



THE BRETON LAW GROUP

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File No. 41736

November 28, 2019

Nova Scotia Utility & Review Board
PO Box 1692, Unit "M"
Halifax, Nova Scotia
B3J 3S3

Attention: Doreen Friis, Regulatory Affairs Officer / Clerk

Dear Ms. Friis:

Re: EfficiencyOne – Approval for Use of Measure Level Non Energy Benefits (NEB) Application M08888

I am writing with regard to EfficiencyOne's Application for Approval for Use of Measure Level Non-Energy Benefits Application ("NEB Application"), filed with the Nova Scotia Utility and Review Board, ("NSUARB"), on September 19, 2018.

The Application sought, *inter alia*, approval for the adoption and inclusion of non-energy benefits (NEBs) within the cost effectiveness testing carried out by EfficiencyOne.

The issue originated in NSUARB Matter M06733 – Application for Approval of the 2016-2018 Demand Side Management (DSM) Supply Agreement and Plan. The Consensus Agreement filed near the conclusion of the proceedings in Matter M06733 specifically contemplated a further consideration of measures to improve the cost-effective testing for future DSM Plans. The Consensus Agreement stated:

7. **COST-EFFECTIVENESS TESTING METHODOLOGY FOR FUTURE APPLICATIONS TO APPROVE A DSM SUPPLY AGREEMENT**

- (a) *The Parties agree to work collaboratively with the DSM Advisory Group to pursue the nature and quantification of estimates associated with participant non-energy benefits to improve the TRC test in future Applications.*
- (b) *EfficiencyOne will update the UARB prior to December 31, 2016 on the DSM Advisory Group's progress on this work.*
- (c) *The Parties acknowledge that specific measures and / or programs exclusively targeted toward low-income Nova Scotians may not pass a cost-effectiveness test.*

Included with the filing of the NEB Application, EfficiencyOne sought specific approvals from the NSUARB which were set out at pages 13 and 14 of the Application, including:

1. that the per measure values in Table 10 of Attachment 4 (VEIC Report) be approved for use in future CE testing.
2. to implement Annual NEB values on a per-first-year kWh basis for the BNI sector, recognizing the increased variability of energy savings if differing measure applications. Without this accommodation, NEBs may be over-valued in low-savings applications, and under-valued in high-savings applications. The per-first-year kWh values would be derived by dividing Table 10 results by the first-year-energy savings modelled as part of the 2016-2018 DSM Resource Plan. This reflects the format of native data adapted from Massachusetts (i.e. Massachusetts values for BNI measures are described on a per-first-year kWh basis).
3. approval of the Ongoing Management and Update strategy described in Section 3.2.
4. approval to base future estimates of Low-Income NEBs on the 2016 Three study performed in Massachusetts, subject to discussion on implementation at the DSMAG.

On October 1, 2018, the NSUARB issued a Hearing Order setting out the timetable for the NEB Application proceeding. Information Requests (IRs) to EfficiencyOne were filed by Intervenors on October 24, 2018. EfficiencyOne responded to these IRs on November 14, 2018 (with a correction to Multeese IRs filed November 15, 2018).

On November 22, 2018, after responding to the Information Requests of the Intervenors, and having regard to the upcoming regulatory proceedings in 2019 with respect to the 2020-22 DSM Plan Application, EfficiencyOne requested the NEB Application be deferred. EfficiencyOne believed, having regard to the issues raised by Intervenors during the IR process, that a reconsideration based on the material now on record may result in a more focused Issues List upon return to the NSUARB in a reconvened proceeding. EfficiencyOne committed to further engagement with stakeholders including a planned technical session and the development of a focused issues list.

On November 23, 2018, the NSUARB issued an Order adjourning the regulatory proceedings without day, requiring EfficiencyOne to file updates and request resumption of the NEB Application proceeding before December 31, 2019.

In its November 23, 2018 correspondence to EfficiencyOne, granting the Order to defer the proceedings, the NSUARB also raised the issue of jurisdictional authority, stating:

...While the Board generally encourages settlement discussions on all or a portion of the issues in a proceeding, the Board will need to be satisfied in this proceeding that it has the jurisdiction, under the Public Utilities Act, to take into account Non-Energy Benefits and the appropriateness of doing so in the interest of NS Power's ratepayers.

Responding to the direction of the NSUARB in its November 23, 2018 Order, EfficiencyOne engaged various Stakeholders throughout October 2019 and November 2019, including:

- Consumer Advocate
- Small Business Advocate
- Industrial Group Representative
- Nova Scotia Power

The intention of the engagement was to update Stakeholders on work which had been carried out by EfficiencyOne during the regulatory deferral, and to obtain the Stakeholders' current view points on the relative merits of proceeding with the NEB Application. EfficiencyOne wishes to acknowledge the participation of these Stakeholders in this consultation.

Jurisdictional Issues

In the course of the NEB Application, in particular through various IRs filed by Intervenor, and as expressly noted by the NSUARB in November 2018, the issue of the jurisdictional authority for the NSUARB to grant the approval sought by EfficiencyOne has been raised. These concerns were expressly noted by the NSUARB's consultant Synapse, the Small Business Advocate and NS Power. They have been raised again through the subsequent October / November discussions with key Stakeholders.

Given these concerns, EfficiencyOne observed there was general support for a request of the NSUARB to make a preliminary legal determination on the issue of its jurisdiction to grant any form of approval relating to the inclusion of NEBs in future cost-effectiveness testing by EfficiencyOne.

EfficiencyOne believes it is a prudent and cost-effective measure to have the matter of jurisdiction addressed as a preliminary matter, in a focused hearing without the need to address the specific issues related to the NEB Application itself. Should the NSUARB determine that it lacks the jurisdiction to grant the approvals sought by EfficiencyOne in the Application, it would be EfficiencyOne's intention to immediately withdraw the NEB Application. Alternatively, should the NSUARB hold that it is within its jurisdiction to grant certain, or all of, approvals sought in the original NEB Application, then the current, or a modified Application, could proceed forward.

In light of the foregoing, EfficiencyOne respectfully requests that the NSUARB permit EfficiencyOne to proceed with a motion for preliminary determination as to the jurisdiction of the NSUARB to take into account Non-Energy Benefits in its cost effectiveness testing of future DSM plans. .

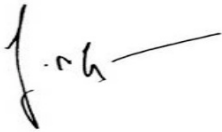
Should the NSUARB be agreeable to this request, EfficiencyOne proposes that it, through consultation with key Stakeholders, frame the legal question for determination and provide it to the NSUARB for its consideration. Provided the NSUARB was satisfied with the question, a Hearing Order could follow setting out the relevant timelines for determination of the preliminary matter. EfficiencyOne, and key Stakeholders, believe that this preliminary matter can be adequately addressed through a paper process without the need for an oral hearing.

Finally, and provided the NSUARB is agreeable to the request of the preliminary matter, EfficiencyOne would request that, in the event the NSUARB determines it has jurisdiction to entertain the NEB Application, that EfficiencyOne be provided a sixty (60) day period, following the NSUARB's decision, to allow EfficiencyOne to make a final determination or amend its current NEB Application, before reconvening the regulatory process.

EfficiencyOne thanks the NSUARB for its consideration of this request and would be pleased to address any questions or concerns the NSUARB may have.

Respectfully,

THE BRETON LAW GROUP

A handwritten signature in black ink, appearing to read 'J. R. Gogan', with a long horizontal line extending to the right.

James R. Gogan

cc. S. Bruce Outhouse, Q.C.
Gina Thompson, EfficiencyOne
Kate McDonald, EfficiencyOne