

**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 of a Decarbonization Deferral Account on the terms and conditions set out in  
the application

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

**APPLICANT:** **NOVA SCOTIA POWER INCORPORATED**  
Blake Williams, Senior Regulatory Counsel

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

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

**AFFORDABLE ENERGY COALITION**  
Peter Duke, Counsel  
Brian Gifford

**EASTWARD ENERGY**  
Michael Johnston  
Kristen Wilcott

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

**MUNICIPAL ELECTRIC UTILITIES**

James MacDuff, Counsel

Melanie Gillis, Counsel

**NOVA SCOTIA DEPARTMENT OF NATURAL  
RESOURCES AND RENEWABLES**

Jeremy Smith, Counsel

Daniel Boyle, Counsel

**PORT HAWKESBURY PAPER LP**

James MacDuff, Counsel

Melanie Gillis, Counsel

**ROSWELL DEVELOPMENTS INC.**

Daniel Roscoe

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

**FINAL SUBMISSIONS:** January 12, 2024

**DECISION DATE:** April 10, 2024

**DECISION:** The DDA is approved with modifications.

## TABLE OF CONTENTS

1.0	INTRODUCTION .....	4
2.0	BACKGROUND .....	6
3.0	DISCUSSION AND ANALYSIS.....	12
3.1	Timing of Transfers to the DDA.....	12
3.1.1	Findings.....	16
3.2	Decommissioning Cost Estimates.....	19
3.2.1	Findings.....	20
3.3	Costs Transferred to DDA.....	21
3.3.1	Review of Costs Transferred to the DDA.....	23
3.3.1.1	Findings .....	25
3.3.2	Transfer of Inventory Exceeding \$1 Million.....	29
3.3.2.1	Findings .....	30
3.4	Recovery of DDA Balances.....	30
3.4.1	Accelerated Depreciation on Certain Assets .....	31
3.4.1.1	Findings .....	34
3.4.2	Carrying Costs on DDA Balances.....	35
3.4.2.1	Findings .....	37
3.4.3	Securitization.....	37
3.4.3.1	Findings .....	40
3.5	Reporting Requirements .....	41
3.5.1	Findings.....	42
3.6	Depreciation Study.....	43
3.6.1	Findings.....	44
4.0	CONCLUSION AND COMPLIANCE FILING .....	45

## 1.0 INTRODUCTION

[1] NS Power must follow federal and provincial laws forcing it to rapidly decarbonize the electricity it supplies to its customers. As a result, NS Power expects it will have to retire coal-fired assets and associated marine unloading and fuel delivery facilities by 2030.

[2] NS Power has not fully recovered its investment in the assets it expects to retire to meet its legal decarbonization obligations or the costs it will incur to decommission these facilities. While NS Power could seek approval to accelerate the recovery of depreciation expenses and decommissioning costs to match the remaining useful lives of the assets, doing so would cause a substantial increase in rates. NS Power has not estimated the rate impact of doing so in this proceeding but given the amounts that are still outstanding, it is clear the increase in rates would be significant.

[3] To recover these energy transition costs in a more affordable manner, NS Power proposes to transfer them to a regulatory asset, which it calls a Decarbonization Deferral Account (DDA). To the extent that costs transferred to the DDA are not offset by governments (to recognize the various policy choices reflected in the laws leading to the premature retirement of assets and the broader social benefits from a decarbonized electricity system), they would be recovered from customers over an undetermined future period.

[4] NS Power originally proposed the DDA in its recent general rate application (GRA). In a settlement reached between NS Power and representatives of all its major customer classes, the parties agreed in principle to a DDA that was narrower in scope than originally proposed by NS Power. NS Power was to develop policies and procedures

for this DDA through a consultative process after the general rate application. The Board agreed with this approach in its decision in that matter and approved the DDA in principle.

[5] In this application, NS Power filed a DDA Manual, which sets out the policies and procedures it proposed to follow to account for the unrecovered net book value (NBV) of assets and unrecovered decommissioning costs transferred to the DDA for future recovery. NS Power seeks formal Board approval of the DDA, as outlined in its DDA Manual.

[6] Although NS Power asked the Board to establish a process for this proceeding that was limited in nature to reflect “the level of engagement that has already occurred, and ... the opportunities to provide comment or ask questions that such engagement has already afforded stakeholders,” it became apparent that stakeholders believed there were a number of unresolved issues and concerns. For example, stakeholders overwhelmingly opposed the annual transfer of costs to the DDA between now and 2030, which would build up the total balance in the DDA before the retirement of the assets. This was one of the major procedures for the operation of the DDA proposed by NS Power. Instead, the intervenors proposed transferring the unrecovered net book value and decommissioning costs only upon the retirement of the assets.

[7] Based on the evidence and submissions, the Board approves the DDA, with unrecovered NBV costs transferred upon the retirement of each asset within the scope of the DDA, and unrecovered decommissioning costs added when they are incurred, subject to the following directives:

- NS Power must provide specific notice to all participants in this proceeding upon filing any future capital work order applications involving assets that are forecasted to be included in the DDA and to confirm this was done in its applications to the Board.

- NS Power must not transfer inventory costs in excess of \$1 million to the DDA without specific Board approval.
- NS Power must include Trenton 5, the International Coal Pier, and Steam General Plant assets in its upcoming depreciation study.
- NS Power must file an annual DDA report, as outlined in its DDA Manual, and as amended in this decision, beginning April 30, 2025.
- NS Power must meaningfully investigate the potential use of securitization as it relates to the DDA and file an initial report on this issue with its first annual DDA filing, due no later than April 30, 2025.

## 2.0 BACKGROUND

[8] In its recent general rate application, NS Power proposed to implement a DDA to address the costs of phasing out its coal-fired generating plants and transitioning to 80% renewable electricity by 2030. NS Power proposed the DDA as a tool to transparently recover these costs while managing rate stability and affordability for customers.

[9] The following elements were featured in NS Power's proposed DDA at that time:

- the recovery of its depreciation expense for coal-fired assets and associated marine unloading and fuel delivery infrastructure facilities through rates for the 2022-2024 general rate application using existing depreciation rates regardless of the projected retirement dates for these assets;
- the accumulation of additional amortization expenses for the unrecovered capital investment and decommissioning costs of the thermal assets to reflect full transfer to the DDA by their expected retirement dates;
- the accumulation of other costs associated with NS Power's obligation to meet the legislative requirements relating to the energy transition, to the extent they were incremental or decremental to amounts included in the revenue requirement in the general rate application;

- the DDA regulatory asset would be recovered over future periods, subject to Board approval, considering affordability for customers and the timely recovery of costs; and
- the DDA regulatory asset would be included in rate base as the balance accumulated.

[10] NS Power said the DDA would make including the early retirement of its thermal assets by 2030 in its pending depreciation study unnecessary. The Company noted that reclassifying the unrecovered costs of these assets from plant-in-service to an approved regulatory asset would allow for increased flexibility in the timing of recovery of these costs to the benefit of NS Power's customers and the utility. The costs would no longer need to be depreciated over an accelerated timeline to reflect a compressed period due to the early retirement of the assets. Instead, NS Power would recover these costs in the future on a timeline intended to best balance customer affordability with the prompt recovery of costs.

[11] The intervenors in NS Power's general rate application expressed a variety of opinions about the proposed DDA.

[12] Board Counsel consultant, Grant Thornton, said the DDA was a reasonable mechanism to capture additional amortization of unrecovered thermal asset capital investment and decommissioning costs by the expected retirement dates. It also said the DDA gave NS Power and the Board flexibility around the timing of the recovery and allowed NS Power to forego the recovery of these costs through accelerated depreciation in its revenue requirement. Grant Thornton was not able to support NS Power's position on the recovery of other costs through the DDA because it felt it needed more information about them.

[13] Another Board Counsel consultant, Synapse Energy Economics Inc., said the proposed DDA was not reasonable because its scope extended far beyond accelerated retirement costs. Synapse recommended that the Board reject the proposed DDA. Instead, it said NS Power should address the costs associated with the early retirement of thermal assets through an existing accounting policy that, with Board approval, allowed the undepreciated cost of the assets to be amortized and recovered over a five-year period or other reasonable period allowed by the Board.

[14] The Small Business Advocate's consultant, Daymark Energy Advisors, recommended that the DDA should not include accelerated depreciation for the expected early retirement of assets. Instead, it said the undepreciated balances of prematurely retired generation assets should accumulate in the DDA when NS Power retires the assets. It noted that the Board should not allow costs normally expensed by NS Power in the DDA. Daymark also suggested NS Power should prove the eligibility of DDA investments during annual capital expenditure plan proceedings.

[15] The Consumer Advocate's consultant, Resource Insight Inc., agreed with NS Power that the use of regulatory assets, including deferral accounts and other similar accounting mechanisms, could address retirements and unusual investments. However, Resource Insight was concerned that almost any future capital costs could be associated with the transition to clean energy and eligible for inclusion in the proposed DDA. The consultant recommended that the Board reject NS Power's proposal to include costs associated with early retirements and uncollected decommissioning costs in the DDA. It said there was no compelling reason to develop entirely new accounting policies to amortize the costs associated with early retirements, although it did not object to the



Board considering revisions to existing policies to allow for the amortization of regulatory assets for more than five years. Resource Insight also recommended that NS Power establish a capital tracker deferral accounting mechanism (which could be called a DDA) for certain energy transition projects.

[16] Drazen Consulting Group, Inc., a consulting firm retained by the Industrial Group and Dalhousie University, said NS Power's proposed DDA was an open-ended approach to the costs that might be transferred to the account. It recommended that the Board reserve judgment on the DDA until the Board and ratepayer representatives could study potential effects.

[17] Power Advisory LLC, who appeared on behalf of the Nova Scotia Department of Natural Resources and Renewables (NRR), said the treatment of NS Power's prematurely retired thermal assets involved balancing rate impacts associated with accelerated depreciation and those associated with any strategy to mitigate short-term rate impacts. Power Advisory considered that the DDA could potentially be the best option for recovery of costs associated with the early retirement of thermal generation assets, but it could not confirm this from the information filed in the general rate application. Power Advisory considered that the other costs NS Power proposed to include in the DDA were business-as-usual costs that NS Power should be able to manage under its existing cost-of-service framework, so it recommended the Board exclude these costs from the proposed DDA.

[18] A settlement agreement between NS Power and representatives of all its major customer classes was filed with the Board in the general rate application. The settlement agreement addressed the proposed DDA and other aspects of NS Power's

general rate application. Regarding the DDA, the settlement agreement provided as follows:

The parties agree in principle to a DDA to recover undepreciated thermal asset NBV and unrecovered decommissioning costs and further agree to engage constructively in a consultative process to confirm the practice and procedures that will be followed to establish the DDA and its scope, to effect the transfer of unrecovered costs to a regulatory asset and to recover such costs. The consultative process will be undertaken and completed in such a manner that will result in NS Power providing a report to the Board with the results of the consultative process and seek approval of the DDA by June 30, 2023. For greater certainty, the Board's decision in 2012 NSUARB 133 with respect to the MEUs responsibility for the payment of stranded costs continues to apply and is not affected by this agreement in principle.

The parties also agree to discuss the potential for the application, approval, and implementation of the DDA, or similar mechanism, as it relates to "New Capital Assets" and "Incremental/Decremental OM&G" as those are described in Section 4.1 of NS Power's Rebuttal Evidence (i.e. energy transition investment and costs related thereto).

[M10431, Exhibit N-155, p. 9]

[19] For the reasons set out in its decision in that matter, the Board approved the DDA, in principle, for the recovery of the undepreciated net book value and decommissioning costs of the thermal assets NS Power will need to retire by 2030 to meet legislated energy transition requirements. The Board noted that formal approval was subject to a future proceeding after consultation with stakeholders:

[312] To be clear, the Board is not approving a formal DDA at this time. Instead, the Board will wait for a report submission by NS Power describing the results of the stakeholder consultative process. The Board will only consider approval of implementation of a DDA after submission of that report and a formal application for approval by NS Power.

[2023 NSUARB 12, p. 120]

[20] The Board went on to identify the following items it believed needed to be addressed in the contemplated consultative process:

- Assets to be included in the DDA;
- Timing of transfers to the DDA;
- Unrecovered plant balances at the time of transfer to the DDA;
- Rationale for selection of future amortization periods;
- Appropriate rate of return on the DDA;
- Potential use of securitization;
- Tracking of sustaining capital costs per plant until retirement;
- Continuity schedule per plant;
- Annual DDA reporting requirements; and

- Identification of expected and unrecovered decommissioning costs, as offset by COR and ARO.

[2023 NSUARB 12, p. 121]

[21] Before consulting with stakeholders, NS Power developed a “DDA Manual,” which it said addressed the issues identified by the Board. NS Power said the manual contains the policies and procedures it will follow when accounting for the unrecovered net book value and unrecovered decommissioning costs transferred to the DDA for future recovery, and any changes in the underlying estimates that support the calculations of amounts transferred to the DDA. It noted the manual also outlines reporting requirements associated with the administration of the DDA.

[22] NS Power gave the DDA Manual to stakeholders on April 27, 2023, and planned a technical conference for May 10, 2023. On May 9, 2023, NS Power gave stakeholders another version of the DDA Manual that it had revised based on comments from stakeholders that it asked for in advance of the technical conference. At the technical conference, NS Power reviewed the processes and procedures in the manual and responded to questions from stakeholders. It asked for and responded to comments following the technical conference.

[23] NS Power applied to the Board to approve the DDA, as set out in the DDA Manual, on June 30, 2023. The Board issued a Hearing Order, setting up procedures for this matter to allow intervenors to seek more information from NS Power and to file evidence and submissions. When it became clear that at least one intervenor intended to file evidence, the schedule for the proceeding was amended to allow for the filing of evidence and any rebuttal evidence before written submissions. The Hearing Order

contemplated the matter would proceed as a paper process but allowed for requests to convert the matter to an oral hearing. The Board did not receive any requests to do so.

[24] In addition to NS Power's application, the Board received written evidence from Power Advisory, on behalf of NRR, and Grant Thornton, on behalf of Board Counsel. Although the Small Business Advocate initially said he would not be filing evidence, the Board received evidence on his behalf from Daymark. The evidence was filed outside of the established timeline, but no objections were filed with the Board about this. NS Power also filed reply evidence.

[25] After evidence in this matter was filed with the Board, the Board received submissions from Port Hawkesbury Paper LP (PHP), NRR and the Industrial Group. These were followed by reply submissions from NS Power.

[26] Despite the canvassing of NS Power's initial proposal for a DDA in its recent general rate application, the consultation process undertaken by NS Power before filing an application in this proceeding, and the additional evidence and information request responses in this proceeding, it is apparent from the closing submissions that there is a lack of consensus about some aspects of the DDA put forward for approval. The Board addresses the areas of dispute below and provides directions on those points.

### **3.0 DISCUSSION AND ANALYSIS**

#### **3.1 Timing of Transfers to the DDA**

[27] NS Power proposes to start transferring the net book value of assets planned for retirement immediately, recording the initial transfer of unrecovered costs to the DDA as at the first year-end balance sheet date after the Board approves the DDA.

The unrecovered NBV of the assets would be transferred on an annual basis, with NS Power calculating the annual amount of the transfer on a straight-line basis to the estimated retirement date (accounting for any changes in estimates on a prospective basis, as explained below). The utility would also accrue its estimate of unrecovered decommissioning costs to the DDA (i.e., forecast decommissioning costs less cumulative accretion expense).

[28] Since the thermal assets are still in use, NS Power said it will continue investing in these assets to ensure their safe operation until they are no longer needed for energy and system capacity requirements. All capital investment would continue to be subject to Board approval. NS Power noted that the gross book value and the accumulated reserve associated with these assets will fluctuate over time, so it will capture changes to these balances within the calculation of the unrecovered net book value of the assets, performed on an annual basis.

[29] NS Power proposed to continue depreciating the thermal assets until their retirement date under NS Power's approved accounting policies. In effect, the difference between the approved depreciation expense (in current rates) and the accelerated depreciation which would otherwise occur based on a straight-line amortization to the accelerated retirement date, would be reflected in the DDA.

[30] Finally, according to NS Power's proposed methodology, as thermal generating assets are retired, any remaining unrecovered NBV included in the utility's plant in service will be transferred to the DDA. NS Power stated it will reduce the DDA regulatory asset in an amount equal to the depreciation expense of the retired assets at

approved depreciation rates, inclusive of net salvage rates, for retired assets in the DDA, classifying this expense as regulatory amortization within its financial statements.

[31] In response to NSUARB IR-1, NS Power explained how immediately starting the transfer of the annual amounts to the DDA would increase transparency:

The proposed approach of reclassifying a portion of the unrecovered costs to the DDA on an annual basis is more transparent as it shows the annual impact of the unrecovered costs that would otherwise be recovered through accelerated depreciation rates. As a result, users of NS Power's financial statements can see the annual impact of the decarbonization transition to the Company and its customers, as well as the cumulative impact of the transition over time based upon current expectations. Accumulating the cost of accelerated retirement of thermal assets could also be helpful for facilitating discussions for potential funding with Government. Finally, the proposed approach increases the flexibility of the DDA as amortization could potentially begin in advance of asset retirement.

[Exhibit N-7, NSUARB IR-1(a), p. 2]

[32] Grant Thornton noted that the reduced estimated useful life of the assets within the scope of the DDA will require accelerated depreciation expense under US GAAP, as well as the recognition of costs for asset retirement obligations (AROs). Grant Thornton concluded that "it is appropriate to recognize these accelerated amounts in a separate regulatory asset given they have not been factored into current customer rates, and the DDA accomplishes this through the processes outlined in the DDA Manual". Grant Thornton added that accelerated accrual of estimated decommissioning costs through accumulated depreciation is not required under US GAAP, but that NS Power's proposed approach of accruing the unrecognized decommissioning costs has no impact on net earnings or rate base and serves to include the total estimated costs in one account.

[33] Most intervenors submitted that any unrecovered NBV and estimated decommissioning costs should only be transferred to the DDA when the coal plants are retired, and related decommissioning costs incurred.

[34] In her evidence, Christine Runge of Power Advisory, stated that transfers to the DDA should only occur when an asset is retired:

88. Essentially, NSPI's proposal will move costs from one line of a spreadsheet to another but will not result in any changes that will impact the rate payers or shareholders in any way. ... For simplicity alone, under NSPI's proposal, it makes sense not to transfer any balance to the DDA prior to retirement and transfer the full balance associated with each asset in that asset's year of retirement when the final amount is known. The complexity of annual transfers, as proposed by NSPI is not necessary and does not result in any value add.

89. Further, retirement dates are not certain, as outlined by IR-6 from the Board showing the changes between the DDA manual and the IRP Evergreen Plan in the 2023 ACE. Changing retirements will create further complexity, ...

[Exhibit N-10, p. 26]

[35] On this latter point, NS Power confirmed in its response to CA IR-1 that if an asset retirement is forecast to extend past 2030, the unrecovered net book value transferred to the DDA would be reclassified to NS Power's Property, Plant & Equipment asset balance.

[36] The Industrial Group supported Ms. Runge's position, saying it was "unconvinced" about NS Power's claims of transparency and any benefit the DDA would provide in federal funding negotiations:

...As the DDA has been presented, it is simply moving accounting entries. NSPI has not contended that it is unable to present the cumulative costs to ratepayers based on its current accounting, or that a DDA where transfers are made at the time of retirement somehow impedes this presentation. One would expect that where NSPI is obliged to make all efforts to minimize costs for its ratepayers, including applying for grants and negotiating for federal support or funding, it would be able to muster the financial records to demonstrate ratepayer impacts – with or without a DDA and in whatever form a DDA takes. [Emphasis in original]

[IG Closing Submissions, p. 3]

[37] Likewise, PHP does not support transfers to the DDA before the actual retirement dates of the assets:

...To the contrary, the premature transfer of such assets risks creating significant confusion as asset balances (including annual sustaining capital investments) are potentially transferred in and out of the DDA each year as assumptions continue to evolve.

[PHP Closing Submissions, p. 2]

[38] As an example, PHP noted that while NS Power's DDA application filed June 30, 2023, referred to a 2028 forecast retirement date for Lingan Units 1, 3, and 4, the utility's response to PHP IR-1(c) confirmed its current intent to convert these units to heavy fuel oil (HFO) and utilize them after 2030 as capacity assets. NS Power added this was subject to change as it refines its approach to achieving the energy transition through the Evergreen Integrated Resource Plan (IRP) process.

### **3.1.1 Findings**

[39] Based on its review of the evidence and the submissions, the Board concludes that transfers to the DDA should only occur once the assets are actually retired. NS Power has not demonstrated that annual transfers to the DDA will enhance transparency to ratepayers or potential funding partners. Moreover, the Board finds that transferring annual estimates to the DDA, subject to later adjustments, is not administratively efficient.

[40] The Board accepts the submissions of NRR and the Industrial Group that annual transfers to the DDA simply amount to accounting entries which provide no material benefit to readers of the financial statements. There is no impact on NS Power's net earnings or rate base whether the amounts are transferred to the DDA annually or when the assets are retired. The transparency benefits raised by NS Power are not apparent to the Board. The methodology proposed by the utility merely transfers annual



amounts to the DDA, it does not clearly illustrate to the reader or observer what the global cost of coal plant retirements will be in 2030, which is the deadline when these must occur. Sustaining capital expenditures would continue on these assets. Also, as noted below in this decision, the decommissioning costs for the coal plant retirements are subject to change when more accurate estimates are prepared as the actual decommissioning work starts.

[41] Further, the annual transfers proposed by NS Power could well lead to confusion or uncertainty if the status of some coal plants is re-evaluated in the future. PHP identified one such example involving Lingan 1, 3 and 4. NS Power confirmed it had changed the application's forecast retirement date of 2028 for these units, and now plans on converting them to HFO and using them after 2030 as capacity assets. Similarly, NS Power extended the forecast retirement date for Trenton 5 to 2028 from September 2023, as originally forecast in the DDA application. The future accounting adjustments related to prior annual transfers to the DDA for these assets, and potentially others, would lead to confusion and uncertainty about the ultimate impact to the DDA and would not be administratively efficient, particularly as NS Power continues to refine its approach to the energy transition through the Evergreen IRP process.

[42] NS Power also stated that its proposed approach of annual transfers to the DDA increases the flexibility of this regulatory asset as amortization could potentially begin in advance of asset retirement. This assertion is speculative at this point. To date, there has been no meaningful discussion of the potential amortization of the DDA in the future and its impact on ratepayers, including the potential impact of securitization, or similar treatment like that proposed in the current FAM AA/BA Rider application

(M11393), as well as the appropriate rate of return that should apply to the DDA, as contemplated under s. 30(5)(b) of the *Public Utilities Act*. Further, the ultimate global balance of the DDA as of 2030 remains uncertain and is subject to adjustment as NS Power continues to evolve its Evergreen IRP action plan. Notwithstanding the above, should NS Power ever consider at any point that it would be appropriate to begin amortization of the unrecovered NBV of coal plant assets destined for retirement before or by 2030, it should not hesitate to bring the matter forward for the Board's review.

[43] Finally, the Board is not persuaded that annual transfers to the DDA will assist NS Power in presenting the impact of the energy transition, including the retirement of coal plants, to potential funding partners like the federal government. NS Power's proposed DDA treatment would only reflect annual transfers to the DDA up to the point of such funding discussions, rather than an anticipated global DDA amount as of 2030 when the retirement of the coal plants is to be complete. As noted above, the balance of the DDA at any point could be subject to adjustment based on changes by NS Power as its generating fleet of assets evolves through the Evergreen IRP process. Further, even if annual transfers to the DDA are not permitted at this point, NS Power should be able to reasonably project potential DDA balances as of 2030 or some other relevant date for the purposes of discussions with government funding partners. These are sophisticated parties that can reasonably assess projected DDA balances and the assumptions underlying them.

[44] The Board denies NS Power's request to make annual transfers to the DDA as proposed in its application. These transfers should occur when the assets are retired.

### 3.2 Decommissioning Cost Estimates

[45] In its report, Grant Thornton recommended that NS Power conduct a comprehensive update of the estimated decommissioning costs related to retiring the coal plants:

Given the potential for a large degree of variability in estimates of decommissioning costs, including the potential for significant cost overruns, we believe it to be prudent for more detailed and frequent studies of estimated decommissioning costs. We recommend the Board request a comprehensive update to estimated decommissioning costs for assets currently estimated to be in the scope of the DDA. This estimate should follow AACE [Association for the Advancement of Cost Engineering] guidelines and be at least a Level III estimate.

[Exhibit N-11, p. 5]

[46] Grant Thornton noted that NS Power's most recent analysis was a Power Production Sites Remediation Study Update prepared in September 2020 to support on-going depreciation studies. The purpose of this study was not to determine estimated decommissioning costs and was based on 2020 labour, equipment and material rates. Also, the cost estimates were AACE Class IV estimates, which are developed using mainly engineering and construction judgment to reach estimates of probable costs. Grant Thornton said this represents one of the largest cost uncertainties of the DDA, with the impact of inflation alone on the amounts estimated in the 2020 study being potentially significant.

[47] Grant Thornton added that comprehensive updates will allow for Board review and approval before the decommissioning costs are incurred and ensure NS Power has a robust capital cost estimating process in place to achieve the lowest cost option for customers.

[48] NS Power opposed this recommendation. While it acknowledged that decommissioning costs would need to be updated before decommissioning work orders

are approved by the Board, it said the forecast decommissioning costs in the 2020 Power Production Sites Remediation Study Update are still relevant since there has been no material change in the anticipated decommissioning work. The utility also stated that developing more accurate AACE Level III estimates would result in unnecessary incremental costs as such estimates would need to be prepared again before the decommissioning work could begin:

To avoid a duplication of effort and costs for customers, the appropriate time to develop Association for the Advancement of Cost Engineering (AACE) Level III estimates for decommissioning is in conjunction with the filing of a decommissioning work order. In addition, it may not be possible to complete a Level III estimate for a long-term plan such as future decommissioning in advance given that a Class III would require supplier proposals, which are difficult to obtain for long-term plans due to the inherent level of estimation required and are often less accurate as any cost estimate provided is sensitive to the time frame in which it relates. This could also create confusion in the market if NS Power were asking for quotes without awarding the work.

[Exhibit N-15, p. 5]

[49] In its closing submissions, PHP noted the uncertainty of future decommissioning costs as support for delaying the timing of transfers to the DDA until the actual retirement dates of the coal plants. PHP acknowledged that decommissioning cost estimates will not be fully developed under AACE Level III guidelines until coal unit retirements occur, and remain subject to change until then.

### 3.2.1 Findings

[50] NS Power did not accept Grant Thornton's recommendation that the utility conduct more detailed and frequent studies of the estimated decommissioning costs, using AACE Level III estimates.

[51] Grant Thornton observed that both *NS Power Accounting Policy 6320 – Asset Retirement Obligations* and *US GAAP Standard ASC 410 – Asset Retirement and*

*Environmental Obligations* are silent on how often estimates of asset retirement costs should be updated.

[52] The Board accepts NS Power's submissions that more detailed and frequent studies of the estimated decommissioning costs, using AACE Level III estimates, are not required at this time. In the Board's view, the requirement for such detailed studies is premature and would incur unnecessary costs since more detailed updates will be required in any event before decommissioning activities begin. Further, as noted earlier in this decision, forecast retirement dates set out in the present application for some assets have subsequently changed under NS Power's evolving Evergreen IRP action plan. Some of the plants have been identified for conversion to HFO and their retirement dates materially delayed.

[53] However, as outlined later in this decision, the Board will require some annual reporting on forecast decommissioning costs.

### **3.3 Costs Transferred to DDA**

[54] In Section 1(a)(i) of the DDA Manual, NS Power identified coal-fired assets and associated marine unloading and fuel delivery facilities which were forecast to be retired to meet legislative decarbonization mandates:

**Figure 1 – List of Assets to be included in the DDA**

<b>Unit/Plant</b>	<b>Forecast retirement date (End of)</b>
Lingan 1-2	2028
Lingan 3-4	2028
Lingan Common	2028
Point Aconi	2029
Trenton 5	September 2023
Tufts Cove 1	2025
Tufts Cove 2	2025
INP	2029
PTMT	2029
Steam General	2029

[55] NS Power noted that this list is subject to change with alterations to its approach to supply 80 percent of the energy to customers from renewable sources by 2030 and meet the goal of phasing out coal generation by 2030. Indeed, since the preparation of the DDA Manual, the information in Figure 1 has become stale, as noted in NS Power’s response to NSUARB IR-6 [Exhibit N-7]. Some units in Figure 1 will not be retired by 2030 because NS Power will convert them to use different fuel sources, such as HFO, or they will continue to be economic. Regardless, “only assets required to be retired to meet legislative decarbonization mandates, which include 80 per cent of energy provided to customers from renewable sources and phasing out coal by 2030, will be included in the DDA as currently proposed.”

[56] The costs relating to the assets that will be subject to the DDA will include the unrecovered net book value and unrecovered decommissioning costs. NS Power has also said it will include “plant-specific inventory” in its unrecovered costs upon retirement of a plant.

### 3.3.1 Review of Costs Transferred to the DDA

[57] Ms. Runge supports NS Power's recovery of its prudently incurred investments in its coal generation assets:

75. The no hindsight principle should always be applied in the assessment of the return of capital to a utility. If the investment was considered prudent at the time it was made with all reasonably available knowledge applied to that assessment, then the utility should not be at risk for the recovery of those costs.

76. The end goal of the regulatory compact is to be fair to both the utility and the rate payers, where one party has an obligation to serve and minimum reliability standards to uphold and the other is held captive given inelastic consumer demand and monopoly utility supply. Application of the no hindsight principle to return of capital is fair to both parties. The coal generation assets were built for rate payers. At the time they were built, they were considered to be prudent. Rate payers wanted access to cost-effective electricity, which was provided to them, and NSPI had an expectation that in exchange for building long-life assets to provide that electricity, it would recover those prudently invested costs over the life of the assets.

77. Consistent application of the no hindsight principle to the return of capital also benefits both parties over the long run. The utility benefits from certainty of cost recovery associated with investment choices that were considered prudent at the time they were made, with no risk that costs will later be removed from rate base due to changes in government policy or technological advancements that occur. At the same time, rate payers benefit as the result is significantly lower utility risk than the application of the used and useful principle to the return of capital, which allows for a lower ROE and potentially a lower cost of debt than would be the case under a policy focused on the used and useful test. In the long run, the application of a lower ROE to the totality of a utility's rate base can be more beneficial to rate payers than small costs that may otherwise be removed from rate base from time to time due to early retirements.

[Exhibit N-10, p. 23]

[58] She goes on to say that this only applies to costs determined to have been prudently incurred. It notes that not all costs incurred by NS Power are subject to an explicit prudence review when they are incurred and highlights the importance of such reviews to ensure that the utility is making only proper investments and not adding to its rate base to inappropriately increase its return:

79. The prudence test is an important part of the regulatory compact. Due to the fact that a utility is a natural monopoly provider of service, if the utility established its own pricing in the absence of a regulator, the utility would have the ability to charge rates that include significant rents as a result of its market power in the region and high consumer demand for its product. Regulatory proceedings that test the proposed investments of a utility allow for rates that are more reflective of competitive market pricing instead of this monopolistic pricing. Given that the ROE is established in a regulatory proceeding and that in the case of NSPI there is no ability to earn above the approved ROE by more than 0.25%, the means

by which NSPI increases its profitability is to invest in capital and increase its rate base. Accordingly, the utility has an incentive to over-invest in capital if it can get those costs approved and added to rate base. Continued testing of costs to ensure prudence of investments is, therefore, required in order to ensure just and reasonable rates.

[Exhibit N-10, p. 24]

[59] Ms. Runge recommends that NS Power be allowed to fully recover the unamortized balances associated with the early retirement of its coal assets where the Board has determined those costs to have been prudently incurred. However, she submitted that, before adding them to the DDA, the Board should evaluate the prudence of any costs NS Power proposes to transfer to the DDA that have not already been found by the Board to have been prudently incurred. Ms. Runge said NS Power should apply to the Board for this purpose when it wants to add such costs to the DDA.

[60] In its closing submissions, PHP noted that costs associated with Point Aconi, which s. 36 of the *Public Utilities Act* exempts from Board approval, are a material amount of the forecast DDA balance as of January 1, 2030. The Board notes that the *Energy Reform (2024) Act*, S.N.S. 2024, c. 2, which has not yet been proclaimed, would end this exemption.

[61] Although not focused specifically as a prudence review, John Athas and Melissa Whitten of Daymark Energy Advisors, Inc. also recommended that the Board predicate its approval of the DDA on the requirement that all costs recovered through the DDA must receive express approval by the Board. Daymark recommended that these costs be reviewed in the context of an annual capital expenditure (ACE) plan proceeding or a separate dedicated proceeding. Daymark added if done through an ACE plan proceeding, DDA costs should be individually reviewed and not limited to the same \$1 million threshold allowed for capital expense projects.



[62] In its reply evidence and its reply to closing submissions, NS Power submitted that the *Public Utilities Act* dictates its capital application processes. It said the statutory capital approval requirements, which currently only require Board approval for capital expenditures exceeding \$1,000,000, balance the need to approve material costs with the regulatory burden of these processes. It also said that once the Board has approved a capital filing and the asset is placed into rate base, a change in accounting treatment does not require a re-examination of the prudence of the investment. Regarding Point Aconi, NS Power said the creation of the DDA and a change in the accounting treatment of these costs should not give rise to a hindsight prudence review of the investments made over the 30-year history of this facility.

### **3.3.1.1 Findings**

[63] NS Power may only recover its reasonably and prudently incurred costs. This applies to all costs, whether they are capital or operating in nature. NS Power's costs are presumed to be prudent. However, its costs are subject to review and disallowance when questions are raised about them. The Board discussed these principles in its decision about NS Power's application for the approval of rates for 2005:

[88] The Board has reviewed the case law cited by the intervenors and NSPI on the question of the acceptable legal standard for a finding of imprudence. As SEB notes, s. 45(2) of the *Act* identifies that expenses which the Board may allow a utility to charge must be "... reasonable and prudent and properly chargeable ...". The Board agrees with Avon and SEB that, while expenses are generally presumed to be prudent, when questions are raised with respect to prudence, the burden falls to the utility to satisfy the regulator that its actions were prudent and reasonable.

[2005 NSUARB 27, pp. 45-46]

[64] General rate applications provide a forum for all parties to raise questions about any costs included in NS Power's proposed revenue requirement. This includes NS Power's proposed operating costs and the scope of its rate base, which influences

the return on capital and depreciation and amortization expenses included in its revenue requirement. NS Power filed its most recent general rate application in January 2022, which included proposed revenue requirements for the years 2022, 2023 and 2024.

[65] However, the Board must consider the prudence of certain capital expenditures before they are incurred. The *Public Utilities Act* obliges NS Power to secure the Board's approval before going ahead with capital work requiring an expenditure that exceeds a threshold amount set by the Legislature.

[66] The Board has previously noted that the reason for this is that capital expenditures form part of the utility's rate base and the utility is compensated through a return on rate base. The larger the rate base the larger the potential return. As such, it is in the public interest to oversee these expenditures, thereby regulating the amounts that may be included in rate base and the utility's return.

[67] A threshold for reviewing proposed capital expenditures has existed under the *Public Utilities Act* (or predecessor legislation) since at least 1943, when it was \$1,000. The threshold amount increased to \$5,000 in 1970, \$25,000 in 2001, \$250,000 in 2010 and \$1,000,000 in 2019 (for a large-scale utility like NS Power).

[68] The Board agrees with NS Power that in setting these various threshold amounts over time, the government has sought to balance the need to oversee these expenditures with regulatory efficiency and burden. This threshold marks the point at which NS Power must seek prior Board approval for capital expenditures; however, it does not remove capital expenditures below that amount from Board review. The basic principles relating to the recovery of only reasonably and prudently incurred costs still

apply. As noted above, this means these costs are presumed to be prudent unless a question is raised about them.

[69] There is nothing in the transfer of costs to the proposed DDA that, in and of itself, raises any questions about the prudence of those costs. The Board agrees with NS Power that the creation of the DDA and a change in the accounting treatment of those costs do not affect their presumed prudence. As a result, the Board finds that a mandatory review of the prudence of all costs transferred to the DDA that have not been previously included in an approval for capital work under the *Public Utilities Act* is inconsistent with the capital approval provisions in the statute.

[70] There is also nothing about the transfer of these costs to the DDA that would shield them from Board review should questions be raised about their prudence. In such a case, the basic principles discussed above would continue to apply and the burden would fall to NS Power to satisfy the Board that it prudently and reasonably incurred these costs.

[71] In its application, NS Power said it would seek approval of an amortization expense for the DDA through a regulatory rate process such as a general rate application or the establishment of a DDA-specific rider. Such proceedings may trigger a review of the costs to be recovered if there are circumstances that give rise to questions that rebut the presumption of prudence.

[72] Some parties expressed concerns about future sustaining capital and decommissioning costs. Costs of this nature may exceed the \$1,000,000 threshold, providing parties with an opportunity to question their legitimacy in future capital approval applications, before they are incurred. The Board expects these concerns will be

advanced and assessed in the context of the applications for these specific investments. To ensure that the Board's processes appropriately allow for such participation, particularly if the requested capital approval is not included in an approval requested in an ACE plan proceeding, the Board directs NS Power to provide specific notice to all participants in this proceeding upon filing any future capital work order applications involving assets that are forecasted to be included in the DDA and to confirm this was done in its applications to the Board.

[73] The Board also notes that NS Power said the Board may choose to review costs transferred to the DDA in any given year:

... The reporting requirements outlined in the DDA Manual are intended to provide all stakeholders with transparency around transfers to or from the DDA in any given year and the Board may choose to review any of these transfers.

[NS Power Reply to Closing Submissions, p. 5]

[74] Based on this, it is possible that circumstances may arise that make it appropriate to consider the prudence of costs transferred at that time. However, as noted above, the Board has found that making the transfer of costs to the DDA dependent on mandatory applications to determine their prudence (where this has not already been determined) is not consistent with the capital approval provisions in the *Public Utilities Act*. Likewise, NS Power should understand that the Board's acceptance of any DDA reports filed following the processes outlined in the proposed DDA Manual would also not constitute a finding that the costs included in the report were prudent.

[75] Finally, the costs relating to Point Aconi, mentioned in submissions filed in this proceeding, may call for different considerations from the principles discussed above because of the statutory requirement to include Point Aconi costs in NS Power's rate base and revenue requirement:

**Exemption and approval for N.S. Power Inc.**

36 (1) Notwithstanding anything contained in this Act or any enactment, this Act does not apply to new construction, improvements or betterments in, extensions or additions to, or conversions of the generation and transmission plant or like facilities of the Nova Scotia Power Incorporated.

(2) In an application by the Nova Scotia Power Incorporated to the Board for approval of rates, tolls and charges or in ascertaining and determining what are proper and adequate annual rates of depreciation of the Company's property, the Board shall include in its determination of the Company's rate base and revenue requirement the capital and operating costs of its generation and transmission plant or like facilities determined in accordance with generally accepted accounting principles.

(3) Subsections (1) and (2) apply only to the generation and transmission plant or like facilities of the Nova Scotia Power Incorporated to be constructed at or near Point Aconi in the County of Cape Breton for which an approval or permit has been received from the Department of the Environment prior to the sixteenth day of April, 1992.

[76] This issue does not require a resolution at this time. The Board does not consider that this issue was appropriately canvassed in the evidence or submissions in this matter. Furthermore, there are no facts or issues that make it a necessary issue for the Board to decide now and legislative changes are expected that may affect any analysis.

**3.3.2 Transfer of Inventory Exceeding \$1 Million**

[77] NS Power's proposed DDA Manual notes that, upon the retirement of a plant, NS Power will include plant-specific inventory in the final calculation for unrecovered costs associated with the plant to be transferred to the DDA if the inventory is no longer usable in any other NS Power plant or operation. In response to Industrial Group IR-10, NS Power said the scope of what may be included in the DDA includes any materials inventory but not fuel inventory expenses.

[78] Grant Thornton said it was unclear how these costs would receive Board approval or if they would be separately tracked in the reporting. It recommended that the Board approve any transfers of plant-specific inventory exceeding \$1 million (the limit

requiring approval for current capital spending). NS Power accepted this recommendation.

### **3.3.2.1 Findings**

[79] Given NS Power's acceptance of Grant Thornton's recommendation, it must not transfer inventory costs in excess of \$1 million to the DDA without specific Board approval.

## **3.4 Recovery of DDA Balances**

[80] In its evidence, Grant Thornton stated:

We recommend that the Board request an analysis of the various options to address the DDA balance including 1) deferral with recovery using original depreciation rates for the asset or origin, 2) potential impacts of securitization, 3) accelerated depreciation, and 4) reduced ROE scenarios during the period of uncertainty. This analysis should include the estimated total cost to rate payers as well as the short-term and long-term potential impact to rates.

[Exhibit N-11, p. 9]

[81] The Industrial Group, NRR, and PHP all supported requesting this analysis.

[82] NS Power did not agree with the suggestion to undertake this analysis now. It stated that there is currently too much uncertainty surrounding the level of funding, value of the balances transferred into the DDA, and other factors, such as the cost of capital, to yield meaningful results.

[83] The Board agrees with NS Power that, given the current level of uncertainty surrounding the future balance of the DDA, undertaking this analysis now would not provide meaningful results. However, the Board does provide direction to NS Power on some of these issues as discussed below.

### **3.4.1 Accelerated Depreciation on Certain Assets**

[84] NS Power has proposed that existing depreciation rates continue to be used for thermal assets that will be transferred to the DDA. Upon retirement of these assets, the depreciation expense currently in rates will then be directed to amortization of the DDA regulatory asset, until such time that a DDA amortization period and rate is set by the Board. Therefore, under NS Power's proposed approach, there will be no immediate rate impacts until the DDA amortization period is set.

[85] However, Ms. Runge has suggested that the Board should take a different approach. She argued that the Board must consider the rate design principles of intergenerational inequity and avoidance of rate shock in determining the amortization rates of these assets before and after their respective retirement dates. To address intergenerational inequity concerns, Ms. Runge stated that the Board could accelerate depreciation of NS Power's thermal assets before the assets are retired or after they are transferred to the DDA. She recognized, however, that this must be balanced with considerations of rate shock, customer affordability concerns and increasing rate impacts associated with developing new generation assets to replace the retiring thermal assets.

[86] In this context, Ms. Runge noted that NS Power's retirement plans for its thermal assets have changed materially from the time the DDA Manual was produced to the time of the Evergreen IRP reflected in the 2023 ACE Plan. With this change, she indicated that there has been a significant reduction in the list of assets to be retired before 2030. As a result, the balance of costs associated with coal generation assets that are retiring early has also been significantly reduced. Ms. Runge therefore recommended that the Board explore the ability to update the depreciation rates of the coal generation assets planned to retire before 2030 in order to accelerate depreciation while the assets remain

used and useful. Specifically, she recommended that the Board determine a minimum level of annual rate increase that can be borne by customers. Then, in any year where rates would otherwise increase by less than this minimum amount based on all other regulatory approvals, she recommended that NS Power modify its depreciation rates on its coal generation assets immediately to increase collection of costs while the assets are still in service.

[87] Ms. Runge also recommended that the same methodology be applied to the DDA. In any year where rates would otherwise increase by less than the minimum amount determined by the Board, she recommended rates be increased to the established minimum with the additional revenue used to pay down the balance of the DDA. She stated that establishing a minimum rate increase formula now will ensure acceleration of DDA payments, when possible, after required significant capital investments to address the energy transition are added to rate base. She further recommended that the DDA be amortized over a period as short as possible, while avoiding rate increases that would be considered rate shock, in order to minimize the total cost burden to ratepayers and address intergenerational inequity concerns.

[88] In its closing submission, NRR submitted that the Board approve Ms. Runge's recommendations. In particular, NRR recommended that NS Power be directed to correct the amortization of assets to reflect the known timelines on their expected useful life. Further, NRR referenced the response of Ms. Runge to the Industrial Group's IR-4. In that response, Ms. Runge noted that outstanding undepreciated balances for Trenton 5, the International Coal Pier, and Steam General Plant are relatively small. As such, NRR, consistent with the recommendation of Ms. Runge, submitted that NS Power



update the depreciation rates for these assets to reflect full cost recovery by the end of 2029. NRR suggested that this should have minimal impact on ratepayers. This approach would also remove all three of these assets from consideration for transfer to the DDA.

[89] In its reply evidence, NS Power agreed with Ms. Runge that the amortization period and the amount of cost recovered in a given period should balance both customer affordability and the requirement to recover these balances in a timely manner. NS Power also stated that Ms. Runge's recommendation for the Board to determine a level of annual rate increase borne by customers is a possible mechanism to ensure that regulatory amortization of the DDA is recovered in customer rates in a timely manner. However, the Company noted:

NS Power is not proposing an amortization period as part of this proceeding, as these assets remain used and useful. Any additional regulatory amortization of the DDA balance included in customer rates, either before or after the retirement of the assets, would need to be considered in the context of a General Rate Application or a specific rate rider. As such, NS Power is unable to immediately increase depreciation rates on assets included in the DDA, as Power Advisory appears to suggest.

[Exhibit N-15, p. 17]

[90] With regard to accelerating the depreciation of thermal assets (including Trenton 5, the International Coal Pier, and Steam General Plant) prior to retirement, NS Power noted that this would result in an increase in the Company's revenue requirement and must be considered as part of a GRA or other rate-setting proceeding. The Company stated that increasing the depreciation expense without a corresponding increase in customer rates would not afford NS Power the opportunity to recover its operating expenses. This could then result in a decrease in the Company's return on equity and a possible downgrade from credit rating agencies, with negative impacts in terms of availability and cost of capital for NS Power and its customers. Finally, the Company noted that increasing customer rates to recover accelerated depreciation for

these assets by their estimated retirement dates adds rate pressure for customers, which contradicts the benefits of the DDA.

#### **3.4.1.1 Findings**

[91] As correctly noted by Ms. Runge, the Board has flexibility to adjust depreciation associated with NS Power's thermal assets in order to find a balance between avoiding rate shock and paying off undepreciated balances of assets that are no longer used and useful in order to avoid intergenerational inequity issues. This includes the flexibility to adjust the depreciation of the coal generation assets while they continue to be in service and accelerate the amortization of the DDA balances after the retirement of each asset. The Board notes that proceeding in this fashion potentially has some advantages, including reducing any future DDA balance. This would likely allow for a shorter amortization period of the DDA than would have otherwise been possible and could lower overall financing costs associated with the DDA.

[92] However, the DDA amortization period and rates are not being determined in the current proceeding. These will be established by the Board in a GRA proceeding or in another matter as directed by the Board. As such, the Board finds it premature at this point to consider accelerated amortization of DDA balances after retirement of NS Power's coal generation assets. Similarly, the Board agrees with NS Power that consideration of accelerated depreciation of these assets in advance of retirement must be done in a GRA proceeding. Failure to do so would not allow the Company to recover the associated costs of accelerated depreciation in rates.

[93] Therefore, at this time, the Board does not direct NS Power to accelerate depreciation of coal generation assets currently in-service or to accelerate amortization

of any of these retired assets that will be transferred to the DDA. Instead, the Board directs NS Power to continue using existing depreciation rates for these assets until its next GRA proceeding. At that time, the issue of accelerated depreciation of these assets can be explored further by parties. Further, should any of these assets be transferred to the DDA prior to NS Power's next GRA application, these assets are to be amortized at current depreciation rates until such time that a DDA amortization period and rate is set by the Board.

[94] The direction noted in the preceding paragraph applies to all NS Power's coal generating assets, including Trenton 5, the International Coal Pier, and Steam General Plant. However, given the relatively small undepreciated balances of the Trenton 5, International Coal Pier, and Steam General Plant assets, the Board does see some potential merit in accelerating depreciation of these assets so that they are fully depreciated upon retirement. Therefore, while not directing accelerated depreciation of these assets at this time, the Board directs NS Power to include these assets in its upcoming depreciation study.

### **3.4.2 Carrying Costs on DDA Balances**

[95] In its decision on NS Power's 2022-2024 GRA, the Board identified the topic of an appropriate rate of return on the DDA in the list of items for consultation with interested parties. NS Power noted in its application that the issue was raised by NRR and PHP, and that it intends to apply for the recovery of carrying costs at its weighted average cost of capital.

[96] NS Power's position is that, as a cost-of-service utility, it should have the opportunity to recover carrying costs at its actual cost of financing, which is its weighted

average cost of capital. NS Power stated that the existing thermal assets are currently financed at its weighted average cost of capital, and that transferring these costs to the DDA should not alter that fact. However, NS Power stated that it will evaluate any opportunities to reduce financing costs of the DDA in the future, in consultation with stakeholders. NS Power believes it is currently too early to consider any such options.

[97] In her evidence, Ms. Runge noted that the *Public Utilities Act* provides discretion to the Board in determining rate of return and “clearly allows the Board to establish different levels of approved ROE for different assets”. Ms. Runge highlighted the difference between coal assets that will no longer be used and useful in providing service to customers, and NS Power’s other assets remaining in use. She noted that there have been instances, such as the retirement of legacy meters, where the Board has determined that NS Power could not earn a return on equity on those assets that were no longer used and useful. Ms. Runge also identified some examples from other jurisdictions.

[98] Ms. Runge goes on to conclude that “there is space to make a decision regarding the return on capital that results in a lower ROE without causing detrimental impacts on access to capital” and recommends that the return on equity on the DDA be reduced to a level between NS Power’s approved return on equity and its cost of debt.

[99] In its closing submission, the Industrial Group stated:

While the appropriate ROE is not a matter to be determined in this proceeding, the Industrial Group states that one of the driving factors to settle an agreement in principle regarding a limited scope DDA was not simply to allow NSPI to smooth rates and earn its full return, but the opportunity to explore a lower rate of return thereby reducing costs to ratepayers, through securitization or otherwise.

[Industrial Group Closing Submission, p. 3]

[100] Daymark stated it had no concern with NS Power’s proposal to earn a return, but said that the return on equity should be determined in a general rate

application. NRR supported Ms. Runge's recommendation to set return on equity on the DDA lower than NS Power's approved return on equity and stated:

In the circumstances of transitioning to a sustainable energy, NS Power must invest in new assets that should have been planned for years ago. Shareholders will receive ROE on these new investments to offset a reasonable reduction in ROE on assets which must be retired early and will no longer benefit ratepayers.

[NRR Submissions, p. 4]

[101] PHP was not opposed to NS Power's request to set a rate of return at a future time but noted NS Power's apparent reluctance to explore alternative rates of return.

#### **3.4.2.1 Findings**

[102] The Board agrees that rate of return on the DDA should be set in a general rate application. The Board also notes that, as outlined in section 64AB(3) of the *Public Utilities Act*, interest on regulatory deferrals is calculated at the Bank of Canada policy interest rate plus one and three-quarters per cent, unless otherwise directed by the Board. In the 2022-2024 GRA, the Board stated that it was premature to consider interest on the DDA at that time, and that the Board's decision regarding a rate of interest on any balance would take into account the circumstances at the time of a future application. Therefore, by default, the Bank of Canada policy interest rate plus one and three-quarters per cent is the rate that will apply to the DDA, unless otherwise directed by the Board in a future proceeding.

#### **3.4.3 Securitization**

[103] In paragraph 314 of its 2022-2024 GRA Decision (M10431), the Board identified a number of issues that were to be addressed by NS Power in a stakeholder consultation process, including the potential use of securitization:

Notwithstanding the Board's approval of the DDA in principle to recover costs associated with early retirement of thermal capital assets, the Board agrees with the Industrial Group and Dalhousie University that all matters surrounding the DDA remain open for discussion with stakeholders, including the future possibility of securitization as an alternative to financing at WACC. As such, the Board believes it would be useful at this stage to identify some of the items it believes need to be addressed through a DDA stakeholder consultative process. These issues include, but are not limited to:

...

- Potential use of securitization:... [Emphasis added]

[NS Power 2022-2024 GRA Decision, para. 314]

[104] In its DDA application, NS Power indicated that:

The potential use of securitization was discussed at the technical conference and by NRR and PHP in their comments. NS Power is not putting forward securitization as the method to recover the costs included in the DDA at this time, but the implementation of the DDA does not preclude and may facilitate securitization in the future. As discussed during the GRA hearing, it is premature to consider securitization without the necessary legislative and corporate finance requirements being addressed first. NS Power remains committed to the most cost-effective avenue of recovery for customers, and if securitization becomes an option which is more advantageous than the flexibility inherent in the DDA, that will be explored fully at the appropriate time.

[Exhibit N-1, p. 11]

[105] Among the reasons outlined by NS Power to defer an investigation of securitization, the utility identified:

- Securitization is a complex process, including trust indenture and debt covenant-related issues;
- Certainty is required about the total accumulated balance of the DDA before securitization is considered;
- Securitization would remove the flexibility provided by the DDA to manage rate impacts of the accelerated retirement of coal assets;
- The impact of securitization on the utility's capital structure must be considered;
- The requirement for enabling legislation;

- Credit rating agency treatment and income tax treatment of the amounts to be securitized; and
- Certainty about the interest rate environment and other matters at the time of the asset retirement.

[106] In its report, Grant Thornton noted that despite the various issues involved with securitization, NS Power has deferred any investigation of these issues:

However, when asked about any inquiries made or research conducted regarding the above requirements, NSPI explained that they continue to focus on *“obtaining federal funding before pursuing any discussions with Provincial or Federal policymakers with respect to securitization”*. They have also not yet conducted a study on the topic of securitization. Therefore, to date there has been no consultation to address the requirements necessary for making an informed decision regarding securitization. Despite the absence of research and inquiry surrounding securitization, NSPI believes that securitization is likely to have unintended consequences. [Emphasis in original]

[Exhibit N-11, pp. 7-8]

[107] Grant Thornton recommended that “the Board request an analysis of the various options to address the DDA balance”, including the potential impacts of securitization, and other options reviewed earlier in this decision such as accelerated depreciation and reduced return on equity scenarios. Grant Thornton recognized that the current information available to NS Power is subject to significant uncertainty, but that “performing an illustrative analysis based on the information available is an important part of transparent rate making”.

[108] The Industrial Group also noted NS Power’s delay in addressing the securitization issues:

NSPI has not seriously engaged on the option of securitization as a method to recover costs included in the DDA beyond reiterating that it is “premature” and a “complex process”. Despite the Board’s direction to assess the “potential use of securitization”, in large part, NSPI has resisted this. It has taken no specific steps to investigate opportunities or other options to reduce financing costs in the DDA nor have any reports, studies or analyses been prepared to date by NSPI. There have been no studies or recommendations made to its Board of Directors with respect to the option of securitization. In fact, NSPI has not conducted any form of economic analysis to assess the cost or benefit of securitization

compared to financing the DDA at WACC, does not intend to do so and reiterated that securitization is not its preferred mechanism.

[IG Closing Submissions, p. 4]

[109] PHP also noted NS Power's delay on this issue:

As noted in its initial May 24, 2023 comments following the technical conference, PHP understood that the stakeholder consultation process ordered in the Board's February 2, 2023 decision was intended to provide an opportunity for full and active consideration of alternative financing options for the DDA, including securitization. Consideration of such alternatives is critical, as this has the potential to reduce the carrying costs of the significant amount of unrecovered costs expected to be transferred to the DDA, to the benefit of all ratepayers.

Based on NSPI's presentation and responses in the technical conference, PHP understood NSPI's position to be that (1) the appropriate rate of return on the DDA is NSPI's WACC, and (2) securitization is something that can and should only be considered at some undetermined point in the future after the DDA is approved. NSPI's responses to Information Requests and its Reply Evidence in this matter confirm that NSPI has taken no active steps to examine or consider any alternatives to financing of the DDA other than at WACC.

[PHP Closing Submissions, p. 4]

[110] In its closing submissions, NRR agreed with Grant Thornton that NS Power should be directed to conduct such an analysis, which should be accomplished promptly given the intervenors' clear interest in this information.

#### **3.4.3.1 Findings**

[111] The Board agrees that NS Power has been non-responsive on this issue and endorses the intervenors' comments. NS Power did not substantively comply with the Board's prior direction to consult its stakeholders on the potential use of securitization. It has maintained its position that securitization should not be canvassed at this time. While securitization is a complex issue, that is not a reason to delay an analysis of its advantages and disadvantages, and to consider the options and prerequisites for its implementation as a regulatory tool to address the rate impacts of the accelerated retirement of coal plants.



[112] The Board sees no reason to further defer such an analysis. Absolute certainty about the final balance of the DDA is not required before these issues are investigated. There may be benefits to securitization that could mitigate the rate impacts on customers from the energy transition. Further, in response to PHP IR-5, NS Power confirmed that the use of securitization could improve the utility's credit metrics.

[113] The Board also notes that the *Energy Reform (2024) Act*, received Royal Assent on April 5, 2024, but is not yet in force. This statute authorizes the Nova Scotia Energy Board to approve an application for a financing order, subject to any regulations that may be made by the Governor in Council.

[114] Accordingly, the Board directs NS Power to initiate a meaningful investigation of the potential use of securitization as it relates to the DDA. NS Power's first report on this issue is to be filed with its first annual DDA filing, due no later than April 30, 2025.

### **3.5 Reporting Requirements**

[115] As noted above, the process contemplated under the DDA Manual is to ultimately transfer the unrecovered NBV of coal plants and decommissioning costs to the DDA. The Board concluded in this decision that annual transfers into the DDA were not approved, but that the transfers would only occur when the assets are retired.

[116] NS Power proposed that transfers into the DDA would be reported as part of its annual filing of its regulated financial statements, which are filed by April 15 of each year. The Small Business Advocate submitted that transfers should be reported in the ACE Plan proceedings or in a separate dedicated proceeding.

[117] NS Power's proposed reporting requirements are set out in Section IV of the DDA Manual. The DDA Manual outlines that the annual reporting will include a continuity schedule for each unit or plant for the year along with supporting calculations for unrecovered NBV and forecast unrecovered decommissioning costs transferred to the DDA. The format and content of the reports are set out in Appendices A to C of the DDA Manual.

[118] Based on its review, Grant Thornton agreed with the reporting requirements outlined in Section IV of the DDA Manual, submitting that the Board will have ample opportunity through the current approval process to obtain sufficient detail and determine any items which warrant further review, including any unexpected changes to unrecovered NBV of the assets or forecast decommissioning costs.

### **3.5.1 Findings**

[119] The Board finds that any reporting about the DDA should not occur as part of NS Power's annual filing of its regulated financial statements or the ACE Plan proceeding. The Board considers that the issues to be considered in DDA filings are sufficiently distinct to warrant separate dedicated proceedings. Notwithstanding that the proposed annual transfers will not occur as originally contemplated, the Board still requires annual reporting from NS Power as outlined in the DDA Manual, as amended in this decision, including on the following points:

- An update on the forecast unrecovered NBV at the expected retirement date and forecast unrecovered decommissioning costs of assets within the scope of the DDA;

- A continuity schedule for each unit or plant for the year along with supporting calculations, including the details about any sustaining capital costs for each unit or plant;
- In the case of assets that were retired in the prior year under review, the supporting calculations for the transfer to the DDA in that year;
- An update on changes to the forecast retirement dates for any of the coal plants or other infrastructure within the scope of the DDA;
- Whether any of the coal plants or other infrastructure currently projected to be within the scope of the DDA are expected to fall outside the scope of the DDA;
- An update on when NS Power expects to apply to the Board to amortize all or a part of the DDA; and
- An update on the results of NS Power's review in the prior year about the potential use of securitization.

[120] The Board directs that NS Power shall file annual reports, beginning April 30, 2025.

### **3.6 Depreciation Study**

[121] In accordance with the Board's decision in Matter M10431, NS Power's 2022-2024 GRA, NS Power must file a depreciation study before its next GRA. In its current DDA application, NS Power noted that a depreciation study that includes the Company's thermal assets would effectively require the acceleration of depreciation of these assets in a manner sufficient to recover the unrecovered costs over the expected remaining useful life of the assets. NS Power believes that the accelerated depreciation

expense required to recover these costs over this period would introduce significant rate increases for customers in the near term. The Company also noted that it continues to seek funding from the federal government for some of its decarbonization costs. Therefore, increasing the depreciation expense to recover the costs over the expected remaining useful life of the assets would not allow for consideration of any federal funding that may be received. NS Power stated that this would result in incorporating the costs into customer rates without a full understanding of the amount to be recovered from customers.

[122] In its DDA application, NS Power proposed that the thermal assets identified in Section I(a) of its DDA Manual be excluded from the Company's next depreciation study. All other assets not included in the scope of the DDA would be considered within the Company's upcoming depreciation study. In its evidence, Grant Thornton stated that it believes this to be a reasonable approach.

[123] In response to NSUARB IR-6, NS Power noted that the costs, expected retirement dates, and assets within the scope of the DDA are expected to change as NS Power revises its approach to meet decarbonization requirements. As such, the Company confirmed that thermal assets with forecast retirement dates beyond 2030 will be included in NS Power's upcoming depreciation study.

### **3.6.1 Findings**

[124] Subject to the Board's direction in Section 3.4.1.1 of this decision related to depreciation of the Trenton 5, International Coal Pier, and Steam General Plant assets, the Board agrees with NS Power's proposed approach for its upcoming depreciation study.

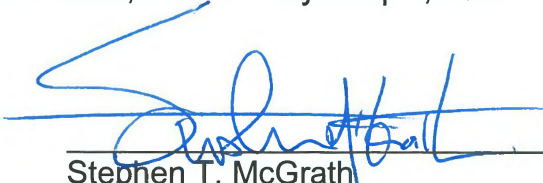
#### 4.0 CONCLUSION AND COMPLIANCE FILING

[125] The Board approves the DDA and the DDA Manual, subject to the Board's findings in this decision. The Board has concluded that additions to the DDA should occur once the assets are retired and unrecovered decommissioning costs are incurred. NS Power is required to file annual DDA reports.

[126] NS Power is to file a compliance filing reflecting the changes to the DDA Manual consistent with the Board's findings in this decision. NS Power's compliance filing is to be filed no later than three weeks after the date of this decision. Intervenors will have two weeks from the date that NS Power files its compliance filing to provide submissions to the Board. NS Power may file a reply within one week from the date the intervenors file submissions.

[127] An Order will issue after the compliance filing.

**DATED** at Halifax, Nova Scotia, this 10<sup>th</sup> day of April, 2024.



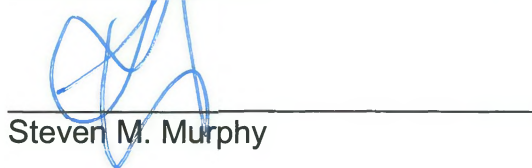
---

Stephen T. McGrath



---

Roland A. Deveau



---

Steven M. Murphy