

IN THE MATTER OF the *Public Utilities Act*,
R.S.N. 1990, Chapter P-47 (the “Act”) and

IN THE MATTER OF an Application by
Newfoundland and Labrador Hydro for approvals of
(1) Under Section 70 of the Act, changes in the rates
to be charged for the supply of power and energy to
its Retail Customer, Newfoundland Power, its Rural
Customers and its Industrial Customers; (2) Under
Section 71 of the Act, its Rules and Regulations
applicable to the supply of electricity to its Rural
Customers; (3) Under Section 71 of the Act, the
contracts setting out the terms and conditions
applicable to the supply of electricity to its Industrial
Customers; and (4) Under Section 41 of the Act, its
2002 Capital Budget.

TO: The Board of Commissioners of Public Utilities (the “Board”)

THE APPLICATION OF Newfoundland Power **SAYS THAT:**

1. The Applicant Intervenor, Newfoundland Power, seeks an Order pursuant to Sections 15 and 27 of the Board of Commissioners of Public Utilities Regulations respecting responses to Requests for Information CA-156, CA-157, CA-158, CA-159, CA-160 and CA-161 served upon it by the Consumer Advocate on July 25th, 2001.
2. In Order No. P.U. 7 (2001-2002), the Board set out the procedure to be followed in the hearing of Newfoundland and Labrador Hydro’s General Rate Application (the “Hydro Application”). In Appendix A, Item 2, the Board ordered that by July 25th the Consumer Advocate was to have its first round of questions directed **to Hydro**.

Reference: Order No. P.U. 7 (2001-2002) [Tab 1]

3. PU-7 (2001-2002) further provided that **Hydro** was to respond to questions submitted by all but the Consumer Advocate by August 3rd, 2001, and respond to questions submitted by the Consumer Advocate by August 8th, 2001.

Reference: Order No. P.U. 7 (2001-2002) [Tab 1]

4. Newfoundland Power intends to call two expert witnesses but has not committed to call any lay witnesses. Order No. P.U. 7 (2001-2002), provides that Intervenors submit questions on Response expert reports and pre-filed statements of Intervenor lay witnesses on or before August 27th, 2001. Order No. P.U. 7 (2001-2002), further provides that responses to questions submitted on Response expert reports and lay witnesses be submitted on or before September 7th, 2001.

Reference: Order No. P.U. 7 (2001-2002) [Tab 1]

5. Order No. P.U. 7 (2001-2002), does not contemplate that the Consumer Advocate be permitted to file Requests for Information **on other Intervenors** prior to the filing of response expert reports and pre-filed lay testimony.

Reference: Order No. P.U. 7 (2001-2002) [Tab 1]

6. The purpose of Requests for Information (commonly referred to as Interrogatories) is to:
 - (a) clarify evidence filed by a party,
 - (b) simplify the issue,
 - (c) permit a full and satisfactory understanding of the matters to be considered, or
 - (d) expedite the hearing.

Reference: Rule 35, Ontario Energy Board Rules of Practice [Tab 2]
Rule 27, Alberta Energy and Utilities Board Rules of Practice [Tab 3]
Rule 11, Nova Scotia Utility and Review Board Rules of Practice
and Procedure Respecting Regulatory Proceedings [Tab 4]

7. In all cases, the questions must be relevant to the proceeding.

Reference: Rule 14, Newfoundland Board of Commissioners of Public
Utilities Regulations [Tab 5]

8. Macaulay on “Practice and Procedure Before Administrative Tribunals” confirms that “the concept of interrogatories is that if a party does not understand material that has been filed, it may address questions in writing to another party.

Reference: Macaulay: Practice and Procedure Before Administrative
Tribunals, page 12-64 [Tab 6]

9. Consistent with these authorities, the *National Energy Board Rules of Practice and Procedure* only permit Requests for Information be directed at a party only after the filing of that party's written evidence, and only in relation to matters raised in the written evidence. To file Information Requests prior to the filing of written evidence requires leave of the board or consent of the party.

Reference: Rule 32, National Energy Board Rules of Practice and Procedure, 1995 [Tab 7]

10. Newfoundland Power submits that Requests for Information to Intervenors prior to the filing of expert reports and pre-filed lay witness testimony cannot meet the test of relevancy since Newfoundland Power has not placed material on the record from which such questions can be said to arise. Further, the Consumer Advocate's questions to Newfoundland Power cannot be said to meet any of the four purposes of Interrogatories as set out in the Rules of comparable jurisdictions. In fact, they will do nothing but complicate and prolong a hearing which the Requests for Information were intended to expedite and would add cost and inefficiencies to the hearing.
11. Newfoundland Power seeks an Order of the Board confirming that it is not required to answer questions put to it by the Consumer Advocate (or any other party) that do not relate to either Response expert reports or pre-filed testimony of lay witnesses.

DATED at St. John's, Newfoundland this 8th day of August, 2001.

NEWFOUNDLAND POWER INC.

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