

NOVA SCOTIA UTILITY AND REVIEW 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 the 2020 interim cost assessment

BEFORE: Peter W. Gurnham, Q.C., Chair
Roland A. Deveau, Q.C., Vice Chair
Steven M. Murphy, MBA, P.Eng., Member

APPLICANT: **NSP MARITIME LINK INCORPORATED**
Colin J. Clarke, Q.C.
Mary Ellen Greenough
Shellie Woolham

INTERVENORS: **CONSUMER ADVOCATE**
William Mahody, Q.C.
Emily Mason

SMALL BUSINESS ADVOCATE
E.A. Nelson Blackburn, Q.C.
Melissa MacAdam

INDUSTRIAL GROUP
Nancy G. Rubin, Q.C.

ALTERNATIVE RESOURCE ENERGY AUTHORITY
(Did not appear)

NOVA SCOTIA DEPARTMENT OF ENERGY AND MINES
Peter T. Craig

NOVA SCOTIA POWER INCORPORATED
(Did not appear)

PORT HAWKESBURY PAPER LP
James MacDuff

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

HEARING DATE: October 16, 2019

FINAL SUBMISSIONS: November 6, 2019

DECISION DATE: **November 27, 2019**

DECISION: **The Board approves the interim assessment of \$144.5 million for 2020, with conditions.**

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1.0 INTRODUCTION

[1] This is a Decision of the Nova Scotia Utility and Review Board respecting the application of NSP Maritime Link Incorporated (NSPML) for approval of an interim assessment for 2020, including a starting date for the payment of depreciation and amortization of deferred financing charges. In its application, NSPML asks that the Board set the 2020 interim assessment at \$144.5 million, which is comprised of \$115.1 million for operating and maintenance costs, debt financing costs and equity financing costs, together with \$29.4 million for depreciation and amortization of deferred financing charges. NSPML also provided an update on the delivery of the NS Block following completion of the Muskrat Falls Generating Station.

[2] Similar interim assessments for 2018 and 2019 (including refunding amounts for depreciation and amortization of deferred financing charges) have been included in NS Power's electricity rates over the past three-year Rate Stability Period from 2017 to 2019.

[3] Based on the evidence and submissions in this matter, the Board approves the 2020 interim assessment of \$144.5 million. The amount of \$115.1 million is to be recovered through a schedule of monthly charges starting on January 1, 2020. The Board directs that the \$10 million holdback will continue in 2020 and be applied, *pro rata*, to the number of days prior to the start of delivery of the NS Block. The Board also approves the recovery of depreciation and amortization of deferred financing charges in the amounts of \$28.6 million and \$0.8 million, respectively. These amounts will be included in rates starting June 1, 2020, but will only be paid over from NS Power to NSPML upon confirmation of delivery of the NS Block, or November 1, 2020, whichever occurs first.

[4] The Board also confirms that it will only process NSPML's application for a final assessment of costs upon confirmation of delivery of the NS Block. NSPML's and NS Power's quarterly reports are to continue, with changes to ensure the consistent description of Maritime Link benefits.

2.0 BACKGROUND

[5] NSPML filed its application on June 14, 2019, under the *Maritime Link Act*, S.N.S. 2012, c. 9 (*ML Act*), s. 8(1) of the *Maritime Link Cost Recovery Process Regulations* (N.S. Reg. 189/2012) (*ML Regulations*), and s. 64 of the *Public Utilities Act*, R.S.N.S. 1989, c. 380, for approval of its 2020 interim assessment, including a commencement date for the recovery of depreciation and amortization of deferred financing charges. Its application requested a total of \$144.5 million, as follows:

(a) Setting an Interim Assessment of \$115.1 million against NS Power in 2020, excluding depreciation and amortization of deferred financing charges as provided for in (b) below, and approving a schedule of monthly charges for these costs commencing January 1, 2020.

(b) Setting a commencement date of June 1, 2020 for the recovery of \$28.6 million in depreciation and \$0.8 million of amortization of deferred financing charges, with the total cost to be recovered from NS Power in time to enable the required December 1, 2020 debt principal repayment under the ML Credit Agreement and [Federal Loan Guarantee], and maintain the approved [Debt to Equity Ratio] of 70:30.

[Exhibit N-1, p. 7]

[6] This Decision follows what has been a series of Board Decisions related to the Maritime Link Project:

- In a Decision dated July 22, 2013 [2013 NSUARB 154], Matter M05419 (*ML Decision*), the Board concluded, applying the test under s. 5(1)(a) of the *ML Regulations*, that the ML Project (with Nalcor Market-priced Energy factored in) represents the lowest long-term cost alternative for renewable electricity for

ratepayers in Nova Scotia. However, in the absence of Market-priced Energy, the Board concluded that the ML Project is not the lowest long-term cost alternative. In its Compliance Filing on October 21, 2013, NSPML filed an Energy Access Agreement (EAA) executed by Emera, Nalcor and NS Power. The EAA was intended to satisfy the principal condition with respect to NS Power's access to Nalcor Market-priced Energy.

- In a Supplemental Decision dated November 29, 2013 [2013 NSUARB 242], Matter M05419 (*Supplemental ML Decision*), the Board held that the EAA satisfied the Nalcor Market-priced Energy condition, based on the representations and clarifications given by NS Power and NSPML, including the interpretation of the EAA.
- In a Decision dated September 11, 2017 [2017 NSUARB 149], Matter M07718 (*2017 Interim Assessment Decision*), the Board set the interim assessment for 2018 at \$109.5 million, and for 2019 at \$111.5 million, subject to an annual \$10 million holdback in each of 2018 and 2019, pending proof satisfactory to the Board that a minimum of \$10 million per year in Maritime Link benefits are realized for NS Power ratepayers. The recovery of depreciation and amortization of deferred financing charges was deferred. The Board directed it would hold another interim assessment hearing in 2019 to consider the continuation of the interim assessment, pending delivery of the NS Block, and a commencement date for the payment of depreciation and amortization of deferred financing charges.

[7] The above amounts for the 2018 and 2019 interim assessments (including refunding amounts for depreciation and amortization of deferred financing charges) have

been included in NS Power's electricity rates over the past three-year Rate Stability Period from 2017 to 2019.

[8] The Maritime Link between Nova Scotia and the island of Newfoundland was completed on the timeline that was originally projected by NSPML and came into service on January 15, 2018. However, delay continues in Nalcor's completion of the Muskrat Falls Generating Station in Labrador and the related transmission infrastructure, including the Labrador-Island Link (LIL), over which energy will be transmitted from Labrador to Newfoundland. Nalcor is now expecting to complete its part of the project in mid-2020, at which point the delivery of the NS Block can start.

[9] For a detailed explanation of the Maritime Link Project, NS Block, Supplemental Energy, and Nalcor Market-priced Energy, the reader is referred to the *2017 Interim Assessment Decision*, paras. 8-16.

[10] A total of seven formal Intervenors responded to the Notice of Public Hearing. A number of these parties were represented at the hearing by counsel. The following Intervenors participated at the hearing: the Consumer Advocate (CA); the Small Business Advocate (SBA); a group of 11 large industrial customers represented by counsel (Industrial Group); the Nova Scotia Department of Energy and Mines (Province); and Port Hawkesbury Paper LP (PHP). NS Power intervened in the proceeding, but did not appear at the hearing.

[11] S. Bruce Outhouse, Q.C., acted as Board Counsel.

[12] The Notice of Public Hearing advised members of the public that they could file written submissions with the Board or appear at an evening session to outline their

views about the Application. The Board did not receive any written comments or requests to speak.

3.0 STATUTORY PROVISIONS

[13] The *ML Act* and the *ML Regulations* set out an approval mechanism for NSPML to seek to recover its costs from NS Power and, in turn, for NS Power to recover these costs from its ratepayers. The Legislation contemplates NSPML applying for an assessment against NS Power, with NS Power then being entitled to recover the assessment from its ratepayers through its rates.

[14] Section 8 of the *ML Regulations* provides:

Assessment and costing approval

8 (1) Before receiving energy under the Nalcor Transactions, an applicant must set an assessment against Nova Scotia Power Incorporated for the recovery of all approved Project costs, and must apply to the Review Board for an approval of the assessment under Section 64 of the *Public Utilities Act*.

(2) Nova Scotia Power Incorporated is entitled to recover through its rates any assessment approved by the Review Board in respect of the Maritime Link Project.

[15] Section 64 of the *Public Utilities Act* provides:

Approval of schedule of rates and charges of utility

64 (1) No public utility shall charge, demand, collect or receive any compensation for any service performed by it until such public utility has first submitted for the approval of the Board a schedule of rates, tolls and charges and has obtained the approval of the Board thereof.

(2) The schedule of rates, tolls and charges so approved shall be filed with the Board and shall be the only lawful rates, tolls and charges of such public utility until altered, reduced or modified as provided in this Act.

4.0 ISSUES

4.1 Application for the proposed interim assessment amount of \$115.1 million (exclusive of depreciation and amortization of deferred financing charges), commencing January 1, 2020

[16] NSPML is seeking an interim assessment to be paid by NS Power in the amount of \$115.1 million in 2020. This excludes depreciation and amortization of deferred financing charges which are dealt with elsewhere in this Decision. NSPML also seeks approval of a schedule of monthly charges for these costs commencing January 1, 2020.

[17] The charges are made up as follows:

- Operating and maintenance charges - \$20.6 million;
- Debt financing costs - \$44.5 million;
- Equity financing costs - \$50 million.

[18] No party to the proceeding challenged the calculation or reasonableness of these charges.

[19] Bates White, Board Counsel's consultant, raised the option of reducing the equity financing component of NSPML's 2020 assessment by up to \$16.9 million based on their assessment of the funds needed to support NSPML's operations, including repayment of Government guaranteed debt. Ultimately, it appeared to the Board that Bates White acknowledged that the Board considered this option in 2017 and rejected it. Rather, Bates White pursued a recommendation to increase the holdback above the \$10 million by an amount not to exceed \$16.9 million. That recommendation will be dealt with in Section 4.3 of this Decision.

[20] John Athas, on behalf of the SBA, advised that in his view the costs requested by NSPML for inclusion in the interim assessment appear reasonable and

appropriate for recovery. However, he recommended final calculation be subject to a future evaluation of actual costs and customer benefits in an application by NSPML that would establish cost recovery.

4.1.1 Findings

[21] In the *2017 Interim Assessment Decision* the Board made two principal findings. Firstly, that with respect to the matters the Board had to deal with in that proceeding, the Board did not find any imprudence on the part of NSPML. Indeed, no imprudence was suggested by any party to that proceeding. The second fundamental finding was that the Maritime Link was used and useful.

[22] None of the consultant witnesses or the parties to this proceeding have suggested those findings were incorrect. In the circumstances, subject to certain adjustments, for example for depreciation and the holdback, NSPML is entitled to an opportunity to collect its prudently incurred costs, including a return of and on capital.

[23] The Board sees no reason to depart from the findings it made in 2017 and adjust cost recovery.

[24] Accordingly, the Board approves an interim assessment amount of \$115.1 million (exclusive of depreciation and amortization of deferred financing charges) commencing January 1, 2020. This is to be paid to NSPML according to a schedule of monthly charges.

4.2 Application for recovery of \$28.6 million in depreciation and \$0.8 million of amortization of deferred financing charges, commencing June 1, 2020

[25] NSPML requested recovery of \$28.6 million in depreciation and \$0.8 million of amortization of deferred financing charges commencing June 1, 2020, with the total cost to be recovered from NS Power in time to enable the required December 1, 2020

debt principal payment under the ML Credit Agreement and the Federal Loan Guarantee, and in order to maintain a debt equity ratio of 70:30. As with the calculation of the balance of the interim assessment, no party questioned the calculation of \$28.6 million of depreciation and \$0.8 million of deferred financing.

[26] The date of June 1, 2020, is the assumed start date of the NS Block.

[27] Paul Chernick, on behalf of the CA, said that while these amounts should be approved, the transfer of those funds to NSPML should only start following a Board Order finding that the NS Block is in service. If the NS Block is not in service June 1, 2020, Mr. Chernick recommended that depreciation should be credited to customers in the FAM proceeding, offsetting a portion of the additional fuel costs due to continuing delay of the project. Mr. Chernick also recommended delaying the return of \$8.6 million in equity financing to Emera on the basis that Emera has sufficient financial strength to be able to carry this cost in the meantime.

[28] Mr. Chernick did not indicate how he expected NSPML to finance the Government guaranteed debt without depreciation payments.

[29] During the course of the hearing, on questioning from Board Counsel and the Board, Brian Rendell, on behalf of NSPML, indicated that while the total amount of depreciation needed to be paid in time to finance the December 1, 2020, payment, payment of depreciation to NSPML did not have to start June 1, 2020. It could be delayed until November 1, 2020, thereby allowing the depreciation funds collected by NS Power from ratepayers to earn interest for the benefit of ratepayers at the weighted average cost of capital. NSPML explained this arrangement in its final submission:

...NSPML submits that in the event the NS Block is further delayed beyond mid-2020, it is open to consider a later date in 2020 to commence the recovery of depreciation of \$28.6 million, provided NSPML recovers this amount in a timely manner to enable the scheduled

payment of debt and return of equity and ensure full compliance with the ML Credit Agreement. Such deferred depreciation expenses would remain in NS Power's FAM liability account and would earn the weighted average cost-of-capital for the benefit of customers during the period prior to being paid over to NSPML.

[Exhibit N-22, p. 25]

[30] Each of the Industrial Group, SBA, CA, and the Alternative Resource Energy Authority supported this delay in depreciation in the event the commencement of the NS Block was delayed.

4.2.1 Findings

[31] With respect to Mr. Chernick's recommendation, the Board reiterates the finding in Section 4.1 and sees no basis upon which to deny NSPML its prudently incurred expenses and return on and of capital. Also, it is in the ratepayers' long term interest to ensure timely payment of the Government guaranteed debt and that there be no default under the provisions of the credit agreements and Federal Loan Guarantee.

[32] Accordingly, the Board approves the collection of depreciation by NS Power from ratepayers based on a schedule of monthly charges commencing June 1, 2020, for the recovery of \$28.6 million in depreciation and \$0.8 million in amortization of deferred financing charges. However, those amounts are to be held by NS Power, earning interest to the credit of FAM customers, until the earlier of delivery of the NS Block or November 1, 2020, as will be directed on further Order by the Board. The November 1st date reflects NSPML's commitments under the Federal Loan Guarantee and other financing documents.

4.3 Will the Maritime Link continue to provide value and benefit to Nova Scotia customers before delivery of the Nova Scotia Block (i.e., continuation of the holdback)?

[33] In the Board's *2017 Interim Assessment Decision*, the Board took two steps to protect customers pending delivery of the NS Block. First, the Board credited back to customers depreciation and deferred financing charges during the delay. Secondly, it imposed a \$10 million holdback from the NSMPL assessment being collected in each of 2018 and 2019. This was done to provide an incentive to ensure that NSPML and NS Power achieved the promised benefits of the Maritime Link prior to delivery of the NS Block. The Board termed it a very conservative estimate of the benefits.

[34] Indeed, in the 2017 hearing, NSPML and NS Power argued that the commissioning of the Maritime Link would provide significant benefits to NS Power ratepayers, even in the absence of the NS Block.

[35] NSPML confirmed that it is proposing to continue the monthly holdback for the full 2020 year. That is, NS Power would continue to collect the assessment from ratepayers, but holdback from NSPML one-twelfth of the \$10 million amount each month, or approximately \$833,000.

[36] The CA commented on "the woefully inaccurate assessment of 2018/19 benefits previously supplied by NSPI":

In 2017, NSPI provided unequivocal evidence that Nova Scotia ratepayers would receive substantial benefits from having the Maritime Link operational even before the delivery of Muskrat energy. NSPI estimated pre-Muskrat annual benefits at multiple times the holdback amount.

The actual benefits received in 2018 and YTD 2019 are only a very small fraction of NSPI's estimates. While the \$10 million holdback has provided a level of protection to customers, it remains troubling that NSPI's estimates have proven to be so unreliable. Moreover, rather than using the opportunity provided by this hearing to explain the wide gap between its estimates and actual results, NSPI chose to simply not attend. The Consumer Advocate finds NSPI's absence and lack of explanation troubling.

[Exhibit N-21, p. 2]

[37] Indeed, the benefits were very significantly below those represented by NS Power and NSPML in 2017. For the 2018 year, only \$1,614,100 of benefits was achieved, the balance of the \$10 million holdback being refunded to ratepayers. Mr. Rendell, on behalf of NSPML, suggested that benefits year-to-date in 2019 are approximately \$4 million. Again, a far cry from the benefits represented by NS Power and NSPML.

[38] The Maritime Link represents a substantial fuel expenditure for NS Power on behalf of its ratepayers. It is NS Power that is largely responsible for achieving the promised benefits. NS Power advised the Clerk of the Board, on the morning of the NSPML hearing, that it would not be attending. The Board expected a representative of NS Power to appear on NSPML's witness panel at the hearing to respond to questions respecting the under-delivery of benefits flowing from the use of the Maritime Link, as did some of the parties, including the Consumer Advocate. In the 2017 hearing a NS Power witness did appear on the witness panel to speak to benefits. The Board directs NS Power to have a witness available to speak to benefits in the final assessment hearing.

4.3.1 Findings

[39] Two issues remain to be decided. The first one, is whether the holdback should be increased, a proposal made by Bates White, and supported by the SBA and Industrial Group. Second, is how the holdback should be allocated through the course of 2020 in which it is anticipated the NS Block will start to flow.

[40] Bates White identified for the Board that, based on its calculation of funds required by NSPML, the Board could increase the holdback above \$10 million by an amount not to exceed \$16.9 million. Bates White was questioned by the Board Chair:

My question really relates to what we call the holdback, and in the last hearing was set at 10 million dollars, and the suggestion that it be increased. There are really two fundamental findings, I think, that the Board made in the 2017 hearing. One was, with respect to the matters we had to deal with in that hearing, we didn't find any imprudence, and no imprudence, in fact, was suggested. And the other sort of fundamental finding we made -- and it was controversial, but we did make it -- was that the link was used and useful. And none of the consultants' witnesses in this hearing, including Bates White, have suggested those findings were incorrect. So, I guess my question is, on what basis, other than they can withstand it financially -- on what basis would the Board, in your view, order an increase in the holdback?

[Transcript, p. 153]

[41] Vincent Musco, on behalf of Bates White, indicated that what Bates White was doing was providing the Board with a range of possibilities that the Board could consider, recognizing that the benefits achieved by the Maritime Link were significantly less than what was represented by NS Power and NSPML in 2017. He went on to clarify that the recommendation is to set a holdback of no less than \$10 million and no more than \$26.9 million, so that the recommendation does not preclude a holdback of \$10 million.

[42] While increasing the holdback may be an attractive proposition to some in light of the failure to achieve the promised benefits, the Board believes any finding to do that must have a sound legal basis.

[43] In the circumstances, where no party has suggested the Board was incorrect in the *2017 Interim Assessment Decision*, where the Board made a finding of no imprudence and that the Maritime Link was used and useful, the Board is not prepared to depart from the 2017 Decision and increase the holdback.

[44] The Industrial Group argued that NS Power should continue to hold back on a monthly basis from the amounts paid over to NSPML and the Board should determine the disposition of the holdback following year end 2020. The Industrial Group

indicated, however, that the benefits should be assessed exclusively for the period prior to delivery of the NS Block.

[45] The CA supported the establishment of a \$10 million holdback during 2020 and suggested that its disposition be dealt with by the Board following 2020 when parties could make representations.

[46] Bates White suggested the holdback should be limited and prorated to all days in 2020 prior to the commencement of delivery of the NS Block, whether that date is June 1st or some later date. It advised that this will provide parties with the appropriate performance incentives.

[47] In the Board's view, the Bates White recommendation is most consistent with the original creation of the holdback. It was meant to apply to each entire year, 2018 and 2019, when the NS Block delivery was not expected. Proration means that customers will receive the benefit of the holdback during the period of time that it was intended to apply (i.e., prior to delivery of the NS Block). If the NS Block does not commence in 2020 then the entire holdback of \$10 million would be available. If the NS Block starts earlier, then a *pro rata* share of that \$10 million would be available.

[48] Therefore, the Board orders the continuation of a \$10 million holdback be prorated to all days in 2020 prior to commencement of delivery of the NS Block, whether that date is June 1, 2020, or some later date. Disposition of the holdback will be directed by the Board following year end.

4.4 Accounting treatment for assessment and costs

[49] During the hearing, Board Counsel explored with NSPML unregulated costs currently included in the Maritime Link Project costs. NSPML's witness panel confirmed

they were not seeking a ruling from the Board on such costs in this application. The Board retains jurisdiction related to the accounting for all costs in the final assessment hearing. The Board directs continuation of its prior accounting direction on recognition of the depreciation and amortization expenses pending further Board Order. Further, recognition of other balances from NS Power, such as a potential 2021 interim assessment or release of holdback balances, may only occur after Board approval.

4.5 Risks and potential of further delay in commissioning of the Muskrat Falls Generating Station and delivery of the Nova Scotia Block

[50] NSPML's application notes that the projected commencement date of the NS Block continues to be in Q2 2020. Throughout the course of this proceeding, the date of June 1, 2020, has been the assumed start date of the NS Block. However, there continue to be project risks that could affect the delivery of the NS Block. These risks are primarily related to potential construction and commissioning delays associated with the Muskrat Falls Generating Station, the LIL and Newfoundland transmission facilities. While these facilities and infrastructure are Nalcor's responsibility, the associated risks of delay could, in turn, delay the commencement of the NS Block.

[51] Specifically, one of these risks relates to commissioning of the AC transmission synchronous condensers on the island of Newfoundland. NSPML indicated that these assets are physically complete, but they have yet to be commissioned as a result of several operational issues encountered during the commissioning process.

However, as Richard Janega noted under cross-examination from Board Counsel:

...The system can operate without it. It would require them to do some different things on the island to flow energy out of Labrador. But as they start to shut off generation at Holyrood, these need to be operational if they're going to support the larger loads on the island. Newfoundland Hydro and Nalcor have completed numerous studies on it and there are third party reports available publicly that would indicate there are concerns in the timing. But it's not the first item of concern relative to the Nova Scotia Block starting.

But for the long-term viability it would definitely be a concern if they ran into a problem that took them another year and a half to complete. But I don't expect that to be the case. They're assembled. They have tested one of the units and as I said, the three items that they're encountering they've identified solutions for those. So, it's just a matter, hopefully, of the physical completion of that work.

[Transcript, pp. 71-72]

[52] The more significant risk of delay appears to be related to software operational and commissioning issues associated with the LIL. It is the LIL over which the NS Block will flow from the Muskrat Falls Generating Station in Labrador to the transmission facilities located on the island of Newfoundland, and ultimately to the Maritime Link. As noted in NSPML's Q3 2019 Quarterly Report to the Board:

Nalcor has been experiencing challenges with the Protections & Controls (P&C) Software required to operate the LIL. The latest version of Muskrat Falls Oversight Committee, dated June 27, 2019, noted that the final version of bipole software is expected to be delivered by GE in early 2020, followed by an additional testing and trial operations period to be coordinated with Newfoundland and Labrador Hydro. Meetings between GE and Nalcor are ongoing to discuss progress of bipole software development and Independent Third-Party reviewers are validating progress, functionality and completion deliverables under the GE amending agreement(s).

[Exhibit N-15, p. 13]

[53] Nalcor recently provided an update on this issue and has indicated that General Electric (GE) would not meet the schedule for October 2019 to complete testing of the software and has pushed the date to December 2019. Under cross-examination from the CA, Mr. Janega addressed this issue and stated:

With regards to the Labrador-Island Link, our concerns were elevated recently when Nalcor provided an update that indicated that General Electric was not going to meet the schedule for October to be able to complete the testing of the protection and control of software. They have now moved those dates out to December. They're actually anticipating testing -- and it is information that's publicly available at this point with their anticipated work, that they would complete the software, install it, and be into a testing program in February. And we're monitoring that closely, also doing additional due diligence on that supply. If they're able to attain those scheduled dates, that would likely put them in a position where they're testing the LIL up to 675 megawatts of capacity. And if they're able to do that with the Bipole operation, that's well in excess of what they would need to be able to supply displacement of the Holyrood Generating Plant, which is about 450 megawatts, and they'd run that during the winter months, plus be in a position to be able to start the Nova Scotia Block, which would put them in just over 600 between those two elements of it. So, it still leaves room for additional capacity on the LIL.

But, importantly, the other element that we're aware of, knowing schedules for Newfoundland, the winter period usually -- it depends on when it ends -- I shouldn't say

usually -- the unpredictability of it could be April or May that it could extend Holyrood operation. But normally in that period demand would drop on the island coming out of winter, which would mean that their need for full energy to displace Holyrood would drop off with the normal reduction of demand at Holyrood.

So, if they're able to run the LIL at anything frankly above the Nova Scotia Block levels of a hundred and fifty, call it a hundred and seventy originating at Muskrat that would leave them in a position where they would be able to start the Nova Scotia Block unimpeded because of the LIL.

[Transcript, pp. 33-35]

[54] Mr. Janega elaborated further on this issue under questioning from the Board Chair:

...to be quite honest, our view is similar to that of the Board. This is taking a long time. They are years behind schedule for completing the controls, which escalates our concern level and Nalcor's. But we are confident that they are taking commercially reasonable steps to work with General Electric and creating terms that will promote GE wanting to get the work finished as soon as possible.

[Transcript, p. 143]

4.5.1 Findings

[55] NSPML has continued confidence that the projected NS Block delivery date of June 1, 2020 will be met. However, the Board is concerned that there are still significant risks remaining that could affect the expected delivery date. The Board recognizes that these risks are primarily the responsibility of Nalcor and not NSPML. However, if these risks result in any further delay of delivery of the NS Block, NS Power ratepayers will be impacted.

[56] As noted previously in this Decision, the Board approves the collection of 2020 project depreciation costs and amortization of deferred financing charges commencing the earlier of the delivery date of the NS Block or November 1, 2020. Under this approval, should delivery of the NS Block start after November 1, 2020, ratepayers will be paying depreciation costs of the ML Project without yet receiving the NS Block. This is so NSPML can meet its commitments under the Federal Loan Guarantee and

other financing documents. Nonetheless, the holdback provision that the Board has ordered within this Decision will provide ratepayers with some means to mitigate this risk and incent NS Power to maximize the benefits from the Maritime Link prior to delivery of the NS Block.

[57] The Board also orders that NSPML continue to closely monitor the projected timing of NS Block delivery and continue to report on such timing in its quarterly reports to the Board. In addition, any further projections of delay beyond June 1, 2020 are to be reported to the Board immediately as NSPML becomes aware of them.

4.6 Scheduling of Final Assessment Hearing

[58] In its application, NSPML addressed the timing of the hearing to determine the final assessment of costs related to the Maritime Link Project:

...NSPML respects the Board's direction that it is not prepared to approve the final assessment until it has confidence in the timing of commencement of the NS Block, Supplemental Energy and Nalcor Market-priced Energy. Moreover, the capital costs of the Maritime Link are not finalized at this time, as work advances relating to the close-out of Maritime Link Project activities. ...

[Exhibit N-1, p. 6]

[59] As described earlier in this Decision, the Board and the representatives for the customer classes remain concerned about the continued delay in the delivery of the NS Block, as well as the uncertainty around the possible date when its delivery will start. However, in questions from the Board, Mr. Janega stated that it will be clear, within a few days of delivery, that the NS Block has actually started:

Q. ...What does the starting of the Nova Scotia Block look like? Does it mean the full amount of the energy right away? Does it mean a partial ramp up for a few weeks, a few months? What does it actually look like in terms of -- what does it mean that the Nova Scotia Block starts?

A.(Janega) Contractually it's that essential one unit of coal fire generation that's able to be displaced with energy and capacity.

So, it would be the 154 megawatts net [that would bind] whatever the actual amount is. That starts. That triggers the commercial obligations that Nalcor has to continue the supply of, which also has conditions where if that supply was interrupted there are provisions where they would make that energy up. So, as soon as it starts and they are signing off on that obligation, they understand that there are other mechanisms that kick in that says, it starts and continues.

There are elements of the Nova Scotia Block though, like, the winter portion of the supplemental energy for the first five years, that we have some other options and ideas that we would consider in working with Nalcor in other ways to support the supply of that. But I would say all of those are on the basis of mid year -- is probably the best time for us to be able to be assured that they should be able to start the Nova Scotia Block.

150 megawatts, one unit being in service would be able to supply it, notionally. I know there's conditions precedent that require the third unit being on. But it is -- it is probably the best time that we could expect that it would be able to start because they're not dealing with their winter load at that point in time.

Gives time -- if there are issues that emerge and they have to take an outage, for a couple of days on the LIL to do something, the ability to continue to flow the Nova Scotia Block shouldn't be a large issue for them to contend with. And even if it was a couple of days, they would be able to make that up in the -- according to the terms of the agreement and within a period of time that, I'm sure, would be satisfactory to Nova Scotia Power too.

...

Q. So, getting back to my main question then. In terms of when the Nova Scotia Block starts it's a matter of a days, or a number of days. We're not talking -- we're not going to have to wait once that starts for two months or so forth that the Nova Scotia Block started. You will know within a few weeks that we're -- within a week or two that we're ready -- that it started?

A. (Janega) I think that's accurate, yeah.

[Transcript, pp. 132-135]

4.6.1 Findings

[60] NSPML has characterized the timing for the Board's approval of the final assessment as being linked to the point when the Board "has confidence in the timing of commencement of the NS Block, Supplemental Energy and Nalcor Market-priced Energy". To be clear, the Board will not initiate the hearing process into the final assessment of costs until the NS Block starts (including the Supplemental Energy) and there is the capacity to transact Nalcor Market-priced Energy. That was what has been referenced in earlier proceedings as the "original bargain".

[61] The Board repeats its direction from the *2017 Interim Assessment Decision* as to the timing of the final assessment hearing:

[153] ...The Board is not prepared to hold the Final Assessment hearing until it knows that the NS Block is being delivered in accordance with the original bargain. This will enable the Board to reserve whatever regulatory options may be available to it in the event of further unfortunate news.

...

[155] However, the Board is not prepared to approve the final assessment until it is confident the ratepayers will get what they bargained for – the NS Block, Supplemental Energy and Nalcor Market-priced Energy.

[62] Thus, no hearing process into the final assessment matter will be started until the NS Block and related components are actually flowing over the Maritime Link.

[63] Given the continuing uncertainty around the delivery of the NS Block, NSPML should manage its regulatory calendar to file a timely request for a 2021 interim assessment in the event that the NS Block is delayed beyond mid-2020. The Board notes that while an NSPML assessment will be reflected in NS Power's rates for the period from 2020 to 2022 (currently being considered in the Base Cost of Fuel proceeding - Matter M09288), there is no Board approval for the transfer of assessment funds beyond 2020 from NS Power to NSPML.

4.7 NSPML's reporting requirements

[64] In its *2017 Interim Assessment Decision*, the Board outlined the reporting requirements that apply to NSPML:

[156] In its Order dated December 5, 2013, regarding approval of the Maritime Link Project (M05419), the Board directed the following reporting requirements:

NSPML must file detailed reports with the Board (including NSPI where appropriate), on a semi-annual basis, on June 15 and December 15 each year, commencing December 15, 2013. Quarterly updates must also be filed on April 15 and October 15. The reports shall follow the directions outlined in Schedule "A" attached.

[157] In order for the Board and stakeholders to maintain visibility on the status of the Muskrat Falls Generating Station and its impact on Nova Scotia ratepayers, NSPML is

directed to continue filing quarterly reports, amended as appropriate to recognize the physical completion of construction activities. In addition, the quarterly reports are to include an accounting of all transactions related to this project, cash flow analysis, and a separate section describing and quantifying the financial and other benefits realized for ratepayers from the Maritime Link prior to delivery of the NS Block and Nalcor Market-priced Energy.

[2017 Interim Assessment Decision, paras. 156-157]

[65] In its pre-filed evidence, Bates White recommended changes in NSPML's and NS Power's reporting of benefits flowing from the Maritime Link prior to the delivery of the NS Block. Bates White stated that NS Power's quarterly reporting of Maritime Link benefits has not been consistent and makes it impossible to track the categories of benefits associated with the Maritime Link over time. In particular, it noted that there was a lack of consistency in the categories of benefits identified in this proceeding's pre-filed evidence, in the responses to Information Requests (IRs), and in NS Power's six Quarterly Benefits Reports filed to date (dating back to the initial Q1 2018 report). Bates White recommended as follows:

We recommend that NSPI's Quarterly Reporting of Maritime Link be further standardized and include some reconciliation with previous quarterly reports, its response to BW-IR-2 (c), and its Interim Assessment Application Supplementary Evidence. At a minimum, NSPML should reconcile the [redacted] of benefits put forth in its Interim Assessment Application Supplementary Evidence with its [redacted] of benefits put forth in its response to BW-IR-2 (c), and restate all six quarterly benefits reports to categorize all benefits to date in a consistent set of benefits categories. NSPML should also elaborate on all MWh of transactions to date on the Maritime Link, distinguishing between transactions flowing power from Nova Scotia from those in which power flows to Nova Scotia. This recommendation will enhance transparency, allow for proper comparisons of benefits accrued through time, and assist future reviews of the determination and calculation of those benefits.

[Exhibit N-8, pp. 26-27]

[66] The Industrial Group supported Bates White's recommendations:

In addition, in order to make a proper evaluation of benefits, the Industrial Group recommends the Board direct NSPI to continue filing on a quarterly basis a report of Maritime Link benefits. With respect to the content of the reports, Bates White had made a number of recommendations to increase transparency. It recommended that the reporting should be consistent and aligned with the identified categories of anticipated benefits, distinguish between transactions flowing power to and power from Nova Scotia and, importantly, clearly demarcate benefits derived prior to delivery of the Nova Scotia

Block and after delivery of the Nova Scotia Block of energy. The Industrial Group supports the Bates White reporting recommendations.

[Industrial Group Closing Submissions, October 30, 2019, p. 2]

[67] In its Rebuttal Evidence, NSPML replied to these recommendations as follows:

On February 22, 2019, the Board advised NS Power that it accepted NS Power's calculation of the benefits for 2018 and confirmed the amount of the holdback applicable to 2018. Given the Board has already made a determination on the calculation of benefits and resulting hold back for 2018, to the extent applicable, NSPML and NS Power will seek to ensure Bates Whites' recommendation are addressed in future Maritime Link Benefits Reports.

[Exhibit N-9. p. 15]

4.7.1 Findings

[68] In its Rebuttal Evidence, NSPML indicated that they only intend to follow Bates White's recommendations going forward in future quarterly reports. The Board observes that the tracking of benefits flowing from the Maritime Link has been specifically referred by NSPML to NS Power through its Quarterly FAM Reports.

[69] The Board accepts Bates White's evidence that there should be consistency in the reporting of Maritime Link benefits. This will ensure transparency and a proper comparison of benefits in future reviews.

[70] The Board accepts NSPML's submission that the 2018 calculation of benefits has already been confirmed by the Board, together with the amount of the holdback that was refunded to customers through the FAM. The Board notes that the calculation of Maritime Link benefits in 2019 is still ongoing. Accordingly, the Board finds that Bates White's recommendations are to be applied as of January 1, 2019 and directs that NS Power's 2019 Quarterly Benefits Reports and NSPML's Supplementary Evidence and IR responses be restated and reconciled on that basis.

[71] The Board directs that the quarterly reports provided by NSPML and NS Power are to continue, incorporating Bates White's changes adopted by the Board.

5.0 CONCLUSION

[72] The Board approves the 2020 interim assessment of \$144.5 million. The Board directs that the \$10 million holdback will continue in 2020 and be applied, *pro rata*, to the number of days prior to the start of delivery of the NS Block. The portion of the interim assessment related to depreciation and amortization of deferred financing charges will only be paid over from NS Power to NSPML upon confirmation of delivery of the NS Block, or November 1, 2020, whichever occurs first.

[73] An Order will issue accordingly.

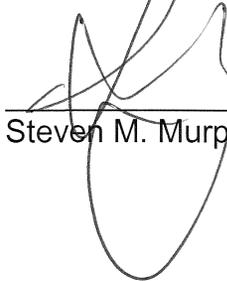
DATED at Halifax, Nova Scotia, this 27th day of November, 2019.



Peter W. Gurnham



Roland A. Deveau



Steven M. Murphy