



Docket UE30402
Order UE13-01

IN THE MATTER of an
application by City of Summerside for a permit to
provide transmission services from its Ottawa
Street substation to Maritime Electric's Bedeque
switching station.

**BEFORE THE
COMMISSION**

on Monday, the 22nd day of April, 2013.

Maurice Rodgeron, Chair
Michael D. Campbell, Commissioner

Order

Compared and Certified a True Copy

(Sgd) *Allison MacEwen*

Director, Technical and Regulatory
Services

IN THE MATTER of an
 application by City of Summerside for a permit to
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Appearances & Witnesses

1. For City of Summerside

Counsel:

David Hooley

Krista MacKay

Witnesses:

Greg Gaudet, City of Summerside

Malcolm Millar, City of Summerside

Paula Zarnett, BDR Energy

Gardiner MacNeill, Coles Associates Ltd.

Blaine Irving

2. Interveners

For the Minister of Finance, Energy and Municipal Affairs, Government of Prince Edward Island

Counsel:

J. Gordon MacKay

Josh Egan

For Maritime Electric Company Limited

Counsel:

Spencer Campbell

Nicole McKenna

Witnesses:

John Gaudet, Maritime Electric Company Limited

Gary O’Rielly, Maritime Electric Company Limited

Ronald LeBlanc, Maritime Electric Company Limited

Jason Roberts, Maritime Electric Company Limited

John Kennific, Maritime Electric Company Limited

Nick Strum, Strum Engineering Associates Ltd.

3. Public Participants

None

4. For The Island Regulatory and Appeals Commission

Counsel:

Ryan P. MacDonald

Staff:

Allison MacEwen, Director, Technical & Regulatory Services

Mark Lanigan, Senior Analyst, Technical & Regulatory Services

Linda Allen, Recording Secretary

IN THE MATTER of an
application by City of Summerside for a permit to
provide transmission services from its Ottawa
Street substation to Maritime Electric's Bedeque
switching station.

Reasons for Order

1. Introduction

- [1] On November 7, 2008, the City of Summerside (“COS”) submitted an application (the “Application”) pursuant to Section 2.1(2) of the *Electric Power Act*, R.S.P.E.I. 1988, Cap. E-4 (the “Act”) seeking a permit from the Island Regulatory and Appeals Commission (the “Commission”) to construct a transmission line from its Ottawa Street substation to Maritime Electric Company Limited’s (“MECL”) Bedeque switching station.
- [2] The Commission believes it is helpful to review some of the background related to the Application.
- [3] In 2003 the Prince Edward Island Government (the “Province”), recognizing changes in approaches to transmission access in many jurisdictions, directed the Commission to provide a report on electric transmission policy and management and the potential implications for Prince Edward Island (“PEI”).
- [4] The Commission engaged the services of John Murphy, a consultant with expertise in this area, to prepare a report which researched the issues and provide recommendations (the “Murphy Report”).
- [5] The Murphy Report identified the evolving market-driven transmission system developments in the United States, the restructuring occurring within the US electricity supply industry, the desire by Canadian electricity generators to sell electricity into the United States market and the requirements imposed by the US regulator for market access.

- [6] In general, the United States Federal Energy and Regulatory Commission (“FERC”) rules require that transmission providers must provide equal access for all potential market participants. Domestic jurisdictions (ie. Canadian) seeking access to the US market must permit any other potential market participants equal access to their domestic market. This open, equal and non-discriminatory access must occur via the transmission system which connects market jurisdictions and participants. These rules of the market in the US became established by FERC Order 888.
- [7] During this same period of time, the technological advancements in the area of wind powered electrical generation, the growing demand for non-fossil fueled electrical generation, the opening of the US market to electrical suppliers from jurisdictions which met FERC Order 888 requirements and the apparent suitable wind resource on PEI were creating the possibility that economical electrical generation on PEI might be suitable for sale to other jurisdictions.
- [8] During 2003 New Brunswick, Nova Scotia and New England either had or were creating an open market for electricity transmission with FERC compliant transmission rules.
- [9] In order for PEI to take advantage of the growing demand for wind generated electricity, both domestically and for export, the Province, taking into consideration the Murphy Report outlining the transmission market developments in the US, directed the Commission to have a FERC compliant Open Access Transmission Tariff (“OATT”) established for PEI.
- [10] In 2006, at the direction of the Commission, MECL developed an Open Access Transmission Tariff which included a rate schedule applicable to all parties who received transmission services from MECL. The development of an OATT included a stakeholder process to receive input from potential users of the transmission system. MECL applied to the Commission for approval of the OATT tariff on November 30, 2006. The principles contained in the OATT tariff, filed with the Commission, were that the OATT tariff and related rules would provide open and non-discriminatory access for any potential users of the MECL transmission system. In general, MECL, COS, and any other potential electricity generator wanting to transmit electricity would have equal and non-discriminatory access to the capacity of the MECL transmission system. All users of the transmission system would comply with the same rules of access and pay the same fees for service once the OATT received Commission approval. It should be noted that MECL charges its customers the same OATT fee tariff as all other transmission customers such as COS.
- [11] The OATT advanced by MECL, which was consistent with the approach in many other jurisdictions, followed what is referred to as a postage stamp rate. For example, postal customers purchasing a postage stamp pay for

the delivery of the mail from Point A to Point B regardless of the distance the mail is required to travel. The same concept, as applied to the OATT tariff, means the transmission customer must pay the tariff regardless of the distance required for delivery of the scheduled electricity. The total costs of the transmission system are considered in setting the rates for each customer, and those rates are charged on a MW basis for the energy transmitted. Again, the distance the electricity is transmitted is not a factor in the OATT fee. Therefore, as the total transmission costs are socialized to all users, a customer in Souris pays the same amount for transmission services as a customer in Charlottetown.

- [12] During this Application, the COS expressed concern about this approach to the creation of the OATT tariff. The Commission views the methodology used for the creation of the OATT tariff as a separate matter from the Application currently before it.
- [13] As the OATT process developed, the COS expressed concerns about the application of the OATT to the services it receives from MECL, and subsequently advanced the position that it should be entitled to a “by-pass competitive rate” as opposed to the rates anticipated by the COS under an interim or finalized OATT. Stated succinctly, the COS is and was of the position that it can construct its own transmission line from MECL’s Bedeque switching station to COS’s substation located on Ottawa St. to transmit electric energy at a lower cost than what was proposed in the OATT tariff.
- [14] Consequently, the COS stated that the lower cost option of constructing and maintaining its own transmission line entitled the COS to a “by-pass competitive transmission rate” which should be incorporated into the OATT. MECL responded that it would be more expensive for the COS to build and maintain a separate transmission line and the OATT, as filed, was fair to all parties. In addition, MECL suggested that a “by-pass competitive rate or discounted rate” could not be considered until the specifics of the by-pass were determined and a cost analysis of transmission line construction and maintenance supported the COS position.
- [15] The Commission approved the OATT as filed on an interim basis, in Order UE08-03, and directed the parties to file evidence relating to any unresolved issues.
- [16] Since the OATT was approved on an interim basis, the COS has been paying a fee to MECL for the transmission of electrical energy purchased and used by COS. Prior to the approval of an interim OATT tariff, MECL and the COS had negotiated a price to be paid by the COS to MECL for transmission services.

- [17] Subsequently, the COS filed its Application in 2008 seeking a permit from the Commission to construct the proposed transmission line in order to reduce its cost of transmission by either utilizing its own transmission line or, alternatively, arguing for a discounted or by-pass competitive rate from MECL's interim OATT rate.
- [18] In its initial Application the COS states that transmission savings, associated with either the operation of its own transmission line or a by-pass competitive rate, would amount to \$60-\$67 annually per customer of the COS.

2. Background

- [19] In relation to the distribution and transmission of electrical energy in Prince Edward Island, there are two (2) 138kV, submarine electric cables under the Northumberland Strait, with a capacity of 100MW each. These cables connect the transmission and distribution systems of MECL to those of NB Power. Currently, MECL transmits and distributes electrical energy to all areas of Prince Edward Island except those areas served by the COS. The COS provides electrical energy to customers who reside within the municipal boundaries of the City of Summerside and to a small pocket of customers who reside outside the municipal boundaries. In addition, and as a result of amalgamation, there is a group of customers who reside within the municipal boundaries of the City of Summerside who receive electrical energy from MECL.
- [20] Currently, the COS purchases its energy from NB Power and the West Cape Wind Farm. The COS also owns and maintains a 12 MW wind farm and has its own internal combustion generation with a capacity of 12.5 MW. In relation to the energy purchased from NB Power and the West Cape Wind Farm, along with any excess wind energy that it exports, the COS pays a transmission fee to MECL.
- [21] Except for the electrical energy purchased from the West Cape Wind Farm and the electrical energy generated from the COS owned wind farm, all of the electrical energy coming to and from the City of Summerside is transmitted over the two (2) 100 MW submarine cables, which come ashore in Richmond Cove, Prince Edward Island. The two submarine cables are connected to the MECL Bedeque substation/switching station through two (2) 138kV transmission lines which extend from the potheads at Richmond Cove to the Bedeque switching station.
- [22] During the hearing some witnesses referred to the Bedeque facility as a substation while others described it as a switching station. While switching station appears to be a more accurate definition of the functions provided in Bedeque, for purposes of the Commission's review of this Application,

the definition differences do not impact the decisions required. This order will use the terms interchangeably when referenced to the facility in Bedeque.

- [23] Electrical energy is then transmitted from the Bedeque switching station to MECL's substations located in Borden, West Royalty and Sherbrooke, Prince Edward Island via 138 kV transmission lines. A 69kV transmission line, commonly referred to as T-11, transmits electrical energy from Sherbrooke to COS's Ottawa St. substation.
- [24] As a matter of completeness, it should be noted that in Commission Order UE09-01, the Commission held that the two (2) submarine cables, together with the potheads and overhead transmission lines from Richmond Cove to the Bedeque switching station all constitute part of a federal undertaking, and as such, are not within the jurisdiction of the Commission. Specifically, the Commission held that its jurisdiction begins within the Bedeque switching station.
- [25] In the current Application, the COS is proposing to build its own transmission line from its Ottawa St. substation directly to MECL's Bedeque switching station, where the new 138 kV line would interconnect with the MECL transmission infrastructure within the Bedeque switching station. By doing so, the COS contends it would bypass the current MECL 138 kV transmission line from Bedeque to Sherbrooke, and the transmission line interconnection with its Ottawa St. substation and the Sherbrooke substation, more specifically identified as line T-11. It is the COS's position that constructing its own line would result in transmission tariff savings. The COS's position is that the proposed new interconnection at the Bedeque switching station would constitute an effective by-pass of the MECL transmission system. As a result of this by-pass, the COS contends that accepted utility rate making principles allow for the establishment of a discount rate to the by-passing customer as an alternative to actual construction of the proposed new transmission line. In addition to its initial Application, the COS is now also requesting that the Commission issue a permit allowing the COS to interconnect its proposed transmission line to MECL's Bedeque switching station.
- [26] Prior to the hearing of the Application, a preliminary matter arose in relation to the application of section 2.1(2) of the Act. Specifically, the Commission requested the position of COS, MECL and the Province as to whose interests the Commission could consider in applying the "*public convenience and necessity*" test as set out and contained in section 2.1(2) of the Act. After receiving submissions from the parties, the Commission issued Order UE10-02 on May 7, 2010, which was subsequently appealed to the Prince Edward Island Court of Appeal by MECL and cross-appealed by the COS.

- [27] On July 13, 2011, the Prince Edward Island Court of Appeal released its decision following the appeal and cross-appeal of UE10-02. At paragraphs 93 and 94, McQuaid J.A. held as follows:

[93] I would dismiss the appeal. The Commission in applying the public convenience and necessity test to the City's application must consider the interests of the customers of the City who will be served by the transmission line the City applies to construct. That is, those customers within the City's municipal boundaries as well as those 80 customers within the area outside its municipal boundaries. The Commission may also consider the test in the context of the interests of those customers of Maritime Electric within the municipal boundaries of the City as they are within the area which will be served by the transmission service the City applies to provide.

[94] I would allow the cross-appeal, in part. The City requires a permit to provide the transmission service which includes the construction of the transmission line and the interconnection with Maritime Electric's switching station in Bedeque Prince Edward Island. Subject to the Commission's determination as to the application of s. 8 of the Act to the City's application, the Commission does not have jurisdiction, in applying the public convenience and necessity test, to consider the interests of those customers of Maritime Electric who are beyond the municipal boundaries of the City and beyond the area where the city's 80 "outside customers" reside.

- [28] The Commission is therefore limited to considering the COS' "inside" and "outside" customers, as well as those MECL customers who reside within the municipal boundaries of the City of Summerside, when considering public convenience and necessity as per section 2.1(2) of the Act. As noted by Justice McQuaid, the Commission may be able to consider the interests of those MECL customers who reside beyond the municipal boundaries of the City of Summerside, depending on the application of section 8 of the Act.

- [29] Following a number of pre-hearing conferences among the parties, a public hearing was scheduled to consider the COS Application.

3. The Application

- [30] As previously noted, the COS has applied to the Commission, pursuant to section 2.1(2) of the Act, seeking an order for:

(a) a permit to allow for the construction of a 138 kV transmission line between the City of Summerside's Ottawa Street substation and Maritime Electric's Bedeque switching station; and

(b) a permit allowing the COS to connect to that portion of Maritime Electric's Bedeque switching station under Commission jurisdiction.

[31] The exact order being requested by the COS will be considered and discussed in more detail herein.

[32] Section 2.1(2) of the Act states:

"The Commission may, on application by any person, and following a hearing in respect thereof, issue a permit authorizing the holder to provide service in any area of the province if the Commission is satisfied that the present or future public convenience and necessity of the area requires or will require the service that the applicant proposes to provide. 2003,c.3.s3."

[33] Following the filing of the Application, an interrogatory process between COS, the Commission and Interveners (MECL and Province) and the determination of the preliminary issues referred to above, the parties to the Application appeared at a public hearing before the Commission beginning February 5, 2013 through February 22, 2013, sitting a total of 11 hearing days.

[34] The COS filed written materials and called five (5) witnesses to testify in support of its Application. Overall, COS is of the position that in considering section 2.1(2) of the Act, it can construct its own transmission line resulting in transmission savings as compared to the rates that it would be required to pay MECL under the OATT. The COS put forward the position that constructing its own transmission line would result in a positive business case for its customers and/or taxpayers. In addition, the COS updated evidence filed December 2, 2011 stated that the new transmission line would resolve concerns identified by the COS with MECL's transmission system in supplying the western end of Prince Edward Island, and specifically address voltage support issues. As well, the COS noted that the construction of the transmission line might provide other economic benefits to customers, beyond the proposed customer rate reductions associated with lower transmission costs. For example, the new transmission line might provide grid access to future on island generators. However, during the hearing, COS did not financially quantify or elaborate with any specific evidence as to intangible customer benefits associated with this added transmission infrastructure.

[35] The initial Application, updated evidence and related filings by the COS made reference to either building the transmission line or using the right to build the transmission line to support a by-pass discount transmission rate from MECL. The written evidence did not identify a preferred option but made reference to both potential eventualities if a permit was issued by the

Commission. At the hearing, the COS stated it wanted to build the line. The Commission, in considering the Application, and applying the public convenience and necessity test, must consider the Application as seeking a permit to build a transmission line. It is however understood that, if a permit for construction is granted, the COS may forego actual construction in favor of a discounted transmission rate from MECL.

- [36] Both MECL and the Province participated as Interveners in the Application. While the Province participated in the Interrogatory process, the Province did not call or question any witnesses during the eleven (11) day hearing and participated in a watching brief capacity only.
- [37] MECL participated in the Application as an Intervener, filed written materials, cross examined the COS' witnesses and called six (6) of its own witnesses in response to the Application. MECL advanced the position that constructing the proposed transmission line would result in the COS paying higher costs for the transmission services than the rate charged by MECL as per the interim approved OATT. As such, MECL is of the position that construction of the proposed transmission line would result in a negative business case and would increase transmission costs to the COS and potentially its customers.

4. Issues for Consideration

- [38] As a result of all of the written filings, direct examinations and cross-examinations of witnesses in this Application, the Commission has identified several issues that have been placed before it for determination. The issues for consideration are as follows:

(a) In considering the "*public necessity and convenience test*", will the proposed transmission line provide any benefit for (i) the COS's inside customers, (ii) the COS's outside customers and/or (iii) MECL's customers residing within the municipal boundaries of the City of Summerside? In reaching a determination on the required test the Commission believes it must determine:

- If the COS business case placed before the Commission is reasonable and results in benefits to any or all of the three groups to whom the test applies; and
- Does the proposed transmission line constitute a by-pass of the existing MECL transmission system?

(b) Is the COS Application subject to operation of section 8 of the Act?

[39] The Commission intends to deal with each of the above noted issues. In addition, it should also be noted that a preliminary issue was raised at the outset of the hearing by the COS with respect to the scope of MECL's participation as an Intervener. While this matter was addressed prior to any evidence being presented in support of the Application, it will be dealt with herein as a preliminary issue as a matter of completeness.

4.1 Preliminary Issue

[40] In its opening comments, the COS indicated that as a result of the July 13, 2011 decision of the Prince Edward Island Court of Appeal, MECL's participation in the Application as an Intervener should be limited. Specifically, the COS stated that MECL was only participating in the Application to protect its own business interests, which, according to COS, the PEI Court of Appeal indicated could not be considered. As such, the COS stated that MECL did not have a legitimate interest in the Application before the Commission.

[41] MECL stated that it had participated as an Intervener since the Application was initiated in 2008, and that its role as an Intervener should not be limited or curtailed in any way. Reference was made to MECL's legislated responsibilities as per the Act and that those responsibilities require its participation in the hearing. Additionally, MECL stated that if its role was to be limited, the COS should have clearly set out and stated its position in this regard in advance of the hearing.

[42] Although the Province participated in the Application in a limited manner, it did support MECL's position in relation to this preliminary matter. The Province indicated that it had viewed MECL as having substantial experience in relation to the construction of transmission lines, and the associated costs, and that MECL was in a better position to assess the information and evidence submitted by the COS in support of its Application. The Province stated that if it had been aware that MECL may be limited in its participation in the hearing, the Province may have proceeded differently.

[43] The Commission considered the preliminary issue raised by the COS and issued an oral ruling which noted that MECL had been granted Intervener status in 2008 and has been participating in that role ever since. The Commission also noted that it has the authority to establish its own rules in relation to procedures in matters before it in accordance with its enabling statute, and that it is the normal practice of the Commission to allow for full participation by Interveners.

[44] The Commission also noted that in raising this preliminary issue, the COS referred to the fact that the Commission is the "*guardian of the people*", in that it has a responsibility as per the Act, to ensure that electricity rates on PEI are reasonable and publically justifiable. In considering this preliminary

issue, the Commission noted that hearing from all parties, including MECL, allowed for all information and evidence to be fully canvassed and considered which assists the Commission in its role as the “*guardian of the people*”. Therefore, the Commission held that MECL would be allowed to participate in the hearing with full intervener status.

5. Position of the Parties

5.1 Public Convenience and Necessity Test

- [45] As noted previously, the COS filed this Application with the Commission seeking a permit to build a transmission line as a means of reducing its cost of transmission associated with the electricity it purchases from NB Power. This reduced cost could occur if the Commission grants a permit for the COS to build the line based on a positive Net Present Value (NPV) of the potential savings stated in the COS business case. However and as previously noted, the COS Application stated that the COS reserved the right to either build the line or use the right to build the line as justification to seek a reduced fee under the MECL OATT tariff.
- [46] In the original application, filed November 7, 2008, the COS stated that customers would benefit directly from the reduced cost of transmission through reduced electricity rates. Since the original Application, the COS has stated in response to Commission interrogatories, both written and orally, that benefits of any cost savings will accrue to the citizens of Summerside but that no decision has been made by Summerside City Council regarding how savings will be distributed. The Summerside Electric Utility is owned by the City of Summerside and operates as a Department of the City with final decisions on electricity rates made by the City Council.
- [47] During the hearing, the COS stated that the savings, if proven, could be allocated in a variety of ways including:
- reduced municipal taxes to Summerside citizens;
 - reduced electrical rates;
 - a rebate to its electricity customers; and/or,
 - investment in new public infrastructure (i.e. parks).
- [48] Currently, the COS voluntarily uses the MECL tariff structure as its own electric rate/tariff structure and does not require Commission approval. The *Electric Power Act and the Electric Power Act – City of Summerside Electric Utility Exemption Regulations* (the “Regulations”) generally exempts COS from requiring Commission approval of its rates, except under certain limited circumstances. The Regulations set out the conditions that COS needs to meet in order to ensure that its rates do not require Commission approval. Most notably, the Regulations state that:

(b) the utility shall, before charging new rates, tolls and charges, file with the Commission a copy of the new rates, tolls and charges; and

(c) the utility shall not charge outside customers any rates, tolls and charges that exceed the rates, tolls and charges that the utility charges customers located inside the boundaries of the City of Summerside;

- [49] Regardless of the actual rates charged to customers, the parties differ on whether or not any transmission savings from the construction of the proposed transmission line will benefit electricity customers. In this regard, the COS indicated that it has options with respect to any transmission savings resulting from the construction of the proposed transmission line. Regardless of how the transmission savings are allocated, the COS is of the position that there are benefits to be gained from the construction of the proposed transmission line.
- [50] MECL stated that there is no benefit to be gained from the construction of the proposed transmission line. Specifically, if the transmission savings are passed on to the taxpayers, by way of further investment in resources and infrastructure within the municipal boundaries of the City of Summerside, MECL is of the position that the electricity rates for the customers of the COS electrical utility could increase.
- [51] As noted, the COS electric utility has maintained a practice of following the rates utilized by MECL. If the proposed transmission line is constructed and the COS pays reduced transmission fees, MECL has indicated that electricity rates for its customers could potentially increase. As such, if the COS constructs the proposed transmission line, and continues to follow the rates established by MECL, then the rates for the COS customers would also increase. As such, MECL is of the position that there is no benefit to be gained should the proposed transmission line be approved if the result is a rate increase for all electricity customers. This conclusion assumes the COS will continue to follow the MECL tariff.

5.2 Business Case

- [52] The COS is of the position, that in constructing the proposed transmission line, it will incur reduced transmission costs as compared to the rates that it currently pays to MECL. MECL, conversely, is of the position that the COS will incur more costs should the COS proceed to construct its own transmission line.
- [53] In setting out its business case, the COS filed a variety of materials, reports and exhibits. However, in considering the business case, the COS indicated that there are three particular areas which should be considered in assessing its business case, namely, the construction costs for the proposed transmission line, the operating costs associated with the

transmission line and the transmission savings incurred as a result of constructing its own line. Within each of these areas there are several separate matters that need to be considered. Overall, the COS is of the position that constructing its own transmission line will result in transmission savings of approximately \$11.438 million over a 40 year period (being the estimated life of the line).

- [54] MECL also filed various reports and exhibits in relation to the COS business case. In analyzing the COS business case, MECL approached its analysis in a very similar fashion to that used by the COS, and focused on the same three elements as noted above. However, MECL initially concluded that the COS will lose approximately \$3.0 million over the next 40 years should it proceed to construct its own transmission line. During the hearing, and as evidence was presented, MECL revised its analysis and stated COS will lose approximately \$12.3 million over the next 40 years should the proposed transmission line proceed. The difference was mainly attributed to MECL's position that the COS is not by-passing the existing MECL transmission system, and as such, will be required to pay the OATT tariff in any event.
- [55] In considering the business case associated with the construction of the proposed transmission line, it is clear that the COS and MECL differ on several components of the business case, including line construction costs as a result of various technical component requirements, load growth, interest rates for discounting cash flow analysis, the required communication infrastructure between facilities, metering, and the backup requirements or the use of critical spares. Some of the critical differences between the parties will be noted and discussed in more detail herein.

5.3 By Pass

- [56] In order to argue that the COS is entitled to a bypass discount rate, as per the interim OATT, the COS needs to establish that it is in fact capable of constructing a transmission line that will bypass the existing transmission system. Again, the parties differ on whether or not the proposed transmission line does in fact constitute a bypass.
- [57] The COS is of the position that the proposed transmission line is a bypass, as it will allow for a new line to be constructed which would directly connect the COS's Ottawa Street Substation with MECL's Bedeque switching station. All of the existing MECL transmission facilities would be by-passed as a result of this proposed transmission line being constructed except for the interconnection in Bedeque.
- [58] The COS stated in its Application and during the hearing that by connecting the proposed transmission line to the MECL owned Bedeque switching station, it would be essentially by-passing the existing MECL transmission

system and should not be responsible for any MECL OATT fees as a transmission customer.

- [59] The COS stated during the hearing that the current interconnection between PEI and NB, consisting of the submarine cables and components of the Bedeque switching station, were provided by previous federal and provincial governments and should be shared between MECL and the COS. The COS feels it is simply connecting to the interconnection provided by government to all citizens of PEI. The COS is prepared to assume costs required to interconnect with the Bedeque switching station, although, it disputes some of the costs proposed by MECL and would rely on a System Impact Study to determine the extent of the equipment required for a safe and efficient interconnection.
- [60] MECL is of the position that the proposed transmission line is not a bypass at all. Specifically, MECL is of the position that the proposed transmission line interconnects directly with the MECL transmission facilities in Bedeque, and as such, is not a bypass. Further, MECL is also of the position that the two submarine cables which connect Prince Edward Island to the New Brunswick power grid, together with the potheads and overhead transmission lines that run from Richmond Cove to the Bedeque switching station are an integral part of MECL's transmission system. As such, MECL is of the position that the transmission line being proposed by the COS does not in fact bypass the existing MECL transmission infrastructure.
- [61] The Commission was informed during the hearing that the MECL Bedeque switching station is a very critical piece of infrastructure for the PEI transmission system. Any transmission interruption problems created at the Bedeque switching station could leave PEI with no electricity until on Island generation is available and/or the necessary repairs are completed. Depending upon system load requirements at the time, together with the availability of PEI generation, PEI customers could be without electricity for the duration of any Bedeque switching station difficulties.

5.4 Electric Power Act – Section 8

- [62] Neither the COS or MECL submitted extensive evidence in relation to the issue of whether or not section 8 of the Act has any application in relation to this particular matter.
- [63] The COS filed an email dated July 25, 2011, from its solicitor to various parties associated with the Application, including Commission staff, in relation to its position on the applicability of section 8. In that particular email, the COS indicated that it was of the position that section 8 of the Act does not apply to this Application for four fundamental reasons. Briefly stated, those reasons are summarized as follows:

- (a) the COS has only applied for a permit under section 2.1(2) of the Act;
 - (b) the PEI Court of Appeal decision held that the COS Application is to provide transmission service which includes both the proposed transmission line and the proposed interconnection;
 - (c) section 8 of the Act does not apply since the COS is not a public utility, nor is it a person providing cable or telephone service; and
 - (d) section 2.1(2) of the Act operates independently of section 8 of the Act.
- [64] The COS is of the position that an Application pursuant to section 2.1(2) of the Act provides the Commission with the authority to grant a permit for the construction of the proposed transmission line and for a permit to interconnect to MECL's facilities located at the Bedeque switching station.
- [65] MECL, on the other hand, submitted in its closing comments that section 2.1(2) and section 8 of the Act are separate and distinct. In short, MECL is of the position that section 2.1(2) of the Act relates to service, whereas section 8 of the Act relates to the use of equipment. According to MECL, the COS should have applied pursuant to section 2.1(2) of the Act for a permit to provide service, and pursuant to section 8 of the Act for a permit to interconnect with MECL's Bedeque switching station.

6. Discussion and Findings

6.1 Public Convenience and Necessity Test

- [66] The COS Application for a permit to construct a transmission line was made pursuant to Section 2.1(2) of the *Electric Power Act* which reads as follows:

The Commission may, on application by any person, and following a hearing in respect thereof, issue a permit authorizing the holder to provide service in any area of the province if the Commission is satisfied that the present or future public convenience and necessity of the area requires or will require the service that the applicant proposes to provide.

- [67] As noted previously, the public convenience and necessity test in this Application was a matter the Commission reviewed as a procedural issue at the beginning of this process. The Commission decision and subsequent decision of the PEI Court of Appeal made it clear the test must be applied to the customers of the COS who will be served by the proposed transmission line, both the inside and outside customers, and can be applied to MECL customers located within Summerside municipal boundaries.

- [68] The COS maintains the test of public convenience and necessity will be met because the public will receive a cost saving over the 40 year life of the proposed transmission system. The COS presented a business plan which proposes a transmission line savings of \$11.438 million dollars. The COS has proposed several possibilities regarding the treatment of these savings including customer rate savings or re-investment in alternative public infrastructure. However, during the hearing, the COS did not provide any evidence as to proposed customer rate amendments or specific customer public infrastructure proposals associated with its business plan. Simply stated, the COS indicated that there will be transmission rate savings but did not provide any evidence as to how these savings will actually be allocated.
- [69] As noted by the PEI Court of Appeal, in assessing and considering the public convenience and necessity test, the Commission is to consider the interests of the customers served by the COS, together with the MECL customers who reside within the City of Summerside municipal boundaries. Without any evidence as to how any of these customers will benefit from the potential transmission savings, the Commission recognizes the uniqueness in applying the public convenience and necessity test.
- [70] Similarly, neither the COS nor MECL presented any extensive evidence as to what is meant by the term “public convenience and necessity” within the context of this Application. From a practical perspective, the COS is currently receiving transmission services from MECL, and as such, it would appear that the proposed transmission line is not necessary from a provision of service perspective. However, neither the COS or MECL discussed what was to be considered in applying the public convenience and necessity test in the context of an application for the construction of a transmission line that would amount to a duplication of services if constructed.
- [71] In light of all the foregoing the Commission views the public convenience and necessity test as being two fold. First, the Application must demonstrate that there will be benefits to the electricity customers from a financial perspective (e.g. rate reduction). Secondly, the project must be required, from a technical perspective, for the provision of safe and reliable transmission service.
- [72] The original COS Application and subsequent revisions referenced proposed customer rate savings; however, no specific rate proposal was included with the Application. During the hearing, the COS indicated that City Council has considered rate amendments but has not made any decisions on electricity rates at this time. Therefore, no specific rate proposal was included with the Application.

- [73] The Commission accepts the COS position that rate amendments could result from transmission savings, if proven, but this approach does not establish that there will be any benefits to electricity customers. A project must demonstrate that cost savings will reduce customer rates. The information before the Commission provides only general comments about possible rate amendments. Rate savings will occur only if City Council decides it will apply proposed savings to rates as opposed to funding other public infrastructure.
- [74] A challenge for the COS and, therefore, the Commission, is the application of the public convenience and necessity test to the three distinct groups of customers that are to be considered. For example, if the Commission accepts the COS position that transmission cost savings were used to support municipal infrastructure, the “benefit” would not necessarily flow to the COS customers residing outside the City’s municipal boundaries. Further, reducing the COS electricity rates would benefit the COS customers, but not those MECL customers residing within the City’s municipal boundaries. Unfortunately, applying the public convenience and necessity test is further complicated by the lack of clarity from the COS as to how any savings would be applied to customers. The Commission believes this is a key element of the Application that requires far greater specificity in order to be properly considered.
- [75] Initially, the COS Application indicated that the construction of the proposed transmission line would provide additional voltage support to western PEI and would reduce the need for both the COS and MECL to run expensive on Island generation. However, no further evidence was presented during the hearing to demonstrate technical system need for this transmission line. In other words no evidence was presented to demonstrate a necessity for the construction of the proposed transmission line from a technical and service reliability perspective. Evidence filed regarding existing capacity and the COS load growth expectations does not support the necessity to construct the line to meet capacity requirements for the COS as the current transmission line, T-11, has sufficient capacity to meet the COS system requirements.
- [76] The Commission finds that without a specific and detailed customer rate savings proposal that clearly shows a benefit to the customer interests in applying the public convenience and necessity test, and the absence of a clear system requirement for this project, the COS has not met the public convenience and necessity test as required by legislation. The Application fails on this point and the Commission will not issue the permit as requested by the COS pursuant to section 2.1(2) of the Act.

[77] Given the length of the hearing and the numerous issues considered in the Application, the Commission will consider other aspects of the Application, including various components of the COS business case, the issue of by-pass and the application of section 8 of the Act; however, unless customers receive rate reductions and/or the technical requirements for the transmission line are demonstrated, the public convenience and necessity test cannot be satisfied.

6.2 Business Case

[78] The initial business case presented by the COS stated that the net present value ("NPV") of the savings associated with the construction of the proposed transmission line would amount to \$11,438,438 over the 40 year estimated life of the line. This saving is calculated as the NPV of the avoided monthly network service transmission charge for use of the MECL transmission system minus the initial capital cost of constructing the proposed line and annual line operations and maintenance costs.

[79] During the hearing, the COS reviewed various components of its business case. The Commission also heard alternative viewpoints of the COS business case components from MECL.

[80] Overall, in considering the business case put forward by the COS, the Commission does not believe, on the balance of probabilities, that the COS will achieve transmission rate savings from the construction of the proposed line. In assessing the COS business case and in arriving at this conclusion, the Commission considered numerous items associated with the COS business case. However, for the purposes of this decision, the Commission will only discuss those items that it believes have a significant impact on the business case as presented and/or raise concerns as to the completeness of the COS business case.

[81] The capital cost for the construction of the transmission line, as presented by the COS, was initially \$4.1 million including allowances for engineering, project management, environmental studies and contingencies. Updated evidence provided by a consultant engaged by the COS, Mr. Blaine Irving P.Eng., who provided a peer review of the initial construction estimates completed by Coles Associates, revised the construction cost to \$5.1 million.

[82] MECL provided evidence which suggested the initial construction cost would be \$7.0 million. In addition, MECL engaged the services of Mr. Nick Strum, P.Eng. to assess the project capital cost. Mr. Strum estimated the project costs at \$7.5 million.

- [83] As there was a wide range between the parties in relation to construction costs (and other matters), the Commission engaged the services of Synapse Energy Economics, Inc., as an independent party, to review and assess the cost estimates for the construction and operation of the proposed line and the related technical issues. The Synapse report commented on the costs as presented by both parties and highlighted cost difference issues for the Commission's consideration. According to the Synapse report, the construction cost for the proposed transmission line ranges between \$4.9 million and \$6.2 million.
- [84] During the hearing considerable evidence and testimony was heard regarding the technical components required for the configuration of the transmission line. The consultants from both parties reviewed their estimated cost components and the related electrical standards. Items such as the span distance between poles, the conductor diameter, substation's breaker requirements, transformer configuration requirements, communication infrastructure between switching/substation systems and other technical requirements were reviewed in detail.
- [85] The Commission accepts that certain components of both parties' estimates are viable and reasonable based on the evidence provided. The COS stated the estimate provided would be considered a Class C construction estimate. The precision of this class of estimate is +25%/-15% variance. The COS maintains this precision of estimate is sufficient to assess the project at this stage of the approval process.
- [86] The Commission understands that the creation of a more reliable class of estimate is more costly and requires further engineering and environmental studies. The Commission, however, must assess the project based on the evidence filed and it is incumbent on the COS to provide the most accurate estimate in support of its Application. This is a 40 year asset that is being proposed. The Commission should not be expected to decide this matter on what was referred to by a COS witness as a "ballpark estimate". The Commission is not comfortable providing conditional approval that would await a more detailed cost estimate to gain final approval. If the COS wanted to construct a transmission line, it should provide a complete business case that supports its Application.
- [87] MECL and Mr. Strum provided a more detailed estimate based on their extensive experience constructing similar transmission lines on PEI. MECL and Mr. Strum would consider their estimate closer to a Class B estimate which has a +20%/-10% degree of precision. Although components of their detailed estimates may not be necessary, from a technical perspective, the identification of those components was valuable for the Commission's consideration.

- [88] The Commission found Mr. Strum to be a helpful witness. He has extensive experience in transmission line construction within the region, including 138kV single pole construction as proposed in the Application. Mr. Strum has worked for both MECL and the COS and the Commission rejects suggestions that Mr. Strum was slanting his evidence in support of a higher cost to collaborate the MECL estimates. Mr. Strum's approach appeared to be a fresh look at the project wherein he considered the various components he felt were necessary, priced those components and arrived at a total cost. The Commission recognizes that not every item Mr. Strum suggested may necessarily be required and therefore the weight given his total cost estimate is diminished. However, Mr. Strum's evidence was helpful in identifying the various components, potential challenges, and the potential impact of various options or requirements on the total cost of the proposed transmission line.
- [89] Mr. Irving was also helpful in providing evidence regarding the line project and its components. However, Mr. Irving testified that he did not take a "new start" to the project but rather provided a peer review of the work performed by Coles Associates, the original engineer retained by the COS. While Mr. Irving did consider other costs or ways of doing things and did make some recommendations that resulted in the COS revised cost estimate, it would have been more beneficial to the Commission if Mr. Irving had given a completely independent and full cost estimate of the project.
- [90] During the hearing the Commission heard a number of quotes about the cost of poles with considerable variance in the price. This is but one area where the Commission believes that a much more reliable and detailed estimate from the COS is required in order to substantiate its business case.
- [91] A Class C estimate, with the precision as noted, is not sufficient to make a final determination on the capital cost of the project. The costs of some line items can change significantly depending upon the environmental studies (which have not yet been completed), the choice of configuration of the line and the requirements for interconnection with another transmission system.

- [92] The Commission notes that cost differences form only one part of the overall business case. Due to the lack of confidence associated with a Class C estimate, the lack of an environmental review of the project together with cost implications that could arise following such a review, the Commission cannot accept the capital costs as presented by the COS. Based upon all of the evidence placed before it, the Commission believes the construction cost for the proposed line would be approximately \$6.5 million. This is based on the revised Irving estimate of \$5.1 million plus the +25% Class C estimate allowance, plus an allowance for potential environmental and interconnection cost changes. In fact, because of the issues identified by Mr. Strum, it would not be unrealistic to estimate the line cost at \$7.0 million.
- [93] The Commission views a higher estimate of construction cost as necessary because the COS has provided a limited level of detail in its estimated costing. The Commission needs to have greater confidence in the cost estimate than that provided in a Class C level estimate.
- [94] The most significant factor in the business case associated with this project is the avoided monthly transmission charge which the COS would have to pay MECL in accordance with the OATT for transmission services. As discussed above, the COS must pay MECL for transmission services received based on the OATT fee schedule. This avoided cost of approximately \$500,000 annually would be replaced by the cost and operation of this new transmission line. The COS stated during the hearing that by building their own transmission line and interconnecting at the Bedeque switching station, the COS would be “predominantly by-passing” the MECL system. Thus, the COS could avoid the monthly OATT charges. The COS’ position is that it would pay a nominal fee for access to the Bedeque switching station, and its share of the operating costs of the switching station and submarine cables interconnecting with New Brunswick.
- [95] As noted, MECL does not consider the proposed line to be by passing its existing transmission system, with the result being that the COS would still be required to pay monthly OATT charges for the transmission service MECL would provide to the point of interconnection. As the OATT tariff is based on a postage stamp principle, distance is not a factor, and as such, the COS would be paying similar amounts under the OATT to what it would be required to pay if the line was not constructed. As such, determining whether or not this line is in fact a by-pass has a significant effect on the COS business case.
- [96] The Commission received limited evidence from the COS respecting various regulatory cases in other jurisdictions relating to by-pass interconnections. MECL provided several cases dealing with the issues of by-pass, including the Consumers’ Gas Co. case which was heard before the Ontario Energy Board (“OEB”). The OEB considered a by-pass as the total avoidance of

existing infrastructure. The COS did file a 1999 decision from the British Columbia Utilities Commission in which BC Hydro was seeking approval of the bypass rate guidelines that it had developed and proposed to apply in determining when to offer a bypass rate to its customers. The COS noted that BC Hydro was of the position that a bypass of part or all of its system may lead to a bypass rate being issued, and as such, the COS relied on this proposal (i.e. the BC Hydro position that the notion of a partial bypass exists in other jurisdictions). However, the bypass rate guidelines that were developed and submitted by BC Hydro were not accepted or approved by the British Columbia Utilities Commission, which limits the applicability of this decision to the COS' Application.

- [97] The Commission notes that the Consumers' Gas Co. case requires the bypassing customer to connect directly with a third party provider. To apply the test, as determined in this case, to this situation would require the COS to interconnect directly to transmission facilities not part of the MECL transmission system. While the COS stated that its Application is a "predominant by-pass", it did not provide sufficient legal authority to support its position that a "predominant by-pass" entitles one to a by-pass competitive rate (i.e. a discounted rate).
- [98] The Commission has already determined that the cables are a federal undertaking and beyond the jurisdiction of the Commission. However, the Commission received evidence from the COS and MECL regarding the history of the submarine cables and the interconnection between New Brunswick and Prince Edward Island.
- [99] MECL filed the Interconnection Lease Agreement which was executed between the Province and MECL at the inception of the interconnection (1976) and amended from time to time. This interconnection agreement outlines the duties and responsibilities of both parties. Specifically, the interconnection agreements states:

Section 4 - Agreement to Lease

Following the In-Service Date, the lessor will retain ownership but will deliver administration and control of the Interconnection to the Lessee and the Lessee shall operate, repair and maintain the P.E.I. Component for and on behalf of the Lessor at the Lessee's expense throughout its service life.

The Lessee shall operate the Interconnection as an integral part of the Lessee's electric supply and transmission system.

- [100] The Commission notes the interconnection agreement considers the submarine cables to be part of the MECL transmission system. If this is in fact correct, any connection which the COS proposes between Murray Corner, NB and the Bedeque, PEI switching station would appear to constitute an interconnection to the MECL transmission system.

- [101] The Commission notes that the process that has ultimately led to this Application started with a direction from the Provincial government to pursue an Open Access Transmission Tariff. As owners of an essential link they would have been aware of the vital role the cables play in the operation of the OATT. The Province has not amended the Interconnection Agreement at any time to allow other parties to interconnect other than MECL. The Province was an intervener at the hearing but did not lead any evidence on this point or make any submissions. The silence of the Province on this matter suggests to the Commission that the owner of the cables is content with the existing lease agreement and all its provisions.
- [102] The existence of the lease agreement raises further complications about where the connection would have to occur to achieve a by-pass. However, for the purposes of determining whether or not the transmission line being proposed by the COS is in fact a by-pass, the Commission notes that all parties, including the COS, agree that the proposed transmission line is interconnecting at Bedeque, which the Commission finds is not a by-pass. Therefore, the issue of an interconnection to infrastructure which constitutes a federal undertaking does not need to be considered for the purposes of this application.
- [103] The Commission has determined that the COS proposed interconnection at the Bedeque switching station is an interconnection to the existing MECL transmission system, Therefore, the COS is not by-passing the MECL system. Based on this finding, and if the Commission were to approve the COS line application, and the line was in fact built and interconnected with MECL in Bedeque, a by-pass would not be achieved and the COS would still be subject to the requirements of the interim OATT.
- [104] The requirement to comply with the OATT fee schedule results negatively on the COS business case, as the COS would not achieve transmission savings. The COS' requirement to pay the OATT fee charges results in the COS business case going from an \$11.4 million saving to a cost increase of \$7.9 million. The COS would in effect be building a redundant transmission line because of the requirement to continue to pay MECL for transmission service from the Bedeque switching station to the point of interconnection. Again, with the postage stamp approach to the development of the OATT, distance of transmission service provided is irrelevant to the OATT fee required. The proposed transmission line and the requirement to pay the OATT fee results in a situation that would not be in the public interest for the customers of the COS.

6.3 Additional Components of the Business Case

[105] The Commission heard evidence regarding the appropriate NPV discount rate, load growth projection, requirement for back-up facilities or critical spares and other related items included in the business case for this application. As these are some of the more predominant items affected the business case, the Commission believes that it is appropriate to comment on some of these issues. However, at the outset, it should be noted that there is no one of these that completely negates the business case on a financial basis. In some cases, the actual financial impact may be minimal, but the consideration, or lack thereof, of several items, causes the Commission to have doubts with respect to the accuracy and completeness of the business case submitted by the COS.

[106] The choice of the appropriate discount rate is critical when reviewing a 40 year business case. The COS has selected a discount rate of 3.85% which is based on a 20 year loan financing proposal from a Canadian chartered bank. Although the financing proposal is for 20 years, which is half of the estimated project life cycle, the COS maintains the balance of the loan at year 20 will be significantly reduced and the risk of higher interest rates is not material to its business case.

[107] The Commission heard that the COS often finances its major capital projects by accepting some degree of interest rate risk associated with shorter term loan amortizations. The COS indicated this has been a favorable financing approach and has resulted in cost savings for the COS in recent years.

[108] The Commission heard evidence from MECL that most electric utilities finance capital projects using long term financing which matches the expected life expectancy of the asset being financed. A longer term loan may carry a higher interest rate but shelters the utility and its customers from interest rate risk. The MECL evidence presented suggested an appropriate discount rate of 4.5% for this project.

- [109] The selection of an appropriate discount rate is ultimately a judgment call where the projections on future interest rate, the interest rate risk tolerance, and the business approach must be considered. The Commission must consider the interest of the customers who generally want the least cost of service and, to the extent possible, certainty with future rates within controllable cost items. Selecting a shorter term loan rate as a discount rate for a 40 year project is not the typical regulatory approach for assessing a long life project. Some consideration must be incorporated into the discount rate for the possibility of rising interest rates. The COS would be investing in a 40 year project that either costs borrowed money, directly, or ties up borrowing capacity for other projects. The selection of a discount rate should recognize the cost of the money over a 40 year timeframe.
- [110] The selection of a discount rate of 4.2% should be a reasonable balance taking into consideration the evidence provided. The Commission makes this observation, not because a change in the discount rate itself undermines or is determinative of the viability of the project, but because it serves as further evidence that the business case presented by the COS is not sufficiently demonstrated.
- [111] Load growth determination is a significant factor when determining electric utilities capacity requirements, and in this case, certain costs in the business case of this project. The MECL OATT tariff fee for network service, the required level of service for the COS to avoid curtailments, requires a projection of electric consumption load growth to determine the appropriate monthly OATT charges. The COS needs to determine its future demand so that it can forecast how that electricity will be transmitted and the potential costs and/or savings associated with those decisions.
- [112] The COS provided a projection of 2% load growth for each of the next 40 years and incorporated this into its business model. This number was calculated based on a simple average of the past 25 year average load growth experience by the COS. This may have been an appropriate approach had there been some evidence filed to suggest that the circumstances of past 25 years will repeat over the next 40 years. The Commission does not find this to be a reasonable assumption.

- [113] The COS did not provide any evidence regarding its customer base and potential changes in this customer base which might impact load growth in the future. For example, the COS did not provide any evidence regarding the impact its Smart Grid, Heat for Less Program may have on future load requirements. The Commission also notes that HST implementation is likely to have a dampening effect on the amount of electricity consumed. In addition, changes occurring in the energy market place with oil prices, natural gas, green energy initiatives, customer demographics, population projections, and urban and rural migrations all can have impacts on electric load growth. These are all factors which can increase or decrease electricity consumption and should have been considered and documented in determining load growth as presented in the Application.
- [114] The Commission was presented with evidence of other load growth forecasts such as the one completed by NB Power. While recognizing it is a different scale in terms of customer base, the NB Power forecast does underscore some of the elements that can impact load growth. It is troubling for the Commission that the COS method of calculating the load growth for the use in the business case does not consider any influencing factors and makes no account for such factors. The Commission does not accept that only what has happened in the past will happen in the future, and therefore, an averaging of past experience would not capture any future factors that might influence load growth.
- [115] Another issue identified during the hearing was the need for backup transmission or critical spares of key transmission components so that if one of these key pieces of equipment is damaged, there is a plan in place to “keep the lights on”. The COS did not provide a comprehensive plan regarding backup services. It appears the COS would have some minor replacement parts or spares on site but would seek to make arrangements with MECL or enter into sharing agreements with other Maritime utilities for critical spares. The impact on the business case is significant, but an even greater concern to the Commission is the potential impact on customers of an outage. The business case does not financially quantify lost business and residential convenience associated with potential outages. When the COS generation does not meet the customer load requirements, customer interruptions may be necessary. This may be an acceptable risk for the COS but in the view of the Commission this is not in the public interest of the customers of the COS. To be clear the Commission finds the lack of the COS planning for back up as part of this Application is a significant deficiency.

- [116] The COS business case should have incorporated costs associated with either critical spares or fees for backup transmission services. For example, the Commission heard evidence that a second transformer, which would serve as a back-up, would cost in excess of \$1.0 million. As this is a significant cost, COS should have addressed the issue of critical spares in more detail in its business case.
- [117] The COS presented an estimation of the transmission line operations and maintenance costs based on their past experiences within their own utility service area. The evidence presented by MECL suggests such costs will be significantly higher, based on its experience with transmission line management on PEI. A realistic plan for operations and maintenance costs is an important element of the project. The Commission notes that the COS has not had any past experience in operating and maintaining a transmission line in rural PEI. Therefore, the Commission views that it would be more appropriate to incorporate, as a project cost, a higher provision for this item than what was included in the COS Application.
- [118] During the hearing the COS indicated that it would be able to incorporate the management, operational requirements and maintenance of this line within its current resource complement of staff. Regardless of whether the COS uses in-house or external resources, these costs should be accounted for as part of this construction project.
- [119] COS described the various large scale projects which it has accomplished recently. The Commission accepts the experience which the COS has regarding project management. The Commission views project management costs as part of the total project costs and these should be included in the business plan. In addition, the Commission views the various soft costs, such as legal and professional fees, as costs that should be included in the overall project costs and the business plan. However, the COS did not include a component for legal fees and other professional fees in its business case.
- [120] The COS made reference to a cost in their business plan for a share of the current submarine cable and maintenance operation. The COS stated the cost estimate included was obtained from MECL during the interrogatory process. The COS included in the business plan this amount as a cost of the interconnection with MECL. The Commission views this number as relevant only if the COS were by-passing the MECL transmission system. As noted above and for the reasons indicated, the COS is not by-passing and therefore this cost is irrelevant to the COS business case.
- [121] There was little disagreement between the parties concerning the cost of running on-island generation while the Bedegue switching station was out of service during the interconnection work. The Commission accepts the COS estimate.

[122] There was significant disagreement between the parties concerning the cost of communications required to interconnect the COS's Ottawa Street substation and MECL's Bedeque switching station. The COS' cost estimation for communications was based on an example of fibre-optic pricing the COS pays on an unrelated project. This is not a suitable method of pricing a project component for presentation at a Commission hearing of this magnitude. The Commission accepts there are alternatives and perhaps less expensive methods to provide the required communications service. However, the consequences of system failure due to communication system shortcomings can have serious ramifications to the COS customers. As such, the Commission would have expected more detail in relation to this item from the COS. The Commission's concern in this area is magnified by the lack of application details in the area of back up facilities or critical spares.

6.4 Other Matters

[123] All parties state this is a simple project yet after many days of testimony and many different engineers the parties do not agree on a significant number of the elements required to construct the proposed line. For example, the Commission heard conflicting evidence regarding such items as insulators, transformers, metering types and location, conductor gauge, and pole spacing.

[124] The Commission heard that the building of the transmission line by the COS will provide many intangible benefits to the COS. The COS reviewed their 40 plus year desire to by-pass the MECL system and control their own destiny. The COS provided verbal evidence of the intangible items and stated that being independent will permit them to make business deals, seek customers, and facilitate the overall growth of the COS.

[125] The Commission also notes this transmission line proposal is to interconnect with the existing Bedeque switching station and submarine cable infrastructure. This infrastructure is over 35 years old and plans are being contemplated for its replacement. MECL stated that any plans being considered focus on the Confederation Bridge and/or Borden substation in relation to a third cable. This is a considerable distance from the COS proposed transmission line. The COS provided no evidence to suggest they considered the implications associated with interconnecting cable infrastructure that could be retired in the near future.

[126] During the hearing the COS raised issues with regards to a current discount in the MECL OATT fee structure for export wind transmission and the ownership of MECL customers which now reside in the COS municipal boundaries. These issues are not related to the current transmission line

Application and are not relevant to the Commission in consideration of this Application.

- [127] Considerable time, money and expertise have been invested in this process to date. The Commission is not confident it will end here. From the Commission's perspective it appears the COS-MECL relationship is tainted by a small number of irritants that cloud consideration of various decisions and courses of action. It might well be wise for the two main parties, MECL and the COS, to come to the understanding they must co-exist and will have to continue to collaborate. It would be useful to commit equal resources to building a stronger relationship and fostering greater cooperation. In addition, the Provincial and City governments should review the legislation and business practices which contribute to the disagreements between the parties and both must provide leadership in making changes so the system can operate more effectively and efficiently. That would be in the public interest.

6.5 Electric Power Act – Section 8

- [128] As noted earlier herein, the COS and MECL differ on the application of section 8 of the Act. The COS' Application for a permit to construct the proposed line and to interconnect with MECL's Bedeque switching station was made pursuant to section 2.1(2) of the Act, which is consistent with the COS' position that section 2.1(2) acts independently of section 8 of the Act. MECL disagrees and is of the position that an application should have been made pursuant to section 2.1(2) for a permit to construct the proposed line, together with an application pursuant to section 8 of the Act for a permit to interconnect with the switching station in Bedeque.
- [129] The Commission recognizes that the applicability of section 8 is an issue for consideration. However, as noted, little information was provided by either of the parties in relation to the application of section 8 to this proceeding. Based upon the PEI Court of Appeal decision, it appears that the application of section 8 to this matter may allow for the Commission to consider the interests of MECL's customers, beyond those residing within the City of Summerside, in assessing the COS' Application. However, for all of the reasons that have been stated herein, the Commission is of the opinion that it does not need to make a determination on the applicability of section 8 in deciding this matter. As the application of section 8 would only broaden the scope of the MECL interests that the Commission could consider in the Application, a positive or negative finding on section 8, from the COS' perspective, does not affect the business case put forward by the COS in support of its Application.

6.6 Summary

[130] A great deal of evidence was put forward by the COS and MECL in relation to the Application. However, for all of the reasons that have been stated herein, the Commission is denying the COS' request for a permit to construct the proposed transmission line, and its request for a permit to interconnect to MECL's Bedeque switching station. By way of summary, the Commission finds that the COS has not:

- (a) established that there will be any benefits in the form of rate savings for its electricity customers; and
- (b) established that there is a clear system requirement for the construction of the proposed transmission line.

[131] In addition, the Commission does not believe, on the balance of probabilities, that the business case put forward by the COS will achieve transmission savings. In this regard, the Commission finds that the business case presented by the COS:

- (a) underestimated the cost of constructing the proposed transmission line;
- (b) did not contain a completed environmental review of the proposed project, together with cost implications that could result from a completed environmental review;
- (c) did not select a discount rate which was reasonably supported based upon the expected life of the proposed transmission line;
- (d) did not consider future events that may affect load growth over the estimated 40 year life of the proposed line;
- (e) did not sufficiently consider and address the issue of back-up transmission/critical spares;
- (f) did not adequately include provisions for professional fees, such as legal and engineering services even if provided by internal resources, in relation to the construction of the transmission line;
- (g) did not adequately consider and cost the communication equipment required to facilitate timely communication between the Bedeque switching station and the COS' Ottawa St. substation; and
- (h) does not constitute a by-pass of the existing MECL transmission system.

7. Disposition

[132] An Order will therefore be issued implementing the findings and conclusions contained in these reasons.

IN THE MATTER of an application by City of Summerside for a permit to provide transmission services from its Ottawa Street substation to Maritime Electric's Bedeque switching station.

Order

UPON receiving an Application by the City of Summerside for a permit to provide electrical transmission services from their Ottawa Street substation to Maritime Electric's Bedeque switching station and a permit to connect to the Maritime Electric Bedeque switching station;

AND UPON considering the evidence provided by the City of Summerside and MECL, as Interveners to the Application;

AND UPON considering that the City of Summerside did not indicate how any transmission savings would provide benefits to customers;

AND UPON concluding that the City of Summerside has failed to demonstrate that the construction of the proposed line will provide any benefits to the customers, in that;

- a. the City of Summerside has not provided sufficiently detailed estimates to substantiate the anticipated capital cost of construction and it is reasonable to conclude the potential costs may be significantly higher than the estimates provided by the COS in the Application;
- b. the City of Summerside has not provided sufficiently detailed cost estimates of the operating and maintenance costs of the proposed 138kV line to conclude the business plan proposed results in a benefit to the customers; and

- c. the City of Summerside is not by-passing the MECL system and therefore must continue to pay the required OATT fee for transmission services which results in no savings to customers for the City of Summerside transmission costs;

NOW THEREFORE, for the reasons given in the annexed Reasons for Order;

IT IS ORDERED THAT

1. The Application by the City of Summerside for a permit to build a transmission line and interconnect with the Bedeque switching station is denied.

DATED at Charlottetown, Prince Edward Island, this 22nd day of April, 2013.

BY THE COMMISSION:

(Sgd) Maurice Rodgerson

Maurice Rodgerson, Chair

(Sgd) Michael D. Campbell

Michael D. Campbell, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13.(1), 13(2), 13(3), and 13(4) of the *Act* provide as follows:

13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

(3) The Commission shall be deemed to be a party to the appeal.

(4) No costs shall be payable by any party to an appeal under this section unless the Court of Appeal, in its discretion, for special reasons, so orders.

IRAC140A(04/07)

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 5 years.