

**Q. What are the remedies for non-compliance with the standards set out in Section 19 of the Administration Practices?**

A. The remedies available for non-compliance with standards set out in the Administration Practices, including Section 19, are outlined in Articles 3, 11 and 18 of the 2011 Joint Use Agreement (“2011 JUA”).<sup>1</sup>

Under Article 11 – Defaults of the 2011 JUA, if either party defaults in performance of any work for which it is obligated under the 2011 JUA, the other party may elect to perform the work and charge the party in default for 200% of the cost of the work performed.<sup>2</sup>

Article 3 – Joint Use Committees of the 2011 JUA and Section 2 of the Administration Practices establish two joint committees to oversee coordination of Joint Use of Support Structures. Non-compliance issues arising from day-to-day operations are referred to a Joint Use Working Committee. These items are typically job-specific. For example, if Bell Aliant clears a right-of-way and Newfoundland Power believes the clearing is inadequate, the first step in correcting the dispute would be to have it addressed at the next meeting of the Joint Use Working Committee.

A dispute which is not resolved at the Working Committee is forwarded to the Joint Use Administration Committee. Only two operational issues have been forwarded to the Administration Committee in the past 10 years, and both were quickly resolved.

If the Joint Use committees are unable to resolve a dispute within 2 months of referral, the dispute may be referred to arbitration pursuant to Article 18 – Dispute Resolution of the JUA.<sup>3</sup>

Substantially similar provisions regarding dispute resolution and remedy have existed in Joint Use agreements since at least the late 1980s. Joint Use of Support Structures in Newfoundland Power’s service territory has been characterized by co-operation and compliance with relevant standards for many years. The additional requirements imposed by Section 19 are not expected to be substantial and are expected to be dealt with as have past compliance issues.

<sup>1</sup> See also Section 2 of the Administration Practices which details the roles of the committees.

<sup>2</sup> Similar provision existed in earlier Joint Use agreements, at least since the 1980s. In these agreements the charge to the party in default was 150% of the cost of the work performed.

<sup>3</sup> Referral to arbitration under Article 18 are made in accordance with the provisions of the *Arbitration Act* R.S.N. 1990, c. A-14, and the decision of the arbitrator shall be binding.