



Memorandum re Solar Garden Ownership Special Council Meeting June 21st, 2024

Decision Required:

Will the Town proceed on the understanding that,

- i) the Town of Mahone Bay owns the solar garden and is a legally distinct entity from the Mahone Bay Electrical Utility able to conclude a power purchase agreement (PPA) with the Utility for sale of energy produced by the solar garden,
or,
- ii) the Mahone Bay Electrical Utility owns the solar garden and retains the energy produced.

Analysis:

Scenario 1 – Town Ownership

- On confirmation of the final cost of production (including project financing costs as well as operations and maintenance costs) conclude a PPA between the Town and the Utility.
- When it is determined that an increase or decrease in Utility rates charged to customers is required in relation to the PPA established for the solar garden (presumably because the PPA price has been increased by the Town), apply to the Nova Scotia Utility and Review Board (NSUARB)

PROS:

- 1) PPA can establish any rate for the sale of solar garden energy to the Utility equal to or less than the avoided cost to purchase from Nova Scotia Power (NSPI) with no further NSUARB filing required at this time;
- 2) If NSUARB accepts the flowthrough mechanism for customer rates, regulatory costs for future rate changes are greatly reduced (over repeat GRAs).

CONS:

- 1) NSUARB determines that it has grounds to rule on the legal distinction – or lack thereof – between the Town and the Utility and rules that this distinction

does not exist (without the Town applying for a flowthrough with respect to the solar energy or making a general rate application (GRA) but it remains a possibility);

2) Town determines it is necessary to apply for a flowthrough of solar energy costs or make a GRA, inviting the NSUARB to confirm the legal distinction between the Town and the Utility and the ruling is that there is no legal distinction. In these cases the NSUARB may rule that the Town is required to retroactively reimburse the Utility for any proceeds on the sale of solar garden energy to the Utility under the PPA.

Scenario 2 – Utility Ownership

- Apply to the NSUARB for retroactive approval of the capital expenditure for the solar garden (this application was not made prior to the expenditure taking place as required because the Town at the time asserted that the Town would be the owner of the solar garden and that the Town is legally distinct from the Utility and able to enter into a PPA to sell the solar garden energy to the Utility).
- When it is determined that an increase or decrease in Utility rates charged to customers is required in relation to the cost of production of solar energy incurred by the Utility, make a GRA to the NSUARB.

PROS:

1) Decreases in the relative cost of production (relative to the avoided cost of purchasing from NSPI) immediately accrue to the Utility, offsetting operating deficits which may exist;

2) Aligns with the NSUARB's implied understanding of the legal distinction between the Town and Utility (or lack thereof) and is therefore not susceptible to future rulings requiring retroactive remedies (the NSUARB expressed this implied understanding in their letter to the Town dated Feb 2nd, attached for reference).

CONS:

1) If, as a result of changes in the cost of producing solar energy, Utility customer rates would need to be changed, a GRA would be required (this time consuming and costly process would compound any rate increases, resulting in higher rates over time than would be required with access to a flowthrough mechanism such as might be possible in the Town ownership scenario);

2) Uncertainty persists over legal distinction between Town and Utility as alignment with the NSUARB's implied position skirts the need to obtain a ruling confirming this.



Nova Scotia Utility and Review Board

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February 2, 2024

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The Town of Antigonish
274 Main Street
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Dear Parties:

Community Solar Projects

The Board understands that, through the Alternative Resource Energy Authority (AREA), the Town of Antigonish, the Town of Berwick, and the Town of Mahone Bay are in the process or have developed community solar gardens. As you are aware, s.35 of the *Public Utilities Act*, R.S.N.S., 1989, c.380, requires a public utility to apply to the Board for the approval of any capital projects exceeding \$250,000:

Approval of improvement over \$250,000

35 No public utility shall proceed with any new construction, improvements or betterments in or extensions or additions to its property used or useful in furnishing, rendering or supplying any service which requires the expenditure of more than two hundred and fifty thousand dollars without first securing the approval thereof by the Board.

Although these projects have been referenced in various applications the towns have filed with the Board, it does not appear that formal approval for these community solar gardens was sought for any of them under s.35. At this point, the ownership structure for these projects is unclear to the Board and it cannot determine whether such an application is necessary.

The Board understands that the towns themselves may own these projects and not AREA. If so, applications under s.35 may be necessary. The Board appreciates that the situation for the Berwick Electric Commission may be different because it was constituted as a distinct body corporate in the *Berwick Electric Commission Act*, S.N.S. 1977, c.84; however, it is the Board's understanding that the utilities operated by the Town of Antigonish and the Town of Mahone Bay have no separate legal status from the town itself. As such, the Board questions whether these towns could own an asset exceeding \$250,000 that provides utility service that would not require an approval under s.35.

The Board would appreciate it if each utility could provide the Board with more information about these projects, including addressing the following questions:

1. Please describe the ownership structure for the community solar garden in your town in detail.
2. Please advise whether the utility will be applying to the Board for approval of the community solar garden in your town under s.35 of the *Public Utilities Act*. If so, when?
3. If the utility is of the view that s.35 of the *Public Utilities Act* does not apply in the circumstances, please provide the factual and legal basis for this opinion.
4. For the Berwick Electric Commission and the Town of Mahone Bay, please confirm that no operating or capital costs relating to these community solar gardens were included in their recent general rate or flow-through applications.

The Board requests responses to this letter no later than **Friday, March 1, 2024**.

Yours truly,



Crystal Henwood
Regulatory Affairs Officer/Clerk

March 1, 2024

Ms. Crystal Henwood
Regulatory Affairs Officer/Clerk of the Board
Nova Scotia Utility and Review Board
3rd Floor, 1601 Lower Water Street
Halifax, NS B3J 3P6

Dear Ms. Henwood:

Re: Community Solar Projects

We are counsel for the Berwick Electric Commission ("BEC"), the Town of Antigonish ("TOA"), and the Town of Mahone Bay ("TOMB"). On February 2, 2024, the Nova Scotia Utility and Review Board (the "Board") sent a letter to BEC, TOA, and TOMB regarding their community solar gardens. The Board asked each utility to provide the Board with more information about the projects by addressing four questions no later than March 1, 2024. Please see the responses below, which are being submitted collectively on behalf of BEC, TOA, and TOMB.

1. Please describe the ownership structure for the community solar garden in your town in detail.

BEC, TOA, and TOMB have not yet made a final decision with respect to the ultimate ownership structure of the community solar gardens, which requires the approval of each of their Councils. BEC, TOA, and TOMB expect to each promptly advise the Board of the ownership structure for their project once the decision of their Council is made in this regard.

As noted in the Board's letter, the options under consideration include TOA and/or TOMB owning their projects themselves, the Town of Berwick owning its project and selling the electricity to BEC through a Power Purchase Agreement ("PPA"), and/or the Alternate Resource Energy Authority ("AREA") owning one, two, or all of the projects and selling the electricity to one, two, or all of BEC, TOA, TOMB.

2. Please advise whether the utility will be applying to the Board for approval of the community solar garden in your town under s. 35 of the *Public Utilities Act*. If so, when?

The schedule for the preparation and filing of such an Application would be determined by each utility if needed following their Council's decision with respect to ownership.

3. If the utility is of the view that s. 35 of the *Public Utilities Act* does not apply in the circumstances, please provide the factual and legal basis for this opinion.

Section 35 of the PUA states: “**No public utility** shall proceed with any new construction, improvements or betterments in or extensions or additions to its property used or useful in furnishing, rendering or supplying any service which requires the expenditure of more than two hundred and fifty thousand dollars without first securing the approval thereof by the Board.” (emphasis added)

AREA is not a public utility. If AREA owns the solar gardens and sells the electricity to BEC, TOA, and/or TOMB pursuant to a PPA arrangement, then section 35 of the PUA does not apply. This would be consistent with the regulatory treatment of electricity from the Ellershouse Wind Farm, in which the costs associated with that PPA were not subject to pre-approval under section 35 of the *Public Utilities Act*, but were reviewed as test year purchased power expenses as part of the recent General Rate Application process for each of BEC, TOA, and TOMB.

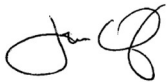
As the Board’s letter notes, the Berwick Electric Commission was constituted as a distinct body corporate in the *Berwick Electric Commission Act*. The Town of Berwick is not an electric public utility. If the Town of Berwick owned its solar garden and sold the electricity to BEC pursuant to a PPA, section 35 of the PUA would not apply in such circumstances for the same reason.

4. For the Berwick Electric Commission and the Town of Mahone Bay, please confirm that no operating or capital costs relating to these community solar gardens were included in the recent general rate or flow-through applications.

Confirmed.

Thank you for the opportunity to provide these responses.

Yours truly,



James MacDuff

cc: Don Regan, Superintendent, BEC
Meaghan Barkhouse, Director of Finance, TOA
Dylan Heide, Chief Administrative Officer, TOMB

Solar Garden Financial Update
Town of Mahone Bay
2024 To Date
Acct: 00353-021-0000

	TOMB \$ Actual	AREA BUDGET	NOTES
Solar Garden Capital Expenses to Date	6,148,099.56	5,906,945.00	
Solar Garden Rebates from Province	4,606,300.00	4,606,300.00	<i>Total Committed from Prov/Fed: \$4,606,300 Received to date: \$3,018,137</i>
Net Total After Rebates	\$ 1,541,799.56	1,300,645.00	
Interest paid to date <i>(Prime less 0.75%)</i>	\$ 263,242.34	-	<i>To be partially offset by 2024-25 solar energy revenue</i>
Total Expenses	\$ 1,805,041.90	\$ 1,300,645.00	
Adjusted for long-term borrowing cost	\$ 2,346,554.47		
Assume 25 year life span	\$ 93,862.18	\$ 52,025.80	<i>Cost per year</i>
Annual Expenses			
Insurance	\$20,645	\$30,000	
Town Admin/Marketing/Communications	\$5,000	\$10,000	
O&M	\$39,000	\$39,000	<i>O&M costs to be determined; original estimate used</i>
Substation Maintenance, Internet and Snow Clearing	\$10,000	\$8,500	
	\$74,645	\$87,500	
Total Estimated Annual Cost	\$ 168,507.18	\$ 139,525.80	
Budgetted 2024-25 Utility Cost for Solar Energy	\$280,234		