

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF: The *Public Utilities Act*, RSNS 1989, c 380, as amended

– and –

IN THE MATTER OF: An Application by EfficiencyOne for Approval of the 2027–2031 Demand-Side Management (DSM) Purchase Agreement between EfficiencyOne and Nova Scotia Power Inc., the establishment of a final agreement between the parties, and approval of a 2027–2031 Demand Side Management (DSM) Resource Plan

**CLOSING STATEMENT
OF EAST COAST ENVIRONMENTAL LAW**

Thank you for the opportunity to submit this closing statement by East Coast Environmental Law (“ECEL”).

ECEL is largely supportive of the Application by EfficiencyOne (“E1”), but it has two significant reservations.

ECEL’s first reservation is that the Application prioritizes short-term affordability over long-term affordability and proposes unnecessarily low levels of demand-side management (“DSM”) spending over the 2027-2031 DSM Plan period. E1’s evidence suggests that DSM Advisory Group discussions, to which ECEL is not privy, persuaded E1 that the current affordability crisis should be met with frozen levels of DSM spending over the next five years. E1 has not demonstrated that this is a necessary or prudent response to the situation, and we are concerned by the lack of evidence supporting E1’s position in this regard. We are likewise concerned by the apparent assumption that the current affordability crisis will have been resolved in time for future DSM plans to reinvigorate efforts to realize Nova Scotia’s full DSM potential, or that similar crises will not present new barriers to future plans. With respect, this is simply kicking the can down the road with no guarantee that the situation will have improved in five years’ time.

ECEL’s second reservation is with the Application’s treatment of strategic electrification opportunities. For the reasons described below, we are concerned that E1 has not fully explored its options or exhausted its opportunities to identify strategic electrification activities that could be included in the 2027-2031 DSM Plan, and we are not convinced that E1’s plans for ongoing innovation activities and assessments during the proposed Annual Adjustment Process and Mid-Term Check-In will fully address the problem.

Recognizing the procedural delays and costs that E1 and other stakeholders would face if the Board were to withhold approval of this Application, ECEL is reluctant to argue that the Application should not be approved. At the same time, we are of the view that approving the

1 Application as it stands would lead to five years of inadequate DSM investments and could also
2 result in missed opportunities to advance strategic electrification. E1’s evidence states expressly
3 that its proposed Mid-Term Check-In would “not constitute a full plan reopening or amendment
4 process”, nor would it “alter E1’s approved performance targets or total spending authority”.¹ E1
5 is proposing to set a firm course now, which will last for years to come. As regards strategic
6 electrification in particular, approving the current Application would mean that if the Board were
7 to clarify that E1 has misunderstood the *PUA*’s strategic electrification requirements—as we
8 respectfully submit it should—there would be limited options for E1 to act on that clarification,
9 because there would be no approved budget for strategic electrification activities, and no
10 opportunity built into the process to apply for a budget increase. For these reasons, we
11 respectfully submit that some reconsideration is necessary before a 2027-2031 DSM Plan is
12 approved.

13
14 This closing statement also takes the opportunity to address a recommendation made by the
15 Brattle Group (“Brattle”) in the expert report that Nova Scotia Power Incorporated (“NSPI”)
16 filed in this matter: specifically, the recommendation that E1’s proposed Solar PV Program not
17 be approved as a component of the 2027-2031 DSM Plan. For the reasons described below, we
18 disagree with Brattle’s interpretation of the applicable requirements of the *Public Utilities Act*
19 (“*PUA*”), and we respectfully submit that adopting Brattle’s interpretation would have far-
20 reaching implications for the assessment of low-income and equity measures and programs
21 proposed in future DSM plan applications

22 23 **Strategic Electrification**

24
25 Clause 79A(b)(iv) of the *PUA* includes within the Act’s definition of DSM, “strategic
26 electrification of energy end uses currently powered by fossil fuels in a manner that reduces
27 overall greenhouse gas emissions and electricity costs”.

28
29 In the Board’s decision in M12282, EfficiencyOne’s application for approval of a new benefit-
30 cost analysis test for evaluating DSM plans (“M12282”), the Board notes repeatedly that clause
31 79A(b)(iv) requires reductions in both greenhouse gas (“GHG”) emissions and electricity costs.²
32 E1’s current Application to the Board raises the question of whether the electricity cost
33 reductions required by clause 79A(b)(iv) are to be evaluated by assessing the cost-effectiveness
34 of strategic electrification activities separately from the cost effectiveness of other DSM
35 activities proposed for inclusion in a DSM plan, or, alternatively, whether the electricity cost
36 reductions required by clause 79A(b)(iv) are the overall electricity cost reductions that the *PUA*
37 requires from a DSM plan on the whole. Evidence and information requests filed in this matter
38 reflect differing positions on what the *PUA* requires in this regard. In our respectful submission,
39 clarification from the Board is necessary to ensure that the *PUA*’s requirements are understood.

40
41 In its decision in M12282, the Board canvassed the principles of statutory interpretation to which
42 it must adhere.³ First among these is the “modern principle”, which requires the words of a
43 statute to be read “in their entire context and in their grammatical and ordinary sense

¹ Exhibit E-1, page 65 of 71.

² *EfficiencyOne (Re)*, 2025 NSEB 18 (CanLII), paras 163 and 218 [“M12282 Decision”].

³ *Ibid* at paras 74-77.

1 harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”
2 (or, in the context of provincial legislation, the Legislature).⁴ Quoting the Supreme Court of
3 Canada’s decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65,
4 the Board noted:

5
6 The administrative decision maker’s task is to interpret the contested provision in a
7 manner consistent with the text, context and purpose, applying its particular insight into
8 the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior—
9 albeit plausible—merely because the interpretation in question appears to be available
10 and is expedient. The decision maker’s responsibility is to discern meaning and
11 legislative intent, not to “reverse engineer” a desired outcome.⁵
12

13 The record in this Matter proposes at least two very different and consequential interpretations of
14 how the *PUA* characterizes strategic electrification in relation to DSM.
15

16 The first interpretation is that because clause 79A(b)(iv) refers specifically to reduction of
17 electricity costs while the other clauses listed under subsection 79A(b) do not, the Legislature
18 intended to uniquely limit the strategic electrification activities that may be included in DSM
19 plans. Whereas subsection 79H(2) requires the cost-effectiveness of other DSM activities to be
20 evaluated at the portfolio level, the Act requires the cost-effectiveness of strategic electrification
21 activities to be evaluated insularly, separate from the aggregate contemplated by subsection
22 79H(2). If a strategic electrification measure or program, evaluated on its own, would not reduce
23 electricity costs for NSPI customers, then it is outside the scope of the Act’s definition of DSM
24 and is not a permissible DSM activity. This appears to be E1’s interpretation of strategic
25 electrification requirements under the *PUA*.
26

27 The second interpretation is one that the Board itself suggested in its decision in M12282. Under
28 this interpretation, clause 79A(b)(iv) refers specifically to reduction of electricity costs because
29 strategic electrification “is somewhat different in nature from the other activities identified in s.
30 79A(b)”, and the reference ensures that strategic electrification activities “are also aimed at the
31 same purpose as the others: reducing electricity costs for customers”.⁶ Under this view, the
32 reference to reduction of electricity costs does not impose a unique requirement to evaluate the
33 cost-effectiveness of strategic electrification measures and programs insularly, separate from the
34 aggregate contemplated by subsection 79H(2). Rather, it is simply a reiteration, for greater
35 certainty, of a fundamental requirement that the Board has identified in other provisions of the
36 *PUA*: namely, that DSM activities be undertaken in an effort to reduce electricity costs for
37 customers.
38

39 E1’s Application indicates that adopting the first of these interpretations severely restricts its
40 ability to include strategic electrification measures or programs in the 2027-2031 DSM Plan, in
41 fact making it impossible to include cost-effective strategic electrification activities at this time.
42 While it appears that E1 may not have fully explored its options or exhausted its opportunities in
43 this regard (a concern we discuss below), we accept that E1’s analyses to date have demonstrated

⁴ *Ibid* at para 74, quoting *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 117.

⁵ *Ibid* at para 75, quoting *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 121.

⁶ *Ibid* at para 114.

1 a serious problem with the insular cost-effectiveness interpretation of the strategic electrification
2 requirements under the *PUA*. This interpretation appears to run contrary to the legislative intent
3 that introduced strategic electrification as a potential DSM activity. While it is reasonable to
4 interpret the *PUA* as setting certain limits on strategic electrification activities to ensure they
5 accord with the broader scheme and purpose of the DSM regime, any interpretation of clause
6 79A(b)(iv) that makes strategic electrification activities impossible or unrealistic should be
7 rejected as an implausible or inferior interpretation of the provision.

8
9 Notably, the current version of clause 79A(b)(iv) was established through the *Energy Reform*
10 (*2024 Act*, SNS 2024, c 2: a transformative piece of legislation that was designed part to align
11 the management and regulation of Nova Scotia's electricity system with the sustainable
12 development and sustainable prosperity goals of the *Environment Act*, SNS 1994-95, c 1, and the
13 *Environmental Goals and Climate Change Reduction Act*, SNS 2021, c 20 ("*EGCCRA*"),
14 respectively. As the language of clause 79A(b)(iv) makes clear, strategic electrification was
15 added as a potential DSM activity with the intention of supporting decarbonization and climate
16 change mitigation within the province: the provision is designed specifically to support the
17 strategic electrification of "energy end uses currently powered by fossil fuels", with the goal of
18 reducing the GHG emissions caused by those fossil-fueled activities. This intention reflects the
19 Legislature's express recognition in *EGCCRA* that climate change is "a global emergency
20 requiring urgent action",⁷ and it aims to support the achievement of the Legislature's ambitious
21 GHG emissions reduction targets.⁸ Any interpretation of clause 79A(b)(iv) that would stymie this
22 legislative intent and make its realization impossible should be rejected as implausible or
23 inferior, and preference should be given to an interpretation that supports forward momentum on
24 strategic electrification within the province.

25
26 For all of these reasons, ECEL respectfully requests that the Board clarify its interpretation of
27 strategic electrification requirements under the *PUA* and, in doing so, reject the insular cost-
28 effectiveness interpretation. In our submission, the Board should prefer an interpretation that
29 enables strategic electrification activities to be advanced as justified components of a DSM plan
30 that is cost-effective in the aggregate, even when those activities would not be independently
31 cost-effective if evaluated on their own.

32
33 If the Board accepts that strategic electrification activities may be justifiable components of a
34 DSM plan that is cost-effective in the aggregate, ECEL respectfully requests that the Board
35 direct E1 to reconsider the measures and programs it modelled and file an updated Application
36 with the Board.

37
38 If the Board does not accept that strategic electrification activities may be justifiable components
39 of a DSM plan that is cost-effective in the aggregate, we would instead ask the Board to consider
40 the following concerns and argument in the alternative.

41
42 If the insular cost-effectiveness interpretation is cemented, it will be important for stakeholders
43 and the Board to know that E1 has fully explored its options and exhausted its opportunities to

⁷ *Environmental Goals and Climate Change Reduction Act*, SNS 2021, c 20, s. 4(c).

⁸ Those targets are set out in *EGCCRA*, with the 2030 target being a reduction of 53% below 2005 levels and the 2050 target being net zero: see *ibid* at ss. 6(a)-(b).

1 propose cost-effective strategic electrification measures under that framework. Knowing if it is
2 truly impossible to pursue strategic electrification measures that are independently cost-effective
3 would equip E1 and other stakeholders to consider legislative amendments that might be
4 necessary to enable strategic electrification DSM activities under the *PUA*.

5
6 The record in this Matter indicates that E1 may not have fully explored its options and exhausted
7 its opportunities to propose cost-effective strategic electrification measures under the insular
8 cost-effectiveness interpretation of clause 79A(b)(iv).

9
10 Notably, although the Board's decision in M12282 directed E1 to assess the cost-effectiveness of
11 strategic electrification activities using a modified Program Administrator Cost ("PAC") test, the
12 Board also emphasized that it was directing the use of that test "[i]n the absence of an
13 alternative", and the Board expressly left it "open to E1 to propose another approach when filing
14 its 2027-2031 DSM Plan for approval", provided that any proposed alternative accord with the
15 Board's findings on the statutory requirements for cost-effectiveness testing for DSM.⁹ E1's
16 Application provides no indication that E1 considered any alternatives to the modified PAC test
17 in the period between the release of the Board's decision in M12282 and the filing of the
18 proposed 2027-2031 DSM Plan. During the hearing of this Matter, Ms. Thompson confirmed on
19 behalf of E1 under cross examination that E1 did not consider any alternatives to the modified
20 PAC test in the period between the release of the Board's decision in M12282 and the filing of
21 the proposed 2027-2031 DSM Plan, noting simply that E1 agreed with the Board's decision.

22
23 With respect, the Board's decision in M12282 clearly implies that it was regrettable that E1 was
24 not to prepared to facilitate a more robust discussion about appropriate cost-effectiveness testing
25 for strategic electrification activities, and it recognizes that E1 was, at the time, still in the
26 process of exploring "how to demonstrate reductions in electricity costs resulting from strategic
27 electrification" and had not yet completed its work in that regard.¹⁰ It was in this context that the
28 Board expressly left it open to E1 to propose a suitable alternative to the modified PAC test for
29 the cost-effectiveness testing of strategic electrification activities. The Board did not find that the
30 modified PAC test was the best or only option for evaluating the cost-effectiveness of strategic
31 electrification activities, but E1 appears to be assuming this is the case.

32
33 We recognize that E1 had limited time between the release of the Board's decision in M12282
34 and the filing of this Application to develop a proposed new cost-effectiveness test for strategic
35 electrification activities, but we are concerned that E1's testimony during the hearing of this
36 Matter indicates that E1 does not intend to explore other options for suitable cost-effectiveness
37 testing and has instead decided to accept what it understands to be a strict limitation imposed by
38 the Board.

39
40 To equip E1 and other stakeholders to consider legislative amendments that might be necessary
41 to enable strategic electrification DSM activities under the *PUA*, ECEL respectfully requests that
42 if the Board adopts the insular cost-effectiveness interpretation of clause 79A(b)(iv), the Board
43 direct E1 to fully explore its options and exhaust its opportunities to propose cost-effective
44 strategic electrification measures under that framework.

⁹ M12282 Decision, *supra* note 2 at paras 162-63.

¹⁰ *Ibid* at para 162.

1 **The Proposed Solar PV Program**

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3 E1’s Application includes a proposed residential solar PV program designed specifically for
4 Mi’kmaw communities in the province (“Solar PV Program”). The Application characterizes
5 customer-sited solar PV as falling “squarely within” the *PUA*’s definition of DSM, and it points
6 specifically to clause 79A(b)(v) of the Act, which refers to “the delivery of a reduction in the
7 amount of electrical energy or capacity that Nova Scotia Power Incorporated would otherwise be
8 required to supply to its customers”.¹¹

9
10 In response to E1’s Application, NSPI filed an expert report by the Brattle that recommends
11 against approving the Solar PV Program as a component of the 2027-2031 DSM Plan (the
12 “Brattle Report”).

13
14 Broadly speaking, the Brattle Report argues that DSM in Nova Scotia “should transition to an
15 effective resource planning tool, from a portfolio of customer rebate programs”, and its
16 recommendations reflect the stated need to understand and approach DSM differently.¹² This
17 framing informs the Report’s recommendation against approving the Solar PV Program, which is
18 based largely on the argument that DSM activities rooted in clause 79A(b)(v) of the *PUA* should
19 target the periods when the electricity system “is most constrained” and aim to reduce “firm
20 capacity needs during winter peak and reliability-risk hours”.¹³

21
22 While we would generally agree that DSM should be treated as a resource planning tool, we do
23 not agree with the suggestion that clause 79A(b)(v) limits E1 to measures or programs that
24 would specifically reduce energy or capacity needs during winter peaking periods, reliability-risk
25 periods, or other periods when the electricity system is most constrained. This limitation does not
26 appear in the language of the clause itself, and, in our respectful submission, it would be
27 inappropriate for the Board to read it in.

28
29 In this regard, it is useful to compare the language of clause 79A(b)(v) to the language of clause
30 79A(b)(iii):

31
32 (b) “demand-side management” means activities, programs or plans relating to

33
34 [...]

35
36 (iii) the alteration of the consumption pattern of an end-user of electricity that has
37 the effect of reducing demand during Nova Scotia Power Incorporated’s periods
38 of highest demand,

39
40 [...]

41
¹¹ Exhibit E-1, page 32 of 71.

¹² Exhibit E-22, page 1.

¹³ *Ibid* at page 29.

1 (v) the delivery of a reduction in the amount of electrical energy or capacity that
2 Nova Scotia Power Incorporated would otherwise be required to supply to its
3 customers[.]
4

5 Whereas clause 79A(b)(iii) expressly requires demand reductions during NSPI's periods of
6 highest demand, clause 79A(b)(v) does not include corresponding language to require energy or
7 capacity reductions during periods of highest system constraint.
8

9 In our view, the argument advanced within the Brattle Report could, if accepted, have far-
10 reaching implications for the assessment of low-income and equity measures and programs
11 proposed in future DSM plan applications. If, for example, cost-effective DSM activities
12 designed to improve the lives of low-income and equity-seeking Nova Scotians were to be
13 rejected simply because they would not help to reduce NSPI's energy or capacity supply needs
14 during periods of highest system constraint, that would be a significant narrowing of the
15 multifaceted role that DSM has played in Nova Scotia to date.
16

17 For these reasons, ECEL opposes the argument advanced in the Brattle Report and submits
18 respectfully that the Board should reject it.
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21

22 Thank you again for the opportunity to submit this closing statement.
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25 Respectfully submitted this 11th day of September, 2026, at Halifax, Nova Scotia.
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29 _____
30 Kostantina Northrup
31 Staff Lawyer
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