

Part I Interpretation

Citation

1 These regulations may be cited as the *Renewable Electricity Regulations*.

Interpretation

2 In these regulations,

“Act” means the *Electricity Act*;

“agricultural biomass” means biomass produced from agricultural products produced in a manner that is sustainable;

“biomass” means organic materials including material that may have been processed so as to change their size, shape, density, moisture, or purity and includes forest biomass and agricultural biomass and secondary waste by-products from their manufacturing, but excluding materials for which other diversion methods are viable and the treated by-products of manufacturing processes;

“Board” means the Nova Scotia Utility and Review Board;

“community economic-development corporation” means a corporation or association that meets the criteria prescribed by the regulations made pursuant to the *Equity Tax Credit Act*, is registered as a community economic development corporation by the Minister of Finance pursuant to Section 11 of the *Equity Tax Credit Act* and has at least 25 members;

“cooperative” means a cooperative incorporated under the *Cooperative Associations Act* that has at least 25 members;

“Department” means the Department of Energy;

“designated representative” means the person authorized to act as the representative of a renewable electricity generator and whose acts and omissions are binding on it;

“developmental tidal array” means for the purposes of clause 4A(7)(d) of the Act, two or more tidal generation devices with a capacity of greater than .5 MW each, connected to one another that will interconnect with the electrical grid through the transmission system, with an overall limit of 20 MW capacity from all such arrays;

“distribution system” means a system for conveying electricity at voltages of less than 69 kV;

“former regulations” means the *Renewable Energy Standard Regulations*;

“GWh” means gigawatt hours;

“independent power producer” means a renewable electricity generator that owns or operates an electricity generation facility in the Province provided that

- (i) no load serving entity in combination with any affiliate of the load serving entity, holds more than forty nine percent of the securities entitled to vote for the election of its directors, and
- (ii) it sells electricity
 - (A) in the Province to public utilities for retail sales to the utilities' customers, or
 - (B) for export outside of the Province;

“load serving entity” means any one of the following:

- (i) NSPI,
- (ii) a municipal electric utility that purchases any or all of its electricity supply from a supplier other than NSPI,
- (iii) an independent power producer who exports electricity;

“MWh” means megawatt hours;

“municipality” means a regional municipality, town or county or district municipality;

“Minister” means the Minister of Energy;

“municipal electric utility” means the electrical utility for any one of the following:

- (i) the Town of Antigonish,
- (ii) the Town of Berwick,

- (iii) the Town of Canso,
- (iv) the Town of Lunenburg,
- (v) the Town of Mahone Bay,
- (vi) The Electric Light Commissioners for Riverport, in the County of Lunenburg;

“NSPI” means Nova Scotia Power Incorporated;

“not for profit body corporate” means a corporation operated on a not for profit basis where no member, officer, director or employee of the corporation may share in any operating surplus of the corporation;

“pre-2002 renewable electricity” means all renewable electricity owned, contracted for in Nova Scotia and operated by a load serving entity prior to January 1, 2002;

“primary forest biomass” means biomass produced from primary forest products harvested in the Province and first used as a fuel;

“primary forest products” has the same meaning as provided in the *Forests Act*;

“renewable electricity” includes all pre-2002 renewable electricity and all renewable low impact electricity generated after December 31, 2001 and imported sources of renewable electricity;

“renewable electricity generator” means a person who owns or operates a renewable electricity generation facility in the Province;

“renewable electricity generation facility” means a facility that generates renewable low impact electricity and has received all approvals and permits required under these regulations or any other applicable enactment;

“renewable electricity standard” means a target share or amount of renewable low impact electricity to be supplied by a load serving entity;

“renewable low impact electricity” for the purposes of section 3A of the Act and these regulations, means electricity produced from:

- (i) solar energy,
- (ii) wind energy,
- (iii) run-of-the-river hydroelectric energy,
- (iv) ocean-powered energy,

- (v) tidal energy,
- (vi) wave energy,
- (vii) primary forest biomass harvested in a sustainable manner;
- (viii) agricultural biomass;
- (ix) landfill gas;
- (x) the following sources so long as they are able to be replenished by natural processes within a reasonable length of time, and within 80 years at the latest:
 - (A) biomass from an aquatic or ocean source;
 - (B) liquid biofuel and other biogas energy; and
- (xi) any other source that is able to be replenished by natural processes within a reasonable length of time, and within 80 years at the latest;

“run-of-the-river hydroelectric electricity” means electricity generated from flowing water that causes minimum environmental effect on the river course and may include the use of a dam structure;

“small-scale in-stream tidal” for the purpose of clause 4A(7)(c) of the Act means a tidal or wave generation device, with a capacity of .5 MW or less, that will interconnect with the electrical grid through the distribution system;

“transmission system” means a system for conveying electricity at voltages of 69 kV or more.

3(1) A corporation shall be deemed to be an affiliate of another corporation if one of them is the subsidiary of the other or if both are subsidiaries of the same corporation or if each of them is controlled by the same person.

(2) A corporation shall be deemed to be controlled by another person or by two or more corporations if

- (a) voting securities of the first-mentioned corporation carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or by or for the benefit of the other corporations; and
- (b) the votes carried by such securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned corporation.

(3) A company shall be deemed to be a subsidiary of another corporation if

(a) it is controlled by

(i) that other, or

(ii) that other and one or more corporation each of which is controlled by that other, or

(iii) two or more corporations each of which is controlled by that other; or

(b) it is a subsidiary of a corporation that is that other's subsidiary.

Minister's powers

4 The Minister may direct the Board to inquire into and report on any matter under the Act or these regulations that the Minister considers necessary or advisable to carry out effectively the intent and purpose of the Act.

Part II Renewable Electricity Standard

Renewable electricity standard 2011

5 (1) In each of the calendar years 2011 and 2012, each load serving entity must supply its customers with renewable low impact electricity from independent power producers in an amount equal to or greater than 5% of its total sales for that year.

(2) Each load serving entity must meet the renewable electricity standard in subsection (1) by supplying renewable low impact electricity produced by a renewable electricity generation facility.

(3) To meet the renewable electricity standard in subsection (1), a municipal electric utility that purchases any of its electricity supply from a person other than NSPI must ensure that a minimum of 5% of that non-NSPI electricity supply is supplied by a renewable electricity generator.

Renewable electricity standard 2013

6(1) Each year beginning with the calendar year 2013, each load serving entity must supply its customers with renewable low impact electricity in an amount equal to or greater than 10% of its total sales for that year.

(2) Each load serving entity must meet the renewable electricity standard in subsection (1) by supplying renewable low impact electricity produced by a renewable electricity generation facility.

(3) Subject to subsection (4), NSPI must meet the renewable electricity standard in subsection (1) as follows:

(a) by continuing to supply 5% of its total annual sales from an independent power producer ; and

(b) by acquiring the additional renewable low impact electricity to meet the standard in subsection (1) from either independent power producers or from its own renewable electricity generation facilities.

(4) To meet the renewable electricity standard in subsection (1), a municipal electric utility that purchases any of its electricity supply from a person other than NSPI must ensure that a minimum of 10% of that non-NSPI electricity supply is supplied by a renewable electricity generator.

Renewable electricity standard 2015

7(1) Each year beginning with the calendar year 2015, each load serving entity must supply its customers with renewable electricity in an amount equal to or greater than 25% of its total sales for that year.

(2) Subject to subsection (3) each load serving entity must meet the renewable electricity standard in subsection (1) by supplying renewable electricity produced by a renewable electricity generation facility.

(3) Subject to subsection (4), NSPI must meet the renewable electricity standard in subsection (1) from eligible renewable electricity supplies including the following:

(a) by acquiring at least an additional 300 GWh from independent power producers in addition to the renewable electricity required to meet the requirements of Section 5 and 6;

(b) by acquiring no more than 150 GWh from co-firing no more than 150,000 dry metric tonnes of forest biomass;

(c) through the contribution of any GWhs acquired under the program provided under section 4A of the Act;

(d) through the contribution from a load-serving entity's owned or operated renewable electricity generating facility including contributions of pre-2002 renewable electricity; and

- (e) other forms of renewable electricity as may be allowed under Section 8.

(4) To meet the renewable electricity standard in subsection (1), a municipal electric utility that purchases any of its electricity supply from a person other than NSPI must ensure that a minimum of 25% of that non-NSPI electricity supply is supplied by a renewable electricity generator.

Shortfalls

8(1) Where NSPI is of the opinion that it may be unable to meet a renewable energy standard due to a delay or the inability of independent power producers to provide contracted electricity supplies, NSPI shall supply sufficient renewable electricity from other sources to make up the shortfall for a period not to exceed 12 months.

(2) Where, on application by NSPI, the Minister is of the opinion that NSPI may be unable to meet the renewable electricity standard due to the inability of independent power producers to provide contracted electricity supplies for a period longer than 12 months, the Minister may permit NSPI to supply sufficient renewable electricity from other sources to make up the shortfall on such terms and conditions as the Minister may determine.

Forest biomass cap

9(1) No more than 500,000 dry tonnes of primary forest biomass over the amount of primary forest biomass consumed in the Province in 2009 may be utilized to attain the renewable electricity standard set out in Section 7.

(2) For the purposes of a renewable electricity generation facility that uses primary forest biomass, only the amount of electricity the Minister determines is generated from the use of primary forest biomass as permitted by the subsection (1) qualifies for the renewable electricity standard set out in Section 7.

Renewable electricity generation facility approval

10(1) Only electricity supplied by a renewable electricity generation facility that has been approved under Section 15 qualifies to meet the renewable electricity standards set out in Sections 5, 6 and 7.

(2) Any person may apply to the Minister for approval of a facility as a renewable electricity generation facility.

Application

11 An application must be completed and signed by a person who is an authorized signatory of the applicant.

Submission of application

12 An application must be submitted to the Minister and be in the form prescribed by the Minister.

Incomplete application

13 If an application is not complete or additional information is required, the Minister shall notify the applicant in writing within 90 days of receipt of the application and request the information necessary to make the application complete.

Rejection of incomplete application

14 If the information requested in Section 13 is not provided by the applicant within 90 days of a request, the Minister may reject the application and, if so, shall immediately notify the applicant in writing that the application has been rejected.

Approval or rejection of application

15(1) The Minister must approve an application if

- (a) the renewable energy generation facility is to be located in the Province, including the marine waters in the Province;
- (b) it will produce renewable low impact electricity;
- (c) if it was constructed before December 31, 2001, it has
 - (i) increased its output since December 31, 2001 by expanding or through technology upgrades, or
 - (ii) have undergone a major rebuild in lieu of retirement since December 31, 2001.

(2) For a facility described in subsection (1)(c) only the incremental capacity resulting from the increase in output since December 31, 2001 qualifies under Sections 5 and 6.

(3) Where the Minister approves an application under subsection (1) the Minister will issue the applicant a renewable electricity standard approval which may be subject to such terms and conditions as the Minister determines are appropriate.

(4) An approval issued by the Minister under subsection (3) must not be transferred without the prior written approval of the Minister.

(5) A renewable energy generation facility approved under this Section must continue to meet the applicable requirements of these regulations and its sales level of output must not exceed production supply.

Transitional

16 A certification issued under Section 7 of the former regulations is hereby continued as a renewable electricity standard approval under Section 15 of these regulations.

Minister's determination

17 For each calendar year starting with the 2011 calendar year, the Minister shall determine for, each load serving entity's total electricity sales, the total renewable electricity produced and the portion of renewable electricity produced from independent power producers after December 31, 2001.

Penalties and enforcement

18(1) A person is liable to a daily penalty of no more than \$500 000 to an maximum aggregate of \$10,000,000 per occurrence if they do any of the following:

- (a) fail to comply with Part II of these regulations;
- (b) fail, neglect, omit or otherwise refuse to do any act or thing required under Part II of these regulations;
- (c) fail, neglect, omit or otherwise refuse to comply with a direction or order of the Minister to comply with Part II of these regulations.

(2) Unless otherwise provided in the Act, a person is not subject to a penalty under subsection (1) if the person establishes that they

- (a) exercised due diligence; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would render the conduct of the person excusable.

(3) No public utility may recover any penalty imposed under this Section through its rate base.

Part III Feed-in Tariffs

One Window Committee

19(1) The Ministers of Agriculture; Energy; Environment; Fisheries and Aquaculture; Natural Resources; Service Nova Scotia and Municipal Relations; Tourism, Culture and Heritage; and Transportation and Infrastructure Renewal, shall designate one or more representative to serve on a one-window committee.

(2) The one-window committee will, under the direction of the Minister of Energy, coordinate the provision of timely advice to applicants under this Part respecting permits or approvals necessary from their respective departments for an applicant's project and the expected level of service for the processing of such permits and approvals.

Community feed in tariff

20(1) In accordance with Section 4A of the Act the Board shall set a tariff under this Section for each of the following classes of generation facility:

- (a) wind;
- (b) biomass;
- (c) small scale in stream tidal; and
- (d) run-of-the-river hydroelectricity.

(2) In establishing a tariff under subsection (1) the Board shall determine, for each class of generator, the estimated value of the physical assets of a facility, and may, in its discretion, make allowances for the following matters:

- (a) depreciation;
- (b) cost of labour and supervision
- (c) necessary working capital
- (d) organization expenses
- (e) construction overheads in respect of engineering, superintendence, legal services, taxes and interest during construction, and like matters not included in the valuation of physical assets;
- (f) costs in whole or in part of land acquired in reasonable anticipation of future requirements;
- (g) costs to interconnect the generation facility with the electrical grid;
- (h) return on investment; and
- (i) such other matters as the Board deems appropriate.

Developmental tidal array tariff

21(1) In accordance with Section 4A of the Act the Board shall set a tariff under this Section for developmental tidal arrays.

(2) In determining a tariff for developmental tidal arrays the Board shall take into account those matters described in subsection 20(2) except that it shall not make any allowance for the following matters:

- (a) costs covered or reimbursed through any government grant;
- (b) costs related to research and development of the technology deployed; and
- (c) costs to interconnect the generation facility with the electrical grid.

Electricity purchases

22 Electricity purchased by a public utility under section 4A of the Act from a renewable energy generator approved under Section 28 qualifies for the renewable electricity standard set out in Sections 5,6, and 7.

Community feed-in tariff qualification

23 In order to qualify for a tariff under Section 20 the generation facility

- (a) must be located in the Province;
- (b) must have majority ownership by:
 - (i) a municipality where the generation facility is located within the boundaries of the municipality;
 - (ii) a Mi'kmaq band council where the generation facility is located on lands owned by the Mi'kmaq band council;
 - (iii) a cooperative all of the members of which reside in Nova Scotia and 25% of which reside in the county where the generation facility is located;
 - (iv) a not-for-profit body corporate where at least 50% of its members reside in Nova Scotia and 25% of which reside in the county where the generation facility is located; and

- (v) a community economic development fund all of the members of which reside in Nova Scotia and 25% of which reside in the county where the generation facility is located;
- (c) must be a generation facility described in Section 20;
- (d) must interconnect with the electrical grid through a distribution system; and
- (e) must have been approved under Section 28.

Developmental tidal array tariff qualifications

- 24 In order to qualify for a tariff under section 21 the generation facility
- (a) must be located in the Province;
 - (b) must be a developmental tidal array;
 - (c) must interconnect with the electrical grid through a transmission system; and
 - (d) must have been approved under Section 28.

Application

- 23 An application must be completed and signed by a person who is an authorized signatory of the applicant.

Submission of application

- 24 An application must be submitted to the Minister in the form or manner required by the Minister which may include filing electronically through the internet.

Contents of application

- 25 An application must be in the form prescribed by the Minister and must:
- (a) contain the name, address, telephone, e-mail address and fax number of the applicant and where applicable, proof of current registration with the Nova Scotia Registry of Joint Stock Companies, and the name, title and address of the person to be contacted in respect of the application;
 - (b) evidence that the applicant qualifies as generator under section 4A of the Act;
 - (c) include a project concept identifying the type of generation facility proposed and the community in which the project will be located;

- (d) demonstrate that the applicant has knowledge of the municipal by-laws that apply to the project and a commitment to comply with them;
- (e) identify any local Miꞑmaq communities that may be impacted by the project and demonstrate an acceptable means to engage those Miꞑmaq communities to identify any of their concerns or interests including interests in participation as owners, investors or suppliers;
- (f) provide evidence of community support for the project;
- (g) demonstrate the applicant's knowledge and understanding of the type and scope of environmental approvals, including a statement of the environmental impact of the project;
- (h) include a business case that
 - (i) contains a resource assessment;
 - (ii) demonstrates the financial viability of the project at the appropriate tariff rate; and
 - (iii) contains the projected capital costs of the project including interconnection costs the cost and expected sources of capital;
- (j) demonstrate the applicant's knowledge of the requirements for an archaeological or heritage site review including a plan for completing the review with cost and timing implications for the project;
- (k) demonstrate the applicant's knowledge of the land ownership and access issues for the propose project site;
- (l) provide evidence of discussions with NSPI on the technology requirements for the project; the availability of capacity on the distribution or transmission system for the project, as the case may be; and demonstrate an understanding of the detailed technical studies required for the project including the costs of the studies; and
- (m) any other information required by the Minister.

Incomplete application

26 If an application is not complete or additional information is required, the Minister shall notify the applicant in writing within 90 days of receipt of the application and request the information necessary to make the application complete.

Rejection of incomplete application

27 If the information requested in Section 26 is not provided by the applicant within 90 days of a request, the Minister may reject the application and, if so, shall immediately notify the applicant in writing that the application has been rejected.

Approval or rejection of application

28(1) The Minister may approve or reject an application which satisfies the requirements under Part III of these regulations, subject to such other terms and conditions as the Minister determines are appropriate and shall notify the applicant in writing accordingly.

(2) Where the Minister approves an application under subsection (1) the Minister will issue the applicant a feed-in tariff renewable electricity approval.

(3) An approval issued by the Minister under subsection (2) must not be transferred without the prior written approval of the Minister.

(4) Where an applicant has been approved under subsection (2) the applicant must continue to meet the applicable requirements of these regulations.

Interconnection queue

29 If an application is approved by the Minister under Section 28, NSPI must, at the request of the applicant, place the applicant's generation facility in the next available place in the queue for interconnection with the electrical grid.

Standard power purchase agreement

30(1) The Minister, in consultation with NSPI shall prepare a standard form of power purchase agreement to be used for the purposes of this Part and have the form of power purchase agreement approved by the Board.

(2) The intended parties to a power purchase agreement may agree to changes to the standard power purchase agreement provide for in subsection (2) provided that the form of power purchase agreement is provided to the Minister.

Deemed agreement

31 When an application is approved, the applicant and NSPI shall be deemed to have entered into a power purchase agreement in the form provided in Section 30 effective from the date NSPI accepts the applicant in the interconnection queue.

Use of information

32 Where an applicant submits an application under this Part the applicant agrees that the information may be shared with other departments or agencies of the government or a load serving entity in order to complete the application process.

Reporting

33 Within 30 days of the interconnection of a generation facility with the electrical grid the renewable energy generator that owns or operates the facility shall provide a report to the Minister that details:

- (a) the total capital costs for the project; and
- (b) for each project expenditure for goods or services that is \$50,000 or greater, the name and address of the supplier or contractor providing the goods or services.

Part IV Renewable Electricity Administrator

Request for proposal mandatory requirement

34 If a request for proposals under section 4B of the Act includes a request for a primary forest biomass renewable electricity generation facility, the request for proposals must require that proponents provide a forest management plan that will explain how the proponent intends to ensure that its fuel supply will meet sustainable harvesting requirements.

Standard contract

35(1) The renewable electricity administrator must, in consultation with NSPI, prepare a standard form power purchase agreement to be used for the purposes of section 4B of the Act and have the form of power purchase agreement approved by the Board prior to any procurement.

(2) The intended parties to a power purchase agreement may agree to changes to the standard power purchase agreement provide for in subsection (2) provided that the form of power purchase agreement is provided to the Minister in the form agreed by the parties.

Part V General

Minister's powers

- 36 The Minister has all the power and authority necessary to implement, administer and enforce these regulations, including the power to issue directions or orders, and
- (a) shall establish a process for approving and auditing for compliance with these regulations renewable electricity generation facilities and renewable electricity generators;
 - (b) shall establish a process for approving and re-approving renewable electricity generation facilities and renewable electricity generators;
 - (c) shall establish accounts and records for a renewable electricity generator or its designated representative;
 - (d) shall establish registries of renewable electricity generation facilities and information that the Administrator determines to be necessary;
 - (e) may audit approved renewable electricity generation facilities as necessary to verify compliance with the Act and regulations;
 - (f) may suspend or revoke an approval issued under the regulations;
 - (g) may do anything necessary to ensure that the requirements of these regulations are met; and
 - (h) may prepare interpretations of these regulations or policies, standards and guidelines under these regulations.
- (2) The Minister may authorize a representative of the Department to exercise the Minister's powers and authority, and to undertake the Minister's responsibilities under these regulations.

Reporting requirements

37(1) Each load serving entity must report to the Minister annually, or at other intervals determined by the Minister, to outline its progress in meeting the requirements of these Part II of regulations.

- (2) The Minister may specify the form and content of the progress report.
- (3) The Minister may issue directions or orders to ensure that the requirements of this Section are met.

Books and records of renewable electricity generators

38 Every renewable electricity generator shall keep or cause to be kept appropriate books, records, accounts, documents and other information related to the ownership and operation of its renewable electricity generation facility and its membership or ownership at an office in the Province.

Audit or examination

39 The Minister may at any time audit or examine the books and records of a renewable electricity generator to ensure the continued compliance by the renewable energy generator with the Act and regulations.

Duty of renewable electricity generator

40(1) A renewable electricity generator shall, for the purpose of an audit or examination made in accordance with Section 39,

- (a) make its books, records, accounts, documents and other information available at all reasonable times to any person authorized by the Minister for the purpose and shall provide the person with copies of documents requested by the person that are reasonable for the purposes of the audit or examination;
- (b) make available copies of any operating agreement or other agreements between the independent power producer and any other person in relation to the operation or ownership of its renewable electricity generation facility, at all reasonable times to any person authorized by the Minister for the purpose; and
- (c) give all reasonable assistance to a person authorized by the Minister to carry out the audit or examination, provide access to all relevant sites and answer orally or in writing all questions relating to the audit or examination in each case at such times, upon such notice and under such supervision by or on behalf of the independent power producer as is reasonable in the circumstances.

Order to comply

41(1) Where the Minister believes that a person has contravened, or will contravene any part of the Act or regulations, the Minister may issue an order requiring the person to cease a specified activity or to take such actions as the Minister directs.

(2) An order pursuant to subsection (1) remains in effect until it is revoked, in writing, by the Minister.

(3) A copy of an order made pursuant to subsection (1) shall be served on the person to whom it is directed.

Compliance with order

42 Where an order is served on a person to whom it is directed, that person shall comply with the order forthwith or where a period for compliance is specified in the order, within the time period specified.

Failure to comply

43 Where the person to whom an order is directed does not comply with the order or a part of the order, the Minister may take whatever action the Minister considers necessary to carry out the terms of the order or may cancel or suspend a power purchase agreement entered into pursuant to the provisions of Part III of these regulations, to which the person is party.

Power purchase agreement

44 Any power purchase agreement entered into or deemed to have been entered into pursuant to the provisions of Part III of these regulations is subject to suspension or cancellation by the Minister as provided in these regulations.

Appeals to the Board

45 (1) A person directly affected by an order or decision of the Minister made under Sections 41, 42 and 43 may, by written notice to the Board, appeal to the Board within 60 days after the later of the date of the order or decision or the issuing of the reasons for the order or decision.

(2) Where an appeal is taken under this Section, the Board may, by order, confirm the decision under appeal or make such other decision as the Board considers proper.

(3) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this Section.

Board powers

46 The powers of the Board respecting a hearing or an appeal under the *Utility and Review Board Act* and the *Public Utilities Act* and regulations made under those Acts apply to an appeal under these regulations.

No assignment of power purchase agreement

47 No power purchase agreement entered into under Part III of these regulations may be assigned without the prior written consent of the Minister.

Report by independent power producer

48 Where any event occurs, whether by operation of law or otherwise, that causes an independent power producer to fail to comply with the requirements for an independent power producer under these regulations, the independent power producer shall forthwith, notify the Minister in writing of the event and provide such information as the Minister may require.

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