

Chapter 3

UTILITY RATES REVIEW COUNCIL ACT

(Assented to March 29, 2001)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

INTERPRETATION

Definitions

1. In this Act,

"designated utility" means a utility or a member of class of utilities designated in the regulations; (*entreprise de service désignée*)

"Minister for the Review Council" means a member of the Executive Council who is designated by the Commissioner on the advice of the Premier as being responsible for the administration of this Act; (*ministre responsable du Conseil d'examen*)

"rate" means a price, toll or charge that applies to goods or services provided by a utility; (*taux*)

"rate structure" means the rate zones of a utility, classes of customers of a utility, the classes of service provided by a utility, and the rules respecting the allocation of the revenue requirements among the rate zones, classes of customers and classes of service; (*structure tarifaire*)

"responsible Minister" means the member of the Executive Council who is responsible for a utility; (*ministre responsable*)

"Review Council" means the Utility Rates Review Council established by section 2; (*Conseil d'examen*)

"tariff" means a document that sets out

- (a) rates and rate structures, and
- (b) applicable terms and conditions; (*tarif*)

"utility" means any of the following that provides goods or services to the public:

- (a) a corporation that is owned or controlled by the Government of Nunavut, and to which this Act applies either by legislation or a regulation made under paragraph 20(1)(a);
- (b) a department or administrative division of the Government of Nunavut to which this Act applies either by legislation or a regulation made under paragraph 20(1)(a);

- (c) a person or organization not mentioned in paragraph (a) or (b) to which this Act applies either by legislation or a regulation made under paragraph 20(1)(a). (*entreprise de service*)

REVIEW COUNCIL – GENERAL PROVISIONS

Review Council established

2. The Utility Rates Review Council is established.

Membership

3. (1) The Review Council consists of three members, in addition to any temporary members appointed under subsection (3).

Appointments

- (2) The Minister for the Review Council shall appoint the members of the Review Council for terms of not more than three years.

Temporary members

- (3) The Minister for the Review Council may appoint no more than two temporary members of the Review Council for the purpose of dealing with a particular matter before the Review Council, and may specify the terms of office and duties of the temporary members in the appointment.

Not members of Public Service

- (4) Members and temporary members of the Review Council may not be members of the public service.

Re-appointments

- (5) Members of the Review Council may be re-appointed.

Continuation in office

- (6) A member of the Review Council, other than a temporary member, whose term of office has expired continues to be a member of the Review Council until he or she is re-appointed, or until a new member is appointed to replace him or her.

Honoraria

- (7) Members and temporary members of the Review Council are entitled to be paid honoraria at the rates established by the Financial Management Board for members of boards.

Expenses

- (8) All members and temporary members of the Review Council are entitled to be reimbursed for their reasonable expenses in accordance with the rates established by the Financial Management Board for members of boards.

Secretary

(9) The Minister for the Review Council shall appoint a Secretary to the Review Council, who shall keep a record of all proceedings of the Review Council, and have custody of all of its records and documents.

Chairperson

4. The Minister for the Review Council shall designate a member of the Review Council to be chairperson.

Quorum

5. Two members of the Review Council constitute a quorum.

Procedures and practices

6. (1) Subject to subsection (2), the Review Council shall determine its own procedures and practices.

Guidelines

(2) The Minister for the Review Council may issue guidelines concerning the procedures and practices of the Review Council, and the Review Council shall comply with those guidelines.

Principles

(3) The Minister for the Review Council, with the approval of the Executive Council, may issue guidelines concerning the principles the Review Council shall have regard to when determining whether rates and tariffs are fair and reasonable, and the Review Council shall comply with those guidelines.

Tabling in the Assembly

- (4) The Minister for the Review Council shall
- (a) make reasonable efforts to publicize any guidelines made under this section and any amendments to the guidelines; and
 - (b) table any guidelines made under this section, and any amendments to the guidelines, in the Legislative Assembly during the first sitting of the Legislative Assembly after the making of the guidelines or amendments.

PURPOSE AND POWERS OF REVIEW COUNCIL

Purposes of Review Council

7. The purposes of the Review Council are to
- (a) advise the responsible Minister of a designated utility concerning the imposition of rates and tariffs in accordance with sections 11 to 18,
 - (b) advise the responsible Minister of a utility other than a designated utility with regard to any questions that the responsible Minister refers to it concerning rates, tariffs and rate structures,

- (c) advise the responsible Minister for any utility concerning any matter related to the utility that is referred to it by the responsible Minister on the advice of the Executive Council,
- (d) advise any Minister concerning any matter related to charges for the provision of goods and services that is referred to it by the Minister on the advice of the Executive Council,
- (e) advise the Minister responsible for the *Nunavut Power Utilities Act* concerning applications under section 18.1 of that Act.

Powers of Review Council

- 8.** (1) In carrying out its purposes, the Review Council may
- (a) hold public and private meetings,
 - (b) retain the services of experts and advisors,
 - (c) solicit advice from the public,
 - (d) conduct meetings and mediations with utilities and concerned parties, and assist utilities and their customers in developing a consensus on contentious issues,
 - (e) require utilities and their employees to provide all information that is needed to carry out its purposes, and may require that information to be provided under oath, or by way of solemn declaration,
 - (f) generally, engage in activities that assist it in providing informed advice to the responsible Minister.

Annual report

(2) The Review Council shall by March 31 in each year forward to the Minister for the Review Council a report showing its activities for the previous year, and the Minister for the Review Council shall lay the report before the Legislative Assembly as soon as reasonably possible.

Protection from liability

9. No proceeding may be commenced in any court against the Review Council, any member or temporary member of the Review Council, or any person acting under the direction of the Review Council or on the behalf of the Review Council, for anything done or not done in good faith in compliance or in purported compliance with this Act.

Funding of Review Council

10. The expenditures of the Review Council must be made from money appropriated by the Legislature for the purpose.

PROPOSED RATES AND TARIFFS

Imposition of rates and tariffs

11. (1) Subject to any regulations made under paragraph 20(1)(c) no designated utility may impose a rate or tariff except where an instruction is given under section 16.

Transitional

(2) Subsection (1) does not apply to a rate or tariff that was in place at the time that the designated utility became a designated utility.

Changes

(3) For greater certainty, for the purposes of this Act an amendment to an existing rate or tariff is deemed to be the imposition of a rate or tariff.

Request for approval

12. (1) A designated utility that desires to impose a rate or tariff shall request in writing the approval of the responsible Minister.

Minister to seek advice

(2) Within 15 days of receiving a request under subsection (1), the responsible Minister shall seek the advice of the Review Council.

Notice to elected officials

(3) The responsible Minister shall give reasonable notice of a request for advice under subsection (2) to mayors and members of the Legislative Assembly who represent a municipality or constituency where the residents, in his or her opinion, are likely to be affected by the rate or tariff.

Report

13. (1) The Review Council, within 90 days of receiving the responsible Minister's request for advice under section 12, shall report to the responsible Minister its recommendation that:

- (a) the imposition of the proposed rate or tariff should be allowed,
- (b) the imposition of the proposed rate or tariff should not be allowed,
- or
- (c) another rate or tariff specified by the Review Council should be imposed.

Relevant factors

(2) In making its report, the Review Council shall have regard to whether the proposed rate or tariff is fair and reasonable, considering

- (a) the cost of providing the service, including related financing costs, and
- (b) any other factors set out in guidelines issued under section 6.

Final report

(3) Within 30 days of receiving a report made under subsection (1), the responsible Minister, if he or she thinks it appropriate to do so, may request in writing that the Review Council make a final report, within a time stipulated by the responsible Minister.

Contents of final report

(4) Where the responsible Minister has made a request under subsection (3), the Review Council shall reconsider its report, and shall make a final report that may:

- (a) make the same recommendation as in its initial report; or
- (b) any other recommendation that may be made under subsection (1).

Where no request

(5) Where the responsible Minister does not make a request under subsection (3), the report of the Review Council delivered under subsection (1) shall be its final report.

Where no report

(6) Where the Review Council does not make a report in the time mentioned in subsection (1), or a final report in a time stipulated under subsection (3), it shall be deemed to have made a report to the responsible Minister recommending that the imposition of the proposed rate or tariff be allowed.

Copy to utility

14. The Review Council shall deliver to the designated utility a copy of every final report it makes to the responsible Minister, and shall provide copies to mayors and members of the Legislative Assembly mentioned in subsection 12(3) and other interested parties on request.

Minister to consider

15. (1) The responsible Minister shall give careful consideration to every report made by the Review Council, but is not bound by it.

Reasons

(2) Where, after seeking the advice of the Executive Council referred to in subsection 16(1), the responsible Minister decides not to instruct the designated utility under subsection 16(1) to comply with the recommendation of the Review Council contained in its report, the Minister shall provide the Review Council with his or her reasons in writing for not instructing the designated utility to comply with the recommendation at the same time that the Minister instructs the designated utility under subsection 16(1).

Minister's decision

16. (1) Within 30 days of receiving the Review Council's report, or if a final report has been requested under subsection 13(3), within 30 days of receiving the final report, the responsible Minister, after seeking the advice of the Executive Council, may instruct the designated utility to

- (a) proceed with the imposition of the rate or tariff;
- (b) not proceed with the imposition of the rate or tariff; or
- (c) proceed with the imposition of another rate or tariff recommended by the Review Council in its report.

New review

(2) When giving an instruction under paragraph 1(b), the responsible Minister may specify a time within which the utility may make a new request for the approval of the rate or tariff.

Deemed instruction

(3) Where the responsible Minister has not acted within the time provided for in subsection (1), the Minister shall be deemed to have instructed the designated utility to comply with the recommendation of the Review Council.

Utility to comply

17. The designated utility shall comply with any instruction given under section 16.

Notice to public

18. (1) The designated utility shall take reasonable measures to notify the public of any instruction given under section 16.

Information to be available

(2) The Minister for the Review Council shall ensure that there is kept at an office in Nunavut copies of every request made under section 12, every final report delivered under section 14, every reason provided by a responsible Minister to the Review Council under subsection 15(2), and every instruction given under section 16, and that those copies are reasonably available to members of the public.

Variation of time

19. The responsible Minister may, after giving notice to the designated utility and the Review Council, extend any time mentioned in sections 11 through 18.

REGULATIONS

Regulations

20. (1) The Minister for the Review Council, with the approval of the Executive Council, may make regulations:

- (a) providing for utilities or classes of utilities to which this Act applies;
- (b) designating utilities or classes of utilities for the purposes of this Act;
- (c) permitting the interim imposition, where special circumstances exist, of rates and tariffs for designated utilities until an instruction is given under section 16, subject to any terms set out in the regulations;
- (d) defining terms used in this Act but not defined in this Act.

Notice

(2) A regulation may not be made under paragraph (1)(a) unless at least 30 days notice of the proposed regulation has been given in the *Nunavut Gazette*.

CONSEQUENTIAL AND OTHER AMENDMENTS

Nunavut Power Utilities Act amended

21. (1) The *Nunavut Power Utilities Act* is amended by this section.

(2) Section 1.1 is amended by striking out "the *Public Utilities Act* or any other enactment" and substituting "any other enactment".

(3) Section 3 is repealed and the following substituted:

Utility Rates Review Council Act

3. Except as otherwise provided, the *Utility Rates Review Council Act* applies to the Corporation.

(4) The following section is added after section 5:

Exclusive supplier retail power

5.1. (1) No person, other than the Corporation, may engage in the retail supply of power in Nunavut except under the authority of an exemption granted by the Minister.

Conditions on exemption

(2) An exemption granted under subsection (1):

- (a) is valid for a period of time set out in the instrument of exemption, but may be renewed;
- (b) does not imply that the Minister or the Corporation has any responsibility for anything done by the person to whom the exemption is granted; and
- (c) shall only be granted where, in the opinion of the Minister, to do so does not significantly detract from the role of the Corporation.

Definitions

(3) In this section:

"power" means electrical power, however generated, including electrical energy; (*énergie*)

"retail supply of power" means an arrangement, transaction or series of transactions which, in form or in substance, constitutes the sale or supply of power to the end user of the power. (*fourniture d'énergie au détail*)

(5) The following sections are added after section 16:

Joint use of public area

16.1. (1) The Minister may make an order where the Minister is satisfied that:

- (a) the Corporation has the right to enter a municipality or settlement to place its equipment on, along, across, over or under any public area owned by the municipal or settlement corporation; or
- (b) the Corporation cannot extend its system, line or apparatus between two places where it is authorized to operate without
 - (i) placing its distribution equipment on, along, across, over or under a public area owned by a municipal or settlement corporation, or
 - (ii) making unreasonable expenditures, and
- (c) the Corporation cannot agree with the municipal or settlement council on the use of the public area or on the terms of use.

Terms of order

- (2) An order made under subsection (1) may
 - (a) require the municipal or settlement council to allow the Corporation to use the public area, where this can be done without unduly preventing other persons from using the public area, and
 - (b) fix the terms of use by the Corporation, or provide for a method of fixing the terms of use.

Joint use of equipment

- 16.2. (1) The Minister may make an order where the Minister is satisfied that:
- (a) public convenience or necessity requires that the Corporation use equipment owned by another person;
 - (b) the use will not prevent the owner or other users from performing their duties or result in any substantial detriment to their service; and
 - (c) the Corporation cannot agree with the owner on the use of the equipment or on the terms of use.

Terms of order

- (2) An order made under subsection (1) may:
 - (a) require the owner to allow the Corporation to use the equipment;
 - (b) fix the terms of use by the Corporation or provide for a method of fixing the terms of use.

(6) Section 17.1 is repealed.

(7) Section 18 is amended by striking out "Subject to the *Public Utilities Act*" and substituting "Subject to the *Utility Rates Review Council Act*".

(8) The following section is added after section 18:

Major capital projects

- 18.1. (1) The Corporation shall apply to the Minister for permission before undertaking a major capital project.

Minister seek advice

(2) Before responding to an application for permission made under subsection (1), the Minister may seek the advice of the Utility Rates Review Council established under the *Utility Rates Review Council Act*.

Corporation to provide information

(3) The Corporation shall provide the Minister and the Utility Rates Review Council with any information necessary to decide whether permission should be granted.

What Minister may do

(4) The Minister may

- (a) grant permission for undertaking the major capital project, with or without conditions, or
- (b) refuse permission.

Definition

(5) In this section, "major capital project" means a capital project that has a total cost that exceeds \$5,000,000.

(9) Section 21 is amended by adding the following paragraph after paragraph (b):

- (b.1) prepare an annual rates and subsidies forecast setting out the rate base, the rates, the rate structure and the revenues requirements of the Corporation, including any resulting subsidy needs.

(10) Subsection 29(1) is amended by striking out "to the *Public Utilities Act* and".

(11) Subsection 29(2) is repealed.

(12) Section 53 is amended by adding "or any section of this Part" after "This Part".

REPEAL

Repeal

22. The *Public Utilities Act* is repealed.

COMING INTO FORCE

Coming into force

23. (1) Subject to subsection (2), this Act comes into force or is deemed to have come into force on March 31, 2001.

Same

(2) Section 22 comes into force or is deemed to have come into force on March 30, 2001.