DECISION **2019 NSUARB 105**
M09096

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

\- and -

IN THE MATTER OF AN APPLICATION by **EfficiencyOne (E1)** to the Nova Scotia Utility and Review Board for Approval of a Supply Agreement for Electricity Efficiency and Conservation Activities between E1 and Nova Scotia Power Inc. (NS Power), the establishment of a final agreement between the parties, and approval of a 2020-2022 Demand Side Management (DSM) Resource Plan

BEFORE: Peter W. Gurnham, Q.C., Chair
Roberta J. Clarke, Q.C., Member
Steven M. Murphy, MBA, P.Eng., Member

COUNSEL:

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INDUSTRIAL GROUP
Nancy Rubin, Q.C.

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Chief Paul Prosper
Derek Peters
Gillian Allen, LL.B.

NOVA SCOTIA DEPARTMENT OF ENERGY AND MINES
Nancy Rondeaux

BOARD COUNSEL: S. Bruce Outhouse, Q.C.

HEARING DATE: June 10, 2019

FINAL SUBMISSIONS: July 11, 2019

DECISION DATE: **August 2, 2019**

DECISION: **Consensus Agreement approved.**
Settlement Agreement approved.

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1.0 INTRODUCTION

[1] The efficient use of electricity, including how and when it is used, as well as the need to conserve or use less electricity, are widely acknowledged to result in financial and environmental benefits. Programs which promote these activities are known as demand-side management (DSM).

[2] EfficiencyOne (E1) was granted a franchise under the *Public Utilities Act*, R.S.N.S. 1989, c. 380, as amended (*PUA*) to provide “electricity efficiency and conservation activities” to Nova Scotia Power Incorporated (NS Power). In addition to the efficient use and conservation of electricity, the activities, programs and plans may include changing demand patterns for consumption of electricity.

[3] Any supply agreement between E1 and NS Power for these activities must be approved by the Nova Scotia Utility and Review Board. If they are unable to agree, either or both may apply to the Board to establish a final agreement.

[4] E1 applied to the Board for approval of a supply agreement, submitting both a “Preferred Plan” and an “Alternate Scenario” for the period from January 1, 2020 to December 31, 2022.

[5] Prior to the public hearing of the application, E1 filed a Consensus Agreement, signed by E1 and NS Power, and supported by Kwilmu’kw Maw-klusuaqn Negotiation Office (KMKNO) and the Assembly of Nova Scotia Mi'kmaq Chiefs, and the Berwick Electric Commission. The Consensus Agreement provided for a total DSM budget for 2020-2022 of $110 million, based on the Alternate Scenario, except for investment and energy savings for First Nations and Low-Income programs. Those programs will remain at the Preferred Plan level. Although other Intervenors did not sign

the Consensus Agreement, only one, the Ecology Action Centre (EAC), urged the Board to reject the proposed plan.

[6] E1 also filed a Settlement Agreement with Heritage Gas Limited (HGL) regarding their agreement to study the Custom Incentive Program for measures in certain multi-unit residential buildings where natural gas is available.

[7] After the public hearing, which included testimony from an E1 and NS Power joint panel, the Board heard from five registered speakers in an evening session. Each of the speakers suggested that the Board should approve a higher level of spending for DSM.

[8] The Board also received letters of comment from 28 individuals, businesses, organizations, and municipalities, all but one of which supported the E1 application. The only writer who urged the Board to reject the application asked that E1 be directed to spend more and achieve higher energy savings targets.

[9] The Board is satisfied that the Consensus Agreement sets out the terms of a supply agreement which is in the best interests of the customers of NS Power, considering the affordability of the proposed activities and spending. The Board approves the Consensus Agreement, except for Clause 5 regarding DSM funding through the Fuel Adjustment Mechanism (FAM), and requires a compliance filing. The issue of future funding through the FAM will be considered in a separate proceeding.

[10] The Board is satisfied that the Settlement Agreement between E1 and HGL appropriately resolves their single issue. The Board approves the Settlement Agreement and awaits a report from E1 and HGL on the results of the study.

2.0 BACKGROUND

[11] Board approval is required under s. 79L of the *PUA* of any agreement for the supply of electricity efficiency and conservation activities. A mutually finalized agreement is contemplated in the *PUA*; however, provision is made for an application to the Board where the franchise holder (currently E1) and NS Power are unable to agree (s. 79J (3)).

[12] In the absence of an agreement, E1 filed its application, following what it described as good faith efforts with NS Power. The Board, in its decision on the 2016-2018 DSM plan (2015 NSUARB 204), directed E1 to provide one or more alternate scenarios for the Board to consider in future filings. The Board also directed NS Power to provide rate impact analysis of any scenarios. In this application, E1 included a Preferred Plan and an Alternate Scenario, and sought approval of the Preferred Plan.

[13] The Preferred Plan called for spending of $43 million in each year, 141 GWh of annual energy savings, and approximately 40 MW of annual peak demand savings. It included an additional performance target of lifetime energy savings. E1 said the Plan introduced new initiatives, with less focus on lighting, increased access for underserved markets, and the removal of barriers to participation. According to E1, the average rate impact of the Preferred Plan would be relatively minor.

[14] The main differences between the Preferred Plan and the Alternate Scenario were a reduced level of spending at $37 million per year, reduced energy savings of 125 GWh, and reduced peak demand savings of 34 MW. Additionally, E1 said that the Alternate Scenario does not align with the 2014 Integrated Resource Plan (IRP), unlike the Preferred Plan.

[15] NS Power is required under s. 79I of the *PUA* to "…undertake cost-effective electricity efficiency and conservation activities that are reasonably available in an effort to reduce costs for its customers." NS Power filed evidence in response to E1's application suggesting a proposed plan should be in a reasonable spending range of $27-34 million. NS Power suggested that the short-term rate impacts of the Preferred Plan were significant and unjustified.

[16] In its evidence, NS Power expressed concerns about the affordability of the Preferred Plan. It noted that E1 has had a history of under-spending its budgets, and suggested that the level of increased spending was not required. NS Power noted that it did not anticipate any significant new system requirements, and had no plans for additional capacity. It concluded, therefore, that the levels of spending and savings were greater than required.

2.1 Consensus Agreement

[17] Ultimately, E1 and NS Power filed a Consensus Agreement which is attached as Appendix A to this Decision. In addition to setting the spending, energy savings target, and demand savings target levels of $110 million, 367.8 GWh, and 98.3 MW, respectively, over the 2020-2022 term, the Consensus Agreement provides for:

- DSM spending for First Nations and Low-Income programs at the level of the Preferred Plan;
- Remainder of the DSM Plan at the level of the Alternate Scenario;
- Withdrawal of request for Lifetime Energy Savings as a performance target;
- Agreement in principle on DSM funding being expensed through the Fuel Adjustment Mechanism (FAM) at the next General Rate Application (GRA);
- HST Refund to be refunded to customers through the FAM;

- Revision of the terms of reference and issues to be considered by the DSM Advisory Group (DSMAG);
- Operation and administration of the NS Power HomeWarming Program by E1; and,
- No objections to the Econoler Evaluation Report, the Peach Verification Report and the E1 2019 Annual Progress Report, or the E1 response to their recommendations.

2.2 Terms of Settlement Agreement

[18] HGL intervened in the proceeding and had a specific issue with E1's application. HGL objected to E1's proposal to offer incentives under the Custom Incentive Program for new construction multi-unit residential buildings promoting electric heat pumps for space heating where natural gas is available. E1 and HGL reached an agreement and filed the Settlement Agreement which is attached as Appendix B. It provides for a collaborative review of this issue over the next several months with E1 refraining from soliciting new program participants during that period.

3.0 ISSUES

3.1 Level of DSM Spending for 2020-2022

[19] E1's Preferred Plan provided for $129.1 million spending and 421.7 GWh of first year energy savings and 120.1 MW of peak demand savings over 2020-2022. The Alternate Scenario provided for $111.0 million spending, 374.2 GWh of energy savings, and 102.7 MW of demand savings. NS Power had suggested a plan which would spend between $27 million and $34 million annually.

[20] The Consensus Agreement provides for a total budget of $110 million, which is considerably less than the Preferred Plan and slightly less than the Alternate

Scenario. It is based on the current DSM funding of $34.05 million annually (which the Board observes is at the high end of the range suggested by NS Power) plus the amount accumulated from underspending in the 2016-2018 Plan, inclusive of interest.

[21] Funding for First Nations and Low-Income programs remains at the level of the Preferred Plan, i.e., $4.5 million to benefit Mi'kmaq communities in Nova Scotia over the term, and $3.0 million for upgrades to affordable multi-family housing. This funding was supported by all participants in the proceeding. The Board notes that, in its closing submission, KMKNO suggested that the name of the program be changed from “First Nations” to “Mi'kmaq”, as it is a Nova Scotia specific project. The Board will use the name currently used by E1 in this Decision, but expects E1 will give due consideration to this suggestion.

[22] To retain funding for these programs at the Preferred Plan level, E1 adjusted its investment over other programs using its Alternate Scenario spending, as set out in its response to Undertaking U-1.

[23] As set out in s. 79L (8) and (9) of the *PUA*, to approve a DSM supply agreement, the Board must be satisfied that the proposed plan is in the best interests of NS Power customers, taking into account affordability, as well as any other matters the Board considers appropriate. The term “affordability” is not defined in the *PUA.*

[24] In its decision on the 2016-2018 DSM Plan, the Board discussed how it should interpret affordability:

> The Board finds that the inclusion of Section 79L(9) of the *PUA* directs the Board to take into account an increased focus on short term rate impacts. Having said that, the Board notes that there will be a review of the DSM program every three years. There will always be rate pressures to be taken into account in both determining rates and in determining the DSM program. A focus exclusively on short term affordability means that the Board would never get to consider long term costs. That would be to the detriment of ratepayers. The Board does not believe that ratepayers are well-served, or that it is in their best interests to focus only on short term costs and thereby deny customers the real long term cost

> savings that are possible from a balanced and properly implemented DSM program. Accordingly, while the Board finds that there has been a change in focus mandated by the Legislature, and an increased emphasis on short term rate impacts, the overarching consideration continues to be "the best interests of Nova Scotia Power Incorporated's customers" as stated in Section 79L(8) of the *PUA*.
>
> [2015 NSUARB 204, para. 82]

[25] In that decision, the Board noted that the spending proposed was less than what had been spent on DSM in each of the previous four years and was significantly less than what was recommended in the 2014 IRP. The Board considered that this met the test of affordability "...while at the same time recognizing the overarching principle of what is in the best interests of ratepayers."

[26] The Consensus Agreement maintains spending at levels that are, when the contribution from past underspending is accounted for, higher than the current levels. In its support for the Preferred Plan, E1 pointed to the challenges of meeting its targets in the future due to the changing nature of programs; there is less emphasis on lighting measures, which are generally less expensive. The evidence demonstrates that more intensive programs will require more spending.

[27] The Consensus Agreement was supported, or not opposed, by all but one of the Intervenors. Notably, the EAC, some of the letters of comment, and the evening session speakers said that the level of spending, even in the Preferred Plan, was not enough. They noted concerns about the impact of climate change, which they consider makes energy efficiency and conservation measures important enough to warrant more spending.

[28] The Board also observes that the majority of those who provided letters of comment supported the Preferred Plan, which called for greater spending than the Consensus Agreement. Further, some parties, such as the Affordable Energy Coalition

(AEC) suggested that some opportunities would be lost forever if funding was not available at higher levels.

[29] E1 had indicated in its application that the Preferred Plan aligned with the 2014 IRP and that the Alternate Scenario did not. In its closing submission, E1 stated that "the most recent Integrated Resource Plan should guide DSM planning". E1 noted that some stakeholders in this proceeding had concerns with reliance on an IRP which is now five years old.

[30] The Board notes these concerns as well as those of the individuals and groups who support a higher level of spending. The issues they raise are important, and E1 and NS Power need to be mindful of them. The Board agrees DSM should be considered against the background of the most recent IRP. However, as an IRP process is currently underway, the Board notes that a new IRP will be in place by the time the next DSM plan is filed. The Board expects such a plan will be informed by that IRP.

[31] The Board has, in past decisions, indicated its views on consensus and settlement agreements. The Board focuses on whether such agreements are in the public interest. In this proceeding, while only two intervenors have signed the Consensus Agreement, the Board finds there is generally little opposition to its terms. The Board is satisfied that the budgeted spending and savings targets are in the best interests of NS Power's customers and are affordable. The Board agrees that maintaining the First Nations and Low-Income Programs, which would not have been included in the Alternate Scenario at the same levels, is an important step in providing access to DSM for under-served communities. Further, the Board finds that, given the history of E1's targets, the

plan is achievable. Therefore, the Board approves the spending levels contained in the Consensus Agreement.

3.2 Historic Underspending by EfficiencyOne

[32] E1 has historically not spent its planned budget and at the same time exceeded energy savings targets. Board counsel witness, Alice Napoleon, compared E1's actual spending with planned spending and noted that E1 had spent less than it budgeted for in each of the years from 2015 to 2018, on average 10% less than budget.

[33] At the same time, she noted that E1 had exceeded its saving targets in recent years:

> For example, 2018 energy savings exceeded E1's target by about 15 GWh, or roughly 11 percent. Demand savings achieved in 2018 (25.5 MW) exceeded E1's target for that year (21.0 MW) by 4.5 MW, or about 21 percent (ENS 2018 DSM Annual Progress Report, p. 2).
>
> [Exhibit E-37, p.12]

[34] Based on her analysis Ms. Napoleon stated that the data appeared to indicate an upward bias in E1's estimate of resource costs. She recommended E1 investigate the factors that led to the overestimation. The Consumer Advocate (CA) agreed such an investigation should be undertaken.

[35] In its Final Submission, E1 indicated it does not expect a surplus in 2019 based on trends year to date.

[36] The Board agrees with Ms. Napoleon and the CA that it is appropriate to investigate this issue, including whether the factors that led to the overestimation continue to be present in E1's current operating environment. E1 is to file terms of reference by October 31, 2019, and the investigation is to be concluded and filed with the Board by March 31, 2020.

3.3 Allocation of Program Costs

[37] The Industrial Group noted that, in response to Undertaking U-2, NS Power provided tables showing the allocation of program costs by year to each of the customer classes. While the total annual spending aligns with that provided by E1, the expenditure by rate class differs. Ms. Rubin provided a table showing the discrepancy and indicated that a discrepancy of over $800,000 is a material difference for the large industrial class.

[38] In its Reply Submission, NS Power confirmed that the Company will work with E1 to ensure this is addressed in the compliance filing. E1 and NS Power are directed to file an explanation and reconciliation in the compliance filing.

3.4 Future DSM as a FAM Expense

[39] In its Evidence, NS Power proposed that any variance from $34.05 million in approved annual DSM costs for 2020-2022 should be included in the FAM account prior to the next General Rate Application (GRA), and that during the next GRA, 100% of customer funded DSM costs should be included in the FAM:

> NS Power proposes that DSM costs be dealt with either as part of the FAM or in a similar manner. As NS Power has $34.05 million in its non-fuel budget apportioned to DSM, the Company proposes that any variation from that amount (whether a decrease or an increase) approved by the Board for the 2020-2022 DSM Supply Agreement period be apportioned to the FAM account prior to the next General Rate Application (GRA). At the time of the next GRA, NS Power proposes that 100 percent of the customer-funded DSM budget be dealt with through the FAM or a similar mechanism. This will provide greater transparency for customers and is a more appropriate mechanism to address these types of expenses.
>
> [Exhibit E-9, p. 30]

[40] In the Consensus Agreement between NS Power and E1, the DSM budget for 2020-2022 was based on the current 2019 DSM budget of $34.05 million per year plus the accumulated underspend from the 2016-2018 DSM Supply Agreement of $7,508,216

inclusive of interest as of June 3, 2019. The only mention in the Consensus Agreement regarding DSM funding via the FAM was in reference to the next GRA:

> The Parties support, in principle, DSM funding being expensed through the FAM at the time of the next General Rate Application subject to UARB approval. NS Power agrees to support adoption of this methodology in a manner that does not result in additional material regulatory burden being imposed on E1.
>
> [Exhibit E-38, Appendix "A"]

[41] In his Closing Submission, the CA noted that he is not in a position to support NS Power's proposal of including DSM costs in the FAM and expressed several concerns with that proposal:

> In its pre-filed evidence, NSPI suggested that DSM funding should be automated either through the FAM or some other mechanism. At the hearing, NSPI expressed a desire to return to the situation that existed prior to the last legislative change that removed the DSM Rider.
>
> The Consumer Advocate is not in a position to support NSPI's call for automated collection of DSM funding. In the event that the Board determines that there should be further investigation into NSPI's proposal, the Consumer Advocate would appreciate the opportunity to participate in those investigations along with other interested parties. Those investigations would likely include identification of any risk transference associated with the proposal.
>
> On the specific suggestion that the FAM be utilized, the Consumer Advocate has two initial concerns. First, is that this Board, NSPI and a number of interested stakeholders, have worked hard to establish the transparency that is the hallmark of the FAM. Layering DSM expense collection into the FAM <u>may</u> impact that transparency. Secondly, there <u>may</u> be cost allocation implications that arise when mixing DSM and FAM matters on an ongoing basis. [Emphasis in original]
>
> [CA Closing Submission, p. 2]

[42] The Board acknowledges these concerns and notes that this issue does not require resolution during this proceeding. Any decision on treatment of future DSM costs will be addressed when such an application is filed, whether during a GRA or otherwise.

3.5 Demand Reduction / Demand Response

[43] As defined by E1 in its Application, demand reduction activities involve the use of passive (proactive) measures to reduce system coincident demand. These

measures do not rely on ongoing communication with NS Power. E1 defined demand response activities, on the other hand, as a means to reduce system coincident demand using signals/communications from NS Power to customers and/or associated equipment. Demand response activities are reactive rather than passive.

[44] Mark Drazen, on behalf of the Industrial Group, suggested a better distinction is that demand reduction activities are "scheduled", while demand response measures result in "real time" demand management. Mr. Drazen also asserted that real time demand management is more effective in reducing system peak demand. Mr. Landrigan, of NS Power, agreed with this assertion:

> **MS. RUBIN:** Okay. Mr. Landrigan, do you agree that real-time measures are more effective at reducing system peak loads?
>
> **MR. LANDRIGAN:** Yes, that would be consistent with our evidence, yeah.
>
> **MS. RUBIN:** Okay, and the reason why is because they reflect actual system conditions?
>
> **MR. LANDRIGAN:** Yes.
>
> **MS. RUBIN:** That a scheduled approach doesn't have that degree of granularity.
>
> **MR. LANDRIGAN:** Yes, it's tricky.
>
> **MS. RUBIN:** And is it fair to say, as Mr. Drazen said, that only a small number of the hourly loads are at or close to the system peak?
>
> **MR. LANDRIGAN:** Oh, yes, sorry. A small amount of our overall load would be at or close to system peak, yes.
>
> [Transcript, pp. 72-73]

[45] Stephen MacDonald, of E1, stated the Consensus Agreement includes a budget of $5.4 million over three years for demand reduction measures. He also stated that he believes E1 has the flexibility to move funds into demand response programs if they are deemed prudent based on E1 engagement with NS Power. Further, clause 3 of the Consensus Agreement states: "To the extent possible, and within budget constraints,

E1 will focus on establishing and implementing demand response initiatives through engagement with NS Power".

[46] The Industrial Group does not support funding new demand reduction initiatives in the manner outlined by E1. The Industrial Group believes that such prescriptive demand reduction activities are uncoupled from the dynamics of NS Power's system peaks. Instead, the Industrial Group has recommended the following:

> (a) the Board confirm that E1 has the flexibility and the mandate to pursue cost-effective demand response as a component of its $5.4 million budget allocation (plus any funding from Enabling Strategies to study the options);
>
> (b) the Board direct EfficiencyOne and NSPI to immediately commence engagement towards the development of the types of rate enhancements and programs as discussed during the evidence regarding demand response;
>
> (c) E1 and NSPI report back to the DSM Advisory Group with respect to their engagement on these initiatives, including possible rate design changes, promptly and no later than June 2020; and
>
> (d) where such initiatives require rate design changes, direct NSPI to bring forward recommended rate designs in a generic rate hearing.
>
> [Industrial Group Closing Submission, pp. 4-5]

[47] The CA argued that NS Power should have the primary responsibility for demand response initiatives. The CA supports E1 using its customer contacts and expertise to assist NS Power in fulfilling these responsibilities, provided that assistance does not impede E1's own DSM program.

[48] The Board finds that demand response activities offer an effective means to reduce NS Power's coincident system peak demand. Therefore, within the context of a DSM plan, there is no reason that these activities should be excluded from E1's demand reduction budget if they are found to be prudent. Similarly, the research, study and piloting of demand response activities should not be excluded from E1's Enabling Strategies budget. The Board, therefore, confirms that E1 has the flexibility and the

mandate to pursue cost-effective demand response as a component of its $5.4 million demand reduction budget allocation (plus any funding from Enabling Strategies to study the options). If, through engagement with NS Power, E1 finds specific demand response measures to be a prudent, cost effective means to reduce system peak demand, the Board believes that this would not impede E1's DSM program, but rather it would enhance the program.

[49] To facilitate these activities, the Board directs E1 and NS Power to immediately begin discussions to develop, assess and evaluate potential demand response measures and any related rate design changes. E1 and NS Power are to report back to the DSMAG by the end of June 2020. Where any proposed demand response measures require rate design changes, NS Power is directed to present these to the Board in a separate proceeding.

3.6 HST Refund

[50] Efficiency Nova Scotia (ENS) settled its appeal of the Minister of National Revenue's decision to deny certain HST credits relating to the operation of ENS for the period May 2010 through January 2015. The refund of these credits totalled $14,123,701.10, and together with accrued interest of $895,164.50, resulted in a total refund amount of $15,018,371.60. The Consensus Agreement proposes that this HST refund, together with any interest, be returned by E1 to NS Power. NS Power would then refund these monies to customers through the FAM. Apportionment of the funds would be done based on the DSM cost of service, but applied to customer fuel costs through the FAM.

[51] Both the Small Business Advocate (SBA) and Industrial Group have confirmed their support for this proposed refund. The AEC and EAC conversely expressed concerns about the proposed HST refund. Both entities believe that since the related HST was originally collected through E1's previous DSM programs, it should be appropriately reinvested back into the new DSM program.

[52] The HST settlement funds were collected from all NS Power customers as part of the DSM Rider. As such, these funds should be returned to all customers, not just those participating in DSM programs. The Board, therefore, finds that the HST refund be returned to NS Power customers through the FAM. This complies with s.8 of the *Electricity Efficiency and Conservation Restructuring (2014) Act*, S.N.S. 2014, c.5.

3.7 Evaluation and Verification Reports

[53] E1 noted that no concern was raised with respect to the Econoler Evaluation Report for the 2018 DSM year, the Verification Report for the 2018 DSM year, or to E1's response to the recommendations in those reports.

[54] In the circumstances the Board accepts the reports and E1's response to those reports as noted in the evidence.

3.7.1 HomeWarming Program

[55] Under the Consensus Agreement, and with the apparent agreement of the Clean Foundation, the HomeWarming Program, funded through a charitable contribution by NS Power, will be operated and administered by E1 for a three year term commencing January 1, 2020. Because this program is not funded by ratepayers it is not subject to approval by the Board. However, it is important that the records and accounts of the HomeWarming Program be segregated such that ratepayer funds are not used in

connection with the program, and the work of E1 employees is properly charged to the program. The Board directs E1 to ensure the records and accounts are so segregated.

3.8 DSM Advisory Group

[56] The Consensus Agreement noted that the existing DSMAG will develop revised Terms of Reference that will enhance the development of future DSM applications including:

> 7. The existing DSMAG will develop revised terms of reference that will enhance the development of future DSM Plan applications. The revised terms will focus on a collaborative and facilitated process with representation of the UARB, intended to keep stakeholders engaged on key DSM issues and development of future DSM Plans.
>
> a. Development of a calendar and framework process which will include developing:
>
> > i. Process/methodology for updating avoided costs;
> >
> > ii. Timeline for the development and stakeholder consideration of DSM Plan scenarios prior to submission to the UARB;
> >
> > iii. Adoption of a recommended format for joint filing of DSM applications consistent with existing legislation;
> >
> > iv. Agreed criteria to determine DSM program affordability; and
> >
> > v. Information sharing protocols.
>
> b. Confirmation that long-term DSM planning levels will be reassessed during each IRP.
>
> c. Consideration of whether a process to evaluate the DSM Evaluation Reports and DSM Verification Reports separate from the DSM Resource Plan process is required and if so the nature of that process.
>
> d. Discussion on payback periods when setting incentives.
>
> e. Other issues as determined by the DSMAG.
>
> [Exhibit E-38, Appendix "A", Clause 7]

[57] Parties appeared generally supportive of the reinvigoration of the existing group and the list of issues to be addressed.

[58] In addition, E1 and NS Power committed to include Mi'kmaq representation on the DSMAG to ensure the Mi'kmaq participate in discussions about key DSM issues and future DSM plans.

[59] The Board approves these changes including, in particular, the addition of the Mi'kmaq representative.

4.0 THE SETTLEMENT AGREEMENT

[60] Under its proposed 2020-2022 DSM Plan, E1 has offered incentives for new construction multi-unit residential buildings ("MURBs") under the Custom Incentives Program. HGL raised concerns about these proposed incentives, specifically related to electric heat pumps and associated measures in areas where natural gas is available. Following the submission of evidence in this proceeding, E1 and HGL filed a Settlement Agreement with the Board aimed at addressing HGL's concerns.

[61] As part of the Settlement Agreement, E1 and HGL have agreed to engage in a collaborative study of the Custom Incentives Program design and operation related to electric heat pump measures in MURBs in areas where natural gas is available. Terms of reference for the study will be developed jointly by E1 and HGL by June 30, 2019. The study will be completed by September 20, 2019, and the evaluation and review of the study will be finished by October 15, 2019.

[62] The cost of the study will be paid from E1's 2019 Board approved DSM budget. The Settlement Agreement also provides that if E1 and HGL are unable to reach resolution of the issues raised by HGL through the process outlined in the Settlement Agreement, either party may bring the matter back to the Board for adjudication.

[63] In its Closing Submission, NS Power stated that it did not oppose the Settlement Agreement. However, NS Power asked the Board to confirm that the existing Custom Incentive Program under the 2019 DSM Plan will continue and not be restricted. Clauses 4, 5 and 6 of Appendix A of the Settlement Agreement deal with this issue and are contrary to NS Power's request. This was further elaborated upon in HGL's Reply Submission:

> ... As Heritage Gas had specifically raised concerns in regard to the Custom Incentive Program having potential unanticipated effects in relation to electric heat pumps and associated measures in multi-unit residential buildings in areas where natural gas is available, the Settlement Agreement specifically dealt with ensuring that such potential unintended effects did not continue during the period of the study. Thus, it would be completely contrary to substantive elements of the Settlement Agreement, the approval of which NS Power does not oppose, for the Board to confirm the request made by NS Power, which is inconsistent with the terms of the Settlement Agreement, and on which NS Power did not pose a single question at the oral hearing.
>
> [HGL Reply Submission, p. 2]

[64] The Board agrees with HGL.

[65] NS Power also indicated that it expected stakeholders and NS Power would be given an opportunity to participate in this study process, including providing comments on any related recommendations prior to their implementation. Similarly, the SBA expressed some concern related to the issue that only E1 and HGL will develop the terms of reference of the study. The SBA believed it would be more appropriate for the terms of reference to be reviewed by the DSMAG for feedback prior to commencing the study. The Board believes that the study schedule needs to be expeditious so that the study is completed well in advance of the start of the 2020-2022 DSM plan. The Board finds that the proposed study schedule outlined in the Settlement Agreement is appropriate and meets this goal. In order to complete the study within this timeframe, the Board does not believe there would be enough time to allow stakeholder participation in the study process. Further, E1 has indicated that stakeholders would have the opportunity to

provide input when the outcome of the study is brought back to the Board. The Board finds that this approach will provide for sufficient stakeholder input related to the study findings and recommendations.

[66] The Board approves the Settlement Agreement. The Board directs that the study report and any recommendations arising from the study be presented to the Board by October 15, 2019. Stakeholders will be provided an opportunity to review the study findings and provided feedback at that time.

5.0 APPROVAL OF SUPPLY AGREEMENT

[67] The Board has reviewed the form of Supply Agreement attached as Appendix "G" to Exhibit E-1. Subject to any changes needed to implement the findings in this Decision, the form of Agreement is satisfactory to the Board and a final form of the Supply Agreement shall be included in the compliance filing.

6.0 COSTS

[68] EAC seeks costs under two headings: firstly, the costs of its consultant Integrated Energy Resources; and secondly, the EAC claims costs of work done by its staff member, Emma Norton, the Energy Conservation Coordinator.

[69] The Board directs E1 and the EAC to attempt to agree on costs. The Board notes, however, that it would be very unlikely for the Board to award costs for a staff member of the EAC.

[70] If the parties cannot agree on costs the matter may be remitted to the Board for determination.

7.0 SUMMARY OF BOARD FINDINGS

[71] The Consensus Agreement, which sets spending, energy saving target levels, and demand savings target levels of $110 million, 367.8 GWh, and 98.3 MW respectively, over the 2020-2022 term, is approved as are the program spending levels outlined in Undertaking U-1, subject to review in the compliance filing. The issue of future funding through the FAM will be considered in a separate proceeding.

[72] The Settlement Agreement between E1 and HGL is approved.

[73] E1 and NS Power are to provide a compliance filing by August 27, 2019, with comments from Intervenors by September 10, 2019, and any reply comments from E1 and NS Power by September 17, 2019.

7.1 Directives

[74] E1 is to investigate historic underspending of planned budgets and historic exceeding of energy savings to determine the factors that lead to the overestimation. E1 is to file terms of reference by October 31, 2019, and the investigation is to be concluded and filed with the Board by March 31, 2020.

[75] The Board directs E1 and NS Power to immediately begin discussions to develop, assess, and evaluate potential demand response measures and any related rate design changes. E1 and NS Power are to report back to the DSMAG by the end of June 2020. Where any proposed demand response measures require rate design changes, NS Power is directed to present these to the Board in a separate proceeding.

[76] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 2nd day of August, 2019.

Peter W. Gurnham

Roberta J. Clarke

Steven M. Murphy

APPENDIX A

M09096

IN THE MATTER OF: **THE PUBLIC UTILITIES ACT**

- and -

IN THE MATTER OF: An application by EfficiencyOne for Approval of a Supply Agreement for Electricity Efficiency and Conservation Activities between EfficiencyOne and Nova Scotia Power Inc., the establishment of a final agreement between the parties, and approval of a 2020-2022 Demand Side Management ("DSM") Resource Plan

CONSENSUS AGREEMENT

WHEREAS EfficiencyOne ("E1") is the Franchise Holder in accordance with the *Public Utilities Act*;

AND WHEREAS EfficiencyOne has filed an application with the Nova Scotia Utility and Review Board, in accordance with the provisions of the *Public Utilities Act*, for the approval of a Supply Agreement with Nova Scotia Power Inc. ("NS Power") for the supply of electricity efficiency and resource conservation activities for the years 2020 through 2022 ("Supply Agreement");

AND WHEREAS NS Power is, in accordance with the *Public Utilities Act*, deemed to be a co-applicant with EfficiencyOne in the application for approval of the 2020 -2022 DSM Resource Plan ("2020-22 DSM Plan") and Supply Agreement;

AND WHEREAS EfficiencyOne and NS Power (together referred to as the "Co-Applicants") have each filed its evidence before the Board;

AND WHEREAS each of the Co-Applicants has served and responded to Information Requests of the other, and each of the Co-Applicants have responded to Information Requests filed by certain of the formal Intervenors in this proceeding;

AND WHEREAS the parties to this Agreement (collectively the "Parties" and individually a "Party") have reached an agreement on certain matters in relation to the approval of the 2020-22 DSM Plan;

AND WHEREAS, based on the record before the Board, the Parties hereby approve the Terms of Consensus attached hereto as Appendix "A". The Parties reserve the right to amend their position based on any further evidence raised in the proceeding before the Board.

NOW THEREFORE the Parties agree as follows:

1) This Consensus Agreement may be executed by the Parties in counterparts, each of which when so executed and delivered shall be deemed to be an original and when taken together shall be deemed to be one and the same instrument. The electronic delivery, including, without limitation, by email or facsimile transmission, of any signed original of this Settlement Agreement shall be the same as the delivery of an original.

Signed and dated effective this 4th day of June 2019.

	EfficiencyOne
Witness	Per:
	Nova Scotia Power Incorporated
Witness	Per:
	Consumer Advocate
Witness	Per:
	Small Business Advocate
Witness	Per:
	Industrial Group
Witness	Per:
	Affordable Energy Coalition
Witness	Per:
	Ecology Action Centre
Witness	Per:

2870094

Signed and dated effective this 4th day of June 2019.

	EfficiencyOne
Witness	Per:
	Nova Scotia Power Incorporated
Witness	Per: BRIAN C. CURRY Sr. Regulatory Counsel
	Consumer Advocate
Witness	Per:
	Small Business Advocate
Witness	Per:
	Industrial Group
Witness	Per:
	Affordable Energy Coalition
Witness	Per:
	Ecology Action Centre
Witness	Per:

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Affordable Energy Coalition

Witness | Per:

Ecology Action Centre

Witness | Per:

Kwilmu'kw Maw-klusuaqn Negotiation Office and Assembly of Nova Scotia Mi'kmaq Chiefs

Witness | Per:

Berwick Electric Commission

Witness | Per:

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Kwilmu'kw Maw-klusuaqn Negotiation Office and Assembly of Nova Scotia Mi'kmaq Chiefs

Witness	Per:

Berwick Electric Commission

Witness	Per: R. E. Dimmick FOR MEUNSC

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APPENDIX "A"

1. The total DSM budget for the 2020-2022 DSM Supply Agreement will be $110 million. The $110 million is based on current DSM funding levels of $34.05 million per year plus the accumulated underspend from 2016-2018 DSM Supply Agreement of $7,508,216 inclusive of interest as of June 3, 2019. Future accumulated interest on the underspend from the 2016-2018 DSM Supply Agreement will be segregated and allocated to the 2020-2022 DSM Plan. The 2020-2022 DSM Plan investment, energy savings and demand savings levels shall be set as follows:

Year	Investment ($ million)	First-Year Energy Savings (GWh)	Peak Demand Savings (MW)
2020	34.4	119.2	30.9
2021	36.5	121.5	32.6
2022	39.1	127.1	34.8
Total	**110**	**367.8**	**98.3**

2. The amount of DSM allocated for First Nations and Low Income in the final 2020-2022 DSM Plan will remain at the level set out in E1's proposed Preferred Plan (as outlined in E1's Application filed February 28, 2019) throughout the 2020-2022 DSM Supply Agreement period.

3. Subject to adjustment for First Nation and Low Income funding (for both the investment and energy savings), the remainder of the 2020-2022 DSM Plan shall be delivered in accordance with the Alternate scenario filed by E1 in E1's Application dated February 28, 2019. To the extent possible, and within budget constraints, E1 will focus on establishing and implementing demand response initiatives through engagement with NS Power.

4. E1 withdraws its request for approval to implement lifetime energy savings (LES) as a new performance target of the 2020-2022 Supply Agreement and will refer it to the DSMAG for further discussion and consideration.

5. The Parties support, in principle, DSM funding being expensed through the FAM at the time of the next General Rate Application subject to UARB approval. NS Power agrees to support adoption of this methodology in a manner that does not result in additional material regulatory burden being imposed on E1.

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6. The HST Refund, together with any interest, will be returned by E1 to NS Power and refunded to customers through the FAM, subject to UARB approval. The amount of the HST Refund as of June 3, 2019 is $ $15,277,651.23, inclusive of interest.

7. The existing DSMAG will develop revised terms of reference that will enhance the development of future DSM Plan applications. The revised terms will focus on a collaborative and facilitated process with representation of the UARB, intended to keep stakeholders engaged on key DSM issues and development of future DSM Plans.
    a. Development of a calendar and framework process which will include developing:
        i. Process/methodology for updating avoided costs;
        ii. Timeline for the development and stakeholder consideration of DSM Plan scenarios prior to submission to the UARB;
        iii. Adoption of a recommended format for joint filing of DSM applications consistent with existing legislation;
        iv. Agreed criteria to determine DSM program affordability; and
        v. Information sharing protocols.
    b. Confirmation that long-term DSM planning levels will be reassessed during each IRP.
    c. Consideration of whether a process to evaluate the DSM Evaluation Reports and DSM Verification Reports separate from the DSM Resource Plan process is required and if so the nature of that process.
    d. Discussion on payback periods when setting incentives.
    e. Other issues as determined by the DSMAG.

    In the event DSMAG agreement on final revised terms of reference cannot be achieved by June 30, 2020, the finalization of the revised terms of reference shall be referred to the UARB for determination.

8. The existing HomeWarming program funded through a charitable contribution by NS Power, shall hereinafter be operated and administered by E1 for a 3 year term (2020 - 2022) commencing January 1, 2020. Terms of reference regarding operation and reporting of results shall be agreed to between E1 and NS Power and codified in an agreement to be executed between NS Power and E1. E1 will take reasonable steps to ensure the existing Home-Warming delivery model utilizing the Clean Foundation remains in place for the 2020 – 2022 DSM Plan years.

9. The Parties do not oppose the Econoler Evaluation Report for the 2018 DSM year or the E1 response to the recommendations set out therein.

10. The Parties do not oppose the Verification Report for the 2018 DSM year or the E1 response to the recommendations set out therein.

11. The Parties do not oppose the 2016-2018 verification and evaluation recommendations as filed by E1 in the 2019 Annual Progress Report.

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12. El and NS Power agree not file rebuttal evidence in this proceeding but specifically reserve all rights to challenge any evidence that has been filed in this Proceeding in any future proceedings.

13. This Agreement is without prejudice to the rights of any Party or the position any Party may take on these issues in future proceedings, including arguments based on the evidence filed in this proceeding.

END

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APPENDIX B

M09096

IN THE MATTER OF: THE PUBLIC UTILITIES ACT

and-

IN THE MATTER OF: An application by EfficiencyOne for Approval of a Supply Agreement for Electricity Efficiency and Conservation Activities between EfficiencyOne and Nova Scotia Power Inc., the establishment of a final agreement between the parties, and approval of a 2020-2022 Demand Side Management ("DSM") Resource Plan

SETTLEMENT AGREEMENT

WHEREAS EfficiencyOne ("EI") is the Franchise Holder in accordance with the *Public Utilities Act;*

AND WHEREAS EfficiencyOne has filed an application with the Nova Scotia Utility and Review Board, in accordance with the provisions of the *Public Utilities Act,* for the approval of a Supply Agreement with Nova Scotia Power Inc. ("NS Power") for the supply of electricity efficiency and resource conservation activities for the years 2020 through 2022 ("Supply Agreement");

AND WHEREAS NS Power is, in accordance with the *Public Utilities Act,* deemed to be a co-applicant with EfficiencyOne in the application for approval of the 2020 -2022 DSM Resource Plan ("2020-22 DSM Plan") and Supply Agreement;

AND WHEREAS EfficiencyOne and NS Power (together referred to as the "Co-Applicants") have each filed its evidence before the Board;

AND WHEREAS Heritage Gas Limited has filed as an Intervenor in this proceeding;

AND WHEREAS each of the Co-Applicants has served and responded to Information Requests of the other, and EI has responded to Information Requests filed by certain of the formal Intervenors in this proceeding, including Heritage Gas Limited;

AND WHEREAS EI and Heritage Gas Limited (the "Parties") have reached an agreement on certain matters in relation to the disposition of matters raised by Heritage Gas Limited as issues in this proceeding;

AND WHEREAS, based on the record before the Board, the Parties each hereby approve the Settlement Terms attached hereto as Appendix "A". The Parties reserve their right to amend their position based on any further evidence raised in the proceeding before the Board.

NOW THEREFORE the Parties agree as follows:

1) This Settlement Agreement may be executed by the Parties in counterparts, each of which when so executed and delivered shall be deemed to be an original and when taken together shall be deemed to be one and the same instrument. The electronic delivery, including, without limitation, by email or facsimile transmission, of any signed original of this Settlement Agreement shall be the same as the delivery of an original.

APPENDIX "A"

1. EfficiencyOne (EI) and Heritage Gas (HG) will engage in a collaborative study/review, at the cost of E1, of the program design and operation of the Custom Incentive Program related to VRF electric heat pump measures in Multi Unit Residential Buildings (MURB's) ("Study Measures") in areas where natural gas is available (the "Study").
2. EI and HG agree to jointly develop the terms of reference of the Study in accordance with this Settlement Agreement.
3. The Study will be completed within the following time frame:

a. Completed Terms of Reference	June 30, 2019;
b. Completion of Study	September 30, 2019;
c. Evaluation and review	October 15, 2019

4. During the period of the Study, and the subsequent evaluation and review period, and, if required, review and determination by the Nova Scotia Utility and Review Board (the "NSUARB"), EI will not enter into any further financial incentive commitments related to the Study Measures.
5. During the period of the Study, and the subsequent evaluation and review period, and, if required, review and determination by the NSUARB, EI shall be permitted to carry on with general advertising and promotion related to the Custom Incentive Program and the Study Measures; however, EI will refrain from actively or directly soliciting new program participants related to the Study Measures.
6. Existing documented commitments under the Custom Incentive Program for the Study Measures will not be subject to any restrictions through this Settlement Agreement.
7. Following return and evaluation of the Study, EI and HG will collaboratively incorporate agreed recommended changes of the Study, if any, into the existing Custom Incentive Program and advise the NSUARB. In the event EI and HG cannot reach agreement regarding the implementation of the Study findings, or the terms of reference for the Study, EI and HG each shall have the right to refer the matter to the NSUARB for final determination.

END

Signed and dated effective this 6th day of June 2019.

	EfficiencyOne
Witness	Per:
	Heritage Gas Limited
Witness	Per:
	DEREK ESTABROOK