month of December. SEB assumes the Board will provide a process for information requests and responses, and the filing of Intervenor evidence with respect to any proposed revisions to NSPI's filing, if such revisions are themselves accepted into evidence by the Board. Only once NSPI has actually made its filing, can Intervenors logically be expected to be able to challenge such material, pose information requests, or develop their own evidence in this regard if required.

2. The incremental export benefit credit ("IEBC") set out in the 2P-RTP may over-compensate the customers

SEB respectfully submits that this issue is not reflected in the Issues List. The IEBC is an approved part of the ELI 2P-RTP tariff and no mention was made by NSPI in its initial Application or Direct Evidence with respect to this item. Further, although purporting to provide testimony on this matter, Mr. O'Sheasy concludes on this point by stating that he is only "recommending that the issue be further considered as the rate is implemented and reviewed

from time to time". SEB respectfully submits that this evidence does not deal with any aspect of the issues to be dealt with in this proceeding at this time.

3. The marginal pricing mechanism utilized in the 2P-RTP would benefit from a true-up

In its correspondence dated October 27, 2006 the Board specifically stated as follows:

> "In the Compliance Filing issued today, the Board declined to include a true-up mechanism. The Board, in the ELIIR decision, provided two mechanisms to ameliorate risk:
>
> 1. The risk protection mechanisms as contained in the rate;
>
> 2. An annual review on the anniversary date of approval of the rate to ensure the rate is operating fairly.
>
> The Board notes that at the hearing NSPI chose, in large part, not to participate in the discussion concerning risk protection mechanisms which were explored with Dr. Rosenberg, Mr. Drazen and Dr. Stutz. NSPI had full opportunity to propose a true-up mechanism in the ELIIR hearing where it could have been properly analyzed and debated along with the other issues that were discussed. Presumably the existence of a true-up mechanism would have eliminated the necessity for the other risk protection mechanisms debated in the hearing and ordered by the Board.
>
> As evidenced by the Compliance Filing, it is not the Board's intent (based on the evidence and submissions to date) to add the true-up condition to the 2P-RTP rate. Indeed, in the decision (para. 179) the Board stated:
>
> > . . . there will be an annual review (not necessarily a hearing) of the new ELIIR rate which will not be a price adjustment, but rather will determine whether the rate is functioning fairly and efficiently with respect to its terms and conditions.
>
> **It was the Board's intent that there would be experience with the rate before further review.**" (emphasis added)

The Board went on to state that, having said the above, it agreed with NSPI that it would be inappropriate to summarily dismiss a portion of the rate application in advance of the hearing on January 22, 2007, and the Board declined SEB's request to do so and left the matter on the Issues List.

The O'Sheasy evidence specifically acknowledges the efforts made by the Board to ameliorate risk (page 14, lines 13-24) but suggests that they may not be sufficient and then provides his views with respect to a recommended true-up provision. This is the exact provision which SEB understood from the Board's correspondence of October 27 (and its findings on the Compliance Filing) was not to be added to the 2P-RTP rate at this time. Any further review of

such matters was not to occur until there was "experience with the rate". Yet NSPI has filed this evidence notwithstanding that no customer is even yet on the rate. The O'Sheasy evidence provides no evidence of an actual impact, but merely lists potential concerns that he feels may arise. Again, this is why SEB understood the Board was not going to address this matter, or any similar matters regarding the 2P-RTP, until there was "experience with the rate".

If this evidence is allowed to stand as part of the record, then SEB (and all other parties for the reasons noted below) will have to re-litigate one of the central portions of the ELIIR-2 hearing which has just been finalized. SEB respectfully submits that this is unfair in the circumstances.

As the above quoted passage from the Board's October 27 letter makes clear, NSPI had full opportunity to propose a true-up mechanism in the ELIIR hearing where it could have been properly analyzed and debated along with the other issues that were discussed, and they chose not to do so. To reopen this issue would significantly reopen the rate contrary to the Board's express intention, and provide tremendous uncertainty to the customers who are proposing to go on the rate as of December 1, 2006.

As noted above, this is a matter of concern to all parties, in that at page 16 of the O'Sheasy evidence he states that:

> "A case could be made that all customers should share in this true-up if the Board concludes that other customers may also ultimately be benefiting by RTP price responses."

And later on the same page:

> "And, it would be up to UARB to decide which customers, if not all, were to be responsible for the true-up."

SEB understands that the Board's general approach to the admission of evidence is that relevant evidence should be accepted provided that its reception is not unfair to one or more of the parties. (*Re Redden Brothers Development Ltd.*, [1995] NSURBD No. 48 cited in *Re Boyne* [1999] NSURBD No. 52). For the reasons noted above SEB respectfully submits that the evidence is not relevant to the matters before the Board in the 2007 rate case and is unfair to SEB, if not all parties, and should not be made a part of the record in this proceeding.

SEB respectfully submits that it is important that the Board make this ruling at this time, so that the parties not be put to the considerable time and expense of having to deal with this matter if this evidence is not to be part of the record. This is all the more important due to the significant number of other issues which NSPI's Application has raised and which the Intervenors have to deal with. Further, SEB has considerable concern with the uncertainty of the ultimate costing of the proposed ELI 2P-RTP rate if this matter is to be left open ended at this time.

If the Board determines that the O'Sheasy evidence, or any part of the O'Sheasy evidence, is to remain a part of the record, SEB respectfully requests that the Board provide a formal process allowing for a schedule for Information Requests and Responses and the filing of

Intervenor evidence. Without getting into the details, the O'Sheasy evidence raises numerous issues, which will require significant review and response. SEB notes that NSPI did not seek leave of the Board to file this evidence, nor did it provide any advance warning that it intended to file this evidence; a filing which occurred on the last business day before the date for the filing of the second set of Information Requests to NSPI.

2. JT BROWNE CONSULTING REPORT

Although NSPI stated on page 135 of its Application that it would be filing this Report as supplementary evidence, as noted above, the Report was not received until last Friday, the last business day before the required date for filing of the second round of Information Requests to NSPI. SEB's preliminary review of the Report leads it to believe that considerable review and follow-up may be required. In this regard, SEB requests that the Board set out a schedule for the filing and response of Information Requests, and Intervenor evidence as may be required.

3. SCHEDULING ISSUES

As explained above, SEB's issues regarding the acceptance of evidence at this late date relate essentially to due process. Not only will SEB not have had time to prepare its own evidence, more fundamentally, considerable portions of this evidence should have been brought forward by NSPI in the recent ELIIR-2 Hearing. As NSPI well knew, certainty and stability were key considerations for SEB, and these issues were fully canvassed in the ELIIR-2 proceeding. It would be wrong and unfair to SEB – not to mention extremely costly and time consuming - to reopen them now. If the JT Browne Report and the O'Sheasy evidence are to be admitted in whole or in part, SEB respectfully submits that as a matter of due process it must be given a full opportunity to reply, even if this makes it necessary to extend the time table for the pre-hearing processes and Hearing. The same is true with respect to NSPI's anticipated updated revenue requirement filing, from which issues arising are not known at this time.

As NSPI filed its Application and Direct Evidence on October 10, 2006, and did not file its recent evidence until almost 6 weeks later, this is seriously compressing the time frame in which SEB, and presumably other Intervenors, can appropriately evaluate and respond to these issues. SEB respectfully submits that it is unfair to the Intervenors for the Applicant to continue to file new evidence, and revise its filing in any substantive way, without providing Intervenors an appropriate time to evaluate and review these materials.

In this regard, SEB also notes that the Black and Veatch review of NSPI's fuel hedging policy is not intended to be complete until the end of 2006 (UARB IR-11) and NSPI intends to file the results of its consultant's operations review as soon as possible and in any event prior to the commencement of the hearing of the application (UARB IR-33). Having the results of these reports (particularly such a key report as NSPI's overall operations review) only available at such a late stage precludes meaningful input from the Intervenors. SEB submits that the Board consider extending the current Hearing schedule to ensure that Intervenors are provided full due process in their ability to review and respond to all material which the Board may subsequently allow NSPI to enter into evidence.

We look forward to receipt of the Board's directions in this regard.

Yours truly,

MCINNES COOPER

George Cooper

(970262.2)
cc: René Gallant
cc: Bruce Outhouse, Q.C.
cc: Intervenors