

Electricity Plan Implementation (2015) Act

CHAPTER 31 OF THE ACTS OF 2015



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An Act to Implement an Electricity Plan

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Short title

1 This Act may be cited as the *Electricity Plan Implementation (2015) Act*. 2015, c. 31, s. 1.

Interpretation

- 2** In this Act,
- (a) “Board” means the Nova Scotia Utility and Review Board;
 - (b) “Fuel Adjustment Mechanism” means the fuel adjustment mechanism approved by the Board for use by Nova Scotia Power in orders dated December 10, 2007, (Board Case Number M00496) and December 8, 2008, (Board Case Number M00010) and any associated tariff and plan for administering the mechanism that has been approved by the Board;
 - (c) “Nova Scotia Power” means Nova Scotia Power Incorporated;
 - (d) “Rate Stability Period” means the calendar years 2017, 2018 and 2019;

(e) “total fuel rate” means the portion of a customer’s electricity rate intended to recover the sum of the base cost of fuel and annual adjustments under the Fuel Adjustment Mechanism. 2015, c. 31, s. 2.

Plan preparation

3 Nova Scotia Power shall prepare a Fuel Stability Plan for the Rate Stability Period. 2015, c. 31, s. 3.

Fuel Stability Plan

4 (1) The Fuel Stability Plan must include

(a) a forecast of Nova Scotia Power’s fuel and purchased power costs for a period ending no sooner than December 31, 2020;

(b) a proposed base cost of fuel under the Fuel Adjustment Mechanism for each calendar year during the Rate Stability Period;

(c) any proposed changes in the base cost of fuel through the Rate Stability Period;

(d) a description of any hedging strategies or mechanisms proposed to be used by Nova Scotia Power to manage fuel costs during the Rate Stability Period; and

(e) a forecast of the amounts to be recovered through Nova Scotia Power’s rates in respect of the anticipated assessment against it pursuant to Section 5E of the *Maritime Link Act*.

(2) The recovery of forecasted amounts in clause (1)(e) must be included in the base cost of fuel during the Rate Stability Period and is subject to subsection 6(2).

(3) Notwithstanding the recovery of forecasted amounts referred to in clause (1)(e) through the base cost of fuel, amounts in respect of the forecasted assessment may be allocated to Nova Scotia Power’s customers on any basis subject to the approval of the Board.

(4) Nova Scotia Power may include a proposal to phase in the recovery of the assessment through its rates for a period not exceeding five years.

(5) The phase-in may be accommodated by the early inclusion or deferral in rates of a portion of Nova Scotia Power’s costs relating to the assessment or by a similar mechanism. 2015, c. 31, s. 4.

Approval application

5 Nova Scotia Power shall apply to the Board for approval of the Fuel Stability Plan before the start of the Rate Stability Period or by such earlier date as may be prescribed by the regulations. 2015, c. 31, s. 5.

Board approval of Plan

6 (1) The Board shall approve the Fuel Stability Plan, subject to any changes, terms or conditions or other requirements considered appropriate by the Board and, without limiting the generality of the foregoing, approve

(a) a base cost of fuel under the Fuel Adjustment Mechanism for each calendar year during the Rate Stability Period, including an amount for the recovery of the anticipated assessment against Nova Scotia Power pursuant to Section 5E of the *Maritime Link Act*; and

(b) the hedging strategies or mechanisms to be used by Nova Scotia Power to manage fuel costs during the Rate Stability Period.

(2) Any changes in the base cost of fuel through the Rate Stability Period must be applied in equal annual increments or decrements over the calendar years 2017, 2018 and 2019.

(3) Where Nova Scotia Power's application includes a phasing of the recovery of the assessment pursuant to Section 5E of the *Maritime Link Act* into its rates pursuant to subsection 4(4), the Board may approve a phase-in of the recovery of the assessment through Nova Scotia Power's rates for a period not exceeding five years.

(4) Notwithstanding the approval of any hedging strategy or mechanism to be used to manage fuel costs during the Rate Stability Period, Nova Scotia Power shall apply to the Board for the approval of revised hedging strategies or mechanisms in the event that a change in circumstances relating to fuel costs makes it no longer reasonable to adhere to the approved hedging strategy or mechanism. 2015, c. 31, s. 6.

Nova Scotia Power to comply with Plan

7 Nova Scotia Power Incorporated shall comply with the approved Fuel Stability Plan. 2015, c. 31, s. 7.

Base cost of fuel

8 (1) The base cost of fuel under the Fuel Adjustment Mechanism may not be reset during the Rate Stability Period but may change pursuant to clause 6(1)(a).

(2) The incentive component of the Fuel Adjustment Mechanism is suspended during the Rate Stability Period. 2015, c. 31, s. 8.

Resetting base cost of fuel

9 The base cost of fuel must be reset for 2020 and Nova Scotia Power shall apply to the Board for the approval of the reset base cost of fuel so that it may be in place on January 1, 2020. 2015, c. 31, s. 9.

Adjustments during Rate Stability Period

10 Notwithstanding any requirement of the Fuel Adjustment Mechanism for annual adjustments, any adjustments implemented on January 1, 2017, must remain in place throughout the Rate Stability Period and must be adjusted so that any intended recovery or reimbursement of costs is made over the course of the Rate Stability Period. 2015, c. 31, s. 10.

January 1, 2020, Fuel Adjustment Mechanism adjustments

11 (1) Subject to Section 12, any variance in the actual recovery of the base cost of fuel and other costs approved for recovery through the Fuel Adjustment Mechanism from the approved forecasted recovery of those costs during the Rate Stability Period must be addressed through adjustments made pursuant to the Fuel Adjustment Mechanism to be implemented on January 1, 2020.

(2) Nova Scotia Power shall apply to the Board for the approval of these adjustments so that they may be implemented on January 1, 2020. 2015, c. 31, s. 11.

Board approval of Fuel Adjustment Mechanism adjustments

12 (1) The Board may approve adjustments made pursuant to the Fuel Adjustment Mechanism for implementation during the Rate Stability Period in respect of exceptional circumstances resulting in a variance in the actual recovery of the base cost of fuel and other costs approved for recovery through the Fuel Adjustment Mechanism from the approved forecasted recovery of those costs that the Board determines has caused or will cause substantial financial harm to Nova Scotia Power or its customers.

(2) The Board shall not make a determination pursuant to subsection (1) until it has held a hearing to determine whether exceptional circumstances exist as set out in that subsection. 2015, c. 31, s. 12.

Reporting and auditing requirements

13 For greater certainty, nothing in Sections 3 to 12 restricts or suspends any reporting or auditing requirements of the Fuel Adjustment Mechanism, except that no hearing relating to an audit may occur during the Rate Stability Period other than for the purpose of setting the base cost of fuel for the calendar year 2020. 2015, c. 31, s. 13.

Excess earnings

14 (1) Where Nova Scotia Power's regulated rate of return on equity exceeds the range approved by the Board for the calendar years 2015, 2016, 2017, 2018 and 2019, any amount that exceeds that range is deemed to be an overrecovery of fuel costs.

(2) Any excess earnings in respect of the calendar years 2015 and 2016 must be incorporated through the Rate Stability Period in the base cost of fuel that is approved pursuant to clause 6(1)(a).

(3) For greater certainty, annual adjustments pursuant to the Fuel Adjustment Mechanism may be made in 2016 in respect of the calendar year 2015 but, subject to Section 16, may not include any amounts relating to excess earnings.

(4) Any excess earnings during the Rate Stability Period must be addressed in the same manner as an overrecovery of fuel costs under Sections 11 and 12.

(5) To the extent that any past or future order of the Board is inconsistent with the treatment of excess earnings required by this Section, the order of the Board is of no force and effect in respect of the inconsistency.

(6) For greater certainty, nothing in this Section affects the operation of the *Public Utilities Act* or any order of the Board as they may apply in respect of earnings exceeding Nova Scotia Power's approved regulated rate of return on equity in calendar years other than 2015, 2016, 2017, 2018 and 2019. 2015, c. 31, s. 14.

Tax differences

15 (1) The tax difference at any time before the coming into force of this Section up to December 31, 2019, arising from the inclusion of Nova Scotia Power's property and assets in the South Canoe Wind Project and the Sable Wind Project in its rate base pursuant to Sections 35B and 35D of the *Public Utilities Act* on a cash tax basis with deferred taxes offset to a regulatory asset or liability as appropriate compared to a deferred tax treatment is deemed to be a recovery of fuel costs and must be incorporated through the Rate Stability Period in the base cost of fuel that is approved pursuant to clause 6(1)(a).

(2) For greater certainty, the tax difference deemed to be a fuel cost pursuant to subsection (1) must not be incorporated into annual adjustments under the Fuel Adjustment Mechanism but must be accounted for in the base cost of fuel during the Rate Stability Period required to be proposed by Nova Scotia Power pursuant to clause 4(1)(b) and approved by the Board pursuant to clause 6(1)(a). 2015, c. 31, s. 15.

January 1, 2016, annual adjustments

16 Notwithstanding subsection 14(2) and Section 15, for annual adjustments pursuant to the Fuel Adjustment Mechanism implemented on or about January 1, 2016, in respect of the 2015 calendar year, an amount excluded from an annual adjustment pursuant to the Fuel Adjustment Mechanism as a result of the application of subsection 14(2) and Section 15 may be included in the annual adjustment for any rate class whose total fuel rate in 2016 would otherwise be higher than it was in 2015, but only to the extent of reducing the 2016 total fuel rate to equal the 2015 total fuel rate. 2015, c. 31, s. 16.

Allocation of recovery of fuel costs

17 Any amounts deemed to be a recovery of fuel costs pursuant to subsections 14(1) and 15(1) must be allocated to Nova Scotia Power's customers on the same basis that they would have been under Nova Scotia Power's approved cost of service methodologies if they had not been deemed to be fuel costs. 2015, c. 31, s. 17.

Change in Nova Scotia Power's general rate

18 (1) Notwithstanding the *Public Utilities Act* but subject to subsection (3), the Board may not grant a change in Nova Scotia Power's general rates to take effect before January 1, 2020.

(2) Nova Scotia Power may, on or before April 30, 2016, file an application for a change in its general rates.

(3) On an application pursuant to subsection (2), the Board may grant a change in Nova Scotia Power's general rates to take effect during the Rate Stability Period.

(4) Where the Fuel Stability Plan is approved by the Board pursuant to Section 6, the base cost of fuel may not be reset on any application for a change in general rates pursuant to subsection (2).

(5) Nothing in subsection (1) affects the authority of the Board to order staged or multi-year changes in Nova Scotia Power's general rates during the Rate Stability Period in respect of an application made by Nova Scotia Power pursuant to subsection (2).

(6) Notwithstanding subsection (1), Nova Scotia Power may be granted a change in general rates during the Rate Stability Period if exceptional circumstances exist that have caused or will cause substantial financial harm to the ratepayers of the utility or to the utility, and Section 64A of the *Public Utilities Act* applies *mutatis mutandis*. 2015, c. 31, s. 18.

Excluded rates

19 Nothing in Sections 3 to 18 is intended to affect the manner in which the Board may deal with rates under the following Nova Scotia Power tariffs:

- (a) One Part Distribution Voltage Real Time Pricing Tariff;
- (b) One Part High Voltage Real Time Pricing Tariff;
- (c) One Part Extra High Voltage Real Time Pricing Tariff;
- (d) Generation Replacement and Load Following Tariff;
- (e) Shore Power Tariff;
- (f) Wholesale Market Backup/Top-Up Service Tariff;
- (g) Wholesale Market Non-Dispatchable Supplier Spill Tariff;
- (h) Open Access Transmission Tariff;
- (i) Load Retention Tariff; and
- (j) any tariff established pursuant to Section 3G of the *Electricity Act*. 2015, c. 31, s. 19.

Agreement

20 (1) Notwithstanding clause 79I(2)(a) of the *Public Utilities Act*, for the calendar year 2019, Nova Scotia Power shall enter into an agreement with the electricity efficiency and conservation franchise holder for the provision of electricity efficiency and conservation activities in an amount not greater than \$34,050,000.

(2) Sections 79J, 79L and 79M of the *Public Utilities Act* apply *mutatis mutandis* to the agreement referred to in subsection (1). 2015, c. 31, s. 20.

Regulations

- 21 (1) The Governor in Council may make regulations
- (a) prescribing a date for the purpose of Section 5;
 - (b) defining any word or expression used but not defined in this Act;

(c) further defining any word or expression defined in this Act;

(d) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2015, c. 31, s. 21.

Electricity Act amended

22 to 28 *amendments*

Public Utilities Act amended

29 to 33 *amendments*

Effective date

34 (1) Section 32 has effect on and after May 1, 2014.

(2) Subsection 52D(5) of the *Public Utilities Act*, as enacted by Section 31 of this Act, comes into force on such day as the Governor in Council orders and declares by proclamation. 2015, c. 31, s. 34.

Proclaimed - November 15, 2016
In force - November 15, 2016
