Nova Scotia Energy Board

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

Mailing Address
PO Box 1692, Unit M
Halifax, Nova Scotia B3J 3S3

TEL 902-424-1332
FAX 902-424-3919
TF 1-833-809-0040

board@novascotia.ca
nserbt.ca/nseb

August 12, 2025

akardash@osler.com

Adam Kardash, Partner & Co-Chair
Privacy and Data Management
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Dear Mr. Kardash:

M12273 – Board Inquiry into Nova Scotia Power's Cybersecurity Incident

This is further to your public and "Board Confidential" letters sent to the Nova Scotia Energy Board on August 8, 2025. The Board panel considering this matter is Stephen T. McGrath, K.C., Chair, Roland A. Deveau, K.C., Vice Chair, and Richard J. Melanson, LL.B, Member.

The Board is not a privacy regulator. This proceeding is about the conduct of a publicly regulated utility, the prudency of its actions and investments in cybersecurity generally and in relation to the recent breach, the impact of the breach on its infrastructure and systems, the provision of services to its customers, the reasonableness of its collection, use, handling and retention of customer information when providing service, and the release of sensitive information involving hundreds of thousands of Nova Scotians.

As your client is aware, the Board has broad authority to investigate matters under the *Public Utilities Act*, RSNS, c. 380. The Board has the general supervision of all public utilities and may make all necessary examinations and inquiries about a utility's compliance with the law and has the right to obtain all information necessary to enable it to fulfill its duties (s. 18). The Board may investigate any public utility when it believes "that an investigation of any matter relating to any public utility should for any reason be made" (s. 19). The Board may also inquire into any neglect or violation of the laws or regulations in force in Nova Scotia by any public utility. The Board has the authority to investigate whether any practice or act whatsoever affecting or relating to the operation of any public utility is in any respect unreasonable or insufficient (s. 83). The Board and each member also have all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act* (*Energy and Regulatory Boards Act*, SNS 2024, c. 2, Sch. A, s. 24).

More specifically, the Board may allow or disallow the recovery of costs by a public utility from its customers. NS Power has incurred capital and operating costs for the protection of its information and assets from cyber threats. The recent incident raises reasonable questions about whether: (1) costs charged to ratepayers by NS Power for cybersecurity have been appropriately invested; and, (2) whether NS Power has appropriately invested enough in cyber protection (and, if not, whether it has incurred or will incur expenses as a result that could be considered to have resulted from imprudence).

Moreover, your client has a broadly stated mandate "to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable" (s. 52). The recent event raises legitimate questions about NS Power's prudent investment in safety and the adequacy of its cybersecurity systems. Although the recent incident appears to have only affected NS Power's information technology systems, questions about the effectiveness of its operational technology protections also reasonably arise from the incident. Additionally, the incident raises questions about the reasonableness of NS Power's practices relating to the collection, use, handling and retention of information, and whether these practices may have put those who receive service from the utility at a greater and unnecessary risk of harm from a cyber incident.

Given the foregoing, the relevance of procedures used by privacy regulators is unclear. The Board has concerns about the specific terms of your proposed procedural order that include but are not limited to:

- The Board is NS Power's regulator. It is not a party to the inquiry. Several parties have already intervened in this proceeding. The relevant issue is the extent to which they should have access to information of varying degrees of confidentiality and sensitivity. Subject to appropriate confidentiality for sensitive information, the Board applies the "open courts" principle in its proceedings, which has been recognized by the Supreme Court of Canada in many cases leading to and including *Sherman Estate v Donovan*, 2021 SCC 25. This was canvassed extensively in *New Palace Cabaret Ltd. (Re)*, 2024 NSUARB 57 (Matter M11181).

- The deadline for providing responses to Board Staff information requests issued on July 24, 2025, will not be suspended to coincide with the filing of the report that NS Power must file with the Board. As noted by the Board in its letter dated July 14, 2025, these information requests relate to frequently asked questions and concerns from customers. The Board expects the responses to be provided in a format that will allow them to be put on the public record in this proceeding and available to customers who may be seeking another source of answers to the questions that many of them are asking.

- The Board appreciates that some of the information likely to be received in this matter will be quite sensitive and may even warrant that it only be provided to the Board and no other parties in the proceeding. However, it appears that NS Power believes it is entitled to unilaterally designate information it may file as "Board Confidential" and expects that this claimed status will be accepted without review or question.

- As the regulator, the Board must be able to access appropriate internal and external resources and individuals to perform this function. As a regulated entity, it is not for NS Power to dictate the specific individuals at the Board, or on its behalf, who may be entitled to access information. As framed in your letter, the restrictions NS Power seeks to impose would preclude the Board from reviewing issues with, among others, technical and professional advisors (aside from Board Counsel). This is not acceptable or appropriate. The Board will, taking into account the potentially sensitive nature of the information, access its internal resources and external advisors as it deems appropriate and as contemplated under s. 15 of the *Energy and Regulatory Boards Act*, SNS 2024, c. 2, Schedule A.

- It may be appropriate for NS Power to review some filings in this proceeding for confidentiality, such as evidence filed by the parties (including Board Counsel consultants). The need for this may depend on the nature of the information these parties are able to access. However, findings and directions made by the Board in this proceeding would not fall into this category. The Board strives to issue decisions that provide meaningful information to the parties and the public, while avoiding references to confidential information. If the Board elects to have NS Power review documents of this nature in advance of a public release, this would only be for confidentiality and not for any other reason, including representations relating to factual accuracy and the Board's legal conclusions.

Notwithstanding the foregoing, the Board would appreciate further information about the procedures referenced in paragraph 4(b) and footnote 1 of your letter, including copies of these procedures (or directions to where they may be viewed online). Additionally, the parts of these procedures that relate specifically to investigations of public utilities, the security of critical information and infrastructure, and the release of information involving hundreds of thousands of customers must be specifically highlighted.

To repeat what the Board said in its letter to the utility on July 14, 2025, the Board appreciates it will not be possible to publicly disclose some information in this proceeding for security reasons and to mitigate impacts relating to personal and confidential information that was stolen. However, the Board emphasized that it was important that this proceeding be conducted as publicly and transparently as possible.

The "Board Confidential" letter that you sent on August 8, 2025, does not sufficiently recognize that the Board's regulatory processes are based on the "open courts" principle and does not reflect the Board's requirement that this process be conducted as publicly and transparently as possible. In particular, it is not clear to the Board why much, if any, of your nine paragraph "Board Confidential" letter could not have been publicly disclosed, let alone disclosed to intervenors and provided under a confidentiality undertaking under the Board's normal processes. Much of the information appears to have already been publicly disclosed, is broad or general in nature, or simply states a position rather than disclose anything that appears particularly sensitive. The Board therefore requires that detailed and specific submissions be provided for each and every paragraph of the "Board Confidential" letter justifying why what is stated in each paragraph must be maintained confidentially.

The additional information requested in this letter must be filed by **Wednesday, August 20, 2025**. Except where necessary to maintain confidentiality, this additional information must be publicly filed. If confidentiality is claimed, each instance where it is claimed must be fully justified so the basis for each claim can be fully understood and separately considered. The justification must address not only the basis for the claim, but also why the information cannot be disclosed to intervenors under a confidentiality undertaking or with other protections.

Yours very truly,

Crystal Henwood

Crystal Henwood
Clerk of the Board

c. William L. Mahody, K.C., Board Counsel
Parties