

C A N A D A

PROVINCE OF PRINCE EDWARD ISLAND

**BEFORE THE ISLAND REGULATORY
AND APPEALS COMMISSION**

IN THE MATTER of an application by Maritime Electric Company, Limited for the approval of a supplementary capital budget request for the On-Island Capacity for Security of Supply Project, pursuant to Section 17 of the *Electric Power Act*, RSPEI 1988, c. E-4.

REQUEST FOR CONFIDENTIALITY

INTRODUCTION

1. Maritime Electric Company, Limited (“Maritime Electric” or the “Company”) is a public utility subject to the *Electric Power Act* engaged in the production, purchase, transmission, distribution and sale of electricity within Prince Edward Island.
2. On December 18, 2024, Maritime Electric applied for an order of the Island Regulatory and Appeals Commission (the “Commission”) approving a supplementary capital budget request for the On-Island Capacity for Security of Supply Project (Exhibit M-1, “the Original Filing”).
3. By correspondence dated May 16, 2025 (Exhibit M-7) and May 28, 2025 (Exhibit M-8), Maritime Electric requested that Appendices E & F of the Original Filing and IR-2d and IR-2e of Exhibit M-6 be disclosed to the Commission and the Added Party Intervenor Prince Edward Island Energy Corporation (“PEIEC”) but otherwise remain confidential.
4. On August 14, 2025, Maritime Electric filed additional evidence detailing a new and time-sensitive opportunity that has arisen (Exhibit M-12, “the Supplemental Filing”).

5. The Supplemental Filing included a request that certain redacted information in the Supplemental Filing, and the entirety of Appendices B-F inclusive of the Supplemental Filing be disclosed to the Commission and PEIEC, but otherwise remain confidential.
6. By correspondence dated September 12, 2025 (Exhibit C-12), the Commission requested that Maritime Electric make a formal request for confidentiality pursuant to the Commission's Rules of Practice and Procedure and to serve and file that formal request on or prior to 3:00 p.m. September 16, 2025.

REQUEST FOR CONFIDENTIALITY

7. Maritime Electric hereby requests an order pursuant to Rule 54 of the Commission's *Rules of Practice and Procedure* (the "Rules") directing that the following be disclosed to the Commission and the Added Party Intervenor but otherwise held in confidence:
 - (a) Appendices E&F of Exhibit M-1 and IR-2d and IR-2e of Exhibit M-6; and
 - (b) The information redacted in Exhibit M-12 and Appendices B-F inclusive of Exhibit M-12.

LEGAL PRINCIPLES

Overview

8. It will be useful to begin with an overview of the relevant legal principles.
9. Documents filed with the Commission are generally placed on the public record. The Rules nevertheless provide a framework by which a party may request that a document filed with the Commission be held in confidence by the Commission. This framework explains what an applicant must do to request confidentiality and what the Commission must consider in deciding this request.
10. The Supreme Court of Canada has also provided direction on the subject of confidentiality orders. In particular, the Court has stated that a discretionary request for confidentiality should typically be granted only to safeguard an important public interest. This direction from the Supreme Court of Canada should inform the application of the framework set out in the Rules.
11. Regulators have repeatedly acknowledged that there is an important public interest in ensuring the efficiency and competitiveness of regulated public utilities. A decrease in the

efficiency or competitiveness of a regulated public utility can, in turn, cause a rise in the prices paid by the customers of the utility.

12. The public disclosure of information during a regulatory proceeding can undermine the efficiency and competitiveness of a public utility and thereby harm the public. Tribunals frequently issue confidentiality orders to prevent this harm from arising. The prior decisions of the Commission and similar tribunals provide helpful guidance on the type of information that may permissibly be kept in confidence for this purpose.
13. These principles are explained in greater detail below.

The Rules Provide the Framework for Deciding a Request for Confidentiality

14. The framework for making and deciding a request for confidentiality is set out in Rules 51 to 54.
15. Rule 51 provides that a party may request that all or part of a document filed with the Commission be held in confidence by the Commission. The request must summarize the document, state the reasons for the request, and explain any objection to placing an abridged version of the document on the public record:

51. Request for Confidentiality of Documents

1. A party may request that all or any part of a document be held in confidence by the Commission.

2. Any request for confidentiality shall:

(a) include a summary of the nature of the information in the document;

(b) state:

i. the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document were publicly disclosed; and

ii. any objection to placing an abridged version of the document on the public record and the reasons for such an objection; and

(c) be filed with the Commission and served on the parties.

3. Where a party has made a request under Rule 51.0(1), the document may, at the discretion of the Commission, be held in confidence.

4. A document that is determined by the Commission to be held in confidence may be considered by the Commission in determining the application or appeal.

16. Rule 52 provides that a party may file an objection to a request for confidentiality and that the party claiming confidentiality may reply to any objection so filed:

52. Objection to Request for Confidentiality

- 1. A party may object to a request for confidentiality by filing an objection and serving the objection on the parties.*
- 2. An objection shall state the reasons:*
 - (a) why the party requires disclosure of the document; and*
 - (b) why disclosure would be in the public interest.*
- 3. The party claiming confidentiality will have an opportunity to reply to any objection.*

17. Rule 53 provides guidance to the Commission in exercising its discretion to decide a request for confidentiality:

53. Factors Considered

When deciding a request for confidentiality, the Commission shall consider:

- (a) whether the document may disclose matters involving public security;*
- (b) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of any person affected outweighs the desirability of adhering to the principle that documents be available to the public; or*
- (c) such other matters the Commission deems appropriate.*

18. Finally, Rule 54 provides the Commission with broad remedial authority to make an order in response to a request for confidentiality:

54. Power of Commission Respecting Confidentiality of Evidence

The Commission may:

- (a) order that the document be held in confidence by the Commission;*

(b) order that the document be placed on the public record;

(c) order that an abridged version of the document be placed on the public record;

(d) order that the document be made available to a party to the proceeding, who has a good faith interest in accessing the confidential information and who would not otherwise be in conflict of interest, on such terms as the Commission considers appropriate, including the signing of a confidentiality form approved by the Commission;

(e) order that the document be withdrawn; or

(f) make any other order the Commission may deem to be in the public interest.

19. The breadth of this authority allows the Commission to craft an order that is appropriate in the circumstances of a given case.

The Supreme Court of Canada has Provided Guidance on Confidentiality Orders

20. In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada affirmed that the open court principle is “inextricably tied” to the *Charter* right to freedom of expression.¹ The open court principle means that, as a general rule, the public must be permitted to attend court hearings and read court files.²
21. The open court principle applies to “all judicial proceedings, whatever their nature”.³ In practice, this means that the principle applies to all court proceedings but not necessarily to all administrative proceedings.⁴
22. In cases where the open court principle does apply, a discretionary order to limit court openness will violate s. 2(b) of the *Charter* unless the person seeking the order establishes that:

(1) court openness poses a serious risk to an important public interest;

¹ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] S.C.R. 522 at 543 [*Sierra Club*] [Tab 2].

² *Sherman Estate v. Donovan*, 2021 SCC 25 at para 1 [*Sherman Estate*] [Tab 3].

³ *Sherman Estate* at para 44 [Tab 3].

⁴ See below at para 22.

(2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,

(3) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁵

23. When these requirements are satisfied, a discretionary order limiting court openness will not violate s. 2(b) of the *Charter*, even if the proceeding is one to which the open court principle applies.

Decisions from Other Jurisdictions Suggest that the Open Court Principle Applies to this Request

24. There is debate about whether the open court principle applies to administrative tribunals. Lower courts have held that it does apply when tribunals hold “adjudicative hearings”⁶ but does not apply when they perform other functions.⁷
25. This raises the question: is this request for confidentiality being made in the course of an “adjudicative hearing” to which the open court principle applies? No binding precedent is directly on point but some decisions are instructive:
- (a) The Nova Scotia Court of Appeal has indicated that the open court principle applies to an application by a public utility for approval of a capital expenditure.⁸
 - (b) A majority of the British Columbia Court of Appeal has indicated that the open court principle applies to an application by a public utility for approval of an energy purchase agreement.⁹
 - (c) The Alberta Utilities Commission has indicated that the open court principle applies to an application by two public utilities for permission to construct a substation and two transmission lines.¹⁰
26. These decisions, although not binding on the Commission, do suggest that the open court principle applies to the present matter.

⁵ *Sherman Estate* at para 38 [Tab 3].

⁶ *Toronto Star v. AG Ontario*, 2018 ONSC 2586 at para 7 [Tab 4].

⁷ *Fraser v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 821 at para 90 [Tab 5].

⁸ *Cape Breton Explorations Ltd. v. Nova Scotia (Attorney General)*, 2013 NSCA 134 at paras 23-24 and 42(c) [Tab 6].

⁹ *Joint Industry Electricity Steering Committee v. British Columbia Utilities Commission*, 2005 BCCA 330 at para 49 per Rowes, J.A. and at para 101 per Levin J.A. [Tab 7].

¹⁰ *AltaLink Management Ltd., Re*, 2011 CarswellAlta 1797, Appendix 3.b at para 30 [Tab 8].

The Framework in the Rules should be Supplemented with Reference to the Direction from the Supreme Court of Canada

27. Assuming, then, that the open court principle described in *Sierra Club* does apply to the hearing in which this request is being made, the Commission must determine how to integrate that principle into the framework set out in the Rules.
28. Decisions from the Nova Scotia Utility and Review Board (the “NS Review Board”) provide helpful guidance.
29. The NS Review Board treats its rules of practice and procedure as being “in essence a codification” of the open court principle that is described in *Sierra Club*.¹¹ In practice, this means that the NS Review Board decides a request for confidentiality by applying its own rules and by referring, as needed, to the direction set out in *Sierra Club*.¹²
30. The approach of the NS Review Board is relevant to the present matter because the rules of the NS Review Board for deciding a request for confidentiality are substantially similar to those of the Commission.¹³ A side-by-side comparison reveals that these sets of rules are nearly identical in stating the requirements for making,¹⁴ and the factors for assessing,¹⁵ a request for confidentiality.
31. Given the similarity between these sets of rules, the Commission can, on this point, take guidance from the NS Review Board. The Commission should apply the framework set out in the Rules with reference to the relevant direction from *Sierra Club*.
32. It is worth pausing here, therefore, to highlight the direction from *Sierra Club* that should supplement the Commission’s application of the Rules.
33. The first point of direction relates to the “interest” that must be identified in order to justify granting a request for confidentiality. *Sierra Club* provides that a person seeking to limit the open court principle must establish that court openness poses a serious risk to “an

¹¹ *Nova Scotia Power Inc., Re*, 2014 NSUARB 5 at para 11 [Tab 9]; *Friends of Harmony, Camden, Greenfield and Surrounding Areas, Re*, 2015 NSUARB 140 at para 12 [Tab 10].

¹² A good example of this is found in *Nova Scotia Power Inc., Re*, 2014 NSUARB 5 at paras 25-43 [Tab 9]. The NS Review Board’s insistence on identifying harm to a public interest appears to derive more from *Sierra Club* than from the text of the relevant rules.

¹³ *Board Regulatory Rules*, NS Reg 235/2005, section 12 [Tab 21].

¹⁴ See Appendix A and compare NS Review Board rule 12(4) with Commission Rule 51(2).

¹⁵ See Appendix A and compare NS Review Board rule 12(10) with Commission Rule 53.

important public interest”.¹⁶ In other words, court openness should not be limited merely to protect the private interests of the parties.

34. The second point of direction relates to the evidence that must be adduced to show that openness poses a serious risk to an important public interest. The Supreme Court has stressed that the tribunal should not be satisfied with too little but also should not require too much. On the one hand, a confidentiality order should not issue on the basis of “impermissible speculation” about the risks that will be created by tribunal openness.¹⁷ On the other hand, however, parties requesting confidentiality are not required to adduce “direct evidence” of the risks in question.¹⁸ A middle ground will suffice: the tribunal may permissibly grant a request for confidentiality on the basis of the “logical inferences” that can reasonably be drawn from the circumstances.¹⁹
35. The third and final point of direction relates to alternatives. A tribunal deciding a request for confidentiality should ask whether there are other, “reasonably alternative” measures that would prevent the risk to an important public interest. The confidentiality order should issue only if no “reasonably alternative” measures are available.²⁰
36. This direction from the Supreme Court of Canada supplements the framework in the Rules.

There is an Important Public Interest in the Efficiency and Competitiveness of Regulated Public Utilities

37. As was noted above, *Sierra Club* directs that a confidentiality order should issue only to protect an important public interest.
38. Tribunals have repeatedly recognized that there is an important public interest in protecting the efficiency and competitiveness of regulated public utilities. A decrease in the efficiency or competitiveness of a regulated public utility can, in turn, cause a rise in

¹⁶ *Sierra Club* at 544 [Tab 2]; *Sherman Estate* at para 38 [Tab 3].

¹⁷ *Sherman Estate* at para 97 [Tab 3].

¹⁸ *Sherman Estate* at para 97 [Tab 3].

¹⁹ *Sherman Estate* at para 97 [Tab 3].

²⁰ *Sherman Estate* at para 97 [Tab 3].

the prices paid by the customers of the utility. The public has an interest in keeping efficiency up and costs down.²¹

The Disclosure of Confidential Information in the Course of a Regulatory Proceeding may Harm the Efficiency and Competitiveness of a Regulated Public Utility

39. The public interest in ensuring that public utilities are efficient and competitive can be harmed by the disclosure of confidential business information in the course of a regulatory proceeding. The NS Review Board has succinctly described this risk in noting that the regulatory process itself could harm consumers by requiring the indiscriminate disclosure of a public utility's financial or commercial information:

*There is a significant public interest in not having the regulatory process itself create undue costs to NS Power, and by extension the consumers of its regulated monopoly service. In other words, disclosure of financial or commercial information which undermines NS Power's ability to obtain goods and services at the lowest possible costs impacts NS Power's customers, which include most businesses and residents of the province. That said, there is still a balancing act to be performed between a demonstrable risk of harm and the transparency of a public process.*²²

40. Tribunals have recognized a variety of ways in which disclosure of financial or commercial information in the course of a regulatory proceeding could harm the competitiveness and efficiency of a public utility.
- (a) In some cases, the disclosure of information could compromise the position of a public utility's ongoing negotiations. On this basis, information has been kept confidential.²³
 - (b) In some cases, the disclosure of information could “advantage” a public utility's counterparts in future negotiations. On this basis, information has been kept confidential.²⁴
 - (c) In some cases, the disclosure of information could undermine the obligations or representations that the public utility has made to third parties in respect of that information (e.g., an obligation or representation that the information would be kept in confidence). The disclosure of such information could damage the public utility's relationship with that third party and make third parties in general less willing to

²¹ See, e.g., *Nova Scotia Power Inc., Re*, 2012 NSUARB 137 at para 5 [Tab 11]; *Nova Scotia Power Inc., Re*, 2014 NSUARB 5 at para 28 [Tab 9]; *Nova Scotia Power Inc., Re*, 2020 NSUARB 121 at para 9 [Tab 12]; *Nova Scotia Power Inc., Re*, 2022 NSUARB 2 at para 114 [Tab 13].

²² *Nova Scotia Power Inc., Re*, 2022 NSUARB 2 at para 114 [Tab 13].

²³ Commission Order UE93-10 [Tab 14].

²⁴ *Nova Scotia Power Inc., Re*, 2020 NSUARB 121 at para 9 [Tab 12].

contract with the public utility in the future. On this basis, information has been kept confidential.²⁵

41. These examples evince a general principle: a confidentiality order may issue to prevent the disclosure of information that could undermine the efficiency or competitiveness of a public utility and thereby harm the utility's customers.

Prior Decisions by the Commission Provide Guidance on the Proper Approach to a Request for Confidentiality

42. The Commission has decided requests for confidentiality in prior applications. Although a tribunal is not bound by prior decisions in the same sense that courts are bound by *stare decisis*, parties appearing before a tribunal are nevertheless “entitled to expect that like cases will generally be treated alike”²⁶. For this reason, prior decisions by the Commission provide helpful guidance on the type of information that may be received and kept in confidence by the Commission. Notable examples include the following:
- (a) In Order UE93-10, the Commission permitted Maritime Electric to keep confidential the data supporting a certain proposal to increase its generating capacity. The data was kept confidential to prevent “compromis[ing] the Company’s negotiating position”. **[Tab 14]**
 - (b) In Order UE93-11, Maritime Electric applied for a number of amendments to its General Tariff. “The Company filed information on overall executive compensation in response to Commission Staff interrogatories, but requested that the details be examined on a confidential basis.” Accordingly, “[t]he Commission reviewed these expenses and held an in-camera hearing with Company President John Reynolds following the adjournment of the public hearing”. Based on this review, the Commission accepted the amounts budgeted by the Company. **[Tab 17]**
 - (c) In Order UT02-01, the Commission agreed to hold the hearing record in confidence in order to protect the identity of the appellant’s clients. **[Tab 18]**
 - (d) In Order UE13-03, the Commission permitted Maritime Electric to file in confidence a Renewable Energy Purchase Agreement that contained “proprietary information”. **[Tab 19]**
 - (e) In Order UE19-03, the Commission permitted the Prince Edward Island Energy Corporation to file a Service Delivery Agreement on a confidential basis. **[Tab 20]**
43. These prior decisions show that the Commission’s approach to confidentiality orders resembles the approach of other tribunals with similar mandates.

²⁵ *Nova Scotia Power Inc.*, Re 2014 NSUARB 5 at para 30 **[Tab 9]**, aff’d in *Cape Breton Explorations Ltd. v. Nova Scotia (Attorney General)*, 2015 NSCA 35 at para 163 **[Tab 15]**.

²⁶ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 129 **[Tab 16]**.

Appendix E&F of Exhibit M-1 and IR-2d and IR-2e of Exhibit M-6

44. Maritime Electric requests that these Appendices and interrogatory responses be kept in confidence because they contain details from energy purchase and power purchase agreements that Maritime Electric has concluded with third parties. Maritime Electric is contractually obligated not to disclose these details to the public.
45. A number of specific harms would flow from the disclosure of this information:
- (a) First, disclosure would reveal the confidential information of third parties. As was noted above, there is an important public interest in ensuring that regulatory proceedings do not require public utilities to reveal third-party confidential information.
 - (b) Second, disclosure would reveal the price that Maritime Electric is willing to pay, and the price at which third parties are willing to sell, pursuant to these agreements. These disclosures could, in future negotiations, result in higher prices for Maritime Electric or even a reluctance on the part of the third party to do business with Maritime Electric which, in turn, would harm the public interest by resulting in the potential for higher rates to customers.
46. Regulatory tribunals, including the Commission, routinely permit public utilities to file contracts such as these in confidence.²⁷
47. Maritime Electric objects to placing on the public record abridged versions of this information because it would not be possible to do so without revealing details about the involvement of the third party in question.
48. Maritime Electric repeats and relies upon the submissions contained in Exhibits M-7 and M-8.

Redacted Information in M-12 and Appendices B-F Inclusive of M-12

49. Maritime Electric's Supplemental Filing (Exhibit M-12) contains redacted information. Maritime Electric requests that this redacted information, and Appendices B-F inclusive, remain confidential.

²⁷ See, e.g., Commission Order UE13-03 [Tab 19] and Commission Order UE19-03 [Tab 20]. See also *Nova Scotia Power Inc., Re*, 2020 NSUARB 121 at para 9: "A frequent use of Rule 12 is to permit NS Power to file fuel contracts and other power purchase arrangements in confidence to protect NS Power (and thereby ratepayers) in ensuring that NS Power can obtain competitive fuel prices. Disclosing these contracts would advantage fuel suppliers in the bidding process" (emphasis added) [Tab 12].

50. Maritime Electric's justification for this request mirrors our submissions in relation to Exhibits M-1 and M-6 infra.
51. The Supplemental Filing details a time-sensitive opportunity to obtain additional on-Island capacity at a reduced cost and with an earlier in-service date. The redacted information and Appendices B-F inclusive contain confidential pricing information that the manufacturer considers "proprietary and confidential".
52. Specific harms would flow from the disclosure of this information:
 - (a) First, disclosure would reveal the confidential information of third parties. As was noted above, there is an important public interest in ensuring that regulatory proceedings do not require public utilities to reveal third-party confidential information.
 - (b) A binding contract with the manufacturer has not yet been achieved. Disclosure of financial information that the manufacturer considers proprietary and confidential could result in higher prices for Maritime Electric or a reluctance on the part of the manufacturer to complete a contract with Maritime Electric, which could result in higher rates and a delayed in-service date for ratepayers.
53. Notwithstanding the foregoing, Maritime Electric recognizes the importance of providing transparency on this important opportunity, and therefore proposes a compromise. Specifically, if approved by the Commission, Maritime Electric would file a summary of financial information. This financial information would include pricing from the manufacturer combined with costs that will be incurred by Maritime Electric to complete the project. In Maritime Electric's submission, this approach is a reasonable compromise which would balance transparency and confidentiality.

Dated at Charlottetown, Province of Prince Edward Island, this 16th day of September, 2025.



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APPENDIX A

Nova Scotia Utility and Review Board, <i>Board Regulatory Rules</i> , N.S. Reg. 235/2005	Island Regulatory and Appeal Commission, <i>Rules of Practice and Procedure</i>
12(1) Subject to Rule 12(2), all documents filed in respect of an application shall be placed on the public record.	50. All documents filed in respect of a hearing, including any submissions or other documents filed prior to the commencement of or during the hearing, shall become part of the public record.
12(2) A party may request that all or any part of the document be held in confidence by the Board, which request shall be placed on the public record.	51(1) A party may request that all or any part of a document be held in confidence by the Commission.
12(4) Any request for confidentiality shall (a) include a summary of the nature of the information in the document; (b) state (i) the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document were publicly disclosed, and (ii) any objection to placing an abridged version of the document on the public record, and the reasons for such an objection; and (c) be filed with the Board and served on the parties.	51(2) Any request for confidentiality shall: (a) include a summary of the nature of the information in the document; (b) state: i. the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document were publicly disclosed; and ii. any objection to placing an abridged version of the document on the public record and the reasons for such an objection; and (c) be filed with the Commission and served on the parties.
12(10) In ruling on a request for confidentiality the Board shall consider (a) whether the document may disclose matters involving public security; (b) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of any person affected outweighs the desirability of	53. When deciding a request for confidentiality, the Commission shall consider: (a) whether the document may disclose matters involving public security; (b) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of any person affected outweighs the desirability of

adhering to the principle that documents be available to the public; or (c) such other matters as the Board deems appropriate.	adhering to the principle that documents be available to the public; or (c) such other matters the Commission deems appropriate.
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TABLE OF CONTENTS

1. Application
2. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] S.C.R. 522
3. *Sherman Estate v. Donovan*, 2021 SCC 25
4. *Toronto Star v. AG Ontario*, 2018 ONSC 2586
5. *Fraser v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 821
6. *Cape Breton Explorations Ltd. v. Nova Scotia (Attorney General)*, 2013 NSCA 134
7. *Joint Industry Electricity Steering Committee v. British Columbia Utilities Commission*, 2005 BCCA 330
8. *AltaLink Management Ltd., Re*, 2011 CarswellAlta 1797, Appendix 3.b
9. *Nova Scotia Power Inc., Re*, 2014 NSUARB 5
10. *Friends of Harmony, Camden, Greenfield and Surrounding Areas, Re*, 2015 NSUARB 140
11. *Nova Scotia Power Inc., Re*, 2012 NSUARB 137
12. *Nova Scotia Power Inc., Re*, 2020 NSUARB 121
13. *Nova Scotia Power Inc., Re*, 2022 NSUARB 2
14. Commission Order UE93-10
15. *Cape Breton Explorations Ltd. v. Nova Scotia (Attorney General)*, 2015 NSCA 35
16. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65
17. Commission Order UE93-11
18. Commission Order UT02-01
19. Commission Order UE13-03
20. Commission Order UE19-03
21. *Board Regulatory Rules*, NS Reg 235/2005, section 12