Nova Scotia Energy Board

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Dear Ms. Murray:

M12499 – Nova Scotia Power Inc. – Application for Approval of 2025/26 Time Varying Pricing Tariffs

Nova Scotia Power Inc. applied on October 1, 2025, to extend the Time Varying Pricing (TVP) Tariffs, effective November 1, 2025.

The Board panel considering this matter is comprised of Roland A. Deveau, K.C., Vice Chair; Richard J. Melanson, LL.B., Member; and Steven M. Murphy, MBA, P.Eng., Member.

This year's TVP application was delayed due to the cybersecurity incident that NS Power incurred in the spring of this year. The cybersecurity breach has impacted NS Power's ability to extract data from its systems to analyze its customers' energy usage under the tariffs.

NS Power stated that the impact of the cyber incident prevents it from proceeding with standard TVP billing and critical peak event notifications, due to unresolved system limitations such as interval meter data retrieval impacting on-peak, off-peak, and critical peak event rates for billing purposes; customer notification systems for critical peak events; and customer-facing tools, limiting their customers' ability to monitor their response to winter peak periods.

Given the operational and system constraints, NS Power identified two options for the 2025/26 TVP Season:

> Option A – maintain TVP Tariffs with suspended on-peak and critical peak event billing; or
>
> Option B – fully pause the TVP program and revert participants to the standard offer tariffs.

NS Power indicated that Option B would present significant risk to the long-term viability of the TVP program. It added that reverting customers to the standard offer tariffs would require substantial administrative effort before the upcoming season and require re-enrollment in the TVP program for future seasons, disrupting the customer experience. NS Power said this "would undermine the continuity and credibility of the TVP pilot and risk losing the momentum built over the past four years".

NS Power submits that Option A is the only "viable path forward" because it "preserves customer enrollment, supports longer-term continuity of the TVP program, and minimizes disruption for customers".

Due to the delay in filing its TVP application, NS Power requested an expedited process to consider this matter so that TVP rates can be in effect by November 1, 2025. NS Power did not explain why it failed to bring this matter earlier to the Board's attention. The Board recognized that any delay in implementing tariffs by November 1, 2025, would remove the availability of TVP tariffs for customers, at least in short term. Accordingly, the Board issued a letter on October 7, 2025, seeking comments from interested parties about NS Power's application, including Option A, Option B and any other options the interested parties may wish to propose to the Board. Written submissions were filed by the Consumer Advocate, Small Business Advocate, the Department of Energy, and Synapse Energy Economics, Inc., the Board Counsel's Consultant, on October 17, 2025. Reply submissions from NS Power were filed on October 22, 2025.

FINDINGS

The Board shares the same concerns identified by the parties in their submissions. TVP programs are designed to incent different customer electricity usage to benefit the system by shifting load and deferring or eliminating significant capital costs by delaying infrastructure spending for extra energy capacity. If price signals do not exist to change energy usage when NS Power's system is down, there is no benefit to the system. Further, a TVP program should be revenue-neutral. If the TVP Tariffs proposed by NS Power were adopted, revenues would be lost to the system and may ultimately have to be recovered from other ratepayers. The Consumer Advocate's consultant estimated this revenue shortfall as up to $500,000.

The Board is also concerned that NS Power's proposal for TVP Tariffs would offend an important tenet of the *Public Utilities Act,* RSNS 1989, c 30 *(PUA)*, and sound rate design, i.e., that customers receiving the same service should pay the same rate for that service. Section 67 of the *Act* requires that "[a]ll tolls, rates and charges shall always, under substantially similar circumstances and conditions in respect of service of the same description, be charged equally to all persons and at the same rate…"

The Nova Scotia Court of Appeal considered the meaning of s. 67 of the *PUA* in the context of low-income rate affordability in *Dalhousie Legal Aid Service* v *Nova Scotia Power Inc.*, 2006 NSCA 74 (leave to appeal to the Supreme Court of Canada denied, January 18, 2007). The Board's ability to factor in affordability by setting rates that are different for the same service was clearly rejected by the Court of Appeal in that case:

> [23] DLA's factum said that low income customers do not have "substantially similar circumstances" to higher income customers. So, different rates would not be barred by s. 67(1). At the appeal hearing DLA's counsel retreated somewhat from this submission.
>
> [24] With respect, the factum's submission misinterprets s. 67(1). The provision refers to "substantially similar circumstances and conditions ***in respect of service of the same description***." To justify a rate difference, the relevant dissimilarity is not in customers' incomes. It is in the service from NSP. The Board accepted,

> and there is no basis to question, that NSP provides substantially similar electrical service whatever the domestic customer's income.
>
> [25] Section 67(1) is mandatory. The rates and charges "shall always . . . be charged equally" to persons of similar circumstances and conditions in respect of service. The statute does not endow the Board with discretion to consider the social justice of reduced rates for low income customers. It is not for the Board or this court to read into s. 67(1) the words:
>
>> …similar circumstances and conditions in respect of ***the income level of customers and*** service of the same description, …[Emphasis in original]
>
> It is for the Legislature to decide whether to expand the Board's purview with the italicized words.

In *Dalhousie Legal Aid*, the Nova Scotia Court of Appeal was also clear there was no latitude for an alternative interpretation:

> [39] Section 67(1) is not ambiguous: "rates . . . shall always . . . be charged equally to all persons and at the same rate" in substantially similar "circumstances and conditions in respect of service of the same description". The Board cannot reduce the rate to a low income customer who receives the same service as a high income customer. There is no latitude for the interpretive presumption.

Similarly, in the present instance, customers who receive the same service should be subject to the same tariff rate.

It might be argued that the TVP program is a pilot, and the proposed tariffs are only expected to apply in the short term. However, any loss of revenue is a loss to the utility's revenue requirement that is not recouped elsewhere. The non-participants may have to subsidize the TVP program participants. Further, while the TVP is currently a pilot, there is no net benefit to ratepayers as a whole because any losses are not offset by gains elsewhere. Moreover, while the TVP program is effectively suspended, no load shifting can occur and, under NS Power's proposal, customers would be paying different rates but receiving the same service as customers under the standard tariffs.

The issue of a pilot and the application of s. 67 was recently considered in a request to approve a proposed pilot program to waive interest charges for customers in arrears who receive financial support from charitable organizations (M12171). After canvassing *Dalhousie Legal Aid*, the Board concluded that, in the circumstances of the proposed pilot, there was a distinction between setting rates and collection procedures. It stated that, when an account goes into arrears, there are cost-benefit considerations, such that both collection costs and disconnection costs need to be considered. The Board noted that the potential lost revenue from that pilot program was estimated at $20,000, which was miniscule when considering NS Power's overall revenue requirements. It further noted that the amount may even become "less significant considering potential reductions in collection and disconnection costs and uncollectable debt write-offs. Theoretically, the pilot program could result in overall cost savings". The Board approved the pilot on that basis. The circumstances in the present matter are distinguishable. The potential lost revenues to the system could be as much as $500,000, as estimated by the Consumer Advocate's consultant and would not be offset by other considerations. Further, NS Power was unable to confirm that it would not seek to recover those costs in the future, simply stating that it is "not <u>currently</u> intending to pursue recovery of any lost revenue" [Emphasis added], but should that change it noted that any future application for recovery of the lost funds would be subject to stakeholder participation and Board approval. The Board considers that such an eventuality can be avoided, while maintaining the continuity of the TVP program.

Further, the Board does not accept NS Power's view that TVP participants must necessarily leave the TVP program if the proposed TVP Tariffs incorporate standard offer rates while the program does not have access to system functionality. NS Power said this would require participants to re-enroll in the TVP program when system functionality resumes. First, there is no requirement for participants to leave the TVP program so long as a TVP Tariff is available, even if that tariff rate is equal to the Domestic Service Tariff rate or other applicable standard rate approved by the Board for that customer class. The Board does not accept NS Power's assertion that a TVP customer is removed from the program and must later enroll again simply because the Utility changes the rate code in its internal billing system while system functionality is down. Second, the Board considers that there is no incentive for TVP participants to revert to their Domestic Service or other standard offer tariff if it is identical to the TVP Tariff rate because they would be paying the same in either case. It does not seem reasonable to the Board that participants in that situation would temporarily leave the TVP program when they can remain in the program and pay the same as they otherwise would but be ready to resume traditional TVP Tariffs when system functionality returns in a relatively short period, expected in 2026.

The Board is mindful of NS Power's submissions that changes to Option A would require administrative effort. However, while the proposal put forward by NS Power did receive qualified support from the Consumer Advocate and Synapse, the Board is not satisfied that NS Power responded to the concerns of the interested parties who provided comments on this application. In the absence of load shifting while system functionality is suspended, the Board concludes that NS Power's proposal offends the requirement under the *Public Utilities Act* that ratepayers who receive the same service must pay the same rate. Further, any revenue requirement deficiency resulting from the Utility's Option A potentially imposes a risk that it will have to be recovered from ratepayers who are non-participants in the program.

The Board concludes that the continuity of the TVP program can be maintained without adopting the proposal put forward by NS Power in Option A. A revised option would temporarily reduce the higher rate paid by some participants in the TVP program. In particular, as noted by Synapse, the Time of Use (TOU) off-peak rates for the Small General and General Service customers are higher than the standard offer rates, but NS Power proposed that they remain higher during the suspended program and they would not be subject to on-peak pricing. The Board considers that the off-peak rate for these customers should be lowered to equal the standard rate during the suspended program. The Board would not expect these customers to be disappointed with this temporary measure.

Further, the Board agrees with the concerns of Synapse and others who questioned why TVP rates should be unavailable until March 31, 2026, if system functionality is restored before that date, as NS Power proposed. Synapse recommended that NS Power give 30 days' notice to TOU customers that the normal TVP off-peak and on-peak rates would apply if system functionality resumes before March 31, 2026. Synapse also stated that maintaining General Critical Peak Pricing (CPP) customers on the TVP CPP Tariff should not require notice to be given after system functionality is restored, at least, in the Board's view, not to the extent proposed by NS Power. As Synapse noted, this would restore "valuable load shifting in the remaining months of the 2025/26 TVP season", which would benefit the system earlier than what is proposed by NS Power. Further, TVP customers would return earlier to the reinstated program.

Obviously, the messaging to TVP participants is important regardless of the option approved by the Board. It is important to convey to TVP participants that NS Power and all interested parties recognize the importance of the TVP program and the goal is to minimize any disruption to the extent possible during the interruption caused by the cybersecurity breach. Moreover, a key message is to confirm that participants do not have to do anything to re-enroll in the TVP program when system functionality is restored. At that point, they will be advised that the TVP Tariffs will resume and the program will continue.

Based on the above, the Board makes the following findings and directs NS Power to amend the respective Tariffs, as follows:

- With respect to the TVP TOU and CPP Tariffs, all rates for off-peak and on-peak, winter and non-winter periods, shall be amended to be the same as the standard offer rates (as may be amended by the Board from time to time) for the applicable class while system functionality is not available. These are effective November 1, 2025, unless otherwise indicated below.
- NS Power shall provide notification to all TVP customers once system functionality is restored, at which point all approved TVP rates will be restored, subject to the notification requirements described below for the respective tariffs when system functionality resumes.

Domestic TOU

Synapse confirmed that the off-peak Domestic TOU rate is the same as the applicable standard rate for that customer class. About 67% of the 8,000 customers in the TVP pilot are enrolled in the Domestic TOU Tariff.

- NS Power is to amend the Domestic TOU Tariff so that NS Power will provide 15 days' notice to customers that on-peak and off-peak rates will resume if NS Power's systems are fully restored by February 15, 2026 (which would leave about 30 days remaining in the TVP winter period).

Domestic CPP

The Board notes that the Domestic CPP customers' rate outside of critical peak events is substantially lower than the standard Domestic rate, and leaving these customers at the lower rate will result in lost revenue requirement from the TVP program. The Board agrees with a modification to Synapse's recommendation as to notice.

- The Board directs that this rate be amended to the standard Domestic offer rate, effective December 1, 2025 (so that notice can be given to these customers of the increased rate).

- The Board agrees with Synapse that 30 days' notice is not required of a resumption of the CPP program. Thus, the off-peak and on-peak CPP rates will resume immediately once system functionality is restored, with NS Power's ability to call CPP events at that time. NS Power is to advise customers and the Board once system functionality is restored, with a 15-day grace period given to customers for calling CPP events.

Small General and General Service TOU

The TOU off-peak rates for the Small General and General Service customers are higher than the respective standard offer rates for these classes. NS Power proposed leaving these customers at the higher rates during the suspended TVP program.

- NS Power is to amend the TOU Tariff so that NS Power will provide 15 days' notice to customers that on-peak and off-peak rates will resume if NS Power's systems are fully restored by February 15, 2026 (which would leave about 30 days remaining in the TVP winter period).

Small General and General Service CPP

Like the Domestic CPP Tariffs, under NS Power's proposal, the Small General and General Service CPP customers would have a lower off-peak CPP rate than the standard offer rates.

- The Board directs that the same amendments be made to these CPP Tariffs as were made to the Domestic CPP Tariff, *mutatis mutandis*.

Multi-Unit Residential Building (MURB) TOU

The Board is satisfied that there are no changes required to this Tariff since NS Power was able to implement manual processes to continue the program for that sector.

The Board will issue its Order approving the 2025/26 TVP Tariffs upon receipt of a satisfactory compliance filing.

Finally, NS Power indicated in its letter of October 1, 2025, that it expects that the systems required to finalize its Year Four Evaluation Report (covering the TVP season ending March 31, 2025), will be available by year end. NS Power stated it would provide a further update to the Board on its evaluation process by December 31, 2025. The Board so directs.

Yours truly,

Roland A. Deveau, K.C.
Vice Chair

Richard J. Melanson, LL.B.
Member

Steven M. Murphy, MBA, P.Eng.
Member

c. William Mahody, K.C., Board Counsel
Interested Parties M11822 and M12499

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