STEWART McKELVEY
LAWYERS • AVOCATS

Queen's Marque, 600-1741 Lower Water Street, P.O. Box 997
Halifax NS B3J 2X2 Canada tel: 902.420.3200 fax: 902.420.1417 stewartmckelvey.com

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Nancy G. Rubin, K.C.
Direct Dial: 902.420.3337
nrubin@stewartmckelvey.com

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Delivered by Email

Crystal Henwood
Regulatory Affairs Officer/Clerk
Nova Scotia Energy Board
3rd Floor, 1601 Lower Water Street
PO Box 1692, Unit M
Halifax, NS B3J 3S3

Dear Ms. Henwood:

Re: M12663 – IESO Nova Scotia – 2026/2027 Revenue Requirement Application

These Closing Submissions are filed on behalf of the Industrial Group.

The IESO-NS has filed its application to the Board in relation to its second Revenue Requirement ("RR") for the test period ending March 31, 2027, representing the IESO-NS's first full year of operation. The total RR applied for is $14.85 million, net of provincial funding, which is a significant increase over the $5.3 million net amount approved for the initial 2025/2026 test year.

In addition to the RR, the IESO-NS seeks approval to expand and make permanent the Net Operating, Maintenance and Administration Deferral and Variance Account which had been approved on an interim basis in the Board's 2025/2026 RR decision.[1] Reflecting a broader scope, IESO-NS proposes to rename the account to the Net Revenue Requirement Deferral and Variance Mechanism (the "**Deferral Account**") and broaden it beyond forecast and accrued net ongoing OM&A costs to include capital costs, capturing any unforeseen expenses arising during the test year. This relief is being sought without the governance framework the Board directed in its 2025/2026 RR decision.

The Industrial Group provides comments with respect to the following:

1. Opposition to the proposed Deferral Account;

2. The Board's authority to order disallowances;

3. The quantum of the RR, and proposed reductions, elimination of procurement costs, and clarifications needed;

4. Procurement practice improvements;

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1 *Nova Scotia Independent Energy System Operator Revenue Requirement*, 2026 NSEB 5 at para 6, and 42-50.

5. The lack of transparency and adequacy of evidence in this proceeding;

6. Proposed cost duplication mitigation practices between IESO-NS and NSPI; and

7. Suggestions for the statutorily required Annual Report.

1. The Proposed Deferral and Variance Account – Opposition to Expansion

The Industrial Group opposes the proposed expansion of the Deferral Account and respectfully submits that the Board should not approve either the proposed permanent status or the expansion of its scope at this stage. If the Board is inclined to approve a deferral for the 2026/2027 fiscal year, it should do so only on a limited and interim basis, with robust protections for ratepayers.

In its decision in Matter M12412, the Board made clear that "specific guidelines and accounting policies must be developed and approved before there is a recovery of Net Ongoing OM&A amounts from the Deferral and Variance Account".[2] The Board directed IESO-NS to file those guidelines and policies no later than its application for the 2027/2028 RR.

As of the date of this Application and confirmed on the hearing record, IESO-NS has not finalized or filed any accounting policies, financial guidelines, threshold framework, carrying cost methodology, sub-ledger template, or disallowance mechanism. The carrying cost applicable to the deferral balance is still "*to be determined*",[3] the sub-ledger template has not been developed,[4] and accounting policies (produced in response to Undertaking U-7) are still in draft form. The manner in which the Deferral Account is intended to work remains unclear.

Despite this, IESO-NS asks the Board to approve the Deferral Account permanently, expand its scope to include capital cost variances and, essentially, allow it to act as a catch-all account for all unforeseen costs. The Industrial Group respectfully submits that this is not a reasonable ask.

The Industrial Group agrees with the conclusions of Board Counsel consultant, Doane Grant Thornton LLP ("**DGT**") regarding the risks of approving the Deferral Account before guardrails are confirmed. DGT confirmed that the absence of finalized financial guidelines, accounting policies, thresholds, and controls *"increases the risk of cost overruns being inadequately managed and reduces transparency in the monitoring and review of deferred amounts. As a result, there is a higher risk that cost variances could accumulate prior to timely review, reducing overall accountability and limiting amounts recoverable to taxpayers*".[5] Further, DGT cautioned that if governance controls lag operational expansion, "*this increases the risk of uncontrolled cost overruns which could place an excessive burden on ratepayers*" and "*negatively impact the regulatory process by reducing transparency and creating challenges for the Board's ability to conduct a timely assessment and review of IESO costs*".[6]

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2 *Nova Scotia Independent Energy System Operator Revenue Requirement*, 2026 NSEB 5 at para 48.

3 N-5, IESO (IG) RIR-32 (b).

4 N-5, IESO (IG) RIR-30 (a).

5 N-13, DGT (IG) RIR-9(b).

6 N-13, DGT (IG) RIR-11(c).

The Board's prior approach to broad deferral and recovery mechanisms has been cautious. The history of the Fuel Adjustment Mechanism (**FAM**) provides a useful precedent. When NSPI first applied for approval of a FAM, the Board rejected the request. In doing so, the Board recognized that such mechanisms can be valuable regulatory tools, but concluded that approval was inappropriate given concerns with NSPI's fuel procurement practices:

> *[131] The Board shares the views of the intervenors with respect to the FAM proposed by NSPI. The Board recognizes that FAMs exist in many other jurisdictions and can, potentially, be a positive and useful regulatory tool. However, in view of the Board's findings with respect to imprudence and inadequacies in NSPI's fuel procurement practices, it would be quite inappropriate to approve a FAM at this time. The Board does not believe it is in the public interest to transfer the risk of fuel price volatility to ratepayers when NSPI's ability to achieve the best possible fuel price is in question.*

The Board further emphasized that shifting risk to ratepayers without adequate safeguards could weaken incentives for NSPI to improve its practices:

> *[132] Further, the Board is of the view that transferring such risk from shareholders to ratepayers could diminish the incentive for NSPI to quickly and thoroughly improve its fuel procurement process. This is particularly the case since the FAM proposed by NSPI would transfer 100% of the risk to ratepayers. Accordingly, the Board rejects the proposed FAM...*[7]

The Board did not foreclose the possibility of a future FAM. Instead, it required substantial foundational work before such a mechanism could be considered, including an independent audit of NSPI's progress and performance. Accordingly, extensive review work was subsequently undertaken by Liberty Consulting regarding NSPI's procurement practices and the proposed operation of the mechanism.

NSPI then later sought approval of the FAM "in principle" as part of the 2007 GRA. A settlement was reached supporting the eventual adoption of a FAM subject to a process to develop its details. In its decision, the Board identified several prerequisites that would have to be satisfied before it would consider approving the mechanism:

> *[45] For the guidance of the parties, however, and without in any way prejudging the issue, in the Board's view there are several prerequisites that must be in place in order for the Board to consider the adoption of a FAM now or in the future:*
>
> > *1. an adequate and appropriate fuel procurement policy at NSPI in which the Board has confidence;*
> >
> > *2. timely disclosure of complete and adequate information by NSPI so as to ensure confidence that the procurement policy is being appropriately administered;*

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[7] *Nova Scotia Power Inc., Re,* 2005 NSUARB 27.

> *3. disclosure and transparency with respect to the administration of the FAM;*
>
> *4. a meaningful audit process under the administration of the Board.*
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> *[46] This list is not meant to be exhaustive.*[8]

It was not until the 2009 GRA, that the Board ultimately adopted the FAM. By that time an extensive collaborative process had occurred involving stakeholders, Board consultants, and NSPI, and a detailed Plan of Administration had been developed and reviewed.[9] A key feature of the approved framework was that it permitted recovery only of costs that were prudently incurred. Even then, the Board's approval remained conditional upon final approval of both the Tariff and the Plan of Administration.

The Board adopted a similar approach with the Decarbonization Deferral Account (**DDA**). In the 2023/2024 GRA, the Board approved the DDA "in principle."[10] At that time, the Board made clear it was not approving a formal DDA, but rather, it established a process for developing the account. The approval was subject to "stakeholders engaging in a consultative process to confirm the practice and procedures that will be followed to establish the DDA and its scope".[11] Formal implementation of the DDA was permitted only after a subsequent application seeking approval of the finalized framework.[12]

These decisions demonstrate a generally consistent regulatory approach: where the Board is asked to approve a significant deferral mechanism in the absence of the details governing its administration, operation, oversight, and prudence review, the Board has not granted substantive approval. Where it has merit (and in the two examples, the support of Intervenors), the Board has approved the concept of the mechanism or the process for its development, while reserving final approval until the necessary safeguards, governance structures, transparency requirements, and accountability measures have been established.

The key governance deficiencies in relation to the Deferral Account that remain unaddressed in this proceeding include:

1. No finalized accounting policies;

2. No dollar cap or cumulative limit on the balance that may accumulate;

3. No carrying cost rate confirmed;

4. No sub-ledger template; and

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8 *Nova Scotia Power Incorporated (Re),* 2007 NSUARB 8.

9 *Nova Scotia Power Inc. (Re),* 2008 NSUARB 140, paras 126-136.

10 *Nova Scotia Power Inc. (Re),* 2023 NSUARB 12.

11 *Nova Scotia Power Inc. (Re),* 2023 NSUARB 12 at para 311.

12 *Nova Scotia Power Incorporated (Re),* 2024 NSUARB 67.

5. No review or disallowance methodology.

These are not minor administrative details; they are the foundational controls.

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.

a. No expansion for Capital Costs

IESO-NS seeks approval to expand its proposed Deferral Account to include capital cost variances. However, IESO-NS has not sought Board approval of any specific capital costs in either its 2025/2026 or 2026/2027 revenue requirement applications. The Industrial Group states that in addition to the governance issues discussed above, expansion of the deferral to include capital costs is premature.

DGT flagged the issue of including capital costs within the Deferral Account. In response to IG IR-10, DGT stated that capital deferral by an ISO may be inconsistent with Good Utility Practice because *"ISOs typically have limited capital and seek approval for capital expenditures"*.[13] DGT also confirmed that, at a minimum, "*prior to deferring capital, it is recommended for the IESO to have clearly defined accounting policies, thresholds, and approval processes in place*".[14]

The Industrial Group submits that capital costs should not be added to any deferral account before they have been specifically reviewed and approved by the Board as part of a RR application. The Board should decline the proposed expansion to capital costs at this time and consider this as part of the development of the Deferral Account framework. Any future specific request for the addition of capital costs should be done as part of an application supported by evidence demonstrating their inclusion is consistent with Good Utility Practice.

b. Unforeseen Costs Should Require a Board Application

As proposed, the Deferral Account would effectively permit IESO-NS to incur costs, identify variances after the fact and recover those amounts from ratepayers in a subsequent period without the Board first having the opportunity to assess the necessity or reasonableness of the expenditures. The Industrial Group submits that the proper vehicle for recovering material unforeseen, extraordinary, and/or exceptional costs is an application to the Board, not an open-ended Deferral Account with no cap, no defined parameters, and no meaningful interim oversight.

The Industrial Group submits that the Board should not expand the Deferral Account into a broad catch-all mechanism capable of capturing all unforeseen costs,[15] whether now or in the future. Such an approach would shift virtually all financial risk from the IESO-NS to ratepayers, offering

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[13] N-13, DGT (IG) RIR-10(b).

[14] N-13, DGT (IG) RIR-10(c).

[15] As was described by Mr. Johnston on cross-examination. See: Transcript June 17, pages 256-259.

little incentive for cost management and providing no Board scrutiny until after the costs have already been incurred. When questioned by the Small Business Advocate during the hearing, Mr. Johnston specifically admitted that it remains undetermined whether Nova Scotia ratepayers bear 100% of the budgeting risk under the Deferral Account proposal.[16]

A deferral account should not become a standing authorization to defer and recover costs that have not been identified, quantified, or meaningfully considered by the Board. Doing so would undermine the fundamental regulatory principle that expenditures should be subject to Board review and approval before the associated risk is transferred to ratepayers.

The more appropriate approach is for IESO-NS to apply to the Board when significant unforeseen costs arise during a fiscal year. That type of application could be brought on an expedited basis if needed and would allow the Board to assess the nature of the costs, the urgency of the spending, the availability of alternatives, and the appropriate allocation of risk before costs are incurred. This approach preserves regulatory oversight, transparency, and accountability.

To be clear, the Industrial Group is not suggesting that IESO-NS should be required to seek Board approval for every unforeseen cost or variance that arises during the fiscal year. That would be impractical and inconsistent with the purpose of a s. 29 RR framework. Rather, the Industrial Group's concern relates to significant costs that were not reasonably foreseeable at the time of the RR application, are outside the scope of the approved RR, and cannot reasonably be accommodated within the budget envelope approved by the Board. In those circumstances, before assuming material new obligations and subsequently seeking recovery from ratepayers, IESO-NS should apply to the Board for approval of the proposed spending.

The establishment of a materiality threshold below which Board approval would not be required (if warranted) is a matter that can be addressed through the Deferral Account's administrative practices and procedures.

2. Board Authority under the MAEA for Disallowances and the Deferral Account

The Department of Energy (**DOE**), through counsel Mr. Kayter, raised a significant legal issue during the hearing that goes to the heart of the Industrial Group's concerns about the Deferral Account: whether the Board has the authority under the *MAEA* to disallow costs found to be imprudent. The DOE raised these concerns during cross-examination of the IESO-NS, so its position on the issue remains unclear. The suggestion was that the Board may be limited to either approving the s.29 revenue requirement as filed or referring it back with recommendations.[17] The Industrial Group intends to respond fully on this issue through its reply submissions once DOE and the IESO-NS's positions have been clearly articulated.

The Industrial Group's broad position is that the Board's authority to establish rates that are just and reasonable necessarily includes the authority to examine the prudence of costs proposed for recovery from ratepayers.

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[16] Transcript, June 17, pages 204-205.

[17] Transcript, June 25, pages 455-463.

3. Quantum and Growth of the Revenue Requirement

The IESO-NS is seeking approval of a RR of $14.85 million, representing an increase of almost $10 million from its first partial year of operation. The Industrial Group recognizes that cost growth is expected as the organization matures and its responsibilities expand. However, during the 2026/2027 test year, the IESO-NS will still not have commenced Phase II of its transition to assume system operations from the NSP System Operator. The quantum of the increase and the composition of the cost categories therefore warrant careful review.

a. Limitations of the DGT Review

DGT was retained by Board Counsel to conduct an independent review of the Application. However, DGT's scope of work and mandate in conducting its review was limited.

In response to the Industrial Groups IRs, DGT confirmed:

- Its primary procedures consisted of reviewing the Application, reviewing interrogatory responses, comparing costs to "Good Utility Practice,"[18] and confirming mathematical accuracy. DGT did not perform independent corroboration of management representations.[19]
- It did not conduct detailed quantitative testing of underlying budget assumptions, and that references to being "satisfied" in its report should be interpreted as meaning only that costs were assessed for reasonability, not prudency or efficiency.[20]
- It did not test whether IESO-NS selected the least-cost means of achieving its objectives.[21]
- Its reasonableness review is not analogous to a prudence review[22] and being satisfied that the cost is "reasonable" is not the same as it being optimal or necessary.[23]
- Any changes to the unaudited financial information it relied upon could impact its conclusions.[24]
- With respect to compensation and staffing, it did not conduct a benchmarking analysis, and it relied on the statements of IESO-NS that third party information and market scans were used to develop initial estimates for compensation.[25]

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18 As defined within its evidence, N-11, DGT Evidence, pages 8-9 (pdf 9-10), Section 2.

19 N-13, DGT (IG) RIR-1(b)(i)–(ii).

20 N-13, DGT (IG) RIR-1(c) and RIR-3(c).

21 N-13, DGT(IG) RIR-3(a).

22 N-13, DGT (IG) RIR-3(c). DGT specifically confirmed that its procedures did not include an assessment of management decisions, analysis of alternatives, or determination on least cost options.

23 N-13, DGT (IG) RIR-3(b).

24 N-13, DGT (IG) RIR-2.

25 N-13, DGT (IG) RIR-6(a).

To meaningfully opine on prudence, DGT stated it would have required information on management's decision-making processes, alternatives considered, least-cost option assessments, documented management approvals, variance thresholds, and explanations for cost category variances exceeding +/−10%.[26] That information was not before DGT.

The Industrial Group therefore respectfully submits that DGT's evidence taken at its highest indicates no obvious unreasonableness and IESO-NS's math is correct. The absence of a finding of unreasonableness is not, without more, a finding of the lowest reasonable cost, the necessity of a cost or prudency.

b. Labour and Compensation Costs

The single largest driver of the RR is employee compensation. The total revenue requirement includes an "Employees (administration)" component of $4.44M and an "Operations (system planning)" component of $3.64M. The Industrial Group submits that this budget is overstated on three grounds: (1) no vacancy rate adjustment has been applied; (2) the salary benchmarking has not been independently supported in a manner that allows meaningful Board review; and (3) executive compensation likewise is not meaningfully benchmarked and cannot currently be reasonably assessed.

i. Vacancy Rate

The 2026/2027 RR includes salary and benefit costs for 44 budgeted full-time equivalents ("**FTEs**"). As of the hearing date, IESO-NS had 31 employees hired, 9 in active recruitment, and 4 roles not yet posted.[27] The evidence confirmed that no vacancy rate or adjustment was applied to the budgeted labour costs despite material vacancies.[28]

IESO-NS posited that consulting and contractor costs approximately offset the savings arising from vacant positions, based on the outcome of 2025/2026 and suggested the same pattern was expected to repeat in the current year.[29] However, no quantitative analysis was produced to support that proposition. The Industrial Group submits that the Board should not accept a labour budget that includes full salary costs for 13 vacant roles without some form of vacancy adjustment or supporting analysis demonstrating that contractor costs are in fact displacing salary savings on a dollar-for-dollar basis.

ii. Salary Benchmarking

Additionally, salary benchmarking offered to support the 44-role compensation budget is limited. In response to Undertaking U-1, IESO-NS provided a narrative of how the salaries were set and benchmarked, along with a copy of the HUB benefits RFP and a spreadsheet of salary bands based on work completed by Timbar Consulting. This response is thin. The Consumer Advocate

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[26] N-13, DGT (IG) RIR-3(d).

[27] N-16, IESO-NS Opening Statement, page 3. See also Transcript, June 17, pp. 53-54; and Transcript, June 25, pages 409-410.

[28] Transcript, June 25, pages 410-411.

[29] Transcript, June 17, pages 59-63.

requested any work product from any consultant hired to support the development of the salary or benefits package for non-CEO employees, not only work product relating to benefit packages.

What has been provided confirms, "*HUB's advisory work for the VP and GC roles was communicated through direct guidance rather than a standalone written report*"[30] and HUB's benchmarking was reportedly anchored on organizational scale to a $1 billion revenue scope, described as "*reflecting the scale and complexity of the electricity system that IESO Nova Scotia plans and operates*."[31] This approach appears to inflate the comparator group, given the limited scope of responsibilities, and the actual size and cost base of the operations anticipated. Additionally, the Timbar Consulting "spreadsheet" discussed during the hearing, is limited to bands of salaries for certain roles without any source data.[32]

Additionally, according to the 2025/2026 actuals reported in the unaudited financial statements in Undertaking U-5, Administration Salaries and Wages amounted to $1,047,767 as of March 31, 2026, compared to a 2025/26 budget of $1,572,751.[33] This represents an underspend of 33%.

Considering this historical overestimation, the vacancies that remain unfilled two months into the fiscal year, and the absence of actual benchmarking or other supporting evidence, it cannot be determined that the proposed labour and salary budget is reasonable.

iii. CEO Compensation

With respect to the CEO compensation at the IESO-NS, there does not appear to have been any benchmarking study or consultation done in setting the remuneration. Undertaking U-10, which responds to a request for "any work product completed by any consultant to assess CEO compensation", produced no external work product and simply provides a "description of the assessment". This includes a summary of publicly available data regarding national compensation for Presidents and CEO roles within Crown corporations and the energy/utility sector.

The source of the range provided remains unclear, including whether the reported salaries are funded by ratepayers, or the type of corporations served. The referenced band in Undertaking U-1, provides no further clarity or benchmarking completed. In fact, it states that the Salary Banding provided by Timbar Consulting was for all non-CEO employees.

In addition, the records confirm that the CEO is eligible for bonus or incentive payments within the test year.[34] At the time of the hearing, the process and metrics to determine eligibility for such payments remained in development and had not been disclosed or filed with this Board.[35] Only during the hearing did the IESO-NS confirm that the CEO's objectives for the 2026/2027 fiscal year had been set by the IESO-NS Board of Directors, but had not been shared with this Board or intervenors.[36] IESO-NS filed those objectives and CEO benchmarking materials confidentially.

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30 N-18, Undertaking Responses, U-1, page 1.

31 N-18, Undertaking Responses, U-1, page 2.

32 N-18 Undertaking Responses, U-1, Attachment 2.

33 N-18 Undertaking Responses, U-5, Attachment 1.

34 N-6, IESO (NSEB) RIR-11(e).

35 N-6, IESO (NSEB) RIR-11(e); and Transcript, June 17, pages 185-187.

36 Transcript, June 17, pages 185-187 ; and Transcript, June 25, pages 413-415.

However, after objection to the confidential treatment of the objectives by the Industrial Group, IESO-NS reconsidered that position. The actual base salary and proposed at risk component remain confidential: Undertakings U-8, U-9, U-10.

While nothing in the CEO objectives contained in Undertaking U-8 do not on their face advance interests contrary to ratepayers, the Industrial Group observes that the objectives contain no target deadlines for transition tasks despite the hard deadline for transfer orders under the *MAEA*; no reference to the cost-effectiveness of procured energy resources; no measures directed at affordability for ratepayers; no concrete articulation of how transparency or trust is to be satisfied through public reporting or otherwise; and no measurable discipline over IESO-NS's own costs beyond compliance with an approved budget. Taken together, the objectives read as internal management and organizational development milestones rather than ratepayer-focused performance commitments.

The Industrial Group does not object in principle to the use of at-risk compensation. However, it is worth noting that if IESO-NS were a Crown corporation or if the relevant functions had remained with NSPI, executive pay recoverable from ratepayers would be subject to statutory limits.[37] Even before the statutory amendment which capped recovery, the Board limited amounts recoverable from ratepayers to a reasonable amount. As stated in the 2002 GRA:

> *[117] The Board wishes to reiterate its earlier point that the Board of Directors of NSPI can pay whatever level of compensation it wishes to the employees of NSPI. This Board's only concern is the level of compensation which is reasonable to charge to the ratepayers of the regulated Utility.*
>
> *[118] When ratepayers are asked to bear the brunt of dramatically increased compensation costs, as is the case in this proceeding, NSPI should be prepared to offer compelling evidence that the amounts proposed are justified and it is reasonable to expect them to be recovered from ratepayers. NSPI bears the burden of proof to demonstrate that costs are fair, reasonable and justifiable in these and other areas. This burden has not been discharged with respect to executive compensation.*[38]

In the 2008 GRA, executive compensation continued to be an issue and the Board retained Kaiser Associates to conduct a review. Kaiser Associates made certain recommendations about elements to be included in benchmarking studies submitted in support of compensation:

> *[78] Kaiser Associates recommends that future benchmarking studies of NSPI's executive compensation incorporate the following elements:*
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> - *Including the whole bonus figures in TTC [Total Target Cash] benchmarking;*
> - *Include stock-based compensation as part of the analysis;*

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[37] Section 3 of the *Nova Scotia Power Incorporated Regulations*, NS Reg 231/2012, allows NSPI to recover from ratepayers the remuneration of its CEO based on the "Senior Officials Pay Plan" approved by the Governor in Council. This is capped at ~$300,000, see *Nova Scotia Power Incorporated (Re),* 2026 NSEB 8, at para. 118.

[38] *Re Nova Scotia Power*, 2002 NSUARB 59.

> · *Look at compensation position by position as well as in the aggregate;*
> · *Factor in cost of living adjustments;*
> · *Benchmark targets and achievement on executive scorecard against comparators.*
>
> *[Kaiser Executive Compensation Review, Exhibit N-3, p.1]*[39]

As an independent not-for-profit, IESO-NS is not subject to the same legislative cap as NSPI's executives, but the same principles outlined in the 2002 and 2008 GRA decisions apply. The Board of Directors of IESO-NS may set executive compensation as it chooses, but recovery from ratepayers is limited to what is fair, reasonable and justifiable, as determined based on appropriate benchmarking evidence.

The Industrial Group submits that the IESO-NS has failed to provide sufficient evidence to support the conclusion that the compensation amounts included in the RR are fair, reasonable, and justified, or that the proposed at-risk pay structure should be incorporated into the current RR. The Industrial Group recommends, going forward, that the IESO-NS consider the alignment of corporate objectives to ratepayer interests. In any future revenue application, it should provide a more complete analysis and evidentiary record to support the proposed compensation amounts, including the CEO incentive pay structure, benchmarked as appropriate with the elements outlined in the Kaiser Associates review. Finally, the Industrial Group supports greater transparency of executive compensation and director compensation, as further addressed below in the Annual Reporting section.

c. Procurement and Energy Resource Costs Should Not Be in the s.29 Application

The Industrial Group submits that the operating costs incurred by IESO-NS in running its energy resource procurement processes, including RFP management costs, legal fees, advisory fees, and staff time dedicated to procurement, are more properly recoverable under s.30 of the *MAEA*, rather than the currently proposed s.29 RR. Including these costs in the general RR obscures their true nature, prevents the Board from assessing their prudency in the context of the contracts they produce, and creates a risk of double-recovery or regulatory gap.

Section 30(1) of the *MAEA* requires IESO-NS to apply to the Energy Board for recovery of "costs for energy resource supply contracts, and any costs incurred by the IESO for the ***administration*** of those contracts" (emphasis added). This language is broad. The administration of energy resource supply contracts logically includes the process by which those contracts are created; namely, the procurement, the RFP, the negotiation, the advisory and legal costs associated with bringing those contracts to completion. To treat these costs as general operating expenses under s.29, while treating the contracts themselves as s.30 expenses, is artificial and ignores the contract development process: site development → RFP administration → contract negotiation → ongoing contract administration.

IESO-NS's own Application confirms the inconsistency. Site development costs, including geotechnical assessments and environmental work, are specifically excluded from the s.29 RR

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[39] *Re Nova Scotia Power*, 2008 NSUARB 140.

on the basis that they will be reimbursed by the successful proponent.[40] The rationale is that these costs are connected to the proponent's capital asset, not IESO-NS's operating budget. Yet the operating costs of running the same procurement process, including the costs of managing RFPs for additional capacity, are included in the s.29 RR at $820,000 forecast.[41] Regardless, the RFP related costs are still reportedly anticipated to be reimbursed by the successful proponent.

If site development costs are excluded because they belong to the proponent's asset, despite being initially incurred by IESO-NS, then the RFP-related legal and advisory costs of obtaining the contract that enables those assets to be built are equally connected to the procurement of energy resources under s.30.

This inconsistency leads to a related, and equally important issue: if there is no successful proponent of the energy resource contract contemplated, then the ratepayers bear these operating procurement costs that have been folded into the RR.[42] Mr. Milligan confirmed that if no Tolling Agreement is executed, ratepayers bear approximately $1.5 million in procurement costs with no contract to show for it.[43]

All procurement-related operating costs should be reviewed for prudency in the s.30 proceeding, based both on the way in which the legislation is drafted and the explicit intent of having all these costs ultimately reimbursed by the successful proponent. If no proponent is selected, that is a matter for review when s. 30 costs are sought to be recovered from ratepayers.

For the purposes of the 2026/2027 RR, the Industrial Group submits that the Board should direct the IESO-NS to remove the procurement costs as confirmed in a Compliance Filing. In addition, in its next filing, the IESO-NS should clearly delineate which procurement operating costs it considers fall under s.29 versus s.30, and to explain why those costs are not "costs incurred for the administration of energy resource supply contracts" recoverable under s.30.

d. HST Exposure

An unresolved risk to ratepayers arises from the HST implications of the IESO-NS's revenue requirement. KPMG opines that amounts charged by IESO-NS to recover its approved revenue requirement will generally attract HST at 14%.[44] IESO-NS's position is that the net economic impact on customers will be neutral because NSPI as the load-serving entity, can claim input tax credits ("ITCs").[45] IESO-NS confirmed at the hearing that HST has already been applied to invoices for the interim fee recovery, meaning this is no longer a theoretical risk.[46]

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

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40 N-01(i), Application, Exhibit B-2, pages 20-21; and Transcript June 17, pages 168-169.

41 N-01(i), Application, Exhibit B-2, page 21.

42 N-5, IESO (IG) RIR-19 (c).

43 Transcript, June 17, p. 215.

44 N-6, IESO (NSEB) RIR-29, Attachment 1.

45 N-6, IESO (NSEB) RIR-29.

46 Transcript, June 25, page 431-436.

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.

4. Procurement Practices Are Currently Inadequate

The IESO-NS currently has no comprehensive procurement guidelines. That gap creates risks to ratepayers, particularly given the scale and significance of the procurement activity now underway.

The Interim Procurement Guidelines[47] were created by Barrington Consulting Group. IESO-NS has not conducted any formal internal review or approval of those Guidelines, and no Board approval has been sought.[48] The Interim Guidelines state they will remain in effect until "a more comprehensive procurement policy is developed and adopted." During the hearing, IESO-NS estimated that this will occur by March 2027, indicating it is "*on the to-do list*".[49] No specific commitment was provided regarding a filing date or Board review of the comprehensive policy.

The Interim Guidelines also contain a "Flexibility Clause" that allows the CEO, Executive Sponsor, or Board Chair to approve an alternative procurement approach in exceptional circumstances.[50] Mr. Johnston confirmed that the Flexibility Clause has been used, but IESO-NS could not confirm how many times or for what total dollar value.[51] Despite the terminology included in the Interim Guideline, there is no identified "Executive Sponsor", and the term "Executive Sponsor" in the Clause is undefined in the current organization.[52] At present, there is no reporting framework for use of the Flexibility Clause, no plan to create one, and nothing in the Flexibility Clause that expressly caps the dollar value at which the CEO can approve a single-source contract.[53] The Industrial Group submits that use of this discretionary Flexibility Clause should be included as part of the quarterly reporting by IESO-NS.

Further, the Interim Guidelines explicitly do not apply to the most significant procurements IESO-NS is conducting: procurement of energy capacity for the bulk power system.[54] This means the fast-acting generation RFP (very recently issued[55]) and the planned capacity and energy storage RFP, which may produce contracts worth hundreds of millions of dollars over their respective terms, are proceeding without any Board-approved or even IESO-NS approved procurement framework.

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47 N-3, IESO (CA) RIR- 1, Attachment 1.

48 Transcript, June 17, page 140-142.

49 Transcript, June 17, page 142.

50 N-3, IESO (CA) RIR- 1, Attachment 1, pdf page 8.

51 Transcript June 17, page 144-145.

52 Transcript June 17, page 144.

53 Transcript June 17, page 145-147.

54 N-3, IESO (CA) RIR- 1, Attachment 1, pdf page 7.

55 IESO-NS launched a competitive procurement issuing an RFP on July 10, 2026, for one or two 300 MW fast acting natural gas electricity generation facilities. See at: https://www.ieso-ns.ca/procurement/.

The absence of any procurement procedure or guideline used by the IESO-NS simply increases the risks and opacity of IESO-NS's practices.

The Industrial Group submits that the Board should require that a comprehensive procurement policy be filed no later than any application for approval of procurement costs.

5. LACK OF TRANSPARENCY AND ADEQUACY OF EVIDENCE

One of the challenges throughout this proceeding has been the absence of clear, specific, and reliable evidence to support key aspects of the Application. This is particularly significant because increased transparency is central to IESO-NS's mandate, as emphasized by Mr. Johnston in his lengthy opening statement.[56]

The record reveals imprecise and, on occasion, internally inconsistent evidence that leaves the Board without the clear information it requires to make fully informed decisions. The Industrial Group highlights the following:

- Prudency Review Framework – Shifting Position: IESO-NS's position on how the prudency review of the Deferral Account will operate has been a moving target. On June 17, when first questioned by the Industrial Group, Mr. Johnston initially confirmed that variances would be tracked by cost category and referred to Table 5 of Exhibit C-1.[57] He then immediately retracted this, stating: "that was a misrepresentation."[58] He revised his position to say the prudency review would be a comparison of total budget versus total actual – not by cost category.[59] When the Industrial Group pointed out that the Board's Decision in M12412 required cost category-level reporting with a +/−10% threshold triggering a prudency review, Mr. Johnston then confirmed that "of course" IESO-NS would follow that direction for the 2025/2026 year, but maintained its current Application did not change its position for fiscal year 2026/2027.[60] Mr. Johnston went on to say that that IESO-NS did not have "the luxury … of the Board's position" when it put forward the proposal in the Application.[61] On June 25, under continued questioning, Mr. Johnston stated that IESO-NS would "be happy to report on the cost category variances if that's what the Board would require",[62] but it appears that the proposed approach to the 2026/2027 Deferral Account administration may be different than that ordered by the Board for the 2025/2026 year. The cumulative effect of this evidence and how a prudence review would function in the requested permanent Deferral Account is unclear and unsettled.

- Deferral Account Mechanics – No Clarity on How It Works: When asked to explain how the Deferral Account would operate, including how balances would be tracked, how

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56 N-16, IESO-NS Opening Statement, pages 2 and 5. See mandate at: *More Access to Energy Act*, SNS 2024, c 2, at s 2(c).

57 Transcript, June 17, pages 279-280.

58 Transcript, June 17, page 281.

59 Transcript, June 17, pages 280–281.

60 Transcript, June 17, pages 282–283.

61 Transcript June 17, page 284.

62 Transcript, June 25, page 322.

interest would accrue, and how true-ups would work, the panel repeatedly deferred substantive answers to future documentation. Mr. Johnston acknowledged: “there’s a little bit of debate and discussion at this end because we don’t want to mislead folks” and indicated that “it’s going to be clearer for everyone for us to provide that clarity through the documentation that’s going to come coming [sic] forwards”.[63] This prompted the Chair to ask directly: “Why didn’t you file that documentation in your application for approval of the mechanism?”, which went substantially unanswered.[64] Additionally, Mr. McFeters, was unable to provide clarity on the carrying costs for the deferral balance, and acknowledged that “we haven’t actually formulated the policy and procedures on that – those mechanics on how that will work. So I can’t actually answer with, you know, a definitive answer on how that will work”.[65] While the absence of the governing documents for the proposed Deferral Account leaves a significant gap in the evidentiary record (as explored above), the concern extends beyond a lack of written documentation; the evidence suggests that key aspects of the account's administration remain unsettled internally at the IESO-NS, irrespective of whether those details have been reduced to writing.

- <u>Phase II Timeline – An “Aspirational” Date with No Analytical Basis</u>: On both hearing days, the IESO-NS panel confirmed that the April 2027 target date for the initiation of Phase II was an aspirational objective set based on two years from the appointment of the IESO-NS Board of Directors.[66] It was not the product of a detailed transition plan, stakeholder engagement, or analysis of the legal prerequisites including the necessity of proclamation of un-proclaimed provisions of the *MAEA*.[67] The absence of analysis or information on the progress of the transition raises questions about the proposed $1.77 million built into the RR and described as “Phase II Transition Costs”.[68] The application itself confirms that the projects budgeted within that amount had not yet been fully scoped or competitively bid, and that there remains considerable work to be done to build out a roadmap for Phase II.[69] When questioned on the budgeting for the transition costs to bring the IESO-NS to Phase II, Mr. Johnston initially stated that IESO-NS did not apply for Phase II implementation costs, which were then described as “internal costs”.[70] It appears, then, that no budget has been allocated for regulatory processes that will be required before Phase II can be implemented, including any application to the Board for a licence under the relevant provisions of the *MAEA* once proclaimed. IESO-NS was not able, or not willing, to provide clarity on whether the work completed by IBM to scope out the transition for Phase II would lead to increased or decreased costs by approximately 10% within that

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63 Transcript, June 17, page 270.

64 Transcript, June 17, page 271. Mr. Johnston’s response explained that the IESO-NS wanted the variance account in place first and that the details needed to be "all dotted out before we came back for recovery of those costs from customers", but he did not directly address why the documentation was not filed with the Application itself.

65 Transcript, June 17, page 269.

66 See for example at Transcript, June 25, pages 329.

67 Transcript, June 17, pages 97-98, and 100-101; and Transcript, June 25, page 324-329.

68 N-1 (i), Application, Exhibit B-3, pages 33-35.

69 N-1 (i), Application, Exhibit B-3, page 35.

70 Transcript, June 17, page 292.

cost-category for Phase II Transition Costs.[71] The IESO-NS is reportedly waiting for approval from its board of directors, and it has no intention to apply to this Board for approval even if those costs were to materially change.[72] Those costs, by IESO-NS's own evidence, will likely flow into the Deferral Account (precisely the open-ended mechanism the Industrial Group submits should not be approved.)

Overall, the Industrial Group submits that the Board should decline to accept unsupported assertions. Where the record is insufficient to allow the Board to assess reasonableness of the costs applied for, for the second year in a row, the Board should require more complete disclosure before confirming recovery, whether through a compliance filing in this proceeding or the forthcoming cost-recovery application.

6. IESO-NS and NSPI Collaboration – Transparency and Cost Duplication

The Industrial Group has consistently raised the importance of transparency in the relative obligations of IESO-NS and NSPI during the transition period, and the need for meaningful protections against duplication of costs being charged to ratepayers by both organizations.

IESO-NS and NSPI both assert that they are making their best efforts to avoid duplication of costs charged to ratepayers. The Industrial Group accepts that the individuals involved are acting in good faith but good intentions offer no regulatory protection.

The evidentiary record confirms that there is currently no formal term sheet governing the transition of responsibilities from NSPI.[73] IESO-NS declined the Industrial Group's proposal for one,[74] and the Joint Transition Committee meetings appear to be relatively informal rather than following a documented framework without any clear enforceable governance.[75] Additionally, IESO-NS confirmed in RIRs that "not all categories of expenditures can be coordinated with NS Power for cost minimization" due to independence requirements.[76] While the Industrial Group accepts the need for organizational independence, this should not shield the two organizations from taking formal steps to avoid (or minimize) the risk of cost duplication, particularly where NSPI and IESO-NS perform overlapping or sequential functions.

The Industrial Group highlights the Synchronous Condenser Project, and the Phase II transition costs, both of which involve work that either originated with NSPI or requires close coordination with NSPI. In each case, both entities are incurring costs (or will incur costs) and the evidentiary record provides no reliable basis for the Board to determine whether those costs are duplicative.

The Industrial Group submits that the Board should direct IESO-NS to file with its next RR application a specific certification from both IESO-NS and NSPI confirming that no duplicate costs have been charged to ratepayers in respect of functions transferred or shared during the 2026/2027 fiscal year. The certification approach is similar to that ordered by the Board with

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[71] Transcript, June 17, page 292-293.

[72] Transcript, June 17, page 293-294.

[73] N-5, IESO(IG) RIR-10.

[74] N-5 IESO(IG) RIR-29(c).

[75] Transcript, June 17, pages 106-107.

[76] N-3, IESO (CA) IR-6(d).

respect to the approval of the NSPI capital project to develop and implement updates and enhancements to existing software solutions to facilitate the renewable to retail market, in Matter M12588.[77] In that decision, the Board ordered Annual Certifications.[78] Additionally, for Affiliate Code reporting by NSPI, and NSPML certifications are required to confirm compliance with the Affiliate Code.[79]

The Industrial Group also recommends that the Board direct IESO-NS to develop and file a written framework identifying the specific functions where duplication risk is elevated, the controls in place to prevent it, and the mechanism for identifying and reversing any duplicate charges.

7. Annual Reporting Improvements

IESO-NS's mandate under the *MAEA* is grounded in a commitment to transparency. A key feature of that transparency is the statutory requirement for annual reporting.

During cross-examination, the IESO-NS was asked about the status of the mandatory legislative reporting under s. 32 of the *MAEA*. It became clear that the IESO-NS had not yet turned its mind to the format or content of that Annual Report.[80] Where the Annual Report is due within six months after the close of the fiscal year, meaning before September 30, 2026, the Board now has the opportunity to shape the content and approach to that reporting.

The Industrial Group submits that the Board should direct IESO-NS to prepare and file an annual report modelled on the annual report published by the Ontario IESO. The Ontario IESO's 2025 Annual Report[81] provides a benchmark for what meaningful transparency looks like from a non-profit independent system operator with a comparable (albeit currently broader) mandate.

The Ontario IESO reports publicly on progress against corporate performance measures set out in its Business Plan, with targets, weighted results, and narrative explanation for each measure.[82] Additionally, along with the audited financial statements (which is a required aspect of the IESO-NS Annual Report under s. 32(2) of the *MAEA*), the Ontario IESO annual reporting includes a financial performance analysis comparing actual results for its core operations, with narrative explanation of material variances.[83]

In contrast with the approach taken by IESO-NS in this proceeding, the Ontario IESO publicly discloses its executive compensation program objectives, governance, and ratepayer funded salaries.[84] It also discloses its benchmarking methodology, comparator group, and the frequency of external reviews. Comparable information has not been made publicly available by the IESO-

77 *Nova Scotia Power Incorporated (Re),* 2026 NSEB 13

78 *Nova Scotia Power Incorporated (Re),* 2026 NSEB 13 at para 100.

79 See for example: Matter M12883, N-1 NSPI Affiliate Code of Conduct 2025 Report, Appendix L; and Matter M12832, NSPML 2025 Annual Affiliate Code of Conduct Report, N1, Attachment 7.

80 Transcript, June 25, pages 422–424.

81 Ontario IESO, 2025 Annual Report, April 30, 2026: https://www.ieso.ca/corporate-ieso/corporate-accountability/financial-reporting.

82 *Ibid,* page 14.

83 *Ibid,* page 22.

84 *Ibid* pages 48- 51.

NS in this proceeding. Board director compensation is similarly disclosed in full, by name, including appointment date, term expiry, and annual remuneration.[85]

The Industrial Group requests that the Board direct IESO-NS to prepare and file an annual report that includes, at minimum:

1. independently audited financial statements with a signed management report and a budget-to-actual variance analysis at the cost category level;

2. a corporate performance measures report, with targets, results, and narrative explanation, filed publicly at the start of each year and reported against at year-end;

3. a named executive Summary Compensation Table and Board of Directors Compensation Table, similar to that in the Ontario IESO report,[86] filed publicly, together with disclosure of the compensation program objectives, benchmarking methodology, and variable pay framework; and

4. a procurement activity report, including any use of the Flexibility Clause, and a Phase I/II transition progress update.

CONCLUSION

In reliance on the above submissions, the Industrial Group requests that the Board:

1. decline to make the Deferral Account Mechanism permanent, and decline to expand its scope to include capital cost variances or catch-all unforeseen costs;

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.

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85 *Ibid* page 52.

86 *Ibid* page 51-52.

3. require IESO-NS to apply to the Board for approval when significant unforeseen costs arise during a fiscal year, rather than permitting recovery through an open-ended deferral mechanism;

4. confirm the Board's authority to direct disallowances on recovery of any variance to the Deferral Account (as/if approved);

5. decline to accept unsupported assertions and, where the record is insufficient to assess reasonableness, require more complete disclosure before confirming recovery, whether through a compliance filing in this proceeding or the forthcoming cost-recovery application;

6. apply a vacancy rate adjustment, based on the current or forecasted expected vacancy rate to be confirmed by a compliance filing, to the labour component of the RR, or require IESO-NS to demonstrate with specific data that contractor or consulting costs are in fact offsetting salary savings from vacant positions;

7. recommend IESO-NS consider the alignment of its corporate objectives on which incentives are based with ratepayer interests and, in future applications, provide a more complete analysis and evidentiary record supporting the proposed compensation amounts, including the executive incentives benchmarked appropriately as outlined in the Kaiser Associates Review;

8. direct IESO-NS to remove procurement-related operating costs from the s. 29 RR, as confirmed in a compliance filing, and confirm that all procurement-related operating costs be reviewed for prudency in the s. 30 proceeding, and that if no proponent is selected, recovery of those costs from ratepayers be addressed at that time;

9. direct IESO-NS, in its next RR filing, to clearly delineate costs incurred for the administration of energy resource supply contracts and justify their inclusion as a s.29 cost;

10. direct IESO-NS to file with its compliance filing confirmation as to how the 14% HST exposure will be managed, including how any input tax credit benefit will be flowed through;

11. direct IESO-NS to file and obtain Board approval of a comprehensive procurement policy, including for its energy capacity procurements, no later than any application for approval of procurement costs;

12. direct IESO-NS to report on any use of the Flexibility Clause, including the number, value, rationale, and approving authority for any non-competitive or alternative procurement approach, within its quarterly reporting;

13. direct IESO-NS and NSPI to file, with IESO-NS's next RR application, a joint certification confirming that no duplicate costs have been charged to ratepayers for transferred, shared, or sequential functions during the 2026/2027 fiscal year;

14. direct IESO-NS to develop and file a written cost duplication prevention framework identifying the functions where duplication risk is elevated, the controls in place to prevent

duplicate recovery, and the process for identifying and reversing any duplicate charges; and

15. direct IESO-NS to prepare the Annual Report due to the Board on September 30, 2026, using the reporting framework and approach adopted by Ontario's IESO.

Thank you for the opportunity to make these submissions.

Yours truly,

Nancy G. Rubin, K.C.

Brianne E. Rudderham

NGR/BER/cj

c. Participants in M12663