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Statutes of Newfoundland and Labrador 2018

CHAPTER 10

AN ACT TO AMEND THE ELECTRICAL POWER CONTROL ACT, 1994 AND THE PUBLIC UTILITIES ACT

(Assented to May 31, 2018)

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

ELECTRICAL POWER CONTROL ACT, 1994

SNL1994 cE-5.1
as amended

1. (1) Section 2 of the *Electrical Power Control Act, 1994* is amended by renumbering paragraph (a) as paragraph (a.1) and adding immediately before that paragraph the following:

(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;

(2) Section 2 of the Act is amended by adding immediately after paragraph (h) the following:

(h.1) "integrated electric system" has the same meaning as in the *Public Utilities Act*;

(3) Section 2 of the Act is amended by deleting the word "and" at the end of paragraph (r) and by adding immediately after that paragraph the following:

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- (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

2. Paragraph 3(b) of the Act is amended by adding immediately after subparagraph (iv) the following:

- (iv.1) that would result in open, non-discriminatory and non-preferential access to, interconnection with and service on the integrated electric system,

3. Section 5.2 of the Act is amended by renumbering it as subsection 5.2(1) and adding immediately after that subsection the following:

(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.

4. Section 5.8 of the Act is amended by adding immediately after subsection (1) the following:

(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.

5. The Act is amended by adding immediately after section 14.2 the following:

**PART II.2
OPEN ACCESS**

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.

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.

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).

6. Subsection 32(2) of the Act is amended by adding immediately after paragraph (b.1) the following:

(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;

PUBLIC UTILITIES ACT

RSNL1990 cP-47
as amended

7. Sections 2 and 3 of the *Public Utilities Act* are repealed and the following substituted:

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;

(b) "board" means the Board of Commissioners of Public Utilities;

(c) "commissioner" means a member of the board;

(d) "integrated electric system" means the system for providing transmission service at or above 230 kilovolts or another kilovolt level prescribed by the regulations and includes

(i) the structures, equipment or facilities used for that service except those structures, equipment or facilities exempted in the regulations, and

(ii) the structures, equipment and facilities prescribed in the regulations that connect the system referred to in subparagraph (i) with generation facilities and distribution systems in the province and with transmissions systems outside the province;

(e) "net income" means money available for dividends and surplus, according to the accounts prescribed by the board and required to be kept by public utilities;

(f) "optimization rate" means a rate relating to the provision of transmission service on the integrated electric system that is lower than the rate approved in the transmission tariff;

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- (g) "person" includes an individual, partnership, corporation, government or agency of a government, unincorporated organization, trustee, administrator and other legal representative;
- (h) "public utility" means a person that owns, operates, manages or controls structures, equipment or facilities in the province for
 - (i) the production, generation, storage, transmission, delivery or provision of electric power, energy, water or heat, directly or indirectly, to or for the public or a corporation for compensation,
 - (ii) the collection, storage, transmission, delivery or provision of water through mains, directly or indirectly, to or for the public or a corporation for compensation, or
 - (iii) the collection, treatment or disposal of sewage through mains, directly or indirectly, for or from the public or a corporation for compensation;
- (i) "service" includes
 - (i) the use and accommodation provided by a public utility,
 - (ii) a product or commodity provided by a public utility, and
 - (iii) the plant, equipment, apparatus, appliances, property and facilities employed by or in connection with a public utility in providing service or a product or commodity for the purposes in which the public utility is engaged and for the use and accommodation of the public;
- (j) "shares" means common or ordinary shares;
- (k) "system operator" has the same meaning as in the *Electrical Power Control Act, 1994*;
- (l) "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;
- (m) "transmission owner" means a person that owns or manages a part of the integrated electric system;
- (n) "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; and
- (o) "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.

Act not to apply to small projects

3. This Act does not apply to a public utility where

- (a) it became a public utility after April 30, 1987;
- (b) its total installed generating capacity at each location in the province where it has structures, equipment or facilities located is less than 1,000 kilowatts; and
- (c) it generates electricity.

8. Subsection 3.1(2.1) of the Act is repealed and the following substituted:

(2.1) Subsection (1) shall not apply to

- (a) Newfoundland and Labrador Hydro;
- (b) Newfoundland Light & Power Co. Limited;
- (c) Deer Lake Power Company Ltd.; and
- (d) a transmission owner.

(2.2) Notwithstanding paragraph (2)(a), subsection (1) applies to Corner Brook Pulp and Paper Limited.

9. Section 4.1 of the Act is amended by renumbering it as subsection 4.1(1) and adding immediately after that subsection the following:

(2) An exemption granted under subsection (1) before the coming into force of subparagraph 3(b)(iv.1) of the *Electrical Power Control Act, 1994* shall not exempt the person to whom the exemption was granted from complying with subparagraph 3(b)(iv.1) of the *Electrical Power Control Act, 1994*.

(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.

(4) The Lieutenant-Governor in Council may by regulation exempt the system operator from one or more sections of this Act.

10. Section 33 of the Act is repealed and the following substituted:

Agreements

33. The Minister of Finance acting on behalf of the Crown may enter into, execute and deliver a trust deed, trust indenture or an agreement with the board, a lender, a trustee acting for the holders of

bonds, debentures or other securities or another person setting out the terms and conditions of a guarantee of a loan to be made under this Act.

11. The Act is amended by adding immediately after section 37 the following:

Requirement to provide open access

37.1 (1) A transmission owner shall provide transmission customers with open, non-discriminatory and non-preferential access to, interconnection with and use of the part of the integrated electric system owned or managed by the transmission owner.

(2) The system operator shall provide transmission customers with open, non-discriminatory and non-preferential access to transmission service and ancillary service on the integrated electric system.

(3) The board may, with or without notice, make an order appointing a person to make examinations, investigations or tests for the purpose of ascertaining whether the requirements in subsections (1) and (2) are met and may in the order make provision as to the remuneration and expenses the person is to be paid by the system operator or transmission owner where the board certifies that they are payable.

12. Section 48 of the Act is repealed and the following substituted:

Restriction of sale

48. A public utility shall not sell, assign or transfer the whole of its undertaking or a part of it to a person until the approval of the board has been obtained.

13. Subsection 53(2) of the Act is repealed and the following substituted:

(2) Where an agreement cannot be reached regarding the use or the conditions or compensation for the use of the equipment referred to in subsection (1), a public utility or a person interested may apply to the board for an order regarding the use or the conditions or compensation for the use.

(2.1) Where after an investigation the board determines that public convenience and necessity require the use of the equipment referred to in subsection (1) and that it would not result in a substantial detriment to the service rendered by the owners or other users of the equipment, the board shall issue an order

- (a) directing that the use be permitted; and
- (b) prescribing the conditions and compensation for the use.

14. Section 71 of the Act is repealed and the following substituted:

Approval of rules and regulations relating to service

71. A public utility shall submit for the approval of the board the rules and regulations which relate to its service, and amendments to them, and upon approval by the board they are the rules and regulations of the public utility until altered or modified by order of the board.

15. The Act is amended by adding immediately after section 71 the following:

Approval of transmission tariff

71.1 (1) The system operator shall submit the transmission tariff and any amendments to the transmission tariff to the board for approval.

(2) Where the board approves the transmission tariff, it shall issue an order and the system operator shall file the transmission tariff with the board.

(3) The transmission tariff filed with the board under subsection (2) is binding on the system operator, transmission customers and transmission owners and all contracts entered into by the system operator after the filing of the transmission tariff shall comply with the transmission tariff.

(4) Where the board approves an amendment to the transmission tariff, the board may order the parties to a contract entered into before the amendment to modify the contract to comply with the amendment to the transmission tariff approved by the board.

(5) A modification to a contract under this section shall not invalidate the contract in other respects.

Optimization rate

71.2 (1) The board may establish rules regarding an optimization rate.

(2) Notwithstanding section 71.1, where the board establishes rules under subsection (1) and there is capacity on a part of the integrated electric system that is not scheduled to be used in a period, the system operator may provide transmission service on that part of the integrated electric system in that period at an optimization rate in accordance with the rules established under subsection (1).

(3) The optimization rate shall be effective on the date that the system operator provides access to information regarding the optimization rate in accordance with section 14.5 of the *Electrical Power Control Act, 1994*.

(4) The optimization rate shall be available on the effective date to all transmission customers for the same service on the same part of the integrated electric system for the same period.

(5) The system operator shall immediately notify the board where it provides transmission service under subsection (2) at an optimization rate.

16. Section 72 of the Act is repealed and the following substituted:

Information to be posted

72. A portion of the schedule referred to in section 70 and a portion of the rules and regulations referred to in section 71 that the board considers necessary for the information of the public shall be

- (a) printed in plain type and kept in every office of the public utility where payments are made by consumers or users and open to the public in the form and place that is readily accessible to the public; and
- (b) posted on the public utility's website.

17. Subsections 75(1) and (2) of the Act are repealed and the following substituted:

Interim order

75. (1) The board may make an interim order unilaterally and without a public hearing or notice, approving with or without modification

- (a) a schedule of rates, tolls and charges submitted by a public utility; or
- (b) the transmission tariff submitted by the system operator,

upon the terms and conditions that it may decide.

(2) The schedule of rates, tolls and charges approved under subsection (1) are the only rates, tolls and charges of the public utility until a final order is made by the board under section 70.

(2.1) The transmission tariff approved under subsection (1) is binding on the system operator, transmission customers and transmission owners and all contracts entered into by the system operator after the filing of the transmission tariff shall comply with the transmission tariff until a final order is made by the board under section 71.1.

18. Section 82 of the Act is repealed.

19. Section 84 of the Act is repealed and the following substituted:

Power and procedure of board upon complaint

84. (1) The board shall, with or without notice, conduct an investigation where it receives a complaint from an incorporated municipal body, Municipalities Newfoundland and Labrador Inc. or from 5 persons stating that

- (a) the rates, tolls, charges or schedules of a public utility are unreasonable or unjustly discriminatory;
- (b) a regulation, measurement, practice or act affecting or relating to the operation of a public utility is unreasonable, insufficient or unjustly discriminatory; or
- (c) the service provided by a public utility is inadequate or unobtainable.

(2) The board may after a public hearing or inquiry

- (a) order the rates, tolls, charges or schedules reduced, modified or altered;
- (b) make other orders as to the reduction, modification or alteration of the regulation, measurement, practice or acts that are required; or

- (c) order that the public utility provide reasonably adequate service and facilities and make extensions of the services and facilities that may be required.
- (3) An order under this section may
 - (a) contain reasonable terms and conditions; and
 - (b) specify a time period for compliance with the order.

(4) Where the board conducts an investigation under subsection (1), it may require a complainant to provide money or other security to cover the costs of the investigation and the money or security shall be dealt with as the board directs.

20. The Act is amended by adding immediately after section 84 the following:

Complaint from transmission customer, transmission owner or system operator

84.1 (1) The board shall, with or without notice, conduct an investigation where it receives a complaint from

- (a) a transmission customer stating that the transmission tariff, an action of the system operator or the transmission service or ancillary service on the integrated electric system is
 - (i) unjust, unreasonable, discriminatory or preferential,
 - (ii) inconsistent with open, non-discriminatory and non-preferential access to, interconnection with and service on the integrated electric system, or
 - (iii) inconsistent with a provision of this Act, the *Electrical Power Control Act, 1994* or the regulations under those Acts;
- (b) a transmission customer or the system operator stating that a transmission owner has not met the requirements of this Act, the *Electrical Power Control Act, 1994* or the regulations under those Acts; or
- (c) a transmission owner stating that the system operator has not met the requirements of this Act, the *Electrical Power Control Act, 1994* or the regulations under those Acts.
- (2) The board may, with or without a public hearing or inquiry, order that
 - (a) the transmission tariff, an agreement, a measurement, a practice or an act be modified; or
 - (b) a service be provided or an action taken.
- (3) An order under this section may
 - (a) contain reasonable terms and conditions; and
 - (b) specify a time period for compliance with the order.

(4) Where the board conducts an investigation under subsection (1), it may require a complainant to provide money or other security to cover the costs of the investigation and the money or security shall be dealt with as the board directs.

21. Sections 85 and 86 of the Act are repealed and the following substituted:

Notice to public utility

85. Before a hearing is held under section 84 or 84.1 the board shall notify the public utility that a complaint has been made against it and after reasonable notice has been given, the board may set a time and place for a hearing.

Notice of hearing

86. (1) The board shall give the complainant and the public utility 10 days notice of the time and place of the hearing.

(2) A person who receives notice under subsection (1) shall be entitled to be heard and may apply to the board to enforce the attendance of witnesses.

22. The Act is amended by adding immediately after section 86 the following:

Complaint against system operator

86.1 (1) A person may make a written complaint to the board regarding the conduct of the system operator.

(2) Where the board receives a complaint under subsection (1) it may

- (a) dismiss all or part of the complaint;
- (b) order the system operator to change the conduct that is the subject of the complaint; or
- (c) order the system operator to refrain from the conduct that is the subject of the complaint.

(3) The board shall dismiss a complaint where the board is satisfied that the complaint

- (a) relates to a matter the substance of which is or was before the board or another body; or
- (b) is frivolous, vexatious, trivial or otherwise does not warrant an investigation or a hearing.

(4) Where the board dismisses a complaint it shall provide written reasons for its dismissal.

Investigation by board

86.2. The board may, with or without notice, investigate a rate, charge, service or matter where the board believes that

- (a) a rate or charge is unreasonable or unjustly discriminatory;
- (b) a reasonable service is not supplied; or
- (c) an investigation of a matter relating to a public utility should be made.

Investigation by board re: open access

86.3 The board may, with or without notice, investigate a matter relating to

- (a) the transmission tariff;

- (b) transmission service or ancillary service; or
- (c) the failure of the system operator, a transmission customer or a transmission owner to meet the requirements of this Act, the *Electrical Power Control Act, 1994* or the regulations under those Acts.

23. The Act is amended by adding immediately after section 87 the following:

Powers of board re: open access

87.1 (1) After an investigation under section 86.3 the board may, with or without a public hearing or inquiry, order that

- (a) the transmission tariff, an agreement, a measurement, a practice or an act be modified; or
 - (b) a service be provided or an action taken.
- (2) An order under this section may
- (a) contain reasonable terms and conditions; and
 - (b) specify a time period for compliance with the order.

24. Sections 88 and 89 of the Act are repealed and the following substituted:

Hearing

88. Where after an investigation under section 86.2 or 86.3 the board is satisfied that sufficient grounds exist to warrant a hearing, the board shall notify the public utility or the transmission customer of the matters under investigation and 10 days after the notice has been given the board may set a time and place for a hearing.

Notice of hearing

89. Notice of the time and place for the hearing referred to in section 88 shall be given to the public utility, the transmission customer and to other persons that the board considers necessary and proceedings shall be held and conducted in the same manner as complaints filed with the board are investigated, and the same order may be made as if the investigation had been made on complaint.

25. Section 103 of the Act is repealed and the following substituted:

Contravention of order of board

103. (1) A public utility or transmission customer that contravenes an order of the board made under this Act is liable on summary conviction to a fine of not less than \$200 and not more than \$5,000.

(2) Where it is proved that a public utility or transmission customer has contravened an order of the board made under this Act, the president and every vice-president, director, managing director, and superintendent of that public utility or transmission customer is liable on summary conviction to a fine of not less than \$200 and not more than \$5,000, unless the person proves that he or she took all necessary and proper means to carry out the order of the board, and that he or she was not at fault for the contravention of the order.

(3) Where it is proved that a municipal corporation has contravened an order of the board made under this Act, the mayor, or other head of that corporation, and every member of the council, or other ruling or executive body of the corporation is liable on summary conviction to a fine of not less than \$200 and not more than \$5,000, unless the person proves that he or she took all necessary and proper means to carry out the order of the board, and that he or she was not at fault for the contravention of the order.

(4) Nothing in or done under this section shall lessen or affect the liability of a public utility or transmission customer or prevent or prejudice the enforcement of an order of the board.

26. Sections 105 to 108 of the Act are repealed and the following substituted:

Penalty for unjust discrimination

105. Where a public utility or its agent or officers directly or indirectly charges a person greater or less compensation for a service rendered by it than that prescribed in the schedules or tariffs in force as provided in this Act, or than it charges another person other than one conducting a similar business for a similar and contemporaneous service, the public utility is guilty of an offence and liable on summary conviction to a fine of not less than \$250 for each offence and the agent or officer is liable on summary conviction to a fine of not less than \$125 for each offence.

Prohibition against accepting unauthorized compensation

106. A public utility shall not charge a person less compensation for a service rendered by the public utility in consideration of the providing by the person of a part of the facilities incident to the service, but this shall not prohibit a public utility from renting facilities incident to the production, transmission, delivery or provision of heat, light, water or power and paying a reasonable rental, or require a public utility to provide a part of those appliances which are situated in and upon the premises of a consumer or user, and unless otherwise ordered by the board, meters and appliances for measurement of a product or service.

Penalty for undue preference or prejudice

107. Where a public utility knowingly or wilfully makes or gives an undue or unreasonable preference or advantage to a person, or subjects a person to an undue or unreasonable prejudice or disadvantage, the public utility is guilty of an offence and liable on summary conviction to a fine of not less than \$250 for each offence.

Penalty for failure to provide open access

107.1 Where the system operator or a transmission owner knowingly or wilfully contravenes section 37.1, it is guilty of an offence and liable on summary conviction to a fine of not less than \$250 for each offence.

Penalty for soliciting or receiving rebate

108. (1) A person shall not knowingly solicit or receive a rebate, concession or discrimination in respect of a service in or affecting or relating to a public utility by which the service is rendered free or at a lesser rate than that named in the schedules and tariffs in force as provided in this Act, or by which a service or advantage is received other than as specified in this Act.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not less than \$125 for each offence.

27. The Act is amended by adding immediately after section 119 the following:

Regulations

120. The Lieutenant-Governor in Council may make regulations

- (a) prescribing a different kilovolt level for the purposes of paragraph 2(d);
- (b) exempting structures, equipment or facilities for the purposes of subparagraph 2(d)(i);
- (c) prescribing structures, equipment and facilities for the purposes of subparagraph 2(d)(ii);
- (d) exempting the system operator from one or more sections of this Act; and
- (e) prescribing information which is required to be submitted to the board for approval of the transmission tariff.

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