

DECISION

NSUARB-W-HRWC-R-11
2012 NSUARB 9

NOVA SCOTIA UTILITY AND REVIEW BOARD

RA

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF AN APPLICATION of the HALIFAX REGIONAL WATER COMMISSION for an order approving a Cost of Service and Rate Design Methodology

BEFORE: Peter W. Gurnham, Q.C., Chair
Kulvinder S. Dhillon, P.Eng., Member
Murray E. Doeher, CA, P.Eng., Member

APPLICANT: HALIFAX REGIONAL WATER COMMISSION
John MacPherson, Q.C.

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

**BOARD COUNSEL
CONSULTANT:** MEL WHALEN
Multeese Consulting Inc.

INTERVENORS: CONSUMER ADVOCATE
John P. Merrick, Q.C.
William J. Mahody, LL.B.

HALIFAX PORT AUTHORITY
Douglas W. Lutz, LL.B.

INCOME PROPERTY OWNERS' ASSOCIATION OF
NOVA SCOTIA (IPOANS)
Robert G. Grant, Q.C.
Maggie A. Stewart, LL.B.

LABATT BREWERIES OF CANADA
Wade Keller

**SPRINGFIELD LAKE CONCERNED CITIZENS
COMMITTEE**
Wayne Faulkner

NOVA SCOTIA POWER INC.
Nicole Godbout, LL.B.

FINAL SUBMISSIONS: December 2, 2011

HEARING DATE: November 21, 2011

DECISION DATE: January 16, 2012

DECISION: Settlement Agreement approved.

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I INTRODUCTION

[1] The Halifax Regional Water Commission (“HRWC”) provides water, wastewater and stormwater services within a specific service boundary to customers in the Halifax Regional Municipality (“HRM”). HRWC became a regional water utility in 1996, after the amalgamation of the former utilities of the City of Halifax, City of Dartmouth and Municipality of the County of Halifax. With the transfer of wastewater and stormwater operations from HRM in 2007, HRWC became the first regulated water, wastewater and stormwater utility in Canada.

[2] In 2010, HRWC filed its first rate application with the Board for approval of consolidated schedules of rates, rules and regulations for the provision of water, wastewater and stormwater services. At that time, the rate structure for water was based upon a traditional utility model and followed the Board’s *Water Utility Accounting and Reporting Handbook* (“Accounting Handbook”). The application proposed revisions to the wastewater and stormwater rate structure, as HRM did not operate in a regulated environment. The Board’s decision in the matter directed that:

...a stand-alone cost of service proceeding should be conducted prior to HRWC’s next rate application....

[2010 NSUARB 244, para 280]

[3] In response to the directive, HRWC filed its cost of service study (“COSS”) application with the Board on May 20, 2011 (the “Application”), requesting Board approval for its proposed cost of service and rate design for each of the water, wastewater and stormwater services. The Application is based upon the findings of the May 2011 report, *Cost of Service and Rate Design Methodology Review and*

Recommendations, prepared by Galardi Rothstein Group, LLC, G.A. Isenor Consulting Limited, and W.H. Gates Utility Consultants Limited (the "Report").

[4] A public hearing into the matter was held on November 21, 2011.

[5] Several Intervenors participated in the proceeding including the Investment Property Owners Association of Nova Scotia ("IPOANS"), the Consumer Advocate ("CA"), Springfield Lake Concerned Citizens Committee ("SLCCC"), Halifax Port Authority ("HPA"), Labatt Breweries of Canada ("Labatts") and Nova Scotia Power Inc. ("NSPI"). Of these, only IPOANS, the CA and SLCCC filed written evidence. An oral presentation was provided by Labatts during the public hearing, which focused on the impact of the proposed Extra Strength Surcharge methodology, and increases in water and wastewater rates, on the operations of the Oland Halifax Brewery.

[6] At the request of the Board, Board Counsel convened a meeting of the expert witnesses for the Board, the CA and IPOANS to determine whether any of the issues in the proceeding could be resolved or simplified in advance of the hearing. The meeting took place in the week prior to the hearing. The Board had observed, in reading the pre-filed evidence, that a significant concern of the Intervenors' expert witnesses was the need, in their view, for additional information.

[7] As a result of the meeting referred to above, HRWC notified the Board at the commencement of the public hearing it had reached a settlement agreement with the CA and IPOANS (the "Settlement Agreement"), which was filed with the Board (Exhibit H-21). HPA indicated that, upon reviewing the Settlement Agreement, its issues could be more appropriately dealt with as a part of a HRWC future rate application.

[8] HRWC and Labatts had discussions prior to the public hearing with respect to Labatts' proposal of a three year moratorium on changes to the Extra Strength Surcharge. HRWC explained:

... HRWC is committed to continuing to consult with Labatt/Olands and, at such time as a rate application is filed under the new structure, HRWC will propose gradual phasing in of any increased Extra Strength Surcharge.

[HRWC Post Hearing Submission, p. 3]

II SPRINGFIELD LAKE

[9] The residents of Springfield Lake Subdivision receive wastewater and stormwater services from HRWC. This is an area of residential homes each of which is responsible for its own water supply. The residents of the subdivision, for some period of time, have been concerned about the charges and, in some cases, the operation of the wastewater and stormwater system that services this subdivision. The SLCCC represents the concerns of these residents. The residents had met with HRWC twice in 2011 to understand the operations and billing methods used for the wastewater and stormwater services. Based on the information that was received at these meetings, the SLCCC determined it should be an Intervenor for this Application. The SLCCC obtained 351 signatures on a petition identifying the concerns of the residents as:

(1) To provide a permanent solution to the ongoing problems with the Springfield Lake wastewater facility and infrastructure, which is currently affecting the local environment in a negative way.

(2) To hold in abeyance any water bills for those residents on wells and hooked into the treatment plant until such time we are able to observe a noticeable improvement in the service provided by the Halifax Water Commission.

[Exhibit H-7, p. 1]

[10] In general, a COSS hearing is focused on the process and methods to accumulate, allocate, and distribute various operating and financing expenditures of the

utility by function and by customer class. The SLCCC was questioned during the hearing about its specific concern and how it related to a COSS hearing:

Chair: And I have to say, I've read the evidence and at the end of the day you want a change in the rates paid ---

Mr. Faulkner: No sir, we don't at all disagree with the rates. We disagree with the methodology. We are presently being billed on an averaging methodology, they have no other choice. ...

[Transcript, pp. 15-16]

[11] Dr. Chris Taggart, on behalf of the SLCCC, provided evidence with respect to the averaging methodology using the equivalent dry weather flow at the Springfield Lake wastewater treatment facility of 273 cubic metres per day ("m³/day") as a starting point. Based upon the HRWC estimate of 377 customers, he calculated this to be an average flow per customer of 0.724 m³/day. Dr. Taggart also presented the figure based upon a higher estimate of the number of wastewater customers in the Springfield Lake Subdivision of 482 customers, which leads to average flow per customer of 0.567 m³/day. This analysis of dry weather flows in the Springfield Lake facility led to the following exchange with HRWC's counsel:

Mr. MacPherson: So I guess I'm just trying to understanding [sic] your figures, and you have to appreciate it's the first time we've seen them. You're saying essentially that the wastewater flows from the citizens who were part of this particular system would be within the Canadian average norm?

Dr. Taggart: If it was based on the sewer flow rate during a dry period.

Mr. MacPherson: Sure.

Dr. Taggart: Yes.

Mr. MacPherson: And presumably if their sewage usage is the same, their water usage must be within the Canadian norm?

Dr. Taggart: That would be correct.

[Transcript, pp. 157-158]

[12] Board Counsel questioned Dr. Taggart's evidence dealing with dry weather flows noting that, based upon a 90 day quarter, the 0.567 m³/day equates to 51 m³ per quarter per customer, which is equivalent to the "average" figure used by HRWC to determine wastewater bills in the absence of a meter. In the determination of rates Dr. Taggart only considered the volumetric charge of \$1.169 per m³ in an attempt to understand his quarterly bill from HRWC. This was explored at the hearing:

Dr. Taggart: And if I do the calculations according to what a metered person is paying for discharging water and do the calculations, then there's \$34.32 for which that discharge is being charged and the reason for it is unknown.

Mr. Outhouse: If I put it this way, to the extent that there's a base rate built into the metered rate, you haven't taken that into account?

Dr. Taggart: I don't know if I have or not because I know nothing about a base rate. I've seen nothing that states a base rate.

The Chair: Have you read our last rate decision?

Dr. Taggart: Pardon me, sir?

The Chair: Have you read our last rate decision?

Dr. Taggart: No, I haven't.

The Chair: So you wouldn't have read the schedule of rates that are attached to that decision?

Dr. Taggart: No. All I'm going on is the information that I can find on my bill and on the Commission site and the calculations of what a person in the city pays and what a ---

The Chair: You haven't looked at the rates that are approved by the Board?

Dr. Taggart: No, sir, I have not.

[Transcript, pp. 161-162]

[13] The Board notes that in the approved rates there is a quarterly base charge of \$34.32 for residential stormwater and wastewater services.

[14] In argument SLCCC acknowledged that the billings are based on a 51 m³ usage every quarter, but questioned the validity of "average" for all:

... Further, we provided clear evidence that if the data used for determining the average (the methodology) is highly variable and/or skewed in any manner, the average is not an equitable estimator. ...

[SLCCC Final Submission, p. 2]

[15] Dr. Taggart mentioned that not all users of the system are being billed:

Oh, one other thing, I -- just to clarify, there are still many residences in the Springfield Lake service boundary who are not billed in this manner. That is a fact. It's an indisputable fact.

I can take you to one residence and show you that person. I could take you to several more persons. I'm not about to do that.

[Transcript, pp. 154-155]

[16] SLCCC, in its summary, stated:

We provided, for obvious reasons, anecdotal evidence, that many of the SL-residents within the service boundary, and connected to the sewer system, are not billed for wastewater and stormwater discharge services. ...

[SLCCC Final Submission, p. 2]

[17] To which HRWC responded:

... However, HRWC welcomes information from any source in regard to any residences which may be receiving services without being billed by HRWC.

[HRWC Rebuttal Submission, p. 4]

[18] HRWC also commented upon the costs of operating the Springfield Lake facility:

... Revenues collected from residents of Springfield Lake in 2010/11 were approximately \$113,000 while the costs to operate the system for 2010/11 were approximately \$252,000. For 2010/11, HRWC's wastewater/stormwater customers, specifically those in the urban core and not service by small systems, subsidized the residents of Springfield Lake by approximately \$139,000.

[Exhibit H-18, p. 38]

[19] With respect to the use of "averaging" in the absence of meters, the Board notes that this methodology is used in other regulated water utilities in the province to

determine an unmetered rate. (HRWC is the only wastewater utility in the province which is regulated by the Board). There are approximately 28 water utilities that have unmetered residential rates. About 20 use an assumed consumption figure which is higher than the actual average of that utility to determine the unmetered rate. This is based upon the premise that unmetered customers have less financial incentive to conserve and may use more water than average. However, HRWC uses the average.

Findings

[20] The Board finds that the present revenue billed to the customers of the Springfield Lake wastewater and stormwater facility is not sufficient to meet expenses and is being subsidized by the urban core customers of HRWC. If, as stated by Dr. Taggart, there should be more customers billed, it would increase the revenues by approximately 28% (482/377-1) or \$32,000. In order to cover all of the operating costs the quarterly billings would have to increase to approximately \$163 per quarter per customer ($\$93.94 \times [\$252,000/(\$113,000 + \$32,000)]$).

[21] The Board also finds that no evidence has been led to indicate that the quarterly billings for wastewater and stormwater services are incorrect and not in accordance with the approved rates.

[22] The use of averaging in the absence of meters is an accepted ratemaking practice.

[23] The Board finds that the average dry weather quarterly flow from the system, divided by the number of users (assuming 482 customers) is slightly higher than the 51 m³ used by HRWC to determine unmetered quarterly rates. The Board

understands, in theory, there can be variations (skewed or not) from the average, however, no actual data, or its statistical analysis, was led to indicate the size of a potential variance between all the Springfield Lake facility customers. Hence, the Board finds that the use of 51 m³ for average quarterly unmetered usage to be supported.

[24] Finally, the Board finds the submission from the SLCCC, about users who are not billed, unhelpful in ensuring all users pay for services received. Without SLCCC being prepared to provide HRWC with names and/or addresses, these revenues are lost. HRWC may want to consider different means (such as billing all properties unless someone can prove they are not connected) to ensure the customer list is complete.

III THE SETTLEMENT AGREEMENT

[25] HRWC, at the start of the oral hearing on November 21, 2011, introduced the Settlement Agreement. Counsel for HRWC stated:

We are pleased to report that result in a very broad-based consensus in terms of the issues as those consultants and their clients saw them in the cost-of-service methodology and rate methodology aspects of this application. Over the course of the next several days, counsel for the parties worked together and have reached a Settlement Agreement which we would like to tender to the Board for its consideration.

[Transcript, p. 4]

[26] The Board canvassed the two Intervenors who did not sign the Settlement Agreement (HPA and SLCCC), to determine if they needed additional time to review it before participating in the hearing. Both Intervenors confirmed to the Board that they did not require additional time and had no comments on the Settlement Agreement.

[27] The Board's general approach to settlement agreements is outlined in its NSPI Decision dated November 5, 2008:

[12] The Board's *Regulatory Rules* facilitate settlement discussions. The Board welcomes and appreciates the efforts of parties to, in good faith, settle issues, even where, as sometimes happens, a settlement cannot be ultimately achieved.

[13] Where, as here, the Agreement is supported by representatives of all of the customer classes, the Board can have confidence that the Agreement is in the public interest.

[14] Customers of NSPI and members of the public are, perhaps understandably, wary of the settlement process. Many of those customers and members of the public may not appreciate that by the time the hearing commences 80% of the rate hearing process has already happened. NSPI filed extensive evidence, as required by the Board, to support its rate request. Interested parties and Board Staff asked NSPI many hundreds of written questions (Information Requests), to which responses were filed.

[15] All of the parties who chose to do so filed evidence, including expert evidence. Written questions (Information Requests) have been asked of and answered by interested parties who filed evidence. NSPI filed reply evidence. As noted, all of this happened before the hearing was scheduled to begin so that the parties and the Board are well informed about the case in advance of any oral public hearing.

[16] The public can rest assured that the Board Members hearing the matter have also thoroughly reviewed all of the material in advance of coming to a decision as to whether to approve the Agreement as being in the public interest.

[17] Settlement agreements, while relatively new in regulatory matters before the Board, are common in the litigation process. Within the Board's adjudicative mandate, for example, assessment appeals, planning appeals and other matters are often settled. In the civil courts of Nova Scotia, a much higher percentage of cases are settled than go to trial.

[18] That is not to say that the Board would hesitate to reject a settlement agreement it did not consider to be in the public interest, however, it should be understood that a properly supported settlement is a success of the regulatory process, not a failure.

[2008 NSUARB 140]

[28] The Settlement Agreement filed by HRWC states:

SETTLEMENT AGREEMENT

The parties agree as follows:

1. Subject to section 7, the AWWA Base-Extra Capacity (BEC) cost of service methodology is an appropriate method for assigning water costs to HRWC's customers. However, the percentages used in HRWC's submission to assign costs will be refined as described in (5).
2. The total cost of fire protection (public and private) will be determined within the BEC method and appropriately allocated between the two. The cost of fire protection shall be allocated between public and private fire protection by use of the size of water main connections for public fire connections and the size of private fire service lines at the first point of use which reflects the actual flow demand.

3. The WEF hybrid method is an acceptable cost of service method for assigning waste water costs to HRWC's customers. However, the percentages used in HRWC's submission to assign costs will be refined as described in (5). Should the refined percentages not support the hybrid method, one of the other WEF methods may be recommended by HRWC.
4. HRWC's proposed cost of service method for assigning stormwater costs to HRWC's customers is appropriate with the revision presented in Exhibit 4 of HRWC's Rebuttal Evidence of November 14, 2011, a copy of which is attached to this Settlement Agreement. The Investment Property Owners Association of Nova Scotia ("IPOANS") reserves its right to take the position that HRM should be responsible for the right of way flow charge.
5. HRWC will collaborate with stakeholders to develop a Cost of Service Manual. This Manual will document the basis for all cost assignments (functionalizations, classifications and allocations) applied to water, waste water and stormwater. It will be completed before any application is made to the Utility and Review Board for new rates based on the new cost of service.
6. Parties retain the right to challenge any portion of the Cost of Service Manual when it is first used by HRWC as the basis for new rates.
7. For greater certainty, the issue of whether density should be taken into account in [sic] for the cost of service for each of the services remains to be determined. HRWC agrees to provide further available information in response to reasonable requests from IPOANS in order to study this issue. Where HRWC considers the level of effort to respond to requests to be excessive, IPOANS will explain the reasons for the request and HRWC will explain the reasons for its objections. HRWC and IPOANS will collaborate to find alternative approaches to obtain reasonably required information. The parties agree to refer any dispute regarding such requests to the Board for resolution.

[Exhibit H-21, Appendix A]

[29] Counsel for IPOANS noted the fact that the Settlement Agreement is endorsed by Intervenor who have "divergent views on some issues, is indicative of support from residential and business customers within the service area."

[30] IPOANS, in its Closing Submission, stated:

The Minutes of Settlement confirm the approval of methodologies for water, wastewater, stormwater and fire protection. Further, the parties have agreed to collaborate on the development of a Cost of Service Manual which will be used as the basis for cost assignments (functionalizations, allocations and classifications.) Finally, the Minutes of Settlement facilitate the exchange of information that is necessary to address outstanding issues, such as the impact of density and intensity on cost of service.

Overall, given that a number of intervenors and their experts noted that the evidentiary foundation presented by the HRWC was, again, incomplete, in this application, the Minutes of Settlement provide a useful alternative to proceeding with a full hearing, in which the Board may well reach the same conclusion. This Agreement allows all the parties to focus their attention to developing the Cost of Service Manual and to resolving a limited number of outstanding issues and this, in so far as it is both, cost effective and productive, is in the public interest.

The Minutes of Settlement represent a reasonable compromise on the issues before the Board in this hearing. It is submitted that it is in the public interest to approve the Minutes of Settlement and IPOANS urges the Board to approve the agreement and decide the application consistent with its provisions.

[IPOANS Closing Submission, p. 5]

[31] The CA supported the Settlement Agreement and stated:

From the perspective of the Consumer Advocate, the proposed terms of settlement represent a fair and reasonable outcome of the issues in this matter. The recommended terms are in the public interest.

[CA Closing Submission, p. 2]

[32] The Board clarified during the hearing that the proposed Settlement Agreement does not apply to the pending rate application by HRWC later this year for rates to be effective in 2012/13.

Findings

[33] The Board has considered the evidence in the proceeding, including the Settlement Agreement and submissions by the parties, and is satisfied that the Settlement Agreement is in the public interest. The Board approves the Settlement Agreement as filed.

[34] HRWC, in accordance with the Settlement Agreement, and in collaboration with the intervenors, is to prepare a Cost of Service Manual which will be submitted to the Board for approval. The Board orders HRWC to complete this manual no later than August 30, 2012 and provide a schedule to achieve this deadline by January 30, 2012.

[35] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 16th day of January, 2012.



Peter W. Gurnham



Kulvinder S. Dhillon



Murray E. Doehler