

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF: THE PUBLIC UTILITIES ACT

and

**IN THE MATTER OF: AN APPLICATION by NOVA SCOTIA POWER INCORPORATED
for approval of an Extra Large Industrial Dispatchable Above-
the-Line Tariff applicable to Port Hawkesbury Paper**

**CLOSING SUBMISSION
OF PORT HAWKESBURY PAPER LP (“PHP”)**

October 26, 2026

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I. Introduction

PHP currently takes service from Nova Scotia Power Inc. (“NS Power”) under the Extra Large Industrial Active Demand Control (“ELIADC”) tariff, which is a Below-the-Line (“BTL”) tariff. PHP has never taken service under an Above-the-Line (“ATL”) tariff. The predecessor mill, NewPage Port Hawkesbury, last took service on an ATL tariff more than 15 years ago, prior to the announcement of its indefinite closure in September 2011.

NS Power and PHP have been working on the development of a successor to the ELIADC tariff for a number of years. On March 31, 2025, NS Power applied to the Nova Scotia Energy Board (“Board”) for approval of a third term for the ELIADC tariff, noting that advancement of the examination of alternatives to the ELIADC tariff, including a viable ATL tariff, was dependent on the ongoing Cost of Service Study (“COSS”) proceeding. Several months later, on September 18, 2025, NS Power filed a General Rate Application (“GRA”) for the 2026 and 2027 test years. The GRA was the result of a lengthy process involving NS Power and customer representatives and included a consensus on NS Power’s proposed COSS methodology for the GRA.

The Settlement Agreement for the GRA dated August 28, 2025 (“SA”) included a “PHP Treatment” section in the Terms of Settlement, which stated, in part, that the proposed 2026/27 COSS includes PHP as an ATL customer based on certain specified PHP load characteristics and the forecast of receiving Board approvals for a new PHP tariff in time to implement for January 1, 2026. However, at the time the SA was executed there remained material uncertainty in the ultimate cost to be approved in PHP’s rate compared to what was modelled in the GRA, as well as the timing of when PHP may ultimately take service on such a tariff.¹ The SA was reached before the new PHP tariff had been fully drafted and tested on any sort of record.²

As a result, and in contrast to all other ATL rate classes, no new rates were put forward or approved for PHP as part of the SA or the GRA process.³ Instead, the PHP Treatment section of the SA contemplated a separate and subsequent tariff process to be brought forward for approval by the Board later in the year, and the creation of a PHP Deferral Account to account for any variances to NS Power’s revenue requirement depending on the final adjudication of NS Power’s application for the PHP successor tariff.⁴

NS Power filed the Application for the Extra Large Industrial Dispatchable (“ELID”) ATL tariff applicable to PHP on December 29, 2025 consistent with the provisions in the SA. The Board subsequently issued an Order establishing a paper hearing process that provided PHP with the opportunity to respond to NS Power’s application in advance of Information Requests. PHP filed its own evidence as well as the expert evidence of consultants Brubaker Associates Inc. (“BAI”) on February 20, 2026. Further evidence was filed on behalf of the Consumer Advocate (“CA”), the Industrial Group (“IG”), and Board Counsel on April 30, 2026. Following the filing of Reply evidence by NS Power and PHP on July 8, 2026, and in response to a request by the IG that was supported by the CA and the Small Business Advocate (“SBA”), the Board determined that it was appropriate to proceed to an oral hearing in this matter.

¹ Transcript, September 21, page 68, lines 9-16.

² Transcript, September 21, page 179, lines 1-6.

³ Transcript, September 21, page 68, line 18 to page 69, line 4.

⁴ Transcript, September 21, page 64, line 9 to page 65, line 13.

The hearing took place over the course of four days in September and involved conflicting testimony from NS Power, PHP, and multiple independent expert witnesses. PHP respectfully submits that the primary areas of disagreement are as follows:

1. The impact of the SA on the outcome of the ELID tariff process;
2. The appropriate demand level to be reflected in the COSS applicable to PHP;
3. The interruptible credit applicable to PHP's interruptible load;
4. The priority interruptible credit applicable to PHP, if any;
5. The calculation of the dispatchable rider to be paid to PHP;
6. The forecast net energy usage applicable to PHP; and
7. The revenue-to-cost ("R/C") ratio applicable to PHP.

This closing submission will address each of these issues in turn. As discussed further below, PHP is putting forward its positions on these matters consistent with the SA that specifically contemplated that Parties could "take any position they so choose" in this process. Importantly, PHP is largely in agreement with the ELID tariff as filed in the Application, subject to the requested modifications noted below.

In its Counsel Opening Statement, the IG noted that:

"...whatever methodology the Board ultimately adopts, the ELID must be a principled tariff grounded in the foundational tenets of ratemaking – above all, cost causation – consistent with the treatment of other Above-the-line customers. PHP should be charged for the costs it causes the system, with appropriate credit for genuine load shifting benefits it provides, and no more."⁵

PHP agrees. Cost causation and consistent treatment with other ATL customers as part of NS Power's COSS are at the heart of PHP's submission. Determining the drivers of system peaks is the primary factor to consider when determining cost causation in allocating demand costs, and NS Power uses a fixed 3CP approach that was comprehensively reviewed as part of the recent COSS process and approved for use in Nova Scotia to allocate such demand costs.⁶ The ELID tariff as filed not only overstates PHP's likely actual demand level on the system at the 3CP based on recent actual metered load and forecast expectations, but it fails to provide PHP with the appropriate and properly calculated interruptible credit in relation to the 57 MW of interruptible load that is proposed to be used to allocate significant system demand costs to PHP. This fundamental issue needs to be addressed in order for the new ATL rate to be grounded in proper cost causation principles.

As noted in its Opening Statement, PHP sees first-hand the importance of load flexibility in a system served by ever increasing amounts of variable generation. However, the go-forward provision of these elements through service under the ELID tariff as proposed is dependent on receipt of remuneration commensurate with the risks and costs incurred solely by PHP in providing these resources.⁷ Unless the calculation of the DR credit provides PHP with a reasonable opportunity to achieve the full value associated with its dispatchability (without any sharing), it is not reasonable to expect PHP to offer the demand response service to NS Power.

⁵ Exhibit N-43, page 1.

⁶ Transcript, September 29, page 129, line 3 to page 132, line 14.

⁷ Exhibit N-41, page 2.

Unfortunately, based on the positions advanced by other parties to date, PHP is also concerned that the provision of the Dispatchable Rider (“DR”) service through the ELID tariff – which is focused on achieving energy savings through generation optimization – is being confused with the provision of interruptibility that avoids the need for new capacity. If dispatchability and interruptibility are not correctly understood and costed as two separate and distinct services, this risks eroding PHP’s receipt of the significant and proper value associated with the capacity credit provided for interruptible load under NS Power’s COSS. As discussed repeatedly during the hearing and below, the interruptible credit is a distinct and separate service from the DR that ensures NS Power does not have to build long-term generating capacity to meet PHP’s interruptible load above 8 MW.⁸ If the ELID tariff that is approved as a result of this Application overstates the interruptible demand PHP is expected to place on the system at peak times or fails to provide proper and full credit for that load being interruptible because of the DR, PHP will need to seriously consider alternative options that would be available to a large industrial customer on January 1, 2027.

As noted in its Opening Statement, PHP’s interest in moving to an appropriate ATL cost-based tariff is to provide PHP greater certainty and predictability of its energy costs.⁹ In Undertaking U-1, NS Power was asked by PHP to provide the rate that would apply to PHP if it applied to go on the large industrial interruptible rate (“LIIR”), and the response is revealing. Even at a demand level of 122.7 MW at the customer’s meter, which assumes (unreasonably) that PHP would be running above its second highest Operating Mode at the time of each Coincident Peak, the analysis suggests that annual revenue attributed to PHP would still decrease by \$5.8 million in 2027 compared to that under the proposed ELID tariff, without any credit for priority interruptibility but prior to the application of any potential DR credit.¹⁰ In other words, PHP would need to achieve considerable savings through the DR credit simply to get back to the rate it could be charged as a LIIR customer. In such circumstances, it would likely make more commercial sense for PHP to forego the ELID tariff and DR and simply take service as a LIIR customer.

That said, as Mr. Lock stated in response to questions from the CA, PHP remains committed to making the ELID tariff construct work if the value that PHP provides is recognized with respect to cost causality and in terms of its DR abilities.¹¹ As noted, despite the numerous issues raised in this process, PHP largely supports the form of ELID tariff included in NS Power’s Application. For the reasons set out below, PHP requests Board approval of the ELID tariff as filed, subject to the following discrete modifications:

- **Demand Assumptions and Interruptible Credit:** (i) adopt the SA framework of a fixed 65 MW 3CP cost allocator for this proceeding, but credit PHP for the 57 MW (plus losses) of interruptible service at NS Power’s avoided marginal cost of capacity (\$13.107/kVA), as opposed to the lower dollar value for the LIIR class referenced in the SA that is not based on the billing determinants of PHP or cost causation, and (ii) provide a methodology for use in setting PHP’s demand in subsequent GRAs that is grounded in an average of prior actual metered load over a representative time period (e.g. five years of 3CP data), adjusted for any known forecast changes.

⁸ Transcript, September 21, page 143, line 18 to page 144, line 16.

⁹ Exhibit N-41, page 2.

¹⁰ Undertaking U-1, page 2 of 7, lines 4-19.

¹¹ Transcript, September 28, page 40, line 16 to page 41, line 17.

- **Priority Interruptible Credit**: PHP recommends that no priority interruptible credit should apply, in which case PHP's load will simply be subject to interruption in rotation with other LIIR customers held as operating reserve.
- **Dispatchability Rider**: in light of the various issues raised and positions advocated by the other intervenors and Board consultants in the hearing process, provide that the DR be an optional rider to the ELID tariff on an annual basis. If PHP does not take service under the DR, no customer charge should apply.
- **Energy Assumptions**: either (i) maintain the assumed PHP energy consumption forecast in the GRA COSS of 304.3 GWh, as recommended by NS Power, or (ii) use the updated PHP load forecast and the P50 wind forecast for 168.5 MW of Goose Harbour Lake wind production to account for the latest load data in Undertaking U-14 (829,300 MWh) and P50 wind data in Undertaking U-21 (577,200 MWh), for net Tariff energy of 252.1 GWh.
- **R/C Ratio**: Set the ELID tariff in its first year of operation using an R/C ratio of 1.0.

Before discussing these points, PHP first addresses claims by NS Power and others that the parameters for costing and pricing of the ELID tariff have already been established and agreed as part of the SA, precluding PHP from arguing issues such as the demand assumptions and interruptible credit value in this process.¹²

II. **The impact of the SA on the outcome of the ELID tariff process**

As discussed in the introduction, the SA was the culmination of a lengthy negotiation among stakeholders ahead of NS Power's 2026/2027 GRA. The intent was to resolve GRA-related issues. This is clear from the very first recital of the SA:

- A. [the Parties] have engaged in a collaborative process to reach consensus on **a 2026-2027 General Rate Application ("GRA")**. (emphasis added)

Similarly, recital F states as follows:

- F. The Parties desire to resolve **the 2026-2027 GRA** on the terms set out herein. (emphasis added)

The intent was not to foreclose arguments on issues on the ELID Application. In fact, the parties decidedly held open the opportunity to take issue on any matter in any future proceeding (page 2, item 6):

6. The Parties agree to the terms set out in Schedule "A" to resolve the matters at issue for the 2026-2027 GRA and **without prejudice to any position** that may be taken **by any Party** in **any future** regulatory proceeding. (emphasis added)

"Any future regulatory proceeding" would of course include the ELID Application by implication. However, to be explicit, the parties agreed to reserve any Party's right to take any position in the

¹² Transcript, September 21, page 58, lines 2-4 and 16-19.

ELID Application specifically, noting at page 12 of the Terms of Settlement under the PHP Treatment heading:

f) **In the PHP ADC and tariff processes that will be brought forward for approval by the Board later this year, it remains open for all Parties to take any position they so choose**, including whether each of the PHP ADC and tariff filing(s) is inconsistent with the load characteristics and basic tariff structure as set out above. (emphasis added)

Not only does the express wording of the SA demonstrate an unequivocal intention for all parties to remain free to challenge any aspect of the ELID Application, the Board interpreted this language to mean as follows in the GRA Decision:

[341] ...The settlement agreement contained a clause that the parties were **free to take any position they wished** during the Board's review of the PHP successor tariff... (emphasis added)

The Board's decision confirmed that all parties are free to take any position they wish. It does not exempt PHP from this determination. It does not narrow the definition of parties to only certain intervenors. The Board took the plain and ordinary meaning used by the sophisticated commercial parties who drafted, reviewed, and signed the SA, and interpreted "Parties" to mean all entities listed under the definition of Parties. This includes PHP.

Despite the clarity in both the SA terms and the Board's subsequent interpretation of them, NS Power and certain Intervenor have taken the position that PHP is precluded from challenging the billing determinants put forward by NS Power in the ELID Application. This position has been to date principally advanced by NS Power and the CA.

It is unclear to PHP at the time of writing which of the Intervenor will ultimately take the position that PHP is precluded from challenging certain elements of NS Power's ELID Application. The Consumer Advocate's Opening Statement indicates that they will, as does NS Power's evidence. In the Industrial Group's case, taking such a view would appear to directly contravene the position they took in their own Opening Statement:

"...Nothing in the settlement agreement reached in NSPI's General Rate Application (Matter M12451) forecloses submissions by the parties in this matter. To the contrary, the settlement expressly provides that "it remains open for all parties to take **any position they so choose**, *including* whether each of the PHP, ADC, and tariff filing(s) is inconsistent with the load characteristics and basic tariff structure as set out above." The tariff structure in the figures in the Cost-of-Service Study were assumptions used for settlement purposes in the GRA, in the absence of a complete tariff application, and evidentiary support...."¹³ (emphasis in original)

Given the evidence of NS Power witnesses, and given the focus this issue received during the oral hearing, PHP finds it prudent to address the issue in detail at the outset of these Closing Submissions.

¹³ Exhibit N-43, page 1.

The position that PHP is precluded from challenging the billing determinants in the ELID proceeding contravenes multiple principles of substantive law:

- a) the SA was made in relation to the GRA, and is expressly “without prejudice” to any future proceeding, including the ELID proceeding;
- b) the plain wording of the SA itself explicitly affords PHP the right, just like all other Parties, to take any position on any aspect of the ELID application, and NS Power’s position is also inconsistent with the standard rules of contract interpretation as applied by this Board in previous decisions;
- c) the rationale behind, and existence of, the deferral account demonstrate that the parties and the Board recognized the potential for variances between NS Power’s ELID proposal, and the ultimate approved tariff, which could arise due to PHP’s dissatisfaction with the ELID tariff;
- d) the Board’s interpretation of the meaning of the SA in the GRA Decision, as well as the opinion of Board Counsel consultants, is inconsistent with NS Power’s position on this point; and
- e) NS Power’s position runs counter to basic commercial realities and reasonableness, as the evidence by multiple witnesses during cross-examination revealed.

We address each of these points in turn below.

a) *The SA Is without prejudice to the ELID proceeding*

As previously noted, the SA states as follows at Page 2, Item 6:

6. The Parties agree to the terms set out in Schedule “A” to resolve the matters at issue for the 2026-2027 GRA and **without prejudice to any position that may be taken by any Party in any future regulatory proceeding.** (emphasis added)

This language was not included casually. It has a specific legal meaning that PHP relied upon in deciding to sign the SA. NS Power appears to argue that this Board should ignore it. This is not a tenable position at law. The legal significance of “without prejudice” has been recognized time and again in past decisions.

For example, in *Nova Scotia Power Incorporated (Re)*, 2015 NSUARB 257, the NSUARB used it to make clear that it was setting aside an issue for later determination:

[21] The *Electricity Plan Bill* renders this discussion moot as the *Bill* dictates the application of excess earnings such that any earnings above the approved rate of return range in 2015 and 2016 are to be incorporated into the 2017 through 2019 rate stability period, except as may be needed to avoid an increase for those customers who otherwise would have seen a fuel rate increase as of January 1, 2016. **In the circumstances, the Board does not need to deal with this issue and sets it aside, without prejudice to the right of any party to raise these issues in a future proceeding after the rate stability period expires.** (emphasis added)

The language used in the SA is almost identical to that used by the Board above: “without prejudice to any position that may be taken by any Party in any future regulatory proceeding.” The Board should decline to endorse an interpretation at odds with its own jurisprudence and the ordinary legal significance of the words the parties chose.

If “without prejudice” is not given its ordinary legal meaning, and is instead given a meaning that departs from past use by parties and the Board, this begs the question, what further, better language must parties now use to ensure that they are free to challenge, question, and take contrary positions in later cases. The fact that this question is being raised at all risks a chilling effect on settlements that is at cross-purposes with the Board’s long-standing encouragement of parties to explore opportunities for resolution and the narrowing of issues.

b) The SA’s plain wording supports PHP’s right to take any position

The SA’s plain wording is decisive: PHP is included as a defined “Party,” and the agreement expressly preserves every Party’s right to take any position in the ELID proceeding. Read in accordance with the principles of contract interpretation, those terms cannot support an interpretation that binds PHP to the GRA assumptions or uniquely deprives it of the rights reserved to all Parties.

The Board is guided by common law principles, and routinely applies the common law to matters that come before it, including common law principles of contract interpretation (see, for example, *St. Francis Xavier University (Re)*, 2014 NSUARB 97, and *Bowater Mersey Paper Company, Re*, 2004 NSUARB 60.)

Sattva Capital Corp v Creston Moly Corp, 2014 SCC 53 (“*Sattva*”) is the leading case on the modern approach to contractual interpretation. The principle is that contractual interpretation involves a “practical, common-sense approach” (paragraph 47). To determine contractual intent, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract (paragraphs 47-48). However, surrounding circumstances cannot be used to contradict or overwhelm the clear written words of the contract (paragraph 57).

It is worth an in-depth examination of the language throughout the SA in applying *Sattva* to the case at hand.

The starting point is the definition of “Parties” at Page 1, Recital A of the SA:

- A. Nova Scotia Power (“NS Power”), along with the Consumer Advocate (“CA”), Small Business Advocate (“SBA”), counsel for the Industrial Group, representing CKF Inc., Crown Fibre Tube Inc., Irving Shipbuilding Inc., K + S Windsor Salt Ltd., Maritime Paper Products Ltd., Michelin North America (Canada) Inc., Compass Minerals Canada Corp., Farnell Packaging Ltd., P & H Milling Group, and PSA Halifax (“IG”), counsel for the Berwick Electric Commission, Riverport Electric Light Commission, the Town of Mahone Bay, and the Town of Antigonish (Municipal Electric Utilities or “MEUs”), and counsel for Port Hawkesbury Paper (“PHP”) (collectively, the “Customer Representatives”, who along with NS Power are referred to herein as the “Parties”) have engaged in a collaborative process to reach consensus on a 2026-2027 General Rate Application (“GRA”).

PHP is included in the definition of Parties. As discussed above, Item 6 of the SA notes that the Parties agree that the SA is without prejudice to “any position that may be taken” by “any **Party**” in future proceedings.

The same defined term is used in item f) of the Terms of Settlement under the PHP section, page 12:

f) In the PHP ADC and tariff processes that will be brought forward for approval by the Board later this year, **it remains open for all Parties to take any position they so choose**, including whether each of the PHP ADC and tariff filing(s) is inconsistent with the load characteristics and basic tariff structure as set out above. (emphasis added)

It does not say “all Parties other than PHP”.

This plain language fully supports the interpretation that PHP, like all Parties, is able to challenge aspects of the ELID Application when filed.

The main arguments against PHP’s position that emerged in NS Power’s Reply evidence and during the oral hearing with respect to the SA interpretation appeared to be as follows (PHP reserves the right to Reply to any further/other reasons provided by other parties in submissions):

- i. Parties can only challenge elements of the ELID Application that are not consistent with the SA; and
- ii. PHP agreed to file a tariff application jointly with NS Power that reflected the COS determinants included in the SA.

We address each of these arguments in turn.

i. The Argument that Parties May Only Challenge Elements Inconsistent with the SA

One need only look at the plain words as written to see that this interpretation is not supportable. Item f) states as follows:

f) In the PHP ADC and tariff processes that will be brought forward for approval by the Board later this year, it remains open for all Parties to take any position they so choose, **including whether** each of the PHP ADC and tariff filing(s) is inconsistent with the load characteristics and basic tariff structure as set out above.

In *National Bank of Greece (Canada) v. Katsikonouris*, [1990] 2 SCR 1029 (“*Katsikonouris*”), the Majority of the Supreme Court of Canada confirmed that listing terms following the term “including” are illustrative, not exhaustive, and do not restrict the broader language preceding them. La Forest J. (Cory and McLachlin JJ. concurring) held as follows (pages 1040-1041):

“...Whatever the particular document one is construing, when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it. **But it would be illogical to proceed in the same manner when a general term precedes an enumeration of specific examples. In this situation, it is logical to infer that the purpose of providing specific examples**

from within a broad general category is to remove any ambiguity as to whether those examples are in fact included in the category. It would defeat the intention of the person drafting the document if one were to view the specific illustrations as an exhaustive definition of the larger category of which they form a part.

Moreover, in this instance, the very language used to introduce the list of omissions and misrepresentations confirms that it would be erroneous to view them as exhaustive. In the English version of the clause, the term "including" precedes the list of examples of omissions and misrepresentations, while the term "*notamment*" is used in the French text. I note that the *Concise Oxford Dictionary* (7th ed. 1982) defines "include" as "comprise or embrace (thing etc.) as part of a whole", while the *Petit Robert 1* (1987) says of "*notamment*" that it "sert le plus souvent à attirer l'attention sur un ou plusieurs objets particuliers faisant partie d'un ensemble précédemment désigné ou sous-entendu". **This meaning finds confirmation in legal lexicons as well: the entries under "include" and "including" in Stroud's Judicial Dictionary (5th ed. 1986) to take but one example, again make it clear that these words are terms of extension, designed to enlarge the meaning of preceding words, and, not, to limit them.** (emphasis added)

The word "including" in the SA does not narrow the right given to all Parties to take any position in any future proceeding. It gives but one example of the argument a party could make in a future proceeding.

(ii) The Argument that PHP Agreed to File a Joint Tariff Application Reflecting the SA

The language under subsection e) of the SA Terms of Settlement states as follows:

e) NS Power and PHP shall reflect the foregoing in a written tariff which shall also include a proposal for priority interruptibility to be brought forward for approval by the Board later this year to be effective January 1, 2026 and PHP commits to taking service under such a tariff on January 1, 2026, or such later date as the Board approves the tariff as being effective, whether on a permanent or interim basis, subject to satisfactory conclusion of the resolution of the PHP ADC and tariff processes.

Beyond the fact that the tariff was to be filed effective January 1, 2026 which calls into question subsequent compliance with this provision in the first instance, the simple response to this argument is that the ELID Application *does reflect* the terms of the SA. The SA does not include any binding language on the load characteristics: it merely notes they were inputs to the COSS.

"NS Power and PHP shall reflect the foregoing in a written tariff" is not the same as: "NS Power and PHP shall jointly file a tariff in which they consent to every element". It does not require PHP to co-file it, or endorse all elements. The phrase "to be brought forward for approval by the Board" is in the passive voice. It was brought forward. It is now being tested through the Board's process.

This provision does not identify NS Power and PHP jointly as the parties required to actually file the application. That is consistent with Mr. Ferguson's evidence that it is generally NSPI's responsibility to make the application, although NS Power would ordinarily seek consensus with

the customer expected to take service.¹⁴ This was exactly what was done here: NS Power sought PHP's consensus, PHP did not offer it given it disagreed with four discrete elements, NS Power filed the Application, and PHP set out its evidence explaining what it disagreed with as contemplated in the Board's hearing order. As Mr. Lock stated when asked by the CA about PHP's understanding of the obligation to reflect the foregoing in a written tariff: "I think our position is we weren't obligated to accept all the terms."¹⁵ This position is consistent with the remainder of the provision, which states that PHP commits to taking service under the tariff subject to satisfactory resolution of the PHP ADC and tariff processes.

Finally, subsection e) cannot be interpreted in isolation. As per *Sattva*, it must be read together with subsection f), which can be taken to modify e). Subsection f) immediately provides that all Parties may take "any position they so choose". Ultimately, NS Power filed the Application, and PHP filed its Evidence which supports much of the ELID as applied for, with a few distinct areas of disagreement. To argue that because the words in e) say "and PHP", PHP is stripped of all its substantive rights, belies a proper reading of this provision, and ignores the other SA provisions, including subsection g) that provides for a deferral account to be implemented as discussed below.

c) The Deferral Account supports PHP's right to take any position

Not only is there clear language tying the SA to the GRA specifically, an express "without prejudice" clause preserving all parties' rights to take any position in any future proceeding, and an express provision allowing any party to take any position in relation to the ELID, but there is also a deferral account created for the purpose of capturing any delta between the GRA SA terms and the ultimate tariff approved for PHP:

g) NS Power may seek Board approval for a deferral account to account for any NS Power revenue variances that may arise in 2026 or 2027 from the following scenarios, which costs would be collected/refunded from/to above the line customers: (a) where a Board decision on the PHP tariff, including the Active Demand Control Rider, differs from the above the line PHP tariff assumptions included in the 2026- 2027 GRA; (b) where, for any reason, the PHP tariff is not available for PHP to take service under it as of January 1, 2026; and/or **(c) PHP determines the PHP ADC and tariff processes outcome is not satisfactory.** (emphasis added)

It must also be noted that item g) follows directly after item f) which preserves all parties' rights to "take any position they so choose" in relation to the PHP rate filings.

The importance of having the deferral account in place was acknowledged by NS Power during cross-examination by PHP Counsel:

"Q. And would it be fair to say that during the GRA process, NSPI's view was that it was very important to ensure a deferral account was put in place to deal with any differences between the assumptions in the Settlement Agreement, or the GRA process, and what was finally approved by this Board in this proceeding?

¹⁴ Transcript, September 21, page 124, lines 2-9.

¹⁵ Transcript, September 28, page 24, lines 10-17.

A. (Ferguson) It was an agreed element of the Settlement Agreement, and yes, we do think it was important to have it established.”¹⁶

This acknowledges that:

- the SA contained assumptions;
- those assumptions could differ from what the Board ultimately approved;
- the deferral account was important because of that possibility; and
- the account was intended to deal with the resulting differences.

The deferral account is a further element of the SA that confirms that the GRA load characteristics were input assumptions, not binding ELID outcomes, and that PHP remained free to challenge them in this proceeding. As Mr. Lock noted in response to the CA:

“...And I think that what we see in this case was there was also the, you know, creation of a deferral account that would help deal with if there were any actuals that ran different than what had been used at that time. So it was -- it's understandably anticipated as it's been verified through, you know, even the setup of a deferral account. If everyone locked everything down, and in perfect foresight, then there would be no need for such a construct, but there is. In this case there was put up in recognition, I think, largely of the number of things that will continue to change throughout the time.”¹⁷

d) The Board's earlier findings, and Board Counsel expert evidence, are both consistent with PHP's interpretation

The Board's findings in the GRA Decision are relevant to this issue. Specifically, in approving the deferral mechanism, the Board discussed its purpose to account for the uncertainty left open by the fact that the SA gives every party the freedom to “take any position they wished” in the ELID proceeding:

[339] NS Power's GRA requested a PHP Deferral to track any revenue differences between the assumptions in the GRA cost-of-service study treating PHP as an ATL customer and the eventual ELID tariff, in the form ultimately approved by the Board. The GRA adopted a clause in the settlement agreement that the PHP Deferral account would apply in the following scenarios:

- the Board's decision on the PHP tariff or ADC rider differs from the ATL GRA tariff assumptions;
- the tariff is not available for PHP to take service under it as of January 1, 2026; or
- PHP decides the outcome of the ADC and tariff processes is not satisfactory.

¹⁶ Transcript, September 21, 2026, page 64, lines 1-11.

¹⁷ Transcript, September 28, page 20, lines 2-12.

As noted by the Board, PHP deciding itself that the ELID tariff is not satisfactory, is one standalone justification for the deferral account. This is separate and apart from the Board approving something other than what the SA describes.

[341] While the PHP Deferral contemplated in the settlement agreement was agreed to by the customer representatives, it is clear from the questioning at the hearing that there may be uncertainty about parts of the scope of the deferral account as between NS Power and some of the customer representatives. The settlement agreement contained a clause that the parties **were free to take any position they wished during the Board's review of the PHP successor tariff.** (emphasis added)

This is a direct finding by the Board as to the meaning of the SA. Having previously construed the SA to permit any party to take any position on the PHP successor tariff, the Board is now being asked to read that same agreement as barring PHP from doing so. The Board's interpretation did not carve PHP out of the word "Parties," nor did it limit the right to only certain intervenors or with respect to only certain matters.

This interpretation is supported by Board Counsel consultants. As noted in an excerpt from Bates White's report filed as part of the GRA and cited at para. 347 of the GRA Decision:

"...NSPI's assumptions appear reasonable for purposes of the GRA Application, though as NSPI notes, the actual tariff and ADC credits may differ substantially from what NSPI assumes in the GRA."

Furthermore, Melissa Whited of Synapse takes the same view of the SA as PHP:

"Although the Settlement Agreement provides an outline for the ELID tariff proposal, the agreement specifically states that settling parties can take any position within this ELID tariff filing. **Thus, while the terms of the Settlement Agreement were approved by the Board, they are not requirements for the ELID tariff.**"¹⁸ (emphasis added)

Overall, the Board's findings on the GRA Decision reflect an interpretation of the SA that is consistent with PHP's position and the views of the Board's independent consultants. The Board recognized that PHP's eventual tariff could differ materially from the GRA assumptions, established the deferral account to capture precisely those variances, and expressly found that the parties remained free to take any position during its review of the PHP successor tariff without any carveouts for PHP or for the issues subject to review.

e) Barring PHP from Challenging Unreasonable ELID Determinants Defies Commercial Reality

The premise underlying NS Power's preclusion argument is commercially untenable. PHP is a sophisticated, system-integrated energy user. Its co-Mill Manager confirmed PHP would never sign off on a commercially unreasonable tariff for PHP:

¹⁸ Exhibit N-21, page 6, lines 12-15.

"Q. Okay, thank you. And I expect you'll have a similar answer to this question, but when did PHP first indicate to Nova Scotia Power that its views on the load parameters was -- had changed?

A. (Lock) We'll have to take that as an undertaking. I can't provide any data, but, once again, I -- we were in a process of looking at the appropriate things to put in this -- not the Settlement Agreement, but the tariff, which we had the ability to take any position on. And I know as a -- you know, that -- I have no idea when the views of any other party changed, or parties. **All I can tell you is that as a sophisticated energy user, and very much integrated with this Nova Scotia system, I would never sign off on a commercially unreasonable position without the full visibility of what was -- what was going to happen, and what has been happening with respect to 3CP.**"¹⁹ (emphasis added)

Mr. Fitzhenry's evidence confirms that PHP was not satisfied with the costing assumptions embedded in the SA:

"Q. Okay. And at the time when this request was made and Port Hawkesbury Paper signed off with your advice on the Settlement Agreement, you were satisfied with these costing assumptions as reflected in the Settlement Agreement?

A. (Fitzhenry) **I would say largely no. I would say that we included a provision in the Settlement Agreement that allowed for the ELID Tariff billing determinants to be renegotiated at a later time, as part of that Settlement Agreement, in part because we understood that we had to have some billing determinants in the model or in the settlement, but we also understood that we might, depending on, you know, a number of factors, need to reserve the right to reinvestigate those particular billing determinants at a later time.**"²⁰ (emphasis added)

The logical interpretation that accords with commercial sense is the reasoning Mr. Lock explained during cross-examination:

"A. (Lock) These are all modelling characteristics that we would have provided for that process, and not for the Application that we're talking about today."²¹

And again, further into cross-examination:

"A. (Lock) But recognizing that what we've just gone through, and (e), (f), and (g), the settlement terms that provided us the ability to take each of these and work them through in this Application, we were satisfied significantly to sign the Settlement Agreement.

Q. I don't think I'm following you. What's the distinction you're making there at the end?

¹⁹ Transcript, September 28, page 34, lines 1-17.

²⁰ Transcript, September 22, page 248, line 9 to page 249, line 4.

²¹ Transcript, September 28, page 16, lines 11-14.

A. (Lock) That ahead of signing the Settlement Agreement, we were aware that there were aspects that were being modelled that we did not agree with the approach, and that to be able to move things forward, as in all settlements between parties, we accepted those, along with the caveat that PHP would have the ability, like any other party, to take any position we so choose, including whether or not the ADC Tariff filings are consistent or inconsistent with the structure. So as outlined in (f) of the Settlement Agreement.”²²

To now read the SA as barring PHP from challenging those very determinants would attribute to a sophisticated commercial party an intention to bargain away protections that were explicitly preserved.

For all of these reasons, PHP respectfully submits that the clear, unambiguous language of the SA entitled PHP to proceed as it has throughout this proceeding, by filing competing evidence challenging limited elements of the proposed ELID tariff as filed. As Mr. Fitzhenry noted in response to the CA:

“...this is the proper forum and process for ensuring we get the ELID Tariff right. That’s why we have this process; that’s why we have the settlement term that specifically allows for debate of these provisions for the ELID Tariff in this proceeding. So while I understand there’ll be, you know, other impacts to making adjustments, I think the -- what’s of most importance is ensuring that we develop a cost-based rate that’s based on cost-causation principles in this proceeding.”²³

This is the approach that PHP has taken in its evidence, to support a modified ELID tariff which reflects proper cost causation, which the ELID as filed does not.

III. The appropriate demand level to be reflected in the COSS applicable to PHP

In this proceeding, three distinct and competing methodological approaches have been put forward as the proper basis to establish the appropriate demand level for PHP as an ATL customer. These range from the low end of 8 MW recommended by PHP and BAI, to the 65 MW number included in the SA that is endorsed by NS Power and the CA in this proceeding, and Mr. Bowman’s recommended approach to use an average running load in the range of 120 MW.

a) Cost causation and the COSS-approved 3CP allocator for demand costs

PHP argues in favour of including only the 8 MW firm peak in its 3CP demand cost allocator, on the cost causative basis that its remaining interruptible demand is not placing additional capacity requirements on NS Power’s system at the time of system peaks. As Mr. Lock stated in response to questions from counsel for the IG:

“A. (Lock) So to break down the answer a little bit, you know, we are subject to Nova Scotia Power’s dispatch. So where they place our load at the coincident peak, and number one, there’s not perfect visibility on what are going to be the

²² Transcript, September 28, page 79, line 3 to page 80, line 1.

²³ Transcript, September 22, page 208, lines 4-12.

3CPs. But given that our load level is in the hands of Nova Scotia Power, the keys, then the resulting demand at the 3CP level in the most recent years and applicable years would be consistent with the 3CP cost causality approach. We --however, we do also feel that there's a good argument to be made that there's -- where we're placed, without, you know, us being in control, should mean that the -- effectively it could be zero and should be zero. As was mentioned earlier in Nova Scotia Power's panel, there are reasons why Port Hawkesbury's load may have been held at different load levels during coincident peak: The wind could have been blowing high as it, you know, may have been dictating choice to run Port Hawkesbury to pick up and not spill wind, for example, or some other reason. But for Port Hawkesbury the demand that we put on the system or that needs to be built for us, in terms of the approach for coincident peak, there's no extra capacity -- demand capacity being brought online or built for Port Hawkesbury's load because we -- the utility has the ability to change our load down to zero."²⁴

NS Power's approved method for allocating demand costs to ATL customers as part of its COSS is similarly focused on cost causation at the time of system peaks. In its COSS process document that was filed as Appendix 12A in NS Power's 2026/27 GRA, NS Power stated as follows at page 24:

"Allocators are used to determine cost responsibility. As noted above, costs classified to demand are associated with the cost of providing required capacity to serve customers. For this reason, **looking at the drivers of system peaks is the primary factor to consider when determining cost causation**, which is one of the considerations that goes into the approach to allocating demand costs in a manner that reflects cost responsibility.

The second factor that is looked at when determining the allocation of demand costs is volatility, which is **generally controlled by looking at a number of system peaks rather than a single peak event. NS Power currently utilizes a fixed 3 CP approach.** NS Power is a winter peaking utility so it looks to the top system peak in each of the months of December, January and February, which are generally the coldest months in the province to determine its allocation of demand costs. NS Power investigated, several other potential approaches to this, but **determined that the current approach continues to reflect cost causation while also balancing volatility and allocation of costs year over year by assessing cost causation across the three coldest months.** This analysis conducted by NS Power is demonstrated by the data included in its response to DR-88."²⁵ (emphasis added)

When this NS Power statement was put to him by PHP counsel, Mr. Bowman noted that: "I'm not sure I can fully support that the 3 CP is the best, but it is the current method and it's been approved for use in this jurisdiction. So I accept all of that."²⁶

In response to questions from the CA, Mr. Bowman further described the purpose of the 3CP methodology as follows:

²⁴ Transcript, September 28, page 199, line 11 to page 201, line 2.

²⁵ Transcript, September 29, pages 130-131.

²⁶ Transcript, September 29, page 132, lines 1-5.

“A. Yes. The 3 CP methodology is one of the steps used in the Cost-of-Service Study. The methods in the Cost-of-Service Study are established to track cost causation and the principle underlying the 3 CP is that customers who cause loads to be on the system at the highest times of the year cause investment in assets in general.

It's a shorthand way for saying which customers cause us to have to build assets related to being able to supply the load at the peak times.”²⁷
(emphasis added)

These comments regarding the purpose of using 3CP to allocate demand costs are consistent with BAI's Reply Evidence. PHP's actions in actively managing their load requirements at times of system peak have capacity benefits for NS Power's system that justify a lower allocation of demand costs pursuant to NS Power's approved COSS because PHP is not driving further investments in capacity at peak:

“PHP actively manages its operations to minimize costs, including its electric power expenses. It achieves this by reducing its consumption and minimizing its contribution to the NS Power system's peak demands. By consuming electricity during non-system-constrained periods and shedding load during the 3-CP peak hours, PHP directly reduces the incremental capacity investments NS Power must make to maintain reliable, firm service.”²⁸

As Mr. Gorman further explained in response to the Chair during the hearing:

“They're not making a 120-megawatt contribution to this 3CP, and NS Power has not incurred additional capacity cost to serve them as though they are. So the amount of capacity that NS Power has incurred to serve its system is being allocated across the customer classes based on their contribution to that 3CP demand.”²⁹

Mr. Bowman confirmed in response to questions from PHP counsel that the evidence is clear it is likely PHP will be down at a lower load during the winter 3CP if it is on the DR, although in his view what the load will be is highly uncertain.³⁰ Mr. Ferguson acknowledged that, “...in all probability, it seems that Port Hawkesbury Paper will be lower than the average load during times of 3CP.”³¹ In his view, the 65 MW number “has the foundation of appropriately balancing general use across the year with use at time of system peak.”³²

This is a critical point. While the DR credit to determine the energy cost savings of hourly load shifting is calculated with reference to a flat CBL (which is determined after the fact at year end using PHP's actual load), the allocation of NS Power's demand costs is done on an entirely different basis. Rather than consider all of the hours of the year, the approved COSS methodology

²⁷ Transcript, September 29, page 91, lines 10-21.

²⁸ Exhibit N-36, page 6, lines 13-18.

²⁹ Transcript, September 22, page 311, lines 8-15.

³⁰ Transcript, September 29, page 171, line 16 to page 172, line 2.

³¹ Transcript, September 21, page 170, lines 11-18.

³² Transcript, September 22, page 98, lines 6-8.

focuses on where the customer load is expected to be during three peak hours of the year. As Mr. Gorman stated in response to the Chair:

“(Gorman) So what we’re trying to do is allocate what Nova Scotia Power’s actual costs are, and that’s not to serve 120-megawatt coincident peak contribution from PHP, but something less than that on a combined firm and interruptible basis.

Q. Yeah, my understanding -- so my understanding is that the rates under the proposed design going forward are going to be allocated to other customers based on the assumption of a flat high-load-factor load for PHP. Do you not -- is that unfamiliar to you?

A. (Gorman) Well, the three coincident peak contribution is how the fixed cost would be allocated across the rate classes. And the contribution of coincident peak is what NS Power will design its system to be able to serve. So there is a tie between what NS Power’s actual costs are and those costs that we’re allocating across the customers’ classes based on their contribution, the load characteristic that causes NS Power to incur costs to serve those customers.”³³

b) Alternatives to using PHP’s expected demand at 3CP to allocate demand costs

The objections to PHP’s proposed approach appear to be twofold. First, in NS Power’s judgment, the effect of applying NS Power’s approved COSS methodology and the use of PHP actual minimal loads at 3CP to set the demand levels for PHP does not result in what NS Power believes is a fair allocation of demand costs based on PHP’s usage of the generation and transmission systems.³⁴ Mr. McLaren of Intergroup expressed similar concerns and pointed to other approaches to allocate demand costs, but he acknowledged in response to the Chair that those methods are not currently included in the methodology approved for use in Nova Scotia.³⁵

Second, since PHP is receiving load shifting credits for the DR, Mr. Bowman argues that the demand allocation should be done purely on a forecast basis assuming PHP ran at a high load factor, oblivious to the system peaks.

In response to questions from counsel to the IG, BAI explained why Mr. Bowman’s approach is inappropriate:

“Q. He’s proposing that the – use the expected 3CP based on a high load factor prior to DR because the DR is being credited separately.

A. (Fitzhenry) I understand his proposal. Yes, that’s correct.

Q. Okay.

A. (Gorman) But to add in to that, it does not reflect the actual load characteristics of PHP, and that’s why it’s inappropriate.

³³ Transcript, September 22, page 309, line 16 to page 310, line 17.

³⁴ See Transcript, September 22, page 50, line 12 to page 52, line 17

³⁵ Transcript, September 29, page 63, line 18 to page 64, line 4.

A. (Fitzhenry) Right. It's discriminatory because it's not -- it's very, very unlikely that PHP will be at 120 megawatts during periods of 3CP. They've never -- they've rarely been close to that value on a historical basis, and on a forecasted basis it's very, very unlikely that they will be at that level.

Q. Because they've been dispatched down?

A. (Fitzhenry) I would say for a number of reasons. I mean, they potentially could have been dispatched down. I mean, the historical 3CPs kind of speak for themselves. That's where they've been during periods. I believe PHP's testimony has some specific evidence about the operating conditions of PHP at those historical 3CPs.

Q. But you ---

A. (Gorman) And also, it's intended to represent the resource cost that Nova Scotia Power has incurred in order to serve their system's peak demand, and accurately measuring customer's contribution to that coincident demand is a means of allocating Nova Scotia's cost and providing service to that customer."³⁶

PHP strongly disagrees with Mr. Bowman's recommended approach to assume that PHP will simply operate at a high load factor during times of system peak for purposes of allocating the fixed demand costs of NS Power's system. For purposes of his analysis, Mr. Bowman simply assumes that PHP will be operating at a high load factor absent the DR and excluding any downtime. In response to counsel from PHP, he indicated the question would be whether PHP was up and running, or would there be periods where PHP is down for maintenance at the 3CP, stating that "given the vast majority of the hours of the year would be up and running hours, I would take the assumption that they're up and running at those times. And that's why there would be a 3 CP."³⁷

Yet the evidence is clear that PHP is not up and running "the vast majority of the hours of the year". Rather, as PHP counsel discussed with Mr. Bowman, the average running load numbers referenced by Mr. Bowman in coming up with his 120 MW figure exclude a significant amount of PHP downtime, particularly in the three winter months, where recent history suggests PHP has forecasted being down as much as 50% of a month.³⁸

Adopting the type of approach suggested by Mr. Bowman implies that PHP would be running at load levels greater than its second highest operating mode at all coincident peaks, which is simply not reasonable. Further, it attempts to exclude the impact of PHP's dispatchability on the 3CP determination on the basis that PHP is already receiving a DR credit, ignoring the fact that the DR credit calculation is based on hourly energy cost savings across the entire year, not the avoidance of long-term fixed capacity costs that are being allocated using the 3CP allocator as part of NS Power's COSS.

The use of the 3CP allocator for demand costs is designed to allocate those costs based on what actually drives NS Power's system peaks for system planning, not hypothetical scenarios that do

³⁶ Transcript, September 22, page 270, line 4 to page 272, line 3.

³⁷ Transcript, September 29, page 177, lines 13-19.

³⁸ Exhibit N-51 and Transcript, September 29, pages 209, line 3 to page 2126-

not reflect PHP's expected peak loads, and three separate peaks are included in the allocator rather than a single peak to address concerns about volatility. It is simply inappropriate to allocate significant demand costs to PHP based on load levels that are not at all reflective of the expected demand that PHP will actually place on the system at times of system peak, and to provide for little or no interruptible credit despite the significant demand cost savings which PHP's interruptibility provides.

c) PHP recommends use of 65 MW for its demand level at 3CP for this proceeding

That said, PHP understands the concerns that have been raised with the cost implications of its proposal to set its interruptible demand at 0 MW for purposes of the COSS in this proceeding. In addition, the historical record is clear that although PHP has operated significantly below its average running load at times of system peak, and its actual metered load at 3CP in 2024 and 2025 has been minimal, that has not always been the case. Also, although BAI disagrees with NS Power regarding the extent to which the transmission system is designed and built to meet both firm and interruptible load³⁹, PHP recognizes that to date in Nova Scotia the interruptible credit is only provided in relation to generation assets.

For these reasons, the evidence of PHP and BAI proposed an alternative to setting its demand at 8 MW only. Provided that the interruptible credit is calculated fairly in accordance with NS Power's established practice and with respect to PHP's billing determinants, so PHP receives the cost causative credit for interruptibility in relation to the additional 57 MW of interruptible load under the COS, PHP accepts that it would be reasonable for the Board to adopt the 65 MW number for firm and interruptible PHP load for purposes of this proceeding.

In this regard, PHP agrees with NS Power that there is some basis for the 65 MW figure, which is not inconsistent with past historical data, and approximates PHP's average running load at Operating Mode 4, which includes the paper machine and bleaching plant but not pulping operations.⁴⁰

The additional data provided by NS Power in Undertaking U-3 suggests that a number in this range could serve as an appropriate starting point for setting the demand assumption as part of the first year of operation of the ELID tariff. This Undertaking response shows that, even prior to the introduction of Active Demand Control in the ELIADC tariff in 2020, PHP's load at 3CP was in the range of 68 MW (inclusive of losses) as shown in the averages using 2013-2019 data (i.e. from a low of 45 MW to a high of 71 MW).

For full context PHP notes that the averages calculated in Undertaking U-3 did not take into account the correction to the January 2024 load at the 3CP provided in Undertaking U-20. The numbers also include line losses and so are more comparable to a 68 MW assumption than 65 MW. Importantly, the updated 3CP numbers for 2025 have also not been incorporated into a "Forecast Year 2026". If the U-3 table were updated to reflect the appropriate numbers for recent historical data (inclusive of losses), they are as follows:

³⁹ Transcript, September 22, page 201, line 14 to page 203, line 3.

⁴⁰ During periods of high system demand, PHP can continue to make paper from its pulp storage so as to avoid higher energy costs.

Forecast Year	Three-year Average	Four-year Average	Five-year Average
2025	50	58	56
2026	23	41	49

d) Setting PHP's 3CP demand level in future proceedings

In terms of the methodology to be used for PHP in setting its demand assumptions on an ATL tariff in future GRAs, PHP agrees with Mr. Fitzhenry's comments in response to counsel for the IG:

"I think PHP will be incentivized to operate in an efficient manner for numerous reasons. Of course, you know, the dispatchable rider, which will provide fuel and, you know, O&M cost savings, but in addition, you know, **PHP is going to know going forward that it's going to be subject to, you know, these types of review processes where their historical demands are going to be evaluated for their peak demand contribution** and, you know, they're going to be -- certainly be cognizant of that too when operating on a going-forward basis."⁴¹ (emphasis added)

It is worth recalling that the starting point for determining the appropriate demand level to be reflected in the COSS applicable to PHP in this proceeding is found in section b) of the PHP Treatment section of the SA Terms of Settlement, where it states that:

"The COS has been prepared on the basis of the following PHP load characteristics... b) PHP's firm, plus interruptible load, at a forecast of 65 MW **based on prior actual PHP metered load at the time of NSP's 3CP.**" (emphasis added)

In future proceedings, the Board and all parties will have additional recent data with respect to PHP's actual metered load at the time of NS Power's 3CPs under the ELID tariff construct. PHP anticipates that a methodology grounded in an average of prior actual metered load over a representative time period (e.g. five years of 3CP data), adjusted for any known forecast changes and free from any one party's subjective "judgment" as expressed by NS Power, represents the most appropriate solution to ensure consistency, clarity, and stability in the rate design for future GRAs. Utilizing such an approach suggests that if anything 65 MW is a conservative approach for purposes of this proceeding.

IV. The interruptible credit applicable to PHP's interruptible load

As noted above, PHP's support for the use of the 65 MW demand assumption is contingent on PHP receiving the appropriate value of the interruptible credit in relation to the 57 MW of interruptible load used to allocate demand costs to PHP. As discussed during PHP counsel's cross-examination of both Intergroup and Mr. Bowman, the total value of the properly calculated

⁴¹ Transcript, September 22, page 276-277.

Interruptible Credit, excluding any priority interruption value, is \$9.5M on a load of 57 MW (before losses):

“Q. If you take the amount of kilowatts of demand that NSPI is showing for PHP comparable to the Interruptible class, the number’s 59,446. And if you multiply that by NSPI’s cost of a peaker of \$160.44, you will get \$9,537,000.

A. (Mahmudov) Subject to check, yes.”⁴²

Unlike the DR credit, which compensates PHP for system energy cost savings and requires that PHP dispatch its load in different configurations multiple times a day, the interruptible credit acts more like an insurance policy, as it is called upon only in rare circumstances of significant capacity constraints, in order to avoid the cost of building further generation. Its value comes from the generating capacity costs it avoids by being interruptible in the first instance, which is why there are significant financial penalties associated with failures to comply when called upon.

a) *Interruptibility versus Dispatchability*

Unfortunately, there appeared to be some confusion among the experts for the IG and the CA regarding the potential overlap or double-counting of benefits between the interruptible credit and the DR credit. To be clear, the services are distinct and the two credits provide PHP with compensation for cost savings that are entirely different in nature. This was explained at length by NS Power during the hearing:

“...So my question is, is there likely to be a high level of coincidence between periods when PHP is interrupted and when PHP is dispatched down?

A. (Ferguson) Are they being compensated for the same occurrence on the system being dispatched down, compensated for the error and higher? I got it right.

I think the question in some respects highlights the difference between the two services. We see them as two distinct services. And the Interruptible Rider is not dependent on actual interruptions. It’s because the company does not have to build something to meet the load, and that benefit is provided, returned, to the customer who enables it, whether it’s customers in the Large Industrial Interruptible Rider class or Port Hawkesbury Paper.

The DR is truly an operating cost benefit. It’s fuel savings that are realized by the system and produced by the dispatch of the system. It’s pure operating costs, fuel and variable energy.

So two separate services. There can be interplay between the two of them. At times when Port Hawkesbury Paper is dispatched down because of higher system costs, it may very well be a time where the system is constrained. But the benefit is -- is not the cost benefit in that hour, it’s the longer term opportunity of not including Port Hawkesbury Paper’s load as part of the firm requirement, like other Large Industrial Interruptible Rider customers.

⁴² Transcript, September 29, page 26, line 15 to page 27, line 1.

Q. So just to follow up on what you're saying, if I may, Mr. Ferguson. So say there's -- if there's an interruption-related reduction in load, say, of 50 megawatts, it's not a question of NSP determining how -- whether that will be compensated under the Interruptible Rider or the Dispatchable Rider; they're two different sort of mechanisms, two different approaches. One is for the -- like you've just described in the interruptible part. Is that right? So it's not a proportionality?

A. (Ferguson) Correct, yeah. The time horizon is different. For the DR, that's the system savings created across the year, but made up of all those decisions throughout the year to dispatch changes load, whether up or down. The IR is just an ongoing tool Nova Scotia Power has to require Port Hawkesbury Paper and other LIIR customers to reduce their load within 10 minutes. It may happen. It could happen multiple times throughout the year; it may not happen at all throughout the year. It's an issue we get that's been raised over the years, but it's really been highlighted in this matter. The discrepancy between customers are being compensated for accepting interruptible service, but very few interruptions and sense that there's some sort of unequal value exchange there. But the value exchange, in my perspective, the company does all it can from an operating perspective to minimize interruptions; they're bad for everybody. But -- so you can have this circumstance where you don't use the tool, but there is value realized by just having the tool, by reducing the fixed cost imposed on the system by the addition of generating capacity."⁴³

Mr. Stanford made similar points in response to Board Counsel:

“Q. And so Mr. Stanford, in that circumstance, the amount of load remaining available for additional reliability interruption can depend on how far PHP has already been economically dispatched.

A. (Stanford) It can, but I will just qualify that the benefit of the interruptible rider is related more so to the longer-term resource planning benefit. So the fact that Port Hawkesbury Paper's load, the majority of which is interruptible, means that we do not have to plan to serve that load and build generation capacity to build -- to serve that load in long-term resource forecasting -- or pardon me, long-term resource planning.

Q. But it's all of PHP's load above its firm level that is not planned for, isn't it?

A. (Stanford) Yes, that is correct.

Q. And that's because of the dispatchability.

A. (Stanford) No, that's because that load is considered interruptible."⁴⁴

...

⁴³ Transcript, September 21, page 158, line 2 to page 161, line 5.

⁴⁴ Transcript, September 22, page 56, line 16 to page 57, line 5.

A. (Sanford) As we've provided for previously, PHP, under the dispatchable rider, can choose to ride through and not respect those schedule changes, so the interruptible provisions of the interruptible rider provide the mechanism where the System Operator can bring them down for reliability reasons. If they fail to come down following a request for interruption, then they would be subject to significant penalties.

Q. And that difference is what Nova Scotia Power points to that, from a planning perspective, it's able to treat interruptibility as different from dispatch?

A. (Sanford) Yeah. From a long-term planning perspective, you know, when you look at the values stream from the two services, they're two separate and distinct services. With respect to the interruptible rider, that means that the company doesn't have to build additional generation capacity to serve that load from a long-term planning perspective. With respect to the DR rider, that's more about re-dispatching PHP to provide the most economic dispatch, so it's more about kind of the operational timeframe as opposed to the long-term planning timeframe."⁴⁵

In response to questions from Commissioner Melanson, NS Power further clarified the critical differences whether load is subject to the DR credit or the Interruptible Credit:

MEMBER MELANSON: Can I just follow up on that? Is not the reason why you can eliminate anything that's above the firm capacity when you're doing long-term planning or you can't eliminate the dispatchability is because of the various standards and rules that tell you how much you can include for your capacity when you're looking at your planning reserves and that type of thing?

MR. STANFORD: Yes, that's correct, Mr. Melanson. There's an NPCC -- Northeast Power Coordinating Council standard that defines as part of your longer-term planning, you have to plan to serve your peak load plus a planning reserve margin.

MEMBER MELANSON: And what you can include in your capacity for that purpose, you can exclude, I guess, the interruptibility component, but you can't exclude dispatchability. Is that right?

MR. STANFORD: You can -- you would include only load that's designated as firm load in the load forecast that goes into that exercise.

MEMBER MELANSON: Right. So the dispatchable load can't be included in that.

MR. STANFORD: If it was firm load that was dispatchable, then yes, you would include it because it would be -- it's more about the load being either firm or non-firm as opposed to being dispatchable or non-dispatchable.

MEMBER MELANSON: Okay."⁴⁶

⁴⁵ Transcript, September 22, page 59, line 5 to page 60, line 8.

⁴⁶ Transcript, September 22, page 65, line 5 to page 66, line 14.

Mr. Lock also confirmed that PHP's response to requests for interruption are different than dispatchability because it is another level of penalty and seriousness, and NS Power does not have the same level of confidence with dispatchability, if no interruptibility is invoked.⁴⁷

b) The appropriate Interruptible Credit

Thus, the record is clear that dispatchability and interruptibility are two completely distinct services with unique value propositions, and each is to be accorded its own cost-based credit in relation to energy and demand cost savings, respectively.

The provision in the SA that sets the dollar value of the Interruptible Credit for PHP as equivalent to the LIIR class credit is clearly discriminatory and not based on cost of service principles. Mr. Ferguson confirmed during the hearing that it does not reflect the actual cost impact, either embedded or incremental, of PHP's load, but rather simply adopts the dollar figure derived out of the creation of the LIIR Credit as prescribed in the Settlement Agreement.⁴⁸

Setting the PHP interruptible credit at the dollar value of the LIIR class would mean that PHP would only receive a credit of \$5,579,000 in NS Power's COSS. If you divide that credit by the cost of a peaker of \$160.44, PHP would effectively be receiving the full value of the interruptible credit for only 34,772 kW, as opposed to the actual amount of interruptible load of 59,446 kW (inclusive of losses) that is being used to allocate costs to PHP. BAI commented on the inequities of the approach in its evidence:

"Under the proposed ELID, PHP receives a credit of \$7.667/KVA, which is well below NS Power's avoided production capacity cost, in the range of \$14.31/KVA to \$13.107/KVA. Under the ELID as proposed, PHP would pay an interrupted capacity charge of \$6.643/KVA (\$14.31 less a credit of \$7.667) for interruptible demands that do not contribute to NS Power's "Firm Peak Load" resource capacity obligation, and do not contribute to NS Power resource capacity costs. Hence, PHP will be paying a subsidy to NS Power for the cost of resources that are needed to provide reliable "firm" service to other ATL customers. This resource capacity subsidy included in the proposed ELID tariff is not reasonable."⁴⁹

As Mr. Fitzhenry of BAI further stated during the hearing:

(Fitzhenry) "Well, I mean, I think just for one example, I think the interruptible rider, you know, being valued at the LIIR class, you know, using the billing determinants of those classes to make a determination about the per-unit interruptible credit being applied to the ELID class, I would suggest that that's not a cost-based ratemaking decision."⁵⁰

Mr. Mahmudov of Intergroup was asked if it was reasonable to develop rates for a distinct customer class by using the billing determinants of an entirely different class, and he responded: "No, it is not, I think."⁵¹

⁴⁷ Transcript, September 28, page 261, line 3 to page 263, line 3.

⁴⁸ Transcript, September 21, page 53, lines 8-17.

⁴⁹ Ex. N-2, page 21, lines 14-22.

⁵⁰ Transcript, September 22, page 219, line 19 to page 220, line 3.

⁵¹ Transcript, September 29, page 2, line 17 to page 3, line 1.

Mr. Ferguson also confirmed that, absent the language of the Settlement Agreement, NS Power would not likely have proposed an interruptible credit that was simply the same number as proposed for the Large Industrial Interruptible class.⁵² The following exchange with the Chair confirms that in order for PHP to be treated on the same basis as the LIIR customers, the \$13.107/kVA needs to be used:

“Q. Okay. But ultimately, the rate itself – talking about the \$13 rate that Nova Scotia Power has indicated would be the one that was used if the model was followed – would be recovering the value that is determined on the same basis as the large industrial customers?

A. (Ferguson) Yes.”⁵³

Even if the Board chooses to give some deference to the SA in totality, the Board is not bound by settlement agreements and its ultimate duty in its consideration of settlement agreements is to ensure that the terms of agreement are just, reasonable and in the public interest.⁵⁴ As Mr. McLaren noted in response to questions from counsel for the IG:

“A. (McLaren) I would agree they're not bound to. And certainly if the Board were to find that any element of it were, you know, unjustly discriminatory or unduly preferential or otherwise not in the public interest, then, yes, the Board can and should make changes. But I also think there should be some deference to the Settlement Agreement and that if the Board doesn't think that changes it might make would rise to the level of things that were unjustly discriminatory or unduly preferential or not in the public interest, that it should give some deference to the terms that the parties negotiated amongst themselves.”⁵⁵

PHP respectfully submits that a provision that has the effect of crediting it with the interruptible credit for only a portion of its interruptible load is not deserving of deference. This is particularly the case given that Mr. Ferguson confirmed that NS Power intends to carry forward the ELID interruptible credit approved in this process until the next General Rate Application, and that no determination has been made as to when the next General Rate Application will be filed.⁵⁶ In such circumstances, it is critical to PHP that the value of the interruptible credit in the first ATL tariff it chooses to take service under be calculated correctly from the outset.

V. The priority interruptible credit applicable to PHP, if any

NS Power has proposed that the value of priority interruption be set at 10% of the value of the LIIR interruptible credit, or roughly \$558,000, for purposes of this proceeding.

⁵² Transcript, September 21, page 51, line 18 to page 52, line 1.

⁵³ Transcript, September 22, page 130, lines 2-8.

⁵⁴ The Board's approach to Settlement Agreements was recently reiterated in [*Eastward Energy Incorporated \(Re\)*](#), 2026 NSEB 21 at paras. 15-16.

⁵⁵ Transcript, September 28, page 292, line 18 to page 293, line 10.

⁵⁶ Transcript, September 21, page 54, lines 1-17.

PHP recommends that no priority interruptible credit should now apply to the ELID tariff, in which case PHP's load will simply be subject to interruption in rotation with other LIIR customers held as operating reserve.⁵⁷

During the hearing, NS Power clarified that it is not supporting 10% of a larger number, but is proposing \$558,000 as the amount of the credit to be approved, regardless of the Board's decision with respect to the interruptible credit.⁵⁸ NS Power also indicated that the justification was largely rooted in the value of dispatchability as opposed to the value of PHP being priority interruptible:

“Q. For the Dispatchable Rider credit, does it -- in calculating the benefits and the credits to PHP, does it also account for benefits for reliability to the system?

A. (Mowatt) As my colleague Mr. Stanford noted, that there is some inherent reliability associated with Active Demand Control or dispatchability of PHP, and the fact that being able to plan around your largest load when system conditions are tightening is beneficial. From a Nova Scotia Power marketing desk, it would allow you to procure imports, knowing where PHP could be during those periods of time. It's not necessarily indicative of a - like a reserve benefit to the -- to that extent, but there is some ancillary benefit to that. But there's -- I would add that there's no compensation for that planning benefit. It's already shaped into that, into their load shape.

Q. Their levelized load shape?

A. (Mowatt) Their actual load shape.

Q. Okay.

A. I would just add, Ms. Rudderham, that that's -- per discussion, I think it was this morning around understood reliability benefit associated with ADC captured in as part of the company's justification for continuing the priority interruptibility credit. We haven't explicitly valued that reliability benefits, but it's just part of the reason that we're proposing to retain the premium associated with priority interruptibility.⁵⁹

Other customer representatives have raised questions as to the evidentiary foundation for the proposed priority interruptible credit, and whether the proposed compensation for this service is appropriate. Given that NS Power's justification for the value of the priority interruptible credit is primarily related to the DR rather than priority interruption, PHP recommends that the impact of these reliability benefits be considered in relation to the DR, as discussed in the next section.

⁵⁷ Transcript, September 21, page 110, lines 3-12.

⁵⁸ Transcript, September 21, page 266, lines 16-17.

⁵⁹ Transcript, September 21, page 240, line 17 to page 242, line 7.

VI. The calculation of the DR to be paid to PHP

In its Opening Statement, NS Power noted that the move from the existing ELIADC tariff to an ATL structure delivers four meaningful benefits to both PHP and other customer's concluding as follows:

"Fourth, and **perhaps most importantly**, the ELID Tariff preserves valuable operational flexibility for the electric system. As Nova Scotia continues its transition toward a system with increasing levels of renewable generation, demand-side flexibility becomes increasingly important."⁶⁰ (emphasis added)

When asked at the hearing by counsel for PHP why NS Power used the words "most importantly" in relation to this benefit, Mr. Stanford replied as follows:

"The emphasis on the term, "Most importantly" speaks to the evolving power system as we're -- as our power system in Nova Scotia is evolving from a system with dispatchable generation, moving towards larger quantities of variable generation, having access to as many operational tools as we can becomes more and more important to ensure the reliable operation of the power system."⁶¹

a) DR credit value must be commensurate with the risks and costs to provide it

PHP's dispatchable value comes with significant operational effort, risk, and cost to PHP. As Mr. Lock stated in response to Board Counsel, "last year we – 425 times we moved more than 50 megawatts hour to hour."⁶² Mr. Esaiw indicated that PHP shifts its load requirements a minimum of three times a day in response to dispatch, and many days PHP is moved around more than that.⁶³ Although PHP does not have a specific quantification of the costs associated with the frequent stops and starts of mechanical equipment and production delays that result from such continuous load shifting due to the complexity of the calculation, during the hearing PHP provided an outline of the significant technical and commercial impacts in response to the SBA and Board Counsel during the hearing.⁶⁴

If PHP is to continue as a dispatchable customer on an ATL tariff, it is critical that PHP receives value commensurate with the costs and risks associated with the provision of such service, otherwise it would not make commercial sense to subject its operations to such disruption in the supply of electricity. It is equally important that taking service under the type of DR proposed as part of the ELID does not in any way erode the full value of the interruptible credit or result in PHP being allocated a greater share of system fixed costs based on hypotheticals about what PHP's load levels might be absent dispatchability.

As discussed above, the value of the interruptible credit for 57 MW of interruptible load using the current cost of a peaker is in the range of \$9.5 million. In contrast, NS Power has estimated that potential DR savings could be between \$7-11 million, with PHP expected to be able to achieve

⁶⁰ Exhibit N-39, page 2.

⁶¹ Transcript, September 21, page 107, lines 15-22.

⁶² Transcript, September 28, page 232, lines 9-10.

⁶³ Transcript, September 28, page 276, lines 5-18.

⁶⁴ Transcript, September 28, pages 50-56 and pages 231-233.

about half of that.⁶⁵ In response to Undertaking U-8, NS Power indicated that applying the methodology for 2025 would yield a benefit of \$8.98 million. When Mr. Lock was asked for his view on a realistic number during the hearing, he stated:

“A. (Lock) We think the lower range of what they provided should be achievable, given our track record of our operator’s ability to move our load around in the responsive way that we’ve seen under the

Q. So 7 million?

A. (Lock) Yes.”⁶⁶

As stated, the applicable interruptible credit is in the range of \$9.5 million for 57 MW of interruptible load (plus losses) when calculated pursuant to the approved methodology in place since 1996 in Nova Scotia, and requires very little change (if any) to actual customer operations during the year. As well, while the interruptible credit is a known amount, the DR credit is only proposed to be determined at year end and as such is unknown at the start of the year.

No reasonable commercial operation would agree to forego the certain receipt of the interruptible value, in exchange for the opportunity to achieve an unknown amount of energy savings calculated at the end of the year. This is particularly the case when those savings require load shifting multiple times a day and remain subject to a full audit and review process, especially if there was potential sharing of the benefit as requested by some of the parties.

b) NS Power’s proposed methodology for calculating the DR credit is appropriate

PHP and NS Power have almost six years of experience in operating under the dispatchability protocols that form the basis for the DR included as part of the ELID tariff as filed. PHP agrees with the approach that NS Power has developed and proposed for calculating the DR credit as a separate service, including the proposal that PHP retain the benefit of the DR given that PHP is now being allocated embedded costs as part of the ATL structure of the ELID tariff. PHP particularly notes NS Power’s clarifying comments during the hearing with respect to the use of forward replacement fuel costs and the level of discretion available to NS Power with respect to the proposed DR credit calculation:

“...I think this question highlights the difference -- one of the main differences between the ELID Tariff and the ELIADC. It’s important to note that under the ELIADC, PHP was being costed out for their entire fuel consumption based on the methodology you referenced. Under the ELID Tariff, it’s moving to an above-the-line cost structure where the majority of its costs will be priced as an embedded cost function. And Mr. Ferguson can interject if I get any of this wrong. The important part to understand here is we’re only pricing the dispatchable rider calculation, which is a very small portion, relatively small portion, of the total credit -- or of the total cost associated with PHP using the replacement cost methodology. The methodology itself is derived to isolate solely load-shifting benefits of PHP. To do that accurately, one needs to use the same pricing methodology in both the actual load profile provided by -- or at the end of the year, which PHP actually ran,

⁶⁵ Exhibit N-1, page 11, lines 1-7.

⁶⁶ Transcript, September 28, page 208, line 13 to page 209, line 2.

and comparing that to the customer baseline or the levelized load profile. The pricing that is used, it represents the opportunity costs on the system of running each fuel type, so in order to really capture the benefit of load-shifting, that replacement cost methodology is the appropriate one to use. Another function that's beneficial of using the replacement cost methodology is that an accounting cost methodology would smooth out pricing, given the fact that you don't -- you might not have price variations throughout a day. It would be a same price for gas. It would be an average or weighted average cost. Whereas replacement cost methodology is the opportunity cost to Nova Scotia Power for dispatch during that day. So it is influencing the dispatch decision behaviour of actually shifting the load.⁶⁷

...

Q. Is there any discretion that's being applied by Nova Scotia Power in conducting that year-end differential calculation?

A. (Mowatt) I'd say Nova Scotia Power has access to all of the information that's required. We have the replacement cost, we have PHP's total load, we have the system conditions at that time. The calculation itself is fairly straightforward. Even the levelizing of PHP's load to mimic that high load factor, that CBL profile, is a formulaic approach. We're using a random seed in order to ensure that there isn't personal bias or any kind of discretion associated with the randomized days to mimic an agnostic -- a customer agnostic to price movements on when they would take those down days. So it is very much formulaic. The access to information makes it such that Nova Scotia Power is the only party in a position to do the calculation. Does that make sense, Mr. Mahody?

Q. It does, so then back to my question. What, if any, discretion is Nova Scotia Power utilizing when it's doing those calculations? And if the answer's none, it's none.

A. (Mowatt) None that I can think of.⁶⁸

In its evidence, Bates White did not support the approval of the DR as filed. PHP was encouraged that during the hearing, Bates White appeared to soften its opposition to approval of the DR, noting that NS Power's response on the use of forward replacement pricing was "quite helpful"⁶⁹ and that "...this hearing has gone a long way into -- in advancing the record. But yeah, there still needs to be that recognition and assurance that these -- that the DR credit results will be, you know, thoroughly reviewed and subject to revision if the adjustments made were not justified or reasonable."⁷⁰

PHP agrees and supports review of the calculation of the DR credit as part of the FAM audit. PHP is also not opposed to the continued tracking of cause code information, should the Board determine it is relevant to the after-the-fact review of the calculation, which PHP does not believe

⁶⁷ Transcript, September 22, page 17, line 5 to page 19, line 2.

⁶⁸ Transcript, September 22, page 45, line 13 to page 47, line 1.

⁶⁹ Transcript, September 29, page 274, line 13.

⁷⁰ Transcript, September 29, page 292, lines 11-16.

necessary.⁷¹ However, it is important to emphasize that the calculation of the DR credit under the proposed mechanism will not attempt to distinguish and remove what Bates White refers to as “incidental load changes – changes in load that have nothing to do with dispatchability.”⁷²

To be clear, the proposed calculation methodology as discussed in the Application and further outlined in response to Undertaking U-8 is intended to compare PHP’s actual load-shifting behaviour to a relatively flat load profile. The calculation is not influenced by the reasoning behind why PHP’s load may have been at a certain level in any given hour. Attempting to isolate “incidental” load changes that are not subject to the DR credit would require a highly subjective, hour-by-hour review of the surrounding circumstances each time PHP shifts its load, which as noted is expected to occur a minimum of three times a day. Importantly, the rationale behind why PHP has shifted its load does not impact the actual cost implications of PHP’s dispatchability on the system.

c) The DR credit should not include a sharing mechanism

NS Power is not proposing a sharing mechanism, and PHP respectfully submits that a sharing mechanism is neither necessary or appropriate. This is especially the case where the value of the load shifting is unable to be known until year end, and where PHP is the only party to face operational challenges and risks in being dispatchable.

PHP acknowledges, as NS Power did in response to the Chair, that in any scenario in the real world, PHP is likely to operate on a suboptimal basis compared to the optimal levelized load that NS Power uses as part of the calculation, and this is a favourable assumption to PHP but the degree can’t really be determined.⁷³ As noted above, there are, however, similarly significant reliability benefits of the DR that accrue to all customers and are not captured by the energy-only credit calculation and are also difficult to quantify. As Mr. Stanford noted, the dispatchability service provides valuable operational flexibility which is becoming increasingly important as the system transitions to increasing levels of variable generation. Mr. Mowatt specifically noted in this regard:

A. (Mowatt) I wouldn’t be able to speak to the detail of it. I do know, heuristically, that the benefit of PHP’s dispatchability is the fact that it can come up and can come down to meet system requirements. So for instance, over the last number of days we could have had a high wind event, at which point PHP’s ability to ramp up to absorb that wind to either save unit start so we can keep existing generation online to meet peak demand later that day or to be able to absorb more wind and maintain economic imports is a valuable part of the system. Likewise, they could have ramped down over the last number of days as the wind forecast comes off and generation -- resourcing becomes tight, so they would try to follow that wind profile to the best of their ability with their load.”⁷⁴

...

⁷¹ Transcript, September 28, page 114, lines 4-14.

⁷² Transcript, September 29, page 291, line 15 to page 292, line 1.

⁷³ Transcript, September 22, page 77, line 1 to page 79, line 15.

⁷⁴ Transcript, September 28, page 26, line 8 to page 27, line 4.

“A. (Mowatt) Just to add on to that last statement, some of that is due to the increased amount of wind and intermittent generation that we have on. That flexibility that they provide does add significant benefit to the system, as I stated before, we’re capture some of the wind sharpening.”⁷⁵

PHP submits that the existence of these reliability benefits offset the need for any sharing of the DR credit with other customers, as PHP’s dispatchability inherently provides significant benefits to all customers and the system as a whole at least commensurate with any suboptimality of PHP’s loading levels. In addition, as discussed above, PHP (i) agrees to forego priority interruption, and the associated credit of \$558,000 which NS Power had noted was largely justified to provide some recognition of the reliability benefits PHP’s dispatchability would continue to bring to the system, and (ii) PHP is the only party to incur operating costs and risk in carrying out dispatchability.

d) Annual DR Rider Optionality

PHP remains concerned about the costs and risks of continuing to offer the dispatchability service, and is only able to do so if, in its determination, the terms of the DR as approved offer sufficient opportunity to achieve savings commensurate with the impact on its business. In this regard, PHP notes that the “Dispatchable Rider to the ELID Tariff” section of the ELID tariff filed with the Application currently states, in part:

“Customers taking service under the ELID Tariff will also be subscribed to this Dispatchable Rider (DR)...” (emphasis added)

In light of the various issues raised and positions advocated by the parties to the hearing, PHP respectfully requests that the Board also make it clear in its decision that the DR is intended to be an optional rider under the ELID tariff. In this regard, PHP anticipates that the DR would include an annual requirement to provide written notice in advance of the year of the customer’s intention to take service under the DR to the ELID tariff for the upcoming year.

Further, it is clear that the proposed customer charge is primarily if not fully justified on the basis of the costs associated with administering the DR operating procedures and credit calculation, the value of which is not proposed to be shared and accrues to PHP.⁷⁶ Should PHP not take service under the DR, PHP’s view is that no customer charge should be applicable for the ELID tariff either, as the basis for such charge would no longer exist.

VII. The forecast net energy usage applicable to PHP

Section b) of the PHP Treatment section of the Terms of Settlement indicates that the PHP energy used in preparing the COS was based on PHP’s forecast usage for the test years, net of the amount forecast to be provided by the Goose Harbour Lake Wind Farm. In its Application, NS Power indicated that the assumed PHP energy consumption in the GRA COSS for 2027 is 304.3

⁷⁵ Transcript, September 28, page 28, lines 5-10.

⁷⁶ Transcript, September 22, page 74, lines 11-16.

GWh.⁷⁷ In its evidence and reply, PHP and BAI supported adjusting the energy assumptions that were available and modeled at the time of the GRA negotiations in July 2025 and incorporated into the SA.

a) Two approaches for setting the PHP energy assumptions are justifiable

Commissioner Melanson specifically asked BAI why it would be appropriate to change the forecast amounts for an above-the-line ELID rate in between GRAs when other ATL forecasts are not changing. Mr. Fitzhenry replied that he felt it was particularly important to get it right in this case due to the dynamic nature of the load given the single customer in the class.⁷⁸ Commissioner Melanson asked the PHP Panel a similar question, and Mr. Esaiw replied that the premise is that PHP wants to start off on sound footing with more relevant and recent data.⁷⁹

However, Mr. Willett of NS Power noted in response to questions from the Chair, that it would be difficult to update the forecasted net PHP load in isolation as this would result in a different system requirement and it becomes challenging to change one component of the GRA forecast.⁸⁰

As PHP discussed with Board Counsel and the Chair, the P50 forecast for the Wind Farm at 168.5 MW would suggest the use of a higher amount of PHP wind compared to the forecast.⁸¹ In contrast, PHP recently provided NS Power with its preliminary, indicative load forecast for the remainder of 2026 and 2027 as of Q3 2026 that shows a higher amount of potential load than PHP was projecting at the time it filed its evidence, and which remains subject to further updates based on evolving market conditions.⁸²

In these circumstances, PHP submits that it would be appropriate if the Board's decision in this matter maintains the assumed net PHP energy consumption of 304.3 GWh from the GRA COSS as per NS Power's position. Alternatively, consistent with PHP's initial position, the Board's decision could update both the PHP load forecast with the most current available information and use the P50 wind forecast based on the 168.5 MW configuration of the wind farm, as provided in the responses to Undertakings U-14 and U-21. Such an adjustment would yield a revised energy assumption for net tariff energy of 252.1 GWh (829.3 GWh – 557.2 GWh).

b) Bates White's recommendation for a True-up should be rejected

Bates White's evidence noted the possibility that there could be variances in PHP's actual generation and the output from the Goose Harbour Wind Farm that would both directly impact the net energy taken under the Tariff. NS Power confirmed in the hearing that a portion of the energy charge includes recovery of fixed embedded costs.⁸³ As noted by Mr. Ferguson, approximately 80% of the Energy Charge is variable on account of fuel costs, but roughly 20% of the Energy Charge is associated with fixed costs.⁸⁴ As a result, Bates White recommended that the ELID Energy Charge be updated to better reflect likely PHP net load, and also proposed a true-up

⁷⁷ Exhibit N-1, page 7, line 14.

⁷⁸ Transcript, September 22, page 301, line 17 to page 302, line 16.

⁷⁹ Transcript, September 28, page 266, line 3 to page 267, line 2.

⁸⁰ Transcript, September 22, page 136, line 8 to page 137, line 2.

⁸¹ PHP response to Undertaking U-21 and Transcript, September 28, pages 268-269.

⁸² NS Power response to Undertaking U-14.

⁸³ Transcript, September 21, page 308, lines 12-17.

⁸⁴ Transcript, September 21, page 309, lines 5-11.

mechanism to address substantial deviations of PHP net load from expectations.⁸⁵ In its response to IR-4 from PHP, Bates White did not offer any lower bound on what might be considered substantial, and also confirmed that the true-up if adopted should operate symmetrically.⁸⁶

As noted above, NS Power opposes adjustments to the ELID Energy Charge to account for more recent forecasts, and also opposes the use of a true-up for the following reasons:

“So what I would say is this is similar to any other above-the-line customer class where the rates would be set and those variances would work just as any other variance of an above-the-line customer class. So there wouldn't be a true up on the non-fuel component to PHP.”⁸⁷

...

“We do have the FAM mechanism, which would true-up a large component of the energy charge, but it's not typical to be changing the assumptions related to -- you know, assumptions -- load expectations are going to change over time. You need to draw a line in the sand when you're establishing those rates. And I would say that the FAM mechanism is what would true-up the majority of those rates, but there's no mechanism on the non-FAM component of the energy rate.”⁸⁸

PHP similarly does not support the use of a true-up with respect to the energy assumptions . As noted in its Opening Statement, PHP's interest in moving to an appropriate ATL cost-based tariff is to provide PHP greater certainty and predictability of its energy costs.⁸⁹ The imposition of a true-up to account for variances for energy assumption forecasts is not applied to any other ATL customer class and introduces an additional level of uncertainty and complication associated with a further required review process. For these reasons and the reasons noted by NS Power, no true-up should be required.

VIII. The revenue-to-cost (“R/C”) ratio applicable to PHP

The R/C ratio for PHP in the ELID tariff filed with the Application is the result of calculations in the COSS modeling that the Parties agreed to be used to establish the ATL rates for other customers as part of the GRA. The Terms of Settlement of the SA were silent on the R/C ratio applicable to PHP under the ELID tariff, which as noted above expressly contemplated that it remains open to the Parties to take any position they choose in the ELID tariff and ADC processes.

As noted in BAI's Reply evidence, PHP is proposing an R/C ratio of 1.0 which ensures PHP pays its cost to serve rather than providing an additional 4.373% premium that will subsidize cost to serve other customer classes:

⁸⁵ Exhibit N-20, page 35, lines 11-14 and 23-25.

⁸⁶ Exhibit N-26, page 5.

⁸⁷ Transcript, September 21, page 313, lines 9-14.

⁸⁸ Transcript, September 22, page 221, lines 3-page 83, lines 9-17.

⁸⁹ Exhibit N-41, page 2.

“Because PHP is a new ATL customer class that has never previously been costed as an ATL, the proposal to force a 4.373% premium onto PHP’s cost of service would compel it to provide an ongoing structural subsidy to other ATL classes. An equitable R/C ratio of 1.0 aligns strictly with the statutory fairness principles mandated under the Public Utilities Act, ensuring PHP pays exactly its cost to serve.”⁹⁰

Mr. Fitzhenry of BAI elaborated on this in response to questions from the SBA:

“A. (Fitzhenry) Right. So a particular class wasn’t be served under an ATL rate but is being transitioned to an ATL rate that’s also experiencing an R/C ratio, so that’s being allocated costs above its cost-of-service, could potentially be experiencing, you know, cost increases due to that transition from a below-the-line to above-the-line rate. And in addition, be experiencing, you know, an additional rate increase as a result of that R/C ratio above 1.0.”⁹¹

Essentially PHP would face a significant increase in its contribution to fixed costs, compounded by the proposed premium on its overall rate. The amounts in question are material to PHP and the proposed ELID tariff. NS Power’s panel confirmed that PHP has not historically been subject to the cost of service for its electricity rates to date.⁹² The cost implications of the higher R/C ratio were identified by NS Power as being \$1.7M as shown in Exhibit N-1(i), the difference between \$79.9M and \$81.7M.”⁹³

PHP understands the comments raised in Commissioner Melanson’s questions to BAI as to whether it is appropriate to change the R/C ratio for one class of customer just because it’s a new rate. As Mr. Gorman stated in his response:

“I think this rate provides some flexibility on that with the deferral account. So since NS Power can be made whole for any small changes that we’re proposing here, the deferral account could pick up those differences in revenue, then the Board can decide how it will go about recovering that deferred cost.”⁹⁴

Here the circumstances are unique in that PHP is proposing to move to a newly designed ATL rate for the first time and contribute significantly greater revenue toward the fixed costs of the system than it has historically, and there is currently no clarity as to when the next GRA may occur such that the R/C ratio could be re-examined. The existence of the deferral account provides the opportunity to establish the ELID tariff at the outset based on the most accurate COSS calculations, at minimal overall impact to other customer classes, and without compounding PHP’s rate increase for tariff energy in moving ATL by imposing a further 4.373% increase.

⁹⁰ Exhibit N-36, page 14, lines 10-14.

⁹¹ Transcript, September 22, page 224, lines 12-20.

⁹² Transcript, September 21, page 112, lines 8-11.

⁹³ Transcript, September 21, page 163, lines 15-17.

⁹⁴ Transcript, September 22, page 304, line 16 to page 305, line 3.

IX. Conclusion

For the above-noted reasons, PHP requests Board approval of the ELID tariff as filed, subject to the following discrete modifications:

- **Demand Assumptions and Interruptible Credit**: (i) adopt the SA framework of a fixed 65 MW 3CP cost allocator for this proceeding, but credit PHP for the 57 MW (plus losses) of interruptible service at NS Power's avoided marginal cost of capacity (\$13.107/kVA), as opposed to the lower dollar value for the LIIR class referenced in the SA that is not based on the billing determinants of PHP or cost causation, and (ii) provide a methodology for use in setting PHP's demand in subsequent GRAs that is grounded in an average of prior actual metered load over a representative time period (e.g. five years of 3CP data), adjusted for any known forecast changes.
- **Priority Interruptible Credit**: PHP recommends that no priority interruptible credit should apply, in which case PHP's load will simply be subject to interruption in rotation with other LIIR customers held as operating reserve.
- **Dispatchability Rider**: in light of the various issues raised and positions advocated by the other intervenors and Board consultants in the hearing process, provide that the DR be an optional rider to the ELID tariff on an annual basis. If PHP does not take service under the DR, no customer charge should apply.
- **Energy Assumptions**: either (i) maintain the assumed PHP energy consumption forecast in the GRA COSS of 304.3 GWh, as recommended by NS Power, or (ii) use the updated PHP load forecast and the P50 wind energy forecast for 168.5 MW of Goose Harbour Lake wind production to account for the latest load data in Undertaking U-14 (829,300 MWh) and P50 wind data in Undertaking U-21 (577,200 MWh), for net Tariff energy of 252.1 GWh.
- **R/C Ratio**: Set the ELID tariff in its first year of operation using an R/C ratio of 1.0.

PHP has spent considerable time and effort collaborating with NS Power to develop an appropriate ATL rate for PHP, as the potential transition to an embedded cost rate is a significant milestone for PHP. This transition will have benefits for both PHP and the system as a whole, but only if the rate is based on proper cost causation principles. Mr. Fitzhenry confirmed that this is his view as well in response to a question from the Chair:

"Q. Could I summarize that by saying generally you view embedded cost rates as being overall fairer for all ratepayers than marginal cost rates?

A. (Fitzhenry) Yeah, I think so long as the Cost-of-Service Study is -- you know, there's good cost, you know, causative principles engrained in the Cost-of-Service Study, I think that's generally the case, yes."⁹⁵

PHP's transition to a properly causative ATL rate is also well aligned with Section 6(2) of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, which states:

⁹⁵ Transcript, September 22, page 308, lines 11-18.

In approving or fixing rates, tolls, charges, tariffs, capital applications and all other matters over which the Energy Board has authority, the Board shall give appropriate consideration to the extent to which such rates, tolls, charges, tariffs, capital applications or other matters

(a) support competition and innovation in the provision of energy resources in the Province;

(b) support the development of a competitive electricity market;

(c) ensure the provision of safe, secure, reliable and economical energy supply in the Province;

(d) support sustainable development and sustainable prosperity; and

(e) support such other factors as prescribed by the regulations,

with the goal of approving rates, tolls, charges, tariffs, capital applications or other matters that are consistent with the purpose of this Act, the *More Access to Energy Act* and the regulations.

The purpose of the *More Access to Energy Act* is set out in section 2 of that statute and includes similar, although not identical, objectives to the list of factors:

(a) increase competition and innovation in the Province's energy sector;

(b) ensure the provision of a safe, secure, reliable and economical energy supply in the Province;

(c) ensure a transparent, efficient and coordinated approach to Provincial energy-supply planning;

(d) provide for competitive procurement practices for new energy-system resources;

(e) support the sustainable development, sustainable prosperity, energy efficiency and greenhouse gas emissions reduction goals of the Province articulated in the Environmental Goals and Climate Change Reduction Act; and

(f) provide for a phased transition of the system operator from Nova Scotia Power Incorporated to an Independent Energy System Operator.

The proposed ELID tariff, modified for cost causative purposes as requested by PHP in this submission, serves these considerations and purposes well in that it further enables the use of PHP's large industrial load as a controllable system resource capable of achieving various system-wide benefits for all ratepayers. As NS Power confirmed in response to Commissioner Melanson, if PHP instead took service under the LIIR class, the dispatchable energy portion would be lost.⁹⁶

⁹⁶ Transcript, September 22, page 92, lines 12-15.

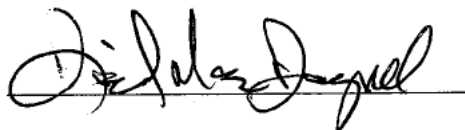
The ELID tariff is an innovative tariff that promotes the reliable, economical, and efficient use of energy in Nova Scotia. The ELID tariff also supports competition in the Province by enabling the greater integration of more wind built by an independent power producer, which in turn supports sustainability and greenhouse gas reductions. NS Power witnesses confirmed this in response to questioning by Member Melanson:

"Q. ... does the tariff itself have any impact on the development of a competitive electricity market?

A. (Ferguson) The tariff accommodates the existence of the Power Purchase Agreement and the Sales Agreement, which is enabling non-utility-owned generation. So I guess it does from that perspective at the wholesale -- as I think of it, at the wholesale level."⁹⁷

Overall, the ELID tariff, properly costed, would provide the option for PHP's flexible load to continue to be used as a powerful grid resource – integrating more wind, lowering system costs, strengthening reliability, and supporting competition. It is an innovative tariff for an evolving electricity system, and should be approved by the Board on that basis, with the cost causative modifications proposed by PHP.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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⁹⁷ Transcript, September 22, pages 102-103.