PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

REPORT OF THE ISLAND REGULATORY AND APPEALS COMMISSION AS DIRECTED BY OIC EC2026-422

Order in Council EC2026-422 directed the Commission to inquire into and report on electricity rate-setting practices, statutory decision-making criteria, and regulatory considerations relevant to potential future approaches, including performance-based regulation. The OIC was followed up by a letter of the former Minister, Sidney MacEwen, dated April 14, 2026. This report is organized to respond to each of the matters raised in the OIC and related letter.

As a preliminary comment, this report is intended to provide general background information respecting the matters raised in OIC EC2026-422, and the related letter, including about the role of the Commission and how that role is carried out. The Commission has not retained any external resources or experts to assist in the preparation of this report.

In order to safeguard the independence, impartiality and neutrality of the Commission as regulator, this response should not be interpreted to be in any way based on any subjective opinion.

The Island Regulatory and Appeals Commission is Prince Edward Island's independent electric utility regulator. The Commission is created by statute and, at law, is required to work within the jurisdiction extended to it by its enabling and operating legislation.

With respect to electricity regulation, the Commission is authorized by both the *Island Regulatory and Appeals Commission Act* and the *Electric Power Act*.

- The *Island Regulatory and Appeals Commission Act* sets out the functions of the Commission as including the function to "regulate utilities", subject to the provisions of the *Electric Power Act*.

- The *Electric Power Act* sets out the framework for this regulation as it relates to public utilities.

As will be discussed below in this response, the Commission must operate within the framework of regulation prescribed by the *Electric Power Act*. The Commission does not have jurisdiction to set electricity policy – that role is firmly within the purview of the provincial government and the legislative assembly.

Maritime Electric Company, Limited is the primary public utility in the province servicing more than 87,000 customers.[1] For the purpose of this response, the Commission will discuss its role in regulating Maritime Electric.

Summerside Electric is generally exempt from regulation by the Commission. The Commission does not, for example, approve Summerside Electric's annual capital budget, its operating expenses, or the electric rates charged to Summerside's customers. However, the Commission

[1] Maritime Electric - History of Maritime Electric

does have jurisdiction over certain matters that may impact Summerside Electric. This response will not include reference to Summerside Electric.

The Prince Edward Island Energy Corporation (“PEIEC”) is also considered a “public utility” under the *Electric Power Act*, as the owner and operator of wind farm operations and transmission facilities in the province. This response does not include reference to PEIEC.

With respect to Maritime Electric, the *Electric Power Act* grants Maritime Electric the exclusive right to provide electric service in the province (s. 2.1). Maritime Electric is required, per the *Electric Power Act*, to provide service in all areas of the province, except within the bounds of the City of Summerside (s. 2.2).

As a public utility within the meaning of the *Electric Power Act*, Maritime Electric has a duty to provide reasonably safe and adequate service to customers at all times (s. 3(a)).

The Commission, as the economic regulator, is intended to act as a proxy for competitive market forces in a natural monopoly. The Commission works in the public interest in carrying out this role.

Under the *Electric Power Act*, the Commission has authority over the “general supervision” of all public utilities (s. 26) and is more specifically responsible for, among other things:

- the approval of electric rates (s. 20);
- the approval of borrowing (s. 12);
- the approval of capital budget expenditures (and variances) (s. 17);
- the approval of return on investment (s. 24);
- the approval of rate base (s. 21);
- the approval of energy efficiency programs (s. 16.1); and
- the approval of service rules and regulations (s. 13).

In addition to approving the rates for electric service, the Commission makes decisions on a number of applications that may impact the level of service that customers receive, or the rates that Maritime Electric may charge for those services in accordance with the list of responsibilities noted above.

Generally speaking, when the Commission receives an application from Maritime Electric, a notice of application is posted on the Commission’s website and published in local newspapers. This ensures that the public is aware of current applications being actively considered by the Commission and has the opportunity to participate in the regulatory process.

1. Electricity Rate-Setting Practices

The former Minister’s letter to the Commission dated April 14, 2026, specifically requests a comprehensive description of the methodology, processes, and analytical approaches used by the Commission in determining electricity rates and allowable earnings, including but not limited to:

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- The treatment of operating and maintenance costs, capital additions, depreciation, fuel and purchased power costs, and variance or adjustment mechanisms;
- The approach to establishing allowable earnings, including return on equity and capital structure assumptions; and
- The regulatory principles, policies, precedents, or benchmarks applied in these determinations.

A. Cost-of-Service Model of Regulation

In responding to these questions, it is first helpful to provide some context about the "cost-of-service" model of regulation prescribed by the *Electric Power Act*. Under this model, the rates charged by the utility are based on the actual cost of providing electricity service to customers. Though some jurisdictions have more recently began to examine other models of regulation (including performance-based regulation), the cost-of-service model remains in many jurisdictions.

Subsection 24(1) of the *Electric Power Act* states:

> **24. Return on investment, utility authorized to earn certain, computation of**
>
> (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.

In effect, this section states that Maritime Electric is entitled to: (1) recover its prudently incurred expenses in providing electricity service to the public and (2) an opportunity to earn "a just and reasonable" profit. This is called a "cost-of-service" model of regulation.

Under this section, the mandate of the Commission is to ensure that the costs and expenses of Maritime Electric to provide electricity service are reasonable, prudent, and properly chargeable to operating account(s). The Commission fulfills this mandate by ensuring:

- expenses are properly associated with the delivery of electrical service;
- expenses are prudent or necessary for the delivery of safe and adequate electrical service; and
- the expenses are reasonable in amount, meaning they are neither unreasonably high nor unreasonably low.

Under the cost-of-service model, Maritime Electric does not set its own rates and does not operate in a competitive market. Instead, rates are established by the Commission based on Maritime Electric's projected "revenue requirement" – that is, the projected cost of providing regulated

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electricity service to every customer and to earn a fair rate of return. This will be described in more detail below.

With respect to electricity rates, section 20 of the *Electric Power Act* states:

> **20. Variation of rates, submission for review and approval**
>
> (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.

The preamble of the *Electric Power Act* further states:

> WHEREAS the rates, tolls and charges for electric power should be reasonable, publicly justifiable, and non-discriminatory;

In Canadian law, "just and reasonable" rates or tariffs are those that are fair to both consumers and the utility.[2] This standard is addressed in more detail later in this response.

In carrying out its mandate, the Commission works in the public interest. The Commission must balance the interests of customers and the utility. In doing so, the Commission must ensure customers receive safe and reliable service at just or reasonable rates, while ensuring that rates are sufficient to permit the utility to recover its prudently incurred costs and earn a fair return on its investment. It is important to caveat, though, that the Commission's mandate does not permit it to disallow prudent costs solely because they would lead to higher rates for customers.[3] In other words, affordability for customers is not a factor the Commission can consider in this exercise.

Rate setting includes two primary steps:

1. Revenue requirement: What is the projected total amount of money Maritime Electric must collect from customers to pay all of its costs and earn its approved return?

2. Rate design: What is a fair allocation of those costs amongst customer classes?

Maritime Electric's rates are set in a process referred to as a "general rate application". A general rate application is a comprehensive filing from Maritime Electric to request approval of rates. Typically, the utility decides that a change in rates is necessary and files the general rate application (the "GRA") with the Commission.

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[2] *ATCO Gas and Pipelines Ltd. [and ATCO Electric Ltd.] v. Alberta (Utilities Commission)*, 2015 SCC 45, at para 7 [*ATCO*, SCC], citing *Edmonton (City) v. Northwestern Utilities Ltd.*, [1929] SCR 186 (SCC).

[3] *ATCO*, SCC at para 62

The GRA is reviewed, considered and decided upon by the Commission following a fulsome regulatory process, which will be described below.

In recent years, Maritime Electric has filed GRAs seeking approval for rates for more than one year. This is called a multi-year rate plan or multi-year rate setting. In multi-year rate setting, electric rates are set for a period of two or three years. This benefits customers by ensuring that electric rates remain stable and predictable.

The Commission invites public input and involvement throughout the rate setting process. When a GRA is filed, a notice of application is posted on the Commission website and published in local newspapers. The public has the opportunity to submit questions to Maritime Electric, make comments to the Commission, and seek to actively participate in the public hearing as an intervener.

B. General Rate Application

i. Revenue Requirement

A utility's revenue requirement presented during a GRA is prospective (or forecast). The annual revenue requirement is determined by looking at a number of forecasts, including: Maritime Electric's forecast energy sales for the year, the forecast cost of generating or purchasing the energy, and the forecast cost of delivering that energy to customers.

In a bit more detail, the cost of providing service typically includes:

operating costs and maintenance costs
+
recovery of the capital costs incurred to provide the service (amortization and depreciation)
+
taxes
+
other approved costs or deferrals
+
return on investment (or profit)

In a GRA, not all of a utility's applied-for costs will necessarily be approved. The Commission must analyze each element of the revenue requirement and determine whether Maritime Electric's forecasts are reasonable. Typically, the Commission will engage independent consultants to review and assess Maritime Electric's forecast revenue requirement.

The approved costs will go into the "revenue requirement" to be charged to customers.

Also, keeping in mind a revenue requirement is prospective, there are instances where unexpected, material costs outside the utility's control may be recoverable at other times.[4]

[4] Order UE26-04 - Docket UE21505 - Application for Recovery of Hurricane Fiona Restoration Costs - June 5, 2026

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ii. Rate of Return

As noted above, section 24 of the *Electric Power Act* also permits Maritime Electric the opportunity to earn a rate of return on "rate base"[5] – this return is additional revenue that essentially represents profit.

While several factors are involved in setting a fair and reasonable return, generally the Commission sets a rate of return equal to the return investors could expect to receive on an investment of comparable risk elsewhere in the economy. This return is not guaranteed. The utility must manage its operations in line with expectations in order to achieve its return.

In determining the fair and reasonable rate of return on a GRA, the Commission engages independent consultants and experts to review and assess the GRA and provide opinions on the appropriate rate of return.

In the most recent GRA approved by the Commission in April 2023 (Order UE23-04), Maritime Electric and PEIEC entered into a negotiated settlement agreement with respect to its approved return.[6]

In the Proposed Settlement, MECL agreed to a return of 9.35 percent for the purpose of calculating its revenue requirement, and agreed to a maximum return of 9.7 percent for the purpose of calculating its annual earnings. This means that although a return of 9.35 percent was used to calculate customer rates, MECL has had the opportunity to earn a return of up to 9.7 percent through operating efficiencies and/or business growth. This mechanism is sometimes referred to as a "deadband" or an "earnings band". In Order UE23-04, the Commission approved the "deadband" upon being satisfied that the return for the purpose of calculating the revenue requirement was less than that recommended by the expert witnesses, including the independent expert retained on behalf of the Commission. In addition, the maximum return for the purpose of calculating Maritime Electric's annual earnings (9.7 percent) was the lowest return recommended by the expert witnesses.

For your reference, the current approved rate of return for Nova Scotia Power Inc., approved in most the GRA decision of the Nova Scotia Energy Board dated March 25, 2026, is 9.0 percent for rate setting purposes, with an earnings band of 8.75 percent to 9.25 percent: see M12451 - Decision.pdf at para 559.

The decision of the New Brunswick Energy and Utilities Board in respect of NB Power's 2024/25 and 2025/26 General Rate Application approved a Net Earnings of $64 million for 2025 and $63.5 million for 2026: New Brunswick Energy and Utilities Board Reasons for Decision March 31, 2025.

[5] "Rate base" is defined in the *Electric Power Act* as meaning the maximum valuation of assets upon which a public utility may earn a percentage of return. In other words, the rate base of a utility is the amount that has been invested in the utility in order to operate. Rate base is mainly made up of the value of all approved property, plant and equipment which is currently "used and useful" by the utility in carrying out its business (s. 21).

[6] Order UE23-04 - Docket UE20946 - 2023 General Rate Application - April 24, 2023

iii. Cost Allocation and Rate Design

Another element in rate-setting is determining how the revenue requirement is recovered from customers. This process is called "rate design". Generally speaking, this is the process by which a utility's approved revenue requirement is shared among different customer classes and recovered through specific rate structures.

The Commission has recently commented on the cost allocation and rate design process in Order UE26-02, as excerpted below:

> ## Rate Design Principles:
>
> 34. Before moving on to our analysis of MECL's Rate Design Application, it will be helpful to explain the basic principles of "rate design".
>
> 35. As noted above, rate design is the process by which a utility's approved revenue requirement is allocated among customer classes[7] and recovered through specific rate structures.[8] A customer class (or rate class) is a grouping of customers to which a specific rate schedule applies (e.g. residential or industrial). Not all customers use electricity in the same way which makes it necessary to group them into different classes. The goal is to ensure the rates charged to each customer class reflect the unique costs of providing service to the different groups.
>
> 36. In assessing proposed rate design changes, the Commission is guided by established regulatory principles, including cost causation, fairness, non-discrimination, simplicity, and revenue sufficiency. These are just some of the well-established "Bonbright Principles" that are commonly used to evaluate proposed rate designs.
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> 37. The principle of cost causation holds that customers should, to the extent that is reasonable, pay rates that reflect the costs they impose on the electric system.[9] Closely related is the principle of non-discrimination, which requires that similar customers be treated similarly, and that differences in rates between customer classes be justified by differences in the costs of serving those customers. Rate design that departs materially from these principles may result in cross-subsidization, where one group of customers pays more than its cost of service to offset lower-than-cost rates paid by another group. In other words, one customer class is subsidizing another customer class.
>
> 38. A key tool used in rate design proceedings is the revenue-to-cost ratio. This ratio is determined by a "cost allocation study" and is calculated by comparing the revenues collected from a customer class to the costs allocated to serve that

[7] "customer classes" can also be referred to as "rate categories" as defined at page B-3 in MECL's General Rules and Regulations.

[8] National Association of Regulatory Utility Commissioners, Electric Utility Cost Allocation Manual

[9] Bonbright, *Principles of Public Utility Rates*

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> class.[10] A ratio of 100 percent indicates that revenues are aligned with allocated costs, and means that customers are paying for their cost of service. However, ratios above 100 percent indicate that a customer class is contributing more in revenue than its allocated cost of service, while ratios below 100 percent indicate that a customer class is not recovering its allocated costs. Persistent deviations from unity may signal inequities in rate design and raise concerns regarding fairness and non-discrimination.
>
> 39. Given the nature of cost allocation and differences in customer classes, it is not realistic that each customer class would achieve a ratio of 100 per cent each year. Therefore, the Commission has determined in previous orders that an RTC ratio range of 95 to 105 percent represents an acceptable level of alignment and directed MECL to seek approval for a new rate structure.[11]
>
> 40. The Commission's review of MECL's Rate Design Application, therefore, must consider the ways in which the existing rate structure results in unjust or undue discrimination, and whether the proposed changes would improve alignment between revenues and costs, reduce cross-subsidization, and address identified inequities while continuing to recover the utility's approved revenue requirement in a stable and predictable manner.
>
> 41. It is against this regulatory and analytical framework that the Commission has considered MECL's Rate Design Application.

As noted in the excerpt above, when assessing a proposed rate design, the Commission is guided by established regulatory principles referred to as the "Bonbright Principles". These principles are commonly used by utility regulators across the country to evaluate proposed rate designs. Some of those principles are as follows:

- "Practical" attributes: simplicity, understandability, public acceptability, and feasibility of application and interpretation.
- Effectiveness of yielding total revenue requirements.
- Revenue stability from year to year.
- Stability of rates themselves, minimal unexpected changes that are seriously averse to existing customers. (avoid rate shock)
- Fairness in apportioning cost of service among different consumers.
- Avoidance of "*undue* discrimination."
- Efficiency of rate classes and rate blocks in discouraging wasteful use of service and encouraging beneficial use

[10] National Association of Regulatory Utility Commissioners, Electric Utility Cost Allocation Manual
[11] See Orders UE19-08 and UE20-06

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C. Capital Expenditures

Each year, Maritime Electric is required to submit its annual capital budget to the Commission for review and approval. The capital budget includes any proposed expenditures for capital improvements or additions that are anticipated for the next year.

Typically, Maritime Electric categorizes the proposed expenditures as relating to generation, distribution, transmission, or corporate expenditures. A capital expenditure may be incurred in a single year, or it may be a recurring annual expenditure as part of an ongoing capital program.

Before the Commission makes a decision on Maritime Electric's annual capital budget, public notice of the application is posted to the Commission website and published in local newspapers. Interested members of the public have the opportunity to submit questions to Maritime Electric, submit written comments to the Commission, or to apply to participate in the process as an intervener.

The Commission routinely issues interrogatories to Maritime Electric to gather additional information necessary for the Commission to make an informed decision on the capital budget. This information is also shared publicly on the Commission website. In addition to written interrogatories, technical sessions may be held in the Commission's hearing room to allow the Commission to ask clarifying questions about the application to Maritime Electric. These technical sessions streamline the regulatory process and form part of the record.

Following its review of the evidence, the Commission issues a written decision and order. The Commission has the authority to approve all or part of Maritime Electric's proposed capital expenditures as submitted in its annual capital budget.

Sometimes unforeseen capital expenditures arise after Maritime Electric's annual capital budget has been approved. In that case, Maritime Electric files a supplemental budget request with the Commission seeking approval for the unforeseen capital expenditure.

In addition to its annual capital budget, Maritime Electric is required to report to the Commission its actual expenditures on improvements or additions to its property in the prior calendar year (section 17(4)) – this is called a Capital Budget Variance Report. Maritime Electric is also required to obtain approval to carryover the unspent portion of any previously approved capital budget. When reviewing a Capital Budget Variance Report, the Commission issues clarifying interrogatories to Maritime Electric and shares those interrogatories publicly on its website. After review of the evidence, a written decision is issued by the Commission.

D. Energy Cost Adjustment Mechanism[12]

The Energy Cost Adjustment Mechanism ("ECAM") is a rate adjustment that is used to account for the difference between what Maritime Electric expects it will cost to supply energy to the Island and what the actual cost is to supply energy. This rate adjustment is separate from base electricity rates.

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[12] ECAM-FAQs-January-2026.pdf

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As part of its General Rate Applications, Maritime Electric will forecast the costs of providing electricity in PEI. This forecast is what Maritime Electric expects it will cost to provide electricity to its customers. The forecast is part of what sets electricity charges that customers pay for a period of time (usually 2-3 years).

However, sometimes there are changes in the cost to supply electricity, which results in the actual costs of providing electricity to be different than what Maritime Electric thought they would be. Where the costs are higher, instead of Maritime Electric collecting these costs from customers in an unpredictable way, the difference between the forecast cost and the actual cost to supply electricity is tracked and monitored in the ECAM account.

This means that Maritime Electric can deal with the additional costs incurred to provide electrical service at a later time instead of collecting them from customers right away. Periodically, Maritime Electric will apply to IRAC to collect the amount in the ECAM account from customers through a temporary rate change.

Maritime Electric must file an application with the Commission to get approval to collect the amount in the ECAM account from customers. If IRAC approves the application, customers may see an increase in their electricity bills for a set period of time, which allows Maritime Electric to collect what they actually paid to supply electricity from customers.

The Commission currently has an open docket in respect of Maritime Electric's application for an order approving an ECAM rate adjustment for the period of March 1, 2026 to February 28, 2027, related to "higher than anticipated energy supply expenses related to replacement energy during outages at the Point Lepreau Nuclear Generating Station, as well as increased wind replacement costs and net metering costs." Information related to this docket can be found here: UE20606 - Energy Cost Adjustment Mechanism Rate Adjustment Application - Island Regulatory & Appeals Commission.

2. Statutory Decision-Making Criteria

The former Minister's letter to the Commission dated April 14, 2026, also requests an explanation of the factors and criteria the Commission applies when assessing whether proposed rates meet statutory requirements, including:

- The analytical tests or considerations used in determining whether rates are reasonable, publicly justifiable and non-discriminatory;
- How the Commission considers cost causation, fairness among customer classes, affordability and bill impacts, equity, and the financial integrity of the utility; and
- Any relevant precedents or regulatory standards relied upon by the Commission.

With respect to this set of questions, the following is excerpted from the Commission's recent Order UE26-04 regarding Maritime Electric's Application for recovery of Fiona restoration costs and is generally responsive to the factors and criteria the Commission considers when assessing whether proposed rates meet the statutory criteria:

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A. The Regulatory Bargain and Prudency

76. In order to determine whether the Fiona restoration costs incurred by MECL were prudent, it is helpful to first consider how the Commission determines prudency.

(i) <u>The Regulatory Bargain</u>

77. Public utility regulation is grounded by a foundational concept known as the "regulatory bargain", sometimes referred to as the regulatory compact. Under the regulatory bargain, the regulated utility is given exclusive rights to sell their services at rates that will provide the company the opportunity to earn a fair return for its investors.[13] In exchange, utilities assume a duty to adequately and reliably serve all customers and are required to have their rates and certain operations regulated. The bargain ensures that all customers have access to the utility at a fair price.[14] This well-balanced regulatory arrangement serves as a backdrop for the role of the Commission as regulator – the object is to protect both the customer *and* the investor.[15]

78. In Prince Edward Island, MECL is a "public utility" as defined in the *Electric Power Act* and is, therefore, subject to this regulatory bargain.

79. Utility rate regulation serves several objectives – sustainability, equity and efficiency – which underlie the reasoning as to how rates are fixed.[16] Almost 100 years ago, the Supreme Court of Canada commented that the duty of a utility regulator is to fix fair and reasonable rates which, on the one hand are fair to the consumer, and on the other hand would secure for the company a fair return for the capital invested.[17]

80. As previously noted, MECL operates under a cost-of-service model of regulation. This means that the electricity rates established by the Commission are based on the Company's revenue requirement. The Company's "revenue requirement" is the forecast cost of providing regulated electricity service to all customers, and typically includes operating and maintenance expenses, depreciation, income taxes, and an approved return on equity applied to the utility's rate base.

81. In Canadian law, "just and reasonable" rates or tariffs are those that are fair to both consumers and the utility.[18] Under a cost of service model, rates must allow the utility the opportunity to recover, over the long run, its operating and capital costs. Recovering these costs ensures that the

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[13] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, at para 62.
[14] 2006 SCC 4, at para 63.
[15] 2006 SCC 4, at para 64
[16] 2006 SCC 4, at para 62.
[17] *Edmonton (City) v. Northwestern Utilities Ltd*., [1929] SCR 186 (SCC), at pp. 192-93.
[18] *ATCO Gas and Pipelines Ltd. [and ATCO Electric Ltd.] v. Alberta (Utilities Commission)*, 2015 SCC 45, at para 7 [*ATCO*, SCC], citing *Edmonton (City) v. Northwestern Utilities Ltd*., [1929] SCR 186 (SCC).

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utility can continue to operate and can earn its cost of capital in order to attract and retain investment in the utility.[19]

82. For almost 100 years, it has been the law in Canada that in order to fix just and reasonable rates that are fair to both the utility and customers, a utility board must consider rate base – which is the amount that shareholders have invested in the utility and on which they are entitled to earn a fair return.

83. However, recovery of specific costs, and whether those costs are eligible to earn a return, is not automatic. The Commission retains authority under the *Electric Power Act* to determine whether proposed cost recovery and return treatment are reasonable and publicly justifiable. The Commission fulfills this mandate by ensuring:[20]

- expenses are properly associated with the delivery of electrical service;
- expenses are prudent or necessary for the delivery of safe and adequate electrical service; and
- the expenses are reasonable in amount, meaning they are neither unreasonably high nor unreasonably low.

84. In the present case, the Commission is satisfied that the Fiona restoration costs were properly associated with the delivery of electrical service. However, the Commission must consider whether the expenses were prudent – or necessary – in order to restore safe and adequate electrical service and whether those expenses were reasonable in amount.

(ii) <u>Prudency</u>

83. The Supreme Court of Canada has said that in the context of utilities regulation, there is no difference between the ordinary meaning of a "prudent" cost and a cost that could be said to be reasonable. The Court said: "It would not be imprudent to incur a reasonable cost, nor would it be prudent to incur an unreasonable cost." [21] MECL agreed with this characterization in their submissions.

84. The Nova Scotia Energy Board recently described prudency as:[22]

> … costs incurred under a standard of care that a reasonable person would expect to be made by other similarly situated

[19] *ATCO*, SCC at para 7.
[20] Commission Order UE93-01
[21] *ATCO*, SCC at paras 34 and 35.
[22] 2026 NSEB 8, at para 429.

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utilities in the same circumstances encountered by the utility at the time decisions had to be made.

85. In the case of MECL, there is no established presumption of prudence in favour of the Company. The Commission has the discretion to allow "reasonable and prudent" expenses.[23] However, where costs are determined to be prudent, the Commission must allow MECL the opportunity to recover them through rates. Generally speaking, "prudent" is not used to describe the decision to incur the costs, but rather to describe the costs themselves.[24]

86. Finally, the Supreme Court of Canada has also commented that the impact of increased rates on consumers cannot be used as a basis to disallow recovery of such costs. In other words, the Commission cannot disallow reasonable costs in order to make electricity rates more affordable. Instead, customer interests are accounted for in rate regulation by limiting a utility's recovery to what it reasonably – or prudently – costs to efficiently provide the utility service.[25] In other words, regulation ensures that consumers only pay for what is reasonably necessary.

87. It follows that the Commission may disallow imprudent or unreasonable costs. The burden is on MECL to show that the costs to provide electricity service to customers are reasonable and prudent. Therefore, the Commission must carefully consider the evidence of the Company as to the prudency of the costs incurred in assessing whether MECL has met its burden on this Application.

* For your information, the Commission notes that Order UE26-04 is currently subject to an appeal to the Court of Appeal.

3. Regulatory Considerations Relevant to Potential Future Approaches, Including Performance-Based Regulation

Finally, the former Minister's letter to the Commission dated April 14, 2026, requests the Commission's perspective on issues and considerations relevant to the potential examination of performance-based regulation (PBR), including:

- An assessment of how the current ratemaking framework performs in relation to its regulatory objectives, such as efficiency, quality of service, and outcomes for customers;

- The suitability of traditional incentive-based ratemaking approaches as potential alternatives or complements to performance-based regulation;

[23] *Electric Power Act*, s. 24(1).
[24] *ATCO*, SCC at para 45.
[25] *ATCO,* SCC at para 61.

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- The potential role of performance targets and incentive mechanisms, including rewards and penalties, in supporting efficiency and quality of service, and the regulatory considerations associated with their use; and

- Considerations related to effective consultation with customers and other stakeholders, including approaches to ensuring their views are appropriately captured and reflected in the design of any future regulatory framework.

With respect to these questions, the Commission notes that it generally does not create or comment on electricity policy. The Commission must maintain its impartiality at all times, and therefore, cannot comment on how the regulatory framework prescribed by the *Electric Power Act* achieves the objectives outlined in your letter as this could be seen to impede the ability of the Commission to remain impartial and unbiased in future proceedings.

That said, should the Department undertake a detailed review of the current regulatory framework prescribed by the *Electric Power Act*, the Commission would be pleased to be consulted as a stakeholder and to provide feedback consistent with the role of the Commission as an independent regulatory tribunal.

With respect to "performance-based-regulation" (PBR) the Commission can only provide general comments. Generally speaking, PBR is an alternative rate-making process to cost-of-service and can include a spectrum of approaches and mechanisms designed to restructure utility incentives. As noted above, the Commission has recently approved multiyear rate plans and an "earnings band" for Maritime Electric, both of which are aligned with performance-based mechanisms for utility regulation.

As the Commission understands it, some Canadian jurisdictions have moved further toward performance-based regulation, with the Alberta Utilities Commission being the most notable example, in respect of distribution utilities.

The Ontario Energy Board is conducting consultation to advance its PBR approach.

4. Other Matters of Interest

i. General Supervision

The *Electric Power Act* assigns general supervision of public utilities to the Commission (section 26). Pursuant to that authority, the Commission routinely requests information and reporting from Maritime Electric on various matters of interest. Much of that reporting can be found on the Commission's website: Utility Reports & Filings - Island Regulatory & Appeals Commission.

As a more recent example, following the cybersecurity incident targeting Nova Scotia Power Inc., the Commission directed Maritime Electric to provide information about how the Company protects customer information and data, as well as information about Maritime Electric's Cyber Risk Management Program. The response from Maritime Electric can be found on the Commission's website: MF35-Response-MECL-Cybersecurity-Letter-redacted-copy.pdf.

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Maritime Electric also provides various monthly and annual financial reporting to the Commission as part of the Commission's general supervisory role.

ii. <u>Application and Hearing Processes</u>

The Commission's process to hear and decide an application is a formalized, public process.

Proceedings are publicly available on the Commission's website, and many are open to the public to provide comment, ask questions and give feedback. Notice of every application filed by Maritime Electric is given on the Commission's website and in the newspaper. Many applications filed with the Commission will proceed to a full public hearing, held in the Commission's hearing room. While some applications are considered in a paper-based process, in many instances, the Commission still gives public notice of those applications and invites public comment. The public can access all filings by Maritime Electric through the Commission's website.

In all proceedings, the Commission will review the application and issue interrogatories to Maritime Electric, who will respond to those questions. In some applications, there are many rounds of interrogatories. Interrogatories typically take the form of written questions and responses, or if appropriate, a technical session will be held in the Commission's hearing room to streamline the regulatory process. In all matters, the Commission compiles a complete record of evidence and submissions.

When a public hearing is held, it will often include sworn testimony from Maritime Electric and its witnesses, any added party interveners, and any expert witnesses engaged by the Commission to comment or opine on the application. In addition to the review of the documentary evidence on the record, the Commissioners will consider and weigh the oral testimony of all parties and their witnesses when coming to their decision on a given matter.

The Commission issues written Orders in respect of all applications, which can be found on the Commission's website.

iii. <u>Regulatory Costs</u>

The Commission collects the costs associated with regulating Maritime Electric through an annual assessment (see: section 15 of the *Island Regulatory and Appeals Commission Act*).

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