



Nova Scotia Utility and Review Board

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Brian Curry
Senior Regulatory Counsel
Nova Scotia Power Inc.
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Via Email: brian.curry@nspower.ca

Dear Mr. Curry:

M09706 – Nova Scotia Power Inc. Affiliate Code of Conduct Report for 2019 (P-167)

Nova Scotia Power Inc. (NS Power) filed its 2019 Annual Affiliate Code of Conduct Report on April 30, 2020. The Board issued Information Requests (IRs) on June 12, 2020 which were responded to on July 10, 2020.

The Board accepts the confidentiality requested in accordance with Rule 12 related to personal employee information or commercially sensitive information.

IRs were issued to gain comfort surrounding the costs and allocations surrounding transactions with affiliates. NS Power confirmed they were able to review Emera's Fully Allocated Costs as part of their assessments to conclude shifting of various services from NS Power to Emera as a service provider was appropriate. NS Power did not, however, provide the information the Board requested be obtained from Emera, specifically in response to IR-1 parts e, f, g & h. The Board does not require this information to accept this report; however, it will be required to satisfy Code and CAM compliance.

NS Power also provided the Board with details of the analysis it relied on to evidence and conclude the switch of services from NS Power to Emera in 2019 was in the customers' best interest. The Board has assumed the analysis to be reasonable; however, this raises the question of what changed, given a similar analysis would have been done previously to justify NS Power as the service provider. The Board does not intend to open a review into this as an outcome of this report; however, this information will be required when considered in future reviews or audits of affiliate transactions.

The Board notes this is the first Annual Report since NS Power was directed to ensure all rent paid to Emera was limited to fair market value. Under M08891, the Board reviewed the rent paid

to and received from affiliates. In a letter dated April 4, 2019, the Board provided direction, including the following:

During this review, the Board also identified non-compliance with the ACOC. The ACOC broadly requires NS Power to charge affiliates the higher of cost or fair market value and, in instances where fair market value is lower than cost, to limit the payment to affiliates to the fair market value. The overarching principle is to ensure transactions with affiliates do not result in cross subsidization.

NS Power has confirmed it paid Emera to sublease some of this space at the rate Emera was required to pay for compliance with the 1H Decision. This rate exceeded fair market value, which was \$27.50 in 2017. NS Power indicated the subleased space was occupied by various shared service employees. NS Power explained that while it understood the ACOC, it was not aware of any other manner to structure shared service cost allocations that did not leave Emera absorbing the difference.

The Board expects NS Power would not have permitted shared services to occupy portions of the unregulated space without sufficient consideration of the consequences. Simpler options existed. The intent of Emera's occupancy is for Emera, not ratepayers, to cover the costs of 24,000 sq. ft. of the 110,000 sq. ft. Nothing in the Board's 1H Decision introduced a pricing exception that would permit NS Power to pay an affiliate more than fair market value.

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The Board directs NS Power to adjust the rent and occupancy to reflect Board findings and revise any lease arrangements effective January 1, 2019 and through the remainder of the 40-year commitment.

In this report and follow up in IRs, NS Power confirmed that Emera revised the rent being charged related to "Emera space occupied by NS Power in Lower Water Street" (Block C) from \$67.34 to \$56.76 per square foot. This remains more than the \$27.50 NS Power used as fair market value for Block A & B. The Board questioned the use of \$27.50 per square foot for rent paid to the affiliate in M08891 and in response to IR-7 NS Power explained:

In order to comply with Protocol 6.7 of the Affiliate Code of Conduct, NS Power was not able to pay more for than Fair Market Value for the sublease from Emera in Blocks A and B. Instead, NS Power paid Emera market value for comparable space, less fees for "fit up" of space, operating costs and contributions to property taxes. This is less than the rate designed to recover fully allocated costs that NS Power was charging to Emera.

Under M08891, NS Power provided detail of the rental transactions with affiliates for 2015, 2016, and 2017 where NS Power indicated \$27.50 was fair market value for rental purposes. The Board accepted \$27.50 to be fair market value and in its April 4, 2019 decision letter directed NS Power to limit all rent being paid to affiliates to not exceed fair market value. Based on the information before the Board in the 2019 Affiliate Report, there was no evidence to support an increase in fair market value.

The Affiliate Code of Conduct is a framework governing these transactions, transactions and parameters are expected to be applied and followed on a consistent basis. Based on the evidence before it, the Board directs NS Power to limit the rent it pays an affiliate for Class A space to a fair market value of \$27.50. As such, NS Power is directed to refund rent paid in excess of fair market value to customers related to the 2019 year. NS Power is directed to calculate this directly on the square footage of office space at the rate applicable to that office space compared to \$27.50.

Common area costs should be excluded from this calculation associated with rentable space. NS Power is to file detail of the refund prior to October 9, 2020.

Subject to the foregoing, the Board accepts the 2019 Report, and makes no other comments.

Yours truly,



Peter W. Gurnham, Q.C., Chair



Roberta J. Clarke, Q.C., Member



Richard J. Melanson, LL.B., Member

c. S. Bruce Outhouse, Q.C., Board Counsel
M09031 Participants