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

Docket: **UE20742**
Order: **UE26-09**

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Jessica Gillis,
General Counsel
Island Regulatory & Appeals Commission

IN THE MATTER of the Application and Supplemental Application of Maritime Electric Company, Limited for the approval of a Supplemental Capital Budget Request for the On-Island Capacity for Security of Supply Project, pursuant to section 17 of the *Electric Power Act*, RSPEI 1988, c. E-4;

AND IN THE MATTER of requests for confidentiality made by Maritime Electric Company, Limited, pursuant to the Rules of Practice & Procedure.

Order

BEFORE THE COMMISSION ON August 20, 2026.

Pamela Williams, K.C., Chair
Kerri Carpenter, Vice-Chair
Gordon MacFarlane, Commissioner

Introduction:

1. This Order considers a request for confidentiality made by Maritime Electric Company, Limited ("MECL") pursuant to Rule 51 of the Commission's Rules of Practice and Procedure. In particular, MECL has requested certain documents filed in support of their applications for approval of a supplemental capital budget request for the On-Island Capacity for Security of Supply Project be held in confidence by the Commission.

Background:

2. In December 2024, MECL filed an application for the approval of a supplemental capital budget request for the On-Island Capacity for Security of Supply Project, pursuant to section 17 of the *Electric Power Act*.[1] In that Application, MECL is seeking to purchase:

   (1) a battery energy storage system to provide 10 MW of back up capacity;

   (2) a 50 MW combustion turbine; and

   (3) a reciprocating internal combustion engine plant with five units each at 18 MW totalling 90 MW.

3. This would result in a total of 150 MW of on-island capacity. The cost of this proposed project was anticipated, at the time of filing, to be $427 million with an expected accuracy of 30 per cent.

4. On August 14, 2025, MECL filed a supplemental application "for the approval of an Accelerated On-Island Capacity Development Solution as part of the On-Island Capacity for Security of Supply Project (the "Supplemental Application"). MECL is now proposing to acquire two 50MW combustion turbines as part of a time-sensitive opportunity. The Supplemental Application identified a total estimated project cost of approximately $334 million at the time of filing and included a request for approval of a Work-in-Progress (WIP) Deferral Account to record development-stage expenditures pending the outcome of this proceeding.

5. On April 17, 2026, MECL filed updated pricing information in respect of the Supplemental Application advising that the project cost estimate had increased to $353 million (a 5.7 percent increase).

6. On December 5, 2025, the Commission issued Order UE25-07, in respect of two previous requests for confidentiality made by MECL to hold in confidence certain documents filed in support of both applications. Following further submissions and a request to vary Order UE25-07, the Commission issued Order UE25-07A, on March 10, 2026.

7. On July 24, 2026, MECL filed a response to additional interrogatories from Commission staff in respect of these applications (the "July 24 IR Responses"). The July 24 IR

[1] Exhibit M-1

Responses included a request for confidentiality over certain information contained in the responses.

8. The information MECL has requested be held confidential includes: the Interconnection Agreement with NB Power (IR-39), indicative pricing provided by the New Brunswick Energy Marketing Corporation (IR46(b)), avoided capacity cost data within the updated rate impact analyses (IR-84 and IR-87(d)), and corporate and employee performance targets and incentive compensation information (IR-88, IR-89 and IR-90).

9. MECL's confidentiality request submits that disclosure of this commercially sensitive information would impact the competitive position of MECL and third parties, as well as MECL's negotiating position in future negotiations, and would ultimately prejudice ratepayers.

Commission's Confidentiality Rules:

10. The Commission's process is intended to encourage transparency and public participation in regulatory proceedings. The starting point, as codified in the Rules, is that all documents filed shall become part of the public record:

> ***50. Documents Filed to Become Part of Public Record***
> *All documents filed in respect of a hearing, including any submissions or other documents filed prior to the commencement of or during the hearing, shall become part of the public record, with exception of those, or parts thereof, that the Commission deems privileged.*

11. As noted by the Ontario Energy Board, "Transparency and accountability are foundational to maintaining public trust in the Board's regulation of utilities and ensuring that rates remain just and reasonable."[2] These same principles guide the Commission's approach to confidentiality and underscore that exceptions to disclosure must be narrowly applied.

12. As provided in the Commission's Rules of Practice and Procedure, the only exceptions to public disclosure are documents, or parts of documents, that the Commission deems privileged or confidential.[3] As the Supreme Court of Canada has emphasized, *"Openness is necessary to maintain the independence and impartiality of courts and tribunals and to maintain public confidence in the administration of justice."*[4] These same principles apply to quasi-judicial bodies such as the Commission, whose decisions directly affect the public and utility ratepayers.

13. In coming to the decision below, the Commission has considered the factors listed at Rule 53 of the Rules of Practice and Procedure:

    (a) whether the document may disclose matters involving public security;

    (b) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of

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[2] *Report on the OEB's Mandate and Principles of Regulation*, 2017.
[3] Rules 50 to 54 (inclusive)
[4] *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522.

any person affected outweighs the desirability of adhering to the principle that documents be available to the public; or

(c) such other matters the Commission deems appropriate.

MECL's Position:

14. MECL's confidentiality request includes submissions about the relevant legal principles for the Commission to consider in a confidentiality request, including with respect to the Commission's Rules of Practice and Procedure, jurisprudence from the Supreme Court of Canada and other jurisdictions, and the Commission's own past prior decisions. MECL's submissions overview those principles as follows (in part):

> 11. The Supreme Court of Canada has also provided direction on the subject of confidentiality orders. In particular, the Court has stated that a discretionary request for confidentiality should typically be granted only to safeguard an important public interest. This direction from the Supreme Court of Canada should inform the application of the framework set out in the *Rules*.
>
> 12. Regulators have repeatedly acknowledged that there is an important public interest in ensuring the efficiency and competitiveness of regulated public utilities. A decrease in the efficiency or competitiveness of a regulated public utility can, in turn, cause a rise in the prices paid by customers.

15. With respect to the July 24 IR Responses, MECL submits that the material identified in this request falls squarely within the framework established by the Commission's Rules of Practice and Procedure and the Commission's prior practice, particularly as determined in Order UE25-07, Order UE25-07A and Order 26-03.

16. MECL submits that, in its opinion, the information at issue cannot be abridged or redacted in a way that would preserve confidentiality and at the same time be of assistance to the public. Accordingly, MECL submits that the material should be disclosed to the Commission and Added Party Intervener, but should otherwise remain confidential and not be placed on the public record.

17. In respect of many of the July 24 IR Responses, MECL generally submits that the benefit to ratepayers in maintaining confidentiality over the particular information outweighs the "incremental transparency benefit" of public disclosure.

Analysis and Decision:

IR-39 – Interconnection Agreement between MECL and NB Power

18. MECL explains that the Interconnection Agreement is a bilateral commercial agreement between MECL and NB Power governing the terms upon which MECL has access to transmission capacity from New Brunswick. MECL submits that the agreement contains

commercially sensitive terms, including pricing, capacity entitlements, operational obligations, and conditions of service, that are proprietary to both parties.

19. MECL submits that disclosing the Interconnection Agreement would compromise the negotiating positions of both MECL and NB Power in future negotiations for interconnection access and related commercial arrangements.

20. Finally, MECL also submits that the Commission has previously granted confidentiality over evidence in this proceeding (see Orders UE25-07, UE25-07A and UE26-03) that touched upon the commercial terms of the arrangements between MECL and NB Power, and MECL submits the Interconnection Agreement itself "falls squarely within the scope of those orders."

Commission's Finding re IR-39

21. The Commission accepts MECL's submission that the Interconnection Agreement contains commercially sensitive terms, including pricing, capacity entitlements, operational obligations and conditions of service, that are proprietary to MECL and NB Power. The Commission also accepts that disclosure of the agreement could compromise the negotiating positions of MECL and NB Power in future negotiations for interconnection access and related commercial arrangements.

22. The Commission therefore finds that the Interconnection Agreement filed in response to IR-39 should be held confidential.

IR-46(b) – Indicative pricing from New Brunswick Energy Marketing Corporation

23. MECL requests confidentiality over a bid received from the New Brunswick Energy Marketing Corporation in response to a request for proposals. MECL specifically cites Rule 53(b) in support of this request.

24. MECL submits the bid constitutes a confidential commercial offer made in the context of a competitive procurement process, containing commercially sensitive pricing information, capacity terms, and contractual conditions. MECL submits that disclosing the bid pricing would ultimately harm ratepayers by limiting the Company's ability to procure off-Island capacity at the best available terms.

Commission's Finding re IR-46(b)

25. The Commission accepts MECL's submission that the bid received from New Brunswick Energy Marketing Corporation constitutes a confidential commercial offer made in the context of a competitive procurement process and contains commercially sensitive pricing information, capacity terms and contractual conditions. The Commission also accepts that disclosure of the bid pricing could limit MECL's ability to procure off-Island capacity at the best available terms.

26. The Commission therefore finds that the bid filed in response to IR-46(b) should be held confidential.

IR-84 – Avoided Capacity Costs (Updated impact on rate base, revenue requirement, and customer rates)

27. MECL submits that the response to IR-84 includes avoided capacity costs, being the forecast costs that MECL would avoid by building on-Island capacity rather than purchasing equivalent capacity from off-Island sources. MECL relies on the Commission's previous findings in Orders UE25-07, UE25-07A and UE26-13 in respect of this request.

Commission's Finding re IR-84

28. In Order UE25-07, the Commission determined that information that contains specific energy-purchase-cost information and price assumptions warrants confidential treatment, because disclosure of this information could affect future negotiations or counterparties' bargaining positions.

29. The avoided capacity costs provided in response to IR-84 contain the same type of information previously considered by the Commission. The Commission therefore finds that the avoided capacity cost information provided in response to IR-84 should be held confidential.

IR-87(d) – Avoided Capacity Costs (updated net present value and rate impact analyses)

30. Similar to IR-84, MECL submits that IR-87(d) will necessarily include avoided capacity costs presented under each sensitivity scenario posed by the Commission. MECL explains that avoided capacity costs are, by their nature, derived from the pricing of capacity procurement arrangements with off-Island counterparties, including NB power.

31. Similar to above, MECL relies on the Commission's previous findings in Orders UE25-07, UE25-07A and UE26-13 in respect of this request.

Commission's Finding re IR-87(d)

32. In Order UE25-07, the Commission determined that information containing specific energy-purchase-cost information and price assumptions warrants confidential treatment because disclosure of this information could affect future negotiations or counterparties' bargaining positions.

33. The avoided capacity costs provided in response to IR-87(d), including those presented under the sensitivity scenarios, contain the same type of information previously considered by the Commission. The Commission therefore finds that the avoided capacity cost information provided in response to IR-87(d) should be held confidential.

IR-88 – Corporate performance targets

34. MECL submits that its corporate performance targets and objectives constitute confidential commercial and management information within the meaning of Rule 53(b) and should be afforded confidential treatment.

35. MECL submits that public disclosure of corporate performance targets would reveal proprietary management strategy, expose the Company's internal decision-making framework to its commercial counterparties and competitors, and undermine the integrity of the Company's internal planning processes going forward.

36. MECL cites, as support, a previous order of the Commission – Order UE93-11 – wherein the Commission recognized the sensitivity of executive and management compensation, and agreed to examine that information *in camera* rather than on the public record.

37. Further, MECL submits that the relevance of this information to the prudency of a specific capital expenditure decision is "indirect at best", and any marginal relevance is outweighed by the commercial sensitivity of the information.

<u>Commission's Finding re IR-88</u>

38. The Commission accepts MECL's submission that its corporate performance targets and objectives contain confidential commercial and management information and that disclosure of that information could reveal proprietary management strategy and internal planning processes.

39. The Commission further notes that MECL's corporate performance targets and objectives have limited relevance to this particular application, but will be subject to further review as part of the upcoming General Rate Application. For these reasons, the Commission therefore finds that the information provided in response to IR-88 will be held confidential for the purposes of this proceeding.

IR-89 – Personal performance targets, corporate performance targets, and incentive plans

40. MECL submits that this information constitutes both "sensitive financial" and "personal matters" within the meaning of Rule 53(b) and should be afforded confidential treatment.

41. MECL submits that individual and group employee performance targets and incentive plans constitute sensitive employment-related information and that the design of MECL's incentive compensation programs constitutes proprietary human resources information. MECL further argues that the question of whether a utility's incentive compensation structure creates appropriate management incentives is distinct from the question of whether a specific capital project is prudent and in the public interest.

42. MECL also relies on Order UE93-11 in respect of this confidentiality request.

<u>Commission's Finding re IR-89</u>

43. The Commission accepts MECL's submission that individual and group employee performance targets and incentive plans constitute sensitive employment-related information and that the design of MECL's incentive compensation programs constitutes proprietary human resources information.

44. Similar to the finding above, the Commission notes that MECL's incentive compensation programs, including the underlying corporate and employee performance targets, has limited relevance to this particular application. The Commission therefore finds that the information provided in response to IR-89 should be held confidential for the purposes of this proceeding. Similar to above, the Commission notes that this information will be subject to further review as part of the upcoming General Rate Application.

IR-90 – Impact of project approval on employee compensation or bonuses

45. MECL submits that the response to IR-90 should be kept confidential for reasons that overlap substantially with those advanced in respect of IR-89 and that the information falls within the category of "sensitive financial" and "personal matters" contemplated by Rule 53(b).

46. MECL makes two additional arguments in respect of this request. First, that the disclosure of this information raises significant privacy concerns as it would effectively disclose personal compensation information about identifiable individuals.

47. Second, MECL says there is an inherent risk that public disclosure of compensation linkages to regulatory outcomes could give rise to unfounded inferences or perceptions regarding the motivations of the Company's management in pursuing regulatory applications, which is neither fair to those individuals nor conducive to the integrity of the regulatory process.

48. MECL submits that the Commission's oversight function in relation to the prudency of costs proposed to be recovered through rates does not require that compensation arrangements be placed on the public record; it requires only that the Commission have sufficient information, on whatever basis is appropriate, to satisfy itself that the costs in question are reasonable.

<u>Commission's Finding re IR-90</u>

49. The Commission does not accept MECL's request for confidential treatment of the information provided in response to IR-90. While MECL raises concerns regarding the disclosure of personal compensation information, the response to IR-90 is general in nature and does not disclose compensation amounts or other personal information relating to identifiable individuals.

50. The Commission also does not accept that the potential for public disclosure to give rise to inferences or perceptions regarding management's motivations is sufficient to warrant confidential treatment of the response.

51. The Commission therefore finds that the information provided in response to IR-90 should be placed on the public record.

ORDER:

In accordance with the reasons outlined above, the Commission Orders as follows:

1. Maritime Electric Company, Limited's request for confidentiality is granted in part and denied in part, as set out below.

2. The following documents shall be placed in the public record in their entirety and provided to the Friends of the Commission Interveners:

   - Response to IR-90 – Impact of project approval on employee compensation or bonuses.

3. The following documents will be held in confidence and are not required to be placed in the public record nor provided to the Friends of the Commission Interveners:

   - IR-39 – Interconnection Agreement between MECL and NB Power;
   - IR-46(b) – Bid received from New Brunswick Energy Marketing Corporation;
   - IR-84 – Avoided capacity cost information;
   - IR-87(d) – Avoided capacity cost information, including the avoided capacity costs presented under the sensitivity scenarios;
   - IR-88 – Corporate performance targets and objectives; and
   - IR-89 – Personal performance targets, corporate performance targets and incentive plans.

4. MECL shall give effect to this Order by filing the documents with the Commission and serving them on all parties, as directed in this Order, no later August 24, 2026 at 12:00 p.m.

DATED at Charlottetown, Prince Edward Island, August 20, 2026.

BY THE COMMISSION:

Pamela Williams, K.C., Chair

Kerri Carpenter, Vice-Chair

Gordon MacFarlane, Commissioner