

File Reference: SM5093.338

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June 13, 2025

Carr, Stevenson & MacKay
65 Queen Street
Charlottetown, PE C1A 7L1

Attention: Nicole McKenna

Dear Ms. McKenna:

**Re: UE20742 - Supplemental Capital Budget Request for MECL's On-Island Capacity
for Security of Supply Project - Request for Confidentiality - MECL Reply**

Dear Ms. McKenna:

As you know, by letters to the Commission dated May 16 and 28, 2025, Maritime Electric Company, Limited ("MECL") requested that certain evidence contained within the above Application be shared with the Commission and PEI Energy Corporation ("PEIEC") but otherwise remain confidential.

The Commission provided MECL's request to the Added Party Intervener PEIEC, as well as the two Friend of the Commission Interveners, for comment. By letters dated June 4, 2025, PEIEC supported MECL's request, but the two Friend of the Commission Interveners opposed the request.

By way of reply, MECL respectfully makes three comments:

1. The Commission's Rules of Procedure ("the Rules") do not contemplate input from Friend of the Commission Interveners on confidentiality requests.
2. The Commission does have the authority to vary or amend its Rules as it sees fit, but those Rules should not be varied or amended to permit Friend of the Commission Interveners to make submissions on an Applicant's request for confidentiality.
3. The information that is the subject of MECL's confidentiality request satisfies the test set out in section 53(b) of the Rules.

We will comment briefly on each of these points.

1. **The Rules do not contemplate input from Friend of the Commission Interveners on confidentiality requests.**

The process for making and dealing with confidentiality requests is found in sections 51 to 54 inclusive of the Rules.

Section 52.1 states that only a "party" can object to a request for confidentiality.

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Section 4(r) of the Rules states that party "... in respect of an application, means an applicant ...".

Section 4(f) of the Rules in turn states that applicant "... means a party who has filed an application ...".

Section 14.1 of the Rules defines Added Party Intervener and states, in part, that "[s]ubject to any condition imposed by the Panel, an Added Party Intervener is vested with all the rights of a party.... ." (emphasis added)

This differs from wording contained in the definition of Friend of the Commission Intervener, also found in section 14.1, which states that "[a] Friend of the Commission Intervener is not ordinarily vested with all of the rights of a party... .". This is consistent with UE25-03, which limits the participation of the two Friend of the Commission Interveners to "... a preliminary written submission, a verbal presentation, and post hearing written submission."

In sum on this point, MECL's view is that PEIEC, as an Added Party Intervener, is vested with all of the rights of a party, including the right to challenge MECL's confidentiality request pursuant to Rule 52. The Friend of the Commission Interveners do not have the same right under the Rules.

2. The Commission does have the authority to vary or amend its Rules as it sees fit, but those Rules should not be varied or amended to permit Friend of the Commission Interveners to make submissions on an Applicant's request for confidentiality.

The Commission does retain discretion in section 6 to amend or vary its Rules.

Based upon the definitions discussed above, it is MECL's view that the Commission must invoke section 6 in order to consider comments made by others who do not fall within the Rules' definition of "party".

In MECL's respectful submission, there is an important distinction between those granted Added Party Intervener status and those that are granted Friend of the Commission Intervener status.

Added Party Interveners are typically granted permission to fully participate in an application, including the right to adduce evidence and to cross-examine the Applicant's witnesses. Friend of the Commission Interveners are typically granted a much more limited status, with the extent of their participation determined by order of the Commission.

As noted earlier, this distinction can be seen in UE25-03, which limits the participation of the two Friend of the Commission Interveners in this Application to "... a preliminary written submission, a verbal presentation, and post hearing written submission."

MECL welcomes public involvement and input on its applications, and that is why it did not oppose the request of Mr. Bevan-Baker and Energy Democracy Now! to participate in this Application. We note, however, that inviting them to make submissions on MECL's confidentiality request not only blurs the important distinction between Added Party Interveners and Friend of the Commission Interveners but is also a level of involvement that exceeds the wording of UE25-03.

Quite frankly, if MECL had been aware that the Friend of the Commission Interveners would be permitted to challenge the confidentiality of information that has historically been considered confidential by both MECL and the Commission, MECL would have opposed their requests to participate in this important and time-sensitive Application. It is hard to contemplate a greater level of involvement than the ability to argue for production of MECL's most confidential and sensitive business information.

3. The information that is the subject of MECL's confidentiality request satisfies the test set out in section 53(b) of the Rules.

Section 53 of the Rules sets out the factors to be considered by the Commission when a request for confidentiality is made.

In MECL's respectful submission, section 53(b) is on point and, in this regard, MECL relies upon the submissions contained in its letters to the Commission dated May 16 and 28, 2025.

As detailed in those letters, MECL relies upon NB Power for a significant amount of its electrical energy, capacity and related requirements. The pricing for these goods and services is negotiated between MECL and NB Power and contained in Energy Purchase Agreements ("EPAs") that are filed, from time to time, on a confidential basis with the Commission. It would be illogical if, having accepted an EPA as confidential, the Commission subsequently permitted the most sensitive information contained in that EPA to be made public.

CONCLUSION

In MECL's respectful submission, the Commission's Rules as currently written do not permit Friend of the Commission Interveners to oppose an applicant's confidentiality request.

In the current Application, the extent of participation of the Friend of the Commission Interveners is defined by UE25-03 and does not extend to opposing MECL's confidentiality request. Permitting this level of involvement is not only beyond the scope of the Commission's Order but blurs the important distinction between the role of the PEIEC in this Application and that of the Friend of the Commission Interveners.

The information that MECL has requested remain confidential is sensitive financial and commercial information that has historically been accepted as confidential by the Commission. It is in the interests of MECL and Island ratepayers that this information continue to be treated in this manner. The Friend of the Commission Interveners can meaningfully participate in this Application to the level contemplated by UE25-03 without the need for access to this information.

Nicole McKenna
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Yours truly,

Stewart McKelvey

A handwritten signature in blue ink, appearing to read 'Stewart', with a long, sweeping underline.

D. Spencer Campbell, K.C.*

DSC/md

*Law Corporation