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SNL1994 CHAPTER E-5.1

## **ELECTRICAL POWER CONTROL ACT, 1994 [Part IV (ss.23-25) - to be proclaimed]**

Amended:

1994 c28 s5; 1995 c37; 1999 c32 s1; 2004 cL-3.1 s25; 2006 c26 s2; 2006 c40 s21; 2007 c25; 2012  
c42 ss2 to 4;  
2012 c47 ss1 to 3; 2018 c10 ss1 to 6

# **CHAPTER E-5.1**

## **AN ACT TO REGULATE THE ELECTRICAL POWER RESOURCES OF NEWFOUNDLAND AND LABRADOR**

*(Assented to June 9, 1994)*

*Analysis*

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*Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:*

**Short title**

1. This Act may be cited as the *Electrical Power Control Act, 1994*.

[1994 cE-5.1 s1](#)

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**Definitions**

2. In this Act

(a) "ancillary service" means a service that is necessary to support transmission service on the integrated electric system while maintaining reliable operation of the integrated electric system;

(a.1) "associate", when used to indicate a relationship between 2 persons, means,

(i) 1 has the power to direct or cause to be directed the management and policies of the other where the other is a corporation,

(ii) 1 is a corporation that is controlled by the other or by a group of persons of which the other is a member,

(iii) 1 is a corporation whose management and policies the other has the power to direct or to cause to be directed,

(iv) another corporation whose management and policies are subject to a power to direct or to cause to be directed by 1 who also has the power to direct or cause to be directed the management and policies of the other where the other is a corporation,

- (v) 1 is a partner of the other acting by or for the partnership of which they are both partners,
  - (vi) 1 is a partnership of which the other is a partner,
  - (vii) 1 is a trust or estate in which the other has a beneficial interest equal to or in excess of 20% or as to which the other serves as trustee or in a similar capacity,
  - (viii) 1 is a person to whom the other is married and with whom the other resides or with whom the other is living in a conjugal relationship outside marriage,
  - (ix) 1 is a son or daughter of the other,
  - (x) 1 is a relative of the other or of a person mentioned in subparagraph (viii), other than a person described in subparagraphs (viii) and (ix), who has the same home as the other,
  - (xi) 1 is a government and the other is an agent of that government,
  - (xii) 1 is an agent of a government and the other is an agent of the same government;
  - (xiii) 1 is a person who is obligated to act in concert with the other in exercising voting rights in respect of the shares of a retailer,
  - (xiv) both are members of a voting trust that relates to voting shares, or
  - (xv) both are at the same time associates within the meaning of subparagraphs (i) to (xiv) of the same person;
- (b) "bargaining agent" means an employee organization that is certified for the purpose of the *Labour Relations Act* or an employee organization which has been voluntarily recognized by the retailer and has not had its bargaining rights terminated;
- (c) "consumer" means a person purchasing power from a retailer for the use of that person and not for resale;
- (d) "control" means control in a manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, an agreement or arrangement, the ownership of a corporation or otherwise and
- (i) a corporation is considered to be controlled by a person where
    - (A) securities of the corporation to which are attached more than 50% of the votes that may be cast ordinarily to elect directors of the corporation are held, otherwise than by way of security only, by or for the benefit of that person, and
    - (B) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation, and
  - (ii) a partnership, trust or unincorporated organization is considered to be controlled by a person if an ownership interest therein representing more than 50% of the assets of the partnership, trust or organization is held, otherwise than by way of security only, by or for the benefit of that person;
- (e) "emergency controller" means that person appointed by the Lieutenant-Governor in Council to exercise the powers under Part III ;

- (f) "employed capital" means the amount of capital invested in property and assets which are used and useful in the production, transmission and distribution of power other than property or assets rendered unusable or surplus by reason of an order made under subsection 8(2);
- (g) "essential employee" means 1 of a number of employees whose duties consist in whole or in part of duties the performance of which at a particular time or during a specified period of time is or may be necessary for the health, safety or security of the public;
- (h) "industrial customer" means any person purchasing power, other than a retailer, supplied from the bulk transmission grid at voltages of 66 KV or greater on the primary side of any transformation equipment directly supplying the person;
- (h.1) "integrated electric system" has the same meaning as in the *Public Utilities Act* ;
- (i) "lockout" means "lockout" as defined in the *Labour Relations Act* ;
- (j) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (j.1) "Muskrat Falls Project" means the Muskrat Falls Project as defined in the *Energy Corporation Act* ;
- (k) "person" includes an individual, partnership, corporation, government or agency of a government, unincorporated organization, trustee, administrator and other legal representatives;
- (l) "parent corporation" means a corporation which controls a retailer;
- (m) "power" includes electrical power, however generated, and electrical energy;
- (n) "producer" means a person who produces or has the capacity to produce power in the province;
- (o) "public utilities board" means the Board of Commissioners of Public Utilities;
- (o.1) "public utility" means a public utility as defined in the *Public Utilities Act*;
- (p) "rates" includes prices, charges, tolls or conditions applying to prices for power or other consideration given for the supplying of power;
- (q) "retailer" means a public utility within the meaning of the *Public Utilities Act* , other than a public utility exempt from the application of that Act, which buys or generates power and whose primary business is the sale or resale of power to arm's length customers;
- (r) "strike" means "strike" as defined in the *Labour Relations Act* ;
- (r.1) "system operator" means the entity established under section 14.3;
- (r.2) "transmission customer" means a person that
  - (i) is receiving transmission service on the integrated electric system,
  - (ii) has applied to become a customer of the system operator, or
  - (iii) is a customer of the system operator and has applied to receive transmission service on the integrated electric system;

- (r.3) "transmission owner" means a person that owns or manages a part of the integrated electric system;
- (r.4) "transmission service" means a service for the reservation and transmission of capacity and energy from one or more points of receipt to one or more points of delivery;
- (r.5) "transmission tariff" means a compilation of documents that set out the
- (i) rates and rate methodology,
  - (ii) conditions of service,
  - (iii) policies, and
  - (iv) rules
- relating to the provision of transmission service and ancillary service on the integrated electric system; and
- (s) "voting share" means a share carrying a voting right under all circumstances.

[1994 cE-5.1 s2](#); [2006 c40 s21](#); [2012 c47 s1](#); [2018 c10 s1](#)

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### Labrador Inuit rights

**2.1** (1) This Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

(2) Where, under this Act the public utilities board issues a licence, the public utilities board may add to that licence terms and conditions that the licensee must comply with in order to ensure compliance with the terms and conditions of the *Labrador Inuit Land Claims Agreement Act*.

[2004 cL-3.1 s25](#)

## PART I DECLARATION OF POLICY AND IMPLEMENTATION

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### Power policy

- 3.** It is declared to be the policy of the province that
- (a) the rates to be charged, either generally or under specific contracts, for the supply of power within the province
    - (i) should be reasonable and not unjustly discriminatory,
    - (ii) should be established, wherever practicable, based on forecast costs for that supply of power for 1 or more years,
    - (iii) should provide sufficient revenue to the producer or retailer of the power to enable it to earn a just and reasonable return as construed under the *Public Utilities Act* so

that it is able to achieve and maintain a sound credit rating in the financial markets of the world,

- (iv) should be such that after December 31, 1999 industrial customers shall not be required to subsidize the cost of power provided to rural customers in the province, and those subsidies being paid by industrial customers on the date this Act comes into force shall be gradually reduced during the period prior to December 31, 1999, and
  - (v) should promote the development of industrial activity in Labrador ;
- (b) all sources and facilities for the production, transmission and distribution of power in the province should be managed and operated in a manner
- (i) that would result in the most efficient production, transmission and distribution of power,
  - (ii) that would result in consumers in the province having equitable access to an adequate supply of power,
  - (iii) that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service,
  - (iv) that would result in, subject to Part III , a person having priority to use, other than for resale, the power it produces, or the power produced by a producer which is its wholly-owned subsidiary,
- (iv.1) that would result in open, non-discriminatory and non-preferential access to, interconnection with and service on the integrated electric system,
- (v) where the objectives set out in subparagraphs (i) to (iv) can be achieved through alternative sources of power, with the least possible interference with existing contracts,
- and, where necessary, all power, sources and facilities of the province are to be assessed and allocated and re-allocated in the manner that is necessary to give effect to this policy;
- (c) in the event of an emergency arising from the loss of use of generating facilities, a shortage of water or a loss of transmission or distribution facilities which results in there being insufficient power to meet the needs of consumers in the province, or a part of the province, the emergency controller should have the responsibility and authority to
- (i) determine priorities,
  - (ii) allocate and re-allocate available power, and
  - (iii) make all other necessary provisions for the supply and distribution of power for so long as the emergency continues;
- (d) the public utilities board shall have the right to determine if, and the extent to which, employees of retailers are essential employees;
- (e) [Rep. by 1995 c37 s15]; and
- (f) planning for future power supply of the province shall not include nuclear power.

[1994 cE-5.1 s3](#); [1995 c37 s15](#); [2012 c42 s2](#); [2018 c10 s2](#)

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### Implementing Policy

4. In carrying out its duties and exercising its powers under this Act or under the *Public Utilities Act*, the public utilities board shall implement the power policy declared in section 3, and in doing so shall apply tests which are consistent with generally accepted sound public utility practice.

[1994 cE-5.1 s4](#)

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### General reference by government

5. (1) The Lieutenant-Governor in Council may refer to the public utilities board
- (a) existing or proposed rates or a class of rates applicable between producers, retailers and customers;
  - (b) matters affecting or related to rates charged by producers to retailers and customers;
  - (c) the principles used by or appropriate for use by producers in determining rates for the supply of power to retailers and customers; or
  - (d) another matter relating to power,

and the public utilities board shall hold a public hearing at which it shall investigate and examine the matters referred to it and report on the matters to the minister within the time specified by the Lieutenant-Governor in Council in the reference.

(2) A reference under this section may be general or particular in terms and may specify criteria, factors and procedures to guide the public utilities board in making its investigation, examination and report.

[1994 cE-5.1 s5](#)

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### Direction to board

5.1 (1) Notwithstanding sections 3 and 4 of the Act and the provisions of the *Public Utilities Act*, the Lieutenant-Governor in Council may direct the public utilities board with respect to the policies and procedures to be implemented by the board with respect to the determination of rate structures of public utilities under the *Public Utilities Act* and, without limiting the generality of the foregoing, including direction on the setting and subsidization of rural rates, the setting of industrial rates in Labrador, the fixing of a debt-equity ratio for Hydro, and the phase in, over a period of years from the date of coming into force of this section, of a rate of return determination for Hydro, and the board shall implement those policies and procedures.

(2) Notwithstanding a provision of this Act or the *Public Utilities Act*, for the purpose of the Muskrat Falls Project the Lieutenant-Governor in Council may direct the public utilities board to implement policies, procedures and directives respecting the exercise of powers and the performance of the duties of the public utilities board under this Act or the *Public Utilities Act*, including policies, procedures and directives respecting

- (a) the costs, expenses and allowances that are to be included in the rates, tolls and charges approved for a public utility, and the terms of that inclusion;
- (b) the terms of the interim orders, orders or approvals determining rates, tolls and charges of a public utility;



- (c) the criteria to be applied by the public utilities board for the approval or confirmation of an approval by the public utilities board;
- (d) the annual rate of return of a public utility;
- (e) whether or not a hearing shall be held;
- (f) the commencement, suspension, continuation or termination of a hearing or process; and
- (g) the parameters, criteria and timing of the exercise or restraint from exercise of a power or performance of a duty of the public utilities board under this Act or the *Public Utilities Act*.

(3) The public utilities board shall implement the policies, procedures and directives of the Lieutenant-Governor in Council as directed under subsection (2).

[2012 c42 s3](#); [2012 c47 s2](#)

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### Exemption

**5.2** (1) The Lieutenant-Governor in Council may exempt a public utility from the application of all or a portion of this Act where the public utility is engaged in activities that in the opinion of the Lieutenant-Governor in Council as a matter of public convenience or general policy are in the best interest of the province, to the extent of its engagement in those activities.

(2) An exemption granted under subsection (1) before the coming into force of subparagraph 3(b)(iv.1) shall not exempt the person to whom the exemption was granted from complying with subparagraph 3(b)(iv.1).

(3) Where the person referred to in subsection (1) is the system operator, a transmission customer or a transmission owner, that person is not exempted from complying with the sections of this Act and the regulations to the extent necessary to carry out its duties and functions as the system operator, a transmission customer or a transmission owner under this Act and the regulations.

[1999 c32 s1](#); [2018 c10 s3](#)

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### Interpretation

**5.3** In section 3, the phrase "all sources and facilities for the production, transmission and distribution of power in the province" shall be read as including sources of every kind, whether developed or undeveloped.

[2007 c25 s1](#)

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### Agreement to develop a source of power

**5.4** (1) Two or more persons who have been granted rights by the province to the same body of water as a source for the production of power and who utilize, or propose to utilize, or to develop and utilize the body of water as a source for the production of power shall enter into an agreement for the purpose of achieving, with respect to the body of water, the policy objective set out in subparagraph 3(b)(i).

(2) Where 2 or more persons enter into an agreement under subsection (1), they shall refer the agreement to the public utilities board.

(3) The public utilities board may, with respect to an agreement submitted under subsection (2),

(a) approve the agreement;

(b) approve the agreement subject to the changes the board may require; or

(c) refuse to approve the agreement.

(4) In the exercise of its authority under subsection (3), the public utilities board shall satisfy itself that the agreement meets the policy objectives set out in subparagraph 3(b)(i).

[2007 c25 s1](#)

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### **Agreement imposed**

**5.5** (1) Where 2 or more persons to whom subsection 5.4(1) applies fail to enter into an agreement within a reasonable time, one or more of them may apply to the public utilities board to establish the terms of an agreement between them.

(2) Where an application is made to the public utilities board under subsection (1), the board shall establish the terms of an agreement for the purpose of achieving the policy objective set out in subparagraph 3(b)(i).

(3) An agreement established by the public utilities board under subsection (2) is binding on the persons named in the agreement.

[2007 c25 s1](#)

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### **Amendments to an agreement**

**5.6** (1) An agreement approved by the public utilities board under subsection 5.4(3) or established under subsection 5.5(2) may not be amended by the persons to whom the agreement applies without the prior approval of the public utilities board.

(2) The public utilities board may require reporting commitments, and impose monitoring requirements, as it considers appropriate, to ensure that the persons to an agreement approved by the public utilities board under subsection 5.4(3) or established under subsection 5.5(2) comply with the terms and conditions of the agreement.

(3) Where the public utilities board believes that one or more of the persons to an agreement approved by the board under subsection 5.4(3) or established under subsection 5.5(2) have failed to comply with the terms and conditions of the agreement, the public utilities board may, independent of any of the rights or remedies available to the persons to the agreement,

(a) order a defaulting person to comply with the terms and conditions of the agreement; and

(b) exercise a contractual remedy that may be available to a person who is a party to the agreement as if it were a party to the agreement.

[2007 c25 s1](#)

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### Provision of an agreement void

**5.7** A provision of an agreement referred to in section 5.4 or 5.5 shall not adversely affect a provision of a contract for the supply of power entered into by a person bound by the agreement and a third party that was entered into before the agreement under section 5.4 or 5.5 was entered into or established, or a renewal of that contract.

[2007 c25 s1](#)

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### Act to apply

**5.8** (1) Notwithstanding section 7 of *The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961*, as of January 1, 2015, the *Public Utilities Act* shall apply to all transmission lines and related assets located in Labrador, except

- (a) those in relation to the supply of hydro-electric power described in subparagraph 7(1)(b)(i) of *The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961*; and
- (b) those included in the Muskrat Falls Project.

(1.1) Notwithstanding subsection (1), the *Public Utilities Act* and the regulations under that Act shall apply to the transmission lines and related assets located in Labrador that form part of the integrated electric system to the extent necessary for the system operator, a transmission customer and a transmission owner to comply with

- (a) subparagraph 3(b)(iv.1); and
- (b) those sections of this Act and the *Public Utilities Act* and the regulations under those Acts that are necessary to carry out its duties and functions as the system operator, a transmission customer or a transmission owner under those Acts and regulations.

(2) The *Public Utilities Act* shall not apply to the setting of electricity rates for industrial customers in Labrador other than the transmission components of those rates, which shall be regulated under subsection (1).

(3) The public utilities board may receive applications, hear evidence and make rulings in respect of a matter that will come into its jurisdiction as a result of subsection (1) or subsections 7(2) and (3) of *The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961* before January 1, 2015, but an order made by the public utilities board as a result of that application or hearing shall not have effect until on or after January 1, 2015.

[2012 c42 s4; 2018 c10 s4](#)

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*The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961*

**5.9** (1) Where Churchill Falls (Labrador) Corporation Limited and Newfoundland and Labrador Hydro cannot reach an agreement for the sale and purchase of the electrical energy and capacity described in subsection 7(3) of *The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961* within a reasonable time, either party may apply to the public utilities board to establish the rate to be charged and paid under an agreement.

(2) Where an application is made to the public utilities board under subsection (1), the public utilities board shall establish the rate to be charged and paid under an agreement, taking into account the submissions of the parties and the following:

- (a) Churchill Falls (Labrador ) Corporation Limited's requirements for price stability and sufficient revenues to cover anticipated costs;
  - (b) the proportionality of the volume of energy under an agreement to Churchill Falls (Labrador ) Corporation Limited's total volume of energy produced;
  - (c) the terms of the Churchill Falls (Labrador ) Corporation Limited's shareholders agreement;
  - (d) other prices received by Churchill Falls (Labrador ) Corporation Limited for sale of electrical energy and capacity; and
  - (e) the policy objective set out in subparagraph 3(a)(v), and the achievement of that policy objective.
- (3) The rate established by the board under subsection (2)
- (a) shall be indexed to and adjusted annually for inflation, and the nature of that adjustment may be established by the public utilities board as appropriate for the industry;
  - (b) shall be binding on Churchill Falls (Labrador) Corporation Limited and Newfoundland and Labrador Hydro, but may be amended or changed by the parties by agreement without the prior approval of the public utilities board; and
  - (c) may be increased by the public utilities board at any time the rate is less than 50% of the blended Labrador industrial generation rate, upon application by Churchill Falls (Labrador ) Corporation Limited, at the discretion of the public utilities board.

[2012 c42 s4](#)

## PART II PLANNING, ALLOCATION AND RE-ALLOCATION OF POWER AND FACILITIES

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### **Planning of future power supply**

6. (1) The public utilities board has the authority and the responsibility to ensure that adequate planning occurs for the future production, transmission and distribution of power in the province.

(2) The public utilities board may direct a producer or retailer to perform such activities and provide such information as it considers necessary for such planning to the public utilities board or to any other producer or retailer on such terms and conditions as it may prescribe.

(3) For the purpose of this section, the public utilities board may adopt those rules and procedures that it considers necessary or advisable to give effect to the subsection.

[1994 cE-5.1 s6](#)

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### **Inquiry by board where shortage anticipated**

7. (1) Where a producer or a retailer believes that it may not be able to supply power sufficient to satisfy the current or anticipated power demands of its customers and prospective customers in accordance with the power policy set out in section 3, it may request the public utilities board to conduct an inquiry into the matter.

(2) The Lieutenant-Governor in Council may request the public utilities board to conduct an inquiry into the matter of the adequacy of supply and the ability of producers and retailers to meet the current or anticipated power demands of consumers in the province, in accordance with the power policy set out in section 3, and to report on the matter to the Lieutenant-Governor in Council within the time specified by the Lieutenant-Governor in Council in the reference.

(3) Where the public utilities board believes that producers and retailers collectively or individually will not be able to satisfy, in accordance with the power policy set out in section 3, the current or anticipated power demands of consumers in the province, the public utilities board may further inquire into the matter.

[1994 cE-5.1 s7](#)

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### **Board to allocate power**

8. (1) Where a matter is referred to the public utilities board under subsection 7(1) or (2) or the public utilities board decides to conduct an inquiry under subsection 7(3), the public utilities board shall, immediately, by public advertisement, give at least 20 days' notice of and hold a public hearing at which it shall investigate and examine into the matter.

(2) Where, after the conduct of an inquiry, the public utilities board is satisfied that a producer or a retailer is not or will not be able under the existing supply and allocation contracts or arrangements to satisfy the current or anticipated demands of its customers for power in the manner required by this Act, the public utilities board may, subject to subsection 11(3), allocate and re-allocate any or all power produced in the province and may order another producer or retailer to supply, upon those terms and conditions respecting rates, timing, duration and amounts that the public utilities board determines, to the producer or retailer which would otherwise be unable to satisfy such demands power that the public utilities board considers to be necessary to implement the power policy set out in paragraph 3(b).

(3) The public utilities board may, in an order made under subsection (2), require a producer or retailer to make its transmission and distribution plant, equipment and facilities available for the transmission and distribution of the power allocated or re-allocated under the order, on those terms and conditions respecting rates, timing, duration and amounts that the public utilities board determines.

(4) Upon the application of a retailer, the public utilities board may make an order requiring a retailer to make its transmission and distribution plant, equipment and facilities available for the transmission and distribution of power on those terms and conditions respecting rates, timing, duration and amounts that the public utilities board determines.

(5) A producer or retailer directed by an order made under subsection (2) to deliver power to another producer or retailer shall, within the limits of its capacity, deliver power to the other producer or retailer on the terms and conditions set out in the order notwithstanding that the producer or retailer may as a result have to reduce the amount, or cease the delivery altogether, of power then being supplied to another customer or the amount of power then being consumed for its own use.

[1994 cE-5.1 s8](#)

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**Compensation for power**

9. (1) The rates to be paid by a producer or a retailer supplied with power under an order made under subsection 8(2) for that power shall be set by the public utilities board and shall be the total of

- (a) the amount of the cost of producing the power as determined by the public utilities board;
- (b) a reasonable allowance for employed capital as determined by the public utilities board; and
- (c) the amount sufficient to amortize over a period approved by the public utilities board the unamortized cost of any and all transmission and distribution plant and other power-related equipment and facilities of a producer and its customers rendered unusable or surplus by reason of the order of the public utilities board for so long as that plant, equipment and facilities remain unusable or surplus due to the continuation in effect of the order or a substitute order of the public utilities board.

(2) A producer receiving a payment for power under an order made under subsection 8(2) which includes an amount in respect of the unamortized cost of transmission and distribution plant and other power-related equipment and facilities of its customer rendered unusable or surplus by reason of that order shall, immediately upon receipt of the payment, remit that amount to that customer.

(3) Where an order of the public utilities board made under subsection 8(2) requiring a producer or retailer to supply power is likely to affect the interest of a holder of security given by the producer or retailer, or by its customers in connection with the obligations of the producer or retailer, in respect of the former sale of the power to be re-allocated, the public utilities board may

- (a) on the request of the producer or retailer, its customer or a security holder, make it a condition of the order that the security holder be given security by the producer or retailer or the customer receiving the re-allocated power, or both, to the extent and in the manner that the public utilities board determines to be substantially the same as the security then in effect; and
- (b) on the request of the customer who has ceased to receive the re-allocated supply, make it a condition of the order that the customer receiving the re-allocated supply give to such customer an indemnity, to the extent that the public utilities board determines to be appropriate in the circumstances, from liability under any guarantee or other covenant given by such customer in relation to an obligation to purchase the power directed to be re-allocated.

[1994 cE-5.1 s9](#)

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**No liability for compliance with order**

10. (1) Where a producer or retailer is unable to supply power under a contract or obligation because of compliance with an order of the public utilities board made under subsection 8(2), that producer or retailer shall be relieved from all liability for failure to supply that power by reason of the inability for so long as that inability continues.

(2) No failure to supply power in compliance with, and nothing done by a producer or retailer under, an order of the public utilities board made under this Part shall be considered a breach of contract or entitle a person to rescind a contract or release a guarantor from the performance of the obligation or render any of them or another person liable in an action or other legal proceedings for damages notwithstanding another law to the contrary.

[1994 cE-5.1 s10](#)[Back to Top](#)**Licence for fixed term contracts**

11. (1) Every producer or retailer in the province may apply to the public utilities board for a licence to sell and distribute power under a contract for a term of 10 years or more for the purpose referred to in subsection (2).

(2) The public utilities board may, on those terms and conditions that it may impose, issue a licence for a contract for a term of 10 years or more where

- (a) the Lieutenant-Governor in Council has certified that a term of 10 years or more is necessary to facilitate the establishment of an industrial enterprise; or
- (b) the public utilities board is satisfied that a term of 10 years or more is necessary in order to raise and secure the funds necessary to construct facilities to generate or transmit the power that is the subject of the contract, and

the actual term authorized is the minimum term reasonable in the circumstances and the term shall not exceed 30 years.

(3) Where the public utilities board issues a licence to a producer or retailer under this section, sections 8 to 10 shall not apply to power sold and distributed by the producer or retailer in respect of which the licence is issued.

[1994 cE-5.1 s11](#)[Back to Top](#)**Considerations**

12. On an application for a licence under section 11, the public utilities board shall have regard to all considerations that appear to it to be relevant and the public utilities board shall satisfy itself that the contract referred to in section 11 is just and reasonable in relation to the public interest and the power policy set out in section 3.

[1994 cE-5.1 s12](#)[Back to Top](#)**Revocation of licence**

13. (1) The public utilities board may, by order, revoke or suspend a licence issued under section 11 where a term or condition of the licence has not been complied with or has been contravened.

(2) Notwithstanding subsection (1) and the regulations, an order shall not be made under subsection (1) unless the public utilities board has, in a notice sent to the holder of the licence, advised the holder of the term or condition of the licence that it is alleged has not been complied with or has been contravened and the board has afforded the holder of the licence a reasonable opportunity to be heard and to correct and justify to the satisfaction of the public utilities board the holder's failure to comply or its contravention.

(3) Notwithstanding subsections (1) and (2), the public utilities board may, by order, revoke or suspend a licence on the application or with the consent of the holder of the licence.

[1994 cE-5.1 s13](#)[Back to Top](#)

**Application of Part II**

14. This Part applies to all contracts for power generated in the province whether the contracts for the power were entered into by producers or retailers before or after the coming into force of this Act.

[1994 cE-5.1 s14](#)

**PART II.1  
EXCLUSIVE RIGHT**

[2012 c47 s3](#)

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**Exclusive right to supply, transmit, distribute and sell**

14.1 (1) Notwithstanding another provision of this Act or another Act,

(a) Newfoundland and Labrador Hydro shall have the exclusive right to supply, distribute and sell electrical power or energy to a retailer or an industrial customer in respect of the business or operations of that retailer or industrial customer on the island portion of the province; and

(b) a retailer or an industrial customer shall purchase electrical power or energy exclusively from Newfoundland and Labrador Hydro in respect of the business or operations of that retailer or industrial customer on the island portion of the province.

(2) Notwithstanding another provision of this Act or another Act, a retailer or an industrial customer shall not develop, own, operate, manage or control a facility for the generation and supply of electrical power or energy either for its own use or for supply directly or indirectly to or for the public or an entity on the island portion of the province.

(3) Subsection (1) does not apply to an industrial customer if that industrial customer is purchasing electrical power or energy in respect of its business or operations on the island portion of the province exclusively from a retailer to whom subsection (1) applies.

(4) Subsections (1) and (2) do not apply to generation facilities owned, operated, managed or controlled by a retailer or an industrial customer where the electrical power or energy generated is used by the retailer or industrial customer exclusively in emergency circumstances.

(5) Subsection (2) does not apply to generation facilities owned, operated, managed or controlled by a retailer or an industrial customer where those facilities existed on December 31, 2011, including the refurbishment of those facilities.

(6) A contract or arrangement entered into before or after the coming into force of this section which is contrary to this section is unenforceable.

(7) Notwithstanding another provision of this section, the Lieutenant-Governor in Council may, by order, exempt a retailer or an industrial customer from the application of this section or a subsection of it.

[2012 c47 s3](#)

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**No liability**



**14.2** (1) A person is not entitled to compensation or damages from the Crown or a minister, employee or agent of the Crown arising from, resulting from or incidental to the operation of this Part.

(2) An action or proceeding does not lie or shall not be instituted or continued against the Crown or a minister, employee or agent of the Crown based on a cause of action arising from, resulting from or incidental to the operation of this Part.

(3) For the purpose of this section, the corporation established by the *Energy Corporation Act* and Newfoundland and Labrador Hydro are agents of the Crown.

[2012 c47 s3](#)

## **PART II.2 OPEN ACCESS**

[2018 c10 s5](#)

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### **System operator**

**14.3** (1) The system operator is established as the entity responsible for

- (a) the safe and reliable operation of the integrated electric system; and
- (b) providing transmission service and ensuring the availability of ancillary service on the integrated electric system.

(2) The Lieutenant-Governor in Council shall by regulation designate the system operator.

(3) The system operator is a public utility.

(4) The system operator shall direct the operation of the integrated electric system.

(5) A transmission owner shall provide the system operator with the authority to direct the operation of the part of the integrated electric system that it owns or manages.

(6) At the request of the system operator or a transmission owner, the public utilities board may impose on the system operator and the transmission owner those terms and conditions regarding the authority under subsection (5) that are necessary to comply with this Act, the *Public Utilities Act* and the regulations under those Acts.

[2018 c10 s5](#)

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### **System operator agreements**

**14.4** The public utilities board shall consider an agreement between the system operator and Newfoundland and Labrador Hydro to be at arm's length.

[2018 c10 s5](#)

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### **Access to transmission information**

**14.5** (1) The system operator shall, within the time period prescribed in the regulations, ensure that transmission customers are provided with simultaneous, open, non-discriminatory and non-preferential access to current information with respect to

- (a) the availability of transmission service and ancillary service on the integrated electric system;
- (b) the transmission tariff;
- (c) an optimization rate under section 71.2 of the *Public Utilities Act* ; and
- (d) other matters prescribed in the regulations.

(2) The system operator shall keep confidential all information relating to the integrated electric system and transmission customers that is not required to be disclosed under subsection (1).

[2018 c10 s5](#)

### PART III POWER EMERGENCIES

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#### **Application of Part III**

**15.** This Part applies to all power generated in the province including power sold and distributed under a contract with a term of 10 years or more in respect of which a licence has been issued by the public utilities board under Part II.

[1994 cE-5.1 s15](#)

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#### **Emergency controller to control power in an emergency**

**16.** (1) Where the Lieutenant-Governor in Council is of the opinion that a state of emergency exists or has existed by reason of actual or apprehended damage to, destruction, failure, or breakdown of, works, plant or equipment or distribution facilities used in the generation or transmission of power, shortage of water or sudden or unexpected power demand in excess of power resources, the Lieutenant-Governor in Council may, by order, declare that a state of emergency exists or has existed.

(2) Notwithstanding this Act or a general or special Act or a contract entered into or assumed by a person, where the Lieutenant-Governor in Council orders a state of emergency under subsection (1) and during the continuance of that state of emergency and until the Lieutenant-Governor in Council by order declares the cessation of the state of emergency, the emergency controller shall

- (a) establish preferences and priorities between different users or classes of users;
- (b) allocate and re-allocate power and, if necessary, interrupt or decrease delivery of power under a contract;
- (c) regulate, and if necessary, restrict and prohibit the generation, transformation, transmission, distribution, supply and use of power; and
- (d) do, or order or direct to be done, any other thing the emergency controller considers necessary for the proper generation, transmission, distribution, supply and use of power in the circumstance.

(3) An order made by the Lieutenant-Governor in Council under this section is not subordinate legislation for the purpose of the *Statutes and Subordinate Legislation Act* .

(4) An order made by the Lieutenant-Governor in Council under this section shall come into force as soon as it is made.

(5) The Lieutenant-Governor in Council may appoint a person to be the emergency controller for the purpose of this Act.

[1994 cE-5.1 s16](#)

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#### **Authority of emergency controller**

17. (1) During the state of emergency, in addition to a general authority under section 16, the emergency controller may

- (a) modify, restrict, rescind, suspend, or re-impose an order, regulation, restriction, prohibition or control, given, made or exercised under section 16;
- (b) order the cessation, interruption, or decrease in delivery of power, in a manner and to an extent that the emergency controller sees fit, to a person who fails to comply with an order, regulation, restriction, prohibition or control given, made or exercised by the emergency controller under this Part and may enforce the order by all reasonable means as the emergency controller may consider proper and for that purpose may enter, or authorize the entering upon, the land of a person and do, or authorize to be done, whatever is necessary for that purpose; and
- (c) order producers and retailers to cease, interrupt, or decrease the delivery of power in a manner, to an extent and by those means that the emergency controller sees fit, to any of its or their customers who fail to comply with an order, regulation, restriction, prohibition, or control given, made or exercised by the emergency controller under this Part and for that purpose the emergency controller, a producer or retailer may enter, or authorize the entering upon, land of a customer and do, or authorize to be done, whatever is necessary for that purpose.

(2) Notwithstanding subsection (1) and paragraph 16(2)(a), wherever it is reasonable and practical, taking into account in particular public health, safety and security, consumption by a producer of the power it produces shall be the last, and power being delivered under a contract in respect of which a licence has been issued under section 11 shall be the second last, interrupted by the emergency controller pursuant to this Part.

[1994 cE-5.1 s17](#)

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#### **Orders of emergency controller to be obeyed**

18. Upon the declaration of an emergency under this Part, every producer and retailer and any other customer or consumer shall immediately comply with all instructions respecting the generation, transmission, distribution, supply and use of power under its or their control, that may be given by the emergency controller under the authority conferred upon the emergency controller under this Part.

[1994 cE-5.1 s18](#)

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**No liability for compliance with order**

19. Nothing lawfully done under this Part or under an order, regulation, restriction, prohibition, or control made or exercised by the emergency controller under this Part, or done to enforce or give effect to anything lawfully done by the emergency controller, a producer or retailer, its or their servants, agents or a person acting under its or their authority, shall be considered to be a breach of contract or entitle a person to rescind a contract or release a guarantor from the performance of his or her obligations or render that corporation or person liable in an action at law or other legal proceedings for damages.

[1994 cE-5.1 s19](#)

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**Compensation for power**

20. (1) A producer or retailer required to supply or deliver power otherwise than in accordance with a contract or existing obligation shall be compensated by the party receiving the power for the power delivered at a rate that shall be the higher of the compensation that the producer or retailer would have received had the power not been diverted by order of the emergency controller and the compensation that the consumer to whom the power was delivered would have paid but for the emergency.

(2) Where the compensation paid under subsection (1) is higher than the amount that the producer or retailer would have received had the power not been diverted, the compensation received by the producer or retailer which is in excess of the amount that would have been received but for the emergency shall be paid to the party from whom the power was originally diverted.

(3) In the event of failure to agree upon the compensation to be paid under this section, the public utilities board shall, at the request of a party affected, determine the amount of the compensation.

[1994 cE-5.1 s20](#)

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**Emergency controller unable to act**

21. In this Part, where the emergency controller is absent or is unable to act, the Lieutenant-Governor in Council may appoint a person to act in his or her absence and that person shall have the duties and powers of the emergency controller under this Part.

[1994 cE-5.1 s21](#)

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**Essential employees**

22. (1) A retailer and a bargaining agent may jointly establish and file with the public utilities board a written statement of the number of employees in each classification in the unit represented by the bargaining agent who are considered to be essential employees which, upon receipt by the public utilities board, shall be binding upon the retailer, the bargaining agent and the employees as an order of the public utilities board.

(2) If the retailer and the bargaining agent do not jointly file a written statement with the public utilities board under subsection (1), either the retailer or the bargaining agent may make an application to the public utilities board to determine the number of essential employees in each classification and the public utilities board shall make such an order.

(3) Within 15 days of the making of an application under subsection (2), the retailer shall provide the bargaining agent and the public utilities board with a written statement of the number of essential employees in each classification who are considered by the retailer to be essential employees.

(4) The number of employees determined to be essential under subsection (2) shall not exceed the number contained in the written statement provided by the retailer under subsection (3).

(5) The public utilities board may, in its discretion, make an interim order under this section based upon such information as it considers necessary and with or without a hearing or notice, which order shall be effective until the public utilities board makes a final order.

(6) A copy of any application made to the public utilities board by a retailer or by a bargaining agent under this section shall be provided to the other party by the applicant not later than 2 days after the application is received by the public utilities board.

(7) Where a hearing is requested by either the retailer or the bargaining agent arising from an application made under subsection (2) or arising from an interim order made under this section, the public utilities board shall hold a hearing into the matter which hearing shall take place not earlier than 15 days after the application was received by it.

(8) The public utilities board may, at any time, amend an order of joint settlement made under subsection (1) or a determination made under subsection (2), and the provisions of subsections (2) and (7) relating to representation, hearing and interim orders shall apply for an amendment as they apply for a determination.

(9) The number of essential employees determined in an amendment to an order of joint settlement shall not exceed the number contained in the order of joint settlement made under subsection (1) or the number contained in the written statement provided by the retailer under subsection (2) unless the retailer and the bargaining agent consent to a greater number.

(10) A determination or amendment made under this section shall be communicated in writing by the public utilities board to the bargaining agent and the retailer not later than 10 days after the determination or amendment is made.

(11) The retailer shall within 10 days of filing a written statement under subsection (1) or receiving from the public utilities board a determination or an amendment under subsection (2) or (8) name the employees in the unit who are essential, but the number of employees named shall not exceed the number considered to be essential as jointly agreed upon under subsection (1) or determined by the public utilities board to be essential under subsection (2) or (8).

(12) The retailer may substitute the name of an employee who is essential for the name of another employee who is essential but the number of employees named shall not exceed the number considered to be essential as jointly agreed upon under subsection (1) or determined by the public utilities board to be essential under subsection (2) or (8).

(13) The retailer shall notify in writing the bargaining agent and each employee in the bargaining unit named by the retailer as an essential employee that he or she has been named as an essential employee.

(14) An employee named as an essential employee shall report for work as if a strike or lockout were not taking place.

(15) Where an employee named as an essential employee does not report for work as required under subsection (14), the retailer shall immediately terminate the employment of that employee, unless the retailer is satisfied that there are reasonable grounds for the employee not so reporting.

**PART IV  
CORPORATE GOVERNANCE OF A RETAILER**

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**Corporate ownership and control**

**23.** (1) Subject to subsection (3), no person, without first obtaining leave of the public utilities board, shall

- (a) acquire, hold or beneficially own such number of any class of voting shares of a retailer that, together with shares, if any, already directly or indirectly held or beneficially owned by such person and the associates of such person, have in the aggregate attached to them more than 20% of the votes attached to all outstanding voting shares of the retailer;
- (b) acquire, together with the associates of the person, control of any person who, together with the associates of such person, holds directly or indirectly, more than 20% of the voting shares of any retailer; or
- (c) acquire, hold or beneficially own such number of any class of voting shares of any corporation that, together with shares already directly or indirectly held or beneficially owned by such person and the associates of such person, have in the aggregate attached to them more than 20% of the votes attaching to all outstanding voting shares of such corporation, where that corporation has control, directly or indirectly, of any retailer; or
- (d) acquire, hold or beneficially own an ownership interest in a partnership, trust or unincorporated organization that, together with ownership interests, if any, already directly or indirectly held or beneficially owned by such person and the associates of such person, in the aggregate represent more than 20% of the assets of such partnership, trust or organization, where that partnership, trust or organization has control, directly or indirectly, of any retailer.

(2) Where a corporation existing under the laws of the province holds more than 85% of the voting shares of a retailer on April 1, 1994, paragraph (1)(a) shall not apply to that holding.

(3) For the purpose of subsection (1), if 2 or more persons who are not associates hold the same voting shares, each of those persons is deemed to be the holder of all those voting shares.

- (4) This section shall not apply to
  - (a) a mortgage, charge or other security interest to secure any loan or indebtedness or other obligation;
  - (b) a transaction or series of transactions the effect of which is that all of the holders of voting shares of the retailer exchange on a pro rata basis their voting shares of the retailer for voting shares in a corporation existing under the laws of the province that, upon completion of the transaction or transactions, holds all of the outstanding voting shares of the retailer;
  - (c) voting shares acquired, held or beneficially owned by the Crown;
  - (d) voting shares acquired, held or beneficially owned by 1 or more persons acting as underwriters;
  - (e) voting shares held by any person who provides centralized facilities for the clearing of trades in securities and is acting in relation to trades in the shares solely as an intermediary in the payment of funds or the delivery of securities, or both; or

- (f) voting shares held by a nominee or bare trustee which, in either case, does not have any beneficial interest in or discretionary powers of voting over such shares.

(5) An application for leave under this section shall be made to the public utilities board, which may hold a public hearing to decide whether the proposed acquisition, holding or beneficial ownership is not in the public interest and may prescribe such terms and conditions in respect of the proposed acquisition, holding or beneficial ownership as it may determine and, if the public utilities board decides that the proposed acquisition, holding or beneficial ownership is not in the public interest, the public utilities board shall disallow the proposed acquisition, holding or beneficial ownership and otherwise the public utilities board shall allow the proposed acquisition, holding or beneficial ownership on such prescribed terms and conditions, if any.

(6) Immediately on the making of a decision under this section, the public utilities board shall, in writing, inform

- (a) every person whose proposed acquisition, holdings or beneficial ownership are affected by the decision;
- (b) every person who participated in the public hearing; and
- (c) the minister,

of the decision of the public utilities board and, subject to subsection (7), the decision is binding on all persons affected thereby.

(7) Notwithstanding sections 99 to 102 of the *Public Utilities Act*, within 30 days after a decision of the public utilities board under this section, the Lieutenant-Governor in Council may review the decision and allow or disallow the proposed acquisition, holding or beneficial ownership and the decision by the Lieutenant-Governor in Council is binding on all persons affected by it.

(8) A retailer and a parent corporation shall exist under and be governed by the *Corporations Act* or another statute of the province, unless the public utilities board approves otherwise.

[1994 cE-5.1 s23](#); [1994 c28 s5](#); [1995 c37 s17](#)

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### Restrictions on business

**24.** (1) Subject to this Act, a retailer shall not engage or invest in or carry on any business or activity other than the business of the production, transmission, distribution or retailing of power and the business or activity that is generally related to it.

(2) For greater certainty, subsection (1) shall not apply to a person who controls a retailer, including a corporation referred to in paragraph 23(3)(b).

(3) This section does not apply to Newfoundland and Labrador Hydro.

[1994 cE-5.1 s24](#); [2006 c26 s2](#)

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### Enforcement

**25.** (1) The public utilities board may require a retailer to provide to it such information in such manner as it may prescribe relevant to the ownership of the retailer.

(2) Where the public utilities board is of the opinion that a person has contravened subsection 23(1), the public utilities board shall send a demand to the person in accordance with this section.

(3) A demand referred to in subsection (2) shall require that the person to whom it is sent, immediately or within such period of time as may be specified in it, comply with this Part and, in the case of a shareholder in a retailer whose shareholding has caused such demand, divest itself of voting shares of the retailer and in the case of a shareholder of a parent corporation whose shareholding has caused such demand, divest itself of voting shares of the parent corporation or otherwise cause compliance with this Part or show cause why there has been no contravention of this Part.

(4) Where a person has acquired, holds or beneficially owns voting shares or other ownership interests in contravention of this Part, the public utilities board may, subject to such terms and conditions as it considers appropriate, require the retailer or the parent corporation, by demand sent to it by the public utilities board, not to permit the exercise of any voting rights attached to such shares or other ownership interests.

(5) Every demand made under this section shall indicate the nature of the proceedings that may be taken under this section in the event that the person or retailer fails to comply with the demand.

(6) Where the public utilities board is of the opinion that a person or retailer has failed to comply with a demand made pursuant to this section, an application on behalf of the public utilities board may be made to the Trial Division for an order under this section to enforce the demand.

(7) Where, at the conclusion of the hearing of the application under subsection (6), the court finds that the person or retailer has failed to comply with a demand pursuant to this section, the court may make such order or orders to enforce the demand as the court considers necessary in the circumstances.

(8) Without limiting the generality of subsection (7), where a person fails to comply with a demand made under this section, the court may, by order, vest the interest or increased interest to which the demand relates in a trustee named by the court and, in that case, the trustee has all the rights, title and interests in respect of the interest or increased interest in accordance with such directions that the court may issue and, notwithstanding any other Act or law, the trustee may do all those things and execute those documents that are necessary to carry out the disposition in accordance with the directions in the same manner and to the same extent as if the trustee were the owner.

(9) All proceeds from a disposition by a trustee under subsection (8) shall be first applied to the payment of the fees and expenses of the trustee in acting as such and thereafter, subject to the terms of the order, any balance remaining shall be paid to the person or persons who would, but for the vesting order, have been entitled to receive the proceeds.

[1994 cE-5.1 s25](#)

## PART V CHANGE OF FREQUENCY

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### Change of frequency

26. With the approval of the public utilities board, a retailer may

- (a) change the periodicity in alternations of current at which it supplies power to a customer;



- (b) for the purpose of standardizing and making uniform the periodicity in alternations of current at which it supplies power, alter, reconstruct, rebuild, reassemble, construct, extend or replace its works or do whatever else may be necessary in respect of them, and, with their consent, the works of other persons who are supplying or purchasing or otherwise delivering or accepting delivery of power to or from it, wherever the works may be located in the province;
- (c) for the purpose of standardizing and making uniform the periodicity in alternations of current at which power generated or procured by it is utilized and, with the consent of the owner, alter, reconstruct, rebuild, reassemble, construct, extend, replace or do whatever else may be necessary in respect of the equipment, apparatus, appliances, devices and works of a person by which the power is taken and used or authorize the owner to do so; and
- (d) charge to and collect from the owners of equipment, apparatus, appliances, devices or works, the expense of anything done by a retailer to or in respect of the equipment, apparatus, appliances, devices or works under this section

on those terms and conditions that the public utilities board may approve including, without limitation, terms limiting the retailer's liability.

[1994 cE-5.1 s26](#)

## PART VI GENERAL

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### **Powers of board**

27. (1) The public utilities board may

- (a) give directions as to the nature and extent of interventions by persons interested in a matter that is to be the subject of a reference or inquiry held under this Act;
- (b) set aside for future examination an issue that in its opinion requires a more prolonged examination; and
- (c) make interim reports pending its final report with respect to the subject matter of a reference or inquiry.

(2) The public utilities board may appoint for classes of users of power in the province that, in the opinion of the public utilities board, have common interests, persons to represent those classes at a reference or inquiry under this Act where it appears to that board that the appointment should be made so that a particular class of user of power can be heard.

(3) Notwithstanding an appointment under subsection (2), a member of a class in respect of which the appointment was made may be heard on his or her own behalf.

[1994 cE-5.1 s27](#)

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### **Costs**

28. (1) The costs of and incidental to a reference or inquiry under this Act to the public utilities board shall be in the discretion of that board and may be fixed at a sum certain, or may be taxed and the board may order by whom the costs are to be taxed and to whom the costs are to be allowed and the public utilities board may prescribe a scale under which costs are to be taxed.

(2) All expenses of the public utilities board in connection with a reference or inquiry under this Act to the public utilities board, including costs of counsel, engineers, valuers, stenographers, accountants and other assistants employed by that board as well as the salaries and expenses of the members of that board while employed in and about the reference or inquiry shall, when the public utilities board orders, be paid by the parties concerned in the reference or inquiry.

(3) Where an order for payment of expenses under subsection (2) is made against 2 or more parties, the expenses shall be apportioned between or among them in the proportion that seems equitable to the public utilities board in all the circumstances of the case.

[1994 cE-5.1 s28](#)

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#### Rep. by 1995 c37 s18

29. [Rep. by 1995 c37 s18]

[1995 c37 s18](#)

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#### Powers under Public Utilities Act

30. (1) In carrying out its duties under this Act, the public utilities board has and may exercise all the powers given to it under the *Public Utilities Act* .

(2) In carrying out its duties under this Act, the public utilities board has all the powers that are or may be conferred on commissioners appointed under the *Public Inquiries Act* .

[1994 cE-5.1 s30](#)

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#### Appeal

31. Sections 99 to 102 of the *Public Utilities Act* apply, with the necessary changes, in respect of a reference or inquiry to the public utilities board under this Act.

[1994 cE-5.1 s31](#)

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#### Regulations

32. (1) The public utilities board may, subject to the approval of the Lieutenant-Governor in Council, make regulations respecting the information to be furnished by applicants for licences under section 11 and the procedure to be followed in applying for licences and in issuing licences.

(2) The Lieutenant-Governor in Council may make regulations

- (a) defining an expression or term used in this Act and not defined in this Act, including for purposes of section 24, production, transmission, distribution or retailing of power or such business or activity as is generally related thereto;
- (b) prohibiting or limiting transactions between a producer or retailer and any person holding shares or other ownership interests in excess of the limitations provided for by subsection 23(1);

- (b.1) respecting the criteria and required terms and conditions for an agreement under section 5.4 or 5.5, and another matter required to carry out the intent and purpose of an agreement under section 5.4 or 5.5;
- (b.2) designating the system operator;
- (b.3) prescribing the duties and functions of the system operator;
- (b.4) prescribing the duties and functions of transmission owners and transmission customers;
- (b.5) prescribing information required to be provided by the system operator under section 14.5;
- (b.6) prescribing the time period in which the system operator is required to provide access to information under section 14.5;
- (c) [Rep. by 1995 c37 s19]
- (d) directing the emergency controller to establish certain preferences and priorities pursuant to paragraph 16(2)(a); and
- (e) respecting any matter that in the opinion of the Lieutenant-Governor in Council is necessary or advisable to carry out effectively the intent and purpose of this Act.

[1994 cE-5.1 s32; 1995 c37 s19; 2007 c25 s2; 2018 c10 s6](#)

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### Offences and penalties

**33.** (1) Every person who refuses or neglects to comply with an order, regulation, restriction, prohibition or control, made or exercised by the emergency controller under Part III is guilty of an offence and, in addition to any other penalty, is liable, on summary conviction, to a fine of not more than \$500,000 for each day upon which the refusal or neglect is repeated or continued.

(2) Every person who fails to comply with an order of the public utilities board made under this Act is guilty of an offence and is liable, on summary conviction, to a fine not exceeding \$100,000 per day for each day that the offence continues.

[1994 cE-5.1 s33](#)

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### Resolving statutory conflict

**34.** (1) An Act or contract, whether enacted before or after the commencement of this Act relating to a producer or retailer shall be read and construed subject in all respects to this Act, which in a case of conflict shall, notwithstanding a provision to the contrary contained in another Act or contract, prevail over a general or special Act enacted or a contract entered into prior to the commencement of this Act.

(2) A contract referred to in subsection (1) includes a contract authorized by or entered into under an Act.

[1994 cE-5.1 s34](#)

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RSN1990 cE-5 Rep.

**35. The *Electrical Power Control Act* is repealed.**

[1994 cE-5.1 s35](#)

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#### **Commencement**

**36. This Act or a Part or section comes into force on a day to be proclaimed by the Lieutenant-Governor in Council. (In force, except Part IV (ss.23 to 25 & s.29) on Jan. 1/96) (S.29 was Rep. by 1995 c37 s18))**

[1994 cE-5.1 s36](#)

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