

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF the PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF AN APPLICATION by the **TOWN OF ANTIGONISH**, on behalf of its **Electric Utility**, the **BERWICK ELECTRIC COMMISSION**, the **TOWN OF MAHONE BAY**, on behalf of its **Electric Utility**, and the **RIVERPORT ELECTRIC LIGHT COMMISSION** for approval to amend the approved flow-through formulas in their Schedule of Rates for Electric Supply and Services

BEFORE: Stephen T. McGrath, K.C., Chair
Jennifer L. Nicholson, CPA, CA, Member
Bruce H. Fisher, MPA, CPA, CMA, Member

APPLICANTS: **TOWN OF ANTIGONISH (ELECTRIC UTILITY)**
TOWN OF MAHONE BAY (ELECTRIC UTILITY)
RIVERPORT ELECTRIC LIGHT COMMISSION
BERWICK ELECTRIC COMMISSION
James MacDuff, Counsel

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

HEARING DATE(S): November 20, 2024

FINAL SUBMISSIONS: November 25, 2024

DECISION DATE: **December 5, 2024**

DECISION: The application is approved, subject to some changes to the proposed tariff language. Flow-through applications must be filed at least every two years and a true-up mechanism must be established.

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1.0 INTRODUCTION

[1] The Town of Antigonish, on behalf of its electric utility, the Berwick Electric Commission, the Town of Mahone Bay, on behalf of its electric utility, and the Riverport Electric Light Commission, (collectively known as the Municipal Electric Utilities or the MEUs) applied to the Nova Scotia Utility and Review Board on September 19, 2024, to amend the approved flow-through mechanisms in their Schedule of Rates for Electric Supply and Services. The existing mechanisms allow them to pass-through changes to their customers in the Board-approved rates Nova Scotia Power Incorporated charges the MEUs based on pre-approved formulas, without the need for a public hearing.

[2] These current mechanisms were originally approved by the Board in 2006 with some modifications over time. Since then, the MEUs have become participants in the wholesale market that was created by the *Electricity Act*, S.N.S. 2004, c. 25. Although this legislation came into force in 2007, the MEUs' activity in the wholesale market increased in 2017 with the execution of power purchase agreements for wind energy to supply about 40% of their requirements. This additional energy resource reduced the MEUs reliance on energy supplied to them by NS Power under its Board-approved Municipal Tariff. Between 2020 and 2022, the MEUs switched to an alternate supplier and did not take service under NS Power's Municipal Tariff at all.

[3] In recent general rate applications brought by the MEUs, the Board expressed concern about the appropriateness of continuing with the current flow-through formulas. More recently, applications by a couple of the MEUs for flow-through adjustments could not be implemented without a public hearing because the existing approved formulas were unworkable (primarily because of the two-year gap in taking service under NS Power's Municipal Tariff).

[4] This application is to update and amend the MEUs' flow-through formula mechanisms to ensure that they can appropriately provide for increased costs for power purchases, demand side management (DSM), and NS Power's fuel adjustment mechanism (FAM) on a timely basis and without the necessity of a public hearing.

[5] The Board approves the proposed amendments included in Exhibits M-8 and M-9 in this proceeding, subject to certain other changes noted in this decision to be confirmed in a compliance filing. Applications for flow-through adjustments must be made at least every two years and include, at a minimum, the information discussed in this decision. Additionally, the flow-through mechanism must include a true up component, and the MEUs are directed to file proposed details for this component, to satisfy the requirements set out in this decision, for the Board's review and approval by June 30, 2025.

2.0 BACKGROUND

[6] The MEUs each operate electric utilities in the vicinity of the Towns of Antigonish, Berwick, Mahone Bay, and Riverport, Lower LaHave, Rose Bay, and Kingsburg areas. The MEUs buy most of the electricity they supply to their customers from other parties, such as NS Power. They also buy energy from the Alternative Resource Energy Authority (AREA), which operates a wind farm in Ellershouse, Nova Scotia. AREA is an intermunicipal corporation that is owned by the Town of Antigonish, the Town of Berwick and the Town of Mahone Bay.

[7] Historically, the MEUs obtained most of their energy from NS Power, under its Board-approved Municipal Tariff. In 2006, the Board approved "flow-through"

mechanisms to allow them to apply to the Board for rate increases because of rate increases granted to NS Power. These were based on formulas that were set in each of the utility's tariffs that could be used to calculate rate changes based on readily available data. Because the formulas were approved in a public hearing and were intended to be a straightforward calculation, flow-through applications were allowed without the necessity of a public hearing. In 2010, these mechanisms were amended to allow for the recovery of DSM and FAM charges from NS Power.

[8] The *Electricity Act* was proclaimed in force on February 1, 2007. One of the objectives of this statute was the establishment of a limited electricity market for wholesale competition in Nova Scotia. Section 3 states:

3 (1) Effective on the date prescribed in the regulations and, for greater certainty, notwithstanding Section 303 of the *Municipal Government Act*, wholesale customers may purchase electricity from any competitive supplier.

(2) Nova Scotia Power Incorporated shall develop and file with the Board for approval an open access transmission tariff to enable the purchase of electricity for the purpose of subsection (1) and, for greater certainty, Section 77 of the *Public Utilities Act* does not apply.

(3) The tariff referred to in subsection (2) must ensure open and non-discriminatory access to wholesale customers.

(4) Nova Scotia Power Incorporated shall develop and maintain a system to facilitate the import and export of electricity from the Province for the purpose of this Section.

(5) The Board has all the power and authority necessary to implement this Section.

[9] Although the text of the definition has changed over time, wholesale customers in Nova Scotia have been limited to NS Power and municipal electric utilities since the legislation was enacted. However, recent amendments to the *Electricity Act*, although not yet in force, extend the requirement for open and non-discriminatory access to the open access transmission tariff to other market participants.

[10] In June 2008, at the request of the Province of Nova Scotia and the municipal electric utilities, NS Power initiated a proceeding to approve backup, top-up and spill services to support the municipal electric utilities' participation in a wholesale market. In its decision approving the tariffs for these services [2009 NSUARB 1], the Board noted that, at least in the early days of the development of the wholesale market, the municipal electric utilities required backstopping arrangements to facilitate their ability to transfer to another supplier and, at the same time, ensure reliable service for their customers.

[11] In 2015, the MEUs entered an arrangement to source a portion of their electric energy supply from the Ellershouse Wind Farm (Ellershouse), which (as of 2021) supplied approximately 40% of these utilities' requirements. Each of the MEUs have two long-term Power Purchase Agreements (PPAs) with AREA, one dated January 1, 2017 for the first two phases of Ellershouse, and one dated April 1, 2017 for the third phase of Ellershouse. For a period beginning in 2020 and ending in 2022, the MEUs sourced their required electric energy supply beyond what was supplied from Ellershouse by way of imports over NS Power's interconnection with New Brunswick. The MEUs did not take service under NS Power's Municipal Tariff during this period.

[12] More recently, utility scale solar projects were developed in the Towns of Antigonish, Berwick and Mahone Bay. These projects are intended to supply MEU customers in those areas.

[13] Between 2022 and 2024, each of the MEUs applied for and received general rate increases. In most cases, it had been some time since the last general rate application and, notwithstanding some flow-through adjustments in the intervening

period, the requested rate increases were significant. The Riverport Electric Light Commission was granted an average rate increase of approximately 28% (which was directed to be phased in over two years) (M10810), the Town of Mahone Bay Electric Utility was granted an average rate increase of approximately 30% (phased in over two years) (M10832), the Berwick Electric Commission received an increase of approximately 17% (M11199) and the Town of Antigonish, approximately 8% (M11441). Changes in purchased power costs, including power purchased from NS Power, contributed significantly to these increases.

[14] In each of these cases, the Board expressed concern about whether the MEUs' existing flow-through applications continued to fit their purpose, given the increased complexity of their supply arrangements since these mechanisms were implemented in 2006. The Board encouraged the MEUs to consider this in consultation with each other. These concerns were borne out when, in the context of flow-through applications filed with the Board in late 2023 and early 2024 by the Town of Mahone Bay and the Berwick Electric Commission, it became apparent that their existing flow-through formulas were unworkable in the circumstances and could not be implemented without amendment. This delayed the Board's ability to approve the requested increases.

[15] In the present matter, the MEUs are collectively bringing forward an application to update and amend their flow-through formula mechanisms to ensure that they can appropriately provide for increased power purchase, DSM, and FAM costs on a timely basis and without the necessity of a public hearing. Board Counsel Consultants, Bates White Economic Consulting, filed evidence with the Board and suggested several clarifications and improvements it considered would benefit the proposed flow through

mechanism. The application and Bates White's recommendations are addressed in this decision.

3.0 DISCUSSION AND ANALYSIS

3.1 A Flow-through Mechanism is Reasonable and Should be Approved

[16] Under the existing flow-through mechanisms, energy and demand charges are increased by the same percentage factor. The mechanisms for the four MEUs are similar, but not identical.

[17] Until recently, the existing flow-through mechanisms have worked well, allowing a simplified method for the MEUs to adjust their rates in response to changes in the cost of power purchased from NS Power. The mechanisms have been clear and transparent and allowed the Board to quickly approve changes in electricity tariffs without a costly general rate application.

[18] However, the provision of electricity by the MEUs has become more complex since the existing mechanisms were created. The Board noted this in its decision on the 2022 general rate application for the Town of Mahone Bay:

[157] Finally, the Board recognizes that TOMBEU's purchased power arrangements have become more complex than when the existing flow-through mechanisms in its tariffs were originally developed. When NS Power was TOMBEU's only supplier, the flow-through mechanisms provided an efficient means for TOMBEU to flow-through cost increases to its customers. In a more complex arrangement, where NS Power is only providing part of TOMBEU's supply, it is possible that increasing costs for the purchase of energy from NS Power may be offset by decreases from other suppliers. In such a case, the flowing through of cost increases from NS Power may not be appropriate.

[158] The Board directs TOMBEU, in its next [general rate application], to address whether, considering the recent complexity of its purchased power arrangements, the existing flow-through mechanisms should continue. As part of this, TOMBEU may wish to consider, on its own or in consultation with one or more other municipal electric utilities, whether another mechanism should be developed to facilitate a timely and fair recovery of purchased power costs. A purchased power adjustment mechanism that would only pass along actual purchased power costs to TOMBEU's customers could be such a mechanism,

although it would necessarily entail robust tracking and auditing processes that would place an increased administrative burden on the utility.

[2023 NSUARB 66, para. 157-158]

[19] The Board made similar comments in its most recent decisions in the general rate applications for the other MEUs and encouraged them to work together on a revised flow-through formula. In its decision in the Antigonish general rate application, the Board further noted that:

There was a discussion with the panel where it was noted that the current flow-through mechanism is applied to both the base and usage charges. As such, it was the flow-through mechanism that pushed the base charge for domestic customers to the current \$16.95, and before that to \$16.09. Both of these amounts are above the \$12.74 calculated in the rate study. The flow-through mechanism as is, may continue to push the base charge higher than calculated under a cost of service methodology.

[2024 NSUARB 79, para. 141]

[20] In the current application, the MEUs noted that due to the Ellershouse Wind Project, and the community solar projects underway, they now have alternative sources to NS Power, but cannot pass-through increases from these or other third-party sources without a full general rate application. They stated, “it is now the appropriate time to consider the development of a mechanism to facilitate and ensure timely recovery of purchased power costs in addition to NS Power increases under the Municipal Tariff.”

[21] In response to information requests from Board staff, the MEUs submitted proposed tariff language and sample calculations for the flow-through mechanism that would be submitted at the option of each MEU. The calculations in the mechanism would take the difference between the existing rates for purchased power and the expected rates for power in the upcoming test year. The difference in the two rates would be applied to the expected volume of electricity (kWh) for the upcoming test year. This calculation would be done for each source of purchased power, yielding the estimated total cost increase for power. That expected total cost increase would be divided into total energy

sales to get an increase per kWh. That increase would be added to the tariff for each rate class, producing revised energy rates. There would be no change to the base charge. Self-generation would not be eligible for the flow-through.

[22] At a hearing held for oral arguments, the Board expressed two concerns about the specifics of the flow-through mechanism. First, the mechanism considered only the change in rates from the existing tariff to the tariff in the test year. It ignored any changes in the mix of electricity coming from each energy source. A change in the mix of energy from a higher cost source to a lower cost source would offset some of any rate increase but was excluded from the calculations. Likewise, the reverse change (from lower cost to higher cost power) would potentially add additional cost on top of any rate increase.

[23] Secondly, the Board noted that the formula produces an incremental energy rate (per kWh). Applying the same energy rate increase to all rate classes means some would have a higher percentage increase than others. This may alter their relationship to the cost of service, especially over time.

[24] In response the MEUs filed a revised formula that included “consideration of the impact of the load and generation mix assumptions used in setting existing rates, as well as for the Test Year”. The formula also applied a percentage “increase to existing rates, as opposed to a cents/kWh increase”.

3.1.1 Findings

[25] The Board has carefully considered the proposed flow-through mechanism. The Board agrees that the concept of a flow-through mechanism is reasonable. The general rate application establishes the cost-of-service model and the appropriate rates

for each class. Embedded in that general rate application are the load forecasts for the utility, and the required energy and corresponding tariffs for each energy source. Hence the general rate application includes an implicit weighted average cost of power per kWh. The flow-through mechanism does not change any of the cost-of-service assumptions or relationships made in a general rate application. It simply updates the weighted average cost of power per kWh to a more current amount. This allows a utility to update its rates in a prudent manner without undertaking a full general rate application.

[26] In reviewing the specific formula revisions in the tariff proposed by the MEUs, the Board finds that they address the concerns raised by the Board. The formulas appear to accurately reflect potential increased costs and savings. The use of a percentage change, as opposed to a cost per kWh, more closely aligns with the cost-of-service approach used in a general rate application. The Board finds that these changes provide for a more robust flow-through mechanism without adding significant complexity or administrative burden. The Board expects that future flow-through rates can be quickly calculated by the utility, and that Board confirmation and approval of those amounts should become a routine function.

[27] In approving the revised flow-through mechanism, the Board directs the MEUs to incorporate the following changes to the tariff language in a compliance filing:

- (1) where the wording reflects “increases” it should also accommodate potential decreases; and
- (2) the percentage change produced by the formula should be applied to the demand and energy usage charge only (the base charge should not be affected). While the MEUs may consider other wording, it may be possible to

achieve this objective by excluding revenue generated from the base charges in the test year revenue projections when calculating the needed percentage increase in the final step.

[28] While the Board is prepared to approve the flow-through mechanism, it cautions that the flow-through approach does not fully replace the need for future general rate applications. Over time the economics of energy sales and costs can be expected to change. It is likely that, with or without a flow-through mechanism, allocated costs may become outdated and need revisions. Aside from the fact that not all costs are adjusted through this mechanism, its application over time may itself distort the revenue to cost ratio for each class set in the last general rate application. The Board encourages the MEUs to be mindful of these changes and to not delay future general rate applications should they become necessary.

3.2 Flow-through Applications Should be Filed Biennially (And Not be Limited to When the Utilities Feel an Increase is Needed)

[29] The MEUs currently file annual financial statements with the Board. When requesting a flow-through of NS Power changes to rates, each utility applies to the Board on an ad hoc basis for approval without the requirement for a general rate application. Bates White assumed that the proposed amended mechanism would be an annual filing and recommended that the following information be included in each filing:

- 1) The information and format of the data provided (and contemplated) by the MEUs in Exhibit M-3 (viii) and since revised in Exhibit M-10.
- 2) The most recent projection of sales, losses, production, and purchases used to develop the calculation (as contemplated in Exhibit M-3 (viii) and since revised in

Exhibit M-10), clearly showing the calculation and impact of any price escalation associated with an existing power purchase agreement.

- 3) Supporting pages from existing power purchase agreements that call for annual escalation to allow the Board to verify the escalation calculations applied by the MEUs.
- 4) Any new power purchase agreements, amendments, and extensions to allow the Board to review not only the rates, but also the products, terms, and conditions of any new power purchase arrangements.
- 5) Evidence of any market canvassing for alternative sources of supply, including any RFP materials, evaluations, and offers from potential counterparties, as well as support for the selected ownership structure if the project is owned by the municipalities.

[30] The MEUs responded to Bates White's filing requirements in their rebuttal evidence, agreeing to much of what was suggested, but disagreeing about the need for market-based evidence:

Bates White lists various items that could be included in the MEUs' future applications at pages 17-18. The MEUs are in agreement with providing the information and format of the data provided in response to NSUARB IR-9 Attachment 1, along with their most recent projection of sales, losses, production, and purchases used to develop the calculation. The MEUs also agree to provide the existing power purchase agreements (to the extent not already filed with the Board), along with any new power purchase agreements, amendments, and extensions, so that the Board can review not only the rates, but also the products, terms, and conditions of any new power purchase arrangements.

As noted above, the MEUs disagree with the requirement to file additional evidence of market canvassing for alternative sources of supply as part of standard flow-through applications. To the extent the MEUs seek recovery of costs associated with any new power purchase agreement that is higher than the costs of purchasing from NS Power, that issue can be addressed by the Board at the time based on the specific circumstances.

[Exhibit M-7, pp. 4-5]

3.2.1 Findings

[31] Given the indication that the MEUs alternative supply options are likely to include an annual price escalation and the Board's direction that the flow-through mechanism will need to include a true-up components, the Board does not believe that the flow-through mechanism should be applied entirely at the discretion of the MEUs if they determine that they need a rate increase. The Board finds that a regular filing cadence should be established.

[32] Mindful of the concerns about administrative burden that the MEUs have expressed, the Board directs each MEU to file a flow-through application no later than November 1st every two years. This cycle should start in 2025, and any flow-through application filed by an MEU before November 1, 2025, will be considered to be the first application under the new mechanism (with the next required no later than November 1, 2027). Each of these applications must include a true-up adjustment, with the first of these occurring in the application to be filed in 2027. The Board will confirm the next mandatory filing date in each order it issues under the new mechanism.

[33] Since price changes may occur suddenly, and outside of the cycle described above, an MEU may, at their discretion, apply for an off-cycle flow-through adjustment at any time. An MEU need not undertake a true-up adjustment in an off-cycle application but may do so. However, an off-cycle flow-through application in a year when a regular biennial filing is required will not satisfy the requirement for that filing if a true-up adjustment is not included.

[34] As for the filing requirements in each application, they must include the information recommended by Bates White in items 1-4 above (including the pages from previously filed power purchase agreements that call for annual escalation to allow the

Board to verify the escalation calculations applied by the MEUs even if they have been previously filed). Regarding item 5, while the Board will not direct precise filing requirements at this time, the onus will be on the MEUs to demonstrate that its costs are prudently incurred and, in all respects, just and reasonable. Insufficient information will affect the Board's ability to assess these issues on a timely basis.

3.3 A True-up Mechanism is Appropriate and Necessary

[35] Bates White recommended that the proposed flow-through mechanism should "true-up" or reconcile cost recovery differences between forecasted costs for the test year and actual cost recovery. It noted that commonplace variances in load, generation (particularly from intermittent renewable energy facilities under contract), purchased power costs and energy resources could, in certain circumstances, lead to material under- or over-recovery in actual costs.

[36] The MEUs confirmed in response to information requests from Board staff that they were not requesting a true-up mechanism:

...the MEUs are not proposing a true-up mechanism, which would add a significant layer of administrative complexity that is not appropriate for utilities of their size and resources. Such a true-up would be inconsistent with the Test Year treatment of costs in a General Rate Application. The intent of the proposal in this application is to provide an efficient way to allow the MEUs to flow-through purchased power costs in a similar manner as has been the case for purchased power costs from NS Power since the flow-through mechanisms were approved in 2006. The proposed mechanism is intended to be an administratively straightforward process to allow purchased power costs to be updated outside of a General Rate Application. The Board's review will ensure that only those costs found to be reasonable and prudent would be flowed through for recovery from customers.

[Exhibit M-3, IR-8(b)]

[37] Bates White considered this response in its evidence. It noted the Board's review would not change the likelihood that actual results would differ from forecasts. Further, Bates White said it was not apparent that administering a true-up mechanism would be unduly burdensome, given that it was reasonable to expect that the MEUs were

already tracking revenues and actual costs, which would make up a substantial portion of such a mechanism. Bates White noted there may be ways to reduce the burden of the mechanism while retaining the benefits, such as by using materiality thresholds.

[38] Regarding the MEUs' concerns about the appropriate level of complexity for utilities of their size and resources, Bates White agreed this was an important consideration but noted the nature of their activities requires a sufficient level of capacity and resources:

That said, it is also important to recognize that the MEUs' purchased power activities and ambitions are markedly increased and more complex than was the case at the outset of the purchased power pass-through rate mechanism in 2006. Then, the pass-through mechanism addressed NSPI rate adjustments only. Today, Ellershouse can provide 40 percent or more of the MEUs' generation with community solar projects commencing operations to supply more of the MEUs' needs. Moreover, the MEUs have previously pursued arrangements whereby 100 percent of its supply would come from competitive, non-NSPI sources, as supplemented by BUTU service. The administrative requirements of planning, procuring, and negotiating these arrangements for purchased power are non-trivial and require the MEUs to have sufficient capability and resources to execute. [footnote omitted]

[Exhibit M-5, p. 19]

[39] Bates White went on to emphasize that municipal ownership in entities with which the MEUs might contract for power increases the need for regulatory review in these situations. Such arrangements might provide benefits to the municipalities that could create incentives for the selection of these arrangements instead of third-party options.

[40] In their rebuttal evidence, the MEUs reiterated their view that the proposed true-up mechanism would be inconsistent with the test year treatment of costs in a general rate application, noting that the flow-through mechanisms that have been in place since 2006 did not include one. They also reiterated their concern about "adding an additional layer of complexity for utilities of their size and resources." However, if the Board

considered that a true-up mechanism was warranted, they proposed the following language:

In considering an application for a flow-through of power purchase increases under this section, the Board shall compare the projection of sales, losses, production, and purchases used in the most recent prior flow-through application with actual results for the prior Test Year. If the comparison results in a variance of greater than 3 percent as compared to the cents per kWh rate applicable to customers, the Board shall make an additional go-forward adjustment to account for that variance.

[Exhibit M-7, p. 2]

3.3.1 Findings

[41] True-up mechanisms are not unusual. NS Power's fuel adjustment mechanism, demand side management cost recovery rider and storm cost recovery riders are examples in this jurisdiction alone. Furthermore, while a true-up mechanism may be inconsistent with the test year treatment of costs in a general rate application, the same could be said for the flow-through mechanism requested by the MEUs, which changes costs between general rate applications. The Board must be cautious about allowing for the recovery of additional costs between general rate applications, recognizing concerns around single-issue ratemaking and the possibility that an increase in test year costs in between general rate applications in some areas may be offset by decreases in other areas. However, other ratemaking and regulatory principles can warrant doing so in appropriate circumstances.

[42] In this case, the Board finds that the implementation of a true-up component as a condition to the approval of a flow-through mechanism as requested by the MEUs is an appropriate and reasonable requirement. The MEUs are not operating the same way they did in 2006. Back then, all the electricity they purchased came from NS Power under its Municipal Tariff. Now the MEUs are wholesale market participants with other supply options. For years, only part of their load has been served under the Municipal Tariff. For

a period, none of it was. In 2006, the forecast variance risk associated with the flow-through mechanism was largely limited to variations in load from year to year. It did not include the risk relating to potential variances due to changes in supply resource mix, production and costs that currently exists.

[43] The Board agrees with the MEUs and Bates White that it is important to consider the administrative burden on the MEUs. But it is unreasonable for the MEUs to expect that the same level of oversight considered appropriate in 2006 would be appropriate today, given “that the MEUs’ purchased power activities and ambitions are markedly increased and more complex than was the case at the outset of the purchased power pass-through rate mechanism in 2006.” Furthermore, as the MEUs are regulated monopolies in their service territories, the interests of ratepayers also need to be considered. The MEUs’ customers pay rates that are comparable to those charged by NS Power, and many face the same affordability issues and concerns. As noted previously, most of the MEUs received significant increases in their most recent general rate applications. Ratepayers are entitled to service that is safe and reliable, at rates that are just and reasonable.

[44] In the circumstances, the Board finds a true-up mechanism fairly balances the risk of forecasting variances in what are increasingly complex resource arrangements by the MEUs. It will help to ensure that material differences between forecasts and actual results do not negatively impact ratepayers and the utilities. An ongoing true-up mechanism should also help mitigate situations where, if there have been sudden increases in purchased power costs, a utility would ultimately be made whole for any

under-recoveries during the time required to properly prepare and apply to the Board for a rate adjustment, and for the application to be appropriately assessed.

[45] While the administration of a true-up mechanism would require more effort than if it did not exist, the Board agrees with Bates White that the MEUs should already be tracking the data needed to implement a true-up mechanism as part of their normal operations; therefore, this should not be unduly burdensome. In some respects, its existence will reduce the complexity associated with the administration of other aspects of the flow-through mechanism. This was noted by Bates White in the following statement in its evidence, with which the Board agrees:

... Absent a true-up, additional information would likely be needed to allow the Board to determine the reasonableness of the MEUs' requests. Such information would include not only the results of the MEUs' load forecast, but the details of the forecasts themselves, including assumptions, inputs, and methodologies. The same would apply to generation forecasts, which would require assumptions (such as meteorological conditions), inputs (such as maintenance and outage schedules), and methodologies. The MEUs would also likely have to provide additional information about the mix of expected generation resources and their relative share of each MEU's demand. This additional level of due diligence would be warranted if the under- or over collections were not to be reconciled with ratepayers.

[Exhibit M-5, p. 18]

[46] The Board is not able to approve the true-up language that the MEUs proposed in their rebuttal evidence if the Board determined, as it does, that a true-up mechanism is required. It is too general and needs more detail. The Board directs the MEUs to develop a mechanism and tariff language for the required true-up mechanism that meets the following objectives:

- The mechanism must account for variances from forecasts associated with load, the amount of purchased power, purchase power costs, revenues and the resource supply mix.

- The mechanism must be applied at least every two years, during a regularly required application for an adjustment to rates under the flow-through mechanism. A utility may apply the true-up mechanism in any off-cycle application for a flow-through adjustment to rates but need not do so.
- The mechanism must address any mismatches associated with the timing of a flow-through application and the period during which actual costs are being reconciled (e.g., the actual data in the current period for an application filed on November 1 for rates effective January 1 in the next period may only be available to the end of September).

[47] The details of an appropriate true-up mechanism do not need to delay the finalization of the flow-through mechanism. This decision contemplates that it may be a couple of years before the true-up mechanism might be applied. That said, there is the potential it would be needed sooner. As such, as a second phase of this proceeding, the Board directs the MEUs to file a proposed mechanism and tariff language for the true-up mechanism described above no later than June 30, 2025.

3.4 Filing and Notice Requirements for Annual Applications

[48] Two Letters of Comment were received from concerned customers of the Town of Mahone Bay Electric Utility. The letters were virtually identical and requested that the current flow-through process be discontinued and that public meetings be held to approve any rate increase:

I am requesting that the NSUARB discontinue the current flow through arrangement and instead require the [Town of Mahone Bay Electric Utility] to convene a well-communicated public meeting for all proposed electricity rate increases. This communication must include distribution of written correspondence, using current billing addresses and the billing process to all Mahone Bay Electric Utility customers detailing the financial requirements and circumstances that would require any future requests for electrical rate increases, including a complete business case analysis. This would provide a much-needed level of

transparency for utility customers and allow them to be better informed about any future rate increases before they appear on monthly billing statements.

[Exhibit M-7, p. 5]

[49] In their rebuttal evidence, none of the MEUs objected to providing written notice of flow-through applications directly to customers in bill inserts to improve transparency.

3.4.1 Findings

[50] The Board directs the MEUs to provide written notification of a proposed flow-through application directly to customers.

3.5 Prudence Reviews for New Supply Arrangements

[51] As noted earlier in this decision, the MEU's power purchase arrangements have become increasingly diverse, requiring changes to the flow-through mechanism. One of these changes is to allow for new power purchase agreements for additional sources of purchased power, if and when they become available, and it is prudent to do so.

[52] In its evidence, the MEUs provided a quote from the Board's decision in the Berwick Electric Commission's general rate application [2023 NSUARB 207] which stated:

[109] ... To the extent that any future mechanism that might be proposed by BEC includes costs other than those tied specifically to NS Power's Board approved rates, the mechanism would likely need to include a process to ensure that only prudently incurred costs are passed along to the utility's customers. [Emphasis added]

[Exhibit M-2, p. 3]

[53] The current application also referenced testimony from the Riverport Electric Light Commission general rate application, where the concept of prudence for third-party electricity supply was discussed. On behalf of AREA, Mr. Long stated:

... our interpretation is there's various levels of prudence. If NSPI rates have been deemed to be prudent and the electric utilities can do better than that, I think automatically that would be the best determination of prudence. ... I'm not sure the value of a further test if rates from Nova Scotia Power's municipal tariff are determined to be prudent."

[Exhibit M-2, p. 6]

[54] In response to Board Staff IR-4, the MEUs confirmed their position that if the energy costs less under a power purchase agreement than NS Power's Municipal tariff, it will always be reasonable and prudent. In Board Staff IR-2, they noted that there may also be circumstances where purchased power costs that are higher than the NS Power Municipal rate may be prudent. The MEUs noted that this could be based on criteria such as net present value over the time of an agreement or additional renewable content. The MEUs also noted that Section 6(2) of the introduced *Energy and Regulatory Boards Act* provides examples of what the Board may consider when determining the prudence of including costs for a power purchase agreement in the flow-through mechanism.

[55] The MEUs proposed that any new source of purchased power and any power purchase agreement that the Board has not previously reviewed, be reviewed to ensure that only prudently incurred costs are flowed through to the utilities' customers. Further, in the Tariff language filed in response to Board Staff IR-6, the MEUs propose that if there is a new source of purchased power or an amendment to a power purchase agreement in a given test year, the Board may grant the flow-through requested following a review of the filed information or the Board may order an expedited public hearing to review the new information, before approving the flow-through.

[56] In its evidence, Bates White noted that the MEUs proposed test of prudence for new power purchase agreements should be enhanced by adopting a more stringent standard than whether the cost of the power purchase agreement is below the NS Power

Municipal rate. Bates White understood that the MEUs are proposing that the more detailed analysis, such as net present value or renewable attributes, apply only when purchased power prices exceed the NS Power Municipal Tariff.

[57] Although Bates White agrees that the MEUs' proposed test is administratively easy, it felt that it is insufficient as it does not account for differences between the products delivered by NS Power or under a power purchase agreement, among other things.

[58] In its evidence, Bates White stated the following regarding the shortcomings of the prudence test as proposed by the MEUs:

Consider an energy-only, as-available power purchase agreement from a renewable resource. The product received by the MEUs would be energy from the resource, when available. Ancillary services would not be included, and in all likelihood a utility would need to contract for backup service to ensure reliability for customers if the resource does not provide energy as scheduled. This is the case for the existing Ellershouse power purchase agreements, which explicitly acknowledge that ancillary services are not included in the product provided and requires the Back-Up/Top-Up Service ("BUTU") from NSPI for the full contract energy amount to ensure reliable supply. Municipal Tariff purchases, on the other hand, are a full service, round-the-clock product. As such, it would be expected that a full service product – like the Municipal Tariff service from NSPI – would have a higher per unit cost than an energy-only, as-available renewable power purchase agreement.

Other key considerations missing from the MEUs' proposed test are the terms and conditions of the power purchase agreements. While price is likely the primary factor in reviewing the reasonableness of a power purchase arrangement, other terms and conditions are also important in determining the risk of a power purchase agreement. This would include factors such as availability guarantees for the renewable facility, allocation of other costs (BUTU, taxes, interconnection), ownership of renewable attributes from the facility, insurance requirements, force majeure clauses, and credit requirements, among others. The prudence test as proposed does not appear to allow for review of these terms to determine whether the full power purchase agreement – including both costs and risks – are reasonable.

Additionally, the prudence test focuses only on a single alternative, the NSPI Municipal Tariff rate. To be clear, the Municipal Tariff rate is a relevant comparator (subject to the discussion above) but should not be the only comparator. The proposed prudence test does not account for the MEUs' efforts to find alternative sources of supply. As the MEUs point out, the Ellershouse project was selected via a request for proposals ("RFP") process. The RFP process and results would be relevant information in supporting the prudence of a new resource. However, it is not clear that the MEUs would file such supporting material in seeking Board approval of new power purchase arrangements.

[Exhibit M-5, pp. 15-16]

[59] Bates White offered five things the MEUs could do to enhance the proposed prudence test:

1. Include the full cost of the purchase power agreement, including any additional costs associated with energy, such as the BUTU and transmission tariff services.
2. Include a comparison of the products and services under the power purchase agreement to those provided under the NS Power Municipal Tariff.
3. Include a risk assessment of the terms and conditions of the power purchase agreement or file the agreement in full, to allow the Board to review and make an assessment.
4. Include evidence of any market canvassing for alternative sources of supply, such as request for proposal material, evaluation and offers from market participants.
5. Provide the ownership structure for any new purchase power providers or resources and explain why such a structure was pursued over alternative ownership, such as utility-owned and operated.

[60] In their rebuttal evidence, the MEUs noted that they are concerned that an approach such as the one suggested by Bates White could expose the MEUs to additional risk and uncertainty that would dissuade their participation in the market. The MEUs further stated:

NS Power's rates, including the Municipal Tariff, are approved by the Board as just and reasonable in Nova Scotia. The MEUs have operated on the understanding that taking service under the Board-approved Municipal Tariff would be found to be a reasonable and prudent approach with respect to its costs of purchased power. For this reason, the MEUs continue to believe that alternative wholesale market arrangements that can be achieved at or below the cost of purchasing from NS Power should likewise be deemed to be prudent.

[Exhibit M-7, p. 3]

[61] The MEUs agreed that a comparison of alternative sources of purchased power should include the full cost of the power purchase agreement but contend that the NS Power fuel adjustment mechanism costs should also be considered, along with the characteristics of the purchased power, such as renewable attributes.

3.5.1 Findings

[62] When considering the inclusion of costs in a flow-through application for any new power purchase agreements or amendments to existing power purchase agreements, the Board may require more time to assess the prudence and reasonableness of the proposed costs than might generally be expected in a typical flow-through application. The revised language in the proposed tariffs contemplates that the Board might grant a flow-through application in such circumstances, but reserve for later consideration whether the proposed costs are prudent and reasonable. Should the later review determine that costs need to be adjusted, the Board has the ability to do so.

[63] In some respects, this process is similar to the assessment of costs under NS Power's fuel adjustment mechanism. Notwithstanding annual fuel adjustments, all costs are reviewed in periodic audits and adjustments and disallowances may be made. The Board finds that a similar approach for implementing flow-through adjustments provides a reasonable balance to ensure timely approval and that the Board has enough time for a more formal review of included costs when warranted.

[64] As there is nothing before the Board in this application that would trigger any sort of prudence review, the Board agrees with the MEUs that issues relating to prudence do not need to be decided in this proceeding. That said, the Board notes that it does not necessarily agree that any power purchase agreement that costs ratepayers the same or less than the NS Power Municipal Tariff should automatically be considered prudent. As noted by Bates White, that approach does not consider the ancillary services provided by NS Power, such as a Backup and Top-up power, among other things. The Board also agrees that a power purchase agreement with rates exceeding the NS Power Municipal Tariff may be prudent, depending on the circumstances.

[65] Future assessments of the costs related to new or amended power purchase agreements may require several factors to be considered. The cost relative to NS Power's Municipal Tariff may be one factor, as may the ownership structure of power purchase providers. Additionally, after April 1, 2025, the Nova Scotia Energy Board will be required to give appropriate consideration to a number of factors in making such decisions:

6 (2) In approving or fixing rates, tolls, charges, tariffs, capital applications and all other matters over which the Energy Board has authority, the Board shall give appropriate consideration to the extent to which such rates, tolls, charges, tariffs, capital applications or other matters

(a) support competition and innovation in the provision of energy resources in the Province;

(b) support the development of a competitive electricity market;

(c) ensure the provision of safe, secure, reliable and economical energy supply in the Province;

(d) support sustainable development and sustainable prosperity; and

(e) support such other factors as prescribed by the regulations,

with the goal of approving rates, tolls, charges, tariffs, capital applications or other matters that are consistent with the purpose of this Act, the *More Access to Energy Act* and the regulations.

[*Energy and Regulatory Boards Tribunal Act*, S.N.S. 2024, c. 2, Schedule A, s. 6(2)]

4.0 SUMMARY OF BOARD FINDINGS

[66] The Board approves the proposed flow-through mechanism, filed in Exhibits M-8 and M-9 in this proceeding, but directs the MEUs to incorporate the following changes to the tariff language in a compliance filing:

- (1) where the wording reflects "increases" it should also accommodate potential decreases; and

- (2) the percentage change produced by the formula should be applied to the demand and energy usage charge only (the base charge should not be affected). While the MEUs may consider other wording, it may be possible to achieve this objective by excluding revenue generated from the base charges in the test year revenue projections when calculating the needed percentage increase in the final step.

[67] A true-up component must be included in the mechanism, but the details for this can be determined in a second phase of this proceeding. The Board directs the MEUs to develop a mechanism and tariff language for the required true-up mechanism that meets the following objectives:

- (1) The mechanism must account for variances associated with changes from forecasts associated with load, the amount of purchased power, purchase power costs, revenues and the resource supply mix.
- (2) The mechanism must be applied at least every two years, during a regularly required application for an adjustment to rates under the flow-through mechanism. A utility may apply the true-up mechanism in any off-cycle application for a flow-through adjustment to rates but need not do so.
- (3) The mechanism must address any mismatches associated with the timing of a flow-through application and the period during which actual costs are being reconciled (e.g., the actual data in the current period for an application filed on November 1st for rates effective January 1st in the next period may only be available to the end of September).

[68] The Board directs the MEUs to file their proposed mechanism and tariff language for the true-up mechanism described above no later than June 30, 2025.

[69] The Board directs each MEU to file a flow-through application no later than every two years by November 1st of that year. This cycle should start in 2025, and any flow-through application filed by an MEU before November 1, 2025, will be considered to be the first application under the new mechanism (with the next required no later than November 1, 2027). Each of these applications will include a true-up adjustment, with the first of these occurring in the application to be filed in 2027. The Board will confirm the next mandatory filing date in each order it issues under the new mechanism.

[70] Since purchased power price changes may occur suddenly, and outside of the cycle described above, an MEU may, at its discretion, apply for an off-cycle flow-through adjustment at any time. An MEU need not undertake a true-up adjustment in an off-cycle application but may do so. However, an “off-cycle” flow-through application in a year when a regular biennial filing is required would not be considered to satisfy that requirement for that filing if a true-up adjustment is not included.

[71] Flow-through applications should include, at a minimum, all of the following information:

- 1) The information and format of the data provided (and contemplated) by the MEUs in Exhibit M-10.
- 2) The most recent projection of sales, losses, production, and purchases used to develop the calculation (as contemplated in Exhibit M-10), clearly showing the calculation and impact of any price escalation associated with an existing power purchase agreement.

- 3) Supporting pages from existing power purchase agreements that call for annual escalation to allow the Board to verify the escalation calculations applied by the MEUs.
- 4) Any new power purchase agreements, amendments, and extensions to allow the Board to review not only the rates, but also the products, terms, and conditions of any new power purchase arrangements.


[72] The Board directs the MEUs to provide written notification of a proposed flow-through application directly to customers.

[73] An Order will issue following a satisfactory review of the compliance filing, which should be filed with the Board no later than December 19, 2024.

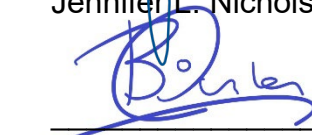
DATED at Halifax, Nova Scotia, this 5th day of December, 2024.



Stephen T. McGrath



Jennifer L. Nicholson



Bruce H. Fisher