



DECISION

IN THE MATTER OF a Motion by New Brunswick Power
Distribution and Customer Service Corporation for the
Approval of the Establishment of a Deferral Account
and Consequential Relief

August 23, 2007

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

New Brunswick Energy and Utilities Board

IN THE MATTER OF a Motion by New Brunswick Power Distribution and Customer Service Corporation for the Approval of the Establishment of a Deferral Account and Consequential Relief

PARTICIPANTS:

BOARD:

CHAIRMAN

Raymond Gorman, Q.C.

VICE-CHAIRMAN

Cyril Johnston

MEMBERS:

Donald Barnett
Roger McKenzie
Edward McLean

STAFF:

Ellen Desmond
Lorraine Légère
Juliette Savoie
Douglas Goss
David Young

APPLICANT:

New Brunswick Power Distribution
And Customer Service Corporation

Terrence Morrison
Edward Keyes
Sharon MacFarlane
Lori Clark
Darren Murphy

FORMAL INTERVENORS:

Canadian Manufacturers and
Exporters, N.B. Division

Gary Lawson
David Plante

FPS Canada Inc.

Chuck Baird

JD Irving Pulp and Paper Group

Wayne Wolfe

Dr. Ken Sollows

Utilities Municipal

Serena Newman
Dana Young
Eric Marr
Jeff Garrett

Vibrant Communities Saint John

Kurt Peacock

Public Intervenor

Daniel Theriault
Robert O'Rourke

Introduction

New Brunswick Power Distribution and Customer Service Corporation (“DISCO”) applied to the New Brunswick Energy and Utilities Board (“Board”) on April 19, 2007 for approval of a change to the charges, rates and tolls for its services. This application was made pursuant to Section 101 of the Electricity Act, Chapter E-4.6, R.S.N.B., 1973 as amended (“the Act”).

DISCO also filed a Notice of Motion and an affidavit in support thereof requesting the Board to make an interim order pursuant to Section 40 of the Act approving a 9.6 percent increase to all electricity rate categories, except water heater rentals and connection fees where the increase would be 3 percent to be effective from the date of such interim order until further order of the Board.

A public hearing on DISCO’s motion for the interim rate relief was held on May 31, 2007. The Board approved the full amount of interim rate relief as requested on June 1, 2007 and the new rates became effective on June 8, 2007.

In a Notice of Motion filed with the Board on August 8, 2007, DISCO stated that the settlement of a lawsuit involving New Brunswick Power Holding Corporation and Petroleos De Venezuela, S.A (“Settlement”) will result in reduced fixed charges to New Brunswick Power Coleson Cove Corporation (“Coleson Cove Corporation”). The benefits of such reduced charges will be passed through to DISCO by way of reduced charges flowing to DISCO through the Coleson Cove Tolling Agreement (“Tolling Agreement”). DISCO proposed the establishment of a deferral account that would permit it to levelize, on an annual basis, the amount of the benefit that would be credited to the customers of DISCO. The Notice stated that DISCO would apply to the Board for the following:

- (a) approval of the establishment of the Deferral Account;
- (b) subject to and conditional upon approval of the Deferral Account, leave to amend DISCO's application for a change in its charges, rates and tolls dated April 19, 2007 to request recovery of a forecasted revenue requirement shortfall of \$83.1 million;
- (c) if the Deferral Account is approved then an Order pursuant to section 43 of the **Energy and Utilities Board Act** varying the Board's Interim Rate Decision by reducing the interim rate increase to 7.1 % to all electricity rate categories except water heater rentals and connection fees which will remain at the approved interim rate of 3% to be effective as of the date of the Board's decision with respect to this motion in accordance with the revised rate schedules attached to the affidavit of Sharon MacFarlane sworn to on August 8, 2007 filed in support hereof and marked Exhibit "C";
- (d) an Order that Exhibit "A" attached to the affidavit of Sharon MacFarlane sworn to on August 8, 2007 be held in confidence by the Board pursuant to section 34 of the **Energy and Utilities Board Act** and that any hearing or deliberation by the Board with respect to the establishment and approval of the Deferral Account be held *in camera* such as to preserve the confidentiality of the information set out in the said Exhibit "A".

Item (d) was dealt with in the Board's decision of August 16, 2007. This decision will deal with items (a) to (c).

DISCO filed on August 13, 2007 a written expert opinion with respect to the appropriateness of the Deferral Account that had been prepared by Mr. John Todd entitled "Treatment of the Petroleos De Venezuela, S.A. (PDVSA)

Settlement in Setting Rates for NB Power Distribution and Customer Service Corporation”. This report was initially filed in redacted form with all parties, but as a result of the Board’s order of August 16, 2007 an un-redacted copy of the report was filed with all parties on August 16.

A public hearing was held on August 17, 2007 to consider DISCO’s motion with respect to items (a) to (c) as identified above.

Board’s Authority

The following section of the Energy and Utilities Board Act (“the EUB Act”) provides the Board with its authority to hear DISCO’s motion with respect to the establishment of a Deferral Account, an amendment to the forecasted revenue requirement shortfall and a reduction to the interim rate increase:

Board may review, rescind or vary order

43 *The Board may review, rescind or vary any order made by it.*

The Deferral Account

In the affidavit attached to its motion, DISCO proposed that the impact of the reduced charges to it, under the Tolling Agreement, be levelized in order to provide an immediate and permanent reduction in rates. DISCO stated that such levelizing would provide an annual benefit to customers that would be the same amount each year. DISCO also proposed that the levelizing occur over a period of 23 years being the remaining term of the Tolling Agreement.

The levelized benefit amount would be different than the actual reduction in charges to DISCO in any given year. This difference is due to the timing of the benefits to Coleson Cove Corporation. In fact, the proposed benefit to customers would in each of the current year and next year be greater than the amount of the reduction in charges to DISCO under the Tolling Agreement.

It is for this reason that DISCO has requested the Board to approve the establishment of a Deferral Account that would deal with these differences. DISCO stated that the requested reduction in interim rates of 2.5% proposed by it is conditional on the approval of the Deferral Account. DISCO stated that the deferral account is necessary in order to keep the company whole, from a financial perspective, in 2007/2008. Without a deferral account, DISCO would be faced with an under-recovery of its revenue requirement.

DISCO also requested that if the establishment of a deferral account is to be approved, that such a decision be final and not subject to review during the full hearing. This was because to do otherwise would put DISCO in the position of providing a reduction to customers and not being able to recover its full revenue requirement should the deferral account be eliminated.

In support of its request for approval of the Deferral Account, DISCO provided the report of Mr. John Todd referenced above. Mr. Todd stated that the refurbishment of the Coleson Cove plant so that it could use Orimulsion® resulted in higher demand charges to DISCO under the Tolling Agreement throughout the service life of the plant. He also stated that, in principle, the consistent approach to flowing the financial benefits to customers is to use them to offset the higher costs that were incurred. Such an approach would, in his opinion, achieve intergenerational equity since the flow of benefits would match the impact on customers of the higher capital costs.

Mr. Todd maintained that the proposed approach is also consistent with the regulatory principle of maintaining rate stability and that the recommended deferral account would provide the mechanism needed to levelize the recognition of the benefits for rate-setting purposes.

Report of the Board's Consultant

Mr. Andrew P. Logan, C.A. ("Board Consultant") was retained by the Board to review the mechanical accuracy and reasonableness of the Regulatory Deferral Calculations that were presented in Exhibit A-13.

The Board Consultant reviewed the Settlement Agreement and the inputs and assumptions that were used to calculate the amounts shown in Exhibit A-13. He testified that DISCO used a forecasted annual average for the settlement price to determine the cost savings despite the fact that the documentation included quarterly price forecasts. In his opinion, the use of quarterly price forecasts would have produced a more accurate result.

He concluded that the methodology used to calculate the expected savings to ratepayers in connection with the Settlement is rational and reasonable based on the documentation that he reviewed. The Board Consultant also concluded that the inputs and variables used in the model are consistent with the underlying documentation and with the particulars of the Settlement Agreement.

He stated that the calculations are accurate and have been consistently applied but he expressed no opinion on the reasonableness of the assumptions and forecasts that were relied upon by DISCO.

Positions of the Other Parties

The following parties presented final arguments.

CME

CME stated that the concept of a deferral account, the levelizing of the benefit, was not unacceptable to it. CME did question the amount that was to be levelized and the time period over which it should occur.

They stated that the amount related to the write-off of the fuel system that was charged to OM&A expense and the amount of the legal fees should be paid back immediately to the customers.

CME submitted that some part of the Settlement should be given immediately to recognize the extra costs for heavy fuel oil and the balance should be given over a shorter period than 23 years, perhaps 10 years.

CME requested that, if a deferral account is approved, the Board order DISCO to report annually on the operation of the account and that such information be made public.

JDI

JDI stated that it had no problem with the deferral account itself but did take issue with the proposed period of 23 years as being too long.

JDI requested that the Board require DISCO to report, at least annually, on the deferral account.

Dr. Sollows

Dr. Sollows stated that, if the results that generally accepted accounting principles would produce are not acceptable, then a deferral account would be

reasonable. He suggested that such an account should, however, be for a length of 8 years.

Utilities Municipal

The Utilities Municipal stated that they had no objection to the establishment of the deferral account as proposed by DISCO but that the Board should have the ability to scrutinize the operation of such an account.

Vibrant Communities

Vibrant Communities proposed that the benefits to customers should occur much sooner than proposed by DISCO and that the Board take a significant oversight role over any deferral account that is established.

Public Intervenor

The Public Intervenor stated that the concept of a deferral account is an appropriate way to treat the benefits arising from the Settlement. He also requested the Board to make a number of rulings and orders. This request will be dealt with later in this decision.

Response by DISCO

DISCO stated that it had no problem with all of the rulings requested by the Public Intervenor, except one, other than to note that certain matters might need to be dealt with in confidence. The one exception was with the term of the deferral account and DISCO maintained that this must be for 23 years to recognize that this is the period during which DISCO will actually receive benefits as a result of the Settlement.

DISCO also stated that the benefits to customers could be disbursed over a shorter period of time, should the Board choose to do so. DISCO maintained that to do so would violate the principle of intergenerational equity and noted that there would also be higher interest costs.

Ruling of the Board

Appropriateness of a Deferral Account

The benefits from the Settlement do not all occur at the same time. Some have been received already, some will occur in 2007/2008 but the full benefits will not be realized until 2009/2010. The use of a deferral account is therefore necessary if the benefits are to be passed to customers in equal annual amounts. The Board considers that this is important and notes that no party took exception to the use of a deferral account.

The Board therefore approves the establishment of a deferral account that will be used to record the differences that occur each year between the amount of the levelized benefit to customers and the actual reduction in charges to DISCO under the Tolling Agreement that are due to the Settlement.

The specific details of this deferral account are described below.

Benefits to DISCO

DISCO is obligated to compensate Coleson Cove Corporation for the full capital costs associated with operating the generating facility. As a result of this obligation, DISCO is entitled to the benefits of any reductions to the capital costs.

The Settlement has resulted in significant benefits to the New Brunswick Power group of companies. They have decided these benefits would be best handled

by applying \$47 million as a recovery against the cost of the fuel delivery system and by applying the remainder of the benefits to reducing the capital asset value of the Coleson Cove generating facility.

The Chief Financial Officer (“CFO”) for DISCO testified that the original write-off of the fuel delivery system was not paid for by the utility’s customers. DISCO stated that the allocation of \$47 million in this fashion was an essential part of the Settlement structure.

The reduction in asset value is to be accompanied by an identical reduction in the debt owed by Coleson Cove Corporation. The reduction in asset value and associated debt will reduce the amortization and interest costs of Coleson Cove Corporation who in turn will pass these savings onto DISCO through reduced charges under the Tolling Agreement.

Some parties suggested that the Board should adjust the structure developed to distribute the benefits from the Settlement. The Board considers that the application of \$47 million as a recovery against the cost of the fuel delivery system is appropriate based on the testimony of the CFO of DISCO.

With respect to the treatment of the remainder of the benefits, the Board considers that the financial results of Coleson Cove Corporation would be the same if the remaining benefits had been given directly to DISCO and DISCO continued to pay the full charges currently in effect under the Tolling Agreement. If DISCO had received the benefits directly, then it could have made its own determination as to what to do with the benefits.

The Board, however, does not consider that it is necessary for it to make any adjustment to the way in which DISCO will receive the benefits from the Settlement. The Board believes that the way in which the benefits are passed

on to the customers of DISCO is not limited by the way in which DISCO itself receives the benefits. This will be discussed further below.

With respect to the aspect of the deferral account that involves the savings from the Tolling Agreement, the Board will accept, subject to verification in the full hearing process, that the benefits that will flow to DISCO are as shown in line 4 of Attachment #1 to Exhibit A-13.

Further, the Board accepts that the benefits to DISCO will flow over a period of 23 years. The Board therefore orders that the term of the deferral account will be for the remainder of the life of the Tolling Agreement, a period of 23 years.

Benefits to the Customers of DISCO

Many parties, as discussed above, stated that the benefits to customers should occur in a period of time less than the 23 years as proposed by DISCO in its motion. DISCO, in its response, repeated its preference for the use of 23 years.

The Board recognizes the argument that the benefits of the Settlement should be related to the capital costs of the Coleson Cove generating facility because such costs are higher due to the preparations that were made so that the facility could burn Orimulsion®.

The Board also recognizes the argument that the ongoing fuel costs of operating the Coleson Cove facility are higher because Orimulsion® is not available and that because of this some of the benefits from the Settlement should be applied to the operating costs.

The Board considers that a reasonable period of time would be something less than the 23 years and one that would achieve an appropriate balance between the competing arguments of addressing the capital costs and the operating

costs. The Board believes that in deciding on the appropriate period of time more weight should be given to the argument with respect to the capital costs.

The choice of the specific time period requires judgement. The Board notes the statement made at page 2 of Exhibit A-14 that the litigation leading to the Settlement related to the Coleson Cove Fuel Supply Agreement which would have supplied Orimulsion® for a period of 20 years beginning in 2004/2005. If the agreement had proceeded, there would be 17 years remaining in the term.

The Board considers that adopting 17 years as the period of time to be used for crediting customers with the benefits from the Settlement is reasonable.

The Board does not consider that the principle of rate stability is materially impacted if the benefits to the customers occurs over 17 years rather than 23 years. The Board does not consider that the relatively small additional reduction in the revenue requirement caused by shortening the period of time to 17 years will be a significant factor at the time that the pass through of benefits to customers ends.

Strictly speaking, it could be argued that, any method that allocates the benefits to customers in a way that is different than the way DISCO receives the benefits could be said to affect inter-generational equity. DISCO's proposal could therefore be said to affect inter-generational equity. The Board does not consider that the principle of inter-generational equity would be materially affected by changing the period of time to 17 years.

The Board considers that over a period of 17 years many developments will occur that will affect electricity rates in New Brunswick and that it is impossible to predict what adjustment would be necessary when the benefits to customers from the Settlement cease.

The Board therefore orders DISCO to pass the benefits from the Settlement to its customers over a period of 17 years starting with the 2007/2008 year in equal annual amounts.

Amount of the Levelized Benefit

The Board decision, that 17 years be the period of time to be used to pass the benefits to the customers of DISCO, requires an adjustment to the amount of the levelized annual benefit

The Board Consultant, at the request of the Board, has calculated that the annual amount of benefit should be \$36.8 million. This calculation was done using the same interest rate as used by DISCO in its calculation.

He recalculated Attachment #1 of Exhibit A-13 using the expected savings from the Tolling Agreement as forecast by DISCO but providing the levelized benefit to the customers of DISCO over a period of 17 years instead of 23 years. This table is attached to the decision as Attachment "A".

The Board therefore orders that the equal annual benefit to customers be set at \$36.8 million.

Amendment to the Forecasted Revenue Requirement

An annual benefit of \$36.8 million means that the forecasted revenue requirement shortfall for 2007/2008 is reduced by the same amount and the Board therefore grants DISCO leave to change its forecasted revenue requirement shortfall for 2007/2008 to \$75.5 million.

Reduction to the Interim Rate Increase

A reduction in the forecasted revenue requirement to \$75.5 million for 2007/2008 requires an adjustment to the Board's Interim Rate Decision of June 1, 2007. The Board hereby varies that interim order to reduce the interim rate increase to 6.4% for all electricity rate categories except water heater rentals and connection fees which will remain at 3%. This variance is to take effect as of August 28, 2007 and to remain in effect until further order of the Board or March 31, 2008 should no final decision be issued by that date.

The Board considers it appropriate that the specific amount that has been used, for the purposes of adjusting the interim rates, was determined on a prima facie basis. This is consistent with the approach used by the Board in approving the interim rates that are currently in place.

DISCO has provided a forecast of the benefits to it from the Settlement and the Board has accepted this information on a prima facie basis. These forecasted benefits were used by the Board to calculate the equal annual benefit to customers as described above.

Parties will have an opportunity to fully examine the underlying assumptions used by DISCO, with respect to the levelized annual benefit, during the hearing process. They may also submit their own evidence on this topic.

The Board considers that such a review is similar in nature to the review of all of the other aspects of DISCO's operations that will occur as part of the hearing process.

The interim rate increases, currently in effect, were approved on a prima facie basis and are subject to adjustment as a result of the full hearing process. The

Board believes that any adjustment to the interim rates, prior to the conclusion of the full hearing process, should also be made on a prima facie basis.

The benefits credited to the customers, during these 17 years, will be in excess of the amounts credited to DISCO under the Tolling Agreement. The Board therefore orders that interest be calculated on these differences and recorded in the deferral account.

The benefits from the Settlement will be fully realized by the 2009/2010 year and thus the specific dollar amount of the benefits will be known by then. The Board considers that, if necessary, during the 2009/2010 year an adjustment can be made to the amount of savings that DISCO will receive and consequently to the equal annual benefits to customers so that the deferral account will achieve a zero balance by the end of its term. DISCO must apply to the Board for approval of any such adjustment.

The Board therefore orders that DISCO report to it annually on the operations of the deferral account. This report is to identify the actual savings received by DISCO under the Tolling Agreement and the interest amount associated with the account. This information is to be available to the public.

Requests of the Public Intervenor

The Board believes that all of the rulings and orders requested by the Public Intervenor, except one, have been addressed in this decision.

This exception is the request that DISCO be ordered to provide all of the documentation related to the Settlement to all registered intervenors by September 1. DISCO took exception to this request and maintained that it could not comply due to the requirement for confidentiality that is contained in the Settlement agreement.

The Board considers that the most appropriate way to proceed is as follows:

Parties may submit written interrogatories to DISCO related to Exhibit A-13 and Exhibit A-14 by September 4, 2007.

DISCO is to provide answers to such interrogatories by September 18, 2007.

If any party objects to the answers provided by DISCO they may request by September 20, 2007 that a Motions Day be held.

If the Board receives any such objections it will hold a Motions Day on September 27, 2007.

Summary of Board Rulings and Orders

The Board approves the establishment of a deferral account that will be used to record the differences that occur each year between the amount of the levelized benefit to customers and the actual reduction in charges to DISCO under the Tolling Agreement that are due to the Settlement.

The Board will accept, subject to verification in the full hearing process, that the benefits that will flow to DISCO are as shown in line 4 of Attachment #1 to Exhibit A-13

The Board orders that the term of the deferral account be for the remainder of the life of the Tolling Agreement, a period of 23 years.

The Board orders DISCO to pass the benefits from the Settlement to its customers over a period of 17 years starting with the 2007/2008 year in equal annual amounts.

The Board orders that the equal annual benefit to customers be set at \$36.8 million.

The Board grants leave to DISCO to change its forecasted revenue requirement shortfall for 2007/2008 to \$75.5 million.

The Board varies its Interim Rate Order of June 1, 2007 to reduce the interim rate increase for all electricity rate categories to 6.4% for all electricity rate categories except water heater rentals and connection fees which will remain at 3%. This variance is to take effect as of August 28, 2007 and to remain in effect until further order of the Board or March 31, 2008 should no final decision be issued by that date.

The Board orders that interest be calculated on any differences between the benefits to the customers and the amounts credited to DISCO under the Tolling Agreement and that such interest be recorded in the deferral account.

The Board orders that DISCO must apply to it for approval of any adjustment to the deferral account.

The Board therefore orders that DISCO report to it annually on the operations of the deferral account. This report is to identify the actual savings received by DISCO under the Tolling Agreement and the interest amount associated with the account. This information is to be available to the public.

Dated at the City of Saint John, New Brunswick this 23rd Day of August, 2007

Original Signed By

Raymond Gorman, Q.C., Chairman

Original Signed By

Cyril W. Johnston, Vice-Chairman

Original Signed By

Ed McLean, Member

Original Signed By

Roger McKenzie, Member

Original Signed By

Don Barnett, Member

Attachment A

**REGULATORY DEFERRAL CALCULATION
17 YEAR BENEFIT PAYOUT TO RATEPAYERS**

(in millions \$)

Item	(1) Year 1	(2) Year 2	(3) Year 3	(4) Year 4	(5) Year 5	(6) Year 6	(7) Year 7	(8) Year 8	(9) Year 9	(10) Year 10	(11) Year 11	(12) Year 12	(13) Year 13	(14) Year 14	(15) Year 15	(16) Year 16	(17) Year 17	(18) Year 18	(19) Year 19	(20) Year 20	(21) Year 21	(22) Year 22	(23) Year 23
(1) Opening balance	\$0.0	\$24.6	\$38.9	\$46.8	\$54.9	\$63.3	\$72.0	\$80.8	\$89.9	\$99.1	\$108.5	\$118.0	\$127.6	\$137.2	\$146.9	\$156.6	\$166.1	\$175.6	\$147.8	\$119.4	\$90.5	\$61.0	\$30.8
Add:																							
(2) Levelized benefit to customers	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	36.8	0.0	0.0	0.0	0.0	0.0	0.0
(3) Interest	1.3	2.0	2.3	2.5	2.8	3.0	3.2	3.4	3.6	3.7	3.9	4.0	4.0	4.0	4.0	3.9	3.8	3.3	2.8	2.2	1.6	1.0	0.3
Less:																							
(4) Expected savings from Tolling Agreement	-13.5	-24.4	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1
(5) Ending balance	\$24.6	\$38.9	\$46.8	\$54.9	\$63.3	\$72.0	\$80.8	\$89.9	\$99.1	\$108.5	\$118.0	\$127.6	\$137.2	\$146.9	\$156.6	\$166.1	\$175.6	\$147.8	\$119.4	\$90.5	\$61.0	\$30.8	\$0.0
Reconciliation of net impact to the revenue requirement																							
(6) Increased interest expense	1.3	2.0	2.3	2.5	2.8	3.0	3.2	3.4	3.6	3.7	3.9	4.0	4.0	4.0	4.0	3.9	3.8	3.3	2.8	2.2	1.6	1.0	0.3
(7) Regulatory deferral adjustment (note)	-\$24.6	-\$14.3	-\$7.9	-\$8.2	-\$8.4	-\$8.6	-\$8.8	-\$9.0	-\$9.2	-\$9.4	-\$9.5	-\$9.6	-\$9.7	-\$9.7	-\$9.7	-\$9.6	-\$9.5	\$27.8	\$28.4	\$28.9	\$29.5	\$30.1	\$30.8
(8) Net regulatory deferral adjustment	-23.2	-12.4	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	-5.6	31.1	31.1	31.1	31.1	31.1	31.1
(9) Reduced purchased power costs	-13.5	-24.4	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1	-31.1
(10) Net revenue requirement decrease	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	-36.8	0.0	0.0	0.0	0.0	0.0	0.0

Note: Represents the difference between the opening and ending balance of the regulatory deferral asset