Written Argument on Behalf of the Conservation Council of New Brunswick (CCNB) – Matter EL-002-2025

Introduction

This memorandum is submitted on behalf of the Conservation Council of New Brunswick (CCNB) in opposition to the motion by New Brunswick Power Corporation (NB Power) for a declaration that its July 2, 2025 Tolling Agreement with RIGS Energy Atlantic Limited Partnership is not a "capital project" under s. 107(1) of the *Electricity Act*, SNB 2013, c 7, and that the New Brunswick Energy and Utilities Board (the Board) lacks jurisdiction to review the Agreement. CCNB is a provincial non-profit dedicated to sustainable energy policy and environmental protection, with a longstanding history of participation in Board proceedings that affect the province's energy mix and ratepayer interests. Given the 25-year duration, large financial commitments, and policy implications of the Tolling Agreement, CCNB has a direct and substantial interest in ensuring it is subject to appropriate regulatory oversight. CCNB submits that the Board **does** have jurisdiction under the *Electricity Act* to review and approve this Agreement. The substance of the Tolling Agreement imposes capital project-like obligations and risks on NB Power and its ratepayers, notwithstanding the Agreement's form and ownership structure. Furthermore, NB Power's broad claims of confidentiality over the Agreement and related evidence are unwarranted and contrary to the public interest in transparent utility regulation. For the reasons set out below, CCNB respectfully urges the Board to dismiss NB Power's motion and assert its jurisdiction to review the Tolling Agreement under s. 107(1) of the *Electricity Act*, or alternatively under s. 107(9) if necessary, and to require a full, open review of the Agreement's prudence and impact on ratepayers.

Background and Context

The RIGS Project and Tolling Agreement: The Tolling Agreement at issue is part of NB Power's "Renewables Integration and Grid Security (RIGS)" project. Under the Agreement, a private developer (RIGS Energy Atlantic LP, through its general partner 1542987 B.C. Ltd.) will develop, own, and operate a 400 MW natural gas-fired generating facility (with fuel oil backup) in Centre Village, NB. NB Power has provided the site, acquiring approximately 491 acres of land near Centre Village in 2024 for this purpose, and has leased the land to the developer under a Ground Lease. NB Power, as "Buyer," has agreed to supply all fuel for the plant and to purchase the facility's capacity and associated energy for 25 years, through monthly capacity payments and other charges set out in the Tolling Agreement. In essence, NB Power will have full rights to the facility's output and will bear the financial and operational burdens of the plant

for the term of the contract, even though legal title to the generating station remains with the private developer.

NB Power's Motion and Position: NB Power's application (dated July 23, 2025) and accompanying Motion seek an order declaring that this Tolling Agreement "is not a capital project within the meaning of section 107(1) of the *Electricity Act*, and that the Board does not possess jurisdiction with respect to the Tolling Agreement under section 107 of the Act." In NB Power's view, the Agreement's form, a contractual purchase of capacity from an independently owned asset, places it outside the scope of the capital project review regime established by s. 107. NB Power emphasizes that it is not itself building or purchasing the generating facility as an owned asset, and it points to the Agreement's ownership structure (with a third-party owner of the plant) as evidence that this is not NB Power's capital project. NB Power further argues that the *Electricity Act* was intended to require Board approval only for traditional utility capital investments (e.g. utility-built generation or infrastructure projects exceeding $50 million in cost to NB Power), not for power purchase agreements or tolling arrangements structured as operating contracts. In support of its motion, NB Power filed the affidavit of its Vice-President of Finance, Mr. Justin Urquhart, which adopts these positions. The Urquhart affidavit acknowledges, however, certain critical facts: (1) NB Power's own accounting assessment has concluded that the Tolling Agreement will "likely" be treated as an on-balance-sheet lease under International Financial Reporting Standards (IFRS), requiring NB Power to recognize a Right-of-Use (ROU) asset and corresponding lease liability for the fixed capacity payments over the 25-year term; and (2) the discounted present value of those capacity payment obligations is expected to **exceed $50 million**. In addition, NB Power's motion materials indicate that the utility must also acquire significant related assets as part of the project. One of these is a new high-voltage switchyard, valued at approximately $70 million, which the developer will build to interconnect the plant to the grid. NB Power must also obtain certain lands through transfer or lease arrangements, although these involve only minimal upfront cost.

NB Power's position is that despite these large financial obligations and assets, the arrangement falls outside s. 107(1) because NB Power is not the owner of the generating station and is incurring the costs through contract payments rather than traditional capital expenditure.

The Statutory Framework – Section 107 of the *Electricity Act*: Section 107 was enacted as part of the 2013 Electricity Act reforms to ensure regulatory oversight of major capital undertakings by NB Power. In general, s. 107(1) provides that NB Power must seek Board approval before incurring expenditures beyond that threshold if the "total projected capital cost to the Corporation of a capital project" is $50 million or more. The Board must approve the project if satisfied with its prudence (s. 107(9)), taking into account factors such as alignment with energy policy (s. 107(11)). This capital project review mechanism was introduced to protect ratepayers from unwarranted or imprudent large investments by requiring an evidence-based review of need, alternatives, and risks before NB Power commits to them. In the present case, NB Power has not applied for approval of the RIGS project under s. 107(2); instead, it seeks a ruling that no such approval is required at all. CCNB's position is that *the Board's oversight jurisdiction is properly triggered here* because the Tolling Agreement, in substance if not form, **is**

a capital project of NB Power that well exceeds the $50 million threshold. Even if the Agreement did not fit neatly under s. 107(1), the Board would still have authority, and indeed a responsibility, to review it under s. 107(9) or the Board's broad mandate to regulate NB Power's undertakings in the public interest. To decide otherwise would undermine the purpose of the *Electricity Act* and set a dangerous precedent for the future.

The Tolling Agreement's Substance is Equivalent to a Regulated Capital Project

1. A 25-Year Commitment with Capital-Project Characteristics: The Tolling Agreement binds NB Power (and by extension its ratepayers) to a *multi-decade financial commitment* virtually indistinguishable from the obligations of owning a new power plant. Under the contract, NB Power must make fixed Monthly Capacity Payments to the developer for 25 years, totalling in the hundreds of millions of dollars, regardless of whether electricity is delivered or needed at any given time. NB Power is also responsible for Variable O&M payments, covering the facility's operating costs, as well as supplying all the fuel (natural gas or backup fuel oil) required to run the plant. These features mean NB Power bears the fixed costs and most operational risks of the facility, just as if it owned and rate-based the plant itself. Indeed, during the term of the Agreement, NB Power has exclusive rights to the plant's capacity and must pay even if the capacity is surplus – a risk profile identical to building a utility-owned generator that could become underutilized.

Moreover, the Agreement includes extensive infrastructure and risk allocation provisions characteristic of capital projects. NB Power has provided the land for the project (via purchase and lease-back) and will ultimately assume the switchyard and interconnection assets needed to integrate the plant with the grid. The switchyard is a tangible, depreciable asset worth about $70 million, which the developer will construct but which NB Power effectively will pay for over time (and likely take ownership of, even if for a nominal transfer price). NB Power itself acknowledged in its Motion that under accounting rules it expects to value the switchyard at the full "expected purchase price" as a standalone asset. This indicates that, for practical purposes, NB Power is treating the switchyard as a capital addition to its system. Additionally, the Tolling Agreement contains clauses passing through climate-related compliance costs and other "change in law" costs to NB Power, and even requires NB Power to make certain risk mitigation payments to the developer before full commercial operation is achieved. In sum, NB Power is assuming all of the key financial burdens and exposures associated with owning a new generating station. These include construction-related infrastructure, fixed capacity outlays, fuel supply, and regulatory compliance. The only exception is that legal title to the main plant is held by a third party.

It is therefore apparent that the ***substance*** of this transaction mirrors that of a traditional NB Power capital project. The Board's capital project approval jurisdiction cannot be defeated by clever contracting or corporate form. If a 25-year tolling arrangement of this magnitude were beyond oversight, NB Power (or other utilities) could simply "outsource" future generation projects to private affiliates or partners, while binding ratepayers to equivalent costs and risks,

all without Board pre-approval. CCNB submits that neither the language of s. 107 nor sound regulatory policy permits such a loophole. As CCNB noted in its written response, accepting 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."* The Board should reject this formalistic approach and look at the economic realities of the RIGS project.

2. The Tolling Agreement Creates a Right-of-Use Asset – a Capital Asset of NB Power: Uncontroverted evidence shows that NB Power's own accountants and experts consider the Tolling Agreement to meet the definition of a **lease** for accounting purposes, meaning NB Power must record a Right-of-Use (ROU) asset on its balance sheet. Mr. Urquhart's affidavit acknowledged that NB Power has determined it is "likely" the Agreement will be treated as an on-balance-sheet lease under IFRS, with a recognized ROU asset and corresponding liability equal to the present value of the fixed payments. The estimated lease liability (discounted capacity payments) over 25 years **"is expected to exceed $50 million."** In fact, it is almost certainly many times $50 million, reflecting the substantial capital value of a 400 MW power plant.

CCNB agrees with the Public Intervener's expert, Mr. Dustin Madsen, CPA, that the IFRS treatment here is highly relevant to the Board's deliberations. The requirement for NB Power to recognize a ROU asset under IFRS confirms that NB Power is *in substance acquiring a long-term interest in a physical generating asset*. As Mr. Madsen opined, the Tolling Agreement is *"definitively a right-of-use asset"* under IFRS 16, and any other accounting treatment would be non-compliant. Crucially, this ROU asset ***is*** a form of capital asset of NB Power. While IFRS does draw distinctions between owned PP&E assets and leased assets, both appear as assets on the utility's financial statements and both must be funded by ratepayers over time. Mr. Madsen's evidence emphasized that recognizing the Tolling Agreement on the balance sheet "eliminates any uncertainty" that NB Power's motion tried to create – it confirms that a significant capital asset and obligation are being incurred. The *Electricity Act* does not explicitly define "capital project" or "capital asset," so it should be interpreted in light of its purpose (preventing unapproved major commitments) and ordinary meaning. In ordinary utility practice, investments that add assets to a utility's rate base or balance sheet, whether via purchase or lease, are treated as capital expenditures. The Board should therefore consider the Tolling Agreement's ROU asset and related liability as part of the "total projected capital cost to the Corporation" for the RIGS project. By NB Power's own admission, those costs exceed the $50 million threshold. Put simply, if NB Power is obligated to record what amounts to a nine-figure generating asset on its books because of this contract, that **is** a capital project that warrants Board scrutiny under s. 107(1).

NB Power may argue that accounting designations should not control legal interpretation. Deloitte LLP (engaged by NB Power to critique Mr. Madsen's report) has suggested that IFRS concepts like "cost, capitalization, and assets" serve a financial reporting purpose and do not automatically answer whether something is a "capital project" under the Act. CCNB acknowledges that regulatory terms are ultimately for the Board to interpret. However, the IFRS treatment is persuasive evidence of the **true nature** of the transaction. Regulators routinely look

beyond form to substance, for example, distinguishing operating leases from finance leases, or considering long-term contracts as utility resource acquisitions. Here, IFRS's "substance over form" approach flags that NB Power is effectively leasing an entire power plant. Deloitte's report in fact confirms that IFRS deliberately distinguishes assets a company owns outright (under IAS 16) from assets it leases (under IFRS 16), showing that NB Power does not own this plant. But that is precisely why the ROU asset exists: NB Power is leasing it instead. That difference in form should not allow NB Power to bypass regulatory oversight. The *Electricity Act* does not refer to "owned capital project"; instead, it addresses the cost of a capital project to the utility. The RIGS generating station, although owned by RIGS LP, is being built *for NB Power's use* and at NB Power's cost (through contract payments). CCNB submits that this falls within the intended scope of s. 107. To conclude otherwise would contradict the Act's consumer-protection objective. The Board can and should find that the Tolling Agreement – by creating a capital lease obligation – brings the RIGS project under s. 107's purview. As Mr. Madsen concluded, a ROU asset *"is a capital asset of NB Power"*, and all components of the project (lease asset, switchyard, land, etc.) should be collectively assessed.

3. NB Power's Associated Assets (Switchyard and Land) Exceed the Threshold: Even setting aside the lease accounting, NB Power is directly involved in capital assets for this project. NB Power's own evidence confirms it acquired the site property (nearly 570 acres including an additional parcel) in 2024 to host the plant. The utility has thus already invested in land for RIGS, a $300,000 cost for the initial acreage, and has undertaken land swaps to assemble the needed footprint. More significantly, NB Power has arranged to take ownership (or responsibility) for the new switchyard and related transmission connection infrastructure that the developer will build for the plant. The switchyard investment is approximately $70 million. NB Power's Motion appears to claim that this $70 million should *not* count toward the s. 107 threshold because the assets are being procured by the developer and may be transferred at a token price (e.g. $1) to NB Power, presumably at the end of the term. This is a hollow distinction. As Mr. Madsen explained, it is "largely irrelevant" whether NB Power formally acquires the switchyard for $1 or $70 million. The developer assuredly expects to recover the full ~$70 million cost through the payments under the Tolling Agreement. NB Power will be paying for the switchyard one way or another, since no rational developer would build such an expensive asset and then hand it over for a nominal sum without having its cost reimbursed in the contract price. Thus, NB Power's commitment under the Tolling Agreement implicitly includes the switchyard's capital cost. The Board should not allow NB Power to unbundle one piece of the project and say it costs only "$1" to the utility when the reality is the ratepayers will fund that asset over time via the capacity charges.

CCNB submits that the Board, in applying s. 107(1), should aggregate all interrelated components of the RIGS project that NB Power is funding or will ultimately own. This includes the ROU lease asset (25 years of payments) plus the switchyard assets and any other ancillary capital assets (land improvements, etc.). When viewed as a whole, the project's cost to NB Power far exceeds $50 million, likely by an order of magnitude. Even if one were to argue that the generating station itself is "off the books" (which, due to IFRS 16, it is not), the $70 million switchyard alone crosses the threshold. Section 107 exists to catch exactly such large undertakings. It would be inconsistent with the intent of the Act to say, for example, that NB

Power must get approval to spend >$50M on a new substation or IT system, but need not get approval to lock into a $300+ million power purchase commitment as long as that commitment is structured as a lease or contract. The Board should interpret the statute in a purposive way to avoid that absurd result. **In conclusion on this point:** The Tolling Agreement's form should not obscure its function. By *function*, it is NB Power's project to obtain a long-term generating resource for the grid, with NB Power assuming the capital cost and risks. As such, it is subject to Board approval under s. 107(1).

Ratepayer Risks and Public Interest Considerations

4. Exposure of Ratepayers to Significant Costs and Risks: CCNB is deeply concerned about the magnitude of the commitments in the Tolling Agreement and the **risks transferred to ratepayers**, which highlight the need for regulatory scrutiny. Over 25 years, NB Power (and thus ratepayers) will pay not only fixed capacity fees but also variable costs including fuel. Natural gas prices are notoriously volatile; NB Power is taking on fuel price risk for a quarter-century, a risk that could lead to dramatically higher costs if fuel markets spike or industrial carbon pricing increases. The Agreement also includes pass-through of environmental compliance costs (e.g. carbon charges or future climate regulations) to NB Power. This means if new emission constraints are imposed, NB Power must bear those additional costs, rather than the private owner. Such exposure could easily run into tens of millions of dollars over the life of the deal. In essence, NB Power is insuring the developer against climate policy changes, leaving ratepayers on the hook. Furthermore, NB Power has agreed to pay even during outages or delays. CCNB notes that the contract apparently requires NB Power to start capacity payments, or other "risk mitigation" payments, once certain milestones are reached, even if the plant is not yet fully operational. If the project faces construction delays or performance issues, NB Power may still be obligated to pay, much like it would have to cover carrying costs on a capital project that came in late. All of these provisions concentrate financial risk onto NB Power and ultimately its customers.

From a regulatory perspective, when a utility proposes to undertake a large generation project, these are precisely the types of risks the Board would examine in a capital project review or an integrated resource plan hearing. The Board would ask: Is this the best option to meet capacity needs? What if fuel costs escalate or emissions rules change – how will that impact the economics? Are there protections for ratepayers or off-ramps if circumstances change? By structuring this as a tolling contract without prior approval, NB Power has attempted an end-run around that analysis. CCNB submits that the public interest demands that the Board not allow ratepayers to be bound to such a significant and potentially costly deal without an independent prudence review. As CCNB highlighted in its response, *"the arrangement binds ratepayers to hundreds of millions of dollars in payments over its term, with exposure to volatile fuel prices."* This could materially affect future rates and the financial stability of NB Power, yet no public examination or hearing occurred before NB Power committed to the deal. That is exactly the scenario s. 107 was meant to prevent. The Board's mandate, as set out in the *Energy and Utilities Board Act* and *Electricity Act*, includes protecting consumers and ensuring that a

monopoly utility's major expenditures are justified and prudent. The scale of this Tolling Agreement clearly triggers those concerns.

5. Policy Implications – Consistency with Energy Transition Goals: Although the primary legal issue is one of jurisdiction under s. 107, CCNB would be remiss not to note the broader policy context. The RIGS project involves a new fossil-fuel generation source (natural gas/oil) at a time when New Brunswick and Canada have committed to reducing greenhouse gas emissions and transitioning to non-emitting energy. A 25-year gas contract extends beyond 2050, the horizon by which Canada aims to reach net-zero emissions. This raises questions about long-term viability, future carbon costs, and the potential for stranded asset risk – all critical considerations that a robust review under s. 107 would address. CCNB, as an environmental stakeholder, is concerned that bypassing Board review sidesteps any analysis of alternatives (e.g. demand-side management or renewable capacity investments) that might achieve the same grid reliability goals with less carbon risk. The *Electricity Act*'s purpose (see e.g., s. 68 policy goals) includes facilitating renewable generation and sustainable development. By scrutinizing the Tolling Agreement, the Board can ensure NB Power's decision is aligned with those legislative objectives and is truly in the public interest over the long term. This policy dimension further supports interpreting s. 107 flexibility to catch novel contractual procurements like the RIGS tolling deal. A contrary approach would incentivize utilities to structure major resource decisions outside of the Board's purview, potentially undermining provincial energy policy goals.

Legal and Regulatory Precedents for Oversight of Such Agreements

6. Board Jurisdiction over PPA/Tolling Agreements – Coleson Cove (2007): The Board has previously confronted the question of oversight for NB Power power purchase agreements and tolling arrangements. Notably, in the 2007 rate application for the NB Power DISCO (distribution company), issues arose regarding several contracts known as the "PPAs" or power purchase agreements between DISCO and generation companies, including a tolling agreement for Coleson Cove Generating Station. Interveners in that case expressly urged the Board to assert jurisdiction over those long-term contracts – even though they were intra-affiliate agreements stemming from the 2004 NB Power restructuring – because they imposed substantial fixed costs on the utility (DISCO) similar to owned assets. In particular, the Coleson Cove tolling agreement was analogous to the RIGS Agreement in that NB Power (through its affiliate) was obliged to pay for capacity/fuel of the Coleson Cove plant, without owning it. According to the account in CCNB's response, *"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, although the PPAs had been mandated by government as part of restructuring, the Board agreed that **substance should prevail over form** – such agreements would indeed be subject to regulatory oversight for their rate impacts and prudence. The Board ultimately required NB Power to file and justify the costs of those agreements and did not simply accept them as untouchable contracts. This demonstrates that the Board has established

precedent for examining the substance of PPAs beyond their form, to the realities of ratepayer obligations.

7. Transparency and Oversight in Vesting Agreements (2006–07): Similarly, during the 2006–2007 hearings on the "vesting" purchase agreements (the initial contracts between NB Power's generation companies and the DISCO after restructuring), the Board and stakeholders raised alarms over the lack of transparency and potential unilateral decision-making embedded in those contracts. NB Power, at the time, argued those were not "capital" matters but rather internal administrative contracts for fuel and energy. Nonetheless, the Board recognized that those agreements had **material impacts on fuel costs and operational risk** borne by ratepayers. The outcome was that the Board imposed increased regulatory oversight on how NB Power managed those agreements. This included, requirements formore frequent disclosure of fuel cost forecasts, updates on dispatch decisions, and justification of any cost variances. Although these were were contracts and not asset purchases, the Board treated them asa significant part of NB Power's resource portfolio. This ensured they could not operate in a "black box" outside public scrutiny. CCNB draws two principles from these precedents: (a) The Board's jurisdiction is not confined strictly to traditional capital works, but extends to any arrangements that have capital-like economic effects on the utility's costs and rates, nd (b) the Board's duty to protect the public interest allows it to demand transparency and accountability for long-term contracts, especially where those contracts might otherwise shield critical information from ratepayers.

The present Tolling Agreement is by all measures a far larger commitment than the Coleson Cove tolling was, and it implicates New Brunswick's generation supply mix for decades. If the Board in 2007 deemed it appropriate to "extend its oversight to all PPAs" of NB Power, then surely in 2025 the Board can find that it has authority under the Act (and indeed the obligation under regulatory principles) to review this Tolling Agreement. To be clear, CCNB is not suggesting the Board has *inherent* jurisdiction to approve every contract a utility signs; the Board's powers must stem from statute. Here, however, we have the statute: section 107, properly interpreted, covers this because of the capital nature of the commitment. And even if there were ambiguity, the Board's consistent approach has been to err on the side of inclusiveness in oversight when significant ratepayer interests are at stake. This aligns with the modern view of utility regulation, which holds that utilities should not be allowed to circumvent prudence review by outsourcing or entering "off-balance-sheet" deals. Other jurisdictions have addressed similar issues by requiring approval of long-term procurement contracts above certain sizes, recognizing that those can have the same impact as building a plant. The Board's own prior rulings, as summarized above, align with this philosophy and with the *Electricity Act*'s purpose "to protect ratepayers through transparent, evidence-based review of substantial, long-term commitments."

8. Legislative Intent and the Purpose of Section 107: It is also instructive to consider *why* section 107 was added to the law. Prior to 2013, NB Power undertook some major projects (like the refurbishment of Point Lepreau, or the orimulsion project at Coleson Cove) without full external approval, contributing to financial difficulties. The 2011 Energy Blueprint policy explicitly called for greater accountability in NB Power's investments, leading to the creation of the

Board's capital project approval mandate. The intent was to ensure that **ratepayers are not locked into paying for costly projects that have not been vetted in advance**. It would defeat that intent if NB Power could simply repackage a major capital expansion as a contract and thereby avoid a hearing. The Board should prefer an interpretation of s. 107 that furthers the Act's consumer-protection and transparency objectives. As our Supreme Court has stated in statutory interpretation, the words of an act are to be read in their entire context and in a manner that best reflects the Legislature's intent and the statute's purposes. Here, "capital project" should be read broadly enough to capture an arrangement that walks, talks, and quacks like a capital project.

Alternative Grounds for Board Review (Section 107(9) or General Powers)

9. Board Authority under Section 107(9): Even if, arguendo, the Board found that the Tolling Agreement does not literally meet the s. 107(1) definition of a capital project, CCNB submits that the Board nonetheless has authority and reason to review and approve the Agreement under s. 107(9). Section 107(9) provides that if the Board is "satisfied as to the prudence of a capital project for which approval is applied for under this section," the Board shall approve it. This subsection is usually read in conjunction with a mandatory application under s. 107(1) or a voluntary application under s. 107(3). But it also embodies the Board's prudent investment test for projects. NB Power's present motion could be viewed as a de facto application under s. 107 – albeit one asking for a negative ruling. Should the Board disagree with NB Power's position on jurisdiction, the practical next step would be to treat the matter as a s. 107 application. Indeed, NB Power styled its filing as an "Application in accordance with subsection 107(2)" on the Board's public notice, which suggests NB Power has opened the door to the Board's oversight by bringing the issue forward. The Board could therefore direct that, pursuant to s. 107(9), NB Power must demonstrate the prudence of the Tolling Agreement's terms and costs before it can be effectively approved or considered binding on ratepayers. If NB Power failed to satisfy the Board on prudence, the Board could deny approval, which would likely force NB Power to renegotiate or seek alternatives. While NB Power might argue the contract is already signed, the Board retains the power to disallow recovery of costs in rates if they result from an imprudent or unapproved commitment. In short, s. 107(9) can be invoked to **grant the Board jurisdiction to approve (or not) the Tolling Agreement even if NB Power disputes the label of "capital project."** CCNB explicitly noted this in its response: *"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 here, CCNB submits that a full Board review is necessary under either provision.

10. The Board's Broad Mandate (EUB Act s. 38): Additionally, the Board has general supervisory powers under the *Energy and Utilities Board Act*, SNB 2006, c E-9.18. Section 38 of that Act, for example, has been cited by NB Power itself when bringing motions in other contexts, and it empowers the Board to make orders and determinations necessary for the

exercise of its functions or to ensure the just, expeditious conduct of its business. The Public Intervener's notice of opposition in this case explicitly grounded its position in the EUB Act, including s. 38. Without belabouring the point, CCNB simply notes that the Board is not a court of narrow jurisdiction but a regulatory tribunal with broad authority over NB Power's rates and expenditures. The Board could justifiably call for a hearing on the Tolling Agreement's merits under its general powers to "inquire into, hear and determine any matter" within its jurisdiction (which covers the Electricity Act and public utility matters). At minimum, the Board could make any approval of the RIGS project a condition for NB Power to include the costs in rates in the future. Thus, even outside s. 107, there are routes by which the Board can and should exercise oversight. However, CCNB's primary submission remains that s. 107 squarely applies, obviating the need to rely on more abstract authorities.

Conclusion

For the foregoing reasons, CCNB respectfully requests that the Board deny NB Power's motion and affirm that the Board **does have jurisdiction** under s. 107 of the *Electricity Act* to review the Tolling Agreement. The Board should rule that the Tolling Agreement is a "capital project" in substance, given the significant capital-like obligations (exceeding $50 million) that NB Power has assumed on behalf of its ratepayers. In the alternative, the Board can and should require a prudence review under s. 107(9) before NB Power may proceed to bind ratepayers to the Agreement. CCNB further urges the Board to schedule a full hearing on the merits of the Tolling Agreement. This hearing should examine need, alternatives, costs, and risks, just as would be done for any major generation investment. This will ensure that the arrangement is truly in the public interest and that any approval (if given) is accompanied by appropriate conditions to protect ratepayers (for example, periodic reporting, cost variance accounts, or termination clauses if circumstances materially change).

In summary, CCNB's position is that NB Power cannot be permitted to circumvent legislative oversight through form over substance. The *Electricity Act* was designed to prevent exactly this kind of situation, where ratepayers could be locked into a massive financial undertaking without prior review. Upholding the Board's jurisdiction here will not only address the instant case, but also set the correct precedent that utilities must come to the Board for approval of **any** major long-term supply commitment, regardless of contractual technicalities. This protects the integrity of New Brunswick's regulatory framework and the interests of ratepayers and the public. CCNB appreciates the Board's careful consideration of these issues. We respectfully submit that the law and evidence support ruling in favour of Board jurisdiction and proceeding to a full review of the Tolling Agreement on its merits. CCNB stands ready to participate constructively in that review to ensure that New Brunswick's energy future is decided with transparency, accountability, and prudence.

Sources Cited

- *Electricity Act*, SNB 2013, c 7, s. 107.
- *Energy and Utilities Board Act*, SNB 2006, c E-9.18, s. 34.

- NB Power Notice of Motion (Matter EL-002-2025, July 23, 2025) (Urquhart Affidavit).
- Affidavit of Dustin Madsen (Public Intervener) dated Aug. 7, 2025, including Expert Report.
- CCNB Written Response of Aug. 11, 2025.
- NBEUB Order of Aug. 12, 2025 (Case Management Order).

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Appendix: Objection to Overbroad Confidentiality Claims

The Need for Transparent Review: CCNB submits that the Tolling Agreement and supporting evidence must be reviewed in as open a forum as possible. Transparency is essential not only as a matter of principle, but also to ensure the Board and all intervenors can fully test the Agreement's prudence and compare it against alternatives. Without disclosure of key terms—such as capacity charges, fuel cost allocation, and risk-sharing provisions—intervenors cannot meaningfully participate, and the public, including the ratepayers who will ultimately fund these obligations, cannot hold NB Power accountable. The *Electricity Act* emphasizes transparency and public accountability; concealing the details of a 25-year, nine-figure commitment would run directly contrary to that purpose.

The Board has ample tools–such as redacted public versions, confidentiality undertakings, or in camera sessions–to protect legitimately sensitive commercial details without shielding broad financial obligations from scrutiny. Profit margins or proprietary vendor data may warrant protection, but aggregate costs, risk allocations, and other terms that directly affect ratepayers should remain on the public record. The Board has already demonstrated this balance in Matter 541 (2023 NB Power rate case), where confidentiality was permitted only to prevent demonstrable harm to NB Power's negotiating position, and even then was narrowly confined. In this case, NB Power's justifications for secrecy are far weaker, since the contract has already been executed, while the public interest in transparency is even stronger.

Accordingly, CCNB urges the Board to apply a strict standard to any confidentiality claims, require NB Power to justify each redaction in detail, and resolve any doubt in favour of disclosure. This proceeding will determine whether a quarter-century resource commitment escapes oversight. Such a consequential decision must be made openly and with full accountability to the public.

- References: NBEUB Ruling on Confidentiality (Matter 541, June 7 2023).