

Gas Distribution Act

CHAPTER 4 OF THE ACTS OF 1997

as amended by

2002, s. 18; 2005, c. 25, s. 2; 2014, c. 48



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CHAPTER 4 OF THE ACTS OF 1997
amended 2002, s. 18; 2005, c. 25, s. 2; 2014, c. 48

**An Act Respecting the Delivery
and Sale of Natural Gas in the Province**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Gas Distribution Act*. 1997, c. 4, s. 1.

Purpose of Act

2 The purpose of this Act is to

- (a) provide a framework for the orderly development and operation of a gas delivery system in the Province; and
- (b) allow for fair competition in the sale of gas for consumption in the Province. 1997, c. 4, s. 2.

Interpretation

3 (1) In this Act,

- (a) “Board” means the Nova Scotia Utility and Review Board;
- (aa) “exempt gas customer” means a person
 - (i) to whom gas for ultimate consumption is delivered
 - (A) outside a franchise area,
 - (B) within a franchise area, from a supplier who has delivered gas to that person on a continuous basis since immediately before the franchise was granted,
 - (C) within a franchise area, if the gas being delivered is liquefied petroleum gas and the gas delivered by the franchise holder is natural gas, or

- (D) within a franchise area, if the gas being delivered is natural gas and the gas delivered by the franchise holder is liquefied petroleum gas,
 - (ii) who is declared by the Board under Section 23 to be an exempt gas customer, or
 - (iii) who is prescribed by the Governor in Council to be an exempt gas customer;
 - (ab) “exempt gas-delivery system” means any compressor station, decanting station, pipe, equipment, apparatus, mechanism, machinery, instrument or ancillary facility, or any building or structure that houses or protects any of the foregoing, used to deliver gas for ultimate consumption
 - (i) to an exempt gas customer at a single location, or
 - (ii) in such circumstances as may be prescribed by the Governor in Council, to an exempt gas customer, or two or more closely related exempt gas customers, at multiple locations;
 - (b) “franchise” means a franchise granted pursuant to this Act to construct and operate a gas delivery system;
 - (ba) “franchise area” means the geographic area that is planned to be served within ten years by the franchise holder;
 - (c) “gas” means
 - (i) odourized sales gas,
 - (ia) liquefied petroleum gas, or
 - (ii) any substance declared by the Board to be gas;
 - (d) “gas delivery system” means any compressor station, decanting station, pipe, equipment, apparatus, mechanism, machinery, instrument or ancillary facility, or any building or structure that houses or protects any of the foregoing, used to deliver gas for ultimate consumption, but does not include an exempt gas-delivery system;
 - (da) “Minister” means the Minister of Energy;
 - (e) “person” includes a partnership;
 - (f) “prescribed” means, except where the context otherwise requires, prescribed by the Board by regulation.
- (2)** An exempt gas customer is closely related to another exempt gas customer if
- (a) they are affiliates within the meaning of subsection 2(2) of the *Companies Act*; or

(b) the relationship between them is prescribed by the Governor in Council as being a close relationship. 1997, c. 4, s. 3; 2002, c. 18, s. 1; 2014, c. 48, s. 1.

Supervision by Minister

3A (1) The Minister has the general supervision and management of this Act and the regulations.

(2) The Minister may establish and administer policies, programs, standards, guidelines, objectives and directives under this Act.

(3) Within five years of the coming into force of this subsection, the Minister shall undertake a review of the legislative and regulatory framework for the distribution of gas in the Province. 2002, c. 18, s. 2; 2014, c. 48, s. 2.

GRANTING OF FRANCHISE

Requirement for franchise

4 Notwithstanding any enactment, no person shall construct or operate a gas delivery system except pursuant to a franchise. 1997, c. 4, s. 4.

Limit on delivery by franchise holder

4A Subject to subsection 4B(1), no franchise holder shall deliver gas for ultimate consumption to any person except pursuant to a franchise. 2014, c. 48, s. 3.

Exempt gas-delivery system

4B (1) A franchise holder who, immediately before the coming into force of this Section, is delivering gas by an exempt gas-delivery system may continue to deliver gas by the exempt gas-delivery system after the coming into force of this Section.

(2) Where a franchise holder continues to deliver gas by an exempt gas-delivery system as permitted pursuant to subsection (1), the franchise holder may, at any time, apply to the Board to amend its franchise to permit the franchise holder to operate the exempt gas-delivery system, or any portion of it, as part of the franchise holder's gas delivery system.

(3) Where an application is made pursuant to subsection (2), the Board may amend the franchise to permit the franchise holder to operate the exempt gas-delivery system, or any portion of it, as part of the franchise holder's gas delivery system, subject to such terms and conditions as the Board considers appropriate.

(4) For greater certainty, upon the Board amending a franchise to permit the franchise holder to operate an exempt gas-delivery system, or any portion of it, as part of the franchise holder's gas delivery system, the exempt gas-delivery system or the portion of it, as the case may be, ceases to be an exempt gas-delivery system. 2014, c. 48, s. 3.

Application for franchise

5 (1) A person may apply to the Board, in the time and in the manner prescribed, for a franchise.

(2) Notwithstanding subsection (1), the Board may invite applications for a franchise in the time and in the manner prescribed. 1997, c. 4, s. 5.

Required information

6 When submitting an application pursuant to Section 5, the applicant shall provide to the Board the prescribed information. 1997, c. 4, s. 6.

Public comment and hearing

7 (1) Upon receipt of an application pursuant to subsection 5(1), the Board shall give notice to the public of the receipt of the application.

(2) Upon receipt of an application pursuant to Section 5, the Board shall invite public comment on the application and, where in the opinion of the Board it is advisable to do so, hold a public hearing.

(3) Notwithstanding subsection (2), no single end user licence outside of an existing franchise area shall be granted by the Board unless a socio-economic impact study, deemed in the opinion of the Board to be appropriate to the location and scale of the franchise applied for, has been completed. 1997, c. 4, s. 7; 2002, c. 18, s. 3.

Grant of franchise

8 (1) The Board may grant a franchise.

(2) Before granting a franchise, the Board shall be satisfied that the granting of the franchise is in the public interest and shall take into consideration the following factors:

- (a) the existence of markets, actual or potential;
- (b) the availability of adequate gas supplies;
- (c) the economic feasibility of the proposed gas delivery system;
- (d) the financial capability of the applicant;
- (e) related experience of the applicant in the delivery of gas;
- (f) the plans of the applicant to provide service in the franchise area; and
- (g) such other factors as are prescribed by the Governor in Council.

(3) The granting of a franchise by the Board is subject to the approval of the Governor in Council.

(4) and (5) *repealed 2002, c. 18, s. 4.*

1997, c. 4, s. 8; 2002, c. 18, s. 4.

Terms and conditions of franchise

9 (1) A franchise

(a) is for a term of twenty-five years and may be renewed in accordance with the regulations; and

(b) is subject to such terms and conditions as may be specified by the Board or prescribed by the Governor in Council.

(2) Notwithstanding Section 43, Section 78 of the *Public Utilities Act* applies *mutatis mutandis* to the holder of a franchise within or partly within a regional municipality, town or a municipality of a county or district. 1997, c. 4, s. 9; 2002, c. 18, s. 5.

Amendment and consolidation of franchise

10 (1) The holder of a franchise may apply to the Board, in the time and in the manner prescribed, to

(a) amend the terms or conditions of the franchise;

(b) alter the geographical boundaries of the franchise area;

(c) consolidate non-contiguous franchises granted to the applicant.

(2) Upon receipt of an application pursuant to subsection (1), the Board shall give notice to the public of receipt of the application in the manner prescribed and may hold a public hearing on the application.

(3) *repealed 2002, c. 18, s. 6.*

1997, c. 4, s. 10; 2002, c. 18, s. 6.

Restriction on transfer and assignment

11 No person shall transfer or assign a franchise without the approval of the Board. 1997, c. 4, s. 11.

Restriction on certain actions

12 Except in the ordinary course of maintenance or repair, no gas delivery system, or part thereof, may be taken up, removed or abandoned without the consent of the Board. 1997, c. 4, s. 12.

Rights of franchise holder

13 Subject to Section 14, a person to whom a franchise is granted has the exclusive right to construct and operate a gas delivery system within the geographical area to which the franchise extends. 1997, c. 4, s. 13.

Application for franchise within a franchise area

14 (1) In this Section,

(a) “producer class franchise” means a franchise granted to a company that produces onshore gas, or to a company that is wholly owned by the gas-producing company or that wholly owns the gas-producing company, for delivery to a single end user;

(b) “single end-user class franchise” means a franchise granted to a company where the gas is consumed solely by the franchise holder, a company that is wholly owned by the franchise holder or a company that wholly owns the franchise holder.

(1A) No person shall, before June 1, 2012, apply to the Board for a franchise within the boundaries of an existing franchise.

(1B) Notwithstanding subsection (1A), a person may at any time apply to the Board for the following types of franchise within an existing franchise:

(a) a producer class franchise;

(b) a single end-user class franchise whose gas supply comes solely from a producer class franchise;

(c) a single end-user class franchise that takes gas through facilities that are not interconnected to an interprovincial or international gas transmission pipeline.

(2) The Board shall give notice to the existing franchise holder and the public of an application received pursuant to this Section and may hold a public hearing on the application.

(3) The Board shall not grant a franchise pursuant to this Section unless the Board is satisfied that the granting of the franchise

(a) is in the public interest; and

(b) complies with the requirements prescribed by the Governor in Council.

(4) Upon the granting of a franchise pursuant to this Section, the boundaries of the existing franchise shall be amended accordingly by the Board. 1997, c. 4, s. 14; 2002, c. 18, s. 7.

Discrimination

15 The holder of a franchise shall not make any undue discrimination in rates, tolls, charges, service or facilities against any person or locality. 1997, c. 4, s. 15.

Burden of proof respecting discrimination

16 Where it is shown that the holder of a franchise makes any discrimination in rates, tolls, charges, service or facilities against any person or locality, the burden of proving that the discrimination is not undue lies on the holder of the franchise. 1997, c. 4, s. 16.

Duties of holder of franchise

17 Subject to such exemptions or conditions as prescribed, the holder of a franchise shall, without delay and with due care and diligence, receive, transport and deliver or store, without discrimination, all gas offered to its gas delivery system. 1997, c. 4, s. 17.

Requirement to extend or improve

18 (1) Where the Board finds such action necessary or desirable in the public interest, the Board may direct the holder of a franchise to extend or improve its gas delivery system if the Board finds that no undue burden will be placed on the holder of the franchise.

(2) Subsection (1) does not empower the Board to compel the holder of a franchise to deliver gas to additional customers if to do so would impose undue burden on its existing customers or impair its ability to render adequate service to its existing customers. 1997, c. 4, s. 18.

CONSTRUCTION AND OPERATION
OF GAS DELIVERY SYSTEM

Prohibited acts

19 A person to whom a franchise is granted shall not

(a) construct a gas delivery system or any part thereof, except pursuant to a permit; or

(b) operate a gas delivery system, except pursuant to a licence,

issued by the Board pursuant to the *Pipeline Act*. 1997, c. 4, s. 19.

Application of Pipeline Act

20 The *Pipeline Act* applies to a gas delivery system. 2002, c. 18, s. 8.

RATES

Approved tariff

21 (1) The holder of a franchise shall not impose, observe or follow rates, tolls or charges except those that are specified in a tariff that has been filed with the Board and approved by an order of the Board.

(1A) When the holder of a franchise has submitted, for the approval of the Board, a schedule of rates, tolls and charges, or a proposed change in any existing schedule of rates, tolls and charges, that, in the opinion of the Board,

(a) constitutes a reduction in the existing schedule of rates, tolls and charges at the time being paid by the majority of the customers of such franchise affected by such change in the class of service to which such proposed change applies; or

(b) applies only in respect of a service for which no rates, tolls or charges have been previously approved,

the Board may, at any time before finally approving or disapproving the schedule or change, grant an interim approval with or without conditions.

(1B) The schedule of rates, tolls and charges of the franchise, as approved by the Board pursuant to subsection (1A), shall be filed with the Board and are the only lawful rates, tolls and charges of the franchise until altered or modified in accordance with Section 22.

(1C) Notwithstanding anything contained in this Act, the interim approval granted pursuant to subsection (1A) may be given *ex parte* and without public hearing or notice.

(1D) Where the holder of a franchise has been granted an interim approval pursuant to subsection (1A), the holder of the franchise shall make an application to the Board within one hundred and eighty days for final approval.

(2) Where the holder of a franchise is the only customer of that franchise, the Board may exempt the holder of the franchise from the requirements of subsection (1). 1997, c. 4, s. 21; 2002, c. 18, s. 9.

Approval and fixing of rates, tolls and charges

22 (1) The Board may, on its own initiative or on the application of a person having an interest, by order in writing, approve or fix just and reasonable rates, tolls or charges for the delivery of gas by a gas delivery system, including related services.

(2) Before approving or fixing rates, tolls or charges pursuant to subsection (1) and subject to the authority of the Board pursuant to subsections 21(1A), (1B), (1C) and (1D), the Board shall invite public comment on the application and, where in the opinion of the Board it is desirable to do so, hold a public hearing.

(3) In approving or fixing rates, tolls or charges, the Board shall give due regard to the following criteria and may give appropriate weight to each of them relative to the others:

- (a) the related practical attributes of simplicity, understandability, public acceptability and feasibility of application;
- (b) freedom from controversies as to proper interpretation;
- (c) effectiveness in yielding total revenue requirements under the just and reasonable return standard;
- (d) revenue stability from year to year;
- (e) stability of the rates, tolls or charges themselves, with a minimum of unexpected changes seriously adverse to existing customers;
- (f) competition;
- (g) fairness of the specific rates, tolls or charges in the apportionment of total costs of service among the different consumers;
- (h) avoidance of undue discrimination in rate relationships;
- (i) efficiency of the rates, tolls or charges in discouraging wasteful use of service while promoting all justified types and amounts of use; and
- (j) such other matters as the Board deems appropriate.

(4) Notwithstanding subsection (3), the Board may, by order in writing, approve or fix just and reasonable rates, tolls or charges that

- (a) are intended to result in cost savings or other benefits to be allocated between the owner of the gas delivery system and its customers; and
- (b) are otherwise in the public interest.

(5) The Board may specify terms and conditions that apply to an order made pursuant to subsection (1) or (4). 1997, c. 4, s. 22; 2002, c. 18, s. 10.

Consumer advocate

22A (1) Where the Governor in Council directs or the Board on its own motion decides, the Board shall appoint a person to act as a consumer advocate in a hearing before the Board.

- (2) A consumer advocate appointed pursuant to subsection (1)
 - (a) shall participate in all aspects of the hearing before the Board and represent the interests of residential consumers as a full

intervenor with power to enter into settlement agreements with other parties; and

(b) has all the powers and authorities necessary to carry out the duties of a consumer advocate pursuant to this Section.

(3) The Board may fix fees and expenses of a consumer advocate in performing the functions and duties of a consumer advocate pursuant to this Section.

(4) The fees and expenses referred to in subsection (3)

(a) shall be paid to the Board by the applicant or applicants in such proportion as determined by the Board; and

(b) may include the cost of retaining experts and legal counsel to provide the consumer advocate with advice, including testimony, on technical and legal matters.

(5) The Board may make rules respecting practice and procedure, scope of work, fees and expenses and other matters respecting a consumer advocate appointed pursuant to subsection (1).

(6) The Governor in Council may make regulations respecting the qualifications and experience of a consumer advocate. 2005, c. 25, s. 2.

EXEMPT GAS CUSTOMER

Application for declaration

23 (1) A person may apply to the Board to be declared to be an exempt gas customer.

(2) Where the Board determines that a franchise holder is unlikely, within a reasonable period, to be able to deliver gas, within its franchise area and from its gas delivery system, to an applicant under subsection (1), the Board may declare the applicant to be an exempt gas customer if the Board considers it to be in the public interest to do so, subject to such terms and conditions as the Board considers appropriate. 2014, c. 48, s. 4.

SALE OF GAS

Requirement for licence

24 (1) No person shall act or purport to act as a natural gas marketer unless that person has been issued a licence by the Board.

(2) Notwithstanding subsection (1), a person may market natural gas to a prospective exempt gas customer without a licence issued by the Board. 1997, c. 4, s. 24; 2002, c. 18, s. 12; 2014, c. 48, s. 5.

Application for licence

25 (1) A person may apply, in the time and in the manner prescribed, for a licence.

(2) A franchise applicant may apply for a licence at the same time as making the franchise application. 1997, c. 4, s. 25; 2002, c. 18, s. 13.

Terms and conditions of licence

26 The Board may issue a licence upon such terms and conditions as the Board considers appropriate or as are prescribed. 1997, c. 4, s. 26.

Application for amendment of licence

27 (1) The Board may amend a licence upon application by the holder in the time and in the manner prescribed.

(2) Where an application is made pursuant to subsection (1), the Board may

(a) amend the licence, subject to such terms and conditions as the Board considers appropriate;

(b) cancel the licence and grant a new licence, subject to such terms and conditions as the Board considers appropriate; or

(c) deny the amendment. 1997, c. 4, s. 27.

Powers of Board on own motion

28 The Board may, in its discretion or as prescribed, amend, suspend, reinstate or cancel a licence. 1997, c. 4, s. 28.

Restriction on transfer and assignment

29 No person shall transfer or assign a licence without the approval of the Board. 1997, c. 4, s. 29.

30 *repealed 2002, c. 18, s. 14.*

GENERAL

Costs

31 (1) At the conclusion of a hearing, the Board may award such costs as the Board deems appropriate.

(2) *repealed 2002, c. 18, s. 15.*

1997, c. 4, s. 31; 2002, c. 18, s. 15.

Interim orders

32 The Board may, from time to time, make interim orders pending final disposition of matters before it. 1997, c. 4, s. 32.

Inquiries

33 (1) The Board may hold an inquiry as to whether any breach of a term or condition of a franchise has occurred.

(2) The Board shall give notice of an inquiry pursuant to this Section to the holder of the franchise and such other persons as the Board may determine in the time and in the manner prescribed.

(3) After an inquiry pursuant to this Section, the Board may, if it finds that a breach of a term or condition of a franchise has occurred, amend or cancel the franchise.

(4) The amendment or cancellation of a franchise pursuant to subsection (3) has no force or effect until it is approved by the Governor in Council. 1997, c. 4, s. 33.

Investigations

34 The Board may, on its own initiative or at the request of the Governor in Council, investigate any matter concerning a gas delivery system and may make all necessary examinations and inquiries and keep itself informed as to the compliance of the holder of a franchise with the provisions of law and has the right to obtain from the holder of a franchise all information necessary to enable the Board to fulfil its duties. 1997, c. 4, s. 34.

Duties of Board on a complaint

35 (1) Upon complaint made to the Board by any person that

(a) any rate, toll or charge is in any respect unduly discriminatory;

(b) the holder of a franchise is not complying with the terms or conditions of the franchise;

(c) service is inadequate or unobtainable,

the Board shall notify the franchise holder and proceed, with or without notice, to make such investigation as the Board deems necessary or expedient, and the Board may order

(d) the rates, tolls or charges reduced, modified or altered;

(e) that the holder of the franchise comply with the terms or conditions of the franchise;

(f) that the holder of the franchise furnish reasonably adequate service and facilities and make such repairs, enhancements or extensions as may be required.

(2) Before making an order pursuant to subsection (1), the Board shall hold a public hearing if, in the opinion of the Board, it is in the public interest to do so.

(3) The Board, when called upon to institute an investigation, may, in its discretion, require from the complainant the deposit of a reasonable amount of money or other security to cover the costs of the investigation and that money or security shall be dealt with as the Board directs if the decision is given against the complainant. 1997, c. 4, s. 35; 2002, c. 18, s. 16.

Conflict of interest

36 (1) No member of the Board shall be directly or indirectly employed by or interested in a gas delivery system or interested in a share, stock, bond, mortgage, security or contract of the holder of a franchise or licence and, where a member of the Board voluntarily becomes so interested, the member's office becomes vacant or, where the member becomes so interested otherwise than voluntarily, the member shall, within a reasonable time, dispose of the interest.

(2) Where a member of the Board fails to dispose of an interest as required by subsection (1), the Governor in Council may declare the office of the member vacant.

(3) No member of the Board is disqualified by reason only of being a consumer of gas. 1997, c. 4, s. 36.

Contravention or failure

37 (1) A person who contravenes or fails to comply with

- (a) this Act or the regulations;
- (b) a term or condition of a franchise or licence;
- (c) any order or direction given by the Board pursuant to this Act or the regulations,

is guilty of an offence and liable on summary conviction to a penalty not exceeding one hundred thousand dollars or imprisonment for a term not exceeding two years.

(2) Where an offence referred to in subsection (1) is committed by a person on more than one day or is continued for more than one day, it shall be a separate offence for each day on which the offence is committed or continued. 1997, c. 4, s. 37.

Interference

38 No person shall prevent, hinder, obstruct, molest or otherwise interfere with a member of the Board or a person authorized by the Board in the exercise of powers pursuant to this Act. 1997, c. 4, s. 38.

False statement

39 No person shall knowingly make a false statement in any record required to be kept or any document required to be submitted pursuant to this Act or the regulations. 1997, c. 4, s. 39.

Conflict with other enactments

40 Where there is a conflict between this Act and any other enactment, this Act prevails. 1997, c. 4, s. 40.

Board regulations

41 (1) The Board may make regulations

- (a) respecting procedures and forms to be used for an application or proposal;
- (b) respecting fees pertaining to any matter provided for pursuant to this Act or the regulations;
- (c) respecting the information to be provided by an applicant for a franchise;
- (d) respecting the giving of public notice;
- (e) respecting the transfer or assignment of a franchise;
- (f) respecting the amendment of a franchise;
- (g) respecting exemptions or conditions for the purpose of Section 10 or 17;
- (h) respecting procedures and forms to be used for the issuing of a permit or licence;
- (i) respecting fees pertaining to the issuing of a permit or licence, including renewal fees and financial security;
- (j) respecting terms and conditions of a permit or licence;
- (k) respecting rates, tolls or charges imposed by the holder of a franchise;
- (l) *repealed 2002, c. 18, s. 17.*
- (m) respecting the amendment, suspension or reinstatement of a licence;
- (n) respecting the transfer or assignment of a licence;
- (o) respecting information to be kept and maintained by the holder of a franchise.

(2) The exercise by the Board of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1997, c. 4, s. 41; 2002, c. 18, s. 17.

Governor in Council regulations

42 (1) The Governor in Council may make regulations

- (a) prescribing persons to be exempt gas customers;
- (aa) prescribing the circumstances in which gas may be delivered to an exempt gas customer, or two or more closely related exempt gas customers, at multiple locations for the purpose of the definition of “exempt gas-delivery system”;
- (ab) prescribing relationships as being close relationships for the purpose of determining whether exempt gas customers are closely related;
- (ac) respecting the approval of a franchise;
- (b) prescribing criteria to be taken into consideration by the Board prior to granting a franchise;
- (c) respecting the renewal of a franchise;
- (d) respecting terms and conditions of a franchise;
- (e) providing for different classes of franchises;
- (f) exempting certain applicants from some or all of the terms and conditions of a franchise as prescribed by the Board;
- (fa) respecting cost recovery for services provided by the Board;
- (g) prescribing requirements for the purpose of Section 14;
- (h) respecting orders and directives issued by the Board;
- (i) conferring powers and duties on the Board;
- (j) respecting the approval of the amendment or cancellation of a franchise;
- (k) defining any word or expression used but not defined in this Act;
- (l) respecting any matter deemed necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1997, c. 4, s. 42; 2002, c. 18, s. 18; 2014, c. 48, s. 6.

Public Utilities Act amended

43 *amendment of the Public Utilities Act.*

Gas Utilities Act repealed

44 Chapter 182 of the Revised Statutes, 1989, the *Gas Utilities Act*, is repealed. 1997, c. 4, s. 44.

Proclamation

45 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 1997, c. 4, s. 45.

Proclaimed - September 3, 1997
In force - September 3, 1997
