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

WRITTEN SUBMISSIONS OF THE APPELLANTS

PART I – OVERVIEW

1. The Rural Municipality of Miltonvale Park (the "Municipality") has exacting standards and zoning requirements for proposed structures within its boundaries. The character of each zone is zealously guarded with detailed restrictions so that only certain structures and uses are permitted.

2. One of the few exceptions to the Municipality's rigorous guardianship is when it comes to a private utility. In such a case, anything goes. A private utility of any size, nature and character can be located anywhere within the Municipality without setback, design standards, or consideration of the zone where it will be placed.

3. This appeal concerns whether the term "private utility" can be stretched by the Municipality to include a 1,084 solar array (the "Array") that is abutting the Appellants' property. This, in a Municipality that prohibits a satellite dish greater than two feet in diameter.

PART II– FACTS

4. The Appellants in this matter are the residents and owners of 985 Loyalist Road in the Municipality.

5. The Array was constructed approximately 20 feet from the Appellants' property boundary by their immediate neighbours, the Developers, at 999 Loyalist Road.

6. The attached photographs (Tab "A") provide a sense of the scale of the Array as seen from the Appellants' home. The Array dominates their view. In placing the Array immediately adjacent to their northern border, the Developers were able to preserve their own unspoiled view of the idyllic agricultural zone in which they live.

7. The Appellants protested the construction of the Array throughout the summer of 2020. On June 24, 2020, the Mayor of the Municipality left a voicemail (a recording of which is attached at Tab "B") for the Appellants indicating, in part, that

> "*We don't regulate permits [for solar arrays] at this point with the policy and guidelines but we will be in the next pass of the rewrite.*"

8. On July 2, 2020, the Appellants prepared a petition to challenge the construction of the Array (the "Petition"). The Appellants gathered the signatures of 104 residents who live closest to the Array (Tab "C").

9. The Petition recognized that:

> *there is a place for alternate energy structures,* ***but not in our front yards****, especially with no bylaws in place for Structure of this magnitude.* [emphasis in original]

10. On July 15, 2020, the Developers submitted an Application for Development Approval for the Array (Tab "D").

11. On the same day, the Municipality issued a Development Permit (Tab "E") subject to the following condition:

> "*That the private utility shall produce, transmit, distribute, and furnish electric energy, either directly or indirectly, only to its owner and not to or for the public*" (the "Permit Condition").

12. On the evening of July 15, 2020, the Developers sent an email asking if the Permit Condition would prevent them from selling power to Maritime Electric. The Municipality responded that they would not be so prevented (see exchange of emails at Tab "F").

13. On July 20, 2020, the Mayor sent a letter to each individual who signed the Petition, espousing the workmanship of the Developer's contractor and certain personal details about hardships faced by the Developers while living in Alberta (Tab "G"). The letter also indicated that as a private utility, the Array was exempt from setback requirements, and could be located in any zone without any applicable standards.

14. The Developers entered into a Net Metering Agreement signed by the Developers on July 24, 2020 and by Maritime Electric on July 28, 2020 (Tab "H").

PART III – ISSUES

15. The issues in this matter are:

(a) Whether the Array is a private utility for the purpose of the *Zoning & Subdivision Control (Development) Bylaw (2019)* (the "Bylaw") (Tab "I"); and, if so,

(b) Whether the Array is a private utility according to the definition used by the Municipality.

PART IV – LAW AND ARGUMENT

ISSUE A - Whether the Array is a Private Utility

(i) Usage Restrictions in Agricultural Zone (A1)

16. As set out at section 8.2 of the Bylaw, within the Agricultural Zone (A1), there are nine permitted uses for properties less than three acres and an additional four uses if the property is greater than three acres.

17. Pursuant to section 4.25 of the Bylaw, uses that are not specified as permitted uses shall not be permitted.

18. The Array does not fit within one of the explicit uses in the Agricultural Zone (A1).

19. Section 4.24 of the Bylaw details some additional uses permitted in all zones. It indicates that:

> *"Public and private utilities and utility-related buildings or structures may be located in any zone and no zone standards shall apply."*

20. The Development Permit was granted for the Array on the basis that it is a private utility structure.

(ii) Principles of Statutory Interpretation

21. The modern principle that governs statutory interpretation is as follows:

> *Today there is only one principle or approach, namely the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.*

See: Elmer A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974), at p. 67 as reproduced in Ruth Sullivan, *Sullivan on the Construction of Statutes* (Markham: LexisNexis, 2014) at p. 7
[Tab J]

22. In undertaking this analysis, the Appellants will do the following in the submissions directly below:

(a) analyze the ordinary meaning of the term "private utility";
(b) place the term "private utility" in the context of the Bylaw;
(c) set out the approach taken by courts where there is a gap in the legislation;
(d) point out the internal inconsistency in the Bylaw and absurd results that would arise based on the Municipality's expansive definition of the term; and
(e) review other statutes in Prince Edward Island that define similar terms.

(iii) Ordinary Meaning of Private Utility

23. It is submitted that the term "private utility" is not used in ordinary parlance and has no standard meaning. It is not defined in Black's Law Dictionary or the Merriam Webster Dictionary.

24. The Bylaw does not define "public utility", "private utility" or "utility".

25. The term "private utility" is only used at section 4.24 of the Bylaw so there are no opportunities to review the operation of the term elsewhere in the Bylaw to shed light on its meaning.

26. Breaking down the two words in the term, "private" could refer to the nature of the ownership interests, i.e. privately owned rather than publicly owned. It could also refer to whether the thing produced by the utility is to be consumed privately rather than distributed publicly.

27. The definition of "utility" in the Merriam Webster Dictionary refers to "public utility", which is defined as "a business organization (such as an electric company) performing a public service and subject to special governmental regulation" (Tab "K").

28. Given that the Bylaw permits all public and private utilities, as well as their related buildings and structures, to locate anywhere in the Municipality and without any applicable standards, an expansive definition of the term "utility" would entitle a telecommunications company to open a store to sell mobile phones, or construct a corporate office tower, anywhere within the Municipality. Clearly this was not the intent of the Bylaw.

29. Moreover, if one uses the definition of "public utility" as defined in the Merriam Webster Dictionary as a starting point, it is difficult to ascertain what aspect(s) of that definition should be changed to reflect the meaning of "private utility". It could mean that it is:

    (a) no longer a "business organization";
    (b) no longer providing a "public service"; and/or
    (c) no longer "subject to special government regulation".

30. Finally, 4.24 does not delineate whether generation of the utility must be the sole purpose of the structure. For instance, if there is a solar collector attached to a large building that would otherwise not be in the appropriate zone, is the entire building insulated from zoning requirements because it has a solar collector affixed to it?

31. It is submitted that the term "private utility" is highly ambiguous. The more ambiguous the ordinary meaning of the text, the less weight it receives and the more the decision-maker must resort to contextual factors. These contextual factors are addressed below.

See: Ruth Sullivan, *Sullivan on the Construction of Statutes* (Markham: LexisNexis, 2014) at p. 14-15 [Tab L]

(iv) Private Utility in the Context of the Bylaw

32. As set out above, the purpose of the enactment must be considered when interpreting a specific term within it.

33. In this case, the Bylaw indicates at section 1.6 that its purpose "is to implement the policies of the *Official Plan* and to establish a transparent, fair and systematic means of Development control for the Community."

34. It is submitted that it is not transparent, fair or systematic to develop an exacting and meticulous plan for permitted uses in the Municipality and then eschew all of those considerations because something qualifies as a private utility. For that reason, the term "private utility", which is undefined in the Bylaw, ought to be construed narrowly.

35. As noted, a second purpose of the Bylaw is to implement the policies of the *Official Plan.* The relevant extracts of the *Official Plan* [Tab "M"] that relate to whether the Array should qualify as a "private utility" are as follows:

(a) Section 4 – The Community Goal:

"Most residents of Miltonvale Park moved to the Community (or stayed here) because they did not want to live in the City of Charlottetown. Residents value the small community charm, the rural lifestyle, the open space and scenic agricultural landscapes..."

(b) Section 5.1: "Agriculture shall remain the dominant land use in the Community."

(c) Section 6: "The Social Objectives of the Community are: To preserve and enhance the rural character of the Community..."

(d) Section 9.3 – Alternate Energy Systems Policy: "It is the policy of Council to support the use of alternate energy systems in the Community. Plan Action: Wind turbine development under the Development Bylaw will be consistent with provincial regulations and best land use planning practices."

36. The above sections of the *Official Plan* emphasize preservation of the rural character of the Municipality. That character is lost for the Appellants, whose view from their home is dominated by the Array.

37. While the Municipality indicates its support for alternative energy systems at section 9.3 of the *Official Plan* (as well as in the Bylaw), it only contemplates wind energy systems. The *Official Plan* indicates that a balance will be struck between support for wind energy and best land use planning practices.

38. The specifics of that balance are laid out at section 4.32 of the Bylaw. The following standards applicable to wind energy conversion systems include:

(a) The owner must comply with all applicable provincial legislation;
(b) A wind turbine with a capacity of less than 100 kilowatts has specified setback requirements from residential uses and highways;
(c) A wind turbine with a capacity of more than 100 kilowatts:
    I. Must be in the A1 Zone;
    II. Not permitted on a lot with residential use;
    III. Not permitted within one kilometre of the RS1 or R1 Zone;
    IV. Blade clearance must be 7.6 metres from the ground;
    V. Various additional setback requirements;
(d) The wind turbine must be in a non-reflective matte and unobtrusive colour;

(e) The only artificial lighting permitted on the wind turbine must be legislatively enacted;

(f) No signage is permitted on the wind turbine except for identification of the manufacturer;

(g) The wind turbine and associated structures must be removed within two years of wind turbine inactivity;

(h) The owner of the wind turbine must enter into a development agreement with Council;

(i) The application for development permit must include:

I. Details about the production levels and characteristics of the wind turbines;

II. A site plan;

III. Manufacturer's specification, and design and approval of the base from a professional engineer;

IV. Copies of all documentation submitted pursuant to any statutory requirement;

V. Copies of all licenses and permits;

VI. An emergency response plan;

VII. A decommissioning and reclamation plan for the lot; and

VIII. Any other required information.

(j) Commercial wind energy systems are prohibited.

39. The language of "utility" is not used in reference to renewable energy in the *Official Plan* or section 4.32 of the Bylaw. Rather, the reference is specifically to "wind energy conversion systems" and "wind turbines".

40. The term "wind turbine" is defined in the Bylaw and no reference is made to it being a utility. The complete definition of the term as found in the Bylaw is as follows:

> *a wind energy generating system (turbine and accessory facilities) intended to primarily serve the electrical needs of the*

on-site user or consumer (either behind the meter or off-grid) and not used to produce power for resale.

41. If wind energy conversion systems and wind turbines were a "public utility" or "private utility", the Bylaw would first acknowledge that wind energy conversion systems are an exception to the exception that applies to public utilities and private utilities. To reconcile this issue, the following language would be used in the Bylaw:

    (a) At the beginning of section 4.24, it would state "Subject to the provisions of section 4.32..."; or

    (b) At the beginning of section 4.32, it would state "Notwithstanding that wind energy conversion systems are public utilities or private utilities, the following zoning requirements and zoning standards apply to them..."

See: Ruth Sullivan, *Sullivan on the Construction of Statutes* (Markham: LexisNexis, 2014) at p. 354
[Tab N]

42. Without such a reconciliation between sections 4.24 and 4.32, it must mean that wind energy conversion systems are not public utilities or private utilities. The Array, which similarly functions to generate energy, would likewise not qualify as a public utility or private utility.

v. Judicial Approach to Legislative Gaps

43. With the Official Plan and section 4.32 of the Bylaw, the Municipality signalled an intention to balance renewable energy with good land use practices. The fact that the Municipality only dealt specifically with wind energy does not mean that solar arrays, biomass generators or other means of renewable power should not be subject to the same balancing; it means there is a gap in the Bylaw.

44. As the Mayor indicated in his voicemail to the Appellants,

> *"We don't regulate [solar array] permits at this point with the policy and guidelines but we will be in the next pass of the rewrite."*

45. Before the Municipality has the opportunity to properly contemplate and balance solar arrays in the next round of amendments to the Bylaw, it has no authority to shoehorn solar arrays in as a "private utility".

46. It is instructive to consider the approach that the Courts take where legislation is underinclusive. The Prince Edward Island Supreme Court was faced with such a situation in *National Farmers Union v. Prince Edward Island (Potato Marketing Council)* (1989), 74 Nfld. & P.E.I.R. 64. The Court had to interpret the *Judicial Review Act*. The purpose of the Act was to substitute an application for judicial review for various other existing proceedings. However, none of the provisions in the Act actually provided the mechanism for the substitution. The Court refused to fill the gap in the legislative scheme.

> **See: *National Farmers Union v. Prince Edward Island (Potato Marketing Council)* (1989), 74 Nfld. & P.E.I.R. 64 [Tab O]**

vi. An Expansive Definition of "Private Utility" Leads to Absurdity

47. The British Columbia Court of Appeal explained the approach to statutory interpretation that a court will take if it is faced with an interpretation that will lead to inconsistency:

> *A court will take into account anomalies, paradoxes and inconsistency created by an interpretation and, to a great degree, eschew them.*

> **See: *R. v H. (J.P.L.),* 2013 BCCA 295 at para. 32, [Tab P]**

48. There are at least four different anomalies, paradoxes and/or inconsistencies that would result from interpreting "private utility" to include the Array.

49. The most glaring inconsistency that would result from an expansive definition of "private utility" is that if the Array is a private utility, so too are wind energy systems. If wind energy systems are a private utility, they are permitted in any zone without standards. This is irreconcilable with section 4.32 of the Bylaw, with its myriad zoning restrictions and standards for wind energy systems.

50. Sections 4.24 and 4.32 do not acknowledge each other or explain which takes precedence. There is no "notwithstanding" or "subject to" language in either provision.

51. To take a hypothetical example, assume that an owner wishes to place a wind turbine with a nameplate capacity of greater than 100 kilowatts on her property in the Residential Zone R1. This would breach section 4.32(3)(i) of the Bylaw because such turbines are only permitted in the A1 zone. However, pursuant to section 4.24, this turbine, as a private utility, could be placed in any zone.

52. If the owner of the turbine with greater than 100 kilowatt capacity sought a development permit, she would rely upon 4.24. Undoubtedly, however, the Municipality would apply the specific language of section 4.32 to deny the permit. In doing so, it would have to acknowledge that the turbine is not a private utility.

53. In *Sullivan on the Constructions of Statutes*, contradiction is defined as "*one provision permits what another provision prohibits.*" Such a contradiction exists in this case if "private utility" captures wind turbines, and by extension, solar arrays.

See: Ruth Sullivan, *Sullivan on the Construction of Statutes* (Markham: LexisNexis, 2014) at p. 345
[Tab Q]

54. The Reply to Notice of Appeal prepared by the Municipality touched upon the question of whether there is a contradiction, stating that "*Regulating wind turbines specifically does not conflict with regulating public and private utilities generally*".

55. As apparent from this hypothetical example, the regulation of wind turbines in the Bylaw is in outright conflict with the prohibition on regulating utilities at section 4.24. The only way these provisions are not in conflict is if wind turbines are not utilities.

56. A second anomaly that arises if the definition of private utilities that includes the Array is found in the reference to "solar collectors" in section 4.17 of the Bylaw. This section exempts certain enumerated structures, including solar collectors, from the height restriction on building. If solar power arrays were a private utility already exempt from all zone standards, it would be unnecessary to exempt solar collectors from the height restriction.

57. In other words, the exemption of solar collectors from the height restriction would add nothing to the Bylaw if solar arrays are already exempt from all possible standards. This would offend the principle that "the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain."

See: Ruth Sullivan, *Sullivan on the Construction of Statutes* (Markham: LexisNexis, 2014) at p. 211
[Tab R]

58. The third reason that interpretation of the Array as a "private utility" would lead to an absurdity is because it would frustrate the purpose of the Bylaw and Official Plan. As pointed out in *Construction of Statutes:* "*An interpretation that would tend to frustrate the legislative purpose or thwart the legislative scheme is likely to be labelled absurd.*"

See: Ruth Sullivan, *Sullivan on the Construction of Statutes* (Markham: LexisNexis, 2014) at p. 320
[Tab S]

59. To find that the Array is a "private utility" would be to defeat the purpose of the Bylaw and Official Plan. The Official Plan explicitly requires that wind energy systems will only be permitted in accordance with good land use planning principles. There is no logical reason that the Municipality would require the application of good land use planning principles for the placement of wind energy systems, but not require them for independent solar structures. As apparent from photographs of the Array taken from the Appellant's property and the Petition, such structures can be quite intrusive. This is not to mean that they will be prohibited, but the Municipality will need to formulate a policy that balances its rural character and need for sound land use planning, with encouragement of renewable energy projects.

60. Fourth, if the Municipality's interpretation of "private utility" is stretched to its logical conclusion, there would be nothing preventing a private landowner from building a hydroelectric dam, coal-fired power plant, or nuclear power plant on their property. Such a facility would still be subject to provincial and/or federal regulation, but once approved by these other levels of government, the Municipality would have no jurisdiction to prevent such a project from proceeding in any zone within its boundaries.

vii. Reliance on other Statutes

61. The Municipality has resorted to other enactments to explain how it interpreted "private utility" for the purposes of the Bylaw.

62. In an email dated July 5, 2020 (Tab "T") from the Chief Administrative Officer ("CAO") of the Municipality to a resident concerned about the Array, reference was made to the definition of "public utility" in the *Subdivision and Development Regulations* of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8. In that regulation, "public utility" was defined as follows:

> *"public utility" means any person or corporation and the lessees, trustees, liquidators or receivers of any person or corporation who owns, operates, manages or controls, or is incorporated for the purpose of owning, operating, managing or controlling any plant or equipment*
> *(i) for the conveyance or transmission of telephone messages,*
> *(ii) for the production, transmission, distribution or furnishing of electric energy, or*
> *(iii) for the provision of water or sewerage service, either directly or indirectly, to or for the public.*

63. The CAO indicated it would be "logical to assume that a private utility would also encompass similar services, only with private ownership and to provide for private citizens."

64. There is no evidence to demonstrate how a "public utility", as treated by this particular Regulation, should dovetail with the definition of "private utility" in the Bylaw.

65. Other enactments that also touch upon municipal affairs have a definition of "public utility" that does not even reference energy. For instance, the *Municipal Government Act*, R.S.P.E.I. 1988 c. M-12.1 incorporates the definition of "public utility" in the *Water and Sewerage Act*, R.S.P.E.I. 1988, c. W-2. This definition only relates to water and sewerage works, and not energy generation.

> **See: Definition of "public utility" in the *Municipal Government Act*, R.S.P.E.I. 1988 c. M-12.1 *Water and Sewerage Act*, R.S.P.E.I. 1988, c. W-2**
> **[Tab U]**

66. Other municipalities have adopted a definition of "utility" that excludes solar power generation. One example of this is a tender that the City of Charlottetown prepared for development of its wellfield property in Miltonvale. Phase 3A of the

development required solar energy electrical power generation from a ground mounted structure (i.e. the same type of structure at issue in this appeal).

67. The electrical power generation in the tender was not referenced as part of the "utility". The "utility" referenced in the tender was all related to the water and sewerage system that was being developed. Electrical power generation was a separate division within the tender and it was not referenced as part of the utility.

See: Table of Contents of "Charlottetown Tender – Miltonvale Wellfield Development, Phase 3A: Booster Station – Charlottetown Water & Sewer Utility Specifications"
[Tab V]

68. Section 1.4.2 within the Solar Energy Electrical Power Generation Division of the tender indicates that one of the submissions shall be a "*Riser diagram showing connection to utility…*". This demonstrates that the solar power generator is treated as a separate structure that interfaces with the utility, but is not part of the utility itself.

See: Section 1.4.2 of Division 48 of "Charlottetown Tender – Miltonvale Wellfield Development, Phase 3A: Booster Station – Charlottetown Water & Sewer Utility Specifications"
[Tab W]

69. The tender from the City of Charlottetown is an example of how a ground mounted solar power generator to be placed within the Municipality was not treated as a "utility". The Appellants submit that this is further evidence that the even more ambiguous term "private utility", at issue in this appeal, has no common meaning. It depends upon the surrounding context. As set out in detail above, the context found within the Bylaw demonstrates that the Array cannot be a "private utility".

viii. Conclusion – The Array is not a Private Utility

70. The analogy of the Array to wind energy conversion systems is instructive in this appeal. Put simply, the function of both solar arrays and wind energy conversion systems is to generate electrical power from an independent structure. Either these structures are both "private utilities" or neither of them are "private utilities".

71. The zoning and standards for wind power structures are heavily regulated in the Bylaw. Private utilities, however, are to have no zoning requirements and standards.

72. Of course, it would be entirely possible for the Bylaw to make wind power structures subject to regulation despite it still being a "private utility". However, in this instance, the Bylaw would have to acknowledge that notwithstanding that private utilities are exempt from zoning and standards, wind energy conversion systems are to be carved-out of this exemption. There is no such acknowledgement that wind energy conversion systems are an exception to the exception.

73. Without such a reconciliation, whereby the Bylaw acknowledges that wind power structures are private utilities but are nevertheless subject to various requirements, wind power generators must not be considered a "private utility". Otherwise, there is a direct inconsistency between the private utility and wind power generator provisions (4.24 and 4.32, respectively) in the Bylaw.

74. The primary interpretive tool relied upon by the Appellants is the presumption of coherence. This presumption was explained by Ruth Sullivan as follows:

> *The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain*

contradictions or inconsistency, that each provision is capable of operating without coming into conflict with any other…

The presumption of coherence is virtually irrebuttable. *Since disputes must be resolved by the courts in a definitive fashion, in accordance with 'the law', contradiction or inconsistency cannot be tolerated; some method of reconciliation must be found.* ***[emphasis added]***

See: Ruth Sullivan, *Sullivan on the Construction of Statutes* (Markham: LexisNexis, 2014) at p. 337-338
[Tab X]

75. This same principle was enunciated by the Supreme Court of Canada as follows: *The objective is to interpret statutory provisions to harmonize the components of legislation inasmuch as is possible, in order to minimize internal inconsistency.*

See: *Willick v. Willick,* [1994] 3. S.C.R. 670 as quoted in Ruth Sullivan, *Sullivan on the Construction of Statutes* (Markham: LexisNexis, 2014) at p. 337
[Tab Y]

76. The reconciliation that is available to eliminate the intolerable inconsistency, is to conclude that the Array, like wind energy conversion systems, must not be "private utilities."

77. As acknowledged by the Municipality's Mayor and apparent from the *Official Plan*, there is a regulatory gap for regulating independent solar structures in the Bylaw. Until this gap is filled with something akin to section 4.32 or whatever the Municipality deems necessary to balance independent solar structures with the need for sound land use planning, such structures are impermissible in the Municipality.

ISSUE B - The Array cannot Comply with the Permit Condition

78. As set out above, the Appellants position is that the Array is not a private utility. Even if the Array was a private utility, it would be impossible for it to comply with the Permit Condition.

79. As the Municipality is aware, the Array has a net-metering agreement with Maritime Electric.

80. This agreement is governed by the *Renewable Energy Act*, R.S.P.E.I. 1988, c R-12.1. Pursuant to section 13(1) of the Act, once a net-metering agreement is entered into, the public utility shall establish a net-metering system with the small renewable energy generator. With a nameplate capacity of less than 100 kW, the Array qualifies as a small renewable energy generator.

See: *Renewable Energy Act*, R.S.P.E.I. 1988, c R-12.1 [Tab Z]

81. A "net-metering system" is defined in the Act to mean:

> *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***
>
> *(a) by the public utility to a small capacity renewable energy generator, and*
>
> *(b) by the small capacity renewable energy generator to the public utility;* [**emphasis added**]

82. By "supplying" energy to Maritime Electric, the array is *producing, transmitting, distributing, and/or furnishing electric energy* to others contrary to the Permit Condition.

83. The Municipality or Developer may raise the argument that the Array does not make a net contribution to the power grid. In other words, an annual tally of the Developer's energy use and production would demonstrate that they are not net contributors to the grid.

84. The restrictions on the Array, as a supposed "private utility", are much more than whether it is a net contributor of energy on an annual basis. As soon as it so much as "transmits" or "distributes" energy, the Permit Condition is breached. If the permit conditions on the Array were limited to ensuring it was not a net contributor of energy on an annual basis, it would not use the language of prohibiting, directly or indirectly, any production, transmission, distribution or furnishing of energy.

85. As the Permit Condition is drafted, the overall energy usage and generation of the Developers is irrelevant. The fact is that at certain times, the Array feeds energy to the grid. This must mean that the Array is not a private utility as defined by the Municipality. The energy generated from the Array is being transmitted and used by other customers of Maritime Electric.

PART V – REMEDY SOUGHT

86. For the reasons set out above, the Array is not a private utility. Alternatively, the Array is not a private utility as the Municipality applies the term.

87. The Appellants request that the Development Permit be quashed and that the Array be removed as an impermissible use within the Agricultural Zone (A1) of the Municipality.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11th day of January, 2021.

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