DECISION

NSUARB-NSPI-P-892
NSPI-P-202
2011 NSUARB 184

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE *PUBLIC UTILITIES ACT*

- and -

IN THE MATTER OF AN APPLICATION by Nova Scotia Power Incorporated for Approval of Certain Revisions to its Rates, Charges and Regulations

- and -

IN THE MATTER OF AN APPLICATION by NewPage Port Hawkesbury Corp. and Bowater Mersey Paper Company Limited for Approval of amendments to Nova Scotia Power Incorporated's Load Retention Tariff and for a Load Retention Rate effective January 1, 2012

BEFORE:

Peter W. Gurnham, Q.C., Chair
Roland A. Deveau, Q.C., Acting Vice-Chair
Kulvinder S. Dhillon, P. Eng., Member

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HEARING DATES: September 19, 21, 22 and October 24 - 27, 2011

UNDERTAKINGS: November 4, 2011

FINAL SUBMISSIONS: November 15, 2011

BOARD COUNSEL: S. Bruce Outhouse, Q.C.

LIST OF INTERVENORS: Appendix A

DECISION DATE: **November 29, 2011**

DECISION: **Settlement Agreement approved; Average rate increase of 5.6% effective January 1, 2012. Load Retention Rate, as applied for, denied. Load Retention Rate, as amended by the Board, approved.**

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1.0 INTRODUCTION

[1] This Decision is further to a public hearing conducted by the Nova Scotia Utility and Review Board (the "Board") on September 19, 21, 22 and October 24 - 27, 2011, in the matter of an application by Nova Scotia Power Incorporated ("NSPI", the "Company", the "Utility"), dated May 13, 2011, for approval of revisions to its Rates, Charges and Regulations (the "NSPI Application") and an application dated June 22, 2011, by NewPage Port Hawkesbury Corp. ("NewPage") and Bowater Mersey Paper Company Limited ("Bowater") (collectively known as "NPB") for amendments to the Load Retention Tariff ("LRT") and a Load Retention Rate ("LRR") (the "NPB Application").

[2] NSPI is engaged in the production and supply of electrical energy. It distributes electricity through a province-wide system and, as at December 31, 2010, served approximately 489,000 customers, including six municipal electric utilities.

[3] In its Application, NSPI requested an increase in rates in order to meet its estimated revenue requirement increase for 2012 of $94.4 Million. NSPI used 2012 estimated costs as a 'test year' for the purpose of determining the additional revenue it required and the corresponding rate increases for its various customer classes, should its Application be approved. The proposed overall average rate increase was 7.3%, with certain customer classes subject to a higher or lower rate increase. The average residential customer would see a 7.1% increase with increases ranging from 5.5% to 13.5% for all other metered classes of customers.

[4] The NPB Application requested amendments to the terms and conditions of NSPI's existing LRT. These proposed revisions would extend the applicability of this LRT to instances where there is an impending business closure due to the economic

distress of NSPI's largest customers (i.e., NewPage and/or Bowater). Further, NPB proposed a new pricing mechanism that would result in a new LRR. The new rate is proposed to be in effect for five years, up to and including 2016.

[5] If approved, the proposed LRR would result in a further increase to electricity rates for NSPI's other customer classes. For example, if both applications of NSPI and NPB were approved by the Board, the average residential customer would see a 9.4% increase (compared to a proposed 7.1% increase under NSPI's application). For all other metered classes of customers, the increases would range from 8.4% to 9.6% if the applications of both NSPI and NPB are approved.

[6] The Board determined that both applications would be heard concurrently and that the Intervenors in NSPI's Application would be recognized as Intervenors in NPB's Application.

[7] The public hearing was duly advertised in accordance with sections 64 and 86 of the *Public Utilities Act*, R.S.N.S. 1989, c. 380, as amended (the "*Act*"), which read as follows:

> **Approval of schedule of rates and charges of utility**
> **64 (1)** No public utility shall charge, demand, collect or receive any compensation for any service performed by it until such public utility has first submitted for the approval of the Board a schedule of rates, tolls and charges and has obtained the approval of the Board thereof.
>
> **Filing with Board**
> **(2)** The schedule of rates, tolls and charges so approved shall be filed with the Board and shall be the only lawful rates, tolls and charges of such public utility until altered, reduced or modified as provided in this Act. R.S., c. 380, s. 64.
>
> **Notice of hearing of application for rate changes**
> **86** Notice of the hearing of any application, for the approval of or providing for an increase or decrease in the rates, tolls and charges of any public utility, shall be given by advertisement in one or more newspapers published or circulating in the cities, towns or municipalities where such changes are sought, for three consecutive weekly insertions preceding the date of said hearing, unless otherwise ordered by the Board. R.S., c. 380, s. 86.

[8] A total of 20 formal Intervenors responded to the applications of NSPI and NPB. A number of these parties were represented at the hearing by counsel. The Nova Scotia Department of Energy, Department of Environment, and Department of Natural Resources (the "Province"); the Small Business Advocate ("SBA"); the Consumer Advocate ("CA"); Avon Group ("Avon"), whose counsel represented 14 Intervenors; NPB; Halifax Regional Municipality ("HRM"); the Liberal Caucus Office; the Progressive Conservative Caucus Office; and the Municipal Electric Utilities of Nova Scotia Co-operative ("MEUNSC") all participated in the hearing. The Board also received numerous submissions from members of the public opposing NSPI's Application and both opposing and supporting NPB's Application.

[9] On August 22, 2011, NSPI's largest customer, NewPage, announced an indefinite shut down of its Port Hawkesbury operations. In early September, NewPage filed and obtained creditor protection under the federal *Companies' Creditors and Arrangement Act*. NewPage's parent company, NewPage Corporation, and certain of its other U.S. based subsidiaries, have filed for bankruptcy protection in the U.S. under Chapter 11 of the *United States Bankruptcy Code*. During the public hearing, the Board was advised of a Court approved process to find a purchaser for the NewPage plant in Port Hawkesbury.

2.0 BACKGROUND

[10] NSPI is a vertically integrated, investor-owned, regulated public utility with a virtual monopoly on electricity service throughout the province. It is the primary electricity supplier in Nova Scotia, providing over 95% of the electricity generation, transmission and distribution in the province. The Board regulates NSPI in the public

interest on a cost of service basis. The *Act* gives the Board broad regulatory oversight over public utilities and provides it with the authority to discharge its regulatory responsibilities. In addition to statutory requirements to be considered during a general rate application, the Board is also guided by long-established, fundamental ratemaking principles. In its Decision dated March 31, 2005, on a rate application by NSPI, the Board explained these guidelines as follows:

> In utility regulation, there are generally accepted principles which govern the rate-making exercise. The object of rate-making under a cost-of-service-based model is that, to the extent reasonably possible, rates should reflect the cost to the utility of providing electric service to each distinct customer class. In regulating NSPI, the Board is guided by these generally accepted principles as well as by case law.
>
> A widely-accepted publication written by Dr. James Bonbright entitled **Principles of Public Utility Rates**, sets out the following guidelines for determining appropriate rates:
>
> **CRITERIA OF A SOUND RATE STRUCTURE**
>
> 1. The related, "practical" attributes of simplicity, understandability, public acceptability, and feasibility of application.
> 2. Freedom from controversies as to proper interpretation.
> 3. Effectiveness in yielding total revenue requirements under the fair-return standard.
> 4. Revenue stability from year to year.
> 5. Stability of the rates themselves, with a minimum of unexpected changes seriously adverse to existing customers. (Compare "The best tax is an old tax.")
> 6. Fairness of the specific rates in the apportionment of total costs of service among the different consumers.
> 7. Avoidance of "undue discrimination" in rate relationships.
> 8. Efficiency of the rate classes and rate blocks in discouraging wasteful use of service while promoting all justified types and amounts of use:
>   (a) in the control of the total amounts of service supplied by the company;
>   (b) in the control of the relative uses of alternative types of service (on-peak versus off-peak electricity, Pullman travel versus coach travel, single-party telephone service versus service from a multi-party line, etc.).
>
> [Board Decision, March 31, 2005, p. 14]

[11] The Board continues to make its decisions in accordance with the *Act,* and the principles noted above.

[12] At the commencement of the public hearing on September 19, 2011, NSPI notified the Board it had reached a Settlement Agreement (the "GRA Agreement") on most of the outstanding issues in the NSPI Application. The GRA Agreement was

supported by most of the Formal Intervenors. The Board adjourned the hearing to provide an opportunity to all parties to file an executed copy of the GRA Agreement with the Board. The hearing reconvened on September 21, 2011, at which point NSPI witnesses explained the terms of the GRA Agreement and testified with respect to the outstanding issues.

3.0 SETTLEMENT AGREEMENT

3.1 The Board's approach to settlement agreements

[13] In its Decision dated November 5, 2008, the Board outlined its general approach to settlement agreements submitted to it for approval:

> [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.
>
> [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.
>
> [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 commences 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.
>
> [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.
>
> [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.

> [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.
>
> [Board Decision, 2008 NSUARB 140]

3.2 The GRA Agreement in the present case

[14] The GRA Agreement addresses most outstanding issues between NSPI and its customers, with the exception of cost of service issues and points related to the rates which apply to large customers under the Large Industrial Rate and the ELI 2P-RTP.

[15] Moreover, the GRA Agreement contains a deferral mechanism related to the recovery of non-fuel costs (net of non-fuel variable O&M costs) by NSPI in the event NewPage and/or Bowater shut down their operations indefinitely in 2012 (or remain closed in the case of NewPage). In that event, the GRA Agreement provides that NSPI will recover its non-fuel costs (net of non-fuel variable O&M costs) from the other customer classes starting in 2013. It should be noted that if either or both of NewPage and Bowater are off the system, variable fuel costs related to their load are avoided.

[16] The GRA Agreement reads as follows:

2012 GRA Settlement Agreement

Load

1. The original GRA 2012 load forecast filed on May 13 will be used to calculate 2012 general rates. This is without prejudice to future determination about what timing of load forecast is the appropriate load for rate-setting purposes when the mid-year load forecast is available in a GRA year. The Parties agree that the mid-year load forecast will be used for FAM and DSM purposes as usual.
2. Due to the indefinite shut down and creditor protection of New Page Port Hawkesbury, load for this customer may not materialize in 2012 at the CBL level included in rates. The future of Bowater Mersey Paper Company is also uncertain, in light of the evidence in the Load Retention Tariff (LRT) application. Setting rates that include revenue from NPB will not provide the utility the opportunity to recover its costs and would therefore not be just and reasonable. Therefore, in order to maintain the lowest reasonable rate increase by setting rates to include NPB load, the parties agree that:

a. The NPB load will be based upon the levels forecast in the May 13 filing, and the forecasted non-fuel contribution from these customers will be calculated as the forecast total revenue from all load of these customers less the forecast BCF revenue for these customers.

b. Any amount of unrecovered NPB contribution to non-fuel costs net of non-fuel variable O&M costs, will be deferred for later recovery from all customers beginning in 2013. Non-fuel variable costs are deemed to be $500,000 annually for the entire NPB load. The non-fuel cost amount will be determined by deducting actual 2012 NPB fixed cost recovery from the forecasted amount of 2012 NPB fixed cost recovery as forecast at the time of setting 2012 rates. The amount will incorporate a reduction for non-fuel variable O&M costs that is proportionate to the actual total load for NPB. The forecast amount of 2012 fixed cost recovery will be quantified as part of the NSPI 2012 GRA Compliance Filing, on which all parties will have the right to comment.

c. The parties agree that NPB should provide security for the payment of their account, and parties will support a request to the UARB by NSPI for such security.

Fuel and Purchased Power Forecast

3. The Base Cost of Fuel in general rates will be based upon the May 13 filing (amount that includes NPPH load). Due to uncertainty about 2012 load, the FAM incentive will be suspended (i.e., will not operate) in 2012.
4. NSPI will adopt the Liberty recommendations relating to the forecast cost of imports, without adopting the approach as an established new methodology. The approach will be reviewed with the FAM SWG for potential revision of the FAM Plan of Administration. NSPI estimates this change will reduce the fuel forecast by $1.7M + 3.1M. The increase in the fuel forecast for 2012 will therefore be $31.3M ($36.1M - 4.8M).
5. This agreement does not affect the 2011 FAM processes, which will operate as usual to establish recovery of the 2011 AA, and the BA (including the 2010 Fuel Deferral amount), as well as reflect the earlier stakeholder agreement to return $14.5M to customers relating to the 2010 earnings deferral. The 2012 FAM process will recover the remaining BA portion of the 2010 Fuel Deferral amount.
6. Other issues related to fuel raised by Intervenors are open for consideration during the upcoming FAM processes.

Return on Equity/Capital Structure

7. Treatment as follows:
   a. Capital Structure – rates will be set on 37.5% equity, NSPI may use a maximum actual equity of 40%, actual average equity will be used to calculate return on equity results.
   b. ROE – rates will be set on 9.20% ROE, with a target earnings range of 9.1 to 9.5%; a corresponding adjustment will be made to the s.21 AAA mechanism.
   c. This reduces revenue requirement from the application by $7.5M.

OM&G

8. For the purpose of the 2012 revenue requirement and without prejudice to future positions, incentives for Executives of NSPI will be paid by shareholders and therefore removed from 2012 customer rates – reduces revenue requirement by $250,000.
9. Pension – NSPI's pension costs are accepted in rates.

10. Salary/wage increase assumption – adopt the result, but not the methodology, of Liberty's recommendation (reduction in revenue requirement of $470K).
11. Succession planning – reduce amount by $1M to $4M. No further review required. This incorporates Meyer recommendation relating to FTEs not yet in workforce.
12. Capitalization rates – NSPI will update during compliance to reflect any changes that are consequential from adjustments to capital items in rate base, otherwise no change from NSPI proposal.
13. Sustainability – recover costs as proposed. No further review required.
14. Vegetation Management and Storms – withdraw increases relating to Vegetation Management and Storm costs (reduction in revenue requirement of $7.1M).
15. Insurance – reduce requested increase by $1M.
16. DSM amortization – as proposed by NSPI in filing.
17. Digby Wind – reduce OM&G by $300,000 as proposed by NSPI and Ramas.
18. Total OM&G revenue requirement reduction of $10.1M.

Rate Base

19. FAM Deferral amount – no change from NSPI filing (consultant proposal would have increased revenue requirement)
20. Reductions to rate base:
    a. Remove Co-Fired biomass and Bag House projects from capital plan (and remove offsetting AFUDC/AO/Depreciation). Reduces revenue requirement by $1.9M.
    b. Adopt Liberty proposed adjustment to rate base relating to pension costs ($9.9M reduction to rate base, $0.7M reduction in revenue requirement).
    c. CWC – maintain as presently in rates using "black box" approach, without prejudice to parties' right to make future arguments – no adoption of changes to methodology. Reduces rate base by $26.9M, reduces revenue requirement by $1.9M.
    d. Further rate base reduction, at NSPI's discretion, sufficient to reduce revenue requirement by $1.0M.
    e. No other rate base adjustments from NSPI application as filed.
    f Total effect on revenue requirement of these changes - $5.5M reduction

COSS and non-revenue requirement

21. Streetlights – rates will be as proposed by NSPI subject to the following adjustments:
    a. Parties agree that LEDs will be used for all replacements effective immediately and until UARB approval of the new capital program. The cost of these interim change-outs will be capitalized and parties will support any U&U application that may be necessary to obtain UARB approval of this interim program.
    b. Interim rate will be the rate as proposed in NSPI's May 13 filing subject to two changes:
        i. Fixture capital cost will be reduced by 15% from NSPI's original proposal. This reduction in the fixture capital cost will also apply to the January 1, 2012 rates.
        ii. No conversion fees will be charged until the 2012 LED Streetlight rates are in effect.
    c. The proposed realignment of rates with costs of the unmetered services of electricity and fixture capital will be introduced in two phases beginning in January 2012. NSPI will submit at the time of 2012 Compliance Filing a set of

streetlight rates that will be effective January 1, 2012 that incorporate 50% (in terms of cost impact) of the methodological adjustments. The complete change will be made in the next General Rate Application.

d. Without prejudice to a later determination of the value of stranded assets, the parties agree that for the purposes of calculating the 2012 conversion fee, the format in NSPI's Appendix G, Schedule 10 will be used with a year-ending 2011 Net Plant Value of $12 million for rate-making purposes to be recovered over 10 years, rather than $23 million predicated on a 5 year recovery period as is the case under NSPI's Application. As well, the schedule will be amended to include forecast retirements and depreciation over the 10 year period. If the program timeline remains 5 years at the time of final UARB approval of the capital work order for LED Streetlights, parties acknowledge this value for stranded assets is not anticipated to be accurate.

e. NSPI is entitled to full recovery of its prudently incurred non-LED street light asset costs. At future General Rate Applications, pricing of the energy and capital components of streetlight rates (LED, non-LED and conversion fees) will reflect NSPI's actual experience. NSPI will monitor the recovery of its stranded costs and is entitled to seek regulatory approval of changes to streetlight rates and conversion fees to ensure that all of its costs are recovered.

22. COSS issues:

    a. Adopt NSPI's corrections to the COSS and Mel Whalen evidence that accepts six adjustments to the COSS and proposes changing the energy classification of all projects that have an environmental component to include only investments made to meet environmental objectives which are a function of energy.

    b. All other COSS changes will be withdrawn. Certain Intervenors may take the position that Terms of Reference should be set leading to a COSS hearing in the near future.

23. Revenue to Cost ratios – may be litigated by Intervenors.

24. Large Industrial Tariff changes – NSPI grandfathering proposal to be adopted.

25. ELI 2P-RTP Tariff changes – may be litigated by Intervenors.

26. Subject to necessary adjustments to incorporate paragraph 7 above, the s.21 AAA Mechanism will continue to operate on a go forward basis until the s.21 amount is fully paid. Amounts in excess of both the range of return on equity and in excess of the room available in the s.21 AAA Mechanism will be returned to customers.

27. This settlement is for the GRA 2012 application only and is without prejudice to any of the parties freshly addressing any of the issues in a future GRA application.

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Summary of Total Adjustments – 2012 Revenue Requirement

	Adjustment	Revenue Requirement	Average Rate Increase (GRA Table 10.8)
May 13 Application		$94.4M increase	7.2%
Fuel and Purchased Power	($4.8M)		
ROE	($7.5M)		
OMG	($10.1M)		
Rate Base	($5.5M)		
Total Adjustments	($27.9M)	($27.9M)	
Total Change in Revenue Requirement		$66.5M Fuel - $31.3M Non-Fuel – $35.2	5.06% 2.38% 2.68

[Exhibit N-49]

[17] In his Opening Statement at the hearing, Rob Bennett, NSPI's CEO, stated that the negotiated GRA Agreement represents a consensus which balances all interests:

> The agreement we're presenting today clearly demonstrates that we can bring all the varied customer interests together to reach consensus for the common good. Doing so should always get us to a better result than an adversarial hearing process. No one loses in a negotiated settlement: everyone's interests are balanced and addressed.
>
> [Exhibit N-52, p. 2]

[18] He concluded:

> The agreement we are presenting today won't solve all our longer term challenges, but it's a step in the right direction. Like all settlements, it is a balance of competing interests. It addresses the reality of the rising costs in our business, while keeping the rate impact on customers as low as possible. It is a fair and prudent agreement.
>
> [Exhibit N-52, p. 4]

[19] In NSPI's Closing Submission, counsel for the Company reiterated that the GRA Agreement advances the public interest:

> NSPI submits the Settlement Agreement in this 2012 General Rate Application is balanced and fair to customers as well as to the Company. The public interest will be advanced by the implementation of the Settlement Agreement and the elements contained within the Agreement, including the new electricity rates on January 1, 2012.
>
> [NSPI Closing Submission, p. 3]

[20] The CA, while remaining mindful that some residential ratepayers would desire nothing short of a robust resistance to any rate increase, concluded that the negotiated rate increases are reasonable and justified and, further, that there is no realistic chance that the terms could be improved upon in a contested hearing:

> It is important to note the Settlement Agreement came only after an extensive opportunity for the Consumer Advocate and other ratepayers to assess the application and the grounds submitted for the increases, to obtain expert consultants with their analysis and opinions, to ask a multitude of questions and to obtain complete factual basis for the rate increase. This was followed by hours of negotiation. The result was the stakeholders involved reached the position that they considered realistic and reasonable in the circumstances.
>
> A response to a rate increase application cannot simply be a denial of that application if it is based on rising costs that the utility must incur in order to provide electric power to ratepayers and a level of service and reliability they expect. In the absence of an ability to cap the costs being incurred by the utility, it is inevitable that increasing costs must be accommodated by either internal efficiencies on behalf of the utility itself or increased rates.
>
> ...
>
> The Consumer Advocate is satisfied that after a review of all of the evidence that has been produced, the analysis of that evidence, including the assessment by expert consultants, that the rate increases contemplated by the settlement agreement are reasonable and justified and that it would be realistic to anticipate that they could not be improved by continuing to contest proceedings through to an adjudication.
>
> [CA Closing Submission, p. 2]

[21] Counsel for Avon also urged the Board to accept the terms of the GRA Agreement. Subject to Avon's submission that the Board should amend the GRA Agreement to reflect NSPI's obligation to take all prudent and reasonable steps to minimize any deferred amounts occasioned by the closure of NewPage and Bowater (a point which the Board will address later in this Decision), Ms. Rubin described the negotiated settlement as "reasonable, equitable and in the public interest" (Avon Closing Submission, p. 4).

[22] In the context of its Application for the LRT and the LRR, NPB did not sign the GRA Agreement, but did not oppose it. While NPB was not a signatory to the GRA Agreement, its counsel stated at the hearing:

> As a participant in the General Rate Application proceeding, NPB has attempted to assist all Intervenors and the Board by sponsoring expert evidence that supports significant cost reductions to the increase sought by NSPI. NPB is pleased that NSPI and ratepayer representatives were able to agree to cost reductions to NSPI's revenue requirement that have the effect of lowering rates.
>
> [Exhibit N-53, p. 1]

[23] Similarly, HRM was not a signatory. However, it supported the LED streetlight rate design reflected in the GRA Agreement, while remaining silent on the other elements of the negotiated settlement. CBRM did not support the GRA Agreement.

[24] Further, in its Closing Submission, the Province submitted that the GRA Agreement is "worthy of very serious consideration". It added:

> Although the Province is not a signatory to the Settlement Agreement, it does not oppose the request of NSPI and the interveners who are parties to the Agreement to resolve NSPI's application on the basis set out in the Agreement.
>
> [Province Closing Submission, p. 4]

[25] Nevertheless, the Province noted that despite the lower rate increases negotiated by NSPI and the Intervenors, the costs of electricity will remain a challenge for consumers, especially for those on low and fixed incomes. The Province also expressed concerns with the deferral mechanism (which the Board will address below).

3.3 Findings

[26] The GRA Agreement represents a comprehensive resolution of most contested issues between NSPI and the Intervenors. It addresses a number of important elements raised in the NSPI Application.

[27] First, it reduces NSPI's revenue requirement by $27.9 Million from the original requested increase of $94.4 Million. The resulting increase to the revenue requirement is $66.5 Million ($31.3 Million for fuel and $35.2 Million for non-fuel).

[28] The proposed settlement lowers the rate increase, averaged across all customer classes, to 5.1%. For residential customers, the proposed increase will be 4.9%. The Board observes that this does not account for the LRR, discussed later in this Decision.

[29] In its Application, NSPI requested that its current return on equity of 9.35% be increased to 9.6% (within a range of 9.35 to 9.85%). Under the terms of the GRA Agreement, the return on equity is reduced to 9.2% (within a range of 9.1% to 9.5%). This reduces the revenue requirement by $7.5 Million.

[30] NSPI agreed to withdraw its proposed increases in vegetation management and storm costs, totaling $7.1 Million. However, the Board notes that there are still substantial funds allocated to these programs to address reliability issues for consumers.

[31] NSPI has also agreed to remove its costs for executive bonuses from its 2012 revenue requirement. This action was no doubt in response, at least in part, to the strong comments from the public on this issue.

[32] The total reduction of OM&G costs is $10.1 Million.

[33] Further, the GRA Agreement represents a negotiated settlement by all represented customer classes. Ms. Rubin described the support for the terms of the settlement:

> The Settlement Agreement has the support of Nova Scotia Power Inc. (NSPI), representatives of the residential class through the Consumer Advocate, small businesses through the Small Business Advocate, Municipal Electric Utilities through its cooperative as well as large industrial customers (the Avon Group). NewPage Port Hawkesbury Limited and Bowater Mersey Paper Company (NPB) have not signed the Settlement Agreement due to the position they are taking in relation to the proposed load retention rate. However, NPB fully participated in the settlement negotiations and Mr. MacDougall, on their behalf, affirmed that NPB would not make any submissions in opposition to the Settlement Agreement. Halifax Regional Municipality (HRM) had tendered evidence in the GRA in relation to the LED street light rate design. Mr. Jedynak

> indicated in submissions to the Board that HRM endorsed and requested approval of the "comprehensive resolution" of the LED street light rate design component of the Settlement Agreement.
>
> The breadth of support from Intervenors who had filed evidence, it is submitted, should be afforded significant weight when the Board considers the public interest in the Settlement Agreement.
>
> [Avon Closing Submission, pp. 1-2]

[34] The Province stated:

> For the most part, the signatories to the Settlement Agreement are parties who have appeared and have been the most active in most matters involving NSPI over the past several years. These parties have a sophisticated understanding of the regulatory framework within which NSPI operates and a general understanding of NSPI's cost structure and pressures.
>
> [Province Closing Submission, p. 6]

[35] The GRA Agreement also provides some stability to the ratepayers in the face of uncertain economic conditions presently existing in Nova Scotia. As noted by counsel for Avon, the deferral clause in the GRA Agreement offers "a mechanism to address the uncertainty surrounding the indefinite shutdown and creditor protection of NewPage" and, for that matter, the precarious situation of Bowater. Since the negotiated revenue requirement is based on the NSPI Application load forecast, the ratepayers benefit from the deferral of an immediate marked increase in rates. Thus, any recovery of lost NPB contributions to non-fuel costs (net of non-fuel variable O&M costs) is deferred to 2013. This deferral mechanism provides some stability for the Utility and ratepayers despite the uncertain future of the NewPage and Bowater mills.

[36] Taking into account the complete evidentiary record, and the submissions of the parties, the Board is satisfied that the GRA Agreement is in the public interest. It provides for rates that are just and reasonable. The Board approves the GRA Agreement.

[37] There was some question raised in the Closing Submissions about the review of the deferral amount under the GRA Agreement. While the issue was not described conclusively during the hearing, counsel for NSPI suggested that the review of the deferral amount would occur in 2012 as part of a 2013 general rate application. Failing a 2013 general rate application, he suggested that the review could occur during the FAM proceeding in 2012.

[38] The Province submitted that it would be preferable if the deferral was reviewed during a general rate application, because addressing it during a FAM proceeding may, in Mr. McGrath's view, result in inequitable allocations amongst rate classes.

[39] The Board considers that the approach described by NSPI's counsel is reasonable and appropriate. In the event there is no general rate application in 2012 for 2013, the review of the deferral amount will be added to the issues list and considered during the FAM proceeding in 2012.

4.0 COST OF SERVICE (INCLUDING STREET LIGHTS)

[40] The proposed revenue requirement is to be recovered from each rate class as determined by using the 2012 Cost of Service Study ("COSS") included in the NSPI Application.

4.1 Cost of Service Study (COSS)

[41] NSPI prepared the COSS for the 2012 test year using the Board approved methodology. The major change proposed is in the allocation of street light

depreciation cost to more accurately reflect this rate class responsibility. NSPI noted that:

> The COSS is predicated on the revenue requirement and costs presented in financial tables, which are included in the Standardized Filing sections of this Application. The revenue requirement used in this study is reflective of costs that are forecasted to be incurred by NS Power in 2012. It does not include forecasts for the 2012 Fuel Adjustment Mechanism (FAM AA and BA). In this regard, the COSS differs from the revenue information displayed in some financial tables, which shows revenues inclusive of the FAM amounts. These amounts will be determined in a separate 2011 FAM proceeding.
>
> [Exhibit N-1, p. 134]

[42] Dr. Alan Rosenberg, consultant for NPB, proposed a number of changes to the 2012 COSS which, in his opinion, are needed to establish cost-based rates for the ELI 2P-RTP rate class. These changes include: interest expense and its allocation to different rate classes; allocation of demand side management ("DSM") and vegetation management costs; treatment of wind generation costs; purchased power costs; tax credits on renewable investment; and the forecast coincident peak of ELI 2P-RTP. Based on these changes he calculated that the ELI 2P-RTP's share of the revenue requirement will decrease to $131,922,000 compared to $136,297,000 as calculated in the NSPI Application.

[43] Dr. Rosenberg also recommended that the Board update the generic COSS due to factors which are currently different than they were when the original COSS was approved by the Board. He added that:

> ...NSPI's generation picture has changed dramatically over the last 20 years. In the first place, NSPI is less dependent upon coal and this dependence will only decrease in the future. Absent a technological breakthrough, it is doubtful that NSPI will ever seriously consider building another coal-fired plant. Moreover, 20 years ago, coal-fired electricity was a small fraction – usually less than half – the cost of gas-fired generation. Today, however, with the increased cost of coal, gas-fired electricity is not only on par with the cost of coal-fired electricity, in some cases it is even cheaper. Thus, the very foundational assumptions of the 1995 methodology have been turned topsy-turvy.
>
> [Exhibit N-28, pp. 24-25]

[44] Lee Smith, consultant for the SBA, recommended a new COSS and noted that:

> The Company's cost allocation may also be seriously flawed in that many important aspects of the allocation process have not been updated, but rely on data and methods that were approved as long as 18 years ago. Costs, the relationship between different types of costs, and technologies have changed over that period. For instance, the Company's treatment of substation plant is based on 1995 studies which identified certain substations as dedicated to serving large customer classes. The allocation of substations to these customers is still based on this old data. There has been no analysis to determine how much additional investment has been made in these substations, and whether these customers today are utilizing some of other substations.
>
> [Exhibit N-29, pp. 4-5]

[45] Ms. Smith questioned the allocation of wind generation cost based on the current COSS methodology by noting that "much more of the cost of wind is related to energy than to peak load that is reflected in the allocation method selected in the past" (Exhibit N-29, p. 6). She also noted that allocation costs for utility poles are based on very old data and need updating to reflect true revenue requirements for various customer classes.

[46] Paul Chernick, consultant for the CA, recommended that the COSS methodology needs changes and noted two main issues for the Board's consideration:

> - The classification of wind costs between energy and capacity is essentially a new issue. As of the end of 2006, [NSPI] had about 50 MW of wind on line, compared to some 280 MW on-line today. The Board did not mention the classification of wind costs in the 2006 order.
> - The issue of substation allocation arises because NSPI has not applied the approach used in the 1977, 1980, and 1993 studies, by failing to update the lists of dedicated substations and the classes served from dedicated substations, let alone the costs of dedicated substations.
>
> [Exhibit N-16, p. 5]

[47] Mr. Chernick disagreed with the proposed classification of wind generation costs based on capacity factors and recommended that:

> All wind-power costs should be classified entirely as energy-related until the wind capacity (1) is needed and (2) allows [NSPI] to avoid conventional generation capacity. At that point wind-power costs should be classified as no more than 10% [demand-related] and at least 90% energy-related. Alternatively, once the wind resources have capacity benefit, Company-owned wind costs can be classified as no more than 2% demand-related for O&M and 13% demand-related for capital-related costs.
>
> [Exhibit N-16, p. 8]

[48] Mr. Chernick also disagreed with the classification of substation costs based on the past practice which makes certain customer classes pay less of their share of the revenue requirement. He noted that:

> Considering NSPI's lack of information about the actual costs (or even the identities) of the dedicated substations, the class served by each dedicated substation, and the load of the large industrial and municipal customers served from non-dedicated substations, it seems most reasonable to allocate all substation costs on some measure of demand. If, in the future, NSPI returns to its previous practice of tracking the costs of the dedicated substations, it can apply the pre-1996 allocation approach.
>
> [Exhibit N-16, p. 13]

[49] He summarized his recommendations as follows:

> The Board should recognize that NSPI's existing cost-of-service methodology overstates the costs of serving residential customers in the following ways:
>
> - classifying an excessive share of wind costs on demand,
> - assigning unrealistically low substation costs to certain classes, based on incorrect data on the cost of dedicated substations.
>
> The Company should be instructed to recompute the revenue-cost ratio with the following corrections:
>
> - Classify all wind costs as energy-related.
> - Allocate all substation costs on non-coincident demand.
>
> [Exhibit N-16, p. 19]

[50] NSPI, in its Closing Submission, recommended that a new COSS is not necessary at this time due to the Board's heavy regulatory agenda for the next few years:

> ...a new COSS is a time consuming, costly and fractious undertaking at a time when there are many significant regulatory proceedings on the horizon. These other matters will affect all customers, and include a FAM audit and annual processes, DSM processes including establishing a new approach to cost allocation, the 2012 ACE Plan that is a

much more extensive process than in the past, and the next general rate application. Other major items that are not yet confirmed but are anticipated to occur in the next 18-24 months include an application relating to the Maritime Link (Muskrat Falls energy), the next Integrated Resource Plan, and other significant capital work order applications...

[NSPI Closing Submission, p. 7]

[51] Avon is in favour of a new COSS and noted that the merits of such a study cannot be determined without due process:

In our respectful submission, the time is ripe for the Board to convene a hearing to decide the issue of whether revisions to NSPI's current COSS methodology are warranted. The threshold question at this stage cannot be whether there is "consensus" on elements of the methodology as suggested by Mr. Ferguson for NSPI or Mr. Whalen's "guess" that a hearing process would result in a similar outcome. The merits of any asserted revisions should not be pre-judged by Mr. Whalen, the Consumer Advocate or this Board without having the benefit of full evidence, data and argument. In the last Cost of Service process, none of the Small Business Advocate, the Consumer Advocate nor any of the fourteen customers which comprise the Avon Group was a participant. The question should be whether there is a reasonable basis to reopen the COS methodology. We submit that there is.

[Avon Closing Submission, p. 8]

[52] Avon further elaborated as to why there is a need for a new COSS:

In the 2009 General Rate Application (NSUARB P-888), Mr. Drazen recommended the Board review the classification of base load generation fixed cost. Contrary to any impression which may have been left by Mr. Whalen, it is important to point out that the concept of classifying generation and transmission costs into demand, duration and energy was not brought forward in the 1992 hearing and so, to date, has not had a thorough airing or testing.

[Avon Closing Submission, p. 9]

[53] NPB supported the undertaking of a new COSS based on the length of time passed since the last COSS:

Furthermore, the fact that it has been so long since the last proceeding alone suggests that a revisitation of the issue is appropriate at this time. This is particularly the case given the substantial changes to NSPI's generation mix that are expected to occur in order for NSPI to meet the Provincial government's Renewable Energy Standards. NPB submits that the Board should in its Decision, order the initiation of a process to review the Cost of Service methodology, beginning in 2012.

[NPB Closing Submission, pp. 8-9]

[54] The CA, in its Closing Submission, did not support a full review of the COSS, but a limited review excluding the methodology. This, he argued, "would

prevent the revisiting of covered ground and may also serve to enhance the confidence some parties have in the COSS".

[55] The SBA recommended that a new COSS be undertaken based on Bonbright's principles and the evidence presented in this case.

4.1.1 Findings

[56] The Board has considered the evidence provided and agrees with most Intervenors that there is merit to review the current COSS. The evidence presented notes that some of the assumptions and principles used in the COSS such as the current generation mix (including renewables) and emission control requirements need a review.

[57] The Board's current 2012 Regulatory Schedule does not allow enough time for a review of the COSS. Therefore, the Board orders that NSPI plan for a COSS hearing in 2013 and provide a schedule in its Compliance Filing.

4.2 Revenue to Cost Ratios (R/C)

[58] Ms. Smith questioned the usefulness of the current Board approved R/C ratio band of 95% - 105%, especially if one rate class is consistently outside or on the higher end of the band (Rate classes 10, 11 and 21). She added that:

> I recommend first that the Board reduce the current spread among R/C ratios so that all classes move closer to the cost of service. In the case of Small Business customers, I recommend that none of the Small Business Classes have a R/C ratio of greater than 103%, and that the Small Industrial class ratio be held at the current 100.5%. This would mean the average rate increase to these customers, will be 4.6%, rather than the 6.5% which the Company has proposed. This would reduce the revenue from Small Business customers by 1.8% and by $6.2 million less than what the Company has requested from these customers.
>
> ...
>
> I recommend that no class should be at a R/C ratio of less than .98. This would create a new range of from .98 to 1.03. This would still leave some additional dollars which could

be collected from the residential class, which would still have an R/C ratio of less than 1.0, and ... the ratio would still be slightly lower than the existing ratio.

[Exhibit N-29, pp. 15-16]

[59] In response to a SBA question, Mr. Ferguson explained why the current R/C ratio band is reasonable:

> The existing revenue-to-cost ratio band that's allowed in Nova Scotia is a recognition that -- two things I think; it recognizes that there is some imprecision in cost-of-service development, any cost-of service model.
>
> The band that's in existence is plus or minus 5 percent which a pretty precise band from a cost-of-service perspective.
>
> So it provides a recognition that cost of service determination can be somewhat imprecise and it also allows the Board some flexibility in levelizing rate increases beyond what would be required if the band was more narrow.
>
> If the band was more narrow then by definition you have to increase the range of increases felt -- experienced by the various classes. So by broadening the range or using the range of 95-105 the Board retains some flexibility in actually applying rate increases.
>
> [Transcript, pp. 260-261]

[60] The CA, in its Closing Submission, did not support the change to the R/C ratio band and moving the Small General and General Demand classes below an R/C ratio of 1.05:

> The Consumer Advocate's second submission relating to revenue cost ratios is to support NSPI's attempt to move the general demand class to an R/C ratio within the present band. In considering whether to move this class below the top end of the band, it is important to note that under the proposed Settlement Agreement - and at NSPI's proposed R/C ratios - the General Demand class would experience a rate increase of approximately 3.9% and the residential class 4.9%. The Consumer Advocate suggests that this would not be an appropriate time to make additional R/C adjustments that would increase the burden on the residential class.
>
> [CA Closing Submission, p. 6]

[61] The SBA, in its Closing Submission, suggested that if the Board does not wish to change the band, then the rates for the Small General and General Demand classes should be placed at an R/C ratio of 1.03.

[62] Avon, in its Closing Submission, argued against changes to the R/C ratio band and stated:

> Mr. Ferguson's characterization of the band as "fairly narrow" is apt. Indeed, the Ontario Energy Board which carried out a review of cost allocation matters for electricity distributors (and specifically R/C ratios), issued a policy with an acceptable range of +/- 15% for residential and industrial customers, and +/- 20% for small general and general classes. Unlike the NSUARB, the OEB permissible ranges vary by class, and may, as well, be asymmetrical. For example, the OEB concluded that the unmetered classes should fall within a revenue to cost ratio of 0.70 to 1.20.
>
> The bandwidth is needed to account for such things such as imprecision in the data, quality and modeling. Indeed, statistically, all the ratios in the range have an equal probability of being the true ratio given the variability of the data. In other words, while the Small General class may show an R/C ratio of 1.05 it has the same probability of being the true value as an R/C ratio of .95 or 1.00, due to limitations in the data and the modeling. As a result, any R/C ratio within the range should be acceptable as equally likely to be the true R/C ratio (based on NSPI's cost of service study).
>
> [Avon Closing Submission, p. 5]

[63] NSPI, in its Closing Submission, submitted the R/C ratios and R/C ratio band should not be amended:

> The Company refers the Board to its submissions made on October 7, 2011 with respect to this item and makes the following additional comments in response to the arguments of the Avon Group and the SBA.
>
> The Avon Group has requested that NSPI be directed to file with its Compliance Filing alternatives which permit the Unmetered Class to move from an R/C ratio of 1.0 when revenue shortfalls are reassigned. The Unmetered Class is like no other in that a significant portion of its costs is made up of direct fixture maintenance and capital costs. Since 2007, NSPI has proposed that the R/C of the Unmetered Class be set at 100 percent. That proposal has been upheld by the Board in the last two rate case decisions.
>
> No evidence has been filed suggesting that the Company's method of beginning the cost allocation exercise by setting the Unmetered Class to 1.0 is improper. Further, the time of Closing Argument is not the time to be proposing alternatives. Indeed, Avon's request for relief requests that the Board reject any alternative scenarios to allocate the revenue increase (item 2); and that the UARB adopt the allocation of the revenue increase as set out by NSPI in Exhibit N-49 (item 3).
>
> The SBA has suggested that the Board might consider a special hearing to deal with their request for a narrowing of the revenue to cost ratio band. The matter has been fully litigated before the Board as a part of this proceeding, with the Board having received evidence and submissions from engaged parties on this issue. NSPI respectfully submits that the Board has the ability to make a determination on this matter based upon the evidence before it now.
>
> [NSPI Reply Submission, pp. 5-6]

4.2.1 Findings

[64] The Board has considered the SBA's recommendation to change the R/C ratio band from 95%–105% to 98%–103%. As noted by NSPI during the hearing, the current R/C ratio band is the tightest in the industry and should not be changed. NSPI noted that industry has bands up to ±20% based on individual utility needs. Other Intervenors have also recommended that the R/C ratio band should not be changed for various reasons.

[65] The Board agrees with NSPI and the other Intervenors that the change to the R/C ratio band be denied.

[66] The Board recognizes the issue of the Small General and General Demand classes being on the high end of the R/C ratio band. The SBA has recommended that the R/C ratio for the Small General and General Demand classes be lowered to 1.03 from 1.05. Most of the Intervenors have objected to this change for reasons noted earlier, mainly the impact on other customers.

[67] The Board understands that by accepting SBA's recommendation the rates for other customers will increase marginally to recover the reduced revenues from these customers. However, the R/C ratio for these customers has been the highest and close to the top end of the band for some time now and in fairness should be reduced.

[68] The Board agrees with the SBA's recommendation to lower the R/C ratio for these two customer classes to 1.03 for this Decision and NSPI is ordered to include this change in the Compliance Filing.

4.3 Street Lights

[69] NSPI used the Board approved COSS to determine the revenue requirements for each rate class. However, the Company is proposing to change the methodology to allocate depreciation of existing street light fixtures. The Company is proposing to create a new below the line ("BTL") category for the capital cost of LED fixtures instead of keeping it in the 2012 COSS. The details of this proposed change are provided in Appendix G of the NSPI Application (Exhibit N-1).

[70] The ratemaking methodology of street lights has remained unchanged since 1977. Street lights are part of the Unmetered Rate Class. NSPI has three types of street light charges based on three types of services it provides: electric service; electric and maintenance service; and electric and maintenance service and capital cost.

[71] The GRA Agreement addresses the street light issue. HRM supports the negotiated resolution of the street light issue. HRM, in its Closing Submission, provided a chart calculating street light charges based on its interpretation of the GRA Agreement. NSPI, in its Closing Submission, took issue with these calculations, noting that they do not comply with the GRA Agreement

4.3.1 Findings

[72] The Board notes that the issue of street lights is part of the GRA Agreement. HRM has supported clause 21 of the GRA Agreement which relates to the street lights. The Board has approved the GRA Agreement reached by the parties and NSPI is ordered to provide street light rates in its Compliance Filing based on the GRA Agreement.

5.0 PROPOSED CHANGES TO THE ELI 2P–RTP RATE

[73] The Extra Large Industrial Two-Part Real Time Pricing rate ("ELI 2P-RTP rate") was first approved in October 2006 to replace the then existing Extra Large Industrial Interruptible Rate. The only customers whose load qualifies for the ELI 2P-RTP rate are NewPage and Bowater. The ELI 2P-RTP rate is a priority interruptible rate with hourly price signals designed to provide customers with power cost savings through load shifting. Its two pricing components are:

1) a customer base line (CBL) base cost rate; and
2) a debit and credit mechanism associated with load increases or reductions from the CBL.

[74] The CBL is set annually in October based on consumption during the previous 12 months subject to adjustments for known factors.

[75] The revenue responsibility associated with the CBL base rate is determined by applying a revenue to cost ratio of 95% to the total cost responsibility determined through the COSS. The CBL base rate includes a customer charge and a standard energy charge.

[76] The second pricing component is the determination of debits and credits associated with load shifting from the customers' CBL. The debits and credits are charged or paid according to NSPI's marginal cost of electricity.

[77] The performance of the ELI 2P-RTP rate with regard to the value provided to customers has been the subject of a Board ordered annual report filed by NSPI since 2007. In its Direct Evidence, NSPI noted two issues that had been raised in these reports prior to 2009:

1) the tiered mechanism of providing decremental credits; and

2) incremental energy pricing.

NSPI advised that it did not consider either of those issues significant enough at the time to warrant a revision to the tariff.

[78] However, with the introduction of the FAM, NSPI argued that changes are required. In its Direct Evidence, Appendix H, NSPI stated as follows:

> The introduction of the FAM in 2009 changed the ratemaking framework of NSPI and brought into focus additional issues not envisaged at the time the Tariff was approved in 2006. Specifically, the inclusion of ELI 2P-RTP debits and credits in the FAM, was determined to have potential to distort the value exchange between ELI 2P-RTP and other rate classes. This risk was sufficient for the Board to direct NSPI to produce a semi-annual report focused on the potential fuel cost transfer between ELI 2P-RTP customers and other FAM ratepayers.
>
> In NSPI's 2009 and 2010 annual and semi-annual reports, the Company advised the Board of the following concerns:
>
> - Failure to compensate the utility for non-fuel related costs due to CBL reductions
> - Imbalances between credits and decremental fuel costs as accounted for under the FAM due to
>   - SEC-based floor credit applied in the second and third tiers
>   - Double counting for losses in the application of the SEC-based floor
>   - Changing conditions in economic dispatch
>
> In the FAM environment the under-recovery of non-fuel related costs has by far the most severe financial consequence for the utility. In a two year period of 2009 and 2010 NSPI under recovered $8.4 million of these costs as measured against the revenue benchmark set at the time of the 2009 Compliance Filing.
>
> [Exhibit N-1, Appendix H, p. 4]

[79] It is NSPI's position that the current billing provisions with respect to the CBL need improvement in rigor and transparency. NSPI says that without this, unjustified cost transfers between ratepayers can occur.

[80] Board Counsel witness Mel Whalen, in his Direct Evidence, provided the simplest summary and the rationale for the proposed changes. He included the following table:

Change Proposed	Rationale
1. Set a nominal CBL during a GRA and adjust it between GRA's only with UARB approval.	1. Reduces the effects of non-fuel cost recovery that occurs when the CBL is less than was anticipated in the GRA.
2. Allow an operational CBL (CBL_{op}) from which incremental and decremental loads are determined.	2. Recognizes customer operational realities and permits more realistic assessment of load changes during unusual circumstances.
3. Compensate the energy difference between nominal CBL and CBL_{op} at forecast avoided cost within 90% and 110% of SEC.	3. Reduces cost fluctuations to ELI 2P-RTP customers and to other FAM customers affected by large customer load adjustments.
4. Adjust the [Tier 2 and Tier 3] credit floor price to include only the fuel portion of the SEC, rather than the total SEC.	4. Current credit (the total SEC) can be more than avoided costs and in that case, the credit is overpaying the ELI 2P-RTP customers.
5. Eliminate line losses from credits determined using the fuel component of SEC.	5. Avoids a double count of losses.

[Exhibit N-30, pp. 14-15]

[81] Mr. Whalen supported the changes proposed by NSPI. He noted that the tariff has been in operation for more than four years and there is experience to assess whether modifications are necessary, something that was anticipated by the Board when the rate was first approved. He goes on to say:

> ... The introduction of FAM and the inclusion of ELI 2P-RTP credits and debits within the FAM added a new risk to this rate. This risk has been assessed in semi-annual reports to the Board since 2009.
>
> The changes proposed by NSPI are intended to address short comings of the rate design that have come to light based on operational experience.
>
> The first shortcoming relates to the customer flexibility to adjust the CBL between rate cases with no recognition of the fact that NSPI's non-fuel component of the Standard Energy Charge (SEC) was predicated on the rate case CBL. This is addressed by NSPI's first proposed change in the table above. To facilitate this, however, but still provide customers with the flexibility to temporarily adjust CBL's, modifications 2 and 3 in the above table are proposed. These changes allow the CBL adjustments and attempts to compensate parties for them in an equitable manner as illustrated in NSPI (NPB) IR-49.
>
> The second shortcoming of the current rate is that when avoided costs are less than the SEC (as they have been) and the floor price for credits is the SEC, NSPI is overpaying the ELI 2P-RTP customers for load shifting. This will be addressed by modification #4 in the above table.

> The third shortcoming of the rate is a double counting of losses when the decremental load credit is the standard energy charge. This is because the decremental load is calculated with a 2% loss adjustment. If it is credited at the SEC, which already includes a loss adjustment, then a double count of the losses occurs. This is addressed by modification #5.
>
> I support these changes. However, I recommend continued monitoring and reporting so that these modifications can be evaluated and adjusted further if necessary.
>
> [Exhibit N-30, pp. 15-16]

[82] Dr. Rosenberg, who testified on behalf of NPB, objected to the changes proposed by NSPI. With respect to the under recovery of fixed costs, Dr. Rosenberg said it was a general phenomenon that where sales are less than levels upon which rates were predicated the result will be less revenue. He noted the large customer charge that these customers pay on the rate and that these customers do not, like others, automatically see reduction of their energy charge with any reduced energy usage.

[83] Concerning the operation of the rate, Dr. Rosenberg noted that no costs are allocated to this rate on the basis of non-coincident demands; coincident demands only are used. He calculated, based on average winter coincident peak, that the customers had a load factor of greater than 100%. Dr. Rosenberg disputed NSPI's claim that the customers' reduced usage below the CBL means customers are not making a contribution to fixed cost recovery. Indeed, Dr. Rosenberg believes the customers are being under compensated for their load shifting.

[84] Dr. Rosenberg commented on NSPI's suggestion that the floor for the second and third tier credit be changed from the total SEC to just the energy component of the SEC:

> ... First, NSPI has not estimated, let alone incorporated, the change in its revenue that this proposed revision to the tariff would engender in its revenue requirement or in its cost of service study. Secondly, such a change would treat the ELI 2P-RTP class differently from any other class. Certainly there is fixed cost recovery in the energy charges of other customer classes, yet those classes are credited the full amount of the energy charge when they reduce their load. Third, such a change would discourage the ELI 2P-RTP customers from reducing their load, i.e., it would give a weaker price signal to reduce load. Such a change would appear to be counter-productive to the goal of demand-side management. And finally, there is no evidence that these customers are being overcompensated for their load reductions. In fact, quite the opposite is true. So the proposed change serves no useful purpose.
>
> [Exhibit N-28, p. 35]

[85] With respect to the establishment of an operational CBL, Dr. Rosenberg stated:

> ... First, this would constitute a fundamental change in the rate which has not been discussed and vetted with the customers. Secondly, there is no intrinsic problem with the rate that this change would remedy. Consequently, in my view it serves no useful purpose. Third, NSPI has not estimated how this proposal would change the revenue and it certainly has not reflected any change in expected revenues or costs in its GRA. Fourth, the change is arbitrary because there is no empirical or theoretical foundation for the 90% and 110% limits. And finally, the proposal is vague as to when and how the CBL_{op} would be triggered.
>
> [Exhibit N-28, p. 36]

[86] In its Closing Submission, NPB indicated that there had not been adequate or, in fact, any consultation between the customers and NSPI with respect to these changes. They suggested NSPI provide a forum for the customers who might take service under the rate to thoroughly consider NSPI's proposals and discuss alternatives in a collaborative way. They noted that NSPI is likely to apply for rate increases in 2013 so there should be no harm in postponing the proposed amendments until that time.

[87] NSPI, in its Closing Submission, noted that the tariff changes are designed to ensure the tariff operates appropriately to recover the full revenue requirement anticipated during the rate setting process. NSPI believes the changes

increase the likelihood that the tariff will recover the fixed cost contribution that is inherent in the rates.

5.1 Findings

[88] At the time the ELI 2P-RTP rate was approved, the Board noted it was innovative and new to NSPI and that there may be a need for the Board to review the terms and conditions once experience was gained under the rate.

[89] The Board ordered an annual review. The reason for the annual review was so that the Board could carefully monitor experience under the rate to ensure that neither NSPI nor other customers were being disadvantaged. The Board also observes that the rate was ordered prior to the institution of the FAM which, as noted by NSPI and Mr. Whalen, has added some complications.

[90] The Board agrees that change #1 remedies a concern that the customer can adjust the CBL between rate cases without recognizing that NSPI's non-fuel component of the SEC was predicated on the rate case CBL. As noted by Mr. Whalen, to facilitate this, however, and still provide customers with the flexibility to temporarily adjust the CBL, changes #2 and #3 noted above are proposed.

[91] Change #4 remedies a concern that the current credit can be more than avoided costs and in those circumstances NSPI is overpaying the customers for load shifting. The final change simply avoids a double counting with respect to line losses as explained by Mr. Whalen above.

[92] The Board is persuaded that these changes are necessary and prudent at this stage of the life of the rate and approves them. The reporting currently in place should continue.

5.2 150% of the Increase

[93] Mr. Whalen noted, in his Direct Evidence, that in the original Application NSPI proposed an increase in the ELI 2P-RTP rate of 14.1%, which is more than 150% of the average increase proposed for other classes. He is concerned this constitutes rate shock. He developed three scenarios where the increase to this class of customers would be moved to within 150% of the average of other classes and the shortfall spread amongst other customers. The scenarios are described in Mr. Whalen's evidence:

> Scenario 1 above has an average increase of 9.18 percent (including the effects of the FAM and DSM riders) across all classes except ELI 2P-RTP and Unmetered. Against this, the ELI 2P-RTP class increase is 16.7 percent. To examine the effects of moving this to within 150% of the average of other classes, I prepared Scenario 2. Under this scenario, the ELI 2P-RTP R/C was set at 0.925 and the Unmetered R/C was held at 1.0.
>
> The results are shown on page 2 of Exhibit MCI-2. Under this approach, there is an additional revenue shortfall of $3.4 million (relative to Scenario 1), which I have allocated to all classes other than ELI 2P-RTP and Unmetered. The net effect of this is to lower the ELI 2P-RTP increase (including the FAM and DSM riders) from 16.7% in Scenario 1 to 13.9% in Scenario 2, while increasing all other class increases by 0.3% relative to Scenario 1.
>
> Scenario 3 is similar to Scenario 2 except that the $3.4 million revenue shortfall associated with the reduction of the ELI 2P-RTP R/C from 0.95 to 0.925 is allocated to the Small General and General classes only. In this case, increases for the Small General and General classes are approximately 1 percent higher than in Scenario 1 and their R/C's are 1.046 and 1.043 respectively. All other classes (except ELI 2P-RTP) have increases equal to their increases in Scenario 1.
>
> [Exhibit N-30, pp. 11-12]

[94] In Undertaking U-6, Mr. Whalen re-calculated the three scenarios using the GRA Agreement numbers.

[95] To avoid rate shock to the ELI 2P-RTP rate customers, the Board finds that the increase should be limited to 150% of the average of the other classes. The Board finds scenario #2 is the appropriate mechanism and directs NSPI to take this into account in the Compliance Filing. The rate increases from Undertaking U-6 are as follows:

	Rate Increase %
Residential	6.1
Sm Gen	2.5
Gen	2.8
Lg Gen	5.7
Sm Ind	5.6
Med Ind	7.5
Lg Ind	7.5
ELI 2P-RTP	8.5
Muni	7.4
Unmetered	-3.4

[96] The average rate increase is approximately 5.6%.

[97] The Board understands that by distributing the revenue shortfall among all other classes, the R/C ratio of the Small General and General Demand classes will be slightly above 1.03.

6.0 APPLICATION FOR LOAD RETENTION TARIFF AND RATE

[98] On June 6, 2011, NPB filed a letter of application for revisions to NSPI's existing LRT. The proposed revisions would allow the Tariff to apply to economic situations, as well as alternative supply options, so that each of NewPage and Bowater may apply to take service under this Tariff effective January 1, 2012.

[99] On June 22, 2011, NPB filed its formal Application for proposed amendments to NSPI's LRT and for a specific LRR. The NPB Application also included:

a) evidence of Dr. Alan Rosenberg in support of the proposed LRT amendments and the LRR;

b) evidence of Bowater supporting its request for the proposed amendments to the LRT and for the LRR;

c) evidence of NewPage supporting its request for the proposed amendments to the LRT and for the LRR; and

d) the following specific proposed energy charges to become effective for NPB for the years noted:

Year	Variable Incremental Rate ($/MWh)	+Adder	=Total Energy Charge
2012	$53.60	$2.00	$55.60
2013	$58.57	$2.00	$60.57
2014	$63.55	$2.00	$65.55
2015	$68.52	$2.00	$70.52
2016	$73.50	$2.00	$75.50

[100] As previously noted, the Board determined that this NPB Application would be heard concurrently with NSPI's Application for approval of certain revisions to its Rates, Charges and Regulations (P-892). Intervenors and Board Counsel witnesses filed evidence on August 30, 2011 and Rebuttal by the Applicants was filed on September 13, 2011. The LRT and LRR hearing was held on October 24 to 27, 2011.

Proposed Tariff Amendments

[101] The NPB Application to amend the LRT included changes to the Availability conditions of the Tariff and added a section to address minimum load requirement and security for payment of account.

[102] The following modifications were proposed within the Availability section:

a) the rate is to be granted in circumstances where it can be shown that the rate is required to respond to the competitive challenge of business closure due to economic distress;

b) where the rate is required to respond to the competitive challenge of business closure due to economic distress, this rate shall be available only to Extra-Large Industrial customers;

c) customers applying for this rate must have been supplied by NSPI for at least two consecutive years at the time of the request.

[103] A new section on minimum load and payment security was proposed as follows:

MINIMUM LOAD REQUIREMENT AND SECURITY FOR PAYMENT OF ACCOUNT

1) All customers must agree to maintain a minimum level of load while taking service under the rate, subject to (i) any terms or conditions relating to supply interruption that may be outlined in the pricing conditions of the rate, (ii) the customer's requirement to take downtime for maintenance purposes and (iii) market downtime, labour disruption and other matters beyond the reasonable control of the customer.

2) A customer taking service under this rate must provide security for payment of the customer's account, regardless of payment history. Appropriate security shall be satisfactory to NSPI. Acceptable security will be described in the pricing of the rate, and may be revised or updated from time to time upon approval of the UARB.

[104] In addition, the following changes to Attachment A of the LRT were proposed:

a) in clause (1), the words "or the potential for closure due to economic distress" have been inserted;

b) in clause (2), a reference is made to meeting "the requirements of clause (1)" and that "the UARB shall direct that" NSPI conduct a screening to determine if this tariff is warranted by the applicant;

c) a new clause (10) is added as follows:

If the customer is applying for a load retention rate on the basis of economic distress, the customer shall provide NSPI and the UARB proof of economic distress, the adequacy of which shall be determined by the UARB prior to approving any proposed rate, including:

- Current and historical financial information for a minimum of at least three (3) fiscal years of the customer
- Evidence of activities undertaken by the customer in the last three (3) years to reduce costs
- Affidavit of a senior executive of the customer or its parent indicating the need for the requested load retention rate, and
- Such other information as reasonably requested by NSPI or the UARB.

d) the former clause (10), now labeled as (11), adds reference to "cessation of operations".

[105] Bowater operates a thermal mechanical based pulp and paper mill. Bowater advised that electricity outweighs any single cost of business. Bowater confirmed that there are significant economic factors outside of its control, principally the Canadian dollar exchange rate and the market price for products, which are affecting the mill's profitability. Bowater went on to say

> Absent approval of our Application, the situation is indeed bleak. Although we can only speak to specifics within the confidential session, as the Board is aware we have fully disclosed our financial situation over the past three years, have provided audited financial statements with respect to our financial position, and have provided numerous supporting information that confirms the validity of our current and recent financial position.
>
> Our parent company, AbitibiBowater, emerged from creditor protection in December 2010, and the company has had many mill and machine shuts over the past several years. The Bowater Mersey mill was not a part of the AbitibiBowater restructuring process, as its ownership structure includes the Washington Post, but our mill is no stranger to the issues facing our parent and sister companies as a whole. In fact, Mr. Chair, I was the General Manager at AbitibiBowater's Stephenville mill prior to working at Bowater Mersey, and I do not want to see what happened to Stephenville where the mill no longer exists happen at Bowater Mersey.
>
> It was made clear to us early this year by corporate management, that as local management responsible for the Bowater Mersey mill, unless we are able to reduce the price of electricity the operation is in jeopardy. As such, if we are not able to get our electricity costs down to a more manageable level, we simply do not believe that we will have a cost base that will provide us the necessary opportunity to stay in business.
>
> [Exhibit NPB-53, pp. 2-3]

[106] In support of the five year rate, Bowater indicated it is a capital intensive business and without some certainty there is little likelihood that it will be in a competitive position to carry on. It advised that the lower rate in the initial year provides it an opportunity to pay its FAM and DSM obligations in 2012.

[107] Finally, Bowater stressed that the status quo is not an option.

[108] NewPage indicated that in 2011 it became concerned with the long term prospects for the Port Hawkesbury mill, if it was not able to stabilize electricity prices.

As events transpired NewPage filed for creditor protection in the United States and Canada in September of this year. Mr. Stewart, on behalf of NewPage, described the rationale for the application.

> As the Board is aware, our application is two-fold. First, we are applying to have the Load Retention Tariff revised so that it not only deals with the issue of competitive alternatives, but is also available to respond to the competitive challenge of business closure due to economic distress. Second, we have proposed an avoided cost-based rate which we believe will provide an essential platform for the potential continued operation of the mill, while at the same time ensuring that all customers of the utility, and the utility itself, are better off than if the mill is closed.
>
> We have filed extensive information with respect to the current and recent past history of the financial position of the mill, and responded to numerous information requests providing detailed information on the mill's financial situation. As the mill's financial information is normally consolidated with the wider NewPage Corporation, we had the Port Hawkesbury mill financial information independently reviewed by PriceWaterhouseCoopers, and we presented the financial information by way of a review engagement report from PWC. This information, and our voluminous follow-up IR responses, were evaluated by Ms. Ramas on behalf of Board staff. It should be clear to all who have reviewed this information of the financial situation that the mill faced. Suffice it to say, that the potential outcome that all of that information suggested could ultimately occur, has unfortunately come to pass for NewPage Port Hawkesbury Corp. Today there can be no doubt of the economic distress faced by the mill and its potential for permanent closure, and thus the need for a load retention rate.
>
> [Exhibit NPB-55, pp. 2-3]

[109] Like Bowater, NewPage testified that electricity is by far the single biggest input cost of its business and will ultimately determine the competitiveness of the mill, its ability to attract capital and its ability to find a new purchaser and reach a potentially firm financial footing.

[110] In the Pre-Filed Evidence of Dr. Rosenberg, he described the rate:

> ... The pricing mechanism is an escalating energy charge applicable for each of the next five years (2012-2016). The energy charges consist of one component (termed the Variable Incremental Rate) that represents avoided cost (i.e., the incremental costs associated with serving the NPB load over the time period), plus an adder of $2/MWh over and above the avoided cost so that the customers are making a significant contribution to fixed costs, in light of their large usage...
>
> [Exhibit NPB-3, p. 9]

[111] Dr. Rosenberg explained that NPB requested NSPI to calculate the incremental cost associated with serving the NPB load using modified 2009 IRP

assumptions. The result was a levelized avoided cost of $62.89/MWh over 5 years, which is provided in Appendix C of Dr. Rosenberg's evidence. In order to establish a 2012 starting point for the pricing mechanism, NSPI was requested to determine the avoided cost associated with removing the NPB load while using the test year assumptions of the 2012 GRA Strategist model. The result was $53.60/MWh.

[112] Dr. Rosenberg noted that NSPI was requested to prepare an analysis demonstrating the impact of the proposed LRR on other customer classes. That analysis is provided in Appendix D of his evidence and it varies by rate class from approximately 2.2% to 3.1%.

[113] Comparing the revenue requirements determined with NPB removed from the electrical system to the revenue requirements with NPB on the proposed load retention rate in 2012, Dr. Rosenberg concluded:

> ... The implication is that in 2012 the remaining ATL customers are approximately $4 million better off retaining the load versus losing the load.
>
> [Exhibit NPB-3, p. 14]

6.1 Evidence of Intervenors

[114] In response to the NPB Application, evidence was submitted by the following nine Intervenor or Board Counsel witnesses:

- Mark Drazen on behalf of Avon
- John Todd on behalf of HRM
- Paul Chernick on behalf of the CA
- John Athas on behalf of the SBA
- Warren Olsen and Warden John Boudreau, both on behalf of the Municipality of the County of Richmond

- Donna Ramas, Richard Mazzini, and Mel Whalen, all on behalf of Board Counsel.

[115] Rebuttal Evidence was submitted by NPB, Dr. Rosenberg on behalf of NPB, and NSPI.

[116] The main issues of concern were:

a) should the existing LRT be modified to include availability due to economic distress?

b) did NPB demonstrate that the proposed LRT and specific rates are necessary and sufficient to keep those two customers in operation?

c) how appropriate is it to set a schedule of rates for a five year term?

d) what rate impact would this proposal have on other ratepayer classes?

e) what level of contribution would NPB make to NSPI's recovery of fixed costs?

f) were the incremental or avoided costs appropriately determined?

g) is there a more appropriate rate design to address this situation?

Economic Distress

[117] In addressing the concern about making the LRT available to customers experiencing economic distress, the evidence suggested that such tariffs do exist in other jurisdictions. In responding to HRM IR-2 and Liberty IR-2, Dr. Rosenberg identified eleven utilities in North America that offer some form of LRT related to a customer's economic hardship; however, the criteria used to determine availability of the tariff is not consistent among those utilities.

[118] Several Intervenors questioned the need for NPB to be granted a LRR and raised concern about the impact this might have on other ratepayer classes. In addition, Mr. Todd, on behalf of HRM, recommended rejection of the proposed LRT.

> I therefore recommend that the proposed ED LRT be rejected on the grounds that neither NSPI nor the UARB have a practical methodology for ascertaining whether a customer requesting the ED LRT would in fact cease operations unless it receives the discounted rate.
>
> [Exhibit NPB-28, p. 21]

Necessity and Sufficiency

[119] Regarding the issue of necessity and sufficiency, several experts raised concerns. Mr. Athas stated:

> ...I have not, however, found evidence that substantiates that the requested level of rate reduction is necessary to avoid a reduction in consumption in these plants.
>
> [Exhibit NPB-35, p. 5]
>
> It is important to have information provided by customers and evaluated in a regulatory proceeding or in a program administration process to develop both necessity and sufficiency. If these conditions cannot be established, then the likelihood exists that the Load Retention Rate benefits only the customers receiving the discount and not NSPI and/or its other customers, including small business customers.
>
> [Exhibit NPB-35, p. 10]
>
> No. They have not demonstrated that the five year term is necessary, and they have not demonstrated that the amount of discount they have requested is necessary and sufficient.
>
> [Exhibit NPB-35, p. 18]

[120] Mr. Todd stated:

> ...assessing the extent of economic distress of a customer, particularly one that is part of a major multi-national corporation, in order to determine the credibility of a claim that the ED LRT is required to retain the load, will be extremely challenging at best.
>
> [Exhibit NPB-28, p. 7]
>
> Whatever the theoretical merit of the ED LRT, it is my view that the critical issue that needs to be considered is not whether it is theoretically possible for the ED LRT to be in the public interest, but whether it is realistic to expect either NSPI or the UARB to assess a claim of economic distress made by any customer so as to determine whether use of the ED LRT is in the public interest.
>
> [Exhibit NPB-28, p. 9]

While the closure of a plant may have important economic repercussions, it is not normally the role of an economic regulator such as the UARB to subsidize industrial customers in economic distress at the expense of either the utility or other ratepayers. To do so would be a clear violation of generally accepted regulatory principles.

[Exhibit NPB-28, p. 14]

Economic distress is not limited to NSPI's largest customers....Should all existing customer classes therefore have parallel economic distress classes? This approach may be fair, but impractical.

[Exhibit NPB-28, p. 17]

...Furthermore, there is no practical way for NSPI or the UARB to ascertain the maximum rate under the ED LRT that would be sufficient to retain the load....Without an effective mechanism to protect against regulatory gaming, it will be impossible for the UARB to ensure that the ED LRT is administered in a manner that protects the public interest by avoiding undue cross-subsidies.

[Exhibit NPB-28, p. 21]

...unless it is clearly demonstrated that other customers will benefit from the rate charged ED LRT customers, the UARB should not approve an ED LRT rate being made available to any customer.

[Exhibit NPB-28, p. 22]

[121] Mr. Mazzini stated:

The two principal and equally critical criteria used to justify such rates are necessity and sufficiency; i.e., (a) rate relief is indeed necessary for survival, and (b) the relief contemplated is sufficient to give reasonable assurances of survival. The applicants have failed to demonstrate that their proposal meets these criteria.

[Exhibit. NPB-31, p. 2]

[122] In the Pre-Filed Evidence submitted by Ms. Ramas, she stated:

... I also address certain failures by both NPPH and Bowater Mersey in addressing what level of electric costs they are able to bear and whether or not the proposed rates will, in fact, enable them to continue operating in Nova Scotia.

[Exhibit NPB-32, p. 3]

Clearly, the financial viability of Bowater Mersey is relevant in evaluating whether or not a special, lower rate under a modified Load Retention Tariff should be granted, particularly as the rates of other customer classes would increase as a result. This should include consideration of not only historic financial performance, but also of forecasts and plans going forward.

[Exhibit NPB-32, pp. 4-5]

> NPB (Bowater)-Larkin-IR-5 requested a copy of the current written strategic plan and long-term financial plans in the most detailed format available. The response indicates that the respondent is "...not aware of a detailed strategic or long-term financial plan specific to BMPC that has been prepared by Corporate Management."
>
> [Exhibit NPB-32, p. 10]
>
> ... NPB (Bowater)-Larkin-IR-7 asked what assurance Bowater Mersey is able to provide to the Board that it will not discontinue operations in Nova Scotia if the rate it is requesting in the application is granted. The response states: "No such assurance can be given." Bowater Mersey has also indicated that there is no guarantee that the plant will "continue in operations" if the tariff is accepted...
>
> [Exhibit NPB-32, p. 12]

[123] Ms. Ramas also stated that, based on the information provided, she could not make a determination if Bowater's Nova Scotia operations will remain in operation either at the LRR it has requested or at another rate which reflects a lower discount.

[124] Ms. Ramas made similar comments about NewPage; however, her evidence pre-dated NewPage's closure.

[125] In his Pre-Filed Evidence, Mr. Whalen noted the following points:

> ... Under the proposed Load Retention pricing mechanism, the rates to be charged are predetermined energy charges. This has operational as well as financial ramifications. Additionally, under the current ELI 2P-RTP tariff, NPB is subject to DSM and FAM riders; under the proposed Load Retention tariff, these are proposed to be eliminated. The DSM rider is proposed to cease beyond 2012 and the FAM riders will cease once NPB's shares of the AA's and BA's associated with 2010 and 2011 have been paid.
>
> [Exhibit NPB-34, p. 4]

Five-Year Rate Schedule

[126] One of the main concerns raised by several experts was the appropriateness of establishing a five year term with escalating fixed rates in each year.

[127] As explained in Dr. Rosenberg's Pre-Filed Evidence, the LRR pricing mechanism includes a rate schedule which establishes fixed rates for each year based on the levelized avoided cost of $62.89 over the five year period from 2012 to 2016. Dr. Rosenberg stated:

> ...for a Load Retention rate to be truly effective and accomplish its purpose, it needed an element of certainty and stability. Five years was intended to be long enough to do that, while short enough to let other parties and the Board feel comfortable with the assumptions underlying the derivation of the rate.
>
> [Exhibit NPB-3, p. 9]

[128] However, recognizing the volatility and uncertainty of fuel pricing and the uncertainty surrounding the sustainability of NewPage and Bowater, participants objected to the five year term.

> No. They have not demonstrated that the five year term is necessary...
>
> [Athas, Exhibit NPB-35, p. 18]
>
> The applicants are asking Nova Scotia's other residents and businesses for help in the form of what is effectively a cash contribution for a period of five years....if this Board is to place this burden on other NSPI customers, it must be very confident that the sacrifice requested is both necessary and sufficient for the applicants' survival.
>
> [Mazzini, Exhibit NPB-31, p. 10]
>
> The assessment of whether other customers are better served with the Load Retention tariff than without it is a one year snap shot that may bear little relevance to the remaining four years of the proposed five year term.
>
> [Whalen, Exhibit NPB-34, p. 16]
>
> According to NPB, increasing the LR energy charge by $4.975 per year will -- over time -- recover the levelized average avoided cost.
>
> ...
>
> ...NPB's proposal back loads the recovery of the cost. This has two undesirable effects. First, it means that if NPB cease taking service before the five years are up, NSPI -- or other ratepayers -- are left with unrecovered costs. Second, the increasing LR charge makes it more likely that the plants will close.
>
> ...
>
> In effect, NPB are asking for a no-cost option to lock in a current forecast of future fuel costs for five years.
>
> [Drazen, Exhibit NPB-26, pp. 5, 6, & 9]

[129] During cross-examination at the hearing, Rob Bennett, on behalf of NSPI, stated:

> ... the most certainty comes in the nearest timeframe, the next year. We are very good at estimating what fuel prices will be in that timeframe. Beyond that it becomes quite -- quite difficult...

> That rate has a five-year predictable cost escalator of rates that primarily is based on fuel. The fact is that those estimates for five-year fuel costs under which we did the math or produced the numbers, it's very, very difficult two or three years out to be sure, with any degree of certainty, that those fuel costs will be correct. The situations can change dramatically…
>
> … at the end of five years, five years from now, I'll suggest it's impossible to predict what fuel prices will be. Five years ago there was no way we could have predicted that natural gas would be at the price that it's at today.
>
> Well, three years is a number that I'm suggesting is a reasonable and common industry practice for hedging natural gas and coal.
>
> … We wouldn't be able to come forward and propose a rate to this Board with a five-year term with certainty that customers would be indifferent over that period.
>
> …
>
> Also, I think we've been clear in portraying that it's very difficult for us to guarantee that those fixed -- that those fuel prices will be absolutely correct in this forecast for five years.
>
> [Transcript, pp. 632, 651, 666, 667, 827, 828]

Avoided Cost, Risk, and Customer Impact

[130] On the related issues of incremental costs, risk, customer rate impact, and fixed cost recovery, several participants raised a number of concerns. NPB's Application noted that granting the proposed LRR for NewPage and Bowater could result in 2012 rate increases to other customer classes ranging between 2.2% and 3.1%. This increase, however, is dependent on a number of factors which, are predominately, the duration and amount of NPB load that remains on the system, and the appropriate determination of incremental and fixed cost recovery.

[131] In his Pre-Filed Evidence, Mr. Whalen stated:

> I recommend that the proposed Load Retention Pricing Mechanism not be approved, for four reasons:
>
> a) The methodology used to develop the proposed prices (incremental cost plus an adder) is flawed….
>
> b) Even if the methodology were acceptable, the prices themselves are developed in a fashion that cobbles together two year old, high-level IRP scenario results with more certain and detailed 2012 simulations. The resulting levelized avoided

cost is highly questionable and the starting 2012 avoided cost of $53.60/Mwh is incorrect.

c) The assessment of whether other customers are better served with the Load Retention tariff than without it is a one year snap shot that may bear little relevance to the remaining four years of the proposed five year term.

d) The effects of the proposed mechanism on the FAM have not been adequately assessed.

[Exhibit NPB-34, p. 16]

[132] Mr. Whalen explained that the starting point for the NSPI calculation of the avoided cost is a modified Plan A from the 2009 IRP which is not likely an optimized plan. Similarly, the plan which excludes the NPB load was not likely an optimized plan, but was simply the modified Plan A with certain resources deleted. Mr. Whalen also stated:

> The starting number for 2012 is understated. As explained in NSPI(Multeese) IR-7, the $53.60/Mwh used by Dr. Rosenberg is based on a different NPB load than the 2012 GRA and it derives from a Strategist simulation that does not have fuel blends optimized. When these adjustments are made, the avoided costs in 2012 are $58.0/Mwh.[18]
>
> Footnote[18] If additional costs related to the "sale of contracted gas not required for production" and to "solid fuel handling contract adjustments" are included in the 2012 case without NPB, the avoided cost drops to $56.24/Mwh...
>
> [Exhibit NPB-34, pp. 11-12]

[133] In his Pre-Filed Evidence, Mr. Drazen addressed the variable cost component of the proposed pricing mechanism:

> Actually, there are two calculations of the decremental cost. One uses a five-year time frame and includes some avoided capital cost. The other is based only on 2012 using assumptions from the Strategist run in the General Rate Application (GRA) and excludes any consideration of capital cost. The five-year analysis shows an avoided cost in 2012 of $59.48/MWh and a levelized avoided cost of $62.89/MWh. The one-year analysis omits any capital cost and gives a much lower cost of $53.60/MWh (see NSPI (Multeese) IR-2). NPB proposes to start with the lower figure and increment the rate by $4.975/MWh each year.
>
> [Exhibit NPB-26, p. 5]

[134] Mr. Drazen noted that the current energy charge under the ELI 2P-RTP rate is $62.20/MWh, while the charge with NSPI's proposed GRA rate increase would be $71.09/MWh.

[135] In his Pre-Filed Evidence, Mr. Chernick also took issue with the manner in which the avoided costs were determined.

> Dr. Rosenberg's Appendix C summarizes NSPI's estimate of avoided costs...NSPI ran Strategist just for 2012, using different assumptions than in the Appendix C runs, and estimated avoided operating (but not capital) costs...In NSPI-Multeese IR-1(k), NSPI lists numerous inputs that differ between the runs that produced the values in Appendix C and those that produced the $53.60/MWh value...
>
> ...NSPI clarified that the plans with and without NPB loads were developed for the IRP50 fuel prices, and that when Strategist was rerun with the updated fuel-price forecasts from the 5-year Business Plan, "The plans were not re-optimized with these revised fuel prices to determine if the timing or types of resources selected would change" (NSPI-Multeese LR IR-1(c)). The updated fuel forecast in the 5-year business plan reduced gas prices and increased coal prices.
>
> [Exhibit NPB-27, pp. 9-11]

[136] Mr. Drazen also raised some other elements of risk associated with the NPB proposal. One of those risks focused on the security related to payment arrangements. The proposal includes weekly payments which would be approximately $2 Million. However, in the event of a delay or default, NSPI would be required to follow its usual practice of issuing a notice of disconnection. Mr. Drazen suggested that the timing associated with various components of the disconnection process could expose NSPI to a potential loss of $6 Million to $20 Million.

[137] Mr. Chernick agreed with this risk:

> Under the LRT, rather than providing a deposit, NPB would be required to pay their bills on a weekly basis...The total weekly bill for NPB averages $2,138,000. If the customers appeal, NSPI might not be able to disconnect them for at least an additional 24 days, by which time their debt would grow to over $9 million. Should the mill owner then declare bankruptcy, collection of those arrearages may be at risk.
>
> [Exhibit NPB-27, pp. 31-32]

[138] Other risks raised by Mr. Drazen addressed the volatility of fuel costs and NPB's proposal for fixed rates over a five-year period, as well as the issue of renewable generation. Mr. Drazen pointed out that renewable energy sources have higher costs than fossil fuel generation. In addition, because this is "must take" generation, it has the effect of reducing the marginal cost and therefore:

> ...the proposed LR rate would give NPB the benefit of renewables reducing marginal cost, but without NPB paying anything for those renewables.
>
> [Exhibit NPB-26, p. 9]

[139] This latter point was also highlighted in Mr. Whalen's Pre-Filed Evidence:

> ... The result of these efforts has been the addition of new resources such as wind and biomass, as well as the use of cleaner solid fuels. These resources and fuels are more expensive (on a $/MMBTU basis) than coal units fired on mid-sulphur coals but they must be used by NSPI to meet various environmental and RES targets. The result is that the cheaper generation is now being forced to the margins. This means that any analysis of the incremental cost of serving a customer, such as is being proposed here, receives the full benefit of the least expensive energy available, while minimizing any recognition [of] the customer's contribution to the requirement for higher cost generation.
>
> Applying this to the current proposal, NPB drives some of NSPI's costs associated with renewables and more expensive fuel mixes, but proposes to pay a price which minimizes this contribution to higher costs and maximizes the resulting benefits of low costs on the margin.
>
> [Exhibit NPB-34, pp. 7-8]

Undertakings

[140] During Ms. Rubin's cross-examination, Mr. Athas was requested to file an Undertaking (U-3) which recalculated the energy charges presented in Dr. Rosenberg's Appendix C. This recalculation was to be done over a three year period, along with adders of $2, $5, $7, and $10. Results of those calculations are presented below:

Year	5-Year Incremental Rate	3-Year Levelized Cost	3-Year Incremental Rate	$2 Adder	$5 Adder	$7 Adder	$10 Adder
2012	$59.48	$61.60	$53.60	$55.60	$58.60	$60.60	$63.60
2013	$61.77	$61.60	$61.98	$63.98	$66.98	$68.98	$71.98
2014	$63.86	$61.60	$70.37	$72.37	$75.37	$77.37	$80.37
2015	$65.08						
2016	$65.20						

[141] Also during the hearing, the NSPI witnesses were requested to file an Undertaking (U-7) to show calculated avoided costs resulting from a sensitivity analysis of the fuel prices contained in its five year Business Plan. In addition, NSPI was requested to provide an analysis (Undertaking U-6) estimating a reasonable level for an adder when considering the volatility of fuel costs.

[142] In its filed Undertakings, NSPI stated that "the avoided costs are more sensitive to changes in the price of coal than to changes in the price of gas". The utility also stated "the forecasting organizations believe that, within the range of future fuel prices, there is more opportunity for higher fuel costs relative to current costs than there is for lower fuel costs". Results extracted from NSPI's Tables 1 and 2 are presented below:

Year	5-Year Business Plan	High Gas Base Coal	High Coal Base Gas	High Gas High Coal	High Case* Adder
2012	$59.48	$63.21	$66.67	$70.32	$10.84
2013	$61.77	$63.61	$69.81	$71.15	$ 9.38
2014	$63.86	$66.83	$73.16	$75.51	$11.64
2015	$65.08	$67.89	$73.57	$76.74	$11.66
2016	$65.20	$67.27	$73.87	$76.39	$11.18
Levelized 2012 - 2016	**$62.89**	**$65.60**	**$71.18**	**$73.80**	

* These adders are the variances between the high gas/high coal scenario and the 5-year business plan.

[143] In reviewing the NSPI response, the Board observed that a reasonable adder to recover fixed costs was not presented. Instead, the analysis showed how the avoided cost of fuel might vary from the Business Plan P50 fuel cost assumption.

[144] One further analysis requested during the hearing was directed to Board Counsel witness, Mr. Whalen. As noted above, based on an optimized GRA Strategist run using NSPI's Business Plan P50 fuel cost assumptions, the 2012 avoided cost was

determined to be $56.24/MWh. Mr. Whalen was requested to recalculate the variable incremental rates shown in Table 1 of Dr. Rosenberg's Pre-Filed Evidence while using $56.24 as the 2012 avoided cost and retaining the levelized avoided cost of $62.89 presented in Appendix C of Dr. Rosenberg's Pre-Filed Evidence. The resulting values, excluding any fixed cost recovery adders, are presented below.

Year	Variable Incremental Rate $/MWh
2012	$56.24
2013	$59.79
2014	$63.33
2015	$66.88
2016	$70.42

Closing Submissions

[145] NPB, Avon, Cape Breton Regional Municipality, CA, SBA, MEUNSC, Municipality of the County of Richmond and NSPI filed Closing Submissions. NPB, Avon, NSPI and the CA also filed a Reply.

[146] In its Closing Submission, NPB addressed two main components of its Application:

1) the proposal to extend applicability of the existing LRT to situations of economic distress, and

2) the specific LRR applications by NewPage and Bowater.

[147] Regarding amendments to the LRT, NPB stated:

a) Mr. Todd was the only expert witness who recommended rejecting the proposed LRT.

b) Several participants suggested that availability of the LRT for reasons of economic distress should not be restricted only to the Extra Large Industrial customers – NPB agreed.

c) Additional flexibility in the form of weekly bill payments was included in the proposed LRT amendments to ensure appropriate security for payment and that imposing any additional security deposits would place an excessive burden on working capital.

d) Sufficient customer information has been provided to allow the Board to make its decisions.

[148] NPB provided a very substantive brief concerning the Board's jurisdiction to amend the LRT to situations of economic distress. Those issues are dealt with elsewhere in this Decision.

[149] Regarding the pricing mechanism, NPB stated:

a) Although Bowater and NewPage have made separate applications, the commonality of their circumstances supports a similar pricing mechanism for each customer.

b) NPB understands that the lowest LRR it can be granted must cover the avoided cost of its load plus make a significant contribution to fixed costs.

c) The NSPI witness panel maintained that their cost analysis was appropriate, reflected the avoided costs of removing the NPB load, and was based on their best current view of fuel costs going forward. In addition, NPB suggests that a full review of the record clearly

demonstrates that NSPI's avoided cost calculation is reasonable and most appropriate for determining a load retention rate in this proceeding.

d) NSPI confirmed that the correct 2012 avoided cost figure is $56.24 as opposed to the previous figure of $53.60.

e) NPB believes that its proposed rates are the most appropriate for these two customers but acknowledges that $56.24 is a potentially valid starting point.

f) In order to alleviate the concern regarding a five year term, NPB could support annual reporting and a regular evaluation against NSPI's short-run marginal cost to ensure that the rate continues to benefit other NSPI customers.

g) Determination of the $2.00 adder was a judgment by NPB as to what it could afford and any increase to the adder, coupled with a possible increase in the starting point to $56.24, would place the usefulness of the rate in jeopardy.

h) Although NPB supports the value which the electrical system derives from load shifting, the associated operational costs and the complications of imposing a load shifting mechanism onto a load retention rate at this time would outweigh the benefit to any party.

[150] Regarding the issue of necessity, NPB submitted that the substantive information provided by NewPage and Bowater in their Pre-Filed Evidence, Information Request responses, and during cross-examination, clearly indicate that the criteria of necessity has been met.

[151] Regarding the sufficiency issue, NPB noted that many jurisdictions do not require proof of sufficiency, while some of the jurisdictions do require varying degrees of evidence. NPB suggests that an appropriate test would be as stated by Mr. Athas in his testimony, i.e., evidence that the rate is sufficient to change an industrial customer's economics so that the customer remains in business or maintains a higher level of production.

[152] Avon stated that it could not support NPB's request and its position regarding NPB's Application can be summarized as follows:

a) The Board should not assume jurisdiction to extend load retention rates on the basis of economic distress. This is based on Avon's assertion that explicit statutory authority to grant business development and business retention rates is absent in Nova Scotia's *Public Utilities Act*.

b) The Board should not approve the proposed amendments to the LRT or the LRT pricing mechanism. This is based on Avon's assertion that the Board cannot be satisfied that NPB will pay the full variable costs to serve those loads and make a significant contribution to fixed costs.

c) The proposed rate structure is problematic and risky. Avon suggests that the escalating rates over the five year term increases the risk of default, and the proposed pricing mechanism insulates these two customers from fuel cost variations.

d) Regarding NewPage, Avon stated that no information was provided substantiating necessity or sufficiency of any approved rate for a new

operator of the mill, and that any decision to approve a special rate for a successor or purchaser is inappropriate and premature.

[153] The CA stated that "the issue before this Board is what if any amendments to the tariff should be made and what if any price, terms and conditions should be approved for each of NewPage and Bowater". The CA's position can be summarized as follows:

a) The Board does have the jurisdiction to set a load retention rate but neither of the two applicants have established their entitlement to such a rate. In addition, the proposed price, terms and conditions do not satisfy the conditions of the LRT.

b) An essential characteristic of a load retention rate is the establishment of necessity and sufficiency since there is no benefit to other ratepayers from the LRR if the applicant will either leave or stay on the system regardless of whether the LRR is granted. The CA suggests that wording in the LRT should be modified to clarify the necessity and sufficiency criteria by stating that "The rate is required to retain the customer's load on the system and will retain the load on the system".

c) NewPage should be denied access to a LRR since it has no intention of reopening the plant and is in the process of selling the assets. Granting the LRR to NewPage will benefit the departing owner by increasing the value of the assets, which is not the purpose of an LRR.

d) In the case of Bowater, the evidence did not show that granting an LRR would prevent it from leaving the system. Instead, the evidence showed

that this decision would be made by the parent company and that the future of the mill was subject to broader influences of competitive pressures in its market. Furthermore, recent media reports indicate that a decision had already been made to close the plant. In that case, the CA suggested that access to a LRR is not a determining factor.

e) Regarding the pricing mechanism, the CA states that it is clear from the evidence of the NSPI panel that they were not satisfied that the projected incremental cost plus the $2.00 adder was sufficient to satisfy the LRT requirement of keeping other ratepayers whole and making a positive contribution on fixed costs.

f) There is also concern that ramping up the proposed rate during the latter part of the five year period may result in a rate that is designed to fail. The CA suggested that the rate should be limited to a short term, or periodic reviews, with the understanding that the rate would be terminated when economic conditions improve such that the rate is no longer needed to maintain the load.

g) The procedure in the LRT should be followed. Written applications should be made to NSPI, which would then work with the applicant to establish a LRR with appropriate terms and conditions which were in the best interest of all ratepayers. NSPI should submit this rate to the Board and the applicant could also submit any disagreements or different terms for consideration during a hearing.

[154] The MEUNSC stated that it "supports NewPage and Bowater in their application for a LRR. We do this with some reservation since we do not believe such rates are the appropriate vehicle for the relief sought, considering any subsidies should be paid from general tax revenues." MEUNSC also noted:

> ... If electric ratepayers can maintain the viability of the industry while being somewhat better off than they would be absent the load then we urge the Board to approve a rate. We say "a rate" because NSP has asserted that the rate as applied for does not make the required sufficient positive contribution to fixed costs. It must meet this test. The Board can decide what level above $2/MWH is appropriate. The rate should also contain various protection for ratepayers such as claw back, if the mills make beyond a certain level of profit; or termination, if certain favorable conditions are obtained in the future; (for example an improvement vis-à-vis the Canadian dollar). Also, Nova Scotia Power Inc. should be required to take any and all actions which mitigate the impact on other ratepayers.
>
> [MEUNSC Closing Submission, p. 1]

[155] NSPI's Closing Submission was focused on explaining its role in providing NPB with the information it requested for developing the proposed pricing mechanism. NSPI stated:

> NPB asked NSPI to provide an analysis that NPB might use to make an application for a LRT. NSPI completed an analysis of the avoided cost of serving the NPB load over the next five years...The result of the analysis represents NSPI's best estimate of the avoided costs, under all of the applicable assumptions upon which the analysis is based.
>
> [NSPI Closing Submission, p. 2]

[156] NSPI further stated:

> ... NPB told NSPI from the beginning that they needed a long term stable rate at the lowest possible level, which level was chosen by NPB after receiving NSPI's analysis. NSPI was never in a position to demand that the rate also guarantee that other customers would receive a significant contribution to fixed costs under any potential fuel cost scenario over the five year period.
>
> ...
>
> NSPI submits that if the Board wishes to provide increased certainty to other customers that the LRT covers the actual fuel cost of serving the NPB load, it might consider a higher fixed cost adder and/or a shorter term. However, such risk can never be completely eliminated without a true up provision at the end of each year...
>
> [NSPI Closing Submission, p. 9]

[157] The SBA opposed the NPB Application. The following points summarize the SBA's Closing Submission:

a) The SBA urged the Board to reject NPB's Application for lack of jurisdiction to amend the existing LRT to allow for the applicants to apply for a discounted rate based on economic distress. The SBA suggested there is nothing in the *Public Utilities Act* that would allow the Board to permit a customer to receive a discount for economic distress.

b) The SBA argued that NPB's Application is deficient since it has not followed the conditions and criteria of the existing or the proposed LRT in applying for the amendments. The SBA stated that NSPI should have applied to amend the LRT on conditions the Utility saw fit in order to protect ratepayers, or at least NSPI should have provided evidence addressing points where they differed from the NPB Application. The SBA concluded that the NPB Application is flawed and should be denied.

c) The SBA argued that NPB has not satisfied the necessity and sufficiency criteria and has not shown that the total revenue to be received from NPB will exceed the total incremental cost of serving those two customers. The SBA stated that there has been a substantial lack of evidence to support the NPB Application.

d) If the NPB Application is granted, the SBA suggested that the following changes and conditions be included:

> ...if the application is granted, then the proposed tariffs, including the adder, and the term of the tariff, should be amended such that the term should not exceed 2 years and the adder should be $5.00 at least/MWh, and there should be a mechanism that it be reviewed on an annual basis by the UARB for sufficiency and necessity. Further, there should also be an mechanism, such that if a rate is not needed, it shall be discontinued.
>
> [SBA Closing Submission, p. 40]

6.2 Findings

6.2.1 Does the Board have jurisdiction to set an LRT for economic distress?

[158] The SBA argued that the Board does not have the jurisdiction to deal with NPB's Application to amend the existing LRT "to assist those ratepayers who are facing economic hardship and who may be forced to close if they are not granted a reduced rate based on their economic circumstances".

[159] The SBA submitted that the Board has no jurisdiction to set rates other than its authority either explicitly or implicitly derived under the *Public Utilities Act*. Specifically, the SBA stated that there is no authority under s. 67(1) of the *Act* to consider NPB's Application.

[160] SBA argued that neither Dr. Rosenberg nor Mr. Athas (the SBA's expert) provided any support for the Board having the jurisdiction, based on its own legislative framework, to grant the LRT for relief based on economic distress, implying that any authority that exists in other jurisdictions to allow load retention tariffs does not extend to Nova Scotia.

[161] The SBA suggested that if NPB seeks a rate that will avoid "rate shock" and be fair and reasonable to all rate classes, then it should proceed, instead, under the present ELIIR structure already approved by the Board as a separate rate class for extra large industrial customers.

[162] Avon also submitted that the Board has no jurisdiction to consider NPB's Application based on economic hardship, stating that in other jurisdictions which allow business development or business retention rates there is explicit statutory authority to do so.

[163] NPB asserted that the Board does have the authority to establish a LRT based on economic distress.

[164] NPB referred to the Board's own findings in its Decision for approval of the Extra Large Industrial Rate [2003 NSUARB 6] with respect to the Board's general authority and decision making process. The Board referred to ss. 52, 67(1), 87(1) and 109(1) of the *Act* and to Bonbright's ratemaking principles (listed earlier in this Decision). In the Board's 2003 Decision, it concluded:

> [39] The Board must balance the interests of all ratepayers in its decision making process. Based on the evidence, it is the Board's view that the consequences of approving the ELIIR, in terms of ratepayer impact alone, are likely to be no more adverse than the consequences of denying the application. Clearly, in the broader economic context, the consequences of denying the ELIIR application would cause significant harm to the economy of a large part of the Province.
>
> [40] It has been suggested by some Intervenors that the Board should only approve rates which are fully cost-based. The Board notes the evidence of Dr. Stutz and Dr. Rosenberg on this point. The Board agrees that rate-making should not be conducted in isolation. There is no question that cost-based rates are desirable. Cost of service studies, which distribute all the utility's embedded (accounting-based) costs, including the allowed rate of return, among all customer classes, are valuable tools which guide the Board in determining how a utility's revenue requirement should be recovered from the various rate classes. However, the Board considers that it has the discretion under the Act to vary from fully cost-based rates if, in the Board's opinion, it is in the public interest to do so and provided that other customer classes are not subjected to undue discrimination as a result.
>
> [41] The Board considered the question of due and undue discrimination in its February, 2000 decision in the matter of an application by NSPI for approval of a load retention rate, stating that:
>
> > Based on its review of the terms of the proposed rate, the provisions of the Public Utilities Act and decisions in other jurisdictions, the Board is satisfied that the rate complies with s. 67 of the Act and is not unjustly discriminatory. Customers taking service under the rate will form a distinct class which will have characteristics that set it apart from

other rate classes. While customers in the class will pay different rates, the rates will be based on the special circumstances of each customer.

(UARB Decision, February 4, 2000, p. 10)

[Board Decision, 2003 NSUARB 6]

[165] NPB submitted that the Board's above analysis applies equally to an application to extend the LRT to situations of economic distress.

[166] Counsel for NPB also referred to the Board's Generic Rate Design Decision [2003 NSUARB 91], which he stated sets out the applicable test to be applied by the Board:

> [27] ...The Board believes that there may be circumstances where a rate which is not fully cost-based can be approved under the principle of due discrimination, fairness and equity. The Board retains the discretion under the Public Utilities Act (the Act) to determine whether a rate is justified, based upon its impact on other ratepayers.
>
> ...
>
> [29] The Board does approve the test proposed by Dr. Stutz for determining eligibility to receive service under a non-cost based rate, namely:
>
> > Obtaining service on a non-cost-based rate should require evidence that, absent the non-cost-based alternative, current or reasonably anticipated usage will be lost, and that other ratepayers will be at least as well off with that usage as without it."
> >
> > (Exhibit N-10, p.18)
>
> In the future, if the Board decides that a proposed new rate or a modified existing rate is not cost based, then this test will be applied.
>
> [Board Decision, 2003 NSUARB 91]

[167] The Board considers ss. 67(1), 87(1) and 109(1) relevant to its jurisdiction to consider an LRT and LRR under the *Act*:

> **67 (1)** All tolls, rates and charges shall always, under substantially similar circumstances and conditions in respect of service of the same description, be charged equally to all persons and at the same rate, and the Board may by regulation declare what shall constitute substantially similar circumstances and conditions.
>
> **87 (1)** If upon any investigation the rates, tolls, charges or schedules are found to be unjust, unreasonable, insufficient or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this Act, the Board shall have power to

> cancel such rates, tolls, charges or schedules, and declare null and void all contracts or agreements in writing or otherwise, to pay or touching the same, upon and after a day to be named by the Board, and to determine and by order fix, and order substituted therefor, such rate or rates, tolls or schedules as shall be just and reasonable.
>
> **109 (1)** If any public utility shall knowingly or wilfully make or give an undue or unreasonable preference or advantage to any particular person, firm or corporation, or shall subject any particular person, firm or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful.

[168] In a Decision dated May 24, 2000, the Board considered the question of unjust discrimination in the context of the application by NSPI for approval of the current LRT. In that proceeding, NSPI submitted that the tariff was consistent with the *Act*. After noting the above statutory provisions, the Board described NSPI's submission as follows:

> NSPI submits that the proposed load retention rate is fully compliant with the above sections. It points out that the purpose of the rate is to retain customer load that would otherwise leave the system and detrimentally affect the remaining customers. The rate classification is predicated upon the ability of the customer receiving the load retention rate to obtain power and electricity from an alternate source. All customers benefit if this customer stays on the system.
>
> It is true that the actual rate paid by anyone load retention rate customer is likely to vary from the rate paid by another load retention rate customer, given the technical and economic differences inherent to each customer. However, the "unequal price would not flow from any arbitrary or unfair characteristic of the proposed rate; rather, differences in price flow from differences in ability to economically leave the system and use an alternate form of supply for their electric needs. In other words, different circumstances and conditions". NSPI concludes that the rate is not unjustly discriminatory and complies with s. 67 of the Act.
>
> [Board Decision, NSPI-P-871, May 24, 2000, p. 7]

[169] As counsel for NPB noted above, the Board concluded:

> Based on its review of the terms of the proposed rate, the provisions of the Public Utilities Act and decisions in other jurisdictions, the Board is satisfied that the rate complies with s. 67 of the Act and is not unjustly discriminatory. Customers taking service under the rate will form a distinct class which will have characteristics that set it apart from other rate classes. While customers in the class will pay different rates, the rates will be based on the special circumstances of each customer...The rate must always be available to any customer meeting the criteria for the rate. The Board is satisfied that the implementation procedures outlined in the rate together with the complaint provisions of the Act provide a sufficient avenue for redress should potential customers consider they are being discriminated against by NSPI.
>
> [Board Decision, NSPI-P-871, May 24, 2000, pp. 11-12]

[170] Thus, the Board has previously determined that a LRT is not unjustly discriminatory. As noted in the Board's 2000 Decision, customers taking service under such a tariff will form a distinct class which will have characteristics that set it apart from other rate classes. Under the presently proposed LRT, like the LRT previously approved by the Board, customers participate in the tariff based on the special characteristics of that customer class. Further, if the circumstances of each customer permit it to qualify for the proposed LRT, other customer classes benefit from that large customer remaining on the system, rather than exiting the system. It is these key elements that distinguish this application from earlier applications by customers wanting a special rate due to their economic circumstances. In the present case, the LRT contemplates that the large customers will contribute to the non-fuel fixed OM&G costs. Thus, the other customers benefit from the large customers staying on the system.

[171] Moreover, the establishment of an LRT based on economic distress is grounded on long-established and well accepted ratemaking principles applied in various jurisdictions, including by the Board in this province.

[172] Further, such rates are in the public interest. In the end, the approval of a well designed LRT, whether it is to avoid the switching of load in the instance of co-generation by the customer, or to help prevent the closure or relocation of an extra large industrial customer due to economic distress, benefits all other customer classes on the system. In the Board's opinion, such a result provides for rates that are reasonable and appropriate for all customers.

[173] The Board concludes that it has jurisdiction under the *Act* to consider the application for a LRT based on the economic distress of extra large industrial customers.

6.2.2 Should the Board approve the NPB Application as filed for amendments to the LRT and for a LRR?

[174] Load retention tariffs are utilized in circumstances where providing the discounted tariff benefits not only the customers qualifying for the tariff but also the other customers on the system. Other customers will benefit if the customer receiving the discounted tariff would cease purchasing power in the absence of a discount and the discounted tariff fully recovers the marginal cost of supplying power to the customer, in addition to making a contribution to the fixed and common costs of a utility's electricity system.

[175] Mr. Todd succinctly set out the legal test:

> Hence, an LRT is in the public interest if and only if its use is limited to circumstances in which:
> (i) making the LRT available to the customer is necessary and sufficient for retaining the load; and
> (ii) the total revenue received from the LRT customer exceeds the total incremental cost of serving that customer.
>
> [Exhibit NPB-28, p. 5]

[176] Various other experts and counsel expressed this test in different language but essentially the same as stated by Mr. Todd.

6.2.2.1 Necessity and Sufficiency

[177] It is clear that both mills face a number of daunting challenges.

Currency

[178] The significant appreciation of the Canadian dollar has made their product significantly more expensive in their principal U.S. market. The dollar impact for every one cent change in the currency exchange rate for Bowater is between $1.5 Million and $2.0 Million per year. For NewPage a one cent change in the currency exchange rate alters that mill's profitability by $3.335 Million. Just this year the exchange rate has swung from a low of $0.95 to a high of $1.03. A number of years ago the Canadian dollar was much lower, vis-à-vis the U.S. dollar.

Demand

[179] Because of the world economic situation and the enhanced use of technology there has been a significant reduction in the demand for paper.

Labour and Fibre

[180] The mills cite high labour and fibre costs as impacting their profitability.

Electricity

[181] Both NewPage and Bowater testified that Nova Scotia is the most expensive jurisdiction in which they operate in North America with respect to electricity.

Necessity

[182] Both Bowater and NewPage submitted extensive and detailed financial and other evidence to justify necessity. During the course of the proceeding the NewPage mill shut down and NewPage sought creditor protection. The mill is for sale.

[183] Almost all of the information that was filed was in confidence as it disclosed sensitive commercial and financial information. Board Counsel retained Donna Ramas of Larkin & Associates to review the financial information. In addition, the financial information was made available to parties who signed standard confidentiality agreements. Based on Ms. Ramas' review of the detailed evidence filed by both NewPage and Bowater, and the Board's own review, the Board is satisfied that each company meets the necessity test. As is dealt with later in the Decision, NewPage has no intention of continuing to operate the mill and any new owner of the mill will have to go through an application process to ensure that the new owner qualifies for the rate.

[184] Ms. Ramas was unable to express an opinion with respect to sufficiency, i.e., that either Bowater or NewPage (at the time she wrote her evidence) would continue operations if the rate were granted.

6.2.2.2 Rate Design

[185] The test that the Board has applied in this case is whether, on a balance of probabilities, the other customers of NSPI would be better off by having NPB remain on the system (on the load retention rate) than those customers would be if NPB stopped taking service. The test is satisfied if the load retention rate fully recovers avoided costs of supplying NPB and makes a positive contribution to the fixed and common costs of NSPI. The Board will not, and indeed cannot, approve a rate in

circumstances where the other customers are worse off (because they are subsidizing NPB) than they would be if these customers left the system.

[186] The Board is not satisfied, on a balance of probabilities, that the LRR as applied for will recover avoided costs and make a positive contribution to fixed costs over the five year term. It has reached this conclusion for the following reasons.

Term

[187] NSPI was not satisfied, based on any set of reasonable assumptions, that the rate would, over five years, recover avoided costs and make a contribution to fixed costs.

> MR. BENNETT: ... That rate has a five-year predictable cost escalator of rates that primarily is based on fuel. The fact is that those estimates for five-year fuel costs under which we did the math or produced the numbers, it's very, very difficult two or three years out to be sure, with any degree of certainty, that those fuel costs will be correct. The situations can change dramatically, with regulations that might be imposed on shale gas development, hurricanes in the Gulf of Mexico, coal disruptions in other parts of the world -- far too many things can change in order to have certainty in that particular area of rate-making.
>
> But the customer needed, and has proposed, a five-year plan. We believe, and we've stated this in the evidence which others have seen, that based on the volatility of those five-year costs, a $2 adder to rates is probably a bit low in order to offset the impact that other customers might face if fuel costs went up.
>
> But we have no way to determine that for certain, because of the uncertainty.
>
> [Transcript, pp. 651-652]

[188] In response to a question from Board Counsel outlining the regulatory rationale for the LRR, NSPI was unable to confirm that other customers would not be worse off.

> MR. OUTHOUSE: All right.
>
> Now, take up your rebuttal evidence, if you would, which is NPB-51, and go to page 4 of 5.
>
> There's a sentence there starting at line 18. You talked about what NSPI had done in the earlier sentences and you say:

> "During this phase NSPI has confirmed that the tariff amendments, as filed, will achieve the objectives of the Applicants and NSPI can implement a rate approved pursuant to the amended tariff."

Do you see that?

MR. SIDEBOTTOM: We do, yes.

MR. OUTHOUSE: What you don't say is that the rate will ensure that customers on the load retention rate will pay the full variable cost of serving them plus make a significant contribution to fixed costs.

MR. SIDEBOTTOM: That's right.

MR. OUTHOUSE: And that was intentional, I assume, because you can't say that?

MR. SIDEBOTTOM: That's correct.

[Transcript, pp. 813-824]

[189] It seems apparent from the record of negotiations between the mills and NSPI that while NSPI was not able to support the LRR for a five year period, NPB made it clear that for business purposes they required a five year term. Mr. Bennett was asked whether there was a rate solution that could meet the customer needs in all of the circumstances.

THE CHAIR: So I come back to my question.

Is it your view there isn't a rate solution that meets the requirements of NewPage and Bowater and meets the requirements that you feel have to be in place to ensure that costs are recovered and that other customers are not prejudiced?

(SHORT PAUSE)

MR. BENNETT: In the circumstances that exist that we've just described, no, we have not been able to find that solution.

THE CHAIR: Right. So if there is to be a solution, there's going to have to be some changes in the rate design. Would you agree with that?

MR. BENNETT: That will depend on the customer and whether or not the changes in rate design accomplish the business objectives they have, yes.

THE CHAIR: Sure, but you'd agree with me that the electrical system collectively can only go so far?

MR. BENNETT: Yes.

[Transcript, pp. 855-856]

[190] It is clear from the evidence that NSPI did not see that there was a LRR that met the legal test on the one hand and, at the same time, met the business needs as demanded by NPB.

[191] Mr. Bennett stated that NSPI could take certain steps to economically hedge fuel costs in the event the term was three years, but not five years. Hedging would provide some level of protection to other customers.

[192] Virtually all of the experts whose evidence on this issue is summarized above, except Dr. Rosenberg, were uncomfortable with a five year term. Indeed, the reason NPB wants the five year term is to be shielded from what they expect to be volatile fuel costs. The proposed LRR transfers that risk to other customers.

[193] The Board concludes that a five year term is simply not supported by the preponderance of evidence. The likelihood is that the actual costs will be higher than the five year levelized costs calculated in Dr. Rosenberg's Appendix C.

Adder

[194] NPB proposed a $2.00/MWh adder as a contribution to fixed costs. NSPI confirmed that it considered the adder of $2.00 to be too low. In the course of negotiations between NPB and NSPI, NSPI urged NPB to put forward a higher adder to enhance the chance that the LRR would be accepted. It would appear, based on the evidence of Mr. Stewart of NewPage, that the adder was not based upon any cost analysis but based on NewPage's judgment as to what it could afford to pay. Avon described the adder as "patently unreasonable".

[195] Undertaking U-6 filed by NSPI highlights the risks. NSPI noted that there is more opportunity for higher fuel costs relative to current costs than there is for lower fuel costs. This would, of course, call for a higher adder. In Undertaking U-3, Mr. Athas calculated a variety of adders.

[196] The Board agrees with the Intervenors that the $2.00 adder, combined with the five year term, does not provide a reasonable likelihood that the LRR will recover avoided costs and make a contribution to fixed costs.

Calculation of Avoided Cost

[197] The most succinct summary of how avoided costs were calculated by the Applicants appears in the summary provided by Mr. Whalen as follows:

> a) Insert the New Page biomass project, scheduled to be on line in December, 2012, into the base plan (Plan A) of the 2009 IRP.
>
> b) Adjust Plan A (as modified by the insertion of NPPH biomass project) to remove the NBP load.
>
> c) Update the fuel prices in the modified Plan A and the plan without the NPB load to reflect the five year Business Plan coal and natural gas prices for 2012 - 2016, and calculate the annual capital and operating costs of each plan.
>
> d) For each year between 2012 and 2016, divide the annual cost differences (including both capital and operating costs) between the two plans in c) by the annual energy differences between the plans to determine the annual costs that would be avoided if the NPB load were not served. Levelize these costs over the five years.
>
> e) To determine an appropriate avoided cost for 2012, remove the NPB load from the Strategist simulations which support the 2012 GRA and divide the difference in costs by the change in load.
>
> f) Beginning with the 2012 avoided cost derived in e), calculate an avoided cost in each of the years 2013 - 2016 such that the levelized cost, expressed in $/Mwh, over the 2012 - 2016 period is the same as the levelized cost calculated in d).
>
> [Exhibit NPB-34, p. 6]

[198] As noted in Section 6.1, there were a number of criticisms of the calculation of avoided costs including:

- that the assumed fuel cost may be too optimistic;
- that there was no increase in exports assumed without the NPB load;
- that these two customers "cherry picked" the lowest available prices leaving all other customers to pay the more expensive costs of new wind, biomass and cleaner solid fuel resources required to meet new environmental requirements;
- that the plan is based on a two year old, high level IRP scenario, with more detailed 2012 simulations;
- that the plans were not re-optimized.

[199] NSPI seemed relatively satisfied that the 2012 avoided costs, which included GRA assumptions, are a good starting point. The Board agrees. NSPI's concern and the concern of the experts, including Mr. Whalen, were with the out years. The Board has the same concern. NSPI also indicated that, with the reasonably low price of natural gas in the Northeastern U.S., opportunities to export power were limited. NSPI also did not agree with the comments concerning re-optimization of the plan. However, NSPI did confirm that from 2013 onward the fuel forecast numbers were simply based on NSPI's current five year internal business plan.

[200] The biggest risk, of course, is that the proposed LRR shields NPB from the future operation of the FAM, which would have guaranteed they pay their share of increasing fuel costs.

Escalating Rate Structure

[201] The LRR design proposed by NPB sees the rate escalate 36% between 2012 and 2016 in order to recover the levelized cost. The Board, as it expressed in the hearing, is concerned that this is a structure that is destined to fail and would allow the mills to stay open for a year or two and then either close or seek a further amendment to the LRR to avoid the high cost imposed by the LRR structure itself in the out years. However, unless the mills stay on the LRR for five years, the other customers will not see the full recovery of avoided costs. NPB stated that part of the rationale for the design was that they would continue to be responsible for FAM and DSM riders in 2012. With the closure of NewPage, that appears not to be the case, although the argument still has relevance to Bowater.

[202] On balance, however, the Board is very concerned about the five year LRR structure as proposed, which provides NPB a significant advantage in the early years and escalates rapidly in years 3, 4 and 5 to rates in excess of what the mills now say they can afford to pay.

[203] For the foregoing reasons the NPB Application, as proposed, is denied.

6.2.3 Is there an alternate LRR Design that the Board can approve?

[204] The Board, in the circumstances, could simply dismiss the NPB Application. However, that would not contribute to meeting the financial challenge that the two mills face, nor would it provide other customers at least some opportunity to receive a contribution to NSPI's system costs from the continued operation of the two mills.

[205] Dr. Rosenberg confirmed that an alternate way of designing the LRR would be to take the annual avoided costs as shown in Appendix C of his Pre-Filed Evidence, plus an adder. That would accomplish two things: it provides greater protection to customers by recovering the currently estimated avoided costs in each year and it does not have as steep an increase over the five year term, a concern noted earlier in this Decision. Dr. Rosenberg indicated that the proposed LRR was not designed that way. He felt a lower rate in the beginning years was important because of the significant economic challenge facing the mills and that in 2012 they would have to pay FAM and DSM riders. Secondly, because of the mills' high cost of capital, Dr. Rosenberg felt they would be better off with a lower rate in the beginning than at the end.

[206] In an attempt to find a solution that both meets the legal test and goes part way to meeting NPB's requirements, the Board is prepared to approve an amended LRR which has as its foundation recovery of NSPI's year-by-year estimate of avoided costs, as identified in Appendix C of Dr. Rosenberg's Pre-Filed Evidence, plus an adder. The term would be three years and the variable incremental cost would be the annual avoided cost in Appendix C in 2013 and 2014. In 2012 the Board would substitute $56.24, as taken from Undertaking U-9 filed by Mr. Whalen, which is based on rate case estimates. As noted earlier, five years is too long a period, given volatile fuel costs, to lock in this LRR.

[207] Citing a precedent from the current ELI 2P-RTP rate, Dr. Rosenberg suggested that if the Board were concerned that the LRR would "get out of whack" the Board could have NSPI monitor the LRR and, if necessary, the LRR could be

"tweaked". Later in his testimony he tried to suggest the Board's review be limited to applying the marginal cost test.

[208] As suggested initially by Dr. Rosenberg, the Board reserves the right to adjust the LRR if actual costs significantly vary from the LRR assumptions. Otherwise, there would be no review of the LRR during the three year period (i.e., at any intervening general rate application). NSPI will report to the Board semi-annually on the performance of the LRR versus the Appendix C assumptions.

[209] The Board had hoped that Undertaking U-6 from NSPI might provide some guidance with respect to an appropriate adder. Avon suggested that, in the absence of the FAM, the only way the other customers could be confident that the LRR would recover avoided costs would be to go to an adder at the high end of Mr. Athas' range (i.e., $10.00 to $12.00).

[210] In an attempt to find a LRR that would protect customers and provide a rate design that goes part way to meeting the business needs of NPB, the Board concludes that a LRR which uses the incremental costs as described above, is limited to a three year term, and has a $4.00 adder, would be appropriate. Accordingly, the rate would be as follows:

Year	Variable Incremental Rate ($/MWh)	+ Adder	Total Energy Charge
2012	$56.24	$4.00	$60.24
2013	$61.77	$4.00	$65.77
2014	$63.86	$4.00	$67.86

This provides some measure of rate stability for NPB. Further, LRR customers will pay DSM and FAM riders in 2012.

[211] The Board understands that, based on the evidence submitted by NPB, this design may not satisfy their business requirements. However, there is only so far

the electricity system collectively can go, while still having a LRR that meets the legal test of recovering avoided costs and making a contribution to fixed costs. None of the Intervenors or their experts supported the LRR design submitted by NPB.

[212] All customers are best served when all of the rates are based on cost of service and all customers' rates are calculated in the same manner. Cost of service studies which distribute all of the Utility's embedded costs, including the allowed rate of return, among all customer classes, are valuable tools which guide the Board in determining how a utility's revenue requirement should be recovered. However, as noted, the Board has the discretion under the *Act* to vary from cost based rates if, in the Board's opinion, it is in the public interest to do so and provided that other customers are not subjected to undue discrimination as a result.

[213] The Board is reluctantly prepared to depart from traditional ratemaking (albeit not to the extent requested by NPB) and provide an opportunity for those customers to stay on the system and make, based on the Board's best judgment, a contribution to the fixed costs of the system. The Board is satisfied, on a balance of probabilities, that other customers will be better off under this amended LRR design with NPB on the system than if they leave. This is because the term is shorter – three years; the rate is based on annual variable incremental costs; there is a reasonable adder; and there is a re-opener if actual costs vary significantly from the rate assumptions.

[214] NPB may ask, if the Board is inserting a re-opener into the rate, why not allow a five year term. The reason is that the Board sees no reasonable prospect that the rate would last for five years without having to be readjusted.

[215] Board staff have calculated the estimated benefits to other customers and the savings to NPB if the full NPB load stays on the system at the LRR, as approved by the Board:

	2012	2013	2014
Benefits to other customers	$20 Million	$18 Million	$18 Million
Savings to NPB (before 150% capping of the ELI 2P-RTP)	$18.5 Million	$28.5 Million	$24.5 Million
Savings to NPB (after 150% capping of the ELI 2P-RTP)	$14 Million	$24 Million	$20 Million

6.2.4 Deferral

[216] The GRA Agreement as filed, in paragraph 2, contains a deferral with respect to loss of revenue from the NPB load due to the uncertainty of the operations of NewPage and Bowater. The deferral clause is outlined in its entirety in the GRA Agreement. Given the continuing uncertainties surrounding these customers and the fact that the Board has amended the LRR from that originally applied for, the Board believes it appropriate to defer the impact of the LRR on other customers, using the GRA Agreement deferral mechanism, until 2013. Deferral would be consistent with the deferral of lost fixed non-fuel cost contributions from NPB as set out in paragraph 2 of the GRA Agreement. It would enable the Board to set rates for all customers without speculating how much contribution to the fixed costs NPB will make in 2012 if the revised LRR is put in place.

[217] Therefore, the Board directs that the lost contribution to non-fuel costs (net of non-fuel variable O&M costs) as a result of implementing the LRR will be deferred for later recovery in the same manner as described in paragraph 2 of the GRA Agreement. In the Compliance Filing NSPI can simply file an addendum to the GRA Agreement

(recognizing this is something imposed by the Board and not agreed to by the parties) that accomplishes this objective.

6.2.4.1 Terms and Conditions of the LRT

[218] The tariff as submitted by NPB contemplated discussion and negotiation between NSPI and the Applicant for the LRR following which NSPI would apply to the Board for approval. NPB did not follow the process contemplated in the LRR they proposed. It is now clear to the Board that NPB made certain demands for terms of a LRR that NSPI could not support and, for that reason, NSPI did not bring the LRR forward. Strangely, NSPI assumed it could go through the hearing maintaining a neutral stance without commenting on the merits of the LRR as proposed. For reasons made clear by the Board at the hearing, that position by NSPI was not acceptable. In the view of the Board, NSPI had an obligation to provide the best advice it could to the Board and other parties on the proposed LRR design. After being directed to do so, NSPI did respond to Intervenor and Board questions and the evidence of NSPI was a critical factor in the Board's Decision.

[219] NPB proposed, and NSPI appeared to agree, that there would not be a security deposit but that customers on the LRR would pay their power bill weekly. It would appear, however, that the normal disconnect procedures would continue to apply which could take some weeks. As pointed out by Mr. Drazen and Mr. Chernick, weekly payments under this LRR, assuming a full load, would be in excess of $2.0 Million and arrears could escalate quickly in the event of a disputed disconnect process. Mr. Drazen suggested losses could amount to $20 Million.

[220] The Board has decided that there should be a condition inserted in the rate that, in the event of non-payment, NSPI may disconnect a LRR customer on two

business days' notice. In the event of a dispute under the LRR, the complaint will be made directly to the Board for resolution, as opposed to the Dispute Resolution Officer.

[221] The only expert who made a detailed review of the LRT terms was Mr. Whalen and, subject to one change, he described the LRT as largely appropriate. With respect to the affidavit of the senior officer, he suggested the following:

> ... I recommend that this item be strengthened by specifying that the affidavit should contain an analysis of the market in which the customer operates, identification of the factors other than electricity costs that are contributing to the economic hardship and the customer's plan to address those, an estimate of the electricity price that could alleviate the economic hardship, and an estimate of the probability that the customer will leave NSPI's system if the requested load retention price is not granted. I would also recommend that whether the affidavit is provided by an executive of the customer or the parent be consistent with whether it will be the customer or parent who will make the decision to leave NSPI's system in the absence of the load retention rate.
>
> [Exhibit NPB-34, pp. 2-3]

[222] The Board agrees with this recommendation and it should be reflected in the Compliance Filing. Otherwise the LRT provisions (i.e., terms and conditions) as applied for, as opposed to the LRR itself, are approved.

6.2.5 Does Bowater Qualify for the New LRR?

[223] The Board is satisfied that Bowater meets the necessity test. While Bowater did not provide evidence to allow the Board to come to a conclusion on the sufficiency test, realistically the Board accepts that Bowater may not be in a position to provide this evidence. Given the other terms and conditions of the LRR, including the reduced term and the ability to re-open the LRR in certain circumstances, the Board is prepared to allow Bowater to go on the LRR effective January 1, 2012 without further evidence of sufficiency.

6.2.6 Does the Prospective Owner of NewPage's Port Hawkesbury Mill Qualify for the New LRR?

[224] The short answer to the question posed in the heading is: the Board does not know and neither does anybody else. NewPage has indicated that it does not intend to operate the mill and the mill is for sale. The Board agrees with the submissions of the Intervenors that it is not possible to make a final determination with respect to the Port Hawkesbury mill's eligibility for the LRR until such time as a new owner is chosen. When the owner is identified, provisions of the LRT, as proposed by NewPage, should be followed in that the new company should apply to NSPI who would then come to the Board. The focus of any examination by NSPI and the Board would be whether the mill and its new owner continue to meet the necessity test. In saying that, the Board believes that the LRR being approved in this Decision would have been an appropriate LRR for NewPage, had it continued to operate the mill. The Board would expedite any application.

7.0 DEFERRAL AND UNDERTAKING TO MANAGE COSTS

[225] During NSPI's testimony, following the filing of the GRA Agreement, the CA, as well as the Board, sought an undertaking from NSPI that it would take all prudent and reasonable steps to minimize costs to other ratepayers if the NPB load, or a portion of it, remains off the system. A question also arose about the mechanism available to the Intervenors, and the Board, to question NSPI on its steps to control costs in the wake of NPB's potentially significant withdrawal from the system.

[226] In its Closing Submission, counsel for Avon outlined the questioning of Mr. Bennett on this issue:

In response to questioning from Mr. Merrick, Mr. Bennett acknowledged NSPI would be held to a prudency standard in seeking to recover its lost contribution to fixed costs:

> Mr. Merrick: You would agree with me, though, I suppose -I hope - that how the company responds to this and how much effort they take in trying to remove as many of those costs as possible, is to be judged according to a prudency standard; in other words, the company must act prudently in doing so?
>
> Mr. Bennett: The company must act prudently in everything it does.
>
> Mr. Merrick: So you accept that responsibility?
>
> Mr. Bennett: Well, I accept that I am responsible for running - using good utility practice in running the utility prudently, yes.
>
> [Transcript, p. 83]

Mr. Gurnham, the Chair, pursued whether there was anything in the Settlement Agreement that obliged NSPI to reduce costs if the NewPage load stays off the system and expressed doubt as to the Board's jurisdiction to amend the Settlement Agreement:

> I guess in an ideal world I'd like to see something in the agreement - and I realize I can't amend the agreement - I'd like to see something in the agreement whereby Nova Scotia Power undertakes to take all prudent and reasonable steps to minimize costs to the customers if this load stays off the system.
>
> Mr. Bennett: Well, I can - I can tell you that Nova Scotia Power will take all prudent and reasonable steps to minimize customers [sic] in any situation and particularly if this load is not on the system.
>
> The Chair: So we can interpret this Settlement Agreement with that statement from you?
>
> Mr. Bennett: Yes.
>
> [Transcript, pp. 240-241]

Following the above exchange, NSPI undertook to outline the process it will undertake to minimize costs and impact to customers if NewPage Port Hawkesbury remains shut down (and presumably, if Bowater Mersey leaves the system). That process is outlined in Undertaking U-4.

[Avon Closing Submission, pp. 2-3]

[227] Counsel for Avon submitted that the Board should amend the GRA Agreement to expressly require NSPI to "investigate and take all prudent steps to minimize costs".

[228] The CA also highlighted NSPI's undertaking in this respect:

> OBLIGATION OF NSPI RE EXCESS CAPACITY
>
> The rate increases being requested are based on a load forecast that assumes continuing service at normal levels to the NewPage and Bowater enterprises. The reality is that ...most, and perhaps all, of the NewPage load will not occur. That leaves fixed or stranded costs which have to be paid for by remaining ratepayers still on the system. The stranded costs are a form of excess capacity.
>
> Those stranded costs are going to incur in circumstances where there is already excess capacity as a result of NSPI being mandated to develop renewable energy sources. As a result, costs to the ratepayers are going to be in excess of what is reasonably needed to serve the demand of customers.
>
> It is the position of the Consumer Advocate that the stranded costs and excess capacity places on NSPI the obligation to act prudently to minimize and possibly negate excess capacity or stranded costs. It is the intention of the Consumer Advocate to require that NSPI be prepared to show that it has exercised prudence in discharging that obligation. The undertaking of NSPI to act prudently and the timing and forum in which compliance with that undertaking could be evaluated is at Transcript pages 237 - 253. At least two of the occasions that would be suitable for such an assessment would be in a rate application in 2012 or when NSPI would seek to have the amount of the deferral included in rates.
>
> [CA Closing Submission, pp. 2-3]

[229] In Undertaking U-4, NSPI outlined the process it will adopt to minimize the cost and impact to customers if all, or a portion of, NPB's load is off the system in 2012. It will implement a Project Team to specifically address the situation, examine alternate scenarios, and implement the appropriate course of action.

7.1 Findings

[230] The absence of an express written undertaking by NSPI to act prudently in controlling costs with respect to the deferral is, perhaps, a failing of the GRA Agreement.

[231] Notwithstanding that, however, the Board notes that NSPI's duty to act prudently is not negated in any manner by the presence of the automatic deferral mechanism contained in the GRA Agreement. In its Decision approving a settlement agreement respecting a general rate application for 2007 [2007 NSUARB 8], the Board stated:

> [29] Finally, the Board finds approval of the Settlement Agreement to be appropriate since it in no way relieves NSPI of the requirement to be accountable to the Board and the public. NSPI is responsible for ensuring that all of the costs of providing safe and adequate service to its customers are prudently incurred and are as low as reasonably possible...
>
> [Board Decision, 2007 NSUARB 8]

[232] Moreover, in the present case, Mr. Bennett has confirmed NSPI's undertaking to take all prudent and reasonable steps to minimize costs to other ratepayers if the NPB load, or a portion of it, remains off the system.

[233] As noted earlier in this Decision, the Board has determined that a review of the deferral amount will occur in 2012 as part of a 2013 general rate application. In the event there is no general rate application in 2012 for 2013, the review will occur during the FAM proceeding in late 2012 and the deferral will be added to the issues list.

[234] Whether the review of the deferral amount occurs in the context of the general rate application or the FAM proceeding, the Board and Intervenors will be able to question NSPI on whether it has taken all prudent and reasonable steps to minimize costs to other ratepayers if the NPB load, or a portion of it, remains off the system. If the actions taken by NSPI are deemed insufficient or imprudent by the Board, it will order accordingly.

8.0 FUTURE COST CONTAINMENT – NSPI

[235] The Board read with interest the Closing Submission of NPB respecting NSPI's Application as it related to what they called forward looking matters. NPB discussed pension issues, salary wage increases and certain aspects of NSPI's OM&G costs and, in particular, the efficiency of the operation of NSPI's generating plants. NPB stated as follows:

> In the context of the current challenging economic times faced not only by Nova Scotia industry, but by Nova Scotians in general, and in fact globally, NPB believes it is imperative that the Board impress upon NSPI in its decision in this matter that it is looking for NSPI to put in place all possible austerity measures going-forward to limit future rate increases to the absolute minimum necessary to provide safe and reliable service. As noted previously, NPB has indicated in the evidence filed as part of its Load Retention Rate applications the extraordinary measures it has taken to reduce costs within its control. NPB submits that the Board should indicate to NSPI that it expects it should take no lesser steps than those taken by its ratepayers.
>
> In this regard, NPB notes that public utility commissions have in the recent past implemented austerity orders. For example, the Public Service Commission of New York in its Order establishing a three-year electric rate plan effective March 26, 2010 for Consolidated Edison Company of New York noted at pages 27 and 28 of their Order that:
>
>> "In view of the broader economic burdens on ratepayers during these recessionary times, we are greatly concerned that we provide all possible rate mitigation for customers while assuring continued safe and reliable service."
>
> [NPB Closing Submission, p. 11]

[236] The Board agrees with NPB that NSPI needs to be particularly vigilant in this regard given recent announcements concerning NSPI's two largest customers and the pressure that places on the remaining ratepayers.

[237] The Board advises NSPI that pension costs will be subject to careful examination by the Board in the next rate hearing.

9.0 IMPORT POWER PURCHASES

[238] In Liberty's Direct Evidence, two specific errors were identified in NSPI's forecast which made the cost of import power purchases appear too high:

> First, the Company priced all of the imported power in its forecast on the basis of the on-peak NEPOOL power price. Many of its actual imports, however, come during off-peak periods. Liberty recommends reducing the Company's estimated fuel cost by $1.8 million, in order to recover lower, off-peak prices for a substantial portion of these imports.
>
> Second, there is now a new category of power imports. Recognizing it in forecasts should further reduce ... the Company's estimated fuel cost by $3.1 million to correct for this new category's impacts.
>
> [Exhibit N-23, pp. 19-20]

[239] Liberty noted that during April, May and June of 2011, NSPI issued requests for proposals for month-long blocks of energy and the winning bids effectively represent a new source of competitively priced power supplies for NSPI.

[240] Regarding the two issues noted above, Liberty stated:

> The two adjustments are additive. ...Our total adjustment, $4.9 million, results only from re-pricing imports that the Company forecasts.
>
> [Exhibit N-23, p. 27]

[241] NSPI addressed these points in its Reply Evidence. Subsequently, in the GRA Agreement, clause 4 states:

> 4. NSPI will adopt the Liberty recommendations relating to the forecast cost of imports, without adopting the approach as an established new methodology. The approach will be reviewed with the FAM SWG for potential revision of the FAM Plan of Administration. NSPI estimates this change will reduce the fuel forecast by $1.7M + 3.1M. The increase in the fuel forecast for 2012 will therefore be $31.3M ($36.1M - 4.8M).
>
> [Exhibit N-49, Appendix A, pp. 1-2]

10.0 TIME OF DAY DISCOUNTS

[242] Henry Vissers appeared at the evening session. He is the Executive Director of the Nova Scotia Federation of Agriculture, representing 2,400 farm families in the province. He said many of his members have participated in efficiency and demand side management initiatives to reduce their electricity costs.

[243] Mr. Vissers stated that the impact of electricity rate increases will be "particularly acute" on certain sectors of the farming industry, specifically those farms that have a large seasonal demand for electricity for cool storage.

[244] Among other requests, he asked the Board to:

> Consider a new rate structure for farm users, particularly larger scale farm users; offer time of day discounts, large-scale users can alter their energy consumption accordingly;
>
> ...
>
> [Transcript, pp. 382-383]

[245] He elaborated on this request upon questioning by the Board Chair:

> THE CHAIR: Do you have any more information on what a time-of-day rate that would be of use to you would look like?
>
> MR. VISSERS: Well, there's -- a lot of the cooling systems that are used in seasonal production and things like that could be handled overnight and could use the bulk of the power then.
>
> There's dairy operations that are in a similar situation for cooling milk and things like that. Time of day use would work there as well.
>
> There's also applications in egg grading, there's a lot of water use there and a lot of heating of water for washing and things like that and those sorts of things could be done at different times as well.
>
> THE CHAIR: Have you had any discussions with Nova Scotia Power concerning a form of time of use rate that might work?
>
> MR. VISSERS: Not recently, no.
>
> [Transcript, p. 384]

[246] Mr. Vissers stated that farms generally fall in the Small General and Residential customer classes.

10.1 Findings

[247] The Board concludes that the request by the Nova Scotia Federation of Agriculture warrants a review. The Board directs NSPI to canvass the issue and report to the Board by April 30, 2012 with its findings and recommendations.

11.0 THRESHOLD FOR DEMAND METERS

[248] Leanne Hachey, Executive Director of the Canadian Federation of Independent Business (N.S.) (the "CFIB"), made a presentation during the evening session. The CFIB represents 5,000 small and medium-sized businesses in the

province. She stated that 70% of its members have already taken measures to reduce their electricity consumption.

[249] The CFIB asked the Board to consider the issue of the threshold for demand meters. While she acknowledged that this point was canvassed in the past, Ms. Hachey suggested that it should be revisited in the context of today's business operations.

11.1 Findings

[250] The Board considers that the CFIB's request is reasonable. The threshold for demand meters should be revisited if there has been a material change in the operational characteristics faced by small and medium-sized businesses, including the impact of recent technology.

[251] The Board directs NSPI to reassess the threshold for demand meters for small and medium-sized businesses, in consultation with appropriate industry stakeholders. NSPI must report its findings and recommendation to the Board by April 30, 2012.

12.0 PERFORMANCE AND VALUE FOR MONEY AUDIT

[252] The Liberal Caucus submitted that there is little incentive for NSPI to find savings or efficiencies in its operations because it benefits from a guaranteed rate of return. They suggest that during this difficult economic period, when consumers and businesses are challenged, that NSPI should be expected to do more to find savings.

[253] In his letter of comment to the Board, Andrew Younger, M.L.A., Energy Critic for the Liberal Caucus, submitted that the Board should hold NSPI to account to provide value for its ratepayers. He concluded:

> Nova Scotia Power Incorporated should be ordered by the board to submit to a performance and value for money audit by independent auditors approved by the board. The results of this audit should be made public by the board and made available for public comment following its completion. Nova Scotia Power Incorporated should be required to report within 30 days of the audit's filing as to how it plans to address any recommendations.
>
> [Exhibit N-2, p. 8]

12.1 Findings

[254] Over the past number of years, NSPI has undergone a number of reviews and audits respecting its performance and operations. In addition to its own external auditors, various aspects of its performance and operations have been reviewed, or are regularly reviewed, as directed by the Board. Examples include:

- In its rate decision dated March 10, 2006, the Board ordered a review of NSPI's operations to comprise:

  > ...a detailed examination of NSPI's organizational structure, its level of OM&G expenditures, and any other pertinent areas which may come to light, with a view to determining whether cost savings and operational efficiencies can be achieved.

  NSPI filed a report prepared by Accenture on January 8, 2007. Along with some Intervenors, including the CA, the Board retained its own experts, Kaiser Associates, to review the Accenture Report and it filed its findings in 2008. Kaiser Associates concluded NSPI's OM&G costs were generally reasonable.

- Also in 2008, Kaiser Associates conducted an Executive Compensation Review.

- On May 14, 2007, the Liberty Consulting Group, the Board's own experts, conducted an Audit of Relations and Transactions between NSPI and its affiliates.

- The Liberty Consulting Group also conducts a regular Audit of NSPI's FAM.

- Earlier in this Decision, the Board has directed that NSPI's pension costs will be examined in the next rate hearing.

[255] These reviews and audits are conducted by consultants on behalf of the Board that are well recognized experts in their respective fields. The reports themselves are comprehensive and are also quite costly. As an example, the Kaiser Report noted above cost in the magnitude of several hundred thousand dollars. That amount was in addition to the initial review conducted by Accenture on behalf of the Company. The costs of such reviews ordered by the Board must ultimately be recovered from ratepayers. Accordingly, the Board is very conscious that it should only order such reviews or audits when absolutely necessary for the protection of ratepayers.

[256] Moreover, all elements of NSPI are extensively reviewed during general rate applications and, in the case of fuel specifically, during the annual FAM proceeding and the comprehensive, independent audit conducted every second year. During these proceedings, experts representing the Board and acting on behalf of the various Intervenors have the opportunity to review and comment on all aspects of NSPI's operations and performance. These reviews have identified items that should be remedied or examined further.

[257] As a result, the Board concludes that it is not necessary at this time to direct NSPI to undergo a performance and value for money audit by independent auditors. If the Board considers that such a review is required at any point in the future, it will not hesitate to direct that one be conducted.

13.0 IMPACT OF GOVERNMENT INITIATIVES AND PROGRAMS

[258] In its presentation at the evening session, and in its Closing Submission, the PC Caucus submitted that there should be transparency on NSPI bills to its customers outlining the cost of government regulations and programs:

> Nova Scotians are not asking for too much. They just want to know what they are paying for on their electricity bill. They want a clear breakdown of the costs of producing and distributing power clearly presented on their bi-monthly bill and labelled with the cost of government policies.
>
> Electricity is a necessity and Nova Scotians do not have a choice when it comes to paying for power. Nova Scotia Power should be required to break [out] the effect of government policies on power bills. A good analogy would be the content labels on cereal boxes. The customer has the opportunity to read the ingredient label to understand what they are purchasing. The same should be available for power.
>
> [PC Caucus Closing Submission, p. 1]

[259] At the evening session, Chuck Porter, M.L.A., Energy Critic for the PC Caucus, repeated this submission in referring to a public survey it conducted:

> NSPI is making significant investments to reach the NDP government's renewable energy targets. How would you prefer to be made aware of this information?
>
> And I think I spoke to this earlier today, about trying to get messaging out and communicating with everyday Nova Scotians. Fifty-four point four (54.4) -- 55.4 percent said their electricity bill should show me how much goes to meeting those government regulations. Over 90 percent of those respondents said that they would like to see how much government policies are costing them.
>
> [Transcript, p. 387]

[260] Ms. Hachey of the CFIB echoed the request for transparency on NSPI bills with respect to environmental initiatives mandated by Government:

> ...there's an awful lot of environmental promises out there, most of which Nova Scotians would rally behind. What we don't know though is the impact some of those promises and commitments will have on our rates or on ratepayers and we do think that information should be known.
>
> [Transcript, p. 336]

[261] The Province responded to this issue in its Closing Submission:

> 29. In closing on this point, it is anticipated that some intervenors may seek to have NSPI disclose the costs associated with renewable energy projects and conservation measures on its bills. Should the UARB wish to consider this, then the Province respectfully requests that putting blinders on and looking only at the costs side of the ledger is misleading. The net cost, or perhaps more accurately, net benefit of these initiatives should be shown, considering both immediate and long term benefits.
>
> [Province Closing Submission, p. 13]

13.1 Findings

[262] The objective of having informed consumers is a worthwhile goal. However, the Board considers that the decision of how to inform ratepayers about the impact of government regulations and programs is a policy decision to be made by the Province.

[263] In the circumstances, the Board makes no direction in this respect.

14.0 COMPLIANCE FILING

[264] NSPI is directed to file a Compliance Filing no later than December 9, 2011.

[265] The Formal Intervenors must provide comments, if any, no later than December 16, 2011.

15.0 SUMMARY OF BOARD FINDINGS

Settlement Agreement

[266] The Board approves the GRA Agreement, which represents a comprehensive resolution of most contested issues between NSPI and the Intervenors. It addresses a number of important elements raised in the NSPI Application.

[267] It reduces NSPI's revenue requirement by $27.9 Million from the original requested increase of $94.4 Million. The resulting increase to the revenue requirement is $66.5 Million ($31.3 Million for fuel and $35.2 Million for non-fuel).

[268] In its Application, NSPI requested that its current return on equity of 9.35% be increased to 9.6% (within a range of 9.35 to 9.85%). Under the terms of the GRA Agreement, the return on equity is reduced to 9.2% (within a range of 9.1% to 9.5%).

This reduces the revenue requirement by $7.5 Million. Other costs are reduced as noted in this Decision.

Cost of Service

[269] The Board agrees with the majority of the Intervenors that there is merit to review the current cost of service. The evidence presented notes that some of the assumptions and principles used in the COSS such as the current generation mix (including renewables) and emission control requirements need a review.

[270] The Board's current 2012 Regulatory Schedule does not allow enough time for a review of the COSS. Therefore, the Board orders that NSPI plan for a COSS hearing in 2013.

Revenue to Cost Ratios

[271] A change to the R/C ratio band of 95% – 105% is denied.

[272] The Board recognizes the issue of the Small General and General Demand classes being on the high end of the R/C ratio band. The SBA has recommended that the R/C ratio for the Small General and General Demand classes be lowered to 1.03 from 1.05.

[273] The Board agrees with the SBA's recommendation to lower the R/C ratio for these two customer classes to 1.03 for this Decision and NSPI is ordered to include this change in the Compliance Filing.

ELI 2P-RTP Rate

[274] At the time the ELI 2P-RTP rate (which currently serves Bowater and NewPage) was approved, the Board noted it was innovative and new to NSPI and that there may be a need for the Board to review the terms and conditions once experience was gained under the rate.

[275] The Board ordered an annual review. The reason for the annual review was so that the Board could carefully monitor experience under the rate to ensure that neither NSPI nor other customers were being disadvantaged. The Board also observes that the rate was ordered prior to the institution of the FAM which has added some complications.

[276] The Board approves the changes to the rate as recommended by NSPI.

[277] The Board is persuaded that these changes are necessary and prudent at this stage of the life of the rate. The reporting currently in place should continue.

[278] To avoid rate shock to the ELI 2P-RTP rate customers, the Board finds that the increase should be limited to 150% of the average of the other classes. The Board finds scenario #2 suggested by Mr. Whalen, Board Counsel's consultant, is the appropriate mechanism to do this and directs NSPI to take this into account in the Compliance Filing.

[279] The rate increases by customer class ordered in this Decision are estimated to be as follows:

	Rate Increase %
Residential	6.1
Sm Gen	2.5
Gen	2.8
Lg Gen	5.7
Sm Ind	5.6
Med Ind	7.5
Lg Ind	7.5
ELI 2P-RTP	8.5
Muni	7.4
Unmetered	-3.4

[280] The average rate increase is approximately 5.6%.

Load Retention Rate

[281] The Board concludes that it has jurisdiction under the *Public Utilities Act* to consider the application for a LRT based on the economic distress of extra large industrial customers.

[282] Load retention tariffs are utilized in circumstances where providing the discounted tariff benefits not only the customers qualifying for the tariff but also the other customers on the system.

[283] The test that the Board has applied in this case is whether, on a balance of probabilities, the other customers of NSPI would be better off by having NPB remain on the system (on the load retention rate) than those customers would be if NPB stopped taking service. The test is satisfied if the load retention rate fully recovers avoided costs of supplying NPB and makes a positive contribution to the fixed and common costs of NSPI. The Board will not, and indeed cannot, approve a rate in circumstances where the other customers are worse off (because they are subsidizing NPB) than they would be if these customers left the system.

[284] The Board is not satisfied, on a balance of probabilities, that the LRR as applied for by NPB will recover avoided costs and make a positive contribution to fixed and common costs over the five year term. It has reached this conclusion for the following reasons:

- The Board concludes that a five year term is simply not supported by the preponderance of evidence. The likelihood is that the actual costs will be higher than the five year levelized costs calculated in the NPB Application.
- The Board agrees with the Intervenors that the $2.00 adder, combined with the five year term, does not provide a reasonable likelihood that the LRR will recover avoided costs and make a contribution to fixed costs.
- The Board is very concerned about the five year LRR structure as proposed, which provides NPB a significant advantage in the early years and escalates rapidly in years 3, 4 and 5 to rates in excess of what the mills now say they can afford to pay.

[285] The Board, in the circumstances, could simply dismiss the NPB Application. However, that would not contribute to meeting the financial challenge that the two mills face, nor would it provide other customers at least some opportunity to receive a contribution to NSPI's system costs from the continued operation of the two mills.

[286] In an attempt to find a solution that both meets the legal test and goes part way to meeting NPB's requirements, the Board is prepared to approve an amended LRR which has as its foundation recovery of NSPI's year-by-year estimate of avoided

costs, as identified in Appendix C of Dr. Rosenberg's Pre-Filed Evidence, plus an adder. The term would be three years and the variable incremental cost would be the annual avoided cost in Appendix C in 2013 and 2014. In 2012, the Board would substitute $56.24, as taken from Undertaking U-9 filed by Mr. Whalen, which is based on rate case estimates.

[287] The Board concludes that a LRR which uses the incremental costs as described above, is limited to a three year term, and has a $4.00 adder, would be appropriate. The Board reserves the right to adjust the LRR if actual costs vary significantly from LRR assumptions. Accordingly, the rate would be as follows:

Year	Variable Incremental Rate ($/MWh)	+ Adder	Total Energy Charge
2012	$56.24	$4.00	$60.24
2013	$61.77	$4.00	$65.77
2014	$63.86	$4.00	$67.86

This provides some measure of rate stability for NPB. Further, LRR customers will pay DSM and FAM riders in 2012.

[288] The Board is satisfied, on a balance of probabilities, that other customers will be better off under this amended LRR design with NPB on the system than if they leave. This is because the term is shorter – three years; the rate is based on annual variable incremental costs; there is a reasonable adder; and there is a re-opener if actual costs vary significantly from the rate assumptions.

Deferral and Undertaking to Manage Costs

[289] The GRA Agreement and this Decision defer the impact of any loss of load from NewPage or Bowater to 2013. Mr. Bennett has confirmed NSPI's undertaking

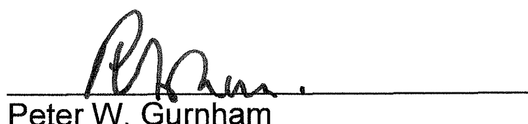
to take all prudent and reasonable steps to minimize costs to other ratepayers if the NPB load, or a portion of it, remains off the system.

[290] The Board has determined that a review of the deferral amount will occur in 2012 as part of a 2013 general rate application. In the event there is no general rate application in 2012 for 2013, the review will occur during the FAM proceeding in late 2012 and the deferral will be added to the issues list.

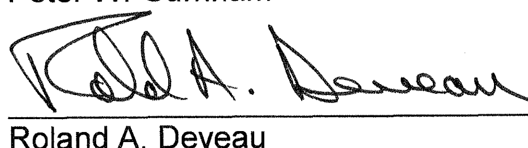
[291] Whether the review of the deferral amount occurs in the context of the general rate application or the FAM proceeding, the Board and Intervenors will be able to question NSPI on whether it has taken all prudent and reasonable steps to minimize costs to other ratepayers if the NPB load, or a portion of it, remains off the system. If the actions taken by NSPI are deemed insufficient or imprudent by the Board, it will order accordingly.

[292] An Order will issue following the Compliance Filing.

DATED at Halifax, Nova Scotia, this 29th day of November, 2011.



Peter W. Gurnham



Roland A. Deveau

Kulvinder S. Dhillon

APPENDIX A

NOVA SCOTIA POWER INC.
2012 RATE APPLICATION P-892

- and -

NEWPAGE PORT HAWKESBURY CORP. and BOWATER MERSEY PAPER COMPANY LIMITED
LOAD RETENTION RATE APPLICATION P-202

COMBINED LIST OF INTERVENORS

Avon Group
(Avon Valley Greenhouses Ltd.)
(Canadian Salt Company Limited)
(CFK Inc.)
(Crown Fibre Tube Inc.)
(Halifax Grain Elevator Limited)
(High Liner Foods Incorporated)
(Imperial Oil Limited)
(Lafarge Canada Inc.)
(Maritime Paper Products Ltd.)
(Michelin North America (Canada) Inc.)
(Minas Basin Pulp & Power Company Ltd.)
(Oxford Frozen Foods Limited)
(Sifto Canada Corp.)
(Nustar Terminals Canada Partnership)

Cape Breton Explorations Ltd.

Cape Breton Regional Municipality

Consumer Advocate

Ecology Action Centre

Efficiency Nova Scotia Corporation

Electricity Ratepayers Association of Nova Scotia (ERANS)

Halifax Regional Municipality

LED Roadway Lighting Limited

Liberal Caucus Office

Municipal Electric Utilities of Nova Scotia Co-operative

Municipality of the County of Richmond

NewPage Port Hawkesbury Corp. and Bowater Mersey Paper Company Limited
(Applicant and Intervenor)

Nova Scotia Department of Energy; Nova Scotia Environment and Nova Scotia Department of Natural Resources

Nova Scotia Government and General Employees Union

Nova Scotia Land Owners and Forest Fibre Producers Association

Nova Scotia Power Inc. (Applicant and Intervenor)

Progressive Conservative Caucus Office

Small Business Advocate

Strait Area Chamber of Commerce

Union of Nova Scotia Municipalities