M12282

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF: *The Public Utilities Act*, RSNS 1989, c 380, as amended

– and –

IN THE MATTER OF: An Application by EfficiencyOne for Approval of a New Benefit-Cost Analysis Test for Evaluating Demand-side Management ("DSM") Plans

CLOSING STATEMENT OF EAST COAST ENVIRONMENTAL LAW

Thank you for the opportunity to submit this closing statement by East Coast Environmental Law ("ECEL").

As described in our Notice of Intervention, ECEL's primary interest in this proceeding is the application of the Board's legislated responsibility to "give appropriate consideration" to how EfficiencyOne's proposed new Benefit-Cost Analysis ("BCA") test for evaluating demand-side management ("DSM") plans would "support sustainable development and sustainable prosperity".[1] In our view, the Legislature's conferral of this responsibility through the *Energy Reform (2024) Act* reflects a legislative intention to transform the landscape of energy regulation in Nova Scotia and equip the Nova Scotia Energy Board ("Board") to support the achievement of Nova Scotia's clean energy and climate change mitigation goals.

ECEL is a party to the partial Consensus Agreement filed by EfficiencyOne in this proceeding (Exhibit E-32), and we support EfficiencyOne's proposed new BCA test as amended by the contents of that Agreement. We are especially supportive of the proposed inclusion of avoided social costs of carbon among non-utility system benefits, because we believe that taking social costs of carbon into account when evaluating DSM plans would help to show the true value of DSM initiatives in Nova Scotia.

This closing statement addresses two issues that must inform the Board's consideration of this application by EfficiencyOne: the definitions of "sustainable development" and "sustainable prosperity" under the *Energy and Regulatory Boards Act*, and the Board's jurisdiction to take non-energy impacts into account in cost-effectiveness testing for DSM plans.

The Definitions of "Sustainable Development" and "Sustainable Prosperity" under the *Energy and Regulatory Boards Act*

The first issue concerns the definitions of "sustainable development" and "sustainable prosperity" under the *Energy and Regulatory Boards Act*.

[1] *Energy and Regulatory Boards Act*, SNS 2024, c 2, cl 6(2)(d) ["*Energy and Regulatory Boards Act*"].

The Board's responsibility to consider sustainable development and sustainable prosperity under the *Energy and Regulatory Boards Act* is set out in clause 6(2)(d), which states:

> In approving or fixing rates, tolls, charges, tariffs, capital applications and all other matters over which the Energy Board has authority, the Board shall give appropriate consideration to the extent to which such rates, tolls, charges, tariffs, capital applications or other matters
>
> […]
>
> (d) support sustainable development and sustainable prosperity;
>
> […]
>
> with the goal of approving rates, tolls, charges, tariffs, capital applications or other matters that are consistent with the purpose of this Act, the *More Access to Energy Act* and the regulations.[2]

Notably, the terms "sustainable development" and "sustainable prosperity" are not defined within the *Energy and Regulatory Boards Act*, which means that the Board must decide how to interpret them in order to fulfil the responsibility conferred by clause 6(2)(d).

The *Energy and Regulatory Boards Act* was established by the *Energy Reform (2024) Act*, which also established the *More Access to Energy Act* and made consequential amendments to several existing statutes, including the *Public Utilities Act* and the *Gas Distribution Act*.[3] Through the *Energy Reform (2024) Act*, the Board received new responsibilities to consider sustainable development and sustainable prosperity under the *Energy and Regulatory Boards Act* and the *Gas Distribution Act*.[4] Additionally, the purposes of supporting sustainable development, sustainable prosperity, energy efficiency, and greenhouse gas emissions reductions were included within the purpose section of the *More Access to Energy Act*, which deals primarily with the role and responsibilities of Nova Scotia's new Independent Energy System Operator ("IESO").[5]

Within both the *Gas Distribution Act* and the *More Access to Energy Act*, "sustainable development" is defined as having the same meaning as in the *Environment Act*, and "sustainable prosperity" is defined as having the same meaning as in the *Environmental Goals and Climate Change Reduction Act*.[6] These same definitions are not provided in the *Energy and Regulatory Boards Act*.

For reference, under the *Environment Act*, "sustainable development" is defined as meaning "development that meets the needs of the present generation without compromising the ability of

---

[2] *Ibid*.
[3] *Energy Reform (2024) Act*, SNS 2024, c 2.
[4] *Energy and Regulatory Boards Act*, *supra* note 1 at cl 6(2)(d); *Gas Distribution Act*, SNS 1997, c 4, ss 22(3A)(c) and 30A(4)(b) ["*Gas Distribution Act*"].
[5] *More Access to Energy Act*, SNS 2024, c 2, s 2 ["*More Access to Energy Act*"].
[6] *Gas Distribution Act*, *supra* note 4 at cl 3(1)(g) and 3(1)(h); *More Access to Energy Act*, *supra* note 5 at s 3.

future generations to meet their own needs".[7] Under the *Environmental Goals and Climate Change Reduction Act*, "sustainable prosperity" is defined as meaning "prosperity where economic growth, environmental stewardship and social responsibility are integrated and recognized as being interconnected".[8] In the *Environment Act*, several "principles of sustainable development" are listed within the Act's purpose section,[9] and those principles may assist the Board in applying the Act's definition of "sustainable development" in practice. Likewise, the Government of Nova Scotia's vision of sustainable prosperity may be contextualized in practice with reference to the goals and targets that the Legislature enshrined within the *Environmental Goals and Climate Change Reduction Act* to support the achievement of sustainable prosperity.

We can only speculate as to why "sustainable development" and "sustainable prosperity" are not defined in the *Energy and Regulatory Boards Act* as they are in the *Gas Distribution Act* and the *More Access to Energy Act*: the absent definitions may have been a legislative oversight. In the interests of regulatory consistency, we submit that the Board should interpret "sustainable development" and "sustainable prosperity" under the *Energy and Regulatory Boards Act* in accordance with the definitions provided in the *Gas Distribution Act* and the *More Access to Energy Act*. In other words, "sustainable development" should be interpreted under the *Energy and Regulatory Boards Act* as having the same meaning as in the *Environment Act*, and "sustainable prosperity" should be interpreted under the *Energy and Regulatory Boards Act* as having the same meaning as in the *Environmental Goals and Climate Change Reduction Act*.

The Board's Jurisdiction to Take Non-energy Impacts into Account in Cost-effectiveness Testing for Demand-side Management Plans

The second issue concerns the Board's jurisdiction to take non-energy impacts into account in cost-effectiveness testing for DSM plans.

In *EfficiencyOne (Re)*, 2020 NSUARB 56 ("*EfficiencyOne (Re)*"), the Nova Scotia Utility and Review Board ("UARB") determined that it did not have jurisdiction consider non-energy impacts in cost-effectiveness testing for DSM plans.[10] That determination informed EfficiencyOne's application in this proceeding, which is premised in part on an argument that changes introduced by the *Energy Reform (2024) Act* empowered the Board to consider non-energy benefits in cost-effectiveness testing for DSM management plans.

For the reasons expressed below, ECEL agrees with EfficiencyOne that the *Energy Reform (2024) Act* empowered the Board to consider non-energy benefits in cost-effectiveness testing for DSM plans.

In *EfficiencyOne (Re)*, the UARB's analysis of its jurisdiction focused primarily on its authority and responsibilities under section 79 of the *Public Utilities Act*.[11] The UARB's analysis was also informed by its articulation of its "principle responsibility in regulating utilities", which, as

---

[7] *Environment Act*, SNS 1994-95, c 1, s 3(aw).
[8] *Environmental Goals and Climate Change Reduction Act*, SNS 2021, c 20, s 2(l).
[9] *Environment Act*, *supra* note 7 at cl 2(b)(i)-(vii).
[10] *EfficiencyOne (Re)*, 2020 NSUARB 56, paras 4 and 49 ["*EfficiencyOne (Re)*"].
[11] See in particular *ibid* at paras 24-26.

expressed, was to ensure "safe and adequate service", "just and reasonable rates", and "lowest long-term cost".[12] The UARB also espoused "an over-arching public interest mandate in everything it does".[13]

Although EfficiencyOne had argued that the Legislature had signalled its "intention for the Board to account for a broader environmental context when considering the best interests of customers under the *Public Utilities Act*",[14] the UARB did not agree: it found nothing in the *Public Utilities Act*, as it existed at the time, that conferred "an environmental mandate or jurisdiction",[15] and it likewise found no such mandate or jurisdiction in other applicable laws.

In our view, changes introduced by the *Energy Reform (2024) Act* give the Board an environmental mandate and jurisdiction that the UARB did not hold in 2020 when *EfficiencyOne (Re)* was decided. Those changes did not replace or negate the requirements of section 79 of the *Public Utilities Act*: instead, they added to the Board's regulatory authority and responsibilities, expanding a complex nexus of statutory provisions that shape the Board's role as Nova Scotia's energy regulator.

As noted above, the *Energy Reform (2024) Act* gave the Board new responsibilities to consider sustainable development and sustainable prosperity when exercising its regulatory authority.[16]

Another notable change is the new, broad conferral of regulatory discretion under subsection 6(1) of the *Energy and Regulatory Boards Act*:

> 6(1) In approving or fixing just and reasonable rates, tolls, charges or tariffs pursuant to this Act or any other enactment, <u>the Energy Board may adopt any method or technique that it considers appropriate</u>, including an alternative form of energy regulation.[17] [emphasis added]

Notably, before the changes introduced by the *Energy Reform (2024) Act*, EfficiencyOne's role as DSM provider under the *Public Utilities Act* was defined primarily in relation to Nova Scotia Power Incorporated ("NSPI"). As the DSM franchise holder, EfficiencyOne's role was to support the fulfillment of NSPI's legislated responsibility to "undertake cost-effective demand-side management that is reasonably available in an effort to reduce costs for its customers".[18] Through the changes introduced by the *Energy Reform (2024) Act*, the *Public Utilities Act* now gives EfficiencyOne responsibilities to the IESO as well as to NSPI:

> 79W (1) The franchise holder shall co-operate with the IESO in the IESO's pursuit of its duties under the *More Access to Energy Act*, including but not limited to the IESO's duty to conduct integrated resource planning exercises.

---

[12] *Ibid* at paras 32-33.
[13] *Ibid* at para 34.
[14] *Ibid* at para 36.
[15] *Ibid* at para 38.
[16] *Energy and Regulatory Boards Act*, *supra* note 1 at cl 6(2)(d); *Gas Distribution Act*, SNS 1997, c 4, ss 22(3A)(c) and 30A(4)(b) ["*Gas Distribution Act*"].
[17] *Energy and Regulatory Boards Act*, *supra* note 1 at subsection 6(1).
[18] *Public Utilities Act*, RSNS 1989, c 380, s 79I(1).

> (2) The franchise holder shall co-operate with the IESO respecting the integrated resource planning process to
>
> > (a) develop avoided cost calculations for demand-side management resources; and
> >
> > (b) identify the maximum amount of cost-effective demand-side management reasonably available.[19]

The IESO's exercise of its duties under the *More Access to Energy Act* should be informed by the Act's stated purposes of supporting "the sustainable development, sustainable prosperity, energy efficiency and greenhouse gas emissions reduction goals of the Province articulated in the *Environmental Goals and Climate Change Reduction Act*".[20] Arguably, these purposes must now also inform EfficiencyOne's work to identify how much cost-effective DSM is reasonably available within the province, so that EfficiencyOne's statutorily-required cooperation with the IESO accords with the purposes of the *More Access to Energy Act*. Correspondingly, we would argue that the Board's authority and jurisdiction in respect of EfficiencyOne are now contextualized by the purposes of the *More Access to Energy Act*, insofar as those purposes inform EfficiencyOne's obligations to support integrated resource planning and other duties of the IESO.

Together, the three notable changes discussed above illustrate that the Board's authority and jurisdiction in respect of EfficiencyOne are now contextualized by a nexus of statutory provisions spanning the *Energy and Regulatory Boards Act*, the *Public Utilities Act*, and the *More Access to Energy Act*. The Board's mandate as Nova Scotia's energy regulator has always been complex, but the *Energy Reform (2024) Act* made it even more so by empowering the Board to regulate creatively, beyond the confines of traditional regulatory practices, to support the achievement of Nova Scotia's environmental policies and goals.

The legislative intention behind the *Energy Reform (2024) Act* can and should inform the Board's consideration of whether the *Energy and Regulatory Boards Act* and the *Public Utilities Act* empower the Board to consider non-energy benefits in cost-effectiveness testing for DSM plans.[21] To this end, several statements from the Honourable Tory Rushton, Minister of Natural Resources (as he then was), during the Second Reading debate on Bill 404 – Energy Reform (2024) Act are noteworthy:

> I think Bill No. 404 is one for the history books. It has taken a big leap to modernize our electricity system, changing how it is structured and regulated. For the first time, it ties

---

[19] *Ibid* at s 79W.

[20] *More Access to Energy Act*, *supra* note 5 at s 2(e).

[21] See *EfficiencyOne (Re)*, *supra* note 7 at para 30, in which the UARB recognized and applied the "modern contextual approach" to statutory interpretation that the Supreme Court of Canada has endorsed for more than twenty years. That approach directs that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament"—or, in this case, the provincial Legislature. As the UARB recognized in *EfficiencyOne (Re)*, at para 31, the Nova Scotia Court of Appeal has typically asked three questions when applying the modern contextual approach described above: "What is the meaning of the legislative text?"; "What did the Legislature intend?"; and, "What are the consequences of adopting a proposed interpretation?".

> those changes to the climate change goals to regulation and the energy sector. This is a bold change to make our ratepayers have clean, reliable, and affordable energy.[22]
>
> I want to thank the Clean Electricity Solutions Task Force for helping us get here. We asked them to give us recommendations to help modernize our system and to make sure it has the capacity we need to reach our climate change goals. This legislation is based on their first and largest recommendation.[23]
>
> […]
>
> I want to be very clear that we do have full confidence in the UARB, but its mandate is broad and we listened to them. We want to bring more focus and expertise to the regulation of the energy sector through one dedicated board. Further, we're giving the Energy Board a mandate to consider climate change goals in their decision-making. That is a first, and it's a requirement that we are hard-baking into this legislation.[24]
>
> […]
>
> This legislation sets us up for transformational change – and our province needs it. It creates more opportunities for clean, reliable energy. It creates transparency and accountability. It helps us reach our climate change goals. It encourages competition to help us protect ratepayers with the lowest-cost power possible.
>
> This is an important, historic and legislative change. It will help secure a bright, sustainable future for all Nova Scotians.[25]
>
> […]
>
> [T]he energy board now will have the opportunity to look at any application under the lens that meets our climate change goals and also on our sustainability goal. It's going to be enshrined with them, that they have to make those decisions in that.[26]

The theme of historical, transformational change runs throughout these comments by Minister Rushton and illustrates that the *Energy Reform (2024) Act* was intended to introduce fundamental changes to energy regulation in Nova Scotia. Inspired in large part by the work of the Clean Electricity Solutions Task Force that Minister Rushton mentions in his comments, the Act reflects clear legislative intentions to empower the Board to move beyond traditional regulatory practices and employ regulatory methods and techniques that will support the achievement of Nova Scotia's environmental policies and goals, including the province's climate change mitigation goals. We agree with EfficiencyOne that the new Board powers and responsibilities

---

[22] Bill 404 – Energy Reform (2024) Act, 2nd Reading, *Nova Scotia House of Assembly Debates and Proceedings 24-95* (29 February 2024) at 7643 (Hon Tory Rushton).
[23] *Ibid*.
[24] *Ibid*.
[25] *Ibid* at 7639.
[26] *Ibid* at 7643.

introduced by the *Energy Reform (2024) Act*—reflecting a clear legislative intention to enable historic, transformative change in energy regulation—confer jurisdiction to take non-energy impacts into account in cost-effectiveness testing for DSM plans.

Conclusion

EfficiencyOne's proposed new BCA test is an important opportunity for the Board to consider how its traditional regulatory practices may need to evolve to give meaning to the Board's new mandate to consider sustainable development and sustainable prosperity in its decision-making. The Board's decision in this proceeding will set a significant precedent for future matters that ask the Board to consider how sustainable development and sustainable prosperity will be supported by proposals from regulated entities.

In our view, by enacting the *Energy Reform (2024) Act*, the Legislature clearly intended to transform energy regulation in Nova Scotia. The Board's new responsibility to consider sustainable development and sustainable prosperity does not override other considerations that inform Board regulation under its governing statutes and regulations, such as the public's interest in affordable energy rates and reliable energy systems. Instead, the Board's new responsibility expands a complex nexus of statutory provisions that shape the Board's role as Nova Scotia's energy regulator, making it clear that sustainable development and sustainable prosperity should be considered substantively in Board decision-making, on par with other public-interest factors that have informed Board decision-making to date.

Submitted this 14th day of October, 2024, at Halifax, Nova Scotia.

____
Kostantina Northrup
Staff Lawyer