DECISION **2024 NSUARB 207**
M11903

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE ELECTRICITY ACT

- and -

IN THE MATTER OF AN APPLICATION by the Minister of Natural Resources and Renewables under s. 3AF(4) of the *Electricity Act* for approval of a Power Purchase Agreement for the Community Solar Program

BEFORE:	Stephen T. McGrath, K.C., Chair Roland A. Deveau, K.C., Vice Chair Richard J. Melanson, LL.B., Member
APPLICANT:	**MINISTER OF NATURAL RESOURCES AND RENEWABLES** Daniel Boyle, Counsel
INTERESTED PARTIES:	**SMALL BUSINESS ADVOCATE** Melissa P. MacAdam, Counsel
	CONSUMER ADVOCATE David Roberts, Counsel Michael Murphy, Counsel
	SWEB DEVELOPMENT LP Rory Cantwell Stefan Karkulik Sarah Rosenblat
	ABO ENERGY CANADA LTD. Hannah Matheson
FINAL SUBMISSIONS:	November 4, 2024
DECISION DATE:	**December 16, 2024**
DECISION:	**The proposed power purchase agreement is approved with revisions to be confirmed in a compliance filing.**

TABLE OF CONTENTS

1.0 INTRODUCTION 3
2.0 BACKGROUND 6
2.1 Board's Jurisdiction 6
2.2 Consultation Process by the Minister 6
2.3 Board's Approach 7
3.0 DISCUSSION 8
3.1 Legislative Framework 8
3.1.1 Own Use and Excess Electricity 14
3.1.2 Energy Rate under the Power Purchase Agreement 18
3.1.3 Summary of this Issue 19
3.2 Request for approval to make non-substantive changes 20
3.3 Minister as a Party to the Power Purchase Agreement 21
3.4 Subscriber Fees 21
3.5 Summary of Commercial Terms: Final In-Service Date and Nameplate Capacity 23
3.6 Summary of Commercial Terms: Power Purchase Rate 23
3.7 Section 4.1 – Requirements for Projects 24
3.8 Section 4.2 – Out of Compliance Projects 25
3.9 Section 6.1 – Power Purchase Rate, Incremental Energy Rate and Payment 25
3.10 Section 6.2 – Billing, Meter Reading and Payment 27
3.11 Section 6.3 – Assignment of Renewable Energy Certificates 27
3.12 Section 6.4 – Administrative Fees and Cost Recovery 28
3.13 Section 7.2 – Cessation of Operations 29
3.14 Section 8.2 – Curtailment of Supply 29
3.15 Section 9.2 – Insurance 31
3.16 Section 12 – Termination by the Parties 32
3.17 Section 13.2 – Assignment and Change of Control 33
3.18 Section 15 – Notice 36
3.19 Change in Law 36
3.20 Financial Security 36
3.21 Performance Penalties and Incentives 37
4.0 SUMMARY OF BOARD FINDINGS 37

1.0 INTRODUCTION

[1] Section 3AF of the *Electricity Act*, S.N.S. 2004, c. 25, requires the Minister of Natural Resources and Renewables to "develop and maintain a community solar program". Under this program, any Nova Scotia Power Incorporated customer, group of customers or third party may generate solar energy for the customer's, group's or third party's use. Any excess electricity can be sold to NS Power in accordance with the conditions and requirements and at the rate prescribed by the *Community Solar Program Regulations*, N.S. Reg. 60/2024.

[2] The regulations contemplate that the owner of a proposed community solar garden who meets certain eligibility requirements may apply to the Minister for approval to operate the project under the program. To qualify the project must (in addition to other requirements) have a nameplate capacity of at least 500 kW and not more than 10 MW. The regulations limit the aggregate nameplate capacity of all projects that may be approved under the program to 100 MW.

[3] Energy from community solar gardens under the program must be purchased by NS Power at a minimum rate prescribed in the regulations or a higher rate determined by the Minister under s. 3AF(3) of the *Electricity Act*. Under s. 3AF(4), the Minister must develop a power purchase agreement, in accordance with the requirements prescribed by the regulations, and file it with the Board for review and approval. The Minister may issue a power purchase agreement to an approved project owner and NS Power is bound by the terms of the agreement.

[4] The Minister applied to the Board to approve a proposed power purchase agreement for the Community Solar Program on September 27, 2024. Once the draft was filed with the Board, a timeline was established for interested parties to provide

comments, and for a reply by the Minister. The Small Business Advocate, the Consumer Advocate, SWEB Development LP and ABO Energy Canada Ltd. provided comments to the Board about the proposed power purchase agreement. The Board also raised some questions about the proposed agreement's consistency with the *Electricity Act*. The Minister filed a response commenting on the submissions filed by the other parties and the Board's questions. The Minister proposed changes to the draft power purchase agreement in response to some of these comments; however, a revised draft agreement was not filed with the Board.

[5] The Board reviewed the comments from the interested parties and the Minister's responses. The Board's view is that the power purchase agreement must balance the interests of community solar garden project owners, NS Power and ratepayers. Their respective risks must also be balanced. Project owners must be incented to put forward projects that will be successful. NS Power must meet legislated renewable electricity standards using sources that are reliable. Ratepayers want electricity at fair prices, and from renewable and reliable sources.

[6] The Board concludes that, for the most part, the commercial terms of the power purchase agreement, as revised, represent a fair balance of both the interests and risks of the parties, and ratepayers. The Board finds that, for the most part, the revised draft power purchase agreement represents a reasonable set of commercial terms for the supply of renewable energy under the Community Solar Program. However, the Board concludes that there are areas where the draft power purchase agreement requires further revision or clarification. These include:

- clarifying the definition of "Final In-Service Date";

- ensuring that consistent references to “Nameplate Capacity” are used throughout the agreement;
- correcting the reference to “PPA” in s. 4.2;
- clarifying that the reference is to a “calendar month” in s. 6.2;
- revising the agreement to include a standard administrative fee of $0.003/kWh ($3.00/MWh), with any necessary changes to the definition of “Administrative Fee” in Schedule “B”, including removing the reference to Board approval of the Administrative Fee;
- correcting s. 7.2 to refer to a 25% reduction in “Net Output” rather than “Nameplate Capacity”;
- providing any necessary amendments to clarify that the cessation of energy production due to utility interruptions or curtailment is not an “Event of Default” for the Seller under s. 12;
- addressing change of control scenarios in the agreement or explain why no such changes to the agreement are necessary;
- revising s. 13.2(b) to provide for a release upon assignment, similar to s. 13.2(a);
- revising the agreement to require that NS Power be notified if an encumbrance is placed on the community solar garden’s Net Output;
- revising s. 15 to include e-mail notification; and
- revising the agreement to include provisions that would apply in the event of a change in law.

[7] The Minister is directed to address these items in a compliance filing.

2.0 BACKGROUND

2.1 Board's Jurisdiction

[8] Subsection 3AF(4) of the *Electricity Act* requires the Minister to develop a power purchase agreement for the Community Solar Program, in accordance with the requirements prescribed by the regulations, and file it with the Board for review and approval. The Board's role in this matter is limited to reviewing and either approving, rejecting, or amending the proposed form of power purchase agreement. The Board has no jurisdiction over the development of the Community Solar Program, or the terms and conditions for the approval of projects under the program. Consequently, the Board has limited its role to a review of the power purchase agreement, as assigned to it under the *Electricity Act*. Additionally, the *Community Solar Program Regulations*, in some instances, direct what must be included in the power purchase agreement for the program. In these cases, the Board has no discretion to vary the terms of the power purchase agreement from what is required by the regulations.

2.2 Consultation Process by the Minister

[9] Based on submissions from the Department of Natural Resources and Renewables, the Board understands the Community Solar Program was developed with significant engagement from stakeholders, with pre-program engagement conducted across the province in fall 2021. The Department said it conducted ongoing consultations with industry stakeholders and community-based organizations, and held webinars post program launch to assist interested stakeholders with understanding and applying to the program. Information pamphlets were developed and distributed on the Department's website and by e-mail to its stakeholder contacts list. The Department said it maintained

a shared solar e-mail account that it checks regularly to respond to e-mails from interested project owners and other stakeholders.

[10] The Department said the *Community Solar Program Regulations* and power purchase agreement were developed in parallel, in close collaboration with NS Power. The Department shared a draft power purchase agreement with Solar Nova Scotia, a solar industry association. The Department said feedback from Solar Nova Scotia and other stakeholders through program development was incorporated.

2.3 Board's Approach

[11] After receiving the Minister's application to approve the proposed power purchase agreement, the Board issued a letter inviting comments on the draft power purchase agreement from interested parties and setting a timeline for doing so. In addition to circulating the letter to its own list of parties interested in electricity matters, the Board directed the Department to distribute a copy of the letter to its stakeholder contact list. In an email message to the Board on October 2, 2024, the Department confirmed this was done on October 1, 2024.

[12] In addition to the Minister's submissions, the Board received comments from the Small Business Advocate, the Consumer Advocate, SWEB Development LP and ABO Energy Canada Ltd. The Department responded to issues raised in these comments in its reply submissions, and addressed additional questions from the Board about the consistency of the proposed power purchase agreement with the *Electricity Act*.

[13] This decision focuses on areas the Board finds should be addressed based on the comments it received in this proceeding, or where the revised power purchase agreement requires amendment before the Board approves the contract. Where the

Board has not directed revisions to the power purchase agreement, the remaining provisions are approved.

3.0 DISCUSSION

3.1 Legislative Framework

[14] Section 3AF of the *Electricity Act* directs the Minister to establish a community solar program, approve projects under the program and issue a power purchase agreement to approved applicants that will be binding on NS Power:

> **3AF (1)** The Minister shall develop and maintain a community solar program that permits any Nova Scotia Power Incorporated customer, group of customers or third party to generate solar energy for the customer's, group's or third party's use and to sell any excess electricity to Nova Scotia Power Incorporated in accordance with the conditions and requirements and at the rate prescribed by the regulations.
>
> **(2)** Upon receipt of an application under the community solar program, the Minister shall approve or deny the application within the time and in the manner prescribed by the regulations.
>
> **(3)** Where the Minister approves an application under the community solar program, the Minister shall determine the rate at which the public utility must purchase the electricity from the project owners.
>
> **(4)** The Minister shall develop a power purchase agreement, in accordance with the requirements prescribed by the regulations, and file it with the Board for review and approval.
>
> **(5)** The Minister may issue a power purchase agreement to an approved project owner and Nova Scotia Power Incorporated is bound by the terms of the agreement.

[15] The statute defines "community solar program" in s. 3AE(b):

> (b) "community solar program" means a program established under Section 3AF that permits a customer, group of customers or third party to generate solar energy
>
> (i) for the customer's, group's or third party's use, and
>
> (ii) where there is an excess electricity generated, to sell the excess to Nova Scotia Power Incorporated at a rate prescribed by the regulations;

[16] The statute contemplates that a project owner will enlist subscribers to a community solar garden through a subscription agreement. The relevant definitions in s. 3AE state:

> (a) "community solar garden" means a facility that generates energy by means of a ground-mounted or roof-mounted solar photovoltaic device for the use of subscribers who receive a bill credit for the electricity generated in proportion to the size of their subscription;
>
> …
>
> (c) "project owner" means the eligible entity or group of entities that own and operate a community solar garden and are responsible for enlisting subscribers;
>
> (d) "subscriber" means an eligible retail customer of Nova Scotia Power Incorporated who owns one or more subscriptions of a community solar garden interconnected with that public utility;
>
> (e) "subscription" means a contract between a subscriber and a project owner.

[17] In addition to being bound by the terms of a power purchase agreement issued by the Minister, NS Power must "update its billing system such that the electricity produced by the community solar garden offsets the subscribers' electricity demand and any renewable energy certificates are managed in accordance with the *Regulations*" (s. 3AH). NS Power must also develop a system for collecting fees payable by subscribers to project owners.

[18] The *Community Solar Program Regulations* prescribe eligibility and application requirements for subscribers, the project and project owners, the content of subscription agreements, certain terms for power purchase agreements (including a minimum power purchase rate for the Community Solar Program), conditions relating to program and project capacity, and requirements for renewable energy certificates.

[19] Under the regulations, NS Power bills a subscriber for their electricity consumption and provides a bill credit of 2 cents/kWh for solar energy generated in

proportion to the size of the subscription. As contemplated in s. 4 of the regulations, and noted by the Department in its reply submissions, subscribers do not pay to be part of a community solar garden. Instead, project owner revenue comes from the energy that is sold to NS Power under the power purchase agreement developed for the Community Solar Program.

[20] The *Community Solar Program Regulations* also require NS Power to pay a project owner for all electricity generated by a community solar garden:

> **28** **(1)** Subject to any terms and conditions contained in a power purchase agreement, NSPI must purchase all solar energy, including excess electricity, generated by projects in the community solar program.
>
> **(2)** For the purpose of subsection (1), excess electricity means all unsubscribed electricity up to the approved nameplate capacity of the project.

[21] A minimum power purchase rate of $70.00/MWh is prescribed in the regulations. However, the definition of “power purchase rate” in s. 2(2) and s. 7(2) contemplates that the Minister may set a higher rate in a power purchase agreement.

[22] During its review in this matter, the Board identified some potential inconsistencies between the model for a Community Solar Program contemplated by the *Electricity Act* and the model under the *Community Solar Program Regulations* and the proposed power purchase agreement. In a letter to the Department’s legal counsel on October 22, 2024, the Board asked the Department to provide additional information to address the following:

> The Community Solar Program under s. 3AF of the *Electricity Act* is defined as one that permits a customer, group of customers or a third party to generate solar energy for (a) their own use, and (b) to sell excess electricity to NS Power. At first blush, the statute appears to contemplate a net metering type of arrangement, where energy produced from a community solar garden offsets the customer’s energy. While s. 3AE(a) refers to the receipt of a bill credit by subscribers, the balance of the provisions in ss. 3AE to 3AK appear to contemplate that the credit is an energy offset. For example, s. 3AH directs NS Power to update its billing system “such that the electricity produced by the community solar garden offsets the subscribers’ electricity demand”. To the extent that there is electricity

> generated beyond this demand, s. 3AK(1)(j) contemplates that the Governor in Council may make regulations respecting the sale of "excess electricity" to NS Power.
>
> The proposed power purchase agreement for the Community Solar Program appears to contemplate that all energy produced by a community solar garden would be sold to NS Power, not just excess energy. The offsetting electricity demand arrangement contemplated by the statute does not appear to have been addressed. Since this goes directly to the amount of energy that must be purchased by NS Power under the proposed power purchase agreement, the Board would appreciate clarification.
>
> The Board has also noted potential ambiguity in the *Electricity Act* about the rate to be paid under the power purchase agreement. Under s. 3AE(b)(ii), s. 3AF(1) and s. 3AK(1)(j), the legislation appears to contemplate that the rate that NS Power must pay for "excess energy" would be set in the regulations. However, s. 3AF(3) contemplates that the rate at which NS Power must purchase electricity from project owners shall be determined by the Minister.

[23] In its reply submissions, the Department submitted that the Community Solar Program employs a virtual net-metering model that gives the Minister the ability to set a rate for the purchase of energy under this arrangement that is not "at the residential rate, but at a rate determined by the Minister, and the Department has interpreted this to imply the Minister will minimize the impact to ratepayers through the use of this power." The Department acknowledged ambiguity in the *Electricity Act* around setting the rate under the power purchase agreement but submitted that the setting of a minimum rate in the *Community Solar Program Regulations* coupled with the ability of the Minister to set a higher rate is consistent with the statute.

[24] The Department's response did not offer much analysis. However, after a more detailed assessment of the legislation, the Board is satisfied that the proposed power purchase agreement drafted under the regulations is consistent with the *Electricity Act*. While the Board is satisfied that it has the jurisdiction to approve the proposed power purchase agreement, it should be noted that this issue was not raised by any of the parties in this proceeding and, aside from a brief response to the Board's questions by the Department, the Board did not have the benefit of submissions on this issue.

[25] The interpretation of legislation in Canada is guided by well recognized principles of statutory interpretation that are applied by all levels of courts and tribunals throughout the country. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, a majority of the court summarized these principles and noted the assumption that legislators intend that administrative decision makers such as this Board will interpret the law consistent with these principles:

> [117] A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the 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": *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21, and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, both quoting E. Driedger, Construction of Statutes (2nd ed. 1983), at p. 87. Parliament and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations: see, e.g., *Interpretation Act*, R.S.C. 1985, c. I-21.
>
> [118] This Court has adopted the "modern principle" as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context: Sullivan, at pp. 7-8. Those who draft and enact statutes expect that questions about their meaning will be resolved by an analysis that has regard to the text, context and purpose, regardless of whether the entity tasked with interpreting the law is a court or an administrative decision maker. An approach to reasonableness review that respects legislative intent must therefore assume that those who interpret the law — whether courts or administrative decision makers — will do so in a manner consistent with this principle of interpretation.

[26] The majority in *Vavilov* noted that the application of these principles by administrative decision makers may look different than the interpretive exercises undertaken by courts. However, they emphasized that regardless of the form of analysis, the interpretation must be consistent with the text, context and purpose of the provision:

> [119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.
>
> [120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text,

> context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements.
>
> [121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome. [Emphasis added]

[27] As noted in the passages from *Vavilov* cited above, the Parliament of Canada and the provincial legislatures have also provided guidance by way of statutory rules that explicitly govern the interpretation of statutes and regulations. In Nova Scotia, this guidance is found in the *Interpretation Act*, R.S.N.S. 1989, c. 235, including ss. 9(1) and 9(5):

> **9 (1)** The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.
>
> …
>
> **(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.

3.1.1 Own Use and Excess Electricity

[28] The Community Solar Program is enabled under ss. 3AE to 3AK of the *Electricity Act*. As set out earlier in this decision, s. 3AE(a) of the *Electricity Act* defines a community solar garden as "a facility that generates energy…for the use of subscribers who receive a bill credit for the electricity generated in proportion to the size of their subscription". Under the model contemplated by the *Community Solar Program Regulations*, all energy is sold by the project owner to NS Power. Subscribers do not directly consume electricity generated by the community solar garden.

[29] This may raise questions about how subscribers would be using the energy from the facility if they are not consuming any of it. However, subscribers are using the energy produced by the facility that is associated with their subscription to establish their entitlement to the bill credit contemplated under the definition. The amount of the bill credit is determined under ss. 3, 4 and 26 of the *Community Solar Program Regulations*. Some subscribers may also be entitled to have renewable energy certificates registered (and retired) on their behalf (s. 38). Further, as will be addressed in more detail later in this decision, the requirement that the energy from the facility be used by the subscribers likely also exists to ensure that these facilities are distinguished from those that might be developed for more commercial reasons.

[30] The definition of "community solar program" in s. 3AE(b) of the *Electricity Act* was also set out earlier in this decision. Considering the text in that provision, such a program allows a "customer, group of customers or third party" to generate energy for their own use and where there is "excess electricity generated, to sell the excess to Nova Scotia Power Incorporated at a rate prescribed by the regulations". Similar language is used in s. 3AF(1) of the *Electricity Act*, which directs the Minister to develop and maintain

a community solar program that allows any NS Power "customer, group of customers or third party" to generate energy for their use and where there is "excess electricity generated, to sell any excess to Nova Scotia Power Incorporated at a rate prescribed by the regulations".

[31] Reading these sections in their grammatical and ordinary sense suggests that, under the Community Solar Program, energy would be used by those who generate it, and any "excess electricity" would be sold to NS Power. The word "excess" suggests an amount greater than what is needed or used.

[32] The phrase "excess electricity" is not defined in the *Electricity Act*, but it is used in the net-metering provisions in the statute enabled under ss. 3A and 3AA. Section 3AA allows a NS Power customer to install a renewable low-impact generator or energy storage device with a total nameplate not exceeding 27 kW. When a customer has installed such a generator or battery "to generate electricity for the customer's own use", NS Power must purchase "excess electricity" from the customer up to a maximum of the customer's total usage per calendar year (ss. 3AA(3) and (4)). This arrangement is referred to as "residential net metering" under the *Renewable Electricity Regulations*, N.S. Reg. 155/2010.

[33] Under s. 3A, a net-metering program for renewable low-impact electricity from generation facilities with a nameplate capacity greater than 27 kW allows customers to "generate electricity for the customer's own use and to sell any excess electricity to the public utility at a rate equivalent to the rate paid by the customer for electricity supplied to the customer by the public utility" (s. 3A(2)). A customer may not be compensated by NS

Power for electricity generated in excess of that customer's consumption in a calendar year (s. 3A(6)).

[34] Unlike the residential net-metering program, s. 3A(4)(b) of the *Electricity Act* specifies that the net-metering program under s. 3A only applies if the generator and the customer's load are not connected to the same meter. Since the generator and customer are connected to two different meters, all the electricity that is generated flows onto NS Power's grid.

[35] It is notable that the net-metering arrangements under ss. 3A and 3AA are for the generation of electricity for the customer's own use, and that they require NS Power to purchase "excess electricity" but not to compensate the customer for more than they consume in a calendar year. Given this, the Board reaches two main conclusions.

[36] First, the requirement that the electricity be generated for the customer's own use does not mean the electricity must be consumed by the customer. In the case of the net-metering program under s. 3A, where the generator and customer's load must be on different meters, all the electricity flows onto NS Power's grid and none of it is directly consumed by the customer. The "use" in this case arises from the sale of this energy to NS Power for compensation (which offsets the amount they pay in their bills from NS Power) and the ability to request that renewable energy certificates be registered (and retired) on their behalf under s. 37E of the *Renewable Electricity Regulations*.

[37] The "own use" requirement for these programs may also simply reflect the fact that these programs are designed to allow customers to reduce their bills to NS Power by allowing them to generate and sell electricity to NS Power to offset the cost of the energy they buy from NS Power. These programs are not intended for commercial

activities relating to the generation and sale of electricity in the market generally. On an annual basis, customers are only entitled to sell up to the same amount of electricity they consume.

[38] The Board's second conclusion is, since NS Power is not required to compensate customers for electricity that exceeds their consumption over the longer term (one year), its obligation to purchase "excess electricity" under these programs must refer to the electricity that is not immediately consumed by the customer in real time and flows onto the NS Power grid. As noted above, since all the electricity under the net-metering program under s. 3A flows onto NS Power's grid, all of it can be considered to be "excess electricity".

[39] The references to "use" and "excess electricity" in the text used in ss. 3AE(b) and 3AF(1) must be considered in the context of similar references to the programs in ss. 3A and 3AA of the *Electricity Act*. The similarities to the net-metering program under s. 3A are particularly noteworthy since, like the Community Solar Program, all electricity produced by the generation facility flows onto NS Power's grid and can be considered "excess electricity". Likewise, consistent with programs under s. 3A, the electricity that is produced by the community solar garden is used by subscribers to provide credits to offset their bills from NS Power, and some subscribers may also be entitled to have renewable energy certificates registered (and retired) on their behalf. Additionally, as in the case of programs under ss. 3A and 3AA, the "own use" requirement in ss. 3AE(b) and 3AF(1) may simply recognize that it is intended that subscriptions in projects be limited to an amount that is not more than the subscriber's expected average annual electricity consumption (*Solar Community Program Regulations*, s. 33).

[40] The Board also notes that s. 28 of the *Community Solar Program Regulations* also refers to “excess electricity”:

> **28 (1)** Subject to any terms and conditions contained in a power purchase agreement, NSPI must purchase all solar energy, including excess electricity, generated by projects in the community solar program.
>
> **(2)** For the purpose of subsection (1), excess electricity means all unsubscribed electricity up to the approved nameplate capacity of the project.

[41] The way this phrase is defined in s. 28(2) is different than the conclusion reached by the Board that “excess electricity” refers to the electricity that enters NS Power’s grid from generation facilities under ss. 3A, 3AA and 3AF. The Board has given less weight to how the phrase is defined in s. 28 in its analysis for two reasons. First, the definition of the phrase in s. 28(2) is expressly limited to s. 28(1). Second, this definition of “excess electricity” would clearly have no application to s. 3A and 3AA, which do not involve a subscription-based model. The Board finds it is preferable to apply a similar meaning to the term “excess electricity” where it is used in the same way in the *Electricity Act*, unless there is a clear indication otherwise. The Board finds nothing in the statute that would warrant applying a different meaning to the phrase “excess electricity” when used in ss. 3A, 3AA or 3AF.

3.1.2 Energy Rate under the Power Purchase Agreement

[42] The other concern about inconsistency that the Board raised with the Department was about the references in the *Electricity Act* to how the rate for excess electricity relating to the solar community program would be set. Under ss. 3AE(b)(ii), 3AF(1) and 3AK(1)(j), the legislation contemplates that the rate NS Power must pay for “excess electricity” would be set in the regulations. However, s. 3AF(3) contemplates that

NS Power must purchase electricity from project owners at a rate determined by the Minister.

[43] The Department's response acknowledged potential ambiguity in these references. However, it submitted that the prescribed minimum rate in the *Community Solar Program Regulations*, coupled with the Minister's ability to set a higher rate when considering the circumstances of any given application under the program met the requirements of the *Electricity Act*.

[44] The interpretation suggested by the Department appears to reconcile the discrepancy in the language used in the *Electricity Act*. The issue was not raised or debated by other parties in this proceeding. The Board is satisfied that the approach used in the proposed power purchase agreement is not inconsistent with the statute, considering the "text, context and purpose" of the regulatory framework under the legislation, as described in *Vavilov*, and "the object to be attained", contemplated under the *Interpretation Act*.

3.1.3 Summary of this Issue

[45] The Board is satisfied that the issues it initially raised about potential inconsistencies between the Community Solar Program model under the *Electricity Act* and the model upon which the proposed power purchase agreement is based are not, upon further consideration, issues that would prevent the Board from approving the proposed power purchase agreement in this matter. The requirement that all electricity produced from the community solar garden be purchased by NS Power is consistent with the interpretation of "excess electricity" based on the analysis set out in this decision. The approach under the *Community Solar Program Regulations* and the proposed power

purchase agreement appears to respect the requirements in the *Electricity Act* that the energy rate in the agreement be both prescribed and set by the Minister.

3.2 Request for approval to make non-substantive changes

[46] In the letter accompanying the application, the Minister requested approval to make non-substantive changes to the form of the power purchase agreement which it considers necessary or advisable after Board approval.

[47] The Consumer Advocate opposed this request. He submitted that there was a lack of clarity about what was meant by “non-substantive” and said this proposal did not accord with good utility practice. The Consumer Advocate said that, at a minimum, any amendment should be filed with the Board, which should retain the right to review and approve as necessary.

[48] In its reply submissions the Department submitted that non-substantive changes would be modifications that do not alter the fundamental rights, obligations, or intentions of the parties involved. It suggested these changes were typically administrative, clerical or procedural in nature.

[49] The Board has approved similar requests in the past. It allowed the procurement administrator to make non-substantive changes to the form of the power purchase agreement approved for the Green Choice Program [2024 NSUARB 90], the Rate Base Procurement [2022 NSUARB 19] and the purchase of marine renewable energy from independent power producers [2020 NSUARB 12]. Given the Board’s earlier decisions, and its understanding that such changes would be non-substantive only as described by the Department in its reply submissions, the Board approves the Department’s request.

3.3 Minister as a Party to the Power Purchase Agreement

[50] SWEB noted that the Minister is referenced throughout the agreement but is not named as a party. SWEB requested clarification. The Department did not address this point in its reply submissions. However, the Board notes that in its response to comments by SWEB about s. 4.2 in the power purchase agreement (discussed later), the Minister suggested that the "PPA" was "the legal agreement document between the province and the developer."

[51] The proposed power purchase agreement references the Minister in several places. These include s. 2(d), 4.2, 7.2, 12.4, Schedule "B" (the definitions for "administrative fee", "approval", "effective date", "Minister" and "power purchase rate") and in the description of Schedule "E". A review of these references reveals that they relate to the Minister's authority over the program under the *Electricity Act* and the *Community Solar Program Regulations*.

[52] The only parties identified in the heading of the agreement, and the definition of "Party" in Schedule "B" are the "Seller" and the "Utility". The Minister is not a party to the proposed power purchase agreement, although certain rights stemming from the Minister's legislative authority are recognized. The Board assumes the Department's response to SWEB's comments about s. 4.2 inadvertently referenced the Province instead of NS Power (or the Utility).

3.4 Subscriber Fees

[53] The Small Business Advocate expressed concern about the amount of subscriber fees for the Community Solar Program, noting these fees may be another revenue source for project owners.

[54] In its reply submissions, the Department said subscribers do not pay to be part of a community solar garden. The Department also advised that the only revenue a project owner receives comes from the energy sold to NS Power under the proposed power purchase agreement. The Department's response is consistent with s. 4 of the *Community Solar Program Regulations* which states that a subscriber must not be charged any additional fees by NS Power or a project owner to participate in the Community Solar Program.

[55] That said, the Board observes that s.3AI(1) of the *Electricity Act* requires NS Power to develop a system for collecting fees payable by subscribers to project owners. Since the program established under the regulations does not currently appear to require subscriber fees, the Board would have assumed that this obligation on NS Power would only be triggered if the program was amended to require the payment of fees by subscribers; however, s. 27 of the *Community Solar Program Regulations* appears to suggest NS Power must take action under s. 3AI by January 1, 2025. This provision is curious, however, in that it uses words that track NS Power's obligation under s. 3AH of the *Electricity Act* to update its billing system.

[56] Regardless, as the Board understands the Small Business Advocate's concern, it goes to the appropriateness of the power purchase rate under the power purchase agreement if the project owner is receiving additional revenue under the program. As it appears that there are no subscriber fees, this concern is moot at this stage. Ultimately, given that the power purchase rate under the agreement is not approved by the Board, it is not an issue for the Board to address in this proceeding.

3.5 Summary of Commercial Terms: Final In-Service Date and Nameplate Capacity

[57] In its submissions, SWEB requested clarification of the definition of “Final In-Service Date” and commented on the inconsistent use of “Name Plate Capacity” and “Nameplate Capacity”. SWEB also commented on the inconsistent use of units when referring to “Nameplate Capacity”.

[58] Regarding the definition of “Final In-Service Date”, the Department agreed there was a lack of clarity and proposed to replace the definition with the following:

> The final in-service date is the latest date that a community solar garden is required to achieve commercial operation. For distribution connected projects, it is 2.5 years from the effective date and 3 years following the effective date for transmission interconnected projects.

[59] The Board finds that the proposed change improves clarity and directs the Department to include that change in a revised power purchase agreement in a compliance filing.

[60] The Department also advised that the power purchase agreement will be revised to refer to “Nameplate Capacity” consistently throughout the agreement. It also indicated that s. 1(e) in the Summary of Commercial Terms would be amended to refer to the correct unit for Nameplate Capacity. The Department is directed to include these changes in its compliance filing.

3.6 Summary of Commercial Terms: Power Purchase Rate

[61] While noting that the Department indicated that it has developed a financial model to establish an energy rate specific to each project considering capital costs, financing and funding, community benefits, financial viability, impact on ratepayers, and the value of solar energy, the Consumer Advocate submitted the potential cost impact on ratepayers was unclear. He recommended that the analysis used to determine the power

purchase rate be completed and shared for each power purchase agreement NS Power must enter under the Community Solar Program.

[62] The Department advised that it intends to "perform a comprehensive internal analysis of the proposed rate to minimize the impacts on ratepayers while ensuring the project's financial viability over its lifetime", but it went on to note that it was unlikely to provide its financial analysis for the rates used in the power purchase agreements due to confidentiality.

[63] The issue raised by the Consumer Advocate is not directly related to the terms of the proposed power purchase agreement. The Board's authority in this matter is limited to approving the terms of the agreement. The Board has no authority over the power purchase rate set by the Minister for each agreement or the process used by the Minister or the Department to determine that rate. This is not an issue for the Board to decide in this proceeding.

3.7 Section 4.1 – Requirements for Projects

[64] Section 4.1 of the power purchase agreement requires the community solar garden to maintain certain requirements over the term of the agreement. These requirements are specified; but generally speaking, the power purchase agreement requires the project owner to ensure that the community solar garden adheres to all eligibility requirements under the *Electricity Act* and the *Community Solar Program Regulations*. SWEB agrees with these requirements but requested that the customer subscription process be clarified.

[65] The requirements in s. 4.1 make adherence to the Community Solar Program under the *Electricity Act* and the *Community Solar Program Regulations* a term

of the agreement. While the Board believes it is appropriate that the terms of the power purchase agreement require compliance with the Community Solar Program, the subscription process under the program is not a matter for the power purchase agreement. As such, it is not an issue to be determined by the Board in this proceeding. The Board notes that the Department, in its reply submissions, indicated that further guidance on the customer subscription process is under consideration and may be provided in future notice to participants or a webinar.

3.8 Section 4.2 – Out of Compliance Projects

[66] SWEB observed that this section uses the initials “PPA” without defining what they mean.

[67] The Board assumes that the reference to “PPA” means power purchase agreement and based on the definitions in Schedule “B”, the term “agreement” may have been a more appropriate reference in this provision. This would be consistent with s. 9 of *Community Solar Program Regulations* and s. 12.4 of the agreement proposed for approval in this proceeding. The Department is directed to make this correction in its compliance filing.

3.9 Section 6.1 – Power Purchase Rate, Incremental Energy Rate and Payment

[68] Section 6.1(a)(iii) states that, for Net Output produced each Contract Year above 110% of the Annual Net Output, the Utility shall pay the Seller the lesser of the Incremental Energy Rate and the Power Purchase Rate. ABO said this means there is limited upside for over-performance, reducing the potential for maximizing revenue even if the project outperforms initial expectations. SWEB said the 110% threshold does not provide enough contingency for high generation years.

[69] SWEB also submitted that the 110% threshold was lower than the 120% threshold used in other renewable energy programs in Nova Scotia. SWEB submitted that a 120% threshold should be used to maintain consistency with those other programs.

[70] In its reply submissions, the Department submitted that it had deemed the 110% threshold to be sufficient for the purposes of the Community Solar Program. It also said that over-generation may add unintended stress to the grid that could place a cost burden on customers.

[71] The Board accepts the Department's submissions on this point. The Minister controls key financial aspects of the power purchase agreement, including the setting of the power purchase rate and the administrative fee. As such, the Minister can balance financial interests under the agreement. The 110% threshold provision supports this objective.

[72] Further, the Board also notes that, while SWEB referred to differences in the threshold between the currently proposed power purchase agreement and the power purchase agreements approved for other renewable energy programs in Nova Scotia, it did not discuss differences in the rates that apply for output above these thresholds. For example, under the agreement proposed in this proceeding, the Seller is paid the lesser of the Incremental Energy Rate and the Power Purchase Rate. In the power purchase agreement that the Board approved for the Green Choice Program, the payment for "excess energy" is the lower of 50% of the "incremental energy rate" and the "energy rate".

3.10 Section 6.2 – Billing, Meter Reading and Payment

[73] SWEB requested clarification about whether the reference to “month” in this section meant calendar month.

[74] The Department confirmed that the reference to month was intended to be the calendar month in which the energy was supplied. For clarity, the Board directs that the proposed power purchase agreement be revised to refer to the “calendar month” in s. 6.2(c).

[75] SWEB also submitted that interest on late payments by NS Power to the project owner should bear interest at the Bank of Nova Scotia’s prime rate plus a premium. SWEB said that the payment of interest at the prime rate is not a market rate.

[76] The Department submitted that the prime rate is appropriate as a proxy for the general value of money across Canada and should be applicable to delayed payments under the proposed power purchase agreement. Given the Minister’s authority for balancing financial interests under the agreement the Board accepts the Department’s submission on this point.

3.11 Section 6.3 – Assignment of Renewable Energy Certificates

[77] Section 6.3(d) prohibits project owners from participating in any program giving rise to Seller Benefits if such participation reduces the amount of any Renewable Energy Certificates to which the Utility would otherwise be entitled under the power purchase agreement. The definition of “Seller Benefits” includes such benefits that exist as of the date of the agreement or arising during the term of the agreement. SWEB submitted that the reference to future benefits arising during the term should be removed

because these are uncertain, and project owners could not know what they were agreeing to.

[78] The Department submitted the definition of “Seller Benefits” did not need to be amended or removed because it was sufficiently explicit.

[79] While the Board appreciates that “Seller Benefits” that do not exist now and might arise in the future may be unknown, the Board accepts the Department’s submission that the nature of the benefits is sufficiently described. Further, the Board notes that s. 6.3(d) exists to protect the value of Renewable Energy Certificates that are being assigned to NS Power under the terms of the proposed power purchase agreement. It would not be appropriate to permit the Seller to engage in future activities that would reduce the amount of the Renewable Energy Certificates that it agreed to assign under the terms of the power purchase agreement.

3.12 Section 6.4 – Administrative Fees and Cost Recovery

[80] The power purchase agreement obliges the project owner to pay an administrative fee to NS Power. SWEB recommended the removal of this provision from the power purchase agreement or, failing that, asked for a detailed description of how the fee would be calculated.

[81] As noted by the Department in its reply submissions, the administrative fee is mandatory under s. 8 of the *Community Solar Program Regulations*. The regulations set a maximum administrative fee of $5.00/MWh of electricity purchased by NS Power from the project. The Board notes that, in its reply submissions, the Department appeared to indicate that it would revise the proposed power purchase agreement to include a standard administrative fee of $0.003/kWh ($3.00/MWh), which is lower than the

maximum amount permitted by the regulations. The Board directs the Department to include its proposed reference to the administrative fee in the power purchase agreement in its compliance filing.

[82] As a final comment, the Board observes that the definition of “Administrative Fee” in Schedule “B” of the proposed power purchase agreement suggests that the administrative fee is approved by the Board. The Board has no authority to approve the administrative fee. The administrative fee is determined solely by the Minister under s. 8 of the regulations. The Board directs the Department to revise the power purchase agreement to remove the reference to Board approval in its compliance filing.

3.13 Section 7.2 – Cessation of Operations

[83] This section requires the project owner to notify the Minister and NS Power if Net Output from the Community Solar Garden is reasonably expected to be more than a 25% reduction of the Nameplate Capacity for more than 14 days. SWEB noted the discrepancy between the energy-based (Net Output) and capacity-based (Nameplate Capacity) references in this provision and requested clarification.

[84] The Department confirmed that the reference should be to a 25% reduction in the Net Output and agreed to amend the proposed power purchase agreement to reflect this. The Board directs the Department to make this change in its compliance filing.

3.14 Section 8.2 – Curtailment of Supply

[85] ABO noted that the power purchase agreement did not provide for compensation in the event of a curtailment.

[86] SWEB expressed concern that there is no limit to the amount of curtailment, nor is there a prescribed set of reasons for doing so. In such circumstances, SWEB said

project owners must assume a high curtailment rate and will be forced to request a higher power purchase rate to account for this contingency and risk. SWEB also noted that agreements for other provincial renewable energy programs limit the amount of curtailment without compensation to 5%, except in cases of unforeseeable emergencies or *force majeure* events. SWEB urged the Board to maintain consistency between provincial power purchase agreements and recommended that there be a set maximum of 5% curtailment and that it only apply in extreme circumstances.

[87] The Board notes that any curtailment under s. 8.2 of the proposed power purchase agreement must be consistent with the Interconnection Agreement between NS Power and the project owner. Curtailment under such agreements was recently considered by the Board in its decision on the review of NS Power's interconnection processes [2024 NSUARB 97]. The Board directed NS Power to further explore curtailment issues and notes that NS Power recently filed an update report on November 29, 2024, which is pending review at this time.

[88] In its decision, the Board also referred to the recent addition of s. 4E to the *Electricity Act*, which requires a generation facility operating under a power purchase agreement under a procurement initiated under s. 4B to be compensated for curtailment exceeding 5% of its total energy bid unless a generation facility was not generating electricity at the time it was instructed to decrease or stop its generation output or the instruction was sent due to an unforeseeable emergency or *force majeure* event. This provision was incorporated in the power purchase agreement approved for the Green Choice Program (Board Matter M11455). However, the power purchase agreement before the Board currently relates to a program under s. 3AF of the *Electricity Act* and not

s. 4B. As such, this provision does not apply to the currently proposed power purchase agreement.

[89] In its reply submissions, the Department noted that the proposed power purchase agreement does not contemplate curtailment protections for the project owner, nor does it contemplate production guarantees for NS Power. The Department submitted that this was bilateral relief that ensured grid stability and minimized liabilities for the project owner. It said it did not expect that projects would be curtailed on anything other than an emergency basis; however, the Board notes that NS Power's standard generator interconnection and operating agreement provides for curtailment if required by "Good Utility Practice".

[90] The Board accepts the Department's position on this point. In adopting a curtailment provision that was different than s. 4E of the *Electricity Act*, the Minister preferred a different balancing of rights under the proposed power purchase agreement. To the extent that this may have an impact on the power purchase rates requested by project owners, the Board notes again that the rate under the proposed power purchase agreement is to be set by the Minister. As such, the Minister is in a position to balance rights under the agreement and the rate.

3.15 Section 9.2 – Insurance

[91] ABO noted that the Seller is required to maintain property and liability insurance for the solar project, including naming the Utility as an additional insured.

[92] The precise nature of ABO's concern is not specified; however, the Board finds it is appropriate to maintain these reasonable and prudent provisions in the proposed power purchase agreement.

3.16 Section 12 – Termination by the Parties

[93] ABO noted that the power purchase agreement did not provide for compensation for the Seller by the Utility if there was a termination of the agreement due to a utility default. ABO submitted that guidance for the calculation of termination payments should be provided so that the parties are aware of their financial exposure.

[94] ABO also commented that the Minister can request termination if the Seller fails to comply with the legislation. It said if compliance issues arise, the Seller may face early termination without any compensation or recourse, risking the entire investment.

[95] The Department said the agreement does not require termination payments by either party, which provides both parties with relief. It did note, however, that in the event of termination of the power purchase agreement, a party may choose to sue for damages. The Department submitted that omitting termination payments minimized costs and ensured a variety of developers could access and apply to the Community Solar Program.

[96] ABO's comments only contemplated termination payments for the Seller and not for the Utility. Indeed, ABO appeared to suggest that the Seller should be entitled to compensation if the agreement was terminated by the Minister because the Seller acted in contravention of the *Electricity Act* or the *Community Solar Program Regulations*. The Board accepts the Department's submission as a more balanced approach.

[97] SWEB recommended that the provision clearly indicate that a termination would not be permitted because of an impact or cessation of energy production caused by a curtailment imposed by NS Power.

[98] The Board notes that s. 12.1(a) defines an "Event of Default" as including the cessation of energy production from events other than a "Force Majeure Event" or

“Utility interruptions pursuant S. 8.2”. Section 8.2 relates specifically to the Utility’s right to interrupt or curtail. As such, it appears that SWEB’s concern has already been addressed.

[99] However, in its reply submissions, the Department advised that the power purchase agreement would be amended to include a clause stating that the Utility cannot terminate the power purchase agreement due to utility-initiated curtailment that impacts or ceases energy production at the Community Solar Garden. To the extent that there are revisions to the power purchase agreement relating to this, the Board directs that they be included in the revised agreement to be provided in a compliance filing.

3.17 Section 13.2 – Assignment and Change of Control

[100] ABO noted that although the power purchase agreement addresses assignments by the parties, it does not provide details about the requirements or consequences of change of control scenarios (e.g., if the Seller is sold to another company).

[101] The Department’s reply submission suggested that this provision was intended to cover “change of control”, which it suggested meant the assignment of the contract to a new controlling entity. However, that is not the Board’s understanding of the concern raised by ABO. As the Board understands it, the concern relates to a situation where there is no assignment of the power purchase agreement, however, there is a change of control within the Seller itself (e.g., a majority of the shares of the Seller are acquired by a new party). In this regard, the Board notes that the recently approved power purchase agreement for the Green Choice Program included separate provisions relating to assignment (s. 16.2) and change of control (s. 16.3). The Board directs the Department

to address change of control scenarios in its compliance filing and either provide a revised power purchase agreement that it believes addresses the concern or explain why no revisions to the proposed power purchase agreement are necessary.

[102] SWEB recommends that this provision indicate that the assigning party be released from its obligations. It said that the development of community solar gardens would likely be done by special project vehicles and submitted that, as drafted, the language currently used would inhibit assignment.

[103] SWEB also submitted that requiring NS Power's consent would interrupt the project owner's assignment process. SWEB recommends the removal of the requirement for consent if the assignee is an eligible entity (as defined in the *Community Solar Program Regulations*).

[104] In its reply submissions, the Department addressed SWEB's concern about the requirement for consent but not about the release upon assignment. Regarding consent, the Department noted that the requirement was put in place to ensure that the Utility could verify that the assignee is an eligible entity and that consent would not be unreasonably withheld, delayed, or conditioned. It submitted this provided enough protection for the Seller. The Board accepts that a requirement for consent in s. 13.2(b) is appropriate, particularly if the Seller is to be released from its obligations under the agreement.

[105] Regarding the requested release, the Board notes that an example of the release contemplated by SWEB exists in s. 13.2(a) and applies when there is an assignment by the Utility. Given the requirement for the Utility's consent to an assignment by the Seller under s. 13.2(b), the Board finds that it is reasonable to incorporate similar

language in this provision. The Board directs the Minister to make this revision in its compliance filing.

[106] However, an assignment under s. 13.2(d) to an affiliate does not require consent and explicitly states the assigning party shall not be released from its obligations. Given that there is no opportunity for the non-assigning party to review or consent to the assignment, the Board finds this provision is reasonable. If a Seller wants to be released from its obligations upon an assignment to an affiliate, it can proceed to request NS Power's consent under s. 13.2(b) instead.

[107] The Smal Business Advocate questioned how NS Power would determine whether an encumbrance exists on the Net Output from a solar garden. The Small Business Advocate noted that s. 13.8 is a representation and warranty from the Seller that the Net Output of the community solar garden "will be free of any liens, encumbrances, or adverse claims and is not and will not be subject to or committed by the Seller under any contract or obligation other than this Agreement" but s.13.2 allows the Seller to "assign, charge, pledge or hypothecate its rights hereunder to any bank or other lending institution as security", which would be subordinate to the power purchase agreement.

[108] In response, the Department advised that it would amend the proposed power purchase agreement to require that NS Power be notified if an encumbrance is placed on the community solar garden's Net Output. The Board directs the Department to include this amendment in a revised power purchase agreement in its compliance filing.

3.18 Section 15 – Notice

[109] SWEB recommends an expansion of the notification provisions to include email communications where the actual intended recipient acknowledges receipt.

[110] The Department advised that it would amend the proposed power purchase agreement to include email communications as an acceptable notice method. The Board directs it to do so in its compliance filing.

3.19 Change in Law

[111] ABO noted there is no specific provision in the power purchase agreement detailing what happens if a change in law or regulation materially affects the project's costs, operations, or feasibility.

[112] The Department advised it would amend the proposed power purchase agreement to include provisions that would apply in the event of a change in law that impacts project economics. The Department said that, in such cases, the Seller would promptly notify NS Power and that both parties would engage in good-faith negotiations to amend the agreement to uphold the Seller’s anticipated economics. If an agreement cannot be reached, the issue will be resolved through the dispute resolution procedures in s. 18 of the proposed power purchase agreement. The Board finds this reasonable and directs the Department to include revised language for this in its compliance filing.

3.20 Financial Security

[113] ABO noted that the power purchase agreement does not require the Utility to provide credit support (e.g., letters of credit, payment guarantees). The Department submitted that neither party is required to post security by design. It noted that there are several representations and warranties for the benefit of the Utility in s. 13.8 and for the

benefit of the Seller in s. 13.9. It said the absence of security provisions reduced costs and allowed a variety of developers to participate in the Community Solar Program.

[114] The Board finds this to be a reasonable balancing of interests given the nature of the Community Solar Program and concludes no changes to the power purchase agreement are needed for financial security protections.

3.21 Performance Penalties and Incentives

[115] ABO said the proposed power purchase agreement lacks provisions for performance penalties (e.g., liquidated damages) or incentives. The Department believes such relief is not necessary.

[116] Neither party submitted detailed comments about this issue. The Board is not satisfied that the rights of the parties under the proposed power purchase agreement for the Community Solar Program are unbalanced without specific penalties or incentives.

4.0 SUMMARY OF BOARD FINDINGS

[117] The Board approves the proposed power purchase agreement filed in this proceeding, subject to the changes and clarifications directed by the Board in this decision, including:

- clarifying the definition of “Final In-Service Date”;
- ensuring that consistent references to “Nameplate Capacity” are used throughout the agreement;
- correcting the reference to “PPA” in s. 4.2;
- clarifying that the reference is to a “calendar month” in s. 6.2;

- revising the agreement to include a standard administrative fee of $0.003/kWh ($3.00/MWh), with any necessary changes to the definition of “Administrative Fee” in Schedule “B”, including removing the reference to Board approval of the Administrative Fee;
- correcting s. 7.2 to refer to a 25% reduction in “Net Output” rather than “Nameplate Capacity”;
- providing any necessary amendments to clarify that the cessation of energy production due to utility interruptions or curtailment is not an “Event of Default” for the Seller under s. 12;
- addressing change of control scenarios in the agreement or explain why no such changes to the agreement are necessary;
- revising s. 13.2(b) to provide for a release upon assignment, similar to s. 13.2(a);
- revising the agreement to require that NS Power be notified if an encumbrance is placed on the community solar garden’s Net Output;
- revising s. 15 to include e-mail notification; and
- revising the agreement to include provisions that would apply in the event of a change in law.

[118] The Department is directed to address these items in a compliance filing, to be filed with the Board no later than Friday, January 10, 2025. The compliance filing must include a clean version of the power purchase agreement as well as a version showing tracked changes from the version filed in this proceeding as Exhibit N-1.

[119] An Order approving the power purchase agreement will be issued following a satisfactory compliance filing.

DATED at Halifax, Nova Scotia, this16th day of December, 2024.

Stephen T. McGrath

Roland A. Deveau

Richard J. Melanson