

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

NOTICE OF MOTION
(Rule 4.3)

In Relation to an Application by: New Brunswick Power Corporation (“NB Power”)

In Accordance with: Subsection 107(2) of the *Electricity Act*, SNB 2013 c. E-7 (the “*Electricity Act*” or the “*Act*”).

TO: New Brunswick Energy and Utilities Board (the “Board”)
AND TO: All Parties in the above noted Matter

NB Power intends to make a Motion before the Board at a Motions Day hearing to be scheduled by the Board, for an Order declaring that a certain Tolling Agreement entered between NB Power and RIGS Energy Atlantic Limited Partnership, as represented by its general Partner 1542987 B.C. Ltd. (the “Owner”), dated and effective July 2, 2025 (the “Tolling Agreement”), is not a capital project within the meaning of that term as used in subsection 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*.

The basis for the Motion is as follows:

General

1. NB Power has determined that its need for new generation capacity, previously identified in the 2023 Integrated Resource Plan as necessary in the early 2030s, will now become critical by 2028. As a result, NB Power has engaged in and completed a Request for Expressions of Interest (“REOI”) process for new generation capacity which resulted in the execution of the Tolling Agreement.

The Nature of the Tolling Agreement

2. Under the Tolling Agreement, the Owner will develop, own and operate a dual fuel (natural gas and liquid fuel) combustion turbine generation facility with a maximum nameplate capacity of 400 MW (the “Generation Facility” or the “Facility”), and sell the capacity and energy (including ancillary services) produced by the Facility to NB Power. NB Power will supply the necessary fuel and agrees to purchase the available capacity and associated energy. The Facility will be located on land owned by NB Power and leased to the Owner under a long term lease agreement.

3. The term of the Tolling Agreement is 25 years from the latter of the Targeted Commercial Operation Date of August 1, 2028, or the Commercial Operation Date achieved.
4. During the term, NB Power has the exclusive right to schedule the delivery of energy from the Generating Facility. The Owner is expressly prohibited from selling any of the capacity of the facility which is not scheduled by NB Power.
5. During the term, NB Power is obligated to pay a Monthly Capacity Payment with respect to the available capacity of the facility, calculated in accordance with the terms of the Tolling Agreement.
6. NB Power is also obligated to pay a Variable O&M Payment for hours in which it causes the Facility to be dispatched to produce energy (or any included ancillary services), calculated in accordance with the terms of the Agreement.
7. NB Power has no ownership interest in the Generation Facility, and does not bear the risk of ownership of the Facility. The obligations of NB Power are restricted to those contained in the Tolling Agreement.
8. As a result of the construction and anticipated operation of the Generation Facility by the Owner, NB Power estimates that it will incur a total of approximately \$25 million in capital expenditures in the three fiscal years between 2026/27 and 2028/29. These capital expenditures relate to transmission upgrades (additional breakers and line reconductoring), gas connection infrastructure and site preparation work prior to the commencement of site activities by the Owner. All other costs related to the Generation Facility, and the purchase of capacity and energy (including ancillary services) therefrom, will be expensed in the year in which those costs are incurred and paid to the Owner.
9. As part of its obligation to construct the Generation Facility, the Owner will perform switchyard work necessary to integrate the Generation Facility with the NB Power system. Due to the prohibition in section 81 of the *Act* on the ownership or operation of a transmission system by any person other than a "transmitter" as defined in the *Act*, these assets are to be transferred to NB Power for the nominal value of \$1.00. NB Power estimates the value of the switchyard assets to be approximately \$70 million.

Accounting Treatment of the Tolling Arrangement

10. NB Power has conducted an assessment of the likely accounting treatment of the Tolling Agreement under International Financial Reporting Standards ("IFRS").

11. While NB Power has not made a final determination, it has determined that it is likely that the Tolling Agreement will be characterized as an on-balance sheet lease under IFRS, as a result of which NB Power will be required to recognize the lease as a Right-of-Use ("ROU") Asset, with a corresponding lease liability equal to the discounted fixed lease (capacity) payments over the term of the lease. The discounted capacity payments over the term of the Tolling Agreement are expected to exceed \$50 million.
12. NB Power has also determined that it is likely that it will be required to value the switchyard assets procured and constructed by the Owner at the expected purchase price as a stand-alone asset, rather than at the nominal transfer value of \$1.00. As a result, NB Power expects to create a capital asset on its balance sheet of approximately \$70 million, which will be depreciated over time, together with the creation of a corresponding finance liability. Creation of this capital asset and finance liability will result in a corresponding reduction in the value of the ROU Asset and its corresponding lease liability.
13. The overall result of this accounting treatment is that the capacity payments, expenditures that would have otherwise been reported as Fuel and Purchased Power Expense ("FPP Expense") under a power purchase agreement, will now be required to be reported as follows:
 - a. depreciation of the ROU Asset;
 - b. interest expense calculated on the declining balance of the lease liability associated with the ROU Asset;
 - c. depreciation of the capital asset valued at the expected stand-alone purchase price of the switchyard assets; and
 - d. interest expense calculated on the declining balance of the finance liability associated with that capital asset.

Condition Precedent in the Tolling Agreement

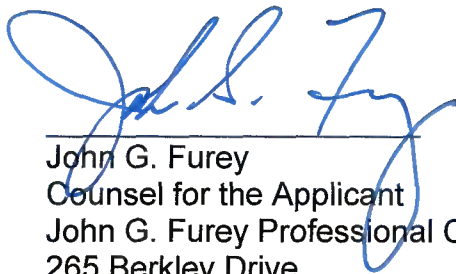
14. Under the Tolling Agreement, it is a condition precedent to the Owner's obligation to achieve the Commercial Operation Date of the Facility that NB Power either obtain approval from the Board under section 107 of the *Electricity Act* to enter the Tolling Agreement, or obtain a determination of the Board that the Board does not possess jurisdiction under section 107 of the *Act* with respect to the Tolling Agreement. NB Power seeks determination of the issue of jurisdiction through this Motion.

NB Power intends to rely upon the following in support of the Motion:

- (1) Affidavit of Justin Urquhart dated July 23rd, 2025;
- (2) *EUB Act*, including section 38;
- (3) *Electricity Act*, including section 107;
- (4) NBEUB Rules of Procedure, including Rule 4.3; and
- (5) Further oral or written argument submitted in accordance with the direction of the Board.

DATED at Fredericton, New Brunswick, this 23rd day of July 2025.

New Brunswick Power Corporation



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