DECISION **2026 NSEB 10**
M12394

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF the **PUBLIC UTILITIES ACT** and the **MARITIME LINK ACT** and the **MARITIME LINK COST RECOVERY PROCESS REGULATIONS**

- and -

IN THE MATTER OF AN APPLICATION by **NSP MARITIME LINK INCORPORATED** for approval of its 2026 revenue requirement and cost assessment

BEFORE: Stephen T. McGrath, K.C., Chair
Roland A. Deveau, K.C., Vice Chair
Steven M. Murphy, MBA, P.Eng., Member

APPLICANT: **NSP MARITIME LINK INCORPORATED**
Geoff Breen, Counsel
David Landrigan, Counsel
Shellie Woolham

INTERVENORS: **CONSUMER ADVOCATE**
David J. Roberts, Counsel
Michael Murphy, Counsel

SMALL BUSINESS ADVOCATE
Melissa MacAdam, Counsel
Rebekah Powell, Counsel

INDUSTRIAL GROUP
Nancy G. Rubin, K.C.
Brianne Rudderham, Counsel

NOVA SCOTIA POWER INC.
Blake Williams, Counsel
Kathleen Murray, Counsel

PORT HAWKESBURY PAPER LP
James MacDuff, Counsel
David MacDougall, Counsel

BOARD COUNSEL: William L. Mahody, K.C.

HEARING DATES: December 15 and 16, 2025

ORAL SUBMISSIONS: December 18, 2025

DECISION DATE: **May 11, 2026**

DECISION: **The Board approves NSPML's application for the 2026 revenue requirement and cost assessment as amended for NSPML's return on equity which is reduced from 9.0% to 8.75%. NSPML is directed to provide a compliance filing with the revised cost assessment. The $4 million monthly holdback will continue, pending further order of the Board.**

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1.0 SUMMARY

[1] On July 18, 2025, NSP Maritime Link Incorporated (NSPML) applied to the Nova Scotia Energy Board under s. 64 of the *Public Utilities Act* and s. 8 of the *Maritime Link Cost Recovery Process Regulations* for approval of its 2026 revenue requirement and its recovery through a cost assessment against Nova Scotia Power Inc., effective January 1, 2026. The cost assessment is the amount that NS Power will pay to NSPML to finance the Maritime Link (ML) and pay for 2026 depreciation, sustaining capital costs, operating and maintenance expenses.

[2] NSPML requested approval to:

- set the 2026 annual cost assessment, effective January 1, 2026, at $198.7 million, which is lower than the total 2025 annual assessment of $200.6 million set by the Board, and includes $39.7 million for repayment of the new debt issued by NSPML in December 2024 which is supported by the Federal Loan Guarantee 2 (FLG2) compared to $42.4 million for the FLG2 supplemental assessment in 2025;
- maintain NSPML's return on equity of 9%, with a range of 8.75 - 9.25%;
- revise NSPML's regulated capital structure to allow sustaining capital to be 60% debt and 40% equity to be tracked and reported separately from the original project capital costs (which to date have been approved at 70% debt and 30% equity); and
- allow NSPML to have flexibility of its equity thickness using a range of ±1.5% on its regulated capital structure on original project capital costs in a range of 28.5 - 31.5% equity and 68.5 - 71.5% debt.

[3] NSPML's cost assessment request is broken down as follows:

TABLE 1

Description	*$M*
Operating & Maintenance	22.0
Depreciation	57.2
Debt Financing Costs • Interest (Net)	37.7
• Amortization of Deferred Financing Costs	1.4
Equity Financing Costs	40.7
FLG2	**39.7**
Total Costs	**198.7**

[Exhibit N-1, p. 10]

[4] NS Power includes the NSPML assessment amount in its revenue requirement and recovers it through the rates paid by its customers. The requested $198.7 million cost assessment is the amount included in the Base Cost of Fuel for NS Power's 2026 test year approved by the Board in its general rate application decision (Matter M12451).

[5] The Board issued a Hearing Order on July 23, 2025, setting the matter down for hearing on December 15, 2025. Dr. Sean Cleary, Board Counsel's consultant, filed cost of capital evidence on October 14, 2025. NSPML filed its Rebuttal Evidence on December 3, 2025. Both NSPML and Dr. Cleary responded to Information Requests (IRs).

[6] The Board is satisfied that NSPML's application for its 2026 revenue requirement and cost assessment is reasonable and appropriate, subject to the Board's finding that the return on equity must be reduced from 9.0% to 8.75%. The requests for the changes to its equity thickness to allow flexibility of ±1.5% and to revise the debt to equity ratio on sustaining capital are denied. The revised 2026 cost assessment and revenue requirement is to be confirmed in a compliance filing filed within two weeks from the date of this decision. As previously directed by the Board, a $4 million monthly holdback will continue, pending further order of the Board. The Board also directs NSPML's continued reporting.

2.0 RATE BASE

[7] In its Order dated February 25, 2022, following the *Final Project Costs* decision (2022 NSUARB 18 (M10206)), the Nova Scotia Utility and Review Board (NSUARB) confirmed NSPML's opening rate base, after adjustments, of $1,752.4 million.

In its prior annual assessment applications, NSPML has stated that no further reconciliation or adjustments have been made to rate base for outstanding insurance, warranty, expropriation and contract claims. It stated any such adjustments would be made after the claims have been settled.

[8] In the present application, NSPML stated its proposed equity financing costs were based on 30% equity thickness on a forecast 2026 average rate base related to undepreciated project costs of $1,487.2 million and 40% equity thickness on a forecast 2026 sustaining capital average rate base of $15.5 million. NSPML provided no further reconciliation from its opening rate base amounts of final project costs.

2.1 Findings

[9] NSPML said it would address the rate base treatment of any 2026 sustaining capital expenditures when it files its rate base reconciliation for outstanding insurance, warranty, expropriation and contract claims. It said the same in the last three years' applications for 2023, 2024 and 2025 sustaining capital costs and prior adjustments to its opening rate base. In response to the Board's prior direction, NSPML provided in Attachment 1 of its application an estimated rate base continuity schedule (2022/2026) for closing year-end amounts.

[10] As noted in its prior cost assessment decisions, it is important to monitor sustaining capital expenses and other capital projects to ensure its impact on rate base does not unduly cause rate pressures or raise intergenerational equity concerns.

[11] The Board repeats the NSUARB's previous direction that NSPML provide a rate base continuity schedule in its future applications for Board approval of its revenue requirement and cost assessment applications.

[12] The Board will consider any of the above adjustments (i.e., outstanding claims and sustaining capital) to NSPML's rate base in later proceedings, including any adjustments made in 2022-2026.

3.0 OPERATING AND MAINTENANCE COSTS

[13] NSPML projected its 2026 operating and maintenance (O&M) costs will be $22.0 million, as described in the following table:

Table 2: Operations & Maintenance Forecast – 2026 vs 2025 ($ millions)

Operating & Maintenance Costs (Amounts in $millions)	2026	2025 approved
Maintenance & Inspections (Note 1)	7.7	6.8
Labour and Administration	9.5	8.6
Insurance	4.5	4.6
Independent Engineer	0.3	0.3
Environmental Assessment	-	0.1
Total	**22.0**	**20.4**

[Exhibit N-1, p. 11]

[14] This is an increase of $1.6 million compared to NSPML's approved 2025 O&M costs. NSPML noted that the overall increase is due to normal year-over-year variances in the level of work completed in overland transmission line activities as well as other administrative activities and inflationary pressures. None of the intervenors opposed NSPML's forecast 2026 operating and maintenance costs.

[15] Over the past several years, NSPML's actual O&M costs have fluctuated, but have consistently been below forecast:

Year	Actual O&M Costs	Approved O&M Costs	Variance
2020	$18.3 million	$20.6 million	$(2.3) million
2021	$19.7 million	$21.5 million	$(1.8) million
2022	$20.2 million	$20.4 million	$(0.2) million
2023	$18.0 million	$18.5 million	$(0.5) million
2024	$19.3 million	$22.2 million	$(2.9) million

[16] In response to questioning by the Board during the hearing, NSPML's President, Norm Dimmell, explained that the underspend in 2024 was due to NSPML not entering into an agreement for cable contingency support that it had forecast in that year. Mr. Dimmell noted that the funds were returned to customers after year end because it resulted in NSPML being above the upper limit of its earnings band in 2024. Mr. Dimmell further confirmed that NSPML had again forecast the amount in its 2025 approved assessment and had again not entered into the agreement in 2025. Mr. Dimmell stated that NSPML is "suggesting that because it is a unique single cost associated with a particular scope that the cost -- or the scope wasn't executed, that we will again return it to customers, irrespective of where our results land".

[17] In the prior year assessment decision, the NSUARB directed NSPML to address the collection of future marine survey costs. In the current application NSPML proposed that the 2027 survey costs be fully expensed in 2027 rather than smoothed over three years, as has been done previously. The NSUARB has previously accepted the benefit of smoothing these costs but has expressed concern over NSPML earning a return on the deferred costs.

[18] NSPML asserted that it would be more efficient for customers to track and manage a single balancing account, and since the NSPML assessment fees are paid through NS Power's Fuel Adjustment Mechanism (FAM), the amount could be balanced or smoothed via that account. NSPML further stated that deferring payment of funds within NSPML would result in NSPML likely needing to raise funds, which it expects would be at a higher Weighted Average Cost of Capital (WACC) than NS Power's due to its current 78% debt capital structure. The Board notes that with the FAM balance in its current underfunded position, customers will still be paying a rate of return on the balance.

[19] In closing submissions, the Industrial Group stated that it does not support the full payment of the 2027 marine survey costs in 2027, and requests that the Board not make a specific direction in this matter but instead direct that the issue be addressed in a process between NSPML and interested parties along with the issue of multi-year assessments.

3.1 Findings

[20] NSPML is required to maintain its O&M costs at a just and reasonable level and must demonstrate its ability to do so in each of its applications. NSPML is now entering its ninth year with the Maritime Link being in service and it has previously said it continues to refine its O&M costs as it gains experience operating and maintaining the Maritime Link. The Board notes that, except for the budgeted cable contingency support contract that has not been executed, NSPML seems to have been able to forecast its O&M costs to within $0.5 million in recent years.

[21] The Board agrees with the Industrial Group that the timing of payment of the marine survey costs should be considered in the context of a multi-year assessment, which is discussed later in this decision.

[22] The Board accepts the forecast 2026 operating and maintenance costs.

4.0 LONG-TERM ASSET MANAGEMENT PLAN (LTAMP)

[23] The background of the LTAMP was discussed in the NSUARB's *2025 Cost Assessment* decision:

> [31] NSPML's LTAMP aims to identify and document appropriate asset management strategies and techniques to adequately maintain NSPML's assets over the long-term. The LTAMP is specifically defined in the "Nalcor Energy and Emera Inc. Amended and Restated Joint Operations Agreement":
>
> > "**Long Term Asset Management Plan**" or "**LTAMP**" means, for each of the Defined Assets, a plan describing and quantifying the O&M Activities, in the case of the Transmission Assets, or the MFP Operating and Maintenance Activities, in the case of the MFP, for the Defined Asset for each year of its Initial Service Life in sufficient detail to determine the estimated annual Operating and Maintenance Costs, including:
> >
> > (a) a description of each activity, including at a minimum routine annual O&M Activities and major asset component inspections, overhauls, retirements and replacements which do not occur annually; and
> >
> > (b) the expected year of the occurrence of each such activity;
>
> [Matter M10206, Exhibit N-6, Response to Industrial Group IR-1, Attachment 2]
>
> [32] In addition, Section 2.1(b) of the Agreement states that from and after the date of First Commercial Power, which was August 15, 2021, Emera shall, with respect to the Maritime Link, develop and maintain an LTAMP for the service life of the Maritime Link. Section 5.2(b) of the Agreement states:
>
> > 5.2(b): Emera In-Service LTAMPs - Not more than 30 days before or 60 days after the date of First Commercial Power, as defined in the NLDA, as regards the last of the Defined Assets to achieve First Commercial Power, as defined in the NLDA, Emera shall prepare and submit to Nalcor an In-Service LTAMP and In-Service LTAMP Cost Estimate for the Maritime Link. Within 90 days after receipt of Emera's In-Service LTAMP and In-Service LTAMP Cost Estimate, Nalcor shall give Notice to Emera of the particulars of any disagreement Nalcor may have with the Emera In-Service LTAMP or In-Service LTAMP Cost Estimate. If Nalcor gives such Notice and the Parties are unable to resolve any disagreement within 30 days thereafter, or such extended period as may be agreed in writing by the Parties, the matter will constitute a Dispute and shall be submitted by the Parties for resolution pursuant to the Dispute Resolution Procedure. The Parties are deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve any such Dispute by arbitration. [Emphasis added]
>
> [Matter M10206, Exhibit N-6, Response to Industrial Group IR-1, Attachment 2]

> [33] Notwithstanding the provisions of Section 5.2(b) of the Nalcor Energy and Emera Inc. Amended and Restated Joint Operations Agreement, NSPML's LTAMP remains a work in progress. During the December 7, 2021, hearing for the 2022 NSPML cost assessment (M10206), NSPML indicated that it expected the plan to be complete by the end of 2022. In its decision for that Matter, dated February 9, 2022, the Board directed NSPML to file the LTAMP once complete. The LTAMP was not filed with the Board in 2022.
>
> [34] On September 6, 2023, in response to NSUARB IR-4 in the 2024 NSPML cost assessment matter (M11285), NSPML stated:
>
> > The Lower Churchill Project Commercial Agreements provide for resolution of the Long Term Asset Management Plan once all the defined assets are commissioned. NSPML and Nalcor have been engaged in discussions post commissioning of the LIL and are committed to regular engagement over the course of 2023. It is not possible to predict a specific conclusion date at this time, but NSPML anticipates resolution in 2024.
> >
> > [Matter M11285, Exhibit N-5, NSUARB IR-4]
>
> As such, the LTAMP was not filed with the Board in 2023.
>
> [35] In the current proceeding, in response to NSUARB IR-10, NSPML stated that it continues to develop the LTAMP, with a targeted completion date in 2024. However, NSPML also noted that this date could potentially slip into 2025 "as LTAMP resolution is a complex commercial process and may require additional time to review all pertinent information in conjunction with obtaining alignment between NSPML and NLH." During the hearing, NSPML provided a further update, indicating that completion of the LTAMP could possibly slip into Q2 of 2025. [Emphasis added]
>
> [2024 NSUARB 199]

[24] In its 2025 NSPML cost assessment decision, the NSUARB directed NSPML to file its LTAMP by June 30, 2025. NSPML did not file its LTAMP by June 30, 2025, nor did it request an extension to file it. In its present application dated July 18, 2025, NSPML filed a document entitled "NSPML's Asset Management Outlook". According to NSPML's application, the Board had directed NSPML to file its "Asset Management Plan" as part of its 2026 cost assessment application. It also stated that this document "provides an overview of NSPML's current asset management outlook focused on the next ten years". There was no mention of the LTAMP in the application.

[25] Accordingly, the Board asked NSPML in information requests to provide an LTAMP status update and to identify whether the Asset Management Outlook was indeed

the LTAMP. NSPML responded that the Asset Management Outlook was never intended to represent the LTAMP defined under s. 5.2 of the Joint Operations Agreement:

> The Asset Management Outlook filed by NSPML is a subset of the Company's asset management plans which was created for regulatory purposes. In filing the Outlook, NSPML was attempting to balance the requirement for disclosure to the Board and intervenors to inform this regulatory process while maintaining privilege on significant amounts of information that are part of a separate, but interrelated, commercial negotiation process as described in the response to NSEB IR-06(a) - a process that will be brought in full before the Nova Scotia Energy Board for review upon completion.
>
> In referencing LTAMP in its prior assessment applications, NSPML was primarily referencing its own long term asset management plans and not the commercial exercise that involves, among other things, NLH's asset management plan. It was also primarily referenced in the context of assessing the practicality of moving towards a multi-year assessment. Providing the Outlook at this time was attempting to balance the need for disclosure to interested parties and ultimately to support the Board's determination in this process, while trying to avoid harming ongoing commercial negotiations.
>
> NSPML recognizes the confusion of utilizing the same or similar technology (sic). Based on the questions from the Board in this regard, NSPML likely could have brought more attention to this distinction in earlier communications.
>
> NSPML titled this document an "Outlook" to differentiate it from the In-Service LTAMP and related documents and estimates, which are prepared for a different purpose. In preparing its Outlook, NSPML reviewed NS Power's 10-year system outlook report, its five-year reliability plan, and its ACE Plan. NSPML settled on providing a 10-year view as this was the longest time horizon associated with these filings by NS Power (short of an Integrated Resource Plan).
>
> [Exhibit N-8, NSEB IR-31, PDF pp. 586-587]

[26] In response to NSEB IR-6, NSPML described the "commercial negotiation process" with Nalcor as the "true-up" exercise related to the LTAMP:

> … the "commercial exercise" referenced in the Application refers to the calculation and payment of an adjustment amount under Section 5.5(b) of the Joint Operations Agreement (JOA), which is referred to as the "LTAMP true-up". This will feed into the Supplemental Energy calculation under the Energy and Capacity Agreement (Schedule 4), the "SE true-up". These commercial true-ups require both parties to prepare an In-Service LTAMP and associated In-Service LTAMP Cost Estimate. Among other things, the exercise will require the parties to agree on a sufficient degree of commonality in their estimates and methodology to render them comparable, as well as on cost inclusions (or resolve through dispute resolution).
>
> [Exhibit N-8, NSEB IR-6, PDF p. 14]

[27] At the hearing, NSPML maintained that it believed the filing of the Asset Management Outlook document satisfied the Board's direction to file the LTAMP. It noted that the LTAMP is the document required to determine the "true-up" under the Joint

Operations Agreement and could not be disclosed because negotiations with Nalcor about the “true-up” were set to commence in early 2026.

4.1 Findings

[28] The significance of the LTAMP was reviewed by the NSUARB in its 2025 NSPML cost assessment decision:

> [37] Beyond the LTAMP’s importance to establishing expected NSPML capital needs, the LTAMP can also be used to establish a foundation for multi-year Maritime Link cost assessments. In the current matter, the CA asked NSPML why it had not filed a multi-year cost assessment as it had previously planned. In response to CA IR-2, NSPML indicated that in the Board’s *NSPML 2024 Maritime Link Cost Assessment* decision, the Board directed that single-year assessments continue until there is more certainty on operational matters, including the LTAMP and sustaining capital needs. NSPML then noted that matters are still in progress, and, therefore, it filed a single-year assessment.
>
> [38] One of the Board’s primary roles related to the Maritime Link is oversight of asset additions and sustaining capital, and oversight of O&M expenses. In particular, s. 35 of the *Public Utilities Act* governs NSPML’s capital additions and improvements. Further, in its decisions for the 2023 and 2024 NSPML annual cost assessments, the Board indicated that there should be certainty about NSPML’s operational matters and sustaining capital needs before a multi-year cost assessment could be considered, but it did not specifically direct single year assessments. The completion of the LTAMP is important to the Board’s oversight role and the certainty needed to proceed with multi-year assessments.
>
> [2024 NSUARB 199]

[29] Despite the NSUARB’s direction for NSPML to file its LTAMP, it has yet to be filed. Instead, NSPML filed what it referred to as its 10-year Asset Management Outlook. Further, it tried to reconcile this filing with what it thought the NSUARB intended in its direction, notwithstanding that the NSUARB directed the LTAMP to be filed by June 30, 2025 (not July 18, 2025, which was NSPML’s filing date) and that LTAMP is a defined term in the Amended and Restated Joint Operations Agreement.

[30] Mr. Dimmell testified that NSPML believes there are effectively two meanings of LTAMP. First, the commercial in-service LTAMP true-up is a confidential process under the Joint Operating Agreement between NSPML and Nalcor (now part of Newfoundland and Labrador Hydro (NLH)). As Mr. Dimmell explained, under this process, each party prepares long-term O&M cost forecasts for their respective assets over the

term of the Maritime Link project. These costs are then compared to 20% of the combined Maritime Link and NLH O&M costs (per the “20 for 20” cost-sharing principle), and annual true-ups are calculated. Per the terms of the Joint Operating Agreement, the net present value of these annual true-ups will then result in a one-time credit or debit between the parties, which may ultimately affect ratepayers. Mr. Dimmell further noted that the in-service LTAMP is an ongoing commercial process between NSPML and NLH that remains confidential.

[31] NSPML’s other meaning of LTAMP, according to Mr. Dimmell, refers to its internal Long-Term Asset Management Planning system, such as documents, software and processes used to manage assets. Mr. Dimmell explained that NSPML interpreted the Board’s direction to file the LTAMP as relating to this form of LTAMP, rather than the commercial in-service LTAMP. As such, NSPML filed its “Asset Management Outlook” with its application, expecting this met the NSUARB’s direction. During his testimony, Mr. Dimmell acknowledged that NSPML’s interpretation did not align with the Board’s expectation.

[32] During its oral closing submissions, counsel for NSPML was asked why the company did not file its in-service LTAMP with the Board on a confidential basis. Counsel explained that the in-service LTAMP true-up is part of a live, confidential commercial negotiation between the parties. In NSPML’s view even a confidential filing with the Board could constitute a waiver of privilege over elements of that negotiation process. NSPML indicated that protecting the integrity of the negotiation was material, particularly given the potential for dispute resolution if settlement is not reached. Accordingly, NSPML maintained that filing the LTAMP, even on a confidential basis, was not appropriate.

[33] The NSUARB's direction in its 2025 NSPML cost assessment decision was clear in terms of what it expected related to filing of the LTAMP. Intervenors agree, particularly the Consumer Advocate and Small Business Advocate, who both submitted that the NSUARB's prior decisions clearly referred to the commercial LTAMP, not NSPML's internal asset management plan. They characterized NSPML's explanation as unreasonable or part of a broader pattern of failing to follow directives (including a prior direction about the return on equity issue).

[34] NSPML's interpretation of the NSUARB's direction about the LTAMP, and how it responded to the direction in its application, is not helpful. NSPML's lack of clarification on this issue prior to it being addressed in information requests is also disappointing and not productive to an efficient regulatory process. This is not to suggest that NSPML's ultimate reason for not filing the in-service LTAMP with this application may not have some legitimacy, given that it remains subject to commercial negotiations. The confidentiality issue should have been raised sooner.

[35] NSPML confirmed that completion of the commercial in-service LTAMP with Nalcor is anticipated in early 2026 if settlement is reached but could take longer if disputes arise. Once concluded, NSPML intends to file the LTAMP with the Board. The Small Business Advocate and Industrial Group emphasized that the LTAMP was originally intended to be finalized shortly after the commercial power in-service date and expressed concern over repeated delays since 2024. As such, they recommended that the Board require quarterly progress updates from NSPML until the in-service LTAMP is complete. Counsel for NSPML indicated a willingness to provide such updates, subject to protecting commercially sensitive information.

[36] The Board agrees and directs NSPML to provide quarterly status reports on the commercial in-service LTAMP, with the first report due July 31, 2026. The quarterly reports are to be filed with the Board until the commercial in-service LTAMP and related true-up application is filed with the Board.

[37] In addition, per the submissions of the Consumer Advocate, the Board expects that going forward, NSPML will take a more careful and proactive approach when dealing with any Board directives.

5.0 RETURN ON EQUITY AND CAPITAL STRUCTURE

[38] NSPML's existing cost of capital is based on an approved return on equity of 9.0% for ratemaking purposes, as decided in the initial *Maritime Link* decision, 2013 NSUARB 154 (*2013 Maritime Link* decision) (M05419). As noted in earlier decisions respecting NSPML, the Maritime Link is a single purpose entity created to take advantage of the federal government's loan guarantee because financing restrictions on NS Power prevented it from providing the specific charge on assets required for the financing arrangement. The NSUARB previously reasoned that, absent this requirement, NS Power would have built the Maritime Link and the 9.0% return on equity set for NS Power only a few months earlier would have applied. Therefore, the NSUARB concluded that, for ratemaking purposes, the same rate of return was appropriate for NSPML. The NSUARB also previously approved a 70:30 debt to equity capital structure to take advantage of the low cost of debt and benefits associated with the federal loan guarantee for the Maritime Link.

[39] In this proceeding, NSPML filed a cost of capital report prepared by James Coyne and John Trogonoski of Concentric Energy Advisors (Concentric). The report

recommended a return on equity for NSPML from 10.10% to 10.35%. Notwithstanding this recommendation, NSPML proposed to continue to set rates based on a 9% return on equity, citing that an increase in its rate of return would cause customers' rates to rise.

[40] For sustaining capital, NSPML requested approval to revise the sustaining capital structure to 60% debt and 40% equity, noting that these amounts would be separately tracked and reported from its original project costs. Historically, sustaining capital (which has been minimal to date) has been treated in the same manner as original project capital, using a 70% debt and 30% equity structure.

[41] NSPML also proposed to introduce flexibility in its regulated capital structure for original project costs by allowing its equity thickness to vary by ±1.5%, resulting in a range of 28.5% to 31.5% equity and 68.5% to 71.5% debt.

5.1 The Fair Return Standard

[42] A fair return is fundamental to ensuring a utility's ongoing financial stability. Because NSPML must secure capital to undertake necessary investments, it requires a return sufficient to attract and retain investors. If the approved return is set below levels commensurate with the utility's risk, investor confidence may erode.

[43] There is a well-recognized and long-standing legal standard for approving a utility's return on its investment. Nearly a century ago, the Supreme Court of Canada described the test as follows:

> 18 The duty of the Board was to fix fair and reasonable rates; rates which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested. By a fair return is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise. In fixing this net return the Board should take into consideration the rate of interest which the company is obliged to pay upon its bonds as a result of having to sell them at a time when the rate of interest payable thereon exceeded that payable on bonds issued at the time of the hearing. To properly fix a fair return the Board must necessarily be informed of the rate of return which money would yield in other fields of investment. Having gone into the matter fully in 1922, and having fixed 10% as a

> fair return under the conditions then existing, all the Board needed to know, in order to fix a proper return in 1927, was whether or not the conditions of the money market had altered, and, if so, in what direction, and to what extent. [Emphasis added]
>
> [*Northwestern Utilities Ltd. v Edmonton (City)*, [1929] SCR 186]

[44] This test was more recently accepted by the Supreme Court of Canada in *Ontario (Energy Board) v Ontario Power Generation Inc.*, 2015 SCC 44:

> [15] This Court has had the occasion to consider the meaning of similar statutory language in *Edmonton (City) v. Northwestern Utilities Ltd.*, [1929] S.C.R. 186 (S.C.C.). In that case, the Court held that "fair and reasonable" rates were those "which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested" (pp. 192-93).
>
> [16] This means that the utility must, over the long run, be given the opportunity to recover, through the rates it is permitted to charge, its operating and capital costs ("capital costs" in this sense refers to all costs associated with the utility's invested capital). This case is concerned primarily with operating costs. If recovery of operating costs is not permitted, the utility will not earn its cost of capital, which represents the amount investors require by way of a return on their investment in order to justify an investment in the utility. The required return is one that is equivalent to what they could earn from an investment of comparable risk. Over the long run, unless a regulated utility is allowed to earn its cost of capital, further investment will be discouraged and it will be unable to expand its operations or even maintain existing ones. This will harm not only its shareholders, but also its customers: *TransCanada Pipelines Ltd. v. Canada (National Energy Board)*, 2004 FCA 149, 319 N.R. 171 (F.C.A.).

[45] The latter part of this passage endorsed the Federal Court of Appeal's comments in *TransCanada Pipelines Ltd. v Canada (National Energy Board)*, 2004 FCA 149, where that court said:

> [12] Even though cost of capital may be more difficult to estimate than some other costs, it is a real cost that the utility must be able to recover through its revenues. If the Board does not permit the utility to recover its cost of capital, the utility will be unable to raise new capital or engage in refinancing as it will be unable to offer investors the same rate of return as other investments of similar risk. As well, existing shareholders will insist that retained earnings not be reinvested in the utility.
>
> [13] In the long run, unless a regulated enterprise is allowed to earn its cost of capital, both debt and equity, it will be unable to expand its operations or even maintain existing ones. Eventually, it will go out of business. This will harm not only its shareholders, but also the customers it will no longer be able to service. The impact on customers and ultimately consumers will be even more significant where there is insufficient competition in the market to provide adequate alternative service. [Emphasis added]

[46] The Federal Court of Appeal went on to address a concern raised by TransCanada Pipelines that the National Energy Board set its return on equity too low because it improperly considered the impact that higher rates would have on its

customers. Although the court found the evidence did not support the conclusion that the National Energy Board had suppressed the return on equity because of the resulting impact on customers, it accepted this consideration was not a relevant factor under the *Northwestern Utilities* test:

> [35] In oral argument, the appellant conceded that it does not object to its customers having input into the Board's cost determinations and in particular, its cost of capital determination, provided the issues in dispute are restricted to the costs of the Mainline. However, the appellant does object to the Board taking the impact of tolls on customers and consumers into account in determining the Mainline's cost of equity capital. The appellant says that the required rate of return on equity must be determined solely on the basis of the Mainline's cost of equity capital. The impact of any resulting toll increases on customers or consumers is an irrelevant consideration in that determination. The appellant does concede that when the final tolls are being fixed, the impact on the customers and consumers may be relevant, but insists that it is irrelevant when determining the required return on equity.
>
> [36] I think that this argument is sound and in keeping with the decision of the Supreme Court in *Northwestern Utilities*. The cost of equity capital does not change because allowing the Mainline to recover it would cause an increase in tolls. Under the Board's Equity Risk Premium methodology, the cost of equity capital is driven by the Board's estimate of the risk-free interest rate and the degree of risk investors perceive in the "benchmark" pipeline. The higher the risk, the higher their required rate of return. The degree of risk specific to the Mainline is accounted for by adjustments to its deemed capital structure. Accordingly, the cost to the Mainline of providing that rate of return on the equity component of its deemed capital structure is unaffected by the impact of tolls on customers or consumers.

[47] The Federal Court of Appeal went on to agree that although the impact on customers cannot be a factor in determining the utility's entitlement to a specific return on equity, any resulting increase in tolls may be a factor in determining the way the utility may be able to recover its costs. In particular, the court said if an increase would be so significant it would lead to "rate shock" if implemented all at once, rate increases could be phased in over time, "provided that there is, over a reasonable period of time, no economic loss to the utility in the process. In other words, the phased in tolls would have to compensate the utility for deferring recovery of its cost of capital" (para. 43).

[48] In a similar vein, a recent Ontario Energy Board decision noted that setting a return on equity is focused on ensuring the utility has the necessary financing to carry

out its operations. It is not a means to "balance" competing interests between the utility and its customers:

> The OEB affirms that in setting this important component of the determination of the cost of capital for regulated utilities it adopts the requirements of the [fair return standard], as set out in the 2009 Report. These requirements mandate a regulatory return that meets the market expectations derived from the review of comparable investments, ensures the financial integrity of the subject utilities and allows for compliance with the capital attraction standard: the approved return must permit incremental capital to be attracted to the enterprise on reasonable terms and conditions. The [fair return standard] does not involve the balancing of interests between the utility and its customers but is singularly focused on ensuring that a utility is furnished with the necessary financing to carry out its responsibilities of service to its customers. However, the utility is allowed the opportunity to earn its cost of capital, no more and no less. [Footnotes omitted]
>
> [OEB EB-2024-0063, p. 34]

[49] Similar principles are considered by utility regulators in the United States: *Bluefield Waterworks & Improvements Co. v Public Service Commission of West Virginia* (1923), 262 US 679 (US W. Va.) and *Federal Power Commission v Hope Natural Gas Co.* (1944), 320 US 591 (US Sup Ct.).

[50] In *Energy Law and Policy* (Kaiser and Heggie, ed., 2011), Gordon Kaiser and Bob Heggie, summarized the principles that have been considered by regulators to set fair returns:

> While no legislative guidance is provided as to what a regulator is to take into account in determining a fair return, United States and Canadian courts have considered the issue. The courts have listed factors that tribunals should consider, but have not prescribed methods for calculating a fair return. To be considered fair, tribunals have taken the following principles or standards into account in determining returns:
>
> - The return must be comparable to the return available in the market on an investment of similar risk: the comparable investment or earning principle.
> - The return must be sufficient to attract new utility capital investment: the capital attraction principle.
> - The return must be sufficient to maintain the financial integrity of the utility: the financial integrity principle.
>
> The comparable investment principle is based on the idea that in order to be fair to a utility equity investor, the investor must be satisfied that the potential return on the investment is sufficient to compensate for the risk assumed in relation to the entire spectrum of comparable competitive investments available. The challenge with this principle is finding comparable companies with similar risks.

> The financial integrity and capital attraction principles are more straightforward and generally will be satisfied if the comparable investment principle is met. Financial integrity is satisfied if the combined effect of the allowed return and the equity thickness of a utility's capital structure results in a debt coverage ratio sufficient to support stable investment grade ratings.
>
> Debt investors need earnings to provide security for the debt capital invested. The difficulty with this principle is determining whether a particular desired rating should drive the allowed return.
>
> Capital attraction means that returns must be adequate to attract necessary capital on reasonable terms to build required utility infrastructure.
>
> [*Energy Law and Policy*, pp. 188-189]

[51] *Northwestern Utilities*, *Bluefield* and *Hope* were referenced by the NSUARB in *Re Nova Scotia Power Inc.* [2019 NSUARB 165, para. 119] as the "landmark decisions which set out general principles with respect to rate of return".

[52] The assessment of these principles in any case before the Board is based on the evidence presented. In the current case, the Board was presented with expert evidence from only two parties, NSPML and Board Counsel.

Overview of Cost of Capital Evidence

5.2 Return on Equity

[53] The assessment of an appropriate return on equity typically relies on the application of several established financial models, including, but not limited to, the Discounted Cash Flow (DCF) Model; Capital Asset Pricing Model (CAPM) and the Risk Premium Model. In practice, these methodologies are applied with reference to prevailing capital market conditions, and results are commonly evaluated across multiple models to assess reasonableness, consistency and overall robustness. The evidence in this proceeding noted that each of these models has their strengths and weaknesses and each may be more or less accurate at any point in time depending on market circumstances.

[54] Utilities acquire debt and equity in capital markets that are affected by macroeconomic indicators and central banking policies. NSPML's consultant, Concentric, reviewed the economic and financial market conditions in Canada and the United States (U.S.) to inform how those conditions affect a utility's required return on equity.

[55] Concentric noted that the risk to a company's earnings is a function of its business and financial risk. Concentric suggested that Canadian and American economic and business environments are closely integrated, with similar investment conditions. It therefore concluded that an investor would not expect materially different returns for utilities operating in either country.

[56] Concentric developed a proxy group of companies it deemed to be similar to NSPML to allow it to apply market data to its models. A review of the authorized equity returns for three companies operating cables that are partially subsea and partially overhead was presented because Concentric considered these to be comparable to NSPML. However, these companies are not publicly traded as stand-alone entities. Concentric therefore selected proxy companies that were electric transmission and distribution utilities and elected to make an adjustment to account for the increased risk it believes exists for NSPML. Concentric's North American proxy group consisted of three U.S. and two Canadian companies.

[57] Concentric estimated required equity returns for the proxy group using three standard methodologies: DCF; CAPM and Risk Premium. Concentric also applied an adjustment to its DCF and CAPM assessments for flotation costs and financing flexibility of +50 basis points, or +0.5%. It concluded that a return on equity of 9.35% was appropriate based on its North American proxy group, subject to an adjustment for the

relative risk of NSPML compared to the transmission and distribution companies in this proxy group.

[58] While reference was made to the potential for a higher risk adjustment using a Hamada calculation to adjust for differences in capital structure, Concentric instead recommended an increase of 75 to 100 basis points to account for the incremental risk it believes exists for NSPML as the operator of a subsea cable. This adjustment increased Concentric's recommended return on equity for NSPML to a range of 10.10% to 10.35%.

[59] In response to Undertaking U-8 [Exhibit N-23], Concentric updated its CAPM model to apply the Canadian risk-free rate and market risk premium to its entire North American proxy group. However, Concentric cautioned against using the result in its undertaking because it believes the revisions led to an overly conservative estimate which unduly lowered the estimated required return on equity.

[60] Concentric's final return on equity results are noted in the table below (along with the results from the modifications applied in Undertaking U-8).

NSPML Return on Equity Models	Estimates in the Application + Flotation	Estimates Using CAPM from U-8 +Flotation
DCF	9.28%	9.28%
CAPM	8.82%	7.79%
Risk Premium	9.92%	9.92%
Average	9.34%	9.00%
Risk Adjustment	10.1% to 10.35%	9.75% to 10.00%

[61] Dr. Sean Cleary, who filed evidence as a cost of capital expert on behalf of Board Counsel, was the only other expert to address NSPML's required return on equity. Like Concentric, Dr. Cleary reviewed the economic and financial market conditions in Canada and the U.S. However, unlike Concentric, he focused his analysis on Canadian sources and applied more recent data and forecasts.

[62] Dr. Cleary recommended that NSPML should continue to have the same return on equity for rate setting purposes as NS Power. His assessment focused on the return required by NS Power. Based on his reading of NSPML's application and other materials, Dr. Cleary considered that the total risk profiles for the two utilities were similar. While he acknowledged that NSPML faced operational risks that were not faced by NS Power, he considered these were offset by its lack of generation assets and the federally guaranteed low-risk debt used to finance the Maritime Link. Dr. Cleary reasoned that the two utilities also face similar local and global economic and capital market conditions at any point in time, and the same level of regulatory risk.

[63] Dr. Cleary argued against using U.S. utilities as proxies for NS Power because he does not consider them to be reasonable comparators for Canadian utilities. He argued that U.S. utilities have higher risk compared to Canadian utilities, partially because they are typically holding companies, they operate in the U.S. and the nature of their operations entails more risk. Dr. Cleary also said he does not limit his view of comparable investments to just regulated utilities. He forecast overall equity return in the market to be 7.5% and said this should be the "upper bound for a Canadian utility, which has much lower risk than the average company in the market…".

[64] During his testimony, Dr. Cleary also explained that Canadian institutional and fixed income investors exhibit a home-country bias. Dr. Cleary further noted that, following the 2024 U.S. Presidential election, economic and political developments have contributed to a divergence in the previously aligned economic relationship between the U.S. and Canada, with the potential to become more disconnected.

[65] Dr. Cleary presented estimates reflecting a return on equity for NS Power, based on the assumption that NSPML should continue to receive the same return as NS

Power for regulatory efficiency. Dr. Cleary recommended that, once determined in NS Power's general rate application in Matter M12451, and in future rate proceedings, the return on equity for NS Power should continue to be applied to NSPML. In this proceeding, he recommended a 7.6% return on equity based on his financial modeling using CAPM, DCF and Risk Premium models. Like Concentric, he included an adjustment for flotation costs of 50 basis points. He applied this adjustment in all models.

[66] In rebuttal evidence, Concentric was critical of the overall approach taken by Dr. Cleary, which, in its view, did not address the specific business risk of NSPML or assess it relative to the other Canadian utilities whose data was used in parts of Dr. Cleary's analysis. Concentric also said Dr. Cleary's recommendation was "well below the authorized [return on equity] for other regulated electric utilities in Canada and the U.S., including subsea cable transmission companies". Concentric said this recommendation does not satisfy the fair return standard because it "does not meet any reasonable measure of the comparable investment standard". Concentric asks rhetorically, "Why would investors choose to invest in NSPML when they can earn a higher return for a lower level of risk by investing in other companies?"

[67] Concentric also said that a steep drop in NSPML's return on equity could create instability from the standpoint of credit rating agencies, and that the cost of debt would increase.

[68] A summary of the results derived from Concentric's and Dr. Cleary's return on equity evidence is set out in the table below:

Return on Equity Results	Concentric	Dr. Cleary
DCF	9.28%	7.91%
CAPM	8.82%	6.90%
Risk Premium	9.92%	7.97%
Average	**9.34%**	**7.59%**
Risk Adjustment	0.75% - 1.00%	N/A
Recommendation	**10.1% - 10.35%**	**7.6%**

[69] In respect of these recommendations, Dr. Cleary testified that:

> **A.** To the best of my knowledge, 7.6 percent would be the lowest recommended [return on equity] in Canada. And also, I would add at 10.35 percent, Concentric's recommendation, I think it would be the highest allowed [return on equity] in Canada.
>
> [Transcript, December 16, 2025, p. 670]

[70] Concentric and Dr. Cleary also filed evidence in NS Power's recent general rate application. Their evidence was similar in that proceeding. While Concentric's model outcomes were different due to the use of different proxy companies and the timing of market-based data, its approach was virtually the same (with the notable exception of the risk adjustment for NSPML in the present case). Dr. Cleary's evidence was substantially the same, as were his model outcomes, and his overall recommendation was identical.

5.2.1 Return on Equity Models

5.2.1.1 Capital Asset Pricing Model

[71] The CAPM accounts for the risk of common equity relative to risk-free securities such as government bonds. The CAPM estimates the required return of a security based on the relationship between the expected return of the market and the systematic risk of the security.

[72] The main components of the CAPM include the risk-free rate of return, the market risk premium and company betas. The market risk premium is measured as the difference between the expected return of the market and the risk-free rate. It represents

the rate of return over and above the risk-free rate. The expected return of the market is a long-term assumption about how the market will perform over time. The risk-free rate is typically represented by the long-term government bond rate. Beta is a measure of a stock's risk which is measured by the changes in its price relative to changes in the market.

[73] Based on its assessment of its North American proxy group and adjusting for flotation costs, Concentric determined that a return on equity of 8.82% was appropriate under its CAPM analysis. Dr. Cleary estimated a 6.9% return on equity under his CAPM assessment with adjustments. A summary of the components used by Concentric and Dr. Cleary is set out in the table below:

	Capital Asset Pricing Model (CAPM)	
	Concentric	**Dr. Cleary**
Risk-free Rate	**3.60% (Canada)** **4.49% (U.S.)** *[Average long-term Consensus Forecast of 10-year government bond yields plus the average spread between 10- and 30-year bond yields]*	**3.63%** *[Long-term government yield of 3.63% as of September 29, 2025]*
Market Risk Premium	5.75% (Canada) 7.31% (U.S.) **6.53% (Average)** [*Kroll*]	**5.5%** [*Within historical range* of 4-6%]
Beta	**0.64 (mean)** [*Bloomberg and Value Line*]	**0.45** [*Usual point within historical range of 0.30-0.60*]
Average Yield Spread Adjustment		**-0.14%**
Debt Cost Spread		**0.40%**
Flotation	**0.50%**	**0.50%**
Return on Equity	**8.82%**	**6.9%**

[74] As noted previously, Concentric's North American proxy group includes two Canadian companies and three American companies. The average return on equity produced by Concentric's CAPM analysis for the two Canadian companies was 8.02%.

[75] For the risk-free rate of return, Concentric used *Consensus Economics* forecasted 10-year government bond yield plus the average 10-year historical spread

between the 10-year and 30-year government bonds (Canada, 3.60%; U.S., 4.49%). In Undertaking U-8, Concentric was asked to provide CAPM model results under alternative assumptions. One of these was to use the lower Canadian risk-free rate (3.60%) for all companies in the proxy group rather than using separate Canadian and U.S rates. Under this assumption, Concentric's CAPM results reduced from 8.82% to 8.29%.

[76] Concentric's estimated risk-free rates are higher than Dr. Cleary's, particularly for the U.S. In his evidence, Dr. Cleary submitted that the *Consensus Economics* yield forecast leads to an upward bias when compared to the actual yields that materialize. The use of spreads to adjust 10-year bond yields to 30-year bond yields introduces further assumptions and sources for error.

[77] Dr. Cleary estimated CAPM rates using the actual yield on long-term government bonds at a recent point in time for his risk-free rate. In this case, he used the long-term government yield of 3.63% as of September 29, 2025.

[78] Concentric was critical of Dr. Cleary's use of a "spot yield" to determine the risk-free rate, which it noted can be volatile. It said if the Board was inclined to rely on current government bond yields as the risk-free rate, it recommends using the average yield over the past 30 or 90 trading days instead of the spot yield on any particular day. However, Concentric agreed with Dr. Cleary that its Canadian risk-free rate estimate was substantially the same as Dr. Cleary's, making the difference in methodology somewhat moot.

[79] Concentric estimated the historical market risk premium based on the arithmetic mean of the equity market returns for large company stocks over the income only return on long-term government bonds using data from Kroll, LLC. The market risk

premium for Canada is based on returns from 1919-2023 (5.75%) and, for the U.S., on returns from 1926-2023 (7.31%).

[80] Concentric averaged the market risk premiums for Canada and the U.S. (6.53%) and applied the average to all proxies, irrespective of the country. Concentric regarded the market risk premiums in Canada and the U.S. as highly correlated, although there was significant disagreement about the inclusion of U.S. proxies from Dr. Cleary throughout his evidence. In Undertaking U-8, Concentric was asked to use only the lower Canadian market risk premium (5.75%) rather than averaging Canadian and U.S. results. This lowered Concentric's CAPM results from 8.82% to 8.32%. Combining this assumption with the assumption about the use of only the Canadian risk-free rate discussed earlier produced a CAPM result suggesting a return on equity of 7.79%.

[81] In addition to questioning use of U.S. data in the analysis, Dr. Cleary said Concentric's market risk premiums are higher than appropriate because of Concentric's use of income only returns for bonds to determine market risk premium estimates, rather than total returns, which neglects to account for both the interest return and capital gain (or loss) return.

[82] Dr. Cleary suggests that market risk premiums lie within a "commonly used 4-6% range". He cites academic studies to support this view. Dr. Cleary notes that A-rated Canadian utility bond yield spreads were well below their long-term average, indicating a low-risk environment that would normally lead him to use a market risk premium of 4.5% or 5%. However, citing uncertainties due to global trade tensions, which pose a risk to future economic growth, he settled on a market risk premium of 5.5%.

[83] In its rebuttal evidence, Concentric submitted that Dr. Cleary's market risk premium was based on an unreasonably low market return estimate that was not

consistent with the historical data in Dr. Cleary's evidence (Attachment J). Concentric also submitted that lower than long-term average bond rates suggested higher market risk premiums given the inverse relationship between interest rates and the market risk premium.

[84] Concentric sourced adjusted betas from Value Line and Bloomberg. These are raw betas that have been adjusted on the theory that there is a tendency for betas to revert towards the market mean of 1.0 over time and a need to account for errors associated with statistical estimates. Concentric's position is that raw betas are inferior inputs because they do not represent the expected returns or the average market returns. It said the CAPM is a forward-looking model, therefore a forecasted beta and its tendency to perform at the average of the market over time is not limited by the historical performance of the industry beta.

[85] Dr. Cleary reviewed beta estimates in his evidence and arrived at several conclusions about appropriate beta estimates. Based on his assessment of research conducted in other cases and academic study, Dr. Cleary said that U.S. utility beta estimates are higher than those for Canadian utilities and should not be used. He submits that Canadian utility beta estimates have historically averaged between 0.2 and 0.4 (with 0.35 being the "best estimate"). He said Canadian utility beta estimates have never come close to 1.0, with maximum values being in the 0.6-0.8 range; therefore, he considered the use of "traditional adjusted betas to be totally inappropriate". He submitted that, based on historical evidence, a range of reasonable estimates for these betas was between 0.3 and 0.6.

[86] Dr. Cleary noted that he used a beta of 0.45 "in several previous utility proceedings" and that is his assessment in this proceeding as well. Although Dr. Cleary

noted that beta estimates may fluctuate over time, he said that variability supports the use of long-term averages and the application of judgement in determining reasonable estimates of future betas.

[87] As with the other parameters in the model, Concentric's beta estimate was higher than Dr. Cleary's. While Dr. Cleary applied his "usual" 0.45 beta, Concentric used company specific adjusted betas from Bloomberg and Value Line. These varied, but all were above Dr. Cleary's estimate. The mean value of all betas in the proxy group was 0.64, somewhat above Dr. Cleary's range of reasonable estimates.

[88] In rebuttal evidence, Concentric submitted that Dr. Cleary's estimated 0.45 beta was a clear outlier and based on personal judgement rather than market data. Concentric submitted that betas should be based on weekly return data and adjusted (Concentric prefers the "Blume adjustment"). At the hearing, Concentric explained that, in its view, weekly betas better capture volatility in the market and that monthly data tends to underestimate betas. Concentric said Dr. Cleary's beta estimate was unreasonably low because it blends weekly and monthly beta estimates and is not adjusted.

[89] In addition to the adjustment for flotation costs and financing flexibility that both he and Concentric made, Dr. Cleary made two other adjustments. First, he explained that government bond yields have increased recently but are still low. He said A-rated Canadian utility bond yield spreads have increased but are less than the long-term average spread. He noted that the Bank of Canada indicated that the increased spread is due to liquidity problems, but some of it still reflects increased risk premiums for low-risk firms, like utilities. He made a downward adjustment of -0.14% to account for the time varying risk premium. Second, Dr. Cleary also remarked that NS Power is paying 0.40%

more on its long-term debt than the average Canadian utility. He applied this spread to adjust his CAPM estimates upward.

5.2.1.2 Discounted Cash Flow

[90] The DCF model estimates the required return on equity by replicating the actions of an investor in estimating the dividend yield and future growth rate to value a firm's securities. Based on its assessment of its North American proxy group and adjusting for flotation costs, Concentric determined that a return on equity of 9.28% was appropriate under its DCF analysis. Dr. Cleary estimates a 7.86% return on equity under his DCF (DDM) assessment, with adjustments.

[91] A summary of the components used by Concentric and Dr. Cleary is set out in the table below:

	Discounted Cash Flow (DCF)	
	Concentric	**Dr. Cleary**
Dividend Yield	**3.95%** [Bloomberg]	**5.2%** [Morningstar]
Multi-Stage Growth Rate Years 1-5	**5.53%**	
Multi-Stage Growth Rate, GDP (perpetuity)	**4.04%** (Canada) **4.24%** (U.S.)	
DDM Sustainable Growth Rate		**1.64%** [Morningstar]
Debt Cost Spread		**0.40%**
Flotation	**0.50%**	**0.50%**
Return on Equity	**9.28%**	**7.91%**

[92] The average of the two Canadian companies under Concentric's DCF model suggested a return on equity of 8.9%.

[93] Concentric's multi-stage DCF model uses three phases of growth: near-term growth in the next 5 years, transitional growth in years 6 to 10, and long-term growth after 10 years. The near-term growth rates are based on analyst earnings per share growth forecasts for each company in the proxy group (5.53% (mean)). Concentric's long-term growth rates are based on forecast real GDP growth plus inflation (Canada, 4.04%;

U.S., 4.24%). The medium term or transitional growth rates are pro-rated in a linear fashion.

[94] Dr. Cleary cautioned against relying on sell-side analyst forecasts used in Concentric's DCF model, stating that such forecasts tend to be optimistic and are generally not reflective of the performance expected of mature, low-risk utilities, thereby introducing bias. He further stated in his evidence that using nominal GDP as a long-term growth assumption is overly optimistic for a low-risk utility, and that Concentric's model effectively assumes dividend growth above GDP for 10 years, before converging to nominal GDP thereafter.

[95] Concentric emphasized its use of multiple sources of earnings growth, which it says best informs the overall estimate, enhances its model and reduces the chance for arbitrary adjustments and custom calculations. Using dividend yields for the companies in the proxy group (3.95% mean), Concentric's result was a return on equity of 9.28%.

[96] Dr. Cleary applied a Dividend Discount Model (DDM), which is a variation of the constant growth DCF model that assumes the market price of a stock is equal to the present value of expected future cash flows (dividends paid per share) that equity holders expect to receive. To begin his analysis, Dr. Cleary calculated the implied rate of return for the overall market and then applied the model at the industry level using values he considered to be representative of publicly traded utilities in Canada.

[97] To determine the overall return for the market in his DDM model, he used the average real GDP growth rate from 1992 to 2024 and various estimates of forecast GDP growth rates in 2025 and 2026. He then added the target inflation rate (2%) to arrive at a nominal GDP estimate (3.8%). Dr. Cleary then inputs the dividend yield of 2.83% for

the S&P/TSX as of December 31, 2024, to derive an implied equity return for the market for 2024 (6.74%).

[98] Dr. Cleary notes that a limitation of the single-stage growth model he used is the assumption of constant growth in dividends to infinity. He said this limitation may be overcome by using a multi-stage version of the DDM called the H-Model, which assumes that growth in dividends moves in linear fashion from some current short-term growth rate toward some long-term growth rate over a specified period of time. Applying this model, he uses the 2025-2026 nominal growth rate for the short term (3.3%) and the average nominal GDP growth rate from 1992 to 2024 (4.3%) to derive a market return of 7.20%.

[99] Dr. Cleary then applied his DCF (DDM) model to sample Canadian utilities using each company's sustainable growth rate by multiplying the earnings retention ratio by return on equity. He explained that growth in earnings is positively correlated to the amount of earnings reinvested and then multiplied by the return earned on those reinvested funds, measured using return on equity. Dr. Cleary noted that it is difficult to find representative Canadian regulated publicly-traded utilities. He applied averages and medians of historical data to estimate sustainable growth rates. Using an estimated sustainable growth rate of 1.64% produced an implied return of 7.01%.

[100] Due to a negative average return on equity in his dataset and what he considered to be abnormally high payout ratios in 2024, Dr. Cleary did not apply his H-Model to his Canadian utilities sample. However, he compared the results to his results for the overall market. Similar to his CAPM model, he made adjustments for cost of debt and flotation costs, to arrive at a return of 7.91%.

[101] In its rebuttal evidence, Concentric said the growth rates used by Dr. Cleary in his DCF analysis were unreasonably low. It said historical and projected earnings per share and dividends per share growth rates for North American electric utilities were significantly higher and have modestly exceeded nominal GDP from 2009 to 2024. Concentric also submitted that Dr. Cleary's sustainable growth rate was based on data over a seven-year period with dividend payouts that were abnormal. It said the sustainable growth rate did not take into account growth in shares outstanding. Further, it submitted that Dr. Cleary's sustainable growth rate of 1.64% implied negative growth, given Dr. Cleary's assumption of 2% inflation. Concentric noted that the Alberta Utilities Commission rejected Dr. Cleary's sustainable growth rates in the past as unreasonable.

5.2.1.3 Risk Premium

[102] The Risk Premium model can be based on historical differences in the return between bonds and equity or the expected bond-equity return spread. The Risk Premium model accounts for equity holding more risk than debt because the equity investors bear the residual risk associated with ownership and therefore require a higher return than a bondholder. The riskier the company, the greater the difference between these returns. The standard equation for the Risk Premium calculates the return on equity as the sum of the yield on long-term bonds and the equity risk premium.

[103] The Risk Premium model was used by both Concentric and Dr. Cleary, but in entirely different ways. A summary of the components used by Concentric and Dr. Cleary is set out in the table below:

	Risk Premium	
	Concentric	**Dr. Cleary**
A-rated Utility Bond Yield (Nova Scotia Power)		**4.97%** [Bloomberg]
Government of Canada Bond Yield	**3.60% (average)** [Calculated from Bloomberg and Average long-term Consensus Forecast of 10-year government bond yields plus the average spread between 10- and 30-year bonds]	
Risk Premium (Canada)	**5.85% (average)** *[Calculated from Bloomberg and Average long-term Consensus Forecast of 10-year government bond yields plus the average spread between 10- and 30- year bonds]*	**2.5%** [Usual range of 2-5% with 3.5% being commonly used for average risk companies and lower values for less risky companies]
U.S. Government Bond Yield	**4.40%** [Calculated using 2027- 2031 Forecast for Yield on 30-Year Treasury Bond, Bloomberg and Blue Chip Financial]	
Risk Premium (U.S.)	**5.99% (average)** *[Calculated from Regulatory Research Associates, Bloomberg and Blue Chip Financial]*	
Flotation		**0.50%**
Return on Equity	**9.46% (Canada)** **10.39% (U.S.)** **9.92% (mean)**	**7.97%**

[104] Concentric stated that "the equity risk premium is not directly observable…", so in its place, Concentric employs a regression analysis to assess the relationship between the authorized equity returns of utilities against 30-year government bonds. Data for over 700 U.S. and 60 Canadian electric utilities dating back as far as the early 1990s was used in the analysis. Concentric also modeled variations of long-term bond yields, including a recent 30-day average, a near-term forecast and a five-year forecast. The regression coefficients were used to estimate the risk premium at each bond yield. The risk premium and corresponding bond yield estimates are summed to obtain return on equity estimates. For its U.S. estimate, Concentric selected the result that used the five-

year government bond forecast because “investors typically have a multi-year view of their required returns on equity” (10.39%). Concentric placed the most weight on the near-term forecast of the government bond yield for its Canadian estimate, which it said was “based on the same projected risk-free rate as in our CAPM analysis for the period from 2026-2028” (9.46%).

[105] Dr. Cleary explained that his model examines the relationship between bond and stock markets using readily observable market-determined bond yields. He used current market long-term debt costs for A-rated utility bonds in Canada and the corresponding Bloomberg data for each utility. He noted that the yield on NS Power’s bonds maturing in 2042 was 4.97%, higher than the other utilities he analysed. He considered that this higher yield was a reflection of the other utilities holding higher credit ratings and longer maturity terms.

[106] In assessing the appropriate Risk Premium, Dr. Cleary noted that utilities generally exhibit equity risk premiums within a range of 2% to 5%. Given his assessment of NS Power as a low-risk, regulated Canadian utility, he concluded that a risk premium at the lower end of this range, between 2% and 3%, was appropriate and selected a value of 2.5%. The bond yield of 4.97% was summed with the risk-free rate of 2.5%. He then applied the adjustments for flotation costs to arrive at a recommended 7.97% return on equity.

[107] Concentric, in its rebuttal evidence, said Dr. Cleary provided no evidence to support his estimated 2.5% risk premium for utilities. Moreover, Concentric said Dr. Cleary’s model was “static” and made no adjustment to reflect the inverse relationship between bond yields and equity risk premiums. Concentric submitted that in a March 2025 decision, the Ontario Energy Board (OEB) set a base return on equity for regulated

electric utilities of 9.0% using a forecast of the long-term Canada bond of 3.13%, implying a market risk premium of 5.87%. Concentric said that using Dr. Cleary's current government bond yield of 3.63% and the OEB market risk premium would produce a return on equity of 9.5%, not including any adjustment for flotation costs and financial flexibility.

5.2.1.4 Risk Adjustment

[108] As noted above, Concentric applied a risk adjustment to its return on equity assessments in its models to account for the increased risk it believes exists for NSPML. In a general sense, Concentric submitted that NSPML's inability to earn its maximum permitted return on equity in most years since the Maritime Link was placed in service in 2018 was evidence of greater than average business risk.

[109] In Concentric's view, the operational risk for subsea cables is higher than for overhead transmission lines due to environmental conditions and the challenge of performing repairs and maintenance. Citing a 2023 article by Marsh McLennan, an international risk management and insurance firm, Concentric submitted subsea cables are exposed to supply chain constraints due to limited manufacturing capacity and scarcity of specialized equipment, external third-party damage from anchors and fishing activities (with older cables being more at risk due to changing cable protection standards over time) and interconnector risks. Concentric noted that in addition to the subsea cables, NSPML operates two complex converter stations, which it claimed were different in scale and complexity from traditional transmission substations. NSPML also operates land-based transmission assets.

[110] Concentric also emphasized what it viewed as NSPML's management of a "complex set of contracts designed to provide secure supply and flexibility for additional

energy to the benefit of NS Power's customers". It said this was atypical of a North American transmission company.

[111] Concentric also considered that NSPML's deemed equity ratio of 30% is lower than NS Power's and the U.S. average for transmission and distribution companies, indicating higher financial risk. Concentric said this would cause equity investors to require an above average return on equity. Concentric submitted that the federal loan guarantee for the cost of developing the Maritime Link does not protect equity investors. Indeed, Concentric submitted that the federal loan guarantee for NSPML's more recent $500 million loan produced an actual equity ratio of 22%, despite the separation of this debt for regulatory purposes.

[112] Given Concentric's views on NSPML's business and financial risks, it concluded that a risk premium above its proxy group's average return on equity was required for NSPML. Using the Hamada equation, which analyzes cost of capital relative to financial leverage, Concentric said an upward adjustment of 1.3% was indicated. However, it was Concentric's judgement that a risk premium of 75 to 100 basis points would compensate NSPML's equity investors for increased risk associated with the Maritime Link, which it observed was below authorized equity returns for other subsea cable projects in the U.S. that range from 10.57% to 13.50%.

5.2.2 Relationship to NS Power's Return on Equity

[113] As noted above, Dr. Cleary considers that NSPML and NS Power have similar total risk profiles and should continue to have the same return on equity for rate setting purposes. At the hearing for this matter, which preceded the Board's recent decision in NS Power's general rate application that approved a 9% return on equity for

NS Power for rate setting purposes, Dr. Cleary confirmed that despite his financial analysis, NSPML should be pegged at the same 9% rate if it was retained.

[114] More pragmatically, Dr. Cleary noted that maintaining a common return on equity continues the existing practice and avoids having to hold separate proceedings every few years to estimate an appropriate allowance for the return on equity for both companies when setting rates. Dr. Cleary presumed these proceedings would consider similar economic and market information. He also noted that generic return on equity proceedings are used in other jurisdictions, such as Ontario and Alberta, rather than holding numerous rate proceedings for individual utilities. He advised that once the base return on equity is set in those jurisdictions, any differences in the specific risk profiles of regulated companies are addressed through an adjustment to the equity ratio for those companies.

[115] When asked at the hearing whether NSPML's return on equity should be tied to NS Power's, Concentric recognized this could improve regulatory efficiency. However, Concentric noted that NSPML's rate could be tied to NS Power's without being the same. Concentric considered there was an advantage in tying NSPML's rate of return to NS Power's, but said the Board would need to determine whether a risk differential is appropriate between the two and that, based on its analysis, a risk adjustment of an incremental 75 to 100 basis points for NSPML is appropriate.

5.3 Capital Structure

[116] NSPML said that sustaining capital is not supported by federal government guarantees, and the 30% deemed equity ratio used with the guaranteed financing of the Maritime Link is materially lower than equity ratios for transmission and distribution company comparators. As such, it submitted it is appropriate for sustaining capital

investments to better align with other utilities and to help improve its overall capital structure and future borrowing costs. NSPML said it is confident that different capital numbers for the original Maritime Link investment versus sustaining capital can be easily tracked and reported.

[117] NSPML's request for a 40% equity ratio on sustaining capital investments was not opposed by Dr. Cleary. As with his recommendation for return on equity, Dr. Clearly submitted that NSPML's equity ratio for sustaining capital should be the same as NS Power's. Dr. Cleary considered NS Power's existing 40% equity ratio to be reasonable at this time.

[118] NSPML's request to be allowed to earn on regulated equity that varies by ±1.5% from its approved capital structure is premised on small fluctuations in its regulated equity balances. While it said it strives to maintain its 70:30 capital structure, it submitted it has no flexibility around debt financing on its original capital investment as all that debt is federally guaranteed, fixed and paid down over time. Debt payments cannot be adjusted to achieve its target capital structure. It noted the flexibility it was requesting would not be required for sustaining capital if the Board approved its request for a 40% equity ratio for these capital expenditures.

[119] In its response to Industrial Group IR-18, NSPML stated:

> NSPML has limited cash flow flexibility in order to balance operational payments and financing obligations and therefore does not have the levers other utilities would have to rebalance its capital structure. While NSPML did request flexibility at the time of the original application, the impact of the additional material disallowance and holdback would not have been anticipated at the time of the original application. NSPML is now requesting the ability to payout earnings in line with its actual equity thickness, up to the requested cap of 31.5%, while continuing to manage to achieve a 30% equity thickness.
>
> [Exhibit N-7, IG IR-18, p. 2]

[120] At the hearing, NSPML was asked by the Board about the relationship between its request in this proceeding and previous disallowances in determining the final project cost:

> **Q.** So am I correct, then, that as a result of the Board disallowances -- and I recall what the disallowances are for. I can remind you if you like, but I'm sure you probably recall as well. As a result of those Board disallowances and the holdback, it seems to me that NSPML is almost asking for a benefit from that by increasing its equity ratio and its allowed payout. Is that correct?
>
> **A.** (Dimmell) So just trying to clarify. I don't think -- it wasn't because of the disallowance that this happens. The disallowance, as an example, is what -- it's more about the consequences of how we're configured, from a corporate perspective.
>
> So what my colleague, Ms. MacEachern-Wilson, was explaining is because the equity and debt were fixed through the project portion when we went into operations, so the disallowance at the time, as we've been talking about it, as we use it as an example in the IR response we're speaking about, that causes discrepancy between the amount of equity stuck in the business and the debt, because obviously all of the disallowance would go towards the equity component. But that's only an example.
>
> So every year there's unregulated costs that are not part of our regulatory or our regulated reporting or unrecoverable costs. Yeah, sorry; the unrecoverable costs that would accumulate. In the normal course of business if we had, let's say, more capital projects ongoing you could use the debt that you're using -- you're getting from executing those capital projects to start to back that equity out of the business, which I understand is another regulatory pressing factor of how it's been managed over time. And so it's not trying to find our way out of the disallowance to try to use that, perhaps, as an example, it's a combination of things, and that included when we delivered the project lower than the project budget. You know, we had equity left in the business that wasn't spent and we had the debt fixed at the 70 percent level, and so now some of that can be balanced when we do the final cost at true-up, I suppose we're calling it, but that does incrementally cause the issue.
>
> So every time we've attempted to rebalance the required 30/70 DER within the -- 70/30, I guess, DER within our regulatory reporting it's just you can't do it because we've got no way to get equity out to rebalance unless you're adding more debt in, as opposed to a larger utility that would have the puts and takes that they could manage that a little better. I don't know. I'm not a financial person. So hopefully that explains it.
>
> **Q.** No, I think I understand that. But your request to raise the equity thickness and pay out up to that 31.5, if that were to happen that would be a benefit to shareholders, would it not?
>
> **A.** (MacEachern-Wilson) Yes, it would.
>
> **Q.** And one of the primary reasons you've identified in this response to the IR of that benefit relates to a disallowance that the Board ordered, as well as the holdback mechanism; correct?
>
> **A.** (MacEachern-Wilson) Yes, it would be a consequence of having those. We don't have the levers.
>
> [Transcript, December 16, 2025, pp. 499-502]

[121] Dr. Cleary did not address this request in his filed report, but he was asked about it at the hearing. He said he did not focus attention on this issue, but did not have any strong objections to NSPML's request on the surface, if it is required to get the equity ratio in line with the approved 30%.

5.4 Party Closing Submissions

[122] NSPML submitted that the cost of capital in every segment of the economy was increasing, but it proposed to maintain its current return on equity. NSPML submitted that reasonable experts can disagree on an appropriate return on equity for a company, but it considered Dr. Cleary's recommendation as not even "in the ballpark". While conceding that Concentric's recommendation in recent Alberta and Ontario cost of capital decisions was 50-100 basis points higher than where those jurisdictions eventually set their generic equity returns for utilities, NSPML submitted Dr. Cleary's recommendations in those proceedings were about 200 basis points lower than the amounts set.

[123] NSPML submitted the evidence in this proceeding demonstrated its risk was somewhat higher than NS Power's. It noted evidence that its cost of debt was higher.

[124] NSPML also submitted that its request for ±1.5% flexibility on actual equity thickness was reasonable, given limitations on its ability to take on additional debt to rebalance its capital structure. It noted that NSPML's request for a 40% equity ratio for sustaining capital was supported by evidence from both Concentric and Dr. Cleary.

[125] The Consumer Advocate submitted NSPML's evidence in this proceeding did not address the NSUARB's direction about whether it should continue to set its return on equity equal to NS Power's. The Consumer Advocate referenced Concentric's testimony at the hearing that there may be some regulatory efficiency in allowing NSPML's return on equity to be tied to NS Power's, although not necessarily set at the

same rate. The Consumer Advocate considered it would be appropriate to tie NSPML's return on equity to NS Power's in some fashion.

[126] The Consumer Advocate submitted that the higher equity returns for subsea cable companies in Concentric's evidence were not necessarily representative of the risk faced by NSPML, given geographic and climate differences, and rates set under "black box" settlements. The Consumer Advocate also submitted the evidence supported the conclusion that general transmission and distribution companies do not operate in the same way, in the same environment or with similar contractual arrangements.

[127] The Consumer Advocate disagreed with Concentric's suggestion that NSPML's rate of return might be set based on an incremental increase of 75 to 100 basis points over NS Power's return on equity. The Consumer Advocate said there was insufficient analysis to determine NSPML's specific risk. He also submitted the contractual complexity that NSPML claimed it operated under was overstated, given the company's small workforce and the amount of work that was actually being done by NS Power and the system operator. Financially, the Consumer Advocate noted that NSPML received a steady monthly income from NS Power and most of NSPML's debt was backed by federal loan guarantees, which should reduce its risk.

[128] The Consumer Advocate also disagreed with Dr. Cleary that the risk profiles of NS Power and NSPML were roughly equivalent. The Consumer Advocate said this analysis appeared "somewhat superficial". The Consumer Advocate submitted if an adjuster were applied, it should produce a lower return on equity for NSPML relative to NS Power. However, the Consumer Advocate did not recommend a specific adjuster.

[129] The Small Business Advocate submitted determining an appropriate return on equity for NSPML is challenging due to the uniqueness of NSPML's operations. The

Small Business Advocate said given the limited number of Canadian comparators, a broader range of information would be beneficial. Given that they operate in the same physical, regulatory, political and economic environments, the Small Business Advocate said there was logic in setting the same equity returns for NS Power and NSPML, at least at this time. The Small Business Advocate noted that circumstances in the future might suggest that different treatment would be appropriate.

[130] The Industrial Group noted the three distinct positions for NSPML's return on equity: Concentric's recommendation of a return on equity of 10.1% to 10.35% based on an evaluation of NSPML on a standalone basis; Dr. Cleary's recommended 7.6% on the basis that NSPML's return on equity should be the same as NS Power's to achieve regulatory efficiencies (and this was an appropriate rate of return for NS Power); and NSPML's request to maintain its currently allowed 9% return on equity. The Industrial Group noted that NSPML's return on equity was originally tied to NS Power's because the project would have been undertaken by NS Power but for certain financing requirements.

[131] The Industrial Group submitted the expert evidence in this proceeding differed in three main ways: (1) the use of Canadian or North American proxy groups and market data; (2) upward adjustment mechanisms to betas and the overall return on equity; and (3) the overall risk profile.

[132] On the first point, the Industrial Group submitted that the Alberta Utilities Commission and the Ontario Energy Board accepted that U.S. utilities have higher business risk than Canadian utilities. The Industrial Group said Canadian market data should be preferred because NSPML is regulated by a Canadian regulator and operates in the Canadian capital market. It said there are material differences in the economic,

political and regulatory environments in Canada and the U.S., and noted government bond yields have generally been higher in the U.S. than in Canada. The Industrial Group also submitted that U.S. market returns and betas are generally higher than in Canada. Overall, the Industrial Group submitted that using U.S. data systematically inflates the return on equity calculation. The Industrial Group said that the return on equity models in Concentric's response to Undertaking U-8 and when using only Canadian data produced materially lower return on equity results compared to Concentric's original evidence.

[133] In terms of adjustments, the Industrial Group submitted that the use of the Blume beta adjustment has not been explicitly endorsed by regulators in Canada. It submitted the Blume adjustment's use was derived from U.S. utilities and compounds the upward bias in Concentric's analysis.

[134] The Industrial Group said that the 75 to 100 basis point risk-based adjustment to NSPML's recommended return on equity by Concentric was not appropriate for NSPML's risk profile. The Industrial Group noted that Concentric's assessment of NSPML as having a high-risk profile was different than the evidence the NSUARB heard in 2013 from Foster & Associates.

[135] The Industrial Group submitted that Concentric provided no evidence that NSPML's subsea cable is uniquely riskier than the assets operated by proxy companies. It noted that NSPML was in the inherently lower risk operational phase and said Concentric made its assessment of NSPML's contractual complexity without examining the contractual arrangements of the proxy utilities. Indeed, the Industrial Group submitted that NSPML's contract management appeared to be limited, based on the evidence in this proceeding, and suggested that NS Power did most of the heavy lifting. The Industrial

Group said there was no analysis suggesting NSPML's contract management activities were more complex than a fully integrated utility like NS Power.

[136] While the Industrial Group accepted that NSPML's debt to equity ratio was high, it submitted its debt was backed by a federal loan guarantee. This, combined with statutorily enshrined cost recovery through NS Power, its monopoly status and parent company support all warranted a return on equity "at the lower end of the range for transmission utilities".

[137] In respect of risks associated with the operation of a single subsea asset, the Industrial Group referred to recent evidence from Cable Consulting International in Board proceedings relating to NSPML's operation and maintenance of the Maritime Link. It then submitted:

> So what we know from here is that NSPML is engaging in good utility maintenance practices to minimize the risk of damage to the Maritime Link cable. It is unlikely to have an internal failure. It was designed specifically to be physically separate. The risk of damage to both at the same time seems remote. And they have the ability to continue to transfer the contracted amount with only one. So I would say that, notwithstanding we are dealing with a single asset, the risks have been mitigated and well managed through the O&M and their plans.
>
> [Transcript, December 18, 2025, p. 834]

[138] The Industrial Group submitted that it makes sense to benchmark, but not tie, NSPML's return on equity to that of NS Power and suggested the Board adopt a return on equity in the range of 8% to 8.5%. It said there was no evidence that having a return on equity in the range of 8.5% would present any increased risk or prejudice to NSPML going forward.

[139] Regarding the request for the ±1.5% flexibility in capital structure, the Industrial Group referred to paragraph 302 of the NSUARB's decision in 2013:

> [302] The Board understands the flexibility requirements for purposes of complying with the covenants of the FLG, including a Debt Service Coverage Ratio. The Board notes the additional cost of permitting NSPML the ability to earn on a further five percent of equity, as opposed to debt, increases the cost of the project. To permit NSPML the flexibility it indicates is required, the Board finds it is appropriate to permit NSPML the flexibility to earn

> up to 35% actual equity during Phase 3, the construction phase. During Phase 4, the Board permits NSPML the flexibility to deviate throughout the year as required. However, during Phase 4, the operating phase, the Board does not approve any payout of earnings in excess of the approved [return on equity] with a 30% equity thickness.
>
> [2013 NSUARB 154]

[140] The Industrial Group said no evidence was filed in this proceeding that was not known at that time or that has changed to warrant approving the flexibility requested in this proceeding. The Industrial Group submitted that previous disallowances contributed to the over-equitization that NSPML may be experiencing and said NSPML was asking for higher returns as a consequence of its own performance in areas such as executive bonuses, above-market rental payments to an affiliate, charitable donations unrelated to utility operations, and other operating and maintenance costs that lacked adequate support. The Industrial Group also submitted that NSPML's problem could also be addressed through other means, such as dividend payments, capital structure planning or shareholder negotiations, but none of these appeared to have been explored.

[141] Finally, referring to the request for a 40% equity thickness on sustaining capital, the Industrial Group expressed concern that any issue with borrowing being more expensive because of subordination to the federal loan guarantee was being made now, many years after the approval of the capital structure for the Maritime Link rather than at the time of its original application. It also said this problem did not impact the more recent federal loan guarantee for $500 million and that NSPML provided no evidence that it has actually attempted to borrow for sustaining capital at 30% equity and been refused or quoted materially higher rates. If there are additional costs, the Industrial Group submitted no analysis was provided to demonstrate that the increased debt costs were more than the additional equity that would be paid if NSPML's request was approved.

[142] In reply, NSPML submitted the following:

- Dr. Cleary recognized the need to increase his recommended return on equity for NS Power to reflect additional risk relative to other Canadian utilities because of its poorer credit ratings and considered NSPML equivalent;
- Using only Canadian data produces arbitrarily low results; and
- There is an inherent risk of cable failure and a demonstrated failure should not be required in order to take this into account from an investment perspective.

5.5 Findings

[143] It bears repeating that for at least a century, the Supreme Court of Canada has recognized that investors in regulated utilities are entitled to a fair return, which is comparable to the return they would see from other investments of similar attractiveness, stability and certainty. Without this, investment may be discouraged and the utility may not be able to expand or maintain its operations, harming both its shareholders and its customers.

[144] Factors that may be appropriately taken into account in setting a fair return are comparable returns on similar investments, the level of return needed to attract capital and the financial integrity of the utility. Factors that the other cases have determined are not appropriate to consider include the impact of a fair return on rates or as a tool for balancing other interests between the utility and its customers, such as affordability or reliability. That is not to say these factors are irrelevant, just that they are not properly considered in setting the allowed return. There are other regulatory tools that can be used to lessen near-term rate impacts and affordability issues, but they generally come at a higher long-term cost and may shift costs to other or future customers who did not receive the benefit of the service to which the costs relate.

5.5.1 Return on Equity

[145] There is no single test for determining an appropriate return on equity. Both experts in this proceeding used a variety of models and averaged the results of these models to produce a specific recommendation. Each expert informed their opinion from the range of results provided by these various approaches and gave equal weighting to these approaches in their final recommendation.

[146] In his evidence, Dr. Cleary said:

> I have weighted all three of my [required return on equity] estimates equally because all three methods are used in practice and provide different perspectives on [required return on equity]. As discussed previously, CAPM is more heavily relied upon in practice due to its conceptual advantages. …
>
> CAPM is also more intuitive from the point of view of a utility cost of capital hearing. In particular, it has a direct relationship to financing costs (i.e., RF and MRP). The CAPM also makes a direct adjustment for the risk of utilities relative to the market, unlike DCF models, since it has a direct measure of risk (i.e., beta) included in the model. In addition, there are uncertainties associated with determining some of DCF input estimates for pure play regulated Canadian industries, as discussed earlier.
>
> I also give equal weighting to the BYPRP [Bond Yield Plus Risk Premium] approach which is much more widely used than DCF approaches due to its intuitive nature, and because it adjusts for market-determined borrowing rates and risk. In fact, the BYPRP approach is more widely used than CAPM by Canadian CFOs, as mentioned earlier. Thus, the BYPRP approach accounts for interactions between company debt costs and equity markets, and as such it is intuitively sound.
>
> [Exhibit N-11, pp. 65-66]

[147] In its evidence, Concentric noted:

> No financial model can exactly pinpoint the correct [return on equity]; rather, each test brings its own perspective and set of inputs that inform the estimate of the [return on equity]. Consistent with the *Hope* standard, it is "the result reached, not the method employed, which is controlling." Although each model brings a different perspective and adds depth to the analysis, each model also has its own inherent limitations and should not be relied upon individually without corroboration from other approaches. Regardless of which analyses are used to estimate the investor-required [return on equity], analysts must apply informed judgment to assess the reasonableness of results and to determine the appropriate weighting to apply to results under prevailing capital market conditions.
>
> Other Canadian utility regulators, including the BCUC, the OEB, and the AUC, have acknowledged the need to use multiple methodologies in determining a fair return on equity. [Footnotes omitted]
>
> [Exhibit N-1, Appendix A, p. 41 of 65]

[148] In addition to the inherent limitations across analytical models, it is apparent from the evidence in this proceeding that an expert's selection of model inputs and their assumptions can also vary – in some cases, quite significantly. In some instances, the Board might have cause to question or give less weight to an input or assumption. In others, differences in approaches might be better described as points over which reasonable experts can disagree. The Board can use all this information to inform its conclusions about an appropriate return on equity.

[149] Dr. Cleary's results produced a recommended return on equity of 7.6%. Concentric's models produced a range of results from 10.1% to 10.34%. The Board finds that neither of the experts' recommendations meet the fair return standard. For reasons set out below, Dr. Cleary's recommendation is too low and Concentric's is too high. An appropriate return on equity for ratemaking purposes lies somewhere between these estimates.

5.5.1.1 Use of Canadian and U.S Data in Return on Equity Models

[150] Before considering the strengths and weaknesses of the models, inputs and assumptions used by each expert, the inclusion of U.S. data in the assessments will be considered. This was a fundamental point of difference in the overall approaches taken by each expert in this proceeding and fundamentally affects the results produced in their models.

[151] While the Board accepts Concentric's view that the economies of Canada and the U.S are highly integrated, the Board does not agree that it is appropriate to treat Canadian and U.S. data as interchangeable in a cost of capital analysis for a Canadian regulated utility. There are political and regulatory differences between the two countries.

Dr. Cleary indicates there are corporate structural and operational differences between Canadian and U.S. regulated utilities. He submits Canadian utilities operate under more supportive regulatory environments. As noted, in Dr. Cleary's testimony during the hearing, he expressed the view that institutional and fixed income investors in Canada (and elsewhere) show a home-country bias for investment.

[152] The Board also observes some differences in the data filed in this proceeding. While suggesting some correlation, Concentric's return on equity Exhibit CEA-2 Macroeconomic [Exhibit N-3] identified lower overall average total returns in Canada on the S&P/TSX compared to the S&P 500 in the U.S. over 25, 10 and 5 years (with a wider gap in the past 10 years), a lower average real GDP growth in Canada relative to the U.S. over the past 25, 10 and 5 years, slightly lower inflation in Canada averaged over the same periods, and slightly lower 10-year government bond yields. In terms of the return on equity results, the Canadian proxy companies in Concentric's North American proxy group produced lower return on equity results than the U.S. companies in the CAPM and Risk Premium models.

[153] On the other hand, the Board does not agree with Dr. Cleary that U.S. regulated utility data should be entirely excluded. The pool of regulated utilities in Canada is limited. Comparing NSPML to regulated utilities in Canada may, in many respects, be more apt than to regulated utilities in the U.S. However, one must also be cautious about comparing it to other Canadian utilities that do not share the same degree of risk. The Board views Concentric's selection of its North American proxy group to be an attempt to address some of these other risks, even though it is weighted on U.S. results.

[154] Overall, the Board finds that, while it must be mindful that Concentric's use of U.S. data is likely inflating results in the analysis, Dr. Cleary's omission of U.S. utilities may be producing results that are lower because the utility data he uses is largely comprised of a number of Canadian utilities that do not share NS Power's or NSPML's risks. The Board must consider and weigh the results from both experts accordingly.

[155] The Board notes the Ontario Energy Board reached a similar conclusion in its recent generic cost of capital proceeding:

> Substantial differences remain between Canadian, and U.S.-based utilities principally associated with risk, regulatory oversight and the engagement of U.S. regulated utilities in non-regulated business operations. As well, holding company structures and business holdings, operating in the U.S. and not in Canada, decrease comparability of regulatory results. The OEB concludes that the "home bias" of the Canadian investor to invest in Canadian utilities is a factor in giving less weight to U.S. comparators. These differences cannot be ignored in the OEB's efforts to set parameters to meet the [Fair Return Standard].
>
> …
>
> The integration of U.S. and Canadian utility markets and the potential lure of higher returns for investors is a factor to be considered in arriving at a final conclusion concerning the requisite return on equity that must be provided to meet the [Fair Return Standard]. However, the use of U.S. regulated utility data as equivalent to Canadian regulated utility data in any computation is questionable.
>
> [EB-2024-0063, pp. 36-37]

[156] The Alberta Utilities Commission had similar comments in its decision in its most recent generic cost of capital proceeding:

> 103. While the Commission finds that the U.S. companies have higher business risks than the Alberta utilities, for the purpose of establishing the comparator group, the Commission accepts the utilities' evidence that it is appropriate to include U.S. utility holding companies. The reasons for this are: (i) the relatively limited number of publicly traded Canadian utility companies; (ii) the prevalence of U.S. business operations among many publicly traded Canadian utilities; and (iii) investors' tendency to consider utility investment opportunities in both the U.S. and Canada. Further, the Commission remains of the view that it is reasonable to consider the U.S. market return data given the globalization of the world economy and integration of North American capital markets. Notwithstanding these findings, none of the Alberta utilities raises capital directly in the equity market, or operates outside of Alberta unlike a number of companies in the comparator group, which are holding companies and can operate anywhere.
>
> 104. After considering the evidence presented in this proceeding, the Commission acknowledges the utilities in the comparator group are not identical to the Alberta utilities, but concludes they are sufficiently comparable for use in various financial models. However, and as set out in in this section and Section 6.4.5, the Alberta utilities are at the

> low end of the range of risk present in the comparator group of utilities. Accordingly, the Commission retains the view expressed in the 2018 GCOC decision that a significant amount of judgment must be applied by the Commission when interpreting data from the representative utilities to establish the return on equity required by investors in the Alberta utilities. [Footnotes omitted]
>
> [Decision 27084-D02-2023, p. 22]

[157] In the paragraphs that follow, the Board outlines its assessment of other models, inputs and assumptions advanced by the experts in this proceeding, beginning with the CAPM.

5.5.1.2 Capital Asset Pricing Model

[158] Overall, the Board observes that the CAPM produced lower return on equity results for each expert than the other models they used.

[159] Notwithstanding the statistical analysis Dr. Cleary provided in Appendix A to his evidence, it has not been sufficiently demonstrated in this proceeding that there is a systematic upward bias in the *Consensus Economics* forecasts of government bond yields used by Concentric to determine its risk-free rates in its CAPM. It would be surprising if any forecast of this nature matched actual results. And while Dr. Cleary's data showed several times when forecasts exceeded actuals, there were more recent periods when the reverse was true. However, the use of 10-year bond yields adjusted by historical spreads to derive a 30-year bond yield introduces the need for other assumptions and procedures in the analysis that cause the Board to have less confidence in Concentric's results.

[160] The Board is also not satisfied that Dr. Cleary's use of 30-year government bond yields on a single day is likely to provide any better results. Aside from any issue about whether it is more appropriate to use a historical trend or a forecast, a single data point poses a greater risk of introducing an anomalous event impacting the metric on that day into the analysis.

[161] Because these witnesses tend to give similar evidence in regulatory proceedings in other jurisdictions, the Alberta Utilities Commission had similar comments on these issues relating to the evidence provided by the witnesses in its recent cost of capital proceeding:

> 110. In keeping with the prospective or forward-looking nature of the determination of the cost of capital and prior Commission practice, it is appropriate to use a forecast of the 30-year Canada bond yield submitted on the record of this proceeding. The Commission finds that a direct forecast of the 30-year Canada bond yield from Canadian major banks is simpler and more transparent than the approach recommended by Dr. Villadsen and Concentric, which uses the Consensus Economics forecast 10-year GoC bond yield and adjusts it by adding the average spread between 10- and 30-year government bonds. The need for this adjustment arises from the fact that Consensus Economics, on which Dr. Villadsen and Concentric rely, does not publish a forecast for the 30-year Canada bond yield. Similar adjustments have been used by the OEB and EUB for their formulas because of reliance on Consensus Forecasts.
>
> 111. The 30-year Canada bond yield forecasts are published by large, reputable Canadian financial institutions such as "the Big Six" banks. In the Commission's view, these forecasts are of comparable quality to the forecasts published by Consensus Economics. In fact, the Consensus Economics forecast is an average of estimates from various sources, including Canadian major banks. However, using direct forecasts of the 30-year Canada bond yield eliminates the need to make additional estimates and adjustments to the 10-year forecast for which there is no single, standardized approach. In addition, these forecasts are publicly available without cost. For simplicity, the Commission considers that averaging the forecasts from three banks, RBC, TD and Scotiabank, is sufficient. Should a forecast from one or more of these banks be unavailable, there are three additional major banks from which a forecast may be obtained as a substitute.
>
> 112. In addition to relying on bond yield forecasts published by the three banks, the Commission accepts in principle the approach of D. Madsen and Dr. Cleary to use a naïve forecast, using the actual 30-year GoC bond yield to inform an estimate of the future 30-year GoC bond yield. The Commission has relied on this approach in past GCOC decisions to temper published forecasts because it accepted they tend to overestimate changes in interest rates. In this proceeding, representatives of customer groups made a similar point. However, the Commission considers it is better to use the average actual long-term GoC bond yields for an entire month rather than the yield that prevailed on any a single day in that month, as was done by Dr. Cleary and D. Madsen, to smooth out the daily volatility.
>
> 113. The Commission will use the bank forecasts published in February 2023 provided by D. D'Ascendis, as they were the most recent bank forecasts of long-term GoC bond yields provided on the record. For consistency, the Commission will use the average actual long-term GoC bond yield in February 2023 for the naïve forecast. [Footnotes omitted]
>
> [Decision 27084-D02-2023, p. 24]

[162] Thus, while the risk-free rate estimates advanced by Concentric and Dr. Cleary are close (at least for the Canadian rate used with Concentric's Canadian utilities

in its North American proxy group which is 3.60% compared to Dr. Cleary's 3.63%), the Board finds they are both subject to inherent weaknesses.

[163] Aside from the use of U.S. data, Dr. Cleary's other major complaint about Concentric's estimate for its market risk premium was about its use of "income only returns" rather than total returns which he said was standard for finance professionals. The Board considers there is merit in this criticism. As a result, it is likely that Concentric's market risk premium is also higher than it should be because of this issue.

[164] However, Dr. Cleary's market risk premium is not without its own weaknesses. While the Board has no specific reason to question Dr. Cleary's professional judgement and experience that market risk premiums generally fall within a range of 4%-6%, the assessment is more subjective. This is especially true about what part of the range should be used in any given case.

[165] Once again, Dr. Cleary's estimate of 5.5% is somewhat comparable to Concentric's 5.75% for the Canadian utilities' market risk premium. But because Concentric uses a blended market risk premium, its much higher U.S. estimate causes the premium it uses in its formula to be about 180 basis points higher than Dr. Cleary's market risk premium.

[166] The experts also disagreed on the use of adjusted betas. To different extents, both suggested there was statistical or historical information supporting their positions. From the evidence in this application, a choice between these two approaches would be somewhat arbitrary. However, in the context of a return on equity analysis where the general approach is to analyse the issue using several different methods to better inform an overall result, using both adjusted and unadjusted betas could provide evidence

of a range of results that may be reasonable. This is the approach taken by the Alberta Utilities Commission:

> 130. As expressed in several past decisions, the Commission remains unpersuaded that adjusted betas are superior to raw betas in the context of regulated utilities. Rather, it finds that both raw and adjusted betas can provide useful information with respect to utility risk. Similarly, the Commission continues to find that reliance on both weekly and monthly estimates of beta is reasonable.
>
> …
>
> 132. The Commission concludes that utility stocks are appreciably less risky and volatile than equities in the broader market, and therefore considers a reasonable range of betas for regulated gas and electric utilities to be between 0.45 (representing Dr. Cleary's unadjusted long-term beta) and 0.75 (in the range of adjusted betas recommended by D. Madsen and D. D'Ascendis). The high end of Dr. Villadsen's beta estimates were well above this range. [Footnotes omitted]
>
> [Decision 27084-D02-2023, p. 29.]

[167] While the only evidence about ranges in this proceeding was the 0.3 to 0.6 range suggested by Dr. Cleary, the Board notes that Concentric's average beta in its CAPM was just a bit higher than that range, but within the range suggested in the Alberta Utilities Commission decision. And as with his market risk premium assessment, Dr. Cleary's approach to estimating the beta within a generally accepted range is subjective, compared to the approach taken by Concentric.

[168] The impact of U.S. data on Concentric's model was explored in Undertaking U-8, where Concentric was asked to modify certain parameters in the calculation. In its model, Concentric applied its U.S. risk-free rate to American companies and its Canada risk-free rate to Canadian companies. In Undertaking U-8, the use of the lower Canadian rate for all companies reduced the mean return on equity in the model from 8.82% to 8.29%. In the undertaking, Concentric was also asked to use only the Canadian market risk premium for both Canadian and American companies. This reduced the mean return on equity produced in Concentric's model from 8.82% to 8.32%. The combined impact of using Canadian data for all companies for both the risk-free rate and the market risk

premium produces a mean return on equity of 7.79% in Concentric's model. This provides some indication of the impact of U.S. data on this parameter in the model, subject to the caveats and concerns expressed by Concentric in its evidence.

[169] The impact of the U.S. companies on Concentric's CAPM analysis might also be seen from simply looking at the average results for the two Canadian companies in the model compared to the overall result. Using the average of the equity returns produced by the model for only the two Canadian companies produces a result of 8.02% (but that still includes the use of a market risk premium that is based on the average of Concentric's American and Canadian estimates). The average of the two Canadian companies' results in Concentric's response to Undertaking U-8, under the scenario that combines the impact of the changes requested in the undertaking, is 7.56%. However, averaging the results of only two companies does not provide the comfort of a more robust analysis.

[170] Overall, the Board's findings relating to the use of the CAPM model only reinforce the general observation that the results produced in Concentric's model are too high, and the result produced in Dr. Cleary's model is too low.

[171] Both experts' results from the CAPM assessment suggest a rate lower than 9%. Concentric's model suggested an 8.82% return on equity. As discussed, this is likely higher than appropriate due to the influence of U.S. data. Various means of isolating that impact could suggest a range of results from approximately 7.6% to 8.3%. However, as discussed above, the Board is not satisfied that using Canadian only data fully supports an award in that range because of the limited dataset and the likelihood that it may not be fully reflective of the business and financial risk of NSPML. As noted already, the Board finds the bottom of that range, which is the same as Dr. Cleary's recommendation, is too

low for those reasons. The Board considers a more reasonable range, based on the CAPM results of both experts and reflecting all the strengths and weaknesses discussed in this decision, is between 8.3% and 8.8%.

5.5.1.3 Discounted Cash Flow

[172] The selection of growth rates was the most significant area of controversy about the application of the DCF approach by the experts. Concentric relies on analysts' earnings growth forecasts, which Dr. Cleary said are typically regarded as overly optimistic. While Concentric disagrees with this, it says any optimism bias was mitigated by using earnings growth forecasts from several sources.

[173] Dr. Cleary also noted that the overall growth rate implied by taking into account all stages of Concentric's multi-stage DCF exceeds nominal GDP growth. Dr. Cleary suggested this is "an ambitious target for regulated utilities". He suggested such a rate assumes these utilities will outperform the productivity of Canada and the U.S. in perpetuity. Dr. Cleary considered this to be an unrealistic assumption for a utility. The Board finds there is merit in this criticism.

[174] On the other hand, Dr. Cleary's "sustainable growth rate" of 1.64% appears unreasonably low for a growth rate applied to a model that is presumed to continue to infinity. Dr. Cleary notes in his evidence around the application of his market DCF estimate, that "we are trying to estimate a 'nominal' required rate of return, so we should use nominal GDP growth". As Concentric noted, Dr. Cleary's growth rate implies negative growth given his 2% inflation assumption.

[175] Both of these points are also featured in the Alberta Utilities Commission's recent cost of capital decision:

> 153. In the 2018 GCOC decision, with reference to Dr. Cleary's evidence, the Commission recognized that the utilities are essentially monopolies in mature markets and,

> because of this, the use of long-term growth in excess of the long-term growth of GDP is unreasonable. Indeed, D. Madsen quoted in his evidence from a publication by Dr. Damodaran, who opined that it is questionable whether any firm is able to sustain high growth in the long term as it will eventually stop growing either due to limitations on size or to the effects of competition.
>
> 154. On the other hand, the sustainable growth rate Dr. Cleary used to estimate expected dividend growth rates relied on historical seven-year average dividend yields and payout ratios and used accounting data, rather than readily available, market-driven forecasts. The Commission notes that this approach produces growth estimates that are less than actual historical rates of dividend growth and less than inflation, resulting in negative real growth. As a result, the Commission is concerned that Dr. Cleary's sustainable growth rate produces results that understate dividend growth. [Footnotes omitted]
>
> [Decision 27084-D02-2023, p. 34.]

[176] As with the Board's conclusion about the CAPM, the growth rates used by the experts in their DCF models reinforces the Board's general observation that the results produced in Concentric's model are too high, and the results produced in Dr. Cleary's model are too low.

[177] The Board notes that using the average of only the two Canadian companies in Concentric's model produces a result of 8.9%. While the Canadian number may not fully reflect NSPML's risk profile, the growth rate used by Concentric is likely high. As these two factors would push the return on equity in opposite directions, the Board considers a result somewhere around 8.9% to be reasonable. Dr. Cleary's 7.91% DCF result was determined using an unreasonably low growth rate. The Board estimates that using a growth rate of 3%, which is still lower than Concentric, would change Dr. Cleary's result to 8.4% or 8.5%, and this number may still not fully reflect an appropriate risk profile. As such, the Board considers a range of between 8.5% and 8.9% is reasonable from the DCF assessments done by both experts, reflecting on the strengths and weaknesses in their approaches.

5.5.1.4 Risk Premium Models

[178] Overall, the Board observes that the Risk Premium Model produced higher return on equity results for each expert than the other models they used.

[179] The regression analysis in Concentric's risk premium model uses long-term government bond yields and equity risk premiums. The equity risk premiums in the regression analysis are obtained from the difference between regulator allowed equity returns and 30-year government bond yields. The bond yields in the Canadian version of this model use the same approach as the calculation of the risk-free rate in its CAPM model and is therefore subject to the same weaknesses.

[180] The Board has concerns with this approach. Using authorized equity returns from other jurisdictions reflects regulatory decisions shaped by legislation, policies and economic conditions that may be unique to those jurisdictions. They are not directly derived from market-based data and are only indirectly derived to the extent that the regulator approving the return on equity considered and accounted for market data.

[181] In his evidence, Dr. Cleary submitted that authorized equity returns have not sufficiently declined in response to reductions in government and A-rated utility bond yields over the last two decades. Based on the evidence in this proceeding, it has not been demonstrated that this interpretation is correct; however, to the extent that there was any "stickiness" in allowed equity returns, following the risk premium approach used by Concentric would likely contribute to that.

[182] Dr. Cleary's risk premium approach uses utility bond yields and adds a risk premium. As with elements of his other models, the risk premium exhibits a high degree of subjectivity through the selection of a point, generally in the range of 2% to 5%, based

on the deemed riskiness of the company. The evidence about that in this proceeding lacked empirical rigour.

[183] The Alberta Utilities Commissions also had concerns about these approaches and refused to rely on them in its recent cost of capital decision:

> 165. In addition to relying on CAPM and DCF models, some parties used the following risk premium models to help inform their fair return on equity estimates: (i) Concentric and Dr. Villadsen used the government bond yield risk premium model; (ii) Dr. Cleary and D. D'Ascendis relied on the utility bond risk yield premium model; and (iii) D. D'Ascendis used the predictive risk premium model. The Commission determines that it will not rely on any of these models for the purposes of the present decision.
>
> 166. The government bond risk premium approach estimates the return on equity as the sum of the ERP and the yield on the 30-year U.S. Treasury bond. The ERP was calculated as the difference between authorized returns from U.S. electric and gas utilities and the then-prevailing quarterly 30-year U.S. Treasury yield. Consistent with prior GCOC decisions, the Commission continues to be of the view that the approved [equity returns] from other jurisdictions are not, strictly speaking, wholly market-based data and therefore, will not place any weight on the results of the government bond risk premium model.
>
> 167. Under the utility bond risk premium approach, a required return on equity is calculated by adding an equity premium to a utility bond yield. In past GCOC decisions, the Commission accepted the bond yield and utility bond yield approaches to be valid tools in estimating the cost of equity, as they are simple to use and conform to the basic principle that investors require a higher return for assets with greater risk. Although the Commission still considers the empirical basis of the utility bond yield methodology to be valid, for the purposes of this decision the Commission will not rely on the utility bond yield risk premium approaches used by Dr. Cleary and D. D'Ascendis.
>
> 168. Dr. Cleary's recommended risk premium of 2.50 per cent is subjective, not supported by any analysis and does not take into the account the changing market environment.
>
> [Decision 27084-D02-2023, pp. 36-37]

[184] In this case, the Board finds that the risk premium models are of limited value, even relative to the other models with their weaknesses, and will weigh them accordingly.

5.5.1.5 Risk Adjustment

[185] Although Concentric considered that NSPML's overall risk was greater than the transmission and distribution companies in its proxy group, the Board finds the assessment was somewhat superficial. Further, although information about the

differences in capital structure was objective, Concentric's other comparisons were more subjective.

[186] The Board agrees with the Industrial Group's submissions that Concentric provided little evidence about the relative riskiness of the assets operated by NSPML compared to the assets operated by the companies in its proxy group. Although the Marsh McLennan article Concentric referenced identifies risks associated with subsea cables, no cable expert gave evidence in this proceeding. Likewise, the evidence about the risks faced by the assets owned and operated by the proxy group companies was little more than to note these were on land transmission and distribution assets.

[187] NSPML (and NS Power) have and continue to tout the Maritime Link as a highly reliable asset. In this proceeding, NSPML claimed that the performance of the Maritime Link to date has been "world class". In its application, NSPML emphasized the high degree of reliability of the Maritime Link:

> As background, strong performance of the Maritime Link continues from 2024 into 2025. As of the end of June, monopole availability (the amount of time at least one cable has been available to deliver energy) was 100%. This availability supported Green House Gas ("GHG") free energy sales to NS Power over the Maritime Link of over 1.15 TWh during the first six months of 2025, representing approximately 185% of the contracted NS Block volumes during this period and providing significant energy cost savings. In 2024, the Maritime Link also delivered over $285 million in benefits to Nova Scotians and served approximately 20% of Nova Scotia Power's customer load.
>
> [Exhibit N-1, p. 4]

[188] The Board agrees with the Industrial Group that risks associated with the Maritime Link appear to have been mitigated and well managed through the design, operation and maintenance of the Maritime Link. This includes the fact that the Maritime Link consists of two subsea cables that have been physically separated to safeguard against the potential that things like anchor strike or fishing activity impacts would damage both cables at the same time. As the Industrial Group noted, the required amounts of

energy for the Nova Scotia Block can be maintained with only one of the two cables operating.

[189] Aside from that, the Board finds that NSPML's claim that it bears an unusually high level of risk because of a need to manage highly complex contractual arrangements is exaggerated, based on the evidence presented at the hearing. The evidence in this proceeding demonstrated that NSPML's expenses are fairly predictable every year, except for larger maintenance projects that occur every few years; it has about 30 people on staff (full time equivalent positions); and it engages with Newfoundland and Labrador Hydro primarily through a Joint Operating Committee that meets as needed (lately this has been quarterly). NS Power manages the energy obligations under the agreements and system operations. The Board's finding that NSPML has exaggerated the complexity relating to its management of contracts causes it to question the weight it should put on all aspects of NSPML's claimed high level of risk.

[190] Given the limited amount of evidence provided specifically comparing risk related to operations and assets between NSPML and companies in Concentric's North American proxy group, and the exaggerated claims about the complexity in NSPML's management of contracts, the Board finds no basis for the risk premium adjustment proposed by Concentric in its evidence.

5.5.1.6 Overall Assessment of Return on Equity

[191] In rebuttal, Concentric stated that if the Board approved Dr. Cleary's recommended 7.6% return on equity, NSPML would have the lowest authorized return on equity of any investor-owned regulated utility in North America by a significant amount. During the hearing, Dr. Cleary was asked to respond to this statement. Dr. Cleary

responded, “To the best of my knowledge, 7.6% would be the lowest recommended return on equity in Canada”.

[192] Setting a rate of return that low could have far reaching consequences. This was the subject of comment by the Ontario Energy Board, where Dr. Cleary recently recommended an even lower return on equity of 7.05% for utilities in that province:

> There is evidentiary support for a significant reduction to the current return on equity advanced by Dr. Cleary. Both Dr. Cleary and LEI are instructive in providing reassurance that the regulator has discharged its responsibility to the utilities it regulates in meeting the FRS for their continued operation. The remaining question is whether the current return on equity results in rates that are greater than required to meet that standard thereby generating economic rent from utility customers.
>
> Dr. Cleary’s evidence endeavors to show a result that could meet that question in the affirmative. The effort produces a result that differs markedly from the other expert evidence by recommending a considerably lower estimate, with much of that difference attributable to his reluctance to accept the comparability of Canadian utilities with U.S. counterparts. His model thus engages a smaller number of comparators. As noted earlier, the OEB also has concerns about the ability to find true comparators from the U.S., which limits the number of comparators that might be definitively used.
>
> However, a significant recommended change from the results of the current formula that has been meeting the FRS for utilities must be done with caution. The submissions of the EDA and the OEA set out potential concerns regarding an return on equity reduction such as recommended in Dr. Cleary’s proposal. The OEA pointed to the risk of negative credit rating impacts, which could increase the cost of debt financing for Ontario utilities and impose additional costs on ratepayers. The OEA also emphasized that setting an return on equity at an insufficient level would constrain the growth prospects of Ontario utilities by reducing projected earnings per share growth, potentially forcing utilities to offer higher dividend payouts to attract equity investment. These outcomes would create financial pressures inconsistent with the requirement that utilities earn a fair return. Dr. Cleary himself acknowledged that a steep drop in return on equity could create instability for regulated utilities from a credit rating standpoint. [Footnotes omitted]
>
> [OEB EB-2024-0063, p. 38-39.]

[193] The Board finds it would not be in the public interest to approve a return on equity that does not meet the fair return standard and deviates materially from the range of equity returns authorized for similar utilities across Canada.

[194] Having reviewed the return on equity models in detail, the Board finds that Concentric’s recommendation is too high and Dr. Cleary’s is too low. The evidence in this matter does not support adopting either, but it does firmly support setting a return on

equity within that range. However, evidence supporting the selection of a specific point between these two recommendations is less firm.

[195] In its decision in NS Power's recent general rate application (2026 NSEB 8), the Board found it was appropriate to accept the proposed rate of return on equity of 9% for NS Power under the settlement agreement, as being a point between what the Board considered to be high and low estimates provided by Concentric and Dr. Cleary and having the support of sophisticated parties who appear regularly in Board proceedings involving NS Power. Here there is no such settlement agreement.

[196] While the 9% return on equity requested by NSPML in this proceeding may be within a reasonable range of rates based on the evidence in this proceeding, the Board finds that, overall, the evidence favours a somewhat lower rate. As discussed above, considering the strengths and weaknesses in the models and assumptions each expert used in this proceeding, the Board finds that a reasonable range under the CAPM assessment would be between 8.3% and 8.8% and between 8.5% and 8.9% under a DCF analysis. As noted already, the Board gives less weight to the Risk Premium models but does note those models produced the highest results for both experts. Considering all of this, the Board finds that an appropriate rate of return on equity for NSPML is 8.75% for rate setting purposes, with a range of 8.5% to 9.0%. This finding is within the reasonable ranges for the CAPM and DCF models the Board noted above and is also in the existing range for NSPML's return on equity. As such, the Board considers it an incremental adjustment.

5.5.1.7 Should NSPML's Return on Equity Be Tied to NS Power's?

[197] Dr. Cleary submitted NSPML's rate of return on equity should be the same as NS Power's because the utilities had similar total risk profiles. Concentric noted having NSPML's rate tied to the approved rate for NS Power could improve regulatory efficiency but said that did not necessarily mean the rate should be the same. A differential could be applied to reflect differences in risk, which, in Concentric's view, would mean a higher return on equity for NSPML than NS Power at this time. Intervenor submissions supported benchmarking NSPML's return on equity to NS Power's but differed over whether they should be the same or if a differential should be applied. Those suggesting a differential said that NSPML's rate of return should be lower than NS Power's.

[198] As discussed previously, the Board finds the evidence did not support Concentric's suggestion that a risk premium should be applied to determine NSPML's rate of return relative to the transmission and distribution companies in Concentric's North American proxy group. As part of this, the Board finds that NSPML's suggestion that it operates under a degree of contractual complexity that results in a relatively higher level of risk was exaggerated.

[199] Through ongoing regulation of both NS Power and NSPML, the Board has regular insight into the activities and operations of these companies. Based on this, the Board accepts the proposition that risk related to a fully integrated utility with generation assets like NS Power is generally higher than a transmission company like NSPML. Taking this into account, along with the evidence about NSPML's financial and business risk discussed at different places in this decision, the Board finds that NSPML has, overall, lower risk relative to NS Power.

[200] The Board also agrees that it would be efficient to link the equity returns of NSPML and NS Power through the application of a differential. In its recent decision in NS Power's general rate application, the Board approved a 9% return on equity for NS Power and in this decision, finds that 8.75% is a reasonable rate of return for NSPML. The Board will maintain this -25 basis point differential for NSPML in future proceedings.

[201] This differential will operate as a rebuttable presumption. In the absence of evidence, the differential will be applied by the Board on the basis of this decision; however, it will be open to any party to demonstrate through an appropriate evidentiary record that this presumption should be abandoned or modified. As the Board anticipates that the parties in future proceedings will rely on this presumption when preparing their applications and positions, the Board expects that any party intending to challenge this presumption will provide sufficient notice to other interested parties so they have an opportunity to address the issue. This may mean that, if NSPML raises the issue in an application it files without sufficient prior notice to interested parties, the timeline for the proceeding may be extended to provide those parties with an appropriate opportunity to address this issue. Likewise, if other parties raise this issue in an application filed by NSPML without having provided the utility with sufficient advance notice, the Board may disallow or defer the pursuit of that issue in the proceeding.

5.5.2 Capital Structure

[202] NSPML is a single purpose entity. It was created to secure lower cost financing under a federal loan guarantee for the development of the Maritime Link. This included constituting NSPML as a more highly leveraged financing vehicle to take more advantage of the favourable financing terms under the federal loan guarantee.

[203] The Board recognizes that the ongoing investment of sustaining capital is not financed under the federal loan guarantee and that a 30% equity ratio is smaller than what NS Power and other utilities are allowed. That said, when the Maritime Link project was approved by the NSUARB in 2013, the financial modelling to determine if the project was the lowest long-term option for ratepayers in Nova Scotia was premised on a 30% equity ratio for ratemaking purposes. Furthermore, while highly leveraged, the Board considers the clear government support for this project, as evidenced by the federal loan guarantees, should provide both debt and equity investors with more confidence in investments in the Maritime Link than might otherwise be the case.

[204] In its application to approve the project in 2013, NSPML asked for flexibility to earn on an actual equity ratio up to 35% in Phase 3 (construction phase) and Phase 4 (operating phase). The NSUARB allowed this flexibility during the construction phase. However, the NSUARB did not approve any payout exceeding the approved return on equity with a 30% equity thickness once the Maritime Link became operational.

[205] The Board notes that Dr. Cleary did not oppose NSPML's request for an increased equity ratio for sustaining capital, but this position did not consider the historical basis for the existing capital structure. The Board agrees with the Industrial Group that NSPML's evidence in this proceeding failed to adequately address what has changed since 2013 to now warrant higher equity costs. The only apparent difference is that NSPML is now required to make a higher rate of investment in sustaining capital compared to the early years of operating the Maritime Link. The Board also agrees that NSPML has not adequately compared the higher debt costs it claims it will incur if the equity component of sustaining capital is not increased to the increased equity costs it is seeking.

[206] The Board therefore declines to approve NSPML's request for a 40% equity ratio for sustaining capital at this time. Currently, the impact of this issue is relatively modest, given the small amount of sustaining capital intended to be invested and the outstanding balance under the financing supported by the federal loan guarantees. However, as the loans under the federal loan guarantees are reduced and investment in sustaining capital increases this will change over time. It is open for NSPML to advance evidence addressing the points noted above in a future proceeding.

[207] The Board also denies the flexibility NSPML requested to allow a return on an actual equity ratio as high as 31.5%. In addition to the intention expressed in the 2013 decision that NSPML not earn on an equity ratio greater than 30% during the operating phase, the Board considers that allowing such flexibility undercuts, to some degree, the disallowances directed by the NSUARB in its decision approving the final cost amounts for the Maritime Link (2022 NSUARB 18) and the mitigation that the holdback requirements were intended to provide to NS Power's customers due to poor performance in the delivery of the Nova Scotia Block in the early years of operating the Maritime Link.

6.0 2026 SUSTAINING CAPITAL COSTS

[208] NSPML expects to incur sustaining capital expenditures of about $33.5 million in 2026. This total amount is comprised of its Submarine Cable Protection Project of $32,962,333, which was approved by the Board in a separate application in Matter M12285, together with about $0.5 million for routine capital projects, including "maintenance, repairs, alterations, improvements, replacements, renewals and additions". NSPML states that funding for routine capital is being sought in this

application. As these expenditures individually and in aggregate are below $1 million, a separate Board capital approval is not required for these items.

[209] These additional sustaining capital costs in 2026 will add depreciation expenses to the depreciation amount already approved by the NSUARB in the *Final Project Costs* decision. These capital assets will be depreciated over the depreciable life of the assets, but only the depreciable amount of 2026 is included in the 2026 assessment.

[210] NSPML noted it will be receiving Insulated Gate Bipolar Transistor (IGBT) replacements in 2026 that will be capitalized which were previously approved by the NSUARB in the 2023 and 2024 cost assessments.

[211] In the *Final Project Costs* decision, the NSUARB directed NSPML to provide a detailed accounting of final costs associated with close-out work for some outstanding insurance, warranty, expropriation and contract claims, and to include in that accounting any resulting adjustment to the approved Maritime Link Project capital cost. Like it said last year, NSPML advised that some of these close-out matters continue to remain outstanding and the timing to finalize them is dependent on third parties (e.g., land expropriation panels). NSPML expects to file its final accounting shortly after the conclusion of these matters. NSPML noted these adjustments are not expected to have a material impact on its approved Maritime Link Project costs, or NSPML's rate base or 2026 revenue requirement.

6.1 Findings

[212] The Board finds that it is appropriate for NSPML to include the forecast sustaining capital expenses of $0.5 million for the smaller individual projects in its 2026 revenue requirement. As noted above, these capital assets (along with the Submarine

Cable Protection Project of $32,962,333), will be depreciated over the depreciable life of the assets, but only the depreciable amount of 2026 is included in the 2026 assessment.

[213] As it said for 2023, 2024 and 2025 sustaining capital expenses, NSPML noted it would address the rate base treatment of any 2026 sustaining capital expenditures when it files its rate base reconciliation for outstanding insurance, warranty, expropriation and contract claims. The Board so directs.

7.0 HOLDBACK

[214] The conditions for termination of the $4 million monthly holdback were outlined in the NSUARB's decision 2023 NSUARB 175 (M11009). In a letter dated June 28, 2024, NSPML advised that deliveries of Muskrat Falls energy had normalized, the re-deliveries of energy had satisfied the conditions to end the holdback, and it would be filing an application in the fall of 2024 for approval to terminate the holdback.

[215] In the present matter, NSPML witnesses stated that other activities had prevented them from applying to end the holdback, but that it would file its request with the Board in early 2026. NSPML filed its application to end the holdback in February 2026 and it is being considered in Matter M12696.

7.1 Findings

[216] The $4 million monthly holdback will continue to be applied and administered as directed by the Board, pending its disposition of the issue in Matter M12696.

8.0 MULTI-YEAR ASSESSMENTS

[217] In the 2025 assessment decision, the NSUARB stated:

> [85] The Board notes that multi-year assessment applications could be more efficient and reduce regulatory costs for both NSPML and intervenors. The Board expects that, to the extent possible, NSPML will reduce costs where savings are possible. To that end, the Board strongly encourages NSPML to consider moving to multi-year assessment applications and expects it to provide justification for continuing with single-year assessments, should NSPML choose to do so.
>
> [2024 NSUARB 199]

[218] In its current application, NSPML chose to proceed with a single-year assessment. It stated that "while NSPML's financing costs are relatively straight-forward and can be forecast with high certainty, some material elements of O&M costs cannot be accurately assessed several years in advance because of the market complexity, uncertainty and other factors". It highlighted its marine survey costs, the Long-Term-Service-Agreement with Hitachi, and transmission line inspection and maintenance work as being the key elements it was unable to estimate several years into the future with an acceptable level of accuracy.

[219] In response to NSEB IR-8, NSPML stated that approximately 89% of its costs are fixed financing costs. It also stated that while the variable portion (~11%) makes up a relatively small portion of the total assessment, the material contracts noted above make up a large portion of the operating, maintenance and general (OM&G) costs. It pointed to the marine survey costs as an example, stating that the size of the contract is significant in relation to the total OM&G costs. The Board notes that this forecasting accuracy risk would be greatly reduced if NSPML were to continue with expensing the survey costs over several years rather than in the year incurred. It also notes that the benefit of expensing the survey costs in the year incurred (of avoiding return on the balance) as NSPML has proposed, is not applicable if the NS Power FAM tariff is not set to collect the full amount from customers.

[220] In response to Consumer Advocate IR-1, NSPML committed “to working with customer representatives in advance of its 2027 assessment application in the hope of developing” a simplified approach.

[221] In closing submissions, the Small Business Advocate noted that there is a tradeoff between certainty and efficiency, and that with the Hitachi agreement being currently negotiated and another marine survey scheduled to be completed, now appears to be an ideal time to explore this issue. The Small Business Advocate requested that the Board require NSPML to engage with interested parties regarding the potential for multi-year assessments and provide a report to the Board prior to its next assessment.

[222] In its closing submissions, the Industrial Group submitted that “it is unreasonable to accept it would be an impossible or impractical task for the utility to forecast its costs beyond a one-year horizon” and that she “welcomes an approach that will address regulatory efficiency while balancing the need or the desire for forecast accuracy.”

8.1 Findings

[223] As the Board has previously noted, it is important that NSPML reduce costs, including regulatory costs, wherever possible. The Board is not convinced that the level of uncertainty surrounding NSPML’s cost forecasts is enough to justify not proceeding with a multi-year assessment application. The Board directs NSPML to engage with interested parties on the topic, as NSPML committed to do, and to report on these discussions in its next cost assessment application.

9.0 DEPRECIATION

[224] NSPML's depreciation rates were set based on a 2021 depreciation study conducted by Gannett Fleming. The rates were set to recover the original cost of the Maritime Link over 35 years to match the delivery duration of the NS Block.

[225] In the Final Project Costs matter, Board Counsel consultant Grant Thornton recommended that the depreciation study be updated every five to seven years. In its application, NSPML said that "as there have been no material additions, replacements or retirements since Final Costing, there would be little benefit to updating the depreciation study at this time". NSPML said that it would update the depreciation study once the cable protection project, its first material capital project, is completed in 2026.

9.1 Findings

[226] The Board agrees that the depreciation study should be updated once the cable protection project is complete in 2026 and directs NSPML to do so.

10.0 COMPLIANCE WITH BOARD DIRECTIVES

[227] The Consumer Advocate asked the Board to caution NSPML about its failure to follow Board directives, citing the examples of NSPML's failure to file the LTAMP and a return on equity review over the course of the past few Board decisions.

[228] The Board agrees that NSPML's failure to file the LTAMP mirrors the company's earlier repeated failure to file a return on equity review until the present application. In both cases, NSPML failed to comply with clear NSUARB directives until prodded by intervenors and the NSUARB in later proceedings. To further aggravate the issue, NSPML did not address its decision to file the Asset Management Outlook instead of the LTAMP until specifically referred to the point in information requests, delaying

further review of the issue until the hearing when it should have been explained in the application. NSPML has exhibited similar behaviour in relation to pursuing multi-year assessments that the intervenors and the Board have identified as potentially beneficial for ratepayers.

[229] While NSPML officials responded that there may have been confusion or a misunderstanding about what the NSUARB directed about the return on equity review and the LTAMP, it is clear in both cases that all the other parties and the Board understood what was being requested. If there was any confusion, it was on NSPML's part. To the extent that NSPML may have felt it could modify its response to what it believed was needed by the Board and the intervenors, it was wrong in doing so and this has led to inefficient proceedings which have caused a delay in addressing these issues and have increased regulatory costs for all parties and the Board. These extra costs were necessitated by the need to revisit these important issues over the course of successive proceedings.

[230] The Board cautions that if NSPML displays similar behaviour in future proceedings, the Board will consider disallowing regulatory costs in NSPML's assessment to address the extra costs imposed on ratepayers due to the inefficiency added to proceedings by the company's actions.

11.0 REPORTING

[231] NSPML's quarterly reports and NS Power's ML Benefits Reports have been useful to the Board and all participants in these proceedings. The Board directs that these reports continue as outlined in paragraph 232 of the *Final Project Costs* decision, including hour-by-hour marginal costs and other documentation described in the

NSUARB's *2023 Annual Cost Assessment* decision, at para. 40. Further, the Board has directed quarterly reporting on the status of the LTAMP.

12.0 CONCLUSION

[232] Taking into account all of the evidence and submissions, the Board is satisfied that NSPML's application for its 2026 revenue requirement and cost assessment is reasonable and appropriate, subject to the Board's finding that the return on equity must be reduced from 9.0% to 8.75%. The requests for the changes to its equity thickness to allow flexibility of ±1.5% and to revise the debt to equity ratio on sustaining capital are denied.

[233] The Board directs NSPML to file a compliance filing no later than two weeks from the date of this decision setting out the revised 2026 cost assessment and revenue requirement resulting from the Board's findings in this decision. As outlined earlier in this decision, the $4 million monthly holdback will continue into 2026, pending further order of the Board. The disposition of NSPML's application to end the holdback is being considered in Matter M12696.

[234] On December 23, 2025, the Board issued an Interim Order approving a $198.7 million cost assessment pending the Board's final decision in this matter. Any subsequent monthly invoicing to NS Power must reflect the amended revenue requirement determined in this decision, with necessary set-offs for prior monthly invoice amounts. The revised schedule of monthly payments is also to be provided in the compliance filing.

[235] The Board notes that the 2026 cost assessment approved in this decision will only remain in effect until December 31, 2026.

[236] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 11th day of May 2026.

Stephen T. McGrath

Roland A. Deveau

Steven M. Murphy