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July 8, 2015

VIA EMAIL

27235

Ms. Doreen Friis
Regulatory Affairs Officer/Clerk
Nova Scotia Utility and Review Board
1601 Lower Water Street, 3rd Floor
Halifax, NS B3J 3S3

Dear Ms. Friis:

Re: M06733 – EfficiencyOne – Application for Approval of a Supply Agreement for Electricity Efficiency and Conservation Activities between EfficiencyOne and Nova Scotia Power Inc., the establishment of a final agreement between the parties and approval of a 2016-2018 Demand Side Management ("DSM") Plan – E-ENS-R-15

This is the closing submission of the Consumer Advocate in relation to the above proceeding.

THE IMPORTANCE OF DSM TO NOVA SCOTIA

It is the view of the Consumer Advocate that an effective and robust DSM program is an important component in meeting the energy requirements of Nova Scotians.

We continue to rely heavily on fossil fuels. We have no single alternate power source that can immediately replace fossil fuel. Natural gas is a candidate but at the present there are uncertainties as to supply and cost. Wind generation is developing rapidly but has inherent limitations preventing it from becoming a major generation source. It is erratic and requires effort, and cost, to balance. At present and for the foreseeable future, it is more expensive. Hydro is cheap but Nova Scotia has limited availability. Tidal promises large amounts of power generation but at present is in the early stages of development, has limited capacity and is expensive. Muskrat Falls holds the near term possibility of large amounts of hydro but it is still premature to be able to calculate at what cost premium or savings that will be. Various other energy sources are in the process of being developed and there are exciting new technologies in development.

But for the foreseeable future it is going to be important for Nova Scotia energy consumers to have as many sources of energy as is practically possible. We do not have the ability to meet our needs from only one or two energy sources. In such circumstances energy supply into the future must rely on as wide a range of methods as possible. Thus the importance of having DSM available to satisfy a part of energy demand.

On a simple financial assessment, a properly designed, verified and evaluated DSM program makes sense. It is cheaper to reduce demand than to generate energy. Every dollar invested in a good DSM program is a good investment.

But for ratepayers, ranging from low income residentials to large commercial enterprises, there is also the practical consideration of whether the up-front cost of DSM can or should be incurred. As noted by the Small Business Advocate, knowing that the initial up-front cost can be amortized and recovered in the future is not of much attraction and does not make much sense if the business involved is not confident that it will be in existence in the next few years.

AFFORDABILITY

The Board has the mandate to ensure rates that recover the cost of a DSM program are just and reasonable.

The Province has recently added the terminology of “affordability”. It is the submission of the Consumer Advocate that the additional terminology does not alter the Board’s mandate. For a rate to be reasonable it must be affordable and to be affordable, it must be reasonable.

It is the position of the Consumer Advocate that the costs of the DSM program proposed by EfficiencyOne are affordable for the following reasons.

PROPOSED RATES CONSISTENT WITH PRIOR FOUR YEARS The fact that since 2011 through and including 2015 ratepayers have been paying for DSM programs in the approximate amount of $40 million is a relevant indication that such a level of expenditure is affordable.

CONSISTENT WITH PROVINCIAL CAP The Legislature has imposed a “cap” of $35 million for the ongoing operation of a DSM program. We are entitled to presume that the Province arrived at the cap after careful analysis and after giving all relevant factors due consideration and that the Province was satisfied the cap was within the range of affordable. We can presume the Province would not authorize expenditure of an amount which it considered to be unaffordable for its citizens.

EFFICIENCYONE PROPOSAL DOES NOT INCREASE RATES The EfficiencyOne proposal does not require any increase in rates. The program submitted to the Board for approval keeps the amount of expenditure on DSM at roughly the same level as the preceding five years. There was no evidence to support the suggestion that during the last five years the level of DSM programing was unaffordable.

Nor does the evidence support the suggestion that the cost of the DSM program over the three-year term would necessitate NSPI seeking in increase in rates.

CONSISTENCY Consistency is an aspect of affordability. Consistency enables ratepayers, residential and commercial, to plan their financial affairs which, in turn, assists them in managing and paying their costs. The proposed program is consistent with previous years.

RATE PRESSURE It is the submission of the Consumer Advocate that in determining whether the amount recoverable in rates for DSM programming is reasonable or affordable it is necessary to determine what other costs are likely to be incurred. How much upward pressure on rates may there be which will impact the affordability of the total rate recovery.

According to the evidence of NSP, the foreseeable expense items which might require an increase in rates would be fuel costs and the cost of DSM. As an offset, the fixed cost recovery amortization will come off. NSPI predicts stable rates.

> **Mr. Merrick:** Is it fair to suggest one of the things we should look at in determining affordability is what other rate pressures may come to pass in the near future; what other demands there may be on rates?
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> **Mr. Blunden:** I think that's reasonable.
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> [Transcript, p. 791]
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> ...
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> **Mr. Merrick:** Other than that, you're predicting stable rates or pressure on rates?
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> **Mr. Blunden:** Correct. If the overall approval of DSM and the direction to expense it was in kind of the range I would expect, we would not anticipate filing a general rate application.
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> **Mr. Merrick:** And that's a legitimate thing to take into account in deciding what's affordable for DSM on a go-forward three years?
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> **Mr. Blunden:** I'm sorry; what is a reasonable . . .?
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> **Mr. Merrick:** The fact that rates are expected at present to be relatively stable.
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> **Mr. Blunden:** Yes, we think that's a good thing as to our customers.
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> **Mr. Merrick:** And in fact, would it not be fair to say that the 8 million - - $8.4 million that presently is a surplus amount, it can be applied to DSM; that could be taken into account in deciding affordability?
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> **Mr. Blunden:** I'm somewhat embarrassed to admit I'm not sure I was aware of that until about a week ago. But, yes, if there's 6 million - - or $8 million of funding that's currently buried somewhere in efficiency, we would expect that that could be utilized to reduce the level of funding required from customers over this three-year period and, quite frankly, we would expect that.
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> [Transcript pp. 795-796]
> [See also Transcript, pp. 791-796]

It is the submission of the Consumer Advocate that the evidence does not establish there will be excessive upward pressure on rates.

APPROPRIATE INCENTIVE LEVELS

It is essential the incentives offered through DSM programming strike an appropriate balance. Incentive levels should only be set to the level needed to incent participation.

At several times throughout the hearing, the Board raised the concern that there may be a risk that incentives are being paid that do not need to be paid and that some discipline needs to be brought to the process. The Consumer Advocate acknowledges that risk and fully supports efforts to bring discipline to the incentive evaluation process so that there is a robust assessment of the need for incentives.

The Consumer Advocate has reviewed NSPI's response to Undertaking-7 that contains Mr. Pickles' detailed assessment regarding a rigorous incentive setting process. In the Consumer Advocate's view, all parties should be given an opportunity to detail the essential elements of a rigorous incentive setting analysis. The DSM Advisory Group may be an appropriate form for such submissions to occur. Based on those submissions, EfficiencyOne could then be tasked with developing a draft protocol for further consideration and eventual implementation.

LET EFFICIENCYONE DO ITS JOB

While the Consumer Advocate shares the view that DSM programs must be both efficient and effective, we agree that performance of DSM programs must be monitored by the Board. But at the same time, it is to be presumed EfficiencyOne is an experienced and capable DSM supplier and must be given "elbow room" to do its job.

THE NSPI POSITION IN THIS PROCEEDING

The Consumer Advocate makes the following comments in relation to the position adopted by NSPI in this proceeding.

NSPI does not demonstrate that it is possible to design a reasonable DSM plan at a $22 million per year spending level. Instead, it puts forth its "Alternative Plan", which cannot be evaluated because it is in "illustration" not a real portfolio.

The Alternative Plan:

(i) Removes end-use categories not based on the TRC but on the first-year cost per kWh saved.

(ii) Eliminates most residential programs, resulting in an inequitable portfolio that violates a primary requirement of affordable DSM. It is to be noted that affordability depends on a well-balanced portfolio that provides as many customers as possible with the opportunity to participate.

(iii) Creates lost opportunities by eliminating the residential energy retrofit sector.

NSPI's explanation of how the Alternative Plan was derived is incorrect. Mr. Pickle stated that there are new residential construction measures in the residential HVAC/Shell category. But in fact looking at EfficiencyOne's spreadsheet, the only new construction measure in this end use category is the Solar Space Heating measure with a planned total EfficiencyOne expenditure of $108 and a TRC of .51 (see evidence of Mr. Chernick on p. 29 re: the "adjustment" of the RES-HVAC/Shell category).

NSPI understates the energy-related value of DSM by:

- Assuming that the load decrement has a constant load shape rather than typical retail load shape.
- Failing to time-differentiate avoided energy costs.
- Ignoring certain benefits of reduced energy load, including opportunities for increased steam plan layups and reduction in Port Hawkesbury biomass operation.
- Focusing on short-term avoided capacity rather than long-term and other avoided costs such as fuel, transmission and distribution

NSPI mistakenly claims that the EfficiencyOne proposed level of DSM spending will not back out capacity additions until 2032 (NSPI Evidence, p. 35). NSPI has failed to consider several capital expenditures that DSM may be able to reduce or avoid in the shorter term, by:

- Stretching out maintenance cycles for lightly-used steam plans (especially Trenton 5 and Lingan 1).
- Retiring additional steam plants.
- Avoiding the new generation in or transmission to Halifax that would otherwise be needed to maintain reliability following the retirement of Tufts Cove capacity, starting in 2025.
- Reducing T&D expenditures.

NSPI further contends that additional DSM has no value in avoiding the costs of meeting Nova Scotia's Renewable Electricity Standards because no additional RES investment is needed in the short term (NSPI Rebuttal, p. 7). However, the DSM should be given RES credits since energy reduction can produce opportunities for selling excess renewable energy to New England. As explained by Mr. Chernick:

> Renewable energy certificates are currently selling for about $50/MWh, which is in addition to the market value of the energy. As NS Power increases its ability to export

> energy to New Brunswick, in conjunction with the Maritime Link, its ability to expert renewable energy through New Brunswick to New England should also increase. (E-42, p. 9)

CONSENSUS AGREEMENTS

The Board has been presented with two Consensus Agreements in this matter. The first, E-61, represents an agreement among EfficiencyOne, Consumer Advocate, Small Business Advocate, Affordable Energy Coalition and the Ecology Action Centre. This Agreement includes a term referencing the level of DSM spending in 2016-18.

The second Consensus Agreement, E-62, includes the foregoing parties along with NSPI and the Industrial Group.

This Board has previously outlined its view of Consensus and Settlement Agreements in *Nova Scotia Power Inc.*, 2008 NSUARB 140 (CanLII):

> [12] The Board's *Regulatory Rules* facilitate settlement discussions. The Board welcomes and appreciates the efforts of parties to, in good faith, settle issues, even where, as sometimes happens, a settlement cannot be ultimately achieved.
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> [13] Where, as here, the Agreement is supported by representatives of all of the customer classes, the Board can have confidence that the Agreement is in the public interest.
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> [14] Customers of NSPI and members of the public are, perhaps understandably, wary of the settlement process. Many of those customers and members of the public may not appreciate that by the time the hearing comments 80% of the rate hearing process has already happened. NSPI filed extensive evidence, as required by the Board, to support its rate request. Interested parties and Board Staff asked NSPI many hundreds of written questions (Information Requests), to which responses were filed.
>
> [15] All of the parties who chose to do so filed evidence, including expert evidence. Written questions (Information Requests) have been asked of and answered by interested parties who filed evidence. NSPI filed reply evidence. As noted, all of this happened before the hearing was scheduled to begin so that the parties and the Board are well informed about the case in advance of any oral public hearing.
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> [16] The public can rest assured that the Board Members hearing the matter have also thoroughly reviewed all of the material in advance of coming to a decision as to whether to approve the Agreement as being in the public interest.
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> [17] Settlement agreements, while relatively new in regulatory matters before the Board, are common in the litigation process. Within the Board's adjudicative mandate, for example, assessment appeals, planning appeals and other matters are

> often settled. In the civil courts of Nova Scotia, a much higher percentage of cases are settled than go to trial.
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> [18] That is not to say that the Board would hesitate to reject a settlement agreement it did not consider to be in the public interest, however, it should be understood that a properly supported settlement is a success of the regulatory process, not a failure.

Based on the record of this proceeding, it is the position of the Consumer Advocate that both Settlement Agreements represent the public interest.

NSPI'S CONFLICT OF INTEREST

The Consumer Advocate has on previous occasions expressed concern that NSPI is in a position of conflict of interest when it is involved in the establishment and implementation of DSM programming.

In the view of the Consumer Advocate, it is not a coincidence that during the years that NSPI was responsible for DSM programming that it had evolved a program involving an expenditure of approximately $21 million. Within one year of Efficiency Nova Scotia assuming responsibility for DSM programs the scope of programs was incurring $40 million in expenditure. While the spending of money by itself is not necessarily an indicator of value, the programs have been validated.

The Consumer Advocate further notes that of the five intervenors advancing positions as to the amount of DSM expenditure that should be undertaken in Nova Scotia for the next three years, the "illustration" advanced by NSPI was the lowest.

It is the position of the Consumer Advocate that because of the conflict of interest it is the corporate objective to keep DSM programming at a minimum. As a result, in evaluating NSPI's position, this Board should discount the weight given to NSPI's evidence and recommendations.

The Consumer Advocate appreciates the opportunity to make this closing submission.

Yours truly,

John Merrick

William L. Mahody

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