

**Matter No.: EL-002-2025**

**In the Matter of:** NB Power's Notice of Motion regarding the Tolling Agreement with RIGS Energy Atlantic Limited Partnership

**Written Response by the Conservation Council of New Brunswick**

**Filed by:** Dr. Muhammad (Moe) Qureshi, Ph.D.

**August 11, 2025**

## **1. Introduction and Standing**

The Conservation Council of New Brunswick (CCNB) is a provincial non-profit dedicated to advancing sustainable energy policy, environmental protection, and the transition to a clean, renewable energy future. CCNB has a longstanding history of participation in matters before the New Brunswick Energy and Utilities Board (the "Board") that materially affect the province's energy mix, ratepayer interests, and climate policy obligations.

Given the scale, duration, and policy implications of the Tolling Agreement between NB Power and RIGS Energy Atlantic LP, CCNB has a direct and substantial interest in the outcome of this proceeding.

## **2. Position on NB Power's Motion**

CCNB **opposes** NB Power's request for an order declaring that the July 2, 2025 Tolling Agreement is *not* a "capital project" within the meaning of s. 107(1) of the *Electricity Act*, and that the Board lacks jurisdiction.

### **2.1 Functional Equivalence to a Capital Project**

- The Tolling Agreement imposes 25 years of significant, fixed financial obligations on NB Power, including Monthly Capacity Payments and Variable O&M Payments, irrespective of whether electricity is delivered or needed.
- The agreement includes land lease and infrastructure responsibilities, fuel procurement obligations, climate-related cost pass-throughs (including environmental compliance), change-in-law provisions, and risk mitigation payments to the developer before full service is available.
- These features mirror the financial structure and risk profile of capital projects NB Power would otherwise own and therefore submit for review under s. 107.

### **2.2 Ratepayer Risk and Public Interest**

- The arrangement binds ratepayers to hundreds of millions of dollars in payments over its term, with exposure to volatile fuel prices.

- If accepted, NB Power’s interpretation would set a dangerous precedent, enabling the utility to avoid s. 107 oversight for future large-scale generation commitments by outsourcing asset ownership while retaining the financial burdens.

## 2.3 Legal and Regulatory Precedent

- In the 2007 DISCO rate hearing on the Coleson Cove Tolling Agreement, the Board affirmed its jurisdiction over tolling and power purchase arrangements where the financial structure and risk profile were equivalent to capital projects. In that proceeding, intervenors urged the Board to extend its oversight to all Power Purchase Agreements, including the Coleson Cove tolling contract, which—much like the current NB Power–RIGS arrangement—imposed long-term, fixed-cost obligations on NB Power without direct ownership of the underlying asset. The Board ultimately agreed that such agreements, regardless of their formal classification, warranted review due to their rate impacts and capital-like risk transfer to ratepayers.
- Similarly, during the 2006–2007 vesting agreement hearings, the Board addressed concerns over the lack of transparency and the discretionary authority of internal committees on fuel cost modeling, pricing, and dispatch decisions. Although NB Power argued these were non-capital administrative agreements, the Board and intervenors recognized that they exposed ratepayers to risks comparable to capital projects. The outcome was increased regulatory oversight, with requirements for more frequent disclosure and justification of decisions affecting costs and operational risks.
- These precedents align with the *Electricity Act*’s purpose: to protect ratepayers through transparent, evidence-based review of substantial, long-term commitments.

## 2.4 Alternative Jurisdiction

Even if the Board were to conclude that the Tolling Agreement does not fall within s. 107(1), **s. 107(9)** grants the Board authority to approve such agreements where warranted. Given the scale, risks, and public interest considerations, CCNB submits that full Board review is necessary.

## 3. Opposition to Confidential Treatment

CCNB **opposes** NB Power’s request for confidential treatment of portions of its evidence.

- NB Power has not demonstrated that the information meets the Board’s threshold for confidentiality, particularly where the material relates to ratepayer costs, risk allocation, or system planning impacts.
- Overbroad confidentiality undermines transparency and deprives stakeholders of the ability to test the evidence fully.

- Any genuinely commercially sensitive information should be narrowly redacted, with all remaining details—especially those affecting costs, environmental impacts, and policy compliance—disclosed publicly.

#### **4. Relief Requested**

CCNB respectfully requests that the Board:

1. **Deny** NB Power's motion to declare the Tolling Agreement outside the jurisdiction of s. 107.
2. **Direct** that the Tolling Agreement be subject to full regulatory review as a capital project, or alternatively, under s. 107(9).
3. **Reject** NB Power's claim for blanket confidential treatment and require disclosure of all non-sensitive information relevant to the Board's determination.
4. **Require** NB Power to file detailed cost estimates for the 25-year term, including capacity payments, fuel supply commitments, climate-related costs, change-in-law adjustments, and all other embedded obligations.

**Respectfully submitted,**

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