Blackburn Law Inc.

August 15, 2025

VIA EMAIL

Ms. Crystal Henwood
Clerk of the Board
Nova Scotia Energy Board
1601 Lower Water Street, 3rd Floor
Halifax NS B3J 3S3

Dear Ms. Henwood:

Re: M12339 – Renewall Energy Inc. – Request for Tariffs for the Renewable to Retail Market

The Small Business Advocate (SBA) was a participant in Matter M06214 -Nova Scotia Power Inc.- Proceeding concerning Sales of Renewable Low Impact Electricity Generated with Nova Scotia by a Retail Seller to a Retail Customer pursuant to the Electricity Act. At the end of that matter, the Board issued a decision setting out the various tariffs applicable to the Renewable to Retail Market in Nova Scotia[1].

In this current matter before the Board, Renewall Energy Inc. (REI), which is the first company to be an authorized Licenced Retail Supplier (LRS) in the Renewable to Retail Market (RTR) in Nova Scotia, is requesting that the Board amend or create a new tariff to permit it, as an LRS, to

a) purchase surplus customer generation from distribution-connected customers ("net billing"); and
b) purchase contracted renewable energy from small renewable energy generators connected to the distribution system[2].

(the "Proposed Purchases")

In the alternative, REI proposes that the application be considered a complaint under the *Public Utilities Act*, Section 83(1) and requests that the Board conduct an investigation into whether the Distribution Tariff and Energy Balancing Services Tariff are:

> "unreasonable or unjustly discriminatory", or that "service is unobtainable" and that the current regulation of the RtR Market does not address the issue of spilled excess electricity onto the distribution lines nor enable small distribution generation, which is "affecting or relating to the operation" of NSPI's distribution system and tariffs in an "unreasonable, insufficient or unjustly discriminatory" manner[3].

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[1] M06214 – Board Decision dated March 23, 2016 - Paragraph 154
[2] M12339 – Exhibit R-1 – Page 3
[3] M12339 – Exhibit R-1 – Page 4

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The SBA submits that the issue before the Board requires careful statutory interpretation of the relevant legislation and associated regulations to both assess REI's request under the *Electricity Act*, and determine whether the authorized sale of renewable low-impact electricity generated within the Province, pursuant to s. 3C of the *Electricity Act*, as requested by REI, would be consistent with the *Board Electricity Retailers Regulations* and the *Code of Conduct for Renewable Low-Impact Electricity Sales in Nova Scotia*; and, if inconsistent, whether the Regulations and the Code of Conduct could or should be amended to permit REI to do as it proposes.

REI's and Nova Scotia Power Incorporated's (NSPI) Respective Positions

In REI's submissions, it states that "The Board's authority over a LRS is not akin to regulation of a public utility, like NSPI.[4]" It further quotes from the Board, which states in its April 8, 2024 decision in M10293: "The Board does not approve the electricity rates charged by retail suppliers[5]."

NSPI's position is that the legislation does not permit REI's Proposed Purchases. REI's response is that: "[s]ilence in the legislation, does not equate to a restriction on an LRS from purchasing renewable energy generated at the distribution level or purchasing excess electricity from its retail customers[6]."

Statutory Interpretation

The SBA respectfully submits that all of the legislation, and the associated regulations, and the intention of the legislature when the legislation was introduced, must be considered when assessing whether there is a "silence" and, if there is, how the "silence" in the legislation should be interpreted, ie: whether it prevents the action, as posited by NSPI, or whether it does not prevent the action, as posited by REI.

Statutory interpretation requires both a comprehensive reading of the language of the legislation, and also an assessment of what was considered in its creation. The reading must give meaning to the language used. The SBA agrees that silence or the absence of an explicit prohibition within a piece of legislation may be read as permissive of an action; however, the SBA cautions that in this case the legislation is not completely silent on the matter of purchasing excess renewable energy from distribution connected customers.

Rather, the SBA notes that there is provision under section 3AA of the *Electricity Act* where it addresses the purchase of such energy, stating:

> **Customer may generate and sell electricity**
>
> 3AA (1) A Nova Scotia Power Incorporated customer may, as of right, with no requirement to participate in a Nova Scotia Power Incorporated program, install a renewable low-impact

[4] M12339 – Renewall Energy Inc. Submissions – August 8, 2025 – Page 3
[5] M10293 – Board Decision dated April 8, 2024, Paragraph 4
[6] M12339 – Renewall Energy Inc. Submissions - August 8, 2025 – Page 3

generator or energy storage device with a total nameplate capacity of twenty-seven kilowatts or less.

(2) A customer who generates the customer's own electricity shall ensure the equipment meets the standards prescribed by the regulations.

(3) Subject to subsection (4), Nova Scotia Power Incorporated shall purchase excess electricity from a customer who has installed a renewable low-impact generator or energy storage device with a nameplate capacity of twenty-seven kilowatts or less to generate electricity for the customer's own use.

(4) Nova Scotia Power Incorporated shall purchase electricity under subsection (3) up to a maximum of the customer's total usage per calendar year at a rate equivalent to the rate paid by the customer, but is not required to compensate a customer for electricity generated by the customer in excess of the customer's total consumption in a calendar year.

...

This provision in the legislation could be interpreted as evidence that the legislature did consider the issue of purchasing excess renewable energy and determined that it would be limited to those with "a renewable low-impact generator or energy storage device with at total nameplate capacity of twenty-seven kilowatts or less"[7]. The legislature clearly states that those customers would be able to sell their excess electricity and it also contemplated to whom, namely NSPI.

The SBA submits that the fact there is some reference to the sale of excess renewable electricity in the legislation distinguishes this statutory interpretation from circumstances where there is a complete silence or absence of reference to the matter under issue. The SBA also submits that the fact there is a permissive/directive provision regarding the sale of renewable energy must be given some meaning.

The question is whether the directive requiring NSPI to purchase the excess electricity from a customer, who has a twenty-seven kilowatts or less generator, using the word 'shall', means that there is a permission for others to do the same, and for generators that exceed twenty-seven kilowatts, or for more than just the excess electricity that is generated in excess of twenty-seven kilowatts.

In the Board's decision in M10293, dated July 3, 2024, it approved Small Volume Customer General Terms and Conditions[8], which state:

[7] Electricity Act. 2004, c. 25, s. 1, Section 3AA

[8]

1 Defined Terms

...

(pp) Net Billing Services – means a metering service and billing practice that enables the Customer to generate electricity from a Qualifying Generating Facility to offset part of, or all, of the Customer's Energy requirements hereunder.

...

(bbb) Qualifying Generating Facility – means an electricity producing generator owned by the Customer which: (i) utilizes only a renewable, low-impact, source of energy (as defined in the Renewable Electricity Regulations made pursuant to the Act, (ii) is located at the Customer's Premises, (iii) meets all applicable safety and performance standards as established by Measurement Canada, the Canadian Electricity Code and NSPI's guidelines, and (iv) complies with any other requirements pursuant to Applicable Law

...

6. NET BILLING SERVICES

(d) During any applicable billing period, the amounts payable for electricity supplied from the Qualifying Generating Facility to the Provider by the Customer Generator shall be set-off against the amounts payable for Energy supplied by the Provider to the Customer Generator as follows[9]:

The Terms and Conditions that were approved as part of the Board's decision appear to contemplate the purchase of excess electricity by the Provider (being REI) from a Customer (being a customer of REI). This approval appears to have been understood by REI, as they state the following in Schedule C of the Board's Order:

Additional Services & Information

Net Billing/Net Metering

Renewall offers Net Billing where a customer can install behind-the-meter generation and isn't limited to a maximum capacity. Surplus energy produced on-site will be purchased by Renewall. Up to 50% of the customer's Average Annual Load will be purchased at the Retailer Charge and anything above 50% of the customer's Average Annual Load will be purchased at 70% of the Retailer Charge. Additional information can be found in Renewall's Terms and Conditions. Net Billing may have income tax implications and impose GST/HST obligations. Additional information is available from Renewall[10].

[9] M10293 – Board Decision July 3, 2024 – Schedule B, General Terms and Conditions, Pages 6, 7 and 10 of 15
[10] M10293 – Board Decision July 3, 2024 – Schedule C

Issues to be Determined

While this appears to suggest that the Board did approve REI's ability to purchase surplus energy from its customers, there are still 2 questions to consider:

1. Does the Electricity Act's requirement for NSPI to purchase excess electricity from its customers and silence on the purchase by any other entity (such as a LRS) mean that there is an underlying permission for an LRS to purchase excess energy, or a limitation that only NSPI is authorized to purchase excess energy?
2. Does the reference to excess or surplus energy, both in the legislation and the Board's Order in M10293 restrict the purchase to only that energy, or is there an underlying, but unstated permission, for the purchase of all generation by an LRS from a customer?

The SBA respectfully submits that the lack of a positive permission in the *Electricity Act* for an entity other than NSPI to purchase excess electricity from a distribution connected customer, given the specific reference to NSPI's requirement, suggests that the legislature chose not to make it permissible. As noted above, if there was silence on the issue completely, then statutory interpretation could be used to argue that the lack of reference means that the legislature had not turned their mind to it and therefore there is no inherent restriction. That is not the case here, and it would seem that the proper interpretation is that only NSPI is currently authorized to purchase excess energy from distribution connected customers who are producing their own renewable energy. While the Board has allowed for it, through its July 3, 2024 Order, the SBA respectfully submits that there needs to be a legislative change to the Electricity Act, or through a clarification in a regulation, to allow for it to proceed.

In contrast to the purchase of excess or surplus energy, there is silence in both the legislation and the Board's Order with respect to purchase of all generation from a distribution connected customers. All references are to surplus or excess energy and the authorization for the purchase of all energy, not just surplus or excess, would be a new concept. While the lack of reference to the purchase of all energy could be interpreted as silence, leading to the above-noted conclusion that silence equals a lack of restriction, that is not likely appropriate in this case. The fact that the purchase is already restricted to surplus or excess energy suggests that a restriction on all energy is being made.

The SBA respectfully submits that statutory interpretation, considering all of the relevant legislation, regulations and Board Orders, suggests that REI is not entitled to purchase surplus or excess energy absent a change to the *Electricity Act* or its relevant regulations, and would require similar amendments in order to purchase all energy from its customers, as well as Board authorization.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of August, 2025.

Melissa

Melissa P. MacAdam
Small Business Advocate