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April 8, 2025

Ms. Crystal Henwood
Regulatory Affairs Officer/Clerk
Nova Scotia Energy Board
1601 Lower Water Street, 3rd Floor
P.O. Box 1692, Unit "M"
Halifax, NS B3J 3S3

Re: M11927 – CI 50518 – HYD – Ruth Falls Main Dam Refurbishment – Closing Submission

Dear Ms. Henwood:

On October 11, 2024, Nova Scotia Power Incorporated (NS Power, Company) filed an Authorization to Overspend (ATO) for Capital Item (CI) 50518 – HYD – Ruth Falls Main Dam Refurbishment for approval from the Nova Scotia Energy Board (NSEB, Board).

On November 6, 2024, staff from Midgard Consulting Inc. (Midgard) attended a site visit of the Ruth Falls Main Dam, hosted by NS Power staff.

The Company received Information Requests (IRs) from Board Staff and Board Counsel Consultant, Midgard, as well as the Consumer Advocate (CA), the Industrial Group (IG), and the Small Business Advocate (SBA). The Company provided responses to IRs on December 3, 2024.

On December 17, 2024, Midgard filed evidence. The SBA filed a letter indicating that it had reviewed the Application and Information Requests but would not be filing Evidence. No other intervenor has filed evidence in this Matter.

On December 23, 2024, Board Counsel filed a letter with the NSEB indicating that Midgard had contacted Board Counsel and requested an opportunity to "clarify and expand on certain sections of its report in this matter."[1] Board Counsel requested Midgard be provided an opportunity to provide additional comments by January 13, 2025. As such, the

[1] M11927, Letter from William Mahody to Crystal Henwood, NS Power Inc. – CI 50518 – HYD Ruth Falls Main Dam Refurbishment, December 23, 2024, page 1.

Board amended the hearing order on December 23, 2024, and Midgard filed its updated evidence on January 13, 2025.

The CA and IG filed IRs to Midgard on January 27, 2025, and responses were received from Midgard on February 18, 2025. The SBA filed a letter indicating it would not be filing IRs to Midgard. NS Power filed its Rebuttal on March 18, 2025.

Closing submissions were received from the CA, SBA and IG on March 25, 2025.

Please see below for NS Power's Reply to Closing.

REPLY TO CLOSING SUBMISSIONS OF THE CONSUMER ADVOCATE

The CA presented two recommendations to the Board in their submissions, as follows:

1. That the Board direct Nova Scotia Power to undertake a review of its budgeting processes for archeological work in view of the evolving regulatory environment and the need to fully consult and engage with Indigenous peoples.

2. The Consumer Advocate recommends that the Board direct Nova Scotia Power to include a decommissioning option in any future application regarding similar facilities.

As set out in its Rebuttal, in the past NS Power looked primarily at other projects in the same geographic area or on the same water system for guidance when developing its archaeological estimates for hydro applications. NS Power agrees with the recommendation of the CA to review its budgeting process for archaeological work in light of the evolving regulatory environment and its engagement with the Mi'kmaq of Nova Scotia. The Company has already commenced this review internally. Going forward, NS Power will consider the broader hydro fleet and lessons learned concerning the potential for requirements and costs to change significantly in relation to archaeology.

In response to the CA's second recommendation, NS Power considered decommissioning on a preliminary basis at the time of the original application, but the initial cost estimates for this option were considerably higher than other options and NS Power therefore determined that decommissioning costs would be orders of magnitude higher than the five refurbishment options being considered. Given this, it was reasonable that NS Power made the decision not to invest resources into developing the decommissioning estimate further at the time. Midgard acknowledged that NS Power may not have considered this option as economic.[2] However, NS Power recognizes the interest regarding evaluating

[2] Exhibit N-9(C) – Amended Midgard Evidence, page 55, lines 2-3.

decommissioning as an option in various hydro proceedings and the need to put that evaluation before the Board for consideration going forward. In light of this, NS Power will commit to providing decommissioning costs in future hydro applications, as applicable.

REPLY TO CLOSING SUBMISSIONS OF THE INDUSTRIAL GROUP

Test for ATOs

The IG referenced an 'explicit ATO test' in its submissions and outlined the conditions for this test within its evidence.[3] However, the submissions of the IG do not accurately represent the established tests for ATO applications and attempt to introduce prescriptive factors that the Board 'must consider', despite there being no precedent establishing this. To date, the standard used to evaluate ATO applications has been a three-part test that focuses on determining whether the decisions of NS Power at the time they were made were reasonable and prudent given the circumstances and information that was known or should have been known. The specific test to be applied in the evaluation of an ATO Application, as referenced by the Board in several proceedings and cited by the IG later in their submission, is limited to the following:

1. Were the utility's decisions reasonable in the context of information which was known (or should have been known) at the time?

2. Did the utility act in a reasonable manner and use a reasonable standard of care in its decision-making process?

3. The imprudency test should relate to the circumstances at the time in question and not to hindsight.

This is a clear, three-part test that has been established by the Board throughout past precedent. The factors that the Board considers when determining whether this test has been met are broad and may vary depending on the specific matter before them. The method being put forward by the IG for assessing ATOs is far more prescriptive than the already established structure for assessing ATOs. In particular, going back to re-visit and re-assess the initial justification for an application in an ATO setting is problematic. The implementation of the structure proposed by the IG should not be taken lightly. The existing approach and test have been utilized extensively by the Board and remains an appropriate, transparent process.

[3] IG Submissions, page 2.

For the reasons noted above, NS Power submits that the test being put forward by the IG is incorrect and that use of the current standard and precedent for ATO applications should be used in the assessment of this application.

Burden of Proof

The IG refers to the applicable burden of proof in this proceeding and states its position that "it is NSPI that must produce sufficient evidence that it has acted prudently in its application and execution of the capital project, and that the proposed refurbishment is in the best interest of ratepayers".[4] However, the IG's statement ignores the fact that there is a base assumption of prudency, which can then be challenged by intervenors through the submission of evidence on reasonable grounds, at which point the burden shifts back to NS Power to establish prudency within their Rebuttal Evidence.[5] That Rebuttal Evidence is filed in response to the concerns raised by intervenors in their submitted evidence. If such concerns are not raised in evidence, then the result is that NS Power is not provided an opportunity to respond to them in evidence. The burden does not rest entirely with NS Power to anticipate all potential concerns that may be raised by individual stakeholders when those concerns are not communicated and/or supported with evidence. Such a standard would result in a high degree of regulatory inefficiency. If stakeholders require specific evidence or have specific information that it believes should be analyzed and considered in an application, it is not a productive use of the regulatory process for those parties to remain silent until the closing submissions phase of a proceeding, particularly when that party had the opportunity to ask IRs, has subsequently not submitted evidence, and raises issues for the first time in submissions.

Economic Justification: Considering Alternative Refurbishment Options

The IG has been critical of the fact that the project justification for this application has not changed. NS Power agrees that the 'Justification' section of the application has remained the same in the ATO, and notes that this is standard practice in ATO applications. The original application was made based on the refurbishment project being necessary to address safety concerns at the dam arising from a Dam Safety Review. As provided by the IG, "the Kleinschmidt 2015 Dam Safety Review confirmed the spillway structure did not meet the current CDA Guidelines and required this project to mitigate the risks. More specifically, it does not meet the stability requirements for the In-Flow Design Flood ("**IDF**") loading condition, and the sluiceway structure did not meet the stability requirements for the IDF and earthquake loading conditions".[6] The safe operation of Ruth Falls remains the

[4] IG Submissions, page 2.
[5] (M11220), Decarbonization Deferral Account Application, Board Decision, paragraph 63.
[6] IG Submissions, page 4.

highest priority consideration for NS Power and the justification for the ATO continues to be that this project is necessary to maintain the Ruth Falls dam in a safe manner.

The IG is also skeptical of NS Power's submission that the option being recommended in this ATO remains the lowest cost option for customers. As set out in the original application NS Power reviewed five potential options, as follows:

> **Option 1** - Replace the existing stoplogs with screw stem vertical lift gates;
>
> **Option 2** - Replace approximately half of the existing stoplog bays and construct an uncontrolled overflow section, and replace the remaining stoplog bays with screw stem vertical lift gates;
>
> **Option 3** - Replace approximately half of the existing stoplog bays and construct an uncontrolled labyrinth spillway, and replace the remaining stoplog bays with screw stem vertical lift gates;
>
> **Option 4** - Remove the stoplog bays and install rubber dams on the left portion of the dam, looking downstream, and install an uncontrolled overflow spillway and rubber dams on the right portion of the dam. The existing sluiceway gates, located in the central portion of the dam, would be replaced with screw stem vertical lift gates;
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> **Option 5** - Construct a new dam immediately downstream of the existing dam. This design option would be similar to Option 4 with an uncontrolled overflow section, deep sluice gates, and a rubber dam section.[7]

NS Power selected Option 4 to complete the required work based on the estimated costs associated with each of the five potential options for refurbishment. Option 4 was the lowest cost option because it required the installation of screw stem vertical lift gates only on the central portion of the dam, which included three gates in total.[8] This can be compared to Options 1 through 3, which required replacement of either half or all of the stoplog bays with screw stem vertical lift gates. For context, there are 33 stoplog bays in total at the Ruth Falls site. Option 4 also presented the lower cost option when compared to Option 5, which involved a complete dam replacement. When making the ATO application, NS Power determined that Option 4 remains the lowest cost option for customers, as the other four options would experience greater exposure to escalating costs

[7] (M08984) ACE 2019, CI 50518, page 2.

[8] Exhibit N-6(C) - NSPI (NSUARB) RIR-07, Attachment 1, page 8, which reads "Option 4, which involves replacing fifteen stoplog bays with an uncontrolled spillway section, and the other 15 stoplog bays with a rubber dam, and the three wood stoplog sluice bays with steel vertical slide gates."

of materials due to the higher number of bays being replaced by steel gates.

The only option that may have avoided additional costs related to the revised Fisheries and Oceans Canada (DFO) requirements was a 'do nothing' option, which was not acceptable at the time, and remains unacceptable due to the relevant safety concerns. In any scenario other than a 'do nothing' the primary drivers of this ATO were unavoidable. Options 1 through 3 would require temporary lowering of the head pond to the same degree as Option 4, with the exception being Option 5, which would require a greater degree of lowering. Based on this, it is reasonable to determine that similar increases would have been seen amongst the other options considered by NS Power and the Board at the time of the original application.[9]

The IG referenced Midgard not having independently verified updated cost comparisons for the five original refurbishment options and stated that accepting NS Power's explanation that all five options would have experienced the same cost escalations as reasonable is difficult.[10] However, Midgard did not have difficulty accepting NS Power's explanation as reasonable and expressly stated in response to the IG's IR-30 that "Midgard considered this statement to be reasonable".[11] The IG's question in IG IR-30 also expressly asked whether Midgard thought the Board should have been given the opportunity to review a more detailed updated analysis and Midgard responded that "No, Midgard did not conclude this that the Board should have also been given the opportunity to review an updated cost analysis of the other four options considered in 2018 as well."[12] This conclusion was based on the reasonability of NS Power's statement that the cost of each option would have escalated in the same way regardless of the option selected. This indicates that Midgard was confident enough in NS Power's explanation to determine that an updated analysis was not necessary and the Board did not need to see it, without needing to independently verify the work of NS Power.

Economic Justification: Considering Decommissioning

The increased environmental regulatory requirements from DFO relating to Fisheries Act Authorization (FAA) permits do not apply exclusively to refurbishment projects. Decommissioning hydroelectric sites such as Ruth Falls cannot be taken lightly and does not represent a simple matter of demolishing a dam, as decommissioning projects substantially impact the flow of water and water management, which result in major impacts to existing homeowners and the surrounding environment. Given these impacts, decommissioning would not eliminate escalating cost factors such as archaeology, and

[9] Exhibit N-6(C) - NSPI (NSUARB) RIR - 07
[10] IG Submissions, page 7.
[11] Exhibit N-11, Midgard (IG) RIR – 30(c), line 17.
[12] Exhibit N-11, Midgard (IG) RIR – 30(c), lines 8-9.

would instead be expected to increase cost categories related to the water control and environmental impact issues referenced above. This is especially true in the case of sites located on systems such as the Sheet Harbour System, which include several head ponds.

A high-level estimate of decommissioning costs was provided as part of NS Power's Rebuttal Evidence. That estimate of $84.5 million would place costs of decommissioning at around 5.5 times the cost of the $15.45 million refurbishment project post-ATO, even without consideration for lost generation. The IG states that NS Power provided limited details on how the estimated decommissioning costs were calculated.[13] However, Appendix A to NS Power's Rebuttal Evidence laid out exactly where each number came from, with an additional footnote referencing the fact that the preliminary results of the decommissioning studies completed as part of the depreciation study indicate that the decommissioning estimate will likely need to be increased.

Archaeology Costs

The IG submits that the ATO costs associated with archaeology should be denied, as they were not accurately estimated in NS Power's original application. However, an accurate estimate of costs in the initial project estimate does not factor into whether the costs ultimately incurred were prudent and the archaeology costs submitted as part of this ATO application are both reasonable and prudent, despite not having been included in the initial estimate.

NS Power acknowledges that the archaeology costs included in the original estimate were low, but is only able to make that assessment given the benefit of hindsight. When this project was originally estimated the projected costs for archaeology represented NS Power's understanding of the extent of archaeology expected to be present at the site based on studies conducted at the Sheet Harbour system. Although an updated approach is now being implemented by NS Power, at the time taking a more regional approach to estimation was reasonable practice. It is also important to consider the fact that the low initial estimate did not result in the selection of a higher cost option for the refurbishment project and that, with respect to archaeology, Midgard found "the magnitude of these costs is unlikely to have materially affected the outcome of the original decision."[14] The archaeology costs were not accurately estimated but would have escalated consistently across the options considered and could not have been mitigated through early identification.

[13] IG Submissions, page 5.
[14] Exhibit N-9(C) - Amended Midgard Evidence, page 26, lines 20-21.

Scope Changes

As discussed in NS Power's Response to Board IR-07, the total cost of any option selected by NS Power to deal with the safety concerns at Ruth Falls would have experienced the same degree of upward cost pressure due to changing DFO requirements and increased archaeology in the area. The additional work completed on this project was not the result of changes to the original project scope, purpose, or construction methods. The new scope items were related entirely to DFO requirements, so changes to the project cost and timeline would apply to all refurbishment options, as drawdown is the primary driver of the environmental permitting requirements[15] and DFO would have the same requirements for permitting on all options, and potentially higher requirements for Option 5.

Foreseeability of Impacts of Changing FAA Requirements

The IG further submits that NS Power should have anticipated and considered the change in DFO requirements when making its application. However, as noted by the IG, the relevant legislation was not given Royal Assent until June 21, 2019, seven months after the initial application was made and nearly two months after the application was approved. NS Power builds its estimates based on the information known at the time. Expecting NS Power to incorporate legislation into its estimates without knowing the exact timing, wording, form, or impact of the final legislation is not reasonable. Based on the information known at the time, NS Power acted prudently in bringing forward the refurbishment application to address safety concerns at Ruth Falls as identified in a detailed report on its condition. To withhold such an application pending a potential legislative change with unknown impact and timing would not have represented a reasonable standard of care.

In addition to this, even if NS Power had attempted to take the potential legislative change into account, determining the actual impact of amendments to the Fisheries Act (FA) would have been pure conjecture. The amendments as written had substantially similar wording to the previous act but resulted in a very different effect. This was primarily the result of DFO's formation of policies around these changes, which included important factors such as how the changes were to be interpreted, applied, and carried out on a practical basis. As stated by Midgard, "The most significant impact expected from the Project results from the proposed drawdown of the reservoir to enable dam crest works to be carried out in the dry. While subject to debate, it can be argued that the drawdown of the reservoir would have resulted in non-permanent effects. Midgard concludes that NS Power was acting reasonably in expecting that, at the time of its original ACE filing, an FAA would not have been required."[16] This demonstrates that the actual degree of the FA amendment's impact

[15] Exhibit N-9(C) - Amended Midgard Evidence, page 54.
[16] Exhibit N-9(C) - Amended Midgard Evidence, page 11, line 27-31.

and applicability to the Ruth Falls project was not known until additional policy and interpretation of the amended act was formalized at the regional level through review of the FAA permit application.

This unpredictability is demonstrated further by the fact that, even after receipt of the initial FAA permit requirements, revised requirements continued to be received from DFO and changed over time, as DFO itself had to adapt to how the new legislation was to be applied. This continued uncertainty after the legislation came into effect presented a 'moving target', which drove the timeline for solution development and ultimately increased the project cost. Midgard acknowledged the evolving DFO requirements in its evidence and expressly stated that Midgard views "NS Power's actions in navigating these challenges as generally prudent, in its attempts to respond to DFO's requests in the face of an evolving regulatory environment."[17]

Further, projecting that an FAA would be required when this project was developed in 2018 would not have changed the outcome. The dam at Ruth Falls still would not have met the CDA criteria and still would have required refurbishment to manage the risk. Had NS Power attempted to include FAA permit costs by inflating the project budget or contingency amount, then an ATO may have been avoided. However, this would not have informed or changed the actual scope introduced by the FAA. NS Power could not have reasonably foreseen the extensive requirements DFO mandated for fish passage improvements and offsetting, which were only known after several reviews of NS Power's FAA application and would likely have been in excess of any costs that NS Power would have predicted at the time of the original application filing. Any estimate prepared by NS Power at the time to capture these impacts would merely have included a much higher margin of error than the present-day estimate, and as such would not have been a reasonable or supportable proposal to put forward to the Board for approval.

The IG references the Tusket Main Dam (Tusket) project and indicates that the Tusket project was concurrent with Ruth Falls, so NS Power ought to have known an FAA would be required as it applied for an FAA for Tusket around the same time.[18] This is incorrect. The Ruth Falls Main Dam Project was submitted to the Board for approval on November 28, 2018 and approval was received ahead of the Royal Assent of the FA amendments. In contrast to this, the Tusket application was made six months after Royal Assent was given for the FA amendments. By this time, the Company understood that the Tusket project would require an FAA permit ahead of the submission of its ATO, and as such, made an application to the environmental regulator ahead of the ATO process.

[17] Exhibit N-9(C) - Amended Midgard Evidence, page 15, lines 16-17.
[18] IG Submissions, pages 9-11.

In concluding its submissions regarding the foreseeability of project impacts arising from FA amendments and how DFO personnel would interpret and apply those amendments, the IG provides the following:

> Viewing the evidence as a whole, NSPI acted imprudently by not including the costs of the FAA within its initial application… Either way, the impact of this imprudence should not rest with ratepayers.

Respectfully, these submissions from the IG are not aligned with the prudency test and the capital approval process. In and of itself, the fact of whether or not costs are included in an "initial application" is not determinative of prudency. NS Power has put forward evidence supporting the prudency of the subject costs and Midgard has provided independent evidence supporting such a finding. Even if the costs could have been foreseen as the IG suggests (despite the consistent evidence to the contrary), but were not included in the original application, that alone does not somehow make them imprudent. On this basis, the IG's submissions on this point can and should be disregarded in their entirety by the Board.

Advancement of Applications to DFO and NSECC

The IG submits that NS Power unnecessarily prolonged the FAA permitting process, and points to NS Power's evidence that an updated FAA package was submitted to DFO on February 28, 2025, approximately 8 months after the last discussions with DFO in June 2024. The IG goes on to state later in their submissions that "it is unclear why there was an eight-month delay".[19] However, this position does not reflect an accurate understanding of the FAA process. DFO communication received in June 2024 directed NS Power to evaluate and provide additional offsetting for the Project as well as an archaeological plan for the proposed drawdown. NS Power required time to hire consultants, who then developed these plans to provide evidence-based responses to DFO's questions and requests. Further, NS Power required time to complete additional engagement with the Mi'kmaq of NS on the updated information to be submitted to DFO.[20] These were necessary, expected steps in producing the plans that were required and ultimately provided to DFO in response to their requests.

The IG also states that "this delay is indicative of the permitting process throughout". However, NS Power provided evidence in its response to Board IR-12 that the regulatory review of NS Power's FAA application resulted in several Incomplete Letters[21] directing NS

[19] IG Submissions, page 5.
[20] Exhibit N-6(C) - NSPI (NSUARB) RIR-12.
[21] 'Incomplete Letter' is the formal title used by DFO for letters where DFO has determined that additional information is required, and does not indicate a failure or omission on behalf of NS Power.

Power to complete additional studies and improvements related to fish and fish habitat that were not directed in previous reviews by DFO. As above, responding to these requirements with sufficient supporting information took significant effort and time.

The IG also referenced delays associated with the NSECC requirements as indicative of imprudence. The NSECC timeline was expressly discussed by Midgard in its evidence, where it found that "Midgard's review of the provided correspondence suggests that in general NS Power was responding appropriately and promptly to NSECC's requests. Moreover, it appears that the requests from NSECC were at times "piecemeal" (i.e., additional issues being raised only after unrelated answers provided by NS Power)."[22] In addition to this, NSECC communications and responses were directly connected to the outcome of the FAA permit and NS Power could not provide information to NSECC about the requirements of DFO before DFO had communicated these requirements. This was also confirmed by Midgard, who stated that "An issue that arose repeatedly in NS Power's correspondence with NSECC was NS Power's inability to provided finalized design drawings and contractor documentation to NSECC. Midgard notes that NS Power did not have these documents primarily due to the shifting Project design and schedule, which itself was caused by NS Power needing to adapt to changing request from DFO."[23]

While counsel for the IG took issue with the resources and time required to fulfill these types of requirements, Midgard did not, finding "NS Power's actions in navigating these challenges as generally prudent, in its attempts to respond to DFO's requests in the face of an evolving regulatory environment".[24]

Request for Re-Application

The IG has recommended that the ATO not be approved as filed, and that NS Power should re-apply or that the ATO application should be held in abeyance to allow all potential alternative options to be explored. The IG filed no evidence in this proceeding, and this is the first time that this has been raised by the IG.

In support of this request, the IG has referenced the fact that NS Power still does not know whether a FAA permit will be issued and whether there will be further additional DFO requirements. By way of an update in response to this, NS Power can advise that meetings with DFO since the filing of evidence have been positive. DFO have confirmed that NS Power's February 28, 2025 submission addresses the outstanding information requested in its correspondence to NS Power in June 2024, and the FAA application has proceeded to

[22] Exhibit N-9(C) - Amended Midgard Evidence, page 16, lines 6-9.
[23] Exhibit N-9(C) - Amended Midgard Evidence, page 16, lines 10-13.
[24] Exhibit N-9(C) - Amended Midgard Evidence, page 15, lines 16-17.

Continuing Consultation with the Mi'kmaq of NS.

As stated by the Board, and restated by the IG in its submissions:

> A balance must be struck between the level of detailed engineering required (conducted at shareholder risk prior to approval); the ability of the utility to take advantage of favourable market conditions; regulatory efficiency; and the timely submission of capital projects.[25]

In this case, delaying the ATO process to wait for the conclusion of the FAA permit process would not strike the appropriate balance. Further delaying the Ruth Falls project could present additional risks to fish management and public safety. The root purpose of the Ruth Falls refurbishment is to address safety concerns and the project will ultimately need to be completed. In addition to this, at a minimum the same degree of FAA work will be required with any viable refurbishment option, and the proposed approach to refurbishment remains the lowest cost option for customers.

REPLY TO SUBMISSIONS OF THE SMALL BUSINESS ADVOCATE

As noted in its response to the CA Submissions above, and in response to the SBA's submissions, NS Power will commit to providing decommissioning costs in future hydro applications, as applicable. NS Power has also updated two aspects of the 2018 Hydro Asset Study within the upcoming Depreciation Study, with those updates being a "Hydro System Decommissioning Study Update" and a "Hydro Asset Archaeological Program 2024 Revised Costing".[26]

To address concerns related to DFO costs going forward, the SBA has requested that NS Power provide ongoing and regular updates to the Board regarding its updated project plan to improve fisheries infrastructure. NS Power agrees to submit an updated project plan regarding the DFO requirements and will also update the Board once FAA permit approval is obtained. However, based on recent progress made with DFO, NS Power does not agree that resubmission of an ATO is beneficial or necessary.

The SBA also submitted that, until NS Power knows that the FAA permit is granted, the ATO application should potentially be paused. NS Power acknowledges this concern and advises that part of the reasoning behind the timing of this application was to allow the Company to achieve sufficient progress regarding the requirements of DFO and the resulting updated

[25] (M11003), Advance Meter Infrastructure (AMI) Project – ATO, Board Letter Decision, page 8.; and IG Submissions page 9.
[26] (M12012), 2025 ACE Application, Exhibit N-9(C) – NSPI (NSUARB) RIR-13.

project cost. NS Power has been coordinating and meeting regularly with DFO regarding the FAA to confirm its understanding of the requirements and has ensured that DFO has all the information it has identified as being required from the Company. As above, DFO confirmed that NS Power's February 28, 2025 FAA submission addresses outstanding information requests from its June 2024 email to NS Power, and that Continuing Consultation with the Mi'kmaq of NS has commenced. As new information was submitted to DFO, which includes a revised offsetting plan and drawdown archaeological plan, NS Power understands that DFO must consult with the Mi'kmaq of NS on potential points of interest and concern with respect to this additional information, prior to issuing the FAA. NS Power has and is continuing to engage with the Mi'kmaq on these plans to hear any additional questions and/or address any outstanding concerns in parallel to the consultation process.

CONCLUSION

NS Power submits that the three-part test for ATO's has been met, as follows:

1. **Were the utility's decisions reasonable in the context of information which was known (or should have been known) at the time?**

NS Power's decision to advance the Ruth Falls application was reasonable in the context of information known at the time. Through the company's Dam Safety Review it identified safety concerns with the dam's structure that need to be addressed and selected this refurbishment option as the lowest cost solution for customers. The archaeology costs were also projected based on what was known about the Ruth Falls reservoir area at the time, and the initial estimate was established based on a reasonable analysis from the project team given that information. Ultimately, the archaeology costs are higher than estimated, but are reasonable, necessary, and prudent.

2. **Did the utility act in a reasonable manner and use a reasonable standard of care in its decision-making process?**

Given the project justification being based on safety, postponing an application based on legislation that was not yet in force, and with unknown overall impacts and an unknown timeline for when it would come into force, would not have represented a reasonable standard of care in the Company's decision-making process at the time.

3. **The imprudency test should relate to the circumstances at the time in question and not to hindsight.**

Given the benefit of hindsight, NS Power, the Board, and stakeholders can consider the FAA scope changes and its impacts with confidence, but this was not possible at the time the application was made. The parties also know now that the archaeology budget at the time was not sufficient. However, that estimate was prepared in the context of 2018, when using cost projections based on the Sheet Harbour system, rather than the province as a whole, was a reasonable practice. Since that time, NS Power and other parties have gained additional experience and insight into the scale of archaeology costs at hydro sites throughout Nova Scotia, but that insight and subsequent amendments to the process for estimating archaeology costs were developed more recently, after the time that the Ruth Falls project was submitted and approved.

In addition to the above, the option selected to move forward with the Ruth Falls project has been considered carefully and remains the lowest cost option for customers to address the issues identified in the dam safety reports. Given this, NS Power respectfully requests that this ATO application be approved in full.

Yours truly,

Annie Beth Sampson
Manager, Regulatory