

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 M11009

BEFORE: Stephen T. McGrath, K.C., Chair
Roland A. Deveau, K.C., Vice Chair
Steven M. Murphy, MBA, P.Eng., Member

APPLICANT: **NSP MARITIME LINK INC.**
Shellie Woolham

FORMAL INTERVENORS: **CONSUMER ADVOCATE**
David J. Roberts, Counsel
Michael Murphy, Counsel

SMALL BUSINESS ADVOCATE
Melissa P. MacAdam, Counsel
Rebekah Powell, Counsel

DEPARTMENT OF ENERGY
Girish Patel

INDUSTRIAL GROUP
Nancy G. Rubin, K.C.
Brianne E. Rudderham, Counsel

NOVA SCOTIA POWER INCORPORATED
Blake Williams, Counsel

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

FINAL SUBMISSIONS: July 23, 2026

DECISION DATE: October 21, 2026

DECISION: Holdback mechanism is ended.

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1.0 SUMMARY

[1] This is the Nova Scotia Energy Board's (Board) decision on an application by NSP Maritime Link Inc. (NSPML) to end the holdback mechanism imposed by the Nova Scotia Utility and Review Board (NSUARB) due to continuing delays in the delivery of the NS Block over the Maritime Link.

[2] In an October 2023 decision, the NSUARB outlined the conditions that had to be met to end the holdback on monthly assessments paid by Nova Scotia Power Incorporated (NS Power) to NSPML. The NSUARB ordered that the holdback would continue until (i) at least 90% of the NS Block (excluding Make-up Energy) is received during each of 12 consecutive months (with flexibility to account for good utility practice outages or exceptional circumstances) and (ii) the net outstanding balance of undelivered energy is less than 10% of the NS Block annual contracted amount.

[3] NSPML submitted that these conditions were satisfied as of May 1, 2024. The intervenors in this matter do not dispute that the net outstanding balance of undelivered energy is less than 10% of the NS Block annual contracted amount, satisfying the second condition. The area of dispute between NSPML and the intervenors is whether at least 90% of the NS Block (excluding Make-up Energy) was received during each of 12 consecutive months. The 90% threshold was not met in 4 of the 12 months. However, NSPML states that the instances of under-deliveries in those months should be excused due to good utility practice or exceptional circumstances.

[4] Having reviewed the evidence and submissions, the Board is satisfied that NSPML has satisfied the conditions to terminate the holdback mechanism as of May 1, 2024. With respect to the condition requiring the receipt of at least 90% of the NS Block (excluding Make-up Energy) during each of 12 consecutive months, the Board has

concluded that the four months of under-deliveries are excused due to good utility practice or exceptional circumstances. The Board orders that all holdback amounts retained after May 1, 2024, be distributed to NSPML as set out in Appendix B, but NSPML is only permitted to collect its weighted average cost of capital for 15 months beyond the end of the compliance period. After that time, NSPML must use its actual cost of debt. The Board directs NSPML to confirm its cost of debt and the total carrying costs in a compliance filing. NSPML is also directed to continue its reporting as part of NS Power's existing Fuel Adjustment Mechanism reports.

2.0 BACKGROUND

[5] In its decision dated October 4, 2023, 2023 NSUARB 175 (Matter M11009), the NSUARB outlined the conditions that NSPML must meet to end the \$4 million holdback on monthly assessments paid by NS Power:

[94] Having reviewed the submissions, the Board finds that the monthly holdback will continue until both of the following conditions are satisfied:

- a) at least 90% of the NS Block, measured in MWh (excluding Make-up Energy), is received during each of 12 consecutive months, and
- b) the net outstanding balance of undelivered energy is less than 10% of the contracted annual amount of the NS Block.

[95] NSPML/NS Power may apply to the Board for relief if it considers that good utility practice or exceptional circumstances caused it to fail to meet the consecutive 12-month requirement. If the Board is satisfied that good utility practice or exceptional circumstances existed, it may provide relief and may attach any terms and conditions it deems appropriate at that time.

[2023 NSUARB 175, paras. 94-95]

[6] On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, Sch A, the NSUARB was succeeded by the Board for all applications related to electric utilities.

[7] On February 3, 2026, NSPML applied to end the holdback mechanism, submitting that these conditions were satisfied as of May 1, 2024. While the Intervenor and the Board agreed that the second condition was clearly satisfied (i.e., the net outstanding balance of undelivered energy was less than 10% of the NS Block annual contracted amount on May 1, 2024), NSPML did not meet the first condition requiring the delivery of at least 90% of the NS Block (excluding Make-up Energy) during each of 12 consecutive months because the 90% threshold was not met in 4 of the 12 months. However, NSPML stated that the four instances of under-deliveries should be excused due to good utility practice or exceptional circumstances. It noted that since the commissioning of the Labrador Island Link (LIL) in April 2023, Newfoundland and Labrador Hydro (NL Hydro) has been delivering the NS Block consistent with the negotiated terms of the Energy and Capacity Agreement. NSPML stated that the “energy delivered over the Maritime Link in 2023 through 2025 has served approximately 19 percent of NS Power’s customer sales, having an estimated value in the 2023/2024 period of ~\$495 million (exceeding NSPML’s assessment costs of ~\$325 million over the same period by over \$165 million), with the added benefit of the energy being renewable.”

[8] NSPML also requested that all holdback amounts retained after May 1, 2024, be released as set out in Appendix B of the application. NSPML asked that its weighted average cost of capital be added to these amounts.

[9] The Board considered this matter by way of a paper hearing process, with further evidence filed by John D. Wilson, on behalf of the Consumer Advocate, and by Bates White on behalf of Board Counsel, followed by NSPML’s rebuttal evidence. Final written submissions were completed by the parties on July 23, 2026.

3.0 ANALYSIS AND FINDINGS

3.1 Was the net outstanding balance of undelivered energy less than 10% of the NS Block annual contracted amount?

[10] One of the two conditions that NSPML was required to satisfy was that “the net outstanding balance of Undelivered Energy is less than 10% of the contracted annual amount of the NS Block”.

[11] NSPML stated that this condition was achieved by the end of March 2024, when the net outstanding Deferred Energy balance fell to 9% (below the 10% threshold), with about 111,000 MWh owing. By June 22, 2024, all the outstanding NS Base Block Deferred Energy had been redelivered. A small amount of Supplemental Block Make-up Energy (about 7,950MWh) remained, but Supplemental Block redeliveries are only received during the 5-month winter period and they were made-up in November 2024.

[12] NSPML provided a summary of the energy deliveries and outstanding balances in Appendix A of the application. No party challenged NSPML’s position that the 10% threshold was met.

3.1.1 Findings

[13] The Board finds that by the end of March 2024 the net outstanding balance of Undelivered Energy was less than 10% of the contracted annual amount of the NS Block. NSPML satisfied this condition for termination of the holdback.

3.2 Was at least 90% of the NS Block (excluding Make-up Energy) delivered during each of 12 consecutive months?

[14] The second condition that NSPML was required to meet was that “at least 90% of the NS Block, measured in MWh (excluding Make-up Energy), is received during each of 12 consecutive months”.

[15] NSPML stated that this condition was satisfied for the 12-month period of May 2023 through April 2024, except for the following four months: July 2023, September 2023, March 2024 and April 2024. When the Board described the test for terminating the holdback, it indicated that relief may be granted for a shortfall if the Board considered that “good utility practice or exceptional circumstances caused [NSMPL] to fail to meet the consecutive 12-month requirement.” NSPML said that the facts surrounding these four shortfall events fall within the scope of that exception.

[16] In summary, NSPML submitted that the events of July 2023, September 2023 and March 2024 were the result of planned outages. It noted that these outages occurred after the Labrador Island Link was commissioned. It argued that, consistent with good utility practice, the outages were planned to occur in lower load periods, when the regional system operators agreed that the assets were not required to ensure reliable service. NSPML noted that there were no customer outages relating to these planned outages. NSPML stated that the 90% threshold was not achieved in April 2024 because of extreme weather conditions, when icing caused damage to electrode wings on NL Hydro transmission facilities that had been in service since 2018.

[17] These four events are explained in detail later in this decision, and the Board will canvass whether they fall within the scope of good utility practice or exceptional circumstances.

3.3 What are good utility practice or exceptional circumstances?

[18] In its initial decision in Matter M11009 (2023 NSUARB 175), the NSUARB allowed NSPML to apply to be relieved of its requirement to demonstrate, in part, that at least 90% of the NS Block had been delivered in a 12-month period:

[95] NSPML/NS Power may apply to the Board for relief if it considers that good utility practice or exceptional circumstances caused it to fail to meet the consecutive 12-month requirement. If the Board is satisfied that good utility practice or exceptional circumstances existed, it may provide relief and may attach any terms and conditions it deems appropriate at that time.

[19] In a later decision in the same matter (2024 NSUARB 17), the NSUARB noted it did not define the scope of “good utility practice or exceptional circumstances” in its earlier decision, intentionally leaving this to evidence and submissions in the context of an actual request for relief in specific circumstances:

[19] ...The Board intentionally did not attempt to provide a definition or describe the scope of “good utility practice or exceptional circumstances” in its decision, as it contemplated this could be the subject of evidence or argument when NSPML eventually files its application to end the holdback.

[20] In this proceeding, NSPML’s application included evidence from Concentric Energy Advisors, Inc. Concentric described good utility practice in a general way, including numerous practices and activities aimed at ensuring optimal performance, reliability, the longevity of assets and ensuring electrical grid stability and resiliency.

[21] Concentric referred to the definition of good utility practice in the Joint Operating Agreement governing the operation and maintenance of the assets needed to deliver the NS Block of energy, which it said was consistent with the definition used by the United States Federal Energy and Regulatory Commission (FERC):

“Good Utility Practice” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved

by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods or acts when undertaken with the standard set forth in the first two sentences of this definition at such time [footnote omitted]

[Exhibit N-1, Attachment 1, p. 12]

[22] The definition used by FERC in its Large Generator Interconnection Agreement and Small Generator Interconnection Agreement established in FERC Order No. 2003 and FERC Order No. 2006 was provided by NSPML in response to Industrial Group IR-23:

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

[Exhibit N-4, IR-23, Attachment 1, pp. 5-6]

[23] Concentric discussed the need for planned outages to maintain infrastructure to ensure its optimal performance and longevity. It noted such outages can be expected every year and are part of good utility practice. Concentric also said that, despite best practices in planning and maintenance, unplanned outages are also a normal part of electricity production and delivery.

[24] In respect of good utility practice relating to extreme weather, Concentric said:

...Good utility practice plays a pivotal role in ensuring the stability and resilience of the electrical grid, particularly in the face of more extreme weather events. Adhering to established standards and best practices in transmission operation and maintenance is essential for minimizing the risk of disruptions, preventing equipment failures, and optimizing the performance of transmission infrastructure. Through routine inspections, proactive maintenance, and investment in modernization efforts, utilities can identify and address potential issues before they escalate into larger problems that could compromise grid reliability. By upholding good utility practice, utilities can enhance the integrity of transmission systems, mitigate the impact of unplanned outages, and ensure the continuous and efficient delivery of electricity to customers.

In addition, diligent adherence to good utility practice is important in accommodating increasing amounts of renewables needed to meet decarbonization goals. As renewable energy sources such as wind and solar power continue to expand, utilities must effectively integrate these variable and intermittent resources into the grid. This requires proactive planning, investment in grid modernization, and the implementation of innovative technologies. By optimizing grid flexibility and enhancing system reliability, utilities can ensure the seamless integration of renewables while maintaining grid stability and resilience. Overall, good utility practice is instrumental in harnessing the potential of renewables to meet growing energy demands while mitigating environmental impacts and advancing energy transition goals.

[Exhibit N-1, Attachment 1, pp. 20-21]

[25] Significantly, Concentric said that, without recognizing planned outages that are required every year as part of good utility practice, it was unlikely that NSPML would ever meet the 12-month requirement for the termination of the holdback mechanism.

[26] NSPML, in response to Board IR-8, said it believed that assessing whether an action was consistent with good utility practice or exceptional circumstances should be undertaken in a similar manner as the “reasonable person test”, which it described as involving judgement in its analysis, but being objective in nature.

[27] Bates White said that, while good utility practice is a common standard that can be referenced in definitions from credible sources, such as FERC, “determining whether an action can be considered good utility practice is a subjective exercise.” Bates White went on to note that the reference to “exceptional circumstances” introduced further subjectivity and lacked a “standard definition”. It reasoned that weather could be considered an exceptional circumstance based on the fact that extreme weather events are often included in *force majeure* clauses. Bates White also noted the assessment was further complicated by the fact that a single planned or forced outage may occur for more than one reason, and more than one party may be involved.

[28] Mr. Wilson, in his evidence, agreed with NSPML that the Board should apply an objective test in assessing whether good utility practice or exceptional circumstances

existed. However, in response to an information request from the Industrial Group (IR-1), he agreed with Bates White that the assessment of exceptional circumstances was subjective and would consider the degree to which the event was foreseeable, whether the event was beyond design standards, and other factors depending on the nature of the event.

[29] In their submissions, the parties made various references to the assessment of good utility practice or exceptional circumstances:

- The Small Business Advocate said good utility practice must consider whether the work is required, whether it is required to be done at that time, or whether it could be combined with other work at another time in order to reduce the duration of the outage time; and whether anything can be done to reduce the total number of outages. The Small Business Advocate acknowledged that, in this case, consideration must also be given to the interconnection and coordination with other parties, such as NL Hydro and NS Power.
- The Consumer Advocate supported Mr. Wilson's conclusion that NSPML should be granted the relief it sought on the basis of good utility practice or exceptional circumstances but acknowledged the issue raised by Bates White that the potential for conflicting evidence about specific outages was a valid concern.
- The Industrial Group submitted good utility practice is not limited to a single definition or universal standard and is not a standard of perfection. Rather, it includes a variety of reasonable approaches while adhering to industry regulations and sound business practices. Planned outages for maintenance of complex assets are inherently part of good utility practice, but not every outage

automatically qualifies. Regarding exceptional circumstances, the Industrial Group said that for the purposes of this application, this should be informed by the same principles applicable in a *force majeure* analysis, as referenced by Bates White.

- NSPML submitted there are established definitions for these terms that provide appropriate guidance for this matter. It referred to the definition of “good utility practices” in the *Wholesale Market Rules and Regulations*, NS Reg 36/2007, s 2(h), the definition in the Joint Operating Agreement referenced by Concentric and the definition used by FERC. NSPML submitted these definitions were consistent with the prudence standard applied by the Board. It said that exceptional circumstances find meaning in the word “exceptional”, which it said was a deviation from the norm and potentially one that is rare. It reiterated its position that an objective test should be used along the lines of a “reasonable person” test, as opposed to a subjective test, which it suggested was something akin to a *mens rea* assessment in a criminal law context. In its reply submissions, NSPML disagreed that the *force majeure* concept was analogous to “exceptional circumstances” and submitted that Bates White referred to it as a basis for considering that weather could constitute an exceptional circumstance and not that *force majeure* should be used as the standard or test in this application.

3.3.1 Findings

[30] While the experts and parties sometimes had different ways of expressing the meaning of good utility practice and exceptional circumstances, it appeared to the Board that there were many common elements across those expressions and that the points of disagreement were limited.

[31] Regarding the good utility practice assessment, the Board agrees that it is, in essence, an assessment of the reasonableness of actions in light of a specific set of circumstances. While it is objective, in the sense that it considers what a reasonable person or utility might do in comparable circumstances, it is also subjective, in the sense that it requires the exercise of judgement in determining what is reasonable in the circumstances. As Bates White noted, a higher degree of judgement might be required where more than one reason is present for an outage, or more than one person is involved. As framed by the Industrial Group, the Board agrees that good utility practice is not limited to a single definition or universal standard, and perfection is not required. As explained by Concentric, planned outages are an inherent part of good utility practice, but the Board does not agree that all planned outages are necessarily consistent with good utility practice. Similarly, if it is reasonable or prudent to plan an outage to repair damage caused by unreasonable or imprudent conduct, it could be said that the need for the outage did not arise from good utility practice.

[32] The concept of exceptional circumstances requires judgement to be applied about how far the circumstances or event depart from what is normal, what is expected or foreseeable, or what is reasonable to have planned for. The Board accepts that certain weather conditions, which appear to be the most relevant example for the purposes of this case, could qualify as exceptional circumstances.

[33] The Board will apply these general principles – not a prescriptive definition or a bright line assessment – to the circumstances presented in this matter, as discussed in the sections that follow.

3.4 Description of Four Events

[34] Bates White summarized the four events that were the subject of NSPML's claim of good utility practice or exceptional circumstances:

- **July 2023 (5-day planned LIL bipole outage):** NSPML explains that in July 2023, there was a five-day bipole planned outage on the LIL, which precludes any Muskrat Falls energy from being sent to Nova Scotia. The purpose of the outage was to complete several work items including "software backup/validation efforts relating to the final software updates designed to remedy non-critical software punch list items," verification of "several Supervisory Control and Data Acquisition (SCADA) points to enable greater LIL visibility and control at the [Newfoundland and Labrador System Operator] Energy Control Center," and testing of "the electrode line fault locator." Absent this outage, NSPML explains that total NS Block deliveries for the month would have been 97% of contract values, exceeding the 90% threshold.
- **September 2023 (10-day planned LIL bipole outage):** According to NSPML, NLH took the LIL offline for a 10-day bipole outage, which NSPML describes as one that "can be expected to occur on an annual basis." NSPML states that "regularly scheduled planned maintenance of Pole 1, Pole 2, and bipole area assets" was completed, including "valve inspections, converter transformer testing and inspection, 2- and 5-year preventative maintenance activities (PMs) on disconnect switches, filter inspections, and 4-year disconnect switch PMs at transition compounds." NSPML indicates that during this outage, NLH also completed some "non-critical LIL punch list items." NSPML explains that it took completed "regularly scheduled planned maintenance" on the Maritime Link "in conjunction with NLH's LIL planned outage," during which time Maritime Link maintenance completed included "Insulated Gate Bipolar Transistor and Gate Unit replacements and circuit breaker, voltage divider, and capacitor testing and inspections," as well as "[o]pportunistic punch list and warranty related work," which was "completed by the Original Equipment Manufacturer." Absent this outage, NSPML explains that total NS Block deliveries for the month would have been over 99% of contract values, exceeding the 90% threshold.
- **March 2024 (2-day planned LIL bipole outage):** NSPML explains that in March 2024, NLH took a two-day bipole planned outage on the LIL "to facilitate corrective maintenance repairs on a variety of systems including Optical Ground Wire (OPGW) damaged in an ice storm on the island of Newfoundland, electromagnetic interference mitigations on several DC current transformers, and installation of ground potential rise mitigations that have affected the cable switching sequence and have left the overload capability of the LIL out of service." NSPML also explains that during March 2024, the Nova Scotia Power System Operator de-rated the Maritime Link to 170 MW for a two-day period "due to inclement weather in Newfoundland that could have resulted in a reliability impact to Nova Scotia customers." Absent the LIL planned outage, NSPML explains that total NS Block deliveries for the month would have exceeded the 90% threshold.
- **March/April 2024 (12-day forced LIL bipole outage, 1-day planned LIL bipole outage):** NSPML identifies two additional, separate LIL bipole outages. First, NSPML explains that on March 30, 2024, both poles of the LIL tripped offline due to "extraordinary damage caused by a significant ice accumulation event which saw ice accumulation and wind speeds nearly double the maximum capacity of the

lines.” NSPML explains that “[i]n an area of southern Labrador, both electrode line conductors were severed and the tower wings supporting them, as well as the Optical Ground Wire (OPGW), were damaged.” According to NSPML, NLH “restored the LIL to service in monopole metallic return configuration on Monday April 8, 2024.” Separately, NSPML states that NLH took an unrelated, one-day bipole outage on April 30, 2024 “to correct a software deficiency relating to cable switching.” Absent these outages, NSPML explains that total NS Block deliveries for the month would have been approximately 98% of contract values, exceeding the 90% threshold.

[Exhibit N-7, pp. 23-26]

3.5 Did the four events represent good utility practice or exceptional circumstances?

[35] The Board will review each of the four events.

3.5.1 July 2023

[36] NSPML seeks good utility practice relief for the five-day planned LIL bipole outage in July 2023, characterizing it as a post-commissioning software and SCADA update outage required to enhance reliability. NSPML asserted that the planned outage occurred at times where the regional system operators agreed the assets were not required to ensure reliable service. Further, NSPML believes that, consistent with good utility practice, the outage was intentionally planned to be taken in lower load periods.

[37] According to NSPML, the July 2023 outage was not related to LIL commissioning activities (which were completed in April 2023). Instead, the Company stated that this planned outage on the LIL served to prepare for the deployment of LIL software updates, which NSPML said had always been planned to occur post-commissioning. The outage was also used to correct emerging deficiencies with the electrode line fault locator, and to test SCADA indication points and allow greater operator visibility and control of the LIL. NSPML stated that all of this work was necessary to enhance asset reliability and was prudently coordinated with system operators. NSPML also indicated that such work was also consistent with Maritime Link outages undertaken

post-commissioning of that asset, where more than 370 software updates have been completed on the Maritime Link since its commissioning in 2018.

[38] Mr. Wilson's opinion is that the July 2023 outage meets the Board's standard for relief for good utility practice.

[39] Bates White, however, was more nuanced in its conclusion, as it noted that an assessment of good utility practice is a subjective exercise, and may rely on a review of multiple events and multiple entities (NSPML and NL Hydro in this case). Bates White noted that "[i]t is therefore possible to observe instances of good utility practice associated with an event, but that such evidence is insufficient to conclude that the outage happened in spite of those instances of good utility practice" due to potentially conflicting evidence on the record.

[40] As it relates to the July 2023 outage, Bates White noted that despite commissioning of the LIL in April 2023, the LIL still required a "final" version of software to resolve a total of 111 "punchlist items and other items that were deferred to the final release" of the software. Installation of this software did not occur until August 2024, several months after the conclusion of NSPML's compliance period. As such, Bates White appears to question whether the outage should be considered consistent with good utility practice and suggested that some of the related outage activities could or should have been addressed prior to LIL commissioning.

[41] In its Rebuttal Evidence, Concentric disagreed with Bates White's inference that the work should have been completed prior to commissioning:

In my opinion, Musco's analysis does not appropriately distinguish between commissioning activities necessary to place a facility into service and post-commissioning activities undertaken to improve, validate, and optimize facility performance.

Large infrastructure projects always generate non-critical punch-list items, software enhancements, testing activities, telemetry refinements, and operational improvements that are completed after commissioning. The existence of such work does not mean the facility was not ready for service. Rather, it reflects the reality that complex facilities continue to be refined and optimized as operating experience is gained.

Commissioning establishes that a facility has met the requirements necessary to safely and reliably enter service. It does not mean that every non-critical item has been completed. As a result, it is common for utilities to schedule planned outage windows following commissioning to complete additional testing, software validation, SCADA verification, and other activities intended to improve operational reliability and system performance.

[Exhibit N-11, pp. 5-6]

As such, rather than demonstrating that the facility was not ready for service, Concentric concluded that the outage demonstrated prudent management of a newly commissioned High Voltage Direct Current facility, and that the ongoing execution of post-commissioning activities was appropriate.

[42] Concentric also disagreed with Bates White's suggestion that the outage may demonstrate a failure to follow good utility practice. Concentric noted that Bates White did not identify any activity that should not have been performed, any engineering standard that was violated, or any prudent alternative that should have been pursued. Instead, Concentric asserts that the July 2023 outage was consistent with good utility practice, as it was planned, coordinated, and undertaken to perform activities intended to improve reliability, operational awareness, and system performance.

[43] Bates White questioned whether the July 2023 outage aligned with good utility practice as a result of NL Hydro failing to conduct the related work prior to LIL commissioning. The Industrial Group agrees with Bates White.

[44] The Industrial Group submitted that the July 2023 outage does not establish good utility practice holdback relief. The Industrial Group argued that while the July 2023 outage technically occurred after LIL commissioning in April 2023, this work had been anticipated prior to commissioning of the LIL and was directly tied to activities that were

ongoing as part of, and in continuation of, the LIL commissioning process. In particular, the Industrial Group noted that NSPML indicated that the outage work was tied to the completion and validation of software needed to resolve outstanding LIL punch-list items. The Industrial Group, therefore, believes that the work was directly related to the successful commissioning of the LIL.

[45] To support its submission, the Industrial Group noted NSPML's response to IG IR-8, which shows that similar numerous software updates on the Maritime Link since its commissioning have not required any multi-day outages. The Industrial Group argued that NSPML has not clearly explained why software-related work on the LIL required a five-day bipole outage in July 2023, when similar work on the Maritime Link did not require any outages.

[46] Further, the Industrial Group disagrees with Concentric's characterization that the July 2023 outage was consistent with good utility practice on the basis that post-commissioning software work is normal for large infrastructure. The Industrial Group submitted that this conflates the existence of post-commissioning work generally with the question of whether the timing, scope, and planning of this particular outage reflects that standard. In this context, the Industrial Group submitted that the work was not routine post-commissioning optimization but was instead deferred commissioning work. As such, the Industrial Group argued that the July 2023 outage is not evidence of good utility practice but rather is evidence of an asset that was not fully commissioned at the time the compliance period began.

3.5.1.1 Findings

[47] The Board respectfully disagrees that the July 2023 outage is evidence of an asset that was not fully commissioned at the time the compliance period began. First,

as noted by NSPML in its Closing Submissions, the LIL was commissioned and accepted by the System Operator and Regional Coordinator for operation, and also reviewed and accepted as commissioned by Canada's Independent Engineer. The Board concludes that acceptance of the commissioned LIL in April 2023 by these entities would not have proceeded unless they were satisfied that the LIL had been successfully commissioned.

[48] Further, the Board agrees with Concentric and NSPML that major infrastructure projects, such as the LIL, generally involve a number of non-critical "punch list items" that are necessary to address at some point in the future but do not affect daily operation. In addition, there was no evidence presented in this proceeding to show that any work related to the July 2023 outage should have been conducted in advance of LIL commissioning.

[49] Finally, the Board agrees with NSPML's Reply Submissions, noting that the fact the Maritime Link did not need to engage in any post-commissioning outages to perform software testing is of no relevance in assessing the July 2023 LIL outage. The Maritime Link is a different asset that operates on different software than the LIL.

[50] Based on the above, the Board finds that the work associated with the July 2023 outage was not part of the LIL commissioning process. The Board also finds that the July 2023 outage work was completed to enhance asset reliability, was prudently coordinated with system operators, and was necessary. The Board, therefore, finds that the work performed during the July 2023 outage was consistent with good utility practice, and grants the requested holdback relief for the event.

3.5.2 September 2023

[51] NSPML seeks good utility practice holdback relief for September 2023, when there was a 10-day outage of the LIL bipole for planned annual maintenance.

NSPML asserted that the planned outage occurred at times where the regional system operators agreed the assets were not required to ensure reliable service. Further, NSPML believes that consistent with good utility practice, the outage was intentionally planned to be taken in lower load periods.

[52] According to NSPML, this was a planned outage that can be expected to occur on an annual basis, as is typical with any utility asset. Concentric stated that the outage had been planned for over a year, was mainly preventative in nature, with corrective actions taken as required to safeguard reliability through the winter and consistent with good utility practice. In addition, NSPML indicated that it coordinated its own Maritime Link monopole outage work for regularly scheduled planned maintenance with the LIL outage. Concentric said that these outages were planned when system loads were lower than they had been (in the shoulder season) and expected water flow in the Churchill River was lower than other times of the year. Concentric concluded that this timing also allowed for the preparation of the lines for operation during the winter months to ensure the reliability of energy supply.

[53] Mr. Wilson's opinion is that the September 2023 outage meets the Board's standard for relief for good utility practice.

[54] As it relates to the September 2023 outage, Bates White concluded that NL Hydro exhibited good utility practice by scheduling the annual outage of the LIL in a lower load "shoulder" month. Bates White stated that this represented a reasonable decision that attempted to minimize the impact of the loss of the asset on affected systems. Bates White also concluded that NL Hydro coordinated the outage with relevant reliability authorities, including the Nova Scotia Power System Operator.

[55] However, Bates White took issue with NSPML's statement that it timed its regularly scheduled planned maintenance on the Maritime Link to occur in conjunction with NL Hydro's planned LIL outage in September 2023. Bates White stated that, in theory, such coordination is a reasonable practice since it would have helped maximize the time the Maritime Link was available when it was most beneficial, i.e., when Muskrat Falls and the LIL are energized and able to deliver energy to the Maritime Link. Nonetheless, Bates White noted that based on its review of the evidence, it appears there was no overlap between the September 2023 LIL outage and the Maritime Link outage. If this was the case, it may imply that NSPML did not follow good utility practice. Specifically, Bates White noted that the LIL annual planned bipole outage began September 17 and ended September 26, 2023, and during that period the Maritime Link's hourly availability was its full 500 MW in all hours.

[56] In its Rebuttal Evidence, Concentric disagreed with Bates White's conclusion that the Maritime Link outage and LIL outage did not overlap or were not coordinated. Concentric noted that the data on which Bates White relied only captures a portion of the overall outage sequence. Concentric provided more detail on the data, noting that the Maritime Link Pole 1 outage extended from approximately September 3 through September 13, 2023. The outage then shifted to the Maritime Link Pole 2 from approximately September 13 through September 15, 2023. Following completion of that work, Maritime Link availability returned to about 500 MW and remained available for nearly the entire remainder of the month.

[57] Concentric further noted that the LIL Pole 1 outage remained in effect from September 3 through September 17, 2023. During periods when the LIL is operating on

a single pole, Concentric pointed out that transfers over the Maritime Link are limited to single-pole capability. Accordingly, the LIL single-pole outage from September 3 through September 17, 2023, established the effective import limit into Nova Scotia. The availability of a second Maritime Link pole would therefore not have increased import capability during this period. As a result, the continued deliveries during the first phase of the outage reflect the availability of the remaining poles, not the absence of coordinated outage activity.

[58] Concentric then noted that on September 17, 2023, NL Hydro expanded the outage and removed both LIL poles from service. At that point, energy deliveries over the LIL ceased. Concentric explained that is why the data upon which Bates White relied shows no NS Block transfers during that period. In effect, the data reflects the two-pole LIL outage that began on September 17, 2023, but it does not reflect the earlier coordinated single-pole outages because the remaining poles continued providing transfer capability. Concentric, therefore, opined that there was overlap between the Maritime Link outage and the LIL outage beginning on September 3, 2023, where both the Maritime Link and the LIL had coordinated single-pole maintenance outages.

[59] Bates White raised questions about whether the September 2023 outage aligned with good utility practice as a result of NSPML failing to coordinate Maritime Link outages with LIL outages. The Industrial Group agrees with Bates White.

[60] Based on Bates White's findings, the Industrial Group submitted that the Maritime Link September 2023 outage was already complete by the time the LIL went offline on September 17, 2023. As such, the Industrial Group argues that the outages ran in sequence, not in parallel, which Bates White characterized as "a missed opportunity to

better optimize the Maritime Link annual outage.” The Industrial Group also argued that Concentric's explanation of the single-pole overlap earlier in September 2023 does not address the fact that the bipole outage causing the NS Block delivery shortfall began on September 17, 2023, after the Maritime Link was fully restored. The Industrial Group submitted, therefore, that there was no concurrent impairment of the Maritime Link during the period of the LIL bipole outage that actually caused the delivery shortfall. As such, the Industrial Group believes that holdback relief for good utility practice is not warranted.

[61] In its Closing Submissions, NSPML argued that the September 2023 outages were in accordance with good utility practice and that Concentric's Rebuttal Evidence showed that the Maritime Link and LIL outages were indeed scheduled at the same time. However, in its Reply Submissions, the Industrial Group asserted that Concentric's Rebuttal Evidence addressed periods of single-pole overlap earlier in September 2023, but it did not establish overlap between the Maritime Link outages and the LIL bipole outage that gave rise to the September 2023 delivery shortfall.

[62] In its Reply Submissions, NSPML explained that the September 2023 planned maintenance outages between the LIL and the Maritime Link were indeed coordinated and that the timing of the bipole outage on the LIL minimized the impact on customers:

On September 3, both the LIL and the Maritime Link started their respective planned annual maintenance, a fully coordinated effort and schedule. On that day, Pole 1 on the LIL was taken offline and maintenance started. Given single pole availability on the LIL, the System Operator limited imports over the Maritime Link to 250 MW. This reduction is notwithstanding whether the Maritime Link was in mono or bipole operation. Pole 1 on the Maritime Link was taken offline on the same date and maintenance started. Given the Maritime Link was then operating on one pole, its availability was 250 MW – matching the System Operator's limit on imports into Nova Scotia when the LIL is in monopole operation.

Pole 1 on the Maritime Link was offline until September 13, when the work was completed and Pole 1 was reenergized. On that same day, work started on Pole 2 and it was taken offline until September 15. From September 3 until September 15 availability was 250 MW on the Maritime Link. After September 15, when the work was all complete, availability

jumped back to the full 500 MW capacity. At this point the planned annual maintenance on the Maritime Link was complete.

In Newfoundland, work continued on Pole 1 until September 17. On September 17 until the 26th, NLH took both LIL poles offline, so availability from the LIL dropped to 0 MW. On September 26, LIL Pole 1 was reenergized, but Pole 2 remained offline so NLH could complete the remaining work on that Pole. With only one LIL pole energized, the System Operator limit on imports to Nova Scotia was once again set to 250 MW – despite the Maritime Link having bipole capability. Pole 2 returned to service on September 29. After September 29, with LIL bipole operational the Maritime Link flow rate was back to full.

It is important to note that during this planned annual maintenance there was not a requirement for both poles on the Maritime Link to be out of service at the same time. In other words, there was never a plan for the Maritime Link to be unable to deliver energy to Nova Scotia. In contrast, the maintenance planned for the LIL did require a period where both poles needed to be out of service. The work required on the LIL was different than the work required on the Maritime Link.

During the period from September 3 – 17, and again from September 26 – 29. The system operator limited deliveries over the Maritime Link to 250 MW – notwithstanding whether the Maritime Link was in mono or bi-pole operation. During the Maritime Link pole outages, from September 3 – 15, as there was also a pole outage on the LIL, the energy available from the LIL matched the Maritime Link capability to deliver the energy to Nova Scotia. Customers during this period were not impacted and planned annual maintenance schedules for NSPML and NLH were coordinated. During this period, the timing of the LIL bipole outage did not impact Nova Scotia customers due to the other constraints (namely only one pole available on the LIL from September 3-17, and from September 26-29, limiting flow to 250 MW).

[NSPML Reply Submissions, pp. 16-18]

3.5.2.1 Findings

[63] The Board understands the concerns expressed by the Industrial Group and Bates White, as the evidence provided in the application and in response to Information Requests (IRs) may not have been entirely clear. However, the Board finds that Concentric's Rebuttal Evidence provides the detail needed to address the concerns. While NSPML's Reply Submissions perhaps provide even more context, those submissions essentially reiterate the material in Concentric's Rebuttal Evidence.

[64] In essence, Concentric's Rebuttal Evidence confirms that as a result of NL Hydro planned maintenance, there was only single-pole availability on the LIL when NSPML began its planned maintenance on Pole 1 of the Maritime Link on September 3, 2023. As such, the Maritime Link availability was 250 MW while the planned outage work

was completed on Pole 1, which matched the System Operator's limit on imports into Nova Scotia when the LIL is in monopole operation. The Maritime Link was, therefore, able to provide what the System Operator allowed. Similarly, when NSPML completed the Pole 1 planned outage work and began its Pole 2 planned outage work, the same conditions existed as the LIL remained in single-pole operation during its planned outage. When NSPML completed its planned outage on September 15, 2023, the availability of Maritime Link returned to its full 500 MW capacity, although the LIL remained on single-pole availability. From September 17 until September 26, 2023, NL Hydro took both LIL poles offline, so availability from the LIL dropped to 0 MW, while Maritime Link availability remained at its full capacity.

[65] The Board agrees with the Industrial Group that Concentric's Rebuttal Evidence addressed periods of single-pole overlap earlier in September 2023, but it did not establish overlap between the Maritime Link outages and the LIL bipole outage that gave rise to the September delivery shortfall. However, the Board finds that there was no need for an overlap of Maritime Link and LIL planned outage work during the LIL bipole outage from September 17 to 26, 2023. Specifically, if NSPML had waited to complete its planned outage work during the LIL bipole outage, the availability of the Maritime Link would have still been limited to 250 MW from September 3 to September 15, 2023, because of System Operator limits resulting from LIL planned maintenance during that period. This is no different than the situation that actually occurred when NSPML and NL Hydro conducted coordinated planned monopole outages during that period. Further, if NSPML had waited to complete its planned outage work during the LIL bipole outage, the availability of the Maritime Link would have been 0 MW during the period. This is

effectively the same level of availability that actually occurred during that period, as the LIL was entirely offline and unavailable to provide capacity to the Maritime Link.

[66] In effect, and as noted by NSPML, during the Maritime Link monopole outages from September 3 to 15, 2023, since there was also a monopole outage on the LIL, the energy available from the LIL matched the Maritime Link capability to deliver the energy to Nova Scotia. The Board finds that NSPML was prudent by not completing its own bipole outage at that time, which would have limited Maritime Link availability to 0 MW while the System Operator would have allowed 250 MW. The Board also finds that the related planned annual maintenance schedules were properly coordinated between NSPML and NL Hydro. The Board, therefore, finds that the outage sequence demonstrates prudent outage planning and coordination consistent with good utility practice.

[67] No party has claimed that the actual work completed in September 2023 for the planned annual maintenance outage was not good utility practice. Based on the evidence, the Board finds that the work completed aligned with good utility practice.

[68] The Board finds that the September 2023 outage was planned in advance, coordinated appropriately between utilities, scheduled during a lower-load shoulder period, and undertaken to preserve reliability. The Board, therefore, finds that the work performed during the September 2023 outage was consistent with good utility practice, and grants the requested holdback relief for the event.

3.5.3 March 2024

[69] NSPML seeks good utility practice relief for a planned two-day bipole outage of the LIL, on March 26 and 27, 2024, for repairs on a variety of systems including optical ground wire damage caused by an ice storm, electromagnetic interference

mitigations on several direct current transformers, and the installation of ground potential rise mitigations affecting cable switching and leaving the overload capability of the LIL out of service. NSPML also noted that the Maritime Link was derated to 170 MW on March 11 and 12 due to inclement weather in Newfoundland that could have resulted in a reliability impact to Nova Scotia customers.

[70] The Industrial Group contended that the planned outage in March 2024 was for corrective maintenance arising from prior failures on the LIL rather than for routine maintenance. It also submitted the Board should consider whether the derating due to inclement weather was “part of a broader pattern of weather-related vulnerabilities”. The Small Business Advocate advanced a similar argument. The Industrial Group asserted that maintenance undertaken to address prior failures or known vulnerabilities should not excuse the holdback requirement to consistently deliver energy.

[71] NSPML addressed the claims about prior weather events in its reply submissions. It said the above-ground part of the LIL was constructed over eight years ago and, therefore, it was not surprising that there have been some weather impacts. It submitted weather impacts on power infrastructure are common in any climate. It also emphasized that none of the outages were complete transmission tower failures, and most involved relatively minor damage to components attached to the towers, with most outages being of relatively short duration.

[72] Regarding the event on March 11 and 12, 2024, NSPML said that the derating did not impair the delivery of NS Base Block Energy (only a small portion of Supplemental Energy and Make-up Energy). NSPML also noted that the derating was

imposed by the System Operator in Nova Scotia and was not due to actual weather-related impacts to the LIL or Maritime Link:

... actions taken by the System Operator are 100% independent of NSPML. NSPML has no influence on the System Operator, nor should it. This deration therefore, cannot be considered as good utility practice by NSPML nor can it be considered poor utility practice. The System Operator is obliged to manage the reliability of the overall Nova Scotia grid, and on these dates, it decided to balance sources of energy based on system (including weather) conditions in the region. The potential weather in Newfoundland on March 11 and 12 influenced the System Operators decision, but that potential weather in no way impacted the reliability of the LIL or the Maritime Link. The 170 MW limit on imports (which limit aligns with Nova Scotia's system reserve requirements) was exclusively driven on a decision by the System Operator, not on actual weather-related impacts on the reliability of the LIL or the Maritime Link. The IG's suggestion that the shortfall was part of a "broader pattern of weather-related vulnerabilities" is not accurate.

[NSPML Reply Submissions, p. 38]

3.5.3.1 Findings

[73] Some degree of weather-related vulnerability is inherent in electrical utility infrastructure. As discussed in more detail in the following section, the Board is not satisfied that the evidence demonstrates that the LIL is subject to a broad pattern of weather-related vulnerability. As such, the Board concludes that the planned outage in March 2024 to address (in part) needed repairs due to previous ice storm damage was prudent and not the result of damage or other maintenance requirements resulting from unreasonable weather-related vulnerabilities or conditions. The Board also notes that the work conducted during the planned outage included systems and equipment not impacted by previous damage from climatic events and no serious arguments were advanced that this work was not undertaken consistent with good utility practice. While academic, given the Board's conclusion about the claimed weather-related vulnerability of the LIL, the extent to which the duration of the planned outage was impacted by the weather-related work, or if it was impacted at all, is unclear. The Board finds the planned outage in March

2024 was consistent with good utility practice and grants the requested holdback relief for the event.

[74] The Board also grants relief for the derating imposed by the System Operator on March 11 and 12, 2024. The derating was not under the control of NSPML and the Board finds it was not associated with any actual reliability impacts to the Maritime Link or the LIL, but the System Operator's judgment in managing system conditions at that time. The evidence does not lead the Board to conclude that judgment was exercised for anything other than good utility practice reasons.

3.5.4 March/April 2024

[75] NSPML seeks exceptional circumstances relief for a 13-day weather-related outage of the LIL. NSPML noted that both poles of the LIL were tripped offline on March 30, 2024. It said this was due to extraordinary damage caused by significant ice accumulation and wind speeds nearly double the capacity of the lines.

[76] NSPML also claimed good utility practice relief for a three-day planned bipole outage to correct a software deficiency relating to cable switching (only impacting one day in April 2024). But the evidence and issues raised about NSPML's claim for relief relating to energy deliveries in April 2024 focused on the more impactful weather event. As such, the Board does not consider this to be a concern, particularly given the Board's findings about software-related issues addressed elsewhere in this decision.

[77] Bates White said that the LIL's limited ability to handle certain icing conditions has been known since at least 2020, when NL Hydro commissioned Haldar & Associates (Haldar) to study the LIL's overall structural reliability and the probability of failure of its components due to harsh weather conditions. Bates White said the Haldar report, completed in March 2021, concluded that the LIL lacked the structural integrity to

handle certain circumstances of unbalanced icing load, a phenomenon that occurs due to unequal ice accumulations or shedding in adjacent spans that can include critical out-of-balance longitudinal loads on the supports. Bates White also referenced previous icing events between 2021 and 2024 that damaged the LIL and required repair. Bates White questioned whether, for the LIL, exposure to high winds and ice conditions was exceptional or expected, and whether there could be an issue with the design of the LIL for the environment in which it operates.

[78] Concentric discussed the original design basis for the LIL, briefly noting the impact of changing design standards and a changing climate:

...The original basis of design for the Lower Churchill Project, which includes the LIL, specified a return period for the transmission system of 50 years, meaning that the LIL is designed to resist, without damage, a climatic event of severity seen once every 50 years. NL Hydro has stated that while the LIL was designed to withstand conditions based on the data available at the time the LIL was designed over 15 years ago, the climate is changing, and microclimates are being discovered. Microclimates are isolated areas along the line where weather may differ substantially from the general weather that was expected and included in the line design. This will require some issues to be resolved with longer-term solutions in order to ensure the reliability of the transmission assets.

[Exhibit N-1, Attachment 1, p. 23]

[79] In its Rebuttal Evidence, Concentric submitted that Bates White overstated the significance of the Haldar report in this proceeding. Concentric said the Haldar report was not commissioned as a prudence or design-certification review and did not reach the conclusions that Bates White draws from the report. Concentric said:

The Haldar Report evaluates the reliability of the LIL as designed and constructed and identifies potential future enhancements that could improve resilience under certain operating conditions. The report does not conclude that the line was improperly designed, nor that applicable engineering standards in effect at the time of design were violated.

Rather, the report confirms the design basis that existed at the time the line was engineered and then compares aspects of that design to information that became available later, including portions of newer standards and subsequent operating experience. While that type of analysis can be useful in evaluating opportunities to enhance future reliability, it should not be interpreted as a finding that the original design was deficient.

The report also recognizes that transmission line design necessarily involves engineering judgment. Design criteria are established using the standards, climatic data, topographic information, and other information available at the time of design. As a result, some portions of a transmission line may be designed to different loading criteria than others based on local conditions and the engineer's professional judgment. Because weather patterns and terrain do not change abruptly at the boundaries between design sections, there is inevitably some degree of judgement in the design process. The existence of areas that could potentially benefit from additional reinforcement therefore does not establish that the original design was unreasonable or inconsistent with accepted engineering practice.

In a February 4, 2022 filing to the Board, NLH explained that the findings associated with the more extreme value assessment completed by Halдар would impact approximately 2% of LIL structures. NLH described this as an important finding because it allowed the utility to take a strategic approach to monitoring and design review.

[Exhibit N-11, p. 13]

[80] Concentric viewed the Halдар assessment not as evidence of a pervasive reliability concern across the LIL, but as identifying a limited number of structures warranting additional monitoring and evaluation as operational experience is gained. Concentric said that, as a normal feature of utility asset management, utilities routinely evaluate opportunities to improve reliability after significant weather events and as additional operating experience is obtained.

[81] Regarding the LIL's operating environment, Concentric disagreed that weather related damage demonstrated, by itself, imprudence, deficient design or poor operation. Concentric noted that designing facilities to withstand every conceivable weather event would impose substantial costs on customers while yielding diminishing reliability benefits.

[82] The Industrial Group argued that the threshold for concluding there were exceptional circumstances should be elevated where prior events raised weather-related concerns and the same type of failure contributed to other historical outages. Based on NL Hydro's LIL Strengthening Overview Report, provided in response IG IR-9, the Industrial Group submitted there were prior significant outages related to ice accumulation in January 2021, December 2022 and February 2024. It argued the Halдар report

identified structural vulnerabilities in the LIL that were known but not fully remediated before the March-April 2024 event.

[83] In its Reply Submissions, NSPML said the Haldar report focused on the probability of failure in theoretical scenarios, not on the sufficiency of the LIL's design. It also said that previous reports prepared by SNC Lavalin and EFLA Consulting Engineers positively assessed the reliability of the LIL support structures and cable systems. NSPML submitted that the Haldar report indicated that, under a more extreme value assessment, only 2% of towers were potentially in need of reinforcement in anticipation of potential storms that may exceed design limitations. NSPML noted the report recommended collecting additional data before undertaking any modification and that NL Hydro was doing that.

[84] In addressing the Industrial Group's submissions about prior weather events, NSPML said:

While the IG references numerous prior "significant events", the reality is that most icing events were minor with just one other event in southern Labrador in December 2022 that damaged two OPGW Peaks. The December 2022 event that impacted this part of the line cannot be described as significant. In no incident was there a catastrophic structure failure, instead the damage that has happened was repaired relatively quickly considering the remote locations. In fact, the LIL spans approximately 1,100 km and the focus of reliability questions is on 2% of the towers, potentially less, pending the final outcome of NLH's data driven assessment.

The weather causing the issues in March / April 2024 was not seen before, particularly in the area where the damage occurred. As reported in prior evidence, the ice was exceptionally thick and dense/heavy to the point where damage was likely to have occurred even if that segment of the LIL was built to a different standard. What happened to that small portion of the LIL in March / April was an extreme event followed by a quick response to get energy flowing to Nova Scotia, as a prudent utility would be expected to do.

[NSPML Reply Submissions, p. 26]

3.5.4.1 Findings

[85] Based on currently prevailing technologies and costs, it is unreasonable to expect that electrical utility infrastructure will be invulnerable to weather or climatic

impacts – or at least that it can be made to be so on any reasonably cost-effective basis or without imposing extraordinary costs on ratepayers. While the Haldar report noted some vulnerability associated with the design of the LIL under certain extreme conditions, the Board finds the evidence does not support the conclusion that the LIL is subject to an inherent design defect or unreasonable design limit. The Board accepts that the purpose and focus of the Haldar report was not to assess the sufficiency of the LIL's design. The LIL's reliability was positively assessed by independent professionals in the past.

[86] The Board also accepts NSPML's evidence that most of the weather-related damages that occurred before the incident in March/April 2024 were repaired relatively quickly. Likewise, the incident that occurred in March/April was due to conditions not previously observed in the area of the LIL that was damaged. The Board is not satisfied that the evidence supports finding that the conditions that were experienced should be considered to be business as usual, or within the range of conditions likely to be experienced in this part of the LIL (which in total spans approximately 1,100 km in length). The Board finds the event in March/April 2024 was an extreme event constituting exceptional circumstances and grants the requested holdback relief for the event.

3.6 Release of Holdback and Carrying Costs

[87] As noted above, the Board accepts that NSPML has satisfied the conditions to terminate the holdback mechanism as of May 1, 2024. The Board concludes that the four months of under-deliveries were excused due to good utility practice or exceptional circumstances. NSPML has requested that the holdback mechanism be terminated and that all holdback amounts retained after May 1, 2024, be distributed to NSPML as set out in Appendix B, inclusive of carrying costs calculated at its weighted average cost of capital to the date of the Board's Decision. As of the end of 2025, there is about \$15.3M in

holdback funds relating to the post-compliance period as set out in Appendix B to the application.

[88] NSPML asserted that it achieved compliance with the NSUARB's conditions as of May 1, 2024, but the Company did not apply to the Board to end the holdback until February 3, 2026. In his evidence Mr. Wilson recommended an alternative approach for carrying costs because NSPML delayed bringing its application forward. Rather than carrying costs based on NSPML's weighted average cost of capital, he recommended NSPML's carrying costs be measured at its cost of debt. The Small Business Advocate stated that "this is a reasonable compromise given the extensive delay in filing" and supported the recommendation. The Industrial Group submitted that it would be unreasonable for ratepayers to compensate NSPML with interest that accumulated on the holdback amounts because of its delay in bringing the application forward.

3.6.1 Findings

[89] The Board concludes that the holdback mechanism should be terminated. The conditions were imposed by the Board to respond to the under-deliveries of the NS Block caused by the delay in the construction and commissioning of the Muskrat Falls generating facility and the LIL. In the Board's opinion, the concerns relating to this set of facts have been addressed through the holdback mechanism. The Board orders that all holdback amounts retained after May 1, 2024, be distributed to NSPML as set out in Appendix B, subject to the Board's findings below on the requested collection of NSPML's weighted average cost of capital.

[90] The Board agrees with the Intervenor that NSPML's delay in bringing the application forward is longer than one would reasonably expect and therefore will not allow NSPML to collect its weighted average cost of capital on the holdback amounts for

the entire period. In the Board's view, a reasonable timeframe for data collection and preparation of the application would have been about six months. The Board's process in this matter has taken around nine months. Therefore, the Board will allow NSPML to collect its weighted average cost of capital for 15 months beyond the end of the compliance period. After July 31, 2025, NSPML is directed to use its actual cost of debt. The Board directs NSPML to confirm its cost of debt and the total carrying costs in a compliance filing.

3.7 Continuing Reporting

[91] The Board recognizes that for various reasons, the amount of energy delivered from Muskrat Falls in any given month may differ from the amount that was contracted to be delivered. The Board directs NSPML to continue reporting on those energy deliveries. More specifically, the reporting is to list the amount of energy contracted to be delivered, the amount of energy actually delivered, the amount of energy shortfall, the amount of make-up energy received, and the amount of surplus market-priced energy or energy delivered under bilateral agreements. Explanations for all variances from the monthly contracted amounts are also to be provided. This additional reporting is to be included as part of NS Power's existing Fuel Adjustment Mechanism reports.

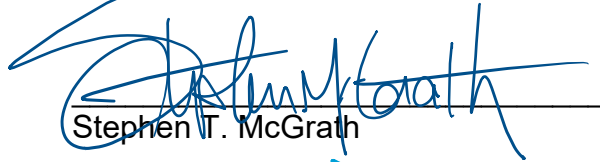
4.0 CONCLUSION

[92] The Board concludes that NSPML has satisfied the conditions to terminate the holdback mechanism as of May 1, 2024. The Board orders that all holdback amounts retained after May 1, 2024, be distributed to NSPML as set out in Appendix B, but NSPML

is only permitted to collect its weighted average cost of capital for 15 months beyond the end of the compliance period. After July 31, 2025, NSPML is directed to use its actual cost of debt. The Board directs NSPML to confirm its cost of debt and the total carrying costs in a compliance filing.

[93] An Order will issue after the Board has reviewed the compliance filing.

DATED at Halifax, Nova Scotia, this 21st day of October 2026.



Stephen T. McGrath



Roland A. Deveau



Steven M. Murphy