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**

Reply Submissions of the Consumer Advocate

Please accept these as the reply 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.

The Significance of Recent Legislative Amendments

The Industrial Group stated in its closing submissions that it "respectfully disagrees with E1's proposed interpretation of the legislative framework and the provisions of the *PUA*, including any reliance on the *Environmental Goals and Climate Change Reduction Act* or *More Access to Energy Act*."[1]

The Consumer Advocate's closing submissions in this matter review the legislation governing the Board's statutory mandate. This legislation forms an integrated suite, as section 2 of the *Energy and Regulatory Boards Act* requires the Board to give "appropriate consideration" to the purposes of the *More Access to Energy Act* and the regulations. The *More Access to Energy Act* includes as a purpose of this *Act* the pursuit of the environmental goals contained in the *Environmental Goals and Climate Change Reduction Act*. The *Environmental Goals and Climate Change Reduction Act* and *More Access to Energy Act* also provide the definitions of "sustainable development" and "sustainable prosperity", to which the Board is now mandated to provide "appropriate consideration," under section 2 of the *Energy and Regulatory Boards Act.*

The principles of statutory interpretation as articulated by the Supreme Court of Canada and the Board are reviewed in the Consumer Advocate's closing submissions. Disregarding the *Environmental Goals and Climate Change Reduction Act* or *More Access to Energy Act* would violate basic principles of statutory interpretation which require the Board to discern the meaning of the legislative text and the legislature's intention with respect to the text.[2] The legislature clearly intended for the Board's mandate under the *Energy and Regulatory Boards Act* to be read in conjuncture with the *Environmental Goals and Climate Change Reduction Act* or *More Access to Energy Act.* This is obvious from the references to the reference to the *More Access to Energy Act* in the *Energy and Regulatory Boards Act*. In the *Vavilov* decision the Supreme Court of Canada

[1] Page 9 of the Industrial Group's closing submissions.
[2] See *Nova Scotia Power Incorporated (Re)*, 2025 NSEB 8 at para 200.

also stated that the legislature "is presumed to use language such that the same words have the same meaning both within a statute and across statutes." [3]

The definitions of sustainable development and sustainable prosperity should therefore be presumed to be consistent between the *Energy and Regulatory Boards Act*, the *Environmental Goals and Climate Change Reduction* Act, and the *More Access to Energy Act*.

The Industrial Group relies upon a predecessor Board decision from 2020 in which the Board concluded it "not have the jurisdiction to take into account non-energy impacts in cost-effectiveness testing" in relation to DSM."[4] The Industrial Group argues:

> The only relevant amendment to the efficiency and conservation provisions in the *PUA* since this decision was the addition of strategic electrification to the meaning of DSM. That, in and of itself, should not be interpreted to expand the Board's jurisdiction to now take into consideration a broad range of non-energy benefits with respect to all other energy efficiency or demand response programs. The prior definition of DSM has largely remained, with simply the addition of strategic electrification.

This submission disregards the legislative amendments which occurred in 2024 through the passage of the *Energy Reform Act (2024)*, c 2, Bill No. 404, which introduced the *Energy and Regulatory Boards Act*, SNS 2024, c 2 and the *More Access to Energy Act*, 2024, c. 2, Sch B. It would be contrary to the principles of statutory interpretation as set out in the *Vavilov* decision to examine the *PUA* amendment regarding strategic electrification in isolation from the other relevant amendments to the Board's governing legislation.

In reference to the *PUA*, the Industrial Group argues "while broader legislative objectives— such as promoting sustainability— may inform the context in which a statute is interpreted, the Industrial Group submits that these goals cannot override or alter the clear and specific language used. These considerations may guide the interpretation where ambiguity exists, but do not expand or redefine the statutory mandate of the utility."[5]

This submission overlooks the Board's mandate under the *Energy and Regulatory Boards Act.* The Board's mandate under section 2 of that *Act* is to give "appropriate consideration" to several enumerated policy objectives, which include sustainable prosperity, sustainable development, the purposes of the *More Access to Energy Act*, and other objectives. The legislation does not specify there is a hierarchy amongst these policy objectives, nor does it suggest that sustainable prosperity and sustainable development are secondary to the other policy objectives enumerated in the statute.

The Industrial Group's Comparisons to other Canadian Jurisdictions

The Industrial Group argues the test proposed by E1 ought not to be approved, in part because it is unique amongst the tests applied for demand side management in other Canadian jurisdictions.[6]

---

[3] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 44.
[4] *Efficiencyone (Re)*, 2020 NSUARB 56, at paras 4, referenced at page 7 of the Industrial Group's closing submissions.
[5] Pages 3-4 of the Industrial Group's closing submissions.
[6] See pages 14 and 15 of the Industrial Group's closing submissions.

This submission overlooks the particular legislative context in Nova Scotia, in response to which the proposed BCA test was developed. As the Consumer Advocate argued in its closing submissions, to the extent that other jurisdictions contain similar legislative provisions to those found in Nova Scotia, the applicable legislation in Quebec is comparable. In the most recent award from Quebec interpreting this statutory mandate the Superior Court of Quebec found the Board at issue was reasonable for considering its statutory mandate in light of sustainability concerns.

The 2% Discount Rate for Evaluating Impacts under the Proposed BCA

Both the Industrial Group and Eastward Energy were critical in their submissions of the 2% discount rate proposed by E1 for evaluating the impacts under the proposed BCA.[7] The Industrial Group endorses the use of the WACC (Weighted Average Cost of Capital) used by NSPI as the discount rate for calculations.[8]

The Consumer Advocate agrees with E1's position that the use of the 2% discount rate is appropriate, reflective of Nova Scotia's legislative context, and consistent with guidance from the Government of Canada and American authorities.[9]

The Consumer Advocate submits that the 2% discount rate better reflects the Board's statutory mandate to give "appropriate consideration" to sustainable development and sustainable prosperity, as compared to the WACC discount rate, since the 2% discount rate places greater emphasis on long-term impacts and intergenerational equality.

The Overall Value Attributed to Beneficial Electrification in the Partial Consensus Agreement

In its closing submissions, Eastward Energy argues that the value of beneficial electrification ought to be adjusted downward, even if the Board decides to approve the remainder of the Partial Consensus Agreement.[10]

The Consumer Advocate submits it is appropriate to maintain the 10% value of beneficial electrification set out in the Partial Consensus Agreement. Christopher Neme's evidence at the hearing was that the 10 % value was "very conservative" to begin with, in light of "dozens of non-energy benefit studies" regarding the actual non-energy benefits to customers.[11]

Eastward Energy has not proposed a percentage by which the value of beneficial electrification ought to be reduced in the Partial Consensus Agreement, nor did it introduce evidence on this issue. Maintaining the 10% value, which is grounded in expert evidence, is preferable to reducing the value of beneficial electrification set out in the Partial Consensus Agreement by an arbitrary percentage in the absence of evidence to guide this reduction.

The Consumer Advocate thanks the Board for the opportunity to provide these reply submissions.

---

[7] Page 17 of the Industrial Group's closing submissions and page 13 of Eastward Energy's closing submissions.
[8] Page 17 of the Industrial Group's closing submissions.
[9] Pages 15-18 of E1's closing submissions.
[10] Page 11 of Eastward Energy's closing submissions.
[11] Page 81 of the Transcript, September 22, 2025.