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Dear Mr. Williams:

M12184 - Nova Scotia Power Inc. - Application for Approval of a Third Term for the Extra Large Industrial Active Demand Control (ELIADC) Tariff

On March 31, 2025, Nova Scotia Power Incorporated (NS Power) applied to the Nova Scotia Utility and Review Board (NSUARB) to approve a third term for the Extra Large Industrial Active Demand Control (ELIADC) Tariff (Application). On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, S.N.S. 2024, c. 2, Sch. A, the NSUARB was succeeded by the Nova Scotia Energy Board (Board) for all applications related to electric utilities.

The Application requested approval to extend the ELIADC Tariff for the period of January 1, 2026, to December 31, 2026. The only customer who takes service under this tariff is Port Hawkesbury Paper (PHP). In addition to extending the term of the Tariff through 2026, the Application proposed to amend the ELIADC Energy Charge to state that the CBL Energy Charge and the Variable Capital Cost (VCC) will be provided to the Board by November 7, 2025. This is the second extension of the term requested for the ELIADC Tariff.

On April 29, 2025, Information Requests (IRs) were submitted by Bates White Economic Consulting (BW), the Industrial Group (IG), and the Small Business Advocate (SBA). Responses from NS Power and PHP were filed on May 20, 2025. No intervenor evidence was filed in this matter. On June 10, 2025, submissions were filed by the Consumer Advocate (CA), the IG, the SBA, PHP, and BW. Reply Submissions were filed on June 24, 2025, by the SBA, PHP, and NS Power.

Background

The ELIADC Tariff is an annually adjusted below-the-line tariff, with PHP being the only NS Power customer served under that tariff. The initial term of the tariff was approved on March 26, 2020, in Matter M09420, for the four-year period from January 1, 2020, to December 31, 2023. Subsequently, the second term of the tariff was approved in Matter M11301, on December 20, 2023, for the two-year period from January 1, 2024, to December 31, 2025.

The ELIADC Tariff consists of an ELIADC Energy Charge comprised of three elements, which are:

- Customer Baseline Load (CBL) Energy Charge – includes the forecast cost of fuel and purchased power, line losses, and variable operating and maintenance costs to serve PHP at an assumed levelized baseline load with no economic load shifting.
- CBL Adder – is a contribution to NS Power's fixed costs.
- Variable Capital Charge (VCC) – is a charge to cover incremental capital costs associated with serving PHP's load.

The ELIADC Tariff also includes an Active Demand Control (ADC) Load Shifting Credit, which is intended to capture the total system savings associated with granting NS Power control to shift PHP's load. The tariff requires a minimum payment from PHP to cover NS Power's actual total incremental cost to serve PHP, plus $4.00/MWh supplied in the year. When the system savings are positive, PHP is credited with 25 percent of the system savings and other NS Power customers receive the balance of system savings (75 percent). If the ADC Load Shifting Credit is negative, cost savings are set to zero.

In the original application (M09420), NS Power stated that the tariff would provide customers with a total estimated benefit between $6 million and $13 million annually with an annual average of $10 million. That financial benefit to other customers was not fully realized. In 2020, a benefit of $7.3 million was achieved, but in the other years, only the required minimum of $4/MWh was realized. In 2024, the amount was only $3.1 million.

Submissions and Replies

Intervenors in this matter raised several concerns and made recommendations, some of which were common among the parties. In their Reply Submissions, NS Power and PHP addressed those concerns and recommendations. The SBA, in its Reply Submissions, noted that certain of Bates White's recommendations were consistent with the SBA's concerns.

The SBA stated that while the ELIADC tariff may provide system stability, it submitted that the forecasted financial benefit to other customers was not realized and the Application lacked any assurance this pattern would reverse for 2025 or 2026. The SBA also noted that Bates White proposed increasing the $4/MWh minimum payment amount as one approach to address that concern. Two options presented by Bates White were an increase to $5.05/MWh based on the increase in NS Power's rate base from 2020 to 2024, or an increase to $4.71/MWh consistent with inflation. Bates White also noted that the historical increase in the VCC was much greater, which suggested that its recommended update to $5.05/MWh may be conservative.

Similarly, the IG also proposed increasing the minimum payment amount, although to a higher value than proposed by Bates White. On page 5 of its Submissions, the IG stated:

> The application in 2020 focused on the ability of PHP to pay. Without current financial information that shows the necessity of maintaining the current floor, there is no rationale to justify maintaining the minimum contribution at the level of $4/MWh. As there is no evidence before the Board with respect to sustainability for PHP, and the ADC benefit received by other ratepayers continues to be significantly less than $10 million on average, the minimum payment should be increased to an amount more aligned with a meaningful contribution to fixed costs, which the Industrial Group suggests in the range of $6/MWh - $7/MWh.

In its Reply Submissions, NS Power submitted it would be challenging to justify a change to the minimum payment without giving due consideration to other elements of the tariff. However, NS Power recognized that a significant increase in inflation over the five years since the tariff was introduced had the effect of decreasing, “in real terms”, the value of the $4/MWh minimum payment. To address this, NS Power proposed increasing the minimum charge to $5/MWh for 2026, stating this was similar to the real value adjusted for the Nova Scotia Consumer Price Index (CPI) actuals and forecast over the 2020 to 2026 period, and also close to the $5.05/MWh figure recommended by Bates White.

PHP stated that it would support an increase to $5/MWh if the Board determined that an increase was required.

Other notable concerns focused on a revised ELIADC or replacement tariff, removing the fixed costs from the CBL Energy Charge, and quarterly and annual reporting.

Regarding a replacement tariff, NS Power stated that it is working with PHP to develop a viable alternative, and its objective is to apply for a successor tariff in 2025, to be available to PHP in 2026, prior to the PHP Goose Harbour Lake Wind Farm being commissioned. The current anticipated date for that wind farm is Q4 2026.

Regarding removal of the fixed costs from the CBL Energy Charge, Bates White noted that inclusion of a fixed cost recovery component in that charge is inconsistent with the tariff language and removing it would provide greater transparency of the calculated amounts. Doing so would also require redefining the CBL Adder to include those additional fixed costs. This recommendation is consistent with Recommendation XV-2 in the latest FAM Audit Report (M11533).

PHP stated it has no objection to removing the fixed costs from the CBL Energy Charge. NS Power confirmed it agreed with, and accepted, that recommendation in Matter M11533 but suggested it could be incorporated in the M11533 compliance process or in the Annually Adjusted Rates (AAR) proceeding to be filed by November 7, 2025.

On the tariff reporting issue, Bates White stated on page 11 of its Submissions:

> Given the frequency and volume of the deviations between the payments made by PHP under the total revenues collected under the ELIADC Tariff and the actual cost to serve PHP, as well as the frequency and volume of the “top up” payments made by PHP, we recommend that the ELIADC Tariff be revised to formalize the procedures for reporting deviations between ELIADC Tariff revenues collected and actual costs, as well as the disbursement of any top up payments. Specifically, we recommend that as part of the FAM quarterly reporting, NSPI be required to report to the Board the monthly deviations between the “ELIADC Energy Charge” revenues and actual costs ($/MWh and in total dollars), as well as any monthly top up payments made by PHP.

Intervenors supported the need to enhance reporting on the ELIADC performance by providing increased levels of detail and expanding the narrative on customer benefits. On page 5 of its Submissions, the CA stated:

> Respectfully, the materials filed in the present Application, as well as in the Annual Report matter, would seem to indicate that NS Power’s evaluation of the performance of the ELIADC Tariff has been somewhat superficial. In that regard, the Consumer Advocate questions whether the company has taken sufficient steps to carefully evaluate the ELIADC Tariff, and whether an extension of the status quo is truly merited, or merely the product of

> convenience. The latter would be deeply concerning, given the issues raised by Bates White and other stakeholders in multiple proceedings regarding the Tariff's performance.

The IG Submissions requested that the Board direct NS Power to "quantify load shifting benefits and costs, identify and report on Cause Codes and costs/benefits and improve year-over-year reporting". In support of that request, the IG quoted Bates White Recommendation XV-3 from the FAM Audit:

> XV-3 - We recommend that NSPI further improve its annual reporting by including more detailed quantification of actual load shifting benefits (and costs), an identification and discussion of the types of deviations that provide the most benefits and why, ways to improve the tariff or tariff administration, and a comparison of current year outcomes to prior years to help to evaluate ELIADC performance over time.

In its Reply Submission, PHP stated that it had no objection to "revising the ELIADC Tariff to formalize the procedures for reporting deviations between ELIADC Tariff revenues collected and actual costs, as well as reporting the disbursement of any top up payments".

However, NS Power did not agree with including monthly deviations between the ELIADC Energy Charge revenues and actual costs ($/MWh and in total dollars), or any monthly top up payments made by PHP, within the FAM quarterly reports since it considered those variances provide limited insight into the annual operation of the tariff.

Furthermore, although confirming it accepted the 2022-2023 FAM Audit recommendation to expand annual reporting on the ELIADC Tariff and agreed to continue identifying and reporting on load shifting benefits in its annual reporting, NS Power declined implementing those changes at this time, stating on page 8 of its Reply Submission:

> As the requirement for changes to the tariff terms or reporting are confirmed in other related matters, these can be addressed within those proceedings, or, potentially, as part of the Annually Adjusted Rate process.

Discussion and Directives

The Board recognizes that having Active Demand Control of PHP load provides NS Power with certain system benefits and operational flexibility. The Board also recognizes that the full extent of projected financial benefits to customers that NS Power identified in seeking initial approval of the ELIADC Tariff have not been realized during the past four years. Further, the required minimum fixed cost contribution of $4/MWh has not been updated since the tariff was initially approved, and detailed analysis of certain aspects of the tariff performance have not been evaluated or reported in sufficient detail, as has been suggested by intervenors and in the FAM Audit report.

All intervenors recommended changes in the tariff reporting as noted in the 2022-2023 FAM Audit recommendations. Bates White and IG also recommended increasing the minimum fixed cost contribution requirement above the current $4/MWh. In addition, Bates White recommended removing the fixed cost portion from the CBL Energy Charge, stating it is inconsistent with the tariff language and obscures transparency of the calculated amounts. A further concern of the intervenors is the length of time being taken to develop a successor or revised ELIADC tariff.

NS Power's delay and reluctance in implementing tariff changes, which it has already accepted in the FAM Audit matter, is concerning to the Board.

In its September 2, 2025, letter in Matter M12123 (ELIADC 2024 Annual Report), the Board stated:

> However, it is evident from the participant comments that NS Power needs to take steps to better demonstrate the value that the ELIADC tariff provides to other customers, given the failure to provide the greater benefits initially promoted in its original tariff application. Furthermore, it is also apparent that NS Power should have provided additional detail in its report, as suggested by the participants. It is not clear why NS Power did not do so, despite previously agreeing to accept the recommendations in earlier proceedings. Instead, NS Power seems to be delaying that commitment by deferring to further discussions with the FAM Small Working Group and suggesting that enhancements will be provided in future annual reports.

These comments similarly apply in this current Application, which requests approval to extend the ELIADC tariff in its present form for an additional year throughout 2026. The Board sees merit in addressing those issues now, without further delay.

The Board grants approval to continue the ELIADC tariff during 2026, but with amendments as noted in the following directives:

- The $4/MWh minimum payment is to be increased to $5/MWh;
- The fixed costs currently included in the CBL Energy Charge are to be removed and incorporated in the CBL Adder and descriptions of those terms are to be amended;
- FAM quarterly reports are to include monthly deviations between the ELIADC Energy Charge revenues and actual costs ($/MWh and in total dollars), as well as any monthly top up payments made by PHP;
- Annual reporting is to include more detailed quantification of actual load shifting benefits (and costs), an identification and discussion of the types of deviations that provide the most benefits and why, ways to improve the tariff or tariff administration, and a comparison of current year outcomes to prior years to help to evaluate ELIADC performance over time.

In closing, the Board notes that the NSUARB considered that rates designed to recover embedded costs are a staple of regulated utility practices across North America, but rates based on different approaches may be considered if there is a principled basis for doing so (2021 NSUARB 126, para. 29). In approving the ELIADC, which is not a fully allocated cost rate, the NSUARB observed that “it would be unreasonable to deny that the proposed Tariff does not possess certain characteristics of a load retention rate or economic incentive rate”, but it considered the primary element of the tariff to be its functionality as a demand response rate (2020 NSUARB 44, paras. 29-30). However, recognizing that part of the justification for the rate (not based on fully allocated costs) related to PHP’s financial circumstances, the NSUARB said “if there is an application to re-open the rate during the four-year term pursuant to its provisions, or at the end of the four-year term a renewal term is applied for, the Board will require full financial information to a level equivalent to the information provided in this application.” (para. 103).

The level of financial information contemplated by the NSUARB when it approved the ELIADC was not provided in this application (or for the previous term extension). The Board cautions NS Power and PHP against relying on further extensions of the ELIADC as a status quo rate until something else is developed. If there is an application to further extend the ELIADC, even for only a short duration, that application must be supported by the financial information contemplated by the NSUARB and must provide a detailed review justifying the continuation of all of the elements of the ELIADC tariff.

In addition, in keeping with NS Power's statement that its objective is to apply for a successor tariff in 2025, to be available to PHP in 2026, prior to the PHP Goose Harbour Lake Wind Farm being commissioned, NS Power is directed to file that application **no later than December 31, 2025**.

NS Power is to submit its Compliance Filing **no later than October 31, 2025**.

Yours truly,

Stephen T. McGrath, K.C.
Chair

Roland A. Deveau, K.C.
Vice Chair

Richard J. Melanson, LLB.
Member.

c: William Mahody, K.C., Board Counsel
Participants M12184