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Delivered by Email

Crystal Henwood
Regulatory Affairs Officer/Clerk
Nova Scotia Energy Board
3rd Floor, 1601 Lower Water Street
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Dear Ms. Henwood:

Re: M12339 - REI - Request for Tariffs for the Renewable to Retail Market

These reply submissions are filed on behalf of Renewall Energy Inc. ("**REI**").

Based on the submissions filed by NSPI and the SBA, it appears that all parties agree to the same principles of legislative interpretation; the disagreement lies in the way those principles apply to the *Electricity Act*, SNS 2004, c 25.

Principles of Statutory Interpretation

The Board should apply the modern principles of statutory interpretation, which it has recently adopted with respect to the 2025 ACE Plan proceeding in *Nova Scotia Power Incorporated (Re)*, 2025 NSEB 8, at para 200. It has cited the leading decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. The principles can be summarized as:

- Words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."
- An administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision.
- Guidance is also found in the *Interpretation Act*, R.S.N.S. 1989, c. 235, including ss. 9(1) and 9(5) which provides that every enactment shall be deemed remedial and interpreted to insure the attainment of its objects.

Beyond these overriding principles, the Board has also acknowledged its broadened mandate under the *Public Utilities Act*, arising from the *Energy Reform (2024) Act,* SNS 2024, c.2 and specifically the requirement to make decisions consistent with the purposes of the *More Access to Energy Act,* SNS 2024, c.2, SchB.

Words and Context

The RtR Market and the regulation of a licensed retail supplier ("**LRS**") is governed by ss.3B-3G of the *Electricity Act*. NSPI and SBA, in their interpretation of the *Electricity Act,* have failed to account for the distinction between the regulation of NSPI as a public utility and the regulation of the RtR Market (s. 3C(3)), with the latter being distinct from the direct regulation of an LRS. The rates paid by RtR customers in Nova Scotia, with the exception of the Distribution Tariff rates, are not regulated. This is a particular scheme created by the *Electricity Act*, for the oversight of the RtR Market.

The Board specifically has "all power and authority necessary to implement" the sale of renewable low-impact electricity in the RtR Market. These powers are restricted by the specific provisions of the *Electricity Act*, none of which dictate how an LRS can access or use the distribution system. Instead, the LRS's purchase and sale of electricity is restricted to that of "renewable low-impact electricity generated within the Province".

Pursuant to s 3G (1), it is NSPI's *obligation* (or the NSIESO, once in place) to file any tariffs, procedures and standards of conduct, or required amendments, that are "necessary to facilitate the purchase of renewable low-impact electricity" and, s 3G(1)(g) confirms the Board's broad powers to oversee and direct NSPI's development of tariffs, procedures or standards of conduct it views are required to "facilitate the purchase of renewable low-impact electricity" within the RtR Market.

"Facilitate the purchase of renewable low-impact electricity" should not be interpreted as being restricted to the "overall functioning of the RtR market", as asserted by NSPI. That would unfairly restrict the scope of that section and ignore the fact that certain tariffs are required to ensure all expenses are appropriately covered by the retail customer and/or the LRS so as not to charge bundled customers for expenses of that Market.

Purpose and Intention of Government

The RtR provisions in the *Electricity Act* were introduced as part of the *Energy Reform (2013) Act*. When the Bill to amend the *Electricity Act* was introduced, it was made clear that the purpose was to promote greater competition and choice for ratepayers, along with increased renewable investment in the province:

> *Our government brought this bill forward because we are committed to improving Nova Scotia's electricity system for the benefit of ratepayers. We are also committed to an electricity market that is rapidly adaptable to changing world conditions, and with this bill we are delivering on our promise to open and improve the electricity market while creating new local investment opportunities for renewable electricity providers.*
>
> *This legislation will permit greater competition and choice for electricity ratepayers.*[1]

Since then, the Government of Nova Scotia has continued to amend the *Electricity Act* to further promote renewable opportunities.

As has been made clear by the *Energy Reform (2024) Act,* the Government is actively actioning the recommendations that have arisen from the Nova Scotia Clean Electricity Solutions Task

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1 Nova Scotia, Legislative Assembly, *Hansard*, 62ng Leg, 1st Sess (3 Dec 2013) at 127, online: <https://nslegislature.ca/legislative-business/hansard-debates/assembly-62-session-1/house_13dec02>

Force. More specifically, these recommendations were to: "Increase competition and innovation in the province's energy sector"; "Provide for robust competitive procurement practices for new energy system resources"; and "Support the sustainable development, sustainable prosperity, energy efficiency and greenhouse gas reduction goals of the province articulated in the *Environmental Goals and Climate Change Reduction Act*."[2]

These goals, and purpose of the various provisions of the *Electricity Act* should inform the interpretation in this proceeding. The way in which the Board reads the provisions of the *Electricity Act* ought to align with the goals of promoting fair competition in the province and promoting renewable generation.

NSPI asserts that the RtR was originally designed with the intent to facilitate access to renewable low-impact electricity through "wholesale" market mechanisms - but that limiting word is not expressly stated. In fact, the RtR Market was created to promote competition within Nova Scotia's electricity sector broadly. Currently, NSPI has a monopoly (apart from the limited number of OATT municipal electric utilities).

The progress to retail competition has been extremely slow. It has been over ten years since the introduction of this Market, and REI is the first and only LRS. Even still, REI continues to be met with obstacles impacting its ability to access the renewable low impact electricity it requires to supply customers with reliable services, and confirm the tariffs needed to fairly and reasonably create rates for its customers.

In the development of the RtR tariffs (M06214), the Nova Scotia Department of Energy stated in January 2015:

> *Finally, the Department would like to clarify that, the success or failure of the retail market opening will be judged by how it satisfies the over-arching principles embedded in legislation while creating new market opportunities for renewable to retail sales*[3]*.*

It is unfortunate that we are more than ten years later, and we cannot yet say there has been a successful market opening.

Interpreting the lack of Prohibition

The focus of NSPI and SBA's submissions is largely on the impact of "silence" in the legislation. All parties agree there are no provisions in the *Electricity Act* that specifically address the issue of whether or how an LRS may use the distribution system for the purpose of aggregating excess electricity produced by its customers or acquire energy from distribution connected generators. However, both NSPI and SBA incorrectly interpret ss 3A and/or 3AA as permitting customers to sell excess electricity to NSPI, and NSPI to purchase that energy. That is not the language used in the *Act*, nor is in keeping with the prior practice.

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2 Nova Scotia, *Modernizing Energy: From Transition to Transformation, A Report of the Clean Electricity Solutions Task Force,* by Alison Scott, LL.B & John MacIsaac, P.Eng, 31 January 2024 (Nova Scotia: Department of Natural Resources and Renewables, 23 February 2024), pages 4-5 online: <https://cetaskforce.ca/wp-content/uploads/2024/02/Report-February-23-2024-Final-Signed.pdf>

3 Matter 06214, NSDOE RtR Comments, January 9, 2015.

Sections 3A and 3AA create *programs* in which NSPI customers can self-generate and sell spilled energy to NSPI. These provisions do not create a new right to self-generate, nor do they create the right for NSPI to purchase the energy.

The history of net metering is important. NSPI has had a form of net metering since 1989, which allowed excess self-generation to be credited against purchased energy for billing purposes over a limited period by a "public utility" (Regulation 3.6). In 2010, the *Electricity Act* was amended and what was then s 3A(2) *mandated* NSPI to develop an expanded and enhanced net metering program and to submit a revised regulation for Board approval by a date certain.[4] In April 2022, the *Electricity Act* was again amended with respect to the net metering provisions. Section 3AA removed the 100 kW cap and allowed installation of up to 27 kW without NSPI approval or the requirement to participate in the Net Metering program and contract with NSPI. Legacy customers were grandfathered, and effective October 28, 2022, amended *Renewable Electricity Regulations* allowed customers to install up to 1 MW nameplate capacity of renewable generation on terms.

Under the *Electricity Act* at s 3AA NSPI *must* purchase "excess electricity" from its customer up to a maximum of the customer's total usage per calendar year (ss. 3AA (3) and (4)). This does not give NSPI the permission to purchase this excess electricity; it requires it. This requirement is only to a certain amount. NSPI *could* purchase excess electricity beyond the customer's yearly total usage, but it is not mandated to do so. NSPI has the ability to purchase excess electricity spilled by its customers, regardless of this obligation. These provisions mandate that NSPI purchase this energy, to a certain extent, and at a specific price. It is now ensured that customers of NSPI are compensated for the energy they produce in excess of their usage.

Sections 3A and 3AA can be given meaning without being interpreted as the converse legislative intent to restrict the sale of excess renewable electricity from a retail customer to an LRS.

NSPI has no choice but to buy back the excess electricity spilled onto the distribution system from its customers at a rate dictated by the legislation. With respect, these provisions protect the interests of NSPI's customers and do not create a separate right to self-generate or sell/purchase excess electricity. This interpretation is further supported by the statements made by Premier Tim Houston leading up to the 2022 amendments to the net metering program:

> *"We agree that it is time for changes to the enhanced net-metering program but the changes we seek will support the greening of the grid, not discourage it," said Premier Houston. "Our government will bring forward the necessary legislative and regulatory framework that will protect ratepayers and the solar industry in Nova Scotia and help achieve our environment and climate change reduction goals."*[5]

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[4] NSPI applied for an amendment to Regulation 3.6 in November 2010, and the enhanced program was approved by the Board in *Nova Scotia Power Incorporated (Re)*, 2011 NSUARB 44. This decision also recognizes the history of net metering in Nova Scotia at paras 5-11.

[5] Premier's Office, Natural Resources and Renewables, News Release, "Government Intervening to Halt Net Metering Charges", (2 February 2022), online: <https://news.novascotia.ca/en/2022/02/02/government-intervening-halt-net-metering-charges>

The enhancement of the net metering program should not be interpreted as stifling the possibility of net metering within the RtR Market. These provisions encourage further renewables, not discourage it.

The SBA has assumed an "inherent restriction" on the sale of excess electricity which does not exist. This not only fails to account for the fact that NSPI has had net metering since before the enactment of s 3A but also interprets the provisions of the *Electricity Act* contrary to the very purpose and objectives in the creation of the RtR Market.

As noted, the Board should also take guidance from the *Interpretation Act*. Every Act must be interpreted as remedial, unless articulated otherwise:

> *9(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters*
>
> *(a) the occasion and necessity for the enactment;*
>
> *(b) the circumstances existing at the time it was passed;*
>
> *(c) the mischief to be remedied;*
>
> *(d) the object to be attained;*
>
> *(e) the former law, including other enactments upon the same or similar subjects;*
>
> *(f) the consequences of a particular interpretation; and*
>
> *(g) the history of legislation on the subject*

A remedial interpretation of ss. 3B-3G, along with ss. 3A and 3AA, would be that an LRS is not restricted from using the distribution system for the purposes of accessing and aggregating excess electricity from its customers or distribution connected generators. Rather, the Board has the power to require tariffs necessary to facilitate the sale of low-impact renewable energy, which could include the use of the distribution system for net metering programs that are competitive with NSPI's programs, and distribution connected generation, also competitive with NSPI's ability to do so.

With respect to an LRS purchasing from distribution-connected generators, as NSPI stated in its application for approval of the RtR tariffs:[6]

> *The Retailers Regulations* provide that generation facilities serving the RtR market shall obtain certification as low-impact renewable energy. The Nova Scotia Department of Energy will certify generators who propose to provide electricity in the RtR market to a LRS as being duly qualified producers of renewable low-impact electricity generated in-province in accordance with the requirements set out in the Renewable Electricity Regulations (RES). <u>NS Power will rely upon the certification issued by the Province when entering into agreements and providing tariffed</u>*

[6] Matter M06214, Exhibit N-16, Application RtR, at page 27.

> *<u>services to LRS. NS Power is not and should not be required to verify whether or not a generation facility has satisfied the requirements for electricity standard approval under the RES.</u>*
>
> ** Appendix 10, Section 17. If a Licence Holder is also a generator, they shall obtain certification. If a Licence Holder purchases electricity from a generator, they shall obtain proof of certification.*
>
> *[Emphasis Added]*

Nothing in the Regulations limits certification to transmission-connected generators, and NSPI acknowledges that it will rely on the certifying authority to qualify a generator who sells its renewable energy to an LRS.

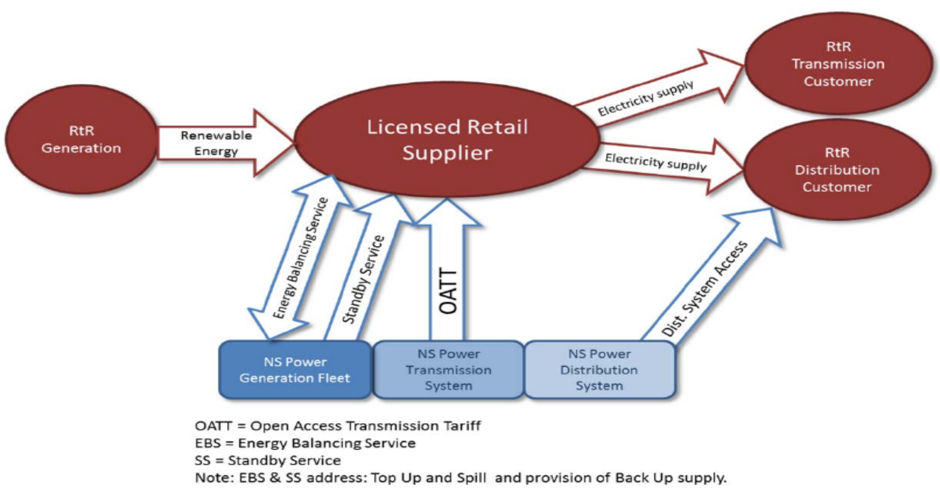
NSPI went through a lengthy consultative process when the RtR tariffs were developed, informed by Robert Cary who submitted multiple reports. Ultimately, NSPI recommended, and the Board adopted a disaggregated tariff approach. In its Application, NSPI illustrated its proposal graphically and in describing Figure 1 (reproduced below) explicitly stated: "**<u>In the diagram, the RtR Generation is shown connected to the NS Power transmission system;</u> <u>it could also be connected to the NS Power distribution system</u>**."[7]

7.2 Disaggregated Market Design

7.2.1 Services and Tariffs

The disaggregated models are discussed in the Market Design White Paper (**Appendix 6**). The full development of this model is elaborated in the Cary Report (**Appendix 16**). This market design is illustrated in **Figure 1.**

Figure 1: Disaggregated Market Design



7 Matter M06214, Exhibit N-16, Application RtR, at pages 41-42.

NSPI went on to state, "As described in **Section 6.3,** for both transmission **and distribution connected generators,** the full suite of RtR tariffs apply, including the OATT and the Renewable to Retail Market Transition Tariff." (page 43)

Section 6.3 of the Application addressed the location of the generation facility. It confirms that in the design of the RtR framework and tariffs, the location of the generation facility relative to load is irrelevant to costing, "whether at opposite ends of the province, within the same distribution zone or the RtR generation is downstream (i.e. behind) NS Power's metering point".[8]

The entire RtR Application was premised on a market design and costing whereby NSPI publicly represented to the Board and participants that the RtR generation could be connected at the distribution level. The pre-requisites are certification and interconnection approval, neither of which are current impediments. NSPI's determined refusal to allow distribution-connected generation to REI when it is finally ready to launch in the market, is inconsistent with NSPI's prior position and contrary to the principles underlying the market design.

Behind the Meter Sales

With respect to the suggestion that retail customers cannot self-generate renewable energy, that has previously been rejected the Board. During the hearing establishing the RtR Market in 2016, Matter M06214, NSPI had a similar argument that transactions behind the meter ("**BTM**") for renewable energy would be subject to regulation in the RtR market, in contrast with un-regulated BTM sales for non-renewable energy. The Board rejected that argument outright at paras 82-87 and confirmed that an arrangement where a person generates electricity for their own use BTM is not subject to regulation by the Board under the *PUA.* The decision specifically states:

> *[84] The scheme of the Act was clearly to enable a retail supplier to sell electricity to a retail customer in circumstances where the supplier required services supplied by NSPI and, in particular, the use of its transmission <u>or distribution system</u> and backup energy. The Electricity Act definition of retail supplier, which includes the phrase "in accordance with this Act and the regulations", must be interpreted having regard to the purpose of the Electricity Act.*
>
> *[85] It seems unlikely that the framers of the legislation intended to impair the current ability of a generator to generate power and energy behind the meter. It also seems unlikely that they intended to disadvantage the sales of renewable low-impact energy by making only those sales subject to tariffs and regulation.*[9]
>
> *[Emphasis Added]*

Similarly, it is unlikely that the drafters intended to impair a retail customer's ability to self-generate renewable energy or disadvantage the sale of renewable low impact energy by restricting the ability of a retail customer to be credited for excess electricity spilled onto the system. The very purpose of s. 3G is to ensure there are requisite tariffs and procedures in place for the fair and appropriate use of the transmission and distribution system by an LRS.

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[8] Matter M06214, Exhibit N-16, Application RtR, at page 34.

[9] *Sale of Renewable Low-Impact Electricity (Re)*, 2016 NSUARB 33

There should be no dispute that retail customers which may participate in the RtR Market, are allowed to self-generate renewable energy BTM. This is despite the fact there is no explicit provision in the *Electricity Act* that confirms it. As the Board has interpreted, BTM sales of renewable energy need not be regulated in that manner. In the Regulations, self-generation BTM is netted out. There is nothing which suggests this should only apply in one direction.

Similarly, even though there is no explicit provision allowing an LRS to access the distribution system to receive excess renewable generation from a retail customer for these purposes, it does not follow that it cannot do so. Silence is relevant because it is not explicitly prohibited within the parameters of the regulation of the RtR Market. There is no restriction on the Board's broad regulation of the Market with respect to an LRS's use of the distribution system in this manner. The restriction is that the energy must be "low-impact electricity generated within the Province". Whether the LRS *should* be granted the ability to use the distribution system as requested, is a separate question.

The fact that ss 3B-3G do not explicitly articulate this use of the distribution system, is not indicative that the legislature intended for it not to be allowed. To the contrary, it is unlikely that the legislature would intend this unbalanced outcome that an LRS is not allowed to access distribution connected generation or excess electricity of its retail customers. That interpretation would be contrary to the purposes of the RtR Market, the scheme in which the Board regulates the Market, and unduly restrict the Board's overarching power to regulate an LRS and the sale of low-impact renewable electricity within Nova Scotia.

The Merits of the Tariffs are a separate issue

At this time, the Board is simply determining whether the legislative framework allows for tariffs as requested by REI. The Board is not yet being asked to determine the appropriateness of those tariffs, or the parameters of those tariffs. Submissions made by NSPI seem to have conflated these two issues.

NSPI's submissions outline some operational hurdles to underscore its argument that the tariff(s) should not be amended/created, including purported changes to system operations, cost allocation, metering, and reliability protocols. REI states that in the fullness of time, should the Board initiate the process to create the tariffs as requested, these issues may be addressed with the necessary evidence. At present, they should not be given any weight when addressing the discrete interpretive exercise currently being undertaken by the Board.

Conclusion

The *Electricity Act*, and provisions pertaining to the RtR Market, must be given meaning based on the words used, within the context of the *Act*, read harmoniously with the purposes of the *Act* and particular provisions. The RtR Market is regulated under the *Electricity Act* in a specific way, in which the Board is given broad discretion over the tariffs that should be created to facilitate the sale of low-impact renewable energy. This includes the use of the distribution system, as needed.

There are no restrictions within the legislation prohibiting the LRS's use of the distribution system to access and aggregate excess renewable electricity spilled onto the grid, nor for distribution connected generation. The Board has the jurisdiction to create such tariffs necessary to facilitate this use, and to ensure no costs are borne by bundled ratepayers.

REI respectfully requests that the Board set a process and timetable to do so.

Yours truly,

Nancy G. Rubin

Brianne Rudderham

NGR/BER/lmc

cc. Intervenors
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