

NOVA SCOTIA COURT OF APPEAL

Citation: *Cape Breton Explorations Ltd. v. Nova Scotia (Attorney General)*,
2015 NSCA 35

Date: 20150410
Docket: CA 416544
Registry: Halifax

Between:

Cape Breton Explorations Ltd.

Appellant

v.

The Attorney General of Nova Scotia, Nova
Scotia Power Incorporated, and The Nova Scotia
Utility and Review Board

Respondents

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: December 10, 2014, in Halifax, Nova Scotia

Subject: **Administrative law. Public Utilities Act**, R.S.N.S. 1989, c. 380; **Utility and Review Board Act**, S.N.S. 1992, c. 11; **Board Regulatory Rules**, N.S. Reg. 235/2005; **Electricity Act**, S.N.S. 2004, c. 25; Renewable Energy Standard Regulations, N.S. Reg. 35/2007; Renewable Energy Regulations, N.S. Reg. 155/2010, as amended; Capital Expenditures by Nova Scotia Power Incorporated Included in the Rate Base.

Summary: In 2012 Nova Scotia Power Inc. (NSPI) entered into agreements to invest in two independent power producing projects known as the South Canoe Wind Project. The arrangement between NSPI, Oxford Frozen Foods Ltd. and Minas Basin Pulp and Paper Co. Ltd. had NSPI owning 49% of the assets in the two projects.

NSPI applied to the Utility and Review Board (UARB) to approve its investment in the IPPs as a Capital Expenditure. This would allow NSPI to include it in the rate base which would entitle it to recover the amount from ratepayers. The UARB allowed NSPI's application and approved the investment in the South Canoe Wind Project as a Capital Expenditure.

Cape Breton Explorations Ltd. (CBEx), an intervenor before the UARB and an unsuccessful bidder on the request for proposals on the South Canoe Wind Project, appealed the decision of the UARB arguing that it erred in its interpretation of the legislative scheme in approving the investment as a Capital Expenditure. It further argued that during the course of the hearing, the UARB erred by treating as confidential, a number of documents NSPI submitted in support of its application as confidential.

Issues:

- (1) Did the UARB err in approving NSPI's investment in the South Canoe Wind Project as Capital Expenditure?
- (2) Did the UARB err in treating as confidential certain documents submitted in support of the application?

Result:

Appeal allowed, in part. The UARB's interpretation of the legislative scheme relating to the procurement of renewable energy by NSPI was unreasonable. It should not have approved the investment in the IPP's as a Capital Expenditure. The UARB decision to treat certain documents filed in support of NSPI's application as confidential was reasonable. As the parties agreed that there would be no costs on the appeal, none were awarded.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 42 pages.