

DECISION

**2024 NSUARB 66
M10293**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE ELECTRICITY ACT

- and -

IN THE MATTER OF AN APPLICATION by **Renewall Energy Inc.** for a Retail Supplier Licence to sell renewable low-impact electricity to retail customers

BEFORE: Stephen T. McGrath, K.C., Chair

APPLICANT: **Renewall Energy Inc.**

FINAL SUBMISSIONS: **March 26, 2024**

DECISION DATE: **April 8, 2024**

DECISION: **The Board approves the proposed documentation for use with small-volume customers, subject to changes directed in this decision and a compliance filing.**

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1.0 INTRODUCTION

[1] Renewall Energy Inc. (formerly known as 4363174 Nova Scotia Limited) is a licensed retail supplier under s. 3E(2) of the *Electricity Act*, S.N.S. 2004, c. 25. As such, although it is not a public utility, Renewall may sell renewable low-impact electricity to retail customers in the province. Renewall is the first, and currently the only, party able to do so.

[2] Renewall may only use certain Board-approved documents when marketing to small-volume customers. These are customers who consume relatively smaller amounts of electricity and who Nova Scotia Power Incorporated would provide service to under its domestic or small general tariffs if they were customers of that utility.

[3] This decision is about Renewall's application for the approval of its documents for use with small-volume customers. Since Renewall is the first licensed retail supplier in Nova Scotia, it was, in many respects, blazing a trail in this proceeding that others may follow. I appreciate the efforts Renewall undertook and the flexibility it showed in adapting its proposed documents to address various concerns and issues. I approve the final versions of the documents Renewall filed in this proceeding, subject to the further changes I have directed in this decision, which will be reviewed in a compliance filing.

2.0 BACKGROUND

[4] The Board's authority over retail suppliers is quite different from its authority over public utilities, such as NS Power, under the *Public Utilities Act*, R.S.N.S. 1989, c. 380. The Board licenses retail suppliers and oversees their marketing and sales activities. Significantly, the Board's role in regulating retail suppliers is not that of an economic regulator. The Board does not approve the electricity rates charged by retail suppliers.

[5] Retail supplier rights, responsibilities and obligations are set out in the *Electricity Act*, the *Board Electricity Retailers Regulations*, N.S. Reg. 246/2016 and the Board-approved *Code of Conduct for Renewable Low-Impact Electricity Sales in Nova Scotia*. The *Retailers Regulations* and the *Code of Conduct* include provisions that apply specifically to small-volume customers.

[6] Retail suppliers must use a Board-approved form of contract for sales to small-volume customers. Small-volume customer contracts must be verified following certain procedures set out in the *Retailers Regulations*. A retail supplier must also provide Board-approved disclosure statements and rate comparisons to small-volume customers.

[7] On August 18, 2023, Renewall applied for approval to use the following documents to engage with small-volume customers:

- Small Volume Power Purchase Agreement and Small Volume Customer General Terms and Conditions
- Website (text format provided)
- Rate Comparisons
- Disclosure statements
- Renewable-to-Retail Guide – Purchasing Renewable Low-Impact Electricity
- Contract Verification Script

[8] Since filing its application, Renewall amended some of these in response to various information requests issued by Board staff.

[9] Aspects of the application touched upon matters that could be of interest to NS Power, so I invited it to participate in this proceeding. NS Power filed comments with the Board on November 28, 2023.

[10] I held a hearing on December 14, 2023, to seek more information about the application. Both Renewall and NS Power attended. After the hearing, Renewall filed revised small-volume customer documents with its undertaking responses. NS Power

provided comments about the new documents and Renewall provided its response and further revised documents on January 26, 2024.

[11] My findings about the requested approvals are set out in the next part of this decision.

3.0 DISCUSSION

3.1 Small Volume Power Purchase Agreement and General Terms and Conditions

[12] Under s. 45(a) of the *Retailers Regulations*, a license holder must only use the form of contract approved by the Board with small-volume customers. Renewall's proposed form of contract consists of a Small Volume Power Purchase Agreement and Small Volume Customer General Terms and Conditions. Renewall filed the most recent versions of these documents with the Board on January 26, 2024, and are included in Exhibit R-12.

3.1.1 Typographical Error

[13] I believe there may be an error in s. 3(a) of the proposed Small Volume Power Purchase Agreement. The reference is to a "Retailer Rate" for the first year of the Term. However, I wonder whether that was meant to be the "Retailer Charge," consistent with the bolded words that precede this reference. I direct Renewall to confirm this in a compliance filing and file a corrected version if necessary.

3.1.2 Mandatory Elements in Contracts

[14] Section 49 of the *Retailers Regulations* says the term of a contract with a small-volume customer must not exceed five years. Under s. 63(1), the contract may not be renewed or extended. However, the parties may sign a new contract (following all the

requirements for contracts with small-volume customers in the regulations in effect at that time).

[15] Section 2 of the Summary of Terms in the Small Volume Power Purchase Agreement has a blank where the number of years for the term of the contract is to be written, but it also includes a footnote highlighting that the term must not exceed five years. It also states that any further term will require a new agreement. These are consistent with the regulations.

[16] Section 50 of the *Retailers Regulations* identifies a number of requirements that must be stated in any contract with a small-volume customer:

- 50 (1)** A contract with a small-volume customer shall state that the contract is not valid unless:
- (a) the customer signs the disclosure statement and rate comparison or, in the case of a telemarketing transaction or electronic communication transaction, the customer confirms that he understands and confirms the disclosure statement and rate comparison before the customer enters into the contract;
 - (b) the customer signs or agrees to the contract; and
 - (c) the licence holder provides a signed or agreed-to copy of the disclosure statement, rate comparison, and contract to the customer by mail, facsimile, electronic communication, or in person.
- (2)** A contract with a small-volume customer shall include a provision that states the contract is valid only if the contract has been verified as required in Section 51.
- (3)** A contract with a small-volume customer shall include a provision that the customer may cancel the contract without cost or penalty if a contract presently exists for the same premises, except where the existing contract is to expire on or before the commencement of the new contract.
- (4)** A contract with a small-volume customer shall include a provision that the customer may cancel the contract without penalty or charge if the retail supplier was not licensed by the Board or the licence was suspended at the time the contract was entered into.

[17] I find that s. 11 of the Summary of Terms in the Small Volume Power Purchase Agreement satisfies the mandatory requirements in s. 50(1) and (2):

11. Validity of Agreement. The Customer understands that this Agreement is not valid unless (i) the Customer has signed the Disclosure Statement, as set out in Schedule "A" attached hereto, (ii) the Customer has signed the Rate Comparison Statement, as set out in Schedule "B" attached hereto, (iii) the Customer has signed or agreed to this Agreement, (iv) the Provider has provided the Customer with a signed or agreed to copy of the Disclosure Statement, the Rate Comparison Statement, and this Agreement, and (v) this Agreement has been verified in accordance with Applicable Law.

[Exhibit R-12]

[18] Sections 50(3) and (4) of the *Retailers Regulations* identify certain cancellation rights. In addition to these, ss. 55-58 allow small-volume customers to cancel a contract in other circumstances:

- 55 A small-volume customer may unconditionally, and without any cancellation fees, penalties or charges, cancel the contract at any time from the date of entering into the contract until 30 days after the date of the first bill for renewable low-impact electricity under the contract, provided the customer is obligated to pay the licence holder for all renewable low-impact electricity consumed until the customer is transferred to bundled-supply.
- 56 A contract with a small-volume customer automatically terminates and the customer is not subject to any cancellation fees, penalties or charges if the customer sells or permanently moves from the premises to which renewable low-impact electricity is supplied under the contract.
- 57 A small-volume customer may unconditionally, and without any cancellation fees, penalties or charges, cancel the contract if the licence holder is found by the Board to be in violation of the Act, these regulations, the code of conduct, or its licence when marketing to the customer or in the course of fulfilling its obligations under the contract.
- 58 A small-volume customer may cancel the contract at any time in accordance with the cancellation provisions contained within the contract.

[19] Section 8 of the Summary of Terms in the Small Volume Power Purchase Agreement satisfies the mandatory contract content required by s. 50(3) and (4) and includes the cancellation rights in ss. 55-58 of the *Retailers Regulations*:

8. Cancellation. The Customer may cancel this Agreement without cancellation fees, penalties or charges (i) at any time from the Effective Date until thirty (30) days after the date of the first bill from the Provider, (ii) if another agreement presently exists for the Customer's Premises and this Agreement is not set to expire on or before the commencement of the new agreement, (iii) if the Provider is found by the NSUARB to be in violation of the Act, the Board Electricity Regulations, the Code of Conduct, or the Licence when marketing to the Customer or during the Term of this Agreement, (iv) if the Provider was not licenced by the NSUARB or the Licence was suspended at the time this Agreement was entered into, (v) the Customer sells or permanently moves from the Customer's Premises, or (vi) if the Provider is in breach of the Code of Conduct.

Cancellation for any other reason may require the Customer to pay a cancellation penalty or fee. See the General Terms and Conditions for additional information relating to cancellation of this Agreement.

[Exhibit R-12]

[20] The Small Volume Customer General Terms and Conditions also provides:

8. TERM, TERMINATION AND SURVIVAL

...

- (b) Either Party may terminate the Agreement, effective upon written notice to the other Party if such other Party:
 - (i) other than a breach pursuant to Section 8(c)(ii) [the failure of a customer to pay], materially breaches the Agreement or these Terms and Conditions, and such breach is incapable of cure, or with respect to a material breach capable of cure, the defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach;
 - (ii) becomes insolvent or admits its inability to pay its debts generally as they become due;
 - (iii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which in the case of any involuntary proceeding is not fully stayed within seven (7) days or is not dismissed or vacated within forty-five (45) days after filing;
 - (iv) is dissolved or liquidated or takes any corporate action for such purpose;
 - (v) makes a general assignment for the benefit of creditors;

...

- (d) In addition to its rights in Section 8(b) herein, in the event the Provider breaches the Code of Conduct, the Customer may terminate the Agreement on written notice to the Provider without any cancellation fees, penalties or charges.
- (e) In the event that the Customer sells or permanently moves from the Customer's Premises, the Agreement shall automatically terminate, and the Customer shall not be subject to any cancellation fees, penalties or charges. If the Customer wishes to still receive Energy from the Provider at the Customer's new premises, the Customer shall provide reasonable prior written notice to the Provider of its intended sale and/or permanent move, and shall execute the Provider's then current form of power purchase agreement for the Customer's new premises.

[Exhibit R-12]

[21] Section 8 of the Small Volume Customer General Terms and Conditions does not refer to all the customer cancellation rights included in s. 8 of the Summary of Terms in the Small Volume Power Purchase Agreement. There are no references in s. 8 of the Small Volume Customer General Terms and Conditions to the customer's right to cancel a contract:

- any time until thirty days after the date of their first bill (Summary of Terms, s.8(i));
- if another agreement exists for the customer's premises that will not expire before the commencement of the new agreement (Summary of Terms, s.8(ii));
- if the Board finds Renewall to be in violation of the *Electricity Act*, the *Retailers Regulations*, or its licence (Summary of Terms, s.8(iii)); or
- if Renewall was not licensed by the Board or its licence was suspended at the time the agreement was concluded (Summary of Terms, s.8(iv)).

[22] It is not clear why Renewall referenced only some of a customer's cancellation rights in s. 8 of its proposed Small Volume Customer General Terms and Conditions. While I recognize that s. 12(a) of the Small Volume Customer General Terms and Conditions gives the Small Volume Power Purchase Agreement precedence if there is any conflict, I find they should be consistent. Therefore, I direct Renewall to ensure that all customer cancellation rights are addressed in s. 8 of the Small Volume Customer General Terms and Conditions.

[23] I also have a concern about the need for a written notice of termination in s. 8(d) of the Small Volume Customer General Terms and Conditions and other requirements about the manner and delivery of notices in s. 12(d):

12. MISCELLANEOUS

...

- (d) Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under the Agreement (other than routine communications having no legal effect) (each, a "**Notice**") in writing and addressed to the other Party at its address set out on the first (1st) page of the Agreement (or to any other address that the receiving Party may designate from time to time in accordance with this Section). Each Party shall deliver all Notices by personal delivery, nationally recognized same day or overnight courier (with all fees prepaid), email or facsimile (with confirmation of receipt or transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is conclusively deemed to have been validly and effectively given: (a) if sent by personal delivery or by courier (all fees prepaid) on the date of receipt; (b) if sent by email, upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment); or (c) if sent by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid on the fifth (5th) Business Day after the mailing thereof.

[Exhibit R-12]

[24] My concern is that these provisions are not consistent with s. 59 of the *Retailers Regulations*, which sets out the specific ways that a customer may give notice of cancellation, and s. 60, which addresses when the notice is deemed to have been given:

- 59** A small-volume customer may give a notice of cancellation of a contract in any of the following ways:
- (a) by telephone;
 - (b) by ordinary or registered mail to the address specified in the contract;
 - (c) in person;
 - (d) by facsimile to the facsimile number specified in the contract; or
 - (e) by electronic communication to the e-mail address provided in the contract.
- 60 (1)** A notice of cancellation in respect of a contract with a small-volume customer is deemed to be given to the licence holder on the date of
- (a) receipt by the licence holder of the telephone call from the small-volume customer cancelling the contract;
 - (b) the electronic date stamp of the e-mail from the small-volume customer cancelling the contract;

- (c) the transmittal of the notice from the small-volume customer cancelling the contract, if the notice is sent by facsimile;
 - (d) the day that is five days after the postmark on the letter from the small-volume customer cancelling the contract, if the notice is sent by ordinary mail; or
 - (e) the delivery to the licence holder of the notice from the small-volume customer cancelling the contract, if the notice is delivered in person or sent by registered mail.
- (2) The cancellation of a contract with a small-volume customer becomes effective when NS Power transfers the customer to bundled-supply.

[25] There are several inconsistencies, including:

- Sections 8(d) and 12(d) of the Small Volume Customer General Terms and Conditions requires written notice. This is contrary to s. 59(a) and 60(1)(a) of the *Retailers Regulations*, which allows a customer to give a notice of cancellation by telephone.
- Section 12(d) of the Small Volume Customer General Terms and Conditions requires that when a notice is delivered by email or facsimile it is deemed to have been delivered upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment). This varies somewhat from s. 59(e) and s. 60(1)(b) of the *Retailers Regulations*, which deems a notice of cancellation to have been given based on the electronic date stamp of the e-mail from the small-volume customer because no automatic or manual confirmation of delivery is necessary.
- Section 12(d) of the Small Volume Customer General Terms and Conditions limits the delivery of notice by mail to certified or registered mail (in each case, return receipt requested, postage prepaid) and deems delivery to have occurred after five business days. This is inconsistent with s. 59(a) of the *Retailers Regulations*, which allows a notice of cancellation to be sent by ordinary mail. Further, s. 60(1)(d) of the *Retailers Regulations* deems a letter sent by ordinary mail to have been delivered five days (not business days) after the postmark on the letter and s. 60(1)(e) deems notice of cancellation sent by registered mail to have been given on the date of delivery.

[26] I direct Renewall to revise its proposed Small Volume Customer General Terms and Conditions to remove any inconsistency with the notice of cancellation provisions in the *Retailer Regulations* (ss. 59 and 60).

3.1.3 Suspension of Service and Disconnection

[27] The Small Volume Customer General Terms and Conditions do not include any rules governing disconnections like Regulation 6.2 in NS Power's Board-approved regulations. However, it appears that Renewall only has a limited ability to disconnect a customer. Under s. 3(b) of the proposed Small Volume Customer General Terms and Conditions, Renewall may suspend the delivery of energy or disconnect a customer only if there is an emergency, a force majeure event or if it is necessary to do so following good utility practices. Under s. 5(b), a customer may be disconnected in certain circumstances if there are issues obtaining meter readings; however, this is only for the purposes of relocating the meter.

[28] A failure to pay does not allow Renewall to suspend or disconnect service. Under s. 8(c)(ii) of its proposed Small Volume Customer General Terms and Conditions, Renewall may terminate the agreement. In these circumstances, the customer reverts to NS Power's bundled service, so there is no interruption in the customer's electrical service.

[29] For clarity, I am not approving any term or condition allowing for the interruption of electrical service for non-payment under Renewall's contracts.

3.1.4 GST/HST Reporting

[30] Section 6 of Renewall's Small Volume Customer General Terms and Conditions addresses its net billing service. Its proposed service for small-volume customers is different from NS Power's net metering service. Notably, it does not restrict the size of any behind-the-meter generation, and it is possible that customers could install

generation facilities that could produce more than the customer would consume for personal use.

[31] Section 6(f) of the proposed Small Volume Customer General Terms and Conditions requires net-billing customers to report GST/HST to the Canada Revenue Agency on the gross amount of electricity they provide to Renewall under the net billing service and the amount received for it (either paid or set off against electricity they consume). I am concerned that small-volume customers may not appreciate that Renewall's net billing service may impose income tax and GST/HST obligations upon them. This possibility should be more specifically brought to their attention. Therefore, I direct Renewall to develop an information sheet highlighting these potential obligations and to provide it to a small-volume customer upon being notified that the customer wishes to use Renewall's net billing service.

[32] It is not my intention that Renewall provide specific advice to its customers about their income tax or GST/HST obligations in the information sheet. Rather, the intent is to provide customers with basic information alerting them to potential income tax and GST/HST obligations. The information sheet should recommend that customers speak with their legal and financial advisors, or the Canada Revenue Agency, about these obligations.

[33] I also direct Renewall to revise the net billing service information in its Rate Comparisons to state that the net billing service may have income tax implications and impose GST/HST obligations and that an information sheet is available from Renewall with further details.

3.1.5 Limited Warranty and Limitation of Liability

[34] Section 7 of Renewall's Small Volume Customer General Terms and Conditions sets out a limited warranty and provisions limiting Renewall's liability. Although Renewall amended these provisions during this proceeding to address concerns I raised, I remain concerned. These terms are more limiting than similar protections for other energy providers in Nova Scotia.

[35] NS Power's liability to customers is limited by s. 23 of the *Nova Scotia Power Privatization Act*, S.N.S. 1992, c. 8:

Limitation on liability

23 Any contract for the supplying by the Company of electricity is deemed to provide that the Company is not liable for damages in respect of any delay, interruption or other partial or complete failure in such supplying where such damages are caused by something which is beyond the ability of the Company to control by reasonable and practicable effort.

[36] Eastward Energy Incorporated's liability to customers is limited under Part 8, s. 7, of its Board-approved Distribution Service Rules:

7. You have no claim against us for damages, including disruptions in natural gas service, caused by events beyond our reasonable control, for example: severe weather, natural disasters, road closures, labour disputes, civil unrest, fires, accidents, pipeline or machinery breakdowns or repairs, supply disruptions, or orders of a legislative or regulatory body or other authority. Similarly, in such circumstances we have no claim against you if you are unable to take service. However, once the emergency or disruption ends, we will resume delivery service to you, and you will resume taking it, as provided for in these Rules and our service agreement.

[37] At the hearing, I reviewed these provisions with Renewall. Renewall noted that, unlike NS Power or Eastward Energy, it does not control the distribution system. After pointing out that NS Power is not liable for damages "caused by something which is beyond the ability of the Company to control," and Eastward Energy is not liable for "events beyond [its] reasonable control," I asked Renewall to consider this further and respond by way of an undertaking as follows:

Q. ...I guess I'll ask for an undertaking around this, but the question that I would like addressed is when looking at whether what you're requesting is reasonable, I have two examples from utilities in this jurisdiction that have a liability provision that specifically address matters that are beyond their control and excludes liability from that which is, I understood, what your primary concern was about.

And you know, I think in terms of the undertaking, which would be U-4, it's if provisions like that will not be sufficient for you, I think I'm going to need some better justification for that.

So if you could either kind of take it away to review those and let me know whether they're sufficient and, if not, to provide the additional justification that you want me to consider before making a decision on it.

A. We agree to take that on.

[Transcript, pp. 59-60]

[38] In its undertaking response, Renewall stated:

Renewall has reviewed section 7 and made the following changes to 7 (d). We believe these changes align with the language of Nova Scotia Power and Eastward Energy regulations while meeting the needs of Renewall.

Please see Appendix A, General Terms and Conditions.

[Exhibit R-11, Undertaking U-4]

[39] Section 7 of Renewall's Small Volume Customer General Terms and Conditions, as revised, provides:

7. LIMITED WARRANTY AND LIMITATION OF LIABILITY

- (a) The Provider warrants that it shall provide the Energy to the Customer:
 - (i) in accordance with the terms and conditions set out in the Agreement and these Terms and Conditions;
 - (ii) using personnel of industry standard skill, experience, and qualifications; and
 - (iii) in accordance with Good Utility Practice.
- (b) The Provider's sole and exclusive liability and Customer's sole and exclusive remedy for breach of this warranty or any other covenants or representation of the Provider under the Agreement shall be as follows:
 - (i) The Provider shall use commercially reasonable efforts to promptly cure any such breach; provided that, if the Provider cannot cure such breach within a reasonable time after the Customer's written notice of such breach, Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 8(b) herein.
 - (ii) In the event the Agreement is terminated pursuant to Section 8 or Section 11(b) herein, the Provider shall after the effective date of termination, refund

to Customer any fees pre-paid by the Customer for Energy as of the date of termination.

- (iii) The foregoing remedy shall not be available unless the Customer provides written notice of such breach within fifteen (15) days after such breach has occurred.
- (c) THE PROVIDER MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 7(a) HEREIN. ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS AND IMPLIED, INCLUDING FITNESS FOR PURPOSE, ARE EXPRESSLY DISCLAIMED.
- (d) PROVIDED ALWAYS, THAT THE PROVIDER IS ACTING IN ACCORDANCE WITH GOOD UTILITY PRACTICE, IN NO EVENT SHALL THE PROVIDER BE LIABLE TO THE CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, COST OF REPLACEMENT ENERGY, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, AGGRAVATED, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.
- (e) IN NO EVENT SHALL THE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO THE PROVIDER PURSUANT TO THE AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE APPLICABLE EVENT GIVING RISE TO THE CLAIM.
- (f) IN NO EVENT SHALL NSPI BE LIABLE TO THE CUSTOMER FOR ANY DAMAGES FOR THE PROVIDER'S BREACH OF THE AGREEMENT OR FOR ANY DELAY, INTERRUPTION OR OTHER PARTIAL OR COMPLETE FAILURE IN THE SUPPLY OF ENERGY TO THE CUSTOMER, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT NSPI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

[Exhibit R-12]

[40] I agree that the revision Renewall made to s. 7(d) is more comparable to the limitations on the liability of NS Power and Eastward Energy. In essence, these provisions limit liability for things these energy providers cannot reasonably control.

[41] Although I make no specific finding on this point, the revised language proposed by Renewall might be narrower than what is in place for NS Power and Eastward Energy. Renewall's proposed limitation of liability in s. 7(d) applies if it is "acting in accordance with good utility practice;" whereas, NS Power's liability is limited if

“damages are caused by something which is beyond [its] ability...to control by reasonable and practicable effort” and Eastward Energy’s liability is limited for damages “caused by events beyond our reasonable control.” Considering the changes that I am directing be made in s. 7 of Renewall’s proposed Small Volume Customer General Terms and Conditions, I would not object if, in its compliance filing, Renewall revised the language it has used in s. 7(d) to language more similar to what applies to NS Power or Eastward Energy.

[42] Beyond s. 7(d), I have concerns about much of what Renewall proposes to retain in s. 7. I find Renewall has not justified the limitations it proposes to place on its customers’ rights if they are harmed by matters that are within Renewall’s ability to reasonably control. I address the proposed limitations and my concerns about them in more detail below.

[43] Before discussing s. 7 of Renewall’s proposed Small Volume Customer General Terms and Conditions I note that although the *Retailers Regulations* require the Board to approve the form of contract between Renewal and its small-volume customers, it does not identify any test to be used or factors to consider when doing so. In my review of Renewall’s proposed limitation of liability provisions in particular, I was mindful that Renewall is not a rate-regulated public utility, it is not subject to the same duty to serve requirements of public utilities, and that domestic and small general customers always have the option to remain with or return to taking service from NS Power. If a potential customer does not like the terms and conditions of service offered by Renewall, they are under no obligation to enter into an agreement for service from Renewall.

[44] I also considered the fact that the approval requirements in the *Retailer Regulations* are for contracts with small-volume customers. Renewall is free to include whatever liability limitations it wants in contracts with customers who are not domestic or small general customers. The difference, of course, is that those larger and generally more sophisticated customers are better situated to negotiate a more balanced allocation of risks due to greater purchasing power and a familiarity with more complex electricity service rate structures. The Board's focus on small-volume customers in the *Retailer Regulations* must be understood as a means to ensure that reasonable contract terms are available to them.

[45] In considering what is reasonable, I was naturally drawn to compare what Renewall was proposing with the rights of those customers under service arrangements with NS Power, and comparable customer arrangements between Eastward Energy and its customers. Furthermore, given that the risk in question is related to harm caused by events within Renewall's control, I find Renewall is in a better position to manage those risks. I was open to departing from the arrangements that exist between NS Power and Eastward Energy and their customers, given the differences between Renewall and those other energy providers previously discussed. However, I am not satisfied that Renewall provided any real justification for doing so. The reference to "meeting the needs of Renewall" in the response to Undertaking U-4 is simply not enough.

[46] Regarding the warranty proposed by Renewall in s. 7(a), I recognize that the intent of this provision is to define a customer's right relating to how energy will be provided. In that respect, the provision is positive for customers. My concern, however, is that it does not expressly capture all customer rights.

[47] Section 7(a) does not explicitly refer to all the sources of Renewall's obligations and I find that these should be mentioned so there is no confusion that they continue to apply and may trigger remedies for customers if Renewall does not live up to them. Specifically, I find that s. 7(a)(i) must also include a statement that energy will be provided in accordance with the *Retailers Regulations*, the *Code of Conduct* and its retailer supplier licence. These include important obligations about the delivery of the Energy, such as the requirement in s. 13 of the *Retailers Regulations* for Renewall to refund "the difference between the Licence Holder's Blended Rate and 90% of the weighted average Top-Up Rate over the Compliance Period" if it has not generated enough renewable low-impact electricity to cover its sales and transmission and distribution losses.

[48] A concern I have about s. 7(b) is that it purports to limit customer remedies, not only for breaches of the warranty in s. 7(a), but also for the breach of "any other covenants or representation of the Provider under the Agreement."

[49] Section 7(b)(i) makes a customer's right to terminate the agreement for a breach of the warranty in s. 7(a) or any other covenant or representation under the agreement conditional on Renewall's inability to cure a breach within a reasonable time. To the extent that such a breach may be a breach of the *Electricity Act*, the *Retailers Regulations*, the *Code of Conduct* or its licence, I find this to be inconsistent with s. 57 of the *Retailers Regulations*, which gives a customer an unconditional right to cancel the contract.

[50] Section 7(b)(ii) of the Small Volume Customer General Terms and Conditions purports to limit a customer's remedy to a refund of pre-paid fees if the

agreement is terminated under s. 8 or s. 11(b) because Renewall is in breach of its warranty or the agreement. I find that Renewall has not justified this provision. Moreover, I find this is inconsistent with the explicit refund available under s. 13 of the *Retailer Regulations* if Renewall fails to provide enough renewable electricity.

[51] Under s. 7(b)(iii), a customer remedy is only available if they advise Renewall of the breach within 15 days after it has occurred. This restriction is quite severe, particularly in the case of a failure to provide enough renewable low-impact electricity, when the customer would have no way of knowing directly that a breach occurred. Further, the compliance report in which a failure to generate enough renewable low-impact electricity is disclosed may be filed up to 30 days after the compliance period ends – twice as long as the notice period for the breach (assuming the breach is considered to have occurred at the end of the compliance period).

[52] Overall, I find the provisions in s. 7(b) to be more limiting than the liability provisions that exist for NS Power and Eastward Energy. Renewall has not satisfied me that it would be reasonable for it to maintain these limitations. There are also inconsistencies with the *Retailer Regulations* as I have noted. I therefore direct Renewall to remove s. 7(b) from its proposed Small Volume Customer General Terms and Conditions.

[53] Section 7(c) disclaims any other warranties or conditions in the agreement (including fitness for purpose), except for the warranty provided in s. 7(a). This provision worsens the concern I have with the fact that s. 7(a) does not refer to providing the energy in accordance with the *Electricity Act*, the *Retailers Regulations*, the *Code of Conduct* or its licence. However, even adding those items, as I have addressed above, I am not

satisfied that such a disclaimer is necessary. It does not exist for NS Power or Eastward Energy, and Renewall has not presented evidence that would justify retaining this provision.

[54] Section 7(e) would place an absolute cap on Renewall's liability, based on the amounts paid or payable by the customer in the past 12 months. Although this provision also covers tort claims, to the extent that it addresses liability for breach of contract or warranty it appears to conflict with s. 7(b). This provision says a customer's "sole and exclusive remedy for breach of warranty or any covenants or representation of the Provider under the Agreement" is, under s. 7(b)(ii), a refund of pre-paid fees when the agreement is terminated under s. 8 or s. 11(b). Regardless, no comparable limit exists for NS Power or Eastward Energy. In the absence of more specific justification for this, which I find has not been provided by Renewall, I direct that s. 7(e) be removed from the agreement.

[55] Section 7(f) limits NS Power's liability. Renewall must include a provision of this nature in its agreements with its customers because of a requirement in the terms and conditions attached to its Licenced Retail Supplier Participation Agreement with NS Power. Section 9.4 in the Licenced Retail Supplier Terms and Conditions states:

The [licenced retail supplier] shall ensure that each [renewable to retail] Customer Contract contains a statement to the effect that NS Power shall not be liable in damages to the [renewable to retail] Customer in respect of any breach of the [renewable to retail] Customer Contract by the [licenced retail supplier] or for any delay, interruption or other partial or complete failure in the supply of electricity to the [renewable to retail] Customer.

[56] In a letter dated March 14, 2024, Renewall said its customers were wondering about the intent of s. 9.4. It said these customers were of the view that, read literally, the phrase "or for any delay, interruption or other partial or complete failure in the supply of electricity to the [renewable to retail] Customer" could limit NS Power's liability

for things caused by that company's negligence, acts or omissions. Alternatively, Renewall said the provision could be read as relating to delays, interruptions of supply failures caused by the licenced retail supplier, with NS Power remaining liable for its own acts, omissions or negligence.

[57] NS Power filed a letter with the Board stating its views about the interpretation of s. 9.4 in the Licenced Retail Supplier Terms and Conditions on March 26, 2023. In essence, NS Power supported the interpretation that it was not liable for any delay, interruption or other partial or complete failure in the supply of electricity to the renewable to retail customer by the licenced retail supplier. NS Power supported this interpretation by reading s. 9.4 in the Licenced Retail Supplier Terms and Conditions with related provisions, including ss. 9.2, 9.3, 9.5 and with reference to s. 10.3.

[58] I am satisfied with the intent of s. 9.4 as described by NS Power, although I find the language could be clearer and understand why Renewall's customers were uncertain. Considering the intent, the language Renewall proposed in s. 7(f) of its Small Volume Customer General Terms and Conditions may be broader than necessary in the second half of this provision. As such, I direct that Renewall delete the part of s. 7(f) that reads, ", regardless of whether such damage was foreseeable and whether or not NSPI has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose" and replace it with "by the provider".

[59] Finally, as discussed earlier, I based my findings about Section 7 of Renewall's General Terms and Conditions on their comparability to similar limitation of liability provisions applicable to NS Power and Eastward Energy and because Renewall has not provided me with anything specific to justify why it may need stronger liability

limitations. It is open to Renewall to apply to the Board to amend its Small Volume Customer General Terms and Conditions at any time. If Renewall believes it can justify its need for a stronger limitation of liability in its contracts with small-volume customers, it may do so at any point in the future and any additional evidence to support this will be considered.

3.2 Website (text format provided)

[60] Renewall's application materials included information it intended to post on its website, in text format. I appreciate Renewall's thoroughness and transparency; however, the *Retailers Regulations* do not require Board approval for the website. Regardless, information communicated to the public through the website must follow the Board's *Code of Conduct for Renewable Low-Impact Electricity Sales in Nova Scotia*. The *Code of Conduct* sets out minimum standards for information provided to the public. A contravention of the Code of Conduct may lead to the suspension or cancellation of a licence.

3.3 Rate Comparisons

[61] Section 45 of the *Retailers Regulations* requires Renewall to give a rate comparison to small-volume customers when marketing to them. The Board must approve the form of the rate comparison under s. 47.

[62] The Board's website has rate comparison forms, which Renewall originally proposed to use. The forms on the Board's website were developed in 2016 when no licensed Retail Supplier existed. Board staff asked Renewall to provide copies of the rate comparisons using actual NS Power rates compared to Renewall's proposed rates.

However, it became clear that trying to achieve a simple apples-to-apples comparison between the two offerings was not straightforward, for several reasons, including:

- Outstanding balances under NS Power's Fuel Adjustment Mechanism (FAM) were addressed through NS Power's FAM rider, but customers transitioning from NS Power to a Retail Supplier are subject to an imbalance adjustment under Special Condition (3) of NS Power's FAM Tariff. The way this adjustment would be recovered from or paid to transitioning customers has not been determined.
- NS Power offers several tariffs to small-volume customers with rate designs that are quite different than what Renewall proposes, including its domestic service critical peak pricing tariff, domestic service time-of-use tariff, domestic service time-of-day tariff, small general critical peak pricing tariff, and small general time-of-use tariff.
- Originally, Renewall contemplated two small general classes with a single energy rate for each class, while NS Power has a single small general class with a two-tiered, declining block energy rate. Through the course of this proceeding, Renewall modified its proposal so it will have a single small general class with a two-tiered rate structure like NS Power's.
- NS Power's net metering and Renewall's net-billing services are different.

[63] As Renewall responded to questions about the rate comparisons, it proposed revisions to address these issues. The final versions of its rate comparisons were filed with the Board on January 26, 2024, and are included in Exhibit R-12.

[64] While the proposed Rate Comparisons are different from the original forms developed by the Board in 2016, I find the modifications are necessary. It was apparent to me that Renewall made concerted efforts to try to satisfy the intended purpose of the forms, which is to fairly compare its rates to those offered by NS Power. Where comparisons could be made, it has done so. Where this was not possible, in the case of fuel adjustment charges, its net-billing service, and because it is not offering anything comparable to NS Power's time-of-day or time-varying pricing rates, it has highlighted these issues. I also note that NS Power participated in this proceeding and its

submissions did not object to the rate comparisons or suggest that they were an unfair comparison to the utility's rates.

[65] Despite the foregoing, I direct Renewall to make some additional changes.

[66] In the Residential Rate Comparison, I find it would be appropriate to rephrase the summary of Renewall's rate at the top of the document from "Under an agreement with Renewall Energy Inc, this would cost..." to "Under a five-year agreement with Renewall Energy Inc, this would cost...". I understand that a customer can select from a one-year to a five-year term and different retailer charges would apply based on this decision. But as the retailer charge used in this summary is the five-year rate, this should be specifically noted.

[67] In both the Residential Rate Comparison and the Small General Rate Comparison, I note there is a "total Retailer Rate" set out in bold at the bottom of the box that sets out the components of Renewall's overall rate. This is expressed as a single per kWh rate in the residential rate comparison and per kWh rates for each of the two tiers of the general service rate. In both instances, it is noted that this excludes the Fuel Adjustment Charge. However, as it is defined by Renewall, the retailer rate also includes a monthly base charge, and this element appears to be missing in the bolded text at the bottom of these boxes. While the base charge is noted earlier in the documents, it would be clearer if it was repeated in the bolded text, to avoid any potential confusion on the part of a customer whether it is included in what might appear to be an "all in" rate.

[68] Lastly, in both documents, I direct Renewall to replace the bolded heading "Additional Services & Information" with headings that would more easily identify the

subject matter of the paragraphs that follow. For example, “Net-metering/Net billing” and “Time-of-use/Time-Varying Pricing.”

3.4 Disclosure Statements

[69] Section 45 of the *Retailers Regulations* requires Renewall to give a disclosure statement to small-volume customers when marketing to them. The form of the disclosure statement must be approved by the Board under s. 46. The Board’s website has Board-prepared disclosure statements and Renewall proposes to use these forms. As such, I approve these forms for use by Renewall.

3.5 Guide to Purchasing Renewable Low-Impact Electricity in Nova Scotia

[70] The *Code of Conduct* requires Renewall, when marketing to small-volume customers, to give them a copy of the current version of the Board’s *Guide to Purchasing Renewable Low-Impact Electricity in Nova Scotia*. The *Guide* is published by the Board and requires no approval to be used by a retail seller like Renewall.

3.6 Contract Verification Script

[71] Under s. 51 of the *Retailers Regulations*, a contract with a small-volume customer must be verified to be valid. The verification process helps to ensure that the requirements for marketing to small-volume customers have been met by the retail supplier. The verification process occurs over the telephone using a script approved by the Board.

[72] Renewall filed its proposed contract verification script with the Board on August 18, 2023. It filed a slightly modified version of the script in response to information requests from Board staff on October 25, 2023 (Exhibit 9(iv)). I reviewed the script and

find it to be reasonable and consistent with the *Retailers Regulations* and the *Code of Conduct*.

3.7 Multiple Account Customers

[73] A week before the hearing in December, Renewal filed a letter with the Board proposing that any commercial customer (non-small volume) who wants to sign a retail power purchase agreement with a term over five years be allowed to include small volume meters associated with the customer's account in their retail Power Purchase Agreement and be exempt from other small-volume customer requirements.

[74] At the hearing, Renewall gave some examples of circumstances where this issue might arise. Renewall said some of its customers may have operations where they have multiple meters in one facility (e.g., hotels or schools) or whose operations span multiple meters over different properties. Renewall gave one example where a customer was a hotel that had one main building and 30 or so smaller buildings. Renewall said if it treated the smaller buildings as small-volume contracts, it would have to call its customer back 30 times to do contract verification.

[75] Renewall explained that those customers would be more sophisticated and would already be signing long-terms contracts for electricity services that would correspond to NS Power's large general or industrial classes. Renewall confirmed that its intention was that if there was one customer with multiple accounts, at least one of which would not be a domestic or small general class account, these would all be dealt with under a single power purchase agreement and the customer, in respect of all of the accounts covered by the agreement, would not be considered a small-volume customer.

[76] The following definitions in s.2(2) of the *Retailers Regulations* are relevant in assessing whether the small-volume customer provisions apply to the scenarios Renewall described at the hearing:

“Small-Volume Customer” means a Customer that qualifies for the Domestic Service or Small General tariffs.

“Customer” means an Account Holder, other than an Account Holder served by a Behind-the-Meter installation, who consumes electricity on its Premises that the Account Holder did not generate and

- a) with whom a Licence Holder has entered into a Contract; or
- b) to whom a Licence Holder is Marketing.

“Account Holder”, in relation to a Premises, means the person listed on the account of NS Power for the delivery of electricity consumed at the Premises, regardless of whether the person is a Customer of a Licence Holder, in respect of the Premises.

“Premises” means the building or portion of a building that is provided with electricity through a single meter.

[77] Based on a reading of these definitions, it appears that a person who has either entered into a contract with a retail supplier or to whom a retail supplier is marketing is a customer of the retail supplier for the purposes of the regulations. The customer must be the NS Power account holder who consumes electricity at a specific location through a single meter supplying the building or part of a building. A small-volume customer is simply a customer who qualifies for service under NS Power’s domestic or small general tariffs.

[78] These definitions appear to focus on electrical service provided to a person under a single account, through a single meter to a single building (or part of a building). This apparent focus is supported by language used in ss. 50(3) and 56 in the *Retailers Regulations*.

[79] Section 50(3) suggests a single customer with a single account at a single location by noting that a contract may be cancelled if a retail supplier contract is already in place for the premises:

50 (3) A Contract with a Small-Volume Customer shall include a provision that the Customer may cancel the Contract without cost or penalty if a Contract presently exists for the same Premises, except where the existing Contract is to expire on or before the commencement of the new Contract.

[80] Likewise, under s. 56 a contract is automatically terminated if the premises is sold:

56 A Contract with a Small-Volume Customer automatically terminates and the Customer is not subject to any cancellation fees, penalties or charges if the Customer sells or permanently moves from the Premises to which Renewable Low-Impact Electricity is supplied under the Contract.

[81] Despite the apparent focus on electrical service under a single account to a single meter, the *Retailers Regulations* do not require a retail supplier to only enter into contracts for a single location. This is clear from the definition of “contract” in s. 2(2) of the regulations, which states:

“Contract” means an agreement between a Customer and a Licence Holder for the supply of Renewable Low-Impact Electricity to a single or multiple Premises.

[82] I find the application of the small-volume customer provisions in the *Retailers Regulations* to situations where there is a contract for multiple premises that mixes “small-volume” accounts with other accounts is ambiguous. These provisions were intended to provide additional protection for smaller customers who may be less sophisticated. Customers who are not domestic or small general customers often have more complex rate structures with demand charges and are more likely to be familiar with more sophisticated arrangements. In situations like those described by Renewall, which involve larger commercial, institutional or industrial customers, with multiple accounts for electricity services, these protections seem unnecessary.

[83] I find that single customers who enter contracts with Renewall that include both small general accounts and other accounts that do not qualify for NS Power's domestic or small general tariffs are not small-volume customers under the *Retailers Regulations*. Since Renewall's proposal related to commercial customers, specifically, and it is not clear to me that it would be proper to mix domestic class accounts with commercial and industrial accounts in a single contract. If multiple "small-volume" accounts were included in a single contract, there would need to be modifications to the contract to accommodate things such as the impact on the contract if a premises is sold (thus triggering small-volume contract termination rights). Should Renewall wish to structure its contracts to combine multiple small-volume accounts in one contract, it must apply to the Board to approve a form of contract for use in those situations.

[84] To be clear, I am approving a small-volume contract in this proceeding only for use in the case of a single customer and a single premises.

4.0 CONCLUSION

[85] I approve the final versions of the Disclosure Statements and Verification Script.

[86] I approve the final version of the Small Volume Power Purchase Agreement, subject to a potential correction in s. 3(a) (see paragraph [13] in this decision).

[87] I approve the final version of the Small Volume Customer General Terms and Conditions, subject to the following directions:

- a) revise s. 8 to ensure that all customer cancellation rights are addressed (see paragraphs [18] to [22] in this decision);
- b) revise the Terms and Conditions to remove any inconsistency with the notice of cancellation provisions in ss. 59 and 60 of the *Retailer Regulations* (see paragraphs [23] to [26] of this decision);

- c) revise s. 7(a)(i) to include a statement that energy will be provided in accordance with the *Retailers Regulations, Code of Conduct* and Renewall's retail supplier licence (see paragraphs [46] and [47] of this decision);
- d) remove s. 7(b) (see paragraphs [48] to [52] of this decision);
- e) remove s. 7(c) (see paragraph [53] of this decision);
- f) remove s. 7(e) (see paragraph [54] of this decision); and
- g) revise s. 7(f) to be consistent with the intent of s. 9.4 of the Licenced Retail Supplier Terms and Conditions (see paragraphs [55] to [58] of this decision).

[88] I approve the final versions of the Rate Comparisons, subject to the following directions:

- a) revise to state that the net billing service may have income tax implications and impose GST/HST obligations and that an information sheet is available from Renewal with further details (see paragraph [33] in this decision);
- b) revise the Residential Rate Comparison to clarify that the referenced retailer charge is for a five-year term (see paragraph [66] in this decision);
- c) revise the Residential and Small General Rate Comparisons to refer to the base charge when summarizing the retailer rate (see paragraph [67] in this decision); and
- d) revise the Residential and Small General Rate Comparisons to replace the bolded heading "Additional Services & Information" with headings that would more easily identify the subject matter of the paragraphs that follow (see paragraph [68] in this decision).

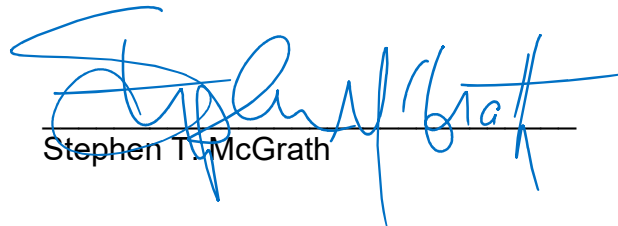
[89] I also direct Renewal to develop an information sheet highlighting the potential GST/HST obligations of small-volume customers who select Renewall's net billing service (see paragraphs [30] to [32] of this decision).

[90] The revisions to the Small Volume Power Purchase Agreement, Small Volume Customer General Terms and Conditions and Rate Comparisons need to comply with the directions in this decision and must be submitted to the Board in a compliance filing, no later than April 30, 2024.

[91] The information sheet highlighting the potential GST/HST obligations of small-volume customers who select Renewall's net billing service may be filed with the Board for review and approval at a later time. However, Renewall may not enter into net billing arrangements with small-volume customers until this is done.

[92] An Order will issue accordingly, subject to the compliance filing.

[93] **DATED** at Halifax, Nova Scotia, this 8th day of April, 2024.



Stephen T. McGrath