In order to safeguard ratepayer interests, the Department of Energy proposes the following conditions:

1. If the Board determines, at any point in the future, that the terms of the final agreement vary in substance from the document in its present form, and from the representations made in the evidence and testimony of the applicant in respect of this compliance filing, and if NSPI incurs costs as a result of such a change, it should be clear that those costs will not be recoverable from ratepayers. It should be noted that this provision captures overly broad definitions and applications of Force Majeure events, and Forgivable Events generally.

2. In the event that NSPI incurs high energy costs as a result of annual solicitation which it is not able to offset through selling energy it self-generates because of any dispute NSPI has with Nalcor over the interpretation of section 3(e) of the Energy Access Agreement, it will not be able to recover the higher costs from ratepayers.

3. In the event that an alternate market price cap under section 4(c)(ii) of the Energy Access Agreement is based on a premium for green attributes is used, NSPI should not be able to recover amounts over the market price cap in section 4(c)(i) from ratepayers.

4. That NSPI provide regular reports to the Board on the operation of the interruption and redelivery provisions. NSPI's Mr. Sidebottom noted that NSPI would be prepared do so on cross-examination (2782). If possible, these reports should be prepared so that they can be made publically available. If the Board at any point determines that NSPI has not fully recovered all of its costs from Nalcor or Emera, NSPI should not be permitted to recover these costs from ratepayers. The calculation of equivalent economic value would include all costs related to the transaction including, but not limited to, internal costs such as plant re-dispatch, shutdown/start up, delayed maintenance, fuel inventories, etc.

5. That it be made clear to NSPI that should it be in the best interest of its ratepayers, and subject to any legal and regulatory requirements to Board approval, it is able to build or contract for wind or other intermittent generation at any time. If NSPI proposes to exercise the option set out in section 7(f)(i) of the Energy Access Agreement, it should be prepared to demonstrate that accessing the balancing service under section 7(g) of the agreement provides greater value to ratepayers than all other options that would maintain the Emera Variance Amount obligation. This demonstration may be required as part of a capital work order application, or as part of a prudency review of a contract that NSPI has entered and seeks to recover costs from ratepayers.

6. If the Board determines that any amount of compensation that NSPI might receive under article 7(e)(viii) is insufficient, ratepayers will receive the benefit of compensation that NSPI should have received but did not.

7. During cross examination, NSPI's Mr. Sidebottom agreed that if the Board approves the arrangement, NSPI would commit to a review of its economy energy policies and procedures through the FAM Working Group, to determine whether any changes are required to

accommodate anticipated market activities (page 2762). The Department requests that any Board approval should require this as a condition. This review should include a consideration of the potential and merit in any hedging arrangements that might be made. It should also include a consideration of strategies for mitigating the potential that NSPI might need to generate energy to sell to the market to offset times when it may have committed to take economy on an indexed price that is at a high point.

In light of the Board's earlier determination that access to market energy was crucial to the viability of the Maritime Link, insisting through conditions such as the foregoing that NSPI take proactive steps to work with stakeholders to ensure that its processes are ready and that it will engage in market activities in the best interests of its ratepayers is essential.

8. As a final matter, the Department of Energy notes it will be important for ratepayers to know that NSPI's activities will be closely scrutinized if Emera proceeds with the Maritime Link project, particularly given the interactions that this will require between NSPI and its affiliates. Audit rights of the parties to the Energy Access Agreement are still being developed, as noted in section 3(i) of the Energy Access Agreement. In cross-examination, NSPI's Mr. O'Connor agreed that NSPI would seek to include a specific provision in the final agreement outlining a right of the Board to access information for purposes of assessing any affiliate transactions. This should at least be consistent with NSPI's Affiliate Code of Conduct and the FAM provisions outlined in paragraph 42 of the Board's decision in 2007 NSUARB 174.

   Furthermore, the Nalcor Forecasts received by Emera shall not be shared with any other Emera affiliates. This information should remain confidential to NSPI for their trading advantage and the benefit of Nova Scotia ratepayers.