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REPEAL AND COMMENCEMENT

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Under section 142 of the *Electricity Act*, the Lieutenant-Governor in Council makes the following Regulation:

PART 1

GENERAL

Citation

1 This Regulation may be cited as the *Electricity from Renewable Resources Regulation - Electricity Act*.

Definitions

2 The following definitions apply in this Regulation.

“electricity from renewable resources” means

- (a) electricity that is generated inside the Province in an innovative manner and provides a net environmental benefit to the Province, and
- (b) electricity generated inside or outside the Province from a source. (*électricité issue de ressources renouvelables*)

“environmental attributes” means environmental premiums or tradeable credits that are recognized in Canada or elsewhere as being derived from the generation of electricity from renewable resources. (*attributs environnementaux*)

“fiscal year” means the period commencing April 1 of one year and ending March 31 of the following year. (*exercice financier*)

“source” means

- (a) solar energy;
- (b) wind energy;
- (c) hydroelectric energy;
- (d) ocean-powered energy;
- (e) biogas energy;
- (f) biomass energy; and
- (g) sanitary landfill gas. (*source*)

Electricity from renewable resources

3(1) On December 31, 2020, and for each subsequent fiscal year, the Corporation shall ensure that 40% of the total in-province electricity sales in kilowatt-hours is electricity from renewable resources.

3(2) On and after August 12, 2014, and before December 31, 2020, the Corporation shall, for the purposes of gradually fulfilling the requirement under subsection (1), endeavour to obtain more electricity from renewable resources.

3(3) On and after August 12, 2014, and before December 31, 2020, the Corporation shall, at a minimum, ensure it maintains the percentage of the total in-province electricity sales in kilowatt-hours for the fiscal year 2012-2013 that is electricity from renewable resources.

3(4) Subject to subsections (5) and (6), any electricity from renewable resources that does not include the immediate and unfettered rights of ownership of any and all the environmental attributes associated with its generation shall not be counted towards fulfilling the requirement under subsection (1).

3(5) The electricity obtained from a sanitary landfill is not required to include the immediate and unfettered rights of ownership of any and all the environmental attributes associated with the destruction of methane in order to count towards fulfilling the requirement under subsection (1).

3(6) The electricity that is generated outside the Province from a source is not required to include the immediate and unfettered rights of ownership of any and all the environmental attributes associated with its generation in order to count towards fulfilling the requirement under subsection (1) if any of the following conditions are met:

(a) the electricity is required to replace electricity that, but for the refurbishment, maintenance or repair of a generation facility, would in the normal course have been generated inside the Province and the contract to purchase electricity is for a term not exceeding five years;

(b) the purchase of this electricity will result in an economic benefit to the Corporation and its customers and the contract to purchase electricity is for a term not exceeding five years; or

(c) the electricity is urgently required as the result of unforeseen circumstances that are beyond the Corporation's control and the Corporation notifies the Minister in writing of the purchase before the Corporation submits the report referred to in section 4.

3(7) The following types of electricity from renewable resources shall count towards fulfilling the requirement under subsection (1):

(a) electricity that is obtained under the Locally Owned Renewable Energy Projects that are Small-Scale Program;

(b) electricity that is obtained under the Large Industrial Renewable Energy Purchase Program;

(c) electricity that is generated inside the Province in an innovative manner and provides a net environmental benefit to the Province and is not obtained under either of the programs referred to in paragraphs (a) and (b);

(d) electricity that is generated inside the Province from a source and is not obtained under either of the programs referred to in paragraphs (a) and (b); and

(e) electricity that is generated outside the Province from a source.

Progress report

4(1) The Corporation shall, within three months after the end of each fiscal year, report to the Minister the following information:

- (a) the total in-province electricity sales in kilowatt-hours for the fiscal year;
- (b) the amount by which in-province electricity sales in kilowatt-hours were reduced by demand-side management and energy efficiency plans for the fiscal year;
- (c) the total amount of electricity from renewable resources in kilowatt-hours obtained during the fiscal year;
- (d) the total amount of electricity in kilowatt-hours and the total installed capacity of generation facilities in megawatts obtained under the Locally Owned Renewable Energy Projects that are Small-Scale Program during the fiscal year, itemized as follows:
 - (i) the total amount of electricity in kilowatt-hours obtained under the procurement set-aside for Aboriginal businesses, the installed capacity of each generation facility in megawatts and the total amount of electricity in kilowatt-hours obtained from each source;
 - (ii) the total amount of electricity in kilowatt-hours obtained under the procurement set-aside for local entities, the installed capacity of each generation facility in megawatts and the total amount of electricity in kilowatt-hours obtained from each source;
 - (iii) the total amount of electricity in kilowatt-hours and the total installed capacity of generation facilities in megawatts obtained in accordance with sections 21 and 22, including

- (A) the total amount of electricity in kilowatt-hours obtained in accordance with section 21 and the installed capacity of each generation facility in megawatts,
- (B) the total amount of electricity in kilowatt-hours obtained in accordance with subsection 22(1) and the installed capacity of each embedded generation facility in megawatts, and
- (C) the total amount of electricity in kilowatt-hours obtained in accordance with subsection 22(2) and the installed capacity of each generation facility in megawatts;
- (e) the total amount of electricity in kilowatt-hours obtained under the Large Industrial Renewable Energy Purchase Program during the fiscal year and the installed capacity of each generation facility in megawatts;
- (f) the total amount of electricity in kilowatt-hours obtained during the fiscal year that is generated inside the Province in an innovative manner, provides a net environmental benefit to the Province and is not obtained under either of the programs referred to in paragraphs (d) and (e);
- (g) the total amount of electricity in kilowatt-hours obtained during the fiscal year that is generated inside the Province from a source and is not obtained under either of the programs referred to in paragraphs (d) and (e) and the total amount of electricity in kilowatt-hours obtained from each source;
- (h) the total amount of electricity in kilowatt-hours obtained during the fiscal year that is generated outside the Province from a source and the total amount of electricity in kilowatt-hours obtained from each source;

(i) the total amount of electricity in kilowatt-hours obtained in accordance with subsection 3(6) during the fiscal year; and

(j) a plan for how the Corporation will fulfil the requirement under subsection 3(1).

4(2) The report shall be accompanied by a declaration by the President and Chief Executive Officer that the electricity from renewable resources obtained by the Corporation during the fiscal year included the immediate and unfettered rights of ownership of any and all the environmental attributes resulting from its generation, other than the electricity generated from the destruction of methane and obtained from a sanitary landfill and the electricity that was obtained in accordance with subsection 3(6).

PART 2

LOCALLY OWNED RENEWABLE ENERGY PROJECTS THAT ARE SMALL-SCALE PROGRAM

Definitions

5 The following definitions apply in this Part.

“Aboriginal business” means

(a) a corporation as defined in the *Business Corporations Act* and in which a majority of the voting shares is beneficially owned or controlled, directly or indirectly, by one or more Aboriginal persons,

(b) a not-for-profit company incorporated under the *Companies Act* and in which a majority of the voting shares is beneficially owned or controlled, directly or indirectly, by one or more Aboriginal persons,

(c) an association as defined in the *Co-operative Associations Act* and in which the majority of the members who are entitled to vote are Aboriginal persons,

(d) a sole proprietorship, the proprietor of which is an Aboriginal person, or

(e) a partnership between any of the businesses listed in paragraphs (a) to (d) and a local entity, the majority interest in which is owned by the business and in which the majority of benefits, under the partnership agreement, accrues to the business. (*entreprise autochtone*)

“Aboriginal person” means any Indian, Inuit or Métis person who is a resident of the Province. (*Autochtone*)

“local entity” means

(a) a municipal distribution utility,

(b) a municipality, rural community or local service district,

(c) a not-for-profit company incorporated under the *Companies Act* and in which a majority of the voting shares is beneficially owned or controlled, directly or indirectly, by one or more residents of the Province,

(d) an association as defined in the *Co-operative Associations Act* and in which the majority of members who are entitled to vote are residents of the Province,

(e) an educational institution that is designated by the Lieutenant-Governor in Council as a degree-granting institution under the *Degree Granting Act* or is authorized by an Act of the Legislature to grant degrees, or

(f) a regional service commission as defined in the *Regional Service Delivery Act*. (*entité locale*)

“Program” means the Locally Owned Renewable Energy Projects that are Small-Scale Program. (*programme*)

“small-scale generation facility” means a generation facility that is located in the Province and that has a maximum installed capacity of 20 MW. (*installation de production à petite échelle*)

Components of Program

6 The Program consists of three components:

- (a) a procurement set-aside for Aboriginal businesses;
- (b) a procurement set-aside for local entities; and
- (c) the procurement of electricity from renewable resources through distributed generation.

Component 1 - Aboriginal Businesses

Procurement set-aside for Aboriginal businesses

7 The Corporation shall endeavour to obtain from Aboriginal businesses 40 MW of electricity from renewable resources.

Restrictions

8(1) The Corporation may obtain up to a maximum of 20 MW of electricity from renewable resources that is generated by a small-scale generation facility owned by one or more Aboriginal businesses.

8(2) The Corporation may obtain up to a maximum of 40 MW of electricity from renewable resources that is generated by two or more small-scale generation facilities if the small-scale generation facilities are owned by two or more Aboriginal businesses and are located on the same site.

Public advertisement

9 On or before January 31, 2016, the Corporation shall, for the purpose of fulfilling the requirement set out in section 7, publicly advertise a notice of a call for expressions of interest

- (a) on the New Brunswick Opportunities Network, and
- (b) in one or more newspapers published in the Province and having general circulation in the Province.

Notice of a call for expressions of interest

10 The notice of a call for expressions of interest shall contain the following information:

- (a) the solicitation number;
- (b) a brief description of the subject matter of the procurement;
- (c) the place where relevant information and solicitation documents may be obtained;
- (d) the conditions for obtaining the solicitation documents; and
- (e) the location where an expression of interest may be submitted.

Structure of procurement

11 The Corporation may, after receiving expressions of interest, structure the procurement of electricity from renewable resources from Aboriginal businesses in different parts and stages and may use different procurement processes, if to do so would enable the Corporation to better identify the subject matter of the procurement and determine the best procurement options.

Public-private partnerships

12(1) The Corporation may enter into a partnership agreement to develop, operate and maintain a small-scale generation facility with one or more Aboriginal businesses or with a partnership referred to in section 13 if, in the opinion of the Corporation, a partnership is the best option.

12(2) The Corporation may enter into a partnership agreement with one or more Aboriginal businesses, in which the Corporation owns the majority interest, to refurbish, operate and maintain a generation facility that is owned by the Corporation if, in the opinion of the Corporation, a partnership is the best option.

12(3) All of the electricity from renewable resources generated by a small-scale generation facility referred to in subsection (1) shall count towards fulfilling the requirement set out in section 7.

12(4) Only the portion of the electricity from renewable resources generated by a generation facility referred to in subsection (2) that represents the interest owned by the Aboriginal business or Aboriginal businesses, as the case may be, in the partnership shall count towards fulfilling the requirement set out in section 7.

Partnership between Aboriginal business and non-resident

13 If an Aboriginal business has entered into a partnership agreement to develop, operate and maintain one or more small-scale generation facilities with a person who is not a resident of the Province and the Aboriginal business owns the majority interest and the majority of benefits under the partnership agreement accrues to the Aboriginal business, the Corporation may obtain the electricity from renewable resources generated by the small-scale generation facility or facilities, as the case may be, and all of that electricity shall count towards fulfilling the requirement set out in section 7.

Component 2 - Local Entities

Procurement set-aside for local entities

14 The Corporation shall, through a competitive process, endeavour to obtain from local entities 40 MW of electricity from renewable resources.

Restrictions

15(1) The Corporation may obtain up to a maximum of 20 MW of electricity from renewable resources that is generated by a small-scale generation facility owned by one or more local entities.

15(2) The Corporation may obtain up to a maximum of 40 MW of electricity from renewable resources that is generated by two or more small-scale generation facilities if the small-scale generation facilities are owned by two or more local entities and are located on the same site.

Public advertisement

16 On or before July 31, 2016, the Corporation shall, for the purpose of fulfilling the requirement set out in section 14, publicly advertise a notice of a call for expressions of interest

- (a) on the New Brunswick Opportunities Network, and
- (b) in one or more newspapers published in the Province and having general circulation in the Province.

Notice of a call for expressions of interest

17 The notice of a call for expressions of interest shall contain the following information:

- (a) the solicitation number;
- (b) a brief description of the subject matter of the procurement;
- (c) the place where relevant information and solicitation documents may be obtained;
- (d) the conditions for obtaining the solicitation documents; and
- (e) the location where an expression of interest may be submitted.

Structure of procurement

18 The Corporation may, after receiving expressions of interest, structure the procurement of electricity from renewable resources from local entities in different parts and stages and may use different procurement processes, if to do so would enable the Corporation to better identify the subject matter of the procurement and determine the best procurement options.

Public-private partnerships

19(1) The Corporation may enter into a partnership agreement to develop, operate and maintain a small-scale generation facility with one or more local entities or with a partnership referred to in section 20 if, in the opinion of the Corporation, a partnership is the best option.

19(2) The Corporation may enter into a partnership agreement with one or more local entities, in which the Corporation owns the majority interest, to refurbish, operate and maintain a generation facility that is owned by the Corporation if, in the opinion of the Corporation, a partnership is the best option.

19(3) All of the electricity from renewable resources generated by a small-scale generation facility referred to in subsection (1) shall count towards fulfilling the requirement set out in section 14.

19(4) Only the portion of the electricity from renewable resources generated by a generation facility referred to in subsection (2) that represents the interest owned by the local entity or local entities, as the case may be, in the partnership shall count towards fulfilling the requirement set out in section 14.

Partnership between local entity and non-resident

20 If a local entity has entered into a partnership agreement to develop, operate and maintain one or more small-scale generation facilities with a person who is not a resident of the Province and the local entity owns the majority interest and the majority of benefits under the partnership agreement accrues to the local entity, the Corporation may obtain the electricity from renewable resources generated by the small-scale generation facility or facilities,

as the case may be, and all of that electricity shall count towards fulfilling the requirement set out in section 14.

Component 3 - Distributed Generation

Deeming distributed generation under the Program

21 Any electricity from renewable resources that is obtained by the Corporation in accordance with an embedded generation agreement or a net metering agreement that is in force on the date of the commencement of this section is deemed to be electricity obtained under the Program.

New distributed generation

22(1) On or after the commencement of this section, the Corporation may, in accordance with an embedded generation agreement, obtain electricity from renewable resources that is generated by an embedded generation facility that meets the following criteria:

- (a) the facility is owned by
 - (i) a local entity,
 - (ii) an individual who is a resident of the Province,
 - (iii) a sole proprietorship, the proprietor of which is a resident of the Province, or
 - (iv) a corporation as defined in the *Business Corporations Act* and in which a majority of the voting shares is beneficially owned or controlled, directly or indirectly, by one or more individuals who are residents of the Province;
- (b) the facility is located in the Province; and

(c) the facility is capable of being connected to the distribution system of the Corporation.

22(2) On or after the commencement of this section, the Corporation may, in accordance with a net metering agreement, obtain electricity from renewable resources that is generated by a generation facility that is owned by a customer of the Corporation that is

- (a) an individual who is a resident of the Province,
- (b) a sole proprietorship and the proprietor of which is a resident of the Province, or
- (c) a corporation as defined in the *Business Corporations Act* and in which a majority of the voting shares is beneficially owned or controlled, directly or indirectly, by one or more individuals who are residents of the Province.

PART 3

LARGE INDUSTRIAL RENEWABLE ENERGY PURCHASE PROGRAM

Definitions

23 The following definitions apply in this Part.

“eligible electricity” means electricity generated in the Province at any of the following facilities owned and operated by an eligible large industrial enterprise:

- (a) an eligible facility at which electricity is generated through the combustion of woody biomass or its by-products from the chemical manufacture of pulp, including black and red liquors, for the purposes of cogeneration or producing combined heat and power; or
- (b) a facility at which electricity is generated through the combustion of woody biomass or its by-products from the chemical manufacture of pulp, including black and red liquors,

for the purposes of cogeneration or producing combined heat and power. (*électricité admissible*)

“eligible facility” means a facility that meets the following criteria:

- (a) the facility has an electrical energy requirement of not less than 50 GWh per year;
- (b) the facility obtains all or a portion of its electricity on a firm basis from the Corporation; and
- (c) at least 50% of the primary products produced by the facility are exported to another province or territory of Canada or elsewhere. (*installation admissible*)

“eligible large industrial enterprise” means an organization, or a group of organizations, that is directly or indirectly owned or controlled by the same person and that

- (a) owns and operates an eligible facility, and
- (b) owns and operates a facility that generates eligible electricity. (*grande entreprise industrielle admissible*)

“Program” means the Large Industrial Renewable Energy Purchase Program. (*programme*)

Large Industrial Renewable Energy Purchase Program

24(1) Subject to subsection (2) and section 28, the Corporation shall, in accordance with the Program, obtain enough eligible electricity from an eligible large industrial enterprise that the cumulative cost of firm electricity for all of the eligible facilities owned and operated by the eligible large industrial enterprise is reduced by the target reduction per cent.

24(2) The target reduction per cent for an eligible large industrial enterprise shall be based on the amount of electricity that the eligible facilities owned and operated by the eligible large industrial enterprise were contracted to obtain on a firm basis from the Corporation immediately before the eligible large industrial enterprise's participation in the Program.

Purchase price for eligible electricity

25 The purchase price that the Corporation shall pay for eligible electricity under the Program is \$95.00 per megawatt-hours.

Calculation of Canadian average rate

26(1) On or before April 21 in each fiscal year, the Minister shall calculate the Canadian average rate for that fiscal year.

26(2) The Minister shall, using the representative customer load profiles, data and methodologies that the Minister considers to be relevant, calculate the Canadian average rate based on the rates that are in effect on April 1 for firm electricity in those provinces and territories of Canada selected by the Minister.

Target reduction per cent

27 On or before April 21 in each fiscal year, the Minister shall calculate the target reduction per cent for that fiscal year by:

- (a) subtracting the Canadian average rate for firm electricity for that fiscal year for those customers who are engaged in a particular manufacturing or processing activity from the rate for firm electricity that is in effect on April 1 for the eligible facilities that are owned and operated by eligible large industrial enterprises and that are engaged in that particular manufacturing or processing activity;

(b) dividing the amount determined under paragraph (a) by the rate for firm electricity that is in effect on April 1 for the eligible facilities that are owned and operated by eligible large industrial enterprises and that are engaged in that particular manufacturing or processing activity; and

(c) multiplying the amount determined under paragraph (b) by 100.

Special measures

28(1) If the facilities owned and operated by an eligible large industrial enterprise are not capable of generating a sufficient amount of eligible electricity that, if sold to the Corporation in accordance with the Program, would result in a reduction in the cumulative cost of firm electricity by the target reduction per cent for all of the eligible facilities owned and operated by the eligible large industrial enterprise, the Corporation may alter the eligible facilities' contracted supply mix that was in place immediately before the eligible large industrial enterprise's participation in the Program by decreasing the proportion of firm electricity and increasing the proportion of interruptible electricity.

28(2) The savings achieved in the first year the eligible large industrial enterprise participates in the Program as a result of an alteration in the eligible facilities' contracted supply mix under subsection (1) shall apply in the subsequent years the eligible large industrial enterprise participates in the Program and shall be taken into account when the Corporation obtains eligible electricity from the eligible large industrial enterprise under subsection 24(1).

28(3) The Corporation shall waive any restrictions or penalties that would otherwise apply to an alteration in the eligible facilities' contracted supply mix under subsection (1).

PART 4

REPEAL AND COMMENCEMENT

Repeal

29 *New Brunswick Regulation 2013-65 under the Electricity Act is repealed.*

Commencement

30 *This Regulation comes into force on October 30, 2015.*

DRAFT
ÉBAUCHE