SUPPLEMENTAL DECISION **2013 NSUARB 242**
M05419

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MARITIME LINK ACT

- and -

IN THE MATTER OF AN APPLICATION by **NSP MARITIME LINK INCORPORATED** for approval of the Maritime Link Project

BEFORE: Peter W. Gurnham, Q.C., Chair
Roland A. Deveau, Q.C., Vice-Chair

APPLICANT: **NSP MARITIME LINK INCORPORATED**
James H. Smellie, LL.B.
René Gallant, LL.B.

INTERVENORS: **PATRICK J. BATES**
on his own behalf

CONSUMER ADVOCATE
John P. Merrick, Q.C.
William L. Mahody, LL.B.

INDUSTRIAL GROUP
Nancy Rubin, Q.C.
Maggie Stewart, LL.B.

LOWER POWER RATES ALLIANCE OF NOVA SCOTIA
Craig McDonald

NOVA SCOTIA POWER INCORPORATED
David Landrigan, LL.B.
Nicole Godbout, LL.B.

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Chris d'Entremont, M.L.A.

PORT HAWKESBURY PAPER LP
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PROVINCE OF NOVA SCOTIA
(Department of Energy)
Stephen T. McGrath, LL.B.
Ryan Brothers, LL.B.

SMALL BUSINESS ADVOCATE
E.A. Nelson Blackburn, Q.C.
Paul B. Miller, LL.B.

BOARD COUNSEL: S. Bruce Outhouse, Q.C.
Richard J. Melanson, LL.B.

HEARING DATE(S): November 14 and 15, 2013

FINAL SUBMISSIONS: November 18, 2013

DECISION DATE: **November 29, 2013**

DECISION: **Subject to the representations and clarifications provided by NSPI and NSPML, all conditions in the Board's Maritime Link Decision dated July 22, 2013, are satisfied: see the summary starting at paragraph [126]**

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1.0 INTRODUCTION

[1] This is a Supplemental Decision of the Nova Scotia Utility and Review Board (the "Board") respecting an application of NSP Maritime Link Incorporated ("NSPML" or the "Applicant") filed on January 28, 2013, under the *Maritime Link Act*, S.N.S. 2012, c. 9 (the "*ML Act*") and the *Maritime Link Cost Recovery Process Regulations* (N.S. Reg. 189/2012) (the "*ML Regulations*") for approval of the Maritime Link Project and the Nalcor Transactions (the "Application").

[2] In a Decision dated July 22, 2013 [2013 NSUARB 154] ("ML Decision"), the Board concluded, applying the test under s. 5(1)(a) of the *ML Regulations*, that the Maritime Link Project (with Market-priced Energy factored in) represents the lowest long-term cost alternative for electricity for ratepayers in Nova Scotia. However, in the absence of Market-priced Energy, the Board concluded that the ML Project is not the lowest long-term cost alternative. Accordingly, the Board directed:

> ...as a condition to its approval of the ML Project that NSPML obtain from Nalcor the right to access Nalcor Market-priced Energy (consistent with the assumptions in the Application as noted in NSUARB IR-37 and Figure 4-4) when needed to economically serve NSPI and its ratepayers; or provide some other arrangement to ensure access to Market-priced Energy.
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> [ML Decision, para. 228]

[3] In addition to the above condition respecting Market-priced Energy, the Board also directed that various other terms and conditions apply:

> ...
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> 2) That accumulation of AFUDC is approved up to and including December 31, 2017 or the in-service date of the Maritime Link, whichever is sooner. At that point, the Board will, applying the test of prudence, review the management of the construction risks by NSPML. The Board will make a decision whether AFUDC will continue beyond that date based on how NSPML has managed the construction scheduling within the scope of the project in its entirety.
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> 3) That there should be no additional costs as a result of related party transactions, timing differences or deferrals.

4) That no markup or earnings will be applied to the NB backstop energy put to NSPI and that no additional earnings will be applied to variances determined by the 60-month transmission true-up. Any credit determined by this true-up will be accrued with interest to the Nova Scotia ratepayers.

5) As discussed later in Section 6.13, that NSPML (including NSPI where appropriate) will provide reports to the Board no later than June 15th and December 15th of each year, unless otherwise directed by the Board. Before the Board finalizes its reporting requirements, NSPML will meet with Board staff to work out the details of such requirements on the basis of the directives in this Decision. Board staff are to report back to the Board for approval of the reporting requirements by October 15, 2013. The Board directs NSPML to provide Board staff with its full cooperation in meeting this timeline.

6) NSPML will be guided by the terms and conditions of NSPI's Code of Conduct (except as noted in this Decision) and accounting policies until NSPML applies to the Board for approval of its own policies.

[ML Decision, para. 366]

[4] On October 21, 2013, NSPML filed its Compliance Filing with a view to satisfying the above conditions outlined in the ML Decision.

[5] The Compliance Filing included an 18 page Energy Access Agreement ("EAA") executed on October 20, 2013. Emera, Nalcor and NSPI negotiated for almost three months to conclude the EAA, which was filed with the intention to satisfy the principal condition with respect to NSPI's access to Nalcor Market-priced Energy.

[6] In its Decision, the Board indicated as follows:

> [230] The Board will make itself available on an expedited schedule to review commercially reasonable terms submitted by NSPML and Nalcor and for comments by the Intervenors.
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> [ML Decision, para. 230]

[7] Upon receiving the Compliance Filing, the Board established a timeline which began with a Technical Conference, leading to a hearing, including oral argument or written submissions. The timeline, as subsequently adjusted in response to Intervenor requests, was as follows:

Technical Conference	October 28, 2013
Filing of Intervenor and Board Counsel Evidence	November 7, 2013
Hearing Dates	November 14 and 15, 2013
Oral Argument	November 18, 2013

[8] The hearing was held at the Board's Offices at Halifax, Nova Scotia. The Board notes that, for the purposes of this hearing, the proceedings at the Technical Conference were transcribed and the transcript was filed in evidence as an exhibit.

[9] Various witness panels testified at the hearing. The witness panel for NSPML and NSPI consisted of Nancy Tower, Chief Executive Officer of Emera Newfoundland and Labrador; Rick Janega, President of Emera Newfoundland and Labrador; Wayne O'Connor, NSPI's Executive Vice-President of Operations; and Mark Sidebottom, NSPI's Vice President, Generation and Delivery. The witness panel for the Consumer Advocate ("CA") and the Small Business Advocate ("SBA") was comprised of Paul Chernick, the President of Resource Insight, Inc., and Seth Parker, Vice President and Principal of Levitan & Associates, Inc., while Philip Raphals, Executive Director of the Helios Centre, testified on behalf of the Lower Power Rates Alliance. Finally, Board Counsel called Pelino Colaiacovo and Brent Walker of MPA Morrison Park Advisors Inc. ("Morrison Park") to testify as a panel.

[10] The Board also received letters of comment from members of the public which were filed as part of the record.

[11] A comprehensive review of the *ML Act* and the *ML Regulations* is contained in the Board's ML Decision.

2.0 ML DECISION – BOARD FINDINGS

[12] In addition to the above terms and conditions imposed by the Board in the ML Decision, it also made a number of findings which provided the context for its

conclusion respecting access to Market-priced Energy. For the purposes of the analysis which follows, the Board considers it helpful to set out those findings:

> [106] On balance, the Board believes that NSPML's "Low Load" forecast, which most closely aligns with NSPI's current load forecast, is a more realistic scenario than NSPML's "Base Load" forecast. The Board accepts the evidence of Synapse, Levitan and Resource Insight that NSPML's "Base Load" forecast is more in the nature of a high load forecast. However, as was pointed out, a number of factors could impact load in a way which could cause it to be higher. It is prudent for NSPI to have flexibility in their load forecasts.
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> ...
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> [156] Except with respect to the issue of Market-priced Energy, the Board is satisfied that the range of sensitivities tested by NSPML in its Strategist modeling represents a prudent approach to evaluating energy alternatives for the province and its ratepayers. The Board is generally satisfied with the reasonableness of most of the various assumptions made by NSPML in the composition of the ML Project alternative (except, as noted earlier in this Decision, the concerns referred to by Synapse, Levitan and other parties about load and the Study Period used in the analysis).
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> ...
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> [159] One of the important potential benefits of the ML Project is that it could provide access to Market-priced Energy. In fact, it is the access to this energy which causes the ML Project (assuming the Market-priced Energy is available) to be the lowest long-term cost alternative for electricity for Nova Scotian ratepayers.
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> ...
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> [163] The Board observes that the presence of the Maritime Link could continue to benefit Nova Scotia even after the expiration of the 35 year term of the Commercial Agreements, because Nova Scotia will still be positioned to access competitive energy markets.
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> ...
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> [170] Taking into account all of the evidence, the Board finds, on the balance of probabilities, that the ML Project (with the Market-priced Energy factored in) represents the lowest long-term cost alternative for electricity for ratepayers in Nova Scotia. In the absence of Market-priced Energy, the ML Project is not the lowest long-term cost alternative for electricity for ratepayers in Nova Scotia.
>
> [171] While the Board finds that the ML Project is the lowest long-term cost alternative, it is not on an overwhelming basis. Based on the evidence presented by Synapse, which the Board accepts, there are various scenarios, within a range of reasonable assumptions, that perform almost on an equivalent basis, or even better in a few cases, than the ML Project. On this point, the Board refers to Synapse's Strategist runs of the Indigenous Wind "Low Load" scenario, as well as the Hybrid option formulated in Undertaking U-41.
>
> [172] The Board does not interpret the test in the ML Regulations in a way whereby the ML Project fails because one or two scenarios indicate it could fail. Instead, over a broad range of assumptions, the ML Project passes the test because on a balance of

probabilities it remained the lowest long-term cost alternative if Market-priced Energy is factored in.

[173] The Board concludes that over the broadest range of Strategist runs for the ML Project it is slightly more robust than the various other alternative runs conducted by Synapse. On this basis, the ML Project does edge out other alternatives and is deserving of approval under s. 5(1) of the *ML Regulations*.

...

[200] While legitimate questions remain about the availability of Market-priced Energy from Nalcor over the first 24 years of the Maritime Link, the evidence clearly shows that there should be no shortage of Market-priced Energy when the Churchill Falls arrangement with Hydro Quebec comes to a conclusion in 2041. The Churchill Falls Generating Station has a capacity of 5,428 MW, which over the past five years has averaged approximately 33 TWh per year (Nalcor's 65.8% share of the Churchill Falls Corporation would therefore yield approximately 22 TWh of energy supply in 2041).

[201] However, until 2041 arrives, there is, as Morrison Park described it, "substantial uncertainty" about the availability of a supply of Market-priced Energy from Nalcor for Nova Scotia.

...

[208] In reviewing the importance of the availability of Market-priced Energy to the Application, the Board referred back to Figure 4-4 of the Application, which is outlined earlier in this Decision. The fundamental assumption which underpins the Application is that NS customers will enjoy a blended rate for electricity which is comprised of a weighted average of the costs reflecting the NS Block and the projected amounts and prices for Market-priced Energy over the 35 year term.

[209] In response to NSUARB IR-37, NSPML provided a breakdown of the annual energy quantities associated with the NS Block supplied over the Maritime Link and the purchase of Market-priced Energy, as depicted on Figure 4-4. The Market-priced Energy consists of projected imports over the NB/NS intertie and from Newfoundland and Labrador, with about 70% of Market-priced Energy sourced from Nalcor, via the Maritime Link, over the course of the 35 year term.

...

[223] Taking all of the above into consideration, the Board concludes that the availability of Market-priced Energy is crucial to the viability of the ML Project proposal as against the other alternatives. Without the Market-priced Energy, the ML Project is clearly not "robust". More importantly, the Board finds that without some enforceable covenant about the availability of the Market-priced Energy, the ML Project does not represent the lowest long-term cost alternative for electricity for ratepayers in Nova Scotia.

[224] The Board has considered how it should address this significant risk to the viability of the ML Project as against the other alternatives. It could, under the *ML Regulations*, simply reject the Application, but that would not be the responsible result and would not be a productive outcome of the regulatory process.

[225] In the Board's opinion, the price of future Market-priced Energy is not the real concern, as alleged by Intervenors. The Board understands and accepts that it may be advantageous to make opportunity purchases of Market-priced Energy, when it is to

NSPI's benefit to do so. In that regard, the Board's primary concern is not exposing a relatively small portion of NSPI's energy portfolio to market prices, rather the concern is that the advantageous opportunity to purchase cannot take place, if there is no Market-priced Energy to buy.

[226] The Board will impose a condition relative to the availability of Market-priced Energy over the 35 year term. In the Board's opinion, such a condition should not create any practical difficulty because it would simply codify what NSPML asserts is the effect of the arrangement in any case. It would also confirm what NSPML already states is Nalcor's view of their future relationship.

[227] This is a simple remedy to the fundamental risk underlying NSPML's Application for approval of the ML Project. If no such condition was imposed, the Board would fail in its regulatory oversight by approving an application that could potentially be commercially disadvantageous to NS ratepayers.

[228] Accordingly, the Board directs as a condition to its approval of the ML Project that NSPML obtain from Nalcor the right to access Nalcor Market-priced Energy (consistent with the assumptions in the Application as noted in NSUARB IR-37 and Figure 4-4) when needed to economically serve NSPI and its ratepayers; or provide some other arrangement to ensure access to Market-priced Energy.

[229] Further, the Board expects that any such confirmation of Market-priced Energy will come at no additional cost to ratepayers, because this assurance was described by NSPML during the hearing as representing the intention of both Nalcor and Emera in the deal presented in the Application. In effect, the Board is simply attempting to get legal certainty over what NSPML has already assured Nova Scotians will be the result of the deal. Moreover, the imposition of any additional cost could jeopardize the ML Project as the lowest long-term cost alternative and, in the end, would not be the deal proposed in the Application.

[230] The Board will make itself available on an expedited schedule to review commercially reasonable terms submitted by NSPML and Nalcor and for comments by the Intervenors.

[231] The Board notes that NSPI will be required to act prudently in the acquisition of Market-priced Energy as it would with all other fuel related decisions. Decisions related to the purchase of Market-priced Energy will be subject to the provisions of NSPI's Fuel Adjustment Mechanism and the oversight that occurs under that mechanism. [Emphasis added]

3.0 ENERGY ACCESS AGREEMENT

[13] The critical terms of the EAA are summarized succinctly by Morrison Park:

- Nalcor commits to make available to NSPI 1.2 TWh of non-firm energy per year on average over the course of the Agreement, which is expected to last approximately 24 years between 2017 and 2041;
- Annual availability of energy could be up to 1.8 TWh, but could be as low as 0 TWh in any given Contract Year (September 1 – August 31) depending on the Nalcor Forecast of Available Energy;

- Nalcor commits to provide NSPI with a rolling 24-month forecast of expected available non-firm energy, on a monthly basis;
- Once per year, in the month of June, NSPI has the option to issue a solicitation for non-firm energy for the following Contract Year, and Nalcor commits to bid into that solicitation, based on Nalcor's May 31 Forecast, up to a maximum of 1.8 TWh;
- In NSPI's solicitation, Nalcor may bid any price for its energy, up to and including the MassHub price, or the higher price of any alternative liquid market opportunity available to Nalcor;
- If there is an extended dry period or some other system difficulty, and it appears that there will be insufficient energy available for export from Newfoundland and Labrador to meet Nalcor's commitment to NSPI over the term of the Agreement, then Nalcor will declare that there will be a "Variance". In this event, Emera shall be responsible for the first 300 GWh per annum of any shortfall, and Nalcor shall be responsible for the remainder;
- In the case of a Variance, if Emera chooses to satisfy its obligation to offer up to 300 GWh of energy through the construction of new intermittent energy facilities in Nova Scotia (including wind, solar and tidal power facilities), then Nalcor will offer up to 100 MW of balancing services under a fixed price contract;
- Even in the event that Nalcor satisfies the commitment to provide at least 1.2 TWh per Contract Year on average before the term of the Agreement is completed (by providing more than 1.2 TWh per year in the early years, for example), Nalcor must still offer its Forecast Available Energy in NSPI's annual solicitation throughout the full term of the Agreement.

[Morrison Park, Exhibit M-140, pp. 3-4]

[14] As noted by Morrison Park, there is an inter-play between Nalcor's commitment to provide 1.2 TWh of non-firm energy per year (on average) and its ability to offer up to 1.8 TWh per year:

> Note that if the Agreement lasts 24 years, then in order to achieve at least 1.2 TWh per year on average, Nalcor will be required to make available at least a cumulative total of 28.8 TWh over that time period. If the Maritime Link is a year late, and hence the Agreement lasts only 23 years, then the cumulative total requirement would be 27.6 TWh. This calculation is relevant because Nalcor may offer more or less than 1.2 TWh in any given year, up to a maximum of 1.8 TWh. So, for example, if 1.8 TWh were offered for the first 16 years, then it would not matter how much was offered in the remaining years, because 28.8 TWh would have already been offered.
>
> [Morrison Park, Exhibit M-140, p. 3, Footnote 5]

[15] Nalcor's contractual commitment under the EAA is to provide, on average, 1.2 TWh of energy per year. The term of the EAA extends to 2041. However, even if it satisfies its commitment prior to 2041 (i.e., by providing up to 1.8 TWh of energy in one

or more years, which would result in providing the cumulative amount of 28.8 TWh before 2041), Nalcor remains obligated to provide its forecast and bid commitment throughout the term of the agreement until 2041.

[16] On this point, René Gallant, Vice-President, Legal and Regulatory Affairs with Emera Newfoundland and Labrador, noted during the Technical Conference that even though Nalcor's commitment to provide, on average, 1.2 TWh per year may be satisfied prior to 2041, there remains an obligation on Nalcor to bid, annually, its forecast of up to 1.8 TWh into NSPI's solicitation throughout the entire term of the EAA:

> The 1.8-terawatt hour forecast and bid commitment is in every year of the term, regardless of when the 1.2 average commitment is met. And, so, if it's met early, that means that all the rest of those years are going to add additional energy into the equation for Nova Scotia Power customers, and in fact, increase the value of the commitment beyond what is represented by Undertaking 3, and Figure 4-4.
>
> [Technical Conference, Exhibit M-137, p. 48]

[17] At the Technical Conference, Mr. Gallant described Nalcor's ability to seek other markets if its bid was not accepted by NSPI. However, he added that it was open to Nalcor to bid again in response to another solicitation by NSPI later in the same year:

> Well, the initial commitment to make energy available, and then to make the forecast of available energy known, and then bid that forecast amount at a capped price is the commitment that creates the market opportunities for Nova Scotia Power and its customers.
>
> But, as a reasonable commercial entity, if Nalcor's energy, at that point, is not taken up by Nova Scotia Power, either because they don't need it, or they don't accept it at the price at which its bid, then Nalcor has to have the flexibility to go back to market, or find another customer for that energy at that time. And if they still have energy available when Nova Scotia Power next goes out to the market, then, like any other player in the market, they can bid in.
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> [Technical Conference, Exhibit M-137, p. 78]

4.0 ISSUES

[18] The Board considers that the issues that must be addressed in this Decision are as follows:

1. Does the EAA satisfy the condition with respect to access to Market-priced Energy?
2. What should be the reporting requirements for NSPML during the course of the ML Project?
3. Does the Compliance Filing satisfactorily address the other conditions imposed by the Board?
4. Should the ML Project be approved?

5.0 ANALYSIS AND FINDINGS

5.1 Does the EAA Satisfy the Condition with Respect to Access to Market-priced Energy?

5.1.1 Benefits

[19] As noted in the passages from the ML Decision quoted above, the Board was not concerned about exposing a portion of NSPI's load to market-based pricing. However, the Board was concerned that without some contractual guarantees there may be no surplus energy available in the market to purchase.

[20] Both Morrison Park and NSPI highlighted a number of benefits of the EAA which, in their view, helped satisfy the Board's concerns.

[21] Indeed, Morrison Park indicated they do not believe it is a correct characterization of the EAA to say it is an energy supply agreement. They said it is, in reality, a contract that guarantees access by NSPI to the market, noting that NSPI may not in any particular year actually issue an RFP or accept any bids for Nalcor Market-priced Energy, if that is not the economic choice. However, the EAA provides NSPI with the benefit of precluding Nalcor from contracting power to third parties on a long term basis as Nalcor must forecast and bid into annual NSPI solicitations. That provision applies in each year of the term of the EAA irrespective of the fact that Nalcor may have satisfied the average 1.2 TWh contractual obligation. Morrison Park described that

contractual commitment as a series of 24 one-way options in favour of NSPI that it can exercise for 24 different consecutive years in the future. Morrison Park noted that NSPI has not taken on any additional commitments in the EAA.

[22] Mr. Walker of Morrison Park explained this further:

> What this agreement does is it forces Nalcor contractually to be in the market, and in our minds that's what satisfies the condition, because you have now created the market, whereas before we had a concern that the market might not get created because they're going to do a long-term deal with some other party in the marketplace. And now Nalcor is contractually committed to have their power in the market every year, and that's what makes the realization of these projections that we've been talking about possible, whereas before it was only a theoretical possibility.
>
> [Transcript, p. 3059]

[23] Morrison Park noted that another beneficial provision of the EAA is that Nalcor must disclose its expectations about power availability through the 24 month forecast. Mr. Walker noted that when you are transacting with a counterparty, knowing their inventory for a 24 month period is an important piece of information that normal market counterparties do not have. This would give NSPI an advantage and could lead to better energy prices for Nova Scotia ratepayers:

> MR. WALKER: ... So when you're transacting with a counterparty and you know what their inventory is like for the 24-month period coming up, that's an enormous amount of information that normal market counterparties don't have. It gives you an advantage in the marketplace which can often lead to price.
>
> [Transcript, p. 3014]

> MR. COLAIACOVO: Given that NSPI is an active trader in energy markets ... they would be actively pursuing opportunities not only with Nalcor, but with other participants in the market.
>
> ... if Nalcor is selling significant blocks of power into that market, they're going to be an important market participant...
>
> To the extent that NSPI is trading and participating in that market, every scrap of information is valuable.
>
> I think one of the points that -- you know, that has already been made is that forecasts are, in and of themselves, valuable to traders. People pay money for forecasts.
>
> In this instance, they're going to be -- NSPI will be getting a rolling 24-month forecast from another market participant. That's a valuable thing, and it's valuable information.

...

MR. WALKER: And it's really about what information you have relative to other guys that you're competing with in the marketplace.

...

And when you know what a major market seller has available to sell over the next 24 months, that gives you a bit of insight as to where market prices might actually head.

So -- and it's information that, you know, other parties in the marketplace don't actually have, so all of a sudden, you've got a bit of an advantage over the other guy when you're bidding for that piece of business.

And traders, you know, they smell blood. That's their job. And so having that piece of information is enormously valuable from a trader's perspective.

[Transcript, pp. 3020-3023]

[24] In summing up the EAA's advantages, Morrison Park stated as follows:

> The Agreement amounts to a right-of-first-refusal for NSPI, albeit under specific limited conditions. The provisions related to the cumulative amount of energy over the life of the Agreement provide further protection to Nova Scotia ratepayers, giving substance to the representations about the benefits of the Maritime Link originally argued before the Board. Further, it is our view that the Agreement does not impose additional costs on Nova Scotia ratepayers that were not already evident in the Maritime Link transaction, nor does it otherwise detract from the proposed Maritime Link project originally proposed to the NSUARB.
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> [Exhibit M-140, pp. 8-9]

5.1.2 Risks

5.1.2.1 Introduction

[25] During the Compliance Hearing, Intervenors outlined a number of concerns with respect to whether the Board's condition relating to Market-priced Energy had been satisfied. These concerns were summarized by Mr. Chernick and Mr. Parker, the CA and SBA's consultants, as follows:

> We conclude that many components of the proposed EAA would reduce the quantity of economy energy, increase the price of that energy, or reduce the value of the energy to NSPI ratepayers, compared to the assumptions in the Application. In more detail, we conclude as follows:
>
> - The quantity of the market-priced energy that would be assured by the EAA is substantially less than the quantity the Application assumes would be available.

- The EAA product that would be offered in fixed quantities in an annual solicitation is substantially inferior to the market-priced energy assumed in the Application and embedded in Application Figure 4-4.

- The surplus energy product provided under the EAA may be substantially more costly than the market-priced energy assumed in the Application.

- The EAA terminates in 2041, while the Application extended the benefits of the economy energy beyond the end of the NS Block in 2052.

Nova Scotia ratepayers would also assume all of the price, quantity, and delivery risks under the EAA, while Nalcor and Emera would bear very little risk.

Compared to Application Figure 4-4, all of these deficiencies increase the costs or reduce the benefits to ratepayers, compared to expectations present in the Application.

In addition, the terminology used in the EAA further increases the risk that NSPI ratepayers would receive even less value than a clearer EAA might produce. This lack of clarity arises from the use of such vague terms as "commercially reasonable" (¶7(c)), "commercially possible," "equivalent economic value to NSPI" (¶4(d)), and several terms in ¶4(c)(ii) discussed in Section VI below, as well as the inconsistency between the language of the EAA and Emera's interpretation of that language, as discussed in Section IV.B below.

Despite the vague and sometimes misleading language, and the EAA's statement that it is only a confirmation of "the terms and conditions under which [Nalcor, NSPI and Emera] will enter into a definitive Energy Access Agreement" (EAA at 1), Emera has no intention of clarifying the EAA …

[Exhibit M-138, pp. 4-5]

[26] In the course of the hearing, and in final submissions, the Intervenors identified specific risks they believed arose under the EAA. The Board will canvass those risks, in turn.

5.1.2.2 NSPI's Future Load Requirements

[27] Some of the parties questioned whether NSPI had secured all of the Market-priced Energy forecasted in the original application. In that application, it had modelled the availability of up to 2 TWh of surplus energy per year.

[28] In the Compliance Filing, NSPML indicated that it had based its negotiation of the EAA on the load findings made by the Board in the ML Decision:

> ... The Energy Access Agreement provides NS Power with the opportunity to contract for energy in volumes that are consistent with Figure 4-4 from the Application, under Low Load planning assumptions. As noted by the UARB:

> [106] On balance, the Board believes that NSPML's "Low Load" forecast, which most closely aligns with NSPI's current load forecast, is a more realistic scenario than NSPML's "Base Load" forecast. The Board accepts the evidence of Synapse, Levitan and Resource Insight that NSPML's "Base Load" forecast is more in the nature of a high load forecast.
>
> [Compliance Filing, Exhibit N-134, p. 11]

[29] Mr. Gallant confirmed at the Technical Conference that the amount of 1.2 TWh referenced in the EAA stemmed from the "Low Load" forecast in NSPML's original application:

> ... What we did is we modeled surplus energy at Mass hub, and that model forecasted that we would want to take a certain volume of energy, and that was represented in Figure 4-4 which we updated as Undertaking U-3 for the low load forecasts.
>
> So if you take those same components under this arrangement, we believe that that volume of 1.2-terawatts hours, which was predicted by Undertaking U-3, will be taken up if those conditions remained as we forecasted, and this Agreement allows for that to happen.
>
> [Technical Conference, Exhibit M-137, p. 81]

[30] Later during the Technical Conference, he added:

> ... if you look at the data that backs up the Figure 4-4 under Undertaking U-3, you'll see that 1.2-terawatt hours, on average, will deliver or make available -- will make available the same amount as the energy under that forecast.
>
> [Technical Conference, Exhibit M-137, p. 84]

[31] The Board notes that Nalcor's commitment under the EAA to provide, on average, 1.2 TWh of energy per year is the minimum requirement under the terms of the EAA. If Nalcor has the energy available, it must forecast and bid up to 1.8 TWh per year, including in every year the EAA is in effect until 2041 (even after it has satisfied its minimum total requirement of 28.8 TWh). When considered in this context, the Board considers that the commitment secured in the EAA goes beyond the scope of the "Low Load" forecast, and could help to address higher load scenarios.

[32] Based on its review, the Board is satisfied that the commitment secured by NSPI from Nalcor (including the 300 GWh commitment from Emera) for 1.2 TWh of energy per year, on average, is consistent with the Board's findings in the ML Decision with respect to load.

5.1.2.3 Access to Market-priced Energy beyond 2041

[33] The Board noted at paragraph [200] of the ML Decision that while there were legitimate concerns about the availability of Market-priced Energy from Nalcor over the first 24 years of the Maritime Link Project, the evidence clearly showed that there would be no shortage of Market-priced Energy when the Churchill Falls agreement with Hydro Quebec comes to a conclusion in 2041. The Board's view on this matter has not changed and it accordingly finds that the term of the EAA, ending in 2041, satisfies the Market-priced Energy condition.

5.1.2.4 Changes to the EAA in the Final Agreement

[34] Pursuant to Section 2(a) of the EAA, the parties have agreed to negotiate a definitive energy access agreement (the "Final Agreement") incorporating certain commercial terms not included in the EAA including, "tax, audit rights, force majeure and metering provisions and the standard agreement template language previously developed by the parties". Unfortunately, that left the Board and the parties in a position of having to review the EAA without the benefit of having the definitive Final Agreement.

[35] The Board has made this Supplemental Decision on the Compliance Filing on the basis of the EAA, as represented and clarified on the record by NSPI and NSPML. In the event the Final Agreement alters the terms and conditions of the EAA in a way that is detrimental to NSPI ratepayers, the terms of the EAA, as so represented

and clarified, will prevail over the Final Agreement for purposes of determining the recovery of costs by NSPI from its ratepayers.

[36] With that finding the Board sees no need to subject the Final Agreement to any further review or approval process as recommended by the CA.

5.1.2.5 NSPI Acquisition of Energy under Annual Solicitations

[37] Currently, NSPI's solicitations in the energy market typically extend only to daily, monthly or seasonal requests. The annual solicitations under the EAA represent a change to longer solicitations.

[38] During cross-examination of NSPI's witnesses by Mr. McGrath, NSPI committed to a review within the FAM Small Working Group of its procurement policies and procedures, which may need to be changed relative to annual energy solicitations anticipated under the terms of the EAA:

> MR. McGRATH: Before NSPI begins acquiring energy under the EAA, if the Board approves the arrangement, would NSPI commit to specifically engaging the FAM Working Group to conduct a specific review to determine whether any policies and procedures need to be changed to accommodate that anticipated activity?
>
> MR. SIDEBOTTOM: Of course.
>
> [Transcript, p. 2762]

[39] This NSPI commitment was further confirmed by Mr. Landrigan in his Closing Remarks:

> MR. LANDRIGAN: ... Nova Scotia Power and the Board confirmed during the hearing that its procurement decisions, including those under this Energy Access Agreement, will continue to be subject to the provisions of the FAM, including the FAM audits, and other associated Board oversight.
>
> In response to a request from the Province, Nova Scotia Power also confirmed that it will conduct a specific review of its Fuel Manual with the FAM Small Working Group. This review will help safeguard the value for customers by fully examining whether the company's procurement policies and procedures should be modified in order to ensure that the value provided under the Energy Access Agreement is achieved.
>
> [Transcript, p. 3133]

[40] The Board directs NSPI to undertake this Fuel Manual review with the FAM Small Working Group and to file the proposed amendments with the Board by December 31, 2014. The review should include a consideration of the potential and merit in any hedging arrangements that might be made. It should also include a consideration of strategies for mitigating the potential that NSPI might need to generate energy to sell to the market to offset times when it may have committed to take economy energy.

5.1.2.6 End-use Consumption Only – EAA Section 3(e)

[41] Section 3(e) of the EAA states:

> End-Use Consumption - Nalcor Supplied Energy will be for end-use consumption in Nova Scotia only, except that NSPI shall have the right to resell Nalcor Supplied Energy in the event that such Energy is surplus to NSPI's requirements due to variations in NSPI's load or generation identified subsequent to NSPI's acceptance of a Nalcor bid.

[42] Concerns were raised by Intervenors about the restriction to re-sell the energy in light of the potential year in advance commitment. The risk is that NSPI would be left with excess energy it could not offload, which may result in additional costs. The Board notes that the section does give NSPI the right to sell surplus energy due to unforeseen variations in NSPI's load or generation.

[43] The CA explored a risk related to NSPI not being able to sell energy to offset an over-commitment resulting from its annual solicitations under the EAA. Mr. Sidebottom testified this restriction related only to the resale of Nalcor energy provided under the EAA, stating further:

> ... Remember, Nova Scotia Power has many generation sources, and at its maximum at a point in time this might represent, you know, 10 or 20 percent of the energy at any moment in time, and Nova Scotia Power is free to resell other electrons.

> So effectively, we are fully free to sell into the markets because we have many generation sources. And the real intent of this clause is around Nalcor's concern that we aren't becoming a reseller of their energy in alternate markets. [Emphasis added]
>
> [Transcript, pp. 2680-2681]

[44] During further questioning by the SBA, Mr. Janega stated the intent of this restriction was to ensure NSPI does not become a market reseller of the Nalcor EAA energy, adding it does not restrict NSPI from optimizing its energy.

[45] The Board's concern was that NSPI have the opportunity to purchase adequate energy for domestic consumption. The Board does not see NSPI's role as a marketing reseller with its attendant risks. Based on the representations from Mr. Sidebottom and Mr. Janega that the agreement does not restrict NSPI from optimizing the resale of energy originally intended for consumption, but no longer needed due to load or generation variations, and the lack of any restriction on the sale of other electricity, the Board is satisfied that this provision should not impose additional costs on NSPI and its customers. However, any administrative or other costs incurred by NSPI related to the resale of energy will be addressed through the FAM process and prudency reviews.

5.1.2.7 Energy-only Product – EAA Section 3(f)

[46] Section 3(f) of the EAA reads:

> Energy-Only Product - Nalcor Supplied Energy shall be provided to NSPI as an energy-only product. For greater certainty, Nalcor retains all rights and value associated with such Energy in respect of Capacity and GHG Credits.

[47] Intervenors identified concerns that the "energy-only" product differs from that contemplated in the original application, because it comes with no attributes required to satisfy compliance with Federal and Provincial emission or renewable requirements.

[48] The Board explored whether this differs from the original application. NSPI explained:

> MR. SIDEBOTTOM: We weren't modelling it -- although it's in there as a compliant product, it wasn't required for compliance and there was no price associated with an RES factor associated with that energy. It was a pure market price.
>
> MR. DEVEAU: In the original application?
>
> MR. SIDEBOTTOM: Yes.
>
> [Transcript, p. 2854]

[49] An additional cost toward compliance could impact the economic analysis. The SBA explored whether there would be an additional cost of being compliant with renewable requirements if NSPI's load increases from the low load scenario:

> MR. BLACKBURN: But what would you do if -- for instance, I mean, if NSPI needed the credits, you'd have to go out and purchase it, which the ratepayers would have to pay for, so why would you assign those credits to Nalcor?
>
> MR. SIDEBOTTOM: I might turn that around another way and say, why would you pay for a piece of a product that you don't need? If, in the future, you find you need that product, then you go out and find the most economic way to acquire that product at the time. We don't need anything other than economy energy to satisfy the needs of this low-load case.
>
> [Transcript, pp. 2717-2718]

[50] Mr. Sidebottom also confirmed there was nothing in the legislation restricting the surplus from counting toward the Renewable Electricity Standard ("RES").

[51] The Board accepts, for the purpose of interpreting the EAA in the future, the evidence of Mr. Sidebottom that there is no increased cost, beyond the original application, related to the provision that this is an energy-only product.

5.1.2.8 Audit Rights – EAA Section 3(i)

[52] Section 3(i) of the EAA, "Audit Rights", reads:

> Audit Rights - The Parties agree that the audit provisions to be included in the Final Agreement shall be based on the principles of reciprocity, confidentiality of commercially sensitive information, and disclosure of information required by each Party to determine compliance with the Final Agreement.

[53] Audit rights are important for matters related to NL Native Load, hydrology, and alternative spot-markets, among other issues under the EAA.

[54] Intervenors highlighted this as an item that remained undefined. They asserted the rights that NSPI and the Board have are vague, leaving it unclear how these will protect the interests of NSPI ratepayers. This was explored from the perspective of the Board's right to access relevant information:

> MR. O'CONNOR: So the Board has access to this document and all transactions that we might do with the -- or any transaction we would do with the affiliate would, of course, be subject to affiliate scrutiny.
>
> MR. McGRATH: Right. So I'm asking specifically though whether when you go to finalize the audit rights provisions and the final agreement whether you will take steps to include a specific provision in the final agreement that outlines that Board right to access?
>
> MR. O'CONNOR: Yes, we will do that.
>
> [Transcript, pp. 2798-2799]

[55] The Board further explored the audit rights, highlighting concerns with access to the Nalcor data:

> MR. SIDEBOTTOM: ... So as things such as the hydrology and the backup and the forecast are exactly the type of thing we would seek in our audit rights, so that's what we would envision going forward.
>
> [Transcript, p. 2841]

[56] The Province proposed a condition that would ensure the Board have access to information consistent with NSPI's Affiliate Code of Conduct and the FAM provisions.

[57] The Board notes there were numerous assurances provided that NSPI will ensure it has access to the information required to document for the Board, and Board appointed auditors, that its activities have been prudent. In adjudicating cost recovery

by NSPI from ratepayers, the EAA will be interpreted in accordance with this representation.

5.1.2.9 Affiliates - EAA Section 4(a)

[58] Section 4(a) of the EAA states the following:

> Nalcor Forecast - On a monthly basis during the Term, Nalcor will provide a good faith forecast to NSPI of Available Energy forecasted to be available for sale to NSPI for the following 24 months, up to a maximum of 1.8TWh per Contract Year (each such forecast is a **"Nalcor Forecast"**). The Nalcor Forecast shall include a forecast of the total Available Energy denominated by Peak Hours and Off-Peak Hours for each month, all being capable of delivery at the Delivery Point.

[59] Counsel for the Province expressed the concern that this information should not be shared by NSPI with Emera or its affiliates.

[60] The Board notes the need to protect this information for the benefit of ratepayers. In order to ensure that NSPI is prevented from sharing this information with Emera or any related entity, the Board directs NSPI to include appropriate conditions within its Affiliate Code of Conduct and related Guidelines. Proposed amendments are to be submitted to the Board for consideration by December 31, 2014.

5.1.2.10 Alternative Spot Market – Green Energy Pricing – EAA Section 4(c)(ii)

[61] The Intervenors also suggested that there may be risks under the EAA with respect to the pricing of Market-priced Energy. In their submission, NSPI might be required to pay a premium for such energy because its renewable or non-carbon attributes might attract higher prices in New England or other markets.

[62] The pricing of Nalcor Market-priced Energy is described in Section 4(c) of the EAA:

> 4(c) Nalcor Bid Price - Nalcor will make good faith bids of Nalcor Bid Energy into the NSPI Solicitations. In pricing such bids, Nalcor will consider NSPI's market alternatives and Nalcor's opportunities in other accessible northeast electricity markets available to Nalcor at any time. The sale price of the Nalcor Bid Energy at the Delivery Point shall not exceed the greater of:
>
> (i) the hourly Day-Ahead Price {as defined in the ISO-NE Tariff} at the ISO-NE Mass Hub node (described as "4000_:_.H.INTERNAL_HUB" by the ISO-NE), priced at the hour of delivery. For greater certainty, this price shall be the Day-Ahead Price, and shall not be reduced by any real or implied market fees, transmission tariffs, transmission losses or other charges; and
>
> (ii) any alternative spot-market opportunities identifiable by Nalcor at the time of its bid which are available to Nalcor at any time within one year following the Nalcor bid into the NSPI Solicitation, to the extent Nalcor can demonstrate both a liquid trading node with associated published forward pricing and an actual transmission path, less incremental transmission tariffs, transmission losses and other charges applicable to deliver Nalcor Bid Energy to such market, but for greater certainty, not to reflect a deduction for any costs for Sunk Transmission.
>
> Pricing up to the greater of (i) and (ii) above shall be deemed to be a good faith bid with respect to price.
>
> [Exhibit M-134, Appendix A, p. 6]

[63] No party raised any concern about "green energy" pricing under Section 4(c)(i). Mr. O'Connor confirmed for the Board at the hearing that the ISO-NE Mass Hub node, described as "4000_:_.H.INTERNAL_HUB", is an energy-only pricing index.

[64] However, concerns were raised about the pricing under 4(c)(ii) for an alternative spot-market.

[65] In its Submissions, the Industrial Group stated:

> 76. NSPML says an alternative market can only be used for brown energy, in amounts and times that are consistent with actual alternative market contracts - but the EAA does not have these limitations. If it was the intent of the parties that the agreement would be interpreted in this way, why not include these limitations within the EAA? [Emphasis added in original]
>
> [Industrial Group Submission, para. 76]

[66] In the pre-filed evidence of Mr. Chernick and Mr. Parker, they referred to the premium being sought in the market for energy with renewable or non-carbon attributes:

> Section 4(c)(i) of the EAA mimics the price-setting formula in the Application, setting the price at the "the hourly Day-Ahead Price at the ISO-NE Mass Hub node." However, Section 4(c)(ii) allows Nalcor to charge a higher price if there is a premium market for clean, renewable, or non-carbon energy in New England or elsewhere (Ontario and New York are the most likely alternative markets). ...
>
> The concern that demand for green energy would cause the price of the economy energy under the EAA to exceed the pricing assumed in the Application ...
>
> [Exhibit M-138, pp. 23-24]

[67] However, NSPML and NSPI assured the Board and the Intervenors at the hearing that the pricing for an alternative spot-market under Section 4(c)(i) would be for an energy-only product.

[68] In questioning from the SBA, Mr. O'Connor confirmed this interpretation:

> MR. BLACKBURN: ... But -- so is it more probable than not? I guess that's my question, that there's probably going to be alternate spot markets and there's going to be a premium attached to it, which means that Nova Scotia Power are going to be paying a premium and the ratepayers are going to be paying a premium?
>
> MR. O'CONNOR: No, I -- I disagree with that completely.
>
> This talks about an alternative spot market, which is for energy only. It is a separate and distinct from whatever the renewables or capacity. Those are separate markets.
>
> They would not -- and the value of those markets would not be in this pricing. And if Nalcor were trying to achieve the value for that, they would have to do it under some other mechanism.
>
> We will not pay for those other attributes through this pricing mechanism. [Emphasis added]
>
> [Transcript, p. 2733]

[69] Moreover, Mr. Smellie, with Nalcor's legal counsel in the hearing room, indicated that this interpretation represented the clear intent of the parties to the EAA:

> ... And we have reconfirmed with Nalcor and the parties are clear that all energy forecast and bid under the Energy Access Agreement is to be and will be an energy-only product consistent with subsection 3(f), which provides that Nalcor supplied energy shall be provided to Nova Scotia Power as an energy-only product.

> And so the price cap for Nalcor bid energy or pricing under subsection 4(c) will not be based on green energy pricing, but rather, on economy energy pricing.
>
> MR. DEVEAU: So that includes 4(c)(i) and 4(c)(ii).
>
> MR. SMELLIE: That's correct, sir.
>
> [Transcript, pp. 2896-2897]

[70] As noted later in this Decision, the representations of NSPI and NSPML in relation to pricing will be subject to the oversight of the Board under the FAM process.

5.1.2.11 Timing and Amount of Energy Linked to the Alternative Spot Market – EAA Section 4(c)(ii)

[71] The Intervenors also expressed concern about the scope of Nalcor's right under Section 4(c)(ii) to identify an alternative spot-market opportunity. Their concern was that once Nalcor identified a liquid trading node for an alternative spot-market, along with an actual transmission path, NSPI, if it elected to purchase the energy, would be committed to the higher resulting price of the Nalcor Bid Energy for the entire contract year, even if the alternative spot-market was only available for one day during that year.

[72] Concerns were also raised about when the alternative spot-market had to be identified by Nalcor.

[73] On the latter point first, Mr. O'Connor testified at the hearing that Nalcor must identify the spot-market at the time of the Nalcor Bid into the NSPI Solicitation:

> MR. MERRICK: But, for example, if Nalcor were bidding, it would have to be aware of the alternative at the time it bids; am I correct on that?
>
> MR. O'CONNOR: That's absolutely correct, yes.
>
> MR. MERRICK: All right. So that any opportunity that might become apparent to it a month or two down the road wouldn't be -- wouldn't qualify?

> MR. O'CONNOR: That's right. At the time they submit the bid, they have to, at that time, identify if condition (ii) will be some of the pricing, some of the energy will be priced under that.
>
> [Transcript, p. 2653]

[74] Moreover, on the former point, Mr. O'Connor confirmed that the impact on NSPI and its customers of an alternative spot-market will be limited to the amount and duration of the spot-market identified by Nalcor. In cross-examination by Mr. Merrick, he testified:

> MR. O'CONNOR: ... But this market, we will be able to verify that that's the market price for that period. We'll be able to verify that they can get that amount of energy there. So we will know that it is an alternative that they can access. [Emphasis added]
>
> [Transcript, p. 2654]

[75] Later, in cross-examination by Mr. McGrath, Mr. O'Connor confirmed this interpretation:

> MR. McGRATH: And if it identifies that it has an opportunity where it can achieve a better price on one day of the entire contract year, either at the beginning or at the end, it doesn't really matter, is it's alternative price applicable only to that one day, or would it apply to the entire year under the contract?
>
> MR. O'CONNOR: It's only applicable to the volume that could flow on that one day.
>
> [Transcript, p. 2768]

[76] In the Board's view, these representations are unequivocal and readily enforceable as between NSPI and its ratepayers.

5.1.2.12 Redelivery and "Equivalent Economic Value" – EAA Section 4(d)

[77] Under Section 4(d) of the EAA, the delivery of any Nalcor Supplied Energy (i.e., Nalcor Bid Energy which has been accepted by NSPI) can be interrupted by Nalcor and redelivered to NSPI within 365 days. The redelivery must be at a time and in such quantities that the energy has "equivalent economic value to NSPI".

[78] Section 4(d) provides:

> Nalcor Redelivery - Following acceptance by NSPI of a Nalcor bid and prior to the scheduling of such Energy, the timing of delivery of any Nalcor Supplied Energy may at Nalcor's option be interrupted and redelivered provided Nalcor shall redeliver such Energy as soon as commercially possible thereafter at a time and in quantities so that the Energy has equivalent economic value to NSPI and, in any event, Energy not so delivered on the date on which it was first to have been delivered shall be redelivered by not later than 365 days following such date at a time and in quantities so that the Energy has equivalent economic value to NSPI, and the NSPI Solicitation contract term will be extended accordingly, if necessary. Nalcor's obligation to schedule and deliver the daily quantities of Redeliverable Energy is subject to Forgivable Events, provided however that Nalcor shall deliver the total Redeliverable Energy in accordance with the foregoing provisions of this Section 4(d). Redeliverable Energy may not be further interrupted by Nalcor pursuant to the foregoing provisions of this Section 4(d). [Emphasis added]

[79] The Intervenors raised a concern with respect to the determination of "equivalent economic value to NSPI".

[80] Mr. Sidebottom and Mr. O'Connor testified that the intent of Section 4(d) is that NSPI customers will be kept whole in the event Nalcor elects to interrupt and redeliver:

> MR. SIDEBOTTOM: If there's a market opportunity during the period, Nalcor has the right to redirect that energy into an alternate market. Now, while exercising that right, they do have to keep Nova Scotia Power whole through an equivalent value proposition. So they have that opportunity to get into that market, but Nova Scotia Power and its customers are left whole with that particular right.
>
> MR. O'CONNOR: And, sorry, if I just may add to Mr. Sidebottom's comment that it's clear that if the -- if this is exercised, Nalcor shall redeliver such energy as soon as commercially possible. The 365 days is at the outer limit. There is an expectation that it will be done sooner than that. In fact, it's a contractual obligation.
>
> [Transcript, pp. 2656-2657]

[81] Mr. Sidebottom explained the process that would be followed to determine the "equivalent economic value", stating it is a calculation that NSPI currently does in its operations:

> MR. MERRICK: How are you going to keep the customers whole?
>
> MR. SIDEBOTTOM: We will simply ensure that the energy that's redelivered has equivalent value as actually set out in page 6 of the agreement. The energy has the equivalent economic value to Nova Scotia Power. That is how we keep them whole.

MR. MERRICK: And just going with that for a moment, is that simply a case of comparing the price?

MR. SIDEBOTTOM: It's a combination of price and any other costs incurred associated with redirecting that energy, which is quite a typical normal calculation we would carry out in the course of our business. We have interruptions in power on economy energy. We do those calculations today.

...

MR. MERRICK: All right. But you say that you would make the customers whole by doing -- making sure that the energy was equivalent economic value.

So I'm taking -- I'm assuming what you mean by that is when it comes time that Nalcor is now prepared, possibly a year later, to deliver energy that Nova Scotia Power had asked for, that at that time you'd merely do a price -- one of the things you'd do to keep the customer whole is do a price comparison.

And let's assume that the energy being delivered a year later is worth a lot less than it was at the time it was originally committed. How would you do the -- how would you hold the customers whole?

MR. SIDEBOTTOM: It would be at a time, price, and quantity such that the equivalent value was realized for customers. And it works as simply as that. So the quantity is not specified, but the value proposition is. And keeping customers whole is the intent there.

...

MR. MERRICK: All right. And what sort of costs would there be?

MR. SIDEBOTTOM: There may be the cost of replacement energy and any associated value with re-dispatching the fleet at the time. And because this is actually set out as a broad statement of value, it would be whatever effectively was the cost at that point in time due to the energy being moved away from Nova Scotia at that point in time.

MR. MERRICK: So how would the customers be made whole for those additional costs?

MR. SIDEBOTTOM: Again, we would foresee that they be an energy with a certain quantity and price that it would offset other generation that Nova Scotia Power would otherwise foresee. We can easily calculate that value and we'd ensure that that value was equal to the value or the cost of the energy that was removed for redelivery.

MR. MERRICK: Assume the value of the interrupted energy and the now-to-be-supplied energy is the same, so that the only cost that has been incurred has been the cost of the interruption.

MR. SIDEBOTTOM: That would be a cost.

[Transcript, pp. 2657-2662]

[82] NSPI's witnesses stated at the hearing that the intent of Section 4(d) was that NSPI customers would be "kept whole" when Nalcor redelivers energy it has interrupted. Accordingly, in adjudicating any issues related to cost recovery between

NSPI and its ratepayers, the Board will interpret Section 4(d) subject to the "kept whole" representation, which means that ratepayers will be put in the same position they would have been had Nalcor not interrupted its Nalcor Supplied Energy.

5.1.2.13 Forgivable Events, Including Force Majeure – EAA Section 4(e)

[83] The Intervenors also raised concerns with respect to the risk that Nalcor might be entitled to avoid its commitment to forecast, deliver or redeliver energy by reason of forgivable events, particularly NL Native Load or hydrology events in NL.

[84] Forgivable events are described in Section 4(e) of the EAA:

> Forgivable Events - Nalcor's requirements to bid the Nalcor Forecast or schedule delivery of the Nalcor Bid Energy as provided in Section 4(b) will be reduced to the extent Nalcor is unable to bid the Nalcor Forecast or schedule delivery of the Nalcor Bid Energy due to any one of the following: (i) Nalcor requires such Energy to meet NL Native Load; (ii) hydrology events in NL; (iii) a force majeure event; (iv) a safety event; (v) a forced outage; or (vi) an action required to be taken by any Party to comply with Good Utility Practice (each of which is a "**Forgivable Event**").

[85] A further concern raised by Intervenors is that the term "force majeure event" has yet to be defined in the EAA. As noted earlier in this Decision, it is to be defined by the parties under Section 2(a), along with other matters such as "audit rights".

[86] The CA canvassed this issue with the NSPML/NSPI witness panel at the hearing:

> MR. MERRICK: All right. But my problem is this. When you look at those two clauses, assume for the moment that in a particular year, or perhaps over the whole term of the contract, native load pre-empts or is -- native load requires the excess or surplus energy that Nalcor has, that extra 40 percent surplus.
>
> Assume for the moment that native load takes it all up. Does that clause override 6(a)? In other words, is even the 1.2 not a guaranteed minimum?
>
> MR. SIDEBOTTOM: So native load and the hydrology are not forgivable events when it comes to the 1.2 average through time.

MR. MERRICK: Where does it say that?

MR. SIDEBOTTOM: Under 6(a), it's only subject to 7(e)(i) and force majeure is the commitment excusable, so it's not hydrology and load-related over the average of the term.

MR. MERRICK: My problem is, I can understand somebody perhaps advancing that as an interpretation, but I don't see it expressly set out in the contract itself.

There doesn't seem, to me, to be anything to limit 4(e).

MS. TOWER: It is the agreement of the parties. It is the understanding of the parties that that's how it works, that the 1.2 is not -- the 1.2 on average commitment is not forgivable by hydrology or native load.

MR. MERRICK: So that your understanding is that when you read all the clauses together, native load may, in fact, reduce the obligation to bid -- to forecast or to bid energy down to a maximum or a minimum, an amount of 1.2, and that that you cannot encroach on for native load. Is that correct?

MR. O'CONNOR: No, that's not correct. I believe if we look at that section, which is forgivable events, so Nalcor's requirement to bid the forecast or schedule delivery is then subject to those items there.

It does not in any way alleviate them of the obligation over the term to meet at least the 1.2 terawatt hours.

MR. MERRICK: All right.

MR. O'CONNOR: So the forecast itself could drop below it, but their overall obligation for the entire term is not affected by that.

MR. MERRICK: At the end of the 24 years, they must have provided the 1.2 average, so that is our solid minimum guaranteed amount. Is that correct?

MS. TOWER: That is correct.

[Transcript, pp. 2631-2633]

[87] This issue was also canvassed by counsel for the Province in his cross-examination:

MR. McGRATH: ... I'd like to move into the agreement, Section 6(a), please.

You've had some discussion about this provision earlier today, and that's the one that establishes the 1.2 terawatt hour commitment on the part of Nalcor. And it's noted that it's subject to force majeure events.

And you've had some discussion as well about the definition of force majeure, and I just want to touch upon that again just very briefly.

Force majeure is used in a number of different places in the document. It's used with respect to the 1.2 terawatt hour commitment. It's also used as a feature of a forgivable event.

Is it intended that force majeure has the same definition throughout the document?

MS. TOWER: Yes.

MR. McGRATH: And if we can move now in the agreement to Section 4(e).

Looking at the definition of forgivable event, which includes force majeure and some other items, can I conclude from that that because force majeure is separated from those other items that none of those other items are included within the definition of force majeure?

MS. TOWER: Yeah.

MR. McGRATH: And more specifically, the NL native load is not going to be an element of force majeure?

MS. TOWER: That is correct.

...

MR. McGRATH: So another item included there was Newfoundland and Labrador hydrology events, so that also would be excluded from the definition of force majeure.

MS. TOWER: That is correct.

[Transcript, pp. 2783-2786]

[88] Based on the interpretation and representations made by NSPI and NSPML witnesses, the Board is satisfied that Nalcor's commitment to provide, on average, 1.2 TWh of energy per year throughout the term of the EAA cannot be circumvented by forgivable events such as NL Native Load and hydrology events in NL. The Board understands that Nalcor's commitment of 1.2 TWh per year, on average, can only be avoided by force majeure.

[89] With respect to the definition of "force majeure", the SBA pursued that issue with Ms. Tower:

MR. BLACKBURN: Okay. Now, my second question is, where is force majeure defined in this agreement?

MS. TOWER: So force majeure is not defined in this agreement yet. It will be defined in the next version of this agreement.

> It has been defined in the Energy and Capacity Agreement and the other agreements that we negotiated in the set of formal agreements. And my expectation is that that definition, the definition that ends up in the agreement, would be very similar to that.
>
> [Transcript, p. 2727]

[90] In cross-examination by counsel for the Province, Mr. O'Connor acknowledged that there is a definition of force majeure in the Edison Electrical Institute Standard Form Master Power and Sale Agreement, which Nalcor and NSPI have adopted by virtue of Section 5(f) of the EAA.

[91] Counsel for the Province expressed some concern in his Final Argument that force majeure was to be defined later in the Final Agreement:

> Force majeure is a forgivable event but it is also a significant term in its own right. A force majeure event excuses Nalcor from honouring its commitment to make an average of 1.2 terawatt hours of energy available to NSPI over the term of the contract and can also excuse Emera and Nalcor from providing the variance amounts intended to backstop this fundamental commitment to the agreement.
>
> Since force majeure overrides the annual obligation to bid, sell, and deliver and the committed 1.2 terawatt-hour per year average amount of available energy, it's an obligation which goes to the very core of the Energy Access Agreement.
>
> It is a critical item and yet, for some reason, it's been left entirely undefined in the agreement put before the Board.
>
> ...
>
> Uncertainty around such a critical term in the agreement is a significant risk to ratepayers.
>
> [Transcript, pp. 3245-3246]

[92] In terms of any potential impact upon NSPI's ratepayers, the Board will rely on the representations and clarifications provided by NSPML and NSPI at the hearing with respect to the scope of force majeure, notwithstanding the Final Agreement.

5.1.2.14 Fulfillment of Nalcor Commitment - EAA Section 6(a)(iii)

[93] With reference to Section 6(a)(iii), concern was raised regarding the potential for double counting the Nalcor energy commitment when a forgivable event occurs. During the hearing this issue was addressed and both NSPI and NSPML stated that forgivable events would not be included in the Nalcor commitment calculation. In his Closing Remarks, counsel for NSPML, Mr. Smellie, confirmed that this was also Nalcor's intent and the meaning of that provision.

[94] Further, Mr. Sidebottom, Mr. O'Connor, and Ms. Tower all agreed that the wording of that section in the EAA would be changed to make it clear that committed amounts would not be eroded by forgivable events:

> MR OUTHOUSE: ... And then it seems to me, when I read 6(a)(iii), that energy which was not supplied counts towards the fulfillment of the 1.2 average commitment.
>
> So that's the problem I'm having with it, and I would ask you to respond whether that's the intent, as you understand it, or that's the effect as you understand it.
>
> ...
>
> MR. O'CONNOR: ... I can speak to the intent. So the intent is not to double count any volumes at all. And it will just take me a moment or maybe a couple of moments to ---
>
> MR. OUTHOUSE: All right.
>
> MR. O'CONNOR: --- follow up. ... So in that case, the forgivable event would reduce the bid amount, so it wouldn't be included in the calculation in that case.
>
> MR. OUTHOUSE: I appreciate that, Mr. O'Connor, and I'm not trying at all to be difficult. I'm concerned that despite what was said this morning that the 1.2 terawatt hours on average commitment ---
>
> MR. O'CONNOR: Yes.
>
> MR. OUTHOUSE: --- gets eroded by forgivable events. And I thought I heard from the panel this morning that that did not happen.
>
> MR. O'CONNOR: No.
>
> MS. TOWER: No.
>
> MR. O'CONNOR: No, that -- it does not get eroded ---
>
> MR. OUTHOUSE: So ---

MR. O'CONNOR: --- by forgivable events.

MR. OUTHOUSE: --- if this language that I've referred you to permits that, on reflection, if you read that, it's going to be changed, I take it?

MR. SIDEBOTTOM: Yes.

MR. O'CONNOR: Yes.

MS. TOWER: Yes.

MR. O'CONNOR: It would change ---

MS. TOWER: We'll make it clear because that is not the intent.

MR. O'CONNOR: That's not the intent at all. [Emphasis added]

[Transcript, pp. 2805-2807]

[95] This was confirmed by Mr. Smellie in Final Argument:

MR. SMELLIE: The first matter arose at or about transcript page 2880, and it concerns your conversation with the panel, Mr. Chair, about paragraph 6(a)(iii) of the Energy Access Agreement.

We have reviewed the provision, both internally and with Nalcor, and as explained by the panel yesterday, the intent and meaning of this provision is that when Nalcor bid energy is accepted but is not supplied due to a forgivable event, then that energy will not count towards the fulfillment of the commitment.

[Transcript, p. 2895-2896]

5.1.2.15 "Shall Compensate NSPI Accordingly" - EAA Section 7(e)(viii)

[96] Section 7(e)(viii) of the EAA reads:

If either Emera or Nalcor is unable or fails to meet their respective variance amount obligations, such parties shall compensate NSPI accordingly.

[97] A number of parties expressed concern about the vagueness and imprecision of this clause. This concern was best summarized in argument by counsel for the Province, who stated as follows:

Section 7(e)(viii) is the ultimate remedy for NSPI in respect of Nalcor's commitment to provide an average 1.2 terawatt hours per year over the term of the contract. If it cannot meet this commitment and backstop obligations of Emera and Nalcor also fail, Emera and Nalcor will compensate NSPI accordingly.

> The problem is, how that compensation will be determined is entirely unclear. Worse still, when questioned about this, NSPI's witnesses seem to suggest that the market price cap might be used to set this amount even though that would be the worst rate that ratepayers would expect to see.
>
> Clearly, there's some unfinished thinking around this provision. As it is NSPI's final remedy, NSPI ratepayers are being put at risk by this uncertainty.
>
> [Transcript, p. 3249]

[98] The Province, as one of its conditions, suggested if the Board determines that any amount of compensation NSPI might receive is insufficient, ratepayers must receive the benefit of the compensation that NSPI should have received, but did not.

[99] The Board notes that assurances were given by NSPI in evidence that NSPI ratepayers would be "kept whole" as a result of this provision. Accordingly, in adjudicating any issues related to cost recovery between NSPI and its ratepayers, the Board will interpret Section 7(e)(viii) subject to the "kept whole" representation, which means that ratepayers will be put in the same position they would have been had Emera or Nalcor met their respective variance amount obligations.

5.1.2.16 Emera/NSPI Wind for Variance Amount - EAA Section 7(f)(i)

[100] In the event of a variance under the EAA, Emera is responsible for part of the variance up to a maximum of 300 GWh per year. Section 7(f)(i) of the EAA provides NSPI the option, but not the obligation, to construct or contract wind generation to mitigate some or all of the variance included in the Emera variance amount. If NSPI exercises the option, Emera's obligation to provide the Emera variance amount shall be reduced pro-rata. The Province and other parties are concerned that NSPI must demonstrate it is in the best interests of ratepayers for it to exercise this option.

[101] The Board agrees that if NSPI chooses to build such generation then it must apply, under Section 35 of the *Public Utilities Act*, for capital work approval

justifying the wind project as the lowest cost alternative. Alternatively, if NSPI decides to contract with a third party for wind generation pursuant to Section 7(f)(i) of the EAA then it must, applying the test of prudence, justify it as the lowest long-term cost alternative in any application to recover those costs.

5.1.2.17 Variance Amount – Nalcor Balancing - EAA Sections 7(f) & 7(g)

[102] Pursuant to Section 7(g) of the EAA, in the event Emera and/or NSPI exercises its option to construct wind generation, Nalcor will enter into a balancing services agreement to support the megawatt capacity of the wind generation up to 100 MW, by providing balancing services.

[103] In its written submission the Industrial Group expressed the concern that the term of the balancing services agreement is not tied to the EAA term and if a wind project were constructed to meet the variance obligation, this section of the EAA may commit Emera and/or NSPI to take balancing services for a period that is much longer than the EAA itself. That issue was clarified by counsel for NSPI during final argument by referring to Appendix 1 of the EAA governing the Nalcor balancing service. Mr. Landrigan, counsel for NSPI, stated:

> MR. LANDRIGAN: So I believe it's clear in the Energy Access Agreement in Appendix 1, item number 1 in the Appendix, that the balancing service is -- is on an annual basis and an option on an annual basis and is variable in terms of quantity.
>
> So in each year, we could choose whether we would trigger a zero or 100 megawatts of the balancing service. And if we choose zero, we have the option to go out and achieve that balancing service through other means. So I do disagree with her statement.
>
> (SHORT PAUSE)
>
> MR. DEVEAU: Sorry; you're talking there about the ability to nominate up to a maximum of 100 megawatts. So the nomination is an annual process that, again, you could choose zero if you wished and it has to be done every year?
>
> MR. LANDRIGAN: Yes.
>
> [Transcript, p. 3137]

5.1.3 Findings on Condition relating to Market-priced Energy

[104] Based on the representations and clarifications given by NSPI and NSPML, including the interpretation of the EAA, the Board finds that the EAA satisfies the Market-priced Energy condition. In any issue related to cost recovery from ratepayers by NSPI, the EAA will be interpreted in light of these representations and clarifications. In the event the Final Agreement alters the terms and conditions of the EAA in a way that is detrimental to NSPI ratepayers, the terms of the EAA, as so represented and clarified, will prevail over the Final Agreement for purposes of determining the recovery of costs by NSPI from ratepayers.

[105] The Province, and other Intervenors, had recommended that the Board impose a number of conditions. The Board considers that interpreting the EAA in accordance with the above representations and clarifications is a more appropriate manner of dealing with the concerns raised by the Province and other Intervenors. However, the Board observes that, as a practical matter, the end result, on a number of issues, is very similar to the conditions proposed by the Province.

5.1.4 Fuel Adjustment Mechanism

[106] It is important to note that the Board, and NSPI's customers, will be able to ensure that NSPI's future purchases of Market-priced Energy are conducted on reasonable and prudent terms. In its ML Decision, the Board stated:

> [231] The Board notes that NSPI will be required to act prudently in the acquisition of Market-priced Energy as it would with all other fuel related decisions. Decisions related to the purchase of Market-priced Energy will be subject to the provisions of NSPI's Fuel Adjustment Mechanism and the oversight that occurs under that mechanism.
>
> [ML Decision, para. 231]

[107] In the Compliance Filing, it was acknowledged that NSPI's obligations to make prudent power procurement decisions would extend to solicitations described in

the EAA. At the Technical Conference, NSPI's responsibilities under the FAM were acknowledged by Mr. Gallant:

> ... Nova Scotia Power customers can rely upon the fact that this is essentially a FAM transaction. It's not fuel, but it is imported power, and that it has to be done in accordance with the practices and procedures that ensure a fair and transparent competitive solicitation is in place for the import of this energy, as it would be for all of Nova Scotia Power's commercial transactions. ... [Emphasis added]
>
> [Technical Conference, Exhibit M-137, p. 87]

[108] Mr. O'Connor, who is responsible for NSPI's fuel related transactions, agreed with this obligation placed upon the utility:

> ... Nova Scotia Power goes through many – [...] -- many solicitations on a regular basis for both solid fuel, natural gas, and electricity, and all of those processes are well documented. We go through a competitive process to get as many bidders as possible, so we can ensure the lowest price outcome for our customers. It's documented and it's open for review from the UARB throughout our regular processes. So we will adhere to that strictly ... [Emphasis added]
>
> [Technical Conference, Exhibit M-137, p. 88]

[109] This was acknowledged again at the hearing by Mr. Landrigan in his Final Argument.

[110] The Board reiterates its view that NSPI will be held accountable for its purchases of Market-priced Energy from Nalcor (or, in the alternative, its decision to forego such purchases), in similar fashion to all of its other fuel related transactions.

5.2 What should be the reporting requirements for NSPML during the course of the ML Project?

[111] The reporting requirements are set out in s. 7 of the *ML Regulations*:

> **Project report**
> 7 (1) An applicant must file a project report on the Maritime Link Project containing the details required by subsection (2) with the Review Board:
>
> (a) on or before December 31, 2013; or
>
> (b) on or before another date the Review Board orders, as it considers necessary as a result of the progress of the Maritime Link Project.
>
> (2) A project report must set out all the following for the Maritime Link Project:

(a) detailed engineering and design information;

(b) updated and current cost estimates and actuals;

(c) any material changes to any of the information submitted to the Review Board under Section 5.

[112] In the ML Decision, the Board adopted the recommendations of Enerco, Board Counsel's consultant, and directed as follows:

> [405] Enerco, in Undertaking U-31, recommended filing of various reports by NSPML during the design and construction phase of the ML Project. The Board has reviewed Enerco's recommendations and generally agrees that given the size of the ML Project and that the final engineering design and tender awards are not completed, it is appropriate for NSPML to provide regular reports to the Board.
>
> [406] NSPML, in its Closing Brief, also agreed with Enerco's recommendations. However, NSPML suggested that before the Board finalizes its reporting requirements, it would like to meet with Board staff to better understand the information being requested. The Board agrees this would be an efficient process. The information noted above by NSPML at pages 56-57 of its Closing Brief could form the basis for the discussion. The Board directs that it receive reports no later than June 15th and December 15th of each year, unless otherwise directed by the Board. As noted earlier, the Board believes independent engineering reports will be critical to keeping the Board informed. The Board expects this consultation process to be carried out expeditiously and Board staff are to report back to the Board for approval of the reporting requirements by October 15, 2013.
>
> [ML Decision, paras. 405-406]

[113] On November 8, 2013, Board staff provided a report to the Board which was filed as an exhibit to this proceeding.

[114] There is agreement from NSPML as to the reporting requirements relating to the Maritime Link Project.

[115] As noted in the ML Decision, detailed reports must be filed by NSPML on a semi-annual basis, on June 15 and December 15 each year. The reports shall commence December 15, 2013. Updated status reports must be filed quarterly.

[116] NSPML's Decision Gate 3 report must be filed by December 15, 2013.

[117] All items identified in Enerco's Undertaking U-31 will be included in NSPML's reports, as amended to reflect the latest updated project schedule: see the revised Articles 3.1 – 3.3 in Exhibit M-141.

[118] Any reports provided by NSPML to the Federal Government, including engineering or financial reports, shall also be filed with the Board.

[119] Further, any independent engineering reports required by NSPML shall be filed with the Board, with NSPML providing any comments of its own in the transmittal letter. The independent engineering reports will conform with the following structure:

Initial Report will provide (this will be issued for financial close, which will be a maximum of 90 days after Nalcor's financial close):

- A brief description of the Project facilities and key procurement contract agreements
- The principal assumptions, opinions, conclusions and summarized pro forma operating results
- Risks identified through the technical review, and any mitigation options

Periodic Report (prepared following financial close and during construction) will cover:

- The general status of construction versus the milestone schedule
- Status of the budget versus actual expenditures
- Status of planned contract expenditures versus actual
- Status of major change orders or claims
- Any areas of concern and actions being taken of which the IE is aware

Drawdown Certification

- The IE will prepare monthly drawdown confirmation certification that provides the IE's opinion regarding matters relating to such requisition or drawdown certificate (such as the status of Project costs relative to the Project budget, the status of the schedule of the Project and expected Commercial Operation Date, and the conformity of the work completed with technical and contractual requirements).

Verification of Project Completion

- The IE will confirm Project completion with project certification which will include confirmation of:
  - The review of construction contracts' completion certificates
  - Monitoring of successful completion of punch list items (by telephone)
  - One final visit to the Project site to verify punch list items have been completed

[120] All reporting requirements outlined above shall remain in effect unless varied or ordered otherwise by the Board.

5.3 Does the Compliance Filing satisfactorily address the other conditions imposed by the Board?

[121] As noted earlier in this Decision at paragraph [3], the Board directed that other terms and conditions apply to the Maritime Link Project, including conditions relating to AFUDC, a Code of Conduct, and others. The Board also directed that details be provided with respect to the asset demarcation for the Woobine transfer.

[122] In its Compliance Filing, NSPML agreed to and accepted each of these conditions.

5.4 Should the ML Project be approved?

[123] Based on the findings made in this Decision, the Board is satisfied that the conditions outlined by the Board in the ML Decision have been satisfied such that the Maritime Link Project is approved in accordance with the ML Decision and this Supplemental Decision.

[124] The Board reserves its jurisdiction on the issue of costs.

[125] An Order will issue accordingly.

6.0 SUMMARY OF BOARD FINDINGS

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

[127] In its ML Decision, the Board imposed a condition to its approval of the Maritime Link Project that NSPML obtain from Nalcor the right to access Nalcor Market-

priced Energy (consistent with the assumptions in the Application as noted in NSUARB IR-37 and Figure 4-4) when needed to economically serve NSPI and its ratepayers; or provide some other arrangement to ensure access to Market-priced Energy.

[128] Among its other findings, the Board directed that certain filing and reporting requirements apply to NSPML respecting the Maritime Link Project, and also directed various other terms and conditions, including directions relating to AFUDC, a Code of Conduct, and others.

[129] In its Compliance Filing provided to the Board on October 21, 2013, NSPML filed an Energy Access Agreement ("EAA") executed by Emera, Nalcor and NSPI. The EAA was intended to satisfy the principal condition with respect to NSPI's access to Nalcor Market-priced Energy. NSPML also agreed to and accepted each of the other conditions imposed by the Board in its ML Decision.

[130] Based on the representations and clarifications given by NSPI and NSPML, including the interpretation of the EAA, the Board finds that the EAA satisfies the Market-priced Energy condition. In any issue related to cost recovery from ratepayers by NSPI, the EAA will be interpreted in light of these representations and clarifications. In the event the Final Agreement (which the same parties are to negotiate later) alters the terms and conditions of the EAA in a way that is detrimental to NSPI ratepayers, the terms of the EAA, as so represented and clarified, will prevail over the Final Agreement for purposes of determining the recovery of costs by NSPI from ratepayers.

[131] Based on the findings made in this Supplemental Decision, the Board is satisfied that the conditions outlined in the ML Decision have been met and that the

Maritime Link Project is approved in accordance with the ML Decision and this Supplemental Decision.

[132] The Province, and other Intervenors, had recommended that the Board impose a number of conditions. The Board considers that interpreting the EAA in accordance with the above representations and clarifications is a more appropriate manner of dealing with the concerns raised by the Province and other Intervenors. However, the Board observes that, as a practical matter, the end result, on a number of issues, is very similar to the conditions proposed by the Province.

[133] The Board notes that relying on the representations and clarifications removes risks to NSPI's customers from the issues canvassed by the Intervenors in this matter. Put more directly, NSPI bears all the risk that the EAA will be applied or interpreted in any way inconsistent with the Board's findings in this Decision.

[134] Further, it is important to note that the Board, and NSPI's customers, will be able to ensure that NSPI's future purchases of Market-priced Energy are conducted on reasonable and prudent terms, in similar fashion to all of its other fuel related transactions. These transactions will all be subject to the oversight of the Board under the FAM process.

[135] In addition to the conditions and directions imposed in the Board's ML Decision, the Board further directs as follows:

a) That NSPI to undertake a Fuel Manual review with the FAM Small Working Group and to file the proposed amendments with the Board by December 31, 2014.

b) That NSPI to include appropriate conditions within its Affiliate Code of Conduct and related Guidelines to prevent information received from Nalcor, including its 24 month forecast, from being shared with Emera or any related entity. NSPI is directed to file the proposed amendments with the Board by December 31, 2014.

c) That detailed reports must be filed with the Board by NSPML on a semi-annual basis, on June 15 and December 15 each year, commencing December 15, 2013. Updated status reports must be filed quarterly.

[136] In conclusion, the Board considers it appropriate to highlight the potential benefits of the EAA to NSPI and its customers. In this respect, the Board found the evidence of Morrison Park to be both instructive and compelling, in that they described the practical "market" benefits of the EAA. The benefit of the EAA is that it will provide NSPI with real and tangible advantages when it participates in the energy market. These benefits will necessarily flow to its customers.

DATED at Halifax, Nova Scotia, this 29th day of November, 2013.

Peter W. Gurnham

Roland A. Deveau