



Docket UE20940
Order UE10-03

IN THE MATTER of an
application by Maritime Electric Company,
Limited for approval of amendments to rates,
tolls and charges.

**BEFORE THE
COMMISSION**

on Monday, the 12th day of July, 2010.

Maurice Rodgerson, Chair
John Broderick, Commissioner
Anne Petley, Commissioner
Ernest Arsenault, Commissioner

Order

Compared and Certified a True Copy

(Sgd) *Allison MacEwen*

Director, Technical and Regulatory
Services

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Appearances & Witnesses

1. **For Maritime Electric Company, Limited**
Counsel:
Spencer Campbell
Thomas Laughlin

Witnesses:
Fred J. O'Brien, President & Chief Executive Officer
John D. Gaudet, Vice President, Corporate Planning & Energy Supply
J. William Geldert, Vice President, Finance & Administration, Chief
Financial Officer & Corporate Secretary
Steven D. Loggie, Vice President, Customer Service
Kathleen C. McShane, Consultant, Foster Associates, Inc.

2. **For the Minister of Environment, Energy & Forestry, Government of Prince
Edward Island**
Counsel:
J. Gordon MacKay

Witnesses:
Laurence D. Booth, Consultant
Wayne MacQuarrie, PEI Energy Corporation

3. **Interveners**
Roger King, PEI Senior Citizens' Federation
Matthew MacCarville, Environmental Coalition of PEI
John te Raa, Private Citizen

4. **Public Participants**
Ernest Mutch & John Jamieson, PEI Federation of Agriculture
Elwin Wyand, Edith Ling, Douglas Campbell and David Best, National
Farmers Union District 1, Region 1
Harold MacNevin, Dairy Farmers of Prince Edward Island

5. For The Island Regulatory and Appeals Commission

Counsel:

Ryan P. MacDonald

Staff:

Allison MacEwen, Director, Technical & Regulatory Services

Mark Lanigan, Senior Analyst, Technical & Regulatory Services

Linda Allen, Recording Secretary

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Reasons for Order

1. Introduction & Background

[1] This is an application under the *Electric Power Act*, R.S.P.E.I. 1988, Cap. E-4, by Maritime Electric Company, Limited (the “Applicant”, “Maritime Electric” or the “Company”) seeking, among other things, an Order or Orders of the Island Regulatory and Appeals Commission (the “Commission”) approving amendments to the rates, tolls and charges for electric service for the period beginning August 1, 2010, and reconsideration of the 2nd block rate elimination.

[2] The Application was filed pursuant to Section 20(1) of the *Electric Power Act* (the “*Act*”) which reads as follows:

Variation of
rates,
submission for
review and
approval

20. (1) Whenever any public utility wishes to vary any existing rates, tolls or charges, or to establish any new rates, tolls or charges for any service, it shall submit for the review and approval of the Commission a schedule of such proposed rates, tolls and charges together with and appended thereto all rules and regulations which, in any manner, relate to the rates, tolls and charges; the Commission may approve, after reviewing the schedule and rules and regulations submitted, the schedule of rates, tolls and charges and the rules and regulations either in whole or in part, or may determine and fix new rates, tolls and charges, and amend the rules and regulations as it sees fit. 2003,c.3.s.10.

[3] The Company's original application filed with the Commission on January 29, 2010 requested the following:

1. Approval to rebase the Energy Cost Adjustment Mechanism ("ECAM") which would increase the base charge for energy to \$0.0940/kWh in 2010 and \$0.0960/kWh effective April 1, 2011;
2. Permission to file an updated report on ECAM rebasing to the Commission by November 30, 2010;
3. Approval to continue the Point Lepreau replacement energy deferral, as well as approval of a 25-year amortization period for deferred replacement energy costs, beginning with the return to service expected March 1, 2011; and
4. Approval of a maximum allowed Return on Average Common Equity of 9.75 per cent for 2010 and 2011.

[4] In February, 2010 the Commission published a Notice of Application in local newspapers seeking public input. The following summarizes the responses received:

The PEI Senior Citizens' Federation and affiliate senior clubs across PEI filed petitions signed by members of each local club stating:

"We the undersigned request that IRAC hold a public hearing to review the 2010 Rate Change Application submitted by Maritime Electric."

In addition, several of the petitions included letters from seniors which provided various comments such as:

- a) the need for MECL to use time-of-day rates;
- b) the Company should be required to "think outside the box and use more hydro, nuclear and wind power";
- c) a public hearing like last year's would be useful to assist with their understanding;
- d) concerns about the refurbishment of Point Lepreau, replacement energy costs and rate implications;
- e) the elimination of the second block and the lack of information on the impact on certain customers; and
- f) energy charge increases and the Company's conflicting statement of no cost increases in 2010.

The Federation of Agriculture provided correspondence on March 4, 2010 stating that the current application, along with a previously issued IRAC Order (UE08-01), have implications for the agricultural sector on PEI. The Federation suggested that a public hearing be held where they could participate and present their concerns.

The Commission received either directly, or via copy, three pieces of correspondence from Mr. John te Raa. The correspondence contained questions and referenced the need for full consideration of the true cost of electricity in setting rates. No mention was made regarding the requirement to hold a public hearing.

Mr. Roger King filed two emails with the Commission. His first email indicated that the Company's rate application is written in a confusing manner, does not explicitly state the rate changes proposed, and that the Company does not "think outside the box". Mr. King also stated that electric heat is the most efficient and is more environmentally-friendly, and that a combination of in-floor and domestic hot water heating with a "time of day" tariff is one obvious alternative to a second block rate. As well, he requested a public hearing be held to allow for full public input.

In his second email, Mr. King provided comments on Commission Order UE08-01 suggesting that the wording is unclear. He also stated that the elimination of the declining block is just one issue of many "requests for change" in the 2010 application that affect customers in both the short and long term. Mr. King concluded his email by stating that "a public hearing is necessary to have all public issues resolved where facts are sorted from fiction and Islanders are told one common and correct story".

Ira Smith provided a letter to the Commission expressing concern and support regarding the continuation of the Point Lepreau replacement energy deferral. Also, she stated the cost of the replacement energy and refurbishment costs should be incurred by today's consumers and not our children and grandchildren.

The Province of PEI, by letter dated February 19, 2010, filed a Notice of Intervention and requested the Commission schedule a public hearing for the purpose of the presentation of oral evidence with respect to this application. The Province also filed a series of interrogatories with respect to this application.

On March 2, 2010 the Hon. Richard Brown, Minister of Environment, Energy and Forestry, wrote the Commission requesting the Commission review and rescind Order UE08-01 with regard to the elimination of the reduced second block rate.

In addition, on March 5, 2010 Maritime Electric wrote the Commission seeking approval to suspend the implementation of UE08-01 based on the following reasons:

- a. Discussion between Governments of PEI and Quebec concerning a potential energy supply agreement which would change electricity pricing in PEI beyond a reduced second block;
- b. The need for a further cost allocation study which may impact all rates;
- c. Further development of an updated Demand Side Management plan (“DSM”); and
- d. Reconsideration of the reduced second block as part of the pending 2010 rate application will allow all interested parties, who have expressed concerns about the public awareness and lack of consultation of the reduced second block elimination, an opportunity to make their views and evidence known to the Commission.

[5] The Commission issued Order UE10-01 on March 9, 2010 which delayed the final step in the elimination of the second block rate, directed the Company to file further information on this issue, and instructed the Company that the 2nd block tariff would be reviewed as part of the 2010 rate application.

[6] Following the significant public interest in this application, in April, 2010, the Commission published a notice in local newspapers inviting parties to participate in a public hearing. Anyone interested in participating as an intervener was advised to file a Notice of Intervention stating their reason for intervention and invited interveners to present their evidence. Four (4) parties registered as interveners in this application:

- Government of PEI, as represented by the Minister of Environment, Energy and Forestry;
- PEI Senior Citizens’ Federation, represented by Mr. Roger King;
- Environmental Coalition of PEI (ECO PEI), represented by Mr. Matthew MacCarville; and
- Mr. John te Raa, as a private citizen.

[7] Commission staff conducted two pre-hearing conferences with all parties participating. A process for interrogatories, Company responses and filing of expert and intervener evidence was agreed upon. The Commission website published all information filed making the information available to all parties and the general public.

[8] The public hearing was held June 14, 2010 thru June 18, 2010 in the Commission's main hearing room. The hearing participants included Mr. Spencer Campbell and Mr. Thomas Laughlin, legal counsel for Maritime Electric, Mr. Gordon MacKay, legal counsel for the Government of PEI, PEI Senior Citizens' Federation represented by Mr. Roger King, Environmental Coalition of PEI represented by Mr. Matthew MacCarville, and Mr. John te Raa, representing himself.

[9] Three groups—PEI Federation of Agriculture, as represented by Mr. Ernie Mutch and Mr. John Jamieson; National Farmers Union Region 1 District 1, represented by Mr. Elwin Wyand, Ms. Edith Ling, Mr. Douglas Campbell and Mr. David Best, and Dairy Farmers of PEI, represented by Mr. Harold MacNevin—requested and received permission to speak at the hearing. All three groups spoke on behalf of the PEI farming community.

[10] There were members of the media in attendance; however, few members of the public attended the proceedings.

2. The Application

[11] The Company's original application filed with the Commission on January 29, 2010 requested approval of the following:

1. Rebasing of the Energy Cost Adjustment Mechanism ("ECAM") which would increase the base charge for energy incorporated into customer billings to \$0.0940/kWh in 2010 and \$0.0960/kWh effective April 1, 2010;
2. Filing of an updated ECAM rebasing report by November 30, 2010;
3. Continuation of the Point Lepreau replacement energy deferral and approval of a 25-year amortization of these deferred replacement energy costs beginning with the return to service expected to be March 1, 2011; and
4. Approval of a maximum allowed Return on Average Common Equity of 9.75 per cent for 2010 and 2011.

[12] The application incorporated the final step in the elimination of the second block reduced rate, which was approved in 2008 by Commission Order UE08-01 following a public process.

[13] As well, the Costs Recoverable from Customers (Post 2003)—or ECAM—balance, excluding Point Lepreau, is forecast to be \$6,316,300 at the end of 2010 and \$8,800,000 at the end of 2011. The Point Lepreau replacement energy costs to be recovered from customers, assuming a 25-year amortization beginning March 2011, would be \$43,100,000 at the end of 2010 and \$45,800,000 at the end of 2011.

[14] The application states there is no change requested in the monthly service charge for the various rate categories. The company proposes the consumer energy rate for electricity consumed will change from \$0.1178 kWh for the first 2,000 kWh/month and \$0.0914 kWh for the remaining monthly consumption, with a new combined rate of \$0.1355 kWh month.

[15] The application would see the residential consumer using 650 kWh/month (or 7,800 kWh/year) experience a forecast annual electricity cost reduction of (0.5%) and (0.4%) in 2010 and 2011.

[16] The Company stated the application contains just and reasonable proposals which balance the interests of Maritime Electric and its customers and allows the Company to provide a high level of service at prices which are reasonable based upon their costs.

[17] On April 8 and 12, 2010 the Company filed supplemental affidavits requesting the Commission approve an amended application which proposed:

1. A continuation of the 2,000 kWh/month 2nd energy block pricing;
2. Rebasings of the Energy Cost Adjustment Mechanism (“ECAM”) which would increase the base charge for energy incorporated into customer billings to \$0.0990/kWh effective August 1, 2010, and \$0.0900/kWh effective April 1, 2011;
3. MECL file an updated report of ECAM rebasing with the Commission by November 30, 2010;
4. A continuation of the Point Lepreau replacement energy deferral and the approval of a 25-year amortization of these deferred replacement energy costs beginning with the return to service expected to be March 1, 2011; and
5. A maximum allowed Return on Average Common Equity of 9.75 per cent for 2010 and 2011.

[18] Under this proposal the Costs Recoverable from Customers (Post 2003) or ECAM balance, excluding Point Lepreau is forecast to be \$7,758,500 at the end of 2010 and \$12,467,600 at the end of 2011. The Point Lepreau replacement energy costs to be recovered from customers, assuming a 25-year amortization beginning March 2011, would be \$43,294,100 at the end of 2010 and \$45,999,800 at the end of 2011. A Commission decision on the recovery of Point Lepreau replacement energy is requested in this amended application as well.

[19] The amended application states there is no change requested in the monthly service charge for the various rate categories. The energy rate for electricity is proposed to increase from \$0.1178 kWh for the first 2,000 kWh/month and \$0.0914 kWh for the remaining monthly consumption to \$0.1455 kWh for the first 2,000 kWh/month and \$0.1103 for the remaining monthly consumption. The amended application maintains the same pricing relationship between the second and first block rate.

[20] The amended application, as proposed, would see the residential consumer using 650 kWh/month (or 7,800 kWh/year) experience a forecast annual electricity cost reduction of (1.1%) in 2010 and no change in 2011 electricity costs over 2010.

[21] In addition, the amended application states the Revenue Requirement Recovery associated with the second block reinstatement would be allocated across all rate classes and adjustments would be made to the ECAM.

3. Discussion

3.1 Intervener—PEI Seniors Citizens' Federation

[22] The PEI Senior Citizens' Federation ("Seniors' Federation") presented information concerning demographics of PEI seniors, the economic situations many face in household budgets, and the increasing electricity cost component which reduces available funds for other essential expenditures such as food and shelter.

[23] The Seniors' Federation explained to the Commission seniors' energy needs and the difficulties many face to achieve energy conservation.

[24] The Seniors' Federation raised the following financial issues with the Commission:

- It supports Maritime Electric's objective to reduce customer debt;
- The chosen solution of increasing the basic rates by 15% for 2010 and a further 3% in 2011 is not endorsed;
- The majority of energy supply costs are declining—future customer rates should be declining too;
- NB Power set energy purchase prices but customer rates are also dependent on Maritime Electric's operating costs;
- Increased scrutiny of Maritime Electric's operating costs is required;
- Maritime Electric continues to request high annual capital expenditures and a high rate of return in a non-growth, low risk business activity; and
- Detailed future year estimates are difficult to reason/check by public observers and customers.

[25] The Seniors' Federation notes that the basic electricity rate increase applies to all rate tariff categories affecting every PEI resident, farmer and business, and is independent of the second block issue. It also notes that Maritime Electric is accumulating high customer debt during the Point Lepreau refurbishment and future nuclear power will cost significantly more. In addition, despite a static PEI energy demand situation and a Canadian economy battling with decline, Maritime Electric proposes increasing annual profits from \$11.4 Million in 2009 to \$12 Million in 2010 and \$12.6 Million in 2011.

[26] The Seniors' Federation expressed concern over the Point Lepreau refurbishment project, the continued delays and the mounting cost of replacement energy which must be recovered from customers over future years. They believe this recovery through rates, along with the unknown future price of electricity from the nuclear generator, may make this an expensive energy source.

[27] In addition, concern was expressed about the cost of power from the NB Power Dalhousie generating facility which has increased substantially due to fuel costs, and the future plans for the plant appear to be uncertain based on public comments from NB Power.

[28] The Seniors' Federation made the following recommendations to the Commission:

- 2010 rates remain unchanged with the ECAM amortization period reduced to 8 months to contain customer debt to the Company;
- Return on Equity of 8% is suggested which better reflects the operational risks of the Company;
- A reduction in capital budget to 8% of revenue to a maximum of \$15 Million;
- Have external consultants review general and administrative expenses and generation asset costs;
- Key Performance Indicators (KPIs) should be set to competitive benchmarks;
- Review viability of future participation in Point Lepreau considering the energy replacement costs, along with future energy costs from this source;
- Direct the Company to consider terminating its agreement with the Dalhousie generating facility; and
- Future rate applications be single year to enable timely rate changes each April.

[29] In response to Commission staff questioning during the hearing, the Seniors' Federation stated they took no position on the elimination of the second block even though many seniors are affected by this rate differential.

3.2 Intervener—John te Raa

[30] Mr. John te Raa presented evidence to the Commission concerning electric heating, its implications to the Company and to customers and rates. Electric heating results in a poor system load factor, an indicator of the efficiency usage of the electrical system. The higher the system electrical load factor the more efficient the use of the system and the less customer cross-subsidization of rates. For instance, Mr. te Raa provided evidence which states the electric load factor of an oil heat customer is 64% while that of an electric heat customer is 30%. The Company's data, provided through interrogatories, supports his claim that electric heat is having a greater influence on PEI with last year's peak load almost shifting to January from December.

[31] Mr. te Raa challenged the intervention by the Province of PEI which supported the retention of the second block. In general, Mr. te Raa states the Province is intervening to protect a small number of customers (7%) at the expense (subsidization) of the majority of customers. In fact, Mr. te Raa states low consumption customers, such as low income customers or families on social services, pay higher electricity bills to offset the discount provided to higher consumption customers.

[32] Mr. te Raa presented a proposal which would alter the current fee structure so that higher energy usage customers would pay a higher base service charge as a consequence of their impact on the system load factor and capacity requirements during peak energy consumption periods. Mr. te Raa stated the Commission should order the Company to create different rate classes within the Residential Rate category as well as set up a different rate class for electric heat customers, including those heating by heat pumps.

[33] Mr. te Raa also stated the ECAM's objective is the smoothing of rates within a set time frame and currently the ECAM just continues to grow and defer the real cost of energy to customers while delaying the proper customer price signals in rates. The ECAM rebasing in both the original application and the amended application shows a growing ECAM deferral account and is not operating as a rate smoothing mechanism.

3.3 Intervener—ECO PEI

[34] ECO PEI recommended the implementation of time-of-use rates and suggested the initiative to replace mechanical meters with digital meters should have taken advantage of the upgrade to install Smart meters. Smart meters could be utilized in a variety of environmentally friendly initiatives which ECO PEI believes have a direct benefit to customers. ECO PEI suggests the utility become more involved in fostering future electrical energy options which result in greater use of wind resources to heat our homes, such as wind/electric thermal storage. Transportation was suggested as a key focus for reducing Green House Gas (“GHG”) emissions on the Island. While other GHG emissions on the Island have decreased, emissions from transportation have increased. ECOPEI suggested greater utilization of Grid Enabled Vehicles and noted the absence of recharge stations for electric vehicles.

[35] ECO PEI presented a variety of energy conservation and demand side management initiatives and themes which looked at consumer energy usage strategically over the longer term. Although their presentation did not focus on the specifics of this application, ECO PEI would like further development of smart grid and greater inter-regional cooperation in the Maritimes which would assist in the development and usage of the PEI’s excellent wind resource.

3.4 Intervener—Government of PEI

[36] The Government of PEI, as represented by the Minister of Environment, Energy and Forestry, presented the evidence and expert testimony of Laurence Booth, Professor of Finance, Rotman School of Management, University of Toronto. Mr. Booth has extensive experience in financial affairs and has appeared before many regulatory boards providing evidence relating to Return on Equity (“ROE”) for Canadian utilities.

[37] Mr. Booth informed the Commission the objective of rate of return regulation can be summarized as the “fair return standard” which has received wide acceptance due to the legal precedent established in the 1929 case *Northwestern Utilities v City of Edmonton*. Mr. Justice Lamont’s definition of fair rate of return states:

“...that the company will be allowed as large a return on the capital invested in the enterprise as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company’s enterprise.”

[38] Economists, generally, refer to this principle as the opportunity cost and it is generally agreed that the return is applied to the book value of assets.

[39] Mr. Booth stated that most regulators in Canada have adopted an ROE formula approach in which Capital Asset Pricing Model (“CAPM”) has been the predominant model used. The model is referred to as a risk positioning model and it tries to estimate a fair return being the risk free rate, plus a risk premium for the market and the company.

[40] Mr. Booth stated that utility stocks did not fair badly during the recent financial market declines and have since regained their pre-market crisis values. This is evidence of their low risk and the fair return approved by regulators using this formula CAPM approach.

[41] Mr. Booth stated the returns of US utilities are not comparable as these utilities are inherently riskier because the business climate in the US is generally riskier. This is evidenced by the financial crisis which originated in the US and the continued perilous economy there. He believes the Canadian economic climate is much healthier in that the recession is felt to be behind us and that Canadian government finances are much healthier than the structural deficit problems faced by the US government.

[42] Mr. Booth stated that in 2009 regulators have reviewed the formula results and made formula risk premium adjustments to take into consideration the financial crisis of 2009. This has resulted in 2009 ROE decisions by regulators being artificially high and these should come down as the financial markets regain liquidity and stability.

[43] Mr. Booth describes the Company as a small distribution utility with a low risk profile, as it is a monopoly provider on PEI, which is a low risk environment due to no significant exposure to a single resource like Newfoundland. Mr. Booth quotes an excerpt of the Standard & Poor’s assessment of the Company, “strong business profile ... a mature, but stable economy with relatively low growth rates.” Mr. Booth makes reference to the weakness of the Company being its small size, limited market access and significant deferrals. Mr. Booth dismisses the deferrals due to regulators ensuring their collection.

[44] Overall, Mr. Booth assesses the Company as a low risk Canadian utility, even though it has a corporate rating of BBB+, its secured debt is rated at A-. He indicates these ratings are below the averages for Canadian utilities.

[45] Mr. Booth recommends an ROE of 8.0% at the 40% legislated common equity ratio. In addition, he believes the legislated common equity ratio should be revisited once the financial markets have settled from the financial crisis of 2008/09.

[46] Mr. Wayne MacQuarrie, presented the PEI Government's position regarding the retention of the 2nd block reduced rate. In his affidavit, Mr. MacQuarrie stated the Government initially supported the elimination of the second block in 2008. However, due to changed circumstances, Government now feels the second block should be retained until various issues associated with electricity on PEI are resolved.

[47] Mr. MacQuarrie updated the Commission regarding ongoing Government negotiations for less expensive energy supply from other jurisdictions such as Quebec and Newfoundland. These suppliers are becoming viable options for PEI with the Open Access Transmission Tariff ("OATT") approved by many jurisdictions, and the development of a competitive energy supply market.

[48] Mr. MacQuarrie stated that the staged increase in the threshold for 2nd block qualification has improved price signals to consumers and the remaining consumers affected by the 2,000 kWh threshold have few viable options to reduce energy consumption. In addition, the retention of the second block at the current level will not result in a material change in consumer consumption or financial consequence to all ratepayers.

[49] Mr. MacQuarrie stated the Point Lepreau refurbishment and replacement energy expense and the uncertainty associated with the Dalhousie generating facility will have further rate burden on consumers and will impact energy consumption decisions.

3.5 Members of the Public

[50] Each of the three groups that attended and made presentations at the hearing expressed concern over electricity rates on PEI and their inability to recover these rising costs from the market place. In addition, each group expressed frustration over the Commission's previous decision to eliminate 2nd block reduced rate pricing. The farm groups stated that energy conservation and demand side management programs have been incorporated in their daily activities but farming operations require significant electricity consumption. Many government programs, which provide assistance for capital outlays to reduce farm energy bills, do not provide the appropriate cost benefit relationship to warrant investment. For instance, on-farm wind generated electricity requires changes in government electricity regulations to allow for net billing. It is believed net billing would provide a stronger business case as it results in a faster payback.

3.6 Applicant—Maritime Electric Company, Limited

[51] Maritime Electric presented evidence and expert testimony of Kathleen McShane, President of Foster & Associates, an economic consulting firm. Ms. McShane reiterated the fair return standard as the legal precedent upon which regulators must establish ROE amounts. Ms. McShane states the fair return standard gives a regulated utility the opportunity to:

- earn a return on investment commensurate with that of comparable risk enterprises;
- maintain its financial integrity; and
- attract capital on reasonable terms.

[52] Ms. McShane presented a view that Maritime Electric faces higher business risk than the average Canadian utility. This assessment referenced the following risk factors:

- Maritime Electric faces higher operating and supply risks relative to the typical Canadian distribution utility. An Island location dependent upon submarine cables and the requirement to maintain on-Island generation represents risks no other Canadian distribution utilities face in regards to supply disruption;
- PEI's *Renewable Energy Act* requires the Company to source 15% of its energy requirements from renewable sources with an increase to 30% contemplated, and significant penalties for non-compliance;
- Maritime Electric's small size and its limited potential for growth in serving a largely rural population with low-growth rates puts pressure on the aging infrastructure and upward pressure on rates;
- Regulatory risk for the Company has been a factor in the past noting the changed regulatory model to price cap regulation and then back to cost-of-service regulation;
- Maritime Electric continues to maintain significant deferral accounts for energy purchases for both ongoing energy supply and replacement of Point Lepreau energy due to the refurbishment. These deferral accounts require regulatory approvals for recovery and put pressure on the Company's financial position as evidenced by the operating financial ratios;
- Maritime Electric's corporate credit rating of BBB+ is lower than that of the average Canadian electric utility (A-) and the Standard & Poor's rating has noted the Company's poorer business metrics, such as lower than average earning before taxes interest coverage, funds from operation to total debt and challenged cash flow position; and
- Overall, Standard & Poor's have rated Maritime Electric's business risk profile as "Satisfactory" which is two rating categories below the average business risk profile assigned to Canadian utilities of "Excellent".

[53] Ms. McShane concluded the ROE of 9.75% on a common equity ratio of between 41% and 41.8% is not only reasonable but relatively low, based on approved ROE levels for other Canadian and US utilities.

[54] Ms. McShane acknowledged the role of formulas in ROE rate setting, however, she pointed to shortcomings in the formula approach in that measuring individual securities risk relative to the market is by a beta factor. Selecting a beta factor that appropriately measures security risk requires judgment that can lead to disagreement among evaluators. Ms. McShane suggested no one formula can measure all requirements of the fair return standard and pinpoint a fair return. In establishing a fair return, reliance on multiple tests, such as, CAPM, discounted cash flow and comparable earnings tests, is a better approach. Each test requires judgment in their application.

[55] Ms. McShane stated that this Commission has never adopted the CAPM formula as the means of ROE. Ms. McShane also stated the Commission has previously taken into consideration comparable earnings of other Atlantic Canadian electric utilities in setting ROE.

[56] Ms. McShane agreed that certain Canadian regulators have incorporated premiums in ROE to account for the impact of the financial crisis. Ms. McShane argued that the financial crisis has highlighted the flaw of the automatic formula approach as the formulas do not take into account all business risks in a timely fashion.

[57] Ms. McShane provided a table of approved ROE and common equity ratios for 2009. This table also provided US average ROE as well. The table outlines the 2009 average Canadian ROE of 9.52% with a common equity ratio of 40.5%. This includes the 9.85% ROE for Ontario Electricity Distributors for 2010. This 2010 OEB decision is 0.10% higher than the 2009 rate of 9.75%.

[58] In support of the written evidence filed as part of the application, Maritime Electric provided testimony from Company President, Mr. Fred O'Brien and a panel of members of Senior Management, consisting of: Mr. William Geldert, Mr. John Gaudet and Mr. Steve Loggie.

[59] Maritime Electric provided the Commission with a supplemental affidavit in support of retaining the second block in its current form for the following reasons:

- It may be premature due to ongoing discussions between the Governments of Quebec and PEI concerning a power purchase agreement which would reduce energy costs and could affect decisions concerning the elimination of the second block;

- Current DSM initiatives have been successful and the retention of the 2nd block will not have a material impact upon future Company DSM plans; and
- The retention of the second block does not cause material differences in the financial situation of the Company as the Revenue Requirement Recovery or revenue shortfall from the 2nd block will be spread across all rate classes, and these differences are not material.

[60] In addition, in response to comments raised during the hearing on the issue of net billing, the Company expressed concerns relating to cross-subsidization of ratepayers under net billing approaches.

[61] The Commission acknowledges and thanks all of the participants for their contributions.

4. Findings

[62] Upon completion of the public hearing and a review of the evidence and closing submissions of the parties, the Commission made the following determinations:

4.1 Point LePreau Replacement Energy

[63] The Company has a 4.72% participation agreement with NB Power Nuclear which entitles the Company to this portion of energy output from the facility. During the hearing the Commission heard the Company had little influence on the refurbishment decision due to its minor involvement with the facility. The 1994 participation agreement established the requirement to pay the monthly fixed overhead costs of the facility during refurbishment, as well as obtain replacement energy.

[64] During the hearing, the Company stated that future participation in Point Lepreau is more beneficial than trying to buy out its participation agreement responsibilities. The Company stated the Lepreau generating facility is still economically viable, in their opinion.

[65] Maritime Electric stated NB Power has not made any decisions regarding the customer rate recovery of replacement energy costs. While Maritime Electric is deferring the replacement energy costs it continues to make monthly payments to NB Power for its share of the operating and maintenance costs.

[66] At present, the refurbishment of Point LePreau is not complete and there have been several delays. The expected date of return to service is now scheduled as March 1, 2011; however, further delays are possible.

[67] The Commission heard the concerns expressed by both the Seniors' Federation and Mr. te Raa regarding the increasing deferred replacement energy costs. Effective January 1, 2009, and continuing to the return to service date of Point Lepreau, the Commission directed the deferral of replacement energy costs. The Company's application states the 2010 year-end balance of replacement energy costs are forecast to be \$43.3 million and \$46.0 million in 2011. This assumes a return to service of March 1, 2011 and the beginning of the 25-year amortization period requested in this application.

[68] The Commission has considered the information filed with the application concerning the amortization of replacement energy costs of other jurisdictions and notes that it is accepted regulatory practice to amortize costs over the future service life of the refurbished facility.

[69] The Commission, therefore, orders the Company to continue with the deferral of the replacement energy costs until the return to service of the Point Lepreau facility. The Commission further orders the Company to begin recovering replacement energy costs through rates over the expected future service life of the facility, currently estimated to be 25 years. The Commission directs the Company to provide updated information concerning the expected future service life once reliable estimates are established.

[70] The Commission is concerned over the lack of detailed evidence associated with the Point Lepreau facility. The Commission directs Maritime Electric to file, on a confidential basis, the cost estimates and economic analysis associated with their continued involvement with the facility.

4.2 ECAM Rebasing and Amortization Period

[71] The Company has filed the ECAM rebasing proposal contained in this application pursuant to Commission Order UE09-02. The Company's ECAM balances in the original application and amended application are forecast as follows:

	Calendar Year	ECAM Year End Balance
Original Application	2010	\$6,122,255
	2011	\$8,600,141
Amended Application (retain 2 nd block)	2010	\$7,758,524
	2011	\$12,467,603

[72] The original application and supplemental amended application (retain 2nd block) contained ECAM rebasing proposals that had the following annual customer cost impact:

Rate Class	Demand KW/Month	Consumption kWh/Month	2010		2011	
			Original Application Apr 1	Amended (Retain 2 nd Block) Aug 1	Original Application Apr 1	Amended (Retain 2 nd Block) Aug 1
Residential - Rural	n/a	650	-0.5%	-1.1%	-0.4%	0.0%
General Service	0-20	500	2.1%	2.7%	0.5%	0.8%
General Service	30	3,000	2.1%	2.7%	0.5%	0.8%
General Service	50	5,000	2.2%	2.7%	0.4%	0.7%
General Service	250	250,000	-2.7%	-2.1%	-1.6%	-1.3%
Large Industrial	9,000	9,000,000	-9.3%	-9.0%	-5.3%	-4.9%
Small Industrial	50	5,000	2.0%	2.6%	0.3%	0.6%
Small Industrial	150	25,000	0.0%	0.5%	-0.5%	-0.2%
Small Industrial	500	300,000	-4.5%	-3.9%	-2.6%	-2.2%

[73] The amended application, with the retention of the 2nd block, incorporates an ECAM base energy charge of \$0.0990/kWh effective August 1, 2010 and \$0.0900kWh effective April 1, 2011.

[74] The Commission shares the concerns over the extent of deferrals for both replacement energy and normal energy supply. Interveners noted that in the amended application the Company ended up increasing the deferred energy charges. The Commission notes that, in addition to increasing the deferrals, the annual customer cost impact increased only slightly with the final result for 2011 being rural residential customers seeing no change in annual cost of electricity.

[75] In response to intervener and Commission questions, the Company stated their desire to eliminate deferred energy accounts and recover all costs from customers sooner. However, the Company stated their additional concern regarding the cost impact to customers. The Company's amended application was an attempt to balance the Company's interests, as well as the cost to customers, while maintaining the second block.

[76] The Commission is concerned by the mixed signals sent to all parties in the amended application. The base ECAM rate would be set at a rate that results in the deferred ECAM account increasing in value. This places further burden on future ratepayers who will ultimately cover these costs.

[77] Most interveners agreed that energy charges should reflect the true supply cost of energy and this would send the appropriate price signals to consumers regarding energy choices. In addition, the Commission heard that the overall cost of energy is important to seniors and this group wants an indication that energy rates are stabilizing. A reducing ECAM deferral balance is a step in that direction.

[78] The Commission has reviewed various ECAM rate scenarios and orders that the new base rate for ECAM be set at \$0.0970kWh effective August 1, 2010 and that an additional \$0.006kWh be added to the ECAM base rate for the period August 1, 2010 to December 31, 2010. This additional rate allows for recovery of energy costs associated with the delay in the rate application from the initially requested April 1, 2010 implementation date to the August 1, 2010 actual implementation date.

[79] The new ECAM base rate is forecast to result in year-end ECAM deferral account balances of \$6,046,954 for 2010 and \$5,709,184 for 2011. These balances are lower than both the original and amended applications. The new ECAM base rate will result in a year-over-year annual rural residential cost change of -0.2% in 2010 and 1.1% in 2011, assuming exchange rates and energy supply costs remain consistent with 2010 levels. The Commission considers this an appropriate rate change to achieve reduced deferrals.

[80] The Commission has considered the request from the Seniors' Federation to reduce the ECAM amortization period and increase the collection of deferred energy supply costs. The Seniors' Federation views this as more desirable than an increase in base rates as it would permit the rates to easily reduce if energy supply costs decrease. The Commission has considered this option and notes that the ECAM at one time was set at eight months; however, feels it is more important to have the ECAM base rate set at a level close to the actual energy supply costs, so that deferred energy costs are minimal into the future. Both the ECAM and the base rates are subject to regulatory control and can be adjusted to reflect reduced energy costs. Therefore, the Commission directs the Company to continue the 12-month amortization in the ECAM formula.

4.3 2nd Block Tariff and Rate Design

[81] The Company filed a supplemental affidavit amending the original application and requesting reconsideration of Commission Order UE08-01. This Order approved the elimination of the second block rate over a three-year period. Although the Company is not financially impacted by the second block

elimination, Maritime Electric stated that the circumstances regarding energy negotiations and their potential implications to the overall rate tariff, as well as progress on demand side management programs support the request for reconsideration.

[82] The Commission heard from farm groups concerning the financial impact of this rate elimination. These groups discussed their limited ability to reduce energy consumption within existing demand side management tools. In addition, current government programs, designed to financially assist farms install on-farm renewable generation, fall short in making a sound business case for the investment. Farm groups suggested that legislation and regulation changes are required by Government to improve the attractiveness of on-farm renewable energy infrastructure.

[83] The Commission was informed of the peculiarities which exist in the current rate tariff schedule. The current tariff schedule was forced on the Company with the legislated price cap regulation of 1994. For instance, within the residential rural tariff (and 2nd block discount) the following are some organizations which qualify:

- small and large scale farm organizations ,
- fish farms,
- campgrounds and trailer parks,
- hotels, motels and tourist courts,
- credit unions, and
- services incidental to fishing and farming.

[84] The Commission was informed by Company officials during the hearing that the tariff schedule which existed prior to 1994 was completely different with consideration given to the volume and nature of electricity usage. For instance, rate differences existed between 100 amp and 200 amp service.

[85] The Commission heard from Mr. John te Raa concerning the system efficiency implications of electric heat and apparent cross-subsidization of rates and charges between low- and high-energy usage customers. Mr. te Raa states the 2nd block tariff furthers this inequity. Mr. te Raa directed the Commission to the results of the 2008 *Cost of Service Study* filed as a response to a Government of PEI interrogatory in this application. This study highlights inequities between rate classes within the current tariff structure.

[86] During the hearing, Company officials acknowledged the results of the 2008 *Cost of Service Study* and advised the Commission that to consider the 2nd block rate issue in isolation of the other obvious inequities in the overall tariff structure would be unreasonable and unfair to all customers.

[87] The Commission noted Company comments which stated that a new cost of service study and a rate design proposal with a goal of tariff fairness within ranges is required.

[88] The Commission notes the preamble to the *Electric Power Act* which states: "*Whereas the rates, tolls and charges for electric power should be reasonable, publicly justifiable and not discriminatory*".

[89] This preamble instructs the Commission to ensure fairness within rate categories and that rates must be based on the cost of providing this service. That means rates do not take into consideration the characteristics of the customer such as farming, fishing, home heat or industrial usage. Rates developed with a rate design objective of fairness based on cost of service are the requirements of the legislation.

[90] The Commission appreciates that the farm community has faced significant economic challenges, but that fact alone does not permit the Commission to vary rates to assist that industry. In order to achieve rate fairness, rates must be based on the cost of providing service to a customer or class of customers.

[91] In true cost of service terms, the Commission was not presented with evidence that warrants retention of the declining 2nd block rate. However, evidence was heard that the residential rate class itself is seriously flawed. Adopted in 1994 from the NB Power rate structure, this rate structure is out of date.

[92] The Commission accepts the argument that any further changes to rate tariffs should await the outcome of a new rate design proposal based on a full cost of service study.

[93] Therefore, the Commission will defer the decision on the removal of the 2nd block tariff until a rate design proposal is approved by the Commission. The Commission orders the Company to prepare a complete rate design proposal with all the necessary supporting reports. The Commission has heard evidence that a new rate design process could result in some significant rate changes, both increases and decreases, for customers. Upon completion of the cost of service and rate design process, the Company is encouraged to engage in stakeholder consultations which explain the process and gain input on the proposed rate classifications. The rate design proposal will incorporate recommendations on the current 2nd block and any other potential rate additions or deletions. Further, the Commission directs that the impact of the increased use of electric heat on the system service requirements be separately considered and addressed in the rate design process.

[94] The rate design proposal must be filed with the Commission by December 31, 2011. This date provides time for the conclusion of inter-governmental power purchase agreement negotiations.

4.5 Rate of Return

[95] Maritime Electric is requesting approval of a 9.75% return on average common equity. Maritime Electric states that it faces higher business risk than other Atlantic Canada investor-owned electric utilities as it operates on a small island with an undiversified economy. The inability to spread risk throughout a diversified customer base means investors are more cautious on the outlook for Maritime Electric. The Company states this is evidenced by the Standard and Poor's BBB+ credit rating which indicates a stable outlook, but this rating is lower than other investor-owned utilities such as Emera's, Nova Scotia Power, and Newfoundland Power. In fact, Maritime Electric notes Standard and Poor's expressed concern about Maritime Electric's relatively poor cash flow position which is caused by the ECAM and delayed recovery of energy costs. The bond raters expressed concern about the relatively low earnings as a percentage of debt ("Interest Coverage Ratio").

[96] Section 24(1) of the *Electric Power Act* states return on investment shall be set by the Commission and reads as follows:

Return on
investment,
utility
authorized to
earn certain,
computation of

24. (1) Every public utility shall be entitled to earn annually such return as the Commission considers just and reasonable, computed by using the rate base as fixed and determined by the Commission for each type of service furnished, rendered or supplied by such public utility, and the return shall be in addition to the expenses as the Commission may allow as reasonable and prudent and properly chargeable to operating account, and to all just allowances made by the Commission according to this Act and the rules and regulations made by the Commission hereunder.

[97] The Commission heard from expert witnesses who stated the principles of the fair return standard. In essence, a fair return is met if a utility can attract capital on reasonable terms, can maintain its financial integrity, and the return allowed is consistent with returns of businesses with similar risks. That standard was first established in Canada with the 1929 case, *Northwest Utilities v. Edmonton (City)*.

[98] The Commission noted Mr. Booth's comments in which he stated the 2009 approved ROE was adjusted higher to take into consideration the 2008-2009 financial crisis. In fact, Mr. Booth suggested the Cost of Capital Review, by the Ontario Energy Board (OEB), was a consequence of the financial crisis. The Commission noted this decision was made after the economic financial problems and reflects the improved Canadian economy.

[99] The Commission noted testimony from both experts with different opinions regarding the risk profile of Maritime Electric in comparison to the Ontario distribution utilities. The Commission accepts that Maritime Electric, with its responsibilities for electricity supply, is different than Ontario electric distribution utilities. The Commission views this difference as significant.

[100] The Commission notes the lower than average Company corporate rating prepared by Standard & Poor's and the debt rating of BBB+, both lower than Canadian averages, is further evidence that the risk profile of Maritime Electric is higher.

[101] The Commission notes the 2009 Nova Scotia Power ROE, arising from a negotiated settlement agreement, of 9.35% on a common equity ratio of 37.5%. In addition, the Newfoundland Power ROE of 9.0% with a common equity ratio of 45% was approved for 2010.

[102] The Commission also notes decisions from the British Columbia Utilities Commission ("BCUC") regarding the ROE rates allowable for a benchmark utility (9.5%), Terasen Gas. In addition, as pointed out by Ms. McShane in her evidence, the BCUC decision stated:

"The Commission Panel notes that CAPM is based on a theory that can neither be proved nor disproved, relies on a market risk premium which looks back over nine decades and depends on a relative risk factor of beta. The fact that the calculated beta for PNG (considered by Dr. Booth to be the most risky utility in Canada) was 0.26 in 2008 causes the Commission Panel to consider that betas conventionally calculated with reference to the S&P/TSX are distorted and require adjustment. The Commission Panel will give weight to the CAPM approach, but considers that the relative risk factor should be adjusted in a manner consistent with the practice generally followed by analysts so that it yields a result that accords with common sense and is not patently adsorb."

[103] The Commission finds this commentary particularly relevant. The Commission did not adopt a formula approach to ROE during a period of time when such an approach was used by regulators as the standard for setting ROE. The Commission sees little value in placing greater emphasis on a formula approach at a time when that approach is either being abandoned, altered or deviated. Judgement, taking into consideration comparators, current market conditions, and appropriate risk assessment, are also very relevant.

[104] The Commission notes the BCUC ROE decision for FortisBC of 9.75%, which is 0.25% above the benchmark BC ROE rate. This Commission views Maritime Electric as a higher risk than the benchmark BC utility and FortisBC due to a variety of factors such as utility size, nature of operations, economic climate within which it operates, and regulatory risk factors.

[105] Taking into consideration all the ROE evidence presented, the Commission finds an ROE of 9.75% to be fair and reasonable considering the risk factors of Maritime Electric, the allowed ROE of comparable regional and national jurisdictions, and the corporate business and debt ratings of Maritime Electric.

4.4 Revenue Requirement and Other Matters

[106] The rates of a public utility are designed to generate, in a fiscal year, what is known as the revenue requirement. The revenue requirement is the sum of all operating expenses, amortization or depreciation of capital assets, interest on debt, income tax and return on equity. Under traditional rate regulation, the revenue requirement approval is required to establish customer rates.

[107] With the establishment and approval of the ECAM approach to rate setting, the energy cost component of the revenue requirement is essentially established each month as the energy rates are set based on actual costs incurred by the company, plus or minus the net ECAM adjustment. The Commission assesses the Company's due diligence in obtaining the best price for energy supply. During the 2009 rate case, the evidence of Mr. Terry MacDonald, who reviewed the current Energy Purchase Agreements and provided energy pricing advice to the Commission, supports this information. As these same agreements are in place until March 2011, the Commission, therefore, accepts the energy supply costs of the Company as reasonable until that time.

[108] The remaining costs comprising the revenue requirement are assessed by the Commission for reasonableness. The *Electric Power Act* provides guidance to the Commission in Section 21(3) which reads:

Rate base, determination and fixing for each utility	21. (1) The Commission may . . . (3) (a) include all or any of (i) an allowance for necessary working capital, and (ii) any other fair and reasonable expenditure which the Commission thinks proper and basic to the public utility's operation;
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[109] Expenditures of Maritime Electric are reviewed by the Commission monthly along with rate schedules. In addition, the rate application includes details of annual expenditure plans. The Commission has considered these estimates of expenditures using analysis and comparison of past expenditures and inquiries into proposed plans for future expenditures. In addition, the

public hearing provided an opportunity for further review into the reasonableness of the expenditures.

[110] The Seniors' Federation expressed concern about the oversight of Company operations and expenses in both the generation, general and administrative areas. In addition, they stated the current Key Performance Indicator ("KPI") monitoring tool employed by the Commission lacked credibility in that no external comparators are considered. The Commission acknowledges the shortcomings of the KPI measurement tool but views the process as valuable. The Commission notes there must be caution exercised in comparing organizations both within the utility sector and general business community. Considerable judgment must be exercised in the KPI review process. The Commission is involved in the process of benchmarking evaluation techniques, an issue currently being debated within the regulatory community across Canada.

[111] The Commission understands the concerns raised by the Seniors' Federation regarding Commission oversight of Company management and operations. While not always highly visible, this is a constant function of the Commission and a consideration woven into all interactions between the regulator and the utility. In addition, external expertise and consultants are employed from time to time to assist the Commission in this regard.

[112] Recent engagements by the Commission include: propriety of general and administrative expenses; assessment of power purchase contracts; demand side management plans; open access transmission tariff requirements, and the health and safety impacts of transmission lines.

[113] The Commission endeavors to make all such assessments available to the public, however, given the confidential nature of some matters, not all reviews are made public.

[114] The Commission, in its duty to ratepayers, must also be mindful of the costs of employing such expertise and satisfy itself that there is value to the Commission and ratepayers in such expenditures. The Commission, through normal regulatory processes, also affords the opportunity for interested parties to pose questions and raise concerns.

[115] The Seniors' Federation expressed concern about the value of Company capital expenditures and the implications for rates. All capital expenditures are approved by the Commission through a public process. The Company is required to provide detailed explanations for all proposed capital expenditures. The Commission not only questions company proposed initiatives, but also considers matters that should be explored. For example, following the Hurricane Juan damage in Nova Scotia, the Company was instructed to prepare and file a Contingency Readiness and Emergency Response Plan which covers a variety of contingencies such as submarine cable failures, transmission tower system failures, Emergency Response Plans and an Infrastructure Readiness Report. This initiative proved valuable when the 2008 ice storms caused considerable damage to transmission and distribution systems.

[116] The Seniors' Federation suggested a capital budget of 8 to 12% of revenue to a maximum of \$15 Million, which would have the impact of reducing capital expenditures by \$7 Million this year. The Commission places high value on system reliability and is concerned an artificial cap on capital expenditures might jeopardize necessary capital upgrades. Given the scrutiny of capital budgets and the necessary approval process, the Commission is not prepared to endorse such a cap.

[117] The Commission considers its website a valuable tool for providing information to the public and will continue to post relevant information to the site. The Commission will continue with the current capital budget approval process.

5. Disposition

[118] An Order will therefore issue implementing the findings and conclusions contained in these reasons.

IN THE MATTER of an
application by Maritime Electric Company,
Limited for approval of amendments to rates,
tolls and charges.

Order

UPON receiving an application by Maritime Electric Company, Limited for approval of proposed amendments to its rates, tolls and charges;

AND UPON receiving a supplemental affidavit amending the original application to request reconsideration of the elimination of the 2nd block tariff;

AND UPON reviewing the additional evidence received in response to staff interrogatories and intervener interrogatories;

AND UPON reviewing and taking into consideration the evidence provided during the hearing by interveners and expert witnesses;

AND UPON review of previous Commission Orders concerning the Energy Cost Adjustment Mechanism (ECAM), Rate of Return, Point Lepreau replacement energy and 2nd block tariff elimination;

NOW THEREFORE, for the reasons given in the annexed Reasons for Order;

IT IS ORDERED THAT:

1. the Company shall continue deferral of Point Lepreau replacement energy costs until its return to service at which time the Company will begin amortization of this cost,

through the ECAM account, over the future expected service life of the refurbished facility;

2. the Company shall file a business case analysis associated with its continued involvement for both Point Lepreau and Dalhousie generating facilities;
3. the Company shall rebase the base rate of energy effective with meter readings taken on and after August 1, 2010 as follows:

	August 1, 2010	Additional Rate August 1, 2010 to December 31, 2010
ECAM Base Rate (\$/kWh)	0.0970	0.006

4. the Company shall continue with a 12-month amortization period in the ECAM formula;
5. the maximum allowed return on average common equity is set at 9.75% for 2010 and 2011; and
6. the Company shall retain the 2,000 kWh second block reduced rate and include consideration of this issue in a rate design proposal to be filed with the Commission by December 31, 2011.

DATED at Charlottetown, Prince Edward Island, this 12th day of July, 2010.

BY THE COMMISSION:

Sgd) Maurice Rodgerson

Maurice Rodgerson, Chair

(Sgd) John Broderick

John Broderick, Commissioner

(Sgd) Anne Petley

Anne Petley, Commissioner

(Sgd) Ernest Arsenaault

Ernest Arsenaault, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13.(1), 13(2), 13(3), and 13(4) of the *Act* provide as follows:

13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

(3) The Commission shall be deemed to be a party to the appeal.

(4) No costs shall be payable by any party to an appeal under this section unless the Court of Appeal, in its discretion, for special reasons, so orders.

IRAC140A(04/07)

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 5 years.