

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF THE ELECTRICITY ACT

- and -

IN THE MATTER OF AN APPLICATION by the **PROCUREMENT ADMINISTRATOR** for
Approval of a Standard Form Power Purchase Agreement

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

APPLICANT: **POWER ADVISORY LLC**
Michael Killeavy, Counsel

**FORMAL
INTERVENORS:** **CONSUMER ADVOCATE**
David J. Roberts, Counsel
Michael Murphy, Counsel

SMALL BUSINESS ADVOCATE
Melissa P. MacAdam, Counsel

CANADIAN RENEWABLE ENERGY ASSOCIATION
Eddie Oldfield

INDUSTRIAL GROUP
Nancy G. Rubin, K.C.
Brianne Rudderham, Counsel

**NATURAL FORCES DEVELOPMENTS LP and
RMSENERGY LTD.**
Amy Pellerin

NOVA SCOTIA POWER INCORPORATED
Blake Williams, Counsel

SWEB DEVELOPMENT LP
Stefan Karkulik

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

FINAL SUBMISSIONS: October 19, 2026

DECISION DATE: **October 30, 2026**

DECISION: The proposed Power Purchase Agreement is approved as revised by the Procurement Administrator in its reply comments and in this decision.

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1.0 INTRODUCTION

[1] Power Advisory LLC, the Procurement Administrator appointed by the Province, applied to the Nova Scotia Energy Board under s. 37 of the *Renewable Electricity Regulations*, NS Reg 155/2010, for approval of a Power Purchase Agreement (PPA) for the purchase of renewable low-impact electricity from Independent Power Producers under the Green Choice Program. The currently proposed PPA is based on the previous Green Choice Program PPA approved by the Nova Scotia Utility and Review Board (NSUARB) in 2024. Before submitting the proposed PPA for approval, the Procurement Administrator consulted with interested parties and these consultations informed the content of the proposed PPA.

[2] The Board considered the application in a paper process, with written comments from interested parties completed by September 28, 2026.

[3] Having reviewed the Procurement Administrator's application and the parties' submissions, the Board approves the PPA subject to amendments to be provided in a compliance filing.

2.0 BACKGROUND

[4] On August 17, 2026, Power Advisory LLC, acting as the Procurement Administrator (PA) applied to the Board under s. 37 of the *Renewable Electricity Regulations* for approval of the PPA for the purchase of renewable low-impact electricity from Independent Power Producers under the Green Choice Program. By Order in Council 2026-45, dated February 17, 2026, the Governor in Council appointed Power

Advisory LLC as the PA for a two-year term for the procurement of renewable energy by means of one or more Requests for Proposal (RFP).

[5] The Province of Nova Scotia created the Green Choice Program to provide large energy consumers in Nova Scotia a pathway to local renewable electricity supply for up to 100% of their electricity use by subscribing to the program. The expected RFP is targeting up to 1,200 GWh (approximately 350 MW) of annual Renewable Low-Impact Electricity supply from onshore wind energy resources.

[6] The PA stated that the proposed PPA is based on the previous Green Choice Program PPA approved by the NSUARB in a Decision dated May 28, 2024, 2024 NSUARB 90, in Matter M11455 (2024 PPA). Following a compliance filing, the NSUARB issued its Order approving the 2024 PPA on June 6, 2024.

[7] On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, Sch A, the NSUARB was succeeded by the Nova Scotia Energy Board.

[8] The PA posted its first draft of the PPA to its procurement website on June 2, 2026, and a webinar for interested parties was held on June 18, 2026. The PA reviewed the comments from interested parties due by June 25, 2026, which formed the basis for the proposed standard form PPA that is the subject matter of the present application. Nova Scotia Power Incorporated (NS Power) will be the counterparty for the PPA. The PPA term is for 25 years following the achievement of Commercial Operation of a Project. The PPA pays the Seller, i.e., a selected Proponent in the RFP, an Energy Rate (i.e., \$/MWh) for energy production over the term of the PPA.

[9] Under the *Electricity Act*, SNS 2025, c 18, and the *Renewable Electricity Regulations*, the Board's role in this matter is limited to reviewing and approving, rejecting,

or amending the proposed form of the PPA. The Board has no jurisdiction to review the process used by the PA to solicit proposals, or to review the pricing, or the amount of capacity and energy to be acquired under the process.

[10] The Board considered the application in a paper process, with comments from interested parties due September 14, 2026, followed by reply comments from the PA. Like its approach with the review of previous PPAs, including in the 2024 PPA, the Board advised interested parties that it intended to review the proposed PPA to see whether, as a whole, it appears reasonable in the circumstances. Comments were received from the Consumer Advocate, Small Business Advocate, SWEB Development Limited Partnership (SWEB), Natural Forces Developments LP (Natural Forces) on its own behalf and on behalf of RMSenergy Ltd., the Canadian Renewable Energy Association (CanREA), the Industrial Group and NS Power. The PA filed its reply comments on September 28, 2026.

[11] Several issues were raised by interested parties, which the Board will address below. The capitalized terms referenced in this decision relating to the PPA are defined terms in the PPA.

3.0 ANALYSIS AND FINDINGS

3.1 Pre-COD Performance Security

3.1.1 Submissions

[12] The draft RFP (Appendix E to the application) states at s. 3.10(a)(iii) that a Selected Proponent must execute and deliver the Pre-Commercial Operation Date (Pre-COD) performance security along with the executed PPA within 20 business days of the

PPA Receipt Date. The Consumer Advocate noted that s. 6.1 of the draft PPA does not provide a specific timeline for the Seller to provide the Pre-COD Performance Security. The section says the Pre-COD performance security must be provided before Commercial Operation. The Consumer Advocate submitted it may be beneficial to revise s. 6.1 of the PPA if the intent is to require the security concurrently with execution of the PPA.

[13] In its submissions, NS Power stated it raised this point with the PA during consultation and was advised that the timing for providing the Pre-COD Performance Security would be clarified in the RFP process. NS Power noted that it does not have legal authority to enforce the provisions of the RFP documentation. Given the issue was now raised by another intervenor, NS Power submitted it would be beneficial to specify a required deadline for posting of the Performance Security in s. 6.1(a) of the PPA that corresponds to that provided in s. 3.10 of the draft RFP.

[14] The application stated the Pre-COD Performance Security was reduced to better align with other jurisdictions, with which Nova Scotia is competing for development capital. The amount was reduced to \$35,000/MW in the draft PPA from the \$125,000/MW amount in the 2024 PPA. The Consumer Advocate and the Industrial Group raised a concern about this reduction, stating that no jurisdictional scan was provided to support this reduction. The Industrial Group noted that this weakened ratepayer protection during the “highest-risk development period”, submitting that this security:

... is the primary financial deterrent against a Seller abandoning a project mid-development after securing a PPA award (crowding out other bidders and delaying portfolio targets); a lower amount increases the risk that walking away is a low-cost option for a marginal developer, with re-procurement costs and delay risk landing on ratepayers ...

[Industrial Group Submissions, p. 3].

3.1.2 Power Advisory Reply

[15] The PA said the language in s. 6.1(a) derogated from the Selected Proponent's obligation to provide the Performance Security in the Pre-COD Amount upon execution of the PPA. However, it revised s. 6.1 in an Amended PPA which it filed with its reply comments to provide clarity by saying the Pre-COD Amount was due "from the Effective Date to Commercial Operation" rather than "prior to Commercial Operation." The Board notes that "Effective Date" is a defined term in the PPA, being the date first mentioned in the PPA.

[16] In terms of the reduced Performance Security amount, the PA stated that other jurisdictions have lower performance security amounts than the previously approved 2024 PPA: Ontario \$35,000/MW, reduced to \$20,000/MW at COD; BC Hydro \$60,000/MW; Hydro Quebec \$15,000/MW at contract signing with an additional \$15,000/MW 18 months before COD.

3.1.3 Findings

[17] The Board is satisfied that the revision to s. 6.1 of the PPA clarifies the timing for provision of the Pre-COD Performance Security.

[18] The reduction in the Pre-COD Performance Security amount from \$125,000/MW to \$35,000/MW is material. The PA stated that it was reduced to better align with other jurisdictions, with which Nova Scotia is competing for development capital. The Consumer Advocate acknowledged that having a materially higher performance security could disincentivize development. While the Board recognizes the Industrial Group's concern that this reduction increases the risk for ratepayers of developers abandoning a project, the reduced amount is within the range of similar

security amounts required in other Canadian jurisdictions. In the circumstances, the Board concludes that the proposed amount is appropriate.

3.2 Exhibit H Calculation of the Adjusted Price (Energy Rate)

3.2.1 Submissions

[19] The draft PPA provides for a prescribed indexing of the Energy Rate for inflation that differs from what was contained in the 2024 PPA. The PA explained the reasons for the change:

Pre-COD and Post-COD Indexing of the Energy Rate – The 2024 Board-approved PPA only provided for escalation of the Energy Rate due to changes in CPI for a specified adjustment period. The GCP PPA provides for pre-Commercial Operation Date escalation based on the relative change in CPI and then after the Commercial Operation Date allows for 20 percent only of the Energy Rate to be escalated based on annual changes in CPI. This 20 percent of the Energy Rate is the amount attributable to ongoing operation and maintenance (“O&M”) costs over the term of the PPA. When developers are forced to lock in their Energy Rate during operation of the Facility, they must try to estimate future macroeconomic conditions and their impact on O&M costs. Unforeseen spikes in inflation can negatively impact project economics and threaten the continued financial viability of the Facility. To protect themselves against unexpected inflation, developers will add a conservative risk premium to the Energy Rate. In allowing for expanded pre-Commercial Operation Date escalation and then escalating a fixed portion of the Energy Rate thereafter, we remove the incentive to inflate the Energy Rate and reduce the risk of project attrition. Adjusting a portion of the Energy Rate for inflation is common in other jurisdictions, such as Ontario, Québec, and, British Columbia.

[Exhibit P-1, p. 7]

[20] The Consumer Advocate submitted that there did not appear to be any information in the application on how the 20% was determined and how it compared to other jurisdictions.

[21] The Industrial Group expressed concern about the “new, open-ended cost pass-through that did not exist in the 2024 Board-approved PPA.” The 2024 PPA only escalated the Energy Rate for the Consumer Price Index (CPI) during a fixed adjustment period ending by December 31, 2027, or COD, whichever was earlier. The proposed draft PPA provides for pre-COD escalation plus ongoing escalation of 20% of the Energy Rate for the full 25-year term. The Industrial Group submitted:

The IG recommends that the PA provide (or the Board direct) an analysis of the expected ratepayer cost of extending CPI indexation to the full 25-year term and demonstrate why 20% of the Energy Rate is the appropriate portion to escalate rather than a lower or capped amount. Failing that, the IG recommends that the Board direct that the post-COD CPI indexation be limited to a fixed adjustment period (as under the 2024 Board-approved PPA) rather than applying for the full 25-year term.

[Industrial Group Submissions, p. 1]

[22] CanREA asked that the annual escalation for CPI be increased from 20% to the 25-30% range Post-COD given “the economic context (growing inflation, tariff fluctuation, supply chain constraints).” In the alternative, it suggested allowing adjustments for specific components like steel, aluminum and copper. It noted British Columbia applied 30% of BC CPI in the 2024 and 2025 Calls for Power, and Hydro Quebec uses a flexible indexing framework of 20% to 50% of Canadian CPI since 2021.

[23] Natural Forces recommended that all references to CPI in the PPA be amended so that CPI is defined consistently as “All Items”, rather than “All Items excluding Energy,” including for the Energy Rate indexation and the Renewable Attribute Loss Rate. It noted that s. 1.1 of the PPA defines CPI for indexation of the Energy Rate as the Consumer Price Index for “All Items excluding energy.” Conversely, it said NS Power benefits from CPI indexation using “All Items” for the Renewable Attribute Loss Rate, which it says results:

...in asymmetric inflation treatment within the same Agreement. This imbalance is not commercially reasonable and is inconsistent with Good Utility Practice, which requires balanced and predictable risk allocation. To ensure consistency, fairness, and accurate inflation tracking, all CPI references in the Agreement should use the “All Items” index.

[Natural Forces Submissions, September 14, 2026, p. 2]

[24] Natural Forces noted that excluding energy from the indexation of the Energy Rate is inappropriate because energy costs represent a “significant component of the Seller’s operating cost profile, particularly for renewable energy facilities that rely on energy-intensive construction, transportation, and maintenance inputs.”

[25] SWEB also had concerns about this provision. It noted that in the draft PPA, the CPI adjustment in Exhibit H starts on the Effective Date (i.e., the time of execution), but no target execution date has been communicated in the RFP. SWEB stated that Proponents have previously experienced delays in the procurement process that were out of their control such as the evaluation process and time for NS Power to execute the PPA, with the planned Effective Date sometimes delayed several months. SWEB indicated that Proponents rely on being able to execute a PPA by a certain date previously communicated by the PA, which developers can model in their proposals. It said such delays impose added inflation and timeline risk for successful Proponents.

[26] To account for such risk, SWEB submitted that CPI_{ED} (reflecting the base date for the CPI adjustment) be defined as the earlier of a) the CPI in the month in which the Effective Date occurs; and b) the CPI of "MONTH 2027", where MONTH would be the anticipated date for execution of the PPA as outlined in the final RFP. SWEB noted that the previous Green Choice PPA had this suggested change which was adopted by the prior PA and approved by the Board.

3.2.2 Power Advisory Reply

[27] The PA did not agree that the PPA should be revised. In response to the Industrial Group's concerns about indexing continuing on the Energy Rate through the entire 25-year term, the PA stated that including a CPI escalation to 20% will lead to greater rate stability for ratepayers while reducing inflation risk for Sellers. It said this should reduce proposed Energy Rates in this procurement relative to Energy Rates under a fixed Energy Rate because the latter would include a premium in proposals for risk exposure on inflation. It said this would reduce the near-term Energy Rates paid by ratepayers and make for more stable annual rate adjustments overall. It repeated that this

is common practice in other jurisdictions. It said escalating 20% of the Energy Rate is consistent with reported studies by the National Laboratory of the Rockies and the International Renewable Energy Agency, providing hyperlinks for both sources. The PA noted that in Ontario, 20% is indexed to CPI, while in BC Hydro's 2025 Call for Power, 30% is indexed to CPI.

[28] In response to Natural Forces' submission that the CPI be revised to include "All Items", rather than "All Items excluding Energy", Power Advisory noted that if the Energy Rate were indexed to a CPI series that includes energy prices, the Seller would effectively get compensated twice for energy price movements (i.e., once on the Energy Rate itself, and again through an index that rises specifically because energy costs increased). It stated that Post-COD, the Energy Rate only needs to escalate to account for inflation for O&M costs, in which fuel is not a significant factor. As to indexing that applies to the Renewable Energy Loss Rate for NS Power, this has typically been designed to compensate for the loss of Renewable Energy Certificates (RECs), which are not energy.

[29] In response to SWEB's suggestion that an adjustment be allowed for any delays in the execution of the PPA, the PA did not agree that there would be any material delay in the execution of PPAs.

3.2.3 Findings

[30] The Board accepts the PA's submissions on the points raised by the Intervenor. First, the Board agrees that the indexing on the Energy Rate proposed in the PPA should reduce the proposed rates in this procurement relative to those that would be proposed as a fixed rate because the latter would likely include a premium to account for risk exposure on inflation. This indexation is common practice in other jurisdictions,

and the Board is satisfied that the 20% component is reasonable relative to those jurisdictions.

[31] The Board also accepts the PA's submission that revising the CPI to include "All Items" would lead to double compensation for Proponents. Further, the Renewable Energy Loss Rate is designed to compensate for the loss of RECs.

[32] The Board is also satisfied that there should be no material delay in the execution of the PPAs and does not direct any revision in that regard.

3.3 Energy Payments during the Interim Period

3.3.1 Submissions

[33] Natural Forces recommended that s. 5.1(a)(i) be amended so that Energy Payments during the Interim Period be made at 100% of the Energy Rate, rather than 75%. It submitted this would ensure the Seller can recover its full operating costs during this period. It stated that this reduction is "punitive and commercially unreasonable because the Seller will incur full operating expenses during the Interim Period, including staffing, maintenance, forecasting, compliance, and all other operational obligations" required under the PPA (s. 3). It added that making this amendment would maintain the financial integrity of the project during the transition to full Commercial Operation.

3.3.2 Power Advisory Reply

[34] The PA opposed any change in the Energy Payment during the Interim Period:

The full Energy Rate ought not to be paid until the Seller has satisfied all the requirements of Commercial Operation in s. 2.4 of the PPA. This provides an additional incentive for the Seller to achieve Commercial Operation, i.e., if the full Energy Rate could be earned before all the requirements in s. 2.4 of the PPA were satisfied, there is no motivation on the part of the Seller to comply with these requirements at all.

[PA Reply Submissions, September 28, 2026, Exhibit A, p. 15]

[35] The PA stated that Ontario does not make any payments under its contracts until a project achieves commercial operation, while BC Hydro pays a test energy price of \$40/MWh for any electricity generated during testing that is done as part of satisfying the COD requirements.

3.3.3 Findings

[36] The Board notes that the 75% Energy Payment under s. 5.1(a)(i) during the Interim Period remains unchanged from the 2024 PPA. The Board accepts the PA's evidence that this treatment during the Interim Period is superior to other jurisdictions, like Ontario and BC. The Board finds that this is a reasonable commercial term to ensure the Seller remains incented to achieve Commercial Operation. The Board denies Natural Forces' proposed amendment.

3.4 Tariff Adjustment

[37] Referencing the 25% global tariff on steel-derivative products, such as wind towers, intervenors commented on the need to provide some sort of tariff relief. The PA noted that any tariffs or similar duties that are applicable as of the Proposal Submission Deadline would be incorporated into the proponent's Energy Rate. However, to address the possibility of tariffs or similar duties being imposed after the Proposal Submission Deadline, s. 16.9 of the PPA enables a Seller to trigger a process to increase the Energy Rate if the Capital Cost increases more than 7.5%. If the parties disagree on a revised Energy Rate, an Independent Expert can be appointed by the parties to resolve the matter.

[38] Alternatively, if tariffs are reduced or eliminated, s. 16.10 of the PPA allows NS Power with the ability to request the Seller to provide the impact such a change would have on the Capital Cost and to request a revised Energy Rate. That request can be

made at any time prior to, or within six months following the Scheduled Commercial Operation Date. If the parties disagree on a revised Energy Rate, the dispute can be referred to an Independent Expert for resolution.

3.4.1 Submissions

[39] The Consumer Advocate noted that the proposed tariff adjustment mechanism is symmetrical and responds to the current high degree of uncertainty. However, several parties raised concerns with parts of ss. 16.9 and 16.10.

[40] The Industrial Group expressed concern that the tariff determination made by the Independent Expert is final, binding, and not appealable, which means that ratepayers would absorb a tariff-driven cost increase through a rate adjustment in a process in which they had no input.

[41] CanREA stated that the 7.5% threshold of increased Capital Costs was too high. It estimated that existing tariffs would increase Capital Costs between 2.5% and 5% so Sellers would have to fully absorb the additional cost. CanREA recommended that the threshold be decreased to between 2.5% and 5% to ensure more competitive bids and financial viability of projects.

[42] Natural Forces recommended removing the 7.5% minimum threshold in s. 16.9 so that proponents would receive full protection from new tariffs. It stated that even modest tariff increases below 7.5% can result in material cost impacts that proponents cannot control or mitigate.

[43] In addition, Natural Forces recommended removing Section 16.10 in its entirety since it provides a downward adjustment benefiting NS Power but offers no relief for many cost increases borne by proponents. Natural Forces also took exception to s. 16.10 which allows a Tariff Reduction Event to occur at any time prior to, or within six

months following the Scheduled Commercial Operation Date. Natural Forces recommended amending s. 16.10 so that such events could only occur prior to the proponent's financial close so that the risk of undermining financial viability of the project is avoided.

[44] SWEB raised several concerns about s. 16.9. It recommended an amendment permitting a Seller to deliver a tariff adjustment notice no later than six months after the date of Commercial Operation, rather than the current restriction of six months prior to the Scheduled Commercial Operation Date. It also recommended additional wording that would deem NS Power's acceptance of a Seller's proposed revised Energy Rate if the 20-business day period had lapsed.

[45] In addition, SWEB stated that the minimum threshold of a 7.5% increase in Capital Costs resulting from tariffs or duties is unreasonably high and should be lowered to 2.5%. SWEB stated that its risk analysis for new tariffs shows the probability and potential impact of new tariffs as very high which will lead to developers reflecting that risk in their Energy Rate bids. Consequently, ratepayers could be paying for a risk which may not materialize.

[46] SWEB also disagreed with the condition that a Seller and NS Power should equally bear the cost of the Independent Expert if its determination falls between the positions of the two parties. SWEB suggested the parties should bear costs in proportion to the difference between their proposed rate and the rate determined by the Independent Expert.

3.4.2 Power Advisory Reply

[47] In its reply, the PA did not address the concern raised by the Industrial Group about the lack of an appeal process for the tariff determination.

[48] Regarding CanREA's recommendation to reduce the minimum threshold for a Capital Cost increase from 7.5% to between 5% and 7.5%, the PA disagreed with that suggestion. The PA stated that a Seller could include that risk in its Energy Rate which would avoid triggering the adjustment mechanism for minor, easily absorbed cost fluctuations. A similar response was provided to Natural Forces' recommendation of removing the 7.5% minimum threshold and to SWEB's recommendation to reduce the threshold to 2.5%.

[49] On the timing issue raised by Natural Forces and SWEB regarding s. 16.10 allowing a Tariff Reduction Event to occur at any time prior to, or within six months following the Scheduled Commercial Operation Date, the PA stated that long lead-time items would be most exposed to tariffs, but those items would generally be ordered earlier than six months prior to the Scheduled Commercial Operation Date. It noted that the conditions in the PPA provide a degree of certainty to parties.

[50] The PA did not agree with SWEB's suggestion of having deemed acceptance of a Seller's proposed revised Energy Rate if the 20-business day period had lapsed. He said NS Power does not control the content in the Seller Tariff Adjustment Notice. In addition, the PA also disagreed with SWEB's proposal to prorate the Independent Expert cost since it seemed to be an unnecessary complication to the process.

3.4.3 Findings

[51] Among the concerns raised in the submissions, there were two main issues with ss. 16.9 and 16.10 of the PPA. However, the Board notes the Consumer Advocate's submission that the proposed tariff adjustment mechanism is symmetrical and responds to the current high degree of uncertainty.

[52] The first issue is what percentage increase, if any, in Capital Cost associated with tariffs should be the threshold that triggers a request for adjustment to the Energy Rate. Instead of a threshold of 7.5%, parties suggested either 2.5% or a range between 2.5% and 5%. The PA explained that Proponents can include an amount in their Energy Rate bid to account for the risk of tariff related Capital Cost increases of up to 7.5%. He also explained that reducing the threshold could lead to multiple requests for Energy Rate adjustments for minor cost fluctuations which could easily be absorbed by the Seller. The Board accepts the PA's position as a reasonable approach to addressing potential Capital Cost increases resulting from the imposition of tariffs.

[53] The second issue relates to the timing when such a request for Energy Rate adjustment can be made. For a Seller's request, the recommendation was to move from six months prior to Scheduled Commercial Operation Date, to no later than six months after the date of Commercial Operation. For NS Power's request, the recommendation was to limit Tariff Reduction Events to only occur prior to the proponent's financial close, rather than at any time prior to, or within six months following the Scheduled Commercial Operation Date.

[54] In response, the PA reasoned that items most affected by tariffs are generally items requiring long lead times and therefore would be ordered sooner than six months prior to the Scheduled Commercial Operation Date. Therefore, tariff impacts would be known to the proponent well before the Scheduled Commercial Operation date. Alternatively, if tariffs are reduced or eliminated ratepayers should not bear an inflated Energy Rate for the duration of a long-term contract. If those tariff reductions are made known within six months after the Scheduled Commercial Operation Date, it is appropriate

for the seller to provide NS Power with the tariff reduction impact analysis and a proposed revised Energy Rate. The Board agrees with the terms proposed by the PA.

[55] SWEB also recommended that a Seller's notice of a Tariff Adjustment Event and proposed revised Energy Rate be deemed accepted if the 20 business days for NS Power to respond have elapsed. SWEB considered this to be crucial to avoid a potential default of the Seller under its financing agreements. The PA did not agree with that recommendation. Clause 16.9 d) states:

Upon NSPI's receipt of a Seller Tariff Adjustment Notice, NSPI shall respond by notice to the Seller within twenty (20) Business Days of its receipt of the Seller Tariff Adjustment Notice ("**NSPI Tariff Adjustment Notice Reply**"). The NSPI Tariff Adjustment Notice Reply shall identify any supplemental information it may require to verify, acting reasonably, that a Seller Tariff Adjustment Event has occurred, the quantum of the Proposed Revised Energy Rate, whether it accepts or rejects that a Seller Tariff Adjustment Event has occurred or accepts or rejects the Proposed Revised Energy Rate. [Emphasis in original]

[Exhibit P-1(i), p. 72]

[56] The Board recognizes that additional time may be required for NS Power to collect the information needed to fully consider a Seller Tariff Adjustment Notice. It also anticipates that Sellers who are concerned that an extended review period might impact its financing agreements would proactively take steps to notify and consult with the financing entity before a default occurs. The Board does not accept SWEB's recommendation to grant deemed acceptance if the 20 business day period is exceeded.

[57] Regarding SWEB's suggestion that parties should bear costs in proportion to the difference between their proposed rate and the rate determined by the Independent Expert, the Board accepts the PA's position that such an arrangement adds an unnecessary complication to the cost-sharing process.

3.5 Curtailment Payment

3.5.1 Submissions

[58] The draft standard form PPA enclosed with the application contained a drafting note stating that NS Power was currently working with the System Operator to determine the delay in paying compensation after a curtailment.

[59] SWEB and Natural Forces expressed concerns with the timing of curtailment compensation under s. 5.1 of the PPA, indicating that annual payments would pose challenges for proponents in financing their projects. They suggested that monthly payments would provide a stable cash flow and help maintain debt-service coverage ratios required by lenders. The Industrial Group submitted that the timing of compensation payments should be defined to provide visibility for the Board and ratepayers on how curtailment costs could impact rates.

[60] In its submissions, NS Power reported that it had completed its review and proposed the following monthly payment timing:

- Curtailment amounts will be calculated and known at the end of each calendar month;
- NS Power will process and pay curtailment amounts in the month following the month in which the associated energy was billed; and
- Subsequent reviews of metering and settlement data may warrant adjustments to previously paid curtailment amounts, which will be applied on an ongoing basis as they arise.

[NS Power Submissions, September 14, 2026, p. 2]

3.5.2 Power Advisory Reply

[61] The PA adopted the proposal concluded by NS Power and revised s. 5.1(b) in the Amended PPA accordingly.

3.5.3 Findings

[62] The revision to s. 5.1(b) submitted by the PA partially addresses the concerns identified by the Intervenor. However, the Board notes that a reference to annual payments related to foregone Expected Output resulting from curtailment appears in s. 4.2(b), which likely also needs to be adjusted. At the same time, the cross-reference to s. 5.3 is unclear. The Board directs the PA to review this and any other corresponding amendments that need to be made in the PPA and either provide a revised PPA in a compliance filing or explain why no further changes are needed.

3.6 Early Completion Incentive

3.6.1 Submissions

[63] The draft PPA introduces a new 25% Early Completion Incentive. The application stated that this is to “encourage the Seller to achieve Commercial Operation in a timely fashion.” If the Scheduled COD and Commencement Date occur before December 31, 2029, the Energy Rate for any output from the Facility (excluding Excess Energy) will be increased by 25% until December 31, 2030 (s. 5.1(a)(iv)). The PA indicated it had discussed this with the Nova Scotia Department of Energy and IESO Nova Scotia. They considered this incentive had merit to meet Nova Scotia’s 2030 Clean Power Plan. The PA indicated that such an incentive has recently been provided in Ontario.

[64] The Small Business Advocate and the Industrial Group had questions about this new provision in the PPA. The Industrial Group submitted that the PA did not provide any “value-for-money test” to support the added cost of this incentive to be paid by ratepayers. While the Industrial Group acknowledged that there may be “some system-planning value in earlier wind capacity”, the application “does not quantify the expected

ratepayer cost of this premium or demonstrate that the value of early delivery exceeds the incremental payment” except a general assertion that it will help meet Nova Scotia’s 2030 Clean Power Plan. The Industrial Group recommend that the Board direct the PA to provide an economic analysis to justify the introduction of this incentive.

[65] The Small Business Advocate questioned the reason for the incentive, how the 25% premium and its duration were determined, as well as the value achieved by having the Scheduled COD and Commencement Date occur before December 31, 2029.

[66] SWEB also raised a concern about the ability of Proponents to commit to a 2029 Scheduled Commercial Operation Date/In-Service Date (which the PA did not address in its reply):

Adding the current delivery timelines for this equipment of up to 24 months to the expected PPA signature Date mid 2027, and including the time necessary to conduct the System Impact (typically commencing after PPA execution) and Facilities Study, it is **highly unlikely that any Proponent or NSPI would be willing to commit to a 2029 Scheduled Commercial Operation Date/In-Service Date within the PPA/the Generator Interconnection Agreement (GIA).**

In order to allow ratepayers/Participants and the Seller to potentially benefit from an earlier interconnection of an awarded project, we therefore suggest tying the Early Completion Incentive exclusively to an early Commencement Date. We propose the following changes to the second sentence within Section 5.1 (iv) so that it reads as follows:

“If the Commencement Date occurs before December 31, 2029, the Energy Rate shall be multiplied by 1.25 from the Commencement Date until December 31, 2030 (“Early Completion Incentive”). [Emphasis in original]

[SWEB Submissions, p. 6]

3.6.2 Power Advisory Reply

[67] The PA submitted that the Early Completion Incentive was “designed to achieve a federally-mandated policy objective, while being net-positive for rate payers.” It indicated that the provision was introduced to incent the completion of the projects by the end of 2029 so Nova Scotia can meet its 80% renewable energy target and 1,000+ MW of wind energy projects by 2030.

[68] In response to the Small Business Advocate's questions, the PA stated that December 31, 2029, was set based on the 2030 policy objective. The PA said this provides a "sufficient incentive" and that the "proposed multiplier balances rate payer protection with developer risk to encourage early completion and achieve a federally mandated policy objective." The 1.25 multiplier was determined by converting the liquidated damages amount of \$150/MW/calendar day in s. 2.5(d) of the PPA into an Energy Rate amount denominated in \$/MWh, instead of \$/MW, based on the capped damages of 365 days set out in s. 2.5(d)(i). It provided the following cost-benefit analysis:

...If we assume a PPA price of \$75/MWh and average capacity factor of 35%, total premium paid for early delivery of the project would be \$57,487 ($\$75/\text{MW h} \times 0.25 \times 1 \text{ MW} \times 35\% \times 8760 \text{ h/year}$). A year's worth of liquidated damages of late delivery would be \$54,750 ($\$150/\text{MW} \times 1 \text{ MW} \times 365 \text{ days/year}$). They are essentially the same number. The benefit for early delivery balances the cost of late delivery.

[PA Reply Submissions, September 28, 2026, Exhibit A, p. 13]

3.6.3 Findings

[69] The Board is satisfied that the calculation provided by Power Advisory in its response shows that the incentive is essentially cost-neutral as to the benefit of early delivery versus the cost of late delivery. The Board agrees that the Early Completion Incentive does promote the policy objective of meeting the 2030 goals and finds the new provision appropriate as contained in the application.

[70] On October 15, 2026, the Board wrote to the PA, asking it to address SWEB's concern. Specifically, why both the Scheduled Commercial Operation Date and Commencement Date must occur before December 31, 2029, and why achieving the Commencement Date on or before December 31, 2029, would not be sufficient (even if the Scheduled Commercial Operation Date had been identified as a later date).

[71] In its reply dated October 19, 2026, the PA indicated that the Early Completion Incentive was provided to encourage a Seller to have its Facility achieve Commercial Operation before 2030 to meet the policy objectives set out in the *Renewable Electricity Regulations* and the *Environmental Goals and Climate Change Reduction Act*, SNS 2021, c 20. The PA submitted that for system planning purposes, both the Scheduled Commercial Operation Date and Commencement Date must occur before December 31, 2029, because “the System Operator needs to understand what projects are committed to come in before the end of December 31, 2029, that could contribute to the province’s clean energy goals”. The Board accepts this explanation and finds that the provision is appropriate, as proposed by the PA.

3.7 ERIS/NRIS Connection

3.7.1 Submissions

[72] In its application, the PA proposed eliminating the Congestion Management Alternative and Forego Network Upgrade Reimbursement option. Under the existing framework, a Proponent would have the option to select either Energy Resource Interconnection Service (ERIS) or Network Resource Interconnection Service (NRIS), unless anticipated network upgrade costs exceeded a certain threshold, in which case ERIS would be required. The PA ultimately proposed removing the NRIS option and requiring ERIS for all Proponents. The PA submitted that this streamlined approach would expedite response times from IESO Nova Scotia, avoid unnecessary network upgrade expenditures, and protect ratepayer interests.

[73] The Small Business Advocate questioned the specific financial threshold governing interconnection requirements and inquired whether potential cost barriers could disqualify otherwise viable bidders. Additionally, the Small Business Advocate

requested clarification on the timing of deliverability testing during Stage 5 of the evaluation process and whether IESO Nova Scotia currently has the capability to perform this testing.

[74] The Industrial Group sought confirmation that transitioning to an ERIS-only interconnection model would not inadvertently shift additional costs onto ratepayers.

[75] Natural Forces highlighted the financial risks associated with interconnection and network upgrade cost and proposed options, including:

... an Energy Rate adjustment mechanism tied to actual Interconnection and Network Upgrade costs identified in the Facilities Study; or a no-fault termination right for the Seller, without any Termination Payment, where such costs materially exceed Feasibility Study estimates.

[Natural Forces Submissions, p. 1]

3.7.2 Power Advisory Reply

[76] In its reply comments, the PA confirmed its intent to proceed with an ERIS-only approach for this procurement, and removing NRIS applications entirely. The PA stated that this decision followed consultations with IESO Nova Scotia, which recommended the change. Under this framework, IESO Nova Scotia will assess the deliverability of project submissions during Stage 5 of the evaluation process, as outlined in s. 4.5 of the RFP.

[77] Addressing concerns about value and ratepayer impact, the PA explained that the procurement scoring matrix is designed to advance only the most cost-effective projects prior to the deliverability assessment. The PA stated that this methodology protects ratepayers by ensuring infrastructure investments are restricted to those that provide clear, economical long-term system-wide benefits.

[78] In response to Natural Forces' requests for an Energy Rate adjustment mechanism or, alternatively, a no-fault termination right to address material increases in

interconnection and network upgrade costs identified through the Facilities study, the PA did not adopt those proposed mechanisms. The PA submitted that with an ERIS-type interconnection, the interconnection costs ought to be capable of estimation. The PA noted that beyond interconnection costs relating to Interconnection Customer's Interconnection Facilities or Transmission Provider's Interconnection Facilities (which are specific to the facility under study), ERIS interconnections generally identify only limited requirements for Network Upgrades attributable to the Project, such as Protection & Control or Remedial Action Schemes design changes.

3.7.3 Findings

[79] The Board accepts the PA's submission to eliminate NRIS, the Congestion Management Alternative and Forego Network Upgrade Reimbursement. In reaching this conclusion, the Board has considered the PA's reasoning to proceed with an ERIS-only approach for this procurement, and removing NRIS applications entirely, as well as its clarification respecting the interaction between the ERIS provisions and s. 33(4) of the *Electricity Act* with respect to curtailment compensation for the ERIS Interconnection Customers. The Board concludes that, notwithstanding the requirement of s. 33(4), the ERIS only option is a specific design choice for this iteration of the Green Choice Program. Under s. 30 of the *Electricity Act*, the development of the Green Choice Program is the responsibility of the Minister, who may delegate some or all of their responsibilities for the Green Choice Program to a third party, including the PA.

3.8 Local Benefits

3.8.1 Submissions

[80] There were a few points raised about the Local Benefits' provisions of the PPA, including confidentiality; the requirement that compliance and enforcement be conducted by NS Power; the disbursement of Local Benefits Shortfall payments and the deadline for both reporting and the payment of Shortfalls.

[81] While points were awarded in the evaluation of proposals in the previous Green Choice Procurement, the Board-approved 2024 PPA did not enforce any commitment to make local expenditures for development and construction. The draft PPA in the present matter requires a Local Benefits Report from the Seller, prepared by an independent third party, outlining the Local Benefits expenditure level. If the Local Benefits expenditure is less than what was committed to in its Proposal, the Seller must pay the difference to NS Power. The reporting and payment must be made within 20 business days of the COD.

[82] The Consumer Advocate supported the new provision generally but questioned why the payment would be made to NS Power and not the Province, given that the intent of the provision is to benefit the Nova Scotian economy rather than NS Power. The Small Business Advocate also questioned why the Shortfall payments would be made to NS Power, how the funds would be tracked, and what the utility intended to do with the funds. Natural Forces had a similar concern about making the Shortfall payment to NS Power, suggesting it should be paid to a government-administered fund. CanREA noted it was unclear if NS Power would then provide the funds to local groups, failing which the purpose of the Local Benefits requirement would be defeated. CanREA suggested that the funds be ultimately distributed to a community-benefit fund.

[83] Natural Forces also submitted that it was unrealistic to expect that Proponents can fully meet their Local Benefits commitments under current market conditions. It said that government and industry associations have repeatedly acknowledged that Nova Scotia lacks sufficient local suppliers to support the current volume of energy projects, including the Green Choice Program, hydrogen projects, NB Power procurements, and other infrastructure initiatives. It stated that the availability of suppliers is outside the control of project owners, even if they intend to maximize local participation. Notwithstanding these concerns, Natural Forces stated that if s. 2.7 remains unchanged, Proponents will face “significant compliance challenges”, submitting that it “will be nearly impossible to complete accurate reporting and determine any shortfall within 20 days of COD, as required by the PPA. Local procurement verification, contract reconciliation, and supplier confirmation cannot be completed within such a compressed timeframe.” Given these circumstances, it recommended that the reporting and payment timeline should be extended to six months to one year after COD, allowing Proponents to produce accurate reporting and make any required payments based on verified data. Similarly, CanREA suggested extending the deadline to 90 days, or even one year. It noted that in past procurements NS Power took longer than 20 days to bill for some interconnection costs and some construction costs are only billed up to six months later. CanREA also recommended that Proponents be allowed to reasonably adjust their quantification of Local Benefits, no later than 30 days after bid selection.

[84] In its submission, SWEB raised confidentiality concerns about the Local Benefits provision, and added that the reporting timeline required from a Seller was not realistic. It recommended that the new Local Benefits provision be removed in its entirety.

In the alternative, it submitted that the reporting timeline should be extended from 20 business days to 12 months after COD, stating that the proposed timeline of 20 business days is not realistic for projects worth hundreds of millions of dollars. In terms of timing, SWEB also noted that certain goods and services are due and payable well after COD, especially in the case of a dispute. Having to deliver a Local Benefits report to NS Power before, and as a condition to, Commercial Operation would result in important gaps in the Local Benefits report.

[85] SWEB questioned the need for an independent third party to verify compliance, saying that it would increase capital costs for the projects.

[86] On confidentiality, SWEB noted that Proponents are subject to confidentiality obligations from its suppliers, particularly for pricing. SWEB suggested suppliers would question why NS Power should have access to such information. It stated that existing standard Non-Disclosure Agreements do not allow Proponents and Sellers to share such information with third parties. SWEB did not agree with the PA's opinion that Non-Disclosure Agreements could be drafted or amended to allow for the release of such information. CanREA expressed similar confidentiality concerns. In addition to the potential difficulty with suppliers, it said some Original Equipment Manufacturers (OEMs) may be reluctant to share commercially sensitive data. To address confidentiality concerns, CanREA suggested the report be made to the Nova Scotia Department of Energy or an independent third party. CanREA also suggested alternative means of reporting to address Non-Disclosure Agreements, potentially allowing the Proponent to attest to the expenditures where reasonable, but unsuccessful, efforts have been made to amend its Non-Disclosure Agreements.

3.8.2 Power Advisory Reply

[87] The PA explained that NS Power is the counterparty to the agreement and can enforce payment under the terms of the PPA. Under s. 10.1(a), if the Seller fails to make a payment and that failure is not cured, it will constitute a Seller Event of Default. Under s. 10.2(d)(i), NS Power can set off any payments owed if there is an uncured Seller Event of Default. The PA noted that providing Local Benefits in a Proposal response to the RFP is not mandatory and if the reporting requirement is believed to be too onerous a Proponent does not need to provide any such commitment in its proposal.

[88] The PA did not agree with most changes recommended by SWEB, Natural Forces and CanREA about the Local Benefits provision, but it agreed to extending the deadline to 40 business days which it considered to be a reasonable time for making the Local Benefits Shortfall payment.

[89] After reviewing SWEB's comments and the PA's reply comments, the Board wrote to the PA on October 15, 2026, requesting clarification about a point raised in SWEB's letter of October 1, 2026, concerning the Local Benefits Report. Section 2.4(a)(vi) of the draft PPA provides that a Facility is deemed to have achieved Commercial Operation when the "Seller has submitted a Local Benefits Report prepared by an independent third party". In its reply comments to SWEB [Item #7 in Exhibit A], the PA stated that providing Local Benefits in a proposal is not mandatory, and if considered too onerous, a Proponent does not need to make such a commitment in the RFP. The Board noted that the language in s. 2.4(a)(vi) suggests that the filing of a Local Benefits Report is mandatory and is indeed one of the triggers for Commercial Operation.

[90] In the PA's October 19, 2026, response, it acknowledged the inconsistency and proposed to amend s. 2.4(a)(iv) of the Amended PPA as follows: "*If applicable, the*

Seller has submitted a Local Benefits Report prepared by an independent third party.” It also proposed to delete “Not Used” in item 6 of the Commercial Terms and add the following: “*Local Benefits Report is Required at COD (Yes/No) [Strike out the inapplicable response]*”. [Emphasis in original]

[91] As to how the Local Benefits payments would be treated when paid to NS Power, the PA replied that the payments would be reflected in reporting to the Board “through its standard financial reporting mechanisms and recorded in accordance with applicable accounting standards and regulatory reporting practices, including treatment as unregulated income where appropriate.”

[92] In terms of the need for an independent third party to verify compliance, the PA replied that NS Power is administering the PPA and needs to be able to evaluate compliance.

[93] The PA considered that the confidentiality provisions in s. 8(a) protected such information from public disclosure. The PA maintained that a Seller can provide for disclosure of its suppliers’ information in any Non-Disclosure Agreement it has with its suppliers.

3.8.3 Findings

[94] The Intervenors raised several issues about the Local Benefits reporting and payment of any Shortfall.

[95] The concerns raised by Natural Forces, CanREA and SWEB about the filing deadlines for the report and any payment due for any Shortfall payment were focussed on a Proponents’ ability to meet the filing timelines for the Local Benefits Report and any Shortfall payment arising from the report. The Board accepts Natural Forces’ submission that it “will be nearly impossible to complete accurate reporting and determine any

shortfall within 20 days of COD, as required by the PPA. Local procurement verification, contract reconciliation, and supplier confirmation cannot be completed within such a compressed timeframe". CanREA noted that in past procurements NS Power took longer than 20 days to bill for some interconnection costs and some construction costs are only billed up to six months later. SWEB recommended deleting the Local Benefits provision in its entirety, but in the alternative submitted that the reporting timeline should be extended from 20 business days to 12 months after COD, stating that the proposed timeline of 20 business days is not realistic for projects worth hundreds of millions of dollars. SWEB added that certain goods and services are due and payable well after COD, especially in the case of a dispute. The Board concludes that the PA's suggestion to extend the deadline from 20 days to 40 days does not address these legitimate concerns. No reason was offered why such a short deadline is appropriate in the circumstances. If the Local Benefits provision is to be a meaningful addition to the PPA, the Proponents should be able to ensure that accurate reporting is completed, with any consequential Shortfall payments made thereafter. The Board finds that the deadline should be extended to 12 months after COD.

[96] SWEB and CanREA were concerned about confidentiality in the Local Benefits reporting process. It said Proponents are subject to confidentiality obligations from their suppliers, particularly for pricing. The Board accepts the PA's submission that the confidentiality provisions in s. 8.1(a) of the PPA protect such information from public disclosure. Such confidentiality provisions are common in commercial contracts. As noted by the PA, the Seller can protect the disclosure of its suppliers' information in any Non-Disclosure Agreement it has with its suppliers. Further, the Board considers NS Power to

be the appropriate party to receive and review these reports, since NS Power is the counterparty to the agreement and can enforce payment under the terms of the PPA. While SWEB questioned the cost of requiring an independent third party to verify compliance, the Board considers that to be a reasonable provision.

[97] Further, the parties questioned why the Shortfall payments should be made to NS Power and questioned how the funds would be disbursed. The Board accepts the PA's submission that NS Power is the counterparty to the PPA and must be able to enforce its provisions. Further, under s. 10.2(d)(i), NS Power can set off any payments owed if there is an uncured Seller Event of Default.

[98] The Board also considered the PA's suggested revisions in the Amended PPA to address the inconsistency of the language in s. 2.4(a)(vi) suggesting that the filing of a Local Benefits Report is mandatory and being one of the triggers for Commercial Operation, while the PA stated that the commitment of a Local Benefits report is not mandatory. In the Board's view, the PA's suggested amendments do not entirely address the inconsistency. Section 2.8 is also linked to the requirement in s. 2.4(a)(vi) about providing the Local Benefits report so COD can become effective. As it currently reads, s. 2.8 requires the Seller to pay any Shortfall in the Local Benefits within 20 days of COD. Local Benefits report is a defined term. A Seller cannot prepare a Local Benefits report "...setting out the Seller's Local Benefit expenditure at COD" for the purposes of s.2.4(a)(vi), if they do not have this information at COD, or even 20 days after COD as originally proposed, for that matter.

[99] Accordingly, instead of the language proposed by the PA, the Board finds that the filing of a Local Benefits report should not be a condition for commercial operation

at all. As currently written, the 20-day requirement is inconsistent with the Board's above direction to extend the filing date of a Local Benefits report, if any, to 12 months. In the Board's opinion, any Shortfall relating to this point would be addressed by setting off future payments in any event. The Board directs that the PA address these points in a compliance filing, including the deletion of the requirement to file a Local Benefits report as a pre-condition for achieving commercial operation.

[100] Finally, the Intervenor (including the Consumer Advocate, Small Business Advocate and industry participants) were concerned about how the funds would be tracked and what should occur with any funds. They generally remarked that the intent of the provision is to benefit the Nova Scotian economy or local community rather than NS Power. The PA replied that the payments would be reflected in NS Power's reporting to the Board "through its standard financial reporting mechanisms and recorded in accordance with applicable accounting standards and regulatory reporting practices, including treatment as unregulated income where appropriate". The Board agrees that any funds received by NS Power should be tracked in its financial reporting.

[101] However, the PPA is silent on the ultimate destination of the funds. The Board does not agree that it should be included as unregulated income for NS Power. It notes that ratepayers are paying for the costs related to the PPAs as Fuel and Purchased Power. Accordingly, the Board finds that any funds (net of any set off) must be credited to ratepayers through the Fuel Adjustment Mechanism. The Board so directs. This credit is to be allocated to customer classes on the same basis as the energy charges under the PPA.

3.9 Change in Control

3.9.1 Submissions

[102] Natural Forces raised a point about the Change of Control provisions of the draft PPA, recommending that s.16.3(b) (Change of Control provisions) be made explicitly subject to s. 12 (Project Lender Provisions), to ensure that lender step-in rights, cure rights, and security interests are not unintentionally overridden or impaired. It stated that, as currently drafted, s. 16.3(b) operates independently of s. 12, including lender security rights, step-in rights, cure periods, and the ability of lenders to assume or transfer the Seller's interest in the Facility.

[103] Natural Forces said that, without an explicit cross-reference, s. 16.3(b) could be interpreted in a manner that conflicts with or limits lender protections, particularly where a Change of Control arises due to enforcement of lender security or restructuring actions undertaken by a secured creditor. It said this uncertainty could materially affect Proponents' ability to secure financing, as lenders require assurance that their rights under s. 12 take precedence over Change of Control restrictions.

3.9.2 Power Advisory Reply

[104] Power Advisory replied that any enforcement of step-in rights or assignment of the PPA under s. 12 would not trigger a breach of s. 16.3(b) because the enforcement would not in itself trigger a change of control of Seller.

[105] However, the PA acknowledged that if the Participant pledged its shares in the Seller as part of the security granted to a Lender, there would be an issue under both Section 16.3(b) and Section 16.4 of the PPA. Accordingly, it proposed revisions to ss. 16.3(b) and 16.4(a) of the Amended PPA to exclude any Change of Control resulting from

the enforcement by a Lender of its rights under any Project Lender Agreement or Project Lender's Security Agreement.

3.9.3 Findings

[106] The Board finds these revisions to ss. 16.3(b) and 16.4(a) of the Amended PPA are appropriate to clarify any uncertainty between the operation of the Change of Control provisions and the Project Lender Provisions in s. 12.

3.10 Inability to Secure CIB or SREP Funding

3.10.1 Submissions

[107] CanREA noted that the initial draft PPA circulated by Power Advisory contained s. 16.9 that dealt with the inability of Proponents to secure federal funding from the Canadian Infrastructure Bank (CIB) or the Smart Renewables and Electrification Pathways Program (SREP). In that event, if the Proponent had indicated in its proposal to the PA that it had relied on obtaining such funding (and had used commercially reasonable efforts to do so) but was ultimately unable to secure the funding within 120 business days after the Effective Date, the Proponent could elect to terminate the agreement by giving notice to NS Power within 140 business days after the Effective Date. However, the PA removed this protection from the proposed PPA submitted in the present application.

[108] CanREA noted that the absence of this protection could "potentially undermine good projects / bids, and without the right to adjust bids or terminate without penalties, it places additional risk on Proponents which ultimately leads to higher costs." It added that in the first Green Choice procurement, delays in confirmed CIB financing were a key element in several projects not moving forward.

[109] SWEB noted the importance of the federal funding. While it recognized that s. 16.9 in the initial draft may need some revisions to provide the intended protection, it expressed the same concern with the clause being removed from the proposed PPA:

Similar to the previous Rate Base Procurement and Green Choice Procurement, Proponents will use these funds in their modelling **to lower the Energy Rate for the benefit of ratepayers/Participants**. Should, after the PPA has been executed, either the offered SREP or CIB funding fall away, awarded projects would almost certainly and immediately become financially unviable.

The consequences of this would not just be a negative financial impact on developers and their first nation partners. It would also mean that projects will not achieve commercial operation, ratepayers/Participants would not benefit from the lower electricity prices offered by these projects and the Province of Nova Scotia would not meet its renewable energy targets.

... Not providing this protection **will ultimately lead to a lower participation** in the procurement and **offered prices that are higher than necessary**.

Proponents do not benefit from CIB or SREP Funding. All benefit is directly passed on to ratepayers/Participants. This is why we fail to understand why the risk of a potential unavailability of such funds should be covered by the Seller. [Emphasis added in original]

[SWEB Submissions, pp. 7-8]

[110] Both CanREA and SWEB requested that the PA re-instate the protection in s. 16.9 contained in the first draft of the PPA.

[111] Further, the PA stated in its draft RFP documentation that the Nova Scotia Department of Energy is in discussions with the CIB about potential financing available to Proponents and details would be made available once the RFP is issued in September. CanREA asked that the PA provide details about available CIB funding as soon as possible.

3.10.2 Power Advisory Reply

[112] After noting that it cannot comment on the availability of CIB funding, the PA replied similarly to both SWEB and CanREA:

Financing through the Canada Infrastructure Bank (CIB) and funding under the Smart Renewables Electrification Pathways (SREP) Program are well-established options in Canada and Nova Scotia; however, neither is a mandatory requirement for Proponents to the RFP. Proponents are encouraged to contact CIB and SREP directly with any questions

regarding eligibility requirements and application processes via the email addresses provided in section 1.5 Federal Funding of the RFP.

[PA Reply Submissions, September 28, 2026, Exhibit A, pp. 6-7]

3.10.3 Findings

[113] The Board accepts the submissions of Power Advisory that both the CIB and SREP are established funding options but that neither is a mandatory requirement for Proponents to the RFP. Like the Board concluded in s. 3.13 elsewhere in this decision about the Change in Law provision, and consistent with its 2024 PPA decision, the Board recognizes that the PA's position leaves the risk of changes in federal financing options with Sellers and that risk may be reflected in proposals submitted in the RFP process. However, the Board finds that this is part of the balancing of risks in the PPA and denies the amendment sought by the Intervenors.

3.11 Cybersecurity Plan

3.11.1 Submissions

[114] Section 2.1(f) of the draft standard form PPA requires the Seller to prepare a Cybersecurity Plan demonstrating how it will satisfy all North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection standards relating to cybersecurity. The Cybersecurity Plan must be submitted to IESO Nova Scotia, and copied to NS Power, at least six months before the Scheduled Commercial Operation Date. Under the terms of the PPA, the Facility cannot achieve Commercial Operation until IESO Nova Scotia is satisfied the Facility complies with all the NERC Critical Infrastructure Protection cybersecurity standards.

[115] While SWEB recognized the importance of this provision, it expressed concern that this section did not clarify the timing for IESO Nova Scotia to review the plan. SWEB noted that if IESO Nova Scotia was delayed in its review, Commercial Operation

would be delayed at no fault of the Seller, potentially causing the Seller to default on its financing agreements. It suggested revisions to s. 2.1(f) requiring IESO Nova Scotia to review and approve (or reject) the Cybersecurity Plan within 10 business days (applying equally to each submission of a revised plan), failing which the plan would be “deemed approved.”

[116] While the Consumer Advocate supported the requirement for a Cybersecurity Plan, the Small Business Advocate questioned whether IESO Nova Scotia had the expertise to assess and approve such a plan. Further, it noted that NS Power, while copied with the plan, did not appear to have any authority to provide comments or raise concerns about the plan to the Seller or to IESO Nova Scotia.

3.11.2 Power Advisory Reply

[117] The PA responded that it had discussed the issue with IESO Nova Scotia and had no concerns about its “capability and expertise to review and approve the Cybersecurity Plan.” It added that NS Power is not responsible for approving the plan.

3.11.3 Findings

[118] The Board considers it prudent for the PPA to require a Cybersecurity Plan and it is satisfied that IESO Nova Scotia has the expertise to assess and approve such a plan. The System Operator is responsible for implementing NERC Critical Infrastructure Protection cybersecurity standards and must have experienced staff to carry out that function. The PA confirmed with IESO Nova Scotia that it has the “capability and expertise” to review and approve the plans. Under the PPA, the Cybersecurity Plan must be submitted to IESO Nova Scotia at least six months before the Scheduled COD. The Board does not accept SWEB’s submission that a specific timeline for plan approval is required in the PPA, given the six-month timeline for filing the plan in advance of COD.

3.12 Equipment Certification

3.12.1 Submissions

[119] Section 5 of the 2024 PPA required certification of the Facility equipment. This requirement was removed from the current proposed PPA. The Small Business Advocate questioned if the intention is to “have the province rely only on project lenders’ technology related requirements, how will the sufficiency of each lender’s requirements be confirmed without equipment certification or equipment certification security”, as compared to the previous version of the PPA?

3.12.2 Power Advisory Reply

[120] The PA replied that onshore wind energy technology is mature, with Canada’s first commercial wind farm beginning production in 1993. It noted that there is currently installed wind farm capacity of 20,100 MW in Canada. It submitted that, in the circumstances, there was no longer a need for equipment certification and “providing security for equipment certification imposes an unnecessary cost on rate payers since the costs of such security will need to be recovered through the Energy Rate.”

[121] The PA added that the Seller has a performance obligation. Through its Energy Bid and under s. 4.1(d), a Seller is liable to pay liquidated damages to NS Power if the Net Output in any year is less than 80% of the Energy Bid. Further, in the event of a default in energy production for a continuous period of 30 days (excepting for a Force Majeure event or curtailment), the Seller must demonstrate it is using Commercially Reasonable Efforts to restore the Facility to commercial operation.

3.12.3 Findings

[122] The Board accepts the PA’s submission that equipment certification is no longer required. This should help reduce costs for ratepayers that would otherwise need

to be included in project costs. Further, the Board accepts the PPA's submission that there are satisfactory provisions in the draft PPA to address the Seller's performance.

3.13 Change in Law

3.13.1 Submissions

[123] SWEB submitted that the PPA should provide for protection from a change in federal law. SWEB noted that the previous PA had rejected similar suggestions in the 2024 proceeding (M11455) from various parties, including CanREA and the Consumer Advocate. The previous PA had taken the position that "there is limited evidence of federal law changes negatively impacting renewable energy development in a significant manner."

[124] However, SWEB highlighted that, within two months of the last Green Choice procurement, all six successful Proponents refused to sign the offered PPA due to a looming federal election and the announcements by one candidate that the Canada Infrastructure Bank should be dissolved. SWEB noted that developers use favorable financing by the CIB to lower their prices paid by ratepayers. Ultimately, only two of the six projects executed the offered PPA. SWEB stated that this prejudiced ratepayers because they were unable to receive the low-cost renewable energy the other four projects would have provided by 2028, and that ratepayers would be "paying the price for this mistake for the next 25+ years." It noted that similar concerns also potentially impacted projects in the Rate Base Procurement under construction at the time, but with the support of provincial and federal decision makers the projects did move forward. SWEB noted that a few months later, a similar situation arose when the federal government introduced tariffs on steel wind towers.

[125] SWEB urged the PA and the Board to ensure similar circumstances did not arise again, noting that this issue is the reason this second Green Choice procurement was required. While it acknowledged that s. 16.9 added some protection, it only covered the risk of new tariffs. It noted a change in federal law could result in developers deciding not to bid, bid at a higher price, or default before commercial operation. These would all negatively impact ratepayers.

[126] SWEB said a change in federal law about Investment Tax Credits (ITCs) would have a similar negative impact on Proponents. Noting that project proposals account for ITCs that can comprise up to 30% of a project's capital needs, a change in federal law could abolish ITCs or change the requirements to obtain it, leading to projects becoming financially unviable.

3.13.2 Power Advisory Reply

[127] The PA did not agree that s. 13.1 should be amended to reflect a change in federal law. It stated that the context for SWEB's submission was based on comments in a past federal election and the uncertainty related to the continued existence of the Canada Infrastructure Bank. The PA did not see this as a current issue.

[128] The PA also noted that s. 16.9 of the proposed draft PPA had been revised to "provide a targeted and specific means of dealing with imposition of federal tariffs."

3.13.3 Findings

[129] As noted by SWEB, this same issue was raised in the 2024 PPA proceeding (M11455). The Board concluded:

[154] As with many of the issues raised in comments provided to the Board in this proceeding, this issue raises questions about the balancing of risk between the parties to the proposed PPA. In many cases, there are clearly no right or wrong answers and the approach is more about balance and fairness. Risk that is removed from Sellers will generally fall to NS Power's ratepayers. Risk left with or shifted to Sellers will likely be

reflected in the proposals received for the project, producing higher rates that will be paid by ratepayers.

[155] The Green Choice Program is established by provincial law and in pursuit of Provincial objectives, including the Province's renewable electricity standards. It could therefore be expected that proponents might be more likely to assume that Provincial laws would not change to the detriment of the Program and their projects and perhaps more appropriate that those expectations be protected in the terms of the PPA.

[156] On this issue, the Board recognizes that the proposed PPA leaves the risk of changes in federal laws with Sellers. However, the Board finds there is no compelling reason to vary this provision from what was included in the PPA approved by the Board for the Rate Base Procurement.

[Board Decision, 2024 NSUARB 90, paras. 154-156]

[130] The Board sees no reason to depart from its findings in its 2024 Decision.

3.14 Force Majeure

3.14.1 Submissions

[131] CanREA submitted that Proponents/Sellers will assume in their proposals that they will receive federal Investment Tax Credits. CanREA recommends that any material change to, or termination of, the federal ITCs, which is beyond the control of the Seller, should be designated as a Force Majeure event under s. 11 of the draft PPA. In that event, CanREA submitted a Seller may seek relief (i.e., negotiate the Energy Rate with NS Power), or exercise its right to terminate the agreement without payment of any damages for early termination.

3.14.2 Power Advisory Reply

[132] The PA did not agree with this proposed change, stating that it was unclear the termination or material changes to ITCs would prevent the Seller from performing its obligations under the PPA. It also noted that s. 11.1(b), which was incorrectly referred to as s. 11.2(b) in the PA's submissions, expressly excludes financial matters from the scope of the Force Majeure relief provided under the PPA. Under s. 11.1(b)(i), a party cannot claim relief for Force Majeure for "economic hardship or lack of funds."

3.14.3 Findings

[133] The Board notes that s. 11.1(b)(i) of the Force Majeure provisions in the proposed PPA expressly exclude any Force Majeure relief for “economic hardship or lack of funds.” In the Board’s view, this appears to directly address the potential scenario identified by CanREA. The Board observes that s. 11.1(b)(i) existed in identical form in the Board-approved 2024 PPA.

[134] In terms of the general balance of risks to be reflected in the PPA, the Board sees this issue as comparable to the provisions relating to the Inability to Secure CIB or SREP Funding and Change of Law. The Board denies the request to make any change to this provision. Further, as the PA noted, the PPA specifically excludes Force Majeure relief for “economic hardship or lack of funds.”

3.15 Non-Substantive Changes

[135] In the letter accompanying the application, Power Advisory requested approval to make non-substantive changes to the form of the PPA which it considers necessary or advisable after Board approval. Understanding that such changes would be non-substantive only, the Board approves this request.

4.0 SUMMARY OF BOARD FINDINGS

[136] The Board has directed changes to the Local Benefits provisions in the proposed PPA. Specifically, the obligation on the Seller to submit a Local Benefits Report prepared by an independent third party as a prerequisite for Commercial Operation in s. 2.4(a)(vi) must be removed. Instead, the obligation to submit a Local Benefits Report prepared by an independent third party if Local Benefits were included in the Proposal is

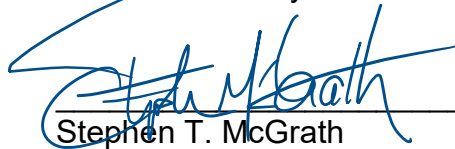
to be moved to s. 2.7 and is to be filed 12 months after the Commercial Operation Date, with any Local Benefits Shortfall also payable at that time. Further, any Shortfall (net of any set off) paid to NS Power is to be credited to ratepayers through the Fuel Adjustment Mechanism.

[137] The Board also directed the PA to consider consequential amendments resulting from its proposed revision to s. 5.1(b) in the Amended PPA about curtailment payments.

[138] The Board directs the PA to file an updated version of the PPA, consistent with the PA's commitments in its reply comments and the Board's decision, by November 6, 2026.

[139] An Order will issue after the compliance filing.

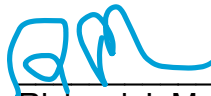
DATED at Halifax, Nova Scotia, this 30th day of October 2026.



Stephen T. McGrath



Roland A. Deveau



Richard J. Melanson