

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE *PUBLIC UTILITIES ACT*

- and -

IN THE MATTER OF an application by **NOVA SCOTIA POWER INCORPORATED** for approval for Deferral of Hurricane Fiona Operating, Maintenance and General Costs

BEFORE: Stephen T. McGrath, K.C., Chair
Steven M. Murphy, MBA, P.Eng., Member
Richard J. Melanson, LL.B, Member

APPLICANT: **NOVA SCOTIA POWER INCORPORATED**
Blake Williams, Counsel
Michael Willett

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

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

INDUSTRIAL GROUP
Nancy Rubin, K.C.
Brienne Rudderham, Counsel
Dylan MacDonald, Counsel

**NOVA SCOTIA DEPARTMENT OF NATURAL
RESOURCES AND RENEWABLES**
Daniel Boyle, Counsel
Jeremy Smith, Counsel

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

FINAL SUBMISSIONS: April 10, 2024

DECISION DATE: **June 27, 2024**

DECISION: **Application is approved, with directions on the treatment of the approved regulatory asset.**

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1.0 INTRODUCTION

[1] On September 23 and 24, 2022, Hurricane Fiona struck Nova Scotia. It exhibited characteristics of a Category 2 hurricane with sustained winds exceeding 100 kilometers per hour and peak gusts around 160 kilometers per hour. As of September 30, 2023, NS Power had incurred costs of \$24.6 million, charged to operating, maintenance, and general (OM&G) expenses for its restoration efforts associated with Hurricane Fiona. On October 31, 2023, NS Power asked the Board to allow it to defer these costs until a future rate setting process.

[2] The Board initiated a review process, involving information requests (IRs), evidence and submissions. The Industrial Group, Consumer Advocate, Small Business Advocate, and the Department of Natural Resources and Renewables (NRR) intervened in the proceeding. EA Technology (EA) and Grant Thornton were engaged as Board Counsel consultants to provide evidence in the matter.

[3] This decision aims to address the key issues raised through this proceeding, including assessing the timing of the application, the reasonableness and prudence of the incurred costs, and determining the appropriate regulatory treatment of the incurred costs.

[4] The Board finds that the incurred costs of approximately \$25 million for the OM&G expenses can be classified as a regulatory asset. The Board directs that this regulatory asset be amortized over a period of ten years, beginning as of the date of the Board's order in this matter (subject to a potential adjustment in NS Power's next general rate application). The Board finds that NS Power is not entitled to an equity return on this regulatory asset.

2.0 BACKGROUND

[5] Hurricane Fiona, one of the most intense storms in Canadian history, caused extensive damage to NS Power's infrastructure, resulting in power outages for approximately 415,000 customers. NS Power stated that despite its significant investments in tree trimming (totaling about \$100 million over the past five years), the storm's powerful winds caused extensive damage, especially along the Atlantic coast and Northumberland Strait. This damage required substantial cleanup efforts, including the use of heavy machinery to remove uprooted trees that obstructed power lines.

[6] NS Power filed its Hurricane Fiona Storm Outage Report with the Board on December 9, 2022, and subsequently updated it on December 20, 2022 (M10898).

[7] On April 14, 2023, NS Power filed its 2022 Regulated Financial Statements (M11090). The Notes to the Consolidated Financial Statements identified \$24 million in OM&G costs that were deferred to an "Other long-term assets" account. This account was classified as non-regulated. The Notes say NS Power intended to apply to the Board requesting deferral of these costs, the creation of a regulatory deferral account, and amortization over a period allowed by the Board. In responding to Board IRs in that matter, NS Power said the company had not yet decided when it would make a deferral application.

[8] In a decision letter dated September 26, 2023, the Board expressed concerns about the delay. NS Power provided no clear indication why the application had not been filed and when it would be. The Board directed NS Power to file an application seeking Board approval for the Hurricane Fiona OM&G costs deferral by October 31, 2023, unless the company provided cogent reasons why the application should be further delayed. NS Power filed this application on October 31, 2023.

[9] This application concerns only the OM&G costs associated with Hurricane Fiona. Other applications filed with the Board addressed capital costs related to storms that occurred in 2022, including Hurricane Fiona. Transmission system capital costs were addressed in Matter M11170 and distribution system capital costs in Matter M11169.

[10] NS Power's strategic approach to managing significant storm-related costs now includes relying on mechanisms like storm riders, approved during the 2022-2024 General Rate Application (GRA), for use between 2023 and 2025. However, Hurricane Fiona's costs preceded these arrangements, prompting the current deferral request to manage the extraordinary expenses from the storm, which marked the costliest restoration in the company's history.

[11] NS Power advised that in 2022, its electricity rates incorporated an annual allocation of approximately \$11 million for OM&G storm costs. This amount was determined during NS Power's 2013 General Rate Application, using the average storm costs from 2007 to 2011. NS Power stated that, excluding the costs from Hurricane Fiona, the actual OM&G storm costs in 2022 amounted to \$21 million, surpassing the anticipated \$11 million included in the rates. NS Power is seeking approval to defer the OM&G storm costs attributable to Hurricane Fiona under Accounting Policy 6900 – Deferred Charges.

3.0 DISCUSSION AND ANALYSIS

3.1 Timing of Application

[12] NS Power said it was not able to apply for the deferral requested in this application by December 31, 2022, because it did not have a sufficient level of detail and accuracy about the amount claimed as Hurricane Fiona OM&G costs. The Industrial Group suggested NS Power knew the magnitude of the costs by September 30, 2022,

when it publicly filed interim financial statements. Ms. Rubin submitted a figure of \$24 million for Hurricane Fiona could be derived from information in those interim statements. This is very close to the \$24.6 million figure advanced in this application.

[13] The Industrial Group submitted that the Board should confirm that the carrying costs of the non-regulated deferral assets will not be added to the deferral amount or otherwise paid by ratepayers. The Consumer Advocate supported this position and NS Power also agreed with this. NS Power said that if the application had been brought earlier, and approved, carrying costs attributable to ratepayers would have started to accrue earlier.

3.1.1 Findings

[14] It is not entirely clear to the Board why this application was not filed until October 31, 2023. While the Board can accept that the September 30, 2022, interim financial statements provided a relatively accurate picture of the amount involved, NS Power would want to have all the documentary support for the amount claimed before making its application. The Board has difficulty understanding why all invoices and reconciliations could not have been done earlier.

[15] The Board would have more concerns if the delay had resulted in additional costs to ratepayers. NS Power has confirmed that the Hurricane Fiona OM&G costs are being carried as a non-regulated asset on the company's balance sheet. The carrying costs are being paid by NS Power's shareholder. NS Power only intends to record the Hurricane Fiona OM&G costs as a regulated asset if, and when, this application is approved. NS Power has confirmed the carrying costs will not be returned to its

shareholder for the period when Hurricane Fiona OM&G costs were treated as a non-regulated asset.

[16] The Board finds that the delay in bringing the application did not cause any financial harm to ratepayers. The carrying costs of the non-regulated Hurricane Fiona OM&G deferral account are being borne by NS Power's shareholder. The Board finds and confirms that any carrying costs accrued before a regulated deferral account is created for Hurricane Fiona OM&G costs will not be included in that regulated deferral account and will not be paid by ratepayers.

3.2 Amount Claimed

[17] NS Power provided a comprehensive analysis about its response to Hurricane Fiona. NS Power summarized the approximately \$24.6 million in OM&G costs the company says were incurred to restore power after Hurricane Fiona up to September 30, 2023:

Other Long-Term Assets – 00053937 – 2022-09-23 Storm Fiona	
Account	Actuals as of September 30, 2023 (\$) ^{1,2}
Contracts	19,090,333
Overtime Labour	2,935,454
Meals & Travel	2,092,380
Materials	870,947
Regular Labour	504,499
Other	231,308
Miscellaneous Revenue	(1,139,988)
Total	24,584,933

[Exhibit N-1, p. 8 of 18]

[18] NS Power also provided a detailed breakdown of the approximately \$19.1 million in contracts costs set out in the above table. The company provided further details on costs in IR responses. There was no evidence presented showing these operating costs were not required to restore NS Power's grid. No party submitted that NS Power's

restoration activities were inadequate or imprudent. No party challenged the amount of the Hurricane Fiona OM&G costs.

[19] EA discussed NS Power's response to Hurricane Fiona. Their analysis of this response from a process perspective was favourable:

EA Technology conclude NS Power's processes for responding to unplanned system failures, reactive incidents, and adverse weather events appears to be complete, scalable, adaptable, and contains both the facilities and opportunities for self-check. If implemented effectively and compliant with the financial accounting practices, will have incurred cost in a prudent manner.

[Exhibit N-12, p. ii]

[20] Grant Thornton and EA asked IRs about the allocation of costs between operating and capital accounts. Grant Thornton was satisfied that the \$24.6 million in costs detailed in this application were properly allocated as operating expenses:

...NSPI states the allocation to capital projects represents cost of replacing damaged assets while operating costs represent the cost to restore service and repair NSPI assets. Based on our review of the allocation methodology utilized by NSPI, we believe the process represents good utility practice. Good utility practice encompass[es] the practices, methods and acts used by a significant portion of the electric utility industry and which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, and safety.

[Exhibit N-11, p. 2]

[21] In terms of whether the costs are financially justified, EA observed that decision making during an adverse weather event can be highly stressful and should be judged based on best efforts. It emphasized:

Decision making regarding resource planning, engagement, deployment and utilisation of resources during storm events can be highly stressful, and is recognised by the review as being an area more subject to best endeavours, than being an exact science. In the review teams experience, it is generally accepted within the utility sector that resourcing decisions taken during reactive events usually result in sub-optimal results. However, most people understand that these types of decisions are normally made in a dynamic environment with limited concrete information upon which firm decisions can be made. It is for this reason that operational decision makers are often aided by decision support process charts, frameworks or similarly designed tools in an attempt to make improved response resourcing determinations, that are justifiable when challenged.

Therefore, when a system operator's decision makers apply these types of provisions correctly, and implement the full range of effective controls, the total committed cost of making a reactive response can be regarded as justifiable.

[Exhibit N-12, p. 8]

[22] However, EA said that NS Power's current reporting systems are not able to record cost accruals at either an individual asset or asset class level. Therefore, EA said the incurred cost of asset replacement or repair could not be determined, nor could the actual physical condition of the assets, before the restoration event.

[23] EA noted that NS Power claimed it was not able to provide an actual breakdown of accrued storm costs between operational and capital expenditures because of the volume of activity during storm events. Instead, NS Power allocates costs by considering the number of asset replacement tasks completed during event restorations and representative asset replacement unit costs. However, EA did not feel the available evidence adequately explained the assumptions used to make this allocation and questioned whether NS Power was appropriately applying paragraph 03 of Accounting Policy 6000 – Capitalization of Cost. This defines capital expenditures as those that create a benefit having a life longer than one year.

[24] In its response to IR-4 from the Industrial Group [Exhibit N-19], EA noted that the opinions it expressed on this topic were different in scope from those provided by Grant Thornton. EA said, "Grant Thornton considered the existence of an accounting mechanism which has been used to allocate capital/OM&G cost allocation. EA Technology considered the engineering approaches adopted by NS Power to justify the cost allocations."

[25] Grant Thornton offered a similar response to a similar question from the Industrial Group:

GT is offering an opinion on the allocation of storm costs between capital and OM&G for financial reporting purposes and the professional judgment to be applied in the accounting for the costs under Accounting Policy 6000. Based on our review of the EA Technology extract referenced above, they are offering an opinion on the ability of NSPI's asset management systems to record costs at the individual asset level during storm recovery events which would allow the actual allocation between capital and OM&G costs to be tracked. As such, we believe the opinions being provided are for similar issues, but not the same issue.

[Exhibit N-16, IR-1(a)]

3.2.1 Findings

[26] The Board finds that, from an accounting perspective, NS Power has established that the company incurred approximately \$24.6 million in OM&G costs to restore power to customers following Hurricane Fiona. Although EA questioned whether the allocation of costs between capital and OM&G from an engineering or asset management systems perspective was appropriate, no different allocation was provided to the Board in evidence in this matter. Furthermore, since the Board has ultimately approved Hurricane Fiona excess capital expenditures [2024 NSUARB 115] and the deferral of the OM&G costs requested in this proceeding, the impact of any imprecision in the allocation between capital and OM&G costs is limited to differences in the depreciation or amortization periods and carrying costs.

[27] For the purposes of this proceeding, the Board finds the amount proposed to be deferred is appropriately calculated as approximately \$24.6 million. The issues raised by EA may be considered in other proceedings, including those relating to the reports and directives issued by the Board in its recent decision following the inquiry into the extent, condition and value of NS Power's property and assets [2024 NSUARB 59].

[28] That said, the Board must still consider whether this amount should be reduced because of concerns about NS Power's stewardship of its electrical network and its investments in the resiliency of its assets. The Board must also decide whether

establishing a deferral account for Hurricane Fiona OM&G costs is appropriate or authorized by Accounting Policy 6900 and applicable public utilities regulatory principles.

3.3 Resilience Concerns

[29] Board Counsel consultant, EA, was retained to review the prudence, justification and necessity of the OM&G costs incurred by NS Power because of Hurricane Fiona.

[30] Regarding the prudence of the incurred costs, EA concluded that NS Power's planning and preparation for adverse weather events is broadly consistent with the contingency planning approaches and operational deployment practices and processes employed by other utilities and electrical system operators around the world. EA also concluded that NS Power's response during adverse weather events appears to be aligned with established practices found in other leading utilities. EA stated:

...NS Power's processes for responding to unplanned system failures, reactive incidents, and adverse weather events appears to be complete, scalable, adaptable, and contains both the facilities and opportunities for self-check. If implemented effectively and compliant with the financial accounting practices, will have incurred cost in a prudent manner.

[Exhibit N-12, p. 7]

[31] However, EA said there was no evidence to explain:

- The financial controls which exist to effectively manage these engagements in terms of resource utilisation and productivity.
- NS Power's ability to reconcile contractor invoices against the contribution to the storm response activities or work completed.
- The way in which NS Power evaluates whether these service providers deliver value for money for their customers.

[32] EA stated that NS Power's response to Hurricane Fiona was necessary, but the costs were likely higher than needed because of inadequate system resilience. However, EA was not able to say what costs or proportion of costs (in either dollars or

categories) were increased due to inadequate system resilience. EA referred to the report it provided in Matter M11169 as providing an overview of the current asset management approach taken by NS Power.

[33] In concluding its report in this matter, EA stated:

There appears to be an emerging cycle developing within which the same responses and solutions are being applied, and the same outcome is achieved. The electrical system infrastructure is damaged, repaired and restored, no additional resilience is being introduced, and when the next weather event takes place, the cycle is being repeated.

All parties involved should recognise that without change, the continued costs associated with maintaining the same approach to storm recovery is only set to continue and present a more demanding financial burden as event response progresses into disaster recovery.

The heart of the issue is that the electrical network lacks the resilience and progress in improving the situation has not been demonstrated.

[Exhibit 12, p. 14]

[34] EA recommended that NS Power's reporting and asset assessment and investment approaches be benchmarked against other leading utility organisations, particularly against the Common Network Asset Investment Methodology (CNAIM) currently mandated in the United Kingdom. EA said CNAIM financially quantifies operational risk to determine programs of asset specific interventions and fully justified investment plans. EA considers CNAIM to represent cutting edge investment practice.

[35] In its Reply Evidence, NS Power "strongly" disagreed with EA that its asset management practices were not aligned with industry best practice, noting that it responded in detail to EA's evidence on this point in Board Matter M11169.

[36] NS Power also said it was familiar with the CNAIM based approach "deployed in the United Kingdom and a small number of utilities in North America." NS Power said it had reviewed this approach with third-party consultants and asset management solutions vendors and said there were "differing views" about whether it was a cutting edge, industry leading approach. It said:

The CNAIM methodology is highly prescriptive and uses complex formulas derived to monetize risk. This approach is heavily weighted on age of assets classes and does not consider individual circuit/ feeder level performance which NS Power and other utilities consider a key indicator of condition and therefore risk. The results of the calculations defined via the CNAIM framework give a sense of precision but the inputs into the model are not necessarily accurate enough or available to monetize risk to the nearest dollar. There is also limited benefit with respect to benchmarking to move to this methodology, as there are no other utilities within the Atlantic Canada region (which NS Power considers its most appropriate comparable utility group), reporting in this way. NS Power believes one of the key benefits missing for the adoption of the CNAIM framework in Nova Scotia is the ability to compare similar utilities with the same geographic conditions as was done in the United Kingdom.

NS Power's position is that the current Feeder Risk and Transmission Line Risk Methodology utilized by NS Power is superior to the CNAIM framework as it is reliability-centered using asset condition, which does include consideration for age-based failure mechanisms while incorporating other important factors, such as asset performance into the Risk determination. The CNAIM methodology does not consider operational performance at the individual circuit level. NS Power considers this omission a fundamental flaw in the CNAIM methodology, as it could lead to the utility prioritizing the average health of an asset class over more efficient deployment of resources to address whole feeders or transmission lines with the greatest collection of risks. This becomes a key consideration for deployment of resources over a large geographical area typical of NS Power's service territory. The CNAIM framework also leaves little room for expert engineering judgment and institutional experience to be reflected, or for end-user cost impacts to be considered. NS Power does not believe that implementing the complex risk framework detailed in CNAIM would be any more cost effective than the Company's current approach and does not adequately balance the cost of remediation activities with affordability.

[Exhibit N-20, pp. 16-17]

[37] In his closing submissions, the Consumer Advocate submitted the Board should approve the Fiona-related OM&G costs because there was no evidence before the Board that they were not prudently incurred. However, the Consumer Advocate submitted that NS Power should retain a third party to review its reliability investments and programs. The Consumer Advocate made this request in several recent proceedings, including NS Power's Annual Capital Expenditure Plan proceedings in 2023 and 2024.

[38] The Small Business Advocate did not explicitly endorse the Board's approval of the requested deferral of OM&G costs, but he accepted NS Power's ability to apply for such an approval and the Board's discretion to grant it. However, the Small Business Advocate proposed an alternative deferral and amortization schedule, premised on the recovery of the deferral amount requested by NS Power.

[39] While NRR submitted the application should be denied based on the evidence of its consultant, Christine Runge, Power Advisory (discussed in more detail later in this decision), it also submitted, based on EA's evidence and concerns about the resiliency of NS Power's electrical system, that NS Power's deficiencies justify a disallowance of "NS Power's restoration costs associated with inefficient resiliency investment associated with storm restoration response." NRR did not say what amount should be disallowed but suggested it should be "derived from negative inferences against NS Power where the evidence is unclear."

[40] The Industrial Group submitted that if the Board granted the accounting order requested in this proceeding, it should bear in mind EA's conclusion that the scale and cost of NS Power's response to Hurricane Fiona were probably increased due to inadequate system resilience. They urged the Board to "consider if NSPI should share responsibility for some proportion of the increased costs to respond to Hurricane Fiona due to its responsibility in relation to system resiliency." The Industrial Group noted that EA was unable to quantify these increased costs and did not suggest how any proportionate responsibility would be determined.

3.3.1 Findings

[41] Although there were differences in the evidence and argument presented in this matter and the Board's decision in a related application by NS Power for authorization to overspend certain distribution capital routines because of Hurricane Fiona (and other storms in 2022), these differences are slight [2024 NSUARB 115]. In that decision, the Board found it would be too speculative to disallow costs for imprudence because of the allegation that NS Power had not introduced additional resilience to its electrical system.

Doing so would presume that there were specific investments that were technically feasible and affordable, and that would have made a difference to the costs incurred because of Hurricane Fiona. The Board concluded that concerns about resiliency were better addressed in other pending processes, such as the implementation of the asset management recommendations arising from the Board's recent decision in its review under s.30(5)(a) of the *Public Utilities Act* [2024 NSUARB 59], the development and review of NS Power's Climate Change Adaptation Plan, ACE Plan and other capital expenditure proceedings and NS Power's annual performance standards reviews.

[42] The Board finds that the evidence and argument presented in this proceeding was not materially different than in its related decision [2024 NSUARB 115]. Therefore, the Board's discussion and analysis in that decision about NS Power's stewardship and the resilience of the electrical network, and how these concerns might best be addressed, apply equally in this proceeding. For the same reasons, the Board finds there is no evidence before it to justify a disallowance of the requested OM&G amount proposed to be deferred in this proceeding.

3.4 Retroactive/Single Issue Ratemaking

[43] In the normal course of business, NS Power expenses its OM&G costs under Accounting Policy 5200 - Operating, Maintenance and General. The general rule that accompanies this policy is that NS Power should "record the cost of OM&G expenditures that do not benefit any future period as an expense in the Statement of Income in the period that they are incurred."

[44] NS Power has instead applied to defer the OM&G costs relating to Hurricane Fiona under Accounting Policy 6900 – Deferred Charges, General Principles.

Policy 6900 states that “Certain large operating expenditures incurred by NSPI may be considered material, and eligible for deferral and amortization, subject to the approval of the Nova Scotia Utility and Review Board (“UARB”). These costs are deferred and amortized over the approved period, rather than expensed and recovered from customers in the year incurred.” NRR submitted that creating a deferral account for Hurricane Fiona OM&G costs would violate the long-standing rule against single-issue and retroactive ratemaking.

[45] Ratemaking under the *Public Utilities Act*, R.S.N.S. 1989, c.380 (*PUA*) requires NS Power to project the total expenses the utility will incur over one or more test years. These projected annual expenses together with a reasonable rate of return on rate base create the revenue requirement for these test years. Once the Board is satisfied that the projections and the appropriate return on rate base are reasonable, it must then establish rates designed to allow NS Power to recover its revenue requirement for each test year. The rates are allocated between customer classes so that, to the extent possible, each customer class pays for the cost of supplying it with electricity.

[46] As new rates are only effective from the date the Board orders a change, the entire exercise is prospective in nature. All participants in the process recognize that projecting expenses and revenues is not an exact science. There will invariably be changes in various line items, but if the utility meets its overall revenue requirement, it does not need to apply for rate increases. The traditional rule against retroactive ratemaking is that a utility cannot ask the Board to establish rates retrospectively to allow it to recover a loss that has already crystallized [see: *Northwestern Utilities Ltd. v. Edmonton*, [1979] 1SCR 684].

[47] A utility is generally not allowed to true up a particular expense category to make up for the fact that it was underestimated in a general rate application. Aside from being contrary to the prospective approach to ratemaking, such an attempt also involves single-issue ratemaking. Allowing this type of ratemaking creates conceptual and pragmatic difficulties. This is because examining and trueing up a single cost category projection in isolation ignores the likelihood that many other cost categories have been overestimated. The utility may have been able to cut costs elsewhere to make up for the lost revenue. The ratemaking process would become seriously bogged down if continuous rate adjustment applications were authorized based on the difference between known past actual costs and the test year projections. It would also create an unacceptable level of uncertainty impacting the important principle of rate stability.

[48] The foregoing is the conceptual basis explaining why this Board and most other utility regulators in Canada have usually refused to authorize retroactive or single-issue ratemaking.

[49] However, the rule against retroactive ratemaking is not absolute. This was acknowledged by Ms. Runge, who has a master's degree in economics and over 13 years of experience in the electricity and regulatory fields. Ms. Runge did not take issue with the Board's jurisdiction to approve a storm rider that would allow recovery for some past storm expenses in a future process, as was done in NS Power's last GRA (M10431).

[50] That said, Ms. Runge said this application should not be approved because it involved a different type of retroactive ratemaking. This request was different from a situation where the Board has established a true up mechanism in advance, such as the GRA storm rider. Based on Ms. Runge's testimony, NRR said the settlement agreement

in NS Power's last GRA (GRA Settlement Agreement) showed the company should not be allowed to create a deferral account for the Hurricane Fiona OM&G costs.

[51] The GRA Settlement Agreement was effective November 2, 2022. It included a provision about a storm rider which could potentially allow for the deferral of past storm restoration OM&G costs above certain thresholds. The Board allowed Intervenors to ask IRs and make submissions about the GRA Settlement Agreement. A Board decision dated February 2, 2023, approved most parts of the GRA Settlement Agreement, including approval in principle of the proposed storm rider for 2023 to 2025. Following a compliance filing, the Board issued an order incorporating the operative parts of its decision.

[52] The proposed storm rider did not include the year 2022. Ms. Runge said that the exclusion of Hurricane Fiona showed a "...deliberate decision to treat Hurricane Fiona under the previous methodology and not allow for after the fact true-up and collection of prudently incurred costs." The "previous methodology" relates to the traditional public utility principles that ordinarily do not allow for retroactive or single-issue ratemaking.

[53] NRR's argument about the impact of the GRA Settlement Agreement was intertwined with the traditional public utility law principles about single-issue and retroactive ratemaking. NRR submitted that the GRA settlement process showed a clear intent that deferral accounts for storm recovery costs be prospective.

[54] In considering the impact of the GRA Settlement Agreement on this application, the Board understands NRR's key points are as follows:

- Hurricane Fiona made landfall approximately 2 months before the GRA Settlement Agreement was signed.

- NS Power, and the Intervenors who entered into the GRA Settlement Agreement, were, therefore, aware that Hurricane Fiona OM&G costs would be extensive, even if they did not know precisely what these costs would be.
- The GRA Settlement Agreement included a storm rider that might provide the type of OM&G costs deferral account relief sought in this application.
- The proposed storm rider did not include any potential relief for 2022. NS Power is a sophisticated business entity which failed to negotiate any protection for Hurricane Fiona operating costs in the GRA Settlement Agreement.
- The GRA Settlement Agreement was approved by the Board on the basis allowed NS Power to earn a reasonable rate of return.
- The Board should not now examine whether the approval of the GRA Settlement Agreement in fact provided a reasonable rate of return.
- Approving this application would effectively add one year to the storm rider in the GRA Settlement Agreement.
- NS Power should, therefore, not be allowed to ask the Board to "...step in and protect shareholders from exposure to losses which NS Power ought to have contemplated and made provision for through their settlement negotiations during the GRA."

[55] NRR also suggested that non-regulated businesses have no similar recourse to recover storm losses. The Board observes that unregulated businesses can charge their customers what the market will bear. They are not prohibited by any legal principle from setting their prices high enough to recover any liability or debt incurred because of past events. They do not need to set up regulatory deferral accounts to do this. Unregulated businesses do not have any restrictions on their future rate of return. Unlike public utilities, unregulated businesses have no duty to serve and can pick and choose to enter the market areas they project will bring the highest returns. Unregulated businesses can leave markets, as they see fit, to cut costs. What unregulated businesses can charge and where they operate is completely market driven and the situations are not comparable. This submission need not be considered further.

[56] The Consumer Advocate did not agree with NRR's position about the GRA Settlement Agreement:

The Settlement Agreement and the Order of the Board approving the Settlement Agreement do not compel such a conclusion. There is no reference whatsoever to Hurricane Fiona in the decision of the Board. Ms. Runge's client was not a party to the Settlement Agreement, and was not involved in the discussions concerning the Storm Rider and its effective date. The fact that the Storm Rider was to be effective in 2023 does not in any way convey an agreement in how OM&G costs from Hurricane Fiona were to be managed. That was made clear in a response from NS Power to an Information Request from DNNR during the GRA proceeding:

The Hurricane Fiona costs incurred in 2022 are not subject to the Storm Rider proposed to be in effect for the 2023-2025 period, per the terms of the Settlement Agreement. The Company has not made a final determination as to the scope or content of an application for the recovery of Hurricane Fiona related costs. When such an application is made, NS Power will provide the appropriate support for its request. The Company anticipates the matter will be examined by the Board as part of a NSUARB process, separate from the current proceeding.

NSPI (DNRR) RIR-5, Exhibit N-157, M10431.

The Storm Rider for 2023-2025 was never intended to prevent NS Power from attempting to recover prudently incurred costs arising from Hurricane Fiona.

[Consumer Advocate's Closing Arguments, pp. 2-3]

[57] The Small Business Advocate did not specifically endorse Ms. Runge's evidence on the effect of the GRA Settlement Agreement. The Small Business Advocate said that as storm restoration costs were included in the 2022 revenue requirement, with slight increases throughout the 2023-2024 test years, it could be inferred that 2022 storm costs were intended to be recovered from approved rates, since there was no storm rider for the 2022 year.

[58] Ms. Rubin, on behalf of the Industrial Group, said that if the Board intended the GRA decision to fix the rules about cost recovery for 2022, then she agrees with Ms. Runge's explanation of the general regulatory principles where there is a strict prohibition against retroactive ratemaking. The Industrial Group did not say whether the GRA Settlement Agreement leads to this result.

[59] NS Power submitted that the GRA Settlement Agreement related to the costs and the revenue requirement for the 2023-2024 test years. The company said the GRA Settlement Agreement does not relate to 2022 costs at all. In any event, NS Power submitted that the IR response cited by the Consumer Advocate, which was given as part of the GRA Settlement Agreement approval process, was very clear. The company said all the GRA Settlement Agreement signatories, other Intervenors, and the Board, were aware that the Hurricane Fiona OM&G costs were not included in the GRA Settlement Agreement. NS Power said all parties and the Board were aware another process was contemplated to address Hurricane Fiona OM&G costs. NS Power said, therefore, the Board Decision and Order approving the GRA Settlement agreement does not stop NS Power from bringing the current application.

[60] In any event, Ms. Runge did not base her opinion solely on the effect of the GRA Settlement Agreement. In her opinion, Accounting Policy 6900 does not allow for retroactive ratemaking where a Board-approved mechanism to achieve this result is not already in place:

20. However, while Accounting Policy 6900 allows for the deferral of operating costs, it does not, in and of itself, allow NSPI to true-up and defer actual costs on an ex-post basis, as proposed in this application. The purpose of this policy, to allow a means by which to prioritize rate stability through modifications to the collection period for large, material operating expenses, supports the fact that the policy is designed to be used on an ex-ante basis during general rate applications. The examples of past uses of Accounting Policy 6900 provided by NSPI also supports this conclusion. In each of the instances listed, NSPI applied for the deferral of collection on an ex-ante basis, i.e. before the costs were incurred.

[Exhibit N-10, p. 9]

3.4.1 Findings

[61] The Board agrees with the Consumer Advocate and NS Power that its approval of the GRA Settlement Agreement does not impact whether Hurricane Fiona OM&G costs can be recovered under Accounting Policy 6900. When NS Power filed its GRA

application on January 27, 2022, the company was hoping the Board would decide early enough to have new rates effective by August 1, 2022. This is why there was a proposed August 1, 2022, effective date for the storm rider in the application. This was the same date as all the proposed revisions to NS Power's rates, charges, and regulations.

[62] The proposed effective date was extremely ambitious. The GRA Settlement Agreement was negotiated when it was obvious that no Board approval would be obtained before the 2023 test year. This is why the GRA Settlement Agreement focusses on the 2023-2024 test years. NS Power's November 24, 2022, letter filing the GRA Settlement Agreement requested an effective date of January 1, 2023.

[63] The GRA Settlement Agreement, and the Board decision approving it, make no reference to Hurricane Fiona, or the potential recovery of OM&G operating costs associated with that storm. The only party to make any reference to Hurricane Fiona in submissions about whether the Board should approve the GRA Settlement Agreement was NRR. These references were about the magnitude of the hurricane and the damage it caused. While NRR opposed the storm rider in general, and certain of its specifics, it did not submit anything about what, if any, impact approving the GRA Settlement Agreement would have on NS Power's ability to claim relief under Accounting Policy 6900.

[64] In the GRA proceeding, there was specific evidence from NS Power that the Hurricane Fiona OM&G costs would be addressed in another process. There were no submissions that a future process was not the appropriate way to deal with a potential deferral of these costs. The issue of the deferral and potential recovery of the Hurricane Fiona OM&G costs was simply not before the Board when the GRA Settlement

Agreement was submitted for approval. The Board made no finding about this issue. The GRA Settlement Agreement, and the Board's decision approving it, including the storm rider, were prospective in nature, as suggested by Ms. Runge. That, in and of itself, does not preclude NS Power from seeking an exceptional remedy under Accounting Policy 6900.

[65] The Board agrees with Ms. Runge that, to date, the Board has usually used Accounting Policy 6900 in instances where NS Power applied for the deferral before the costs were incurred, with one notable exception. NS Power pointed out that the Board had allowed the company to defer a \$150 million Section 21 income tax liability in a 2005 GRA proceeding related to disallowed returns from 1998 to 2002. In that case, a final determination was made by the Supreme Court of Canada just after the GRA application was filed. This final judgment was confirmation of a lower court ruling and the tax obligations were incurred prior to the 2005-2006 test years. The Board's decision in that matter did not discuss retroactive ratemaking. Additionally, there was a much larger amount involved than in this application [see: 2005 NSUARB 27]. Therefore, whether the retroactive single-issue ratemaking at issue in this matter is, or should be, authorized under Accounting Policy 6900 remains a live issue, which the Board will now address.

[66] The wording of Accounting Policy 6900 uses the words "large operating expenditures incurred" which would suggest the policy can be applied to costs that have already been incurred. Because the costs must be "eligible for deferral and amortization" and are subject to Board approval, the wording is not a conclusive indication on this point. The Board must still decide if the Hurricane Fiona OM&G costs fit into a category where this type of retroactive ratemaking is appropriate.

[67] In its application, NS Power provided six examples where regulators had allowed significant storm restoration OM&G costs to be deferred and amortized over future years. Grant Thornton provided an example from PEI where the utility was authorized to defer and amortize OM&G costs related to Hurricane Fiona. Ms. Runge said that there was only the PEI example, and one example from Maryland, where such costs were authorized without an existing mechanism in place prior to the costs being incurred. The Board notes that in the case of PEI, there appears to have been no analysis about retroactive ratemaking.

[68] In response to Industrial Group IR-6, NS Power provided what the company said were 80 cases where regulators allowed monopoly utilities to recover “...extraordinary costs related to a significant multi-day storm (Storm Uri) ...” This storm took place in February 2021 in the US South and Midwest. NS Power provided case summaries as an attachment. These cases were not analyzed in any detail in the parties’ closing submissions.

[69] There are many precedents in various jurisdictions for allowing the deferral and amortization of significant storm restoration costs. The recovery mechanisms and statutory framework are different in many jurisdictions. In many cases, there is a recovery mechanism or tariff in place before the subject OM&G costs are incurred. In others, there is not. Absent a detailed analysis of each legislative and regulatory framework, it is difficult to assess the comparability of these precedents to the case at hand. There is, however, a Canadian precedent that provides a principled basis for deciding the issue of whether Accounting Policy 6900 should be applied to the Hurricane Fiona OM&G costs.

[70] In *Capital Power Corporation v. Alberta Utilities Commission*, 2018 ABCA 437, the Alberta Court of Appeal reviewed the rule against retroactive ratemaking in the context of what is known as a negative disallowance scheme. In this type of regulatory scheme, rates or rules are set by the utility, subject to being retrospectively amended by the regulator. Because the Alberta Utilities Commission had relied on several recognized exceptions to the rule against retroactive ratemaking, the Alberta Court of Appeal discussed the general principles about these exceptions.

[71] At paras [64] to [66], the Court explained why the rule against retroactivity was not absolute. The Court also addressed what factors should be considered when deciding whether an exception to the rule should be allowed:

[64] The reason that there is no blanket prohibition against retroactive ratemaking is that there are decades of public utility board and judicial decisions variously applying the rule or declining to apply the rule depending on circumstances. See, for example, Professor Stefan Krieger's article entitled "The Ghost of Regulations Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings" (1991) 1991 Illinois L Rev 983. Professor Krieger discusses a century of what he characterized as "inconsistent and contradictory application of the traditional rule against retroactive ratemaking." Whether that is a fair characterization of the jurisprudence, no court or public utilities board will ever be able to define precisely the circumstances in which retroactive ratemaking is permissible. Nor is it desirable that they should do so. And, presumably, it has been deemed even less desirable to enact a blanket prohibition.

[65] The rule against retroactive ratemaking is applied when considerations of fairness, reliance, rate stability and certainty are engaged and given more weight than countervailing considerations. By way of examples, the rule is often not applied in the context of regulatory changes to accounting methodology, when obvious mistakes have been made in rate orders, when utilities experience extraordinary losses or gains or other exceptional (novel and complex) circumstances. It is often not applied when rate orders are quashed or reversed following judicial review. And it is often not applied when retroactive relief is granted by the utility regulator following a lengthy tariff proceeding or in cases of interim rates subject to change or in cases of deferral accounts employed to deal with differences between forecast and actual costs and revenues. There are other circumstances as well in which the rule is not applied. The list is not closed.

[66] The point being made is that the Commission's application of the rule against retroactive ratemaking is not so much a question of law but a question of whether or not a strict application of the rule in the circumstances of the case achieves sound utility regulation. The latter is not a question for this Court.

[72] The Board is in general agreement with the Alberta Court of Appeal's approach to retroactive ratemaking. Where there is no express statutory prohibition against retroactive ratemaking, it is beneficial for the Board to have some flexibility to address extraordinary or novel situations by relaxing the rule against retroactive ratemaking so that the interests of both the utility and its ratepayers can be considered, without opening the door to endless rate adjustments.

[73] There is no express prohibition against retroactive ratemaking in the *PUA*. The Board agrees with the premise in *Capital Power* that it has the discretion to apply Accounting Policy 6900 retroactively, even if no recovery mechanism exists prior to certain OM&G costs being incurred.

3.5 Deferral

[74] In its application, NS Power asked the Board to allow it to defer the recovery of OM&G costs it incurred responding to the damage caused by Hurricane Fiona. The company submitted that, without a deferral, it would be precluded from the opportunity to recover these costs. It asked that these costs be deferred for amortization and collection as determined in a future rate-setting process. As discussed previously, NS Power cited precedents for its requested recovery and examples from other jurisdictions where regulators have allowed storm-related operating costs to be recovered through mechanisms such as storm-specific deferrals.

[75] In its closing submissions, NS Power emphasized the need for a financially healthy and stable utility. It submitted customers benefit from a utility that has earnings and cash flow capable of attracting equity and debt on reasonable terms to make investments to provide safe, reliable and affordable utility service:

In its 2022 regulated financial statements, NS Power reported a regulated return on equity of 8.65 percent for 2022, which is below the low end of its approved earnings band of 8.75 percent. If the \$24.6 million in deferred Fiona OM&G costs had been expensed in 2022, this would have resulted in a regulated return of equity of approximately 7.30 percent. NS Power has not yet filed its 2023 regulated financial statements but has publicly disclosed that it expected to earn below the low end of its approved earnings band in 2023. NS Power has also publicly disclosed that it expects to earn below the low end of its approved earnings band in 2024. If the Fiona Restoration Costs cannot be deferred, those costs will be required to be expensed in the current period, further eroding the 2024 ROE.

The pattern of NS Power earning below the low end of its approved earnings band for multiple consecutive years highlights the risk inherent in Nova Scotia's regulatory environment. This is evident in S&P Global's ranking of Nova Scotia as one of the three least credit supportive jurisdictions in North America. Not approving deferral and recovery of the Fiona Restoration costs would further increase the perception of risk in Nova Scotia's regulatory environment, negatively impact NS Power's credit metrics, and increase the risk of further credit rating downgrades. Herein lies why rejecting NS Power's request to defer the Fiona Restoration Costs would not benefit customers.

[Closing Argument, pp. 4-5]

[76] NS Power also said if the return is less than what investors can obtain in the market, investors may choose to invest elsewhere.

[77] The Industrial Group, in its closing submissions, suggested there were a number of general factors the Board should consider when deciding whether to approve the establishment of a regulatory deferral or asset. These included:

- Whether the costs proposed to be deferred are extraordinary or unusual or result from an event which is unusual or extraordinary.
- The expense is beyond the utility's control and could not have been reasonably anticipated.
- The expense must be "significant".
- Whether, absent deferral, the costs would have a material impact on the utility's financial condition.
- Whether, if granted, the deferral will provide significant benefits to ratepayers.

[78] In its evidence, Grant Thornton accepted that there was regulatory precedent for approving the request and recommend the Board approve the application to defer the OM&G costs related to Hurricane Fiona for amortization and collection as

determined in a future rate-setting process. The significance of the costs and NS Power's ability to absorb them were part of the basis for its recommendation:

Given the significance of the Fiona costs, NSPI was not able to absorb the costs and projects it will earn below the low end of its ROE range in both 2023 and 2024. NSPI's response to NSUARB IR-6 highlights the impact Bill 212 in that rates in 2023 and 2024 have been capped below their revenue requirement for those years. NSPI further describes the impacts of Bill 212 and the corresponding actions of rating agencies in its response to IG IR-3 and highlights that an adverse decision in this matter could further impact its financial health and lead to further downgrade decisions which would be unprecedented in the Company's history. This could create increased risk of investment and may drive higher costs in the future resulting from negative impacts to the Company's credit ratings, cost of capital and ability to attract capital. As a cost-of-service utility, NSPI is allowed to recover its prudently incurred costs, including storm restoration costs. If costs from Hurricane Fiona cannot be deferred, they will be required to be expensed in the current period, further reducing earnings and ROE in 2023.

[Exhibit N-11, p. 3]

[79] However, Grant Thornton suggested if the Board approves the deferral of OM&G costs, it could also exercise its discretion to limit the amount of carrying costs for the deferral. It said to mitigate the impact to ratepayers, the Board may wish to eliminate the equity return component from the carrying costs.

[80] The Consumer Advocate submitted that the Board should approve the requested deferral, with the period and terms of the amortization determined in NS Power's next general rate application. He noted that refusing to do so would threaten the utility's credit standing to the detriment of its customers. However, he submitted that the carrying costs should be limited to those incurred only after approval and they should not include a return on equity. The Consumer Advocate said that OM&G costs are usually recovered through electricity rates in the year they are incurred and the primary reason for this application was to protect NS Power's "somewhat precarious credit rating"; therefore, NS Power should not be entitled to earn a return on equity on costs that would otherwise have been expensed.

[81] The Small Business Advocate also submitted that NS Power should be allowed to defer the excess storm-related operating costs. However, he proposed these be recovered over a five-year amortization period beginning no later than 2024. In part, the amortization period proposed by the Small Business Advocate reflects his view that NS Power delayed bringing this application longer than was necessary.

[82] The Industrial Group questioned whether refusing the requested deferral would have the impact to NS Power's financial health that the utility suggested. The Industrial Group submitted that since NS Power had already experienced a credit downgrade in 2022, in part due to the passage of Bill 212, a further reduction in NS Power's return on equity in that year would not have made things worse from a credit rating perspective. Instead, the Industrial Group said NS Power's delay preserved shareholder returns and denied the Board the opportunity to consider whether the amount should have been expensed in 2022 or normalized over multiple years.

[83] The Industrial Group said if NS Power has consecutive years of under earnings, this would not be due to the OM&G costs relating to Hurricane Fiona, but for other reasons. It said approving the deferral would not change those reasons and that rejecting the deferral, based on recognized regulatory precedent and principles, may have little impact on NS Power's business and financial risk. The Industrial Group also noted there were recent regulatory decisions that should improve NS Power's risk profile.

[84] The Industrial Group also submitted that any deferral should only be for the amount that is necessary based on the bottom end of the return on equity range approved by the Board. It also noted that there may be an offsetting accounting adjustment if the

Board were to grant NS Power's appeal of a \$10 million penalty levied by the Minister of Natural Resources and Renewables in 2023.

[85] Furthermore, the Industrial Group said the approval of a deferral does not mean NS Power is entitled to earn its weighted average cost of capital on the balance. The Industrial Group noted Grant Thornton's evidence on this point and observed that the Board exercised its discretion in other matters to reduce the carrying cost of a regulatory asset to something other than the weighted average cost of capital, including for Heritage Gas (now Eastward Energy) when the Board approved deferrals for depreciation and certain operating, maintenance and administration expenses. The Industrial Group said that, in the usual course, storm response costs would not generate a profit.

[86] In its Reply Evidence, NS Power disagreed that carrying costs on the deferral should be set at anything other than its weighted average cost of capital. In its Reply to Closing, NS Power argued that eliminating the equity element implied that it had the balance sheet capacity to finance the Hurricane Fiona OM&G restoration costs entirely in debt, which would further erode the company's credit metrics. NS Power submitted there was no evidence that the OM&G costs it seeks to recover were imprudently incurred and it should be able to recover its prudently incurred financing costs associated with the deferral.

[87] In its Reply to Closing, NS Power also argued that an amortization period for the recovery of its prudently incurred OM&G costs related to Hurricane Fiona beginning in 2024 or even 2025, before those costs could be included in rates, would amount to a disallowance of a portion of those costs. It said this would cause NS Power

to absorb a significant amount of these restoration costs and send negative signals to the capital markets.

3.5.1 Findings

[88] As discussed already, the Board has the discretion to grant the deferral requested by NS Power (as reflected in Accounting Policy 6900) and the Board does not find that it is precluded from exercising its discretion based on principles of retroactive or single-issue ratemaking. However, the Board agrees with the Industrial Group's submissions that deferrals like the one requested by NS Power should not be granted as a matter of course. The discretion to approve such a deferral should only be exercised in extraordinary or exceptional circumstances, or as the Alberta Court of Appeal in *Capital Power* said, to deal with "extraordinary losses" or other "exceptional (novel and complex) circumstances."

[89] A decision to grant such a deferral would need to take several factors into account. The Board accepts that the factors set out in the Industrial Group's submissions provide a good basis for guiding the Board in exercising its discretion to allow such a deferral. However, the discretionary nature of the decision means that the weight to be given to each factor may vary from case to case and all the factors do not necessarily need to be satisfied in every case. In some cases, there may be other factors to be considered.

[90] In this case, the Board accepts that the costs proposed to be deferred are extraordinary and were not reasonably anticipated. It could be argued that hurricanes are becoming more common with the growing impacts of climate change. Indeed, NS Power has warned about the increasing stress that wind events are placing on the grid. However,

that does not mean Hurricane Fiona did not result in extraordinary losses. It was novel in its intensity and duration and required a complex and expensive response. It impacted most of the province over a prolonged period and damaged a significant portion of NS Power's grid. The damage was far more extensive than that caused by Post-tropical Storm Dorian, which was previously the most damaging storm to NS Power's grid.

[91] In addition to the sheer magnitude of this specific weather event, the volatility and unpredictability of storms generally were some of the reasons for the approval of the temporary storm rider in NS Power's last general rate application. Some evidence relating to this was highlighted in the Board's decision in that matter:

[324] Concentric, on behalf of NS Power, indicated that the use of adjustment clauses (that operate through rate riders) and deferral and variance accounts has grown over time, and the use of such non-base rate mechanisms to track and recover costs is prevalent throughout the North American utility industry. Concentric noted that these types of cost recovery mechanisms tend to focus on the recovery of costs that are: (1) volatile and/or difficult to project, (2) potentially significant, and (3) generally outside of the utility's control. As such, since Level 3 and 4 storm restoration costs meet these criteria, Concentric argued that the associated OM&G costs are well suited for recovery through the proposed Storm Rider. Concentric also believes that the proposed Storm Rider is an appropriate mechanism to help address the challenges facing the Company over the coming decade, and is in line with industry precedent.

[325] For the most part, the Intervenor did not object to the imposition of the Storm Rider. In fact, Ms. Whited, on behalf of Board Counsel, noted that a rider can be a reasonable method for recovering major storm costs that are outside the control of the utility....

[2023 NSUARB 12]

[92] The Hurricane Fiona OM&G costs are "material" as required by Accounting Policy 6900, or "extraordinary" to use the language in *Capital Power*. As noted by the Industrial Group in its submissions, at approximately \$24.6 million, the OM&G costs flowing from NS Power's response to Hurricane Fiona exceeded 5% of its operating revenues in 2022, which the Industrial Group said was a threshold that some regulators have used to determine that an expense is extraordinary or material. With reference to the same financial statements for 2022 (Exhibit N-9, Attachment 1, p. 1), the Board also

notes that the OM&G costs relating to Hurricane Fiona approach 9% of the OM&G costs incurred by NS Power for the entire year (excluding Hurricane Fiona).

[93] As to whether refusing the deferral would have a material impact on NS Power's financial condition, the Board finds the following comments in the Industrial Group's Reply Submissions to be quite apt:

It is extremely difficult to make regulatory decisions based on what the credit ratings agencies may or may not do, based on their perception of NSPI's financial and business risks. Clearly these decisions are multi-factorial.

[Industrial Group Reply Submissions, p. 1]

[94] Notwithstanding this difficulty, the credit downgrade at the time of NS Power's last general rate application, and NS Power's relatively poorer financial results in 2022 (and now 2023), are cause for concern. This was noted not only by NS Power, but the Consumer Advocate as well.

[95] This Board, consistent with well-recognized regulatory principles, has recognized that customers benefit from a financially healthy utility. For example, the Board made the following comments in NS Power's 2006 rate case, and considers that they still ring true today:

[665] The Board understands the importance of ensuring that NSPI remain on a sound financial foundation as it heads into the future. The Company's ability to attract capital, access fuel markets and control costs must not be compromised.

[666] The Board recognizes that the interests of customers and shareholders of NSPI are not mutually exclusive. They both benefit from a financially sound utility. In this decision, the Board has strived to strike an appropriate balance between the interests of NSPI and its customers.

[2006 NSUAR 23]

[96] On balance, the Board finds that the deferral should be granted. However, there is merit in the Industrial Group's submissions that other options, grounded in regulatory precedent and principles, were open to the Board in the exercise of its

discretion. In this case, rather than deny the requested deferral, the Board finds a more appropriate balance of the interests of NS Power and its customers can be achieved by reducing the carrying costs associated with the deferral.

[97] The Board finds that NS Power is not entitled to an equity return on the deferral of the OM&G costs it incurred restoring service after Hurricane Fiona. The Board disagrees with NS Power's characterization that a refusal to allow the recovery of an equity component denies it the opportunity to recover its prudently incurred costs. NS Power already had that opportunity. NS Power's rates already provide for the recovery of its OM&G costs.

[98] In the normal course, these costs would have been expensed in the year they were incurred, and not subject to any return. While the Board believes it is appropriate to allow NS Power to recover these costs, the exceptional nature of this relief and the need to balance the interests between the company and its customers leads the Board to its conclusion.

[99] As a final point to be determined on this issue, the Board finds that the amortization period for the deferral will begin July 1, 2024. Again, the Board disagrees with NS Power's characterization that an amortization start date prior to the costs "being included in rates" would amount to a disallowance.

[100] NS Power's rate base is not static. Capital assets are constantly added and removed. Regulatory assets and liabilities may be added, paid or recovered, and new ones may come along. In between rate cases, however, the "cost" of these changes is not addressed until the next general rate application. Depreciation and amortization charges included in the revenue requirement used to set rates will continue to be charged

until the next rate application, even if the assets they relate to have been fully recovered or otherwise removed from rate base. At the same time, new assets will be created, and begin to depreciate or be amortized, even though those changes have not yet been included in a formal revenue requirement to set rates. To consider those costs to be disallowed because they have not been “included in rates” is not consistent with typical principles of rate regulation.

[101] There is also another principle to consider: intergenerational equity. The deferred costs are for services provided to customers in 2022. By virtue of the deferral, future customers will now pay for those services. While most of those customers are likely the same at this point, as more time goes by, that will be less true. As such, it is appropriate to recover deferrals as quickly as is reasonable. The Board finds that the request for the amortization period to begin at the time of some undetermined “future rate-setting process” does not appropriately consider the intergenerational aspects of the requested deferral. While the next rate case is likely to be sooner than the approximate decade that passed between NS Power’s last two general rate applications, the Board’s concern remains.

[102] The Board recognizes that it has the discretion to defer the start of the amortization period but considering the extraordinary nature of the relief requested by NS Power, the need to balance that request with customer interests, and principles relating to intergenerational equity, the Board finds that the amortization period for the deferral approved in this proceeding will begin on July 1, 2024.

[103] Given the way the application was presented to the Board, no amortization period for the deferral was suggested or debated in this proceeding. For present

purposes, the Board directs NS Power to use a 10-year amortization period. However, all parties are free to argue that the period should be adjusted in NS Power's next rate application (either shorter or longer).

3.6 Cost Controls

[104] As mentioned already, EA expressed concern about the capability of NS Power's current reporting systems to appropriately account for costs during a storm event. While NS Power agreed in its Reply Evidence that restoration costs should be recorded at the asset class level on the transmission and distribution system, it said that detailed asset-level and person-level tracking during a major storm event adds time to the restoration event and adds to the ultimate cost of restoration events. NS Power argued that a balance must be struck between restoration time and precision around the recording of financial details.

[105] NS Power also said that contractors do not have access to NS Power's systems or hardware to track costs to this level of detail during a response to a storm event. It added that onboarding temporary resources to monitor and track this level of detail or providing its own resources to support external crews with this is not presently practical or cost effective.

[106] NS Power submitted that its current methodology is reasonably and materially accurate. It noted that it has recently upgraded its work management system and will continue to evaluate enhancements for tracking costs at the asset level during storm restoration where it is practical and cost effective.

[107] In respect of financial controls relating to the use of third-party contractors during restoration events, NS Power noted that as a reporting issuer with listed or quoted

securities in Canada it must comply with certain financial requirements to ensure quality, reliability and transparency in its filings and financial reporting. Non-compliance with these requirements could result in significant fines and increased market risk. In concluding its discussion on this point, NS Power submitted:

In summary, NS Power has effective financial controls in place. Controls around storm restoration events are not an exception to this. The Company effectively contracts for an appropriate number of crews based upon advance modelling of uncertain weather events, has processes in place to effectively utilize and release crews during these events and appropriate controls to ensure that the amounts billed to NS Power are correct prior to payment. EA Technology's assertion that there is a lack of evidence of financial controls in regard to NS Power's storm restoration activities is incorrect and unfounded.

[Exhibit N-20, p. 27]

3.6.1 Findings

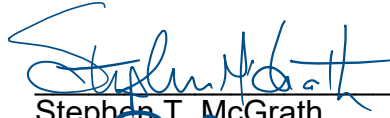
[108] Based on the evidence submitted by NS Power in this proceeding, and considering the significance of NS Power's obligations to ensure quality, reliability and transparency of its financial filings as a reporting issuer with listed or quoted securities in Canada, the Board finds that no specific direction is required for this issue at this time.

4.0 CONCLUSION

[109] NS Power's request to defer \$24,584,993 in OM&G costs related to Hurricane Fiona is approved. The deferred amount will not earn a return on equity and will be amortized over a period of 10 years beginning on July 1, 2024. The length of the amortization period for this deferral may be revisited in NS Power's next GRA.

[110] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 27th day of June, 2024.



Stephen T. McGrath


Steven M. Murphy
Richard J. Melanson