

New Brunswick Board of Commissioners of Public Utilities

Hearing

In the Matter of an application by WPS Canada Generation Inc. dated January 10, 2003, Inc., in connection with Approval of Proposed Rates

Town Hall, Village of Perth Andover, NB
March 26, 2003, 10:00 a.m.

PUB In house Transcript

1 New Brunswick Board of Commissioners of Public Utilities
2 Hearing
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5 Town Hall, Village of Perth Andover, NB
6 March 26, 2003, 10:00 a.m.
7 CHAIRMAN: David C. Nicholson
8
9 COMMISSIONERS: A. Boucher
J. Dumont
E. LeBreton
10
11 BOARD SECRETARY: L. Légère
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13

14 CHAIRMAN: Good morning ladies and gentleman. Mr. MacDougall, would
15 You make appearances for the applicant please?
16 MR. MACDOUGALL: Yes, I can, Mr. Chair. It's David MacDougall, counsel for
17 WPS Canada Generation Inc. and I'm joined today by Mr. Ed Howard,
18 who's an energy marketing executive with WPS Canada.
19 CHAIRMAN: Thanks, Mr. MacDougall. My understanding, Madame Secretary
20 is that the Department of Natural Resources and Energy withdrew their
21 application to be an intervenor in this matter as a result of the Board's
22 ruling in St. Stephen.
23
24 MS. LEGERE: That is correct.
25 CHAIRMAN: Okay, Mr. MacDougall. You had pre-filed some evidence.

1 MR. MACDOUGALL: That is correct, Mr. Chairman.

2 CHAIRMAN: Do you want to mark that?

3 MR. MACDOUGALL: Yes, we should. And that's identified as the direct
4 testimony of Mr. Ed Howard and it has attached to it tabs 1, 2 and 3. It's
5 all in one package so if we just have one...

6 CHAIRMAN: Just one and it will be exhibit A, for applicant, one.

7 MR. MACDOUGALL: I do have extra copies of that here if anybody in the
8 room requires one.

9 CHAIRMAN: Okay, if any of the audience would like a copy, well Mr.
10 MacDougall has some additional ones. The Board has copies in their
11 binders. Don't be shy.

12 MR. MACDOUGALL: I also have copies of the application as well, Mr. Chair so
13 I can pass them out at the same time.

14 CHAIRMAN: Certainly. Good morning, Mr. Howard.

15 MR. HOWARD: Good morning.

16 MR. MACDOUGALL: Mr. Chair, in an initial preliminary matter I have an
17 affidavit of publication here, an original affidavit and a copy to give to
18 Ms. Legere. And that was sworn before me and I have checked that and
19 it is in accordance with the Board's Order.

20 CHAIRMAN: Okay, great. All right, we'll just therefore take that as having
21 complied with the Board's Order and I'll check it later on. I will simply
22 mark it not as an exhibit, but simply mark it and it will form part of the
23 record of this proceeding. Go ahead, Mr. MacDougall.

24 MR. MACDOUGALL: Now, Mr. Chair, the witness today for WPS Canada, as
25 previously advised is Mr. Ed Howard. We would suggest that Mr. Howard

1 be sworn and that he adopt his evidence and then there was the one
2 matter that we spoke with Mr. Goss beforehand, which I'll then deal
3 with after Mr. Howard has adopted the evidence and then we'll be open
4 to cross-examination. So if he could be sworn.

5 CHAIRMAN: Yes.

6 MS. LEGERE: Do you swear that the evidence you shall give will be the truth,
7 the whole truth and nothing but the truth so help you God?

8 MR. HOWARD: I do.

9 MR. MACDOUGALL: Mr. Howard, could you please tell us your full name and
10 current address?

11 MR. HOWARD: Yes, my full name is Edward Alex Howard and my current
12 business address is 142 Lower Lyndon Street, Caribou, Maine and I am
13 a Canadian resident.

14 MR. MACDOUGALL: And what is your position with WPS Canada Generation?

15 MR. HOWARD: My current position is Energy Marketing executive with WPS
16 Canada Generation.

17 MR. MACDOUGALL: And do you have before you a copy of your direct
18 testimony which was earlier marked as Exhibit A-1 in this proceeding?

19 MR. HOWARD: Yes, I do.

20 MR. MACDOUGALL: And was that testimony prepared under your direction
21 And control?

22 MR. HOWARD: Yes, it was.

23 MR. MACDOUGALL: And do you adopt it as your testimony and that of
24 WPS Canada Generation in this proceeding?

25 MR. HOWARD: Yes, I do.

1 MR. MACDOUGALL: And can you confirm that your resume is as set out in
2 the fourth question on page one of the direct testimony?

3 MR. HOWARD: That is correct.

4 MR. MACDOUGALL: Mr. Chair, Mr. Howard will now be available for cross-
5 examination by any parties. There is one point that maybe is worth
6 dealing with before that just in case there are any questions on that. The
7 question arose with respect to exhibit or tab three, which is the amended
8 restated agreement, which was put before the Board for approval today.
9 Board staff raised a question with respect to section 10 of that agreement,
10 which is arbitration proceedings and Board staff indicated the concern that
11 there is a complaint proceeding under section 6 of the Public Utilities Act,
12 which generally allows customers of utilities to make a complaint to the
13 Board. We would just like to confirm today on behalf of WPS Canada
14 Generation that this clause was not to derogate from the rights of a
15 customer of WPS Canada Generation to make a complaint to the Board, but
16 it was to set up a more modern process between commercial customers
17 do deal with matters amongst themselves if they thought that it was
18 appropriate. We had spoken with Mr. Dionne, who is an employee of both
19 the Perth-Andover Electric Light Commission and the village council and
20 had suggested to him that an appropriate resolution to this would be to say
21 that the complaint procedure would remain open to the Commission up
22 until such time as the parties have either decided on the single arbitrator
23 or decided on a panel of three arbitrators. Both options are available in
24 the contract, but at such time that the parties have decided on the
25 arbitrators and who the arbitrators then the matter would continue

1 before the arbitration and it wouldn't be reversed after that time frame so
2 that the Commission would have its right to come to the Board as a
3 complainant. But if they decided fully to use the arbitration and are
4 satisfied with the arbitrators then from that time period on they would
5 take that option.

6 CHAIRMAN: Mr. MacDougall, does that track this Board's order in
7 reference to NB Power's open access transmission tariff proceeding that
8 we just concluded recently and the order that the Board made at that
9 time?

10 MR. MACDOUGALL: I don't believe that it does completely, Mr. Chair. Mr.
11 Goss explained to me what that order said was that throughout the
12 arbitration proceeding at any time a party would be able to make a
13 complaint to the Board and then the arbitration proceeding would stop
14 and once a complaint was made to the Board it would continue on in front
15 of the Board. The only concern WPS has is that once an arbitration starts
16 parties then start to know where the arbitrator is heading and maybe
17 decides well, we don't like where this is going so now let's go back to the
18 Board. We thought that would be a little bit of form shopping. We've
19 had this discussion with Mr. Dionne. He believes that there will be plenty
20 for the Commission to make a determination whether it wants to make a
21 complaint to the Board or to go by arbitration, but once it had decided on
22 the arbitrators it would have decided that this is the process that we want
23 to take and to continue and therefore at that stage they wouldn't be able
24 to bring a complaint to the Board. The issue is a concern that what if the
25 arbitration went right to the day before the decision was suppose to be

1 made and the complainant felt well, we don't think we're going to get a
2 good outcome here we're going to go and then all of a sudden they
3 decide to stop that. Mr. Dionne believes the Commission will not have a
4 problem with that in that this is an option. It doesn't take away from the
5 complaint procedure. If the Commission wishes to make a complaint, it
6 can do so. It just has to make its mind up on that before it starts the
7 parties down the cost of an expensive full arbitration.

8 CHAIRMAN: Okay, our concern, the Board's concern as you discussed with
9 staff is that is that if that if an Act of the Legislature gives a customer an
10 Opportunity to apply to this Board to resolve a dispute or a complaint, we
11 don't want the parties to be able to cut that off on an unreasonable basis,
12 i.e. even though we respect the fact that the parties should be free to
13 contract and do what they wanted. My suggestion and the Board will chat
14 about it after is that perhaps we can get a hold of a copy of what it is that
15 we put in the Order and see if that is acceptable. I mean I'm terribly
16 disappointed that both you and Mr. Dionne have not committed that portion
17 of our previous decision to memory.

18 MR. MACDOUGALL: I'm terribly disappointed myself.

19 CHAIRMAN: Anyhow, perhaps we can just wait until after we've concluded
20 the rest of the matter to see if staff perchance has a copy of the decision
21 that they can lay their hands on or Mr. Dionne, do you perhaps have in
22 your office some piles you could check for a copy of our decision?

23 MR. DIONNE: I could check.

24 CHAIRMAN: Ms. Drescher does have a copy? Okay, well then after we've
25 taken a break and preferably looked at because there would be some

1 some advantage to having consistency in that you would be a transmitter
2 under the next tariff that is applied to the ... that comes before the Board
3 round two. So to have things consistent between this agreement and
4 NB Power's tariff where you can.

5 MR. MACDOUGALL: Well, Mr. Chair actually to comment on that and maybe
6 this would be helpful. It is WPS's intent and actually by law they will have
7 to file a transmission tariff by the end of December 2004. In that
8 transmission tariff they would be fully willing to have proper stipulation.
9 This was sort of to deal with the time period between now and that tariff
10 since this is the agreement that is going to govern during that time frame.

11 CHAIRMAN: Let's leave it to where we've concluded and it certainly isn't the
12 Board's intention to hold up a decision in reference to this matter to deal
13 with that. We'll go forward from there.

14 MR. MACDOUGALL: That's great, Mr. Chair. In that regard, I suggested to
15 Mr. Dionne in order to confirm that that he might have to register as an
16 informal Intervenor, but since the matter will be dealt with at the end of
17 the proceeding I don't think we have to do that. I think that we can just
18 continue on.

19 CHAIRMAN: Okay, good. Go ahead, sir.

20 MR. MACDOUGALL: Mr. Chair, at that point subject to the our
21 understanding is that there is no one who has filed in advanced of today in
22 opposition to this proceeding so Mr. Howard doesn't intend to summarize
23 his evidence. It's in general summary form and the amended agreement
24 has been agreed to by both parties to the agreement so Mr. Howard is
25 available for cross-examination by the Board or any parties that have

1 come to the hearing today.

2 CHAIRMAN: As you know, Mr. MacDougall, this Board doesn't stand on a
3 great deal of formalities most of the time. My only concern now is that
4 there may be some people in the audience who are not totally familiar
5 with it and if there are and they wish to have this witness paraphrase his
6 evidence, i.e. set the stage for what the agreement is between the
7 applicant WPS and the Commission of Perth-Andover why, just raise your
8 hand and I'll ask a question of Mr. Howard.

9 MR. MACDOUGALL: We should say if anyone has then Mr. Howard certainly
10 is willing to do that.

11 CHAIRMAN: Sure. It appears as though everyone is completely familiar so I
12 won't take up anymore of your time with that. Do any of the
13 Commissioners have any questions that they want to put to Mr. Howard?
14 I have but one because the arbitration matter has been dealt with pretty
15 well because under the old agreement and we're testing people's memories
16 here. Under the old agreement, it was on page five of the 1993 agreement
17 and it mentioned a particular action that was underway in the Queen's
18 Bench that the parties would settle. Anybody in the room remember what
19 the nature of that litigation was? It's all been settled and settled amicably
20 but we were just sort of curious when we were doing our review of the
21 documentation. I can't remember us questioning it back in 1994 when we
22 saw a disagreement before. Mr. Dionne, I know that you're not so old so
23 if you know tell us.

24 MR. DIONNE: I was at the downtown office at that point so I don't know.

25 CHAIRMAN: Anybody know?

1 BURPEE WAGNER: The only thing that possibly might have been, could have
2 been at one particular time the line coming in from a tanker to Perth-
3 Andover was constructed by the Village of Perth-Andover and for several
4 years it was not turned over to what would have then been Maine Public
5 Service and in the beginning there was an agreement to do so. That
6 eventually did get straightened out and the line was turned over to Maine
7 Public Service. That's was it reminds me of, but I can't say for sure.

8 MR. HOWARD: I don't believe that's what it was, Mr. Chairman, because
9 it's include in the documentation in the agreement that was written if you'll
10 remember, Burpee, that preceded the line construction to the village and I
11 have been trying to remember. I know that I know what it is, but I can't
12 remember for the life of me what that issue was that was before the court
13 because I was involved in the current agreement negotiations. And at the
14 time there was an issue, but I cannot remember for the life of me, Burpee,
15 what that was. It would have preceded this current agreement, right?

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17 MR. WAGNER: The only individual that I could think of who might be able to
18 remember that would be Murray Waters.

19 CHAIRMAN: It started in 1989. That's basically all you can tell from the
20 court's files. Well, that's okay. It was just simply a matter of curiosity,
21 that's all. The Board and its staff has had the opportunity to review the
22 contracts and notices have been published and we read your pre-filed
23 testimony, Mr. Howard. We're going to take a brief recess now just so
24 that now we can check on the Board's decision on the open access tariff
25 and we'll go back whenever you've had the opportunity to do that and we'll

1 remove this passage.

2 CHAIRMAN: All right, Mr. MacDougall the Board has heard what you and
3 Board staff have chatted about concerning this clause ten dealing with the
4 arbitration provisions, etc. We've had a discussion among the panel
5 members. First of all, we'll approve the application as filed.

6 MR. MACDOUGALL: Thank you, Mr. Chair.

7 CHAIRMAN: And it will be, the Board's Order will be effective as of, how do
8 say that? As of April 1, 2003 or is it midnight of March the whatever,
9 2003?

10 MR. DIONNE: In the electric business, we 0001 April one.

11 CHAIRMAN: I see.

12 MR. MACDOUGALL: Commencing the first of April I think will do.

13 CHAIRMAN: Commencing the first of April will be fine. It will be that. The
14 difficulty that the Board had with section 10 of the arbitration process is
15 you have had discussions and there are only two parties involved in this
16 and you have mutually agreed the way you want to proceed and you have
17 acknowledged on the record what your concerns are. And secondly, the
18 fact that if the customer were to choose the route of complaining directly to
19 to this Board then that would be open to them. So our suggestion is quite
20 simply take what we have put in our decision in reference to the NB Power
21 open access tariff and adapt it to reflect what it is that the two parties here
22 agree to and file that with the Board and we will accept that as the way in
23 which section 10 of your agreement will be interpreted in the future until
24 such time that you're gotten your new transmission tariff. Any comments
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1 on that approach, Mr. MacDougall?

2 MR. MACDOUGALL: That's perfectly acceptable, Mr. Chair, and we'll have that
3 to you if not tomorrow then certainly on Friday so that you'll have it by the
4 end of this week in advance of April 1.

5 CHAIRMAN: Do you want to do a draft Order?

6 MR. MACDOUGALL: Yes, Mr. Chair, I'll do that.

7 CHAIRMAN: If you could, we'd appreciate it you getting it in either tomorrow
8 or on Friday. Some people are leaving the province around the first of
9 April.

10 MR. MACDOUGALL: We will certainly have it to you by Friday at the latest.

11 CHAIRMAN: They're dodging the difficulty that the first of April brings. In
12 closing the Board wants to thank the Village of Perth-Andover for their
13 normal hospitality and also allowing us to use their very adequate
14 premises.

15 MR. MACDOUGALL: Mr. Chair, one other comment. I had mentioned this to
16 Goss last night, but Mr. Howard would like to extend the invitation this
17 morning if any of the Board members or Board staff or anyone who's here
18 today would actually like to go up to Perth-Andover's facility for an hour or
19 so, Mr. Howard could give you a tour. It's quite interesting, it has some
20 very old components, some new components and it would enable the Board
21 members to see how the utility is set up, where's it connects with NB Power
22 and otherwise. It would probably be an hour, an hour and a half and
23 anybody who would like to do that, Mr. Howard would be pleased to do
24 that. It's about 15 minutes from here.

25 CHAIRMAN: We appreciate the offer, but I don't know if any of the

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Commissioners want to take advantage of that. I personally have got some things I want to get back for. I’ve been through Grand-Falls, I’ve been through Mactaquac and I’ve also been through Milltown.

MR. HOWARD: But you’ve missed the best.

CHAIRMAN: Well, I’m saving that to the last. So we do appreciate your offer, Mr. Howard, but the Commissioners will approach you if they find their time scheduled are such that they can do it. But I someday would like do it so thank you very much.

MR. MACDOUGALL: That’s great, Mr. Chair, we can just discuss that with whomever would like to.

CHAIRMAN: Thank you very much.

(Adjourned)

Certified to be a true transcript of the proceedings of this hearing as recorded by me, to the best of my ability.

Board Staff

