

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards (NI 52-107)*, s. 5.1 – the Filers request relief from the requirements under section 3.2 of NI 52-107 that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises to permit the Filers to prepare their financial statements in accordance with U.S. GAAP.

Applicable Legislative Provisions

National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, s. 5.1

Date: September 13, 2022

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
NOVA SCOTIA AND ONTARIO
(the Jurisdictions)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
EMERA INCORPORATED AND
NOVA SCOTIA POWER INCORPORATED
(the Filers)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers under the securities legislation (the **Legislation**) of the Jurisdictions seeking exemption (the **Exemption Sought**) from the requirements of section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards (NI 52-107)* that financial statements (a) be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises and (b) disclose an unreserved statement of compliance with IFRS

in the case of annual financial statements and an unreserved statement of compliance with IAS 34 in the case of an interim financial report.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Nova Scotia Securities Commission is the principal regulator for this application;
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 - *Passport System (MI 11-102)* is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the **Passport Jurisdictions**); and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

In this decision:

- (a) unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 52-107 have the same meaning; and
- (b) “rate-regulated activities” has the meaning ascribed in the Chartered Professional Accountants Canada Handbook (the **CPA Handbook**) as at the date hereof.

Representations

This decision is based on the following facts represented by the Filers:

1. Emera Incorporated (**Emera**) and Nova Scotia Power Incorporated (**NSPI**) are incorporated under the *Companies Act* (Nova Scotia). The head office of Emera is located at 5151 Terminal Road, Halifax, Nova Scotia B3J 1A1 and the head office of NSPI is located at 1223 Lower Water Street, Halifax, Nova Scotia, B3J 3S8.
2. Each Filer is a reporting issuer or equivalent in the Jurisdictions and each Passport Jurisdiction and is not in default of securities legislation in any such jurisdiction.
3. NSPI is a subsidiary of Emera and its financial statements are consolidated into the financial statements of Emera.
4. Each of the Filers currently prepares and files its financial statements for annual and interim periods in accordance with U.S. GAAP, in reliance on an exemption granted by the Decision Maker in each of the Jurisdictions to the Filers on January 26, 2018 in *Emera Incorporated and Nova Scotia Power Incorporated* (the **Existing Relief**). The Existing Relief is substantially similar to the Exemption Sought.
5. Each Filer has rate-regulated activities.

6. Neither of the Filers is an SEC issuer.
7. Were either of the Filers SEC issuers, they would be permitted by section 3.7 of NI 52-107 to file their financial statements prepared in accordance with U.S. GAAP.
8. The Existing Relief provided that it would cease to apply to a Filer on the earliest of:
 - (a) January 1, 2024;
 - (b) if the Filer ceased to have activities subject to rate regulation, the first day of the Filer's financial year that commenced after the Filer ceased to have activities subject to rate regulation; and
 - (c) the effective date prescribed by the International Accounting Standards Board (**IASB**) for the mandatory application of a standard within IFRS specific to entities with activities subject to rate regulation.

Accordingly, in the absence of further relief provided by Canadian securities regulators, the Filers would become subject to Canadian GAAP no later than January 1, 2024. Canadian GAAP includes IFRS as incorporated into the CPA Handbook.

9. In January 2021, the **IASB** published the Exposure Draft - Regulatory Assets and Regulatory Liabilities, which introduces a proposed standard of accounting for regulatory assets and liabilities, applicable to entities with rate-regulated activities. The issuance by the IASB of a standard within IFRS for entities with rate-regulated activities (a **Mandatory Rate-regulated Standard**) would have resulted in the expiry of the Existing Relief, giving rise to the obligation of the Filers to commence financial statement preparation and reporting in accordance with IFRS pursuant to NI 52-107. It is not yet known when the IASB will finalize and implement such a standard and the Filers will require sufficient time to: (a) interpret and implement such standard and transition from financial statement preparation and reporting in accordance with U.S. GAAP to IFRS; and (b) interpret and reconcile the implications on the customer rate setting process resulting from the implementation.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that:

- (a) the Exemption Sought is granted to each Filer in respect of the Filer's financial statements required to be filed on or after the date of this order, provided that the Filer prepares such financial statements in accordance with U.S. GAAP; and
- (b) the Exemption Sought will terminate in respect of a Filer on the earliest of the following:
 - (i) January 1, 2027;

- (ii) if the Filer ceases to have rate-regulated activities, the first day of the Filer's financial year that commences after the Filer ceases to have rate-regulated activities; and
- (iii) the first day of the Filer's financial year that commences on or following the later of:
 - A. the effective date prescribed by the IASB for a Mandatory Rate-regulated Standard; and
 - B. two years after the IASB publishes the final version of a Mandatory Rate-regulated Standard.

“Abel Lazarus”

Abel Lazarus
Director, Corporate Finance
Nova Scotia Securities Commission