

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE PUBLIC UTILITIES ACT**

- and -

**IN THE MATTER OF A SUPPLEMENTARY DECISION** on an **Audit** of the **Transactions** between **Nova Scotia Power Incorporated** and its **Affiliates** ordered by a **Decision** of the **Board** dated March 10, 2006 on an **Application** by **Nova Scotia Power Incorporated** for **Certain Revisions to its Rates, Charges and Regulations**

**BEFORE:**

Peter W. Gurnham, Q.C., Chair  
Margaret A. M. Shears, Q.C., Vice-chair  
Kulvinder S. Dhillon, P.Eng., Member

**COUNSEL:**

**NOVA SCOTIA POWER INCORPORATED**  
René Gallant, LL.B.

**NEWPAGE PORT HAWKESBURY LIMITED** and  
**BOWATER MERSEY PAPER COMPANY LIMITED**  
David S. MacDougall, LL.B.

**PROVINCE OF NOVA SCOTIA**  
**(Department of Energy)**  
Mark V. Rieksts, LL.B.

**MUNICIPAL ELECTRIC UTILITIES**  
**OF NOVA SCOTIA CO-OPERATIVE**  
Donald Regan

**CONSUMER ADVOCATE**  
John P. Merrick, Q.C.

**WRITTEN SUBMISSIONS:** February 29, 2008

**REBUTTAL:** March 7, 2008

**APPENDIX 'A'** **Liberty Consulting Group Recommendations**

**APPENDIX 'B'**

**Code of Conduct**

**BOARD COUNSEL:**

S. Bruce Outhouse, Q.C.

**BOARD COUNSEL'S  
CONSULTANTS:**

Liberty Consulting Group

**DECISION DATE:**

**June 9, 2008**

**DECISION:**

**Code of Conduct to be Revised; New audit process  
and various other directives issued.**

## TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION</b>	<b><u>4</u></b>
<b>2.0</b>	<b>CODE OF CONDUCT</b>	<b><u>7</u></b>
<b>3.0</b>	<b>LIBERTY AUDIT REPORT</b>	<b><u>14</u></b>
<b>4.0</b>	<b>NSPI - RESPONSE TO THE AUDIT REPORT</b>	<b><u>17</u></b>
<b>5.0</b>	<b>LIBERTY - SUPPLEMENTARY REPORT</b>	<b><u>21</u></b>
<b>6.0</b>	<b>SUBMISSIONS OF OTHER PARTIES</b>	<b><u>22</u></b>
6.1	CA	<u>22</u>
6.2	MEUNSC	<u>23</u>
6.3	NSDOE	<u>23</u>
6.4	NPB	<u>24</u>
<b>7.0</b>	<b>NSPI - REBUTTAL</b>	<b><u>26</u></b>
<b>8.0</b>	<b>FINDINGS</b>	<b><u>28</u></b>
8.1	Code of Conduct	<u>28</u>
8.2	Annual Audit Report	<u>31</u>
8.3	Energy Related Transactions	<u>32</u>
8.4	Emera Fuels	<u>34</u>
8.5	Emera Utility Services	<u>35</u>
	8.5.1 Transformers	<u>35</u>
	8.5.2 Cablecom	<u>37</u>
	8.5.3 Web-based Affiliate Transactions	<u>39</u>
8.6	Financial Relations	<u>41</u>
8.7	Prior Board Approval	<u>42</u>
8.8	Public Hearing	<u>43</u>
8.9	Miscellaneous	<u>44</u>
	<b>APPENDIX 'A'</b>	<b><u>45</u></b>
	<b>APPENDIX 'B'</b>	<b><u>48</u></b>

## 1.0 INTRODUCTION

[1] This is a decision of the Nova Scotia Utility and Review Board (the "Board") with respect to an audit of transactions between Nova Scotia Power Incorporated ("NSPI", the "Company", the "Utility") and its affiliates arising from the Board's Decision dated March 10, 2006, concerning a hearing to consider an application by NSPI for revision to its rates, charges and regulations. The purpose of the audit was to ensure that all affiliate transactions were in compliance with the Board-approved Code of Conduct which establishes the manner in which such activities are permitted to occur.

[2] The Board in its March 10, 2006 decision stated that:

[147] The Board accepts the recommendation of Liberty to implement a process of detailed, periodic audits of affiliate transactions. Due to Liberty's extensive knowledge of NSPI, gained as a result of its work during the last two years, the Board will retain Liberty to carry out the first audit. During 2006, the Board will request Liberty to prepare a detailed work plan for the first audit, including the estimated time and budget, as well as an appropriate commencement date. The Board directs that the work plan be filed with the Board by June 30, 2006 for Board approval. The Board intends this audit to be carried out on a professional basis by experienced experts in utility matters, including the energy and fuel functions, as well as affiliate transactions. NSPI will be consulted during this process and its opinions solicited. The Board, in planning the commencement date for the first audit, will give consideration to other time commitments which may be facing NSPI.

[148] The reason the Board considers this audit to be an important step is because NSPI's parent, Emera, has become a large multi-faceted organization, with many affiliates, and NSPI engages in numerous transactions with some of these affiliates. In order to properly carry out its mandate pursuant to the **Public Utilities Act**, the Board must be able to satisfy itself that these inter-affiliate transactions are being conducted in accordance with the Code of Conduct and that they are also properly accounted for in the records of NSPI, thereby ensuring that NSPI is receiving all profits to which it is justly entitled.

[2006 NSUARB 23, pp. 79-80]

[3] The Board retained Liberty Consulting Group ("Liberty") to carry out the audit. Following a number of meetings with NSPI, Liberty submitted a proposed work plan to the Board which outlined the audit process it intended to follow during the project. The work

plan was approved by the Board on June 26, 2006 and provided to NSPI at that time. On July 17, 2006, NSPI advised the Board that it had not been consulted with respect to the scope of work and, due to time commitments, was unable to comply with the timeframe set out in Liberty's work plan. NSPI also requested that the matter be held in abeyance until this issue was resolved. Following receipt of Liberty's comments on NSPI's request, on October 18, 2006, the Board instructed Liberty to proceed with the audit and directed NSPI to work cooperatively with Liberty to ensure that the audit would be completed before the next rate hearing occurred.

[4] Liberty filed its first Audit Report dated May 14, 2007 (the "Report") with the Board on May 22, 2007, which was then provided to NSPI and all of the participants in the 2006 rate case.

[5] NSPI, in a letter dated May 24, 2007 to the Board, indicated that it was prepared to formally respond to the Report. However, an application was filed on April 30, 2007 by NSPI seeking approval of a Fuel Adjustment Mechanism (FAM). Since the hearing on the FAM would be focused primarily on NSPI's fuel acquisition process, which comprised a significant portion of the audit, the Board deferred consideration of the Report until after the evidence phase of the FAM hearing was completed. The Board also determined that the affiliate transactions matter would be dealt with through a written submission process rather than an oral hearing.

[6] The Board issued a letter advising the parties with respect to the timing of a response to the Report on June 4, 2007 and noted that:

Nova Scotia Power will obviously have an opportunity to respond formally to the Liberty Report. However, the Board has determined that until the conclusion of the evidence phase of the FAM hearing, it will not be issuing further directions with respect to responding to the Liberty Report. Further directions will be forthcoming following conclusion of the evidence phase of the FAM hearing.

[7] At that time it was anticipated the FAM hearing would be held in June, 2007.

It was subsequently adjourned at the request of the parties and rescheduled for November of 2007. On August 30, 2007, the Board advised NSPI and the parties that:

The Board believes that the Liberty Report will be the subject of comments/questions in the upcoming FAM hearing. Despite the adjournment of the FAM hearing, the Board continues to be of the view that it should wait until the conclusion of the evidence phase of the FAM hearing before issuing further directions with respect to responding to the Liberty Report. Further directions will be forthcoming following conclusion of the evidence phase of the FAM hearing.

[8] At the FAM hearing a Framework Agreement was reached by the majority of parties involved to approve the FAM, subject to a number of conditions. Along with NSPI, Liberty gave evidence at the hearing. This evidence included references to their findings in the Report. Following the Board's decision dated December 10, 2007 on the FAM hearing, on January 4, 2008 the Board issued directions on procedure for the affiliate audit process stating that:

Since the FAM hearing process concluded with the issuance of the Board's decision on December 10, 2007, the Board has determined that the process to deal with the affiliate audit will be as follows:

1. NSPI to provide its written submission - January 25, 2008;
2. Notice of Intention to Participate by Interested Parties - February 1, 2008;
3. Information Requests to NSPI - February 8, 2008;
4. Responses by NSPI - February 22, 2008;

5. Written Submissions by any Interested Party - February 29, 2008;
6. Written Rebuttal by NSPI - March 7, 2008.

Upon conclusion of this process the Board may direct further proceedings or may issue directions with respect to concerns identified in the affiliate audit.

While neither NSPI or any Interested Parties is precluded from making relevant submissions, the Board notes that there were three areas of significant concern raised by Liberty which were:

1. **Energy related transactions, particularly gas transactions, between Emera Energy and NSPI;**
2. **NSPI's relationship with Cablecom;**
3. **NSPI's relationship with Emera Utility Services with respect to transformers.**

The Board also notes that Issue #1 appears to have been partly resolved through agreements reached by the parties during the FAM hearing.

[Board letter dated January 4, 2008, emphasis added]

[9] The Board received written submissions on the Report from NSPI, the Consumer Advocate ("CA"), the Nova Scotia Department of Energy ("NSDOE"), New Page Port Hawkesbury Limited and Bowater Mersey Paper Company Ltd. ("NPB") and the Municipal Electric Utilities of Nova Scotia Co-operative ("MEUNSC").

## 2.0 CODE OF CONDUCT

[10] A Code of Conduct (the "Code") dealing with affiliate transactions was initially given interim approval by the Board on March 16, 2001, to become effective on September 16, 2001.

[11] The Code was jointly developed by the Board and NSPI. Its purpose was to protect NSPI ratepayers in view of an increasing number of transactions between NSPI

and a growing group of affiliated companies which were being created by Emera Inc., the parent company of NSPI. This objective was set out in the principles of the Interim Code which included a provision stating that:

The preliminary purpose of this Code of Conduct is to ensure that the customers of Nova Scotia Power Inc. (NSPI) are not harmed by transactions between NSPI and its affiliates.

[NSPI Interim Code of Conduct, S1.1]

[12] Final approval of the Code was discussed but not granted in a decision of the Board on October 23, 2002, following a rate hearing. The Board stated that:

[177] The development of a Code of Conduct was initiated between the Board and NSPI in light of the increasing number of NSPI affiliates and the potential impact of their activities on NSPI ratepayers. As noted above, the Interim Code, attached hereto as Appendix C, became effective on September 16, 2001. In preparation for the rate hearing, the Board engaged PricewaterhouseCoopers (PWC) to review NSPI's compliance with the Interim Code and, as well, to recommend any changes which should be made to the Code before receiving final approval by the Board. The PWC report drew the following conclusions:

1. The Code is generally effective in its primary purpose of ensuring that the customers of NSPI are not harmed by transactions between NSPI and its affiliates.
2. There are two areas that we believe require refinement to be compliant with the Code.  
  
These are:
  - Establishment of a fair method for allocating corporate support services costs; and
  - Establishment of fair market values for transactions with affiliates.
3. Management at NSPI is making significant efforts to comply with the spirit of the Code although we note there are other minor areas in which compliance is not absolute. (Exhibit –19, p.2)

[178] PWC expanded upon its conclusions as follows:

#### **Significant Findings and Recommendations**

As noted, our major findings are around the allocation of corporate support services costs and the fair market value of transactions with affiliates. These findings and recommendations are:

1. We believe that the current method used by NSPI to allocate corporate shared

services costs does not appropriately measure the amount of specific services being provided to or being used by its affiliates. We recommend that NSPI review alternative methods of allocating its corporate shared services costs that directly relate to the amount of the service utilized or the effort expended. We expect that different allocation methods will be used for different types of costs. We do not know if NSPI is in compliance with Section 6.11 of the Code as we do not know the amount of the adjustment to the costs allocated to the affiliates that would be required if these alternative measures were used.

2. We believe that NSPI is in compliance with Section 6.8 of the Code with respect to the sale of steam to Strait Energy as fully allocated cost is appropriate in the circumstances. However, we believe that in keeping with the spirit of the Code, an attempt to determine the fair market value of these transactions should have been made.
3. We do not have enough information to determine if NSPI is in compliance with Section 6.8 of the Code in respect of its sale of energy to Emera Energy Inc. At issue is the splitting of total margin on the resale of this energy of [redacted]. It is currently split [redacted]. NSPI management has indicated that the agreement to allocate the margin is temporary and that work on developing a pricing methodology is ongoing.
4. We recommend that, where the fair market value for affiliate transactions is not readily determinable, NSPI introduce the transfer pricing methodologies recommended by the Organization for Economic Co-operation and Development (OECD) to determine fair market value for transactions with affiliates. This is of particular concern in instances, such as those described in 2 and 3 above, where NSPI produces the product that is delivered to the ultimate customer but where an affiliate is between the customer and NSPI. Allocation of the earned margin between NSPI and the affiliate should be based on established transfer pricing methodologies. [Exhibit –19, p.5 (Deletions in original text)]

[2002 NSUARB 59, pp. 81-83]

[13] In its post-hearing brief, NSPI opposed certain of the PricewaterhouseCoopers ("PwC") recommendations particularly with respect to the cost allocation of expenses between NSPI and Emera stating that:

[182] During the hearing, NSPI advised that it was preparing a response to the PWC report. NSPI filed its response as an attachment to its post-hearing brief. While NSPI stated its fundamental agreement with the report, the following passages from its response are noteworthy:

In addition to the above, the Consultants' report includes a number of finding[s] concerning 2002 transactions and process related recommendations upon which NSPI wishes to comment. It is important to note that in discussing Code of Conduct processes within this submission, NSPI has not changed its position that these are internal procedures

directed toward the achievement of Code compliance. As such they do not require or warrant UARB approval. As affiliate relationships change over time, the Guidelines will be revised accordingly. Consistent with this, where the recommendations of the Consultants concerning Code processes are considered to contribute positively to Code of Conduct compliance, these will be incorporated within the internal Guidelines.

The Board's expectations concerning affiliate activity are clearly expressed within the terms of the Code of Conduct. The scope of the Regulator's oversight of this activity as outlined in the Code's provisions is broad and adequate to determine Code compliance. It must be left to the Utility to develop the appropriate internal procedures to ensure the provisions of the Code are met. NSPI management understands that should we fail to develop the necessary internal processes to maintain compliance, the Regulator will respond.

Beyond these items, the Consultants also recommended a schedule of unadjusted differences be appended to the Audit Report and management and post audit correspondence involving the Code be filed with the UARB. NSPI believes these latter recommendations to be inappropriate; in the case of the former, because it will tend to focus compliance processes on relatedly [sic] immaterial areas and in the case of the latter because expanding the audience of such correspondence beyond internal management may negatively impact the value of the information in improving internal processes.

(NSPI, Post-Hearing Brief,  
Appendix B, pp.1-2)

[2002 NSUARB 59, p. 83-84]

[14] A number of the Intervenors in the 2002 rate hearing raised their concern with respect to affiliate activity and its impact on NSPI's ratepayers. Robert Grant, Q.C., Counsel for a number of companies referred to as Annapolis Group et al., argued at the time that the final version of the Code should reflect the following revision:

[184] . . . In view of the unlimited number of transactions in which NSPI may be involved with its affiliates, the subjective nature of the valuations, and the effective inability or impracticality of ratepayers challenging affiliated party transactions, we would submit that the Board refuse to approve a Code of Conduct founded upon the principle that affiliated party transactions shall cause no harm to the ratepayers. In our submission, the Board should direct NSPI to prepare and submit to the Board a new Code of Conduct in which the principle is established that NSPI shall not enter into an affiliated party transaction unless it is able to demonstrate positively that the transaction will be of benefit to NSPI and its ratepayers.

(Annapolis, Rebuttal Submission, p.13)

[2002 NSUARB 59, pg. 84]

[15] In its decision, the Board agreed with Mr. Grant and stated:

[186] The Board is cognizant of the potential risk to ratepayers of unregulated affiliate activities. The Interim Code was developed in order to institute a number of formalized measures to protect NSPI ratepayers. The Board finds that the PWC report is helpful in that it focusses attention on potential weak points in the existing Code. Likewise, the Board finds the suggestion of Counsel for Annapolis, that the test for affiliate activity should be raised from "no harm" to "demonstrate a benefit" to NSPI ratepayers, to have merit.

...

[188] The Board finds that it is not appropriate, at this time, to give final approval to the Interim Code of Conduct. There appears to be merit to the suggestion that Article 1.1 of the Code be amended to require that affiliate transactions must demonstrate a benefit to NSPI ratepayers as opposed to causing them no harm. The Board intends to retain independent consultants to review the implications of such a change, and also to review the desirability of making further changes in light of the recommendations contained in the PWC report, the evidence presented at the hearing, and the findings of the Board in this decision.

[189] The Board generally accepts the recommendations of the PWC report. Additional Board comment on specific recommendations by PWC are set out later in this decision. The Board agrees with PWC's recommendation that NSPI's external auditors should provide to the Board a schedule of their unadjusted differences (i.e., a summary of immaterial errors or exceptions), along with the annual audit report on compliance with the Code. In addition, the Board directs that copies of management or post-audit letters issued by NSPI's external auditors in connection with their audit of NSPI's compliance with the provisions of the Interim Code of Conduct be filed with the Board by the external auditors. While the Board agrees with NSPI's contention that individual transactions may involve relatively small amounts, it believes that this issue goes beyond NSPI's materiality threshold. Disclosure of this information supports the fundamental principles of fairness and accountability with respect to affiliate activities. The Board has no desire or intention to micro-manage NSPI. However, at the present time, Emera appears to be in the process of transferring to various Emera affiliates a number of activities carried out by NSPI and the Board has concerns about the fairness and efficacy of these transactions. Accordingly, the Board believes this reporting tool is a helpful instrument in protecting the interests of NSPI ratepayers.

[2002 NSUARB 59, p. 85-87]

[16] Following the issuance of its decision, the Board retained PwC to conduct the above-noted review which ultimately recommended that changes be made to the Code, including the 'benefit' revision suggested by Mr. Grant.

[17] The Board provided NSPI with a copy of PwC's proposed changes to the Interim Code. While NSPI agreed with a number of PwC's recommendations it opposed replacing the 'no harm' clause with a mandated benefit approach.

[18] The Board approved the Code despite NSPI's objection to the 'benefit' standard revision on November 9, 2004, with an effective date of January 1, 2005 (Appendix 'B').

[19] As earlier stated, the issue of affiliate transactions and the Code was raised at the FAM hearing in Liberty's evidence on NSPI's fuel procurement practices. In its December 10, 2007 decision approving the Framework Agreement of the parties on the FAM application, the Board noted that:

[39] The two areas of continuing concern expressed by Liberty are affiliate transactions and hedging and risk management. NSPI states that hedging and risk management issues have been addressed, albeit not yet reviewed by Liberty. The Board expects any outstanding concerns will be resolved.

[40] Affiliate transactions, on the other hand, have been a difficult and contentious issue beginning with a proposal several years ago to assign to an affiliate NSPI's gas supply contract. Most recently Liberty highlighted a series of transactions of concern in its Affiliate Audit. Relevant to this proceeding are transactions related to natural gas.

[41] The relationship between NSPI and its affiliates is a legitimate concern of various parties, Board staff and consultants. Further direction with respect to review of the Affiliate Audit will follow the release of this decision.

[42] However, for purposes of the FAM, Board Counsel and NSPI have entered into an arrangement which will allow affiliate transactions to occur and to be adequately monitored. Exhibit -47 outlines that arrangement:

It is our understanding that under a FAM, NSPI may enter into transactions for natural gas or energy, including financial transactions (swing swaps) with an affiliate when the following conditions are met:

1. That affiliate must disclose to the UARB's auditor, in respect of transactions in Atlantic Canada (for gas, Maritimes and Northeast Pipeline) and New England (for gas, Maritimes and Northeast Pipeline - US) all information not subject to confidentiality provisions or for which confidentiality protection has been waived by counterparties of the affiliate. This includes individual transactions that have taken place more than 12 months prior to the disclosure

request; and

2. That affiliate must use good faith efforts to obtain counterparties agreement to include consent to disclosure to the UARB and its auditors in future master trading agreements, and, subject to 4 below, the affiliate must not renew master trading agreements or enter into master trading agreements with new counterparties that do not contain such consent to disclosure; and
3. That existing counterparties that have not consented to disclosure will be "grandfathered", and the affiliate must direct its external auditor to review the confidential information and respond to specific questions from the UARB, or its auditor, on the condition that the external auditor would not be required to release confidential information; and
4. That the affiliate will be allowed sufficient time following a request to produce the necessary information, and may object to requests it considers unreasonable due to volume, cost, response time or otherwise. If any such objection remains unresolved, the affiliate, NSPI or Board Counsel may apply to the Board for direction in relation to same. All information provided by the affiliate will be subject to a confidentiality agreement; and
5. That NSPI may seek direction from the UARB about any aspect of these conditions, or future audits or any aspect thereof.

This confirms that NSPI, under a FAM, will operate in accordance with these conditions in respect of gas or energy transactions with affiliates in future.

[2007 NSUARB 174, p. 16-17]

[20] The Board further elaborated on the issue of transparency and the Code as follows:

[58] The most recent affiliate transactions audit was conducted by Liberty and its report dated May 17, 2007 (as well as its evidence in this proceeding) makes it clear that significant problems were encountered in accessing, what Liberty believed to be necessary information, in order to complete the thorough and comprehensive audit it had been retained to perform. Under questioning by the CA, John Antonuk described the problem as follows:

243. Q. Just going back a moment to the discussion that you and I had about the importance and how critical it was to have transparency. Can you make any comment as to the need for the company to display the correct approach to that or a cooperative approach?
- A. (Antonuk) I have an answer and I want to organize my thoughts a little bit, because that's a broad and, I think, a very important question.
244. Q. And it's an important question to us.

- A. (Antonuk) Our experience in rate cases and [in] the affiliate audit with the company's willingness to provide information has been not a good one. In our experience it has, in fact, been probably at the poorest level of cooperation with what we have found in the past. We continue to have concerns about whether that cooperation level will rise to the level we think is necessary. We are encouraged by the fact that this settlement -- and I think it's the strongest aspect of the settlement -- is that it provides what I think is a foundation for testing whether that cooperation level is going to improve in ways that are tangible. And by "tangible" I mean the establishment of a course of dealing between the company and stakeholders and the creation of documents during 2008 that will do two things; allow the Board to decide before January 1, 2009 whether that level of cooperation has been shown, and (b) to establish the roster and the contents of specific documents, specific forecasting information, that will allow us down the road, namely 2009 and beyond, to test whether, in fact, that level of cooperation is continuing. I think I said to you a number of times in the stakeholder meetings we were kind of in the "show me" mode with respect to the company's cooperation and responsiveness. I think now is the time for them to show that through 2008 if, in fact, the Commission -- or the Board decides to accept the settlement.
245. Q. Can the Board not give a commitment for the FAM before being shown?  
 A. (Antonuk) For my own part I can answer that I would like to see an opportunity before the FAM begins to affect customer rates for that confirmation of appropriate level of transparency and cooperation to exist, and I think that confirmation should come after a demonstration of what is going to happen and does happen in 2008 and what doesn't happen, although obviously I'm in the camp of hoping that it does happen.

[Transcript, November 6, 2007, pp. 106-108]

[59] NSPI now indicates it is committed to transparency and timely disclosure.

[2007 NSUARB 174, p. 22-23]

### 3.0 LIBERTY AUDIT REPORT

[21] As noted above, Liberty filed its Report with the Board on May 22, 2007, and provided an overview of the activities it conducted to complete the report:

Liberty then began its work with the issuance of data and interview requests in late October 2006. During the course of this audit, Liberty asked more than 275 formal data requests, and conducted over 30 interviews, both in person and by telephone. The audit team also conducted a number of on-site work sessions designed to examine detailed transaction documentation, monitor the operation of key information systems, and observe job locations, affiliate physical separation, and work activities.

NSPI provided timely and complete responses to Liberty's requests for interviews,

documents, and site access, and worked diligently to clarify and supplement responses where necessary. Audits of this type also require substantial documentation from affiliates. The other Emera companies that had significant relationships or transactions with NSPI declined initially to respond to numerous requests. This stance did not prevent Liberty from gaining any information directly concerning transactions between NSPI and affiliates. In all cases, the audit team received timely and complete information on all aspects of such transactions. The NSPI affiliate objections to Liberty's data requests were confined to questions seeking to:

- Verify that there were no disadvantageous indirect relationships between transactions made by affiliates with NSPI, as compared with similar transactions with other parties
- Establish NSPI transaction competitiveness in markets without transparent, public prices
- Determine whether NSPI had "ceded" appropriate utility cost mitigating opportunities to affiliates on a less than arm's-length basis.

The lack of responses from affiliates significantly delayed audit progress for several months, after which Emera decided to provide much of the information previously withheld. After that change of position, Liberty did find Emera ultimately responsive to all audit requests, with one principal exception, which this report addresses later.

[Liberty Report, p. 3]

[22] Liberty's report and recommendations focussed on six categories: controls, major affiliate transactions, transaction testing, financial relationships, financial impact on NSPI and structure and governance.

[23] Liberty's review of major affiliate transactions included transactions between NSPI and Emera Energy, NSPI and Emera Fuels, NSPI and Emera Utility Services ("EUS") (transformer, power lines and web-based customer usage services), NSPI and Bangor Hydro and NSPI and Strait Energy (steam sales).

[24] Liberty reviewed NSPI's transaction testing to determine whether or not the transactions secured necessary approvals and appropriate supporting documentation; the accuracy of the transactions; and whether fully allocated costs or fair market value of the transactions were accurately derived and supported.

[25] As noted in paragraph 8 of this decision, the three areas of significant concern in Liberty's Report were:

1. Energy related transactions, particularly gas transactions, between Emera Energy and NSPI;
2. NSPI's relationship with Cablecom;
3. NSPI's relationship with Emera Utility Services with respect to transformers.

[26] Further discussion of Liberty's concerns on these topics is set out in the Findings section of this decision.

[27] Under the category of financial relationships, Liberty reviewed the accounting and cash management systems; lines of credit; and financing agreements of Emera Inc. with its affiliates to confirm the adequacy of separation between NSPI and its affiliates. In general, Liberty concluded that Emera Inc. and NSPI operated in a sufficiently distinct manner and maintained separate cash management operations systems. However, Liberty noted that solicitation of credit facility syndicates for NSPI and Emera were linked and recommended that these activities be separated.

[28] In terms of the financial impact on NSPI from its affiliates, no concern was identified except with respect to Section 10.5 of the Emera Inc. and NSPI Credit Agreement. According to Liberty, this section needs clarification to ensure that NSPI assets cannot be encumbered by other parties, including Emera Inc., affiliates and lenders.

[29] Under the Structure and Governance portions of its audit, Liberty reviewed NSPI's organizational structure, including recent changes with particular reference to the Code. The Board notes that as of 2006, Emera has constituted a separate NSPI Board

of Directors. Liberty generally seems to be pleased with this new arrangement, but is of the view that NSPI needs to take a stronger utility-focused view of affiliate transactions.

[30] A summary of Liberty's conclusions and recommendations are attached as Appendix 'A' to this decision. A number of the recommendations were accepted by NSPI and so are not detailed further in the decision. Other recommendations of Liberty including:

9. Recognize that NSPI lost about C\$250,000 in value as a result of its uncompensated concessions in the sale of Emera Fuels.
10. Defer a decision about extending [redacted]<sup>1</sup> until NSPI has completed a sound analysis of internal costs and demonstrated that a fully competitive solicitation can occur.
11. Execute an orderly transition of the rebuilt transformer business from EUS to NSPI.
12. Require separate, affirmative NSUARB approval for any future transfers of utility assets, intellectual property, or operations with significant commercial potential.

are discussed in the findings section.

#### **4.0 NSPI - RESPONSE TO THE AUDIT REPORT**

[31] NSPI provided its response to the Report and stated that, in its view, the affiliate transactions which occurred were in compliance with the Code:

The Company suggests that the appropriate measure for assessing affiliate transactions must be the Code of Conduct. It is this document that has been approved by the Board to provide direction and guidance in respect of affiliate transactions. The Code of Conduct requires a demonstrated benefit to customers for each affiliate transaction. Affiliate transactions should be encouraged where such transactions benefit customers and the utility.

NSPI respectfully suggests that the Liberty consultants, in some instances, assessed the

---

<sup>1</sup> The Board is at a loss to understand why NSPI considers the redacted information to be confidential.

Company's performance based on a standard not previously established by the Board in the Code of Conduct. Importantly the Liberty standard was not specifically described in the report. Rather, Liberty appears to prefer to avoid affiliate transactions wherever possible. An alleged failure to meet a previously unmentioned, new standard is an unreasonable conclusion, whether in a hindsight review or otherwise. NSPI suggests the Board should refrain from adopting the new Liberty standard for affiliate transactions.

[NSPI Submission, pp. 2-3]

[32] NSPI further noted that:

The key concern raised by Liberty relates to the disclosure of certain third-party confidential business information by an affiliate of NSPI to Liberty. Much has been previously said about this matter during the FAM proceeding. NSPI's Code of Conduct, does not and cannot compel information disclosure by affiliates of information to a Board consultant about transactions between the affiliate and other counterparties.

As the Board notes, the question of disclosure has been resolved by the FAM process. In particular the Company has confirmed to the Board that, under a FAM, the Company will transact with affiliates in gas or energy in accordance with the conditions as outlined in the November 2, 2007 letter, filed by Board Counsel as Exhibit –47 in the FAM proceeding. As a result and during the hearing, Board Counsel said the question of disclosure of information in audits has "finally been resolved". Mr. Antonuk agreed that the issues have been finally resolved for the purposes of the FAM.

...

NSPI suggests that concerns relating to the competitive nature of the Company's natural gas solicitations have also been resolved. The Board has confirmed that NSPI has an adequate and appropriate fuel procurement policy. In its testimony during the FAM hearing, Liberty described the most recent gas solicitation as "clearly the best" they have seen since they started examining them (November 6, 2007, at page 123, lines 20-22). The Liberty panel also testified that "participation was robust" (page 124, line 17), "the affiliate offered the best prices" (page 124, line 18), they are "pleased that the company is continuing its outreach efforts" (page 124, line 19), and the "results appeared to be better" (page 167, line 25). Finally, NSPI's natural gas solicitations in future, to the extent they occur, will be part of the regular FAM reporting and review.

The Company suggests that the Board can confirm that concerns about affiliate transactions in relation to energy, which constitute the vast majority of transactions from a financial perspective, are now resolved.

[NSPI Submission, pp. 3-4]

[33] NSPI's response to Liberty's comments on the process it followed when it retained Cablecom to carry out powerline work was:

Through 2002 to 2007 NSPI engaged EUS (formerly known as Cablecom) to provide linework services. Liberty examined the NSPI/EUS lineworker relationship and related transactions which occurred over the period 2005 and 2006. Liberty concluded that the

Company did not support its decisions with a competitive procurement and dropped consideration of a new option in 2005. The consultant recommended that NSPI defer a decision about future PLT work until it completed an analysis of internal costs and demonstrated that a fully competitive solicitation could occur.

...

#### 2002 Engagement of Cablecom

Contracting with Cablecom in 2002 was an initial step in the development of NSPI's Flexible Workforce Model. The model employs external contractor resources to meet NSPI work peaks. The model, and the expanded role for Cablecom during this period, were based on NSPI work requirements consistent with terms established by NSPI. NSPI did not undertake a competitive process during this development period.

[NSPI Submission, p. 6]

[34] NSPI also disagreed with Liberty's conclusions regarding its decision to contract out power line technician ("PLT") work in 2005:

#### 2005 PLT Option

NSPI disagrees with Liberty's conclusion that a new option for PLT work in 2005 was inappropriately excluded from consideration by NSPI. The company referenced was a large American contractor. Discussions with this company were pursued by NSPI after being suggested by an affiliate of the linework contractor.

Pursuit of this option was discontinued once the vendor concluded there was insufficient work in this region to justify the mobilization of a work force. This was discussed with Liberty during the audit and has been subsequently affirmed through that vendor's election not to participate in either of the two market solicitations conducted by NSPI in 2007.

#### Economics of Extending Affiliate Relationship

Liberty's conclusion that extending the engagement of the affiliate for an extended period is not "demonstrably economic" fails to reflect the broader strategy objective behind the development of the Flexible Workforce Model. The objective is to cost-effectively manage PLT resources throughout the year through the deployment of full-time NSPI employees to meet NSPI base service requirements and contractor resources to meet work peaks. This serves to minimize fixed costs and aligns variable costs with actual work flows.

The Liberty conclusion appears to be based on the comparison of the cost of a NSPI powerline technician to the cost of a contract employee on a per hour basis. This analysis ignores the overall cost savings which are realized through "as-required" deployment of the contract worker versus the full-time NSPI employee and the operating flexibility which is created as NSPI is able to ramp-up and ramp-down to meet changing work volumes.

...

The work force plan assumes a substantial and continued role for contract PLTs to meet NSPI linework requirements. This is necessary to enable the Company to complete its linework program. The Board has considered the work force plan and has directed NSPI to report annually to the Board on its execution.

...

Liberty recommends deferring a decision regarding the continued engagement of the affiliate until "NSPI has completed a sound analysis of internal costs and demonstrates that a fully competitive solicitation can occur".

As discussed in the foregoing, NSPI's priority regarding PLT numbers is to ensure that its Base PLT complement is met. This represents a substantial challenge at a time when qualified powerline technicians are in high demand within and outside our region and as an aging work force within this discipline approaches retirement.

NSPI plans to continue to aggressively pursue the addition of PLT apprentices. The Company currently has 44 powerline technician apprentices within the workforce and anticipates increasing this number to 60-70 by 2009.

Once implementation of this plan is complete, NSPI will be in a better position to undertake a meaningful analysis of its long-term PLT requirements. The analysis will revisit the utility's base customer requirements, including any planned changes to the capital and operating programs in the coming years. Board staff will be consulted as part of this analysis.

In the interim, NSPI has undertaken two formal market solicitations concerning the acquisition of PLT contract resources. The competitive solicitations have been managed by NSPI's Procurement department consistent with accepted procurement practices.

...

The outcome of the competitive market solicitations was that for 2007, transmission work was awarded to a non-affiliate. The distribution work for 2007 was awarded to Emera Utility Services. For the 2008-2010 solicitation, the transmission and distribution work has been awarded to Emera Utility Services. This competitive solicitation demonstrates value for customers.

The 2007 engagement of EUS will be audited for Code of Conduct compliance by NSPI's external auditor.

[NSPI Submission, pp. 6-8]

[35] NSPI's response to Liberty's recommendation on affiliate activity regarding transformer rebuild by EUS was:

The business opportunity was developed by the affiliate in collaboration with a third-party. Resources in support of this venture were provided in large-part by the third-party, not NSPI, as suggested by Liberty.

The services undertaken by EUS reduced NSPI's cost and risk associated with the management of new and used transformers. Benefits delivered by this service include the following:

- Lower cost transformers.
- Central coordination of transformer removal.
- Improved security of supply.
- Improved environmental performance.

...

The Liberty audit presents a high-level analysis in order to estimate the value of this business to the affiliate and suggests the net earnings associated with this business represent a "net loss" to NSPI. This is factually incorrect as it ignores the assets invested in by the affiliate, and ignores the risk assumed by the affiliate in undertaking this investment and managing the transformer rebuild operation.

Were NSPI, as suggested by Liberty, to assume this operation, the cost of financing and maintaining the venture would be borne by NSPI customers, not the affiliate. The cost differential to NSPI customers would likely result in increased cost.

[NSPI Submission, pp. 9-10]

## 5.0 LIBERTY - SUPPLEMENTARY REPORT

[36] Liberty provided a supplementary report on February 28, 2008, and took issue with NSPI's interpretation of the Code as set out in NSPI's response to the Report, stating:

Page 2 of NSPI's response to the Audit identifies the Code of Conduct ("the Code") as the appropriate measure for assessing affiliate transactions. NSPI's response refers frequently to the Code, and particularly to the requirement that affiliate transactions provide a demonstrated benefit to customers. Liberty believes that NSPI has applied an unduly weak standard for determining what provides a benefit to the utility. Assume, for example, that NSPI has itself provided a service it needs for \$10 million and that an affiliate is willing to provide it for \$9 million. Purchasing the service from the affiliate can be claimed to produce a demonstrated customer benefit of \$1 million even if, with modest additional effort, the service could be obtained from a third party (or by NSPI itself through revisions to its past method of providing the service) for \$8 million. In Liberty's view what should be required is making the effort to get the service for \$8 million.

The difference between Liberty's and the company's views about what demonstrating benefit to NSPI entails is particularly well highlighted by two points made in NSPI's response to the Audit:

- Liberty called on NSPI to agree that it will only enter into an affiliate transaction if that is the best option for the utility and its customers. NSPI's response was that this standard is not supported by the Code (see the discussion of Recommendation #1 on Structure and Governance, provided on page 15 of NSPI's response).
- Competitive solicitation is a common way of optimizing procurements. Liberty called on NSPI to conduct such solicitations where market alternatives exist before entering into an affiliate transaction. NSPI responded that the Code meets this recommendation (see the discussion of Recommendation #3 on page 13 of NSPI's response).

Liberty believes that these points make it clear that NSPI does not accept the responsibility to undertake efforts that would provide reasonable assurances that affiliate transactions represent the best choice from the perspective of NSPI and its customers. Liberty, in contrast, views the requirement to make such efforts as fully consistent with the Code, and as required to meet the burden that any utility has with respect to costs that it seeks to include in its rates for utility service.

[Liberty Supplementary Report, pp. 1-2]

[37] **Liberty made the following recommendations:**

... Liberty therefore recommends that the UARB expressly state that the customer benefit standard in the Code requires that NSPI only enter or continue with an affiliate transaction if that is the best option for NSPI and its customers, after considering available third-party and utility provided options. Where market alternatives exist, a competitive solicitation should be required as part of the case that an affiliate transaction is the best option. Where no such alternatives exist, NSPI should provide a well-developed and supported business case that compares any selected affiliate provided option with the full range of feasible options.

Liberty further recommends that NSPI be required to secure prior UARB approval for the creation or extension of significant affiliate transactions and relationships. This approval should begin with an NSPI filing that describes the transaction, indicates the associated dollar value, and provides evidence that the transaction meets the UARB-endorsed customer benefit standard...

[Liberty Supplementary Report, p. 2]

## **6.0 SUBMISSIONS OF OTHER PARTIES**

### **6.1 CA**

[38] **The CA's written submission stated:**

But of more fundamental and over-arching concern is the question of the criteria by which affiliate transactions are to be evaluated, both from the perspective of NSPI making decisions as to how to proceed and the criteria by which transactions that do occur are to be reviewed for the purposes of determining if they were prudent and appropriate.

In the information filed, including responses to IR requests, NSPI takes the position that the existing Code of Conduct adequately enunciates the criteria. The standard is essentially whether the utility and its ratepayers have derived benefit from the transaction. Such a criteria would be satisfied by a transaction which gave some residual benefit to ratepayers, but also provided a non-arms' length benefit to the affiliate. Liberty Consulting takes the position that the standard for affiliate transactions should be whether the transaction is the best reasonably possible from the perspective of the utility and its ratepayers. Liberty, in their submission of February 28, 2008, requests that the Code of Conduct be interpreted consistent with that standard.

Liberty proposes a Board approval process for significant affiliate transactions. NSPI again refers to the Code as adequately dealing with the matter.

[Consumer Advocate Submission, p. 1]

[39] The CA also recommended that an oral hearing be held to clarify the interpretation of the Code as well as other issues.

## 6.2 MEUNSC

[40] MEUNSC, in its submission, argued that affiliate transactions “are problematic at best and that an outright prohibition is the best and simplest course”.<sup>2</sup> However, it also stated that should these transactions be permitted to continue, it agreed that the standards of review recommended by Liberty should be adopted by the Board as the test to be applied when auditing transactions between NSPI and its affiliates.

## 6.3 NSDOE

[41] The NSDOE, in its submission, stated that:

... the Consultant notes that NSPI in its response to the affiliate audit report identifies the Code of Conduct (the “Code”) as the “appropriate measure for assessing affiliate transactions”, with the standard for affiliate transactions being “a demonstrated benefit to

---

<sup>2</sup> MEUNSC Submission, p. 1

customers for each affiliate transaction.” The Code provides that “NSPI’s management will conduct the company’s transactions with affiliates in such a way that its utility customers benefit from such transactions. The Consultant submits that NSPI has applied an “unduly weak standard for determining what provides a benefit to the utility” , and advocates an interpretation of the ‘customer benefit standard’ which requires NSPI to only enter into or continue with an affiliate transaction if that is the “best option for the Utility and its customers.”

NSDOE supports the view of the Consultant in relation to the proper interpretation which should be given to the “benefit to customer” standard for affiliate transactions under the Code of Conduct.

NSDOE does not endorse NSPI’s interpretation of the Code of Conduct, as set out in its submissions, that affiliate transactions be measured on the basis of some demonstrated benefit to customers.

NSDOE supports the Consultant’s recommendations as being essential clarifications of the customer benefit standard in the Code of Conduct, and consistent with providing optimal or maximum benefits to customers.

[NSDOE submission, pp. 1-2]

#### 6.4 NPB

[42] NPB, in its submission, set out what it believed to be the main issues for consideration by the Board:

- a) Clarify ss. 1.1, 2.1, and 6.11 of the NSPI Code of Conduct relating to customer benefits from transactions.
- b) More thorough year-end review of Code of Conduct compliance filing.
- c) Appointment of auditors who are familiar with the electrical utility operations.
- d) Monitor NSPI’s performance regarding fuel related affiliate transactions during the FAM process.

[NPB Submission, p. 2]

[43] NPB disagreed with NSPI's position that revisions to the Code are not required and recommended that:

NPB submits that the Board should clarify the Code of Conduct, consistent with Liberty’s recommendation, so that affiliate transactions can only occur where the transaction is demonstrably the best available option. This standard would not require NSPI to eliminate all other possible options, as NSPI suggests. Rather, it would require NSPI to undertake a proper examination and quantification of the costs/risks and benefits of the available options (including NSPI undertaking an activity itself) in order to ensure that the affiliate transaction

provides the greatest benefit to customers than would otherwise be available.

This standard would still permit NSPI to enter into affiliate transactions, but only where the financial benefit to customers was obtained, through either: i) a transparent, competitive solicitation process in which the affiliate provides the bid with the greatest value, or ii) based on a transparent, structured and documented cost-benefit analysis. Obviously those activities which lend themselves to competitive solicitation should be dealt with as such. NPB is concerned that, absent the requirement that the benefit referred to be the demonstrably best available, NSPI often relies simply on generic references to the risks without necessarily quantifying whether those risks are, in fact, worth taking from a cost-benefit perspective.

NPB believes the intent of the Code of Conduct was to require NSPI to perform such analyses of available options to ensure the benefit achieved in affiliate transactions was, in fact, the best available for NSPI's customers. Liberty's audit appears to identify a trend that, in a number of varied circumstances, NSPI has relied on indefinite references to "benefits" to justify affiliate transactions, without engaging in more detailed examinations or strategic thinking to ensure that the most desirable option was selected...

[NPB Submission, pp. 5-6]

[44] NPB also questioned the usefulness of the annual Affiliate Audit Report process currently required under the Code. It noted that it is prepared by an accounting firm retained by NSPI and submitted to the Board, at which time it is reviewed by another accounting firm appointed by the Board. NPB stated that:

This statement offers NPB little assurance that annual audits performed by an accounting-type firm such as Grant Thornton have provided (or can provide) the Board with sufficient evidence to conclude that NSPI is compliant with its Code of Conduct. NPB submits that the annual reporting requirement of section 7.2 of the Code of Conduct only has value if the auditor has appropriate documentation to assess the transactions and is also familiar with the reasonableness of NSPI's assumptions as to the benefits an affiliate transaction provides. Such annual audits need not necessarily be to the level of detail as the more detailed, periodic audits of the type recently performed by Liberty, however, NPB believes it is important that the entity undertaking these audits have the necessary expertise to properly assess the benefit provided by the affiliate transaction that NSPI has identified.

**Therefore, NPB submits that the Board should consider nominating an auditor with particular experience in electric utility transactions to conduct NSPI's annual Code of Conduct compliance audit and that the annual auditors' report should be addressed directly to the Board and made available to stakeholders who have signed the appropriate confidential undertakings as part of the FAM process.**

[NPB Submission, p. 7, emphasis added]

[45] NPB disagreed with NSPI's view that concerns about energy-related affiliate transactions have been resolved as part of the review process provisions in the FAM agreement, noting that:

In NPB IR-3(a), NPB asked NSPI to commit to making the affiliate information referred to in NSPI's letter to the Board of November 2, 2007, available to intervenors in the FAM process who have signed the appropriate confidential undertaking. NSPI's request was inconclusive on this point. As such, NPB requests that the Board order that such intervenors will also have the right to access this information under similar conditions. Full and timely disclosure going forward is critical to the successful implementation of the FAM. This is not an issue that should be considered "resolved" by the Board. Rather, it is an issue that must be constantly assessed, particularly in the development stages of the FAM.

[NPB Submission, p. 8]

[46] NPB concluded by stating that these issues need to be dealt with as NSPI affiliate transactions are likely to continue, citing a recent Memorandum of Understanding between NSPI, Emera and Newfoundland and Labrador Hydro and Emera's equity stake in OpenHydro Group Limited as an example of this activity.

## **7.0 NSPI - REBUTTAL**

[47] NSPI, in its rebuttal, responded to the issues raised by Liberty and the parties with respect to the Code, including the requirement to demonstrate a benefit to customers when engaging in affiliate transactions, as well as the suggestion that prior approval of affiliate transactions should be implemented by the Board. NSPI argued that these measures are unnecessary as it correctly interpreted the Code; complied with it when dealing with its affiliates; and that NSPI customers have benefited from these transactions.

[48] NSPI also noted its concern that the proposed standard of review is being applied on an 'after the fact' basis. It submitted that if the standard of review suggested

by Liberty and the participants is to be applied to future transactions, NSPI requires direction as to how such a test can be met as, in its view, the test "... seeks proof of the unprovable".<sup>3</sup>

[49] However, if the Board determines that revisions to the Code are necessary, NSPI suggested the following addition which it believes is consistent with Liberty's recommendation:

2.4 The Company can demonstrate that an affiliate transaction benefits customers by using competitive solicitation processes where market alternatives exist, and are reasonably available at the time the decision is made. The utility will select the best option in comparison with other reasonably available options at the time of the decision, including the utility providing the service itself.

[NSPI Rebuttal, p. 3]

[50] NSPI also objected to the recommendation that prior approval of the Board be required for affiliate transactions, citing potential problems due to the time sensitivity of a number of these transactions and proposed the following provision instead:

As an alternative to Liberty's suggestion, NSPI proposes that for future non-energy affiliate contracts that exceed \$500,000 in value or 36 months in duration the Company will prepare a Record of Approval document, similar in form to significant fuel transactions. This ROA will include background analyses, competitive solicitation documentation, financial support, and other relevant information. The ROA will be available to the Board for subsequent affiliate audit review. The Company notes that the current Code of Conduct requires such transactions to be reported annually to the Board, and the Board can request these details at any time from the Company.

[NSPI Rebuttal, p.3]

---

<sup>3</sup> Rebuttal, p.2

## 8.0 FINDINGS

### 8.1 Code of Conduct

[51] As noted earlier in this decision, in its review of the wording of the Code Liberty concluded that the standard used to test affiliate transactions, in order to ensure that ratepayers derive a benefit from them, requires clarification and revision.

[52] To this end, Liberty made the following recommendation:

... Liberty therefore recommends that the UARB expressly state that the customer benefit standard in the Code requires that NSPI only enter or continue with an affiliate transaction if that is the best option for NSPI and its customers, after considering available third-party and utility provided options. Where market alternatives exist, a competitive solicitation should be required as part of the case that an affiliate transaction is the best option. Where no such alternatives exist, NSPI should provide a well-developed and supported business case that compares any selected affiliate provided option with the full range of feasible options.

[Liberty Supplemental Report, pp. 2-3]

[53] The CA, NSDOE and MUENSC agreed with Liberty's conclusions that NSPI has applied a very weak standard when determining the benefits realized by ratepayers from affiliate transactions and that clarification is required to satisfactorily address this issue. As noted earlier, while MEUNSC indicated a preference for prohibition of affiliate transactions, all of the participants support the standard of review recommended by Liberty as set out earlier in this decision.

[54] NPB elaborated on its support for Liberty's proposed standard noting that:

The requirement that customers "benefit" from transactions now appears in various sections of the Code of Conduct stated as follows:

- 1.1 The primary purpose of this Code of Conduct is to ensure that transactions between Nova Scotia Power Inc. (NSPI) and its affiliates demonstrate a benefit to the customers of NSPI.
- 2.1 NSPI's management will conduct the company's transactions with

affiliates in such a way that its utility customers benefit from such transactions.

- 6.11 Before an activity is transferred from NSPI to an affiliate or from an affiliate to NSPI, NSPI must ensure there is a demonstrated benefit to its customers.

Importantly, the Code of Conduct provides no further details as to how NSPI must demonstrate the benefit of an affiliate transaction to customers. In response to NPB IR-2(b), which asks NSPI to state the obligations of the current Code to perform comparative analysis of options before entering into affiliate transactions, NSPI simply states what NSPI claims it currently does (i.e., performs comparative analysis through competitive bids, benchmarking or consideration of market data and conditions) rather than refer to specific obligations. Similarly, in response to MEUNSC IR-2(c), NSPI lists ways to obtain and demonstrate a benefit, including a competitive solicitation process, benchmarking, or market conditions.

NSPI cites its Code of Conduct Guideline 13 in response to NSDOE IR-1 as its explanation of how NSPI assesses the benefit to customers of affiliate transactions. Guideline 13 states (emphasis added):

Affiliate transactions, per the UARB, are to provide a benefit to NSPI customers. A benefit may be either quantitative, qualitative, or both. Benefit will depend on the nature of the transaction.

An example of a quantitative benefit could be a better price that NSPI would receive in comparison to competitive alternatives.

A benefit may also be qualitative. Examples of qualitative benefits include considerations such as flexibility in the ability to provide a good or service.

With respect, NPB submits that this summary of potential “benefits” to consumers lacks any concrete meaning and remains too open to subjective interpretation. Furthermore, as Liberty states at page 2 of its audit, “The Code has undergone NSUARB approval, but the accompanying Code of Conduct Guidelines (Guidelines) have not. NSPI has filed these guidelines, but they are not subject to NSUARB approval.”

[NPB Submission, pp. 3-4]

[55] The Board agrees with Liberty and the parties that the Code must be revised and a clear and transparent review standard must be developed which would be used in audits when determining whether an affiliate transaction is of benefit to ratepayers. This test must provide an acceptable record as to the basis of NSPI's decision to engage in an affiliate transaction. In other words, a transaction can only occur if it is demonstrably the

best available option for NSPI and that all other alternatives for the provision of goods and services, including third party and in-house options, are carefully and adequately evaluated.

[56] Accordingly, the Board directs that revisions be made to the Code to ensure that customers receive demonstrably the best available option when NSPI engages in affiliate or third party transactions and that a clear and strict standard by which this benefit will be measured be established.

[57] In order to implement the Board's directive through revisions to the Code, the Board has determined that a consultative process is the best way to proceed. Accordingly, the Board orders that Board staff, in consultation with NSPI, interested parties and Liberty, review and make recommendations to the Board for specific revisions to the Code, including the development of a clear and acceptable standard for assessing the benefit to customers from affiliate transactions, no later than October 30, 2008. The Board directs that this process begin with an opportunity for submissions for suggested changes by all interested parties. The proposed revisions suggested by the parties will then be reviewed and considered for inclusion by Board staff when drafting a revised Code. This draft Code will be shared with all parties for their comments prior to the Board approving a final version of the revised Code. Board staff will provide parties with Directions on Procedure and a more detailed timeline on this process in the near future.

## 8.2 Annual Audit Report

[58] NPB, in its submission, raised the issue of the usefulness of the annual audit reports submitted to the Board under the Code, which are prepared by NSPI's auditors. As set out earlier in this decision, NPB recommends that the Board retain its own auditors to conduct this work and report directly to the Board. It also suggested that auditors retained by the Board to undertake such a review should "... have the necessary expertise in electric utility transactions to fully review and identify whether the 'benefit' test has been met".<sup>4</sup>

[59] The Board is in agreement with NBP's position in this regard. NSPI's auditors have provided annual audit reports to the Board, in compliance with s. 5.7.2 of the Code, starting with the year 2005. The Board retained another accounting firm to review some of these annual reports on its behalf. None of these reports identified the serious concerns raised by Liberty in its audit of affiliate transactions. While this fact does not diminish the quality of the work of these accounting firms from an accounting perspective, it does demonstrate the clear need to change the way audits are done and retain auditors who have both electric utility experience and financial expertise as Liberty and NPB have suggested.

[60] Accordingly, the Board directs that the annual audit reports required under the current Code be discontinued immediately. In future, the Board will appoint auditors who have the relevant and necessary experience to do a thorough and meaningful review

---

<sup>4</sup> NPB Written Submission, p. 7

of affiliate transactions. In addition, the timing and frequency of these audits will be determined by the Board. It should also be clearly understood that these audits may occur with limited notice to NSPI.

### **8.3 Energy Related Transactions**

[61] One of the areas of concern identified by Liberty in its audit was the sale of natural gas. Liberty found that Emera Energy, an affiliate of NSPI, does business with NSPI on a number of matters including the purchase, sale and transportation of natural gas; the purchase and sale of electricity; financial hedging; and IT services.<sup>5</sup> In any particular period, the value of these services could be both substantial and material based on the overall revenue requirements of NSPI. The sale of the natural gas by NSPI to Emera Energy represents the major portion of these services.

[62] At present, NSPI has a contract to purchase natural gas from an offshore producer. Depending upon the price of oil and natural gas, and to reduce its annual fuel costs, NSPI uses natural gas to produce electricity from certain generating stations with the remainder sold to markets. The amount of natural gas to be sold may vary significantly depending upon a number of factors. NSPI conducts solicitations for the sale of excess gas to outside parties.

[63] Liberty concluded that NSPI's solicitation for the sale of excess natural gas in 2006 was not competitive, favored the affiliate, and that NSPI did not receive the full

---

<sup>5</sup> Liberty Report, p. 16

value of the natural gas.<sup>6</sup>

[64] Liberty also noted that Emera Energy declined to provide information on the parties it was dealing with on sale of natural gas purchased from NSPI. Without this information, Liberty indicated that it was unable to assure itself that a transfer at an appropriate value from NSPI to its affiliate had taken place. Liberty expressed the view, based on its experience in other jurisdictions, that this information should have been provided.<sup>7</sup> As a result, Liberty recommended that all energy related transactions be prohibited between NSPI and its affiliates.

[65] NSPI defended its affiliate transactions, stating that all of them reflected the requirements of the Code and provided a benefit to NSPI and its customers<sup>8</sup> and noted a number of positive comments made by Liberty in its audit.

[66] NSPI also pointed out that Liberty's concern regarding the lack of disclosure and the corresponding difficulty in evaluating this transaction has now been resolved. NSPI has agreed, through correspondence with Board Counsel dated November 2, 2007 (see paragraph 19), that adequate disclosure of information regarding gas and other energy-related transactions with its affiliates will be provided in the future.

[67] While there have been significant issues raised with respect to energy-related transactions during the course of this process, the Board is of the opinion that the majority,

---

<sup>6</sup> Liberty Report, p. 35

<sup>7</sup> Liberty Report, p. 38

<sup>8</sup> NSPI Response, p. 2

if not all, of the concerns related to energy have now either been resolved or will be adequately addressed by the parties during the upcoming FAM evaluation process, the consultation process for revisions to the Code and the next Board audit of affiliate transactions. Should any of these concerns remain outstanding, the parties are free to request the Board's further consideration of same.

#### **8.4 Emera Fuels**

[68] Liberty also reviewed affiliate transactions between NSPI and Emera Fuels, a company which distributed heavy fuel oil (HFO) or Bunker C and light fuel oil, including home heating and diesel fuel, and which was, until September 2005, an NSPI affiliate. Emera Fuels obtained its HFO supplies from NSPI which purchases and uses HFO for use at its own generating plants. As part of this transaction, Emera Fuels paid NSPI a charge for purchasing and storing the fuel on its behalf and for its share of the use of operations and storage facilities, all of which were in addition to the cost of the actual fuel.

[69] On September 30, 2005, Emera Inc. sold Emera Fuels to Bluewave Energy Inc., a company owned by the former managers of the affiliate. In Liberty's view, the transfer of Emera Fuels to Bluewave Energy imposed a cost burden on NSPI, and consequently on ratepayers, since all proceeds from the sale flowed to the parent company, Emera Inc. Liberty estimated that this transaction resulted in a loss of approximately \$250,000 in value because Emera Fuels would no longer use NSPI's facilities and recommended that NSPI be compensated accordingly.

[70] In making a determination on this recommendation, the Board has considered Liberty's report in the context of past filings by NSPI. The annual audit statements filed with the Board over the last several years included reviews of transactions between NSPI and Emera Fuels. Concerns regarding these transactions (including the sale of Emera Fuels) were not raised by NSPI's auditor or by the Board's accounting firm in its review of NSPI's auditors' filings and, as a result, NSPI was not advised by the Board at the time that a problem existed or that the transaction was inappropriate. Given such circumstances, it seems unfair to now impose a retroactive compensation requirement. In terms of its responsibility under the Act to protect the public interest the Board is satisfied that by making this finding, no material impact on rates paid by NSPI customers will occur. In addition, it is the Board's view that the imposition of revisions to the Code, as well as the creation of strict standards and independent and short notice audits by fuel and utility experts which results from this decision, establishes a far more effective system of ensuring that affiliate transactions are appropriate and that the interests of customers will be properly protected.

## **8.5 Emera Utility Services**

### **8.5.1 Transformers**

[71] A transformer is a device used to change voltage levels of electricity. Customers need different voltage levels depending upon their uses. However, a utility transports electricity at a much higher voltage than customers need so as to reduce its

losses and costs. An appropriately sized transformer is situated at or near the customer's location to reduce voltage levels.

[72] In the past, NSPI conducted its own transformer rebuild operation. From 2000 to the present time it has contracted this work to EUS. According to Liberty's report, 95% of EUS's business is from NSPI. Liberty concluded that the work performed by EUS is, in fact, a core utility business which could be performed more cost effectively by NSPI's own resources. Liberty's recommendation is that since NSPI has and continues to lose a benefit of approximately \$400,000 per year from its arrangement with EUS, it should initiate an orderly transfer of rebuilding transformers from EUS back to NSPI.<sup>9</sup>

[73] NSPI, in its response, stated that its engagement of EUS services was based on the objective of achieving cost savings for its customers by lowering the cost of transformers; improving supply security and environmental performance; and centralizing the coordination of the transformer removal function.<sup>10</sup>

[74] NSPI also questioned Liberty's loss estimation stating that its analysis was 'high level' rather than detailed and did not consider the assets invested and risk assumed by the affiliate in providing this service. NSPI stated that if this work reverts to being done 'in house', it will have to assume the cost of financing and maintaining this venture, which will result in increased costs to its customers.<sup>11</sup> It also noted that in 2007, tenders were

---

<sup>9</sup> Liberty Report, p. 60

<sup>10</sup> NSPI Response, p. 9

<sup>11</sup> NSPI Response, p. 10

issued for the supply of new pole-top and pad mounted transformers for the years 2008-2010 with the expectation that it will enter into long term agreements for this service with two international companies and that an assessment of the value of the transformer rebuild service will be performed at that time.

[75] The Board has considered the evidence of both Liberty and NSPI in this regard and believes that a deferral of this analysis until 2010 or later is not appropriate. In view of the potential benefit to customers of a transfer of this work back to NSPI and the time which would be required to plan and implement such a transfer, the Board finds that the analysis referred to above should be carried out by NSPI and filed with the Board no later than February 1, 2009. Further, the Board wishes to make it clear that while it agrees an analysis is appropriate, no further action should be taken by NSPI with respect to decisions involving the out-sourcing of this work until the Board determines whether the transformer rebuild operation should revert back to NSPI from EUS.

### **8.5.2 Cablecom**

[76] Liberty reviewed in detail NSPI's relationship with EUS with respect to its 2002 decision to contract out work on the construction of powerlines to Cablecom, a division of EUS.<sup>12</sup> NSPI provides approximately [redacted] of Cablecom's overall business and the Board understands that, as a result of this transaction, a reduction of NSPI's in-house PLT staff has occurred. Liberty conducted a detailed review of comparisons done

---

<sup>12</sup> Liberty Report, p. 43

by NSPI on alternative third party suppliers of PLT services and found that NSPI had not provided supporting documentation to demonstrate that its selection of Cablecom in 2002 was done on an adequately competitive basis and that NSPI excluded consideration of new options for provision of this service in 2005. Liberty's view is that NSPI's subsequent decision in 2007 to expand and lengthen the period of Cablecom's provision of PLT work on distribution lines was not demonstrably economical. Liberty recommended that NSPI defer its decision to extend work to Cablecom until a full analysis of internal costs is completed and a fully supported competitive solicitation can occur.

[77] In its response to Liberty's report, NSPI disagreed with this conclusion and stated that the basis of Liberty's comparison of cost was not appropriate and ignored cost savings achieved by retaining outside services on an as-required basis.

[78] NSPI also noted that the issue of PLTs was investigated and reviewed in detail by the Board as part of its decision in the Power Outage review hearing [2005 NSUARB 86]. NSPI stated that it has complied with the directives flowing out of that decision relating to its future PLT requirements and workload, and the Board's directive to provide annual updates with respect to same.<sup>13</sup>

[79] With respect to the level of in-house PLT staffing issue, one of the directives issued by the Board as part of the above-noted hearing stated:

However, it is the Board's view that PLT staffing levels have a direct impact on the reliability of electricity service in the Province and, in particular, on NSPI's ability to restore service to customers as quickly as reasonably possible. As a result, the Board considers the adequacy

---

<sup>13</sup> NSPI Response, p. 7

of NSPI's PLT staffing level to be a critical element of NSPI's operation and one which warrants ongoing monitoring by the Board. In the Board's view, the current number of PLTs and apprentices as set out in the Sherrod Report should be considered by NSPI as a minimum acceptable staffing level on a go-forward basis. Depending on the results of the monitoring process, this issue may be revisited by the Board.

[Board Letter, April 12, 2007, p. 3]

[80] With regard to Liberty's recommendation to defer a decision on extending work to Cablecom, the Board believes that revisions to the Code to ensure that affiliate transactions only occur if they are in the best interests of NSPI and its customers, and the creation of a rigorous 'benefit' test for affiliate transactions referred to earlier, will address this issue. However, the Board wishes to make it clear that no modifications or extensions of any contractual arrangement currently in place with an affiliate should be undertaken before these measures are in place.

### **8.5.3 Web-based Affiliate Transactions**

[81] NSPI has used software named Utilismart-imitated systems which provides information to real time price rate customers to manage their usage.

[82] Liberty explained the development and use of the system as follows:

Since it began to use the systems, NSPI has in sequence:

- Owned a share in Utilismart
- Sold that interest to its affiliate
- Begun at that point to purchase services back from EUS the services that it had secured from Utilismart when NSPI had partially owned it
- Begun also at that point to provide certain meter and IT services needed by EUS to provide RTP/SEIS services to NSPI, and took over operation of the systems, while EUS still owned them
- Bought back the remaining system assets it had sold to EUS, but after the affiliate had disposed of many of them.

NSPI has been using RTP since December 2001, offering it through website access that allows customers to view projected hourly energy prices, and make decisions about load decreases in connection with NSPI's RTP tariff. NSPI administers communications,

compliance, and pricing regarding its Extra Large Industrial Interruptible Rate (ELIIR) rate and its recent replacement, ELI 2P-RTP, through another web-based application. SEIS comprises a group of web-based applications including Smart Energy Information Service (SEIS) and Energy Manager (EM). SEIS and EM allow subscribing customers to use a web browser to view their power consumption and costs graphically on line.

NSPI sold its interest in Utilismart to EUS as of March 31, 2003. The sale occurred a number of years after NSPI had successfully been using Utilismart's web-based customer demand and use monitoring systems. NSPI reports that the underlying assets had never received rate treatment by the NSUARB before this 2003 sale. Emera listed Utilismart as a subsidiary of EUS as of the end of 2003. EUS had a Utilismart voting power of one-third and the book value of its investment was [redacted]. EUS held its interest in Utilismart for just over a year, selling it, except for portions including those relevant to serving NSPI, as of June 9, 2004. Following that sale, EUS stopped supporting RTP/SEIS in 2005, leaving to NSPI the responsibility for operating expenses. EUS then transferred the remaining assets back to NSPI in 2006, while retaining the value of revenues paid by the other utility that had a firm contract with EUS for similar services.

Utilismart had operating systems and customers other than NSPI when the utility sold its interest in the venture in 2003. From the time of NSPI's sale and then the subsequent 2004 EUS sale to third-party interests, significant changes were under consideration in the Ontario electric utility regulatory regime and markets. Utilismart has become a significant participant in information systems important to the implementation of those changes. Meanwhile, in the Maritimes region, NSPI and two other utilities have continued to use the capabilities retained by EUS (and sold back to NSPI in 2006).

[Liberty Report, pp. 61-62]

[83] Liberty noted that during its review, NSPI provided background and financial analysis supporting the sale, purchase and operating agreements between NSPI and EUS. Liberty's analysis of the affiliate transactions with EUS resulted in a conclusion that the sale of NSPI's interest in Utilismart in 2003 did not give adequate emphasis to NSPI's interests and did not provide appropriate protection against cost increases to NSPI, and correspondingly, to its customers.

[84] To address this issue Liberty recommends the following actions be taken:

1. Require separate, affirmative NSUARB approval for any future transfers of utility assets, intellectual property, or operations with significant commercial potential. (Conclusion #1)
2. For any future ventures and any renewal of existing agreements, require that NSPI perform a structured examination of the benefits and detriments of direct utility participation before deciding to support affiliate participation. (Conclusions #1, 2, and 3)

3. Require that NSPI conduct actual, competitive solicitations before taking services from or transferring assets to an affiliate, where market alternatives are available. (Conclusion #4).

[Liberty Report, p.162]

[85] NSPI stated that, in its view, Recommendations 1 to 3 above are already incorporated in the Code. The Board reminds NSPI of its continuing obligations under s. 62 of the *Public Utilities Act* which requires prior Board approval of such agreements which, in the Board's view, addresses concerns raised by Liberty on this issue.

## 8.6 Financial Relations

[86] As part of its audit Liberty reviewed NSPI's financial relations with Emera Inc. and concluded that while generally operations of both companies are separate, in future separate and independent solicitation of financing facilities should occur. Liberty also noted that the credit agreement between NSPI and Emera Inc. should be amended to ensure that only NSPI can encumber its assets.

[87] NSPI agreed that currently Emera Inc. uses the Bank of Nova Scotia as its lead bank with commitments from Canadian Imperial Bank of Commerce, Royal Bank of Canada, Bank of Montreal and Toronto Dominion Bank. NSPI stated that it would have difficulty finding a separate financial facility syndicate, given that all major banks in Canada are connected to Emera Inc. As a result, NSPI has few, if any, banking alternatives for its use. Under these circumstances, the Board finds it is not practical or reasonable to implement this recommendation.

[88] The Board agrees with Liberty's second recommendation and notes that

NSPI has indicated it has no objection to modifying its credit agreement with Emera Inc. to ensure that only NSPI can encumber its assets.

### **8.7 Prior Board Approval**

[89] Liberty has recommended that the Board require NSPI to receive prior Board approval for all new significant affiliate transactions and relationships or extensions of same and has defined such a transaction as one which exceeds \$100,000 per year. It also noted that this requirement would not include gas sales, as these transactions, along with other fuel and energy transactions, will be subject to extensive review under the FAM process.

[90] NSPI argued that a prior approval rule could impede some transactions which may be time sensitive. As noted earlier, it suggested instead that, in such cases, it could prepare a 'record of approval' document for non-energy transactions in excess of \$500,000 and/or of 36 months duration or more. This 'record of approval' would be available for scrutiny during the affiliate audit review.

[91] The Board understands the rationale of the position of all parties with respect to the 'prior approval' issue. NSPI has a legitimate turn-around time concern with such an approval process and the parties have a valid concern that inappropriate affiliate transactions could continue to occur as a result of Liberty's audit findings. However, given the Board's decision to amend the Code to provide a clear and indisputable understanding of the 'benefit' provision for ratepayers; the implementation of a strict test to ensure that

compliance with the 'benefit' requirement is achieved; and the ordering of affiliate audits to be conducted by experienced electric utility and financial experts at any time without advance notice, the Board does not believe it is necessary to impose the pre-approval process for affiliate transactions at this time. Should a future audit indicate that the measures taken in this decision do not adequately ensure that compliance with the 'benefit' provision for ratepayers is demonstrable, this issue may be revisited.

## **8.8 Public Hearing**

[92] The CA noted that affiliate transactions are an important issue and, in his opinion, require a public hearing:

This is a significant issue that needs to be addressed and determined. It is the request of the Consumer Advocate that the Board structure a hearing to deal with the question of how the current Code of Conduct is to be interpreted, what is the criteria that should govern affiliate transactions and whether the Code requires amendment. Because of its importance, the matter needs a hearing rather than a "paper only" process.

[CA Submission, pp. 1-2]

[93] The Board has considered the CA's request and does not dispute the importance of the concerns regarding affiliate transactions which have been raised. However, as noted above, the Board has determined that unless the upcoming processes do not adequately address these issues, the Board is of the view that a public hearing is not warranted at this time.

**8.9 Miscellaneous**

[94] There are a number of recommendations made by Liberty which NSPI has either agreed to implement or has already done so. The Board orders that these changes be considered by staff as part of the process in determining what revisions should be made to the Code.

[95] Some of Liberty's recommendations and the energy-related comments of participants, in the Board's view, are more appropriately dealt with in the FAM process which is currently underway. Should concerns remain at the conclusion of the FAM process the Board can review them at that time.

[96] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 9th day of June, 2008.

---

Peter W. Gurnham, Chair

---

Margaret A.M. Shears, Vice-chair

---

Kulvinder S. Dhillon, Member

## APPENDIX 'A'

### LIBERTY'S RECOMMENDATIONS

#### **A. CONTROLS**

1. Extend the recent approval-sheet practice to all new, significant affiliate transactions.
2. Establish clear, comprehensive guidelines, requirements, and justifications addressing the need for purchases from and sales to affiliates to be conducted competitively and at arm's length.
3. Develop and provide affiliate transaction and relationship training on a planned, cyclical basis.
4. Rigorously monitor the creation and the execution of affiliate transactions as they occur, and provide for more in-depth, periodic testing of Code of Conduct compliance by outside reviewers.

#### **B. MAJOR AFFILIATE TRANSACTIONS**

5. Prohibit all energy transactions directly and indirectly between NSPI and its affiliates.
6. Perform a structured analysis of the value of swing swaps, as a condition of their continued use.
7. Subject individual energy-related financial transactions to robust, structured competition that is even-handed, well documented, and designed in fact and appearance to produce the best terms and conditions for NSPI.
8. Record the screen used when making NSPI sales or purchases of electricity from affiliates.
9. Recognize that NSPI lost about C\$250,000 in value as a result of its uncompensated concessions in the sale of Emera Fuels.
10. Defer a decision about extending [redacted] until NSPI has completed a sound analysis of internal costs and demonstrated that a fully competitive solicitation can occur.

11. Execute an orderly transition of the rebuilt transformer business from EUS to NSPI.
12. Require separate, affirmative NSUARB approval for any future transfers of utility assets, intellectual property, or operations with significant commercial potential.
13. For any future ventures and any renewal of existing agreements, require that NSPI perform a structured examination of the benefits and detriments of direct utility participation before deciding to support affiliate participation.
14. Require that NSPI conduct actual, competitive solicitations before taking services from or transferring assets to an affiliate, where market alternatives are available.
15. Include the present value of the other RTP/SEIS Maritimes utility customer's stream of revenues as an offset to NSPI's revenue requirements.
16. For any future ventures and any renewal of existing agreements, require that NSPI perform a structured examination of the benefits and detriments of direct utility participation before deciding to support affiliate participation.

### **C. TRANSACTION TESTING**

17. Change the allocation basis for Nucleus costs from numbers of users to numbers of transaction.
18. Execute formal lease amendments to address current affiliate space usage.
19. Include in the transaction support binders more detailed support for corporate services allocations.
20. Allocate yearly infrastructure operating base fees to each affiliate on the basis of each affiliate's percentage of total operating support charges.
21. Execute an IT SLA with each affiliate every year, retain a copy in the files, and improve IT documentation to assure that it records and substantiates IT charges sufficiently.
22. Execute an updated agreement with Cablecom for vehicle leases, establish and maintain updated price lists, document support for the determination of fully allocated costs, and assure and document that all transactions secure appropriate approval.

23. Verify compliance with the directive intended to assure consistency in charging a loader for inventory withdrawals and correct any future billing errors in this and other charges upon discovery.
24. Adopt and implement a consistent and fully documented policy and procedure for calculating and charging costs to affiliates for employee labour, and apply them consistently to all applicable transactions and to services provided both to and from NSPI.
25. Require documented pre-approval of all use of affiliate time, charge it at fully allocated costs, and provide adequate support for the charges.
26. Adopt and enforce strict requirements precluding the use of affiliates to serve NSPI in matters that relate to their commercial arrangements with the utility.

#### **D. FINANCIAL RELATIONSHIPS**

27. Separately and independently solicit Emera and NSPI financing facilities in the future.

#### **E. FINANCIAL IMPACTS ON NSPI**

28. Work with lenders to change Section 10.4 of the Emera and of the NSPI credit agreements.

#### **F. STRUCTURE AND GOVERNANCE**

29. Underscore a top-down commitment to the principle that NSPI will enter affiliate transactions and agreements only where that approach is demonstrably the best option for optimizing NSPI's utility-only goals and requirements.

## APPENDIX 'B'

### Schedule "A" to Board Order dated November 9, 2004

#### NOVA SCOTIA POWER INC. CODE OF CONDUCT Effective January 1, 2005

#### 1.0 PURPOSE

- 1.1 The primary purpose of this Code of Conduct is to ensure that transactions between Nova Scotia Power Inc. (NSPI) and its affiliates<sup>14</sup> demonstrate a benefit to the customers of NSPI.

#### 2.0 STATEMENT OF PRINCIPLES

- 2.1 NSPI's management will conduct the company's transactions with affiliates in such a way that its utility customers benefit from such transactions.
- 2.2 NSPI's customers will not otherwise bear the risks or share the rewards of an affiliate's activities.
- 2.3 Competition in markets where NSPI's affiliates are active will not be impaired by non-market behaviour by NSPI.

#### 3.0 CORPORATE STRUCTURE

##### Objectives

To separate regulated electric and other utility services<sup>15</sup> from affiliate activities.

##### Protocols

- 3.1 EMERA, the parent company of NSPI, will create and maintain a corporate organizational structure which ensures that regulated electric and other utility services are provided solely by NSPI and by no other affiliate.
- 3.2 NSPI 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).

---

<sup>14</sup> For the purpose of this Code of Conduct, the term "affiliate" shall be interpreted in accordance with Sections 2(2), 2(3), and 2(4) of the Nova Scotia Companies Act.

<sup>15</sup> Regulated electric and other utility services are those covered by the Public Utilities Act.

## **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 NSPI affiliates are expanding into other business activities.

### **Protocols**

- 4.1** NSPI will maintain a management team capable of delivering a superior level of performance.
- 4.2** NSPI will prepare and submit to the Board an annual report which summarizes utility performance. The report format, and contents thereof, shall be agreed upon in advance between NSPI and the Board.

## **5.0 UTILITY FINANCING**

### **Objectives**

To maintain a capital structure for NSPI which is in accordance with applicable Board decisions.

### **Protocols**

- 5.1** NSPI's capital structure will reflect the Board approved capital structure.
- 5.2** NSPI's capital structure will not be used to subsidize affiliate activities. Affiliate risks or losses will not be borne by NSPI's customers.
- 5.3** NSPI shall not, without the prior approval of the Board, provide loans to, guarantee the indebtedness of, or invest in securities of an affiliate.

## **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 NSPI subsidizing or being subsidized by the activities of affiliates.

## **Protocols**

- 6.1** NSPI will provide access to regulated utility services on a non-discriminatory basis and will not in respect of those utility services directly or indirectly state, imply or offer any preference or favoured treatment to NSPI's affiliates or persons purchasing affiliate goods and services.
- 6.2** The financial records of NSPI, as well as NSPI's information systems, will be kept separate from those of its affiliates.
- 6.3** NSPI will not provide confidential customer information to affiliates or other persons without prior customer consent.
- 6.4** NSPI will provide customer information to NSPI affiliates and non-affiliates in a non-discriminatory manner.
- 6.5** NSPI will charge Board approved rates for all regulated electric and other utility services provided to affiliates.
- 6.6** NSPI will charge and be charged a market rate of return for any assistance it provides to or receives from affiliates by way of a guarantee or loan.
- 6.7** NSPI will charge and be charged prices which reflect fair market value for all non-regulated utility goods and services provided to affiliates or purchased from affiliates, provided that in no case shall NSPI supply such goods and services at a loss.
- 6.8** Where prices based on market value cannot be established, NSPI will charge prices which reflect the utility's fully-allocated costs for the goods and services provided.
- 6.9** Where a capital asset is transferred from NSPI to an affiliate or from an affiliate to NSPI, that asset will be transferred at a price to be approved by the Board in advance.
- 6.10** The costs of corporate support services<sup>16</sup> will be fairly allocated between NSPI and its affiliates. The allocation factor employed will depend on the nature of the corporate support services.

---

<sup>16</sup> Corporate support services are those Management and Administrative services which are provided to affiliates by NSPI. Examples include Board of Directors' costs, Public and Regulatory Affairs, Finance and Administration, Corporate Services, Legal, Human Resources and Information Technology.

**6.11** Before an activity is transferred from NSPI to an affiliate or from an affiliate to NSPI, NSPI must ensure there is a demonstrated benefit to its customers.

## **7.0 ACCOUNTING COMPLIANCE**

### **Objectives**

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

### **Protocols**

**7.1** NSPI shall report annually to the Board the following information:

- (a) A detailed listing of all assets, services and products provided to and from NSPI 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.
- (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.

**7.2** NSPI shall submit an annual report to the Board by its external auditors, in a form satisfactory to the Board, which indicates whether the company is in compliance with the provisions of this Code of Conduct.

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

**7.4** In order to monitor compliance, the Board at any time may review the records of NSPI and, so far as is required for this sole purpose, the records of NSPI affiliates.

## **8.0 EMPLOYEE COMPLIANCE**

### **Objectives**

To ensure understanding of and compliance with this Code of Conduct.

## **Protocols**

8.1 NSPI will inform all its managers and employees directly involved in affiliate activities of their expected behaviour relative to the Code of Conduct and will undertake annual management reviews to ensure compliance.

### **9.0 GENERAL**

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

9.2 This Code of Conduct replaces the Interim Code of Conduct and shall become effective on January 1, 2005.