

**APPENDIX OF FORMS  
FORM 16D**

**NOTICE OF APPLICATION**

IN THE NEW BRUNSWICK COURT OF APPEAL

No.: \_\_\_\_\_ Fredericton

Between:

GREGOR JAMES MACASKILL  
Applicant

-and-

NEW BRUNSWICK ENERGY AND UTILITIES  
BOARD  
Respondent

**NOTICE OF APPLICATION  
(FORM 16D)**

TO:

New Brunswick Energy and Utilities Board  
P.O. Box 5001  
44 Chipman Hill, Suite 800 Brunswick House  
Saint John, NB E2L 4Y9

RIGS Energy Atlantic Limited Partnership  
c/o Len Hoyt, K.C.  
McInness Cooper  
Suite 600, Barker House  
570 Queen Street, P.O. Box 610  
Fredericton, NB E3B 5A6

Public Intervener  
Office of the Public Intervener  
500 Beaverbrook Court, Rm 208  
PO Box 6000  
Fredericton, NB E3B 5H1

NB Power Corporation  
P.O. Box 2000  
515 King Street,  
Fredericton, NB E3B 4X1

Conservation Council of New Brunswick  
180 St. John St.  
Fredericton, NB E3B 4A9

**FORMULAIRE  
FORMULE 16D**

**AVIS DE REQUÊTE**

(*Cour; N<sup>o</sup> du dossier; Intitulé de l'instance*)

**AVIS DE REQUÊTE  
(FORMULE 16D)**

DESTINATAIRE: (*l'intimé susmentionné ou autre*)

Dr. Andrew G. Secord  
Professor of Economics  
St. Thomas University  
55 Dineen Drive  
Fredericton, NB E3B 5G3

Utilities Municipal  
c/o Cox & Palmer  
Suite 300, 77 Westmorland St.  
Fredericton, NB E3B 4Y9

WKM Energy Consultants Inc.  
c/o William K. Marshall, President  
653 Aberdeen St.  
Fredericton, NB E3B 1S6

LEGAL PROCEEDINGS HAVE BEEN COMMENCED BY FILING THIS NOTICE OF APPLICATION.

The applicant will make an application before the Court at FREDERICTON, on the \_\_\_\_ day of \_\_\_\_\_, 2026 at \_\_\_ a.m./p.m. for an order as set out hereunder.

If you wish to oppose this application you must appear at the hearing of the application at the place, date and time stated, either in person or by a New Brunswick lawyer acting on your behalf.

If you intend to appear on the hearing of the application and wish to present to the Court at that time affidavit or other documentary evidence to support your position, you must serve a copy of such evidence on the applicant or his lawyer and, with proof of such service, file it in this Court Office prior to the hearing of the application.

If you fail to appear on the hearing of the application  
**AN ORDER WHICH MAY AFFECT YOU MAY BE MADE IN YOUR ABSENCE.**

You are advised that:

- (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;
- (b) the applicant intends to proceed in the ENGLISH language; and
- (c) if you require the services of an interpreter at the hearing you must advise the clerk at least 7 days before the hearing.

**PAR LE DÉPÔT DU PRÉSENT AVIS DE RE-QUÊTE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE.**

Le requérant présentera une requête à la Cour à ..... (*lieu précis*) ....., le 20 ..... à ..... h... en vue d'obtenir l'ordonnance décrite ci-dessous.

Si vous désirez contester cette requête, vous devrez comparaître à l'audition de la requête aux lieu, date et heure indiqués, soit en personne ou par l'intermédiaire d'un avocat du Nouveau-Brunswick chargé de vous représenter.

Si vous prévoyez comparaître à l'audition de la requête et désirez présenter à la Cour un affidavit ou une autre preuve littérale en votre faveur, vous devrez signifier copie de cette preuve au requérant ou à son avocat et la déposer, avec une preuve de sa signification, au greffe de cette Cour avant l'audition de la requête.

Si vous ne comparez pas à l'audition de la requête,  
**UNE ORDONNANCE POUVANT VOUS CONCERNER POURRA ÊTRE RENDUE EN VOTRE ABSENCE.**

Sachez que:

- a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;
- b) le requérant a l'intention d'utiliser la langue ..... ; et
- c) si vous avez besoin des services d'un interprète à l'audience, vous devez en aviser le greffier au moins 7 jours avant l'audience.

Form / Formule 16D

THIS NOTICE is signed and sealed for the Court of Appeal by \_\_\_\_\_ Clerk of the Court at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2026.

CET AVIS est signé et scellé au nom de la Cour du Banc du Roi par \_\_\_\_\_, greffier de la Cour, à \_\_\_\_\_, ce ..... 19. ....

.....  
(clerk)

.....  
(greffier)

Court Seal

Sceau de la Cour

.....  
(address of court office)

.....  
(adresse du greffe)

**APPLICATION**

**REQUÊTE**

À l’audition de la présente requête, le requérant a l’intention de demander qu’il soit ordonné que ..... (indiquer l’ordonnance demandée) .....

Énoncer ensuite les éléments suivants dans des paragraphes numérotés et distincts:

1. La qualité de toutes les personnes qui sont parties à l’instance.
2. Le lieu de résidence du requérant.
3. Les motifs à discuter et les renvois aux dispositions législatives ou règles qui seront invoquées.
4. Une liste des preuves littérales qui seront utilisées lors de l’audition de la requête.

FAIT à ..... le ..... 20. ....

.....  
Avocat du requérant (ou requérant, s’il n’est pas représenté par un avocat)

**PART I: Order Sought**

1. On the hearing of this application, the Applicant intends to apply for (1) an order that the decision of the New Brunswick Energy and Utilities Board (the “Board”) be removed into this Honourable Court, quashed, and remitted to the Board to be redecided with a new hearing, in accordance with this Honourable Court’s findings, and on a complete evidentiary record; (2) costs; (3) such further and other relief as this Honourable Court may find just.

**PART II: Facts**

***The Applicant:***

2. The Applicant Gregor MacAskill resides in Sackville, New Brunswick.
3. The Protect the Chignecto Isthmus Coalition (the Coalition) is an unincorporated coalition that was granted formal intervenor status in and participated throughout Matter EL-002-2025.
4. The New Brunswick Energy and Utilities Board (the “Board”) recognized Mr. MacAskill as a representative of the Coalition. Mr. MacAskill participated in the proceeding by assisting the preparation and review of interrogatories, evidence, motions and submissions, and by presenting submissions to the Board on the Coalition’s behalf. Mr. MacAskill advanced the Coalition’s positions concerning resource adequacy, alternatives, procurement, procedural fairness and the prudence of the Project.
5. Mr. MacAskill warrants that the Coalition has authorized him to represent the Coalition in this matter.
6. Mr. MacAskill, as the representative of an intervenor before the Board, is a person aggrieved by the Board’s decision in this matter per subsection 52(1) of the *Energy and Utilities Board Act*, SNB 2006, c E-9.18.
7. In the alternative, Mr. MacAskill, as representative of the Coalition, is a public interest litigant in this matter, and will seek public interest standing.

***The Board:***

8. The Respondent, the Board, is a statutory board continued pursuant to Section 3 of the *Energy and Utilities Board Act*, SNB 2006, c E-9.18.

***Additional Parties:***

9. New Brunswick Power Corporation (“NB Power”) was the applicant before the Board.

10. RIGS Energy Atlantic Limited Partnership is the contractual counterparty to NB Power under the approved agreements.
11. Conservation Council of New Brunswick, Dr. Andrew G. Secord, Utilities Municipal, WKM Energy Consultants Inc., and the Public Intervener were intervenors in Matter EL-002-2025.

***The Decision:***

12. NB Power applied to the Board for an order pursuant to subsection 107(9) of the *Electricity Act* (the “Act”) to approve its intended entry into an Amended and Restated Tolling Agreement with RIGS Atlantic Limited Partnership, for the development, construction, and operation of a dual-fuel combustion turbine electric generating facility at Centre Village, New Brunswick, and approval for an Expansion Tolling Agreement with RIGS LP to add two additional turbines to the Project in order to provide a further 100 MW of capacity which would be sold to Nova Scotia for a period of time, resulting in a total nameplate generation capacity for the “Project” of 500 MW. Both requests were considered and determined by the Board in Matter EL-002-2025.
13. The capital cost of the Project would be more than \$1 billion, and to the extent that NB Power is permitted to include the costs of the Project in future revenue requirements, it will result in higher electricity rates for NB Power customers over the 25-year design life of the facility.
14. The Act requires the Board to approve a proposed capital project if the Board finds the project to be prudent, having regard to the factors set out in subsection 107(11) of the Act.
15. On May 28, 2026, the Board found the Tolling Agreement and the Expansion Tolling Agreement to be prudent and thus approved both of NB Power’s capital expenditure requests in the Matter. A copy of a transcript of the oral Decision delivered by the Board is attached to this application.

**PART III: Grounds**

16. Adequacy of reasons: The Board erred in law, and acted unreasonably, by failing to provide reasons that adequately explain its conclusion that the Project was prudent. The reasons do not sufficiently disclose the Board’s chain of analysis or the manner in which it assessed the evidence before it, thereby preventing the Applicant and this Honourable Court from understanding the basis for the Board’s conclusion. The Board failed, for example, to show how alternatives to the Project had been considered and rejected, or how the mandatory factors in subsection 107(11) of the Act were considered. Nor did the Board provide a complete findings-of-fact on the evidence as required by subsection 46(1) of the *Energy and Utilities Board Act*.
17. Coherence, rationality and intelligibility of reasons: The Board erred in law and in fact, and acted unreasonably, by failing to provide internally coherent, rational, and intelligible reasons

demonstrating how the evidentiary record supported its conclusion. The Board failed to establish a rational connection between the evidence before it and its ultimate finding. As a result, the Decision is not reasonably justified, transparent, or intelligible. The Board's conclusion regarding the prudence of the Project, pursuant to subsections 107(9) and 107(11) of the Act, is not reasonably justified on the basis of the evidentiary record before it. The Decision does not demonstrate that the statutory prudence factors were reasonably assessed or that the evidence before the Board reasonably supported its conclusion.

18. Failure to adequately consider and respond to parties' submissions: The Board erred in law and in fact, and acted unreasonably, by failing to meaningfully consider and respond to submissions made by the Applicant and other interveners that were directly relevant to the prudence determination required under subsections 107(9) and 107(11) of the Act. In particular, the Board failed to adequately address submissions concerning the evidentiary foundation for the Matter, including resource adequacy, alternatives, procurement, and other evidence bearing on whether the Matter represented a prudent investment. The Board's reasons do not demonstrate that the submissions were meaningfully considered in reaching its prudence determination.
  
19. Procedural fairness: The Board erred and breached the requirements of procedural fairness by failing to provide the Applicant with a fair and meaningful opportunity to participate in and respond to the case advanced by NB Power concerning the prudence of the Matter under subsections 107(9) and 107(11) of the Act. In particular, the Board failed
  - a. to ensure that NB Power's evidentiary filings were sufficient to permit a full, transparent, and rigorous assessment of the prudence of the Matter;
  
  - b. to ensure that relevant materials were disclosed in a timely manner to permit meaningful review and response by the Applicant;
  
  - c. to require production of relevant and material information, including NB Power's Investment Governance Framework and Investment Rationale Documentation, necessary to assess the prudence of the Matter;
  
  - d. to permit the evidentiary record to expand in a manner proportionate to the expanded scope of the Matter;
  
  - e. to allow the Applicant a fair opportunity to present relevant evidence bearing on the prudence of the Matter, including evidence relating to Nova Scotia resource adequacy;
  
  - f. to allow the Applicant a fair opportunity to review and respond to relevant information, including the REOI Evaluation Report received by NB Power, full-year system data, and
  
  - g. portions of the confidential record;
  
  - h. to allow the Applicant an opportunity to meaningfully respond to additional evidence advanced by NB Power.

These procedural deficiencies impaired the Applicant's ability to meaningfully participate in the proceeding and to fully test and challenge NB Power's assertion that the Matter constituted a prudent investment.

20. Such further and other grounds as may appear prior to the hearing of this matter.

***Relief Sought***

21. Mr. MacAskill seeks an order that removes the decision of the Board in matter EL-002-2025 to this Honourable Court, quashes it, and remits it to the Board to be remade through a new hearing and in consideration of the findings of this Court. Mr. MacAskill also seeks costs and such further and other relief as this Honourable Court deems just.

**PART IV: Statutory Provisions and Evidence**

22. Mr. MacAskill relies on the following statutory provisions:

- a. *Energy and Utilities Board Act*, SNB 2006, c E-9.18;
- b. *Electricity Act*, SNB 2013, c 7;
- c. Court of King's Bench Civil Rules, including Rules 38, 62 and 69.

23. Mr. MacAskill will use the following documentary evidence at the hearing of this application:

- a. The Affidavit of Gregor MacAskill (as evidence of the Applicant's background and involvement with the Matter and as procedural fairness evidence only).
- b. The Record of the proceeding before the Board in the Matter at issue, including evidence and transcripts from the proceeding.
- c. Such further affidavits and other documents as counsel for the Applicant may advise and this Court may permit.

Dated at Halifax, Nova Scotia, this 23<sup>rd</sup> day of June, 2026

---

James Simpson  
Barrister of the Supreme Court of Nova Scotia

Form / Formule 16D

Name of lawyer for applicant: JAMES SIMPSON

Name of firm: JUNIPER LAW

Business address: 8426 HWY 7  
Musquodoboit Hbr., B0J 2L0

Tel: 902 817 1737

Email: Jamie@juniperlaw.ca

Address for service within New Brunswick:

Jamie Simpson c/o  
46 Weldon Street  
Sackville, NB E4L 4N4

82-93; 85-5; 86-87; 87-111

Nom de l'avocat du requérant: .....

Raison sociale (s'il y a lieu): .....

Adresse professionnelle: .....

.....  
ou, si le demandeur n'est pas représenté par un avocat:

Nom du requérant: .....

Adresse aux fins de signification au Nouveau-  
Brunswick: .....

82-93; 85-5; 86-87; 87-111