



## **RULING**

IN THE MATTER OF an application by New Brunswick Power Distribution and Customer Service Corporation (DISCO) for approval of changes in its Charges, Rates and Tolls

(Motions with respect to Responses to Interrogatories by Disco)

**October 2, 2007**

## **RULING**

New Brunswick Power Distribution and Customer Service Corporation (“Disco”) has applied to the New Brunswick Energy and Utilities Board (“the Board”) for approval of a change to its charges, rates and tolls. The Board has scheduled a hearing to begin on November 26<sup>th</sup>, 2007. The Board has put in place a pre-hearing process, which includes a schedule for the filing of evidence and permits the parties to pose written questions, which are referred to as “IRs”. If a party is not satisfied with the response to an IR it may, by way of a motion, seek an order from the Board.

The Canadian Manufacturers and Exporters, Dr. Sollows and the Public Intervenor each filed a motion (“the Motions”) requesting the Board to order Disco to file additional information and/or to make public certain information that had been filed in confidence. A public hearing was held on September 27, 2007 to receive evidence and hear arguments with respect to the Motions. The only witness to testify was Mr. Darrell Bishop, Vice-President of New Brunswick Power Generation Corporation (“Genco”). Arguments were made with respect to issues of relevance, confidentiality and data analysis.

Disco is required to provide information that is relevant. The Oxford Dictionary defines relevance as “pertinent, applicable to the issue”.

The Board believes that information is relevant if it would assist the Board in making its decision. The Board can only make decisions on matters that fall within its jurisdiction. It is not simply a matter of whether Disco has the

information but rather would the information be useful to the Board. In this particular instance, Disco has applied for approval of changes to its charges, rates and tolls.

The Board considers that Disco should be given a reasonable opportunity to recover all of the costs necessary to provide service so long as the costs were prudently incurred. This requires the Board to set the appropriate revenue requirement for Disco for 2007/2008. The Board also has a responsibility to set specific rates that are just and reasonable.

The Board, therefore, believes that, in this proceeding, information is relevant if it helps the Board to establish the revenue requirement for Disco for 2007/2008 and/or assist the Board in setting reasonable rates. The Board considers this to be a general principle that will guide it in making its ruling on the Motions. With this principle in mind, the Board makes the following comments on specific matters that arose at the public hearing.

The Board, in its July 16, 2007 Ruling, stated that it was not appropriate to conduct a review of the efficiency of Genco's operations. The Board also stated that the onus was on Disco to demonstrate that the costs that flow from the Power Purchase Agreements ("PPAs") and Service Level Agreements ("SLAs") are reasonable in light of the options available.

The Board ordered Disco:

- to provide information on the costs of generation;

- to identify all sections of the PPAs and SLAs that affect the costs of Disco;
  - to describe the steps that Disco is taking to minimize its costs in relation to these sections;
  - to identify lower cost options to the PPAs and SLAs that might exist;
  - to provide details of its calculations for those options that Disco had considered and
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- to describe what it has done to reduce its costs, if it has identified a lower cost option.

The purpose was to identify those items that impact Disco's revenue requirement in any given year and over which Disco can exercise some discretion. Examples of such items are the acquisition of fuel and the budget amounts for hydro generation and export sales. The Board considers that all such items should be carefully reviewed.

The generation cost information was not intended for the purpose of reviewing the efficiency of any of the companies that generate electricity. The Board considers that the relevant issue is whether or not Disco is minimizing its costs in obtaining the necessary services.

Disco should demonstrate that its decisions were prudent and that, through its administration of the PPAs, it is minimizing its costs. With respect to the Orimulsion settlement, Disco must demonstrate that it is receiving all the benefits to which it is entitled, that the amount of benefits has been properly

calculated and that the proposed distribution of the benefits is reasonable.

Disco has provided information as ordered and the Board intends to examine this information to determine if Disco has minimized its costs. The Board will review what options are available to Disco with respect to the acquisition of energy and capacity. The Board will also review Disco's administration of the current arrangements. This information may be tested by the Intervenor and they may file evidence to demonstrate that Disco could reduce its costs if the Intervenor consider it appropriate to do so.

The Board also intends to examine the arrangements that Disco has in place with respect to the acquisition of fuel. Disco is responsible for all of the associated costs and therefore must demonstrate that fuel is being acquired in a prudent and cost effective manner.

The overall revenue requirement is allocated to the various customer classes based on a cost allocation methodology that was approved in a decision of June 19, 2006. There was some discussion on the methodology at the hearing on September 27, 2007 but no party suggested that a review of the methodology be done prior to the Board setting the rates for the 2007/2008 year. The Board intends to accept the currently approved method for use in allocating costs for 2007/2008.

Parties have the right to propose specific rate designs at the time of a review of a general rate application. Disco is to provide any requested data that would assist in this matter. This would permit Intervenor to perform their own analyses and to file evidence on this topic, should they consider it

appropriate to do so. The Board will not require Disco to develop analyses that are based on assumptions with which Disco does not agree.

Certain information may be relevant but considered by Disco to be of a confidential nature. If a party objects to Disco's claim of confidentiality, the Board must determine if the benefits that would arise from placing the information on the public record, as opposed to reviewing it at an *in camera* session, outweigh any potential harm. In other words; is it in the public interest to place the information on the public record? If the Board rules that certain information is confidential, then parties may be given access to such information if they sign the confidentiality agreement that has been approved by the Board for this purpose. Parties who complete a confidentiality agreement are to file a copy with the Board.

With respect to the Motions, the Board has decided that certain information will be kept confidential and protected by section 34 of the *Energy and Utilities Board Act*. However pursuant to Section 2(3)(i)(b) of the Board's confidentiality policy, this information may be disclosed at a later date, should it be necessary in the public interest.

The Board realizes that all parties are making significant efforts to move the review process forward as effectively and efficiently as possible. The Board appreciates this and is committed to completing the review as promptly as possible. The Board heard comments as to the timing of the follow-up steps with respect to the additional information that Disco must file as a result of

this ruling. The Board has carefully considered these comments in light of the specific orders that it is making in this ruling.

For the reasons described above, Disco is ordered to:

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|-------------------------|---|
| CME IR 17               | Provide the forecast and actual out of province sales for 2004/2005, 2005/2006 and 2006/2007.   |
| SOL IR 15               | Provide answers to parts 1-3 and the following portion of part 4:<br><br>“Assuming that the use of 5 years of data provides a rough estimate for “average” weather, is it reasonable to estimate the amount of energy billed in the 1 <sup>st</sup> 1300 KWh block of energy by multiplying the energy estimate found in 3. (above) by the corresponding <i>Fraction of energy in 1<sup>st</sup> 1300 KWh block?</i> If not, please explain why not.” |
| PI 1(5)                 | Provide the information that Disco has in its possession.   |
| PI IR 8                 | Provide the requested information with respect to Disco only.   |
| PI IR 9                 | Provide the requested information. It may be provided on a consolidated basis, if this is the only form available.  |
| PI IR 11                | Provide the requested information.  |
| PI IR 12                | Provide the requested information to the level of detail that Disco has it in.  |
| PI IR 28, 29, 30 and 31 | Provide the requested information.  |

- PI IR 33 Provide the information that Disco has with respect to its performance for the period October 1, 2004 to the latest date for which such information is available.
- PI IR 36 Provide the requested information.
- PI IR 37 Provide an answer to part 4 only.
- PI IR 39 part 1(i,ii, and iii) Provide the requested information.
- PI IR 39 part 2 Provide the requested information.
- PI IR 40 part 1 Provide the requested information.
- PI IR 40 part 2 Provide the requested information, if it is publicly available.
- PI IR 41parts 1, 2(iv) and 4 Provide the requested information.

Disco is ordered to provide, on a confidential basis, responses to the following IRs. This information will be available to formal Intervenors who sign a confidentiality agreement.

PI IR 4, PI IR 5 and PI IR 6(4) (i, ii and iii)

PI IR 13(2), 13(3), 13(4) and 13(5)

PI IR 41 parts 5-10 and 12-14

Disco is ordered to provide on a confidential basis an answer to the following IR. The response will be available to formal Intervenors who are



not competitors with any of the NB Power group of companies and who sign the confidentiality agreement.

PI IR 39 part 1(iv)

In order to allow time to fulfill the above rulings, the parties are ordered to comply with the following deadlines which are to be incorporated into the main filing schedule.

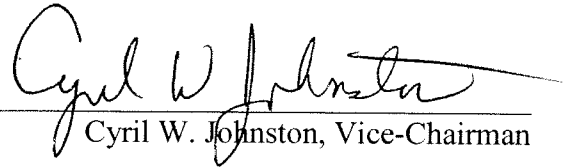
Disco to file the information	12 noon Tue. Oct. 9, 2007
IRs on the information	12 noon Fri. Oct. 12, 2007
Responses by Disco to the IRs	12 noon Wed. Oct. 17, 2007
Notification of need for Motions Day	12 noon Fri. Oct. 19, 2007
Motions Day, if necessary.	9:30 Mon. Oct. 22, 2007

The Board directs any party, should it not wish to respond to a particular IR in the future, to clearly identify why it is not responding and whether or not it is prepared to provide the answer in confidence. Any party who objects to such a response is, in its notice for a Motions Day, to provide the rationale as to why the requested information would be relevant and/or why it should be public.

Dated at the City of Saint John, New Brunswick this 2<sup>nd</sup> Day of October, 2007.



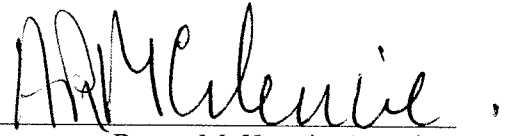
Raymond Gorman, Q.C., Chairman



Cyril W. Johnston, Vice-Chairman



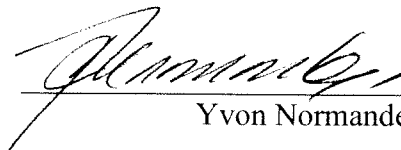
Don Barnett, Member



Roger McKenzie, Member



Constance Morrison, Member



Yvon Normandeau, Member