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Delivered by Email

Crystal Henwood
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Dear Ms. Henwood:

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

These Reply Submissions are filed on behalf of the Industrial Group ("**IG**") to address the legal issue of the Board's jurisdiction under s. 29 of the *More Access to Energy Act*, SNS 2024, c 2 (the "***MAEA***"). Both the Consumer Advocate ("**CA**") and the Nova Scotia Independent Energy System Operator ("**IESO-NS**") addressed this issue in their closing submissions. Additionally, a new development regarding the RIGS project, which arose after the close of the oral hearing, is also briefly addressed within these submissions.

Overall, the IG agrees with and supports the CA on the central issue of jurisdiction; s. 29(4) authorizes the Board to set IESO-NS's revenue requirement, expenditures and fees at what it determines is just, reasonable and necessary. That includes a level below what IESO-NS proposed.

The IG disagrees with IESO-NS's position that s. 29(4) gives the Board only two options: approve the Application as filed or send it back. That position does not fit the modern approach to statutory interpretation, and such an interpretation is inefficient and practically unworkable in the current regulatory scheme. It also blurs two different regulatory functions: setting a forward-looking budget and rate and conducting a prudence review on a cost already spent. Those functions are not the same, and the distinction matters.

In addition to the recommendation contained in the IG's submissions in chief, the Board should also find that:

1. Section 29(4) of the *MAEA*, read in its full context and in light of the Board's general powers under the *Energy and Regulatory Boards Act*, SNS 2024, c. 2, Sch. A (the "**ERBA**"), authorizes the Board to approve IESO-NS's proposed expenditure and revenue requirements and fees in whole, in part, with conditions or adjustments, or to fix the revenue requirement at a different (including lower) amount than proposed;

2. IESO-NS's interpretation is not consistent with the words contained in s. 29(4), and does not fit the scheme and purpose of the *MAEA* or the *ERBA*, and does not work in practice; and

3. Setting a forecast revenue requirement is a different exercise than disallowing specific costs already spent based on imprudence. The two should not be conflated. Both are permitted under s. 29, with the latter contemplated through the deferral and variance mechanism.

THE STATUTORY TEXT AND THE COMPETING POSITIONS

Subsection 29(4) of the MAEA provides:

> *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.*

IESO-NS reads s. 29(4) as giving the Board two options: approve the revenue requirement or refer it back to IESO-NS with recommendations. IESO-NS's submission suggests this choice could be made category by category rather than only for the Application as a whole. It describes its own model as "iterative," under which the Board returns "the matter, or part thereof" to IESO-NS with recommendations, rather than substituting its own determination. Whether whole-application or category-by-category, the same limit applies. IESO-NS suggests the Board cannot itself fix a number for anything it does not approve as filed.

IESO-NS submits that the power to “disallow costs and fix a [different] revenue requirement” is missing from s. 29, and that the Board's jurisdiction is limited only to what s. 29 expressly says. Such an approach is not only contrary to the general principles of statutory interpretation, but also the well-known broad discretion of the Board in setting just and reasonable rates.

In contrast to the IESO-NS, the CA submits that s. 29(4), read with the Board's general powers under the *ERBA*, give the Board authority to approve or disapprove IESO-NS's requests, in whole or in part, and to make adjustments it considers appropriate. The CA submits that a narrower reading would unreasonably limit the Board's regulatory authority and create unnecessary inefficiency that the Legislature could not have intended.

The IG agrees with the CA's conclusion but frames the question slightly differently. The question is not whether the Board can "disallow" or "disapprove" costs in the abstract. That language carries a retrospective meaning better reserved for a prudence review of costs already spent. The more accurately phrased question is whether s. 29(4) authorizes the Board to set IESO-NS's forward-looking revenue requirement at a level, and on such terms, the Board considers just, reasonable and necessary. The IG’s position is that it does. IESO-NS's not-for-profit, non-utility status does not change that answer; it supports it.

STATUTORY INTERPRETATION PRINCIPLES

1. The modern approach to interpretation

The parties agree on the interpretive framework. The Supreme Court's "modern approach" to statutory interpretation, stated in *Rizzo & Rizzo Shoes Ltd. (Re) (“**Rizzo**”)*[1], requires that the words of a statute be read in their entire context and in their grammatical and ordinary sense, in harmony with the scheme of the Act, its object, and the intention of the Legislature. IESO-NS cites *Rizzo*

1 1998 CanLII 837 (SCC).

for the point that statutory interpretation cannot rest on wording alone and text, context and purpose all matter.

IESO-NS further cites *ATCO Gas & Pipelines Ltd. v. Alberta (Energy and Utilities Board*) ("**ATCO 2006**)[2] for the principle that a regulatory tribunal is a creature of statute, that its jurisdiction must come from its enabling legislation expressly or by necessary implication, and that the grammatical and ordinary sense of one provision is not decisive on its own; rather, the whole statutory context matters.

The IG agrees. The problem is that IESO-NS states the test correctly but does not appear to follow it. IESO-NS's submission isolates the language ins. 29(4), without engaging the scheme of the *MAEA* and *ERBA* together, the purpose of giving an independent regulator authority over rates or considering the practical results of its own reading.

2. The words of s29(4), read in context, do not impose the rigid binary IESO-NS proposes

IESO-NS reads "approve" in s. 29(4) as meaning approval of the exact figures filed, with referral being the only other option. Nothing in the text requires that narrow reading. The provision does not say the Board "shall either approve the Application as filed or refer it back in its entirety." It says the Board "may approve the proposed expenditure and revenue requirements and the proposed fees or may refer them back" Approving 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." It is the Board's determination, after its statutory review, of what will be approved for the fiscal year. Nothing in the text limits "approve" to a rubber stamp of the exact dollar figures IESO-NS filed. In fact, the language uses permissible language: "may".

Subsections 29(1) to (3) support this reading, as the CA notes. Subsection 29(1) requires IESO-NS to submit its "proposed" expenditure and revenue requirements and fees "for review." Subsection 29(3) says that, until the Board approves those amounts, the prior year's fees continue. The word "proposed" appears throughout section 29 because what IESO-NS files is a request, not an automatic entitlement. It takes effect only once, and to the extent the Board approves it. If the Board's review could only end in full acceptance or full rejection-with-recommendations, the word "review" and the word "proposed" would carry little meaning.

IESO-NS says the Board's requirement under s. 29 is to decide whether IESO-NS's forecast costs are "just and reasonable." In order to allow for a meaningful review of what is just and reasonable, the Board must be able to do something more than approve or send back. It must be able to decide that some proposed costs are justified and others are not, and then approve a revenue requirement that reflects only the justified costs. IESO-NS cannot simply rely on s. 6 of the ERBA and *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission) ("**ATCO 2015**")*[3] to suggest that its forecast should be reviewed for reasonableness, while simultaneously arguing the Board has no authority to adjust that forecast within its ultimate decision.

3. The Board's general powers under the *ERBA* inform and enhance the reading of s. 29

Section 29 should not be read in isolation. The CA correctly points to ss. 5 and 6 of the *ERBA* as necessary context. Section 5 gives the Board the functions, powers and duties conferred by the

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[2] 2006 SCC 4.

[3] 2015 SCC 45 ("**ATCO 2015**")

ERBA, the *MAEA* and other enactments. Subsection 6(1) of the *ERBA* says that, in approving or fixing just and reasonable rates, tolls, charges or tariffs under the *ERBA* or any other enactment, the Board may use any method or technique it considers appropriate, including an alternative form of regulation. Subsection 6(3) specifically directs the Board to regulate the IESO and s. 6(2) directs the Board, in approving or fixing rates and other matters within its authority, to consider specified public-interest factors, with the goal of approving matters consistent with the purpose of the *ERBA*, the *MAEA* and the regulations. These powers apply to s. 29 of the *MAEA* which requires IESO-NS's proposed revenue requirements and fees to go "to the Energy Board for review," and it is the Board's rate-approval function under the *ERBA* that must inform that review.

ATCO 2006 stands for the presumption that the Legislature is logical and that related statutes form a system, including statutes like the *ERBA* and *MAEA*. To determine a tribunal's authority requires examining the entire legislative scheme to find the Legislature's intent and the statute's true purpose. Applying the ATCO 2006 principles, the *ERBA* and the *MAEA* should be read in harmony, as one regulatory system for IESO-NS regulation. Read that way, the Board's power to "approve" the revenue requirement under s. 29(4) includes the Board's general ratemaking authority under s. 6 of the *ERBA* to fix just and reasonable rates by whatever method it considers appropriate, including approving a different, lower, or conditional revenue requirement.

RETROACTIVE IMPRUDENCE REVIEWS ARE DIFFERENT

IESO-NS has asked the Board to rule on the full scope of its jurisdiction under s. 29(4), including its ability to make prudence findings or order disallowances because of the implications for IESO-NS's future operations. The IG takes the position that the Board has the power to order a disallowance on a finding of imprudence, however, the Board should distinguish between the distinct regulatory functions that may arise under, or alongside, that provision.

The two separate regulatory functions are:

(i) Prospective revenue requirement setting, including reviewing IESO-NS's forecast costs and fees for the coming fiscal year 2026/2027; and

(ii) Retrospective imprudence reviews, which may arise after the completion of a particular fiscal year, and that examines whether specific costs IESO-NS already spent were prudently incurred and potentially disallowing recovery of those costs.

IESO-NS's own submissions on the deferral and variance mechanism make this distinction clear. It cites the Board's decision in M12412: "*the IESO's proposed forecast costs are all subject to the Board's finding that they are just and reasonable, and to being reviewed for prudence once spent*" (para 45). That sentence draws the appropriate line. The just-and-reasonable review of forecast costs happens before the money is spent; the prudence review happens after.

IESO-NS’s request for the approval of a deferral and variance mechanism necessitates the Board’s ability to review costs captured within that account. Otherwise, the account would become insulated from any meaningful regulatory oversight. The mechanism would become a vehicle for automatic cost recovery, contrary to the purpose of a deferral account. If the Board is permitted to review previous expenses incurred and recorded in that account, it must by necessity be allowed to disallow any costs which were not prudently incurred.

The Board’s ability to conduct a retrospective prudence review is distinct from its prospective authority to approve future expenditure plans or establish rates. These functions arise at different points in time and serve different regulatory purposes. A prospective assessment necessarily turns on the information reasonably available at the time a forecast is prepared, whereas a prudence review evaluates decisions and expenditures after they have been incurred using a two-part test.[4] As such, different tests must apply.

The *Enbridge* "prudent investment" standard, which IESO-NS also relies on,[5] is of no assistance to confirming the parameters of the Board's prosecutive review authority. The *Enbridge* test was developed in the context of a prudence review of costs already incurred. That test was designed for reviewing costs already committed, where hindsight bias poses a real risk. It has no role in the Board's review of a forecasted expenditure and is being reviewed for the first time. There is no historical decision to second-guess with hindsight in a prospective review; there is only a forecast to test against the evidence available, which is what the Board must do under s. 29 of the *MAEA* and s. 6 of the *ERBA*.

Applying the *Enbridge* presumption to a forecast would require the Board to treat every dollar IESO-NS proposes as presumptively prudent unless challenged. That reverses the burden and flips the ordinary ratemaking principles to justify an applicant's own revenue requirement. That reversal would matter for any applicant, but it matters more in the context of a not-for-profit entity.

As pointed out by IESO-NS, it operates as a not-for-profit and has no shareholder standing behind its forecast. If the Board presumed IESO-NS's proposed costs as reasonable by default, any unjustified cost that passed through the review process would be borne by ratepayers, not shareholders. This is a further reason to maintain the burden on the applicant seeking approval of its forecasted cost, rather than relaxing or shifting that burden onto ratepayers.

In this proceeding, the immediate issue is the scope of the Board's authority to "approve the proposed expenditure and revenue requirements." That authority requires the Board to determine, prospectively, whether the proposed expenses are just, reasonable and necessary. The Board need not decide, in its current decision, whether it also has the implied jurisdiction to disallow costs already spent for imprudence reasons. Nevertheless, given IESO-NS's request for approval of a comprehensive and enduring deferral account, it would also be helpful for the Board to confirm it has the authority to complete an imprudence review and order disallowances where appropriate. Such confirmation would assist in the Board's consideration to approve an ongoing deferral account and the development of the related deferral account guidelines.

The practical application of the power to disallow costs, in the context of a not-for-profit organization, is a fact-specific issue that may be better addressed through the anticipated deferral and variance mechanism guidelines and any future prudence review conducted under that framework on a full record.

IESO-NS'S APPROACH IS IMPRACTICAL AND INCONSISTENT WITH THE PURPOSE OF THE *MAEA*

Rizzo confirms that an interpretation should be avoided where it produces results that are illogical, incoherent, unreasonable, or inconsistent with the object of the statute. IESO-NS's proposed interpretation should be rejected for that reason. It would turn the Board's statutory review into a procedural loop: if the Board identifies an unsupported forecast cost, it could not approve the

44 As canvassed most recently in the 2022/23 FAM Audit, *Nova Scotia Power Incorporated (Re),* 2025 NSEB 10 (M11533) at paras. 17-42.

5 *Enbridge Gas Distribution Inc. v. Ontario (Energy Board)*, 2006 CanLII 10734 (ON CA)

amount the evidence supports. Rather, it could only return the matter to IESO-NS with recommendations that IESO-NS could accept, reject, or reframe. That result is inconsistent with the purpose of s. 29 and with effective rate regulation. Above that, it should be assumed that the Legislature is not taken to intend such an unreasonable or inconsistent result.

1. IESO-NS's “iterative” process creates a regulatory loop

IESO-NS's submission allows for the possibility that the Board could deal with a single cost category on its own, referring that category back with recommendations while approving the rest of the Application.

The vacancy-adjustment dispute in this proceeding illustrates the problem. If the Board were to find that IESO-NS's assumption of a full staffing complement for the entire fiscal year is not reasonably supported, and that a vacancy-adjusted figure is the just and reasonable quantum for that category, IESO-NS's reading would still prevent the Board from approving that figure. The Board could only refer the Employees (Administration) category back to IESO-NS with a recommendation that a vacancy adjustment be applied. IESO-NS could then accept that recommendation, reject it, or resubmit the same unadjusted figure with different reasons attached. If the Board still does not accept the unadjusted figure as reasonable, IESO-NS's interpretation gives the Board no way to require the adjustment or to approve any number for that category other than the one IESO-NS chooses to file.

Under IESO-NS’s interpretation, the Board's only recourse would be another referral and another recommendation, leaving IESO-NS in control of whether the process ends. This is not only administratively burdensome, inefficient, and counterintuitive to the Board’s overarching powers to set just and reasonable rates, but it is also contrary to permissive language used in s. 29(4).

2. A category-level referral creates uncertainty rather than ratepayer protection

Subsection 29(3) does not solve the problem of a revenue gap. Instead, it preserves the prior year's fees while a forward-looking application remains unapproved, unless the Board orders otherwise. At best, that provision maintains continuity at the overall fee level. It does not give the Board a mechanism to establish a current-year, category-specific amount where a disputed category is referred back.

Using the same vacancy adjustment example, if the IESO-NS does not accept a Board recommendation to apply such an adjustment (if that were the Board’s finding), that specific category would have no approved value while the remainder is referred back to IESO-NS with an ongoing dispute. In a growing organization like IESO-NS, the prior-year figure may not correspond to the category under review, or the category may not have existed at a comparable level the year before.

The result is then ongoing uncertainty, delay, and pressure on the Board to approve the filed amount simply to avoid limbo. If IESO-NS declines the Board's recommendation, a disputed category may remain unresolved with no approved current-year figure, no reasonable fallback figure, and no fixed date by which the issue must be resolved. That does not protect ratepayers. It gives the regulated entity practical leverage over the end point of the review. Coupled with an all-encompassing deferral and variance account, the IESO-NS would be permitted to spend to an uncapped amount with limited (and potentially no) recourse available for the Board to protect ratepayers.

Rate regulation is meant to produce a just and reasonable outcome on the record before the regulator, not a cycle of recommendations and resubmissions. The coherent approach is for the Board to approve the sound parts of the Application and fix the amount of any disputed category at the level the evidence supports. Otherwise, ratepayers could be paying increased administrative fees, along with category level amounts that have no reasonable support for the applicable fiscal year.

3. The variance threshold assumes an approved baseline and enforceable conditions

IESO-NS's current interpretation also does not align with the way the Board and IESO-NS have already treated the interim deferral and variance mechanism. In M12412, the Board did more than reserve a future prudence review. It approved recovery through a mechanism and terms that set a +/-10% variance threshold from the forecast before further regulatory scrutiny was required.

That mechanism only makes sense if there is an approved baseline set by the Board and enforceable conditions attached to that approval. If the Board's only role under s. 29(4) were to accept IESO-NS's filed number or return it with non-binding recommendations, it is difficult to see how the Board could attach a binding variance threshold to that budget, require guidelines and accounting policies before recovery, and place the burden on IESO-NS to justify overruns beyond the threshold. These are the incidental elements of the Board's authority that flows from a power to approve a revenue requirement on specific terms, define the approved baseline, and control recovery through rates when IESO-NS later moves outside that baseline. IESO-NS accepted that framework in M12412 and has built its current proposal around it. That practical construction of the statute is inconsistent with the narrow reading it now advances.

4. A regulator confined to yes-or-no cannot do its job

The CA correctly places s. 29 within the established purpose of utility rate regulation. Regulation stands in for the competitive market forces that would otherwise drive costs and pricing. The CA appropriately relies on the Board's summary in *Nova Scotia Power Incorporated (Re*), 2026 NSEB 8, quoting the Nova Scotia Court of Appeal in *Dalhousie Legal Aid Service v Nova Scotia Power Inc.,* 2006 NSCA 74 at para 33: "[t]he Board's regulatory power is a proxy for competition, not an instrument of social policy." The Board's ratemaking function is a surrogate for competition, giving the utility a reasonable opportunity to recover legitimate costs and earn a reasonable return at rates that are fair to customers.

IESO-NS submits that this framework does not fit it in the usual way, because it is a not-for-profit body with a public interest mandate, not an investor-owned utility with a shareholder. That is true, but it does not follow that the Board's oversight should be less stringent. The IG submits that if anything, it should be stronger. 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.

While IESO-NS has a board of directors, it has no shareholder pressing for cost control in the interest of profitability, and no competitor to force efficiency. The record already shows that this newly formed, still-maturing monopoly had a first-year record of materially inaccurate forecasting in every OM&A cost category, missing the associated budgets by roughly 12% to 115% across all categories.

A regulator that can only accept or reject such a forecast, with no power to set the budget at a level the evidence supports, cannot perform its function for an entity structured this way. The Legislature gave the Board an express review function over a monopoly system operator's revenue requirement and gave the Board the general ratemaking powers set out in the *ERBA*. Reading s. 29 to strip the Board of any power to act on what its review finds does not fit that scheme, whether the applicant is an investor-owned utility or, as here, a not-for-profit with no shareholder at all. *Rizzo* tells us to reject a reading that does not fit the statute's purpose. That purpose is not diminished because the regulated entity happens to have no shareholder.

ADDITIONAL CONSIDERATIONS WHEN INTERPRETING S. 29(4)

1. The referral power is one tool, not the only tool

IESO-NS's submissions rely heavily on s. 67(1) of the *MAEA*, which deals with reliability standards and lists five options for the Board: approve, approve with modifications, refuse to approve, remand for further consideration, or retire a standard. IESO-NS argues that s. 29's shorter wording must mean the Legislature deliberately withheld any power beyond approval or referral. IESO-NS submits that this kind of express wording is available to the Legislature when it wants to grant a disallowance power, and that its absence from s. 29 must mean something.

With respect, if anything, s. 67(1) shows that the Legislature knows how to articulate an approval-with-modification power in detail when it chooses to. It does not follow that the shorter wording in subsection 29(4), ("may approve the proposed expenditure and revenue requirements") was meant to be read more narrowly. Reliability standard-setting and revenue requirement approval are different functions, governed by different provisions, considered through different principles, and are drafted with different levels of detail. That difference in drafting does not tell us anything about the scope of s. 29(4), which must still be read together with the Board's general ratemaking powers under s. 6 of the *ERBA.*

2. The Ontario precedent does not support IESO-NS's position.

IESO-NS relies on the Ontario OEB's decision in EB-2015-0275 as authority for its narrow reading of s. 29(4). IESO-NS submits that the OEB did not exercise a power to disallow costs or unilaterally fix the IESO's revenue requirement. Rather, it approved the expenditure and revenue requirements and referred back only the fee structure with recommendations.

The IG submits this decision does not bear the weight IESO-NS places on it. It arose in a specific factual context; i.e., a dispute about fee allocation between domestic and export customers, not a challenge to the prudence or reasonableness of specific expenditures. The OEB's approval of the revenue requirements in that case does not establish that the OEB (or this Board) lacks the authority to decline specific expenditures. The Ontario provision is materially identical to s. 29(4), yet the Ontario OEB has never ruled that it lacks front-end authority in the manner argued by IESO-NS.

Moreover, the OEB in that decision, EB-2015-0275, did decline to approve the proposed single usage fee and imposed its own structure. This itself is a form of fixing the outcome differently from what the IESO proposed and is inconsistent with IESO-NS's argument that the Board can only approve or refer back with recommendations.

3. Necessary implication supports the Board's authority to fix the revenue requirement

Even if s. 29(4) were ambiguous on fixing the revenue requirement this point, which the IG does not accept, the doctrine of jurisdiction by necessary implication in ATCO 2006 supports the Board's authority to set the revenue requirement at a level it considers just and reasonable. ATCO 2006 holds that an enabling statute's powers include not only those expressly granted, but also those practically necessary to accomplish the object of the statutory scheme.

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.

Applying the five-factor test from *Re Consumers' Gas Co*., E.B.R.O. 410-II/411-II/412-II (cited in ATCO 2006), the same conclusion follows. Setting a just and reasonable revenue requirement is necessary to the legislative scheme and to the Board's mandate under s. 29. The *MAEA* does not expressly withhold that power, it is simply silent on the mechanics. Instead, the legislation uses broad and permissive language. The Board's mandate under s. 29, read with s. 6 of the *ERBA*, supports that authority.

Additionally, there is no sign the Legislature necessarily turned its mind to this question and explicitly decided against giving the Board the power to adjust an unreasonable revenue requirement. If it had done so, it could have done so more explicitly.

THE IMPORTANCE OF FRONT-END CONTROLS, GIVEN THE PRACTICAL LIMITS OF BACK-END DISALLOWANCE AGAINST A NOT-FOR-PROFIT

The distinction discussed above between setting a revenue requirement in advance and disallowing a cost after the fact, has an important consequence. Even if the Board has a back-end disallowance power for imprudence, that power does not substitute for front-end scrutiny when the regulated entity is a not-for-profit with no shareholder.

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.[6]

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 record already reflects an awareness of this dynamic. The Board's decision in M12412 built front-end discipline into the deferral and variance mechanism from the outset, requiring specific guidelines and accounting policies before any recovery, and a variance threshold that triggers review with the burden on IESO-NS to justify overruns. IESO-NS's witness specifically agreed that the organization needs internal controls — budgets, approval limits, segregation of duties, monthly reporting — precisely because the deferral and variance mechanism otherwise removes any real financial consequence for overspending.[7]

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.

RENEWABLES INTEGRATION GRID SECURITY (RIGS) PROJECT

The CA raised the RIGS project in its closing submissions as a concrete example of the imprudence risk inherent in IESO-NS's procurement process and the proposed deferral account structure. The CA noted that IESO-NS touted the NB EUB's approval of NB Power's RIGS facility as a "significant win", noting however that NB Power had been criticized by the NB Auditor General for advancing the project “before supporting analysis, governance processes, and regulatory requirements were fully addressed," with NB Power assuming governance, financial, and long-term contractual risks that increased exposure to cost and regulatory uncertainty.

The IG supports and adopts the concerns of the CA. In addition, since the conclusion of the oral hearing, the NB EUB decision approving the RIGS project has been challenged by way of judicial review. As reported in the media, the notice of review was filed on June 26, 2026, with the New Brunswick Court of Appeal hearing the application on September 15, 2026.[8]

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6 Transcript, June 15, 2026, page 516, lines 10-14.

7 Transcript, June 15, 2026, page 503-505.

8 Opponents seek judicial review of EUB's approval of southeast N.B. power plant | CBC News) https://www.cbc.ca/news/canada/new-brunswick/tantramar-gas-plant-regulatory-thumbs-up-9.7214994

The IESO-NS opening statement characterized the NB EUB approval as a "significant win for electricity supply reliability for Nova Scotians." That characterization must now be qualified. The project approval is under active legal challenge, with a court hearing scheduled less than six weeks after the reply submission deadline in this proceeding. The IG submits this development is relevant to the Board's deliberations for three reasons:

1. The IESO-NS did not fully mitigate exposure risks before project approval. IESO-NS confirmed at the hearing that it was aware of the Auditor General's findings, that it was aware when it entered the agreement with NB Power that there was a risk the project would not be approved, and that if the project had not been approved, IESO-NS would have borne a proportionate share of the cost in the range of approximately $15 million.[9] The judicial review proceeding reopens the question of whether that risk is ongoing.

2. Nova Scotia ratepayers remain directly exposed. 100 MW of the plant's capacity is earmarked for purchase by IESO-NS under a 10-year contract with NB Power. If the judicial review succeeds and a new hearing is ordered, the status of that contract and IESO-NS's obligations under it will become uncertain.

3. The NB Auditor General's findings parallel the concerns raised in this proceeding about IESO-NS's own governance, procurement practices, and regulatory conduct. IESO-NS entered contractual commitments tied to the RIGS project without pre-approval from this Board and without an indemnity. This is precisely the category of risk that a properly structured deferral and variance mechanism framework with pre-approval requirements is designed to prevent. Such guardrails ought to be included in any administration or guideline documents proposed by IESO-NS or approved by the Board.

While the IG recognizes that the prudence of the RIGs project contract, as between IESO-NS and NB Power, is not currently before the Board, the financial risks arising from IESO-NS's procurement process have now been transferred to ratepayers. In addition, the administrative costs associated with managing the project to date are being recovered through the proposed revenue requirement.

The IG is not asking the Board to make pre-emptive findings regarding IESO-NS's conduct in entering into the agreement. (Although, the Board may take such conduct into consideration when a s. 30 application is filed.) However, given the current status of the RIGS project, the costs included in the 2026-27 revenue requirement, and the proposed expansion of the deferral and variance account mechanism, the IG respectfully submits that the Board should direct IESO-NS to report on the status and outcome of the judicial review proceedings, including any resulting implications for the NB Power arrangement, as part of its quarterly reporting obligations.

CONCLUSION AND RELIEF SOUGHT

The IG submits that the Board should conclude that s. 29(4) of the *MAEA*, read with the Board's general ratemaking powers under ss. 5 and 6 of the *ERBA*, authorizes the Board to approve IESO-NS's proposed expenditure and revenue requirements and fees in whole, in part, subject to conditions, or at any different amount than proposed (including reduced), if it is just, reasonable

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[9] Transcript June 17, 2026, pages 41-42, and 44.

and necessary. It follows that the Board should set IESO-NS's 2026/27 revenue requirement, expenditures and fees at the level the Board considers, on the whole record, to be just, reasonable and necessary.

The IG also recommends the Board direct IESO-NS to report on the status of the pending judicial review application and decision in relation to the RIGS project, and any implications for the IESO-NS / NB Power contract that fall on ratepayers, in its ongoing quarterly reporting.

In addition, the IG recommends that the Board take the unresolved nature of the RIGS approval and related risks, into account in considering the governance framework for the deferral and variance mechanism.

Thank you for the opportunity to make these reply submissions.

Yours truly,

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