



BILL NO. 88

Government Bill

*4th Session, 61st General Assembly
Nova Scotia
61 Elizabeth II, 2012*

An Act to Ensure Regulatory Review of the Maritime Link

CHAPTER 9
ACTS OF 2012

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 17, 2012**

The Honourable Charlie Parker
Minister of Energy

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act to Ensure Regulatory Review of the Maritime Link

WHEREAS there are unique advantages for the Nova Scotia economy and Nova Scotia electricity ratepayers from the delivery into Nova Scotia of hydro-electric power from Newfoundland and Labrador;

AND WHEREAS the Governments of Nova Scotia, Newfoundland and Labrador and Canada have committed to support development of the Lower Churchill Project;

AND WHEREAS there is a need to provide for a predictable, timely and transparent regulatory review process;

THEREFORE be it enacted by the Governor and Assembly as follows:

- 1 This Act may be cited as the *Maritime Link Act*.
- 2 In this Act,
 - (a) “applicant” means a person who makes an application in respect of the Maritime Link Project and rates associated with the Project in accordance with the regulations;
 - (b) “Maritime Link” means a new high voltage direct current transmission system and related components, including grounding systems, and includes
 - (i) direct current converter stations in Newfoundland and Labrador, and in Cape Breton, Nova Scotia, together with the subsea cables and high voltage direct current transmission lines connecting the converter stations,
 - (ii) an alternating current transmission line connecting the converter station in Newfoundland and Labrador with the Newfoundland Island Interconnected System, and
 - (iii) any additional transmission infrastructure required in order to interconnect with the Newfoundland Island Interconnected System and the Nova Scotia Transmission System;
 - (c) “Maritime Link Project” means the design, construction, operation and maintenance of the Maritime Link, together with the related transactions involving the delivery of energy, the provision of transmission services over the Maritime Link and the enabling of transmission service through the Province, as set out in a term sheet between Emera Incorporated and Nalcor Energy dated November 18, 2010;
 - (d) “Minister” means the Minister of Energy;
 - (e) “Review Board” means the Nova Scotia Utility and Review Board established under the *Utility and Review Board Act*.
- 3 The Minister has the general supervision and management of this Act.

4 The Review Board has the general supervision of an applicant and the Maritime Link Project, and may make all necessary examinations and inquiries and keep itself informed as to the compliance by an applicant with the provisions of law and has the right to obtain from an applicant all information necessary to enable the Review Board to fulfil its duties.

5 (1) Notwithstanding the regulations, Section 54 of *Public Utilities Act* does not apply with respect to construction of the Maritime Link Project by an applicant in territory already served by a public utility of like nature, as that territory exists at the time this Act comes into force.

(2) For greater certainty, where an applicant has been made subject to the *Public Utilities Act* by regulation, for the purpose of that Act and in particular Section 64 of that Act, the transmission of electricity by the applicant is a service to which Section 64 of that Act applies.

(3) Notwithstanding Section 117 of the *Public Utilities Act*, where there is a conflict between this Act or the regulations and the *Public Utilities Act* or the regulations made pursuant to that Act, this Act and the regulations prevail.

6 (1) The Governor in Council shall, after consultation with the Chair of the Review Board, make regulations establishing a hearing and approval process and the criteria and conditions by which an application with respect to the Maritime Link Project is to be reviewed and considered for approval by the Review Board, which may include regulations

- (a) determining when a hearing is required;
- (b) establishing the subject-matter to be considered in a hearing;
- (c) setting out the criteria for approval or confirmation of an approval by the Board;
- (d) determining the matters to be decided in a hearing including, without limiting the generality of the foregoing, setting limits or parameters for which costs will be allowed or within which rates must be set;
- (e) establishing the timing of various steps of the hearing and approval process;
- (f) determining any other matter or thing relating to the hearing and approval process the Governor in Council considers necessary or advisable.

(2) The Governor in Council may make regulations

- (a) providing that the *Public Utilities Act* applies to an applicant and that the applicant is a public utility within the meaning of that Act;
- (b) defining any word or expression used but not defined in this Act;
- (c) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(3) The exercise by the Governor in Council of the authority contained in subsections (1) and (2) is regulations within the meaning of the *Regulations Act*.

7 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.



**Executive
Council**

Nova Scotia

*A certified copy of an Order in Council dated
October 2, 2012*

N.S. Regulations 189/2012

FILED

Date October 4, 2012

**RACHEL L. JONES
REGISTRAR OF REGULATIONS**

2012-326

The Governor in Council on the report and recommendation of the Minister of Energy dated September 20, 2012, and pursuant to Section 6 of Chapter 9 of the Acts of 2012, the *Maritime Link Act*, is pleased to make regulations respecting the cost recovery process for the Maritime Link Project, in the form set forth in Schedule "A" attached to and forming part of the Report and Recommendation, effective on and after October 2, 2012.

Certified to be a true copy


Handwritten signature of David Darrow in blue ink, written over a dotted line.

**David Darrow
Clerk of the Executive Council**

Approved by Order in Council

.....2012-326.....dated

.....October 2, 2012.....



David Darrow

Clerk of the Executive Council

Schedule "A"

**Regulations Respecting the Maritime Link Cost Recovery Process
made by the Governor in Council pursuant to Section 6 of
Chapter 9 of the Acts of 2012,
the *Maritime Link Act***

Citation

1 These regulations may be cited as the *Maritime Link Cost Recovery Process Regulations*.

Definition

2 In these regulations,

“Act” means the *Maritime Link Act*;

“greenhouse gas” means a greenhouse gas as defined in the *Greenhouse Gas Emissions Regulations* made under the *Environment Act*;

“Emera” means Emera Incorporated, a body corporate incorporated under the laws of the Province, and includes any of its affiliates;

“Nalcor Energy” means Nalcor Energy, a body corporate incorporated under the laws of the Province of Newfoundland and Labrador, and includes any of its affiliates;

“Nalcor Transactions” means the transactions with respect to the Maritime Link Project as set out in the Agreement dated July 31, 2012, between Emera, Nalcor Energy, the Government of Nova Scotia and the Government of Newfoundland and Labrador, and for greater certainty includes all of the following transactions as set out in agreements between Emera and Nalcor Energy:

- (i) the development of the Maritime Link by Emera,
- (ii) the provision to Emera of energy equivalent to 20% of the estimated capacity of the Muskrat Falls Generating Station,
- (iii) the provision to Nalcor Energy of certain transmission

rights through the Province,

- (iv) the granting of transmission rights over the Maritime Link,
- (v) the responsibility for operating and maintaining the Maritime Link,
- (vi) the transfer of the Maritime Link to Nalcor Energy following a period of 35 years after energy is first delivered to Emera;

“Project costs” means all costs incurred by an applicant in connection with the Maritime Link Project.

Designation as public utility

- 3** An applicant is deemed to be a public utility within the meaning of the *Public Utilities Act* and the *Public Utilities Act* applies to an applicant.

Requirement for Review Board approval

- 4** (1) To obtain a rate, toll, charge or other compensation for services as defined under the *Public Utilities Act*, an applicant must first obtain an approval of the Maritime Link Project under Section 5.
- (2) Once approved under Section 5, an applicant is entitled to recover Project costs through a rate, toll, charge or other compensation from Nova Scotia Power Incorporated in accordance with Section 8.
- (3) An applicant who makes an application under this Section is not required to make a separate application under Section 35 or 35A of the *Public Utilities Act*, but once the Review Board has approved an assessment under Section 8, the applicant is subject to Sections 35 and 35A of the *Public Utilities Act* with respect to any new expenditures.

Application and review

- 5** (1) The Review Board must approve the Maritime Link Project if, on the evidence and submissions provided, the Review Board is satisfied that the project meets all of the following criteria:
- (a) the project represents the lowest long-term cost alternative for electricity for ratepayers in the Province;
 - (b) the project is consistent with obligations under the *Electricity Act*, and any obligations governing the release of greenhouse gases and air pollutants under the *Environment Act*, the *Canadian Environmental Protection Act* (Canada) and any associated

agreements.

- (2) An applicant must provide the Review Board with the best information and evidence available at the time to apply the criteria in subsection (1).
- (3) In its approval, the Review Board may order any terms and conditions it considers necessary.
- (4) The Review Board must make a decision under Section 5 no later than 180 days after the date the applicant submits an application.
- (5) An application must include all of the following:
 - (a) a statement of the purpose of the Maritime Link Project, including the reasons for the project and the specific relief being requested of the Review Board;
 - (b) a summary of the commercial transactions with Nalcor Energy together with copies of all relevant agreements;
 - (c) engineering and design details sufficient to enable the Review Board to approve the Maritime Link Project in accordance with subsection (1);
 - (d) capital and operating cost estimates for the Maritime Link Project, including proposed capital structure and return-on-investment;
 - (e) capital and operating cost estimates for Muskrat Falls, Labrador transmission assets and the Labrador Island link, together with supporting engineering and design evidence;
 - (f) an analysis of lowest long-term cost alternatives to the Maritime Link Project;
 - (g) anticipated schedule of construction and in-service schedule for the Maritime Link, as contemplated under the Nalcor Transactions.

Variance with respect to approved costs

- 6 (1) If requested by an applicant, the Review Board must establish a variance with respect to the approved cost of the Maritime Link Project.
- (2) The size of the variance must be set by the Review Board.
- (3) If at any time there are Project costs that exceed the variance established under this Section, an applicant must apply to have the excess costs

approved by the Review Board in accordance with Section 8.

Project report

- 7 (1) An applicant must file a project report on the Maritime Link Project containing the details required by subsection (2) with the Review Board:
- (a) on or before December 31, 2013; or
 - (b) on or before another date the Review Board orders, as it considers necessary as a result of the progress of the Maritime Link Project.
- (2) A project report must set out all the following for the Maritime Link Project:
- (a) detailed engineering and design information;
 - (b) updated and current cost estimates and actuals;
 - (c) any material changes to any of the information submitted to the Review Board under Section 5.

Assessment and costing approval

- 8 (1) Before receiving energy under the Nalcor Transactions, an applicant must set an assessment against Nova Scotia Power Incorporated for the recovery of the all approved Project costs, and must apply to the Review Board for an approval of the assessment under Section 64 of the *Public Utilities Act*.
- (2) Nova Scotia Power Incorporated is entitled to recover through its rates any assessment approved by the Review Board in respect of the Maritime Link Project.