

# Chapter 15

## Special Report for the Public Accounts Committee - NB Power Funding of Minto Economic Development Activities

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# Special Report for the Public Accounts Committee NB Power Funding of Minto Economic Development Activities

## Background

**15.1** On 1 April 1997 the Standing Committee on Public Accounts adopted a motion requesting

*That the Auditor General inquire whether economic development activities in the Minto area which are funded by NB Power are in accordance with the legislative authority granted to NB Power under the Electric Power Act.*

**15.2** On 25 April 1997 we received a letter from the Clerk Assistant of the Legislative Assembly formally asking our Office to make this inquiry. We replied that we intended to look into the matter in late 1997.

## History of the Minto economic development fund

**15.3** In February 1994 the President of NB Coal Ltd. presented to the board of directors of NB Power (board) a business case on the evaluation of a mining plan with three alternatives for mining coal in Minto. He recommended that the tonnage of coal mined be reduced in 1994-95 to 300,000 tons from 450,000 tons with a consequent reduction in personnel. Importing cheaper offshore coal would make up the shortfall. The resulting annualized cost saving to NB Power was estimated at being \$7.8 million to \$9.5 million. On 24 February 1994 the board approved the recommended reduction to 300,000 tons for 1994-95.

**15.4** In March 1994 the board approved the 1994-95 budget and, as part of the business case, included a \$2.5 million funding commitment for economic development in the Minto region. NB Power also agreed to an additional five-year commitment of \$150,000 per year to the Minto Regional Economic Development Corporation.

**15.5** On 23 June 1994 the board was advised that the \$2.5 million in respect to the Minto region obligation had been expensed in the 1993-94 fiscal year. Therefore, it was recommended that the 1994-95 budget be revised accordingly. By motion, the board approved the removal of the Minto region expenses from the 1994-95 budget.

**15.6** NB Power has implemented the strategy set out in the business case gradually since 1994-95. NB Power staff indicated significant savings have occurred already but that the full effect will not be felt until 1998-99. In a letter to us in February 1998 NB Power management estimated the annual cost savings from this reduction at \$9,423,000 for 1998-99.

## Scope

**15.7** In light of the request from the Standing Committee on Public Accounts we met with NB Power officials on 9 December 1997 to discuss whether the corporation had the legislative authority to pursue economic development the way it did in the Minto area. At the meeting it was agreed that NB Power would provide a written response to the issue. We received their written response on 16 February 1998.

**15.8** We reviewed the Electric Power Act to determine if it, in our opinion, permitted such expenditures. We also reviewed the analysis NB Power prepared comparing reducing production levels at NB Coal with continuing production at existing levels. Finally we spoke to NB Power and NB Coal staff regarding the analysis and inquired as to whether expected savings had been achieved.

## Results in brief

**15.9** **Based on our review and the information provided to us, we conclude that the board's decision to pursue coal production cost-savings was a good business decision, and certainly well within its authority.**

**15.10** **NB Power was under no obligation to provide development funding. If public policy required that NB Power provide funding of \$2.5 million for economic development in the Minto area, we believe this should have been evidenced and supported by an Order in Council. It is our opinion that, because there was no such evidence, the expenditure of \$2.5 million by NB Power was not in accordance with the legislative authority granted to it under the Electric Power Act.**

## Legislation

**15.11** As our first step we met with NB Power officials and reviewed the issue of NB Power funding economic development activities in the Minto area. NB Power staff offered to provide a written submission to the issue and we agreed.

**15.12** We also reviewed the governing Act of NB Power, the Electric Power Act. Section 2 of the Act states:

*The intent, purpose, and object of this Act is to provide for the continuous supply of energy adequate for the needs and future development of the Province and to promote economy and efficiency in the generation, distribution, supply, sale, and use of power.*

**15.13** In our opinion this is the primary purpose of NB Power.

**15.14** In the official response from the President of NB Power, we were told that the corporation considered section 3(7) of the Electric Power Act as giving the authority for the funding of the development expenditures. This section states:

*The board of directors shall administer the affairs of the Corporation on a commercial basis and all decisions and actions of the board of directors are to be based, subject to public policy as determined from time to time by the Lieutenant-Governor in Council, on sound business practice.*

**15.15** NB Power officials believe the board's decision to supply development funding for the Minto area was in compliance with this section. That is, the board made the decision and it was based on sound business practice.

**15.16** We believe that 3(7) is a relevant section. This section could give the board of directors the right to fund development activities if the board could show it made the decision based on sound business practice. The section also allows NB Power to be used as an instrument of public policy, provided there is direction given to that effect by the Lieutenant-Governor in Council.

## **Business decision**

**15.17** The next step was to assess whether the board's decision to fund development in the Minto area was based on sound business practice.

**15.18** While implementation of the business case did not occur as quickly as originally planned, savings have occurred gradually since 1994-95. As noted earlier, NB Power management estimates the annual cost savings from reduced mining activity in the Minto region at \$9,423,000 for 1998-99. NB Power and NB Coal staff stated planned reductions have now been achieved and the cost of a ton of coal has dropped appreciably. Altogether, the savings will be significantly more than the funds NB Power supplied for economic development in the Minto region.

**15.19** We agree that the board's decision to proceed with the planned reduction in mining activity was a good business decision. However, we would also note that from a purely business point of view we do not believe it was necessary for NB Power to supply any developmental funding. Many companies make decisions to reduce or

**close out activities in an area and yet, except for meeting legal requirements, provide no other monies.**

## **The decision-making process**

**15.20** Thus our third and final step was to try and determine why, and how, the funding decision was made. To do this we reviewed the minutes of the Standing Committee on Public Accounts and discussed the decision with various NB Power staff. We also reviewed media releases and correspondence relating to the funding.

**15.21** In a December 1993 media release the Premier and the NB Power Chairman announced that with respect to the Minto area, "There will be various initiatives to further develop the local economy". The same release also announced "NB Power will contribute to a community economic development fund in the Grand Lake region". In a December letter to the mayor of Minto the Premier states "We are committed to supporting economic development in the area". Additionally a letter in late December 1993 from the Chairperson of the Minto Regional Economic Development Committee to the Chairman of NB Power noted that in discussions with the Chairman and the Premier "it was suggested that funds would be made available to the Minto area for job creation". The January 1994 reply from the Chairman stated the level of funding from NB Power would be contingent upon the impact of reduced coal production in the Minto area and done in concert with the Department of Economic Development and Tourism.

**15.22** We believe this information shows that government several months prior to NB Power board approval made the decision for NB Power to supply funding to the Minto area. That is, the government determined that a development fund was required and they asked NB Power to supply the required funding.

**15.23** Section 3(7) does state "subject to public policy as determined from time to time by the Lieutenant-Governor in Council". Thus there may be instances where public policy, as approved by the Lieutenant-Governor in Council, would allow NB Power to pursue actions in the public interest.

**15.24** **It is clearly the government's responsibility to set out public policy. However, the wishes of the Lieutenant-Governor in Council are usually expressed by means of an Order in Council. In this case, in order to reflect the open and transparent setting of public policy, we believe an Order in Council should have been issued authorizing NB Power to provide the required funds. This was not done.**