

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF: *The Public Utilities Act, R.S.N.S. 1989, c. 380 as amended*

– and –

IN THE MATTER OF: 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 SUBMISSIONS OF
THE CONSUMER ADVOCATEOVERVIEW

NS Power seeks approval for an Extra Large Industrial Dispatchable Above-the-Line Tariff applicable to Port Hawkesbury Paper (the “ELID Tariff” or the “Tariff”). Several aspects of the proposed Tariff are in dispute, including but not limited to the appropriate costing and billing parameters for the Tariff, as well as the structure of the Dispatchable Rider (“DR”).

Generally speaking, and subject to certain reservations concerning the DR, the CA supports NS Power’s Application as being consistent with the terms of settlement in NS Power’s 2026-2027 General Rate Application proceeding (M12451). The CA notes that the Board’s objective in this matter is not to approve a Tariff that is “satisfactory” to PHP,¹ but rather a tariff that is just, reasonable and in the public interest. With that in mind, the CA submits that NS Power’s proposal provides PHP with a Tariff that is just and reasonable in providing stability and transparency to PHP, while also ensuring that PHP makes appropriate contributions to system costs in a manner that is fair to other customer classes (and which takes into account the unique operating circumstances of NS Power’s largest customer). The CA further submits that the proposed Tariff is therefore neither unduly prejudicial nor unduly preferential to PHP, and is supportable on this basis.

The CA therefore requests that the Board approve the ELID Tariff as filed, subject to the following:

- The Board should consider the appropriateness of crediting all DR savings to PHP, consistent with the recommendations made by InterGroup and Patrick Bowman;
- The Board should require NS Power, IESO, and PHP to seek approval of the DR Operating Procedures from the Board, consistent with the recommendations made by InterGroup and Patrick Bowman;
- The Board should undertake a review of the ELID Tariff after the first year of implementation, which would include but not be limited to a review of the Interruptible Service component, consistent with the recommendations made by InterGroup.

In addition, the CA is concerned about PHP’s approach to this proceeding, and the extent to which other parties to the Settlement Agreement may have been unfairly prejudiced. The CA is particularly concerned

¹ Exhibit N-3, Evidence of PHP, p. 12.

about the extent to which PHP's approach may have resulted in costs being unnecessarily allocated to the PHP Deferral Account.

BACKGROUND

This Application concerns NS Power's request for approval of an "above-the-line" ("ATL") tariff for Port Hawkesbury Paper ("PHP"). The Tariff is based on the Large Industrial ("LI") Tariff under which the Company's large industrial customers are served, with various modifications, and includes the following key elements:

- Customer Charge - \$10,000/month;
- Demand Charge – equal to \$12.872/kVA per month in 2026, and \$14.310/kVA in 2027, multiplied by 65 MW of billing demand;
- Energy Charge - \$0.09977/kWh in 2026;
- Interruptible Service - providing a credit to the demand charge equal to \$7.64/kVA-month in 2026 and \$7.67/kVA-month in 2027, plus a priority interruptible credit of 10%, applied to the difference between PHP's firm contracted demand (8 MW) and the billing demand (65 MW), and imposing penalties if the customer does not curtail load as required;
- Dispatchable Rider - calculated annually by comparing actual system costs under the customer's dispatched load to a modeled high load-factor baseline scenario, with the difference credited to PHP.²

The Tariff structure has been summarized as follows:

At a basic level, the ELID Tariff is based on the Large Industrial Tariff and contains a customer charge, demand charge, and energy charge. There are also two additional riders, the Dispatchable Rider and the Interruptible Rider. NS Power states that the Dispatchable Rider provides both a benefit to PHP as well as a "significant benefit to other customers through PHP's increased contribution to system costs as enabled by the embedded cost-based energy and demand pricing and minimized risk to other ATL customers due to PHP load flexibility."³

Notably, the costing and billing parameters for the ELID Tariff arose out of the Settlement Agreement (the "SA") filed by NS Power in the company's 2026-2027 General Rate Application ("GRA") (M12451).⁴ The Settlement Agreement provided the following parameters for a proposed above-the-line tariff for PHP (the "PHP Treatment Provisions"), all of which have been applied by NS Power in the development of the ELID Tariff:

- a) NS Power's 2026/2027 cost of service study includes PHP as an above-the-line customer based on the forecast of receiving Board approvals for a new PHP tariff in time to implement for January 1, 2026.
- b) The COS has been prepared on the basis of the following PHP load characteristics: a) PHP's firm load at 8MW at the three coincident peaks; 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; and c) PHP energy will be 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. The same load characteristics are applicable to the base cost of fuel model as well.

² Exhibit N-1, Application, p. 4 of 19

³ Exhibit N-21, Evidence of Synapse, p. 5

⁴ Exhibit N-1, Application, Attachment 4

- 1 c) The dollar value of the Interruptible credit to be applicable to PHP's interruptible load shall be
 2 the same as the credit for Large Industrial Interruptible customers, plus the value of priority
 3 interruption service provided, if any. The priority interruptibility service that may be provided
 4 by PHP is modelled at an additional 10% credit.
 5

6 In addition, the PHP Treatment Provisions also addressed various procedural steps required to be taken by
 7 NS Power and PHP, which included the development of an Active Demand Control mechanism for the
 8 ATL tariff, and the filing of written tariff with the Board for approval. The relevant paragraphs state:
 9

- 10 d) PHP and NS Power will complete discussions and analysis of the value of Active Demand
 11 Control ("ADC"), which shall be proposed to be a rider to the cost-based rate. The value of
 12 ADC, and the proposal for cost recovery, if any, shall be brought forward for approval by the
 13 Board later this year to be effective January 1, 2026. For clarity, any payment approved by the
 14 Board for Active Demand Control services will be collected from above the line customers.
 15
 16 e) NS Power and PHP shall reflect the foregoing in a written tariff which shall also include a
 17 proposal for priority interruptibility to be brought forward for approval by the Board later this
 18 year to be effective January 1, 2026 and PHP commits to taking service under such a tariff on
 19 January 1, 2026, or such later date as the Board approves the tariff as being effective, whether
 20 on a permanent or interim basis, subject to satisfactory conclusion of the resolution of the PHP
 21 ADC and tariff processes.
 22

23 The terms of settlement as described in the PHP Treatment Provisions also provide a "carve-out" that allows
 24 parties to take any position they wish to take in this proceeding, and is stated as follows:
 25

- 26 f) In the PHP ADC and tariff processes that will be brought forward for approval by the Board
 27 later this year, it remains open for all Parties to take any position they so choose, including
 28 whether each of the PHP ADC and tariff filing(s) is inconsistent with the load characteristics
 29 and basic tariff structure as set out above.
 30

31 Finally, the PHP Treatment Provisions also permitted NS Power to seek approval of a deferral account to
 32 address any revenue variances arising in relation to the ATL tariff application, stated as follows:
 33

- 34 g) NS Power may seek Board approval for a deferral account to account for any NS Power revenue
 35 variances that may arise in 2026 or 2027 from the following scenarios, which costs would be
 36 collected/refunded from/to above the line customers: (a) where a Board decision on the PHP
 37 tariff, including the Active Demand Control Rider, differs from the above the line PHP tariff
 38 assumptions included in the 2026-2027 GRA; (b) where, for any reason, the PHP tariff is not
 39 available for PHP to take service under it as of January 1, 2026; and/or (c) PHP determines the
 40 PHP ADC and tariff processes outcome is not satisfactory.
 41

42 Although the above terms were previously agreed upon by all parties to the SA, PHP subsequently opposed
 43 the proposed costing and billing parameters as described above. Relying upon the evidence of its
 44 consultants, Colin T. Fitzhenry and Michael P. Gorman of Brubaker & Associates Inc. (BAI), PHP argues
 45 that the ELID Tariff should be modified as follows:
 46

- 47 • The ELID capacity charge should be based on 8 MW of firm demand at 3CP (instead of 65
 48 MW), which would eliminate the need for any interruptible credit for power supply above
 49 PHP's firm demand of 8 MW;
- 50 • In the alternative, if the ELID capacity charge is designed to include the cost of firm demand
 51 service for a 65 MW tariff capacity, then the interruptible credit should be applied to 57 MW

of the 65 MW service, and the interruptible credit should be priced at NS Power's estimated marginal cost of capacity of \$13.107KVA;

- The Revenue-to-Cost (R/C) ratio should be established at 1.0, instead of the proposed 1.04373 (as established by the COS filed with the GRA);
- The ELID Tariff should be updated to incorporate revised 2026 and 2027 energy sales forecasts for PHP.⁵

PHP argues that its reversal on these items is permitted by the terms of settlement, which allow "all Parties to take any position they so choose" in these proceedings.⁶ PHP therefore characterizes its opposition to the ELID Tariff as proposed as not being "inconsistent with any terms of the 2026-2027 GRA Settlement Agreement."⁷ Other participants have adopted similar readings, though both NS Power and the CA disagree with PHP's interpretation.⁸

Board Counsel consultants and several Intervenors, including the CA, have filed evidence in this proceeding. The respective positions advanced by the various consultants in response to PHP's proposed changes to the Tariff are briefly summarized below:

	Demand Charge	Interruptible Service	R/C Ratios	Energy Forecasts
Intergroup ⁹	Supports NS Power's proposal; rejects PHP's proposal	Supports NS Power's proposal; rejects PHP's proposal	Supports NS Power's proposal; rejects PHP's proposal	Supports NS Power's proposal; rejects PHP's proposal
Patrick Bowman ¹⁰	Disagrees with NS Power and PHP positions; recommends setting the value of the capacity value at 120 MW	Disagrees with NS Power and PHP positions; recommends providing little to no credit via the Interruptibility Rider, and also rejecting the priority interruptible credit of 10%	Supports NS Power's proposal; rejects PHP's proposal	Supports NS Power's proposal; rejects PHP's proposal
Synapse ¹¹	Supports NS Power's proposal; rejects PHP's proposal	Disagrees with NS Power and PHP position; recommends directing NS Power and PHP to negotiate an alternative credit value	No comments	No comments
Bates White ¹²	No comments	No comments	No comments	No comments

In addition, expert consultants have also raised other concerns regarding the tariff structure, as follows:

⁵ N-2, Evidence of BAI, p. 2-3; N-3, Evidence of PHP, p. 8

⁶ Exhibit N-1, Attachment 4, Page 12 of 21.

⁷ Exhibit N-12, PHP (CA) RIR-6

⁸ Exhibit N-5, NSP (CA) RIR-9.

⁹ Exhibit N-19, Evidence of Andrew McLaren and Hayitbay Mahmudov (InterGroup), p. 5-8

¹⁰ Exhibit N-25, Evidence of Patrick Bowman, p. 3-5

¹¹ Exhibit N-21, Evidence of Melissa Whited (Synapse), p. 3-4

¹² Exhibit N-20, Evidence of Bates White

- 1 • InterGroup: Apart from offering its support for the Application as being consistent with the terms
2 of the Settlement Agreement, and recommending that the Board reject PHP's proposed
3 modifications, Intergroup recommends that the Board (1) consider the reasonableness of the DR
4 savings proposed to be credited to PHP; (2) require NSP to seek Board approval for the Operating
5 Procedures; (3) approve the Interruptible Service component to the ELID Tariff only for 2026 and
6 2027, with a review to be completed prior to 2028; (4) undertake a review of the ELID tariff
7 generally after the first year of implementation.
8
- 9 • Patrick Bowman: In addition to the positions noted above, Mr. Bowman recommends that (1) the
10 rights provided NSP in the DR should include practical control of dispatch at times when the system
11 has small reserve margins or supply constraints; (2) the DR dollar value credit should not be
12 allocated 100% to PHP, and should instead be shared with other customers; and (3) The Board
13 should ensure that the Operating Procedures are specifically noted as a matter for Board approval.
14 Further the Board should clarify that reporting on the DR status, including estimates of the annual
15 DR to be funded by ATL customers, is provided at least quarterly by NSP.
16
- 17 • Bates White: Bates White's evidence did not address the issues in dispute between NS Power and
18 PHP, and instead focussed on three key aspects of the ELID Tariff: (1) the Energy Charge, (2) the
19 Customer Charge, and (3) the treatment of the Goose Harbour Lake Wind Farm ("Goose Harbour").
20 With respect to each item, Bates White recommended the following: (1) that NS Power file
21 additional evidentiary support for its proposed Customer Charge of \$10,000/month, and absent this
22 for the Board to set the Energy Charge at \$12,291.67/month; (2) that the Board decline to approve
23 the Energy Charge as proposed, and instead require NS Power to revised the Energy Charge by
24 updating the COS Study model to better reflect PHP net load (dealing with the likely output from
25 Goose Harbour); and (3) that the Board not approve the Dispatchable Rider (DR) credit as
26 proposed.
27

28 In response to the positions taken by the various parties and their consultants, NS Power has confirmed its
29 opposition to PHP's proposed modifications, and further maintained its proposal to (1) allocate DR benefits
30 solely to PHP; and (2) maintain allocation of Priority Interruptible service to PHP. NS Power has also stated
31 that the "costing and pricing of the ELID Tariff" appropriately takes into account the supply of electricity
32 from Goose Harbour. As for "what NS Power consider to be lesser, more administrative matters that will
33 not fundamentally alter the Tariff," NS Power states that (1) the proposed ELID Customer Charge of
34 \$10,000/month is appropriate; (2) there should be no requirement to seek Board approval of the DR
35 Operating Procedures; and (3) there should be no additional reporting of benefits at year-end regarding the
36 operation of the DR.¹³
37

38 PHP and its consultants have also maintained their proposed modifications to the ELID Tariff, arguing that
39 the "alternative billing determinants and rate structures proposed by certain intervening parties violate
40 fundamental principles of rate uniformity and cost causality, resulting in an unjustly discriminatory
41 framework targeted solely at PHP."¹⁴ They also oppose the various recommendations made by InterGroup,
42 Mr. Bowman, Synapse, and Bates White.
43

44 The Board also heard further viva voce evidence from the parties on September 21, 22, 28, and 29, 2026.
45

46 The CA's closing submissions follow below. The CA's silence on any particular issue raised in the evidence
47 should not be taken as endorsement or acceptance of any particular position put forward by NS Power or
48 any other party, except as explicitly stated below.

¹³ Exhibit N-38, Reply Evidence of NS Power

¹⁴ Exhibit N-36, Reply Evidence of BAI, p. 5

SUBMISSIONS

On review of the evidence filed in this proceeding, it is apparent that several aspects of the proposed ELID Tariff are in dispute, including but not limited to the appropriate costing and billing parameters for the Tariff, as well as the structure of the Dispatchable Rider (“DR”).

The CA provides its submissions on each of these items below.

(1) Costing and Billing Parameters

As discussed above, the Tariff structure as proposed by NS Power includes certain costing and billing parameters that are consistent with the terms of the Settlement Agreement filed in the GRA, as well as the COSS filed by NS Power with the GRA.

First, the CA acknowledges that the Board is not bound by or obligated to accept the terms of settlement. The Board has had occasion to comment upon the weight to be given to settlement agreements previously, and most recently in the GRA Decision. The Board canvassed the issue as follows:

[38] Previous decisions by the NSUARB set out the principles it applied in its consideration of settlement agreements. Those principles are still relevant and bear repeating. In its decision dated November 5, 2008, about a prior NS Power general rate application, the NSUARB outlined its general approach to settlement agreements submitted to it for approval:

[12] The Board's *Regulatory Rules* facilitate settlement discussions. The Board welcomes and appreciates the efforts of parties to, in good faith, settle issues, even where, as sometimes happens, a settlement cannot be ultimately achieved.

[13] Where, as here, the Agreement is supported by representatives of all of the customer classes, the Board can have confidence that the Agreement is in the public interest.

[14] Customers of NSPI and members of the public are, perhaps understandably, wary of the settlement process. Many of those customers and members of the public may not appreciate that by the time the hearing commences 80% of the rate hearing process has already happened. NSPI filed extensive evidence, as required by the Board, to support its rate request. Interested parties and Board Staff asked NSPI many hundreds of written questions (Information Requests), to which responses were filed.

[15] All of the parties who chose to do so filed evidence, including expert evidence. Written questions (Information Requests) have been asked of and answered by interested parties who filed evidence. NSPI filed reply evidence. As noted, all of this happened before the hearing was scheduled to begin so that the parties and the Board are well informed about the case in advance of any oral public hearing.

[16] The public can rest assured that the Board Members hearing the matter have also thoroughly reviewed all of the material in advance of coming to a decision as to whether to approve the Agreement as being in the public interest.

[17] Settlement agreements, while relatively new in regulatory matters before the Board, are common in the litigation process. Within the Board's adjudicative mandate, for example, assessment appeals, planning appeals and other matters are often settled. In the civil courts of Nova Scotia, a much higher percentage of cases are settled than go to trial.

[18] That is not to say that the Board would hesitate to reject a settlement agreement it did not consider to be in the public interest, however, it should be understood that a properly supported settlement is a success of the regulatory process, not a failure.

[2008 NSUARB 140]

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

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

[*NS Power 2007 GRA* decision, 2007 NSUARB 8]

[40] The Board agrees with the following submission in the NSUARB's 2023-2024 *GRA* Decision about the important role of settlement negotiations in such proceedings:

... It is in the public interest to approve settlement agreements in these circumstances in order to encourage a collaborative approach to ratemaking. Doing so provides incentive to parties to be reasonable and promotes the reduction of controversy in rate applications coming to the Board.

[Board Decision, M10431, para. 60]

Based on the above principles, the CA submits that while the Board is not bound to endorse or accept the Tariff simply because it complies with the terms of settlement, the Board should provide appropriate weight to that fact.

To briefly summarize, consistent with the terms of settlement, NS Power proposes to set PHP's firm (non-interruptible) load at 8 MW, and firm plus interruptible load at 65 MW, while also applying a priority interruptible credit at 10%. The 65 MW figure "reflects the figure used in prior forecasts for estimating the demand of PHP at 3CP based on PHP's historical demand at the time of system peak as dispatched by the Company."¹⁵ NS Power also proposes to rely upon the 2026 load forecast for PHP (810.5 GWh), and to match PHP's revenue-to-cost ratio with that applied to other non-residential classes (104.4%).

PHP opposes the use of these billing parameters, and proposes an alternative, as does Patrick Bowman on behalf of the Industrial Group.

Specifically, PHP and its expert consultants recommend that all of PHP's demand above 8 MW be treated as non-firm demand, since 8 MW represents PHP's minimum demand on the system. PHP argues that this level of demand is appropriate given the "material resource capacity savings" provided to NS Power through the Tariff.¹⁶ If this recommendation were adopted, then there would be no need for an interruptible credit, since PHP would not be charged for its non-firm demand (i.e., demand above 8 MW).¹⁷ In the

¹⁵ Exhibit N-1, Application, p. 6

¹⁶ Exhibit N-2, Evidence of BAI, p. 5

¹⁷ Exhibit N-21, Evidence of Synapse, p. 10

alternative, if its primary proposal is not accepted, PHP proposes to increase the Interruptible Credit payable to PHP on 57 MW of its demand by more than 50 percent to \$13.107/kVA-month. In addition, “PHP recommends that its revenue-to-cost ratio be reduced from 1.04 to 1.0 in the allocation of costs among customer classes, and that the ELID tariff be updated to incorporate revised 2026 and 2027 energy sales forecasts for PHP.”¹⁸

All of PHP’s proposed changes would materially shift costs as developed in NS Power’s Cost of Service Study (“COSS”) from PHP as a proposed ATL customer to other ATL customers, including the domestic class. Specifically, the reduction in PHP demand from 65 MW to 8 MW would result in a reduction in PHP’s rate by approximately \$6.5M in 2026 and \$9.4M in 2027.¹⁹ Moreover, if PHP’s alternative proposal were adopted, with the interruptible credit being independently developed for PHP as opposed to using the interruptible credit calculated for the LIIR, PHP’s annual costs would be reduced by \$4.2M in the 2026 and 2027 test years. Further cost reductions would accrue if the R/C ratio was adjusted as proposed, and if the energy forecasts were updated. Contrary to the suggestion provided by BAI at the hearing that these costs reductions will not necessarily be borne by customers or by NS Power, the CA submits that those would appear to be the only real options available in the circumstances.²⁰ In other words, if PHP’s proposed changes are accepted, either rates for other ATL customers will have to be increased, whether in the current GRA period or deferred to some future period, or NSPI will simply not be permitted to collect its full approved revenue requirement. Those are the only possible outcomes, neither of which are consistent with the SA.

In contrast, Mr. Bowman has proposed using PHP’s average load (approximately 120 MW) as the applicable demand figure, since this is representative of PHP’s actual forecast energy requirements (prior to non-dispatchable wind energy credits). Mr. Bowman reasons as follows:

Since the DR is to credit PHP for the savings that arise from its actual load dispatch for its total load (i.e., 800 GW.h), as compared to a CBL, the COS inputs should be based on the CBL assumption, including that PHP will operate at a high load factor across the 800 GWh. As a high load factor customer (prior to DR), PHP would be expected to have a load profile that is generally flat – or largely consuming the same average capacity throughout the year during operating periods. This load should establish the costing appropriate to the PHP load prior to DR, and should include all reasonable demand requirements consistent with the CBL assumptions.²¹

Mr. Bowman also remains supportive of utilizing the 2026 energy forecast for PHP as proposed in the Application, as well as applying the R/C ratio applicable to other non-residential classes.²²

There is obviously a significant disparity in the proposals currently before the Board regarding the costing and billing parameters proposed by NS Power for the ELID Tariff.

On review of the Application as filed, and the evidence submitted by all parties, the CA supports the costing and billing parameters as proposed by NS Power.

First, the CA agrees with NS Power that its proposed costing and billing parameters are consistent with the terms of the Settlement Agreement. Moreover, the CA disagrees with PHP’s interpretation of the PHP

¹⁸ Exhibit N-21, Evidence of Synapse, p. 11

¹⁹ Exhibit N-2, Evidence of BAI, p. 19

²⁰ Hearing Transcript, September 22, 2026, p. 188-189

²¹ Exhibit N-25, Evidence of Patrick Bowman, p. 9

²² Exhibit N-25, Evidence of Patrick Bowman, p. 17-18

Treatment Provisions, and specifically with PHP's claim that PHP reserved any right to oppose those parameters in these proceedings.

Specifically, as noted above, PHP relies upon clause f) of the PHP Treatment Provisions to argue that the parties to the Settlement Agreement did not intend to restrict PHP from opposing the agreed-upon costing and billing parameters, given the clause states that "it remains open for all Parties to take any position they so choose" in the "PHP ADC and tariff processes that will be brought forward for approval by the Board later this year."

The CA acknowledges that this language, read on its own, could be interpreted as supporting PHP's position on this issue. However, it is a well-established principle of contractual interpretation that contracts must be read "as a whole" in light of their surrounding circumstances. This modern approach to contractual interpretation was cited by the Nova Scotia Court of Appeal in *Port Hawkesbury Paper LP v. Nova Scotia (Energy Board)*, 2026 NSCA 29 (CanLII) at para. 62 as follows:

[62] In *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, Justice Rothstein for the Court set out the modern approach to contractual interpretation:

[47] Regarding the first development, the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. **The overriding concern is to determine "the intent of the parties and the scope of their understanding" [citations omitted]. To do so, 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. ...**

...

[57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement [citations omitted]. The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract [citation omitted]. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement [citation omitted].
[bolding added]

With regards to reading the PHP Treatment Provisions as a whole, it is apparent that PHP's interpretation completely ignores clauses d) and e), which are reproduced below for ease of reference:

- d) PHP and NS Power will complete discussions and analysis of the value of Active Demand Control ("ADC"), which shall be proposed to be a rider to the cost-based rate. The value of ADC, and the proposal for cost recovery, if any, shall be brought forward for approval by the Board later this year to be effective January 1, 2026. For clarity, any payment approved by the Board for Active Demand Control services will be collected from above the line customers.
- 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,

1 or such later date as the Board approves the tariff as being effective, whether on a permanent or
 2 interim basis, subject to satisfactory conclusion of the resolution of the PHP ADC and tariff
 3 processes.
 4

5 The above provisions clearly envision two steps being taken by NS Power and PHP, including (1)
 6 discussing and analysing the value of ADC, before bringing that forward for approval by the Board, and
 7 (2) reflecting the “foregoing” terms in a “written tariff,” which was also to be brought forward for approval
 8 by the Board. In clause e), the Parties referred to these processes as “the PHP ADC and tariff processes,”²³
 9 and notably PHP committed to take service under “such a tariff” subject only to the satisfactory conclusion
 10 of these processes. Notably, and contrary to evidence provided by PHP’s witnesses,²⁴ the requirement to
 11 reflect the foregoing terms in a written tariff was not “optional,” given the use of the word “shall” as
 12 opposed to “may.” Both NS Power and PHP were contractually obligated to take this step.
 13

14 It is within this context that clause f) must be read and interpreted. Again, for ease of reference, that
 15 provision states:
 16

- 17 f) In the PHP ADC and tariff processes that will be brought forward for approval by the Board later
 18 this year, it remains open for all Parties to take any position they so choose, including whether each
 19 of the PHP ADC and tariff filing(s) is inconsistent with the load characteristics and basic tariff
 20 structure as set out above.
 21

22 The above clause can be broken down as follows:
 23

- 24 - “In the PHP ADC and tariff processes that will be brought forward for approval by the Board later
 25 this year ...” – This phrase refers to the subsequent applications to be filed by NS Power for
 26 approval of an ATL tariff for PHP, i.e. this very Application, and follows on the language used to
 27 describe the Board process in clause e). Notably, such processes could only occur after completion
 28 of the mandatory steps contemplated in clauses d) and e), which committed PHP to develop a
 29 written tariff with NS Power that reflected the terms as already agreed and set out in clauses a)
 30 through d) of the PHP Treatment Provisions, and to take service under such a tariff, subject only to
 31 the outcome of the Board’s process;
 32
- 33 - “... it remains open for all Parties to take any position they so choose, ...” – This phrase does
 34 confirm that “all Parties” may take any position they so choose, but it is qualified by the prior
 35 phrase, which indicates that this only applies to the Application process itself. This ability to take
 36 any position does not apply to the steps required by clause e), which committed PHP to work jointly
 37 with NS Power to “reflect the foregoing in a written tariff” and to take service under that tariff,
 38 subject only to outcome;
 39
- 40 - “... including whether each of the PHP ADC and tariff filing(s) is inconsistent with the load
 41 characteristics and basic tariff structure as set out above” – This phrase further modifies the
 42 preceding phase, and confirms that potential inconsistency with the load characteristics and basic
 43 tariff structure as reflected in the PHP Treatment Provisions would provide a basis for opposing
 44 the filings. This further implies and recognizes that the written tariff itself would be consistent with
 45 the terms of settlement.
 46

47 Based on the language used in clause f), the CA submits that clause f) should not be read in isolation as
 48 providing either NS Power or PHP “carte blanche” when it comes to taking positions in this present

²³ Hearing Transcript, September 28, 2026, p. 28, line 7 to 21

²⁴ Hearing Transcript, September 28, 2026, p. 30

Application. Rather, both NS Power and PHP were committed, in accordance with clause e), to reflect all agreed upon terms in the filings, and PHP had further committed to take service under such a tariff, subject only to a “satisfactory conclusion of the resolution of the PHP ADC and tariff processes.” Reading these provisions as both requiring PHP to work with NS Power to reflect the terms in a written tariff, and allowing PHP to take contrary positions to the written tariff, results in an obvious absurdity that strains the credulity of PHP’s interpretation. The absurdity of PHP’s proposed interpretation of clause f) is perhaps best exemplified by its own witness’ claim that the reference to “all Parties” in clause f) would also include NS Power,²⁵ thus envisioning a situation where NS Power could both file an application for approval of a tariff consistent with the agreed upon terms, while also taking positions contrary to it. Just as it would be unreasonable for NS Power to take such a position, so too is it unreasonable for PHP to do so, given its express commitment to develop a written tariff with NS Power that is consistent with the prior terms. Of course, these absurd outcomes can be easily avoided by reading clause f) as ultimately subordinate to clause e).

In short, once clause f) is properly situated and read in light of the whole agreement, it is apparent that PHP’s interpretation cannot stand, and that clause f) should be read more narrowly.

The CA respectfully submits that the surrounding circumstances would further support such an interpretation. Specifically, the development of the PHP Treatment Provisions came at the request of PHP, who had requested to be included as an ATL customer for the purposes of the COSS filed by NS Power with its GRA. It is also a pertinent fact that the billing determinants which PHP now disputes were originally proposed for modelling by PHP.²⁶ Although BAI testified that PHP expressed concerns about use of these billing determinants to other parties at the time the Settlement Agreement was negotiated and signed,²⁷ PHP has since confirmed that it is “not aware of any communications in which PHP expressed dissatisfaction with the modelled costing determinants that are embedded in the Cost-of-Service Study for GRA settlement purposes.”²⁸ Rather, PHP apparently only advised NS Power that it did not support the modelled parameters on September 16, 2025, which was several weeks after the Settlement Agreement was finalized and signed by the Parties.²⁹ At some unspecified time “in October and November 2025 leading up to the filing of the Tariff,” PHP also advised NS Power that it was continuing to evaluate whether it would be more appropriate for PHP’s interruptible load to be set at 0 MW rather than 57 MW.³⁰ All that to say that at the time of signing it would have been understood by all parties that PHP was in support of the agreed upon billing determinants, and that PHP’s concerns only surfaced after an agreement had been concluded.

It is also a relevant fact that, in prior matters where NS Power has applied for a tariff applicable to PHP, PHP has played a pivotal supporting role. For instance, in the most recent extension of the ELIADC Tariff (M12184), NS Power applied for the extension, but was supported in its efforts by PHP, so much so that NS Power and PHP “jointly conducted a session with Counsel for the Consumer Advocate, Small Business Advocate, and the Industrial Group to brief stakeholders in this Application.”³¹ Indeed, the first ELIADC Tariff “was developed by PHP and NS Power, informed by their experience operating under the real-time pricing-based LRT,” and was accordingly supported by both NS Power and PHP.³² In PHP’s evidence filed

²⁵ Hearing Transcript, September 28, 2026, p. 29, lines 1-22

²⁶ Exhibit N-50, Copy of Settlement DR PRP 4.01 Att 01

²⁷ Hearing Transcript, September 22, 2026, p. 256-258.

²⁸ Exhibit E-54, PHP Response to Undertakings, U-18

²⁹ Exhibit E-54, PHP Response to Undertakings, U-16 (Re-Filed)

³⁰ Exhibit E-54, PHP Response to Undertakings, U-16 (Re-Filed)

³¹ M12184, Exhibit N-1, Application for Approval of a Third Term for the Extra Large Industrial Active Demand Control Tariff (ELIADC), p. 12 of 14; see also Hearing Transcript, September 28, 2026, p. 26

³² M09420, Exhibit N-1, Application for Extra Large Industrial Active Demand Control Tariff (ELIADC), p. 3-4 of 30

1 in that initial proceeding, PHP fully supported NS Power's application, and filed its own evidence
2 simultaneously with NS Power's. Notably, PHP stated the following in that proceeding:

3
4 The combined experience with the LRT of both PHP and NS Power was fully considered in the
5 development of the ELIADC Tariff, which will allow for greater optimization of benefits for the
6 Mill, NS Power and its other customers, and an increased level of contribution to other customers
7 as compared to the LRT.

8
9 PHP respectfully requests approval of the ELIADC Tariff, discussed further below and in the
10 Application of NS Power, with the rate to become effective on a final or interim basis starting
11 January 1, 2020.³³

12
13 PHP's conduct at the time the Settlement Agreement was negotiated, and the prior history between NS
14 Power and PHP with respect to development of the ELIADC Tariff, are relevant "surrounding
15 circumstances" that support the CA's interpretation of clause d), e), and f), and specifically would support
16 finding that (1) PHP agreed to work with NS Power to develop a written tariff that reflected the billings
17 determinants as proposed in the present Application, which would be filed by NS Power but jointly
18 supported by PHP; (2) PHP agreed to take service under such a tariff, subject only to consideration of the
19 potential outcome of the Board's hearing process (where the Board was not bound to accept the proposal);
20 and (3) PHP did not reserve any ability to subsequently oppose those agreed upon billing determinants.

21
22 For all of these reasons, the CA respectfully submits that PHP's proposed modifications to the ELID Tariff
23 should be rejected as being contrary to the terms of the Settlement Agreement.

24
25 Based on the plain language in the PHP Treatment Provisions, the CA further submits that PHP is not only
26 prohibited from opposing the Tariff as proposed by NS Power, but further that PHP has acted in breach of
27 its contractual obligations. PHP's conduct has not only created considerable regulatory cost and delay, but
28 has also resulted in costs being allocated to the PHP Deferral Account that otherwise may not have been so
29 allocated. The relevant provision of the PHP Treatment Provisions concerning the creation of the PHP
30 Deferral Account states:

- 31
32 g) NS Power may seek Board approval for a deferral account to account for any NS Power revenue
33 variances that may arise in 2026 or 2027 from the following scenarios, which costs would be
34 collected/refunded from/to above the line customers: (a) where a Board decision on the PHP tariff,
35 including the Active Demand Control Rider, differs from the above the line PHP tariff assumptions
36 included in the 2026-2027 GRA; (b) where, for any reason, the PHP tariff is not available for PHP
37 to take service under it as of January 1, 2026; and/or (c) PHP determines the PHP ADC and tariff
38 processes outcome is not satisfactory

39
40 At this stage, it is apparent that certain costs have already been allocated to the PHP Deferral Account due
41 to the fact that the PHP tariff was not available for PHP to take service under as of January 1, 2026. As
42 noted in the Board's GRA decision:

43
44 [340] In response to Undertaking U-2, NS Power estimated that \$18.2 million would accrue in
45 the PHP Deferral account if PHP remains as a BTL customer for the entirety of 2026, and there
46 would also be a \$5.7 million fuel balance captured under the FAM. NS Power also assumed the
47 PHP load in 2026 was the same as that assumed in the GRA. The Industrial Group noted that these
48 amounts did not account for delays in PHP's Goose Harbour Wind Project.

49
³³ M09420, Exhibit N-2, Direct Evidence of PHP, p. 1.

1 Notably, the Settlement Agreement was signed on August 29, 2025, but NS Power did not file its application
2 for a successor tariff until December 29, 2025.

3
4 There can be no dispute that NS Power and PHP controlled the timing of the successor tariff application.
5 According to PHP, NS Power was also aware as of September 16, 2025 (two days before the GRA was
6 filed) that PHP “did not support the parameters as modelled.” To the extent that PHP’s own breach of the
7 Settlement Agreement delayed this Application and resulted in costs being improperly allocated to the PHP
8 Deferral Account, the CA submits that such costs should be borne by PHP.

9
10 In the alternative, even if PHP is not bound to support the costing and billing parameters as defined in the
11 Settlement Agreement (and the CA maintains PHP is so bound), the CA submits that PHP’s proposed
12 modifications to the costing and billing determinants are unreasonable, and should not be endorsed by the
13 Board.

14
15 First, even if the Settlement Agreement is not binding on the parties, it should still be given some weight
16 as reflecting a consensus as to what reasonable billing determinants may be for an ATL tariff for PHP. The
17 use of the 65 MW figure is also justifiable, where NS Power has used that figure in prior forecasts for
18 estimating the demand of PHP at the time of coincident peak:

19
20 The 65 MW is a figure that has been used in prior forecasts for estimating the demand of PHP at
21 the time of coincident peak. This value, 65 MW, is based on the optimized load profile for PHP
22 developed for the 2012 Stern Paper Mill Load Study, and has been periodically confirmed to remain
23 a reasonable quantity. Please refer to Table 2 on page 15 of the Evidence of Colin T. Fitzhenry and
24 Michael P. Gorman, Brubaker & Associates Inc. (BAI). As observed by BAI, “the average of the
25 2022 and 2023 PHP demands at the winter CPs is 65,332 kW, or approximately 65 MW.” The 65
26 MW figure was used in the 2026-2027 General Rate Application (GRA) Cost of Service and, as
27 part of the GRA Settlement Agreement (SA), was determined by parties to be reasonable as the
28 foundation for 2026 and 2027 PHP ATL Tariff costing.³⁴

29
30 By comparison, 8 MW represents the minimum PHP load, and is clearly too low. This amount would result
31 in a cost of service treatment that assumes a load so low that PHP could not conduct its ordinary business.

32
33 As noted by Synapse, PHP’s proposal is premised on the claim that PHP’s interruptible demand “does not
34 contribute to NS Power’s generation and transmission resource capacity costs.” However, “this
35 characterization is not consistent with how NS Power indicates that transmission costs are incurred.”³⁵
36 Rather, the costs of transmission, according to NS Power, are “driven by the entire system load inclusive
37 of the interruptible load. If costs were assigned on the basis of the firm load alone this would result in
38 inequitable apportionment of costs to rate classes with the interruptible loads avoiding responsibility for the
39 costs of transmission and the cost of interruptible credit.”³⁶ Accordingly, Synapse opines that assigning
40 PHP a demand charge based solely on its 8 MW firm load “would allow a substantial portion of PHP’s load
41 to avoid responsibility for transmission costs, shifting those costs to other to other customers.”³⁷ The CA
42 notes that the NS Power witness panel further confirmed at the hearing that interruptibility does not
43 eliminate transmission planning responsibility. Rather, the transmission system is generally “planned to
44 serve the peak of both firm and non-firm loads.”³⁸

45
³⁴ Exhibit N-9, NS Power (SBA) RIR-1(a)

³⁵ Exhibit N-21, Evidence of Synapse, p. 12

³⁶ Exhibit N-10, NSPI (Synapse) IR-10(a).

³⁷ Exhibit N-21, Evidence of Synapse, p. 12

³⁸ Hearing Transcript, September 21, 2026, p. 151.

1 Similar concerns were raised by InterGroup in its evidence, relying upon NS Power's evidence in NSP
2 (CA) RIR-9:

3
4 In response to a Consumer Advocate Information Request, NSP stated the proposal to exclude
5 interruptible load from the 3CP calculation would result in the avoidance of transmission cost
6 responsibility, when transmission systems are designed to meet an area's total load, not its firm
7 load only and that PHP is clearly not viable running at 8 MW for a sustained period.

8
9 InterGroup agrees with the concerns raised by NSP that including only the firm 8 MW of load
10 would under-represent the degree to which PHP makes use of and benefits from the transmission
11 system. In InterGroup's experience this is a common problem with "interruptible" loads that reflect
12 a considerable portion of a customer's ordinary electricity needs. While there are alternative cost
13 allocation methods that could help address this, in the context of the SA, the load parameters
14 modelled by NSP in the application are reasonable and should be approved.³⁹

15
16 The fact is that even 65 MW may be too low, given the evidence provided by Mr. Bowman, which supports
17 using PHP's average load (approximately 120 MW) as the applicable demand figure. Between these two
18 options, the CA would support Mr. Bowman's approach as being more indicative of cost causation, and a
19 better reflection of PHP's actual demand. In any event, and given the disparity, the CA agrees with NS
20 Power that use of the 65 MW figure remains appropriate, and represents a reasonable compromise between
21 these two proposals.⁴⁰ As noted in NS Power's Reply Evidence:

22
23 The Company submits that the evidence of both PHP and Bowman, reinforced by InterGroup,
24 demonstrates why this is a complex question and why, for the 2026-2027 test period settling the
25 demand level to be applied to PHP load in the GRA SA was appropriate and why that should be
26 approved in the Board's Decision in this matter until it can be reexamined in a future period with
27 the benefit of actual results operating under this Tariff.⁴¹

28
29 For all of these reasons, the CA submits that PHP's proposal concerning interruptible demand is not
30 reasonable. To the extent the Board wishes to consider an alternate approach other than that described in
31 the Settlement Agreement, the CA would support the position advanced by Mr. Bowman on behalf of the
32 Industrial Group as providing a more accurate assessment of PHP's costs to the system.

33
34 Synapse has noted that adopting this aspect of PHP's proposal "would impact the allocation of capacity
35 costs to PHP in the cost of service study, where PHP's 3CP demand was assumed to be 65 MW for the
36 purpose of cost allocation."⁴² In fact, adopting any aspect of PHP's proposal would have an impact of the
37 COSS, and would inevitably shifts costs away from PHP as an ATL customer and onto the other customer
38 groups.

39
40 As noted by InterGroup, in their experience, "settlement agreements typically reflect trade-offs among
41 parties on a number of issues and altering one item of a settlement package risks undermining the basis for
42 the entirety of the agreement. It could also impact the ability and willingness for parties to participate in
43 future settlements."⁴³ The revenue-to-cost ratio, value of the interruptible credit, and the energy sales
44 forecasts are all elements that were agreed upon by the parties, and that agreement should be upheld as a
45 reasonable outcome in the circumstances.

³⁹ Exhibit N-19, Evidence of InterGroup, p. 5

⁴⁰ Hearing Transcript, September 21, 2026, p. 78, lines 9-15

⁴¹ Exhibit N-38, Reply Evidence of NS Power, p. 9 of 25

⁴² Exhibit N-21, Evidence of Synapse, p. 10

⁴³ Exhibit N-19, Evidence of InterGroup, p. 6

With respect to PHP's proposal regarding setting PHP's R/C ratio at 1.0, the CA respectfully submits that the use of a 1.04 R/C ratio was understood by all parties, and also falls within the Board's standard zone of reasonableness of 0.95 to 1.05. Indeed, as noted by the Chair during questioning of the BAI panel, one of the reasons regulators use a range is that cost of service studies are not exact. There are assumptions and estimates involved in them and the range recognizes that there is imprecision in the measurement.⁴⁴ BAI also provided no clear recommendation on how to redistribute the resulting revenue shortfall.⁴⁵ But to be clear – the only options available involve either raising rates to other ATL customers, whether in the current GRA period or deferred to some future period, or for NSPI not to collect its full revenue requirement and therefore not have the opportunity to earn their approved return on equity. Those are the only possible outcomes, neither of which are consistent with the SA. Similar reasoning would apply to PHP's proposed use of updated energy forecasts, which the CA also opposes.

PHP and its consultants have also proposed changes to the interruptible credit to be priced at NS Power's marginal cost of capacity, in the event the Board accepts the proposal to use the 65 MW figure as discussed above. This issue is summarized by InterGroup as follows:

Consistent with the SA for NSP's 2026 and 2027 GRA, the proposed interruptible credit rate to PHP under the ELID Tariff is the same as proposed for the Large Industrial Interruptible Rider (LIIR) customers, plus the value of priority interruption service provided, if any. However, NSP states that the LIIR rate of \$7.638 per kVA and \$7.667 per kVA of interruptible service for 2026 and 2027, respectively, is a significantly lower figure than would be applicable to PHP had the credit been developed in accordance with NSP's established practice for pricing of the interruptible credit. NSP calculated this credit value at \$13.107 per kVA.

In response to a Consumer Advocate Information Request explaining the reason for this difference, NSP stated the LIIR credit is determined based on forecast LIIR customer kW peak coincident with the system peak divided by subscribing customers' forecast non-coincident interruptible billing demand. In the case of PHP, however, NSP states that the kW demand figure for calculating the value of the assumed interruptible load at time of system peak and PHP's billing demand, other than the relatively small 8 MW firm portion, before conversion to kVA, are proposed to be the same.

On this basis, PHP argues that the interruptible credit to PHP should be set at \$13.107/kVA.

InterGroup notes the following important observations with respect to NSP's derivation of an interruptible credit rate of \$13.107/kVA to PHP and its applicability to the proposed ELID Tariff:

1. As confirmed by NSP in various responses to Information Requests from interveners, the billing demand, used in arriving at \$13.107/kVA, equals the fixed 65 MW determinant, minus the 8 MW firm, which is the same as PHP's assumed interruptible load at the time of system peak. However, the 65 MW determinant is not a metered and confirmed non-coincident peak for PHP, which would be the practice applied to LIIR customers. As provided by NSP, PHP's average load alone is approximately 124 MW and PHP's peak load is expected to be approximately 155 MW. It is not clear why derivation of an interruptible credit rate to PHP would use the same kW demand figure for both coincident and non-coincident PHP peaks, which is not supported by PHP's historical peak load.

⁴⁴ Hearing Transcript, September 22, 2026, p. 313-314

⁴⁵ Hearing Transcript, September 22, 2026, p. 187

- 1 2. The proposed cost-based demand charge is \$12.872/kVA for 2026 and \$14.310/kVA
 2 for 2027. At the rate of \$13.107/kVA plus 10% PI premium, the interruptible credit
 3 would be \$14.42/kVA, thus exceeding the cost-based demand charge in both 2026 and
 4 2027. It is clearly unreasonable to determine that value of an interruptible credit is
 5 higher than a full cost-based demand cost for the firm service.⁴⁶

6
 7 InterGroup also questions the value of the Interruptible service to the system,⁴⁷ as does Mr. Bowman on
 8 behalf of the Industrial Group, who specifically recommends that there “should be little to no credit via the
 9 Interruptibility Rider,” and further that there is “no basis for providing PHP with a priority interruptibility
 10 credit given (a) PHP is rarely if ever interruptible in practice under the IR, and (b) the priority interruption
 11 adds nothing to the system in terms of extra resources, in exchange for the added credit provided to PHP.”⁴⁸
 12 Consistent with these comments, NS Power highlighted the Interruptible Rider as perhaps “the most
 13 disputed element of this application.”⁴⁹ NS Power further notes an anomaly with their IR credit value, as
 14 follows:

15
 16 As well, an anomaly, not specific to this application but rather to ATL interruptible service classes
 17 generally, is that the calculated value of the avoided cost of the combustion turbine proxy has, in
 18 recent years, converged with demand-related costs assigned to these classes under the embedded
 19 cost-based cost of service. Effectively, demand costs assigned to these groups of customers are now
 20 largely being offset by the value of the interruptible credit these customers are receiving.⁵⁰

21
 22 The CA shares the concerns noted by InterGroup and Mr. Bowman, and particularly questions the value of
 23 the IR credit given the duplicative function performed by the DR (as discussed below). In light of these
 24 concerns, even if the Settlement Agreement is not dispositive from the Board’s perspective, then the CA
 25 would submit that the agreement to provide PHP with *some* value for IR remains, for the 2026 and 2027
 26 test years, a reasonable compromise between eliminating the credit altogether and providing a full benefit
 27 using what NS Power calls “the established IR credit protocol.”⁵¹

28
 29 For these reasons, the CA maintains that NS Power’s proposal for the ELID Tariff remains fair and
 30 reasonable in the circumstances, and the CA opposes PHP’s proposed modifications accordingly.

31 32 **(2) Dispatchable Rider**

33
 34 As noted above, the terms of the DR as proposed in the ELID were developed independently by NS Power
 35 and PHP. Although developed in accordance with the terms of the PHP Treatment Provisions, the actual
 36 structure and parameters were not part of the settlement.

37
 38 The purpose of the DR was summarized by InterGroup as follows:

39
 40 NSP states that the Dispatchable Rider (DR) will allow PHP to operate in a manner which reduces
 41 PHP’s individual cost of service, enables NS Power to manage PHP’s load in response to system

⁴⁶ Exhibit N-19, Evidence of InterGroup, p. 6-7

⁴⁷ Exhibit N-19, Evidence of InterGroup, p. 13

⁴⁸ Exhibit N-25, Evidence of Patrick Bowman, p. 14-15

⁴⁹ Exhibit N-38, Reply Evidence of NS Power, p. 11, line 29

⁵⁰ Exhibit N-38, Reply Evidence of NS Power, p. 15

⁵¹ Exhibit N-38, Reply Evidence of NS Power, p. 15, line 2. Although characterized by NS Power in this way, InterGroup testified that NS Power is not actually applying the same method for PHP as for LIIR customers. It’s approach to PHP is to assume that the CP and billed demand are the same, which is different from the LIIR approach of ratcheted demand. See Hearing Transcript, September 29, 2026, pages 29-30.

conditions, reducing overall system costs, and compensates PHP for the value its load flexibility provides to the NSP system.

NSP states that the structure of the Rider shields ATL customers from the significant incremental cost impacts that the system's largest customer can have on the system if not incented to operate in a manner which reduces overall system costs.

NSP explains that the DR is premised on the understanding that, absent the DR, and as an ATL customer with demand and energy charges, PHP would generally be incented to operate at a high load factor (i.e. leveled load) across the year, as this mode of operation will reduce the per unit cost of electricity for PHP.⁵²

Given the benefits supposedly provided to the system by this service, NS Power proposes to credit the value derived by the dispatch of PHP's load fully to PHP. InterGroup questions the reasonableness of this approach, and comments as follows:

When questioned about the value that other ATL customers receive from the DR component of the proposed tariff if the value created by dispatch of PHP load is fully credited to PHP, NSP provided the following response:

While on the ELIADC Tariff, 75 percent of the Active Demand Control (ADC) value was assigned to FAM. However, under the ELIADC Tariff, non-fuel cost recovery was not embedded cost-based. On the ELID Tariff, which is an above-the-line embedded cost of service based tariff, PHP will contribute a full allocation of fixed costs, which is a benefit to all customers.

Like the operational and capital costs incurred by PHP to accommodate NS Power's dispatch of its load, the benefit created by this service compared to running flat will accrue solely to PHP. This is considered appropriate as a Rider applied to an ATL tariff because the energy and demand charges applicable to PHP are embedded cost based and as such provide for the recovery of the fixed transmission and generation costs allocated to PHP in accordance with the Cost of Service (as is the case with other ATL customers).

Note however that the ELIADC Tariff, includes a Variable Capital Charge (VCC) that PHP pays "for NS Power's incremental generation and delivery of electricity to PHP in the amount of \$3.34/MWh", and as such does appear to contribute to the recovery of the fixed transmission and generation costs under the ELIADC Tariff.

The VCC component is not included in the proposed ELID Tariff structure and does not appear to be considered in the DR credit transfer ratio of 100% to PHP. Note that even at a reduced PHP net energy consumption of 304,000 MWh forecast in 2027, the VCC payment by PHP would exceed \$1.0 million annually, or approximately 20%-30% of the actual benefit that NSP estimates can be realized by PHP via DR credit.

In InterGroup's view, the proposed ELID Tariff includes many moving parts, including changes as compared to the ELIADC Tariff, with complex interactions between different components. Given this, the proposed change in the DR credit ratio to PHP is very big and its reasonableness should be further tested.⁵³

⁵² Exhibit N-19, Evidence of InterGroup, p. 9

⁵³ Exhibit N-19, Evidence of InterGroup, p. 9-10

InterGroup also recommends that the Operating Procedures developed by the DR should be subject to Board approval, to ensure that the “document is transparent and not revised between NSP and PHP to the disadvantage of ATL customers.”⁵⁴ In addition to these concerns about the DR, InterGroup questions whether the DR is duplicative of the Interruptible Credit Rider, and comments as follows:

NSP acknowledges that there is likely to be a high level of coincidence during periods of tight system conditions that PHP load will be dispatched down and situations where PHP load may be interrupted (or held as operating reserve), stating, however, that the two services are distinct and PHP is being compensated for two separate value streams (IR for planning relief (i.e. the avoided cost of building new generation) and DR for operational cost relief (i.e. the avoidance of high real-time marginal costs).

Accordingly, based on NSP’s assertion that the two services are distinct, in InterGroup’s view NSP should be able to identify cases where the compensation paid to PHP was related to the PHP load dispatch provisions versus PHP load interruption.

However, NSP was unable to provide such an example despite requests from interveners.

On the contrary, NSP confirmed that PHP can simultaneously receive (i) a DR credit for being dispatched down through the Dispatchable Rider and (ii) an interruptible credit for having its load interrupted under the Interruptible Rider.

Note that this credit relates to the same portion of the load – i.e., the credits are not stacked where NSP identifies a portion of the load receiving a DR credit and a separate incremental load receiving an Interruptible Rider credit.

NSP further confirmed that given that NS Power may hold as operating reserve any PHP non-firm load remaining after implementation of the Dispatchable Rider provisions for load shifting under the proposed ELID Tariff, the value of this operating reserve would be equivalent to that provided by other interruptible customers equipped with Telemetry & Control (T&C).

With respect to NSP’s reasoning that the Interruptible Rider is distinguishable from the Dispatchable Rider in that compliance with the NSP dispatch schedule is not mandatory and there is no “penalty” for non-compliance for PHP, InterGroup notes that the ELIADC already includes exactly the same penalty to PHP under interruptibility, however with no additional Interruptible Rider credit. It is also important to note that the proposed Dispatchable Rider mechanism already increases the share of savings transferred to PHP from 25% to 100%. In InterGroup’s view there is a risk that pairing the proposed Dispatchable Rider with the proposed Interruptible Credit credits PHP twice for effectively the same provision. This could reflect a benefit to PHP beyond 100% of the system benefits, at the expense of other ATL customers. (emphasis added)

Similar concerns regarding the allocation of credit for the DR and the development of the Operating Procedures are raised by Mr. Bowman in his evidence.⁵⁵

The CA shares the concerns as expressed by InterGroup and Mr. Bowman, and requests that the Board consider the appropriateness of crediting all DR savings to PHP, and also require NS Power, IESO, and PHP to seek approval of the DR Operating Procedures from the Board. The CA also supports Mr. Bowman’s recommendation that NS Power provide quarterly reporting on the DR status, including estimates of the annual DR to be funded by ATL customers.

⁵⁴ Exhibit N-19, Evidence of InterGroup, p. 10

⁵⁵ Exhibit N-25, Evidence of Patrick Bowman, p. 11-12; 15-16

1 Bates White also raised various concerns regarding the potential for DR credit overestimation under NS
 2 Power's proposed method, which simply assumes that any load efficiency relative to the theoretical CBL
 3 reflects PHP's efforts rather than operational variations that may be entirely independent from system
 4 conditions. Specifically, Bates White states:

5
 6 Our sixth concern is that the DR credit represents a zero-sum mechanism that, if incorrectly
 7 calculated, could harm other FAM customers. Any load "smoothing" exercise inherently assumes
 8 that actual deviations from a smoother load profile represent changes actively provided by PHP
 9 rather than operational variations that might be entirely independent from system conditions.
 10 Consequently, the risk of incorrectly estimating the DR credit would likely be biased toward
 11 overestimation, to the detriment of FAM customers.⁵⁶
 12

13 Based on the above concern, and other concerns enumerated in their evidence, Bates White recommends
 14 against approving the DR credit as proposed, and state the following:

15
 16 We do not recommend that the Board approve the DR credit as proposed. To be reasonable, at least
 17 two things must be true: (1) any payments to PHP from FAM customers under the DR credit must
 18 be demonstrably tied to PHP deciding to shift load due to energy prices and (2) that FAM customers
 19 not be at risk of providing any compensation to PHP in hours where no load-shifting activity due
 20 to energy prices occurred. It may be that, with additional elaboration, revisions, reporting
 21 requirements, and verifiability guardrails, the mechanism may achieve these objectives, but as
 22 proposed, it is our view that the DR credit is too vague, uncertain, unverifiable, and at risk of failing
 23 to match rider payments to load-shifting service to be recommendable for approval.⁵⁷
 24

25 The CA submits that Bates White has raised serious concerns regarding the DR mechanism and risks posed
 26 to other customer classes, which the Board will have to consider in this proceeding. At the very least, the
 27 concerns expressed by Bates White would further support taking a more cautious approach to the allocation
 28 of benefits from the DR credit.
 29

30 Finally, the CA also shares the concerns expressed by InterGroup regarding the complexity of the ELID
 31 Tariff, and its practical implementation, and whether it will provide the system benefits claimed. As noted
 32 in their evidence:

33
 34 ... the proposed ELID tariff includes layers of complexity in the interactions of different
 35 components of the proposed tariff as compared to the ELIADC Tariff, including fixed charges
 36 (customer and demand), Dispatchable Rider credit calculations, PHP Deferral charges and
 37 reconciliation. Considering the complexity of the proposed ELID Tariff, InterGroup recommends
 38 that the Board undertake a review of the ELID Tariff approved in this Matter after the first year of
 39 implementation.⁵⁸
 40

41 Consistent with the recommendations made by InterGroup, the CA is supportive of the Board conducting
 42 a review of the ELID Tariff after 2027 (assuming PHP takes service under the Tariff in 2027).
 43
 44
 45
 46
 47

⁵⁶ Exhibit N-20, Evidence of Bates White, p. 27

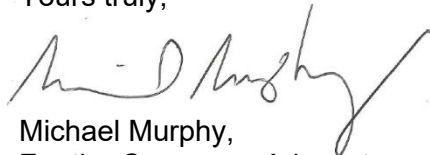
⁵⁷ Exhibit N-20, Evidence of Bates White, p. 28

⁵⁸ Exhibit N-19, Evidence of InterGroup, p. 7

1 **CONCLUSION**

2
3 The Consumer Advocate repeats the foregoing, and thanks the Board for the opportunity to participate in
4 this proceeding and provide these submissions.

5
6 Yours truly,

7 
8
9

10 Michael Murphy,
11 For the Consumer Advocate
12