

THE ISLAND REGULATORY AND
APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket UE20942

Order UE16-04R

IN THE MATTER of an

application by Maritime Electric Company, Limited to
approve the rates, tolls and charges for electric service
for the period beginning March 1, 2016 and for certain
approvals incidental thereto;

AND IN THE MATTER of

the *Electric Power Act*, R.S.P.E.I. 1988, Cap. E-4 and the
Island Regulatory and Appeals Commission Act,
R.S.P.E.I. 1988, Cap. I-11;

BEFORE THE COMMISSION

on Monday, the 11th day of July, 2016.

Scott MacKenzie Q.C., Chair
Douglas Clow, CPA, CA, Vice-Chair
John Broderick, Commissioner
Michael Campbell, Commissioner

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I-11;

Appearances & Witnesses

1. **For Maritime Electric Company, Limited**
Counsel:
Spencer Campbell, Q.C.
Thomas P. Laughlin

Witnesses:
John D. Gaudet, P.Eng. Vice President, Corporate Planning & Energy Supply
Steve Loggie, CPA, CA Vice President, Finance and Chief Financial Officer
Angus Orford, P.Eng. Vice President, Customer Service
Jason Roberts, CPA, CA Director, Regulatory and Financial Planning
Ron LeBlanc, P.Eng. Manager, Production and Energy Supply
2. **Interveners**
The Government of Prince Edward Island, as represented by the Minister of
Transportation, Infrastructure and Energy
Counsel:
J. Gordon MacKay, Q.C.
Staff:
Kim Horrelt, P.Eng., Chief Executive Officer, PEI Energy Corporation
Mark Victor, P.Eng., Senior Engineer, PEI Energy Corporation
3. **Public Participants**
Tony Reddin & Jordan MacPhee, Environmental Coalition of Prince Edward
Island
Hon. Jamie Fox. Interim Leader, PC Party of PEI
4. **For The Island Regulatory and Appeals Commission**
Counsel:
Thomas Matheson, Q.C.
Nicole McKenna
Staff:
Mark Lanigan, CPA, CA Director, Corporate Services and Appeals
Dawn Murphy, Recording Secretary

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Reasons for Order

1. Introduction

[1] This is an application made by Maritime Electric Company, Limited (the "Applicant", "Maritime Electric" or the "Company") pursuant to the *Electric Power Act*, R.S.P.E.I. 1988, Cap. E-4 ("EPA") seeking, among other things, an order of the Island Regulatory and Appeals Commission (the "Commission") approving amendments to the rates, tolls and charges for electric service for the three-year period from March 1, 2016 to February 28, 2019.

[2] The Application was filed pursuant to Section 20(1) of the *EPA* which reads as follows:

Variation of rates, submission for review and approval

20. (1) Whenever any public utility wishes to vary any existing rates, tolls or charges, or to establish any new rates, tolls or charges for any service, it shall submit for the review and approval of the Commission a schedule of such proposed rates, tolls and charges together with and appended thereto all rules and regulations which, in any manner, relate to the rates, tolls and charges; the Commission may approve, after reviewing the schedule and rules and regulations submitted, the schedule of rates, tolls

and charges and the rules and regulations either in whole or in part, or may determine and fix new rates, tolls and charges, and amend the rules and regulations, as it sees fit.

[3] Maritime Electric filed a general rate application with the Commission on October 28th, 2015. In its initial filing, Maritime Electric sought, among other things, a return on average common equity of 9.7% within an allowed range of 9.5% to 9.9%, and an electricity rate increase equivalent to 2.5% for the typical rural residential customer. The initial filing sought to set rates, tolls and charges for electric service for the one-year period from March 1, 2016 to February 28, 2017.

[4] In January 2016, Maritime Electric filed with the Commission an agreement between Maritime Electric and the Government of Prince Edward Island (the "Agreement"). The Agreement addressed or agreed to amend certain matters raised in Maritime Electric's general rate application and in a related application dealing with rates of depreciation.

[5] As a result of the Agreement, Maritime Electric filed amendments to its general rate application on February 5th, 2016. As part of its amended filing, Maritime Electric proposed to set rates, tolls and charges for electric service over the three-year period from March 1, 2016 to February 28, 2019. The Company sought, among other things, a return on average common equity of 9.35% and an annual increase in electricity rates equivalent to 2.3% for the typical customer, effective March 1 in each of 2016, 2017 and 2018.

[6] A public hearing was held on February 25, 2016 to consider the proposed amendments to electricity rates and other related matters. On February 29, 2016, the Commission issued Order UE16-04, and advised that detailed reasons for the Order would follow in due course.

[7] Following are the detailed reasons in support of Commission Order UE16-04.

2. Regulation of Public Utilities in P.E.I.

[8] The Applicant, Maritime Electric, owns and operates a fully integrated system providing for the purchase, generation, transmission, distribution and sale of electricity throughout Prince Edward Island. The Company's head office is located in Charlottetown with generating facilities in Charlottetown and Borden-Carleton. The Company has contractual entitlement to capacity and energy from NB Power's Point Lepreau nuclear generating station and an agreement for the purchase of capacity and system energy from NB Power delivered via two submarine cables. The cables are leased from the Province of Prince Edward Island. The Company also purchases 92.5 MW of wind powered energy under contract with the PEI Energy Corporation.

[9] Maritime Electric is a "public utility" as defined in the *EPA* and, as such, is subject to regulatory oversight by the Commission. The Commission's jurisdiction to regulate public utilities is founded in both the *EPA* and the *Island Regulatory and Appeals Commission Act*, R.S.P.E.I. 1988, Cap. I-11 (the "*IRAC Act*").

[10] Since the Commission was first created in 1991, its jurisdiction to regulate public utilities under the *EPA* has been in an ongoing state of change. In 1994, the Government introduced a price cap on electricity rates equivalent to New Brunswick rates plus 10%. While the price cap was in effect, the Commission was authorized to "monitor" but not "regulate" utilities. In 2004, the legislation reverted to full cost of service regulation, requiring the Commission's approval for any changes to the rates, tolls and charges for electricity. Cost of service regulation remained in effect until 2010, when the Government, through amendments to the *EPA*, introduced legislatively fixed electricity rates as part of the PEI Energy Accord (the "Energy Accord"). The Energy Accord continued for a five-year period, from March 1, 2011 to February 29, 2016. As a result of the expiration of the Energy Accord, the Commission was required to set the rates, tolls and charges for electricity effective March 1, 2016.

[11] In accordance with the *EPA*, Maritime Electric has a monopoly to provide electric service in the Province of PEI. Section 2.1(1) of the *EPA* states that "*No person other than Maritime Electric Company, Limited shall provide service in the province, or in a part of the province*". The only exception to this monopoly are those customers served by the City of Summerside's electric utility.

[12] Regulatory oversight is of increased importance when dealing with a monopoly, such as Maritime Electric's, due to a lack of competition and natural market forces. However, the financial benefits associated with a monopoly must be balanced against the onerous requirements imposed on Maritime Electric to provide "*reasonably safe and adequate*" electric service, at all times and to all parts of the Province. This is not without challenges, risk and expense for the Company.

[13] The Commission is required, in accordance with the *EPA*, to set rates, tolls and charges for electric service that are "*reasonable, publicly justifiable, and non-discriminatory*". In doing so, the Commission must balance the interests of ratepayers and the interests of the utility. This duty was explained by the Supreme Court of Canada in the leading case of *Northwestern Utilities, Limited v. The City of Edmonton and Board of Public Utility Commissioners of Alberta*, [1929] SCC 186 [*Northwestern Utilities*]:

The duty of the Board was to fix fair and reasonable rates; rates which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested.

3. Overview of Proceedings

[14] In 2015, Maritime Electric filed with the Commission five separate applications pursuant to the *EPA*. These applications generally dealt with the following matters:

- Approval of a proposed energy efficiency and demand side management ("DSM") plan (Commission Docket UE21406) ("DSM Application");
- Approval of proposed expenditures to design, construct and commission a 50 MW combustion turbine generator (Commission Docket UE20723) ("CT4 Application");
- Approval of proposed amendments to the rates of depreciation for several classes of property beginning January 1, 2016 (Commission Docket UE21603) ("Depreciation Rate Application");
- Approval of proposed amendments to the rates, tolls and charges for electric service for the period beginning March 1, 2016 (Commission Docket UE20942) ("General Rate Application"); and
- Approval of a proposed annual capital budget for 2016 (Commission Docket UE20724) ("Capital Budget").

[15] The Commission provided public notice of each application and allowed for the involvement of the public, including in the exchange of interrogatories. All filings in respect of the above noted applications were made available to the public and can be viewed on the Commission's website.

[16] On November 3, 2015, the Commission issued Order UE15-01 approving the Capital Budget as filed.

[17] Also on November 3, 2015, the Commission issued Order UE15-02 with respect to the DSM Application. The Commission refused to accept the majority of the DSM plan as filed by Maritime Electric, approving only the public outreach and education components. The Commission has since engaged the services of expert consultants with respect to DSM and a report is forthcoming. The Commission expects that Maritime Electric and the Government will work together to develop a DSM plan that is consistent with, and complimentary to, the Provincial Energy Strategy that is currently being developed by the Government. A further order will be issued with respect to the DSM Application in due course.

[18] On January 29, 2016, the Commission issued Order UE16-02 accepting Maritime Electric's withdrawal of the CT4 Application, subject to certain conditions. The Order was issued in response to a letter and supporting document filed by Maritime Electric advising that the Company has the ability to procure access to 50 MW of firm capacity and requesting that the CT4 Application be withdrawn accordingly.

[19] The General Rate Application was initially filed with the Commission on October 28, 2015. The Commission issued a Notice of Application that provided an overview of the proposed amendments to the rates, tolls and charges for electric service being sought by Maritime Electric and also provided information on how the public could view, comment and ask questions with respect to the application.

[20] In response to the initial filing in the General Rate Application, Mr. Roger King issued interrogatories to Maritime Electric and received responses. No other public comment was received with respect to the initial filing. The Government of Prince Edward Island did not participate in the interrogatory process and did not seek formal intervener status at the time of the initial filing.

[21] On January 29, 2016, Maritime Electric filed the Agreement with the Commission. The Agreement addressed the matters raised in the General Rate Application and the Depreciation Rate Application, as well as other matters relating to electric service in the Province.

[22] Upon receipt of the Agreement, the Commission issued Procedural Order UE16-01. The Procedural Order directed that the General Rate Application and the Depreciation Rate Application would be consolidated into a single matter in Commission Docket UE20942 and heard together at a public hearing. The Procedural Order further directed that the public hearing would commence at 9:30 a.m. on February 25, 2016, and set certain timelines for submissions by the parties, interveners and the public.

[23] Also on January 29, 2016, the Commission issued a Notice of Public Hearing. The Notice provided information regarding the Agreement, including the key terms, how the Agreement could be viewed, how the public could participate or provide comments, as well as the date, time and location of the public hearing. The Notice was published on the Commission's website and in local newspapers.

[24] On February 1, 2016, the Government of Prince Edward Island, as represented by the Minister of Transportation, Infrastructure and Energy, sought formal intervener status in the application. On February 16, 2016, the Commission also received a request for intervener status from the Environmental Coalition of Prince Edward Island Ltd. ("ECOPEI"). However, upon further inquiry, ECOPEI advised the Commission that it did not intend to call evidence at the hearing, but instead requested only the opportunity to ask questions of witnesses called on behalf of Maritime Electric and/or the Government.

[25] On February 19, 2016, the Commission issued Procedural Order UE16-03. In accordance with the Procedural Order, the Government was granted formal intervener status in the application. ECOPEI was not granted intervener status, but was permitted to participate in the manner requested, including the questioning of witnesses called on behalf of Maritime Electric and/or the Government.

[26] The Commission also received comments via email from Mr. Tom Courtney, a resident of PEI who opposed the proposed increase in electricity rates. No other written comments were received from the public.

[27] Members of the public were also invited to make oral submissions at the public hearing. Although individuals seeking to make oral submissions were required to register with the Commission in advance of the hearing, no individuals registered. At the commencement of the hearing, the Honourable Jamie Fox, Interim Leader of the Official Opposition, requested the opportunity to make submissions. This request was granted by the Commission. No other oral submissions were made by members of the public.

4. Commission Approach to Settlement Agreements

[28] The Commission notes at the outset that it is not a party to the Agreement and does not consider itself to be, in any way, bound by the terms of the Agreement. The Commission's jurisdiction to regulate public utilities, including Maritime Electric, is founded in the *EPA*. Although the Agreement is evidence that certain matters are supported by the Government, the Commission must still exercise its jurisdiction to set rates, tolls and charges for electric service that it determines to be reasonable, publicly justifiable, and non-discriminatory.

[29] Negotiated settlements, such as the Agreement, are becoming increasingly more common in utility regulation across Canada, particularly in Alberta and Nova Scotia. The Commission views negotiated settlements favorably in the context of utility regulation. A negotiated settlement brings interested parties to the table, giving consumers, industries and utilities a voice without the need for a costly – and potentially intimidating – regulatory hearing. Multi-year agreements, whenever possible, are to be encouraged as allowing for rate stability and decreasing the cost of regulation – a cost that is ultimately borne by ratepayers.

[30] Numerous regulators across Canada have legislation, procedural rules and/or common law that govern the negotiated settlement process. These rules, such as those developed by the Alberta Utilities Commission ("AUC"), provide a procedural framework from the initiation of the negotiated settlement process to the approval by the regulator. The AUC rules, for example, address issues such as notice to interested parties, the disclosure of relevant information, and the evidence that must be filed in support of an application to approve a negotiated settlement.

[31] Despite being common in other jurisdictions, this is the first time the Commission has been presented with a negotiated settlement in the context of utility regulation. As a result, the Commission does not currently have the benefit of legislation or procedural rules to assist in the consideration of the Agreement. Instead, the Commission, with the approval of the parties, has adopted the following principles set forth by the Nova Scotia Utility and Review Board ("NSUARB") and the Alberta Court of Appeal.

[32] Once the interested parties reach a negotiated settlement, the agreement is not simply approved by "rubber stamp" of the regulator. Instead, a regulator presented with a negotiated settlement is required to determine if the agreement is in the public interest (see *Nova Scotia Power Inc. (Re)*, 2012 NSUARB 227 at para. 24). A settlement agreement does not replace an "appropriate and informed review by the Board as to what is in the overall public interest" (see *ATCO Electric Ltd. v. Alberta (Energy and Utilities Board)*, 2004 ABCA 215 [ATCO] at para. 139).

[33] Although the "public interest" in the rate-setting context traditionally requires a balance between the interests of the utility and the interests of ratepayers, this will not always be the case when considering a negotiated settlement.

[34] When a regulator is presented with a "package deal" negotiated settlement agreed to by a utility, and the agreement is approved by the regulator in its entirety, the public interest to be considered is that of the consuming public generally; the regulator is under no obligation to consider the utility's economic interests. If the regulator alters, or proposes to alter, the terms and conditions of a negotiated settlement, then the regulator's consideration of the public interest will include both the interests of the consuming public and the economic interests of the utility (see *ATCO* at para. 140-143).

[35] Although the Commission has adopted these principles in the context of the present application, it fully intends to work with all interested parties to develop and implement procedural rules governing the negotiated settlement process for future applications. The Commission is particularly interested in ensuring that all interested parties are represented at the negotiating table. It is noteworthy that other jurisdictions have a consumer advocate appointed to represent certain interests, most notably that of the residential consumer. The Commission recognizes the value of a consumer advocate, in some form, and expects the Government and Maritime Electric to present options to the Commission as to how to best represent these interests in the event of future negotiated settlements.

5. Overview of the Application and the Agreement

[36] On January 29, 2016, Maritime Electric filed with the Commission the Agreement as between the Company and the Government. The Agreement, dated January 28, 2016, was executed by Fred J. O'Brien, President and Chief Executive Officer of Maritime Electric, and the Honourable Paula J. Biggar, Minister of Transportation, Infrastructure and Energy.

[37] Also on January 29, 2016, Maritime Electric filed Minutes of Settlement with the Commission. In accordance with the Minutes, the parties acknowledged that the Agreement differed from the relief sought in Maritime Electric's initial filing. In so far as there were any differences, the parties requested that the terms of the Agreement would prevail. Maritime Electric and the Government jointly requested that the Agreement be approved and that the Commission set new electricity rates effective March 1, 2016 on the basis of the Agreement.

[38] Upon review of the Agreement, the Commission determined that it differed, in many respects, from the initial filing of Maritime Electric in support of its General Rate Application. As a result, the Commission ordered Maritime Electric to file an amended application with the Commission. The purpose of requesting the amended application was to provide support and validation for certain matters agreed to by Maritime Electric and the Government, particularly where the Agreement differed from Maritime Electric's initial request for relief.

[39] Maritime Electric filed its amended application with the Commission on February 5, 2016. The amended application included the following reconciliation and comparison between the relief sought in the initial application versus the relief sought in the Agreement:

	Initial Application	Agreement
Proposed Rate Setting Term	1 Year (March 1, 2016 - February 28, 2017)	3 years (March 1, 2016 - February 28, 2019)
Return on Average Common Equity - 2016	9.70% for setting revenue requirement within an allowed range of 9.50% to 9.90%	9.35%
Average Common Equity	2016 - 40.5%	2016 - 40.9% 2017 - 40.0% 2018 - 40.0%
Regulatory Costs - 2016	\$1,009,300	\$802,300
Financing Costs - 2016	\$12,705,600	\$12,388,100
Cost Allocation Proposal	Residential Second Block/GS1	Pending Further Detailed Study
Customer Electricity Costs	2.5% (Typical Customer)	2.3% per year (Typical Customer)
Rate of Return Adjustment (RORA) Refund Period	2 years	3 years

[40] Following receipt of the Agreement and the amended application, the Commission issued interrogatories to both Maritime Electric and the Government. Responses to all interrogatories were received in advance of the public hearing and made available on the Commission's website.

[41] The Commission has made the following findings based on the evidence as presented by the interested parties and members of the public.

5.1 Rates, Tolls & Charges

a) Evidence

Proposed Rate Increase

[42] In its initial filing, Maritime Electric sought a one-year increase in electricity rates equivalent to a 2.5% increase for the typical rural residential customer consuming an average of 650 kWh/month. The actual level of consumption by a customer would determine if the increase in electricity costs would be more or less than the typical customer. The rate increase, if approved by the Commission, would be in effect for a one-year period from March 1, 2016 to February 28, 2017. The rates initially proposed by Maritime Electric for each class of customers are set out in Schedule 16-1 to the initial filing.

[43] In its amended filing, Maritime Electric proposed to set electricity rates for a three-year period from March 1, 2016 to February 28, 2019. The Company requested an annual increase of 2.3% for the typical electric customer in each class. The impact on annual electricity costs would vary from customer to customer based on their actual electricity consumption. The increases, if approved, would come into effect annually on March 1, 2016, March 1, 2017, and March 1, 2018.

Cost Allocation & Rate Structure

[44] Maritime Electric filed, as part of its initial filing, a cost allocation study prepared by Chymko Consulting Ltd. at the request of Maritime Electric (the "2014 Cost Allocation Study"). The 2014 Cost Allocation Study was based on Maritime Electric's statement of earnings for the twelve months ending December 31, 2014.

[45] A significant component of cost allocation and rate structure in this Province is the continued use of the "residential second block". The residential second block offers a reduced rate per kWh for residential customers who consume in excess of 2,000 kWh per month. The residential second block not only encourages energy consumption, the evidence filed discloses that it results in the residential rate class paying less than the actual cost to provide service to that class.

[46] The cost of providing service to the various classes of customers is measured by using a revenue-to-cost ("RTC") ratio. A RTC ratio below 100% indicates that revenue for that rate class should be increased, while a RTC ratio above 100% indicates that revenue for that rate class should be decreased. Maritime Electric views a RTC range of 90/110 as an acceptable range for the Company's rate classes.

[47] The 2014 Cost Allocation Study (like cost allocation studies in the past) confirmed the existence of disproportionate RTC ratios in Maritime Electric's current rate structure. While the RTC ratio for the residential rate classes (excluding seasonal and farm customers) was 92%, the RTC ratio for the general service rate class was in excess of 110%. In simplified terms, the RTC ratios suggest that the general service rate class is subsidizing residential consumers.

[48] For these reasons, Maritime Electric initially proposed to increase the residential second block from 2,000 kWh per month to 3,000 kWh effective March 1, 2016, then to 3,800 kWh effective March 1, 2017, and finally to 5,000 kWh effective March 1, 2018. According to Maritime Electric's evidence, a 5,000 kWh per month threshold was an appropriate threshold to capture the large majority of the highest consumption residential electricity consumers (with dwellings). The estimated \$773,000 of incremental residential rate class revenue generated by the proposed change over the three-year transition period would be used to lower electricity costs for general service customers.

[49] As part of its amended filing, Maritime Electric sought to defer any changes to the residential second block. Instead, Maritime Electric proposed consulting with stakeholders and undertaking a rate design study to determine the appropriate class for all or some farms, and filing an updated cost allocation study using 2017 financial data.

[50] The deferral of changes to the residential second block was supported by the Government. The Government presented evidence that it is developing a new Provincial Energy Strategy, the results of which could lead to new policy direction on electricity supply and/or usage. The Government also noted that changes to the second block rate could have a significant financial impact on certain consumers. It submitted that consultation should occur with affected consumers prior to implementing any changes, and suggested that there may be opportunities to mitigate the financial burden through programs resulting from the Provincial Energy Strategy and DSM.

[51] In response to the Commission's interrogatories, both Maritime Electric and the Government confirmed that they were not aware of any other jurisdiction in North America that utilizes a discounted pricing structure in the residential rate class.

[52] Also on the issue of cost allocation, Maritime Electric proposed the preparation of a cost allocation classification study with respect to Point Lepreau. The Point Lepreau nuclear generating facility is a base load facility with substantially all costs as fixed long term facility costs, with relatively minor fuel costs. In the 2014 Cost Allocation Study, the annual fixed costs incurred under the Point Lepreau participation agreement are classified as all demand related, with a minor fuel cost component classified as energy. Maritime Electric proposes to undertake a detailed review and analysis of the Point Lepreau costs to determine the most appropriate methodology to be employed in future cost allocation studies to classify the annual fixed costs as between demand and energy.

b) Findings

Proposed Rate Increase

[53] The Commission encourages multi-year rate setting, whenever possible, so as to allow for stable and predictable electricity rates for consumers. Multi-year rate setting also reduces the utility's regulatory costs – costs that are ultimately borne by the consumer.

[54] The Commission accepts as reasonable the proposed annual increase in electricity rates of 2.3% during the three-year period from March 1, 2016 to February 28, 2019. In accordance with section 20 of the *EPA*, Maritime Electric shall charge the rates, tolls and charges for electric service as set out in Appendix 1 hereto for the period from March 1, 2016 to February 28, 2019.

[55] The rates, tolls and charges in Appendix 1 are based upon the forecast values and input values set forth in Appendix 2 hereto. In response to the Commission's interrogatory, Maritime Electric advised that the schedule of inputs in Appendix 2 is based upon actual results to December 31, 2015 and management's best estimates for 2016 to 2018. Both Maritime Electric and the Government confirmed that they are not aware of any information that would suggest that the inputs in Appendix 2 are now inaccurate or will differ in any material way from the projections contained therein.

[56] Both Maritime Electric, as applicant, and the Government, as intervener, shall notify the Commission, in a timely manner, of any material change to any of the inputs set forth in Appendix 2. Maritime Electric shall also file with the Commission, on or before February 28 in each of 2017, 2018 and 2019, the actual values associated with each of the inputs set forth in Appendix 2, based on the Company's actual financial results for the preceding year.

Cost Allocation & Rate Structure

[57] The Commission accepts the proposed deferral of changes to the residential second block pending completion of the Provincial Energy Strategy and the DSM plan. The deferral is intended to allow for consultation with impacted consumers and to explore opportunities to mitigate the financial burden through programs resulting from the Provincial Energy Strategy and DSM.

[58] However, the Commission has, on numerous occasions, expressed concerns with the continued existence of the residential second block (see, for example, Commission Order UE10-03). The residential second block is not based on cost of service; in effect, it is a method to subsidize electricity costs for certain classes of consumers, most notably farm operations. For this reason, the elimination of second block has historically been opposed by the farming community and by the governments of the day. Examples of this opposition are clearly seen in Commission Order UE10-03.

[59] The Commission views the continued existence of the residential second block as being contrary to the principles behind the *EPA*, which directs that the rates, tolls and charges for electric power should be reasonable, publicly justifiable and non-discriminatory. The Commission fully expects that Maritime Electric and the Government will work together over the next two years to develop a proposed rate structure that is fair and non-discriminatory for all ratepayers. Given the evidence presented on this application regarding the cross-subsidization of rate classes, the Commission is hereby putting Maritime Electric and the Government on notice that any proposed continuation of the residential second block rate in future rate applications will require compelling evidence of its equity to ratepayers.

[60] Accordingly, Maritime Electric shall undertake a rate design study to consider changes to the multi-block residential energy pricing structure, and related changes to Maritime Electric's other rate structures. The rate design study and a proposed rate structure shall be filed with the Commission on or before April 30, 2018. Maritime Electric shall also file an updated cost allocation study with the Commission on or before June 30, 2018, based on the Company's financial results to December 31, 2017. Finally, Maritime Electric shall prepare and file with the Commission a Point Lepreau cost allocation classification study on or before April 30, 2017.

5.2 Return on Average Common Equity

[61] At common law, a regulated public utility is entitled to earn a "fair return" on the capital invested in its enterprise. As explained by the Supreme Court of Canada in *Northwestern Utilities*:

By a fair return is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise.

[62] The *EPA* codifies this common law principle in section 24, which states that a public utility is entitled to earn an annual return on its investment that is "*just and reasonable*":

24. (1) Every public utility shall be entitled to earn annually such return as the Commission considers just and reasonable, computed by using the rate base as fixed and determined by the Commission for each type of service furnished, rendered or supplied by such public utility, and the return shall be in addition to the expenses as the Commission may allow as reasonable and prudent and properly chargeable to operating account, and to all just allowances made by the Commission according to this Act and the rules and regulations made by the Commission hereunder.

[63] It is the role of the Commission to determine the return on average common equity ("ROE") that is just and reasonable in the circumstances.

a) Evidence

[64] In its initial filing, Maritime Electric sought a ROE of 9.7%, within an allowed range of 9.5% to 9.9%, for a one-year period from March 1, 2016 to February 28, 2017. The proposed ROE was based on a forecast average common equity of 40.5% for 2016. In support of this position, Maritime Electric filed a report prepared by James M. Coyne, Senior Vice President of Concentric Energy Advisors ("Concentric") at the request of Maritime Electric.

[65] Mr. Coyne concluded that Maritime Electric's proposed ROE was consistent with the allowed ROE for other investor-owned electric utilities across Canada, particularly those in Atlantic Canada, given the relative risk of Maritime Electric to those utilities.

[66] The Concentric report identified a number of business and financial risks unique to Maritime Electric, including:

- greater risk associated with adverse economic conditions due to Maritime Electric's small size;
- weaker electric sales growth in coming years due to macroeconomic and demographic trends;

- greater operating risks associated with:
 - Maritime Electric's reliance on NB Power for a large percentage of its energy supply;
 - the need for on-island generation assets as a back-up in case of supply interruption;
 - weather-related service interruptions; and
 - additional operational and contractual complexities associated with on-island wind generation facilities;
- higher political/regulatory risk due to the "active role of government, as demonstrated by past changes in legislation as well as by the broad mandate of the PEI Energy Commission [sic]."

[67] Based on these and other factors, Mr. Coyne concluded that "the business risk of Maritime Electric today is above average and somewhat higher than its Canadian and U.S. peers".

[68] In its amended filing, Maritime Electric requested a lesser ROE of 9.35% for the period March 1, 2016 to February 28, 2019, based on average common equity of 40.9% in 2016 and 40% in 2017 and 2018. In support of this amended ROE, the Government, as intervener, filed an independent report prepared by Grant Thornton LLP at the request of the PEI Energy Corporation.

[69] The Grant Thornton report confirmed that during the period from 2010 to 2015, the ROEs approved by Canadian regulators had decreased. In Nova Scotia, the ROE decreased by 0.35% during this period, while the ROE in Newfoundland decreased by 0.2%. The proposed ROE for Maritime Electric, if approved, would result in a decrease of 0.4% from the legislated ROE of 9.75% in place during the Energy Accord.

[70] The proposed ROE of 9.35% was supported by the Government. In response to the Commission's interrogatory requesting rationalization for the proposed ROE, the Government stated in part:

In rationalizing the agreed upon ROE, Government recognized that past regulatory decisions allowed for a risk premium, presumably for the purpose of protecting Maritime Electric's S&P [Standard & Poor's] debt rating. On this basis and in the interests of continued rate stability, it was deemed prudent to reach agreement on an ROE reduction of 0.4 percent (for an allowed ROE of 9.35 percent). This reduction is in the range of what has been seen in other Canadian jurisdictions over the past five years.

[71] In response to the Commission's interrogatory, Maritime Electric reiterated many of the factors identified by Concentric as increasing the Company's overall risk profile relative to other Atlantic Canadian electric utilities and comparable Canadian utilities. Based on these continuing risk factors, Maritime Electric submitted that a risk premium of 25 to 50 basis points was just and reasonable.

[72] ECOPEI submitted that an ROE of 9.35% was "*an extremely high return on average common equity*" and advocated for a more modest ROE that was comparable to monopolies in other jurisdictions.

b) Findings

[73] The Commission accepts the proposed ROE of 9.35% based on average common equity of 40.9% in 2016 and 40% in 2017 and 2018. The ROE shall be in effect for the 2016, 2017 and 2018 calendar years, and thereafter until varied by the Commission.

[74] An ROE of 9.35% represents a reduction of 0.4% from the legislated ROE of 9.75% in effect during the Energy Accord. A reduction of this magnitude is consistent with what has been seen in other Canadian jurisdictions, including in Atlantic Canada, as noted in the review undertaken by Grant Thornton.

[75] The Commission also accepts that a ROE risk premium is appropriate due to the unique risk factors that exist in this Province, as set out by Concentric and Maritime Electric. The Commission recognizes, in particular, that Maritime Electric faces incremental risk relative to other utilities due to the frequency in which the regulatory framework in this Province has been changed over the last twenty years. Such changes may be perceived by investors as increasing the regulatory risk of the Company, resulting in the need for a higher risk premium when compared to similar utilities in other jurisdictions. The Commission recognizes the Company's responsibilities for electricity supply which are unique when compared to other Canadian distribution utilities. The Commission is reluctant to assign a value to the risk premium, and views this as an assessment to be conducted based on the circumstances as they exist at the time of each rate application.

[76] The Commission accepts the Company's average rate base set forth in Appendix 2 hereto for 2016, 2017 and 2018. However, Maritime Electric shall file with the Commission, within six months from the date of Commission Order UE16-04, confirmation of its rate base, including details of all accounts comprising its rate base. Maritime Electric shall also file with the Commission, on or before February 28 in each of 2017, 2018 and 2019:

- a) the audited rate of return on average rate base for the previous fiscal year; and
- b) the audited rate of return on average common equity for the previous fiscal year.

5.3 Energy Cost Adjustment Mechanism (“ECAM”)

a) Evidence

[77] The Energy Cost Adjustment Mechanism (“ECAM”) has been in place in this Province since the early 1970s and is one component of the amount charged to ratepayers for electric service. The ECAM is intended to provide a smoothing effect to the collection or rebate of costs. It enables Maritime Electric to collect/return fluctuations in approved energy related costs above/below the forecast base amount per kWh included in the basic rates.

[78] Under the operation of the ECAM, Maritime Electric charges to expense, on a monthly basis, an amount equal to the net purchased and produced energy for the month, multiplied by a base rate per kWh. This amount is subtracted from the actual cost of energy purchased or produced during the month, with the difference (positive or negative) added to the Company's balance sheet for future recovery from, or return to, customers over a period of time and as approved by the Commission.

[79] In its evidence, Maritime Electric noted significant fluctuations in the ECAM Costs Recoverable From (Payable To) Customers. These costs varied from negative \$5,061,928 in 2014, to a forecast \$2,881,920 in 2015 and \$1,532,952 in 2016. Maritime Electric submits that these fluctuations are driven in part by how the ECAM base rate was previously set, and in part by the manner in which the rate charged to customers for ECAM was calculated.

[80] So as to reduce such fluctuations, Maritime Electric proposes:

- a) to reset the base rate at the forecast rate per kWh for energy supply costs during the year for which revised customer rates are sought; and
- b) to modify the ECAM to reflect forecast energy supply costs in customers' rates during the period in which they will be incurred.

[81] According to Maritime Electric's evidence, the Energy Purchase Agreement between NB Power and Maritime Electric has been extended for an additional three years, to February 28, 2019. This extension allows the Company to reasonably estimate the average unit cost of energy purchases for the three-year period, barring any unplanned events (for example, unplanned outages at Point Lepreau or curtailments in excess of forecast amounts). In addition, NB Power has recently granted a one-year extension of an existing capacity agreement and an incremental increase of 50 MW of firm transmission service to PEI, reducing the risk of significant curtailments.

b) Findings

[82] The Commission accepts as reasonable the modified ECAM set forth in Appendix 3 hereto. The modified ECAM shall apply to the approved basic rates for meter readings taken on or after March 1, 2016.

[83] The Commission also accepts as reasonable the following ECAM base rates per kWh:

	March 1, 2016	March 1, 2017	March 1, 2018
ECAM Base Rate per kWh (\$)	0.08605	0.08988	0.09161

[84] The Commission accepts Maritime Electric's submission that these changes to the ECAM will reduce the amount of energy costs being deferred (collected) for future collection (return), and will result in the timely collection of energy costs through basic rates. Such results are viewed favorably by the Commission as being in the public interest.

5.4 Rate of Return Adjustment ("RORA")

a) Evidence

[85] The Rate of Return Adjustment ("RORA") account represents over earnings by Maritime Electric, in excess of the allowed return on average common equity, during the term of the Energy Accord. In accordance with the legislated Accord, these excess earnings are to be returned to customers, with interest, at the conclusion of the Energy Accord.

[86] The RORA account was implemented by Commission Order UE11-04 in December 2011, being the first year of the Energy Accord. Maritime Electric recognized that in the absence of regulatory adjustment, it would have exceeded the allowed 9.75% return on average common equity.

[87] According to Maritime Electric's submissions, the excess earnings were due to sales growth being higher than forecast when developing the Accord. As a result, Maritime Electric sought and received direction from the Commission to establish a RORA account to defer amounts in excess of the allowed return. In accordance with Commission Order UE11-04, the RORA account; also, accrued interest at the Company's cost of short-term borrowing.

[88] On March 1, 2013, Maritime Electric began refunding to customers the actual 2011 RORA and the forecast 2012 RORA at the rate of \$0.00071/kWh. This refund rate is reflected in the rates legislated during the continuation of the Energy Accord for the period from March 1, 2013 to February 29, 2016.

[89] Maritime Electric confirmed that it also recorded a RORA in 2013, 2014 and 2015. The Company submits that the excess earnings earned during the Energy Accord continuation were also due to higher than forecast sales growth, driven primarily by the accelerated adoption of electricity based sources for space heating.

[90] In its initial filing, Maritime Electric forecast the balance of the RORA Account, to February 2016, to be \$15,035,081. It proposed to refund the RORA to customers over a two-year period from March 1, 2016 to February 28, 2018. The Company estimated a return of \$6,384,400 (48%) of the RORA balance between March 1, 2016 and February 28, 2017 by applying a credit of \$0.00533/kWh for each rate class. The disposition of the balance of the RORA account would be addressed in the Company's 2017 rate application.

[91] In its amended filing, Maritime Electric confirmed the balance of the RORA account was \$15,156,765 as of December 31, 2015. It did not provide an updated forecast for January and February 2016. Maritime Electric proposed that the balance of the RORA account be refunded over a three-year period – rather than a two-year period – beginning March 1, 2016. The three-year period was proposed to smooth the impact on customers' electricity rates over the term of the Agreement.

b) Findings

[92] The Commission accepts as reasonable the refund of the balance of the RORA account to ratepayers over the three-year period from March 1, 2016 to February 28, 2019. In doing so, the term of repayment is consistent with the term of the Agreement.

[93] The Commission also accepts the following refund rates per kWh as proposed by Maritime Electric:

	March 1, 2016	March 1, 2017	March 1, 2018
RORA Rebate per kWh (\$)	0.00410	0.00473	0.00345

[94] However, the Commission does express concern about the level of over earning by Maritime Electric during the term of the Energy Accord. Although the balance of the RORA account is now being refunded, it is being refunded to present-day ratepayers, rather than to those ratepayers who contributed to the excess earnings. The Commission is of the view that over earnings must be regulated more closely in the future to both limit the amount of over earning and ensure a timely refund to ratepayers. Maritime Electric is therefore ordered to file with the Commission the monthly balance of the RORA account as part of its monthly reporting requirements, and to further file the year-end balance of the RORA account on or before February 28 in each of 2017, 2018 and 2019.

[95] The Commission also expresses concern over Article 4.1 of the Agreement entered into between Maritime Electric and the Government. Article 4.1 uses the word "recover" when discussing the RORA account. The Commission recognizes that, in the event of an over-refund from the RORA account, Maritime Electric may seek Commission approval to collect the amount of any such over-refund from ratepayers. However, in the absence of an over-refund, Maritime Electric shall not otherwise be entitled to recover any amounts from the RORA account and shall specifically not be entitled to recover from the RORA account in the event the Company does not attain a return on average common equity of 9.35%. Maritime Electric agrees with this finding and advises the Commission it was not the intent of Article 4.1 to permit recovery from RORA for any under-earnings.

[96] Ideally for ratepayers, a public utility would never over earn beyond its allowed rate of return. However, the Commission recognizes that the inputs prepared by Maritime Electric are forecast values that will, in all likelihood, differ from actual results. Therefore, any over earnings during the three-year period from March 1, 2016 to February 28, 2019 shall be deposited to a separate RORA account. Maritime Electric shall report the balance of this new RORA account to the Commission monthly and annually, and the balance, including accrued interest at the Company's short term borrowing rate, shall be refunded to ratepayers commencing March 1, 2019 or as further directed by the Commission.

5.5 Weather Normalization Mechanism

a) Evidence

[97] Maritime Electric seeks to implement a weather normalization reserve to mitigate volume and/or demand fluctuations caused by temperature changes relative to historical averages. According to Maritime Electric's evidence, weather normalization reserves are common throughout the utility industry and are part of a broader group of deferral reserves designed to mitigate volume or demand fluctuations.

[98] Maritime Electric does not currently utilize a weather normalization reserve. The Company's request arises from increased volatility in sales revenue and energy supply costs caused by the increased use of electricity for space heating in recent years.

[99] Generally, a weather normalization mechanism allows a utility to "reserve" revenue earned in colder-than-average years for use in warmer-than-average years. In a year when heating degree days ("HDD") are higher than normal, a marginal net revenue amount would be subtracted from the Company's income statement and added to the weather normalization reserve. In a year when HDD are lower than normal, a marginal net revenue amount would be added to the Company's income statement and subtracted from the weather normalization reserve.

[100] According to Maritime Electric's evidence, the weather normalization reserve on the Company's balance sheet should, over time, net to zero. As a result, Maritime Electric does not anticipate the need for an adjustment mechanism to deal with reserve balances.

b) Findings

[101] The Commission approves the weather normalization reserve, on an interim basis only, for the period from January 1, 2016 to February 28, 2019.

[102] The Commission does have concerns about the impact that a weather normalization reserve may have on the RORA account, in particular, that contributions to the RORA account – and the associated refunds to ratepayers – may be diminished as a result of the weather normalization reserve. In light of these concerns, Maritime Electric shall file with the Commission, as part of its monthly reporting requirements, the monthly balance of the weather normalization reserve. Maritime Electric shall also file with the Commission, on or before February 28 in each of 2017, 2018 and 2019, the year-end balance of the weather normalization reserve.

[103] The Commission reiterates that the weather normalization reserve is approved on an interim basis only. The Commission will determine the appropriateness of continuing a permanent weather normalization reserve based upon review and analysis of the monthly and annual reports.

5.6 Depreciation Rates

a) Evidence

[104] As of March 1, 2016, the determination of appropriate depreciation rates is within the Commission's jurisdiction by virtue of section 23 of the *EPA*, which provides:

23. Every public utility shall carry a proper and adequate depreciation account when the Commission, after investigation, determines that the depreciation account can be reasonably required; the Commission shall ascertain and determine what are proper and adequate rates of depreciation of the several classes of property of each public utility.

[105] The application of section 23 of the *EPA* was suspended during the five-year period in which the Energy Accord was in effect. As a result, depreciation rates were not regulated by the Commission during that period.

[106] Similarly, the Commission did not have jurisdiction to regulate depreciation rates while the price cap regulation was in effect, from 1994 to 2004.

[107] The Commission did, however, have authority to regulate Maritime Electric's depreciation rates from 2004 to 2010, and issued a number of orders dealing with depreciation during that period. In April 2006, the Commission ordered Maritime Electric to file an updated depreciation study by August 31, 2006 (see Commission Order UE06-02). Although Maritime Electric did file an updated depreciation study, the Commission found it did not comply with certain limitations imposed by the *EPA*, most notably section 47(6). As a result, Maritime Electric was ordered to file a further depreciation study within 36 months (see Commission Order UE07-01). The completion of the depreciation study was ultimately deferred at the request of Maritime Electric (see Commission Order UE08-07). At that time, Maritime Electric reported experiencing "*significant transitional accounting issues*" arising from the adoption of International Financial Reporting Standards. Maritime Electric was ordered to provide quarterly updates to the Commission on the proposed accounting standards.

[108] In December 2010, the Government introduced the Energy Accord. As a result of the Accord, section 23 of the *EPA* was suspended, as was the Commission's jurisdiction to regulate depreciation rates. Instead, input factors, including depreciation rates, were legislated by the Government during the term of the Accord.

[109] Recognizing the end of the Energy Accord in February 2016, Maritime Electric engaged Gannett Fleming to prepare a depreciation study (the "2014 Depreciation Study"). The 2014 Depreciation Study was based on the Company's financial results and assets in service up to and including December 31, 2014.

[110] On July 23, 2015, Maritime Electric filed its Depreciation Rate Application with the Commission. The 2014 Depreciation Study was included as part of that application.

[111] Maritime Electric proposes to adopt the depreciation rates recommended in the 2014 Depreciation Study, effective January 1, 2016. The Company submits that the proposed changes to the depreciation rates incorporate the estimated average service life of assets and a prudent allowance for the cost of removal of assets upon retirement. According to Maritime Electric, the proposed changes to depreciation rates will serve to prevent further increases in the accumulated reserve variance, assuming status quo in other variables. The proposed changes to depreciation rates would result in an increase of approximately \$1.981 million (based on 2014 asset values) in annual depreciation expense.

[112] Maritime Electric also requests an adjustment to depreciation rates to incorporate the amortization of the accumulated reserve variance associated with the Charlottetown Thermal Generating Station's ("CTGS") impending retirement. This increase to the depreciation rates would result in an estimated increase in annual depreciation expense of \$2.117 million, based on 2014 asset values. The Company proposes that further steps required to amortize the accumulated reserve variance with respect to all other asset classes be deferred until the filing of a subsequent depreciation study.

[113] Finally, Maritime Electric proposes to undertake two further studies:

- a decommissioning study with respect to the CTGS that would provide an estimate of the cost of decommissioning and retiring the facility and that also incorporates the Company's plans to potentially stage the retirement of individual generation units at the CTGS; and
- a depreciation study based on financial results up to December 31, 2017. The Company proposes that the depreciation study would include:
 - recommendations on the amortization of the accumulated reserve variance for all other assets classes;
 - an updated proposed depreciation rate adjustment recommendation reflecting the Company's updated plans with respect to the timing of the retirement of the CTGS; and
 - the findings from the decommissioning study to ensure a plan is implemented to provide for adequate and prudent depreciation rates and an adequate reserve for future site removal of the CTGS.

[114] Maritime Electric's amended filing did not alter its requests for relief with respect to matters of depreciation. The Agreement adopted all of the aforementioned proposals made by Maritime Electric with respect to depreciation.

[115] The Commission raised concerns with Maritime Electric's request that depreciation rates be set effective January 1, 2016, as the Commission's authority to regulate depreciation rates under section 23 of the *EPA* was suspended until March 1, 2016. Maritime Electric explained that the input factors, including depreciation rates, were legislatively set under the Energy Accord only until December 31, 2015, notwithstanding that electricity rates were legislated until February 29, 2016. As a result, depreciation rates were not established for the period from January 1, 2016 to February 29, 2016.

[116] Maritime Electric relies on certain provisions of the *EPA* and the *IRAC Act* in support of the Commission's authority to set depreciation rates prior to March 1, 2016. In particular, Maritime Electric relies on section 12 of the *IRAC Act* that allows the Commission to review, rescind or vary any order or decision made by it, including previous orders and decisions with respect to rates of depreciation. Maritime Electric also notes that the Commission retains a general power of supervision with respect to public utilities, pursuant to section 26 of the *EPA*. Finally, Maritime Electric relies on sections 48(1)(b) and 48.1(1)(b) of the *EPA* as allowing the Commission to regulate input factors, including depreciation rates, prior to March 1, 2016.

b) Findings

[117] The Commission accepts that certain of Maritime Electric's classes of property, including the CTGS, are under-depreciated. The Commission also accepts that the depreciation rates for Maritime Electric's classes of property as proposed in the 2014 Depreciation Study are proper and adequate. The Commission further accepts that it has jurisdiction, pursuant to the *IRAC Act* and the *EPA*, to establish depreciation rates effective as of January 1, 2016.

[118] The Commission therefore orders that Maritime Electric shall adopt the depreciation rates set forth in Appendix 5 hereto, effective as of January 1, 2016 (the "Depreciation Rates"). The Depreciation Rates shall remain in effect until varied by the Commission. Maritime Electric shall record and incorporate into the Depreciation Rates the recommended amortization of the accumulated reserve variance associated with the CTGS commencing in 2016 and as outlined in Appendix 6 hereto. The Commission considers it reasonable to defer the amortization of the accumulated reserve variance with respect to all other asset classes so as to balance the rate impact resulting from the change in Depreciation Rates.

[119] On or before June 30, 2018, Maritime Electric shall file with the Commission a decommissioning study with respect to the CTGS as well as an updated depreciation study based on financial results to December 31, 2017.

5.7 Interconnection Upgrade Project

[120] The amended filing advises the Commission that Maritime Electric has entered into a Memorandum of Understanding and a Construction Agency Agreement with the PEI Energy Corporation with respect to the Interconnection Upgrade Project (the "Project").

[121] Generally, the Project is to install two subsea cables with 180 MW capacity each to supplement and/or replace the two existing 40-year-old subsea cables and includes related new infrastructure in both New Brunswick and Prince Edward Island to interconnect with existing electrical transmission infrastructure.

[122] The Company has included in the forecast financial data the Company's share of the Project costs as estimated at the time of the hearing. These costs are included in the forecast rate increase for 2017 and 2018. It also makes assumptions concerning Company revenues from the Open Access Transmission Tariff ("OATT").

[123] The amended filing notes that the Company will seek recovery of its portion of the Project costs as a component of the ECAM and that these adjustments will survive the expiration of the Agreement.

[124] The Commission understands that the Project involves Federal Government funding and that the Project cost, less Federal Government funding, will be financed by the PEI Government and the net cost of the Project will be billed by the PEI Government to MECL, who in turn will recover these costs from ratepayers.

[125] The Commission understands that the net Project costs as initially determined and included in the amended filing are included in the 2.3% increase in rates for 2017 and 2018, respectively. The Commission requires the Company to file any proposal to adjust rates for any differential between proposed Project costs and actual Project costs, once determined.

[126] The Commission understands that the revenue associated with any changes to the current interim OATT will require Commission approval as part of a separate Company filing. This may affect the rate increase for 2016, 2017 and 2018 depending upon the materiality of the OATT rate changes associated with final Project costs.

5.8 Demand Side Management (“DSM”)

[127] The amended filing includes funding for a DSM program that is yet to be approved by the Commission. The funding level included in the amended filing is consistent with the funding initially proposed and rejected by the Commission in Commission Order UE15-02.

[128] The Company indicates that a new DSM program will be put forward for Commission approval and thus has maintained the funding as proposed previously in the amended filing. These DSM costs are part of the 2.3% rate increase for 2016, 2017, and 2018.

[129] Any further DSM programs or expenditures by Maritime Electric require Commission approval as part of a separate DSM filing. The rate increase for 2016, 2017 and 2018 may also require adjustment depending upon the level of DSM expenditures ultimately approved by the Commission.

6. Disposition

[130] The foregoing reasons follow Commission Order UE16-04, issued on the 29th day of February, 2016 in Commission Docket UE20942, a copy of which is attached hereto and forms part of this decision.

DATED at Charlottetown, Prince Edward Island, this 11th day of July, 2016.

BY THE COMMISSION:

Scott MacKenzie Q.C., Chair

Douglas Clow, CPA, CA, Vice-Chair

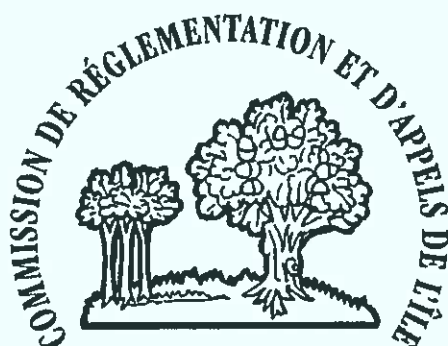
John Broderick, Commissioner

Michael Campbell, Commissioner

APPENDIX:

Appendix 1 – UE16-04

APPENDIX 1:



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket UE20942

Order UE16-04R

IN THE MATTER of an
application by Maritime Electric Company,
Limited to approve the rates, tolls and charges
for electric service for the period beginning
March 1, 2016 and for certain approvals

incidental thereto; **AND IN THE**

MATTER of the Electric Power Act,
R.S.P.E.I. 1988, Cap. E-4 and the Island
Regulatory and Appeals Commission Act,
R.S.P.E.I. 1988, Cap. I-11;

**BEFORE THE
COMMISSION**

on Monday, the 11th day of July, 2016.

Scott MacKenzie Q.C., Chair
Douglas Clow, CPA, CA, Vice-Chair
John Broderick, Commissioner
Michael D. Campbell, Commissioner

Order

IN THE MATTER of
an application by Maritime Electric Company,
Limited to approve the rates, tolls and charges
for electric service for the period beginning
March 1, 2016 and for certain approvals
incidental thereto;

Order

Whereas on July 23, 2015, Maritime Electric Company, Limited ("Maritime Electric") filed an application with the Island Regulatory and Appeals Commission (the "Commission") seeking to amend rates of depreciation with respect to Maritime Electric's several classes of property for the period beginning January 1, 2016 (Commission Docket UE#21603) ("Depreciation Rate Application");

And Whereas on October 28, 2015, Maritime Electric filed an application with the Commission seeking to approve proposed amendments to the rates, tolls and charges for electric service for the period beginning March 1, 2016 (Commission Docket UE#20942) ("General Rate Application");

And Whereas notices of the Depreciation Rate Application and the General Rate Application were published by the Commission on August 7, 2015 and October 28, 2015, respectively;

And Whereas on January 29, 2016, Maritime Electric filed with the Commission an agreement between Maritime Electric and the Government of Prince Edward Island ("Agreement"), which Agreement addresses or agrees to amend certain matters raised in the General Rate Application and the Depreciation Rate Application, as well as other matters relating to electric service in the Province of Prince Edward Island;

And Whereas on January 29, 2016, the Commission issued a procedural order directing that the General Rate Application and the Depreciation Rate Application be consolidated and heard together in Commission Docket UE#20942 (the "Amended Application");

And Whereas a Notice of Public Hearing with respect to the Amended Application was published by the Commission on January 29, 2016;

And Whereas the Notice of Public Hearing outlined certain details of the Agreement and invited members of the public to comment on the Amended Application and to participate in a public hearing;

And Whereas Maritime Electric filed an updated application record with the Commission on February 5, 2016;

And Whereas interrogatories were exchanged and public comments were received with respect to the Depreciation Rate Application, the General Rate Application, and the Amended Application;

And Whereas a public hearing was held with respect to the Amended Application on February 25, 2016;

And Whereas the Government of Prince Edward Island was granted formal intervener status in the Amended Application and permitted to call evidence and cross-examine witnesses at the public hearing;

And Whereas the Environmental Coalition of Prince Edward Island Ltd. was permitted to ask questions of witnesses and make an oral submission at the public hearing;

And Whereas the Leader of the Official Opposition was permitted to make an oral submission at the public hearing;

And Whereas no other individuals requested intervener status or the opportunity to make an oral submission at the public hearing;

AND UPON considering the written and oral submissions received from the parties and from members of the public;

NOW THEREFORE, pursuant to the Electric Power Act, R.S.P.E.I. 1988, Cap. E-4 and pursuant to the Island Regulatory and Appeals Commission Act, R.S.P.E.I. 1988, Cap. I-11,

IT IS ORDERED THAT

Rates, Tolls & Charges

1. Maritime Electric shall charge the rates, tolls and charges for electric service as set out in Appendix 1 hereto for the period from March 1, 2016 to February 28, 2019, which rates, tolls and charges are based upon the forecast values and input values set forth in Appendix 2 hereto.

Return on Average Common Equity

2. Maritime Electric shall be entitled to earn a maximum return on average common equity of 9.35 per cent for each of the calendar years 2016, 2017 and 2018, and thereafter until varied by the Commission.

Energy Cost Adjustment Mechanism

3. The Energy Cost Adjustment Mechanism ("ECAM") set forth in Appendix 3 hereto shall apply to the approved basic rates for meter readings taken on or after March 1, 2016.
4. The base rate per kWh for use in the ECAM shall be as set forth in Appendix 2 hereto for each of the years March 1, 2016 to February 28, 2017; March 1, 2017 to February 28, 2018; March 1, 2018 to February 28, 2019, and thereafter until varied by the Commission.

Rate of Return Adjustment

5. During the period from March 1, 2016 to February 28, 2019, Maritime Electric shall refund to ratepayers the balance of the Rate of Return Adjustment ("RORA") account accumulated to December 31, 2015, being \$15,156,765. The balance of the RORA account shall be refunded at the rates as set out in Appendix 2 hereto for each of the years March 1, 2016 to February 28, 2017; March 1, 2017 to February 28, 2018; March 1, 2018 to February 28, 2019, and thereafter until varied by the Commission.
6. Any over earnings accumulated during the period from January 1, 2016 to February 28, 2019 shall be deposited to a separate RORA account, the balance of which shall be refunded to ratepayers commencing March 1, 2019, or as further directed by the Commission.

7. With the exception of any amounts over-refunded to ratepayers, Maritime Electric shall not be permitted to recover any amounts from the RORA account(s), and in particular, Maritime Electric shall not be permitted to recover from the RORA account(s) in the event it does not attain a return on average common equity of 9.35 per cent. In the event of an over-refund, Maritime Electric shall not be permitted to recover all or part of the over-refund from ratepayers without the approval of the Commission.

Weather Normalization Mechanism

8. The Weather Normalization Mechanism and Reserve Account set forth in Appendix 4 hereto is approved, on an interim basis, for the period January 1, 2016 to February 28, 2019. The Commission shall determine the appropriateness of continuing a permanent Weather Normalization Mechanism and Reserve Account.

Depreciation Rates

9. Maritime Electric shall adopt the depreciation rates set forth in Appendix 5 hereto, effective as of January 1, 2016 (the "Depreciation Rates"). The Depreciation Rates shall remain in effect until varied by the Commission.
10. Maritime Electric shall record and incorporate into the Depreciation Rates the recommended amortization of the accumulated reserve variance associated with the Charlottetown Thermal Generating Station commencing in 2016 and as outlined in Appendix 6 hereto.

Further Studies

11. Maritime Electric shall undertake a rate design study to consider changes to the multi-block residential energy pricing structure, and related changes to Maritime Electric's other rate structures. The rate design study and a proposed rate structure shall be filed with the Commission on or before April 30, 2018.
12. On or before April 30, 2017, Maritime Electric shall prepare and file with the Commission a Point Lepreau cost allocation classification study.
13. On or before June 30, 2018, Maritime Electric shall file with the Commission an updated cost allocation study based on financial results to December 31, 2017.

14. On or before June 30, 2018, Maritime Electric shall file with the Commission a decommissioning study with respect to the Charlottetown Thermal Generating Station.
15. On or before June 30, 2018, Maritime Electric shall file with the Commission an updated depreciation study based on financial results to December 31, 2017.

Annual & Monthly Reporting

16. In addition to all existing reporting requirements and the reporting requirements set out herein, Maritime Electric shall file with the Commission on or before February 28 in each of 2017, 2018 and 2019:
 - a. the actual values associated with each of the inputs set forth in Appendix 2 hereto, based on Maritime Electric's actual financial results for the preceding year;
 - b. the year-end balance of the RORA account(s);
 - c. the year-end balance of the Weather Normalization Reserve Account;
 - d. the audited rate of return on average rate base for the previous fiscal year; and
 - e. the audited rate of return on average common equity for the previous fiscal year.
17. In addition to Maritime Electric's current monthly reporting requirements, Maritime Electric shall file with the Commission as part of its monthly reports:
 - a. the monthly balance of the RORA account(s); and
 - b. the monthly balance of the Weather Normalization Reserve Account.
18. Maritime Electric shall file with the Commission, within six (6) months from the date of this Order, confirmation of its rate base, including details of all accounts comprising its rate base.

Material Change

19. As agreed to by the parties, Maritime Electric, as applicant, and the Government of Prince Edward Island, as intervener and a party to the Amended Application, shall notify the Commission of any material change to any of the inputs set forth in Appendix 2 hereto in a timely manner.

Reasons to Follow

20. The Commission shall provide detailed reasons for the Order granted herein in due course.

DATED at Charlottetown, Prince Edward Island, this 11th day of July, 2016.

BY THE COMMISSION:

Scott MacKenzie Q.C., Chair

Douglas Clow, CPA, CA, Vice-Chair

John Broderick, Commissioner

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.