M12696

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF: ***The Public Utilities Act and the Maritime Link Act and the Maritime Link Cost Recovery Process Regulations***

-and-

IN THE MATTER OF: **An Application by NSP Maritime Link Inc. to end the holdback mechanism in accordance with the parameters set by the Nova Scotia Utility and Review Board in Matter 11009**

BATES WHITE INFORMATION REQUESTS RESPONSES

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Responses Due: **Thursday, June 11, 2026**

Copies: 1 electronic copy (PDF searchable)

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Issued at Halifax, Nova Scotia, this 11th day of June 2026.

Request IR-1:

Reference: N-7, Evidence of Bates White, p. 8, lines 6-22.

(a) To paraphrase this summary, is it accurate to say that Bates White concludes that NSPML has clearly met its evidentiary burden to satisfy the "Reduction in Undelivered Volumes" threshold but NSPML has not clearly or definitively met its evidentiary burden to satisfy the "Consistent Deliveries" threshold? If not, please clarify.

(b) Where you note significant subjectivity in applying "good utility practice" and "exceptional circumstances", (here and in the discussion at pp. 26-33) do you have any recommended objective criteria the Board could apply to reduce subjectivity?

(c) Please confirm that you have not recommended that the Board grant NSPML's request to end the holdback.

Response IR-1:

(a) Yes.

(b) No. The assessment of good utility practice and exceptional circumstance exceptions necessarily includes subjectivity.

(c) Confirmed.

Request IR-2:

Reference: N-7, Evidence of Bates White, p. 28, lines 1-12 regarding conflicting information in NSPML's evidence regarding good utility practice.

(a) In this section, please confirm:

(i) while NSPML asserted that LIL and ML outages are coordinated as evidence of its good utility practices, in fact the LIL bipole outage ran from September 17 to 26, 2023, while the ML planned outages ran from approximately September 11-14 (ML Pole 1) and September 14-17 (ML Pole 2) so at most there was a single day boundary contact between the two outage windows, not a concurrent multi-day period of overlap. If not, please explain.

(ii) ML maintenance work was already complete by the time the LIL went offline after analysis of the ML transfer capability in all hours (as referenced in footnotes 76 and 77), for the September 17–26, 2023 window.

(iii) NSPML's ML maintenance and NLH's LIL planned outage ran in sequence, not in parallel.

(b) Is it Bates White's position that the September 2023 ML maintenance, having been completed before the LIL outage commenced on September 17, 2023, resulted in ML capacity being unavailable during a window when the LIL was still operational and energy deliveries could have been made? If so, please identify the specific hours and estimated NS Block delivery volumes affected.

(c) In Bates White's opinion, if NSPML had genuinely timed its maintenance to coincide with the LIL outage, the ML would instead have been derated during September 17-26, 2023?

(d) Having failed to do so, does Bates White agree that this does not demonstrate optimal operational scheduling and provide evidence of good utility practice?

Response IR-2:

(a)

(i) Confirmed.

(ii) The Maritime Link had returned to full 500 MW transfer capability on September 15, 2023, two days before the start of the LIL bipole annual planned outage identified by NSPML in response to NSPML (IG) IR-07 (a).

(iii) The LIL bipole annual outage for 2023 ran subsequent to, not in conjunction with, the Maritime Link planned outages.

(b) The data does not directly support this assertion. During the period of monopole operation of the Maritime Link between September 3, 2023 (at hour 8) until September 15, 2023 (at hour 18), there were no hours in which actual flows on the Maritime Link reached the maximum transfer capability of 250 MW. Flows on the Maritime Link averaged 161 MW during that period, and reached no higher than 225 MW. This suggests that there was always headroom for additional flows on the Maritime Link during that period. Still, it should be noted that in the week prior to the Maritime Link's monopole outage (August 27, 2023 through September 2, 2023, inclusive), actual hourly flow on the Maritime Link averaged 333 MW, well above the 250 MW derated limit imposed during the monopole outage.

(c) If NSPML had timed the Maritime Link annual outage to overlap with the LIL's bipole annual outage, the Maritime Link would have been derated to 250 MW during the September 17, 2023 to September 26, 2023 period.

(d) Absent some compelling reason or constraint as to why it would be optimal to conduct the Maritime Link's annual outage in the days prior to the LIL bipole annual outage, this appears to have been a missed opportunity to better optimize the Maritime Link annual outage.

Request IR-3:

Reference: N-7, Evidence of Bates White, p. 30, lines 8-14.

(a) In referencing extreme weather events as found in *force majeure* clauses, such as tornadoes, is this the nature and degree of the "exceptional circumstances" Bates White contemplated?

(b) Does Bates White have any regulatory guidance regarding legal standards and criteria for weather-related *force majeure* which could provide some guidance?

Response IR-3:

(a) Yes, extreme weather was a type of exceptional circumstance contemplated and can be specified in *force majeure* clauses.

(b) We cannot offer a legal opinion on the question. From a policy perspective, *force majeure* clauses often try to isolate events that (1) prevent performance by a party to the agreement, (2) that such non-performance is not directly or indirectly caused by the non-performing party, (3) that the event is outside the control of the non-performing party, (4) that the event could not have been prevented by the non-performing party through taking all reasonable precautions to avoid such an event, and (5) the non-performing party could not overcome the event by the exercise of due diligence.

Request IR-4:

Reference: N-7, Evidence of Bates White, p. 33, lines 7-18.

> *All parties agree that the LIL traverses a route that is subject to severely harsh winter weather conditions, and thus high wind and ice events are not exceptional but expected. Moreover, to the extent that the event was driven by unbalanced ice loading, questions arise regarding the sufficiency of the LIL's design, which were raised by the Haldar report and subsequently acknowledged by NLH. …*
>
> *Questions regarding the sufficiency of LIL's design do not support NSPML's position that the March-April 2024 outage was excused by extraordinary circumstances.*

(a) Please confirm whether the March 2024 icing event exceeded the design-basis weather conditions.

(b) In Bates White's view, can weather outages attributable to design limitations qualify as "exceptional" circumstances?

(c) If yes, please explain how this can be distinguished from normal project performance risk.

(d) Please confirm whether, in your view, the March–April 2024 LIL outage does or does not qualify as an "exceptional circumstance" within the meaning of the Board's test.

(e) If you cannot provide a definitive answer, explain precisely what additional evidence would be required to do so.

Response IR-4:

(a) The evidence provided NSPML's Application page 21 lines 4-10 supports the assertion that the radial ice and wind conditions experienced exceeded design parameters.

(b) Yes. All assets have design limitations, and no asset will be 100% reliable in all potential weather conditions.

(c) Exceptional circumstances related to extreme weather may be considered weather conditions that exceed reasonable design parameters.

(d-e) NSPML provided compelling evidence that the March-April 2024 outage was caused by a severe icing event, as well as evidence that the radial ice and wind conditions experienced exceeded design parameters. However, unbalanced ice loads due to ice shedding were acknowledged by Newfoundland and Labrador Hydro as a potential

contributor to the event, and unbalanced ice loading has contributed to seven of ten ice damage events experienced on the Labrador Island Link. As discussed in the Bates White evidence at pages 31-32, the Haldar Report raised concerns about the design capability of the LIL to meet Canadian Standard Association requirements and Newfoundland and Labrador Hydro's own standards regarding unbalanced ice loads. The Bates White evidence did not provide a technical or engineering review of the outages or LIL design, but acknowledged that the conclusions of the Haldar Report about the sufficiency of the LIL design do not support NSPML's position that the March-April 2024 outage was excused by extraordinary circumstances.

Request IR-5:

Reference: N-7, Evidence of Bates White, pp. 34-35, regarding long-term outlook of deliveries and the potential for extended outages (e.g. 6-week bipole outage scenarios).

a. Is Bates White able to quantify the expected frequency of such events? If so, please provide any analysis or estimate.

b. What would be the financial impact on ratepayers if such events occur after the holdback mechanism is terminated? Please explain and provide any analysis.

Response IR-5:

(a-b) Bates White has not conducted any analysis estimating the likelihood of extended bipole outages on the LIL, or the financial impact on ratepayers if such events occur after the holdback mechanism is terminated. It is reasonable to expect that if there was an extended bipole outage on the LIL, especially during winter months, there would be material costs to Nova Scotia ratepayers for replacement energy to make up for Nova Scotia Block volumes, which have zero marginal cost and would be unavailable during a LIL bipole outage.