ORIGINAL

2007 NSUARB-P-866

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 Certain Revisions to its Rates, Charges and Regulations

NOVA SCOTIA POWER INC.
2007 RATE APPLICATION

FINAL SUBMISSIONS ON BEHALF OF THE ECOLOGY ACTION CENTRE

RECEIVED
JAN 2 9 2007
Nova Scotia Utility and Review Board

Submitted: January 26, 2007
Brendan Haley, Energy Coordinator
Ecology Action Centre
2705 Fern Lane
Halifax, NS B3K 4L3
Phone: (902) 442-0199
e-mail: energy@ecologyaction.ca

PART I

Overview

1. The rate application before the Utility and Review Board (the Board) is based on an assumption that the use of fossil fuels, and the costs associated with those fuels, is sufficient evidence upon which the Board can rely in making a decision regarding a rate increase. However, evidence has not been presented, by any party, that a rate increase could be avoided if Nova Scotia Power Inc (NSPI) investigated options with no fuel costs attached.

2. The Ecology Action Centre (EAC) does not support a rate increase. This rate increase is due principally to the continued use of fossil fuels. The volatile nature of these fuel prices has led to a situation whereby the Board has heard the 4th rate case since 2001. It is our position that these fuel costs incurred are neither reasonable, nor prudent given that more cost-effective options as well as options that would decrease fuel volatility have not been maximized.

3. We therefore suggest that the issues discussed at this hearing call upon the Board to order the expedient implementation of policies devoted to increase procurement of energy efficiency and renewable energy.

4. We also maintain that it is appropriate for the Board to seek a redefinition of its role regarding social and environmental costs associated with our consumption and production of energy in this province at this time.

5. We will make reference to our concerns with the settlement agreement between some of the interveners before this hearing in light of the comments mentioned above, and provide recommendations to increase public participation in the hearing process.

PART II - ISSUES

1. Is NSPI Undertaking Reasonable and Prudent Expenses Given Opportunities for Demand Side Management?

2. Is NSPI Undertaking Reasonable and Prudent Expenses Given Opportunities for Renewable Energy Generation?

3. Is NSPI Undertaking Rational and Prudent Expenses?

4. Should Social and Environmental Costs and Benefits Be a Consideration?

5. Should a Fuel Adjustment Mechanism Process be initiated?

6. Do These Hearings Facilitate Full Public Participation?

7. Should the EAC Be Awarded Costs in This Matter?

PART III - ARGUMENT

Is NSPI Undertaking Reasonable and Prudent Expenses Given Opportunities for Demand Side Management?

6. Sec 45(2) of the *Public Utilities Act* R.S.N.S c. 380 [hereinafter PUA] specifies that the Board determines a request by NSPI for an increase in general rates based upon the reasonableness and prudence of its expenses.

7. It is the expenses associated continued fossil fuel generation that is principally at issue in this rate case.

8. The EAC understands that an expense would not be reasonable or prudent if it is undertaken when more cost-effective options were to be available.

9. The Ecology Action Centre acknowledges that Demand Side Manangement (DSM) issues have been rolled into the Integrated Resource Plan (IRP) process planned by the Company and that evidence regarding DSM will be tendered during this process and perhaps a separate DSM process afterwards. The EAC also recognizes that evidence of DSM programs was not introduced at this rate application and, therefore, the Board is not in a position to consider this evidence. However, it is the position of the Ecology Action Centre that to restrict this evidence to the IRP process and to not consider it in this rate application is to set up unnecessary silos of information in a process that should look at NSPI's operations as a whole. Therefore, the EAC will refer to evidence from the DSM and IRP processes.

10. As presented in NSPI's Demand Side Management plan, written by Summit Blue Consulting and submitted on September 8th, 2006, a more cost-effective option than fossil fuel purchase is available. The existing DSM plan as originally filed communicates, in principle, that a utility can avoid costs by making investments in energy efficiency and that energy efficiency is 'cost-effective' if the cost of these investments are less than the avoided costs.

11. The experience in the jurisdiction of Vermont presents an illustrative example of how costs can be avoided by the utility and how energy efficiency can be procured as a least-cost resource. Efficiency Vermont's cost comparison between efficiency and supply in 2004 shows that the cost to make investments in energy efficiency was $0.028 cents per kilowatt hour, while the cost of the avoided electricity supply was $0.075 cents per kilowatt hour. This demonstrates how efficiency can act as a least-cost resource.

12. Procuring fossil fuels instead of efficiency is leading towards extra costs for the ratepayers of Nova Scotia. Given that it is known that a less costly alternative is available, continued fossil fuel expenses by NSPI should be deemed neither reasonable nor prudent.

13. It is relevant to note that the utility has de-emphasized other expenditures that would have resulted in long-term savings to the ratepayer. Most pertinent is the decision to discontinue Demand Side Management programs within this province. If a DSM program had been built upon the 1993 DSM hearings at the UARB, Nova Scotians would have reaped the savings from procuring efficiency as a least-cost resource.

14. Further, the DSM Plan submitted by Nova Scotia Power Inc. on September 8th, 2006 does not provide a full accounting of avoided costs or the maximum achievable economic potential in Nova Scotia.

15. A letter written by EAC consultants from the Vermont Energy Investment Corporation on September 26, 2006 to the Nova Scotia Utility and Review Board specified the documentation required to assess the avoided costs to the utility and society. This documentation has yet to be provided to stakeholders or interveners in either the Integrated Resource Plan or Demand Side Management process.

16. Achievable Economic Potential is defined by the Northeast Energy Efficiency Partnerships as "all feasible, cost-effective efficiency achievable through a concerted, sustained campaign involving proven programs and market intervention – *not bound by budget constraints*" (italics added).[1] In the DSM report filed by Nova Scotia Power, the EAC has expressed in a letter dated August 25th, 2006 that the "benchmarking" methodology used to draw comparisons with other utilities allows calculation of the achievable potential to be bound by the budgetary constraints in other jurisdictions. Nor did the DSM report take into effect the ramping up of DSM budgets set to occur in other jurisdictions to reach higher efficiency potentials. In short, the DSM filing was unduly influenced by decisions in other jurisdictions and would not have provided adequate evidence to the Board regarding the Achievable Economic Potential for energy efficiency in Nova Scotia

17. Thus a lack of publicly available evidence currently exists in Nova Scotia regarding the maximum achievable potential for cost-effective energy efficiency.

18. The EAC understands that in this hearing the Board is charged with considering the approval of certain revisions to NSPI rates, charges and regulations, with an increase in the cost of fuel as the major issue. However, to consider fuel costs in isolation of other more cost-effective options does not allow for a rationale governance of Nova Scotia's electricity system. At issue is the current lack of a framework to procure energy efficiency as a resource. This shortcoming is, in part, due to the lack of clear regulations governing the procurement of energy efficiency.

19. In a letter dated September 26, 2006 to the Board the EAC also expressed our concern for the need to establish a proper framework for the procurement of energy efficiency in Nova Scotia. Issues such as performance incentives, choice of administrator, overcoming throughput incentives, proper public oversight, equity

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[1] Presentation to Conference of New England Governors and Eastern Canadian Premiers by Susan Coakley, Executive Director of NEEP

considerations and funding mechanisms are crucially important the long-term success of DSM programming.

20. Given that it is known that there is an ability to procure energy efficiency as a resource, that a lack of evidence regarding avoided costs currently exists in Nova Scotia, and that a new framework must be created to allow for the procurement of energy efficiency, it is our position that a proper framework be established within the province to ensure that a DSM strategy will be enabled to be expediently implemented following the conclusion of the Integrated Resource Plan and Demand Side Management processes.

21. In conclusion the EAC respectfully submits that the Board:

a) ***Support, in principle, the establishment of a Public Good Charge to provide dedicated and secure funding for energy efficiency, with the amount to be determined by the Integrated Resource Plan process;***

b) ***Mandate that expenditures accruing from the Integrated Resource Plan and Demand Side Management processes should be approved as part of the processes, in order to avoid another rate hearing;***

With the powers granted to the Board under section 21 of the *PUA* the EAC recommends that the Board:

c) ***Recommend to the Government of Nova Scotia that the Utility and Review Board be provided with a legislative mandate to order NSPI to procure cost-effective energy efficiency as the resource of first-choice;***

d) ***Recommend to the Government of Nova Scotia that it provide further direction with regards to the effective delivery of Demand Side Management in due course.***

Is NSPI Undertaking Reasonable and Prudent Expenses Given Opportunities for Renewable Energy Generation?

22. NSPI's strategy of incurring fuel expenses must also be viewed in light of their capital investment decisions. Since 1979 the overall percentage of renewable energy capacity in Nova Scotia has been in decline. In that same period of time we have seen capital expenditures at Lingan, Pt. Tupper, Trenton #6, Pt. Aconi and Tufts Cove.[2]

23. Capital expenditures have been accrued by Nova Scotia Power that carry associated fuel costs. These decisions were taken in spite of the ability of the utility to undertake capital expenditures that would not require associated fuel expenses. If Nova Scotia has undertaken investments in renewable energy developments the province would have been further insulated from the fuel price volatilities that have been referenced in the rate application process.

24. Nova Scotia has made a *choice* in establishing an energy system and energy policies that create vulnerabilities to volatile international fuel markets. Nova Scotia Power has been, at least, complicit in making these choices since they have prioritized particular expenditures in their submissions to the Board over others.

25. In order to assess the reasonableness and prudence of decisions made in Nova Scotia it is necessary to fully assess the potential to avoid fuel costs by investing in renewable energy resources.

26. However, it is not entirely certain what the full potential for renewable energy generation is at this point in time or in the future in Nova Scotia, nor does Nova Scotia Power's current or planned procurement process provide a reasonable amount of certainty that renewable energy projects will actually be developed.

27. Given the high probability of carbon and pollution regulations increasing the cost of utilizing fossil fuel and the current era of fuel price volatility it seems prudent for NSPI, the Board, The Government of Nova Scotia and Nova Scotian citizens to gain as much information as possible on our ability to maximize the use of renewable energy and policies needed to maximize our use of renewable energy. Yet, still in 2007, a study of renewable energy potential combined with recommendations of how to increase that potential has yet to be undertaken in Nova Scotia.

Therefore, with the powers granted to the UARB under Sec 21 of the *Public Utilities Act* the EAC respectfully requests that:

> ***The Board order a complete and independent study on the capacity of Nova Scotia's electricity network to support the connection of distributed renewable energy generators with relevant policy recommendations be undertaken***

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[2] Information from Mr. Aaron Smith from NSPI Annual Reports, latest static from 2004, compiled in winter 2006-07.

expediently in cooperation with NSPI, The Government of Nova Scotia and Stakeholders.

28. In addition to uncertainty regarding Nova Scotia's ability to maximize renewable energy generation in the province, it remains uncertain if renewable energy investments will in fact be accrued, even after NSPI has signed contracts with energy generators. NSPI has gained a track record of seeing project cancellations and set-backs after issuing requests for proposals and signing contracts. In the long-run, set-backs in renewable energy development increase the province's vulnerability to fuel price volatility.

29. A number of other jurisdictions have gained experience with a feed-in law mechanism that fixes the price of renewable energy to ensure development and found that it results in the installation of more wind and other renewable energy capacity.

Thus, the EAC also requests that

30. The Board request that the Government of Nova Scotia and Nova Scotia Power Inc. in consultation with a broad array of stakeholders re-evaluate the current procurement policy for renewable energy, with explicit consideration of a feed-in law mechanism.

31. In conclusion, the EAC fully understands that this hearing is charged with discussing the approval of certain revisions to NSPI rates, charges and regulations, with an increase in rates to incur fuel expenses the major issue. However, to consider fuel costs in isolation of the capital expenditures that are tied to the need to accrue these fuel costs does not allow for a rational governance of Nova Scotia's electricity system, and we request that the Board take action on this issue before considering the requested rate increase.

Is NSPI Undertaking Rational and Prudent Expenses?

32. In light of the ability to both procure energy efficiency as a least-cost resource and undertake capital expenditures without associated fuel costs, we feel that a rate increase request to make further fuel expenses is neither reasonable nor prudent.

The EAC urges the Board to reject any rate application until such time as:

A framework has been developed to continuously procure all cost-effective energy efficiency as the resource of first-choice and

33. NSPI has maximized its ability to invest in renewable energy and cogeneration to reduce the need to incur fuel costs.

Should Social and Environmental Costs and Benefits Be a Consideration?

33. In this submission the EAC has not chosen to question the reasonableness and prudence of NSPI's expenses from a social cost and benefits perspective. However, considering that NSPI's fuel expenses do have social effects we wish to provide recommendations on this issue for future processes.

34. The public is increasingly coming to recognize that the way we use and produce energy has become the defining issue of our time.

35. The broad consequences of our electricity system came to light within the submissions during the evening session of January 24th, 2007.

36. Mr. Paul Chaisson, Dr. Alasdair Sinclair of Faces of Poverty, Mr. Carl Lange of the Salvation Army as well as Mr. Peter Boyles from the Trenton-Hillside Environmental Watch Association highlighted the impact rate increase have on low-income ratepayers. Energy poverty is responsible for homelessness, family break-up, health problems, and dangerous and illegal behaviours. The energy burden of low-income households is only likely to increase given the likelihood of rising fossil fuel costs and Nova Scotia's dependence on those fuels.

37. The Affordable Energy Coalition raised the issue of the discriminatory impact of rate increases on groups in low-income. The Coalition was set to argue that *the Public Utilities Act* violates the *Charter of Rights and Freedoms* and the *Nova Scotia Human Rights Act* because of this discriminatory impact.

38. Ms. Yvette Michaud of the Atlantic Region Solidarity Network and Mr. Blake MacDonald of United Church World Outreach both spoke of the human rights abuses taking place in the coal mines of Columbia. The same mines that Nova Scotia Power Inc. purchases it's coal from. The knowledge the Nova Scotians are inadvertently contributing to human rights abuses by turning on their lights creates a social cost for citizens of Nova Scotia.

39. Ms. Laura Trowell and Mr. Peter Boyles from the Trenton-Hillside Environmental Watch Association spoke eloquently on the effect of the local pollution Trenton. Ms. Laura Trowell and Mr. Duncan MacAdams spoke to global warming being an issue of utmost importance. Global warming has the potential to cause the death of millions through risk of water supplies and food production, increases in pests and disease, and droughts and floods. If greenhouse gas emissions are allowed to continue on our current trajectory we are almost certain to experience a catastrophic and irreversible level of warming.

40. The Genuine Progress Index Atlantic has documented many of the social and environmental costs and benefits associated with energy production in *The Energy Accounts for the Nova Scotia Genuine Progress Index.* GPI Atlantic identified and

assessed 30 economic, social, health, environmental, and institutional indicators to measure the progress of Nova Scotia's energy sector. This study has been presented to the Board before, with little consequence.

41. Given the growing concern regarding the social and environmental consequences of our use and production of electricity in Nova Scotia, the EAC feels it likely that the demands on the Board to consider social and environmental costs and benefits will continue.

In this hearing, the submissions provided to the Board clearly call upon it to consider social and environmental costs. It is with this in mind that the EAC respectfully requests that the Board with the powers granted to it by section 21 of the *Public Utilities Act*,

42. seek clarification from the Government of Nova Scotia regarding its mandate to operate with due regard to economic, social, and environmental concerns.

Should a Fuel Adjustment Mechanism Process be initiated?

42. Before the hearing of NSPI's Application a settlement agreement was reached among the parties that signed the confidentiality agreement and the Company. Given that the EAC has a differing opinion on the prudence and reasonableness of further fossil fuel expenses at this moment in time we were not signatories. Other formal interveners did not sign as well.

43. We wish to express specific concern with item #4 in the agreement regarding a Fuel Adjustment Mechanism (FAM). Item #4 states

"The parties request the UARB to establish a process that commences as soon as possible to establish a FAM. The parties will work constructively on the content or elements of a FAM. A FAM hearing will being no later than July 15, 2007"

44. Our major concern is that a select group of interveners are attempting to dictate the schedule and priorities of the Board. While the EAC certainly encourages interveners to reach compromises and agreements, we note that it is the Board's role to consider the priorities of the public and to consider the priorities of other interveners. It is also our position that this group of intervenors does not represent the interests of all formal interveners.

45. In our submission, the Ecology Action Centre has outlined a variety of recommendations to the Board. Given that consideration of a FAM has been justified due to volatile fuel costs, it seems to be prudent and reasonable for the Board to take all steps necessary to reduce the impact of this volatility by introducing measures to avoid fuel costs as expediently as possible.

46. The Ecology Action Centre also believes the issues raised by the Affordable Energy Coalition, the Genuine Progress Index Atlantic, Mr. Duncan MacAdams, Mr. Peter Boyles & Ms. Laura Trowell of the Trenton-Hillside Environmental Watch Association, Mr. Paul Chaisson, Faces of Poverty, The Atlantic Region Solidarity Network and The United Church World Outreach deserve expedient action.

47. We therefore request that the Board should not convene a process to consider a Fuel Adjustment Mechanism as requested by some interveners until such time as the Board or Government has first established a process to consider each of the following issues:

- ***i. The discriminatory impacts of rate increases on low-income customers;***
- ***ii. a framework to ensure investments to achieve the maximum, cost-effective, potential to improve energy efficiency;***
- ***iii. the undertaking of an independent and complete analysis of the capacity of Nova Scotia's electricity network to support the connection of distributed renewable energy generators;***

iv. ***the implementation of Recommendations 51 and 52 of the Electricity Marketplace Governance Committee to promote renewable energy;***

v. ***the need to re-evaluate Nova Scotia Power's current procurement policy for renewable energy;***

vi. ***consideration of the mandate of the Board to operate with due regard to economic, social, and environmental concerns.***

Do These Hearings Facilitate Full Public Participation?

48. Mr. Allen Smith, Mr. Peter Boyles and Mr. Mike Moeller raised issues of public participation during this hearing.

49. The Ecology Action Centre is writing its submission with the full knowledge that many of the issues raised could be dismissed due to arguments based on legal procedure and rules of evidence. Any complications that might arise because of legal issues like the rules of evidence are due to the EAC's capacity constraints. For instance, it has been especially difficult to prepare a submission given a much shorter time-line than originally expected.

50. We wish to emphasize that the Ecology Action Centre is an organization with limited capacity to fully participate in the hearing process due to funding and staff constraints. As the current energy coordinator for the Ecology Action Centre, I do not currently possess expertise in administrative law. The EAC has had many of its staff and volunteer members participate in hearings for over 3 ½ decades with varying degrees of comfort and familiarity with the Board's norms and procedures.

51. We would like to commend the Board for the actions that have been taken to improve public participation. Without allowing non-profit interveners to make submissions for costs, many would not be able to participate. The board has taken to provide a live audio broadcast during the hearings and the rules, and regulations and decisions of the Board are available on its website, which further facilitates non-profit intervenor involvement.

52. As an intervener with a long history of appearances before the Board, but with limited resources and a variety of members, the EAC believes it is uniquely placed to offer guidance to the Board on issues of public participation.

53. The EAC respectfully recommends the following measures to improve the ability of the public to participate in the UARB processes:

i) make a user-friendly, step-by-step, manual to explain a typical hearing process available on the UARB website as the current page on rules and regulations is difficult to navigate and links to another page;

ii) when hearings are announced advertise that both electronic and paper copies of this manual are available;

iii) ensure that e-mails are clearly labelled if they are relevant to issues of scheduling or administration;

iv) the Consumer Advocate be furnished with funds for the creation and maintenance of a website to provide relevant information and opportunities for dialogue;

v) the UARB establish clear rules and guidelines regarding issues of confidentiality, and ensure that those guidelines are understood by non-profit intervenors.

54. The EAC believes these small steps will improve public participation in the hearing process.

Should the Ecology Action Centre Be Awarded Costs in this Matter?

55. The power to make an order for costs is contained in sections 12 and 28 of the *Utility and Review Board Act*.[3] Section 6(2) of the Board's Rules of Practice and Procedure Respecting Costs states that:

> 6(2) The Board may consider awarding costs against a utility to non-profit, public interest interveners with limited financial resources who:
>
> a) have a substantial interest in the proceeding
> b) will be affected by the proceeding
> c) participate in the hearing in a responsible way; and
> *d)* contribute to a better understanding of the issues by the Board.

56. The Ecology Action Centre is a non-profit, public-interest organization dedicated to respecting and protecting Nova Scotia's environment. Throughout we have attempted wherever possible to reduce hearing time and other costs.

57. As a membership based, non-profit organization we have no commercial interest in the outcome of these hearings. The EAC is funded by individual donations as well as foundation and government support. Mr. Brendan Haley's wage is principally supported by foundation donations, but the EAC does not has not dedicated funding for the express purpose of intervention in this rate application.

58. The environment has a substantial interest in the application before this hearing. This hearing is considering incurring expenses to purchase fossil fuel responsible for global warming and local air pollution.

59. It is submitted that the EAC acted responsibly and prudently in these hearings. The EAC is an organization that represents over 1,200 members in Nova Scotia. Throughout the hearings the EAC has attempted to only discuss topics relevant to the interest of its membership and wherever possible, accommodate, the schedule of the Board. As such, it is submitted that the EAC has behaved in a responsible manner to incur only such costs as were necessary to complete the evidence before the Board concerning the issues in this application.

60. It is submitted that the arguments submitted by the EAC have contributed to the "better understanding" of the issues affecting Nova Scotians and the environment they live in this application for a rate increase by NSPI.

61. It is respectfully submitted that the Board should allow the application by the Ecology Action Centre for costs in this application.

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[3] *Utility and Review Board Act*, R.S.N.S. +1992, c. 11

62. All of which is respectfully submitted.



Brendan Haley, Energy Coordinator, Ecology Action Centre