DECISION **2026 NSEB 25**
M12663

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF THE MORE ACCESS TO ENERGY ACT

- and -

IN THE MATTER OF AN APPLICATION by the **NOVA SCOTIA INDEPENDENT ENERGY SYSTEM OPERATOR** for approval of its proposed expenditure and revenue requirement for the test year ending March 31, 2027

BEFORE: Stephen T. McGrath, K.C., Chair
Jennifer L. Nicholson, CPA, CA, ICD.D., Member

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INTERVENORS: **CONSUMER ADVOCATE**
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SMALL BUSINESS ADVOCATE
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Thomas Kayter, Counsel

NOVA SCOTIA POWER INC.
Jennifer Power, Counsel

PORT HAWKESBURY PAPER LP
David MacDougall, Counsel
Melanie Gillis, Counsel

BOARD COUNSEL: William L. Mahody, K.C.

HEARING DATE: June 17 and 25, 2026

FINAL SUBMISSIONS: August 7, 2026

DECISION DATE: **November 2, 2026**

DECISION: **The application is approved with directions to provide additional information in future applications.**

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1.0 SUMMARY

[1] The Nova Scotia Independent Energy System Operator (IESO Nova Scotia) applied to the Nova Scotia Energy Board for approval of its 2026-2027 expenditures and revenue requirement under the *More Access to Energy Act*, SNS 2024, c 2, Sch B. It also sought approval for a permanent Net Revenue Requirement Deferral and Variance Mechanism to track variances from its approved revenue requirements for later reimbursement or recovery.

[2] The Board approves IESO Nova Scotia's requested $14.85 million revenue requirement. Despite concerns raised by the intervenors in this matter, the Board finds that the proposed expenditures are reasonable and sufficiently supported given IESO Nova Scotia's stage of development. While the Board has accepted IESO Nova Scotia's explanations in this proceeding, IESO Nova Scotia must improve its budgeting, reporting, risk identification, procurement oversight, and cost-classification practices. IESO Nova Scotia's justification for its expenditures and revenue requirement in future applications must include substantially stronger evidence, forecasting practices, and documentation to improve transparency and accountability. IESO Nova Scotia must also demonstrate that it has developed and is following appropriate financial and cost controls.

[3] The Board also approves IESO Nova Scotia's proposed Net Revenue Requirement Deferral and Variance Mechanism. While the Board finds that such a mechanism is a practical necessity, given IESO Nova Scotia's not-for-profit status, the system operator has a lot of work to do in this area as well. It must develop appropriate guidelines, cost management controls and accounting policies for approval before the recovery of amounts from the mechanism.

[4] A significant issue in this proceeding concerned the Board's authority under s. 29(4) of the *More Access to Energy Act*. The Board finds that it is not limited to either approving an application as filed or referring it back to IESO Nova Scotia with recommendations. Rather, the Board has the authority to modify, reduce, or otherwise approve expenditures, revenue requirements, and fees on terms it considers appropriate, consistent with the purpose of the legislation and its broader powers under the *Energy and Regulatory Boards Act*, SNS 2024, c 2, Sch A.

[5] IESO Nova Scotia must continue to provide quarterly reports, as directed by the Board in its prior decision (M12412 (2026 NSEB 5)), including updates about the status of Phase 1 and 2 of the transition of the system operator functions from NS Power to IESO Nova Scotia, as well as reporting about staffing, facilities and technology, regulatory compliance matters, and on any material changes to the transition timeline or to forecast costs.

2.0 BACKGROUND

[6] The *More Access to Energy Act*, much of which was proclaimed in force on October 24, 2024, established IESO Nova Scotia as a new provincial independent energy system operator. In addition to other responsibilities, all electricity system operator functions will be transferred from NS Power to IESO Nova Scotia.

[7] The objects and duties of IESO Nova Scotia are set out in ss. 9 and 10 of the *More Access to Energy Act.* IESO Nova Scotia said it assumed the system planning, transmission interconnection and energy and capacity procurement functions during the

first phase of the transition, in Q4 2025. It aspires to the transfer of controlled grid and real-time energy dispatch operations in Q2 2027.

[8] Under s. 11(1) of the *More Access to Energy Act*, IESO Nova Scotia "shall commence its first integrated resource planning exercise within one year following the coming into force of this Section". IESO Nova Scotia had to start its first integrated resource planning exercise by October 24, 2025, and has done so.

[9] Section 29 of the *More Access to Energy Act* requires IESO Nova Scotia to apply to the Board every year to approve its proposed expenditure and revenue requirements for the year and the fees it proposes to charge. The Board approved IESO Nova Scotia's initial application for its expenditures and revenue requirement up to March 31, 2026, on February 25, 2026, in Matter M12412 (2026 NSEB 5). This application, which IESO Nova Scotia filed on January 20, 2026, deals with its proposed expenditures and revenue requirement for its fiscal year running from April 1, 2026, to March 31, 2027.

[10] IESO Nova Scotia requested approval of the following:

> 1) A total revenue requirement of $14.85 million for the 2026-2027 fiscal year reflecting both its ongoing Operating, Maintenance and Administration (OM&A) costs and transitional costs; and
>
> 2) Continuing the Net Revenue Requirement Deferral and Variance Mechanism (previously referred to as the Net OM&A Deferral and Variance Account) to track IESO Nova Scotia's actual costs compared to its Board-approved revenue requirement budget on an ongoing basis.

[11] The application also requested an Interim Order from the Board for temporary financial relief no later than February 27, 2026, as follows:

> 1) Directing NS Power to begin paying by April 1, 2026, monthly payments to IESO Nova Scotia, of $950,000, exclusive of applicable taxes, with such payments being made effective February 1, 2026 (Monthly Assessment);
>
> 2) Confirming that such Monthly Assessment shall continue until the earlier of:

(a) March 31, 2027, or
(b) the effective date of a Board-approved permanent fee recovery mechanism; and

3) Authorizing NS Power to record, defer and recover such Monthly Assessment through its Fuel Adjustment Mechanism (FAM), with the Monthly Assessment being approved as a prudent cost of NS Power.

[12] In a decision letter dated February 25, 2026, the Board approved the monthly payments of $950,000, exclusive of applicable taxes, effective February 1, 2026, with payments starting April 1, 2026. The Interim Order was issued on February 26, 2026. The Board imposed conditions on the tracking of such payments in a separate deferral account:

> The Board therefore approves IESO Nova Scotia's request for interim temporary financial relief, in part. The fees will apply effective February 1, 2026, and payments will commence April 1, 2026, as proposed. However, these payments are not to be charged to NS Power's fuel adjustment mechanism. NS Power may, instead, accrue these amounts in a separate deferral account. Since this deferral has been made necessary because of IESO Nova Scotia's lack of diligence in filing a fee recovery mechanism for approval, the Board finds it is appropriate for this deferral to accrue interest at NS Power's weighted average cost of capital. The way the deferred costs are allocated to and recovered from customers will need to be determined. These payments are also subject to being retroactively reviewed and adjusted by the Board in its final order in this proceeding and may include a requirement that IESO Nova Scotia repays NS Power for any amounts determined to have been overpaid, including NS Power's weighted average cost of capital in respect of those amounts.
>
> [Board Decision Letter, February 25, 2026, p. 3]

[13] In a separate proceeding (M13007), the Board is considering an application filed by IESO Nova Scotia on July 31, 2026, for the approval of a fee recovery mechanism to recover its approved revenue requirements.

[14] The Board issued a hearing order in this matter on January 23, 2026, setting out a timeline for considering the matter in a paper hearing process. The order provided the opportunity to file information requests and evidence.

[15] While the proceeding was framed as a paper process, it allowed for the possibility of an oral hearing. Following requests by the Consumer Advocate and Small

Business Advocate to convene an oral hearing, the Board issued an Amended Hearing Order on April 16, 2026, setting the matter down for an oral hearing on June 17, 2026.

[16] Board Counsel consultants, Doane Grant Thornton LLP, filed evidence on March 31, 2026. It reviewed the test year budget and the proposed continuation of the deferral and variance account and any associated accounting policy considerations. No other intervenor filed evidence. IESO Nova Scotia did not file Rebuttal Evidence but filed an extensive opening statement prior to the hearing setting out more detail about its activities and the transition of functions from NS Power. Written closing submissions followed the oral hearing and were completed on August 7, 2026.

3.0 ANALYSIS AND FINDINGS

3.1 Proposed Revenue Requirement, Filing Requirements and Financial Controls

[17] IESO Nova Scotia seeks approval of its revenue requirement for the 2026/27 fiscal year, made up of OM&A costs of $13.08 million and transition costs of $1.77 million for a total of $14.85 million. A breakdown of the proposed revenue requirement was set out in Table 1 of the application:

Table 1: Summary of OM&A Costs

OM&A Cost Category	Total OM&A Costs ($)(Millions)	Transition Costs ($) (Millions)	Ongoing O&MA Costs ($) (Millions)
Employees (Administration)	4.44	0.00	4.44
Corporate Administrative	0.26	0.00	0.26
Governance	0.49	0.00	0.49
Legal and Regulatory	1.15	0.00	1.15
Procurement	0.89	0.00	0.89
Facilities and Technology	1.56	0.00	1.56
Finance	0.65	0.00	0.65
Transition and Operational Planning	1.77	1.77	0.00
Operations (System Planning)	3.64	0.00	3.64
Total OM&A Expenses	**14.85**	**1.77**	**13.08**

[Exhibit N-1(i), p. 9]

[18] Doane Grant Thornton was engaged by Board Counsel to review IESO Nova Scotia's application for approval of its proposed revenue requirement for the 2026-2027 fiscal year. This included a review of test year OM&A costs, and an analysis of transitional costs. It also completed a review of the reasonableness of the net revenue requirement deferral and variance mechanism.

[19] Doane Grant Thornton observed that budgeted 2026-2027 OM&A costs increased over actual 2025-2026 costs but concluded that IESO Nova Scotia provided acceptable support for these increases. Transitional costs are significantly higher in this application for 2026-2027 compared to the previous year. IESO Nova Scotia explained

the difference related primarily to specialized external expertise to assist with the second phase of its transition. Doane Grant Thornton was satisfied with the explanations for all variances that were provided.

[20] In the Board's decision about IESO Nova Scotia's previous revenue requirement (2026 NSEB 5), it ordered that all future revenue requirement applications include:

- Formal support for all significant assumptions and expenditures in the application, such as quotes, any referenced market information, correspondence from discussions surrounding estimates, market data supporting employee compensation, etc.;
- Up to five years of actual audited historical financial results as they become available;
- Three years of projected financial results;
- An annual business plan that includes:
    - a detailed workplan of IESO Nova Scotia's planned activities in the period covered by the revenue requirement application connecting each activity to the achievement of its objects in the *More Access to Energy Act*;
    - timelines for activities expected to span more than one year;
    - an analysis of the past year's results, including reasons for failing to complete activities in the prior year's business plan and the reasons for any adjustments to timelines for longer-term activities; and
- Details of engagement activities with Indigenous groups and interested parties.

[21] The Board's decision in that matter was issued after IESO Nova Scotia filed its current application; therefore, the application does not include these items. All intervenors in this matter had concerns about the detail and transparency in the application.

[22] The Consumer Advocate was "concerned about the limited information that [had] been provided" and questioned the reliability and accuracy of IESO Nova Scotia's forecasts. The Consumer Advocate pointed out that the prior year's forecasts had turned out to be "materially inaccurate in every single cost category". It stated that as "the IESO grows further into its role, the CA would expect further and better particulars to be provided in future applications before the Board". The Consumer Advocate commented that the application and responses to information requests were so vague that he and the Small Business Advocate requested an oral hearing instead of the paper process that had been initiated. All intervenors supported this request, and an oral hearing was held.

[23] The Small Business Advocate submitted that IESO Nova Scotia should follow accounting policies and rules for identifying financial risks in its revenue requirement applications going forward. It said that this would contribute to transparency and ensure ratepayers have access to all relevant information about known costs and risks.

[24] The Industrial Group stated that one of the challenges throughout the proceeding was "the absence of clear, specific, and reliable evidence to support key aspects of the Application". It submitted that the Board should not accept unsupported assertions.

[25] Key areas of concern with the forecast accuracy of OM&A costs related to Employees (Administration), salary benchmarking and Governance. In its forecast, IESO Nova Scotia assumed that all full-time employees would be in place for the entire fiscal year. In its opening statement, IESO Nova Scotia stated that it had 31 of a forecasted 44 employees as of June 10, 2026. It stated that it was working on recruiting and hiring for nine of the vacant positions and that it should be fully staffed by fall 2026. IESO Nova Scotia stated that it did the best it could with limited resources when it developed its budget. It stated that even if full-time staff were not in place for the full year, it would incur costs for temporary staff or consultants while it found permanent employees and the costs would likely be the same. The Industrial Group submitted that IESO Nova Scotia should be required to apply a vacancy rate adjustment or demonstrate that consultant costs are in fact offsetting salary savings.

[26] Another common area of concern was the lack of supporting documentation for the compensation for non-CEO roles that were not transfers from NS Power. IESO Nova Scotia said it worked with two consultants to determine compensation. They benchmarked roles they considered to be like the responsibilities of IESO Nova Scotia positions and made recommendations that were mostly verbal, with no written work product to share. The Consumer Advocate said it was difficult to imagine that the consultant did not produce some kind of written work product to support its discussions with IESO Nova Scotia.

[27] The Consumer Advocate questioned Governance costs. Most of the costs in this category consisted of remuneration for IESO Nova Scotia’s Board of Directors. The Consumer Advocate stated that the remuneration of such positions varied significantly in

different jurisdictions. While the Consumer Advocate did not necessarily object to what IESO Nova Scotia board members were receiving, his concern was the lack of documentation in the application about how the compensation was determined.

[28] The intervenors also said that IESO Nova Scotia has not provided enough information to justify the reasonableness of its employee costs, or to adequately demonstrate that the employees are being paid competitive market rates. The Consumer Advocate stated that the information provided also raises questions about IESO Nova Scotia's own diligence in reviewing and ultimately adopting the recommendations of their consultants.

[29] The Small Business Advocate highlighted the potential for signing bonuses for non-CEO employees, which it stated may not be appropriate for a not-for-profit entity, and the misclassification of travel and conference costs as office expenses.

[30] Another issue raised by intervenors was the lack of an approved comprehensive procurement policy, and IESO Nova Scotia's use of a "flexibility clause" in its interim procurement guidelines, which allows the CEO, Executive Sponsor, or Board Chair to approve an alternative procurement approach in exceptional circumstances. During the hearing, Johnny Johnston, President and CEO of IESO Nova Scotia, confirmed that the flexibility clause has been used and gave the example of a single-source procurement when there was only one organization that would have been able to meet IESO Nova Scotia's requirements.

[31] The Small Business Advocate submitted that the existence of the flexibility clause does not align with the policy's purpose of "ethical, transparent and accountable purchasing decisions" and therefore the flexibility clause should be eliminated, or, at a

minimum, documented when used. The Industrial Group said that use of the flexibility clause should be included as part of IESO Nova Scotia's quarterly reporting, including the number, value, rationale, and approving authority for its use. It further noted that no specific commitment has been made by IESO Nova Scotia regarding a filing date of a comprehensive policy.

[32] Intervenors were also concerned about the progress, timing and costs to be incurred to transition duties and responsibilities from NS Power. A primary issue about the transition from NS Power to IESO Nova Scotia is the potential for functional overlap and unnecessary cost duplication, all of which ultimately costs ratepayers more for, effectively, the same service. The Industrial Group submitted that the Board should require that the two entities certify that "no duplicate costs have been charged to ratepayers in respect of functions transferred or shared during the 2026/2027 fiscal year". The Industrial Group further recommended that IESO Nova Scotia be required to develop and file a framework identifying duplication risk and the controls in place to prevent it.

[33] The Industrial Group also submitted that IESO Nova Scotia should be directed to remove its procurement-related operating costs from its s. 29 revenue requirement application, asserting that these costs should be filed under a s. 30 application, which relates to the recovery of costs related to energy resource supply contracts.

[34] IESO Nova Scotia said that its $14.85 million revenue requirement is prudent, reasonable and necessary and should be approved. It stated that no intervenor filed evidence showing that the proposed expenses are imprudent or unreasonable. It also said that Doane Grant Thornton did not identify any material concerns with the OM&A

or transition costs. IESO Nova Scotia said that its forecasting precision will improve over time and that the Board should evaluate budgets and variances with the organization's early stage of development in mind.

[35] IESO Nova Scotia said that, while it is "amenable to further transparency and improving evidentiary support going forward", it requests the Board "consider any related direction against the cost of additional regulatory burden on a small organization, especially given the relatively small magnitude of the revenue requirement in question". It also said that it is "amenable to the SBA and IG's recommendations regarding providing additional clarity in future revenue requirement applications" about procurement costs and risks. It noted it will work to develop a comprehensive procurement policy this fiscal year, and it committed to providing an update via its quarterly reporting. However, IESO Nova Scotia said that "reporting on the use of the flexibility clause in every instance represents unreasonable over-reach into the minutia of IESO Nova Scotia's internal decision-making process". IESO Nova Scotia further said that joint certification from it and NS Power would not provide additional value and is not aligned with the purpose it served in previous uses by the Board, such as the sharing of costs by affiliates or relating to the use of an asset solely owned and controlled by the party. With respect to the exclusion of procurement-related operating costs from its s. 29 application, IESO Nova Scotia said that these are costs incurred in the run-up to entering into a formal resource supply contract and are appropriately recovered in the revenue requirement under s. 29. It stated that s. 30 pertains to costs incurred under an energy resource supply contract once in place.

3.1.1 Findings

[36] The Board recognizes the timing of this process did not allow for the incorporation of its previous directions, and that the application was developed at a time

when IESO Nova Scotia was still onboarding resources and gaining operational experience. In many respects, IESO Nova Scotia is building the plane while it is flying. This comment is not intended as a criticism, but a recognition that circumstances required it to act quickly because it was established to undertake a significant transformation of the energy sector in Nova Scotia at a time when that sector, both in the province and globally, is in a rapid state of transition. Additionally, federal and provincial government deadlines and targets relating to the operation of coal plants, greenhouse gas reduction and the use of renewable electricity are quickly approaching.

[37] Because of these circumstances, some lack of rigour in the development and accuracy of forecasts and operating budgets might be expected (and has been accepted by the Board in its decisions in this matter). But that rigour must soon follow. The Board agrees with intervenors that the processes, procedures and documentation to support the forecasted costs would have benefited from greater detail and supporting information. This needs to improve.

[38] There are many areas where IESO Nova Scotia could have endeavoured to provide additional details. For example, in response to Undertaking U-1, IESO Nova Scotia provided a few paragraphs explaining that its consultants performed market-based analysis in providing recommendations on salary bands; however, no market-based analysis was provided as evidence. The Board agrees with the Consumer Advocate that further and better information should be provided in future applications. This should include the identification of financial risks as requested by the Small Business Advocate and agreed to by IESO Nova Scotia.

[39] The Board appreciates that IESO Nova Scotia's operating costs are relatively small compared to NS Power's annual revenue requirement and there is a need to balance regulatory burden with benefit. However, the stark reality of IESO Nova Scotia's required not-for-profit status means that it would be very difficult, if not practically impossible, to address any unreasonableness or imprudence in its costs after the fact. As such, concerns about IESO Nova Scotia's costs should be addressed, as best they can, before they are incurred to ensure that a lack of rigour in the development and implementation of its forecasting, budgeting and cost-control processes does not increase costs for ratepayers, particularly over time if inefficiencies become embedded in IESO Nova Scotia's structure. Furthermore, ensuring that IESO Nova Scotia's processes are efficient, optimized and transparent when it comes to the approval of its annual revenue requirement can also improve the effectiveness of planning and resource procurement. This is likely to have a significantly greater impact on the costs paid by ratepayers in Nova Scotia over the long term.

[40] Based on the evidence provided in the application and supplemented during the oral hearing and, considering the circumstances in which IESO Nova Scotia finds itself at this time as discussed above, the Board is satisfied that the proposed expenses are reasonable and necessary. But as noted, the justification and support for these expenses needs to quickly become more robust in future proceedings.

[41] The Board agrees with the Industrial Group that costs should be forecast on a refined basis, but in the present application the Board accepts IESO Nova Scotia's assertion that consultant costs (not included in its proposed budget) will be required to

make up for vacant positions. This offsets costs it would have incurred for full-time employees.

[42] With respect to the operational procurement costs, the Board finds that they are appropriately included within this application under s. 29, as they are standard operating costs of the organization that are required in advance of entering into procurement contracts. However, these costs should be separately identified within revenue requirement applications moving forward to ensure transparency. Additionally, the Board notes that IESO Nova Scotia has committed to developing written guidelines to more precisely categorize its costs to be recovered between s. 29 and s. 30 of the *More Access to Energy Act* and the Board directs it to do so.

[43] The Board approves the Revenue Requirement of $14.85 million as filed and directs IESO Nova Scotia to continue to improve its policies, procedures and governance model to ensure future budgets can be supported by appropriately detailed evidence.

3.2 Net Revenue Requirement Deferral and Variance Mechanism

[44] In this application, IESO Nova Scotia requested approval to permanently continue its Net OM&A Deferral and Variance Account, which has been renamed as the "Net Revenue Requirement Deferral and Variance Mechanism". This account/mechanism would continue to be used as a means to true-up variances in actual total OM&A costs and other cost categories.

[45] Through this proceeding, all intervenors raised concerns about the operation of this variance account. The primary concern relates to how any overspend should be addressed, particularly if there is a finding of imprudence in relation to that overspend. The intervenors question who must ultimately bear the risk and cover any

associated costs of a finding of imprudent spending. Unlike NS Power, IESO Nova Scotia does not have an ultimate “shareholder” to absorb costs deemed imprudent by the Board.

[46] There was strong opposition to making the Net Revenue Requirement Deferral and Variance Mechanism permanent and expanding its scope at this time. Intervenors submitted that the necessary governance framework has not yet been developed and approved by the Board. It was argued that tighter controls should be implemented, there should be a cap on accumulated balances, and costs should be justified and approved before recovery from ratepayers.

[47] In its closing submission, the Industrial Group requested:

> 2. if any deferral mechanism is approved for the 2026/2027 fiscal year, approve it only on a limited, interim, and conditional basis, with a direction to initiate a stakeholder session to complete the applicable plan of administration, and include all governance elements previously directed by the Board as pre-requisites to the account implementation, including:
>
> (a) Finalized accounting policies;
>
> (b) A hard dollar cap or cumulative limit not exceeding 10% variance;
>
> (c) A confirmed carrying cost rate;
>
> (d) A defined sub-ledger template;
>
> (e) Cost category-level reporting; and
>
> (f) A functioning review and/or disallowance methodology.
>
> [Industrial Group Closing Submissions, p. 18]

[48] The Consumer Advocate, Industrial Group and Port Hawkesbury Paper recommended an “Authorization to Overspend” type process prior to incurring costs over a set threshold. The Industrial Group recommended a hard cap of 10%:

> At most, the Deferral Account should be approved only in principle. Approval in principle should not be construed as approval of a permanent mechanism capable of accumulating recoverable costs indefinitely. Rather, it should be understood as approval to further develop the mechanism, with any final authorization contingent upon the Board's review and approval of the safeguards and administrative framework that it previously directed be put in place. If any deferral is approved, the Industrial Group submits that it would be

> appropriate to impose a hard dollar cap limited to a 10% variance on the cumulative balance that may accumulate without further Board approval.
>
> [Industrial Group Closing Submissions, p. 5]

[49] IESO Nova Scotia stated that it does not believe an Authorization to Overspend type process, where significant unforeseen costs are approved in advance, is necessary. It said that most spending categories have relatively low budgets and that new spending categories are unlikely to be outside of what is understood to be its mandate under the *More Access to Energy Act*. It said that the largest variances in Board-approved costs are likely to relate to staff compensation due to variances in the number of staff. IESO Nova Scotia said in its reply to closing submission that:

> Accordingly, IESO Nova Scotia does not believe it is necessary to implement mandatory NSEB approval of unexpected expenditures outside of its annual revenue requirement applications. Nevertheless, IESO Nova Scotia is live to the concern of intervenors, and submits that its quarterly reporting offers the least administratively burdensome and regulatorily efficient process through which to update the Board and stakeholders on any unexpected expenditures or variances.
>
> [IESO Nova Scotia Reply Submissions, p. 12]

[50] IESO Nova Scotia strongly urged the Board to approve the proposed Net Revenue Requirement Deferral and Variance Mechanism. It stated that it is an evolution of the Board-approved OM&A variance account and that it improves simplicity and transparency. IESO Nova Scotia does not support a “hard cap” on deferred costs as unknown future events may require spending outside of forecasts and could prevent the organization from carrying out its statutory obligations. It noted that all significant variances would still be reviewed by the Board. It supports the +/- 10% variance threshold.

3.2.1 Findings

[51] In approving IESO Nova Scotia’s first application, the Board stated it was appropriate to establish the Net OM&A Deferral and Variance Account but directed that “specific guidelines and accounting policies must be developed and approved before

there is a recovery" from the account. In this regard, the Board specifically required that the guidelines "should reflect that any variance that exceeds +/-10% will trigger a review process established by the Board". This threshold was chosen because IESO Nova Scotia is a new organization and close oversight is needed to limit large cost increases during its first years of operation. For cost overruns, the burden was on IESO Nova Scotia to demonstrate that the expenditures were prudent. In 2026 NSEB 5 (M12412), the Board directed IESO Nova Scotia to file the required guidelines and accounting policies no later than its 2027-2028 Revenue Requirement application.

[52] The Board does not agree that the Net Revenue Requirement Deferral and Variance Mechanism should be a temporary measure. There will always be variances in any budget and, given the funding structure of IESO Nova Scotia, it will need to track and recover or refund variances on an ongoing basis.

[53] The Board understands intervenor concerns and accepts many of their suggestions. Although the Board finds that the implementation of a deferral and variance mechanism is a practical necessity in the circumstances, there are important risks that must be managed. As discussed earlier, it may be practically impossible to address any unreasonableness or imprudence in its costs after the fact, so concerns about IESO Nova Scotia's costs should be addressed before they are incurred. The approval of a deferral and variance account, to the extent that costs vary from an approved revenue requirement, removes that front-end accountability and review. Therefore, the need to ensure that IESO Nova Scotia has strong forecasting, budgeting and cost-control processes is even more critically important. As the Board noted in its past IESO Nova Scotia revenue requirement decision, the deferral and variance account must be subject

to appropriate guidelines, cost management controls and accounting policies, which would be developed and approved before the recovery of amounts from the mechanism.

[54] As noted earlier in the decision, the Board established a requirement for IESO Nova Scotia to explain or justify any variances that exceed +/-10%. For clarity, that variance applies at the cost category level. While this may help to identify costs that have been imprudently incurred, it does little to address the problem around how those costs could be recovered for the benefit of ratepayers. The primary benefit of this justification threshold is not as a disallowance mechanism. A greater benefit comes from identifying how and why IESO Nova Scotia's revenue requirement forecasts and cost controls proved to be inadequate and finding opportunities to strengthen those front-end processes to avoid future problems.

[55] Aside from the requested cap, the Board adopts all the Industrial Group's suggestions. The Board finds that IESO Nova Scotia must have strong controls in place to ensure forecasted costs are as accurate as possible so that once they are approved by the Board, it is unlikely that actual costs will be deemed imprudent after the spending has occurred.

[56] The Board agrees with IESO Nova Scotia that an Authorization to Overspend process is not necessary at this time. Review of the Net Revenue Requirement Deferral and Variance Mechanism will be an annual process, and significant changes will be brought to the Board's attention through the quarterly reporting and annual filing processes. If it is determined over time that imprudent spending is occurring, the Board may require a pre-approval process in the future.

3.3 Quarterly and Annual Reporting

[57] Both the Consumer Advocate and the Small Business Advocate recommended that IESO Nova Scotia increase the cadence of its reporting to monthly.

[58] The Industrial Group recommended that the annual report provided by IESO Nova Scotia should be modelled on the annual report published by the Ontario Independent Electricity System Operator.

[59] IESO Nova Scotia said that monthly reporting is inappropriate given the regulatory and administrative burden that would place upon the organization. Regarding its annual report, it said that there is clear legislative direction on the contents of the report.

3.3.1 Findings

[60] The Board agrees with IESO Nova Scotia that the current cadence of quarterly reporting strikes an appropriate balance between administrative burden and transparency. Should this level of reporting fail to provide the necessary degree of transparency in the future, the Board may revisit the timing.

[61] On the topic of the annual report, the Board notes that the first annual report has been filed in Matter M13113. Therefore, any issues relating to the content of the annual report will be addressed in that proceeding.

3.4 Does the Board Have the Power to Disallow Costs Under s. 29(4)?

3.4.1 The Authority of Administrative Tribunals

[62] The Board is a “creature of statute”. It was established under the *Energy and Regulatory Boards Act*. It must follow legislative requirements and administrative law principles. The Board’s decisions may be appealed to the Nova Scotia Court of Appeal on any question of law or jurisdiction. The Supreme Court of Nova Scotia may also judicially review aspects of its decisions.

[63] In *ATCO Gas & Pipelines Ltd. v Alberta (Energy and Utilities Board),* 2006 SCC 4, a majority of the Supreme Court of Canada, in reasons written by Justice Bastarache, described the authority of administrative tribunals and agencies:

> 35 Administrative tribunals or agencies are statutory creations: they cannot exceed the powers that were granted to them by their enabling statute; they must "adhere to the confines of their statutory authority or 'jurisdiction' [; and t]hey cannot trespass in areas where the legislature has not assigned them authority": Mullan, at pp. 9-10 (see also S. Blake, *Administrative Law in Canada* (3rd ed. 2001), at pp. 183-84).
>
> …
>
> 38 But more specifically in the area of administrative law, tribunals and boards obtain their jurisdiction over matters from two sources: (1) express grants of jurisdiction under various statutes (explicit powers); and (2) the common law, by application of the doctrine of jurisdiction by necessary implication (implicit powers) (see also D. M. Brown, *Energy Regulation in Ontario* (loose-leaf ed.), at p. 2-15).

[64] Sara Blake's description of the powers of administrative tribunals, in *Administrative Law in Canada*, 7th ed, p. 137 (LexisNexis Canada, 2022), noted:

> An administrative tribunal is created by statute and has only those powers conferred on it by statute. It has no inherent power to undertake proceedings or to make an order that affects a person's substantive rights or obligations. Most Interpretation Acts confer on tribunals all powers that are necessary to enable them to make the decisions and do the things they are expressly empowered to do. The powers that exist by necessary implication may be deduced from the wording of the Act, its structure, and its purpose. A tribunal's powers should be interpreted so as to enable the tribunal to fulfil the purposes of the statute rather than sterilized by overly technical interpretation, but statutory powers may not be expanded to accomplish what the tribunal thinks it ought to do to further its mandate in the public interest. If a tribunal has broad authority to make any order to remedy a violation of the Act, the remedy must be related to the violation, its consequences and the purposes of the Act.

[65] The Board's general functions, power, duties and jurisdiction are explicitly addressed in the *Energy and Regulatory Boards Act*:

> **Powers and duties**
> **5 (1)** The Energy Board has those functions, powers and duties that are conferred or imposed upon it
>
> (a) by this Act;
>
> (b) by the *More Access to Energy Act*;
>
> (c) respecting the production, transmission, delivery or furnishing of electrical energy for the purpose of heat, light and power or steam heat, geothermal heat, geothermal resources and electricity efficiency and conservation, by the *Public Utilities Act*;

(d) by the *Gas Distribution Act*, the *Electricity Act*, the *Petroleum Products Pricing Act* or any other enactment; and

(e) as the Governor in Council prescribes by the regulations.

(2) The Governor in Council may assign to the Energy Board the powers, functions and duties of any board, commission or agency and while the assignment is in effect, that board, commission or agency is discontinued and Section 43 applies with necessary changes respecting that board, commission or agency.

Approving and fixing rates, regulatory powers

6 (1) In approving or fixing just and reasonable rates, tolls, charges or tariffs pursuant to this Act or any other enactment, the Energy Board may adopt any method or technique that it considers appropriate, including an alternative form of regulation.

(2) 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.

(3) Subject to subsection (4), the Energy Board shall regulate

(a) the Independent Energy Systems Operator, transmitters and all matters relating to public utilities that perform the functions of production, transmission, delivery or furnishing of electrical energy to or for the public for the purpose of heat, light and power, geothermal resources, geothermal energy, geothermal heat or steam heat;

(b) the franchise holder granted a franchise pursuant to Section 79C of the *Public Utilities Act*;

(c) the Halifax Water district energy project;

(d) any holder of the franchise to construct and operate a gas delivery system in the Province pursuant to the *Gas Distribution Act*; and

> (e) any other entity or service prescribed by the regulations.
>
> **(4)** The Governor in Council may make regulations
>
> (a) prescribing factors for the Energy Board to consider when approving rates, tolls, charges or tariffs, capital applications and all other matters over which the Energy Board has authority respecting the production, transmission, delivery or furnishing of electrical energy for the purpose of heat, light and power or steam heat, including combined heat and power;
>
> (b) excluding any entity or service from the jurisdiction of the Energy Board.
>
> **(5)** The exercise by the Governor in Council of the authority contained in subsection (4) is a regulation within the meaning of the *Regulations Act*.
>
> **(6)** The Energy Board shall endeavour to issue fair decisions in relation to all matters in a manner that is efficient, effective and as timely as possible.
>
> **(7)** The Energy Board shall make public all approved rates, tolls, charges, tariffs and capital applications on its website and update these documents as required.
>
> …
>
> **Jurisdiction of Board**
> **30** **(1)** A Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on the Board.
>
> **(2)** The Boards, as to all matters within their jurisdiction pursuant to this Act, may hear and determine all questions of law and of fact.

[66] Other functions, powers, duties and jurisdiction are also expressly assigned to the Board under various statutes, such as the *More Access to Energy Act*.

[67] As noted by the majority in *ATCO*, in addition to these express grants of authority, the Board's jurisdiction may be necessarily implied from the wording of legislation, its structure and its purpose:

> 51 The mandate of this Court is to determine and apply the intention of the legislature (*Bell ExpressVu*, at para. 62) without crossing the line between judicial interpretation and legislative drafting (see *R. v. McIntosh*, 1995 CanLII 124 (SCC), [1995] 1 S.C.R. 686, at para. 26; *Bristol-Myers Squibb Co.*, at para. 174). That being said, this rule allows for the application of the "doctrine of jurisdiction by necessary implication"; the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature (see

Brown, at p. 2-16.2; *Bell Canada*, at p. 1756). Canadian courts have in the past applied the doctrine to ensure that administrative bodies have the necessary jurisdiction to accomplish their statutory mandate:

> When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it.

[68] The majority in *ATCO* later clarified the doctrine of jurisdiction by necessary implication, explaining how it may arise in relation to both broadly and narrowly framed statutory powers and identifying the circumstances in which the doctrine may apply:

> 73 The City seems to assume that the doctrine of jurisdiction by necessary implication applies to "broadly drawn powers" as it does for "narrowly drawn powers"; this cannot be. The Ontario Energy Board in its decision in *Re Consumers' Gas Co.*, E.B.R.O. 410-II/411-II/412-II, March 23, 1987, at para. 4.73, enumerated the circumstances when the doctrine of jurisdiction by necessary implication may be applied:
>
> * [when] the jurisdiction sought is necessary to accomplish the objectives of the legislative scheme and is essential to the Board fulfilling its mandate;
>
> * [when] the enabling act fails to explicitly grant the power to accomplish the legislative objective;
>
> * [when] the mandate of the Board is sufficiently broad to suggest a legislative intention to implicitly confer jurisdiction;
>
> * [when] the jurisdiction sought must not be one which the Board has dealt with through use of expressly granted powers, thereby showing an absence of necessity; and
>
> * [when] the Legislature did not address its mind to the issue and decide against conferring the power upon the Board.
>
> (See also Brown, at p. 2-16.3.)
>
> 74 In light of the above, it is clear that the doctrine of jurisdiction by necessary implication will be of less help in the case of broadly drawn powers than for narrowly drawn ones. Broadly drawn powers will necessarily be limited to only what is rationally related to the purpose of the regulatory framework. This is explained by Professor Sullivan, at p. 228:
>
> > In practice, however, purposive analysis makes the powers conferred on administrative bodies almost infinitely elastic. Narrowly drawn powers can be understood to include "by necessary implication" all that is needed to enable the official or agency to achieve the purpose for which the power was granted. Conversely, broadly drawn powers are understood to include only what is rationally related to the purpose of the power. In this way the scope of the power expands or contracts as needed, in keeping with the purpose. [Emphasis in original.]

[69] While *ATCO* considered the common law doctrine of jurisdiction by necessary implication, there is also a statutory analogue in the *Interpretation Act,* RSNS 1989, c 235:

> **Implied provisions in enactment**
> **19** In an enactment,
>
> …
>
> (b) where power is given to the Governor in Council or a public officer to do or enforce the doing of any act, all necessary powers are also given to enable him to do or enforce the doing of the act; …

3.4.2 The Board's Authority under s. 29(4) of the *More Access to Energy Act*

[70] At the hearing, the Nova Scotia Department of Energy submitted the Board does not have the "… legislative authority to disallow parts or all of …" an application by IESO Nova Scotia under s. 29 of the *More Access to Energy Act* to approve its proposed expenditure and revenue requirements and the fees it proposes to charge. According to the Department, the Board may only approve the application or refer it back to IESO Nova Scotia for further consideration. Although the Department of Energy elected not to file closing submissions supporting its position in this matter, IESO Nova Scotia, the Consumer Advocate, the Small Business Advocate, the Industrial Group and Port Hawkesbury Paper addressed this issue in their submissions.

[71] Given the Board's approval of the proposed revenue requirement in this case, it is not strictly necessary for the Board to address this issue. However, IESO Nova Scotia urged the Board to do so and submitted "… understanding whether the Board believes it has authority to disallow costs will have a material and profound impact on the ongoing and future operations of IESO Nova Scotia". Given this, and the fact that several

of the parties canvassed this issue in detail in their closing submissions, the Board finds it is appropriate to consider the issue at this time.

3.4.3 The Principles of Statutory Interpretation

[72] Well-recognized principles applied by courts and tribunals throughout the country guide the Board when interpreting legislation. A majority of the Supreme Court of Canada summarized these principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. These reasons assumed that legislators intended that administrative decision makers, such as this Board, would interpret legislation consistent with these principles:

> [117] A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21, and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, both quoting E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. Parliament and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations: see, e.g., *Interpretation Act*, R.S.C. 1985, c. I-21.
>
> [118] This Court has adopted the "modern principle" as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: Sullivan, at pp. 7-8. Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law — whether courts or administrative decision makers — will do so in a manner consistent with this principle of interpretation.

[73] The majority, in *Vavilov*, noted that the application of these principles by administrative decision makers may look different than the interpretive exercises undertaken by courts. They emphasized that regardless of the form of analysis, the interpretation must be consistent with the text, context and purpose of the contested provision:

> [119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.
>
> [120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.
>
> [121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.

[74] As noted in *Vavilov*, the Parliament of Canada and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations. In Nova Scotia, this guidance is in the *Interpretation Act*, including ss. 9(1) and 9(5):

> **9** **(1)** The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning
>
> …
>
> **(5)** Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
>
> (a) the occasion and necessity for the enactment;
>
> (b) the circumstances existing at the time it was passed;
>
> (c) the mischief to be remedied;
>
> (d) the object to be attained;
>
> (e) the former law, including other enactments upon the same or similar subjects;

(f) the consequences of a particular interpretation; and

(g) the history of legislation on the subject.

3.4.4 IESO Nova Scotia's Obligation to Obtain Approval for its Expenditures, Revenue Requirements and Fees

[75] Section 29 of the *More Access to Energy Act* requires IESO Nova Scotia to submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge to the Board for review and approval:

> **Proposed expenditure and revenue requirements**
> **29 (1)** The IESO shall, at least 90 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Energy Board for review.
>
> **(2)** Where the IESO is unable to make its submission under subsection (1) within the time required under that subsection, the IESO shall file its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Energy Board for review as soon as possible.
>
> **(3)** Until the Energy Board approves the proposed expenditure and revenue requirements for the fiscal year and the fees the IESO proposes to charge during the fiscal year, the fees approved for the previous fiscal year remain in effect unless the Energy Board orders otherwise.
>
> **(4)** The Energy Board may approve the proposed expenditure and revenue requirements and the proposed fees or may refer them back to the IESO for further consideration with the Energy Board's recommendations.
>
> **(5)** The IESO shall not, without the approval of the Energy Board,
>
> (a) establish, eliminate or change any fees it has established; or
>
> (b) eliminate or change any fees established by a predecessor that remain in effect.
>
> **(6)** The Energy Board may hold a hearing before exercising its powers under this Section.

[76] Subsection 29(5) prohibits IESO Nova Scotia from charging (or removing) any fees without Board approval.

3.4.5 A Textual Analysis of s. 29(4)

[77] IESO Nova Scotia submitted that, under s. 29(4) of the *More Access to Energy Act*, the Board may only (1) approve IESO Nova Scotia's proposed expenditures,

revenue requirements or fees; or (2) refer them back to IESO Nova Scotia for further consideration with the Board's recommendations. In other words, that the Board's authority is limited by the statute to a binary choice to either fully approve the application or refer it back. IESO Nova Scotia said the power to fix its revenue requirement at a level other that what it proposed was "notably absent".

[78] Port Hawkesbury Paper considered there was some merit in IESO Nova Scotia's interpretation of s. 29(4). But it said if the Board concluded it did not have the authority to disallow forecast revenue requirements, a referral back to IESO Nova Scotia would be "tantamount to a disallowance". It said if IESO Nova Scotia did not follow the Board's recommendations about matters referred back to it for further consideration, the Board was not obliged to approve the proposed revenue requirement.

[79] The Industrial Group framed the question to be addressed under s. 29(4) as whether it authorizes the Board to set IESO Nova Scotia's forward-looking revenue requirement at a level, and on such terms, the Board considers just, reasonable and necessary. The Industrial Group submitted it does.

[80] The Industrial Group argued that IESO Nova Scotia's interpretation of s. 29(4) was narrow. It highlighted the absence of language clearly limiting the Board's authority, noting the provision does not say the Board "shall either approve the Application as filed or refer it back in its entirety". The Industrial Group also emphasized the use of the permissive "may" in the provision.

[81] The Industrial Group argued that the Board's approval of a different revenue requirement other than the one sought in the application would still be an approval of the application. It submitted the text of the statute did not limit the Board's approval to a rubber

stamp of the exact amount sought in the application. Rather, the Industrial Group argued that a meaningful review of an application under s. 29(4) required the Board to have the ability to decide whether some proposed costs were justified and that others were not.

3.4.6 Context from the *Energy and Regulatory Boards Act*

[82] The Consumer Advocate submitted:

> Given the preceding provisions in s. 29, and the Board's general powers as described in *Energy and Regulatory Boards Act*, s. 29(4) should be read as providing the Board with the authority to either approve or disapprove of the IESO's requests, either in whole or in part. Where an application is not approved, either in whole or in part, the Board can make "recommendations" for the IESO's further consideration. This should not, however, be read as limiting the Board's discretion to approve certain aspects of an application, while disapproving others, or to make adjustments as deemed appropriate by the Board in its discretion. To read s. 29(4) more narrowly would, in our respectful opinion, unreasonably fetter the Board's authority in a manner that would undermine its general authority to regulate the IESO, and would also result in unnecessary regulatory inefficiency that could not reasonably have been intended by the legislature. This would be inconsistent with the well-established regulatory authority of the Board.
>
> Accordingly, s. 29 of the *Act* permits the Board to either "disallow" or "disapprove" certain costs, or any other aspect of any application that the IESO may file pursuant to s. 29. The Board would, in that case, have the general regulatory authority to either simply disapprove, or approve with modifications considered appropriate by the Board in the exercise of its discretion. The option to provide "recommendations" should not read as limiting the Board's general powers.
>
> [Consumer Advocate Closing Submissions, pp. 11-12]

[83] The Industrial Group agreed that the provisions of the *More Access to Energy Act* and the *Energy and Regulatory Boards Act* must be read together, submitting that *ATCO* supported a harmonious review of the framework for regulating IESO Nova Scotia. It argued the approval of a revenue requirement under s. 29(4) includes the Board's general ratemaking authority under s. 6 of the *Energy and Regulatory Boards Act* to fix just and reasonable rates by whatever method it considers appropriate, "including approving a different, lower, or conditional revenue requirement".

[84] In its reply submissions, IESO Nova Scotia said that while the *Energy and Regulatory Boards Act* broadly grounds the Board's jurisdiction under other legislation

and “confers incidental powers in the exercise of that jurisdiction”, s. 5 of that statute does not confer new jurisdiction on the Board. It submitted the Board must be able to find an express grant of authority elsewhere. IESO Nova Scotia reiterated its comments that the Supreme Court of Canada, in *ATCO*, observed that seemingly broad powers in legislation must be exercised within the confines of the statutory regime, which in this case it said was the “express and clear” language in s. 29(4) of the *More Access to Energy Act*.

3.4.7 A Comparison to Ontario’s *Electricity Act*

[85] IESO Nova Scotia noted that s. 29(4) of the *More Access to Energy Act* was like s. 25(4) in Ontario’s *Electricity Act*, SO 1998, c 15, Sch A. In support of its position that the Board can only approve IESO Nova Scotia’s application or refer it back under s. 29(4), IESO Nova Scotia cited an Ontario Energy Board decision about the Ontario Independent Electricity System Operator’s application for approval of its 2016 revenue requirement, expenditures and fees. In that decision, the Ontario Energy Board approved the expenditure and revenue requirement, but referred the matter of fees back to the system operator:

> **Recommendations**
>
> Under s. 25(4) of the *Electricity Act, 1998*, “The Board may approve the proposed expenditure and revenue requirements and the proposed fees or may refer them back to the IESO for further consideration with the Board’s recommendations.” The OEB has approved the proposed expenditure and revenue requirements, but not the proposed single usage fee. The OEB refers the matter of the usage fee back to the IESO for further consideration, and recommends the following:
>
> 1 The IESO should submit a revised proposal to the OEB to recover its approved revenue requirement through two separate usage fees, one for domestic customers and one for export customers.
>
> 2. Each usage fee should represent a revenue-to-cost ratio of 100%, based on the Elenchus cost allocation evidence.
>
> [Decision and Order, EB-2015-0275, December 1, 2016]

[86] In its reply submissions, the Small Business Advocate disputed IESO Nova Scotia's interpretation of this Ontario Energy Board decision. The Small Business Advocate argued that the only conclusion to be drawn from the decision is that the Ontario Energy Board determined that the expenditure and revenue requirement was appropriate and the proposed fees were not. More specifically, the Small Business Advocate said that, although the Ontario Energy Board referred the fees issue back to the system operator, it did not say that its powers were limited to that option or that costs could not be disallowed.

[87] Like the Small Business Advocate, the Industrial Group argued the reasoning in the case did not go as far as proving that the Ontario Energy Board did not have the authority to decline to accept certain proposed expenditures. The Industrial Group suggested that despite nearly identical wording, the Ontario Energy Board has never ruled that it lacks such authority.

[88] The Industrial Group emphasized that the factual context for the Ontario Energy Board decision was different as well. It noted the case did not involve a challenge to the prudence or reasonableness of the proposed expenditures.

[89] The Consumer Advocate also disagreed that reliance on a single decision of the Ontario Energy Board supported IESO Nova Scotia's position. The Consumer Advocate submitted the decision did not rule out the possibility of denying certain aspects of an application outright, if appropriate to do so. The Consumer Advocate referred to a more recent Ontario Energy Board decision to support this point:

> … Indeed, other decisions from the OEB would suggest that the OEB does not view its authority as being so limited. Specifically, in EB-2024-0004, the OEB considered the Ontario IESO's application for an incremental increase to its approved revenue requirement. The OEB stated that while the Ontario IESO was permitted under s. 25(1) to make such an application, the "OEB's intervention to adjust fees in line with differences in

> the forecast of expenditures is not simply an automatic exercise." The OEB then referred to a prior decision concerning an application filed by Ontario Power Generation, which provided the following conclusion:
>
> > However, the Board's power to consider and set what makes a just and reasonable rate is very broad and allows significant flexibility. The obligation to ensure that rates are always just and reasonable does not mean that the Board must examine and adjust a utility's rates on a constant basis. Most utility's rates are set on a forecast basis, for example, and invariably these forecasts turn out to be inaccurate to some extent. Absent extraordinary circumstances, the Board does not intervene to adjust rates simply because actual costs or revenues are different from what was forecast – even though the Board has the power to do so. In other words, there is a measure of "wiggle room" in a just and reasonable rate. (Referenced in *Enbridge Gas Inc v. Ontario Energy Board*, 2020 ONSC 3616 (Divisional Court).)
>
> While the Board did not directly consider the scope of its authority pursuant to s. 25(4) of the Ontario *Electricity Act*, this reference would suggest that the OEB views its authority over approval of rates for the Ontario IESO as being more in line with its approach to other regulated utilities, and therefore would allow the OEB, in certain circumstances, to either approve such an adjustment, or deny it.
>
> [Consumer Advocate Reply Submissions, p. 2]

[90] The Board notes that although the wording in s. 25(4) of Ontario's *Electricity Act* is nearly identical to s. 29(4) of the *More Access to Energy Act*, there is a contextual difference that is evident when one considers these sections in their entirety rather than just the specific subsections. In Ontario, the system operator may not apply to the Ontario Energy Board for the approval of its expenditures, revenue requirement and fees until the Minister of Energy has approved the system operator's annual business plan (s. 29(1)). In Nova Scotia, there is no requirement in the *More Access to Energy Act* for prior ministerial or government approval of IESO Nova Scotia's annual business plan.

[91] Although annual reports and other information may be provided to the Board and the Minister of Energy under s. 32 of the *More Access to Energy Act*, the annual report addressed in that provision is a report on IESO Nova Scotia's activities in the past year rather than its proposed activities in the upcoming fiscal year as is the case in Ontario. Furthermore, there are no approval requirements associated with the filing of an

annual report or other information under s. 32. The Nova Scotia Energy Board's review of IESO Nova Scotia's proposed expenditures and revenue requirement for the fiscal year is the only independent approval of the system operator's planned expenditures established in the statute in this jurisdiction.

3.4.8 A Comparison to Section 67(1) and other Provisions in the *More Access to Energy Act*

[92] For context in interpreting s. 29(4), IESO Nova Scotia also contrasted the wording in that provision with s. 67(1)(c) of the *More Access to Energy Act*. It emphasized the existence of explicit authority in the latter provision to refuse to approve a proposed reliability standard:

> **67 (1)** Upon application by the IESO, a standards authority or a licence holder subject to a reliability standard, or as directed by the Energy Board, the Energy Board may, subject to and in accordance with the regulations and subject to subsection (2),
>
> (a) approve a reliability standard, with or without modifications;
>
> (b) approve modifications to an approved reliability standard;
>
> (c) refuse to approve a reliability standard or modifications to an approved reliability standard;
>
> (d) remand a reliability standard or modifications to an approved reliability standard to the IESO for further consideration; or
>
> (e) retire an approved reliability standard.

[93] The Industrial Group submitted there was a difference between the approval of revenue requirements under s. 29 and reliability standards under s. 67, noting that different principles apply in considering such approvals. It argued it does not follow that the shorter wording in s. 29(4) was meant to be read more narrowly.

[94] The Board also observes that, while s. 29(4) of the *More Access to Energy Act* is nearly identical to s. 25(4) of Ontario's *Electricity Act*, s. 67(1) of the *More Access*

to Energy Act is remarkably similar to s. 119(1) in New Brunswick's *Electricity Act*, SNB 2013, c 7. It is possible that the differences in the wording of these provisions simply reflect differences in the extra-jurisdictional precedents referenced during the development of legislation in Nova Scotia.

[95] While not raised by any party in closing submissions, the Board notes that s. 79(5) of the *More Access to Energy Act* describes the Board's authority to approve a transmission tariff in a way that is different, yet again, from the language used in both s. 29(4) and s. 67(1):

> **79 (5)** At the conclusion of the hearing, the Energy Board may make any order respecting the tariff it deems appropriate and may set out timelines for the effective date of the tariff.

3.4.9 The Purpose of the Legislation

[96] The purpose of the *More Access to Energy Act* is set out in s. 2:

> **Purpose**
> **2** The purpose of this Act is to
>
> (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.

[97] The objects and duties of IESO Nova Scotia are set out in ss. 9 and 10:

Objects

9 The objects of the IESO are to

(a) exercise and perform the powers, duties and functions assigned to the IESO under this Act, the market rules and its licence;

(b) enter into agreements with transmitters giving the IESO the authority to direct the operations of their transmission systems;

(c) direct the operation of the IESO-controlled grid;

(d) establish and enforce criteria and standards relating to the reliability of the integrated electricity system;

(e) maintain the adequacy and reliability of the bulk electricity system;

(f) procure ancillary services;

(g) enter into interconnection agreements with transmitters;

(h) work with responsible authorities outside the Province to coordinate the IESO's activities with their activities;

(i) participate with any standards authority in the development of standards and criteria relating to the reliability of transmission systems;

(j) undertake and coordinate power system planning and development responsibilities to maintain and ensure the adequacy and reliability of the bulk electricity system for present and future needs and for the efficient operation of a competitive market;

(k) facilitate the operation of a competitive electricity market;

(l) engage in activities related to settlements, payment under a contract entered into under the authority of this Act and payments provided for under this Act, the *Electricity Act* or the *Public Utilities Act*;

(m) conduct procurements for energy resources, including

(i) electricity supply,

(ii) electricity capacity,

(iii) energy storage,

(iv) ancillary services, and

(v) hybrid peaking resources;

(n) engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;

(o) engage in activities in support of system-wide goals for the amount of electricity to be produced from different energy sources;

(p) forecast electricity demand and the adequacy and reliability of electricity resources for the Province for the short, medium and long terms;

(q) conduct independent planning for energy resources, demand-side management and transmission;

(r) collect and make public information relating to the short, medium and long term electricity needs of the Province and the adequacy and reliability of the integrated electricity system to meet those needs;

(s) perform any other function or engage in any activity the IESO considers necessary or advisable to exercise its powers and carry out its duties, responsibilities and functions under this Act and the regulations; and

(t) perform any other duties prescribed by the regulations.

Duties of IESO

10 **(1)** In furtherance of the objects of the IESO, the IESO shall

(a) develop terms of reference for and carry out an integrated resource planning exercise as required;

(b) carry out competitive procurements of energy resources consistent with the results of the integrated resource planning exercises referred to in clause (a) and as provided for by the regulations;

(c) issue administrative penalties in accordance with the Market Rules and Procedures; and

(d) carry out transmission interconnection studies and implement transmission connected generation interconnection procedures in a timely manner and in accordance with the regulations to support the purpose of this Act.

(2) The IESO shall carry out procurements of energy resources, subject to any additional or alternative requirements as may be prescribed by the regulations or considered appropriate by the IESO in accordance with the Province's 2030 Clean Power Plan, the purpose of this Act and the objects of the IESO.

(3) Prior to carrying out the integrated resource planning exercise referred to in subsection (1), the IESO shall operate on the basis of the results of the most recent update to the integrated resource plan filed by NSPI with the Utility and Review Board.

[98] Reflecting on its purpose, IESO Nova Scotia submitted that it is fundamentally different than an investor-owned utility. It noted that it is a not-for-profit organization with a public interest mandate to undertake the statutory functions noted in the *More Access to Energy Act*. It said the potential for a denial or disallowance of costs

by the Board “has the potential to interfere with the exercise of IESO Nova Scotia’s public interest mandate, rather than simply being absorbed by a shareholder”.

[99] IESO Nova Scotia submitted the intent of s. 29(4) was to establish an “iterative” process where any Board concerns about approving the application would be referred back to IESO Nova Scotia for further consideration. IESO Nova Scotia argued this process preserves both meaningful Board oversight and IESO Nova Scotia’s statutory role.

[100] IESO Nova Scotia indicated that it would be under a good faith obligation to consider and respond to any Board recommendations made in matters referred back to it, “either by accepting them, or by outlining the rationale for not accepting them”. IESO Nova Scotia’s submissions were silent about what would occur if it refused to address the concerns raised by the Board that precluded the Board from approving its application in the first place.

[101] The Small Business Advocate submitted that IESO Nova Scotia’s interpretation of s. 29(4) could lead to delay if IESO Nova Scotia continued to submit applications to the Board that the Board found were not appropriate and had to be referred back to IESO Nova Scotia for further consideration. The Small Business Advocate noted that the ultimate authority to approve proposed expenditures, revenue requirements and fees rests with the Board and, if the Board does not approve an application filed by IESO Nova Scotia, the result is the same whether the matter is remitted back to IESO Nova Scotia or not – the application is not approved.

[102] Similarly, the Industrial Group argued that IESO Nova Scotia’s “iterative” interpretation risks creating a “regulatory loop”. It said this would be “administratively

burdensome, inefficient and counterintuitive to the Board's overarching powers to set just and reasonable rates". It submitted the Legislature should not be presumed to have intended such an unreasonable or inconsistent result.

[103] The Consumer Advocate argued that IESO Nova Scotia's not-for-profit status, and the inability to pass along costs found to be imprudent to a shareholder, supported an interpretation favouring more oversight by the Board, not less. The Industrial Group shared this view, noting:

> … A conventional utility has a shareholder whose return absorbs the consequence of an unjustified cost. IESO-NS has no such buffer. Absent another mechanism to hold IESO-NS itself accountable for any imprudence, every dollar in an approved revenue requirement and every further dollar spent may pass through to ratepayers.
>
> [Industrial Group Reply Submissions, p. 7]

[104] Later, the Industrial Group went on to submit:

> In a conventional utility, a retrospective disallowance has somewhere to land. The utility absorbs the disallowed amount, typically through a reduction to shareholder return, without a corresponding reduction in service. The utility remains solvent, and the ratepayer is protected after the fact.
>
> That mechanism does not neatly translate to a not-for-profit system operator. If the Board disallows a cost after IESO-NS has already spent the money, without a reserve or shareholder capital to fall back on, it may leave IESO-NS short of the funds needed to operate, with no source to make up the difference apart from ratepayers themselves in a later year, or the proverbial "belt-tightening". IESO-NS's own witness acknowledged this difficulty directly when asked about a hypothetical disallowance of an already-incurred cost: the Board "always maintains its right to deem a cost imprudent," but "[t]he challenge, of course, will be what to do with that" once the money has already been spent.
>
> This is precisely why front-end review and approval matters more, not less, in this context. Where a back-end remedy is difficult to enforce in practice, the Board's ability to test and adjust a forecast before the money is spent becomes the primary, and more effective, avenue to safeguard ratepayers. A dollar kept out of an approved revenue requirement because it was not justified is a dollar protected. The same dollar, approved now and found imprudent only after IESO-NS has spent it, may be practically unrecoverable without significant consequences to reliability of the system, regardless of what the formal disallowance power turns out to be.
>
> …
>
> The Board's authority under s. 29(4) to set the revenue requirement at the level it considers just, reasonable and necessary is the clearest and most direct form that front-end control can take. It lets the Board correct an unsupported forecast at the only point when correction is straightforward: before the money is spent. Reading s. 29(4) narrowly would remove the

> Board's ability to make the forecast corrections prospectively and limit protections for ratepayers to, possibly, only a back-end mechanism that, on IESO-NS's own evidence, is limited and may be practically difficult. [Footnotes omitted] [Emphasis added]
>
> [Industrial Group Reply Submissions, pp. 9-10]

3.4.10 Jurisdiction by Necessary Implication

[105] IESO Nova Scotia argued that an "implicit power to disallow costs is not merely unnecessary to achieve the Board's mandate; it is inconsistent with the express power granted and would frustrate the process intended under subsection 29(4)". It went on to submit that such authority was outside of the Board's "main function" in s. 29 and contrary to the Legislature's intent.

[106] The Industrial Group disagreed, arguing that *ATCO* supports the proposition that an enabling statute's powers include those practically necessary to accomplish the object of the statutory scheme. It submitted:

> Setting a just and reasonable revenue requirement, with the full scope of authority to determine which forecasted costs are reasonable is practically necessary to the object the Legislature enacted by requiring IESO-NS's proposed revenue requirement and fees to go "to the Energy Board for review." A review that leads to an inefficient outcome or meaningful oversight is not really a review; it is only a choice between approval and delay. To interpret the Board's role otherwise would render it a toothless tiger: ostensibly tasked with reviewing the proposed revenue requirement but lacking the practical authority necessary to ensure that the resulting rates are just and reasonable.
>
> [Industrial Group Reply Submissions, p. 9]

3.4.11 Authority to Approve a Deferral and Variance Account

[107] In its application for the approval of its revenue requirement for the year ending March 31, 2026, IESO Nova Scotia proposed, and the Board approved, a "Net OM&A Deferral and Variance Account". In the present application, IESO Nova Scotia proposed a permanent replacement of that mechanism with a "Net Revenue Requirement Deferral and Variance Mechanism".

[108] There is no explicit authority for IESO Nova Scotia to apply for such a mechanism or the Board to approve one. IESO Nova Scotia argued this absence of express authority does not affect the analysis of whether the Board can approve a revenue requirement in an amount that is something other than what was sought by IESO Nova Scotia in its application (without referring the matter back to IESO Nova Scotia for consideration).

[109] IESO Nova Scotia said the Board's authority to approve a deferral and variance mechanism flows from the "unique not-for-profit status of IESO Nova Scotia and its public interest mandate". It submitted that any variances of actual expenditures from the approved revenue requirements would result in either a surplus or deficit in a fiscal year, which it said was at odds with the not-for-profit requirements of the *More Access to Energy Act*. As part of this, IESO Nova Scotia acknowledged "that the Board retains authority to review individual expenditure decisions for prudence …".

[110] In contrast, IESO Nova Scotia submitted any purported authority to disallow costs on an application to approve a revenue requirement would "render superfluous the referral process the Legislature expressly established" in s. 29(4) of the *More Access to Energy Act*.

3.4.12 Findings

[111] The Board finds that it has the authority to approve expenditures, revenue requirements and fees that are different than proposed by IESO Nova Scotia in an application for review and approval under s. 29 of the *More Access to Energy Act*.

[112] While there may be some foundation for IESO Nova Scotia's interpretation in the text of the statute, an interpretation of s. 29(4) fully considering its text, context and purpose does not support a conclusion that the provision restricts the Board to either fully

approving the application or referring it back to IESO Nova Scotia, with recommendations, for further consideration.

[113] The Board did not find the Ontario Energy Board decisions referenced in submissions to be helpful. They provided examples of what the Ontario Energy Board did in the circumstances presenting in those particular cases, but they did not specifically address the limits of the authority or jurisdiction of that Board under the similarly worded s. 25(4) in Ontario's *Electricity Act*.

[114] The text in s. 29(4) of the *More Access to Energy Act* refers to two options, but the implication that these are the only two options is weakened by the use of permissive language ("may" instead of "shall" or "must"). The absence of an explicit "either…or" sentence structure compounds this inherent weakness.

[115] Likewise, the contrast in the language between s. 29(4) and the Board's other approval authorities in s. 67(1)(c) and s. 79(5) might provide some support for IESO Nova Scotia's interpretation of s. 29(4). However, this is undercut by a clear lack of style and consistency in the expression of these authorities. Additionally, while IESO Nova Scotia focussed on the explicit authority to "refuse to approve" in s. 67(1)(c), clause a) says the Board may "approve a reliability standard, with or without modifications". This is consistent with the Industrial Group's argument that, "[a]pproving a revenue requirement at an amount the Board considers just and reasonable, including a lower amount, an amount subject to conditions, adjustments, deferral and variance directions, is still an approval of 'the proposed expenditure and revenue requirements'".

[116] More fundamentally, IESO Nova Scotia's interpretation does not stand up to a broader consideration of the context and purpose of these provisions.

[117] IESO Nova Scotia's business and affairs must be carried out without the purpose of gain, and any revenues must be used by it for the purpose of carrying out its objects. IESO Nova Scotia's sources of revenue under the *More Access to Energy Act* are limited. In the case of the expenditures and revenue requirements contemplated in s. 29 of the statute, these are recovered through fees that are ultimately paid by electricity ratepayers in the province.

[118] The pathway for the recovery of these fees is through the Board. The Board must approve IESO Nova Scotia's expenditures, revenue requirements and fees. IESO Nova Scotia is prohibited from establishing, eliminating or changing fees without Board approval.

[119] IESO Nova Scotia's obligation to seek Board approval of its expenditures, revenue requirements and fees is an annual one. The statute contemplates IESO Nova Scotia will apply to the Board 90 days before the beginning of each fiscal year (by January 1st each year for IESO Nova Scotia's fiscal year starting April 1st).

[120] IESO Nova Scotia's suggestion that s. 29(4) contemplates an "iterative" process designed to "preserve both meaningful Board oversight and IESO Nova Scotia's statutory role" is not supported by either its not-for-profit status, its statutory objects or the purposes of the legislation. This is not the driving intent of s. 29. The purpose of this section is to provide for an efficient regulatory pathway for the approval and recovery of costs by IESO Nova Scotia so it can fulfill its statutory objects. This regulatory pathway is also consistent with the Board's requirement to issue "fair decisions in relation to all matters in a manner that is efficient, effective and as timely as possible", as required under s. 6(6) of the *Energy and Regulatory Boards Act*.

[121] The *More Access to Energy Act* charges IESO Nova Scotia with important tasks and a mandate to carry out this necessary work in the public interest. However, the purpose of s. 29 cannot be aimed at highlighting the need to respect that role by sacrificing the need for the timely recovery of costs by IESO Nova Scotia to a regulatory process that is more likely to cause delay and, at least in theory, lead to a "regulatory loop" in which the revenue necessary for IESO Nova Scotia to undertake its important work would never be approved or recovered.

[122] IESO Nova Scotia's concerns relating to its not-for-profit status appear to focus on the prospect that if the Board disallows costs after they have been incurred, IESO Nova Scotia has no ability to absorb the loss. It suggests this could pose an existential threat to its ability to continue to operate and fulfill its statutory mandate.

[123] Given that approvals under s. 29 relate to "proposed" expenditures for IESO Nova Scotia's upcoming fiscal year and are intended to be filed months in advance to provide some opportunity to review and approve them before they are incurred, this concern appears misplaced. Its not-for-profit status makes it more appropriate to ensure that its annual applications for the approval of expenditures, revenue requirements and fees are addressed as efficiently as possible, so that cost changes can be approved and fees adjusted as quickly as possible to mitigate risk to the cash flow of the not-for-profit entity.

[124] An interpretation that would require the Board to refer the application back to the system operator when there is a proposed expense that it considers unreasonable and not in the public interest does not serve the statutory purpose of providing IESO Nova Scotia with an efficient pathway for the approval of its annual expenses, revenue

requirements and fees. It would be counterproductive to that purpose by creating unnecessary delay, an inefficient regulatory process and prolonging the updating of fees for the not-for-profit system operator.

[125] Further, the Board's authority to approve alternatives without referring the application back to IESO Nova Scotia does not make the explicit reference to referring matters back to the system operator irrelevant. There may very well be aspects of an application that could warrant a referral back to IESO Nova Scotia. For example, there may be many mechanisms that could be designed and approved to establish fees for the recovery of IESO Nova Scotia's revenue requirement. If a fee recovery mechanism is proposed that the Board does not find to be reasonable, it may be quite appropriate for the Board to provide recommendations to IESO Nova Scotia on what it would consider appropriate. This could give IESO Nova Scotia the opportunity to consider how the concerns might be addressed from among what may be many alternative design options for such a mechanism.

[126] Moreover, IESO Nova Scotia's concerns about a disallowance of its proposed costs due to its not-for-profit status is entirely inconsistent with its request that the Board approve its proposed Net Revenue Requirement Deferral and Variance Mechanism. As discussed elsewhere in this decision, under this mechanism, variances from approved revenue requirements and recoveries would be trued up after the fact. Notwithstanding that any truing up of over-expenditures would occur after the costs have been incurred, IESO Nova Scotia appears to be prepared to commit that its proposed Net Revenue Requirement Deferral and Variance Mechanism would be "no simple pass-through of costs … without first going through [Nova Scotia Energy Board] review and

approval". This concession is likely sensitive to the possibility that without providing for the review and approval of costs that are trued up, the mechanism may not be approved. That said, IESO Nova Scotia highlighted the significant practical difficulties and limitations associated with disallowances in the context of a not-for-profit system operator.

[127] Regarding IESO Nova Scotia's concern that the Board's ability to reject unreasonable proposed costs, rather than referring the matter back to the system operator, would interfere with the fulfillment of its statutory objects, it is unclear how that result would follow. There are other provisions in the *More Access to Energy Act* that allow the Board to refuse an application (or approve it with modifications) without referring the matter back to the system operator. It is not clear why not referring an application back to IESO Nova Scotia when considering approvals of reliability standards or transmission tariffs does not offend the system operator's ability to satisfy its statutory objectives when not doing so in the case of proposed operating costs would.

[128] If the concern is that the Board might not approve costs IESO Nova Scotia believes it needs to pursue activities to satisfy its mandate, then that concern is again not consistent with the statutory purpose of the provisions in question. The statute requires Board approval. Interpreting s. 29(4) as requiring the Board to refer matters back to IESO Nova Scotia does not change that.

[129] This is also a matter that IESO Nova Scotia should be well able to manage. If its applications for approval include appropriate evidence and justification for expenditures demonstrating that its proposed expenses are reasonable and necessary to fulfill its mandate, this will facilitate timely approvals. As noted above, the Board must operate within its statutory authority and administrative law principles. If IESO Nova

Scotia believes at any point that the Board has wrongfully refused to approve proposed expenditures, revenue requirements or fees, then IESO Nova Scotia's recourse, under the statutory regime, is to appeal those decisions to the Nova Scotia Court of Appeal or seek judicial review before the Nova Scotia Supreme Court.

[130] In *Re EfficiencyOne*, 2025 NSEB 18, paragraphs 131-133, the Board noted that general provisions in the *Energy and Regulatory Boards Act* cannot override clear and specific language used elsewhere to set out the Board's authority or limits to its jurisdiction. If s. 29(4) clearly limited the Board to only two options as suggested by IESO Nova Scotia, then any discretion arising from the broad authority set out in the *Energy and Regulatory Boards Act* could not be applied if it would be inconsistent with the clear limitations. But considering the text, context and purpose, the Board finds that s. 29(4) of the *More Access to Energy Act* does not limit the Board to either fully approving an application from IESO Nova Scotia or referring it back. As such, the Board's broad discretion in "approving or fixing just and reasonable rates, tolls, charges or tariffs" to "adopt any method or technique that it considers appropriate, including an alternative form of regulation" is fully engaged.

[131] The Board considers that this broad discretion not only provides it with the authority to refuse to allow certain proposed expenditures in an application under s. 29(4) but also gives it the authority to approve the deferral and variance mechanism proposed by IESO Nova Scotia in this application despite there being no express authority in the *More Access to Energy Act* for doing so.

[132] Given the foregoing, where s. 29(4) does not limit the Board to only two options and the Board may draw on its discretionary authority in the *Energy and*

Regulatory Boards Act to ensure that the purpose of the provision is achieved (ensuring that IESO Nova Scotia has an efficient and effective pathway for approving its expenses and a timely method for updating its fees to recover its costs), there appears to be no need to consider the doctrine of jurisdiction by necessary implication. If it were necessary to do so, the Board would find it is practically necessary for it to have the ability to refuse to approve unreasonably claimed expenses.

[133] As noted above, the Board finds that, properly interpreted, s. 29(4) does not limit it to only two options. Therefore, the Legislature has not decided against conferring the power on the Board to refuse to approve unreasonable or inappropriate expenditures. The legislation tasks the Board with reviewing and approving IESO Nova Scotia's proposed expenditures, revenue requirements and fees. Accepting that this authority was not intended as a mere "rubber stamp", it is clear that from time to time it may be necessary for the Board to disagree with IESO Nova Scotia over the reasonableness of a proposed expense, and the Board must have the authority to settle IESO Nova Scotia's revenue requirement and fees, even in the face of such a disagreement.

3.5 Approvals Under s. 30

[134] Section 30 of the *More Access to Energy Act* requires IESO Nova Scotia to apply to the Board to recover costs related to energy resource supply contracts and directs the Board to establish a mechanism to recover these costs from ratepayers:

> **Cost recovery**
>
> **30 (1)** The IESO shall apply to the Energy Board for the recovery of costs for energy resource supply contracts, and any costs incurred by the IESO for the administration of those contracts, respecting settlements or payments under contracts for

> energy resources obtained through procurement activities or through reassignments of existing energy supply agreements from NSPI.
>
> **(2)** The Energy Board shall establish a mechanism to recover the costs referred to in subsection (1) from ratepayers, and the public utilities connected to the IESO grid shall collect these amounts and remit them to the IESO.

[135] Port Hawkesbury Paper said s. 30 does not set out a timeline for when IESO Nova Scotia must apply for approval and expressed concern that if IESO Nova Scotia entered into resource supply commitments and subsequently sought Board approval, there may be no meaningful way to recover imprudently incurred costs from IESO Nova Scotia. It submitted that the Board "should confirm that in relation to section 30 applications, with the exception of 'reassignments of existing energy supply agreements from NSPI', the IESO shall require approval from the Board in advance of any final commitment to execute energy resource supply contracts".

3.5.1 Findings

[136] Port Hawkesbury Paper was the only party to raise this issue directly and did so in its reply submissions. The Board finds this issue warrants considered attention and the opportunity for input from other parties and, therefore, declines to consider this issue at this time.

[137] Given the nature of this issue, the Board would be open to addressing this matter in IESO Nova Scotia's next application for the approval of its annual revenue requirement under s. 29, if no application under s. 30 is made before then. Any request for the Board to do so should include detailed submissions interpreting the Board's authority under s. 30, much like what was provided for s. 29(4) in this proceeding.

[138] Additionally, given the Nova Scotia Utility and Review Board's previous decisions that it did not have the jurisdiction to approve, in advance, the prudency of a resource supply contract under the *Public Utilities Act*, RSNS 1989, c 380, it may be

necessary to consider whether IESO Nova Scotia's control of transmission systems in the province brings it within the definition of "public utility" under s. 2(e)(iv) under the *Public Utilities Act* and, if so, whether the Nova Scotia Utility and Review Board's previous decisions apply or are distinguishable given IESO Nova Scotia's mandate under the *More Access to Energy Act* (see *Re Nova Scotia Power Incorporated*, 2009 NSUARB 111; *Re Barrington Wind Energy Ltd.*, 2005 NSUARB 98; and *Re Nova Scotia Power Incorporated*, 2004 NSUARB 118).

3.6 HST

[139] In its application, IESO Nova Scotia requested temporary financial relief payments of $950,000 per month "exclusive of any applicable taxes". In the system operator's temporary financial relief rebuttal submission, it noted that it had obtained an opinion from accounting firm KPMG that the amounts charged by IESO Nova Scotia to recover its revenue requirement would be subject to HST. The opinion from KPMG was provided in response to Board IR-29. In the same information request, IESO Nova Scotia stated that it is "reasonable to assume that any HST paid by NS Power to IESO Nova Scotia would give rise to corresponding input tax credits for NS Power" resulting in no incremental cost for customers.

[140] In its closing submissions, the Industrial Group highlighted a potential risk to customers:

> The difficulty is that there is no assurance that NSPI will fully pass through the ITC benefit to customers, nor that NSPI has confirmed its approach. If NSPI does not fully recover and credit the ITCs, the effective cost to ratepayers appears to be 14% higher than the approved revenue requirement. The Board should receive confirmation from NSPI and IESO-NS as to how this exposure will be managed, for both the interim relief and the forthcoming cost recovery mechanism, and, if necessary, should impose conditions on the approval to protect ratepayers.
>
> [Industrial Group Closing Submissions, p. 12]

The Industrial Group recommended that IESO Nova Scotia be required to confirm the HST exposure would be managed.

[141] IESO Nova Scotia submitted that, based on its understanding of the issue and expert advice, the issue has been addressed, and that any inquires related to the treatment of HST by NS Power be directed to NS Power.

3.6.1 Findings

[142] The Board agrees with IESO Nova Scotia that the treatment of HST within NS Power must be confirmed directly with NS Power. As such, this matter should be dealt with in a future proceeding with NS Power.

4.0 SUMMARY OF FINDINGS

[143] The Board approves IESO Nova Scotia's expenditures and revenue requirement for its 2026-2027 fiscal year at $14.85 million; however, IESO Nova Scotia must improve its justification and support for its forecasting and budgeting processes. The Board directs IESO Nova Scotia to include the following in its future revenue requirement applications:

- Formal support for all significant assumptions and expenditures in the application, such as quotes, any referenced market information, correspondence from discussions surrounding estimates, market data supporting employee salaries, etc.;
- Up to five years of actual audited historical financial results as they become available;
- Three years of projected financial results;

- An annual business plan that includes:
    - a detailed workplan of IESO Nova Scotia's planned activities in the period covered by the revenue requirement application connecting each activity to the achievement of IESO Nova Scotia's objects in the *More Access to Energy Act*;
    - timelines for activities expected to span more than one year;
    - an analysis of the past year's results, including reasons for failing to complete activities in the prior business plan and the reasons for any adjustments to timelines for longer-term activities;
- Details of engagement activities with Indigenous groups and stakeholders; and
- Provide more refined cost categories for its proposed expenditures to increase transparency, including separately identifying employee compensation, consulting, travel and procurement related costs.

[144] The Board approves IESO Nova Scotia's proposed Net Revenue Requirement Deferral and Variance Mechanism, but directs IESO Nova Scotia to provide the following relating to this mechanism:

- Guidelines;
- Accounting policies;
- A confirmed carrying cost rate;
- A defined sub-ledger template;
- Cost category-level reporting; and
- A functioning review methodology.

[145] Some of the information in the preceding two paragraphs was the subject of directions to IESO Nova Scotia in the Board's previous decision (M12412 (2026 NSEB 5)) but not implemented by IESO Nova Scotia in this application because the application was filed before the Board's decision. As such, the Board expects these directives will be addressed when IESO Nova Scotia files its application for the approval of its 2027-2028 revenue requirement. The new directives in this decision may not be able to be implemented in that filing and, if not, must be addressed no later than IESO Nova Scotia's application for the approval of its 2028-2029 revenue requirement.

[146] IESO Nova Scotia is further directed to file the following with the Board for review and approval no later than July 2, 2027:

- Procurement policies relating to both operating costs and relating to energy resource supply agreements; and
- Guidelines for allocating costs for recovery under s. 29 and s. 30 of the *More Access to Energy Act*.

[147] The Board confirms it has the authority to approve expenditures, revenue requirements and fees that are different than proposed by IESO Nova Scotia in an application for review and approval under s. 29 of the *More Access to Energy Act*. The Board declines to consider whether energy resource supply contracts should be approved in advance under s. 30 at this time but would be open to addressing this matter in IESO Nova Scotia's next application for the approval of its annual revenue requirement under s. 29, if no application under s. 30 is made before then. Any request for the Board to do

so should include detailed submissions interpreting the Board's authority under s. 30, much like what was provided for s. 29(4) in this proceeding.

[148] IESO Nova Scotia must continue to provide quarterly reports, as directed by the Board in its prior decision, including updates about the status of Phase 1 and 2 of the transition of the system operator functions from NS Power to IESO Nova Scotia, as well as reporting about staffing, facilities and technology, regulatory compliance matters, and on any material changes to the transition timeline or to forecast costs.

[149] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 2nd day of November 2026.

Stephen T. McGrath

Jennifer L. Nicholson