

**DRAFT**

**Department of Natural Resources**

**Governance and Accountability  
Nalcor Energy**



## Table of Contents

Introduction.....	1
Section 1: General.....	2
Chapter 1 Overview of Governance.....	3
I.    What is a Crown Corporation? .....	3
II.   Governance Model .....	3
III.  Governance and Accountability .....	4
Chapter 2 Mandate .....	7
I.    Legislation.....	7
A.  The Energy Corporation Act .....	7
B.  The Hydro Corporation Act, 2007 .....	7
II.   Policy .....	8
A.  Energy Plan.....	8
B.  Letter of Expectations .....	9
Section II: Governance Framework - Nalcor Energy .....	10
Chapter 1 Key Roles and Responsibilities .....	11
II.   The Shareholder .....	11
III.  The Shareholder's Representatives .....	11
A.  The Responsible Minister: The Minister of Natural Resources .....	11
B.  The House of Assembly.....	13
C.  The Lieutenant-Governor-in-Council and Cabinet .....	13
D.  The Minister of Finance .....	14
IV.  The Crown Corporation: Nalcor Energy .....	14
V.   Crown Corporation's Representatives.....	16
A.  The Board of Directors .....	16
B.  The Chairperson .....	17
C.  The Chief Executive Officer .....	18
D.  Management .....	18
Chapter 2 Planning Requirements .....	19
II.   Strategic Plan.....	19
III.  Annual Budget .....	20
Chapter 3 Reporting Requirements .....	22

I. Annual Business and Financial Report .....	22
II. Audit and Financial Statements .....	23
III. Annual Performance Report .....	23
IV. Procurement Report .....	24
V. Annual Public Meeting .....	24
Chapter 4 Composition and Appointment of the Board of Directors .....	25
Chapter 5 Financial .....	26
I. General .....	26
II. Loans and Guarantees .....	26
Chapter 6 Powers of Corporation .....	27
Chapter 7 Procurement .....	29
Chapter 8 Communication .....	30
Section III: Governance Framework - Subsidiary .....	31
Chapter 1 Establishing a Subsidiary .....	32
I. What is a Subsidiary? .....	32
II. Establishing a Subsidiary .....	32
III. Nalcor Energy – Hydro .....	33
Chapter 2 Key Roles and Responsibilities .....	34
I. The Shareholder: Nalcor Energy .....	34
II. The Shareholder’s Representatives .....	34
A. The Nalcor Energy Board of Directors .....	34
B. The Lieutenant Governor in Council and Cabinet .....	34
C. The Minister of Finance .....	35
III. The Subsidiary .....	36
IV. The Subsidiary’s Representatives .....	37
A. The Board of Directors of a Subsidiary .....	37
B. The Chairperson .....	39
C. The Chief Executive Officer .....	40
D. Management .....	40
Chapter 3 Planning Requirements .....	41
I. [REDACTED] .....	41
II. Annual Budget .....	41
A. Hydro .....	41
B. Other Subsidiaries .....	41

Chapter 4 Reporting Requirements .....	42
I. Annual Report .....	42
II. Audit and Financial Statement .....	42
III. Procurement Report .....	43
IV. Annual Meeting .....	43
Chapter 5 Composition and Appointment of the Board of Directors .....	44
I. Hydro .....	44
II. Non-Crown Agents .....	44
Chapter 6 Financial .....	46
I. General .....	46
II. Loans and Guarantees .....	46
A. Hydro .....	46
B. Non-Crown Agents .....	47
Chapter 7 Powers of a Subsidiary .....	48
Chapter 8 Procurement .....	50
Chapter 9 Communication .....	51
APPENDIX .....	52
Appendix A: Events Calendar .....	53
Appendix B: Procedure for Tabling a Document in the House of Assembly .....	54
<b>Appendix C: Energy Corporation Act, 2007</b> .....	
Appendix D: <i>Energy Corporation Act</i> .....	59
Appendix E: <i>Hydro Corporation Act, 2007</i> .....	60
Appendix F: <i>Transparency and Accountability Act</i> .....	61
Appendix G: Sources .....	62
Appendix H: Endnotes .....	64

## Introduction

Accountability is the cornerstone of our democratic system. It is the public that gives Government the responsibility to develop public policy and manage public resources, often through the creation of public bodies such as Crown corporations. Government, in turn, is held accountable to the public for the actions of the Crown corporations.<sup>1</sup> Corporate governance provides the parameters of the Crown corporation's autonomy. Government gives the Crown corporation the responsibility to govern while retaining the responsibility to ensure that Government's fiscal and policy mandates are achieved.<sup>2</sup>

The Department of Natural Resources has developed, and Cabinet has approved, a framework for the governance and accountability of Nalcor Energy. This document will provide Nalcor Energy with the means to achieve Government's performance expectations in an open, transparent and accountable manner by outlining the role of the Department of Natural Resources as the Shareholder of Nalcor Energy and the role of Nalcor Energy as a Crown corporation. This handbook balances the needs of Government to ensure that Nalcor Energy's actions are consistent with government policy and that Nalcor Energy is accountable and transparent, with the needs of Nalcor Energy to make independent decisions within its mandate and have flexibility to operate in a commercially competitive environment.

The purpose of this handbook is to set forth the best practices for the corporate governance of Nalcor Energy, by providing:

- Clear definition of the roles and responsibilities of those involved in the corporate governance of Nalcor Energy;
- Clear planning and reporting requirements for Nalcor Energy; and
- Transparency and accountability for Nalcor Energy.

## **Section 1: General**

Chapter 1: Overview of Governance

Chapter 2: Mandate



## Chapter 1 Overview of Governance

Corporate governance is the process and structure used to ensure a corporation effectively meets its mandate and objectives. It includes the relationship among the stakeholders, which are the shareholders, the board of directors and management.<sup>3</sup> It is a system of structuring, operating and controlling a company with a view for long term strategic goals. An important theme for corporate governance is to ensure the accountability and transparency of the corporation.

### I. What is a Crown Corporation?

Crown corporations are created by government to achieve public policy and commercial objectives. The concept is that the policies and procedures by which a government must conduct itself provide too many constraints to achieve certain defined objectives that are more effectively achieved in a business setting.<sup>4</sup> The objective is to create a framework in which the Crown corporation, having received its policy mandate, operates at arm's length from government. While no public body is totally independent from the government that created it, many are autonomous in that they are self-governing and exercise their decision-making powers within provincial government policy and legislation.

The expectation that Crown corporations will pursue major policy objectives is what distinguishes them from private sector companies. Usually through legislation, the government sets the policy objectives for the Crown corporation. Within that framework the Board of Directors and Management develop the strategic plan and determine how it will be implemented. The main policy driver comes from the Shareholder to the Board of Directors to Management. This is not how it occurs in the private sector for widely-held corporations. Rather, the mission statement and strategic plan and their implementation lie almost entirely within the hands of Management. Apart from statutory rights, the Shareholder usually plays no role in the strategic planning process or the management of the business. The key distinction is that the government, as Shareholder, establishes policy direction as a rule, while in the private sector, shareholder intervention is the exception.<sup>5</sup>

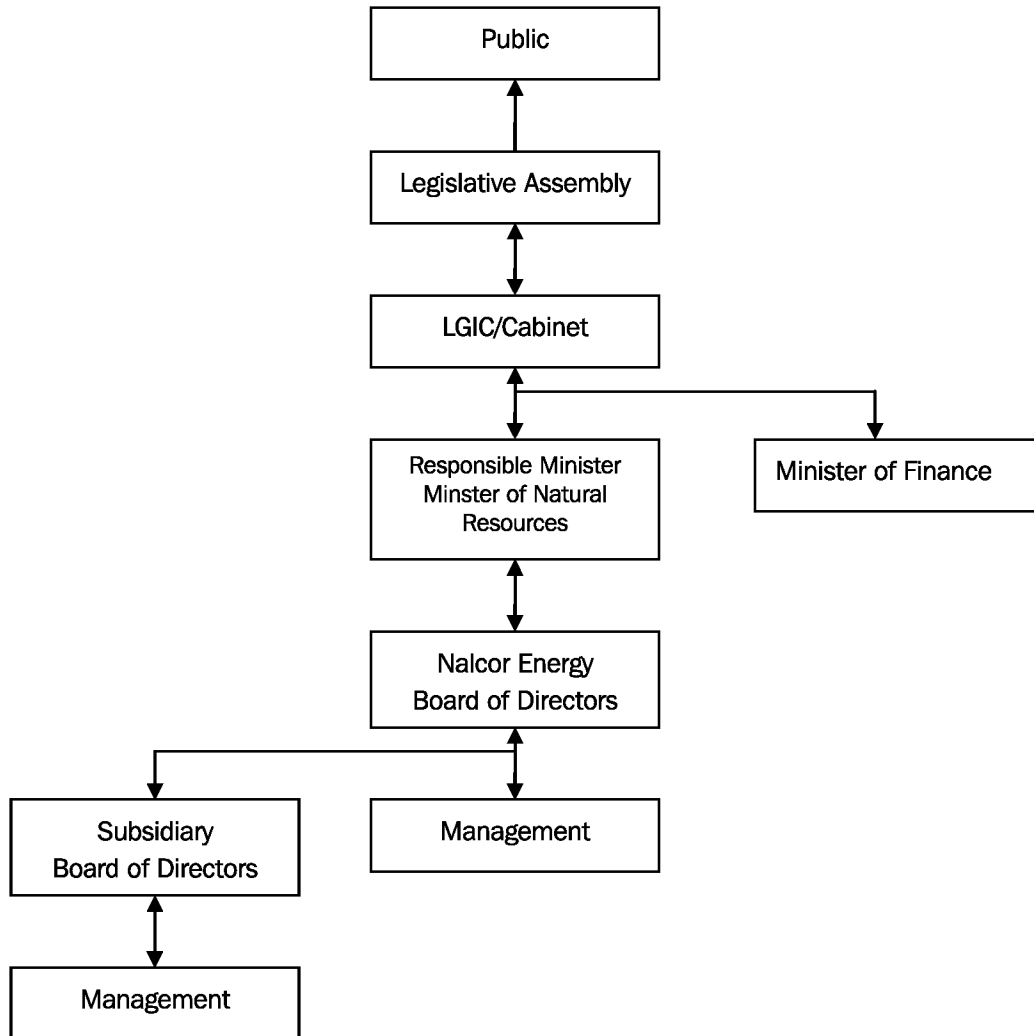
Nalcor Energy is the province's energy corporation and is 100% wholly owned by the provincial government. Nalcor Energy, and its subsidiaries, are entrusted with managing the province's investment and involvement in the development of all aspects of the province's energy sector. The Department of Natural Resources has been designated as the Shareholder of Nalcor Energy with the Minister of Natural Resources being the Responsible Minister.

### II. Governance Model

As illustrated below, under the governance framework, the Minister of Natural Resources, as the Responsible Minister, is directly accountable to Cabinet and the Lieutenant-Governor-in-Council (LGIC) for the activities of Nalcor Energy. Management of Nalcor Energy report to

the Board of Directors, who in turn, are accountable to the Responsible Minister. The Minister of Finance also falls under this structure as s/he has specific responsibilities under the *Energy Corporation Act*.

Subsidiaries of Nalcor Energy follow the same governance structure as Nalcor Energy, with modifications. The Shareholder of a subsidiary is Nalcor Energy. Management of a subsidiary reports to the Board of Directors of that subsidiary who is accountable to the Nalcor Energy Board of Directors.



### III. Governance and Accountability

Appropriately designed governance and accountability structures provide the necessary autonomy for Crown corporations to conduct its business while maintaining the Responsible Minister's ability to ensure that government's fiscal and policy responsibilities are met.<sup>6</sup>

Several principles underlie good governance:

- Clarity of roles and responsibilities;
- Effective functioning of the Board of Directors;
- Transparency; and
- Reporting.<sup>7</sup>

### ***Clarity of Roles and Responsibilities***

Accountability is central to our system of democratic governance. The key players are the Shareholder, the Board of Directors and Management. The roles and responsibilities of the Shareholder, the Board of Directors and Management should be clearly defined and understood. Each must have a knowledge and appreciation of the various instruments that are used in the governance process.<sup>8</sup> These relationships function in the following manner:

- The Shareholder communicates its objectives and enables the Board of Directors to effectively operate the corporation;
- The Board of Directors approves long-term strategy consistent with the Shareholder's objectives and monitors Management without participating in the day-to-day operation of the corporation;
- Management, through the Chief Executive Officer, leads the development of the long term strategic and annual operating and capital plans, implements Board-approved plans and manages the day-to-day business of the corporation.<sup>9</sup>

In terms of accountability, Crown corporations are accountable to the House of Assembly through a Responsible Minister. The Responsible Minister is accountable at a systemic level and is answerable for the activities of the corporation. The Responsible Minister is responsible for the legislative and regulatory framework applicable to the corporation and for the provision of policy direction to the corporation. The Board of Directors is accountable to the Responsible Minister for the stewardship of the corporation. Management is accountable to the Board of Directors for the management and performance of the corporation.<sup>10</sup>

### ***Effective functioning of the Board of Directors***

Through its leadership role, the Board of Directors establishes the processes and structures necessary to ensure the effective functioning of the corporation. It delegates the necessary authorities to Management to carry out its responsibilities, establishes processes to ensure thorough and timely reporting from Management to the Board of Directors, and from the corporation to the Shareholder, and establishes a strong relationship with Management to effectively represent the corporation's interests as expressed by the Shareholder.<sup>11</sup>

*Transparency*

Transparency means that the public has the right to assess whether or not Government is delivering on its policy commitments and whether or not public funds are being managed effectively. Public disclosure and accurate reporting of the corporation's activities helps build public confidence in the ability of the Crown corporation to deliver its mandate.<sup>12</sup>

An atmosphere of trust and respect is required to achieve the Shareholder's expectations for the Crown corporation. Expectations must be conveyed through a well-defined corporate mandate and clear direction on specific shareholder priorities and objectives for the corporation. To ensure that decision-making, reporting and monitoring requirements are met, clear and well-defined processes are required to ensure the timely and accurate flow of information between the Shareholder and the Board of Directors. The public interest is best served if there is constructive dialogue between the Shareholder and the corporation to jointly develop an effective strategic direction consistent with the corporation's mandate.<sup>13</sup>

*Reporting*

Regular reporting is integral to public sector accountability and plays an important role in governance. It allows for the monitoring of the fiscal condition of the Crown corporation, a review of annual budgets and activities, and permits an evaluation the corporation's progress in meeting planned goals and objectives.<sup>14</sup> Reporting also permits government to communicate on the progress and achievements of the Crown corporation to the public.

## Chapter 2 Mandate

Nalcor Energy, and its subsidiaries, must ensure that their operations are aligned with the Province's strategic priorities and policy objectives. The Department of Natural Resources, as Shareholder of Nalcor Energy, must provide clear direction regarding Nalcor Energy's mandate but without interfering with its day-to-day operations. The mandate for Nalcor Energy, and its subsidiaries, is found in legislation and policy instruments.

### I. Legislation

#### A. The *Energy Corporation Act*

The overall mandate and administrative framework for Nalcor Energy is outlined in its enabling legislation, the *Energy Corporation Act*. The objects of Nalcor Energy, found in section 5 of the *Energy Corporation Act*, are to invest in, engage in, and carry out activities in all areas of the energy sector in the province and elsewhere, including:

- 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;
- the exploration for, development, production, refining, marketing and transportation of hydrocarbons and products from hydrocarbons;
- the manufacture, production, distribution and sale of energy related products and services; and
- research and development.

Section 14.1(2) of the *Energy Corporation Act* states that the objects of a subsidiary of Nalcor Energy are to be some or all of the objects of Nalcor Energy, as listed in section 5 above.

#### B. The *Hydro Corporation Act, 2007*

The *Hydro Corporation Act, 2007*, is the enabling legislation for Nalcor Energy's subsidiary, Nalcor Energy - Hydro ("Hydro"). Section 5 of this Act states that the objects of Hydro are to develop and purchase power, on an economic and efficient basis. In particular, Hydro is to engage in the province and elsewhere in the development, generation, production, transmission, distribution, delivery, supply, sale, purchase and use of power from water, steam, gas, coal, oil, wind, hydrogen or other products, and to supply power, at rates consistent with sound financial administration, for domestic, commercial, industrial or other uses in the province. With the prior approval of the Lieutenant-Governor-in-Council, Hydro may supply power outside the province.

## C. Unanimous Shareholder Agreements

Section 245 of the *Corporations Act* applies to Nalcor Energy. Under this section, if the Shareholder changes its strategic direction, or feels that Nalcor Energy is no longer following the strategic direction of the Province, the Shareholder can provide direction regarding the management of the business and affairs of the corporation, including the restriction or abrogation, in whole or in part, of the powers of the directors in the form of an unanimous shareholder agreement.

Section 39(3) of the *Hydro Corporation Act, 2007* permits the Lieutenant-Governor-in-Council to provide direction to the Board of Directors of Hydro, as if the Lieutenant-Governor-in-Council were the beneficial owner of Hydro.

## II. Policy

### A. Energy Plan

In 2007, the Province released the Energy Plan, outlining the Province's long term strategy for the development and management of the Province's energy sector. The plan outlines the creation of Nalcor Energy with the purpose of taking a lead role in the Province's participation in the development of the Province's resources to ensure they are managed and used in the best interests of the people of the Province.

#### *Oil and Gas*

Nalcor Energy has been directed to encourage exploration activity, both offshore and onshore, in the area of oil and gas. In order to ensure that offshore and onshore oil and gas producing regions are fully explored and developed in an economic manner, Nalcor Energy has a mandate to:

- Purchase existing proprietary seismic data for reevaluation and acquire new data; and
- Acquire a 10 per cent equity interest in future offshore petroleum projects that requires development plan approval where it fits with the Province's strategic long-term objectives. Nalcor Energy will negotiate payment for its share of the historic exploration and pre-development costs incurred by the license co-venturers as well as contribute its share of subsequent development and operation costs.

#### *Electricity*

To ensure that the province continues to have a solid and sustainable electricity industry, Nalcor Energy has a mandate to:

- Lead the development of the Lower Churchill Project;
- Explore opportunities in relation to the Upper Churchill Contract for the Upper Churchill facility to make greater economic contributions to the Province;

- If the moratorium on small hydro projects on the island portion of the province is lifted, Nalcor Energy will control and coordinate the development of small hydro projects that meet economic thresholds and are economically viable;
- Maximize the value from wind generation; and
- Study hydrogen as an energy carrier in relation to the Ramea wind project.

### ***Energy and the Environment***

To ensure that the province's natural resources are developed in a sustainable manner, Nalcor Energy has a mandate to:

- Assess the development of greenhouse gas emission regulations and trading in Canada and the United States; and
- Join the Energy Conservation and Efficiency Partnership with the Department of Natural Resources, the Department of Environment and Conservation and other Provincial departments and agencies to coordinate and assist with energy conservation and efficiency initiatives.

### **B. Letter of Expectations**

The Shareholder's Letter of Expectations provides the Shareholder with a formal means of communicating direction and priorities. It is an agreement between the Department of Natural Resources and Nalcor Energy on respective roles, responsibilities, policy direction and performance expectations. While it is not legally binding, it is intended to promote a cooperative working relationship between both parties.

## **Section II: Governance Framework - Nalcor Energy**

Chapter 1: Key Roles and Responsibilities

Chapter 2: Planning Requirements

Chapter 3: Reporting Requirements

Chapter 4: Composition and Appointment of the Board of Directors

Chapter 5: Financial

Chapter 6: Powers of Nalcor Energy

Chapter 7: Procurement

Chapter 8: Communication



## Chapter 1 Key Roles and Responsibilities

Within the Governance Framework, various individuals and agencies represent Nalcor Energy and the Shareholder. Clear definition of these roles and responsibilities is essential to good governance and achieving accountability.

### I. The Shareholder

The Shareholder's role is that of owner and investor. It has general responsibilities with respect to Nalcor Energy including establishing its purpose and mandate and communicating that mandate to the Board of Directors through legislation and policy.<sup>15</sup> The Shareholder approves fundamental changes affecting Nalcor Energy, such as amending its mandate or enabling legislation. It also advises the Board of Directors of strategic government decisions that may impact the corporation. The Shareholder is responsible for ensuring that the Board of Directors has the appropriate authority to enable it to effectively discharge its responsibilities and must ensure that the appropriate governance structure is in place. The Shareholder must monitor the corporation's performance and hold the Board of Directors accountable. The Shareholder is in turn held accountable to the legislature for its investment in the corporation.

### II. The Shareholder's Representatives

#### A. The Responsible Minister: The Minister of Natural Resources

The Responsible Minister is the key link between Nalcor Energy and Cabinet and is the reporting link to the House of Assembly. The Minister of Natural Resources (the "Minister") is the Responsible Minister for Nalcor Energy. Nalcor Energy is an instrument of government, but it has operational autonomy for the purposes of keeping its day-to-day activities at arm's length from the government.<sup>16</sup> It is crucial to maintain the balance of the autonomy of Nalcor Energy as an arm's length organization and the government's overall responsibility for its effectiveness as an instrument of public policy. Arm's-length status is maintained as long as the Board of Directors and Management remain effectively in charge of the administration of the corporation.

The Minister is accountable at a systemic level; he or she is not responsible for the day-to-day activities of Nalcor Energy. Generally, the Minister is responsible for:

- Nalcor Energy's enabling legislation;
- Assessing the ongoing relevance of Nalcor Energy's mandate;
- Fostering an effective working relationship with the Board of Directors and Management;
- Communicating Cabinet's mandate, performance expectations and ongoing policy direction and ensuring implementation of that direction;

- Ensuring Nalcor Energy meets all legislative requirements;
- Setting ministry specific policies that may be relevant to Nalcor Energy;
- Fulfilling responsibilities indicated in legislation;
- Responding to public inquiries regarding Nalcor Energy;
- Informing the Minister of Finance of any issue that may materially impact government's financial reporting or planning; and
- Seeking Cabinet approval for the appointment of directors and the creation of subsidiaries.<sup>17</sup>

Under the *Energy Corporation Act*, the Minister:

- May, after receipt of the Annual Business and Financial Report under section 5.2, request additional information on Nalcor Energy's, or a subsidiary's, activities (section 5.2(2));
- Tables Nalcor Energy's Annual Business and Financial Report with the House of Assembly (section 5.2(3)); and
- Tables a summary of Nalcor Energy's procurement principles and procurement reports with the House of Assembly (section 17.1(5)).

Under the *Transparency and Accountability Act*, the Minister:

- Approves Nalcor Energy's three-year Strategic Plan and ensures the plan is in keeping with the strategic direction of Government, Nalcor Energy's mandate, and Nalcor Energy's financial resources (section 5(3));
- Sets the date for the filing of the Strategic Plan by Nalcor Energy to the Minister (section 5(6));
- Tables the Strategic Plan in the House of Assembly not later than 3 months after the beginning of the first fiscal year covered by the plan (section 5(7));
- Approves any amendments to the Strategic Plan (section 5(8));
- Tables any amendments to the Strategic Plan in the House of Assembly within one month of their approval (section 5(11));
- Tables Nalcor Energy's Annual Performance Report by the date set by the Lieutenant-Governor-in-Council (section 9(2)) to the House of Assembly (section 9(10));
- Requests additional information about the Annual Performance Report if the Minister requires (section 9(8)); and
- May make recommendations to Nalcor Energy to ensure Nalcor Energy's activities are more consistent with the objectives of the Strategic Plan if the Minister believes that Nalcor Energy is failing to meet the objectives set forth in the Strategic Plan. If

Nalcor Energy does not give effect to a recommendation by the Minister, the Minister may report the matter to the Lieutenant-Governor-in-Council (section 20).

## **B. The House of Assembly**

As the elected representatives of the people of the Province, the House of Assembly is responsible for ensuring that public finances are properly managed. The House of Assembly's responsibilities include approving government's overall financial plan or budget and authorizing annual appropriations. It legislates with respect to the creation, dissolution or privatization of a Crown corporation. Under the *Energy Corporation Act* and the *Transparency and Accountability Act*, Nalcor Energy's Annual Business and Financial Report, Annual Performance Report, three-year Strategic Plan, Procurement Principles and Procurement Reports are made public by being tabled by the Minister in the House of Assembly.

## **C. The Lieutenant-Governor-in-Council and Cabinet**

The Lieutenant-Governor-in-Council of Newfoundland and Labrador, as representative of the Queen in Right of Newfoundland and Labrador, is the head of the Province's Executive Council (Cabinet).

Under the *Energy Corporation Act*, the Lieutenant Governor-in-Council:

- Appoints the Board of Directors, the Chairperson and the Chief Executive Officer of Nalcor Energy and fixes the rate of remuneration for the Board of Directors, the Chairperson and the Chief Executive Officer (sections 6 and 7);
- Approves the incorporation of a subsidiary and designates a subsidiary an agent of the Crown (section 14.1);
- Approves Nalcor Energy's procurement principles for procurement and contracting (section 17.1);
- Approves the borrowing and repayment of money by Nalcor Energy and the terms and conditions associated with same. This power can be delegated to the Minister of Finance (section 18);
- Approves the guarantee and the form and manner of guarantee by the Crown of loans obtained by Nalcor Energy. This power can be delegated to the Minister of Finance (section 19 and 20);
- Sets the total amount of short terms loans and the total of guarantees of short term loans that Nalcor Energy may raise (section 23);
- Approves a performance guarantee (section 25);
- Approves loans by Government to Nalcor Energy (section 26); and
- Appoints an auditor to carry out a specific audit of Nalcor Energy's (or a subsidiary's) accounts and business as the Lieutenant Governor-in-Council considers necessary (Section 31).

Under the *Transparency and Accountability Act*, the Lieutenant Governor-in-Council sets the date for the filing of the Annual Performance Report by Nalcor Energy to the Minister (section 9(7)). This date has currently been set at six (6) months following the end of Nalcor Energy's fiscal year. If the Lieutenant Governor-in-Council receives a report from the Minister that Nalcor Energy is not giving effect to a recommendation by the Minister concerning its objectives, the Lieutenant Governor-in-Council can direct Nalcor Energy to carry out the recommendation (section 20).

#### **D. The Minister of Finance**

The Minister of Finance is generally responsible for providing strategic leadership across the public service on the financial and economic implications of its policy decisions, overseeing the management and control of provincial finances to ensure appropriate use of public funds, and providing centralized and corporate shared services to other government departments (e.g. economic analysis, statistical services and the administration of such things as compensation and benefits, internal audit services and payment processing).

Specifically, under the *Energy Corporation Act*, the Minister of Finance:

- Where authority has been delegated by the Lieutenant Governor-in-Council, approves the form, terms and conditions under which Nalcor Energy may borrow and repay money (section 18);
- With prior approval from the Lieutenant Governor-in-Council, unconditionally guarantees loans issued under section 18 by Nalcor Energy or a subsidiary (section 19) and may be required to sign the guarantee (section 20);
- Unconditionally guarantees short term loans by Nalcor Energy and ensures that the total of short term loans and guarantees does not exceed the limit set by the Lieutenant Governor-in-Council (section 23);
- Enters into agreements setting out the terms and conditions of a guarantee of a loan made under this Act (section 24);
- With prior approval from the Lieutenant Governor-in-Council, guarantees the performance of Nalcor Energy or a subsidiary (section 25); and
- Makes a payment or advance that the Crown has approved or which is required under this Act (section 27).

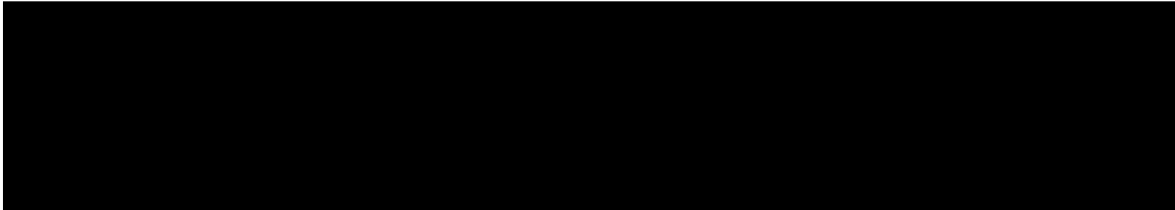
### **III. The Crown Corporation: Nalcor Energy**

The general responsibilities of Nalcor Energy are to achieve its mandate and the performance expectations of the Shareholder, establish and implement corporate policies and procedures consistent with the Shareholder's general direction, provide the Shareholder with reports and other information to enable the Shareholder to carry out its responsibilities,

and ensure that its strategies, policies and plans support the achievement of the Shareholder's objectives.<sup>18</sup>

Pursuant to the *Energy Corporation Act*, Nalcor Energy must:

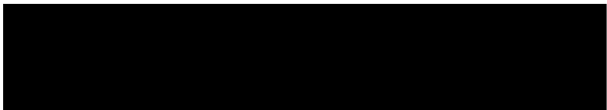
- Hold an annual meeting in the province, open to the general public, within 60 days of the publication of the Annual Business and Financial Report (section 5.1);
- No later than April 30, submit a report to the Minister on the activities of the corporation and its subsidiaries for the previous fiscal year (Annual Business and Financial Report) containing an audited, consolidated financial statement of the corporation, a report by the Board of Directors giving an account of the activities of the corporation and a report of each subsidiaries' activities (section 5.2);



- With the prior approval of the Lieutenant Governor-in-Council, enter into an agreement with a person that provides for his or her appointment to the office of Chairperson or Chief Executive Officer of Nalcor Energy (section 9);
- Develop and adopt procurement principles that follow best industry practices for procurement and contracting for approval by the Lieutenant Governor-in-Council (section 17.1(3));
- Report to the Minister on its procurement activities and include a summary of contracts entered into and the identities of suppliers to whom contracts have been awarded every 6 (six) months (section 17.1(4));
- No later than 30 November, provide the Minister with a capital and operating budget for the corporation for the succeeding financial year (section 30); and
- Establish a fund in the name of Nalcor Energy which is separate and distinct from the Consolidated Revenue Fund (section 32).

Under the *Transparency and Accountability Act*, Nalcor Energy must:

- Prepare a three-year Strategic Plan and submit the plan to the Minister for approval (section 5(1));
- Prepare and submit to the Minister an annual report (Annual Performance Report) on the preceding fiscal year (section 9(1));
- Provide the Comptroller General with a copy of its audited financial statements (section 19); and



- Give effect to any recommendations made by the Minister to ensure Nalcor Energy's activities are consistent with the objectives of its Strategic Plan (section 20).

#### IV. Crown Corporation's Representatives

##### A. The Board of Directors

The Board of Directors is responsible for overseeing the management of Nalcor Energy's business and affairs. In order for directors to be effective, they must approach their work objectively and with decision-making independence. Corporate best practices require that Boards of Directors of Crown corporations function independently from Management.<sup>19</sup> This independence helps establish the Board's credibility and supports sound governance and effective accountability.

The Board of Directors is accountable to the Shareholder for the performance of Nalcor Energy. Its responsibilities fall into the following general areas: management of board affairs, shareholder mandate, strategy and plans, financial and corporate issues, and reporting and communications.<sup>20</sup> Generally, the Board of Directors is responsible for:

- Meeting their fiduciary duty to act honestly and in good faith;
- Avoiding conflicts of interests and the perception of a conflict of interest;
- Maintaining appropriate confidentiality;
- Establishing policies that are necessary for the reasonable and prudent operation of the corporation, including policies on governance, risk management, conflicts of interest, and communications;
- Ensuring the corporation is in compliance with statutory obligations and applicable legislation; and
- Approving the strategies, policies and plans necessary to fulfill government's direction including the Annual Corporate Business Plan, Strategic Plan, Annual Performance Report, Annual Business and Financial Report and Annual Budget.<sup>21</sup>

Under the *Energy Corporation Act*, the Board of Directors:

- Exercises the powers of the corporation by a resolution of the Board (section 6);
- During the absence or incapacity of the Chief Executive Officer, appoints an acting Chief Executive Officer (section 7(6));
- Makes by-laws regarding: the calling of meetings of the Board; the establishment of a quorum; the conduct of business at meetings and establishing committees of the board and delegating duties to those committees; the duties and conduct of the directors, officers and employees of Nalcor Energy; the common seal of Nalcor Energy and its use; the execution of a contract or instrument on behalf of Nalcor Energy; the mechanical reproduction of signatures of the corporation or the common seal of the corporation; the management and use of its property by

- employees, invitees, licensees, or permittees of the corporation; and generally for the conduct and management of the affairs of Nalcor Energy (section 10);
- Appoints officers, managers, staff and other employees and retains consultants, advisors and other professional persons it considers necessary and fixes their remuneration and terms of service (section 12); and
- Annually appoints an auditor to audit the financial statement of the corporation, fixes the remuneration of the auditor and ensures that two directors sign the financial statement of the corporation to attach to the auditor's report (section 31).

## B. The Chairperson

The Chairperson is the formal link between Nalcor Energy and the Shareholder. The Chairperson is the leader and main spokesperson for the Board of Directors and represents the Board of Directors and its interests in dealing with Minister and the Chief Executive Officer.<sup>22</sup> It is the Chairperson that advises the Minister of issues arising within the corporation that materially impact the corporation or the Minister's interests and accountabilities. Generally, the Chairperson is responsible for:

- Fostering an effective working relationship with the Minister;
- Ensuring the Minister is provided with timely, relevant, accurate and complete reports to enable the Minister to assess whether the corporation is fulfilling its mandate and to enable the Minister to carry out its responsibilities;
- Receiving government's mandate direction from the Minister and communicating that direction to the Board of Directors;
- Planning and managing Board meetings;
- Ensuring that the Board of Directors and its committees meet independent of Management;
- Ensuring the Board of Directors conducts an annual review of its performance, the performance of individual Board members and the performance of the Chief Executive Officer; and
- Identifying and requesting the resources necessary for the Board of Directors to fulfill its duties.<sup>23</sup>

Specifically, under the *Energy Corporation Act*, the Chairperson is responsible for ensuring that minutes are kept of the meetings of the board (section 8).

Under the *Transparency and Accountability Act*, the Chairperson:

- Signs the Strategic Plan (section 5(5));
- Signs the Annual Performance Report and include a statement that the Board of Directors is accountable for the actual results reported (section 9(9));

- Ensures that Nalcor Energy engages an auditor on a timely basis and that the audit is completed in a timely manner (section 19(1)); and
- Enters into a performance contract with the Chief Executive Officer (section 21).

### **C. The Chief Executive Officer**

The Chief Executive Officer (CEO), while also sitting on the Board of Directors, manages the day-to-day activities and guides the organization towards achieving its strategic goals. The CEO is generally responsible for:

- Providing leadership, general supervision, and control of the corporation's day-to-day operations in accordance with Board-approved plans and policies;
- Ensuring business plans are effectively implemented, monitored and reported to the Board of Directors;
- Working with the Board of Directors to prepare the Annual Corporate Business Plan, Strategic Plan, Annual Business and Financial Report, Annual Performance Report and Annual Budget;
- Ensuring the Board of Directors has all the information before it to make informed decisions on matters within its mandate; and
- Maintaining effective communications with the Chairperson and Deputy Minister, as required, to discuss major developments and progress in achieving the corporation's objectives.<sup>24</sup>

Under the *Energy Corporation Act*, the CEO, subject to the direction of the Board of Directors, is charged with the general direction, supervision and control of the business of the Board and Nalcor Energy (section 7).

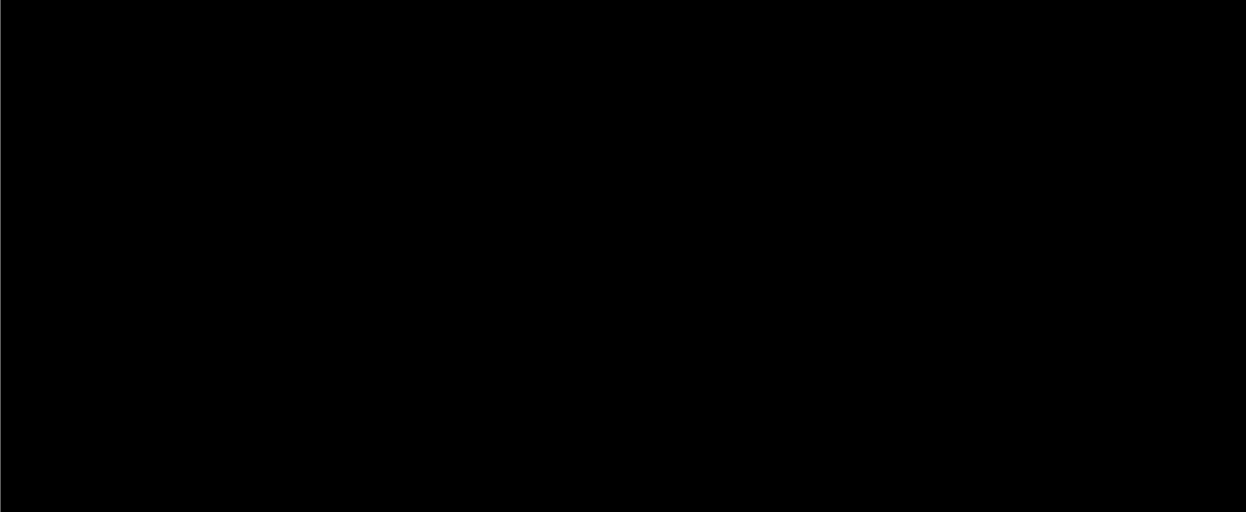
### **D. Management**

Management is responsible for the daily operations of Nalcor Energy including providing leadership, general supervision in the management and control of the corporation's day-to-day operations in accordance with Board approved plans and policies.<sup>25</sup>




## Chapter 2 Planning Requirements

Defined planning processes are one of the mechanisms through which Nalcor Energy remains accountable for its performance to the House of Assembly and the public. Nalcor Energy is subject to planning requirements under the *Energy Corporation Act* and the *Transparency and Accountability Act*.



### II. Strategic Plan

The *Transparency and Accountability Act* requires a three-year Strategic Plan which is designed to ensure that Nalcor Energy clearly outlines its goals and performance expectations and to ensure that Nalcor Energy is held accountable for its decisions and actions. Under section 5 of the *Transparency and Accountability Act*, Nalcor Energy's Strategic Plan must:

1. Set out the goals and objectives to be met during the period covered by the plan, taking into account
    - a. the strategic direction of Government in the area of Nalcor Energy's mandate as communicated by the Minister;
    - b. Nalcor Energy's mandate as set out in the *Energy Corporation Act*; and
    - c. the financial resources of Nalcor Energy;
  2. Identify objective performance measures specific to the goals and objectives set out in the plan;
  3. Set out the fiscal years covered by the plan;
- 

4. Contain a statement by the Board of Directors that it is accountable for the preparation of the plan and for achieving the specific goals and objectives in the plan; and
5. Be signed by the Chairperson on behalf of the Board of Directors.

The Transparency and Accountability Office has published guidelines to assist government entities in drafting their strategic plans. The document titled “Guidelines for Multi-Year Performance-Based Planning” suggests that the Strategic Plan contain the following components:

1. Strategic Direction
2. Overview
3. Mandate
4. Lines of Business
5. Values
6. Primary Clients
7. Vision
8. Mission
9. Goals
10. Objectives

Nalcor Energy must submit the Strategic Plan to the Minister for approval by a date set by the Minister. The Minister must only approve the plan upon being satisfied that it is in keeping with the strategic direction of government, Nalcor Energy’s mandate and its financial resources. It is important that the Minister provide feedback to Nalcor Energy in a timely manner and identify whether the plan is acceptable or recommend changes to the plan. If the Minister recommends changes to the plan, Nalcor Energy is responsible for implementing those changes and re-submitting the plan for approval to the Minister.

Once the plan is finalized and approved by the Minister, the Minister must table Nalcor Energy’s Strategic Plan in the House of Assembly. The process for tabling a document in the House of Assembly is set forth in Appendix B. Once the report is tabled or is deemed to have been tabled in the House of Assembly, Nalcor Energy must publish the report on its website.

### **III. Annual Budget**

Pursuant to the *Energy Corporation Act*, Nalcor Energy must file with the Minister an annual budget by November 30 in each year. The budget must contain the estimated capital and operating expenses of Nalcor Energy for the next succeeding financial year. As part of the budgetary process, the Minister and staff should consult with Nalcor Energy to discuss the

forthcoming budget, clarify expectations and identify critical issues and concerns. The Minister should also share information about the province's fiscal condition. Following these consultations, Nalcor Energy will forward its projected financial requirements for the upcoming year to the Minister. After the provincial budget is tabled and relevant capital and operating grant allocations are determined, the Minister will provide Nalcor with an allocation approval letter outlining the details of its forthcoming budget. Following this, the Minister and/or departmental staff should meet with the Chairperson of Nalcor Energy to review the budget details.

## Chapter 3 Reporting Requirements

The *Energy Corporation Act* and the *Transparency and Accountability Act* require Nalcor Energy to report on a regular basis. This regular reporting of results is integral to meeting the accountability expectations of the House of Assembly and the public. In addition to the following legislative requirements, Nalcor Energy is expected to inform the Shareholder of all emerging issues on an ongoing basis.

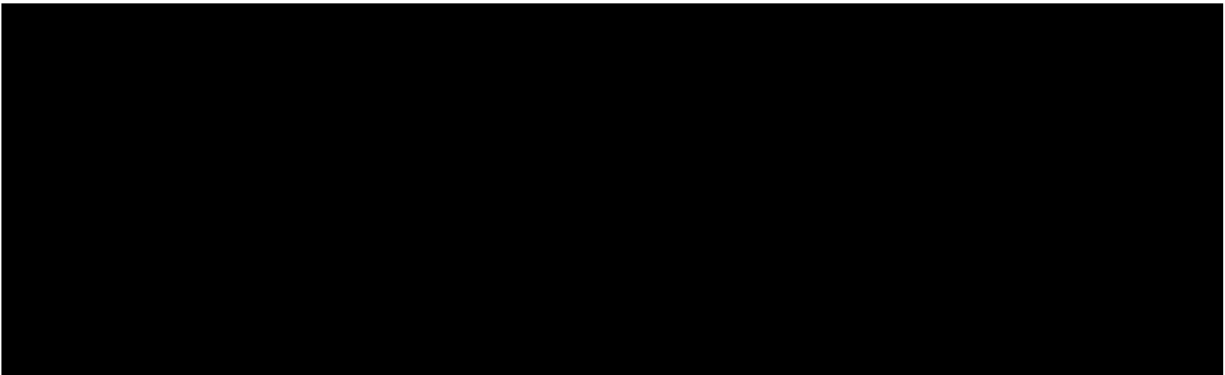
### I. Annual Business and Financial Report

The *Energy Corporation Act* requires that Nalcor Energy annually file a report, no later than April 30 of each year, detailing the activities of the corporation and its subsidiaries during the previous fiscal year. It must contain the following information:

- An audited consolidated financial statement of the corporation setting out the assets and liabilities of the corporation as of the end of the preceding financial year and the results of its operations for that financial year;
- A report by the Board of Directors giving an account of the activities of the corporation during the preceding financial year and other matters that may be of a public interest in relation to the affairs or activities of the corporation; and
- A report on the activities of each subsidiary during the preceding financial year including any information that it believes may be of a public interest relating to its activities but must not include commercially sensitive information.

The report is required to be consistent in form and content with annual reports prepared by publicly traded companies. If the Minister is not satisfied with the information contained within this report, the Minister may direct Nalcor Energy to provide additional information.

Following receipt of the report, the Minister must table it in the House of Assembly. The process for tabling a document in the House of Assembly is set forth in Appendix B. Once the report is tabled or is deemed to have been tabled in the House of Assembly, Nalcor Energy must publish the report on its website.



### III. Audit and Financial Statements

Pursuant to the *Energy Corporation Act*, Nalcor Energy must annually appoint an auditor to annually audit the financial statements of the corporation. The financial statements of Nalcor Energy must be signed by two directors and be attached to the auditor's report. The report of the auditor must state whether the financial statements fairly represent the financial position of the corporation and the results of its operation for the period under review and whether the financial statements were prepared in accordance with generally accepted accounting principles.

### IV. Annual Performance Report

Under the *Transparency and Accountability Act*, Nalcor Energy must file an Annual Performance Report, not later than six (6) months following the end of the fiscal year. The report must compare the actual results for the applicable fiscal year of its Strategic Plan with the projected results of that year. If the report discloses a variance between the actual and projected results, the report must provide an explanation for the variance. The report must also include Nalcor Energy's audited financial statements. The Chairperson of Nalcor Energy must sign the report and include a statement that the Board of Directors is accountable for the actual results contained in the report. The Transparency and Accountability Office has published guidelines to assist in the drafting of annual reports. This document titled "Guidelines for Annual Reports: Category 1 Government Entities" suggests the Annual Performance Report contain the following components:

1. Table of Contents
2. Chairperson's Message
3. Nalcor Energy's Overview
  - a. Key statistics
  - b. Physical location
  - c. Description of revenues and expenditures
  - d. Lines of business
  - e. Vision

- f. Mission
- 4. Shared Commitments
- 5. Highlights and Accomplishments
- 6. Report on Performance
  - a. Progress on strategic direction
  - b. Objectives, measures and indicators for next financial year
- 7. Opportunities and Challenges Ahead
- 8. Financial Statements

Nalcor Energy must submit the report to the Minister by a date set by the Lieutenant Governor-in-Council. Nalcor Energy is responsible for ensuring the report meets the requirements set forth in the *Transparency and Accountability Act*. The Minister may require Nalcor Energy to provide additional information than that which is set out in the report. It is important that the Minister provide feedback to Nalcor Energy in a timely manner and identify whether the report is acceptable or requires further information. If the Minister recommends changes to the report, Nalcor Energy is responsible for implementing those changes and re-submitting the report to the Minister.

Once the report is finalized and submitted, the Minister must table the report in the House of Assembly. The process for tabling a document in the House of Assembly is set forth in Appendix B. Once the report is tabled or is deemed to have been tabled in the House of Assembly, Nalcor Energy must publish the report on its website.

## **V. Procurement Report**

The *Energy Corporation Act* requires Nalcor Energy, subject to the prior approval of the Lieutenant Governor-in-Council, develop and adopt procurement principles that follow best industry practices for procurement and contracting. The *Energy Corporation Act* also requires Nalcor Energy report to the Minister on its procurement activities, including a summary of contracts entered into and the identities of suppliers to whom the contracts have been awarded, every six (6) months.

The Minister must table a summary of the procurement principles and the procurement reports in the House of Assembly. The process for tabling a document in the House of Assembly is set forth in Appendix B. Once the document is tabled or is deemed to have been tabled in the House of Assembly, Nalcor Energy must publish it on its website.

## **VI. Annual Public Meeting**

Nalcor Energy must, under the *Energy Corporation Act*, hold an annual meeting in the Province open to the public within sixty (60) days of the publication by the Minister of the Annual Business and Financial Report.

## Chapter 4 Composition and Appointment of the Board of Directors

Under the *Energy Corporation Act*, the Board of Directors of Nalcor Energy is appointed by the Lieutenant Governor-in-Council and must be comprised of not less than five (5) and not more than fourteen (14) persons. The Chairperson and Chief Executive Officer are appointed by the Lieutenant Governor-in-Council and the same person may not hold the offices of Chairperson and Chief Executive Officer at the same time. Any vacancy that occurs is also filled by the Lieutenant Governor-in-Council. The remuneration of the Board of Directors, including the Chairperson and Chief Executive Officer, is set by the Lieutenant Governor-in-Council.

Cabinet policy regarding the appointment of persons to the Board of Directors states that a committee of members from the Board of Directors is responsible for the nomination of potential directors. While the committee recommends candidates, the final decision for Board appointments remains with the Lieutenant Governor-in-Council and is not limited to those individuals recommended by the Committee. For future appointments, the Order-in-Council will specify that a director is to continue to serve after the expiration of his or her term until a replacement has been appointed to ensure continuity on the board as replacements are identified and appointed. The policy also stipulates, in keeping with practices of publicly traded companies, that a majority of the members of the Board, including the Chairperson, should be independent and should satisfy the following criteria:

- Not be employed by Nalcor Energy or any of its subsidiaries or affiliates (now or in the past two years);
- Not have a family member employed in a senior management position at Nalcor Energy or its subsidiaries;
- Not benefit from a business relationship with Nalcor Energy in the past year that could impair the independent judgment of the director;
- Not receive remuneration from Nalcor Energy or any of its subsidiaries, except for director's fees or post-retirement benefits in the past year; and
- Not be a partner or employee of the current external auditor during the previous two years.

## Chapter 5 Financial

The *Energy Corporation Act* sets out the terms and conditions relating to financial matters for Nalcor Energy.

### I. General

The financial year for Nalcor Energy is a calendar year. Nalcor Energy is required by the *Energy Corporation Act* to submit to the Minister, not later than November 30 of each year, a capital and operating budget for the succeeding financial year. Nalcor Energy is also required to annually appoint an auditor to annually audit the financial statements of the corporation. The financial statements of Nalcor Energy must be signed by two directors and be attached to the auditor's report. The report of the auditor must state whether the financial statements fairly represent the financial position of the corporation and the results of its operation for the period under review and whether the financial statements were prepared in accordance with generally accepted accounting principles.

### II. Loans and Guarantees

Nalcor Energy, with the prior approval of the Lieutenant Governor-in-Council, may borrow money, up to \$600 million, for purposes related to the attainment of its objects as set out in the *Energy Corporation Act*. It can secure the repayment of such a loan under the terms and conditions as approved by the Lieutenant Governor-in-Council, or where that authority has been delegated, by the Minister of Finance. These loans may be unconditionally guaranteed by the Minister of Finance, with prior approval of the Lieutenant Governor-in-Council, with the amount of the guarantee not to exceed \$600 million.

Nalcor Energy, without the approval of the Lieutenant Governor-in-Council, can obtain short term loans for a period not exceeding two years and to an amount not exceeding \$300 million. It is the duty of the Minister of Finance to ensure that this amount is not exceeded. The Minister of Finance may also unconditionally guarantee these short term loans, with the amount of the guarantee not to exceed \$300 million.

The Minister of Finance may also guarantee the performance by Nalcor Energy for an obligation of the corporation.

The *Energy Corporation Act* also states that notwithstanding the *Financial Administration Act*, the Lieutenant Governor-in-Council may advance monies to Nalcor Energy in order to enable Nalcor Energy to attain its objects or carry on business.



## Chapter 6 Powers of Corporation

The general powers of Nalcor Energy are set out in section 14 of the *Energy Corporation Act*. These general powers include:

- Entering into contracts or other agreements on behalf of the Crown to acquire and dispose of real and personal property;
- Acquire, lease, establish, construct, maintain and operate works in the Province or elsewhere in order to attain its objectives;
- 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;
- Contract for the purchase of petroleum products;
- Acquire real and personal property, water privileges, water powers, rights, easements, privileges, proprietary rights, interest and works of every description which the corporation considers necessary, convenient or advisable to acquire for or incidental to the exercise its powers, duties and attainment of its objects;
- Sell or dispose of real or personal property that the corporation considers unnecessary for the purposes of the corporation and grant an estate, term, easement, right or interest in property;
- Contract for the supply, transmission and distribution of power and the construction, maintenance and operation of works for the generation, transmission and distribution of that power;
- Deposit money or securities with a bank, trust company or other depositary in or outside of Canada;
- Lend money to or invest in a subsidiary of the corporation;
- Guarantee the repayment by a subsidiary of the corporation of money advanced to that subsidiary by a lender, including interest and all associated charges;
- Guarantee the performance by a subsidiary of the corporation of an obligation of that subsidiary to perform, fulfill or observe a covenant, obligation or provision of an agreement, deed, bond, promissory note or other document or instrument;
- Exercise and enjoy all of the privileges and immunities conferred on it by the *Energy Corporation Act* and do all acts necessary or incidental to the attainment of its objects;
- Carry on business incidental and subsidiary to the carrying out of its objects and necessary to enable the corporation to profitably carry out its objects;
- Generally do all things necessary, convenient or advisable to exercise the powers and the discharge of obligations of the corporation;

- Acquire, lease, construct, maintain, operate and use land, works, plants, buildings, structures, machinery, equipment, devices, pole lines, conduits, pipe lines, tunnels and other property for the carrying out of its objects; and
- All other powers that are incidental or conducive to the attainment of its objects.

Nalcor Energy is an agent of the Crown; it can acquire from the Crown in right of Canada, other provinces or agencies of the Crown in right of Canada or other provinces, real and personal property and rights of all kinds, enter into contracts with the Crown in right of Canada, other provinces or agencies of the Crown in right of Canada or the provinces, enter into a partnership, joint venture, equity arrangement or other arrangement with the Crown, an agent of the Crown, or another person, and appoint agents to act on its behalf.

The *Energy Corporation Act* also permits Nalcor Energy, with the prior approval of the Lieutenant Governor-in-Council, to borrow money and secure repayment of that money for purposes related to the attainment of its objects, up to a limit of \$600 million. Nalcor Energy can also raise short term loans for the attainment of its objects, not to exceed \$300 million, without the prior approval of the Lieutenant Governor-in-Council.

## Chapter 7 Procurement

The *Energy Corporation Act* exempts Nalcor Energy and its subsidiaries, excluding Hydro, from the *Public Tender Act*. Instead, Nalcor Energy must develop and adopt procurement principles that follow best industry practices for procurement and contracting, including transparent supplier development, monitoring and reporting that will apply to the corporation and its subsidiaries. These principles must be approved by the Lieutenant Governor-in-Council prior to implementation.

Nalcor Energy must submit a report to the Minister on its procurement activities summarizing the contracts entered into and identifying the supplies who have been awarded the contracts every six (6) months.

The Minister must table a summary of the procurement principles and the procurement reports in the House of Assembly. The process for tabling a document in the House of Assembly is set forth in Appendix B. Once the document is tabled or is deemed to have been tabled in the House of Assembly, Nalcor Energy must publish it on its website.

## Chapter 8 Communication

Communication is important to achieving accountability. In carrying out his or her duties, the Minister relies on a “No Surprises” commitment with Nalcor Energy. This entails open communication with full and timely information sharing with the Chairperson and Chief Executive Officer. The Minister and Chairperson must inform each other of ongoing issues and discuss how to address them.

The Minister must communicate to the Board of Directors, through the Chairperson, Cabinet’s mandate, performance expectations and ongoing policy direction for Nalcor Energy. The Minister must also provide feedback to Nalcor Energy in relation to the approval of its three-year Strategic Plan. In turn, the Chairperson must provide the Minister with regular updates on Nalcor Energy’s operations, advise the Minister of potentially contentious issues, major financial changes and any initiatives that could materially affect or impact government interests and must ensure that the Minister is provided with timely, relevant and accurate information. The Chairperson must communicate information that he or she receives from the Minister to the Board of Directors and CEO in a timely manner.

It is recommended that the Minister, or his/her representative, meet with the Chairperson and CEO of Nalcor Energy, or his/her representative, on a quarterly basis to ensure that regular, up-to-date communication between the Shareholder and Nalcor Energy occurs.

## **Section III: Governance Framework - Subsidiary**

Chapter 1: Establishing a Subsidiary

Chapter 2: Key Roles and Responsibilities

Chapter 3: Planning Requirements

Chapter 4: Reporting Requirements

Chapter 5: Composition and Appointment of the Board of Directors

Chapter 6: Financial

Chapter 7: Powers of Subsidiaries

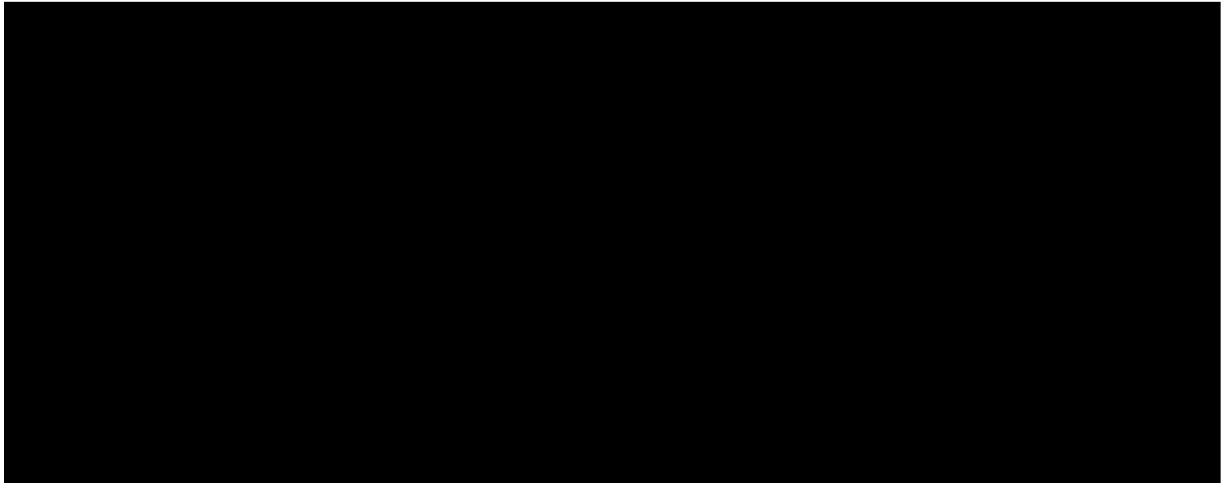
Chapter 8: Procurement

Chapter 9: Communication

## Chapter 1 Establishing a Subsidiary

### I. What is a Subsidiary?

The *Energy Corporation Act* states that a company is a subsidiary of Nalcor Energy if it is controlled by Nalcor Energy or is a subsidiary of a subsidiary of Nalcor Energy. A company is 'controlled' by Nalcor Energy if Nalcor Energy holds more than 50% of the votes for the election of directors or if it carries votes sufficient to elect a majority of the board of the directors of the company.



### II. Establishing a Subsidiary

Section 14.1 of the *Energy Corporation Act* sets out how a corporation becomes a subsidiary of Nalcor Energy and how a subsidiary is maintained.

In order to establish a company as a subsidiary, Nalcor Energy must first seek the approval of the Lieutenant Governor-in-Council. The objects of a subsidiary shall be some or all of the objects of Nalcor Energy as stated in section 5 of the *Energy Corporation Act* (more fully explained in Section 1, under "Mandate.") A subsidiary cannot engage in an activity that, if it were undertaken by Nalcor Energy, would require the prior approval of the Lieutenant Governor-in-Council, without the prior approval of Nalcor Energy. The *Energy Corporation Act* applies, with the necessary changes, and is considered to form the articles of incorporation of a subsidiary. Further, a subsidiary is not an agent of the Crown unless it has been designated as such by the Lieutenant Governor-in-Council when the Lieutenant Governor-in-Council approves the establishment of the subsidiary.

Section 14.1(6) applies to a subsidiary that is not an agent of the Crown. Where a subsidiary is not designated as a Crown agent, the property of the subsidiary and its debts and obligations are not property, debts and obligations of the Crown or an agent of the Crown. The subsidiary must be incorporated under the *Corporations Act*, unless the Lieutenant Governor-in-Council gives approval for incorporation under the laws of another

jurisdiction. The Board of Directors of non-Crown agent subsidiaries are appointed by the Board of Directors of Nalcor Energy and must be comprised of not less than five (5) and not more than ten (10) members. The subsidiaries must have a specific number of independent directors, depending on the size of the Board. Where the board has five (5) or six (6) members, two (2) independent directors; where the board has seven (7) or eight (8) members, three (3) independent directors; where the board has nine (9) or ten (10) members, four (4) independent directors. The *Energy Corporation Act* defines 'independent director' as a person who is not a member of the board of directors of Nalcor Energy or another subsidiary of Nalcor Energy or an employee or officer of Nalcor Energy or another subsidiary of Nalcor Energy or the Crown. The chief executive officer of the subsidiary is appointed by the board of directors of the subsidiary. Section 10 of the *Transparency and Accountability Act* also requires the approval of the Lieutenant Governor-in-Council when a corporation is incorporated under the *Corporations Act*.

Section 14.1(6) of the *Energy Corporation Act* does not apply to Churchill Falls (Labrador) Corporation Limited, Lower Churchill Development Corporation Limited, Gull Island Power Corporation or Twin Falls Power Corporation.

### III. Nalcor Energy – Hydro

When Nalcor Energy was created, Newfoundland and Labrador Hydro was designated a subsidiary of Nalcor Energy and is now Nalcor Energy – Hydro ("Hydro"). As Hydro existed prior to the creation of Nalcor Energy, it has its own enabling legislation. Pursuant to the *Hydro Corporation Act, 2007*, Hydro is designated as an agent of the Crown. The objects of Hydro are found in section 5 of the *Hydro Corporation Act, 2007*, and are more fully explained in Section 1, under "Mandate."

The Board of Directors of Hydro are appointed by the Lieutenant Governor-in-Council and must be comprised of not less than five (5) and not more than fourteen (14) persons. The Chairperson and Chief Executive Officer of each company are appointed by the Lieutenant Governor-in-Council. The same person may not hold the offices of Chairperson and Chief Executive Officer at the same time. Any vacancy is filled by the Lieutenant Governor-in-Council. The remuneration of the Board of Directors, including the Chairperson and Chief Executive Officer is set by the Lieutenant Governor-in-Council.

## Chapter 2 Key Roles and Responsibilities

As noted in Section 2: Governance Framework, the key players in a governance framework of a corporation include the Shareholder, the Board of Directors and Management.

### I. The Shareholder: Nalcor Energy

Nalcor Energy, not the Department of Natural Resources, is the Shareholder of a subsidiary. Nalcor Energy is the owner and investor and establishes the purpose and mandate of a subsidiary. It is responsible for communicating that mandate to the board of directors of a subsidiary.<sup>26</sup> It also advises the board of directors of a subsidiary of strategic government decisions that may impact the subsidiary. Nalcor Energy must monitor a subsidiary's performance and hold the Board of Directors of a subsidiary accountable. Nalcor Energy is in turn held accountable to the Department of Natural Resources.

### II. The Shareholder's Representatives

#### A. The Nalcor Energy Board of Directors

The Nalcor Energy Board of Directors is the link between a subsidiary and the Department of Natural Resources. The Nalcor Energy Board of Directors is not responsible for the day-to-day activities of a subsidiary. Generally, the Nalcor Energy Board of Director is responsible for:

- Fostering an effective working relationship with the Board of Directors of the subsidiary and senior management of a subsidiary;
- Communicating the mandate, performance expectations and ongoing policy direction and ensuring implantation of that mandate;
- Fulfilling responsibilities indicated in legislation; and
- Informing the Minister of Natural Resources and/or the Minister of Finance of any issue that may materially impact government's financial reporting or planning.<sup>27</sup>

#### B. The Lieutenant Governor in Council and Cabinet

The Lieutenant-Governor-in-Council is responsible for approving the establishment of a corporation as a subsidiary of Nalcor Energy. It is also responsible for designating a subsidiary as a non-Crown agent.



Under the *Hydro Corporation Act, 2007*, the Lieutenant Governor-in-Council:

- Appoints the Board of Directors, the Chairperson and the Chief Executive Officer of Hydro and fixes the rate of remuneration for the Board of Directors, the Chairperson and the Chief Executive Officer (sections 6 and 7);
- Approves the borrowing and repayment of money by Hydro and the terms and conditions associated with same. This power can be delegated to the Minister of Finance (section 20);
- Approves the guarantee and the form and manner of guarantee by the Crown of loans obtained by Hydro. This power can be delegated to the Minister of Finance (section 21 and 22);
- Sets the total amount of short terms loans and the total of guarantees of short term loans that Hydro may raise (section 25);
- Approves a performance guarantee (section 27);
- Approves loans by Government to Hydro (section 28); and
- Appoints an auditor to carry out a specific audit of Hydro's accounts and business as the Lieutenant Governor-in-Council considers necessary (Section 33).

Under section 39(3) of the *Hydro Corporation Act, 2007*, the Lieutenant Governor-in-Council may also give direction to the Board of Directors of Hydro as if the Crown were the beneficial owner of Hydro. When the Lieutenant Governor-in-Council chooses to give such direction, it must inform the Board of Directors of Nalcor Energy.

### **C. The Minister of Finance**

The Minister of Finance is generally responsible for providing strategic leadership across the public service on the financial and economic implications of its policy decisions. The Minister of Finance has specific responsibilities under the *Energy Corporation Act* with respect to subsidiaries, including:

- With prior approval from the Lieutenant Governor-in-Council, unconditionally guarantees loans issued under the Act by a subsidiary (section 19) and may be required to sign the guarantee (section 20); and
- With prior approval from the Lieutenant Governor-in-Council, guarantees the performance of a subsidiary (section 25).

With respect to Hydro, under the *Hydro Corporation Act, 2007*, the Minister of Finance:

- Where authority has been delegated by the Lieutenant Governor-in-Council, approves the form and terms and conditions under which Hydro may borrow and repay money (section 20);

- With prior approval from the Lieutenant Governor-in-Council, unconditionally guarantees loans issued under the Act by Hydro (section 21) and may be required to sign the guarantee (section 22);
- Unconditionally guarantees short terms loans by Hydro and ensures that the total of short term loans and guarantees does not exceed the limit set by the Lieutenant Governor-in-Council (section 25);
- Enters into agreements setting out the terms and conditions of a guarantee of a loan made under this Act (section 26);
- With prior approval from the Lieutenant Governor-in-Council, guarantees the performance of Hydro (section 27); and
- Makes a payment or advance that the Crown as approved or which is required under this Act (section 28).

Under section 16 the *Hydro Corporation Act, 2007*, the Minister of Finance may enter in an agreement with Hydro to provide for the transfer to and assumption by the Hydro Pension Plan of the assets and liabilities of the Public Service Pension Plan and the Government Money Purchase Plan.

### III. The Subsidiary

The general responsibilities of a subsidiary is to achieve its mandate and meet the performance expectations of the Shareholder, establish and implement corporate policies and procedures consistent with the Shareholder's general direction, provide the Shareholder with reports and other information to enable the Shareholder to carry out its responsibilities, and ensure that the strategies, policies and plans support the achievement of the Shareholders objectives.<sup>28</sup>

Best practices dictate that a subsidiary provide the Nalcor Energy Board of Directors with:

- An annual report detailing the subsidiary's activities for the previous fiscal year containing an audited consolidated financial statement of the corporation and a report by the board of directors giving an account of the activities of the subsidiary;
- An annual corporate business plan for the subsidiary outlining its operational goals and objectives for the succeeding fiscal year; and
- An annual capital and operating budget for the subsidiary for the succeeding financial year.

Pursuant to the *Energy Corporation Act*, subsidiaries must:

- Follow the procurement principles established by Nalcor Energy and submit a report to the Minister on its procurement activities every 6 (six) months (section 17.1(4)).

Under the *Hydro Corporation Act, 2007*, Hydro must:

- With the prior approval of the Lieutenant Governor-in-Council, enter into an agreement with a person that provides for his or her appointment to the office of Chairperson or Chief Executive Officer of Hydro (section 9);
- Adopt and maintain the depreciation and amortization policies of the corporation as recommended by Board of Commissioners of the Public Utilities that are reflected in the audited financial statements of the corporation for the year ended December 31, 1994 (section 15(1));
- Adopt and maintain the rate stabilization plan of the corporation on the basis reflected in the audited financial statements of the corporation for the year ended December 31, 1994 (section 15(2));
- No later than 30 November, provide the Minister with a capital and operating budget for the corporation for the succeeding financial year (section 32); and
- Administer the Newfoundland and Labrador Hydro-electric Corporation Fund, which is separate and distinct from the Consolidated Revenue Fund (section 34).

A subsidiary incorporated under the *Corporations Act* must:

- Prepare and maintain records containing the articles and by-laws and all amendments to the articles and by-laws, and a copy of a unanimous shareholder agreement; minutes of meetings and resolutions of shareholders, copies of all notices required by the *Corporations Act*, and a securities register complying with section 96 of the *Corporations Act* (section 36);
- Prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and a committee of directors (section 37); and
- Ensure that the above noted documents are not lost, destroyed, or falsified (section 41).

#### **IV. The Subsidiary's Representatives**

##### **A. The Board of Directors of a Subsidiary**

The Board of Directors of a subsidiary is responsible for overseeing the management of the subsidiary's business and affairs and is accountable to the Shareholder for the performance of the subsidiary. Its responsibilities fall into the following general areas: management of board affairs, shareholder mandate, strategy and plans, financial and corporate issues, reporting and communications. Generally, the Board of Directors of a subsidiary is responsible for:

- Meeting their fiduciary duty to act honestly and in good faith;
- Avoiding conflicts of interests and the perception of a conflict of interest;

- Maintaining appropriate confidentiality;
- Establishing policies that are necessary for the reasonable and prudent operation of the corporation, including policies on governance, risk management, conflicts of interest, and communications;
- Ensuring the corporation is in compliance with statutory obligations and applicable legislation; and
- Approving the strategies, policies and plans necessary to fulfill its mandate including an annual corporate business plan, annual report, and annual budget.<sup>29</sup>

Under the *Energy Corporation Act*, the Board of Directors of a subsidiary must:

- Appoint the Chief Executive Officer of the subsidiary (section 14.1(6)(f)); and
- Annually appoint an auditor to audit the financial statements of the subsidiary, fix the remuneration of the auditor and ensure that two directors sign the financial statements of the subsidiary to attach to the auditor's report (section 31).

Under the *Hydro Corporation Act, 2007*, the Board of Directors of Hydro must:

- Exercise the powers of Hydro by a resolution of the Board (section 6);
- During the absence or incapacity of the Chief Executive Officer, appoint an acting Chief Executive Officer (section 7(6));
- Make by-laws regarding: the calling of meetings of the board; the establishment of a quorum; the conduct of business at meetings and establishing committees of the board and delegating duties to those committees; the duties and conduct of the directors, officers and employees of Hydro; the common seal of Hydro and its use; the execution of a contract or instrument on behalf of Hydro; the mechanical reproduction of signatures of the corporation or the common seal of the corporation; the management and use of its property by employees, invitees, licensees, or permittees of the corporation; and generally for the conduct and management of the affairs of Hydro (section 10);
- Appoint officers, managers, staff and other employees and retain consultants, advisors and other professional persons it considers necessary and fix their remuneration and terms of service (section 11); and
- Annually appoint an auditor to audit the financial statement of the corporation, fix the remuneration of the auditor and ensure that two directors sign the financial statement of the corporation to attach to the auditor's report (section 33).

The Board of Directors for a subsidiary incorporated under the *Corporations Act* must:

- Subject to a unanimous shareholders agreement, exercise the powers of the subsidiary and direct the management of the business and affairs of the subsidiary (section 167);

- Make, amend, or repeal by-laws that regulate the business or affairs of the subsidiary to be submitted at the next shareholders meeting (section 170);
- Ensure that at least 25% of the directors are resident Canadians (section 174);
- Appoint officers, specify the duties and delegate the powers to manage the business and affairs of the subsidiary, subject to the articles, by-laws of a unanimous shareholders agreement (section 202);
- Act honestly and in good faith, exercise the care, diligence and skill that a reasonably prudent person in comparable circumstances would exercise, and comply with the provisions of the *Corporations Act*, the regulations, articles, by-laws and a unanimous shareholders agreement (section 203);
- Call an annual meeting of the shareholders no later than 18 months after the subsidiary comes into existence and subsequently no later than 15 months after the preceding annual meeting (section 217);
- Provide the shareholder with comparative financial statements of the current fiscal year and preceding fiscal year with a report of the auditor (section 258);
- Approve the financial statements, evidenced by the signature of one or more directors (section 261); and
- Comprise an audit committee of directors of review the financial statements of the corporation (section 276).

## **B. The Chairperson**

The Chairperson is the formal link between a subsidiary and the Shareholder. The Chairperson is the leader and main spokesperson for the Board of Directors of a subsidiary and represents the Board of Directors of a subsidiary and its interests in dealing with the Chief Executive Officer, the Nalcor Energy Board of Directors, and the Department of Natural Resources. Generally, the Chairperson is responsible for:

- Fostering an effective working relationship with the Nalcor Energy Board of Directors;
- Ensuring the Nalcor Energy Board of Directors is provided with timely, relevant, accurate and complete reports to enable it to assess whether the subsidiary is fulfilling its mandate;
- Receiving mandate direction from the Nalcor Energy Board of Directors and communicating that direction to the Board of Directors of the subsidiary;
- Planning and managing Board meetings;
- Ensuring that the Board of Directors of the subsidiary and its committees meet independent of Management;
- Ensuring the Board of Directors of the subsidiary conduct an annual review of its performance, the performance of individual Board members and the performance of the Chief Executive Officer; and

- Identifying and requesting the resources necessary for the Board of Directors of the subsidiary to fulfill its duties.<sup>30</sup>

Under the *Energy Corporation Act* and the *Hydro Corporation Act, 2007*, the Chairperson must ensure that minutes are kept of the meetings of the board (section 8).

### C. The Chief Executive Officer

The Chief Executive Officer (CEO), while also sitting on the Board of Directors of a subsidiary, manages the day-to-day activities and guides the subsidiary towards achieving its strategic goals. The CEO is generally responsible for:

- Providing leadership, general supervision, and control of the subsidiary's day-to-day operations in accordance with Board-approved plans and policies;
- Ensuring business plans are effectively implemented, monitored and reported to the Board of Directors of the subsidiary;
- Working with the Board of Directors of the subsidiary to prepare the annual corporate business plan, annual report, and annual budget for the subsidiary;
- Ensuring the Board of Directors of the subsidiary has all the information before it to make informed decisions on matters within its mandate; and
- Maintaining effective communications with the Chairperson to discuss major developments and progress in achieving the corporation's objectives.<sup>31</sup>

Under the *Hydro Corporation Act, 2007*, the CEO is charged with the general direction, supervision and control of the business of the Board and Hydro (section 7).

### D. Management

Management is responsible for the daily operations of a subsidiary including providing leadership, general supervision in the management and control of the corporation's day-to-day operations in accordance with Board approved plans and policies.<sup>32</sup>

## Chapter 3 Planning Requirements

Nalcor Energy is subject to planning requirements under the *Energy Corporation Act* and the *Transparency and Accountability Act*. The [REDACTED] Strategic Plan required under these acts require Nalcor Energy to include the activities of a subsidiary. For this reason, a subsidiary of Nalcor Energy is not subject to these same legislative requirements. However, a subsidiary is subject to other legislative requirements and should also follow corporate governance best practices in terms of planning.

[REDACTED]

### II. Annual Budget

#### A. Hydro

Under the *Hydro Corporation Act, 2007*, Hydro must file with the Minister an annual budget by November 30 in each year. The budget must contain the estimated capital and operating expenses of Hydro for the next succeeding financial year. As part of the budgetary process, the Minister and staff should consult with Hydro to discuss the forthcoming budget, clarify expectations and identify critical issues and concerns. The Minister should also share information about the province's fiscal condition. Following these consultations, Hydro must forward its projected financial requirements for the upcoming year to the Minister. After the provincial budget has been tabled and relevant capital and operating grant allocations are determined, the Minister must provide Hydro with an allocation approval letter outlining the details of its forthcoming budget. At this time, the Minister and/or departmental staff should meet with the Chairperson of Hydro to review the budget details.

[REDACTED]

## Chapter 4 Reporting Requirements

The *Energy Corporation Act* and the *Transparency and Accountability Act* require Nalcor Energy to report on an annual basis. These public reports also detail the activities of Nalcor Energy's subsidiaries. For this reason, a subsidiary is not subject to the same legislative requirements. However, a subsidiary is subject to other legislative requirements and should also follow corporate best practices in terms of reporting. A subsidiary is also expected to inform Nalcor Energy of all emerging issues on an ongoing basis.

### III. Audit and Financial Statement

Under the *Energy Corporation Act* and the *Hydro Corporation Act, 2007*, a subsidiary of Nalcor Energy must annually appoint an auditor to annually audit the financial statements of the subsidiary. These financial statements must be signed by two directors of the subsidiary and be attached to the auditor's report. The report of the auditor must state whether the



financial statements fairly represent the financial position of the subsidiary and the results of its operation for the period under review and whether the financial statements were prepared in accordance with generally accepted accounting principles.

#### **IV. Procurement Report**

Subject to the prior approval of the Lieutenant-Governor-in-Council, Nalcor Energy is required to develop and adopt procurement principles that follow best industry practices for procurement and contracting. A Nalcor Energy subsidiary, excluding Hydro, must adopt and follow these principles. The *Energy Corporation Act* also requires a subsidiary report to the Minister on its procurement activities, including a summary of contracts entered into and the identities of suppliers to whom the contracts have been awarded every six (6) months.

The Minister must table a summary of the procurement principles and the procurement reports in the House of Assembly. The process for tabling a document in the House of Assembly is set forth in Appendix B. Once the document is tabled or is deemed to have been tabled in the House of Assembly, Nalcor Energy must publish it on their website.

This provision of the *Energy Corporation Act* does not apply to Hydro as Hydro is subject to the requirements of the *Public Tender Act*.

#### **V. Annual Meeting**

Subsidiaries incorporated under the *Corporations Act* must hold an annual meeting with its shareholder eighteen (18) months after the subsidiary comes into existence and subsequently no later than fifteen (15) months after the preceding annual meeting. Although not legislatively required to do so, best practices dictate the Hydro should also hold an annual meeting with its shareholder.

## Chapter 5 Composition and Appointment of the Board of Directors

### I. Hydro

Pursuant to the *Hydro Corporation Act, 2007*, the Board of Directors of Hydro are appointed by the Lieutenant-Governor-in-Council and must be comprised of not less than five (5) and not more than fourteen (14) persons. The Chairperson and Chief Executive Officer of each company are appointed by the Lieutenant-Governor-in-Council. A person may not hold the offices of Chairperson and Chief Executive Officer at the same time. Any vacancy is filled by the Lieutenant-Governor-in-Council. The remuneration of the Board of Directors, including the Chairperson and Chief Executive Officer, is set by the Lieutenant-Governor-in-Council.

Cabinet policy regarding the appointment of persons to the Board of Directors states that a committee of members from the Board of Directors is responsible for the nomination of potential directors. While the committee recommends candidates, the final decision for Board appointments remains with the Lieutenant Governor-in-Council and is not limited to those individuals recommended by the Committee. For future appointments, the Order-in-Council will specify that a director is to continue to serve after the expiration of his or her term until a replacement has been appointed to ensure continuity on the board as replacements are identified and appointed. The policy also stipulates, in keeping with practices of publicly traded companies, that a majority of the members of the Board, including the Chairperson, should be independent and should satisfy the following criteria:

- Not be employed by Nalcor Energy or any of its subsidiaries or affiliates (now or in the past two years);
- Not have a family member employed in a senior management position at Nalcor Energy or its subsidiaries;
- Not benefit from a business relationship with Nalcor Energy in the past year that could impair the independent judgment of the director;
- Not receive remuneration from Nalcor Energy or any of its subsidiaries, except for director's fees or post-retirement benefits in the past year; and
- Not be a partner or employee of the current external auditor during the previous two years.

### II. Non-Crown Agents

Pursuant to the *Energy Corporation Act*, the Board of Directors of non-Crown Agent subsidiaries of Nalcor Energy are appointed by the Board of Directors of Nalcor Energy and must be comprised of not less than five (5) and not more than ten (10) members. The subsidiaries must have a specific number of independent directors, depending on the size of the Board. Where the board has five (5) or six (6) members, two (2) independent directors;

where the board has seven (7) or eight (8) members, three (3) independent directors; where the board has nine (9) or ten (10) members, four (4) independent directors. *The Energy Corporation Act* defines 'independent director' as a person who is not a member of the Board of Directors of Nalcor Energy or another subsidiary of Nalcor Energy or an employee or officer of Nalcor Energy or another subsidiary of Nalcor Energy or the Crown. The Chief Executive Officer of a subsidiary is appointed by the Board of Directors of the subsidiary. The *Energy Corporation Act* states that these provisions do not apply to Churchill Falls (Labrador) Corporation Limited, Lower Churchill Development Corporation Limited, Gull Island Power Corporation or Twin Falls Power Corporation.

## Chapter 6 Financial

The *Energy Corporation Act* and the *Hydro Corporation Act, 2007*, set out the terms and conditions regarding financial matters for a subsidiary of Nalcor Energy.

### I. General

The financial year for a subsidiary of Nalcor Energy, including Hydro, is a calendar year. Hydro is required by the *Hydro Corporation Act, 2007* to submit to the Minister, not later than November 30 of each year, a capital and operating budget for the succeeding financial year.

Pursuant to the *Energy Corporation Act*, a subsidiary must annually appoint an auditor to annually audit the financial statements of the subsidiary. The financial statements of each subsidiary must be signed by two directors and be attached to the auditor's report. The report of the auditor must state whether the financial statements fairly represent the financial position of the subsidiary and the results of its operation for the period under review and whether the financial statements were prepared in accordance with generally accepted accounting principles.

### II. Loans and Guarantees

#### A. Hydro

Hydro, with the prior approval of the Lieutenant-Governor-in-Council, may borrow money, up to \$600 million, for purposes related to the attainment of its objects as set out in the *Hydro Corporation Act, 2007*. It can secure the repayment of such a loan under the terms and conditions as approved by the Lieutenant-Governor-in-Council, or where that authority has been delegated, by the Minister of Finance. These loans may be unconditionally guaranteed by the Minister of Finance, with prior approval of the Lieutenant-Governor-in-Council, with the amount of the guarantee not to exceed \$600 million.

Hydro, without the approval of the Lieutenant-Governor-in-Council, can obtain short term loans for a period not exceeding two years and to an amount not exceeding \$300 million. It is the duty of the Minister of Finance to ensure that this amount is not exceeded. The Minister of Finance may also unconditionally guarantee these short term loans, with the amount of the guarantee not to exceed \$300 million.

The Minister of Finance may also guarantee the performance by Hydro, or a subsidiary of Hydro, for an obligation of the Hydro.

The *Hydro Corporation Act, 2007*, also states that notwithstanding the *Financial Administration Act*, the Lieutenant-Governor-in-Council may advance monies to Hydro in order to enable Hydro to attain its objects or carry on business.

#### **B. Non-Crown Agents**

A subsidiary of Nalcor Energy, with the prior approval of Nalcor Energy, may borrow money, up to \$600 million, for purposes related to the attainment of its objects as set out in the *Energy Corporation Act*. It can also secure the repayment of such a loan under the terms and conditions as approved by Nalcor Energy, or where that authority has been delegated, by the Minister of Finance. These loans may be unconditionally guaranteed by the Minister of Finance, with prior approval of the Lieutenant-Governor-in-Council, with the amount of the guarantee not to exceed \$600 million.

A subsidiary, without the approval of Nalcor Energy, can obtain short term loans for a period not exceeding two years and to an amount not exceeding \$300 million. It is the duty of the Minister of Finance to ensure that this amount is not exceeded. The Minister of Finance may also unconditionally guarantee these short term loans, with the amount of the guarantee not to exceed \$300 million.

The Minister of Finance may also guarantee the performance by a subsidiary for an obligation of the subsidiary.

## Chapter 7 Powers of a Subsidiary

The general powers of a subsidiary are the same as the general powers of Nalcor Energy and are set out in section 14 of the *Energy Corporation Act*, and for Hydro, in section 14 of the *Hydro Corporation Act, 2007*. These general powers include:

- Entering into contracts or other agreements on behalf of the Crown to acquire and dispose of real and personal property;
- Acquire, lease, establish, construct, maintain and operate works in the Province or elsewhere in order to attain its objectives;
- Purchase from a person and transmit, make available for use, distribute, deliver, sell, supply and generally use the power for the purposes of the corporation;
- Contract for the purchase of petroleum products;
- Acquire real and personal property, water privileges, water powers, rights, easements, privileges, proprietary rights, interest and works of every description which the corporation considers necessary, convenient or advisable to acquire for or incidental to the exercise its powers, duties and attainment of its objects;
- Sell or dispose of real or personal property that the corporation considers unnecessary for the purposes of the corporation and grant an estate, term, easement, right or interest in property;
- Contract for the supply, transmission and distribution of power and the construction, maintenance and operation of works for the generation, transmission and distribution of that power;
- Deposit money or securities with a bank, trust company or other depository in or outside of Canada;
- Lend money to or invest in a subsidiary of the corporation;
- Guarantee the repayment by a subsidiary of the corporation of money advanced to that subsidiary by a lender, including interest and all associated charges;
- Guarantee the performance by a subsidiary of the corporation of an obligation of that subsidiary to perform, fulfill or observe a covenant, obligation or provision of an agreement, deed, bond, promissory note or other document or instrument;
- Exercise and enjoy all of the privileges and immunities conferred on it by the *Energy Corporation Act* (or in the case of Hydro, the *Hydro Corporation Act, 2007*) and do all acts necessary or incidental to the attainment of its objects;
- Carry on business incidental and subsidiary to the carrying out of its objects and necessary to enable the corporation to profitably carry out its objects;
- Generally do all things necessary, convenient or advisable to exercise the powers and the discharge of obligations of the corporation;

- Acquire, lease, construct, maintain, operate and use land, works, plants, buildings, structures, machinery, equipment, devices, pole lines, conduits, pipe lines, tunnels and other property for the carrying out of its objects; and
- All other powers that are incidental or conducive to the attainment of its objects.

For a subsidiary that is incorporated under the *Corporations Act*, the *Transparency and Accountability Act* states that the Lieutenant-Governor-in-Council may also determine the purposes, powers, governance structure, and authority to borrow and incur debt.

Hydro, as an agent of the Crown, can acquire from the Crown in right of Canada, other provinces or agencies of the Crown in right of Canada or other provinces, real and personal property and rights of all kinds, enter into contracts with the Crown in right of Canada, other provinces or agencies of the Crown in right of Canada or the provinces, enter into a partnership, joint venture, equity arrangement or other arrangement with the Crown, an agent of the Crown, or another person, and appoint agents to act on its behalf.

## Chapter 8 Procurement

The *Energy Corporation Act* exempts Nalcor Energy and its subsidiaries, excluding Hydro, from the *Public Tender Act*. Instead, Nalcor Energy must develop and adopt procurement principles that follow best industry practices for procurement and contracting, including transparent supplier development, monitoring and reporting that will apply to the corporation. A subsidiary of Nalcor Energy, other than Hydro, must follow these principles, report to the Minister on their procurement activities, and submit a report to the Minister summarizing the contracts entered into and identifying the suppliers who have been awarded the contracts every six (6) months.

The Minister must table a summary of the procurement principles and the procurement reports in the House of Assembly. The process for tabling a document in the House of Assembly is found in Appendix B. Once the document is tabled or is deemed to have been tabled in the House of Assembly, Nalcor Energy must publish it on their website.



## Chapter 9 Communication

Communication is important to achieving accountability. Just as the Minister of Natural Resources relies on a “No Surprises” commitment with Nalcor Energy, the Nalcor Energy Board of Directors relies on a “No Surprises” commitment from its subsidiaries.

The Nalcor Energy Board of Directors is required to communicate to the Board of Directors of a subsidiary, through the Chairperson, the mandate, performance expectations and ongoing policy direction of the subsidiary. The Chairperson of the subsidiary must provide the Nalcor Energy Board of Directors with regular updates on the subsidiary’s operations, advise of potentially contentious issues, major financial changes and any initiatives that could materially affect or impact Nalcor Energy or government interests and must ensure that the information being provided is timely, relevant and accurate. The Chairperson of a subsidiary is also required to communicate information that he or she receives from the Nalcor Energy Board of Directors to the Board of Directors and Chief Executive Officer of the subsidiary.

## APPENDIX

Appendix A: Events Calendar

Appendix B: Process for Tabling a Document in the House of Assembly



Appendix D: *Energy Corporation Act*

Appendix E: *Hydro Corporation Act, 2007*

Appendix F: *Transparency and Accountability Act*

## Appendix A: Events Calendar

<i>Act</i>	<i>Reporting Requirements</i>	<i>Timing</i>	<i>Directed to</i>	<i>Resources</i>
<i>Energy Corporation Act</i>				
	Annual Business and Financial Report detailing the activities of the corporation and subsidiaries for previous fiscal year.	April 30	Minister of Natural Resources for consideration and tabling in the Legislative Assembly. Nalcor Energy to publish on website.	See legislation and confer with the Department of Natural Resources regarding form and content.
	Annual Public meeting	Within sixty (60) days of publication of Annual Business and Financial Report		
	Annual Capital and Operating Budget for upcoming fiscal year.	November 30	Minister of Natural Resources must forward to the Minister of Finance for consideration	Confer with the Department of Natural Resources regarding form and content.
	Procurement Report summarizing procurement activities.	Every six months	Minister of Natural Resources for consideration and tabling in the Legislative Assembly. Nalcor Energy to publish on website	Confer with the Department of Natural Resources regarding form, content and due date.
<i>Hydro Corporation Act, 2007</i>	Annual Capital and Operating Budget for upcoming fiscal year for Hydro	November 30	Minister of Natural Resources must forward to the Minister of Finance for consideration	Confer with the Department of Natural Resources regarding form and content.
<i>Transparency and Accountability Act</i>	Three (3) year Strategic Plan outlines goals and performance targets consistent with government's strategic priorities and mandate direction.	June 30	Minister of Natural Resources for approval and tabling in the Legislative Assembly. Nalcor Energy to publish on website.	See "Guidelines for Multi-Year performance-Based Planning" on the Transparency and Accountability Office website
	Annual Performance Report reports on actual results against Strategic Plan goals	June 30	Minister of Natural Resources for approval and tabling in the Legislative Assembly. Nalcor Energy to publish on website.	See "Guidelines for Annual Reports: Category 1 Government Entities" on the Transparency and Accountability Office website
<i>Corporations Act</i>	Annual Meeting for subsidiaries incorporated under the Corporations Act	Eighteen (18) months after corporation comes into existence and fifteen every (15) subsequent months		

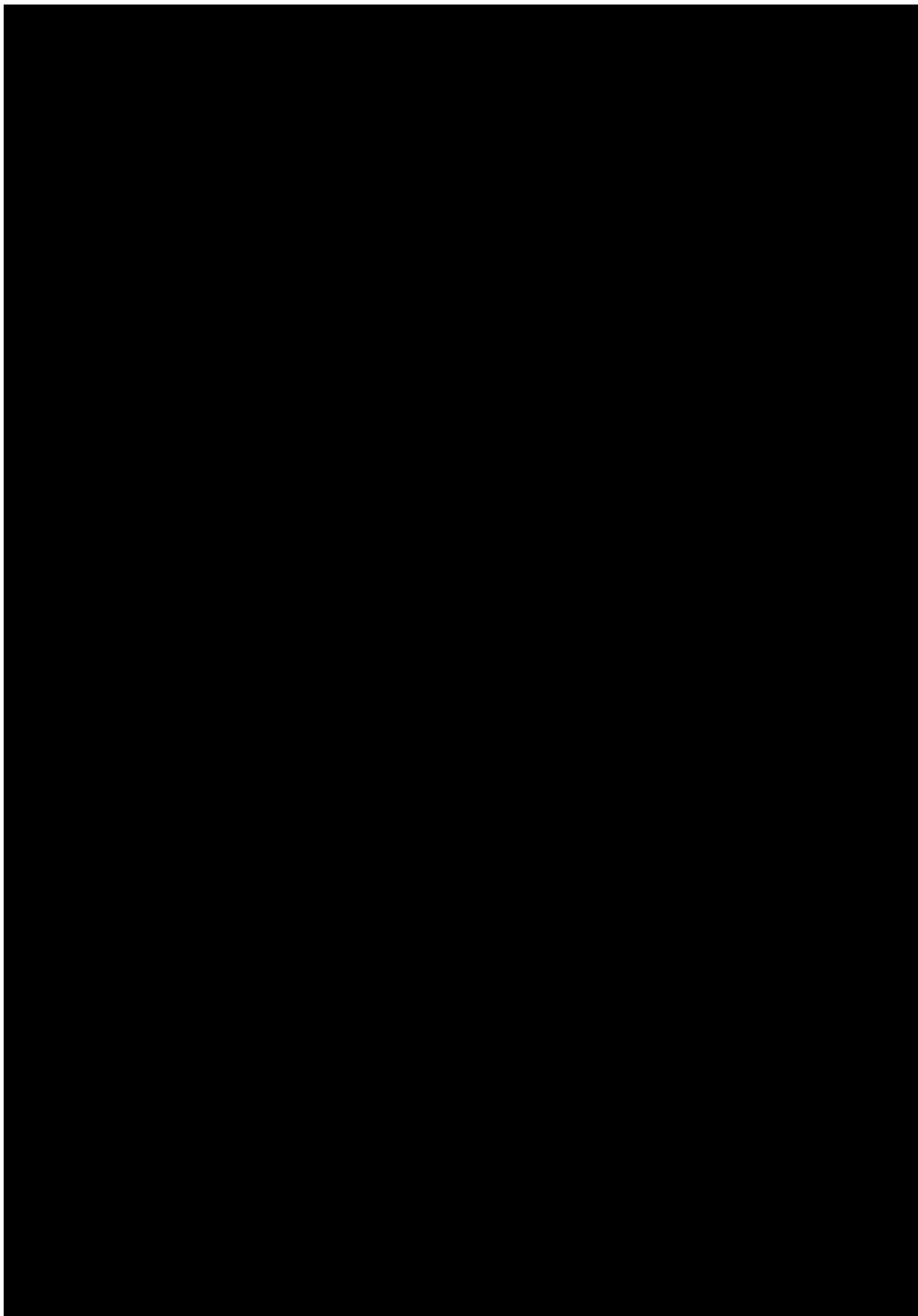
## **Appendix B: Procedure for Tabling a Document in the House of Assembly**

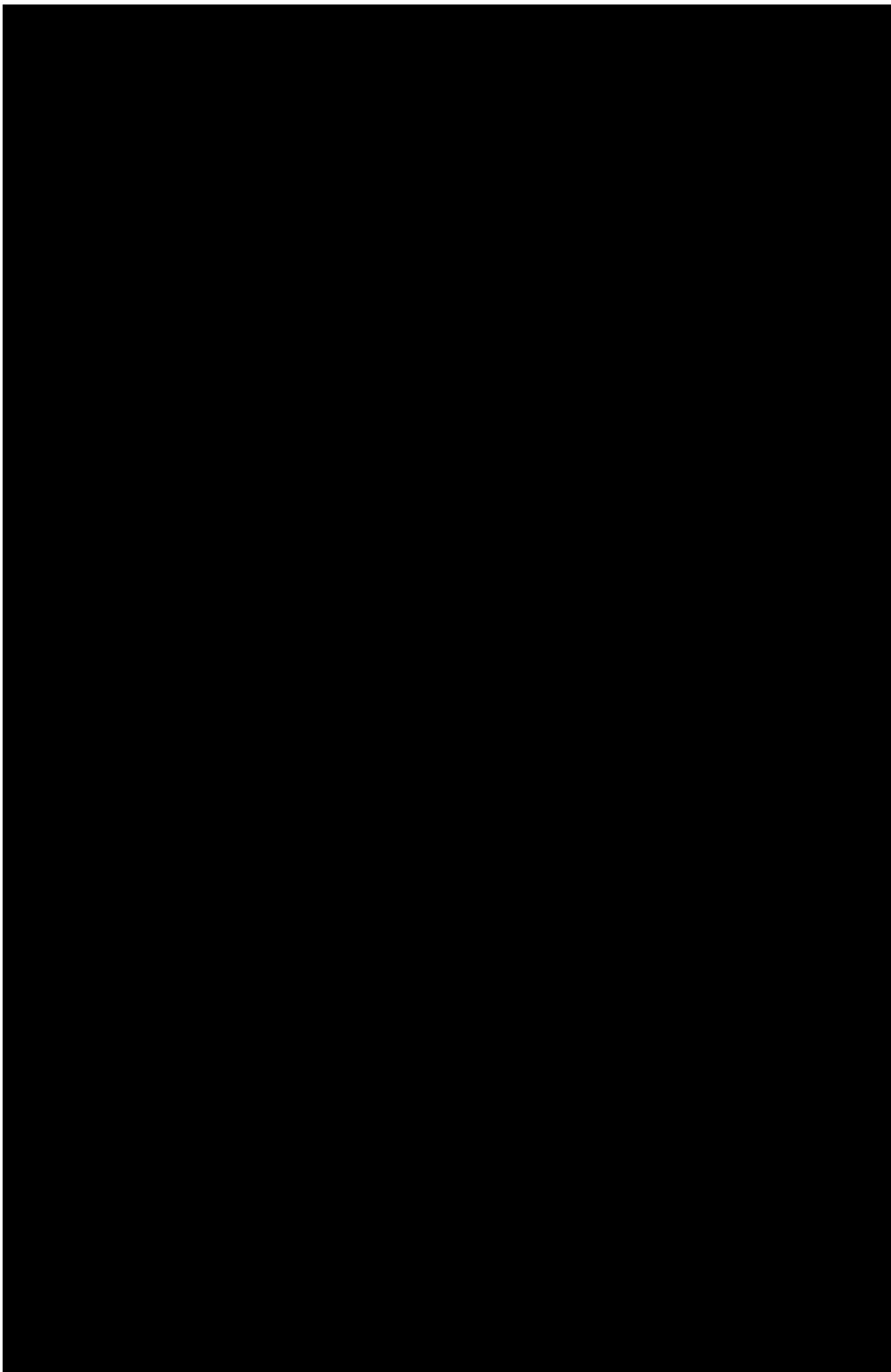
When the House is open:

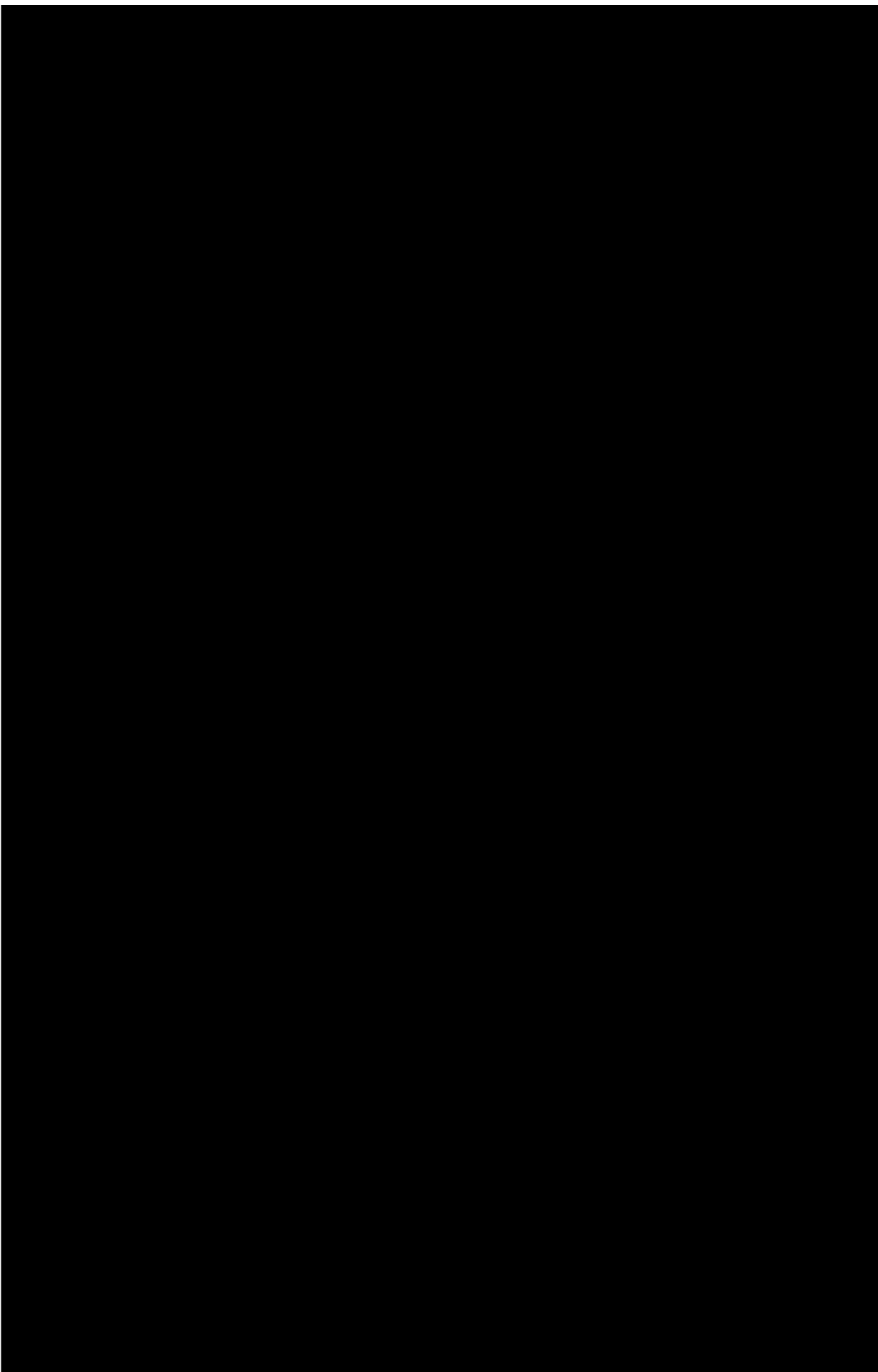
- Fifteen (15) paper copies of the document must be submitted to the House of Assembly, Clerk's Office, by 1:00 p.m. on the day of tabling.
- Two hard copies of the document must be forwarded to the Transparency and Accountability Office
- The Minister will coordinate the timing of the tabling through the Legislative Assistant to the Government House Leader.
- An electronic copy of the document, in PDF format, must be emailed to the Information Specialist of the Legislative Library and copied to the Manager of the Legislative Library and the Transparency and Accountability Office.
- The Clerk of the House of Assembly will ensure the document is distributed to the members of the House of Assembly.

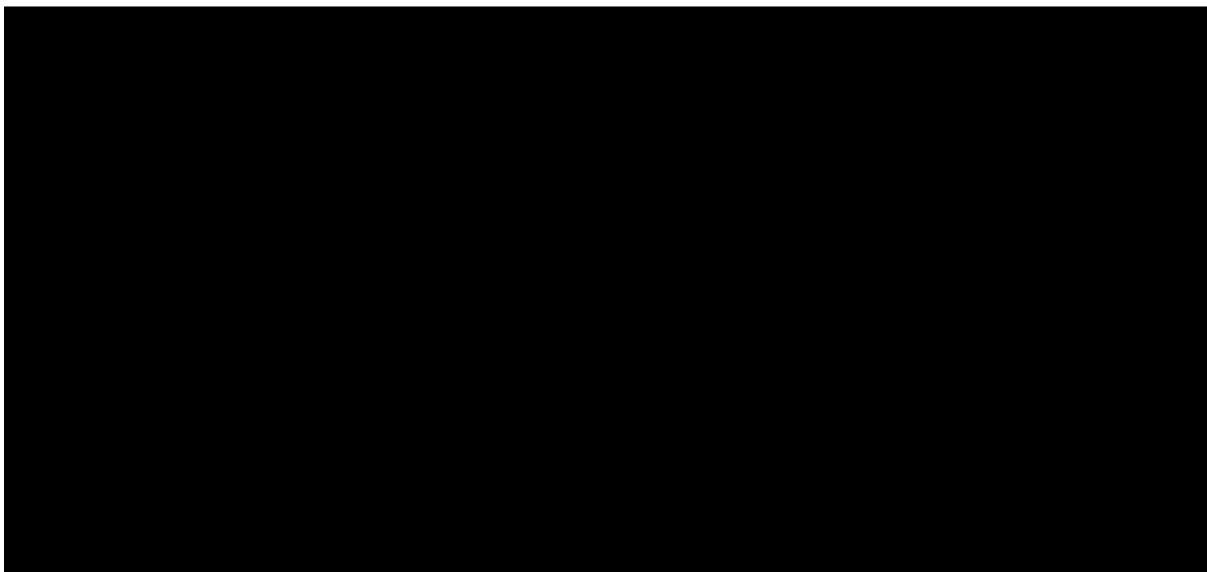
When the House is closed:

- Ten (10) paper copies of the document must be submitted to the House of Assembly, Clerk's Office.
- A transmittal letter must be attached to the ten (10) copies addressed to the Clerk of the House of Assembly indicating the Minister's intent to table the document.
- The Transmittal letter must also be copied to the Transparency and Accountability Office along with two (2) paper copies of the document.
- An electronic copy of the document, in PDF format, must be emailed to the Information Specialist of the Legislative Library and copied to the Manager of the Legislative Library and the Transparency and Accountability Office.
- The Clerk of the House of Assembly will ensure the document is distributed to the members of the House of Assembly.











## **Appendix D: *Energy Corporation Act***

(Copy of Act to be inserted)

## **Appendix E: *Hydro Corporation Act, 2007***

(Copy of Act to be inserted)

## **Appendix F: *Transparency and Accountability Act***

(Copy of Act to be inserted)

## Appendix G: Sources

*Corporations Act*, R.S.N.L.1990, c. C-36.

*Energy Corporation Act*, SNL 2007, c. E-11.01.

Government of Alberta, Agency Governance Secretariat. 2008. Public Agencies Governance Framework.

Government of British Columbia. 2002. Governance Framework for Crown Corporations.

Government of British Columbia, Crown Agencies Resource Office, Ministry of Finance. 2011. Shareholder's Expectation for British Columbia's Crown Agencies.

Government of Canada, Treasury Board of Canada Secretariat. 2005. Meeting the Expectations of Canadians: Review of the Governance Framework for Canada's Crown Corporations.

Government of Canada, Treasury Board. 2005. Review of the Governance Framework for Canada's Crown Corporations. Queen's Printer.

Government of Newfoundland and Labrador, Transparency and Accountability Office. 2000. Achieving Excellence 2000, Public Body Governance Handbook.

Government of Newfoundland and Labrador, Transparency and Accountability Office. 2004. Excellence in Governance: An Orientation for Public Service Bodies.

Government of Newfoundland and Labrador, Transparency and Accountability Office. 2005. Excellence in Strategic Planning – Master Template of Category 1 Government Entities.

Government of Newfoundland and Labrador, Transparency and Accountability Office. 2005. Excellence in Governance, A Handbook for Public Sector Bodies.

Government of Newfoundland and Labrador, Transparency and Accountability Office. 2006. Achieving Excellence 2006, A Guide for the Improved Accountability of Government Entities.

Government of Newfoundland and Labrador, Transparency and Accountability Office. 2010. Guidelines for Multi-Year Performance-Based Planning.

Government of Newfoundland and Labrador, Transparency and Accountability Office. 2011. Guidelines for Annual Performance Reports: Category 1 Government Entities.

Government of Nova Scotia, Treasury and Policy Board. 2007. Governing in the Public Sector: A Guide for Province of nova Scotia Government Agencies.

Grey, Tara. 2006. Crown Corporate Governance and Accountability Framework: A Review of Recently Proposed Reforms. Library of Parliament.

Holburn, Guy. 2011. Guidelines for Governance of the Electricity Sector in Canada, Richard Ivey School of Business, University of Western Ontario.

*Hydro Corporation Act*, 2007, S.N.L. 2007, c.H-17.

Osler, Hoskin &Harcourt LLP. 2009. Corporate Governance in Canada: A Guide to the Responsibilities of Corporate Directors in Canada.

Reiter, Barry. 2009. Crown Corporations in Canada, Lexpert (July/August).

*Transparency and Accountability Act*, S.N.L. 2004, c.T-8.1

## Appendix H: Endnotes

- <sup>1</sup> Government of Newfoundland and Labrador, Transparency and Accountability Office, *Excellence in Governance: An Orientation for Public Service Bodies* (1994) at 1.2.
- <sup>2</sup> Excellence in Governance. Module 2: Overview of Governance at 2.4.
- <sup>3</sup> Osler, Hoskin & Harcourt LLP, *Corporate Governance in Canada: A Guide to the Responsibilities of Corporate Directors in Canada*. (2009).
- <sup>4</sup> Barry Reiter, "Crown Corporations in Canada." Lexpert (July/August 2009).
- <sup>5</sup> Ibid.
- <sup>6</sup> *Excellence in Governance*, at 1.2.
- <sup>7</sup> Government of Canada, Treasury Board of Canada Secretariat, *Review of the Governance Framework for Canada's Crown Corporations* (2005) at 7.
- <sup>8</sup> Government of Newfoundland and Labrador, Transparency and Accountability Office, *Achieving Excellence 2000, Public Body Governance Handbook* (2000) at 9.
- <sup>9</sup> Government of British Columbia, *Governance Framework for Crown Corporations* (2002) at 4.
- <sup>10</sup> *Review of the Governance Framework for Canada's Crown Corporations* at 8.
- <sup>11</sup> *Governance Framework for Crown Corporations* at 4.
- <sup>12</sup> *Review of the Governance Framework for Canada's Crown Corporations* at 8.
- <sup>13</sup> *Governance Framework for Crown Corporations* at 5.
- <sup>14</sup> Government of Newfoundland and Labrador, Transparency and Accountability Office, *Achieving Excellence 2006, A Guide for the Improved Accountability of Government Entities* (2006) at 10.
- <sup>15</sup> *Governance Framework for Crown Corporations* at 6.
- <sup>16</sup> *Review of the Governance Framework for Canada's Crown Corporations* at 14-17.
- <sup>17</sup> *Governance Framework for Crown Corporations* at 9.
- <sup>18</sup> Ibid at 10.
- <sup>19</sup> *Achieving Excellence 2000, Public Body Governance Handbook* at 13.
- <sup>20</sup> Excellence in Governance: An Orientation for Public Service Bodies at 3.7.
- <sup>21</sup> *Governance Framework for Crown Corporations* at 11.
- <sup>22</sup> *Excellence in Governance, A Handbook for Public Sector Bodies*.
- <sup>23</sup> *Governance Framework for Crown Corporations* at 11.
- <sup>24</sup> Government of Newfoundland and Labrador, Transparency and Accountability Office, *Excellence in Governance, A Handbook for Public Sector Bodies* (2005) at 4.11.
- <sup>25</sup> *Governance Framework for Crown Corporations* at 12.
- <sup>26</sup> Ibid at 6.
- <sup>27</sup> Ibid at 9.
- <sup>28</sup> Ibid at 10.
- <sup>29</sup> Ibid at 11.
- <sup>30</sup> Ibid at 11.
- <sup>31</sup> *Excellence in Governance, A Handbook for Public Sector Bodies* at 4.11.
- <sup>32</sup> *Governance Framework for Crown Corporations* at 12.