

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE *GAS DISTRIBUTION ACT*

- and -

IN THE MATTER OF AN APPLICATION by HERITAGE GAS LIMITED for the approval of amendments to its Schedule of Rates, Tolls and Charges

**BEFORE:** Peter W. Gurnham, Q.C., Chair  
Kulvinder S. Dhillon, P.Eng., Member  
Murray E. Doehler, CA, P.Eng., Member

**APPLICANT:** **HERITAGE GAS LIMITED**  
John C. MacPherson, Q.C.

**INTERVENORS:** **CONSUMER ADVOCATE**  
John Merrick, Q.C.  
William L. Mahody, LL.B.

**DALHOUSIE UNIVERSITY**  
Robert G. Grant, Q.C.

**HALIFAX REGIONAL MUNICIPALITY**  
Mary Ellen Donovan, Q.C.  
Stephan Jedynek, LL.B.  
Julian Boyle  
Angus Doyle

**NOVA SCOTIA DEPARTMENT OF ENERGY**  
Stephen T. McGrath, LL.B.

**NOVA SCOTIA POWER INC.**  
Michael Johnston

**DR. PETER ALLEN, P.Eng., Ph.D.**

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

**HEARING DATE:** October 17 & 18, 2011

**CLOSING  
SUBMISSIONS:** October 28, 2011

**REBUTTAL  
SUBMISSIONS:** November 4, 2011

**DECISION DATE:** November 24, 2011

**DECISION:** Settlement Agreement approved; Average rate increases of 8.25% (2012), 6% (2013) and 3% (2014) for the test period effective January 1, 2012 and ending December 31, 2014.

Table of Contents

1.0 BACKGROUND .....	4
2.0 SETTLEMENT AGREEMENT.....	5
2.1 The Board's Approach With Respect to Settlement Agreements.....	5
2.2 Dr. Allen's Submissions .....	7
2.3 HRM Position on the Settlement Agreement .....	11
2.4 The Heritage Gas Settlement Agreement.....	11
3.0 OTHER WRITTEN AND ORAL SUBMISSIONS .....	15
4.0 2012 COST OF SERVICE .....	15
5.0 AFFILIATE CODE OF CONDUCT .....	17
6.0 SUMMARY OF FINDINGS.....	19
7.0 COMPLIANCE FILING.....	19

## 1.0 BACKGROUND

[1] Since Heritage Gas Limited (“Heritage”) accepted a natural gas distribution franchise on June 30, 2003, the Board has approved, on five separate occasions, new distribution rates for Heritage. Most recently, the Board approved an application (GTA-10) 2010 NSUARB 241, which set rates effective January 1, 2011 for a one year test period. In the course of that proceeding, Heritage stated that it would be making a complete rate application by mid-year 2011.

[2] Heritage filed its application with the Board on June 15, 2011 (the “Application”) requesting Board approval for several items including revenue requirement, capital structure, capitalization policy, depreciation and a schedule of rates, tolls and charges.

[3] After receiving input from interested parties, the Board issued an Amended Final Issues List to be considered, as follows:

1. Operating costs and revenue requirements
2. Cost of service study (COSS) and rate design
3. Mains classification
4. Working capital and lead /lag study
5. Test period and customer growth
6. Capitalization policy
7. Capital structure (Rate of Return, cost of debt and debt/equity ratio)
8. Amortization and depreciation
9. Revenue Deficiency Account (RDA)
10. Capital Expenditures
11. Accounting policies (US GAAP and IFRS)
12. Proposed rates, tolls and charges

13. Encouragement by Heritage Gas Limited of a competitive gas supply market

[4] A public hearing into the matter was held on October 17 and 18, 2011.

[5] Several Intervenors played an active role in the proceeding including the Nova Scotia Department of Energy (the "Province"), the Consumer Advocate (the "CA"), Dalhousie University ("Dalhousie"), Halifax Regional Municipality ("HRM"), Nova Scotia Power Inc. ("NSPI") and Dr. Peter Allen. Of these, only the CA and Dalhousie filed evidence. Letters of comment were received from Mr. Michael Poulton and Killam Properties.

[6] At the commencement of the public hearing Heritage notified the Board it had reached a settlement agreement (the "Agreement") with the CA and Dalhousie. The Board adjourned the hearing to provide an opportunity to all parties to review the Agreement and the hearing reconvened on October 18, 2011.

## **2.0 SETTLEMENT AGREEMENT**

### **2.1 The Board's Approach With Respect to Settlement Agreements**

[7] HRM suggested that the manner in which the settlement process was conducted violated principles of natural justice. Dr. Allen described it as a "backroom deal".

[8] While the Board's Regulatory Rules ("Board's Rules") facilitate settlement discussions, they do not specify how settlement discussions proceed. The Board understands that in this proceeding Heritage met with the only two parties who had filed evidence to discuss, and then ultimately negotiate, a settlement agreement. HRM and Dr. Allen had not filed evidence. Once the Agreement was entered into among the

parties who filed evidence, it was presented at the opening of the hearing. The hearing was adjourned and parties, who were not part of the settlement discussions, were given an opportunity to review the Agreement following which the hearing resumed.

[9] In response to HRM's suggestion, Heritage stated:

HRM also raises a "natural justice" point in regard to the process of negotiation which led to the Settlement Agreement. Heritage Gas notes that the Settlement Agreement was tabled on the first day of hearing. The Board then adjourned the hearing to allow parties to consider the Settlement Agreement and to question the Heritage Gas Panel. HRM availed itself of that opportunity.

... Heritage Gas does not recommend that the Board set specific rules as to how settlement discussions should occur. By its nature, this negotiation process requires flexibility. Heritage Gas undertook this negotiation process in an open and responsible manner. Heritage Gas submits that the process was appropriate and resulted in an outcome which is supported by the parties including HRM.

[Heritage Rebuttal Submission, November 4, 2011, p. 2]

[10] The CA observed that greater effort needs to be made to include all stakeholders in settlement discussions, particularly when it becomes apparent that a consensus towards a joint recommendation may be developing. However, the CA recommended the Board not lay down hard and fast rules as to how settlement discussions are to evolve as it would possibly hinder the development of future joint recommendations. Mr. Grant, on behalf of Dalhousie, agreed:

... However, the nature of the issues and parties will vary from hearing to hearing, and we do not recommend that the Board set out rules on how settlement discussions should be conducted. Such directions could end up being counterproductive or restrictive, preventing the efficient resolution of issues between various parties.

In the instant case, although certain parties did not participate in settlement discussions, the Minutes of Settlement were presented to the Board and all parties, and there followed an adjournment during which all participants before the Board could consider the settlement and their respective positions. There was then an opportunity for the parties to question the applicant. The fact that certain parties were not parties to the settlement discussions does not indicate any disregard for the principles [of] natural justice, as HRM suggests. Further, as stated in 2003 NSUARB 139:

[21] The Board's responsibility to ensure that the public interest is protected is not diminished by the existence of a negotiated settlement between parties to a proceeding. However, such a settlement, especially one which has broad support among competing interests, is entitled to serious consideration by the Board.

[Dalhousie Reply Submission, November 4, 2011, p. 1]

[11] The Board's Rules permit it to dispose of all, or part, of a proceeding by approving a settlement of one or more of the issues agreed to amongst the parties. The Board's view is that settlement rules should not be overly prescriptive with respect to process. Settlements, by their nature, require identification of points of agreement by and amongst parties and discussion of those points. Settlement may start by two parties talking and then engaging others. The process must be flexible enough to permit this and parties must be able to approach settlement discussions with a view to achieving success. The Board does agree that, where possible, the results of the settlement discussion should be shared with all parties as soon as consensus is reached. Too often, in recent proceedings, a settlement agreement has been tabled at the opening of the hearing which served to frustrate non-participating parties and to call into question the appropriateness of the settlement agreement (as HRM and Dr. Allen have done), in circumstances where the agreement may be appropriate. The Board urges applicants to share any settlement agreement with all parties at the earliest possible time.

## **2.2 Dr. Allen's Submissions**

[12] Dr. Allen filed final and reply submissions with respect to the matters before the Board. In his reply submission, and in correspondence with the Board, he alleged that he was not permitted to give evidence.

[13] As is the case in all regulatory proceedings before the Board, pursuant to the Board's Rules (which are readily available on the Board's website), the Board issued a Hearing Order containing the timetable to apply to the proceeding. The timetable was as follows:

IT IS ORDERED that the Application be heard at a sitting of the Board to be held at the offices of the Board at Summit Place, 3rd Floor, 1601 Lower Water Street, Halifax, Nova Scotia, commencing on Monday, October 17, at 9:00 a.m. An evening session will be scheduled for Monday, October 17, 2010 at 7:00 p.m., provided speakers have registered to speak;

IT IS FURTHER ORDERED that the following timetable will apply to this proceeding:

Filing Date	Wednesday, June 15, 2011
Preliminary Issues List	Tuesday, June 28, 2011
Filing of Notices of Intervention	Thursday, July 7, 2011
Comments by Intervenors and Heritage on Preliminary Issues List	Friday, July 8, 2011
Final Issues List Determined by the Board	Tuesday, July 12, 2011
First Round of Information Requests (IRs) to Heritage	Friday, July 15, 2011
Heritage Responses to IRs	Friday, July 29, 2011
Second Round of IRs to Heritage	Friday, August 5, 2011
Heritage Responses to IRs	Friday, August 19, 2011
<b>Filing of Evidence by Intervenors and Board Counsel Witnesses</b>	<b>Wednesday, September 7, 2011</b>
Heritage IRs to Witnesses and Intervenors	Wednesday, September 14, 2011
Responses to Heritage IRs	Monday, October 3, 2011
Filing of Rebuttal Evidence by Heritage	Tuesday, October 11, 2011
Letters of Comment	Tuesday, October 11, 2011
Requests to Speak	Tuesday, October 11, 2011
Hearing Commences	Monday, October 17, 2011

[Emphasis added]

[14] The Board's Order normally provides that evidence in any regulatory proceeding is to be provided in writing in advance of the oral hearing so that the positions of all parties are disclosed in advance of the hearing and each of the parties knows the case they have to meet. Often, as is the case here, the Board provides the opportunity for written Information Requests based on that written evidence. By following this process there is transparency and disclosure. There is a complete record

by the time the oral hearing starts. Disclosure is essential to a fair regulatory proceeding. In this proceeding, as is clearly set out in the timetable, in order to give evidence at the hearing, Intervenors had to pre-file that evidence by Wednesday, September 7, 2011.

[15] Dr. Allen did not file pre-file any evidence and indeed did not ask Information Requests of Heritage or any other party. He then arrived at the oral phase of the hearing wanting to provide evidence in circumstances where the date for supplying evidence was long past.

[16] Dr. Allen was permitted to, and did, file extensive written argument with respect to the matters before the Board including the merits of the Agreement. Indeed, in the end, he attached a copy of the evidence he wanted to give orally to his final written submission.

[17] Should Dr. Allen wish to become a party to future proceedings he is welcome to participate in all phases, including the pre-filing of evidence and speaking to that evidence in the proceeding, but should understand that the Board's Rules will be enforced.

[18] His final submission included evidence regarding Heritage customer growth, rate of return and cost of debt. Since he did not pre-file this evidence, there was no opportunity for the other parties to test it either through Information Requests or cross-examination. While the Board finds Dr. Allen's submission interesting and informative, it cannot be given the weight accorded to evidence properly filed in the proceeding.

[19] Dr. Allen, in his reply submission, argued:

At this time Dalhousie enjoys the delivery of natural gas at a rate that is only minutely above the commodity cost of natural gas. How will the supply of natural gas to Dalhousie by an alternate supplier reduce the cost of natural gas to Dalhousie and how would this be in the greater public interest of increased gas distribution in the Heritage Gas franchise area? No evidence was presented to establish that this would benefit Dalhousie. No evidence was presented that this would not be harmful to Heritage Gas in its mission to distribute gas in the franchise area, and to its other customers.

On the one hand it is the desire of all parties that Heritage Gas increase its revenue, increase its customer base and succeed in delivering gas to a much larger portion of its franchise area. On the other hand it is obvious that if Dalhousie were allowed to obtain gas from an alternate supplier than the business prospects for Heritage Gas would be seriously diminished. I do not agree with the return on equity and cost of debt sought by Heritage Gas, nor on the feasibility test method, however, I argue that Heritage Gas has moved expeditiously to deliver gas to a certain portion of its franchise area, has done this in a professional and competent manner, and has invested more than \$100 million in doing so. Why should the UARB allow Dalhousie to buy from another supplier and impair the financial prospects and increase the risks for Heritage Gas?

[Dr. Allen Reply Submission, p. 1]

[20] In this regard it is important to recognize that the Board does not regulate the commodity transaction, although Heritage is required to file reports with the Board to demonstrate that the cost of gas is not subsidized by the distribution rates.

[21] The Board does not share Dr. Allen's opinion that Heritage's business would be impaired if Dalhousie, or any other customer, were to purchase gas from an alternate supplier. Heritage does not earn a profit on the purchase and sale of the commodity, but merely passes the cost of gas along to the customer with a small premium to recover its costs of administering the transaction. Heritage's business under the *Gas Distribution Act*, R.S.N.S., 1997, c. 4 (the "*Act*") is the distribution of natural gas through its system. Under the *Act*, the sale of gas is an unregulated business. If Dalhousie were to arrange an alternate supply of natural gas, it would still be delivered through the Heritage distribution system at the approved rates and the distribution revenues would continue to be paid to Heritage. Indeed, even if all of Heritage's customers were to find alternate gas supply from other gas marketers,

Heritage's financial picture would not appreciably change. It is even conceivable that third parties marketing natural gas could help accelerate system expansion to some degree. In any case, it is the Board's view that there would not be a detrimental impact on Heritage's primary business of distributing natural gas.

### **2.3 HRM Position on the Settlement Agreement**

[22] HRM also made a final submission but had not earlier submitted pre-filed evidence. In its submission HRM suggested, as Dr. Allen had, that the process leading to the Agreement was flawed in that HRM was not notified that settlement discussions were underway and was not given an opportunity to participate in arriving at the Agreement.

[23] HRM is generally supportive of the Agreement, but added that:

- The Board should revisit whether Heritage can still be considered a greenfield utility at the point it begins repayment of the revenue deficiency account, and;
- The Board should address the relationship between Heritage's market penetration and the approved return on equity.

### **2.4 The Heritage Gas Settlement Agreement**

[24] The Agreement, in part, states:

#### **1. Working Capital and Lead/Lag study**

Heritage Gas will remove from working capital Prepaid Expenses in the amount of \$180,000.00.

#### **2. Capitalization policy**

One hundred percent (100% of insurance costs will be expensed and not capitalized.

#### **3. Capital structure (rate of return, cost of debt and debt/equity ratio)**

For the test period, Heritage Gas will have the following capital structure:

Rate of return	11.00%
Cost of debt	7.25%
Debt/equity ratio:	55:45

#### **4. Revenue Deficiency Account (RDA)**

As set forth in the Application, subject to the right of Heritage Gas, as described in the NSUARB Order of September 10, 2010, to apply for an increase in the rates and/or the cap due to unforeseen circumstances.

#### **5. Proposed rates, tolls and charges**

The difference between a rate of return of 11.75% and the agreed rate of 11.0% will be applied 75% to reduction of the RDA balance and 25% to reduction of distribution rates. This and the other above noted changes will result in average annual rate increases of 8.25% (2012), 6% (2013) and 3% (2014). The Heritage Gas revised Revenue Requirement is summarized in the revised Schedule 3.1 and the year-over-year Rate Increases and Revenue to Cost Ratios attached as Attachment 1. The revenue requirement reduction associated with the reduced cost of capital will be apportioned between delivery revenue and the RDA as outlined in the revised Table 3.1.

#### **6. Encouragement by Heritage Gas Limited of a competitive gas supply market**

Heritage Gas will proceed immediately with the necessary steps to enable large volume customers to obtain natural gas commodity supply from alternative suppliers as soon as is reasonably possible and in no event later than April 1, 2013. Any costs reasonably and prudently incurred by Heritage Gas to implement these steps, to the extent that any such costs are not appropriately allocated to the Gas Cost Recovery Rate, shall be accumulated in a deferral account. Responsibility for the payment of the costs accumulated in this account will be determined by the Board.

...

8. All other matters are as set forth in the Application.

[Exhibit H-30, pp. 2-3]

[25] The Board finds that the above excerpt from the Agreement addresses the following items on the Amended Final Issues List:

- 1) Operating costs and revenue requirements
- 4) Working capital and lead/lag study
- 5) Test period and customer growth
- 6) Capitalization policy
- 7) Capital structure (Rate of Return, cost of debt and debt/equity ratio)
- 8) Amortization and depreciation
- 9) Revenue Deficiency Account
- 10) Capital Expenditure
- 12) Proposed rates, tolls and charges
- 13) Encouragement by Heritage Gas Limited of a competitive gas supply market.

[26] In HRM's closing submission it stated:

On balance, HRM supports the Minutes of the Settlement. ...

[HRM Closing Submission, p. 3]

[27] The Province made the following comment in its closing submission:

Although the Department of Energy is not a signatory to the settlement agreement, it was pleased to see that Heritage Gas and representatives of its consumers were able to achieve a consensus resolution on a path forward for the next few years, and believes that such a cooperative approach helps to achieve the benefits contemplated in the Energy Strategy. ...

[Province Closing Submission, p. 2]

[28] In this Application the Board considered Heritage's 2011 Annual Report on its Activities and Plans to Fulfill its Mandate in the Franchise Award.

[29] Heritage's rebuttal submission stated:

Heritage Gas looks forward to working co-operatively with HRM to build out its system including the development of a pilot project to creatively address the challenges of infill in established residential neighbourhoods.

[Heritage Rebuttal Submission, p. 3]

[30] The Board has discussed the "public interest" as it relates to settlement agreements in *Re Nova Scotia Power*, 2009 NSUARB 140:

[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.

[31] The Board understands that the components of a settlement agreement are interrelated and the subject of compromise. As such the Board must take care if it decides to alter any one component as it may unbalance the overall result. Regardless, the Board has some comments on two parts of the Agreement.

[32] The Board agrees with treating insurance costs as an expense. The Board finds that this is the first step towards the development of a more traditional policy on the capitalization of operating expenses. This topic will continue to be a focus for the next general rate hearing.

[33] The Board finds that the reduction in the rate of return and the cost of debt ("cost of capital") is appropriate given the current economic climate and the maturing of the utility. All parties to the Agreement, as well as the Board, were advised by experts on cost of capital. The agreed cost of capital is within the range suggested by the various experts. The Board accepts, because of the nature of the Agreement, the

amount of the reduction in the cost of capital. Cost of capital will continue to be a focus at the next general rate hearing.

[34] The Board accepts, subject to a Compliance Filing, items 1 to 6 and 8 of the Agreement. The issue as to whether Heritage is a mature utility can be reviewed at the next general rate hearing.

### **3.0 OTHER WRITTEN AND ORAL SUBMISSIONS**

[35] Mr. Michael Poulton provided a letter of comment which proposed a method of financing expansion of the distribution system.

[36] Mr. Philip Fraser, President and CEO, Killam Properties, also provided a letter of comment and gave an informal brief presentation. Mr. Fraser's chief concern was that Heritage's allowed rate of return was excessive, even at the 11% proposed in the Agreement.

[37] Neither Mr. Poulton nor Killam Properties was a registered Intervenor but the Board always reviews such submissions seriously and thoughtfully. The Board sincerely appreciates the time, effort and interest of those who have expressed their views to the Board during this hearing.

### **4.0 2012 COST OF SERVICE**

[38] The Agreement also included the following item:

#### **7. Cost of Service Study (COSS)**

The COSS prepared by Chymko Consulting Ltd. will be used for setting 2012 rates. The parties request that a specific COSS proceeding be established leading to a hearing in 2012. Results from the 2012 COSS hearing would be reflected in rates commencing January 1, 2013.

[Exhibit H-30, p. 3]

[39] The Consumer Advocate commented:

The Settlement Agreement provides for a specific cost of service study ("COSS") process to occur in 2012 and that any changes to the COSS resulting from that hearing be implemented beginning in 2013.

In arriving at the proposal regarding COSS matters, the Consumer Advocate was of the view that rate impacts associated with changes to the COSS are most appropriately implemented during years of relatively consistent rate increases across classes. Under the terms of the proposed Settlement Agreement, 2012 year-over-year rate increases are 6.5% for rates 1 and 2, and 20.2% for rate 3.

The Consumer Advocate acknowledges that much of the evidence regarding costs of service related matters has been the subject matter of testimony in this matter. The Consumer Advocate would therefore suggest that the COS hearing could proceed fairly early in 2012.

[CA Closing Submission, p. 2]

[40] Heritage added:

2. Cost of Service Study (COSS) and Rate Design

This matter is addressed in paragraph 7 of the Settlement Agreement. Heritage Gas supports the Settlement Agreement provision which provides for a "stand alone" COSS hearing in 2012. Heritage Gas requests that the Board set a date for such a hearing which will allow sufficient time for any revisions to rates arising from this proceeding to be effective as of January 1, 2013.

3. Mains Classification

The issue of mains classification is inherent to and enmeshed with Issue 2. Heritage Gas submits that it should be considered during the COSS hearing to be held in 2012.

[Heritage Post Closing Submission, p. 4]

[41] Heritage also commented upon the adoption of US GAAP:

Heritage Gas has proposed to adopt US GAAP accounting principles. The consequences of that proposal have been addressed in its evidence. The Board's consultant, Larkin & Associates has concluded that the adoption of this method of accounting is appropriate. (Direct Evidence of Donna Ramas, CPA commencing at page 3, line 60).

[Heritage Post Closing Submission, p. 6]

[42] The Board notes the request to defer costs incurred to enable large volume customers to obtain gas supply from an alternative supplier. In particular, the Agreement states:

... Responsibility for the payment of the costs accumulated in this account will be determined by the Board.

[Exhibit H-30, p. 2]

[43] The Board finds that the above item of the Agreement satisfies the following items on the Amended Final Issues List:

- 2) Cost of Service study and rate design
- 3) Mains classification

[44] The Board notes that Heritage's request to adopt US GAAP is the subject of another application. It will be dealt with by the Board in due course. There is a possibility that the adoption of US GAAP may create financial account balances different than those used in Heritage's present regulated financial statements.

[45] The Board agrees that a separate cost of service application should be heard. The Board finds that the mains classification, disposition of the deferral of costs to enable alternative suppliers, and US GAAP transition items (if any) should be included in the COSS application.

## **5.0 AFFILIATE CODE OF CONDUCT**

[46] Heritage's Application includes costs related to services provided by an affiliate company, AltaGas Utility Group Inc. ("AUGI") in the matters of financial reporting and control. These services are described under two categories as operational services and financial market services. The estimated cost of operational services for 2012 is

\$666,023 and is adjusted over the remaining two test years. The cost of financial market services is estimated at \$1,066,176 per year, but only one-third of this amount is included in year 2012, two-thirds of the amount in year 2013 and full cost is included in year 2014.

[47] The allocation of direct operational services cost is based on the percentage of time spent by the AUGI employees on Heritage matters. The financial market services cost is billed to Heritage based on a composite allocator which is a simple average of the following three variables:

1. Heritage Gas' Total Assets in dollars divided by the dollar sum of the Total Assets of All AUGI operating companies;
2. Heritage Gas' Revenues in dollars divided by the dollar sum of the Total Revenues of All AUGI operating companies;
3. Heritage Gas' Capital Expenditures in dollars divided by the dollar sum of the Total Capital Expenditures of All AUGI operating companies;

[Exhibit N-1, p. 113 of 671]

[48] The third party costs incurred by AUGI to provide direct operational services are directly allocated to Heritage. The third party costs incurred to provide the financial market services are allocated based on the composite allocator noted above.

[49] The Board, at the hearing, questioned Heritage on the need for an Affiliate Code of Conduct given the costs being billed by its affiliate. Heritage responded as follows:

MR. BRACKEN: --- providing those services. It's not an affiliate code. I think it includes all the things that we need in order to get those services from AltaGas.

We don't have a draft code of conduct. I think it would be appropriate for us to have a code of conduct, particularly as we get further down the road of some of these gas supply issues that we're talking about.

THE CHAIR: So if we, as part of this decision, directed you to prepare for submission to us a draft code of conduct that would be okay with you?

MR. BRACKEN: --- Yes.

[Transcript, p. 85]

## **Findings**

[50] AUGI, an affiliate of Heritage, is providing operational and financial services to Heritage as per the agreement between them. The Board's concern is the reasonableness of these costs and whether an outside agency can provide the same services more economically to its customers. Heritage has agreed to draft an Affiliate Code of Conduct for approval by the Board. The Board orders Heritage to provide in the Compliance Filing a proposed timetable of milestones leading to Board approval of the Affiliate Code of Conduct.

## **6.0 SUMMARY OF FINDINGS**

[51] The following summarizes the Board's findings:

- a) The Agreement is approved;
- b) The cost of service hearing in June 2012 will include mains classification, disposition of the deferral of costs to enable alternative suppliers, and US GAAP transition items;
- c) The Compliance Filing will include a proposed timetable of milestones leading to Board approval of the Affiliate Code of Conduct.

## **7.0 COMPLIANCE FILING**

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

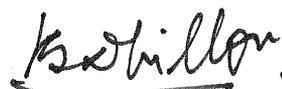
[53] The Formal Intervenors must provide comments, if any, no later than December 16, 2011.

[54] An Order will issue following review of the Compliance Filing.

**DATED** at Halifax, Nova Scotia, this 24<sup>th</sup> day of November, 2011.



\_\_\_\_\_  
Peter W. Gurnham



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Kulvinder S. Dhillon



\_\_\_\_\_  
Murray E. Doehler