THE BRETON LAW GROUP

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File No. 41736-119

February 5, 2020

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 in relation to EfficiencyOne's correspondence to the Nova Scotia Utility and Review Board ("NSUARB") on November 28, 2019, and NSUARB's reply dated November 29, 2019, with regard to EfficiencyOne's Application for Approval for Use of Measure Level Non-Energy Benefits Application ("NEB Application"), filed with the Board on September 19, 2018.

In its November 28, 2019 correspondence EfficiencyOne noted that the issue of the jurisdictional authority of NSUARB to grant the relief sought in the Application – namely, the use of non-energy benefits in cost-effectiveness testing - was raised by both NSUARB and Stakeholders. EfficiencyOne observed there was general support for a referral of this issue to the NSUARB on the matter of a preliminary legal determination of this jurisdictional question. EfficiencyOne believes this approach would be a prudent and cost-effective manner to have the issue of jurisdiction adjudicated through a focused hearing without the need to address the substantive issues of the NEB Application itself.

EfficiencyOne has, through consultation with key stakeholders, developed an agreed legal question for determination. Provided the NSUARB is satisfied with the question, a Hearing Order could follow setting out the relevant timelines for determination of the preliminary matter through a paper process without the need for an oral hearing.

In considering and framing the issue to be determined, EfficiencyOne relied upon the NEB Application currently before the NSUARB., which opens with the following statement:

> *The purpose of this Application is to request approval for the use of measure-level Non-Energy Benefits (NEBs) within the context of Cost-Effectiveness (CE) testing associated with future DSM planning regulatory processes*[1]*.*

The NEB Application, EfficiencyOne's supporting evidence, and responses to Information Requests, focus on the inclusion of non-energy benefits in the Total Resource Cost test. For example, in its Response to UARB IR-07, EfficiencyOne stated:

> *EfficiencyOne's motivation for pursuing the inclusion of NEBs in the TRC was to achieve a balanced approach when using this cost-effectiveness test…A likely result of including NEBs is that more measures may pass the TRC test. The result of this may or may not mean that more measures will be included in existing DSM programs delivered by EfficiencyOne, because the TRC test is only one consideration in measure selection.*
>
> *…*
>
> *The inclusion of NEBs only affects the results of the TRC test, which EfficiencyOne uses as a screening test (at the program level). All other metrics…remain unchanged.*[2]

The NEB Application requests "*that the per measure values in Table 10 of Attachment 4 (VEIC Report) be approved* ***for use in future CE testing****."*[3]

EfficiencyOne worked collaboratively with stakeholders to develop an appropriate question to be put before the NSUARB for determination through this process. EfficiencyOne received comments from Nova Scotia Power Inc., the Consumer Advocate, the Small Business Advocate and the Industrial Group. EfficiencyOne thanks the Stakeholders for their input on this matter.

The agreed question adopts the language of the *Public Utilities Act* and focuses on NSUARB jurisdiction to take into account non-energy impacts in the context of cost-effectiveness testing:

> **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 ?**

EfficiencyOne is pleased that the Consumer Advocate, Small Business Advocate, the Industrial Group and NS Power have confirmed their support for this wording.

[1] M08888 - EfficiencyOne: Non-Energy Benefits: An Application for Approval of the use of Non-Energy Benefits within Cost-Effectivness Testing, Filed September 19, 2018, at p.1, Lines 3-5
[2] M0888 – EfficiencyOne Response to UARB IR-07, Filed November 14, 2018, p. 1 Lines 8 – 15, and p. 2., Lines 3-4.
[3] M08888 – EfficiencyOne: Non-Energy Benefits: An Application for Approval of the use of Non-Energy Benefits within Cost-Effectiveness Testing, Filed September 19 2018, at p. 13, Lines 22-23.

EfficiencyOne looks forward to NSUARB's consideration of this proposed jurisdictional question and, upon approval, the establishment of timelines for its determination.

Respectfully,
THE BRETON LAW GROUP

James R. Gogan

cc. S. Bruce Outhouse, Q.C.
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