ORIGINAL

Before The

Nova Scotia Utility and Review Board

In the Matter Of an Application by Nova Scotia Power Incorporated for Approval of Certain Rates, Charges and Regulations

(P – 886)

January 26, 2007

Closing Submission on the Proposed Settlement Agreement

from

Nova Scotia NDP Caucus Office

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Nova Scotia Utility and Review Board

NDP Caucus Closing Submission on the Settlement Proposal

The following submission is made to the Board on behalf of the Nova Scotia NDP Caucus. This submission will address the proposed settlement agreement filed with the Board on January 22, 2007.

Overview

The NDP Caucus notes that the Board is not bound by any element of the proposed settlement agreement, especially given the Board's mandate to exercise independent judgement.

In a previous submission to the Board concerning a Settlement Proposal circulated in December 2004 the NDP Caucus detailed its concern that the settlement process as conducted in that instance served to undermine the credibility of the Board and of the rate hearing and approval process. At the time, the NDP Caucus stated:

> *It is incumbent on the Board to issue some direction, perhaps via the establishment of guidelines, to frame a process by which settlement agreements can be reached. As this is to become a more frequent practice, all intervenors must be involved in the process, instead of the closed-door, back-room process used to reach the settlement agreement on December 15, 2004.*

The NDP Caucus notes with concern that a similar process has taken place – this time before any public hearings took place – resulting in a settlement proposal for NSPI's Application (P-886). A number of intervenors in association with NSPI and Board staff developed and agreed to a settlement proposal during the weekend preceding the opening of public hearings, and in doing so, excluded other intervenors from fulfilling their mandate as representatives of key stakeholders in the rate setting process.

The NDP Caucus wishes to state its concern that the continued use of processes that allow the exclusion of intervenors and the public to determine the cost of electricity in the province of Nova Scotia seriously undermines the credibility of the Board and of the rate hearing and approval process. We suggest that decision-making instruments, including technical conferences and settlement conferences, should be open to all intervenors and not just confidential intervenors.

Increases in the residential, commercial and industrial rates of electricity are becoming annual events. While the NDP Caucus has no objection to NSPI's regular use of the regulatory mechanisms offered by the Board to adjust its revenue base, we feel that the opacity engendered by settlement proposals brokered behind closed doors does little to persuade its customers of the veracity of NSPI's arguments for such adjustments. This year, Nova Scotians are preparing for an increase of almost five per cent for a necessary commodity (electricity) in the knowledge that an extremely limited public hearing took place to examine the evidence regarding the need for such an increase. Such outcomes should not become a regular feature of any truly transparent and accountable regulatory system.

The proposed settlement agreement states that all parties agree in principle that the UARB should adopt a Fuel Adjustment Mechanism (FAM) in principle, and undertake a hearing on the issue no later than July 2007. It is conceivable that such a hearing may never take place, and that a select group of confidential intervenors may again propose a settlement in advance of public hearings. The NDP Caucus is very concerned that such an important development in the regulation of the price of electricity be examined carefully and in public.

The NDP Caucus is concerned about the independence of the regulatory over-sight when Board Counsel agreed in principle to a controversial proposal for a Fuel

Adjustment Mechanism without direction from the Board as to the role of Counsel in settlement conferences.

Recommendation 1: In particular, we recommend that the Board not agree in principle to a FAM as part of any approved rate increase.

The Board has heard expert testimony on many occasions, most recently evidence submitted by Liberty Consulting, that questions NSPI's fuel procurement practices and points out the lack of maturity evidenced by NSPI in this area. The NDP Caucus feels that the Board's rulings on this matter are contributing to an improvement in these practices and we hope that the Board will continue to guide NSPI in this matter, as effective fuel procurement practices help minimise energy cost increases.

With regard to energy efficiency, the NDP Caucus is disappointed at the slow pace of development of a comprehensive demand side management program for NSPI customers. It has been a number of years since a high proportion of NSPI customers made it known through market research that they were extremely interested in working with the utility to reduce their energy costs. To date, no program is in operation. We feel that the absence of a strong DSM program is contributing to increased energy costs for families and for business owners.

Section A: Settlement

The Board is seized of an obligation to exercise independent judgement in all matters that come before it, most especially those with serious financial consequences for hundreds of thousands of individuals, families and business owners. This obligation is not diminished or affected by any proposed settlement agreement.

We feel that in respect of NSPI Application (P-886) it is especially the case that the Board must adhere to its obligation of independent judgement, given that the proposed settlement agreement was submitted to the Board before any public hearings were held in this matter, that subsequently the public hearing timetable was truncated, and particularly since the proposed settlement agreement was negotiated by select parties to the hearings, not by all of the intervenors.

Section B: R.O.E.

The NDP Caucus has noted in previous years' submissions, and repeats, that an element that has been missing from discussion of R.O.E. at the Board hearings is the general low-risk for investors. Since the 1992 privatization, NSPI has generated approximately $100 million of net earnings applicable to dividends for holders of common and preferred shares, each year. The utility is in a virtual monopoly position. Revenues are reliable. Unlike other sorts of investments in publicly-traded stocks the position of utilities, given Canada's prevailing system of exclusive province-based electricity generation, transmission and distribution, is very privileged. We believe that R.O.E. should be set more on the basis of the prevailing return on corporate bonds and less on the basis of the return on other equity investments.

Recommendation 2: Consequently, we suggest that the Board adopt a phase-in move in this direction.

Section C: Executive bonus/ incentive packages

In its March 2006 decision the Board stated that it was still reviewing the 50/50 (shareholder/ratepayer) split on executive bonus/ incentive packages, to see if this remains an appropriate division of this cost.

Recommendation 3: The NDP Caucus suggests that the Board uses the opportunity presented by its forthcoming deliberations to fully move the cost of Executive bonus/ incentive packages over to shareholders.

Section D: Process

The process for any negotiations that might take place among parties during this sort of regulatory hearing requires clarification. We have previously asked and repeat that the Board consider issuing directives, or establishing guidelines, for future settlement processes.

The NDP Caucus has no objection to the use of settlement conferences, so long as there is recognition that the Board cannot be bound by any such discussions or any revised or resultant proposals. What we seek are directions on the process that should guide all parties on future occasions.

Recommendation 4: We ask the Board to consider:

- Whether the Board must be publicly and formally advised when any settlement discussions are to take place;
- What role, if any, Board counsel, staff and consultants ought to take in any such discussions;
- Whether all parties must be advised, and invited to participate;
- Whether settlement discussions must always include at least one meeting at which all parties are present.

Section E: Fuel Costs/ Fuel Adjustment Mechanism (FAM)

Ongoing volatility in world fuel markets is becoming an increasingly important factor in any application for an increase in electricity rates. The effective management of the impact of cost uncertainties on NSPI's business model has been an issue of concern to intervenors in this and other rate applications.

The NDP Caucus notes the evidence submitted by John Antonuk, Donald Spangenberg Jr, and John B Adgar, Jr on 20 December 2006, which points to NSPI's improved performance in this area. The NDP Caucus feels that ongoing Board attention to this issue has played no small part in this positive outcome.

The NDP Caucus further notes that a downward trend in international prices led to a substantial review of the fuel costs submitted in NSPI's original rate application (October 2006). The proposed settlement includes agreement in principle to a FAM and a request for a hearing process about which we have serious concerns.

Recommendation 5: If the Board rules that a hearing on the establishment of a FAM should go ahead, we ask the Board to rule that such a hearing will not be truncated by the submission of a proposed settlement agreement in advance of the hearing.

Recommendation 6: Furthermore, we ask that the Board require NSPI to demonstrate in an exacting way that it has acquired not just further experience, but beneficial expertise in the international coal market before any decision is taken on whether or not to introduce a fuel adjustment mechanism.

Recommendation 7: In particular we ask that the Board implement Liberty's 2006 recommendations regarding Organisations and Procedures (11:16 – 12:3).

Section F: NSPI's low income customers

The NDP Caucus notes that the Board instituted hearings in 2006 that resulted in the establishment of an Extra-Large Industrial Interruptible Rate. We are happy that the particular needs of discrete groups rate payers have been met through this development, and we feel that this outcome offers a precedent that may now be used to tackle the difficulties that low income Nova Scotia families face when meeting the costs of their energy needs. It is our view that in the long term the board may legitimately consider the financial impact on low income customers as a discrete customer of NSPI.

The cumulative effect of the requested rate increase should be seen against the background of several years of electricity rate increases plus other energy-related cost increases for individuals and families who have no or limited discretion as to energy consumption. To the extent there is potential for reductions in use for the residential customer, this is almost always associated with up-front high cost expenditures (e.g. insulation, new windows, light bulbs).

There is a fundamental problem of affordability by the utility's residential customers. Rate increases have been 3.1% in 2002; 6.1% in 2005; 8.9% in 2006, and now NSPI seeks 4.8% for 2007. In previous hearings, the consumer advocate has referred to "rate shock" to describe the cumulative effect of such increases on customers.

It is important to recognize that residential customers pay a disproportionate share of the utility's revenues. The utility does not seem to have challenged the assertions of customer problems with affordability. Rather, it has based its case on its view that it should be treated on a cost-recovery basis. And to be explicit, the problems of customer affordability are greater for the poorest of the utility's customers, something also not challenged.

The Affordable Energy Coalition, an intervenor in the proceedings, was not party to the discussions that resulted in a proposed settlement agreement. Consequently, the NDP Caucus asks that the Board take particular note of the Coalition's submissions when making a final decision.

Section G: Demand Side Management

One of the ways in which NSPI can assist all its customers, but in particular its low income customers, is through the roll out of a comprehensive demand side management program. So why the continued delay in roll out of this program?

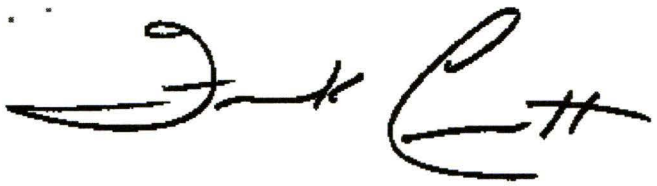
In its 2006 decision the Board selectively used the NDP's submission to buttress its case that Demand-Side Management (DSM) shouldn't be dealt with in that hearing. The Board disallowed the proposed $5 million DSM expense, resulting in no meaningful assistance for customers to reduce their energy consumption being made available by NSPI at that time. Instead, the Board allowed an additional $550,000 for NSPI to hire an expert to design a plan to be submitted by June 2006. Consequently, the development of a demand side management program and intervenor agreement on NSPI's proposed Air Emissions Strategy have been rolled over into an Integrated Resource Planning process that has not yet completed its work. This has left NSPI customers without the opportunities to save money offered by a demand side management plan.

Recommendation 8: The NDP Caucus recommends that the Board ensure a quick and mutually acceptable outcome to the current IRP process and direct NSPI to begin its roll out of a comprehensive DSM program before any hearings on a proposed Fuel Adjustment Mechanism take place.

Deliberations

As the Board settles into the process of continuing deliberations on what order should be made in response to the application of NSPI, we express our understanding for the difficulty of the task before the Board, and we further express our sincere hope that the Board will exercise the independent judgement incumbent on it, and expected by Nova Scotians.

Respectfully submitted,



Frank Corbett, MLA
On behalf of the NDP Caucus