Nova Scotia Utility and Review Board

IN THE MATTER OF *The Public Utilities Act,* R.S.N.S. 1989, c.380, as amended

- and -

IN THE MATTER OF an Application by EfficiencyOne for approval for the use of measure-level Non-Energy Benefits within the context of Cost-Effectiveness testing associated with future Demand Side Management (DSM) planning regulatory processes (M08888)

DSM Non-Energy Benefits
Nova Scotia Power
Jurisdiction Submission

March 9, 2020

NON-CONFIDENTIAL

TABLE OF CONTENTS

1.0 INTRODUCTION

Nova Scotia Power Incorporated (NS Power) is providing these submissions in accordance with the process set out in the Nova Scotia Utility and Review Board's (Board) correspondence of February 10, 2020, with regard to the Board's consideration of the question of whether the Board has jurisdiction to take into account non-energy impacts in the context of cost effectiveness testing.

In considering the matter, the specific question to be addressed by the Board is:

> In assessing proposed electricity efficiency and conservation activities, does the NSUARB have the jurisdiction to take into account non-energy impacts in cost effectiveness testing?

It is NS Power's understanding that the "non-energy impacts" referred to in this question relate generally to the types of impacts or effects listed in Table 1 of EfficiencyOne's (E1) Application[1], but that this table is not an exhaustive list and that non-energy impacts or effects may also be negative or adverse in nature.

NS Power has reviewed the submissions provided by E1, dated February 24, 2020 (E1 Submission), and provides the following in response.

[1] Exhibit N-1, page 8 of 15, line 1 (pdf page 11 of 143).

2.0 NS POWER'S POSITION

NS Power's position is that, in assessing proposed electricity efficiency and conservation activities, the Board does not have the jurisdiction to take into account non-energy impacts in cost effectiveness testing.

3.0 LEGISLATION AND INTERPRETATION

3.1 Legislation

The operative provisions relevant to the subject question are sections 79H and 79I(1) of the *Public Utilities Act*, RSNS 1989, c. 380, s 79C (PUA). Those sections provide as follows:

> 79H The Board shall determine the cost-effective electricity efficiency and conservation activities that must be undertaken for the purpose of this Act.
>
> 79I(1) On and after the Implementation Date, Nova Scotia Power Incorporated shall undertake cost-effective electricity efficiency and conservation activities that are reasonably available <u>in an effort to reduce cost for its customers</u>. [emphasis added]

It is the reduction of costs for customers identified in s. 79I(1) that is the objective of the Electricity Efficiency and Conservation provisions in the PUA. This is to be done by way of cost-effective electricity efficiency and conservation activities; however, it is not the activities themselves that are the objective. The activities are the “means” to an “end” of reduced electricity costs for NS Power’s customers.

This is consistent with the definition of “electricity efficiency and conservation activities” provided at s. 79A(b) of the PUA, which identifies only activities that relate directly to a reduction in the use of electricity and/or a reduction in electricity costs:

> “electricity efficiency and conservation activities” manes activities, programs or plans relating to
>
> (i) the efficient use of electricity,
> (ii) the conservation of electricity,
> (iii) the alteration of the consumption pattern of an end-user of electricity that has the effect of reducing demand during Nova Scotia Power Incorporated’s periods of highest demand,
> (iv) the utilization or management by Nova Scotia Power Incorporated of its electrical system in a more cost-effective manner,

> (v) the delivery of a reduction in the amount of electrical energy or capacity that Nova Scotia Power Incorporated would otherwise be required to supply to its customers, or
>
> (vi) any other prescribed activities, plans or programs.

Pursuant to s. 79H, it is the Board that must determine what activities must be undertaken to fulfill this objective. Sections 79L(8) and (9) then provide the considerations that must be made by the Board in assessing and approving proposed electricity efficiency and conservation activities:

> 79L(8) The Board shall approve and agreement pursuant to this Section if, in addition to any other matters considered appropriate by the Board, it is satisfied that the agreement, including the proposed electricity efficiency and conservation activities that are the subject of the agreement, is in the best interests of Nova Scotia Power Incorporated's customers and satisfies the requirements of Section 79J.
>
> 79L(9) The Board's assessment of the proposed electricity efficiency and conservation activities for the purpose of the approval must take into account their affordability to Nova Scotia Power Incorporated's customers, along with any other matters considered appropriate by the Board or as may be prescribed.

There are no "other matters" prescribed by regulation or otherwise. Therefore, when assessing whether proposed electricity efficiency and conservation activities are in the best interests of customers, the Board must take into account their affordability to customers, along with any other matters it considers appropriate.

The manner in which the PUA is to be interpreted is set out at PUA s. 116(1):

> This Act shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the Board by the provisions of this Act, the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in this Act conferred on the Board.

The PUA continues at s. 116(2), setting out the broad powers provided to the Board:

> The Board hereby, created shall have, in addition to the powers in this Act specified, mentioned and indicated, all additional, implied and incidental powers which may be proper or necessary to carry out, effect, perform and execute all the said powers herein specified, mentioned and indicated. [emphasis added]

3.2 Principles of Interpretation

In its analysis interpreting these provisions, the E1 Submission cites s. 9(5) of the *Interpretation Act*, RSNS 1989, c. 235 and *Driedger's Modern Principle* as cited by the Supreme Court of Canada, which states that 'the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament."[2] NS Power does not dispute the relevance of these in guiding the interpretation of the above noted provisions of the PUA. However, the E1 Submission has limited its analysis to a consideration of the grammatical and ordinary meaning of the relevant words and provisions in isolation. No consideration has been given in the E1 Submission to the meaning of the words and provisions within the context of the PUA.

The interpretation of the relevant legislation must be done through the lens of the PUA. As the Supreme Court of Canada stated in *ATCO Gas and Pipelines Ltd. v. EUB (2006)*, 2006 SCC 4 (*ATCO Gas*) [Tab 1] at paragraph 50, a "Board's discretion is to be exercised within the confines of the statutory regime and principles generally applicable to regulatory matters, for which the legislature is assumed to have had regard in passing that legislation".

The Court at paragraph 38 of *ATCO Gas*, stated that in addition to Driedger's Modern Principle, in the area of administrative law, the jurisdiction of tribunals and boards over matters is obtained from two sources: express grants of jurisdiction under various statutes (explicit powers); and, the common law, by application of the doctrine of jurisdiction by necessary implication (implicit powers).

[2] E1 Submission, page 11, lines 8-11.

This is discussed further at paragraph 51 of *ATCO Gas*:

> …[t]his rule allows for the application of the "doctrine of jurisdiction by necessary implication"; the powers conferred by an enabling statue are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature.

Therefore, the jurisdiction required for the Board to take into account non-energy impacts in cost effectiveness testing when assessing electricity efficiency and conservation activities must be expressly granted in the language of the relevant legislation or, failing such, the jurisdiction to do so, and as follows the action, must be implied to be necessary for the fulfillment of the Board's intended mandate or objective under the PUA.

As stated by the Court in *ATCO Gas* at paragraph 7:

> …The Board's seemingly broad power to make any order and to impose any additional conditions that are necessary in the public interest has to be interpreted within the entire context of the statutes which are meant to balance the need to protect consumers as well as the property rights retained by owners, as recognized in a free market economy. The limits of the powers of the Board are grounded in its main function of fixing just and reasonable rates ("rate setting") and in protecting the integrity and dependability of the supply system. [emphasis added]

3.3 Mandate of Board Under *Public Utilities Act*

The Board's mandate under the PUA is the regulation of public utilities. It is not a proxy or conduit for policy implementation. More specifically, the Board's intended mandate or function under the PUA is the dual role of ensuring that rates are just and reasonable and that safe and adequate service, including service quality standards, is maintained.

In Decision 2006 NSUARB 85, the Board explained as follows:

> The role of the Board is to provide rates which permit the Utility to meet its obligation to provide reasonably safe and adequate services and facilities to the public, as set out in s. 52 of the PUA.
>
> …
>
> The Nova Scotia Court of Appeal has summarized the Board's role in regulating utilities in the Province. In the Dalhousie Legal Aid case, the Court of appeal cites with approval the comments of Chief Justice MacKeigan, as he then was, in Nova Scotia (Public Utilities Board) v. Nova Scotia Power Corp. (1976), 18 N.S.R. (2d) 692 (A.D.), at para. 17:
>
>> The scheme of regulation established by the Act [*page703] envisages and indeed compels control by the Board of all aspects of a utility's operation in providing a controlled service. Two great objects are enshrined – that all rates charged must be just, reasonable and sufficient and not discriminatory or preferential, and that the service must be adequately, efficiently and reasonably supplied to the public. Almost all provisions of the Act are directed toward securing these two objects – that a public utility give adequate service and charge only reasonable and just rates.
>
> The Board would add that the two objects stated by Chief Justice MacKeigan are interrelated. The Board wold also add that, in addition to the service being adequately, efficiently and reasonably supplied to the public, the PUA also requires it be 'reasonably safe".[3]

Specifically, in the context of the Electricity Efficiency and Conservation provisions under the PUA, the Board has provided the following commentary regarding its role:

> The Board notes, however, its limited role, as pointed out by Counsel for the Industrial Group in its closing submission:
>
>> It is not the role of the Board to prop up or sustain an industry, regardless of the impassioned evidence of speakers in the public session who have enjoyed an expansion of their business under E1. The arguments with respect to the number of jobs created is not a

[3] Decision 2006 NSUARB 85, page7, paragraph 11-13.

> matter of concern for this Board unless they directly connect to cost associated with the delivery of the programs. Job creation is a policy matter for the Province, not the Board under the Public Utilities Act. Furthermore, it should be evident from the early submissions and the basis for the intervention by Nichent, that there are businesses in Nova Scotia which are prepared to deliver efficiency to consumers outside of the circle of preferred providers or suppliers to E1.

> The Board understands the concerns expressed in the letters and comments of the speakers. However, the Board's jurisdiction with respect to DSM plans is restricted by ss. 79L(8) and (9) of the PUA, which address the best interests of NSPI's customers and affordability, as discussed earlier in this Decision.[4]

Any analysis or interpretation of the PUA's provisions and wording, must be in the context of the entire statute and must be grounded in the Board's main function as described in the foregoing.

[4] Decision 2015 NSUARB 204, page 43-44, paragraphs 136-137.

4.0 ANALYSIS

4.1 Explicit Powers

The relevant provisions that provide the Board with its jurisdiction regarding the assessment of proposed electricity efficiency and conservation activities do not provide it with specific power to account for or otherwise consider non-energy impacts in cost effectiveness testing when assessing proposed electricity efficiency and conservation activities. Therefore, one must look to the broad powers provided to the Board, such as those provided to it under s. 116(2).

In *ATCO Gas*, the Supreme Court of Canada commented on the scope of authority granted by provisions such as s. 116(2) of the PUA. The Court's analysis is provided at paragraph 46, as follows:

> The City does not limit its arguments to s. 26(2); it also submits that the AEUBA, pursuant to s. 15(3), is an express grant of jurisdiction because it authorizes the Board to impose any condition to any order so long as the condition is necessary in the public interest. In addition, it relies on the general power in s. 37 of the PUBA for the proposition that the Board may, in any matter within its jurisdiction, make any order pertaining to that matter that is not inconsistent with any applicable statute. <u>The intended meaning of these two provisions, however, is lost when the provisions are simply read in isolation as proposed by the City</u>: R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at p. 21; *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*, 1993 CanLII 31 (SCC), [1993] 3 S.C.R. 724, at p. 735; Marche, at paras. 59-60; *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, [2005] 1 S.C.R. 533, 2005 SCC 26, at para. 105. <u>These provisions on their own are vague and open-ended. It would be absurd to allow the board an unfettered discretion to attach any condition it wishes to an order it makes. Furthermore, the concept of "public interest" found in s. 15(3) is very wide and elastic; the Board cannot be given total discretion over its limitations</u>. [emphasis added]

On the basis of the foregoing, despite the broad powers granted in s. 116(2) of the PUA, the Board's discretion in exercising its authority is fettered in that the exercise of any authority must be grounded within its main function of ensuring that rates are just and reasonable and that safe and adequate service is maintained. The exercise of any such authority must then also be "necessary" for the Board to carryout its role as the regulator of public utilities under the PUA.

Accounting for non-energy impacts in cost effectiveness testing is not necessary for or relevant to the Board's broad regulatory role or, more specifically, the objective set out in s. 79I(1) of reducing electricity rates for NS Power customers. Consequently, the Board does not have the jurisdiction to account for or consider them in cost effectiveness testing.

This is reinforced by the following analysis of the Federal Court of Appeal case, *Reference Re National Energy Board Act*, 69 N.R. 174 (1986) (*Re NEB*) [Tab 2]. At issue in *Re NEB* was the jurisdiction of the National Energy Board (NEB) to award costs. It was argued that s. 10(3) of the *National Energy Board Act*, R.S.C. 1970, c. N-6 gave the NEB such jurisdiction. The Court, however, after an examination of the explicit and implicit jurisdiction of the NEB to award costs, found that no such jurisdiction existed. Section 10(3) read as follows:

> The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry upon and inspection of property and other matters <u>necessary or proper</u> for the due exercise of its jurisdiction, all such powers, rights and privileges as were vested in a superior court of record.[5] [emphasis added]

The "necessary or proper" qualifier in s. 10(3) is similar to the "proper or necessary" language in s. 116(2) of the PUA.

In *Re NEB*, Heald J. for the Court asserted the following in rejecting the explicit jurisdiction of the NEB to award costs at paragraph 9:

> As was pointed out by some of the counsel opposing the Board's jurisdiction, the Board has effectively operated for many years without awarding costs. It can, therefore, hardly be said that such a power is "necessary" for the exercise of its

[5] *Re NEB*, paragraph 7.

> jurisdiction. It might well be argued that the Board would operate more effectively with that power but such a circumstance does not make such a power necessary to its exercise of jurisdiction.

The Board has assessed and approved cost-effective electricity efficiency and conservation activities for many years without accounting for non-energy impacts in cost effectiveness testing. The relevant legislation provides the Board with the authority to continue to do so in order to fulfill the objective of reducing customers costs. As a result, just as in *Re NEB*, it cannot be said that accounting for non-energy impacts is "necessary" for the exercise of the Board's mandate. As follows, such accounting is outside the jurisdiction of the Board, just as the power to award costs was found to be outside the NEB's jurisdiction.

4.2 Implicit Powers

Due to the "necessary" language found in s. 116(2) of the PUA, a similar analysis, as employed above with regard to explicit powers, will also apply to this analysis of implied powers. The doctrine of necessary implication has essentially been codified in s. 116(2).

As stated in *ATCO Gas*, at paragraph 77, it is a well-founded principle that in order to impute jurisdiction to a regulatory body such jurisdiction must be necessary to carry out the regulatory body's mandate. The longevity of the doctrine of necessary implication is evident from its declaration in *Salomon v. Salomon & Co. Ltd.*, [1897] A.C. 22, at page 38:

> In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.[6]

The analysis undertaken above with regards to *Re NEB* will also apply in this context of implied powers. Similar to his discussion regarding explicit powers, Heald J. stated for the Court in relation to implicit powers at paragraph 15 of *Re NEB*:

[6] See *Grand Trunk Railway Co. v. Department of Agriculture of Ontario*, (1910) 42 S.C.R. 557 [Tab 3], at page 575

> In the case at Bar there is no evidence of practical necessity for implying a general costs power. As noted by counsel for I.P.L., the Board has, since its inception in 1959, operated without such a power, held innumerable hearings and exercised the jurisdiction conferred upon it under the statute in a satisfactory manner without purporting to exercise any alleged jurisdiction in respect of costs.

As previously noted, the Board has the requisite authority to effectively assess proposed electricity efficiency and conservation activities in order to fulfill the objective of reducing customer costs, without the need to account for non-energy impacts in cost effectiveness testing. Therefore, as jurisdiction is not expressly granted, and there is no basis for implicitly granting such powers, the accounting of non-energy impacts is outside of the Board's jurisdiction.

5.0 REPLY TO E1 SUBMISSION

5.1 Standard of Review is Irrelevant

The outset of the analysis provided in the E1 Submission refers to the reasonableness standard of review that has historically been applied by the Nova Scotia Court of Appeal to decisions of the Board interpreting its "home or related" statutes. E1 states:

> The Court of Appeal often defers to the Board as the most suitable body to interpret its home and related statutes. The Board typically need not be correct in its interpretation of a related statute, but its interpretation must be reasonable.[7]

E1 goes on to note that:

> Although a determination of the applicable standard of review is outside the scope of this Application, the standard generally applied in the review of the Board's interpretation of the PUA and other related legislation should be considered relevant.[8]

With respect, what the standard of review may be, is not only outside the scope of these submissions and this Application, it is not relevant. An administrative body should at all times strive to interpret legislation, particularly the jurisdiction it is granted in that legislation, correctly. The interpretation of its jurisdiction should not vary, be altered, or otherwise be dependent on what standard of review it may be subject to on appeal.

In any event, the law on these matters has recently changed with the release of the Supreme Court of Canada's companion decisions in *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66 and *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

[7] E1 Submission, page 12, lines 3-6.
[8] E1 Submission, page 12, lines 6-8.

(*Vavilov*) [Tab 4] and the legal analysis and case law provided by E1 to support its submissions regarding the standard of review is incorrect.

Paragraph 37 of the decision in *Vavilov* makes clear that where there is a statutory right to appeal an administrative tribunal's decision upon a question of law or jurisdiction, as there is pursuant to s. 30(1) of the *Utility and Review Board Act*, S.N.S 1992, c. 11 (URBA), then the standard to be used is "correctness":

> It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision. This means that the applicable standard is to be determined with reference to the nature of the question and to this Court's jurisprudence on appellate standards of review. Where, for example, a court is hearing an appeal from an administrative decision, it would, in considering questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, apply the standard of correctness in accordance with *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at para. 8.

5.2 Hansard and Conveying Jurisdiction

On page 13 of the E1 Submission, E1 states that "[t]he intention of the legislature is also reflected in the history of related legislation".

The submission then continues citing a Hansard excerpt introducing Bill 49, which would become *The Efficiency Nova Scotia Corporation Act*. E1 concludes from this excerpt that "[t]he Board's consideration of best interests of the customers extends to environmental protections".[9] However, such a conclusion cannot be drawn.

While Demand Side Management (DSM) may have ancillary environmental policy implications, that does not somehow grant jurisdiction to the Board to consider environmental matters. Again, the E1 Submission fails to undertake its analysis through the lens of the PUA.

[9] E1 Submission, page 14, lines 18-19.

Moreover, E1's reliance on Hansard to confer jurisdiction is not consistent with the relevant case law. At paragraph 22 of *Reference Re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68 (*Reference Re Broadcasting*) [Tab 5], the Supreme Court of Canada stated the following:

> Policy statements, such as the declaration of Canadian broadcasting policy found in s. 3(1) of the *Broadcasting Act*, are not jurisdiction-conferring provisions. They describe the objectives of Parliament in enacting the legislation and, thus, they circumscribe the discretion granted to a subordinate legislative body (Sullivan, at pp. 387-88 and 390-91). <u>As such, declaration of policy cannot serve to extend the powers of the subordinate body to spheres not granted by Parliament in jurisdiction-conferring provisions</u>. [emphasis added]

While the Court in *Reference Re Broadcasting* was considering policy statements found in the actual legislation being interpreted, the policy statement cited in the E1 Submission is found in Hansard discussing legislation unrelated to the PUA or URBA. Therefore, the policy statements made by the Minister of Energy in the Hansard cited in the E1 Submission cannot serve to extend jurisdiction over matters of "environmental protection" to the Board.

The E1 Submission goes on to cite a "lack of any contrary direction from the Board or from the Court of Appeal"[10] as well as Board decisions under past legislative regimes[11] to support its position; however, it is well-established law that an administrative tribunal cannot convey jurisdiction upon itself, just as jurisdiction cannot be conveyed by parties to matters before the tribunal.[12]

[10] E1 Submission, page 14, lines 23-24.
[11] E1 Submission, page 16, line 10 to page 17, line 2.
[12] *Business Watch International Inc. v. Alberta (Information & Privacy Commissioner)*, 2009 ABQB 10 [Tab 6], paragraphs 37 and 43 and *Sturgeon Lake Cree Nation v. Greenview (Municipal District) No. 16*, 2003 ABCA 146 [Tab 7], paragraph. 12.

5.3 Other Jurisdictions

Beginning on page 18, the E1 Submission refers to three American jurisdictions "which include non-energy benefits in their cost-effectiveness test".[13] In support of its argument, the E1 Submission focuses on Maryland and assesses the consideration of non-energy benefits by the Public Service Commission of Maryland, suggesting that the "statutory considerations in energy efficiency programming [in Maryland] are similar to those in Nova Scotia"[14] and concluding that:

> Maryland's approach lends support to EfficiencyOne's position that the *Public Utilities Act* authorizes and empowers the Board to permit the inclusion of non-energy impacts in cost effectiveness testing.[15]

To the contrary, the statutory considerations are not at all similar to Nova Scotia and the approach taken in Maryland actually supports NS Power's position.

The statute being considered in the Public Service Commission of Maryland (Commission) Order No. 87082 cited and relied upon in the E1 Submission is the Maryland Public Utilities Code §7-211 (Maryland Code).[16]

Under §7-211(f) of the Maryland Code, the Commission has a duty to require each gas and electric company to establish a program or service that the Commission deems appropriate and cost effective to encourage and promote the efficient use and conservation of energy.[17] Admittedly, this is similar to what is required pursuant to sections 79H and 79I(1) of the PUA, which require that NS Power undertake cost-effective electricity efficiency and conservation activities that are reasonably available in an effort to reduce costs for its customers and that the Board approve the activities that are to be undertaken.

[13] E1 Submission, page 18, lines 24-25.
[14] E1 Submission, page 20, lines 24-31.
[15] E1 Submission, page 21, lines 3-4.
[16] See Tab 11 of E1 Submission Book of Authorities for Order No. 87082.
[17] Commission Order No. 87082, page 3.

However, where the two pieces of legislation differ is with regard to the enumerated considerations of the respective regulators when determining whether the programs or activities put forward by the utilities fulfill the statutory requirements.

Under the Nova Scotia legislation, what the Board is to consider in approving proposed electricity efficiency and conservation activities is set out in sections 79L(8) and (9) of the PUA. As noted above, s. 79L(8) requires that the Board consider whether "in addition to any other matters considered appropriate by the Board" the activities are in the "best interests of Nova Scotia Power Incorporated's customers", while s. 79L(9) requires that the Board consider "their affordability to Nova Scotia Power Incorporated's customers", and "any other matters considered appropriate by the Board or as may be prescribed".

Under the Maryland Code, §7-211(i)(1) requires that when determining whether a program or service encourages or promotes the efficient use and conservation of energy, the Commission must consider:

(i) Cost-effectiveness;
(ii) Impact on rates of each ratepayer class;
(iii) Impact on jobs; and
(iv) Impact on the environment.

This section of the Maryland Code is set out on page 3, footnote 13, and page 7 of Commission Order No. 87082, found at Tab 11 of the E1 Submission Book of Authorities. The specifically enumerated and required considerations of the impact on jobs and the environment is a glaring distinction that was ignored in the E1 Submission. This distinction only strengthens the statutory interpretation analysis provided by NS Power, particularly in light of the previously cited portion of Board Decision 2015 NSUARB 204 where the Board confirmed that impacts on jobs is not within its jurisdiction.

The inclusion of the requirement to consider impacts to jobs and the environment is a specific statutory instruction from the legislature requiring the Commission to consider non-energy impacts. The Commission did not rely on its mandate to provide "affordable" energy to its constituents to hold that a failure to include societal (non-energy) benefits would ignore this intent, as the E1 Submission claims.[18] To the contrary, if the Commission had not included consideration of societal impacts such as those on jobs and the environment, then it would have been ignoring the statutory imperative imposed on it by §7-211(i)(1).

The fact that non-energy impacts have been considered by the Commission in Maryland, in the context of legislation that explicitly requires it to do so, serves only to reinforce NS Power's argument that the jurisdiction to consider non-energy impacts cannot be implied to exist in the statutes governing utility regulation, where the role of regulators is generally to ensure that rates are just and reasonable and that safe and adequate service is maintained. Such considerations are not necessary for a regulator generally, and the Board specifically, to carry out its legislated role; therefore they must be expressly and explicitly provided for in the legislation, as was done in Maryland.

[18] E1 Submission, page 20, lines 29-31.

6.0 CONCLUSIONS

Based on the foregoing, when assessing proposed electricity efficiency and conservation activities, the Board does not have the jurisdiction, whether express or implied, to take into account non-energy impacts in cost effectiveness testing. The Board's jurisdiction relates to a consideration of electricity benefits and costs, just as it does for all public utilities.

As stated in the foregoing, the PUA is not a proxy or conduit for the implementation of policy unrelated to its core intent, which is to provide for regulation to ensure that utility rates are just and reasonable and that safe and adequate utility service is maintained. If societal or non-energy impacts are to be considered by the Board, then such an intent must be expressly set out in the legislation, as they are in Maryland. No such intent is expressly provided in the PUA and none is necessary "for the accomplishment of the object intended to be secured by the statutory regime created by the legislature"[19] and, therefore, cannot be implied.

[19] *ATCO Gas*, paragraph 51.