

# Public Utilities Act

CHAPTER 380 OF THE REVISED STATUTES, 1989

*as amended by*

1992, c. 8, s. 35; 1992, c. 11, s. 43; 1992, c. 37, s. 3;  
1997, c. 4, s. 43; 2001, c. 35, s. 30; 2005, c. 25, s. 1; 2006, c. 45;  
2008, c. 31; 2010, cc. 24, 71; 2012, c. 41; 2014, c. 5, s. 15;  
2015, c. 31, ss. 29-33



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amended 1992, c. 8, s. 35; 1992, c. 11, s. 43; 1992, c. 37, s. 3;  
1997, c. 4, s. 43; 2001, c. 35, s. 30; 2005, c. 25, s. 1; 2006, c. 45;  
2008, c. 31; 2010, cc. 24, 71; 2012, c. 41; 2014, c. 5, s. 15;  
2015, c. 31, ss. 29-33

**An Act to Regulate Public Utilities**

title amended 1992, c. 11, s. 43.

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### Short title

**1** This Act may be cited as the *Public Utilities Act*. R.S., c. 380, s. 1; revision corrected 1997.

### Interpretation

- 2** In this Act,
- (a) “Board” means the Nova Scotia Utility and Review Board;
  - (b) *repealed 1992, c. 11, s. 43.*
  - (c) “extension” includes any reasonable extension of the service and facilities of every public utility;
  - (d) “net income or revenue” means money available for dividends and surplus, according to the accounts prescribed by the Board and required to be kept by every public utility;
  - (e) “public utility” includes any person that may now or hereafter own, operate, manage or control

- (i) any tramway,
  - (ii) any trolley bus or motor vehicle, other than one being operated as a taxi, for the conveyance of passengers from any point within a city or incorporated town to any other point within such city or town, including any such person who also operates any trolley bus or motor vehicle for the conveyance of passengers to or between points outside such city or town but not including any such person whose revenue from the operation of any trolley bus or motor vehicle for the conveyance of passengers between points within any city or town does not, in the opinion of the Board, exceed ten per cent of the gross revenue of such person from the operation of trolley buses or motor vehicles,
  - (iii) any plant or equipment for the conveyance of telephone messages,
  - (iv) any plant or equipment for the production, transmission, delivery or furnishing of electric power or energy, water or steam heat either directly or indirectly to or for the public,
  - (v) *repealed 1997, c. 4, s. 43.*
  - (vi) any plant or equipment for the extraction, transmission, delivery or furnishing of a geothermal resource or for the production, transmission, delivery or furnishing of geothermal energy or heat either directly or indirectly to or for the public;
- (f) “service” includes
- (i) the conveyance for compensation by a public utility of passengers,
  - (ii) the conveyance or transmission for compensation by a public utility of telephone messages,
  - (iii) the production, transmission, delivery or furnishing to or for the public by a public utility for compensation of electrical energy for purposes of heat, light and power,
  - (iv) *repealed 1997, c. 4, s. 43.*
  - (v) the production, transmission, delivery or furnishing to or for the public by a public utility for compensation of water,
  - (vi) the production, transmission, delivery or furnishing to or for the public by a public utility for compensation of steam heat,
  - (vii) the extraction, transmission, delivery or furnishing to or for the public by a public utility for compensation of a geothermal resource,
  - (viii) the production, transmission, delivery or furnishing to or for the public by a public utility for compensation of geothermal energy or heat;

(g) “telephone line” includes all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances and routes used, operated, controlled or owned by any public utility to facilitate the business of affording telephonic communication for hire, and all conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines and appliances, connected or used therewith;

(h) “tramway” includes a street railroad, railway or tramway for the conveyance of passengers, operated by motive power other than steam, and usually constructed in whole or in part in, under or above public streets, roads, ways and places, and the poles, wires and other appliances and equipment connected therewith. R.S., c. 380, s. 2; 1992, c. 37, s. 3; 1992, c. 11, s. 43; 1997, c. 4, s. 43.

**3 to 14** *repealed 1992, c. 11, s. 43.*

## POWERS AND DUTIES OF THE BOARD

### Expenses of Board

**15 (1)** The expenses of the Board incurred in carrying out its functions and duties pursuant to this Act and exercising its powers pursuant to this Act, including the salaries and allowances of the members, officers and employees of the Board, counsel, experts, accountants, stenographers and other assistants and reasonable allowance for travel of all such persons, shall annually be estimated by the Board and assessed upon and borne by the public utilities which carried on business the whole or part of the preceding year in such proportions as the Board shall determine, due regard being given by the Board to the gross earnings of each such public utility as shown by the balance sheets, reports and other information filed with the Board by such public utilities and relating to such preceding year.

**(2)** Where any such balance sheet, report and other information are not filed by a public utility, or the Board deems the same inadequate or insufficient, the question of the amount of such gross revenue of the public utility shall be a matter relating to the public utility within the meaning of Section 19.

**(3)** On or before the first day of July in each year, or such later date in any year as the Board in its discretion, with or without notice, may order, the Board shall notify each of such public utilities the amount of its proportion of such expenses. R.S., c. 380, s. 15; 1992, c. 11, s. 43.

### Payment and recovery of amount assessed

**16 (1)** The amount so assessed on a public utility shall be paid by it within one month after it has been notified by the Board of such amount, and in default of payment the Board may sue for and recover the same in any court of law in the name of the Nova Scotia Utility and Review Board as fully and effectually to all intents and purposes as if the Board were incorporated under such name or title, and no such proceedings shall abate by reason of any change in the membership of

the Board by death, resignation or otherwise, but such proceedings may be continued as if such change had not occurred.

(2) Any costs adjudged or ordered in such proceedings to be paid by the Board, and any costs and expenses incurred by the Board, by reason of such proceedings shall be held to be part of the expenses of the Board for the year in which the same are paid, and any costs adjudged or ordered in such proceedings to be paid to the Board shall, if and when the same are paid, be credited to the expenses of the Board for the year in which the same are paid. R.S., c. 380, s. 16; 1992, c. 11, s. 43.

#### **Expenses of annual report**

17 The expenses incurred by the Queen's Printer in printing and publishing the annual report of the Board shall be defrayed by the Board and shall form part of the annual expenses of the Board. R.S., c. 380, s. 17.

#### **Supervision of utility by Board**

18 The Board shall have the general supervision of all public utilities, and may make all necessary examinations and inquiries and keep itself informed as to the compliance by the said public utilities with the provisions of law and shall have the right to obtain from any public utility all information necessary to enable the Board to fulfil its duties. R.S., c. 380, s. 18.

#### **Summary investigation by Board**

19 Whenever the Board believes that any rate or charge is unreasonable or unjustly discriminatory, or that any reasonable service is not supplied, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice. R.S., c. 380, s. 19.

#### **Power to exclude certain corporations from Act**

20 (1) The Board may, by order or regulation, exclude from the scope of this Act any corporation which does not, at the time of such exclusion, own, operate, manage or control any tramway for the conveyance of passengers or any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power, either directly or indirectly, to or for the public and the Board may, from time to time, revoke, alter or modify any such order or regulation, provided that any corporation so excluded may be afterwards declared by the Board to be within the scope of this Act.

(2) Any such order or regulation shall have the effect of excluding from the scope of this Act any such corporation from any time after the fourteenth day of April, 1943, or after such corporation was incorporated or otherwise according to the tenor of such order or regulation until the same is revoked, altered or modified as herein provided. R.S., c. 380, s. 20.



**Power to hear proposals and recommend legislation**

**21** Whenever any public utility or person shall propose any change in any law relating directly or indirectly to the property or operations of any public utility, the proposed change may be submitted to the Board, which may take evidence and give public hearing thereon, and the Board may recommend such bills as will, in its judgement, protect the interests of the public and such public utility, and transmit the same to the Attorney General. R.S., c. 380, s. 21.

**Annual report**

**22** The Board may publish annual reports showing its proceedings and showing in tabular form the details as provided by this Act for all the public utilities of each kind in the Province. R.S., c. 380, s. 22.

**May be included in annual report**

**23** The Board may also publish in its annual report the value of all the property actually used and useful for the convenience of the public, and the value of the physical property actually used and useful for the convenience of the public of every public utility as to whose rates, charges, service or regulations any public hearing has been held by the Board under the provisions of this Act, or the value of whose property has been ascertained by it under this Act. R.S., c. 380, s. 23.

**Powers imposed by contract or other Act preserved**

**24** Subject to this Act, the powers, rights, privileges and obligations secured to or imposed upon any public utility by any statute, or by any contract or agreement made under the authority of any statute, shall not be subject to the provisions of this Act, and nothing in this Act contained shall authorize the Board to alter, enlarge or diminish such rights, powers, privileges or obligations or to impair the obligations of any contract, except any contract or agreement relating to rates, tolls, charges or schedules which the Board is authorized by this Act to regulate and control, but the Board may at any time inquire into any such rights, powers, privileges or obligations in so far as the exercise or observance thereof affects the public interest and may make such recommendations to the Legislature in connection therewith as may be deemed just and proper. R.S., c. 380, s. 24.

**Regulations respecting practice and procedure**

**25** The Board may, from time to time, make, revoke and alter rules and regulations for the effectual execution of its duties and of the intention and objects of this Act, and the regulation of the practice and procedure with regard to the matters over which it has jurisdiction and such rules and regulations, when approved by the Governor in Council, shall have the force of law. R.S., c. 380, s. 25.

**Regulations respecting poles and pole lines**

**26 (1)** The Board may make rules and regulations for the erection, construction, maintenance and repair of all poles and pole lines, specifying the type, character, quality and dimensions of such poles and the cross arms and other equipment to be attached thereto, and for the stringing, construction, erection, mainte-

nance and repair of all wires, including drop wires and service wires, or other conductors for the transmission of electric energy, messages or signals, and for the construction, erection, maintenance and repair of all conduits, ducts, pins, insulators, attachments, transformers or any structure or device used or useful in connection with the transmission of electric energy, messages or signals by wire, as the Board may deem in the public interest, and may require every public utility to bring its existing poles, pole lines, wires, conductors, devices, attachments and equipment into conformity with such rules and regulations.

(2) Such rules and regulations shall have the force of law, and any provisions contained in the Act of incorporation of any public utility or in any city charter or in the *Towns Act*, or in any by-laws and ordinances thereunder, conferring upon any public utility or any city, town or municipality, or any official thereof, powers which are by this Act conferred upon the Board, are repealed. R.S., c. 380, s. 26.

#### **Form of books and records of utility**

27 The Board may prescribe the forms of all books, accounts, papers and records required to be kept by any public utility and every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the Board and to comply with all directions of the Board relating to such books, accounts, papers and records. R.S., c. 380, s. 27.

#### **Blank forms from Board**

28 The Board may cause to be prepared suitable blank forms for carrying out the purposes of this Act and shall, when necessary, furnish such blank forms to each public utility. R.S., c. 380, s. 28.

#### **Examination and audit of accounts**

29 (1) The Board may provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the Board.

(2) The agents, accountants or examiners employed by the Board shall have authority under the direction of the Board to inspect all and any books, accounts, papers or records and memoranda kept by any public utility. R.S., c. 380, s. 29.

#### **Power to determine value of property of utility**

30 (1) The Board may at any time, with the assistance of such engineers, accountants, valuers, counsel and others as it deems wise or advisable to employ, inquire into and determine the extent, condition and value of the whole or any portion of the property and assets of any public utility used and useful in furnishing, rendering or supplying a particular service to or for the public, as of a date to be fixed by the Board.

(2) The Board shall determine the value of such property and assets on the basis of the prudent original cost thereof or by such other method as the Board may from time to time prescribe, deducting therefrom the amount of the accrued depreciation of such property and assets as determined by the Board.

(3) For the purposes of this Section, annual and accrued depreciation shall be calculated by the straight line method, so called, or such other method as the Board may from time to time prescribe.

(4) The Board may make such rules and regulations to facilitate inquiries under this Section as it may deem convenient, and the rules and regulations so made shall be binding on all public utilities. R.S., c. 380, s. 30.

#### **Liability for costs and expenses of valuation**

**31** (1) Where a valuation is ordered by the Board under this Act, the Board may order that all costs and expenses of counsel, engineers, valuers, clerks, stenographers and other assistants retained and employed by the Board, as well as the salary and expenses of the members of the Board while employed in and about the making of such valuation, shall be paid by the public utility whose assets and property are the subject of the inquiry and valuation.

(2) Amounts chargeable under this Section may, by order of the Board, be made payable as the work of valuation proceeds and before its completion and the certificate of the Chairman of the Board shall be sufficient to fix on the public utility the liability for the payment of any amount so certified to have been incurred in respect of such valuation.

(3) All expenses in connection with any valuation ordered by the Board, including all expenses incurred by the public utility whose property is the subject of such valuation, may, when the Board so directs, be charged to capital account and added to the rate base of the public utility. R.S., c. 380, s. 31.

#### **Revaluation**

**32** The Board may at any time make a revaluation of such property. R.S., c. 380, s. 32.

#### **Duty of utility to furnish information**

**33** (1) Every public utility shall furnish to the Board from time to time, and as the Board may require, maps, profiles, contracts, reports of engineers and other documents, records and papers, or copies of any and all of the same in aid of any investigation and to determine the value of the property of such public utility, and every public utility shall co-operate with the Board in the work of the valuation of its property in such further particulars and to such extent as the Board may direct.

(2) The Board shall, thereafter, in like manner, keep itself informed of all extensions and improvements or other changes in the condition of

the property of the said public utilities, and from time to time may revise and correct its valuation of the property of such public utilities.

(3) To enable the Board to make such changes and corrections in its valuation, every public utility shall report correctly to the Board changes in its property and file with the Board copies of all contracts for changes and improvements at the time the same are executed. R.S., c. 380, s. 33.

**Duty to furnish financial information on operations**

34 Each public utility shall furnish to the Board, whenever required in connection with any investigation by the Board, in such form and at such times as the Board shall require such accounts, reports and information as shall show in itemized detail, depreciation, salaries, wages, legal expenses, taxes and rentals, quantity and value of material used, receipts from residuals, by-products services, or other sales, total and net costs, net and gross profits, dividends and interest, surplus or reserve, prices paid by consumers, and in addition such other items, whether of a similar nature to those hereinbefore enumerated or otherwise, as the Board may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public. R.S., c. 380, s. 34.

**Independent savings review of N.S. Power Inc.**

34A (1) The Board may order and thereupon Nova Scotia Power Incorporated shall furnish to the Board an independent savings review of Nova Scotia Power Incorporated to identify potential savings by Nova Scotia Power Incorporated.

(2) The Board may order that the independent savings review include

(a) an assessment of the operations of Nova Scotia Power Incorporated;

(b) an assessment of Nova Scotia Power Incorporated's fiscal management of its revenue and expenses;

(c) a value-for-money assessment examining the economy, efficiency and effectiveness of the operations and management of Nova Scotia Power Incorporated; and

(d) such other matters as the Board may determine, if the Board considers the matters relevant to the assessment of potential savings.

(3) An order made pursuant to subsection (1) may include such terms and conditions as the Board considers necessary or advisable. 2012, c. 41, s. 2.

**Approval of improvement over \$250,000**

35 No public utility shall proceed with any new construction, improvements or betterments in or extensions or additions to its property used or useful in

furnishing, rendering or supplying any service which requires the expenditure of more than two hundred and fifty thousand dollars without first securing the approval thereof by the Board. R.S., c. 380, s. 35; 2001, c. 35, s. 30; 2010, c. 24, s. 1.

#### **Annual capital expenditure program of public utility**

**35A (1)** Notwithstanding Section 35, a public utility may submit to the Board for approval an annual capital expenditure program.

**(2)** Where the plan referred to in subsection (1) is approved by the Board, a public utility may make the capital expenditures referred to in the plan without any further approval by the Board.

**(3)** A public utility may make a capital expenditure not contained in the capital expenditure program referred to in subsection (1), without the approval of the Board, where that expenditure does not exceed two hundred and fifty thousand dollars. 1992, c. 8, s. 35; 2010, c. 24, s. 2.

#### **Valuation of South Canoe Wind Project**

**35B** Notwithstanding Section 2A and subsection 4B(13) of the *Electricity Act* and clause 2(f) of this Act, any property and assets owned by Nova Scotia Power Incorporated that are part of the South Canoe Wind Project are deemed to be used and useful in Nova Scotia Power Incorporated providing a service to or for the public, and the Board shall include in its determination of Nova Scotia Power Incorporated's rate base and revenue requirement the capital and other costs in respect of such property and assets on the same basis as the capital and other costs relating to property and assets in other wind farms owned by Nova Scotia Power Incorporated and included in its rate base on a cash tax basis with deferred taxes offset to a regulatory asset or liability as appropriate. 2015, c. 31, s. 29.

#### **Board Case Number M05416**

**35C (1)** The order of the Board dated April 30, 2013, in proceedings bearing Board Case Number M05416 is deemed to be an approval pursuant to Section 35 for the construction of the property and assets owned by Nova Scotia Power Incorporated as part of the South Canoe Wind Project, except to the extent that it may be inconsistent with an express requirement of this Section or Section 35B.

**(2)** Notwithstanding subsection (1), Nova Scotia Power Incorporated may not, in respect of the amount of the original construction cost included in the order, seek approval from the Board, and the Board may not approve an Authorization to Overspend under Nova Scotia Power Incorporated's approved Capital Expenditure Justification Criteria. 2015, c. 31, s. 29.

#### **Valuation of Sable Wind Project**

**35D** Notwithstanding Section 2A and subsection 4B(13) of the *Electricity Act* and clause 2(f) of this Act, any property and assets owned by Nova Scotia Power Incorporated that are part of the Sable Wind Project are deemed to be used and useful in Nova Scotia Power Incorporated providing a service to or for the pub-

lic, and the Board shall include in its determination of Nova Scotia Power Incorporated's rate base and revenue requirement the capital and other costs in respect of such property and assets on the same basis as the capital and other costs relating to property and assets in other wind farms owned by Nova Scotia Power Incorporated and included in its rate base on a cash tax basis with deferred taxes offset to a regulatory asset or liability as appropriate. 2015, c. 31, s. 29.

**Board Case Number M06083**

**35E (1)** The order of the Board dated September 22, 2014, in proceedings bearing Board Case Number M06083 is deemed to be an approval pursuant to Section 35 for the construction of the property and assets owned by Nova Scotia Power Incorporated as part of the Sable Wind Project, except to the extent that it may be inconsistent with an express requirement of this Section or Section 35D.

**(2)** Notwithstanding subsection (1), Nova Scotia Power Incorporated may not, in respect of the amount of the original construction cost included in the order, seek approval from the Board, and the Board may not approve an Authorization to Overspend under Nova Scotia Power Incorporated's approved Capital Expenditure Justification Criteria. 2015, c. 31, s. 29.

**Retroactive effect of Sections 35B and 35D**

**35F** Sections 35B and 35D apply retroactively, as if the Board orders referred to in subsections 35C(1) and 35E(1) had been valid since they were issued by the Board, except to the extent that they may be inconsistent with an express requirement of Sections 35B to 35E. 2015, c. 31, s. 29.

**Exemption and approval for N.S. Power Inc.**

**36 (1)** Notwithstanding anything contained in this Act or any enactment, this Act does not apply to new construction, improvements or betterments in, extensions or additions to, or conversions of the generation and transmission plant or like facilities of ~~the~~ Nova Scotia Power Incorporated.

**(2)** In an application by ~~the~~ Nova Scotia Power Incorporated to the Board for approval of rates, tolls and charges or in ascertaining and determining what are proper and adequate annual rates of depreciation of the Company's property, the Board shall include in its determination of the Company's rate base and revenue requirement the capital and operating costs of its generation and transmission plant or like facilities determined in accordance with generally accepted accounting principles.

**(3)** Subsections (1) and (2) apply only to the generation and transmission plant or like facilities of ~~the~~ Nova Scotia Power Incorporated to be constructed at or near Point Aconi in the County of Cape Breton for which an approval or permit has been received from the Department of the Environment prior to the sixteenth day of April, 1992. R.S., c. 380, s. 36; 1992, c. 8, s. 35.

**Application of Section 36**

**37** Section 36 does not change the law applicable to the Board with respect to new construction, improvements or betterments in, extensions or additions to, or conversions of the generation and transmission plant or like facilities of the Nova Scotia Power Incorporated built primarily for the export of electricity. R.S., c. 380, s. 37; 1992, c. 8, s. 35.

**Annual depreciation**

**38 (1)** Every public utility shall make provision for proper and adequate annual depreciation of its property and assets used and useful in furnishing, rendering or supplying each type or kind of service, and shall in respect thereof keep necessary and proper accounts.

**(2)** Such annual depreciation shall be calculated by the straight line method or by such other method as the Board may from time to time prescribe.

**(3)** Every public utility shall report to the Board the annual rates of depreciation from time to time applied to the several classes of property in such public utility.

**(4)** The Board may ascertain and determine what are proper and adequate annual rates of depreciation of the several classes of property in any public utility, and such public utility shall thereupon and thereafter conform its depreciation account to the rates so ascertained and determined.

**(5)** The Board may revise such rates of depreciation from time to time as it deems necessary or expedient. R.S., c. 380, s. 38.

**Depreciation fund**

**39 (1)** All moneys provided under this Act for depreciation may be set aside out of the earnings and carried in a depreciation fund.

**(2)** Unless the Board otherwise directs, the moneys in any such fund may be expended only in new construction, extensions or additions to property of such public utility and for depreciation, provided that such public utility may from time to time invest all or any part of any such moneys in securities approved by the Board and may sell or dispose of any such securities and reinvest the proceeds of such sale in securities approved as aforesaid and while so invested, the income therefrom shall belong to and be payable to the public utility. R.S., c. 380, s. 39; 1992, c. 8, s. 35.

**Regulations respecting depreciation**

**40** The Board may also prescribe rules, regulations and forms of accounts regarding depreciation which a public utility is required to observe, carry into effect and follow. R.S., c. 380, s. 40.

**Rates of utility to include allowance for depreciation**

**41** In fixing rates, tolls and charges to be paid to a public utility for any service, the Board shall include proper allowances for depreciation. R.S., c. 380, s. 41.

**Separate rate base for each service supplied**

**42 (1)** The Board shall fix and determine a separate rate base for each type or kind of service furnished, rendered or supplied to the public by a public utility.

**(2)** In establishing a rate base the Board shall determine the value of the physical assets of the public utility in accordance with the provisions of this Act, including in such value the actual reasonable and necessary cost of labour and supervision up to and including gang foreman, and the Board may, in its discretion, make allowances for the following matters, and such other matters as the Board deems appropriate:

- (a) necessary working capital;
- (b) organization expenses to the extent of such sum as the public utility may establish to the satisfaction of the Board to have been reasonably and prudently expended out of capital account in respect of organization expenses as defined by the regulations of the Board;
- (c) construction overheads to the extent of such sum as the public utility may establish to the satisfaction of the Board to have been reasonably and prudently expended out of capital account in respect of engineering, superintendence, legal services, taxes and interest during construction, and like matters not included in the valuation of the physical assets;
- (d) expenses of valuations to the extent of such sums as may have been expended in respect of a valuation by the Board and, with the approval of the Board, charged to capital account;
- (e) costs in whole or in part of land acquired in reasonable anticipation of future requirements.

**(3)** The Board may direct that a public utility shall make such provision as to the Board seems proper for the amortization of the sums allowed in a rate base for organization expenses and expenses of valuations, and may direct that the sums required annually for such amortization shall be charged as an operating expense.

**(4)** The Board may from time to time revise any rate base making due allowance for extensions and additions to, improvements or alterations in and withdrawals or retirements from, the property and assets of the public utility.

**(5)** Until a rate base is determined by the Board for any public utility pursuant to this Section, the present rate base for such public utility as from time to time revised or accepted by the Board shall continue in effect and shall be



the rate base for such public utility, provided that the Board may direct that any such public utility shall make such provision as to the Board seems proper for the amortization of the sums allowed in such rate base for organization expenses, expenses of valuations or allowances not mentioned in subsection (2) and may direct that the sums required annually for such amortization shall be charged as an operating expense. R.S., c. 380, s. 42; 1992, c. 8, s. 35.

**Each category of service treated as separate unit**

**43** Where any public utility furnishes, renders or supplies more than one type or kind of service, the Board shall segregate such types or kinds of service into distinct classes or categories of service, and, for the purposes of determining the rate base for a particular service furnished, rendered or supplied, and for the purpose of annual and other returns or reports to be made to the Board, each distinct class or category of service shall be considered as a separate and self-contained unit, the rate base for which shall be determined and fixed without regard to the rate base determined and fixed for any other unit. R.S., c. 380, s. 43.

**Orders by Board respecting rates and charges of utility**

**44** The Board may make from time to time such orders as it deems just in respect to the tolls, rates and charges to be paid to any public utility for services rendered or facilities provided, and amend or rescind such orders or make new orders in substitution therefor. R.S., c. 380, s. 44.

**Amount utility entitled to earn annually**

**45 (1)** Every public utility shall be entitled to earn annually such return as the Board deems just and reasonable on the rate base as fixed and determined by the Board for each type or kind of service furnished, rendered or supplied by such public utility, provided, however, that where the Board by order requires a public utility to set aside annually any sum for or towards an amortization fund or other special reserve in respect of any service furnished, rendered or supplied, and does not in such order or in a subsequent order authorize such sum or any part thereof to be charged as an operating expense in connection with such service, such sum or part thereof shall be deducted from the amount which otherwise under this Section such public utility would be entitled to earn in respect of such service, and the net earnings from such service shall be reduced accordingly.

**(2)** Such return shall be in addition to such expenses as the Board may allow as reasonable and prudent and properly chargeable to operating account, and to all just allowances made by the Board according to this Act and the rules and regulations of the Board. R.S., c. 380, s. 45.

**Power to compel compliance by utility**

**46** The Board shall have power, after hearing and notice by order in writing, to require and compel every public utility to comply with the provisions of this Act and any municipal ordinance or regulation relating to said public utility, and to conform to the duties imposed upon it thereby by the provisions of its own charter, if any charter has or shall be granted it, provided, that nothing herein contained

shall be held to relieve any public utility or its officers, agents or servants, from any punishment, fine, forfeiture or penalty for violation of any such law, ordinance, regulation or duty imposed by its charter, nor to limit, take away or restrict the jurisdiction of any court or other authority which now has or which may hereafter have power to impose any such punishment, fine, forfeiture or penalty. R.S., c. 380, s. 46.

#### **Inquiry into neglect or violation by utility**

**47** The Board may inquire into any neglect or violation of the laws or regulations in force in the Province by any public utility doing business therein, or by the officers, agents or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of this Act as well as all other laws relating to public utilities. R.S., c. 380, s. 47.

### **POWERS AND DUTIES OF PUBLIC UTILITIES**

#### **Resources to be used**

**48 (1)** Notwithstanding anything contained in this Act or any enactment, ~~the~~ Nova Scotia Power Incorporated may in the operation of its generation and transmission plant or like facilities take steps to maximize the use of indigenous Nova Scotia resources, and the Board shall, where an application is made to the Board to determine the revenue requirement of the Company, include in such requirement the cost of such use.

**(2)** ~~The~~ Nova Scotia Power Incorporated shall not construct a generating plant that utilizes nuclear energy to produce electricity.

**(3)** Where Nova Scotia Power Incorporated applies to the Board to increase its capacity to produce power, the Board shall consider, among other things, the ability of private power producers to supply to the Company a portion of the increased capacity. R.S., c. 380, s. 48; 1992, c. 8, s. 35; revision corrected 1997.

#### **Accounts and returns**

**49** All public utilities shall keep such accounts, make such returns and otherwise render available to the Board all such information in respect of their business and affairs as the Board may from time to time order. R.S., c. 380, s. 49.

#### **Annual balance sheet**

**50 (1)** Unless otherwise ordered by the Board, all accounts required to be kept by a public utility shall be closed annually on the last day of December in each year, and a balance sheet of that date shall be promptly taken therefrom.

**(2)** On or before the first day of February following or such other date as may be set by the Board from time to time, such balance sheet, together with such other information as the Board shall prescribe, verified on oath by an officer of the public utility, shall be filed with the Board. R.S., c. 380, s. 50.

**Duty to furnish information, return forms and deliver documents**

**51 (1)** Every public utility shall furnish to the Board all information required by it to carry into effect the provisions of this Act, and shall make specific answers to all specific questions submitted by the Board.

**(2)** Any public utility receiving from the Board any blank forms with directions to fill in the same shall cause the same to be properly filled in so as to answer, fully and correctly each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure and such answers shall be verified under oath by the president, secretary, superintendent or general manager of such public utility, and returned to the Board at its office within the period fixed by the Board.

**(3)** Whenever required by the Board, every public utility shall deliver to the Board any and all maps, profiles, contracts, reports of engineers and all documents, books, accounts, papers and records, or copies of any or all of the same, with a complete inventory of all its property, in such form as the Board may direct. R.S., c. 380, s. 51.

**Regulations respecting reports**

**51A (1)** The Governor in Council may make regulations

(a) requiring a public utility to prepare and provide reports to the Minister of Energy and the Board, or either of them, including such content and in such form and manner as may be prescribed;

(b) with respect to the manner in which such reports or other information prescribed must be made available to the public by the Minister of Energy or the public utility.

**(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. 30.

**Duty to furnish safe and adequate service**

**52** Every public utility is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. R.S., c. 380, s. 52.

**Performance standards for adverse weather conditions**

**52A (1)** The Board shall establish performance standards for Nova Scotia Power Incorporated in respect of reliability and response to adverse weather conditions.

**(2)** For the purpose of subsection (1), performance standards relating to reliability must be determined by the Board based upon

(a) such North American electrical utility industry standards as it considers appropriate, modified, where necessary, to

account for any circumstances or conditions existing in the Province;  
and

(b) any other factors or requirements prescribed by the regulations.

(3) For the purpose of subsection (1), performance standards relating to responses to adverse weather conditions must be determined by the Board based upon

(a) such standards as it considers appropriate in order to ensure that Nova Scotia Power Incorporated's response to adverse weather conditions is consistent with the standards of other electrical utilities operating along the North Atlantic seaboard having regard to the nature and severity of the adverse weather condition and the extent of the damage sustained; and

(b) any other factors or requirements prescribed by the regulations. 2015, c. 31, s. 31.

#### **Performance standards for customer service**

**52B (1)** The Board shall establish performance standards in respect of such areas of Nova Scotia Power Incorporated's customer service as it determines appropriate.

(2) For the purpose of subsection (1), performance standards relating to customer service must be established by the Board based upon

(a) information to be collected by the Board to determine a baseline in respect of the customer service provided by Nova Scotia Power Incorporated in the areas determined appropriate by the Board;

(b) the objective of gradually improving Nova Scotia Power Incorporated's performance in the areas of customer service determined appropriate by the Board; and

(c) any other factors or requirements prescribed by the regulations. 2015, c. 31, s. 31.

#### **Release of reports related to performance standards**

**52C** Whenever required in connection with any investigation by the Board or a person appointed pursuant to Section 82, Nova Scotia Power Incorporated shall provide the Board with such reports and information as the Board may require to show completely and in detail Nova Scotia Power Incorporated's conduct in relation to any performance standard established by the Board. 2015, c. 31, s. 31.

#### **Status reports relating to performance**

**52D (1)** The Board may require Nova Scotia Power Incorporated to provide it with periodic status reports, at such times and including such information

as the Board may require, on Nova Scotia Power Incorporated's performance in respect of the standards established pursuant to Sections 52A and 52B.

(2) Within ninety days following the end of each calendar year, Nova Scotia Power Incorporated shall provide a written report to the Board on its performance in respect of the standards established pursuant to Sections 52A and 52B.

(3) The written report must be in such form and contain such information as the Board determines appropriate.

(4) Where, following receipt of the report referred to in subsection (2), the Board determines that Nova Scotia Power Incorporated has failed to achieve any performance standard established pursuant to Section 52A, the Board may order Nova Scotia Power Incorporated to pay an administrative penalty or to develop and file a plan for bringing itself into compliance with a performance standard, or both.

(5) Where, following receipt of the report referred to in subsection (2), the Board determines that Nova Scotia Power Incorporated has failed to achieve any performance standard established pursuant to Section 52B, the Board may order Nova Scotia Power Incorporated to pay an administrative penalty or to develop and file a plan for bringing itself into compliance with a performance standard, or both. 2015, c. 31, s. 31.

#### **Administrative penalties**

**52E (1)** In this Section, "Fuel Adjustment Mechanism" means the fuel adjustment mechanism approved by the Board for use by Nova Scotia Power Incorporated 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[.]

(2) The amount of any administrative penalty ordered to be paid is the amount determined by the Board to be appropriate in order to promote future compliance with the performance standards and not for punitive purposes or effects or for redressing a wrong done to society at large.

(3) The cumulative total of administrative penalties levied against Nova Scotia Power Incorporated in a calendar year must not exceed one million dollars.

(4) Any administrative penalties levied against Nova Scotia Power Incorporated must be credited to customers through Nova Scotia Power Incorporated's Fuel Adjustment Mechanism or, where no such mechanism exists, in any manner the Board determines appropriate.

(5) Notwithstanding subsection (4), any amounts to be credited to customers may be allocated amongst Nova Scotia Power Incorporated's customers in any manner that the Board determines appropriate.

(6) Any administrative penalties levied against Nova Scotia Power Incorporated may not be included when determining Nova Scotia Power Incorporated's rate of return pursuant to this Act. 2015, c. 31, s. 31.

**Regulations respecting Sections 52A to 52E**

**52F (1)** The Governor in Council may make regulations

(a) applying Sections 52A to 52E, or any of them, *mutatis mutandis* to any other public utility;

(b) prescribing factors or requirements for the purpose of clauses 52A(2)(b) and (3)(b) and 52B(2)(c).

(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. 31.

**Abandonment of operating line or works**

**53** No public utility shall abandon any part of its line or lines, or works, after the same has been operated, without notice to the Board, and without the consent in writing of the Board, which consent shall only be given after notice to the city, town or municipality interested and after due inquiry had. R.S., c. 380, s. 53.

**Condition for construction if similar utility in area**

**54 (1)** No public utility shall begin the construction of its line, plant or system or any extension thereof in any territory already served by a public utility of like character, without having first obtained from the Board a certificate that the present or future public convenience and necessity require or will require such construction.

(2) The Board shall have power, after a hearing involving the financial ability and good faith of the applicant and the necessity of additional service in the community, to issue such certificate as applied for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated line, plant or system, and may attach to the exercises of the rights granted by said certificate such terms and conditions as in its judgement the public convenience and necessity may require.

(3) Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the Board shall be null and void. R.S., c. 380, s. 54.

**If changes by utility detrimental to other utility**

**55 (1)** No public utility shall make any extensions to or changes in its line, plant or system which are likely to be detrimental to the service supplied by any other public utility without first giving reasonable notice in writing by prepaid post of the same to the chief office in the Province of such other public utility, and the public utilities directly concerned may agree upon methods and specifications which will, so far as reasonably possible, minimize the detrimental effect on the service of such other public utility.

**(2)** In the event of the failure of a public utility to comply with the provisions of subsection (1) as to notice or in the event of failure so to agree, any of the parties directly concerned may make application to the Board for a hearing with respect to the matter in issue.

**(3)** The Board may, if it sees fit, hold such hearing without public advertisement or notice to any person other than to the parties directly concerned.

**(4)** After inquiry into the nature of the extensions and changes made or proposed to be made, the Board, subject to such terms and conditions as in the judgement of the Board the circumstances require, may grant or withhold approval or may order such changes as may be just and expedient.

**(5)** In the event of a dispute or disagreement between two or more public utilities as to which public utility should serve any particular territory, the Board shall, after each such examination and inquiry as it deems adequate, determine the matter and the Board may, by order, direct which public utility shall serve the said territory.

**(6)** Without being limited by the foregoing provisions of this Section, the Board may at any time order a public utility to serve any particular territory not then served, provided, however, that no such order shall be made if, in the opinion of the Board, it would place an unreasonable financial burden on the public utility. R.S., c. 380, s. 55.

**Agreement with N.S. Power Inc.**

**55A (1)** Subject to the approval of the Board, Nova Scotia Power Incorporated may enter into an agreement on commercial terms with the owner or operator of an interconnected electric generation plant to export from the Province electric power using the facilities of Nova Scotia Power Incorporated.

**(2)** Where the parties fail to reach an agreement for the transmission of power

(a) one or both of the parties may apply to the Board for a decision with respect to the proposed agreement; and

(b) the Board, in making its decision, may establish on commercial terms whatever criteria the Board deems suitable and

attach any terms or conditions the Board deems appropriate. 1992, c. 8, s. 35.

#### **Duty to customer respecting pressure and frequency**

**56 (1)** Before commencing to supply electrical energy to any customer a public utility shall declare, in writing under the hand of its proper officer, or its agent thereunto duly authorized, to such customer the constant pressure, and, if from an alternating current source, the frequency, at which it proposes to supply such electrical energy at the customers' terminals.

**(2)** The variation of pressure, and in the case of alternating currents the frequency, at any customer's terminals, unless otherwise ordered by the Board, shall not under any conditions of the supply which the customer is entitled to receive, nor at any time, exceed four per cent from the declared constant pressure or frequency, whether such variation is due to the resistance of the service lines or apparatus belonging to such public utility, or to any action or effect produced by such apparatus, for which the customer cannot be shown to be responsible, or partly to a variation of pressure in the distributing mains from which the supply is taken. R.S., c. 380, s. 56.

#### **Duty to maintain apparatus on premises of customer**

**57** The public utility shall be responsible for all electric lines, fittings and apparatus belonging to it or under its control upon the customer's premises, being maintained in a proper condition, and in all respects fit for supplying energy, but it shall not be responsible for any damages arising from the use of the electric current in lines, fittings and apparatus not belonging to it or under its control. R.S., c. 380, s. 57.

#### **Right of entry if leakage suspected**

**58** If the public utility is reasonably satisfied, after making all proper examination by testing or otherwise, that at some part of a circuit, connection with the earth exists of such resistance as to be a source of leakage and that such connection does not exist at any part of the circuit belonging to the public utility, any officer or agent of the public utility duly authorized by it in writing, may, for the purpose of discovering whether such connection with the earth exists at any part of the wires upon any customer's premises, at all reasonable times, after giving one hour's notice of his intention to do so, enter such premises and disconnect the customer's wires from the service lines, and may require the customer to permit him to inspect and test the wires and fittings belonging to the customer and forming part of the circuits. R.S., c. 380, s. 58.

#### **Discontinuance of supply of electrical energy**

**59** If, on such inspection and testing, the officer or agent discovers that a connection exists between the customer's wires and the earth and that such connection has an electrical resistance of less than five thousand ohms, or if the customer does not give all due facilities for such inspection and testing, the public utility shall forthwith discontinue the supply of electrical energy to the premises of the cus-



tomers, giving immediate notice of such discontinuance to the customer and shall not recommence such supply until it is satisfied that such connection with the earth has been removed. R.S., c. 380, s. 59.

**Dissatisfaction with action of utility**

**60** If any customer is dissatisfied with the action of the public utility, either as to the mode of making the test or in discontinuing the supply of electrical energy to his premises, the wires and fittings of such customer may, on his application to the Board, be tested, for the existence of such connection with the earth, by an inspector appointed by the Board. R.S., c. 380, s. 60.

**Right of entry onto supplied premises**

**61 (1)** Any officer or agent of the public utility authorized in writing by the public utility may, for the purpose of

- (a) inspecting the electric wires, meters, accumulators, fittings, works and apparatus of the public utility for the supply of electrical energy;
- (b) ascertaining the quantity of electrical energy consumed or supplied;
- (c) removing any electric wires, meters, accumulators, fittings, works and apparatus belonging to the public utility; or
- (d) in cases where a supply of electrical energy is no longer required, or the public utility is authorized to take away and cut off the supply of electrical energy from any premises, doing as little damage thereby as may be,

enter at all reasonable times any premises to which electrical energy is or has been supplied by the public utility.

**(2)** Such officer or agent shall repair all damage caused by such entry, inspection or removal. R.S., c. 380, s. 61.

**Approval for transfer of undertaking**

**62** Notwithstanding the provisions of any Act of the Legislature, no public utility shall sell, assign or transfer the whole of its undertaking or any part thereof to any person or corporation except with the approval of the Board first had and obtained. R.S., c. 380, s. 62.

**Approval of contract affecting or transfer of franchise**

**63 (1)** No franchise nor any right under any franchise to own or operate any public utility, or to use the tracks of any tramways, shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement has been made under the authority of a statute or with the written approval of the Board.

(2) The approval of the Board of any such assignment, transfer, lease, contract or agreement under this Section shall not be held or construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. R.S., c. 380, s. 63.

**Approval of schedule of rates and charges of utility**

**64 (1)** No public utility shall charge, demand, collect or receive any compensation for any service performed by it until such public utility has first submitted for the approval of the Board a schedule of rates, tolls and charges and has obtained the approval of the Board thereof.

(2) The schedule of rates, tolls and charges so approved shall be filed with the Board and shall be the only lawful rates, tolls and charges of such public utility until altered, reduced or modified as provided in this Act. R.S., c. 380, s. 64.

**Restriction on general rate increase**

**64A (1)** In this Section, “utility” means Nova Scotia Power Incorporated.

(2) The utility may not be granted a general rate increase to take effect sooner than twenty-four months following the effective date of the last preceding general rate increase, whether made before or after the coming into force of this Section.

**(2A)** Notwithstanding subsection (2), the utility may not be granted a general rate increase to take effect sooner than January 1, 2015.

**(2B)** Nothing in this Section restricts the authority of the Board to order a staged or multi-year general rate increase.

**(2C)** Subsections (2) and (2A) do not apply to a general rate increase arising out of the utility’s application dated May 8, 2012 (Matter No. M04972).

(3) Subsections (2) and (2A) do not apply if the Board determines that exceptional circumstances exist that have caused or will cause substantial financial harm to the ratepayers of the utility or to the utility.

(4) The Board shall not make a determination pursuant to subsection (3) until it has held a hearing to determine whether exceptional circumstances exist as set out in that subsection and it has determined that such exceptional circumstances exist.

(5) Where the Board has determined that exceptional circumstances exist as set out in subsection (3), it shall hold a separate hearing on the general rates.

- (6) For greater certainty,
- (a) a determination of the Board pursuant to subsection (3) may be appealed to the Nova Scotia Court of Appeal pursuant to Section 30 of the *Utility and Review Board Act*; and
  - (b) where the Board holds a hearing pursuant to subsection (4), the Board shall appoint a consumer advocate pursuant to Section 91. 2006, c. 45, s. 1; 2012, c. 41, s. 3.

#### Recovery of executive remuneration

**64B (1)** In this Section, “report” means the report required by subsection (2).

- (2) Nova Scotia Power Incorporated shall submit to the Board
- (a) on or before January 1, 2013; and
  - (b) with each application for a general rate increase made after January 1, 2013,

a report identifying who the executive employees of Nova Scotia Power Incorporated are, the position held by each executive employee and the remuneration to which each executive employee is entitled.

(3) The Board shall review the report and determine whether it accurately reflects who the executive employees of Nova Scotia Power Incorporated are, the position held by each executive employee and the remuneration to which each executive employee is entitled.

(4) The Board may prescribe the content and form of the report.

(5) The Board shall review the report either

- (a) *ex parte*; or
- (b) after such notice and public hearing as the Board in its discretion determines.

(6) The Board shall either

- (a) approve the report; or
- (b) reject the report and require Nova Scotia Power Incorporated to amend the report on such terms and conditions as the Board considers necessary or advisable.

(7) Where Nova Scotia Power Incorporated fails to amend the report within thirty days of being required to do so, the Board shall determine who is an executive employee of Nova Scotia Power Incorporated for the purpose of this Section.

(8) Nova Scotia Power Incorporated shall not recover from any rate, charge or fee approved by the Board

(a) any bonus or incentive compensation; or

(b) any other remuneration, except remuneration that is prescribed by the regulations,

paid to an executive employee of Nova Scotia Power Incorporated as identified in an approved report or determined by the Board. 2012, c. 41, s. 4.

#### **Regulations respecting schedule**

65 (1) A public utility shall submit for the approval of the Board with and as part of any schedule of rates all rules and regulations that in any manner relate to such schedule.

(2) Upon such rules and regulations being approved by the Board they shall be filed with the Board as part of the schedules of such public utility and thereafter shall be the lawful rules and regulations of such public utility until altered or modified by order of the Board. R.S., c. 380, s. 65.

#### **Availability of schedule for inspection**

66 A copy of so much of said schedule as the Board shall deem necessary for the use of the public shall be printed in plain type and kept on file in every office of such public utility where payments are made by the consumers or users, open to the public in such form and place as to be readily accessible to the public and so as to be conveniently inspected. R.S., c. 380, s. 66.

#### **Equal rates and charges for similar services**

67 (1) All tolls, rates and charges shall always, under substantially similar circumstances and conditions in respect of service of the same description, be charged equally to all persons and at the same rate, and the Board may by regulation declare what shall constitute substantially similar circumstances and conditions.

(2) The taking of tolls, rates and charges contrary to the provisions of this Section and the regulations made pursuant thereto is prohibited and declared unlawful. R.S., c. 380, s. 67.

#### **Change in form of schedule**

68 The Board may prescribe such changes in the form in which schedules are issued by any public utility as may be expedient. R.S., c. 380, s. 68.

#### **Interim approval of schedule**

69 (1) When a public utility has submitted for the approval of the Board a schedule of rates, tolls and charges, or a proposed change in any existing schedule of rates, tolls and charges, which, in the opinion of the Board, either constitutes a reduction in the existing schedule of rates, tolls and charges at the time

being paid by the majority of the customers of such public utility affected by such change in the class of service to which such proposed change applies or which applies only in respect of a service for which no rates, tolls or charges have been previously approved, the Board may at any time before finally approving or disapproving of such schedule or change, grant an interim approval thereof, with or without modification, and thereafter the existing schedule of rates, tolls and charges of such public utility as amended by such schedule of charges, interim approval of which with or without modification, as the case may be, has been so granted by the Board, shall be the only lawful rates, tolls and charges of such public utility until the Board shall express its final approval or disapproval thereof, with or without modification or amendment.

(2) Thereafter the existing schedule of rates, tolls and charges of such public utility as amended by such schedules of rates, tolls and charges or change so finally approved by the Board, with or without modification or amendment, shall be filed with the Board and shall be the only lawful rates, tolls and charges of such public utility until altered, modified or reduced as provided in this Act.

(3) Notwithstanding any other provisions of this Act, the interim approval referred to in this Section may be given *ex parte* and without public hearing or notice. R.S., c. 380, s. 69.

#### **Approval for change of telephone equipment**

70 (1) A public utility that owns, operates, manages or controls, or is incorporated for the purpose of owning, operating, managing or controlling any plant or equipment for the conveyance of telephone messages either directly or indirectly to or for the public shall not at any time change the type of equipment installed in any of its exchanges without first obtaining the approval of the Board.

(2) Such approval may be given *ex parte* or after such notice and public hearing as the Board in its discretion determines in each case, and upon such conditions as the Board may prescribe. R.S., c. 380, s. 70.

#### **No rate or charge by utility other than as in schedule**

71 No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it than is prescribed in such schedules as are at the time in force, or demand, collect or receive any rates, tolls or charges not specified in such schedules. R.S., c. 380, s. 71.

#### **Rescission or amendment of order of Board**

72 The Board may, at any time, upon notice to the public utility and after hearing as provided in this Act, rescind, alter or amend any order fixing any rate or rates, tolls, charges or schedules, or any other order made by the Board, and certified copies of the same shall be served and take effect as herein provided for original orders. R.S., c. 380, s. 72.

**Domestic rate or charge in certain cases**

**73 (1)** In this Section, “municipality” means a municipality as defined by the *Municipal Affairs Act*.

**(2)** This Section does not apply to a customer that is the Government of Canada, the Province or a municipality or any of their departments, organizations or agencies.

**(3)** Subject to subsection (4), the rate or charge for electric energy supplied by an electric public utility to a customer that is a senior citizens’ club, service club, volunteer fire department, a Royal Canadian Legion, community hall or recreational facility owned by a community and used for general community purposes, a charitable or religious organization or institution shall be at a rate or charge not in excess of the domestic rate.

**(4)** Subsection (3) applies only to a customer for energy supplied on or after the fifth day of May, 1978, and upon an application from that customer.

**(5)** The Governor in Council may by order in council extend the application of subsection (3) to other organizations or institutions that are similar to or like those named or referred to in subsection (3). R.S., c. 380, s. 73.

**Approval for issue of certain securities**

**74 (1)** No public utility shall issue any shares, stocks, bonds, debentures or any evidence of indebtedness payable in more than one year from the date thereof, except as in subsection (2) provided, until it has obtained approval from the Board for such proposed issue.

**(2)** Without the approval of the Board and for the purpose of enabling a public utility to organize, it may make a first issue of its shares for cash as follows:

- (a)** if such shares have a nominal or par value it may issue at the par value thereof not exceeding fifty shares of one hundred dollars each;
- (b)** if such shares are without nominal or par value it may issue not more than fifty of such shares,

but for the purpose of enabling it to organize, no public utility shall issue shares to exceed five per cent in number of the shares of its nominal capital.

**(3)** An application to the Board by a public utility for approval of any issue of its shares, stocks, bonds, debentures or other evidence of indebtedness, shall comply with and conform to the rules of procedure of the Board.

**(4)** After hearing such application and when satisfied that the proposed issue by a public utility of its shares, stocks, bonds, debentures or other evidence of indebtedness is to be made in accordance with law and for a purpose approved by the Board, it shall be the duty of the Board to make an order approving

the proposed issue to such amount as it deems proper, and also to prescribe the purpose to which the same or the proceeds thereof shall be applied.

(5) In such order the Board shall have power to fix, determine and prescribe the following matters:

(a) if the application is for an issue of shares, the issue price thereof, and in addition in the case of preferred shares the rate of dividend to be payable;

(b) if the application is for an issue of bonds, debentures, debenture stock or other evidence of indebtedness, the issue price thereof and the rate of interest to be payable thereon;

(c) the time within which the issue approved shall be sold or otherwise disposed of;

(d) such other provisions as the Board may deem necessary or proper.

(6) On the application of a public utility affected by an order under this Section and after notice, the Board may amend, vary or rescind such order or make a new order.

(7) An increase of capital by a public utility shall not be valid or effectual unless, in addition to all other requirements being complied with, the proposed increase of capital has been sanctioned by a resolution of a majority in interest of those shareholders of the public utility who are present in person or by proxy at a special general meeting duly called for the purpose or at an annual meeting of the shareholders of the public utility, if in the notice of such annual meeting, express reference is made to such purpose.

(8) Except as provided in subsections (10) and (12), all new common shares shall be offered to the shareholders unless the Board otherwise directs and new preference shares shall not be offered to the shareholders unless the Board directs that they shall be so offered.

(9) Where new shares are required to be offered to the shareholders, they shall be offered at such price as the Board may determine, in proportion to the number of shares held by such shareholders respectively, and such offer shall be made by notice specifying, in the case of each shareholder, the number of shares to which such shareholder is entitled, and stating the time fixed by the Board within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on receipt of an intimation from the shareholder to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as the Board may approve, provided that the Board may direct that rights to purchase fractions of shares shall not be offered to the shareholders or may make such other order respecting the offering to the shareholders as the Board deems just.

(10) An issue of shares which does not exceed five per cent in number of shares of the capital stock previously issued, may be made in any calendar year by any public utility, without first or at all offering the shares of such issue to the shareholders, provided such shares are issued for any of the following purposes:

- (a) to acquire property which the public utility is authorized to acquire and hold;
- (b) to provide shares to be sold for cash to employees;
- (c) to provide shares to be sold for cash to or for an employees' benefit fund.

(11) Notwithstanding the provisions of subsection (10), the number of shares which may be sold to any employee out of such an issue of shares as is referred to in subsection (10) shall not exceed those which might be allotted or issued to such employee under a written agreement, plan or schedule adopted by the shareholders at an annual meeting or at any special meeting for which notice has been given that such agreement, plan or schedule will be discussed.

(12) Where the purpose of the issue of any shares is to implement any agreement made by a public utility with respect to the exchange of one class of shares for another class or to redeem preference shares issued subject to their redemption at par or at a premium, the provisions of subsection (8) shall not apply.

(13) Where application is made to the Board for approval of an issue of shares which are not required by this Act to be first offered to the shareholders, the Board may, in its discretion, on proper cause being shown, dispense with notice of hearings or any public notice whatever and at once, on application to the Board, may declare its approval of the proposed issue.

(14) This Section does not apply and shall be deemed not to have applied to a public utility that is a city or incorporated town or a municipality or ~~the~~ Nova Scotia Power Incorporated. R.S., c. 380, s. 74; 1992, c. 8, s. 35.

#### **Distribution of surplus profit**

75 (1) Nothing in this Act shall be taken to prohibit a public utility from entering into any reasonable arrangement with its employees for the division or distribution of its surplus profits.

(2) No such arrangements shall be lawful until it is found by the Board, after investigation, to be reasonable and just and not inconsistent with the purposes of this Act.

(3) Such arrangements shall be under the supervision and regulation of the Board. R.S., c. 380, s. 75.



**Location of office and books**

**76 (1)** Each public utility shall have an office in one of the cities, towns or villages of the Province in which its property or some part thereof is located and shall keep in said office all such books, accounts, papers or records as shall be required by the Board to be kept within the Province.

**(2)** No such books shall at any time be removed from the Province, except upon such conditions as may be prescribed by the Board. R.S., c. 380, s. 76.

**Use of equipment by another utility**

**77 (1)** Every public utility which furnishes telephone, heat, light or power service, and every telegraph company doing business within the Province, and having conduits, poles, wires or other equipment, shall, for a reasonable compensation, permit the use of the same by any other public utility furnishing any of said services whenever public convenience and necessity require such use, and such use will not result in any substantial detriment to the service to be rendered.

**(2)** In case of failure to agree upon such use, or the conditions or compensation for such use, any public utility or any person or corporation interested may apply to the Board, and if after investigation the Board shall ascertain that public convenience and necessity require such use, and that it would not result in any substantial detriment to the service to be rendered by such owners or other users of such equipment, it shall by order direct that such use be permitted and prescribe conditions and compensation for such joint use.

**(3)** Such use so ordered shall be permitted, and such conditions and compensation so prescribed shall be the lawful conditions and compensation to be observed, followed and paid.

**(4)** Any such order of the Board may be from time to time revised by the Board upon application of any interested party or upon its own motion. R.S., c. 380, s. 77.

**Consent for erection of pole or wire in city or town**

**78** No public utility shall, in any city or town, erect or place in, upon, along, under or across any street, road or highway, any pole, wire, conduit or pipe, without first obtaining the consent of the council of such city or town, and the council may give such consent on such terms, including the rate or amount of taxation to be paid by such public utility, or may refuse its consent, as it deems fit, and if the council refuses or neglects to give such consent within one month after such application has been received by the mayor or clerk of such city or town or agrees to give it only on terms which the company will not accept, the matter shall be referred to the Board, and the Board may make an order directing on what terms any such work shall be undertaken, or may refuse to make any order. R.S., c. 380, s. 78.

**Complaint by public utility**

**79** Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by a municipal corporation as provided in this Act. R.S., c. 380, s. 79.

## ELECTRICITY EFFICIENCY AND CONSERVATION

**Interpretation**

**79A** In this Section and Sections 79B to 79V,

(a) “affiliate” means an affiliate within the meaning of *Companies Act*, and includes a person that Nova Scotia Power Incorporated does not deal with at arm’s length;

(b) “electricity efficiency and conservation activities” means activities, programs or plans relating to

(i) the efficient use of electricity,

(ii) the conservation of electricity,

(iii) the alteration of the consumption pattern of an end-user of electricity that has the effect of reducing demand during Nova Scotia Power Incorporated’s periods of highest demand,

(iv) the utilization or management by Nova Scotia Power Incorporated of its electrical system in a more cost-effective manner,

(v) the delivery of a reduction in the amount of electrical energy or capacity that Nova Scotia Power Incorporated would otherwise be required to supply to its customers, or

(vi) any other prescribed activities, plans or programs;

(c) “franchise” means a franchise granted pursuant to Section 79C;

(d) “franchise holder” means a body corporate granted a franchise pursuant to Section 79C;

(e) “Implementation Date” has the same meaning as in the *Electricity Efficiency and Conservation Restructuring (2014) Act*;

(f) “Minister” means the Minister of Energy;

(g) “personal information” has the same meaning as in the *Personal Information Protection and Electronic Documents Act (Canada)*;

(h) “prescribed” means prescribed by the regulations. 2014, c. 5, s. 15.

**Application for franchise**

**79B (1)** Upon invitation by the Minister, a person may apply for a franchise.

(2) An applicant for a franchise shall provide the Minister with such information as may be prescribed, in such time and manner as may be prescribed.

(3) Neither Nova Scotia Power Incorporated or any of its affiliates may apply for a franchise. 2014, c. 5, s. 15.

#### **Terms of franchise**

**79C (1)** Upon application pursuant to Section 79B, the Minister may grant an electricity efficiency and conservation franchise pursuant to this Section.

(2) A franchise

(a) gives the franchise holder the exclusive right to supply Nova Scotia Power Incorporated with reasonably available, cost-effective electricity efficiency and conservation activities for the purpose of this Act;

(b) is for a term of nine years ending December 31st in the ninth year of the franchise;

(c) is subject to any terms or conditions specified by the Minister in the grant of the franchise; and

(d) may be terminated by the Minister for a breach of a term or condition specified by the Minister in the grant of the franchise, for a failure by the franchise holder to achieve a performance requirement established by the Board pursuant to subsection 79M(1) or 79R(4) or if the agreement between the franchise holder and Nova Scotia Power Incorporated is terminated by the Board pursuant to clause 79N(2)(c).

(3) At the request of the Minister, the Board shall review and assess the extent to which a franchise holder is in compliance with any of the terms, conditions or performance requirements referred to in subsection (2).

(4) A franchise holder and Nova Scotia Power Incorporated shall provide the Board with the information and evidence the Board considers necessary for the purpose of a review and assessment pursuant to subsection (3).

(5) No transfer or assignment of a franchise is effective without the approval of the Minister. 2014, c. 5, s. 15.

#### **Early termination of franchise**

**79D** Notwithstanding clause 79C(2)(b), where a franchise is terminated and a new franchise is granted, the term of the new franchise includes the balance of the current year in addition to the nine-year term. 2014, c. 5, s. 15.

**Information and assistance for new franchise holder**

**79E (1)** In the event of the termination or expiration of a franchise, the franchise holder shall provide a new franchise holder with the information in its possession or control, including personal information, and the assistance necessary for the uninterrupted delivery or evaluation of electricity efficiency and conservation activities, in such manner as the Minister directs.

**(2)** The information and assistance referred to in subsection (1) must be provided within a reasonable period to ensure the uninterrupted delivery of electricity efficiency and conservation activities.

**(3)** Where there is no new franchise holder, the information and assistance referred to in subsection (1) must be provided to Nova Scotia Power Incorporated for the uninterrupted delivery of electricity efficiency and conservation activities and to enable Nova Scotia Power Incorporated to provide the information and assistance to the new franchise holder when the new franchise holder is known.

**(4)** All persons shall keep confidential all information obtained pursuant to this Section except information that

- (a)** is in the public domain at the time it is obtained;
- (b)** comes into the public domain after it has been obtained, other than by virtue of a breach of this subsection; or
- (c)** is required by law to be disclosed, but only to the extent so required.

**(5)** Information provided pursuant to this Section is subject to the same conditions on the transfer or disclosure to which it was subject when held by the franchise holder, and the person to whom it is disclosed or transferred shall comply with any such conditions.

**(6)** The provision of information pursuant to this Section that is subject to any privilege, including solicitor-client privilege, does not constitute a waiver of the privilege.

**(7)** No person has or may maintain any cause of action or claim against Her Majesty in right of the Province, the Minister, Nova Scotia Power Incorporated, the franchise holder or the new franchise holder arising from or in relation to the provision of information to the new franchise holder or Nova Scotia Power Incorporated pursuant to this Section. 2014, c. 5, s. 15.

**Transition of franchise activities to new franchise holder**

**79F (1)** Notwithstanding any agreement to the contrary, in the event of the termination or expiration of a franchise, any agreement between the franchise holder and any other person with respect to the franchise may be assigned to a new franchise holder or such other person as the Minister directs in accordance with the

terms of an order made by the Minister pursuant to Section 79U and, upon such assignment,

(a) the franchise holder is relieved of obligations pursuant to the assigned agreement on and after the date of the assignment but remains responsible for all payments accrued before the date of the assignment and all liabilities arising from any disputes arising from such agreement before the date of the assignment;

(b) the new franchise holder or other person to whom the agreement is assigned is entitled to any benefits, and is responsible for any obligations, pursuant to the assigned agreement on and after the date of the assignment, but is not responsible for any payments accrued before the date of the assignment or any liabilities arising from any disputes arising from such agreement before the date of the assignment; and

(c) no person has or may maintain any cause of action or claim against Her Majesty in right of the Province, the Minister, Nova Scotia Power Incorporated, the franchise holder, the new franchise holder or another person to whom an agreement is assigned pursuant to this Section arising from or in relation to the assignment.

(2) The Board has the general supervision of a franchise holder for the purpose of Section 79E and this Section, and may make all necessary examinations and inquiries, keep itself informed as to the compliance by the franchise holder with the law and obtain from the franchise holder all information necessary to enable the Board to fulfil its duties.

(3) Upon application by the Minister, Nova Scotia Power Incorporated, the franchise holder or the new franchise holder, the Board shall determine any matters required to be determined with respect to the termination or expiration of the franchise and the transition of franchise activities to the new franchise holder.

(4) Where a franchise holder, other than the holder of a franchise that is terminated for any of the reasons set out in clause 79C(2)(d), provides information or assistance pursuant to subsection 79E(1) or (3), the franchise holder may apply to the Board to determine the appropriate compensation, and the new franchise holder or Nova Scotia Power Incorporated, as the case may be, shall compensate the franchise holder for the information or assistance provided, subject to any terms or conditions that the Board considers appropriate, by paying the franchise holder the amount of compensation determined by the Board for that purpose.

(5) Where the new franchise holder pays compensation pursuant to subsection (4), the Board shall permit the new franchise holder to recover the amount of compensation it pays from Nova Scotia Power Incorporated pursuant to their first agreement. 2014, c. 5, s. 15.

**Board supervision**

**79G (1)** The Board has the general supervision of a franchise holder in relation to the franchise holder's franchise activities, and may make all necessary examinations and inquiries, keep itself informed as to the compliance by the franchise holder with the law and obtain from the franchise holder all information necessary to enable the Board to fulfil its duties.

**(2)** For the purpose of Sections 15 to 19, 21, 22, 25, 27 to 29, 34, 46, 47, 49 to 51, 63, 76, 79, 80, 83 to 85, 88 to 106 and 111 to 118, a franchise holder is deemed to be a public utility in relation to its franchise activities and those Sections apply *mutatis mutandis* to the franchise holder with respect to those activities.

**(3)** The Board may order and thereupon a franchise holder shall furnish to the Board an independent savings review of the franchise holder's franchise activities to identify potential savings by the franchise holder.

**(4)** The Board may order that the independent savings review pursuant to subsection (3) include

(a) an assessment of the franchise activities of the franchise holder;

(b) an assessment of the franchise holder's fiscal management of its revenue and expenses relating to its franchise activities;

(c) a value-for-money assessment examining the economy, efficiency and effectiveness of the operations and management of the franchise holder's franchise activities; and

(d) such other matters as the Board considers relevant to the assessment of potential savings.

**(5)** An order made pursuant to subsection (3) may include such terms or conditions as the Board considers necessary or advisable.

**(6)** A franchise holder shall, on the request of the Board, by the date requested by the Board, provide reports to the Board, dealing with such matters and in such detail as the Board may require or as may be prescribed. 2014, c. 5, s. 15.

**Board determines required activities**

**79H** The Board shall determine the cost-effective electricity efficiency and conservation activities that must be undertaken for the purpose of this Act. 2014, c. 5, s. 15.

**N.S. Power Inc. to undertake activities**

**79I (1)** On and after the Implementation Date, Nova Scotia Power Incorporated shall undertake cost-effective electricity efficiency and conservation activities that are reasonably available in an effort to reduce costs for its customers.

(2) Nova Scotia Power Incorporated shall meet its obligation pursuant to subsection (1)

(a) by entering into an agreement with a franchise holder for the supply of electricity efficiency and conservation activities, if there is a franchise holder, that is approved by the Board pursuant to Section 79L; or

(b) where there is no franchise holder, in the manner approved by the Board, subject to any terms or conditions considered appropriate by the Board.

(3) Notwithstanding subsection (2) and clause 79C(2)(a) but subject to any other requirement for review or approval by the Board in this Act, Nova Scotia Power Incorporated may

(a) maintain or develop rate structures or technologies for its customers incorporating load management features, including load shifting and interruptibility;

(b) enter into financing arrangements with its customers or offer support for the supply of heating equipment, including heat pumps, to its customers;

(c) undertake any electricity efficiency and conservation activities with respect to its own property;

(d) undertake charitable giving with respect to electricity efficiency and conservation activities; and

(e) undertake any other activity, subject to approval by the Board, that, in the opinion of the Board, will not unduly interfere with the franchise holder's franchise. 2014, c. 5, s. 15.

#### **Agreements with franchise holder required**

**79J (1)** In order to purchase electricity efficiency and conservation activities from a franchise holder to meet its obligation pursuant to clause 79I(2)(a), Nova Scotia Power Incorporated shall enter into agreements with a franchise holder that meet the requirements of this Section.

(2) Each agreement must

(a) be for a term of three years, ending on December 31st of the third year of the agreement;

(b) not be terminable or terminated unless the franchise holder's franchise is terminated or the termination is approved by the Board pursuant to Section 79N;

(c) describe the electricity efficiency and conservation activities that the franchise holder will provide to Nova Scotia Power Incorporated; and

(d) identify the amount that Nova Scotia Power Incorporated will pay to the franchise holder for the supply of electricity efficiency and conservation activities.

(3) Where Nova Scotia Power Incorporated and the franchise holder are unable to finalize the required agreement, either or both of them may apply to the Board for a decision with respect to a proposed agreement and, upon considering the application, the Board shall establish a final agreement between the parties on such reasonable terms as the Board considers appropriate.

(4) An application made pursuant to subsection (3) is deemed to be an application for the approval of an agreement pursuant to Section 79L and Section 79L applies *mutatis mutandis* to the application. 2014, c. 5, s. 15.

#### **Information for franchise holder**

**79K (1)** Nova Scotia Power Incorporated shall provide a franchise holder with such information in its possession or control, including records and personal information, respecting customer electricity usage and load as is necessary to enable the franchise holder to provide Nova Scotia Power Incorporated with reasonably available cost-effective energy efficiency and conservation activities.

(2) Upon written notice from a franchise holder, Nova Scotia Power Incorporated shall, within a reasonable period, provide the franchise holder, for the purpose of enabling the franchise holder to provide Nova Scotia Power Incorporated with reasonably available cost-effective energy efficiency and conservation activities, such information in its possession or control, including records and personal information, respecting customer electricity usage and load as is specified in the notice.

(3) Subsections (1) and (2) apply whether or not an agreement has been entered into between Nova Scotia Power Incorporated and the franchise holder.

(4) A franchise holder that believes that Nova Scotia Power Incorporated has failed to provide the information required or requested pursuant to subsection (1) or (2) may apply to the Board for a determination of what information Nova Scotia Power Incorporated is required to provide and the period within which it must be provided.

(5) A franchise holder shall keep confidential all information obtained pursuant to this Section except information that

- (a) is in the public domain at the time it is obtained;
- (b) comes into the public domain after it has been obtained, other than by virtue of a breach of this subsection; or
- (c) is required by law to be disclosed, but only to the extent so required.



(6) Information provided pursuant to this Section is subject to the same conditions on transfer or disclosure to which it was subject when held by Nova Scotia Power Incorporated, and the franchise holder shall comply with any such conditions.

(7) A transfer or disclosure for the purpose of this Section of information that is subject to any privilege, including solicitor-client privilege, does not constitute a waiver of the privilege.

(8) No person has or may maintain any cause of action or claim against Her Majesty in right of the Province, the Minister, Nova Scotia Power Incorporated or the franchise holder arising from or in relation to any provision of information by Nova Scotia Power Incorporated to the franchise holder pursuant to this Section. 2014, c. 5, s. 15.

#### **Board's approval of agreements**

**79L (1)** No agreement between Nova Scotia Power Incorporated and a franchise holder, including an agreement amending such an agreement, is valid until it has been approved by the Board pursuant to this Section.

(2) Where Nova Scotia Power Incorporated and a franchise holder have finalized an agreement, either or both of them may apply to the Board for approval of the agreement.

(3) Regardless of which makes the application, both Nova Scotia Power Incorporated and the franchise holder are applicants.

(4) Upon receiving the application, the Board shall, when establishing a process for the review and approval of the application, ensure that an applicant that did not file the application has sufficient time, as the Board may determine, to prepare the information or evidence required by subsection (5).

(5) Each of the applicants shall provide any information or evidence required by the Board for its determination of the application.

(6) Notwithstanding subsection (5), in the application, the franchise holder is primarily responsible to provide information and evidence to the Board to justify the electricity efficiency and conservation activities that it proposes to undertake for Nova Scotia Power Incorporated, and Nova Scotia Power Incorporated is entitled to rely upon the expertise of the franchise holder in respect of the delivery of the electricity efficiency and conservation activities.

(7) Notwithstanding subsection (6), in the application, the franchise holder is entitled to rely upon the written information and evidence filed with the Board by Nova Scotia Power Incorporated for the purpose of the application and proceeding.

(8) The Board shall approve an agreement pursuant to this Section if, in addition to any other matters considered appropriate by the Board, it is satisfied that the agreement, including the proposed electricity efficiency and conservation activities that are the subject of the agreement, is in the best interests of Nova Scotia Power Incorporated's customers and satisfies the requirements of Section 79J.

(9) The Board's assessment of the proposed electricity efficiency and conservation activities for the purpose of the approval must take into account their affordability to Nova Scotia Power Incorporated's customers, along with any other matters considered appropriate by the Board or as may be prescribed. 2014, c. 5, s. 15.

#### **Board's authority when approving agreements**

**79M (1)** In making an order approving an agreement pursuant to Section 79L, the Board shall establish such performance requirements for the franchise holder as the Board considers appropriate.

(2) The failure of the franchise holder to achieve performance requirements established pursuant to subsection (1) is not the responsibility of Nova Scotia Power Incorporated except to the extent that the Board determines that Nova Scotia Power Incorporated materially contributed to the franchise holder's failure to achieve the requirements by failing to comply with the approved agreement.

(3) In making an order approving an agreement pursuant to Section 79L, the Board shall determine and approve the costs that are payable by Nova Scotia Power Incorporated to the franchise holder pursuant to the agreement.

(4) In making an order approving an agreement pursuant to Section 79L, the Board may attach such modifications to the agreement or such terms or conditions as the Board considers appropriate, and the agreement is subject to any modifications, terms or conditions that the Board attaches to its approval.

(5) In making an order approving an agreement pursuant to Section 79L, the Board shall include a provision to permit Nova Scotia Power Incorporated to recover any costs Nova Scotia Power Incorporated incurs pursuant to the approved agreement, including through its rate base, pursuant to Section 45, in the year in which the costs are incurred or as deferred by the Board.

(6) The Board may, in its discretion, defer the recovery of costs incurred by Nova Scotia Power Incorporated or the franchise holder pursuant to all approved agreements up to a cumulative amount of \$100,000,000, taking into account, in addition to any other matters considered appropriate by the Board,

(a) the extent to which the payment of the costs for electricity efficiency and conservation activities can be matched to the expected benefits; and

(b) the stability of the rates paid by Nova Scotia Power Incorporated's customers. 2014, c. 5, s. 15; 2015, c. 31, s. 32.

#### **Termination of agreements**

**79N (1)** Neither party to an agreement approved pursuant to Section 79L may terminate the agreement without the approval of the Board[.]

(2) Notwithstanding Sections 79I and 79J, upon receiving an application to terminate an agreement pursuant to this Section, the Board may, based on its assessment of the matter and its determination of what is in the best interests of Nova Scotia Power Incorporated's customers,

(a) provide directions to the parties as if the application were made pursuant to subsection 79P(1);

(b) terminate the agreement and establish a new agreement between the parties for any period up to the date on which the terminated agreement would have expired if not terminated as if the application were made pursuant to subsection 79J(3); or

(c) terminate the agreement and permit Nova Scotia Power Incorporated to meet its obligation pursuant to subsection 79I(1) in the manner approved by the Board, subject to any terms or conditions considered appropriate by the Board. 2014, c. 5, s. 15.

#### **Term of agreement with new franchise holder**

**79O** Notwithstanding clause 79J(2)(a), where an agreement is terminated and a new franchise is granted, the term of the first agreement between the new franchise holder and Nova Scotia Power Incorporated includes the balance of the current year in addition to the three-year term. 2014, c. 5, s. 15.

#### **Disagreement between parties to approved agreement**

**79P (1)** Where Nova Scotia Power Incorporated and a franchise holder are parties to an approved agreement, either or both of them may apply to the Board for directions relating to any disagreement between them in relation to the agreement.

(2) Upon receiving an application pursuant to this Section, the Board shall, when establishing a process for the review and disposition of the application, ensure that a party that did not file the application has such sufficient notice and time, as the Board may determine, to prepare the information or evidence required by subsection (3).

(3) Each of the parties shall provide any information or evidence required by the Board for its determination of the application.

(4) Notwithstanding Sections 79I and 79J, upon considering the application, the Board may, based on its assessment of the matter and its determina-

tion of what is in the best interests of Nova Scotia Power Incorporated's customers, provide directions to the parties. 2014, c. 5, s. 15.

#### **First franchise**

**79Q (1)** Notwithstanding clause 79C(2)(b), the first franchise granted after the coming into force of this Section expires December 31, 2025.

**(2)** Notwithstanding Sections 79I and 79J, for the purpose of Section 79I, Nova Scotia Power and the holder of the first franchise granted after the coming into force of this Section are deemed to have entered into an initial agreement for the supply of electricity efficiency and conservation activities by the franchise holder to Nova Scotia Power Incorporated, as set out in this Section, for a term commencing on the Implementation Date and ending on December 31, 2015.

**(3)** The franchise holder shall develop a proposal setting out electricity efficiency and conservation activities for the period referred to in subsection (2) and apply to the Board to approve the activities for the purpose of the agreement.

**(4)** An application pursuant to subsection (3) is deemed to be an application for the approval of an agreement pursuant to Section 79L and Section 79L applies, *mutatis mutandis*, to the application. 2014, c. 5, s. 15; 2015, c. 31, s. 33.

#### **Spending and cost-recovery for activities of franchise holder**

**79R (1)** In making an order approving electricity efficiency and conservation activities pursuant to Section 79Q, the Board shall approve the amount that the franchise holder may spend to supply the activities, which must not exceed the sum of

(a) \$35,000,000; and

(b) the amount of any over recovery of funds by Efficiency Nova Scotia Corporation during 2013.

**(2)** In making an order approving electricity efficiency and conservation activities pursuant to Section 79Q, the Board shall approve the amount that the franchise holder may charge to Nova Scotia Power Incorporated for the activities, which must not exceed the lesser of

(a) \$35,000,000; and

(b) the amount approved by the Board pursuant to subsection (1) less the amount of any over recovery of funds by Efficiency Nova Scotia Corporation during 2013.

**(3)** The recovery by Nova Scotia Power Incorporated from its customers of the amount charged to it by the franchise holder, as permitted by subsection (2), must be deferred, and must be recovered by Nova Scotia Power Incorporated, including through its rate base, over the eight-year period beginning January 1, 2016.

(4) In making an order with respect to an application pursuant to Section 79Q, the Board shall establish such performance requirements for the franchise holder as it considers appropriate and may establish such other terms or conditions for the initial agreement between Nova Scotia Power Incorporated and the franchise holder as the Board considers appropriate.

(5) The failure of the franchise holder to achieve performance requirements established pursuant to subsection (4) is not the responsibility of Nova Scotia Power Incorporated except to the extent that the Board determines that Nova Scotia Power Incorporated materially contributed to the franchise holder's failure to achieve the requirements by failing to comply with the approved agreement.

(6) Nova Scotia Power Incorporated shall pay the amount charged to it, as permitted pursuant to subsection (2), to the holder of the first franchise in equal monthly instalments, with the first instalment due on the later of January 1, 2015 and the first day of the month in which the Implementation Date occurs. 2014, c. 5, s. 15.

#### **Allocation of costs recoverable**

79S The Board may, when approving an application made pursuant to Section 79L or 79Q, determine the manner in which any costs recoverable by Nova Scotia Power Incorporated from its customers must be allocated amongst Nova Scotia Power Incorporated's customers, and in doing so may, in addition to any other factors considered appropriate by the Board, take into account the Rate Smoothing Adjustment approved by the Board in its order dated January 29, 2014. 2014, c. 5, s. 15.

#### **Electricity Demand-side Management Fund addressed**

79T Notwithstanding Sections 28 to 30 of the *Efficiency Nova Scotia Corporation Act*, any surplus or deficit relating to the Electricity Demand-side Management Fund established pursuant to that Act may be addressed by the Board, in any manner that the Board determines to be appropriate. 2014, c. 5, s. 15.

#### **Order by Minister to assign agreement**

79U (1) The Minister may make an order for the purpose of subsection 79F(1) assigning an agreement as referred to in that subsection, including attaching terms or conditions to any such assignment and consequences for failing to meet such terms or conditions, and respecting any other matter or thing the Minister considers necessary or advisable to achieve the assignment of such agreements.

(2) The exercise by the Minister of the authority contained in subsection (1) is not a regulation within the meaning of the *Regulations Act*. 2014, c. 5, s. 15.

#### **Regulations**

79V (1) The Governor in Council may make regulations for the purpose of Sections 79A to 79U, including regulations

- (a) prescribing activities, programs or plans that are electricity efficiency and conservation activities;
- (b) prescribing the information that must be included when applying for a franchise and the time and manner of such an application;
- (c) prescribing reports that a franchise holder must provide for the purpose of 79G(6);
- (d) prescribing matters that the Board must consider pursuant to subsection 79L(9);
- (e) defining any word or expression used but not defined in this Act;
- (f) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of these Sections.

(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*, 2014, c. 5, s. 15.

#### PROCEDURE AND PRACTICE

##### **Right of inspection and examination by Board**

**80 (1)** The Board or any member thereof, or any person or persons employed by the Board for that purpose, shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility, and the Board or any such member shall have the power to examine, under oath, any officer, agent or employee of such public utility in relation to its business and affairs.

(2) Any person other than one of such members who shall make such demand shall produce his authority to make such inspection or examination. R.S., c. 380, s. 80; 1992, c. 11, s. 43.

**81** *repealed 1992, c. 11, s. 43.*

##### **Appointee to investigate safety or adequacy of service**

**82** The Board may, either with or without notice to a public utility, make an order appointing a person to make at any time or from time to time any examinations, investigations or tests for the purpose of ascertaining whether service reasonably safe and adequate and in all respects just and reasonable is being supplied by the public utility, and may in such order make provision as to the remuneration and expenses such person is to be paid and that the same shall be paid to such persons by the public utility whenever the Board certifies that the same is payable. R.S., c. 380, s. 82.

**Complaint against public utility**

**83 (1)** Upon complaint made to the Board against any public utility by any municipal corporation or by any five persons, firms or corporations, that any of the rates, tolls, charges or schedules are in any respect unreasonable or unjustly discriminatory or that any regulation, measurements, practice or act whatsoever affecting or relating to the operation of any public utility is in any respect unreasonable, insufficient or unjustly discriminatory or that the service is inadequate or unobtainable, the Board shall proceed, with or without notice, to make such investigation as it deems necessary or expedient, and may order such rates, tolls, charges or schedules reduced, modified or altered, and may make such other order as to the modification or change of such regulation, measurements, practice or acts as the justice of the case may require, and may order on such terms and subject to such conditions as are just that the public utility furnish reasonably adequate service and facilities and make such extensions as may be required, but no such order shall be made or entered by the Board without a public hearing or inquiry first had in respect thereof.

**(2)** The Board, when called upon to institute an investigation, may, in its discretion, require from the complainants the deposit of a reasonable amount of money or other security to cover the costs of the investigation, which money or security shall be dealt with as the Board directs, should the decision be given against the complainants. R.S., c. 380, s. 83.

**Notice of complaint and setting down**

**84** The Board shall, prior to such formal hearing, notify the public utility complained of that a complaint has been made, and after reasonable notice has been given, the Board may proceed to set a time and place for a hearing and an investigation as hereinafter provided. R.S., c. 380, s. 84.

**Notice of hearing and investigation**

**85 (1)** The Board shall give the public utility and the complainant, if any, ten days notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined.

**(2)** Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses. R.S., c. 380, s. 85.

**Notice of hearing of application for rate changes**

**86** Notice of the hearing of any application, for the approval of or providing for an increase or decrease in the rates, tolls and charges of any public utility, shall be given by advertisement in one or more newspapers published or circulating in the cities, towns or municipalities where such changes are sought, for three consecutive weekly insertions preceding the date of said hearing, unless otherwise ordered by the Board. R.S., c. 380, s. 86.

**Unjust or unreasonable rate or charge, regulation or service or action**

**87 (1)** If upon any investigation the rates, tolls, charges or schedules are found to be unjust, unreasonable, insufficient or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this Act, the Board shall have power to cancel such rates, tolls, charges or schedules, and declare null and void all contracts or agreements in writing or otherwise, to pay or touching the same, upon and after a day to be named by the Board, and to determine and by order fix, and order substituted therefor, such rate or rates, tolls or schedules as shall be just and reasonable.

**(2)** If upon such investigation it shall be found that any regulation, time schedule, act or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise in violation of any of the provisions of this Act, or if it is found that reasonable service is not supplied, the Board shall have power to determine and substitute therefor such other regulations, time schedules, services or acts and to make such order respecting any such changes in such regulations, time schedules, services or acts as shall be just and reasonable.

**(3)** Upon any investigation for the purpose of determining upon and requiring any reasonable extension or extensions of lines, or of service that shall promise to be compensatory within a reasonable time, the Board shall have power to fix, determine, and require every such extension or extensions to be made and the terms and conditions upon which the same shall be made, provided that no hearing shall be had and no order shall be made respecting such extension or extensions, without notice to the public utility affected thereby as provided in this Act. R.S., c. 380, s. 87.

**Where formal hearing warranted**

**88 (1)** If after making any summary investigation, the Board becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation.

**(2)** Ten days after such notice has been given the Board may proceed to set a time and place for a hearing and an investigation as in this Act provided. R.S., c. 380, s. 88.

**Notice of formal hearing**

**89** Notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the Board shall deem necessary, as provided in this Act, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though a complaint had been filed with the Board relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint. R.S., c. 380, s. 89.



**Determination of question of fact**

**90** In determining any question of fact, the Board shall not be bound by the finding or judgment of any court in any suit, prosecution or proceeding involving the determination of such fact, but such finding or judgment shall in proceedings before the Board be *prima facie* evidence only. R.S., c. 380, s. 90.

**Consumer advocate**

**91 (1)** Where the Governor in Council directs or the Board on its own motion decides, the Board shall appoint a person to act as a consumer advocate in a hearing before the Board.

**(2)** A consumer advocate appointed pursuant to subsection (1)

(a) shall participate in all aspects of the hearing before the Board and represent the interests of residential consumers as a full intervenor with power to enter into settlement agreements with other parties; and

(b) has all the powers and authorities necessary to carry out the duties of a consumer advocate pursuant to this Section.

**(3)** The Board may fix fees and expenses of a consumer advocate in performing the functions and duties of a consumer advocate pursuant to this Section.

**(4)** The fees and expenses referred to in subsection (3)

(a) shall be paid to the Board by the applicant or applicants in such proportion as determined by the Board; and

(b) may include the cost of retaining experts and legal counsel to provide the consumer advocate with advice, including testimony, on technical and legal matters.

**(5)** The Board may make rules respecting practice and procedure, scope of work, fees and expenses and other matters respecting a consumer advocate appointed pursuant to subsection (1).

**(6)** The Governor in Council may make regulations respecting the qualifications and experience of a consumer advocate. 2005, c. 25, s. 1.

**Small business advocate**

**92 (1)** In this Section,

(a) “prescribed” means prescribed by the regulations made pursuant to subsection (7);

(b) “small business” means a business

(i) of a prescribed type,

(ii) to which prescribed rate classes and service tariffs approved by the Board for a utility apply, and

(iii) that annually consumes the services of the utility within prescribed limits.

(2) Where the Governor in Council directs or the Board on its own motion decides, the Board shall appoint a person to act as a small business advocate in a hearing before the Board.

(3) A small business advocate appointed pursuant to subsection (2)

(a) shall participate in all aspects of the hearing before the Board and represent the interests of small business as a full intervenor with power to enter into settlement agreements with other parties; and

(b) has all the powers and authorities necessary to carry out the duties of a small business advocate pursuant to this Section.

(4) The Board may fix fees and expenses of a small business advocate in performing the functions and duties of a small business advocate pursuant to this Section.

(5) The fees and expenses referred to in subsection (4)

(a) shall be paid to the Board by the applicant or applicants in such proportion as determined by the Board; and

(b) may include the cost of retaining experts and legal counsel to provide the business advocate with advice, including testimony, on technical and legal matters.

(6) The Board may make rules respecting practice and procedure, scope of work, fees and expenses and other matters respecting a business advocate appointed pursuant to subsection (2).

(7) The Governor in Council may make regulations

(a) prescribing the criteria and attributes that the type of business for the purpose of subclause (1)(b)(i);

(aa) prescribing the rate classes and service tariffs for the purpose of subclause (1)(b)(ii);

(ab) prescribing the limits of annual consumption of utility services for the purpose of subclause (1)(b)(iii)-[:];

(b) respecting the qualifications and experience of a business advocate. 2008, c. 31, s. 1; 2010, c. 71, s. 1.

**Separate advocates**

**93** The same person must not be appointed as both the consumer advocate under Section 91 and the small business advocate under Section 92. 2010, c. 71, s. 2.

**94 to 99** *repealed 1992, c. 11, s. 43.*

**Incrimination**

**100** No person shall be excused from testifying or from producing books, accounts and papers in any proceeding based upon or growing out of any violation of the provisions of this Act, on the ground or for the reason that the evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence. R.S., c. 380, s. 100.

**101 to 105** *repealed 1992, c. 11, s. 43.*

## OFFENCES AND PENALTIES

**Penalty for false statement**

**106** Every director, president, secretary or other official of any public utility who makes any false statement to secure the issue of any share, stock, certificate of stock, bond, mortgage or other evidence of indebtedness, or who shall, by false statement knowingly made, procure of the Board the making of the certificate herein provided or with knowledge of such fraud, issue, negotiate or cause to be negotiated any such share, stock, certificate of stock, bond, mortgage or other evidence of indebtedness in violation of this Act, shall be liable to a penalty of not less than five hundred dollars, or to imprisonment for a term of not less than one year, or to both, such penalty and imprisonment in the discretion of the court. R.S., c. 380, s. 106.

**Offence and penalty for unjust discrimination**

**107** If any public utility or any agent or officer thereof shall directly or indirectly, by any device whatsoever, or otherwise, charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than that prescribed in the public schedules or tariffs then in force or established, as provided in this Act, or than it charges, demands, collects or receives from any other person, firm or corporation other than one conducting a like business for a like and contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful, and upon conviction thereof shall be liable to a penalty of not less than fifty dollars for each offence, and such agent or officer so offending shall upon conviction thereof be liable to a penalty of not less than twenty-five dollars for each offence. R.S., c. 380, s. 107.

**No reduced compensation for provided facilities**

**108** It shall be unlawful for any public utility to demand, charge, collect or receive from any person, firm or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm or corporation of any part of the facilities incident thereto, provided that nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the operation of a tramway or to the production, transmission, delivery or furnishing of heat, light, water or power or the conveyance of telephone messages and paying a reasonable rental therefor or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscriber's premises, and unless otherwise ordered by the Board, meters and appliances for measurements of any product or service. R.S., c. 380, s. 108.

**Undue or unreasonable preference**

**109 (1)** If any public utility shall knowingly or wilfully make or give an undue or unreasonable preference or advantage to any particular person, firm or corporation, or shall subject any particular person, firm or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful.

**(2)** Any person, firm or corporation violating the provisions of this Section shall on conviction thereof be liable to a penalty of not less than five dollars for each offence. R.S., c. 380, s. 109.

**Unlawful rebate or concession**

**110 (1)** It shall be unlawful for any person, firm or corporation knowingly to solicit, accept or receive any rebate, concession or discrimination in respect to any service in or affecting or relating to any public utility, or for any service in connection therewith, whereby any such service shall, by any device whatsoever or otherwise, be rendered free or at less rate than that named in the schedules and tariffs in force as provided in this Act, or whereby any service or advantage is received other than is in this Act specified.

**(2)** Any person, firm or corporation violating the provisions of this Section shall on conviction thereof be liable to a penalty of not less than twenty-five dollars for each offence. R.S., c. 380, s. 110.

**Penalty on officer or agent or employee of utility**

**111** Any officer, agent or employee of any public utility who

- (a) fails or refuses to fill out and return any blanks, as required by this Act;
- (b) fails or refuses to answer any questions therein asked;
- (c) wilfully gives a false answer to any such question;

(d) evades the answer to any such question where he had the means of ascertaining the fact inquired of;

(e) upon proper demand, fails or refuses to exhibit to the Board or any member thereof, or any person authorized to examine the same, any book, paper, account, record or memoranda of such public utility, which is in his possession or under his control;

(f) fails to properly use and keep his system of accounting, or any part thereof, as prescribed by the Board under this Act; or

(g) refuses to do any act or thing in connection with such system of accounting when so directed by the Board or its authorized representative,

shall, upon conviction thereof, be liable to a penalty of not less than two hundred dollars for each offence, and a penalty of not less than five hundred dollars shall, on conviction, be imposed on the public utility for each such offence when such officer, agent or employee acted in obedience to the direction, instruction or request of such public utility or any general officer thereof. R.S., c. 380, s. 111; 1992, c. 11, s. 43.

#### **Penalty on public utility**

**112 (1)** If any public utility

(a) violates any provision of this Act;

(b) does any act by this Act prohibited;

(c) fails or refuses to perform any duty enjoined upon it for which a penalty has not been provided; or

(d) fails, neglects or refuses to obey any lawful requirement or order made by the Board or any judgment or decree made by any court upon its application,

for every such violation, failure or refusal, such public utility shall be liable to a penalty of two hundred dollars for each such offence.

**(2)** In construing and enforcing the provisions of this Section, the act, omission or failure of any officer, agent or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission or failure of such public utility. R.S., c. 380, s. 112.

#### **Penalty for unlawful destruction or interference**

**113** Any person who destroys, injures or interferes with any apparatus or appliance owned or operated by or in charge of the Board or its agents, shall, upon conviction, be liable to a penalty not exceeding one hundred dollars or imprisonment for a period not exceeding thirty days, or both. R.S., c. 380, s. 113.

#### **Separate offence**

**114** Every day during which any public utility, or any officer, agent or employee thereof, fails knowingly or wilfully to observe and comply with any order

or direction of the Board, or to perform any duty enjoined by this Act, shall constitute a separate and distinct violation of such order or direction, or of this Act, as the case may be. R.S., c. 380, s. 114.

#### **Recovery of penalty**

**115 (1)** The penalties prescribed by this Act may be recovered or enforced

(a) by civil action or proceeding at the suit of the Attorney General, or of a private party with the consent of the Attorney General, in any court having jurisdiction to the amount of the penalty in cases of simple contract; or

(b) with the like consent under the *Summary Proceedings Act*.

**(2)** No action or proceeding for the violation of any of the provisions of this Act shall be commenced after the expiration of one year from the time of such violation. R.S., c. 380, s. 115.

#### GENERAL

#### **Interpretation and construction of Act and powers of Board**

**116 (1)** This Act shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the Board by the provisions of this Act, the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in this Act conferred on the Board.

**(2)** The Board hereby created shall have, in addition to the powers in this Act specified, mentioned and indicated, all additional, implied and incidental powers which may be proper or necessary to carry out, effect, perform and execute all the said powers herein specified, mentioned and indicated.

**(3)** A substantial compliance with the requirements of this Act shall be sufficient to give effect to all the rules, orders, acts and regulations of the Board, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. R.S., c. 380, s. 116.

#### **Conflict with and application of**

**117 (1)** Any Act whether enacted before or after the fourteenth day of April, 1943, relating to a public utility as defined by this Act shall be read and construed as subject in all respects to the provisions of this Act and, in case of conflict, the provisions of this Act shall prevail unless the contrary intention is expressly stated.

(2) This Act applies to ~~the~~ Nova Scotia Power Incorporated and ~~the~~ Nova Scotia Power Incorporated is a public utility within the meaning of this Act.

(3) *repealed 1992, c. 8, s. 35.*

R.S., c. 380, s. 117; 1992, c. 8, s. 35.

### Regulations

**118 (1)** The Governor in Council may make regulations

(a) prescribing the remuneration of an executive employee of Nova Scotia Power Incorporated that Nova Scotia Power Incorporated may recover from a rate, charge or fee approved by the Board, which remuneration must be derived from the pay plan, as established from time to time, used for deputy ministers in the public service of the Province;

(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*. 2012, c. 41, s. 5.