M12282

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF: ***The Public Utilities Act***

and

IN THE MATTER OF: **An Application by EfficiencyOne for approval of a new Benefit-Cost Analysis Test for Evaluating Demand-Side Management Plans**

Closing Submissions of the Consumer Advocate

Please accept these as the closing submissions on behalf of the Consumer Advocate regarding the Application filed by EfficiencyOne ("E1") for approval of a New Benefit-Cost Analysis ("BCA") Test for Evaluating Demand Side Management Plans.

A. Overview

E1's new proposed BCA Test was developed by E1 and its consultant, Energy Futures Group ("EFG"), through consultation with the DSM Advisory Group ("DSMAG"). These consultations were informed by recent amendments to legislation governing the regulation of the energy sector in Nova Scotia, including amendments to the *Public Utilities Act* and the introduction of the *Energy Reform Act (2024)*, c 2, Bill No. 404 which created a newly constituted Energy Board.

As discussed further in these submissions, the *Energy Reform Act (2024)* expanded the scope of the mandate of the Board to consider factors such as sustainable development, sustainable prosperity, and the environmental goals articulated in the *Environmental Goals and Climate Change Reduction Act*. These factors informed the development of the BCA test that E1 has filed with the Board, which takes into account all electric utility system impacts, and also non-utility system impacts, such as other fuel impacts, greenhouse gas impacts, and criteria air pollutant impacts. Importantly, the proposed BCA Test also takes into account certain host customer non-energy impacts, including asset value, water cost impacts, O&M costs, productivity, economic well-being, comfort, amenity, health & safety, empowerment, and pride. The stated purpose of considering such impacts was to align with existing Nova Scotia policy goals and objectives. Through a Partial Consensus Agreement, certain parties (including the Consumer Advocate) confirmed acceptance of the BCA test framework, including the various host customer non-energy impacts, and also agreed to adjust the proxy values to be used in performing BCA testing for the 2027-2031 DSM Plan.

The Consumer Advocate supports E1's new proposed BCA Test, as modified through the Partial Consensus Agreement, and supports the adoption of the terms of the Agreement by the Board.

In what follows, the Consumer Advocate first briefly discusses the legislative context for E1's Application, followed by a review of the evidence in this proceeding, and finally our submissions.

B. Background

a. The Legislative Context for this Application

This Application occurs in the context of recent legislative amendments, which have impacted energy regulation in Nova Scotia.

Specifically, the *Energy Reform Act (2024)*, c 2, Bill No. 404, introduced legislation pertinent to this matter, including both the *Energy and Regulatory Boards Act*, SNS 2024, c 2, which created a new Energy Board to regulate the energy sector, and the *More Access to Energy Act,* 2024, c. 2, Sch B. Both statutes place emphasis on the importance of supporting sustainable development and sustainable prosperity in the exercise of the Board's regulatory powers. In that regard, Section 6 of the *Energy and Regulatory Boards Act*, SNS 2024, c 2 mandates the Board consider certain factors in exercising its regulatory powers:

> (2) 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
>
> > (a) support competition and innovation in the provision of energy resources in the Province;
> >
> > (b) support the development of a competitive electricity market;
> >
> > (c) ensure the provision of safe, secure, reliable and economical energy supply in the Province;
> >
> > (d) support sustainable development and sustainable prosperity; and
> >
> > (e) support such other factors as prescribed by the regulations, 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.

Section 2 of the *More Access to Energy Act*, 2024, c. 2, Sch B includes as a purpose of the *Act* to:

> (e) support 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…

Amendments to the *PUA* introduced in 2022 also altered the criteria the Board is to apply in evaluating a franchise-holder's proposed cost-effective demand side management. Section 79H

(2) of the *Act* now requires applications be evaluated "at the portfolio level that would be the aggregate amount of demand-side management programs." Notably, strategic electrification is now included within the definition of "demand-side management."

The impact of these legislative changes will be discussed further in our submissions.

b. Summary of Evidence

An extensive amount of written and oral evidence has been provided in this matter. The Consumer Advocate does not intend to summarize all of the evidence provided in this matter, but summarizes some of the relevant points below.

i. EfficiencyOne

E1 filed evidence in support of its application from Dr. David Hill, a Consultant with Energy Futures Group ("EFG"). Dr. Hill's evidence was that in 2024 EFG worked with the DSMAG "to review and develop a new jurisdictionally specific benefit cost analysis test."[1] In May of 2025 EFG submitted its report flowing from this work, titled "Development of a Jurisdictional Benefit Cost Analysis Framework for Nova Scotia," which contained recommendations about the contents of a new proposed BCA test.[2]

As noted above, the new proposed BCA test would require the Board to consider both utility system and non-utility system impacts in a "jurisdiction-specific" manner. Dr. Hill's evidence contains a summary of the methodology used to formulate the proposed BCA test.

With respect to the data and secondary source material relied upon to formulate the proposed BCA test, Dr. Hill stated in his evidence that the "National Energy Screening Project's published National Standards Practice Manual Reports were heavily referenced with respect to the principles and the practical steps for development of a jurisdictionally specific benefit cost analysis test."[3] These Reports are included as an Appendix to EFG's evidence.

Dr. Hill's evidence also discusses how the proposed BCA test compares to the Total Cost Resource Test in place in Nova Scotia for the period from 2023-2025, and the Program Administrator Cost ("PAC") Test. Page 12 of Dr. Hill's evidence includes a table which summarizes the impact categories that are analyzed within the proposed BCA test, the Total Cost Resource ("TRC") Test in place in Nova Scotia for the period from 2023-2025, and the PAC Test. Dr. Hill explained that the "most significant difference between the recommended new Nova Scotia test and the prior TRC test is the latter excludes other fuel impacts … Host customer non-energy benefits, and criteria air pollutant impacts from increased electric generation were also not included in the prior TRC test, but the impact of excluding them is relatively minor."[4]

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[1] Page 5 of Dr. Hill's evidence, Appendix A to Exhibit E-1, lines 1 and 2.
[2] Page 5 of Dr. Hill's evidence, Appendix A to Exhibit E-1, lines 6-11.
[3] Pages 10 and 11 of Dr. Hill's evidence, Appendix A to Exhibit E-1, lines 7-10; see also page 12, lines 4-6.
[4] Page 14 of Dr. Hill's evidence, Appendix A to Exhibit E-1.

In response to evidence filed by Board Counsel and the various parties to this matter (addressed below), E1 also filed its own rebuttal evidence and rebuttal evidence from EFG. To briefly summarize:

- E1's rebuttal evidence critiques the evidence of Patrick Bowman for the Industrial Group as containing a legal argument about the interpretation of Nova Scotia's legislation.[5] E1's rebuttal also includes a defence of its proposed BCA test and a summary of why it proposed this test rather than the PAC Test.[6] E1's rebuttal evidence also responds to specific critiques contained in the evidence of Courtney Lane of Synapse submitted by Counsel to the Nova Scotia Energy Board,[7] the evidence of Francis Wyatt of Green Energy Economics Group submitted by the Consumer Advocate,[8] the evidence of Melissa Whitten of Daymark Energy Advisors submitted by the Small Business Advocate,[9] the evidence of Posterity Group Consulting submitted Eastward Energy,[10] and the evidence of Eastward Energy.[11]

- The rebuttal evidence of EFG includes a response to Courtney Lane of Synapse's critique of the use of proxy values used in the proposed BCA test.[12] It also addresses Melissa Whitten's recommendation to assign a nil value to the unquantified non-energy benefits.[13] Finally, it addresses Patrick Bowman's evidence that E1 ought to be required by the Board to demonstrate that any avoided greenhouse gas emissions were avoided due to demand-side management, and Mr. Bowman's critique of E1's use of a 2% social discount rate within its proposed BCA.[14]

Notably, E1's proposed BCA Test was modified subsequent to the filing of written evidence with the Board, through a Partial Consensus Agreement executed by E1, the Consumer Advocate, and other parties. The Partial Consensus Agreement essentially accepts E1's proposed BCA Test, but with adjustments to the quantification of certain non-energy benefit impacts, and to the proxy values used to quantify certain host customer non-energy benefit impacts. E1 also confirmed its agreement to undertake "comprehensive literature reviews, jurisdictional analysis, market research, and targeted customer surveys designed to validate host customer non-energy impacts and provide annual stakeholder sessions and reports on its progress," and to share the resulting information with the DSMAG for discussion to inform the quantification of non-energy impacts in the BCA test.

At the hearing, E1's panel of witnesses (which included David Hill and Christopher Neme of EFG) were asked various questions about the BCA test, as well as alternative tests, including the PAC Test and the TRC Test. In that regard, Mr. Neme from EFG stated that a secondary test can "be

[5] Page 3 of E1's Rebuttal Evidence, Exhibit E-24, lines 5-7.
[6] Pages 3-10 of E1's Rebuttal Evidence, Exhibit E-24.
[7] Pages 10-11 of E1's Rebuttal Evidence, Exhibit E-24.
[8] Pages 11-12 of E1's Rebuttal Evidence, Exhibit E-24.
[9] Pages 12-16 of E1's Rebuttal Evidence, Exhibit E-24.
[10] Pages 16-17 of E1's Rebuttal Evidence, Exhibit E-24.
[11] Pages 17-20 of E1's Rebuttal Evidence, Exhibit E-24.
[12] Pages 2-4 of Energy Futures Group's Rebuttal Evidence, which is Appendix A to E1's Rebuttal Evidence, Exhibit E-24.
[13] Pages 4-5 of Energy Futures Group's Rebuttal Evidence, Appendix A to E1's Rebuttal Evidence, Exhibit E-24.
[14] Pages 5-6 of Energy Futures Group's Rebuttal Evidence, Appendix A to E1's Rebuttal Evidence, Exhibit E-24.

used to review the reasonableness of the program designs and perhaps to consider whether investments that are marginal-either marginally not cost effective or marginally cost effective might merit change or removal, or whatever."[15] Mr. Neme also agreed upon questioning from the Board that it would be reasonable to use the PAC test as a secondary test alongside the BCA proposed by E1.[16] Mr. Neme was also asked to comment upon whether EFG provided an assessment of the PAC test in its evidence. Mr. Neme responded by noting that "implicit in a process that attempts to establish the test that makes most sense for Nova Scotians based on Nova Scotia policy is a consideration of whether the PAC test is the right test or not." Further, Mr. Neme stated:

> **A.** … It just became very clear from the review of the policies of the Province that that's not consistent with -- that would not be consistent with policy objectives of the Province, but it was considered along with any other potential outcome but, again, driven by a kind of structured process related to assessing what the policy objectives in the Province are.[17]

Mr. Neme then addressed one particular shortcoming of the PAC test as follows:

> **A.** (Neme) Dr. Hill makes a number of good points there. Just to emphasize or to put -- extend his points one step further by way of illustrative example, <u>under the PAC test no electrification measure will ever screen as cost effective because electrification only adds cost to the grid. There would be no benefit. There would only be cost.</u>
>
> <u>The law has been changed so that EfficiencyOne is now obligated to consider strategic electrification in addition to energy efficiency programs, for example. It would be highly problematic to have a test as your primary test that, by definition, rules out the potential for doing one of the things that statute requires you to consider.</u>
>
> I think that's just illustrative of the point about why the PAC test is not applicable for Nova Scotia as its primary test, as David just said. It can have significant value once you get past the hurdle with your primary test about it, whether the overall portfolio is cost effective, and now the Board can -- and other parties can consider the details of its design and its composition and does it make sense if things be moved around, should they be changed, should we put less emphasis on one thing and more emphasis on something else.
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> <u>The PAC test and a whole variety of other lenses through which you could look at their portfolio can be used to help answer that question. But for the purpose of the primary -- the initial kind of threshold question is the portfolio cost effective or not, the PAC test would seem to be highly problematic, from our perspective, for Nova Scotia</u>.[18] (emphasis added).

ii. Consumer Advocate

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[15] Page 277 of the Transcript from September 23, 2025, lines 6-12.
[16] Page 278 of the Transcript from September 23, 2025, lines 3-5.
[17] Page 259 of the Transcript from September 23, 2025, lines 13-19.
[18] Page 266-267 of the Transcript from September 23, 2025, starting at line 4 of p. 266 and ending at line 17 of p. 267.

The Consumer Advocate filed evidence in this matter from its consultant Francis Wyatt of Green Energy Economics Group ("GEEG"). Mr. Wyatt recommended in his evidence that the Board "approve the new benefit cost test as the primary cost-effectiveness test for Nova Scotia."[19]

Mr. Wyatt also provided the following opinion in his evidence:

> …the proposed benefit cost test is a major step in the right direction. It provides a much better balance of the benefits and costs. The current benefit costs test, the Total Resource Cost ("TRC") Test, includes the vast majority of costs but neglects many benefits. The proposed test also better reflects the recently updated goals of the Province.[20]

Mr. Wyatt's evidence also included the following recommendations for the Board:

- Call for continued stakeholder involvement in the development, evaluation and further refinement of the new benefits included in the proposed benefit cost test.
- Include the externalized cost of carbon in the new benefit cost test for Nova Scotia.
- Maintain calculation of the internalized cost of carbon for use in secondary cost-effectiveness tests.[21]

iii. Board Counsel

Counsel to the Nova Scotia Energy Board filed evidence from Courtney Lane of Synapse Energy Economics.

Ms. Lane's conclusions in her evidence were as follows:

- E1's approach to developing the Nova Scotia Test is reasonable and follows the sound economic guidance from the *National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resources* (NSPM) on the development of a new BCA test.[1]
- The proposed Nova Scotia Test is an improvement over the current total resource cost (TRC) test because it accounts for Nova Scotia energy policy goals by including other fuels and societal impacts.
- The proposed Nova Scotia Test is also an improvement over the current TRC test because it accounts for both host customer benefits and costs and is more consistent with Nova Scotia's energy policy goals through the incorporation of non-energy impacts as directed by recent legislation.[22]

Ms. Lane also concluded that it was reasonable to "estimate host customer non-energy benefits (NEB) in cost-effectiveness analysis." However, she found that "E1 has not sufficiently justified its proposal for NEB proxy values."

[19] Page 8 of Mr. Wyatt's evidence, Exhibit E-10, lines 4 and 5.
[20] Page 3 of Mr. Wyatt's evidence, Exhibit E-10, lines 3-6.
[21] Page 8 of Mr. Wyatt's evidence, Exhibit E-10, lines 6-11.
[22] Page 3 of Courtney Lane's evidence, Exhibit E-9, lines 8 to 18.

Importantly, Ms. Lane's evidence was submitted before a Partial Consensus Agreement was reached which included an "assumed quantification of zero for the following impacts: amenity, empowerment, and pride."[23]

Ms. Lane recommended that the Board approve the proposed BCA test and recommended the Board should approve the inclusion of both host customer costs and non-energy benefits in the Nova Scotia Test.[24] She also recommended specific modifications to the test for non-energy benefits, which are detailed at page 4 of Ms. Lane's evidence.

Ms. Lane provided oral testimony in this proceeding. In her testimony, she affirmed that she had reviewed the evidence filed in the proceeding and it did not alter the opinion she provided in her written evidence.[25] She also testified that she had reviewed the Partial Consensus Agreement and it reflected the recommendations in her evidence "related to reducing proxy adders."[26]

iv. *Small Business Advocate*

The Small Business Advocate filed evidence in this matter from Consultant Melissa Whitten of Daymark Energy Advisors, Inc. In her evidence, Ms. Whitten presented concerns regarding E1's proposed BCA test as presented in its application, as it included non-energy benefits and she had concerns about the ability to quantify them.[27] This evidence was also filed before the Partial Consensus Agreement was reached which included an assumed quantification of zero for the following impacts: amenity, empowerment, and pride. The Small Business Advocate is a signatory to the Partial Consensus Agreement.

Ms. Whitten provided oral evidence in this matter. Upon questioning from Board Member Murphy, Ms. Whitten stated she was "okay with the Partial Consensus Agreement" due to the amendment of the non-energy benefits of amenity, empowerment, and pride being reduced to zero. She added that she has concerns about the non-energy benefits being included going forward and was hopeful her concerns could be allayed by a future Intervenor session.[28]

v. *Industrial Group*

The Industrial Group filed evidence from Patrick Bowman of Bowman Economic Consulting Inc. In his evidence, Mr. Bowman provided the opinion that the proposed BCA test is "excessively expansive as a primary test. DSM analyzed at the societal level for the purpose of regulator approvals is uncommon across Canada."[29] Mr. Bowman also critiqued the proposed BCA test as "fundamentally delinked from the utility and its customers."[30] Mr. Bowman provided the opinion

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[23] Section 2 c) of the Partial Consensus Agreement, Exhibit E-32.
[24] Page 4 of Courtney Lane's evidence, Exhibit E-9, lines 5-8.
[25] Page 491 of the transcript, September 23, 2025.
[26] Page 492 of the transcript, September 23, 2025.
[27] Page 5 of Melissa Whitten's evidence, Exhibit E-13, lines 4 and 5.
[28] Pages 324 and 325 of the transcript of September 23, 2025.
[29] Page 13 of Patrick Bowman's evidence, Exhibit E-14, lines 15 and 16.
[30] Page 13 of Patrick Bowman's evidence, Exhibit E-14 lines 21 and 22.

that rather than developing a new proposed BCA test, it would have been preferable for E1 to adopt as its primary test the PAC Test.[31]

Mr. Bowman wrote that to account for "beneficial electrification, the assessment can include benefits to the utility in terms of added revenue, which is the fundamental benefit to the utility and its customers from added sales."[32]

Mr. Bowman also provided oral evidence at the hearing of this matter. On cross-examination, Mr. Bowman acknowledged that the test he recommended to the Board which accounted for the benefits of electrification was not the standard PAC test, but a modification to the standard PAC test.[33]

vi. Eastward Energy

Eastward Energy filed evidence by Posterity Group Consulting Inc. In this evidence, Posterity Group requested "that E1 specifically recognize the benefits of hybrid heating to reduce peak load impacts as part of the 2027-2031 DSM Plan."[34] Posterity Group also provided "two quantitative illustrative examples" which it stated "show there is a net benefit for hybrid heating under the proposed BCA test."[35] Mr. Christopher Pulfer of Posterity Group testified at the hearing on behalf of Eastward Energy for the limited purpose of being qualified as an expert witness in the proceeding.[36]

C. Submissions

As noted above, the Consumer Advocate has executed a Partial Consensus Agreement with E1 and other Parties regarding the new proposed BCA Test. The Consumer Advocate supports the adoption of the terms of the Agreement by the Board. Approving the test as articulated in the terms of the Partial Consensus Agreement would be consistent with the Board's statutory mandate, pertinent jurisprudence, and the weight of the evidence presented in this matter.

As E1 has acknowledged in its Application, the question of the regulator's jurisdiction to consider non-energy impacts arose in the matter of *EfficiencyOne (Re)*, 2020 NSUARB 56 (Board Matter M08888). In that matter, the Board considered and decided that non-energy impacts including environmental considerations should not be considered when evaluating whether a DSM plan is "cost-effective." However, this decision occurred prior to the legislative amendments that occurred in 2024, and described briefly above. Accordingly, given that the proposed BCA test would require consideration of certain non-energy impacts, it is necessary to consider whether those legislative changes provide a sufficient basis to broaden the scope of cost-effectiveness testing, and take into account non-energy impacts as proposed.

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[31] Page 12 of Patrick Bowman's evidence, Exhibit E-14, lines 25 to 28.
[32] Pages 11 and 12 of Patrick Bowman's evidence, Exhibit E-14.
[33] Page 429 of the Transcript of the hearing, lines 12-19.
[34] Page 7 of Posterity Group's Evidence, Exhibit E-12.
[35] Pages 4 to 7 of Posterity Group's Evidence, Exhibit E-12.
[36] Pages 335 to 337 of the transcript, September 23, 2025.

In *Nova Scotia Power Incorporated (Re)*, 2025 NSEB 8, the Board recently summarized the modern approach to statutory interpretation as follows:

> 200 *Vavilov*, cited by the IG, is a reaffirmation of the modern principle of statutory interpretation first adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21. In *Sparks v. Holland*, 2019 NSCA 3, at para. 28, the Nova Scotia Court of Appeal said the following about the modern principle of statutory interpretation:
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> > [28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan's text, *Sullivan on the Construction of Statutes*, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.
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> > [29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slauenwhite*, 2012 NSCA 20, and more recently, in *Tibbetts*. In summary, the Sullivan questions are:
> >
> > 1. What is the meaning of the legislative text?
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> > 2. What did the Legislature intend?
> >
> > 3. What are the consequences of adopting a proposed interpretation?

In addition, the Supreme Court of Canada's discussion in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 contains several principles salient to the matter before the Board, as summarized below:

> [118] This Court has adopted the "modern principle" as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: Sullivan, at pp. 7-8. Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker.
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> …
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> [120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at

> para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.
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> [121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.

Another principle of statutory interpretation affirmed by the Supreme Court of Canada in that decision is that "the legislature is presumed to use language such that the same words have the same meaning both within a statute and across statutes."[37]

On review, the *Energy and Regulatory Boards Act*, SNS 2024, c 2 requires the Board to now give "appropriate consideration" to the support of "sustainable development and sustainable prosperity." While the *Energy and Regulatory Boards Act*, SNS 2024, c 2 does not define "sustainable development" or "sustainable prosperity", those terms are defined in the *More Access to Energy Act*, 2024, c. 2, Sch B, which was also passed through the *Energy Reform Act (2024)*, c 2, Bill No. 404. Specifically, Section 2 of the *More Access to Energy Act*, 2024, c. 2, Sch B includes as a purpose of the *Act* to:

> (e) support 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…

The *Environmental Goals and Climate Change Reduction Act*, SNS 2021, c 20 defines sustainable development and sustainable prosperity as follows:

> 2
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> …
>
> (k) "Sustainable development" has the same meaning as in the *Environment Act*;
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> (l) "Sustainable prosperity" means prosperity where economic growth, environmental stewardship and social responsibility are integrated and recognized as being interconnected.

The definition of "sustainable development" within the *Environment Act* is "development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs."[38]

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[37] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 44.
[38] *Environment Act*, SNS 1994-95, c 1, s 3, (z) (aw).

The *Environmental Goals and Climate Change Reduction Act* also contains goals pertaining to energy efficiency and greenhouse gas emissions reductions. These are relevant to the matter before the Board, as the Board is required under the *Energy and Regulatory Boards Act*, SNS 2024, c 2 to give "appropriate consideration" to factors consistent with the purposes of the *More Access to Energy Act.* The *More Access to Energy Act* includes as a purpose the goals of the Province articulated in the *Environmental Goals and Climate Change Reduction Act.*

The greenhouse gas emissions reductions targets contained in the *Environmental Goals and Climate Change Reduction Act* are:

> 6 The Government's targets for greenhouse gas emissions reductions are
>
> (a) by 2030, to be at least 53% below the levels that were emitted in 2005; and
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> (b) by 2050, to be net zero, by balancing greenhouse gas emis-sions with greenhouse gas removals and other offsetting measures. 2021, c. 20, s. 6.

This legislation also articulates as a purpose the following climate change response and greenhouse gas emissions reduction goals:

> 7 The Government's goals with respect to climate change mitigation and adaptation and the reduction of greenhouse gas emissions are...
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> (b) to support, strengthen and set targets for energy efficiency programming while prioritizing equitable access and benefits for low income and marginalized Nova Scotians;
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> …
>
> (l) to have 80% of electricity in the Province supplied by renewable energy by 2030; and
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> (m) to phase out coal-fired electricity generation in the Province by the year 2030.

Amendments were also introduced to section 79A of the *Public Utilities Act,* RSNS 1989, c 380 in 2022. Section 79A of the PUA concerns "electricity efficiency and conservation." Section 79A (b) of the *Public Utilities Act* now defines "demand-side management" as follows:

> "demand-side management" means activities, programs or plans relating to
>
> (i) the efficient use of electricity,
>
> (ii) the conservation of electricity,
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> (iii) the alteration of the consumption pattern of an end-user of electricity that has the effect of reducing demand during Nova Scotia Power Incorporated's periods of highest demand,

(iv) strategic electrification of energy end uses currently powered by fossil fuels in a manner that reduces overall greenhouse gas emissions and electricity costs,

(v) the delivery of a reduction in the amount of electrical energy or capacity that Nova Scotia Power Incorporated would other-wise be required to supply to its customers, or

(vi) any other prescribed activities, plans or programs.

The Consumer Advocate states that the language described above clearly broadens the scope of what the Energy Board may properly consider when assessing any applications that may come before it, including but not limited to applications concerning DSM cost-effectiveness testing. Generally, it can now be said that consideration of environmental and societal impacts is appropriate when assessing DSM cost-effectiveness.

Notably, this Application is not the first time the Board has had occasion to consider and interpret its recently amended legislative scheme. Specifically, in *Nova Scotia Power Incorporated (Re)*, 2025 NSEB 8, the Board interpreted its new statutory mandate to encompass factors such as competition, innovation, coordinated and transparent energy-supply planning and sustainable development.[39] The Board also recognized in that decision that even prior to legislative amendments in 2024 which significantly altered its statutory mandate it had considered the public interest in rendering past awards, and had interpreted the public interest to mean more than a pure cost-benefit analysis.[40] The Board's comments are noted below:

> [201] … The word "expenditure" is not expressly qualified by any language in the *PUA* which would limit its meaning to expenditures net of third-party funding. Reading in such a qualification might have been justified under historical views about utility regulators being only charged with pure economic regulation. In this context, it could be argued that the Board need not concern itself with capital expenditures that do not impact rate base, depreciation expense or other aspects of the revenue requirement of a utility. However, <u>while the Board's main role is as an economic regulator, it is not limited to a pure economic analysis of the least-cost alternative</u>. This was discussed to some extent at paras. [88] to [93] in *Nova Scotia Power Incorporated (Re)*, 2018 NSUARB 154 (CanLII) (affirmed in *Nova Scotia (Attorney General) v. Nova Scotia (Utility and Review Board), 2019 NSCA 66*). In addition, the regulatory scheme has been somewhat altered by s. 35(2) of the PUA, which only became effective on April 1, 2025. This amendment provides that when considering the approval of capital expenditures, the Board "… shall consider the extent to which such approval accords with the purpose of the *More Access to Energy Act*…"
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> [202] <u>As discussed in the IG's Closing Submission, in addition to the traditional least-cost option approach to public utility regulation, the Board can now consider such</u>

[39] *Nova Scotia Power Incorporated (Re)*, 2025 NSEB 8 at para 202.
[40] *Ibid* at para 201; see also *Nova Scotia Power Incorporated (Re)*, 2018 NSUARB 154 at paras 87-91, affirmed in *Nova Scotia (Attorney General) v. Nova Scotia (Utility and Review Board)*, 2019 NSCA 66.

> factors such as competition, innovation, coordinated and transparent energy-supply planning and sustainable development. These involve broader policy issues than pure economic regulation based on the least-cost option approach. Given the expanded nature of the factors the Board can consider, it would not be reasonable to take a restrictive approach when interpreting the word "expenditure". Restricting the meaning of the word "expenditure" would not appear to operate in harmony with the overall scheme of the current *PUA*. (emphasis added)

The evidence in this hearing included a discussion of the legislative context governing other Canadian utility regulators. To the extent that other jurisdictions contain similar legislative provisions to those found in Nova Scotia, the applicable legislation in Quebec is comparable as it contains a provision mandating consideration of the public interest, equity, and sustainable development in rate setting and in utility regulation decisions.[41]

In the most recent interpretation of this provision in Quebec's legislation, the Superior Court of Quebec found that a "level one" Board was reasonable in its consideration of climate change and environmental sustainability in rendering a decision and reversed a "level two" Board decision which had overturned the "level one" Board decision at issue.[42] There is an appeal pending of the Superior Court of Quebec's decision before the Quebec Court of Appeal.[43]

In light of the above, the Consumer Advocate agrees with E1 that the legislative changes described above, and in E1's Application, "broaden the Energy Board's mandate to consider non-utility impacts," such as other fuel usage, host customer benefits, greenhouse gas (GHG) emissions, and other environmental considerations. It is therefore appropriate for the Board to assess the proposed BCA test against these broader considerations. It is also appropriate to assess the proposed BCA against the need to align with the attainment of the climate change response and greenhouse gas emissions reduction goals articulated in the *Environmental Goals and Climate Change Reduction Act*, to which the Board is also required to give "appropriate consideration" pursuant to the terms of the *Energy and Regulatory Boards Act*. Finally, it is also appropriate to take into account the definition of "demand-side management" in the *Public Utilities Act*, which now includes "strategic electrification of energy end uses currently powered by fossil fuels in a manner that reduces overall greenhouse gas emissions and electricity costs."

Based on this new legislative environment, the Consumer Advocate respectfully submits that any cost-effectiveness test must take into account sustainability-focused factors, and incorporate concepts such as environmental stewardship, social responsibility, and sustainable prosperity. It is the Consumer Advocate's position that E1's proposed test achieves those goals. Indeed, the weight of the evidence submitted by the Parties to this matter favors the approval of the Partial Consensus Agreement.

In this regard, the evidence from EFG on behalf of E1, Francis Wyatt of GEEG on behalf of the Consumer Advocate, and Courtney Lane of Synapse Energy Economics on behalf of Counsel to

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[41] *Loi sur la Régie de l'énergie*, RLRQ, c. R-6.01, s. 5.
[42] *Hydro-Québec v. Energy Board*, 2024 QCCS 718.
[43] *Association québécoise des consommateurs industriels d'électricité (AQCIE) c. Hydro-Québec*, 2024 CarswellQue 3713.

the Nova Scotia Energy Board, was all largely supportive of the adoption of the BCA test proposed by E1. Moreover, while the evidence of Ms. Whitten was critical of the approach to the quantification of non-energy benefits in E1's application as it was initially proposed, that aspect of the proposal was amended through the Partial Consensus Agreement, to which the Small Business Advocate is now a signatory. Ms. Whitten testified at the hearing that she was agreeable to the Partial Consensus Agreement due to the amended quantification of non-energy benefits.[44]

The Consumer Advocate acknowledges that not all parties are in support of the BCA test as proposed by E1. Notably, Mr. Bowman on behalf of the Industrial Group is critical of the proposed BCA test, which he considers "excessively expansive as a primary test." In that regard, he further notes that "DSM analyzed at the societal level for the purpose of regulator approvals is uncommon in Canada."[45]

Instead, Mr. Bowman recommends adoption of the PAC test as the primary cost-effectiveness test. However, as noted by Mr. Neme in his testimony, the PAC Test is actually particularly ill-suited for implementation as a primary test in Nova Scotia, given that "under the PAC test no electrification measure will ever screen as cost effective because electrification only adds cost to the grid. There would be no benefit. There would only be cost."[46] As an apparent workaround, Mr. Bowman suggested that increased revenues could be accounted for as a benefit of beneficial electrification. However, this is also an "uncommon" approach. In that regard, Mr. Bowman was asked on cross-examination whether he was aware of any jurisdiction that used the modified PAC test he recommended which accounted for the benefits of electrification.[47] Mr. Bowman replied that "the one place it has come up is in Newfoundland where they have a pretty severe rate increase problem right now."[48] When asked whether Newfoundland had adopted the test he recommended, he indicated he was not certain and did not want to provide inaccurate information, but had provided evidence in a case in Newfoundland in 2021 or 2022 regarding the test he proposed. Mr. Bowman also provided a reference to the case, which was footnoted in IR-3 of Exhibit 19.[49] Upon subsequent review of the decision referenced by Mr. Bowman, it appears that the Newfoundland Board considered but did not approve of the application filed by Newfoundland Power and Newfoundland Hydro to use a modified test which would have accounted for beneficial electrification.[50]

The Consumer Advocate remains of the view that the BCA test as proposed by E1 is more appropriate, and more reflective of the policy goals of Nova Scotia, than the modified PAC test proposed by Mr. Bowman, and should be preferred by the Board for that reason. That being said, the Consumer Advocate also recognizes that the traditional PAC test could apply as a secondary or complementary test. Indeed, Mr. Neme affirmed that a secondary test can be useful in reviewing

[44] Pages 324 and 325 of the transcript of September 23, 2025.
[45] Page 13 of Patrick Bowman's evidence, Exhibit E-14.
[46] Page 266 of the Transcript from September 23, 2025, lines 5-7.
[47] Pages 430-431 of the Transcript of the hearing.
[48] Page 431 of the Transcript, lines 9-12.
[49] Pages 432 to 435 of the Transcript.
[50] Newfoundland and Labrador Board of Commissioners of Public Utilities, An Order of the Board, No P.U. 33 (2022).

the reasonableness of the program design. Mr. Neme also agreed it would be reasonable for the PAC test to be applied as a secondary cost-effectiveness test alongside the BCA proposed by E1.[51]

For all of these reasons, the Consumer Advocate states that the proposed BCA test, as modified in the Partial Consensus Agreement, is appropriate as a primary test for cost-effectiveness, and should be adopted by the Board.

Conclusion

As noted throughout these submissions, the Consumer Advocate is a signatory to the terms of the Partial Consensus Agreement reached in this matter by E1 and several of the Parties. The Consumer Advocate submits the approval of the Partial Consensus Agreement by the Board would be consistent with the Board's statutory mandate, pertinent jurisprudence, and the weight of the evidence presented in this matter.

Thank you for the opportunity to provide these submissions to the Board.

[51] Page 277 of the Transcript from September 23, 2025, lines 6-12; page 278 of the Transcript from September 23, 2025, lines 3-5.