

Renewable Electricity Regulations

made under Section 5 of the
Electricity Act
S.N.S. 2004, c. 25

O.I.C. 2010-381 (October 12, 2010), N.S. Reg. 155/2010
as amended to O.I.C. 2017-187 (July 17, 2017), N.S. Reg. 108/2017

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Interpretation

Citation

1 These regulations may be cited as the Renewable Electricity Regulations.

Definitions for these regulations

2 (1) In these regulations,

"Act" means the Electricity Act;

"co-firing" means the combusting of biomass and fossil fuels at the same time;

Definition of "co-firing" added: O.I.C. 2013-12, N.S. Reg. 10/2013.

"designated lands" has the same meaning as in the Indian Act (Canada);

Definition "designated lands" added: O.I.C. 2013-13, N.S. Reg. 11/2013.

“device” means 1 or more turbines on a single frame or platform;
Definition of “device” added: O.I.C. 2014-18, N.S. Reg. 7/2014.

“distribution system” means a system for conveying electricity at voltages of less than 69 kV;

“electricity standard approval” means an approval issued under Section 14 to approve a generation facility as a renewable low-impact electricity generation facility for the purposes of the renewable electricity standards;

“expected amounts to be paid”, in relation to a procurement, means the amounts that a public utility would be required to pay to the owner of the generation facility to purchase the procured electricity, net of the following:

(i) any savings relating to costs that would have been incurred by the public utility to produce, transmit, deliver or furnish any electricity that would be displaced by the procured electricity, and

(ii) the value of any benefits or credits relating to the reduction of greenhouse gases or air emissions or to the generation of electricity from renewable resources;

Definition of “expected amounts to be paid” added: O.I.C. 2017-127, N.S. Reg. 73/2017.

“feed-in tariff program” means the program established by Section 4A of the Act under which a public utility permits a generator to connect an electricity generation facility to the public utility’s electrical grid;

“feed-in tariff approval” means an approval issued under Section 28 for an electricity generation facility that qualifies for the feed-in tariff program;

Definition of “firm” repealed: O.I.C. 2016-90, N.S. Reg. 65/2016.

“heritage renewable electricity” means all electricity that was contracted for or supplied by a load-serving entity in the Province before January 1, 2002, and that, in the opinion of the Minister, is generated from renewable sources;

“load-serving entity” means any one of the following:

(i) NSPI,

(ii) a municipal electric utility that purchases any or all of its electricity supply from a supplier other than NSPI,

(iii) an independent power producer that exports electricity;

“municipal electric utility” means any of the following:

(i) the electrical utility for

(A) the Town of Antigonish,

(B) the Town of Berwick,

(C) the former Town of Canso,

Definition of “municipal electric utility”, paragraph (i)(c) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(D) the Town of Lunenburg, or

(E) the Town of Mahone Bay,

(ii) the Electric Light Commissioners for Riverport, in the County of Lunenburg;

“Muskrat Falls Generating Station” means the generating facility proposed to be constructed as part of the Lower Churchill Project in the Province of Newfoundland and Labrador;

Definition of “Muskrat Falls Generating Station” added: O.I.C. 2013-13, N.S. Reg. 11/2013.

“net-metering arrangement” means any agreement between a public utility and a customer of that utility that permits the customer to generate electricity and deliver it to the public utility’s electrical grid to offset electricity drawn from the grid by the customer;

Definition of “net-metering arrangement” added: O.I.C. 2017-127, N.S. Reg. 73/2017.

“NS Mi’kmaw band council” means an entity referred to in clause 4A(8)(a) of the Act;

Definition of “NS Mi’kmaw band council” added: O.I.C. 2013-13, N.S. Reg. 11/2013.

“NSPI” means Nova Scotia Power Incorporated;

“primary forest biomass” means biomass produced from primary forest products harvested in the Province and first used as a fuel;

“primary forest products” means primary forest products as defined in the Forests Act;

Definition of “renewable electricity administrator” repealed: O.I.C. 2017-127, N.S. Reg. 73/2017.

“procurement administrator” means a person appointed under subsection 4B(1) of the Act to conduct a procurement of renewable low-impact electricity;

Definition of “procurement administrator” added: O.I.C. 2017-127, N.S. Reg. 73/2017.

“renewable low-impact electricity generation facility” means a facility in the Province that generates renewable low-impact electricity and has received all approvals and permits required under these regulations or any other applicable enactment;

“renewable low-impact electricity generator” means a person who owns or operates a renewable low-impact electricity generation facility in the Province;

“request for proposals” means a request for proposals for procurement of renewable low-impact electricity under Section 4B of the Act;

Definition of “request for proposals” added: O.I.C. 2013-13, N.S. Reg. 11/2013.

“run-of-the-river hydroelectric electricity” means electricity that is generated from flowing water in a river with minimal environmental effect on the river course and that may include the use of a dam structure;

“solar program” means the Solar Electricity for Community Buildings Program established under Section 37A;

Definition of “solar program” added: O.I.C. 2017-127, N.S. Reg. 73/2017.

“transmission system” means a system for conveying electricity at voltages of 69 kV or more;

“university” means any of the following institutions: Acadia University, Atlantic School of Theology, Cape Breton University, Dalhousie University, Mount Saint Vincent University, Nova Scotia College of Art and Design, Saint Mary’s University, St. Francis Xavier University, University of King’s College or Université Sainte-Anne;

Definition of “university” replaced: O.I.C. 2013-13, N.S. Reg. 11/2013.

“untreated organic material” means organic material that has not been treated or organic material that has been treated in conformance with a government policy or regulation respecting the material.

Definitions of “renewable electricity” and “renewable electricity standard” repealed: O.I.C. 2013-13, N.S. Reg. 11/2013.

Section 2 redesignated 2(1): O.I.C. 2014-18, N.S. Reg. 7/2014.

(2) In the definition of “device” in subsection (1), “turbine” means a rotating blade or appliance that is designed to capture the kinetic energy of the ocean.

Subsection 2(2) added: O.I.C. 2014-18, N.S. Reg. 7/2014.

Definitions for the Act and these regulations

3 (1) In the Act and these regulations,

“biomass” means untreated organic material and includes material that has been processed so as to change its size, shape, density, moisture level, or degree of purity, and secondary waste by-products from its processing, but does not include material for which other diversion methods are viable or the treated by-products of manufacturing processes;

“community economic-development corporation” means a community economic-development corporation as defined in the Equity Tax Credit Act;

“cooperative” means a cooperative incorporated or continued under the Co-operative Associations Act or the Canada Cooperatives Act (Canada);

Definition of “cooperative” amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

“developmental tidal array” means

(i) a tidal generation facility consisting of a single device with a capacity greater than 0.5 MW, or

(ii) a tidal generation facility consisting of multiple devices, each of which has a capacity greater than 0.5 MW;

Definition of “developmental tidal array” replaced: O.I.C. 2014-18, N.S. Reg. 7/2014.

“independent power producer” means a renewable low-impact electricity generator

(i) of which no more than 49% of the securities entitling the holders to vote for the election of its directors are held by a public utility in combination with any affiliate of the public utility, and

(ii) that sells electricity

(A) in the Province to public utilities for retail sales to the utilities’ customers, or

(B) for export outside of the Province;

“municipality” means a regional municipality, a town or a county or district municipality located in the Province;

Definition of “municipality” amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

“not-for-profit body corporate” means a corporation that

(i) qualifies as a non-profit organization under paragraph 149(1)(l) of the Income Tax Act (Canada), or

Definition of “not-for-profit body corporate”, subclause (i) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(ii) is a registered charity under the Income Tax Act (Canada);

Definition of “not-for-profit body corporate” replaced: O.I.C. 2013-13, N.S. Reg. 11/2013.

“Province” includes the lands and submarine areas within the limits of the offshore area described in Schedule I to the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act as amended by the Schedule I (Offshore Area Limits) Amending Regulations made under that Act; Definition of “Province” added: O.I.C. 2014-18, N.S. Reg. 7/2014.

“renewable electricity” means all of the following:

- (i) heritage renewable electricity,
- (ii) renewable low-impact electricity generated after December 31, 2001,
- (iii) imported electricity that in the opinion of the Minister is generated from renewable

resources;

Definition of “renewable electricity” added: O.I.C. 2013-13, N.S. Reg. 11/2013.

“renewable electricity standard” means a target share or amount of renewable electricity to be supplied by a load-serving entity as prescribed by the regulations.

Definition of “renewable electricity standard” added: O.I.C. 2013-13, N.S. Reg. 11/2013.

“renewable low-impact electricity” means electricity produced from any of the following:

- (i) solar energy,
- (ii) wind energy,
- (iii) run-of-the-river hydroelectric energy,
- (iv) ocean-powered energy,
- (v) tidal energy,
- (vi) wave energy,
- (vii) biomass that has been harvested in a sustainable manner,
- (viii) landfill gas,

(ix) any resource that, in the opinion of the Minister and consistent with Canadian standards, is able to be replenished through natural processes or through sustainable management practices so that the resource is not depleted at current levels of consumption;

“small-scale in-stream tidal” means a tidal generation facility that

- (i) consists of 1 or more devices, each of which has a capacity of 0.5 MW or less, and
- (ii) is capable of being interconnected with the electrical grid through a distribution system.

Definition of “small-scale in-stream tidal” replaced: O.I.C. 2014-18, N.S. Reg. 7/2014.

(2) For the purposes of subclause (i) of the definition of “independent power producer” in subsection (1),

(a) a corporation is deemed to be an affiliate of another corporation if 1 of them is the subsidiary of the other or if both are subsidiaries of the same corporation or if each of them is controlled by the same person;

(b) a corporation is deemed to be controlled by another person or by 2 or more corporations if

(i) voting securities of the 1st-mentioned corporation carrying more than 50% of the votes for the election of directors are held, other than by way of security only, by or for the benefit of the other person or by or for the benefit of the other corporations, and

(ii) the votes carried by those securities are entitled, if exercised, to elect a majority of the directors of the 1st-mentioned corporation; and

(c) a corporation is deemed to be a subsidiary of another corporation if

(i) it is controlled by

(A) that other, or

(B) that other and 1 or more corporation, each of which is controlled by that other, or

(C) 2 or more corporations, each of which is controlled by that other, or

(ii) it is a subsidiary of a corporation that is that other's subsidiary.

Renewable Electricity Standards

Renewable electricity standard 2011

4 (1) In each of the calendar years 2011 and 2012, each load-serving entity must supply its customers with renewable low-impact electricity produced by renewable low-impact electricity generation facilities operated by independent power producers in an amount equal to or greater than 5% of the total amount of electricity supplied to its customers as measured at the customers' meters for that year.

Subsection 4(1) amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

(2) To meet the renewable electricity standard in subsection (1), a municipal electric utility that purchases any of its electricity supply from a supplier other than NSPI must ensure that at least 5% of that non-NSPI electricity supply is supplied by a renewable low-impact electricity generator.

Renewable electricity standard 2013

5 (1) In each of the calendar years 2013 and 2014, each load-serving entity must supply its customers with renewable low-impact electricity produced by renewable low-impact electricity generation facilities in an amount equal to or greater than 10% of the total amount of electricity supplied to its customers as measured at the customers' meters for that year.

Subsection 5(1) amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

(2) Each load-serving entity must meet the renewable electricity standard in subsection (1) as follows:

(a) by continuing to at least supply 5% of its total annual sales from independent power producers; and

Clause 5(2)(a) amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

(b) by acquiring the additional renewable low-impact electricity required to meet the standard from either independent power producers or from its own renewable low-impact electricity generation facilities.

(2A) NSPI must maintain the Port Hawkesbury biomass power generation plant available as a base load cogeneration facility and NSPI must operate the plant on an economic dispatch basis or as required for system reliability.

Subsection 5(2A) added: O.I.C. 2013-12, N.S. Reg. 10/2013; replaced: O.I.C. 2016-90, N.S. Reg. 65/2016.

Subsection 5(2B) repealed: O.I.C. 2016-90, N.S. Reg. 65/2016.

(3) To meet the renewable electricity standard in subsection (1), a municipal electric utility that purchases any of its electricity supply from a supplier other than NSPI must ensure that at least 10% of that non-NSPI electricity supply is supplied by a renewable low-impact electricity generator.

(3A) Electricity supply purchased by a municipal electric utility that is sold to NSPI as spill energy under the Wholesale Market Non-Dispatchable Supplier Spill Tariff counts towards the municipal electric utility's renewable electricity standard under subsection (1) if

(a) an equivalent amount of electricity is purchased from NSPI as backup/top-up energy under the Wholesale Market Backup/Top-Up Service Tariff; and

(b) the supply is consumed within the same calendar year as it is purchased.

Subsection 5(3A) added: O.I.C. 2013-13, N.S. Reg. 11/2013.

Renewable electricity standard 2015

6 (1) Each year beginning with the calendar year 2015 until 2020, each load-serving entity must supply its customers with renewable electricity in an amount equal to or greater than 25% of the total amount of electricity supplied to its customers as measured at the customers' meters for that year.

Subsection 6(1) amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

(2) To meet the renewable electricity standard in subsection (1), NSPI must

(a) continue to supply at least 5% of its total annual sales from independent power producers; and

(b) acquire at least 300 GWh from independent power producers in addition to the renewable low-impact electricity required to meet the requirements of Sections 4 and 5.

Subsection 6(2) replaced: O.I.C. 2013-13, N.S. Reg. 11/2013.

Subsection 6(3) repealed: O.I.C. 2016-90, N.S. Reg. 65/2016.

(4) In meeting its obligations under subsections (1) and (2), NSPI may include other sources of renewable electricity, including:

(a) contributions from distribution system connected renewable energy generators;

(b) contributions of 150 GWh or less from co-firing non-primary forest biomass at its generation facilities;

(c) contributions from renewable electricity generating facilities that it owns or operates.

Subsection 6(4) replaced: O.I.C. 2013-13, N.S. Reg. 11/2013.

(5) To meet the renewable electricity standard in subsection (1), a municipal electric utility that purchases any of its electricity supply from a supplier other than NSPI must ensure that a minimum of 25% of that non-NSPI electricity supply is renewable electricity.

(6) Electricity supply purchased by a municipal electric utility that is sold to NSPI as spill energy under the Wholesale Market Non-Dispatchable Supplier Spill Tariff counts towards the municipal electric utility's renewable electricity standard under subsection (1) if

(a) an equivalent amount of electricity is purchased from NSPI as backup/top-up energy under the Wholesale Market Backup/Top-Up Service Tariff; and

(b) the supply is consumed within the same calendar year as it is purchased.

Clause 6(6)(b) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

Subsection 6(6) added: O.I.C. 2013-13, N.S. Reg. 11/2013.

Renewable electricity standard 2020

6A (1) Each year beginning with the calendar year 2020, each load-serving entity must supply its customers with renewable electricity in an amount equal to or greater than 40% of the total amount of electricity supplied to its customers as measured at the customers' meters for that year.

(2) NSPI must meet the renewable electricity standard in subsection (1) by

(a) continuing to meet the requirements in clauses 6(2)(a) and (b);

(b) continuing to meet the requirements of subsection 6(4); and

(c) directly or indirectly acquiring, to deliver to customers in the Province, 20% of the electricity generated by the Muskrat Falls Generating Station if the Muskrat Falls Generating Station and associated transmission infrastructure is completed and in normal operation and the UARB has approved an assessment against NSPI under the Maritime Link Act and its regulations.

Subsection 6A(3) repealed: O.I.C. 2016-90, N.S. Reg. 65/2016.

(4) To meet the renewable electricity standard in subsection (1), a municipal electric utility that purchases any of its electricity supply from a supplier other than NSPI must ensure that a minimum of 40% of that non-NSPI electricity supply is renewable electricity.

(5) Electricity supply purchased by a municipal electric utility that is sold to NSPI as spill energy under the Wholesale Market Non-Dispatchable Supplier Spill Tariff counts towards the municipal electric utility's renewable electricity standard under subsection (1) if

(a) an equivalent amount of electricity is purchased from NSPI as backup/top-up energy under the Wholesale Market Backup/Top-Up Service Tariff; and

(b) the supply is consumed within the same calendar year as it is purchased.

Section 6A added: O.I.C. 2013-13, N.S. Reg. 11/2013.

Section 6B repealed: O.I.C. 2016-90, N.S. Reg. 65/2016.

Shortfalls and overages

7 (1) A load-serving entity that is unable to meet a renewable electricity standard for a period of 12 months or less, because independent power producers cannot provide contracted electricity supplies at the contracted times or because of problems arising from the load-serving entity's own renewable generation assets, must supply enough renewable electricity from other sources to make up the shortfall during the period.

(2) A load-serving entity that will be unable to meet a renewable electricity standard for longer than 12 months must apply to the Minister, who, if satisfied that the entity will be unable to meet the standard as described in subsection (1) for longer than 12 months, may permit the entity to supply enough renewable electricity from other sources to make up the shortfall on the terms and conditions determined by the Minister.

(3) The Board must allow a public utility to recover the costs of the public utility's own renewable generation assets on the basis approved by the Board under the Public Utilities Act, together with the recovery of the costs of tariffs allowed under subsection 4A(6) of the Act and the costs of the public utility's contracts allowed under subsection 4B(13) of the Act, to a maximum of costs in relation to a supply of renewable low-impact electricity of no more than the following:

(a) 133% of the minimum renewable electricity standard in Section 5;

(b) 125% of the renewable electricity standard in Section 6.

Section 7 replaced: O.I.C. 2013-12, N.S. Reg. 10/2013.

(4) For greater certainty, nothing in subsection 7(3) affects Section 6 of the Order of the Nova Scotia Utility and Review Board dated September 12, 2012, in Matter M04862, which remains in effect unless and until modified by the Board.

Subsection 7(4) added: O.I.C. 2014-26, N.S. Reg. 14/2014.

Forest biomass cap

8 (1) No more than 350 000 dry tonnes annually of primary forest biomass over the average amount of primary forest biomass consumed annually in the Province for the years 1995 to 2005, that average being 3.285×10^6 dry tonnes, may be used to attain any renewable electricity standard.

Subsection 8(1) replaced: O.I.C. 2013-12, N.S. Reg. 10/2013.

(2) For the purposes of a renewable low-impact electricity generation facility that uses primary forest biomass, only the amount of electricity the Minister determines is generated from the use of primary forest biomass as permitted by subsection (1) qualifies for any renewable electricity standard.

Minister's determination

9 For each calendar year starting with the year 2011, the Minister must determine, for each load-serving entity,

(a) its total electricity sales;

(b) the total amount of renewable low-impact electricity that it produced; and

(c) the proportion of its total supply of renewable low-impact electricity that was produced by independent power producers.

Qualifying for renewable electricity standards

10 (1) Electricity purchased by a public utility under the feed-in tariff program qualifies for any renewable electricity standard.

(2) Any person other than a person who has been issued a feed-in tariff approval may apply to the Minister for an electricity standard approval.

Applying for electricity standard approval

11 An application for an electricity standard approval must

(a) be submitted to the Minister in a form required by the Minister;

(b) be completed and signed by an authorized signatory of the applicant; and

(c) for a biomass project, include a biomass fuel procurement plan outlining how the applicant intends to ensure that its fuel supply will meet sustainable harvesting requirements.

Section 11 replaced: O.I.C. 2013-12, N.S. Reg. 10/2013.

Incomplete application for electricity standard approval

12 (1) If an application for an electricity standard approval is not complete or additional information is required, the Minister must notify the applicant in writing no later than 90 days after receipt of the application and request the information necessary to make the application complete.

(2) If the information requested under subsection (1) is not provided by the applicant within 90 days of the request, the Minister may reject the application and, if so, must immediately notify the applicant in writing that the application has been rejected.

Criteria for approval of application for electricity standard approval

13 (1) Subject to subsection (3), the Minister must approve an application for an electricity standard approval if the generation facility

(a) is to be located in the Province;

Clause 13(1)(a) amended: O.I.C. 2014-18, N.S. Reg. 7/2014.

(b) will produce renewable low-impact electricity; and

(c) if it was constructed before December 31, 2001, has increased its output since December 31, 2001,

(i) by having expanded or through technology upgrades, or

(ii) by having undergone a major rebuild in lieu of retirement.

Clause 13(1)(c) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(2) For a facility described in clause (1)(c), only the output that exceeds the capacity of the facility before the expansion, upgrade or major rebuild qualifies for the 2011 and 2013 electricity standards in Sections 4 and 5.

(3) Before being approved under subsection (1), an applicant who is requesting approval of a biomass generation facility must satisfy the Minister that their biomass fuel procurement plan demonstrates that the applicant will meet sustainable harvesting requirements.

Subsection 13(3) added: O.I.C. 2013-12, N.S. Reg. 10/2013.

Issuance of electricity standard approval

14 On approving an application for an electricity standard approval, the Minister must issue the applicant an electricity standard approval subject to any terms and conditions that the Minister determines are appropriate.

Minister's approval required to transfer electricity standard approval

15 An electricity standard approval must not be transferred without the prior written approval of the Minister.

Approved facility must continue to meet requirements

16 A renewable low-impact electricity generation facility that is issued an electricity standard approval must meet all of the following requirements:

(a) it must continue to meet the requirements of these regulations;

(b) its electricity sales must not exceed its electricity production;

(c) if the electricity is to qualify for a renewable electricity standard, all emission credits or allowances arising from the use of renewable sources for electricity produced by the facility and sold to a public utility must be transferred or assigned to the public utility purchasing the electricity.

Transitional

17 A certification issued under Section 7 of the Renewable Energy Standard Regulations made under the Act is continued as an electricity standard approval.

Feed-in Tariff Program

Tariffs to be set by Board

18 (1) For the purposes of clause 4A(7)(e) of the Act, a run-of-the-river hydroelectricity generation facility is a class of generation facility to which a tariff applies.

(2) Subject to subsections (3) and (4), the Board must set a tariff for all of the following classes of electricity generation facility:

(a) all of the following, as required by clauses 4A(7)(a) to (d) of the Act:

(i) wind power,

(ii) biomass,

(iii) small-scale in-stream tidal devices,

Subclause 18(2)(a)(iii) amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

(iv) developmental tidal arrays;

(b) run-of-the-river hydroelectricity.

(3) The Board must set separate tariffs for wind power with a capacity greater than 50 kW and wind power with a capacity of 50 kW or less.

(4) The tariff for biomass must apply only to the electricity produced from a combined heat and power plant.

(5) The Board must set separate tariffs for developmental tidal arrays with a single device and developmental tidal arrays with multiple devices, and may set multiple tariffs for either type of developmental tidal array.

Subsection 18(5) added: O.I.C. 2013-155, N.S. Reg. 204/2013.

Setting community feed-in tariff

19 (1) In this Section and in Sections 20 to 35, “community feed-in tariff” means a tariff set by the Board for any class of generation facility referred to in Section 18 except for a developmental tidal array.

Subsection 19(1) amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

(2) In setting a community feed-in tariff, the Board must determine, for each class of generation facility, the cost of the physical assets of a facility and may make allowances for any of the following matters:

(a) depreciation;

(b) cost of labour and supervision;

(c) necessary working capital;

(d) organization expenses;

(e) overhead costs for engineering, superintendence, legal services, taxes and interest during planning and construction, and similar matters not included in the cost of the physical assets;

(f) costs in whole or in part of land acquired in reasonable anticipation of future requirements;

(g) costs to interconnect the generation facility with the electrical grid;

(h) return on investment;

(i) additional matters that the Board considers appropriate.

Community feed-in tariff qualifications

20 (1) For the purposes of clause 4A(8)(f) of the Act, in addition to the entities listed in clauses 4A(8)(a) to (e) of the Act, each of the following entities qualifies as a generator for a community feed-in-tariff:

(a) a university;

(b) a wholly owned subsidiary of a municipality;

(c) a privately owned biomass combined heat and power plant that uses a portion of the heat produced;

(d) an entity that

(i) is registered with the Registrar of Joint Stock Companies, and
Subclause 20(1)(d)(i) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(ii) is a joint venture among 2 or more of any of the generators referred to in clauses 4A(8)(a) and 4A(8)(c) to (e) of the Act and clauses (a) and (b) who have contributed equity to the joint venture;

(e) an entity that

(i) is registered with the Registrar of Joint Stock Companies, and
Subclause 20(1)(e)(i) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(ii) 1 of the generators referred to in clauses 4A(8)(a) and 4A(c) to (e) of the Act or in clauses (a) and (b) owns more than 50 % of the voting shares or holds majority control of the entity;

(f) the Kwilmu'kw Maw-klusuaqn Negotiation Office.
Subsection 20(1) amended: O.I.C. 2014-18, N.S. Reg. 7/2014.

(2) In addition to the eligibility qualifications in subsection 4A(8) of the Act and subsection (1), a generator must meet the following requirements to qualify as a generator for a community feed-in-tariff:
Subsection 20(2) amended: O.I.C. 2014-18, N.S. Reg. 7/2014.

(a) if it is a not-for-profit body corporate or a co-operative, a majority of its members must reside in the Province and at least 25 members must reside in the municipality where the generation facility is located;

(b) if it is a community economic-development corporation, at least 25 shareholders must reside in the municipality where the generation facility is located.

(3) To qualify as a generator for a community feed-in tariff, a generator must own a generation facility, and the generation facility must meet all of the following requirements:
Subsection 20(3) amended: O.I.C. 2014-18, N.S. Reg. 7/2014.

(a) it must be a generation facility in a class to which a community feed-in tariff applies under subsection 19(1);

(b) if it uses biomass, it must be a combined heat and power generation facility;

(c) it must interconnect with the electrical grid through a distribution system;

(d) it must be located in the Province;

(e) if it is wholly owned by a municipality or a wholly owned subsidiary of a municipality, it must be located within the boundaries of that municipality or the boundaries of an immediately adjacent municipality;

(f) if it is wholly owned by an NS Mi'kmaw band council, it must be located on designated lands or lands acquired by an NS Mi'kmaw band council through a transfer of fee simple or a lease;
Clause 20(3)(f) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(g) it must have been issued a feed-in tariff approval under Section 28.

(4) For the purposes of subsection (2), a generator owns a generation facility if it holds at least a majority ownership in the generation facility.

(5) For greater certainty, subsection (4) does not apply to a municipality.

(6) The ownership requirements in subsection 4A(8) of the Act and in subsection (2) do not apply to a combined heat and power generation facility described in clause 3(b) if the heat is consumed or used by the generator or an affiliate generator.

Section 20 replaced: O.I.C. 2013-13, N.S. Reg. 11/2013.

Setting developmental tidal array tariff

21 In setting a tariff for developmental tidal arrays, the Board must take into account those matters described in subsection 19(2) on a normal amortized basis, including the costs for the manufacture, deployment and operation of the developmental tidal array, but must not make any allowance for any of the following matters:

(a) costs covered or reimbursed through any government grant;

(b) costs to interconnect the generation facility with the electrical grid.

Section 21 amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

Developmental tidal array tariff qualifications

22 (1) For the purposes of clause 4A(8)(f) of the Act, in addition to the entities listed in clauses 4A(8)(a) to (e) of the Act, a privately owned developmental tidal array qualifies as a generator for a developmental tidal array tariff.

(2) To qualify as a generator for a developmental tidal array tariff, a generation facility must meet all of the following requirements:

(a) it must be located in the Province;

(b) it must meet the definition of “developmental tidal array” in these regulations;

(c) it must interconnect with the electrical grid;

(d) it must have been issued a feed-in tariff approval.

Section 22 replaced: O.I.C. 2014-18, N.S. Reg. 7/2014.

Applying for feed-in tariff approval

23 An application by a generator feed-in tariff approval must be

(a) submitted to the Minister in the form or manner required by the Minister, which may include filing electronically through the Internet; and
Clause 23(a) amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

(b) completed and signed by an authorized signatory of the applicant.

Section 23 amended: O.I.C. 2013-13, N.S. Reg. 11/2013, O.I.C. 2017-127, N.S. Reg. 73/2017.

Contents of application for community feed-in tariff approval

24 An application for a community feed-in tariff approval must include all of the following information or documentation:

(a) the name, address, e-mail address and telephone and fax number of the applicant and the name, title and address of the person to be contacted about the application;

(b) if applicable, proof of current registration with the Nova Scotia Registry of Joint Stock Companies;

(c) evidence that the applicant qualifies for the feed-in tariff program;

(d) a project concept identifying both of the following for the proposed generation facility:

(i) the type of facility,

(ii) the location;

Clause 24(d) replaced: O.I.C. 2013-13, N.S. Reg. 11/2013.

(e) documentation demonstrating that the applicant has knowledge of the municipal by-laws that apply to the project and a commitment to comply with them;

(f) documentation identifying the lands of any local NS Mi'kmaw band council that may be impacted by the project and demonstrating an acceptable means of engaging those Mi'kmaw communities to identify any of their concerns or interests, including interests in participation as owners, investors or suppliers;

Clause 24(f) replaced: O.I.C. 2013-13, N.S. Reg. 11/2013.

(g) evidence of community support for the project, which may include

(i) a municipal council resolution from the municipality within which the project is to be located indicating support for the project, and

(ii) letters or other written evidence of support for the project from members of the community in which the project is to be located;

(h) documentation demonstrating the applicant's knowledge and understanding of the type and scope of environmental approvals required for the project, including a statement of the environmental impact of the project;

(i) a business case that

(i) includes a resource assessment,

(ii) demonstrates the financial viability of the project at the appropriate tariff rate, and

(iii) includes the projected capital costs of the project, including interconnection costs and the cost of and expected sources of capital;

(j) documentation demonstrating the applicant's knowledge of the requirements for an archaeological or heritage site review, including a plan for completing the review with cost and timing implications for the project;

(k) documentation demonstrating the applicant's knowledge of the land ownership and access issues for the proposed project site;

(l) evidence of discussions with NSPI on the technology requirements for the project, including the availability of capacity on the distribution or transmission system for the project, as the case may be;

(m) documentation demonstrating an understanding of the detailed technical studies required for the project, including the costs of the studies;

(n) documentation demonstrating compliance with the ownership requirements in subsection 4A(8) of the Act and, if applicable, of subsection 20(3);

(o) for a biomass project, a biomass fuel procurement plan outlining how the applicant intends to ensure that its fuel supply will meet sustainable harvesting requirements;

(p) any additional information or documentation required by the Minister.
Section 24 amended: O.I.C. 2014-18, N.S. Reg. 7/2014.

Application for developmental tidal array feed-in tariff approval

24A(1) An application for a developmental tidal array feed-in tariff approval may be made only in response to

- (a) an invitation from the Minister to apply for an approval; or
- (b) a public call for applications from the Minister.

(2) The Minister may invite or make a public call for an application for a developmental tidal array feed-in tariff approval

- (a) at any time and in respect of any location that the Minister considers appropriate; and
- (b) subject to subclause 18(2)(a)(iv) and Section 32, on any terms and conditions that the Minister considers appropriate.

Section 24A added: O.I.C. 2014-18, N.S. Reg. 7/2014.

Contents of an application for developmental tidal array feed-in tariff approval

24B (1) Except as provided in subsection (2), an application for a developmental tidal array feed-in tariff must include all of the following information or documentation:

- (a) the information and documentation listed in clauses 24(a) to (f);
- (b) a project plan, including all of the following:
 - (i) details about the previous applicable experience of the generator,
 - (ii) a detailed description of the proposed facility,
 - (iii) a resource and site assessment,
 - (iv) a site plan,
 - (v) a schedule identifying key milestones in the construction and deployment of the developmental tidal array;
- (c) a stakeholder and public engagement plan;

- (d) a full description of the proposed technology to be deployed, including all of the following:
 - (i) a description of the devices and ancillary equipment to be used,
 - (ii) the total nameplate capacity,
 - (iii) evidence of ownership or licence to use the technology,
 - (iv) evidence of any applicable certifications;
- (e) a business plan that demonstrates the financial viability of the project, including all of the following:
 - (i) a detailed financial analysis based on the applicable tariff set by the Board under Section 4A of the Act and Section 18,
 - (ii) projected costs, revenue and cash flow over the life of the developmental tidal array;
- (f) a risk management plan, including descriptions of all of the following:
 - (i) any risks to health, safety and the environment,
 - (ii) any risks relating to the construction, operation and schedule for the developmental tidal array,
 - (iii) any risks relating to technology failures;
- (g) detailed plans to manage any risks described under clause (f) using industry best practices;
- (h) information demonstrating how the proposed developmental tidal array will contribute to each of the following:
 - (i) building and maintaining public trust in the use of the marine environment to generate tidal energy,
 - (ii) developing approaches and technologies for generating tidal energy that are technically, economically and environmentally sustainable,
 - (iii) building a tidal energy industry, and developing Nova Scotia skills, experience and technology relating to tidal energy;
- (i) any plans the applicant has for future tidal energy development in the Province;
- (j) any additional information required by the Minister in the invitation or public call for an application for a developmental tidal array feed-in tariff approval.

(2) The Minister may waive, in whole or in part, a requirement for any of the information or documentation to be provided by an applicant under subsection (1) if the Minister is satisfied that the applicant has already provided the Department of Energy with information or documentation that meets the requirement.

Section 24B added: O.I.C. 2014-18, N.S. Reg. 7/2014.

Designated representatives

25 (1) An applicant for a feed-in tariff approval must designate a representative in writing in a form required by the Minister and file the designation with the Minister.

(2) Once designated, a representative of an applicant or approval holder has sole responsibility on behalf of the applicant or approval holder for

(a) corresponding with the Minister with respect to any application or approval or the administration of these regulations, whether by written or electronic means; and

(b) any additional duties that are specified in a feed-in tariff approval issued to the applicant or approval holder.

(3) An applicant or approval holder is responsible for advising its representative of the representative's obligations under these regulations.

(4) An applicant or approval holder is liable for the acts or omissions of its representative with respect to any matter to which the authority of the representative extends.

(5) A representative continues as a representative unless another representative is substituted as provided for in subsection (8).

(6) The Minister may rely, without detriment, on any representations made or actions taken by a representative.

(7) An applicant or approval holder is deemed to have notice of all correspondence from the Minister that is directed through the representative.

(8) An applicant or approval holder may, on giving the Minister 30 days' notice in writing, substitute another representative by filing a new designation with the Minister, and on filing, the former designation is revoked.

(9) A reference in these regulations to an applicant or the holder of a feed-in tariff approval includes the representative of the applicant or the approval holder.

Use of information

26 In order to complete the application process and for the purposes of the "one-window" committee identified in Section 35, the information in an application for a feed-in tariff approval may be shared with another department or agency of the Government of Nova Scotia, a department or agency of another provincial government or the Government of Canada, or a load-serving entity.

Section 26 replaced: O.I.C. 2014-18, N.S. Reg. 7/2014.

Incomplete application for feed-in tariff approval

27 (1) If an application for a feed-in tariff approval is not complete or additional information is required, the Minister must notify the applicant in writing no later than 90 days after receipt of the application and request the information necessary to make the application complete.

(2) If the information requested under subsection (1) is not provided by the applicant within 90 days of the request, the Minister may reject the application and, if so, must immediately notify the applicant in writing that the application has been rejected.

Approval or rejection of application for feed-in tariff approval

28 (1) The Minister may approve or reject an application for a feed-in tariff approval if

(a) the application satisfies the requirements of the Act and these regulations; and

(b) the Minister determines that the application is consistent with the Department of Energy's policies and objectives for the development of renewable low-impact electricity resources and industries.

Subsection 28(1) replaced: O.I.C. 2014-18, N.S. Reg. 7/2014.

(1A) In deciding whether to approve or reject an application for a feed-in tariff approval, the Minister may take into account any matter that the Minister considers relevant and in the public interest.
Subsection 28(1A) added: O.I.C. 2014-18, N.S. Reg. 7/2014.

(2) For wind power generation facilities with a capacity of 50 kW or less, feed-in tariff approvals must be issued for no more than a maximum of 5 mW total capacity.

(3) On approving or rejecting an application, the Minister must notify the applicant accordingly.

(4) On approving an application, the Minister must issue the applicant a feed-in tariff approval subject to any terms and conditions that the Minister determines are appropriate.

Minister's approval required to transfer feed-in tariff approval

29 A feed-in tariff approval must not be transferred without the prior written approval of the Minister.

Approved applicant must continue to meet requirements

30 An applicant that has been issued a feed-in tariff approval must continue to meet the applicable requirements of these regulations and must diligently pursue the construction and completion of the applicant's project.

Interconnection queue

31 At the request of an applicant that has been issued a feed-in tariff approval, NSPI must place the applicant's generation facility in the next available place in the queue for interconnection with the electrical grid.

Standard power purchase agreement for feed-in tariff program

32 (1) The Minister, in consultation with NSPI, must prepare a standard form of power purchase agreement to be used for the feed-in tariff program and must have the form of power purchase agreement approved by the Board.

(1A) A separate standard form of power purchase agreement may be prepared and approved for any class of generation facility to which the feed-in tariff program applies.
Subsection 32(1A) added: O.I.C. 2014-18, N.S. Reg. 7/2014.

(2) When a feed-in tariff approval is issued, the applicant and NSPI are deemed to have entered into a power purchase agreement in the form provided for in subsection (1) effective from the date of the approval.
Subsection 32(2) amended: O.I.C. 2014-18, N.S. Reg. 7/2014.

(3) The intended parties to a power purchase agreement may agree to changes to the standard power purchase agreement provided for in subsection (1) and, if so, the form of power purchase agreement as agreed to by the parties must be provided to the Minister.

(3A) The applicant must be in good standing under the terms and conditions of their feed-in tariff approval at the time of commercial operation and the Minister must issue a letter to NSPI indicating the expected annual output of the project.

Subsection 32(3A) added: O.I.C. 2013-13, N.S. Reg. 11/2013.

Minister's consent required to assign power purchase agreement

33 A power purchase agreement entered into under the feed-in tariff program must not be assigned without the prior written consent of the Minister.

Generator under feed-in tariff program must report to Minister

34 Within 30 days of the interconnection of a renewable low-impact electricity generation facility with the electrical grid under the feed-in tariff program, the renewable low-impact electricity generator that owns or operates the facility must provide a report to the Minister that details all of the following:

(a) the total capital costs for the project;

(b) for each project expenditure for goods or services in the amount of \$50 000 or greater, the name and address of the supplier or contractor providing the goods or services.

“One-window” committee for feed-in tariff program

35 (1) To coordinate applications for community feed-in tariff approvals, the Ministers of the following departments or agencies must each designate 1 or more representatives to serve on a “one-window” committee under the direction of the Minister of Energy:

(a) Agriculture;

(b) Energy;

(c) Environment;

(d) Fisheries and Aquaculture;

(e) Natural Resources;

(f) Office of Service Nova Scotia;

Clause 35(1)(f) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(g) Communities, Culture and Heritage;

Clause 35(1)(g) amended: O.I.C. 2013-13, N.S. Reg. 11/2013.

(h) Transportation and Infrastructure Renewal.

Subsection 35(1) amended: O.I.C. 2014-18, N.S. Reg. 7/2014, O.I.C. 2017-127, N.S. Reg. 73/2017.

(1A) A separate “one-window committee” must be established to coordinate applications for developmental tidal array feed-in tariff approvals under the direction of the Minister of Energy, and must include 1 or more designates from each of the following departments or agencies:

(a) Energy;

(b) Environment;

(c) Fisheries and Aquaculture;

(d) Natural Resources;

(e) Labour and Advanced Education;

(f) Office of Aboriginal Affairs;

(g) any department or agency of another provincial government or the Government of Canada that agrees to participate on the “one-window” committee at the request of the Minister of Energy.

Subsection 35(1A) added: O.I.C. 2014-18, N.S. Reg. 7/2014.

(2) The “one-window” committee must coordinate the providing of timely advice to applicants under the feed-in tariff program about permits or approvals necessary from the respective departments for applicants’ projects, and the estimated time for the processing of permits and approvals.

Procurement of Renewable Low-Impact Electricity Under Section 4B of the Act

Responsibility of procurement administrator

35A The procurement administrator must ensure that a procurement under Section 4B of the Act is fair, transparent and competitive, and subject to subsection 37(2) that the power purchase agreement executed by the bidder with the public utility is consistent with the request for proposals.
Section 35A added: O.I.C. 2013-13, N.S. Reg. 11/2013.

Request for proposals requirements

35B (1) Except as provided in subsection (4), the primary basis for evaluating bids under a request for proposals is the degree to which the proposal provides the best value from renewable electricity for electricity ratepayers, and this requirement must be clearly indicated in any request for proposals.
Subsection 35B(1) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(2) A bidder, other than a bidder under the solar program, must include the following [in] their proposal:

- (a) how the proposed project will comply with the requirements of these regulations;
- (b) how the proposed project will be economically viable;
- (c) proof that it has the technical capacity necessary to undertake and complete the proposed project;
- (d) the anticipated in-service date for the renewable low-impact electricity generation facility;
- (e) any previous experience the bidder has with renewable electricity projects.

Subsection 35B(2) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(2A) A bidder under the solar program must include all of the following in their proposal:

- (a) independently reviewed or audited year-end financial statements for the bidder's most recent fiscal year;
- (b) the proposed nameplate capacity of the generation facility;
- (c) the amount of electricity proposed to be delivered;
- (d) the proposed location and orientation of solar panels;
- (e) a solar site assessment;
- (f) an estimate of the total cost to develop the generation facility that separately identifies the costs for significant components of the development, including costs for solar panels, inverters, the balance of system hardware, labour and permitting;
- (g) an estimate of the annual operating and maintenance costs for the generation facility;
- (h) an estimate of the total amount of indebtedness expected to be incurred to develop the generation facility, the average length of the term for repaying the indebtedness and the average interest rate;
- (i) an estimate of the amount of any incentives or grants that the bidder expects to receive to develop the generation facility;
- (j) any information the procurement administrator requires to assess whether the proposal meets the requirements of the Act and these regulations.

Subsection 35B(2A) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

(3) The requirements set out in subsections (2) and (2A) must be clearly indicated in any request for proposals.

Subsection 35B(3) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(4) The primary basis for evaluating bids under a request for proposals for the solar program is the price for the proposed electricity, and this requirement must be clearly indicated in any request for proposals.

Subsection 35B(4) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

(5) A procurement administrator must not award a contract to a bidder under a request for proposals for the solar program if the bid price is too high, taking into account the relative amounts of the bid prices received from all other bidders who responded to the request for proposals and any other factor the procurement administrator considers appropriate.

Subsection 35B(5) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

(6) Responses to a request for proposals for the solar program must be submitted to the Minister electronically through the Internet through an online application form established for the program.

Subsection 35B(6) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

Section 35B added: O.I.C. 2013-13, N.S. Reg. 11/2013.

Proposal evaluation

35C(1) In evaluating proposals submitted under a request for proposals under Section 4B of the Act, the procurement administrator must

- (a) respond to any concerns or questions from bidders in a timely manner;
- (b) undertake the evaluation required by subsection 4B(10) of the Act in a timely fashion; and
- (c) provide the written decision required by subsection 4B(10) of the Act no later than 7 days after making the decision.

(2) The procurement administrator must exclude any proposal from further evaluation if the administrator is not satisfied of any of the following:

- (a) that the proposal is technically feasible;
- (b) that the bidder has the financial capacity or support to construct and operate the proposed generation facility.

Section 35C added: O.I.C. 2013-13, N.S. Reg. 11/2013; replaced: O.I.C. 2017-127, N.S. Reg. 73/2017.

Report on procurement

35D For each procurement, a procurement administrator must provide a final report in writing to the Minister no later than 60 days after the notice provided for in clause 35C(c), that includes all of the following:

- (a) a summary of the request for proposal process;
- (b) details of the steps the procurement administrator took to ensure a fair, transparent and competitive process;
- (c) a comparative economic analysis of the bids received;
- (d) details of any relevant considerations that support the procurement administrator's selection of the successful bidder;
- (e) for any contract awarded to a bidder,
 - (i) the price for electricity under the contract,

(ii) the nameplate capacity of the generation facility under the contract, and

(iii) the annual amount of electricity expected to be generated by the generation facility under the contract;

Clause 35D(e) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

(f) if more than 1 contract is awarded in the procurement,

(i) the total, mean and median prices for electricity under all contracts,

(ii) the total, mean and median nameplate capacity of generating facilities under all contracts awarded, and

(iii) the total, mean and median amounts of electricity expected to be generated by the generation facilities under all contracts awarded;

Clause 35D(f) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

(g) for a procurement under the solar program,

(i) the expected amounts to be paid by a public utility using the assumptions set out in subsection 37E(7), and

(ii) an assessment of any impacts on the expected amounts to be paid by NSPI because of the limits in subsection 37E(4);

Clause 35D(g) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

(h) any issues or trends relating to the procurement process that the procurement administrator considers relevant.

Clause 35D(h) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

Section 35D added: O.I.C. 2013-13, N.S. Reg. 11/2013; amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

Requirement for request for proposals

36 If a request for proposals under Section 4B of the Act includes a request for a primary forest biomass renewable low-impact electricity generation facility, the request for proposals must require that a proponent provide a biomass fuel procurement plan that outlines how the proponent intends to ensure that its fuel supply will meet sustainable harvesting requirements.

Standard power purchase agreement for procurement

37 (1) Except as provided in subsection (1A), a procurement administrator must, in consultation with NSPI, prepare a standard form power purchase agreement to be used for procuring renewable low-impact electricity under Section 4B of the Act and must have the form of power purchase agreement approved by the Board before any procurement.

Subsection 37(1) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

(1A) The Minister must, in consultation with NSPI, prepare a standard form power purchase agreement to be used for procuring renewable low-impact electricity from a generation facility connected to the electrical grid of a public utility under a program established under Section 4C of the Act and must have the form of power purchase agreement approved by the Board before any procurement.

Subsection 37(1A) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

(1B) For a procurement under the solar program, the standard form power purchase agreement must incorporate all of the following terms:

(a) the owner of the generation facility must be permitted to designate a commercial operation date for the generation facility that is no later than 24 months after the date the agreement was awarded by the procurement administrator;

(b) the term of the agreement must end 20 years after the commercial operation date, except that the agreement may give a party to it the right to terminate earlier if there is a default by the other party;

(c) before the commercial operation date, the owner must be permitted to change the design of the generation facility from the design proposed in its response to the request for proposals for the solar program, unless the change would

(i) result in the generation facility not meeting the requirements in Section 37C for a procurement administrator to award a contract under the solar program,

(ii) move the generation facility from the location identified by the owner in its response to the request for proposals,

(iii) increase the price bid identified by the owner in its response to the request for proposals, or

(iv) increase the amount of electricity proposed to be delivered by the owner in its response to the request for proposals;

(d) except as provided in clause (e), the price for electricity output from the generation facility at the delivery point must be as follows:

(i) for net output from the generation facility before the commercial operation date, no payment may be made,

(ii) for net output from the generation facility that is 110% or less of the annual amount of electricity proposed to be delivered in the response to the request for proposals, the price bid in the response,

(iii) for net output from the generating facility that is greater than 110% of the annual amount of electricity proposed to be delivered, an amount in \$/MWh that is equal to the public utility's cost of generating or purchasing 1 more MWh of electrical energy from sources other than the generation facility as calculated by the public utility averaged over the 12-month period immediately preceding the relevant time;

(e) for a generation facility that is conveyed to an entity that is not eligible to participate in a request for proposals under Section 37B or for a generation facility whose owner ceases to be an entity that is eligible to participate in a request for proposals, the price for electricity output from the generation facility at the delivery point must be as follows:

(i) for net output from the generation facility before the commercial operation date, no payment may be made,

(ii) for net output from the generation facility that is 110% or less of the annual amount of electricity proposed to be delivered in the response to the request for proposals, 70% of the price bid in the response,

(iii) for net output from the generating facility that is greater than 110% of the annual amount of electricity proposed to be delivered, an amount in \$/MWh that is equal to the public utility's cost of generating or purchasing 1 more MWh of electrical energy from sources other than the generation facility as calculated by the public utility averaged over the 12-month period immediately preceding the relevant time;

(f) any benefits or credits relating to the reduction of greenhouse gases or air emissions or to the generation of electricity from renewable resources must accrue to the public utility;

(g) the owner of the generation facility must not be required to provide the public utility with any form of financial security for the performance of its obligations under the power purchase agreement;

(h) the requirements for generation facilities in subsection 37C(2).

Subsection 37(1B) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

(1C) When a contract is awarded by the procurement administrator to a bidder under a request for proposals for the solar program, the bidder and the public utility are deemed to have entered into a power purchase agreement in the form provided for in subsection (1A) effective from the date of the award.
Subsection 37(1C) added: O.I.C. 2017-127, N.S. Reg. 73/2017.

(2) The parties to a power purchase agreement may agree to changes to the standard power purchase agreement provided for in this Section and, if so, the form of power purchase agreement as agreed to by the parties must be provided to the Minister.

Subsection 37(2) amended: O.I.C. 2017-127, N.S. Reg. 73/2017.

Solar Electricity for Community Buildings Program

Solar Electricity for Community Buildings Program

37A The Solar Electricity for Community Buildings Program is established, for the years 2017, 2018 and 2019, as a program under subsection 4C(1) of the Act to connect a renewable low-impact electricity generation facility to a public utility's electrical grid.

Section 37A added: O.I.C. 2017-127, N.S. Reg. 73/2017.

Eligible respondents to requests for proposals under solar program

37B (1) Any or all of the following categories of participants, as determined by the procurement administrator, may participate in a request for proposals undertaken by a procurement administrator for the procurement of renewable low-impact electricity under the solar program:

(a) an NS Mi'kmaw band as defined in the Indian Act (Canada), or a body corporate, partnership or other business association that is wholly owned by 1 or more bands;

(b) a municipality, or a body corporate, partnership or other business association that is wholly owned by 1 or more municipalities;

(c) a university, or a body corporate, partnership or other business association that is wholly owned by a single university;

(d) a not-for profit body corporate, or a body corporate, partnership or other business association that is wholly owned by a single not-for profit body corporate.

(2) In clause (1)(c), "university" includes the Nova Scotia Community College.

Section 37B added: O.I.C. 2017-127, N.S. Reg. 73/2017.

Requirements for generation facilities

37C(1) A procurement administrator may not award a contract under the solar program if the electricity proposed to be produced from the generation facility was subject to a power purchase agreement or net-metering arrangement on the date the response to the request for proposals was submitted by the respondent.

(2) A procurement administrator may not award a contract under the solar program unless the proposed generation facility meets all of the following requirements:

(a) it will be wholly owned by an entity that is eligible to participate in a request for proposals under Section 37B on the date that it reaches commercial operation;

(b) it will not exceed a total nameplate capacity of 50 kW;

(c) it is expected to produce at least 51% of its average annual renewable low-impact electricity from solar energy;

(d) it will be connected to the electrical grid of a public utility through 1 electric meter that records electricity sales and peak power at least 4 times per hour;

(e) it will be located on or wholly within 100 m of a building that satisfies all of the following conditions:

(i) it will be owned or leased, in whole or in part, by the owner of the generation facility on the date that the generation facility reaches commercial operation;

(ii) it is not associated with another generation facility procured under the solar program unless the contract for the development of the other generation facility has been terminated;

(iii) it will be provided with electricity from a public utility through an electric meter on the date the generation facility reaches commercial operation;

(iv) it will not be constructed or provided with electricity solely to qualify for the solar program;

(v) it will be located on the same property as the generation facility, or on an adjoining property that is owned by the owner of the generation facility, on the date that the generation facility reaches commercial operation until the end of the contract.

Section 37C added: O.I.C. 2017-127, N.S. Reg. 73/2017.

Condition regarding use of information

37D The owner of a generation facility that provides renewable low-impact electricity under the solar program must agree in writing that the Minister may use the information described in and as permitted under subsection 37F(5) for any purpose, including the publication or other public release of the information, regardless of any proprietary interest or claim to confidentiality that the owner may have and without any compensation being paid to the owner for the use of the information.

Section 37D added: O.I.C. 2017-127, N.S. Reg. 73/2017.

Program limits on expected amounts to be paid by public utility

37E (1) In this Section,

“program year” means

(i) 2017, for contracts awarded by the procurement administrator under the solar program before December 1, 2017,

(ii) 2018, for contracts awarded by the procurement administrator under the solar program after November 30, 2017, and before December 1, 2018,

(ii) 2019, for contracts awarded by the procurement administrator under the solar program after November 30, 2018, and before December 1, 2019.

Subsection 37E(1) replaced: O.I.C. 2017-187, N.S. Reg. 108/2017.

(2) For contracts awarded under the solar program, the expected amounts to be paid by a public utility in 2019 must not exceed the amounts set out in the following table for the electrical utility:

Municipal Electric Utility
Amount
Electrical utility for the Town of Antigonish
\$12 000
Electrical utility for the Town of Berwick
\$4500
Electrical utility for the former Town of Canso
\$1000
Electrical utility for the Town of Lunenburg
\$5500
Electrical utility for the Town of Mahone Bay
\$2000
Electric Light Commissioners for Riverport, in the County of Lunenburg
\$1200

(3) The total expected amounts to be paid by NSPI for all contracts awarded under the solar program for a program year must not exceed the amounts set out in the following table for that program year:

Program Year	Amount
2017	\$250 000
2018	\$350 000 plus any increases made under subsection (5) for the program year
2019	\$400 000 plus any increases made under subsection (5) for the program year

(4) The total expected amounts to be paid by NSPI for each program year under subsection (3) are subject to the following additional limits:

(a) no more than 30% of an amount set out in subsection (3) may be paid to 1 or more owners who fall into the same category of participant in a clause in subsection 37B(1);

(b) no more than 30% of an amount set out in subsection (3) may be paid to 1 or more owners for generation facilities located in Halifax County;

(c) no more than 30% of an amount set out in subsection (3) may be paid to 1 or more owners for generation facilities located in the counties of Cape Breton, Inverness, Richmond and Victoria;

(d) no more than 30% of an amount set out in subsection (3) may be paid to 1 or more owners for generation facilities located in the counties of Antigonish, Colchester, Cumberland, Guysborough and Pictou;

(e) no more than 30% of an amount set out in subsection (3) may be paid to 1 or more owners for generation facilities located in the counties of Annapolis, Digby, Hants, Kings, Lunenburg, Queens, Shelburne and Yarmouth.

(5) If the expected amounts to be paid by NSPI for a program year are less than the total amount set out in subsection (3), then an amount equal to the difference between those amounts must be added to the amount set out in subsection (3) as an increase in the total limit for the following program year.

(6) In subsection (5), the net expected payments determined for NSPI for a program year must exclude expected payments under contracts awarded by the procurement administrator that have been terminated.

(7) To determine whether an amount set out in subsection (2) or (3) would be exceeded, the procurement administrator must assume all of the following, despite information to the contrary in any response to a request for proposals:

(a) that a generation facility awarded a contract under the solar program with a public utility other than NSPI will be in commercial operation for the entire year in 2019;

(b) that a generation facility awarded a contract under the solar program with NSPI will be in commercial operation for the entire year in the program year for the contract.
Section 37E added: O.I.C. 2017-127, N.S. Reg. 73/2017.

Data reporting and sharing

37F (1) An owner of a generation facility under the solar program must provide the Minister with all of the following information:

(a) the nameplate capacity of the generation facility;

(b) the cost of constructing the generation facility, or of any particular component or aspect of the generation facility.

(2) On request, a public utility must provide the procurement administrator with all of the following:

(a) the costs that would be incurred to produce, transmit, deliver or furnish any electricity that would be displaced by electricity purchased under the solar program to permit the procurement administrator to assess whether the awarding of a contract would result in the expected amounts to be paid by the public utility exceeding the program limits under Section 37E;

(b) notification in writing if a power purchase agreement between the public utility and an owner of a generation facility connected to its electrical grid under the solar program is terminated.

(3) A public utility must provide the Minister with all of the following:

(a) all electric meter data for each generation facility connected to its electrical grid under the solar program including

(i) the amount of electricity produced and sold for each generation facility, and

(ii) the time, date and amount of peak power for each generation facility;

(b) the price of all electricity sold by the owner of each generation facility to the public utility under the program;

(c) notification in writing if a power purchase agreement between the public utility and an owner of a generation facility connected to its electrical grid under the solar program is terminated.

(4) The information required to be provided to the Minister under subsections (1) and (3) must be provided at the times and in the formats requested by the Minister.

(5) Subject to subsection (6), the Minister may use the information included in a response to a request for proposals or required to be provided under subsections (1) and (3) for any purpose, including the publication or other public release of the information.

(6) The Minister may not publish or publically [publicly] release the information required by clauses 35B(2A)(a)(e), (h), and (i).

Section 37F added: O.I.C. 2017-127, N.S. Reg. 73/2017.

Records, Audits and Reporting

Renewable electricity standards progress reports

38 (1) Each load-serving entity must report to the Minister annually, or at other intervals determined by the Minister, to outline its progress in meeting the requirements of the renewable electricity standards.

(1A) Each generator who receives a feed-in tariff approval must report to the Minister as follows:

- (a) annually, or at other intervals determined by the Minister;
 - (b) its progress in putting its generator into service and its actual in-service date within 30 days after such facility is put into service;
 - (c) the amount of electricity able to be connected following the system impact study by the Nova Scotia System Operator;
 - (d) the annual amount of electricity expected to be produced prior to commercial operation;
 - (e) the actual amount of electricity produced and any variance between actual and expected.
- Subsection 38(1A) added: O.I.C. 2013-13, N.S. Reg. 11/2013.

(2) The Minister may specify the form and content of the progress reports.

(3) The Minister may issue directions or orders to ensure that the requirements of this Section are met.

Books and records of renewable low-impact electricity generators

39 Every renewable low-impact electricity generator must keep or cause to be kept appropriate books, records, accounts, documents and other information related to the ownership and operation of its renewable low-impact electricity generation facility and its membership or ownership at an office in the Province.

Audit or examination of renewable low-impact electricity generator

40 The Minister may at any time audit or examine the books and records of a renewable low-impact electricity generator to ensure the continued compliance by the renewable electricity generator with the Act and these regulations.

Duty of renewable low-impact electricity generator

41 For the purpose of an audit or examination under Section 40, a renewable low-impact electricity generator must do all of the following:

- (a) make its books, records, accounts, documents and other information available at all reasonable times to any person authorized by the Minister for the purpose, and provide the person with copies of documents requested by the person that are reasonable for the purposes of the audit or examination;
- (b) make copies of any operating agreement or other agreements between the renewable low-impact electricity generator and any other person in relation to the operation or ownership of its renewable low-impact electricity generation facility available at all reasonable times to any person authorized by the Minister for the purpose;
- (c) at any time, on any notice and under any supervision by or on behalf of the renewable low-impact electricity generator as is reasonable in the circumstances,
 - (i) give all reasonable assistance to a person authorized by the Minister to carry out the audit or examination,
 - (ii) provide access to all relevant sites, and

(iii) answer orally or in writing all questions relating to the audit or examination.

Report by independent power producer

42 If any event occurs, whether by operation of law or otherwise, that causes an independent power producer to fail to comply with the requirements for an independent power producer under these regulations, the independent power producer must immediately notify the Minister in writing of the event and provide any information that the Minister requires.

Enforcement

Minister's powers

43 (1) The Minister has all the power and authority necessary to implement, administer and enforce these regulations, including the power to issue directions or orders, and must do all of the following:

(a) establish a process for approving and auditing renewable low-impact electricity generation facilities and renewable low-impact electricity generators for compliance with these regulations;

(b) establish a process for approving and re-approving renewable low-impact electricity generation facilities and renewable low-impact electricity generators;

(c) establish accounts and records for a renewable low-impact electricity generator or its representative;

(d) establish registries of renewable low-impact electricity generation facilities and information that the Minister determines to be necessary;

(e) establish limits for production or payments for excess electricity reported in subsection 38(1A).

Clause 43(1)(e) added: O.I.C. 2013-13, N.S. Reg. 11/2013.

(2) In addition to the powers and duties set out in subsection (1), the Minister may do any of the following:

(a) audit approved renewable low-impact electricity generation facilities as necessary to verify compliance with the Act and regulations;

(b) suspend or revoke an approval issued under these regulations;

(c) take any action that the Minister considers necessary to ensure that the requirements of these regulations are met;

(d) extend the time within which a condition of an approval issued under these regulations must be met;

(e) prepare interpretations of these regulations, or policies, standards and guidelines under these regulations;

(f) suspend or revoke a procurement process under these regulations.

Clause 43(2)(f) added: O.I.C. 2013-13, N.S. Reg. 11/2013.

(3) The Minister may authorize a representative of the Department of Energy to exercise the Minister's powers and authority, and to undertake the Minister's responsibilities under these regulations.

(4) The Minister may direct the Board to inquire into and report on any matter under the Act or these regulations if the Minister considers it necessary or advisable in order to effectively carry out the intent and purpose of the Act.

Order to comply

44 (1) If the Minister believes on reasonable grounds that a person has contravened or will contravene any part of the Act or these regulations, the Minister may issue an order requiring the person to cease a specified activity or to take any action that the Minister directs.

(2) An order remains in effect until it is revoked, in writing, by the Minister.

(3) A copy of an order must be served on the person to whom it is directed.

Compliance with order

45 (1) If an order issued under Section 44 is served on a person to whom it is directed, that person must comply with the order without delay or, if a period for compliance is specified in the order, within the time period specified.

(2) Any order issued because of the failure of a cooperative, a not-for-profit body corporate or a community economic-development corporation to continue to meet the ownership requirements in clause 20(2)(c), (d) or (e), as the case may be, must allow a reasonable period of time for the person to whom the order is directed to comply with the order.

Failure to comply

46 (1) If a person to whom an order under Section 44 is directed does not comply with the order or a part of the order, the Minister may take whatever action the Minister considers necessary to carry out the terms of the order or, in the case of a renewable low-impact electricity generator participating in the feed-in tariff program, may cancel or suspend a power purchase agreement to which the generator is party.

(2) Any power purchase agreement entered into or deemed to have been entered into under the feed-in tariff program is subject to suspension or cancellation by the Minister as provided in subsection (1).

Penalties and enforcement respecting renewable electricity standard

47 (1) A person who does any of the following is liable to a daily penalty of no more than \$500 000 to a maximum aggregate of \$10 000 000 per occurrence:

(a) fails to comply with the requirements of Section 4, 5, 6 or 6A;

Clause 47(1)(a) amended: O.I.C. 2013-13, N.S. Reg. 11/2013, O.I.C. 2017-127, N.S. Reg. 73/2017.

(b) fails, neglects, omits or otherwise refuses to do any act or thing required in respect of Section 4, 5, 6 or 6A;

Clause 47(1)(b) amended: O.I.C. 2013-13, N.S. Reg. 11/2013, O.I.C. 2017-127, N.S. Reg. 73/2017.

(c) fails, neglects, omits or otherwise refuses to comply with a direction or order of the Minister to comply with Section 4, 5, 6 or 6A.

Clause 47(1)(c) amended: O.I.C. 2013-13, N.S. Reg. 11/2013, O.I.C. 2017-127, N.S. Reg. 73/2017.

(2) Unless otherwise provided in the Act, a person is not subject to a penalty under subsection (1) if the person establishes that they

(a) exercised due diligence; or

(b) reasonably and honestly believed in the existence of facts that, if true, would render the conduct of the person excusable.

(3) No public utility may recover any penalty imposed on it under this Section through its rates.

Appeals

Appeals to the Board

48 (1) A person directly affected by an order or decision of the Minister made under these regulations may, by written notice to the Board, appeal to the Board no later than 60 days after the later of

- (a) the date of the order or decision; and
- (b) the date that the reasons for the order or decision are issued.

(2) If an appeal is taken under this Section, the Board may, by order, confirm the decision under appeal or make any other decision that the Board considers proper.

(3) The Minister is entitled to be heard by counsel or otherwise on the argument of an appeal under this Section.

Board powers

49 The powers of the Board respecting a hearing or an appeal under the Utility and Review Board Act and the Public Utilities Act and regulations made under those Acts apply to hearings and appeals under the Act and these regulations.

“Renewable electricity administrator” changed to “procurement administrator” throughout: O.I.C. 2017-127, N.S. Reg. 73/2017.