BEFORE THE
NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF *The Public Utilities Act, R.S.N.S. 1989, c.380,* as amended
-and -
IN THE MATTER OF A General Rate Application by Nova Scotia Power Incorporated for approval of certain revisions to its Rates, Charges and Regulations

General Rate Application (M12451) 2026-2027

Closing Submissions on behalf of

The Department of Energy
Government of Nova Scotia

30 January 2026

Overview

1. The Department of Energy (the "Department") submits that the Board should reject NS Power's rate change request in its entirety as NS Power has failed to satisfy its burden of proof under Section 45 of the *Public Utilities Act* (the "*Act*") to demonstrate that the proposed rates are just and reasonable.

2. These submissions address deficiencies in NS Power's application and material concerns regarding the Company's operational performance. The Department submits that the evidence demonstrates that NS Power has failed to justify the requested rate changes and that approval would not be just and reasonable under the *Act*.

3. The current economic context is material to the Board's consideration of this application. Nova Scotians, businesses and local governments face significant financial pressures. All levels of government are making difficult decisions regarding staffing, service levels and program funding. Businesses are similarly constrained in their operational and pricing decisions. These economic conditions are particularly acute for residential customers.

4. The Province of Nova Scotia is operating with a significant budgetary deficit while taking steps to support residents during this period of economic constraint. The Department continues to fulfill its statutory mandate to represent the public interest in utility regulation proceedings.

5. Data suggest that almost 40% of Nova Scotians are considered "energy poor"—defined by Statistics Canada as spending more than 6% of after-tax income on heat and lights[1].

[1] Energy Poverty and an Equitable Transition to a Net-Zero Carbon Future in Nova Scotia – EfficiencyOne

The Department submits that the Board must assess whether the requested rate changes are just and reasonable under the *Act* in light of the following factors: (i) NS Power's continued increases in company FTEs and profits; (ii) the Company's failure to maintain adequate service reliability, as evidenced by high outage frequencies and durations; (iii) the loss of personal information of customers in the cyber breach; (iv) the magnitude of the rate increase requested; and (v) NS Power's requests for exceptional regulatory treatment. When these factors are considered together with the economic circumstances facing ratepayers, the Department submits that NS Power has not met its burden of demonstrating that the proposed rate changes satisfy the statutory standard.

6. Power outages have a significant impact on individuals and businesses, including economic costs and disruption to essential services. The evidence demonstrates that NS Power's reliability metrics, including outage frequency and duration, are inadequate. The Department submits that NS Power's capital allocation decisions, including dividend payments to its parent company, have been prioritized over investments necessary to maintain reliable service. The evidence does not support a finding that NS Power is providing service quality that justifies the existing rate base, let alone an increase in rates. The Department submits that the Board should require NS Power to demonstrate improved operational performance before approving any rate increase.

7. The tone-deaf timing of this application is also impossible to ignore. This requested rate increase is particularly galling for ratepayers who have suffered throughout 2025 from the fallout of NS Power's cybersecurity breach, which allegedly resulted in theft of personal information of customers and allegations of estimated bills which lacked any discernable connection to customer's bills from the same cycle in the previous calendar year. The letters of comments on file in this proceeding[2] provide a representative sample of the deep frustration of NS Power's customers. The requested rate increase serves to exacerbate these sentiments.

8. Before addressing the substantive deficiencies in the application, the Department submits that the Board should be aware of procedural concerns regarding pre-filing discussions between NS Power and stakeholders.

9. In the 2022 GRA proceeding, M10431, NS Power filed its application prior to commencing settlement negotiations, consistent with established regulatory practice. In contrast, in the present proceeding, the "Consensus Agreement" was negotiated and executed before the filing of the application, thereby depriving the Department and other stakeholders of the opportunity to review and assess NS Power's evidence and filings on the public record prior to the conclusion of settlement discussions.

10. For the avoidance of doubt, the Department is not a party to that agreement.

11. Consequently, the evidentiary foundation upon which the settling parties negotiated remains unknown to the Department and the public record. The Department cannot assess whether the terms of the Consensus Agreement represent appropriate compromises based on a full evidentiary record or whether material concessions were made without adequate justification. This lack of transparency undermines the Board's ability to determine whether the Agreement serves the public interest as requires under the *Act*.

[2] M12451, Exhibit N-1

12. The Board has previously acknowledged that there are certain principles it applies as it considers settlement agreements. In a decision dated November 5, 2008[3], the Board said that "Customers of NSPI and members of the public are, perhaps understandably, wary of the settlement process." Importantly it goes on to say:

> *"Many of those customers and members of the public may not appreciate that by the time the hearing commences 80% of the rate hearing process has already happened. NSPI filed extensive evidence, as required by the Board, to support its rate request. Interested parties and Board Staff asked NSPI many hundreds of written questions (Information Requests), to which responses were filed.*
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> *All of the parties who chose to do so filed evidence, including expert evidence. Written questions (Information Requests) have been asked of and answered by interested parties who filed evidence. NSPI filed reply evidence.* ***As noted, all of this happened before the hearing was scheduled to begin so that the parties and the Board are well informed about the case in advance of any oral public hearing.***
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> *The public can rest assured that the Board Members hearing the matter have also thoroughly reviewed all of the material in advance of coming to a decision as to whether to approve the Agreement as being in the public interest.*

13. It is not clear that NS Power followed this principle for the current rate application, certainly the Department was not part of it if it was.

14. NS Power confirmed during cross examination that their expert evidence was ready in April 2025[4]. but that the company waited until after negotiations concluded to file the application. The only logical conclusion is that they saw an advantage in seeking a closed-door Agreement.

15. The Board established a process for this application, albeit on an expedited basis, to provide a public forum to consider whether the Consensus Agreement is in the public interest. The Department respectfully submits that the Board must exercise its independent judgment and is not bound by the terms of the Consensus Agreement. The Board's statutory obligation under Sections 45 and 47 of the *Act* requires it to ensure that rates are just and reasonable, regardless of whether parties have reached a settlement.

16. Regardless of any concessions behind closed doors, the end product in the form of the present application must be justified in public to ensure that ratepayers understand the outcome and are given reasons for the outcome.

17. Furthermore, where the Department was not a party to the settlement process and we therefore do not know what issues were raised in the closed-door consensus, it essentially means that this hearing was limited to issues NS Power wants to talk about, which do not appear to include a discussion around asset valuations, which can have a direct impact

[3] M00010, (P-888), UARB Decision, Paragraph 14-16
[4] Transcript page 633, January 9, 2026, transcript pdf page 17, lines 4 to 16.

on what Nova Scotians see on their power bills and is therefore relevant to this hearing, the subject matter of which being power rates.

18. The Department supports the Board's oversight role to ensure that the proposal established through the Consensus Agreement results in rates that are just, reasonable and in the public interest. This role is particularly important where negotiations leading to the Consensus Agreement occurred behind closed doors.

19. When weighing the merits of this application, the Department asks that the Board remain mindful that Nova Scotians continue to feel the impact of rising electricity rates amidst an already challenging cost of living environment, and respectfully requests that the Board specifically focus on the following:

    a. Return on Equity: The Department submits that NS Power's ROE should be set at 7.6%, as recommended by Dr. Cleary. This is less than the 9% ROE NS Power currently receives and will reduce ratepayer burden (save ratepayers money).

    b. Valuation of Assets: We ask the Board to consider a fair resolution that sees NS Power's coal assets written down by an amount that the Board deems appropriate. Specifically, before reaching a decision on this application, we call on the Energy Board to conduct a transparent, comprehensive review of asset lives and amortization schedules, aligned with coal phase-out commitments and the public interest. Section 30(2) of the *Act* provides the Board with the authority to do a review of NS Power's depreciation methods and Section 33(2) gives the Board the authority to correct valuation of property. This authority should be exercised.

    c. It is the position of the Department that the $20 million in Lingan 2 spending should be disallowed.

    d. Securitization: To the extent that the existence of any form of securitization agreement will influence the Board's decision, the Board should be aware that the Province has not been convinced that this is the best path to lower rates and has not agreed to make any regulatory changes to facilitate any securitization. Before the Province can consider any securitization scheme it must first be convinced that any assets at issue are fairly valued.

    e. No justification for increased labour costs: NS Power forecasts an additional 507 FTEs in 2026, representing a 24% increase in FTEs since the Company's 2024 compliance filing. This is a substantial increase of employees in a very limited timeframe. The Department asks that the Board critically consider reductions to NS Power's staffing request to eliminate any unnecessary burden on ratepayers. Additionally, Section 34(A) of the *Act* allows the Board to order a "Savings Review" of NS Power and that the savings review be conducted by an independent party. This should be done.

    f. Interest on deferred liabilities: With respect to interest on regulatory deferrals, the Department maintains that section 64AB of the *Act* applies. The Bank of Canada policy interest rate plus one and three-quarters percent is presently in effect and there is no reason to sweeten NS Power's returns.

g. Cyber-attack: The Department asks the Board to recognize that it is entirely possible that ratepayers are being asked to bear at least indirect expenses of NS Power's cyber-attack and act accordingly.

20. Finally, the Department submits that if the Board does agree to allow a rate increase, then new rates should not come into effect until NS Power satisfies the Board that new rates will not apply to customers retroactively through proration. This is particularly important given that the cyber-attack has resulted in NS Power estimating bills for customers, and the company still does not have all meters back online or manually read.

21. The Department's position on these issues is discussed in greater detail below. The Department asks that the Board take every reasonable step to reduce the burden of higher rates on Nova Scotians and reject this rate increase application in its entirety.

Return on Equity

22. The Department submits that NS Power's ROE should be set at 7.6%, as recommended by Dr. Cleary[5]. This is less than the 9% ROE NS Power currently receives and will save ratepayers money.

23. Even if the Board rejects this rate increase application, this ROE adjustment should be made and applied going forward.

24. Interestingly, the closed-door Consensus Agreement panel concluded that it was appropriate to recommend that NS Power continue to enjoy the existing 9% ROE. It is hard to understand this conclusion in the face of Dr. Cleary's presentation.

25. It is possible the parties to negotiations did not critically assess ROE in their discussions, and the continuation of the existing ROE was simply assumed to permit negotiations to focus on other priorities. We don't know their thought process.

26. Still, the Board must determine the most appropriate outcome considering public interest. A higher ROE is clearly in NS Power's interests, but it is not in the public's interest that ratepayers are asked to pay more. This is particularly the case where ratepayers contribute to NS Power's returns despite poor reliability performance, including continually failed SAIDI and SAIFI standards, most notably in rural Nova Scotia. Much of Nova Scotia is rural, and power outages can deprive ratepayers not only of light and heat but also access to well water. NS Power should not be permitted to earn more by delivering less.

27. NS Power did not offer any rebuttal to Dr. Cleary's evidence. Dr. Cleary offers the best evidence in this proceeding with respect to appropriate ROE, noting that NS Power has, since 2012, earned its allowed ROE on average, exceeding the allowed ROE in 8 of 12 canvassed years[6].

Valuation of assets

28. NS Power has only completed two depreciation studies in the last fifteen years. After the 2011 depreciation study, nothing further was filed until this proceeding. That is remarkable

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[5] Exhibit N-32, page 5, lines 19 to 22, and page 75 lines 20 to 25.
[6] Exhibit N-32, pages 77 and 78, Table 13.

in and of itself, but even more egregious considering the material changes that have happened in the company's operating environment in the intervening time, specifically around environmental legislation.

29. The Department has highlighted in past regulatory filings[7] that updated depreciation studies were overdue. It has now been almost 15 years since the 2011 decision. While a study has recently been filed, the lack of studies for such an extended period has likely contributed to the over-inflated value of the coal plants and likely led to overall higher costs to ratepayers.

30. The copy of the Gannet Fleming depreciation study as of December 31, 2023, does not contain any reference to the words “stranded,” “useful life,” “government” or “legislation,” which suggests that none of these factors were considered in determining appropriate depreciation. In fact, the following is an excerpt from a summary of the year in service, probable retirement year and life span for each power production facility taken from the Report:

A summary of the year in service, probable retirement year and life span for each power production facility follows:

Depreciable Group	Nameplate Capacity Rating, MW	Year in Service	Probable Retirement Year	Life Span
Steam Production Plant				
Lingan Units 1	150.5	1980	2049	69
Lingan Units 2	150.5	1981	2029	48
Lingan Units 3-4	150.5	1984	2049	65
Point Aconi	165.0	1994	2029	35
Point Tupper	150.0	1973	2048	75
Trenton 5	150.0	1970	2029	59
Trenton 6	160.0	1992	2029	37
Tufts Cove 1	100.0	1966	2049	83
Tufts Cove 2	100.0	1973	2049	76
Tufts Cove 3	150.0	1977	2049	72
Tufts Cove 6	50.0	2011	2049	38

31. The Department asks that the Board review the “Probable Retirement Year” column whilst considering existing legislation and government policy.

32. NS Power’s extended period without delivering a depreciation study raises a material issue as to whether NS Power obtained higher-than-appropriate returns because of these delays, particularly considering the concerns noted respecting the Gannet Fleming chart above.

33. The Department submits that NS Power’s failure to diligently file updated depreciation studies may have resulted in excessive returns to the utility. Had NS Power prepared timely, updated depreciation studies, NS Power’s overall allowable returns would likely have been reduced, resulting in lower rates for ratepayers.

34. In this proceeding, NS Power’s expert, Mr. Wiedmayer, confirmed a benchmark of every 3-5 years for preparing depreciation studies[8].

[7] M10431, Exhibit N-113, page 2
[8] Transcript page 253, January 7, 2026, transcript pdf page 261, lines 5 to 11.

35. In the 2022 GRA, the Department submitted that the Company knew as of 2016 that coal must be retired by 2030 and yet it did not take this into consideration when valuing its assets. It is common that accounting and regulatory standards require impairment (write-downs) when early retirement is probable. Nova Scotia's coal-retirement trajectory has been clearly defined in legislation and federal policy for some time, making impairment not only probable but foreseeable. These regulatory changes were well known and NS Power's failure to reflect them in asset valuations has resulted in ratepayers bearing costs that should have been recognized and allocated differently.

36. A reasonable person would expect that utilities revisit and update depreciation assumptions promptly when asset-impairment indicators arise, including regulatory or legislative changes that affect asset lives, recoverability or service potential.

37. NS Power did not file an updated depreciation study prior to the 2022 GRA and only subsequently delivered an updated depreciation study as part of this application. This delay was inconsistent with regulatory best practices as confirmed by Mr. Wiedmayer.

38. Even with the delayed delivery of a depreciation study as compared to industry benchmarks, the scope of the current depreciation study still fails to adequately address the regulatory requirements regarding coal retirement. The scope of the report says only that: "*The service life and net salvage estimates resulting from the study were based on informed judgment which incorporated analyses of historical plant retirement data as recorded through 2023, a review of Company practice and outlook as they relate to plant operation and retirement, and consideration of current practice in the electric industry, including knowledge of service lives and net salvage estimates used for other electric companies*."[9] (Emphasis added)

39. Nova Scotians should only be paying for infrastructure that reflects its real remaining usefulness. There remain legitimate questions around whether NS Power is employing actual *values that reflect real remaining usefulness*.

40. Depreciation and valuation decisions must reflect both economic reality and regulatory requirements pursuant to the Board's statutory mandate under the *Act*. The Department submits that the Board is obligated to conduct a comprehensive review of asset lives and amortization scheduled to ensure compliance with: (i) federal regulations under SOR/2012-167 requiring coal phase-out by 2030; (ii) the "used and useful" standard established in Canadian regulatory law; and (iii) the Board's duty to ensure just and reasonable rates under Section 52 of the *Act*.

41. The Department's position is that ratepayers should not be asked to carry the cost of outdated infrastructure.

[9] M12451, Exhibit N-7, Page I-2

Valuation is a serious issue.

42. The U.S. Supreme Court has established that regulated assets included in rate base must be “used and useful” in providing service to the public. Assets not meeting this threshold cannot be used in setting rates.

43. Canadian regulatory law follows the same principle. The “used and useful” requirement should be explicitly applied by Canadian regulators when determining whether utility assets continue to be eligible for inclusion in the rate base.

44. The Alberta based – Utility Asset Disposition (UAD) Line of Cases: The “UAD line of cases” refers to a sequence of **Supreme Court of Canada**, **Alberta Court of Appeal**, and **Alberta Utilities Commission (AUC)** decisions interpreting how utility assets are owned, valued, and treated when they are sold, stranded, or removed from service. Importantly, the Alberta Utilities Commission (AUC) issued the Utility Asset Disposition (UAD) decision[10] confirming that when assets are no longer used and useful, utilities—not ratepayers—may bear unrecovered costs. This can require utilities to absorb losses, effectively forcing capital write-downs. These rulings, including both Smyth v. Ames[11] (U.S.) and the Stores Block lineage (Canada) constitute some of the strongest Canadian legal precedents for requiring write-downs.

45. Some key moments of the Alberta UAD Line of Cases are as follows:

In 2006 the Supreme court of Canada held that utilities, not ratepayers, own utility assets and therefore keep gains on asset sales[12]. This ruling triggered years of regulatory uncertainty about stranded assets and risk allocation.

In 2011the AUC issued decisions applying the decision to real-world utility asset issues[13].

In 2013 the UAD Decision where the AUC released its major Utility Asset Disposition UAD decision.

46. The UAD decision that utility assets are the property of the utility and its shareholders, not the ratepayers is relevant.

47. When these assets are retired or become stranded or no longer “used and useful” for providing utility service, the financial consequences of their retirement should not rest solely on Nova Scotia families and businesses, but rather as owners of the utility, shareholders - who have benefited from the operation of these assets - should participate in addressing the costs associated with their disposition, consistent with the principle that any gains or losses on utility assets fall on the utility and its shareholders, not the ratepayers.

48. The bottom line is that if coal units are no longer economically beneficial, it is appropriate that they be removed from the rate base. We will address NS Power’s current securitization situation in detail later, but for the moment it is important to highlight that

[10] Alberta Utilities Commission Decision 2013-417, December 16, 2023 (Application 1608826)
[11] *Smyth v. Ames*, 169 US 466 (1898)
[12] *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board),* 2006 SCC 4
[13] Alberta Utilities Commission Decision 2011-450, November 15, 2011 (Application 1607297)

securitizing the assets today could risk locking them into the rate base for a period that long exceeds their economic benefits. That would seem to be unfair and inappropriate.

Why asset valuation accuracy matters now more than ever.

49. Across both Canada and the United States, regulators have recognized that the energy transition can strand assets. Evidence shows that newer, cleaner technologies have rendered coal increasingly uneconomic.

50. Based on existing legislation and the general rapid decline in economic utility of coal-fired generation (including rising costs, lower capacity factors, and inferior cost competitiveness), NS Power's coal units are no doubt moving toward the point of no longer being useful.

51. This is precisely the set of conditions that has triggered write-downs in other jurisdictions and supports the need for a comprehensive valuation review.

52. Consider the timing of the situations above where utilities were required to take write-downs and particularly the Alberta situation would have attracted all industry eyes during the 2006 to 2013 period. NS Power should have been aware of the discussion around asset valuations and stranded assets during this time frame as our understanding is that the entire sector was on edge.

53. It was also a political issue at the time as a private members bill, Bill No. 98 *Nova Scotia Power Stranded Asset Disclosure Act* was introduced on October 25, 2012.

54. This was also around the time that NS Power reached a settlement agreement that included language that "NSPI is entitled to full recovery of and a return on the prudently incurred investment in its regulated assets regardless of the depreciation methodology employed from time to time."

55. Further, *Nova Scotia Power Incorporated (Re)*, 2012 NSUARB 133, a Board decision addressed how stranded costs should be handled when a customer switches from a Municipal Electric Utility ("MEU") to NS Power or vice versa. The ruling established that MEUs are responsible for paying stranded costs in certain circumstances.

56. Interestingly, in a settlement agreement reached in respect of the 2022 rate increase application - Settlement Agreement – Nova Scotia Utility and Review Board Matter M10431 - the "Terms of Settlement" included the following language: "For greater certainty, the Board's decision in 2012 NSUARB 133 with respect to the MEUs responsibility for the payment of stranded costs continues to apply and is not affected by this agreement in principle."

57. NS Power appears to have felt it important to stress that the 2012 principle continued to apply to other entities. As such, it makes sense that it should also apply to them and this is what we are seeking.

58. The question this raises is whether NS Power identified a vulnerability as early as 2011 and then at every step along the way took steps to mitigate its risk by, when it could, investing in coal assets instead of other generation assets. Ensuring Nova Scotia's

dependence on coal would certainly allow it to argue that its coal assets are relevant for longer.

59. The Department submits that the 2011 decision to extend the service life of Nova Scotia's coal-fired generating stations created a regulatory obligation to conduct a comprehensive review in 2016 when the Federal Government enacted regulations under SOR/2012-167 requiring all coal facilities to be retired by 2030. The failure to conduct such a review resulted in depreciation schedules that no longer accurately reflected the operational realities and regulatory constraints governing these assets, contrary to established regulatory principles regarding asset valuation and cost recovery.

60. The settlement agreement in Matter M03665 extended the amortization period of the coal-fired generation assets, which had the regulatory effect of deferring cost recovery and maintaining higher asset values in rate base for an extended period. While this approach reduced rates in the near term, it resulted in ratepayers bearing costs over a longer recovery period that extended beyond the subsequently mandated 2030 retirement date for coal facilities under the Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations, SOR/2012-167, as amended in 2018.

61. This may be why instead of respecting the legislation through action and spirit, NS Power has instead continued to invest in thermal energy generation. This has seemingly allowed NS Power to profit from the higher asset carrying values and has had the double whammy effect of also punishing ratepayers with the associated volatile fuel costs as prices of the fuel skyrocket.

62. In M08929, NS Power's 2020 Integrated Resource Plan, there are many references to a "2040 coal phase-out schedule" in direct contravention to the Federal law in place at that time, indicating that NS Power had publicly not internalized the change in retirement date and was set on continuing its investment plan in 2020.

63. In that same filing, NS Power acknowledges that "Wind is the lowest cost domestic source of renewable energy," yet restricts this competitive resource, leaving ratepayers exposed to the volatile global fuel market.

64. The impact of volatile fuel costs has been punishing for ratepayers. The Fuel Adjustment Mechanism (FAM) allows NS Power to recover actual fuel costs from ratepayers when they differ from forecasted fuel costs. Variances accumulate in a FAM deferral account, which is periodically reviewed and approved by the Board.

65. There have been large fuel cost balances accumulated in recent years, especially since 2018 due to:

    a. Record-high global fuel prices;
    b. Delays in receiving renewable energy from Muskrat Falls; and
    c. Volatility in natural gas and coal markets.

66. In 2024, NS Power had a "large balance of fuel costs" accumulated in the FAM account, which are clear in AA/BA proceedings M11393 and M11902. Without government intervention, ratepayers would have faced a 19% rate increase due to accumulated fuel costs.

67. Despite all the reasons why it has been harmful to ratepayers, NS Power's approach continues unabated even today with NS Power's indication that over $20 million of sustaining capital is needed over the test period to obtain a further year out of Lingan 2. It is important to make that point that this individual $20 million request is a direct result of NS Power's failure to sufficiently plan for 2030 over the last decade and is a symptom of what they have done time and time again over that period. All of this has most certainly cost ratepayers and should not be allowed to continue.

68. The question to be asked is to what extent, and on what legal and regulatory basis, could the Board require NS Power to recognize regulatory disallowances or capital write-downs on its coal-fired generation assets, considering:

    a. The Canadian (UAD line of cases (including the *Stores Block* jurisprudence and the "used and useful" doctrine informed by *Smyth v. Ames*),

    b. The Federal Law Regulation: SOR/2012-167 [2018]) requiring phase out unabated coal-fired electricity generation, and

    c. NS Power's post-2011 decision not to review the extended service lives of coal units and continue investing in thermal generation despite foreseeable policy-driven stranding risk.

69. We ask the Board to consider a fair resolution that sees NS Power's coal assets written down by an amount that the Board deems appropriate.

70. For the avoidance of doubt, it is the Department's position that shareholders of NS Power must bear a share of responsibility for stranded asset costs.

71. The Department believes that certainly in principle NS Power could be required to absorb write-downs on its coal assets but accepts that this is not automatic and depends on how the Board applies its statutory mandate, its prudence and "used and useful" tests and how persuasively parties connect the UAD line of cases to Nova Scotia's legal framework.

72. With respect to the Relevance of the UAD line of cases to Nova Scotia, the UAD line (including *Stores Block* and subsequent Alberta decisions) establishes three core ideas:

    a. Ownership: Utility assets are owned by shareholders, not ratepayers; customers do not have a proprietary interest in the plant.
    b. Risk allocation: Regulation does not guarantee full cost recovery; utilities can be left with unrecovered capital if assets cease to be used and useful.
    c. Used and useful: Once an asset is no longer used and useful in providing regulated service, it can be removed from rate base, with associated losses potentially borne by shareholders.

73. While these are Alberta and Supreme Court of Canada decisions arising under Alberta statutes, they articulate general regulatory principles that the Board can find persuasive when interpreting our own legislation, especially around stranded assets and climate-policy-driven obsolescence.

74. From an expert regulatory perspective, the failure to review the 2011 decision to extend the service life of coal units after federal coal-phase-out policy was clearly on the horizon is critical to any write-down argument:

    a. Foreseeability: Once Federal policy signaled a coal phase-out through the 2018 federal coal regulations, continued capital investment in coal became a known regulatory and policy risk, not an unforeseen shock. The timing and nature of this policy signal is critical to establishing when NS Power should have adjusted its investment strategy.

    b. Prudence Standard: Under established regulatory principles in Nova Scotia and pursuant to the Board's statutory mandate under Sections 30, 33 and 45 of the *Act*, the Board has both the authority and the duty to review whether incremental investments in coal-fired generation after federal policy signals were prudent. Given the demonstrable likelihood of shortened economic lives and potential asset stranding, the prudence inquiry must assess whether NS Power's investment decisions reflected the reasonable consideration of known regulatory risks that a prudent utility operator would have exercised in similar circumstances.

    c. Risk Allocation: If NS Power chose to continue investing heavily in coal despite clear decarbonization policy signals, the Board may properly conclude that shareholders - not ratepayers - should bear the resulting stranded-asset risk. This allocation is consistent with the fundamental regulatory principles that utilities bear the risk of imprudent investment decisions made with knowledge of material regulatory changes.

75. This reasoning is consistent with the UAD jurisprudence: when regulatory risk is or becomes visible to a utility, the utility cannot assume ratepayers will indefinitely backstop that risk. The UAD cases establish that utilities bear the consequences of investment decisions made with knowledge of material policy changes that affect asset viability.

76. We submit that the Board does not need an explicit "write-down" power in accounting terms to achieve the same economic result. It can:

    a. Disallow recovery of some or all undepreciated capital on coal units that are no longer used and useful or that were imprudently invested in.

    b. Deem any undepreciated balances remaining at legislated retirement not to be recoverable from ratepayers absent a finding that the investments were prudent and the depreciation schedule was reasonable given known policy constraints.

    c. Exclude certain investments from rate base if found imprudent considering known climate and coal-retirement policy.

77. Each of these tools effectively forces a write-down from the shareholder perspective, even if the accounting treatment is implemented by NS Power rather than explicitly ordered as a "write-down."

78. Applying the UAD logic to Nova Scotia:

a. Used and useful: After 2030 (or earlier if units are retired), coal assets will no longer be used and useful. At that point, continued inclusion in the rate base is difficult to justify.

b. Prudence of life-extension and reinvestment: The key battleground is not just end-of-life, but whether post-policy-change investments in coal were prudent. If the Board finds that NS Power reasonably should have anticipated earlier retirement or reduced utilization, it can disallow some costs.

c. No entitlement to full recovery: The UAD line reinforces that utilities are not guaranteed full recovery of sunk capital when assets become uneconomic or obsolete due to policy, technology, or market change—especially where those risks were visible.

79. While Nova Scotia is not bound to replicate Alberta's exact approach, the conceptual architecture of UAD gives the Board a strong, defensible framework to:

    a. Treat coal assets as having been at risk of stranding since at least 2016, if not before;

    b. Allocate that risk primarily to shareholders where investments were made in the face of clear policy signals; and

    c. Justify partial or full disallowance of remaining net-book value.

80. The argument that NS Power should be forced to take write-downs on coal assets is strongest if:

    a. The regulatory record shows clear policy signals (Federal coal phase-out, Provincial climate commitments) at the time of reinvestment decisions.

    b. NS Power's planning and risk analysis did not adequately reflect those signals (e.g., continued life-extension as if 2040 were the retirement date in the IRP).

    c. Alternative investments (renewables, storage, transmission, DSM) were reasonably available but under-pursued relative to coal reinvestment, as evidenced by a successful government procurement of wind at $53/MWh.

    d. Ratepayer harm from continued coal investment (Exposure to market price fluctuation, higher long-run costs, stranded capital, transition risk) can be demonstrated.

81. In that setting, the Board could credibly rely on UAD-style reasoning to conclude that ratepayers should not be the insurer of last resort for NS Power's coal strategy, and that some portion of coal-related capital must be written off by shareholders.

82. We submit that there is a solid legal-regulatory pathway for the Board to require NS Power to bear coal-asset write-downs, particularly for life-extension and reinvestment decisions made in the shadow of a known 2030 coal phase-out. The UAD line of cases does not automatically impose that outcome in Nova Scotia, but it provides a powerful, conceptually

coherent precedent for treating coal assets as subject to “used and useful” limits and allocating foreseeable stranding risk to shareholders rather than ratepayers.

83. All these arguments are strengthened by the fact that one coal plant, Point Aconi, was exempted from regulatory oversight by the Board under Section 36 of the *Public Utilities Act* for much of its life. We insist on transparent, responsible management of assets, and until this issue has been examined by the Energy Board, feel it is premature to return the full investment on these assets to shareholders through securitization, or any other avenue.

84. This is also obvious in the case of Lingan 2 where we share the skepticism of Bates White with respect to further investment at ratepayer expense in Lingan 2.

85. While Bates White has questioned whether the investment is in fact necessary[14], the Department asks the same question differently. We ask whether this investment was only made necessary by a series of very deliberate decisions by NS Power over several years.

86. Certainly, if there is a write-down on the value of the assets then the amount ratepayers would have to pay would be reduced, therefore, their bills could be lower than they otherwise would have been.

87. We request that the Board carefully consider this issue and, at a minimum, deny NS Power’s request respecting Lingan 2. Even if the investment is determined to be necessary in the test period, the Department submits that shareholders should not benefit.

88. In conclusion, Section 30(2) of the *Act* provides the Board with the authority to do a review of NS Power’s depreciation methods and Section 33(2) gives the Board the authority to correct valuation of property. This authority should be exercised.

Securitization

89. It is not possible to discuss asset valuations without addressing NS Power’s hopes around securitization.

90. The Department is always open to any opportunity to deliver relief to ratepayers. The Province has repeatedly sought mechanisms to lower costs for ratepayers, including buying $117 million in fuel debt and working with the Federal Government to take on another $500 million in debt. These actions, along with Sulphur emissions savings of $160 million have concretely resulted in meaningful savings of 19% for ratepayers. The Department remains committed to further initiatives that it is convinced will result in savings for ratepayers.

91. The Department remains willing to engage in discussions regarding securitization proposals that demonstrably benefit ratepayers. This position is consistent with the Province’s policy framework on securitization as articulated in the letter of Deputy Minister Karen Gatien dated May 6, 2025, included in this application[15].

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[14] Exhibit N-35, page 30 line 12 to page 31 line 5.
[15] Exhibit N-7 as Appendix 8F

92. For initiatives that demonstrably protect ratepayers, the Department is all in. However, there remains considerable uncertainty regarding the appropriate value of coal assets that would form the basis of any securitization initiative. Without a clear and comprehensive understanding of these assets' appropriate value, it would be irresponsible to lock in a price that commits ratepayers to funding them into the future and for the Province to be financially exposed to risk through NS Power's request for the province to backstop the securitization loan.

93. The Department submits that the Board should avoid approving arrangements that may result in future ratepayers bearing unjustified costs, as has occurred with certain decisions made in 2011.

94. The Province will not implement regulations creating a situation, securitization or otherwise, that could result in financial harm to ratepayers or fail to demonstrate clear ratepayer benefits. It could be that under certain circumstances some form of securitization makes sense. This conclusion has not been reached with respect to NS Power's proposition and as such the Province does not accept it. Until it is proven to save ratepayers money, it is a nonstarter.

95. The Department has worked with NS Power to try to develop an approach that would benefit ratepayers but to date has been unable to do so.

96. To this end, the Department also has significant concerns with assumptions NS Power made about the Province's position with respect to securitization. Specifically, the Consensus Agreement seems to suggest that NS Power and consumer representatives shared an understanding that securitization of Decarbonization Deferral Account liabilities was imminent. In fact, there has never been any firm commitment from the Province that it will change regulations to permit securitization.

No justification for increased labour costs

97. While many other organizations are searching for ways to do the same with less, NS Power continues to grow headcount with ratepayers asked to incur the cost. NS Power is proposing to increase its labour pool at ratepayer expense but has not provided sufficient justification for this growth.

98. As set out in NS Power's response to Board IR-42 and discussed in the hearing, NS Power forecasts an additional 507 FTEs in 2026, representing a 24% increase in FTEs since the company's 2024 compliance filing[16]. This represents a substantial increase of employees in a very limited timeframe.

99. Additional direct costs of new FTEs are not only related to labour. NS Power also incurs additional costs associated with increases to support required by the Company's Human Resources and Safety teams "driven by the overall increase to total company headcount"[17], as well as cost allocations from Emera for NS Power's use of Emera's Talent Management services[18].

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[16] Exhibit N-27, pdf page 278, NS Power's response to Board IR-42.
[17] Exhibit N-27, pdf page 315, lines 13 to 18, NS Power's response to Board IR-62(b)(i).
[18] Exhibit N-27, pdf page 315, lines 25 to 30, NS Power's response to Board IR-62(c).

100. The Benchmarking Report provided by Scott Madden NS Power's total HR Cost per FTE in 2023 was 21% higher than the industry group median[19]. NS Power has not provided sufficient evidence to justify why its total HR costs exceed the industry group median by 21%, particularly given that other industry group members face comparable labour market challenges.

101. NS Power's panel spoke to this issue in cross examination, agreeing that the inability to hire qualified resources is not unique to Nova Scotia, but suggested that the industry group includes other types of utilities such as water and gas, and that the issue is more pronounced in electric utilities, despite Mr. Flemming for the NS Power panel also acknowledging that his knowledge of those other utility industries was more limited[20].

102. From the evidence in this proceeding, the Department submits that NS Power has not clearly justified the need for the number of staff it forecasts for 2026. Although NS Power indicated that cuts would be difficult from the company's perspective, the Company intends to reduce labour costs in some undefined areas to comply with commitments made in the Consensus Agreement[21].

103. The Department's position is that NS Power has not sufficiently justified the Company's departure from industry standards and asks that the Board critically consider reductions to NS Power's staffing request to eliminate any unnecessary burden on ratepayers.

104. Considering NS Power's large growth in overall FTEs since the last rate application, the Department asks that the Board critically consider reductions to NS Power's staffing request to eliminate any unnecessary burden on ratepayers.

105. The Department submits that NS Power, like other organizations operating in the current economic environment, should be required to demonstrate cost management and operational efficiency. Section 34A of the *Act* allows the Board to order a "Savings Review" of NS Power and that the savings review be conducted by an independent party. Considering the concerns identified in this proceeding about NS Power's increased spending with no clear justification, the Department submits that the Board should order a Savings Review

Interest on deferred liabilities

106. In the last NS Power GRA, matter M10431, the Department requested that the Board reject NS Power's request for creation of a Decarbonization Deferral Account in part because of the lack of any current depreciation study[22].

107. At the time the Department pointed out that "*Time is prejudicial to ratepayers. Deferrals can mitigate rate shock to consumers in the short term, but over time the total amount payable is increased…*"

[19] Exhibit N-14, pdf page 175, Chart Bullet under Observations
[20] Transcript page 999, January 12, 2026, transcript part A pdf page 75, lines 6 to 16
[21] Transcript page 975, January 12, 2026, transcript part A pdf page 51, lines 4 to 12.
[22] M10431, document number 88167 – Closing Submissions – NRR, at para 60

108. This remains true today. Yet NS Power's request was not rejected. Instead, in its decision in ***Nova Scotia Power Incorporated (Re)***, 2024 NSUARB 67, M11220, the Board permitted establishment of the Decarbonization Deferral Account and stated as follows at para 102:

> [102] The Board agrees that rate of return on the DDA should be set in a general rate application. The Board also notes that, as outlined in section 64AB(3) of the Public Utilities Act, interest on regulatory deferrals is calculated at the Bank of Canada policy interest rate plus one and three-quarters per cent, unless otherwise directed by the Board. In the 2022-2024 GRA, the Board stated that it was premature to consider interest on the DDA at that time, and that the Board's decision regarding a rate of interest on any balance would take into account the circumstances at the time of a future application. **Therefore, by default, the Bank of Canada policy interest rate plus one and three-quarters per cent is the rate that will apply to the DDA, unless otherwise directed by the Board in a future proceeding. (Emphasis added)**

109. NS Power requests in its application that depreciation expenses and financing costs now be deferred at WACC on an interim basis, pending securitization. NS Power has offered no reasonable justification for this request to depart from the legislated interest rate and has simply requested that the company receive WACC[23].

110. The Department submits that section 64AB of the *Act* applies, and interest on regulatory deferrals should continue at the Bank of Canada policy interest rate plus one and three-quarters percent, as has been the case since the DDA was established.

Cyber Attack

111. The cyber-attack resulted from circumstances within NS Power's operational control, yet ratepayers bear the financial and operational consequences, including billing uncertainty and potential financial exposure.

112. As a regulated monopoly utility providing essential services under the *Act*, NS Power must be held to stringent standards of operational performance, cybersecurity and customer protection consistent with its statutory obligations, including its duty to provide safe, adequate and reliable service and the public interest as defined under Sections 3 and 4 of the *Act.*

113. Utilities such as NS Power must be held to the highest standards because of their monopolies serving vulnerable populations.

114. Many Nova Scotians are struggling. A promise of future fixes does little to help Nova Scotians who are being affected today. That's why we have previously called on the Board to launch a formal investigation into:

1. The fairness and legality of NSP's estimated billing methodology.
2. The adequacy of consumer protections and communication during this period.

[23] Exhibit N-3, page 52 line 27 to page 53 line 1. Note that NS Power separately confirmed in response to Board IR 141(e), in Exhibit N-27, that the cost of financing the deferral or return on the Storm Cost Recovery Rider is subject to section 64AB of the *Public Utilities Act*.

3. The timeline and contingency planning for restoring accurate billing systems.
4. Whether NSP should provide financial relief, credits, or bill smoothing options to affected customers.
5. Whether NSP is subject to financial penalties; and if so, the maximum amount that can be levied.

We look forward to the outcome of this investigation because Nova Scotians deserve transparency, fairness, and accountability from their regulated utility. We continue to ask that the Board treat this matter with urgency and provide a public update on the scope and timeline of your investigation.

115. NS Power confirmed in oral testimony that the company is not seeking to recover costs associated with the cyber-attack in rates[24]. Despite no direct request for recovery of costs, it was apparent in NS Power's oral testimony that ratepayers are bearing indirect costs through rates.

116. NS Power indicated it made no new hires for customer service to respond to inquiries relating to the cyber-attack. However, customer service received calls about issues resulting from the cyber-attack. Vice-Chair Deveau noted that the Board had received complaints about customers not being able to get through to customer service[25].

117. The evidence supports the conclusion that the cyber-attack drew internal resources. Even responding to customers reaching out about concerns with estimated bills or other issues arising as a direct result of the cyber-attack are not within the normal course of business for NS Power.

118. The Department asks the Board to recognize that it is entirely possible that ratepayers are being asked to bear at least indirect expenses of NS Power's cyber-attack and disallow a reasonable estimate of these costs.

Timing of any rate increase awarded.

119. As a result of the cyber-attack, NS Power was unable to deliver accurate bills to customers, resulting in estimated bills which have in many cases been well above what ratepayers were charged for the same period in prior years. NS Power hired meter readers to manually correct some of these issues and has been working to bring its smart meter connections back online. However, in cross-examination, NS Power confirmed that only about 400,000 of these meters have been restored, with about 150,000 outstanding. NS Power did not commit to a definite timeline for restoration of all meters. The Company also confirmed that meters store usage data for 60 to 90 days.

120. The Department has concerns about the lack of certainty surrounding these issues and the timing of implementing any rate increase. It is not clear from NS Power's evidence whether meters are currently storing accurate usage data, and what proportion of meters not back online retain data for 60 days as compared to 90 days. It is not clear when those meters will be brought back online to permit a true-up of customer accounts under existing rates before new rates take effect.

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[24] Transcript page 58, January 7, 2026, transcript pdf page 66, lines 13 to 19.
[25] Transcript page 894, January 9, 2026, transcript pdf page 258, lines 7 to 11.

121. The potential issue was identified in cross examination, where NS Power suggested that rates be pro-rated[26]. The Department disagrees with this suggested approach, where energy use is presently high due to winter heating needs. By the time new rates come into effect, customers will likely on average be using less electricity on average, resulting in a portion of their current higher-consumption winter usage being charged at increased rates. Such an outcome would be contrary to ratemaking principles and public interest.

122. The Department submits that if the Board decides to allow any rate increase, then it should not come into effect until NS Power can confirm to the Board's satisfaction that ratepayers will not be liable to pay higher rates on their current energy consumption.

123. Because any delay is a result of the cyber-attack, the effects of which NS Power has indicated it is not seeking relief through this application, any costs to NS Power resulting from delayed implementation of new rates should be borne by the Company's shareholders.

Summary

124. In summary, the Department of Energy respectfully requests as follows:

a. That the Board reject the requested rate changes.

b. That NS Power's ROE be set at 7.6%.

c. That the Board take steps to ensure that NS Power's coal assets are written down by an amount that the Board deems appropriate based on a transparent, comprehensive review of asset lives and amortization schedules, aligned with coal phase-out commitments and the public interest but that at a minimum the Board carefully consider NS Power's position on the need for additional investment in Lingan 2 and deny NS Power's request respecting Lingan 2. If the investment is determined to be necessary in the test period, the Department submits that shareholders should not benefit.

d. That the Board acknowledge that securitization has not been shown to the department as the best path to lower rates and that regulations will not be forthcoming to support this at this stage.

e. That the Board find that there is no justification for increased labour costs.

f. That the Board find that there is no reason to change the calculation on interest on deferred liabilities.

g. That the Board recognize that it is entirely possible that ratepayers are being asked to bear at least indirect expenses of NS Power's cyber-attack and act accordingly.

h. That to the extent that the Board finds that an increase is appropriate, that any rate increase will not come into effect until NS Power can confirm to the Board's

[26] Transcript page 787 line 7 to page 788 12, January 9, 2026, transcript pdf page 152 line 7 to page 153 line 12.

satisfaction that ratepayers will not be liable to pay higher rates on their current energy consumption, and that any costs associated with delays to rate implementation be borne by shareholders.

125. The Department further asks that the Board critically consider every opportunity to mitigate the effects of the requested rate increase on ratepayers. For its part, the Department will continue to review opportunities to lower costs in the best interests of ratepayers.

All of which is respectfully submitted this 30th day of January 2026.

Tim Houston

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Honourable Tim Houston
Minister, Department of Energy