Nova Scotia Utility and Review Board

IN THE MATTER OF Section 35(A) of *The Public Utilities Act,* R.S.N.S. 1989, c.380, as amended

- and -

IN THE MATTER OF An Application by Nova Scotia Power Inc. for Approval of Capital Work Orders:

CI 39323, Digby Wind Project
CI 39626, Digby Wind Project Substation
CI 39627, Digby Wind Project Transmission Line
CI 39628, Digby Wind Project Interconnection

Closing Submission

January 14, 2010

TABLE OF CONTENTS

SUMMARY

By this Application, Nova Scotia Power Inc. (NSPI) seeks approval from the Utility and Review Board (UARB, Board) for four capital work orders: CI 39323, Digby Wind Project, CI 39626, Digby Wind Project Substation, CI 39627, Digby Wind Project Transmission Line, CI 39628, Digby Wind Project Interconnection, as filed on July 23, 2010 (the Project). NSPI's Application describes the acquisition of the assets and developments rights associated with the Project. The investment allows for the construction and interconnection of a 30 megawatt (MW) wind energy project, capable of generating an average of 110 gigawatt hours (GWh) of renewable energy annually. This energy delivered to Nova Scotians will help NSPI to meet the 2013 Renewable Energy Standard (RES) on behalf of customers.

The Project approval request includes approval of several affiliate transactions, and, in particular, approval of the acquisition of the Project from 3240383 Nova Scotia Limited (324 NSL). Part of the project costs also includes an affiliate transaction with EUS under its existing power line technician (PLT) contract for the construction of transmission lines associated with the wind farm. NSPI submits that each affiliate transaction associated with the Project offered the best available option to NSPI customers, at the time, in accordance with the requirements of NSPI's Revised Code of Conduct governing Affiliate Transactions (Code of Conduct).

NSPI was asked Information Requests by Board staff and the Consumer Advocate. No evidence has been filed by any party other than NSPI.

1.0 APPROVAL OF THE PROJECT, AS FILED, IS APPROPRIATE

On behalf of customers, NSPI has worked diligently and in the interests of customers to comply with the RES by relying on the significant effort and resources of its affiliates to construct and commission the Project, which is the lowest cost renewable energy generation project developed in Nova Scotia since the introduction of the RES in 2007. NSPI now seeks approval to include the Project, as filed, in the utility rate base for the benefit of customers.

The Application and Evidence in this proceeding, supported by the forthright testimony of Rob Bennett, President and CEO of Nova Scotia Power, compellingly demonstrate that NSPI and its affiliates have successfully delivered real value to NSPI customers by engineering and constructing the Project, on time and under budget. There is no evidence before the Board that calls into question the value of the Project or the involvement and actions of NSPI's affiliates – no opposing evidence was filed and no contrary statements were elicited from NSPI witnesses during cross examination by intervenor representatives.

NSPI's Evidence demonstrates that:

1. Having been granted a power purchase agreement (PPA) following the 2007 Request for Proposals (RFP), the Project is the lowest cost renewable energy project available to NSPI and its customers.

2. Due to the insolvency of the original developers, the Project and the value of its renewable generation was at risk of being lost for NSPI and its customers. Quick action had to be taken to preserve the PPA and to ensure that the significant value available on a time limited basis from the Federal ecoEnergy incentive was preserved.

3. At the time the Project was placed into protection under the *Companies' Creditors Projection Act* (CCAA), there was a significant likelihood that the Project would have to be developed independently of NSPI so its output could contribute to 2011 RES compliance. If NSPI had purchased the Project assets directly, the PPA would have been extinguished. Although Emera and NSPI might have wanted the Project to be developed by NSPI and become part of the utility rate base (as has subsequently become possible), the 2011 RES in combination with the uncertain status of other IPP projects did not allow for that approach at the time.

4. With an extremely tight development schedule in order to meet the 2011 RES and save the $10 million ecoEnergy incentive, Emera established a numbered project company, 324 NSL, to take all necessary steps to complete the Project on time. Emera did not have any reason to do so, other than to help NSPI and NSPI's customers. This action by the NSPI affiliate provides demonstrable benefit to NSPI customers.

5. 324 NSL was motivated to complete the project at the lowest possible cost because the PPA price is so low as to make it difficult for any independent entity to earn value from the Project unless it could be constructed at low cost. Further, low construction cost was a key way for 324 NSL to obtain value for the Project in the event it had to be later sold to an independent third party not affiliated with NSPI to achieve compliance with the 2011 RES.

6. Faced with a tight schedule, and needing to redesign and reengineer the Project in order to make it economically viable, 324 NSL retained EUS under an EPC contract. At the time of this transaction, neither 324 NSL nor EUS were subject to the NSPI Code of Conduct governing NSPI's transactions with affiliates. Both companies were free to operate like any other private, non-regulated corporation.

7. By hiring its affiliate, 324 NSL ensured that it could control the Project and achieve the desired outcome – on time commissioning that would save the ecoEnergy incentive. 324 NSL used industry standard methods to enhance the ability to commission the Project on time and under budget.

- By providing EUS with extensive pre-existing information received from SkyPower about the original project design and costs, 324 NSL was able to obtain the lowest reasonable price for the Project, and one in which 324 NSL could be confident that a quality Project would be completed. The information EUS was provided about other bids related to the original project design. At the time it established its price, EUS had not been provided with the revised engineering cost estimate prepared by CBCL Limited (CBCL) for the new project design. This revised engineering estimate from CBCL was only requested in April of 2010, when NSPI was evaluating the EUS price as part of its decision to acquire the Project from 324 NSL. It was at this time that NSPI requested 324 NSL to obtain a revised engineering estimate. NSPI used this information along with the SkyPower tenders to determine that taking an assignment of the EUS contract was the best available option for customers.

- By negotiating a contract that included both a stringent penalty provision, and an appropriate and well-considered performance incentive, 324 NSL used reasonable, industry standard contract provisions to help ensure that EUS performed as required, thereby having the Project available to contribute to the 2011 RES if need be and to obtain the ecoEnergy incentive. The record shows that the incentive was negotiated into the contract by 324 NSL by reducing the original price estimate provided by EUS by the amount of the incentive – in other words, the only way EUS could get the negotiated price was by completing the Project on time and earning its "bonus". This behaviour transferred some of the risk for project completion directly to EUS. NSPI respectfully suggests that this is exactly the type of behaviour that the Board and customers should expect from affiliates, and this delivers real value to customers.

8. NSPI retained EUS to complete the transmission interconnection under its existing Master Agreement for PLT services. NSPI's existing workforce was fully deployed and not available to complete this additional project based work. This work was completed by EUS at prices that were established by a competitive solicitation process when the Master Agreement was originally established.

9. Once it became clear in the Spring of 2010 that the Project was not likely required to achieve compliance with the 2011 RES, although it would contribute to 2013 RES compliance, Emera and NSPI took appropriate action to transfer the Project into NSPI. As described by Mr. Bennett, once NSPI is able to comply with the law, both it and Emera prefer renewable generation projects to be part of the operating utility, not be operated by an unregulated affiliate. NSPI acquired the Project from 324 NSL at cost – 324 NSL did not earn any profit or margin on this transaction or any aspect of the Project.

10. The Project has been successfully completed. The original PPA price, had any IPP been able to deliver on the contract, would have been among the lowest cost renewable energy on NSPI's system. The involvement of 324 NSL and EUS means that NSPI is now able to deliver energy at an even lower cost to customers, using reasonable assumptions for comparison to the PPA price. Comparing the now-complete project to any other current or planned renewable energy projects demonstrates that the Project is delivering real value to customers, is the lowest cost renewable project that has been developed since the introduction of the RES, and well below original expectations for cost.

11. This capital work order review and approval process has provided the opportunity to examine the affiliate transactions that is required by the Code of Conduct. By

approving the Project as filed, the Board can confirm that all affiliate transactions comply with the Code of Conduct.

NSPI refers the Board to the exchange between Vice Chair Shears and Mr. Bennett, in which the heart of the issues arising from this Application are discussed. In this exchange, Mr. Bennett responded directly to the concerns identified by the Vice Chair, confirming that NSPI's efforts are aimed at delivering the best possible value to customers.

> **THE CHAIR:** I just have a few questions, and I realize this is a very complex matter and you know, we've heard complicated questions and answers.
>
> My questions, I don't think, are complicated. Hopefully, they're simple. And for us, I think there are three underlying questions that we need to be satisfied with before we could approve this project.
>
> One is whether NSPI taking over the Digby wind process was necessary for customers and for NSPI. I understand a number of times it's [its] been described how beneficial it is, and I'm not challenging that, but is it necessary? Was it necessary?
>
> The second question is, is the price of this project, which is a big price, you know, $82.7 million, is that fair, reasonable and justifiable, especially given that it's an affiliate transaction?
>
> And thirdly, is this the best deal Nova Scotia Power could have gotten for its customers if circumstances were different?
>
> And I guess I'm wondering whether -- you know, at the moment it looks like all we have -- and I'm not diminishing it -- is your word that the answers to all those questions is yes.
>
> **MR. BENNETT:** Hopefully I can keep the answers in the order of the questions.
>
> Was it necessary for Nova Scotia Power to engage in this project, to move this project along? I believe that the record shows that it absolutely was necessary.
>
> At the time, we were required to comply with the renewable energy standards of the province and there were onerous penalties associated with

non-compliance and, quite frankly, it's just our practice and policy and desire to comply with the laws and regulations. So we work hard to do that.

The Digby project is only one example of the hard work that we've done to ensure compliance.

It includes everything from doing Nuttby, from doing a complicated partnership relationship with RESL at Point Tupper to great flexibility that we've demonstrated with other Power Purchase Agreements, other independent power producers who are successfully producing today because of the flexibility that we exercise in support of their projects.

It included complicated arrangements related to NewPage and an approach to this Board to have a Power Purchase Agreement with NewPage, all in an effort to pursue compliance with the renewable energy standard.

This project, in our minds, at that time, was absolutely necessary to get that work done and comply with the regulations.

Over and above that, we believed in the project. We believe the project is an economic project in a good wind regime with the community support needed to bring a project like this to success and with the opportunity to gain eco-energy credits, millions of dollars worth of eco-energy credits and make those available to customers that won't be there in the future. The eco-energy program is over.

If this project had not succeeded and completed and garnered those benefits, the next project that comes along won't have the opportunity. The next project that comes along will be buying turbines, not out of the bankruptcy process at a discount but in a competitive market at market prices which are increasing.

So we believe that there was a reason, an importance to doing this project to create value for customers, to see the project move ahead in some way and not fail.

Is the price reasonable? I believe the price is absolutely reasonable. It's one of the lowest cost sources of renewable electricity that exists in the province. It is that way because we've executed the project well, because we financed it at the lowest cost that it can be financed at through the utility and because we've leveraged every eco-energy and tax credit benefit for customers that we can out of this project.

So I think it's absolutely a value for customers.

THE CHAIR: I gather, though, even though you are fresh as a daisy to some of these issues, that you do have an understanding of the Board's concern with respect to affiliate transactions?

That concern goes back a long way. That concern was the reason why there was a Code of Conduct imposed by the Board, based on what the Board felt were unacceptable transactions in large part because they didn't go out to tender.

So I guess I'm just, you know, concerned about that side.

You say that, yes, you think it's a justifiable price, but you understand, don't you, why the Board has some concern that really we don't have a lot except for your opinion that it's the best price NSPI could have gotten.

MR. BENNETT: Well, and the evidence that it's lower priced than anything else that anyone has ever brought to the table in the form of a Power Purchase Agreement in this 2007 solicitation. It is -- it's lower than the original PPA. It's nearly the lowest price of any of the projects that have come out of that process.

And I understand the Board's discomfort with the process that has been followed, but I think the Board also appreciates that from my perspective, I know the work that's been done.

I've been in the middle of this endeavour to bring renewable energy to Nova Scotians, to comply with the Regulations in this province, and I've lived it with my colleagues, heart and soul, and the work that we've done is honourable work.

It's valuable work and there is no reason in my mind to suspect that someone could have done a better job at a lower price. I'm sure that's always a possibility, but it's not a test that we can take now. The project is done and it's been done well, and we're putting this forward as a complete package that has, in regulation, more value for customers than it has outside of regulation.

And our opportunity is to put it where it belongs, which is within the regulated utility. I shouldn't suppose where it belongs, I'm sorry -- where I believe it belongs.

I'm obviously, you know, very engaged and, as I said this morning in my introduction, I've been with these projects from the beginning, from the inception of these Power Purchase Agreements through the successes and failures with each of the proponents right to the very end, and I wanted to see these things done and I wanted to see them done well for our customers and that's why I'm here.

So do I think it's the best deal? I absolutely think it's the best deal and I think it's been done in the best way it could be done given all the circumstances and complications of the last couple of years that we've worked it.

THE CHAIR: And I guess that's your response to my third question, which was, "Is this the best deal NSPI could have gotten?"

MR. BENNETT: I believe it's a very good value. I believe everyone's intentions were forthright and honourable. I have no reason to believe that we didn't get the best value.

I appreciate the concerns about the affiliate transactions, and we operate with those concerns every day within Nova Scotia Power.

THE CHAIR: So do we.

MR. BENNETT: We appreciate very much the importance of transparency, and we're starting the new year endeavouring to be even more transparent in a process that's already extraordinarily transparent.

But we want to be absolute sure that we give the Board the confidence that we're doing these things aboveboard and we're doing them always with the best interests of our customers at heart.

We ---

THE CHAIR: And I guess that's the point of our concern, is that we need to ensure that expenditures made in this project and in any other project is in the best interests of the ratepayers because ultimately they will shoulder the cost of it. And so that's -- you know, that's why we're expressing these concerns with respect to affiliate transactions that have occurred.

MR. BENNETT: And I know, Madam Chair, that me giving my word, which I am under oath, I'm telling you exactly how I feel and how committed I am to this. What you describe as service to our customers, I know well as my job, that's what I try to do every day and that's what we're trying to do here.
We're trying to put this project in service in a way that brings the best value to customers.

THE CHAIR: Thank you, Mr. Bennett.[1]

The responses by Mr. Bennett to the Vice Chair's questions; a review of the Evidence, IRs, and Undertakings in their entirety; and the testimony of NSPI's panels lead to a conclusion that the Project should be approved as filed and a confirmation that there has been compliance with the Affiliate Code of Conduct.

1.1. The Project is Low Cost under Reasonable Assumptions

NSPI's Application, filed on July 23, 2010, provided two financial analysis models to demonstrate the effect of this ownership structure on NSPI customers. These models follow the methodology previously applied and accepted by the UARB in the Nuttby Mountain and Point Tupper wind projects; a discounted cash flow approach and a levelized cost model. The economic analysis model, or discounted cash approach, compared the cost of this Project under a PPA, to the current proposal of NSPI ownership. The levelized cost approach provides the effects of this project on a revenue requirement basis. The results of the analyses for both approaches confirm the cost to NSPI customers will be lower if owned by the utility than under the original PPA.

At the P50 production forecast, the Project provides a positive net present value (NPV) of $4.9 million, compared with the original PPA. The levelized cost to customers over the analysis period is forecast to equal $86.71/MWh. This is lower than the 2008 PPA between NSPI and SkyPower.

During the hearing, NSPI was asked to recalculate the economic analysis in several ways:

1. Recalculate the financial analysis to reflect the lower O&M costs per the signed GE Operating and Support Agreement.

2. Recalculate the financial analysis assuming that NSPI's annual production did not exceed the amount originally contracted for in the 2008 PPA, and recalculate the

[1] Transcript, page 183, line 4 – page 190, line 22.

financial analysis using a midpoint between the PPA annual production and the P50 level of production assumed in NSPI's Application.

3. Recalculate the 2008 PPA price to include the incremental energy rate in the PPA.

NSPI has filed revised calculations with respect to each of the requests noted above.[2] The O&M costs obtained through the GE Operating and Support Agreement are lower than forecast in NSPI's Application. As a result, the project economics are more favourable than originally suggested. The NPV is improved by $1.5 million and the levelized costs are lower by $1.79/MWh.[3]

NSPI's financial analysis provided with its Application assumed an average annual production level of 110.4 GWh. This level reflects the P50 from the Garrad Hassan report.[4] This is consistent with the Board-approved approach that NSPI has taken with respect to its capital applications. NSPI has performed the financial analyses to reflect the production level assumed in the 2008 PPA, as well as a midpoint projection level. NSPI also performed the analysis at a higher production level than that assumed in the Application, which highlights the benefits to customers in the event that the production levels are higher than forecast. While NSPI was deliberately conservative in its modelling of production for the filing, wind studies conducted on this project have estimated average production as high as 123 GWh/year.[5] NSPI included in its calculations the revised O&M costs per the GE Operating and Support Agreement as well as a reduced construction cost as the project is now substantially complete and the construction costs are known to be at least $2.0 million lower than forecast. The impact of these updates at the P50 production level is reflected in an NPV of $6.6 million and a levelized cost of $83.22/MWh, both of which are more favourable than contemplated at the time of NSPI's Application, and lower than the PPA.[6]

[2] NSPI Undertaking U-8, filed January 7, 2011.
[3] NSPI Undertaking U-8, filed January 7, 2011.
[4] NSPI's Application, Appendix 11, page 5 of 99.
[5] NSPI Application, page 15, footnote 2.
[6] NSPI Undertaking U-13, filed January 7, 2011.

While the PPA was based on a lower annual production level, this should not be taken to mean that the PPA is indicative of the expected wind energy production at that site. Rather, the energy bid of an IPP deliberately will underestimate the expected production of the facility so that the IPP can avoid penalties for non-delivery of energy, or for having to provide make-up energy. The IPPs typically have to be conservative in their assumptions in order to attract financing.[7] The production level associated with the SkyPower PPA is well outside the band of a balanced evaluation of the expected wind regime at the site,[8] and would be inconsistent with the Board's approach in past applications, which has been to use the P50 assumption. NSPI submits that the appropriate assumption to use for the evaluation of production for this site is the assumption supported by the expert report prepared by Garrad Hassan.

As noted above, NSPI was also requested to update the financial analyses to reflect a revised PPA price which accounts for the fact that the IPP would have been paid an incremental rate for excess energy delivered to NSPI above the contracted energy amount. NSPI agrees that amending the PPA price in this manner is appropriate. NSPI also included the impact of the lower O&M costs and construction costs noted above in this analysis. The results of NSPI's revised analyses are reflected in Undertaking U-13. The economic analysis remains positive and confirms that the Project remains more favourable to customers than the 2008 PPA.

An important element of the favourable economics of the Project is that it preserves the benefit of the ecoEnergy incentive for customers. The ecoEnergy funding is completely allocated by Natural Resources Canada. Future renewable energy projects will not have the opportunity to obtain this funding. If approved, the Project would be owned by a regulated utility, and as a consequence the entire value of the ecoEnergy funding will be used to offset cost, which benefits customers. This represents a significant savings of $10/MWh for 10 years. If NSPI had not been able to act swiftly, with the assistance of its

[7] Transcript, page 263, lines 12-18.
[8] NSPI Undertaking U-12, filed January 7, 2011.

affiliates, to complete construction before the March 31, 2011 deadline, this opportunity would have been lost.

1.2. The Affiliate Transactions Brought Value to NSPI Customers

NSPI has filed a complete Application for approval by the UARB. Included within that Application are several transactions which constitute affiliate transactions pursuant to the NSPI Revised Code of Conduct governing Affiliate Transactions (the Code of Conduct) which was approved by the UARB on February 24, 2009 and which was ordered in effect June 1, 2009. The Code of Conduct applies to any transaction entered into between NSPI and Emera affiliated companies. The Code of Conduct does not apply to transactions between non-regulated Emera companies.

The purpose of the Code of Conduct is as follows:

> 1.0 PURPOSE
> 1.1 The primary purpose of this Code of Conduct is to ensure that all transactions Nova Scotia Power Inc. (NSPI) enters into with affiliates are designed and carried out in a manner reasonably expected to produce demonstrable benefit to NSPI customers, when compared with all other available options.[9]

The Code of Conduct further provides that NSPI will only enter into affiliate transactions when doing so has established that each transaction with an affiliate is demonstrably the best option from among those available at the time for its customers.[10]

The main affiliate transaction associated with this Project is the purchase of the Project by NSPI from 324 NSL (the main affiliate transaction). That transaction is encompassed in the following agreements:

[9] Exhibit N-8, NSPI Revised Code of Conduct governing Affiliate Transactions, as approved by UARB order dated February 24, 2009, section 1.0.
[10] Exhibit N-8, NSPI Revised Code of Conduct governing Affiliate Transactions, as approved by UARB order dated February 24, 2009, section 7.6.

1. PPA between NSPI and 324 NSL (as assignee of SkyPower Corp.) (Appendix 5 of NSPI's Application)
2. License to Use Assets and Option Agreement (Exhibit N-5)
3. Asset Purchase Agreement (Appendix 4), General Conveyance (Appendix 7), Assignment and Assumption of Contracts Agreement (Appendix 13)
4. Promissory Note between NSPI and 324 NSL (Appendix 9)

A further affiliate transaction is associated with the construction of the transmission line associated with this project (CI 39627). NSPI engaged EUS to perform this work under the umbrella of its existing PLT contract with EUS (the Master Agreement). This work is aligned with NSPI's work force planning model which is designed to optimize the allocation and execution of PLT resources among work requirements. Work performed for NSPI by EUS under the Master Agreement has been reviewed and approved by the Board in previous capital work order applications filed by NSPI.

With respect to the main affiliate transaction, the acquisition of the project from 324 NSL triggers Section 6.10 of the Code of Conduct. This section states:

> 6.10 Where a capital asset is transferred from NSPI to an affiliate or from an affiliate to NSPI, that asset will be transferred at a price to be approved by the Board in advance.

On April 16, 2010, NSPI provided notice to the UARB of NSPI's intention to file a capital work order for approval for this Project. NSPI requested that the UARB allow the Company to continue with the project construction which would proceed in tandem with the Capital Work Order review and approval process. NSPI confirmed that customers would not be responsible for the costs of the Project unless and until the UARB approved the Capital Work Order Application and approve the inclusion of the asset in rate base. On April 23, 2010, the UARB responded and confirmed that it had no objection to NSPI proceeding with the Project at shareholders' risk. The Board further confirmed that a rigorous review of the transaction with 324 NSL would occur at the time of the capital work order application.[11]

NSPI's Application, Evidence, and Responses to IRs comprise the documented analysis conducted by NSPI in determining to acquire this Project from 324 NSL. NSPI submits that this documentation confirms that NSPI's acquisition of the Project is the best option available to NSPI customers and that it provides demonstrable benefits to NSPI customers. Indeed, this Project and the Nutty Mountain Wind project are the two lowest cost renewable energy resources that have been added to the network since the 2007 renewable energy solicitation.[12]

Much discussion took place at the hearing with respect to NSPI having taken an assignment of the EPC contract between 324 NSL and EUS for the construction of the wind farm by EUS. This transaction takes effect through the Assignment and Assumption of Contracts Agreement, provided at Appendix 13 of NSPI's Application. Intervenors have suggested that the Code of Conduct applies to the contract between 324 NSL and EUS. The Code of Conduct has no application to this contract. The UARB's oversight extends to transactions which affiliates may have with NSPI. In that regard, the relevant affiliate transaction is the transaction whereby NSPI accepted an assignment of the EUS contract by virtue of the Assignment and Assumption of Contracts Agreement dated May 28, 2010. NSPI must show that the decision to accept an assignment of the EPC contract was the best option available to customers at the time.

When it appeared that NSPI would be taking over the Project from 324 NSL, 324 NSL had already entered into the EPC contract with EUS.[13] In the April of 2010, prior to purchasing the Project from 324 NSL, NSPI required that 324 NSL engage CBCL to re-estimate the scope of work, accounting for updated pricing, the new turbine layout and

[11] NSPI Application, Appendix 3, page 4.
[12] Transcript, page 166, line 21 – page 167, line 22.
[13] Transcript, page 142, line 12 – page 143, line 2**.**

revised civil works and electrical requirements.[14] CBCL provided this estimate to EUS on May 5, 2010.

The result of the CBCL re-estimate was that the cost estimates for some civil works and the substation were reduced and the estimates related directly to the turbines stayed exactly the same. Since the SkyPower solicitation for tenders was not an RFP process, and the engineers estimated that scope/costs associated with the turbines had not changed, the SkyPower tenders were a good indication of the market.[15]

The CBCL revised engineer's estimate before taxes did not include padmount transformers, project management services and engineering. NSPI estimated these amounts and added them to the CBCL estimate. NSPI further adjusted the initial SkyPower tender results for the percentage difference between the initial CBCL estimate and the revised engineer's estimate. NSPI applied this percentage reduction to the original SkyPower tenders and adjusted them to include the padmount transformers, project management and engineering. NSPI found that the EUS price was lower than the CBCL revised Engineer's Estimate and was approximately $4 - 10.5 million lower than the adjusted range of tenders received as a result of the SkyPower solicitation.[16] CA IR-3, with attachments, provides the documents reviewed by NSPI at the time and NSPI's analysis with respect to its decision to accept an assignment of the EUS contract as being in the best interests of customers.

An important consideration was also that, at the time NSPI took the assignment of the EUS contract, work had already commenced by EUS. To stop work and conduct a further solicitation would have put the construction schedule and therefore the ecoEnergy funding at risk. It would also create project risks associated with quality control and liability if one contractor were to be removed from the job and replaced with another or the potential of moving the construction of the wind farm to a more expensive winter schedule. As a result of the early completion date, customers receive the benefit of the

[14] CA IR-3.
[15] CA IR-3.
[16] Transcript, page 197, line 18 – page 198, line 11.

renewable energy through avoided fuel costs of approximately $300,000-$500,000 per month.[17] There was risk associated with this being lost for every month that construction would have been delayed.

NSPI was not privy to the analysis done by 324 NSL, nor discussions between those parties at that time. At the time that EUS contracted with 324 NSL in February, 2010, a decision had not been made to have NSPI acquire the Project. It only became apparent in the spring of 2010 that the Project was not likely needed for 2011 RES compliance.[18] Further, it was not until March 1, 2010 that it was clear that Scotian Windfields was not going to exercise its ownership option.[19]

The Consumer Advocate and counsel for Avon also questioned the propriety of the inclusion of an incentive payment to EUS as part of the EPC contract. When NSPI accepted assignment of the EPC contract all terms had been agreed, and EUS was executing on its obligations. NSPI reviewed the contract in its entirety and determined that the total price was lower than the revised engineer's estimate that NSPI requested from 324 NSL. Further the price was significantly lower than the tenders received by SkyPower.

It is a principle of good business management to provide incentives or penalties to achieve value for customers. Despite the suggestions of the Consumer Advocate to the contrary during cross examination, no evidence has been filed by intervenors contesting NSPI's evidence on this point. Mr. Bennett responded to the Consumer Advocate confirming that the use of incentives is industry practice:

> **MR. MERRICK:** In your response to IRs, an IR on the bonus point from this Consumer Advocate there is a reference made to two other contracts where NSPI has used a bonus provision.
>
> Do you know if those were the only two other contracts where a bonus was provided?

[17] Transcript, page 95, lines 3-6.
[18] Transcript, page 80, line 18 – page 81, line 16.
[19] UARB IR-1, Attachment 1.

> **MR. BENNETT:** I'm sure it's not the only examples because it's common practice in the industry to set up contracts that have incentives and that have penalties. It's certainly a principle in our company. We believe that that motivates the right behaviour and produces the best value for customers in terms of getting projects completed on time and properly completed with quality.
>
> So it's a common practice and I'm sure there are more examples.[20]

The Consumer Advocate further questioned Mr. Bennett on the propriety of the use of incentives by NSPI:

> **MR. MERRICK: […**] Is there any criteria that NSPI uses to determine when it will include a bonus provision in a contract or not?
>
> **MR. BENNETT:** It's simply a principle of good business management. It's normal industry practice.
>
> You know, obviously we're negotiating for the best possible position that we can get to create value for customers and if we believe an incentive is the best way to achieve that then we will work for that in the contract. If we believe penalties are more effective a way to make sure customers are well served then we'll incorporate those. So it can be different in every contract.[21]

NSPI has provided examples of other commercial transactions where an incentive has been used to achieve results. See UARB IR-12 and NSPI Undertaking U-4.

The Consumer Advocate also requested that NSPI inquire of 324 NSL or EUS to determine how the incentive provision became a part of the EPC contract. In answer, NSPI has filed Undertaking U-5. The all-in contract price originally included the amount which was subsequently assigned as the incentive value. The incentive was created when 324 NSL sought to assign risk associated with the construction of the project to EUS. The all-in contract price was not increased to account for the incentive when certain risk was assigned to EUS. Rather, a percentage of the all-in price was

[20] Transcript, page 51 line 11 – page 52, line 4.
[21] Transcript, page 54, line 18 – page 55, line 1.

assigned to certain contract risks assigned to EUS and would only be paid if the substantial completion was attained by December 21, 2010. The breakdown of that assignment of risk is provided in Undertaking U-5. The incentive resulted in early completion of the project and provided approximately $300,000 to $500,000/month of free energy to customers in the form of avoided fuel costs, which they will receive through the FAM.[22]

NSPI submits that the decision to take assignment of the EUS contract price, which included an incentive, was appropriate and in the best interests of customers. If the substantial completion date was not achieved, there was risk that the ecoEnergy funding would not be obtained. This funding contributes $10 million over the life of the Project. This risk was negated when the incentive achieved its intended purpose – the project was completed early and, in addition to receiving valuable renewable energy from the Project,[23] customers will receive the benefit of the ecoEnergy funding.

[22] Transcript, page 94, line 4 - page 95, line 6.
[23] Transcript, page 70, line 1 to page 72, line 8.

2.0 SUMMARY AND REQUEST FOR PROJECT APPROVAL

By this Application, Nova Scotia Power Inc. seeks approval from the Utility and Review Board for four capital work orders:

1. CI 39323, Digby Wind Project, in the amount of $70.8 million
2. CI 39626, Digby Wind Project Substation, in the amount of $4.6 million
3. CI 39627, Digby Wind Project Transmission Line, in the amount of $4.2 million
4. CI 39628, Digby Wind Project Interconnection, in the amount of $3.3 million

Further, NSPI requests confirmation that the affiliate transactions relating to these capital work orders comply with the Code of Conduct.

The Project is required for the 2013 RES compliance. This Project is the lowest cost renewable energy project developed since the introduction of the RES. It is economically justified, producing a lower levelized cost than when the Project was originally proposed as an independent PPA, and it provides a positive NPV when compared to the original PPA. NSPI's evidence in this regard is uncontradicted.

Through the engagement of NSPI affiliates, through the acquisition of the Project, and through the construction of it, NSPI has been able to both preserve the Project and the PPA, in the event that it would be required for 2011 RES compliance, as well as to proceed efficiently to obtain the Federal ecoEnergy funding for the benefit of customers. As is seen in the economic analysis, the attainment of the ecoEnergy funding alone has contributed significantly to savings for customers over the life of the project. Without these contributions by affiliates, the Project and PPA may not have been preserved, and most certainly, if the Project had been preserved by an outside entity, it would have been constructed at a higher cost to customers. The transactions between NSPI and its affiliates have served to preserve benefit to customers and demonstrate that NSPI proceeded with the best option available at the time.

NSPI respectfully requests approval, pursuant to s. 35 of the *Public Utilities Act,* of the proposed capital expenditure of $82.8 million for the costs of the acquisition and construction of the Digby Wind Project, and confirmation that NSPI has complied with the Code of Conduct, in accordance with NSPI's Capital Work Orders more fully described in NSPI's Application dated July 23, 2010.