

DECISION

**2025 NSEB 11
M12306, M12307, M12308**

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF APPLICATIONS by the **TOWN OF ANTIGONISH**, the **TOWN OF MAHONE BAY**, and the **TOWN OF BERWICK** for approval to construct their Community Solar Gardens

BEFORE: Stephen T. McGrath, K.C., Chair
Roland A. Deveau, K.C., Vice Chair
Richard J. Melanson, LL.B., Member

APPLICANTS: **TOWN OF ANTIGONISH**
TOWN OF MAHONE BAY
TOWN OF BERWICK
James A. MacDuff, Counsel

INTERESTED PARTIES: **CONSUMER ADVOCATE**
David J. Roberts, Counsel

SMALL BUSINESS ADVOCATE
Melissa P. MacAdam, Counsel

BARRY DUPUIS

BOARD COUNSEL: William L. Mahody, K.C.

FINAL SUBMISSIONS: August 14, 2025

DECISION DATE: **November 7, 2025**

DECISION: **The applications are approved.**

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1.0 INTRODUCTION

[1] The Towns of Antigonish, Berwick, and Mahone Bay applied to the Nova Scotia Energy Board (Board) for approval to construct solar gardens under s. 35 of the *Public Utilities Act*, RSNS 1989, c 380. The Towns originally intended to develop these projects in a way they believed would not require the Board's approval under s. 35 and proceeded to build them. After the Nova Scotia Utility and Review Board (NSUARB) questioned this approach, the Towns applied to the NSUARB to rule on the issue. In its decision, the NSUARB found that these projects needed approval and directed the Towns to make the present applications.

[2] While the Towns would not have been able to feasibly develop these projects on their own, they were supported by significant grants from the Governments of Canada and the Province of Nova Scotia. The Board finds that these projects are justified. These projects, over the life of the assets, will likely provide economic and strategic benefits to electricity customers in the Towns. They are approved under s. 35 of the *Public Utilities Act*.

2.0 BACKGROUND

[3] The Towns of Antigonish, Berwick and Mahone Bay recently developed solar gardens. A 3.45 MW solar garden began operating in Berwick in December 2023, a 1.5 MW facility in Mahone Bay in January 2024, and a 1.65 MW solar generator in Antigonish in November 2024. These projects were developed with financial support under the April 2018 Integrated Bilateral Agreement for the Investing in Canada Infrastructure Program – Green Infrastructure, Climate Change Mitigation (ICIP), between

the Minister of Infrastructure, Communities and Intergovernmental Affairs (Canada) and the Province of Nova Scotia.

[4] The Towns applied for funding for the solar gardens under the ICIP to leverage significant governmental funding to help meet the long-term requirements of their municipal utilities to procure more renewable electricity. The application was approved. The Province of Nova Scotia agreed to contribute up to \$7,465,920 to the development of the solar gardens (based on a percentage of eligible expenses) and Canada agreed to pay up to \$8,960,000.

[5] The Alternative Energy Resource Authority (AREA) is an intermunicipal corporation owned by the Towns. It was established to provide wholesale market services to municipal utilities in competition with Nova Scotia Power Inc. (NS Power). AREA supported the Towns' endeavour by leading the analysis of the solar garden projects and overseeing a common request for proposal procurement process for the Towns.

[6] In a letter to the Towns dated February 2, 2024, the NSUARB noted it had not received applications for the development of these solar gardens under s. 35 of the *Public Utilities Act*, which states:

35 (1) 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.

[7] The NSUARB asked the Towns to provide information about the ownership structure of the solar gardens, the potential application of s. 35 of the *Public Utilities Act* to those facilities, and whether solar garden costs were included in recent rate applications by the Towns.

[8] In their response letter dated March 1, 2024, the Towns said final decisions about the ownership structure for the solar gardens had not been made. They also commented on the application of s. 35 in certain situations and confirmed that solar garden costs had not been included in their recent rate applications.

[9] In a letter dated August 21, 2024, the Towns advised the NSUARB that the Town of Berwick intended to own the solar garden in that town and sell electricity from that facility to the Berwick Electric Commission (Commission) under a power purchase agreement. The Towns submitted that, given the distinct corporate identities of the Commission and the Town of Berwick, an application under s. 35 of the *Public Utilities Act* was not required. They asked the NSUARB to confirm this and noted that the Towns of Mahone Bay and Antigonish were considering pursuing similar legislation to establish their utilities as separate electric commissions, in the same manner as was done in Berwick.

[10] In its decision dated December 18, 2024, (2024 NSUARB 209) the NSUARB concluded that, like all other assets owned by the Town of Berwick and used by the Commission to provide electric service to its customers, a solar garden constructed by the Town to provide service to the Commission's customers required approval under the *Public Utilities Act*. The NSUARB directed the Towns to apply for approval for the solar gardens under s. 35.

[11] On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, Sch A, the Board succeeded the NSUARB for all applications related to electric utilities.

[12] The Towns applied to the Board for the approval of their solar gardens under s. 35 of the *Public Utilities Act* on May 30, 2025. The Board was satisfied it could address the issues arising in the applications in a paper hearing process. The Consumer Advocate, Small Business Advocate and Barry Dupuis, a resident of the Town of Mahone Bay, formally intervened. The Board also received Letters of Comment from members of the public about the applications filed by Berwick and Antigonish.

3.0 JUSTIFICATION

[13] The estimated costs and funding for the solar gardens are set out in the following table summarizing the information provided in the application:

	Antigonish	Berwick	Mahone Bay
Solar Garden Capacity	1,650 kW	3,450 kW	1,500 kW
Project Costs			
Direct Construction	\$6,870,000	\$11,274,000	\$5,175,000
Engineering and Professional Services	\$1,006,000	\$2,157,000	\$883,000
Legal, Permits and Administrative	\$324,000	\$469,000	\$342,000
Costs Invoiced Post-Commissioning		\$1,150,000	
Total	\$8,200,000	\$15,050,000	\$6,400,000
Expected Grant Funding	\$4,000,000	\$7,800,000	\$4,000,000
Other Recoveries	\$200,000		
Ratepayer Contribution	\$4,000,000	\$7,250,000	\$2,400,000

[14] Exact project costs are not known at this time, and will depend on factors including, but not limited to, the final allocation of costs and grant funding among the Towns as part of AREA's delivery of the projects, which remains outstanding and subject to further review and agreement among the Towns.

[15] As noted previously, the grant funding is based on a percentage of eligible costs. The estimated amounts used in the table are somewhat lower than the maximum grant contributions noted in the ICIP Contribution Agreement. Although the Antigonish

solar garden is operational, that project is not completed, so final grant funding could not be confirmed. The Towns expect to receive confirmation of the final grant funding following submission of the final claim. Additionally, the “Other Recoveries” for Antigonish are for outstanding legal and insurance claims related to its solar garden.

[16] The Towns justified the construction of the solar gardens on the need to meet increasingly stringent legislative requirements for the generation of renewable energy under the *Renewable Electricity Regulations*, NS Reg 115/2010. These regulations currently require load-serving entities to supply their customers with renewable electricity equal to or greater than 40% of the total amount of electricity supplied. In 2030, this will increase to 80%.

[17] The Towns say that the ICIP funding arrangement provided them with the opportunity to diversify their renewable electricity mix at a fixed price. This decreases their reliance on electricity purchases from NS Power. They said these purchases were subject to volatility and pricing increases as NS Power proceeds toward the closure of its coal plants and the transformation of its electricity grid. The Towns also noted that, as 100% renewable resources, the solar gardens provided them with the opportunity to purchase economical electricity from non-renewable alternatives while still remaining compliant with the *Renewable Electricity Regulations*.

[18] The Towns also filed a confidential financial model, which they said used conservative assumptions and demonstrated that the cost of electricity from the solar gardens would be competitive with the status quo alternative of purchasing energy from NS Power. During the proceeding, the Board considered the scope of the claim for confidentiality and provided directions to release some of the information in the model.

The financial model was refiled following the Board's direction. The Board accepted the remaining requests for confidentiality because the release of the information could potentially put the Towns (and their customers) at a competitive disadvantage in future commercial arrangements.

[19] The Towns submitted that ratepayers should expect to pay lower overall electricity prices because of the solar gardens over the course of their useful lives compared to buying electricity from NS Power under its Municipal Tariff. They noted that, by securing funds under the ICIP, they successfully achieved long-term economic and environmental benefits for their customers. The solar gardens would not have been economically feasible for the Towns without help from the federal and provincial governments.

[20] The Towns did not consider alternatives to these projects. They submitted that the unique opportunity to obtain significant government funding through the ICIP was only available in the context of a community solar garden project. As a result, they said no alternative would have offered the same opportunity to diversify their renewable electricity generation mix while leveraging significant government funding.

[21] Focusing on the solar garden built by the Town of Mahone Bay, Mr. Dupuis questioned whether the *Renewable Electricity Regulations* required this facility to be built. In its reply submissions, the Town of Mahone Bay noted:

Obviously there is no legislation mandating that Mahone Bay construct its own renewable generation. Mahone Bay never suggested this to be the case. The point is that Mahone Bay has a legislative obligation to procure increasing amounts of renewable electricity for its customers by 2030. Mahone Bay could remain passive in the face of this requirement, and simply rely on purchases from NS Power to be compliant with the requirements of Section 6B(1) of the Regulations. Doing so would leave Mahone Bay at the mercy of NS Power rate increases, which are expected to be substantive in the coming decades as part of the clean energy transition and the early retirement of Nova Scotia's coal plants. To the extent that Mahone Bay wishes to explore alternatives in the wholesale market, it needs to

be mindful of its legislative obligations in Section 6B(1) to ensure a significant portion of its future supply will be generated from renewable sources.

[M12307, Reply Submissions, Town of Mahone Bay, p. 4]

[22] The operating and maintenance costs the Towns used in their financial model were based on a September 2023 technical report by the National Renewable Energy Laboratory (NREL) in the United States. The Towns submitted that this provided an independent assessment of potential operating and maintenance costs over the life of a solar garden project. It was also noted that these costs were consistent with Berwick's experience to date. Mahone Bay and Antigonish said it was too early to determine how their actual operating and maintenance costs would compare to the NREL estimates.

[23] Mr. Dupuis questioned the use of the NREL estimates and said prices obtained from an operating and maintenance request for proposals (RFP) for the solar gardens prepared by AREA would have been a more appropriate estimate. In its reply submissions, the Town of Mahone Bay said:

Mr. Dupuis also cites the RFP placed by AREA in December 2023 for O&M services for the project, but it is important to note that AREA did not accept any proposals as a result of this RFP. The responses were limited and since that time, the municipal utilities have collectively decided to source their O&M services separately. Mahone Bay has taken reasonable and prudent steps throughout this process to guide the procurement and construction aspects of the solar garden project, including the use of third party experts such as Strum Engineering and Zon Engineering. Mahone Bay is also a member of the Maritime Municipal Electric Utility Alliance, which includes Saint John Energy, Edmundston Energy, the Perth-Andover Electric Light Commission, and the City of Summerside. These utilities have experience with solar garden projects, particularly the City of Summerside which officially energized a 21.6 MW solar project on January 16, 2024. Mahone Bay has benefited from its collaboration with these utilities, as well as the other utilities in Nova Scotia. Should issues arise in future requiring additional capital and/or operation and maintenance spending not foreseen at this time, the Board retains the jurisdiction as part of the General Rate Application process to ensure that the costs of providing safe and adequate service to be charged to Mahone Bay's customers are prudently incurred.
[footnote omitted]

[M12307, Reply Submissions, Town of Mahone Bay, p. 7]

[24] Mr. Dupuis also raised several concerns about factors that could influence the cost and revenue estimates submitted by the Towns in their financial model, such as

panel-racking deflection, equipment operating temperatures, uninsured risks, reduced demand, and variance from planned to actual generation. Mr. Dupuis questioned whether risks might materialize and result in the Town of Mahone Bay's customers having to pay more for electricity than they would have if their supply was simply obtained from NS Power. In its reply submissions, the Town of Mahone Bay said:

Mr. Dupuis next raises a host of speculative and largely hypothetical questions regarding the risks of placing the assets into rate base, including panel racking deflection, equipment operating temperature ratings, CSA/cUL certification, and insurance, followed by questions on the financials. Mr. Dupuis's general concern appears to be that the levelized cost of energy will climb above NS Power's municipal rates and commit Mahone Bay to long-term rates higher than the rest of Nova Scotia.

As discussed below, Mahone Bay can assure the Board that it is committed to ensuring that the rates associated with the solar garden project remain at or below the comparable rates charged by NS Power for electricity over the life of the project. This is precisely why the original intent was to use a power purchase agreement structure similar to the Ellershouse Wind Project, which would have left some of the risks cited by Mr. Dupuis with the Town rather than the utility and its ratepayers.

[M12307, Reply Submissions, Town of Mahone Bay, pp. 6-7]

[25] The Town of Mahone Bay also noted that benefits arising from ownership of the solar garden, such as the potential sale of excess renewable attributes associated with the energy produced from the facility, would be applied to the benefit of ratepayers.

[26] The Consumer Advocate reviewed the applications but did not file submissions with the Board. The Small Business Advocate noted that the Towns did not consider options for renewable energy and there was "a great deal of uncertainty surrounding the total costs of the project and the allocation of costs and grant funding between the Towns".

[27] In response to the Small Business Advocate's submissions, the Town of Mahone Bay submitted:

Mahone Bay agrees with the Small Business Advocate that the approval of the solar garden will impact customer rates in the future, and therefore the Board should consider the proposed rates in comparison to other public utilities. The financial analysis provided in this Application appropriately compares the reasonableness and prudence of proceeding

with the solar garden to the status quo alternative of purchasing electricity from NS Power. While specific renewable projects can and are being explored with Independent Power Producers, such negotiations are complex, costly, and fraught with uncertainty. Simply put, the small municipal electric utilities in Nova Scotia operate in a market where the main (and too often only) alternative is NS Power.

[M12307, Reply Submissions, Town of Mahone Bay, p. 3]

3.1 Findings

[28] The Board finds that the solar garden projects are justified. The Board accepts the Towns' evidence and submissions that the projects are likely to provide both financial and strategic benefits to customers in the Towns. The Board agrees with the Towns' submissions that additional 100% renewable energy resources will provide the Towns with more flexibility when considering alternatives to NS Power for their electricity.

[29] Overall, the Board finds the financial model provided by the Towns to be reasonable, but the Board believes the Towns could have provided better information in their applications. For example, a closer review of actual operating costs experienced by the Towns or experience from the members of the Maritime Municipal Utility Alliance might have provided better information than the American data in the NREL study. Additionally, some consideration of sensitivities around key estimates, including costs, revenues, and interest and discount rates, could have provided a more robust picture of the economic justification for the project. That said, the Board notes that the strategic value of optionality and flexibility provided by these assets would not be reflected in a model such as the one presented in these applications.

[30] Additionally, the Board cautions the Towns that although the delivery of energy at a cost that is lower than NS Power's Municipal Tariff is a relevant factor to consider, it is not the only factor. The NSUARB discussed this in its decision approving revised flow-through mechanisms for the Towns:

[64] As there is nothing before the Board in this application that would trigger any sort of prudence review, the Board agrees with the MEUs that issues relating to prudence do not need to be decided in this proceeding. That said, the Board notes that it does not necessarily agree that any power purchase agreement that costs ratepayers the same or less than the NS Power Municipal Tariff should automatically be considered prudent. As noted by Bates White, that approach does not consider the ancillary services provided by NS Power, such as a Backup and Top-up power, among other things. The Board also agrees that a power purchase agreement with rates exceeding the NS Power Municipal Tariff may be prudent, depending on the circumstances.

[2024 NSUARB 203]

[31] While the NSUARB made this comment in the context of a prudence review of new resources included in purchased power costs, similar considerations would apply in approving capital projects.

[32] The Towns' applications did not consider alternatives that may have resulted in energy costs even lower than NS Power's Municipal Tariff. In its reply submissions, the Town of Mahone Bay said since "the avoided cost of NS Power represents the most likely alternative to the solar garden project, that is the appropriate benchmark to use to assess the reasonableness and prudence of the proposed expenditures".

[33] In the circumstances of this case, the Board accepts that the ICIP funding that was available for these projects allowed the Towns to develop projects with the support of the federal and provincial governments that would not otherwise have been economically open to them. The federal and provincial governments will pay about half of the capital costs for the solar gardens, on behalf of the Towns' customers. It seems unlikely that, without such support, the Towns would have been able to develop comparable or more cost-effective renewable projects on their own that would provide the same strategic value.

4.0 CONCERNS ABOUT CONSTRUCTION METHODS, MAINTENANCE AND OPERATIONS

[34] Submissions received from Mr. Dupuis and the Letters of Comment filed about the Antigonish and Berwick applications raise a variety of concerns about whether the solar gardens were constructed properly and will be maintained and operated appropriately. The Board notes that the purpose of these applications was not to review whether the Towns had prudently constructed the solar gardens (in terms of the method or manner of construction). Indeed, applications under s. 35 of the *Public Utilities Act* typically occur before construction starts. If questions about the way these facilities have been built are raised in future proceedings and suggest the facilities may have been constructed imprudently, those questions can be explored, and if necessary, costs can be disallowed.

[35] Likewise, the Towns have ongoing responsibilities to prudently operate and maintain their assets. If questions are reasonably raised in future proceedings suggesting this is not being done, these matters can be reviewed, and costs can be refused or disallowed if a finding of imprudence is made.

5.0 ENERGY AND REGULATORY BOARDS ACT FACTORS

[36] Subsection 6(2) of the *Energy and Regulatory Boards Act* states:

(2) In approving or fixing rates, tolls, charges, tariffs, capital applications and all other matters over which the Energy Board has authority, the Board shall give appropriate consideration to the extent to which such rates, tolls, charges, tariffs, capital applications or other matters

(a) support competition and innovation in the provision of energy resources in the Province;

(b) support the development of a competitive electricity market;

(c) ensure the provision of safe, secure, reliable and economical energy supply in the Province;

(d) support sustainable development and sustainable prosperity; and

(e) support such other factors as prescribed by the regulations,

with the goal of approving rates, tolls, charges, tariffs, capital applications or other matters that are consistent with the purpose of this Act, the *More Access to Energy Act* and the regulations.

[37] The parties did not specifically canvass these factors in evidence or submissions in this proceeding. Although the Board finds that the economic and strategic justification considered above is sufficient to approve the applications, the Board also notes, as a general observation, that the factors to be considered under clauses 6(2)(a)-(d) appear to be positively reflected in these applications.

6.0 CONTRAVENTION OF THE *PUBLIC UTILITIES ACT* AND ADMINISTRATIVE PENALTIES

[38] In early submissions to the Board, Mr. Dupuis inquired whether the Board's review of the solar garden projects would consider the Towns' alleged violations of the *Public Utilities Act* in failing to seek approval under s. 35 before developing these projects. As noted in the Board's letter of June 27, 2025, the Board addressed the construction of the community solar gardens under s. 35 of the *Public Utilities Act* in its earlier decision by directing the Towns to apply for approval of the solar gardens by June 1, 2025 (2024 NSUARB 209). The circumstances in that application were somewhat novel, and the Towns fully complied with the Board's directive. The Board also noted in its letter that the alleged violation of s. 35 would not be considered in this proceeding and that it did not intend to initiate another proceeding to do so.

[39] Mr. Dupuis later asked the Board to consider whether administrative penalties were warranted. The Board finds they are not. The Towns believed that they were pursuing development of these projects in a way that would not require an approval under s. 35 of the *Public Utilities Act*. When the Board raised concerns about this, the Towns addressed the matter by applying to the Board for a formal ruling on the issue. Following the Board's ruling, the Towns followed the directive to proceed with s. 35 applications.

7.0 DON REGAN

[40] The Board was saddened to learn of the passing of Don Regan in August 2025, when closing submissions were being filed in this proceeding. Mr. Regan was the long-time superintendent of the Berwick Electric Commission and his contributions to regulatory proceedings involving electricity matters in the Province of Nova Scotia over the decades earned him the respect of the Board and colleagues alike. He worked tirelessly to improve the situation for municipal electric utilities in Nova Scotia. He will be missed.

8.0 CONCLUSION

[41] The Board approves the Towns' solar projects under s. 35 of the *Public Utilities Act*.

[42] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 7th day of November 2025.



Stephen T. McGrath



Roland A. Deveau



Richard J. Melanson