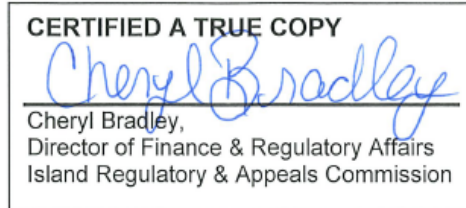




Docket: UE21505  
Order: UE26-04



**IN THE MATTER** of an application by Maritime Electric Company, Limited for an order approving an adjustment to its rates, tolls and charges for electric service for the Recovery of Hurricane Fiona restoration costs pursuant to sections 20, 21(3)(a)(ii) and 24(1) of the *Electric Power Act*, RSPEI 1988, c. E-4;

---

# Order

---

**BEFORE THE COMMISSION ON** June 5, 2026.

Pamela Williams, K.C., Chair  
Kerri Carpenter, Vice-Chair  
Murray MacPherson, Commissioner

## **Introduction:**

1. This Order follows a hearing by the Commission of an application by Maritime Electric Company, Limited (“MECL” or the “Company”) requesting approval of a rate change to recover the restoration costs related to Hurricane Fiona.
2. In making this Order, the Commission recognizes the efforts of MECL and its staff in both preparing for Fiona from an emergency preparedness perspective, as well as their extraordinary efforts in getting the power back on following the storm of a lifetime.
3. In this Order, the Commission finds that MECL can recover 90 per cent of the Fiona restoration costs from customers. The Commission is satisfied that 90 per cent of MECL’s costs were prudent and necessary in the circumstances. The Commission disallows recovery of 10 per cent of the Fiona restoration costs on the basis that a portion of the costs attributed to Fiona-restoration were, in all likelihood, related to clearing vegetation that should otherwise have been prudently managed by MECL in the years before Fiona. This decision will be discussed in detail in these reasons.

## **Background:**

4. Hurricane Fiona struck Prince Edward Island on September 23, 2022, making contact as a post-tropical storm (“Fiona”). Fiona lasted approximately 12 hours and delivered peak wind speeds exceeding 130 km/per hour across the Island.<sup>1</sup> Island-wide rainfall exceeded 60 mm, with 117 mm reported in Murray Harbour. The storm combined with a high tide and delivered an unprecedented storm surge. Fiona caused widespread and extensive damage across the province, and is considered the most intense post-tropical storm to hit the north eastern region of Canada on record.<sup>2</sup> Fiona destroyed houses and infrastructure, downed trees, closed roads, caused telecommunication outages, and left nearly the entire Island without power.
5. Restoration of Maritime Electric’s system started at daybreak Saturday, September 24th, 2022, for the approximately 83,200 customers who were left without power. At that time, the majority of the transmission and distribution system was out of service.<sup>3</sup> In response to Hurricane Fiona, Maritime Electric reports that it undertook the largest restoration effort in the Company’s history. Over 205 power line crews, 59 vegetation management crews and many other supporting resources such as Canadian Armed Forces personnel, damage assessors, field supervisors, and traffic control personnel were mobilized to storm affected areas at the height of the restoration effort. Activities relating to the majority of the extraordinary restoration effort continued for 3 weeks.<sup>4</sup>
6. MECL’s Application states that the transmission system suffered minimal structural damage, with only 10 transmission poles requiring replacement.<sup>5</sup> The distribution system,

---

<sup>1</sup> Exhibit M-5 – Refiled Hurricane Fiona Post Mortem Report (March 7, 2023), at pg. 1.

<sup>2</sup> Exhibit C-7 – Expert Report by EA Technologies re MECL Fiona Application (March 25, 2025), at pg. 3.

<sup>3</sup> Exhibit M-5, at pg. 1.

<sup>4</sup> Exhibit M-5, at pg. 1.

<sup>5</sup> Exhibit M-6 – MECL Application for Recovery of Fiona Restoration Costs (November 2, 2023), at pg. 6.

on the other hand, required the replacement of 1,275 distribution poles, 445 transformers and 140 kilometers of conductor. More details of MECL's restoration efforts will be included throughout these reasons.

## **Procedural History:**

7. On November 25, 2022, following MECL's restoration of electric service, MECL applied to the Commission to request interim approval to defer the costs associated with restoring the power after Fiona. The deferral was requested to permit MECL to record the operating expenses incurred in the Fiona restoration as a long-term "regulatory asset" on the Company's balance sheet, rather than an expense. MECL's interim application stated that MECL was preparing a detailed report on the restoration efforts and compiling the necessary information to finalize the actual cost of the restoration effort. MECL's interim application submitted that interim approval would provide sufficient time for the Commission to fully review the Company's pending report before granting final approval of the costs and recovery period. The application stated that securing government funding could limit or completely offset the amount to be recovered from customers.
8. On December 19, 2022, by Order UE22-08, the Commission approved the deferral of MECL's Fiona restoration costs, estimated at that time to be \$35.9 million. The Commission's approval was on an interim basis only and was conditional on any and all government funding being applied to reduce the balance of the deferral. For clarity, the result of Order UE22-08 was not to approve MECL's Fiona-related costs. Rather, the approval of the deferral meant that the Company could utilize an accounting mechanism to defer the restoration costs and amortize them over a longer period, rather than expense and recover them in the 2022 year. Order UE22-08 stated (at para 13):

The approval granted herein is interim approval only. At this time, the Commission does not know the final amount of Fiona-related costs incurred by Maritime Electric. The Commission also does not have sufficient information to determine whether the costs claimed by Maritime Electric were prudently incurred, or the appropriate allocation between operating and capital costs.

9. Order UE22-08 also did not permit MECL to earn a return on the interim deferral account and ordered that the Fiona-related costs would be recovered as directed by the Commission. MECL was also directed to file a comprehensive report detailing all Fiona-related costs (together with supporting invoices) and the proposed allocation of those costs as operating expenses or capital costs. That order also required an independent auditor's opinion confirming the costs claimed were consistent with the Company's policy.
10. Following the Commission's direction in Order UE22-08, MECL filed a Hurricane Fiona Post Mortem Report with the Commission on January 31, 2023.<sup>6</sup> Upon receipt of this filing, the Commission directed a more substantive report be filed and MECL filed a revised Post Mortem Report on March 7, 2023.<sup>7</sup> The Post Mortem Report detailed things such as MECL's proactive capital and operating investments, emergency planning efforts, damage

---

<sup>6</sup> Exhibit M-4

<sup>7</sup> Exhibit M-5

assessment response, emergency restoration response, vegetation management program and customer service and outage communication.

11. On November 2, 2023, MECL filed its complete Application for Recovery of Fiona Restoration Costs, with supporting materials (the “Fiona Application” or “Application”). MECL requested approval to increase its rates in order to recover the restoration costs associated with Fiona. The Fiona Application also sought approval to complete an equity injection from its shareholders to support MECL’s capital structure and financial position following the storm restoration. The full details of the Fiona Application will be discussed further in these reasons.
12. On November 21, 2023, the Commission gave public notice of the Fiona Application through a publication in local newspapers and on the Commission’s website. In response to the notice, Energy Democracy Now! Co-operative Limited sought Friend of the Commission Intervener status. On February 1, 2024, the Commission declined to grant intervener status, but did invite Energy Democracy Now! to submit written questions to MECL and to make written submissions to the Commission.
13. Following public notice of the Fiona Application, the Commission also received public comments from several members of the public. Many of those individuals also posed written questions (interrogatories) to MECL, which MECL responded to in January and February 2024. The public comments, interrogatories and MECL’s responses formed part of the Commission’s public record and were included as Public Exhibits at the hearing. Some of these will be discussed in more detail below.
14. In the spring of 2024, the Commission engaged EA Technology to provide an independent opinion on the prudence of MECL’s storm response and restoration costs. EA Technology issued nearly seventy (70) written questions (interrogatories) to MECL on June 12, 2024.
15. On July 26, 2024, MECL responded to EA Technology’s interrogatories with a 232-page package that included the interrogatory responses and fifteen supporting appendices. MECL claimed confidentiality over five of the appendices, and the Commission agreed to hold that information in confidence.
16. In February 2025, EA Technology submitted its report to the Commission. The conclusions reached by EA Technology will be discussed in more detail later in these reasons. MECL provided a summary response to EA Technology’s report in April 2025.
17. On September 25, 2025, MECL wrote to the Commission requesting immediate approval to obtain an equity contribution from shareholders of \$16.0 million, being 40 per cent of the balance of the Fiona-related deferral as of September 2025. In basic terms, an equity injection is an input of cash into a business by its investor(s) to increase capital without acquiring additional debt. The Company explained that the equity injection was needed to ensure MECL’s capital structure stayed within the range prescribed by the *Electric Power Act*, which requires MECL to maintain a capital investment of between 35 and 40 per cent at all times.<sup>8</sup> After one round of interrogatories with MECL to gather more information

---

<sup>8</sup> *Electric Power Act*, s. 12.1.

about their equity injection request, the Commission approved MECL's request for a capital injection by Order UE25-08 Equity Injection Component, dated December 5, 2025.

18. On January 15, 2026, the Commission issued further interrogatories to MECL, primarily in respect of MECL's vegetation management practices both before and after Fiona. MECL responded in detail to the Commission's interrogatories on February 11, 2026.
19. On that same day, the Commission published a Notice of Hearing in respect of the Fiona Application on its website and in local newspapers.
20. The Commission heard MECL's Fiona Application on March 3, 2026. The Commission heard evidence from Enrique Riveroll, Maritime Electric's Vice President of Sustainability & Customer Operations and Michelle Francis, Maritime Electric's Vice President of Finance & Chief Financial Officer.
21. The Commission also heard evidence from Andrew Harrison, Principal Consultant, with EA Technology with respect to EA Technology's independent report.

### **Commission's Authority Under the *Electric Power Act*:**

22. The Commission is an independent, quasi-judicial tribunal. It exercises appellate, adjudicative, and regulatory authority under a number of provincial statutes, including the *Electric Power Act*. In doing so, the Commission is required to follow legislative requirements and administrative law principles.
23. As a public utility within the meaning of the *Electric Power Act*, MECL has a duty to provide reasonably safe and adequate service to customers at all times (section 3(a)).
24. Subsection 24(1) of the *Electric Power Act* says:
  - 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.
25. In effect, this section states that MECL is entitled to (1) recover its prudently incurred expenses in providing electricity service to the public and (2) an opportunity to earn a reasonable profit. This is called a "cost-of-service" model of regulation.
26. Under this model, the Company does not set its own rates and does not operate in a competitive market. Instead, rates are established by the Commission based on MECL's revenue requirement – that is, the projected cost of providing regulated electricity service.

27. The “cost-of-service” model of regulation prescribed in the *Electric Power Act* means that MECL is permitted an opportunity to earn an annual return, as considered “just and reasonable” by the Commission and is also permitted to recover from customers the cost of providing electricity service. In Canadian law, “just and reasonable” rates or tariffs are those that are fair to both consumers and the utility.<sup>9</sup> This standard will be discussed in more detail later in these reasons.
28. The burden is on MECL to show that the costs to provide electricity service to customers are reasonable and prudent.
29. The Act requires MECL to provide “at all times” reasonably safe and adequate service. With an extraordinary weather event like Fiona, MECL’s costs to restore service to meet this requirement were not contemplated in the approved base rates. Therefore, the Company has sought approval after-the-fact to recover those costs from customers.
30. Generally speaking, under a cost-of-service model, public utilities may recover the prudently incurred costs required to restore service after an outage. However, recovery of certain costs, and whether those costs are eligible to earn a return, are not automatic. The Commission retains the authority under the *Electric Power Act* to determine whether the proposed cost recovery and return treatment are reasonable and publicly justifiable.
31. The mandate of the Commission is to ensure that the costs and expenses of MECL to restore 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.
32. In carrying out its mandate, the Commission must balance the interests of customers and the utility. The Commission must ensure that rates are sufficient to permit the utility to recover its prudently incurred costs and earn a fair return on its investment, while protecting consumers from unjust or unreasonable charges. It is important to caveat at this point, though, that the Commission’s mandate does not permit it to disallow prudent costs solely because they would lead to higher rates for customers.<sup>10</sup>
33. The Commission has the authority under the *Electric Power Act* to determine whether Maritime Electric’s proposal for cost recovery and request to earn a return on those costs are reasonable and publicly justifiable.

---

<sup>9</sup> *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).

<sup>10</sup> ATCO, SCC at para 62

## **Overview of the Fiona Application:**

34. MECL has requested approval to recover the total restoration costs related to Fiona totalling approximately \$41.2 million. In particular, MECL is requesting:

- (1) Approval to record approximately \$19.3 million in capital costs as Property, Plant and Equipment, in accordance with its capitalization policy. MECL proposes that this balance would be recovered from customers through a depreciation expense and would be recovered over the life of the related assets over approximately 40 years. By their nature, capital costs are included in rate base and, therefore, MECL would earn a return on these costs.
- (2) Approval to defer approximately \$15.3 million in operating expenses, plus the associated debt financing costs (i.e. interest) of approximately \$6.6 million, as a regulatory asset. MECL proposes this balance would be recovered from customers over five years. MECL also proposes to earn a return on these expenses.

35. MECL submits that the restoration costs were necessary to restore service to customers as required under the *Electric Power Act*, reasonable in the circumstances faced by the Company at the time of the event, and were prudently incurred. MECL is, therefore, requesting approval to include these costs – both capital and operating – in rate base and to finance them in accordance with its approved capital structure. Including the costs in rate base would permit MECL to earn a return on the recoverable costs.

36. With respect to the impact to customers, MECL projected that the recovery of the Fiona-related restoration costs would result in an incremental annual cost increase of 3.5 per cent for a typical Residential customer, if the Application was approved in full. MECL requested this rate increase effective May 1, 2026, until such time as the costs are fully recovered.

37. MECL's position on the Application is that:

- The restoration costs were necessary and prudently incurred; and
- All costs should be recovered through the Commission approved capital structure and approved return on equity.

38. MECL submits that the only appropriate mechanism for managing customer impact in this case is the period of time over which those costs are recovered.

### **MECL's Fiona Restoration**

39. MECL reported that damage caused by Fiona was extensive and unprecedented and it views its response and restoration efforts as exceptional.

40. As previously outlined, MECL has reported that Fiona was the largest storm response in the Company's history, utilizing 205 line crews, 59 vegetation management crews and

many other supporting resources.<sup>11</sup> MECL's Post Mortem Report states that the transmission system was affected by tree contacts, but suffered minimal structural damages. Falling trees and branches during Fiona caused the vast majority of damage and related power outages. More specifically, the damage assessment determined that broken poles, transformers and conductors were a direct result of approximately 40,000 fallen trees and large branches.<sup>12</sup> MECL reported that the damage to the distribution system required the replacement of 1,275 distribution poles, 445 transformers and 140 kilometers of conductor. Further, many customers sustained damage to their individual electrical services, including 2,037 masts.

41. In addition, MECL states that its Customer Service and Corporate Communications responded to 72,000 customer interactions, including phone calls, emails, web chats and social media interactions.<sup>13</sup>
42. The total cost for MECL to restore power to customers was \$34.6 million.<sup>14</sup> MECL reported that restoration costs were incurred up to October 14, 2022, at which time electric service to all Maritime Electric customers was restored. Fiona-related costs included internal labour and transportation charges, materials, line and traffic control contractors, and mutual-aid crews including related accommodations, meals and travel. The Company described the costs as labour intensive. In addition, vegetation management and line maintenance costs associated with post-restoration cleanup continued for an additional four to six weeks and were included in the Fiona deferral amounts.<sup>15</sup>
43. The Fiona Application included the following table summarizing the total cost to restore power to customers:<sup>16</sup>

<b>TABLE 2</b>			
<b>Fiona-Related Costs<sup>21</sup></b>			
<b>(\$ millions)</b>			
	<b>Capital and Retirement</b>	<b>Operating</b>	<b>Total</b>
Third-Party Contractor Labour	13.3	11.2	24.5
Maritime Electric Labour and Transportation	2.3	1.3	3.6
Materials	3.7	-	3.7
Accommodations, Meals, Travel, etc.	-	2.8	2.8
<b>TOTAL</b>	<b>19.3</b>	<b>15.3</b>	<b>34.6</b>

44. The total cost was allocated to operating and capital based on the nature of the work performed, with 55.8 per cent being capital costs, and 44.2 per cent being operating costs.

<sup>11</sup> Exhibit M-5, pg. 2

<sup>12</sup> Exhibit M-5, pg. 32

<sup>13</sup> Exhibit M-5, pg. 2

<sup>14</sup> Exhibit M-6, pg. 11

<sup>15</sup> Exhibit M-2, pg. 5

<sup>16</sup> Exhibit M-6, pg. 15

45. At the hearing, Enrique Riveroll (“Riveroll”), MECL’s Vice President of Sustainability & Customer Operations, testified that the process of restoring power is a systematic and sequential process. The utility must first restore the transmission system and substation, while concurrently restoring power to the distribution system (main lines and side lines). Riveroll testified that this portion of the restoration effort took 10 days after Fiona. The remaining time was spent restoring service to individual customers.
46. Riveroll testified that the removal of trees was extensive just to clear the power lines that were damaged. Then infrastructure had to be replaced and power eventually restored.
47. MECL submits that the restoration effort was necessary in order for the Company to restore power to Islanders and to fulfil its statutory obligation to provide safe and adequate service to customers.

### **Capital Costs**

48. MECL incurred capital costs of \$19.3 million related to the Fiona restoration. MECL explains that these costs were associated with replacing damaged assets. These costs can be further subdivided into capital costs associated with the installation of new assets (42.7 per cent of total restoration cost) and retirement costs associated with removing the damaged assets (13.1 per cent of total restoration cost).<sup>17</sup>
49. MECL submitted that Fiona resulted in the replacement of 10 transmission poles, 1,275 distribution poles, 445 transformers, and 140 km of conductor, along with associated components (e.g. connectors, insulators, cross arms, brackets).
50. MECL’s Application explains that in each instance of damaged assets, trees needed to be removed in order to safely access and replace the damaged assets. The labour required to remove the trees during these instances was considered a capital cost and amounted to 81 per cent of the total capital cost.<sup>18</sup> However, the Commission notes that in interrogatory responses to Roger King, dated January 19, 2024, the Company corrected this figure and said that the labour referred to in the Application was actually related to *all* labour and not just vegetation management labour.<sup>19</sup>
51. MECL describes the storm response as labour intensive and points out that the restoration effort included extended work days, several weekends and two statutory holidays which increased the overall hourly rates for all work associated with the asset replacements.
52. The Company engaged its external independent auditor to provide an audit opinion, and it was concluded that the proposed capital and operating allocation of the Fiona related costs is in accordance with the Company’s capitalization policy.

---

<sup>17</sup> Exhibit M-6, pg. 16

<sup>18</sup> Exhibit M-6, pg. 16

<sup>19</sup> Exhibit M-7, pg. 9.

## Operating and Carrying Costs

53. MECL incurred operating costs of \$15.3 million (44.2 per cent of the total restoration costs). Operating costs are associated with repairing damaged assets (rather than replacing, which is covered by capital costs). If the inspection and power restoration revealed that no assets required replacement then the effort was considered an operating cost.
54. According to MECL, a significant portion of operating labour was associated with sectionalizing the power lines, which involves strategically and systematically isolating each circuit starting at the substation and then re-energizing each circuit working from the substation to the end customer.<sup>20</sup> MECL submits that this approach is a best practice to ensure power is restored safely for utility workers and the general public. MECL's Application states that extensive line faults were a direct result of the wide-spread tree damage caused during Fiona.
55. In support of the Company's request to earn a return on the operating portion of the Fiona-related costs, MECL submitted at the hearing that – although true operating costs are typically treated as a current period expense – the Fiona-related operating costs cannot be considered normal. MECL's Fiona Application submits that it is common utility practice to recover significant storm-related operating costs over a longer period of time to mitigate the rate impact on customers.<sup>21</sup> MECL submits this practice seeks to balance the regulatory principles of rate shock and inter-generational equity.
56. MECL submitted that the Fiona-related operating costs were equivalent to 60 per cent of annual operating costs in a normal year. Further, the Commission's approval to defer the costs in UE22-08 was a recognition that these costs required special treatment.
57. MECL has also incurred carrying costs (i.e. short-term interest costs) in the amount of \$6.6 million, forecast to April 2026. The Company's position is that carrying costs must be recovered through customer rates. MECL says that the restoration costs were unavoidably incurred as a direct consequence of unprecedented weather events, which required the Company to finance substantial storm-related expenditures that were entirely outside of its control. Further, the carrying costs reflect compounded interest charges that arise under standard commercial lending practices, and were magnified by regulatory lag in establishing an approved recovery mechanism.<sup>22</sup>
58. MECL recommends a five-year recovery period for the operating and carrying costs. Although this option would increase the total amount to be recovered from customers (because the unrecovered balance would continue to be financed over the recovery period), MECL nevertheless submits that this recovery period strikes an appropriate balance between the impact on customers' annual costs while limiting the total financing amount to be recovered from customers.

---

<sup>20</sup> Exhibit M-6, pg. 17

<sup>21</sup> Exhibit M-6, pg. 22

<sup>22</sup> Exhibit M-17, pg. 3

59. With respect to whether the Company can earn a return on the operating and carrying costs, MECL submits that earning a return is appropriate in these specific circumstances because the operating expenses were material, unplanned, non-discretionary and prudent. MECL says that allowing the Company to earn a return on this deferred balance fairly compensates the utility for the financing costs associated with the deferral balance until it can be fully recovered from customers. Further, it submits that the Company lost earnings on the Fiona-related capital expenditure at approximately \$0.722 million per year (for a total of approximately \$2.2 million).
60. MECL submits that the Company has an obligation to serve customers under the *Electric Power Act* and as part of that obligation it is required to restore power as quickly as possible after a major event such as Fiona, which results in a significant financial burden. MECL submits that if it is not allowed to recover these costs with a return, it could impact future restoration efforts as MECL may lack the financial ability to adequately invest in the resources required for rapid restoration.

### Vegetation Management

61. MECL's position is that there was no amount of prudent vegetation management that could have occurred prior to Fiona that would have changed the impact of this storm.
62. As noted, MECL reports that the broken poles, transformers and conductors resulting from Fiona were a direct result of approximately 40,000 fallen trees and large branches. At the hearing, Riveroll testified that "99 per cent" of those trees fell on power lines from outside the Company's permitted right-of-way ("ROW"). MECL submits that when trees in the ROW fall, they do not result in poles breaking.<sup>23</sup> Rather, Riveroll testified that trees within the public right-of-way and underneath the power lines simply cause outages due to the tree contact. As will be discussed in more detail later in these reasons, MECL distinguishes "damage" caused by trees outside the ROW from "outages" caused by trees inside the permitted ROW.
63. MECL is authorized by the Government of Prince Edward Island to manage the trees within the provincial right-of-way. Riveroll testified that MECL's pole line is located at the edge of that right-of-way – being 33 feet from the centre line of a provincial highway. Everything else is private property and MECL requires consent from land owners to cut or trim those trees outside the public right-of-way. MECL submitted that, at the time of Fiona, their Annual Vegetation Management Permit from the Department of Environment with respect to the public right-of-way stated as follows:

Permission to ground-cut trees under existing power lines within the Provincial Right-of-Way will only be granted when the surrounding landscape is primarily forested (65% +/-). Where the surrounding landscape is primarily agriculture, only tree trimming shall be permitted.

64. MECL has stated that its authority to manage trees is typically limited to achieving "standard line clearances", being three meters.<sup>24</sup> At the hearing, Riveroll testified that

---

<sup>23</sup> Exhibit M-17, MECL IR responses February 11, 2026, at pg. 6

<sup>24</sup> Exhibit M-17, pg. 9

MECL is permitted to trim trees approximately three meters both above and on either side of the conductor and to below the communication lines (this is the part of the pole where other companies (e.g. Bell Aliant, Eastlink) have their infrastructure). These standard clearances, according to MECL, are designed to maintain reliability under normal “blue-sky” conditions, but they do not mitigate the impact of large trees located further away that uproot and fall into the lines during extreme weather events.<sup>25</sup>

65. Riveroll testified that trees within the public right-of-way and underneath the power lines do not cause poles or conductor to break when they fall. Instead, Riveroll testified that the trees directly adjacent to the power line on private property cause damage. As noted above, Riveroll testified that 99 per cent of the trees that fell and caused damage to MECL’s infrastructure were on private property, and therefore not subject to MECL’s vegetation management permit.
66. In MECL’s interrogatory responses to Roger King, the Company explained that performing vegetation management does not eliminate the risk of tree contacts due to the limitations on the Company’s vegetation management permit. They explain that despite the standard vegetation management clearance, remaining vegetation in proximity to the power line can naturally fall. Furthermore, MECL wrote that the “primary objective” of vegetation management, from a reliability perspective, is to minimize the impact of tree contacts due to tree growth into electrical lines. However, the significant impact of trees during storms and extreme weather events are not mitigated through vegetation management.<sup>26</sup>
67. Ultimately, Riveroll testified the damage to MECL’s infrastructure caused by Fiona was not a result of MECL’s lack of vegetation management. He testified that the effectiveness of MECL’s vegetation management has contributed to overall reliability performance of the Company compared to other maritime provinces. This will be discussed in more detail later in these reasons.
68. At the hearing, Counsel for MECL submitted that the proximate cause of the damage to the Company’s infrastructure was Fiona. He submitted that there was nothing more the Company could have done from a vegetation management perspective due to the limitations on the Company’s permits.

### **Overview of Public Comments:**

69. The Commission received public comments on the Fiona Application from several members of the public. Those comments were on the record before the Commission in this matter. Many of the comments opposed the Application on the basis of affordability and that MECL should bear some of the burden of Fiona-related costs due to operating risks and vegetation management practices.
70. Two members of the public submitted at least two rounds of written questions (interrogatories) to MECL. Those questions included (but were not limited to) the following topics: MECL’s vegetation management practices and budgeting, permitted access to

---

<sup>25</sup> Exhibit M-17, pg. 9

<sup>26</sup> Exhibit M-7, pg. 17.

private property, extreme weather and climate adaptation, availability of government funding, as well as MECL's insurance policies.

71. MECL provided written responses to the public interrogatories and those responses were also on the record before the Commission.

## **Analysis and Decision:**

72. There are three questions for the Commission to consider on this Application:

- (i) Were the costs prudently incurred?
- (ii) To the extent the costs were prudently incurred, how should the costs be recovered from customers?
- (iii) Can MECL earn a return on the recovered costs?

73. The Commission will address each of those questions in the analysis that follows, beginning with an overview of the "regulatory bargain" and how the Commission determines prudence.

74. The analysis will then consider whether MECL's costs incurred were prudent, with particular focus on MECL's approach to vegetation management in the years before Fiona and whether that approach contributed to the damage sustained or the costs to restore electricity service following Fiona such that some of the costs incurred were imprudent or not reasonably necessary.

75. The decision will conclude with a review of the capital and operating costs incurred by MECL in restoring electrical service post-Fiona, whether those costs were prudent, and how those costs should be recovered.

### **A. The Regulatory Bargain and Prudence**

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 prudence.

#### (i) The Regulatory Bargain

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.<sup>27</sup> 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.<sup>28</sup> This well-balanced regulatory arrangement serves as

---

<sup>27</sup> *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, at para 62.

<sup>28</sup> 2006 SCC 4, at para 63.

a backdrop for the role of the Commission as regulator – the object is to protect both the customer and the investor.<sup>29</sup>

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.<sup>30</sup> 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.<sup>31</sup>
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.<sup>32</sup> 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 utility can continue to operate and can earn its cost of capital in order to attract and retain investment in the utility.<sup>33</sup>
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:<sup>34</sup>
- 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

---

<sup>29</sup> 2006 SCC 4, at para 64

<sup>30</sup> 2006 SCC 4, at para 62.

<sup>31</sup> *Edmonton (City) v. Northwestern Utilities Ltd.*, [1929] SCR 186 (SCC), at pp. 192-93.

<sup>32</sup> *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).

<sup>33</sup> *ATCO*, SCC at para 7.

<sup>34</sup> Commission Order UE93-01

- 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) Prudency

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.”<sup>35</sup> MECL agreed with this characterization in their submissions.

84. The Nova Scotia Energy Board recently described prudency as:<sup>36</sup>

... costs incurred under a standard of care that a reasonable person would expect to be made by other similarly situated 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.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> 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.

---

<sup>35</sup> ATCO, SCC at paras 34 and 35.

<sup>36</sup> 2026 NSEB 8, at para 429.

<sup>37</sup> *Electric Power Act*, s. 24(1).

<sup>38</sup> ATCO, SCC at para 45.

<sup>39</sup> ATCO, SCC at para 61.

## B. Prudence of MECL's Fiona-Related Costs

88. EA Technology concluded that MECL's general approach to "reactive emergency response events" broadly follows expected practice. Their report draws the following conclusions with respect to the "prudence" of MECL's recovery:
- C2. Prior to Storm Fiona [Maritime Electric] appear to have had appropriate range of emergency plans, facilities, contractual arrangements and provisions to prepare for and support the majority of reactive response deliveries in a safe, timely manner. This range of provisions may now need to be reviewed for future large scale events.
  - C3. The scale of reactive response required following the passage of Storm Fiona is considered to have exceeded [Maritime Electric]'s emergency response provision, which in order to maintain a safe mode of operation has a finite resource capacity. This restriction is thought to have had a direct affect upon the pace of restoration delivery and customer outage duration.
  - C5. [Maritime Electric]'s response to Storm Fiona was delivered in accordance with their Business Continuity and Disaster Recovery Plan, and included external assistance from approved contractors and suppliers, mutual aid partnership organisations and Fortis Group members.
  - C6. Although the full range of financial controls have not been evidenced, the resources utilised during the Storm Fiona response are understood to have all be subject to pre-arranged contractual terms and conditions, therefore the review considers that the costs associated with [Maritime Electric]'s reactive response is unlikely to be subject to financial mismanagement, and have been prudently accrued.
89. At the hearing, Andrew Harrison, Principal Consultant, with EA Technology ("Harrison"), the report's author, testified that, with respect to the prudence of the costs incurred, MECL has "done an awful lot that is quite right." He testified that MECL seemed to have good provision of resources, materials and business continuity plans in place. He said MECL had written procedures that were enacted in a timely and organized fashion. Harrison also testified that the pre-arranged contractual terms limits exposure to market forces and exploitation in a desperate situation. According to Harrison, engaging resources with a known, pre-arranged contingency means MECL would have been able to make informed decisions about how they committed resources and expenditures to carry out the restoration efforts.
90. Harrison qualified EA Technology's report by clarifying that EA Technology considered prudence from a technical perspective, but that a financial audit was not within the scope of work.
91. MECL engaged its external independent auditor, Deloitte, to provide an audit opinion on the Fiona Restoration costs.<sup>40</sup> The auditor's report concluded that the proposed capital

---

<sup>40</sup> Exhibit M-6, Appendix A.

and operating allocation of the Fiona related costs is in accordance with the Company's capitalization policy. The Commission accepts this evidence.

92. Based on the above, the Commission is satisfied that steps MECL took to prepare for Fiona from an emergency preparedness perspective were prudent and reasonable. As opined by EA Technology, MECL's provision of resources, materials and business continuity plans were appropriate and well-executed in the circumstances. The Commission agrees.
93. The Commission accepts that when Fiona hit, MECL had to do everything it could to get the power back on in a safe and timely manner. The Commission is satisfied that the steps MECL took to do that were prudent and necessary in the circumstances.
94. However, a relevant consideration with respect to MECL's Fiona Application is that the relief sought by MECL to recover costs from customers – after the fact – to cover expenses not contemplated in approved rates is a somewhat exceptional form of relief. In approving this Application, the Commission must be satisfied that the costs sought to be recovered were extraordinary and not reasonably anticipated. As will be discussed in the section below, the Commission is also of the opinion that the state of MECL's vegetation management at the time Fiona hit Prince Edward Island is critical to a determination about recovery in the complete circumstances of this Application and the magnitude of MECL's restoration efforts following the storm.

### **C. Vegetation Management**

95. MECL's Fiona Post Mortem Report and Fiona Application make it clear that trees were the primary cause of damage during Fiona. MECL has taken the position on this Application that there is nothing more it could have done in the way of vegetation management to prevent that damage.
96. The Commission acknowledges that Fiona was the storm of a lifetime – the standard of MECL's restoration efforts cannot be perfection. The analysis above confirms this, to a large degree. However, the Commission cannot ignore that just three months before Fiona, MECL provided a submission to the Commission that their vegetation management program needed "urgent" investment. The Commission, therefore, considers it necessary in a review of "prudence" to determine whether MECL's approach to vegetation management in the years before Fiona contributed to either the damage sustained or the costs to restore electricity service following Fiona such that some of those costs incurred were imprudent or not reasonably necessary. As noted above, "prudent" is not necessarily used to describe the decision to incur the costs, but rather to describe the costs themselves.<sup>41</sup>
97. In June 2022, as part of the Company's 2023 General Rate Application, MECL sought approval for expanded investment in its vegetation management program. At that time, MECL submitted that over 50 per cent of MECL's outages were caused by wind and tree contact, which suggested to the Company that improved tree clearances would have

---

<sup>41</sup> ATCO, SCC at para 45.

prevented many of those outages.<sup>42</sup> In the 2023 General Rate Application, MECL submitted that the Company's 2021 operating budget for vegetation management was "materially insufficient" to allow for a vegetation management cycle in line with industry practice.<sup>43</sup> As a result, MECL estimated that 60,600 distribution spans and 6,400 transmission spans required "urgent" vegetation management to avoid "a significant deterioration of reliability".<sup>44</sup>

98. Appendix E to MECL's 2023 General Rate Application included the following notable submissions:

- Proper maintenance of the electrical system is necessary to provide an acceptable level of reliability for customers, and Electricity Canada (formally known as the Canadian Electrical Association) indicates that the industry average for tree-related outages from 2011 to 2021 was 14 per cent. In comparison, Maritime Electric outage statistics for that same period show that 33 per cent of reported outages, excluding the impact of post-tropical storm Dorian, were attributed to trees and/or wind, which is well above the industry average.<sup>45</sup>
- Reliability impacts increase significantly during major storm events where the effects of not achieving a reasonable vegetation management cycle are magnified and often result in longer restoration times.<sup>46</sup>
- Without a reasonable trimming cycle, costs to trim are generally one and a half to two times higher because the trees grow up and around the lines, which then requires protection permits and additional work safe procedures. Vegetation management activities performed after the trees reach energized lines is a suboptimal use of the existing budget.<sup>47</sup>
- Maritime Electric's distribution vegetation management cycle is significantly higher than the other utilities, which averages six years. In addition, good utility practice recommends a vegetation management cycle of five to ten years, depending on the type of vegetation and climate. Climate change has resulted in warmer temperatures and longer growing seasons, which has resulted in utilities adjusting their vegetation management cycles to be more frequent than past practice.<sup>48</sup>
- In 2019 the Company completed a vegetation inspection of all of its off-road transmission system and almost half of its roadside transmission and distribution system. Extrapolating the results of this inspection, it is estimated that 60,600

---

<sup>42</sup> MECL 2023-2025 General Rate Application – June 20, 2022, Appendix E, pg. 2, Lines 6-8 [2023 GRA Appendix E].

<sup>43</sup> 2023 GRA Appendix E, pg. 2, Lines 14-15.

<sup>44</sup> Exhibit C-11, 2023 GRA Appendix E, pg. 5, Lines 11-14.

<sup>45</sup> Exhibit C-11, 2023 GRA Appendix E, pg. 3, Lines 7-12.

<sup>46</sup> Exhibit C-11, 2023 GRA Appendix E, pg. 3, Lines 16-18.

<sup>47</sup> Exhibit C-11, 2023 GRA Appendix E, pg. 4, Lines 2-5.

<sup>48</sup> Exhibit C-11, 2023 GRA Appendix E, pg. 5, Lines 1-6.

distribution spans and 6,400 transmission spans require urgent vegetation management to avoid a significant deterioration of reliability.<sup>49</sup>

- Ground cutting is more cost effective. However, on PEI ground cutting is not permitted in certain areas ... Nonetheless, the Company estimates that it can increase its ground cutting efforts to account for approximately 20 per cent of the distribution spans.<sup>50</sup>

99. Despite MECL's expressed need for "urgent" investment in vegetation management just months prior to Fiona, the Company's position on the present Application is that the hurricane itself and the trees that fell onto lines from outside the permitted ROW were the proximate cause of the damage sustained to the Company's infrastructure, not any lack of diligence in vegetation management within the permitted right-of-way.

100. At the hearing, Riveroll testified that "99 per cent" of the damage was caused by trees outside the ROW. This figure of "99 per cent" will be returned to later in these reasons, but at the hearing Riveroll's testimony was effectively that there was nothing more the Company could have done in the way of prudent vegetation management to prevent the damage that occurred as a result of Fiona. Riveroll testified that trees within the ROW would not have caused damage in the same way as the trees outside the ROW. For example, the trees underneath the lines do not cause poles or conductor to break when they fall. He said that while those trees may cause outages due to tree contact, it is the trees adjacent to the power lines on private property that cause damage. Riveroll testified that the extent of that damage can be caused by the height of the tree, the force of the wind, and the tree's distance from the power lines.

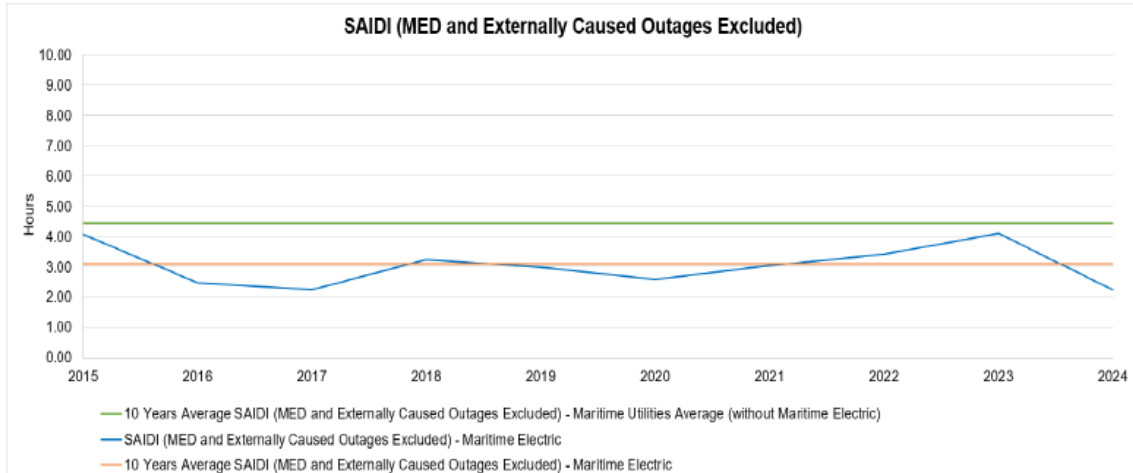
101. Riveroll testified to the effectiveness of the Company's vegetation management program, saying it is demonstrated by its overall reliability compared to other maritime utilities. At the hearing, MECL relied on the Company's "system average interruption duration index" or SAIDI to demonstrate that MECL's reliability surpasses that of other maritime utilities, with an average interruption duration of only 3.1 hours, compared to approximately 4.5 hours for other maritime utilities:

[see table on next page]

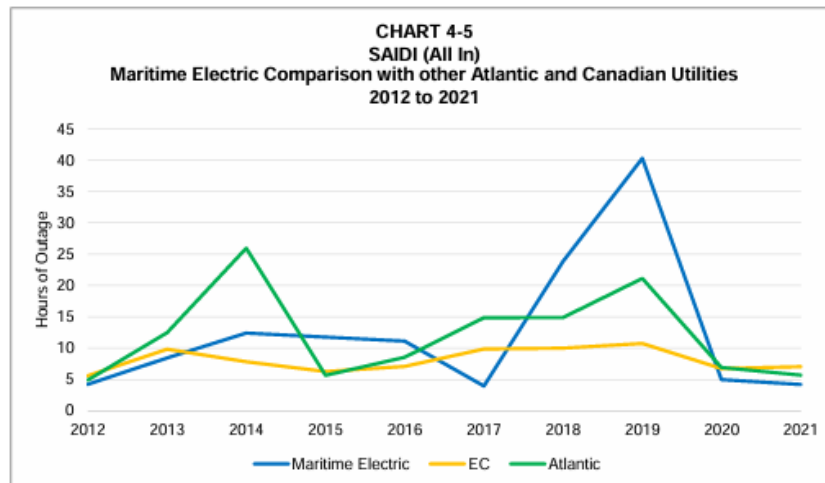
---

<sup>49</sup> Exhibit C-11, 2023 GRA Appendix E, pg. 5, Lines 11-14.

<sup>50</sup> Exhibit C-11, 2023 GRA Appendix E, pg. 7, Lines 3-11.



102. Importantly, however, the Commission notes that the SAIDI data relied upon by MECL at the hearing expressly excludes major weather events – such as Hurricane Dorian and Fiona. The SAIDI (All In) table shown below, was included in MECL’s 2023 General Rate Application and measures reliability performance using outage data under all operating conditions. MECL’s 2023 General Rate Application stated that major events had a significant impact on the Company’s outage duration relative to normal operating conditions.<sup>51</sup>



103. Notably, MECL’s 2023 General Rate Application went on to say that over 50 per cent of major outage events between 2011 and 2021 were caused by wind and tree contacts and reasoned that system hardening and expanded vegetation management would have prevented many of these outages.<sup>52</sup>

<sup>51</sup> 2023 General Rate Application, pg. 22, Lines 3-5.

<sup>52</sup> 2023 General Rate Application, pg. 25, Lines 3-5.

104. At the hearing, Riveroll testified to some “misunderstandings” in the Company’s 2023 General Rate Application filing. He testified that the 35-year cycle referred to in that filing was not accurate. He said the Company presented the information in that way to illustrate the need for vegetation management, but that the company has used a risk-based approach – not a cyclical approach – to vegetation management since 2013. Riveroll testified that the risk-based approach identifies areas with lots of trees and lots of customers to maximize efficiency. MECL explained<sup>53</sup> that it has two inspectors that cover the whole Island, who do a thorough inspection on a cyclical basis. The transmission system is on a 2-year cycle, while the distribution system is on a 6-year cycle. MECL also explained, however, that crew and field staff also report issues that are dealt with when identified. Riveroll testified that part of the reason MECL sought further investment in 2022 was because the Company assessed that trees were growing faster and the growing season was longer, so spending needed to increase. He testified that since the Commission approval of the 2023 General Rate Application, the Company has started to use satellite imagery data and software to prioritize vegetation management based on risk.

105. Riveroll testified that the trees identified as needing vegetation management would not have contributed to the damage sustained in Fiona. However, in an exchange with the Panel Chair, Riveroll did agree that those trees would have contributed to the clean up:

Panel Chair: But would those trees have potentially contributed to the damage during Fiona?

Riveroll: No. Not to the damage.

Panel Chair: To the clean up?

Riveroll: To the clean up. Yeah. Yes.

Panel Chair: So, although – and I just want to understand your position. It’s 99 per cent of trees outside of the right-of-way caused the damage. But, the vegetation management within the right-of-way that had not been attended to may have impacted the clean up.

Riveroll: That’s right.

Panel Chair: And those costs are included in the Application today?

Riveroll: Yes, they would be.

106. With respect to the submission in 2022 that distribution and transmission spans needed “urgent” investment, Counsel for MECL encouraged the Commission not to place undue emphasis on this word. He submitted that the world of utilities is conservative in terms of planning, and that planning for 5+ years would be considered “urgent”.

107. To assist the Commission in analyzing MECL’s Application, the Commission retained an independent expert, EA Technology, to carry out a review and report of MECL’s Fiona response. EA Technology undertook a paper review of documentation filed in support of

---

<sup>53</sup> This evidence was presented at the hearing by Kenneth Sampson, Director of Customer Service and Operations.

MECL's Application. One area EA Technology considered in their report was the impact, if any, MECL's vegetation management had on the Fiona restoration efforts. EA Technology made the following conclusions with respect to vegetation management:<sup>54</sup>

- C1. The primary asset base which makes up Maritime Electric's transmission and distribution power systems were considered to be in a generally good condition prior to the onset of Storm Fiona. However, from a vegetation management perspective, it appears that line corridors were not as well maintained. [emphasis added]
- C4. During the Storm Fiona response effort, Maritime Electric had to respond to increased rates of system damage caused by preventable tree contacts. These contacts have contributed to a significant overall reduction to the overall system integrity and should have been avoided through effective and reasonable vegetation management activity. The scale of this response requirement is through to have significantly extended customer's restoration times during Storm Fiona. [emphasis added]
- C7. Maritime Electric's post Fiona increase in vegetation management investment, including the development of cyclical vegetation clearance programmes are expected to improve overall electrical system performance on blue-sky days. However, due to current legislative restrictions and limitations these programmes are unlikely to prevent future windfall tree contacts during high wind weather events.

108. EA Technology's report comments that, based on the evidence provided for their review, it appeared that MECL's vegetation management prior to Fiona was only taking place on a piecemeal basis following routine line inspection that identified potentially hazardous situations or following reports from concerned customers who may have been experiencing poor system performance. EA Technology concluded that the condition of MECL's line corridors (the land cleared beneath and around MECL's infrastructure) immediately before the onset of Fiona was not as expected and, therefore, contributed little to the resilience of the system when faced with an adverse weather event.

109. That said, EA Technology's report also seems to agree with MECL that even if vegetation clearances were rigorously maintained, "clearances would be insufficient to prevent interference from the larger falling branches and trees flanking the rights of way during severe weather events."<sup>55</sup>

110. EA Technology wrote that inadequate line corridor vegetation management will "directly affect the number of locations at which unwanted tree contacts will occur during both blue-sky and adverse weather events". EA Technology also concluded that instances of preventable tree contacts, that should have been avoided through effective and reasonable vegetation management activity, will have increased the magnitude of the

<sup>54</sup> Exhibit C-7 Expert Report by EA Technologies, at pg. ii.

<sup>55</sup> Exhibit C-7 Expert Report by EA Technologies, at pg. 4 and 7.

restoration effort, extending customer supply restoration times, increasing accrued costs and reducing overall levels of system resilience.<sup>56</sup>

111. At the hearing, Harrison, the report's author, testified to EA Technology's conclusions in the report. On cross-examination, Harrison did not dispute that the majority of damage was caused by trees falling at the periphery of the ROW; however, he said that in his experience this would not be the sole cause of electrical supply interruption or potential for damage if there was vegetation in an unmaintained ROW supporting an overhead line corridor. Harrison testified that the vegetation management being behind schedule leaves the possibility that trees within the ROW could make contact and cause damage. For example, he testified that if vegetation is in close proximity to the wires, it may get entangled.

112. The evidence and information before the Commission leads us to the conclusion that, by MECL's own admission, the condition of MECL's line corridors and its vegetation management activities (at least as it existed in June 2022) required investment to bring it in line with industry practice.

113. At the hearing, Counsel for MECL submitted that MECL's evidence that "99 per cent" of the damage was caused by trees outside MECL's ROW is the "only evidence" before the Commission as to the cause of the damage. While this may be technically true, the Commission notes that this figure of "99 per cent" is not corroborated by any other objective evidence on the record before the Commission. When asked by Commission counsel at the hearing, Riveroll agreed that during MECL's restoration efforts, the Company was not tracking the source of any damage or whether it was attributable to trees within or outside the ROW. This same submission was made in MECL's interrogatory responses dated February 11, 2026, where MECL reported:<sup>57</sup>

- a. Maritime Electric does not have any specific data on the proportion of damage attributable to inside the ROW vs outside the ROW.

[...]

- c. Maritime Electric does not maintain records or mapping to identify tree-fall origin points; however, specific outage cause codes are used when a customer-owned tree causes an outage to a service line.

114. The Commission notes that in those same interrogatory responses, MECL submitted both that the "vast majority"<sup>58</sup> of trees that caused damage were outside the ROW and an estimated "99 per cent"<sup>59</sup> of the broken poles were from trees outside the ROW. Further,

---

<sup>56</sup> Exhibit C-7 Expert Report by EA Technologies, at pg. 4.

<sup>57</sup> Exhibit M-17, pg. 5.

<sup>58</sup> Exhibit M-17, pg. 4.

<sup>59</sup> Exhibit M-17, pg. 6. The Commission notes that the reference to "99 per cent" in the IR responses is purportedly copied from the Hurricane Fiona Post-Mortem Report, but the Commission was unable to verify that citation as accurate.

in interrogatory responses to Roger King, the Company said that trees located outside the right-of-way caused “most” of the impacts from Fiona.<sup>60</sup>

115. Perhaps most pointedly, in MECL’s February 11, 2026, interrogatory responses to the Commission the Company said it was:<sup>61</sup>

...not feasible or practical to collect the location of the faults caused by tree contact, and therefore Maritime Electric is not able to compare tree-caused outages against vegetation management activities, or to specifically quantify inside-ROW versus outside-ROW vegetation impacts.

116. The Commission, therefore, is left to draw the conclusion that MECL’s figure of “99 per cent” is not based on any objective data collected by MECL.

117. The Commission can accept that MECL’s evidence amounted to a proposition that the majority of the damage—or even almost all of the damage—sustained during Fiona was caused by trees on private property outside the Company’s permitted ROW. However, even if the Commission were to accept the figure of “99 per cent” (without the benefit of any objective data to corroborate this estimation), the Commission cannot accept that *100 per cent* of the Fiona restoration costs were attributed to trees outside the permitted ROW. Based on the various submissions of MECL reviewed above, the Commission reasonably concludes that MECL cannot establish anything more than “most” or “a majority” of the damage was caused by Fiona—both of which invite subjective determinations of quantum.

118. The Commission also notes here that MECL has distinguished in its submissions and testimony between “damage” and “outages”. The Commission understands that difference to be that trees inside the ROW may cause outages due to tree contacts, but that it was large trees outside the ROW that caused the damage when they fell and broke poles and other infrastructure. However, MECL has not made this same distinction in its breakdown of costs. For example, MECL has not provided the Commission with any evidence as to what costs were incurred to repair “damages” versus those to restore “outages”.

119. Therefore, even in accepting that “most” or “a majority” (or even 99 per cent) of the *damage* was caused by trees outside the ROW, the Commission is still left without any evidence as to what, if any, proportion of the restoration effort was spent restoring *outages*, which may, or may not, have been as a result of unmaintained vegetation in line corridors.

120. The Commission understands that on the morning of Saturday, September 24, 2022, MECL’s primary focus and responsibility was to restore power in a safe and timely manner. A downstream effect of this may be a lack of data as to the attribution of damage between trees inside and outside the ROW. However, as stated above, the Commission

---

<sup>60</sup> Exhibit M-7, pgs. 4, 16 and 18.

<sup>61</sup> Exhibit M-17, pg. 7.

cannot ignore that only three months prior to Fiona, the Company expressed to the Commission that urgent investment was needed in its vegetation management activities.

121. Further, the Commission accepts the conclusion of EA Technology that preventable tree contacts that should have been avoided through effective and reasonable vegetation management activity, “will have increased the magnitude of the restoration effort, extending customer supply restoration times, increasing accrued costs and reducing overall levels of system resilience.”<sup>62</sup>
122. In sum, it is more likely than not that the condition of the ROWs prior to Fiona had *some* impact on the cost of MECL’s restoration efforts following Fiona.
123. In saying this, the Commission does accept that prior to 2023, MECL had been advocating for changes to its Annual Vegetation Management Permit from the Department of Environment since 2017 because of inadequacies with the permit and the challenges it presented for effective vegetation management. Riveroll testified that MECL’s prior permit prohibited ground cutting in areas where the surrounding landscape was primarily agriculture. He testified that since the permit was amended in 2023 to allow for an assessment in those areas, MECL has been having a lot more success with their vegetation management in these areas.
124. On the whole, the Commission is of the opinion that the state of MECL’s vegetation management prior to Fiona had *some* impact on the clean up efforts and costs to restore electricity. This was the conclusion of the Commission’s expert, EA Technology and Riveroll testified to this fact, too. However, the challenge the Commission faces in coming to this conclusion is that MECL has not identified the actual costs and impact because the Company was not tracking this information. Nevertheless, the Commission must consider whether the amount claimed for Fiona restoration costs should be reduced because a portion of those costs was not reasonably necessary as a result of Fiona, but was instead due to MECL’s lack of prudent vegetation management in the years before Fiona.
125. As already stated, Counsel for MECL submitted at the hearing that the proximate cause of the loss was Fiona and that the “only evidence” before the Commission is Riveroll’s testimony that “99 per cent” of the damage was caused by trees outside MECL’s permitted ROW. However, for the reasons above, the Commission does not find that evidence to be particularly reliable in the circumstances.
126. MECL bears the burden on an application before the Commission to prove that costs incurred were prudent. In this (or really any) Application the Commission is mindful that it is MECL that “holds the cards”, so to speak. The evidence about MECL’s restoration efforts and any impact vegetation management practices may have had on those efforts is within the domain of Maritime Electric to provide. Even where the Commission retains an independent expert, that person is limited in the kind of evidence they can collect and opine on.

---

<sup>62</sup> Exhibit C-7 Expert Report by EA Technologies, at pg. 4 [underline emphasis added to quote].

127. The Commission expects MECL to fully and accurately disclose to the Commission all material facts and information relevant to its decisions—this premise is necessary for a properly functioning regulatory system. On this Application, the Commission cannot accept MECL’s position that they just did not track the relevant data, while also accepting that “most” of the damage was related to trees outside the ROW. This evidence is not sufficient to discharge the Company’s burden of proof that all costs incurred were entirely prudent. This is particularly the case where MECL itself has been inconsistent in how its own evidence has been expressed—e.g. most, a majority of, 99 per cent. That is not credible, reliable evidence in the opinion of the Commission and, frankly, leaves the Commission in a tough spot. The Commission is also not satisfied with MECL’s attempts to explain the expressed need for investment in vegetation management in the 2023 GRA application as “misunderstandings”. The Commission cannot weigh the complete dearth of evidence about the impact of MECL’s vegetation management practices in favour of MECL when MECL both holds those cards and bears the burden to prove prudence. There is obvious mischief in that approach.
128. As stated by the Supreme Court of Canada, customers must pay what the Commission “expects it to cost to efficiently provide the services they receive” such that, “overall, they are paying no more than what is necessary for the service they receive”.<sup>63</sup>
129. In the result, the Commission cannot accept that 100 per cent of the costs incurred by MECL to restore electricity service following Fiona were prudent and reasonably necessary when considering the Company’s previously admitted need for “urgent” investment in its vegetation management program. Put another way, a portion of the costs attributed to Fiona restoration were, in all likelihood, related to clearing vegetation that should otherwise have been prudently managed by MECL. Given MECL’s prior expression of the need for investment, it cannot be said this conclusion has only been made with the benefit of hindsight.
130. However, in the absence of evidence or submissions from MECL about an apportionment regarding the impact of MECL’s vegetation management on the costs incurred to restore power, the Commission finds that 90 per cent of the Fiona-related costs were prudent. The Commission, therefore, disallows recovery of 10 per cent of the Fiona-related restoration costs on the basis that those costs were imprudent. This 10 per cent disallowance will apply across the board to all costs claimed by MECL as detailed below.
131. The Commission arrives at 10 percent for the following reasons. First, the Commission accepts that MECL’s emergency preparedness was prudent and reasonable. As opined by EA Technology, MECL’s provision of resources, materials and business continuity plans were appropriate and well-executed in the circumstances. Therefore, the vast majority of MECL’s restoration costs were prudent in these extraordinary circumstances. However, the evidence before the Commission leads to the conclusion that MECL’s vegetation management was not up to industry standards in 2022. In saying this, the Commission acknowledges that MECL has narrow rights-of-way and a limited ability to

---

<sup>63</sup> ATCO, SCC at para 45, citing from *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, at para 20.

manage vegetation outside of those rights-of-way. The Commission is satisfied that 10 per cent is a reasonable amount to disallow that accounts for all of these circumstances.

132. The Commission pauses here to make one thing clear—the Commission’s finding about prudence is not in any way intended to reflect on the hard work of MECL employees and other front-line responders that began at daybreak on Saturday, September 24 and continued for the next three weeks. The Commission accepts and appreciates that this dedicated work was critical to restoring power for 83,200 Islanders.

133. Before moving on, the Commission expressly acknowledges the comments of the Supreme Court of Canada that the impact of increased rates on consumers cannot be used as a basis to disallow recovery of prudent costs.<sup>64</sup> In the present case, the Commission is instead focused on ensuring that customers only pay for what was reasonably necessary. As articulated by the SCC, while this conclusion carries with it the consequence that rates will be lower as a result, in arriving at this conclusion the Commission reasoned from the prudence of the costs themselves, not from a desire to keep rates down.<sup>65</sup>

#### D. Approved Cost Recovery

134. The Commission approves MECL’s claimed costs as follows:

<b>Cost</b>	<b>Claimed Amount</b> (in millions)	<b>Approved Amount</b> (in millions)
Capital Costs	\$19.3	\$17.37
Operating Costs	\$15.3	\$13.77
Carrying Costs	\$6.6	\$5.94

135. The sections that follow will speak to the time period for recovery of the costs as well as whether MECL can earn a return on the costs.

#### E. Capital Costs

136. Paragraphs 48 to 52 above outline MECL’s claimed capital costs. In brief, MECL incurred capital costs of \$19.3 million related replacing damaged assets as a result of Fiona.

137. MECL proposes that this balance would be recovered from customers through a depreciation expense and would be recovered over the life of the related assets over approximately 40 years. The Commission agrees that the capital costs to replace damaged assets should be recovered from customers as proposed by MECL.

138. As concluded above at paragraph 134, the Commission is satisfied that 90 per cent of the claimed capital costs were incurred prudently and can be recovered by MECL, in the total amount of \$17.37 million.

<sup>64</sup> ATCO, SCC at para 61.

<sup>65</sup> ATCO, SCC at para 63.

139. The Commission otherwise agrees that the approved amount may be recovered over the life of the related assets (e.g. new power poles) and can be included in rate base. This means that in addition to recovering the cost of the assets, MECL will be allowed to earn a return on the invested capital costs.

## **F. Operating Costs and Carrying Costs**

140. Paragraphs 53 to 60 above outline MECL's claimed operating costs. In brief, MECL incurred operating costs of \$15.3 million related repairing damaged assets as a result of Fiona.

141. As concluded above at paragraph 134, the Commission is satisfied that 90 per cent of the claimed operating costs were incurred prudently and can be recovered by MECL, in the total amount of \$13.77 million. The recovery and treatment of these costs will be detailed below.

142. MECL has also incurred carrying costs (i.e. short-term interest costs) in the amount of \$6.6 million, forecast to April 2026. On December 19, 2022, by Order UE22-08, the Commission approved the deferral of MECL's Fiona-related costs, meaning that the Company financed the costs entirely with debt, versus its approved capital structure. The impact of this was that MECL incurred carrying costs associated with financing of these operating costs. These carrying costs were incurred on a compound basis. MECL's position is that these carrying costs must be recovered through customer rates.

143. In interrogatory responses, and at the hearing, MECL explained that compounded interest is standard in these circumstances and appropriate due to the long-term nature of the financing. The Commission agrees with MECL that the carrying costs were prudently incurred. However, as determined above, the Commission has found that 90 per cent of the Fiona restoration costs can be recovered from customers. Therefore, in the circumstances the Commission approves 90 per cent of the carrying costs, a total of \$5.94 million, as recoverable from customers.

144. MECL recommends a five-year recovery period for the operating and carrying costs. Although this option would increase the total amount to be recovered from customers (because the unrecovered balance would continue to be financed over the recovery period), MECL nevertheless submits that this recovery period strikes an appropriate balance between the impact on customers' annual costs while limiting the total financing amount to be recovered from customers.

145. The Commission has considered MECL's submissions but finds that an eight-year recovery period for the operating and carrying costs is appropriate. In its filing, MECL provided examples of this practice in other jurisdictions in similar circumstances, many of which deferred significant storm-related operating expenses well beyond five years. The Commission acknowledges that a longer recovery period will increase the total financing costs; however, the Commission is satisfied, in the circumstances, that eight years is a reasonable recovery period that will limit rate shock and have a more balanced impact on customers' annual costs.

146. With respect to whether the Company should be entitled to include the deferred operating costs in rate base and, consequently, earn a return on those costs, MECL submits that earning a return is appropriate in these specific circumstances because the operating expenses were material, unplanned, non-discretionary and prudent. MECL submitted at the hearing that – although true operating costs are typically treated as a current period expense – the Fiona-related operating costs cannot be considered normal. MECL’s Fiona Application submits that it is common utility practice to recover significant storm-related operating costs over a longer period of time to mitigate the rate impact on customers.<sup>66</sup> MECL submits this practice seeks to balance the regulatory principles of rate shock and inter-generational equity.
147. In MECL’s interrogatory responses, the Company submitted that while the operating expenses incurred were not a “capital-related investment”, there was a great deal of risk with incurring them, in part, because they were unplanned and non-discretionary.<sup>67</sup> MECL submitted that the financial burden of rapid restoration is significant, and deferral mechanisms allow a utility to recover expenses closer to when they were incurred, which reduces the overall costs of financing and maintains financial stability for the utility. MECL submits that allowing a return on deferred storm expenses prevents these unexpected costs from causing financial distress, ensuring the utility remains solvent and able to continue operations.
148. As explained above, Canadian law provides 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.<sup>68</sup> In carrying out this duty, the Supreme Court of Canada said the regulator has to consider rate base – which means the amount that the owner of the utility has invested in the enterprise and on which it is entitled to a fair return.<sup>69</sup>
149. With respect to the operating costs, in the normal course these costs would have been expensed in the year they were incurred and would not be subject to any return. Therefore, MECL is seeking exceptional relief by requesting that these costs be capitalized such that MECL can earn a return on them. In the circumstances, the Commission accepts the approach taken by the NSERB (formerly NSURAB) in its approach to Fiona cost-recovery, and finds that MECL is not entitled to earn a return on the deferred operating costs.<sup>70</sup> Similar to the conclusion of the NSERB, in coming to this conclusion the Commission is satisfied that denying this exceptional relief is fair to both the utility and customers.
150. In conclusion, with respect to the operating costs and carrying costs, the Commission finds that MECL is entitled to recover 90 per cent of the incurred costs, but is not permitted to include these costs in rate base and is not permitted to earn a return on these costs.

---

<sup>66</sup> Exhibit M-6, pg. 22

<sup>67</sup> Exhibit M-17, pgs. 24-25.

<sup>68</sup> *Edmonton (City) v. Northwestern Utilities Ltd.*, [1929] SCR 186 (SCC), at pp. 192-93.

<sup>69</sup> *Edmonton (City) v. Northwestern Utilities Ltd.*, [1929] SCR 186 (SCC), at p. 190.

<sup>70</sup> 2024 NSUARB 116, at paras 97 and 98.

151. Further, any additional carrying costs accrued in respect of the disallowed portion of the capital, operating and carrying costs is not recoverable from customers.

### **G. Capital Structure**

152. For clarity, the Commission confirms that – in the present Order – there will be no change to MECL’s capital structure as approved by the Commission in MECL’s 2023 General Rate Application, being Order UE23-04. In that Order, the Commission effectively approved an average common equity ratio of 40 per cent for each 2023, 2024 and 2025 (or until otherwise varied by the Commission).

### **H. Government Funding**

153. The Commission’s approval of MECL’s deferral account in Order UE22-08 was conditional on any and all government funding being applied to reduce the balance of the deferral.

154. In MECL’s interrogatory responses of February 11, 2026, the Company reported that it has not received any indication that government funding is forthcoming from either Provincial or Federal Government sources. MECL said it is “highly unlikely” that such funding will be received in the future. Nevertheless, MECL submitted that should it receive such government funding, the amount would first be applied to any unrecovered regulatory deferral balance related to Fiona immediately upon receipt.

155. The Commission orders that in the event MECL receives government funding in relation to Fiona-related expenses, the Company shall apply to the Commission for approval on how that funding is to be applied to any unrecovered regulatory deferral balance and how to adjust any recovery from or refund any balance to customers. For clarity, any government funding cannot be applied to the disallowed costs.

### **I. Accounting Treatment of Disallowance**

156. MECL shall remove the disallowed amount from the Fiona deferral account and shall ensure that no portion of the disallowed amount is recovered from ratepayers. MECL shall record an adjustment to the Fiona deferral account to remove the disallowed amount and shall account for such amount as a shareholder responsibility.

### **J. Compliance Filing**

157. Within 60 days of this Order, MECL shall file a compliance report demonstrating how the disallowed amount has been accounted for and confirming that no portion of the disallowed amount remains in any regulatory asset, deferral account, rate base or other account from which recovery may be sought from ratepayers.

158. The compliance filing shall include confirmation from MECL’s external auditors that the accounting treatment of the disallowed amount is consistent with this Order.

159. MECL shall identify the opening balance, additions, reductions, amortization and closing balance of the Fiona deferral account in each monthly financial report and annual report filed with the Commission until the account is fully disposed of.

#### **K. Rate Impacts**

160. MECL shall file with the Commission a report that details the rate impacts to ratepayers prior to implementing rate increases to recover the costs approved in this Order with a proposed date for implementation.

### **Order:**

The Commission Orders as follows:

1. **MECL may recover from ratepayers the capital costs related to Fiona in the total amount of \$17.37 million. These costs are to be recovered over the life of the related assets.**
2. **Capital costs related to Fiona that are approved for recovery may be included in MECL's rate base and MECL may earn a return on these costs.**
3. **MECL may recover from ratepayers the operating costs related to Fiona in the total amount of \$13.77 million. These costs are to be recovered over a time period of 8 years.**
4. **Operating costs related to Fiona that are approved for recovery shall not be included in rate base and MECL shall not be entitled to earn a return on these costs.**
5. **The carrying costs claimed by MECL may be recovered from ratepayers in the amount of \$5.94 million. These costs are to be recovered over a time period of 8 years.**
6. **The carrying costs approved for recovery shall not be included in rate base and MECL shall not be entitled to earn a return on these costs.**
7. **MECL shall file with the Commission a report that details the rate impacts to ratepayers prior to implementing rate increases to recover the costs approved in this Order with a proposed date for implementation.**
8. **MECL shall remove the disallowed amount from the Fiona deferral account and shall ensure that no portion of the disallowed amount is recovered from ratepayers. MECL shall record an adjustment to the Fiona deferral account to remove the disallowed amount and shall account for such amount as a shareholder responsibility.**
9. **MECL shall apply to the Commission for approval on how any government funding in respect of Fiona-related costs is to be applied to any**

unrecovered regulatory deferral balance and how to refund any balance to customers.

10. Within 60 days of this Order, MECL shall file a compliance report in accordance with the direction at section J of this Order.

**DATED** at Charlottetown, Prince Edward Island, June 5, 2026.

**BY THE COMMISSION:**

(sgd) Pamela Williams  
\_\_\_\_\_  
Pamela Williams, K.C., Chair

(sgd) Kerri Carpenter  
\_\_\_\_\_  
Kerri Carpenter, Vice-Chair

(sgd) Murray MacPherson  
\_\_\_\_\_  
Murray MacPherson, Commissioner