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Ontario Energy Board Act, 1998

S.O. 1998, CHAPTER 15
SCHEDULE B

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PART I GENERAL

Board objectives, electricity

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1.

Facilitation of integrated power system plans

(2) In exercising its powers and performing its duties under this or any other Act in relation to electricity, the Board shall facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*. 2004, c. 23, Sched. B, s. 1.

Board objectives, gas

2. The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:

1. To facilitate competition in the sale of gas to users.
2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
3. To facilitate rational expansion of transmission and distribution systems.
4. To facilitate rational development and safe operation of gas storage.
5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
- 5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.

6. To promote communication within the gas industry and the education of consumers. 1998, c. 15, Sched. B, s. 2; 2002, c. 23, s. 4 (2); 2003, c. 3, s. 3; 2004, c. 23, Sched. B, s. 2; 2009, c. 12, Sched. D, s. 2.

Definitions

3. In this Act,

“affiliate”, with respect to a corporation, has the same meaning as in the *Business Corporations Act*; (“membre du même groupe”)

“associate”, where used to indicate a relationship with any person, means,

- (a) any body corporate of which the person owns, directly or indirectly, voting securities carrying more than 50 per cent of the voting rights attached to all voting securities of the body corporate for the time being outstanding,
- (b) any partner of that person,
- (c) any trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity,
- (d) any relative of the person, including the person’s spouse as defined in the *Business Corporations Act*, where the relative has the same home as the person, or
- (e) any relative of the spouse, as defined in the *Business Corporations Act*, of the person, where the relative has the same home as the person; (“personne qui a un lien”)

“Board” means the Ontario Energy Board; (“Commission”)

“construct” means construct, reconstruct, relocate, enlarge or extend; (“construire”)

“distribute”, with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less; (“distribuer”)

“distribution system” means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose; (“réseau de distribution”)

“distributor” means a person who owns or operates a distribution system; (“distributeur”)

“enforceable provision” means,

- (a) a provision of this Act or the regulations,
- (b) a provision of Part II of the *Energy Consumer Protection Act, 2010* or of the regulations made under it,
- (c) a provision of Part III of the *Energy Consumer Protection Act, 2010* or of the regulations made under it,

- (c.1) a provision of the *Ontario Clean Energy Benefit Act, 2010* or the regulations made under it;
 - (d) section 25.33, 25.34, 25.36, 25.37, 26, 27, 28, 28.1, 29, 30.1, 31, 53.11, 53.13, 53.15, 53.16 or 53.18 of the *Electricity Act, 1998*, or any other provision of that Act that is prescribed by the regulations,
 - (e) regulations made under clause 114 (1.3) (f) or (h) of the *Electricity Act, 1998*,
 - (f) a condition of a licence issued under Part IV, V or V.1,
 - (g) a provision of the rules made by the Board under section 44 or a code issued under section 70.1, 70.2 or 70.3,
 - (h) a provision of an order of the Board,
 - (i) a provision of an assurance of voluntary compliance that is given to the Board under section 112.7 or that was entered into under section 88.8 before that section was repealed, or
 - (j) a provision of any other Act or the regulations made under an Act, as may be prescribed by regulation; (“disposition exécutoire”)
- “fuel oil” means any liquid hydrocarbon within the meaning from time to time of the Canadian General Standards Board specification CAN/CGSB-3.2-M89 entitled FUEL OIL HEATING, CAN/CGSB-3.3-M89 entitled KEROSENE, CAN/CGSB-3.6-M90 entitled AUTOMOTIVE DIESEL FUEL or, when used for heating, cooking or lighting, within the meaning from time to time of CAN/CGSB-3.27-M89 entitled NAPHTHA FUEL; (“mazout”)
- “gas” means natural gas, substitute natural gas, synthetic gas, manufactured gas, propane-air gas or any mixture of any of them; (“gaz”)
- “gas distributor” means a person who delivers gas to a consumer and “distribute” and “distribution” have corresponding meanings; (“distributeur de gaz”, “distribuer”, “distribution”)
- “gas transmitter” means a person who carries gas by hydrocarbon transmission line, and “transmit” and “transmission” have corresponding meanings; (“transporteur de gaz”, “transporter”, “transport”)
- “IESO” means the Independent Electricity System Operator established under the *Electricity Act, 1998*; (“SIERE”)
- “land” includes any interest in land; (“bien-fonds”)
- “manufactured gas” means any artificially produced fuel gas, except acetylene and any other gas used principally in welding or cutting metals; (“gaz manufacturé”)
- “Minister” means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“oil” means crude oil, and includes any hydrocarbon that can be recovered in liquid form from a pool through a well; (“pétrole”)

“OPA” means the Ontario Power Authority established under the *Electricity Act, 1998*; (“OEO”)

“pipe line” means a pipe that carries a hydrocarbon and includes every part of the pipe and adjunct thereto; (“pipeline”)

“pool” means an underground accumulation of oil or natural gas or both, separated or appearing to be separated from any other such underground accumulation; (“gisement”)

“producer” means a person who has the right to remove gas or oil from a well, and “produce” and “production” have corresponding meanings except when referring to documents or records; (“producteur”, “produire”, “production”)

“propane” means a hydrocarbon consisting of 95 per cent or more of propane, propylene, butane or butylene, or any blend thereof; (“propane”)

“rate” means a rate, charge or other consideration and includes a penalty for late payment; (“tarif”)

“regulations” means the regulations made under this Act; (“règlements”)

“renewable energy generation facility” has the same meaning as in the *Electricity Act, 1998*; (“installation de production d’énergie renouvelable”)

“renewable energy source” has the same meaning as in the *Electricity Act, 1998*; (“source d’énergie renouvelable”)

“smart grid” has the same meaning as in the *Electricity Act, 1998*; (“réseau intelligent”)

“Smart Metering Entity” means the corporation incorporated, the limited partnership or the partnership formed or the entity designated pursuant to section 53.7 of the *Electricity Act, 1998*; (“Entité responsable des compteurs intelligents”)

“smart metering initiative” means those policies of the Government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters; (“initiative des compteurs intelligents”)

“station” means a compressor station, a metering station, an odorizing station or a regulating station; (“station”)

“storage company” means a person engaged in the business of storing gas; (“compagnie de stockage”)

“suite meter” has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; (“compteur individuel”)

“transmission system” means a system for transmitting electricity, and includes any structures, equipment or other things used for that purpose; (“réseau de transport”)

“transmit”, with respect to electricity, means to convey electricity at voltages of more than 50 kilovolts; (“transporter”)

“transmitter” means a person who owns or operates a transmission system; (“transporteur”)

“unit smart metering” has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; (“activités liées aux compteurs intelligents d’unité”)

“unit smart meter provider” has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; (“fournisseur de compteurs intelligents d’unité”)

“unit sub-metering” has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; (“activités liées aux compteurs divisionnaires d’unité”)

“unit sub-meter provider” has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; (“fournisseur de compteurs divisionnaires d’unité”)

“utility line” means a pipe line, a telephone, telegraph, electric power or water line, or any other line that supplies a service or commodity to the public; (“ligne de service public”)

“voting security” has the same meaning as in the *Business Corporations Act*; (“valeur mobilière avec droit de vote”)

“well” means a hole drilled into a geological formation of Cambrian or more recent age, except a hole where no gas or oil is encountered that is drilled for the production of fresh water or salt. (“puits”) 1998, c. 15, Sched. B, s. 3; 1999, c. 6, s. 48; 2002, c. 1, Sched. B, s. 1; 2002, c. 23, s. 4 (3); 2003, c. 3, s. 4; 2005, c. 5, s. 51; 2006, c. 3, Sched. C, s. 1; 2009, c. 12, Sched. D, s. 3; 2010, c. 8, s. 38 (1); 2010, c. 26, Sched. 13, s. 17 (1); 2011, c. 9, Sched. 27, s. 34 (1).

PART II THE BOARD

Ontario Energy Board Board continued

4. (1) The Ontario Energy Board is continued as a corporation without share capital under the name Ontario Energy Board in English and Commission de l’énergie de l’Ontario in French. 2003, c. 3, s. 5 (2).

Powers

(2) The Board has the capacity and the rights, powers and privileges of a natural person for the purpose of exercising and performing its powers and duties under this or any other Act, except as otherwise provided in this Act. 2003, c. 3, s. 5 (4).

Duties

[\(3\)](#) The Board shall perform the duties assigned to it under this or any other Act. 2003, c. 3, s. 5 (4).

Crown agency

[\(4\)](#) The Board is an agent of Her Majesty in right of Ontario, and its powers may be exercised only as an agent of Her Majesty. 2003, c. 3, s. 5 (4).

[\(5\)](#) Repealed: 2003, c. 3, s. 5 (3).

Composition

[4.1 \(1\)](#) The Board shall be composed of at least five members. 2003, c. 3, s. 6.

Appointment

[\(2\)](#) The members shall be appointed by the Lieutenant Governor in Council. 2003, c. 3, s. 6.

Term of initial appointment

[\(3\)](#) The first term of office of a person who is appointed to the Board shall not exceed two years. 2003, c. 3, s. 6.

Transition

[\(4\)](#) Subsection (3) does not apply to a person who is a member of the Board when subsection (3) comes into force. 2003, c. 3, s. 6.

Reappointments

[\(5\)](#) A member of the Board may be reappointed for one or more terms of office, each of which does not exceed five years. 2003, c. 3, s. 6.

Chair and vice-chairs

[\(6\)](#) The Lieutenant Governor in Council shall, by order, designate a member of the Board as chair and shall designate two members as vice-chairs. 2003, c. 3, s. 6.

Same

[\(7\)](#) The chair and each vice-chair holds office for the term specified by the Lieutenant Governor in Council which shall not exceed his or her term as a member of the Board. 2003, c. 3, s. 6.

Same

[\(8\)](#) Despite subsections (3) and (5), when a member of the Board is designated as chair, the designation may provide that his or her term of office as a member continues for a period that does not exceed five years from the date of the designation as chair, and subsection (5) applies to any subsequent reappointment as a member. 2003, c. 3, s. 6.

Duties of chair

[\(9\)](#) The chair is the chief executive officer of the Board and, unless otherwise authorized by the Minister, shall devote his or her full time to the work of the Board. 2003, c. 3, s. 6.

Chair may delegate

[\(10\)](#) The chair may in writing delegate any of his or her powers or duties to a vice-chair. 2003, c. 3, s. 6.

Conditions and restrictions

[\(11\)](#) A delegation under subsection (10) is subject to such conditions and restrictions as the chair may specify in writing. 2003, c. 3, s. 6.

Acting chair

[\(12\)](#) If no one is available to exercise or perform a power or duty of the chair, any vice-chair may exercise the power or duty. 2003, c. 3, s. 6.

Management committee

[4.2 \(1\)](#) The Board shall have a management committee composed of the chair and the vice-chairs. 2003, c. 3, s. 7.

Duties

[\(2\)](#) The management committee shall manage the activities of the Board, including the Board's budgeting and the allocation of the Board's resources, and shall perform such other duties as are assigned to the management committee under this Act. 2003, c. 3, s. 7.

Rules of practice and procedure

[\(3\)](#) The Board's authority to make rules governing practice and procedure under section 25.1 of the *Statutory Powers Procedure Act* shall be exercised by the management committee on behalf of the Board. 2003, c. 3, s. 7.

Quorum

[\(4\)](#) Subject to the by-laws made under section 4.10, two members of the management committee constitute a quorum. 2003, c. 3, s. 7.

Presiding officer

[\(5\)](#) The chair shall preside over management committee meetings. 2003, c. 3, s. 7.

Delegation

[\(6\)](#) The management committee shall not delegate any of its powers or duties under the following provisions:

1. Sections 4.8 to 4.10.
2. Subsection 6 (1).
3. Section 26.
- 3.1 Section 26.1.
4. Any other provision prescribed by the regulations. 2003, c. 3, s. 7; 2009, c. 12, Sched. D, s. 4.

Same

[\(7\)](#) Subject to subsection (6), the management committee may delegate its powers and duties, but only to a member of the management committee. 2003, c. 3, s. 7.

Conditions and restrictions

[\(8\)](#) A delegation under subsection (7) is subject to such conditions and restrictions as the management committee may specify in writing. 2003, c. 3, s. 7.

Panels

[4.3 \(1\)](#) The chair may assign one or more members of the Board to a panel to hear or determine any matter and, for that purpose, the panel has all the jurisdiction and powers of the Board. 2003, c. 3, s. 8.

Same

[\(2\)](#) A member of the Board shall not exercise or perform any power or duty of the Board except as a member of a panel to which he or she has been assigned. 2003, c. 3, s. 8.

Same

[\(3\)](#) Subsection (2) does not apply to the powers of the Board under sections 44 and 70.1. 2003, c. 3, s. 8.

Market Surveillance Panel

[4.3.1 \(1\)](#) The Market Surveillance Panel established by the board of directors of the Independent Electricity Market Operator under subsection 13 (1) of the *Electricity Act, 1998* as it read on January 1, 2004 is continued as the Market Surveillance Panel of the Board. 2004, c. 23, Sched. B, s. 3.

Appointment

[\(2\)](#) The Board's management committee shall appoint the members of the Market Surveillance Panel. 2004, c. 23, Sched. B, s. 3.

Membership

[\(3\)](#) No person shall be appointed as a member of the Market Surveillance Panel if he or she has any material interest in a market participant or is a director, officer, employee or agent of,

- (a) a generator, distributor, transmitter or retailer;
- (b) a person who sells electricity or ancillary services through the IESO-administered markets or directly to another person who is not a consumer;
- (c) a market participant;
- (d) an industry association that represents a person referred to in clause (a), (b) or (c);
- (e) the OPA;
- (f) the IESO; or
- (g) an affiliate of a person listed in clause (a), (b), (c), (e) or (f). 2004, c. 23, Sched. B, s. 3.

Same

(4) Subsection (3) applies only with respect to persons who first become members of the Market Surveillance Panel on or after the day subsection (3) comes into force. 2004, c. 23, Sched. B, s. 3.

Staff and assistance

(5) Subject to the by-laws made under section 4.10, the Market Surveillance Panel may use the services of employees of the Board and the IESO, with the consent of their employers, and of persons who have technical or professional expertise that the panel considers necessary. 2004, c. 23, Sched. B, s. 3.

Testimony

(6) A person who is a member of the Market Surveillance Panel or an employee of the IESO or the Board and who is acting on behalf of the Panel shall not be required in any civil proceeding to give testimony with respect to information obtained in the course of his or her duties. 2004, c. 23, Sched. B, s. 3.

Law enforcement information

(7) A record that contains information provided to or obtained by the Market Surveillance Panel and that is designated by the Panel as relating to activity in the IESO-administered markets or to the conduct of a market participant shall be deemed, for the purpose of section 14 of the *Freedom of Information and Protection of Privacy Act*, to be a record the disclosure of which could reasonably be expected to interfere with a law enforcement matter. 2004, c. 23, Sched. B, s. 3.

Confidential information relating to market participant

(8) A record that contains information provided to or obtained by the Market Surveillance Panel relating to a market participant and that is designated by the Panel as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization. 2004, c. 23, Sched. B, s. 3.

Regulations

- (9) The Lieutenant Governor in Council may make regulations,
- (a) prescribing a day on which the Market Surveillance Panel is dissolved and the Board commences to exercise the powers and perform the duties of the Panel under this or any other Act;
 - (b) governing the application, after the dissolution of the Panel, of any provision of this or any other Act that relates to the Market Surveillance Panel or its powers or duties. 2004, c. 23, Sched. B, s. 3.

Stakeholder input

4.4 The Board shall establish one or more processes by which consumers, distributors, generators, transmitters and other persons who have an interest in the electricity industry may provide advice and recommendations for consideration by the Board. 2004, c. 23, Sched. B, s. 4.

Fiscal year

4.5 The fiscal year of the Board begins on April 1. 2003, c. 3, s. 10.

Memorandum of understanding

4.6 (1) Every three years beginning with the Board's 2003-2004 fiscal year, the chair of the Board, on behalf of the Board and its management committee, and the Minister shall enter into a memorandum of understanding setting out,

- (a) the respective roles and responsibilities of the Minister, the chair and the management committee;
- (b) the accountability relationships between the chair, the management committee and the Minister;
- (c) limitations on the Board's powers to borrow and invest;
- (d) the responsibility of the chair and the management committee to provide the Minister with business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Board;
- (e) details of an obligation that requires the management committee to provide the Minister with statements of the Board's priorities and to publish those statements;
- (f) details of an obligation that requires the management committee,
 - (i) to provide the Minister with regulatory calendars that set out anticipated dates for,
 - (A) dealing with proceedings that are expected to be heard or determined by the Board, and
 - (B) exercising the power to make rules under section 44 or issue codes under section 70.1, and
 - (ii) to publish the regulatory calendars described in subclause (i);
- (g) details of an obligation that requires the management committee to establish performance standards for the Board;
- (h) details of an obligation that requires the management committee to establish and maintain a pay for performance plan for full-time members of the Board that links payment of bonuses to the achievement of performance standards;
- (i) details of an obligation respecting consumer protection support that requires the management committee, on behalf of the Board, to make and maintain rules

governing practice and procedure under section 25.1 of the *Statutory Powers Procedure Act* that govern interim and final awards of costs to organizations representing consumers;

- (j) details of an obligation that requires the management committee to consult with the advisory committee established under section 4.4 with respect to the obligations referred to in clauses (e) to (i); and
- (k) any other matter that the parties consider necessary or appropriate. 2003, c. 3, s. 11.

Same

[\(2\)](#) The Board shall comply with the memorandum of understanding in exercising its powers and performing its duties under this Act, but the failure to do so does not affect the validity of any action taken by the Board or give rise to any rights or remedies by any person, other than rights or remedies provided by the memorandum of understanding. 2003, c. 3, s. 11.

Publication

[\(3\)](#) The management committee shall publish the memorandum of understanding on the Board's website on the Internet as soon as practicable after the memorandum is entered into. 2003, c. 3, s. 11.

Minister's request for information

[4.7 \(1\)](#) The Board's management committee shall promptly give the Minister such information about the Board's activities, operations and financial affairs as the Minister requests. 2003, c. 3, s. 11.

Examination

[\(2\)](#) The Minister may designate a person to examine any financial or accounting procedures, activities or practices of the Board and report the results of the examination to the Minister. 2003, c. 3, s. 11.

Duty to assist, etc.

[\(3\)](#) The members and employees of the Board shall give the person designated by the Minister all the assistance and co-operation necessary to enable him or her to complete the examination. 2003, c. 3, s. 11.

Financial statements

[4.8 \(1\)](#) The Board's management committee shall cause annual financial statements to be prepared for the Board in accordance with generally accepted accounting principles. 2003, c. 3, s. 11.

Same

[\(2\)](#) The financial statements must present the financial position, results of operations and changes in the financial position of the Board for its most recent fiscal year. 2003, c. 3, s. 11.

Auditors

(3) The management committee shall appoint one or more auditors licensed under the *Public Accounting Act, 2004* to audit the financial statements of the Board for each fiscal year. 2003, c. 3, s. 11; 2004, c. 8, s. 46.

Auditor General

(4) The Auditor General may also audit the financial statements of the Board. 2003, c. 3, s. 11; 2004, c. 17, s. 32.

Annual report

4.9 (1) Within six months after the end of each fiscal year, the Board's management committee shall deliver to the Minister an annual report, including the Board's audited financial statements, on the affairs of the Board for that fiscal year. 2003, c. 3, s. 11.

Report to be laid before Assembly

(2) Within one month after receiving the annual report, the Minister shall lay the report before the Assembly by delivering the report to the Clerk. 2003, c. 3, s. 11.

By-laws

4.10 (1) The Board's management committee may make by-laws,

- (a) governing the administration, management and conduct of the affairs of the Board;
- (b) prescribing emergency circumstances in which the quorum of the management committee is one member;
- (c) governing the appointment of an auditor;
- (d) setting out the powers, functions and duties of the chair, the vice-chairs and the officers employed by the Board;
- (e) governing the remuneration and benefits of the chair, the vice-chairs and the other members of the Board;
- (f) governing the composition and functions of the Market Surveillance Panel and the appointment, removal and remuneration of members of the Market Surveillance Panel. 2003, c. 3, s. 11; 2004, c. 23, Sched. B, s. 5.

Notice to Minister

(2) The management committee shall deliver to the Minister a copy of every by-law passed by it. 2003, c. 3, s. 11.

Minister's review of remuneration and benefits by-laws

(3) Within 60 days after delivery of a by-law made under clause (1) (e), the Minister may approve, reject or return it to the management committee for further consideration. 2003, c. 3, s. 11.

Effect of approval

[\(4\)](#) A by-law made under clause (1) (e) that is approved by the Minister becomes effective on the date of the approval or on such later date as the by-law may provide. 2003, c. 3, s. 11.

Effect of rejection

[\(5\)](#) A by-law made under clause (1) (e) that is rejected by the Minister does not become effective. 2003, c. 3, s. 11.

Effect of return for further consideration

[\(6\)](#) A by-law made under clause (1) (e) that is returned to the management committee for further consideration does not become effective until the committee returns it to the Minister and the Minister approves it. 2003, c. 3, s. 11.

Expiry of review period

[\(7\)](#) If, within the 60-day period referred to in subsection (3), the Minister does not approve, reject or return the by-law for further consideration, the by-law becomes effective on the 75th day after it is delivered to the Minister or on such later date as the by-law may provide. 2003, c. 3, s. 11.

Publication

[\(8\)](#) The management committee shall publish every by-law made under subsection (1) on the Board's website on the Internet as soon as practicable after the by-law becomes effective. 2003, c. 3, s. 11.

Legislation Act, 2006, Part III

[\(9\)](#) Part III (Regulations) of the *Legislation Act, 2006* does not apply to by-laws made by the management committee under subsection (1). 2003, c. 3, s. 11; 2006, c. 21, Sched. F, s. 136 (1).

Restrictions on Board powers

[4.11](#) The Board shall not, without the approval of the Lieutenant Governor in Council,

- (a) create a subsidiary;
- (b) purchase or sell real property;
- (c) borrow money, pledge, mortgage or hypothecate any of its property, or create or grant a security interest in any of its property;
- (d) enter into a contract of a class prescribed by the regulations; or
- (e) exercise other rights, powers or privileges under subsection 4 (2) that are prescribed by the regulations. 2003, c. 3, s. 12.

Purchases and loans by Province

[4.12 \(1\)](#) The Minister of Finance, on behalf of Ontario, may purchase securities of or make loans to the Board in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient. 2003, c. 3, s. 12.

Same

[\(2\)](#) The Minister of Finance may pay from the Consolidated Revenue Fund the money necessary for a purchase or loan made under subsection (1). 2003, c. 3, s. 12.

Authority re income

[4.13 \(1\)](#) Despite Part I of the *Financial Administration Act* and subject to subsection 26.1 (5), revenue from the exercise of a power conferred or the discharge of a duty imposed on the Board or the Board's management committee under this or any other Act, and the investments held by the Board, do not form part of the Consolidated Revenue Fund and, subject to this section, shall be applied to carrying out the powers conferred and duties imposed on the Board under this or any other Act. 2003, c. 3, s. 12; 2009, c. 12, Sched. D, s. 5.

Same

[\(2\)](#) The revenue referred to in subsection (1) includes the following:

1. Fees payable under section 12.1.
2. Assessments payable under section 26.
3. Costs payable to the Board under section 30.
4. Administrative penalties payable under section 112.5. 2003, c. 3, s. 12.

Collection of personal information

[4.14](#) The Board may collect personal information within the meaning of section 38 of the *Freedom of Information and Protection of Privacy Act* for the purpose of carrying out its duties and exercising its powers under this or any other Act. 2003, c. 3, s. 12.

Non-application of certain Acts

[4.15](#) The *Corporations Act* and the *Corporations Information Act* do not apply with respect to the Board. 2003, c. 3, s. 12.

Members and employees

[4.16 \(1\)](#) Repealed: 2006, c. 35, Sched. C, s. 98.

Status of members

[\(2\)](#) The members of the Board are not its employees, and the chair and vice-chairs shall not hold any other office in the Board or be employed by it in any other capacity. 2003, c. 3, s. 12.

Conflict of interest, indemnification

[\(3\)](#) Sections 132 (conflict of interest) and 136 (indemnification) of the *Business Corporations Act* apply with necessary modifications with respect to the Board as if the Minister were its sole shareholder. 2003, c. 3, s. 12.

Agreement for services

[\(4\)](#) The Board and a ministry of the Crown may enter into agreements for the provision by employees of the Crown of any service required by the Board to carry out its

duties and powers, and the Board shall pay the agreed amount for services provided to it. 2003, c. 3, s. 12.

Chief operating officer and secretary

5. The Board's management committee shall appoint a chief operating officer of the Board and a secretary of the Board from among the Board's employees. 2003, c. 3, s. 13.

Delegation of Board's powers and duties

6. (1) The Board's management committee may in writing delegate any power or duty of the Board to an employee of the Board. 2003, c. 3, s. 13.

Exceptions

(2) Subsection (1) does not apply to the following powers and duties:

1. Any power or duty of the Board's management committee.
2. The power to make rules under section 44.
3. The power to issue codes under section 70.1.
4. The power to make rules under section 25.1 of the *Statutory Powers Procedure Act*.
5. Hearing and determining an appeal under section 7 or a review under section 8.
6. The power to make an order against a person under section 112.3, 112.4 or 112.5, if the person gives notice requiring the Board to hold a hearing under section 112.2.
7. A power or duty prescribed by the regulations. 2003, c. 3, s. 13.

Conditions and restrictions

(3) A delegation under this section is subject to such conditions and restrictions as the management committee may specify in writing. 2003, c. 3, s. 13.

No hearing

(4) An employee of the Board may exercise powers and duties that are delegated under this section without holding a hearing. 2003, c. 3, s. 13.

Statutory Powers Procedure Act

(5) If an employee of the Board holds a hearing pursuant to this section, the *Statutory Powers Procedure Act* applies to the same extent as if members of the Board were holding the hearing. 2003, c. 3, s. 13.

Review by employee

(6) An employee of the Board who makes an order pursuant to this section may, within a reasonable time after the order is made and if he or she considers it advisable, review all or part of the order, and may confirm, vary or cancel the order. 2003, c. 3, s. 13.

Transfer to Board

[\(7\)](#) At any time before an employee of the Board makes an order in respect of a matter pursuant to this section, the management committee may direct that the matter be transferred to the Board for determination. 2003, c. 3, s. 13.

Effect of employees' orders, etc.

[\(8\)](#) Anything done by an employee of the Board pursuant to this section shall be deemed, for the purpose of this or any other Act, to have been done by the Board. 2003, c. 3, s. 13.

Application of s. 33

[\(9\)](#) Despite subsection (8), section 33 and subsection 38 (4) do not apply to an order made by an employee of the Board pursuant to this section. 2003, c. 3, s. 13; 2009, c. 33, Sched. 2, s. 51 (1).

Appeal from delegated function

[7. \(1\)](#) A person directly affected by an order made by an employee of the Board pursuant to section 6 may, within 15 days after receiving notice of the order, appeal the order to the Board. 2003, c. 3, s. 13.

Exception

- [\(2\)](#) Subsection (1) does not apply to,
- (a) a person who did not make submissions to the employee after being given notice of the opportunity to do so; or
 - (b) a person who did not give notice requiring the Board to hold a hearing under section 112.2, in the case of an order made by the employee under section 112.3, 112.4 or 112.5. 2003, c. 3, s. 13.

Parties

- [\(3\)](#) The parties to the appeal are:
- 1. The appellant.
 - 2. The applicant, if the order is made in a proceeding commenced by an application.
 - 3. The employee who made the order.
 - 4. Any other person added as a party by the Board. 2003, c. 3, s. 13.

Powers of Board

[\(4\)](#) The Board may confirm, vary or cancel the order. 2003, c. 3, s. 13.

Stay

[\(5\)](#) An appeal under this section does not stay the order of the employee, unless the Board orders otherwise. 2003, c. 3, s. 13.

Review of delegated function

8. (1) The Board's management committee may, on its own motion, within 15 days after the making of an order by an employee of the Board pursuant to section 6, direct the Board to review the order. 2003, c. 3, s. 13.

Parties

(2) The parties to the review are:

1. Every person directly affected by the order, including, if the order is made in a proceeding commenced by an application, the applicant.
2. The employee who made the order.
3. Any other person added as a party by the Board. 2003, c. 3, s. 13.

Exception

(3) Despite paragraph 1 of subsection (2), a person is not a party to the review if the person did not make submissions to the employee after being given notice of the opportunity to do so. 2003, c. 3, s. 13.

Application of subss. 7 (4) and (5)

(4) Subsections 7 (4) and (5) apply, with necessary modifications, to a review under this section. 2003, c. 3, s. 13.

Power to administer oaths

9. The secretary of the Board and an inspector appointed under section 106 has, in carrying out his or her duties under this Act, the same powers as a commissioner for taking affidavits in Ontario. 2003, c. 3, s. 14.

Not required to testify

10. Members of the Board and employees of the Board are not required to give testimony in any civil proceeding with regard to information obtained in the discharge of their official duties. 1998, c. 15, Sched. B, s. 10.

Liability

11. (1) No action or other civil proceeding shall be commenced against any of the following persons for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act or regulation or for any neglect or default in the exercise or performance in good faith of such a power or duty:

1. A member of the Board.
2. An officer, employee or agent of the Board.
3. A member of the Market Surveillance Panel.
4. An officer, employee or agent of the IESO acting on behalf of the Market Surveillance Panel. 2004, c. 23, Sched. B, s. 6.

Same

[\(2\)](#) A member of the Board is not liable for an act, an omission, an obligation or a liability of the Board or its employees. 2003, c. 3, s. 15.

Crown liability

[\(3\)](#) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsections (1) and (2) do not relieve the Crown of any liability to which it would otherwise be subject in respect of a tort committed by any person referred to in subsection (1) or (2). 2003, c. 3, s. 15.

Fees and access to licences

[12. \(1\)](#) Repealed: 2003, c. 3, s. 16.

[\(2\)](#) Repealed: 2003, c. 3, s. 16.

[\(3\)](#) Repealed: 2003, c. 3, s. 16.

Inspection

[\(4\)](#) The Board shall make all licences available for public inspection during normal business hours. 1998, c. 15, Sched. B, s. 12 (4).

Fees

[12.1 \(1\)](#) The Board's management committee may set and charge fees for copies of Board orders, decisions, reasons, reports, recordings or other documents or things, including documents certified by a member of the Board or the secretary of the Board. 2003, c. 3, s. 17.

Application and other fees

[\(2\)](#) The management committee may set and charge licence fees, application fees and other fees relating to an application or appeal to the Board. 2003, c. 3, s. 17.

Classes

[\(3\)](#) The management committee may establish different fees for different classes of persons and for different types of proceedings and types of licences. 2003, c. 3, s. 17.

Mandatory fees re gas marketers and retailers of electricity

[\(4\)](#) The management committee shall, as of the time or times prescribed by regulation, set and charge fees for the licensing of gas marketers under section 48 and retailers of electricity under section 57. 2010, c. 8, s. 38 (2).

Forms

[13.](#) The Board's management committee may,

- (a) establish forms and require their use in connection with any matter relating to the Board; or
- (b) approve forms or the content of the forms and require that any application, appeal or information submitted to the Board be in the approved form. 2003, c. 3, s. 18.

Assistance

14. The Board may appoint persons having technical or special knowledge to assist the Board. 1998, c. 15, Sched. B, s. 14.

Orders and licences

15. (1) All orders made and licences issued by the Board shall be signed by the chair, a vice-chair or the secretary. 2003, c. 3, s. 19.

Same

(2) Despite subsection (1), an order made or licence issued by the Board pursuant to section 6 may be signed by the employee who made the order or issued the licence. 2003, c. 3, s. 19.

Judicial notice

(3) An order or licence that purports to be signed by a person referred to in subsection (1) or (2) shall be judicially noticed without further proof. 2003, c. 3, s. 19.

Legislation Act, 2006, Part III

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to the orders made or licences issued by the Board. 2003, c. 3, s. 19; 2006, c. 21, Sched. F, s. 136 (1).

16. Repealed: 2003, c. 3, s. 19.

17. Repealed: 2003, c. 3, s. 19.

Transfer of authority or licence

18. (1) No authority given by the Board under this or any other Act shall be transferred or assigned without leave of the Board. 1998, c. 15, Sched. B, s. 18 (1).

Same

(2) A licence issued under this Act is not transferable or assignable without leave of the Board. 1998, c. 15, Sched. B, s. 18 (2).

Board's powers, general

Power to determine law and fact

19. (1) The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact. 1998, c. 15, Sched. B, s. 19 (1).

Order

(2) The Board shall make any determination in a proceeding by order. 1998, c. 15, Sched. B, s. 19 (2); 2001, c. 9, Sched. F, s. 2 (1).

Reference

(3) If a proceeding before the Board is commenced by a reference to the Board by the Minister of Natural Resources, the Board shall proceed in accordance with the reference. 1998, c. 15, Sched. B, s. 19 (3).

Additional powers and duties

(4) The Board of its own motion may, and if so directed by the Minister under section 28 or otherwise shall, determine any matter that under this Act or the regulations

it may upon an application determine and in so doing the Board has and may exercise the same powers as upon an application. 1998, c. 15, Sched. B, s. 19 (4).

Exception

[\(5\)](#) Unless specifically provided otherwise, subsection (4) does not apply to any application under the *Electricity Act, 1998* or any other Act. 1998, c. 15, Sched. B, s. 19 (5).

Jurisdiction exclusive

[\(6\)](#) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act. 1998, c. 15, Sched. B, s. 19 (6).

Powers, procedures applicable to all matters

[20.](#) Subject to any provision to the contrary in this or any other Act, the powers and procedures of the Board set out in this Part apply to all matters before the Board under this or any other Act. 1998, c. 15, Sched. B, s. 20.

Board's powers, miscellaneous

[21. \(1\)](#) The Board may at any time on its own motion and without a hearing give directions or require the preparation of evidence incidental to the exercise of the powers conferred upon the Board by this or any other Act. 1998, c. 15, Sched. B, s. 21 (1).

Hearing upon notice

[\(2\)](#) Subject to any provision to the contrary in this or any other Act, the Board shall not make an order under this or any other Act until it has held a hearing after giving notice in such manner and to such persons as the Board may direct. 1998, c. 15, Sched. B, s. 21 (2).

[\(3\)](#) Repealed: 2000, c. 26, Sched. D, s. 2 (2).

No hearing

[\(4\)](#) Despite section 4.1 of the *Statutory Powers Procedure Act*, the Board may, in addition to its power under that section, dispose of a proceeding without a hearing if,

- (a) no person requests a hearing within a reasonable time set by the Board after the Board gives notice of the right to request a hearing; or
- (b) the Board determines that no person, other than the applicant, appellant or licence holder will be adversely affected in a material way by the outcome of the proceeding and the applicant, appellant or licence holder has consented to disposing of a proceeding without a hearing.
- (c) Repealed: 2003, c. 3, s. 20 (1).

1998, c. 15, Sched. B, s. 21 (4); 2002, c. 1, Sched. B, s. 3; 2003, c. 3, s. 20 (1).

Consolidation of proceedings

[\(5\)](#) Despite subsection 9.1 (1) of the *Statutory Powers Procedure Act*, the Board may combine two or more proceedings or any part of them, or hear two or more proceedings at the same time, without the consent of the parties. 2003, c. 3, s. 20 (2).

Non-application

[\(6\)](#) Subsection 9.1 (3) of the *Statutory Powers Procedure Act* does not apply to proceedings before the Board. 1998, c. 15, Sched. B, s. 21 (6).

Use of same evidence

[\(6.1\)](#) Despite subsection 9.1 (5) of the *Statutory Powers Procedure Act*, the Board may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time, without the consent of the parties to the second-named proceeding. 2003, c. 3, s. 20 (3).

Interim orders

[\(7\)](#) The Board may make interim orders pending the final disposition of a matter before it. 1998, c. 15, Sched. B, s. 21 (7).

Hearings under *Consolidated Hearings Act*

[22. \(1\)](#) Despite subsection 4 (4) of the *Consolidated Hearings Act*, the establishing authority under that Act may appoint one or more members of the Board to be members of a joint board holding a hearing under that Act with respect to an undertaking for which, but for the application of the *Consolidated Hearings Act*, a hearing before the Board is or may be required. 1998, c. 15, Sched. B, s. 22 (1).

Where term of member ends

[\(2\)](#) If a joint board commences to hold a hearing under the *Consolidated Hearings Act* and the term of office on the Ontario Energy Board of a member sitting for the joint hearing expires or is terminated before the proceeding is disposed of, the member shall remain a member of the joint board for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated. 1998, c. 15, Sched. B, s. 22 (2).

Final decision

[22.1 \(1\)](#) The Board shall issue an order that embodies its final decision in a proceeding within 60 days after making the final decision. 2003, c. 3, s. 21.

Validity of decision not affected

[\(2\)](#) Failure to comply with subsection (1) does not affect the validity of the Board's decision. 2003, c. 3, s. 21.

Conditions of orders

[23. \(1\)](#) The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application. 1998, c. 15, Sched. B, s. 23.

[\(2\)](#) Repealed: 2003, c. 3, s. 22.

Written reasons to be made available

[24.](#) All written reasons of the Board shall be kept by the secretary and be made available to any person upon payment of the required fee. 1998, c. 15, Sched. B, s. 24; 2003, c. 3, s. 23.

Obedience to orders of Board a good defence

[25.](#) An order of the Board is a good and sufficient defence to any proceeding brought or taken against any person in so far as the act or omission that is the subject of the proceeding is in accordance with the order. 1998, c. 15, Sched. B, s. 25.

Assessment

[26. \(1\)](#) Subject to the regulations, the Board's management committee may assess those persons or classes of persons prescribed by regulation with respect to all expenses incurred and expenditures made by the Board in the exercise of any powers or duties under this or any other Act. 1998, c. 15, Sched. B, s. 26 (1) ; 2003, c. 3, s. 24.

Obligation to pay assessment

[\(2\)](#) Every person assessed under subsection (1) shall pay the amount assessed. 1998, c. 15, Sched. B, s. 26 (2).

Order to pay assessment

[\(3\)](#) If a person fails to pay an assessment made under subsection (1), the Board may, without a hearing, order that person to pay the assessment. 1998, c. 15, Sched. B, s. 26 (3).

Failure to pay

[\(4\)](#) If a licensee fails to pay an assessment in accordance with the order, the Board, without a hearing, may suspend or cancel that person's licence. 1998, c. 15, Sched. B, s. 26 (4).

Payment of full amount

[\(5\)](#) The Board may reinstate the licence of a person whose licence was suspended or cancelled under subsection (4) if the person pays all amounts owing under this section. 1998, c. 15, Sched. B, s. 26 (5).

Regulations

- [\(6\)](#) The Lieutenant Governor in Council may make regulations,
- (a) prescribing persons or classes of persons liable to pay an assessment under subsection (1);
 - (b) prescribing the frequency of the assessments;
 - (c) respecting the manner in which an assessment under this section is carried out;
 - (d) prescribing the amount of the assessment or the method of calculating the amount;
 - (e) prescribing the proportion of the assessment for which each person or class of persons is liable or a method of determining the proportion;

- (f) prescribing such other matters relating to the carrying out of an assessment as the Lieutenant Governor in Council considers appropriate. 1998, c. 15, Sched. B, s. 26 (6).

Scope

[\(7\)](#) A regulation under this section may be general or particular in its application. 1998, c. 15, Sched. B, s. 26 (7).

Assessment, Ministry conservation programs, etc.

[26.1 \(1\)](#) Subject to the regulations, the Board shall assess the following persons or classes of persons, as prescribed by regulation, with respect to the expenses incurred and expenditures made by the Ministry of Energy in respect of its energy conservation programs or renewable energy programs provided under this Act, the *Green Energy Act, 2009*, the *Ministry of Energy Act, 2011* or any other Act:

1. In respect of consumers in their service areas, gas distributors and licensed distributors.
2. The IESO.
3. Any other person prescribed by regulation. 2009, c. 12, Sched. D, s. 6; 2011, c. 9, Sched. 27, s. 34 (2).

Assessments, collection by gas distributors and licensed distributors

[\(2\)](#) Gas distributors and licensed distributors may collect the amounts assessed under subsection (1) from the consumers or classes of consumers as are prescribed by regulation and in the manner prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Assessments, IESO

[\(3\)](#) The IESO may collect the amounts assessed under subsection (1) from market participants or classes of market participants as are prescribed by regulation and in the manner prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Assessment, amount and timing

[\(4\)](#) For the purposes of subsection (1), the Board shall assess the amount prescribed by regulation within the time prescribed by regulation in accordance with the methods or rules prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Assessment, obligation to pay

[\(5\)](#) Every person assessed under subsection (1) shall pay the amount assessed in accordance with the Board's assessment by remitting the amount to the Minister of Finance. 2009, c. 12, Sched. D, s. 6.

Failure to pay

[\(6\)](#) If a person fails to pay an assessment made under subsection (1), the Board may, without a hearing, order the person to pay the assessment. 2009, c. 12, Sched. D, s. 6.

Reporting

[\(7\)](#) Persons referred to in subsection (1) shall report such information in such manner and at such times to the Board or to the Minister as is prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Regulations

[\(8\)](#) The Lieutenant Governor in Council may make regulations,

- (a) governing assessments under this section, including,
 - (i) prescribing the amount to be assessed or the amounts to be assessed against each person, or class of person liable to pay an assessment or the method of calculating the amount or amounts, and
 - (ii) prescribing the time within which the assessments must occur;
- (b) prescribing persons or classes of persons liable to pay an assessment under subsection (1);
- (c) prescribing the frequency of the assessments;
- (d) respecting the manner by which an assessment under this section is carried out;
- (e) prescribing the proportion of the assessment for which each person or class of persons is liable or a method of determining the proportion;
- (f) with respect to subsection (7), prescribing the time at which such reports must be made or submitted, the manner by which such reports must be made or submitted, and governing the information to be provided, including the manner in which such information is presented or provided;
- (g) prescribing such other matters relating to the carrying out of an assessment as the Lieutenant Governor in Council considers appropriate. 2009, c. 12, Sched. D, s. 6.

Special purposes

[26.2 \(1\)](#) For the purpose of the *Financial Administration Act*, all amounts collected under section 26.1 relating to assessments paid shall be deemed to be money paid to Ontario for the special purposes set out in subsection (2). 2009, c. 12, Sched. D, s. 6.

Same

[\(2\)](#) The following are the special purposes for which amounts collected under section 26.1 relating to assessments are paid to Ontario:

1. To fund conservation or renewable energy programs aimed at decreasing the consumption of two or more of the following fuels:
 - i. natural gas,
 - ii. electricity,

- iii. propane,
 - iv. oil,
 - v. coal, and
 - vi. wood.
2. To fund conservation or renewable energy programs aimed at causing consumers of fuel to change from one or more of the fuels listed in paragraph 1 to any other fuel or fuels listed in that paragraph.
 3. To fund conservation or renewable energy programs aimed at decreasing peak electricity demand, while increasing or decreasing the consumption of another type of fuel.
 4. To fund research and development or other engineering or scientific activities aimed at furthering the conservation or the efficient use of fuels.
 5. To fund conservation or renewable energy programs aimed at a specific geographical, social, income or other sector of Ontario.
 6. To reimburse the Province for expenditures it incurs for any of the above purposes. 2009, c. 12, Sched. D, s. 6.

Special Purpose Conservation and Renewable Energy Fund

[\(3\)](#) The Minister of Finance shall maintain in the Public Accounts an account to be known as the Ministry of Energy Special Purpose Conservation and Renewable Energy Fund in which shall be recorded all receipts and disbursements of public money under this section. 2009, c. 12, Sched. D, s. 6; 2011, c. 9, Sched. 27, s. 34 (3).

Non-interest bearing account

[\(4\)](#) The balances from time to time in the account do not bear interest. 2009, c. 12, Sched. D, s. 6.

Interpretation

[\(5\)](#) For the purposes of this section, the terms used in it that are not defined in this Act but that are defined in section 1 of the *Financial Administration Act* have the meanings provided in that Act. 2009, c. 12, Sched. D, s. 6.

Policy directives

[27. \(1\)](#) The Minister may issue, and the Board shall implement, policy directives that have been approved by the Lieutenant Governor in Council concerning general policy and the objectives to be pursued by the Board. 1998, c. 15, Sched. B, s. 27 (1).

Publication

[\(2\)](#) A policy directive issued under this section shall be published in *The Ontario Gazette*. 1998, c. 15, Sched. B, s. 27 (2).

Conservation directives

[27.1](#) (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps specified in the directives to promote energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources. 2002, c. 23, s. 4 (4).

Publication

[2](#) A directive issued under this section shall be published in *The Ontario Gazette*. 2002, c. 23, s. 4 (4).

Directives re conservation and demand management targets

[27.2](#) (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps specified in the directive to establish conservation and demand management targets to be met by distributors and other licensees. 2009, c. 12, Sched. D, s. 7.

Directives, specified targets

[2](#) To promote conservation and demand management, a directive may require the Board to specify, as a condition of a licence, the conservation targets associated with those specified in the directive, and the targets shall be apportioned by the Board between distributors and other licensees in accordance with the directive. 2009, c. 12, Sched. D, s. 7.

Same

[3](#) A directive made under subsection (2) may require the OPA to provide information to the Board or to the Ministry about the conservation targets referred to in subsection (2) or the contracts referred to in subsection (5). 2009, c. 12, Sched. D, s. 7.

Directives re distributors

[4](#) Subject to subsection (7), a directive may require the Board to specify, as a condition of a licence, that a distributor may meet, at its discretion, any portion of its conservation target by seeking the approval of the Board for the conservation and demand management programs to be offered in its service area. 2009, c. 12, Sched. D, s. 7.

Directives, contracting with the OPA

[5](#) A directive may require the Board to specify, as a condition of a licence, that a distributor meet, at its discretion, any portion of its conservation target by contracting with the OPA to meet the target through province-wide programs offered by the OPA. 2009, c. 12, Sched. D, s. 7.

Public reporting

[6](#) To promote a culture of conservation and demand management, a directive may require the Board to specify, as a condition of a licence, that the licensee make public, by such means and at such time as specified in the directive, the steps that the licensee has

taken to meet its targets and the results that have been achieved in meeting those targets. 2009, c. 12, Sched. D, s. 7.

Hearings

[\(7\)](#) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held. 2009, c. 12, Sched. D, s. 7.

Publication

[\(8\)](#) A directive issued under this section shall be published in *The Ontario Gazette*. 2009, c. 12, Sched. D, s. 7.

Directives re: market rules, conditions

[28. \(1\)](#) In order to address the abuse or possible abuse of market power in the electricity sector, the Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council concerning market rules made under section 32 of the *Electricity Act, 1998* and existing or proposed licence conditions. 1998, c. 15, Sched. B, s. 28 (1).

Hearing

[\(2\)](#) A directive issued under subsection (1) may require the Board to hold a hearing or not to hold a hearing. 1998, c. 15, Sched. B, s. 28 (2).

Licence condition directives

[28.1 \(1\)](#) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board, in the manner specified in the directives, to amend conditions in licences issued by the Board that relate to the directive issued to the Board pursuant to an order of the Lieutenant Governor in Council that was dated March 24, 1999 and is available on request from the Minister. 2002, c. 23, s. 4 (5).

No hearing

[\(2\)](#) The Board shall amend the conditions as required by a directive without holding a hearing. 2002, c. 23, s. 4 (5).

Directives re: commodity risk

[28.2](#) The Minister may issue, and the Board shall implement, directives approved by the Lieutenant Governor in Council directing the Board to take such steps or develop such processes as may be required by the directive to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 2004, c. 23, Sched. B, s. 7.

Directives re smart metering initiative

[28.3 \(1\)](#) The Minister may issue, and the Board shall implement, directives approved by the Lieutenant Governor in Council relating to the government's smart metering initiative. 2006, c. 3, Sched. C, s. 2.

Directives re licence conditions

[\(2\)](#) The directives may require the Board, in the manner specified in the directives, to amend conditions in licences issued by the Board that relate to the Smart Metering Entity, distributors, retailers and transmitters or licences issued pursuant to section 57, including the following:

1. Conditions granting the exclusive right to the Smart Metering Entity to carry out any or all of its objects set out in section 53.8 of the *Electricity Act, 1998*.
2. Conditions granting the exclusive right to store information and data derived from smart meters to the Smart Metering Entity, including conditions in respect of the manner in which the information and data is stored.
3. Conditions providing for performance standards to be achieved by the Smart Metering Entity.
4. Conditions identifying arrangements and agreements, including procurement, service or operating arrangements or agreements, to be entered into by the Smart Metering Entity, distributors, transmitters, retailers or other persons and providing that the arrangements or agreements must contain specific conditions, restrictions, criteria or requirements relating to the arrangements or agreements.
5. Conditions providing for circumstances in which the Smart Metering Entity shall provide a person with access to information and data relating to consumers' consumption or use of electricity collected pursuant to paragraph 2 of section 53.8 of the *Electricity Act, 1998*, including conditions relating to the protection of privacy.
6. Conditions providing the Smart Metering Entity with the authority to conduct its metering activities in relation to the distribution of gas.
7. Conditions providing the Minister with exclusive authority to approve the base design, requirements, specifications and performance standards for smart meters, metering equipment, systems and technology and associated equipment, systems and technologies or classes of smart meters, equipment, systems and technology to be installed for prescribed classes of property and prescribed classes of consumers.
8. After a date prescribed by regulation made under the *Electricity Act, 1998*, conditions providing the Board with exclusive authority to approve the base design, requirements, specifications and performance standards for smart meters, metering equipment, systems and technology and associated equipment, systems and technologies or classes of smart meters, equipment, systems and technology to be installed for prescribed classes of property and prescribed classes of consumers. 2006, c. 3, Sched. C, s. 2.

Directives re amending conditions in licences

(3) A directive may require the Board, in the manner specified in the directive, to amend conditions in licences granted to the Smart Metering Entity, distributors, transmitters, retailers or others granting the Smart Metering Entity exclusive jurisdiction in Ontario with respect to some or all of the activities it is authorized to undertake under Part IV.2 of the *Electricity Act, 1998*. 2006, c. 3, Sched. C, s. 2.

Publication

(4) A directive issued under this section shall be published in *The Ontario Gazette*. 2006, c. 3, Sched. C, s. 2.

No hearing

(5) The Board shall amend the conditions as required by a directive without holding a hearing. 2006, c. 3, Sched. C, s. 2.

Directives re regulatory and accounting treatment of costs

28.4 The Minister may issue, and the Board shall implement, directives approved by the Lieutenant Governor in Council in respect of the regulatory and accounting treatment of costs in orders made under section 78 and associated with meters owned before January 1, 2006 to ensure that distributors, transmitters, retailers or other persons are not financially disadvantaged by the implementation of the smart metering initiative. 2006, c. 3, Sched. C, s. 2.

Directives, smart grid

28.5 (1) The Minister may issue, and the Board shall implement directives, approved by the Lieutenant Governor in Council, requiring the Board to take such steps as are specified in the directive relating to the establishment, implementation or promotion of a smart grid for Ontario. 2009, c. 12, Sched. D, s. 8.

Hearings

(2) A directive may specify whether the Board is to hold a hearing and the circumstances under which a hearing may or may not be held. 2009, c. 12, Sched. D, s. 8.

Publication

(3) A directive issued under this section shall be published in *The Ontario Gazette*. 2009, c. 12, Sched. D, s. 8.

Directives, connections

28.6 (1) The Minister may issue, and the Board shall implement directives, approved by the Lieutenant Governor in Council, requiring the Board to take such steps as are specified in the directive relating to the connection of renewable energy generation facilities to a transmitter's transmission system or a distributor's distribution system. 2009, c. 12, Sched. D, s. 8.

Directives, transmission and distribution systems

(2) A directive issued under subsection (1) may require the Board to amend the licence conditions of distributors, transmitters and other licensees to take the actions specified in the directive in relation to their transmission systems, distribution systems or

other associated systems, including enhancing, re-enforcing or expanding their transmission system or distribution system. 2009, c. 12, Sched. D, s. 8.

Hearings

(3) A directive may specify whether the Board is to hold a hearing and the circumstances under which a hearing may or may not be held. 2009, c. 12, Sched. D, s. 8.

Guidelines re processes and timing

(4) In relation to paragraph 5 of subsection 1 (1), the Minister may issue guidelines setting out goals or targets for the Board in relation to its processes associated with the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities, including the timing of those processes and the time within which the Board completes the processes. 2009, c. 12, Sched. D, s. 8.

Directives, gas marketers and electricity retailers

28.7 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council in relation to the marketing of gas and the retailing of electricity in Ontario. 2010, c. 8, s. 38 (3).

Same

(2) A directive issued under subsection (1) may require the Board to take steps specified in the directive to promote fairness, efficiency and transparency in the retail market for gas and for electricity in Ontario or in respect of any activity associated with the marketing of gas or the retailing of electricity within Ontario. 2010, c. 8, s. 38 (3).

Same

(3) A directive may require the Board to amend licences referred to in section 48 in respect of gas marketers or under section 57 in respect of retailers of electricity and may require the Board to amend all licences so issued or to amend specific licences of specified licensees. 2010, c. 8, s. 38 (3).

Licence conditions

(4) The directives may require the Board, in the manner specified in the directives, to amend conditions in licences issued by the Board that relate to gas marketers or retailers of electricity, including the following:

1. Conditions regarding the operations and management and business practices of a gas marketer or retailer of electricity, including but not limited to the conduct of employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.
2. Activities, conduct or practices that must, may or may not be undertaken by a gas marketer or retailer of electricity, its employees, agents or third parties acting on behalf of the gas marketer or the retailer of electricity.
3. Conditions requiring or imposing standards that are required to be met by a gas marketer or retailer of electricity or its employees, agents or third parties

acting on behalf of the gas marketer or retailer of electricity, including standards related to,

- i. education, training, certification and communications,
- ii. business practices,
- iii. performance standards,
- iv. background verifications and assessments as required under paragraph 6,
- v. record keeping,
- vi. contracting, including standards related to contracting with certain specified classes of vulnerable consumers, and
- vii. such other matters as may be specified in the directive.

- 4. Conditions requiring a gas marketer or retailer of electricity or its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity to provide such information orally or in writing to a consumer or a member of a class of consumers specified in the directive, the Board or the Ministry or to such other person or entity as may be specified in the directive, in the circumstances specified in the directive and within such time or times as may be specified in the directive.
- 5. Conditions requiring a gas marketer or retailer of electricity to meet criteria or requirements related to identification as specified in the directive, including criteria or requirements related to the identification credentials or badges or other forms of identification provided to its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity as may be specified in the directive.
- 6. Conditions requiring a gas marketer or retailer of electricity to meet specific criteria and requirements related to background verification and assessment of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including the requirement to establish a process or processes to conduct the verifications and assessments, and the criteria and requirements may include the time or times at which the verifications and assessments must be performed.
- 7. Conditions requiring a gas marketer or retailer of electricity to take the following steps or do the following things in respect of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity:
 - i. To establish a process or to follow or adhere to a process or processes as are prescribed by regulation or are approved by an order of the Board, for the following activities in respect of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity:

- A. licensing, including renewal, suspension and cancellation of licences,
 - B. bonding and insurance,
 - C. examination for credentials, certificates, accreditations or designations,
 - D. the creation of codes of conduct, best practices and policies,
 - E. requirements in relation to independence from or permissible investment in or association with the gas marketer or retailer of electricity or another licensee, and
 - F. such other matters as may be specified in the directive.
- ii. To conduct, at such times as may be specified in the directive, the activities referred to in this section in relation to each of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.
 - iii. To ensure that its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity adhere to the process or processes referred to in this section and, in particular, obtain any specified credentials, accreditations or designations referred to in this section by such time or times as may be specified in the directive.
8. Conditions identifying provisions which must be included in any arrangements or agreements, including arrangements or agreements relating to the marketing of gas or the retailing of electricity with specified classes of consumers, entered into by the gas marketer or retailer of electricity or third parties acting on behalf of the gas marketer or retailer of electricity and such conditions may specify or provide that the arrangements or agreements must contain specific conditions, restrictions, criteria or requirements relating to the arrangements or agreements. 2010, c. 8, s. 38 (3).

Verification

[\(5\)](#) For the purposes of the verification of a contract required under Part II of the *Energy Consumer Protection Act, 2010*, a directive,

- (a) may require the Board to prepare specified information, including preparing the information in languages specified in the directive, and to do so within the time specified in the directive; and
- (b) may require that the Board require that gas marketers or retailers of electricity or specified classes of them,
 - (i) use the information in the manner specified in the directive, and

- (ii) take such steps as may be specified in the directive to ensure that persons engaged by them in activities related to verification use the information in the manner specified in the directive. 2010, c. 8, s. 38 (3).

Audit and investigation

- (6) A directive issued under this section may require the Board to,
 - (a) exercise its authority under Part V.1 to audit the records and information of the gas marketer or retailer of electricity specified in the directive, in such manner as is specified in the directive;
 - (b) exercise its authority under Part VII to inspect the activities or conduct of the gas marketers or retailers of electricity or the classes of gas marketers or retailers of electricity, as are specified in the directive, in relation to compliance with this Act or its regulations;
 - (c) exercise its authority under Part VII to undertake random inspections of the activities or conduct, as are specified in the directive, of the gas marketers or retailers of electricity specified in the directive, in relation to compliance with this Act or its regulations;
 - (d) exercise its authority under Part VII.0.1 to investigate the activities or conduct or the classes of activities or conduct, as are specified in the directive, of gas marketers or retailers of electricity generally or of the classes of gas marketers or retailers of electricity as are specified in the directive, in relation to compliance with this Act or its regulations;
 - (e) exercise its authority under Part VII.0.1 to investigate the number or percentage, as is specified in the directive, of complaints received by the Board against gas marketers or retailers of electricity and reasonably considered by the Board to have merit, in relation to compliance with this Act or its regulations. 2010, c. 8, s. 38 (3).

Publication

- (7) A directive issued under this section shall be published in *The Ontario Gazette*. 2010, c. 8, s. 38 (3).

No hearing

- (8) The Board shall amend the conditions as required by a directive without holding a hearing. 2010, c. 8, s. 38 (3).

Refrain from exercising power

- 29. (1) On an application or in a proceeding, the Board shall make a determination to refrain, in whole or part, from exercising any power or performing any duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest. 1998, c. 15, Sched. B, s. 29 (1).

Scope

[\(2\)](#) Subsection (1) applies to the exercise of any power or the performance of any duty of the Board in relation to,

- (a) any matter before the Board;
- (b) any licensee;
- (c) any person who is subject to this Act;
- (d) any person selling, transmitting, distributing or storing gas; or
- (e) any product or class of products supplied or service or class of services rendered within the province by a licensee or a person who is subject to this Act. 1998, c. 15, Sched. B, s. 29 (2).

Where determination made

[\(3\)](#) For greater certainty, where the Board makes a determination to refrain in whole or in part from the exercise of any power or the performance of any duty under this Act, and does so refrain, nothing in this Act limits the application of the *Competition Act* (Canada) to those matters with respect to which the Board refrains. 1998, c. 15, Sched. B, s. 29 (3).

Notice

[\(4\)](#) Where the Board makes a determination under this section, it shall promptly give notice of that fact to the Minister. 1998, c. 15, Sched. B, s. 29 (4).

Costs

[30. \(1\)](#) The Board may order a person to pay all or part of a person's costs of participating in a proceeding before the Board, a notice and comment process under section 45 or 70.2 or any other consultation process initiated by the Board. 2004, c. 23, Sched. B, s. 8.

Same

[\(2\)](#) The Board may make an interim or final order that provides,

- (a) by whom and to whom any costs are to be paid;
- (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed; and
- (c) when any costs are to be paid. 2003, c. 3, s. 25 (1).

Rules

[\(3\)](#) The rules governing practice and procedure that are made under section 25.1 of the *Statutory Powers Procedure Act* may prescribe a scale under which costs shall be assessed. 2003, c. 3, s. 25 (1).

Inclusion of Board costs

[\(4\)](#) The costs may include the costs of the Board, regard being had to the time and expenses of the Board. 1998, c. 15, Sched. B, s. 30 (4).

Considerations not limited

[\(5\)](#) In awarding costs, the Board is not limited to the considerations that govern awards of costs in any court. 1998, c. 15, Sched. B, s. 30 (5).

Application

[\(6\)](#) This section applies despite section 17.1 of the *Statutory Powers Procedure Act*. 2003, c. 3, s. 25 (2).

[31. \(1\)](#) Repealed: 2002, c. 1, Sched. B, s. 5.

[\(2\)](#) Repealed: 2003, c. 3, s. 26.

Stated case

[32. \(1\)](#) The Board may, at the request of the Lieutenant Governor in Council or of its own motion or upon the motion of any party to proceedings before the Board and upon such security being given as it directs, state a case in writing for the opinion of the Divisional Court upon any question that is a question of law within the jurisdiction of the Board. 1998, c. 15, Sched. B, s. 32 (1); 2003, c. 3, s. 27.

Same

[\(2\)](#) The Divisional Court shall hear and determine the stated case and remit it to the Board with its opinion. 1998, c. 15, Sched. B, s. 32 (2).

Appeal to Divisional Court

[33. \(1\)](#) An appeal lies to the Divisional Court from,

- (a) an order of the Board;
- (b) the making of a rule under section 44; or
- (c) the issuance of a code under section 70.1. 2003, c. 3, s. 28 (1).

Nature of appeal, timing

[\(2\)](#) An appeal may be made only upon a question of law or jurisdiction and must be commenced not later than 30 days after the making of the order or rule or the issuance of the code. 1998, c. 15, Sched. B, s. 33 (2); 2003, c. 3, s. 28 (2).

Board may be heard

[\(3\)](#) The Board is entitled to be heard by counsel upon the argument of an appeal. 1998, c. 15, Sched. B, s. 33 (3).

Board to act on court's opinion

[\(4\)](#) The Divisional Court shall certify its opinion to the Board and the Board shall make an order in accordance with the opinion, but the order shall not be retroactive in its effect. 1998, c. 15, Sched. B, s. 33 (4).

Board not liable for costs

[\(5\)](#) The Board, or any member of the Board, is not liable for costs in connection with any appeal under this section. 1998, c. 15, Sched. B, s. 33 (5).

Order to take effect despite appeal

[\(6\)](#) Subject to subsection (7), every order made by the Board takes effect at the time prescribed in the order, and its operation is not stayed by an appeal, unless the Board orders otherwise. 2006, c. 33, Sched. X, s. 1.

Court may stay the order

[\(7\)](#) The Divisional Court may, on an appeal of an order made by the Board,

- (a) stay the operation of the order; or
- (b) set aside a stay of the operation of the order that was ordered by the Board under subsection (6). 2006, c. 33, Sched. X, s. 1.

No petition to Lieutenant Governor in Council

Definition

[34. \(1\)](#) In this section,

“old section 34” means this section as it read immediately before the day the *Good Government Act, 2009* received Royal Assent. 2009, c. 33, Sched. 2, s. 51 (2).

Not subject to petition

[\(2\)](#) Every order, rule or code of the Board that is the subject of a petition filed under the old section 34 that is not disposed of or withdrawn before the day the *Good Government Act, 2009* receives Royal Assent is deemed not to be subject to petition to the Lieutenant Governor in Council, and shall not be considered or continue to be considered, as the case may be, by the Lieutenant Governor in Council. 2009, c. 33, Sched. 2, s. 51 (2).

Same

[\(3\)](#) Every order, rule or code of the Board that may be the subject of a petition under the old section 34 is deemed not to be subject to petition to the Lieutenant Governor in Council, and shall not be considered by the Lieutenant Governor in Council. 2009, c. 33, Sched. 2, s. 51 (2).

No effect on validity

[\(4\)](#) Nothing in this section affects the validity of an order, rule or code of the Board that, but for subsection 51 (2) of Schedule 2 to the *Good Government Act, 2009*, was or could have been the subject of a petition filed under the old section 34. 2009, c. 33, Sched. 2, s. 51 (2).

Question referred to Board

[35.](#) The Minister may require the Board to examine, report and advise on any question respecting energy. 1998, c. 15, Sched. B, s. 35.

PART III GAS REGULATION

Order of Board required

[36. \(1\)](#) No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract. 1998, c. 15, Sched. B, s. 36 (1).

Order of Board re Smart Metering Entity

[\(1.1\)](#) Neither the Smart Metering Entity nor any other person licensed to do so shall conduct activities relating to the metering of gas except in accordance with an order of the Board, which is not bound by the terms of any contract. 2006, c. 3, Sched. C, s. 3.

Order re: rates

[\(2\)](#) The Board may make orders approving or fixing just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies, and for the transmission, distribution and storage of gas. 1998, c. 15, Sched. B, s. 36 (2).

Power of Board

[\(3\)](#) In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate. 1998, c. 15, Sched. B, s. 36 (3).

Contents of order

[\(4\)](#) An order under this section may include conditions, classifications or practices applicable to the sale, transmission, distribution or storage of gas, including rules respecting the calculation of rates. 1998, c. 15, Sched. B, s. 36 (4).

Deferral or variance accounts

[\(4.1\)](#) If a gas distributor has a deferral or variance account that relates to the commodity of gas, the Board shall, at least once every three months, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 30.

Same

[\(4.2\)](#) If a gas distributor has a deferral or variance account that does not relate to the commodity of gas, the Board shall, at least once every 12 months, or such shorter period as is prescribed by the regulations, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 30.

Same

[\(4.3\)](#) An order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates shall be made in accordance with the regulations. 2003, c. 3, s. 30.

Same

[\(4.4\)](#) If an order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates is made after the time required by subsection (4.1) or (4.2) and the delay is due in whole or in part to the conduct of a gas distributor, the Board may reduce the amount that is reflected in rates. 2003, c. 3, s. 30.

Same

[\(4.5\)](#) If an amount recorded in a deferral or variance account of a gas distributor is reflected in rates, the Board shall consider the appropriate number of billing periods over which the amount shall be divided in order to mitigate the impact on consumers. 2003, c. 3, s. 30.

Fixing other rates

[\(5\)](#) Upon an application for an order approving or fixing rates, the Board may, if it is not satisfied that the rates applied for are just and reasonable, fix such other rates as it finds to be just and reasonable. 1998, c. 15, Sched. B, s. 36 (5).

Burden of proof

[\(6\)](#) Subject to subsection (7), in an application with respect to rates for the sale, transmission, distribution or storage of gas, the burden of proof is on the applicant. 1998, c. 15, Sched. B, s. 36 (6).

Order, motion of Board or at request of Minister

[\(7\)](#) If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates for the sale, transmission, distribution or storage of gas by any gas transmitter, gas distributor or storage company are just and reasonable, the Board shall make an order under subsection (2) and the burden of establishing that the rates are just and reasonable is on the gas transmitter, gas distributor or storage company, as the case may be. 1998, c. 15, Sched. B, s. 36 (7).

Exception

[\(8\)](#) This section does not apply to a municipality or municipal public utility commission transmitting or distributing gas under the *Public Utilities Act* on the day before this section comes into force. 1998, c. 15, Sched. B, s. 36 (8).

Gas storage areas

[36.1 \(1\)](#) The Board may by order,

- (a) designate an area as a gas storage area for the purposes of this Act; or
- (b) amend or revoke a designation made under clause (a). 2001, c. 9, Sched. F, s. 2 (2).

Transition

[\(2\)](#) Every area that was designated by regulation as a gas storage area on the day before this section came into force shall be deemed to have been designated under clause (1) (a) as a gas storage area on the day the regulation came into force. 2001, c. 9, Sched. F, s. 2 (2).

Prohibition, gas storage in undesignated areas

37. No person shall inject gas for storage into a geological formation unless the geological formation is within a designated gas storage area and unless, in the case of gas storage areas designated after January 31, 1962, authorization to do so has been obtained under section 38 or its predecessor. 1998, c. 15, Sched. B, s. 37; 2001, c. 9, Sched. F, s. 2 (3).

Authority to store

38. (1) The Board by order may authorize a person to inject gas into, store gas in and remove gas from a designated gas storage area, and to enter into and upon the land in the area and use the land for that purpose. 1998, c. 15, Sched. B, s. 38 (1).

Right to compensation

(2) Subject to any agreement with respect thereto, the person authorized by an order under subsection (1),

- (a) shall make to the owners of any gas or oil rights or of any right to store gas in the area just and equitable compensation in respect of the gas or oil rights or the right to store gas; and
- (b) shall make to the owner of any land in the area just and equitable compensation for any damage necessarily resulting from the exercise of the authority given by the order. 1998, c. 15, Sched. B, s. 38 (2).

Determination of amount of compensation

(3) No action or other proceeding lies in respect of compensation payable under this section and, failing agreement, the amount shall be determined by the Board. 1998, c. 15, Sched. B, s. 38 (3).

Appeal

(4) An appeal within the meaning of section 31 of the *Expropriations Act* lies from a determination of the Board under subsection (3) to the Divisional Court, in which case that section applies and section 33 of this Act does not apply. 1998, c. 15, Sched. B, s. 38 (4); 2003, c. 3, s. 31.

Gas storage, surplus facilities and approval of agreements

Allocation of surplus storage facilities

39. (1) Upon the application of a gas transmitter or gas distributor, the Board by order may direct a storage company having storage capacity and facilities that are not in full use to provide all or part of the storage capacity and facilities for the applicant upon such conditions as may be determined by the Board. 1998, c. 15, Sched. B, s. 39 (1).

Gas storage agreements to be approved

(2) No storage company shall enter into an agreement or renew an agreement with any person for the storage of gas unless the Board, with or without a hearing has approved,

- (a) the parties to the agreement or renewal;

- (b) the period for which the agreement or renewal is to be in operation; and
- (c) the storage that is the subject of the agreement or renewal. 1998, c. 15, Sched. B, s. 39 (2).

Referral to Board of application for well licence

40. (1) The Minister of Natural Resources shall refer to the Board every application for the granting of a licence relating to a well in a designated gas storage area, and the Board shall report to the Minister of Natural Resources on it. 1998, c. 15, Sched. B, s. 40 (1).

Hearing

(2) The Board may hold a hearing before reporting to the Minister if the applicant does not have authority to store gas in the area or, in the Board's opinion, the special circumstances of the case require a hearing. 1998, c. 15, Sched. B, s. 40 (2).

Copy of report to be sent to parties

(3) The Board shall send to each of the parties a copy of its report to the Minister made under subsection (1) within 10 days after submitting it to the Minister and such report shall be deemed to be an order of the Board within the meaning of section 34. 1998, c. 15, Sched. B, s. 40 (3).

Minister's decision

(4) The Minister of Natural Resources shall grant or refuse to grant the licence in accordance with the report. 1998, c. 15, Sched. B, s. 40 (4).

Allocation of market demand

41. The Board by order may allocate a just and equitable share of the market demands for gas or oil to the several sources from which the gas or oil is produced and to the several interests within a field or pool. 1998, c. 15, Sched. B, s. 41.

Duties of gas transmitters and distributors

Discontinuance of transmission or distribution

42. (1) Subject to the *Technical Standards and Safety Act, 2000* and the regulations made under that Act, and in the absence of an agreement to the contrary between the parties affected, no gas transmitter shall voluntarily discontinue transmitting gas to a gas distributor without leave of the Board. 1998, c. 15, Sched. B, s. 42 (1); 2002, c. 17, Sched. F, Table; 2003, c. 3, s. 32.

Duty of gas distributor

(2) Subject to the *Public Utilities Act*, the *Technical Standards and Safety Act, 2000* and the regulations made under the latter Act, sections 80, 81, 82 and 83 of the *Municipal Act, 2001* and sections 64, 65, 66 and 67 of the *City of Toronto Act, 2006*, a gas distributor shall provide gas distribution services to any building along the line of any of the gas distributor's distribution pipe lines upon the request in writing of the owner, occupant or other person in charge of the building. 2006, c. 32, Sched. C, s. 42.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 42 is amended by adding the following subsections:

Security

[\(2.1\)](#) In exercising its authority under subsection 50 (4) of the *Public Utilities Act* or any other Act, where a gas distributor requires security for the payment of charges related to gas by or on behalf of a consumer or a member of a class of consumers prescribed by regulation, the gas distributor shall,

- (a) meet the criteria prescribed by regulation; and
- (b) satisfy the criteria or requirements in any order made by the Board or rule issued by the Board. 2010, c. 8, s. 38 (4).

Security, requirements, etc.

[\(2.2\)](#) If required to do so by regulation, a gas distributor shall,

- (a) meet specific requirements in relation to any security being required by it in respect of consumers or members of a class of consumers;
- (b) accept forms of security prescribed by regulation and, in circumstances prescribed by regulation, shall forego any requirement for security; and
- (c) provide consumers or classes of consumers with alternative security arrangements, which meet the criteria prescribed by regulation, where the conditions or circumstances prescribed by regulation are satisfied by the consumers or classes of consumers. 2010, c. 8, s. 38 (4).

Additional requirements

[\(2.3\)](#) In addition to the matters referred to in subsection (2.2), a gas distributor shall comply with such other requirements with respect to security as may be prescribed by regulation. 2010, c. 8, s. 38 (4).

Definition

[\(2.4\)](#) For the purposes of subsections (2.1), (2.2) and (2.3),

“security” has the meaning as may be prescribed by regulation. 2010, c. 8, s. 38 (4).

See: 2010, c. 8, ss. 38 (4), 40.

Order

[\(3\)](#) Upon application, the Board may order a gas transmitter, gas distributor or storage company to provide any gas sale, transmission, distribution or storage service or cease to provide any gas sale service. 1998, c. 15, Sched. B, s. 42 (3).

Restriction

[\(4\)](#) Despite subsection 19 (4), the Board may not commence a proceeding under subsection (3) on its own motion. 1998, c. 15, Sched. B, s. 42 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 42 is amended by adding the following subsections:

Stopping the distribution of gas

[\(5\)](#) In exercising its authority under section 59 of the *Public Utilities Act* or any other Act, a gas distributor may stop the distribution of gas to a property,

- (a) if any amount payable by a person for the distribution or sale of gas is overdue; and
- (b) if the stopping of the distribution of gas to the property complies with rules made under clause 44 (1) (b.1). 2010, c. 8, s. 38 (4).

Notice, to whom

[\(6\)](#) A gas distributor shall provide notice of the proposal to stop distributing gas to,

- (a) the person who is responsible for the overdue amount; and
- (b) any other person who resides at the property who meets the criteria prescribed by regulation. 2010, c. 8, s. 38 (4).

Notice, means

[\(7\)](#) The notice of the proposal to stop the distribution of gas shall be provided,

- (a) by personal service, prepaid mail or posting the notice in a conspicuous place on the property where the gas is distributed; or
- (b) by such other means or in such manner as is prescribed by regulation. 2010, c. 8, s. 38 (4).

Notice, information and manner of presentation

[\(8\)](#) The notice of the proposal to stop the distribution of gas shall contain such information as may be prescribed by regulation and the information shall be presented in such manner as may be prescribed by regulation. 2010, c. 8, s. 38 (4).

Recovery of any amount

[\(9\)](#) A gas distributor may recover all amounts payable despite stopping the distribution of gas. 2010, c. 8, s. 38 (4).

Exception

[\(10\)](#) A gas distributor shall not stop the distribution of gas to a property where it has received by the time prescribed by regulation such information as may be prescribed by regulation about the consumer or member of a class of consumers prescribed by

regulation who resides at the property under such circumstances as may be prescribed by regulation,

- (a) where the consumer does such things, or takes such steps or actions as may be prescribed by the regulations or provides such information as may be prescribed by the regulations to the gas distributor, the Board or such other entity as may be prescribed by regulation; or
- (b) during any period prescribed by the regulations. 2010, c. 8, s. 38 (4).

Same

[\(11\)](#) For the purposes of subsection (10), where a regulation requires that a thing be done, a step be taken or information be provided by a certain date, a gas distributor shall not stop the distribution of gas to the property before the time prescribed by regulation has elapsed. 2010, c. 8, s. 38 (4).

Same

[\(12\)](#) Subsections (10) and (11) apply despite the *Public Utilities Act*. 2010, c. 8, s. 38 (4).

Same, different steps

[\(13\)](#) For the purposes of subsection (10), a prescribed consumer or a member of a prescribed class of consumers may be required to take different prescribed steps during the different prescribed periods provided for under that subsection. 2010, c. 8, s. 38 (4).

Restoration of gas

[\(14\)](#) If a gas distributor stops distributing gas to a property in contravention of this section, the gas distributor shall, as soon as possible,

- (a) restore, without charge, the distribution of gas to the property; and
- (b) compensate any person who suffered a loss as a result of stopping the distribution of gas. 2010, c. 8, s. 38 (4).

See: 2010, c. 8, ss. 38 (4), 40.

Change in ownership or control of systems

Disposal

43. (1) No gas transmitter, gas distributor or storage company, without first obtaining from the Board an order granting leave, shall,

- (a) sell, lease or otherwise dispose of its gas transmission, gas distribution or gas storage system as an entirety or substantially as an entirety;
- (b) sell, lease or otherwise dispose of that part of a system described in paragraph (a) that is necessary in serving the public; or
- (c) amalgamate with any other corporation. 1998, c. 15, Sched. B, s. 43 (1).

Same

[\(1.1\)](#) Subsection (1) does not apply with respect to a disposition of securities of a gas transmitter, gas distributor or storage company, or of a corporation that owns securities in a gas transmitter, gas distributor or storage company. 2003, c. 3, s. 33.

Acquisition of share control

[\(2\)](#) No person, without first obtaining an order from the Board granting leave, shall,

- (a) acquire such number of voting securities of a gas transmitter, gas distributor or storage company that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company; or
- (b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company if such voting securities constitute a significant asset of that corporation. 1998, c. 15, Sched. B, s. 43 (2).

Same

[\(2.1\)](#) Subsection (2) does not apply to,

- (a) an underwriter (within the meaning of the *Securities Act*) who holds the voting securities solely for the purpose of distributing them to the public;
- (b) any person or entity who is acting in relation to the voting securities solely in the capacity of an intermediary in the payment of funds or the delivery of securities or both in connection with trades in securities and who provides centralized facilities for the clearing of trades in securities; or
- (c) any person or entity who holds the voting securities by way of security only. 2003, c. 3, s. 33.

Significant asset

[\(3\)](#) For the purpose of subsection (2),

- (a) an asset is a significant asset if its value is 20 per cent or more of the aggregate book value of the total assets of a person, determined on a consolidated basis in accordance with generally accepted accounting principles; and
- (b) “control”, with respect to a corporation, has the same meaning as in the *Business Corporations Act*. 1998, c. 15, Sched. B, s. 43 (3).

Valuation of voting securities

[\(4\)](#) For the purpose of determining whether voting securities constitute a significant asset, the value of the voting securities shall be deemed to be,

- (a) the market value of the securities if more than 20 per cent of the voting securities are publicly traded; and

- (b) 115 per cent of the book value of the voting securities, as determined by the equity method of accounting, in all other cases. 1998, c. 15, Sched. B, s. 43 (4).

Mortgages

[\(5\)](#) This section does not apply to a mortgage or charge to secure any loan or indebtedness or to secure any bond, debenture or other evidence of indebtedness. 1998, c. 15, Sched. B, s. 43 (5).

Leave

[\(6\)](#) An application for leave under this section shall be made to the Board, which shall grant or refuse leave. 1998, c. 15, Sched. B, s. 43 (6).

Void agreement

[\(7\)](#) An amalgamation agreement between the corporations that propose to amalgamate is void if the Board refuses to grant leave under this section, even if the amalgamation agreement has been adopted in accordance with subsection 176 (4) of the *Business Corporations Act*. 1998, c. 15, Sched. B, s. 43 (7).

Void certificate

[\(8\)](#) A certificate of amalgamation endorsed by the director appointed under section 278 of the *Business Corporations Act* is void if it is endorsed before leave of the Board for the amalgamation is granted. 1998, c. 15, Sched. B, s. 43 (8).

Rules

[44. \(1\)](#) The Board may make rules,

- (a) governing the conduct of a gas transmitter, gas distributor or storage company as such conduct relates to its affiliates;
- (b) governing the conduct of a gas distributor as such conduct relates to any person,
 - (i) selling or offering to sell gas to a consumer,
 - (ii) acting as agent or broker for a seller of gas to a consumer, or
 - (iii) acting or offering to act as the agent or broker of a consumer in the purchase of gas;
- (b.1) subject to subsections 42 (5) to (14), governing the conduct of a gas distributor as the conduct relates to,
 - (i) stopping the distribution of gas to a property, including the manner in which and the time within which the distribution stops or is to stop,
 - (ii) the manner, timing and form in which the notice under subsection 42 (6) is to be provided to the person, and
 - (iii) the information to be included in the notice to the person;

- (b.2) subject to the regulations, governing the manner and circumstances in which security is to be provided, including where security is to be provided or not to be provided by a gas consumer to a gas distributor and,
 - (i) the interest rate to be applied to amounts held on deposit and payable by the gas distributor to the consumer for the amounts,
 - (ii) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,
 - (iii) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the gas distributor to the consumer, and
 - (iv) such other matters as the Board may determine in respect of security;
- (b.3) relating to any matter in respect of invoices issued in respect of gas to consumers, including meeting such requirements as may be provided for by the Board or being in a form approved by the Board;
- (c) governing the conduct of persons holding a licence issued under Part IV;
 - (c.1) relating to any matter, prescribed by regulation, in respect of gas marketers in relation to gas marketing, subject to any regulations made under this Act or under the *Energy Consumer Protection Act, 2010*;
 - (d) establishing conditions of access to transmission, distribution and storage services provided by a gas transmitter, gas distributor or storage company;
 - (e) establishing classes of gas transmitters, gas distributors and storage companies;
 - (f) requiring and providing for the making of returns, statements or reports by any class of gas transmitters, gas distributors or storage companies relating to the transmission, distribution, storage or sale of gas, in such form and containing such matters and verified in such manner as the rule may provide;
 - (g) requiring and providing for an affiliate of a gas transmitter, gas distributor or storage company to make returns, statements or reports relating to the transmission, distribution, storage or sale of gas by the gas transmitter, gas distributor or storage company of which it is the affiliate, in such form and containing such matters and verified in such manner as the rule may provide;
 - (h) establishing a uniform system of accounts applicable to any class of gas transmitters, gas distributors or storage companies;
 - (i) respecting any other matter prescribed by regulation. 1998, c. 15, Sched. B, s. 44 (1); 2010, c. 8, s. 38 (5).

Quorum

[\(1.1\)](#) For the purposes of this section and section 45, two members of the Board constitute a quorum. 2003, c. 3, s. 34 (1).

Approval, etc., of Board

[\(2\)](#) A rule may require an approval, consent or determination of the Board, with or without a hearing, for any of the matters provided for in the rule. 2003, c. 3, s. 34 (2).

Incorporation by reference

[\(3\)](#) A rule authorized by this section may incorporate by reference, in whole or in part, any standard, procedure or guideline and may require compliance with any standard, procedure or guideline adopted. 1998, c. 15, Sched. B, s. 44 (3).

Scope

[\(4\)](#) A rule may be general or particular in its application and may be limited as to time or place or both. 1998, c. 15, Sched. B, s. 44 (4).

Exemption

[\(5\)](#) A rule may authorize the Board to grant an exemption to it. 2000, c. 26, Sched. D, s. 2 (3).

Same

- [\(6\)](#) An exemption or a removal of an exemption,
- (a) may be granted or made in whole or in part; and
 - (b) may be granted or made subject to conditions or restrictions. 2000, c. 26, Sched. D, s. 2 (3).

Non-application

[\(7\)](#) Part III (Regulations) of the *Legislation Act, 2006* does not apply to the rules made by the Board. 1998, c. 15, Sched. B, s. 44 (7); 2006, c. 21, Sched. F, s. 136 (1).

Proposed rules, notice and comment

[45. \(1\)](#) The Board shall ensure that notice of every rule that it proposes to make under section 44 is given in such manner and to such persons as the Board may determine. 1998, c. 15, Sched. B, s. 45 (1); 2003, c. 3, s. 35 (1).

Content of notice

- [\(2\)](#) The notice must include,
- (a) the proposed rule or a summary of the proposed rule;
 - (b) a concise statement of the purpose of the proposed rule;
 - (c) an invitation to make written representations with respect to the proposed rule;
 - (d) the time limit for making written representations;
 - (e) if a summary is provided, information about how the entire text of the proposed rule may be obtained; and

- (f) a description of the anticipated costs and benefits of the proposed rule. 1998, c. 15, Sched. B, s. 45 (2).

Opportunity for comment

[\(3\)](#) Upon giving notice under subsection (1), the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the proposed rule within such reasonable period as the Board considers appropriate. 1998, c. 15, Sched. B, s. 45 (3).

Exceptions to notice requirement

[\(4\)](#) Notice under subsection (1) is not required if what is proposed is an amendment that does not materially change an existing rule. 1998, c. 15, Sched. B, s. 45 (4).

Notice of changes

[\(5\)](#) If, after considering the submissions, the Board proposes material changes to the proposed rule, the Board shall ensure notice of the proposed changes is given in such manner and to such persons as the Board may determine. 1998, c. 15, Sched. B, s. 45 (5); 2003, c. 3, s. 35 (2).

Content of notice

[\(6\)](#) The notice must include,

- (a) the proposed rule with the changes incorporated or a summary of the proposed changes;
- (b) a concise statement of the purpose of the changes;
- (c) an invitation to make written representations with respect to the proposed rule;
- (d) the time limit for making written representations;
- (e) if a summary is provided, information about how the entire text of the proposed rule may be obtained; and
- (f) a description of the anticipated costs and benefits of the proposed rule. 1998, c. 15, Sched. B, s. 45 (6).

Representations re: changes

[\(7\)](#) Upon giving notice of changes, the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the changes within such reasonable period as the Board considers appropriate. 1998, c. 15, Sched. B, s. 45 (7).

Making the rule

[\(8\)](#) If notice under this section is required, the Board may make the rule only at the end of this process and after considering all representations made as a result of that process. 1998, c. 15, Sched. B, s. 45 (8).

Public inspection

[\(9\)](#) The Board must make the proposed rule and the written representations made under this section available for public inspection during normal business hours at the offices of the Board. 1998, c. 15, Sched. B, s. 45 (9).

Consultation

[\(10\)](#) If the Board proposes to make a rule under clause 44 (1) (a), notice shall not be given under subsection (1) until after the Board has consulted with gas transmitters, gas distributors or storage companies, as appropriate. 1998, c. 15, Sched. B, s. 45 (10).

Amendment

[\(11\)](#) In this section, a rule includes an amendment to a rule and a revocation of a rule. 1998, c. 15, Sched. B, s. 45 (11).

Rules, effective date and gazette publication

[46. \(1\)](#) A rule comes into force on the day specified in the rule. 1998, c. 15, Sched. B, s. 46 (1).

Publication

[\(2\)](#) The Board shall publish every rule that comes into force in *The Ontario Gazette* as soon after the rule is made as practicable. 1998, c. 15, Sched. B, s. 46 (2).

Effect of non-publication

[\(3\)](#) A rule that is not published is not effective against a person who has not had actual notice of it. 1998, c. 15, Sched. B, s. 46 (3).

Effect of publication

[\(4\)](#) Publication of a rule in *The Ontario Gazette*,

- (a) is, in the absence of evidence to the contrary, proof of its text and of its making; and
- (b) shall be deemed to be notice of its contents to every person subject to it or affected by it. 1998, c. 15, Sched. B, s. 46 (4).

Judicial notice

[\(5\)](#) If a rule is published in *The Ontario Gazette*, judicial notice shall be taken of it, of its content and of its publication. 1998, c. 15, Sched. B, s. 46 (5).

PART IV GAS MARKETING

Definitions, Part IV

[47.](#) In this Part,

“gas marketer” means a person who,

- (a) sells or offers to sell gas to a low-volume consumer,
- (b) acts as the agent or broker for a seller of gas to a low-volume consumer, or
- (c) acts or offers to act as the agent or broker of a low-volume consumer in the purchase of gas,

and “gas marketing” has a corresponding meaning; (“agent de commercialisation de gaz”, “commercialisation de gaz”)

“low-volume consumer” means a person who annually uses less than the amount of gas prescribed by regulation. (“petit consommateur”) 1998, c. 15, Sched. B, s. 47.

Requirement to hold licence

48. (1) No person shall carry on business as a gas marketer unless the person holds a gas marketer’s licence. 1998, c. 15, Sched. B, s. 48 (1).

Restriction on name use

(2) A gas marketer shall not carry on business in a name other than the name in which it is licensed unless authorized to do so in the licence. 1998, c. 15, Sched. B, s. 48 (2).

Exclusion

(3) This section does not apply to,

- (a) a gas distributor acting in accordance with an order of the Board; or
- (b) a gas distributor to whom section 36 does not apply pursuant to an exemption set out in the regulations. 2003, c. 3, s. 36.

Where not in compliance

49. A gas marketing contract between a low-volume consumer and a person who is not in compliance with section 48 may not be enforced against that consumer. 1998, c. 15, Sched. B, s. 49.

Application for licence

50. (1) A person may apply to the Board for the issuance or renewal of a gas marketing licence. 2003, c. 3, s. 37.

Regulations

(2) The Lieutenant Governor in Council may make regulations prescribing requirements for a gas marketing licence which, if not met, will result in the refusal to issue or renew a licence. 2003, c. 3, s. 37.

Licence conditions and renewals

Licence conditions

51. (1) A licence under this Part may contain such conditions as are appropriate having regard to the objectives of the Board. 2010, c. 8, s. 38 (6).

Licence renewals

(2) A licence under this Part shall be renewed at such times as may be prescribed by regulation. 2010, c. 8, s. 38 (6).

Amendment of licence

52. The Board may, on the application of any person, amend a licence if it considers the amendment to be,

- (a) necessary to implement a directive issued under section 27, 27.1 or 28.7; or
- (b) in the public interest, having regard to the objectives of the Board. 2003, c. 3, s. 37; 2010, c. 8, s. 38 (7).

Cancellation on request

53. The Board may cancel a licence on the request in writing of the licence holder. 2003, c. 3, s. 38.

54. Repealed: 2003, c. 3, s. 39.

55. Repealed: 2003, c. 3, s. 39.

PART V REGULATION OF ELECTRICITY

Definitions, Part V

56. In this Part,

“alternative energy source” means an energy source that is an alternative energy source for the purposes of the *Electricity Act, 1998*; (“source d’énergie de remplacement”)

“ancillary services” means services necessary to maintain the reliability of the IESO-controlled grid, including frequency control, voltage control, reactive power and operating reserve services; (“services accessoires”)

“consumer” means a person who uses, for the person’s own consumption, electricity that the person did not generate; (“consommateur”)

“designated consumer” means a consumer, other than a low-volume consumer, that,

(a) is a municipality as defined in the *Municipal Act, 2001*,

(b) is a university or college of applied arts and technology or other post-secondary education institution that receives regular and ongoing operating funds from Ontario for the purpose of providing post-secondary education,

(c) is a board or private school, both as defined in the *Education Act*,

(d) is a hospital as defined in the *Public Hospitals Act*, a private hospital operated under the authority of a licence issued under the *Private Hospitals Act* or a long-term care home within the meaning of the *Long-Term Care Homes Act, 2007*,

(e) is a registered charity as defined in subsection 248 (1) of the *Income Tax Act* (Canada) that has a registration number issued by the Canada Revenue Agency, or

(f) is a consumer prescribed by the regulations or a member of a class of consumers prescribed by the regulations; (“consommateur désigné”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “designated consumer” is repealed by the Statutes of Ontario, 2004, chapter 23, Schedule B, subsection 9 (3). See: 2004, c. 23, Sched. B, ss. 9 (3), 34 (2).

“Financial Corporation” has the same meaning as in the *Electricity Act, 1998*; (“Société financière”)

“generate”, with respect to electricity, means to produce electricity or provide ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system; (“produire”)

“generation facility” means a facility for generating electricity or providing ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system, and includes any structures, equipment or other things used for that purpose; (“installation de production”)

“generator” means a person who owns or operates a generation facility; (“producteur”)

“IESO-administered markets” means the markets established by the market rules under the *Electricity Act, 1998*; (“marchés administrés par la SIERE”)

“IESO-controlled grid” means the transmission systems with respect to which, pursuant to agreements, the IESO has authority to direct operations; (“réseau dirigé par la SIERE”)

“low-volume consumer” means a consumer who annually uses less than 150,000 kilowatt hours of electricity or such other amount of electricity as is prescribed by the regulations; (“petit consommateur”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “low-volume consumer” is repealed by the Statutes of Ontario, 2004, chapter 23, Schedule B, subsection 9 (6). See: 2004, c. 23, Sched. B, ss. 9 (6), 34 (2).

“market participant” means a person who is authorized by the market rules to participate in the IESO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IESO-controlled grid; (“intervenant du marché”)

“market rules” means the rules made under section 32 of the *Electricity Act, 1998*; (“règles du marché”)

“renewable energy source” means an energy source that is a renewable energy source for the purposes of the *Electricity Act, 1998*; (“source d’énergie renouvelable”)

“retail”, with respect to electricity, means,

- (a) to sell or offer to sell electricity to a consumer,
- (b) to act as agent or broker for a retailer with respect to the sale or offering for sale of electricity, or
- (c) to act or offer to act as an agent or broker for a consumer with respect to the sale or offering for sale of electricity; (“vendre au détail”)

“Retail Settlement Code” means the Retail Settlement Code issued by the Board, as amended from time to time; (“code appelé Retail Settlement Code”)

“retailer” means a person who retails electricity. (“détaillant”) 1998, c. 15, Sched. B, s. 56; 2002, c. 23, s. 4 (6, 7); 2003, c. 3, s. 40; 2004, c. 23, Sched. B, s. 9 (1, 2), (4, 5), (7-9); 2007, c. 8, s. 222; 2009, c. 12, Sched. D, s. 9; 2009, c. 33, Sched. 18, s. 21.

Requirement to hold licence

57. Neither the OPA nor the Smart Metering Entity shall exercise their powers or perform their duties under the *Electricity Act, 1998* unless licensed to do so under this Part and no other person shall, unless licensed to do so under this Part,

- (a) own or operate a distribution system;
- (b) own or operate a transmission system;
- (c) generate electricity or provide ancillary services for sale through the IESO-administered markets or directly to another person;
- (c.1) engage in unit sub-metering;
- (d) retail electricity;
- (e) purchase electricity or ancillary services in the IESO-administered markets or directly from a generator;
- (f) sell electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer;
- (g) direct the operation of transmission systems in Ontario;
- (h) operate the market established by the market rules; or
- (i) engage in an activity prescribed by the regulations that relates to electricity.
1998, c. 15, Sched. B, s. 57; 2002, c. 1, Sched. B, s. 6; 2004, c. 23, Sched. B, s. 10; 2006, c. 3, Sched. C, s. 4; 2010, c. 8, s. 38 (8).

Where not in compliance

58. A contract between a member of a prescribed class of consumers and a person who is not in compliance with section 57 may not be enforced against that consumer. 2010, c. 8, s. 38 (9).

Interim licences

Emergency

59. (1) Despite this Act, the Board may issue an interim licence authorizing a person to undertake any of the activities described in section 57 if the Board considers it necessary to do so to ensure the reliable supply of electricity to consumers. 1998, c. 15, Sched. B, s. 59 (1).

Powers of Board

(2) If the Board has determined that a distributor has failed or is likely to fail to meet its obligations under section 29 of the *Electricity Act, 1998*, it may,

- (a) require the licensee, as a condition of an interim licence, to take possession and control of the business of the distributor;
- (b) order the distributor to surrender possession and control of its business to the person licensed under subsection (1); and
- (c) without a hearing, amend or suspend the licence of a distributor. 1998, c. 15, Sched. B, s. 59 (2); 2003, c. 3, s. 42 (1).

Conduct under cl. (2) (a)

[\(3\)](#) A person who is required under clause (2) (a) to take possession and control of the business of a distributor may, subject to the conditions of the interim licence, carry on, manage and conduct the operations of the business in the name of the distributor, including,

- (a) preserving, maintaining and adding to the property of the business;
- (b) receiving the income and revenue of the business;
- (c) issuing cheques from, withdrawing money from and otherwise dealing with the accounts of the business;
- (d) retaining or dismissing employees, consultants, counsel and other assistance for the business;
- (e) directing the employees of the business; and
- (f) conducting, settling and commencing litigation relating to the business. 2003, c. 3, s. 42 (2).

Liability

[\(3.1\)](#) A person who is required under clause (2) (a) to take possession and control of the business of a distributor is not liable for anything that results from taking possession and control of the business or otherwise exercising or performing the person's powers and duties under this Act, the interim licence or any order of the Board, unless liability arises from the person's negligence or wilful misconduct. 2003, c. 3, s. 42 (2).

Disposal of assets

[\(4\)](#) A person described in subsection (3) may dispose of such assets as are ordinarily disposed of in the normal course of carrying on the business of a distributor. 1998, c. 15, Sched. B, s. 59 (4).

No notice

[\(5\)](#) The Board may act under this section without notice and without a hearing. 1998, c. 15, Sched. B, s. 59 (5).

Review

[\(6\)](#) The Board shall, upon the request of a distributor against whom an order is made under clause (2) (b), hold a hearing to review the order. 1998, c. 15, Sched. B, s. 59 (6).

Order not stayed

[\(7\)](#) A request for a hearing does not stay the order made under clause (2) (b). 1998, c. 15, Sched. B, s. 59 (7).

Action on review

[\(8\)](#) After the hearing, the Board may confirm or amend its order and may extend the order. 1998, c. 15, Sched. B, s. 59 (8).

Term of licence

[\(9\)](#) An order made or licence issued under this section expires three months after it is made or issued unless the Board orders that it be extended. 1998, c. 15, Sched. B, s. 59 (9).

Retain ownership

[\(10\)](#) Despite subsection (2) or (3), and subject to subsection (4) a distributor to whom an order is issued under clause (2) (b) retains ownership of any assets of the business that the distributor owned before the order was issued, subject to any encumbrances. 1998, c. 15, Sched. B, s. 59 (10).

No compensation

[\(11\)](#) A distributor to whom an order is issued under clause (2) (b) is not entitled to any compensation from the Crown, the Board or any person for being required to surrender possession and control of its business. 1998, c. 15, Sched. B, s. 59 (11).

Application for licence

[60. \(1\)](#) A person may apply to the Board for the issuance or renewal of a licence authorizing one or more of the activities referred to in section 57 as specified in the application. 1998, c. 15, Sched. B, s. 60 (1); 2003, c. 3, s. 43 (1).

[\(2\)](#) Repealed: 2003, c. 3, s. 43 (2).

[61.](#) Repealed: 2003, c. 3, s. 44.

[62.](#) Repealed: 2003, c. 3, s. 44.

[63.](#) Repealed: 2003, c. 3, s. 44.

[64.](#) Repealed: 2003, c. 3, s. 44.

[65.](#) Repealed: 2003, c. 3, s. 44.

Mutual access, electricity generated outside Ontario

[66.](#) If an application for a licence relates to electricity generated from facilities located in a jurisdiction outside of Ontario, the Board may, in determining whether or not to issue a licence, have regard to whether that jurisdiction allows for equivalent access to its electricity markets for electricity generated from facilities located in Ontario. 1998, c. 15, Sched. B, s. 66; 2003, c. 3, s. 45.

[67.](#) Repealed: 2003, c. 3, s. 46.

[68.](#) Repealed: 2003, c. 3, s. 46.

[69.](#) Repealed: 2003, c. 3, s. 46.

Licence conditions

[70. \(1\)](#) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 1998, c. 15, Sched. B, s. 70 (1).

Approvals, etc., with or without holding hearing

[\(1.1\)](#) The Board may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence. 2009, c. 12, Sched. D, s. 10.

Examples of conditions

[\(2\)](#) The conditions of a licence may include provisions,

- (a) specifying the period of time during which the licence will be in effect;
- (b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;
- (c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;
- (d) governing the conduct of the licensee, including the conduct of,
 - (i) a transmitter or distributor as that conduct relates to its affiliates,
 - (ii) a distributor as that conduct relates to a retailer,
 - (ii.1) a distributor or suite meter provider as such conduct relates to,
 - (A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place,
 - (B) the manner, timing and form in which the notice under subsection 31 (2) of the *Electricity Act, 1998* is to be provided to the consumer, and
 - (C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,
 - (1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,

- (2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,
 - (3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and
 - (4) such other matters as the Board may determine in respect of security deposits,
- (iii) a retailer, and
- (iv) a generator, retailer or person licensed to engage in an activity described in clause 57 (f) or an affiliate of that person as that conduct relates to the abuse or possible abuse of market power;
- (d.1) governing conditions relating to any matter prescribed by regulation in respect of retailers of electricity in relation to the retailing of electricity, subject to any regulations made under this Act;
- (e) specifying methods or techniques to be applied in determining the licensee's rates;
- (f) requiring the licensee to maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate businesses in order to prohibit subsidies between separate businesses;
- (g) specifying performance standards, targets and criteria;
- (h) specifying connection or retailing obligations to enable reasonable demands for electricity to be met;
- (i) specifying information reporting requirements relating to the source of electricity and emissions caused by the generation of electricity;
- (j) requiring the licensee to expand or reinforce its transmission or distribution system in accordance with market rules in such a manner as the IESO or the Board may determine;
- (k) requiring the licensee to enter into an agreement with the IESO that gives the IESO the authority to direct operations of the licensee's transmission system;
- (l) requiring the licensee to implement transmission requirements identified in an integrated power system plan approved under Part II.2 of the *Electricity Act, 1998*;
- (m) requiring licensees, where a directive has been issued under section 28.2, to implement such steps or such processes as the Board or the directive requires

in order to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 1998, c. 15, Sched. B, s. 70 (2); 2003, c. 3, s. 47 (1); 2004, c. 23, Sched. B, s. 11 (1-3); 2010, c. 8, s. 38 (10, 11).

Deemed conditions of licences, transmitters and distributors

[\(2.1\)](#) Every licence issued to a transmitter or distributor shall be deemed to contain the following conditions:

1. The licensee is required to provide, in accordance with such rules as may be prescribed by regulation and in the manner mandated by the market rules or by the Board, priority connection access to its transmission system or distribution system for renewable energy generation facilities that meet the requirements prescribed by regulation made under subsection 26 (1.1) of the *Electricity Act, 1998*.
2. The licensee is required to prepare plans, in the manner and at the times mandated by the Board or as prescribed by regulation and to file them with the Board for approval for,
 - i. the expansion or reinforcement of the licensee's transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and
 - ii. the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system.
3. The licensee is required, in accordance with a plan referred to in paragraph 2 that has been approved by the Board or in such other manner and at such other times as mandated by the Board or prescribed by regulation,
 - i. to expand or reinforce its transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and
 - ii. to make investments for the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system. 2009, c. 12, Sched. D, s. 10.

Deemed condition of licences, unit sub-meter provider

[\(2.2\)](#) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Clean Energy Benefit Act, 2010* and the regulations made under it. 2010, c. 26, Sched. 13, s. 17 (2).

Where no agreement

[\(3\)](#) If the parties to an agreement under clause (2) (k) cannot agree on a proposed amendment to the agreement, the parties may jointly apply to the Board for a resolution of the matter. 1998, c. 15, Sched. B, s. 70 (3).

Market rules

[\(4\)](#) Every licence shall be deemed to contain a condition that the licensee comply with the market rules that apply to that licensee. 1998, c. 15, Sched. B, s. 70 (4).

Abuse of market power

[\(5\)](#) Without limiting the generality of subsection (1), a licence to engage in an activity described in clause 57 (c), (d) or (f) may contain conditions to address the abuse or possible abuse of market power, including conditions,

- (a) establishing minimum and maximum prices or a range of prices at which electricity may be offered for sale or sold through the IESO-administered markets or directly to another person or class of persons;
- (b) restricting the duration of contracts between licensees and any other person;
and
- (c) restricting significant investment in or acquisition of generation facilities located in Ontario. 1998, c. 15, Sched. B, s. 70 (5); 2004, c. 23, Sched. B, s. 11 (4).

Non-exclusive

[\(6\)](#) Unless it provides otherwise, a licence under this Part shall not hinder or restrict the grant of a licence to another person within the same area and the licensee shall not claim any right of exclusivity. 1998, c. 15, Sched. B, s. 70 (6).

Distributors: connection of generation facilities

[\(6.1\)](#) The licence issued to a distributor shall contain conditions governing the connection of generation facilities to the distribution system, including the maximum cumulative generating capacity from generators to whom the regulations made under clause 88 (1) (g.1) apply that the distributor must allow to be connected to the distribution system. 2002, c. 23, s. 4 (8).

Requirement to provide information

[\(7\)](#) Every licence shall be deemed to contain a condition that the licensee is required to provide such reasonable information to the IESO or the OPA as either of them may require, in the manner and form specified by whichever of them makes the request for the information. 2004, c. 23, Sched. B, s. 11 (5).

Conditions of OPA licence

[\(8\)](#) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council respecting conditions to be included by the Board in a licence issued to the OPA. 2004, c. 23, Sched. B, s. 11 (5).

Affiliates

[\(9\)](#) The licence of a distributor shall specify whether the distributor will comply with section 29 of the *Electricity Act, 1998*,

- (a) directly;
- (b) through an affiliate;
- (c) through another person with whom the distributor or an affiliate of the distributor has a contract; or
- (d) through a combination of methods described in clauses (a), (b) and (c), as specified. 1998, c. 15, Sched. B, s. 70 (9); 2002, c. 1, Sched. B, s. 7.

Exception

[\(10\)](#) Despite clause (9) (a) and any licence, a distributor shall not comply with section 29 of the *Electricity Act, 1998* directly after the date prescribed by regulation. 1998, c. 15, Sched. B, s. 70 (10).

Service area of distributor

[\(11\)](#) The licence of a distributor shall specify the area in which the distributor is authorized to distribute electricity. 1998, c. 15, Sched. B, s. 70 (11).

Non-discriminatory access

[\(12\)](#) If a transmitter or distributor is exempt from the requirement to provide non-discriminatory access to its transmission or distribution system in Ontario by regulation made under the *Electricity Act, 1998*, a licence under this Part shall not include a condition requiring the provision of non-discriminatory access unless the licensee has consented to the condition. 1998, c. 15, Sched. B, s. 70 (12).

Limitation

[\(13\)](#) A licence under this Part shall not require a person to dispose of assets or to undertake a significant corporate reorganization. 1998, c. 15, Sched. B, s. 70 (13).

Exclusion

[\(14\)](#) Despite subsection (13), a licence under this Part may require a distributor to establish an affiliate through which it shall comply with subsection (9) or section 73. 1998, c. 15, Sched. B, s. 70 (14).

Scope

[\(15\)](#) This section applies to the exercise of any power under this Act or the *Electricity Act, 1998* in relation to a licence referred to in section 57. 1998, c. 15, Sched. B, s. 70 (15).

Codes that may be incorporated as licence conditions

[70.1 \(1\)](#) The Board may issue codes that, with such modifications or exemptions as may be specified by the Board under section 70, may be incorporated by reference as conditions of a licence under that section. 2003, c. 3, s. 48.

Quorum

[\(2\)](#) For the purposes of this section and section 70.2, two members of the Board constitute a quorum. 2003, c. 3, s. 48.

Approval, etc., of Board

[\(3\)](#) A code issued under this section may provide that an approval, consent or determination of the Board is required, with or without a hearing, for any of the matters provided for in the code. 2003, c. 3, s. 48.

Incorporation of standards, etc.

[\(4\)](#) A code issued under this section may incorporate by reference, in whole or in part, any standard, procedure or guideline. 2003, c. 3, s. 48.

Scope

[\(5\)](#) A code may be general or particular in its application and may be limited as to time or place or both. 2003, c. 3, s. 48.

Legislation Act, 2006, Part III

[\(6\)](#) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a code issued under this section. 2003, c. 3, s. 48; 2006, c. 21, Sched. F, s. 136 (1).

Transition

[\(7\)](#) The following documents issued by the Board, as they read immediately before this section came into force, shall be deemed to be codes issued under this section and the Board may change or amend the codes in accordance with this section and sections 70.2 and 70.3:

1. The Affiliate Relationships Code for Electricity Transmitters and Distributors.
2. The Distribution System Code.
3. The Electricity Retailer Code of Conduct.
4. The Retail Settlement Code.
5. The Transmission System Code.
6. Such other documents as are prescribed by the regulations. 2003, c. 3, s. 48.

Proposed codes, notice and comment

[70.2 \(1\)](#) The Board shall ensure that notice of every code that it proposes to issue under section 70.1 is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.

Content of notice

- [\(2\)](#) The notice must include,
- (a) the proposed code or a summary of the proposed code;
 - (b) a concise statement of the purpose of the proposed code;
 - (c) an invitation to make written representations with respect to the proposed code;

- (d) the time limit for making written representations;
- (e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and
- (f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

Opportunity for comment

[\(3\)](#) On giving notice under subsection (1), the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the proposed code within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

Exceptions to notice requirement

[\(4\)](#) Notice under subsection (1) is not required if what is proposed is an amendment that does not materially change an existing code. 2003, c. 3, s. 48.

Notice of changes

[\(5\)](#) If, after considering the submissions, the Board proposes material changes to the proposed code, the Board shall ensure notice of the proposed changes is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.

Content of notice

[\(6\)](#) The notice must include,

- (a) the proposed code with the changes incorporated or a summary of the proposed changes;
- (b) a concise statement of the purpose of the changes;
- (c) an invitation to make written representations with respect to the proposed code;
- (d) the time limit for making written representations;
- (e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and
- (f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

Representations re: changes

[\(7\)](#) On giving notice of changes, the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the changes within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

Issuing the code

[\(8\)](#) If notice under this section is required, the Board may issue the code only at the end of this process and after considering all representations made as a result of that process. 2003, c. 3, s. 48.

Public inspection

[\(9\)](#) The Board must make the proposed code and the written representations made under this section available for public inspection during normal business hours at the offices of the Board. 2003, c. 3, s. 48.

Amendment of code

[\(10\)](#) In this section, a code includes an amendment to a code and a revocation of a code. 2003, c. 3, s. 48.

Effective date and gazette publication

[70.3 \(1\)](#) A code issued under section 70.1 comes into force on the day specified in the code. 2003, c. 3, s. 48.

Publication

[\(2\)](#) The Board shall publish every code that comes into force in *The Ontario Gazette* as soon after the code is issued as practicable. 2003, c. 3, s. 48.

Effect of non-publication

[\(3\)](#) A code that is not published is not effective against a person who has not had actual notice of it. 2003, c. 3, s. 48.

Effect of publication

[\(4\)](#) Publication of a code in *The Ontario Gazette*,

- (a) is, in the absence of evidence to the contrary, proof of its text and of its issuance; and
- (b) shall be deemed to be notice of its contents to every person subject to it or affected by it. 2003, c. 3, s. 48.

Judicial notice

[\(5\)](#) If a code is published in *The Ontario Gazette*, judicial notice shall be taken of it, of its content and of its publication. 2003, c. 3, s. 48.

Restriction on business activity

[71. \(1\)](#) Subject to subsection 70 (9) and subsection (2) of this section, a transmitter or distributor shall not, except through one or more affiliates, carry on any business activity other than transmitting or distributing electricity. 2004, c. 23, Sched. B, s. 12.

Exception

[\(2\)](#) Subject to section 80 and such rules as may be prescribed by the regulations, a transmitter or distributor may provide services in accordance with section 29.1 of the *Electricity Act, 1998* that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to,

- (a) the promotion of electricity conservation and the efficient use of electricity;
- (b) electricity load management; or
- (c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources. 2004, c. 23, Sched. B, s. 12.

Exception

- (3) Despite subsection (1), a distributor may own and operate,
- (a) a renewable energy generation facility that does not exceed 10 megawatts or such other capacity as may be prescribed by regulation and that meets any criteria that may be prescribed by the regulations;
 - (b) a generation facility that uses technology that produces power and thermal energy from a single source and that meets any criteria that may be prescribed by the regulations; or
 - (c) a facility that is an energy storage facility and that meets any criteria that may be prescribed by the regulations. 2009, c. 12, Sched. D, s. 11; 2011, c. 1, Sched. 4, s. 1.

Separate accounts

72. Every distributor shall keep its financial records associated with distributing electricity separate from its financial records associated with other activities. 1998, c. 15, Sched. B, s. 72.

Municipally-owned distributors

73. (1) If one or more municipal corporations own, directly or indirectly, voting securities carrying more than 50 per cent of the voting rights attached to all voting securities of a corporation that is a distributor, the distributor's affiliates shall not carry on any business activity other than the following:

1. Transmitting or distributing electricity.
2. Owning or operating a generation facility that was transferred to the distributor pursuant to Part XI of the *Electricity Act, 1998* or for which the approval of the Board was obtained under section 82 or for which the Board did not issue a notice of review in accordance with section 80.
3. Retailing electricity.
4. Distributing or retailing gas or any other energy product which is carried through pipes or wires to the user.
5. Business activities that develop or enhance the ability of the distributor or any of its affiliates to carry on any of the activities described in paragraph 1, 3 or 4.
6. Business activities the principal purpose of which is to use more effectively the assets of the distributor or an affiliate of the distributor, including providing meter installation and reading services, providing billing services and carrying on activities authorized under section 42 of the *Electricity Act, 1998*.
7. Managing or operating, on behalf of a municipal corporation which owns shares in the distributor, the provision of a public utility as defined in section 1 of the *Public Utilities Act* or sewage services.
8. Renting or selling hot water heaters.

9. Providing services related to the promotion of energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources. 1998, c. 15, Sched. B, s. 73 (1); 2002, c. 23, s. 4 (9).

Limitation

[\(2\)](#) In acting under paragraph 7 of subsection (1), the distributor's affiliate shall not own or lease any works, pipes or other machinery or equipment used in the manufacture, processing or distribution of a public utility or in the provision of sewage services. 1998, c. 15, Sched. B, s. 73 (2).

Municipal corporation

[\(3\)](#) Subsection (1) does not restrict the activities of a municipal corporation. 1998, c. 15, Sched. B, s. 73 (3).

Amendment of licence

[74. \(1\)](#) The Board may, on the application of any person, amend a licence if it considers the amendment to be,

- (a) necessary to implement a directive issued under this Act; or
- (b) in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 2004, c. 23, Sched. B, s. 13.

Further power to amend

[\(2\)](#) In addition to its power to amend a licence under subsection (1), the Board may amend a licence under section 38 of the *Electricity Act, 1998*. 2004, c. 23, Sched. B, s. 13.

[75.](#) Repealed: 2003, c. 3, s. 49.

[76.](#) Repealed: 2003, c. 3, s. 50.

Suspension or revocation, Board consideration

[77. \(1\)](#) Repealed: 2003, c. 3, s. 51 (1).

[\(2\)](#) Repealed: 2003, c. 3, s. 51 (1).

[\(3\)](#) Repealed: 2003, c. 3, s. 51 (1).

[\(4\)](#) Repealed: 2003, c. 3, s. 51 (1).

Cancellation of licence

[\(5\)](#) The Board may cancel a licence upon the request in writing of the licence holder. 1998, c. 15, Sched. B, s. 77 (5); 2003, c. 3, s. 51 (2).

[\(6\)](#) Repealed: 2000, c. 26, Sched. D, s. 2 (6).

Orders by Board, electricity rates

Order re: transmission of electricity

[78. \(1\)](#) No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Order re: distribution of electricity

[\(2\)](#) No distributor shall charge for the distribution of electricity or for meeting its obligations under section 29 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Order re the Smart Metering Entity

[\(2.1\)](#) The Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract. 2006, c. 3, Sched. C, s. 5 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 78 is amended by adding the following subsection:

Order re unit smart meter provider

[\(2.2\)](#) No unit smart meter provider shall charge for unit smart metering except in accordance with an order of the Board, which is not bound by the terms of any contract. 2010, c. 8, s. 38 (12).

See: 2010, c. 8, ss. 38 (12), 40.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 78 is amended by adding the following subsection:

Order re unit sub-meter provider

[\(2.3\)](#) No unit sub-meter provider shall charge for unit sub-metering except in accordance with an order of the Board, which is not bound by the terms of any contract. 2010, c. 8, s. 38 (13).

See: 2010, c. 8, ss. 38 (13), 40.

Rates

[\(3\)](#) The Board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity or such other activity as may be prescribed and for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*. 2009, c. 12, Sched. D, s. 12 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out “electricity or such other activity” and substituting “electricity, unit sub-metering or unit smart metering or such other activity”. See: 2010, c. 8, ss. 38 (14), 40.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 78 is amended by adding the following subsection:

Rates, unit sub-metering and unit smart-metering

[\(3.0.0.1\)](#) The Board shall, in accordance with rules prescribed by the regulations, make orders approving or fixing separate rates for unit sub-metering and for unit smart metering,

- (a) for classes of consumers, as may be prescribed by regulation; and
- (b) for different circumstances, as may be prescribed by regulation. 2010, c. 8, s. 38 (15).

See: 2010, c. 8, ss. 38 (15), 40.

Rates

[\(3.0.1\)](#) The Board may make orders approving or fixing just and reasonable rates for the Smart Metering Entity in order for it to meet its obligations under this Act or under Part IV.2 of the *Electricity Act*, 1998. 2006, c. 3, Sched. C, s. 5 (1).

Orders re deferral or variance accounts

[\(3.0.2\)](#) The Board may make orders permitting the Smart Metering Entity or distributors to establish one or more deferral or variance accounts related to costs associated with the smart metering initiative, in the circumstances prescribed in the regulations. 2006, c. 3, Sched. C, s. 5 (1).

Orders re recovery of smart metering initiative costs

[\(3.0.3\)](#) The Board may make orders relating to the ability of the Smart Metering Entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative, in the situations or circumstances prescribed by regulation and the orders may require them to meet such conditions or requirements as may be prescribed, including providing for the time over which costs may be recovered. 2006, c. 3, Sched. C, s. 5 (1).

Orders re deferral or variance accounts, s. 27.2

[\(3.0.4\)](#) The Board may make orders permitting the OPA, distributors or other licensees to establish one or more deferral or variance accounts related to costs associated with complying with a directive issued under section 27.2. 2009, c. 12, Sched. D, s. 12 (2).

Methods re incentives or recovery of costs

[\(3.0.5\)](#) The Board may, in approving or fixing just and reasonable rates or in exercising the power set out in clause 70 (2) (e), adopt methods that provide,

- (a) incentives to a transmitter or a distributor in relation to the siting, design and construction of an expansion, reinforcement or other upgrade to the transmitter's transmission system or the distributor's distribution system; or

- (b) for the recovery of costs incurred or to be incurred by a transmitter or distributor in relation to the activities referred to in clause (a). 2009, c. 12, Sched. D, s. 12 (2).

Annual rate plan and separate rates for situations prescribed by regulation

[\(3.1\)](#) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

- (a) to such different classes of consumers as may be prescribed by the regulations; and
- (b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Same

[\(3.2\)](#) The first rates approved or fixed by the Board under subsection (3.1) shall remain in effect for not less than 12 months and the Board shall approve or fix separate rates under subsection (3.1) after that time for periods of not more than 12 months each or for such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

[\(3.3\)](#) In approving or fixing rates under subsection (3.1),

- (a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect these costs; and
- (b) the Board shall take into account balances in the OPA's variance accounts established under section 25.33 of the *Electricity Act, 1998* and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1).

Forecasting cost of electricity

[\(3.4\)](#) In forecasting the cost of electricity for the purposes of subsection (3.3), the Board shall have regard to such matters as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Imposition of conditions on consumer who enters into retail contract

[\(3.5\)](#) A consumer who enters into or renews a retail contract for electricity after the day he or she becomes subject to a rate approved or fixed under subsection (3.1) is subject to such conditions as may be determined by the Board. 2004, c. 23, Sched. B, s. 14 (1).

Rates

[\(4\)](#) The Board may make an order under subsection (3) with respect to the retailing of electricity in order to meet a distributor's obligations under section 29 of the

Electricity Act, 1998 even if the distributor is meeting its obligations through an affiliate or through another person with whom the distributor or an affiliate of the distributor has a contract. 1998, c. 15, Sched. B, s. 78 (4).

[\(5\)](#) Repealed: 2004, c. 23, Sched. B, s. 14 (2).

Same, obligations under s. 29 of *Electricity Act, 1998*

[\(5.0.1\)](#) In approving or fixing just and reasonable rates for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*, the Board shall comply with the regulations made under clause 88 (1) (g.5). 2003, c. 8, s. 1.

Same, Hydro One Inc. and subsidiaries

[\(5.1\)](#) In approving or fixing just and reasonable rates for Hydro One Inc. or a subsidiary of Hydro One Inc., the Board shall apply a method or technique prescribed by regulation for the calculation and treatment of transfers made by Hydro One Inc. or its subsidiary, as the case may be, that are authorized by section 50.1 of the *Electricity Act, 1998*. 2002, c. 1, Sched. B, s. 8; 2003, c. 3, s. 52 (2).

Same, statutory right to use corridor land

[\(5.2\)](#) In approving or fixing just and reasonable rates for a transmitter who has a statutory right to use corridor land (as defined in section 114.1 of the *Electricity Act, 1998*), the Board shall apply a method or technique prescribed by regulation for the treatment of the statutory right. 2002, c. 1, Sched. B, s. 8; 2003, c. 3, s. 52 (3).

Conditions, etc.

[\(6\)](#) An order under this section may include conditions, classifications or practices, including rules respecting the calculation of rates, applicable,

- (a) to the Smart Metering Entity in respect of meeting its obligations;
- (b) to an activity prescribed for the purposes of subsection (3); and
- (c) to the transmission, distribution or retailing of electricity. 2009, c. 12, Sched. D, s. 12 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is repealed and the following substituted:

(c) to the transmission, distribution or retailing of electricity or unit sub-metering or unit smart metering.

See: 2010, c. 8, ss. 38 (16), 40.

Deferral or variance accounts

[\(6.1\)](#) If a distributor has a deferral or variance account that relates to the commodity of electricity, the Board shall, at least once every three months, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 52 (4).

Same

[\(6.2\)](#) If a distributor has a deferral or variance account that does not relate to the commodity of electricity, the Board shall, at least once every 12 months, or such shorter period as is prescribed by the regulations, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 52 (4).

Same

[\(6.3\)](#) An order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates shall be made in accordance with the regulations. 2003, c. 3, s. 52 (4).

Same

[\(6.4\)](#) If an order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates is made after the time required by subsection (6.1) or (6.2) and the delay is due in whole or in part to the conduct of a distributor, the Board may reduce the amount that is reflected in rates. 2003, c. 3, s. 52 (4).

Same

[\(6.5\)](#) If an amount recorded in a deferral or variance account of a distributor is reflected in rates, the Board shall consider the appropriate number of billing periods over which the amount shall be divided in order to mitigate the impact on consumers. 2003, c. 3, s. 52 (4).

Same

[\(6.6\)](#) Subsections (6.1), (6.2) and (6.4) do not apply unless section 79.6 has been repealed under section 79.11. 2003, c. 3, s. 52 (4).

Fixing other rates

[\(7\)](#) Upon an application for an order approving or fixing rates, the Board may, if it is not satisfied that the rates applied for are just and reasonable, fix such other rates as it finds to be just and reasonable. 1998, c. 15, Sched. B, s. 78 (7).

Burden of proof

[\(8\)](#) Subject to subsection (9), in an application made under this section, the burden of proof is on the applicant. 1998, c. 15, Sched. B, s. 78 (8).

Order

[\(9\)](#) If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates that the Board may approve or fix under this section are just and reasonable, the Board shall make an order under subsection (3) and the burden of establishing that the rates are just and reasonable is on the transmitter or distributor, as the case may be. 1998, c. 15, Sched. B, s. 78 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is repealed and the following substituted:

Order

[\(9\)](#) If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates that the Board may approve or fix under this section are just and reasonable, the Board shall make an order under subsection (3) and the burden of establishing that the rates are just and reasonable is on the transmitter, distributor or unit sub-meter provider, as the case may be. 2010, c. 8, s. 38 (17).

See: 2010, c. 8, ss. 38 (17), 40.

Payments to prescribed generator

[78.1 \(1\)](#) The IESO shall make payments to a generator prescribed by the regulations, or to the OPA on behalf of a generator prescribed by the regulations, with respect to output that is generated by a unit at a generation facility prescribed by the regulations. 2004, c. 23, Sched. B, s. 15.

Payment amount

- [\(2\)](#) Each payment referred to in subsection (1) shall be the amount determined,
- (a) in accordance with the regulations to the extent the payment relates to a period that is on or after the day this section comes into force and before the later of,
 - (i) the day prescribed for the purposes of this subsection, and
 - (ii) the effective date of the Board's first order in respect of the generator; and
 - (b) in accordance with the order of the Board then in effect to the extent the payment relates to a period that is on or after the later of,
 - (i) the day prescribed for the purposes of this subsection, and
 - (ii) the effective date of the Board's first order under this section in respect of the generator. 2004, c. 23, Sched. B, s. 15.

OPA may act as settlement agent

[\(3\)](#) The OPA may act as a settlement agent to settle amounts payable to a generator under this section. 2004, c. 23, Sched. B, s. 15.

Board orders

[\(4\)](#) The Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment. 2004, c. 23, Sched. B, s. 15.

Fixing other prices

[\(5\)](#) The Board may fix such other payment amounts as it finds to be just and reasonable,

- (a) on an application for an order under this section, if the Board is not satisfied that the amount applied for is just and reasonable; or

- (b) at any other time, if the Board is not satisfied that the current payment amount is just and reasonable. 2004, c. 23, Sched. B, s. 15.

Burden of proof

[\(6\)](#) Subject to subsection (7), the burden of proof is on the applicant in an application made under this section. 2004, c. 23, Sched. B, s. 15.

Order

[\(7\)](#) If the Board on its own motion or at the request of the Minister commences a proceeding to determine whether an amount that the Board may approve or fix under this section is just and reasonable,

- (a) the burden of establishing that the amount is just and reasonable is on the generator; and
- (b) the Board shall make an order approving or fixing an amount that is just and reasonable. 2004, c. 23, Sched. B, s. 15.

Application

[\(8\)](#) Subsections (4), (5) and (7) apply only on and after the day prescribed by the regulations for the purposes of subsection (2). 2004, c. 23, Sched. B, s. 15.

Payments to the Financial Corporation

[78.2 \(1\)](#) The IESO shall make payments to the Financial Corporation with respect to the Financial Corporation's contracts with generators relating to output generated at generation facilities prescribed by the regulations and the provision of ancillary services at those generation facilities. 2004, c. 23, Sched. B, s. 16.

Payment amounts

[\(2\)](#) The payments to the Financial Corporation in respect of a contract referred to in subsection (1) shall equal the amounts required to reimburse the Financial Corporation for its indirect costs, as determined under the regulations, and its direct costs under the contract. 2004, c. 23, Sched. B, s. 16.

OPA may act as settlement agent

[\(3\)](#) The OPA may act as a settlement agent to settle amounts payable to the Financial Corporation under this section. 2004, c. 23, Sched. B, s. 16.

Payments to the OPA for output under procurement contracts

[78.3 \(1\)](#) The IESO shall make payments to the OPA with respect to output generated by units at generation facilities and ancillary services in respect of which the OPA has entered into procurement contracts under Part II.2 of the *Electricity Act, 1998* that are prescribed by the regulations or that satisfy the rules prescribed by the regulations. 2004, c. 23, Sched. B, s. 17.

Payment amounts

[\(2\)](#) The payments under subsection (1) to the OPA shall equal the amounts payable by the OPA under the procurement contracts referred to in that subsection. 2004, c. 23, Sched. B, s. 17.

Payment to the OPA under procurement contracts

78.4 (1) The IESO shall make payments to the OPA with respect to amounts paid or payable by the OPA to an entity with whom the OPA has entered into a procurement contract under Part II.2 of the *Electricity Act, 1998* that is prescribed by the regulations or that satisfies the rules prescribed by the regulations. 2004, c. 23, Sched. B, s. 18.

Payment amounts

(2) The payments under subsection (1) to the OPA shall be the amounts payable by the OPA under the procurement contracts referred to in that subsection. 2004, c. 23, Sched. B, s. 18.

Payments to distributors or the OPA under conservation and demand management programs

78.5 (1) The IESO shall make payments to a distributor or to the OPA on behalf of other persons prescribed by the regulations with respect to amounts approved by the Board for conservation and demand management programs approved by the Board pursuant to a directive issued under section 27.2. 2009, c. 12, Sched. D, s. 13.

Amount and timing of payment

(2) The amount and timing of each payment referred to in subsection (1) shall be determined by the Board in accordance with such rules, methods and criteria as may be prescribed by the regulations or mandated by a code issued by the Board or an order of the Board. 2009, c. 12, Sched. D, s. 13.

Regulations review

(3) A regulation made under subsection (2) may require the Board to undertake its review of the amounts referred to in this section at the time or times prescribed by the regulation. 2009, c. 12, Sched. D, s. 13.

OPA may act as settlement agent

(4) The OPA may act as a settlement agent to settle amounts payable to a distributor under this section. 2009, c. 12, Sched. D, s. 13.

Conflict with market rules

78.6 In the event of a conflict, sections 78.1 to 78.5 prevail over the market rules to the extent of the conflict. 2009, c. 12, Sched. D, s. 13.

Rural or remote consumers

79. (1) The Board, in approving just and reasonable rates for a distributor who delivers electricity to rural or remote consumers, shall provide rate protection for those consumers or prescribed classes of those consumers by reducing the rates that would otherwise apply in accordance with the prescribed rules. 1998, c. 15, Sched. B, s. 79 (1).

Special case

(2) In setting rates under subsection (1), the Board shall ensure that the class of rural or remote consumers receiving assistance under section 108 of the *Power Corporation Act* on the day before this section comes into force shall receive rate protection while they continue to,

- (a) occupy the same rural residential premises, as defined in section 108 of the *Power Corporation Act*, as they were occupying on that day; and
- (b) live in a part of Ontario designated by regulation as a rural or remote area. 1998, c. 15, Sched. B, s. 79 (2).

Compensation

[\(3\)](#) A distributor is entitled to be compensated for lost revenue resulting from the rate reduction provided under subsection (1). 1998, c. 15, Sched. B, s. 79 (3).

Liability for compensation

[\(4\)](#) All consumers are required to contribute towards the amount of any compensation required under subsection (3) in accordance with the regulations. 1998, c. 15, Sched. B, s. 79 (4).

Regulations

[\(5\)](#) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the consumers or classes of consumers eligible for rate protection under this section in addition to those described under subsection (2);
- (b) designating areas in Ontario as rural or remote areas;
- (c) prescribing rules for the calculation of the amount of the rate reduction;
- (d) prescribing maximum amounts of the total annual value of rate protection that may be provided under this section;
- (e) prescribing rules respecting the amounts that must be collected to compensate distributors, including rules,
 - (i) respecting the calculation of those amounts,
 - (ii) establishing the time and manner of collection,
 - (iii) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,
 - (iv) prescribing methods of ensuring that the amounts required cannot be bypassed, and
 - (v) respecting the distribution of the amounts collected;
- (f) respecting the use of money collected in excess of the amount required to compensate distributors;
- (g) prescribing the powers and duties of the Board in relation to the calculation of amounts to be collected and the time and manner of collection and distribution;
- (h) respecting any other matter that the Lieutenant Governor in Council considers necessary in relation to the rate protection. 1998, c. 15, Sched. B, s. 79 (5).

General or particular

[\(6\)](#) A regulation under this section may be general or particular in application and may prescribe different rules for different persons or classes of persons. 1998, c. 15, Sched. B, s. 79 (6).

Cost recovery, connecting generation facilities

[79.1 \(1\)](#) The Board, in approving just and reasonable rates for a distributor that incurs costs to make an eligible investment for the purpose of connecting or enabling the connection of a qualifying generation facility to its distribution system, shall provide rate protection for prescribed consumers or classes of consumers in the distributor's service area by reducing the rates that would otherwise apply in accordance with the prescribed rules. 2009, c. 12, Sched. D, s. 14.

Distributor entitled to compensation re lost revenue

[\(2\)](#) A distributor is entitled to be compensated for lost revenue resulting from the rate reduction provided under subsection (1) that is associated with costs that have been approved by the Board and incurred by the distributor to make an eligible investment referred to in subsection (1). 2009, c. 12, Sched. D, s. 14.

Consumers' contributions

[\(3\)](#) All consumers are required to contribute towards the amount of any compensation required under subsection (2) in accordance with the regulations. 2009, c. 12, Sched. D, s. 14.

Regulations

- [\(4\)](#) The Lieutenant Governor in Council may make regulations,
- (a) prescribing consumers or classes of consumers eligible for rate protection under this section;
 - (b) prescribing criteria to be met by a qualifying generation facility;
 - (c) prescribing the criteria to be satisfied for an investment to be an eligible investment;
 - (d) prescribing rules for the calculation of the amount of the rate reduction;
 - (e) prescribing maximum amounts of the total annual value of rate protection that may be provided under this section;
 - (f) prescribing rules respecting the amounts that must be collected to compensate distributors, including rules,
 - (i) respecting the calculation of those amounts,
 - (ii) establishing the time and manner of collection,
 - (iii) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

- (iv) prescribing methods of ensuring that the amounts required cannot be bypassed, and
- (v) respecting the distribution of the amounts collected;
- (g) prescribing the powers and duties of the Board in relation to the calculation of amounts to be collected and the time and manner of collection and distribution;
- (h) respecting any other matter that the Lieutenant Governor in Council considers necessary for the purposes of this section. 2009, c. 12, Sched. D, s. 14.

Definitions

[\(5\)](#) In this section,

“eligible investment” means an investment in the construction, expansion or reinforcement of a distribution line, transformer, plant or equipment used for conveying electricity at voltages of 50 kilovolts or less that meets the criteria prescribed by regulation; (“investissement admissible”)

“qualifying generation facility” means a generation facility that meets the criteria prescribed by regulation. (“installation de production admissible”) 2009, c. 12, Sched. D, s. 14.

[79.2](#) Repealed: 1998, c. 15, Sched. B, s. 79.2 (5).

[79.3](#) - [79.10](#) Repealed: 1998, c. 15, Sched. B, s. 79.11.

[79.11](#) Spent: 2003, c. 8, s. 10; 2004, c. 23, Sched. B, s. 24.

[79.12](#) - [79.15](#) Repealed: 1998, c. 15, Sched. B, s. 79.11.

Commodity price for electricity: low volume consumers, etc.

[79.16](#) [\(1\)](#) Despite any order under section 78 and, subject to subsection (7), despite any agreement to the contrary entered into or renewed on or before December 9, 2002, the rates for electricity payable by a consumer who is a member of a class of consumers prescribed by the regulations for the purposes of this section are,

- (a) with respect to electricity used on or after the day this subsection comes into force and before the day prescribed by the regulations for the purposes of this subsection, the price determined in accordance with the regulations; and
- (b) with respect to electricity used on or after the day prescribed by the regulations for the purposes of this subsection, the rates determined by the Board in accordance with the regulations. 2004, c. 23, Sched. B, s. 25.

Same

[\(2\)](#) The Board shall not make any rate determinations for the purposes of clause (1) (b) unless a regulation has been made under clause 88 (1) (z.8). 2004, c. 23, Sched. B, s. 25.

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 25.

Exception: consumers who file statement

- (4) Subsection (1) does not apply to a consumer if,
- (a) the consumer indicates in a written statement that the consumer does not wish to have subsection (1) apply and the consumer files the written statement with,
 - (i) the distributor with whom the consumer has an account, if the consumer is not a market participant, or
 - (ii) the IESO, if the consumer is a market participant; and
 - (b) at the time the statement is filed under clause (a), a regulation prescribing criteria for the purpose of this clause is in force and those criteria are met.
- 2004, c. 23, Sched. B, s. 25.

Application of subs. (1)

(5) Subsection (1) does not apply to a consumer to whom electricity is distributed through a distribution system that is not connected to the IESO-controlled grid. 2004, c. 23, Sched. B, s. 25.

Exception: service transaction request, contract entered into after December 9, 2002

(6) If a consumer enters into or renews a contract after December 9, 2002 with respect to which a service transaction request as defined in the Retail Settlement Code is or has been implemented to enable the consumer to purchase electricity from a competitive retailer as defined in the Retail Settlement Code, subsection (1) does not apply to the consumer during the term of the contract. 2004, c. 23, Sched. B, s. 25.

Contracts entered into after December 9, 2002

(7) Subject to subsection (6), the commodity price for electricity payable by a consumer under subsection (1) is subject to any contract the consumer renews or enters into after December 9, 2002. 2004, c. 23, Sched. B, s. 25.

Same

(8) A consumer who enters into or renews a retail contract for electricity after the date prescribed for the purposes of subsection (1) or becomes subject to a rate approved or fixed by the Board under this section is subject to such conditions as may be determined by the Board. 2004, c. 23, Sched. B, s. 25.

Repeal

(9) This section is repealed on a day to be named by proclamation of the Lieutenant Governor. 2004, c. 23, Sched. B, s. 25.

Form of invoice for prescribed classes of consumers

79.17 (1) The Minister may require that invoices issued in respect of electricity to consumers who are members of a class of consumers prescribed by the regulations be in a form approved by the Minister. 2004, c. 23, Sched. B, s. 26.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Form of invoice for prescribed classes of consumers

(1) The Minister may require that invoices issued in respect of electricity to consumers who are members of a class of consumers prescribed by the regulations meet requirements to be prescribed by the regulations or be in a form approved by the Minister. 2010, c. 8, s. 38 (18).

See: 2010, c. 8, ss. 38 (18), 40.

Different forms

(2) The Minister may approve different forms of invoices and may specify the circumstances in which each form shall be used. 2004, c. 23, Sched. B, s. 26.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Different forms

(2) The regulations may prescribe or the Minister may approve different requirements for invoices and may prescribe or specify the circumstances in which each requirement shall apply or be used and the Minister may approve different forms of invoices and the circumstances under which the forms are to be used. 2010, c. 8, s. 38 (18).

See: 2010, c. 8, ss. 38 (18), 40.

Errors

(3) No defect, error or omission in the form or substance of an invoice issued in respect of electricity to a consumer referred to in subsection (1) invalidates any proceeding for the recovery of the amount payable under the invoice. 2004, c. 23, Sched. B, s. 26.

Prohibition, generation by transmitters or distributors

80. No transmitter or distributor or affiliate of a transmitter or distributor shall acquire an interest in a generation facility in Ontario, construct a generation facility in Ontario or purchase shares of a corporation that owns a generation facility in Ontario unless it has first given notice of its proposal to do so to the Board and the Board,

(a) has not issued a notice of review of the proposal within 60 days of the filing of the notice; or

(b) has approved the proposal under section 82. 1998, c. 15, Sched. B, s. 80.

Prohibition, transmission or distribution by generators

81. No generator or affiliate of a generator shall acquire an interest in a transmission or distribution system in Ontario, construct a transmission or distribution system in Ontario or purchase shares of a corporation that owns a transmission or distribution system in Ontario unless it has first given notice of its proposal to do so to the Board and the Board,

- (a) has not issued a notice of review of the proposal within 60 days of the filing of the notice; or
- (b) has approved the proposal under section 82. 1998, c. 15, Sched. B, s. 81.

Review of acquisition

82. (1) If the Board has issued a notice of review under section 80 or 81, it shall expeditiously proceed to review the proposal. 1998, c. 15, Sched. B, s. 82 (1).

Order

(2) The Board shall make an order approving a proposal described in section 80 if it determines that,

- (a) the impact of the proposal would not adversely affect the development and maintenance of a competitive market; or
- (b) the proposal is required to maintain the reliability of the transmission or distribution system of the relevant transmitter or distributor. 1998, c. 15, Sched. B, s. 82 (2).

Same

(3) The Board shall make an order approving a proposal described in section 81 if it determines that the impact of the proposal would not adversely affect the development and maintenance of a competitive market. 1998, c. 15, Sched. B, s. 82 (3).

Condition for making order

(4) Unless the Board makes the determination described in subsection (2) or (3), it shall not make an order approving a proposal described in section 80 or 81, respectively. 1998, c. 15, Sched. B, s. 82 (4).

Standards, targets and criteria

83. (1) The Board may establish standards, targets and criteria for evaluation of performance by generators to whom section 78.1 applies, transmitters, distributors and retailers. 1998, c. 15, Sched. B, s. 83 (1); 2004, c. 23, Sched. B, s. 27 (1).

Regard for standards, targets

(2) The Board may have regard to the standards, targets and criteria referred to in subsection (1) in exercising its powers and performing its duties under this or any other Act in relation to generators to whom section 78.1 applies, transmitters, distributors and retailers, including establishing the conditions of a licence. 1998, c. 15, Sched. B, s. 83 (2); 2004, c. 23, Sched. B, s. 27 (2).

Distinction between transmission and distribution, determination

84. In making a decision in any proceeding under this Part or under the *Electricity Act, 1998*, the Board may determine that,

- (a) a system or part of a system that forms part of a transmission system is a distribution system or part of a distribution system; and
- (b) a system or part of a system that forms part of a distribution system is a transmission system or part of a transmission system. 1998, c. 15, Sched. B, s. 84; 2003, c. 3, s. 53.

85. Repealed: 2003, c. 3, s. 54.

Change in ownership or control of systems

86. (1) No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

- (a) sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety;
- (b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public; or
- (c) amalgamate with any other corporation. 2003, c. 3, s. 55 (1).

Same

(1.1) Subsection (1) does not apply with respect to a disposition of securities of a transmitter or distributor or of a corporation that owns securities in a transmitter or distributor. 2002, c. 1, Sched. B, s. 9 (1).

Acquisition of share control

(2) No person, without first obtaining an order from the Board granting leave, shall,

- (a) acquire such number of voting securities of a transmitter or distributor that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of the transmitter or distributor; or
- (b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation. 1998, c. 15, Sched. B, s. 86 (2).

Same

(2.1) Subsection (2) does not apply to,

- (a) the Crown in right of Ontario;
- (b) an underwriter (within the meaning of the *Securities Act*) who holds the voting securities solely for the purpose of distributing them to the public;

- (c) any person or entity who is acting in relation to the voting securities solely in the capacity of an intermediary in the payment of funds or the delivery of securities or both in connection with trades in securities and who provides centralized facilities for the clearing of trades in securities; or
- (d) any person or entity who holds the voting securities by way of security only. 2002, c. 1, Sched. B, s. 9 (2).

Significant asset

- (3) For the purposes of subsection (2),
 - (a) an asset is a significant asset if its value is 20 per cent or more of the aggregate book value of the total assets of a person, determined on a consolidated basis in accordance with generally accepted accounting principles; and
 - (b) “control”, with respect to a corporation, has the same meaning as in the *Business Corporations Act*. 1998, c. 15, Sched. B, s. 86 (3).

Valuation of voting securities

- (4) For the purpose of determining whether voting securities constitute a significant asset, the value of the voting securities shall be deemed to be,
 - (a) the market value of the securities if more than 20 per cent of the voting securities are publicly traded; and
 - (b) 115 per cent of the book value of the voting securities, as determined by the equity method of accounting, in all other cases. 1998, c. 15, Sched. B, s. 86 (4).

Mortgages

- (5) This section does not apply to a mortgage or charge to secure any loan or indebtedness or to secure any bond, debenture or other evidence of indebtedness. 1998, c. 15, Sched. B, s. 86 (5).

Transactions under *Electricity Act, 1998*

- (5.1) This section does not apply with respect to a transaction described in section 50.1 or 50.2 of the *Electricity Act, 1998*. 2002, c. 1, Sched. B, s. 9 (2).

Leave

- (6) An application for leave under this section shall be made to the Board, which shall grant or refuse leave. 1998, c. 15, Sched. B, s. 86 (6).

Void agreement

- (6.1) An amalgamation agreement between the corporations that propose to amalgamate is void if the Board refuses to grant leave under this section, even if the amalgamation agreement has been adopted in accordance with subsection 176 (4) of the *Business Corporations Act*. 2003, c. 3, s. 55 (2).

Void certificate

[\(6.2\)](#) A certificate of amalgamation endorsed by the director appointed under section 278 of the *Business Corporations Act* is void if it is endorsed before leave of the Board for the amalgamation is granted. 2003, c. 3, s. 55 (2).

Sale of assets of OEFC to or by Hydro One Inc., etc.

[\(7\)](#) Despite subsection (1) and any order of the Board, the sale, lease, conveyance, transfer, assignment, assumption or other disposition of any of the assets, rights, liabilities or obligations of the Ontario Electricity Financial Corporation to or by Hydro One Inc. or a subsidiary of Hydro One Inc. after March 31, 1999, including any such sale, lease, conveyance, transfer, assignment, assumption or other disposition completed before this subsection came into force, does not require an order from the Board granting leave. 2002, c. 23, s. 4 (13).

Board to monitor markets

[87. \(1\)](#) The Board shall monitor markets in the electricity sector and may report to the Minister on the efficiency, fairness, transparency and competitiveness of those markets. 1998, c. 15, Sched. B, s. 87 (1).

Board to advise Minister

[\(2\)](#) The Board shall advise the Minister with respect to any of the following matters if requested by the Minister to do so or if the Board considers it advisable to do so:

1. Any abuse or potential abuse of market power in the electricity sector.
2. The circumstances giving rise to or that is capable of giving rise to unintended outcomes or effects that operate contrary to the interests of competition. 2004, c. 23, Sched. B, s. 28.

Regulations, electricity licences

[88. \(1\)](#) The Lieutenant Governor in Council may make regulations,

- (a) prescribing requirements for a licence which allows for the retailing of electricity to residential or small business consumers, as defined in the regulations, which, if not met, will result in the refusal to issue or renew a licence;
- (a.0.1) prescribing the time or times at which a licence is to be renewed for the purposes of subsection 51 (2);
- (a.0.2) prescribing classes of consumers for the purposes of section 58;
- (a.1) providing for the establishment, administration and operation of a tracking system to associate electricity with the processes and fuel types used by generation facilities and with the types and quantities of contaminants emitted by generation facilities, including,
 - (i) designating the administrator of the tracking system and prescribing the administrator's powers and duties,

- (ii) designating a person or body to audit the tracking system and the information used by the tracking system and prescribing the auditor's powers and duties, including powers to enter business premises and inspect documents and records,
 - (iii) requiring persons prescribed by the regulations to submit information prescribed by the regulations or by the administrator or auditor of the tracking system to the administrator or auditor in a form and at times specified by the regulations or by the administrator or auditor,
 - (iv) protecting the administrator of the tracking system from liability arising from incorrect information provided by other persons,
 - (v) requiring the administrator or auditor of the tracking system or the Minister to make determinations for the purposes of the tracking system,
 - (vi) requiring information from the tracking system to be made available to the public,
 - (vii) requiring persons prescribed by the regulations to provide other persons prescribed by the regulations with information from the tracking system in a form and at times specified by the regulations or by the administrator or auditor of the tracking system,
 - (viii) authorizing and governing the issuance of certificates related to determinations made for the purposes of the tracking system, and
 - (ix) authorizing the administrator of the tracking system, subject to the approval of the Board, to establish and charge fees in connection with the tracking system, and governing the establishment and charging of those fees;
- (b) requiring retailers or generators or persons engaged in an activity described in clause 57 (f) to make timely disclosure to the Minister of the Environment, or the IESO in the manner and at the times prescribed, of the nature and quantity of the prescribed contaminants emitted by the generation facility from which the electricity being sold or offered for sale is produced or deemed to be produced, the nature of the fuel and the process of generation used at the facility;
- (c) authorizing the Minister of the Environment to determine from which generation facility or facilities electricity is deemed to be produced in accordance with such rules as may be prescribed in the regulation;
- (d) requiring retailers or generators or persons engaged in an activity described in clause 57 (f) to file with the Board, in such form and at such times as the Board may determine, evidence that the generation facility from which the electricity is produced or is deemed to be produced meets standards for

emission of prescribed contaminants from a source or class of sources set out under the *Environmental Protection Act*;

- (e) respecting the manner in which reductions, credits or allowances acquired by a retailer, generator or a person engaged in an activity described in clause 57 (f) under the *Environmental Protection Act* may be used in determining whether there has been compliance with the standards referred to in clause (d);
- (f) requiring retailers to make timely disclosure to consumers, in the manner and at the times prescribed, of the nature and quantity of the prescribed contaminants emitted by the generation facility from which the electricity being sold or offered for sale is produced or is deemed to be produced, the nature of the fuel and the process of generation used at the facility and such other information as is prescribed;
- (g) delegating to a body the power to establish the manner and time requirements described in clause (f) and requiring retailers to disclose the information described in that clause in that manner and within those time periods;
- (g.1) requiring a distributor, in the circumstances and in the manner prescribed by the regulations, to subtract the amount of electricity conveyed into the distribution system by a generator from the amount consumed from the system by the generator, for billing purposes, if the generator generates electricity primarily for the generator's own use;
- (g.2) for the purposes of clause 70 (2) (d.1), prescribing matters which may be included as a licence condition in a licence of a retailer of electricity in relation to the retailing of electricity;
- (g.3) Repealed: 2004, c. 23, Sched. B, s. 29 (3).
- (g.3.1) prescribing rules for the purposes of subsection 71 (2);
- (g.3.2) governing,
 - (i) the capacity of a renewable energy generation facility referred to in clause 71 (3) (a) and criteria for a renewable energy generation facility for the purposes of clause 71 (3) (a),
 - (ii) criteria for a generation facility that uses technology that produces power and thermal energy from a single source for the purposes of clause 71 (3) (b), and
 - (iii) criteria for an energy storage facility for the purposes of clause 71 (3) (c);
- (g.4) prescribing different situations for which separate rates must be approved or fixed under section 78, with those situations being defined with reference to amounts of electricity used and times when electricity is used;

- (g.5) governing the approving or fixing under section 78 of just and reasonable rates for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*, including prescribing methods of and procedures for approving or fixing rates, including requiring persons licensed under this Part to participate in those methods and procedures and to enter into contracts or other arrangements as part of those methods and procedures;
- (g.6) prescribing different classes of consumers for the purposes of section 78 and the date or method of determining the date on which rates approved or fixed for a class of consumers take effect;
 - (g.6.0.1) prescribing circumstances under which a transmitter or distributor shall bear the costs of construction, expansion or reinforcement associated with the connection of a renewable energy generation facility to the transmitter's transmission system or the distributor's distribution system;
 - (g.6.0.2) for the purposes of subsection 78 (3.0.0.1), prescribing rules in relation to the fixing of just and reasonable rates for unit sub-metering that the Board must follow, prescribing classes of consumers for the purposes of clause 78 (3.0.0.1) (a) and prescribing circumstances for the purposes of clause 78 (3.0.0.1) (b);
 - (g.6.1) prescribing the circumstances in which the Board may make orders permitting the Smart Metering Entity or distributors to establish deferral or variance accounts for the purposes of subsection 78 (3.0.2);
 - (g.6.2) in respect of orders relating to the ability of the Smart Metering Entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative for the purposes of subsection 78 (3.0.3);
- (g.7) governing the approving or fixing under subsection 78 (3.1) of rates for the retailing of electricity, including,
 - (i) prescribing rules for the purposes of subsection 78 (3.1), and
 - (ii) prescribing matters for the purposes of subsection 78 (3.4) to be taken into consideration in forecasting the cost of electricity and the methods of and procedures for forecasting the cost of electricity, including the treatment of any outstanding balances in variance accounts held by the OPA;
- (g.8) prescribing conditions for the purposes of subsection 78 (3.5);
- (h) prescribing, for the purposes of subsection 78 (5.1), methods and techniques for the calculation and treatment of transfers made by Hydro One Inc. or its subsidiary, as the case may be, that are authorized by section 50.1 of the *Electricity Act, 1998*;

- (i) prescribing, for the purposes of subsection 78 (5.2), methods and techniques for the treatment of the statutory right to use corridor land;
- (i.1) prescribing generators and generation facilities and units for the purposes of section 78.1;
- (i.2) prescribing generators or generation facilities and units at generation facilities whose generators may apply to the Board for an order that section 78.1 applies to the facility or unit and rules governing the procedure for applying, the criteria to be satisfied and any terms and limitations that must or may be included in the order;
- (i.3) governing circumstances in which payments shall not be made under section 78.1;
- (i.4) prescribing a date for the purposes of subsection 78.1 (2);
- (i.5) prescribing payment amounts or methods for determining payment amounts for the purposes of clause 78.1 (2) (a) including prescribing separate prices or methods for different situations, including situations defined with respect to energy sources, time of generation and amounts of electricity generated;
- (i.6) governing the determination of payment amounts by the Board under section 78.1, including rules prescribing,
 - (i) methods of and procedures for determining payment amounts,
 - (ii) financial factors which the Board may take into consideration in determining payment amounts, and
 - (iii) different payment amounts or different methods of and procedures for determining payment amounts for different situations, including situations defined with respect to energy sources, time of generation and amounts of electricity generated;
- (i.7) authorizing or requiring generators to establish one or more variance or deferral accounts in connection with section 78.1;
- (i.8) prescribing generation facilities for the purposes of section 78.2;
- (i.9) prescribing rules for determining the amount of the Financial Corporation's indirect costs in respect of a contract for the purposes of section 78.2;
- (i.10) prescribing procurement contracts or rules relating to procurement contracts for the purposes of section 78.3;
- (i.11) prescribing procurement contracts or rules relating to procurement contracts for the purposes of section 78.4;
- (j) governing all matters relating to payment amounts under section 78.5;
- (k)-(o) Repealed: 1998, c. 15, Sched. B, s. 79.1 (24).

- (p)-(q) Repealed: 1998, c. 15, Sched. B, s. 79.2 (5).
- (r) Repealed: 1998, c. 15, Sched. B, s. 79.11.
- (r.1) Repealed: 1998, c. 15, Sched. B, s. 79.11.
- (r.2) Repealed: 1998, c. 15, Sched. B, s. 79.11.
- (s)-(y) Repealed: 1998, c. 15, Sched. B, s. 79.11.
- (z) Repealed: 2004, c. 23, Sched. B, s. 29 (9).
- (z.1) Repealed: 1998, c. 15, Sched. B, s. 79.11.
- (z.2) Repealed: 1998, c. 15, Sched. B, s. 79.11.
- (z.3) Repealed: 1998, c. 15, Sched. B, s. 79.11.
- (z.4) Repealed: 1998, c. 15, Sched. B, s. 79.11.
- (z.5) Repealed: 1998, c. 15, Sched. B, s. 79.11.
- (z.6) prescribing classes of consumers for the purposes of section 79.16;
- (z.7) prescribing prices or methods for determining prices for the purpose of clause 79.16 (1) (a), including prescribing separate prices or methods for different situations, including situations defined with respect to types of consumers and amounts of electricity used;
- (z.8) governing the determination of rates by the Board under clause 79.16 (1) (b), including,
 - (i) prescribing methods of and procedures for determining rates, including requiring persons licensed under this Part to participate in those methods and procedures and to enter into contracts or other arrangements as part of those methods and procedures, and
 - (ii) prescribing different situations for which separate rates must be determined, including situations defined with respect to types of consumers, amounts of electricity used and times when electricity is used;
- (z.9) prescribing a date for the purpose of subsection 79.16 (1);
- (z.10) prescribing criteria for the purposes of clause 79.16 (4) (b);
- (z.11) prescribing classes of consumers for the purposes of section 79.17 and information that must or may be included on invoices issued in respect of electricity to consumers in one or more of the prescribed classes;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (z.11) is repealed and the following substituted:

(z.11) for the purposes of section 79.17, prescribing,

- (i) classes of consumers,
- (ii) information that must or may be included on invoices issued in respect of electricity to consumers in one or more of the prescribed classes,
- (iii) the requirements that the invoices must meet, and
- (iv) the form of the invoice, including prescribing different requirements and forms for the purposes of that section;

See: 2010, c. 8, ss. 38 (20), 40.

(z.12) respecting the manner in which invoices issued in respect of electricity to consumers who are members of a class of consumers prescribed for the purposes of section 79.17 are to be provided to those consumers. 1998, c. 15, Sched. B, s. 88 (1) [see also ss. 79.1 (24), 79.2 (5), 79.11]; 2002, c. 1, Sched. B, s. 10; 2002, c. 23, s. 4 (14-17); 2003, c. 3, s. 56 (1, 2); 2003, c. 8, s. 11; 2004, c. 23, Sched. B, s. 29 (1-11); 2006, c. 3, Sched. C, s. 6; 2009, c. 12, Sched. D, s. 15; 2010, c. 8, s. 38 (19).

Retroactive

[\(2\)](#) A regulation made under clause (1) (i.5), (i.9) or (z.7) may apply in respect of an amount payable before the day the regulation is filed. 2004, c. 23, Sched. B, s. 29 (12).

Same

[\(2.0.1\)](#) A regulation made under clause (1) (i.8), (i.9), (i.10) or (i.11) may apply with respect to a period before it is filed. 2004, c. 23, Sched. B, s. 29 (12).

Conflict with market rules

[\(2.0.2\)](#) In the event of a conflict, a regulation made under clause (1) (i.5), (i.6), (i.9), (i.10) or (i.11) prevails over the market rules to the extent of the conflict. 2004, c. 23, Sched. B, s. 29 (12).

[\(2.1\)](#)-(2.3) Repealed: 1998, c. 15, Sched. B, s. 79.11.

General or particular

[\(3\)](#) A regulation under this section may be general or particular in its application. 1998, c. 15, Sched. B, s. 88 (3).

Compensation of distributors, retailers, etc.

Purposes

[88.0.1 \(1\)](#) The purpose of this section is to make such financial arrangements as the Lieutenant Governor in Council or a person referred to in subsection (4) considers appropriate,

- (a) to compensate distributors for payments made by them under section 79.1 and for reductions made to PPVA accounts or equal billing plan accounts under that section, other than reductions related to interest;

- (b) to compensate retailers for payments made by them under section 79.1;
- (c) to compensate the IESO for payments made by it under section 79.2;
- (c.1) to provide for payments to consumers, if the Minister determines that, in respect of all periods to which clause 79.4 (1) (a) or 79.16 (1) (a) applied, the total of the amount received by the Financial Corporation in connection with this Act and the amount received by the OPA under section 25.33 of the *Electricity Act, 1998* exceeds the total of the amount expended by the Financial Corporation in connection with this Act and the amount expended by the OPA under section 25.33 of the *Electricity Act, 1998*;
- (c.2) to compensate distributors, retailers, the IESO and the OPA for payments made by them pursuant to clause (c.1);
- (d) to offset differences between the commodity price for electricity in contracts between retailers and consumers that were in effect on November 11, 2002 and the commodity price for electricity in the IESO-administered markets;
- (e) to offset differences between the commodity price for electricity supplied by generators and the commodity price for electricity payable by consumers as a result of the operation of clause 79.4 (1) (a), section 79.5 and clause 79.16 (1) (a);
- (e.1) to compensate the OPA for payments made by it under section 25.33 of the *Electricity Act, 1998* in respect of any period during which either clause 79.4 (1) (a) or 79.16 (1) (a) applies; and
- (f) to make payments to the IESO in respect of liabilities or expenses it incurs after the coming into force of this section as a result of carrying out its objects under the *Electricity Act, 1998*. 2002, c. 23, s. 4 (19); 2003, c. 8, s. 12 (1); 2004, c. 23, Sched. B, s. 30 (1-7).

Regulations

- (2) The Lieutenant Governor in Council may make regulations,
 - (a) requiring the Financial Corporation or a subsidiary of the Financial Corporation to make payments to distributors, retailers, the IESO or the OPA, requiring the OPA to make payments to distributors, retailers or the IESO and prescribing methods for determining the amounts payable;
 - (b) requiring distributors to make payments to retailers and prescribing methods for determining the amounts payable;
 - (c) requiring the IESO, the OPA or a distributor or retailer to make payments to the Financial Corporation or a subsidiary of the Financial Corporation and prescribing methods for determining the amounts payable;
 - (c.1) requiring distributors, retailers or the IESO to make payments to consumers to whom either clause 79.4 (1) (a) or 79.16 (1) (a) applied and prescribing

rules for calculating the amount of the payments and for determining the classes of consumers who are entitled to receive payments;

- (d) governing the payments required under clause (a), (b), (c) or (c.1), including methods of payment and the times within which payments must be made;
- (e) governing the calculation of amounts payable by distributors and consumers to the IESO for the operation of the IESO-administered markets and the operation of the IESO-controlled grid;
- (f) authorizing distributors to set off amounts against amounts they owe to the IESO or other distributors, and prescribing methods for determining the amounts that may be set off;
- (g) governing the set-offs authorized under clause (f), including methods of set-off and the times within which amounts may be set off;
- (h) for the purposes of this section, requiring distributors, retailers or consumers to provide information to the Financial Corporation or a subsidiary of the Financial Corporation, the IESO, the OPA or distributors, requiring the IESO to provide information to the Financial Corporation or a subsidiary of the Financial Corporation, the OPA or distributors and requiring the OPA to provide information to the Financial Corporation or a subsidiary of the Financial Corporation, the IESO or distributors;
- (i) prescribing a day for the purposes of subsection (2.1). 2002, c. 23, s. 4 (19); 2003, c. 8, s. 12 (2-4); 2004, c. 23, Sched. B, s. 30 (8-14).

Application of regulations

[\(2.1\)](#) A regulation made under clause (2) (a), (b), (c), (c.1), (d), (e), (f), (g) or (h) applies only with respect to electricity generated or consumed before the day prescribed for the purposes of this subsection. 2004, c. 23, Sched. B, s. 30 (15).

General or particular

[\(3\)](#) A regulation under subsection (2) may be general or particular in its application. 2002, c. 23, s. 4 (19).

Subdelegation

[\(4\)](#) A regulation under subsection (2) may authorize a person to require, authorize, prescribe or otherwise determine any matter that may be required, authorized, prescribed or otherwise determined by the Lieutenant Governor in Council under subsection (2). 2002, c. 23, s. 4 (19).

Provision of information

[\(5\)](#) A person may do anything required by a regulation made under clause (2) (h) despite any agreement to the contrary, the person is not liable for doing the thing in contravention of any agreement to the contrary, and doing the thing shall be deemed not to constitute a breach, termination, repudiation or frustration of any contract. 2002, c. 23, s. 4 (19).

Conflict with market rules

[\(6\)](#) In the event of a conflict, a regulation made under clause (2) (c), (c.1), (d), (e), (f) or (g) prevails over the market rules to the extent of the conflict. 2002, c. 23, s. 4 (19); 2003, c. 8, s. 12 (5).

No assignment

[\(6.1\)](#) An assignment by a consumer to a retailer of the entitlement to any payment does not apply to a payment that is required by the regulations made under clause (2) (c.1), whether the assignment was made before or after this subsection comes into force. 2003, c. 8, s. 12 (6).

Purpose of payments

[\(6.2\)](#) Any payments that are required by the regulations made under clause (2) (c.1) are for the purpose of reimbursing consumers for part of the commodity price they paid for electricity. 2003, c. 8, s. 12 (6).

Investigations and inquiries

[\(7\)](#) Any person thereunto authorized by the Minister of Finance for any purpose related to the administration of this section or any regulation made under it may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business, and,

- (a) audit or examine the books and records and any account, voucher, letter or other document that relates or may relate to the information that is or should be in the books or records;
- (b) examine any property, process or matter, an examination of which may, in the person's opinion, assist in ascertaining the information that is or should be in the books or records; and
- (c) require a distributor, retailer, the IESO or the OPA or a partner or the president, manager, secretary or any director, agent or representative thereof and any other person on the premises of a distributor, retailer, the IESO or the OPA to give him or her all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination, either orally or, if he or she so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises or place with him or her. 2002, c. 23, s. 4 (19); 2004, c. 23, Sched. B, s. 30 (16).

Same

[\(8\)](#) The Minister of Finance may, for any purpose related to the administration of this section or the regulations made under it, by registered letter, or by a demand served personally or delivered by a courier service, within such reasonable time as is stipulated in the registered letter or demand, require from any person, partnership, syndicate, trust, corporation, or other business entity or from any partner, agent, member, director or officer thereof,

- (a) any information required to be provided to any person by a regulation under clause (2) (h);
- (b) production of books, letters, accounts, invoices, financial statements, computer programs or data files, or any other documents on paper or stored electronically;
- (c) particulars of any amounts paid or payable to or by, or held on behalf of, a distributor, retailer, consumer, the IESO or the OPA; or
- (d) a written statement, concerning any matter that may be relevant to the administration of this section or the regulations made under it. 2002, c. 23, s. 4 (19); 2004, c. 23, Sched. B, s. 30 (16).

Same

[\(9\)](#) The Minister of Finance may require that a written statement referred to in clause (8) (d) be made by way of affidavit or statutory declaration. 2002, c. 23, s. 4 (19).

Admission of evidence

[\(10\)](#) The Minister of Finance, or a person authorized by the Minister, may, for any purpose related to the administration of this section or the regulations made under it, reproduce from original data stored electronically any information previously submitted as required under this section or the regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way. 2002, c. 23, s. 4 (19).

Inquiry

[\(11\)](#) The Minister of Finance may, for any purpose related to the administration of this section or the regulations made under it, authorize any person, whether or not the person is an officer of the Ministry of Finance, to make such inquiry as the Minister of Finance considers necessary with reference to anything relating to the administration of this section or the regulations. 2002, c. 23, s. 4 (19).

Copies

[\(12\)](#) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry of Finance may make, or cause to be made, one or more copies thereof, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way. 2002, c. 23, s. 4 (19).

Compliance

[\(13\)](#) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing. 2002, c. 23, s. 4 (19).

Same

[\(14\)](#) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything he, she or it is required by this section to do. 2002, c. 23, s. 4 (19).

Administration of oaths

[\(15\)](#) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor. 2002, c. 23, s. 4 (19).

Application of *Public Inquiries Act*, 2009

[\(16\)](#) Section 33 of the *Public Inquiries Act*, 2009 applies to an inquiry under subsection (11). 2009, c. 33, Sched. 6, s. 77.

No approval required for subsidiary

[\(17\)](#) A subsidiary of the Financial Corporation may be established for the purposes of this section without the approval of the Minister of Finance under subsection 72 (1) of the *Electricity Act*, 1998. 2002, c. 23, s. 4 (19).

Money paid to Financial Corporation

[\(18\)](#) Money paid to the Financial Corporation or a subsidiary of the Financial Corporation under this section is the property of the Financial Corporation or the subsidiary, as the case may be. 2002, c. 23, s. 4 (19).

Repeal

[\(19\)](#) This section is repealed on a day to be named by proclamation of the Lieutenant Governor. 2004, c. 23, Sched. B, s. 30 (17).

PART V.1

GAS MARKETERS AND RETAILERS OF ELECTRICITY — STANDARDS AND AUDITS

Licences

[88.1 \(1\)](#) A licence issued under Part IV or V,

- (a) shall contain such conditions as may be prescribed by regulation; and
- (b) may contain such other conditions provided by an order of the Board or any rule or code issued by the Board. 2010, c. 8, s. 38 (21).

Same

[\(2\)](#) For the purposes of subsection (1), a regulation may specify criteria, conditions or requirements that must or that may be included as a condition of licence in any licence issued to a gas marketer or a retailer of electricity, including criteria, conditions or requirements relating to the following:

1. The operations, management and business practices of a gas marketer or retailer of electricity, including but not limited to the conduct of employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.
2. The activities, conduct or practices that must, may or may not be undertaken by the gas marketer or retailer of electricity, its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.
3. The establishment of an assurance fund within each gas marketer or retailer of electricity, including,
 - i. criteria and requirements as to the amount that the gas marketer or retailer of electricity is required to maintain in the fund or a method for determining the amount, and
 - ii. the circumstances governing how the amount is to be contributed to the fund by the gas marketer or retailer of electricity and the times at which and the circumstances under which contributions are to be made and the amount is to be maintained.
4. Standards that are required to be met by a gas marketer or a retailer of electricity or its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including standards related to,
 - i. education, training, certifications and communications,
 - ii. business practices,
 - iii. performance standards,
 - iv. background verifications and assessments as required under paragraph 7,
 - v. record keeping,
 - vi. contracting, including standards related to contracting with prescribed consumers or prescribed classes of consumers, and
 - vii. such other matters as may be prescribed by regulation.
5. Information that is to be provided orally or in writing by a gas marketer or retailer of electricity or its employees, agents or third parties acting on its behalf to a consumer or a member of a class of consumers prescribed by regulation, the Board, the Ministry or to such other person or entity as may be prescribed by regulation and the circumstances in which the information must be provided and the time or times within which such information must be provided.
6. Identification, including criteria or requirements related to the identification credentials or badges or other forms of identification provided to the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.

7. Background verification and assessment of the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including the requirement to establish a process or processes to conduct the verifications and assessments and the criteria and requirements for the time or times at which the verification and assessments must be performed.
8. The establishment of processes related to employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including the prescribing of conditions, requirements or criteria to be met by such processes, for the following activities:
 - i. Business related activities, including,
 - A. licensing, including renewal, suspension and cancellation of licences,
 - B. bonding and insurance,
 - C. examination for prescribed credentials, certificates, accreditations or designations,
 - D. creation of codes of conduct, best practices and policies,
 - E. requirements in relation to independence from or permissible investment in or association with a gas marketer or retailer of electricity or another licensee, and
 - F. such other matters as may be prescribed by regulation.
 - ii. The conduct of activities referred to in this section in relation to each of the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity at such times as may be prescribed by regulation.
 - iii. Ensuring that the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity adhere to the processes referred to in this section and, in particular, obtain any prescribed credentials.
9. Requirements or provisions that must be included in any arrangements or agreements relating to retailing of electricity or gas marketing in Ontario, including arrangements or agreements relating to retailing of electricity or gas marketing to consumers or to classes of consumers prescribed by regulation. Such requirements or provisions may be general or specific in nature. 2010, c. 8, s. 38 (21).

Licensing employees, etc.

88.2 (1) Where a regulation made under this Act so requires, the Board shall license the following persons and the regulation may specify conditions, criteria or requirements that must or may be included in a licence issued to the person:

1. Employees of a gas marketer or retailer of electricity or members of classes of such employees prescribed by regulation.
2. Employees of third parties acting on behalf of gas marketers or retailers of electricity or members of classes of such employees prescribed by regulation. 2010, c. 8, s. 38 (21).

Processes, etc.

[\(2\)](#) For the purposes of subsection (1), any process established by the Board to license the employees referred to in that subsection shall meet the criteria or requirements prescribed by regulation. 2010, c. 8, s. 38 (21).

Powers of audit

[88.3 \(1\)](#) The Board may appoint a person who meets the criteria as may be prescribed by regulation to audit the compliance of a gas marketer or retailer of electricity or its agents or employees with the requirements of,

- (a) any condition of a licence referred to in section 48 or 57; or
- (b) an enforceable provision. 2010, c. 8, s. 38 (21).

Time for audit

[\(2\)](#) The Board may authorize the person appointed to audit compliance to conduct the audit at such time as the Board may require. 2010, c. 8, s. 38 (21).

Audit, without notice

[\(3\)](#) Where the Board authorizes a person to audit the compliance of a gas marketer or retailer of electricity, the Board may do so without notice to the gas marketer or retailer of electricity. 2010, c. 8, s. 38 (21).

Audit, where notice provided

[\(4\)](#) Despite subsection (3), where the Board does provide notice of the audit to the gas marketer or retailer of electricity, it shall do so in the manner prescribed by regulation and the notice shall include the information prescribed by regulation. 2010, c. 8, s. 38 (21).

Examination of records, etc.

[\(5\)](#) For the purposes of subsection (1), the person appointed may do or cause to be done any one or more of the following:

1. Examining any record or copying any document or record, in any form, by any method.
2. Requiring any document or record that is required to be kept under this Act to be provided, in any form, and requiring any other document or record related to the purposes of the audit to be provided, in any form.
3. Examining documents relating to the training, education or professional credentials, certificates, accreditations or other designations of the employees, agents or third parties for the gas marketer or retailer of electricity, including

determining which credentials, certificates, accreditations or other designations the employee, agent or third party has or has not received.

4. Removing from a place documents or records, in any form, that are provided under paragraph 2 for the purpose of making copies.

5. Making reasonable inquiries of any person, orally or in writing. 2010, c. 8, s. 38 (21).

Regulations

88.4 The Lieutenant Governor in Council may make regulations governing all matters dealt with in this Part that are required or permitted to be prescribed by regulation or that are required or permitted to be done in accordance with the regulations. 2010, c. 8, s. 38 (21).

88.5-88.8 Repealed: 2003, c. 3, s. 58.

88.9-88.12 Repealed: 2010, c. 8, s. 38 (21).

88.13, 88.14 Repealed: 2003, c. 3, s. 61.

PART VI TRANSMISSION AND DISTRIBUTION LINES

Definitions, Part VI

89. In this Part,

“electricity distribution line” means a line, transformers, plant or equipment used for conveying electricity at voltages of 50 kilovolts or less; (“ligne de distribution d’électricité”)

“electricity transmission line” means a line, transformers, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts; (“ligne de transport d’électricité”)

“hydrocarbon line” means a pipe line carrying any hydrocarbon, other than a pipe line within an oil refinery, oil or petroleum storage depot, chemical processing plant or pipe line terminal or station; (“ligne pour hydrocarbures”)

“interconnection” means the plant, equipment and apparatus linking adjacent transmission or distribution systems as defined in Part V; (“interconnexion”)

“work” means a hydrocarbon line, electricity distribution line, electricity transmission line, interconnection or station. (“ouvrage”) 1998, c. 15, Sched. B, s. 89; 2003, c. 3, s. 62.

Leave to construct hydrocarbon line

90. (1) No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,

(a) the proposed hydrocarbon line is more than 20 kilometres in length;

- (b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations;
- (c) any part of the proposed hydrocarbon line,
 - (i) uses pipe that has a nominal pipe size of 12 inches or more, and
 - (ii) has an operating pressure of 2,000 kilopascals or more; or
- (d) criteria prescribed by the regulations are met. 2003, c. 3, s. 63 (1).

Exception

[92.](#) Subsection (1) does not apply to the relocation or reconstruction of a hydrocarbon line unless the size of the line is changed or unless the acquisition of additional land or authority to use additional land is necessary. 1998, c. 15, Sched. B, s. 90 (2); 2003, c. 3, s. 63 (2).

Application for leave to construct hydrocarbon line or station

[91.](#) Any person may, before constructing a hydrocarbon line to which section 90 does not apply or a station, apply to the Board for an order granting leave to construct the hydrocarbon line or station. 2003, c. 3, s. 64.

Leave to construct, etc., electricity transmission or distribution line

[92.](#) [\(1\)](#) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection. 1998, c. 15, Sched. B, s. 92 (1).

Exception

[92.](#) [\(2\)](#) Subsection (1) does not apply to the relocation or reconstruction of an existing electricity transmission line or electricity distribution line or interconnection where no expansion or reinforcement is involved unless the acquisition of additional land or authority to use additional land is necessary. 1998, c. 15, Sched. B, s. 92 (2).

[93.](#) Repealed: 2003, c. 3, s. 65.

Route map

[94.](#) An applicant for an order granting leave under this Part shall file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass. 1998, c. 15, Sched. B, s. 94.

Exemption, s. 90 or 92

[95.](#) The Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing. 1998, c. 15, Sched. B, s. 95.

Order allowing work to be carried out

[96.](#) [\(1\)](#) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is

in the public interest, it shall make an order granting leave to carry out the work. 1998, c. 15, Sched. B, s. 96.

Applications under s. 92

(2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. 2009, c. 12, Sched. D, s. 16.

Condition, land-owner's agreements

97. In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board. 1998, c. 15, Sched. B, s. 97.

Right to enter land

98. (1) The following persons may enter on land at the intended location of any part of a proposed work and may make such surveys and examinations as are necessary for fixing the site of the work:

1. Any person who has leave under this Part or a predecessor of this Part to construct the work.
2. Any person who is exempted under section 95 from the requirement to obtain leave to construct the work.
3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person's licence, to expand or reinforce the transmission or distribution system.
4. The officers, employees and agents of a person described in paragraph 1, 2 or 3. 2006, c. 33, Sched. X, s. 2 (1).

Interim order

(1.1) The Board may, upon application, issue an interim order authorizing a person and the officers, employees and agents of that person to enter on land at the intended location of any part of a proposed work and to make such surveys and examinations as are necessary for fixing the site of the work and as are specified in the order if,

- (a) the person has applied for leave under section 90 or 92 and has complied with section 94;

- (b) the person has applied to the Board for an exemption under section 95; or
- (c) the Board has commenced a proceeding to determine whether to require the person, pursuant to a condition of the person's licence, to expand or reinforce a transmission or distribution system. 2006, c. 33, Sched. X, s. 2 (2).

Damages

[\(2\)](#) Any damages resulting from an entry onto land carried out under subsection (1) or pursuant to an order under subsection (1.1) shall be determined by agreement or, failing agreement, in the manner set out in section 100. 2006, c. 33, Sched. X, s. 2 (3).

Expropriation

[99. \(1\)](#) The following persons may apply to the Board for authority to expropriate land for a work:

1. Any person who has leave under this Part or a predecessor of this Part.
2. Any person who intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection and who is exempted from the requirement to obtain leave by the Board under section 95 or a regulation made under clause 127 (1) (f). 1998, c. 15, Sched. B, s. 99 (1).

Hearing

[\(2\)](#) The Board shall set a date for the hearing of the application, but the date shall not be earlier than 14 days after the date of the application. 1998, c. 15, Sched. B, s. 99 (2).

Information to be filed

[\(3\)](#) The applicant shall file with the Board a plan and description of the land required, together with the names of all persons having an apparent interest in the land. 1998, c. 15, Sched. B, s. 99 (3).

[\(4\)](#) Repealed: 2003, c. 3, s. 67.

Power to make order

[\(5\)](#) If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land. 1998, c. 15, Sched. B, s. 99 (5).

Determination of compensation

[100.](#) If compensation for damages is provided for in this Part and is not agreed upon, the procedures set out in clauses 26 (a) and (b) of the *Expropriations Act* apply to the determination of the compensation, and the compensation shall be determined under section 27 of that Act or by the Ontario Municipal Board. 1998, c. 15, Sched. B, s. 100.

Crossings with leave

[101. \(1\)](#) The following persons may apply to the Board for authority to construct a work upon, under or over a highway, utility line or ditch:

1. Any person who has leave to construct the work under this Part.
2. Any person who intends to construct the work and who is exempted under section 95 from the requirement to obtain leave.
3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person's licence, to expand or reinforce the transmission or distribution system.
4. The officers, employees and agents of a person described in paragraph 1, 2 or 3. 2006, c. 33, Sched. X, s. 3.

Procedure

[\(2\)](#) The procedure set out in subsections 99 (1) to (4) applies with necessary modifications to an application under this section. 1998, c. 15, Sched. B, s. 101 (2).

Order

[\(3\)](#) Without any other leave and despite any other Act, if after the hearing the Board is of the opinion that the construction of the work upon, under or over a highway, utility line or ditch is in the public interest, it may make an order authorizing the construction upon such conditions as it considers appropriate. 1998, c. 15, Sched. B, s. 101 (3).

Right to compensation for damages

[102.](#) Any person who has acquired land for a work under this Part by agreement with the owner of the land shall pay to the owner due compensation for any damages resulting from the exercise of the person's rights under the agreement and, if the compensation is not agreed upon, it shall be determined in the manner set out in section 100. 1998, c. 15, Sched. B, s. 102.

Entry upon land

[103. \(1\)](#) Any person may at any time enter upon land, without the consent of the owner of the land, for the purpose of inspecting, altering, maintaining, repairing, renewing, disconnecting, replacing or removing a work or part of a work where leave for the construction, expansion or reinforcement of the work or the making of an interconnection was granted under this Part or a predecessor of this Part. 1998, c. 15, Sched. B, s. 103 (1).

Compensation

[\(2\)](#) Compensation for any damages resulting from the exercise of a right under subsection (1), if not agreed upon by the person and the owner of the land, shall be determined in the manner set out in section 100. 1998, c. 15, Sched. B, s. 103 (2).

Non-application, *Public Utilities Act*, s. 58

[104.](#) If leave to construct a work has been granted under this Part, section 58 of the *Public Utilities Act* does not apply to that work. 1998, c. 15, Sched. B, s. 104.

PART VII INSPECTORS AND INSPECTIONS

Board receives complaints and makes inquiries

105. The Board may,

- (a) receive complaints concerning conduct that may be in contravention of an enforceable provision whether the conduct constitutes an offence or not; and
- (b) make inquiries, gather information and attempt to mediate or resolve complaints, as appropriate, concerning any matter that comes to its attention that may be in contravention of an enforceable provision whether the matter constitutes an offence or not. 2010, c. 8, s. 38 (22).

Inspectors

106. (1) The Board's management committee may appoint persons to exercise and perform the powers and duties of an inspector under this Part. 2003, c. 3, s. 69.

Certificate of appointment

(2) The Board shall issue to every inspector a certificate of appointment bearing the signature of a member of the Board or a facsimile of his or her signature. 2010, c. 8, s. 38 (23).

Power to require documents, etc.

107. (1) An inspector may, for the purposes of this Act and any other Act that gives powers or duties to the Board, require any of the following persons to provide documents, records or information:

1. A person required to have a licence under section 48 or 57.
 - 1.1 An affiliate, agent or employee of a gas marketer or retailer of electricity.
2. A gas distributor, gas transmitter or gas storage company or an affiliate of a gas transmitter, gas distributor or gas storage company.
3. An affiliate of a person required to have a licence under clause 57 (a) or (b).
4. A person exempted from the requirements of clause 57 (a) by regulation.
5. A person exempted from the requirements of clause 57 (b) by regulation.
6. A person exempted from the requirements of section 48 by regulation.
7. An affiliate, agent or employee of a person referred to in paragraph 4. 2003, c. 3, s. 70; 2010, c. 8, s. 38 (24).

Application of subs. (1)

(2) Subsection (1) only applies to documents, records and information that relate to the following:

1. Activities for which a licence is required under section 48 or 57.

- 1.1 The persons who are required to have a licence under section 48 or 57 and their affiliates, agents and employees.
- 1.2 Activities for which a licence is required under subsection 88.2 (1).
- 1.3 The persons who are required to have a licence under subsection 88.2 (1).
2. Gas distribution, gas transmission or gas storage, including the sale of gas by a gas distributor.
3. Transactions between a gas distributor, gas transmitter or gas storage company and its affiliates.
4. Transactions between a person required to have a licence under clause 57 (a) or (b) and its affiliates.
5. Adjustments, payments, set-offs and credits under sections 25.33 and 25.34 of the *Electricity Act, 1998* and under the regulations made under clauses 114 (1.3) (f) and (h) of that Act.
6. Payments under sections 78.1 to 78.5. 2004, c. 23, Sched. B, s. 32; 2009, c. 12, Sched. D, s. 17; 2010, c. 8, s. 38 (25).

Inspections

108. (1) An inspector may, for the purposes of this Act and any other Act that gives powers or duties to the Board, without a warrant or court order, at any reasonable time and with any reasonable assistance, conduct inspections and, for that purpose, the inspector may,

- (a) enter any place that the inspector reasonably believes is likely to contain documents or records related to any of the activities referred to in subsection 107 (2); or
- (b) enter any place where anything is being done that requires an order of the Board granting leave under Part VI. 2003, c. 3, s. 71 (1).

Same

(2) During an inspection under subsection (1), an inspector may,

- (a) examine, record or copy any document or record, in any form, by any method;
- (b) require any document or record that is required to be kept under this Act to be provided, in any form, and require any other document or record related to the purposes of the inspection to be provided, in any form;
- (c) remove from a place documents or records, in any form, that are provided under clause (b) for the purpose of making copies;
- (d) examine anything that is being done that requires an order of the Board granting leave under Part VI;

- (e) make reasonable inquiries of any person, orally or in writing. 2003, c. 3, s. 71 (2).

Identification

(3) In conducting an inspection under this section, the inspector shall, upon request, produce his or her certificate of appointment. 2010, c. 8, s. 38 (26).

Duty to assist

(4) In exercising powers under this section, the inspector may require a person described in subsection 107 (1) or its officers, directors or employees to give all reasonable assistance to the inspector. 2003, c. 3, s. 71 (4).

Copying

(5) The inspector may, on giving a receipt, remove any document or record described in subsection (2) for the purpose of making copies or extracts and shall promptly return the document or record and obtain a written acknowledgment of its return. 2003, c. 3, s. 71 (4).

Documents in electronic form

(6) If a document or record is kept in electronic form, the inspector may make a copy of it or require that a copy of it be provided to him or her on paper or in a machine-readable medium or both. 1998, c. 15, Sched. B, s. 108 (6); 2003, c. 3, s. 71 (5); 2010, c. 8, s. 38 (27).

Evidence

(7) Copies or extracts from documents or records removed under this section and certified as being true copies or extracts from the originals by the person who made them are admissible in evidence to the same extent as and have the same evidentiary value as the originals. 1998, c. 15, Sched. B, s. 108 (7).

Dwellings

(8) This section does not authorize a person to enter a room or place actually used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (9). 1998, c. 15, Sched. B, s. 108 (8).

Warrant

(9) A justice of the peace may issue a warrant authorizing a person named in the warrant to enter a place identified in the warrant and exercise the powers given under this section if the justice of the peace is satisfied by information on oath that,

- (a) there is reasonable ground to believe that,
 - (i) there are documents or records located in the place that are relevant to the carrying out of an inspection, or
 - (ii) anything is being done in the place that requires an order of the Board granting leave under Part VI; and
- (b) entry to the place has been or will be denied. 2003, c. 3, s. 71 (6).

Same

[\(10\)](#) A warrant issued under this section shall,

- (a) specify the hours and days during which it may be executed; and
- (b) name a date on which it expires, which date shall not be later than 15 days after its issue. 1998, c. 15, Sched. B, s. 108 (10).

Extension

[\(11\)](#) Upon application without notice by the person named in a warrant, a justice of the peace may, before or after the warrant expires, extend the date on which the warrant expires for an additional period of not more than 15 days. 1998, c. 15, Sched. B, s. 108 (11).

Notifying Board

[109.](#) An inspector shall notify the Board of all matters he or she thinks relevant to Board proceedings or possible future Board proceedings. 1998, c. 15, Sched. B, s. 109; 2003, c. 3, s. 72.

Evidence, Board proceedings

Witnesses

[110. \(1\)](#) An inspector may be called as a witness by the Board in any Board proceeding. 1998, c. 15, Sched. B, s. 110 (1); 2003, c. 3, s. 73 (1).

No privilege

[\(2\)](#) No document, record or copy thereof obtained by an inspector under section 107 or 108, and no information obtained by an inspector under section 107, shall be excluded as evidence on the ground of privilege in any Board proceeding. 2003, c. 3, s. 73 (2).

Notice

[\(3\)](#) No document, record or copy thereof obtained by an inspector under section 107 or 108, and no information obtained by an inspector under section 107, shall be introduced in evidence in a Board proceeding unless,

- (a) the Board gives the owner of the document or record or the person who provided the information notice that the inspector intends to introduce the evidence; and
- (b) the Board gives the owner of the document or record or the person who provided the information an opportunity to make representations with respect to the intended introduction of that evidence. 2003, c. 3, s. 73 (3).

[\(4\)](#) Repealed: 2003, c. 3, s. 73 (3).

Confidentiality

[111. \(1\)](#) All documents and records obtained by an inspector under section 107 or 108, and information obtained by an inspector under section 107, are confidential and

shall not be disclosed to any person other than a member of the Board or an employee of the Board except,

- (a) as may be required in connection with the administration of this Act or any other Act that gives powers or duties to the Board or in any proceeding under this or any other Act that gives powers or duties to the Board;
- (b) to counsel for the Board or an employee of the Board; or
- (c) with the consent of the owner of the document or record or the person who provided the information. 2003, c. 3, s. 74.

Same

[\(2\)](#) If any document, record or information obtained by an inspector under section 107 or 108 is admitted in evidence in a proceeding under this Act or any other Act that gives powers or duties to the Board, the Board may rule on whether the document, record or information is to be kept confidential. 2003, c. 3, s. 74.

Evidence

[112.](#) No document, record or information obtained by an inspector under this Part is admissible in evidence in any proceeding except a proceeding in respect of an order of the Board or a proceeding in respect of an offence under section 126. 2003, c. 3, s. 75.

PART VII.0.1 INVESTIGATORS AND INVESTIGATIONS

Investigators

[112.0.1 \(1\)](#) The chair may appoint persons to exercise and perform the powers and duties of an investigator under this Part and Part IX. 2010, c. 8, s. 38 (28).

Certificate of appointment

[\(2\)](#) The chair shall issue to every investigator a certificate of appointment bearing the chair's signature or a facsimile of his or her signature. 2010, c. 8, s. 38 (28).

Production of certificate of appointment

[\(3\)](#) Every investigator who is conducting an investigation shall, upon request, produce his or her certificate of appointment. 2010, c. 8, s. 38 (28).

Search warrant

[112.0.2 \(1\)](#) Upon application made without notice by an investigator, a justice of the peace may issue a warrant if he or she is satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening an enforceable provision; and
- (b) there is,
 - (i) in any building, dwelling, receptacle or place anything relating to the contravention of an enforceable provision, or

- (ii) information or evidence relating to the contravention of an enforceable provision that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant. 2010, c. 8, s. 38 (28).

Powers under warrant

[\(2\)](#) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an investigator,

- (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and examine and seize anything described in the warrant;
- (b) to use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form;
- (c) to exercise any of the powers specified in subsection (10); and
- (d) to use any investigative technique or procedure or do anything described in the warrant. 2010, c. 8, s. 38 (28).

Entry of dwelling

[\(3\)](#) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,

- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice of the peace authorizes the entry into the dwelling. 2010, c. 8, s. 38 (28).

Conditions on a warrant

[\(4\)](#) A warrant obtained under subsection (1) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2010, c. 8, s. 38 (28).

Expert help

[\(5\)](#) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the investigator in respect of the execution of the warrant. 2010, c. 8, s. 38 (28).

Time of execution

[\(6\)](#) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2010, c. 8, s. 38 (28).

Expiry of warrant

[\(7\)](#) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator. 2010, c. 8, s. 38 (28).

Use of force

[\(8\)](#) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant. 2010, c. 8, s. 38 (28).

Obstruction

[\(9\)](#) No person shall obstruct an investigator executing a warrant under this section or withhold from him or her or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant. 2010, c. 8, s. 38 (28).

Assistance

[\(10\)](#) An investigator may, in the course of executing a warrant, require a person to produce the evidence or information described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the evidence or information described in the warrant and the person shall produce the evidence or information or provide the assistance. 2010, c. 8, s. 38 (28).

Return of seized items

[\(11\)](#) An investigator who seizes any thing under this section or under section 112.0.3 may make a copy of it and shall return it within a reasonable time. 2010, c. 8, s. 38 (28).

Admissibility

[\(12\)](#) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2010, c. 8, s. 38 (28).

Seizure of thing not specified

[112.0.3](#) An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of his or her duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of an enforceable provision. 2010, c. 8, s. 38 (28).

Searches in exigent circumstances

[112.0.4 \(1\)](#) An investigator may exercise any of the powers described in subsection 112.0.2 (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant. 2010, c. 8, s. 38 (28).

Dwelling

[\(2\)](#) Subsection (1) does not apply to a place or part of a place that is being used as a dwelling. 2010, c. 8, s. 38 (28).

Use of force

[\(3\)](#) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary. 2010, c. 8, s. 38 (28).

Application of s. 112.0.2

(4) Subsections 112.0.2 (5), (9), (10), (11) and (12) apply with necessary modifications to a search under this section. 2010, c. 8, s. 38 (28).

Witnesses

112.0.5 (1) An investigator may be called as a witness by the Board in any Board proceeding. 2010, c. 8, s. 38 (28).

Notice

(2) No document, record or copy of one obtained by an investigator under a warrant obtained under section 112.0.2 or obtained without a warrant under the circumstances referred to in section 112.0.4 and no information obtained by an investigator under such a warrant or under the circumstances referred to in section 112.0.4 shall be introduced in evidence in a Board proceeding unless,

- (a) the Board gives the owner of the document or record or the person who provided the information notice that the investigator intends to introduce the evidence; and
- (b) the Board gives the owner of the document or record or the person who provided the information an opportunity to make representations with respect to the intended introduction of that evidence. 2010, c. 8, s. 38 (28).

Same

(3) No thing seized under section 112.0.3 and no information obtained by an investigator under such a seizure shall be introduced in evidence in a Board proceeding unless,

- (a) the Board gives the owner of the thing or the person who provided the thing notice that the investigator intends to introduce the evidence; and
- (b) the Board gives the owner of the thing or the person who provided the thing an opportunity to make representations with respect to the intended introduction of that evidence. 2010, c. 8, s. 38 (28).

Confidentiality

112.0.6 (1) All documents and records obtained by an investigator under this Part or Part IX are confidential and shall not be disclosed to any person other than a member of the Board or an employee of the Board except,

- (a) as may be required in connection with the administration of this Act or any other Act that gives powers or duties to the Board or in any proceeding under this or any other Act that gives powers or duties to the Board;
- (b) to counsel for the Board or an employee of the Board; or
- (c) with the consent of the owner of the document or record or the person who provided the information. 2010, c. 8, s. 38 (28).

Same

[\(2\)](#) If any document, record or information obtained by an investigator under this Part or Part IX is admitted in evidence in a proceeding under this Act or any other Act that gives powers or duties to the Board, the Board may rule on whether the document, record or information is to be kept confidential. 2010, c. 8, s. 38 (28).

PART VII.1 COMPLIANCE

[112.1](#) Repealed: 2010, c. 8, s. 38 (29).

Procedure for orders under ss. 112.3 to 112.5

[112.2 \(1\)](#) An order under section 112.3, 112.4 or 112.5 may only be made on the Board's own motion. 2003, c. 3, s. 76.

Notice

[\(2\)](#) The Board shall give written notice to a person that it intends to make an order under section 112.3, 112.4 or 112.5. 2003, c. 3, s. 76.

Contents of notice

[\(3\)](#) Notice under subsection (2) shall set out the reasons for the proposed order and shall advise the person that, within 15 days after receiving the notice, the person may give notice requiring the Board to hold a hearing. 2003, c. 3, s. 76.

Service of notice or order

[\(3.1\)](#) Any notice or order required to be given or served by the Board under this Part or Part VII.2 is sufficiently given or served if,

- (a) delivered personally;
- (b) sent by registered mail; or
- (c) sent by another manner, if the Board can prove receipt of the notice or order.
2010, c. 8, s. 38 (30).

Deemed service

[\(3.2\)](#) Where service is made by registered mail, the service is deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date. 2010, c. 8, s. 38 (30).

Exception

[\(3.3\)](#) Despite subsection (3.1), the Board may order any other method of service. 2010, c. 8, s. 38 (30).

Hearing

[\(4\)](#) A person to whom notice is given under subsection (2) may, within 15 days after receiving the notice, give notice to the Board requiring the Board to hold a hearing. 2003, c. 3, s. 76.

If hearing not required

[\(5\)](#) If no notice requiring a hearing is given within the time permitted by subsection (4), the Board may make an order. 2003, c. 3, s. 76.

Interim orders under s. 112.3

[\(6\)](#) An interim order of the Board may be made under section 112.3, with or without a hearing, and may take effect before the time for giving notice under subsection (4) has expired. 2003, c. 3, s. 76.

Action required to comply, etc.

[112.3 \(1\)](#) If the Board is satisfied that a person has contravened or is likely to contravene an enforceable provision, the Board may make an order requiring the person to comply with the enforceable provision and to take such action as the Board may specify to,

- (a) remedy a contravention that has occurred; or
 - (b) prevent a contravention or further contravention of the enforceable provision.
- 2003, c. 3, s. 76.

Application

[\(2\)](#) This section applies to contraventions that occur before or after this section comes into force. 2003, c. 3, s. 76.

Suspension or revocation of licences

[112.4 \(1\)](#) If the Board is satisfied that a person who holds a licence under Part IV or V has contravened an enforceable provision, the Board may make an order suspending or revoking the licence. 2003, c. 3, s. 76.

Application

[\(2\)](#) This section applies to contraventions that occur before or after this section comes into force. 2003, c. 3, s. 76.

Administrative penalties

[112.5 \(1\)](#) If the Board is satisfied that a person has contravened an enforceable provision, the Board may, subject to the regulations under subsection (5), make an order requiring a person to pay an administrative penalty in the amount set out in the order for each day or part of a day on which the contravention occurred or continues. 2003, c. 3, s. 76.

Purpose

[\(1.1\)](#) The purpose of an administrative penalty is to promote compliance with the requirements established by this Act and the regulations. 2010, c. 8, s. 38 (31).

Limitation

[\(2\)](#) The Board shall not make an order under subsection (1) in respect of a contravention later than two years after the later of,

- (a) the day the contravention occurred; and

- (b) the day on which the evidence of the contravention first came to the attention of the Board. 2003, c. 3, s. 76.

Amount of penalty, limited

(3) An administrative penalty in respect of a contravention shall not exceed \$20,000 for each day or part of a day on which the contravention occurs or continues. 2003, c. 3, s. 76.

No offence to be charged if penalty is paid

(4) If a person who is required by an order under subsection (1) to pay an administrative penalty in respect of a contravention pays the amount of the penalty in accordance with the order, the person shall not be charged with an offence in respect of the contravention. 2003, c. 3, s. 76.

Regulations

- (5) The Lieutenant Governor in Council may make regulations,
- (a) specifying types of contraventions in respect of which an order may not be made under this section and circumstances when the Board shall not make an order under this section;
 - (b) governing the determination of the amounts of administrative penalties, including the criteria to be considered and including providing for different amounts depending on when an administrative penalty is paid;
 - (c) respecting any other matter necessary for the administration of the system of administrative penalties provided for by this section. 2003, c. 3, s. 76.

General or particular

(6) A regulation under subsection (5) may be general or particular in its application. 2003, c. 3, s. 76.

Application

(7) Subject to subsection (8), this section applies to contraventions that occur before or after this section comes into force. 2003, c. 3, s. 76.

Same

(8) This section does not apply to a contravention that occurred before this section came into force unless, at the time it occurred, section 125.2 was in force and a notice could have been issued in respect of the contravention under that section. 2003, c. 3, s. 76.

Restraining orders

112.6 The Board may apply to the Superior Court of Justice for an order directing a person not to contravene an enforceable provision, and the court may make that order or such other order as the court considers just. 2003, c. 3, s. 76.

Voluntary compliance

[112.7 \(1\)](#) A person may give the Board a written assurance of voluntary compliance,

- (a) to refrain from contravening an enforceable provision specified in the assurance;
- (b) to take such action as is specified in the assurance to remedy a contravention of an enforceable provision; or
- (c) to take such action as is specified in the assurance to prevent a contravention of an enforceable provision. 2003, c. 3, s. 76.

Force and effect

[\(2\)](#) An assurance of voluntary compliance has the same force and effect as an order of the Board. 2003, c. 3, s. 76.

[\(3\)](#) Repealed: 2010, c. 8, s. 38 (32).

Public record

[112.8 \(1\)](#) The Board shall maintain a public record of,

- (a) assurances of voluntary compliance given under this Act;
- (b) compliance orders issued under this Act;
- (c) orders made under section 112.10;
- (d) any other prescribed document or information. 2010, c. 8, s. 38 (33).

Orders

[\(2\)](#) The Board may by order require the payment of fees for the inspection of public records maintained under subsection (1) and may approve the amount of those fees. 2010, c. 8, s. 38 (33).

Same

[\(3\)](#) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under subsection (2). 2010, c. 8, s. 38 (33).

Form and manner of public record

[\(4\)](#) The public record maintained under subsection (1) shall be maintained by the Board in such form or manner as may be prescribed by regulation. 2010, c. 8, s. 38 (33).

PART VII.2

COMPLIANCE RE PART II OF THE ENERGY CONSUMER PROTECTION ACT, 2010

Application

[112.9 \(1\)](#) This Part applies in respect of enforceable provisions referred to in clause (b) of the definition of “enforceable provision” in section 3. 2010, c. 8, s. 38 (34).

Same

[\(2\)](#) This Part applies in addition to Part VII.1. 2010, c. 8, s. 38 (34).

Definitions

[\(3\)](#) For the purposes of this Part,

“consumer” has the same meaning as in Part II of the *Energy Consumer Protection Act, 2010*; (“consommateur”)

“supplier” has the same meaning as in Part II of the *Energy Consumer Protection Act, 2010*. (“fournisseur”) 2010, c. 8, s. 38 (34).

Freeze order

[112.10 \(1\)](#) If the conditions in subsection (2) are met, the Board may make an application to the Superior Court of Justice for,

- (a) an order requiring any person having on deposit or controlling any assets or trust funds of a supplier or former supplier to hold those funds or assets;
 - (b) an order requiring a supplier or former supplier to refrain from withdrawing any asset or trust fund from a person having them on deposit or controlling them; or
 - (c) an order requiring a supplier or former supplier to hold any asset or trust fund of an energy consumer or other person in trust for the person entitled to it.
- 2010, c. 8, s. 38 (34).

Conditions

[\(2\)](#) The Board may make an application under subsection (1) if it believes that it is advisable for the protection of consumers and,

- (a) a search warrant has been issued under this Act;
- (b) an order has been made under section 112.3 or 112.11; or
- (c) there has been an assurance of voluntary compliance under section 112.7 or 112.12. 2010, c. 8, s. 38 (34).

Person engaged in unfair practice

[\(3\)](#) Subsections (1) and (2) apply with necessary modifications to any person, whether or not the person is or was a supplier, if the person has engaged or is engaging in unfair practices under the *Energy Consumer Protection Act, 2010*. 2010, c. 8, s. 38 (34).

Limitation

[\(4\)](#) In the case of a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* or a loan or trust corporation, the order under subsection (1) applies only to the offices and branches named in the order. 2010, c. 8, s. 38 (34).

Release of assets

(5) The court may consent to the release of any particular asset or trust fund from the order or may wholly revoke the order. 2010, c. 8, s. 38 (34).

Exception

(6) Subsection (1) does not apply if, prior to the Board obtaining an order under that subsection, the person files with the Board, in such manner and amount as the Board determines,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another form of security prescribed by regulation. 2010, c. 8, s. 38 (34).

Application to court

(7) An application may be made to the Superior Court of Justice for a determination in respect of the disposition of an asset or trust fund,

- (a) by a person in receipt of an order under subsection (1), if that person is in doubt as to whether the order applies to the asset or trust fund; or
- (b) by a person who claims an interest in the asset or trust fund subject to the order. 2010, c. 8, s. 38 (34).

Notice

(8) If an order is made under this section, the Board may register in the appropriate land registry office a notice that an order under subsection (1) has been issued and that the order may affect land belonging to the person referred to in the notice and the notice has the same effect as the registration of a certificate of pending litigation except that the Board may in writing revoke or modify the notice. 2010, c. 8, s. 38 (34).

Cancellation or discharge application

(9) A person in respect of whom an order has been made under subsection (1) or any person having an interest in land in respect of which a notice is registered under subsection (8) may apply to the Superior Court of Justice for cancellation in whole or in part of the order or for discharge in whole or in part of the registration. 2010, c. 8, s. 38 (34).

Disposition by court

(10) The Superior Court of Justice shall dispose of the application after a hearing and may cancel the order or discharge the registration in whole or in part, if the court finds,

- (a) that the order or registration is not required in whole or in part for the protection of consumers or of other persons having an interest in the land; or

- (b) that the interests of other persons are unduly prejudiced by the order or registration. 2010, c. 8, s. 38 (34).

Court application

[\(11\)](#) If the court has made an order under subsection (1) or the Board has registered a notice under subsection (8), the Board may apply to the court for directions or an order relating to the disposition of assets, trust funds or land affected by the order or notice. 2010, c. 8, s. 38 (34).

Notice not required

[\(12\)](#) An application by the Board under this section may be made without notice to any other person. 2010, c. 8, s. 38 (34).

Order for immediate compliance

[112.11 \(1\)](#) Without limiting the generality of section 112.3, the Board may make an order requiring immediate compliance with an enforceable provision and, subject to subsection (2), such an order takes effect immediately. 2010, c. 8, s. 38 (34).

Notice of order

[\(2\)](#) If the Board makes an order for immediate compliance, it shall serve on the person named in the order a notice that includes,

- (a) the order;
- (b) the written reasons for making the order; and
- (c) a statement that the person is entitled to a hearing by the Board if the person mails or delivers to the Board, within 15 days after the notice is served, notice in writing requiring a hearing. 2010, c. 8, s. 38 (34).

Hearing

[\(3\)](#) When a person named in the order requires a hearing in accordance with the notice under subsection (2), the Board shall hold the hearing and may confirm or set aside the order or make such other order as the Board considers proper to give effect to the purposes of Part II of the *Energy Consumer Protection Act, 2010*. 2010, c. 8, s. 38 (34).

Expiration of order

- [\(4\)](#) If a hearing by the Board is required,
- (a) the order expires 15 days after the written request for a hearing is received by the Board; or
 - (b) the Board may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period referred to in clause (a). 2010, c. 8, s. 38 (34).

Same

[\(5\)](#) Despite subsection (4), if it is satisfied that the conduct of the person named in the order has delayed the commencement of the hearing, the Board may extend the time of the expiration for the order,

- (a) until the hearing commences; and
- (b) once the hearing commences, until the hearing is concluded. 2010, c. 8, s. 38 (34).

Parties

[\(6\)](#) The person who has required the hearing and such other persons as the Board may specify are parties to proceedings before the Board under this section. 2010, c. 8, s. 38 (34).

Voluntary compliance

[112.12 \(1\)](#) Without limiting the generality of section 112.7, a person may give the Board a written assurance of voluntary compliance,

- (a) to publicize the assurance or the actions being undertaken as a result of the assurance;
- (b) to pay any cost incurred in investigating the person's activities, any legal costs incurred in relation to the person's activities and any cost associated with the assurances;
- (c) to take any such action as the Board considers appropriate in the circumstances. 2010, c. 8, s. 38 (34).

Security for any assurance of voluntary compliance

[\(2\)](#) The Board may require any person who is giving an assurance of voluntary compliance to provide, in such manner and amount as the Board determines, security in the form of,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another form of security prescribed by regulation. 2010, c. 8, s. 38 (34).

Release of security

[\(3\)](#) The bond and any collateral security required under subsection (2) shall not be released until the Board is satisfied that the person has fulfilled the assurance. 2010, c. 8, s. 38 (34).

[113.-120.](#) Repealed. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

PART IX MISCELLANEOUS

Rules

[121.](#) The Board's management committee may make rules,

- (a) governing the practices of employees to whom powers and duties are delegated under section 6;
- (b) governing the making of rules under section 44 and the issuance of codes under section 70.1. 2003, c. 3, s. 77.

Provincial offences officers

122. Despite subsection 1 (3) of the *Provincial Offences Act*, the Board's management committee may, for the purposes of that Act, designate in writing any person or class of persons as a provincial offences officer, but the designation only applies in respect of offences under this Act. 2010, c. 8, s. 38 (35).

123. Repealed: 2003, c. 3, s. 79.

124. Repealed: 2003, c. 3, s. 80.

Obstruction

125. No person shall obstruct an inspector appointed under section 106 or a provincial offences officer designated under section 122 or an investigator appointed under subsection 112.0.1 (1) or knowingly withhold or conceal from that person or destroy any relevant document, record or information required to be provided by that person. 2003, c. 3, s. 81; 2010, c. 8, s. 38 (36).

Method of giving notice

125.1 Subsections 18 (2) to (5) and clause 24 (1) (a) of the *Statutory Powers Procedure Act* apply, with necessary modifications, to all notices given by the Board, whether or not a hearing is held. 2003, c. 3, s. 82.

Duties of directors and officers of a corporation

125.2 Where a retailer of electricity or gas marketer is a corporation, every director and officer of the corporation shall,

- (a) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
- (b) take such measures as necessary to ensure that the corporation complies with all requirements under this Act and the *Energy Consumer Protection Act*, 2010. 2010, c. 8, s. 38 (37).

Offences

126. (1) A person is guilty of an offence who,

- (a) undertakes an activity without a licence for which a licence is required under this Act and for which a person has not been granted an exemption from the requirement to hold a licence;
- (b) knowingly furnishes false or misleading information in any application, statement or return made under this Act or in any circumstances where information is required or authorized to be provided under this Act;

- (c) fails to comply with a condition of a licence or an order of the Board made under this or any other Act;
- (c.1) fails to comply with an assurance of voluntary compliance given under section 112.7;
- (c.2) fails to comply with an assurance of voluntary compliance entered into under section 88.8 before that section was repealed;
- (d) contravenes this Act, the regulations or a rule made under section 44; or
- (e) contravenes the *Energy Consumer Protection Act, 2010* or the regulations made under it. 1998, c. 15, Sched. B, s. 126 (1); 2002, c. 1, Sched. B, s. 16; 2002, c. 23, s. 4 (20); 2003, c. 3, s. 84 (1, 2); 2010, c. 8, s. 38 (38).

Officers, etc.

[\(2\)](#) It is an offence for any officer or director of a corporation to cause, authorize, permit or acquiesce in the commission by the corporation of an offence mentioned in subsection (1). 1998, c. 15, Sched. B, s. 126 (2).

Penalty

[\(3\)](#) An individual who is convicted of an offence under subsection (1) or (2) is liable to a fine of not more than \$50,000 for a first offence and to a fine of not more than \$150,000 for a subsequent offence. 1998, c. 15, Sched. B, s. 126 (3); 2003, c. 3, s. 84 (3).

Corporations

[\(4\)](#) A corporation that is convicted of an offence under subsection (1) is liable to a fine of not more than \$250,000 for a first offence and to a fine of not more than \$1,000,000 for a subsequent offence. 1998, c. 15, Sched. B, s. 126 (4); 2003, c. 3, s. 84 (4).

Increasing fine by amount of monetary benefit

[\(4.1\)](#) Despite the maximum fines set out in subsections (3) and (4), the court that convicts a person of an offence under subsection (1) or (2) may increase the fine imposed on the person by an amount equal to the monetary benefit that was acquired by, or that accrued to, the person as a result of the commission of the offence. 2003, c. 3, s. 84 (5).

Limitation

[\(5\)](#) Subject to subsection (6), no proceeding under this section shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Board. 1998, c. 15, Sched. B, s. 126 (5); 2010, c. 8, s. 38 (39).

Same, retailers of electricity and gas marketers

[\(6\)](#) Despite subsection (5), no proceeding under this section shall be commenced against the following persons more than two years after the facts upon which the proceeding is based first came to the knowledge of the Board:

1. A retailer of electricity or a gas marketer.

2. A director or officer of a corporation, where the person referred to in paragraph 1 is a corporation. 2010, c. 8, s. 38 (40).

Order for compensation, restitution

126.0.1 If a person referred to in subsection 126 (6) is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or make restitution. 2010, c. 8, s. 38 (41).

Default in payment of fines

126.0.2 (1) If a fine payable by a person referred to in subsection 126 (6) as a result of a conviction for an offence under this Act is in default for at least 60 days, the Board may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default. 2010, c. 8, s. 38 (41).

Where payment made

(2) Within 10 days after the Board has notice that the fine has been paid in full, the Board shall inform the consumer reporting agency of the payment. 2010, c. 8, s. 38 (41).

Liens and charges

126.0.3 (1) If a fine payable by a person referred to in subsection 126 (6) as a result of a conviction for an offence under this Act is in default for at least 60 days, the Board may by order create a lien against the property of the person who is liable to pay the fine. 2010, c. 8, s. 38 (41).

Liens on personal property

(2) If the lien created by the Board under subsection (1) relates to personal property,

- (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act;
- (b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
- (c) the Board may perfect the security interest referred to in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act. 2010, c. 8, s. 38 (41).

Liens and charges on real property

(3) If the lien created by the Board under subsection (1) relates to real property, the Board may register the lien against the property of the person liable to pay the fine in the proper land registry office and, on registration, the obligation under the lien becomes a charge on the property. 2010, c. 8, s. 38 (41).

Initiation of sale proceedings prohibited

(4) The Board shall not initiate sale proceedings in respect of any real property against which it has registered a lien under subsection (3). 2010, c. 8, s. 38 (41).

Proceeds of sale

[\(5\)](#) If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the Board shall ensure the funds it receives as result of the sale are used to pay the fine. 2010, c. 8, s. 38 (41).

Discharge of lien

[\(6\)](#) Within 10 days after the Board has knowledge of the payment in full of the fine, the Board shall,

- (a) discharge the registration of any financing statement registered under clause (2) (c); and
- (b) register a discharge of a charge created on registration of a lien under subsection (3). 2010, c. 8, s. 38 (41).

Admissibility in evidence of certified statements

[126.1 \(1\)](#) A statement as to,

- (a) the licensing or non-licensing of any person;
- (b) the filing or non-filing of any document, material or information with the Board;
- (c) the date the facts upon which a proceeding is based first came to the knowledge of the Board; or
- (d) any other matter pertaining to such licensing, non-licensing, filing or non-filing,

purporting to be certified by the secretary of the Board, is, without proof of the office or signature of the secretary, admissible in evidence in any prosecution or other proceeding as proof, in the absence of evidence to the contrary, of the facts stated. 2000, c. 26, Sched. D, s. 2 (13); 2003, c. 3, s. 85 (1, 2).

Certificate of assurance of voluntary compliance

[\(2\)](#) A copy of an assurance of voluntary compliance purporting to be certified by the secretary of the Board is, without proof of the office or signature of the secretary, admissible in evidence in any prosecution or other proceeding as proof, in the absence of evidence to the contrary, of the facts stated. 2003, c. 3, s. 85 (3).

Regulations, general

[127. \(1\)](#) The Lieutenant Governor in Council may make regulations,

- (a) limiting, restricting or taking away any rights to use or consume gas without charge or at a reduced rate;
- (b) requiring the Board to approve or fix rates under section 36;

(c) providing for compensation procedure for the owners of gas or oil rights and the rights to store gas and for the owners of land who are referred to in subsection 38 (2);

(d) Repealed: 2003, c. 3, s. 86 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following clause:

(d) prescribing consumers and classes of consumers for the purposes of subsection 42 (2.1);

See: 2010, c. 8, ss. 38 (42), 40.

(e) Repealed: 2001, c. 9, Sched. F, s. 2 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following clauses:

(e) prescribing the conditions or criteria that must be satisfied for the purposes of subsections 42 (2.1) and (2.2);

(e.1) for the purposes of subsection 42 (2.2), governing security, alternative security arrangements and the conditions and criteria that must be satisfied and prescribing the requirements where a gas distributor must provide consumers or classes of consumers with specific arrangements in respect of security, including,

(i) prescribing the consumers or classes of consumers,

(ii) prescribing the type or kind of arrangements which the gas distributor must accept, the conditions and circumstances under which they must be accepted, the form of the arrangements and the circumstances where a gas distributor must forego requiring security from the consumer or member of a prescribed class of consumers, and

(iii) prescribing alternative security deposit arrangements;

(e.2) prescribing consumers or classes of consumers and additional requirements which gas distributors must meet for the purposes of subsection 42 (2.3);

(e.3) prescribing the meaning of “security” for the purposes of subsection 42 (2.4);

(e.4) for the purposes of subsections 42 (5) to (14), governing all matters dealt with in those subsections that are required or permitted to be prescribed by regulation or that are required or permitted to be done in accordance with the regulations;

See: 2010, c. 8, ss. 38 (42), 40.

- (f) exempting any person from any provision of this Act, subject to such conditions or restrictions as may be prescribed by the regulations;
- (g) defining any word or expression used in this Act that is not defined in this Act;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following clause:

(g.1) for the purposes of clause 44 (1) (c.1), prescribing matters about which the Board may make a rule under section 44 in respect of gas marketers in relation to gas marketing;

See: 2010, c. 8, ss. 38 (42), 40.

- (h) delegating all or part of the powers or duties of the Board with respect to the issuance or renewal of licences under Part IV or V to a self-regulatory organization on such conditions as the Lieutenant Governor in Council considers appropriate;
- (i) delegating all or part of the powers or duties of the Board under Part IV or V to a tribunal on such conditions as the Lieutenant Governor in Council considers appropriate;
- (j) prescribing a date or dates for the purposes of subsection 70 (10), which dates may be different for different classes of distributors;
- (j.1), (j.2) Repealed: 2010, c. 8, s. 38 (43).
- (j.3) Repealed: 2003, c. 3, s. 86 (3).
- (j.4) Repealed: 2010, c. 8, s. 38 (43).
- (j.5) Repealed: 2003, c. 3, s. 86 (4).
- (j.6)-(j.10) Repealed: 2010, c. 8, s. 38 (43).
- (j.11) prescribing rights, powers or privileges under subsection 4 (2) for the purpose of clause 4.11 (e);
- (j.12) prescribing provisions for the purpose of paragraph 4 of subsection 4.2 (6);
- (j.13) prescribing classes of contracts for the purpose of clause 4.11 (d);
- (j.14) prescribing powers or duties for the purpose of paragraph 7 of subsection 6 (2);
- (j.15) prescribing an amount of money for the purpose of clause 90 (1) (b);
- (j.16) prescribing criteria for the purpose of clause 90 (1) (d);
- (j.17) prescribing provisions of the *Electricity Act, 1998* for the purpose of clause (b) of the definition of “enforceable provision” in section 112.1;

- (j.18) prescribing deferral or variance accounts as deferral or variance accounts that relate to the commodity of gas for the purpose of subsections 36 (4.1) and (4.2) or to the commodity of electricity for the purpose of subsections 78 (6.1) and (6.2), or prescribing rules for determining if a deferral or variance account relates to the commodity of gas for the purpose of subsections 36 (4.1) and (4.2) or to the commodity of electricity for the purpose of subsections 78 (6.1) and (6.2);
- (j.19) prescribing periods of time for the purpose of subsections 36 (4.2) and 78 (6.2);
- (j.20) governing the making of orders that determine whether and how amounts recorded in deferral or variance accounts shall be reflected in rates for the purpose of sections 36 and 78;
- (j.21) governing the awarding of costs under section 30 when section 22.1 is not complied with;
- (k) prescribing anything in this Act that is referred to as being prescribed by regulation;
- (l) providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of this Act;
- (m) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the purposes of this Act. 1998, c. 15, Sched. B, s. 127 (1); 2000, c. 26, Sched. D, s. 2 (14); 2001, c. 9, Sched. F, s. 2 (6); 2002, c. 1, Sched. B, s. 18.; 2003, c. 3, s. 86 (1-5); 2010, c. 8, s. 38 (43).

(2) Repealed: 2001, c. 9, Sched. F, s. 2 (7).

General or particular

(3) A regulation under this section may be general or particular in its application. 1998, c. 15, Sched. B, s. 127 (3).

Delegation to self-regulatory organization

(4) If a regulation is made under clause (1) (h) delegating powers or duties of the Board to a self-regulatory organization, subsections 6 (4) to (9) and sections 7 and 8 apply, with necessary modifications. 2003, c. 3, s. 86 (6).

Transition, *Green Energy Act, 2009*

(5) The Lieutenant Governor in Council may make regulations governing transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of amendments to this Act arising from the enactment of the *Green Energy and Green Economy Act, 2009* and to facilitate the implementation of the *Green Energy Act, 2009*. 2009, c. 12, Sched. D, s. 18.

Conflict with other legislation

128. (1) In the event of conflict between this Act and any other general or special Act, this Act prevails. 1998, c. 15, Sched. B, s. 128 (1).

Same

(2) This Act and the regulations prevail over any by-law passed by a municipality. 1998, c. 15, Sched. B, s. 128 (2).

Reports on Board effectiveness

128.1 (1) Not later than the fifth anniversary of the day this section comes into force, and not later than every fifth anniversary thereafter, the Minister shall cause a report to be prepared and submitted to the Minister on the Board's effectiveness in meeting the objectives set out in sections 1 and 2. 2003, c. 3, s. 87.

Tabling

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2003, c. 3, s. 87.

129. Repealed 2003, c. 3, s. 88.

Transition, uniform system of accounts

130. On the coming into force of section 44, Ontario Regulation 504/97 shall be deemed to be a rule of the Board made under that section and the Board may change or amend the rule in accordance with that section. 1998, c. 15, Sched. B, s. 130; 2003, c. 3, s. 89.

Transition, undertakings

131. Despite the repeal of the *Ontario Energy Board Act* under the *Energy Competition Act, 1998*, any undertaking made to the Lieutenant Governor in Council under the repealed Act, if valid immediately before this section comes into force, continues to be valid and binding. 1998, c. 15, Sched. B, s. 131.

Transition, director of licensing

132. (1) A licence issued by the Board's director of licensing before this section comes into force shall be deemed to be a licence issued by the Board. 2003, c. 3, s. 90.

Same

(2) An order made by the Board's director of licensing before this section comes into force shall be deemed to be an order made by the Board. 2003, c. 3, s. 90.

Same

(3) Any matter pending before the Board's director of licensing when this section comes into force is continued before the Board, subject to the directions of the Board's management committee. 2003, c. 3, s. 90.

133. Omitted (enacts short title of this Act). 1998, c.15, Sched. B, s. 133.

Note: The Crown and its agents are protected from certain liabilities relating to or resulting from amendments made to this Act by the *Electricity Pricing, Conservation*

and Supply Act, 2002, or from any action taken pursuant to those amendments or pursuant to regulations made under those amendments. See: 2002, c. 23, s. 6.

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