**Matter No. 336**

**NEW BRUNSWICK ENERGY AND UTILITIES BOARD**

**INTERROGATORY**
(Rule 4.3)

**In Relation to an Application by:** New Brunswick Power Corporation

**In Accordance with:** Section 103(1) of the Electricity Act, SNB 2013, c.E-7

**TO:** Public Intervener (PI)

**FROM:** New Clear Free Solutions

**PI(NCFS) ___ _ IR- 1 Jan. 23th, 2017**

**Reference:** Matter 336 RDK Evidence on Behalf of the PI (Jan 17 17) (1)

**PLEASE SUMMARIZE YOUR UNDERSTANDING OF THE KEY LEGAL REQUIREMENTS FOR SETTING RATES AT NB POWER.**

The key features of the rate regulation of NB Power are detailed in Part 4 of the Act. I summarize my understanding of those requirements as follows:

- Rates should be set based on annually forecast costs;
- Rates should provide a just and reasonable return, in the context of achieving a capital structure of at least 20 percent equity;
- The fully integrated utility should be reliable, safe and economically sustainable, such that:
    - Generation, transmission and distribution should be "most efficient;"
    - Customers should have equitable access to secure power;
    - Customers should see the lowest cost of service;

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INDUSTRIAL ECONOMICS, INCORPORATED

- Subject to the conditions listed above, and to the extent practicable, rates should be as low as possible and rate changes should be stable and predictable.

Section 4 of the Electricity Act

**Electricity policy of the government**

**68** It is declared to be the policy of the Government of New Brunswick

(*a*) that the rates charged by the Corporation for sales of electricity within the Province

(i) should be established on the basis of annually forecasted costs for the supply, transmission and distribution of the electricity, and

(ii) should provide sufficient revenue to the Corporation to permit it to earn a just and reasonable return, in the context of the Corporation's objective to earn sufficient income to achieve a capital structure of at least 20% equity,

(*b*) that all the Corporation's sources and facilities for the supply, transmission and distribution of electricity within the Province should be managed and operated in a manner that is consistent with reliable, safe and economically sustainable service and that will

(i) result in the most efficient supply, transmission and distribution of electricity,

(ii) result in consumers in the Province having equitable access to a secure supply of electricity, and

(iii) result in the lowest cost of service to consumers in the Province, and

(*c*) that, consistent with the policy objectives set out in paragraphs (*a*) and (*b*) and to the extent practicable, rates charged by the Corporation for sales of electricity within the Province shall be maintained as low as possible and changes in rates shall be stable and predictable from year to year.

**Question(s):**

a) Why did you interpret low and stable rates using "should" in your evidence when the legislation uses "shall", or was this just an oversight?

b) This is in our opinion a significant oversight in your interpretation, and we feel a significant portion of your evidence is based on giving the corporations 20% equity target significant weight especially in regards to the public's requirement for low and stable rates. We feel that this has in turn led your evidence to not be in the public's best interest in which you were hired for. What aspects of your evidence would change if you had of used shall instead of should regarding low and stable rates?

**PI(NCFS) ___ _ IR- 3 Jan. 23th, 2017**

**Reference:** Matter 336 RDK Evidence on Behalf of the PI Pg 3 lines 8-10
"As a non-lawyer, I would interpret these criteria as elevating annual rate setting and 20 percent equity criteria above the low and stable rate criterion. As a matter of practice, it is not clear how the Company balances these issues."

**Question(s):**

a) Are you aware that the use of "shall" in regulatory and legal meaning is significantly different than the meaning of "should", or is this interpretation based on a initial misreading of section 68 (c) of the act.
b) Are you aware that "shall" is used as a requirement and "should" is used as guidance in regulatory and legal meaning, and that this would elevate the low and stable criterion shall to be a requirement over the should 20% equity target a guidance?
c) Do you consider your alternative interpretation to be in the public's best interest? Please explain why or why not?

**PI(NCFS) ___ _ IR- 4 Jan. 23th, 2017**

**Reference:** Matter 336 RDK Evidence on Behalf of the PI Pg 3 lines 28-30 pg 4 1-3
Because the legislation is not specific regarding the timetable for achieving a 20 percent equity ratio, the Company's view appears to be that it can continue to set rates based on an annual positive income targets, but never make any adjustment for over- or under-runs. Thus, Company appears to generally conclude that if its budget represents progress toward the legislated equity share of capital, it is compliant with the legislation."

**Question(s):**

a) Do you think that because the legislation is not specific regarding the timetable for achieving a 20 percent equity target it could be interpreted as giving the time to reach the target less of a priority, and therefore the timing should have the most flexibility for over or under runs, as long as progress is being made?

b) Do you think your interpretation is in the public's best interest, compared to NB Powers interpretation and if so please explain?

**PI(NCFS) ___ _ IR- 5 Jan. 23th, 2017**

**Reference:** Matter 336 RDK Evidence on Behalf of the PI Pg 4 lines 13-15
"Similarly, the shareholder does not share in the Company's profits, nor does it share directly in the operating risks."

**Question(s):**

a) While NCFS would certainly object to any dividends being paid to shareholders anytime soon we do think NB Power should be able to provide the province with substantial dividends in the future if the transition to renewables is well managed, as indicated in our Integrated Resource Plan we submitted as evidence. These dividends can be used in the public's interest to help fund social programs and or reduce taxes. We however ask why you state that the shareholders do not share in the company's profits? Section 38 of the act states:

> ***Dividends***
>
> ***38***( *1) The Corporation may declare or pay a dividend unless there are reasonable grounds for believing that*
>
> *(a) the Corporation is, or would after the payment, be unable to pay its liabilities as they become due, or*
>
> *(b) the realizable value of the Corporation's assets would thereby be less than the aggregate of its liabilities.*
>
> ***38***( *2) Any dividends payable to the Crown shall be paid to the Minister of Finance.*

**Reference:** Matter 336 RDK Evidence on Behalf of the PI Pg 6 lines 3-7
"Second, the Electricity Act and associated Regulation require that 40 percent of in province electricity sales be provided by renewable resources, by December 31, 2020 and every fiscal year thereafter. Because incremental renewable supplies are generally more expensive than other supply options, this regulation serves to increase rates."

**Question(s):**

a) What evidence can you provide that incremental renewable energy is generally more expensive than other supply options, and is it just a little more expensive or a lot more expensive? We supplied the latest 2016 EIA Outlook Levelized Cost of Electricity data that showed renewables are now comparable to or less than other options, as is the case with many current reports on renewables.

b) Can you explain the effects on different NB Power financial metrics if NB Power invested into renewables as opposed to signing PPA's with private companies to supply the renewable energy?

c) Can you give your opinion on which of the above would be a better method for implementing renewables for NB Power remembering that ratepayers are also the owners of NB Power.

d) We submitted evidence that it is better for NB Power to create equity by investing into renewables than by paying down debt. We submitted that investing into renewables will increase amortization and depreciation and small increases in O and M expense but will reduce fuel and purchased power cost. We submitted that this switch from fuel and purchased power cost to amortization and depreciation cost will increase cash flow that can also be used to invest in more renewables each year, and that over time this displacement of fuel and purchased power creates a compounding effect. We proposed this to be a much more effective way of reaching the equity target while also the considering new climate action plans and the fundamental differences between renewable energy and traditional ff energy. We feel the switch to a very high penetration of renewables will significantly change the economics and particularly cash flow of NB Power. Do you have any thoughts on this different way of reaching the equity target and is it something that NB Power should be exploring in more detail in the next iteration of the IRP?

e) NB Power uses Net Present Value for the IRP. Does NPV take into consideration the difference between capital cost and opex cost, especially when the capital costs are equity financed vs debt financed?

**PI(NCFS) ___ _ IR- 6 Jan. 23th, 2017**

**Reference:** Matter 336 RDK Evidence on Behalf of the PI Pg 8 lines 36-38 Pg 9 lines 1-8

"In an effort to encourage cost realism in the both the annual and longer-term forecasts, and possibly to provide a modest incentive for the Company to meet its targets, the Board should consider an adjustment mechanism for future rates to reflect variances in historical performance.[4] In essence, the annual rate increases would consist of both a longer-term trajectory component and a shorter term adjustment mechanism to reflect performance variances. Thus, for example, after the first year, if the Company misses its approved income forecast by $50 million, the rate trajectory would be adjusted upward for a short period of time (say 3 years) to allow for recovery of that variance over a longer period (say ten years).[5]"

**Question(s):**

a) Section 68 (a) (i) of the act states that rates should be established on the basis of annually "forecasted" cost for the supply, transmission and distribution of the electricity. We interpret forecasted in the legislation as forward looking, and gives no indication that rates should be set by performance, so future rate payers are not on the hook for past performance, only NB Powers rate of return is on the hook. Why is your interpretation different than ours?

b) How should the board take into consider the rate trajectory overshooting the equity target? We see in the 10 year plan a significant overshoot of the equity target and even in year 2027 when significant spending on Mactaquac occurs the equity ratio is still declining.

c) Do you think the lifespan of the investment that created the debt and the details around the investment decisions should be taken into consideration in the timing of reaching the equity target? For example NB Power proceeded with the refurbishment of Lepreau even though the EUB's predecessor the PUB declared it to be not in the public's interest. NB Power then essentially 100% debt financed this investment and now this investment is not performing as well as anticipated. Do you think the ratepayers should be on the hook for this or should NB Powers returns be on the hook when considering low and stable rates.

d) Why do you think it is in the public's best interest for the board to adopt such a mechanism, or is this due to your initial misinterpretation of the "should" and "shall" in section 68 of the act?

**PI(NCFS) ___ _ IR- 7 Jan. 23th, 2017**

**Reference:** Matter 336 RDK Evidence on Behalf of the PI Pg 1 lines 1-20

**IN REPRESENTING THE PUBLIC INTERVENER, HOW DO YOU INTERPRET YOUR RESPONSIBILITIES IN THIS PROCEEDING?**

It is my understanding that the Public Intervener is tasked with representing the public interest. However, in my experience in regulatory proceedings, the term "public interest" can be interpreted in many different ways. My approach is therefore to evaluate the rate filing for consistency with:

- The law and the policy environment;
- Previous decisions of the regulator;
- Sound economics and regulatory principles;
- The practices of other regulators and utilities.

In general, this approach requires a reasonable balancing of the interests of all stakeholders, notably between the utility and its ratepayers, between customer classes, and between individual customers. Furthermore, the concerns of other stakeholders (e.g., competitors, suppliers, environmental advocates, First Nations, low-income customer advocates, utility workers, and municipalities) deserve a fair hearing.

Moreover, given the nature of NB Power and its regulatory environment, representing the public interest should balance the interests of today's ratepayers with the interests of future ratepayers. As discussed further below, future ratepayers are "on the hook" for any under-recoveries of today.

**Question(s):**

a) What are some examples of the many ways public interest may be interpreted, what would be the most common, and how are they different than your interpretation?

b) Much of your evidence would suggested NB Power should be asking for higher rates than what NB Power is currently asking for. How do you justify this to be in the public's best interest, as it seems opposite of what we would expect from someone representing the public interest?

c) Given that the legislation puts a priority on low and stable rates over any returns, and currently has no mechanism for adjusting rates for past performance why do you think future customers will be "on the hook" for an under recovery of returns, wouldn't the legislation suggest that the return is adjusted to assure low and stable rate requirement?