

DECISION

NSUARB NSPI-P-128.09
2009 NSUARB 179

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE *PUBLIC UTILITIES ACT*

- and -

IN THE MATTER OF Nova Scotia Power Incorporated having filed a work order application with the Nova Scotia Utility and Review Board for approval of the Nuttby Mountain Wind Project, a 45 megawatt (MW) project located in Colchester County in the total amount of \$120 Million. NSPI also seeks approval to resell a portion of the facility, if necessary, to comply with Nova Scotia's Renewable Energy Standards

BEFORE:

Peter W. Gurnham, Q.C, Chair
Kulvinder S. Dhillon, P. Eng., Member
Roberta J. Clarke, Q.C., Member

COUNSEL:

NOVA SCOTIA POWER INCORPORATED
Mr. René Gallant, LL.B.
Mr. Daniel Campbell, Q.C.

AVON ET AL.

Mr. Robert Grant, Q.C.
Ms. Nancy Rubin, LL.B.

BLACK RIVER WIND LIMITED

Mr. Neal Livingston
Ms. Peggy Cameron

CAPE BRETON EXPLORATIONS LTD.

Mr. Luciano Lisi

CONSUMER ADVOCATE

Mr. John P. Merrick, Q.C.
Mr. William Mahody, LL.B.

**MUNICIPAL ELECTRIC UTILITIES OF
NOVA SCOTIA CO-OPERATIVE**

Mr. Don Regan

**NEWPAGE PORT HAWKESBURY CORP. and
BOWATER MERSEY PAPER COMPANY LIMITED**

Mr. George Cooper, Q.C.

Mr. David MacDougall, LL.B.

Mr. Matthew Clarke, LL.B.

Mr. James MacDuff, LL.B.

NOVA SCOTIA DEPARTMENT OF ENERGY

Mr. Stephen T. McGrath, LL.B.

Mr. Scott McCoombs

Mr. Richard Penny

NOVA SCOTIA LIBERAL CAUCUS

Mr. Shawn Lawlor

QUETTA INC.

Mr. John Reynolds

SCOTIA INVESTMENTS LIMITED

Mr. Robert Patzelt, Q.C.

Mr. John Woods

Mr. Aaron Long

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

SUBMISSION DATES: September 11, 2009
November 3, 2009
November 10, 2009

DECISION DATE: November 30, 2009

DECISION: The Board approves the application subject to conditions.
Sale of 51% of the Project is not approved at this time.

Table of Contents

I	INTRODUCTION AND OVERVIEW.	<u>2</u>
II	ISSUES, ANALYSIS AND FINDINGS.	<u>4</u>
	Review of Wind Turbines Solicitations	<u>4</u>
	Costs of the Project, including Costs Relative to EarthFirst Power Purchase Agreement.	<u>8</u>
	Adequacy of Information Disclosed	<u>13</u>
	P50 Analysis.	<u>13</u>
	RES Compliance - Administrator's Opinion.	<u>15</u>
	Just in Time Planning.	<u>16</u>
	CBEX Offer.	<u>18</u>
	EcoENERGY Funding.	<u>18</u>
	Final Approval of Costs to go into Rate Base.	<u>19</u>
III	SALE OF 51% OF THE PROJECT.	<u>20</u>
IV	CONFIDENTIALITY ISSUE.	<u>21</u>
V	APPROVAL WITH CONDITIONS.	<u>22</u>

I INTRODUCTION AND OVERVIEW

[1] Nova Scotia Power Inc. ("NSPI") proposes to build the Nuttby Mountain Wind Project ("Project") in the Cobequid Mountain Region of Colchester County, Nova Scotia. The Project will be a 45 megawatt ("MW") wind energy project capable of generating an average of 140 gigawatt hours ("GWh") of renewable energy annually. Pursuant to Section 35 of the *Public Utilities Act*, R.S.N.S. 1989, c.380, as amended ("*PUA*"), NSPI seeks capital work order approval from the Nova Scotia Utility and Review Board (the "Board"). It also seeks approval of the sale of 51% of the Project in the event such a sale is necessary to comply with the 2010 Renewable Energy Standards.

[2] Pursuant to the provisions of the *Electricity Act*, S.N.S. 2004, c. 25, s. 4, commencing January 1, 2006, a person who sells or supplies electricity to a customer in Nova Scotia must comply with the Renewable Energy Standards ("RES") set out in the Regulations (Regulations made under s. 5 of the *Electricity Act*). The RES Regulations originally required that by 2010 NSPI is to procure five percent (5%) of its energy from non-NSPI renewable sources constructed after 2001. The RES requirement increases to ten percent (10%) in 2013 but includes generation from both third party and NSPI facilities constructed after 2001.

[3] If NSPI fails to meet the requirements of the RES Regulations it is possibly subject to significant penalties. Section 14 of the RES Regulations reads as follows:

Penalties and enforcement

14 (1) A person is liable to a daily penalty of no more than \$500,000, if they do any of the following:

- (a) fail to comply with these regulations;
- (b) fail, neglect, omit or otherwise refuse to do any act or thing required under these regulations;
- © fail, neglect, omit or otherwise refuse to comply with a direction or order of the Administrator or the Board made under these regulations.

(2) Unless otherwise provided in the Act, a person is not subject to a penalty under subsection (1) if the person establishes that they

- (a) exercised due diligence; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would render the conduct of the person excusable.

[4] The Province of Nova Scotia (the “Province”) recently extended to 2011 the date by which NSPI must procure five percent (5%) of its energy from non-NSPI renewable sources constructed after 2001.

[5] In the Province’s Energy Strategy released in January of 2009 it identified a minimum provincial goal of at least twenty-five percent (25%) of electricity generated in Nova Scotia being from renewable sources by 2020. In July of 2009 the Province announced this goal must be met 5 years sooner, in 2015.

[6] NSPI originally selected this Project as part of its 2007 Request for Proposal (“RFP”) process for renewable energy from independent power producers (“IPP”).

[7] Financial troubles led EarthFirst Canada Inc. (“EarthFirst”), the proponent of the Project, to offer for sale the Nuttby Mountain development rights. In a decision dated

April 17, 2009, the Board approved NSPI's purchase of the Nuttby Mountain development rights.

[8] NSPI's Application consists of three work orders totalling \$120 Million for the development, construction, commissioning and interconnection of the Project.

[9] As part of the funding for the Project NSPI intends to apply for the Government of Canada's EcoENERGY Program to a value of \$14 Million. NSPI advises that in order to access the EcoENERGY funding it must undertake this investment beginning in 2009 with completion prior to March 31, 2011. Following the filing of submissions NSPI filed a letter from Natural Resources Canada dated November 20, 2009, confirming the Project qualifies for an EcoENERGY Contribution Agreement.

II ISSUES, ANALYSIS AND FINDINGS

Review of Wind Turbines Solicitations

[10] NSPI held a meeting on May 1, 2009 to outline the major requirements for the project to proceed, and the outstanding issues that needed to be resolved. The notes, in part, from that meeting are as follows:

Discussion:

NSPI purchased the development rights to the Nuttby Mountain project on April 27, 2009. The project is in advanced development. Key factors that impact the timeline and choices available for turbines for Nuttby Mountain are:

1. Transmission – 45MW maximum capacity
2. Generation Interconnection Agreement signed and based on the Vestas V90.
3. Permitting – Provincial Environmental Assessment release was based on up to 22 turbines; Federal Environmental Assessment is pending with the same assumption
4. Resource Assessment – Garrad Hassan wind analysis was conducted on the Vestas V90 (45MW) and the Enercon E82 (36MW).

5. Incentive Funding – EcoENERGY Incentive funding requires that projects be commissioned by March 31, 2011.

...

NSPI can revisit the turbine decisions, subject to the management of the constraints noted above. NSPI's considerations for developing Nuttby are:

- Lowest \$MWh
- Lowest \$MW capital
- Most energy from the site (energy optimization)
- Most capacity on the site(45MW)
- Develop site as quickly as possible

...

Decision:

A request for proposals will be issued May 8, 2009. The distribution will be limited to Vestas, Enercon, any parties that are believed to have shortfalls in turbine frame agreements with Vestas or Enercon, and the parties administering the re-sale of the Vestas V90 turbines for the Earthfirst Dokie project.

...

Given the lead time for turbines and transformers (12 – 18 months in a normal market, expected to be shorter in the current market), NSPI will request a faster than typically processing of the Work Order request.

(Exhibit N-8, IR-3e, Attachment 5, pp. 1-3)

[11] NSPI stated that the time lines were tight to develop the project and take advantage of the available EcoENERGY Program.

[12] NSPI completed a Market Scan & Procurement Strategy (Exhibit N-8, IR-3b, Attachment 2) in advance of the issue of the RFP for the Wind Turbine Generators (“WTG”). The Strategy summarized the issues NSPI was considering with the Project. The document addressed the WTG availability issue and listed the constraints and considerations being faced in developing the project. NSPI noted that there were very few

WTGs suitable for the Nuttby site as the potential to develop the full 45 MW required a turbine of 2MW or greater capacity.

[13] NSPI issued the RFP on May 14, 2009 with submissions from suppliers due by June 4, 2009. NSPI advised in response to a Board Information Request (“IR”):

All major turbine suppliers that have a presence in Canada and offer turbines that are 2 MW and larger were invited to submit a proposal in the Request For Proposal (RFP) process. Vestas and Enercon participated in the RFP process, each submitting a proposal. Siemens declined to submit a proposal, but did provide a modest amount of technical information and some non-binding indicative pricing for their turbines. They did not conduct analysis to determine which of their turbines, if any, are suitable for the Nuttby site.

Marathon Capital was invited to participate in the RFP process as one of the leading brokers of “grey market” and distressed turbines. Marathon was handling the sale of the Earthfirst Dokie turbines and were representing other undisclosed vendors as well.

HSH Nordbank is one of the leading lenders involved in turbine supply loans were invited to participate in the RFP process.

(Exhibit N-8, IR-3b)

[14] The Consumer Advocate (“CA”), in his submission, expressed concern over the shortness of time available to properly assess the project and noted in particular the selection criteria for acquisition of the turbines (Exhibit N-12, pp. 2-5). The CA suggested that insufficient time had been devoted to modeling a reduced number of turbines, thus reducing the wake effects which could have increased the output from the other turbines. If done, the CA submitted this might have resulted in a more cost effective project that would have determined whether investment in additional turbines was cost effective. NSPI, in response to the CA submission, noted that an iterative process was utilized:

Earthfirst conducted its analysis based on 18 Enercon E82 turbines (36MW). Enercon initially proposed a 40MW solution to NSPI during the RFP process. Through an iterative process it was determined that a 22 wind turbine layout (45MW) provided the best overall value for customers. Wind turbine #20 has a projected capacity factor of 32.3%. This is an efficient turbine. It is normal to have a range of capacity factors on the same wind farm.

The Garrad Hassan yield report provided the production forecast for the 3 most promising turbine layouts. It did not include all the layouts considered. Between the work conducted by Earthfirst and the work conducted by NSPI, 18 layouts were considered.

(Exhibit N-18, Attachment 1, p.7)

[15] In summarizing his submission, the CA stated:

. . . Further, despite the problems in NSPI's process and analyses, it appears that the project is generally reasonable, if not necessarily optimized.

(Exhibit N-12, p.9)

[16] Garrad Hassan Canada Inc. ("GH") completed a review of WTGs that were suitable for the Nuttby site at the request of NSPI. GH confirmed that only 3 models would meet the requirements as set out by NSPI, they being Vestas, Enercon, and Siemens. In a second report for NSPI, GH assessed the energy production of the Nuttby location and advised that the highest net output was from layout option 2 utilizing 22 Enercon E82 WTGs. The Application proposes purchasing the Enercon WTGs.

[17] The Board understands that there were constraints that NSPI was faced with in developing the Project within the time frame to qualify for the EcoENERGY incentive. The Board is concerned that a normal open bid solicitation process in which all WTG suppliers would have an opportunity to submit a proposal was not conducted for this Project. However, the decision to limit the WTG supplier to the two companies in order to take advantage of the full generation potential of the site and in time to pursue the EcoENERGY fund was a reasonable decision under the circumstances. The Board is satisfied that the WTG selected is an acceptable decision from a technical standpoint and will be capable of delivering the required performance over the life of the Project.

Costs of the Project, including Costs Relative to EarthFirst Power Purchase Agreement

[18] The Project consists of three components with costs as follows:

Wind Project Development	\$116,508,507
Substation	\$ 2,895,574
Transmission Interconnection	\$ 563,173
Total	<u>\$119,967,254</u>

[19] NSPI estimates that the Project will generate 45 MW of capacity and 140 GWh of annual renewal energy based on P50 (i.e. a probability of 50% to meet energy production target). The estimated levelized energy cost is expected to be \$84.54/MWh, which is less than the \$97.80/MWh in the Power Purchase Agreement (“PPA”) with EarthFirst.

[20] The levelized energy cost is calculated based on the construction cost of the Project, annual operating costs and the incentive from the EcoENERGY Renewable Power Program. This incentive is provided to create approximately 4,000 MW of low impact energy projects by March 31, 2011 and is available for projects which are constructed between April 1, 2007, and March 31, 2011. The annual incentive for the Project is approximately \$1.4 million which is based on one cent per kilowatt hour of energy produced up to 10 years and a load factor not exceeding 35%.

[21] As noted, NSPI is proposing to install 22 Enercon E82 wind turbines on the site based on the technical analysis prepared by GH. To calculate the current cost and net present value, NSPI has assumed a 23 year life expectancy of the Project, with energy

production to start in Q4 of 2010, approval of the incentive from the EcoENERGY Program and accelerated depreciation. NSPI's analysis shows a net present value of \$7.3 million over 23 years and a levelized energy cost of \$84.54/MWh.

[22] NSPI expects to start construction of the Project in the fall of 2009 and have it fully completed by the end of 2010 to meet the original provincial requirements of the RES, which now have been delayed by one year to 2011.

[23] Nova Scotia Department of Energy ("NSDOE") supports NSPI's request to proceed with the Project based on the legal requirement for NSPI to meet the Provincial Regulations for renewable energy for 2011 and beyond. It has, however, noted that NSPI's calculations do not include remediation cost at the end of the projected 23 year life span. NSDOE, however, accepts NSPI's calculations based on the assumption that the Project will last beyond 23 years.

[24] The other issue raised by NSDOE is that based on NSPI's responses to the IRs from Intervenors, the energy cost would rise to \$91.05/MWh, if the incentive under EcoENERGY is not received.

[25] The Municipal Electric Utilities of Nova Scotia Co-Operative ("MEUNSC") has indicated its support for the Project. However, it has raised the possibility of risk to ratepayers based on NSPI's assumptions with respect to unit energy cost.

[26] NewPage Port Hawkesbury Corp. and Bowater Mersey Paper Company Limited ("NPB") are supportive of the Project, but have concerns with NSPI's assumptions used to calculate the unit energy cost. It is their view that the risk of any changes in the construction and operating costs, EcoENERGY incentive and NSPI's ownership of the

Project will be totally borne by the ratepayers. NPB has suggested that some protection be contained in the Board's approval to protect the ratepayers if the unit energy cost exceeds \$97.80/MWh, the cost of the EarthFirst PPA.

[27] Avon *et al.* indicated their reservation with the Project due to the risks identified in its submission: the certainty of costs in the PPA versus uncertainty of costs of the Project, expected energy production (i.e. P50 assumption) and the EcoENERGY incentive. Avon *et al.* has also questioned the procurement practices of NSPI to meet its RES requirements.

[28] Cape Breton Exploration Ltd. ("CBEX") is of the opinion that the Project is not in the best interest of the ratepayers and approval should not be granted by the Board. CBEX is of the view that the Project cost is too high and the assumptions used by NSPI to calculate unit energy cost are unreasonable. It points to the P50 assumptions to calculate the total energy produced versus the use of P90. CBEX also suggested that NSPI should open up the RES procurement process for the IPPs to bid on the additional energy required because of additional time now available due to the change in the deadline to meet the RES requirement. CBEX questioned the certainty of the EcoENERGY incentive.

[29] Scotia Investment Limited ("Scotia") notes merit in the location and worthiness of the Project, but questions the process followed by NSPI and potential risks for the ratepayers, the certainty of the Project cost and ongoing operating cost of the Project. Finally, Scotia notes that the Project approval should only be given if the ratepayers are insulated from the future risks.

[30] As noted, the CA is of the view that “the project is generally reasonable , if not necessarily optimized” (Exhibit N-12, pg.9).

[31] The CA is, however, concerned with the level of information received in the IR responses and shortness of time provided to further explore this information. It has also questioned the time taken by NSPI to process other IPP projects.

[32] The Board received a letter of comment from Mr. David Dagley of Liverpool, Nova Scotia and Mr. Jim Kimbrell. Mr. Dagley is of the opinion that NSPI shareholders should finance the Project and not ratepayers. He went on to say that the sale of the Project should protect the ratepayers’ interests. Mr. Kimbrell suggested that NSPI should own large wind farms, since over time, they pay for themselves because they only require maintenance and no fuel cost.

[33] NSPI, in its reply submission, responded to issues raised by the Intervenors.

[34] NSPI stated that it has used 23 years to calculate net present value and unit energy cost to provide a comparison with the PPA. The actual life of the Project is expected to be more than 23 years after which NSPI will own these assets, which represents a significant advantage over the PPA. The energy cost under the PPA was \$97.80/MWh compared to NSPI’s cost of \$84.54/MWh.

[35] NSPI agrees that at any given point the unit energy cost could be different than the proposed unit energy cost due to the variability of wind speed and operating costs. However, its analysis is based on the most likely scenario and is consistent with the normal capital submissions to the Board. The net present value of the Project is positive based

on conservative assumptions used in the submission. The final Project costs are to be approved by the Board as required by the *PUA*.

[36] In closing, NSPI noted that:

1. The Nuttby Mountain Project is an excellent renewable generation opportunity. The wind regime is strong. The site is close to NSPI's transmission system and can be interconnected at relatively low cost.
2. Moving forward now will allow the project to be commissioned in time for the Company the opportunity to access the Federal EcoENERGY funding for customers.
3. Based upon prior applications and competitive processes, the Project will be the lowest cost renewable energy added to the generation mix since the RES became law.

The suggestion that NSPI's application to include this asset in rate base somehow increases risk for customers is incorrect. The Company's shareholders have already assumed significant risk in moving the project forward in advance of Board approval so the EcoENERGY funding can be pursued. The UARB staff and stakeholders have vetted all assumptions underlying the business case. Board Final Cost approval will be required before the amounts included in rate base are finalized.

This Project has received the rigorous review typical of large-scale NSPI capital expenditures. Its development at this time is not a transfer of risk to customers. It is the realization of an opportunity that will benefit customers financially and contribute positively to the Province's environmental objectives.

(Exhibit N-18, p. 8)

[37] The Board, having considered all the information, is satisfied that the Project is in the best interest of the ratepayers and should proceed. Under a reasonable set of assumptions, the Project is less expensive than the EarthFirst PPA by a considerable margin. Given the time constraints, the Board believes NSPI undertook a reasonable cost analysis. The Board also understands the concerns of the Intervenors to minimize future risks to the ratepayers. To this end, the Board notes that in a normal approval process final costs are approved by the Board when the Project is complete, before they are finally added to the rate base. However, in this case, NSPI is ordered to advise the Board, as

soon as possible, if it becomes aware of any material change in the approved Project costs.

Adequacy of Information Disclosed

[38] The CA in its submission indicated that due to the shortness of time, he and his advisors did not have adequate opportunity to fully review the Application.

[39] The CA has some concerns with the criteria used to acquire wind turbines and the economic analysis. The detailed information on these issues was provided by NSPI in responses to IRs; however, in the CA's opinion, NSPI did not provide sufficient time for review. Based on this, the CA suggested that the Board should provide additional discovery or a technical conference to allow Intervenors to further explore these issues. However, the CA also notes that the delay in the Project approval may jeopardize the EcoENERGY incentive.

[40] While the Board shares some of the CA's concerns, given the time constraints for incentive eligibility, RES requirement and the Board's view of the reasonableness of the analysis provided, the Board has approved the Project.

P50 Analysis

[41] Both Avon *et al.* and CBEX criticize NSPI for its utilization of P50 probability values for the expected wind generation and capital cost estimates. As pointed out by Avon *et al.*, there is a 50/50 chance the cost to customers will be above or below \$84.54 per MWh. Avon *et al.* goes on to say:

The suggestion in the IRs of Cape Breton Exploration is that the originally contracted energy of \$97.80/GWh [MWh] would have been based on a P100 probability of always meeting output expectations. In the absence of evidence on this point, the Avon Group does not know whether this is accurate. However, a 50/50 probability would not appear to be a "conservative" estimate. Indeed, as pointed out by NSPI, a P50 value is often used for equity purposes and a P90 value in sizing debt and for debt service coverage ratios.

(Exhibit N-11, p. 3)

[42] It is CBEX's view that a prudent project manager would only use a P90 estimate to arrive at a risk tolerable level.

[43] In response NSPI states:

Certain intervenors are critical of NSPI's utilization of "P50" values for the expected wind generation and capital costs. The evidence demonstrates that under the original PPA customers would have paid \$97.80/Mwh for 100% of the energy. Under NSPI's Application, almost 90% of the time customers will pay less than the original PPA price (the P90 scenario). In fact, 50% of the time the Project will cost customers less than the \$84.54/Mwh identified as the P50 levelized cost in NSPI's Application.

...

NSPI acknowledges that at any given point in time of the life of the Project the levelized cost of the energy, on a per megawatt hour basis, could be different from \$84.54 described in NSPI's Application. It is correct that in lower wind years the cost per megawatt hour may be higher. It is also correct that in higher wind years the cost per megawatt hour may be lower. It is not correct to suggest, however, that this variability at any specific point in time makes a fixed price PPA preferable for customers. Rather, as noted above, NSPI's analysis demonstrates that the only guarantee offered by a fixed PPA in this situation is that customers would have no opportunity to benefit from lower costs, higher output or the residual value of the Project.

NSPI suggests that some IPPs may need to use P90 assumptions because IPPs are bidding long-term fixed prices, and must protect against the risk of loss, secure project financing from lenders and maximize the opportunity to profit. To be clear, NSPI's analysis reflects the most likely outcome of this investment for customers. This is the normal approach employed by NSPI in its capital filings to the UARB. To employ less likely (i.e. more conservative) estimates would reduce the forecast net present value of the project. It would not, however, change the essential value that this project represents for customers.

(Exhibit N-18, pp. 5 & 6)

[44] The Board is satisfied with the estimates as filed for purposes of approving this Application. NSPI advises that the approach they have taken is a long-standing and

traditional approach to economic analysis of capital utility investment. The Board is hesitant to make any general finding or direction with respect to a P50 versus a P90 analysis as it relates to future applications. If Intervenors wish to pursue this issue as it relates to future work order applications, the Board is prepared to hear further submissions.

RES Compliance - Administrator's Opinion

[45] One of the driving forces behind the request for approval of both the work orders and a proposed sale of a portion of the Project is the need for NSPI to comply with the RES. NSPI is currently required to obtain renewable low impact (or "green") electricity from IPPs to meet the standards. If NSPI retains ownership of the Project, the electricity generated would not be included in its quota.

[46] NSPI communicated with the Administrator of the RES seeking an interpretation of the definition of independent power producer in s. 2(g) of the Regulations. By letter dated May 29, 2009, the Administrator offered his opinion to NSPI that the definition:

... does not restrict an electric utility from having a minority equity holding in an independent power producer.

(Exhibit N-1, Appendix B)

[47] As a result, NSPI seeks the approval of a sale of a bare majority interest in the Project. This would leave it with a minority interest. NSPI takes the opinion to mean that this Project would then be eligible for 2011 RES inclusion.

[48] Scotia objected strenuously to this. It said that this interpretation would allow a utility to do something by the "back door" which it could not legally do by the "front door" - a circumvention of the RES. Scotia offered a detailed analysis of how the definition of "independent power producer" should be interpreted. It urged the Board to rule on whether or not the sale would qualify under the Regulations.

[49] The matter before the Board is an application for the approval of work orders and a proposed sale. Whether the Administrator's opinion is a correct interpretation of the definition is not for the Board to decide. That is for the courts. If there is a concern about the opinion expressed by the Administrator, there are other avenues to pursue.

[50] Whether or not divestiture of 51% of its interest in the Project will aid NSPI in meeting the 2011 RES requirements is moot in light of the Board's decision on the request for approval of a sale.

Just in Time Planning

[51] NSPI, in its Application, states as follows:

. . . Delay in this regard or planning for "just-in-time" construction may result in higher costs for customers and increased probability of failing to meet the RES requirements for the Company. NSPI must pursue all viable renewable projects in a timely manner, including development of the Nuttby Mountain project.

(Exhibit N-1, p. 16)

[52] The Province encourages timely, perhaps even advance consideration of renewable projects.

[53] It needs to be pointed out, however, that the timing of the submission of projects for approval under the *PUA* is entirely within the control of NSPI. Parties to this

proceeding, as they did in the Biomass and GIP proceedings, have complained bitterly that NSPI has not brought projects forward soon enough to allow them to assess the projects. From the Intervenor's perspective it has not been "just in time" planning but rather it has been "not enough time" planning. NSPI says in its submission:

Recognizing that the renewable energy requirements are escalating over the next six years, it will serve NSPI customers best if compliance with these requirements is achieved in a planned fashion.

(Exhibit N-1, p. 16)

[54] If NSPI is now telling the Board and parties that it intends to bring projects forward according to a timetable which allows the Board and intervenors an adequate opportunity to assess such applications without being pressured by timelines imposed by NSPI because of late filing, then this is indeed a welcome change.

[55] The Board understands NSDOE to be recommending timely planning for renewables and suggests the Board be open to approve a project in advance of it being needed to assist in complying with the RES.

[56] A paramount consideration for the Board, in approving any capital project under the *PUA*, is the lowest long term cost to customers. Recognizing that paramount requirement of the *PUA*, the Board is prepared, as suggested by NSDOE, in any application, to consider early approval of a project with a view to compliance with the RES if that is appropriate in the circumstances.

CBEX Offer

[57] In Exhibit N-5, IR-10 and its submission, CBEX, one of the Intervenors, made an offer to construct the entire Project at \$5 Million less than the combined cost of the work orders. On that basis alone, it urged the Board to refuse to grant approval.

[58] On its face, the CBEX offer appears to mean a \$5 million saving to the ratepayers. Such a submission invites a response. The Board notes that CBEX did not bid in the original RFP process. When the assets of EarthFirst were being sold as the company was under creditor protection, CBEX would have had an opportunity to purchase the Project, if it wished. It did not. Further, the principal of CBEX assumes a 9.3% rate of return on investment. In fact NSPI's forecasted weighted average cost of capital is 6.72% after tax (8.23% before tax).

[59] For these reasons, the Board finds that it should give no weight to CBEX's submission on this point.

EcoENERGY Funding

[60] The Board observes that another driving force behind the request of NSPI for early approval of the work orders is the need for work to start on the Project to meet an in-service date of March 31, 2011. This is necessary to be eligible for funding of approximately \$14 Million from the federal EcoENERGY incentive program.

[61] The funding is unrelated to the RES, so would not be affected by any sale of the Project (Exhibit N-8, IR-33). NSPI noted, however, that if the requested divestiture were to occur, it would retain its proportionate share of the funding (Exhibit N-8, IR-36).

[62] NSPI acknowledged that the funding is not certain, and that it would go ahead with the Project even if funding is not received (Exhibit N-8, IR-31). NSPI expressed confidence that it will be approved and can meet the deadline (Exhibit N-10, IR-16). NSPI stated that if the funding is not available, the revised cost of energy would be \$91.05/MWh (Exhibit N-8, IR-38), which is lower by \$6.75/MWh than the original PPA. As noted, following submissions confirmation of funding was received.

[63] The Board finds that application for and approval of such funding is in the interest of ratepayers.

Final Approval of Costs to go into Rate Base

[64] Based on the submissions received, it appears that some parties may not understand that the Board, prior to a project going into rate base, must review and approve the final costing. NSDOE notes this issue at paragraph 22 of its Reply Submission:

One significant difference between the situation that rate payers were in under the Earthfirst PPA and NSPI's Nuttby Mountain Project, is that with NSPI's project, rate payers would bear the risk of variations from NSPI's assumptions and projections. This is a risk that can be mitigated as the UARB will be required to approve the final costs of the project. At that time, NSPI would be required to justify any significant changes to its estimates.

(Exhibit N-15, p. 8)

[65] Parties should be aware that NSPI must receive from the Board final costing approval in a process whereby it must justify any final cost variations from estimates before the Project will be allowed into rate base.

[66] In addition to that the Board has imposed a condition of approval (reference paragraph 75) which specifically requires NSPI to notify the Board during the construction phase of any material change in costs.

III SALE OF 51% OF THE PROJECT

[67] NSPI has asked the Board to give approval now of the sale of 51% of the Project should it be determined necessary to enable the Project to contribute to its compliance with the 2010 RES. NSPI seeks approval of such a sale on three conditions:

- (1) that the RES remain unchanged and 100% ownership by NSPI would continue to delay RES eligibility until 2013;
- (2) that the sale recover 51% of the net book value of the Project leaving 49% in NSPI's rate base; and
- (3) there would be a PPA for 51% of the energy produced at a price no higher than the PPA with EarthFirst.

[68] NSPI says that having the approval now would eliminate the necessity of a second application to the Board before a sale could take place, saving both time and expense and that the company would have more flexibility to respond in the most opportune way to any RES changes.

[69] In response to various IRs, NSPI acknowledged it had taken no steps to seek out potential purchasers, or to consider how any such sale might be conducted (Exhibit N-4, IR-1 & 4).

[70] None of the Intervenor's who filed submissions supported an unqualified approval of a sale at this juncture. There is no identifiable purchaser; there are no meaningful identifiable terms; and no process for soliciting or assessing offers. Quite possibly, given the prevailing uncertainty about the RES, there may be no need for the company to divest itself of any interest in the Project. NSPI acknowledged that it had informed the "...few potentially interested parties..." that "...it is premature for serious discussions..." (Exhibit N-8, IR-34). It also acknowledged that "...It is premature to know what entities are potential purchasers." (Exhibit N-8, IR-37)

[71] In the Board's view it would not be prudent to give the approval sought by NSPI on the stated conditions, or indeed on any conditions, at this time; nor would it be in the public interest. It is simply premature. Any sale of any portion of the Project will require prior approval under s. 62 of the *PUA*. The Board is prepared to review the conditions of such a sale if and when an application is received. NSPI will have to justify any such sale to be in the best interests of its ratepayers.

IV CONFIDENTIALITY ISSUE

[72] While IRs were being issued and replies received, one of the Intervenor's, Robert Patzelt, of Scotia Investments Limited, made application under Regulatory Rule 12 challenging the refusal by NSPI to allow him access to certain information, even with a signed confidentiality undertaking. (Scotia letter dated October 23, 2009)

[73] The application raised broader issues about NSPI's position and practices in relation to confidentiality and access to information it claims to be confidential. Submissions were received from Scotia, Avon *et al.*, and from counsel for NSPI.

[74] The Board does not find it necessary to address this issue for the purposes of these specific requests for work order approvals. However, the public interest demands a transparent regulatory process. There are legitimate factors which require a balance of that interest with commercial interests which have an impact, less directly perhaps, on ratepayers. The Board recognizes that these broader issues require consideration. The Board will address this in a separate decision after further consultation.

V APPROVAL WITH CONDITIONS

[75] The Board approves the following capital work orders:

- (a) CI #36882 Nuttby Mountain Wind Project Development;
- (b) CI #37942 Nuttby Mountain Wind Project Substation;
- © CI #37944 Nuttby Mountain Wind Project Transmission Interconnection,

subject to the following conditions:

- (1) If, during construction of the Project, NSPI foresees any material change in the wind generation or capital cost estimates, the Board and parties are to be notified forthwith;
- (2) If any affiliate of NSPI is involved in any portion of planning or construction of the Project, strict compliance with the Code of Conduct is required.

[76] NSPI's request to approve the sale of 51% of the Project is refused at this time.

[77] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 30th day of November, 2009.

Peter W. Gurnham

Kulvinder S. Dhillon

Roberta J. Clarke