

To: Law Amendments Committee  
From: Brian Gifford and Claire McNeil, on behalf of the Affordable Energy Coalition  
Re: **Bill 147: Public Utilities Act**  
Date: April 13, 2022

The Affordable Energy Coalition (AEC) is a group made up of individuals and community organisations committed to equitable and universal access to energy and eradicating energy poverty. Electricity is necessary to maintain adequate housing and for about 1/3 of Nova Scotia households provides the main source of heat. The AEC believes that equitable and universal access to electricity is a matter of human rights both in terms of equality and the right to housing.

Nova Scotia Power Inc. is a privately owned company with a virtual monopoly on the transmission and delivery of electricity in Nova Scotia. It is publicly regulated pursuant to the *Public Utilities Act* and the *Utility and Review Board Act*.

The focus of our submissions concerning Bill 147 concerning the *Public Utilities Act* is on the authority given to the government to set by regulation "performance standards, requirements and minimums" for Nova Scotia Power Inc, in particular for "**(c) equity, low-income service and energy poverty.**"

We welcome this important initiative and the government's commitment to strengthening equity and low income service and tackling energy poverty.

However, we are presenting here today to address a problem with the *Public Utilities Act* that will undermine and frustrate the government measures to address energy poverty by regulation under this Act.

Regulations must be authorised by the statute pursuant to which it is made. In this case, the regulations contemplated by Bill 147 must be authorised under the *Public Utilities Act*. This amendment in Bill 147 creates an inconsistency in the law that we fear may undermine these important government objectives and render this statutory amendment ineffectual.

That inconsistency arises from a Nova Scotia Court of Appeal decision that interpreted s. 67(1) of the *Public Utilities Act*. Based on s. 67(1), the Court found that the Utility and Review Board had no jurisdiction to provide a rate assistance program to address the impacts of energy poverty on low income residential consumers:

25 Section 67(1) is mandatory. The rates and charges "shall always . . . be charged equally" to persons of similar circumstances and conditions in respect of service. The statute does not endow the Board with discretion to consider the social justice of reduced rates for low income customers. It is not for the Board or this court to read into s. 67(1) the words:

... similar circumstances and conditions in respect of the income level of customers and service of the same description,

**It is for the Legislature to decide whether to expand the Board's purview with the italicized words. [emphasis added] *Dalhousie Legal Aid Service v. Nova Scotia Power Inc.* 2006 NSCA 74**

The Court interpreted “equal rates” in s 67(1) to mean identical rates, in concluding that all residential consumers – regardless of their income – must be treated identically and charged the same rate.

Until now, the Nova Scotia Legislature has not amended s.67(1) so as to give the Utility and Review Board the jurisdiction to order NSPI to provide programs to assist low income consumers, such as a Universal Service Program, despite the fact that Nova Scotians pay among the highest rates for electricity in North America, and despite the fact that most jurisdictions in North America provide programs to assist low income electricity consumers through their regulatory system, unlike the Nova Scotia Utility and Review Board (see for instance the Ontario Energy Board programs).

Unfortunately, as it now stands, Bill 147 purports to give the government the power to set performance standards on activities that neither the Utility and Review Board nor NSPI have the jurisdiction to provide: “equity, low income service, energy poverty” given the restrictions imposed in s. 67(1) of the *Public Utilities Act*. Because s. 67(1) is a statutory provision, it will overrule any regulation passed under these amendments.

If the provision of Bill 147 concerning energy poverty is to be any more than an empty gesture, this Legislature must amend s. 67(1) of the PUA **at the same time** in order to remove the barrier to the creation of utility funded programs to address energy poverty. Otherwise this regulation will fail in its purpose as it is contrary with the Court’s interpretation of s. 67(1) of the statute - the *Public Utilities Act*.

Energy poverty has a discriminatory impact on disadvantaged groups in our society including those living in poverty who are disproportionately comprised of women, single mothers, persons with disabilities and people of colour. It undermines people’s right to housing because in the absence of lights, refrigeration and heat homes in Canada are not habitable.

Energy poverty in Nova Scotia occurs when people have unsustainable energy burdens and their access to energy is undermined. The fact is that low income households have precarious access to electricity now. Inadequate income is the primary reason for disconnection of electrical service. Arrears build up. Low income households are forced to use food banks or to stop buying medicine so they can pay electricity bills. Or they lose their electricity which means they can’t store or prepare food or lead a normal life. In some cases they cannot heat their homes.

A key value or principle in our system of electricity must be that of equitable and universal access to electricity. The issue of access, from a human rights point of view, must include more than simply making a service available, but rather making sure everyone has meaningful access to electricity.

To achieve equitable and universal service, which lies at the core of our government's commitment to electricity regulation, we must ensure that electricity service is accessible. Accessibility has two relevant components:

- The direct and indirect costs should not prevent people from accessing the service.
- Access to electricity service should not undermine access to other necessities of life, such as adequate housing, food and health.

The current regulatory system in Nova Scotia does not take into account the circumstances of low-income households, and thus undermines their access to electricity. Denial of electricity leads to social and economic costs for individuals and society and adversely impacts health. Equitable access to energy will increase participation in the work force, housing affordability, health and educational success.

Inequitable access to electricity has human rights implications. To explore these human rights implications, the government could also seek an opinion from the Nova Scotia Human Rights Commission who has a statutory obligation to inquire into matters referred to it by the Governor in Council or Minister of Justice (see Human Rights Act s 24(1)(h)).

### **Conclusion**

In order to address the inconsistency between s. 67(1) of the Public Utilities Act and the proposed amendment under Bill 147, and to allow Bill 147 to achieve its purpose, this Committee should refer Bill 147 back for further amendments to s. 67(1) of the *Public Utilities Act* as follows:

**67 (1) Except as required for purposes of rate assistance programs to address energy poverty for low income domestic (residential) consumers, [a]**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. (proposed amendments in bold)

The government should then enact regulations to require the UARB to take steps to require the implementation of a Universal Service Program in Nova Scotia to ensure that all Nova Scotians have universal access to electricity.