

**AUDIT OF NOVA SCOTIA POWER INC.'S  
COMPLIANCE WITH  
THE AFFILIATE CODE OF CONDUCT  
FOR  
OCTOBER 2015 – DECEMBER 2016**

**PREPARED FOR  
NOVA SCOTIA UTILITY AND REVIEW BOARD  
AUGUST 1, 2017**

**REDACTED FINAL REPORT**



**NORTHSTAR CONSULTING GROUP**

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# TABLE OF CONTENTS

## EXECUTIVE SUMMARY

NS Power .....	E-1
Audit Scope and Objectives.....	E-2
Audit Approach.....	E-2
Summary of Findings and Recommendations .....	E-3
Organization of this Report.....	E-9

## CODE SECTION 1.0: PURPOSE

Protocol 1.1 .....	I-1
Protocol 1.2.....	I-5

## CODE SECTION 2.0: STATEMENT OF PRINCIPLES

Protocol 2.1 .....	II-1
Protocol 2.2.....	II-8
Protocol 2.3 .....	II-9

## CODE SECTION 3.0: CORPORATE STRUCTURE

Protocol 3.1 .....	III-1
Protocol 3.2.....	III-5

## CODE SECTION 4.0: UTILITY MANAGEMENT

Protocol 4.1 .....	IV-1
Protocol 4.2.....	IV-5

## CODE SECTION 5.0: UTILITY FINANCING

Protocol 5.1 .....	V-2
Protocol 5.2.....	V-3
Protocol 5.3.....	V-5
Protocol 5.4.....	V-6

## CODE SECTION 6.0: FAIR DEALING

Protocol 6.1 .....	VI-1
Protocol 6.2.....	VI-3
Protocol 6.3.....	VI-6
Protocol 6.4.....	VI-8
Protocol 6.5.....	VI-9
Protocol 6.6.....	VI-10
Protocol 6.7.....	VI-11
Protocol 6.8.....	VI-13
Protocol 6.9.....	VI-16
Protocol 6.10.....	VI-17
Protocol 6.11.....	VI-19

Protocol 6.12 .....	VI-23
Protocol 6.13 .....	VI-26
Protocol 6.14 .....	VI-27
Protocol 6.15 .....	VI-28
Protocol 6.16 .....	VI-30
Protocol 6.17 .....	VI-31
Protocol 6.18 .....	VI-32

**CODE SECTION 7.0: DEMONSTRATING CODE COMPLIANCE**

Protocol 7.1 .....	VII-1
Protocol 7.2 .....	VII-12
Protocol 7.3 .....	VII-13
Protocol 7.4 .....	VII-15
Protocol 7.5 .....	VII-16
Protocol 7.6 .....	VII-17
Protocol 7.7 .....	VII-19
Protocol 7.8 .....	VII-22
Protocol 7.9 .....	VII-24
Protocol 7.10 .....	VII-25
Protocol 7.11 .....	VII-26

**CODE SECTION 8.0: EMPLOYEE COMPLIANCE**

Protocol 8.1 .....	VIII-1
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**CODE SECTION 9.0: GENERAL**

Protocol 9.1 .....	IX-1
Protocol 9.2 .....	IX-2

# EXECUTIVE SUMMARY

This chapter of the report provides a brief overview of the findings, conclusions, and recommendations resulting from NorthStar Consulting Group's (NorthStar) audit of Nova Scotia Power's (NS Power) compliance with the Affiliate Code of Conduct (Code) from October 2015 through December 2016. This executive summary presents an overall picture without duplicating the specific material described further in the report and includes a brief overview of the scope and objectives of the audit, the approach used by NorthStar in auditing NS Power's compliance with the Code, an exhibit summarizing NS Power's compliance status and a list of NorthStar's recommendations for improvement in NS Power's compliance activities.

## NS Power

NS Power was created in 1992 through the privatization of the Crown corporation Nova Scotia Power Corporation (NSPC).<sup>1</sup> NS Power is a fully integrated regulated electric utility and is the primary electricity supplier in Nova Scotia, Canada. NS Power has \$4.6 billion of assets and provides electricity generation, transmission and distribution services to approximately 506,000 customers. NS Power owns 2,483 MW of generating capacity, of which approximately 50 per cent is coal-fired; 28 per cent of which is natural gas and/or oil; 19 per cent of which is hydro and wind; and three per cent of which is fuelled by biomass. In addition, NS Power has contracts to purchase renewable energy from independent power producers (IPP). These IPPs own and operate 496 MW of wind and biomass-fuelled generation capacity, which will increase to 552 MW in 2016. NS Power also owns approximately 5,000 kilometres of transmission facilities and 27,000 kilometres of distribution facilities. NS Power has a workforce of approximately 1,700 people.

NS Power is a public utility as defined in the Public Utilities Act (Nova Scotia) (Act) and is subject to regulation under the Act by the Nova Scotia Utility and Review Board (UARB or Board). The Act gives the UARB supervisory powers over NS Power's operations and expenditures. Electricity rates for NS Power's customers are also subject to UARB approval. NS Power is not subject to a general annual rate review process, but rather participates in hearings from time to time at its request or at the UARB's request.

NS Power is regulated under a cost-of-service model, with rates established to recover prudently incurred costs of providing electricity service to customers, and to provide an appropriate return to investors. NS Power's target regulated return on equity (ROE) range for 2015 and 2016 is 8.75 per cent to 9.25 per cent, based on an actual five-quarter average regulated common equity component of up to 40.0 per cent.

NS Power has a fuel adjustment mechanism (FAM), approved by the UARB, allowing NS Power to recover fluctuating fuel expenses from customers through annual fuel rate adjustments. Differences between prudently incurred fuel for generation and purchased

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<sup>1</sup> <http://investors.emera.com/Cache/1500083715.PDF?Y=&O=PDF&D=&fid=1500083715&T=&iid=4072693>

power and certain fuel related costs (Fuel Costs) and amounts recovered from customers through electricity rates in a year are deferred to a FAM regulatory asset or liability and recovered from or returned to customers in a subsequent year.

## **Audit Scope and Objectives**

By Order dated July 18, 2014, the Board established a process to consider revisions to the Code of Conduct governing NS Power affiliate transactions.<sup>2</sup> This resulted from an extended period of efforts to resolve concerns of stakeholders through additional reporting requirements and changes to NS Power's Code of Conduct annual reporting. A timeline was established to allow creation of an Issues List, the issuing of Information Requests (IRs), and submissions from stakeholders and NS Power. The Board approved a new Affiliate Code of Conduct for NS Power and replaced the previous Code effective as of October 1, 2015.

The objective of this audit is to express an independent opinion on the degree and extent of NS Power's compliance with the current Code of Conduct from its effective date of October 1, 2015 through December 31, 2016.

The audit scope of work was detailed in the UARB's Scope of Engagement for Quote, highlighted below.<sup>3</sup>

1. Perform a detailed examination of NS Power's reported affiliate transactions, assessing for compliance with the Code.
2. Audit areas will include Corporate Governance, Strategic Planning, as well as the Financial and Credit Structure. Also consider review of past Board direction, Code of Conduct reporting, General Rate applications, information requests, and other material relevant to the audit.
3. Identify any activity, not currently reported by NS Power as an affiliate transaction that the Board should hold to the requirements of the Code.
4. Prepare an Audit Report identifying whether NS Power has complied with the specific requirements of the Code as well as with the spirit of the Code.
5. Communicate findings and conclusions, with recommendations to address any issues. Where concerns are identified, the consultant should report NS Power's response.<sup>4</sup>

## **Audit Approach**

NorthStar approached this audit from a managerial as well as a financial perspective. We conducted our assessment of NS Power's compliance with the Code in accordance with Generally Accepted Government Auditing Standards for performance audits. The most pertinent standards relate to issues of management economy, efficiency, and effectiveness as they apply to public utilities.

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<sup>2</sup> Letter from UARB to NS Power August 19, 2015: M06268 - Nova Scotia Power Inc. -Affiliate Code of Conduct Paper Proceeding - P-167

<sup>3</sup> Nova Scotia UARB Scope of Engagement for Quote, August 22, 2016.

<sup>4</sup> NS Power's response, evidence and rebuttal will be part of the UARB's process.

A compliance audit is intended to assess an organization's adherence to formal regulatory or internal requirements, contract terms or policies and procedures. It is not specifically designed to address operating efficiency, identify process improvements, economic tradeoffs or alternatives, management decision-making or how to optimize performance.

During the course of the audit, NorthStar submitted 326 data requests to NS Power. NorthStar also conducted 76 interviews with a cross-section of NS Power and Emera officers, managers, and employees who had specific knowledge of operations and policies relating to Code compliance and positions directly responsible for Code compliance.

This extensive documentation and interview coverage provided a broad perspective of NS Power's compliance activities as well as focused attention on transactions in order to establish a high degree of confidence in our audit findings and conclusions. Many NS Power personnel were interviewed more than once.

In addition to the data requests and interviews, NorthStar tested the validity, accuracy, and compliance status of a large number of affiliate transactions and other customer transactions that are subject to the Code.

Because NS Power's compliance process is an internal control system, our review was also based on the internal controls guidelines published in the 1992 report by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission. COSO defines internal control as the process carried out by the Board of Directors, management, and other personnel for the purpose of gaining reasonable assurance of achieving objectives related to: (1) the effectiveness and efficiency of operations, (2) the reliability of financial reports, and (3) compliance with laws and regulations.

The COSO definition of internal control includes several important concepts worth noting. First, internal control is a means to an end, not an end in itself. Second, internal controls are not "people proof". Third, effective internal controls can only provide a reasonable assurance, not a guarantee. Effective internal controls cannot entirely prevent human error, poor judgment, or well-planned fraud. It is important to balance the cost of controls with their effectiveness, so as not to burden a company with expensive controls that provide minimal benefit.

## **Summary of Findings and Recommendations**

NorthStar's general observations about the nature of NS Power's Code compliance and its affiliate transactions during the audit period are described below.

- This is the first time the compliance of NS Power's activities with respect to the 2015 Affiliate Code of Conduct has been audited by an external audit firm or by NS Power's Internal Audit organization. It should not be surprising that many Code implications surfaced by the audit have escaped attention thus far as the normal checks and balances provided in the findings from an audit have not occurred.

- NS Power did not comply with a number of the Code Protocols. This was often apparent when reviewing documentation supporting affiliate transactions, the lack of separation of NS Power’s organization from its affiliates, and the refusal to provide information related to corporate governance and information regarding the Enterprise Resource Management Program initiative. The refusal to provide affiliate information, specifically required by Protocol 7.5 does not demonstrate transparency or a spirit of compliance within the utility, Emera Inc. or their corporate family.
- NorthStar reviewed the affiliate transactions and relationships between NS Power and its affiliates in detail, and found that in a number of cases NS Power exhibited a level of management indifference to the Code compliance requirements.
- In a number of cases NS Power’s compliance Guidelines are incomplete, in some instances they are not followed and in some other instances if they were followed they would result in noncompliance.
- NS Power has not been concerned to date regarding the sharing of sensitive or competitive information among its affiliates in the Emera Inc. corporate family. This is evident in its organizational structure, unencumbered employee transfers, and the lack of arm’s length commercial relationships with affiliates.

As shown in **Exhibit E-1**, 53 protocols were audited for compliance, covering many distinct Code requirements. During the audit period (October 1, 2015 through December 31, 2016), NS Power complied with 24 Protocols, partially complied with 5 Protocols, and failed to comply with 24 Protocols. Protocol 1.1 describes the Purpose of the Code and was not included in the count. NorthStar’s recommendations are noted as they relate to a specific Protocol and summarized following **Exhibit E-1**.

The severity of non-compliance with the Code varies both in the magnitude of non-compliance and the potential for adverse risk or economic impact on the ratepayer. For each error, discrepancy, or violation of the Code by NS Power that NorthStar observed, **Exhibit E-1** provides:

- a) An assessment of the magnitude of the compliance error, discrepancy, or violation;
- b) The criteria used to determine the magnitude;
- c) The actual or potential harm to the ratepayers as a result of each error, discrepancy, or violation of the Code, considering the overarching goals of:
  - i.* avoiding cross-subsidization of affiliate activities by ratepayers, and
  - ii.* maintaining market competition.

There are no independent standards by which to measure the severity of the impact of a Code violation. Therefore, NorthStar developed a Compliance Impact Scoring hierarchy to assess magnitude and actual or potential harm to ratepayers as a result of each error,

discrepancy, or violation. For the sake of simplicity, we refer to errors, discrepancies and violations collectively as “violations.”

The Compliance Impact Scoring hierarchy is a structured assessment of the impact of a Code violation. The use of the impact scoring ensures that a consistent approach is used to assess violations, so that they are scored and compared consistently across the Code Protocols audited by NorthStar. In order to minimize the influence of subjective judgment, NorthStar used the averages of the violation impact scores determined independently by each of the audit team members. Each Code violation is scored on two characteristics and is color-coded to provide perspective:

- Severity of Potential Harm -- A value is assigned, using the following ratings as a guideline.

Low – No Significant Impact

Medium – Cross-subsidization

High – Real or Potential Impact on Competitive Energy Market

- Magnitude -- A value is assigned, using the following ratings as a guideline.

Low – Error and/or Oversight

Medium – Inadequate and/or Incorrect Controls

High – Failure to Comply with the Code

### Exhibit E-1 Nova Scotia Power Inc. Summary of Code Compliance

Section	Protocol	Brief Description	Complied?	Rec. #	Severity	Magnitude
1.0	1.1	Purpose of Code	Duplication	1 & 2		
	1.2	Definition of Affiliate	Complied			
2.0	2.1	Documentation preceding transactions with affiliates	No	3 & 4	Medium	High
	2.2	Demonstrated best available option for customers	No	5, 6, 7 & 8	Medium	High
	2.3	No sharing of risks or rewards	No	9	Medium	Medium
3.0	3.1	Corporate structure	No	10 & 11	High	High
	3.2	List of affiliates	Complied			
4.0	4.1	Capable management team	No	12	High	High
	4.2	Report of utility performance	Complied			
5.0	5.1	Board approved capital structure	Complied	13, 14 & 15		
	5.2	Capital structure	Partial		High	High
	5.3	Finance structure	Complied			
	5.4	Affiliate Partnerships	Complied			
6.0	6.1	Non-discrimination of utility services	Complied			
	6.2	Separation of systems	No	16, 19 & 20	Medium	High
	6.3	Customer information	Complied			
	6.4	Obtaining customer information	Complied			

Section	Protocol	Brief Description	Complied?	Rec. #	Severity	Magnitude
	6.5	Charging of approved rates	Complied			
	6.6	Market rates	Complied			
	6.7	Fair market value	Partial	18	Medium	High
	6.8	Determination of FMV	Partial	21	Medium	High
	6.9	Fully allocated cost	No	27	Medium	Medium
	6.10	Transfer of capital assets	No		Medium	Medium
	6.11	Management and Administrative Services	Partial	17	Low	Medium
	6.12	Positive time reporting	Complied			
	6.13	No contracting for utility services	Complied			
	6.14	Nalcor: Confidentiality of Information	Complied			
	6.15	Documentation of accounting procedures	No	22	Medium	Medium
	6.16	Annual Budget	Complied			
	6.17	Reporting of Fuel transactions with affiliates	Complied			
	6.18	Alternative pricing	No		Medium	High
7.0	7.1.a	Annual Report – Detailed Listing	No	28	Low	Medium
	7.1.b	Price and Detail	No	23, 24 & 28	Low	Medium
	7.1.c	Fair Market Value and Explanation	Partial	27	Medium	Medium
	7.1.d	Cost Allocation Methods	Complied			
	7.1.e	Corporate Services	No	25	Low	Medium
	7.1.f	Utility Performance Results and Explanation	Complied			
	7.1.g	Inter-Affiliate Pricing Documentation per 6.15	No	26	Medium	Medium
	7.1.h	Employee Transfers	Complied			
	7.1.i	Corporate Entities	Complied			
	7.1.j	Most Recent Guidelines	No	1	Low	High
	7.2	External Audits	Complied			
	7.3	Affiliate reviews	No	29	Medium	Medium
	7.4	Submittal of guidelines	Complied	1		
	7.5	Review of affiliate records	No	26	High	High
	7.6	Contemporaneous documentation of transactions	No		Medium	High
	7.7	Large transaction definitions	Complied			
	7.8	Large transactions requirements	No		High	High
	7.9	Justification of large transactions	No		High	High
	7.10	Third-party relationships	No		High	High
	7.11	Development of guidelines	No	1	Medium	High
8.0	8.1	Annual training	No	30, 31 & 32	Medium	Medium
9.0	9.1	Due date of reports	No	33	Low	Medium
	9.2	Replacement of previous Code of Conduct	Complied			

## Recommendations

1. Finalize the Code compliance Guidelines and adopt version control instead of allowing the Guidelines to be a “living document.”

2. The audit has surfaced areas of potential ambiguity in the Code, in NS Power's compliance Guidelines and potential overlap between Code Protocols. While these are in some cases addressed in the findings, conclusions and recommendations related to each Section and Protocol, highlights are provided to the UARB and NS Power for consideration and potentially revisions to the Code.
3. Perform a proper self-provisioning analysis for the remainder of the transformer oil testing program using comparable productivity factors and real costs for in-house versus contractor rates.
4. Share the results of this analysis and recommended action with the UARB and obtain an approval prior to any procurement decision to continue transformer oil testing using EUS.
5. Perform self-provisioning and alternatives analyses preceding affiliate transactions. NS Power self-provisioning cost analyses should be performed consistent with and responsive to Procurement's Requests for Proposals in order to be comparable.
6. Perform a comprehensive assessment of NS Power procurement and accounting practices. Focus on levels of competitive procurement versus sole sourcing, materials and service areas lacking competitive alternatives, activities that NS Power is conducting to promote competition locally, controls over inspection and approval of work performed by contractors prior to payment, and policies/procedures/approvals for change orders and rework or work rejected due to poor quality.
7. Perform a detailed prudence review of NS Power transactions with EUS to ensure that the failure to sufficiently evaluate and document economic and operational alternatives as well as reasonable management of NS Power resources has not resulted in cross subsidization or additional costs to ratepayers.
8. Revise the Code of Conduct to be more specific for those affiliate transactions that require, and do not require NS Power to precede the transaction with justification documentation.
9. Clarify Code Protocol 2.1 to be consistent with Protocol 6.11 covering all approved shared corporate service functions, flow-through, labour, directly allocated and temporary labour assignment charges that do not require this same level of documentation even if similar transactions exceed \$125,000.
10. Inform the UARB when a new affiliate is created or acquired. These updates should include all information that is required in the NS Power Affiliate Code of Conduct Annual Report.
11. Temporary assignments of personnel between affiliates should be formalized, certifying that sensitive information has been protected, NS Power skills and capabilities have not been diminished, labour charges have been established in accordance with the Code of Conduct, assignment time has been estimated and limited to the agreement.
12. Separate the NS Power management team and utility organization from Emera Inc., obtain approval for the organizational deviations or modify the Code.

13. NS Power should clarify the extent of its financial separation from Emera including, for example, language that includes bankruptcy resistant covenants as stated in Protocol 5.2(i)
14. NS Power should investigate if the Transfer of Part VI.1 Tax from Emera could substantiate a claim by creditors that the assets of NS Power could be accessed in a bankruptcy claim against Emera.
15. Because NS Power has not instituted ring fencing provisions to date, the UARB should direct NS Power to implement these provisions.
16. Develop detailed guidelines, similar to those in effect prior to September 30, 2016, which address the protection of confidential customer information. The guidelines should address the provision of customer information to affiliates.
17. Obtain Board approval for all categories of management and administrative services affiliate transactions including those covered in Protocol 6.11.
18. Obtain Board approval for Emera Newfoundland and Emera Energy Inc. to be included in Emera's lease at 1223 Lower Water Street.
19. Obtain waivers or Board approval for sharing information systems or separate their use and data.
20. Discontinue the use of the Global Intercompany System and Journal Entries for charging Affiliate Transactions. Require monthly invoices for all affiliates with itemized services, dates and cost.
21. Conduct fair market value (FMV) analyses for all affiliate transactions including Management & Administrative services or obtain Board approval for alternate pricing methodologies.
22. Develop a comprehensive Cost Allocation Manual that integrates all budgeting, allocating, assigning, charging, accounting and reporting of affiliate transactions.
23. Stop charging affiliates for Emera Inc. rent transactions
24. Review charges from Emera Inc. with more detailed scrutiny.
25. Physically isolate Emera Energy Inc. office locations at the NS Power 1223 Lower Water Street Facility or move to a non-NS Power location.
26. Develop policies and procedures as also discussed in Protocol 6.15, to support intercompany pricing protocols.
27. Develop and follow procedures for calculation of fringe benefits, overhead rates, secondment, self-provisioning analyses, determination of FMV, determination of FAC, and documentation requirements.
28. Charge Emera Inc. for back rent.
29. Amend all contracts with affiliates to permit access to affiliate books and records.
30. At a minimum, train all existing NS Power employees with time charged or allocated to an affiliate in Affiliate Code of Compliance on annual basis and obtain required certifications. New employees who are part of a shared service group or will likely

perform work for an affiliate should be trained as part of the onboarding process. Any employee who has not been provided training, should be provided with training before they begin work for an affiliate.

31. Develop a more robust record-keeping process such that NS Power can demonstrate compliance with Protocol 8.1.
32. Develop, and follow, guidelines and associated policies and procedures to ensure compliance with all elements of Protocol 8.1
33. NS Power should plan for and develop the Annual Affiliate Code of Conduct Report so that it can be provided to the UARB on or before April 30 of each year. NS Power's Compliance Guidelines should be corrected accordingly.

## **Organization of this Report**

The remainder of this report provides NorthStar's detailed evaluation of NS Power's compliance with each of the Code. Each Section and Protocol is discussed sequentially and includes the following sections:

- Text of the Protocol
- Current NS Power Guidelines
- Findings and Conclusions

At the end of each chapter, we provide our recommendations.

# CODE SECTION 1: PURPOSE

This Section of the Code of Conduct addresses:

- Cross-subsidization and that NS Power’s customers do not bear any risks or losses because of its affiliates.
- NS Power’s organization and that its management team remains focused on utility operations.
- Customer information maintained by NS Power is protected in transactions with affiliates.
- NS Power’s financial records and other financial information are separated from those of its affiliates.
- NS Power complies with the Code of Conduct with a sufficient level of transparency.

This chapter and each succeeding chapter on compliance with the Code is organized with a statement of the code section followed by the corresponding section of NS Power’s Compliance Guidelines and then NorthStar’s Findings and Conclusions. Recommendations are described at the end of each chapter.

## Code Section 1.0 Purpose

### Protocol 1.1

- 1.1 The purpose of this Code of Conduct is to ensure that: (i) NS Power does not cross subsidize and NS Power's customers do not bear any risks or losses because of its affiliates, (ii) NS Power's organization and management is focused on utility operations, (iii) customer information maintained by NS Power is protected in transactions with affiliates, (iv) NS Power's financial records and other financial information are separate from those of its affiliates, and (v) NS Power complies with the Code of Conduct with a sufficient level of transparency.**

### NS Power Compliance Guidelines

- 1.1 i) NS Power shall not subsidize any of its affiliates.*

*Any invoices or accounts payable shall be paid within 30 days of receipt. (See also 5.3(iii)).*

- ii) NS Power’s management will ensure that NS Power’s business relates to the safe, reliable and affordable generation of electricity and that NS Power does not invest in or become involved in other ventures.*

- iii) NS Power will not provide information about its customers without the customers’ consent, and any information provided to one affiliate must be made available to all other affiliates.*

iv) NS Power will ensure that its records in Oracle and PeopleSoft (and other software) are separate from those of the affiliates and will conduct quarterly testing to determine who has access to its systems or records.

NS Power will maintain and disclose to the UARB upon request a list of employees who have access to the financial records of NS Power and other affiliates. NS Power will provide an explanation for any such access.

## Findings and Conclusions

### 1. Protocol 1.1 covers a number of Code elements that are addressed in greater detail within the remainder of the Code and in the body of this report. In these detailed sections, the report identifies specific areas of the Code and Protocols where NS Power complied and those areas where it did not.

Protocol 1.1.i requires that NS Power does not cross subsidize and NS Power's customers do not bear any risks or losses because of its affiliates. Cross-subsidization can include financial transactions such as cost allocations, interest due to untimely payments, and paying for affiliate goods and services at greater than full market value (FMV). It can also be found in the absence of arm's-length business relationships between NS Power and its affiliates, providing a pool of skilled, unencumbered resources that can be used by affiliates at will, and providing technical or sensitive business information to affiliates that otherwise would be precluded.

- NS Power did not comply with Protocol 2.1 and 2.2 requiring reasonable analyses and documentation preceding any affiliate transaction. The audit also revealed NS Power's selection of an affiliate when the affiliate was not the lowest cost option and then and paying more to the affiliate than agreed upon amounts.
- NS Power provides Board approved rates for regulated electric and other utility services (complying with Protocol 6.5), does not provide financial assistance or commitments on behalf of affiliates (complying with Protocol 6.6), provides shared services at fully allocated cost (6.7 and 6.11) and conducts energy transactions at market rates (partially complying with Protocol 6.8).
- NS Power does not generally determine fair market value or document its inability to obtain fair market value for goods and services as required by Protocol 6.9.

Protocol 1.1.ii requires that NS Power's organization and management is focused on utility operations. NS Power did not comply with this subsection as described below.

- NS Power did not separate regulated electric and other utility services from its affiliates, did not comply with Protocol 3.1 requiring utility services provided solely by NS Power or Protocol 4.1 maintaining a management team within the utility.
- As a result of NS Power's unencumbered temporary assignments and personnel transfers, cross-appointments of senior managers, and inter-affiliate organizational reporting relationships, it did not protect commercially sensitive information.

Protocol 1.1.iii requires that customer information maintained by NS Power is protected in transactions with affiliates.

- NS Power has developed a compliance Guideline that is incorrect. The Code requires protection of customer information, not equal distribution of customer information among NS Power affiliates:

*(iii) NS Power will not provide information about its customers without the customers' consent, and any information provided to one affiliate must be made available to all other affiliates.*

- Neither NorthStar nor NS Power could identify an occasion in which customer information was made available to an affiliate, nor situations where affiliates would be interested in customer information.

Protocol 1.1.iv requires that NS Power's financial records and other financial information are separated from those of its affiliates. NS Power produces separate financial records and reports from its affiliates, but does not comply with the Code since information systems and software, including systems housing financial records are commonly shared within the Emera Inc. family of affiliates (please refer to Protocol 6.2).

- To a limited degree, NS Power identified and addressed the lack of financial records and information systems separation in its 2015 Affiliate Code of Conduct Annual Report under the title "List of Exceptions to the Code of Conduct." NS Power noted its failure to comply with the Code and protect financial information in its Annual Report, when it stated:

Section 6.2 of the Code stipulates that NS Power's financial records and information systems will be kept separate from those of affiliates. All systems containing such records shall include protections to preclude access by non-NS Power employees to NS Power information.

Certain Emera employees require access to NS Power's financial information in Oracle, and have been provided read-only access. The Chief Information Officer and Vice President, Finance both have approval access in Oracle.

- NS Power's simple assertion that affiliate employees require access to financial information does not relieve the Company from compliance with the Code, nor was it granted a waiver for Protocol 6.2. The separation of other information systems was not addressed, "read-only access" is still access precluded by the Code, and "protections" consist mainly of an approved user list.

Protocol 1.1.v requires that NS Power comply with the Code of Conduct with a sufficient level of transparency. Transparency, in the context of performing this Code of Conduct Compliance Audit would include materials supporting and verifying reported transaction source information, provision of materials, documentation and reports generated in the normal course of business, verification of managerial processes and documentation

demonstrating compliance. NorthStar believes that the audit was restricted due to an insufficient level of transparency.

- In its letter submitted to the Board, NS Power stated that the audit should be limited to the expressed provisions of the Code and the spirit and intent of those provisions. In this regard, NorthStar has diligently focused on the expressed provisions of the existing Code, not reading into the Code obligations that are not there.
- In this same letter, NS Power stated that reviewing affiliate fuel transactions was not appropriate, that transactions and compliance be limited to the effective date of the Code, inquiries related to corporate governance must be framed within the scope of affiliate transactions, governance practices of its affiliates would be beyond the scope of review, and recommendations of further revisions to the current Affiliate Code be limited to non-compliance.
  - Following this letter, NS Power required that all audit interviews be conducted with Regulatory Counsel present in addition to two note-takers, limiting answers to questions.
  - NorthStar was not provided with requested affiliate information even though required by Protocol 7.5 which states: In order to monitor compliance, the Board at any time may review the records of NS Power and the records of NS Power affiliates as the Board deems required in assuring compliance with any provisions of this Code and with the duty to deal at arm's-length with affiliates.
  - NorthStar was not provided with requested corporate governance information, an Internal Audit related to an affiliate and information related to the Enterprise Resource Management Program (ERP). In one instance, NS Power stated that requested information was provided only because the affiliate was also regulated by the UARB.

## Protocol 1.2

### 1.2 For the purpose of this Code of Conduct, the term "affiliate" means:

- a) an "affiliate" in accordance with Sections 2(2), 2(3), and 2(4) of the Nova Scotia Companies Act; or
- b) any business entity deemed by the Board to be an affiliate of the Utility for purposes of this Code.

### NS Power Compliance Guidelines

1.2 *Affiliates are listed in the List of Affiliates provided by the Corporate Secretary and filed with the UARB as part of the Annual Code of Conduct reporting. The List of Affiliates sets out all affiliates and distinguishes between affiliates which meet the definition of affiliate in the Nova Scotia Companies Act and minority interest affiliates which fall below the 50% ownership and control threshold.*

*The term affiliate is defined in section 2(2)-(4) of the Companies Act:*

- (2) *A body corporate shall be deemed to be an affiliate of another body corporate if one of them is the subsidiary of the other or if both are subsidiaries of the same body corporate or if each of them is controlled by the same person.*
- (3) *A body corporate shall be deemed to be controlled by another person or by two or more bodies corporate if*
  - (a) *voting securities of the first-mentioned body corporate carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or by or for the benefit of the other bodies corporate; and*
  - (b) *the votes carried by such securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned body corporate.*
- (4) *A body corporate shall be deemed to be a subsidiary of another body corporate if*
  - (a) *it is controlled by*
    - (i) *that other, or*
    - (ii) *that other and one or more bodies corporate each of which is controlled by that other, or*
    - (iii) *two or more bodies corporate each of which is controlled by that other; or*
  - (b) *it is a subsidiary of a body corporate that is that other's subsidiary.*

*NS Power can request that the Board determine that a related entity be considered an affiliate for the purposes of the Code of Conduct.*

## Findings and Conclusions

### 2. NS Power complied with Protocol 1.2.

- NS Power Guidelines define an “affiliate” in accordance with Sections 2(2), 2(3), and 2(4) of the Nova Scotia Companies Act.
- NS Power has identified its affiliates in its Affiliate Code of Conduct Annual Report.
- To date, the UARB has not deemed any other business entity to be an affiliate of the Utility for purposes of this Code.

## Recommendations

1. Finalize the Code compliance Guidelines and adopt version control instead of allowing the Guidelines to be a “living document.”
2. The audit has surfaced areas of potential ambiguity in the Code, in NS Power’s compliance Guidelines and potential overlap between Code Protocols. While these are in some cases addressed in the findings, conclusions and recommendations related to each Section and Protocol, highlights are provided to the UARB and NS Power for consideration and potentially revisions to the Code.
  - To improve clarity:
    - Define the use of the word “Board” in the Code as the UARB, which is used throughout the Code. (1.2)
    - The Statement of Principles does not sufficiently address separation of personnel or potential transfer of information. (2.1)
    - To focus on the regulated utility and not Emera Inc. “NS Power” must create and maintain an organizational structure solely with the utility. (3.1)
    - “Dedicated” could have multiple interpretations – as in strictly utility responsibilities or to “have a management team” that is committed. (4.1 helps clarify in this case) Is the focus on quality and capability and if so how determined? Does this rely on performance report results? (Section 4.0 - Utility Management Objectives)
    - The words “or other persons” could be deleted. PIPEDA already requires the protection of customer information. (6.3)
    - Is the list of services sufficiently comprehensive? Is it illustrative or restricted to these specific functions? Are other management and administrative services prohibited? (6.11)
    - Language should be clarified with regard to “any services” (6.13)
    - Prohibit confidential and commercially sensitive information received from or provided to Nalcor shared with NS Power’s affiliates versus “take appropriate measures to prevent” sharing. (6.14)
    - Clarify the relationship between Code compliance audits and FAM audits. (6.17)

- Section 7.0 Objectives and Protocols does not address knowledge or sensitive information transfer.
- The wording “under all established utility performance measurements” requires clarification or the word “all” should be deleted (7.1.f)
- To improve potential overlap or conflict, the following Protocols should be combined/aligned:
  - Cross-subsidization and customer risk: 1.1.i, 2.3, 5.1, 5.2, 5.3, and 5.4
  - Organizational separation and personnel transfers: 3.1, 4.1, 6.13, and 7.1.h
  - Documentation justifying affiliate transactions: 2.1.a, 2.1.b, 2.2, 6.13, 6.16, 7.3, and 7.10
  - Documentation establishing fair market value and pricing: 6.6, 6.7, 6.8, 6.9, 6.10, 6.18, 7.1.b, 7.1.c, 7.1.d, 7.1.e, 7.1.g, 7.6.a – 7.6.e, 7.7.a – d, and 7.8.a – c
- The Code should more specifically address conflicts of interest, what can and cannot be discussed in joint meetings and the transfer of information.

## CODE SECTION 2: STATEMENT OF PRINCIPLES

This Section of the Code of Conduct ensures that NS Power policies, procedures and practices provide documented analyses and justification for affiliate transactions.

### Code Section 2.0 Statement of Principles

#### Protocol 2.1

- 2.1 NS Power will precede any transaction by which it acquires from or provides to an affiliate any goods, services, leases, asset transfers, or other exchanges of value, with a sound, objective, and transparent process and reasonable documentation;
- (a) The process and documentation shall identify and then compare transacting with an affiliate to: (i) provisioning through other, reasonably available commercial alternatives, (ii) self-provisioning by NS Power, (iii) joint NS Power/third-party provisioning, (iv) joint NS Power/affiliate provisioning, and (v) such other arrangements as may be reasonably available under the applicable circumstances at the time of the decision.
  - (b) For transactions below \$125,000 in aggregate value (determined by adding together all similar transactions with the same affiliate during any consecutive 12-month period), the comparison of alternatives and documentation may be abbreviated as appropriate to avoid adding materially to the cost of the transaction, provided that NS Power provides sufficient documentation to demonstrate that the transaction complies with the standards of Section 1.1 of this Code and that NS Power's actions to meet those standards preceded the decision to transact with an affiliate.

#### Compliance Guidelines

- 2.1 *Exchange of value may extend to exchange of information such as policies and procedures or documents or programs created by NS Power or third parties.*

*In determining whether there should be a charge for a particular service or exchange and what the fee should be, the provider should determine whether it would provide the same service or exchange to an unrelated company and what the charge should be.*

*NS Power and affiliates also need to be mindful of whether the proposed transaction in any way conflicts with or breaches the Emera Code of Conduct.*

*If a proposed transaction does not violate the confidentiality, proprietary information or intellectual property provisions of the Emera Code of Conduct, NS Power needs to determine whether the proposed transaction is in the best interests of customers.*

*If the proposed transaction is in the best interests of customers or is the most reasonable option for customers in the circumstances, NS Power needs to determine what the fair market value of the requested product or service would be. If there is no readily available comparator in the marketplace, NS Power needs to consider the inherent value which went into creation of the product or service. Factors such as employee time and resources, software and hardware requirements are expenses*

*incurred by NS Power which are ultimately paid for by customers. NS Power should be recovering those costs in order to provide benefit to customers. NS Power would have to determine its fully allocated costs in order to pass those on to the affiliate.*

*Each request will have to be assessed on its merits, and all such decisions should be thoroughly documented. A member of the Executive Leadership Team should sign off, regardless of whether the decision is to enter into the transaction or not to enter into the transaction.*

*When considering such requests, NS Power should also consider whether it would be willing to provide the information to non-affiliates or other unrelated parties. If the answer to that question is no, then NS Power should not be prepared to provide the information requested by the affiliate.*

*The documentation and analysis process required under section 2.1(a) of the Code includes the following:*

*If there is a proposal to transfer services from NS Power to an affiliate, or from an affiliate to NS Power, the parties must carry out an analysis which provides information about the following:*

- *The current cost of the service (including labour and non-labour allocations and any overhead)*
- *The cost of having the service performed by the other company (including labour and non-labour allocations and any overhead)*
- *The cost of having the service performed by an unrelated third party. If no such information is available, there should be an explanation about why the service cannot be outsourced to the market place.*

*The analysis should be reviewed by both companies and it should be provided to Regulatory Affairs to ensure that it complies with the Code of Conduct.*

*NS Power will ensure that it keeps the following documentation:*

- *Copy of the correspondence and RFP, including a list of potential bidders to whom the RFP is sent*
- *Copies of all bids received and communication from potential bidders declining to provide a bid (including reasons for not bidding)*
- *Matrix showing the criteria used for determining the successful proponent and an indication of how each bidder fares under each criterion*
- *Listing of criteria used to rank each submission*
- *Documentation pertaining to any presentations or site visits involving individual bidders*
- *Recommendation setting out the reasons for recommending a particular transaction*
- *Copies of any contracts negotiated with the successful bidder*

*NS Power will also include any self-provisioning analysis as part of its documentation.*

*If NS Power is unable to carry out the work itself (because of resource or other constraints), it must indicate so as part of the documentation.*

*In carrying out a self-provisioning analysis, NS Power may not review any of the bids provided by any of the other bidders.*

## **Findings and Conclusions**

### **1. NS Power did not comply with Protocol 2.1.**

Fundamental elements of the Code requiring compliance are:

- Analyses must precede any transaction with affiliates.
- Transactions must receive sound, objective, transparent and reasonable documentation of alternatives analysis.
- Other alternatives analysis and documentation shall identify and compare:
  - Other reasonably available commercial alternatives considered.
  - Self-provisioning by NS Power versus an affiliate considered.
  - Joint provisioning documentation, if considered.
  - Joint NS/affiliate provisioning documentation, if considered.
  - Other arrangements documented, if considered.

Arguably, the terms “any transaction” presents a compliance problem when applied to transactions such as energy purchases and sales, taxes or storm restoration assistance. Also, aggregating “similar” transactions could become somewhat subjective. Nevertheless, NS Power did not comply with the Code in a significant number of affiliate transactions reviewed.

- NS Power could not demonstrate alternatives analysis or documentation preceding the majority of materials and services transactions with its affiliates in compliance with Protocol 2.1.a. NS Power did not provide alternatives documentation for transactions less than \$125,000 as required for Protocol 2.1.b.
- **Exhibit II-1** provides a summary of affiliate transactions that in aggregate exceed \$125,000. NS Power did not document or provide an alternative analysis for some of these affiliate transactions - IT services, some rent, various shared services and general time and expenses. The exhibit shows the entire 2015 transactions, some of which occurred prior to the effective audit period.

**Exhibit II-1**  
**List of Transactions Exceeding \$125,000 in Aggregate 2015-2016**

Entity Provider	Entity Recipient	Transaction	2015****	2016
Emera Inc.	NS Power	ERM Costs	338,912	510,263
Emera Inc.	NS Power	ERP Project		346,550
Emera Inc.	NS Power	ETRM (Allegro) Amortization		494,653
Emera Inc.	NS Power	Investor Relations**	167,376	
NS Power	Emera Energy	IT SLA Charges	1,292,653	1,419,815
NS Power	Emera Inc.	IT SLA Charges	1,672,192	1,941,130
NS Power	Emera Maine	IT SLA Charges	149,198	141,009
NS Power	Emera Newfoundland	IT SLA Charges	806,177	1,060,321
NS Power	EUS	IT SLA Charges	653,311	464,128
NS Power	Emera Newfoundland	ML Expenses	1,255,114	440,424
Emera Energy	NS Power	Natural Gas sales		
NS Power	Emera Energy	Natural Gas sales		
NS Power	Emera Inc.	NI-52***	158,642	
EUS	NS Power	PLT and Other EUS Services		
Brooklyn Power	NS Power	Power Purchases		
NS Power	Emera Inc.	Property Tax	200,000	255,000
NS Power	Emera Energy	Rent		
NS Power	Emera Inc.	Rent		
NS Power	Emera Newfoundland	Rent		
Emera Inc.	NS Power	Rent Chargebacks		
Emera Inc.	NS Power	Shared Services	209,068	3,617,963
NS Power	Barbados Light & Power	Shared Services	266,387	348,854
NS Power	Bayside Power	Shared Services	130,002	132,670
NS Power	Bear Swamp	Shared Services	211,402	170,305
NS Power	Domlec	Shared Services	128,160	241,842
NS Power	Emera Brunswick Pipeline	Shared Services	400,948	234,513
NS Power	Emera Inc.	Shared Services	3,012,385	3,264,054
NS Power	Emera Energy	Shared Services	1,189,897	1,059,856
NS Power	Emera Maine	Shared Services	853,432	712,293
NS Power	Emera Newfoundland	Shared Services	943,952	818,704
NS Power	EUS	Shared Services	397,841	440,489
NS Power	EUSHI	Shared Services	200,289	930,364
NS Power	Grand Bahamas Power Corp.	Shared Services	249,506	335,541
Emera Maine	NS Power	Storm Restoration	248,841	
NS Power	Emera Maine	Storm Restoration	(145,012)	
NS Power	Grand Bahamas Power Corp.	Storm Restoration		2,923,224
Emera Inc.	NS Power	Time & Expenses	185,938	177,637
NS Power	Barbados Light & Power	Time & Expenses	159,161	
NS Power	Emera Inc.	Time & Expenses	612,583	209,889
NS Power	Emera Newfoundland	Time & Expenses	1,044,739	1,203,940
NS Power	Grand Bahamas Power Corp.	Time & Expenses	280,254	555,719
*Currency is USD, otherwise CAD				
** Investor Relations charges in 2016 are included in Emera shared services charges				
***NI-52 charges were included as part of Internal Audit shared services charges starting in 2016				
**** Full calendar year reported although audit covered October 2015 through December 2016.				

NS Power's compliance or failure to comply with Protocol 2.1 is summarized in **Exhibit II-2** below. The table contains the types of transactions reported as part of the Annual Affiliate Code of Conduct Report and in some cases, a description of why NS Power believes that it demonstrates compliance with the Affiliate Code.

**Exhibit II-2**  
**Summary of Affiliate Transactions - Description of Alternatives Analysis**

Category	Transactions	Compliance Description
Documented Comparison or Analysis	<ul style="list-style-type: none"> <li>• EUS PLT Services</li> </ul>	Contract signed October 1, 2014 and self-provisioning analysis done in 2014.
	<ul style="list-style-type: none"> <li>• EUS Transformer Testing Services</li> <li>• Hefler’s Mill</li> <li>• Canso</li> <li>• Sissiboo</li> </ul>	NorthStar concluded that self-provisioning analysis/documentation was not done. NS Power stated that it did not, or could not perform the work. NS Power’s position was not supported by alternatives analysis.
	<ul style="list-style-type: none"> <li>• Emera Energy Natural Gas Trades</li> </ul>	Trades are based on alternatives and summary tables document savings, complying with Protocol 2.1.
	<ul style="list-style-type: none"> <li>• Transfer of Payroll to Emera Inc.</li> </ul>	2013 alternative analysis done.
Directly Allocated Charges	<ul style="list-style-type: none"> <li>• Shared services</li> <li>• Pension administration</li> </ul>	NS Power pays the majority of these charges acquired from or provided to affiliates. NS Power is able allocate a portion of the costs to affiliates. Protocol 6.11 states that Management and Administrative services will equal the providing party’s fully allocated costs.
Flow-Through Charges	<ul style="list-style-type: none"> <li>• Subscriptions</li> <li>• Travel expenses</li> <li>• Property tax</li> <li>• Amortization charges</li> </ul>	The prices are charged by third parties in the marketplace, and are allocated to the appropriate affiliate, either on a pro-rata basis or in their entirety, depending on the item. There is no mark-up on these charges and NS Power believes the charged amounts represent fair market value.
Labour Charges (Direct Billing)	<ul style="list-style-type: none"> <li>• NS Power labour charges to affiliates</li> <li>• Affiliate labour charges to NS Power</li> <li>• Storm restoration charges</li> </ul>	NS Power charges fully allocated costs for direct labour charges. Fully allocated costs consist of the hourly salary rate plus the applicable fringe and overhead allocation on all labour charges. NS Power stated it would be impractical to determine market value for all individual labour charges, particularly those for short duration (e.g., engineer required for only a few hours).

- The simple assertion, without support, that NS Power could not perform the work does not relieve the Company from compliance with the Code. In its present form, the Code makes no exceptions for directly allocated, flow-through, and temporary labour assignment charges.
- Similarly, following another Code Protocol requirement such as “fully allocated costs,” “positive time reporting,” or “direct charging” does not relieve NS Power from compliance under Protocol 2.1.

NorthStar’s audit of NS Power’s contract with EUS for transformer oil testing services demonstrated numerous compliance issues. This procurement was for 10,000 of 45,000

transformers to be tested. The sole source purchase was valued at [REDACTED] and NS Power spent [REDACTED].

NS Power invoice records document 9,451 units tested during the audit period and charged at [REDACTED] per unit. The remaining 549 transformer units (of the 10,000) that were included in the scope of work as well as a total of 1,667 tests that NS Power believes were performed by EUS as part of “training and mobilization” (invoiced for [REDACTED]), could not be confirmed during the audit. The remaining charges were for additional work not covered by the purchase order.

- **May 27, 2015:** An unaffiliated contractor ([REDACTED]) submitted a proposal for a proprietary transformer oil testing service. One of three options offered was to provide materials, special tools and training while NS Power provided labour.
- **May 28, 2015:** One day later, NS Power decided to use its affiliate, EUS to perform the transformer oil testing. [REDACTED] was required to work with EUS after their proposal was submitted and prior to when NS Power sent purchase orders to [REDACTED] and EUS. As shown in the email below, tying the selection of NS Power contractors to the use of NS Power affiliates raises numerous questions and does not comply with the Code.

I had a call with [REDACTED] today from [REDACTED] regarding the potential use of a sub-contractor if we were to take on the PCB Pole Top Transformer sampling ourselves and purchase the rivets from [REDACTED]. He said he would not have an issue with us using EUS if this was required.

- **May 29, 2015:** NS Power continued to discuss using EUS a month and a half before EUS proposed on transformer oil testing as noted in the email below:

Thanks for touching base with [REDACTED]. First I'd like to chat with [REDACTED] again – I'm not satisfied with the rates quoted.

With respect to having EUS quote the work, I would prefer to confidentially discuss the option with them and have them provide a ball park for this specific work and then reevaluate before we create churn in the business by bringing it to Operations. I know the Ops Managers were hoping to use this as filler work for their crews which would present a logical challenge I'm not sure we want to undertake.

I'd like to set up a call with both [REDACTED] and [REDACTED] at EUS to discuss further.

- **July 16, 2015:** The EUS proposal for services was submitted well after commercial negotiations had been conducted.
- **August 10, 2015:** Weeks of electronic communication and collaboration among the NS Power Procurement Manager, Procurement Lead, T&D Engineering, and Distribution Capital Management, and EUS management preceded the procurement approval. The procurement recommendation was submitted to the NS Power Senior Engineer Reliability, Manager of T&D Capital Management, Regulatory Compliance, Procurement Director, T&D Senior Director and the EVP Customer Experience.

While the commercial examination documentation noted that NS Power internal resources were less costly than the EUS alternative, providing quantification, a self-provisioning analysis was not performed or documented. The procurement recommendation was presented to management as noted in the email below.

I apologize I didn't get chance to get back to you, I'm on vacation until August 11th. I put a cost comparison sheet together for NSP, EUS and [REDACTED]. You should be able to see that NSP is the best option from a cost perspective, but we will not be able to the self-provisioning because our resources are loaded with work. I believe EUS is the way to go since it's the second most cost effective option and resources can be available to complete the job.

- In summary, this single NS Power contract with its affiliate EUS, exhibited the following:
  - Broad, unrestricted communication between NS Power management and an affiliate exchanging commercially sensitive information.
  - Tying and conditioning the contract with [REDACTED], an unaffiliated contractor to NS Power's affiliate EUS.
  - Sole source purchasing to an affiliate.
  - Failure to precede an affiliate transaction with a sound, objective analysis of alternatives and reasonable documentation of a prudent business decision.
  - Subordinating internal T&D resources and prohibiting fill-in work that, as discussed, could improve internal productivity while assigning work to an affiliate to earn a profit.
  - Failure to adhere to and manage the purchase order with EUS: approving and paying for activities that were not included, overpaying for agreed upon unit costs, and additional payment for EUS lost productivity.
  - This [REDACTED] contract with EUS resulted in NS Power paying more than the purchase order agreed upon amount. The total amount paid to EUS exceeded NS Power's in-house cost estimate and the all-inclusive estimate from [REDACTED].

## Protocol 2.2

- 2.2 NS Power will only enter into affiliate transactions when doing so has been demonstrated through sound, documented analysis to be the best available option for NS Power's customers at the time.**

### Compliance Guidelines

- 2.2 *Each affiliate transaction should be documented. For individual or non-recurring transactions, there should be documentation which provides a full analysis of the transaction and which shows it to be the best available option for NS Power's customers.*

*To be the best available option for NS Power's customers, there should be a benefit derived from entering into the transaction. This may be a quantitative benefit (demonstrated by savings to NS Power or revenue generated by NS Power) or a qualitative benefit which doesn't necessarily equate to a financial benefit but which shows that there are other considerations when considering whether to transact with an affiliate.*

*For example, EUS may be a bidder for a particular procurement function, but EUS may not have the lowest bid. However, if EUS has a proven track record of success, and has appropriate safety policies and procedures in place, and outperforms the other bidders in other categories, the EUS option may be the best available option in the circumstances. Each situation and transaction will have to be looked at on an individual basis.*

### Findings and Conclusions

- 2. As NS Power did not comply with Protocol 2.1, it cannot comply with Protocol 2.2.**

As described above, NS Power has not demonstrated affiliate transactions to be sound, nor provided contemporaneously documented analyses, nor shown affiliate transactions to be the best available option for NS Power's customers.

## Protocol 2.3

### 2.3 NS Power's customers will not otherwise bear the risks or share the rewards of an affiliate's activities.

#### Compliance Guidelines

*NS Power has not developed any specific guidelines in respect to this protocol.*

#### Findings and Conclusions

### 3. NS Power did not comply with Protocol 2.3.

NorthStar was able to observe the benefits of affiliate transactions resulting from economies of scale. NorthStar observed risks associated with potential transfers of information, lack of separation, insufficient alternatives analysis, and potential financial exposure.

NorthStar was unable to comprehensively analyze the risks and rewards of all NS Power affiliate transactions during the audit period. Beginning at a high level, risks and rewards can be identified in various governance and planning activities highlighting subject areas of affiliate relationships and transactions.

- Board of Directors meeting minutes are the initial step in the identification of affiliate-related risks and rewards particularly in the area of energy transactions and exceptionally large materials and services agreements.
- On its own, governance is a significant affiliate transaction, allocated among affiliates. Corporate governance is provided by a number of senior managers that are responsible for both NS Power and affiliates.
- In a number of instances, NS Power on behalf of its affiliates indicated that affiliate information would not be provided, prohibiting analysis.

For these reasons, NS Power did not comply with Protocol 2.3 or 7.5.

Absent access to information and evidence to demonstrate that there was no bias in governance and in affiliate transactions, we are not able to conclude that transactions with affiliates did not shift reward to the affiliate and risk to the ratepayer.

An example of NS Power customers bearing the risk of an affiliate transaction, was observed in one of the four purchase orders executed with its unregulated affiliate EUS. During the audit period, NS Power paid █ percent or █ over the stated purchase order amount during the audit period. NS Power has attributed some of these additional charges to change orders for additional work. However, additional services and conditions that would support change orders were not provided for in the purchase order description of services, or terms and conditions. Additionally, the purchase order stated unit prices for training/mobilization and oil sampling were not followed.

The selection of EUS at an amount greater than the estimate for NS Power conducting the work was based on a unit cost with EUS taking full responsibility for productivity. NS Power's procurement recommendation stated that:

Engagement with EUS will be under a per unit costing structure to ensure that EUS will manage their productivity – a condition that internal NSPI resources could not easily be under.

## Recommendations

3. Perform a proper self-provisioning analysis for the remainder of the transformer oil testing program using comparable productivity factors and real costs for in-house versus contractor rates. To demonstrate an objective, unbiased analysis:
  - Conduct a limited number of tests using and effectively managing NS Power resources, recording actual productivity and unit cost consistent with utility cost accounting.
  - Compare the NS Power pilot test results with the [REDACTED] proposal and the cost of EUS resources as proposed.
  - Determine whether the transformer oil testing can be performed over time as fill-in work while maintaining the T&D system.
  - If deemed necessary, demonstrate why NS Power T&D resources cannot perform transformer oil testing.
4. Share the results of this analysis and recommended action with the UARB and obtain an approval prior to any procurement decision to continue transformer oil testing using EUS.
5. Perform self-provisioning and alternatives analyses preceding affiliate transactions. NS Power self-provisioning cost analyses should be performed consistent with and responsive to Procurement's Requests for Proposals in order to be comparable.
6. Perform a comprehensive management audit of NS Power Procurement and Accounting practices. Focus on levels of competitive procurement versus sole sourcing, materials and service areas lacking competitive alternatives, activities that NS Power is conducting to promote competition locally, controls over inspection and approval of work performed by contractors prior to payment, and policies/procedures/approvals for change orders and rework or work rejected due to poor quality.
7. Perform a detailed prudence review of NS Power transactions with EUS to ensure that the failure to sufficiently evaluate and document economic and operational alternatives as well as reasonable management of NS Power resources has not resulted in cross subsidization or additional costs to ratepayers.

8. Revise the Code of Conduct to be more specific for those affiliate transactions that require, and do not require NS Power to precede the transaction with justification documentation.
9. Clarify Code Protocol 2.1 to be consistent with Protocol 6.11 covering all approved shared corporate service functions, flow-through, labour, directly allocated and temporary labour assignment charges that do not require this same level of documentation even if similar transactions exceed \$125,000.

## CODE SECTION 3: CORPORATE STRUCTURE

This section of the Code addresses separation of the regulated utility and its products and services from those of the affiliates.

- Has Emera, the parent company of NS Power, created and maintained a corporate organizational structure which ensured that regulated electric and other utility services were provided solely by NS Power and by no other affiliate?
- Has Emera created a corporate organizational structure that provides sufficient separation between the regulated utility and non-regulated affiliates to prevent inappropriate sharing or exchange of information?
- Has NS Power maintained a complete list of all of its affiliates?
  - Does the list of all affiliates include the name and address of each affiliate, a brief and current description of its activities and the names, addresses and telephone numbers of all of its officers?
  - Is the list kept up to date, on an open file with the Board?

### Code Section 3.0 Corporate Structure

#### Objectives

To separate regulated electric and other utility services from affiliate activities.

#### Protocol 3.1

- 3.1 Emera, the parent company of NS Power, will create and maintain a corporate organizational structure which ensures that regulated electric and other utility services are provided solely by NS Power and by no other affiliate.**

#### Compliance Guidelines

*NS Power has not developed any specific guidelines regarding this protocol.*

#### Findings and Conclusions

- 1. NS Power did not comply with Protocol 3.1. The NS Power organization and utility services are not provided solely by NS Power and are not separate from affiliates.**

Protocol 3.1 requires organizational separation and regulated electric and other utility services be provided solely by NS Power and by no other affiliate. The Nova Scotia Public Utilities Act covers all activities and services provided by NS Power as a public utility and its rates for electric service. NorthStar's review of the *Public Utilities Act* did not reveal any electric and other utility services, functions or activities that were excluded.

The NS Power organization is not separate from its holding company affiliate, Emera, Inc. or its affiliates. This is evident at the very top of the NS Power organization, at functional levels of management reporting, and the manner in which people transfer freely among affiliates when the needs arise. The lack of separation is evident at various levels.

- The Nova Scotia Power Incorporated Board of Directors Charter specifies that the Chair shall be an “independent director” as defined under applicable legislation and the rules of any stock exchange on which NS Power’s securities are listed for trading. Emera Inc. holds directly and through its subsidiaries all NS Power’s common equity securities. Nevertheless, the definition of an “independent director” is determined by the Toronto Stock Exchange. Since May 1, 2016, NS Power’s Board has not been led by an independent director.
  - Mr. Scott Balfour was appointed Chair of the NS Power Board of Directors in May 2016.
  - He also serves as Chair of the Boards for Nova Scotia Power, Emera Maine, Emera New Brunswick, Emera Utility Services, Grand Bahama Power and appointed to the local boards of Tampa Electric and New Mexico Gas.
  - He has been the Emera Inc. Chief Operating Officer (COO), since March 1, 2016. Prior to that, he had been the Emera Inc. EVP and Chief Financial Officer since April 16, 2012.
  - Mr. Balfour is an officer of many NS Power affiliates. Affiliates reporting directly to the Emera COO position in addition to NS Power include:
    - Emera Maine
    - Emera Newfoundland
    - Emera Caribbean Inc.
    - Emera Energy
    - Emera Utility Services
    - Emera Brunswick Pipeline
- Additionally, the NS Power Board requires a majority of independent directors as called for in its Charter. Four of the seven NS Power Board members are independent Directors.
- The NS Power President and CEO reports directly to the Emera Chief Operating Officer (COO) who is the NS Power Board Chair.
- Numerous NS Power executives and managers report directly to Emera managers and Emera resources report to NS Power managers. These reporting relationships are summarized in **Exhibit III-1**.

**Exhibit III-1**  
**Direct Organizational Reporting Among NS Power and Emera, Inc.**

<b>Supervisor Company or Affiliate</b>	<b>Employee Company or Affiliate</b>	<b>Job Classification</b>
NSP	EMERA, Inc.	Engineer, Senior
NSP	EMERA, Inc.	Compensation Analyst
NSP	EMERA, Inc.	Sen. Dir, Enterprise Risk Mgmt
NSP	EMERA, Inc.	Senior Communications Advisor
EMERA, Inc.	NSP	Corporate Secretary
EMERA, Inc.	NSP	Manager, COE
EMERA, Inc.	NSP	Manager, ERP
EMERA, Inc.	NSP	Manager, Health & Wellness
EMERA, Inc.	NSP	Manager, ERP
EMERA, Inc.	NSP	VP, Corp Insurance
EMERA, Inc.	NSP	Director, Internal Audit
EMERA, Inc.	NSP	Specialist, HR
EMERA, Inc.	NSP	Associate, HR
EMERA, Inc.	NSP	Director, Finance
EMERA, Inc.	NSP	Director, Safety
EMERA, Inc.	NSP	Associate, HR
EMERA, Inc.	NSP	President & CEO
EMERA, Inc.	NSP	Coordinator, Project
EMERA, Inc.	NSP	Associate, HR
EMERA, Inc.	NSP	Director, Env Governance
EMERA, Inc.	NSP	Director, Field Operations
EMERA, Inc.	NSP	VP & Treasurer
EMERA, Inc.	NSP	Compliance Manager
EMERA, Inc.	NSP	Executive Assistant
EMERA, Inc.	NSP	Specialist, HR
EMERA, Inc.	NSP	Specialist, HR
EMERA, Inc.	NSP	Director, Procurement & RE
EMERA, Inc.	NSP	Senior Director, Corp Security
EMERA, Inc.	NSP	Director, Corporate Tax
EMERA, Inc.	NSP	Director, Financial Plan

- Corporate Officers hold positions in both NS Power and Emera, Inc. organizations. NS Power characterizes these as “cross-appointments” which are prohibited in its own Code Compliance Guideline 4.1. The following positions are examples of cross-appointments that combine NS Power managerial duties with those of affiliates.
  - The Emera COO is also the NS Power Board Chair.

- The Emera CFO is also the NS Power and numerous affiliates CFO.
  - The Emera Corporate Secretary is also the NS Power Corporate Secretary and for many affiliates.
  - The Emera VP Finance is also the NS Power VP Finance.
  - The Emera Chief Legal Officer is also the NS Power Chief Legal Officer.
  - The Emera Chief Human Resources (HR) Officer is also the NS Power HR Officer.
- NS Power resources are commonly made available to affiliates.
    - The NS Power “Competition Checklist” used for screening resources for new positions makes no distinction between NS Power employees and those of affiliates.
    - NS Power Human Resources posts position openings to all Emera entities.
    - NS Power does not have specific policies and procedures related to employee transfers to and from affiliates. The Recruitment Policy which is applicable for external candidates or for employees seeking internal transfer does not recognize an affiliate employee transfer as an affiliate transaction.
    - Dozens of NS Power employees are assigned each month to work for affiliates and similarly, affiliate employees are assigned and charge NS Power. NS Power describes the methodology to perform a temporary assignment as “agreements” which can be informal, relying for the most part on time records for charging labour. No restrictions on information transfer or limitations on resource availability were noted.
      - NS Power employees perform specific project-related work for affiliates which can last from an hour (or less) to many days.
      - NS Power does not consider casual assignments where employees perform work for affiliates while working for NS Power to be temporary assignments. Requests for these assignments are made by phone or email, approved by the employee’s supervisor and it is expected that time worked is captured by timekeeping.
      - Employees provide storm response assistance in the case of emergencies.
      - There are shared Emera Inc. employees whose time is charged 50 percent to NS Power and 50 percent to Emera Inc.
      - NS Power employees are seconded to an affiliate for full-time assignments. Time is paid by NS Power and charged to the affiliate at salary plus fringe and a 55 percent overhead allocation.
  - NS Power / Emera position “cross-appointments” are not considered transfers. For example, the VP, Finance at Emera Inc. since 2014, was also appointed as the VP Finance at NS Power effective July 1, 2015. This same VP Finance was reported as appointed to the NS Power (dual role) on August 8, 2015 and on August 10, 2015.
  - NS Power employee transfers to affiliates reported during the 2015 and 2016 audit period were greater than or equal to affiliates to NS Power.

## Protocol 3.2

- 3.2 NS Power will maintain a complete list of all of its affiliates. The list will include the name and address of each affiliate, a brief description of its activities and the names, addresses and telephone numbers of all of its officers. The list will be kept on open file with the Nova Scotia Utility and Review Board (Board).**

### Compliance Guidelines

- 3.2 The Corporate Secretary will prepare a list of all affiliates and minority interests and will identify each affiliate as an affiliate or a minority interest holding. The list will also indicate the status of any entities which have been wound up, discontinued or dissolved. NS Power's Corporate Secretary will use best efforts to obtain the contact and officer information for minority interests on the list.*

*NS Power will file the list with the annual Code of Conduct Report in April of each year, but will provide the list upon two weeks' request.*

### Findings and Conclusions

- 2. NorthStar believes NS Power complied with Protocol 3.2, but could not determine whether NS Power continuously maintained a complete list of all affiliates.**

Compliance with Protocol 3.2 requires three actions: maintaining a complete list of all NS Power affiliates, maintaining affiliate information, and keeping an open file with the UARB.

- NS Power stated that the Corporate Secretary, by virtue of holding an office responsible for corporate governance for both Emera Inc. and NS Power, has knowledge of new affiliates within the Emera group of companies. And, corporate-wide announcements of new affiliates are made to employees as appropriate via the Emera intranet, entitled the *grid* and e-grams from the CEO and President of Emera Inc.
  - The list of affiliates is provided in the annual NS Power Affiliate Code of Conduct Report – Entity List of Affiliates and Minority Interests.
  - NS Power's process for identifying new affiliates and their business relationships did not include any updates to the UARB.
- The Emera Inc. Corporate Secretary either directly retains or oversees the retention of external legal counsel to incorporate new affiliates. The Corporate Secretary oversees the process of corporate organization, collects the relevant information for record keeping purposes and controls the corporate minute books and related corporate information. The Corporate Secretary is responsible for updating and keeping records and minute books in the facilities assigned for retention of such corporate records.
  - The NS Power Corporate Secretary is not the Corporate Secretary for all Emera group companies and may not have knowledge by virtue of the position.

- NorthStar could not determine when affiliate announcements were deemed appropriate.
- NS Power stated that affiliates and their business relationships are identified in several ways.
  - The Corporate Secretary of both NS Power and Emera Inc. is aware at all times of the affiliation between NS Power and all other affiliates of Emera Inc.
  - NS Power annually obtains a list of affiliates and minority interests from the Corporate Secretary which it files as part of the Annual Affiliate Code of Conduct Report.
  - Of the approximately 130 affiliates, currently only 12 are operating entities. The remaining companies are holding companies or companies created for particular purposes (such as financing structures and other reasons).
  - The President and CEO of NS Power is a member of the Emera Corporate Council and Emera's Disclosure Committee and participates in substantial review of Emera's annual and quarterly public and other disclosure which includes information about operations and affiliates and their business relationships. Subject to applicable securities regulations and rules of the Toronto Stock Exchange (TSX) which apply to the disclosure of information that is material to Emera Inc. as a public company listed on the TSX, material developments for Emera, including the acquisition or incorporation of operating affiliates are publicly announced.
  - Public announcements are routinely and promptly accompanied by announcements addressed to all employees of Emera and its affiliates, including without limitation, NS Power. The identification of new affiliates or business relationships is shared as appropriate with senior management and leaders, and is also communicated to all employees by way of email communications, organizational announcements, and information provided on the Emera intranet, entitled the *grid*.

## Recommendations

10. Inform the UARB when a new affiliate is created or acquired. These updates should include all information that is required in the NS Power Affiliate Code of Conduct Annual Report.
11. Temporary assignments of personnel between affiliates should be formalized, certifying that sensitive information has been protected, NS Power skills and capabilities have not been diminished, labour charges have been established in accordance with the Code of Conduct, assignment time has been estimated and limited to the agreement.

## CODE SECTION 4.0: UTILITY MANAGEMENT

This section of the Code describes personnel and qualification requirements of the utility workforce and whether NS Power has:

- Maintained a management team within the utility capable of delivering a superior level of performance.
- Prepared and included a summary of utility performance as specified in Code Section 7.1 in its Annual Report submitted to the Board.

### Code Section 4.0 Utility Management

#### Objectives

To dedicate to the provision of regulated services, in terms of quality and numbers, a management team capable of maintaining a superior level of performance, at the same time as NS Power affiliates are expanding into other business activities.

#### Protocol 4.1

- 4.1 NS Power will maintain within the utility a management team capable of delivering a superior level of performance.**

#### Compliance Guidelines

- 4.1 Members of NS Power's Executive Leadership Team shall not hold cross-appointments to any of the affiliates. Any exceptions will be discussed in advance with the Board.*

*Any shared executives will track their time spent on working for NS Power and will charge their fully allocated costs up to the level prescribed in section 64B of the Public Utilities Act.*

*Shared executives may have access to confidential and commercially sensitive information pertaining to both NS Power and the affiliate(s). NS Power will make appropriate and reasonable efforts to prevent exposure to information that would not otherwise be provided to the affiliate during the course of a regular non-affiliated third-party transaction. Shared executives will not allow knowledge of confidential and commercially sensitive information of NS Power and the affiliate(s) to bias their decision-making process or the decision-making process of any of their employees.*

#### Findings and Conclusions

##### 1. NS Power did not comply with Protocol 4.1.

The language in Protocol 4.1 presents three issues. First, compliance with Protocol 4.1 requires maintaining a management team within the utility – NS Power. In this regard, the management team is not entirely within the utility. Second, the “management team” is not specifically defined. Third, the utility management team must be capable of superior

performance. NorthStar found no issues with regard to the performance of the utility as noted in Protocol 4.2.

NorthStar found that the NS Power management team is not maintained entirely within the NS Power utility organization, it is not separate from affiliates.

- Numerous NS Power executives and managers report directly to Emera managers and Emera resources report to NS Power managers. These reporting relationships are summarized in **Code Section 3: Corporate Structure, Exhibit III-1**. In 26 instances, NS Power management positions report directly to an Emera Inc. manager. Four Emera Inc. personnel report directly to a NS Power manager. These reporting relationships create a free conduit of information flow and conflict of interest should decisions impact NS Power as well as an affiliate. The Guideline 4.1 above refers to this as allowing this “...to bias their decision-making process or the decision-making process of any of their employees.”
- Officers hold key positions in both NS Power and Emera, Inc. organizations. NS Power characterizes this as “cross-appointments” despite the fact that this is prohibited in its Code Compliance Guidelines 4.1 as noted above. The following positions are examples of cross-appointments that combine NS Power managerial duties and responsibilities with those of affiliates.
  - The Emera COO is also the NS Power Board of Directors Chair.
  - The Emera CFO is also the NS Power and numerous affiliates CFO.
  - The Emera Corporate Secretary is also the NS Power and many affiliates Corporate Secretary.
  - The Emera VP Finance is also the NS Power VP Finance.
  - The Emera Chief Legal Officer is also the NS Power Chief Legal Officer.
  - The Emera Chief Human Resources (HR) Officer is also the NS Power HR Officer.
- The NS Power Compliance Guideline included above, appears to make an exception to Code 4.1 when it states that *any shared executives will track their time spent on working for NS Power and will charge their fully allocated costs*. “Shared executives” do not comply with the Code specifying “within the utility management team.”
- NS Power management resources are commonly made available to affiliates.

NS Power’s Executive Management Team (ELT) consisted of the President and CEO, COO, EVP – Regulatory, Legal and Business Planning, VP Transmission and Distribution, VP Corporate Affairs and Stakeholder Relations, VP Fuels and Energy, and VP Finance (as discussed previously this position was shared with Emera).

NS Power recognizes the potential for sharing sensitive information prohibited by the Code of Conduct. The Compliance Guideline noted above states: *Shared executives may have access to confidential and commercially sensitive information pertaining to both NS Power and the affiliate(s). NS Power will make appropriate and reasonable efforts to*

*prevent exposure to information that would not otherwise be provided to the affiliate during the course of a regular non-affiliated third-party transaction.*

- Shared executives are not the only resources that have access to sensitive information and NS Power has not demonstrated effective controls to prohibit sensitive or competitive information transfer to affiliates.
  - Administrative procedures governing access to NS Power computer systems are minimal and entirely dependent on managers to initiate actions. Access to NS Power and affiliate computer systems is provided when employees join the company (onboarding), when employees transfer internally to another affiliate (internal transfers), and when employees terminate their employment with the company (offboarding). As part of the onboarding process, a hiring manager submits a request via an online form (on the grid) for a Local Area Network (LAN) account. This account gives a user access to his or her workstation and general IT services.
  - NS Power does not have any specific guidelines about what information should not be transferred when an employee transfers to an affiliate beyond the obligations contained in the Code of Conduct.
  - NS Power's policy implemented in March 2017 requires all NS Power-issued assets to remain at NS Power when employees transfer to affiliates.
  - Absent controls over information and computer assets, NS Power could not determine whether employees temporarily assigned to affiliates retained NS Power computers and information.
  - Currently, employees' personal information contained on "H drives" are not transferred or deleted upon an employee's transfer to or from NS Power. NS Power's IT Department is currently engaged in formulating policies and procedures to address issues concerning information contained on and access to employees' H drives. The IT Department is in the process of developing policies and procedures relating to the content of and access to employee H drives which will specifically address the information which should not be maintained on the H drive. Key executives transferred between NS Power and affiliates during 2015 and 2016. No changes were made to these employees H drives when they transferred.
- NS Power's Compliance Guideline 4.1 recognizes the potential for shared executive's knowledge of confidential and commercially sensitive information of NS Power and the affiliate(s) to bias their own and employee decision-making. In the case of shared positions and direct reporting relationships, which entity should not be biased cannot be determined. It is not logical that a subordinate resource would make decisions or perform in a manner that is contrary to their superior's primary interests, organizational responsibilities or their own opportunities for advancement.
- As a regulated public utility, NS Power must be above reproach regarding personnel transfers and the protection of sensitive and competitive information. Two personnel transfers provide examples of the potential appearance of a "revolving door" and senior management's knowledge of confidential and commercially sensitive

information traveling between NS Power and its unregulated affiliate. These management positions were related to the evaluation and decision-making process that resulted in the five-year PLT contract and other contracts with EUS:

- The first transfer involved the NS Power VP Finance to EUS President and CEO, back to Emera Inc. Finance and NS Power Finance.
  - The NS Power VP Finance during 2012/2013 became the President and CEO of EUS March 19, 2013.
  - Within months after the transfer from NS Power Finance to EUS, EUS was sent NS Power's Request for Proposal (RFP) to obtain PLT services. While the RFP was not dated, the schedule contained in the RFP noted that it was issued October 24, 2013. Submissions were due November 20, 2013.
  - The EUS proposal to provide PLT services was dated December 2, 2013.
  - The EUS President and COO signed the EUS proposal.
  - NS Power's procurement recommendation for the selection of EUS was made in May, 2014.
  - One month prior to signing the contract with EUS, securing its baseload of work for five years at greater than [REDACTED] annually, and spending 17 months at EUS, the EUS President was then promoted to Emera Inc. VP Finance – September 1, 2014.
  - NS Power's contract for PLT services was dated October 1, 2014.
  - On August 10, 2015 the Emera Inc. VP Finance took on the additional role of VP Finance at NS Power and remained in this dual role during the audit period, reporting to the NS Power CEO and the Emera, Inc. CFO.
  
- The Director of Procurement at NS Power transferred to EUS as President and COO on May 11, 2015 seven months after the PLT contract dated October 1, 2014 and remains in that role today.
  - The NS Power Director of Procurement transferred to EUS with the NS Power laptop and information contained therein.
  - NS Power's procurement recommendation for the selection of EUS was made in May, 2014.
  - The NS Power Director of Procurement was promoted to the EUS President and COO seven months after execution of the PLT service agreement.
  - Less than one month from this promotion to EUS President and COO, this same manager signed a proposal to NS Power for EUS services – the only proposal received by NS Power. EUS secured four contracts within the audit period from NS Power, representing over [REDACTED] in services in addition to the EUS PLT contract. None of these awards had appreciable procurement competition.

## **Protocol 4.2**

- 4.2 NS Power will prepare and include in the annual report submitted to the Board, as specified in Code Section 7.1, a summary of utility performance.**

### **Compliance Guidelines**

- 4.2 The Utility Performance report is filed in conjunction with NS Power's Balanced Scorecard and shall include information about each of the categories on NS Power's corporate Balanced Scorecard.*

*The categories include Safety, People, Customer (Satisfaction and Reliability), Asset Management, Financial (Earnings and Cash Flow). The Utility Performance Report shall list the measure and the results for the current and two previous years. Each section will have detailed information in the form of Notes and Commentary which discusses the results achieved. Non-fuel OM&G information will be provided for the previous five years. The Utility Performance Report shall also include a comparison of NS Power's safety and reliability performance compared to other CEA utilities.*

### **Findings and Conclusions**

#### **2. NS Power complied with Protocol 4.2.**

As part of the annual report submitted to the Board, NS Power includes a summary of utility performance, which is discussed in further detail in NorthStar's assessment of NS Power's compliance with Protocol 7.1.

### **Recommendations**

12. Separate the NS Power management team and utility organization from Emera Inc., obtain approval for the organizational deviations or modify the Code.

## CODE SECTION 5.0: UTILITY FINANCING

This Section of the Code requires NS Power to perform its many finance functions in accordance with Board Decisions including:

- NS Power's capital structure
- Prohibiting affiliate subsidization
- Affiliate risks or losses borne by NS Power's customers
- Enacting bankruptcy resistant covenants that protect the utility
- Guaranteeing the indebtedness of, or invest in securities of an affiliate
- NS Power's financial assistance

NorthStar considered several evaluative criteria in evaluating NS Power's compliance with this section including:

- Does NS Power's capital structure reflect the Board approved capital structure?
- Has NS Power's capital structure has been affected in any manner by its affiliate relationships or subsidized affiliate activities in any manner?
- Have any affiliate risks or losses been borne by NS Power's customers, in violation of the Code? Has NS Power:
  - Enacted bankruptcy resistant covenants that protect the utility in the event of a parent company bankruptcy?
  - Caused credit facility, debt and preferred stock financings to be solicited, negotiated and acquired independently by NS Power?
  - Prohibited borrowings of Emera or affiliates from any recourse to NS Power or cross defaults or a cross-default event whereby NS Power would be in default of its borrowings due to the actions of Emera or its affiliates?
- Has NS Power provided loans to, guarantee the indebtedness of, or invest in securities of an affiliate?
  - Entered into any type of money pool arrangement that includes non-utility affiliates?
  - Pledged financial support or cash flow for the benefit of an affiliate, in violation of the Code?
  - Has NS Power maintained standalone credit ratings?
  - Has NS Power kept cash management systems separate from its affiliates?
  - Has NS Power made reasonable efforts to settle all inter-affiliate receivables and collectibles monthly on a timely basis?
- Has NS Power's partnerships with affiliates permitted in any way the avoidance of the restrictions on NS Power's financial assistance or support, in violation of the Code?

## Code Section 5.0      Utility Financing

**Objective:**      To maintain a capital structure for NS Power which is in accordance with applicable Board decisions.

### Protocol 5.1

**5.1**    NS Power's capital structure will reflect the Board approved capital structure.

### Compliance Guidelines

*NS Power has not developed any specific guidelines in respect to this protocol.*

### Findings and Conclusions

#### 1. NS Power complied with Protocol 5.1.

NS Power has maintained a capital structure that reflects the Board approved capital structure. The five quarter average of common equity was 39.7 percent as shown in **Exhibit V-1**. However, the most recent year end percentage of equity marginally exceeds the Board's guideline.

#### Exhibit V-1 Capital Structure

Capital Element	Board Approved	Annual Financial Report 2016	Annual Financial Report 2015	12/31/2015 Five Qtr. Ave
Debt and Preferred Stock (\$000)		\$3,678	\$3,810	
Equity (\$000)		\$1,493	\$1,495	
Equity percent	37.5%	40.6%	39.2%	39.7%

## Protocol 5.2

- 5.2 NS Power's capital structure will not be used to subsidize affiliate activities. Affiliate risks or losses will not be borne by NS Power's customers. NS Power shall, unless otherwise approved by the Board: (i) enact bankruptcy resistant covenants that protect the utility in the event of a parent company bankruptcy; (ii) cause all credit facility, debt and preferred stock financings to be solicited, negotiated and acquired independently by NS Power; and (iii) not agree to borrowings of Emera or its affiliates to have recourse to NS Power or permit cross defaults or a cross-default event whereby NS Power will be in default of its borrowings due to the actions of Emera or its affiliates.**

### Compliance Guidelines

- 5.2 *NS Power does not guarantee any Emera affiliates or activity. NS Power maintains its own separate trust indenture and credit facilities. There is no cross-default language in Emera-related contracts which would entitle Emera or an affiliate to encumber NS Power's assets in the event of a default by Emera or its affiliates.*

*NS Power solicits, negotiates and acquires its credit, debt and preferred stock financings independent of the process and timing used by Emera and its affiliates.*

*NS Power does not agree to Emera or affiliate borrowings which permit cross-defaults due to Emera or affiliate actions.*

### Findings and Conclusions

#### 2. NS Power partially complied with Protocol 5.2.

Protocol 5.2(i) NS Power is not in compliance. The Board stated that “NS Power shall, unless otherwise approved by the Board: enact bankruptcy resistant covenants...”. NS Power has not enacted specific bankruptcy resistant covenants that protect the utility in the event of a parent company bankruptcy. According to NS Power, Emera has not enacted provisions that would allow creditors to access NS Power's assets. However, Emera materials were not provided for verification.

In the years included in this audit, Emera and NS Power engaged in swaps of tax benefits, Transfer of Part VI.1 Tax, that Emera otherwise could not benefit from in exchange for additional common equity in NS Power. The net effect of these transactions is similar to creating additional paid in capital in NS Power. Because Emera owns 100% of the equity of NS Power, this increases the value of Emera's holding. In the event of a bankruptcy by Emera, creditors might use these transactions to support a claim against NS Power.

Protocol 5.2 (ii) NS Power is in compliance. NS Power solicits, negotiates and acquires its credit and financings independent of Emera. However, the degree of separateness may not be clear to creditors. As Standard & Poor's noted in its rating of NS Power:

The negative outlook on NSPI reflects our consolidated outlook on its ultimate parent Emera Inc. We believe NSPI to be core to Emera under our group rating methodology.

The negative outlook on Emera reflects the financing risk associated with the announced acquisition of TECO Energy Inc. for US\$10.4 billion and the materially weaker credit metrics that exist due to the issuance of \$2.2 billion in convertible debentures to finance in part the cash purchase of TECO.....

As well, a lower rating on Emera is likely to result in a lower rating on NSPI.

Protocol 5.2(iii) NS Power is in compliance. NS Power has not subsidized or collateralized the debt of any affiliate. NS Power has engaged in activities with affiliates including: purchasing of goods and services, providing shared services and participating in joint projects. The purchasing of goods and services is addressed under Code Sections 2.0 and 4.0. Intercompany charging for shared services is addressed under Protocol 6.11, 6.16 and 7.1.

## Protocol 5.3

- 5.3 NS Power shall not, without the prior approval of the Board: (i) provide loans to, guarantee the indebtedness of, or invest in securities of an affiliate; (ii) enter into any type of money pool arrangement that includes non-utility affiliates; or (iii) pledge financial support or cash flow for the benefit of an affiliate. NS Power shall, unless the Board authorizes otherwise: (i) maintain standalone credit ratings; (ii) keep cash management systems separate from its affiliates; and (iii) make reasonable efforts to settle all inter-affiliate receivables and collectibles monthly.**

### Compliance Guidelines

- 5.3 (i) *NS Power does not provide loans to affiliates, guarantee the indebtedness of affiliates or invest in securities of affiliates.*
- (ii) *NS Power does not enter into money pool arrangements that include non-utility affiliates.*
- (iii) *NS Power does not pledge financial support or cash flow for the benefit of Emera or affiliates. [NTD: May need to add wording from the Memorandum or Articles of Association when we get them from the Corporate Secretary's office].*
- (iv) *NS Power maintains standalone credit ratings with S&P and DBRS. Its overall corporate credit rating is determined by business risk, financial risk, its anchor position and the impact of modifiers. NS Power is also subject to a group credit profile which takes into account Emera Inc.*
- (v) *NS Power uses the same software system (Oracle) as the Canadian Emera affiliates, but the data is distinct and confidential to NS Power and individual business units.*
- (vi) *Corporate Accounting policy requires that inter-affiliate transactions be provided to Corporate Accounting within three days of the previous month's end. Transactions are settled monthly.*

*Corporate Accounting prepares a list of any invoices or transactions not processed within 30 days of the month end and follows up with the affiliates. All accounts beyond 30 days are subject to a 2% interest fee.*

### Findings and Conclusions

#### 3. NS Power complied with Protocol 5.3.

NS Power observes all of the limitations stated in Protocol 5.3. NS Power does not provide loans to or invest in the securities of any affiliates. NS Power has not entered into any type of money pool arrangements with its affiliates. NS Power has not pledged financial support for any affiliate. NS Power has maintained standalone credit ratings. NS Power maintains separate cash management systems from its affiliates. NS Power has a highly automated procedure that insures that inter-affiliate receivables are collected monthly.

## **Protocol 5.4**

- 5.4 NS Power's formation of partnerships with affiliates shall not in any way allow avoidance of the restrictions on NS Power's financial assistance or support.**

### **Compliance Guidelines**

*NS Power has not developed any specific guidelines in respect to this protocol.*

### **Findings and Conclusions**

#### **4. NS Power complied with Protocol 5.4.**

NS Power has not entered into partnerships with its affiliates.

### **Recommendations**

13. NS Power should clarify the extent of its financial separation from Emera including, for example, language that includes bankruptcy resistant covenants as stated in Protocol 5.2(i)
14. NS Power should investigate if the Transfer of Part VI.1 Tax from Emera could substantiate a claim by creditors that the assets of NS Power could be accessed in a bankruptcy claim against Emera.
15. Because NS Power has not instituted ring fencing provisions to date, the UARB should direct NS Power to implement these provisions.

## CODE SECTION 6.0: FAIR DEALING

Section 6 of the Code covers a variety of affiliate transaction requirements including:

- Non-discrimination when providing utility services.
- Separation of financial records as well as information systems.
- Maintaining confidential customer and sensitive information.
- Using Board approved rates for regulated electric and other utility services.
- Requiring fair market rates and the use of fully allocated costs.
- Use of personnel time reporting for charging services.
- Analysis of best available services options for NS Power.
- Complete and detailed accounting documentation.

### Code Section 6.0 Fair Dealing

#### Objectives

**To avoid discrimination in the matter of pricing or in any other manner against non-affiliated buyers of regulated electric utility services.**

**To avoid subsidy by NS Power of the costs, revenues, or activities of affiliates.**

#### Protocol 6.1

- 6.1 NS Power will provide access to regulated utility services on a non-discriminatory basis and will not in respect of those utility services, directly or indirectly provide, state, imply or offer any preference or favored treatment to NS Power's affiliates or persons purchasing affiliate goods and services.**

#### Compliance Guidelines

- 6.1 NS Power does not provide preferential electricity rates to affiliates or any other parties. NS Power will not represent that any of its affiliates or its affiliates' customers will receive any preferential or different treatment by NS Power than the treatment which NS Power provides to other unaffiliated companies or their customers.*

*For affiliates who rent space from NS Power in IH, electricity costs are included in the commercial rental rate and are not charged separately.*

#### Findings and Conclusions

##### 1. NS Power complied with Protocol 6.1.

To comply with Protocol 6.1, NS Power must provide regulated utility services in a non-discriminatory, non-preferential manner. NS Power may not imply preferential treatment to affiliates or their customers in the provision of regulated utility services. Regulated utility services are those products and services provided, including:

- Tariff Electric Service
- Access to customer service
- Outage response
- Initiation, transfer and termination of service

NS Power provides tariff electric service to its affiliates in accordance with published tariffs. A full discussion of affiliate electric service is found in Protocol 6.5.

## Code Section 6.2

### Protocol 6.2

- 6.2 The financial records of NS Power, as well as NS Power's information systems, will be kept separate from those of its affiliates. All systems containing such records shall include sufficient protections to preclude access by non-NS Power employees to NS Power information. The administrator of such systems shall regularly test those protections and attest to their effectiveness.**

### Compliance Guidelines

- 6.2 Certain Emera employees require access to NS Power's financial information in Oracle, and have been provided read-only access. The Chief Information Officer and the Vice President, Finance both have approval access in Oracle. The CIO is required to approve invoices and purchases because the IT group reports in to him.*

*Each year as part of the Code of Conduct reporting, NS Power's IT Department produces a list of employees who have access to NS Power's Oracle records. The listing contains the following information:*

- *Employee ID Number or User Name (alpha numeric alias)*
- *Employee home company (should only be Emera Inc.)*
- *Position*
- *Reason for access*

*NS Power requests that the access be reviewed every six months to determine whether any people on the list need to be removed / have their access removed.*

*The information is provided to Regulatory Affairs as part of the ongoing monitoring process.*

### Findings and Conclusions

#### **2. NS Power did not comply with Protocol 6.2.**

To comply with Protocol 6.2, NS Power must maintain separate financial records and information systems from its affiliates. NS Power must also ensure that systems containing financial records have sufficient protection to prevent unauthorized access and these protections are to be tested regularly. The Code does not distinguish between records and systems, and large information systems are often shared within a corporate family to allow economies of scale.

NorthStar reviewed both financial records and the information systems storing the financial records.

- NS Power financial records and reports are separate from its affiliates. Emera Inc., in its annual report, provides the following financial statements exclusive to NS Power:

- Statement of Net Income
  - Statement of Electric Revenues
  - Statement of Fuel for Regulated Generation
  - Statement of Regulated Fuel Adjustment Mechanism
  - Statement of Electric Margin
  - Statement of Regulatory Amortization
- NS Power’s general ledger system of accounts is specific to NS Power activities. NorthStar’s review of the general ledger chart of accounts did not identify shared accounts or accounts of affiliates.
  - While financial records and reporting are separated, NS Power does not maintain separate information systems from its affiliates. Software applications are shared throughout Emera Inc. NS Power affiliates have access to the following shared applications:
    - Oracle E-Business Suite (Oracle)
    - Hyperion
    - InvoiceXpress
    - OrgChart
    - FuelWorx
    - PowerPlant
    - PeopleSoft
    - Global Intercompany System (GIS)
    - Maximo
  - Information access and security is dependent on numerous system “owners” who approve employee access, terminate access, and monitor user access.
    - Information/files are stored on the system through the establishment of folders.
    - There are three types of folders: Personal, General Shared and Critical/Confidential.
    - Critical/Confidential folders contain business information that is considered sensitive such as financial information, compensation, strategic planning etc.
    - These folders are also assigned “owners”, who are responsible for granting and denying access based on need to these folders. The owner is also responsible for conducting periodic checks of who has access to these folders.
  - NS Power tests employee access granted to its shared systems on a monthly basis as follows:
    - An email is system generated to application owners to review user access.
    - A link in the email provides a report of users by type (view or edit).
    - The application owner must confirm completion of the review.
    - The application owner has the authority to request removal of approved users.
  - NS Power testing methodology does not include tests for unauthorized access – often referred to as penetration tests to detect unauthorized access.

- System access is based on owner’s discretion as NorthStar found no Guidelines, policies or procedures that govern granting access.
- NS Power Compliance Guidelines provided above begin with the statement: Certain Emera employees require access to NS Power’s financial information in Oracle, and have been provided read-only access. Emera Inc. employees granted “read-only” access – is still access granted to non-NS Power employees, which is prohibited by Protocol 6.2. This access is noted in the Annual Report.
- NS Power Emera and its affiliates’ financial systems are Oracle based.
  - NS Power has three methods for charging for affiliates transactions:
    - Journal Entries – used primarily for Management and Administrative (M&A) services
    - Invoices – used for products and services that are contractually obtained
    - GIS – used for time, expenses, and materials that are not associated with Management and Administrative Services
- NS Power documents state that:
  - Access has been granted to 353 affiliate employees for InvoiceXpress. This application provides employee expense management functionality.
  - Access has been granted to 125 affiliate employees for Oracle Financials. This application provides financial general ledger accounting, accounts payable and purchase order functionality.
  - Access has been granted to 416 affiliate employees for PeopleSoft. This application provides payroll, employee profile information and general basic human resource transactional management functionality.
  - The VP Finance of NS Power, during the audit period, was also the VP Finance of Emera, Inc. This joint employment situation represents an information conduit between the financial systems of NS Power and Emera, Inc.
  - In the case of employee transfers, unless authorizations are cancelled upon transfer, unauthorized access can occur for thirty days after the transfer. While daily testing of the system is not practical, NS Power has not developed a control mechanism that ties employee transfer with computer access (e.g., a direct connection between payroll changes and computer access).
  - NS Power does not perform system penetration tests nor attest to their effectiveness.
- The GIS system, an Oracle product, is a shared system between NS Power and its affiliates. The system provides a mechanism for intercompany billing, where one party generates the charge within GIS and sent for approval to an affiliate (and vice-versa). The sharing of this system and the information between affiliates is prohibited by Protocol 6.2, as transactions flow within one common system without separation.

## Protocol 6.3

### 6.3 NS Power will not provide confidential customer information to affiliates or other persons without prior customer consent.

#### Compliance Guidelines

6.3 *Confidential customer information includes customer name, account number, billing address, service address, usage history and any other specific customer information which is considered confidential.*

#### Findings and Conclusions

### 3. NS Power complied with Protocol 6.3.

In addition to the Code requirements, NS Power is required to comply with the *Personal Information Protection and Electronic Documents Act* (PIPEDA), the federal privacy law for private-sector organizations. PIPEDA sets out the ground rules for how businesses must handle personal information in the course of commercial activity. Organizations covered by the Act must obtain an individual's consent when they collect, use or disclose the individual's personal information. The individual has a right to access personal information held by an organization and to challenge its accuracy, if need be. Personal information can only be used for the purposes for which it was collected. If an organization is going to use it for another purpose, consent must be obtained again. Individuals should also be assured that their information will be protected by appropriate safeguards. Under PIPEDA, the definition of organization includes an association, a partnership, a person or a trade union.

Neither NorthStar nor NS Power can identify an occasion in which an affiliate would be interested in customer information. Additionally, NS Power has established a system of controls to prevent the inappropriate release of customer information.

Requests for customer information would be predominately from customers who have called NS Power's Contact Center to pay bills or request information on their account. NS Power maintains a dedicated call center for processing customer inquiries and complaints. Other utility affiliates have their own call centers. According to NS Power, the Customer Care Centre did not receive any requests for customer information in 2015 or 2016. NS Power will not provide customer information to anyone other than the customer or a representative authorized to speak on the customer's account (e.g., a spouse or caregiver). For any other release of customer information (such as to local government or social agencies), NS Power only provides customer information in response to such requests if the customers have provided a signed release or verbal consent.

NS Power's system of controls regarding the release of confidential customer information includes the following:

- All NS Power employees are required to take EMERA Code of Conduct training and certify compliance with the requirements on an annual basis. The training makes employees aware of their requirements to comply with the affiliate rules and to

protect confidential information. The online training requires completion of a test which contains a question regarding the release of confidential customer information.

- All new Customer Service Associates (CSAs) working in the Customer Care Centre are required to take customer privacy training.
- NS Power's Customer Protection Policies are accessible to CSAs on the Customer Care Centre intranet site. Contact Centre policies and procedures include:
  - Customer Verification Policy and guidance document.
  - Detailed Customer Privacy Policy
- Customers or their representatives must verify their identity before a CSA will discuss the account. For a customer calling the Contact Centre, the CSA must obtain the following:
  - 
  - The identity of any third-party authorized to speak on the customer's behalf must also be verified.
- For a customer to access their account online they must have registered, and provide their account number and password.
- NS Power monitors a minimum of two calls per CSA per month. The call quality review addresses customer verification. Email responses are also evaluated and include a review of verification processes.
- Access to the NS Power Customer Information System is monitored and controlled by the Manager of Revenue and Control and audited by Internal Audit.

**4. Current guidelines do not provide sufficient specificity regarding the protection of confidential customer information.**

NS Power does not have a specific policy related to the request for customer information from affiliates. The November 2012 Affiliate Code of Conduct Guidelines, under which NS Power still operates, require that confidential customer information not be released without the customer's prior consent, and customer information which has been authorized to be released will be provided in a non-discriminatory manner to affiliates and non-affiliates. All requests for customer information are to be processed through a central location. Employees who receive inquiries are to direct the inquiry to the Director, Customer Care Centre. 2016 Draft guidelines, mirror the Code but provide limited additional specificity –only the definition of confidential customer information.

## **Protocol 6.4**

- 6.4 NS Power will make its customer information available to all parties on terms no less favorable than those that NS Power has offered or provided to any affiliates.**

### **Compliance Guidelines**

*NS Power has not developed any specific guidelines in respect to this protocol.*

### **Findings and Conclusions**

#### **5. NS Power complied with Protocol 6.4.**

As NS Power has not provided customer information to any affiliate it has complied with protocol 6.4.

## Protocol 6.5

- 6.5 NS Power will charge Board approved rates for all regulated electric and other utility services provided to affiliates. When NS Power is the receiver of tariff services, NS Power will pay the appropriate tariff.**

### Compliance Guidelines

6.5 Refer to section 6.1 and the Guideline.

*NS Power obtains transportation of natural gas on the M&NP pipelines. Although M&NP is not an affiliate under the Companies Act definition, Emera has a 12.5% ownership share in M&NP. Any fees charged to NS Power by M&NP are based on the published tariffs.*

### Findings and Conclusions

#### 6. NS Power complied with Protocol 6.5.

NS Power charges affiliates Board approved rates for regulated utility services and pays Board approved rates for regulated services received from affiliates.

Two affiliates receive electric service from NS Power at approved rates: Brooklyn Power and Emera Utility Services.

NorthStar verified:

- Brooklyn Power is on the correct rate (Customer must be an electric generator)
- Hourly marginal cost data is provided in the bill
- Hourly usage is provided in the bill
- The administration charge is added to the Marginal Cost.

Emera Utility Services receives service under the general tariff for commercial customers. NorthStar reviewed a cross section of affiliate bills during the audit period and verified:

- The tariff was identified on the bill
- The affiliate is on the correct tariff
- The prices charged were consistent with the tariff.
  - Fuel Adjustment Mechanism (FAM) and base rates were calculated according to tariff
  - Demand charge was applied correctly
  - Tiered energy consumption was correctly allocated
- NorthStar noticed that Emera Utility Services (EUS) was late on a number of instances in remitting payment. EUS was appropriately charged interest for late payment.

## **Protocol 6.6**

- 6.6 NS Power will charge market rates for any assistance it provides to affiliates and pay market rates for any assistance it receives from affiliates by way of a guarantee or loan. In no case shall the costs for financial assistance provided by affiliates to NS Power exceed NS Power's standalone costs. NS Power will not engage in support agreements or similar undertakings with affiliates that can commit resources effectively provided by NS Power, except on the same terms and conditions NS Power would require from others.**

### **Compliance Guidelines**

*NS Power has not developed any specific guidelines in respect to this protocol.*

### **Findings and Conclusions**

#### **7. NS Power complied with Protocol 6.6.**

To comply with Protocol 6.6, NS Power must charge market rates for any assistance it provides to affiliates.

NorthStar found no instance in which NS Power provided financial assistance to an affiliate. NorthStar reviewed the public filings of NS Power including management comments and notes to the financial statements. NorthStar conducted interviews with several staff with responsibilities in the Finance area then confirmed its findings with a review of written responses from the company. NorthStar also reviewed minutes of the NS Power Board of Directors for the period of the audit.

## Protocol 6.7

- 6.7 Except where pricing is otherwise specified in this Code or an exception has been explicitly obtained in accordance with Section 6.18:
- (a) NS Power will charge prices no less than the greater of its fully allocated costs or fair market value (FMV) for all goods, services, leases, asset transfers, or other exchanges of value (excepting those otherwise covered by this Code) provided to affiliates.
  - (b) NS Power shall not pay affiliates for such goods and services prices greater than FMV. Where FMV cannot be evidenced, by a minimum of two alternative qualified vendor offers, NS Power shall pay no more than the affiliates' fully allocated costs. In no case should NS Power pay any amount that exceeds NS Power's self-provisioning costs or the costs that NS Power can secure from other, third-party sources.

### Compliance Guidelines

- 6.7 *If a shared service carries out work for another shared service, that is not treated as an affiliate transaction because it is work by NS Power carried out for NS Power. The shared service which receives the work may incorporate that work as part of its charges to affiliates, and the work will be allocated in accordance with the approved cost allocation methodology for that particular shared service.*

*Inventory items for affiliates are subject to a 21% overhead mark-up. This amount reflects an amount for handling, storage and freight. This 21% is in addition to a 1.25% charge which covers outbound freight to NS Power depots.*

### Findings and Conclusions

#### 8. NS Power partially complied with Protocol 6.7.

NS Power's Guidelines for this protocol do not address Protocol 6.7.

To comply with Protocol 6.7, NS Power must charge its affiliates the greater of fully allocated costs or fair market value (FMV) for the provision of goods, services, leases and transfer of assets unless pricing is stipulated elsewhere in this code. Furthermore, NS Power will not pay affiliates greater than FMV for affiliate goods, services, leases and assets.

NorthStar reviewed and catalogued a cross section of the types of transactions from the 2015 Annual Affiliate Code of Conduct Report (Annual Report) and the 2016 quarterly accounting reports of affiliate transactions as shown in **Exhibit VI-1**. NS Power did not perform the requisite FMV or self-provisioning analyses for the transactions highlighted in yellow below.

**Exhibit VI -1**  
**Affiliate Transactions Pricing Analyses**

<b>Product/Service</b>	<b>Provider</b>	<b>Receiver</b>	<b>Pricing Methodology</b>
Shared Services	NS Power	Affiliates	Protocol 6.11 specifies M&A pricing method
Shared Services	Emera Inc.	NS Power	Protocol 6.11 specifies M&A pricing
Payroll	Emera Inc.	NS Power	FMV analysis done in 2013. Fully allocated cost was less.
IT	NS Power	Affiliates	Internal Rates – Analysis not conducted
Power Line Technician Services	EUS	NS Power	FMV – Competitively bid and awarded
Transformer Testing	EUS and [REDACTED]	NS Power	Awarded a contract with third-party participant – proprietary technology
Wholesale Natural Gas	NS Power	Emera Energy Inc (EEI)	FMV – Competitively bid and awarded
Wholesale Natural Gas	EEI	NS Power	FMV – Competitively bid and awarded
Energy Scheduling and Renewable Energy Credits	EEI	NS Power	FMV – Competitively bid and awarded
Wholesale Energy	Brooklyn Power	NS Power	Board approved contract
Professional Services related to engineering, safety and other non-shared services	Affiliates	NS Power	Analysis not conducted
Professional Services related to engineering, safety and other non-shared services	NS Power	Affiliates	Analysis not conducted
1223 Lower Water Street Lease	NS Power	Emera Inc.	Board approved lease rates
1223 Lower Water Street Lease	NS Power	EEI and Emera Newfoundland (ENL)	Charged same as Emera Inc. No approval for sublease

## Protocol 6.8

- 6.8 NS Power shall determine and document all FMV prices through the use, where practicable, of competitive tendering or quotes; otherwise NS Power shall use the most direct alternative means of establishing FMV pricing, including without limitation benchmarking studies, catalog pricing or recent market transactions.**

### Compliance Guidelines

- 6.8 Refer to 2.1.

*In determining FMV, NS Power may look at catalogue pricing (where multiple vendors offer the same goods or services at or around the same price), or it may look at pricing from recent market transactions for similar or the same products or services. If there are reasons for departing from catalogue or transaction-based pricing, NS Power shall document those reasons.*

### Findings and Conclusions

#### 9. NS Power partially complied with Protocol 6.8.

Protocol 6.8 requires NS Power to determine FMV whenever practical through competitive tendering or quotes. The protocol further requires NS Power to use benchmarking, catalogues or recent market transactions as a proxy for market price when it is impractical to obtain bids.

**Exhibit VI-1** identifies some of the types of products and services that are received and provided to affiliates. NS Power did not comply with Protocol 6.8 for the following transactions:

- NS Power frequently procures the services of Emera Employees, for example: Public Relations Specialist and Thermal Power Plant Specialist. This does not comply with this protocol as NS Power is charged fully allocated cost and has no documentation or supporting evidence as to how this compares to FMV for these services.
- NS Power also provides the services of some of its employees to affiliates, including: Power Reliability Specialist, Power System Trainer, and System Planner. These transactions do not comply with this protocol as NS Power charged its affiliates fully allocated cost and has no documentation or supporting evidence as to the FMV of these services.
- In 2015, NS Power issued a purchase order to EUS for distribution construction services associated with the testing of transformer oil. The transactions completed under this purchase order were not competitively bid or market based. Please see Protocol 2.1 for the details associated with this transaction.

NS Power has transactions for fuel, purchased power, and renewable energy credits (RECs) as shown in **Exhibit VI-2** with its affiliate Emera Energy Inc. These transactions

comply with Protocol 6.8 as they were conducted through competitive bids or through contracts preceding the Code.

**Exhibit VI -2  
Fuel, Purchased Power, and RECs with EEI**

Transaction	Product	Transaction Amount (CAD)	
		2015	2016
Sale	Natural Gas		
Purchase	Natural Gas		
Sale	Wind Energy Scheduling Fee		
Purchase	Energy		
Marketing	RECs		

NS Power posts its solicitations for natural gas on an electronic bulletin board to all market participants. In 2016, NS Power had [REDACTED] participants, including [REDACTED], in its wholesale natural gas market. Emera was the counterparty in [REDACTED] transactions [REDACTED] percent) in 2016, representing only a modest market presence.

NS Power uses Allegro for accounting of its natural gas trades. NorthStar verified that the value of the trades found in Allegro for fourth quarter 2016 match the transactions found in the quarterly affiliate transaction report, [REDACTED]. NS Power maintains an electronic journal for recording affiliate transactions. The journal was complete and accurate with the records found in Allegro for fourth quarter 2016, however NS Power does not have a policy regarding the input and maintenance of the journal.

NorthStar reviewed the transactions with EEI from fourth quarter 2016, and found there were [REDACTED] transactions totaling [REDACTED]. All transactions were tendered as the result of a competitive bidding process. NorthStar reviewed the transactions with EEI and found that EEI was appropriately awarded [REDACTED] transactions solely based on [REDACTED]. One transaction was for a smaller volume in December 2016 and EEI was the [REDACTED] price, however the competing bid did not have sufficient volume.

NorthStar also reviewed the trading agreements between NS Power and EEI and with an unaffiliated trader found the agreements to be standardized and materially the same.

[REDACTED]  
[REDACTED] NorthStar reviewed the solicitation and found.

- The solicitation was sent to [REDACTED] potential suppliers
- NS Power received [REDACTED] bids.
- EEI was the most beneficial option to NS Power.

NS Power also has procured in excess [REDACTED] of wholesale power associated with EEI's Brooklyn Power Plant. EEI procured this power plant in July 2013. The contract and its

terms predate the Affiliate Code of Conduct. NorthStar reviewed a selection of invoices and found them to be consistent with the contract.

## Protocol 6.9

- 6.9** Where prices based on FMV cannot be determined through reasonably direct and substantially supported means, NS Power will document the inability to make such determination, and will charge to its affiliates prices that reflect the utility's fully-allocated costs for the goods and services provided and vice versa.

### Compliance Guidelines

- 6.9 *Depending on the nature of the transaction, fully-loaded costs may include an overhead allocation.*

*Fully-allocated costs also include a reasonable profit margin. An affiliate cannot be required to charge NS Power only the actual costs of labour and expenses; reasonable overhead and profit margin are considered as part of fully-allocated costs.*

### Findings and Conclusions

#### **10. NS Power did not comply with Protocol 6.9.**

NS Power has three requirements under this Protocol:

- To determine FMV
- To document efforts of FMV inability
- To use fully allocated cost if FMV cannot be determined

NS Power did not provide documentation to demonstrate its inability to determine FMV for the transactions as required in Protocol 6.8 and in Protocol 6.9.

NS Power's Internal Guidelines also do not comply with this Protocol.

- NS Power states that fully allocated cost includes a reasonable profit margin.
- Profit is not a component of cost.
- Both Emera Inc. and NS Power verified that they do not include profit in their fully allocated cost calculations. NorthStar reviewed the overhead and direct budget cost components and did not find a cost component for profit.

## Protocol 6.10

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

### Compliance Guidelines

*6.10 When NS Power is aware of the possibility of a transfer of a capital asset to or from NS Power, it shall provide the Board with information about the nature and description of the capital asset, the proposed transfer price and justification for the transfer price, and any relevant analysis which provides a market opinion about the value of the transfer.*

*NS Power will make application to the Board as soon as it is aware of the possibility of the transfer.*

### Findings and Conclusions

#### **11. NS Power did not comply with Protocol 6.10.**

To comply with Protocol 6.10, NS Power must have Board pre-approval for the transfer price.

NS Power did not report any asset transfers during the audit period. NorthStar reviewed a number of source documents including:

- Organization Charts
- Annual Reports
- Copies of transactions

NorthStar's review did identify unreported asset transfers.

- NS Power does not have specific policies and procedures related to employee transfers to and from affiliates.
- NS Power does not have any written employee certifications which specifically state that equipment and information have not been transferred upon that employee's transfer to or from an affiliate.
- NS Power could not document or demonstrate that computers did not transfer with personnel between affiliates.
- NS Power's transfer records show that 31 employee transfers were not issued a new computer and 25 employee transfers received a new computer. However, this data is not conclusive with regard to the transfer of computers. NS Power's Procurement Director transferred to EUS as President and CEO on May 11, 2015 and retained his NS Power laptop. He is also reported as having received a new computer.
- Following an internal review, NS Power concluded that "there is potential risk for NS Power employees to transfer employment to an affiliate and take electronic information with them." NS Power created a policy to require that all transferring employees be provided with new computers, phones or tablets as appropriate and

their former equipment will be maintained in NS Power's existing hardware asset inventory.

- NS Power provided a copy of the Affiliate Asset Transfer Policy dated March 6, 2017.

## Protocol 6.11

- 6.11 The price for Management and Administrative services between NS Power and affiliates will equal the providing party's fully allocated costs. Management and Administrative services consist of corporate support services in the areas of Internal Audit & Corporate Security, Corporate Secretary and Insurance, Security, Environmental Policy & Programs, Corporate Tax, Controllers, Treasury, Investor Services, Pension Administration, Human Resources and Strategic Human Resources, Safety and Corporate overhead.**

### Compliance Guidelines

- 6.11 Each Management and Administrative service (commonly referred to as corporate support services or shared services) prepares its cost allocation methodology which sets out the basis for charges to affiliates. The spreadsheet containing the shared services cost allocation methodology is provided to each affiliate every month and accompanies the invoice which details the charges.*

*Charges are based on the updated forecast prepared each quarter and may be based on headcount, licence fees, project plan, or other metric. If there are material changes in the basis for the cost allocation from one quarter to another, NS Power will recalculate the amounts manually for each month. If the changes in each quarterly forecast are not material, those updated forecasts will be used for the next quarter.*

*Each corporate support service charge also includes an overhead component. The overhead component includes the following items described in NS Power's Accounting Policy 6940A – Overhead Application Rate:*

- *Executive labour*
- *Office supplies*
- *Materials*
- *Freight and postage*
- *Tools and equipment*
- *Royalties and easements*
- *Telephone*
- *Data communication circuits*
- *Leasing*
- *Corporate filing fees*
- *Membership dues*
- *Subscriptions*
- *Equipment and software rental and maintenance*
- *Application software*
- *Computer hardware and operating software*
- *Directors' fees and expenses*
- *Legal and audit costs*
- *Annual shareholders' meeting*
- *Advertising*
- *Employee benefits (including Workers' Compensation)*

- *Insurance*
- *Energy use*
- *Rent*
- *Warranty and service contracts*
- *Conference and tuition fees*
- *Personal equipment*
- *Amortization of prepaid items*
- *Commissions and bank charges*

*The overhead application rate is calculated based on the total OM&G expenses listed above divided by total operating labour. The overhead application is intended to recover a portion of NS Power's fixed administrative costs so that customers benefit from transactions.*

*Finance reviews the historical amounts each year to determine whether the overhead application rate should be updated.*

*The cost allocation methodology spreadsheet for corporate support services is filed as part of the Annual Affiliate Code of Conduct Report.*

*Certain cost centres such as Information Technology and Real Estate and Procurement provide services to affiliates under Service Level Agreements. The Agreements are updated annually or as often as deemed necessary. The agreements describe the products and services provided by the business unit to the affiliates along with the prices and costs of the products and services. Service descriptions and prices are contained in schedules to the agreements. The agreements may provide for regular monthly charges to be invoiced to affiliates and may also provide for specific project pricing.*

*Regulatory Affairs and the Legal Department review the agreements for Affiliate Code compliance prior to execution and retain copies for information purposes.*

## **Findings and Conclusions**

### **12. NS Power partially complied with Protocol 6.11.**

To comply with Protocol 6.11, NS Power and its affiliates must charge fully allocated cost for Management and Administrative (M&A) services. M&A services noted in Protocol 6.11 consist of: Internal Audit & Corporate Security, Corporate Secretary and Insurance, Security, Environmental Policy & Programs, Corporate Tax, Controllers, Treasury, Investor Services, Pension Administration, Human Resources and Strategic Human Resources, Safety and Corporate overhead.

**Exhibit VI-3** provides a list of the M&A services between Emera and NS Power during 2016. M&A services are shown with an approved pricing mechanism of "Protocol 6.11". For most of the M&A services identified in Protocol 6.11, NS Power priced services at fully

allocated cost. One service, Payroll, underwent an analysis of FMV and determined that fully allocated cost was the preferred option.

Eleven other services are shared among NS Power and affiliates. FMV analyses were not provided to permit the provision of these services priced at fully allocated cost.

**Exhibit VI-3  
M&A Services**

<b>Service</b>	<b>Provider</b>	<b>Approved Pricing Mechanism</b>	<b>Allocation Methodology</b>
Accounts Payable	NS Power	None	Monthly Retainer + Unit Cost Pricing
Board Allocations	Emera Inc.	None	Per BOD Meeting
Commercial Investment	Emera Inc.	None	Per Subscription
Communications	Emera Inc.	None	Headcount + usage
Corporate Controller	Emera Inc.	Protocol 6.11	50/50 split
Corporate Accounting	Emera Inc.	None	Not Specified
Corporate Overhead	NS Power	Protocol 6.11	Multi-Factor Allocation Formula
Corporate Secretary	Emera Inc. and NS Power	Protocol 6.11	Forecast Percent of Labour
Corporate Security	NS Power	Protocol 6.11	Time Estimation of Activities
Corporate Tax	NS Power	Protocol 6.11	Forecast Percent of Labour
Emera Project Development	Emera Inc.	None	Allocated labour hours based on projects
Enterprise Risk Management	Emera Inc.	None	50/50 split
Environmental Policy and Programs/Compliance	Emera Inc. and NS Power	Protocol 6.11	Forecast Percent of Labour
External Financial Reporting	Emera Inc.	None	Forecast Percent of Labour
Human Resources Employee Services Strategic Human Resources	Emera Inc. and NS Power	Protocol 6.11	Employee Headcount
Information Technology including: Chief Information Officer Allegro Computershare	Emera Inc. and NS Power	None	Unit Cost Pricing Not Specified Number of Users % of Cap
Insurance	NS Power	Protocol 6.11	Forecast Percent of Labour
Internal Audit and Security	NS Power	Protocol 6.11	Forecast Percent of Work Plan
Investor Services	Emera Inc.	Protocol 6.11	50/50 split
Legal	Emera Inc.	None	Fixed fee plus direct charges
Payroll	Emera Inc.	FMV analysis	Employee Headcount
Safety	NS Power	Protocol 6.11	Forecast Percent of Work Plan
Smart Grid	Emera, Inc.	None	Equal sharing by operating region
Treasury	NS Power	Protocol 6.11	Forecast Percent of Labour

NS Power develops an annual budget by cost center listed in **Exhibit VI-3**. The budget is then forecast into quarterly spending, including labor and overheads. Each cost center is responsible for determining the causal factors to allocate costs across Emera.

- Allocations based on labour hours result in a percentage of cost allocated to each affiliate (including NS Power) using the service.
- Allocations based on production metrics (invoices, transactions, purchase orders etc.) are charged a unit rate.

The quarterly allocation factors are then applied to actual monthly costs and billed to each affiliate by Journal Entry. This methodology accounts for the allocation of all monthly costs across the affiliates. The methodology for “true-up” is discussed in Protocol 6.16.

NorthStar reviewed the budgets by cost center and found them to be comprehensive. The budgets and associated work papers include labour by employee and overheads.

Emera Inc. also develops an annual budget and similarly to NS Power, each cost center is responsible for determining the causal factors to allocate costs across the enterprise. The allocation factors are applied to the annual budget and billed to affiliates (including Emera Inc.) in twelve equal installments. The methodology for “true-up” is discussed in Protocol 6.16. As the forecast budget is used for affiliate billing, the “true-up” is critical to fully allocating cost.

## Protocol 6.12

- 6.12 The determination of the cost of personnel providing any service shall be based on a positive time reporting that incorporates an explicit, appropriate designation of the beneficiary or group of beneficiaries of the services provided in each pay period. All costs should be directly charged to the clients of the services wherever possible. When direct charging is not possible, costs should next be allocated wherever possible using allocation factors based on cost drivers specifically applicable to the service provided. Only when no other reasonable alternative exists should costs be allocated using general allocation factors not directly related to the services provided. Where budgets or estimates of such costs are used as an initial pricing basis, they must in all cases eventually be reconciled to actual time and other resources used.**

### Compliance Guidelines

- 6.12 Employees doing work for affiliates (in both directions) are required to track their time and expenses using the Affiliate Billing Template. The Affiliate Billing Template is filled out and submitted to Corporate Accounting on a monthly basis. Each employee working for an affiliate (whether on a long-term, short-term or single instance basis) is required to provide the number of hours worked for an affiliate (to the nearest .25 of an hour). The timekeeper filling out the Affiliate Billing Template fills in the employee's name, number of hours, hourly rate (including fringe) from PeopleSoft, and the 55% overhead allocator. Each entry must be accompanied by a specific description of the project worked on and the work done. Any associated expenses are to be listed on the Affiliate Billing Template along with a description of the expense.*

*Timekeepers provide the Affiliate Billing Templates to Corporate Accounting on a monthly basis and Corporate Accounting enters the information into Oracle.*

*Where work is done by affiliates for NS Power, the same process is followed. The affiliate timekeeper fills out the Affiliate Billing Template and submits it to NS Power's Corporate Accounting for payment.*

*Information about hourly rates and the number of hours worked must be included so that NS Power can determine that charges are appropriate*

*The Affiliate Billing Template and billing instructions are on the grid.*

*For instances where the work will be of longer duration, the parties should fill out the Labour / Secondment form which provides the justification for the work, information about the work to be done, and information about the effect on the employee's current position and the need for any backfill or other arrangements.*

*An overhead allocation of 55% will be added to the salary and fringe costs for employees doing work for affiliates. This overhead allocation is applicable to all employee labour charges (from NS Power to affiliates and from affiliates to NS Power).*

*NS Power's Corporate Accounting reviews the overhead allocation rate every year to determine whether it needs to be adjusted. Corporate Accounting looks at the actual*

*historical costs over the last few years for guidance in determining whether the rate should change.*

*New overhead allocation rates come into effect January 1 in any given year, so timekeepers and business units are encouraged to check with Corporate Accounting at the end of Q4 to determine the appropriate rate.*

*Corporate Accounting will provide updated Affiliate Billing Templates which include a formula for adding the overhead allocation component to labour transactions.*

*Employees who carry out work for affiliates are responsible for ensuring that their managers are aware of the work conducted in support of affiliate activities. Managers are responsible to ensure that their employee's time spent working for affiliates is accurately captured and allocated to affiliates and that any expenses are charged out appropriately and in a timely manner. Managers are responsible to ensure that work performed by employees is charged to the appropriate affiliate cost centre.*

*Time and expense charges for NS Power employees working for affiliates and for affiliates working for NS Power are provided to Corporate Accounting for processing. Corporate Accounting will review the overhead allocation percentage annually to determine the appropriate amount for the year, and will look at historical and actual costs as part of that determination. Corporate Accounting will provide Regulatory Affairs with a copy of its annual memos setting out the overhead allocation amounts.*

*For 2016, the overhead allocation factor charged by NS Power to affiliates is 55%.*

## **Findings and Conclusions**

### **13. NS Power complied with Section 6.12.**

NS Power and its affiliates must use a positive time reporting system. In addition:

- The beneficiaries from services provided must be explicit.
- Costs should be charged using direct charging whenever possible.
- If direct charges are not possible, costs should be charged based on allocation factors.
- If allocation factors are used, NS Power must eventually reconcile actual time to forecast time.

NS Power and its affiliates use a positive time reporting system. PeopleSoft is the application used by NS Power and its affiliates. Employees are required to track time and submit time sheets every two weeks.

- M&A service employees charge time to their respective cost centers or on occasion directly to affiliates for special projects.
- All other employees are instructed to track time in 15 minute intervals.
- The NS Power time sheet includes: time entry for each day for multiple account numbers, placeholders for vacation or holiday, and a placeholder for appropriate charging of overtime.

- NS Power time records show who received benefits from services provided.
  - M&A services are allocated based on causal factors. Each affiliate receiving services is identified and charged accordingly. Protocol 6.11 describes the cost allocation process in detail.
  - Intermittent and seconded employees charge their time directly to the beneficiary receiving the service.
- NS Power and its affiliate employees direct charge costs whenever possible. With the exception of M&A services employees, employees are instructed to enter their time specific to the activities being worked. Employees are also instructed to complete an Affiliate Billing Template (ABT) and submit to corporate accounting monthly for any work conducted for affiliates.
- NS Power and Emera Inc. use allocations for overhead charges associated with direct-time charges and for M&A Services. These allocation factors are discussed in Protocols 6.11 and 7.1(b).
- M&A services charges are reconciled periodically as discussed in Protocol 6.16.

## **Protocol 6.13**

**6.13 NS Power shall make no changes in responsibility for the performance of any services regularly provided for or by any affiliate (including but not limited to corporate support services), absent a prior analysis demonstrating that such change is the best available option for NS Power customers.**

### **Compliance Guidelines**

*6.13 If there is a proposal to transfer services from NS Power to an affiliate, or from an affiliate to NS Power, the parties must carry out an analysis which provides information about the following:*

*The current cost of the service (including labour and non-labour allocations and any overhead)*

*The cost of having the service performed by the other company (including labour and non-labour allocations and any overhead)*

*The cost of having the service performed by an unrelated third party. If no such information is available, there should be an explanation about why the service cannot be outsourced to the market place.*

*The analysis should be reviewed by both companies and it should be provided to Regulatory Affairs to ensure that it complies with the Code of Conduct.*

### **Findings and Conclusions**

#### **14. NS Power complied with Protocol 6.13.**

NS Power did not make changes in responsibility of any service regularly provided for or by NS Power during the audit period. Therefore an analysis demonstrating the change as the best option for NS Power customers was not required.

- NorthStar reviewed the transactions and contracts between NS Power and its affiliates.
- NorthStar also reviewed the organizational structure of NS Power during the audit period.

## **Protocol 6.14**

**6.14 NS Power shall take appropriate measures to prevent all confidential or commercially sensitive information received from Nalcor, including but not limited to its 24 month forecast received from Nalcor Energy, from being shared with any of NS Power's affiliates.**

### **Compliance Guidelines**

*6.14 Under the Energy Access Agreement between Nalcor and Emera Inc. and NS Power, once the Maritime Link is in commercial operation, each month Nalcor will provide NS Power with a forward-looking forecast of energy available for the next 24 months. Although specific arrangements for the distribution of this information have not been finalized yet, NS Power anticipates that the information will be provided by way of secure email, and the information will be used only within the Fuel, Energy and Risk Management Department. NS Power will treat the information as it would treat any other confidential counterparty information and will not share it with affiliates or external parties.*

### **Findings and Conclusions**

#### **15. NS Power complied with Protocol 6.14.**

NS Power must develop policies and procedures to ensure the confidentiality of information received for Nalcor.

NS Power's Power Marketing Group has not yet developed the policies and procedures for the secure storage and distribution of the Nalcor forecast. The Maritime Link is not operational and the policies and procedures will not be necessary until the project is operational. The Power Marketing Group:

- Specifically acknowledges the necessity of developing secure distribution and storage procedures for this information.
- Maintains a secure location at 1223 Lower Water Street. Affiliates do not have access to this department.
- The NS Power Fuel Manual, a confidential document, explicitly addresses that disclosure of commodity information is a violation of Canadian securities law and is subject to disciplinary action.

## Protocol 6.15

- 6.15 NS Power shall maintain complete and detailed documentation of its procedures for accounting for- and charging, assigning, and allocating the prices and costs of inter-affiliate transactions, including but not limited to: (i) a listing of each type of cost which is allocated or directly charged between entities and the factor(s) which is (are) used in the allocation; (ii) an explanation of the bases for and calculation of each cost allocation factor used for transactions between and among corporate entities; (iii) a listing of the total amount of each cost allocated or directly charged between or among corporate entities during the annual period; (iv) a description of the detailed procedures used for identifying and assigning costs between affiliates; (v) a description of the control procedures for ensuring proper interaffiliate cost assignment, including organizational responsibilities and accountabilities and review procedures; and (vi) detailed procedures for determining FMV.**

### Compliance Guidelines

- 6.15 NS Power shall prepare and update the Inter-Affiliate Pricing Methodology document which is filed with the Annual Code of Conduct Report in April.*

*For Management and Administrative services (formerly known as corporate support services), the inter-affiliate pricing methodology shall be provided with each monthly invoice.*

*Intercompany billing items for affiliate transactions are in the form of journal entries posted in the general ledger system. NS Power and the affiliates do not submit paper invoices for intercompany billing items. Where necessary, the business units provide additional back-up documentation in the form of emails or other documentation. Billings posted to the general ledger system can be viewed by the appropriate affiliate.*

*Accounting entries are processed in accordance with NS Power's Accounting Policy & Procedures Manual (including the Chart of Accounts).*

### Findings and Conclusions

#### **16. NS Power did not comply with Protocol 6.15.**

NS Power must maintain a complete set of procedures for charging, assigning and allocating costs among affiliates. In particular, NS Power must document:

- Types of cost
- Bases of calculation
- Listing of total annual amount allocated or directly charged
- Procedure for identifying and assigning costs
- Control procedures including organizational responsibilities, accountabilities and review procedures
- Detailed procedures for FMV

Neither NS Power or Emera Inc. have a corporate-wide Cost Accounting Manual. NS Power has not provided a “complete set” of detailed documents that:

- Identify all related policies and procedures
- Provide detailed instruction to employees
- Provide the controls for organizational responsibilities, accountabilities, and review procedures

NS Power was unable to provide work papers for allocation factors and cannot provide complete and detailed documentation of the methodology for allocation factors used for affiliate transactions.

- NS Power provided its Inter-Affiliate Costing/Pricing procedure in its Annual Report. This document is not a comprehensive set of procedures. It does provide: the types of costs and the bases for calculations.
- NS Power also provided the following procedures:
  - Procedure for Affiliate Billing
  - Affiliate Code of Conduct Facts
  - Forms for seconded employment
  - Procedure for recording and tracking time
  - Procedure for corporate support invoice preparation
  - Procedure for Affiliate Code Conduct documentation
  - Procedure for Intercompany Process
  - Procedure for Mass allocation preparation
  - Internal Guidelines for compliance with the Code

In total, these procedures do not represent a comprehensive set of procedures.

- NorthStar conducted interviews and reviewed the information for calculating allocations.
- NS Power and Emera Inc. have methodologies for pricing, assigning and billing affiliates. These methodologies appear to be “institutional knowledge” and not complete and detailed documentation.

## Protocol 6.16

- 6.16 All regularly recurring services that NS Power provides to its affiliates or one of its affiliates provides to NS Power shall be subject to an annual budget to which both the service providers and recipients must concur in documents reflecting such agreement. Variances to such budgets will be tracked.**

### Compliance Guidelines

- 6.16 Each Management and Administrative service shall prepare a budget and cost allocation methodology for charging affiliates during the course of the year.*

*When budgets are updated on a quarterly basis, the budget and cost allocation figures shall be adjusted to reflect any changes. Budgets based on head count, for example, will be adjusted quarterly.*

### Findings and Conclusions

#### **17. NS Power complied with Protocol 6.16.**

To comply with Protocol 6.16, NS Power must prepare an annual budget for regularly recurring affiliate services, documentation must show both parties concur and variances must be tracked.

- Emera Inc. prepares an annual budget for M&A services and then allocates the services as discussed in Protocol 6.11. The budget is charged to affiliates in twelve equal recurring monthly amounts. Emera Inc. then reconciles budget to actual costs in the third quarter annually and prepares a forecast budget for the remainder of the year.
- NS Power also prepares an annual budget for its M&A services. The budget is then forecast quarterly and allocated on a quarterly basis to affiliates as discussed in Protocol 6.11. The quarterly allocation factors are applied to monthly actual costs. This step relieves the responsibility of conducting actual to budget dollar true-ups. NS Power does reconcile allocation factors if there is a substantive change in the quarterly factors. NorthStar found two occasions in 2016 where this occurred:
  - Internal Audit provided reconciliation in 4<sup>th</sup> quarter 2016 due to a change in work plan. The work plan is the causal factor driving allocations.
  - Corporate Insurance reported a change in labor allocation for April 2016. Labor is the causal factor driving allocations.
- NorthStar did not find any documentation demonstrating that both parties concur, or systematic corrections/adjustments of allocation factors and believes them to be the exception rather than routine. Internal audit has not conducted any audits during the audit period verifying the reconciliations of allocation factors.

## **Protocol 6.17**

**6.17 NS Power energy and fuel transactions with affiliates will be included in the annual Code of Conduct Report and will continue to be examined in the Fuel Adjustment Mechanism Audits.**

### **Compliance Guidelines**

*6.17 For each fuel or power transaction with an affiliate, NS Power's Fuels Department shall prepare documentation which demonstrates the benefit to NS Power and its ratepayers in transacting with the affiliate as compared to transacting with an unrelated third party.*

*The documentation shall include the quantity requested or offered and the price per unit for the quantity from all potential sources. Actual results (including whether a transaction occurred) shall be recorded, along with any relevant explanation or commentary (such as any reasons for a counterparty not submitting an offer or being unable to provide the amount of fuel or energy requested).*

*Such documentation shall be completed for each month by the Gas Marketer or Energy and Dispatch Optimization Specialist and shall be reviewed by the Team Lead or Manager, Oil Gas and Energy as appropriate.*

*Affiliate Code compliance for fuel and energy-related transactions will continue to be examined primarily through the FAM Audit.*

### **Findings and Conclusions**

#### **18. NS Power complied with Protocol 6.17.**

NS Power must include fuel and purchased power in the Annual Report and permit them to be examined in the Fuel Adjustment Mechanism Audits (FAM).

NS Power submitted its fuel and purchased power transactions in its Annual Report in Appendix D(1), submitted May 3, 2016. NS Power completed its most recent FAM audit on August 12, 2016. The audit covered transactions for calendar years 2014 and 2015.

## Protocol 6.18

**6.18 With the approval of the UARB, NS Power may use a pricing protocol other than those described above.**

### Compliance Guidelines

*6.18 In instances where NS Power bases its pricing on something other than one of the bases listed above, it will advise the UARB and request approval for the alternative pricing mechanism.*

*In circumstances where the pricing arrangement pre-dates the affiliate relationship, NS Power shall provide copies of documentation (such as evidence of contract pricing) to the UARB upon request.*

*In circumstances where NS Power enters into an arrangement with an affiliate and pricing will be based on anything other than the provisions of the Affiliate Code, NS Power will ensure that it keeps the following documentation:*

- *Copy of the correspondence and RFP, including a list of potential bidders to whom the RFP is sent*
- *Copies of all bids received and communication from potential bidders declining to provide a bid (including reasons for not bidding)*
- *Matrix showing the criteria used for determining the successful proponent and an indication of how each bidder fares under each criterion*
- *Listing of criteria used to rank each submission*
- *Documentation pertaining to any presentations or site visits involving individual bidders*
- *Recommendation setting out the reasons for recommending a particular transaction*
- *Copies of any contracts negotiated with the successful bidder*

*NS Power will also include any self-provisioning analysis as part of its documentation.*

### Findings and Conclusions

#### **19. NS Power did not comply with Protocol 6.18.**

To comply with Protocol 6.18, NS Power must obtain UARB approval to use a pricing protocol other than described in the Code.

NS Power has used pricing protocols that are not UARB approved. In particular:

- NS Power is charging ENL and EEI rent at 1223 Lower Water Street without an approved agreement.
- NS Power issued a purchase order to EUS for distribution support services related to the [REDACTED] Transformer testing contract discussed in Section 2.1. The services were not competitively bid and not UARB approved.

- NS Power and Emera have exchanged products and services such as M&A services that are not UARB approved as discussed in Protocol 6.11.

## **Recommendations**

16. Develop detailed guidelines, similar to those in effect prior to September 30, 2016, which address the protection of confidential customer information. The guidelines should address the provision of customer information to affiliates.
17. Obtain Board approval for all categories of M&A services including those covered in Protocol 6.11.
18. Obtain Board approval for ENL and EEI to be extended Emera's lease at 1223 Lower Water Street.
19. Obtain waivers or Board approval for sharing information systems or separate their use and data.
20. Discontinue the use of GIS and Journal Entries for the charging Affiliate Transactions. Require monthly invoices for all affiliates with itemized services, dates and cost.
21. Conduct FMV analyses for all affiliate transactions including M&A services or obtain Board approval for alternate pricing methodologies.
22. Develop a comprehensive Cost Allocation Manual that integrates all budgeting, allocating, assigning, charging, accounting and reporting of affiliate transactions.

## CODE SECTION 7: DEMONSTRATING CODE COMPLIANCE

This Section of the Code covers a variety of NS Power affiliate transactions requirements along with annual reporting including demonstrating the following:

- Supporting justifications, agreements, and prices paid for asset, service and product transactions.
- Utility performance.
- Employee movement.
- Corporate structure information.
- NS Power's compliance guidelines.

### Code Section 7.0 Demonstrating Code Compliance

#### Objectives

To separately and fully account for the value of goods, services, financial and other support delivered to or from NS Power and its affiliates.

#### Protocol 7.1

7.1 NS Power shall report annually to the Board the following information:

- (a) A detailed listing of all assets, services and products provided to and from NS Power and each of its affiliated companies.
- (b) Each item on the listing should indicate the price received or paid and, as appropriate, the relevant fully allocated costs or market values, along with notes providing full explanatory detail.
- (c) Where fair market value is used, an explanation should be provided as to how the value was determined, including the comparative source for the value.
- (d) Where cost allocations are involved, a description of the cost allocators and methods used to make the allocations should be included.
- (e) A summary of corporate services and the methodology for ensuring fair allocations of these costs.
- (f) A summary of utility performance providing results under all established utility performance measurements for at least the last three years and detailed definition and explanation of each performance measurement. Other aspects of the utility performance report format, and contents thereof, shall be agreed upon in advance between NS Power and the Board.
- (g) A copy of the latest version of the documentation of inter-affiliate costing pricing procedures required in Code 6.15.
- (h) A list of the number of employees transferred between NS Power and its affiliates during the year by level and job function.
- (i) A list of corporate entities in which NS Power's parent company has any amount of ownership. For those entities that are affiliates, as understood by this Code, the list will include the name and address of each affiliate, a brief description of its activities and the names, addresses and telephone numbers of all of its officers.

- (j) **The most recent version of the NS Power's internal Guidelines for implementing this Code of Conduct, as specified in Section 7.11.**

## **NS Power Compliance Guidelines**

7.1 (a) *In February of each year Corporate Accounting shall prepare the Affiliate Transaction Report which sets out all affiliate transactions between NS Power and affiliates the previous calendar year.*

*The Affiliate Transaction report is broken down into the following components:*

- *Goods and Services (commodities and contracts)*
- *Rentals*
- *Corporate Transactions (including the following components):*

*Investor Relations charges*

*Enterprise Risk Management Charges*

*ETRM Amortization*

*Executive Charges*

*NS Power Time and Expense Charges to Affiliates*

*Affiliate Time and Expense Charges to NS Power*

*Subscription Charges*

- *Corporate Support Charges (including IT SLA Labour charges)*

*NS Power will provide a detailed breakdown of all the charges in the different categories under the Affiliate Transaction report*

(b) *NS Power has not provided any guidelines specific to this protocol.*

(c) *Where NS Power is required to demonstrate fair market value for a product or service, it shall document the process used for the determination. This will include the identities and contact information for all of the unrelated market providers, as well as the product or service requested or offered and the basis for the pricing.*

*NS Power will make best efforts to ensure that the same components are included in pricing comparisons for affiliates and unrelated market providers. Any exceptions or carve-outs shall be documented, along with any necessary explanation.*

*If NS Power is required to determine fair market value for a product or service, it shall contact at least two potential third party providers. If it is not possible to do so, NS Power will document why it was unable to solicit pricing from more than one party.*

*When preparing a recommendation which compares transacting with an affiliate and with an unrelated third party, NS Power shall provide all supporting documentation and shall note any reasons for preferring an affiliate to a third party.*

*In circumstances where the fair market value of a product or service is lower than that offered by an affiliate, NS Power can enter into the transaction with the affiliate under the following circumstances:*

- *The affiliate must agree in writing to meet the price offered by the third party; or*
  - *The affiliate must agree in writing to charge NS Power the price offered by the third party and must subsidize the difference (or obtain approval from another affiliate such as Emera Inc. to pay the difference)*
- (d) *If cost allocations are not already included on the Inter-Affiliate Pricing Methodology document, NS Power must document the basis for the cost allocation and methodology. If the product or service is provided to NS Power by an affiliate, NS Power shall obtain the cost allocation and methodology from the affiliate.*
- (e) *In accordance with Affiliate Code section 6.15 and the Inter-Affiliate Pricing Methodology, NS Power shall keep a record of the basis of each charge or transaction*
- (f) *NS Power has not prepared any guidelines specific to this protocol.*
- (g) *NS Power has not prepared any guidelines specific to this protocol.*
- (h) *In February of each year, NS Power shall obtain from Human Resources a listing of all employees who transferred from NS Power to an affiliate and all employees who transferred from an affiliate to NS Power. NS Power shall include the following information on the listing:*
- *Employee Number*
  - *Former home company*
  - *Former position*
  - *Date of Transfer*
  - *New company*
  - *New position*
- (i) *The Corporate Secretary's office shall prepare each March a list of corporate entities which includes the following:*
- *The number of the company*
  - *Name of the company and ownership breakdown*
  - *Registered address*
  - *Nature of business*
  - *Officers (Name, Address and Telephone number)*
  - *Indication of whether the company has been wound up, dissolved or amalgamated*
  - *Indication of whether the company is not majority owned (<51% ownership) in accordance with the Companies Act of Nova Scotia*

- (j) *NS Power shall review and update the Affiliate Code of Conduct Guidelines on an annual basis and shall include them as an appendix to the Annual Code of Conduct Report.*

## Findings and Conclusions

As required by this Code, effective October 1, 2015, NS Power submitted its Affiliate Code of Conduct 2015 Report (Annual Report) to the Board on May 3, 2016. **Exhibit VII-1** provides a cross reference of where Protocols 7.1(a) to 7.1(j) can be found in the Annual Report.

### Exhibit VII-1 Protocol 7.1 versus NS Power Annual Report

Protocol 7.1 Subsection	Subject Matter	Location in Report
a	<b>Transaction Types</b> Goods and Services Rents Corporate Transactions Corporate Support	Section 2.4 Appendix D(1) Appendix D(2) Appendix D(3) Appendix D(4)
b	Pricing	Sections 2.4, 2.9, Appendix D
c	How Fair Market Value (FMV) was calculated	Section 2.4, Appendix D
d	Cost Allocation Methodology	Section 2.5, Appendix E
e	Summary of Corporate Support Services	Sections 2.4, Appendices D(3) and E
f	Utility Performance Report	Section 2.2 and 2.3 Appendices B and C
g	Inter-affiliate Pricing Procedure	Section 2.6, Appendix F
h	Employee Transfers	Section 2.7, Appendix G
i	Corporate Entities	Section 2.1, Appendix A
j	Internal Guidelines	Section 2.8, Appendix H

#### Protocol 7.1(a)

##### 1. NS Power did not comply with Protocol 7.1(a).

To comply with Protocol 7.1(a), NS Power must provide a detailed listing of all assets, services, and products provided to and from NS Power and each of its affiliated companies. As shown in **Exhibit VII-1** above, transactions are organized into four groups: Goods and Services, Rents, Corporate Transactions, and Corporate Support.

- NS Power did not report any assets exchanged with its affiliates from October 1, 2015 through December 31, 2015. There is no listing for them in the Annual Report.
- As reported under Protocol 6.10, NorthStar's review did identify unreported computer transfers. Following an internal review, NS Power concluded that there is potential risk for NS Power employees to transfer employment to an affiliate and take

electronic information with them. NS Power created a policy to require that all transferring employees be provided with new computers, phones or tablets as appropriate and their former equipment will be maintained in NS Power's existing hardware asset inventory. NS Power provided a copy of the Affiliate Asset Transfer Policy dated March 6, 2017.

- On November 18, 2016, IT leadership was transferred from Emera Inc. to NS Power. NS Power indicated that the IT assets had always belonged to NS Power and that the employees had always been NS Power employees, so there was no exchange of assets in relation to affiliate transaction reporting. NorthStar reviewed the transaction details from 2016 and did not identify any other asset exchanges with respect to this leadership transfer.
- NS Power did not include all transactions in its Annual Report. The 2015 Annual Report is detailed as to the types of transactions between NS Power and its affiliates. Transactions include:
  - Management and Administrative (M&A) Shared Services
  - Intermittent and seconded employee labor costs
  - Travel and other expenses
  - Rents
  - Contract Services
  - Fuels and Energy
  - Service Level Agreement Services
- NS Power did not include transactions NS Power labeled “flow-through” in the 2015 Annual Report. Flow-through transactions are explained by NS Power as charges between NS Power and its affiliates where NS Power procured the product or service charged it through to the affiliates and that no value was added. These charges should be included in the Report, based on the following:
  - The Code does not exempt these transactions.
  - These charges are not trivial in amount. **Exhibit VII-2** summarizes flow-through charges for the 2015/2016 audit period.

**Exhibit VII-2**  
**4<sup>th</sup> Quarter 2015 and 2016 Flow-through Charges**

<b>Provider</b>	<b>Receiver</b>	<b>Amount</b>
2015 NS Power	Emera Inc	\$218,317
2015 NS Power	Emera Maine	\$1,362
2015 Emera Inc.	NS Power	\$747,579
2016 NS Power	Emera Inc	\$821,360
2016 NS Power	Emera Maine	\$1,782,139
2016 NS Power	EUS	\$23,915
2016 Emera Inc.	NS Power	\$2,697,790

- Failure to report these items based on “value-added” is inconsistent with numerous other transactions that are flow-through such as travel insurance charged to NS Power from Emera that are included in the Annual Report.
- Affiliate transaction accounting practices are troublesome when demonstrating a transparent control environment and external audit perspective. For example, many affiliate transactions are not supported by formal invoices between entities.
  - Charges between affiliates are processed three ways: Global Intercompany System (GIS), Journal Entry, or Paper Invoice.
  - EUS and EEI and NS Power Information Technology (IT) provide monthly invoices for services provided.
  - Monthly allocated charges for M&A services are entered directly into Oracle as Journal Entries.
  - Typical GIS transactions include seconded employees, employee time charges, travel and expense charges, and many charges from Emera that are not included in M&A services. GIS transactions are entered into the accounting system as they occur.
  - Once a GIS transaction is approved by the receiving affiliate, the charge is paid through an intercompany clearing account.
  - Sharing this financial system, Emera Inc. and NS Power do not prepare monthly invoices that display date, cost, and service provided.

**Protocol 7.1(b)**

**2. NS Power did not comply with Protocol 7.1(b).**

To comply with Protocol 7.1(b), for each item on the listing NS Power must report the price received or paid and, as appropriate, the relevant fully allocated costs or market values, along with notes providing full explanatory detail.

The 2015 Annual Report provided pricing as required:

- The price received or paid
- The pricing mechanism
- Additional notes related to the pricing

Labour costs include fringe benefits and a 55 percent overhead mark-up. However, NS Power's methodology for calculating its overhead rate is inconsistent.

- The mark-up rate used in 2015 was 55 percent. It is unclear how NS Power determined this rate. On February 6, 2015, NS Power determined the actual rate for 2014 was 51 percent and that the five-year average was 51.3 percent. NS Power does not use budgeted information for determining the rate.
- In 2016, the 55 percent rate approximates a historical average (54.5 percent) and 2015 actual overhead (56 percent).
- NorthStar reviewed a variety of affiliate transactions including: M&A services, corporate transactions, goods and services, and rents to determine:
  - Accuracy
  - Timeliness
  - Pricing Mechanism
  - Appropriate support documentation
- NorthStar's testing found:
  - The allocation percentages were correctly applied to actual cost.
  - The Journal Entries were correctly input.
  - The affiliate was billed at end-of-month.
  - NS Power was paid within 30 days
- NS Power is not managing its lease at 1223 Lower Water Street according to the lease requirements.
  - NS Power did not charge the contractual square footage in 2016. According to NorthStar's analysis Emera owes NS Power an additional [REDACTED] for unbilled square footage.
  - NS Power has a lease agreement with Emera, but does not have leases with EEI and ENL.

### **Protocol 7.1(c)**

#### **3. NS Power partially complied with Protocol 7.1(c).**

Where fair market value (FMV) is used, NS Power must provide how the value was determined, including the comparative source for the value. It is important to note that Code compliance is based on "where" FMV is used, not whether it is required to be used.

- NorthStar reviewed the transactions found in the 2015 Annual Report and the 2016 quarterly and monthly affiliate transaction accounting spreadsheets, and found the following transactions included FMV descriptions:

- Parking
  - Rent
  - Fuels and purchased power
  - Equipment storage
  - Provision of inventory items
  - Transformer Services (2011 Contract)
  - Power-line technician services (2014 PLT Contract)
- NS Power does not provide comparative sources for FMV as back up information to the transactions in the Annual Report.

**Protocol 7.1(d)**

**4. NS Power complied with Protocol 7.1(d).**

Where cost allocations are involved, a description of the cost allocators and methods used to make the allocations should be included in the Annual Report.

- The 2015 Annual Report and the 2016 quarterly and monthly affiliate transaction accounting spreadsheets identified the types of transactions using cost allocators. Transactions include:
  - Overhead costs associated with seconded employees and employees on intermittent assignments.
  - IT charges.
  - Procurement charges.
  - Software applications.
  - Corporate support services (also discussed in Protocol 7.1(e)).
- NS Power provides a description of the cost allocator and how it is used.

**Protocol 7.1(e)**

**5. NS Power did not comply with Protocol 7.1(e).**

To comply with Protocol 7.1(e), NS Power must provide a summary of corporate services and the methodology for ensuring fair allocations of these costs.

- Protocol 7.1(e) does not prescribe allowed corporate services or that they must be allocated, only that they are summarized and ensure a fair allocation methodology.
- The 2015 Annual Report Appendix E included the following corporate support services:
  - Internal Audit
  - Corporate Secretary
  - Corporate Insurance
  - Security

- Environmental Policy and Programs
  - Corporate Tax Services
  - Account Payable
  - Treasury and Investor Services
  - Employee Services
  - HR Strategy
  - Safety
  - Corporate Overhead
- NS Power did not include Payroll, Investor Relations, and External Financial Reporting in its list of corporate support services in Appendix E of the 2015 Annual Report. Emera provides these corporate support services to NS Power. The Code does not differentiate as to who provides the service.
  - Investor Relations is allocated 50 percent to NS Power and 50 percent to Emera without justification.

**Protocol 7.1(f)**

**6. NS Power complied with protocol 7.1(f).**

To comply with Protocol 7.1(f), NS Power must provide a summary of utility performance providing results under all established utility performance measurements for at least the last three years and detailed definition and explanation of each performance measurement. Other aspects of the utility performance report format, and contents thereof, shall be agreed upon in advance between NS Power and the Board.

- The information provided in the Annual Reports are the same performance measures used by NS Power as part of its Balanced Scorecard Process. The Balanced Scorecard is designed to translate organizational strategy and vision into measurable goals and objectives. NS Power's Balanced Scorecard includes financial and operational metrics (safety and health, people, customer and asset management). All Balanced Scorecard measures are included in the Annual Report.
- The Balanced Scorecard is tied to employee compensation and performance is categorized as threshold, target and stretch.
- Performance results are provided for the current and two prior years. Reliability and safety performance is benchmarked against other Canadian Electric Association (CEA) member utilities.
- The utility performance report includes a description and discussion of the measures. The reported information has evolved over time in response to requests from the UARB.

As part of its testing, NorthStar performed the following to determine the extent to which the Balanced Scorecard measures were embedded within NS Power's operations and consistently reported:

- Reviewed Monthly Safety Excellence Newsletters.
- Reviewed PowerGram Newsletters.
- Reviewed videos of Balanced Score progress. These are accessible to employees on the utility's intranet site.
- Reviewed Board of Director's meeting minutes.
- Interviewed NS Power personnel regarding the Balanced Scorecard process and links to compensation.
- Issued and reviewed requests for calculation methodologies, survey instruments, survey results and other support for selected measures.

In 2016, NS Power modified some of its performance measures. For these items, prior year performance is not listed.

### **Protocol 7.1(g)**

#### **7. NS Power did not comply with Protocol 7.1(g).**

To comply with Protocol 7.1(g), NS Power must provide the latest version of its inter-affiliate costing/pricing procedures required in Protocol 6.15. These include:

- A listing of each type of cost which is allocated or directly charged between entities and the factor(s) which is (are) used in the allocation
- An explanation of the bases for and calculation of each cost allocation factor used for transactions between and among corporate entities
- A listing of the total amount of each cost allocated or directly charged between or among corporate entities during the annual period
- A description of the detailed procedures used for identifying and assigning costs between affiliates
- A description of the control procedures for ensuring proper inter-affiliate cost assignment, including organizational responsibilities and accountabilities and review procedures; and
- Detailed procedures for determining FMV.

Protocol 6.15 requires that NS Power maintain complete and detailed documentation of its procedures for accounting for- and charging, assigning, and allocating the prices and costs of inter-affiliate transactions. NS Power did not comply with Protocol 6.15.

### **Protocol 7.1(h)**

#### **8. NS Power complied with Protocol 7.1(h).**

To comply with Protocol 7.1(h), NS Power must provide a list of the number of employees transferred between NS Power and its affiliates during the year by level and job function.

- NS Power provided a list of employees transferred between NS Power and its affiliates in Appendix G of the 2015 Annual Report.

- The NS Power list provided:
  - Employee Number
  - Position level (Director, Vice President, Manager, etc.).
  - Organization

**Protocol 7.1(i)**

**9. NS Power complied with Protocol 7.1(i).**

NS Power's Annual Report provided a list of corporate entities in which NS Power's parent company has any amount of ownership. For those entities that are affiliates, as defined by the Code, the list included the name and address of each affiliate, a brief description of its activities and the names, addresses and telephone numbers of its officers.

**Protocol 7.1(j)**

**10. NS Power did not comply with Protocol 7.1(j).**

To comply with Protocol 7.1(j), NS Power must provide the most recent version of NS Power's internal Guidelines for implementing this Code of Conduct, as specified in Section 7.11.

- The Board approved this Affiliate Code of Conduct for NS Power, attached to a letter sent to NS Power dated August 19, 2015. It replaced the previous Code effective October 1, 2015.
- The NS Power Affiliate Code of Conduct 2015 Report was submitted May 3, 2016, seven months after the effective date of the Code.
- NS Power's Guidelines as submitted were not developed to address this Code of Conduct. The Guidelines provided in the Annual Report are dated November 2012, almost three years before the Board Decision approving this Code.

## Code Section 7.2

### Protocol 7.2

**7.2 NS Power shall be subject to external audits of affiliate transactions and transfers of employees between NS Power and its affiliates from time to time as the Board determines to be appropriate. The auditor shall be subject to approval by the Board. Understanding that internal control remains an important measure, NS Power shall conduct an internal audit program encompassing an appropriate level of testing affiliate transactions on an annual basis, except in years subject to an external audit by the UARB. Compliance with Internal Audit requirements will be confirmed through a certificate of compliance from NS Power in accordance with Section 8.1.**

### NS Power Compliance Guidelines

*7.2 In years when there is not an external audit of the Code of Conduct, Internal Audit shall test NS Power's compliance with the Code of Conduct by reviewing its control measures. Internal Audit shall not test the validity of individual transactions, but will be testing the processes to ensure that the transactions have complied with the Code of Conduct.*

*Internal Audit shall prepare documentation about its findings and shall discuss them with NS Power.*

*Following its review of NS Power's control measures, Internal Audit shall sign a Compliance Certificate confirming that it has complied with its requirements under the Code of Conduct.*

### Findings and Conclusions

#### **11. NS Power complied with Protocol 7.2.**

To comply with Protocol 7.2, NS Power must:

- Conduct internal audits of the Code in years where there is not an external audit
- The audit will include an assessment of internal controls
- The audit will include testing of transactions

The Board's Decision M06268 dated August 19, 2015, noted that the Board would proceed with an external audit after the new Code had been in place for one year – this Compliance Audit. An NS Power internal audit was not required for CY2015 and CY2016.

## Code Section 7.3

### Protocol 7.3

- 7.3 All newly entered, renewed, extended, or otherwise altered or amended NS Power agreements with an affiliate (excepting those energy transactions addressed by the agreement between NS Power and Board Counsel as recorded in 2007 NSUARB 17 4, at para. 42) will contain provisions sufficient to require and assure that the affiliate will make available all of its books and records (notwithstanding any agreement the affiliate has with any third party) as may in the judgement of the Board be necessary to: (a) examine the market competitiveness of the terms and conditions of such affiliate agreement with reference to any similar agreements the affiliate has with third parties, or (b) verify that agreements between the affiliate and NS Power are independent of and in no way linked to agreements between the affiliate and third parties in a manner that causes financial or other harm or loss to NS Power. Moreover, if executed by NS Power no such commitment shall be considered binding, or effective in the absence of such provisions.

### NS Power Compliance Guidelines

- 7.3 *New agreements or master agreements negotiated with affiliates contain mandatory provisions indicating that the affiliate agrees and understands that the UARB has the jurisdiction and authority to review the affiliate's financial records and documentation to ensure that the affiliate is charging NS Power rates which are the lesser of the affiliate's fully allocated costs or fair market value*

*The Board will ensure that this information is maintained in confidence and not passed to NS Power.*

*The statements referred to in 2007 NSUARB 174 refer to grandfathered provisions in prior affiliate agreements. All new agreements, however, should contain the mandatory disclosure wording in the Terms and Conditions.*

### Findings and Conclusions

#### 12. NS Power did not comply with Protocol 7.3.

Newly entered, renewed, extended, or otherwise altered or amended NS Power agreements with an affiliate must contain provisions sufficient to require and assure that the affiliate will make available all of its books and records. NS Power failed to comply with this Protocol in numerous aspects with few exceptions.

- NS Power's amended agreements with Bridgeport Energy LLC, Brooklyn Power Corporation, Emera Brunswick Pipeline Ltd., Emera Energy and Emera Utility Services in 2015 and 2016, for IT services did not contain books and records access provisions, although the initial agreements from previous years generally contained access provisions.
- NS Power's agreement with Emera Inc. dated October 30, 2015, did contain a provision for books and records access.

- NS Power's agreement with EUS for PLT services dated October 1, 2014 (prior to the audit period and this Code) did not contain a books and records access provision.
- NS Power's agreement with NSP Maritime Link Inc. incorporated records access provisions (prior to the audit period – January 1, 2014). The License Agreement dated July 5, 2016 did not.
- NS Power's purchase agreements with Cape Sharp Tidal Venture Ltd. did not contain books and records access provisions.
- In 2015 and 2016 there were four instances where EUS, an affiliate, submitted a bid in response to an RFP resulting in an agreement for services. NS Power's Purchase Order terms and conditions specify that each party may provide the other party with confidential information required by law or regulatory body with written consent. This does not comply with the Code.
- Numerous Change Orders related to PO#285723 for transformer oil testing services were approved by NS Power. These Change Orders did not have provisions for books and records access.
- NS Power's newly created agreement with EUS for the Canso project does not contain provisions for access to books and records, nor does the Purchase Order (PO#304604) in the amount of [REDACTED].
- NS Power's lease agreements with affiliates do not contain books and records access provisions.

## Code Section 7.4

### Protocol 7.4

- 7.4 NS Power shall submit to the Board annually, all internal Code of Conduct implementation guidance along with a summary of significant interpretations or judgements made by NS Power related to the Code during the year.**

#### NS Power Compliance Guidelines

- 7.4 If NS Power is asked about whether a potential transaction or situation complies with the Code of Conduct, and the situation requires interpretation of an issue which hasn't been raised before, NS Power will document the request and the advice provided.*

*Regulatory Affairs maintains the listing of significant interpretations or judgments relating to the Affiliate Code of Conduct.*

#### Findings and Conclusions

##### **13. NS Power complied with Protocol 7.4.**

NS Power submitted its Code of Conduct Guidelines in its 2015 Annual Report dated May 3, 2016. Protocol 7.4 does not require that the Guidelines are current or relevant to the Code in effect at the time.

NS Power addressed interpretations and judgements in its 2015 Annual Report Appendix K. NS Power identified three interpretations/judgements to the Code.

- The first judgement involved the re-hire of an NS Power retired engineer as an Emera Inc. employee and sharing the employee with NS Power. Emera Inc. bills the employee's time and expense and required the employee to sign a confidentiality agreement about any current and former work for NS Power.
- The second judgement granted computer access to NS Power's purchase order approval system (Oracle) for the CIO, an Emera employee. NS Power Purchase Order agreement approval granted to an Emera Inc. employee does not comply with the Code.
- The third judgement addressed the hiring of internal audit external resources. NorthStar believes that this did not present a Code compliance issue.

## Code Section 7.5

### Protocol 7.5

- 7.5 In order to monitor compliance, the Board at any time may review the records of NS Power and the records of NS Power affiliates as the Board deems required in assuring compliance with any provisions of this Code and with the duty to deal at arm's-length with affiliates.**

### NS Power Compliance Guidelines

- 7.5 If the Board wishes to review the records of an affiliate to determine whether that affiliate's transactions with NS Power are in the best interests of NS Power's customers and are compliant with the Affiliate Code, the affiliate and the Board will ensure that the Board will make arrangements to review the affiliate records in a way that will not allow that information to be shared with NS Power.*

*NS Power can provide the Board with the appropriate contact information for the affiliates and can arrange meetings or other communications, but NS Power will not be privy to the affiliate's records or documentation.*

### Findings and Conclusions

#### **14. NS Power did not comply with Protocol 7.5.**

To comply with Protocol 7.5, NS Power and its affiliates must permit access to books and records, and affiliate transactions must be at arm's-length.

NS Power's affiliates did not produce or provide access to its records. For example:

- Emera Inc. Board of Director Meeting Minutes and governance information.
- EUS and affiliates' Board of Director Meeting Minutes
- An Internal Audit Report related to NS Power and an affiliate.

## Code Section 7.6

### Protocol 7.6

- 7.6 NS Power will take the following actions to establish that each transaction with an affiliate is demonstrably the best option from among those reasonably available at the time for its customers.
- (a) Where NS Power decides to transact with an affiliate, it shall document, contemporaneously with the time of the decision, efforts undertaken to identify commercially available alternatives, the alternatives identified, and a description of the basis for its decision to transact with an affiliate.
  - (b) This documentation shall contain a summary table or narrative that identifies all alternatives considered, lists each criterion considered material in deciding with whom to transact, compares each alternative under each such criterion, and explains the reasons for selecting an affiliate.
  - (c) NS Power's documentation shall contain summaries of all verbal communications substantially affecting its decision to transact with an affiliate, which summaries shall be prepared by an identified NS Power participant as soon as practicable following such communication.
  - (d) The documentation required to be maintained regarding affiliate transactions shall be prepared by or under the direction of an NS Power manager responsible for the costs that the transaction will cause NS Power to incur, and shall be accompanied, in all cases where transactions individually or in aggregate over any consecutive 12- month period exceed \$125,000, by an NS Power officer's level signifying the officer's review and approval of transaction decisions made and the sufficiency of the data gathering and analysis underlying them.
  - (e) To the extent that emergency circumstances require the waiver or delay in performing or documenting any normal step in the data gathering, analysis, and decision process, those circumstances shall be described in a document that shall be accompanied by a responsible NS Power officer's signature signifying the officer's verification that conditions were sufficient to warrant the suspension of normal steps or delay in documenting them.

### NS Power Compliance Guidelines

- 7.6(a) *NS Power has not developed any specific guidelines in respect to this protocol.*
- (b) *In accordance with Affiliate Code section 6.18 and the related and Guideline, NS Power shall ensure that it keeps complete documentation pertaining to its decisions to transact with affiliates. If Procurement is involved in the decision to transact with an affiliate, the Procurement Recommendation shall contain all the necessary components for documenting the decision and the basis for transacting with the affiliate.*
- Procurement will provide a copy of the Recommendation to Regulatory Affairs for review prior to signing any contract in order to ensure that the process is compliant with the Affiliate Code.*
- (c) *If there are any verbal communications which affect NS Power's decision to transact with an affiliate, NS Power will note those communications as part of the Procurement Recommendation. Please refer to section 6.18 and 7.6(a) and (b) above.*

- (d) *NS Power has not developed any specific guidelines in respect to this protocol.*
- (e) *NS Power has not developed any specific guidelines in respect to this protocol.*

## **Findings and Conclusions**

### **15. NS Power did not comply with Protocol 7.6.**

As reported in Code Section 2.1 and 2.2, NS Power did not contemporaneously document or provide an alternative analysis demonstrating the best available option for the affiliate transactions shown in **Exhibit II-1**, that include IT services, rent, various M&A services and general time and expenses.

- NS Power's discussions with EUS prior to the affiliate's proposal submittal for transformer oil testing the services, fails to comply with the Code.
- Self-provisioning analysis was not done for the four affiliate transactions with EUS executed during the audit period.

In the absence of documentation demonstrating the best option, NS Power cannot comply with Protocol 7.6 elements (a) through (e) requirements:

- Commercially available alternatives
- Summary narrative of all alternatives and basis for decision
- Additional summaries of verbal communications
- Preparation under an NS Power responsible manager responsible for costs and officer's verification
- Emergency conditions and officer's verification.

## Code Section 7.7

### Protocol 7.7

7.7 Additional requirements shall apply to all "Large Transactions" with affiliates, which consist of those that meet the following criteria:

- (a) One-time transactions with a value of \$500,000 or more;
- (b) Periodic, related transactions reasonably expected to reach in aggregate \$750,000 or more in any consecutive 12-month period;
- (c) Transactions with: (a) a duration of 24 months or greater, taken alone or in combination with related transactions, and (b) with a value of \$250,000 or more.
- (d) Loans or assignments of personnel between NS Power and an affiliate and involving work in more than 6 months of any consecutive 12-month period, or where costs of all employees involved in related activities or projects are reasonably expected to exceed \$500,000.

### NS Power Compliance Guidelines

7.7 *Management & Administrative Services (formerly corporate support services or shared services) are assessed separately and are not required to comply with the provisions for Large Transactions.*

*Affiliate transactions related to capital work orders are reviewed and assessed as part of the capital work order process, but included in the annual transaction figures.*

*If an employee is required to work for an affiliate for six or more consecutive months, that will be considered a secondment for the purposes of the Affiliate Code of Conduct. This will include full-time assignments and part-time assignments which are anticipated to occur regularly over a period of six months or more.*

*The home company and the affiliate will fill out the Secondment / Loan / Employee Assignment form provided by Regulatory Affairs and will include the following information:*

- *Employee name, current position (including job description if available), current business unit or department, direct supervisor and Senior Manager*
- *Proposed position, description of the work to be done (including job description if available), supervisor, length of the assignment, start and end dates, and the number of hours per week or month to be devoted to the assignment*
- *Rationale for the assignment, including the quantitative and/or qualitative benefit to NS Power's customers, and information about what benefits / skill sets the employee will derive as a result of the arrangement*
- *Identification of skill sets / expertise the employee is bringing to the assignment, indication whether the employee's current role needs to be reassigned (wholly or partially) to another employee or whether another employee needs to be hired to fill in*
- *Consideration of issues such as travel time, overtime entitlement, incentive payments, and other benefits to be provided to the employee*

- *Consideration of how the assignment will affect personal development plans and review of the employee's performance*
- *Consideration of computer hardware and software, cell phones and security passes, including whether it is necessary to provide the employee with access to the affiliate's systems, and whether the employee's access to his/her home systems needs to be modified*
- *Consideration of whether a non-disclosure agreement needs to be signed by the employee in order to protect NS Power's interests*
- *Identification of the people involved in the discussions (home department or business unit, proposed department or business unit, HR staff, IT, Corporate Security, etc.)*
- *Confirmation that HR at both NS Power and the affiliate have been involved in the arrangements*
- *Copies of documentation such as a secondment letter or memo (redacted as appropriate to protect the employee's personal information) formalizing the arrangement*

*Once the arrangements for the secondment or assignment have been proposed, Regulatory Affairs will create an Affiliate Transaction Pre-Approval Form which summarizes the proposed transaction and pertinent sections of the Code and Guidelines and which is signed by the home business unit, the receiving business unit, Regulatory Affairs, and a member of the Executive Leadership Team.*

## **Findings and Conclusions**

### **16. NS Power complied with Protocol 7.7.**

NS Power identified and quantified "Large Transactions." **Exhibit VII-3** summarizes transactions that are categorized as large transactions.

**Exhibit VII-3  
Large Transactions**

Entity Provider	Entity Recipient	Transaction	2,015	2,016
NS Power	Emera Energy	IT SLA Charges	1,292,653	1,419,815
NS Power	Emera Inc.	IT SLA Charges	1,672,192	1,941,130
NS Power	Emera Newfoundland	IT SLA Charges	806,177	1,060,321
NS Power	EUS	IT SLA Charges	653,311	464,128
NS Power	Emera Newfoundland	ML Expenses	1,255,114	440,424
Emera Energy	NS Power	Natural Gas sales	████████	████████
EUS	NS Power	PLT Services	████████	████████
Brooklyn Power	NS Power	Power Purchases	████████	████████
NS Power	Emera Inc.	Rent	████████	████████
NS Power	Emera Newfoundland	Rent	████████	████████
Emera Inc.	NS Power	Shared Services	209,068	3,617,963
NS Power	Emera Inc.	Shared Services	3,012,385	3,264,054
NS Power	Emera Energy	Shared Services	1,189,897	1,059,856
NS Power	Emera Maine	Shared Services	853,432	712,293
NS Power	Emera Newfoundland	Shared Services	943,952	818,704
NS Power	EUSHI	Shared Services	200,289	930,364
NS Power	Grand Bahamas Power Corp.	Storm Restoration		2,923,224
NS Power	Emera Inc.	Time & Expenses	612,583	209,889
NS Power	Emera Newfoundland	Time & Expenses	1,044,739	1,203,940
NS Power	Grand Bahamas Power Corp.	Time & Expenses	280,254	555,719
*Currency is USD, otherwise CAD				

In 2015 and 2016, large transactions totaled approximately \$57 million and \$59 million, respectively.

## Code Section 7.8

### Protocol 7.8

#### 7.8 NS Power shall for Large Transactions:

- (a) Prepare an analysis of the costs of self-provisioning by NS Power, which shall specifically identify and exclude fixed NS Power costs (i.e., those that NS Power will continue to bear during the term of the agreement).
- (b) Prepare a description of any solicitations of terms and conditions from third-party suppliers.
- (c) Prepare a documented analysis that: (i) identifies the potential third-party suppliers from whom interest was solicited, (ii) the identities of any of them disqualified from submitting offers, (iii) the reasons for such disqualification, (iv) the number and identity of offers received, (v) a list of all criteria used to evaluate the transaction and a description of the relative importance applied to each such criterion, (vi) a ranking of each bid received by cost and by each criterion considered, and (vii) a justification of the decision that addresses the significance of each decision criterion identified as relevant.

#### NS Power Compliance Guidelines

7.8 Please refer to Affiliate Code sections 6.18 and 7.6 and related Guidelines.

*For large transactions, a Decision Board may be required. The purposes of such a group are to determine the documentation and analysis necessary to meet Affiliate Code requirements, and the roles and responsibilities for carrying out the documentation and analysis and to ensure that the transaction is planned and executed in compliance with the Affiliate Code. The Decision Board will include relevant members of the business unit initiating the transaction, Procurement (if applicable), Regulatory Affairs, and appropriate members of senior management or the Executive Leadership Team.*

*The Decision Board should be formed as soon as a potential large transaction has been identified, and before the RFP documents are formalized and sent out to prospective bidders. The Decision Board will meet at all key stages (prior to issuing the RFP, following receipt of bids, and during the evaluation phase and recommendation phase). Members of the Decision Board will sign off on the ultimate procurement Recommendation.*

*The Decision Board may develop a project charter for the potential transaction.*

*Individual tasks and responsibilities will be assigned and managed through Workflows on SharePoint.*

- (a) NS Power has not developed any guidelines specific to this Protocol.
- (b) NS Power has not developed any guidelines specific to this Protocol.
- (c) NS Power has not developed any guidelines specific to this Protocol.

## Findings and Conclusions

### 17. NS Power did not comply with Protocol 7.8.

NS Power did not document affiliate transaction analyses for self-provisioning.

- Self-provisioning analyses were not provided for the shared services provided from Emera communications or the seconded employee providing Community Relations Support.
- The seconded employee agreement was for a period greater than six months during a consecutive twelve months thereby qualifying this transaction as a Large Transaction as defined in Protocol 7.7.d.

As NS Power did not conduct self-provisioning analyses and did not obtain competitive bids from third parties for the transactions noted above, NS Power cannot be in compliance with the documentation requirements of Protocol 7.8.c.

Natural Gas Purchases as discussed in Section 6.8 are in compliance with Section 7.8.

The Energy Purchases from Brooklyn Power are in compliance with Section 7.8 as they are based on a contract that was assumed with the EEI acquisition of the Brooklyn Biomass Power Plant on July 26, 2013.

## Code Section 7.9

### Protocol 7.9

- 7.9 In the event that solicitation of third-party offers is not used for a Large Transaction, NS Power shall prepare a description of: (a) the justification for failing to use such solicitations, (b) a description of alternate means used to identify available commercial alternatives, (c) the criteria used to evaluate and compare those alternatives, and (d) a description of the process and reasons for choosing to transact with an affiliate.**

### NS Power Compliance Guidelines

*NS Power has not developed any specific guidelines in respect to this protocol.*

### Findings and Conclusions

#### **18. NS Power did not comply with Protocol 7.9**

To comply with Protocol 7.9, NS Power must:

- Comply with Protocol 7.8, calling for competitive bids and documentation.
- Prepare justifications for failing to use such solicitations
- Describe alternate means to identify commercially available alternatives
- Provide evaluation criteria
- Reasons for selecting affiliate

NS Power did not comply with Protocol 7.8 and therefore cannot comply with Protocol 7.9.

## Code Section 7.10

### Protocol 7.10

**7.10** In the event that NS Power contracts with an affiliate acting in concert with a third-party (whether by partnership, joint venture, or otherwise), NS Power shall document its efforts to consider the propriety, possibility, advantages, and disadvantages of NS Power's working similarly with a third-party as an alternative.

### NS Power Compliance Guidelines

*NS Power has not developed any specific guidelines in respect to this protocol.*

### Findings and Conclusions

#### **19. NS Power did not comply with Protocol 7.10.**

Compliance with this Protocol requires NS Power to document efforts to consider the propriety, possibility, advantages, and disadvantages of NS Power working with the third party similarly.

NorthStar's review of NS Power's transactions found two instances where partnerships with third parties had been executed:

- The transformer oil testing services agreement among NS Power, EUS, and [REDACTED] as described in Protocol 2.1
- The Canso Crossing Transmission project among NS Power, EUS, and [REDACTED].

Neither arrangement is in compliance with this Protocol. Specifically, NS Power failed to provide documentation demonstrating consideration of NS Power working independently with the third-party.

## Code Section 7.11

### Protocol 7.11

**7.11 Proper implementation of this Code of Conduct requires detailed internal Guidelines. NS Power shall prepare, maintain, and review and update at least annually Code of Conduct Guidelines that fully comply with the Code's current provisions and that provide employees with guidance appropriate to ensuring its full, timely, and proper implementation and compliance. The Guidelines shall be organized in the same numbering scheme as the Code, that is, guidelines for each Code provision.**

### NS Power Compliance Guidelines

*7.11 NS Power will create a set of interlinear Guidelines which clearly relate to and explain the applicable Affiliate Code provisions. There may be some sections of the Affiliate Code which do not require Guidelines. NS Power will ensure that copies of the Affiliate Code Guidelines are available to all employees and will incorporate the Guidelines into the Affiliate Code training program.*

### Findings and Conclusions

#### **20. NS Power did not comply with Protocol 7.11.**

Protocol 7.11 requires:

- Development of implementation guidelines.
- Maintain, review, and update the guidelines annually.
- Prepare guidelines that fully comply with the Code.
- Guidelines that provide employees with guidance to ensure compliance.
- Guidelines that are numbered in the same scheme as the Code and for each Code provision.

#### **2015 Affiliate Code of Conduct Report**

NS Power's Internal Guidelines submitted as Appendix H of the 2015 Annual Report failed to comply with Protocol 7.11.

- As of May 3, 2016, NS Power had not provided an annual update to its internal guidelines. NS Power submitted guidelines that predate this Code by three years.
- NS Power had seven months to develop guidelines for this Code from the effective date. The Annual Report was submitted in May 2016 and the Code was approved in August 2015.
- The guidelines were not numbered in the same scheme as the Code.

#### **2016 Code of Conduct Guidelines**

NS Power's Internal Guidelines (Guidelines) provided in support of this audit failed to comply with Protocol 7.11 based on the following:

- As of January 31, 2017, NS Power has not formalized a set of internal guidelines. NS Power treats the Guidelines as a “living” document that is not formally approved.
- The Guidelines do not fully comply with the Code.
  - For example, the Guidelines do not address the specific requirements of the Code for many Protocols including: 4.1, 5.2, 6.3, 6.7, 6.8, 6.9, 7.4, 7.6, 7.7, and 7.9.
  - NS Power’s statement that the procedures detailed in the Guidelines are the same procedures as have been applied to affiliate transactions under the previous version of the Code of Conduct – confirms that they do not comply with this Code.
- While the Guidelines are generally numbered in the same scheme as the Code, there are gaps in the Guidelines, where portions of the Code are not addressed, including Protocols: 2.3, 3.1, 5.1, 5.4, 6.4, 6.6, 7.1(b), 7.1(f), 7.1(g), 7.8, 7.9, and 7.10.
- The Guidelines are not complete in providing employee guidance. As a minimum the following should be found for each Protocol:
  - Organization responsibilities
  - Relevant policies and procedures
  - Relevant forms
  - Relevant approval protocols

## Recommendations

23. Stop charging affiliates for Emera Inc. rent transactions.
24. Review charges from Emera Inc. with more detailed scrutiny.
25. Physically isolate EEI office locations at the NS Power 1223 Lower Water Street Facility or move to a non-NS Power location.
26. Develop policies and procedures as also discussed in Protocol 6.15, to support intercompany pricing protocols.
27. Develop and follow procedures for calculation of fringe benefits, overhead rates, secondment, self-provisioning analyses, determination of FMV, determination of FAC, and documentation requirements.
28. Charge Emera Inc. for back rent.
29. Amend all contracts with affiliates to include permitting access to affiliate books and records.

## CODE SECTION 8.0: EMPLOYEE COMPLIANCE

This Section of the Code describes the activities necessary to ensure understanding of and compliance with this Code of Conduct.

In reviewing NS Power's compliance with Section of the Code, NorthStar used the following evaluative criteria, whether:

- Does NS Power have the appropriate communication and training channels to ensure:
  - Employees who perform work for affiliates understand and agree to abide by this Code of Conduct
  - Managers and employees directly involved in affiliate activities were informed of their expected behavior relative to the Code of Conduct and will undertake annual training in Code content and use
  - Obtain annual certifications by all employees having engagement in affiliate transactions and their pricing and documentation that such employees understand and have complied with the requirements of the Code of Conduct and Guidelines
  - NS Power has undertaken management reviews of compliance sufficient to enable the President of NS Power to certify to the Board annually in writing that all affected employees have complied with this requirement to the best of their knowledge, information, and belief.

### Code Section 8.1

#### Protocol 8.1

- 8.1 NS Power will ensure that its employees who perform work for affiliates understand and agree to abide by this Code of Conduct. NS Power will inform all its managers and employees directly involved in affiliate activities of their expected behavior relative to the Code of Conduct and will undertake annual training in Code content and use. NS Power will require annual certifications by all employees having engagement in affiliate transactions and their pricing and documentation that such employees understand and have complied with the requirements of the Code of Conduct and Guidelines. NS Power shall also undertake management reviews of compliance sufficient to enable the President of NS Power to certify to the Board annually in writing that all affected employees have complied with this requirement to the best of their knowledge, information, and belief.**

#### Compliance Guidelines

- 8.1 NS Power will conduct training sessions for general Affiliate Code of Conduct compliance and specialized sessions for timekeepers. These sessions will be available to employees in person and by WebEx and will be recorded. Employees who are unable to attend regularly scheduled sessions may attend other sessions or may review the presentations on their own time.*

*At the completion of each session, every employee in attendance will receive a Certificate of Compliance attesting to his or her having completed the Affiliate Code training and understanding what is required in order to comply with the Affiliate Code. Employees who attend the training sessions by WebEx will also fill out and scan the forms which are then sent to Regulatory Affairs for documentation.*

*Copies of attendance sheets and signed compliance certificates will be provided to the ELT on a quarterly basis, along with a summary of the affiliate transactions for the quarter, and a list of any exceptions.*

## **Findings and Conclusions**

### **1. NS Power did not comply with Protocol 8.1.**

NS Power is not able to confirm that all employees who perform work for affiliates have completed Affiliate Code of Conduct training or signed the required certifications. As a result of the method employed to identify required training and track its completion, NS Power is able to provide a list of groups or departments that did not receive training, but cannot positively confirm that all employees who perform work for affiliates have taken the training. Records indicate the training has not been taken as required.

- During the audit period, NS Power targeted business units that have historically engaged in affiliate transaction or have done work for affiliates (such as shared service functions, fuels and procurement) and provided training on business-unit wide basis. Administrative assistants within the business units or departments identified the specific employees requiring training. To the extent an employee was unable to attend the scheduled training session, it was the responsibility of the business unit or department to ensure the employee received the training.
- In response to a NorthStar data request, NS Power identified the employees who had direct charged time to an affiliate. In 2015, 103 employees charged time directly to affiliates and only 23 employees completed Affiliate Code of Conduct training. In 2016, 88 employees charged their time directly to affiliates and only 44 completed training.
- For those individuals who have not completed the training, NS Power must rely on the Emera Code of Conduct training. On an annual basis, all employees receive training and certify their compliance with the Emera Code of Conduct. The Emera Code of Conduct training refers to the Affiliate Code of Conduct and the need for compliance.
- According to NS Power, beginning in 2017, all employees will be required to take on-line Affiliate Code of Conduct training; however, this did not occur during the audit period.

NS Power's draft Guidelines related to the required management reviews of compliance, were not followed. According to NS Power, "the process referred to in the draft Guidelines for providing quarterly attendance sheets and signed certificates was not implemented in 2016. Since the drafting of the Guidelines, NS Power has determined that it will require all employees to take Affiliate Code of Conduct training through an on-line training program

and testing module which will be rolled out by the end of 2017. This supersedes the requirement for quarterly updates to the ELT and the Guidelines will be modified to reflect this change.”

Prior to the modification to the Affiliate Code of Conduct, NS Power provided general Affiliate Code of Conduct to employees that are likely to do work for affiliates, with specific modules for timekeeping and labour and secondments. Twelve training sessions were conducted between May 25, 2015 and September 30, 2015. General training sessions were open to NS Power and affiliate employees. NS Power’s record keeping for these sessions relies on screen shots of employees who registered for training and signed training session attendance sheets. NorthStar’s testing identified a number of employees who had registered for various training modules but had not signed attendance sheets. NS Power was not able to confirm that these employees ultimately received training in response to NorthStar’s request (on a sample basis) for evidence of completion. According to NS Power, employees “who signed up to attend sessions but did not sign the attendance sheets either attended by WebEx but did not identify themselves on the phone or they may not have attended due to conflicting commitments.”

With the revision to the Code of Conduct, the general training was incorporated into user-group specific training as follows:

- Fuels, Energy and Risk Management (November 17, 2015)
- Corporate Security (October 3, 2016)
- Generation Planning and Asset Management (October 13, 2016)
- ERP (October 14, 2016)
- Information Technology (October 31, 2016)
- Finance (November 1, 2016)
- Legal (November 2, 2016)
- Procurement (November 2, 2016)
- Senior Management Team (November 9, 2016)
- Internal Audit (November 10, 2016)
- Tax and Treasury (November 22, 2016)
- Timekeepers (November 22, 2016)
- HR and Health & Wellness (November 29, 2016)

As part of the updated training, employees certify that they have received training and the 2015 Affiliate Code of Conduct, understand it, and will abide by it. No testing was required as part of the training. In 2015, 40 NS Power employees signed certifications following the revision to the Code. In 2016, about 300 of the roughly 1,700 NS Power employees signed certifications. Records provided to NorthStar are inconsistent in terms of the number of employees that attended training: 2016 Attendance sheets indicate 197 employees attended training; the response indicates over 435 employees took Affiliate Code of Conduct training in 2016.

## Recommendations

30. At a minimum, train all existing NS Power employees with time charged or allocated to an affiliate in Affiliate Code of Compliance on annual basis and obtain required certifications. New employees who are part of a shared service group or will likely perform work for an affiliate should be trained as part of the onboarding process. Any employee who has not been provided training, should be provided with training before they begin work for an affiliate.
31. Develop a more robust record-keeping process such that NS Power can demonstrate compliance with Protocol 8.1.
32. Develop, and follow, guidelines and associated policies and procedures to ensure compliance with all elements of Protocol 8.1

## CODE SECTION 9.0: GENERAL

This Section of the Code addresses reporting requirements and whether NS Power provided all reports referred to in the Code by April 30 in respect of each preceding year.

### Code Section 9.0      General

#### Protocol 9.1

**9.1** All reports referred to in this document shall be provided by April 30 in respect of each preceding year.

#### Compliance Guidelines

*9.1 NS Power will file its Annual Code of Conduct Report by April 30 of the following year. If April 30 falls on a weekend or holiday, NS Power will file the report on the next business day.*

#### Findings and Conclusions

##### **1. NS Power did not comply with Protocol 9.1.**

Protocol 9.1 requires the Annual Affiliate Code of Conduct Report to be provided by April 30 of the following year. NS Power provided the 2015 Annual Report on May 3, 2016 for affiliate transactions conducted during CY2015.

Additionally, NS Power's Compliance Guideline for Protocol 9.1 may continue to result in non-compliance if left unchanged: *If April 30 falls on a weekend or holiday, NS Power will file the report on the next business day.*

## **Code Section 9.2**

### **Protocol 9.2**

**9.2 This Code of Conduct replaces the Code of Conduct dated February 24, 2009 (effective June 1, 2009), and shall become effective on October 1, 2015.**

### **Compliance Guidelines**

*NS Power has not developed any specific guidelines regarding this protocol.*

### **Findings and Conclusions**

**2. NS Power does not have to do anything to comply with Protocol 9.2.**

### **Recommendations**

33. NS Power should plan for and develop the Annual Affiliate Code of Conduct Report so that it can be provided to the UARB on or before April 30 of each year. NS Power's Compliance Guidelines should be corrected accordingly.