James R. Gogan
Direct +1 (902) 563 5920
james.gogan@mcinnescooper.com

1969 Upper Water Street, Suite 1300
Halifax, Nova Scotia
Canada B3J 3R7
Tel +1 (902) 425-6500 | Fax +1 (902) 425-6350

Our File: 238984

June 16, 2026

Nova Scotia Energy Board
1601 Lower Water St., 3rd Floor
Halifax, NS B3J 3P6

Attention: Crystal Henwood, Clerk of the Board

Dear Ms. Henwood:

Re: M12780 Application by EfficiencyOne for approval of the 2027-2031 Demand-Side Management ("DSM") Purchase Agreement between EfficiencyOne and Nova Scotia Power Incorporated, the establishment of a final agreement between the parties, and approval of a 2027-2031 DSM Resource Plan - E1 Response to Board Letter Regarding NSEB IR 17, Attachment 2, Mercer Compensation Review ("Mercer Report")

This letter is filed on behalf of EfficiencyOne ("**E1**") in response to the Nova Scotia Energy Board (the "**Board**") letter dated June 10, 2026 (the "Board Letter"). For the reasons set out below, E1 respectfully submits that the Mercer Report should remain Board Confidential, and that this outcome is consistent with the applicable legal framework under Rule 12 of the *Board Regulatory Rules* and the Sierra Club two-part test, properly applied to the materially different circumstances of this proceeding as compared to Matter M10431.

The Board raises a concern about the NSEB IR 17, Attachment 2, Mercer Compensation Review ("**Mercer Report**") which E1 filed as Board Only - Confidential. The Board notes that it previously canvased the issue of a Board Only - Confidential filing in the context of executive compensation in NS Power's 2022 General Rate Application, Matter M10431 (the "**M10431 Decision**"), where it held as follows:

> …the public interest outweighs NS Power's arguments for keeping the information "Board Confidential", including the executive team's reasonable expectation of privacy. In this instance, the Board has weighed those privacy concerns and finds that they are satisfactorily addressed by retaining the "General Confidential" nature of the Mercer Reports and only allowing access by the Intervenors who have signed a Confidentiality Undertaking.

The Board requests that E1 explain why the Board should not follow the same rationales discussed in the M10431 Decision in this case.

Consideration of M10431

E1 maintains its position that the Mercer Report qualifies for Board Confidential treatment under Rule 12 of the *Board Regulatory Rules*. First, the Mercer Report contains sensitive compensation data from which the remuneration of specific, identifiable individuals can be ascertained. Disclosure of this information – even on a General Confidential basis to Intervenors – would constitute a breach of the reasonable privacy expectations of those individuals and expose E1 to serious competitive harm in the recruitment and retention of qualified personnel. Second, this material constitutes sensitive commercial and financial information within the meaning of Rule 12(2), the disclosure of which could reasonably be expected to cause material harm to E1's competitive position in the labour market and to its ability to attract and retain the specialized workforce necessary to deliver its DSM mandate.

At the same time, E1 also recognizes the public interest in open and accessible regulatory proceedings.

E1 acknowledges the need to weigh the public interest against its reasons for confidentiality. However, the weighing of the two concerns is different in the present case, such that the Board should not strictly follow the same rationales discussed in the M10431 Decision.

(a) No Demonstrated Public Concern

First, in the present matter, the concern regarding the public interest has not been demonstrated to the same degree as in the M10431 Decision. Intervenors have the ability to file an objection to a request for confidentiality. Subsections 12(5) & (6) of the *Board Regulatory Rules* state:

> **(5)** Where a party has made a request under Rule 12(2), the document shall be held in confidence unless the Board orders otherwise.
>
> **(6)** A party may object to a request for confidentiality by filing an objection and serving the objection on the parties.

The M10431 Decision arose in the context of a motion by multiple intervenors - specifically, the Consumer Advocate, the Nova Scotia Department of Natural Resources and Renewables, and the Industrial Group/Dalhousie University – who each filed formal objections under Rule 12(6) and made detailed submissions on why disclosure was in the public interest under Rule 12(7). In the present proceeding, no intervenor has filed a comparable objection, despite having received notice of E1's confidentiality claim over two weeks ago. The absence of any formal objection is a meaningful indicator that parties representing the public interest do not consider broader disclosure of the Mercer Report to be required in these circumstances.

(b) Absence of Legislative Concern

Second, significant legislation weighing in favour of disclosing executive compensation information in the M10431 Decision does not apply in the present case. In the M10431 Decision, the Board's finding that the public interest outweighed NS Power's confidentiality arguments was materially informed by the detailed statutory and regulatory obligations imposed on NS Power under s. 64B of the *Public Utilities Act*, and by the fact that executive compensation was a live issue expressly included in the Final Issues List for the 2022 GRA. Those obligations are entirely absent in the context of the present proceeding.

As referenced by the Board in pages 4 – 5 of the M10431 Decision, under section 46B of the *Public Utilities Act*, NS Power is subject to specific obligations with respect to disclosure of information regarding executive compensation. There are no similar provisions which apply to E1 as the DSM franchise holder. In fact, section 2(1) of the *Nova Scotia Power Incorporated Regulations*, referenced by the Board in the M10431 Decision, states as follows:

> In the Act, “general rate increase” does not include increases arising from the fuel adjustment mechanism, demand side management cost recovery riders or the special annually adjusted rates.

This provision specifically and clearly excludes “increases arising from […] demand side management cost recovery riders” from the term “general rate increase”, which is the term which triggers the disclosure of the executive employee compensation report in section 64B(2) of the *Public Utilities Act*. The Legislature specifically chose *not* to apply the same executive compensation disclosure obligations with regard to DSM as for NS Power’s main general rate applications.

NS Power operates as a fully regulated monopoly utility: the entirety of its operations, revenues, and costs – including executive compensation – fall within the Board's regulatory jurisdiction and are recovered exclusively from ratepayers. By contrast, only a portion of E1's operations constitutes a regulated utility activity. E1 carries out both regulated DSM program delivery and non-regulated activities, and it maintains a single integrated staff structure that serves both functions. The costs attributable to E1's regulated and non-regulated activities are apportioned through a Board-approved cost allocation model. The compensation information contained in the Mercer Report accordingly relates to employees whose time and remuneration are only partially recovered from ratepayers – and only to the extent allocated to regulated operations under that model, where the connection between any individual's compensation and the rates paid by ratepayers is indirect, partial, and already subject to allocation oversight by the Board.

(c) Different Weighing under the *Sierra Club* Test

As the Board noted in the M10431 Decision, Rule 12 of the *Board Regulatory Rules* effectively codifies the criteria set out by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (“***Sierra Club***”). Those criteria require the Board to consider: (a) whether such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonably alternative measures will not prevent the risk; and (b) whether the salutary effects of the confidentiality order outweigh its deleterious effects, including the effects on the public interest in open and accessible proceedings.

E1 submits that both prongs of the *Sierra Club* test are satisfied in the present case. With respect to the first prong, the Mercer Report contains sensitive compensation data relating to identifiable individuals. Disclosure of this information, even on a General Confidential basis, would reveal the specific compensation of named executives and expose E1 to competitive harm in recruiting and retaining talent. This constitutes a serious risk to an important commercial interest. With respect to the second prong, the salutary effects of maintaining Board Confidential treatment — protecting individual privacy and E1's commercial interests — outweigh the deleterious effects in the circumstances of this case. As outlined above, the public interest in broader disclosure is substantially lower than it was in the M10431 Decision, based on four material grounds: (i) no intervenor has filed a formal objection to E1's confidentiality claim under Rule 12(6), meaning there is no demonstrated public concern before the Board; (ii) executive compensation is not a live issue on the Issues List in the same manner as it was in the 2022 GRA; (iii) the legislative framework imposing executive compensation disclosure obligations on NS Power in a GRA does not apply to E1 in this DSM proceeding; and (iv) the compensation in question in this matter relates to compensation paid for by both regulated and non-regulated activities. Taking these distinctions together, the demonstrated public concern is materially lower in the present case than it was in the M10431 Decision. In these circumstances, E1 submits that the *Sierra Club* test weighs in favour of protecting E1's sensitive compensation data from disclosure and protecting the privacy of identifiable individuals.

Alternative Position: Redacted Intervenor-Confidential Version

Without prejudice to E1's primary position that the Mercer Report should remain Board Confidential, and in the alternative, E1 proposes production of a redacted version of the Mercer Report on an Intervenor-Only Confidential basis, with the redacted portions remaining Board-Only Confidential.

The Mercer Report was prepared in order to review market competitiveness of E1's workforce. It benchmarks and analyzes E1's compensation practices against those of similar organizations in comparable industries. E1 proposes to produce a version of the Mercer Report that includes the benchmark comparisons and overall conclusions, but with all specific quantifications relevant to salary values attributable to E1 specifically redacted. Those redacted figures would remain Board-Only Confidential. This approach allows the Intervenors to obtain the main information for which the Mercer Report was drafted (market benchmarks and analysis). E1 submits this information is the relevant portion of the report for the purposes of assessing E1's ability to appropriately carry out its proposed DSM plan. The specific salary values – disclosure of which poses significant privacy and commercial risk – would remain Board-Only Confidential. E1 submits that this alternative approach appropriately balances the public interest in accessible regulatory proceedings against the privacy and commercial interests at stake and should be considered by the Board in the event it does not grant E1's primary request.

Requested Relief

E1 respectfully requests that the Board issue an order pursuant to Rule 12(11)(a) of the *Board Regulatory Rules* that the Mercer Report be held in confidence by the Board. For the reasons set out above, E1 submits that this relief is warranted under the *Sierra Club* test as codified in Rule 12(10), satisfies the confidentiality requirements applicable in this proceeding, and is appropriately distinguished from the Board's prior decision in M10431 on four material grounds. Maintaining strict Board Confidential treatment protects the privacy of identifiable individuals and E1's legitimate commercial interests, while the public interest in broader disclosure in the specific circumstances of this DSM proceeding does not reach the threshold established in M10431.

Respectfully,

James R. Gogan