M12663

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF: **MORE ACCESS TO ENERGY ACT**

-and-

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

REPLY SUBMISSIONS OF THE CONSUMER ADVOCATE

August 7, 2026

The Consumer Advocate (the "CA") has reviewed the submissions filed by IESO Nova Scotia and other parties in this matter.

The CA generally agrees with and supports the submissions made by the Small Business Advocate ("SBA"), the Industrial Group ("IG"), and Port Hawkesbury Paper ("PHP") concerning IESO Nova Scotia's application. It is apparent on review that the Intervenors all have serious concerns regarding IESO Nova Scotia's application, which will need to be addressed by the Board.

The CA does not intend to address the various points raised in the submissions of the Intervenors, or in IESO Nova Scotia's closing submission, other than to note that the CA maintains its position as set out in our closing submissions, dated July 24, 2026. The CA also wishes to briefly address some of IESO Nova Scotia's submissions concerning the appropriate interpretation of s. 29 of the *More Access to Energy Act.* In particular:

- The CA does not agree that IESO Nova Scotia's not-for-profit status and public interest means the typical "regulatory company" framework does not apply in its traditional form. If anything, the lack of any shareholder who could absorb imprudent costs would support an interpretation of more Board oversight in the interests of ratepayers, not less.

- IESO Nova Scotia indicates that its not-for-profit status "creates a practical issue with respect to the potential for the Board to disallow costs." Specifically, IESO Nova Scotia suggests that the timing between IESO Nova Scotia's application and the Board's decision could result in the organization experiencing a disallowance after the costs have already been incurred. This potential outcome is something that IESO Nova Scotia could and should avoid by filing its applications in a timely manner, to ensure that the Board's consideration and approval of its revenue requirement occurs before those projected costs are incurred. Section 29(1) of the *Act* states that such an application must be filed "at least

90 days before the beginning of each fiscal year." It remains open to IESO Nova Scotia to file even earlier than that, if it wishes to mitigate the potential risk of certain costs being disapproved.

- To support its interpretation of s. 29(4), IESO Nova Scotia refers to a single decision from the Ontario Energy Board concerning a 2016 application filed by the Ontario IESO for approval of its 2016 revenue requirement, expenditures, and fees, where the Board referred a specific issue back to the Ontario IESO for further consideration. Respectfully, it is not in dispute that s. 29(4) allows the Board to impose a similar measure in reviewing an application filed pursuant to s. 29(1). However, this does not rule out the possibility of the Board also disapproving certain proposals or aspects of an application outright, if reasonable to do so. Indeed, other decisions from the OEB would suggest that the OEB does not view its authority as being so limited. Specifically, in EB-2024-0004, the OEB considered the Ontario IESO's application for an incremental increase to its approved revenue requirement. The OEB stated that while the Ontario IESO was permitted under s. 25(1) to make such an application, the "OEB's intervention to adjust fees in line with differences in the forecast of expenditures is not simply an automatic exercise." The OEB then referred to a prior decision concerning an application filed by Ontario Power Generation, which provided the following conclusion:

> However, the Board's power to consider and set what makes a just and reasonable rate is very broad and allows significant flexibility. The obligation to ensure that rates are always just and reasonable does not mean that the Board must examine and adjust a utility's rates on a constant basis. Most utility's rates are set on a forecast basis, for example, and invariably these forecasts turn out to be inaccurate to some extent. Absent extraordinary circumstances, the Board does not intervene to adjust rates simply because actual costs or revenues are different from what was forecast – even though the Board has the power to do so. In other words, there is a measure of "wiggle room" in a just and reasonable rate. (Referenced in *Enbridge Gas Inc v. Ontario Energy Board*, 2020 ONSC 3616 (Divisional Court).)

While the Board did not directly consider the scope of its authority pursuant to s. 25(4) of the Ontario *Electricity Act*, this reference would suggest that the OEB views its authority over approval of rates for the Ontario IESO as being more in line with its approach to other regulated utilities, and therefore would allow the OEB, in certain circumstances, to either approve such an adjustment, or deny it.

The Consumer Advocate thanks the Board for the opportunity to provide these reply submissions.

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Michael Murphy on behalf of
Consumer Advocate