Blackburn Law Inc.

July 9, 2026

VIA EMAIL

Ms. Crystal Henwood
Clerk of the Board
Nova Scotia Energy Board
1601 Lower Water Street, 3rd Floor
Halifax NS B3J 3S3

Dear Ms. Henwood:

Re: M12696 – NSP Maritime Link Inc. – 2026 Application to Review the Holdback Mechanism

This application by NSP Maritime Link Inc. (NSPML) relates to the holdback mechanism, which was originally created in 2017, when NSPML filed for approval of its first interim assessment[1] (the "Holdback Mechanism").

The Holdback Mechanism was updated in subsequent decisions, including the Board's Decision in NSPML's final assessment application. In that Decision, the Board found that "…it would not consider NSPML's application for approval of final costs of the ML project until NS ratepayers are receiving the NS Block that NSPML had originally promised"[2]. As it was noted that under deliveries had occurred in previous years and recognizing that all intervenors in M10206 supported a holdback, the Board continued the existing $10 million holdback currently in place as a way to protect ratepayers from under deliveries in the future[3].

On February 3, 2026, NSPML applied to the Board requesting the following relief (the "Application"):

a) The Holdback shall be vacated as at the end of April 2024 given that:

   i. At least 90% of the NS block was received during each of the previous 12 consecutive months (with relief granted for July and September 2023 as well as March and April 2024); and

[1] M07718, NSP Maritime Link Incorporated Application for approval of an interim cost assessment, Board Decision, Page 48, Paragraph 121.
[2] M10206, Board Decision, February 9, 2022, Page 8, Paragraph 8.
[3] M10206, Board Decision, February 9, 2022, Page 16, Paragraphs 31-31.

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ii. The net outstanding balance of Undelivered Energy became less than the 10% of the contracted annual amount of the NS Block threshold in March 2024.

b) Direction to release all Holdback amounts accumulated since the Compliance Period[4].

The request by NSPML was based on its claim that it had satisfied the two parts of the test that was set out in the Board's M11009 Decision of October 4, 2023:

> ...The holdback will continue until at least 90% of the NS Block measured in MWh (excluding Make-up Energy) is received for 12 consecutive months and the net outstanding balance of undelivered energy is less than 10% of the contracted annual amount of the NS Block. [5]

Also in that decision, the Board acknowledged that there should be some margin for interruptions and added a qualification to the above-noted test:

> [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[6].

In this Application, NSPML has asserted that it has met both sections of the test, claiming that its failure to meet the consecutive 12-month requirement does not negate its satisfaction of the requirements because the causes for those interruptions can be characterized as due either to good utility practice and/or exceptional circumstances.

Undelivered Energy

In its Application, NSPML provided a chart showing the Compliance Period NS Block Delivery Levels, which shows the Make-up Balance dropping to 9% in March 2024[7], and stated:

> The net balance of Deferred Energy dropped below 10% in March 2024 and was essentially eliminated in June 2024[8].

[4] M12696, Exhibit N-1, NSPML Application for Review of the Holdback Mechanism (the "Application"), Page 32 of 37, Lines 6-16.
[5] M11009, Decision Dated October 4, 2023, NSPML Application Respecting the Disposition of the Holdback for 2022 and 2023, Page 5, Paragraph 4.
[6] M11009, Decision Dated October 4, 2023, NSPML Application Respecting the Disposition of the Holdback for 2022 and 2023, Page 43, Paragraph 95.
[7] M12696, Exhibit N-1, the Application, Appendix A, Compliance Period NS Block Delivery Levels, Page 33 of 37.
[8] M12696, Exhibit N-1, the Application, Page 11 of 37, Lines 15-16.

The evidence of Bates White confirmed that the balance of undelivered energy was less than 10% by the end of March 2024, thereby meeting the threshold set by the Board[9]. The evidence of John D. Wilson, Grid Strategies, LLC had a similar finding[10].

On the basis of the evidence provided, the Small Business Advocate (SBA) does not challenge NSPML's assertion that it achieved the undelivered energy requirement part of the test for the ending of the Holdback within the Compliance Period and notes that the undelivered energy remained close to, or well below, 10%, in the months that followed[11].

Delivery of 90% of the NS Block for 12 Consecutive Months

Under the terms set out by the Board in its decision for M11009, NSPML is also required to demonstrate that Nova Scotia ratepayers have received, each month for 12 consecutive months, 90% of the promised NS Block of energy. As noted above, the Board did allow for the possibility of interruptions, if "...good utility practice or exceptional circumstances existed[12]..." and provided that the Board may grant relief in those circumstances. The issue is what falls within the class of exceptions that should be allowed because of 'good utility practice or exceptional circumstances'.

In the 12-month period between May 2023 and April 2024 (which NSPML refers to as the Compliance Period), NSPML fell below the 90% delivery threshold on 4 occasions – July 2023, September 2023, March 2024 and April 2024[13]. NSPML states that the outages in July and September 2023 were due to planned outages and were undertaken during lower load periods as part of good utility practice[14]. It notes that the March 2024 reduced deliveries were due to a combination of good utility practice as well as an extreme weather event[15], whereas the April 2024 shortfall was due to an extreme icing event that caused damage on NLH transmission facilities[16].

Good Utility Practice

The SBA acknowledges that there are times when, in order to ensure that the facilities operate efficiently and safely, they must be taken off-line to accomplish important work. That may occur on a planned or an unplanned basis, depending on the circumstances. While NSPML appears to take the position that any type of planned or unplanned outage is part of good utility practice, as long as there is a "technical reason why an outage is required to complete the work identified[17]", it is respectfully submitted that the test must be more substantive than that criteria. There must be

[9] M12696, Exhibit N-7, Evidence of Bates White Economic Consulting, Page 37, Lines 5-7.
[10] M12696, Exhibit N-8, Evidence of John D. Wilson, Grid Strategies, Inc., Page 4, Lines 10-13 and Page 7, Line 9.
[11] M12696, Exhibit N-1, the Application, Appendix C, Review of Holdback Mechanism, Page 36 of 37.
[12] M11009, Decision Dated October 4, 2023, NSPML Application Respecting the Disposition of the Holdback for 2022 and 2023, Page 43, Paragraph 95.
[13] M12696, Exhibit N-1, the Application, Appendix C, Review of Holdback Mechanism, Page 36 of 37.
[14] M12696, Exhibit N-1, the Application, Page 14 of 37, Lines 12-18.
[15] M12696, Exhibit N-1, the Application, Page 14 of 37, Lines 12-18 and footnote 21.
[16] M12696, Exhibit N-1, the Application, Page 15 of 37, Lines 1-4.
[17] M12696, Exhibit N-4, NSMPL Responses to Information Requests from the Industrial Group, IR 1(c), Page 4 of 5, Line 1-5.

consideration given to 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 SBA does acknowledge that, in the unique circumstances with the Maritime Link, consideration must also be given to the interconnection and coordination with other parties, such as NLH and Nova Scotia Power Inc.

Exceptional Circumstances

For both the March and April 2024 outages, NSPML claims that a portion of both shortfalls were due to icing damage which caused a bipole outage[18]. There was another icing incident in January 2025, which also caused a bipole outage[19]. Considering the closeness of these icing events, and the same outcome (being a bipole outage) the question arises as to whether the icing event in March and April 2024 constitutes an exceptional circumstance under the test set by the Board for the release and termination of the Holdback.

The SBA does acknowledge NSPML's statements concerning the impact of the icing event on deliveries:

> Absent the impact of either the planned outage or the impact of the ice event (see April below), NS Block delivery (absent Make-up Energy) was greater than the 90% threshold. Absent the impact of both, NS Block delivery (absent Make-up Energy) was greater than 99%[20].
>
> ...
>
> Absent the impact of the icing event and an unrelated planned outage on April 30th, NS Block delivery (absent Make-up Energy) was ~98%[21].

Despite those comments, the SBA respectfully submits that out of a 12-month period, as set by the Board, NSPML failed to meet the 90% threshold for NS Block deliveries in 4 of those 12 months – or a failure rate of 33.33%.

Delay in Filing Application

NSPML is claiming the 12 months between May 2023 and April 2024 as the time period in which it achieved the requirements set out by the Board in order to terminate the Holdback. Despite the threshold allegedly being satisfied in the spring of 2024, NSPML did not file this Application until early 2026, approximately 21 months after the end of the Compliance Period. NSPML references challenges with employee availability and the need for 3rd party information to justify the delay,

[18] M12696, Exhibit N-1, the Application, Page 18 of 37, Top of Page.

[19] M12696, Exhibit N-1, the Application, Page 27 of 37, Lines 5-7 and Attachment 1, Rebuttal Testimony of Danielle S. Powers, Concentric Energy Advisors, Page 27 of 36, Table 1: LIL Outage History.

[20] M12696, Exhibit N-1, the Application, Page 20 of 37, Lines 28-29 and Page 21 of 37, Lines 1-2.

[21] M12696, Exhibit N-1, the Application, Page 22 of 37, Lines 4-5.

but provides little detail as to why those reasons justify almost 2 years passing before the Application was filed[22].

The SBA respectfully submits that there are 2 issues that arise due to the delay in NSPML filing this Application. The first is with respect to the WACC that has accrued on the Holdback amounts. It has been submitted by John D. Wilson, Grid Strategies, Inc., who filed evidence on behalf of the Consumer Advocate, that the request from NSPML for "...the weighted cost of capital (WACC) calculated to the date of the Board Decision on this Matter[23]" should be denied and instead "...a carrying charge calculated at NSPML's approved cost of debt through the date of the Board Decision on this matter[24]" should be awarded. The SBA respectfully submits that this is a reasonable compromise given the extensive delay in filing and supports this recommendation.

The second issue arising from the delay in filing the Application is that, at the end of the Compliance Period, the deliveries from the Maritime Link almost immediately went down. In May 2024, the Base Contract Delivery % was only 62%, in July 2024, it was 86% and in August 2024 it was 0%[25]. Overall, in the 20 months following the end of the Compliance Period, NSPML failed to meet the 90% NS Block delivery threshold 8 times or 40% of the time. While we may not have been aware of this reduction in service had this Application been filed earlier, the SBA respectfully submits that the Board must take this into consideration when assessing whether the intent or purpose of the test has been fulfilled and/or was fulfilled as of May 2024.

Summary

The SBA respectfully submits that, while the first part of the test, namely the delivery of previously undelivered energy, appears to have been satisfied by March, 2023, whether NSPML has achieved the second requirement of the test is not as clear.

At the outset, the evidence provided shows that NSPML has not achieved a minimum of 90% of NS Block energy delivered in 12 consecutive months. Rather, it failed to achieve that standard in 4 of the 12 months that constitute the Compliance Period. The next question is therefore whether the reasons for those 4 failed months are either due to Good Utility Practice or Exceptional Circumstances, however either of those terms/concepts may be interpreted by this Board.

In considering this question, the SBA respectfully submits that the Board should consider NSPML's lack of specificity of what constitutes 'Good Utility Practice' with respect to planned and unplanned outages, as well as the fact that the exceptional circumstances claimed for causing the outages in March/April were also experienced only a few months later.

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[22] M12696, Exhibit N-5, NSPML Responses to Board Information Requests, IR 1(b), Page 1 of 3, Lines 25-29 and Page 2 of 3, Lines 2-7.
[23] M12696, Exhibit N-3, NSPML Responses to Consumer Advocate Information Requests, IR 4(a), Page 2 of 2, Lines 3-4.
[24] M12696, Exhibit N-8, Evidence of John D. Wilson, Grid Strategies, Inc., Page 10, Lines 12-13.
[25] M12696, Exhibit N-1, NSPML Application for Review of the Holdback Mechanism, Appendix C, Review of Holdback Mechanism, Page 36 of 37.

While not directly tied to the test for the release of the Holdback Mechanism, the SBA also respectfully submits that NSPML's extensive delay in filing this Application, which in turn provided additional information about the service levels that followed the Compliance Period, should be considered.

The SBA also respectfully submits that NSPML has not provided sufficient justification for its request for WACC, especially in light of the delay in filing, and the amount to be approved should instead be calculated at NSPML's approved cost of debt.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of July, 2026.

Yours truly,

Melissa P. MacAdam
Small Business Advocate