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SNL2007 CHAPTER E-11.01

ENERGY CORPORATION ACT

Amended:

2008 c31; 2010 c31 s7; 2012 c47 ss4 to 10; 2015 cA-1.2 s125;
2016 cP-41.001 s30; 2018 c22 ss1 & 2

CHAPTER E-11.01

**AN ACT TO ESTABLISH AN ENERGY CORPORATION FOR THE
PROVINCE**

(Assented to June 14, 2007)

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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 *Energy Corporation Act*.

[2007 cE-11.01 s1](#)

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Definitions

2. In this Act

- (a) "board" means the board of directors of the corporation;
- (b) "chairperson" means the chairperson of the board;
- (b.1) "commercially sensitive information" means information relating to the business affairs or activities of the corporation or a subsidiary, or of a third party provided to the corporation or the subsidiary by the third party, and includes
 - (i) scientific or technical information, including trade secrets, industrial secrets, technological processes, technical solutions, manufacturing processes, operating processes and logistics methods,
 - (ii) strategic business planning information,
 - (iii) financial or commercial information, including financial statements, details respecting revenues, costs and commercial agreements and arrangements respecting individual business activities, investments, operations or projects and from which such information may reasonably be derived,
 - (iv) information respecting positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the corporation, a subsidiary or a third party, or considerations that relate to those negotiations, whether the negotiations are continuing or have been concluded or terminated,
 - (v) financial, commercial, scientific or technical information of a third party provided to the corporation or a subsidiary in confidence,
 - (vi) information respecting legal arrangements or agreements, including copies of the agreement or arrangements, which relate to the nature or structure of partnerships, joint ventures, or other joint business investments or activities,
 - (vii) economic and financial models used for strategic decision making, including the information used as inputs into those models, and
 - (viii) commercial information of a kind similar to that referred to in subparagraphs (i) to (vii),

but does not include information relating to an independent contractor's

- (ix) name,
- (x) position or function with the corporation,
- (xi) remuneration, and

- (xii) payments received from the corporation;
- (c) "corporation" means the energy corporation established by this Act;
- (d) "director" means a director of the board;
- (d.1) "independent contractor" means a person retained under a contract to perform services for the corporation;
- (e) "land" means real property of every kind, and includes tenements, hereditaments, and appurtenances, leaseholds, and an estate, term, easement, right or interest in, to, over, under or affecting land, including rights-of-way, and waters, water rights, water powers and water privileges;
- (f.1) "Muskrat Falls Project" means the Muskrat Falls Project as described in section 2.1;
- (g) "person" includes a natural person, a corporation, another entity recognized by law, and the heirs, executors, administrators or other legal representatives of a person;
- (h) "power" includes electrical power, however generated and electrical energy;
- (h.1) "public body" means a public body as defined in the *Access to Information and Protection of Privacy Act, 2015* ;
- (h.2) "record" means a record as defined in the *Access to Information and Protection of Privacy Act, 2015* ;
- (h.3) "subsidiary" means a subsidiary of the corporation except Newfoundland and Labrador Hydro; and
- (i) "works" means all land, property, buildings, plants, machinery, installations, materials, dams, canals, devices, fittings, apparatus, appliances, and equipment made, established or acquired or utilized, or useful for the exercise of the powers of the corporation and the attainment of its objects.

[2007 cE-11.01 s2](#); [2008 c31 s1](#); [2012 c47 s4](#); [2015 cA-1.2 s125](#); [2018 c22 s1](#)

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Muskrat Falls Project

2.1 (1) For the purpose of this Act, "Muskrat Falls Project" means a project by the corporation, a subsidiary of the corporation, Newfoundland and Labrador Hydro and Emera Inc., whether individually or by any combination of them, for

- (a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of equipment and facilities, to be comprised of
 - (i) the new hydroelectric plant to be constructed at Muskrat Falls on the Churchill River, and all associated facilities, including the intake structures, penstock, powerhouse, dams and spillways,
 - (ii) a new HVdc transmission line and all related components to be constructed between the Muskrat Falls hydroelectric plant on the Churchill River and Soldier's Pond, including
 - (A) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent,

- (B) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to the transmission line, and
 - (C) all mechanical, electrical and other systems and other technology installed under or upon anything referred to in clause (A) or (B),
 - (iii) new transmission facilities to be constructed between the Muskrat Falls hydroelectric plant on the Churchill River and the generating plant located at Churchill Falls ,
 - (iv) new transmission facilities to be constructed by Emera Inc. between the island portion of Newfoundland and Labrador and Cape Breton , Nova Scotia including
 - (A) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent,
 - (B) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to them, and
 - (C) all mechanical, electrical and other systems and other technology installed under or upon anything referred to in clause (A) or (B), and
 - (v) any associated upgrades to the bulk electrical system or related control facilities on the island portion of the province required as a result of subparagraphs (i) to (iv);
 - (b) the production, generation, storage, transmission, delivery or provision of electrical power and energy from the facilities in paragraph (a);
 - (c) the negotiation, conclusion, execution and performance of agreements for activities referred to in paragraphs (a) and (b), and in particular agreements respecting the
 - (i) construction, operations, maintenance and administration,
 - (ii) acquisition of easements, rights-of-way, permits, licences, certificates, consents and other authorizations,
 - (iii) engineering and procurement,
 - (iv) arrangements with aboriginal peoples,
 - (v) demobilization and decommissioning, and
 - (vi) any agreements, contracts or instruments necessary or incidental to any activity described in this paragraph; and
 - (d) raising and securing equity or debt financing and any related derivative contracts necessary to construct the facilities and otherwise engage in the activities referred to in paragraphs (a) to (c), including without limitation the negotiation, conclusion and execution of agreements and security documentation with a lender providing that financing or refinancing to the projects.
- (2) The Lieutenant-Governor in Council may designate any activities, agreements and amendments in connection with or in respect of subsection (1) entered into by the corporation, a subsidiary of the corporation, Newfoundland and Labrador Hydro, and Emera Inc., whether individually or by any combination of them

- (a) to be included as part of the Muskrat Falls Project where that activity, agreement or amendment may not otherwise qualify under this section; and
 - (b) to be excluded from the Muskrat Falls Project, notwithstanding another provision of this section.
- (3) For the purpose of this section, "Emera Inc." includes all affiliates, subsidiaries, successors and assigns of that corporation.

[2012 c47 s5](#)

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Corporation established

3. (1) There is established an energy corporation for the province.
- (2) The name of the corporation shall be determined by the Lieutenant-Governor in Council.
 - (3) The corporation is considered to have issued and outstanding shares which are vested in the Crown.
 - (4) The head office of the corporation shall be at St. John's .
 - (5) The corporation is an agent of the Crown.
 - (6) Notwithstanding that the corporation is an agent of the Crown, the corporation may, for the purpose of this Act and subject to conditions it considers necessary,
 - (a) acquire from the Crown in right of Canada , of the province or of the other provinces of Canada or from an agency of the Crown in right of Canada or of this or another of the provinces of Canada , real and personal property and rights of all kinds;
 - (b) enter into contracts with the Crown in right of Canada , the province or another province of Canada , or an agency of the Crown in right of Canada or of this or another province;
 - (c) enter into a partnership, joint venture, equity arrangement or other arrangement with the Crown, an agent of the Crown or another person; and
 - (d) appoint agents to act on its behalf.
 - (7) Property of the corporation is the property of the Crown, but title to it is vested in the name of the corporation.
 - (8) A director or a person employed by the corporation does not become, by reason of that office or employment only, an officer or employee of the Crown.

[2007 cE-11.01 s3](#)

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Crown agency status

3.1 (1) Notwithstanding subsections 3(5), (6) and (7), where the corporation enters into contracts and ancillary arrangements relating to the Muskrat Falls Project, the corporation shall be considered to have entered into those contracts and ancillary arrangements in its own capacity and not as an agent of the Crown, and the Crown shall not be liable as principal in contract, tort or otherwise at law or equity for the liabilities of the corporation created directly or indirectly by those contracts or arrangements.

(2) Notwithstanding subsection (1), the corporation may execute contracts relating to the Muskrat Falls Project as an agent of the Crown where

- (a) the Lieutenant-Governor in Council has approved the contract; and
- (b) the contract explicitly states that the corporation signs the contract as an agent of the Crown.

[2012 c47 s6](#)

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Application of the *Corporations Act*

4. (1) The *Corporations Act*, except for section 27, paragraphs 31(a) to (e), sections 32, 76, 81, 167, 169, 172, 173, 177 and 178, subsections 184(3) and (4), section 188, subsections 189(1) and (2), paragraphs 189(3)(a), (d), (h) and (j), sections 200, 201, 203 to 209, subsections 245(1), (2) and (8), sections 273 and 275, subsections 276(1), (3), (4) and (5) and section 277, does not apply to the corporation.

(2) A requirement in a section referred to in subsection (1) to register or to provide information to the registrar does not apply to the corporation.

(3) Where there is a conflict between a provision referred to in subsection (1) and this Act, this Act prevails.

(4) The provisions of this Act constitute the articles of the corporation.

[2007 cE-11.01 s4; 2010 c31 s7](#)

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Objects of the corporation

5. (1) The objects of the corporation are to invest in, engage in, and carry out activities in all areas of the energy sector in the province and elsewhere, including,

- (a) the development, generation, production, transmission, distribution, delivery, supply, sale, export, purchase and use of power from wind, water, steam, gas, coal, oil, hydrogen or other products used or useful in the production of power;
- (b) the exploration for, development, production, refining, marketing and transportation of hydrocarbons and products from hydrocarbons;
- (c) the manufacture, production, distribution and sale of energy related products and services; and
- (d) research and development.

(2) Notwithstanding subsection (1), the corporation may engage in those other activities that the Lieutenant-Governor in Council may approve.

[2007 cE-11.01 s5](#)

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Annual meeting

5.1 The corporation shall hold an annual meeting in the province, which shall be open to the general public, within 60 days of the publication by the minister of the annual report under subsection 5.2(3).

[2008 c31 s2](#)

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Annual report

5.2 (1) The corporation shall, each year, no later than April 30, prepare and submit to the minister a report on the activities of the corporation and its subsidiaries, including Newfoundland and Labrador Hydro, in the previous fiscal year containing

- (a) an audited consolidated financial statement of the corporation setting out the assets and liabilities of the corporation as of the end of the immediately preceding financial year and the results of its operations for the financial year;
- (b) a report by the board giving an account of the activities of the corporation during the immediately preceding financial year and setting out other matters that may appear to it to be of a public interest in relation to the affairs or the activities of the corporation; and
- (c) a report of each subsidiary giving an account of its activities during the immediately preceding financial year and including information that it believes may be of public interest relating to its activities, but the report shall not be required to include commercially sensitive information.

(2) The minister may, on receipt of a report required under subsection (1), direct the corporation to provide additional information on its activities or the activities of one or more of its subsidiaries and the corporation shall provide the information in the form and detail and at the time the minister may direct.

(3) The report required under subsection (1) shall be made public by the minister by

- (a) presenting the report to the House of Assembly; and
- (b) other effective means, including electronically.

(4) Section 19.1 of the *House of Assembly Act* applies to a report required under subsection (1) as if the report were a report of an officer of the House of Assembly.

[2008 c31 s2](#)

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Form and content of reports

5.3 The report required under section 5.2 shall be consistent in form and content with annual reports prepared by publicly traded companies.

[2008 c31 s2](#)

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Records of commercially sensitive information

5.4 (1) Notwithstanding section 7 of the *Access to Information and Protection of Privacy Act, 2015*, in addition to the information that shall or may be refused under Part II, Division 2 of that Act, the chief executive officer of the corporation or a subsidiary, or the head of another public body,

- (a) may refuse to disclose to an applicant under that Act commercially sensitive information of the corporation or the subsidiary; and
- (b) shall refuse to disclose to an applicant under that Act commercially sensitive information of a third party

where the chief executive officer of the corporation or the subsidiary to which the requested information relates, taking into account sound and fair business practices, reasonably believes

- (c) that the disclosure of the information may
 - (i) harm the competitive position of,
 - (ii) interfere with the negotiating position of, or
 - (iii) result in financial loss or harm to
 the corporation, the subsidiary or the third party; or
- (d) that information similar to the information requested to be disclosed
 - (i) is treated consistently in a confidential manner by the third party, or
 - (ii) is customarily not provided to competitors by the corporation, the subsidiary or the third party.

(2) Where an applicant is denied access to information under subsection (1) and a request to review that decision is made to the commissioner under section 42 of the *Access to Information and Protection of Privacy Act, 2015*, the commissioner shall, where he or she determines that the information is commercially sensitive information,

- (a) on receipt of the chief executive officer's certification that he or she has refused to disclose the information for the reasons set out in subsection (1); and
- (b) confirmation of the chief executive officer's decision by the board of directors of the corporation or subsidiary,

uphold the decision of the chief executive officer or head of another public body not to disclose the information.

- (3) Where a person appeals,
 - (a) under subsections 52 (1) and (2), subsections 53 (1) and (2) or section 54 of the *Access to Information and Protection of Privacy Act, 2015*, from a decision under subsection (1); or
 - (b) under subsections 52 (1) and (2), subsections 53 (1) and (2) or section 54 of the *Access to Information and Protection of Privacy Act, 2015*, from a refusal by a chief executive officer under subsection (1) to disclose information,

paragraph 59 (3)(a) and section 60 of that Act apply to that appeal as if Part II, Division 2 included the grounds for the refusal to disclose the information set out in subsection (1) of this Act.

(4) Paragraph 102 (3)(a) of the *Access to Information and Protection of Privacy Act, 2015* applies to information referred to in subsection (1) of this section as if the information was information that a head of a public body is authorized or required to refuse to disclose under Part II, Division 2.

(5) Notwithstanding section 21 of the *Auditor General Act*, a person to whom that section applies shall not disclose, directly or indirectly, commercially sensitive information that comes to his or her knowledge in the course of his or her employment or duties under that Act and shall not communicate those matters to another person, including in a report required under that Act or another Act, without the prior written consent of the chief executive officer of the corporation or subsidiary from which the information was obtained.

(6) Where the auditor general prepares a report which contains information respecting the corporation or a subsidiary, or respecting a third party that was provided to the corporation or subsidiary by the third party, a draft of the report shall be provided to the chief executive officer of the corporation or subsidiary, and he or she shall have reasonable time to inform the auditor general whether or not in his or her opinion the draft contains commercially sensitive information.

(7) In the case of a disagreement between the auditor general and a chief executive officer respecting whether information in a draft report is commercially sensitive information, the auditor general shall remove the information from the report and include that information in a separate report which shall be provided to the Lieutenant-Governor in Council in confidence as if it were a report to which section 5.5 applied.

(8) Notwithstanding the *Citizens' Representative Act*, the corporation, a subsidiary, another public body, or an officer, member or employee of one of them is not required to provide commercially sensitive information, in any form, to the citizens' representative in the context of an investigation of a complaint under that Act.

[2008 c31 s2; 2015 cA-1.2 s125](#)

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Report of auditor general

5.5 (1) Where,

- (a) during the course of an audit;
- (b) as a result of a review of an audit report prepared by another auditor; or
- (c) as a result of an internal audit procedure,

the auditor general becomes aware of an improper retention or misappropriation of funds by a director, officer, employee or agent of the corporation or a subsidiary, or of another activity that may constitute an offence under the *Criminal Code* or an Act of the province or of Canada, the auditor general shall, where the report includes commercially sensitive information, notwithstanding the *Auditor General Act*, provide the report to the Lieutenant-Governor in Council in confidence.

(2) In addition to the report required under subsection (1), the auditor general shall immediately provide a report to the House of Assembly that includes a general description, excluding commercially sensitive information, of the activity that is the subject of the report under subsection (1) and the dates on which those activities were reported to the Lieutenant-Governor in Council.

(3) Section 19.1 of the *House of Assembly Act* applies to a report under subsection (2) as if it were a report of an officer of the House of Assembly.

[2008 c31 s2](#)

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Board of directors

6. (1) For the exercise and discharge of the powers and duties of the corporation, there shall be a board of directors comprised of not less than 5 and not more than 14 persons.

(2) The directors shall be appointed by the Lieutenant-Governor in Council, shall hold office during pleasure only and are eligible for reappointment.

(3) Except where otherwise prescribed under this Act, the corporation may exercise its powers by a resolution of the board.

(4) The directors shall be paid the salary or other remuneration that the Lieutenant-Governor in Council may determine, and the salary or remuneration together with all reimbursable expenses shall be paid by the corporation out of its funds.

(5) Where a vacancy occurs on the board because of the death, illness, resignation, removal of a member, or for another reason, the Lieutenant-Governor in Council may appoint a person to fill the vacancy.

(6) Exercise of the powers of the corporation is not impaired because of a vacancy on the board.

(7) Until the board makes other provision under section 10 , a majority of the directors who then hold office constitutes a quorum of the board.

(8) Notwithstanding that it is afterward discovered that there was some defect in the appointment or qualification of a person purporting to be a director, all acts done by the corporation and the board shall be as valid as if that defect had not existed.

[2007 cE-11.01 s6](#)

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Chairperson and CEO

7. (1) There shall be a chairperson of the board to be appointed by the Lieutenant-Governor in Council from among the directors.

(2) The chairperson holds office for the period and under the terms and conditions that may be prescribed by the Lieutenant-Governor in Council or in an agreement made under section 9 , and shall vacate office in accordance with those terms and conditions.

(3) There shall be a chief executive officer of the corporation, to be appointed by the Lieutenant-Governor in Council, who shall, subject to the terms of appointment that may be established by the Lieutenant-Governor in Council, or in an agreement made under section 9 and, subject to the directions of the board, be charged with the general direction, supervision and control of the business of the board and the corporation.

(4) The same person may not hold the offices of chairperson and chief executive officer simultaneously.

(5) During the incapacity or absence of the chairperson, one of the other directors, other than the chief executive officer, where the chief executive officer is a director, elected by the board for the purpose shall act as chairperson of the board.

(6) During the absence or incapacity of the chief executive officer, the board may appoint an acting chief executive officer who shall perform the duties of the chief executive officer until his or her return or resumption of duties or until a new chief executive officer is appointed.

[2007 cE-11.01 s7](#)

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Minutes

8. The chairperson shall ensure that regular minutes are kept of the meetings of the board.

[2007 cE-11.01 s8](#)

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Service contract

9. (1) With the approval of the Lieutenant-Governor in Council the corporation may enter into an agreement with a person that provides for his or her appointment to the office of chairperson or chief executive officer of the corporation.

(2) An agreement under this section may prescribe the terms and conditions of appointment to the office and the term, tenure and remuneration, including the salary, pension and other rights and benefits that the appointee is to receive and the terms and conditions under which the appointment may be terminated and by whom before the expiration of the term of the appointment.

(3) A person with whom an agreement is made under this section in relation to an office

(a) holds that office in accordance with the agreement and shall vacate it or them accordingly; and

(b) does not, by reason only of the appointment to that office, become an employee of the province.

[2007 cE-11.01 s9](#)

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By-laws

10. The board may make by-laws

(a) respecting the calling of meetings of the board;

(b) establishing a quorum of the board;

(c) respecting the conduct of business at meetings of the board and the establishment of committees of the board and the delegation of duties to those committees;

(d) respecting the duties and conduct of the directors and of the officers and employees of the corporation;

(e) respecting the common seal of the corporation and the use of it;

(f) respecting the execution of a contract or instrument on behalf of the corporation;

(g) respecting the lithographing or mechanical reproduction of signatures on bonds, debentures, securities, or other evidence of indebtedness of the corporation or upon

coupons and the mechanical reproduction of the common seal of the corporation on the bonds, debentures, securities, other evidence of indebtedness or coupons;

- (h) respecting the management and use of any or all of its property by employees, invitees, licensees or permittees of the corporation and by another person; and
- (i) generally, for the conduct and management of the affairs of the corporation.

[2007 cE-11.01 s10](#)

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Affixing seal

11. Until the board makes other provision under section 10 , the affixing of the common seal of the corporation shall be witnessed by at least 2 directors.

[2007 cE-11.01 s11](#)

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Appointment of staff

12. (1) The board may appoint those officers, managers, other staff and employees and retain consultants, advisors and other professional persons that it considers necessary and may fix their remuneration and terms of service.

(2) A person who is appointed under this section does not, by reason only of the appointment, become an employee of the province.

[2007 cE-11.01 s12](#)

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Subsidiaries of corporation

13. (1) A company is considered to be a subsidiary of the corporation if

- (a) it is controlled by
 - (i) the corporation,
 - (ii) the corporation and one or more companies, each of which is controlled by the corporation, or
 - (iii) one or more companies, each of which is controlled by the corporation; or
- (b) it is a subsidiary of a company which is a subsidiary of the corporation.

(2) For the purposes of this section, a company shall be considered to be controlled by the corporation or one or more companies if

- (a) shares of the first-mentioned company carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, for the benefit of the corporation or other companies; and
- (b) the votes carried by the shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

[2007 cE-11.01 s13](#)[Back to Top](#)**General powers****14. (1) The corporation may**

- (a) where it is an agent of the Crown, on behalf of the Crown, or where it is not an agent of the Crown, in its own capacity, enter into contracts or other agreements and acquire and dispose of and otherwise deal with real and personal property and all rights of all kinds in the name of the corporation;
- (b) acquire, lease, establish, construct, maintain and operate works in a part of the province or elsewhere in connection with the attainment of its objectives as set out in section 5;
- (c) purchase power from a person and transmit, make available for use, distribute, deliver, sell, supply and generally use the power for the purposes of the corporation;
- (d) contract with a person for the purchase of petroleum products, notwithstanding another Act;
- (e) acquire by purchase, lease or otherwise, property, both real and personal, and water privileges, water powers, rights, easements, privileges, proprietary rights, interests, and works of every description which the corporation considers necessary, convenient or advisable to acquire for or incidental to the exercise of the powers and duties of the corporation and the attainment of its objects;
- (f) sell or otherwise dispose of its property, real or personal, of every nature and kind or an interest in it which is found by the corporation to be unnecessary for the purposes of the corporation, and grant an estate, term, easement, right or interest in, over or respecting the property;
- (g) contract with a person for
 - (i) the supply, transmission and distribution of power to that person, and
 - (ii) the construction, maintenance and operation of works for or incidental to the generation, transmission and distribution of power on behalf of that person, to be done by the corporation or a person designated by the corporation to do the things referred to in this paragraph,for the consideration that the corporation may prescribe;
- (h) deposit money or securities with a bank, trustee, trust company, or other depositary in Canada or outside of Canada ;
- (i) lend money to or invest in a subsidiary of the corporation;
- (j) guarantee the repayment by a subsidiary of the corporation of money advanced to that subsidiary by a lender, together with the payment of interest on it and of all charges incurred in connection with it;
- (k) guarantee the performance by a subsidiary of the corporation of an obligation of that subsidiary contracted by it with a person to perform, fulfil or observe a covenant, obligation or provision of an agreement, deed, bond, promissory note or other document or instrument;

- (l) exercise and enjoy all of the privileges and immunities conferred on it by this Act and do all acts necessary or incidental to the attainment of the objects of the corporation referred to in section 5 ;
 - (m) carry on business incidental and subsidiary to the carrying out of the objects referred to in section 5 and necessary to enable the company profitably to carry out those objects; and
 - (n) generally, do all things which the corporation considers necessary, convenient or advisable for or incidental to the exercise of the powers and the discharge of the obligations of the corporation.
- (2) The powers of the corporation include
- (a) the power to acquire, lease, construct, maintain, operate and use in the province and elsewhere land, works, plants, buildings, structures, machinery, equipment, devices, pole lines, conduits, pipe lines, tunnels and other property used or useful for carrying out the objects of the corporation;
 - (b) the powers conferred on the corporation under this Act; and
 - (c) all other powers that are incidental or conducive to the attainment of the objects of the corporation.
- (3) [Rep. by 2008 c31 s3]

[2007 cE-11.01 s14; 2008 c31 s3; 2012 c47 s7](#)

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Subsidiaries

14.1 (1) Except with the prior approval of the Lieutenant-Governor in Council, the corporation shall not organize or maintain a subsidiary of the corporation or purchase, sell, otherwise dispose of or deal in shares of a subsidiary of the corporation or of another company, and, where the approval is given, the corporation may do the things referred to in this subsection only where it is expressly mentioned in and to the extent provided by the approval.

(2) The objects of a subsidiary shall be some or all of the objects of the corporation under section 5.

(3) A subsidiary shall not engage in an activity that, were it to be undertaken by the corporation, would require the prior approval of the Lieutenant-Governor in Council, including the creation of a subsidiary, without the prior approval of the corporation.

(4) The provisions of this Act, with the necessary changes, shall be considered to form the articles of incorporation, or a part of them, of a subsidiary.

(5) A subsidiary is not an agent of the Crown unless it is designated as an agent by the Lieutenant-Governor in Council when the Lieutenant-Governor in Council gives its approval of the incorporation of the subsidiary under subsection (1).

(6) Where a subsidiary is not designated as an agent of the Crown under subsection (5),

- (a) the property of the subsidiary is not the property of the Crown or an agent of the Crown;
- (b) the debts and obligations of the subsidiary are not the debts and obligations of the Crown or an agent of the Crown;

- (c) the subsidiary shall be incorporated under the *Corporations Act* unless the approval provided under subsection (1) permits incorporation under the laws of another jurisdiction;
- (d) the board of directors of the subsidiary shall be composed of not less than 5 and not more than 10 members;
- (e) the board of directors of the subsidiary shall be composed of at least the following number of independent directors:
 - (i) where the board has 5 or 6 members, 2 independent directors,
 - (ii) where the board has 7 or 8 members, 3 independent directors, and
 - (iii) where the board has 9 or 10 members, 4 independent directors; and
- (f) the chief executive officer of the subsidiary shall be appointed by the board of directors of the subsidiary.

(7) In paragraph (6)(e), "independent director" means a person who is not a member of the board of directors of the corporation or another subsidiary or an employee or officer of the corporation, another subsidiary or the Crown.

- (8) Subsection (6) does not apply to
 - (a) Churchill Falls (Labrador) Corporation Limited;
 - (b) Lower Churchill Development Corporation Limited;
 - (c) Gull Island Power Corporation; or
 - (d) Twin Falls Power Corporation.

[2008 c31 s4](#)

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Acts applicable

15. (1) The *Labour Relations Act* applies to the corporation.

(2) All collective bargaining agreements and other agreements of the corporation with a trade union, council of trade unions, employee bargaining agent or affiliated bargaining agent shall continue in force as if made under the *Labour Relations Act*.

(3) A trade union, council of trade unions, employee bargaining agent or affiliated bargaining agent that is party to a collective bargaining agreement with the corporation under subsection (2) shall be considered to be certified for the purpose of the *Labour Relations Act*.

(4) Section 11.1 of the *Public Sector Restraint Act, 1992* applies to the corporation and its employees.

[2007 cE-11.01 s15](#)

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Application of Acts

16. Whether or not the corporation is an agent of the Crown

- (a) the *Mechanics' Lien Act* applies in respect of the corporation and all property to which title is vested in the name of the corporation; and
- (b) the *Workplace Health, Safety and Compensation Act* applies in respect of the corporation and its employees.

[2012 c47 s8](#)

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Application of Acts

17. (1) The corporation is subject to the *Water Resources Act* .

(2) The corporation is not a utility as defined by the *Public Utilities Act* and that Act does not apply to the corporation.

[2007 cE-11.01 s17](#)

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Application of Public Procurement Act

17.1 (1) The corporation or a subsidiary is exempt from the *Public Procurement Act* with respect to procurement in the following areas:

- (a) energy and energy products;
- (b) where the corporation or a subsidiary is acting in a strategic partnership, joint venture, or equity investment with other public bodies or private sector entities; or
- (c) for the purpose of meeting the requirements of a benefit arrangement.

(2) With respect to procurement activities that are exempt under paragraph (1)(b) or (c), the corporation and a subsidiary shall, every 6 months, report to the minister responsible for the administration of this Act on their procurement activities and shall include a summary of contracts entered into and the identities of suppliers to whom the contracts have been awarded.

(3) The minister responsible for the administration of this Act shall, upon receipt of a report under subsection (2), send a copy of the report to the chief procurement officer appointed under the *Public Procurement Act* , who shall post a copy of it on the electronic notification system.

[2008 c31 s5](#); [2016 cP-41.001 s30](#)

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Intergovernmental agreements

17.2 (1) An agreement between the corporation or a subsidiary, including Newfoundland and Labrador Hydro, and an agent of the Crown in right of Canada, or of the Crown in right of another province or of another sovereign government is not an intergovernmental agreement.

- (2) In this section, the terms
 - (a) "intergovernmental agreement"; and
 - (b) "sovereign government"

have the meaning given them in the *Intergovernmental Affairs Act*.

(3) An intergovernmental agreement entered into by the corporation or a subsidiary, including Newfoundland and Labrador Hydro, before the coming into force of this section is considered binding on the corporation or a subsidiary notwithstanding the agreement may not have been signed by the minister responsible for intergovernmental affairs or his or her designate as required by section 7 of the *Intergovernmental Affairs Act* .

[2008 c31 s5](#)

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Borrowing power

18. (1) Subject to the prior approval of the Lieutenant-Governor in Council, the corporation may

- (a) borrow money for purposes related to the attainment of its objects as set out in section 5 ; and
- (b) to secure the repayment of money borrowed
 - (i) issue bonds, debentures, or other securities of the corporation,
 - (ii) execute and deliver mortgages, assignments, conveyances, charges or other encumbrances of and over property of every nature and kind, both present and future, title to which is vested in the corporation, and
 - (iii) enter into, execute and deliver a trust deed, trust indenture or an agreement with a lender, a trustee acting for the holders of bonds and debentures or other person,

and the money may be borrowed at the rate of interest and upon the terms and conditions, and the instruments and documents may be issued or executed and delivered in the form, that the Lieutenant-Governor in Council, or, where the authority to do so is delegated to the Minister of Finance by the Lieutenant-Governor in Council, the Minister of Finance, approves.

(2) The securities of the corporation may be made payable in a currency approved by the Lieutenant-Governor in Council and expressed in the security.

[2007 cE-11.01 s18](#)

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Guarantee of loans

19. Subject to the prior approval of the Lieutenant-Governor in Council, the Minister of Finance acting for and on behalf of the Crown may unconditionally guarantee both as to principal and interest, including interest on overdue interest, premium and sinking fund payments, loans authorized under section 18 to be raised by the corporation or a subsidiary, and the loan may be raised by bonds, debentures, or other securities to be issued by the corporation or a subsidiary

- (a) in a principal amount not exceeding the amount;
- (b) at a rate of interest;
- (c) on the terms and conditions; and
- (d) with provision for redemption at the time,

that may be approved by the Lieutenant-Governor in Council, or, where the authority to do so is delegated to the Minister of Finance by the Lieutenant-Governor in Council, the Minister of Finance, and the bonds, debentures or other securities may be issued or sold in the numbers and amounts, at

the times, at the prices, and upon the terms that the Lieutenant-Governor in Council or that minister may approve.

[2007 cE-11.01 s19; 2008 c31 s6](#)

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Manner and form of guarantee

20. Notwithstanding the *Financial Administration Act* or another Act or law, when a guarantee is given under section 19 of this Act, it shall be given in the manner and form that the Lieutenant-Governor in Council approves, and the form of guarantee shall be signed on behalf of the province by the Minister of Finance, his or her deputy minister or another minister whom the Lieutenant-Governor in Council may designate, and that signature may be engraved, lithographed or otherwise mechanically reproduced on the bonds, debentures or other securities in respect of which the guarantee is given.

[2007 cE-11.01 s20](#)

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Guarantee of payment

21. Where the payment of interest or a premium or a sinking fund payment has been guaranteed under this Act, the Crown may incur liability in excess of the principal amount of the loan to be raised by way of bonds, debentures, or other securities, to the extent of the guarantee of the interest, premium and sinking fund payment.

[2007 cE-11.01 s21](#)

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Guarantee of repayment

22. The power conferred by section 19 to guarantee the repayment of bonds, debentures or other securities includes the power to guarantee the repayment of part of the bonds, debentures or other securities.

[2007 cE-11.01 s22](#)

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Short-term loans

23. (1) The corporation may, for its purposes, raise short-term loans

- (a) in the manner and form;
- (b) in the amounts;
- (c) in the currencies;
- (d) for the period, not exceeding 2 years;
- (e) at the rates of interest, including interest on overdue interest; and
- (f) on the conditions, including conditions relating to discounts, premiums, charges and commissions,

that the corporation may determine.

(2) The total of the short-term loans raised under subsection (1) and outstanding at any time shall not exceed a limit to be fixed by the Lieutenant-Governor in Council, and it is the duty of the Minister of Finance to see that this total is not exceeded.

(3) The Minister of Finance acting on behalf of the Crown may unconditionally guarantee the repayment of a sum raised under subsection (1), the payment of interest, including interest on overdue interest and the payment of a premium.

(4) The total of the guarantees made under subsection (3) and outstanding at any time shall not exceed a limit to be fixed by the Lieutenant-Governor in Council, and it is the duty of the Minister of Finance to see that this total is not exceeded.

(5) A guarantee given under this section shall be in the form that the Minister of Finance approves, and the form of guarantee shall be signed on behalf of the province by that minister whose signature may be engraved, lithographed or otherwise mechanically reproduced on the bonds, debentures or other securities in respect of which the guarantee is given.

[2007 cE-11.01 s23](#)

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Agreements

24. 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 corporation, a lender, a trustee acting for the holders of bonds, debentures or other securities of the corporation or other person or company setting out the terms and conditions of a guarantee of a loan to be made under this Act.

[2007 cE-11.01 s24](#)

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Performance guarantee

25. Subject to the prior approval of the Lieutenant-Governor in Council, the Minister of Finance acting on behalf of the Crown may guarantee the performance by the corporation or a subsidiary of an obligation of the corporation or a subsidiary contracted by it with a person

(a) to pay money or an instalment; or

(b) to perform, fulfil or observe a covenant, obligation or provision of an agreement, deed, bond, promissory note or other document or instrument.

[2007 cE-11.01 s25; 2008 c31 s7](#)

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Loans by government

26. Notwithstanding the *Financial Administration Act* or another Act or law, the Lieutenant-Governor in Council may advance to the corporation a sum to enable the corporation to reach its objects or to carry on its business, and the advance may be made in the amount, for the term, at the rate of interest and on the terms and conditions that may be approved by the Lieutenant-Governor in Council.

[2007 cE-11.01 s26](#)

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Performance under guarantee

27. (1) A payment or advance that the Crown may approve in the exercise of a power conferred by this Act or be required to make under this Act shall be paid by the Minister of Finance out of the Consolidated Revenue Fund or, where the payment is to be made in performance of a guarantee, it may be paid out of funds provided in the manner prescribed in section 55 of the *Financial Administration Act*.

(2) Notwithstanding subsection (1), in respect of the Muskrat Falls Project, a payment or advance that the Crown may approve in the exercise of a power conferred by this Act or be required to make under this Act shall be paid by the Minister of Finance out of the Consolidated Revenue Fund.

[2007 cE-11.01 s27; 2012 c47 s9](#)

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Total amount of loan

28. (1) The total amount of money to be raised by the corporation and its subsidiaries in the aggregate by loans shall not exceed \$600 million in Canadian currency or its equivalent in the currency of another country.

(2) The total of all loans to the corporation and its subsidiaries in the aggregate to be guaranteed by or on behalf of the Crown shall not exceed \$600 million in Canadian currency or its equivalent in the currency of another country.

(3) In calculating the maximum amount of money raised by way of loans by the corporation and its subsidiaries and of guarantees given under this Act, no account shall be taken of amounts raised by way of loan

(a) that have been repaid or a part of the proceeds of a loan to be raised for, or that has been spent on, the repayment, refinancing, refunding, redemption, retirement or purchase of the whole or a part of loans or securities of the corporation; or

(b) by the corporation or its subsidiaries in respect of the Muskrat Falls Project.

[2012 c47 s10](#)

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Financial year

29. The financial year of the corporation shall be the calendar year.

[2007 cE-11.01 s29](#)

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Capital and operating expenses

30. The corporation shall, not later than November 30 in each year, provide to the minister a budget containing the estimated capital and operating expenses of the corporation for its next succeeding financial year.

[2007 cE-11.01 s30](#)

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Audit and financial statement

31. (1) The board shall annually appoint an auditor who shall annually audit the financial statement of the corporation.

(2) The financial statement referred to in subsection (1) shall be signed by 2 directors and shall have attached to it the auditor's report.

(3) The remuneration of the auditors referred to in subsection (1) shall be fixed annually by the board and shall be paid by the corporation out of its funds.

(4) The report of the auditors shall state whether the financial statements present fairly the financial position of the corporation and the results of its operations for the period under review and whether the financial statements were prepared in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

(5) The Lieutenant-Governor in Council may, by order, designate or appoint other auditors for carrying out the specific audit of the corporation's accounts and business that the Lieutenant-Governor in Council may specify in the order, and the auditor general may conduct the additional examination and investigation of the records and operations of the corporation that he or she considers necessary.

(6) For the purposes of an audit, examination or investigation conducted under subsection (5), the person designated or appointed by the Lieutenant-Governor in Council, or the auditor general, may request and shall be supplied by the board with all books, vouchers, records, schedules, working papers and other documentation which he or she considers necessary.

(7) This section applies, with the necessary changes, to a subsidiary.

(8) Subsection 5.4(5) and section 5.5 apply to an audit conducted under this section by an auditor who is not the auditor general as if he or she were the auditor general.

[2008 c31 s8](#)

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Fund established

32. (1) The corporation shall establish a fund in the name of the corporation to be determined under subsection 3(2) which shall be separate and distinct from the Consolidated Revenue Fund.

(2) All money and revenues of the corporation, including the proceeds of loans raised by the corporation, when they come into the hands of the corporation, shall be deposited to the credit of the fund referred to in subsection (1) and the corporation shall have full authority to administer the money so deposited for the purposes and objects of this Act.

[2007 cE-11.01 s32](#)

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Financial provisions to have full effect

33. Notwithstanding the *Financial Administration Act* or another Act or law, paragraph 14 (1)(h) and section 32 of this Act shall have full effect.

[2007 cE-11.01 s33](#)

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Actions

34. (1) Actions, suits or other legal proceedings in respect of a right or obligation acquired or incurred by the corporation may be brought by or against the corporation in the name of the corporation in a court and a judgment shall be carried into effect by the corporation, and where the judgment is for the payment of money, it may be enforced by execution against the money, lands and effects of the corporation as in ordinary cases between party and party.

(2) The corporation is liable in tort for damages for which, if it were a private person of full age and capacity, it would be liable in respect of

(a) torts committed by its employees or agents; or

(b) a breach of duty attaching to the ownership, occupation, possession or control of property.

(3) This section has effect, notwithstanding anything to the contrary contained in the *Proceedings Against the Crown Act* or another Act or law.

[2007 cE-11.01 s34](#)

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No liability re: disclosure of information

34.1 An action or proceeding does not lie or shall not be instituted or continued against the corporation, an officer, employee or agent of the corporation, 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 disclosure of information in accordance with this Act.

[2018 c22 s2](#)

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Offences

35. (1) A person who

(a) contravenes this Act; or

(b) interferes with or obstructs an inspector or other person in the discharge of his or her duties under this Act

is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 and in default of payment of the fine to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

(2) The conviction of a person under paragraph (1)(a) or (b) does not operate as a bar to further prosecution under this Act for a continuance of the offence.

[2007 cE-11.01 s35](#)

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Transitional

36. (1) Until the board of directors is appointed under section 6, the directors of Newfoundland and Labrador Hydro on the day this Act comes into force are the directors of the corporation.

(2) Until a chief executive officer is appointed under section 7, the chief executive officer of Newfoundland and Labrador Hydro on the day this Act comes into force is the chief executive officer of the corporation.

[2007 cE-11.01 s36](#)

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Commencement

37. This Act shall come into force on a day to be proclaimed by the Lieutenant-Governor in Council. (In force - Oct. 11/07)

[2007 cE-11.01 s37](#)

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