

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF AN APPLICATION by **PORT HAWKESBURY PAPER LP** seeking confirmation that it will not be responsible for the repayment of any costs related to Nova Scotia Power Incorporated's \$500 million regulatory asset as part of the tolls, rates and charges PHP pays to NS Power

- and -

IN THE MATTER OF an application by **NOVA SCOTIA POWER INCORPORATED** for approval of its 2025 Fuel Adjustment Mechanism (FAM) AA/BA Rider

BEFORE:

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

APPLICANT:

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

INTERVENORS:

NOVA SCOTIA POWER INCORPORATED
Blake Williams, Counsel

CONSUMER ADVOCATE

David J. Roberts, Counsel
Michael Murphy, Counsel

SMALL BUSINESS ADVOCATE

Melissa P. MacAdam, Counsel
Rebekah Powell, Counsel

INDUSTRIAL GROUP

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

EFFICIENCY ONE

James R. Gogan, Counsel

**MUNICIPAL ELECTRIC UTILITIES OF
NOVA SCOTIA COOPERATIVE**

James MacDuff, Counsel

NOVA SCOTIA DEPARTMENT OF ENERGY

Daniel Boyle, Counsel

RENEWALL ENERGY INC.

Daniel Roscoe

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

FINAL SUBMISSIONS: March 3, 2025

DECISION DATE: April 30, 2025

DECISION: The Board denies the requests by Port Hawkesbury Paper LP, Berwick Electric Commission, Riverport Electric Light Commission, Town of Antigonish, and Town of Mahone Bay to confirm they are not responsible for the payment of costs related to NSP Maritime Link Inc.'s \$500 million regulatory asset as part of the tolls, rates and charges they pay to NS Power. As with all NS Power customers, responsibility for these payments will depend on the costs included in the rates set in the tariffs under which these customers may take service in the future.

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1.0 INTRODUCTION

[1] In the fall of 2024, the Government of Canada agreed to guarantee a \$500 million bond issuance by NSP Maritime Link Inc (NSPML). Under the arrangement, NSPML had to use the proceeds of a bond issuance to refund Nova Scotia Power Incorporated, on behalf of its customers, amounts paid (or expected to be paid) between 2018-2025 for principal and interest for an existing federally guaranteed bond issuance used to finance the construction of the Maritime Link. At the time of this arrangement, fuel and purchased power costs, which NS Power recovers under a Fuel Adjustment Mechanism (FAM), were chronically and significantly under-recovered. The effect of the arrangement was to reduce the FAM balance, strengthening NS Power's financial position without needing a significant increase in rates for FAM customers to do so.

[2] The Nova Scotia Utility and Review Board (NSUARB) found this arrangement to be in the public interest and approved it. The NSUARB also approved the creation of a regulatory asset by NSPML, through which NSPML could recover its costs under the new federally guaranteed debt and, therefore, fully recover its investment in the Maritime Link. Under the arrangement with the Federal Government, the new federally guaranteed debt must be paid over the remaining term of the original financing for the Maritime Link (the next 28 years). The recovery of these Maritime Link costs over the next 28 years better matched those payments with the benefits of the Maritime Link, which, as discussed in numerous NSUARB decisions, has seriously underperformed in its initial years of operation.

[3] Port Hawkesbury Paper LP (PHP) is not a FAM customer and was not obliged to repay any of the outstanding fuel balance that existed when the arrangement with the Federal Government was concluded. In this proceeding, PHP asked the

NSUARB to confirm that it will not be responsible for the repayment of the costs associated with the \$500 million regulatory asset as part of the tolls, rates and charges PHP pays to NS Power in the future.

[4] On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, S.N.S. 2024, c. 2, Sch. A, the Nova Scotia Energy Board succeeded the NSUARB for all applications involving the production, transmission, delivery or furnishing of electrical energy under the *Public Utilities Act*, R.S.N.S. 1989, c. 380; the *Electricity Act*, S.N.S. 2004, c. 25; and the *More Access to Energy Act*, S.N.S. 2024, c. 2, Sch. B.

[5] A foundational premise for PHP's request is that, as a non-FAM customer, it is inappropriate for PHP to repay fuel and purchased power costs incurred by NS Power to serve FAM customers. While the Board is mindful of the cost-of-service principle that underlies this position, it disagrees with PHP's premise in this case. The Term Sheet for the arrangement required the funds from the guaranteed debt to be used by NSPML to refund NS Power for past (and some prospective) principal and interest payments associated with the financing of the Maritime Link under an existing federally guaranteed debt. Because of the refund, the previously incurred costs were eliminated.

[6] Further, the Board finds that the recovery of payments relating to NSPML's approved \$500 million regulatory asset from NS Power's customers over the next 28 years, whether they be existing customers, new customers or PHP, match the costs of the Maritime Link with its benefits much better than was previously the case because of issues with historical non-delivery and under-delivery of energy over the Maritime Link. As a result, the Board finds that any future payments related to the regulatory asset are more appropriately associated with future service from the Maritime Link and are better

characterized as costs incurred to provide service at that time, rather than as recovery of historically incurred costs.

[7] As a result, the Board declines to confirm that PHP will not be responsible for the repayment of any of the costs associated with the \$500 million regulatory asset as part of the tolls, rates and charges PHP pays to NS Power. PHP will be responsible for those payments if it takes service under a tariff that covers those costs.

[8] In a related proceeding, the Berwick Electric Commission, Riverport Electric Light Commission, Town of Antigonish, and Town of Mahone Bay (OATT MEUs) requested a similar confirmation from the NSUARB relating to the portion of the outstanding FAM balance that accrued during the period between 2020-2022, when they were not FAM customers. In their view, these costs were not incurred to serve them and, moreover, under a settlement agreement in NS Power's last general rate application, it was agreed they would not be responsible for these historical costs. Likewise, the Board declines to provide the requested confirmation.

2.0 BACKGROUND

[9] NS Power tracks its costs for fuel and purchased power under an approved FAM, intended to ensure that its customers only pay the actual fuel and purchased power costs NS Power reasonably and prudently incurs to provide them with electric service. As designed, NS Power's FAM requires a base cost of fuel to be set at least every two years. An annual rate adjustment, commonly referred to as the AA/BA Rider, accounts for the variation between NS Power's actual costs and the fuel-related revenues from customers through the rate set to recover the base cost of fuel. Fuel stability plans have sometimes altered the way this mechanism works.

[10] During its general rate application to set rates for 2022-2024, NS Power filed a fuel update that forecasted a substantial increase in fuel costs from the costs previously estimated for those years. NS Power and several other parties in that proceeding considered that setting rates at the level needed to collect the full amount of the updated forecast fuel costs would be untenable for many customers. In a settlement agreement filed in that general rate application, the parties agreed that the rates approved in the application would not fully recover the forecast fuel costs and expected that, as a result, the 2024 AA/BA Rider would be significant. The parties pledged to work together to defer the impact of unrecovered fuel costs to future periods and included the following term in the settlement agreement:

[55] As the rate increase required to collect under-recovered fuel amounts in a 2024 AA/BA Rider is material for all or certain of the customer classes, the parties will work in a good faith manner to defer a portion of the impact of the increase and costs to 2025 or an additional period as may be reasonable and appropriate. NS Power will apply in October 2023 to set the AA/BA rider for 2024. For greater certainty, as the four Wholesale Market customers (the MEUs) were not FAM customers during the 2020-2022 period, none of the historical under-recovered fuel costs on account of 2020-2022 will be recoverable from those customers. [Emphasis added]

[2023 NSUARB 12, para. 55]

[11] The NSUARB approved the settlement agreement for the reasons fully set out in its decision in that matter [2023 NSUARB 12].

[12] On October 16, 2023, NS Power asked the NSUARB to extend the deadline for filing its 2024 AA/BA Rider application, noting that unrecovered fuel costs contained in the FAM were material and it was exploring options to try to reduce rate pressure on customers relating to the recovery of the outstanding AA/BA balance. The NSUARB approved this, and a further extension requested by NS Power. NS Power eventually filed its 2024 AA/BA application on January 29, 2024.

[13] NS Power's 2024 AA/BA application noted that the balance of its unrecovered fuel costs, as of September 30, 2023, was \$343.2 million. By December 31, 2023, the outstanding amount had increased to \$395.4 million. NS Power said further increases (above approximately \$400 million) would endanger the financial health of the utility.

[14] NS Power also noted it had reached an agreement with the Province of Nova Scotia, under which Invest Nova Scotia would buy \$117 million of the outstanding FAM balance. Under this arrangement, NS Power customers would then repay this balance to Invest Nova Scotia over 10 years, financed at the Province's more favourable interest rate. NS Power explained that the FAM balance was expected to increase by \$117 million in 2024 if there was no rate adjustment. In its application, NS Power proposed that the annual FAM adjustment for 2024 only include amounts for the first-year repayment of the Invest Nova Scotia balance (which NS Power had to collect on behalf of Invest Nova Scotia).

[15] The NSUARB approved this arrangement, but was concerned about the amount of unrecovered fuel costs remaining in the FAM:

[43] This is by no means a permanent or adequate solution to the serious problem of managing the recovery of the outstanding fuel costs. NS Power projects its base cost of fuel to fall short of the costs it expects to incur in 2024 and 2025 by \$222 million. Addressing this aspect of the problem alone (before recovering any of the \$395 million outstanding costs at the end of 2023) would require a 5.6% rate increase in 2024 and another 1.2% increase in 2025 (NSUARB IR-5). As such, a day of reckoning is looming.

[2024 NSUARB 71, para. 43]

[16] When NS Power filed its 2025 AA/BA Rider application on September 25, 2024, it forecasted the outstanding FAM balance to reach approximately \$412 million by the end of December 2024. In that application, NS Power proposed a solution to address

the underlying FAM balance, this time founded on a commercial agreement with the Government of Canada.

[17] Under this commercial agreement, NSPML, the NS Power affiliate that built and owns the Maritime Link, would issue \$500 million of new debt repayable over 28 years (until 2052), supported by a loan guarantee from the Government of Canada. The Term Sheet for the arrangement required the funds from the guaranteed debt to be used by NSPML to refund NS Power for past (and some prospective) principal and interest payments associated with the financing of the Maritime Link under an existing federally guaranteed debt for the development and construction of the Maritime Link. In turn, NS Power had to use the refund for the ratepayer account to offset its outstanding FAM balance.

[18] Going forward, it was proposed that a regulatory asset in the amount of the new guaranteed debt would be approved for NSPML and that NS Power would pay NSPML 1/28 of the \$500 million (plus financing and guarantee costs) each year until 2052. This would be paid through NSPML's annual cost assessment for the Maritime Link, which is included in NS Power's fuel and purchased power costs under the FAM. The NSUARB approved this arrangement.

[19] In closing submissions in that proceeding, PHP asked the NSUARB to confirm that it will not be responsible for the repayment of any of the costs associated with NSPML's \$500 million regulatory asset. PHP buys substantial amounts of power and energy to manufacture paper at its mill in Port Hawkesbury. It takes service from NS Power as a single customer in its own rate class.

[20] When it began operations in 2012, PHP took service under a Load Retention Tariff. Since January 1, 2020, PHP has taken service under a unique rate structure approved as the Extra Large Industrial Active Demand Control (ELIADC) Tariff. These tariffs required PHP to pay the incremental costs for fuel and purchased power that NS Power incurred to provide service to PHP, along with some contribution to NS Power's fixed costs. These tariffs were not subject to any adjustments under NS Power's FAM (PHP was not a FAM customer).

[21] In asking the NSUARB to confirm that it is not responsible to pay any of the costs associated with the \$500 million regulatory asset, PHP noted that when the existing FAM balances were incurred (because other customers were not fully paying their FAM costs), it paid all the incremental fuel costs that NS Power incurred to provide it with electric service. PHP also said these incremental costs were significantly higher in those years due to the delay in receiving energy over the Maritime Link, however, it will not receive any of the refund of Maritime Link costs for that period.

[22] The NSUARB declined to rule on PHP's request in that proceeding because other parties with an interest in the issue had not had an opportunity to fully consider it or respond with evidence or submissions. PHP later started this proceeding to have the matter addressed and allow for the full participation of other interested parties.

3.0 DISCUSSION AND ANALYSIS

3.1 Is PHP responsible for future payments relating to the new federal loan guarantee?

The outstanding FAM balance and the new federal loan guarantee

[23] PHP's application in this proceeding reiterated many of the points it raised in the earlier matter. It emphasized that NS Power made the arrangement with the Federal Government to address its outstanding FAM balance in a way that would avoid the significant increase in rates that would occur if the usual FAM processes were applied. PHP contrasted its position "as an incremental customer in its own separate class [that] was required and agreed to pay 100% of the fuel and purchased power costs to serve its load" with NS Power's other customers, who PHP said "did not fully pay the fuel and purchased power costs incurred on their behalf," leading to the outstanding FAM balance that was being addressed by the arrangement with the Government of Canada.

[24] PHP's arguments are summarized as follows:

- a. The outstanding FAM balance addressed by the arrangement with the Federal Government was for fuel costs and Maritime Link costs incurred by NS Power to serve FAM customers.
- b. PHP has never been a FAM customer. FAM fuel costs and Maritime Link costs incurred to serve FAM customers should not become its responsibility because of the "accounting treatment" used to implement the arrangements with the Federal Government.
- c. The unrecovered FAM costs have not disappeared. The costs to serve the FAM customers have simply been paid off through the arrangement with the Government of Canada, with FAM customers now responsible for the

repayment of these costs in the future (along with financing costs and guarantee fees).

- d. It would be unfair, and contrary to the Bonbright principles that have traditionally guided regulatory processes, for PHP to pay costs incurred to serve other customers (including financing costs and guarantee fees) during a period when it fully paid the costs attributed to it.

[25] PHP submitted there was nothing in the Term Sheet for the arrangement with the Federal Government that precluded the Board from confirming that PHP does not have to pay future amounts associated with the recently obtained federally guaranteed debt. It also noted that costs relating to NSPML's approved \$500 million regulatory asset were being tracked separately, so isolating them to ensure they are not charged to PHP would be administratively straightforward.

[26] Board counsel consultant, Bates White Economic Consulting, also filed evidence in this proceeding. Bates White said that PHP did contribute to the outstanding FAM balance.

[27] First, Bates White said that the unique and innovative ELIADC Tariff under which PHP took service since 2020 had not performed as expected. It noted that when the NSUARB considered and approved the ELIADC Tariff, it was expected that other customers would also benefit from the tariff. These benefits were estimated to be between \$6 million and \$10 million annually over the 2020-2023 term of the tariff.

[28] Bates White said that the benefits other customers received during this period were about 56% lower than expected. Excluding the minimum required \$4/MWh contribution to fixed costs used to serve PHP under the tariff, Bates White said benefits

to other customers over the entire four-year period amounted to only \$5.3 million. Bates White said data from 2020-2024 suggested there were a considerable number of hours when NS Power's schedule may have been suboptimal, in a way that may have imposed costs on other customers, due to PHP's inability to run as required under the tariff.

[29] Second, while Bates White supported a methodological change in the way incremental fuel costs are determined under the ELIADC Tariff the NSUARB approved in 2023, it noted this change resulted in a \$51 million reduction in charges to PHP in 2022 (compared to how the tariff was calculated in 2020 and 2021) and an uncalculated impact on charges in 2023. Bates White said this was relevant because, but for this change, the unrecovered FAM balance at the end of December 2024 would have been at least \$51 million less.

[30] Third, Bates White said that although PHP paid its allocated share of costs under the ELIADC Tariff, whether PHP "fully paid" the cost of the service it received depended on the underlying tariff mechanism. As noted, Bates White said other customers did not fully realize the projected benefits under the ELIADC Tariff. Bates White also noted NS Power's evidence that there are operational scenarios under which both potential and real costs and benefits are not fully captured under the ELIADC tariff. Since the allocation of fuel and purchased power costs is a "zero-sum game", Bates White observed that FAM customers pay any costs to serve PHP not picked up by the ELIADC Tariff.

[31] Further, Bates White noted that, in the future, PHP would benefit from NS Power's stronger credit profile due to the elimination of the FAM balance. While Bates White agrees that PHP's full payment of its ELIADC Tariff costs was credit positive and a

benefit to other customers, it said the relative contributions of these factors have not been addressed.

[32] Ultimately, Bates White recommended that PHP's application be denied. However, Bates White said this would not preclude PHP from any future design options for tariffs that might exclude costs associated with the repayment of the newly incurred federally guaranteed debt if supported by evidence justifying the tariff design.

[33] The Consumer Advocate and the Industrial Group endorsed Bates White's evidence in their closing submissions. The Small Business Advocate posited that the arrangement with the Federal Government could be viewed as either the repayment of money paid by ratepayers for the Maritime Link when power was not flowing (or flowing only at minimum levels) or money that was paid by NS Power's ratepayers for higher fuel costs due to the lack of energy flow from the Maritime Link. All three parties submitted it was premature to decide whether PHP should be responsible for future payments related to NSPML's \$500 million regulatory asset, noting this would depend on the rate design of PHP's future tariffs.

[34] In its reply submission, PHP argued that the issue before the Board was a question of interpretation largely separate from the points put forward in Bates White's evidence. The straightforward question, in its view, was whether "the obligations of the FAM customer classes that led to the Federal Loan Guarantee...[can] be extended to PHP, an existing non-FAM customer, simply due to the approach that ...NSPML...and NSPI plan to use to account for the Federal Loan Guarantee?". PHP submitted the only correct response to this question is they cannot. PHP said if there had never been a material amount of unrecovered FAM costs, the new federal loan guarantee would not

have been required and would not exist. It also said if the new federal loan guarantee had not been provided, there would be no question that PHP would not be responsible for the repayment of any of the outstanding FAM balance.

[35] Notwithstanding its position that Bates White's evidence was not relevant to the issue before the Board, PHP went on to address this evidence. PHP said:

- a. It paid everything it was required to under the ELIADC Tariff. It is not responsible for the unforeseen and extraordinary changes in circumstances, beyond its control, that both reduced the benefits to other customers estimated when the tariff was approved and significantly increased the costs it expected to pay under the tariff at that time. PHP noted that, despite the failure to achieve estimated benefits, the ELIADC Tariff functioned as designed and was beneficial to other customers.
- b. The ELIADC Tariff contemplated that PHP's complex industrial operations could give rise to technical issues that would not allow PHP to fully follow all NS Power's requests for load deviations. Further, while instances of this nature occurred, they were infrequent. Considering overall availability, PHP said its performance under the ELIADC Tariff compared favourably to industry averages for the availability of the thermal generating units NS Power operates.
- c. The NSUARB approved the methodological change to the calculation of the incremental costs to serve PHP under the ELIADC Tariff after a full process. PHP also said the change did not relate to a methodology previously

approved by the NSUARB and was necessary to avoid significantly overstating and overcharging PHP for the actual cost to serve it.

Intergenerational equity

[36] In its application, PHP responded to a question about intergenerational equity raised by the Board during closing submissions in the earlier proceeding. PHP submitted that excluding it from future payments related to the new federally guaranteed debt was not discriminatory compared to future small business or residential customers who would become responsible for the repayment of the guaranteed debt. In its view, the difference was that “[n]one of those future customers would have been taking service from NS Power as a separate rate class at the time the buildup of costs incurred, and none of them would have paid their fully allocated costs during that same time period, which helped to ensure that NS Power’s unrecovered fuel and purchased power costs were not even more exacerbated.”

[37] Bates White said it seemed inconsistent to exempt PHP, but not new customers, from payments associated with the \$500 million bond issuance, on the basis that the debt was for “legacy system costs” that were not incurred to serve them. Bates White also observed that PHP might take service under tariffs in the future that, for other entities subject to the same tariff, included payments associated with the \$500 million debt. It said exempting PHP from such costs could appear to be discriminatory if other entities under the same tariff were not exempted.

[38] The Industrial Group also discussed the principle of intergenerational equity, and submitted that the refund to ratepayers and the obligation to pay costs

associated with the new federally guaranteed debt in the future realigned the payment of Maritime Link costs with the benefits received:

Whether PHP will have any future obligation to contribute to the ML assessments remains to be seen. This is part of the reason why a decision on this issue now is premature. If PHP does have an obligation to make payments on the ML assessments, it should also be required to contribute to the repayment obligations under the FLG2 [the new federally guaranteed loan to NSPML]. This is an issue of intergenerational equity: the costs should align with the benefits received.

As noted, PHP has not had any obligation to pay ML assessment costs in relation to the charges under the ELIADC. It follows that it has also not received any of the \$500 million refund for those ML costs paid. The purpose of the FLG2, as supported by the Board's decision in Matter M11902, is for a refund of ML assessment costs paid dating back to January 1, 2018. As confirmed by NSPI in that matter, the repayment period of 28 years was intended to match the remaining term of the original Federal Loan Guarantee in place to cover the costs of the ML. This realigns the payment of the ML with the benefits delivered to its customers. The FLG2 addresses the delays and deficiencies in the ML by refunding prior assessment costs and starts fresh by aligning the costs owing with the corresponding benefits that are anticipated to be received over the future 28-year period.

If PHP is determined to have an obligation to pay ML assessments as part of its new tariff structure, it too should have to contribute to the repayment obligations associated with the FLG2 to better align benefits received with the costs owing. To do otherwise, would be discriminatory as unfairly apportioning costs of services among rate classes and would conflict with NSPI's treatment of new customers.

NSPI has confirmed that new FAM customers will be responsible for all FAM costs, including additional ML assessment costs. This would include the repayment obligations under the FLG2. If new customers, who have also not received the funds associated with the FLG2, are obligated to contribute to the repayment of the \$500 million, so too should PHP. If customers are receiving the benefit of the ML, they should be contributing to the costs that align with those benefits. PHP having previously paid the amounts charged under the ELIADC does not change the need to be charged for costs of serving its load at the time it is receiving those benefits. [Emphasis added]

[Industrial Group submissions, February 24, 2025, pp. 9-10]

[39] In its reply submission, PHP argued that any cost responsibility for the repayment of future obligations relating to the Maritime Link did not have to align with obligations for the repayment of the new federally guaranteed debt. PHP said payments for the guaranteed debt put in place to address the FAM balance were distinct and would be tracked separately. It noted if NS Power elects to treat new customers who choose to attach to NS Power's system as responsible for the regulatory asset as well as other Maritime Link costs, then those customers will be joining the system aware that they are

expected to be responsible for such costs. PHP reiterated that when the FAM balance was accruing, it paid all its Board-mandated costs and there was no suggestion it would be responsible for outstanding FAM costs.

Nova Scotia Department of Energy Evidence

[40] The Department of Energy filed brief evidence in this proceeding addressing the intention of the federal loan guarantee:

The Department was part of the negotiations that led to the arrangement with the Government of Canada to provide a federal loan guarantee to manage the costs incurred by some Nova Scotia electricity ratepayers as a result of delays related to the delivery of electricity over the Maritime Link. The intention of this approach was to provide a mechanism to address the large outstanding FAM balance owing by existing FAM customer classes similar to the approach taken by the Department with respect to the \$117 million purchase of FAM receivables by Invest Nova Scotia in 2024.

The Department confirms that the Federal Loan Guarantee was created to address the significant negative FAM balance and there was no intention to make non-FAM customers through the relevant time responsible for the repayment of the loan. This is consistent with the approach taken by the Department to the \$117 million purchased FAM receivable.

[Exhibit P-12, pp. 1-2]

[41] NS Power's submissions only addressed this evidence. It indicated the \$117 million receivable purchased by Invest Nova Scotia and the new \$500 million federally guaranteed debt "are not and were not intended to be similar and consistent". It said:

The \$117 million receivable was effectively a refinancing of the FAM balance that allowed the \$117 million portion of the FAM balance to be financed at a lower rate than could otherwise be obtained by NS Power and repaid over a 10-year period. Over this 10-year period customers are still paying down an outstanding FAM balance, the money is just owed to Invest Nova Scotia, which now owns the receivable, rather than NS Power.

That is not the case with the \$500 million FLG [federal loan guarantee]. The \$500 million FLG provided for a refund of a portion of the previous Maritime Link Assessment payments, which resulted in a refund of the outstanding FAM balance. Over the 28-year amortization period for the \$500 million FLG, customers will not be paying down the FAM balance, rather, customers will be paying the cost of the Maritime Link on a go-forward basis. As has been clearly stated previously in both NS Power's 2025 AA/BA Application and NSPML's 2025 Supplemental Assessment Application, the intent of the \$500 million FLG was to refund a portion of previous Maritime Link Assessment payments and realign payment for the Maritime Link with the benefits it delivers to customers.

As a result, the \$117 million receivable and the \$500 million FLG are two distinct transactions with different intents and outcomes. [Emphasis added]

[NS Power submissions, February 24, 2025, pp. 2-3]

[42] In its reply, PHP suggested that NS Power's submissions in this proceeding were not consistent with what NS Power said in its application for the approval of the federally guaranteed debt (Matter M11902). At that time, NS Power noted the purpose of the arrangement with the Federal Government was to recover its unrecovered FAM costs in the near term. PHP submitted that while the approach taken with the Federal Government was different from the approach with Invest Nova Scotia, the intention to address the outstanding FAM balance was the same.

3.1.1 Findings

[43] The Board agrees with PHP that the arrangement with the Federal Government to provide the new federal loan guarantee was intended to reduce the outstanding FAM balance. However, the arrangement was intentionally structured as a refund, which the Board finds to be significant and drives how costs are characterized and allocated.

[44] In its application, PHP emphasized that the unrecovered fuel and purchased power costs have not disappeared:

18. It is important to emphasize that the unrecovered fuel and purchased power costs associated with the FAM balance that are being refunded have not disappeared. They have still been incurred by those FAM customer classes. Those costs will simply have been paid off now by the Federal Government as opposed to by the FAM customer classes, with those FAM customer classes now responsible for the repayment of the incurred costs into the future, along with additional financing costs and a guarantee fee. In the circumstances, PHP fails to see any reasonable justification or argument in which NS Power or other FAM customer classes would seek to have PHP pay a portion of those costs as an existing customer in a separate rate class, when none of those costs were incurred to serve PHP. The notion that potentially some of these costs could or should now be transferred from the FAM customer classes responsible for the costs

and onto an existing customer in a separate class that already paid its fully allocated costs is in violation of all regulatory norms.

[Exhibit P-1, pp. 4-5]

[45] The Board finds otherwise. The refund eliminated the unrecovered fuel and purchased power costs associated with the FAM balance.

[46] In its February 18, 2025, decision approving NS Power's 2025 AA/BA Rider, the NSUARB noted that the Term Sheet for the federal loan guarantee required NSPML to use the guaranteed debt to refund past principal and interest payments associated with the financing of the Maritime Link to NS Power for the account of ratepayers:

[17] The Term Sheet for the new \$500 million FLG2 contemplates that the funds from the guaranteed loan would be used by NSPML to refund NS Power for past principal and interest payments associated with the financing of the Maritime Link under the original FLG1 [the original federally guaranteed loan] for that project:

3.2 Use of Proceeds

In accordance with Canada's understanding of the intentions of the NS Crown and NSP, the proceeds of the ML FLG2 Debt shall (i) first, be used by NSPML to cover financing fees, (ii) second, be used by NSPML to refund to NSP for the ratepayer account the principal and interest payments associated with the ML FLG Debt made from June 1, 2018 to December 1, 2024, totaling \$485,900,000 and (iii) third, be used by NSPML to refund to NSP to partly cover the principal and interest payment scheduled for June 1, 2025 with respect to ML FLG Debt. The refunded amounts would be used by NSP to defray the Fuel Adjustment Mechanism deficit, which is largely a result of unanticipated costs arising from the delays and deficiencies in the electricity contracted to be delivered by Nalcor Energy to NS (which are directly attributable to the delays encountered by the NL Projects).

The funds received by NSP pursuant to the repayment of the Fuel Adjustment Mechanism deficit may only be used by NSP to reduce its indebtedness.

[Exhibit N-8, Response to IR-1, Attachment 1, p. 4]

[18] The refund must be "for the ratepayer account". ...

[2025 NSUARB 33]

[47] Later in its decision, the NSUARB underscored the explicit requirement that the funds from the federally guaranteed debt be used to provide a refund to NS Power's customers:

[30] ...The refund is limited to the portion of NSPML annual assessments related to principal and interest payments associated with the existing FLG1 for the Maritime Link and, as noted by NS Power in its response to NSUARB IR-8, this was a requirement of the Federal Government in providing the FLG2. The Term Sheet for the new loan guarantee explicitly notes that Canada expects that the proceeds from the FLG2 loan will be used for the purposes summarized in s. 3.2 of the Term Sheet. This provision, quoted earlier in this decision, requires that the proceeds of the new federally guaranteed loan be used as follows, in order:

1. The payment of NSPML's financing fees;
2. A refund by NSPML to NS Power "for the ratepayer account the principal and interest payments associated with the [FLG1 debt] made from June 1, 2018 to December 1, 2024, totalling \$485,900,000"; and
3. A refund by NSPML to NS Power to "partly cover the principal and interest payments scheduled for June 1, 2025, with respect to [the FLG1 debt]".

[31] The MEUs submission (supported by the Industrial Group) that the refund should be allocated based on a rate class's share of the outstanding FAM balance is not consistent with the overall structure of the arrangement as a refund for the ratepayer account to cover principal and interest payments related to the Maritime Link. Rather than a refund of payments by NSPML to NS Power, the arrangement under the OATT MEUs' proposal becomes, essentially, a loan from NSPML to NS Power to pay out each customer class' existing FAM balances.

[2025 NSUARB 33]

[48] The difference between a refund and a loan is more than just an "accounting treatment". Notwithstanding the Department of Energy's evidence, given the explicit emphasis in the Term Sheet for the arrangement with the Federal Government, the Board agrees with NS Power's submissions that the arrangement is not, and was not intended to be, similar to and consistent with the arrangement with Invest Nova Scotia.

[49] As noted in the NSUARB's reasons approving the arrangement with Invest Nova Scotia [2024 NSUARB 71], it considered the sale of \$117 million of the outstanding FAM balance by NS Power to Invest Nova Scotia to be the sale of an asset. This transferred an existing obligation on FAM customers to pay the \$117 million incurred by

NS Power for fuel (and related) costs to serve them to Invest Nova Scotia. Based on the specific arrangements before the NSUARB, it approved the recovery of the transferred debt by NS Power, through its rates, on behalf of Invest Nova Scotia:

[44] Moving beyond the justness of the arrangement to the other requirements of s. 44, the Board is satisfied that the 2024 FAM AA/BA Rider approved by the Board is paid to NS Power for services rendered. The costs covered by the AA/BA Rider are for fuel (and related costs) used by NS Power to generate electricity for its customers. Furthermore, under its arrangements with Invest Nova Scotia, NS Power must collect the costs for Invest Nova Scotia and Invest Nova Scotia has no recourse to recover costs from customers. It is entirely reliant upon NS Power for the recovery of its investment.

[45] The Board approves the proposed 2024 FAM AA/BA Rider. The Board confirms that the \$117 million amount (with interest) will be collected by NS Power on behalf of Invest Nova Scotia through the existing FAM process, as contemplated under the Agreement.

[2024 NSUARB 71]

[50] In the present case, the Board finds that the effect of the arrangement, which was explicitly framed as a refund, was to eliminate the existing FAM debt that customers owed to NS Power (for most rate classes). There is no obligation on NS Power's FAM customers to repay the refund provided by NSPML from the proceeds of the new federally guaranteed debt. Rather, the new federally guaranteed debt is being paid as part of the cost of service for the Maritime Link over the next 28 years.

[51] The arrangement with the Federal Government rolled back NSPML's recovery of principal and interest payments for the Maritime Link. However, under longstanding regulatory principles enshrined in the *Public Utilities Act*, NSPML is entitled to the opportunity to recover its prudently incurred costs, including a return of, and on, invested capital. As such, the NSUARB approved a regulatory asset to allow the rolled-back recovery of principal and interest payments for the Maritime Link to be recovered by NSPML over the remaining 28 years of the existing financing arrangement for the Maritime Link (the recovery period was another requirement under the arrangements with

the Federal Government). Hence, payments related to the approved regulatory asset are for the recovery of and return on its investment in a capital asset used to serve customers, they are not for the repayment of a debt.

[52] At the time, the NSUARB questioned whether the arrangement shifted past costs onto future ratepayers, offending the principle of intergenerational equity by making future customers (for the next 28 years) pay for the costs incurred to serve past customers. In response to NSUARB IR-7 in that proceeding, NS Power denied that the arrangement created intergenerational equity but, rather, provided a fairer matching of costs and benefits:

The 28-year amortization period was agreed upon by Canada, the Government of Nova Scotia, NS Power and NSPML (see Sections 3.3 and 3.4 of the Term Sheet) to ensure repayment would match with the remaining term of the original FLG. Use of this period is consistent with the intent of the \$500 million FLG, which is to refund a portion of previous Maritime Link Assessment payments and realign payment for the Maritime Link with the benefits it delivers to customers.

The proposed refund does not create intergenerational inequity. To the contrary, it goes further than previous mechanisms or measures to address the concerns of intergenerational equity that have previously been raised regarding the Maritime Link. It does this by realigning the costs of the Maritime Link with the benefits customers receive and, therefore, provides a fairer matching between costs and benefits.

Over the 28-year amortization period, customers will not be paying the costs of replacement energy; those FAM costs will have been eliminated. Rather, customers will be paying the cost of the Maritime Link as the proposed transaction refunds a portion of prior Maritime Link Assessment payments with those refunded amounts now being paid over the 28-year amortization period. [Emphasis added]

[M11902, Exhibit N-8, IR-7]

[53] The Industrial Group referenced NS Power's position on intergenerational equity in their closing submissions in that proceeding, noting that the realignment of Maritime Link payments to provide a fairer matching of costs and benefits of the Maritime Link appeared "logical". The NSUARB briefly addressed the topic in its decision:

[77] However, it could be argued that financing the deferral of fuel costs over 28 years, albeit at lower debt financing costs than WACC, raises intergenerational equity concerns about future customers having to pay recent fuel costs. NS Power said that because

principal and interest expenses for repayment of the project costs will be deferred to the future, the costs will be matched to the customers who will ultimately benefit from Maritime Link energy. The Intervenor accepted this explanation and did not have any intergenerational equity concerns.

[2024 NSUARB 199]

[54] The realignment of capital and financing costs for the Maritime Link for recovery over the next 28 years is not perfect. Delivery of the Nova Scotia Block of energy over the Maritime Link was non-existent in the early years of the refund period (2018-2025) but improved after the execution of an Acceleration Agreement with Nalcor Energy on August 9, 2021 (particularly in the later years of the refund period). Much of the history of the Maritime Link and its performance over time was discussed by the NSUARB in a decision dated October 4, 2023, which, even at that time, found that NS Power's customers were paying for Maritime Link benefits they were not receiving:

[72] NS Block deliveries have improved since February 2022 when that decision was released, but the improvement has been delayed by a variety of factors related to the commissioning of the LIL. As noted by the Intervenor, the replacement energy costs have been significant, even more so than what could have been expected at that time, at least partly due to global geo-political events. While NS Power is entitled to recover its prudently incurred costs under the FAM, ratepayers face an increased burden as the FAM balance increases. The intergenerational inequity concerns persist and the imbalance continues.

[2023 NSUARB 175]

[55] The Board notes the intergenerational inequity concern the NSUARB was referencing was the fact that customers at that time were paying for benefits they were not receiving, but which would be received by future customers.

[56] Between January 1, 2018, and December 31, 2024, NS Power's FAM customers paid approximately \$1 billion in costs for the Maritime Link. So, even with the \$500 million (less financing costs) refund of principal and interest payments relating to the Maritime Link by NSPML, NS Power's FAM customers paid considerable amounts for benefits they did not fully receive. The realignment of capital and financing costs for the

Maritime Link for recovery over the next 28 years may not be perfect. However, considering the amount of unrefunded costs paid by FAM customers for the Maritime Link and the timing of when benefits were received, the Board finds the refund arrangement results in a far superior matching of the costs and benefits of the Maritime Link than what existed before.

[57] The Board finds the refund eliminated the existing debt. The recovery of the refunded principal and interest payments for the Maritime Link have been shifted in time to better match costs and benefits over the next 28 years. Therefore, any future payments by PHP associated with NSPML's recently approved regulatory asset for the new federally guaranteed debt are not payments for costs incurred by other customers, but are payments for the cost of using the Maritime Link at that point in time. In this regard, PHP would be in the same situation as new customers who join the system in the future.

[58] This outcome is not a violation of regulatory norms but is consistent with cost-of-service principles. The Board fully accepts that the arrangement with the Federal Government, and the shifting of Maritime Link costs to a future period to better match costs and benefits, would not have occurred if there was no outstanding FAM balance. However, that motivation cannot turn the remedy that was implemented from a refund to the buyout of a receivable, as was done with Invest Nova Scotia.

[59] In reaching this conclusion, the Board has not found it necessary to make findings relating to the evidence filed by Bates White. However, to the extent that PHP may consider the implementation of the relief provided by the Federal Government to be "inappropriate", "wholly discriminatory, manifestly unfair and neither just or reasonable", the Board simply notes that reasonable questions have been raised about whether the

ELIADC tariff has provided appropriate benefits in exchange for PHP not being on a fully allocated cost rate. That said, the Board agrees with PHP that since PHP has fully paid all charges under its approved tariff. It would not be appropriate, even if the issues raised by Bates White were determined to be legitimate, to require PHP to supplement its past tariff payments by requiring it to pay costs owing by other customers for past services. As discussed, however, the Board finds that is not the case because the refund facilitated by the new federal loan guarantee eliminated the outstanding fuel costs owed by other customers (for most rate classes).

[60] Finally, the Board notes that, at this stage, it is not known whether any tariff that PHP will take service under in the future will require it to pay costs for principal and interest for the federally guaranteed debts for the Maritime Link. As noted previously, PHP did not have to do so under its Load Retention Tariff or the ELIADC Tariff. The original four-year term of the ELIADC Tariff was extended two years to December 31, 2025, and an application is currently before the Board to extend it again to December 31, 2026.

[61] The Board also understands that the Goose Harbour Lake Wind Farm, with a maximum nameplate capacity of 168 MW, is expected to achieve commercial operation in the fourth quarter of 2026. Under the *Prescribed Generation Facilities and Energy-Storage Projects Regulations*, N.S. Reg. 160/2024, all of the output from this facility must be acquired by NS Power and sold to PHP over 25 years at the energy rate for the purchase of the output from the wind farm by NS Power plus an administrative fee no greater than \$4/MWh. It is not clear whether the administrative fee will over- or under-recover PHP's fully allocated costs associated with the energy provided.

3.2 Are Municipal Electric Utilities responsible for future payments relating to the new federal loan guarantee?

[62] In Matter M11902, relating to the setting of NS Power's 2025 AA/BA Rider, the OATT MEUs submitted they should not be responsible for future payments for the refunded amounts relating to under-recovered fuel costs between 2020-2022. In its decision, the NSUARB noted:

[62] The OATT MEUs submit that the OATT municipal customers should not be responsible for future payment of the refunded amounts that relate to the under-recovered fuel costs of 2020-2022. In their closing submissions, they stated:

Finally, the OATT MEUs also note that NS Power's Application does not include the OATT MEUs in the breakdown of the \$42.4 million Supplemental Assessment by rate class. The Settlement Agreement approved as part of NS Power's 2022-2024 General Rate Application makes it clear that none of the historical under-recovered fuel costs on account of 2020-2022 will be recoverable from the OATT MEUs. If the allocation of the credit is to be based on the annual actual cost responsibilities of the Maritime Link, as opposed to the % share of the FAM balance, the Board should also confirm that the OATT MEUs will not be responsible for future payment of any of those historical under-recovered Maritime Link assessment costs incurred in 2020-2022 (\$65.5 million in 2020, \$84.5 million in 2021, and \$83.1 million in 2022) by virtue of the Settlement Agreement.

[OATT MEUs Closing Submissions, pp. 1-2]

[2025 NSUARB 33]

[63] The NSUARB concluded the allocation of the refund was appropriately based on the actual cost responsibilities of the Maritime Link. However, it considered that the issues raised by the OATT MEUs about whether they would be responsible for historical Maritime Link assessment costs incurred when they were not customers under NS Power's Municipal Tariff (2020-2022) were similar to those raised by PHP in this proceeding. Therefore, the NSUARB reserved its decision on this point until considering the issues in this proceeding. The OATT MEUs filed additional submissions in this proceeding.

[64] As noted previously, the parties to the settlement agreement in NS Power's last general rate application agreed that the rates approved would not fully recover the forecast fuel costs. They anticipated that, as a result, the 2024 AA/BA Rider would be significant. The parties pledged to work together to defer part of this impact to future periods. The settlement agreement confirmed that "none of the historical under-recovered fuel costs on account the 2020-2022 will be recoverable from" the OATT MEUs.

[65] The OATT MEUs submitted when they signed the settlement agreement in NS Power's last general rate application, all parties were aware that the Maritime Link assessment costs from 2020-2022 formed part of NS Power's overall fuel costs and contributed to the under-recovered fuel amounts. Referring to the recent arrangements with the Federal Government, the OATT MEUs said:

...Some of the Maritime Link costs that were initially approved to be paid in 2018 to 2024 will now be paid back over a new 28-year time horizon at higher cost, because FAM customers were unable to pay the FAM balance when such costs were originally assessed and incurred. To say now that these outstanding fuel costs associated with the Maritime Link from 2018-2024 never existed in the first place, but actually represent future costs, goes against every Board proceeding involving NS Power and the issue of its under-recovered fuel costs since the Maritime Link was approved as used and useful as of January 1, 2018.

[OATT MEUs submissions, February 24, 2025, p. 4]

[66] The OATT MEUs went on to argue that NS Power's evidence in Matter M11902, that the refund arrangement did not require it to restate prior financial statements, was significant. They argued that the refunded charges "could not simply be labeled 'future period costs', as NS Power claimed in its reply submissions in Matter M11902, particularly when a new regulatory asset has been created to account for them, separate and apart from and with different financing terms than other future Maritime Link costs that have not yet been subject to assessments against NS Power."

3.2.1 Findings

[67] As discussed, principal and interest payments associated with the Maritime Link, including those charged to FAM customers between 2020-2022, were refunded. They no longer exist and there is no obligation on any customer to pay them. Specifically, the “historical under-recovered fuel costs on account of 2020-2022” have been eliminated. Any amounts paid by the OATT MEUs in the future will not be for these historical costs, so the settlement agreement is not affected.

[68] The creation and approval of a regulatory asset recognized NSPML’s entitlement to the recovery of principal and interest payments relating to the Maritime Link it made from 2018 to date. Further, it shifted the time for the recovery of these costs to the next 28 years to better match costs and benefits. In reaching these findings in this decision, the Board is not bound by NS Power’s position on whether it must restate past financial statements.

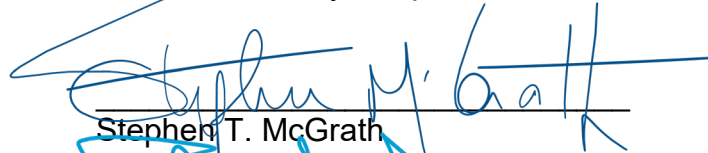
[69] As with PHP, and for the reasons set out in more detail earlier in this decision, the Board finds that if the OATT MEUs take service in the future under a tariff that requires the payment of costs associated with principal and interest payments for the Maritime Link (including those associated with the regulatory asset relating to the new federally guaranteed debt), then they will be obliged to pay those costs.

4.0 CONCLUSION

[70] The Board denies the requests by PHP and the OATT MEUs to confirm they are not responsible for the payment of costs related to NSP Maritime Link Inc.’s \$500 million regulatory asset as part of the tolls, rates and charges they pay to NS Power. As with all NS Power customers, responsibility for these payments will depend on the costs

included in the rates set in the tariffs under which these customers may take service in the future.

DATED at Halifax, Nova Scotia, this 30th day of April 2025.



Stephen T. McGrath



Roland A. Deveau



Steven M. Murphy