Nova Scotia Energy Board

3rd Floor, 1601 Lower Water Street
Halifax, Nova Scotia B3J 3P6

Mailing Address
PO Box 1692, Unit M
Halifax, Nova Scotia B3J 3S3

TEL 902-424-1332
FAX 902-424-3919
TF 1-833-809-0040

board@novascotia.ca
nserbt.ca/nseb

October 17, 2025

By Email

Dear Parties:

M12451 – Nova Scotia Power Incorporated – 2026 General Rate Application (GRA)

On September 25, 2025, the Board issued a Hearing Order, Notice of Hearing and Draft Issues List for NS Power's application to set rates for 2026 and 2027. Following the timeline in the Hearing Order, comments on the Draft Issues List were to be filed with the Board by October 15, 2025. NS Power was the only party to file detailed comments about the Draft Issues List. In those comments, NS Power submitted that many of the issues on the Draft Issues List were essentially resolved or did not warrant further evidence in this proceeding. For the most part, the Board finds otherwise.

In its submissions, NS Power emphasized that its application was "the result of an extensive collaborative process involving NS Power and all customer representatives, who, as a result of that process, are supportive of the outcomes being requested in this GRA." It went on to note that these customer representatives were experienced legal counsel with professional and statutory obligations to advocate for the interests of those that they represent and were aided by expert consultants.

NS Power noted:

> The Board has previously stated in relation to settlement agreements:
>
> > 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.[1]
>
> This statement recognizes that a customer representative's support for an outcome is in and of itself evidence that that outcome is in the best interests of the customers being represented. In this instance, the fact that the GRA outcomes are supported by all customer representatives is evidence that the GRA is in the broader public interest and that the outcomes are just and reasonable.

Insofar as it goes, the Board accepts this statement, but while settlement agreements may provide some evidence that the arrangement is in the public interest, this evidence must be weighed against other factors. A settlement agreement is not determinative of a matter. The

[1] *Re Nova Scotia Power Inc.*, 2008 NSUARB 140 at para. 13. Also see para. 57 of 2023 NSUARB 12 (M10431).

Board reiterates its comments in its September 5, 2025, letter to NS Power in this proceeding:

> 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.
>>>
>>> [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.
>>>
>>> [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.
>>>
>>> [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.
>>>
>>> [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.
>>>
>>> [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.
>
> [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.
>
> [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.
> >
> > [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.

NS Power characterizes the purpose and intent of the issues list in this proceeding as follows in its October 15, 2025, submissions:

> The purpose of the issues list is, as the Board has stated, to identify those issues that are to be dealt with in the public hearing of this matter, which is set to begin on January 7, 2026. As NS Power understands it, the intent is that the list creates efficiencies by identifying issues that remain unresolved and that require further evidence or testing. The intent is not to identify a list of all potential items that fall within the Board's mandate and which could be raised. If that were the case, the issues list would be redundant. To the extent issues do not warrant further evidence or testing, then they need not be included in the Final Issues List.

The Board agrees that the issues list is intended to create efficiencies by identifying the scope of issues to be addressed in the proceeding. But the Board does not agree that the intent is to narrow the scope to "issues that remain unresolved and that require further evidence or testing". Significantly, the application was just filed. No issues have been resolved in this proceeding. The fact that NS Power's application may be supported by several intervenors does not mean the issues have been resolved.

Rather, the issues list identifies those issues that the Board considers relevant and appropriate to consider in this proceeding. Given that the matter is a general rate application, the issues can be quite broad because virtually all of NS Power's costs and revenues are in issue, along with other general practices and regulations for the services associated with its rates.

NS Power's comments identify many issues on the Draft Issues List that it submits do "not warrant further evidence in the hearing or this matter." The justification for this points to one or more factors, including: (a) "support for the GRA outcomes"; (b) earlier collaborative or consultative processes; (c) the matter is addressed in its application or evidence from consultants included in the application NS Power filed; (d) NS Power is not proposing changes related to the issue in the current general rate application; (e) the matter has been or will be addressed in another proceeding; and (f) NS Power is not seeking approval for the matter in this proceeding.

The Board will explore these factors more specifically but notes at this stage that although NS Power has expressed the view that evidence on a variety of potential issues is not warranted, the real question before the Board is whether those issues should be out of scope in this proceeding. If so, then information requests about those issues would not have to be addressed and any evidence filed by parties about those issues would not be accepted or considered by the Board. Generally speaking, if the issue relates to something that NS Power has asked the Board to approve or is relevant to the Board's consideration of the matter, then parties should have the ability to file evidence about it. While a party may ultimately agree with NS Power that no additional information is warranted in the circumstances or decide not to address an issue for other reasons, it would be unusual to disallow a party from at least considering whether they will file evidence on a relevant issue.

Further, the Board is not obliged to accept NS Power's evidence or a settlement agreement. As noted above, it is important that the public be assured that before the Board has reached a decision about whether a settlement agreement is in the public interest, it has had an opportunity to thoroughly review the issues and evidence before making its decision. At this point, only NS Power's evidence has been presented. While the parties who support NS Power's application may provide no additional evidence, it must be open for other parties who are involved in this proceeding to explore the issues arising in the application or present their own evidence. The Board must also ensure that it has an appropriate record before it to make its decision. The Board also notes that no settlement agreement was actually filed in this case, at least not in the usual form previously canvassed in earlier Board decisions. There is support by the customer representative for the GRA outcomes but there is no delineation of the specific issues in the application that they support, or whether they support all of the issues raised in the application.

Moreover, NS Power submits that its collaborative efforts with the customer representatives "should be recognized and incentivized by creating regulatory efficiencies" reflected in the regulatory process. In this respect, the Board notes that it has presented a materially streamlined hearing timeline in its Hearing Order for the consideration of this matter.

<u>Support for GRA Outcomes</u>

NS Power's references to the "universal support" it has from all customer representatives must necessarily be understood to be limited to the parties it identified in its application who participated in its collaborative process leading to its application. This includes parties who are typically active in NS Power's applications to the Board. However, a number of other parties, some of whom also often appear before the Board in proceedings about NS Power, have also intervened in this proceeding. The Board is mindful that there are at least 10 other intervenors who have yet to indicate whether they support the application or if they will file evidence about one or more issues in the application. Their positions on the "GRA outcomes" is not entirely clear, although some have highlighted issues of interest in their Notices of Intervention. For example, SWEB Development said:

> The M12451 Preliminary Issues List supplied by the NSEB along with the Hearing Order outlines a number of very important topics to be discussed as a part of this Matter. As a former and current Interconnection Customer with Nova Scotia Power, several of these identified issues have the potential to influence the outcomes and practices of SWEB's business here in Nova Scotia. These issues include, but are not limited to Fuel and Purchased Power Costs, Rate Base, Load Forecasting, Rate Design, Climate Change Studies, Maritime Link Projects, etc.

More generally, Renewall Energy Inc. noted, "The issues which may be addressed include many of the Preliminary Issues as established by the NSEB." Other Intervenors have also expressed concerns about some issues.

The broad support NS Power appears to have received from participants who routinely appear in NS Power matters is an important factor to be considered when approval of NS Power's application is determined. But it does not prevent other parties from exploring or filing additional evidence about issues arising in the application in this proceeding.

Collaborative and Consultative Processes

NS Power noted that its Line Loss Study and its Cost-of-Service Study were undertaken through collaborative processes. These studies have an impact on NS Power's revenue requirement and how costs are allocated to various customers. They are relevant, if not fundamental, in this proceeding. The Board commends NS Power for undertaking consultative processes for these studies, but these processes cannot preempt the ability of parties in Board proceedings such as this to ask questions about or file evidence relating to the issues addressed in the studies. However, if the consultative or collaborative processes are done well, they may naturally reduce or eliminate any controversy about their use in informing decisions in related matters before the Board.

Addressed in Application or Evidence from Consultants

NS Power submitted that certain issues were addressed in evidence from consultants filed with its application. In particular, evidence filed by Concentric Energy Advisors supporting NS Power's capital structure and financing costs and by ScottMadden relating to NS Power's claimed working capital. These issues, among other issues, may have a significant impact on proposed rates. The suggestion that other parties in this proceeding should be precluded from filing evidence about a relevant issue because it was addressed in evidence filed by NS Power is not reasonable.

NS Power also proposes that certain Maritime Link Transmission Projects be included in rate base because it has demonstrated in its evidence that the threshold test set for doing so has been met. It asks for the Board's confirmation of this point but says other parties should not be able to file evidence about this. Once again, this is not reasonable.

No Proposed Changes

NS Power notes it is not proposing changes to its capital structure and financing costs (including its rate of return on equity); the design of its rates, riders, or credits (other than the DSM Rider and the added symmetrical component of the Storm Rider); its accounting policies; its rules and regulations (other than the introduction of an AMI opt-out fee); or how its miscellaneous charges are calculated. However, these are relevant issues and NS Power's decision to not seek changes should not preclude other parties from, for example, filing evidence to demonstrate that these things should be changed. Were this otherwise, then NS Power could conceivably prevent other parties from questioning something like its rate of return on equity by never seeking to make changes.

In a somewhat related point, NS Power said it is not aware of "income tax issues" so that item does not warrant further evidence in this proceeding. There may be no issues, but taxes are relevant to the determination of NS Power's revenue requirement. If an intervenor believes there may be an issue, it should not be precluded from raising it.

Addressed in Another Proceeding

NS Power submitted several of the issues identified on the Draft Issues List were or will be addressed in other proceedings.

1. NS Power has specifically asked the Board for approval in this proceeding to extend the Storm Cost Recovery Rider beyond its initial three-year term and to make it symmetrical. Despite this, it submits no evidence from intervenors or Board Counsel consultants is warranted. It is surprising, and the Board finds unreasonable, that NS Power would seek these changes to the Storm Cost Recovery Rider in this proceeding and take the position that it is not open to other parties to address the issue.

   While the parties who support the “GRA outcomes” may have agreed not to pursue this issue, it is open for others to do so. While the amendment to make the rider symmetrical appears to be a favourable change to customers, parties may have concerns about how this would operate and may desire other changes or oppose the extension entirely. Having squarely put the issue of whether the storm rider should be continued in issue in this proceeding, it is inappropriate for NS Power to suggest that annual filings under the rider are the appropriate venue to address the continued operation of the rider. The Board further notes that in the decision relating to NS Power’s last annual storm restoration cost report, it noted that the GRA was the appropriate venue to consider any amendments to the storm rider.

2. NS Power submitted that matters relating to its rate base did not warrant further evidence in the hearing of this matter because of the settlement agreement and the fact that it receives approvals for capital additions to its rate base under the *Public Utilities Act.* The accuracy of NS Power’s rate base and its forecasted capital additions drive many aspects of NS Power’s proposed revenue requirement and are relevant in this proceeding. The reasonableness of these items in setting appropriate rates should not be confused with the separate approvals required for some, but not all, of NS Power’s capital expenditures. Further, even in the case of any capital projects that may have already been approved, the timing of the completion of those projects in the test years may still be an issue.

3. NS Power submits that further evidence about its load forecast for 2026-2027 is not warranted because it is the forecast filed from its 2024 load forecast report, which was considered in a paper hearing before the Utility and Review Board. The review of NS Power’s 2024 load forecast was not undertaken for the purposes of setting rates and, at this time, its sufficiency for that purpose will be considered. Additionally, parties may wish to raise questions about whether the forecast is appropriate if circumstances and conditions have changed since it was prepared in 2023 or early 2024.

4. NS Power notes that its Five-Year Reliability Plan was the subject of the 2025 ACE Plan proceeding (M12012) and will be subject to further assessment and consideration through the third-party review directed as part of the Board’s decision in that matter. NS Power said its forecast investment in the GRA test period is consistent with the current plan and further review of the plan itself as part of the GRA would create redundant processes.

The Board accepts that the potential for duplicated processes is a legitimate concern. By the same token, NS Power's proposed revenue requirement in this proceeding is influenced by NS Power's forecast of capital work and it would not be appropriate to preclude parties from questioning whether NS Power has proposed too much or too little investment in the test years being considered in this proceeding (which may be for a number of reasons, including reliability).

The Board will revise this reference in the Final Issues List to read, "Reliability and proposed investments in the test years", recognizing that the reliability plan *per se* is the subject of a future process.

5. NS Power reiterates that its revenue requirement forecast was prepared before the cybersecurity attack and therefore does not include costs relating to the attack. It also notes that the Board has an open matter relating to this issue (M12273). As with the reliability plan, the Board accepts the concern about duplicated processes is legitimate and issues in this proceeding should not overtake the review intended in Matter M12273. However, it is not reasonable to expect that a proceeding that covers as much ground as a general rate application could be completely isolated from significant issues affecting the utility. Furthermore, if NS Power has not updated its revenue requirement as a result of the cyber attack, it could also impact the accuracy of the forecast costs in the case of any work that was planned to occur in the test years that will now not occur or not occur as planned because of the cybersecurity breach.

<u>Not Submitted for Approval in this Proceeding</u>

NS Power notes that, in this proceeding, it is not seeking approval of the AA and BA rider rates or final approval of fuel costs; a financing order to facilitate securitization; or its Climate Change Adaptation Plan and Wildfire Mitigation Plan.

1. NS Power noted that it is not seeking approval of the AA or BA components of the FAM mechanism in this proceeding or final approval of fuel costs. The Board recognizes that NS Power noted that it is not seeking approval of the AA or BA components of the FAM mechanism in this proceeding; but, if there were any concerns about the operation or design of these riders, they would be in scope in this proceeding.

   Despite these riders or the FAM audit process, it is also important that the base cost of fuel rate set in this proceeding be just and reasonable. This includes being accurate, to minimize after the fact adjustments or the creation of significant imbalances under the FAM mechanism that could create financial, intergenerational equity or other concerns. With respect, the base cost of fuel set in a general rate application is not appropriately identified as being approved "on an interim basis". They are to be considered and approved in this matter for the preceding reasons.

   Additionally, NS Power has proposed a smoothing mechanism through the base cost of fuel in this proceeding, and the impact of the proposed smoothing is also a relevant consideration in this proceeding.

2. NS Power notes that although it understands the Board may have questions to ensure a full understanding of the proposed securitization, it is not seeking a financing order in this proceeding. This is true. The Board agrees that details about

any future proposed securitization mechanism must wait until a future application is made. However, given the amounts discussed amount to $704 million in the test years, the reasonableness of NS Power's forecast of when this will occur, the costs it will save in the revenue requirement for the test years, and the likelihood that NS Power's forecasts will lead to significant after the fact adjustments under its proposed deferral mechanism are all relevant issues in this proceeding. This is a significant issue that raises an important context on understanding the basis for the proposed rates and potential implications for future rate applications, including affordability and intergenerational equity. This is especially so when this application comes at a particularly consequential time in the energy transition leading to the 2030 goals and foundational changes in the establishment of the NSIESO.

3. NS Power notes that its Climate Change Adaptation Plan and Wildfire Mitigation Plan were filed as directed. It said they were provided as part of this proceeding to ensure the Board had the best information possible, but it notes it is not seeking approval of either plan as part of this process. Neither would the Board intend to approve plans such as these. These are tools used by NS Power to manage its infrastructure. However, to the extent that these plans may be driving investment in the test years and have a bearing on NS Power's ongoing obligation to furnish reliable service and facilities reasonably safe and adequate and in all respects just and reasonable, they are relevant. While the Board intends to keep these items on the Final Issues List, the Board accepts it may be more appropriate to leave a detailed review of these plans to a proceeding such as an annual capital expenditure filing.

Residual Comments

1. NS Power submitted that the express mention of pensions, executive compensation, and expenses shared with affiliates was of little or no relevance in the proceeding and should not be expressly set out as a focus in the proceeding. Given these items form part of NS Power's operating, maintenance, and general costs, the Board does not agree they are not relevant in the proceeding. However, the Board did not intend to isolate these items for particular focus and will amend this item in the Final Issues List to remove explicit reference to them.

2. In NS Power's view, the transfer of operations and related costs from it to the NSIESO is not relevant and the only relevant issue is confirmation of its request for a deferral mechanism to adjust its estimated costs in this proceeding to actual costs, once they are known.

   The Board considers that the impact of the transition of functions from NS Power to the NSIESO on NS Power's costs and operations is relevant in at least two respects. First, the amount of the costs that are or will be avoided may be subject to debate, not just the timing of when these costs might shift from NS Power to the NSIESO. Additionally, notwithstanding the request for a deferral mechanism, NS Power's estimate of costs and the timing of the transition should be reasonable and as accurate as possible to minimize the need for after the fact adjustments.

3. While NS Power recognized that the Board must give appropriate consideration to the factors set out in s. 6(2) of the *Energy and Regulatory Boards Act*, it said an application need not address all or any of these factors to be approved by the Board. In the company's view, the enumeration of these factors does not change the Board's mandate or alter what the Board has historically considered in the context of a

general rate application. As such, it said this should not be included in the Final Issues List.

The Board is required to consider these factors; therefore, evidence a party feels has a bearing on the Board's consideration of these factors is appropriate in this proceeding.

Conclusion

While NS Power was the only party to explicitly comment on the issues included on the Draft Issues List, the Board notes that parties, such as the Kwilmu'kw Maw-klusuaqn Negotiation Office and the Assembly of Nova Scotia Mi'kmaw Chiefs, and the Nova Scotia New Democratic Party, have expressed a general intention to pursue issues relating to affordability, reliability and resiliency. The Board considers these issues, which relate generally to NS Power's duty to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable, to be in scope. They touch upon several of the issues specifically noted on the Final Issues List. However, the Board is also bound by the requirements of the *Public Utilities Act* and related case law dealing with the Board's lack of jurisdiction to waive or reduce rates or charges for any segment of the public, by reason of their affordability.[2]

The Final Issues List is attached to this letter.

Yours very truly,

Crystal Henwood
Clerk of the Board

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

Enclosure

[2] See Dalhousie Legal Aid Service, Re, 2005 NSUARB 27; appeal dismissed in Dalhousie Legal Aid Service v Nova Scotia Power Inc., 2006 NSCA 74; leave to appeal refused in 2007 CanLII 1149 (SCC) and Affordable Energy Coalition, Re, 2008 NSUARB 11; appeal dismissed in Affordable Energy Coalition, Re, 2009 NSCA 17; leave to appeal refused in 2009 CanLII 47476 (SCC).