Legislating a Net-zero Mandate for New Brunswick's Energy and Utilities Board

Analysis and Recommendations to Support the Modernization of New Brunswick's Legislated Energy Regime

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Executive Summary

In New Brunswick, the provincial government has committed to achieving net zero by 2050, and it has set an interim greenhouse gas ("GHG") emissions reduction target for 2030, aiming to reduce provincial GHG emissions to 46% below the province's 2005 emissions level by that time. These commitments are set out in the provincial climate action plan, *Our Pathway Towards Decarbonization and Climate Resilience: New Brunswick's Climate Action Plan 2022-2027* ("Climate Action Plan"), and the 2030 target has also been enshrined in law under New Brunswick's *Climate Change Act*.

In the provincial energy strategy that the Government of New Brunswick released in 2023, entitled *Powering Our Economy and the World with Clean Energy: Our Path Forward to 2035* ("Energy Strategy"), the government recognized that "[c]limate change and the need for decarbonization are creating an unprecedented energy revolution that has never been seen before". Among other commitments, the Energy Strategy stated that the government would review and "modernize" the mandate of New Brunswick's Energy and Utilities Board ("EUB") "to strengthen its regulatory and governance framework as needed, in light of the significant changes occurring in the energy market". Additionally, the government committed to undertaking "legislative changes that are needed to facilitate the energy transition and drive clean energy development", including changes to New Brunswick's *Electricity Act*.

This report argues that the "modernization" of New Brunswick's legislated electricity regime should align the EUB's responsibilities as energy regulator—and its role as the regulator of electric utilities in particular—with New Brunswick's GHG emissions reduction objectives. These objectives include the net zero by 2050 commitment expressed in the provincial Climate Action Plan, and they also include the 2030 target enshrined in New Brunswick's *Climate Change Act*.

Among the potential law reform options explored herein, this report ultimately recommends that the legislated statement of electricity policy that currently appears in New Brunswick's *Electricity Act* be amended to include New Brunswick's GHG emissions reduction objectives, including the objective of achieving net zero by 2050. Doing this would create a "net-zero mandate" for the EUB that would align the regulator's role and responsibilities with New Brunswick's climate change commitments, support the renewable energy transition, and help to enable progressive energy regulation in New Brunswick.

As important as this "net-zero mandate" would be, however, this report also recognizes that the mandate, on its own, might not be enough to give the EUB the powers it needs to engage in net-zero-minded regulation of electric utilities. Although broader regulatory reform is beyond the scope of this study, independent resources cited in this report offer useful analysis and commentary that can assist lawmakers in ensuring that the EUB is fully empowered to regulate in accordance with New Brunswick's GHG emissions reduction objectives when fulfilling its role.

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1.0 Introduction

Today in Canada, the nature of the global climate crisis is well understood. Human activity since the Industrial Revolution has caused greenhouse gases ("GHGs") to accumulate in the Earth's atmosphere, trapping heat and producing dangerous climate effects. The combustion of fossil fuels to power modern life is a primary contributor to the problem, which is why the global community has recognized the need for a collective transition away from fossil fuels to clean and renewable sources of energy.[1]

While there may be a limited role for fossil fuel energy sources in the decades to come, the GHG emissions associated with their use will need to be offset through genuine solutions, including nature-based solutions such as ecosystem conservation and restoration to retain and enhance natural carbon sequestration. In light of this, it is common for climate scientists, governments, and civil society to speak of the need to achieve "net zero" in the first half of this century—meaning, the need to achieve and maintain an equilibrium in which GHG emissions from human activity are reduced significantly and all remaining emissions are offset measurably through corresponding technological or environmental stewardship practices.

In New Brunswick, the provincial government has committed to achieving net zero by 2050, and it has set an interim GHG reduction target for 2030, aiming to reduce provincial GHG emissions to 46% below the province's 2005 emissions level by that time.[2] These commitments are set out in the provincial climate action plan, *Our Pathway Towards Decarbonization and Climate Resilience: New Brunswick's Climate Action Plan 2022-2027* ("Climate Action Plan"), and the 2030 target has also been enshrined in law under New Brunswick's *Climate Change Act*.[3]

Due to the predominant role played by fossil fuel energy sources in creating the climate crisis, energy law and policy are powerful instruments that can either facilitate or impede mitigation. Throughout Canada, energy law and policy are now evolving at the federal, provincial, territorial, and Indigenous governance levels to accommodate or, better yet, accelerate the vital energy transition.

In December 2023, the Government of New Brunswick released a twelve-year energy strategy entitled *Powering Our Economy and the World with Clean Energy: Our Path Forward to 2035* ("Energy Strategy").[4] In it, the government recognizes that "[c]limate change and the need for

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[1] United Nations Climate Change, "COP28 Agreement Signals 'Beginning of the End' of the Fossil Fuel Era" (13 December 2023). At the 28th conference of the parties to the United Nations Framework Convention on Climate Change, held in Dubai in 2023, the global community formally recognized the need to "[transition] away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050": see FCCC/PA/CMA/2023/L.17 at Article 28(d).

[2] Government of New Brunswick, *Our Pathway Towards Decarbonization and Climate Resilience: New Brunswick's Climate Action Plan 2022-2027* (21 September 2022) at pages 7 and 18 ["Climate Action Plan"]. According to the Climate Action Plan, reducing GHG emissions 46% below 2005 levels would mean limiting emissions to 10.7 megatonnes: see page 18.

[3] *Climate Change Act*, SNB 2018, c 11 at subsection 2(b) ["*Climate Change Act*"]. The 2050 net-zero target is not expressed clearly in this statute: the Act states that the provincial government's objective is to reduce GHG emissions to no more than 5 megatonnes in 2050.

[4] Government of New Brunswick, *Powering Our Economy and the World with Clean Energy: Our Path Forward to 2035* (December 2023) ["Energy Strategy"].

decarbonization are creating an unprecedented energy revolution that has never been seen before",[5] and it states that "[t]hree critical constraints of sustainability, affordability and reliability will guide the development of a New Brunswick energy transition strategy and detailed action planning".[6]

In several Canadian provinces and territories, the regulation of electric utilities is an important component of the energy law and policy that will either facilitate or impede the renewable energy transition. This is true of New Brunswick, where electricity generation accounts for nearly a quarter of the province's GHG emissions, and suitable regulation is needed to facilitate emissions reduction in this sphere.[7]

Within New Brunswick, electricity law and policy are established by the provincial government and expressed primarily through the *Electricity Act*,[8] regulations under that Act, and Cabinet directives. Administration of the *Electricity Act* and the broader regulatory regime is carried out primarily by the Energy and Utilities Board ("EUB"), which is an administrative tribunal empowered to oversee the operations of the New Brunswick Power Corporation ("NB Power") and other electricity players within the province.

At its core, the EUB's mandate as the electric utility regulator is to hold NB Power accountable to its obligation to ensure the safe, adequate, secure and reliable supply of electricity within New Brunswick at the lowest cost of service.[9] This mandate is consistent with the traditional roles that have been assigned historically to the regulators of electric utilities in Canada. Although this traditional focus on safety, adequacy, security, reliability, and lowest cost of service is, without question, important, nevertheless we must consider whether it equips energy regulators like the EUB to do their part in advancing the renewable energy transition in accordance with established government policy.

In its Energy Strategy, the Government of New Brunswick has committed to reviewing and "modernizing" the EUB's mandate, "to strengthen its regulatory and governance framework as needed, in light of the significant changes occurring in the energy market".[10] Elsewhere in the Energy Strategy, the government has committed to undertaking "legislative changes that are needed to facilitate the energy transition and drive clean energy development", including changes to the *Electricity Act*.[11]

This report argues that electricity regulation in New Brunswick would be improved if the EUB had a legislated responsibility to regulate in accordance with the Government of New

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[5] *Ibid* at page 4.
[6] *Ibid* at page 11.
[7] In 2020, electricity generation produced 23% of New Brunswick's GHG emissions. See Canada Energy Regulator, "Provincial and Territorial Profiles: New Brunswick" (27 May 2024).
[8] *Electricity Act*, SNB 2013, c 7 ["*Electricity Act*"].
[9] *Ibid* at clause 139.2(3)(c), subsection 68(b), clause 107(4)(a), and section 123.
[10] Energy Strategy at page 52. This statement appears within a discussion of measures the government intends to take to support affordable energy costs for New Brunswickers; however, the statement could easily apply to other themes addressed in the Energy Strategy, such as energy security and reliability, economic growth, and regulatory reform.
[11] *Ibid* at page 54.

Brunswick's stated objective of achieving net zero by 2050, as well as the government's legislated GHG emissions reduction target for 2030. In making this argument, the report draws on recent work undertaken in Nova Scotia by the Clean Electricity Solutions Task Force ("CESTF"), which was itself influenced by recent work conducted by Utilis Consulting on behalf of Electricity Canada. As is discussed in more detail in Section 2.0 of this report, the considerable expertise, stakeholder input, and insight offered by the work of Utilis Consulting and the CESTF make a persuasive case for the value of aligning energy regulators' roles and responsibilities with government policies on climate change mitigation, decarbonization, and the achievement of net zero.

This report also builds on research and recommendations that East Coast Environmental Law prepared for the Ecology Action Centre in 2021, in a project that reviewed the legislated electricity regimes of all thirteen provinces and territories in Canada and all six New England states to discover if any energy regulators in those jurisdictions were mandated to take sustainability considerations into account when regulating electric utilities. That research is now publicly accessible online, and several of its findings inform the perspective that shapes this report.[12] Although the 2021 project searched for clearly legislated mandates that required energy regulators to consider sustainability, not GHG emissions reduction objectives, a number of the lessons drawn from that research are helpful to the subject matter of this study. Key findings from the 2021 project that inform the analysis and recommendations presented in this study are summarized below in the Appendix.

This report describes the energy law reform that is currently underway in Nova Scotia and assesses its value as a model for analogous reform within New Brunswick. It is our hope that this analysis will contribute usefully to the modernization of New Brunswick's legislated energy regime. Notably, the law reform currently underway in Nova Scotia is reorganizing Nova Scotia's existing energy regulator, the Utility and Review Board ("UARB"), to create an independent Energy Board as a branch of an Energy and Regulatory Boards Tribunal. Nova Scotia's law reform is also mandating the new Energy Board to take "sustainable development and sustainable prosperity" into account when overseeing the activities of Nova Scotia Power Incorporated and other energy players within the province. In our view, this new "sustainability mandate" is a useful model for an analogous "net-zero mandate" for New Brunswick's EUB.

Section 2.0 of this report discusses the value of aligning an energy regulator's mandate with the climate objectives of government and makes the case for a legislated net-zero mandate for New Brunswick's EUB.

In Section 3.0, the report explores two pertinent examples from Québec and Nova Scotia to see how the local energy regulators have been mandated in those provinces.

In Section 4.0, the report synthesizes the information and analysis presented in the preceding sections and explores two potential pathways to give the EUB a net-zero mandate. The recommended pathway is accompanied by suggested language for legislative amendments.

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[12] East Coast Environmental Law, *Legislating a Sustainability Mandate for Nova Scotia's Utility and Review Board: A Multi-Jurisdictional Comparative Analysis of Sustainability Mandates of Electricity Regulators in Canada and New England* (1 June 2021).

Finally, the report concludes by reiterating certain key suggestions presented in the research resources canvassed here—namely, that in addition to providing the EUB with a legislated mandate to consider the government's GHG emissions reduction objectives when fulfilling its role, the modernization of New Brunswick's legislated electricity regime should also include review of the broader regulatory powers that the EUB holds, in order to ensure that the EUB has the power necessary to implement net-zero-minded decision-making.

2.0 The Value of Aligning an Energy Regulator's Mandate with the Climate Objectives of Government

In 2023, the Government of Nova Scotia established a Clean Electricity Solutions Task Force ("CESTF" or "Task Force") that was mandated to study and address several questions concerning Nova Scotia's readiness for the renewable energy transition, focusing on electricity generation, transmission, distribution, and storage in particular. One of the key questions assigned to the Task Force was whether changes to Nova Scotia's legislated electricity regime and "regulatory model" "should be made to enable transition".[13]

In January 2024, the Task Force delivered its report, entitled *Modernizing Energy from Transition to Transformation: A Report of the Clean Electricity Solutions Task Force* ("CESTF Report"). In response to the question whether changes to the legislated electricity regime and regulatory model were needed to enable transition, the Task Force noted that multiple stakeholders had expressed concern about "a disconnect between the provincial government's clean energy targets and UARB decisions".[14] Ultimately, among several other recommendations "intended to support the modernization and greening of Nova Scotia's electricity grid",[15] the Task Force recommended that the UARB be reorganized to create an independent Energy Board under an Energy and Regulatory Boards Tribunal and that the new Energy Board be empowered to regulate in accordance with legislated statements of purpose and policy that express the Government of Nova Scotia's climate objectives.

Among the changes proposed to accomplish the latter recommendation, the CESTF report recommended that Nova Scotia's *Electricity Act* and *Public Utilities Act* be amended to account for Nova Scotia's *Environmental Goals and Climate Change Reduction Act* ("*EGCCRA*"),[16] including clear statements of purpose and policy.[17] As the Task Force put it, "[c]lear statements of government's policy objectives to be considered by the Energy Board in its decisions are an important step in providing the Board with the scope and flexibility it needs to facilitate the energy transition required in our province".[18]

Nova Scotia's *EGCCRA*[19] is a unique statute, with no equivalent in New Brunswick, that enshrines numerous environmental protection and climate change mitigation and adaptation goals in law. Among other things, the Act legislates a net zero by 2050 target, and it also includes an interim GHG emissions reduction target of 53% below the province's 2005 levels by 2030.[20] The Act also enshrines the provincial government's goal to have 80% of electricity in Nova Scotia supplied by renewable energy by 2030,[21] along with the goal to phase out coal-fired

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[13] Nova Scotia Clean Electricity Solutions Task Force, *Modernizing Energy from Transition to Transformation: A Report of the Clean Electricity Solutions Task Force* (31 January 2024) at page 3 ["CESTF Report"].
[14] *Ibid* at page 31.
[15] *Ibid* at page 3.
[16] *Ibid* at page 40.
[17] *Ibid* at page 41.
[18] *Ibid*.
[19] *Environmental Goals and Climate Change Reduction Act*, SNS 2021, c 20 ["*EGCCRA*"].
[20] *Ibid* at section 6.
[21] *Ibid* at subsection 7(l).

electricity generation in Nova Scotia by 2030.[22] The Act is also the source of an important definition that will soon inform the energy regulation in the province: *EGCCRA* defines the term "sustainable prosperity" to mean "prosperity where economic growth, environmental stewardship and social responsibility are integrated and recognized as being interconnected".[23] The significance of this term for reformed energy regulation in Nova Scotia is discussed in more detail in Section 3.0 of this report.

Notably, although the CESTF Report recommends using clear statements of purpose and policy to align electricity regulation with the Government of Nova Scotia's climate objectives, the Task Force also emphasized that such reforms may not go far enough. Energy regulators must also be given whatever additional powers they need to implement regulation in accordance with legislated purpose statements and policy objectives.[24]

In its discussion of these recommendations, the CESTF Report acknowledges the research, recommendations, and advocacy on this subject by the Ecology Action Centre and East Coast Environmental Law.[25] The Task Force also puts considerable weight on a report prepared by Utilis Consulting and published by Electricity Canada in 2023, entitled *Back to Bonbright: Economic regulation fundamentals can enable net zero* ("Back to Bonbright Report").[26] Combined, the considerable expertise, stakeholder input, and insight offered by the work of the CESTF and Utilis Consulting make a persuasive case for the value of aligning energy regulators' roles and responsibilities with government policies on climate change mitigation, decarbonization, and the achievement of net zero.

The Back to Bonbright Report asks a question similar to the one considered by the CESTF and described above, namely: "*do electric utilities operate within governance and regulatory structures that are capable of facilitating the achievement of net zero?*".[27] More specifically, the Back to Bonbright Report considers whether the "regulatory constructs"[28] currently used in Canadian regulation of electric utilities and the principles articulated by economist James C. Bonbright in *Principles of Public Utility Rates, 1961* (widely recognized as the key principles governing modern regulation of electric utilities[29]) "can accommodate the achievement of net zero".[30]

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[22] *Ibid* at subsection 7(m).
[23] *Ibid* at subsection 2(l).
[24] CESTF Report at page 40.
[25] *Ibid* at page 33.
[26] Utilis Consulting, on behalf of Efficiency Canada, *Back to Bonbright: Economic regulation fundamentals can enable net zero* (May 2023) ["*Back to Bonbright Report*"].
[27] *Ibid* at page 7.
[28] By "regulatory constructs", the authors of the Back to Bonbright Report mean "tactical principles, framework elements, and approaches commonly used by regulators", which, they suggest, complement the regulatory application of "the Bonbright principles": see Back to Bonbright Report at page 2.
[29] As the authors of the *Back to Bonbright Report* explain: "While Bonbright's 1961 work explores issues beyond the practice of rate-setting, the 'Bonbright Principles' are often summarized as the establishment of a revenue requirement, the fair apportionment of costs among customers, and optimal efficiency through rate design": see Back to Bonbright Report at page 8.
[30] *Ibid* at page 2.

In answer to their question whether the Bonbright principles and complementary regulatory constructs being used in Canada today "can accommodate the achievement of net zero", the authors of the Back to Bonbright Report say "yes", although they identify a need for some reforms to the regulatory constructs currently in use.[31] Additionally, the authors make a number of recommendations concerning the ideal form of "energy governance structures", relating primarily to the appropriate division of powers and responsibilities between legislatures (elected governments) and regulators (unelected administrators appointed by government). Ultimately, however, the authors conclude that "a fundamental revision of the Bonbright Principles is not needed".[32] Importantly, however, the authors also emphasize that "[w]hile the regulatory recommendations expressed in [the] report represent evolution, as opposed to revolution, the urgency to address these issues is high. Left unaddressed, the issues discussed below represent credible barriers to achievement of net zero, which utilities are not positioned to overcome alone".[33]

The Back to Bonbright Report makes seven recommendations for reform of regulatory constructs currently in use. These suggested reforms focus mainly on energy regulators' powers to engage in economic regulation that is fully equipped to respond to contemporary challenges and priorities:

> (1) Establish flexible regulatory frameworks which allow for the proactive submission of utility investment or service proposals which are not bound by prescriptive timing requirements; allowing for multi-year investment plans or targeted requests submitted mid-rate-term. When new and innovative frameworks are a specific response to facilitate net zero policy, utilities should demonstrate that they are pursuing this end.
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> (2) In applying the principle which requires an asset to be "Used and Useful" to form a part of rate base and earn a return on equity, regulators need to acknowledge and place increased weight on utilities' obligation to serve in a time of significant forecast uncertainty.
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> (3) Enhanced incentive opportunities should be available based on demonstrated performance, which balance the potential for additional earnings with appropriate risk sharing.
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> (4) Enable utilities and regulators to leverage alternative Benefit-Cost Assessments (BCAs) to assess nontraditional utility investments. This can be accomplished through regulators establishing frameworks proactively, or through case-by-case decision-making for the use of different BCAs in different circumstances.
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> (5) Utilities should proactively monitor changes in customer consumption patterns within and across their rate classes for imbalances caused by the energy transition, and consider opportunities to correct these through cost allocation (inter-rate class) and rate design (intra-rate class).

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[31] *Ibid* at page 3.
[32] *Ibid*.
[33] *Ibid* at page 13.

> (6) Where utilities propose new services or initiatives in direct response to government policy, opportunities to propose marginal cost pricing or comparable competitive cost pricing should be deemed appropriate by the regulator.
>
> (7) Ensure regulators are sufficiently resourced and maintain their independent decision-making capacity, empowering them to review more novel and innovative proposals.[34]

These recommendations are designed to address important questions such as: "[a]re utilities empowered to make the investments needed?"; "[a]re objectives, incentives and risk allocation appropriately aligned?"; "[a]re the correct costs and benefits being considered in weighing investment decisions?"; "[a]re regulators resourced and empowered to make difficult decisions, be they rejections or approvals?"; and, "[a]re elected governments directing the regulated electricity sector appropriately, or are they doing too much, or too little?".[35]

To effectively support the achievement of net zero, these recommended reforms must be accompanied by clear policy objectives to which energy regulators can turn for direction in implementation. The Back to Bonbright Report's fourth recommendation —"Enable utilities and regulators to leverage alternative Benefit-Cost Assessments (BCAs) to assess nontraditional utility investments"—offers a useful illustration of this point.[36]

The Back to Bonbright report contextualizes its fourth recommendation with the following comments:

> Though regulators are charged with protecting the public interest, economic regulators are generally not empowered to enact social ends of a non-economic nature; instead focusing on the protection of safe and reliable service at the lowest reasonable cost. As elected governments embed new, policy driven objectives in planning and rate-setting, a new common language will be required in regulatory forums to 'economize' the outcomes sought. This common language must take the form of a Benefit-Cost Assessment (BCA) framework.
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> […]
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> The empowerment of regulators in this area will largely depend on the specific mandate and authority of the regulator in question. In an ideal scenario, regulators could consider and appropriately weigh the outcomes of alternative BCAs independently, within a broader consideration of the public interest and the setting of just and reasonable rates. Indeed, there is consistency in leveraging appropriate BCA outcomes within the context of Bonbright's Principle that rates reflect all the present and future costs and benefits created by a service's provision. However, regulators may require government direction

[34] *Ibid* at page 4.
[35] *Ibid* at page 9.
[36] Notably, the Back to Bonbright Report suggests that such alternative BCAs could potentially include consideration of the "social costs of carbon" and the avoided costs of carbon associated with investing now in renewable energy technologies: see page 25.

> to empower them to consider benefits beyond traditional regulation. This would ideally be done through softer tools, such as Mandate Letters or similar. In some jurisdictions, modification to regulation or legislation may be required.
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> Most importantly, a reasonable level of discretion should be left with the regulators to determine the appropriate BCAs to be used for alternative investments, or for the utilities themselves to propose an appropriate BCA. A broad mandate for an economic regulator to "include the cost of avoided emissions" in its decision-making opens the door for considerable wrangling between parties arguing for different scopes of emissions to be included, different values of emissions to be included, and different weighting to be assigned to emissions' value in rendering decisions. Ideally, the regulator would be empowered to provide clear guidance, upfront or through sequential case-by-case analyses, regarding the appropriate BCAs and their mechanics.[37] [underlining added]

In our view, even though these comments express some reservations about overly broad mandates, this contextualization of the report's fourth recommendation illustrates nevertheless that mandate statements or statements of purpose or policy are needed to provide crucial direction to energy regulators who are given more freedom and flexibility to engage in economic regulation that supports the achievement of net zero. Simply giving an energy regulator power to explore alternative approaches will mean very little unless that power is associated clearly with a desired objective and purpose.

Notably, among the recommendations that the Back to Bonbright Report makes with regard to ideal energy governance structures, the report recommends that governments "[s]et clear, outcome-based policy to provide regulators and utilities a common understanding of required objectives and outcomes".[38] Likewise, the report recommends firmly that "[g]overnments must utilize right-sized policy mechanisms, be they Mandate Letters, Regulation, or Legislation, to communicate timely, clear, and specific outcomes, which utilities and regulators are expected to facilitate, without dictating *how* utilities achieve such outcomes or *how* regulators assess applications to achieve such outcomes" [underlining added].[39] It is also worth noting that both of these passages were highlighted by Nova Scotia's CESTF[40] and appear to have influenced the Task Force's recommendation that Nova Scotia's legislated electricity regime be reformed to include clear statements of purpose and policy to align energy regulation with the government's climate objectives.

As the Government of New Brunswick considers how best to modernize the provincial energy regime, it is likely asking many of the questions addressed in the Back to Bonbright Report and the work of Nova Scotia's CESTF. It may be that some or all of the changes recommended in the Back to Bonbright Report to facilitate responsive economic regulation will appeal to the Government of New Brunswick and be implemented in provincial legislation.

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[37] *Ibid* at pages 23-26.
[38] *Ibid* at page 5.
[39] *Ibid*.
[40] CESTF Report at pages 33 and 40.

In our view, an expressly legislated "net-zero mandate" for New Brunswick's EUB will be a necessary complement to any regulatory changes such as those described above. If the EUB is empowered with more freedom and flexibility to employ alternative approaches to economic regulation, it will need a guidepost to direct the exercise of such new powers. It will need a clear mandate to motivate, inform, and rationalize new ways of "economizing" the benefits and detriments of proposed solutions by NB Power and other electricity players within the province. As the authors of the Back to Bonbright Report remark: "If a regulator is insufficiently resourced and the objectives for the electricity sector are not made clear and certain by government, there is a risk of conservative decision-making".[41]

Before concluding this section of this report, it must be acknowledged that the Back to Bonbright Report expresses reservations concerning amendments to the legislated mandates of energy regulators like the EUB. These concerns have two primary facets: first, that amendments to legislated mandates might unintentionally disrupt the distinctions between the role of elected governments and the role of independent regulators; and, second, that such amendments might confuse existing regulatory practices or create confusion and uncertainty in regulatory proceedings.[42] To avoid such unwelcome results, the authors suggest that amendments to mandates be as specific and targeted as possible, if they are to be made,[43] and they also emphasize that governments, in setting mandates to further net-zero policies, should express *what* outcomes they want to see achieved but should not prescribe *how* energy regulators must achieve those outcomes.[44]

Having considered the concerns discussed in the Back to Bonbright Report, this report takes the view that the Government of New Brunswick should not shy away from legislating a net-zero mandate for the EUB. As is described in more detail in Section 4.0 of this report, our recommendation is that the EUB be given a net-zero mandate through a targeted amendment to the statement of electricity policy that exists already in New Brunswick's *Electricity Act*. This change would make a significant difference but, in our view, would likely not create confusion or contention in proceedings before the EUB, as it would be an incremental addition to the policy guidance that already informs energy regulation within the province.

[41] Back to Bonbright Report at page 31.
[42] *Ibid* at pages 33-35.
[43] *Ibid* at page 35.
[44] *Ibid* at page 34.

3.0 Québec and Nova Scotia Examples

3.1 *Québec*

In Québec, the generation, transmission, and distribution of electricity are regulated by the Régie de l'énergie, which is empowered primarily by Québec's *Act Respecting the Régie de l'énergie*.[45] Unlike the statute that empowers New Brunswick's EUB, the *Act Respecting the Régie de l'énergie* includes a standalone mandate provision for energy regulator, as follows:

> In the exercise of its function, the Régie shall reconcile the public interest, consumer protection and the fair treatment of the electric power carrier and of distributors. It shall promote the satisfaction of energy needs in a manner consistent with the Government's energy policy objectives and in keeping with the principles of sustainable development and individual and collective equity.[46]

As is evident from this provision, the mandate of the Régie includes a sustainability aspect, brought forward through the requirement to "promote the satisfaction of energy needs […] in keeping with the principles of sustainable development and individual and collective equity". In its decision-making, the Régie has turned to Québec's *Sustainable Development Act* for an applicable definition of "sustainable development" as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[47]

It was beyond the scope of this research project to conduct a comprehensive examination of how the sustainability mandate bestowed by the *Act Respecting the Régie de l'énergie* has influenced proceedings before and decisions made by the Régie. An initial survey of select decisions indicates that environmental non-governmental organizations and others in Québec have sought to intervene in proceedings before the Régie in order to advance arguments based on sustainability, and that the Régie has sometimes dismissed applications to intervene or dismissed interveners' arguments concerning sustainable development because the sustainability considerations being advanced were deemed to be overly broad or irrelevant to the actual subject-matter of the proceeding at hand.[48] It also appears that the Régie has developed a restricted interpretation of its mandate to 'promote the satisfaction of energy needs in keeping with the principle of sustainable development': for example, it has emphasized that its responsibility to take sustainable development into account does not, in and of itself, empower it to take actions that are not otherwise within its power, such as applying specific environmental or sustainable development legislation from the province.[49] This restricted interpretation is not necessarily problematic from the perspective of the Régie's responsibility to carry out its mandate; indeed, it might be interpreted as demonstrating that energy regulators can be given

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[45] *Act Respecting the Régie de l'énergie*, CQLR c R-6.01.
[46] *Ibid* at section 5.
[47] *Sustainable Development Act*, CQLR c D-8.1.1 at section 2. See for example *Hydro-Québec et Association cooperative d'économie familiale de l'Outaouais (ACEF de l'Outaouais)*, 2010 CanLII 100328 (QC RDE).
[48] See for example *Hydro-Québec et Association cooperative d'économie familiale de l'Outaouais (ACEF de l'Outaouais)*, 2010 CanLII 100328 (QC RDE); *Hydro-Québec et Association Hôtellerie Québec et Association Restauration Québec (AHQ-ARQ)*, 2023 CanLII 114927 (QC RDE).
[49] See for example *Municipalité de Saint-Adolphe-d'Howard et Hydro-Québec*, 2017 CanLII 5746 (QC RDE) at paragraphs 91-96.

legislated mandates aligned with government policies and objectives, and so long as the regulators are trusted to establish practical ways of implementing those mandates, legislative changes will not give rise to the concerns expressed in the Back to Bonbright Report.

Notably, the Régie has interpreted its mandate to 'promote the satisfaction of energy needs in keeping with the principle of sustainable development' as one that empowers it to approve proposed solutions that are not necessarily lowest cost but that have better value from the perspective of sustainable development dimensions.[50] This perspective aligns with the arguments of the Back to Bonbright Report, which suggests that, to advance net-zero objectives, energy regulators should be empowered to implement alternative forms of economic regulation, including alternative approaches to benefit-cost assessments.

Bearing in mind that a comprehensive examination of decision-making by the Régie was beyond the scope of this report, the findings described above suggest that we can learn at least three useful lessons from Québec's legislated electricity regime.

First, electric utility regulators like New Brunswick's EUB can be given a standalone mandate provision such as that which appears in Québec's *Act Respecting the Régie de l'énergie*. Under New Brunswick's current electricity legislation, there is no such mandate provision for the EUB; instead, the Board's mandate is distilled from the various roles and responsibilities assigned to it under the statutes and regulations it administers.

Second, while the authors of the Back to Bonbright Report express reservations about including policy objectives within the legislated mandates of energy regulators, the Québec example suggests that any potential confusion or disagreement concerning the scope of a legislated mandate can be resolved by the regulator if it is trusted to determine how it will take legislated policy objectives into consideration. Although it appears that the Régie has been faced with conflicting arguments about the nature of its responsibility to 'promote the satisfaction of energy needs in keeping with the principle of sustainable development', disagreements over the meaning of legislative provisions are common in administrative and adjudicative spheres. Our research to date suggests that the Régie has navigated such arguments in the same way it would address any other conflicting arguments about the meaning of requirements imposed by law.

Third, a clearly legislated mandate aligned with government policy objectives can provide the direction and jurisdiction that energy regulators require to explore alternative approaches to economic regulation.

3.2 *Nova Scotia*

Soon after Nova Scotia's CESTF delivered its CESTF Report in January 2024, Nova Scotia's Minister of Natural Resources and Renewables tabled Bill 404,[51] a proposed *Energy Reform (2024) Act*, in the provincial House of Assembly. The Bill adopted many of the key recommendations made in the CESTF Report but also departed in some ways from the Task Force's recommendations.

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[50] *Ibid* at paragraph 93.
[51] Bill 404 – Energy Reform (2004) Act, Nova Scotia Assembly 64, Session 1.

Bill 404 was passed and given royal assent in early April 2024, but most of it has not yet been proclaimed in force, so the bulk of Nova Scotia's new *Energy Reform (2024) Act*[52] is not yet operative as law.[53] As regards the Task Force's recommendations to establish clear statements of purpose and policy to align electricity regulation with the provincial government's climate objectives, the *Energy Reform (2024) Act* will do several things once it is fully proclaimed in force.

Once it is fully proclaimed in force, the *Energy Reform (2024) Act* will establish an independent Energy Board as a branch of a new Energy and Regulatory Boards Tribunal, as part of a strategic reorganization of Nova Scotia's current UARB. To do this, the Act will enact a separate statute to be known as the *Energy and Regulatory Boards Act*, which will replace the existing *Utility and Review Board Act*. Under the new *Energy and Regulatory Boards Act*, when the new Energy Board is engaged in approving or fixing "rates, tolls, charges, tariffs, capital applications and other matters", it will have a new responsibility to "give appropriate consideration" to the extent to which those rates, tolls, charges, etc. "support sustainable development and sustainable prosperity".[54]

The term "sustainable development" is defined in Nova Scotia's *Environment Act* as meaning "development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs".[55] The term "sustainable prosperity" is defined in Nova Scotia's *EGCCRA* as meaning "prosperity where economic growth, environmental stewardship and social responsibility are integrated and recognized as being interconnected".[56] Notably, however, the *Energy Reform (2024) Act* does not state explicitly that the definitions of "sustainable development" and "sustainable prosperity" under the *Energy and Regulatory Boards Act* are the same as the definitions given in the *Environment Act* and *EGCCRA* respectively. Although it is likely that the Energy Board will adopt the *Environment Act* and *EGCCRA* definitions when fulfilling its responsibility to consider "sustainable development" and "sustainable prosperity", it is too early to know if the Board will go further and give consideration to specific goals and targets enshrined in *EGCCRA*, such as the target of achieving net zero by 2050, the interim GHG emissions reduction target of 53% below 2005 levels, the goal of having 80% of electricity in Nova Scotia supplied by renewable energy by 2030, and the goal of phasing out coal-fired electricity generation in Nova Scotia by 2030.

The *Energy Reform (2024) Act* will also establish a new Independent Energy System Operator ("IESO") for Nova Scotia, by enacting another separate statute, to be known as the *More Access to Energy Act*. One of that Act's stated purposes will be to "support the sustainable development, sustainable prosperity, energy efficiency and greenhouse gas emissions reduction goals of the Province articulated in [the *EGCCRA*]". Notably, compared to the language of the new *Energy and Regulatory Boards Act*, this purpose statement more explicitly links the responsibility to

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[52] *Energy Reform (2004) Act*, SNS 2024, c 2 ["*Energy Reform (2024) Act*"].
[53] Under section 105 of the *Energy Reform (2024) Act*, which addresses when the Act comes into effect, clauses 57(d) and (e) and subsection 76(2) of the Act came into force when the Act received royal assent. These provisions make minor amendments to existing electricity legislation in the province and are not among the more significant changes introduced by the Act.
[54] *Energy Reform (2004) Act* at Schedule A, subsection 6(2).
[55] *Environment Act*, SNS 1994-95 c 1 at subsection 3(aw).
[56] *EGCCRA* at subsection 2(l).

support sustainable development to the targets and goals set out in the *EGCCRA*. This may be interpreted to mean that while the IESO is mandated to consider the targets and goals set out in the *EGCCRA* when fulfilling its responsibilities, the Energy Board is not. Interpretive possibilities of this kind will be speculative until the new Energy Board has been established and is making decisions under its new enabling legislation.

Additionally, beyond the sphere of electricity regulation, the *Energy Reform (2024) Act* will also amend Nova Scotia's *Gas Distribution Act* to give the new Energy Board a sustainability mandate in its role approving or fixing rates, tolls, or charges under that Act, specifically by having a responsibility to "give appropriate consideration to the extent to which such rates, tolls or charges" "support sustainable development and sustainable prosperity".[57]

Notably, the *Energy Reform (2024) Act* does not establish a new purpose section for either the *Electricity Act* or the *Public Utilities Act*, neither of which have such sections in their current forms. Nor does the *Energy Reform (2024) Act* establish a legislated statement of the Government of Nova Scotia's electricity policy, analogous to the one that exists in New Brunswick's *Electricity Act*. The CESTF Report suggested that there would be value in establishing clear purpose statements in electricity legislation and a legislated statement of electricity policy to guide the work of the new Energy Board; however, rather than taking this approach, the Government of Nova Scotia chose instead to make targeted additions to key decision-making responsibilities of the new Energy Board itself.

[57] *Energy Reform (2024) Act* at subsection 32(1).

4.0 Recommendations for Modernizing New Brunswick's Legislated Electricity Regime

4.1 *Summary of Lessons Learned from Québec and Nova Scotia*

As described above, lawmakers in Québec chose to give the Régie de l'énergie a sustainability mandate by imposing a requirement to 'promote the satisfaction of energy needs in keeping with the principle of sustainable development' within a standalone mandate provision in the *Act Respecting the Régie de l'énergie*. The term "sustainable development" has been interpreted in accordance with the definition given in Québec's *Sustainable Development Act*, creating an implicit link between the Régie's mandate as Québec's energy regulator and the sustainable development policy expressed in the *Sustainable Development Act*. However, the Régie has deemed that its mandate does not give it jurisdiction to implement legislation such as the *Sustainable Development Act*, so the connection between the Régie's mandate and Québec's sustainable development goals is somewhat nebulous.

The Québec example also suggests that reservations about including policy objectives within legislated mandates can be addressed by ensuring energy regulators are empowered to interpret and implement their mandates in practice, and that a clearly legislated mandate aligned with government policy objectives can provide the direction that energy regulators require to explore alternative approaches to economic regulation.

Differently than the approach taken in Québec, lawmakers in Nova Scotia chose to give the province's new Energy Board a sustainability mandate by making targeted legislative amendments to the Board's key decision-making powers, requiring that when the Board is engaged in approving or fixing "rates, tolls, charges, tariffs, capital applications and other matters", it must "give appropriate consideration" to the extent to which those rates, tolls, charges, etc. "support sustainable development and sustainable prosperity". As noted above, although the terms "sustainable development" and "sustainable prosperity" are defined within Nova Scotia's *Environment Act* and *EGCCRA* respectively, in the *Energy and Regulatory Boards Act* that will come into force after the *Energy Reform (2024) Act* is fully proclaimed, the two terms are not defined by explicit connections to the corresponding definitions in the *Environment Act* and *EGCCRA*. This raises questions about how the Energy Board will define the two terms in its proceedings and whether the Board will consider specific targets and goals in *EGCCRA* when considering the extent to which rates, tolls, charges, etc. will support sustainable prosperity within the province.

In light of these findings, this report argues that the Québec and the Nova Scotia examples both suggest the benefit of aligning energy regulators' mandates with specific policy objectives in order to be as clear as possible and avoid interpretive conflict and confusion. Where legislated targets or statements of policy exist, energy regulators' mandates can be connected to them explicitly for the utmost clarity concerning government's desired outcomes. This perspective is reflected in the recommended amendments discussed below.

4.2 *Recommended Amendments to New Brunswick's Legislated Electricity Regime*

In light of the lessons described above, the suggestions of the Back to Bonbright Report, and the findings and recommendations of the CESTF in Nova Scotia, this report argues that the "modernization" of New Brunswick's legislated electricity regime should align the EUB's responsibilities as energy regulator—and its role as the regulator of electric utilities in particular—with the Government of New Brunswick's stated objective of achieving net zero by 2050. Additionally, interim GHG emissions reduction targets that currently exist in New Brunswick legislation or that may be set in the future should also be accounted for within the EUB's "net-zero mandate".

There are at least two potential pathways to achieving this result.

The first potential pathway is to create a standalone mandate provision for the EUB—analogous to the one that appears in Québec's *Act Respecting the Régie de l'énergie*—that would require the EUB to regulate in keeping with the provincial objective of achieving net zero by 2050 and any GHG emissions reduction targets enshrined in provincial legislation. The most logical location for a mandate provision of this kind would be the *Energy and Utilities Board Act*, which is the statute that empowers the EUB generally.

There are potential complications with this approach, however. The first is that the *Energy and Utilities Board Act* does not currently include a standalone mandate provision of any kind for the EUB, and creating such a provision for the sole purpose of aligning the EUB's responsibilities with the government's GHG emissions reduction objectives would likely require more work than is necessary to achieve the intended effect. A standalone mandate provision analogous to the one in Québec's *Act Respecting the Régie de l'énergie* would need to address the EUB's mandate as a whole, not simply the intended alignment with provincial climate policy. As a result, there would likely be more extensive consideration and dialogue required to determine how best to articulate the entirety of the EUB's essential mandate in a new standalone provision. Additionally, with due regard for the reservations expressed in the Back to Bonbright Report concerning the potential problems associated with overly broad or general mandates that are not specific enough to provide guidance, we acknowledge that a mandate provision located in the *Energy and Utilities Board Act* and unattached to specific decision-making responsibilities could be interpreted as imposing a responsibility that is too nebulous to be implemented in practical decision-making.

The second potential pathway would be to amend the legislated statement of the government's electricity policy that currently appears in the *Electricity Act* to codify the net-zero objective and incorporate interim GHG emissions reduction targets enshrined in other provincial legislation. This is the pathway that this report recommends. On balance, this option represents a logical and natural addition to the existing structure of the *Electricity Act* and the EUB's established responsibilities under that Act, and it would not necessitate the degree of legislative change that would be required to establish an entirely new standalone mandate provision for the EUB.

Section 68 of the *Electricity Act* currently states:

> **68** It is declared to be the policy of the Government of New Brunswick

(a) that the rates charged by the Corporation for sales of electricity within the Province

(i) should be established on the basis of annually forecasted costs for the supply, transmission and distribution of the electricity, and

(ii) should provide sufficient revenue to the Corporation to permit it to earn a just and reasonable return, in the context of the Corporation's objective to earn sufficient income to achieve a capital structure of at least 20% equity,

(b) that all the Corporation's sources and facilities for the supply, transmission and distribution of electricity within the Province should be managed and operated in a manner that is consistent with reliable, safe and economically sustainable service and that will

(i) result in the most efficient supply, transmission and distribution of electricity,

(ii) result in consumers in the Province having equitable access to a secure supply of electricity, and

(iii) result in the lowest cost of service to consumers in the Province, and

(c) that, consistent with the policy objectives set out in paragraphs (a) and (b) and to the extent practicable, rates charged by the Corporation for sales of electricity within the Province shall be maintained as low as possible and changes in rates shall be stable and predictable from year to year.

Notably, the EUB is already required to take this statement of policy into account when exercising key decision-making powers under the *Electricity Act*. Under subsection 103(7) of the Act, when the EUB is "approving or fixing just and reasonable rates", the Board must "base its order or decision on" the revenue requirements of NB Power, while also taking into account the policy expressed in section 68 of the Act, among other things.[58] This legislated policy statement must also be considered by the EUB in applications to set or change transmission tariffs or transmission revenue requirements.[59] Likewise, when determining whether or not to approve capital projects or capital expenditures proposed by NB Power, the EUB must take into account the policy expressed in section 68.[60]

Put simply, under the *Electricity Act* as it currently stands, the legislated policy statement set out in section 68 must inform the EUB's decision-making with respect to rates, transmission tariffs and transmission revenue requirements, and capital projects and capital expenditures. These key decision-making responsibilities could therefore be brought into alignment with the government's GHG emissions reduction objectives by adding those objectives to the legislated policy statement within the *Electricity Act*.

[58] *Electricity Act* at clause 103(7)(a).
[59] *Ibid* at clause 113(15)(a).
[60] *Ibid* at clause 107(11)(a).

This report recommends the following amendments to the legislated policy statement that currently appears in section 68 of the *Electricity Act*:

> **68** It is declared to be the policy of the Government of New Brunswick
>
> (a) that the rates charged by the Corporation for sales of electricity within the Province
>
> (i) should be established on the basis of annually forecasted costs for the supply, transmission and distribution of the electricity, and
>
> (ii) should provide sufficient revenue to the Corporation to permit it to earn a just and reasonable return, in the context of the Corporation's objective to earn sufficient income to achieve a capital structure of at least 20% equity,
>
> (b) that all the Corporation's sources and facilities for the supply, transmission and distribution of electricity within the Province should be managed and operated in a manner that is consistent with reliable, safe and economically sustainable service and that will
>
> (i) result in the most efficient supply, transmission and distribution of electricity,
>
> (ii) result in consumers in the Province having equitable access to a secure supply of electricity, and
>
> (iii) result in the lowest cost of service to consumers in the Province, ~~and~~
>
> (c) that all the Corporation's activities in respect of the supply, transmission and distribution of electricity within the Province should be conducted in a manner that is consistent with
>
> (i) the achievement of net zero greenhouse gas emissions within the Province by 2050, and
>
> (ii) the achievement of all greenhouse gas emissions reduction targets established under the *Climate Change Act*, SNB 2018, c 11, any amendments made thereto, or any other law of the Province, and
>
> ~~(c)~~ (d) that, consistent with the policy objectives set out in paragraphs (a), ~~and~~ (b), and (c) and to the extent practicable, rates charged by the Corporation for sales of electricity within the Province shall be maintained as low as possible and changes in rates shall be stable and predictable from year to year.

Amendments such as these would give the EUB a "net-zero mandate" analogous to the "sustainability mandate" that will shape regulation by the Energy Board under Nova Scotia's reformed energy regime. This new net-zero mandate would clearly align the EUB's role as New Brunswick's electricity regulator with the GHG emissions reduction objectives of government,

and it would help to support the achievement of net zero within a "modernized" provincial energy regime.

4.3 *Concluding Remarks*

Before this report concludes, it is worth reiterating one of the key points made by the Back to Bonbright Report and CESTF Report from Nova Scotia—namely, that an energy regulator's mandate to regulate in accordance with government's climate objectives may not be enough, in and of itself, to support the change that is needed. Governments wishing to empower their energy regulators to support the renewable energy transition must also ensure that the regulators have the specific powers required to explore alternative forms of economic regulation. In this regard, the Back to Bonbright Report makes a number of recommendations for regulatory reform that are beyond the subject-matter of this study. This report therefore recommends that the recommendations for reform of "regulatory constructs" presented within the Back to Bonbright Report be considered by the Government of New Brunswick as it explores potential amendments to New Brunswick's legislated electricity regime.

Appendix: Sustainability Mandates in Canadian Provinces and New England States

This appendix summarizes key findings from research carried out by East Coast Environmental Law on behalf the Ecology Action Centre in 2021, now publicly accessible online.

The 2021 research aimed to discover if any regulators of electric utilities in Canada and New England had clearly legislated mandates to take sustainability into account when fulfilling their roles. The research surveyed the legislated electricity regimes of all thirteen provinces and territories in Canada and all six New England States, and it concluded that Québec's electric utility regulator, the Régie de l'énergie, had the clearest mandate to consider sustainability when fulfilling its role. Language in governing statutes in Alberta, Ontario, New Hampshire, and Vermont was also found to provide valuable food for thought.

Noteworthy lessons drawn from the jurisdictions under study included the lesson that, even in the absence of a clearly legislated, overarching mandate to take sustainability considerations into account when regulating electric utilities, other legislative mechanisms could shape energy regulators' responsibilities in this sphere. In particular, the research suggested that legislated statements of electricity policy could be used to express government objectives with regard to sustainability and that energy regulators' responsibilities to regulate in accordance with such policy statements could be viewed as a form of sustainability mandate, albeit indirect. Additionally, the research found that legislatures might also require energy regulators to take sustainability considerations into account when exercising certain specific decision-making powers (as opposed to creating an overarching mandate that would apply to all of an energy regulator's activities).

Canadian Jurisdictions

Québec

The mandate of Québec's Régie de l'énergie is discussed in detail in Section 3.0 of this report, and that discussion is not reproduced here. For comparative purposes, it suffices to reiterate that Québec's *Act Respecting the Régie de l'énergie* includes the following provision:

> In the exercise of its function, the Régie shall reconcile the public interest, consumer protection and the fair treatment of the electric power carrier and of distributors. It shall promote the satisfaction of energy needs in a manner consistent with the Government's energy policy objectives and in keeping with the principles of sustainable development and individual and collective equity.

This provision gives the Régie a clear responsibility to 'promote the satisfaction of energy needs in a manner consistent with the principles of sustainable development'. As discussed above, "sustainable development", in this context, is understood to mean "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

Alberta

Our 2021 research found that the Alberta Utilities Commission does not have a clearly legislated sustainability mandate; however, a valuable insight was drawn from our review of applicable Alberta legislation. That insight was that even in the absence of a clearly legislated, overarching mandate to take sustainability considerations into account when fulfilling its role, legislatures may assign targeted responsibilities to consider sustainability in certain specific contexts. Subsection 17(1) of the *Alberta Utilities Commission Act*, as it stood at that time, stated:

> Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment. (underlining added)[61]

Although this provision does not include the word "sustainability" or the term "sustainable development", it imposes a requirement that the AUC consider the "public interest"—which explicitly includes socioeconomic effects and environmental effects, as described by the provision—when deciding whether or not to approve an application to construct or operate certain kinds of major energy infrastructure.

Ontario

Our 2021 research found that the Ontario Energy Board has a legislated sustainability mandate, but that the word "sustainability" within Ontario's electricity legislation most likely referred to economic sustainability and sustainability of energy supply, as opposed to environmental sustainability or the considerations commonly associated with sustainable development.[62]

New England Jurisdictions

New Hampshire

Our 2021 research found that the New Hampshire Public Utilities Commission had a high-level legislated sustainability mandate, expressed in Title XXXIV, Chapter 374-F of the New Hampshire Statutes, among a number of legislated policy principles that the state government established to guide the Public Utilities Commission in restructuring the state's electricity market. One of those policy principles was found to state that "[c]ontinued environmental

[61] East Coast Environmental Law, *Legislating a Sustainability Mandate for Nova Scotia's Utility and Review Board: A Multi-Jurisdictional Comparative Analysis of Sustainability Mandates of Electricity Regulators in Canada and New England* (1 June 2021) at pages 7-8.
[62] *Ibid* at pages 22-24.

protection and long term environmental sustainability should be encouraged".[63] Notably, our research found that this high-level policy statement was given additional nuance through specific decision-making requirements imposed on the Public Utilities Commission that require it to take "environmental and health-related impacts" into account when conducting certain review and approval processes.[64] Notably, New Hampshire law even comments on how various factors must be prioritized in some of this decision-making.[65] The 2021 research concluded from this example that high-level policy mandates can be useful means of connecting energy regulator's responsibilities to government policy objectives and that specific decision-making responsibilities can provide additional clarity and even express government wishes for how to prioritize various different interests.

Vermont

Our 2021 research found that, although the Vermont Public Utilities Commission does not have an overarching, clearly legislated sustainability mandate, Vermont law imposes a requirement for the Commission to consider sustainability when exercising one of its specific decision-making powers. Specifically, when the Public Utilities Commission is determining whether or not to issue a Certificate of Public Good for a proposed in-state electricity generation facility that will use woody biomass as fuel, the Commission must consider whether the proposed facility will "comply with harvesting procedures and procurement standards that ensure long-term forest health and sustainability".[66] The report concluded that the lesson to be drawn from this example is the same as the lesson drawn from Alberta's legislated electricity regime—namely, that even in the absence of an overarching sustainability mandate, requirements to take sustainability considerations into account can be imposed with regard to specific decision-making powers.

Summary of Relevant Lessons Drawn from the 2021 Research Report

Key lessons learned in the 2021 research report that are relevant to the argument for a net-zero mandate for New Brunswick's EUB are as follows. Although these lessons pertained to the presence or absence of "sustainability mandates" in the 2021 research, they can apply equally to consideration of a "net zero mandate".

- Energy regulators can be given standalone mandate provisions that express legislatures' objectives for energy regulation within the province/state, as in Québec.

- Even in the absence of an overarching mandate, requirements to take the legislature's objectives into account can be assigned to specific decision-making powers that energy regulators will exercise.

- When high-level policy statements express the legislature's objectives, energy regulators can be given additional guidance and direction through specific decision-making

[63] *Ibid* at pages 41-42.
[64] *Ibid* at pages 42-43.
[65] *Ibid.*
[66] *Ibid* at page 49.

requirements that impose specific obligations to take relevant factors into account; these can also include prioritization requirements.

- Specificity in legislated mandates or requirements to take policy-oriented decision-making factors into account is helpful for clarity and avoidance of interpretive confusion.