



**Department of Justice
Legal Services Division**

4th Floor - 5151 Terminal Road
PO Box 7
Halifax NS B3J 2L6

Phone: 902-424-6288
Fax: 902-424-1730
E-mail: mcgratst@gov.ns.ca

Stephen T. McGrath
Solicitor

File No.: 10-2263

May 6, 2011

VIA COURIER & VIA EMAIL: NMCNEIL@gov.ns.ca

Nancy McNeil
Regulatory Affairs Officer/Clerk
Nova Scotia Utility and Review Board
3rd Floor - 1601 Lower Water Street
Summit Place
Halifax, NS B3J 3P6

Dear Ms. McNeil:

Re: Community Feed-in-Tariff Hearing 2010 - BRD-E-R-10

Please accept the brief comments in this letter as reply submissions in the above-noted proceeding on behalf of the Nova Scotia Department of Energy ("NSDOE").

Upon review of the closing submissions filed in this proceeding, NSDOE noted that a number of comments that were made by several parties, including in particular Black River Wind Limited and the Ecology Action Centre addressed matters of government policy which, it is respectfully submitted, are not within the purview of the Nova Scotia Utility and Review Board's mandate in this particular proceeding. As such, NSDOE will not respond to these matters in these submissions, except to reiterate government's intention to review the COMFIT program in 2012.

NSDOE does, however, wish to comment briefly on two aspects of the closing submissions filed by the Consumer Advocate. Specifically, the Consumer Advocate's recommendations for limits on the amount of tidal power that should be allowed on the COMFIT rate (and potentially for biomass projects as well) and the Consumer Advocate's recommendation that certain express provisions be included in the tariffs.

In respect of the requested caps on permitted capacity from certain classes of generators, it is respectfully submitted that the Board does not have the jurisdiction to impose such caps under either the *Electricity*

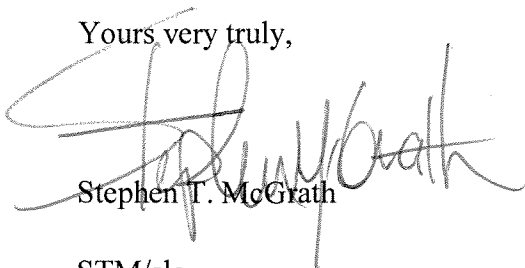
Act or the *Renewable Electricity Regulations*. This is an issue of statutory interpretation, the general principles of which were set out in NSDOE's closing submissions.

NSDOE respectfully submits that the primary reason for its interpretation of the regulations as not giving the Board the jurisdiction to impose capacity caps is because this matter has already been addressed in the regulations. In particular, s. 28(2) imposes a 5 MW total capacity cap on small wind. Government has already considered the need for capacity caps and is requiring a cap only in respect of this class of generation facility.

It is respectfully submitted that the Board has no greater jurisdiction to impose caps for those classes of generation facilities for which the government has not set caps than it does to alter the capacity cap for small wind that is expressly stated in the regulations. NSDOE wishes to note that these comments are directed to the question of the Board's jurisdiction to actually impose capacity caps and are not intended to suggest that the Board could not, if it felt it were appropriate, make recommendations on the imposition of such caps, either for the reasons expressed by the Consumer Advocate, or for any other reasons deemed appropriate by the Board and otherwise within its statutory jurisdiction.

In respect of the express tariff provisions recommended by the Consumer Advocate on the bottom of page 13 of his closing submissions, it is respectfully submitted that these matters are already addressed in the regulations and do not need to be included as express tariff provisions. Although NSDOE is not suggesting that the provisions requested on the bottom of page 13 are inconsistent with the current regulations (except for the request on page 14 relating to the capacity cap for tidal power), there is the potential that the regulations may be modified as a result of the review in 2012 or otherwise. This could result in inconsistencies between possible future provisions in regulations, and any provisions that might be expressly embedded in the tariff language at this point in time.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Stephen T. McGrath", is written over a printed name.

Stephen T. McGrath

STM/slc

cc: Intervenor