



Nova Scotia Utility and Review Board

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October 15, 2012

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Mr. Stephen Feist
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Mr. Alan Bond
Municipal Clerk
Municipality of the County of Antigonish
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Dear Messrs. Feist and Bond:

Town of Antigonish Water Utility – Complaint Regarding Dispute with the County of Antigonish – Fire Protection Charges – W-ANT-C-11 / Matter No. M04155

In a letter to the Board dated May 26, 2011, the Town of Antigonish ("Town") on behalf of its water utility (the "Utility") noted that there appears to be discrepancies with the Utility's Schedule of Rates, Rules and Regulations with respect to payment amounts and timing of payments from the Municipality of the County of Antigonish (the "Municipality", the "County") for the provision of public fire protection service. Both parties filed additional information with respect to the issues, and after reviewing the material, the Board provided its comments on the matter in a letter dated September 13, 2011. In a letter to the Board dated January 3, 2012, the Municipality requested that further consideration be given to the matter, based upon the understanding that the Board's September 13, 2011 letter constitutes a comment and that an order or direction was not issued. The Town provided its comments with respect to the County's request in a letter to the Board dated January 18, 2012.

In a letter to the Board dated April 17, 2012, the County states that it has had an independent review conducted on the matter and concludes that further review is warranted. The letter further notes that representatives of the Town and County have been unable to resolve the matter and further assistance from the Board is requested in resolving the issue. A telephone conference call into the matter was held on May 23, 2012 between the Board and representatives of both parties. It was agreed that the Board would review the matter, focusing on the issue of determining the accumulated interest balance. The results of the Board's review are discussed in this decision letter.

The Board's role in reviewing such matters is to determine whether the Utility is following the Board approved Schedule of Rates and Schedule of Rules and Regulations in its dealings with customers. The Utility's Regulation 14 states:

Fire Protection Service Charge

The Utility shall annually on or before the first day of March, render to the Town of Antigonish and The Municipality of the County of Antigonish the account for fire protection for the following financial year. Such accounts shall be for such sums as is set out in the Schedule of Rates. The Town of Antigonish and The Municipality of the County of Antigonish shall pay to the Utility, on or before the first day of October, the estimated account so rendered for the financial year. Adjustments to reconcile the estimated and actual accounts shall be made on the last day of the financial year.

The Utility's Schedule of Rates states that overdue accounts will include interest charges of 1.5% per month or part thereof.

As stated above, the Utility's Schedules of Rates and Rules and Regulations set out the amount of Public Fire Protection Charge, the due date for payment and the interest rate to be charged. As noted in the Board's letter dated September 13, 2011, there does not appear to be an issue with the amounts charged, due dates, or the interest rate applied. However, the Schedules do not set out how the interest is to be calculated and how payments are to be applied to balances associated with a number of outstanding bills of differing past due dates.

In its investigation of the matter, both the Town (Utility) and the County filed information with the Board, in accordance with the timetable agreed upon by the parties during the May 23, 2012 telephone conference call and set out in the Board's letter dated May 24, 2012. The information included the County's evidence, Town response and responses by both parties to Board staff information requests ("IRs").

One outstanding issue identified by the parties was the payment of the 'missing quarter' relating to the time period of January 1, 2006 to March 31, 2006. It was agreed by the parties that this quarter should be paid with interest calculated to May 25, 2012. On June 11, 2012, the Town received a payment from the County in the agreed amount of \$35,757.51. This issue appears to be resolved.

Based upon the information filed as a part of its earlier review, it is the Board's understanding that a Settlement Agreement was reached as a result of a County appeal of a Board Order issued in 1980 with respect to public fire protection rates. The application of the interest earned on the settlement trust funds on deposit, in the amount of \$10,883.78, has been the subject of discussion of both parties. It is the Town's position that it is under no obligation to apply this amount to any amount owing by the County. The County believes that it should be applied. It appears that the Town has, in the interest of resolving the matter, applied this amount in past discussions with the County, to reduce the outstanding balance. The Board's September 2011 calculations applied this amount to the balance. As a part of the current review, the Town has expressed its position that, while it has issues with applying this amount to the outstanding balance, the September 2011 calculations of the Board are acceptable. There does not appear to be any new information filed to cause the Board to change its earlier comment on the matter, and therefore, it seems reasonable to apply this amount to reduce the outstanding balance.

In its evidence, the County has claimed that the Town has altered its payments after the fact, which the Town denies. It appears that some changes were suggested by the Town, for

example the application of the interest on the settlement funds, in an attempt to resolve the matter. While the Board agrees that payments should not be altered retroactively, it does not find that any evidence has been filed to suggest that this occurred. This claim is dismissed.

The main issue in the matter appears to be the Town's practice of applying payments to interest first, which the County disagrees with. In the absence of specific direction of *The Public Utilities Act* ("PUA"), the Town refers to *The Municipal Government Act* (the "MGA"), which states in s. 131 that partial payments should be applied to the accumulated interest first and then to the oldest outstanding invoices.

The County refers to Clayton's case for guidance in the appropriation of payments of debt. In relation to Clayton's case, the County summarizes that if the debtor does not indicate how payments are to be applied, the creditor may make application to whatever debt it pleases, provided that it advises the debtor of this. The Town indicates that it did not communicate to the County how payments were to be applied (IR-4). However, the County (IR-6) indicates that it never specifically indicated to the Town how payments were to be applied, although it was "implied" that they were to be made towards the principal apparently through the amounts that were paid. Given these statements, the relevance of the Clayton reference appears questionable.

The Town further indicates that it is its general practice to apply payments to interest first and it is its opinion that the County follows the same practice. The County did not respond to an IR which questioned how it applies interest to outstanding balances (IR-12a, b), leaving the Board with little additional information on the issue.

The Board's September 2011 calculations applied payments to interest first, in accordance with the MGA. It is the Board's opinion that nothing has been filed since these calculations to suggest that this methodology is unreasonable.

The County indicated at the time of requesting the Board to revisit the matter that it had asked its auditors to review its calculations of the outstanding balance for reasonableness, based upon the assumptions used in preparing the calculations. However, in response to the IRs, it notes that there was no formal independent review done and no opinion given by the auditors (IR-4a response). It further notes that no additional information has resulted from the independent review (IR-4b response).

The Board has reviewed the additional information filed since the County's request of January 3, 2012. Based upon the review, as outlined above, the Board does not find any new information has been filed to alter its comments provided in its letter dated September 13, 2011.

The Board's September 2011 calculations indicate an outstanding balance of \$94,535.76 as at December 31, 2011. Applying interest of 18% per year over the 163 days to June 11, 2012 (the day that payment for the missing quarter in the amount of \$35,771.51 was received), the balance as at June 11, 2012 is $\$94,535.76 + \$7,599.12$ (interest) - $\$35,771.51 = \$66,363.37$. Interest on this amount to June 30, 2012 is \$621.82. Based upon this, the outstanding amount as at June 30, 2012 is calculated to be \$66,985.19. With the application of the credit for interest earned on settlement trust funds (\$10,883.78), this amount is decreased to \$56,101.41. The following table summarizes the calculations:

Beginning Balance	Interest	Payment	End Balance	Date
			\$94,535.76	December 31, 2011
\$94,535.76	\$7,599.12	\$35,771.51	\$66,363.37	June 11, 2012
\$66,363.37	\$621.82		\$66,985.19	June 30, 2012
\$66,985.19		\$10,883.78	\$56,101.41	June 30, 2012

The Board notes that with the application of interest to the current date, this outstanding balance will increase. The Board further notes that this amount does not include the bill issued for public fire protection on March 1, 2012, in the amount of \$101,448, which was due on October 1, 2012.

As agreed by the parties during the May 23, 2012 telephone conference, this letter constitutes the Board's decision in the matter, which is binding.

The Board reiterates its position as stated in its September 13, 2011 letter that the methodology used to determine the outstanding balance in its decision is specific for the purpose of resolving this matter. It is not a methodology which the Board endorses for all utilities, nor is it a methodology that the Board orders the Utility to use on a go forward basis. However, any methodology used should be applied consistently and not be in violation of the Board approved Schedules of Rates and Rules and Regulations.

It appears that there was a lack of communication with both parties, which led to the matter escalating to the point that the Board became involved. In order to avoid a similar situation occurring in the future, the Board directs the Utility to clearly communicate in writing to the County, and copy to the Board, the methodology to be used on a go forward basis to determine the application of interest and the appropriation of payments to outstanding balances. This information should be filed with the Board by **Monday December 10, 2012**.

Yours very truly,



Roberta J. Clarke, Q.C.
Member

c Tom Wadden, Comptroller, Town of Antigonish

By email