

PUBLIC VERSION

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF
THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE 1976 UNCITRAL ARBITRATION RULES**

BETWEEN:

RESOLUTE FOREST PRODUCTS INC.

Claimant

AND:

GOVERNMENT OF CANADA

Respondent

PCA CASE No. 2016-13

WITNESS STATEMENT OF MURRAY COOLICAN
April 17, 2019

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I, Murray Coolican, of [REDACTED] the City of Halifax, in the Province of Nova Scotia, hereby AFFIRM as follows:

1. I was the Deputy Minister at the Nova Scotia Department of Energy (“DOE”) from March 2010 until my retirement from the Government of Nova Scotia (“GNS”) on December 31, 2017. From 2011-2012, in my capacity as Deputy Minister of Energy, I worked with my colleague Duff Montgomerie, then Deputy Minister of Natural Resources, in the context of an interdepartmental government committee tasked with addressing the developments surrounding the Bowater Mersey mill owned by Resolute Forest Products Inc. (“Resolute”) and the Port Hawkesbury mill owned by NewPage (“NPPH”).

2. I provide this witness statement to respond to certain allegations made by Resolute in its Memorial dated December 28, 2018, concerning electricity regulation in Nova Scotia and the involvement of the GNS in the negotiations between Pacific West Commercial Corporation (“PWCC”) and Nova Scotia Power Inc. (“NSPI”). I make this statement from my personal knowledge and from my review of contemporaneous documents. While I do not respond to every statement made in Resolute’s Memorial, that should not be taken to mean that I agree with its characterizations or statements.

ELECTRICITY MARKET IN NOVA SCOTIA

3. Unlike other jurisdictions, in Nova Scotia it is a private company (NSPI), not the GNS or a Crown corporation, that generates, transmits, and distributes electricity to electricity users (ratepayers). NSPI was privatized in 1992 and is a wholly-owned subsidiary of Emera Incorporated (“Emera”), a for-profit company that is publicly traded on the Toronto Stock Exchange. The GNS does not own shares or appoint directors to the board of Emera or NSPI.

4. In Nova Scotia, the rates charged by all public utilities have to be approved by the Nova Scotia Utility and Review Board (“UARB” or “Board”) in order to ensure that such rates are not unreasonable or unjustly discriminatory as required by the *Public Utilities Act*.¹ The UARB is a quasi-judicial tribunal that is independent from the executive and legislative branches of the

¹ C-101, *Public Utilities Act*, RSNS 1989, c 380, ss. 64, 67, 87.

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GNS. Proceedings before the Board are adversarial – the applicant has the burden of establishing that it has met the requisite legal criteria. Nova Scotia DOE employees often attend UARB hearings (which are open to the public), and the DOE may also act as an intervenor where the circumstances warrant. However, the GNS has no extraordinary status or powers before the Board.

ELECTRICITY RATE FOR THE PORT HAWKESBURY MILL WAS NEGOTIATED BETWEEN PWCC AND NSPI

5. In its Memorial, Resolute suggests that GNS was considering “offering PWCC subsidies to pay its power bills”² and ultimately “instructed” NSPI to supply electricity to the Port Hawkesbury mill under a “lower electricity rate.”³ I believe that these statements do not accurately describe the events that occurred in 2011-2012.

6. It is well known that electricity rates in Nova Scotia are generally higher than in other Canadian provinces, and I believe that in 2011-2012 this differential was significant. Therefore, I was not surprised when in June 2011 Resolute and NPPH filed a joint application with the UARB seeking approval of a change to NSPI’s Load Retention Tariff (“LRT”) for a reduced electricity rate for their Bowater Mersey and Port Hawkesbury mills, respectively.⁴ Both the Bowater Mersey and NPPH mills used electricity-intensive thermomechanical pulping (“TMP”) processes, and both companies argued that they could not afford the already high electricity prices and NSPI’s plan to increase those rates starting on January 1, 2012.

7. Although Resolute notes in its Memorial that the “load retention tariff,” or “LRT,” is “sometimes called a load retention rate or ‘LRR,’”⁵ the *tariff* and the *rate* are two different things. NSPI has offered a LRT since 2000, when it was approved by the UARB following an application by NSPI. This *tariff* allowed NSPI’s large industrial customers to lower their electricity bills by providing a smaller contribution to NSPI’s fixed costs, and was available in

² *Resolute Forest Products Inc. v. Government of Canada* (UNCITRAL) Claimant’s Memorial, 28 December 2019 (“Claimant’s Memorial”), ¶ 49.

³ Claimant’s Memorial, ¶¶ 52, 186.

⁴ **R-162**, *New Page Port Hawkesbury Corporation (Re)*, Letter re: Proposed Amendments to Nova Scotia Power Inc.’s Load Retention Tariff, M04175 NPB-1 (June 6, 2011).

⁵ Claimant’s Memorial, ¶ 60.

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the circumstances where such customer had a technically and economically feasible option to use an alternate supply of power and energy (for instance, by using the customer's own natural gas-powered generator). If NSPI's customer was eligible to apply for a LRT, the customer and NSPI would then negotiate an individual *rate* ("Load Retention Rate" or "LRR"), i.e. a specific *price* to be paid by the customer for the electricity supplied by NSPI. This way, NSPI could still receive revenue by supplying electricity to the customer who otherwise would have left the system, while the customer benefited from a lower electricity rate.

8. The LRT was and remains subject to two fundamental principles:

- (i) Retaining the customer's load, at the price offered by this rate, shall be better for other electricity customers than losing the customer's load in question; and
- (ii) The revenue from service to a customer under this rate shall: (a) be greater than the applicable incremental cost to serve such customer and (b) make a significant positive contribution to fixed costs.⁶

9. In June 2011, Resolute and NPPH jointly sought to expand the terms of the LRT to make it available in the circumstances where a lower electricity rate was required to respond to a potential business closure of NSPI's extra-large industrial customers due to economic distress.⁷

10. On November 29, 2011, the UARB approved the requested amendments to the LRT *and* a specific LRR for Resolute's Bowater Mersey mill, effective from January 1, 2012.⁸ The two core principles underlying the LRT, however, remained the same. The UARB also stated that the LRR would have been appropriate for the Port Hawkesbury mill, but since that mill had been in creditor protection proceedings under the *Companies' Creditors Arrangement Act* ("CCAA")

⁶ **R-163**, *Nova Scotia Power Inc. (Re)*, 2000 NSUARB 72 (May 24, 2000), Schedule "A", s "Availability", ¶ 1; **R-164**, *New Page Port Hawkesbury Corporation (Re)*, Order, NSUARB M04175 (Dec. 21, 2011), Schedule "B", Load Retention Tariff, s "Availability", ¶ 1.

⁷ **R-162**, *New Page Port Hawkesbury Corporation (Re)*, Letter re: Proposed Amendments to Nova Scotia Power Inc.'s Load Retention Tariff, M04175 NPB-1 (June 6, 2011); **R-165**, *New Page Port Hawkesbury Corporation (Re)*, Pre-Filed Evidence of New Page Port Hawkesbury Corp., NSUARB M04175 NPB-4 (June 22, 2011), pp. 6-7; **R-166**, *New Page Port Hawkesbury Corporation (Re)*, Pre-Filed Evidence of Bowater Mersey Paper Company Limited, NSUARB M04175 NPB-5 (June 22, 2011), pp. 4-5.

⁸ **C-138**, *In re an Application by NewPage-Port Hawkesbury and Bowater Mersey Paper Company*, Decision, (Nov. 29, 2011) ("Resolute NSUARB Decision"), ¶¶ 170-173, 281-288.

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since September 2011 and it was uncertain whether the mill would continue as a going concern, the Board deferred a decision on a LRR for the Port Hawkesbury mill until a new owner, if there was to be one, came forward.⁹

11. Once PWCC was selected by the CCAA Monitor as one of the qualified bidders to purchase the Port Hawkesbury mill as a going concern, Mr. Stern and his team briefed me on some of their ideas for improving energy efficiency and reducing electricity costs.¹⁰ Mr. Stern's team proposed two major innovations:

- (i) creating true interruptibility – by operating the TMP more flexibly and creating a large amount of pulp storage; and
- (ii) assuming all of NSPI's fuel price risks associated with supplying electricity to the mill.

12. PWCC's expectation was that these innovations could slash the electricity rate for the Port Hawkesbury mill almost in half, down to \$30/MWh.

13. Because the DOE does not supply electricity in Nova Scotia and cannot independently assess whether a particular rate is technically and economically feasible, let alone instruct NSPI to provide electricity to any particular customer at any particular price, I decided that the best course of action was to introduce Ron Stern and his team to NSPI officials so they could start understanding each other's capabilities and goals.

14. My understanding was that the initial meetings between PWCC and NSPI in November and December 2011 were challenging. My impression was that both parties were used to operating in very different electricity markets and that some of the energy strategies being floated by PWCC would require greater flexibility from NSPI than it was accustomed to providing to a customer. While both parties were interested in continuing discussions – PWCC was interested in operating a profitable mill and NSPI was interested in its largest customer

⁹ C-138, Resolute NSUAR Decision, ¶ 224.

¹⁰ For an example of Ron Stern's position at the start of negotiations, see C-125, PWCC Discussion Memorandum (Nov. 9, 2011).

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remaining operational – it occurred to me that it could be helpful to engage an energy expert with extensive experience with large customers and utilities to help the parties to design their own solution to the high electricity prices problem. Our team identified Mr. Todd Williams from Navigant Consulting, who has more than 30 years of experience in the energy sector in a variety of jurisdictions among which were public, private or a blend of public and private utilities. He had previously served as an expert witness both in Ontario and Alberta. Mr. Williams appeared to be a suitable candidate for this role.

15. In December 2011, GNS retained Mr. Williams as an independent expert consultant. He was not an agent of the Province and had no authority to bind the GNS.¹¹ I believe that the limited extent of his mandate is evident from his contract:

- Help both parties understand the opportunities and value presented by the ancillary services proposed by PWCC and NSPI;
- Help both parties to a positive consensus by assisting them in quantifying potential benefits of their arrangements and discussing implementation; and
- Stay in contact with both parties to understand the basis from which each party has established their positions, consider whether the information each party is using is reasonable, and accurately reflect the potential operations of the mill in the Nova Scotia context and determine how to move to a consensus.¹²

16. Mr. Williams attended various meetings to act as, in his words, an “honest broker” between PWCC and NSPI.¹³ Mr. Williams testified at the UARB that he “did not advocate for any specific party or position”,¹⁴ which is consistent with my understanding of what his role was supposed to be in the PWCC-NSPI negotiations.

¹¹ C-151, Todd Williams Engagement Agreement (Feb. 13, 2012), ss. 9.01 and 9.02.

¹² C-151, Todd Williams Engagement Agreement (Feb. 13, 2012), Schedule “A”: Services – Scope of Work.

¹³ C-168, *Re Pacific West Commercial Corporation*, Direct Evidence of Todd Williams (“Evidence of Todd Williams”), p. 6.

¹⁴ C-168, Evidence of Todd Williams, p. 6.

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17. My colleague John Traves Q.C., who was then Executive Director of Legal Services for the Nova Scotia Department of Justice and whom Resolute refers to as the “senior GNS Department of Justice attorney”¹⁵ also attended a few meetings between NSPI and PWCC but was there only as an observer. The meeting notes indicate that Mr. Traves informed the parties that the GNS “prefers if NSPI [and] Stern can agree and jointly file” an application to the UARB.¹⁶ This is consistent with the role the GNS saw for itself – the Province would not be a co-applicant with NSPI and PWCC. I do not recall attending more than one or two meetings where NSPI and PWCC were present.

18. The GNS had no ability to dictate the outcome of PWCC and NSPI’s negotiations. Both parties were mindful that their proposed LRR would need to be approved by the UARB following a public hearing in an adversarial proceeding. I believed that if NSPI was not comfortable with the pricing mechanism suggested by PWCC and its ability to pass the existing UARB test for a LRR (i.e. that NSPI’s customers would be better off by having the mill remain on the system on the proposed LRR than they would be if the mill did not resume operations), it would not support the application. I also believed that whatever the LRR, both NSPI and PWCC had to be satisfied that it would allow the Port Hawkesbury mill to be a viable enterprise (i.e., there was no point to an electricity rate that was still too expensive for the mill to survive). Whether and how this could be achieved, however, was in the hands of PWCC and NSPI.

19. After several months of negotiations, PWCC and NSPI reached an agreement and both applied to the Board on April 27, 2012.¹⁷ Mr. Williams advised me that, in his opinion, the arrangement satisfied the UARB’s LRT framework. In light of Mr. Williams’ familiarity with the details of the LRR pricing mechanism, PWCC and NSPI requested that the DOE permit him to appear before the UARB and explain his involvement in the development of the LRR and his views on the proposed mechanism.¹⁸ I considered this to be a reasonable request and that the

¹⁵ Claimant’s Memorial, ¶¶ 54, 60.

¹⁶ **C-147**, PWCC Meeting Notes, Redacted PWCC LRT Application NSPI (Avon) IR-1 Attachment 2, p. 108 of 165.

¹⁷ **R-167**, *Pacific West Commercial Corporation (Re)*, NSPI Application, M04862 P-4 (April 2012); **R-168**, *Pacific West Commercial Corporation (Re)*, Notice of Application by PWCC for Approval of a Load Retention Rate, M04862 P-2 (April 27, 2012).

¹⁸ See **R-169**, *Pacific West Commercial Corporation (Re)*, Opening Statement of Todd Williams, M04862 P-47

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public interest would be served by transparency and the Board would benefit from hearing his views on a complex and innovative electricity arrangement.

20. After numerous rounds of written and oral submissions and witness and expert testimony, the UARB ultimately approved the LRR for the Port Hawkesbury mill on September 28, 2012.¹⁹

RETURN OF THE PORT HAWKESBURY MILL ONTO THE GRID WAS NOT EXPECTED TO TRIGGER ADDITIONAL RENEWABLE ELECTRICITY STANDARDS (RES) COSTS

21. In its Memorial, Resolute argues that “GNS took specific and extraordinary actions to ensure that PHP’s electricity deal would be approved by the NSUARB.”²⁰ Since Resolute argues that a letter I submitted to the UARB on July 20, 2011 is among such “specific and extraordinary” measures, I would like to situate the letter in its proper context and clarify Resolute’s mischaracterization in this respect.

22. Electricity regulation is a complex exercise that requires a systematic approach, taking into account considerations of stability and reliability of the electrical grid, and involves comprehensive analysis and long-term planning.

23. In 2007, the GNS passed the *Renewable Energy Standard Regulations*, which required NSPI to supply its customers with renewable electricity from post-2001 sources in an amount no less than 5% of NSPI’s total sales for the years 2010-2012 (“RES-2010”)²¹ and 10% for each year beginning in 2013 (“RES-2013”).²² NSPI had to purchase renewable electricity from independent power producers (“IPPs”) to meet the RES requirements for 2010-2012, but was able both to acquire renewable electricity from IPPs and to count output from some of its own generation facilities to meet the RES-2013.²³

(2012), p. 2.

¹⁹ **R-170**, *Pacific West Commercial Corporation (Re)*, Order, NSUARB M04862 10433 (Sep. 28, 2012).

²⁰ Claimant’s Memorial, ¶ 168.

²¹ **R-171**, *Renewable Energy Standard Regulations*, N.S. Reg. 35/2007, ss 5(1), 5(2), 7(2)(d)(i).

²² **R-171**, *Renewable Energy Standard Regulations*, N.S. Reg. 35/2007, ss 6(1), 6(2), 7(2)(d)(i).

²³ **R-171**, *Renewable Energy Standard Regulations*, N.S. Reg. 35/2007, s 5(3) and 6(3).

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24. In October 2010, almost a year before the Port Hawkesbury mill went into CCAA proceedings and began hot idling, GNS adopted the *Renewable Electricity Regulations*²⁴ (“RES Regulations”), which added an even more ambitious target, namely the requirement to supply customers with 25% renewable electricity beginning with the year 2015 (“RES-2015”).²⁵ While NSPI was able to count certain pre-existing renewable sources (known as “heritage renewable electricity”, such as hydro facilities) towards the RES-2015 requirement under the RES Regulations, NSPI was mandated to purchase at least an additional 300 GWh from IPPs.²⁶ Therefore, to comply with the RES Regulations and avoid incurring daily penalties of up to \$500,000 for possible violations, NSPI had to plan its generation and purchases of renewable electricity from IPPs well in advance and on the assumption of a load that included the Bowater and Port Hawkesbury mills (both of which were operating at the time the new target was adopted).

25. By mid-2012, we at the DOE knew that there was sufficient renewable energy coming online in Nova Scotia to meet these targets. First, by the time the Port Hawkesbury mill went into “hot idle” and significantly reduced its electricity consumption in September 2011, NSPI had already planned its compliance with the RES-2015 requirements through a combination of wind, biomass, and other renewables generated by NSPI’s own facilities, procured from IPPs, and supplied through the Community-Based Feed-in-Tariff (COMFIT).²⁷ Second, Resolute’s Bowater Mersey paper mill, another extra-large industrial electricity user that consumed 4-5% of all the electricity generated in Nova Scotia²⁸ and was included in NSPI’s forecasts, was also facing economic challenges and ultimately closed in mid-2012, decreasing the overall system load and, correspondingly, the amount of renewable electricity needed for NSPI to comply with RES requirements. Third, because PWCC planned to permanently close the newsprint machine

²⁴ **R-179**, *Renewable Electricity Regulations*, N.S. Reg. 155/2010.

²⁵ **R-179**, *Renewable Electricity Regulations*, N.S. Reg. 155/2010, ss 4-6.

²⁶ **R-179**, *Renewable Electricity Regulations*, N.S. Reg. 155/2010, ss 2(“heritage renewable electricity”, “renewable electricity”), 3(“renewable low-impact electricity”), 6(1), 6(2), 6(3)(b), 6(4)(f).

²⁷ See **R-172**, *Nova Scotia Power Inc. - 10 Year System Outlook 2011-2020*, Final Report, M04250 N-2 (Mar. 14, 2012), pp. 3, 12-16.

²⁸ **R-166**, *New Page Port Hawkesbury Corporation (Re)*, Pre-Filed Evidence of Bowater Mersey Paper Company Limited, M04175 NPB-5 (June 22, 2011), p. 2.

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at the Port Hawkesbury mill, reducing the mill's load by approximately 450,000 MWh,²⁹ and the LRR negotiated between NSPI and PWCC contemplated interruptibility and off-peak operation of the electricity-intensive TMP process, the return of the Port Hawkesbury mill onto the grid was not expected to create more load requirements for the system beyond what had already been planned.

26. Finally, at that time, the GNS had also been pursuing an interconnection of Nova Scotia's electrical system with neighboring provinces to allow for the import of lower cost hydro-generated electricity and for the export of renewable electricity when Nova Scotia had a surplus. In late 2011, after several months of negotiations, the governments of Nova Scotia and Newfoundland and Labrador signed an interprovincial Memorandum of Understanding concerning the Lower Churchill – Maritime Link Project.³⁰ The project contemplates damming the Lower Churchill River in Labrador, building an electricity generating plant at Muskrat Falls, laying thousands of kilometers of subsea cable, and building overhead transmission lines to deliver electricity from Labrador to Newfoundland, through Nova Scotia, and ultimately into New Brunswick. This project is jointly developed by Nalcor (the Newfoundland and Labrador Crown corporation responsible for most of the power generation in that province) and Emera (NSPI's parent company). As the GNS was involved in its planning, we were aware that the Lower Churchill – Maritime Link Project would result in NSPI importing hydro-generated electricity that would help it to satisfy the RES-2020 requirements.³¹

27. I recall that it was Mr. Williams' understanding that NSPI would not incur any incremental costs for renewable energy required to meet the RES requirements due to the return of Port

²⁹ **C-028**, *Pacific West Commercial Corporation (Re)*, 2012 NSUARB 126, Pre-Filed Evidence of Pacific West Commercial Corporation, M04862, P-3 (April 27, 2012), p. 4.

³⁰ **R-173**, Newfoundland and Labrador Natural Resources, "Provincial Government Finalizes Memorandum of Understanding for Business and Employment Benefits Associated with Development of Muskrat Falls" (Nov. 28, 2011); **R-174**, Memorandum of Understanding between the Government of Newfoundland and Labrador and the Government of Nova Scotia (Nov. 28, 2011); **R-175**, Government of Newfoundland and Labrador / Government of Nova Scotia / Nalcor Energy / Emera Inc., "Lower Churchill Project to Become a Reality; Province Signs Partnership Agreement with Emera Inc. for Development of Muskrat Falls" (Nov. 18, 2010).

³¹ **R-176**, *Nova Scotia Power Inc. -10 Year System Outlook 2012-2021*, Report, M05061 Doc. 09914 (June 29, 2012), pp. 10-11 ("The Maritime Link Project will enable import of RES compliant hydro energy from the Muskrat Falls project in Newfoundland and Labrador which will largely achieve the incremental requirements of the 2020 Renewable Electricity Standard (RES) target of 40% renewable energy as a percentage of sales.").

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Hawkesbury mill load,³² and NSPI's own estimates in July 2012 indicated that it would have sufficient supply of renewable electricity to comply with the RES requirements throughout the term of the LRR.³³

28. With this background in mind, when the UARB signalled during the hearing in July 2012 that it wanted the GNS to provide clarity around certain RES-related issues (since the mill load might increase the denominator for NSPI to calculate its RES requirements), we knew about NSPI's pre-existing commitments to satisfy the RES-2015 standard and the long-term planning needed to satisfy the RES standards. Accordingly, on July 20, 2012, I submitted the following letter which outlined the GNS policy and intentions on RES:

Incremental RES issue:

Government Policy:

The Government created the Renewable Electricity Standards to achieve a number of objectives: the obligation to meet a number of targets and the requirement that the provision of electricity come from specific technologies, and come from both Independent Power Producers as well as NSPI. Accordingly the Government has enabled the procurement of new sources to enable all of these objectives to be met. **The Government is confident that there is enough RES supply coming on-line that the mill-load will not trigger an incremental RES cost over the term of the proposed mechanism.**

Government Commitment:

The Government commits to ensuring that if the mill load does trigger an additional RES obligation during the term of the proposed mechanism, and if this results in incremental costs, then the Province guarantees that neither PWCC nor other ratepayers will be required to pay these incremental costs.³⁴

29. I believe that my letter is self-explanatory: the DOE was confident that, because there was enough RES supply coming on-line and the return of the mill-load would not otherwise increase the total system load from what had been planned for in prior years, the Port Hawkesbury mill

³² **R-177**, *Pacific West Commercial Corporation (Re)*, 2012 NSUARB 126, Non-Confidential Government of Nova Scotia Amended Response to Consumer Advocate IR-41(a), M04862 P-66 (July 18, 2012), p. 8.

³³ **R-178**, *Re Nova Scotia Power Incorporated*, General NSPI Responses to Nova Scotia Utility and Review Board Information Requests, M04972 P-893 N-35 (July 23, 2012), IR-51 and "RES 2013, 2015 and 2020 Compliance Forecast".

³⁴ **C-179**, *Pacific West Commercial Corporation (Re)*, Letter Regarding PWCC Load Retention Tariff Hearing M04862 P-69 (July 20, 2012) ("Letter Regarding PWCC LRT"), p. 1-2 (emphasis added).

returning to the grid would not trigger an incremental RES cost over the term of the proposed LRR pricing mechanism.

30. [REDACTED].³⁵
However, it is my understanding that as of today, this has never occurred, which does not surprise me and confirms that the view I took in July 2012 was correct: the potential for an incremental RES cost was extremely low and need not have been a concern in the context of the LRR approval process.

31. I understand that Resolute refers to my letter [REDACTED] as “a regulatory waiver from environmental standards” and an element of the “GNS Bailout Package.”³⁶ I believe that Resolute is confused in its characterization. The DOE has never “waived” the requirement to comply with the RES requirements for NSPI or PHP. Just as the DOE assessed and expected, the Port Hawkesbury mill’s load has never triggered an additional RES obligation and has never resulted in additional incremental costs. Accordingly, I understand that neither NSPI nor PHP has ever requested the GNS to cover RES-related incremental costs.

NSPI’S PORT HAWKESBURY BIOMASS PLANT WAS DESIGNATED AS A BASE LOAD FACILITY TO ENSURE SUFFICIENT SUPPLY OF FIRM RENEWABLE ELECTRICITY

32. Resolute also alleges that the designation of the Port Hawkesbury Biomass Plant as a base load (or “must run”) facility constitutes another “specific and extraordinary action” that GNS adopted to “ensure that PHP’s electricity deal would be approved by the NSUARB.”³⁷ I believe that this statement omits two important facts. First, NSPI itself (not the GNS) was the proponent of the construction and operation of the Port Hawkesbury Biomass Plant. Second, the DOE had been planning to introduce a requirement for NSPI to purchase certain amounts of “firm” renewable electricity before NPPH even went into CCAA proceedings in September 2011. To clarify Resolute’s mischaracterization, I will explain the context of the biomass plant at Port Hawkesbury.

³⁵ C-210, [REDACTED], s. 3.1.

³⁶ Claimant’s Memorial, ¶ 71.

³⁷ Claimant’s Memorial, ¶ 168.

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33. Electricity generation in Nova Scotia has been historically dependent on fossil fuels, and in 2008-2010 about three quarters of all electricity in the province was generated by burning imported coal. This overreliance on a single source of energy was detrimental to Nova Scotia's environment and, with the rising prices for imported fossil fuels, to the energy security of the province as a whole. To comply with the RES Regulations, which set ambitious but realistic renewable electricity targets, NSPI relied primarily on wind power, a source that has low carbon footprint and low operating costs, but, due to its dependence on weather conditions, is "intermittent" (i.e. electricity is generated at irregular times) and non-dispatchable (i.e. the output of wind turbines cannot be increased on demand of the operator). In contrast, biomass is "firm" energy because it is dispatchable and has a high capacity factor (i.e. it can be used continuously throughout the year).

34. The GNS energy policy was to ensure a more secure, stable and reliable supply of energy through diversification of energy sources and the shift towards renewable electricity generation. In 2009-2010, the GNS contemplated the use of sustainably harvested biomass in combined heat and power (CHP) plants – more efficient than operating biomass plants in stand-alone mode – as one of the means to reach the RES targets.³⁸

35. In April 2010, NSPI applied to the UARB for approval of a capital work order to develop a 60 MW biomass CHP facility at the Port Hawkesbury mill. NSPI sought to purchase a boiler and related assets from NPPH, and NPPH agreed to procure and install a steam turbine (generator) and ancillary equipment, as well as to interconnect this facility to NSPI's

³⁸ **R-180**, Nova Scotia Department of Energy, "Toward a Greener Future: Nova Scotia's 2009 Energy Strategy" (January 2009), p. 8 ("The transition to a cleaner energy supply will require us to develop more renewable energy sources, such as wind, biomass and tidal."), p. 15 ("Biomass has the potential to displace coal and supply firm, predictable amounts of electricity. It is also an attractive economic opportunity to use Nova Scotia fuel sources to lessen our dependence on foreign coal."); "It may be possible to exceed this [RES] goal, to as much as 40 per cent by 2020, through a combination of domestic wind, biomass and tidal and imported renewable energy."), and p. 19 ("The province will consider a combination of the following three options to transform our electricity sector: [...] more stable and controllable renewable energy sources such as biomass"); **R-181**, Nova Scotia Department of Energy, Renewable Electricity Plan: A path to good jobs, stable prices, and a cleaner environment (April 2010), pp. 3,12 ("Electricity produced from co-firing biomass will play a role in meeting the 2015 target, but will undergo review for post-2015 use."; "Although forest biomass is a plentiful resource here, using wood solely for the purpose of generating electricity through co-firing is inefficient. Far more energy is extracted from biomass used to heat water or living spaces. A long-term strategy for cleaner energy supplies will recognize wood's greater value as a heat source, or as a combined source of heat and electricity"), and p. 16 ("Beyond 2015, the province will consider several options to achieve a 40% renewable electricity supply by 2020: [...] More stable renewable energy sources such as biomass").

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transmission system.³⁹ NSPI argued that the Port Hawkesbury Biomass Plant project would help it meet the RES-2013⁴⁰ while offsetting the excessive reliance on intermittent sources of renewable energy (i.e. wind power):

Given the amount of renewable energy that will need to be added to the system over the coming years, it is necessary to take time to understand the effect of wind on NSPI's unique bulk power system before adding more intermittent generation to meet the next target. By adding firm energy now, NSPI can meet the 2013 target and add further renewable energy for 2015. The Port Hawkesbury Biomass Project will help NSPI to meet the 2013 RES and permit other cost-effective renewable projects to have an opportunity to be added to the system for 2015.⁴¹

36. In the same 2010 proceedings, the DOE agreed that NSPI's Port Hawkesbury Biomass Plant project would "advance the provincial objective of compliance with the 2013 RES"⁴² and would "help to diversify the province's electricity supply and make cost-effective use of existing infrastructure. It also helps support the forest sector and can help to develop a supply chain that will eventually serve more efficient and valuable uses for the resources."⁴³ NSPI's project was consistent with "the Province's policy support for combined heat and power projects as ones that normally gain more energy from the biomass than stand-alone or co-firing projects"⁴⁴ and overall "consistent with provincial policies relating to the development of renewable energy in Nova Scotia"⁴⁵

³⁹ **R-182**, *Nova Scotia Power Inc. (Re)*, Redacted Application for Approval of Work Order CI# 39029, Port Hawkesbury Biomass Project (April 9, 2010), M02961 N-2 ("Application for Work Order CI#39029"), pp. 3, 11, and 32.

⁴⁰ **R-182**, Application for Work Order CI#39029, pp. 5-7 and Appendix 15, p. 3; **R-224**, *Nova Scotia Power Inc. (Re)*, Application by Nova Scotia Power Inc. for Approval of Capital Work Order CI 39029 Port Hawkesbury Biomass Project ("Project") P-128-10 – NSPI Response to Intervenor Submissions, M02961 N-32 (July 21, 2010) ("NSPI Response to Intervenor Submissions"), p. 1-3.

⁴¹ **R-224**, NSPI Response to Intervenor Submissions, p. 5.

⁴² **R-183**, *Nova Scotia Power Inc. (Re)*, Closing Submissions on Behalf of Her Majesty the Queen in Right of the Province of Nova Scotia as Represented by The Department of Energy, the Department of Environment, and the Department of Natural Resources (Sept. 20, 2010), M02961 Doc. No. 05292 ("Closing Submissions"), ¶ 24.

⁴³ **R-183**, Closing Submissions, ¶ 31.

⁴⁴ **R-183**, Closing Submissions, ¶ 32.

⁴⁵ **R-183**, Closing Submissions, ¶ 34.

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37. The UARB approved the Port Hawkesbury Biomass Plant project on October 14, 2010.⁴⁶

38. While the Port Hawkesbury Biomass Plant was being constructed, the DOE started the process of drafting amendments to the 2010 RES Regulations, which were released for public consultation in the summer of 2011.⁴⁷ However, the DOE decided to wait to enact the new regulations while the fate of the Bowater Mersey and Port Hawkesbury mills was determined. Because GNS policy was to encourage the use of biomass as a source of both heat and power (i.e. to operate biomass plants in CHP mode) rather than solely as a fuel for electricity generation, the potential for both mills closing down permanently would obviously have an impact on Nova Scotia's policy more broadly.

39. We had sufficient clarity by the summer of 2012: Bowater Mersey was closing and therefore no longer needed its biomass plant as a source of heat, while NSPI wanted to finish construction of its Port Hawkesbury Biomass Plant and take an ownership stake in the Port Hawkesbury mill with PWCC. With these developments, the amendments to the RES Regulations were ready to move forward.

40. It was in this context that in July 2012, during the hearing on the LRR pricing mechanism for the Port Hawkesbury mill, the UARB sought clarity from the GNS around certain RES-related issues. In the July 20, 2012 letter submitted to the UARB, I stated the GNS policy and intentions on the use of biomass for electricity generation:

Biomass Plant issue:

Government Policy:

Government policy has always been supportive of using biomass for combined heat and power. **In 2011, the Government conducted a public consultation on changes to the Renewable Electricity Standard Regulations. One of the proposed amendments to the regulations creates a requirement that a portion of the renewable electricity purchased to meet the standards be firm.** Firm renewable generation enhances system

⁴⁶ **R-184**, *Nova Scotia Power Incorporated (Re)*, 2010 NSUARB 196 (Oct. 14, 2011).

⁴⁷ **R-185**, Proposed Amendments to Renewable Electricity Regulations Released (June 27, 2011). The proposed amendments included, in particular, confirming the RES-2020 target of 40% renewable electricity; defining how much power from the Lower Churchill project NSPI has to use to meet the RES-2020; and “[b]alancing wind with other electricity resources to meet 2013 and 2015 renewable electricity targets while ensuring system reliability”.

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reliability and facilitates the balancing of non-firm intermittent wind generation. This requirement would result in the obligation to run the biomass plant to achieve this objective, whether the mill is in operation or not. The policy intention has not changed.

Government Commitment:

The Government commits to ensuring that PWCC receives the full benefit of the proposed arrangement it reached with Nova Scotia Power Inc. This will be accomplished, as planned, through finalization of amendments to the Renewable Electricity Standard Regulations so that the Port Hawkesbury CHP plant is operated as a base load and is deemed must run or we will address the issue through an equivalent solution that meets the objectives of the proposed arrangement.⁴⁸

41. Once again, I believe that my letter speaks for itself: the Port Hawkesbury Biomass Plant was designated as “must run” following a public consultation and in furtherance of the GNS policy aimed at ensuring certain amount of firm renewable electricity in order to enhance system stability and reliability while meeting the RES targets.

42. In its Memorial, Resolute quotes my letter to the UARB and immediately states that “must run” regulations “were subsequently passed in January 2013.”⁴⁹ I would like to clarify that on January 17, 2013, the GNS passed multiple amendments to the RES Regulations: one set of amendments to add a 2020 renewable electricity standard (“RES-2020”), to enable the purchasing of power from Muskrat Falls (discussed above), and to provide changes to the feed-in tariff program,⁵⁰ and another set of amendments to add provisions respecting the generation of electricity using biomass.⁵¹ In particular:

- NSPI was required to produce or acquire certain amounts of “firm” renewable electricity (at least 260 GWh in 2013 and at least 350 GWh beginning in 2014);⁵²

⁴⁸ **C-179**, Letter Regarding PWCC LRT, p. 1-2 (emphasis added).

⁴⁹ Claimant’s Memorial, ¶ 85.

⁵⁰ **R-186**, Order in Council, No. 2013-13 (Jan. 17, 2013).

⁵¹ **R-225**, Order in Council, No. 2013-12 (Jan. 17, 2013).

⁵² **R-225**, Order in Council, No. 2013-12 (Jan. 17, 2013), Schedule A, s. 4.

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- Each year beginning with the calendar year 2013, NSPI had to operate the Port Hawkesbury Biomass Plant as a base-load unit producing as close as practical to its rated output on a continuous basis;⁵³
- Beginning with the calendar year 2020, NSPI has to supply its customers with renewable electricity in an amount of not less than 40% of the total electricity supplied (“RES-2020”);⁵⁴ and
- To meet the RES-2020 requirements, NSPI has to acquire and to deliver to customers in Nova Scotia, 20% of the electricity generated by the Muskrat Falls Generating Station if the station and associated transmission infrastructure is completed and in normal operation and if the UARB has approved an assessment against NSPI under the *Maritime Link Act* and its regulations.⁵⁵

43. The 2013 amendments were thus a set of changes to the GNS energy policy aimed at ensuring smooth transition to “greener” electricity while adding yet another, more ambitious renewable energy target starting in the year 2020. Contrary to Resolute’s allegation, my letter referred to the GNS’ long-standing government’s intent, which was based upon previous public consultations and pre-existing policy imperatives.

44. Over the course of the next several years, due to technological advances and the acquisition of necessary operational experience, NSPI became able to plan and flexibly manage the wind power generators and its own older coal plants. As Nova Scotia’s market was changing and prices for energy commodities stabilized, the need to ensure certain level of firm renewable electricity purchases by NSPI became less drastic.⁵⁶ Ultimately, in April 2016 the RES Regulations were modified and the current version provides that NSPI must “maintain the Port

⁵³ **R-225**, Order in Council, No. 2013-12 (Jan. 17, 2013), Schedule A, s 3.

⁵⁴ **R-186**, Order in Council, No. 2013-13 (Jan. 17, 2013), Schedule A, s 6.

⁵⁵ **R-186**, Order in Council, No. 2013-13 (Jan. 17, 2013), Schedule A, s 6.

⁵⁶ See **R-187**, Nova Scotia, “Our Electricity Future: Nova Scotia’s Electricity Plan 2015-2040, pp. 23-24.

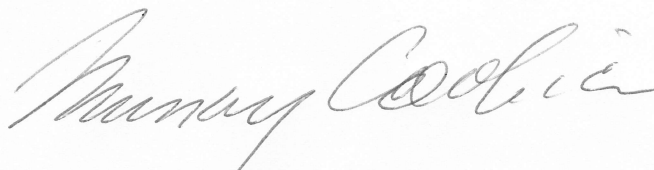
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Hawkesbury biomass power generation plant available as a base load cogeneration facility” and “operate the plant on an economic dispatch basis or as required for system reliability.”⁵⁷

45. In sum, I disagree with Resolute’s allegation that, subsequent to my letter outlining the DOE position with respect to minimum supply of firm renewable electricity, the GNS amended its RES Regulations “to satisfy PWCC.”⁵⁸ In reality, the DOE had supported NSPI’s Port Hawkesbury Biomass Plant project in 2010 when NewPage (a U.S. company) owned and operated the mill, more than a year before the Port Hawkesbury mill went into CCAA proceedings and long before PWCC entered the picture, because this project advanced provincial renewable energy objectives. Furthermore, the DOE had been planning amendments to RES Regulations in the summer of 2011 that would require NSPI to procure a certain amount of firm renewable electricity to ensure the stability and reliability of Nova Scotia’s electrical grid. It was not, as Resolute alleges, an amendment to “satisfy PWCC”. Subsequently, NSPI’s Port Hawkesbury Biomass Plant was designated as a base load facility in January 2013 and helped NSPI meet its RES-2015 obligations while ensuring the stability of the system. Once NSPI demonstrated more capability to integrate intermittent, non-dispatchable generation with the existing fossil fuel units, it was no longer necessary to maintain the “must run” requirement for the Biomass Plant and the RES Regulations were amended accordingly in 2016.

I affirm that the foregoing is true and correct.

Dated: April 17, 2019



Murray Coolican

⁵⁷ R-209, *Renewable Electricity Regulations*, N.S. Reg. 65/2016, s 5(2A).

⁵⁸ Claimant’s Memorial, ¶ 174.