Nova Scotia Energy Board

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Dear Mr. Johnston, Mr. Luther and Mr. Peachey:

M12663 – IESO Nova Scotia – 2026/2027 Revenue Requirement and Fees Application

Under the *More Access to Energy Act,* the Nova Scotia Independent Energy System Operator is supposed to file its proposed expenditure and revenue requirements for the fiscal year, and the fees it proposes to charge, for review by the Nova Scotia Energy Board by the end of December. On January 2, 2026, IESO Nova Scotia wrote to the Board advising that it was unable to make its submission in the time required and, under s. 29(2), advised that its revenue requirement and fees application would be filed by January 31, 2026.

IESO Nova Scotia filed its revenue requirement application on January 20, 2026. As was the case with its initial application for its first revenue requirement approval under s. 29 of the *More Access to Energy Act*, IESO Nova Scotia failed to include a request for the approval of a fee recovery mechanism. This is notwithstanding that it indicated in its past application that a rate recovery mechanism would be included in its application for the fiscal year, April 1, 2026, to March 31, 2027. Instead, IESO Nova Scotia indicated its fee and cost recovery mechanism would be submitted for the Board's review and approval in "Q2 2026, with the goal of NSEB approval prior to year-end 2026."

Instead of the expected fee recovery mechanism approval request, IESO Nova Scotia's current application included a request for immediate temporary financial relief "to enable it to remain able to pay its liabilities as they become due." IESO Nova Scotia said it determined that a minimum of $950,000 per month was needed to ensure it continues to meet its liabilities as they become due. It proposed that this monthly amount be paid to it by Nova Scotia Power Inc. and recovered by NS Power from its customers under its fuel adjustment mechanism. Monthly payments would be effective as of February 1, with the first payment beginning April 1, 2026, (and including payments for February and March 2026). These payments would continue until the earlier of the effective date of a Board-approved permanent fee recovery mechanism or March 31, 2027.

The Board issued a Hearing Order for this proceeding that included submissions from intervenors about the proposed temporary financial relief on February 12, 2026, and rebuttal submissions by IESO Nova Scotia on February 19, 2026. Submissions were filed by the Consumer Advocate, the Small Business Advocate, the Industrial Group and Port Hawkesbury Paper. IESO Nova Scotia's request for immediate temporary financial relief was specifically opposed by the Consumer Advocate, the Small Business Advocate and the Industrial Group. These intervenors raised a number of concerns in their submissions, relating to a number of issues including the use of NS Power's fuel adjustment mechanism to recover funds paid by NS Power to IESO Nova Scotia, ratepayer risk, the need for a prudence review, and a lack of support for the claimed monthly amount.

In its reply submissions, IESO Nova Scotia attempted to address these concerns and, in doing so, included additional information and detail the Board considers ought properly to have been included in its application. After receiving these reply submissions, the Consumer Advocate, Small Business Advocate and the Industrial Group sought the Board's directions compelling IESO Nova Scotia to respond to information requests and giving the intervenors an opportunity to provide additional submissions about the requested relief after the information request responses were provided.

In a letter dated February 23, 2026, IESO Nova Scotia indicated it was open to providing additional information but said:

> Absent immediate temporary financial relief from the Board on February 27, 2026, IESO Nova Scotia will be required to begin commencing activities and refocusing its work towards potential insolvency. IESO Nova Scotia respectfully submits that such a process and outcome would be undesirable for all stakeholders and contrary to the public interest.

To be clear, the circumstances in which IESO Nova Scotia finds itself are entirely of its own doing. The *More Access to Energy Act* sets out the mechanisms through which IESO Nova Scotia's activities will be funded. The Board would have expected that ensuring that appropriate recovery mechanisms were in place to meet its revenue requirement would have been one of IESO Nova Scotia's top priorities. However, this issue appears to have been inappropriately delayed by IESO Nova Scotia bringing it, apparently, to the brink of insolvency. This is not an auspicious start for this new and important organization. IESO Nova Scotia's actions have shown a lack of regard for stakeholders, the regulatory process and the public interest.

Unfortunately, to avoid making the bad situation created by IESO Nova Scotia even worse, the Board is largely compelled to provide the requested relief in the face of less than ideal input from intervenors and an application that is lacking in detail (which the Board expects will be significantly supplemented by IESO Nova Scotia in its information request responses in this matter).

In its submissions, the Industrial Group questioned whether the Board had the power to grant the relief sought by IESO Nova Scotia. It submitted IESO Nova Scotia is not a public utility and that what was requested is not a "rate, toll or charge"; therefore, the Board's ability to grant an interim approval under s. 69 of the *Public Utilities Act* is unavailable. The Industrial Group also submitted that the *More Access to Energy Act* requires the Board to approve IESO Nova Scotia's proposed expenditure and revenue requirement before establishing any fees, noting that s. 29 is silent on the mechanism to recover those fees, from whom the fees are to be recovered and the allocation of those fees.

In its reply submissions, IESO Nova Scotia stated, in part:

> Subsection 29(3) is particularly important in the present circumstances. It contemplates that, pending approval of the fees proposed for a fiscal year, the fees from the previous year continue to apply "unless the Energy Board orders otherwise." Because IESO Nova Scotia has no previously approved fees upon which it can rely, the MAEA necessarily requires the Board to "order otherwise." In this context, the only practical and lawful path forward is for the Board to determine an interim fee arrangement that allows IESO Nova Scotia to collect the funds required to discharge its legislated responsibilities in the current fiscal year.
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> Subsection 29(4) reinforces the breadth of the Board's authority by expressly empowering it to approve IESO Nova Scotia's proposal or to refer it back with recommendations. Notably, the MAEA provides no guidance on how fees are to be calculated, through what vehicle they are to be charged, to whom they should be charged, or when collections should begin. The absence of such detail does not limit the Board's authority. Instead, it requires that the Board interpret and apply section 29 in a manner consistent with the established principles of statutory interpretation.

The Board is not convinced that IESO Nova Scotia falls outside the *Public Utilities Act*'s definition of a "public utility." In particular, that definition includes any person who manages or controls any plant or equipment for the transmission of electric power or energy directly or indirectly to or for the public. However, that issue was not well-developed in this proceeding and the Board finds it is appropriately authorized to provide the requested relief under s. 29 of the *More Access to Energy Act* in any event.

The Board is required to interpret legislation consistent with its text, context and purpose. Section 29 of the *More Access to Energy Act* directs IESO Nova Scotia to file its revenue requirement and proposed fees for review by the Board every year. Section 29(3) contemplates that IESO Nova Scotia's existing fees will continue to apply until the Board approves new fees, "unless the Board orders otherwise." On its face, this gives the Board the flexibility to approve interim fees other than the fees that are in place. Since s. 13 requires IESO Nova Scotia to operate on a not-for-profit basis, the Board's flexibility is necessary to ensure that IESO Nova Scotia is able to fulfill its objects under the statute.

The Board accepts IESO Nova Scotia's position that under s. 29(3), the Board has the ability to approve fees for the recovery of IESO Nova Scotia's proposed expenditure and revenue requirements for a fiscal year that vary from those that are currently in place pending the outcome of the Board's approval. The Board does not believe that the fact that no prior fees have been specifically approved impacts this interpretation if, as the Board finds, the purpose of the Board's flexibility under s. 29(3) is to facilitate appropriate resourcing for IESO Nova Scotia. The term "fees" is not specifically defined and is a general term that contemplates there may be a number of potential recovery mechanisms, models and methods. The Board finds the term is broad enough to include the monthly amounts proposed to be paid to IESO Nova Scotia by NS Power, and that such an interpretation is consistent with the purpose of the provision.

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.

The Board will issue an Order to this effect.

Yours very truly,

Stephen T. McGrath, K.C.
Chair

Roland A. Deveau, K.C.
Vice Chair

Jennifer L. Nicholson, CPA, CA
Member

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