

Energy Watch

REVIEW OF LEGISLATIVE & POLICY ADVANCEMENTS IN THE
RENEWABLE ENERGY SECTOR

NOVA SCOTIA
NEWFOUNDLAND AND LABRADOR
NEW BRUNSWICK





Energy Watch

Stewart McKelvey is pleased to present *Energy Watch* - a review of key legislative and policy advancements in the renewable energy sector in 2023 in each of Nova Scotia, Newfoundland and Labrador, and New Brunswick, and a look forward to anticipated activities in 2024.

Atlantic Canada's renewable energy sector is growing rapidly. Research from the [Canadian Renewable Energy Association](#) pointed to a national growth rate of 10.5% in wind, solar and energy storage sectors in 2022. With Atlantic Canada's geography offering us significant renewable opportunities, we expect the region to benefit significantly from continued growth. Multiple levels of government, industry partners and post-secondary institutions are collectively working to understand and anticipate the impacts to regional economies and foster direct investment, ensuring the sector's considerable growth is sustainable.

Sustaining this type of progress requires two key ingredients: collaboration and innovation. In anticipation of the unique needs of the renewable energy industry, from both a legal and strategic perspective, Stewart McKelvey has applied our innovative approach to the practice of law to the needs of the sector – firmly positioning ourselves as Atlantic Canada's Renewable Energy Law Firm.

With a dedicated practice area and team of lawyers focused on tomorrow, we have developed our expertise and demonstrated Thought Leadership. In addition to representing many clients in burgeoning energy sectors, our lawyers have published a series of articles – the [Winds of Change](#) – focusing on the growth of regional energy initiatives and providing clients and stakeholders insight into treetop considerations facing the industry. In addition, *Prevailing Winds: Regulatory Frameworks and Commercial Realities for Developing Wind and Green Hydrogen Projects*

in Nova Scotia and Newfoundland and Labrador, was written by members of our Energy Group and recently published in the [Alberta Law Review](#).

Over the course of 2023, many of our lawyers attended national and international energy conferences to better understand, assess and contribute to, the global demand for Atlantic Canadian renewable energy sources. As regulatory frameworks and commercial realities in the renewable energy sector continue to emerge and evolve, our Energy Group will continue to remain at the forefront of these developments.

We are well positioned to help support clients and industry partners grow the sector and provide clean, renewable energy solutions developed in and for Atlantic Canada. 2024 will undoubtedly bring more change and growth to this exciting industry; Stewart McKelvey will continue to be at the forefront compiling knowledge and insight to our clients' benefit.



A handwritten signature in blue ink, appearing to read 'Dave Randell', positioned above a horizontal line.

Dave Randell
Partner & Energy Team Lead



Nova Scotia

Nova Scotia made significant progress in the development of its renewable energy sector in 2023, including the release of the Province's 2030 Clean Power Plan.¹ Lawyers from [Stewart McKelvey's Energy Group](#) remained up to date with all local and regional progress in this area throughout the year.

Nova Scotia's 2030 Clean Power Plan

Nova Scotia's [2030 Clean Power Plan](#) (the "**Plan**"), released in October 2023, introduces the key components of the Province's proposition to eliminate the burning of coal as a source of energy by 2030 and promote new renewable energy.² In addition to phasing out coal, the Plan looks to achieve a target of 80% renewable energy generation by 2030. It also notes the need for significant investment in onshore and offshore wind, hydrogen and energy storage solutions, and calls for bringing online the following quantities of new renewable energy by 2030:

- > Onshore wind: 1,000 MW
- > Solar: 300 MW
- > Fast-acting Hydrogen Capable Generators: 300 MW

The Plan also calls for 300-400MW of battery storage capacity by 2030. In connection with transmission, it calls for a new transmission line between Nova Scotia and New Brunswick while noting that the Province is no longer considering the Atlantic Loop project prior to 2030.

As described above, the Plan provides for 300 MW of large-scale solar generation by 2030.³ The use of solar has significantly expanded across Nova Scotia, with net metering being strengthened through legislation and 7,000 Nova Scotians having installed solar⁴, and in the fall of 2023, Nova Scotia launched the Community Solar Program and Commercial Net Metering.⁵ It is expected a further \$150 million in solar investments will be made throughout Nova Scotia in 2024.⁶

In December 2023, Nova Scotia Power Inc. ("**NSPI**"), Nova Scotia's privately-owned power utility, submitted its report "The Path to 2030" to the Nova Scotia Utility and Review Board ("**UARB**"). This report is largely consistent with the Plan regarding the push to 80% renewable energy sales by 2030.⁷

Launch of the Green Choice Program

The Green Choice Program (the “GCP”) was enabled through amendments to the *Electricity Act* in 2020.⁸ A major goal of the GCP is to enable Nova Scotia to procure 100% renewable electricity for all federal government facilities, per the Province’s agreement with the Federal Government.⁹ Additionally, the GCP will now allow many large-scale electricity customers to procure up to 100% of their electricity from renewable energy.¹⁰ The goal of the GCP is to secure new projects that will generate 350 MW of renewable electricity beginning in 2027 to 2028.¹¹

The *Green Choice Program Regulations* were released by the Province on September 8, 2023. These regulations cover participant eligibility, the application process, proponents, as well as fees, benefits and credits. A more detailed review of the regulations by our Energy Group can be found [online](#).

In December 2023, the Province issued requests for proposals for potential proponents (suppliers of qualifying renewable electricity) and opened the application process for participants (consumers of qualifying renewable electricity) for the GCP. Selected proponents are expected to be notified in September 2024.¹² The commercial operation date for the program is expected to be December 31, 2028.¹³ The form of power purchase agreements that will be entered into by successful proponents has been submitted by the GCP administrator to the UARB for approval.¹⁴

Sleeved PPAs and renewable energy storage: amendments to the *Electricity Act* and Regulations

On April 12, 2023, Royal Assent was granted in respect of amendments to the *Electricity Act* (the “**Act**”) through Bill 264.¹⁵ The amendments allow the Province to issue requests for proposals for energy storage solutions such as large-scale batteries.¹⁶ The goal of these amendments was to get more storage in Nova Scotia’s system faster, allowing rapid development in this area.¹⁷ Prior to the passage of Bill 264, only NSPI was authorized to own this type of storage system.

On November 9, 2023, further amendments to the Act were passed which promote the supply of additional renewable energy facilitated through “sleeved” power purchase agreements (“**Sleeved PPA(s)**”) entered into by renewable energy suppliers, NPSI, and a customer.¹⁸ Renewable energy Sleeved PPAs involve the sale of energy from a renewable energy generator to a customer, with NSPI managing sale and delivery from the generator to the customer as the owner of the electrical grid.¹⁹ These amendments also enable the Province to approve energy storage solutions.²⁰

Amendments made to section 4AA of the Act grant the Minister of Natural Resources and Renewables the power to require NSPI to enter into a Sleeved PPA and to purchase energy from a specific generation facility. NSPI must then sell that energy to a specific customer as determined by the Minister.²¹ The amendments provide the Minister with the authority to determine the terms included in Sleeved PPAs.²² Further, the amendments clarify that the terms of a Sleeved PPA under subsections 4AA(2) and 4AA(2A) are not subject to approval by the UARB.

Amendments were also made to section 4D of the Act. These amendments allow the Province to approve energy-storage projects proposed by NSPI and to determine the terms and conditions for these projects.²³ These terms and conditions can relate to size and location of the energy storage projects.²⁴ These changes allow the Province to approve innovative energy storage solutions more quickly. Previously, NSPI required the approval of the UARB for these types of large-scale projects. The Province enacted the [Prescribed Energy-Storage Projects Regulations](#) on December 21, 2023, under section 4D of the Act. These regulations require NSPI to install three 50 MW grid scale batteries at sites adjacent to specified NSPI substations in Lunenburg, Kings and Halifax Counties.²⁵ The regulations further require NSPI to prepare annual reports issued to the UARB and Minister of Natural Resources and Renewables up to and including 2030 regarding the use of each battery project.²⁶





Offshore wind roadmap modules

In 2022, Nova Scotia set a target to offer leases for five gigawatts of offshore wind energy by 2030.²⁷ A first call for bids is planned for 2025.²⁸ To reach this goal, the Province has begun to establish a framework for the development of offshore wind projects through the release of the [Offshore Wind Roadmap](#). This will consist of three modules:

- > Module 1, released in May, 2023, outlined what is needed to complete the legislative and regulatory regime for offshore wind. A detailed review of Module 1 by Stewart McKelvey's Energy Group can be found [online](#);
- > Module 2, expected to be released in Spring 2024, will outline the supply chain and infrastructure opportunities for offshore wind; and
- > Module 3, expected to be released in Fall, 2024, will outline input from Indigenous peoples, as well as industry, academic and community stakeholders.²⁹

Module 1 indicated the Province's willingness to pursue early wind development for nearshore areas solely under the Province's jurisdiction.³⁰ The module announced that seabed rights issuances would begin as early as 2024 for these nearshore areas.³¹ In November, 2023, the Province retreated on this commitment, indicating that it would not pursue early development of nearshore wind projects, instead focusing on wind development in offshore areas jointly managed with the Federal Government.³²

Module 1 further noted the Province's commitment to introduce mirroring legislative amendments to the Federal Government's amendments made through Bill C-49. Bill C-49, and mirroring provincial legislation, are required to modernize and amend the mandate of the Canada-Nova Scotia Offshore Petroleum Board to create the regulatory regime for offshore wind development in joint federal-provincial managed offshore areas. Our Energy Group provided a [detailed review](#) of Bill C-49 in June, 2023.

Nova Scotia releases Green Hydrogen Action Plan

On December 15, 2023, the Province released its [Green Hydrogen Action Plan](#) (the "GHAP") which is intended to facilitate the growth of the Province's nascent green hydrogen industry.³³ The GHAP lists seven goals and 23 associated action items to achieve these goals. The goals identified in the GHAP are intended to promote the economic, social and environmental benefits associated with a green hydrogen industry.³⁴

Programs have been initiated to incentivize investment in the equipment required for low-emitting energy generation and storage. At the federal level, examples of programs to promote green hydrogen include the Clean Hydrogen Investment Tax Credit recently announced by the Government of Canada, the [Clean Technology Investment Tax Credit](#), and the Canada Growth Fund.³⁵ Provincial programs in development to support green hydrogen include the Nova Scotia Clean Fuels Fund and the Hydrogen Innovation Program. Additionally, Invest Nova Scotia, a provincial Crown Corporation with an economic development mandate, has updated the [Innovation Rebate Program](#) and initiated a Low-Carbon Technology Stream (as part of the Early Stage Commercialization Fund), to support decarbonization initiatives by businesses in Nova Scotia.³⁶

At the national level, the Federal Government intends to create regional hubs for green energy production. The Province aims to establish Nova Scotia as a regional hub, given its strategic position as a gateway to international markets. To date, the Province has amended various laws and regulations to enable the development of the sector in Nova Scotia, including [amendments passed in late 2022](#) which (i) will, upon proclamation, permit hydrogen facilities to be wholesale electricity customers; (ii) add hydrogen to the provincial gas distribution system; (iii) provide for the regulation of hydrogen pipelines, and (iv) provide for underground storage of hydrogen and ammonia.

Two green hydrogen projects received Environmental Assessment Approvals

In 2023, the Canso Strait area emerged as an important location for the Province's first green hydrogen production and export facilities. The Province issued its first two environmental assessment approvals (“**EA(s)**”) for green hydrogen projects. In February 2023, the Province issued an EA to EverWind Fuels Company relating to Phase 1 of a project intended to produce green hydrogen and ammonia in Point Tupper on Cape Breton Island.³⁷ Nova Scotia issued a second EA in April 2023, to Bear Head Energy Inc. for a green hydrogen and ammonia production plant as well as loading and storage facility in Richmond County, Nova Scotia.³⁸

EverWind expects operations to begin in 2025, while Bear Head expects commissioning and production in late 2027. These projects were approved in accordance with section 13(1)(b) of the [Environmental Assessment Regulations](#).⁴⁰

Proponents for wind farms granted Environmental Assessments Approvals

Ten onshore wind projects were also issued EAs in 2023. These projects are all expected to be under construction in 2024, and operational by 2025. Prior to supplying electricity to the grid, onshore wind developments must proceed through the interconnection request process with NSPI.⁴¹

Community Solar Program

In April 2022, the Province amended the Act to enable the creation of a community solar program administered by NSPI.⁴² These amendments will be effective once proclaimed by order-in-council. The goal of the program is to enable at least 50 MW of generation. The program will also encourage the development of new community solar gardens with a project nameplate capacity of between 0.5 MWac and 10 MWac.⁴³ NSPI anticipates that the combined program capacity for all community solar gardens will be 100 MW. The program is anticipated to launch in the first quarter of 2024 following the proclamation of the amendments and the release of the community solar regulations. NSPI expects that community solar projects will be operational in 2025.⁴⁴





Nova Scotia Plan to increase renewable energy approved by Federal Government

The Nova Scotia and New Brunswick governments received approval from the Federal Government for their respective plans to increase their use of renewable energy while eliminating reliance on coal to generate electricity by 2030.⁴⁵ As discussed, the Province has chosen a pared-back version of the previous Atlantic Loop by focusing on transmission capacity with New Brunswick, and domestic renewable energy.⁴⁶ It was announced as a first phase of funding, Nova Scotia will receive \$11.5 million to improve monitoring and automation of its electric grids.⁴⁷

On December 15, 2023, an EA approval was issued to NSPI for the construction of the NS-NB Reliability Intertie Project (the “**Intertie Project**”). The Intertie Project will consist of the 96 km twinning of a 345 kilovolt (kV) transmission line from Onslow, Nova Scotia to the New Brunswick border.



Newfoundland and Labrador

In 2023, the Government of Newfoundland and Labrador (“**GNL**”) demonstrated a commitment to advancement in the renewable energy sector in line with goals to position Newfoundland and Labrador (“**NL**”) as an industry leader.⁴⁸ Lawyers from our Energy Group remained engaged with the latest local and regional developments through our [Winds of Change Thought Leadership Series](#) in addition to participating in events and conferences, including EnergyNL or the World Hydrogen Summit in Rotterdam, The Netherlands.

Four proponents were successful in the Crown Lands call for Bids Wind Energy Process

Realization of the [Crown Lands Call for Bids for Wind Energy Projects](#) process was perhaps the most notable development in the local renewable energy space in 2023. The Call for Bids process, launched on December 14, 2022, was designed to award successful proponents a “Wind Application Recommendation Letter” granting an exclusive right to pursue the lands necessary for project development. As part of a two-stage review, proponents were evaluated based on their experience, financing strategy and comprehensive proposal, including their plans for Indigenous engagement and overall project benefits.

Four proponents were awarded Recommendation Letters from the Department of Industry, Energy and Technology.⁴⁹ Crown lands will be held in reserve, however, proponents remain subject to the GNL’s Crown Lands application process, fiscal framework and environmental assessment process.



The Wind-Hydrogen Fiscal Framework attempts to balance project cost recovery and investment risk

2023 saw a significant evolution in Provincial economic energy policy with the announcement of the Wind-Hydrogen Fiscal Framework (the “**Framework**”). The Framework ensures that the GNL can collect revenues throughout a project’s lifecycle, as payments are grouped into various land, wind and water fees.

While a detailed review of the Framework is available [online](#), certain elements bear emphasizing. For instance, the integration of both a Crown Land Reserve and Lease Fee ensures that annual charges started during the assessment process will not only continue, but increase once leases are issued. Additionally, water royalties applied to operational hydrogen projects will allow the GNL to receive royalties over the lifetime of a project through a tiered cost recovery model premised on the residual value of water used. Hence the Framework’s comprehensive approach intended to balance project benefits against investment risk.⁵⁰ Whether this fiscal policy aligns with the commercial realities of project proponents remains a question, and is something Stewart McKelvey’s Energy Group and stakeholders alike will continue to watch in the months and years ahead.

The offshore renewable energy regulatory scheme continues to develop

2023 updates in the offshore renewable energy (“**ORE**”) space highlighted legislative developments and steps taken by the GNL and Federal Government to expedite ORE project regulation.

As previously noted, the Federal Government introduced Bill C-49 in the summer of 2023 which intends to establish a modern regulatory scheme for ORE projects through the *Accord Acts* by building on Nova Scotia and Newfoundland and Labrador’s pre-existing petroleum regulatory regime. Bill C-49 will be studied by the Standing Committee on Natural Resources after final briefs are submitted to the Committee in February 2024.⁵¹

Signing of the *Canada-Newfoundland Offshore Wind Development Memorandum of Understanding* (“**MOU**”) in December 2023 demonstrated how the [Provincial ORE regulatory regime](#) might interact with Bill C-49. The MOU designated a specific ORE Area to be solely regulated by the GNL. Our Energy Group anticipates further updates regarding the ORE Area and Federal-Provincial joint management regulatory initiatives later in 2024.

Finally, in March 2023, the GNL and Federal Government launched the [Regional Assessment of Offshore Wind Development in Newfoundland and Labrador](#) (“**RA**”) in line with the *Impact Assessment Act* (“**IAA**”).⁵² Through the work of an appointed RA Committee, the RA will analyze potential effects of offshore wind development activities to inform future project-specific impact assessments, facilitate environmental protection and assess sustainable economic development opportunities.⁵³

Stewart McKelvey’s Energy Group looks forward to following announcements regarding *IAA* amendments in light of the Supreme Court of Canada’s [decision](#) on the unconstitutionality of the *IAA*’s designated project scheme.⁵⁴ However, the Federal Government’s [interim guidance](#) has already revealed that the RA will continue despite the need for *IAA* amendments since the RA focuses on understanding impacts as opposed to decision making.⁵⁵ Accordingly, the RA Committee’s work will proceed as they must release their findings in a report to the Minister in the fall of 2024.

Department of Finance Canada calls for comments on proposed Clean Hydrogen and Clean Technology Manufacturing Investment Tax Credits Legislation

Interested parties will be anxiously awaiting announcements regarding the Government of Canada's plans for clean economy investment tax credits ("ITCs") this year as Parliament continues to debate [Bill C-59: An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023, and certain provisions of the budget tabled in Parliament on March 28, 2023](#). The Firm's Energy Group [reviewed](#) the proposed ITCs, noting that Atlantic Canadian businesses stand to benefit from their implementation. The House completed the first reading of Bill C-59 in November 2023, and it was referred to Committee after a second reading on December 12, 2023. Bill C-59 must pass the Committee stage and third reading before it will be reviewed by the Senate.

Finance Canada published [draft legislation](#) regarding the Clean Hydrogen Investment Tax Credit ("**CHITC**") and the Clean Technology Manufacturing Investment Tax Credit ("**CTMITC**") on December 20, 2023. The CHITC is a refundable investment tax credit of up to 40% on eligible expenses incurred on property producing clean hydrogen before 2034. The CHITC will be reduced by 50% during 2034 and subsequently phased out by 2035.

The draft legislation defines "eligible clean hydrogen property" and "excluded property" to denote the CHITCs applicability. Clean hydrogen property must be acquired by the taxpayer and be available for use in connection with the taxpayer's qualified clean hydrogen project on or after March 28, 2023. Equipment used for off-site transmission, transportation or distribution of hydrogen or ammonia is considered "excluded property." In order for a taxpayer's hydrogen project to be considered a "qualified clean hydrogen project," it must meet the criteria outlined in the proposed legislation.

Definitions concerning the CTMITC are also included in the draft legislation and confirm details previously provided in the Government of Canada's [2023 Fall Economic Statement](#). The proposed amendments indicate that the CTMITC will be a refundable tax credit of up to 30% available on the capital cost of clean technology manufacturing ("**CTM**") property for "CTM use." CTM property associated with CTM use (which includes qualifying mineral activities as defined in the draft amendments) must be situated and exclusively used in Canada. After December 31, 2031, the rate associated with the CTMITC will be reduced to 20% and eventually phased out after 2034.

No explanatory notes were published with the proposed legislation, and the consultation period will run until February 5th of this year.





Hydrogen producers require guidance on Electrical Power Control Act exemptions

As noted in the first [Winds of Change](#) article, the *Electrical Power Control Act* (“**EPCA**”)⁵⁶ restricts retailers and industrial customers on the island portion of the Province from developing, owning, operating, managing or controlling a facility for the generation and supply of electrical power or energy to the public. Although the legislation also provides that the Lieutenant-Governor in Council can exempt a retailer or industrial customer from this limitation, there has been no directive from the GNL on how to obtain an exemption. The precise breadth of the “retailer” and “industrial customers” definitions in the wind to hydrogen context require interpretation in this context as well, possibly determined on a project-by-project basis. The timeline for this guidance is unclear, although the Government of Newfoundland and Labrador officials indicated in technical briefings regarding its energy policy that more information on this was to come. Given Canada’s commitment to export clean hydrogen to Germany by 2025 via the [Germany-Canada Hydrogen Alliance](#), updates concerning the *EPCA* exemption policy framework are highly anticipated.

Can we expect a second Crown Lands Call for Bids process for Green Hydrogen Proponents in 2024?

With the end of the wind energy Call for Bids process, the question of whether or how the GNL will structure a similar exercise for other lands remains. Answers may be found with the potential release of the Province’s Hydrogen Development Action Plan. In December, 2021, the Provincial Government launched their [Renewable Energy Plan](#) stating that, within one year, the GNL would develop a Hydrogen Development Action Plan and continue to enhance the Province’s ability to determine hydrogen opportunities. In 2024, industry players may be seeking advice and insight on policies regarding the regulatory environment and Crown Lands process to begin capitalizing on these opportunities.



New Brunswick

In 2023, the Government of New Brunswick (“**GNB**”) continued to focus attention on exploiting existing infrastructure, and developing and promoting transitional energy projects to provide more immediate and cleaner power resources while also reasserting its commitments to meet net-zero green house gas emissions by 2050. These targets have prompted new provincial policies and objectives, particularly given the heavy reliance on coal-fired electricity in the Province which must be phased out by 2030.

Requests for Expressions of Interest (“REOI”) by NB Power & updated Integrated Resource Plan

New Brunswick has a largely integrated electricity system, where generation and transmission are primarily owned and operated by New Brunswick Power Corporation (“**NB Power**”), a Crown Corporation, with distribution offered by three municipal distribution utilities in addition to NB Power. The sector is regulated by the New Brunswick Energy and Utilities Board and governed primarily by the [Electricity Act, SNB 2013, c.7](#) (“**Electricity Act**”). Subject to limited exceptions, the Electricity Act prohibits the sale or supply of electricity to a consumer, the ownership or operation of distribution system (<69 kV), or ownership, operation or construction of a transmission system (>69 kV) in the Province by anyone other than NB Power.⁵⁷

The central role of NB Power in the provincial legislative framework presents unique opportunities for parties looking to develop projects in partnership with NB Power. For example, in February 2023, NB Power issued a REOI to invite interested parties to submit wind, solar, tidal power and storage solution proposals for up to 220 MW of power by the end of April 2023. The REOI is intended to help achieve the provincial government’s objectives set out in their 2022 plan titled “[Our Pathway Toward Decarbonization and Climate Resilience](#)”.

On January 17, 2024, NB Power announced the first project approved under the REOI being the Neweg Energy Project located near Sussex for a six turbine with 100GWh annual production. It is anticipated that further projects will be selected from the REOI throughout 2024.

On July 28, 2023, NB Power submitted to the Energy and Utility Board their [Integrated Resource Plan: Pathways to a Net-Zero Electricity System](#) (“**IRP**”). NB Power is required to update the IRP at least every three years, and the plan generally reflected the proposals set out in NB Power’s strategic plan which included a heavy focus on nuclear energy, the need to add 300 MW of installed wind capacity by 2027/2028, and the exploration of biomass alternative fuel conversion opportunities for existing infrastructure as well as refurbishment of existing hydroelectric facilities.

GNB policies and legislative amendments emphasize economic growth and regulatory reform

Generally the GNB advances much of its clean energy policies through policy development at NB Power. In addition to those policies, on December 13, 2023, the Province published its own report titled “[Powering our Economy and the World with Clean Energy – Our Path Forward to 2035](#)” (the “**GNB Report**”). The GNB Report identifies the primary initiatives and strategies to be implemented more generally in steering the Province’s clean energy policy for the next 12 years. While confirming the objects set out in NB Power’s IRP highlighted above, the GNB Report also highlighted economic growth initiatives including supporting energy clusters, promoting hydrogen industries, and emphasizing clean manufacturing.

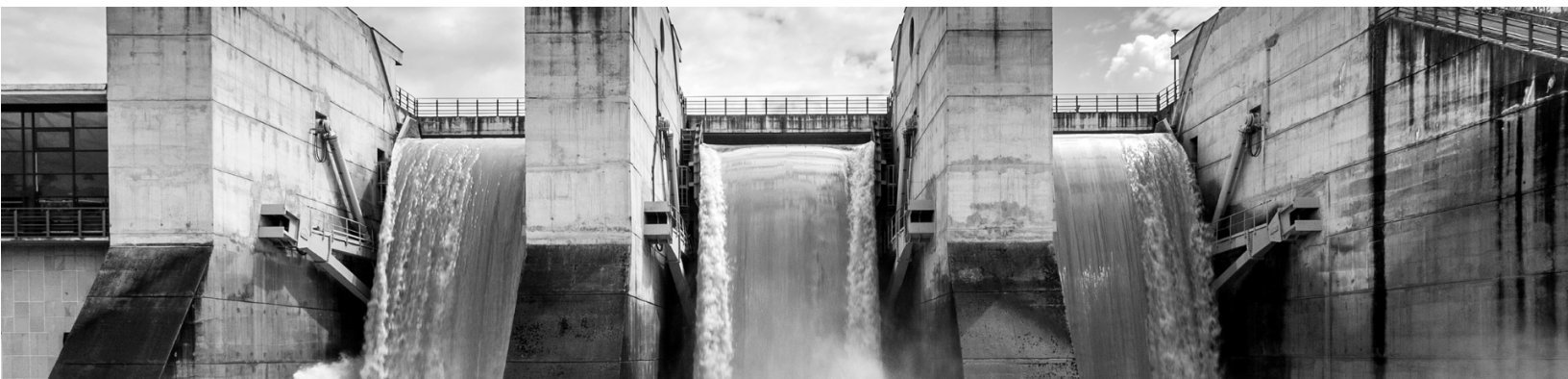
GNB recognized that substantial legislative and regulatory reform would be necessary in order to meet the goals of the GNB Report, including to: complete legislative changes to the *Electricity Act*, the *Pipeline Act, 2015* and *The Gas Distribution Act, 1999*; streamline approvals for clean energy projects; and establish an offshore wind regime by 2024.

[An Act to Amend the Electricity Act, Bill 10](#), was passed on December 10, 2023 and received royal assent on December 17, 2023. The most significant and key amendment was the addition of the right of a generation facility, belonging to a person other than NB Power, to sell or supply electricity from a “clean source” to a consumer within the Province if:

- a. the generation facility and consumer are both connected to NB Power’s transmission system;
- b. all or a portion of such electricity is used by the consumer for the production of ammonia, hydrogen or any other purpose prescribed by regulation; and
- c. the consumer connects “large loads” (to be defined by regulation) to the NB Power transmission system.⁵⁸

Prior to these amendments, self generation or transmission in connection with self generation was not actually prohibited by the *Electricity Act*, provided that transmission did not move or transfer electricity to a “consumer” or another electric system (which would have captured such transmission and contravened the prohibition against any other party other than NB Power owning a “transmission system”). Notwithstanding the original complicated exception permitting self generation with dedicated transmission, the new amendments set out in Bill 10 establish a clearer path forward for parties to develop clean energy projects in the Province while utilizing NB Power’s transmission system, and provides a means for commercialization of that system.

Of note, Bill 10 also included a prohibition against NB Power obtaining electricity from more than two small modular reactors (“**SMRs**”), at a maximum price to be set by regulation. It also prohibited both NB Power and any municipal distribution utility from extending its supply of electricity to a cryptocurrency mining business, unless contracted with prior to coming into force.





Nuclear power identified as a central component to NB's green action plans

While power generated by nuclear is not generally considered 'green' by potential export jurisdictions like the European Union, GNB and NB Power continued to identify nuclear power as a central and practical component in their energy transition plans, particularly as a complement to intermittent renewables. An early supporter of Moltex Energy Canada Inc. ("**Moltex**") and ARC Clean Technology Canada Inc. ("**ARC**"), the provincial government continues to heavily advance the development of existing and alternative strategic partnerships to support the construction and operation of advanced SMRs producing less than 300MW. These partnerships are in furtherance of the [*Strategic Plan for the Deployment of Small Modular Reactors*](#) prepared by the governments of New Brunswick, Ontario, Alberta, and Saskatchewan in 2022.

Two SMRs are being developed in the province by each of ARC (ARC-100) and Moltex (Stable Salt Reactor – Wasteburner (SSR-W)) in collaboration with NB Power. On June 30, 2023, NB Power submitted an Environmental Impact Assessment to the Provincial Department of Environment and Local Government and an application for a license to prepare the site to the Canadian Nuclear Safety Commission in respect of ARC's proposed SMR to be located west of the existing Point Lepreau Nuclear Generating Station. NB Power has indicated that it will apply, by December 2024, for a license to construct the facility, with construction to follow in late 2027. This project is expected to be the first commercial deployment of an on-grid generation IV SMR facility in Canada.

Regulatory and financial approvals for refurbishment of the Mactaquac Generating Station expected in 2024

The Mactaquac Generating Station, owned by NB Power, is a hydro facility with an installed generation capacity of 672 MW, having an expected life of 100 years. The facility began generating electricity in 1968, but since the 1980s due to adverse chemical reactions with portions of the concrete facility, experienced substantial annual maintenance and repairs, reducing its expected lifespan. NB Power has proposed a refurbishment project to ensure the station can operate to its intended lifespan with a modified approach to maintenance and adjusting and replacing equipment over time. In 2023, NB Power submitted an Environmental Impact Assessment to the Provincial Department of Environment and Local Government in respect of the project, with the expected regulatory and financial approvals to follow this year. Expected costs for the project are not yet public, but the refurbishment is expected to be the lowest cost option for the station given that the station provides the most affordable and reliable clean energy for the Province.

Construction contemplated by the refurbishment is expected to commence in 2025 through 2039.

GNB highlights the importance of natural gas reserves and exportation opportunities in 2023

Through the spring of 2023, GNB continued to highlight the importance of developing certain natural gas reserves located within the Province for the purpose of domestic use and exportation opportunities to Europe. GNB indicated that doing so would shutter the coal power plants in the region. In addition, GNB also heavily advanced the possibility of converting Repsol's receiving and regassification liquid natural gas ("**LNG**") facility located in Saint John into Canada's only operating LNG export facility – highlighting that such a conversion could occur well ahead of the completion of the multiple LNG export projects currently underway in Western Canada.

The development of the Province's natural gas reserves remains a key economic opportunity for GNB and we expect to see further efforts by GNB through 2024 to further develop this resource for the Province.



Belledune green energy hub proposes future green hydrogen projects

The Belledune Port Authority (“**BPA**”) further advanced its aim to become the Province’s first green energy hub and received substantial monetary and political support from Provincial and Federal Governments. Building on a number of memorandums of understanding with various port authorities located in Europe, BPA, in a partnership with Cross River Infrastructure Partners, announced their intention to develop a hydrogen facility powered by green-certified energy that would produce ammonia fuel for eventual export. This project is only one of the many projects proposed for the Belledune region, with a second major project being the exploration of the feasibility of converting Belledune’s coal-fired generating station from coal to sustainably sourced biomass.

It would appear that the amendments made to the Electricity Act by the proclamation of Bill 10 noted above were driven by the commercial projects contemplated in the development of the Belledune green energy hub, and we would expect announcements of other project developments through 2024.

NB saw two green energy projects come online in 2023

Saint John Energy, a municipal distribution utility exempted from a number of the restrictions imposed by the Electricity Act, partnered with Neqotkuk (Tobique First Nation) and Natural Forces on a ten turbine, 42-megawatt wind farm in Lorneville dubbed the Burchill Wind Project. The Burchill Wind Project came online in June 2023.

NB Power partnered with the Town of Shediac and the Government of Canada through Natural Resources to build its 1.63 megawatt (MW) solar farm (4000 panels) in Shediac as part of Smart Grid Atlantic, a smart and renewable energy research program being run by NB Power, Siemens Canada, and Nova Scotia Power. The solar farm came online in February 2023.



think: strategic advisors

Our Renewable Energy practice group is made up of the region's leaders in providing legal advice and guidance to all parties involved in navigating the nuanced regulatory regimes associated with renewable and clean energy projects. Should you have questions on the content covered in Energy Watch, or any of our energy Thought Leadership articles, please contact a lawyer in our [Renewable Energy Group](#) or this publication's authors, listed below.

With networks across the region, spanning multiple sectors, Stewart McKelvey is Atlantic Canada's Renewable Energy Law Firm.



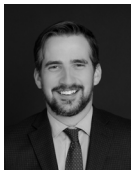
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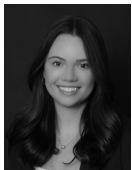
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Endnotes

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 58. “Clean Source” is defined as solar energy, wind energy, hydroelectric energy, ocean-powered energy, biogas energy, biomass energy, nuclear energy, sanitary landfill gas, and any other source of energy prescribed by regulation.

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