Legislating a Sustainability Mandate for Nova Scotia's Utility and Review Board:

A Multi-Jurisdictional Comparative Analysis of Sustainability Mandates of Electricity Regulators in Canada and New England

East Coast Environmental Law

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INTRODUCTION

Genesis of the Research Questions

This report expands on research conducted by East Coast Environmental Law in the summer and autumn of 2020 in which we undertook comparative analyses of the legislated electricity regimes in four eastern Canadian provinces and two New England states to assess how each regime addresses affordability, reliability, and sustainability concerns. That research was conducted to inform advocacy efforts by the Conservation Council of New Brunswick and the Ecology Action Centre ("EAC") in Nova Scotia, and, more specifically, to inform the organizations' advocacy for progressive reform of the electricity regimes in their respective provinces.

After the delivery of our final research report in the autumn of 2020, EAC staff requested additional research expanding on one of the subjects which our completed reports addressed: namely, whether sustainability mandates held by electricity regulators in jurisdictions other than Nova Scotia offer useful models for law amendments in Nova Scotia that would give a sustainability mandate to Nova Scotia's electricity regulator, the Utility and Review Board ("NSUARB" or "the Board").

As a conscious expansion of the research we conducted in the summer and autumn of 2020, the research plan for this report was designed to examine the legislated electricity regimes in the Canadian and New England jurisdictions that were not addressed in our earlier research. Our objective was to produce a research report which:

> (1) surveys the legislated electricity regimes in select jurisdictions and asks: does the regulator have a sustainability mandate, and, if so, how is that mandate expressed in the relevant legislation?
>
> (2) identifies legislative language from other jurisdictions that could model proposed amendments to Nova Scotia's *Public Utilities Act* or *Electricity Act* or corresponding regulations; and,
>
> (3) proposes amendments to the *Public Utilities Act* or *Electricity Act* or corresponding regulations and explains how those amendments would further the EAC's goals for electricity reform in Nova Scotia.

Our research in the summer and autumn of 2020 assessed four legislated electricity regimes in eastern Canada (those of New Brunswick, Newfoundland and Labrador, Nova Scotia, and Québec) and two in New England (those of Massachusetts and Vermont). Our research for this report therefore expanded our earlier work by assessing the legislated electricity regimes in Alberta, British Columbia, Manitoba, the Northwest Territories, Nunavut, Ontario, Saskatchewan, and the Yukon, in addition to those in Connecticut, Maine, New Hampshire, and Rhode Island. This report now synthesizes our new research with the sustainability findings which appeared in our previous work.

Importantly, as we proceeded with our research, we honed the question that we first articulated as asking whether the electricity regulator in each regime has "a sustainability mandate" and looked instead to see whether each regulator has "a clearly legislated sustainability mandate". We made this adjustment because in many, if not most, jurisdictions in Canada and New England, electricity regulators have at least some responsibility for overseeing, approving components of, or otherwise helping to administer various renewable energy, energy efficiency, energy conservation, and demand-side management ("DSM") programs and initiatives established by provincial, territorial, or state governments. We do not interpret electricity regulators' general oversight or administrative responsibilities in connection with such programs and initiatives as amounting to clear sustainability mandates that inform the regulators' more fundamental duties and powers. This is because legislated responsibilities to oversee or administer renewable energy, energy efficiency, energy conservation, or DSM programs and initiatives do not necessarily mean that electricity regulators are empowered to prioritize sustainability or environmental concerns above or even on a level equal to other regulatory concerns such as costs to ratepayers. Not least for this reason, rather than searching for places in which electricity regulators could arguably be said to have sustainability mandates arising from their regulatory responsibilities in connection with renewable energy, energy efficiency, energy conservation, or DSM programs and initiatives, we have instead looked for electricity legislation in which the words "sustainable" or "sustainability" are used clearly and directly in connection with the regulators' roles.

This honed research focus also strengthens our analysis of legislative language from other jurisdictions that could model proposed amendments to Nova Scotia's electricity laws. Notably, the NSUARB already has a variety of responsibilities connected to the oversight and administration of various renewable energy, energy efficiency, energy conservation, and DSM programs and initiatives, but the Board does not regulate as though it has a sustainability mandate. This is because Nova Scotia's electricity laws do not give the Board a clear and direct mandate to regulate in accordance with sustainability concerns or needs, and, without express legislative language to that effect, the Board is unlikely to do so.

As our jurisdictional reviews in this report make clear, the electricity laws in most of the jurisdictions we surveyed tend to assign very traditional regulatory mandates to electricity regulators. Although the language of such mandates varies slightly from jurisdiction to jurisdiction, there is a spectrum of familiar terms that functions as the common underpinning of the regimes we surveyed. By and large, the traditional regulatory mandates given to electricity regulators expect the regulators to ensure that adequate, reliable, and safe electricity services are provided for rates that are just and reasonable and not unjustly discriminatory or preferential. Clear and direct legislative language is needed to put sustainability concerns and needs on par with these traditional mandates and to ensure that electricity regulators' conceptions of what is "just and reasonable" are informed by sustainability principles.

Interpreting "Sustainability" in the Context of this Report

As our jurisdictional reviews in this report make clear, different jurisdictions can use a variety of terms when incorporating sustainability concerns or needs into their legislated electricity regimes. Differing legislative terms referencing sustainability or sustainable activities do not

necessarily mean the same thing, and so it is important to be attuned to differences and to consider what language might be most appropriate for Nova Scotia's legislated electricity regime.

To give just one comparative example, electricity laws in New Brunswick and New Hampshire refer to "environmental sustainability", whereas the legislated mandate of Québec's electricity regulator, the Régie de l'énergie, requires that electricity regulation be carried out in accordance with "the principles of sustainable development". "Environmental sustainability" and "the principles of sustainable development" may not mean exactly the same thing—among other things, the principles of sustainable development include principles that address human economics and human issues of social and distributive equity. This is why one of the recommendations we make in this report is to clearly define whatever sustainability language the EAC wishes to propose for inclusion in Nova Scotia's electricity laws.

A Note on Research Methods

The conclusions we draw throughout this report are based on review and keyword searches of the primary electricity statutes and regulations in all Canadian provinces and territories, with additional review of other legislation that appeared to be possibly relevant. Our review of the legislated electricity regimes in the New England states relied primarily on the codified laws of each state and did not search comprehensively through all associated regulations and orders that could possibly offer additional context. Additionally, our research focused primarily on the electricity mandates of the regulators in each jurisdiction, and although our review included several statutes, regulations, and chapters of codified laws which address regulators' mandates with respect to gas, telecommunications, and water utilities (to give just some examples), we did not examine those responsibilities in detail but instead relied on keyword searches for relevant terms.

PART ONE: JURISDICTIONAL REVIEWS

CANADIAN JURISDICTIONS

(1) ALBERTA

Overview

Electricity in Alberta falls under the purview of the Ministry of Energy and is regulated directly by the Alberta Utilities Commission ("AUC" or "the Commission"), which is empowered by the *Alberta Utilities Commission Act*. Unlike most of Canada's other provinces and territories, Alberta hosts a competitive electricity market in which several investor-owned utilities compete to provide services. Electric utilities providing services in Alberta are regulated under the *Electric Utilities Act*. The operations of Alberta's competitive electricity market and the underlying transmission system are overseen by the Alberta Electricity System Operator ("AESO") and Alberta's Market Surveillance Administrator.

Does the Alberta Utilities Commission Have a Clearly Legislated Sustainability Mandate?

The AUC does not have a clearly legislated sustainability mandate.

The AUC's responsibilities as Alberta's electricity regulator are shaped primarily by the *Alberta Utilities Commission Act* and the *Electric Utilities Act*, neither of which give the Commission an express sustainability mandate. Instead, the legislation reflects common regulatory mandates for competitive electricity markets: namely, to ensure that Alberta's electricity market operates in a way that is fair, efficient, and openly competitive.

Alberta's *Electric Utilities Act* does not include a section that identifies the Government of Alberta's electricity policy expressly; however, the Act's purpose section offers insight into the government policies that inform Alberta's competitive electricity market. Section 5 of the Act states:

> The purposes of this Act are
>
> (a) to provide an efficient Alberta electric industry structure including independent, separate corporations to carry out the responsibilities of the Independent System Operator and the Balancing Pool, and to set out the powers and duties of those corporations;
>
> (b) to provide for a competitive power pool so that an efficient electricity market based on fair and open competition can develop, where all persons wishing to exchange electric energy through the power pool may do so on non-discriminatory terms and may make financial arrangements to manage financial risk associated with the pool price;
>
> (c) to provide for rules so that an efficient electricity market based on fair and open competition can develop in which neither the market nor the structure of the Alberta

electric industry is distorted by unfair advantages of government-owned participants or any other participant;

(c.1) [repealed]

(d) to continue a flexible framework so that decisions of the electric industry about the need for and investment in generation of electricity are guided by competitive market forces;

(e) to enable customers to choose from a range of services in the Alberta electric industry developed by a competitive electricity market, and to receive satisfactory service;

(f) to continue the sharing, among all customers of electricity in Alberta, of the benefits and costs associated with the Balancing Pool;

(g) to continue the framework established for power purchase arrangements;

(h) to provide for a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the cost of regulation and provides incentives for efficiency.

In keeping with the purposes identified above, subsection 6(1) of the Act states:

> Electricity market participants are to conduct themselves in the electricity market in a manner that supports the fair, efficient, and openly competitive operation of the electricity market.

This emphasis on fair, efficient, and openly competitive operations recurs throughout the *Electr*ic *Utilities Act* and *Alberta Utilities Commission Act* and is at the core of the AUC's mandate. Sustainability considerations do not appear in the legislation, and our review of other provincial enactments that are relevant to the AUC's regulatory role indicate that no clearly legislated sustainability mandate is given to the Commission elsewhere.

A Public Interest Factor Worth Noting

Although Alberta's electricity legislation does not give the AUC a sustainability mandate, one element of the *Alberta Utilities Commission Act* is worth noting. Subsection 17(1) of that Act states:

> Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is <u>in the public interest, having regard to the social and economic effects of the development,</u>

plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment. [Emphasis added]

This subsection is noteworthy because it expressly includes environmental effects as a factor for the AUC to take into account when considering whether the construction or operation of a proposed hydro development, power plant, transmission line, or gas utility line is in the public interest. In other words, the section conditions the concept of the "public interest" by making it clear that the public interest, in this specific context, includes environmental considerations.

Our research indicates that this is the only provision in Alberta's electricity legislation that conditions the concept of the "public interest" in this way, and so the provision should not be understood to mean that all of the AUC's deliberations on the public interest must take environmental considerations into account. The provision is noteworthy because it illustrates that even if electricity legislation does not incorporate environmental or sustainability considerations into regulators' mandates on the whole or require regulators to always take environmental and sustainability considerations into account when considering the public interest, legislation can nevertheless give such mandates and impose such requirements in discreet circumstances where electricity regulators are exercising specific decision-making powers or fulfilling specific responsibilities.

Lessons Learned from Alberta

- A requirement to take environmental considerations into account when considering the public interest can be assigned in connection with specific decision-making powers and responsibilities.

(2) BRITISH COLUMBIA

Overview

Electricity in British Columbia falls under the purview of the Ministry of Energy and Mines and is regulated directly by the British Columbia Utilities Commission ("BCUC" or "the Commission"), which is empowered by British Columbia's *Utilities Commission Act*. British Columbia's primary power player is the British Columbia Hydro and Power Authority ("BC Hydro" or "the Authority"), which is a Crown corporation empowered by British Columbia's *Hydro and Power Authority Act*.

Does the British Columbia Utilities Commission Have a Clearly Legislated Sustainability Mandate?

The BCUC does not have a clearly legislated sustainability mandate.

The BCUC's responsibilities as British Columbia's electricity regulator are shaped primarily by the *Utilities Commission Act*, which does not give the Commission an express sustainability mandate. Instead, the legislation primarily reflects traditional regulatory mandates: namely, to ensure that adequate and safe electricity services are provided for rates that are just, reasonable, and not unduly discriminatory.

Notably, British Columbia's *Clean Energy Act* identifies the energy objectives of the Government of British Columbia. Section 2 of the Act states:

> The following comprise British Columbia's energy objectives:
>
> (a) to achieve electricity self-sufficiency;
>
> (b) to take demand-side measures and to conserve energy, including the objective of the authority reducing its expected increase in demand for electricity by the year 2020 by at least 66%;
>
> (c) to generate at least 93% of the electricity in British Columbia from clean or renewable resources and to build the infrastructure necessary to transmit that electricity;
>
> (d) to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources;
>
> (e) to ensure the authority's ratepayers receive the benefits of the heritage assets and to ensure the benefits of the heritage contract under the *BC Hydro Public Power Legacy and Heritage Contract Act* continue to accrue to the authority's ratepayers;

(f) to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America;

(g) to reduce BC greenhouse gas emissions

(i) by 2012 and for each subsequent calendar year to at least 6% less than the level of those emissions in 2007,

(ii) by 2016 and for each subsequent calendar year to at least 18% less than the level of those emissions in 2007.

(iii) by 2020 and for each subsequent calendar year to at least 33% less than the level of those emissions in 2007,

(iv) by 2050 and for each subsequent calendar year to at least 80% less than the level of those emissions in 2007, and

(v) by such other amounts as determined under the *Climate Change Accountability Act*;

(h) to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia;

(i) to encourage communities to reduce greenhouse gas emissions and use energy efficiently;

(j) to reduce waste by encouraging the use of waste heat, biogas and biomass;

(k) to encourage economic development and the creation and retention of jobs;

(l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources;

(m) to maximize the value, including the incremental value of the resources being clean or renewable resources, of British Columbia's generation and transmission assets for the benefit of British Columbia;

(n) to be a net exporter of electricity from clean or renewable resources with the intention of benefiting all British Columbians and reducing greenhouse gas emissions in regions in which British Columbia trades electricity while protecting the interests of persons who receive or may receive service in British Columbia.

Although these objectives, as articulated in the Act, do not use the word "sustainability", many of them could be said to align with sustainability principles. To the extent that these objectives condition the BCUC's mandate, it might therefore be said that the Commission's activities are informed indirectly by provincial aspirations that align with sustainability needs.

Our review of other provincial enactments that are relevant to the BCUC's role as British Columbia's electricity regulator indicate that no clearly legislated sustainability mandate is given to the Commission elsewhere.

Lessons Learned from British Columbia

- A legislated statement of government energy objectives could be a place to incorporate sustainability considerations into legislated electricity regimes, but it is best for the language to be clear.

(3) MANITOBA

Overview

Electricity in Manitoba falls under the purview of the Ministry of Crown Services and is regulated directly by Manitoba's Public Utilities Board ("MPUB" or "the Board"), which is empowered by Manitoba's *Public Utilities Board Act*. Manitoba's primary power player is Manitoba Hydro, which a Crown corporation empowered the *Manitoba Hydro Act* and *Crown Corporations Governance and Accountability Act*.

Does Manitoba's Public Utilities Board Have a Clearly Legislated Sustainability Mandate?

The MPUB does not have a clearly legislated sustainability mandate.

The MPUB's responsibilities as Manitoba's electricity regulator are shaped primarily by the *Public Utilities Board Act* and *Crown Corporations Governance and Accountability Act*, which do not give the Board a sustainability mandate. Instead, the legislation reflects traditional regulatory mandates: namely, to ensure that adequate, proper, and safe electricity services are provided for rates that are just, reasonable, and not unjustly discriminatory or unduly preferential.

Our review of other provincial enactments that are relevant to the MPUB's role as Manitoba's electricity regulator indicate that no clearly legislated sustainability mandate is given to the Commission elsewhere.

(4) NEW BRUNSWICK

Overview

Electricity in New Brunswick falls under the purview of the Department Natural Resources and Energy Development and is regulated directly by the Energy and Utilities Board ("the NBEUB" or "the Board"), which is empowered by New Brunswick's *Energy and Utilities Board Act*. New Brunswick's primary power player is the New Brunswick Power Corporation ("NB Power" or the "Corporation"), which is a Crown corporation.

Does New Brunswick's Energy and Utilities Board Have a Clearly Legislated Sustainability Mandate?

The NBEUB does not have a clearly legislated sustainability mandate.

The NBEUB's responsibilities as New Brunswick's electricity regulator are shaped primarily by New Brunswick's *Electricity Act*. That Act does not give the NBEUB an express sustainability mandate. Instead, the Act primarily reflects traditional regulatory mandates: namely, to ensure that adequate, safe, and reliable electricity services are provided for rates that are just, reasonable, and not discriminatory.

It is worth considering the Government of New Brunswick's legislated electricity policy, which is set out in section 68 of the *Electricity Act*. That section states:

> It is declared to be the policy of the Government of New Brunswick
>
> > (a) that the rates charged by the Corporation for sales of electricity within the Province
> >
> > > (i) should be established on the basis of annually forecasted costs for the supply, transmission and distribution of the electricity, and
> > >
> > > (ii) should provide sufficient revenue to the Corporation to permit it to earn a just and reasonable return, in the context of the Corporation's objective to earn sufficient income to achieve a capital structure of at least 20% equity,
> >
> > (b) that all the Corporation's sources and facilities for the supply, transmission and distribution of electricity within the Province should be managed and operated in a manner that is consistent with reliable, safe and economically sustainable service and that will
> >
> > > (i) result in the most efficient supply, transmission and distribution of electricity,

(ii) result in consumers in the Province having equitable access to a secure supply of electricity, and

(iii) result in the lowest cost of service to consumers in the Province, and

(c) that, consistent with the policy objectives set out in paragraphs (a) and (b) and to the extent practicable, rates charged by the Corporation for sales of electricity within the Province shall be maintained as low as possible and changes in rates shall be stable and predictable from year to year.

This legislated electricity policy speaks of "economically sustainable" service but does not speak of environmental sustainability. We have not interpreted the phrase "economically sustainable" as being akin to phrases such as "environmentally sustainable" or aligned with the principles of sustainable development because the phrase "economically sustainable" appears to us to focus exclusively on cost considerations, in keeping with the other cost and debt-to-equity considerations reflected in New Brunswick's policy.

Section 100 of the *Electricity Act*, which deals with NB Power's integrated resource planning, states at subsection 100(2) that integrated resource plans developed by NB Power must be developed "in accordance with the principles of least-cost service, economic and environmental sustainability and risk management". This is the only reference to environmental sustainability within the Act. Importantly, it is the Executive Council of the Government of New Brunswick, not the NBEUB, that is responsible for approving the integrated resource plans ("IRPs") which the *Electricity Act* requires.[1] The Act empowers the NBEUB to order NB Power to include additional information in IRPs that are developed for approval by the Executive Council,[2] which could be said to give the Board some responsibility for ensuring that proposed IRPs adequately address environmental sustainability concerns. However, in our view, this falls short of giving the Board a clearly legislated sustainability mandate.

Notably, the NBEUB's core rate-setting mandate is set out in subsections 103(6)-(7) of the *Electricity Act*, which require the Board to fix or approve rates that are "just and reasonable" and to take several considerations into account when assessing rates proposed by NB Power, including NB Power's most recent IRP approved, or deemed to be approved, by the Executive Council.[3] Because IRPs must be developed in accordance with principles of environmental sustainability, it is possible to conclude that rate-setting by the NBEUB will be informed by environmental sustainability principles to some extent; however, we do not interpret this as giving a clearly legislated sustainability mandate to the Board itself.

Our review of other provincial enactments that are relevant to the NBEUB's role as New Brunswick's electricity regulator indicates that no clearly legislated sustainability mandate is given to the Board elsewhere.

[1] *Electricity Act*, SNB 2003, c 7 at subsections 100(4)-(8).
[2] *Ibid* at subsection 100(3).
[3] *Ibid* at paragraph 103(7)(b).

Lessons Learned from New Brunswick

- A legislated statement of the government's electricity policy provides useful guidance for regulators.

- A mandate to act in accordance with principles of "environmental sustainability" can be assigned in connection with electric utilities' duties.

- It is helpful to define what is meant by phrases such as "environmental sustainability".

(5) NEWFOUNDLAND AND LABRADOR

Overview

Electricity in Newfoundland and Labrador falls under the purview of the Department of Natural Resources and is regulated directly by the Board of Commissioners of Public Utilities (the "Public Utilities Board" or the "NLPUB"), which is empowered by Newfoundland and Labrador's *Public Utilities Act*. Two electric utilities serve the province: Newfoundland Power ("NP"), which is an investor-owned utility, and the Newfoundland and Labrador Hydro-electric Corporation, otherwise known as Newfoundland and Labrador Hydro ("NL Hydro"), which is a Crown corporation that operates under the wing of Nalcor, the province's overarching Crown energy corporation.

Does the Newfoundland and Labrador Public Utilities Board Have a Clearly Legislated Sustainability Mandate?

The NLPUB does not have a clearly legislated sustainability mandate.

The NLPUB's responsibilities as Newfoundland and Labrador's electricity regulator are shaped primarily by Newfoundland and Labrador's *Public Utilities Act* and *Electrical Power Control Act, 1994* and corresponding regulations. Those enactments do not give the NLPUB an express sustainability mandate. Instead, the legislation primarily reflects traditional regulatory mandates: namely, to ensure that adequate and safe electricity services are provided for rates that are just, reasonable, and not discriminatory.

Like the Government of New Brunswick, the Government of Newfoundland and Labrador has established a legislated electricity policy, which is set out in section 3 of the *Electrical Power Control Act, 1994.* That section states:

> It is declared to be the policy of the province that
>
> > (a) the rates to be charged, either generally or under specific contracts, for the supply of power within the province
> >
> > > (i) should be reasonable and not unjustly discriminatory,
> > >
> > > (ii) should be established, wherever practicable, based on forecast costs for that supply of power for 1 or more years,
> > >
> > > (iii) should provide sufficient revenue to the producer or retailer of the power to enable it to earn a just and reasonable return as construed under the *Public Utilities Act* so that it is able to achieve and maintain a sound credit rating in the financial markets of the world,
> > >
> > > (iv) should be such that after December 31, 1999 industrial customers shall not be required to subsidize the cost of power provided to rural

customers in the province, and those subsidies being paid by industrial customers on the date this Act comes into force shall be gradually reduced during the period prior to December 31, 1999, and

(v) should promote the development of industrial activity in Labrador;

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

(i) that would result in the most efficient production, transmission and distribution of power,

(ii) that would result in consumers in the province having equitable access to an adequate supply of power,

(iii) that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service,

(iv) that would result in, subject to Part III, a person having priority to use, other than for resale, the power it produces, or the power produced by a producer which is its wholly-owned subsidiary,

(iv.1) that would result in open, non-discriminatory and non-preferential access to, interconnection with and service on the integrated electric system,

(v) where the objectives set out in subparagraphs (i) to (iv) can be achieved through alternative sources of power, with the least possible interference with existing contracts,

and, where necessary, all power, sources and facilities of the province are to be assessed and allocated and re-allocated in the manner that is necessary to give effect to this policy;

(c) in the event of an emergency arising from the loss of use of generating facilities, a shortage of water or a loss of transmission or distribution facilities which results in there being insufficient power to meet the needs of customers in the province, or a part of the province, the emergency controller should have the responsibility and authority to

(i) determine priorities,

(ii) allocate and re-allocate available power, and

(iii) make all other necessary provisions for the supply and distribution of power for so long as the emergency continues;

(d) the public utilities board shall have the right to determine if, and the extent to which, employees of retailers are essential employees;

(e) [repealed]; and

(f) planning for future power supply of the province shall not include nuclear power.

Notably, this legislated electricity policy does not mention sustainability in any way.

Our review of other provincial enactments that are relevant to the NLPUB's role as Newfoundland and Labrador's electricity regulator indicates that no clearly legislated sustainability mandate is given to the Board elsewhere.

Lessons Learned from Newfoundland and Labrador

- A legislated statement of the government's electricity policy provides useful guidance for regulators.

(6) NOVA SCOTIA

Overview

In Nova Scotia, electricity falls under the purview of the Department of Energy and Mines and is regulated directly by the Utility and Review Board ("NSUARB" or "the Board"), which is empowered by Nova Scotia's *Utility and Review Board Act*. Nova Scotia's primary power player is Nova Scotia Power Incorporated ("NSPI"), an investor-owned utility.

Does Nova Scotia's Utility and Review Board Have a Clearly Legislated Sustainability Mandate?

The NSUARB does not have a clearly legislated sustainability mandate.

The NSUARB's responsibilities as Nova Scotia's electricity regulator are shaped primarily by Nova Scotia's *Electricity Act* and *Public Utilities Act* and corresponding regulations. Neither of those statutes, and none of their corresponding regulations, give the NSUARB a sustainability mandate. Instead, the legislation primarily reflects traditional regulatory mandates: namely, to ensure that adequate and safe electricity services are provided for rates that just, reasonable, and not discriminatory.

Our review of other provincial enactments that are relevant to the NSUARB's role as Nova Scotia's electricity regulator indicates that no clearly legislated sustainability mandate is given to the Board elsewhere.

Notably, the Government of Nova Scotia has not established a legislated electricity policy that could serve to guide the NSUARB's activities as the electricity regulator. Establishing such a policy, and including a sustainability mandate within it, would be one way to begin reshaping the NSUARB's mandate in accordance with sustainability principles.

(7) NORTHWEST TERRITORITIES

Overview

In the Northwest Territories, electricity falls under the purview of the Minister responsible for the Northwest Territories Power Corporation ("NWTPC" or "the Corporation"). The NWTPC is a Crown corporation empowered under the *Northwest Territories Power Corporation Act* and is the territory's primary power player. There is also an investor-owned utility, Northland Utilities, operating within the territory, which purchases electricity wholesale from the NWTPC and distributes it in certain communities while generating and distributing power in four isolated communities within the territory.[4] Electric utilities within the Northwest Territories are regulated by the Northwest Territories Public Utilities Board ("NWTPUB" or "the Board"), which is empowered by the Northwest Territories *Public Utilities Act*.

Does the Northwest Territories' Public Utilities Board Have a Clearly Legislated Sustainability Mandate?

The NWTPUB does not have a clearly legislated sustainability mandate.

The NWTPUB's responsibilities as the Northwest Territories' electricity regulator are shaped primarily by the Northwest Territories' *Public Utilities Act*, which does not give a sustainability mandate to the Board. Instead, the Act primarily reflects traditional regulatory mandates: namely, to ensure that safe, adequate, and proper electricity services are provided for rates that are just, reasonable, and not unjustly discriminatory or preferential.

Our review of other provincial enactments that are relevant to the NWTPUB's role as the Northwest Territories' electricity regulator indicates that no clearly legislated sustainability mandate is given to the Board elsewhere.

[4] Natural Resource Canada, "Northwest Territories' Electric Reliability Framework" (19 August 2016).

(8) NUNAVUT

Overview

In Nunavut, electricity falls under the purview of the Minister responsible for the Qulliq Energy Corporation ("QEC" or "the Corporation). The "QEQ" is a Crown corporation empowered under the *Qulliq Energy Corporation Act*, under which the Corporation has a legislated monopoly over the retail supply of electrical power within the territory.[5] The QEC is regulated directly by Nunavut's Utility Rates Review Council ("URRC" or "the Council"), which is empowered by the *Utility Rates Review Council Act*. Notably, the URRC differs from most other electricity regulators in Canada in that it does not have decision-making authority. Its primary role is to advise the government Ministers who are responsible for public utilities in Nunavut regarding various matters concerning the utilities' operations, including the fairness and reasonableness of the rates and tariffs that public utilities propose to charge for their services.[6]

Does Nunavut's Utility Rates Review Council Have a Clearly Legislated Sustainability Mandate?

The URRC does not have a clearly legislated sustainability mandate.

The URRC's responsibilities as Nunavut's electricity regulator are shaped primarily by Nunavut's *Utility Rates Review Council Act*, which does not give the Council a sustainability mandate. Instead, the legislation primarily reflects traditional regulatory mandates: namely, to ensure that the QEC's rates are fair and reasonable.

Notably, subsection (2) of the *Utility Rates Review Council Act* empowers the Minister responsible for the URRC to issue guidelines concerning the Council's procedures and practices and requires the Council to comply with such guidelines when they are issued, and subsection 6(3) empowers the Minister to issue guidelines concerning the principles the Council must consider when determining whether utilities' rates are fair and reasonable. These sections arguably give the Minister power to incorporate sustainability concerns into the URRC's mandate; however, the rate setting guidelines that appear on the URRC's website do not add sustainability concerns to the Council's mandate.[7]

Our review of other provincial enactments that are relevant to the URRC's role as Nunavut's electricity regulator indicates that no clearly legislated sustainability mandate is given to the Council elsewhere.

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[5] *Qulliq Energy Corporation Act*, RSNWT 1998, c N-2 at section 5.1.
[6] *Utility Rates Review Council Act*, S Nu 2001, c 3 at section 7.
[7] Utility Rates Review Council of Nunavut, *Rules of Procedure and Practice and Rate Setting Guidelines* (March 2007).

(9) ONTARIO

Overview

In Ontario, electricity falls under the purview of the Ministry of Energy, Northern Development and Mines and is regulated directly by the Ontario Energy Board ("OEB" or "the Board"), which is empowered under the *Ontario Energy Board Act, 1998*.

Ontario hosts a competitive electricity market in which electricity customers can choose to purchase electricity from competitive electricity retailers, or, alternatively, customers can choose to purchase electricity from their local utilities, which are responsible for distribution in all cases. The OEB licenses all electricity generators, transmitters, and distributors operating within the province and has oversight over transmission and distribution rates, but the rates charged by competitive electricity retailers are subject to less regulation.

Does the Ontario Energy Board Have a Clearly Legislated Sustainability Mandate?

The OEB has a legislated sustainability mandate; however, that mandate is expressed less clearly and has a more ambiguous meaning than the sustainability mandate which the Government of Québec has given to its electricity regulator, the Régie de l'énergie.

The OEB's responsibilities as Ontario's electricity regulator are shaped primarily by the *Ontario Energy Board Act, 1998* and Ontario's *Electricity Act, 1998*.

Section 1 of the *Electricity Act, 1998*, which is the Act's purpose section, states, in part:

> The purposes of this Act include the following:
>
> > (a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;
> >
> > […]
> >
> > (g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity[.]

The *Ontario Energy Board Act, 1998*, does not include the words "sustainable" or "sustainability". However, subsection 1(1) of the *Ontario Energy Board Act, 1998*—which identifies core OEB objectives—states:

> 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 inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service.

> […] [provision repealed]
>
> 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 innovation in the electricity sector.
>
> […] [provision repealed]
>
> [Emphasis added]

The underlined portion of paragraph 3 in this subsection indicates that the OEB is expected to regulate in accordance with the Government of Ontario's policies. This provision could be said to incorporate the sustainability purpose which appears in section 1 of the *Electricity Act, 1998*. Notably, however, Ontario's electricity legislation on the whole tends primarily to reflect traditional regulatory mandates: namely, to ensure that adequate, reliable, and safe electricity services are provided for just and reasonable rates.

It is worth noting that some pages on the website of the OEB refer colloquially to the Board having a sustainability mandate. For example, the website includes statements such as:

> We are Ontario's independent regulator of the electricity and natural gas sectors. We protect consumers and make decisions that serve the public interest. Our goal is to promote a sustainable and efficient energy sector, for today and tomorrow.[8]
>
> We are Ontario's independent energy regulator. Our goal is to ensure Ontario's energy system remains sustainable, today and tomorrow, and that your energy rights are protected.[9]

Notably, however, the "Mission and Mandate" page on the OEB website does not mention a sustainability mandate.[10] On the whole, it is not clear to what extent the OEB gives life to its sustainability mandate in its day-to-day regulatory decision-making.

It is also worth noting that the references to sustainability in Ontario's *Electricity Act, 1998* could have a meaning different from the meanings implied by phrases such as "environmental sustainability" or the principles of sustainable development. In a 2006 decision by the Supreme Court of Canada ("SCC") reported as *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities*

[8] Ontario Energy Board, "Who We Are" (undated).
[9] *Ibid*, "About Us" (undated).
[10] *Ibid*, "Mission and Mandate" (undated).

Board), 2006 SCC 4 ("*ATCO*"), the Court stated that, in general, rate regulation by the regulators of public utilities "serves several aims – sustainability, equity and efficiency – which underlie the reasoning as to how rates are fixed".[11] The Court then went on to quote the following passage from a 1999 manual on setting price controls for privatized public utilities:

> […] the regulated company must be able to finance its operations, and any required investment, so that it can continue to operate in the future. … Equity is related to the distribution of welfare among members of society. The objective of sustainability already implies that shareholders should not receive "too low" a return (and defines this in terms of the reward necessary to ensure continued investment in the utility), while equity implies that their returns should not be "too high".[12] [Emphasis added]

This interpretation of "sustainability" is clearly about economic sustainability—ensuring that shareholders will receive returns high enough to motivate continued investment in the utility.

Our research discovered no decisions by Ontario courts interpreting the meaning of "sustainability" as that word is used in the *Electricity Act, 1998*, but the SCC's decision in *ATCO*—and, specifically, its comments on rate regulation serving the aims of sustainability, equity, and efficiency—is quoted in a 2008 decision of the Ontario Superior Court of Justice Divisional Court reported as *Advocacy Centre for Tenants-Ontario v Ontario Energy Board*, 2008 CanLII 23487.[13] The Court's reliance on *ATCO* in that decision is not extensive enough to conclude that "sustainability", as that word is used in the *Electricity Act, 1998*, must necessarily be interpreted to mean "economic sustainability"; however, in our view, that interpretation is not only possible, but likely. Notably, our keyword searches of the terms "sustain", "sustainable", and "sustainability" in over one hundred decisions by the OEB indicate that the Board and the utilities that come before it typically use those terms to refer to sustainable business and economic practices rather than to principles associated with "environmental sustainability" or the principles of sustainable development.

These research findings illustrate the importance of clearly explaining what is meant by terms such as "sustainable" and "sustainability" if they are being used to give a regulator a sustainability mandate that is intended to be something more than a mandate to ensure that electricity services are sustainable from business and economic perspectives.

Lessons Learned from Ontario

- The purpose sections of electricity statutes can create high-level sustainability mandates, but high-level purpose statements may not be direct enough to shape regulatory decision-making on the ground.

- It is helpful to describe what is meant by mandates to ensure the sustainability of a province's electricity supply and to promote the sustainability of the generation, transmission, distribution, and sale of electricity.

[11] *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board)*, 2006 SCC 4 at paragraph 62.
[12] *Ibid*.
[13] *Advocacy Centre for Tenants-Ontario v Ontario Energy Board*, 2008 CanLII 23487 at paragraph 36.

(10) PRINCE EDWARD ISLAND

Overview

Electricity on Prince Edward Island falls under the purview of the Department of Transportation, Infrastructure, and Energy and is regulated directly by the Prince Edward Island Regulatory and Appeals Commission ("IRAC" or "the Commission"), which is empowered by Prince Edward Island's *Island Regulatory and Appeals Commission Act*. There are two primary power players on Prince Edward Island: Maritime Electric Company, Ltd ("Maritime Electric"), which is an investor-owned utility, and the Prince Edward Island Energy Corporation ("PEI Energy Corporation"), which is a Crown corporation empowered by Prince Edward Island's *Energy Corporation Act*.

Under subsection 2.1(1) of Prince Edward Island's *Electric Power Act*, Maritime Electric has a legislated monopoly to provide electricity services on the Island, subject to certain exceptions. It is fully regulated as a public utility. By contrast, the PEI Energy Corporation is not regulated as a public utility except to the extent described in section 6 of the *Energy Corporation Act*, which states, among other things, that rates or charges for electricity produced, transmitted, or furnished by the PEI Energy Corporation are subject to approval by the IRAC in accordance with the requirements of the *Electric Power Act*.

Does the Island Regulatory and Appeals Commission Have a Clearly Legislated Sustainability Mandate?

The IRAC does not have a clearly legislated sustainability mandate.

The IRAC's responsibilities as Prince Edward Island's electricity regulator are shaped primarily by Prince Edward Island's *Electric Power Act.* That Act and its corresponding regulations do not give the IRAC a sustainability mandate. Instead, the legislation primarily reflects traditional regulatory mandates: namely, to ensure that adequate and safe electricity services are provided for rates that are just, reasonable, and not discriminatory.

Our review of other provincial enactments that are relevant to the IRAC's role as Prince Edward Island's electricity regulator indicates that no clearly legislated sustainability mandate is given to the Commission elsewhere.

(11) QUÉBEC

Overview

Electricity in Québec falls under the purview of the Ministère de l'Énergie et des Ressources naturelles (the "MERN")—in English, the Ministry of Energy and Natural Resources—and is regulated directly by the Régie de l'énergie (the "Régie"), which is empowered by the *Act respecting the Régie de l'énergie*. Québec's primary electric utility is the Crown corporation Hydro-Québec.

Does Québec's Régie de l'énergie Have a Clearly Legislated Sustainability Mandate?

The Régie has a clearly legislated sustainability mandate.

Section 5 of the *Act respecting the Régie de l'énergie* states:

> In the exercise of its functions, the Régie shall reconcile the public interest, consumer protection and the fair treatment of the electric power carrier and of distributors. It shall promote the satisfaction of energy needs in a manner consistent with the Government's energy policy objectives and in keeping with the principles of sustainable development and individual and collective equity.

Notably, Québec has a *Sustainable Development Act* which addresses "governance for sustainable development" specifically and was enacted to establish a new management framework for the Government of Québec that would "ensure that powers and responsibilities are exercised in the pursuit of sustainable development".[14] Although the *Act respecting the Régie de l'énergie* does not state that the term "sustainable development", as used within that Act, accords with the definition and corresponding principles set out in the *Sustainable Development Act*, the language of the *Sustainable Development Act* may nevertheless offer insight into the ways in which "the principles of sustainable development" could be interpreted under the *Act respecting the Régie de l'energie*.

Section 2 of the *Sustainable Development Act* states:

> Within the scope of the proposed measures, "sustainable development" means development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development is based on a long-term approach which takes into account the inextricable nature of the environmental, social and economic dimensions of development activities.

Additionally, the *Sustainable Development Act* requires that the implementation of sustainable development within the Government of Québec and all government departments and agencies must be done in accordance with the following principles:

[14] *Sustainable Development Act* (chapter D-8.1.1) at section 1.

(a) "*Health and quality of life*": People, human health and improved quality of life are at the centre of sustainable development concerns. People are entitled to a healthy and productive life in harmony with nature;

(b) "*Social equity and solidarity*": Development must be undertaken in a spirit of intra- and inter-generational equity and social ethics and solidarity;

(c) "*Environmental protection*": To achieve sustainable development, environmental protection must constitute an integral part of the development process;

(d) *"Economic efficiency*": The economy of Québec and its regions must be effective, geared toward innovation and economic prosperity that is conducive to social progress and respectful of the environment;

(e) "*Participation and commitment*": The participation and commitment of citizens and citizens' groups are needed to define a concerted vision of development and to ensure its environmental, social and economic sustainability;

(f) "*Access to knowledge*": Measures favourable to education, access to information and research must be encouraged in order to stimulate innovation, raise awareness and ensure effective participation of the public in the implementation of sustainable development;

(g) "*Subsidiarity*": Powers and responsibilities must be delegated to the appropriate level of authority. Decision-making centres should be adequately distributed and as close as possible to the citizens and communities concerned;

(h) "*Inter-governmental partnership and cooperation*": Governments must collaborate to ensure that development is sustainable from an environmental, social and economic standpoint. The external impact of actions in a given territory must be taken into consideration;

(i) "*Prevention*": In the presence of a known risk, preventive, mitigating and corrective actions must be taken, with priority given to actions at the source;

(j) "*Precaution*": When there are threats of serious or irreversible damage, lack of full scientific certainty must not be used as a reason for postponing the adoption of effective measures to prevent environmental degradation;

(k) "*Protection of cultural heritage*": The cultural heritage, made up of property, sites, landscapes, traditions and knowledge, reflects the identity of a society. It passes on the values of a society from generation to generation, and the preservation of this heritage fosters the sustainability of development. Cultural heritage components must be identified, protected and enhanced, taking their intrinsic rarity and fragility into account;

(l) "*Biodiversity preservation*": Biological diversity offers incalculable advantages and must be preserved for the benefit of present and future generations. The protection of species, ecosystems and the natural processes that maintain life is essential if quality of human life is to be maintained;

(m) "*Respect for ecosystem support capacity*": Human activities must be respectful of the support capacity of ecosystems and ensure the perenniality of ecosystems;

(n) "*Responsible production and consumption*": Production and consumption patterns must be changed in order to make production and consumption more viable and more socially and environmentally responsible, in particular through an ecoefficient approach that avoids waste and optimizes the use of resources;

(o) "*Polluter pays*": Those who generate pollution or whose actions otherwise degrade the environment must bear their share of the cost of measures to prevent, reduce, control and mitigate environmental damage;

(p) "*Internalization of costs*": The value of goods and services must reflect all the costs they generate for society during their whole life cycle, from their design to their final consumption and their disposal.[15]

Again, there is nothing in the *Act respecting the Régie de l'énergie* or the *Sustainable Development Act* which indicates that these principles must inform interpretations of the phrase "the principles of sustainable development" as that phrase is used in the *Act respecting the Régie de l'énergie*; however, in our view, it is reasonable to assume that the principles set out in the *Sustainable Development Act* reflect the Government of Québec's priorities concerning sustainable development and may therefore be useful interpretive tools when considering the mandate of the Régie.

Lessons Learned from Québec

- A standalone mandate provision that includes a sustainability mandate is a clear and direct way of giving a sustainability mandate to an electricity regulator.

- It is helpful to define what is meant by a requirement to regulate in accordance with "the principles of sustainability".

[15] *Sustainable Development Act* (chapter D-8.1.1) at sections 5-6.

(12) SASKATCHEWAN

Overview

Electricity governance in Saskatchewan looks somewhat different from electricity governance in Canada's other provinces and territories. In Saskatchewan, electricity falls under the purview of the Ministry of Crown Investments. The Crown Investments Corporation ("CIC" or "the Corporation") is a holding company for commercial Crown corporations in Saskatchewan, and it is responsible for regulating Saskatchewan's primary electric utility—the Saskatchewan Power Corporation ("SaskPower"), which is a Crown corporation with a legislated monopoly over electricity transmission and distribution services throughout the province.[16]

Within Saskatchewan's legislated electricity regime, the CIC is responsible for regulating SaskPower. In 2000, the Saskatchewan Rate Review Panel ("SRRP" or "the Review Panel") was established to play an advisory role for the CIC. Periodically, Saskatchewan's Minister of Crown Investments ("the Minister") appoints the SSRP's members, who serve as a Ministerial Advisory Committee that advises the CIC on rate matters within the CIC's purview. The SRRP conducts full rate review hearings when directed to do so by Ministerial Order and, at the conclusion of such hearings, provides non-binding recommendations to the CIC.

Does the Crown Investments Corporation or the Saskatchewan Rate Review Panel Have a Clearly Legislated Sustainability Mandate?

Neither the CIC nor the SSRP has a clearly legislated sustainability mandate.

The CIC's responsibilities to oversee SaskPower's activities are shaped primarily by Saskatchewan's *Crown Corporations Act, 1993* and *Power Corporation Act*. These statutes and their corresponding regulations do not give the CIC a sustainability mandate.

The SSRP's responsibilities when conducting rate review processes are assigned by Terms of Reference which the Minister assigned for individual processes. We reviewed the Terms of Reference for several SSRP rate review processes conducted within the past decade, and none mandated the SSRP to consider sustainability concerns.[17] Our review indicates that the Terms of Reference assigned by the Minister primarily reflect traditional regulators mandates: namely, to ensure that electricity rates are fair and reasonable.

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[16] See *Power Corporation Act*, RSS c P-19 at section 38. SaskPower's legislated monopoly over electricity transmission and distribution services within the province permits two municipalities to provide distribution services as well. SaskPower does not have a monopoly over electricity generation within the province.

[17] See Government of Saskatchewan, Minister of Crown Investments, "Minister's Terms of Reference to the Saskatchewan Rate Review Panel for the SaskPower Rate Change Proposal" (15 August 2017); Government of Saskatchewan, Minister of Crown Investments, "Minister's Terms of Reference to the Saskatchewan Rate Review Panel for the SaskPower Rate Change Proposal" (19 May 2016); Government of Saskatchewan, Minister of Crown Investments, "Minister's Terms of Reference to the Saskatchewan Rate Review Panel for the SaskPower Rate Change Proposal" (25 October 2013); Government of Saskatchewan, Minister of Crown Investments, "Minister's Order and Terms of Reference for SaskPower 2013 Rate Application" (10 July 2012); Government of Saskatchewan, Minister of Crown Investments, "Minister's Orders – Terms of Reference" (18 February 2010).

Our review of other provincial enactments that are relevant to the CIC's and SSRP's respective roles as Saskatchewan's electricity regulators indicates that no clearly legislated sustainability mandates are given to the Corporation or Review Panel elsewhere.

(13) YUKON

Overview

Electricity in the Yukon falls under the purview of the Department of Energy, Mines and Resources and is regulated directly by the Yukon Utilities Board ("YUB" or "the Board"), which is empowered by the Yukon *Public Utilities Act*. The primary power players in the Yukon are the Yukon Energy Corporation, which is a Crown corporation, and ATCO Electric Yukon, which is an investor-owned utility.

Does the Yukon Utilities Board Have a Clearly Legislated Sustainability Mandate?

The YUB does not have a clearly legislated sustainability mandate.

The YUB's responsibilities as the Yukon's electricity regulator are shaped primarily by the *Public Utilities Act*, which does not give the Board an express sustainability mandate. Instead, the legislation reflects traditional regulatory mandates: namely, to ensure that adequate, proper, and safe electricity services are provided for rates that are just and reasonable.

That being said, other Yukon legislation which may inform the YUB's regulatory role indirectly could possibly be said to give the Board an implied mandate to regulate in accordance with sustainable development principles. The Yukon Energy Corporation is a Crown corporation that exists under a parent company, the Yukon Development Corporation ("YDC" or "the Corporation"), which is also a Crown corporation and is empowered under the *Yukon Development Corporation Act*. On its website, the YUB states that the Yukon Energy Corporation works with its parent company "to provide Yukoners with a sufficient supply of safe, reliable electricity and related energy services".[18]

Section 5 of the *Yukon Development Corporation Act* describes the objects of the YDC as follows:

> The objects for which the corporation is established are to participate with the private sector in the economic development of the Yukon and, in particular,
>
> (a) to develop and promote the development of Yukon resources on an economic and efficient basis;
>
> (b) to promote employment and business opportunities for Yukon residents;
>
> (c) to assure a continuing and adequate supply of energy in the Yukon in a manner consistent with sustainable development; and
>
> (d) to carry out development policy directives issued to it by the Commissioner in Executive Council.

[18] Yukon Utilities Board, "Yukon Energy Corporation" (undated).

[Emphasis added]

Notably, a directive that was issued to the YDC in 2013, directing the Corporation to plan one or more hydroelectric projects (referred to as "the Project") included this statement of the territorial government's motivations for issuing the directive:

> The goal of the Project is to ensure, together with supporting renewable and, to the minimum extent feasible, non-renewable sources of electrical power, an adequate and affordable supply of reliable and sustainable electrical power in Yukon.[19]

Although the Yukon *Public Utilities Act* and other legislation defining the Yukon Energy Corporation's powers and responsibilities does not include similar language that expressly creates a sustainability mandate, it may be possible to interpret the language of the *Yukon Development Corporation Act* as creating a kind of "trickle down" sustainability mandate that could influence the Yukon Energy Corporation's responsibilities and, in doing so, shape the YUB's regulatory role as well.

That being said, our research did not locate any court decisions indicating that the YUB has been held to have a sustainability mandate. Similarly, keyword searches of YUB decisions over the past five years did not return any decisions in which the YUB implemented a sustainability mandate.

Lessons Learned from the Yukon

- It may be possible to give an electricity regulator a sustainability mandate by requiring an electric utility or parent company to operate in a manner that is consistent with sustainable development, but such indirect channels may not produce the change desired.

[19] Yuk Reg OIC 2013/201 – Hydroelectric Power Planning Directive.

NEW ENGLAND JURISDICTIONS

(1) CONNECTICUT

Overview

Connecticut is one of the five New England states with a competitive electricity market in which the generation and wholesale transmission of electricity are decoupled from retail distribution.

Connecticut participates in the New England wholesale electricity market regulated by the Federal Energy Regulatory Commission ("FERC") and managed by the Independent System Operator for New England ("ISO-NE"). Electricity customers in Connecticut can choose to purchase their electricity from one of a number of competitive retail suppliers; however, all distribution within the state is carried out by electric distribution companies ("EDCs") which are regulated public utilities. Additionally, as an alternative to purchasing electricity from competitive retail suppliers, electricity customers in Connecticut can instead choose to purchase a Standard Service offer delivered by one of Connecticut's two main EDCs: the Connecticut Light and Power Company (doing business as "Eversource") and the United Illuminating Company ("UI").

EDCs in Connecticut are regulated as public utilities, whereas competitive retail suppliers are subject to less regulation and function primarily within the parameters of the competitive electricity market. That being said, competitive retail suppliers are subject to reliability and safety standards imposed by law, and they are also subject to other requirements that the Connecticut General Assembly chooses to impose as a condition of doing business within the state, such as renewable energy portfolio standards.

Connecticut's electricity regulator is the Public Utilities Regulatory Authority ("PURA" or "the Authority"), which is an independent branch of the Connecticut Department of Energy and Environmental Protection ("DEEP"). In addition to regulating Connecticut's EDCs, the PURA also licences competitive retail suppliers and monitors competition in the state electricity market.

Does the Connecticut Public Utilities Regulatory Authority Have a Clearly Legislated Sustainability Mandate?

The PURA does not have a clearly legislated sustainability mandate.

The PURA's responsibilities as Connecticut's electricity regulator are shaped primarily by Titles 16 and 22a of Connecticut's General Statutes, neither of which give the Authority an express sustainability mandate. Taken as a whole, the legislation primarily reflects traditional regulatory mandates: namely, to ensure that adequate electricity services are provided for rates that are just, reasonable, not discriminatory, and adequate to allow electric distribution companies to provide for the public convenience, necessity, and welfare.

Section 22a-2d of the Connecticut General Statutes is the provision that establishes the DEEP and PURA and identifies their mandates. It states:

> (a) There is established a Department of Energy and Environmental Protection, which shall have jurisdiction relating to the preservation and protection of the air, water and other natural resources of the state, energy and policy planning and regulation and advancement of telecommunications and related technology. For the purposes of energy policy and regulation, the department shall have the following goals: (1) Reducing rates and decreasing costs for Connecticut's ratepayers, (2) ensuring the reliability and safety of our state's energy supply, (3) increasing the use of clean energy and technologies that support clean energy, and (4) developing the state's energy-related economy. For the purpose of environmental protection and regulation, the department shall have the following goals: (A) Conserving, improving and protecting the natural resources and environment of the state, and (B) preserving the natural environment while fostering sustainable development. The Public Utilities Regulatory Authority within the department shall be responsible for all matters of rate regulation for public utilities and regulated entities under title 16 and shall promote policies that will lead to just and reasonable utility rates. The department head shall be the Commissioner of Energy and Environmental Protection who shall be appointed by the Governor in accordance with the provisions of sections 4-5 to 4-8, inclusive, with the powers and duties therein prescribed. The Department of Energy and Environmental Protection shall establish bureaus, one of which shall be designated an energy bureau.
>
> (b) The Department of Energy and Environmental Protection shall constitute a successor department to the Department of Environmental Protection and the Department of Public Utility Control in accordance with the provisions of sections 4-38d, 4-38e and 4-39.
>
> [Emphasis added]

Notably, this provision gives the DEEP a sustainability mandate with respect to its environmental protection and regulation; however, it does not clearly give the same mandate to the Department or the PURA with respect to energy policy and regulation.

That being said, subsection 16-2(m) of the Connecticut General Statutes states:

> Notwithstanding any provision of the general statutes, the decisions of the Public Utilities Regulatory Authority, including, but not limited to, decisions relating to rate amendments arising from the Comprehensive Energy Strategy, the Integrated Resources Plan, the Conservation and Load Management Plan and policies established by the Department of Energy and Environmental Protection, shall be guided by said strategy and plans and such policies.

This provision indicates that a sustainability mandate can be read into the PURA's regulatory role through means other than legislation—specifically, through the inclusion of sustainability principles in Connecticut's Comprehensive Energy Strategy, Integrated Resource Plan, Conservation and Load Management Plan, or DEEP policies.

With this in mind, it is worth noting (and quoting at length) the state energy policy that is articulated in section 16a-35k of the Connecticut General Statutes:

> The General Assembly finds that the state of Connecticut is severely disadvantaged by its lack of primary energy resources; that primarily as a result of past policies and tendencies, the state has become dependent upon petroleum as an energy source; that national energy policies do not preclude the recurrence of serious problems arising from this dependence during petroleum shortages; that the increase in oil prices since the 1973 oil embargo has had a major impact on the state; that the economy has suffered directly because of our dependence on petroleum and constraints upon the rate of conversion to alternatives; that other conventional sources of energy are subject to constraints involving supply, transportation, cost and environmental, health and safety considerations; and that the state must address these problems by conserving energy, increasing the efficiency of energy utilization and developing renewable energy sources. The General Assembly further finds that energy use has a profound impact on the society, economy and environment of the state, particularly in its impact on low and moderate-income households and interrelationship with population growth, high density urbanization, industrial well-being, resource utilization, technological development and social advancement, and that energy is critically important to the overall welfare and development of our society. Therefore, the General Assembly declares that it is the policy of the state of Connecticut to (1) conserve energy resources by avoiding unnecessary and wasteful consumption; (2) consume energy resources in the most efficient manner feasible; (3) develop and utilize renewable energy resources, such as solar and wind energy, to the maximum practicable extent; (4) diversify the state's energy supply mix; (5) where practicable, replace energy resources vulnerable to interruption due to circumstances beyond the state's control with those less vulnerable; (6) assist citizens and businesses in implementing measures to reduce energy consumption and costs; (7) ensure that low-income households can meet essential energy needs; (8) maintain planning and preparedness capabilities necessary to deal effectively with future energy supply interruptions; and (9) when available energy alternatives are equivalent, give preference for capacity additions first to conservation and load management. The state shall seek all possible ways to implement this policy through public education and cooperative efforts involving the federal government, regional organizations, municipal governments, other public and private organizations and concerned individuals, using all practical means and measures, including financial and technical assistance, in a manner calculated to promote the general welfare by creating and maintaining conditions under which energy can be utilized effectively and efficiently. The General Assembly further declares that it is the continuing responsibility of the state to use all means consistent with other essential considerations of state policy to improve and coordinate the plans, functions, programs and resources of the state to attain the objectives stated herein without harm to the environment, risk to health or safety or other undesirable or unintended consequences, to preserve wherever possible a society which supports a diversity and variety of individual choice, to achieve a balance between population and resource use which will permit the maintenance of adequate living standards and a sharing of life's amenities among all citizens, and to enhance the utilization of renewable resources so that the availability of nonrenewable resources can be extended to future generations. The General Assembly

declares that the energy policy is essential to the preservation and enhancement of the health, safety and general welfare of the people of the state and that its implementation therefore constitutes a significant and valid public purpose for all state actions.

[Emphases added]

Although this statement of Connecticut's energy policy does not use the word "sustainability", many of the aspirations and principles it describes are aligned with sustainability principles. This indicates that even though the PURA does not have a clearly legislated sustainability mandate, its mandate to regulate in accordance with DEEP policies and state energy planning is a vehicle for the incorporation of sustainability concerns.

Lessons from Connecticut

- A legislated statement of the government's energy policy can create a high-level sustainability mandate, but high-level policy statements may not be direct enough to shape regulatory decision-making on the ground.

(2) MAINE

Overview

Maine is one of the five New England states with a competitive electricity market in which the generation and wholesale transmission of electricity are decoupled from retail distribution.

Maine participates in the New England wholesale electricity market regulated by FERC and managed by ISO-NE; however, in northern Maine, the state's electricity grid is connected to the New Brunswick Power System and is not directly connected to the ISO-NE system. In this area, called the Maritimes Control Area, the Northern Maine Independent System Administrator ("NMISA") is responsible for system administration.

Electricity customers in Maine can choose to purchase electricity from a selection of competitive electricity providers ("CEPs"), or, alternatively, customers can choose to purchase a Standard Offer service which is administered by Maine's electricity regulator, the Maine Public Utilities Commission ("MPUC" or "the Commission"). In all cases, whether or not a customer is purchasing electricity from a CEP or receiving Standard Offer service, electricity transmission and distribution within the state are carried out by regulated transmission and distribution ("T&D") utilities.

All T&D utilities operating in Maine are regulated as public utilities, whereas CEPs are subject to less regulation by the state and function primarily within the parameters of the competitive electricity market. That being said, CEPs are subject to reliability and safety standards imposed by law, and they are also subject to other requirements that the Maine State Legislature chooses to impose as a condition of doing business within the state, such as consumer protection laws and renewable portfolio standards.

Two investor-owned utilities dominate in Maine: Central Main Power Company ("CMP") and Versant Power ("Versant", formerly Emera Maine, which existed under the parent corporation Bangor Hydro-Electric Company, or "BHE"). Additionally, ten consumer-owned utilities operate within the state.

Does the Main Public Utilities Commission Have a Clearly Legislated Sustainability Mandate?

The MPUC does not have a clearly legislated sustainability mandate.

The MPUC's responsibilities as Maine's electricity regulator are shaped primarily by Title 35 of the Maine Revised Statutes ("MRS"). The MRS express the Commission's core mandate as follows:

> The purpose of this Title is to ensure that there is a regulatory system for public utilities in the State and for other entities subject to this Title that is consistent with the public interest and with other requirements of law and to provide for reasonable licensing requirements for competitive electricity providers. <u>The basic purpose of this regulatory</u>

> system as it applies to public utilities subject to service regulation under this Title is to ensure safe, reasonable and adequate service, to assist in minimizing the cost of energy available to the State's consumers and to ensure that the rates of public utilities subject to rate regulation are just and reasonable to customers and public utilities.[20] [Emphasis added]

As illustrated by this provision, Maine's electricity legislation primarily reflects traditional regulatory mandates: namely, to ensure that adequate, reasonable, and safe electricity services are provided for just and reasonable rates.

Our review of other enactments that are relevant to the MPUC's role as Maine's electricity regulator indicates that no clearly legislated sustainability mandate is given to the Commission elsewhere. Maine's legislation gives the MPUC several specific responsibilities to administer and oversee state initiatives that are designed to support the generation, distribution, and use of renewable electricity within the state and enhance public awareness of renewable energy's benefits; however, we do not interpret those responsibilities as amounting to an express sustainability mandate.

[20] 35-A MRS §101. In keeping with the language in this provision, 35-A MRS §301 imposes familiar obligations on public utilities which the MPUC regulates: those obligations are to furnish safe, reasonable and adequate facilities and service and to ensure that the charges, joint rates, rates, and tolls for services are just and reasonable. Under the same section, unjust and unreasonable charges, joint rates, rates, and tolls are prohibited.

(3) MASSACHUSETTS

Overview

Massachusetts is one of the five New England states with a competitive electricity market in which the generation and wholesale transmission of electricity are decoupled from retail distribution.

Massachusetts participates in the New England wholesale electricity market regulated by FERC and managed by ISO-NE. Electricity customers in Massachusetts can choose to purchase electricity from a selection of competitive retail suppliers, but all distribution of electricity is carried out by electric utility companies ("EUC"), which are regulated as public utilities. Additionally, electricity customers in Massachusetts can choose to purchase basic service from their EUCs rather than contracting with competitive retail suppliers.

Whereas EUCs in Massachusetts are regulated as public utilities, competitive retail suppliers are subject to less regulation by the state and function primarily within the parameters of the competitive electricity market. That being said, competitive retail suppliers are subject to reliability and safety standards imposed by law, and they are also subject to other requirements that the Massachusetts General Court (the state government) chooses to impose as a condition of doing business within the state, such as consumer protection laws and renewable portfolio standards.

Massachusetts' electricity regulator is the Department of Public Utilities ("DPU" or "the Department"), which is under the supervision and control of the Commonwealth Utilities Commission. Four investor-owned EDCs operate within the state: Fitchburg Gas and Electric Light Company (doing business as "Unitil"); Massachusetts Electric Company and Nantucket Electric Company (doing business together as "National Grid"); and, NSTAR Electric Company (doing business as "Eversource Energy").[21]

Does the Department of Public Utilities Have a Clearly Legislated Sustainability Mandate?

The DPU does not have a clearly legislated sustainability mandate.

The DPU's responsibilities as Massachusetts' electricity regulator are shaped primarily by Chapter 25 of Title II, Part I and Chapter 164 of Part I, Title XXII of the General Laws of Massachusetts, neither of which give the Department a sustainability mandate. Massachusetts' electricity laws do not describe the DPU's mandate in detail, but the Department's own commentary reflects its understanding that it has a traditional regulatory mandate: namely, to ensure that adequate and reliable electricity services are provided for rates that are just and reasonable and not unjustly discriminatory or unduly preferential.[22] The DPU has also explained

[21] Massachusetts Department of Public Utilities, *2020 Annual Report* (undated) at page 8 ["*DPU Annual Report 2020*"].
[22] Massachusetts Department of Public Utilities, DPU 18-150 at page 48.

that it expects rate structures to reflect factors such as "economic efficiency, continuity, fairness, earnings stability, and simplicity".[23]

Our review of enactments relevant to the DPU's role as Massachusetts' electricity regulator indicate that the Department has not been given an express sustainability mandate in Massachusetts' electricity laws. Massachusetts legislation gives the Department several specific responsibilities to administer and oversee state initiatives that are designed to support the generation, distribution, and use of renewable electricity within the state and enhance public awareness of renewable energy's benefits; however, we do not interpret those responsibilities as amounting to a clearly legislated sustainability mandate.

[23] *DPU Annual Report 2020* at page 48.

(4) NEW HAMPSHIRE

Overview

New Hampshire is one of the five New England states with a competitive electricity market in which the generation and wholesale transmission of electricity are decoupled from retail distribution.

New Hampshire participates in the New England wholesale electricity market regulated by FERC and managed by ISO-NE. As in Maine, electricity customers in New Hampshire can choose to purchase electricity from a selection of competitive electricity providers ("CEPs"); however, all electricity transmission and distribution within the state is carried out by regulated electric distribution companies ("EDCs"). Rather than purchasing their electricity from a CEP, electricity customers in New Hampshire can instead choose to purchase electricity directly from their EDC.

There are four EDCs operating in New Hampshire: Eversource Energy, Liberty Utilities, Unitil Energy Systems, and the New Hampshire Electric Cooperative, Inc.[24] EDCs in New Hampshire are regulated as public utilities, whereas CEPs are subject to less regulation and function primarily within the parameters of the competitive electricity market. That being said, CEPs are subject to reliability and safety standards imposed by law, and they are also subject to other requirements that the New Hampshire General Court (the state government) chooses to impose as a condition of doing business within the state, such as consumer protection laws and renewable portfolio standards.

New Hampshire's electricity regulator is the New Hampshire Public Utilities Commission ("NHPUC" or "the Commission").

Does New Hampshire's Public Utilities Commission Have a Clearly Legislated Sustainability Mandate?

The NHPUC has a clearly legislated sustainability mandate.

The NHPUC's responsibilities as New Hampshire's electricity regulator are shaped primarily by Title XXXIV of the New Hampshire Statutes. Chapter 374-F of that Title lists a number of legislated policy principles which the state government established to guide the NHPUC in restructuring of the state's electricity market (to decouple generation and wholesale transmission from retail distribution) and regulating that restructured market on an ongoing basis.[25] One of those policy principles—entitled "Environmental Improvement"—states:

> Continued environmental protection and long term environmental sustainability should be encouraged. Increased competition in the electric industry should be implemented in a manner that supports and furthers the goals of environmental improvement. Over time, there should be more equitable treatment of old and new generation sources with regard

[24] State of New Hampshire Public Utilities Commission, "Electric" (undated).
[25] RSA 374-F at section III.

> to air pollution controls and costs. New Hampshire should encourage equitable and appropriate environmental regulation, based on comparable criteria, for all electricity generators, in and out of state, to reduce air pollution transported across state lines and to promote full, free, and fair competition. As generation becomes deregulated, innovative market drive approaches are preferred to regulatory controls to reduce adverse environmental impacts. Such market approaches may include valuing the costs of pollution and using pollution offset credits.[26] [Emphasis added]

The sustainability mandate given by this provision is framed in terms of "environmental sustainability". The meaning of that phrase is not defined in the legislation, and so its meaning is somewhat ambiguous. It is not clear, for example, whether the meaning of "environmental sustainability" under New Hampshire's legislation aligns with, or means something different from, the meaning of "the principles of sustainable development" under Québec's legislation. Resonances and differences are possible.

It is important to note that the state policy of "encouraging" continued environmental protection and long-term environmental sustainability does not override the traditional regulatory mandates which the NHPUC holds: namely, to ensure that adequate and safe electricity services are provided for rates that are just, reasonable, not discriminatory, and not unduly preferential or advantageous. Notably, New Hampshire's legislated energy policy also emphasizes the state's interest in ensuring that energy is provided at "the lowest reasonable cost":

> The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.[27]

Our review of the New Hampshire Statutes indicates that the state government's interest in ensuring that energy is provided at the lowest reasonable cost is often balanced, in practice, with the state's environmental protection and energy efficiency goals. Two give just two examples:

- when establishing rates for the purchase of energy and energy or capacity from small power producers and co-generators that are qualified to participate in New Hampshire's electricity marker, the NHPUC is required by law to consider potential environmental and health-related impacts as one of the factors in its decision (impact on electricity rates is another factor);[28] and,

- when reviewing integrated least-cost resource plans submitted by utilities, the NHPUC is required by law to "consider potential environmental, economic, and health-related impacts of each proposed option". If the Commission determines that available resource options have "equivalent financial costs, equivalent reliability, and equivalent

[26] RSA 374-F:3(VIII).
[27] RSA 378:37.
[28] RSA 362-A:8.

environmental, economic, and health-related impacts", it must be guided by the following prioritization of energy policy priorities: (i) energy efficiency and other demand-side management resources; (ii) renewable energy sources; and (iii) all other energy sources.[29]

Our review of other enactments that are relevant to the NHPUC's role as New Hampshire's electricity regulator indicates that additional clearly legislated sustainability mandates are not given to the Commission elsewhere. As illustrated by the examples listed above, New Hampshire's legislation gives the NHPUC several specific responsibilities to administer and oversee state initiatives that are designed to support the generation, distribution, and use of renewable electricity within the state; however, we do not interpret those responsibilities as amounting to additional sustainability mandates.

Lessons Learned from New Hampshire

- A legislated statement of the government's energy policy can create a high-level sustainability mandate and connect that mandate to the regulator's role more directly by using clear language to that effect.

- Specific decision-making powers and responsibilities given to electricity regulators can set and rank specific priorities that the regulators must bear in mind when making their decisions.

[29] RSA 378.39.

(5) RHODE ISLAND

Overview

Rhode Island is one of the five New England states with a competitive electricity market in which the generation and wholesale transmission of electricity are decoupled from retail distribution.

Rhode Island participates in the New England wholesale electricity market regulated by FERC and managed by ISO-NE. Electricity customers in the state can choose to purchase electricity from a selection of competitive electricity retailers; however, all electric distribution services within the state are provided by just three electric distribution companies ("EDCs"): National Grid (which distributes to most of the state's consumers), Block Island Power Company, and the Pascoag Utility District. All three EDCs are regulated as public utilities.

Electricity regulation in Rhode Island is shared between two regulatory bodies: the Rhode Island Public Utilities Commission ("the Commission") and the Division of Public Utilities and Carriers ("the Division). Both regulatory bodies are empowered under Title 39 of the State of Rhode Island General Laws ("the General Laws of Rhode Island"), and they have different and complementary powers and responsibilities.

Under section 39-1-3(a) of the General Laws of Rhode Island, the Commission is a quasi-judicial tribunal (an administrative tribunal with powers similar to those of a court) with jurisdiction, powers, and duties to:

- implement and enforce standards of conduct for public utilities that are required by statute;

- hold investigations and hearings concerning the charges, rates, tariffs, and tolls of railroad, gas, electric distribution, water, telephone, telegraph, and pipeline public utilities; and,

- hold investigations and hearings concerning the sufficiency and reasonableness of such public utilities' facilities and accommodations.

Under section 39-1-3(b) of the General Laws of Rhode Island, the Division is responsible for the execution of all laws relating to public utilities and carriers within the state, as well as all regulations and orders of the Commission regarding the conduct and charges of public utilities. In other words, the Division is, to some extent, the Commission's enforcement arm, but it has other responsibilities as well.

In addition to the regulatory oversight provided by the Commission and the Division, government oversight over electricity matters within the state is provided by the Rhode Island Office of Energy Resources ("OER"), which was established by law as a state agency within the executive department of the State of Rhode Island General Assembly and which is overseen by

the Commissioner of Energy Resources.[30] Additional input on energy matters within the state is provided by the Rhode Island Energy Efficiency and Resource Management Council, which was established by law to facilitate better public policy within the state as regards energy efficiency, energy conservation, and energy resource management.[31]

Do the Rhode Island Public Utilities Commission and the Division of Public Utilities and Carriers Have Clearly Legislated Sustainability Mandates?

Neither the Commission nor the Division has a clearly legislated sustainability mandate.

The Commission's and Division's respective responsibilities as Rhode Island's electricity regulators are shaped primarily by Title 39 of the General Laws of Rhode Island, which does not give either body an express sustainability mandate. Instead, the legislation reflects traditional regulatory mandates: namely, to ensure that adequate, reasonable, and safe electricity services are provided for just and reasonable rates. That being said, Rhode Island's electricity laws do incorporate several environmental considerations which the Commission appears to be using as the foundation for a sustainability-minded approach to at least some of its decision-making.

Environmental Considerations Shaping the Public Interest in Rhode Island's Electricity Laws

Section 39-1-1 of the General Laws of Rhode Island is a purpose section which establishes the state government's policies concerning the regulation of public utilities in the public interest. The statement of purpose that appears in paragraph 39-1-1(a)(3) is worth noting:

> Preservation of the state's resources, commerce, and industry requires the assurance of adequate public transportation and communication facilities, water supplies, and an abundance of energy, all supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment, the conservation of natural resources, including scenic, historic, and recreational assets, and the strengthening of long-range, land-use planning. [Emphasis added]

This provision indicates that environmental considerations inform the very purpose of establishing the Commission and the Division to regulate public utilities within the state.

Rhode Island's electricity laws also impose a more specific environmental mandate on the Commission. Subsection 39-1-27.7(b) of the General Laws of Rhode Island requires the Commission to establish least-cost procurement standards for electricity and natural gas utilities within the state, and subsection 39-1-27.7(a) describes the purpose of least-cost procurement as follows:

> Least-cost procurement shall comprise system reliability and energy efficiency and conservation procurement, as provided for in this section, and supply procurement […] as complementary but distinct activities that have as a common purpose meeting electrical

[30] Rhode Island General Laws at §42-140-2.
[31] *Ibid* at §42-140.1-3.

> and natural gas energy needs in Rhode Island in a manner that is optimally cost-effective, reliable, prudent, and environmentally responsible. [Emphasis added]

The Commission has now established Least Cost Procurement Standards ("the Standards") as required by law. The Standards deal with three distinct procurement activities: system reliability procurement, energy efficiency and conservation procurement, and supply procurement. Building on the language of subsection 39-1-27.7(a)—which identifies meeting electrical needs in Rhode Island in an "environmentally responsible" manner as one of the purposes of least-cost procurement—the Standards describe how environmental responsibility will be assessed:

> i. The distribution company shall assess how investment complies with State environmental policies and properly values environmental costs and benefits.
>
> ii. The distribution company shall assess how the investment affects pollution, where applicable, at a local, regional, and global scale.[32]

Importantly, the Standards also contain provisions that shape how cost considerations will be weighed when energy efficiency and conservation procurements are being assessed. It is clear that environmental considerations will not be prioritized above all other considerations, such as cost-effectiveness. In this regard, the Standards reflect legal requirements set out in subsection 39-1-27.7(a) of the General Laws of Rhode Island, which stipulate how certain cost considerations should be taken into account.

Lastly, it is worth noting the Standards refer to the value of fostering a "sustainable energy efficiency economy" in Rhode Island.[33] This phrase does not reflect a clearly legislated sustainability mandate for the Commission, but it suggests that the Commission may be attuned to sustainability concerns and may interpret the phrase "environmentally responsible" in a sustainability-minded manner.

Guidance from the Rhode Island Public Utilities Commission on Its Mandate and Approach

In 2017, the Commission established a formal Guidance Document that:

- articulates the Commission's own understanding of its governing laws and mandate; and,
- describes in detail the regulatory approach which it intends to take in all decision-making concerning the operations of National Grid.

The Guidance Document is not law, and the Commission is not legally required to follow the principles contained within it; however, to establish the Guidance Document, the Commission relied on section 42-35-2.12 of the General Laws of Rhode Island, which not only allows agencies to create guidelines that bind their members and staff but also creates corresponding

[32] State of Rhode Island Public Utilities Commission, "Least Cost Procurement Standards" (28 March 2020) at section 1.3.F.
[33] *Ibid* at section 3.2.J.

procedural rights for parties who rely on such guidelines and expect the principles and processes contained within them to be followed. This means that although the Commission is not legally required to apply the principles contained within its Guidance Document, Rhode Island law expects that if the Commission chooses to deviate from its Guidance Document, it will explain its reasons for making that choice.

The Commission's Guidance Document does not mention sustainability explicitly, but it does articulate environmental goals and principles that align with sustainability needs. One of the goals that the Commission describes as informing its regulatory mandate is to "[a]ddress the challenge of climate change and other forms of pollution".[34] The Guidance Document also includes several principles that the Commission has adopted and will apply whenever it assesses the reasonableness of National Grid's rate design. Among them are principles that require the Commission to consider if the proposed rate design:

- "[e]nsures safe, reliable, affordable, and environmentally responsible electricity service today and in the future";[35]

- [e]nsures consistency with policy goals (e.g. environmental, climate […] energy diversity, competition, innovation, power/data security, least cost procurement, etc.)";[36] and

- "[e]valuates rate structures based on whether they encourage or discourage appropriate investments that enable the evolution of the future energy system".[37]

These statements of principle illustrate a recurring policy focus on "environmentally responsible" electricity service, echoing the language of subsection 39-1-27.7(a) of the General Laws of Rhode Island. Notably, while subsection 39-1-27.7(a) concerns least-cost procurement standards specifically, the principle of environmental responsibility which the Commission articulates in its Guidance Document applies to all rate-setting by National Grid. Additionally, the language in the Guidance Document goes further than the language of subsection 39-1-27.7(a) by speaking of environmentally responsible electricity service "today and in the future". This future-oriented approach aligns with the principle of intergenerational equity which the Government of Québec has listed among the principles that inform its understanding of sustainable development.

On the whole, the Commission's Guidance Document suggests that the principles articulated within it inform the Commission's understanding of what constitutes the public interest.[38] This is significant, as it suggests that even though the General Laws of Rhode Island do not assign an express sustainability mandate to the Commission or the Division, the Commission appears to interpret its environmental responsibilities in a sustainability-minded way.

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[34] State of Rhode Island Public Utilities Commission, "Public Utilities Commission's Guidance on Goals, Principles and Values for Matters Involving the Narragansett Electric Company d/b/a National Grid" (undated) at page 4.
[35] *Ibid* at page 4.
[36] *Ibid* at page 5.
[37] *Ibid*.
[38] *Ibid*.

Lessons Learned from Rhode Island

- Environmental protection obligations established in law may enable an electricity regulator to adopt a sustainability-minded approach.

(6) VERMONT

Overview

Among the six New England states, Vermont is the only one that has not restructured its electric industry to accommodate retail competition.[39] Operating within the state are fourteen municipal electric departments, two member-owned rural electric cooperatives, and one large investor-owned utility, all of which are regulated as public utilities.

Electricity in Vermont falls under the purview of the Department of Public Service (the "DPS"), and is regulated directly by the Vermont Public Utility Commission ("PUC" or "the Commission"). Insofar as they participate in New England's wholesale electricity market, electric utilities in Vermont are also subject to management and control by the ISO-NE and regulation by the FERC.

Does the Vermont Public Utility Commission Have a Clearly Legislated Sustainability Mandate?

The PUC does not have an overarching, clearly legislated sustainability mandate; however, Vermont's electricity laws give the PUC a clearly legislated sustainability mandate in connection with one specific decision-making responsibility, and Vermont's legislated energy policy incorporates sustainability concerns as well.

(i) A Sustainability Mandate in Decision-Making for the Public Good

Title 30, subsection 248(a) of the Vermont Statutes Annotated prohibits electric companies from

- purchasing electric capacity or energy from outside the state,
- investing in electric generating facilities, energy storage facilities, or transmission facilities located outside the state, or
- beginning site preparation for construction of new electric generation facilities, energy storage facilities, or electric transmission facilities within the state

unless the PUC determines that such purchases or investments would promote the general good and issues a Certificate of Public Good permitting the activity. Subsection 248(b) identifies several factors that the PUC must take into account when deciding whether to issue Certificates of Public Good. Paragraph 248(b)(11) lists the factors that are relevant to PUC assessments of proposed in-state generation facilities that will generate electricity using woody biomass as a fuel, and one of those factors is whether a proposed facility will "comply with harvesting procedures and procurement standards that ensure long-term forest health and sustainability".[40]

[39] See State of Vermont, Department of Public Service, "Electric".
[40] 30 VSA §248(b)(11)(C).

(ii) Sustainability Concerns Incorporated in Vermont's Legislated Energy Policy

Title 30, section 202a of the Vermont Statutes Annotated includes a legislated statement of the Vermont's energy policy.

> It is the general policy of the State of Vermont:
>
> (1) To ensure to the greatest extent practicable that Vermont can meet its energy service needs in a manner that is adequate, reliable, secure, and sustainable; that ensures affordability and encourages the State's economic vitality, the efficient use of energy resources, and cost-effective demand-side management; and that is environmentally sound.
>
> (2) To identify and evaluate, on an ongoing basis, resources that will meet Vermont's energy service needs in accordance with the principles of reducing greenhouse gas emissions and least-cost integrated planning, including efficiency, conservation, and load management alternatives; wise use of renewable resources; and environmentally sound energy supply.
>
> (3) To meet Vermont's energy service needs in a manner that will achieve the greenhouse gas emissions reductions requirements pursuant to 10 V.S.A § 578 and is consistent with the Vermont Climate Action Plan adopted and updated pursuant to 10 V.S.A § 592.[41] [Emphasis added]

Unlike the legislated energy policies of New Brunswick and Newfoundland and Labrador or British Columbia's legislated energy objectives, Vermont's legislated energy policy speaks specifically of meeting the state's energy needs in a sustainable way. That being said, the precise meaning of the word "sustainable", as it is used in this policy statement, is not clear, nor is it clear that this high-level energy policy will bear directly on the PUC's day-to-day regulatory activities. Unlike the legislated policy principles that appear in New Hampshire's electricity laws, discussed above, Vermont's legislated energy policy does not include language indicating that the policies are intended to guide the PUC's regulation of the state's electricity industry. It is also significant that only one of the specific decision-making powers and responsibilities given to the PUC in the Vermont Statutes Annotated expressly requires the PUC to take sustainability considerations into account: this suggests that sustainability concerns do not necessarily inform most on-the-ground decisions being made by the PUC.

Lessons Learned from Vermont

- Sustainability mandates can be given to electricity regulators in connection with specific decision-making powers and responsibilities.

- A legislated statement of the government's energy policy can create a high-level sustainability mandate, but high-level policy statements may not be direct enough to shape regulatory decision-making on the ground.

[41] 30 VSA §202a.

PART TWO: SYNTHESIS AND RECOMMENDATIONS

(1) SYNTHESING THE LESSONS LEARNED

Our jurisdictional analyses gave rise to a number of "lessons learned" that can help us to imagine law amendments in Nova Scotia that would give the NSUARB a clearly legislated sustainability mandate. Those key lessons are:

- A requirement to take environmental considerations into account when considering the public interest can be assigned in connection with specific decision-making powers and responsibilities (Alberta).

- A legislated statement of government energy objectives could be a place to incorporate sustainability considerations into legislated electricity regimes, but it is best for the language to be clear (British Columbia).

- A legislated statement of the government's electricity policy provides useful guidance for regulators (New Brunswick, Newfoundland and Labrador).

- A mandate to act in accordance with principles of "environmental sustainability" can be assigned in connection with electric utilities' duties (New Brunswick).

- It is helpful to define what is meant by phrases such as "environmental sustainability" (New Brunswick).

- The purpose sections of electricity statutes can create high-level sustainability mandates, but high-level purpose statements may not be direct enough to shape regulatory decision-making on the ground (Ontario).

- It is helpful to describe what is meant by mandates to ensure the sustainability of a province's electricity supply and to promote the sustainability of the generation, transmission, distribution, and sale of electricity (Ontario).

- A standalone mandate provision that includes a sustainability mandate is a clear and direct way of giving a sustainability mandate to an electricity regulator (Québec).

- It is helpful to define what is meant by a requirement to regulate in accordance with "the principles of sustainability" (Québec).

- It may be possible to give an electricity regulator a sustainability mandate by requiring an electric utility or parent company to operate in a manner that is consistent with sustainable development, but such indirect channels may not produce the change desired (Yukon).

- A legislated statement of the government's energy policy can create a high-level sustainability mandate, but high-level policy statements may not be direct enough to shape regulatory decision-making on the ground (Connecticut and Vermont).

- A legislated statement of the government's energy policy can create a high-level sustainability mandate and connect that mandate to the regulator's role more directly by using clear language to that effect (New Hampshire).

- Specific decision-making powers and responsibilities given to electricity regulators can set and rank specific priorities that the regulators must bear in mind when making their decisions (New Hampshire).

- Environmental protection obligations established in law may enable an electricity regulator to adopt a sustainability-minded approach (Rhode Island).

- Sustainability mandates can be given to electricity regulators in connection with specific decision-making powers and responsibilities (Vermont).

In our view, these lessons learned can be distilled into six key "takeaways" that can help to guide the EAC's advocacy for electricity reform in Nova Scotia:

(1) Nova Scotia's legislated electricity regime would benefit from a standalone mandate provision for the NSUARB, and that provision could include a sustainability mandate.

(2) Nova Scotia's legislated electricity regime would benefit from a legislated statement of the Government of Nova Scotia's electricity policy, and that legislated policy statement could include sustainability objectives and principles.

(3) If the Government of Nova Scotia were to enact a legislated statement of its electricity policy and include sustainability objectives and principles in that statement, it would best to see additional legislative language making it clear that the NSUARB is expected to regulate in accordance with those objectives and principles.

(4) The Government of Nova Scotia could give the NSUARB a clearly legislated sustainability mandate in connection with specific decision-making powers and responsibilities and could set and rank specific sustainability priorities for the Board to bear in mind when making certain decisions.

(5) If the Government of Nova Scotia were to require NSPI to operate in a manner that is consistent with sustainability principles, the NSUARB would indirectly receive a sustainability mandate arising from its responsibility to monitor NSPI's compliance with relevant laws.

(6) If a sustainability mandate is given to the NSUARB in any form, the relevant legislation should clearly define what is meant by the terms that are used to assign that mandate.

In our Recommendations discussion below, we offer our thoughts on potential legislative language that could further the EAC's advocacy goals while building on useful foundations in Nova Scotia's current laws.

(2) RECOMMENDATIONS FOR PROPOSED LAW REFORM EFFORTS

Choosing Appropriate "Sustainability" Phrases and Principles

As we noted in our Introduction, our jurisdictional reviews demonstrate that sustainability mandates can take a variety of forms depending on the language used and the principles associated with the mandate. Requirements to regulate in accordance with principles of "environmental sustainability" may not mean the same thing as requirements to regulate in accordance with "the principles of sustainable development", and so it is important to clearly define the mandate you wish to see.

This report does not provide a qualitative assessment of the nuances, pros, and cons of various ways of articulating sustainability principles, as the EAC is better positioned to determine which principles align best with its values. Instead, our discussion in this section draws attention to the fact that Nova Scotia's environmental law regime already incorporates sustainable development principles and identifies some specific principles which the Government of Nova Scotia associates with the concept of "sustainable development". In our view, it would likely be strategic for the EAC to align its advocacy efforts to create a sustainability mandate for the NSUARB with sustainability principles that already have traction in the province.

Nova Scotia's *Environment Act* defines "sustainable development" as meaning "development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs".[42] Section 2 of the Act (the purpose section) states, in part:

> The purpose of this Act is to support and promote the protection, enhancement and prudent use of the environment while recognizing the following goals:
>
> […]
>
> (b) maintaining the principles of sustainable development, including
>
> (i) the principle of ecological value, ensuring the maintenance and restoration of essential ecological processes and the preservation and prevention of loss of biological diversity,
>
> (ii) the precautionary principle will be used in decision-making so that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradations,

[42] *Environment Act*, SNS 1994-95 c 1 at section 3.

(iii) the principle of pollution prevention and waste reduction as the foundation for long-term environmental protection, including

(A) the conservation and efficient use of resources,

(B) the promotion of the development and use of sustainable, scientific and technological innovations and management systems, and

(C) the importance of reducing, reusing, recycling and recovering the products of our society,

(iv) the principle of shared responsibility of all Nova Scotians to sustain the environment and the economy, both locally and globally, through individual and government actions,

(v) the stewardship principle, which recognizes the responsibility of a producer for a product from the point of manufacturing to the point of final disposal,

(vi) the linkage between economic and environmental issues, recognizing that long-term economic prosperity depends upon sound environmental management and that effective environmental protection depends on a strong economy, and

(vii) the comprehensive integration of sustainable development principles in public policy making in the Province[.]

This list of principles is not as long or comprehensive as that which appears in Québec's *Sustainable Development Act*, but it offers a good starting point from which to consider sustainability principles that the Government of Nova Scotia could incorporate into the mandate of the NSUARB.

Importantly, the sections of Nova Scotia's *Environment Act* which define "sustainable development" and identify principles associated with that term draw directly on the international context in which the concept of "sustainable development" took shape.

The term "sustainable development" emerged from the work of the World Commission on Environment and Development (commonly called "the Brundtland Commission"), which was convened by the United Nations General Assembly in the early 1980s and tasked with articulating a "global agenda for change" that would examine and address the world's environmental problems and offer strategies to achieve sustainable development. The Brundtland Commission's final report, *Our Common Future*, was completed in 1987. The report defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs", and the report's commentary on sustainable development was clearly informed by analyses taking social and

distributive equity into account. In 1992, the *Rio Declaration*—which emerged from the United Nations Conference on Environment and Development (often referred to as the "Earth Summit") held in Rio de Janeiro, Brazil, in 1992—established several sustainable development principles, including the precautionary principle. In 2015, a resolution by the United Nations General Assembly entitled *Transforming our world: the 2030 Agenda for Sustainable Development* established 17 sustainable development goals and 169 associated targets which the international community has committed to pursuing collectively. These are just a few significant milestones in the long journey through which the concept of sustainable development has been taking shape at the international level. This history informs the incorporation of sustainable development principles and goals in Nova Scotian legislation and, in our view, should inform the EAC's perspective on an appropriate sustainability mandate for the NSUARB.[43]

In our view, the sustainable development principles in Nova Scotia's *Environment Act* provide a useful foundation for law reform efforts focused on Nova Scotia's legislated electricity regime. Proposed amendments to Nova Scotia's *Electricity Act* or *Public Utilities Act* could point to and drawn on this language as models for the assignment of a sustainability mandate to the NSUARB. Additionally, the sustainable development principles listed in Québec's *Sustainable Development Act* provide useful models for potential expansions of the language that is currently being used in Nova Scotia's legislation. At the same time, it is important to keep in mind that developments at the international level have informed these provincial statutes and should inform law amendments that establish new sustainability mandates in Nova Scotia. With this in mind, principles, goals, and targets articulated by the United Nations provide important models as well.

Creating a Standalone Mandate Provision for the Utility and Review Board and Including a Sustainability Mandate within that Provision

The NSUARB does not currently have a standalone mandate provision like that which appears in section 5 of Québec's *Act respecting the Régie de L'énergie*. As we discussed above, the Régie's mandate provision states:

> In the exercise of its functions, the Régie shall reconcile the public interest, consumer protection and the fair treatment of the electric power carrier and of distributors. It shall promote the satisfaction of energy needs in a manner consistent with the Government's energy policy objectives and in keeping with the principles of sustainable development and individual and collective equity.

In our view, Nova Scotia's legislated electricity regime would benefit from a standalone mandate provision for the NSUARB, and that mandate provision could include a sustainability mandate.

[43] It is also worth noting that Nova Scotia's more recently enacted *Sustainable Development Goals Act* ("the *SDGA*") defines "sustainable development" by giving it the same meaning as in the *Environment Act*. Pointing to legislative language that is already established elsewhere is a common way of establishing consistency in legislation. The *SDGA* also makes use of the phrase "sustainable prosperity", which section 2 of the Act defines as meaning "prosperity where economic growth, environmental stewardship and social responsibility are integrated and recognized as being interconnected".

Although the NSUARB is empowered fundamentally by Nova Scotia's *Utility and Review Board Act*, the Board's responsibilities as Nova Scotia's electricity regulator are shaped primarily by the *Public Utilities Act* (and sections 15-47 of that Act in particular), with additional duties and powers assigned through the *Electricity Act*.

In our view, the *Public Utilities Act* is the most logical place for a standalone mandate provision for the NSUARB analogous to that which appears in section 5 of Québec's *Act respecting the Régie de L'énergie*. We consider the Régie's mandate provision an appropriate model for an analogous mandate for the NSUARB, and we suggest the following language as a possibility:

> In exercising its functions, the Board shall reconcile the public interest, consumer protection, and the fair treatment of public utilities. The Board shall promote the satisfaction of energy needs in a manner that is consistent with the Government's electricity policy and environmental, sustainable development, and sustainable prosperity goals described in other provincial enactments and will exercise its functions in keeping with the principles of sustainable development and individual and collective equity.

Additionally, as we have already noted, any proposed amendment along these lines should be accompanied by an additional proposed amendment clearly explaining what is meant by "the principles of sustainable development". That proposed amendment could be a list of relevant principles preceded by an introductory phrase such as:

> For the purposes of this Act, the principles of sustainable development include, but are not limited to:

As we suggested above, the EAC could develop a list of appropriate principles by comparing the principles listed in Nova Scotia's *Environment Act*, Québec's *Sustainable Development Act*, and international documents such as the *Rio Declaration* and the United Nations' *2030 Agenda for Sustainable Development* to identify principles that reflect the collective commitments of the international community and illuminate the EAC's vision for sustainability in Nova Scotia.

Creating a Legislated Electricity Policy for Nova Scotia

Unlike several of the jurisdictional governments discussed throughout this report, the Government of Nova Scotia has not legislated a clear statement of Nova Scotia's electricity policy or objectives. In our view, Nova Scotia's legislated electricity regime would benefit from a legislated statement of the Government of Nova Scotia's electricity policy, and that legislated policy statement could include sustainability objectives and principles.

In our view, a legislated statement of the provincial government's electricity policy and objectives could appear in either the *Public Utilities Act* or the *Electricity Act* but may be most appropriately placed in the *Public Utilities Act*, as that statute is more detailed and comprehensive.

This report does not recommend language for a full statement of the Government of Nova Scotia's electricity policy, as such policy statements are often long and may include a variety of

objectives that need to be balanced against one another. We will instead focus solely on recommending language that would not only incorporate sustainability considerations but would also make it clear that the NSUARB is expected to exercise its functions in accordance with those considerations. Our jurisdictional reviews demonstrate that New Hampshire's legislation provides the best model for high-level policy statements that draw clear connections between the stated policies and the regulators' on-the-ground responsibilities.

A legislated electricity policy could begin with introductory language along these lines, modelled on the language that appears in New Brunswick's *Electricity Act*: "It is declared to be the policy of the Government of Nova Scotia". Subsequent provisions could then list various policy priorities.

Drawing on the language we recommended above when considering how section 5 of Québec's *Act respecting the Régie de l'énergie* could model a standalone mandate provision for the NSUARB, we suggest that a legislated electricity policy for Nova Scotia could include complementary sustainability provisions along these lines:

> Electricity needs in Nova Scotia shall be met in a manner that accords with the Province's environmental, sustainable development, and sustainable prosperity goals.
>
> Electricity needs in Nova Scotia shall be met in a manner that accords with the principles of sustainable development and individual and collective equity.

Drawing on the language that appears in RSA 374-F section III, we suggest that a legislated electricity policy for Nova Scotia conclude with a provision along these lines:

> These statements of policy shall guide the Board in the exercise of its functions.

Additionally, a legislated policy statement of this kind could also state that the Government of Nova Scotia expects NSPI and other public utilities to operate in a manner that is consistent with sustainability principles. That being said, if the provincial government were to consider requiring NSPI to operate in accordance with sustainability principles, it would be best to establish an additional legislative provision (not in the legislated policy statement) creating a clear legal obligation to that effect.

Assigning a Sustainability Mandate in Connection with Specific Decision-Making Responsibilities

As we noted above, the Government of Nova Scotia could give the NSUARB a clearly legislated sustainability mandate in connection with specific decision-making powers and responsibilities and could set and rank specific sustainability priorities for the Board to bear in mind when making certain decisions.

This report does not canvas specific NSUARB decision-making powers that could be enhanced by situation-specific sustainability mandates, as there could potentially be dozens of possibilities, including in the numerous situations where the Board has some oversight or administrative

responsibility for renewable energy, energy efficiency, energy conservation, or DSM programs and initiatives.

In our view, it would be preferable to advocate for a fundamental sustainability mandate that applies in all situations rather than focussing efforts on situation-specific sustainability mandates; however, it is worth keeping in mind that as new electricity programs and initiative are developed in Nova Scotia, the government (and potentially public) work of developing statutes and regulations to enable them can offer opportunities to advocate for the incorporation of sustainability principles.

Conclusion and Summary of Key Recommendations

Although there are multiple ways in which a clearly legislated sustainability mandate could be given to the NSUARB, our research leads us to conclude that the most effective way to give the Board a sustainability mandate would be to use a three-pronged approach by: (i) creating a standalone mandate provision which includes a sustainability mandate; (ii) establishing a legislated statement of provincial electricity policy which incorporates sustainability considerations, and (iii) legislating a list of relevant sustainability principles which illustrates how the sustainability mandate should be interpreted. This three-pronged approach would create mutually-reinforcing legislative provisions that make the significance of the sustainability mandate clear. We therefore conclude by summarizing the following key recommendations.

> **RECCOMENDATION 1:** The EAC should use section 5 of Québec's *Act respecting the Régie de l'énergie* as a model for a standalone mandate provision that would give a sustainability mandate to the NSUARB.
>
> **RECCOMENDATION 2:** The EAC should advocate for a legislated statement of the Government of Nova Scotia's electricity policy which includes sustainability considerations and draws a clear connection between the policy statement and the mandate of the NSUARB.
>
> **RECOMMENDATON 3:** The EAC should propose an additional law amendment to explain what is meant by whatever sustainability language the EAC chooses to include in its recommended mandate and policy provisions. In our view, it would likely be useful for the sustainability language chosen by the EAC to be grounded in the international articulation of sustainable development principles and objectives and to reflect and build on the existing incorporations of those international principles and objectives in Nova Scotian law.

Appendix: Clearly Legislated Sustainability Mandates – Table of Primary Research Findings

Jurisdiction	Does the Regulator Have a Clearly Legislated Sustainability Mandate?	Related Findings of Interest
Alberta	No	Subsection 17(1) of the *Alberta Utilities Commission Act* includes environmental considerations as part of the "public interest" in specific decision-making circumstances, demonstrating that environmental and sustainability considerations can inform the public interest in specific circumstances even when the regulator does not have a more fundamental sustainability mandate.
British Columbia	No	
Manitoba	No	
New Brunswick	No	
Newfoundland and Labrador	No	
Nova Scotia	No	
Northwest Territories	No	
Nunavut	No	
Ontario	Yes	The meaning of the Ontario Energy Board's legislated sustainability mandate is ambiguous and less clear than the sustainability mandate given to Québec's Régie de l'énergie.
Prince Edward Island	No	
Québec	Yes	The legislated sustainability mandate given to the Régie de l'énergie provides a useful model for analogous legislation in Nova Scotia.

Saskatchewan	No	
Yukon	No	

Connecticut	No	
Maine	No	
Massachusetts	No	
New Hampshire	Yes	The legislated sustainability mandate given to the New Hampshire Public Utilities Commission ("NHPUC") is less direct than the sustainability mandate given to Québec's Régie de l'énergie. In New Hampshire, the sustainability mandate is given through a legislated policy statement that is expressly intended to guide the NHPUC in regulating the state's electricity market, whereas in Québec the sustainability mandate is given through a standalone mandate provision.
Rhode Island	No	
Vermont	No	Although Vermont's Public Utility Commission does not have a fundamental, clearly legislated sustainability mandate that informs its regulatory responsibilities on the whole, the regulator does have a clearly legislated sustainability mandate that applies to one very specific decision-making power. As with Alberta's legislated electricity regime, this illustrates that environmental and sustainability considerations can be added to the regulator's role in specific circumstances even when they are not part of the regulator's mandate more generally.