

**THE NEW BRUNSWICK BOARD OF
COMMISSIONERS OF PUBLIC UTILITIES**

IN THE MATTER OF The Public Utilities Act, R.S.N.B. 1978, Ch. P-27 as amended

IN THE MATTER OF an application by the New Brunswick Power Corporation for approval of changes in its charges, rates and tolls, in particular, for approval of an incentive rate.

Board:	David C. Nicholson	-	Chairman
	B. Fernand Nadeau	-	Vice-Chairman
	Claudette Stymiest	-	Commissioner
	Frank E. Kane	-	Commissioner

NB Power: **Thomas B. Drummie, Q.C. and Karen Colpitts, Solicitors**

The Large Power Users Group: **E. Neil McKelvey, Q.C. and Cynthia J. Benson, Solicitors**

Public Intervenors: **Robert L. Kenny, Q.C. and Ivan Robichaud, Solicitors**

People Against Lepreau Two Campaign: **Julie Dingwell and David H. Thompson**

Board: **Harry G. Colwell, Solicitor**

INTRODUCTION

The New Brunswick Power Corporation (NB Power) applied on Feb. 4, 1993 for a change in its rates to provide an incentive rate for large industrial customers. More particularly, this incentive rate was to promote in-province economic growth by encouraging the establishment of new industries or accelerating expansion of existing ones.

The proposed incentive is a 50% discount on the demand charge component of any new or additional loads of 2,000 KW or greater. It would be available for the period April 1, 1993 to March 31, 1998.

In July, 1993 the 440 MW Belledune Plant is scheduled to begin producing electricity for NB Power customers. Even with consideration being given to possible mothballing and early retirement of older generating plant, NB Power will have excess

capacity estimated as follows:

1993/94	-	377 MW
1994/95	-	340 MW
1995/96	-	278 MW
1996/97	-	229 MW
1997-98	-	147 MW

NB Power maintained that if, by offering this incentive rate, new industry would locate in New Brunswick, existing industry would advance start-up of unused capacity or expand capacity, this would be of benefit to all the customers of NB Power. The proposed rate would recover all of the incremental costs of producing the additional electrical energy. It would also provide a contribution to help pay for the excess generating capacity present on NB Power's system. This would mean that less revenue would be required from other sources. Therefore, the incentive rate would be of benefit to all of NB Power's customers.

As a general rule, customers who receive "a like and contemporaneous service" under similar circumstances should be charged the same rate for this service. It is rate discrimination to do otherwise. However, there has always been some

discrimination between customers in public utility rate setting. The test, both at common law and in public utility statutes, is whether or not it is "undue", "unjust", or "unlawful" discrimination.

Most regulatory statutes in Canada bar unjust discrimination in rate setting. However, there have been no reported reviews by the Courts of regulatory decisions in Canada, as to what constitutes unjust discrimination in public utilities' rate setting. However, in the United States, the courts have dealt with this question many times. The Texas Court of Appeals discussed the subject of discrimination as follows:

"The antidiscriminatory principle is not only statutory, it is a common law principle as well... But the principle includes a permissible range of unequal treatment which, while literally discriminatory, is not unlawfully so. The dividing line is generally that drawn by the rule of reasonableness, for mere inequality is not itself unlawful discrimination. That is to say, the different treatment practiced by the public utility must be founded upon a substantial and reasonable ground of distinction between the favoured and disfavoured classes or individuals." (Amtel Communications, Inc et al v. Texas Public Utility Commission (1985), 66 PUR 4th 140, at 146.

American regulatory boards have dealt with many applications for the approval of incentive rates similar to that proposed in this application. They have generally approved

incentive rates. The reasons for approval have varied from decision to decision but a common reason is that the rates will be of benefit to all of the customers of the utility.

"Use of economic development incentive rates has generally been approved as a means of contributing to the state's efforts to promote industrial growth, of facilitating construction of new or expended industrial or commercial plant, and of strengthening utility financial bases through expansion of the customer base." (RE Joint Petition of Indiana Cities and Towns for Approval of a Standard Economic Development Tariff (1989), 104 PUR 4th 51 at 51, Indiana Utility Regulatory Commission.)

"An economic redevelopment rate was affirmed as not being unreasonably discriminatory because, by stimulating industry and increasing utility revenues it would reduce the cost of service for all utility customers over the long run..." (Re Detroit Edison Company (1985), 68 PUR 4th 241 at 253.)

Further evidence that the incentive rate applied for is in the public interest is the fact that the Government of New Brunswick passed Order-in-Council 93-50 which reads as follows:

"Pursuant to subsection 3(7) of the Electric Power Act, the Lieutenant-Governor in Council directs the New Brunswick Power Corporation to proceed with the implementation of an incentive rate for industry in the form of a discount to existing rates and to be available to "new or "additions to" loads which are 2,000 KW or greater, applicable for the period April 1, 1993 to March 31, 1998."

SPECIFIC CONSIDERATIONS

POTENTIAL BENEFITS

The incentive rate will only apply to additional loads of 2000 KW or greater. It provides for a reduction to the normal demand charge but the energy charge is unchanged. There is no additional cost to NB Power for additional demand when it has surplus generating capacity. The generating plants have been built and their fixed costs remain the same regardless of the level of demand. If demand increases but remains below the level where new facilities would be required any additional revenue from demand charges can be applied to the fixed costs of generation. This will reduce the revenue requirement from other sources.

It is possible that total revenue may be lower with the incentive rate than it would be without it. This is due to the potential for "free-riders". These are customers who would have provided additional loads even without the incentive rate and therefore would have paid more. NB Power, based on its projections, estimated that the revenue at standard rates would be \$880,000 per year more than at incentive rates. This assumes that all additional loads would have occurred even in the absence of an incentive rate. NB Power stated that only one third of the additional load need be caused by the rate incentive for it to break-even.

The reference period for determining additional loads is the last six months of 1992. NB Power stated that, as of the date of the hearing, no customer had increased load in 1993 by more

than 2000 KW compared to the last six months of 1992. Therefore, no customer will automatically receive a reduction in demand charges due to the implementation of the incentive rate. To qualify for the incentive rate, all customers must increase their demand.

The Board recognizes that there is a risk that overall revenues may be somewhat lower with the incentive rate than they would have been without it. However, on balance, the potential for increased industrial demand and energy use is significantly greater with the implementation of an incentive rate.

TIME PERIOD

NB Power proposed that the incentive rate be applicable for a five year period, from April 1, 1993 to March 31, 1998. The Corporation provided a forecast of surplus capacity for the five years. The surplus is estimated at 377 MW for 1993/94 and reduces to 147 MW for 1997/98. The Board considers that it would not be desirable to offer demand at incentive rates without a reasonable assurance that sufficient surplus capacity will exist. Given the difficulties that exist in accurately predicting future demand, the Board is concerned by a commitment to five years. However, the Board will accept NB Power's position that five years is almost the minimum time acceptable to allow for industry to respond appropriately.

AMOUNT

NB Power proposed to accept customers for the incentive rate on a first come, first served, basis to a maximum of 100 MW in the aggregate. This was based on the current load and resource analysis which NB Power stated would be reassessed on the basis of a forthcoming revised load forecast.

The Board considers this to be a reasonable limit given its concern expressed in the previous section. The proposed tariff section creating the incentive rate does not state that there will be a cap of 100 MW. Mr. Gilliss, NB Power's witness, testified that he could see merit from a customer service policy prospective, of having the limit specifically set out in the tariff as it would enhance communication and explain the situation. The Board agrees with Mr. Gilliss and considers that the maximum number of MW available under the incentive rate should be clearly stated in the tariff.

OTHER

The LPU requested the Board to direct NB Power to use normalized revenue in its cost of service studies should the Board approve the incentive rate application. The LPU stated that to do otherwise would result in a potential detriment to the large industrial class. The Board will not comment on this matter at this time but believes that it would be more appropriate to discuss the matter fully at the time of the next general rate hearing.

NB Power recommended that the incentive rate be made available to customers of both the Power Commission of the City of Saint John and the Electrical Department of the City of Edmundston as large industrial load additions to their systems would also be beneficial. To accommodate this, NB Power amended proposal page RSP N-9(a) of the tariff as filed in the application. The Board agrees that the incentive rate should be available to customers of the two wholesale customers and that the amended wording will make this clear.

CONCLUSIONS

The Board directs NB Power to amend Page RSP N-9(a) to clearly state that the incentive rate is only available to a maximum of 100 MW in the aggregate and to file the amended page with the Board for approval. The Board will, upon receipt of an acceptable page RSP N-9(a), approve the incentive rate credit, effective as of this date.

Dated at the City of Saint John, New Brunswick this *28th* day of May, 1993.

Douglas Sanders
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Douglas W. Sanders
Secretary