

Headnote

Application for relief from the requirement contained in subsection 122(1) of the *Companies Act* (Nova Scotia) that a reporting issuer's annual financial statements be prepared in accordance with Canadian GAAP – Each reporting issuer has been granted an exemption from the requirements of section 3.2 of National Instrument 52-107 which permits each reporting issuer to continue to prepare its financial statements in accordance with U.S. GAAP – Relief granted subject to conditions.

Applicable Legislative Provisions

Companies Act, R.S.N.S. 1989, c. 81, as amended, ss. 122 and 123.

IN THE MATTER OF: The *Companies Act*, R.S.N.S.1989, c. 81, as amended (the **Act**)

- and -

IN THE MATTER OF: Emera Incorporated and Nova Scotia Power Incorporated

ORDER

(Section 123)

UPON the application of Emera Incorporated (**Emera**) and Nova Scotia Power Incorporated (**NSPI**, together with Emera, the **Applicants**) to the Nova Scotia Securities Commission (the **Commission**) for an order pursuant to clause 123(b) of the Act that each of the Applicants be exempt from the requirement contained in subsection 122(1) of the Act that the Applicant's annual financial statements be prepared in accordance with generally accepted accounting principles determined with reference to the Handbook of the Canadian Institute of Chartered Accountants (**CGAAP**);

AND UPON reading the application and the recommendation of staff of the Commission;

AND UPON the Applicants having represented to the Commission that:

1. Each Applicant is a company incorporated under and governed by the Act. The head office of each Applicant is located at 1223 Lower Water Street, Halifax, Nova Scotia, B3J 3SB.
2. Each Applicant is a reporting issuer in each province of Canada and is not in default of securities legislation in any such province.

3. Emera is an energy and services company with \$9.29 billion in assets and 2013 revenues of \$2.2 billion. Emera invests in electricity generation, transmission and distribution, gas transmission and utility services, and provides energy marketing, trading and other energy-related management services. Emera's strategy is focused on driving profitable growth by investing in its existing and new businesses, improving system reliability, reducing emissions from the generation of electricity, and transmitting that cleaner energy to market. Emera's business interests are primarily in northeastern North America and the Caribbean. In 2013, approximately 80% of Emera's adjusted net income was earned by its rate-regulated subsidiaries.
4. NSPI is the largest regulated operating subsidiary of Emera. It is the primary electricity supplier in Nova Scotia, providing electricity generation, transmission and distribution services to approximately 502,000 customers. NSPI has approximately 1,735 employees and \$4.3 billion in assets, and is a public utility regulated by the Nova Scotia Utility and Review Board (**UARB**).
5. Prior to January 1, 2011, the financial statements of each Applicant were prepared in accordance with CGAAP as it existed prior to the adoption of International Financial Reporting Standards (**IFRS**), which permitted the use of specific rate-regulated accounting treatments consistent with the then-current version of Part V of the Handbook of the Canadian Institute of Chartered Accountants. These specific rate-regulated accounting treatments were supported by specific regulatory decisions and treatments prescribed by utilities regulators, including the UARB, which oversees NSPI's accounting policies. Emera's consolidated financial statements are substantially derived from the financial statements of NSPI and its other regulated subsidiaries (of which many use rate-regulated accounting), and therefore are significantly influenced by rate-regulated accounting treatments.
6. Owing to uncertainty around the treatment under IFRS of entities with rate-regulated activities, among other things, (i) on July 15, 2010, NSPI registered non-convertible investment grade debt securities with the United States Securities and Exchange Commission (**SEC**) using Form F-9, a registration statement under the Multijurisdictional Disclosure System (**Form F-9**), and thereby became an "SEC issuer" (as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**)) subject to reporting obligations under U.S. federal securities laws, and (ii) on February 23, 2011, Emera registered non-convertible investment grade debt securities and preferred shares with the SEC using Form F-9 and similarly became an SEC issuer subject to reporting obligations under the U.S. federal securities laws. As a result of these actions, each Applicant was permitted under Section 3.7 of NI 52-107 to prepare and report its financial statements in accordance with accounting principles generally accepted in the United States (**U.S. GAAP**). U.S. GAAP, including its treatment of rate-regulated accounting, is very similar to pre-IFRS CGAAP and is a standard which Canadian investors, analysts and regulators are comfortable with.

7. The Applicants' status as SEC issuers by virtue of having registered securities under the United States *Securities Act of 1933* also allowed each of the Applicants to rely on the exemption provided under subsection 122(1A) of the Act from the requirement contained in subsection 122(1) of the Act that the Applicant's annual statements be prepared in accordance with CGAAP.
8. Subsequent to the SEC registration, each of the Applicants applied for and was granted (on November 15, 2011 (NSPI) and May 17, 2012 (Emera)) an exemption from the requirements of Section 3.2 of NI 52-107 (the **Prior Securities Law Relief**), thereby permitting the Applicants to continue to report in U.S. GAAP. Upon the granting of the Prior Securities Law Relief, each of the Applicants terminated their respective SEC reporting obligations and ceased to be an SEC issuer.
9. As the Applicants would no longer be able to rely on the subsection 122(1A) exemption under the Act following their ceasing to be an SEC issuer, each of the Applicants applied for and was granted by the Commission (on November 24, 2011 (NSPI) and May 30, 2012 (Emera)) an exemption from the requirement contained in subsection 122(1) of the Act that its annual financial statements be prepared in accordance with CGAAP (the **Existing Orders**).
10. The Prior Securities Law Relief was, and the Existing Orders are, each subject to a sunset provision under which the exemption expires at the end of each Applicant's 2014 financial year. Each of the Applicants applied for and was granted on April 28, 2014 a new exemption from the requirements of section 3.2 of NI 52-107 which permits each of the Applicants to continue to prepare its financial statements in accordance with U.S. GAAP until the earliest of the following:
 - (i) 1 January 2019;
 - (ii) if the Applicant ceases to have activities subject to rate regulation, the first day of the Applicant's financial year that commences after the Applicant ceases to have activities subject to rate regulation; and
 - (iii) the effective date prescribed by the International Accounting Standards Board (**IASB**) for the mandatory application of a standard within IFRS specific to entities with rate-regulated activities.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest and that in the circumstances of this particular case, there is adequate justification for so doing;

IT IS ORDERED that the Existing Orders are revoked.

AND IT IS ORDERED, pursuant to clause 123(b) of the Act, that each of the Applicants is exempt from the requirement contained in subsection 122(1) of the Act that the Applicant's annual financial statements be prepared in accordance with CGAAP provided that:

- (a) the Applicant prepares its annual financial statements in accordance with U.S. GAAP;
and
- (b) the exemption in this order will terminate on the earliest of the following:
 - (i) 1 January 2019;
 - (ii) if the Applicant ceases to have activities subject to rate regulation, the first day of the Applicant's financial year that commences after the Applicant ceases to have activities subject to rate regulation; and
 - (iii) the effective date prescribed by the IASB for the mandatory application of a standard within IFRS specific to entities with rate-regulated activities.

DATED at Halifax, Nova Scotia, this 9th day of July, 2014.

"Sarah Bradley"

"Paul Radford"
