

### ***Now is the Time to Invest in Community Owned Energy***

*By Derek Simon*

2011 will be a big year for community-owned energy projects in Nova Scotia. The Province of Nova Scotia recently announced a new Community Feed-in Tariff Program. Under this program, community organizations that set up small-scale, locally owned renewable electricity projects will be able to sell electricity to Nova Scotia Power at very attractive prices that will be guaranteed for a number of years. Mi'kmaq band councils are one of the organizations that can take advantage of this program.

This program offers Mi'kmaq communities the opportunity to enter a rapidly growing industry, and to earn relatively stable, predictable income for the next several years by selling electricity generated from renewable sources to Nova Scotia Power.

To be considered community-owned, a community organization has to hold a majority interest in the electrical generating facility. The project can be owned by a band council or band-owned corporation. The band council or corporation can also partner with other community organizations, to own a majority of the project. Other organizations, including for-profit corporations, could be brought in as minority partners.

Eligible sources of renewable electricity include wind energy, biomass, and small-scale tidal and hydroelectric projects.

Band-owned projects can be situated on reserve lands or on other lands owned or leased by a band or a band-owned corporation.

Setting up a corporation to own the generating facility may be preferable so that the First Nation can limit their liability for the project, and also offers the opportunity for a First Nation to partner with other organizations that have experience in the renewable energy industry.

Applications for the program will be accepted once the prices have been approved by the Nova Scotia Utility and Review Board. This hearing is currently set to take place on April 4, 2011. While consultations with the Mi'kmaq of Nova Scotia on the program are ongoing, communities will want to move quickly if they want to take advantage of this program.

Applications have to be approved by the Minister of Energy. Once approved, successful applicants will enter into a standard power purchase agreement with Nova Scotia Power.

This provides a tremendous opportunity for Mi'kmaq communities to enter into a growing business and earn revenue to support social and economic development. Nova Scotia has a goal of 40% renewable energy by 2020, and so there may be further opportunities for the Mi'kmaq to own and operate renewable energy projects.

Mi'kmaq communities in Nova Scotia should consider what resources are available to them to take advantage of this program, and begin preparing for the start of the program in April. If communities do not have adequate land, money or other resources, they may be able to partner with other organizations on the project.

Burchells LLP can assist with any legal aspects of these projects, and would be pleased to make referrals to appropriate professionals who can assist with other aspects of the program

# BURCHELLS LLP

## Aboriginal Law Group

### Burchells Aboriginal Law Group

Burchells LLP has the region's largest Aboriginal Law practice, providing legal advice to Aboriginal Peoples in various parts of Canada since 1985 when we acted in support of Treaty Rights in the R. v. Simon case at the Supreme Court of Canada. Since that successful beginning, the lawyers in Burchells' Aboriginal Law Group have acted in many leading cases on behalf of Aboriginal Peoples. This includes cases at the Supreme Court of Canada, the Federal Court and Federal Court of Appeal, the Superior Courts of Alberta, Quebec, Newfoundland and Labrador, Prince Edward Island, New Brunswick and Nova Scotia, and a number of Provincial Courts.

In addition to litigating Aboriginal and Treaty rights, Burchells has successfully worked on behalf of First Nations, Tribal Councils and other Aboriginal Peoples' political and governance organisations in dealing with a whole range of issues that include:

- The Constitution of Canada
- Consultation and Accommodation
- Economic Development and Social Development
- Energy and Natural Resources
- Environmental Agreements
- Harvesting Agreements
- Human Rights
- The Indian Act and related legislation
- Impacts and Benefits Agreements
- International Law
- Investment and Business
- Labour and Employment
- Relationships with Industry
- Self-Government
- Specific and Comprehensive Claims
- Taxation
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In addition to its leading role in Aboriginal Law, Burchells is well recognized for its general litigation and business related practices, which are of course of interest to Aboriginal Peoples. Burchells' long standing working relationships with many Aboriginal groups prepare us to deal with the specific social and cultural matters that can arise when providing legal advice concerning these areas of law. We offer comprehensive legal advice in a sensitive and supportive environment.

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