

Chapter 6

NB Power - Governance

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NB Power - Governance

Background

6.1 The New Brunswick Power group of companies (NB Power) is the largest entity owned by the citizens of New Brunswick. At 31 March 2005, NB Power had total combined assets of \$3.87 billion and had generated revenues and corresponding expenses of approximately \$1.4 billion for the year ended on that date. NB Power provides a vital service to citizens of the Province and is the engine that drives much of the economic activity in the Province. Further, it directly employs approximately 2,500 New Brunswickers.

6.2 The last few years have been a very challenging period for NB Power.

- A decision was made to refurbish the Coleson Cove generating station in 2001 and that refurbishment was completed by late 2004.
- The *Electric Power Act* was repealed and the new *Electricity Act* was approved and came into force (with the exception of certain unproclaimed sections) effective 1 October 2004.
- As a result of this change in legislation, the old NB Power Corporation was restructured and now consists of a parent company along with four subsidiary companies. One of those subsidiary companies also has two subsidiaries of its own.
- A new board of twelve directors was appointed effective 1 October 2004 that included a new chair, six other new members, along with four incumbent members and the CEO.
- The companies went through a staff reduction exercise in early 2005 that eliminated 279 positions, or a total of ten percent of the workforce.
- A decision was made to apply to the Public Utilities Board in early 2005 for a rate increase in excess of 3% effective 31 March 2005, the first such application since 1993. The effective date on the application was subsequently deferred to 1 April 2006.

- A decision was announced on 29 July 2005 that the Point Lepreau nuclear facility would be refurbished.
- A decision has been made to add a second transmission link to the United States electricity market. Work related to that initiative continues.

6.3 NB Power's board of directors and management have had to deal with these major initiatives and changes while at the same time ensuring that regular operations continued.

6.4 As we have discussed in previous Reports, effective governance is critical to good performance for Crown agencies. NB Power is no exception. About six years ago, shortly after the election of 1999, the new administration appointed Grant Thornton to carry out "a financial review of the Province of New Brunswick." Among other things, Grant Thornton identified problems with the governance structure at NB Power. Their 1999 report to government said:

We recommend high priority be given to reassessment of the governance structure between the Government, the Board and management of NB Power. Recommended changes arising from the reassessment should be implemented promptly.

Corporate governance

6.5 Governance can be defined as the process and structure used to direct the business and affairs of a corporation with the objective of achieving the corporate mission. The process and structure define the division of power between the shareholder, board and management. They also establish mechanisms for achieving accountability between management, the board of directors, and shareholders. A board of directors is appointed to represent the shareholder in the governance of a Crown agency. The sole shareholder of NB Power is the Province of New Brunswick. Hence the real owners of NB Power are the citizens of New Brunswick.

6.6 Ultimately Crown agency governance is about performance and accountability. Boards of directors are responsible for ensuring that Crown agencies they govern meet the performance expectations of the shareholder. They are also responsible for ensuring that management is accountable for its performance, and for discharging their own accountability obligations to the shareholder. Boards need to fulfill these critical responsibilities in order to justify their existence.

Scope

6.7 Our objective for this audit was:

To ensure that current governance structures and processes established for NB Power set a framework for effective governance.

6.8 In completing this work, we interviewed representatives of the NB Power board and management, the Department of Energy, the Department of Finance, the New Brunswick Electric Finance Corporation, the Public Utilities Board, and other involved organizations and individuals. We reviewed documentation including legislation, shareholders agreements, bylaws, board minutes, business plans, the New Brunswick Energy Policy, the NB Power corporate governance manual, and various other documents. We also reviewed recently-published governance literature, and findings and documentation from our previous governance audits, in order to identify best practices.

6.9 Our audit was performed in accordance with standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

Conclusion and results in brief

6.10 **We were pleased to note that recently there have been some important enhancements in NB Power governance structures and processes. However, there are still improvements that must be made before those governance structures and processes can truly be said to set a framework for effective governance.**

6.11 **Crown agency governance is ultimately about performance and accountability for that performance. Most of our key findings and recommendations in this chapter relate to those two critical areas.**

Performance expectations

6.12 **During our audit, we noted uncertainty on the part of the NB Power board and management in connection with provincial performance expectations for NB Power. This appears to be primarily because the Province, as shareholder, has not provided clearly documented expectations to NB Power. A contributing factor to this uncertainty is that, in various situations, direction comes from various provincial sources, all of which represent the shareholder in some capacity.**

6.13 We have recommended that to improve clarity the Province should develop, and update annually, a shareholder's letter of expectations, in consultation with the NB Power board of directors. That document should be signed by a shareholder representative and the chair of the NB Power board, and should, as a minimum:

- Provide clearly defined shareholder performance expectations including targets that the Province will use in evaluating corporate performance.
- Identify one official shareholder representative to provide direction to NB Power on behalf of the shareholder (i.e. Department of Energy, New Brunswick Electric Finance Corporation, or another organization).
- Provide a clear indication to the NB Power board of directors as to when it needs to consult with the shareholder representative for direction prior to making a decision on a significant initiative. This should be consistent with the process to the extent it is already documented in existing shareholder agreements.
- Document the mandates, missions and objectives for all corporations in the NB Power group.
- Establish performance reporting the shareholder needs from NB Power to evaluate corporate performance.
- Clarify other aspects of the relationship between the shareholder and NB Power as considered necessary (e.g. relative roles and responsibilities of major players in the governance of NB Power).

Accountability for performance

6.14 The board is the key accountability link for NB Power. As such it needs to ensure that it gets sufficient information from management to ensure that its policies are being complied with. However, at the time of our audit, monitoring reports had not been developed. We have recommended that the NB Power board obtain such reports from management as soon as possible that allow it to:

- evaluate actual corporate performance in comparison with performance targets established under board Ends policies; and

- ensure that management is complying with board Executive Limitations policies.

6.15 The board is also responsible for discharging a large portion of its accountability obligation to the shareholder by reporting on performance through the NB Power annual report. We have noted that external performance reporting through the corporate annual report needs improvement. Consequently, we have recommended that the board develop and implement an external reporting policy, based upon key requirements in the provincial annual report policy.

Good practices

6.16 The Department of Energy process for appointing the new board of directors of NB Power was a significant improvement over what we have observed in our past governance work in a number of other Crown agencies. It focused primarily on qualifications in identifying candidates.

6.17 We commend NB Power management for the initiative they have taken in the following governance-related areas:

- performance reporting through their balanced scorecard initiative; and
- supporting the governance function by assisting in the preparation of the corporate governance manual, and through other initiatives.

Areas selected for audit

6.18 There are many areas that can be looked at in examining corporate governance at a Crown agency. We chose eight areas we felt could have the most impact on the effectiveness of governance at NB Power. Those areas are detailed in Exhibit 6.1. The exhibit also shows the audit criteria, or statements of principle, for each of these areas. These criteria were agreed to by senior representatives of NB Power, the Department of Energy, the New Brunswick Electric Finance Corporation, and our Office.

6.19 The criteria established the framework for our audit. And it is against these criteria that we evaluated the state of governance of NB Power. Our findings in each area are discussed in the eight sections that follow.

Exhibit 6.1
Areas selected for audit

Audit area	Audit criterion
The board appointment process	The appointment process should provide sufficient information to those responsible for selecting candidates for appointment to the NB Power board to allow them to choose candidates with the characteristics, skills and abilities that will best contribute to board effectiveness. The process should be clearly documented and followed consistently.
NB Power mandates, missions and objectives	The Province, as shareholder, should ensure that the mandates, missions and objectives of NB Power Holding Co. and its subsidiaries have been clearly documented and agreed upon by the shareholder and the NB Power board.
Relative roles and responsibilities of key players in the governance of NB Power	The relative roles and responsibilities of the NB Power board of directors and its committees, the management of NB Power, the New Brunswick Electric Finance Corporation, the Department of Energy, the Department of Finance, Executive Council, the Public Utilities Board and the New Brunswick System Operator should be clearly documented and agreed upon by appropriate parties.
Direction provided to NB Power by the shareholder	The conditions under which the NB Power Holding Co. or its subsidiaries should consult the shareholder for direction and the mechanisms to be used in providing that direction should be clearly documented and consistently followed.
Policies of the board of directors	The NB Power board should maintain a comprehensive group of high-level, risk-based policies.
Compliance with policies of the board of directors	The NB Power board should regularly obtain assurance that board policies are being complied with.
Internal and external corporate reporting on performance	The NB Power board should ensure that appropriate principles and standards covering internal and external reporting on performance have been clearly documented and are being followed consistently.
Management by the board of its information needs	Periodically, the NB Power board should look critically at the information they receive from management and other sources to ensure that it allows for the effective discharge of all of the board's roles and responsibilities.

Board appointment process

6.20 The Treasury Board of Canada recently stated, “Governance experts agree that a critical element of achieving sound governance is choosing qualified directors to sit on Boards...”

6.21 The process for appointing members to the board of NB Power was changed prior to the appointment of the current board. Previously the board of NB Power would make a recommendation to the responsible Minister. The Minister would consider the recommendation and other candidates, and make a revised recommendation to Executive Council. There were no formal criteria that would allow those selecting candidates to choose those that would best contribute to the effectiveness of the board.

6.22 The new process for appointing the board of directors at NB Power worked as follows:

- The Department of Energy had NB Power contract a governance consultant to prepare a matrix document outlining the skills required of individual directors and the board as a whole. This document was designed for use in ensuring the composition of the new board collectively represented the personality traits, core competencies and experience necessary for effective governance at NB Power. The matrix is also intended to be used to fill future vacancies on the board of directors.
- The Department of Energy provided this and other information to a recruiting agency that subsequently identified a list of potential candidates for the board. A departmental representative indicated that the Province is considering this new approach for the identification, recruitment and selection of directors for all boards and agencies, and the appointment of the NB Power board was chosen as a pilot project.
- A recruitment committee, made up of representatives of government departments, reviewed the list of potential candidates identified by the recruiting agency and recommended a slate of candidates to the Minister of Energy. The Minister presented this list to the Lieutenant-Governor in Council (i.e. the Cabinet) for approval.
- Cabinet made a few changes to the list, primarily using additional candidates suggested by officials from the Department of Energy, to ensure certain demographic and stakeholder representation in line with their interpretation of the skills matrix.

- Cabinet then appointed a slate of eleven candidates to the new board of NB Power. The CEO of NB Power is also an ex-officio member of the new board.

6.23 We made the following observations on this process.

- Neither the Province nor the Department of Energy has a written policy covering the process for appointing directors to Crown agency boards, and as a result the Department of Energy had no documented appointment process that it was obliged to follow.
- The process followed in appointing the new board of directors of NB Power was a significant improvement over what we have observed in our past governance work in a number of other Crown agencies. Using private sector consultants and a skills matrix resulted in a strong and clear focus on the qualifications of candidates and the result has been that the qualifications of board members appointed is correspondingly high.
- We were encouraged by the development of the matrix document, but were disappointed that there was no completed document showing how the appointed directors fulfilled the core competency and experience requirements considered a prerequisite for appointment to the board. However, from our review those appointed did appear to meet documented requirements for the most part.
- Minutes were not kept of the meetings and discussions of the recruitment committee. Therefore, there is no documented record of their input into the appointment process.
- The NB Power board governance manual requires, among other things, that a nominating committee of the board recommend a slate of candidates to the Cabinet for approval. The nominating committee appears to have been replaced by the recruitment committee discussed above for purposes of the 1 October 2004 appointments. However, we were informed by NB Power representatives that future appointment processes will be initiated by the Board's own Human Resources, Governance and Nominating Committee.

Recommendations

6.24 We recommended the Executive Council Office develop and document a policy that clearly defines the process to be followed in appointing directors to the boards of all provincial Crown

agencies. This policy should be based on the process utilized to appoint the new NB Power board.

6.25 We recommended the policy include the requirement for thorough documentation of information and analyses supporting the evaluation, recommendation and appointment of candidates.

***Department of Energy
response***

6.26 *Having piloted the process used for the appointment of the new NB Power board, along with representatives of the Executive Council Office, the board of NB Power and private sector recruitment consultants, the Department of Energy understands this recommendation. The collective experience and high qualifications of the newly appointed board result from the new appointment process, as acknowledged by your audit report. The Department of Energy will promote the expanded use of this appointment process for other Crown agencies with the Executive Council Office.*

**NB Power mandates,
missions, and
objectives**

6.27 Documenting the mandates, missions and objectives of the NB Power group of companies and having them agreed to by the shareholder and board would yield three major benefits.

- It would provide the Province, the board, and management and staff with a common understanding of the purpose of NB Power.
- It would provide management and staff with a clear indication as to what initiatives and activities they should be undertaking.
- It would provide a basis for business planning and evaluation of corporate performance.

6.28 The NB Power Group is made up of the following entities:

1. NB Power Holding Corporation;
2. NB Power Distribution and Customer Service Corporation (which is a subsidiary of NB Power Holding Corporation);
3. NB Power Transmission Corporation (which is a subsidiary of NB Power Holding Corporation);
4. NB Power Generation Corporation (which is a subsidiary of NB Power Holding Corporation);
5. NB Power Nuclear Corporation (which is a subsidiary of NB Power Holding Corporation);

6. NB Power Coleson Cove Corporation (which is a subsidiary of NB Power Generation Corporation); and
7. NB Coal Limited (which is a subsidiary of NB Power Generation Corporation).

6.29 In our audit, we noted that the mandate, mission and objectives (called strategic themes) have been documented within NB Power for the first five corporations on this list. The board of directors approves them through its annual approval of corporate business plans.

6.30 The Province, as shareholder, should agree with the strategic direction being taken by NB Power. The Province would be aware of the mandate, mission and objectives of NB Power to the extent that they mirror terms of the *Electricity Act* and Regulation. Further, the New Brunswick Electric Finance Corporation does see corporate objectives as part of their review of corporate business plans. However, the Province has not been provided with one clearly worded document stating the mandates, missions, and strategic objectives of all corporations in the NB Power Group that would allow it to ensure that the strategic direction being taken is consistent with provincial expectations.

Recommendation

6.31 We recommended clearly documented mandates, missions, and objectives for all corporations in the NB Power Group be reviewed and agreed to by the Province, as shareholder, and the board of NB Power. This could be done as part of the sign-off of a shareholder's letter of expectations, as discussed later in this chapter.

NB Power response

6.32 *The respective boards of the NB Power Group of Companies have received and approved the mandates, missions, and objectives of the companies. These mandates are incorporated in the corporate Business Plans and are filed with the Electric Finance Corporation in accordance with the respective shareholder agreements.*

Department of Energy response

6.33 *The Department of Energy supports this recommendation. Although many improvements have been made through the introduction of the new Electricity Act and the resulting restructuring documents, we note that such direction should be stated more explicitly on a regular basis. Again, as the voting shareholder of NB Power Holding Corporation on behalf of the Province of New Brunswick, our department will undertake to work with the board of NB Power to have clearly documented mandates, missions, and objectives for all*

corporations in the NB Power Group reviewed and agreed to by the Province.

Recommendation

6.34 We further recommended that mandates, missions, and objectives be documented for NB Power Coleson Cove Corporation and NB Coal Limited.

NB Power response

6.35 *New Brunswick Power Coleson Cove Corporation and NB Coal Limited are subsidiaries of New Brunswick Power Generation Corporation. As such the mandate of the Generation Corporation and its subsidiaries is one and the same.*

Relative roles and responsibilities of key players in governance of NB Power

Lieutenant-Governor in Council

6.36 To have effective governance, it is very important that the roles and responsibilities of key players be clearly documented and agreed upon by appropriate parties. Our findings in this area relative to NB Power follow.

6.37 The role of the Lieutenant-Governor in Council (i.e. Cabinet) is defined in the *Electricity Act* and includes approving the appointment of NB Power board members and the NB Power CEO.

Department of Energy

6.38 The role of the Department of Energy is to represent the Province as the voting shareholder of NB Power Holding Corporation (i.e. the parent corporation) as well as to develop energy policy for the Province. The Department works with NB Power to implement elements of energy policy that involve electric power. It is also represented on the board of the New Brunswick Electric Finance Corporation.

New Brunswick Electric Finance Corporation

6.39 The role of the New Brunswick Electric Finance Corporation (NBEFC) is established by the *Electricity Act* and is reflected in individual Shareholder's Agreements with New Brunswick Power Holding Corporation and its subsidiaries. It provides debt management services to NB Power. It also monitors the financial performance of NB Power for the Province. That role includes reviewing the annual business plans and financial statements of NB Power. However, NBEFC does not approve the business plan and does not provide policy direction to NB Power. NBEFC is staffed entirely by Department of Finance employees and that Department is represented on the board of directors of NBEFC.

Board of directors and its committees

6.40 The role of the NB Power board of directors is laid out in the board governance manual. The Global Governance Process policy, as developed by the former board, states, "The purpose of the board, on

behalf of the shareholders and the people of New Brunswick, is to see that NB Power companies (1) achieve appropriate results for appropriate stakeholders at an appropriate cost and (2) avoid unacceptable actions and situations.”

6.41 The shareholder’s agreements establish certain restrictions on the powers of directors, some of which are discussed in the next section of this chapter.

6.42 The board has established the following committees to aid it in fulfilling its roles and responsibilities:

- Environment Committee;
- Nuclear Oversight Committee;
- Human Resources, Governance, and Nominating Committee; and
- Audit Committee.

6.43 Board committees are intended to be tools that allow a board to fulfill its roles. However, they do not have the power to make resolutions on behalf of the board. They can simply do work as requested by the board and make recommendations to the board as they deem necessary. Consequently, it is important, if committees are to be effective in doing the work that the board has assigned them, that their area of involvement be clearly defined.

6.44 We noted during our audit that terms of reference had not been approved by the board for any of these committees. However, subsequent to the completion of our fieldwork, we were provided with an updated governance manual that did include approved terms of reference for all except the Nuclear Oversight Committee. Terms of reference for that committee remain to be approved by the board.

6.45 We also noted that, while the board of NB Power is heavily involved in hiring the CEO, final approval must be granted by the Cabinet. Final approval to fire the CEO would also rest with the Cabinet.

Chief Executive Officer (CEO)

6.46 Under the Carver Policy Governance model that has been adopted by the NB Power board, and is discussed in more detail later in this chapter, all direction to management by the board is done through the CEO. Under that model, the summarized role of the CEO is to:

- achieve performance targets established by board Ends policies;
- do so while respecting board Executive Limitations policies; and

- provide information to the board to help it (1) evaluate the performance of the CEO and (2) make decisions for which the board accepts responsibility.

6.47 This role has been documented in the Board-CEO linkage and Executive Limitation policy sections of the governance manual, which has been approved by the board. In general, we feel that documented board policy makes a clear distinction between the roles and responsibilities of the board, and those of management.

New Brunswick System Operator

6.48 The role of the New Brunswick System Operator is to manage the power grid with the goal of ensuring a constant supply of power. This role is defined in Section 42 of the *Electricity Act*.

Department of Finance

6.49 The Department of Finance handles certain aspects of debt management for NB Power pursuant to a fiscal agency agreement between NBEFC, the NB Power Holding Corporation and the Department of Finance.

Public Utilities Board

6.50 All authority the Public Utilities Board (PUB) has in connection with NB Power is specified in the *Electricity Act*. The PUB's primary role is to hear applications for rate increases in excess of three percent from the NB Power Distribution and Customer Service Corporation and approve, modify or reject those requested rate increases. Rate decisions of the PUB may be overturned by the Cabinet within thirty days of being filed with the Clerk of the Executive Council. Other roles assigned to the PUB under the *Electricity Act* include licensing power generation and investigating public complaints about certain corporations within the NB Power Group.

Recommendation

6.51 We recommended the board of directors of NB Power ensure they receive and approve terms of reference for the Nuclear Oversight Committee.

NB Power response

6.52 Revised terms of reference for the Nuclear Oversight Committee reflecting the Committee's role in the refurbishment of Lepreau will be presented to the board for approval at the February 21st, 2006 board meeting.

Recommendation

6.53 We recommended the Province give the board of directors of NB Power full responsibility for approving the hiring and firing of the NB Power CEO.

Direction provided to NB Power by the shareholder

Documented direction to NB Power

6.54 From our documentation review, it appears that the Province, as shareholder, directs NB Power through

- Legislation and Regulation, most particularly the *Electricity Act* that was enacted effective 1 October 2004;
- Orders in Council (OICs) approving the appointment of NB Power board members and the CEO;
- Policy and Priorities Committee minutes approving government policy initiatives applicable to NB Power (e.g. the provincial Energy Policy as prepared by the Department of Energy); and
- Shareholder's Agreements signed by NB Power Holding Corporation or its subsidiaries with the Minister of Energy and President/CEO of the New Brunswick Electric Finance Corporation (NBEFC).

6.55 Section 3(7) of the old *Electric Power Act* provided the following direction to NB Power. "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." While a similar comment does not appear in the new *Electricity Act*, various NB Power and government representatives have indicated that this approach is to be continued. Also, the Premier in comments made 30 May 2002 stated, "Each of the new restructured companies will be instructed to operate on a commercial, business-like basis..."

6.56 Under the shareholder's agreements the Minister of Energy and/or NBEFC must be provided by NB Power on demand with:

- the President's report to the board of directors;
- minutes of the meetings of the board of directors;
- quarterly financial statements;
- corporate management reports;
- monthly financial statements and reports;
- monthly operating results report;
- reports on cash flow-liquidity;
- report on load and resources adequacy;
- annual report;
- any other financial information as required; and
- access to operating and financial records at corporate offices for each company in the NB Power corporate group.

6.57 The shareholder's agreements also indicate:

- Each corporation must deliver annually a strategic business plan and a budget to the President of NBEFC. NBEFC has thirty days to review it before NB Power may move forward with the plan, although NBEFC does not formally approve the plan. NBEFC may, however, ask questions of NB Power in order to obtain further information.
- The board's power to manage and supervise the business and affairs of the corporate group is restricted in that:

It cannot sell, exchange, dispose of, or purchase, lease or otherwise acquire "material assets" other than in the ordinary course of business without the written consent of the board of directors of NBEFC. [There is no definition of the term "material assets".]

It cannot appoint/terminate the chair without written consent of Executive Council.

It cannot appoint/terminate the President and CEO without written consent of Executive Council.

It cannot appoint the auditor for the corporation without written consent of the board of directors of NBEFC.

The board of directors of NBEFC will establish the percentage of profit to be paid as a regular dividend by the companies in the NB Power group.

6.58 We see two issues of concern in connection with shareholder direction. They are:

- the existence of multiple shareholder representatives; and
- a lack of clearly communicated shareholder performance expectations.

Multiple shareholder representatives

6.59 There appear to be at least three shareholder representatives that may, from time to time, direct the NB Power group (i.e. speak on behalf of the shareholder). These include the Premier's Office, NBEFC, and the Department of Energy. It is our understanding, from reviewing the *Electricity Act*, that the official shareholder representative is the Minister of Energy, but he and his department do not currently speak for the shareholder on all matters.

6.60 In fact, a representative of the Department of Energy indicated the "... Minister of Energy is responsible for policy issues, Finance

[i.e. NBEFC] is responsible for the dollar issues.” We also note that there is regular communication between NB Power and the Premier’s Office, some of which appears to be for decision-making purposes. For instance, the Premier made the following statement in connection with the Point Lepreau refurbishment decision: “...the final decision on Lepreau belongs to the Tory cabinet.”

6.61 Representatives of NB Power management have indicated that not having one official shareholder representative from which necessary shareholder direction originates sometimes causes uncertainty for them.

6.62 To improve clarity of direction to NB Power, we feel that the Province should clearly identify one official shareholder representative to speak on behalf of the shareholder. That representative would be responsible for providing official direction to NB Power.

Lack of clearly communicated shareholder performance expectations

6.63 The report from the Grant Thornton Financial Review of the Province of New Brunswick, dated 30 September 1999, included the following statement:

It ... appears from our discussions, there is not a clearly articulated and communicated strategy for [NB Power] nor is there consensus among the Government, [NB Power] Board and [NB Power] management on what constitutes the appropriate strategy and direction.

6.64 From our audit, it appears that the situation has not changed in relation to the communication of provincial performance expectations for NB Power. The board itself in its Board Job Description policy describes its job in part, “... to represent the shareholders in determining and demanding appropriate organizational performance ...” However, it cannot fulfill this role without determining what the shareholder expects of NB Power.

6.65 In fact, the Province has no formal process for communicating provincial performance expectations (i.e. desired direction) to NB Power. What is communicated is either purely financial in nature and a by product of the provincial budget and/or debt repayment requirements, or specifically related to implementation of the provincial energy policy.

6.66 Board members we talked to seemed uncertain as to the shareholder’s specific performance expectations for NB Power. Having documented expectations from the shareholder is important if governance is to be effective. It ensures that corporate plans can be

accurately aligned with those of the Province. And it allows both the board and the shareholder to better evaluate corporate performance by providing consistent targets against which to measure results.

6.67 As part of our work in this area, we reviewed comments made by the former Minister of Natural Resources and Energy in his Minister's Statement on the Future of NB Power dated 30 May 2002. That document includes the comment, "... five criteria the government would use in evaluating the future of N. B. Power. These are customer rates, impact on provincial finances, economic development, reliability and safety, and environmental protection."

6.68 Further, New Brunswick's Prosperity Plan 2002-2012 states:

New Brunswick's Energy Policy will help ensure a secure, reliable, and cost-effective energy supply for commercial and non-commercial customers making us competitive in attracting new investment and supporting our economic development objectives. This cornerstone has the following action priorities: Energy Policy – Continuing to implement the initiatives contained in the Province's comprehensive energy policy released in January 2001, based on the following five policy objectives: Ensure a secure, reliable and cost effective energy supply for residential, commercial and industrial users; Promote economic efficiency in energy systems and services; Promote economic development opportunities; Protect and enhance the environment; and Ensure an effective and transparent regulatory regime.

6.69 We believe the priorities discussed in these documents could serve as the basis for documented shareholder performance expectations. Further, board Ends policies, which are discussed in the next section of this chapter, should be clearly aligned with these documented shareholder performance expectations.

Letter of expectations

6.70 While a number of shareholder performance expectations for NB Power have been presented in one form or another, what is missing is a single reference document specifically prepared for NB Power that clearly summarizes those expectations. Such a document would reduce the opportunity for misinterpretation of the performance expectations established by legislation and shareholder's agreements, and allow for further clarification and enhancement as considered necessary. It would also allow expectations to be adjusted regularly in keeping with changes in provincial policy and priorities.

6.71 Other jurisdictions have made use of a shareholder's letter of expectations as a way of documenting government expectations for a Crown agency. For example, the Province of British Columbia requires that a shareholder's letter of expectations be signed by the Minister of Energy and Mines (as representative of the shareholder, the Government of British Columbia) and the chair of the British Columbia Hydro and Power Authority (as representative of the corporation). It goes beyond performance expectations to also clearly define other key aspects of the relationship between the shareholder and the corporation. The purpose section of the document states:

This Shareholder's Letter of Expectations between the Shareholder and the Corporation is an agreement of the respective roles and responsibilities of each, and serves as the basis of agreement between the Shareholder and the Corporation on corporate mandate including high-level performance expectations, public policy issues and strategic priorities. It will be reviewed annually and updated as required. ...

6.72 The British Columbia document clearly identifies:

- specific direction government has given to the corporation;
- corporation accountabilities in responding to government's performance expectations;
- shareholder responsibilities establishing that the shareholder is responsible for the legislative, regulatory and public policy framework in which the Crown operates; further, it mandates specific shareholder actions required to meet these responsibilities and support achievement of government's performance expectations; and
- areas of shared accountability, specifically communications and reporting.

6.73 One of the documented shareholder responsibilities is to "advise Crown corporations of government's priorities, strategic decisions and public policy and performance objectives and expectations that may impact the Crown corporation ..."

6.74 The Executive Summary of the Treasury Board of Canada Secretariat in its 2005 Report to Parliament, Meeting the Expectations of Canadians – Review of the Governance Framework for Canada's Crown Corporations includes the comment:

The government will reinforce the notion of active ownership. The responsible Minister, as the representative

of the owner, will be required to provide Crown corporations' Boards of Directors with a clear statement of the government's policy priorities and performance expectations for the corporation, which would form the basis of a periodic review of the corporation's performance.

6.75 The British Columbia document, supported by the Treasury Board of Canada best practices cited above, would provide an excellent model for a letter of expectations between the Province of New Brunswick and NB Power.

Recommendations

6.76 We recommended the Province, in consultation with the NB Power board of directors, develop, and update annually, a shareholder's letter of expectations that, as a minimum:

- **Identifies one official shareholder representative to provide direction to NB Power on behalf of the shareholder (i.e. Department of Energy, NBEFC, or another organization).**
- **Provides clearly defined shareholder performance expectations including targets that the Province will use in evaluating corporate performance.**
- **Provides a clear indication to the NB Power board of directors as to when it needs to consult with the shareholder representative for direction prior to making a decision on a significant initiative. This should be consistent with the process to the extent it is already documented in existing shareholder agreements.**
- **Documents clearly-stated mandates, missions and objectives for all corporations in the NB Power group.**
- **Establishes performance reporting the shareholder needs from NB Power to evaluate corporate performance.**
- **Clarifies other aspects of the relationship between the shareholder and NB Power as considered necessary (e.g. relative roles and responsibilities of major players in the governance of NB Power).**

6.77 The document should be signed by both the shareholder representative and the chair of the NB Power board of directors to signify their understanding and agreement. The British Columbia document discussed above could be used as a model.

NB Power response

6.78 *Currently the Shareholders Agreements clearly define the roles of the NB Power boards by setting out the parameters within which they may function with and without authorization from the province and outline the information that the boards are to provide to the Province.*

6.79 *Further the boards were incorporated under the Business Corporations Act and as such the legislation defines how the boards should exercise their fiduciary duties.*

6.80 *There is no uncertainty on the part of the boards as to what the province's expectations are.*

Department of Energy response

6.81 *The Department of Energy supports the above-noted recommendation and recognizes the need for an annual statement of expectations to go along with the longer-term direction outlined in the various agreements executed between the parties. As the voting shareholder of NB Power Holding Corporation on behalf of the Province of New Brunswick, and with our mandate of developing and implementing government policy with respect to energy, including electricity, our department will undertake to work with appropriate stakeholders to implement this recommendation.*

Policies of the board of directors

6.82 During 2004 the former board of directors of NB Power began to develop a corporate governance manual. At the same time, the board adopted the Carver Policy Governance model which is reflected in the documentation in the governance manual.

6.83 Both the manual and the Carver model were adopted as a work in progress by the new board when they arrived in October 2004. We did not, as part of our work, make any assessment of the suitability of the Carver model to the governance of NB Power.

Carver Policy Governance model

6.84 The Carver model requires that policies be developed in four distinct areas:

- Governance Process - how the board conducts its business;
- Board-CEO Linkage - how the relationship between the board and CEO works;
- Executive Limitations - what management is prohibited from doing because the board judges it as imprudent (i.e. it would negatively impact the corporation's ability to achieve its mission) and/or unethical; and

- Ends - performance targets that the board expects management to meet, usually based primarily upon the board's understanding of the shareholders' expectations.

6.85 The board's roles and responsibilities under the Carver model include:

- preparing and maintaining board-level policies in the areas described above;
- monitoring corporate success in achieving Ends policies and management compliance with Executive Limitations policies;
- ensuring the board complies with its own policies (for example the requirement to monitor CEO performance);
- ensuring that appropriate and timely action is taken to correct deficiencies identified; and
- maintaining open communication with the shareholder and other stakeholders, most particularly in order to clearly understand shareholder corporate performance expectations.

Implementation of Carver Policy Governance model at NB Power

6.86 We reviewed the current practices of the NB Power board to see the extent to which the model had been implemented and made the following observations.

- As part of its governance development work, the former board developed a group of board policies in three of the four areas specified by the Carver model. Those areas included governance process, board-CEO linkage, and executive limitations. The policies are all documented in the corporate governance manual. It is apparent based upon a general review of the content of these policies that the board did intend to adopt the Carver model.
- Development of corporate Ends policies was not started until mid-2005. A draft set of Ends policies had been created prior to the completion of our fieldwork. We were subsequently informed that Ends policies had been finalized at a September 2005 meeting of the board. In a 2005 review of the Corporate Governance manual, the internal auditor, Ernst & Young, pointed out the importance of having board Ends policies in place.

... If no Ends policies have been created, there is a risk that the long-term goals of the Board have not been communicated to the organization. The CEO cannot be held

responsible for not achieving Ends that have not been stated in writing.

- Draft Ends policies were developed by a consultant and management. The board had no involvement, nor were the Ends policies based on clearly documented shareholder expectations. We were informed that the board reviewed and modified the Ends policies as necessary in finalizing them during the September 2005 board meeting. We feel that the board, as the shareholder representative at NB Power, should take the lead in developing this important set of policies in future. Representatives of management indicated that in the longer term they would expect to see the board take ownership of this process.
- A balanced scorecard initiative was introduced by management during 2004 independent of and prior to the development of draft Ends policies. The balanced scorecard developed from a need to translate a company's vision and strategy into a related set of performance measures. In other words, development of Ends policies should typically precede a balanced scorecard initiative. Also, given that these two initiatives were undertaken independently, we have a concern that they may not result in a unified set of performance objectives for NB Power. It is very important that they be aligned. Management representatives recognized that it was preferable to have Ends policies developed first, but could not wait as they needed the information the balanced scorecard could provide.
- We also noted other cases where the board or its committees directed management to prepare board-level policies. For example the Human Resources, Governance, and Nominating Committee in January 2005 asked management "to prepare policies that fall within the Human Resources mandate and to present them to the committee for consideration at its next meeting". As noted above, the Carver model specifically indicates that board policies should be prepared by the board, not management.
- Most of the NB Power board members we talked to were unfamiliar with the Carver Policy Governance model. Subsequent to our fieldwork, we were informed that the board was provided with a training session on the Carver model during September 2005. Based upon our research, the model can be the basis for effective governance, but requires the appropriate application of model-specific knowledge by the board.

Consequently, we believe that the board should continue to enhance its knowledge about the model to allow it to

- facilitate the successful implementation and ongoing application of the model; and
- make periodic assessments as to whether it continues to be an appropriate choice for NB Power.

Risk-based policies

6.87 The Conference Board of Canada, in its Corporate Governance Handbook, states:

Managements should construct an inventory of risks including: strategic, operational, reputation, regulatory, financial, and information risk. Information should be provided to the board that arrays the risks against the probabilities of occurrence and associated losses.

6.88 The Conference Board has also stated that “...Directors should understand the company’s business, the factors that drive it and the major risks and vulnerabilities that the company faces...”

6.89 And the Toronto Stock Exchange Committee on Corporate Governance in its report, Where Were the Directors – Guidelines for Improved Corporate Governance in Canada recommended “The board of directors of every corporation should explicitly assume responsibility for ... the identification of the principal risks of the corporation’s business and ensuring the implementation of appropriate systems to manage these risks...”

6.90 During our audit, we were informed that NB Power staff has been formally identifying and managing risks at NB Power since 2004. The work of the internal auditor concentrates heavily on the area of risk management as well. Our audit did not include reviewing risk management activities at NB Power prior to 2004.

6.91 Board policies also speak to certain specific risks. For example the Emergency CEO Replacement policy requires that the CEO have no less than two other executives familiar with board and CEO issues and processes. There is also an Emergency Planning policy and other risk management related policies.

6.92 However, we noted during our audit that the board does not generate or maintain a comprehensive listing of the principal risks to NB Power. Further, risk information the board receives from management is incidental to its review of the annual business plan or

internal auditor reports to the audit committee, and does not constitute a comprehensive listing.

6.93 Without comprehensive risk information, it is more difficult for the board to ensure that its policies address all significant areas of risk. For example, one board member identified fuel price as the biggest risk that NB Power faces. However, when we reviewed current board policies, we saw nothing that calls attention to this risk or requires that it be mitigated, although we are aware of a management policy that addresses the area. We feel that the board can add significant value in this area, but needs to take a more active role.

Recommendation

6.94 We recommended NB Power management ensure that the objectives and targets set in their balanced scorecard initiative align with and support those in the board's Ends policies, when finalized, and make adjustments as necessary.

NB Power response

6.95 *The board's Ends Policies are finalized. The objectives and targets set out in the NB Power balanced scorecard initiatives are aligned with and support the Ends policies.*

Recommendation

6.96 We recommended board Ends policies be reviewed with the shareholder to ensure that they accurately reflect shareholder expectations for NB Power including the priorities documented in the New Brunswick Prosperity Plan 2002-2012.

NB Power response

6.97 *The boards Ends Policies were drawn from and are aligned with the New Brunswick Energy Policy which is incorporated in the New Brunswick Prosperity Plan 2002-2012. The Corporate Business Plans articulate the Ends Policies and will be provided to the Electric Finance Corporation, pursuant to the respective shareholders agreements.*

Recommendation

6.98 We recommended future board policy development and maintenance of current policies be initiated and carried out by the board or its committees, not by management.

NB Power response

6.99 *The initial draft Ends Policies were developed by management. Thereafter the board held a workshop exclusively dedicated to a review of all board policies. All policies were thoroughly reviewed and discussed by the board. The workshop concluded with approval by the board of all Policies as amended. On a go forward basis the board through its committees will develop board policies.*

Recommendation

6.100 We recommended the board generate and maintain a comprehensive listing of the principal risks to NB Power. Further, the board should set policy that requires management to address specific risks as it considers appropriate.

NB Power response

6.101 *Current board policies (Executive Limitations) address principal risks to the NB Power Group of Companies. The ongoing review by the board of the Ends Policies will be supported by a comprehensive review of principal risks to the respective corporations. Currently the internal auditors are developing a formal comprehensive risk reporting to the board. The board will continue to set risk management policies as required.*

Recommendation

6.102 We recommended the board continue to enhance its knowledge about the Carver Policy Governance model to allow the board to

- **facilitate the successful implementation and ongoing application of the model; and**
- **make periodic assessments as to whether it continues to be an appropriate choice for NB Power.**

NB Power response

6.103 *The boards will make periodic assessments as to whether the Carver model continues to be the appropriate choice for the NB Power Group of Companies.*

Compliance with policies of board of directors

6.104 The NB Power board policy, Monitoring CEO Performance includes the requirement for the board to perform “Systematic and rigorous monitoring of CEO job performance...”, and states

Monitoring is simply to determine the degree to which board policies are being met. ... All policies that instruct the CEO will be monitored at a frequency and by a method chosen by the board. The board can monitor any policy at any time by any method, but will ordinarily depend on a routine schedule.

6.105 Reports that will allow the board to monitor management compliance with board policies were still under development by management at the time of our audit. Consequently, no formal monitoring activity had commenced.

6.106 We were pleased to note, however, that management now requires all significant transactions to be reviewed and signed off by knowledgeable staff to ensure that they comply with board policies.

6.107 During the period under review, board deliberations continued to revolve around decisions on specific issues. Once monitoring information is available from management, we would expect to see more policy-based board discussions, in keeping with the Carver Policy Governance model. The board should also consider using internal and external audit reports and direct inspection by board members as sources of monitoring data as suggested by the board policy, Monitoring CEO Performance.

6.108 We would also expect that the board would review those reports regularly, and ensure appropriate action is taken if cases of non-compliance are reported.

6.109 We understand that the board of NB Power intends to conduct a self-assessment of its performance in the near future. We would encourage the board, as part of that process, to review its own compliance with board policies in the areas of governance process and board-CEO linkage.

Recommendation

6.110 We recommended the NB Power board obtain internal monitoring reports from management as soon as possible to allow it to ensure that:

- performance targets established under board Ends policies have been met; and
- management is complying with board Executive Limitations policies.

NB Power response

6.111 *Management is developing reporting mechanisms for compliance with Executive Limitation policies as well as establishing measures for the Ends Policies.*

Recommendation

6.112 We further recommended the board review those reports regularly once completed, and ensure appropriate action is taken if cases of non-compliance are reported.

NB Power response

6.113 *The board agrees. Regular reviews of these reports will be undertaken by the board.*

Recommendation

6.114 We recommended the board of NB Power, as part of its upcoming, and future, performance self-assessments, review its own compliance with board policies in the areas of governance process and board-CEO linkage.

NB Power response

6.115 *The boards of the NB Power Group of Companies have adopted a Governance process policy ...*

The pre-determined criteria is set out in the policy.

The first self assessment is scheduled for early 2006.

Internal and external corporate reporting on performance

6.116 In general, there appears to be no reporting policy or direction from the board in connection with either internal or external performance reporting. In other words, the board has not ensured that appropriate principles and standards covering internal and external reporting on performance have been clearly documented and are being followed consistently.

Performance reporting framework

6.117 There appear to be three distinct players in the governance process that need regular performance reporting information relating to the NB Power group of companies.

- management, whose primary performance reporting source should be the CEO Forum reports that are generated as a result of the balanced scorecard initiative;
- the board, whose primary performance reporting source should be management reports on corporate performance vis-à-vis board Ends policies and compliance with board Executive Limitations policies; and
- the shareholder, and by extension the public, whose primary performance reporting source should be the corporate annual report, along with specific financial reporting received pursuant to shareholder's agreements.

6.118 We have already discussed the need for the board's Ends policies to be aligned with the shareholder expectations for NB Power. And we discussed the importance of aligning the priorities covered by the balanced scorecard with the board's Ends policies.

6.119 Performance reporting should mirror this alignment. Management has developed the balanced scorecard initiative primarily for internal reporting purposes. But a subset of the performance information presented in balanced scorecard reporting should provide information needed to report against the board's Ends policies. And all or part of that reporting should be used to report externally about corporate success in achieving the shareholder's expectations.

Internal performance reporting

6.120 For purposes of this section, internal performance reporting can be defined as reporting from management to the board of directors or its committees. In *Boards That Make A Difference*, John Carver

identifies three categories of information that management provides to boards.

1. Decision information - "... that information the board receives to make decisions, for example, to create a budget policy from among alternative positions ..."
2. Monitoring information - "Monitoring information is used to gauge whether previous board directions have been satisfied. It is judgmental in that it intentionally measures performance. It is retrospective in that it always looks to the past. ..."
3. Incidental information - "Information that is used neither to make decisions nor to monitor falls into the incidental information category. It often masquerades as monitoring information. ..."

6.121 From our review of board minutes, we determined that the board gets lots of decision and incidental information. However, as noted in the previous section, monitoring reports (i.e. performance reports) are still under development by management. Consequently, there is no reporting to the board that would help them establish if:

- performance targets established under board Ends policies have been met; and
- management is complying with board Executive Limitations policies.

6.122 We feel that the board needs this reporting in order to govern effectively. However, during our audit we found no board policy on internal reporting, nor did we see any indication of the board proactively soliciting this information from management. This is perhaps in part due to the new board's preoccupation since it was appointed with a number of significant initiatives requiring board decisions.

6.123 As we implied above, all external performance reporting must necessarily start as internal performance reporting. Therefore, the lack of monitoring reports (i.e. performance reports) means that external reporting on performance may be compromised as well because information needed to report externally is not being generated.

External reporting

6.124 For purposes of this section, external reporting can be defined as performance reporting from NB Power to the shareholder, New Brunswick taxpayers, and other stakeholder groups. In general, this is accomplished through the corporate annual report and through regular

financial reporting to NBEFC as required under shareholder's agreements.

6.125 Effective June 1991, the Province of New Brunswick adopted an annual report policy for government departments and Crown agencies. It established certain requirements regarding the form and content of annual reports. The policy defines the prime function of an annual report to be "the major accountability document by departments and agencies for the Legislative Assembly and the general public. It serves as the key public link between the objectives and plans of a government entity and the results obtained."

6.126 It goes on to state:

To the degree possible, departments and agencies should give a clear account of goals, objectives and performance indicators. The report should show the extent to which a program continues to be relevant, how well the organization performed in achieving its plans and how well a program was accepted by its client groups.

6.127 NB Power is covered by this policy. And in fact, when we reviewed the 31 March 2004 NB Power annual report, we noted that a number of requirements of the provincial annual report policy have already been met. Additional information that would be required for the report to fully comply with the policy includes providing a clear account of goals, objectives and performance indicators, and actual versus budget comparative information.

6.128 We also note that section 10(1) of the new *Electricity Act*, referring to the New Brunswick Power Holding Corporation (HoldCo), states the following:

The Corporation shall, within 6 months after the termination of its fiscal year, submit to the Minister an audited report, in such form as the Minister may direct, on the operations of the Corporation and the subsidiaries of the Corporation for that fiscal year and the Minister shall table the report in the Legislative Assembly if it is then sitting or, if it is not then sitting, when it next sits.

6.129 Representatives of NB Power and the Department of Energy indicated that the Minister of Energy has not prescribed any form under section 10(1) of the Act beyond indicating that the new reporting regime will not increase NB Power's costs. This requirement may, in

fact, restrict HoldCo's ability to report effectively on performance for all corporations within the NB Power group.

6.130 We make the following observations in relation to external reporting by NB Power. Note that these comments are based in part upon our review of NB Power's 2003-2004 annual report, the last such report under the old corporate structure. The new NB Power group of companies had not yet published an annual report by the time of completion of our audit fieldwork.

- The board of the NB Power group has not adopted an external reporting policy beyond being a signatory to the shareholder's agreements. We believe that the provincial annual report policy provides good guidance on external reporting and is applicable to NB Power, even though corporate compliance with the policy has never been enforced by the Province.
- The 2003-2004 NB Power annual report includes an entire section detailing the board's approach to corporate governance. We consider this a best practice and encourage the board to continue to disclose this information in its annual report.
- Timeliness of external reporting has become a problem under the new *Electricity Act*. As referenced above, the financial statements for NB Power do not have to be tabled at the Legislative Assembly by the Minister of Energy until six months after year end and the tabling date is even later if the Legislative Assembly is not sitting. Establishing timely accountability for results in such a case becomes more difficult. Under the old *Electric Power Act*, the deadline was three months after year end. The current deadline for tabling annual reports for all British Columbia Crown agencies with a March 31st year end is also the end of June.
- NB Power publishes annual environmental reports pursuant to its involvement in the Environmental Commitment and Responsibility Program of the Canadian Electricity Association. These environmental reports are produced separately from the corporate annual report and include four key principles regarding the efficient use of resources, reducing adverse environmental impacts, being accountable, and ensuring employees understand the environmental impact of their actions. Given that the provincial Prosperity Plan includes an objective, "Protect and enhance the environment", it would be appropriate to include a summarized version of this reporting in the corporate annual report.

6.131 Subsequent to the completion of our fieldwork, we received a copy of the 2004-2005 NB Power annual report. We briefly reviewed the report and noted that the section on corporate governance had been further enhanced to include a comparison of NB Power governance processes with those recommended in the Toronto Stock Exchange (TSX) Governance Guidelines.

Recommendation

6.132 We recommended the NB Power board develop a policy covering internal reporting from management to the board.

NB Power response

6.133 *Management is developing reporting mechanisms for compliance with Executive Limitation policies as well as establishing measures for the Ends Policies.*

Recommendation

6.134 We recommended the NB Power board develop a policy covering external reporting by NB Power. That policy should be based on the provincial annual report policy.

NB Power response

6.135 *Section 10 of the Electricity Act requires that the companies submit to the Minister an annual audited report in such form as the Minister may direct.*

6.136 *The board will seek guidance from the Minister on additional, external reporting.*

Recommendation

6.137 We recommended a summary of the annual environmental reporting by NB Power pursuant to its involvement in the Environmental Commitment and Responsibility Program of the Canadian Electricity Association be included as part of the corporate annual report.

NB Power response

6.138 *A summary of the annual environmental reporting by NB Power pursuant to its involvement in the Environmental Commitment and Responsibility Program of the Canadian Electricity Association will be included as part of the Corporate Annual Report.*

Recommendation

6.139 We recommended the official shareholder representative consider requesting that the *Electricity Act* be amended to require tabling of the corporate financial statements at the Legislative Assembly within three months of the end of the fiscal year.

Management by the board of its information needs

6.140 There are several questions that a board needs to ask itself in connection with the information it receives from management.

- Is there information we need that we are not getting now?

- Is the information we are getting now of reasonable quality (reliable, accurate, timely, etc.)?
- Is the information we are getting now in a useful form (i.e. presented so as to facilitate board deliberations in its areas of responsibility)?
- Is there information we are getting now that we do not need?

6.141 As we discussed in the previous section, it appears that the board is not proactively asking itself the first question, at least in terms of board policy monitoring information.

6.142 However, based upon our review of board minutes, it does appear that the other three questions are being asked, if on a somewhat ad hoc basis. We found fairly regular comments in the board minutes about the quality of information being provided by management, both positive and negative, and in some cases questioning the relevance of certain reports provided to the board by management.

6.143 In general, though, the board has not been as proactive as it might have been up to now in addressing the quality and completeness of reporting provided by management. This may be as a result of the board's preoccupation with a number of large initiatives requiring board decisions as previously discussed. However, in the longer term, we feel it will improve the effectiveness of board governance if the board looks critically at the information it receives from management to ensure that it allows for the effective discharge of all of the board's roles and responsibilities.

6.144 We agree with the suggestion made during our discussions with individual board members that the upcoming board self evaluation may provide an opportunity for the board to review the quality and completeness of reporting it receives from management. The review process leading up to the evaluation of the CEO may provide another opportunity. Ultimately, though, we feel that adoption of a board internal reporting policy and subsequent monitoring of that policy for compliance would be the key steps in improving the quality and completeness of management reporting to the board.

6.145 The British Columbia Guidelines for Crown Agencies 2004/05 Annual Reports include one requirement that could be adopted for NB Power to enhance the reliability of both internal and external reporting. Specifically, those guidelines include the comment that "Information on performance management and reporting systems" should include "a discussion of what management has done to ensure that performance data are accurate and reliable (reviewed by internal

audit, strong internal controls, testing and documentation of systems, outsider verification, use of third party information)...” The requirement for some form of assurance from management or others relating to non-financial performance reporting could be included as part of board internal and external reporting policies.

Recommendation

6.146 We recommended the board review the quality and completeness of management reporting to the board on an annual basis. This could be done in conjunction with the board self-assessment process and/or the CEO evaluation process.

NB Power response

6.147 The board will review the quality and completeness of management reporting to the board on an annual basis.

Recommendation

6.148 We recommended that, as part of the board’s internal and external reporting policies, there be a requirement for some form of assurance from management or others relating to non-financial performance information presented.

General comments on our findings

6.149 The New Brunswick Electric Finance Corporation provided the following comments on our report:

As a general comment, in my view the report correctly reflects governance structures and reporting relationships. In particular, the description of NBEFC is an accurate assessment of the corporation’s role and responsibilities as established by the Electricity Act.

6.150 The Department of Energy, in addition to commenting on specific recommendations, provided the following general comments:

... I wish to convey that your report is well received by our Department. Overall, your findings provide a good appreciation of the governance model for NB Power, including the acknowledgement that important enhancements had been made recently. Although Government and the board of NB Power will be reviewing your recommendations, the Department of Energy recognizes that many of these would further enhance the governance model for the provincially owned electric utility.

6.151 The board of NB Power, in addition to commenting on specific recommendations, provided the following general comments:

We understand the significant challenges which your office has had in completing your audit. At the same time, we would point out that we are a newly constituted group of companies out of the original New Brunswick Power Corporation. Since the restructuring we have been working diligently with management to create a completely new governance structure for the companies. We recognize that many of these changes were being implemented as your office conducted its audit.

While we are grateful for your comments, we are concerned that on balance they may not fully reflect the significant positive developments which have occurred over the past 18 months. During that time, governance has been enhanced by:

- the appointment of a new CEO;*
- the creation of a board selected through a professional third party process;*
- a shareholders agreement which clearly defines the role of the Board and the role of the Province;*
- open, regular and constructive communication among management, the Board and our Shareholders;*
- the creation of a full governance process that we have ensured is being strictly adhered to by management; and*
- the creation of a comprehensive monthly report used by management to monitor the business and identify emerging risks; which report is provided to the Board of Electric Finance Corporation and thereby to the Province.*

In conclusion, we are pleased to receive your comments on how to enhance our governance structure and will certainly take the recommendations in that spirit. However, we would respectfully submit that the report should provide significantly more comfort to the people of New Brunswick by clearly outlining how far governance has come in the past 15 months and then provide an analysis of the current governance position.