2015 **M06733**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF: ***The Public Utilities Act***

- and -

IN THE MATTER OF: EfficiencyOne's Application pursuant to Subsection 79J(3) of the Public Utilities Act for Approval of the 2016-2018 Supply Agreement for Electricity Efficiency and Conservation Activities

CLOSING STATEMENT ON BEHALF OF THE NOVA SCOTIA DEPARTMENT OF ENERGY

July 8th, 2015

Contents

Introduction

1. Please accept these closing submissions on behalf of the Department of Energy[1], in relation to an application to the Nova Scotia Utility and Review Board[2] by EfficiencyOne[3] for the approval of a Supply Agreement for electricity efficiency and conservation activities[4] to Nova Scotia Power Incorporated[5] pursuant to the ***Public Utilities Act***[6][7].

2. At its heart, this proceeding is about how much DSM we can afford to include in rates today as an investment that may, over the next decade or more, be the lowest cost option for meeting the needs of Nova Scotia's electricity system. Tools, such as NSPI's integrated resource plan[8] are useful touchstones in this exercise, but the answer cannot be determined solely and precisely by mathematical calculation.

3. Finding an appropriate solution also requires an element of subjectivity – much like the judgment exercised by that fabled golden haired girl who found a place to rest that was not too hard, and not too soft, but just right. Unfortunately, unlike Goldilocks, we have really not been provided with any options to compare.

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[1] Referenced as the "Province" in these submissions.

[2] Referenced as the "Board" in these submissions.

[3] Referenced as "E1" in these submissions.

[4] Referenced as "DSM" in these submissions.

[5] Referenced as "NSPI" in these submissions.

[6] ***Public Utilities Act***, R.S.N.S. 1989, c.380, s.79J(3).

[7] Referenced as the "PUA" in these submissions.

[8] References as the "IRP" in these submissions.

The *Public Utilities Act* Focus on Affordability

4. Amendments to the ***PUA*** in 2014 added new provisions relating to Electricity Efficiency and Conservation. These amendments place an explicit obligation on NSPI to "undertake cost-effective electricity efficiency and conservation activities that are reasonably available in an effort to reduce costs for its customers".[9]

5. NSPI is further directed to fulfill this obligation by entering into an agreement with an electricity efficiency and conservation franchise holder.[10] This franchise holder becomes, essentially, an efficiency utility, subject to many of the obligations of a public utility under the ***PUA***.[11] E1 is the holder of the first electricity efficiency and conservation franchise granted by the Minister of Energy under the ***PUA***.

6. An agreement for the supply of DSM by a franchise holder to NSPI must be approved by the Board,[12] or failing the successful conclusion of an agreement between these parties, the agreement must be established by the Board.[13] In either case, the Board may only approve an agreement if it is satisfied that it is in the best interests of NSPI's customers.[14]

7. The Board must also take into account the extent to which NSPI's customers can afford the proposed DSM.[15] This is similar to legislation in other jurisdictions, but with notable differences relating to the extent of the directive to obtain DSM, and the focus on affordability.

8. Under the General Laws of the State of Massachusetts,[16] the Department of Public Utilities is charged with ensuring that "…electric and natural gas resource needs shall first be met through

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[9] ***Public Utilities Act***, R.S.N.S. 1989, c.380, s.79I(1).

[10] ***Public Utilities Act***, R.S.N.S. 1989, c.380, s.79I(2).

[11] ***Public Utilities Act***, R.S.N.S. 1989, c.380, s.79G.

[12] ***Public Utilities Act***, R.S.N.S. 1989, c.380, s.79G(2)(a) and s.79L.

[13] ***Public Utilities Act***, R.S.N.S. 1989, c.380, s.79J(3).

[14] ***Public Utilities Act***, R.S.N.S. 1989, c.380, s.79L(8) and s.79J(4).

[15] ***Public Utilities Act***, R.S.N.S. 1989, c.380, s.79L(9) and s.79J(4).

all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply." Electric distribution companies are directed to prepare electric efficiency investment plans providing for "…the acquisition of all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply…".[17] These plans must address a large number of requirements:

> (2) A plan shall include: (i) an assessment of the estimated lifetime cost, reliability and magnitude of all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply; (ii) the amount of demand resources, including efficiency, conservation, demand response and load management, that are proposed to be acquired under the plan and the basis for this determination; (iii) the estimated energy cost savings that the acquisition of such resources will provide to electricity and natural gas consumers, including, but not limited to, reductions in capacity and energy costs and increases in rate stability and affordability for low-income customers; (iv) a description of programs, which may include, but which shall not be limited to: (A) efficiency and load management programs; (B) demand response programs; (C) programs for research, development and commercialization of products or processes which are more energy-efficient than those generally available; (D) programs for development of markets for such products and processes, including recommendations for new appliance and product efficiency standards; (E) programs providing support for energy use assessment, real time monitoring systems, engineering studies and services related to new construction or major building renovation, including integration of such assessments, systems, studies and services with building energy codes programs and processes, or those regarding the development of high performance or sustainable buildings that exceed code; (F) programs for the design, manufacture, commercialization and purchase of energy-efficient appliances and heating, air conditioning and lighting devices; (G) programs for planning and evaluation; (H) programs providing commercial, industrial and institutional customers with greater flexibility and control over demand side investments funded by the programs at their facilities; and (I) programs for public education regarding energy efficiency and demand management; provided, however, that not more than 1 per cent of the fund shall be expended for items (C) and (D) collectively, without authorization from the advisory council; (v) a proposed mechanism which provides performance incentives to the companies based on their success in meeting or exceeding the goals in the plan; (vi) the budget that is needed to support the programs; (vii) a fully reconciling funding mechanism which may include, but which shall not be limited to, the charge authorized by section 19; (viii) the estimated amount of reduction in peak load that will be reduced from each option and any estimated economic benefits for such projects, including job

[16] Part I, Title II, Chapter 25, Section 21(a) (https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter25/Section21).

[17] Part I, Title II, Chapter 25, Section 21(b)(1) (https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter25/Section21); emphasis added.

> retention, job growth or economic development; and (ix) data showing the percentage of all monies collected that will be used for direct consumer benefit, such as incentives and technical assistance to carry the plan. With the approval of the council, the plan may also include a mechanism to prioritize projects that have substantial benefits in reducing peak load, reducing the energy consumption or costs of municipalities or other governmental bodies, or that have economic development, job creation or job retention benefits.[18]

9. In Vermont, the Public Service Board is directed to establish an energy efficiency charge "…in order to realize <u>all</u> reasonably available, cost-effective energy efficiency savings…" based on:

> …an appropriate balance among the following objectives; provided, however, that particular emphasis shall be accorded to the first four of these objectives: reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the State's transmission and distribution infrastructure; minimizing the costs of electricity; reducing Vermont's total energy demand, consumption, and expenditures; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and targeting efficiency and conservation efforts to locations, markets, or customers where they may provide the greatest value.[19]

10. While the legislation in Massachusetts and Vermont refers, respectively, to "all available energy efficiency and demand reduction resources that are cost effective or less expensive than supply" and "all reasonably available, cost-effective energy efficiency savings", the word "all" is conspicuous in its absence in the directive in the ***PUA*** in Nova Scotia. NSPI is directed to "undertake cost-effective electricity efficiency and conservation activities that are reasonably available in an effort to reduce costs for its customers",[20] not to "undertake *all* cost-effective electricity efficiency and conservation activities that are reasonably available in an effort to reduce costs for its customers".

11. In terms of affordability, the legislation in Massachusetts requires that the electric efficiency investment plan include "affordability for low-income customers" amongst its many other requirements. In Vermont, there is a requirement to give weight to "minimizing the costs of

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[18] Part I, Title II, Chapter 25, Section 21(b)(2) (https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter25/Section21).

[19] Title 30, Chapter 5, § 209(d)(3) (http://legislature.vermont.gov/statutes/section/30/005/00209); emphasis added.

[20] ***Public Utilities Act***, R.S.N.S. 1989, c.380, s.79I(1).

electricity" as one of four main factors to balance in a much longer list of objectives to take into account when setting the energy efficiency charge, although this is not the same thing as assessing whether they are affordable.

12. In Nova Scotia, the singular emphasis on affordability in s.79L(9) is significant. While the Board is not constrained to only taking affordability into account, and ultimately must be guided by the best interests of NSPI's customers, it is respectfully submitted that the legislature intended that some weight be placed on this factor.

13. Further, the Province submits that the terms "cost-effective" and "affordability", which both appear in the legislation, are assumed to mean different things.[21] Care must be taken to respect the distinct meaning in both terms. The Province submits that whereas "cost-effective" may look to a balancing of costs and benefits, "affordability" relates to an ability to pay.

14. It is submitted that the use of "affordability" in the legislation was intended to emphasize short term rate impacts. Furthermore, equating affordability with the lowest long-term cost or the lowest net present value of revenue requirements largely and improperly conflates its meaning with "cost-effective".

15. An understanding of these terms must also be informed by the context in which they appear in the ***PUA***. These provisions only appear in the part of the ***PUA*** dealing with electricity efficiency and conservation activities which, by their nature, tend to involve an up-front cost and benefits over time. An assessment of the cost-effectiveness of these activities must necessarily have a long term purview, as the cost and benefits occur in different time frames. On the other hand, the affordability of these activities relates to their cost, which is paid up-front (unless it is deferred).

[21] ***Sullivan on the Construction of Standards*** (Sixth Edition), §8.32: "It is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument the same words have the same meaning and different words have different meanings."

The Affordability of DSM in the Context of other Rate Pressures

16. The Province's Electricity System Review engaged the general public and stakeholders about their views on key elements of our future electricity system and more than 1300 Nova Scotians provided feedback to the Province through telephone surveys, face-to-face meetings, webcasts, and written submission.[22] Through this, it was clearly expressed that ratepayers are under pressure.

17. It was noted in the evidence before the Board that electricity rates in Nova Scotia are amongst the highest in Canada. [23] This is a relevant factor when considering affordability. It is also useful to consider other costs that may be increasing, putting even further upward pressure on rates.

18. Information on cost pressures was canvassed with NSPI's witnesses in evidence and during cross-examination at the hearing:

    a. NSPI is projecting that in 2015 it will have an under-recovery from its fuel adjustment mechanism (FAM) of approximately $10 or $20 million.[24]

    b. NSPI expects that the base cost of fuel in the fuel adjustment mechanism will need to be re-set approximately $50 million higher than what they currently include.[25]

    c. Costs relating to the Maritime Link will also begin to be recovered by NSPI within the term of the proposed DSM Supply Agreement.[26]

    d. Amortization of DSM in 2015 will begin in 2016 at approximately $6 million.

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[22] ***Electricity Review Report***, April 30, 2015 (http://energy.novascotia.ca/sites/default/files/files/Final%20Review%20Report.pdf).

[23] Exhibit E-8, Nova Scotia Power Incorporated Direct Evidence, p. 15; Exhibit E-40, Direct Evidence from Drazen Consulting Group, Inc. on Behalf of the Industrial Group, pp.7-9.

[24] Transcript, June 19, 2015, pp. 901.

[25] Transcript, June 19, 2015, pp. 902-903.

[26] Direct Evidence from Drazen Consulting Group, Inc. on Behalf of the Industrial Group, p.8.

19. To round out this discussion, it is also important to note that other costs included in rates are reducing, and offsetting these rate pressures:

a. The amortization of NSPI's 2012 fixed cost recovery mechanism is ending, eliminating $15 or $16 million that is included in rates.[27]

b. The FAM AA/BA is currently carrying an amount equivalent to the approximate $53 million 2014 DSM Cost Recovery Rider that was used to pay down, largely in one year for some rate classes, the FAM under-recoveries that had built up by December 31, 2014.[28]

c. E1 has also confirmed that it holds an amount of approximately $8.4 million in unspent monies that should be returned to ratepayers.[29]

20. After considering these fuel and non-fuel cost pressures and savings, the conclusion is that absent other changes there will be a net impact on total rates from rising fuel costs. NSPI indicated during cross-examination that much of the pressure on the base cost of fuel relates to the addition of costs relating to the Province's Community Feed-in Tariff program[30] in the base cost of fuel for 2016 compared to the base cost of fuel for 2014.[31]

21. Spending on DSM is another pressure. DSM is an important part of the Province's Energy Strategy.[32] However, the pace of efficiency efforts must be balanced against other public policy objectives in order to maintain affordability and stability in power rates as we continue to pursue other public interest objectives relating to a greener, more diversified and secure electricity system.

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[27] Transcript, June 18, 2015, pp. 792-793.

[28] Transcript, June 18, 2015, pp.779-786.

[29] Transcript, June 16, 2015, p.520-521.

[30] Referenced as "COMFIT" in these submissions.

[31] Transcript, June 19, 2015, pp. 902-903.

[32] *Toward a Greener Future: Nova Scotia's 2009 Energy Strategy* (Section 5.1) (http://energy.novascotia.ca/sites/default/files/Energy-Strategy-2009.pdf).

22. Regardless of the reasons, the cost pressures noted above are real and must be factored into the assessment of this application. While the concept of "affordability" affords the Board some measure of subjectivity in its assessment of ratepayer impacts, the Province respectfully submits that in the context of rising cost pressures in other areas, and recognizing that more modest levels of energy efficiency savings will avoid the need for new generation capacity for quite some time,[33] affordability means not spending any more than is absolutely necessary at this time. Further, the fact that there is no need to stave off near term capacity additions also affords the Board the opportunity to sharpen its pencil on DSM costs, and to test the efficiency of E1's efficiency measures, particularly with respect to the setting of incentives.

23. Before leaving this aspect of the discussion, the Province respectfully requests that in future applications for the approval of DSM Supply Agreements, NSPI be required to provide specific information about forecasted cost pressures to assist with the assessment of affordability. During cross examination by counsel for the Industrial Group, Mr. Whalen agreed that all components of rates should be considered when assessing affordability and suggested that this information could be provided by NSPI "through some kind of a forecast for the three years as to what expected revenue requirements are, including the total system with some levels of DSM".[34] The Province requests that this be provided in future applications, whether they are initiated by NSPI or the franchise holder, in the format provided by Mr. Whalen in response to Undertaking U-9.[35]

Short on Options

24. The IRP was an important starting point in the development of the E1 2016-2018 DSM Resource Plan.[36] The Province agrees that this is an important consideration, but one must be mindful of

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[33] NSPI has noted that energy savings of approximately 100 GWh/year with associated demand savings of 18MW/year would avoid the need to add any additional generation capacity until 2032. See footnote 52.

[34] Transcript, June 19, 2015, pp.1049-1050.

[35] Exhibit E-68(ii).

[36] Exhibit E-1, Efficiency One Direct Evidence, p.31 of 64.

the observations of Scottish author, Andrew Lang: “An unsophisticated forecaster uses statistics as a drunken man uses lamp-posts - for support rather than for illumination.” The results of the IRP should inform decision-making, not slavishly drive it.

25. The Province recognizes that, for affordability reasons, E1 backed away from the “preferred” resource plan resulting from the IRP. E1 noted that the preferred plan “would likely have negative rate impacts in the short term”.[37]

26. Further, E1 appears to have found the means to produce energy savings at a lower level of investment than previously suggested, resulting in a proposed DSM resource plan that would produce three-year energy savings comparable to Efficiency Nova Scotia’s Base-DSM Scenario in the DSM Potential Study “within an investment level comparable to the Low-DSM Scenario…”.[38] At the same time, the E1 proposed plan aligns with demand savings in the Low-DSM Scenario, avoiding the same capacity additions as the preferred plan in the IRP for more than a decade and a half.[39]

27. Respectfully, the Province submits that E1’s proposed plan is still more supported by the IRP than illuminated by it. E1 does not appear to have considered that the fact that Nova Scotia will not be needing generation capacity for some time warranted consideration of a plan that was somewhat less ambitious than it had in mind.

28. In testimony, E1’s Ms. Vincent suggested that developing a plan with significantly changed assumptions would require an amount of work or effort that E1 did not have either the time or capacity to accomplish during its negotiations with NSPI, particularly for plans in multiple increments.[40] The Province does not doubt that the development of such a plan could require a

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[37] Exhibit E-1, EfficiencyOne Direct Evidence, p.31 of 64.

[38] Exhibit E-1, EfficiencyOne Direct Evidence, pp.25-26 of 64. The Plan includes a three-year target of 405.9 GWh compared to three-year energy-savings of 417.8 GWh in ENS’s Base-DSM Scenario in the DSM Potential Study, which was analyzed in the IRP. The 2016-2018 three-year target will be achieved within an investment level comparable to the Low-DSM Scenario from ENSC’s DSM Potential Study ($121.5 million over the three years compared to $126.9 million in the Potential Study).

[39] Exhibit E-1, EfficiencyOne Direct Evidence, p.26 of 64.

[40] Transcript, June 15, 2015, p. 168; Transcript, June 16, 2015, pp. 496-498.

substantial amount of effort. However, if E1 had presented the Board and intervenors in this proceeding with one or more examples of what a different plan might look, and what trade-offs might need to be made to undertake something that may be somewhat less costly, then a more robust discussion about affordability could have been undertaken.

The Inherent Flexibility of DSM

29. The adjustability of DSM was noted by several witnesses in the proceeding, including Mr. Sampson who commented:

> **MR. SAMPSON:** I'd say for a resource like DSM, which has flexibility where there are numerous decision points over that 25 years on the degree of programming, it affords the Board flexibility that it wouldn't have for a -- sort of a bricks and mortar type of resource.

30. E1's witness, Philippe Dunsky, agreed as a principle of DSM that, all else equal, you accelerate it in order to avoid generation and de-accelerate when you've got lots of excess capacity.[41] The ability to scale DSM up and down in response to capacity requirements needs to be considered, particularly in light of the statutory emphasis on affordability. The Province accepts that, in the long term, shifting DSM intensities may result in higher overall cost of DSM measures, but that is not necessarily so.

31. It is not necessarily the case that authorizing a lower budget for DSM than what E1 has requested will result in a failure to achieve the energy and capacity savings that E1 is proposing in its application:

    a. E1 has a very successful track record.[42] Except for 2011 when they did not quite achieve target, E1 has met or exceeded its targets at less than its budget every single year.[43]

    b. Although E1 claims to bring rigour to its assessment of appropriate levels for incentives,[44] its practices in this area are not entirely transparent, notwithstanding E1's response to

[41] Transcript, June 16, 2015, pp. 491-492.

[42] As the successor to Efficiency Nova Scotia Corporation.

[43] Transcript, June 16, 2015, p.486.

Undertaking U-4.[45] E1 also conceded that there are some parts of its incentive setting processes that are less rigourous,[46] and that there may be measures that pay for themselves in as little as three or four months without incentives.[47] The Industrial Group's expert witness, Mark Drazen observed that NSPI's rates are already high enough to induce customers to conserve.[48] He also noted that the setting of incentives by E1 appeared to be neither art nor science, but more like magic because we don't see what is behind the numbers.[49] As for the numbers themselves, Mr. Pickles reported incentives that were three times higher than incremental cost and "significantly higher than any other utility or administrator [he has] seen anywhere in North America".[50]

c. Technological evolutions and innovations and other efficiency measures outside of ratepayer funded programs are likely reducing electricity sales now and are likely to do so in the future.[51]

32. It is not necessarily the case that authorizing a lower budget for E1 than requested will result in the need to incur steep rate increases in the future to achieve increased capacity savings:

a. NSPI has noted that energy savings of approximately 100 GWh/year with associated demand savings of 18MW/year would avoid the need to add any additional generation capacity until 2032.[52] This energy savings requirement is less than E1's at approximately 135

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[44] Transcript, June 16, 2015, p.480-490

[45] Exhibit E-68.

[46] Transcript, June 16, 2015, p.483.

[47] Transcript, June 16, 2015, p.336.

[48] Exhibit E-40, Direct Evidence from Drazen Consulting Group, Inc. on Behalf of the Industrial Group, p.4.

[49] Transcript, June 19, 2015, pp.1024-1025.

[50] Transcript, June 18, 2015, p.607 and pp.743-745.

[51] Transcript, June 19, 2015, pp.917-918 and p.969.

[52] Exhibit E-8, Nova Scotia Power Incorporated Direct Evidence, pp.15-16; Transcript, June 19, 2015, p.985.

GWH/year.[53]

b. E1 has noted that it requires the flexibility to make mid-course adjustments based in part on "changing market conditions, changes in technology and changes in codes and standards."[54] This suggests a pace of development in the industry which may very well mean that increased capacity savings could be obtained even more cost-effectively in the future. The Province also agrees that "…DSM is more flexible in its implementation than some supply alternatives [and that]... Failing to adjust DSM spending to match system needs leaves the value of DSM flexibility unrealized."[55]

c. E1 has been researching demand response options and has stated that additional demand savings not included in the existing modeling are expected to increase potential demand savings if required in future plans [56]

d. In the event that sharp increases are necessary, the impacts of this could be smoothed through the use of deferrals, as a means to manage affordability, as contemplated by the ***PUA.***[57]

33. It is not necessarily the case that authorizing a lower budget for E1 than requested will result in reduced benefits for NSPI's customers:

a. Mr. Drazen has noted that NSPI's avoided costs will likely be lower than the ones used by E1, and that therefore customer benefits have been overstated.[58]

b. Mr. Drazen has noted that when the full revenue requirement is considered, non-participants may see no benefits at all for decades.[59]

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[53] Exhibit E-1, Efficiency One Direct Evidence, p.21 of 64.

[54] Exhibit E-1, Efficiency One Direct Evidence, Appendix A, p.1 of 26.

[55] Exhibit E-8, Nova Scotia Power Incorporated Direct Evidence, p. 36.

[56] Exhibit E-1, EfficiencyOne Direct Evidence, p. 26 of 64.

[57] ***Public Utilities Act***, s.79M(6).

[58] Exhibit E-40, Direct Evidence from Drazen Consulting Group, Inc. on Behalf of the Industrial Group, pp. 13-15.

34. It is not necessarily the case that authorizing a lower budget for E1 than requested will result in a loss of industry capacity:

a. Mr. Drazen has noted that the current "efficiency culture" and declining costs in the market should increase NSPI's customers' efforts to improve the efficiency of their homes and businesses.[60]

b. NSPI's customers will still need to replace end-of-life equipment.[61]

c. Mr. Pickles observed that there were many jurisdiction in the United States that have ramped up DSM without difficulties or increased costs. He felt that the metric was how the cost of carrying excess capacity compared to the cost to re-create it in the future, and felt that there was "strong evidence that carrying those costs is questionable."[62]

35. Evidence filed by a few experts in this proceeding supports a rational basis for authorizing a lower budget for DSM than E1 has requested. This evidence suggested the following:

a. Less cost-effective measures could be excluded;[63]

b. Very cost effective measures could be excluded;[64]

c. Minimization of indirect expenditures such as advertising;[65] and

d. Variances in program implementation costs and incentives.[66]

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[59] Exhibit E-40, Direct Evidence from Drazen Consulting Group, Inc. on Behalf of the Industrial Group, pp. 15-18.

[60] Exhibit E-40, Direct Evidence from Drazen Consulting Group, Inc. on Behalf of the Industrial Group, p.19.

[61] Transcript, June 18, 2015, pp.803.

[62] Transcript, June 18, 2015, p.652.

[63] Exhibit E-40, Direct Evidence from Drazen Consulting Group, Inc. on Behalf of the Industrial Group, pp. 19-20; Exhibit E-41, Direct Evidence of John Athas (SBA), p.18; Exhibit E-8, Nova Scotia Power Incorporated Direct Evidence, Appendix A, Direct Evidence of David Pickles, p.20-25.

[64] Exhibit E-40, Direct Evidence from Drazen Consulting Group, Inc. on Behalf of the Industrial Group, pp. 19-20.

[65] Direct Evidence of John Athas (SBA), p.18.

36. Based on the foregoing, the Province respectfully requests that E1 be directed to develop a plan at a much lower cost than it has requested (or has agreed to accept as a result of proposed settlement arrangements). This may require E1 to make changes in its assumptions, and in this regard the Province suggests that E1 should focus on removing measures that are only marginally cost-effective and measures that are so cost-effective that they pay for themselves quickly, as suggested by Mr. Drazen in his evidence. Based on the evidence of both Mr. Drazen and Mr. Pickles, the Province submits that E1 proposed incentive spending should be significantly reduced.

37. The guiding posts for the development of a plan at a lower budget would be the targeted energy savings of 100 GWh/year and associated demand savings of 18 MW/year that NSPI suggests is needed to avoid capacity additions until 2032. Within these parameters, the Province submits that the program design should be as equitable as possible, so that all customers have an opportunity to participate in programs that will lower their electricity bills.

38. Recognizing that there may be insufficient time for the development and implementation of such a plan for commencement on January 1, 2016, the Province supports the suggestion of Mr. Blunden that an interim approval could be given to allow E1 to proceed pending final approval of the Supply Agreement.[67] The approximately $8.4 million in unspent monies held by E1 should be returned to ratepayers. This should be deducted from any contract amount approved by the Board in this proceeding.

39. The Province also respectfully submits that, in future filings, E1 be directed to file at least one alternative to the plan requested in their application, using different assumptions for a potential lower level of spending. This should be considered essential when the parties have not reached an agreement on a plan. However, Mr. Whalen noted during questioning by Board Member Clarke that even if the parties reach an agreement that they are both supporting for approval by the Board, it would be presented to the Board "with the understanding that the two parties would have looked at some scenarios that would be available to the Board if the Board wanted

[66] Exhibit E-8, Nova Scotia Power Incorporated Direct Evidence, Appendix A, Direct Evidence of David Pickles, p.20-25.

[67] Transcript, June 19, 2015, p.988.

to see them."[68] Having an alternative option to consider will permit a more productive debate on affordability, and provide better illumination on what might be gained or lost from following a lower cost alternative.

40. Finally, the Province also requests that E1 be directed to review the suggested incentive level setting protocols outlined by Mr. Pickles, seek a third party review of incentive level setting best practices and incorporate suggested changes.[69]

Deferral and Amortization

41. The Province submits that a decision on how DSM costs should be recovered (i.e. whether they are deferred or expensed) should generally be made at the same time as the DSM budget is set. The Province submits that this may, depending upon the level of approved DSM spending, be an integral component to maintain affordability. And the process may be iterative. The ability, or inability to defer costs, may be a factor in assessing the affordability of the DSM budget.

42. The Province accepts that the Parties to the Consensus Settlement Agreement[70] wish to engage in further discussions on this issue, and with respect to cost-allocation. In light of the transition in the way in which DSM is delivered in Nova Scotia this is understandable.

43. In terms of whether DSM should be deferred or expensed, the Province submits that there is justification for deferring a portion of DSM budgets, considering that spending on DSM produces nearer term benefits derived primarily from energy (primarily fuel) savings and longer term savings related to both energy and demand. DSM expenses could be matched to benefits.

44. The Province recognizes that there is a cost associated with deferrals, and this also needs be taken into account. During questioning by the Board Chair, E1's witnesses were asked about the

[68] Transcript, June 19, 2015, pp.1054-1055.

[69] Exhibit E-68, Undertaking U-7.

[70] Exhibit E-62.

possibility of financing measures outside of NSPI's rate base, and E1's Mr. MacDonald agreed to engage in discussions relating to this.[71]

45. The Province observes that s.79M(6) contemplates the possibility of a deferral of DSM spending and that the Board has noted that this subsection could be interpreted as requiring that deferrals be financed by NSPI. The Province submits that the provision only addresses "…costs incurred by Nova Scotia Power Incorporated…", and not costs incurred by E1. It is conceivable that the payment terms under the Supply Agreement could see that E1 is paid in arrears, so that it is E1's recovery of costs that is deferred, not NSPI's.

46. The Province submits that the Board's authority to provide for the deferred recovery of costs by the efficiency utility could be found in its general authority over the recovery of costs by utilities, or in its more specific authority to set the terms of the Supply Agreement. However, if the terms of the legislation are viewed as an impediment, legislative changes could also be considered by the Province. For the time being, the Province would submit that the financing of DSM by E1 outside of NSPI should be part of the discussions around cost recovery that are contemplated in the Consensus Settlement Agreement.[72]

Consensus Settlement Agreement and Terms of Consensus Agreement

47. The Province supports some aspects of the terms of Consensus Agreement but does not agree with the DSM investment level and performance targets. The Province notes that in addition to cost allocation and cost recovery, other matters have been identified for further discussion amongst the parties, including the development of a standardized filing, evaluation and reporting, the development of assumptions relating to rate and bill impact analysis, the potential development of DSM Expenditure Justification Criteria, and discussions on cost-effectiveness testing. The Province supports this collaboration and approach.

[71] Transcript, June 16, 2015, pp. 571-573.

[72] Exhibit E-62.

48. The Province supports mid-course adjustments. It is important that E1 is provided with the flexibility to make appropriate adjustments. For example, Mr. Pickles noted that the full retail cost of LED bulbs has gone down by 70% over the past two years.[73] In addition to changing market conditions, E1 must monitor and adapt programs to incorporate new technologies.

49. The Province supports the statement of Principles of Equity identified in Exhibit E-61.

50. The Province also has no concerns with the provisions relating to Performance Targets, Indicators and Thresholds included in Exhibit E-62.

Conclusions

51. The amendments to the ***PUA*** in 2014 bring a new focus to the affordability of DSM in Nova Scotia. In the context of current and anticipated rate pressures, and in light of the fact that DSM is not required to address near term capacity requirements, E1's plan is more expensive than it needs to be and does not reflect the inherent flexibility of DSM programming.

52. Now is not the time to aggressively pursue DSM. There are no near term capacity issues that need to be addressed that a less aggressive plan could not also achieve. In the context of rising cost pressures in other areas, and recognizing that more modest levels of energy efficiency savings will avoid the need for new generation capacity for quite some time, affordability means not spending any more on DSM at this time than is absolutely necessary. We also need to critically assess the effectiveness of DSM delivery in this jurisdiction, particularly around the use of incentives, and we appear to be in an ideal spot to pause to do so.

53. The Province respectfully requests that E1 be directed to move forward with a more modest plan. In future applications, the Province requests that E1 be directed to prepare an alternative, less costly plan to compare to what is being requested in the application. NSPI should also be directed to provide information on rate pressures through the period covered by the proposed Supply Agreement in future cases.

[73] Transcript, June 18, 2015, pp. 743.

54. The Province also requests that future applications address the amount of the proposed Supply Agreement with the consideration of whether its costs will be expensed or deferred. The Province believes that these issues are related, and should not be addressed in isolation.

55. Finally, the Province would like to thank the Board for its consideration of these matters, and to thank the parties and members of the public who participated in this proceeding, for enhancing the process with their views and perspectives.

All of which is respectfully submitted this 8th day of July, 2015.

STEPHEN T. McGRATH