DECISION

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF AN APPLICATION by EFFICIENCY NOVA SCOTIA CORPORATION for Approval of its Electricity Demand Side Management Plan for 2015

BEFORE: Peter W. Gurnham, Q.C., Chair
Kulvinder S. Dhillon, P. Eng., Member
Roberta J. Clarke, Q.C., Member

COUNSEL: EFFICIENCY NOVA SCOTIA CORPORATION
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CONSUMER ADVOCATE
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SMALL BUSINESS ADVOCATE
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Ellen Burke, LL.B.

AFFORDABLE ENERGY COALITION
Brian Gifford
Donna Franey, LL.B.

CARIBBEAN EASTERN CANADA LINKS LIMITED
Dennis Keay

CLEAN NOVA SCOTIA FOUNDATION
Normand Gendron
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INDUSTRIAL GROUP
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Mark V. Rieksts, LL.B.
Bob Green
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NOVA SCOTIA POWER INC.
Nicole Godbout, LL.B.
Anne-Marie Curtis

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

HEARING DATE: July 22, 2014

FINAL SUBMISSIONS: July 29, 2014

DECISION DATE: September 8, 2014

DECISION: Settlement Agreement approved. Directions provided at paragraph [45].
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1.0 INTRODUCTION


[2] In accordance with the Board’s Hearing Order, the Notice of Hearing was advertised in both the Halifax Chronicle Herald and the Cape Breton Post on May 24, 2014; May 31, 2014; and June 4, 2014.


[4] The Board provided a Final Issues List which identified the following as the issues to be considered in the hearing:

1. Proposed 2015 DSM Resource Plan -- Appendix A
3. Preliminary Cost Allocation Tables -- Appendix C
4. Evaluation reports of 2013 DSM programs (Econoler)
5. Verification report of 2013 DSM programs (Peach)
6. HST status
8. ENSC Management and Financial Controls
The hearing took place at the Board’s office in Halifax on July 22, 2014. John P. Merrick, Q.C. and William L. Mahody, LL.B., appeared on behalf of the CA; E. A. Nelson Blackburn, Q.C., appeared on behalf of the SBA; Brian Gifford represented the AEC; Dennis Keay appeared on behalf of Caribbean; Normand Gendron appeared on behalf of Clean Nova Scotia; Nancy G. Rubin, Q.C., represented the Industrial Group; Mark V. Rieksts, LL.B., represented NSDOE; and Nicole Godbout, LL.B., appeared on behalf of NSPI. S. Bruce Outhouse, Q.C., acted as Board Counsel.

On June 13, 2014, the Board received a complaint from Chuck Ross, on behalf of National Foam Supply, regarding ENSC’s contractor procurement practices. The Board determined that it would deal with the complaint as part of this proceeding, and advised Mr. Ross and the parties accordingly by letter dated June 20, 2014. Mr. Ross subsequently requested the opportunity to speak at the public session of the hearing, and did so on July 22, 2014.

After hearing Mr. Ross’s presentation, and his responses to questions from the Board, the Board determined that, as he was not a party to the Settlement Agreement, it would be more appropriate to address his complaint in a separate process. The Board advised the parties of the proposed process by letter dated July 31, 2014.

The following parties pre-filed evidence with the Board: ENSC, the AEC, Caribbean, the Industrial Group and the SBA. The evidence of Alice Napoleon, of
Synapse Energy Economics, Inc., and Mel Whalen, of Multese Consulting Inc., was filed on behalf of Board Counsel.

[9] The ENSC Panel consisting of: Allan Crandlemire, Chief Executive Officer; Stephen MacDonald, Chief Operating Officer; Chuck Faulkner, Director of Efficiency Programs; Gina Thompson, Director of Finance; and Julie-Ann Vincent, Manager of Regulatory Affairs, testified at the hearing. Additionally, Dennis Keay testified on behalf of Caribbean.

[10] The Board received no letters of comment in connection with this Application. The only registered speaker was Mr. Ross, noted above.

[11] Closing Submissions were received on July 29, 2014 from the SBA, the CA, NSDOE, Caribbean, AEC, and ENSC.

2.0 BACKGROUND

[12] Prior to January 26, 2010, the electricity DSM conservation and energy plan for Nova Scotia was administered by NSPI. ENSC was established under the Efficiency Nova Scotia Corporation Act, S.N.S. 2009, c. 3, as amended (the “ENSC Act”).

[13] In order to transfer responsibility for administration of DSM from NSPI to ENSC, a transition plan was developed, pursuant to ss. 40-41 of the ENSC Act. The transition plan was approved by the Board, subject to conditions, by letter dated September 22, 2010, which provided certain directives, with which ENSC complied.

[14] A new regime for DSM activities was established under the Electricity Efficiency and Conservation Restructuring (2014) Act, S.N.S. 2014, c. 5 (“2014 Act”). Responsibility for DSM measures, including programs and administration, is to be
transferred from ENSC to a franchise holder, effective January 1, 2015. Approvals granted to ENSC by the Board for recovery of charges for DSM have no effect as of that date.

[15] A franchise will be granted by the Minister of Energy to a body corporate to provide electricity efficiency and conservation measures to NSPI. ENSC will form a new corporation and hold the franchise in the 2015 transition year.

[16] The legislation provided for amendments to the Public Utilities Act, R.S.N.S 1989, c. 380, as amended, ("PUA"). The relevant sections, for the purposes of this Decision, are:

**79A** In this Section and Sections 79B to 79V,

... (b) “electricity efficiency and conservation activities” means activities, programs or plans relating to

(i) the efficient use of electricity,

(ii) the conservation of electricity,

(iii) the alteration of the consumption pattern of an end user of electricity that has the effect of reducing demand during Nova Scotia Power Incorporated's periods of highest demand,

(iv) the utilization or management by Nova Scotia Power Incorporated of its electrical system in a more cost-effective manner,

(v) the delivery of a reduction in the amount of electrical energy or capacity that Nova Scotia Power Incorporated would otherwise be required to supply to its customers, or

(vi) any other prescribed activities, plans or programs;

(c) “franchise” means a franchise granted pursuant to Section 79C;

(d) “franchise holder” means a body corporate granted a franchise pursuant to Section 79C;

... **79B** (1) Upon invitation by the Minister, a person may apply for a franchise.

(2) An applicant for a franchise shall provide the Minister with such information as may be prescribed, in such time and manner as may be prescribed.

(3) Neither Nova Scotia Power Incorporated or any of its affiliates may apply for a franchise. 2014, c. 5, s. 15.
79C (1) Upon application pursuant to Section 79B, the Minister may grant an electricity efficiency and conservation franchise pursuant to this Section.

(2) A franchise

(a) gives the franchise holder the exclusive right to supply Nova Scotia Power Incorporated with reasonably available, cost effective electricity efficiency and conservation activities for the purpose of this Act;

(b) is for a term of nine years ending December 31st in the ninth year of the franchise;

(c) is subject to any terms or conditions specified by the Minister in the grant of the franchise; and

(d) may be terminated by the Minister for a breach of a term or condition specified by the Minister in the grant of the franchise, for a failure by the franchise holder to achieve a performance requirement established by the Board pursuant to subsection 79M(1) or 79R(4) or if the agreement between the franchise holder and Nova Scotia Power Incorporated is terminated by the Board pursuant to clause 79N(2)(c).

(3) At the request of the Minister, the Board shall review and assess the extent to which a franchise holder is in compliance with any of the terms, conditions or performance requirements referred to in subsection (2).

(4) A franchise holder and Nova Scotia Power Incorporated shall provide the Board with the information and evidence the Board considers necessary for the purpose of a review and assessment pursuant to subsection (3).

(5) No transfer or assignment of a franchise is effective without the approval of the Minister.

79G (1) The Board has the general supervision of a franchise holder in relation to the franchise holder’s franchise activities, and may make all necessary examinations and inquiries, keep itself informed as to the compliance by the franchise holder with the law and obtain from the franchise holder all information necessary to enable the Board to fulfil its duties.

(2) For the purpose of Sections 15 to 19, 21, 22, 25, 27 to 29, 34, 46, 47, 49 to 51, 63, 76, 79, 80, 83 to 85, 88 to 106 and 111 to 118, a franchise holder is deemed to be a public utility in relation to its franchise activities and those Sections apply mutatis mutandis to the franchise holder with respect to those activities.

(3) The Board may order and thereupon a franchise holder shall furnish to the Board an independent savings review of the franchise holder’s franchise activities to identify potential savings by the franchise holder.

(4) The Board may order that the independent savings review pursuant to subsection (3) include

(a) an assessment of the franchise activities of the franchise holder;

(b) an assessment of the franchise holder’s fiscal management of its revenue and expenses relating to its franchise activities;
(c) a value-for-money assessment examining the economy, efficiency and effectiveness of the operations and management of the franchise holder’s franchise activities; and

(d) such other matters as the Board considers relevant to the assessment of potential savings.

(5) An order made pursuant to subsection (3) may include such terms or conditions as the Board considers necessary or advisable.

(6) A franchise holder shall, on the request of the Board, by the date requested by the Board, provide reports to the Board, dealing with such matters and in such detail as the Board may require or as may be prescribed.

79H The Board shall determine the cost-effective electricity efficiency and conservation activities that must be undertaken for the purpose of this Act.

79I (1) On and after the Implementation Date, Nova Scotia Power Incorporated shall undertake cost-effective electricity efficiency and conservation activities that are reasonably available in an effort to reduce costs for its customers.

(1) No agreement between Nova Scotia Power Incorporated and a franchise holder, including an agreement amending such an agreement, is valid until it has been approved by the Board pursuant to this Section.

(2) Where Nova Scotia Power Incorporated and a franchise holder have finalized an agreement, either or both of them may apply to the Board for approval of the agreement.

(3) Regardless of which makes the application, both Nova Scotia Power Incorporated and the franchise holder are applicants.

(4) Upon receiving the application, the Board shall, when establishing a process for the review and approval of the application, ensure that an applicant that did not file the application has sufficient time, as the Board may determine, to prepare the information or evidence required by subsection (5).

(5) Each of the applicants shall provide any information or evidence required by the Board for its determination of the application.

(6) Notwithstanding subsection (5), in the application, the franchise holder is primarily responsible to provide information and evidence to the Board to justify the electricity efficiency and conservation activities that it proposes to undertake for Nova Scotia Power Incorporated, and Nova Scotia Power Incorporated is entitled to rely upon the expertise of the franchise holder in respect of the delivery of the electricity efficiency and conservation activities.

(7) Notwithstanding subsection (6), in the application, the franchise holder is entitled to rely upon the written information and evidence filed with the Board by Nova Scotia Power Incorporated for the purpose of the application and proceeding.

(8) The Board shall approve an agreement pursuant to this Section if, in addition to any other matters considered appropriate by the Board, it is satisfied that the agreement, including the proposed electricity efficiency and conservation activities that are the subject of the agreement, is in the best interests of Nova Scotia Power Incorporated’s customers and satisfies the requirements of Section 79J.
The Board’s assessment of the proposed electricity efficiency and conservation activities for the purpose of the approval must take into account their affordability to Nova Scotia Power Incorporated’s customers, along with any other matters considered appropriate by the Board or as may be prescribed.

79M  (1) In making an order approving an agreement pursuant to Section 79L, the Board shall establish such performance requirements for the franchise holder as the Board considers appropriate. 

79N  (1) Neither party to an agreement approved pursuant to Section 79L may terminate the agreement without the approval of the Board.

(2) Notwithstanding Sections 79L and 79J, upon receiving an application to terminate an agreement pursuant to this Section, the Board may, based on its assessment of the matter and its determination of what is in the best interests of Nova Scotia Power Incorporated’s customers,

(a) provide directions to the parties as if the application were made pursuant to subsection 79P(1);

(b) terminate the agreement and establish a new agreement between the parties for any period up to the date on which the terminated agreement would have expired if not terminated as if the application were made pursuant to subsection 79J(3); or

(c) terminate the agreement and permit Nova Scotia Power Incorporated to meet its obligation pursuant to subsection 79J(1) in the manner approved by the Board, subject to any terms or conditions considered appropriate by the Board.

79Q  (1) Notwithstanding clause 79C(2)(b), the first franchise granted after the coming into force of this Section expires December 31, 2024.

(2) Notwithstanding Sections 79J and 79J, for the purpose of Section 79J, Nova Scotia Power and the holder of the first franchise granted after the coming into force of this Section are deemed to have entered into an initial agreement for the supply of electricity efficiency and conservation activities by the franchise holder to Nova Scotia Power Incorporated, as set out in this Section, for a term commencing on the Implementation Date and ending on December 31, 2015.

(3) The franchise holder shall develop a proposal setting out electricity efficiency and conservation activities for the period referred to in subsection (2) and apply to the Board to approve the activities for the purpose of the agreement.

(4) An application pursuant to subsection (3) is deemed to be an application for the approval of an agreement pursuant to Section 79L and Section 79L applies, mutatis mutandis, to the application.

79R  (1) In making an order approving electricity efficiency and conservation activities pursuant to Section 79Q, the Board shall approve the amount that the franchise holder may spend to supply the activities, which must not exceed the sum of

(a) $35,000,000; and
(b) the amount of any over recovery of funds by Efficiency Nova Scotia Corporation during 2013.

(2) In making an order approving electricity efficiency and conservation activities pursuant to Section 79Q, the Board shall approve the amount that the franchise holder may charge to Nova Scotia Power Incorporated for the activities, which must not exceed the lesser of

(a) $35,000,000; and

(b) the amount approved by the Board pursuant to subsection (1) less the amount of any over recovery of funds by Efficiency Nova Scotia Corporation during 2013.

(3) The recovery by Nova Scotia Power Incorporated from its customers of the amount charged to it by the franchise holder, as permitted by subsection (2), must be deferred, and must be recovered by Nova Scotia Power Incorporated, including through its rate base, over the eight-year period beginning January 1, 2016.

(4) In making an order with respect to an application pursuant to Section 79Q, the Board shall establish such performance requirements for the franchise holder as it considers appropriate and may establish such other terms or conditions for the initial agreement between Nova Scotia Power Incorporated and the franchise holder as the Board considers appropriate.

[17] Pursuant to s. 79R(1)(a) of the PUA, the Board is to approve the amount to be spent for 2015 to supply the DSM activities to NSPI, which is not to exceed the total of $35 million plus the amount of any over-recovery by ENSC during 2013. The over-recovery amount is $3,976,398, according to the Application. ENSC sought approval of the 2015 DSM Plan, spending for which included the full amount of the over-recovery.

[18] Among the issues identified by the Board in this proceeding were the 2013 DSM Evaluation Report dated April 20, 2014, prepared by Econoler (Exhibit E-5), and the Verification Review of Year 2013 Program Evaluation Results, dated June 5, 2014, prepared by H. Gil Peach & Associates (Exhibit E-3). In addition, the Board identified for consideration the 2014 Q1 DSM Report received from ENSC.
3.0 SETTLEMENT AGREEMENT

[19] At the opening of the hearing, Mr. Gogan filed Minutes of Settlement dated July 21, 2014 (“Settlement Agreement”), to which ENSC, the CA, the SBA, the AEC, the Industrial Group and Clean Nova Scotia had agreed. NSPI was not a signatory, but advised the Board that it did not oppose the agreement. In its Closing Submission, NSDOE recommended that the Board approve the Settlement Agreement. The Minutes of Settlement are attached as Schedule “A” to this Decision.

4.0 EVIDENCE OF CARIBBEAN EASTERN CANADA LINKS LIMITED

[20] Caribbean pre-filed evidence which its President, Mr. Keay, adopted at the hearing. Caribbean did not support the Settlement Agreement, and maintained that ENSC had not achieved the energy efficiency savings it claimed. It suggested that any reduction in electricity consumption was due to loss of industrial users and general economic activity, rather than efficiency. Further, Caribbean said that ENSC has failed to comply with both its statutory mandate to restrain future electricity use, and the directions of the Board in previous decisions on its applications. Finally, Caribbean examined energy policy in Nova Scotia and objected to the protection which it considers that NSPI enjoys due to its market monopoly.

[21] In its Opening Statement, and in its Closing Submission, Caribbean claimed that because ENSC had not rebutted its claims about ENSC’s reported performance, this in effect confirmed Caribbean’s claims. It urged the Board to order a “forensic quality audit” of the finances and operations of ENSC, and suspend ENSC activities in the interim.
5.0 ANALYSIS AND FINDINGS

5.1 Settlement Agreement

[22] As discussed in previous decisions, the Board generally views settlement agreements favorably, and, particularly, when widely supported by the parties. The Board is aware that NSPI has not signed the Settlement Agreement, but notes it did not oppose it. The Board also observes that NSDOE recommended its approval, and indeed the only party to oppose the Settlement Agreement is Caribbean.

[23] There were a number of questions raised in cross-examination of the ENSC panel, and by the Board, which expanded on the terms of the Settlement Agreement. In particular, ENSC committed to, subject to the Board’s directions:

- Provide the initial implementation report on the changes to the future delivery of DSM in the province to the DSM Advisory Group (“DSMAG”) by October 31, 2014, and file it with the Board within two weeks of that date;

- Continue quarterly reporting to the Board during 2015;

- File updates provided to the DSMAG on the implementation of recommendations of the Econoler and Peach reports to the Board;

- Provide the internal audit reports to the DSMAG by the end of April, 2015, and thereafter to the Board;

- Ensure that the external audit undertaken by KPMG regarding procurement practices examines whether they are in fact appropriate.

[24] In addition, ENSC confirmed that the process of evaluation and verification of the 2015 programs would be unchanged, unless otherwise approved by the Board.

Findings

[25] The Board observes that the Settlement Agreement addresses all of the items on the Final Issues List, with the exception of the ENSC 2014 Q1 Report, which the Board now accepts. The Board recognizes that 2015 is a transition year for ENSC and DSM programs in Nova Scotia. The Board is satisfied that the Settlement
Agreement represents a reasonable resolution of the issues, and approves it, accepting and relying on the undertakings of ENSC as outlined above.

5.2 Other Issues

5.2.1 Position of Caribbean

[26] Caribbean asserted that ENSC had not achieved the savings results it claims because NSPI's sales of electricity show increases. It further claimed that the absence of a rebuttal from ENSC to its claims confirmed that Caribbean is correct.

Findings

[27] The Board observes that, repeatedly, over the years since the inception of ENSC, there have been evaluation and verification reports filed with the Board by independent third parties which confirmed ENSC's claims. The Board saw no evidence to suggest that the results claimed by ENSC are inaccurate or misrepresented. Further, the Board does not accept Caribbean's argument that ENSC was in agreement with its claims because it filed no rebuttal.

[28] Further, the Board notes that an absolute increase in electricity sales by NSPI is not evidence of a failure of ENSC to achieve its savings, since the savings demonstrate the additional electricity consumption that would have occurred in the absence of the efficiency programs. As Mr. Faulkner stated in the hearing:

Fundamentally, we don't see the fact that Nova Scotia Power's load has grown and the fact that our efficiency programs have been successful as mutually exclusive outcomes. As I'm sure the Board knows, there are a lot of things that can affect year over year load growth from the utility, and sometimes those more than offset the energy savings through efficiency programs...

[Transcript, pp. 54-55]

5.2.2 Performance Requirements

[29] Under s. 79R(4) of the PUA, the Board is required to set performance requirements for the franchise holder for 2015, and may establish other terms or
conditions for the initial agreement between NSPI and the franchise holder as the Board considers appropriate.

[30] ENSC stated, in response to NSPI IR-1(a), and as confirmed by Ms. Vincent at the hearing, that the two requirements it proposed for 2015 are “...achievement of the total incremental annual net energy and demand savings targets...” Ms. Vincent claimed these were appropriate as part of the transition, and are objective measures of success.

[31] ENSC did not link these energy and demand performance targets to approved or actual program spending.

[32] In CA IR-2, ENSC was asked to explain how any under expenditure for 2015 will be returned to rate classes. In its response, ENSC noted that the amount to be charged to NSPI for 2015 activities is subject to Section 79R of the PUA. The response went on to state: “For 2015 ENS understands that it will be responsible for any over expenditure and conversely, shall be entitled to retain any under expenditure.”

[33] The Board notes that no mention of performance requirements is found in the Settlement Agreement. It does, however, state in Article 2 of Appendix “A” that “...it would be appropriate that the 2015 Program Cost Recovery calculation be deferred to a future Application to the UARB.”

**Findings**

[34] The Board finds that achievement of energy and demand savings targets are acceptable performance requirements for 2015, but those targets must be linked to program expenditures. The Board does not accept ENSC’s understanding that it is entitled to retain any under expenditure and directs that such funds be credited to
ratepayers in subsequent cost recovery calculations. The Board also cautions that further performance requirements may be directed in future years.

5.2.3 Low Income Consumers
[35] The Settlement Agreement sets out the concerns of various Intervenors which ENSC has committed to address, including the AEC’s desire to include low income renters as well as homeowners, and the need to monitor and report on the efficiency programs for low income electricity consumers. This need was identified in the evidence of Ms. Napoleon of Synapse, and endorsed by the AEC and the CA, and supported by NSDOE.

[36] Although low income consumers are eligible to participate in certain residential DSM programs, funding for the existing Low Income Homeowners DSM programs is not included in the proposed 2015 ENSC spending. Instead, NSPI has committed to make a charitable donation of $3.4 million per year over a ten year period to Clean Nova Scotia to fund efficiency upgrades for homes of low income consumers which are electrically heated.

[37] The CA and the AEC also shared the concern identified by Ms. Napoleon about the risk to low income program funding due to the uncertainty of the commitment by NSPI to continue this funding in the future. This was in addition to other concerns about the relationship between the future franchise holder and NSPI, identified by the CA, the SBA, and Caribbean, which the Board need not address in the context of this Application.

Findings
[38] The Board has no ability to regulate NSPI’s commitment to make the donation to Clean Nova Scotia; nor is it able to regulate the activities of Clean Nova
Scotia. However, the Board expects that NSPI will honour its commitment and that Clean Nova Scotia will make its best efforts to ensure effective programs are implemented and administered to allow low income electricity consumers to derive the greatest benefit from energy efficiency measures. Further, the Board anticipates that ENSC and the first franchise holder will monitor this initiative as contemplated in the Settlement Agreement.

5.2.4 Contractor Procurement

[39] The Settlement Agreement confirmed that ENSC has engaged an external consultant to audit compliance with, among other issues, its procurement guidelines. At the hearing, ENSC agreed that this would extend to a determination of whether the guidelines are in fact appropriate.

[40] Contractor procurement practices were the main focus of Mr. Ross’s complaint. The Board did not discern that he took any comfort from the provisions of the Settlement Agreement in this regard.

Findings

[41] The Board looks forward to the results of the external audit and any recommendations which may flow with respect to contractor procurement practices. In the interim, as noted earlier in this Decision, it will address Mr. Ross’s complaint in a separate process.

5.2.5 Advisory Group Role

[42] The DSMAG is composed of stakeholders and acts in an advisory capacity to ENSC. All parties stressed the importance of the work done by the DSMAG, and supported its continued role, especially as the transition to a new franchise holder for electricity efficiency and conservation unfolds. The Settlement Agreement
addressed the need for continued consultation within the DSMAG, and identified several areas to be explored.

Findings

[43] The Board considers that the collaboration and consultation among the DSMAG assisted the parties in reaching the Settlement Agreement. As such, the Board recognizes the importance of its past and continuing role. As noted by the CA, and as clearly established in the 2014 Act, however, this is not to derogate in any way from the regulatory oversight of the Board.

6.0 SUMMARY

[44] ENSC applied to the Board for approval of its 2015 DSM Plan. This covers a one year period of transition of electricity efficiency programming from ENSC to a franchise holder pursuant to the 2014 Act.

[45] A Settlement Agreement endorsed by the CA, the SBA, the Industrial Group, the AEC and Clean Nova Scotia was presented to the Board at the commencement of the hearing. It was not opposed by NSPI, and approval was recommended by NSDOE. The Board obtained commitments from ENSC regarding certain filings and the scope of an external audit during the hearing, which are outlined at paragraph [23] above. As a result, the Board approves the Settlement Agreement, with the expectation of compliance with those commitments. The Board directs that the updates regarding implementation of the recommendations of the Econoler and Peach reports, and the internal audit reports, be filed with the Board no later than two weeks from when ENSC provides them to the DSMAG.
[46] The Settlement Agreement covered all of the issues the Board had identified in its Final Issues List, with the exception of the 2014 Q1 Report, which the Board accepts as filed.

[47] The Board found no evidence to support, and rejects, the contention of Caribbean that ENSC had not achieved its reported results.

[48] Pursuant to s. 79R(4) of the PUA, the Board establishes the performance requirements, for 2015 only, as identified by ENSC, being incremental annual net energy and demand savings targets. The Board does not accept ENSC’s understanding that it is entitled to retain any under expenditure and directs that such funds be credited to ratepayers in subsequent cost recovery calculations.

[49] The Board will address the complaint of Mr. Ross on behalf of National Foam Supply in a separate process.

[50] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 8th day of September, 2014.

Peter W. Gurnham

Kulvinder S. Dhillon

Roberta J. Clarke
NOVA SCOTIA UTILITY & REVIEW BOARD

IN THE MATTER OF: The Public Utilities Act, R.S.N.S. 1989, c. 380 as amended

IN THE MATTER OF: An Application to Approve Efficiency Nova Scotia Corporation's Electricity Demand Side Management (DSM) 2015 Plan (M06247)

Minutes of Settlement


AND WHEREAS pursuant to the Act, on the "Implementation Date" (as defined in s. 2(d) of the Act), all assets and liabilities of ENSC shall vest with the "first franchise holder" (as defined in s. 2(b) of the Act) (hereinafter referred to as "ENS"). Subsequent to the Implementation Date ENSC shall be known as the "ENS Transition Corporation";

AND WHEREAS in its Order of January 29, 2014, the UARB directed the repayment of the 2014 Rate Smoothing Adjustment to begin in 2015;

AND WHEREAS pursuant to s.79R(1) of the Act, the maximum amount ENS may spend to supply DSM activities for 2015 must not exceed the sum of $35,000,000.00 together with the amount of over recovery of funds in 2013, which totalled $3,976,398;

AND WHEREAS on June 20, 2014 certain formal intervenors filed Information Requests ("IRs") of ENSC in accordance with the timetable issued by the UARB;

AND WHEREAS ENSC provided responses to the filed IRs on July 3, 2014, together with supplemental corrections to the filed responses thereafter;
E-ENSC-R-14

AND WHEREAS certain intervenor and UARB consultant evidence in respect of this Application was filed on July 14, 2014;

AND WHEREAS the Parties, recognizing the transitional nature of the 2015 DSM Plan, have reached an agreement on matters related to the approval of the ENSC 2015 DSM Plan Application, as represented in the attached Appendix “A” to these Minutes of Settlement.
E-ENSC-R-14

These Minutes of Settlement dated July 21, 2014 are agreed to by:

Allan Crandlemire, Chief Executive Officer
Efficiency Nova Scotia Corporation

John Merrick, Q.C.
Consumer Advocate

Nelson Blackburn, Q.C.
Small Business Advocate

Brian Gifford
Affordable Energy Coalition

Nancy Rubin, Q.C.
Industrial Group
Canadian Salt Company Limited
CXF Inc.
Crown Fibre Tube Inc.
Irving Shipbuilding Inc.
Lafarge Canada Inc.
Maritime Paper Products Ltd.
Michelin North America (Canada) Inc.
Oxford Frozen Foods Limited
Sifto Canada Corp.
Nustar Terminals Canada Partnership
E:ENSC-R-14

Chris Morrissey
Clean Nova Scotia Foundation
Appendix "A"

1. 2015 DSM Resource Plan

The Parties are in agreement with the proposed programs and investment set out in the ENSC 2015 DSM Plan as filed, and recommend approval of the 2015 DSM Plan subject to any modifications set out herein. The DSM Plan summary table is attached for reference in Schedule "1".

The Parties hereby reserve their respective rights regarding future positions in respect of DSM planning, measures and programs.

2. Preliminary Cost Allocation Methodology

The Parties agree that given the transitional nature of the 2015 DSM Plan, together with the deferral of cost recovery associated with the proclamation of the Electricity Efficiency and Conservation Restructuring (2014) Act, it would be appropriate that the 2015 Program Cost Recovery calculation be deferred to a future Application to the UARB.

3. Rate Smoothing Adjustment

In keeping with the transitional nature of the 2015 DSM Plan, the Parties do not oppose deferring the repayment of the Rate Smoothing Adjustment, with the details to be addressed in the filing of the 2016-18 DSM Plan.

4. Evaluation reports (Econoler) & Verification report (Peach) of 2013 DSM programs

The Parties do not oppose acceptance of the Econoler Evaluation reports and the Peach Verification report as submitted.

ENS agrees to consult with, and provide updates to, the Demand Side Management Advisory Group ("DSMAG") with regard to the implementation of recommendations contained within these reports.
5. **HST status**

**HST Appeal**

Until the Implementation Date (as defined in the *Electricity Efficiency and Conservation Restructuring (2014) Act*), ENSC shall continue to pursue resolution of the April 2012 Canada Revenue Agency ("CRA") Ruling which denied ENSC the right to claim Harmonized Sales Tax ("HST") input tax credits on DSM activities. Thereafter, decision making with regard to the HST appeal shall be the responsibility of ENS Transition Corporation. Subsequent to the Implementation Date, ENS agrees to fully support, on an administrative and cost recovery basis, all prudent efforts by ENS Transition Corporation to pursue successful resolution of the HST appeal.

**2015 HST Treatment**

The Parties support the approach of ENS to reduce its 2015 DSM Plan spending to offset HST costs. Upon final determination of the matter with CRA, ENS agrees that the disposition of any such funds retained, or subsequently recovered in respect of the HST input tax credits, shall be resolved after consultation with the DSMAG and determination by the UARB.

6. **ENS Management and Financial Controls**

ENSC has engaged an external consultant to undertake audits of its practices and controls relating to:

1. Procurement activities to ensure compliance with existing ENSC procurement guidelines;
2. Expense reports to ensure compliance with ENSC’s expense reimbursement policy;
3. Design and operating effectiveness of program internal controls;

ENS shall provide the results of these audits to the DSMAG prior to filing them with the UARB.

7. **Demand Side Management Advisory Group (DSMAG)**

The Parties recognize the need for ongoing stakeholder consultation in regard to the transition from the current Nova Scotia DSM operating regime to the legislative requirements of the *Electricity Efficiency and Conservation Restructuring (2014) Act*. The parties agree that such consultation is best coordinated through the DSMAG.
ENS agrees to consult with the DSMAG and NSPI on matters including but not limited to:

1. an update of the DSMAG Terms of Reference having regard to the requirements of the *Electricity Efficiency and Conservation Restructuring (2014)* Act, which may include:
   a. development of future DSM programs, plans and investments;
   b. an assessment of the respective responsibilities of ENS and NSPI in relation to future DSM applications generally;
2. the adequacy of ENS’s contractor procurement process;
3. development of appropriate terms of reference for an audit of ENS cost control practices and opportunities to ensure ENS is operating in a cost-effective manner, to be carried out during the 2016-18 DSM Plan period; and
4. the scope of the 2015 DSM Program evaluation.

8 Low income DSM Considerations

The Parties support the following ENS commitments with regard to ratepayer funded low income electricity customers:

1. ENS shall dedicate a portion of its 2015 DSM Enabling Strategies to research in the area of efficiency upgrades in electrically heated low income rental accommodation in relation to a comprehensive, long term plan for major efficiency retrofits in low income rental accommodation;

2. ENS shall plan and report on low income program participation, expenditures, and savings separately from residential program information, including participation by low income renter households in current applicable DSM programs, all of which may be through a variety of methods, including estimation based on geographic census information; and

3. ENS shall work with stakeholders, including the DSMAG, to identify program opportunities related specifically to low income electricity consumers.

4. ENS shall use its best efforts to work towards a coordinated approach in administering and tracking low income DSM programs outside of ratepayer-funded programs.
9 Implementation of the *Electricity Efficiency and Conservation Restructuring (2014) Act*

Recognizing the extent of the work required to implement the *Electricity Efficiency and Conservation Restructuring (2014) Act*, ENS shall continue its work on the implementation of the changes relating to the future delivery of DSM in Nova Scotia. ENS shall provide an initial implementation report to the DSM Advisory Group on or before October 31, 2014 for discussion prior to filing it with the UARB.
Schedule "1"

2015 DSM Resource Plan Savings and Investment (as proposed)

<table>
<thead>
<tr>
<th>2015</th>
<th>Investment ($ million)</th>
<th>Incremental Annual Net Energy Savings at Generator (GWh)</th>
<th>Incremental Annual Net Demand Savings at Generator (MW)</th>
<th>Unit Cost ($/kWh)</th>
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<tbody>
<tr>
<td>RESIDENTIAL DSM PROGRAMS</td>
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<tr>
<td>Efficient Product Rebates</td>
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<td>15.5</td>
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<td>Existing Residential</td>
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<td>New Residential</td>
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<td>BUSINESS, NON-PROFIT AND INSTITUTIONAL PROGRAMS</td>
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<tr>
<td>Efficient Product Rebates</td>
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<td>Education &amp; Outreach</td>
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<tr>
<td>Development &amp; Research</td>
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<tr>
<td>Other Enabling Strategies</td>
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<tr>
<td>Total</td>
<td>39.0</td>
<td>121.2</td>
<td>21.2</td>
<td>0.025</td>
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</table>

*Currency is expressed in 2015 dollars.

*Based on weighted average measure lives from ENSC’s 25-Year DSM Potential Study, filed January 14, 2014.

*Includes participation by low income households.

Columns may not add due to rounding.