

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE PUBLIC UTILITIES ACT**

- and -



**IN THE MATTER OF AN APPLICATION** of the **MUNICIPALITY OF ANNAPOLIS COUNTY**, on behalf of its **WATER UTILITY**, for Approval of Amendments to its Schedule of Rates and Charges for Water and Water Services and its Schedule of Rules and Regulations

**BEFORE:** Murray E. Doehler, CPA, CA, P.Eng., Member

**APPEARING:** **MUNICIPALITY OF THE COUNTY OF ANNAPOLIS**  
W. Bruce Gillis, QC  
Solicitor

Maggie A. Shackleton, LL.B.  
Solicitor

**INTERVENOR:** **TOWN OF ANNAPOLIS ROYAL**  
Jonathan G. Cuming, LL.B.  
Solicitor

**HEARING DATE:** October 5, 2016

**FINAL EVIDENCE:** November 16, 2016

**ORIGINAL  
DECISION DATE:** **December 23, 2016**

**COMPLIANCE FILING  
DECISION DATE:** **March 17, 2017**

**DECISION:** **Schedule of Rates and Charges approved.**

## I INTRODUCTION

[1] The Municipality of the County of Annapolis (“County”) applied to the Nova Scotia Utility and Review Board (“Board”) on behalf of the Annapolis County Water Utility (“Utility” or “Applicant”) for amendments to its Schedule of Rates and Charges for Water and Water Services and its Schedule of Rules and Regulations pursuant to the *Public Utilities Act*, R.S.N.S. 1989, c. 380 as amended (“Act”).

[2] In addition to its retail customers, the Utility provides water at a wholesale rate to the Annapolis Royal Water Utility in the Town of Annapolis Royal (“Town”). The existing Schedule of Rates for Water and Water Services and Schedule of Rules and Regulations have been in effect since April 1, 2011, and November 1, 2009, respectively.

[3] A rate study to support the Application, dated February 19, 2016, was subsequently amended in advance of the hearing on the merits held on October 5, 2016.

[4] The Board issued its Decision on the Application on December 23, 2016 [2016 NSUARB 218], in which it approved the Schedule of Rates and Charges, subject to a compliance filing related solely to joint use percentages. In that Decision the Board found:

[66] In determining joint use percentages, it is these other physical attributes that can be used to derive an appropriate percentage (as was done for Transmission and Distribution). They should not be reliant on the output (quantity of water produced). They need to be allocated based on the physical element (or elements) that cause costs. A major cost item in a category could be used as a proxy for the total of the expense category. As examples:

- i) The main expense for Source of Supply is for buildings. The physical attribute could be square footage of the buildings.
- ii) For Power and Pumping the main expense is for electrical. The physical attribute could be power consumption.
- iii) For Water Treatment, the main expense is wages and salaries followed by operational materials and supplies. The physical attribute could be a combination of direct hours and the usage of supplies.

vi) For taxes the assessed value of the property in each system.

[67] The above are examples and not necessarily what should be used by the Utility to determine appropriate joint use expense percentages. The Utility is directed to determine the appropriate attributes that can be used to calculate joint use expense percentages so as to come as close as possible to only have the expenses for the Granville Ferry system in the wholesale rate. The evidence to support the attributes and the determination of the joint use percentages are then to be submitted as part of a compliance filing. The compliance filing is to also include the application of these percentages in the determination of the wholesale rate.

[5] The Board requested that the compliance filing (“first compliance filing”) be submitted by January 13, 2017, and the Town was given the opportunity to respond by January 27, 2017.

## II COMPLIANCE FILINGS

[6] The first compliance filing was received on January 13, 2017, and the Town’s response was received by the Board on January 27, 2017.

[7] In the first compliance filing an explanation was given for the reallocation and reclassification for the four expense categories identified in the Decision. The notes that accompanied this filing included:

3. A portion of the Electrical expense item has been moved from Power and Pumping to Water Treatment based on discussions with the Utility Staff to reflect the cost of operating the Cornwallis Water Treatment Plant. The supply systems in Margaretsville and Granville Ferry both require pumping while the supply system in Cornwallis is gravity fed. The electrical cost for the Cornwallis Water Treatment Plant (\$33,222) has been moved [to] water treatment in Worksheet B-2a/b/c/d/e.

...

5. Each expense item in the Water Treatment cost centre has been reviewed by the County of Annapolis Water Utility Staff and has been assigned the percentage that applies to the Granville Ferry supply source. Wages and benefits were assigned a 25% allocation based on the salaries paid to each operator and the need for an ORDC for all facilities. Common use items were assigned a 33% allocation based on the operation of three water treatment facilities by the Annapolis County Water Utility. Building maintenance and related items were assigned a 10% or 15% allocation to Granville Ferry depending on the expense due to the more complex building in Cornwallis Park Water Treatment Plant. Operational Equipment was assigned a 20% allocation due to the significant amount [of] time needed for the operation and maintenance of the Chlorine disinfection system in Granville Ferry. Electrical Cost was assigned a 0% allocation (see Item 3 above). The Town of Annapolis Royal allocation calculated for Granville Ferry Water Supply System is applied to the

allocation for Water Treatment calculated using the above methodology to arrive at the Town of Annapolis Royal rate.

[Compliance filing, pp. 1-2]

[8] The joint use percentages were changed, as identified above, as well as the allocation for the Town usage which is now based on:

... the percentage of the water produced for Granville Ferry compared to the total water produced at both Granville Ferry and Margaretsville.

[Compliance filing, p. 2]

[9] When the joint use and usage percentages are combined, the total of the expense category allocated to the Town changes from 29.25% to 22.28% for Source of Supply, from 29.5% to 60.21% for Power and Pumping (albeit at a significantly reduced base), from 29.25% to 12.38% for Water Treatment, and from 29.25% to 26.26% for Taxes. The net effect of all of these adjustments is a substantial reduction in the wholesale rate that is to be paid by the Town.

[10] The Town, in its response, essentially agreed with the treatment of the Source of Supply, but disagreed with the joint use percentages for the other three categories. No comments were made about the change in the usage allocation. The Town presented other things to consider in the calculation of the wholesale water rate.

[11] W. Bruce Gillis, on behalf of the Utility, wrote on February 7, 2017, stating:

With the "Post Hearing Submissions" which I take to be the comments invited by the Board from the Town, the Intervenor attaches to it 7 tabs which appear to me to be additional evidence that was not presented to the Board and not considered by the Board in its decision and accordingly, should not be considered at this stage.

The compliance filing submitted by the County contained, it is submitted, all of the information necessary for the Board to proceed of additional evidence consisting of over 100 pages, the Town has purported to amplify its "comments" to include additional evidence which is not before the Board and which the County has not previously seen or been in a position to comment on.

Accordingly, it is submitted that the additional evidence attached to the Town's comments and the references to that evidence be rejected by the Board and that its decision be made based on the evidence properly before it.

[12] Jonathan Cuming, on behalf of the Town, responded on February 9, 2017, disagreeing with the conclusion stated by Mr. Gillis. One of the points raised by Mr. Cuming was that:

... the Town reviewed the County's historical records, along with the County's most recent financials and prepared its own calculations (calculations based on the County's own records) that it submits are more reflective of the actual expenses of the Granville Ferry Water Utility. The suggestion that the County has not seen this "additional evidence" ignores the fact that the only "evidence" that was submitted are the County's own records, which the Town respectfully submits ought to have been considered when preparing the compliance filing.

[13] The Board wrote to the parties on February 17, 2017, stating, in part:

The Board agrees with the Utility that the seven tabs of information is new evidence and will not be considered in preparing the final Order for this matter. As well, within the body of the Town's comments, there is additional information that had not been properly placed as evidence, as well as arguments to which the Utility should be given a chance to respond. The Town had also commented on areas that were not requested in the Decision. The Decision only requested input on the joint use percentage of four expense categories.

The Town has accepted the revised joint use percentage for Source of Supply. The Board asks the Utility, by March 3, 2017, to respond to the Town's comments on Power and Pumping, Water Treatment and Taxes.

[14] The Utility responded on March 3, 2017, with a revised compliance filing (the second compliance filing). The second compliance filing did not make any changes to the revenue requirements or to the usage percentages. It made a change to the Power and Pumping joint use percentage which had the effect of reducing the combined percentage from 60.21% to 42.94%. All other calculations in the first compliance filing were maintained.

[15] Mr. Cuming wrote on March 3, 2017, stating that the Town considered the first compliance filing (its comments upon which had already been received by the Board on January 27, 2017), to be a new rate study. The Town went on to state:

Notes 3 and 5 to the new rate study advise that the allocations used to determine the Town's share of various expenses were determined by County staff. Those allocations are not contained in any of the previous filings and, as such are new evidence. While the Town was provided the opportunity to comment on this new evidence, it has not been given the opportunity to challenge, either by cross-examination or through introducing rebuttal evidence, the accuracy of the proposed allocations.

### III FINDINGS

[16] The Board finds the first and second compliance filings were both based upon the evidence as presented at the hearing on the merits. At that time, the Town had the opportunity to request (but did not) more detail, and to analyze the components of the various expense categories and the respective derivations using whatever expertise it wished to bring to bear on the Application. The Board finds that the Utility's action amounts simply to a reconfiguration of the data which was in the original Application, and does not constitute new evidence. The Town, before and during the hearing on the merits, had ample opportunity to present its own such analysis and/or derivation of the data used in the Application, but did not do so.

[17] The Board finds the second compliance filing fulfills the requirements it set out in the December 23, 2016, Decision [2016 NSUARB 218]. The Schedules of Rates for Water and Water Service for the effective dates of April 1, 2017, and April 1, 2018, are approved.

[18] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 17<sup>th</sup> day of March, 2017.

  
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Murray E. Doehler