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August 8, 2025

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Our Matter Number: 1268459

Sent by Email

Nova Scotia Energy Board
3rd Floor, 1601 Lower Water Street
Halifax, Nova Scotia B3J 3P6

Attention: Crystal Henwood, Clerk of the Board

Dear Ms. Henwood:

M12273 – Inquiry of the Nova Scotia Energy Board (the Board) into Cybersecurity Incident of Nova Scotia Power (NS Power)

Title: Application for Procedural Order and Request for Confidentiality

1. NS Power respectfully requests that the Board: (a) issue a procedural order regarding the process to be applied in the Board's inquiry into the ransomware attack on NS Power (the **Inquiry**); and (b) rule that NS Power's confidential submissions in support of this application (the **Confidential Submissions**), delivered to the Board under separate cover, be held in confidence by the Board and made available for review only by (i) the panel members involved in the Inquiry; (ii) the Clerk of the Board; and (iii) Board counsel.
2. This application letter (excluding the Confidential Submissions) may be placed on the public record in accordance with Rule 12(1) of the *Board Regulatory Rules*.

A. Background Facts

3. The Inquiry relates to the ransomware attack on NS Power in 2025. Given the highly sensitive nature of information related to the incident, further background facts are outlined in the Confidential Submissions.

B. Procedural Order Sought

4. Pursuant to Rules 5(2) and 5(3) of the *Board Regulatory Rules*, NS Power respectfully requests that the Board issue procedural orders that:

- a. dispense with the *Board Regulatory Rules*; and
- b. adopt a procedure akin to the standards applied by federal and provincial privacy regulatory authorities and internationally (as detailed below).

5. NS Power seeks these orders to facilitate a collaborative and cooperative process and to ensure that the Board receives all information required to resolve the Inquiry.

a. *Dispensing with the Board Regulatory Rules*

6. Pursuant to Rule 5(2) of the *Board Regulatory Rules*, the Board “may dispense with, amend, vary or supplement, with or without a hearing, all or part of [the *Board Regulatory Rules*] at any time by making a procedural order, if it is satisfied that the special circumstances of the application so require, or it is in the public interest to do so.”

7. The special circumstances and public interest considerations that warrant dispensing with the *Board Regulatory Rules* are detailed in the Confidential Submissions.

b. *Procedures to Govern the Inquiry*

8. Pursuant to Rule 5(3) of the *Board Regulatory Rules*, the Board “may make directions on procedure and procedural orders which shall govern the conduct of a specific application.”

9. As the Inquiry relates to cybersecurity, the Board’s procedures should reflect the standards of privacy regulators in Canada and internationally. Privacy regulators are

accustomed to inquiring into cybersecurity incidents in a procedurally fair manner that is sensitive to the unique context while also ensuring that the public is properly informed.

10. Privacy investigations generally have the following features:

- a. The parties to the investigation are the regulator, the subject company and the individual(s) who raise a complaint with the regulatory authority. The process is inquisitorial and cooperative and, as a matter of public policy, specifically designed to facilitate close collaboration between the regulator and company. The process is not adversarial. That is, multiple parties do not present contending “cases” to the regulator seeking a determination. Rather, one or more individuals make a complaint to the regulator, and the regulator thereafter initiates a confidential investigative process.
- b. During the investigation, everything exchanged between the regulator and the company is maintained on a strictly confidential basis by the regulator until the regulator publishes a report at the end of the process. At the conclusion of its investigation, the regulator’s report informs the complainant(s) and the public what occurred, how the company responded, the steps the company has taken to prevent a recurrence of the incident, and the steps taken to reduce potential harm to impacted individuals. The company is given an opportunity to comment on the report (in draft) before publication, to ensure accuracy of facts, comment on factual and legal findings, and to address confidentiality concerns of the company.
- c. Privacy regulators do not allow complainants or intervenors to participate in the inquiry process. Complainants and intervenors are not granted access to the investigative record, are not permitted to review submissions, and do not engage in questioning or other aspects of the investigation. There are circumstances where non-parties with a relevant interest may, at the

regulator’s discretion, be asked to provide information or respond to the regulator’s questions, but such “interested persons” are similarly never granted access to the investigative record or permitted to review submissions. Allowing complainants, intervenors or other “interested parties” to participate would shift the process toward an adversarial model, contrary to the cooperative and non-adversarial approach that underpins the public policy objectives of privacy investigations.¹

11. NS Power is committed to working with the Board to provide fulsome and detailed information, and this objective is best achieved by following the best practices of privacy regulators as summarized above.

c. Specific Terms of Procedural Order

12. Consistent with the procedures applicable in privacy regulatory proceedings, NS Power proposes that the following be incorporated into the requested procedural order:

- a. The parties to the Inquiry will be NS Power and the Board.
- b. By October 31, 2025,² NS Power will provide to the Board a report regarding the cybersecurity incident containing the information outlined in the Board’s letter of July 14, 2025 (the **Report**), subject to any extensions that NS Power may request and the Board may provide.

¹ See, for example, the investigation procedures followed by the *Office of the Privacy Commissioner of Canada* (as well as the provincial privacy authorities in Quebec, Alberta and British Columbia, which follow a substantially similar procedure). Data protection authorities in Europe and other jurisdictions similarly conduct their investigations on a strictly confidential basis and otherwise aligned with the other procedural safeguards outlined above.

² This is two (2) months ahead of the end-of-year deadline for the Report that the Board request in the letter dated July 14, 2025.

- c. NS Power may consolidate with the Report its responses to the Board's Information Requests issued July 24, 2025 (**IRs**). Should NS Power elect to consolidate the IR responses with the Report, the deadline for delivery of the IRs shall be suspended until such time as the Report is due to be delivered to the Board.
- d. NS Power may designate submissions to the Board in connection with the Inquiry as "Board Confidential", including the Report, responses to the IRs, responses to queries from MNP Digital, monthly progress reports, and any oral submissions made by NS Power. Submissions designated as "Board Confidential" will be held in confidence by the Board and reviewed only by panel members involved in the Inquiry, the Clerk of the Board, and Board counsel. Submissions designated as "Board Confidential" will not be posted publicly nor made accessible to any other parties.
- e. To the extent that the Board intends to release a report on the incident, NS Power should have a reasonable opportunity to review and provide comments on draft reports. Consistent with the practices of privacy regulators, NS Power should have an opportunity to make representations with respect to factual accuracy, the confidentiality of any commercial information, and the Board's legal conclusions.

13. NS Power also respectfully requests that the Board specify the statutory provisions under which the Board is conducting the Inquiry, and the nature of the Board's concerns that it seeks to address in the Inquiry. This will help contextualize the Board's requests and ensure that NS Power understands the issues before the Board. NS Power's objective is to ensure it fully addresses the Board's concerns through this process.

14. These procedures would facilitate a collaborative and cooperative process and ensure that the Board receives all information needed for the Inquiry. NS Power remains committed to working with the Board to support the Board's important work on this matter.

C. Request for Confidentiality

15. Pursuant to Rule 12(2) of the *Board Regulatory Rules*, NS Power requests that the Confidential Submissions be held in confidence by the Board and be reviewed only to panel members involved in the Inquiry, the Clerk of the Board, and Board counsel.

16. The Confidential Submissions explain why information about the cybersecurity incident and NS Power's response cannot be made public. The nature and extent of the specific harm of public disclosure is detailed in the Confidential Submissions. Further details of the risks cannot be made public without jeopardizing the need for confidentiality.

17. An abridged version of the Confidential Submissions cannot be filed on the public record. NS Power has included in the Confidential Submissions additional information which, if disclosed, would harm the public interest. All other grounds for NS Power's application have been included within this application letter, which will be filed on the public record.

Sincerely,



Adam Kardash
Partner and Co-Chair, Privacy and Data Management

c. W. David Rankin, *Osler*
Judith Ferguson, Executive Vice President, Regulatory, Legal, and Government
Relations, *Nova Scotia Power*