

NEWFOUNDLAND POWER INC.
RATE #1.1
DOMESTIC SERVICE

Availability:

For Service to a Domestic Unit or to buildings or facilities which are on the same Serviced Premises as a Domestic Unit and used by the same Customer exclusively for domestic or household purposes, whether such buildings or facilities are included on the same meter as the Domestic Unit or metered separately.

Rate: (Includes Municipal Tax and Rate Stabilization Adjustments in effect July 1, 2007)

Basic Customer Charge:\$15.60 per month

Energy Charge:
All kilowatt-hours@ 9.030¢ per kWh

Minimum Monthly Charge\$15.60 per month

Discount:

A discount of 1.5% of the amount of the current month's bill, but not less than \$1.00, will be allowed if the bill is paid within 10 days after it is issued.

General:

Details regarding conditions of service are provided in the Rules and Regulations. **This rate does not include the Harmonized Sales Tax (HST) which applies to electricity bills.**

NEWFOUNDLAND POWER INC.
RATE #2.1
GENERAL SERVICE 0-10 kW

Availability:

For Service (excluding Domestic Service) where the maximum demand occurring in the 12 months ending with the current month is less than 10 kilowatts.

Rate: (Includes Municipal Tax and Rate Stabilization Adjustments in effect July 1, 2007)

Basic Customer Charge: \$17.90 per month

Energy Charge:
All kilowatt-hours @ 11.015 ¢ per kWh

Minimum Monthly Charge, Single Phase \$17.90 per month
Three Phase \$35.80 per month

Discount:

A discount of 1.5% of the amount of the current month's bill, but not less than \$1.00, will be allowed if the bill is paid within 10 days after it is issued.

General:

Details regarding conditions of service are provided in the Rules and Regulations. **This rate does not include the Harmonized Sales Tax (HST) which applies to electricity bills.**

NEWFOUNDLAND POWER INC.
RATE #2.2
GENERAL SERVICE 10-100 kW (110 kVA)

Availability:

For Service (excluding Domestic Service) where the maximum demand occurring in the 12 months ending with the current month is 10 kilowatts or greater but less than 100 kilowatts (110 kilovolt-amperes).

Rate: (Includes Municipal Tax and Rate Stabilization Adjustments in effect July 1, 2007)

Basic Customer Charge: \$20.62 per month

Demand Charge:

\$8.64 per kW of billing demand in the months of December, January, February and March and \$7.14 per kW in all other months. The billing demand shall be the maximum demand registered on the meter in the current month.

Energy Charge:

First 150 kilowatt-hours per kW of billing demand..... @ 8.563 ¢ per kWh
All excess kilowatt-hours @ 6.255 ¢ per kWh

Maximum Monthly Charge:

The Maximum Monthly Charge shall be 16.3 cents per kWh plus the Basic Customer Charge, but not less than the Minimum Monthly Charge.

Minimum Monthly Charge:

Single Phase \$20.62 per month
Three Phase \$35.80 per month

Discount:

A discount of 1.5% of the amount of the current month's bill, but not less than \$1.00, will be allowed if the bill is paid within 10 days after it is issued.

General:

Details regarding metering [in particular Regulation 7 (n)], transformation [in particular Regulation 9(k)], and other conditions of service are provided in the Rules and Regulations. **This rate does not include the Harmonized Sales Tax (HST) which applies to electricity bills.**

NEWFOUNDLAND POWER INC.
RATE #2.3
GENERAL SERVICE 110 kVA (100 kW) - 1000 kVA

Availability:

For Service where the maximum demand occurring in the 12 months ending with the current month is 110 kilovolt-amperes (100 kilowatts) or greater but less than 1000 kilovolt-amperes.

Rate: (Includes Municipal Tax and Rate Stabilization Adjustments in effect July 1, 2007)

Basic Customer Charge: \$92.81 per month

Demand Charge:

\$7.46 per kVA of billing demand in the months of December, January, February and March and \$5.96 per kVA in all other months. The billing demand shall be the maximum demand registered on the meter in the current month.

Energy Charge:

First 150 kilowatt-hours per kVA of billing demand,
up to a maximum of 30,000 kilowatt-hours @ 8.431 ¢ per kWh
All excess kilowatt-hours @ 6.106 ¢ per kWh

Maximum Monthly Charge:

The Maximum Monthly Charge shall be 16.3 cents per kWh plus the Basic Customer Charge.

Discount:

A discount of 1.5% of the amount of the current month's bill, up to a maximum of \$500.00 will be allowed if the bill is paid within 10 days after it is issued.

General:

Details regarding metering [in particular, Regulation 7(n)], transformation [in particular Regulation 9(k)], and other conditions of service are provided in the Rules and Regulations. **This rate does not include the Harmonized Sales Tax (HST) which applies to electricity bills.**

**NEWFOUNDLAND POWER INC.
RATE #2.4
GENERAL SERVICE 1000 kVA AND OVER**

Availability:

For Service where the maximum demand occurring in the 12 months ending with the current month is 1000 kilovolt-amperes or greater.

Rate: (Includes Municipal Tax and Rate Stabilization Adjustments in effect July 1, 2007)

Basic Customer Charge: \$185.64 per month

Demand Charge:

\$7.05 per kVA of billing demand in the months of December, January, February and March and \$5.55 per kVA in all other months. The billing demand shall be the maximum demand registered on the meter in the current month.

Energy Charge:

First 100,000 kilowatt-hours @ 7.042 ¢ per kWh

All excess kilowatt-hours @ 5.980 ¢ per kWh

Maximum Monthly Charge:

The Maximum Monthly Charge shall be 16.3 cents per kWh plus the Basic Customer Charge.

Discount:

A discount of 1.5% of the amount of the current month's bill, up to a maximum of \$500.00 will be allowed if the bill is paid within 10 days after it is issued.

General:

Details regarding metering [in particular, Regulation 7(n)], transformation [in particular, Regulation 9(k)], and other conditions of service are provided in the Rules and Regulations. **This rate does not include the Harmonized Sales Tax (HST) which applies to electricity bills.**

NEWFOUNDLAND POWER INC.
RATE #4.1
STREET AND AREA LIGHTING SERVICE

Availability:

For Street and Area Lighting Service where the electricity is supplied by the Company and all fixtures, wiring and controls are provided, owned and maintained by the Company.

Monthly Rate: (Includes Municipal Tax and Rate Stabilization Adjustments in effect July 1, 2007)

	Sentinel/Standard	Post Top
High Pressure Sodium*		
100W (8,600 lumens)	\$15.16	\$15.98
150W (14,400 lumens)	19.09	-
250W (23,200 lumens)	25.25	-
400W (45,000 lumens)	34.47	-

* For all new installations and replacements.

Mercury Vapour

175W (7,000 lumens)	\$15.16	\$15.98
250W (9,400 lumens)	19.09	-
400W (17,200 lumens)	25.25	-

Special poles used exclusively for lighting service**

Wood	\$ 6.29
30' Concrete or Metal, direct buried	9.30
45' Concrete or Metal, direct buried	14.72
25' Concrete or Metal, Post Top, direct buried	7.39

Underground Wiring (per run)**

All sizes and types of fixtures	\$12.39
---------------------------------	---------

** Where a pole or underground wiring run serves two fixtures paid for by different parties, the above rates for such poles and underground wiring may be shared equally between the two parties.

General:

Details regarding conditions of service are provided in the Rules and Regulations. **This rate does not include the Harmonized Sales Tax (HST) which applies to electricity bills.**

NEWFOUNDLAND POWER INC.
CURTAILABLE SERVICE OPTION
(for Rates #2.3 and #2.4 only)

Availability:

For Customers billed on Rate #2.3 or #2.4 that can reduce their demand ("Curtail") by between 300 kW (330 kVA) and 5000 kW (5500 kVA) upon request by the Company during the Winter Peak Period. The Winter Peak Period is between 8 a.m. and 9 p.m. daily during the calendar months of December, January, February and March. The ability of a Customer to Curtail must be demonstrated to the Company's satisfaction prior to the Customer's availing of this rate option.

Credit for Curtailing:

If the Customer Curtails as requested for the duration of a Winter, the Company shall credit to the Customer's account the Curtailment Credit during May billing immediately following that Winter. The Curtailment Credit shall be determined by one of the following options:

Option 1:

The Customer will contract to reduce demand by a specific amount during Curtailment periods (the "Contracted Demand Reduction"). The Curtailment Credit for Option 1 is determined as follows:

Curtailment Credit = Contracted Demand Reduction x \$29 per kVA

Option 2:

The Customer will contract to reduce demand to a Firm Demand level which the Customer's maximum demand must not exceed during a Curtailment period. The Curtailment Credit for Option 2 is determined as follows:

Maximum Demand Curtailed = (Maximum Winter Demand - Firm Demand)

Peak Period Load Factor =
$$\frac{\text{kWh usage during Peak Period}}{(\text{Maximum Demand during Peak Period} \times 1573 \text{ hours})}$$

Curtailment Credit = ((Maximum Demand Curtailed x 50%) + (Maximum Demand Curtailed x 50% x Peak Period Load Factor)) x \$29 per kVA

Limitations on Requests to Curtail:

Curtailment periods will:

1. Not exceed 6 hours duration for any one occurrence.
2. Not be requested to start within 2 hours of the expiration of a prior Curtailment period.
3. Not exceed 100 hours duration in total during a winter period.

The Company shall request the Customer to Curtail at least 1 hour prior to the commencement of the Curtailment period.

NEWFOUNDLAND POWER INC.
CURTAILABLE SERVICE OPTION
(for Rates #2.3 and #2.4 only)

Failure to Curtail:

Failure to Curtail under Option 1 occurs when a Customer does not reduce its demand by the Contracted Demand Reduction for the duration of a Curtailment period. Failure to Curtail under Option 2 occurs when a Customer does not reduce its demand to the Firm Demand level or below for the duration of a Curtailment period.

The Curtailment Credit will be reduced by 50% as a result of the first failure to Curtail during a Winter. For each additional failure to Curtail, the Curtailment Credit will be reduced by a further 25% of the Curtailment Credit. If the Customer fails to Curtail three times during a Winter, the Customer forfeits 100% of the Curtailment Credit and the Customer will no longer be entitled to service under the Curtailable Service Option.

Notwithstanding the previous paragraph, no Curtailment Credit will be provided if the number of failures to Curtail equals the number of Curtailment requests.

Termination/Modification:

The Company requires six months written notice of the Customer's intention to either discontinue Curtailable Service Option or to modify the Contracted Demand Reduction or Firm Demand level.

General:

Services billed on this Service Option will have approved load monitoring equipment installed. For a customer that Curtails by using its own generation in parallel with the Company's electrical system, all Company interconnection guidelines will apply, and the Company has the option of monitoring the output of the Customer's generation. All costs associated with equipment required to monitor the Customer's generation will be charged to the Customer's account.

NEWFOUNDLAND POWER INC.

RATE STABILIZATION CLAUSE

The Company shall include a rate stabilization adjustment in its rates. This adjustment shall reflect the accumulated balance in the Company's Rate Stabilization Account ("RSA") and any change in the rates charged to the Company by Newfoundland and Labrador Hydro ("Hydro") as a result of the operation of its Rate Stabilization Plan ("RSP").

I. RATE STABILIZATION ADJUSTMENT ("A")

The Rate Stabilization Adjustment ("A") shall be calculated as the total of the Recovery Adjustment Factor and the Fuel Rider Adjustment.

The Recovery Adjustment Factor shall be recalculated annually, effective the first day of July in each year, to amortize over the following twelve (12) month period the annual plan recovery amount designated to be billed by Hydro to the Company, and the balance in the Company's RSA.

The Recovery Adjustment Factor expressed in cents per kilowatt-hour and calculated to the nearest 0.001 cent shall be calculated as follows:

$$\frac{B + C}{D}$$

Where:

B = the annual plan recovery amount designated to be billed by Hydro during the next twelve (12) months commencing July 1 as a result of the operation of Hydro's RSP.

C = the balance in the Company's RSA as of March 31st of the current year.

D = the total kilowatt-hours sold by the Company for the 12 months ending March 31st of the current year.

The Fuel Rider Adjustment shall be recalculated annually, effective the first day of July in each year, to reflect changes in the RSP fuel rider applicable to Newfoundland Power. The Fuel Rider Adjustment expressed in cents per kilowatt-hour and calculated to the nearest 0.001 cent shall be calculated as follows:

$$\frac{E \times F}{D}$$

NEWFOUNDLAND POWER INC.

RATE STABILIZATION CLAUSE

I. RATE STABILIZATION ADJUSTMENT ("A") (Cont'd)

Where:

- D = corresponds to the D above.
- E = the total kilowatt-hours of energy (including secondary energy) sold to the Company by Hydro during the 12 months ending March 31 of the current year.
- F = the fuel rider designated to be charged to Newfoundland Power through Hydro's RSP.

The Rate Stabilization Adjustment ("A") shall be recalculated and be applied as of the effective date of a new wholesale mill rate by Hydro, by resetting the Fuel Rider Adjustment included in the Rate Stabilization Adjustment to zero.

II. RATE STABILIZATION ACCOUNT ("RSA")

The Company shall maintain a RSA which shall be increased or reduced by the following amounts expressed in dollars:

1. At the end of each month the RSA shall be:
 - (i) increased (reduced) by the amount actually charged (credited) to the Company by Hydro during the month as the result of the operation of its Rate Stabilization Plan.
 - (ii) increased (reduced) by the excess cost of fuel used by the Company during the month calculated as follows:

$$(G/H - P) \times H$$

Where:

- G = the cost in dollars of fuel and additives used during the month in the Company's thermal plants to generate electricity other than that generated at the request of Hydro.
- H = the net kilowatt-hours generated in the month in the Company's thermal plants other than electricity generated at the request of Hydro.

NEWFOUNDLAND POWER INC.

RATE STABILIZATION CLAUSE

II. RATE STABILIZATION ACCOUNT ("RSA") (Cont'd)

- P = the 2nd block base rate in dollars per kilowatt-hour paid during the month by the Company to Hydro for firm energy.
- (iii) reduced by the price differential of firmed-up secondary energy calculated as follows:

$$(P - J) \times K$$

Where:

- J = the price in dollars per kilowatt-hour paid by the Company to Hydro during the month for secondary energy supplied by Deer Lake Power and delivered as firm energy to the Company.
- K = the kilowatt-hours of such secondary energy supplied to the Company during the month.
- P = corresponds to P above.
- (iv) reduced (increased) by the amount billed by the Company during the month as the result of the operation of the Rate Stabilization Clause calculated as follows:

$$\frac{L \times A}{100}$$

Where:

- L = the total kilowatt-hours sold by the Company during the month.
- A = the Rate Stabilization Adjustment in effect during the month expressed in cents per kilowatt-hour.
- (v) increased (reduced) by an interest charge (credit) on the balance in the RSA at the beginning of the month, at a monthly rate equivalent to the mid-point of the Company's allowed rate of return on rate base.
2. On the 31st of December in each year, the RSA shall be increased (reduced) by the amount that the Company billed customers under the Municipal Tax Clause for the calendar year is less (or greater) than the amount of municipal taxes paid for that year.

NEWFOUNDLAND POWER INC.

RATE STABILIZATION CLAUSE

II. RATE STABILIZATION ACCOUNT ("RSA") (Cont'd)

3. The annual kilowatt-hours used in calculating the Rate Stabilization Adjustment to the monthly streetlighting rates are as follows:

	Fixture Size (watts)				
	100	150	175	250	400
Mercury Vapour	-	-	840	1,189	1,869
High Pressure Sodium	546	802	-	1,273	1,995

4. On December 31st, 2007, the RSA shall be reduced (increased) by the amount that the increase in the Company's revenue for the year resulting from the change in base rates attributable to the flow through of Hydro's wholesale rate change, effective January 1, 2007, is greater (or less) than the amount of the increase in the Company's purchased power expense for the year resulting from the change in the base rate charged by Hydro effective January 1, 2007.

The methodology to calculate the RSA adjustment at December 31, 2007 is as follows:

Calculation of increase in Revenue:	
2007 Revenue with Flow-through (Q)	\$ -
2007 Revenue without Flow-through (R)	<u>\$ -</u>
Increase in Revenue (S = Q – R)	\$ -

Calculation of increase in Purchased Power Expense:	
2007 Purchased Power Expense with Hydro Increase (T)	\$ -
2007 Purchased Power Expense without Hydro Increase (U)	<u>\$ -</u>
Increase in Purchased Power Expense (V = T – U)	\$ -

Adjustment to Rate Stabilization Account (W = S – V)	\$ -
--	------

Where:

- Q = Normalized revenue from base rates effective January 1, 2007.
- R = Normalized revenue from base rates determined based on rates pursuant to the operation of the Automatic Adjustment Formula for 2007.
- T = Normalized purchased power expense from Hydro's wholesale rate effective January 1, 2007 (not including RSP rate).
- U = Normalized purchased power expense determined based on Hydro's wholesale rate effective January 1, 2006 (not including RSP rate).

NEWFOUNDLAND POWER INC.

RATE STABILIZATION CLAUSE

II. RATE STABILIZATION ACCOUNT ("RSA") (Cont'd)

5. On December 31st of each year from 2008 up to and including 2010, the Rate Stabilization Account (RSA) shall be increased (reduced) by the Energy Supply Cost Variance.

This Energy Supply Cost Variance identifies the change in purchased power cost that is related to the difference between purchasing energy at the 2nd block energy charge in the wholesale rate and the test year energy supply cost reflected in customer rates.

The Energy Supply Cost Variance expressed in dollars shall be calculated as follows:

$$\frac{(A - B) \times (C - D)}{100}$$

Where:

- A = the wholesale rate 2nd block charge per kWh.
B = the test year energy supply cost per kWh determined by applying the wholesale energy rate to the test year energy purchases and expressed in ¢ per kWh.
C = the weather normalized annual purchases in kWh.
D = the test year annual purchases in kWh.

III. RATE CHANGES

The energy charges in each rate classification (other than the energy charge in the "Maximum Monthly Charge" in classifications having a demand charge) shall be adjusted as required to reflect the changes in the Rate Stabilization Adjustment. The new energy charges shall be determined by subtracting the previous Rate Stabilization Adjustment from the previous energy charges and adding the new Rate Stabilization Adjustment. The new energy charges shall apply to all bills based on consumption on and after the effective date of the adjustment.

Newfoundland Power Inc.

Regulation Changes

Existing Regulation 9(b)

Where a Customer requires Service for a period of less than three (3) years, the Customer shall pay the Company in advance a “Temporary Connection Fee”. The Temporary Connection Fee is calculated as the estimated labour cost of installing and removing lines and equipment necessary for the Service plus the estimated cost of non-salvageable material.

Approved Regulation 9(b)

Where a Customer requires Service for a period of less than three (3) years, the Customer shall pay the Company a “Temporary Connection Fee”. The Temporary Connection Fee is calculated as the estimated labour cost of installing and removing lines and equipment necessary for the Service plus the estimated cost of non-salvageable material. The payment may be required in advance or, subject to credit approval, billed to the Customer.

Existing Regulation 9(c)

Where special facilities are required or requested by the Customer or any facility is relocated at the request of the Customer, the Customer shall pay the Company in advance the estimated additional cost of providing the special facilities and the estimated cost of the relocation less any betterment.

Approved Regulation 9(c)

Where special facilities are required or requested by the Customer or any facility is relocated at the request of the Customer, the Customer shall pay the Company the estimated additional cost of providing the special facilities and the estimated cost of the relocation less any betterment. The payment may be required in advance or, subject to credit approval, billed to the Customer.

Newfoundland Power Inc.

Regulation Change for Rejected Payment

Existing Regulation 10(d)

Where a Customer's cheque is not honoured for insufficient funds, a charge of \$10.00 may be applied to the Customer's bill.

Approved Regulation 10(d)

Where a Customer's cheque or automated payment is not honoured by their financial institution, a charge of \$16.00 may be applied to the Customer's bill.

Newfoundland Power Inc.

Demand Management Incentive Account

Approved Definition

Demand Management Incentive Account

278xx

This account shall be charged or credited with the amount by which the Demand Supply Cost Variance exceeds the Demand Management Incentive. The Demand Management Incentive equals $\pm 1\%$ of test year wholesale demand charges.

The Demand Supply Cost Variance expressed in dollars shall be calculated as follows:

$$(A - B) \times C$$

Where:

- A = actual demand supply cost in dollars per kWh determined by dividing the wholesale demand charges in the calendar year by the weather normalized kWh purchases for that year (as will be reported in Return 13 of Newfoundland Power's Annual Report to the Board).
- B = test year demand supply cost in dollars per kWh determined by dividing the test year wholesale demand charges by the test year kWh purchases.
- C = the weather normalized annual purchases in kWh.

The amount charged or credited to this account shall be adjusted for applicable income taxes calculated at the statutory income tax rate.

Disposition of any Balance in this Account

Newfoundland Power shall file an Application with the Board no later than the 1st day of March each year for the disposition of any balance in this account.

REGULATORY FRAMEWORK

STATUTORY POWERS AND RESPONSIBILITIES

The statutory powers and responsibilities described below are consistent with those set out in Order No. P. U. 7(2002-2003) and are intended to communicate to the utilities and other stakeholders the fundamental regulatory framework used by the Board in issuing its decisions, findings and subsequent Orders.

The Board is an independent, quasi-judicial body established under Provincial legislation to regulate public utilities in the Province. Regulation is designed to ensure consumers receive safe and reliable electricity at rates that are reasonable while allowing the utility to earn a fair return on its investment in supplying the electrical service. Regulation strives to strike an equitable balance between the interests of consumers and the utility.

The regulatory framework of the Board consists of five cornerstones, as follows:

- i. **BOARD AUTHORITY** sets out the legislative and legal powers and responsibilities of the Board.
- ii. **BOARD HEARING PROCEDURES** govern the presentation of the evidentiary record on matters before the Board.
- iii. **REGULATORY PRINCIPLES** which are commonly accepted in guiding sound public utility regulation.
- iv. **THE RATE SETTING PROCESS** is founded in accounting, engineering and economic methodologies which are applied in combination with i), ii) and iii) and weighed by the Board in making decisions affecting rates.
- v. **REPORTING/COMPLIANCE** provides appropriate regulatory monitoring of the utility's ongoing activities and compliance with Board Orders.

1. Board Authority

Mandate

The Board's authority is derived from its statutory powers and responsibilities as set out in the *Public Utilities Act* (the "Act") and the *Electrical Power Control Act, 1994* (the "EPCA").

The *Act* sets out the structure of the Board and defines its powers. The Board has responsibility for the general supervision of public utilities in the Province, which requires the Board to approve rates, capital expenditures and other aspects of the business of public utilities.

In addition to the provisions of the *Act*, the Board is also mandated through the *EPCA*, particularly Section 3, which states the power policy of the Province as follows:

“3. *It is declared to be the policy of the province that*

(a) the rates to be charged, either generally or under specific contracts, for the supply of power within the province

- (i) should be reasonable and not unjustly discriminatory;*
- (ii) should be established, wherever practicable, based on forecast costs for that supply of power for 1 or more years;*
- (iii) should provide sufficient revenue to the producer or retailer of the power to enable it to earn a just and reasonable return as construed under the Public Utilities Act so that it is able to achieve and maintain a sound credit rating in the financial markets of the world; and*
- (iv) should be such that after December 31, 1999 industrial customers shall not be required to subsidize the cost of power provided to rural customers in the province, and those subsidies being paid by industrial customers on the date this Act comes into force shall be gradually reduced during the period prior to December 31, 1999;*

(b) all sources and facilities for the production, transmission and distribution of power in the province should be managed and operated in a manner

- (i) that would result in the most efficient production, transmission and distribution of power;*
- (ii) that would result in consumers in the province having equitable access to an adequate supply of power;*
- (iii) that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service...”*

Section 4 of the *EPCA* states:

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

In summary, the *EPCA* mandates the Board to make rate decisions that are reasonable and not unjustly discriminatory. Rates are to be based on forecast costs for the supply of power for one (1) or more years. This timeframe in practice is generally referred to as the “*test year(s)*”. The legislation also ensures that the utilities are permitted to earn a just and reasonable financial return while maintaining a sound credit rating in the financial markets of the world. The legislation calls for the most efficient production, transmission and distribution of power that will afford consumers the lowest possible cost electricity consistent with equitable, safe and reliable service.

Form of Regulation

With regard to the form of regulation, Section 80(1) of the *Act* states:

“80. (1) A public utility is entitled to earn annually a just and reasonable return as determined by the Board on the rate base, as fixed and determined by the Board for each type or kind of service supplied by the public utility...”

This is commonly referred to as return on rate base regulation. Rate base consists largely of investment by the utility in plant and equipment and historically has constituted the statutory form of regulation used in the Province. Return on rate base regulation is more fully described in relation to the Rate Setting Process. Alternative forms of regulation in place elsewhere include Return on Equity (ROE) and/or an emerging trend toward Performance Based Regulation (PBR).

Statutory Limitations

The legislative authority of the Board is, nonetheless, subject to two limitations (Sections 5.1 and 5.2) in the *EPCA* as follows:

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

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

Appeal Process

Section 99 (1) of the *Act* states the statutory authority embodied in an Order of the Board as follows:

“An appeal lies to the Court of Appeal from an order of the board upon a question as to its jurisdiction or upon a question of law, but the appeal can be taken only by leave of a judge of the court, given upon an application presented within 15 days after the making of the decision and upon the terms that the judge may determine.”

An Order of the Board has the force of law and is binding on the parties and can only be appealed to the Court of Appeal on an issue of law or jurisdiction of the Board.

Stated Case

The most comprehensive judicial consideration of the authority of the Board comes from the comments of Mr. Justice Green in Newfoundland (Board of Commissioners of Public Utilities)(Re)(1998), 64 NFLD. & PEI R.60 (NFLD.C.A.) In 1998 the Board stated a case for the consideration of the Court of Appeal pursuant to Section 101 of the *Act*. Mr. Justice Green set out some general principles that apply to all decisions of the Board, which may be summarized as:

1. The *Act* should be given a liberal interpretation respecting the purpose of the legislation and the power policy of the province;
2. The Board has discretion in how it approaches its mandate;
3. The Board has all appropriate and necessary powers;
4. The Board must balance the interests of public utilities and electrical consumers;
5. The Board sets rates prospectively, after a full consideration of all available evidence; and
6. The Board has discretion to choose the approach to setting rates as long as it observes the legislation and sound utility practices.

The Court was clear in setting out that the Board must balance two sets of interests - the utility's right to a fair return and the consumer's right to reasonable access to power. Mr. Justice Green notes that the Board must be careful to balance both interests, when he says, at para. 144:

"It must always be remembered that, as has been emphasized throughout this opinion, the Board is charged with balancing the competing interests of the utility and the consumers of the service it provides. Neither set of interests can be emphasized in complete disregard of the interests of the other. Thus, in choosing to exercise a particular power within the Board's jurisdiction, the Board must always be mindful of whether, in so acting, it will be furthering the objectives and policies of the legislation and doing so in a manner that amounts to a reasonable balance between the competing interests involved."

In conclusion, the Court found that the Board can be regulative and corrective but not managerial in its prospective regulation of a utility. The Board notes that the Court of Appeal suggested that the Board should observe a presumption of managerial good faith.

2. Board Procedures

The Board's procedures are governed by the relevant legislation and, as a quasi-judicial body, the principles of natural justice and procedural fairness apply. The *Act* and *Regulation 39/96* both set out procedures for the Board. In addition to prescribed regulations, Section 26 of the *Act* enables the Board to establish its own procedures. This permits the Board to exercise discretion to allow for a more informal and flexible treatment of issues.

The procedures of the Board address items such as the form of the application, public notice, submission by intervenors, information requests, document exchange along with rules and protocol surrounding public hearings. While the procedures in a hearing before the Board are less formal than a court, the principles of natural justice are still observed. Sufficient notice is given to all interested persons who are provided with the opportunity to participate. Witnesses are sworn, and their testimony is heard by way of both direct and cross-examination. Evidence is entered and documented and the Board maintains a full and complete record.

Hearing documentation is generally filed in electronic format with a paper copy maintained as the official Board record. The Board provides public access to all information through the Board's web site (www.pub.nl.ca). The web site is updated daily with transcripts and additional evidence filed during each day's proceedings posted in advance of the commencement of the hearing the following day. During the hearing the evidence can also be viewed simultaneously by the Board, parties and witnesses on monitors located in the Hearings Room.

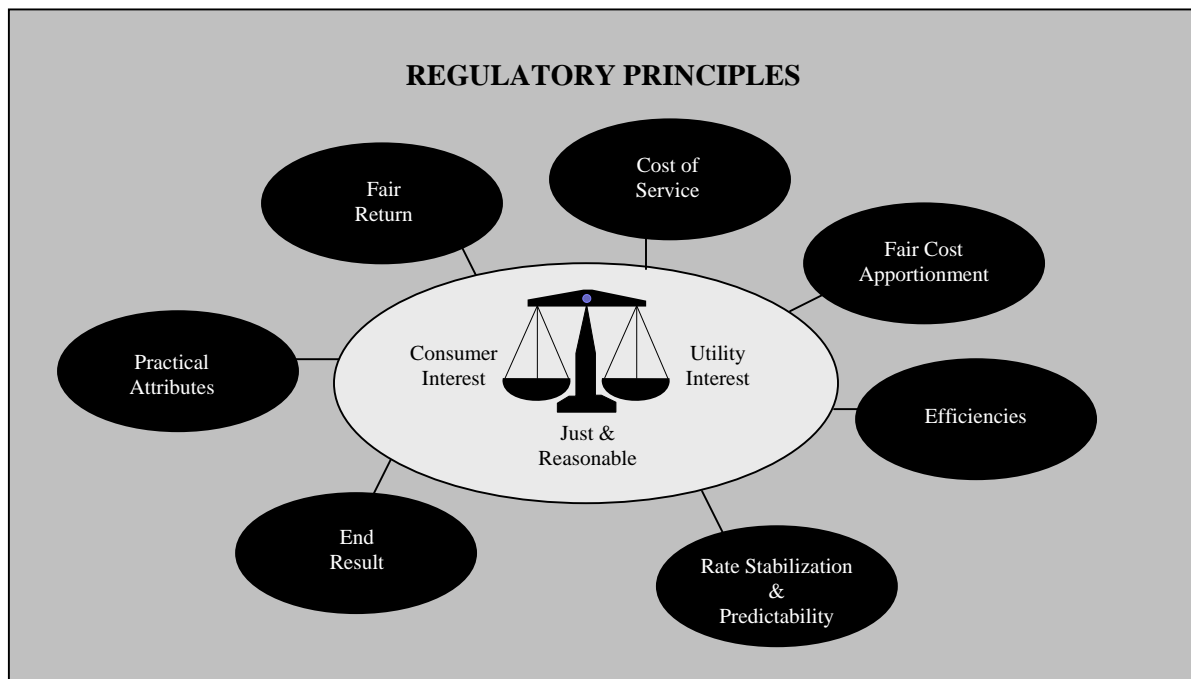
Through these procedures the Board ensures that the process is accessible and transparent for stakeholders, including the public. The Board may also travel throughout the province to hear from interested persons or organizations. Full and informed public debate and discussion on the issues is encouraged through the participation of the parties, the general public and, for major hearings, a government appointed consumer advocate.

After full consideration of all of the evidence the Board will issue a reasoned decision, usually in writing. A Decision and Order of the Board will be issued and, as noted previously, can only be appealed to the Court of Appeal.

3. Regulatory Principles

Sound regulatory practices encompass fundamental principles which are used by regulators as a guide or roadmap to rational decision-making. As stated in the Bonbright J. C., Danielsen A.L, Kamerscen D.R., *Principles of Public Utility Rates* (Arlington: Public Utilities Reports, Inc., 1988): “We are simply trying to identify the desirable characteristics of utility performance that regulators should seek to compel through edict.” These are commonly referred to as Bonbright’s principles.

Section 4 of the *EPCA* directs the Board to apply tests that are consistent with generally accepted sound public utility practice. The Board sets out the following principles for purposes of its regulatory framework:



1. Fair Return

Regulated utilities are given the opportunity to earn a fair rate of return. To be considered fair, the return must be:

- commensurate with return on investments of similar risk;
- sufficient to assure financial integrity; and
- sufficient to attract necessary capital.

The fair return principle is consistent with both Section 80(1) of the *Act* and Section 3(a)(iii) of the *EPCA*.

2. Cost of Service

Under this principle a utility is permitted to set rates that allow the recovery of costs for regulated operations, including a fair return on its investment devoted to regulated operations - no more, no less. Costs should be:

- prudent;
- used and useful in providing the service;
- assigned based on cause (causality);
- incurred and recovered (matching costs and benefits) during the same period; and
- reflective of private/social costs and benefits occasioned by the service.

3. Fair Cost Apportionment

Fairness of specific rates in the apportionment of total costs of service among the different ratepayers should be such so as to avoid arbitrariness, capriciousness, inequities or discrimination. Under this principle, customers in similar situations should be treated equally (horizontal equity), while those in different situations should be treated differently (vertical equity). This principle would not deny cross-subsidization of rates among customers of equal circumstances but such subsidization should not cause undue discrimination. The principle of horizontal equity (i.e. equals treated equally) is set forth in Section 73(1) of the *Act* which requires that “*all tolls, rates and charges shall always, under substantially similar circumstances and conditions in respect of service of the same description, be charged equally to all persons and at the same rate, ...*”. Furthermore, the aspect of undue discrimination also has statutory reinforcement in Section 3(a)(i) of the *EPCA* which declares it to be “*...the policy of the province that the rates to be chargedshould be reasonable and not unjustly discriminatory.*”

4. Efficiencies

Rate classes and rate blocks should discourage wasteful use of service while promoting all types and amounts of use that are economically justified. Greater efficiency should also be encouraged in promoting innovation and responding economically to changing demand and supply patterns.

5. Rate Stability and Predictability

Rates and revenues should be stable and predictable from year to year with a minimum of unexpected changes seriously adverse to either ratepayers or utility companies. This principle may justify smoothing out increases to avoid sharp rate climbs or temporary fluctuations. The emphasis using this standard relates to the timing of rate implementation.

6. End Result

In compliance with the legislation, the end result must be fair, just and reasonable from the perspective of both the consumer and utility.

7. Practical Attributes

Rates should be simple, understandable and publicly acceptable with a minimum of controversy upon implementation.

While setting out these principles may be useful to ensure full consideration of all the issues, the Board notes that at times they may contain ambiguities, conflict with legislation, be inconsistent and/or hold different priorities. The real challenge for the Board, in keeping with its legislative mandate, is to balance oftentimes competing objectives within the regulatory environment to ensure a set of sound and reasoned decisions serving the interests of both consumer and utility alike.

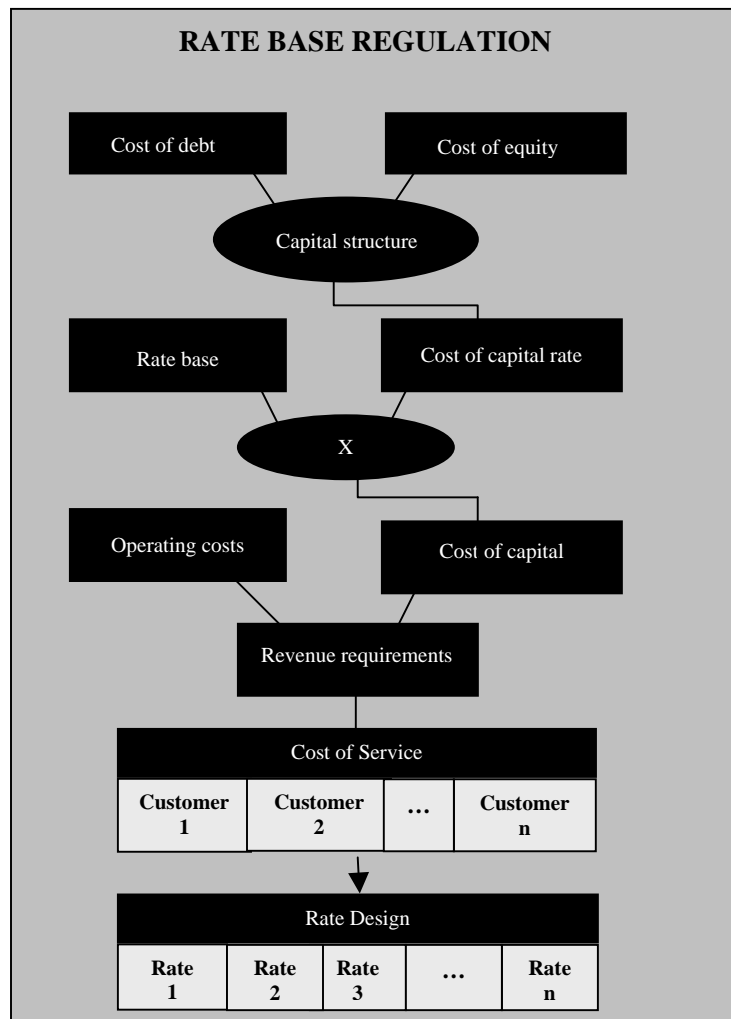
During rate proceedings the Board is often petitioned by intervenors and presenters to consider the customers' ability to pay when setting rates for various classes of customers and service. While cross subsidization of a group of customers contributing toward the cost of service assigned to another group of customers is a common regulatory practice, the ability of an individual customer to pay for the electrical service consumed is not considered by the Board in setting rates. Without compelling change in either legislation, public policy or structure of regulation, the Board will continue to pursue generally accepted regulatory principals as outlined above which does not incorporate ability to pay among its criteria for rate setting.

4. The Rate Setting Process

The rate setting process is founded in accounting, engineering and economic methodologies and is the proverbial glue that binds the regulatory framework. The Board's authority, the evidence and regulatory principles are combined by the Board through this process to make decisions affecting rates. The rate setting process is described below under the heading "*Rate Base Regulation*".

Rate Base Regulation

As noted previously, pursuant to Section 80 of the *Act*, the regulatory framework of the Board is founded in rate base regulation. The elements of rate base regulation are illustrated as follows:



(As modified from “*Basics of Canadian Rate Regulation*”, pg. 13, by J. T. Browne and Charles Perron, Deloitte & Touche, 1997.)

The focus of return on rate base regulation is on earnings, in particular the allowed return per dollar of investment (rate base). Rates are set to give the regulated utility the opportunity to recover its revenue requirement consisting of its estimated operating costs and a fair return on its rate base. These costs are generally estimated for a test year(s) for which the rates are set.

Rate Base

Rate base is the amount of investment on which a regulated utility is allowed to earn a fair return. Rate base comprises primarily depreciated investment in plant and equipment plus working capital as well as certain deferred assets/costs attributable to future operations. Regulators tend to focus on whether additions to the rate base, looking at the asset, are needed and if the cost is reasonable.

Capital Structure

Capital structure is the relative amounts of equity and debt, commonly referred to as the debt to equity ratio, which comprises a company's total invested capital. The total invested capital represents the funds invested in the public utility by shareholders (equity) and by bondholders and other long-term debt holders (debt). The just and reasonable rate of return allowed on rate base is equivalent to the cost of capital representing the sum of the weighted costs of both debt and equity in the capital structure.

Revenue Requirement

Revenue requirement is the amount of revenue required by a utility to cover the sum of operating costs including debt service, depreciation, taxes and allowed return on rate base (\$ rate base x cost of capital). The revenue requirement is the total amount of money a utility is eligible to collect from customers through rates:

$$\text{Revenue Requirement} = \text{Operating Costs} + (\text{Rate Base} \times \text{Rate of Return})$$

From a regulatory perspective, efficient operations, fully justified capital expenditures and a low cost capital structure all combine to minimize revenue requirement, and hence provide least cost electricity to ratepayers.

Cost of Service

Cost of service constitutes the basis on which the utility's revenue requirement is allocated to each class of customer served. The utility normally submits a study of the costs incurred in purchasing, producing, transmitting and distributing electricity to its customers, by customer class.

Rate Design

Once the cost of service or revenue requirement is allocated by customer class, specific rates are determined to recover the required costs/revenues from each customer within the class.

5. Reporting/Compliance

Reporting/Compliance is the mechanism used to monitor the ongoing activities of the utility from a regulatory perspective and is an important part of the regulatory framework. Section 16 of the *Act* states:

“The board shall have the general supervision of all public utilities, and may make all necessary examinations and inquiries and keep itself informed as to the compliance by public utilities with the law and shall have the right to obtain from a public utility all information necessary to enable the board to fulfil its duties.”

Consistent with the Court of Appeal’s findings, the role of the Board is not to exercise managerial influence but to ensure appropriate reporting/compliance mechanisms are in place such that regulatory objectives are met. The objective of the Board is to focus on regulatory accountability of the utility rather than engage in detailed reviews and costly controls. In keeping with this approach, some examples of the Board’s reporting/compliance requirements requested of the utilities include:

- Compliance with Board Orders;
- Annual financial review;
- Quarterly reports;
- Incident/Outage reports;
- Technical reports;
- Productivity, cost benefit and efficiency studies;
- CIAC audits; and
- Monitoring complaints.

6. Summary

A consistent and equitable regulatory framework is in the interests of both the regulated utilities and consumers. The framework as described above has been in place in one form or another since the Board was established in 1949. This framework has evolved to date through a series of legislative amendments and case law and will continue to form the basis of the Board’s exercise of its regulatory authority under existing legislation, both in this Decision and Order and on a go forward basis.