



**Nova Scotia Utility and Review Board
Annual Accountability Report
For the Fiscal Year Ended March 31, 2006**

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Accountability Statement

The accountability report of the Nova Scotia Utility and Review Board for the year ended March 31, 2006, is prepared according to the *Provincial Finance Act* and government policy and guidelines. These authorities require the reporting of outcomes against the Board's business plan for the fiscal year 2005-2006. The reporting of the such outcomes necessarily includes estimates, judgements and opinions by management.

It is acknowledged that this accountability report is the responsibility of the Board's management and is, to the extent possible, a complete and accurate representation of outcomes relative to the goals and priorities set out in the Board's business plan for the year.

Peter W. Gurnham, Q.C., Chair

Paul G. Allen, CA, Executive Director

Introduction

1. This accountability report reflects on progress made in achieving the goals and priorities set out in the 2005-2006 business plan of the Board, and to describe other significant activities and accomplishments during the year. The 2005-2006 business plan more fully describes the Board's core business functions, goals and priorities for the year. The Board recommends that this accountability report be read in conjunction with the business plan.

Mandate

2. The Board is a quasi-judicial body created by the *Utility and Review Board Act*, S.N.S. 1992 c.11. The Board has regulatory and adjudicative jurisdiction to hear applications and appeals under a number of statutes including, but not limited to, the *Public Utilities Act*, *Assessment Act*, *Municipal Government Act*, *Revenue Act*, *Motor Carrier Act*, *Expropriation Act*, *Victims of Crime Act*, *Gaming Control Act*, *Liquor Licensing Act*, *Gas Distribution Act*, *Pipelines Act*, *Fire Safety Act* and *Education Act*. A complete list of statutes is attached as Appendix A.

3. The following is a brief description of the Board's responsibilities. For ease of understanding, the various functions are classified as regulatory or adjudicative in nature.

Regulatory Matters

4. Public Utilities. The Board exercises general supervision over all water, electrical, and steam heat utilities within the Province. This includes setting rates, tolls and charges; approval of regulations for provision of service; approval of capital expenditures in excess of \$25,000; and any other matter the Board feels necessary to properly carry out its responsibilities. Nova Scotia Power Inc., an investor-owned utility, is the largest public utility regulated by the Board.

5. Halifax - Dartmouth Bridges. The Board is required to set the rates, tolls and charges to be paid for use of the two bridges which cross Halifax Harbour and are operated by the Halifax-Dartmouth Bridge Commission.

6. Motor Carrier. The Board is responsible for a comprehensive safety inspection program and economic regulation of all public passenger carriers within the Province, and interprovincial carriers operating to and from the Province. Carriers are broadly defined to include not-for-profit carriers and school bus operations, as well as commercial bus companies. Commercial van operations are also included in the safety program but are not economically regulated. Economic regulation includes setting fares, approving routes and stops, approving equipment for use, hearing complaints against carriers, and hearing applications for modification or discontinuance of service.

7. Natural Gas. The Board has responsibility for regulation of the distribution of natural gas in Nova Scotia including pipelines and underground storage facilities. That includes, but is not limited to, selection of franchisees, approval of construction plans and issuance of operating permits.

8. Alcohol, Gaming and Amusements. The Board hears applications involving licensing and discipline of establishments authorized to sell liquor; licensing and discipline relating to gambling operations; and appeals of film classifications. Applications for reinstatement of access to casinos

by persons who have voluntarily excluded themselves are also heard by the Board.

9. Railways. The Board has regulatory responsibilities relating to licensing of short line railways which operate wholly within the Province.

Adjudicative Matters

10. Planning. The Board hears appeals from municipal councils relating to amendment of land use by-laws and staff decisions concerning issuance or amendment of development agreements.

11. Municipal and School Board Electoral Boundaries. The Board also hears applications to establish and amend boundaries of municipalities, including towns and regional municipalities. The Board sets polling district boundaries and determines the number of councillors for each municipality, and sets school board electoral district boundaries and determines the number of school board members.

12. Assessment. The Board hears appeals from decisions of the Regional Assessment Appeal Court respecting real property and business occupancy assessments and change of use tax levies.

13. Expropriation Compensation. Where a property owner and an expropriating authority cannot agree on the compensation to be paid for expropriated land an application can be made to the Board to set the value.

14. Victims' Rights and Services Compensation. The Board hears appeals from the decisions of the Director of Victim Services at the Department of Justice concerning compensation for certain expenses incurred by victims of crime.

15. Fire Safety. Certain orders made by the Fire Marshal and other fire officials under the *Fire Safety Act* may be appealed to the Board.

Highlights

16. The following were the most prominent matters during the year requiring significant effort or resources:

- a. A hearing relating to a request by NSPI (Nova Scotia Power Inc.) for an approximately 12.8% general increase in rates, tolls and charges as well as certain amendments in service regulations.
- b. Decision on an Open Access Transmission Tariff for NSPI.
- c. Initial consideration of an application by NSPI for approval of its air emissions strategic capital project (Lingan scrubbers).
- d. Completion of a review of NSPI's outage response to the storm event of November 13 and 14, 2004.
- e. Follow-up activities, including a plebiscite, relating to an interim decision on the

combined applications of the Town of Antigonish to annex a portion of the County, and the County of Antigonish to amalgamate with the Town.

- f. Numerous permit and license applications by Heritage Gas relating to the continued development of its distribution systems in Dartmouth and Amherst.
- g. A major hearing relating to an appeal of a decision of Halifax Regional Council to allow a development of the Midtown Tavern site. The appeal was made by Heritage Trust of Nova Scotia, Paul and Joyce McCulloch, Peninsula South Community Association and the Federation of Nova Scotia Heritage.

17. While the above items were the most significant activities in terms of public interest, impact on large numbers of taxpayers or ratepayers and consumption of Board resources, there are a large number of matters, such as appeal hearings, hearings related to public passenger matters, capital expenditure approvals, licensing applications and transfers, which cumulatively make up the bulk of the Board's work.

Mission

18. The mission of the Nova Scotia Utility and Review Board is to carry out the mandate assigned to it by government through statute and regulation.

Core Activities

19. Quasi-judicial Function. This is the primary function of the Board - to carry out those responsibilities delegated by the Legislature pursuant to various statutes.

20. Motor Carrier (Public Passenger) Administration. This involves safety inspection, licensing administration, and enforcement functions relating to the public passenger industry and some not-for-profit organizations.

Priorities and Goals

Core Area 1: Quasi-judicial Function

Priority 1 - Maintain a sufficient number of Board members with an appropriate mix of expertise in order to effectively carry out the assigned mandate.

21. The number of full-time members increased to eight from six during the year with the appointment of Mr. Murray E. Doehler, C.A., P.Eng. and Ms. Dawna J. Ring, Q.C.. The Chair had previously recommended government appoint two full-time members – one a legal professional and the other a financial professional – to fill vacancies on the Board. Government concurred with the recommendation and subsequently engaged the Advisory Committee required by the Guidelines to Ensure Appointments Based on Merit issued by the Minister of Justice in 2001. In addition, Mr. John A. Morash, C.A., F.C.M.A., C.B.V., a part-time member, was reappointed for one year.

Priority 2 - Maintain essential independence.

22. An important characteristic of the Board is its independence from control or significant influence by others. Parties applying or appealing to the Board must be satisfied that the Board and its members are independent both in fact and in appearance in order for the decision process to have credibility. The Board continues to operate as an independent entity and no significant changes have occurred that would alter this.

Priority 3 - Maintain a support infrastructure sufficient to ensure that hearings and decision making operations are not impaired. This includes ensuring sufficient advisory and administrative staff are available and that there are adequate hearing and office facilities.

23. Advisory staff provide technical advice to members and Board legal counsel as well as investigate certain complaints. Administrative staff support hearings and decision making activities of the Board as well as providing necessary financial, information systems and logistical services. One additional administrative staff person was added during the year. The staffing level and structure, adjusted in fiscal 2004-2005, was sufficient for requirements during fiscal 2005-2006.

24. As noted in previous Accountability Reports, the Board's hearing and office facilities were not felt to be adequate to provide the needed level of service, particularly for larger hearings. Improvement of the facilities was begun in fiscal 2004-2005 and completed in the 2005-2006 fiscal year.

Priority 4 - Ensure operations are being conducted in the most efficient manner possible within legal and resource limitations.

25. During fiscal 2005-2006 the Board continued a review of its hearing procedures, rules, regulations, and related administrative processes. The review involved government, legal and industry stakeholders and was completed in fiscal 2005-2006 with the issuance of new or amended rules¹ governing practice and procedure before the Board.

Core Area 2: Motor Carrier (Public Passenger) Administration.

Priority 1 - Maintain current inspection and inspection co-ordination levels to meet the requirement to inspect all public passenger vehicles twice annually.

¹ Board Regulatory Rules, Board Adjudicative Rules, Municipal Government Act Rules, and Assessment Appeal Rules

26. All vehicles in service² have been inspected every six months. Inspection capability was increased by two additional inspectors to fill approved vacant positions.

Priority 2 - Complete updating of the 15 year old computerized inspection and licensing system and associated business processes in order to minimize costs associated with licensing administration, provide inspection staff with accurate and timely information critical to their activities, and avoid failure due to technological obsolescence.

27. Initial design work for the upgrade of the existing computerized licensing system was completed during the year. Development of the new system is scheduled for fiscal 2006-2007. It is anticipated that the new system will be implemented by March of 2007.

Priority 3 - Maintain necessary level of trained staff for administration of licensing and inspection information systems.

28. The level of administrative staffing remains constant and was sufficient for 2005-2006 operations.

Priority 4 - Continue review of existing procedures regarding inspections and business processes to ensure costs are minimized and no unnecessary administrative burden is placed on stakeholders.

29. A number of process and procedure reviews will be done in conjunction with the update of the computerized licensing system. A broader review intended for FY 2005-2006 was deferred pending availability of Board members.

² Includes charter, transit, school, and specialty busses; vans operated under both motor carrier licenses and commercial van operations; and other specialty vehicles such as amphibious landing craft operated as tour vehicles.

Budget Context

Nova Scotia Utility & Review Board - Estimated Budget Expenditures by Core Business		
Core Business (all)	Budget 2005 - 2006	Actual 2005 - 2006
	(\$ thousands)	(\$ thousands)
Revenues:		
Grant from Province of Nova Scotia	3,087	3,087
Recoveries from utilities and others ³	1,509	3,530
Total Revenues	4,596	6,617
Expenditures:	4,596	6,503
Expected net income (loss)	---	114
Surplus, beginning of year ⁴	856	651
Surplus, end of year	856	765
Salaries and benefits	3,267	3,270
Funded members and staff (FTE's)	47	48

30. Higher than forecasted expenditures and recoveries relate primarily to unbudgeted direct costs of hearings. For larger proceedings out-of-pocket expenditures for items such as expert witnesses, hearing facilities, and legal fees are, in many cases, recovered from one or more parties to the proceeding.

³ Actual recoveries from utilities and others includes unbudgeted amounts relating to recovery of hearing expenditures for some larger hearings.

⁴ Budgeted opening surplus differs from the actual opening surplus by the amount of the actual net loss for the fiscal year ended March 31, 2005. Budget figures are submitted prior to completion of the fiscal year.

Measuring Performance

31. Performance measurement in a quasi-judicial context must be carefully designed due to the “custom” or “one-time” nature of many applications and appeals. For example, some hearings require reviews of large amounts of evidence, involve many parties, and can take a number of months to schedule and complete. Other matters may only require the review of small amounts of evidence and, after scheduling, need only a few days to complete. Regardless of the type of hearing the primary emphasis must always be on producing an unbiased, timely, fair and legally correct decision based on the specific facts of each case. During the year the Board introduced a performance target to have substantially all of its decisions released within 90 days of the date final submissions are received.

32. The following were felt to be reasonable measures for the 2005-2006 planning period:

Quasi-judicial Function

Improve efficiency in carrying out the Board’s legal mandate by continuing a review of the Board’s case management and hearing processes begun in fiscal 2005. This includes examining rules of procedure for hearings, including settlement rules.

33. The review of the case management was initiated as intended and completed during the 2005-2006 fiscal year. The review considered rules, hearing procedures, regulations, and related administrative processes and involved government, legal and industry stakeholders.

Issue decisions within 90 days of the date of receipt of final submissions unless an earlier date is set by law or where, by tradition, an earlier deadline is the ordinary practice. Seek to issue decisions on interlocutory matters within 10 business days.

34. This is the first year for this measurement. Results⁵ are as follows:

⁵ Note that the figures presented in the tables are output measures. Case data previously reported in the Board’s annual Activity Report were based on inputs, that is the number of matters received. Not all matters are processed in the year received.

Type of Matter ⁶	Number of Matters Decided	Matters Within Standard	Success Rate
Cases requiring hearing	659	643	97.6%
Interlocutory Matters	92	73	79.3%
Combined	751	716	95.3%

35. Average decision production times by area of jurisdiction are as follows:

Jurisdiction / Mandate	Number of Decisions (all types)	Average Time to Decision (days)
Alcohol, Gaming and Amusements	360	1.1
Assessment	37	57.2
Criminal Injury Compensation	2	58
Electricity	20	18.1
Expropriation Compensation	4	60.8
Fire Safety	0	0
Halifax-Dartmouth Bridge Commission	1	0 ⁷
Motor Carrier	110	3
Municipal and School Board Boundaries	1	299 ⁸
Natural Gas	90	2
Planning	15	74.7
Water	19	15.6

36. The above figures are a benchmark for future performance. To provide additional incentive to meet targets, pay for performance⁹ for full-time Board members was introduced during the year. Further, as noted above, the Board's rules of practice and procedure were

⁶ Hearings include public hearings, *in camera* or closed sessions, telephone conferences and *ex parte* proceedings. Interlocutory matters are applications which do not require a hearing but do require approval of a Board member.

⁷ Decision was rendered on the same day as receipt of final evidence.

⁸ Complex matter re Antigonish annexation and amalgamation applications.

⁹ See Order in Council 2005-344 dated July 29, 2005.

reviewed and amended.

Motor Carrier (Public Passenger) Administration

Continue with current vehicle inspection program. Public passenger vehicles are safety inspected at least twice annually with other inspections and investigations occurring as circumstances require.

37. As noted above, all vehicles were inspected every six months. The Board is not aware of any vehicle kept from service awaiting regular inspection.

Complete modernization of computerized motor carrier licensing system.

38. As noted above, update of the system is in progress with anticipated implementation in March 2007. The update will not only prevent failure due to obsolescence but also introduce a number of improvements such as remote access and data entry by inspectors, better data input processes, and better reporting of non-inspection events.

Continue with review of motor carrier inspection and business processes.

39. This review has been suspended indefinitely as staff have been assigned to other higher priority activities. Some business process reviews will be done in conjunction with the update of the computerized licensing system.

Appendix A
Nova Scotia Utility and Review Board
List of Statutes Containing Board Mandate

Assessment Act, R.S.N.S. 1989, c.23 as amended
Education Act, S.N.S. 1995-96, c.1 as amended
Electrical Installation and Inspection Act, R.S.N.S. 1989, c. 141 as amended
Energy Resources Conservation Act, R.S.N.S., 1989, c.147 as amended
Expropriation Act, R.S.N.S. 1989, c. 156 as amended
Fire Safety Act, S.N.S. 2002, c.6
Gaming Control Act (Part II), S.N.S. 1994-95, c. 4 as amended
Gas Distribution Act, S.N.S., 1997, c. 4 as amended
Halifax-Dartmouth Bridge Commission Act, R.S.N.S. 1989, c.192 as amended
Heritage Property Act, R.S.N.S. 1989, c.199 as amended
Liquor Control Act, R.S.N.S. 1989, c.260 as amended
Motor Carrier Act (public passenger only), R.S.N.S. 1989, c.292 as amended
Motor Vehicle Transport Act of Canada, S.C. 1987, c.35 (Federal) as amended
Municipal Government Act, S.N.S. 1998, c.18 as amended
Nova Scotia Power Finance Corporation Act, R.S.N.S. 1989, c.351 as amended
Nova Scotia Power Privatization Act, S.N.S. 1992, c.8 as amended
Petroleum Resources Act, R.S.N.S. 1989, c. 342 as amended
Petroleum Resources Removal Permit Act, S.N.S. 1999 c.7 as amended
Pipeline Act, R.S.N.S. 1989 c. 345 as amended
Public Utilities Act, R.S.N.S. 1989, c.380 as amended
Railways Act, S.N.S. 1993, c.11 as amended
Theatre and Amusement Act, R.S.N.S. 1989, c. 466 as amended
Underground Hydrocarbons Storage Act, S.N.S. 2001, c. 37
Utility and Review Board Act, S.N.S. 1992, c. 11 as amended
Victims' Rights and Services Act, R.S.N.S. 1989, c.14 as amended