

IN THE MATTER OF an appeal by Carol-Ann McLaine and William McLaine of a decision by the Rural Municipality of Miltonvale Park ("Municipality") to issue a development permit for a private utility structure (solar array) (the "Structure") on July 15, 2020

Further Grounds of Appeal Based on Disclosure of Record from the Municipality ("Record")

The Appellants raises the additional issues and grounds for appeal based upon the Record disclosed by the Municipality:

1. By email dated July 15, 2020 (page 13 of the Record), the Municipality advised the Proponents that a net metering agreement with Maritime Electric would not breach the Development Permit. As a "private utility" the permit required that the Proponents "*shall produce, transmit, distribute, and furnish electric energy, either directly or indirectly, only to its owner and not to or for the public.*"
2. The Structure does not qualify as a private utility even based on the Municipality's interpretation of the term. The Structure directly produces, transmits, distributes and/or furnishes electric energy to the public through the Proponents' net metering agreement with Maritime Electric.
3. The *Renewable Energy Act*, R.S.P.E.I. 1988, c R-12.1 defines "net-metering system" as:
a system that operates in parallel with the electrical distribution facilities of a public utility and that measures, by means of one or more meters, the amount of electric energy that is supplied
 - i. *by the public utility to a small capacity renewable energy generator, and*
 - ii. *by the small capacity renewable energy generator to the public utility;*
4. The Appellants request the complete file generated in relation to the Proponents' net metering agreement with Maritime Electric. If necessary, the Appellants request a preliminary hearing pursuant to *Rule 32(f)* for production of this documentation.
5. By email dated July 5, 2020 to another resident concerned with the Structure (page 154 of the Record), the Municipality referred to the definition of "public utility" in the *Planning Act*, R.S.P.E.I. c. P-8 to extrapolate what the definition of "private utility" would be in the *Zoning & Subdivision Control (Development) Bylaw (2019)*. In particular, the email states that "*Many of the definitions in the bylaw correspond to those used by the Province, in their Planning Act Subdivision and Development Regulations.*"
6. The Municipality neglected to consider the definition of "public utility" in the *Municipal Government Act*, R.S.P.E.I. 1988 c. M-12.1. This act incorporates the definition of "public utility" in the *Water and Sewerage Act*, R.S.P.E.I. 1988, c. W-2, which only relates to water and sewerage works, and not energy generation.
7. The Record includes redactions within various emails (pages 16, 17, and 65). The partially redacted emails were not authored by lawyers and the emails were not prepared for the purpose of receiving legal advice. The Appellants request the complete unredacted Record.

8. The Record does not include the Structure's building permit. The Structure is not exempt from the requirement of a building permit pursuant to the *Building Codes Act*, R.S.P.E.I. 1988 c B-5.1. If the Structure was issued a building permit, as is required, it ought to form part of the Record.