



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

Docket: UE21225

Order: UE20-04

IN THE MATTER of an application by Maritime Electric Company, Limited for an Order of the Island Regulatory and Appeals Commission approving the deferral of the contingent income tax expense reduction associated with the amendment of the 2007 to 2010 Corporate Income Tax Returns pending assessment and approval of the amendments by the Canada Revenue Agency;

AND IN THE MATTER of an application by Maritime Electric Company, Limited to vary Order UE12-01 and to reverse the accumulated Capital Asset Review regulatory deferral owing to ratepayers.

AND IN THE MATTER of the *Electric Power Act*, RSPEI 1988, Cap. E-4; and the *Island Regulatory and Appeals Commission Act*, RSPEI 1988, Cap. C-4.1,

**BEFORE THE COMMISSION ON
Wednesday, August 5, 2020.**

J. Scott MacKenzie, Q.C., Chair

Erin T. Mitchell, Commissioner

CERTIFIED A TRUE COPY

Collette Vessey,
Island Regulatory & Appeals Commission

ORDER

1. In or around February 2011, Maritime Electric Company, Limited ("MECL" or the "Company") engaged Ernst & Young LLP to perform a Capital Asset Review for the 2007 to 2010 taxation years;
2. The Capital Asset Review recommended the reclassification and current deduction of certain expenditures previously capitalized for tax purposes;
3. In February 2012, MECL filed with the Canada Revenue Agency amended tax returns for the 2007 to 2010 taxation years to adopt the recommendations of the Capital Asset Review;
4. The amended tax returns and related loss carry back requests, if accepted by the Canada Revenue Agency, would generate refunds of approximately \$12.6 million plus interest, which amount has been recorded as a long-term income tax receivable on the Company's balance sheet;
5. In March 2012, the Company made application to the Commission to recognize a regulatory liability in the amount of \$2.8 million plus interest, representing the total tax savings accruing fully to ratepayers should the amendments as filed be accepted by the Canada Revenue Agency;
6. The application was approved by the Commission in Order UE12-01, which Order permitted the Company to defer recognition of the potential tax refunds until approved by the Canada Revenue Agency;
7. The Canada Revenue Agency has, to date, refused to allow full or partial allowance of the Capital Asset Review amendments as filed by MECL in February 2012;
8. To date, MECL has not been successful in finding an avenue to pursue the Capital Asset Review amendments for the 2009 taxation year;
9. MECL has engaged legal tax counsel to prepare and file Notices of Objection for the 2007, 2008 and 2010 taxation years;
10. It is the Company's assessment, based on the advice of tax counsel, that the net benefit to ratepayers, after consideration of the potential for significant legal fees, is not sufficient to justify continuing to pursue the Capital Asset Review amendments with the Canada Revenue Agency;
11. The Company has requested to vary Order UE12-01 and reverse the accumulated Capital Asset Review regulatory deferral owing to ratepayers;
12. The Company has advised that the reversal of the said regulatory deferral will have no impact on customer electricity rates or on the financial position of the Company;
13. The Commission has determined that the reversal of the accumulated Capital Asset Review regulatory deferral owing to ratepayers is, in the circumstances, reasonable;

NOW THEREFORE pursuant to section 26(1) of the *Electric Power Act*, and section 12 of the *Island Regulatory and Appeals Commission Act*, the Commission orders as follows:

IT IS ORDERED THAT:

1. Maritime Electric Company, Limited is hereby authorized to reverse the accumulated Capital Asset Review regulatory deferral owing to ratepayers as of the date of this Order.
2. Order UE12-01 is hereby varied accordingly.

DATED at Charlottetown, Prince Edward Island, on Wednesday, August 5, 2020.

BY THE COMMISSION:

(sgd) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd) Erin T. Mitchell

Erin T. Mitchell, 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.

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.