

**Written Submission – Senate Committee on National Finance:  
Bill C-59, Exemption requested for regulated utilities and their holding companies from  
Section 18.1 Excessive Interest & Financing Expense Limitation (EIFEL)  
March 15, 2024**

## Overview

Emera Inc (Emera) and Nova Scotia Power (NSP) are pleased to provide feedback as part of the Senate Committee on National Finance’s consideration of *Bill C-59, the Fall Economic Statement Implementation Act*.

By way of background, Emera Inc, a TSX 60 company based in Halifax, Nova Scotia, has grown from a single electric utility into an energy leader serving over 2.5 million customers in Canada, the US and the Caribbean. We are focused on safely delivering cleaner, reliable energy while always working to minimize the cost impacts for our customers. NSP is uniquely the only investor-owned regulated electric utility in Canada that is fully integrated (i.e., responsible for generation, transmission and distribution). NSP serves more than 525,000 residential, commercial and industrial customers. The utility provides 95 per cent of Nova Scotia’s generation, transmission and distribution services. NSP is a wholly owned subsidiary of Emera.

## Issue

- The Government of Canada is moving ahead with the OECD-led EIFEL rules aimed at reducing a taxpayer’s ability to shift profits from high tax rate jurisdictions to low tax rate jurisdictions via financing arrangements.<sup>1</sup>
- We support this initiative but it has the unintended consequence of increasing costs for regulated energy customers, including for Nova Scotia Power customers.
- The EIFEL rules are included in Bill C-59 which is making its way through the House of Commons and Senate.

### *Rules inadvertently increase costs for utility customers at a time of affordability challenges*

- The capital structure for utilities is determined by independent regulators. This structure is established with higher debt levels intentionally in order to reduce the cost of service and keep electricity rates lower for customers.
- Applying the EIFEL rules to Canadian Utilities is expected to produce a significant amount of denied net interest expense. This would result in increased income tax expense for Canadian Utilities which would be passed on to customers resulting in higher electricity rates. Other OECD jurisdictions recognize this and have taken steps to ensure that utilities, which provide a

---

<sup>1</sup> Electricity Canada and the Canadian Gas Association have been active on this matter as described in the following: [Finance Canada’s new rules could threaten energy affordability: Electricity Canada and CGA | Electricity Canada](#)

public good, are not adversely impacted, relieving customers of the financial pressure associated with EIFEL compliance.

- From a customer affordability perspective, we estimate that the EIFEL rules will cost Nova Scotia Power customers approximately \$50M total from 2024 through 2026. The impact for Nova Scotia Power customers beyond 2026 remains uncertain and will be influenced by the magnitude of debt financing required to fund the progress toward a net zero grid.
- These costs come at time of energy affordability challenges - - in Nova Scotia it is estimated that 37% of Nova Scotians are currently experiencing energy poverty.<sup>2</sup>
- The increased EIFEL costs are at odds with other federal initiatives, such as grants and investment tax credits, which are aimed at addressing affordability challenges associated decarbonization with the clean energy transition.
- Increasing costs to customers contradicts the intent of many of the provisions found in Budget 2023 which are aimed at accelerating progress towards a net-zero grid in an affordable way for customers.
- At the same time, the EIFEL rules do not capture utilities that are owned by a provincial government (e.g., crown corporations). Therefore, customers of some utilities are expected to experience cost increases and some will not - - creating inequity in energy costs across Canada by province and regulatory jurisdiction.

*OECD rules allow exemptions: US/ UK provide exemptions for utilities customers, Canada can too*

- The OECD EIFEL rules allow for exemptions for certain privately owned public-benefit entities like utilities that are delivering a public good and have prescribed capital structures with high debt to equity ratios.<sup>3</sup>
- The US<sup>4</sup> and the UK have exempted utilities from the EIFEL provisions based on the OECD rules in order to shield customers from higher costs. The Canadian utility sector is seeking a similar exemption to protect customers and ensure timely investments in reliability and decarbonizations efforts.
- Our sector is uniquely positioned for an exclusion from these rules because it is highly regulated, capital intensive and highly leveraged in order to spread-out the large capital costs

---

<sup>2</sup> Affordable Energy Coalition – Nova Scotia (2023)

<sup>3</sup> OECD: [\*Limiting Base Erosion Involving Interest Deductions and Other Financial Payments Action 4: 2015 Final Report - Section 64\*](#) (2015)

<sup>4</sup> For example, see: [\*US Federal Register / Vol. 85, No. 178 / Monday, September 14, 2020 / Rules and Regulations, Page 4: "Under section 163\(j\)\(7\), the limitation on the deduction for business interest expense in section 163\(j\)\(1\) does not apply to certain trades or businesses \(excepted trades or businesses\). The excepted trades or businesses are the excepted trades or businesses are the trade or business of providing services as an employee, electing real property businesses, electing farming businesses, and certain regulated utility businesses."\*](#)

for operating the grid (typically between 55-70% of capital structure as prescribed by provincial utility regulators). This capital structure is determined by independent regulators, and not corporations. This is done with the express purpose of keeping the cost of capital, and thus the cost of service and electricity rates, lower for customers.

- A regulated utility holding company's highly leveraged capital structure is a function of its underlying regulated utilities' highly leveraged capital structures, which are prescribed by regulators. As such, EIFEL has the potential to also increase the cost of capital for regulated utility holding companies, which could have a direct impact on the cost of capital for regulated utility company investments. This will have the effect of increasing costs for customers and has the potential to inadvertently encourage holding company investments outside of Canada.
- Extending the EIFEL exemption to include regulated utility holding companies will ensure that regulated utilities and their customers are protected from any negative implications arising from EIFEL at the holding company level and not discourage clean energy investments in Canada.
- Canadian Utilities are not considered "excluded entities" as defined in the proposed rules and are therefore caught under the EIFEL rules simply because they are owned by Canadian parent corporations that have investments in foreign affiliates over the *de minimis* threshold of \$5 million.

#### **Recommended amendments and Next Steps**

- Electricity Canada, the Canadian Gas Association and member companies, including Emera/ Nova Scotia Power, have been engaging with Finance Canada to request an exemption from the EIFEL rules for regulated utilities and their holding companies.
- We have developed a proposed amendment to section 18.2 which would effect these changes (see attachment 1).
- We would be pleased to appear before the Senate Committee on National Finance to discuss the impacts of this legislation on our customers, and our recommendation for amending Bill C-59 so it is in line with the practices of other jurisdictions including the US and the UK.

\* \* \*

Attachment 1: Proposed Amendments to Bill C-59

# Proposed Amendments

## 3 (1) The Act is amended by adding the following after section 18.1:

### Definitions

18.2 (1) The following definitions apply in this section and section 18.21.

...

*exempt interest and financing expenses* of a taxpayer for a taxation year means the total of all amounts, each of which would, if the description of A in the definition *interest and financing expenses* were read without reference to “exempt interest and financing expenses”, be included in interest and financing expenses of the taxpayer for that year, and that is incurred in respect of a borrowing or other financing (referred to in this definition as the “borrowing”), ~~if~~

(a) if

- (i) the taxpayer or a partnership of which the taxpayer is a member entered into an agreement with a public sector authority to design, build and finance — or to design, build, finance, maintain and operate — property that the public sector authority, or another public sector authority, owns or has a leasehold interest in or right to acquire;
- (ii) the borrowing was entered into in respect of the agreement;
- (iii) it can reasonably be considered that all or substantially all of the amount is directly or indirectly borne by a public sector authority referred to in paragraph (a); and
- (iv) the amount was paid or payable to
  - (A) a person that deals at arm’s length with the taxpayer or the partnership of which the taxpayer is a member, or
  - (B) a particular person that does not deal at arm’s length with the taxpayer or the partnership of which the taxpayer is a member if it may reasonably be considered that all or substantially all of the amount paid or payable to the particular person was paid or payable by the particular person to one or more persons that deal at arm’s length with the taxpayer or the partnership of which the taxpayer is a member.

(b) to the extent that

- (i) the borrowing was directly or indirectly used for the purpose of earning income from a business carried on by the borrower or a person or partnership that does not deal at arm’s length with the borrower –(referred to in this definition as the "regulated utility");

- (ii) all or substantially all of the property of the regulated utility is used or held for the purpose of gaining or producing income from a business that is the provision of property or services of or in support of, the production, generation, storage, transmission, distribution, sale, delivery or provision of electricity, natural gas or steam or any other agent for the production of light, heat, cold or power<sup>1</sup>;
- (iii) the rates for the provision of the property or services have been established or approved by a government entity (within the meaning assigned by subsection 241(10)) or a similar body of any country, province, state, municipality or other political subdivision or by the governing or ratemaking body of an electric cooperative;<sup>2</sup> and
- (iv) the borrower files with the Minister an election in writing in prescribed manner under this paragraph in respect of the borrowing [NTD: **the prescribed election could (i) set out the relevant portion of a borrowing traced/linked to a regulated utility, and (ii) could require election to be filed by the tax return due date of the borrower for its taxation year that includes the borrowing.**]; or

---

<sup>1</sup> See *Utilities Commission Act*, RSBC 1996, c. 473, s. 1 “**public utility**”.

<sup>2</sup> US Code Section 163(j)(7) and Regulation §1.163(j)-1(b)(15)(i)(2) use the following language: “State or political subdivision thereof, by any agency or instrumentality of the United States, by a public service or public utility commission or other similar body of any State or political subdivision thereof, or by the governing or ratemaking body of an electric cooperative.” See also Regulation § 1.163(j)-10(c)(5)(ii)(C)(2) (2) that uses the following language for the special rule for CFC utilities: “a foreign government, a public service or public utility commission or other similar body of any foreign government, or the governing or ratemaking body of a foreign electric cooperative.”