Nova Scotia Energy Board

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September 5, 2025

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Judith Ferguson
Executive Vice President, Regulatory,
Legal and Government Relations
Nova Scotia Power Inc.
1223 Lower Water St
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Dear Ms. Ferguson:

M12451 - Nova Scotia Power Inc. - 2026 General Rate Application (GRA)

This is further to your letter dated September 2, 2025, advising that, following an extensive collaborative process between NS Power and customer representatives, NS Power will be filing a general rate application for the 2026-2027 period in the coming weeks. You noted that the Consumer Advocate, Small Business Advocate, Industrial Group, Municipal Electric Utilities and Port Hawkesbury Paper support the application and have agreed they "are not seeking a process that provides an opportunity for them to make information requests or submit evidence, provided the GRA is filed in accordance with the terms of the negotiated outcome."

Based on the foregoing, you asked the Board to open a matter for the general rate application. Although you acknowledged the Board will need to see the application before establishing a final process, you asked "that any process that stems from the filing of the GRA provides for rates to be in effect by January 1, 2026, as contemplated by the GRA." NS Power also believes that early stages of the process, such as public notice and setting a deadline for Notices of Intervention can be undertaken prior to filing of the rate application based on its letter.

The Nova Scotia Energy Board's approach to settlement agreements is similar to what was outlined by the Nova Scotia Utility and Review Board in its decision on NS Power's last general rate application:

> [57] In its previous decisions, the Board has set out the principles it applies in its consideration of settlement agreements. Those principles bear repeating. In its decision dated November 5, 2008, about a prior NS Power general rate application, the Board outlined its general approach to settlement agreements submitted to it for approval:

> [12] The Board's Regulatory Rules facilitate settlement discussions. The Board welcomes and appreciates the efforts of parties to, in good faith, settle issues, even where, as sometimes happens, a settlement cannot be ultimately achieved.
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> [13] Where, as here, the Agreement is supported by representatives of all of the customer classes, the Board can have confidence that the Agreement is in the public interest.
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> [14] Customers of NSPI and members of the public are, perhaps understandably, wary of the settlement process. 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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> [15] 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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> [16] 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.
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> [17] Settlement agreements, while relatively new in regulatory matters before the Board, are common in the litigation process. Within the Board's adjudicative mandate, for example, assessment appeals, planning appeals and other matters are often settled. In the civil courts of Nova Scotia, a much higher percentage of cases are settled than go to trial.
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> [18] That is not to say that the Board would hesitate to reject a settlement agreement it did not consider to be in the public interest, however, it should be understood that a properly supported settlement is a success of the regulatory process, not a failure.
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> [2008 NSUARB 140]

[58] The GRA Settlement Agreement in this proceeding was reached by the parties after the hearing was finished. This matter had a full evidentiary record containing over 30,000 pages of information and spreadsheets, including NS Power's application, Rebuttal Evidence, Fuel Update, 19 expert reports and documents filed by the Intervenors and Board Counsel consultants, 700 Information Requests (IRs) with over 1,900 questions to NS Power and 157 IRs with over 270 questions to Intervenors, about 1,000 letters of comment from members of the public, almost 300 exhibits, and 71 Undertakings filed after the hearing.

[59] The Board remains mindful that in its consideration of settlement agreements its ultimate duty is to ensure that the terms of agreement are just, reasonable and in the public interest:

> [23] …Settlement agreements do not, however, diminish the Board's duty and obligation to ensure that the terms of any such agreement result in approval of only those costs which are fair, justifiable and prudently incurred by the Utility. Further, the Board must ensure that these costs result in customer rates that are just, reasonable and in the public interest. In addition, when deciding whether to approve a settlement agreement, the Board must be satisfied that the outstanding concerns of all intervenors are adequately considered by the Board and the terms and conditions under which they consent to a settlement agreement are honoured.
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> [NS Power 2007 GRA decision, 2007 NSUARB 8]

[2023 NSUARB 12]

The Board views NS Power's engagement with customers in advance of significant filings such as this as a positive step and commends NS Power for its efforts in doing so. Efforts to achieve a consensus around contentious issues may lead to solutions that would be more difficult to achieve in a litigated process before the Board. However, in the context of a general rate application, the Board must always be satisfied that approving a settlement agreement results in customer rates that are just, reasonable and in the public interest.

While the parties involved in the agreement about NS Power's pending general rate application have spent many months, and exchanged a lot of information to resolve issues, nothing has been presented to the Board at this point except your letter outlining only the broad elements of the pending application. Once NS Power's application comes forward, the Board must ensure that any subsequent approval is based on a thorough evidentiary record. This record should clearly demonstrate to the Board that issues have been fully and appropriately addressed and satisfy the public that the application has been fully and carefully reviewed.

As usual, Board staff and Board Counsel will engage consultants to review the application and file evidence for the Board to consider when deciding whether to approve the application. This means that although the agreement NS Power has reached with customer representatives will likely reduce the volume of information requests and evidence it will need to respond to, those usual processes cannot be eliminated. Likewise, those processes may be important to parties who have not been involved in the extensive collaborative process leading to the filing of NS Power's pending application and who may want to take a position on any aspect of NS Power's application.

The Board has opened a general rate application matter and considered whether it can initiate certain parts of its process before the filing of NS Power's application. There are practical problems with doing so. First, the Board's public notice typically includes details about the application and the process the Board will follow to review the application that cannot be determined before the application is filed and reviewed. Second, any deadline for filing Notices of Intervention in the proceeding must be for a date that is after the application is filed (the date of which is unknown at this point) and gives prospective intervenors a meaningful opportunity to review the application to determine whether it raises issues that warrant their participation in the proceeding.

Once NS Power's application is filed, the Board will establish a process leading to a public hearing as outlined above. With a filing this late in the year and the need for a process that ensures that Board Counsel consultants and other potential intervenors can adequately assess the application and bring forward evidence addressing any concerns they may have, it seems doubtful at this stage that the Board will be in a position to render a decision in the matter by January 1, 2026.

Yours very truly,

Crystal Henwood

Crystal Henwood
Clerk of the Board

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