

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF an application by the **HALIFAX REGIONAL WATER COMMISSION** for approval of the transfer of certain stormwater assets from the Halifax Regional Municipality

BEFORE: Roberta J. Clarke, Q.C., Panel Chair
Steven M. Murphy, MBA, P. Eng., Member
Jennifer L. Nicholson, CPA, CA, Member

APPLICANT: **HALIFAX REGIONAL WATER COMMISSION**
John C. MacPherson, Q.C
Counsel

Heidi Schedler
General Counsel and Corporate Secretary

INTERVENORS: **NOVA SCOTIA POWER INC.**
Blake Williams
Senior Regulatory Counsel

CONSUMER ADVOCATE
William J. Mahody, Q.C.

Emily Mason
Counsel

DECISION DATE: **April 13, 2022**

DECISION: **Application is approved.**

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I INTRODUCTION

[1] In an application filed on October 13, 2021, the Halifax Regional Water Commission asked the Nova Scotia Utility and Review Board to approve the transfer of stormwater assets in certain areas of the Halifax Regional Municipality, from HRM to Halifax Water, effective June 1, 2022. The expansion areas include certain areas in Boutiliers Point, Head of St. Margarets Bay, Hubley, Ingramport, Lewis Lake, Upper Tantallon, East Preston, Lake Echo, Lawrencetown, and Mineville, and are referred to as Areas 1 and 4 in the application.

[2] Halifax Water also asked that its current rates, charges, and regulations for delivery of stormwater services apply in the expansion areas. The proposed transfer of stormwater assets is a result of the transfer of certain roads from the Province of Nova Scotia to HRM. If the Board approves the proposed transfer of stormwater assets, HRM will be required to pay Halifax Water charges for stormwater service related to the HRM-owned rights-of-way. Halifax Water asked that the Right of Way Charge set out in Halifax Water's *Regulations* be amended to set the charge for the transferred roads.

[3] Under the *Halifax Regional Water Commission Act*, S.N.S. 2007, c. 55 (*HRWC Act*), Halifax Water is a public utility, and is subject to the *Public Utilities Act*, R.S.N.S 1989, c. 380 (*PUA*). One system operated by Halifax Water is the stormwater system in certain areas of HRM.

[4] "Stormwater" is defined in s. 2(1)(l) of the *HRWC Act*:

(l) "stormwater" means water from precipitation of all kinds, and includes water from the melting of snow and ice, groundwater discharge and surface water.

[5] Section 2(1)(m) of the *HRWC Act* defines "stormwater system":

(m) "stormwater system" means a method or means of carrying stormwater, including ditches, swales, sewers, drains, canals, ravines, gullies, pumping stations,

retention ponds, streams, watercourses, floodplains, ponds, springs, creeks, streets or private roads, roadways or driveways.

[6] As set out in s. 6 of the *HRWC Act*, the business of Halifax Water is owned by HRM. On July 20, 2021, HRM Council passed a motion directing its Chief Administrative Officer to “continue preparations to receive the transfer of provincial roads” and to request Halifax Water to provide stormwater services to the landowners within the boundaries identified.

[7] The Consumer Advocate (CA), appointed under the *PUA*, and Nova Scotia Power Inc., intervened in this proceeding. The only evidence filed was that of Halifax Water, including its application, responses to Information Requests (IRs) issued by the Board, and rebuttal evidence. At the invitation of the Board, the CA filed a submission, and Halifax Water filed a reply submission.

[8] After considering the evidence and submissions, the Board approves the transfer of stormwater assets in the new service areas described in the application to Halifax Water as contributed assets, effective June 1, 2022. The Board approves the application of the current rates, charges, and regulations for the operation of the stormwater system in the new service areas where roads are being transferred from the Province to HRM.

[9] The Board also approves the amendment of s. 7(2) of the Halifax Water *Regulations* to provide for the Right of Way Charge to HRM (which is collected on HRM’s behalf by Halifax Water) as sought by Halifax Water.

[10] The Board notes that there is currently a General Rate Application (GRA) by Halifax Water to be heard by the Board later this year, and acknowledges that there

may be changes in rates, charges and regulations related to stormwater service as a result of the decision on the GRA.

II BACKGROUND

1. History of Stormwater Charges by Halifax Water

[11] Prior to 2007, the Board regulated Halifax Water as a utility providing only water service. Up until that time, HRM constructed and maintained the sewage system (wastewater and stormwater) and sewage treatment facilities throughout the Municipality. HRM paid for the necessary expenditures to construct and maintain this infrastructure. Subsequently, HRM Council decided to transfer the responsibility for this infrastructure to Halifax Water, as was outlined in a transfer agreement dated June 12, 2007 (Transfer Agreement).

[12] Halifax Water applied to the Board for approval of the transfer, and requested that the sewage rates, as approved by HRM, be approved by the Board as interim rates. The transfer from HRM to Halifax Water of the sewer system and sewage treatment plant facilities, and interim sewage rates, were approved by the Board effective August 1, 2007. Halifax Water has been operating the system within its defined boundary since that time.

[13] In 2012, Halifax Water submitted a Cost of Service (COS) Manual for water, wastewater, and stormwater service, as directed by the Board in a 2011 cost of service proceeding. One of the major differences from the 2011 practice, as proposed in the 2012 COS Manual, was the introduction of a separate stormwater charge. At that time, Halifax Water's costs to operate the stormwater system were recovered by a combined

wastewater/stormwater rate that included a volumetric charge based upon water consumption. The COS Manual noted that this methodology did not provide a direct relationship between the amount of stormwater entering the system and the recovery of costs to operate the system.

[14] Halifax Water submitted a rate application to increase rates for water, wastewater, and stormwater service in 2013, based upon the 2012 COS Manual. The COS Manual proposed a new charge for stormwater, based upon the impervious area of a property. It was noted that the impervious surface reduces the natural infiltration of water and therefore is used as a billing determinant for the quantity of stormwater entering the system. As a part of the application, Halifax Water noted other utilities base stormwater charges on both pervious and impervious area, which is significantly more complex and costly to implement. The measured impervious area is based upon satellite imagery. The 2012 COS Manual noted that as there are large numbers of residential properties, with relatively small variations in impervious area, a system wide average residential impervious area would apply to these properties, while all other properties (non-residential) would be charged based upon actual impervious area.

[15] As a part of its decision in the 2013 matter, the Board approved Halifax Water's Schedule of Rates, Rules and Regulations for Water, Wastewater and Stormwater Services, effective July 1, 2013, with a second rate increase approved effective April 1, 2014. The rates approved included separate rates for each of water, wastewater, and stormwater service, with stormwater rates based upon impervious area, as described above. All residential customers paid a uniform stormwater charge, which was based upon the average impervious area for residential properties, as calculated

from satellite imagery. Non-residential customers paid a charge based upon a site generated flow rate per square metre of impervious area on the property.

[16] After some experience in implementing and administering the new stormwater rates, Halifax Water conducted a review of the 2012 COS Manual and rate design methodology for stormwater service, which included a comparison to industry norms and best practice. Based upon the results of the review, Halifax Water proposed modifications to the COS Manual and rate design in 2016. At the time of the application, Halifax Water raised the possibility of billing residential customers on a “tiered” basis, which the Board considered a more equitable way to bill residential customers than the then current uniform charge applied to all residential stormwater customers.

[17] In October 2016, Halifax Water applied to the Board for approval of adjustments to its rates for stormwater service and to its rules and regulations for stormwater service (M07731). Included in the proposed rate changes was the introduction of a tiered rate structure for residential customers. Five tiered rates were proposed, based upon the amount of impervious area on a property, with the properties with more impervious area (higher tier), paying more than those with less impervious area. It was further proposed that the rate for non-residential customers include the clause “...provided that where a part of a property is located outside the Commission’s Stormwater Service boundary, that part of the property located outside the boundary is exempt from the charge.” As a part of the application, Halifax Water filed its COS Manual with proposed changes due to updated stormwater data and customer numbers collected since the previous version was approved by the Board, as well as a few minor changes.

[18] In a decision dated April 12, 2017, the Board approved the Rates, Rules, and Regulations for the provision of stormwater service effective July 1, 2017. Included in the Rates, Rules, and Regulations is a Right of Way (ROW) stormwater charge to HRM for the impervious area in the street right of way. While there have been revisions pertaining to water and wastewater service since that time, the Rates, Rules, and Regulations currently in place for the provision of stormwater service are essentially what was approved effective July 1, 2017.

[19] In February 2022, Halifax Water filed a general rate application with the Board (M10468), for an order approving a Schedule of Rates and Charges for the Supply of Water, Wastewater and Stormwater Services, and approval of a Schedule of Rules and Regulations for Water, Wastewater and Stormwater Service. A public hearing in the matter has been scheduled for June 2022.

2. Current Application

[20] The Transfer Agreement dated June 12, 2007, approved by the Board effective August 1, 2007, included the following provisions dealing with the expansion of the service area for stormwater service:

Expansion of Service Area – HRWC

29. In the event that the Province of Nova Scotia transfers to HRM responsibility for roads outside the existing area designated pursuant to Section 2(e) of this Agreement, HRWC shall assume responsibility for Municipal stormwater facilities and services in such additional area effective immediately upon the Province's transfer of such responsibilities to HRM.

30. The terms upon which HRWC assumes such additional responsibilities shall be as agreed upon by the parties and approved by the Utility and Review Board, and, pending agreement or in default of agreement to the contrary, HRWC's additional services shall be provided on a full cost recovery basis.

[Exhibit H-1, p.4]

[21] HRM has entered into another agreement with the Province for the transfer of certain roadways and associated stormwater systems currently owned and operated

by the Province to HRM, with an effective date of June 1, 2022. HRM has requested that Halifax Water accept the transfer of these stormwater assets from HRM and incorporate them into its stormwater system.

[22] Halifax Regional Council passed the following motions on July 20, 2021:

1. Direct the Chief Administrative Officer to continue preparations to receive the transfer of provincial roads, effective June 1, 2022, within:
 - a. Area 1 as listed in Attachment D and generally defined on the map in Attachment E of the staff report dated July 15, 2021;
 - b. Area 4 is listed in Attachment F and generally defined on the map in Attachment G of the staff report dated July 15, 2021; and
2. Request that Halifax Water provide storm water services to the landowners within the boundaries identified in Recommendation 1.

[Exhibit H-1, p.5]

[23] Area 1 includes roads within Boutiliers Point, Ingrampont, Head of St. Margarets Bay, Lewis Lake, Hubley and Upper Tantallon. Area 4 includes roads within East Preston, Lake Echo, Mineville and Lawrencetown. Maps of the roads proposed to be transferred, and a list of roads proposed to be transferred in each of Area 1 and Area 4, are included in the application.

[24] On March 26, 2020, Halifax Water passed the following *in camera* motion which was made public on September 23, 2021:

The Board of the Halifax Regional Water Commission authorizes staff to apply to Nova Scotia Utility and Review Board for an order seeking:

Approval of the transfer of the storm water assets within the attached identified boundaries owned, operated, managed, or controlled by the Halifax Regional Municipality to the Halifax Regional Water Commission.

[Exhibit H-1, p.6]

[25] The application requests that the current Rates, Rules, and Regulations for the provision of stormwater service be applied to any stormwater assets approved by the Board to be transferred from HRM. Halifax Water further proposed that HRM be charged

the ROW charge associated with the additional kilometres of road in the new areas, through an amendment to subsection 7(2) Charges for Stormwater Service of the Rates, Rules, and Regulations, as follows:

Effective April 1, 2018 HRM shall pay annually to the Commission for Stormwater Service associated with the HRM owned street right of way (ROW) the amount of \$3,835,012 plus an incremental amount calculated based on the \$0.135 per m² of Impervious Area within the HRM owned ROW in Area 1 and Area 4.

[Exhibit H-1, p.6]

[26] Halifax Water is currently requesting Board approval of the transfer of stormwater assets from HRM as described in the application, with an effective date of June 1, 2022.

III ANALYSIS

1. Communications

[27] Stormwater charges have always been a contentious issue for Halifax Water customers. Many do not understand the charge and do not believe they receive stormwater services. According to Halifax Water's Quality of Service/Customer survey, almost a quarter of existing customers did not know if they received stormwater service from Halifax Water.

[28] This proposed transfer of stormwater assets is challenging for residents affected by the transfer because they are not currently Halifax Water customers and will now be billed for stormwater service only. Halifax Water acknowledged this issue in its application and provided its communication plan. Page 8 of the Recommendation Report states:

Further, it is expected that some new stormwater-only customers will object to becoming customers of Halifax Water, will resent any charges, and will question the process, the rates, and whether they receive service or not. This may result in customer notices of

objections, including increased costs for the dispute resolution process. This risk is intended to be mitigated through a robust communications plan led by HW.

[Exhibit H-1, Appendix 2, p. 8]

[29] Attachment 1 of Halifax Water's response to IR-20 describes Halifax Water's plan for communicating with future customers throughout the transfer process. Its plan consists of two phases - from the time the transfer was announced and through the Board's hearing process and after the Board's decision is released. The goal of the plan is to provide proactive communication and engagement with all stakeholders to support customer awareness and education. After filing its application with the Board, Halifax Water distributed brochures and information letters to residents of the proposed expansion areas.

[30] Halifax Water sent another letter in November 2021 to inform residents of public information sessions to be held in each of the two expansion areas. Eight public information sessions (four in each area) were scheduled and held in late 2021 and two additional sessions were held in order to accommodate residents who were unable to attend the originally scheduled sessions. The purpose of these public sessions was to meet with the residents and educate and inform them about the proposed changes. More than 225 residents attended the sessions. Halifax Water sent a third letter in January 2022 about additional virtual information sessions. The letter also included an FAQ document based on questions asked during the in-person sessions, and alerted residents to the February 2, 2022, deadline to submit letters of comment to the Board.

2. Consumer Advocate

[31] As mentioned earlier in the decision, the CA intervened in this matter. In his submission, the CA acknowledged that Halifax Water intends to provide stormwater services to the applicable properties in the affected areas and that there are related costs that must be recovered from customers.

[32] The CA noted the large volume and negative nature of the letters of comment received from potential customers. He commented that it is apparent that Halifax Water has additional work to do to ensure the clarity and transparency of its communications about the proposed stormwater service expansion. The CA urged Halifax Water to describe its interaction with the authors of the letters of comment in its final submission.

3. Letters of Comment

[33] The Board received 23 letters of comment from residents of the affected areas. All letters were against the proposed charge. Some residents requested the Board disallow the transfer; some commented that their property taxes should be reduced to cover this increased cost; many said they will not pay the charge, and one customer threatened to take Halifax Water to court if the transfer takes place.

[34] In its final submission, Halifax Water said it had contacted some residents who sent inquiries via the Board to Halifax Water and plans to communicate with those who submitted letters of comment after the release of the Board's decision.

[35] Halifax Water acknowledged that some negative reaction to this expansion was anticipated. However, it stated that negative reactions do not mean that it has lacked transparency or clarity in its communications. Halifax Water said that, instead, residents

have received information from Halifax Water, and some have indicated that they are unhappy with the expansion itself and the fact that they may receive a bill for a service when they previously did not. Halifax Water stated that it will continue to communicate with impacted residents throughout the expansion process.

4. Financial Consequences of Transfer

(a) Charges to Customers

[36] When Halifax Water filed its application, and at the time it filed responses to IRs, the utility confirmed its intention is to charge the new stormwater customers at the current rates, based on the tiered charges discussed earlier in this decision. The response to IR-4 clarified that the rates will be those in effect on June 1, 2022.

[37] In its response to IR-1, Halifax Water noted it had previously advised the Board that there would be an estimated 4,525 new stormwater-only customers in Area 1, and 3,357 in Area 4. Halifax Water was, however, not yet able to determine the annual total revenue expected from these customers. Notably, in response to IR-9 (c), Halifax Water said its current stormwater charges do not allow for full cost recovery of the contributed assets, including depreciation. The utility said any adjustments to the rates would be requested in a GRA. As noted earlier, Halifax Water has such an application currently before the Board (M10468) which will be heard beginning on June 27, 2022. This will likely result in new rates to be charged for stormwater service.

[38] The stormwater assets to be transferred are recorded for accounting purposes as contributed assets. At the time of the application, Halifax Water did not have a list of the assets to be transferred, so the utility was unable to state their book value and the associated annual depreciation expense. As a result, Halifax Water does not yet know the replacement cost of the assets, nor the anticipated cost of maintenance and

repair. In its rebuttal evidence, Halifax Water gave an update regarding the collection and analysis of data as follows:

- Phase 1 – Survey location and condition status of the catch-basins and cross-culverts
 - o Required for creation of catchment boundary
 - o Completed January 31, 2022
- Phase 2 - GIS analysis of data
 - o Using information from phase 1
 - o Quality control of the delineated impervious area to remove anomalies
 - o Identify which properties receive service
 - o Expected completion end of March 2022
- Phase 3 – Survey location and condition status of stormwater infrastructure
 - o Running parallel to phase 2
 - o Expected completion end of July 2022
- Phase 4 – Establishing the financial values of contributed assets for financial statement, and future operating and capital costs for rate purposes
 - o Running parallel to phase 2 and 3
 - o Expected to be complete by the end of July 2023

[Exhibit H-5, pp. 4-5]

[39] Based on this timeline, the Board expects that the first two phases should be complete by the time the Board issues this decision and expects a further update through the GRA process.

[40] Halifax Water stated that if the application is approved, it will begin to provide stormwater service in the identified areas on June 1, 2022. Halifax Water's practice is to bill for services after they are provided. The utility said that it bills stormwater-only customers once a year. According to the response to IR-19, the invoice will be sent between January and March, 2023. For the new customers covered in this application, "...the invoice will be dated January to March 2023 and will be for the prorated service period of June 1, 2022 to March 31, 2023."

(b) HRM Right of Way Charge

[41] Concurrent with the transfer of stormwater assets, the Province of Nova Scotia is transferring the street rights-of-way in the new service areas (Areas 1 and 4) to HRM. As the Board decided in 2013, [2013 NSUARB 127 (M05463)], HRM as owner of

the streets benefits from stormwater service and must pay for it in the same way as any other Halifax Water stormwater customer. HRM opted to fund the cost by a per lot charge to the properties which receive Halifax Water's site generated stormwater charge. The charge is set by, and collected on behalf of, HRM on the invoices issued by Halifax Water to its customers. The charge is currently \$40 annually.

[42] As part of the application, Halifax Water asked the Board to approve an amendment to its *Regulations*:

9. Halifax Water proposes that consistent with the current Halifax Water Regulations, HRM be charged the Right of Way Charge for the additional kilometres of road in the new service areas, and that subsection 7(2) of the Halifax Water Regulations be amended as follows:

Effective April 1, 2018, HRM shall pay annually to the Commission for Stormwater Service associated with the HRM owned street right of way (ROW) the amount of \$3,835,012 plus an incremental amount calculated based on the \$0.135 per m² of Impervious Area within the HRM owned ROW in Area 1 and Area 4 . [Emphasis in original]

[Exhibit H-1, p. 2]

[43] Halifax Water confirmed, in response to IR-8(b), the \$0.135 per m² is consistent with the current rate charged to HRM. Halifax Water estimated the impervious area within the HRM rights-of-way in the two expansion areas to be 1,800,000 m².

[44] Property owners in the new service areas will be subject to the HRM ROW charge if they receive stormwater service for their properties. The Halifax Water charge to HRM may be changed as a result of the upcoming GRA. Halifax Water will continue to include the HRM ROW charge to these properties at the rate of \$40 annually, unless changed by HRM.

5. Approval of Transfer

[45] Under s. 7(1)(a) of the *HRWC Act*, Halifax Water may:

- 7 (1) Subject to the supervision and regulation of the Board pursuant to the Public Utilities Act, the Commission may
 - (a) acquire, own or operate

(i) water systems, facilities and utilities,
(ii) wastewater systems, facilities and utilities, and
(iii) stormwater systems, facilities and utilities, for the purpose of providing water, wastewater and stormwater services to customers located within the Regional Municipality; [Emphasis added]

[46] Halifax Water sought an order:

- approving the transfer of the stormwater assets in the new service areas from HRM to Halifax Water;
- approving the application of the current rates, charges, and regulations regarding the delivery of stormwater services to the new service areas; and
- approving the amendment of Regulation 7(2) of the Halifax Water *Regulations* to include an incremental amount to be charged for the impervious area in the HRM Right of Way in the new service areas.

[47] The Board accepts that HRM's transfer of the stormwater assets is necessary and approves the transfer. These assets are "a combination of cross culverts, driveway culverts, ditches, catch basins, piped systems and drainage corridors". They are to be identified more particularly and listed when Halifax Water has compiled the field data in the expansion areas (see Exhibit H-5, Response to Board IR-2).

[48] The *PUA* authorizes the Board to make orders it "deems just" for rates and charges by a public utility (s.44). A public utility may only charge for a service after the utility applies for and receives approval from the Board (s.64(1)). The public utility is required to submit its rates and regulations to the Board for approval (s.65(1)).

[49] The Board has previously approved the rates, charges, and regulations of Halifax Water for stormwater service. Section 67(1) of the *PUA* states:

Equal rates and charges for similar services

67 (1) All tolls, rates and charges shall always, under substantially similar circumstances and conditions in respect of service of the same description, be charged equally to all persons and at the same rate, and the Board may by regulation declare what shall constitute substantially similar circumstances and conditions. [Emphasis added]

[50] Therefore, with the expansion of the areas in HRM to receive this service, the property owners within the new service areas must be charged at the same rates as the customers already receiving the service and must be subject to the same regulatory regime. The Board notes, however, that not all property owners in the expanded areas will in fact receive stormwater service. That determination will be made by Halifax Water once it completes collection of the field data and investigation of impervious area. Once complete, Halifax Water will know which properties are receiving stormwater service.

[51] In its rebuttal evidence, Halifax Water stated that a letter will be sent to residents in the fall of 2022 advising them whether they are a customer, and the charges that will apply. The Board directs Halifax Water to provide the Board with a sample of the proposed letter and to provide confirmation when it has been sent to residents.

[52] Currently, HRM is charged for the impervious areas of the municipally owned streets which receive stormwater service. As noted earlier in this decision, HRM recovers this by a per lot charge it imposes which is collected by Halifax Water on behalf of HRM. The charge is identified as the HRM ROW Charge on the bills issued by Halifax Water.

[53] The Board observes that the proposed amendment to the *Regulations* provides a per square meter charge on the impervious area in the additional kilometers of roads in the two expansion areas being transferred from the Province to HRM. In response to Board IR-8, Halifax Water confirmed the impervious area within the expanded HRM right-of way is estimated to be 1,800,000 m², and the charge of \$0.135 per m² is consistent with the current charge to HRM. The Board is satisfied that this results in a charge to HRM which is, therefore, equal to the current charge in similar circumstances.

[54] The Board considers that the amendment to *Regulation 7(2)* is necessary and approves it.

IV CONCLUSION

[55] The Board approves the application. Specifically, the transfer of the stormwater assets in the new service areas is approved, effective June 1, 2022. The transferred assets shall be treated as contributed assets. The Board approves the application of the current rates, charges and regulations of Halifax Water which govern stormwater services to the operation of the stormwater assets described in Halifax Water's application.

[56] The Board further approves the amendment of s. 7(2) of the Halifax Water *Regulations* to provide for the Right of Way Charge to HRM as sought by Halifax Water as follows:

Effective April 1, 2018, HRM shall pay annually to the Commission for Stormwater Service associated with the HRM owned street right of way (ROW) the amount of \$3,835,012 plus an incremental amount calculated based on the \$0.135 per m² of Impervious Area within the HRM owned ROW in Area 1 and Area 4.

[57] The Board expects Halifax Water to complete the phased work described in its application to do what is necessary to effect the transfer and to determine the appropriate charges.

[58] The Board acknowledges that changes in rates and charges may result from the pending GRA.


[59] The Board directs Halifax Water to provide the Board with a sample of the proposed letter advising residents if they are customers and the applicable charges, and to provide confirmation when the letter has been sent to them.

[60] An Order will issue accordingly.

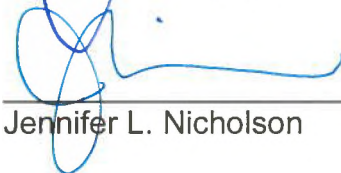
DATED at Halifax, Nova Scotia, this 13th day of April, 2022.



Roberta J. Clarke



Steven M. Murphy



Jennifer L. Nicholson