

P.U. 28(2006)

IN THE MATTER OF the *Electrical Power Control Act*, SNL 1994, Chapter E-5.1 (the “*EPCA*”) and the matter of the *Public Utilities Act* RSNL 1990, Chapter P-47 (the “*Act*”);

AND IN THE MATTER OF an application by Newfoundland and Labrador Hydro for approval of, *inter alia*, rates to be charged its customers (the “*Application*”).

BEFORE:

Robert Noseworthy
Chair and Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chairperson

PROCEDURAL ORDER

WHEREAS Newfoundland and Labrador Hydro (“NLH”), filed an Application with the Board of Commissioners of Public Utilities (“the Board”) on August 3, 2006 for an Order of the Board approving, among other things, rates to be charged as of January 1, 2007 for the supply of power and energy to its customers; and

WHEREAS Notice of the Application and Pre-hearing Conference was published in newspapers throughout Newfoundland and Labrador beginning on August 19, 2006; and

WHEREAS after publishing Notice, the Board received Intervenor Submissions from the Consumer Advocate, Newfoundland Power Inc., and a group of customers of NLH referred to as the Island Industrial Customers; and

WHEREAS on September 7, 2006 a Pre-hearing Conference was held in the Board’s Hearing Room, 2nd Floor, Prince Charles Building, 120 Torbay Road, St. John’s; and

WHEREAS issues addressed at the Pre-hearing Conference included the procedures to be followed in the proceeding, the Order of Witnesses, and the Schedule of Dates; and

WHEREAS another issue addressed at the Pre-hearing Conference was whether it was reasonable and appropriate to postpone consideration of the request set out in the Application for approval in principle of the straight line and equal life group depreciation methodology; and

WHEREAS the rates proposed in the Application do not reflect the proposed changes to the depreciation methodology which, if considered as set out in the Application, were intended to be implemented at a later date; and

WHEREAS the Consumer Advocate and the Industrial Customers advocate the deferral of consideration of the depreciation issue to a generic proceeding to be held after the hearing of the Application; and

1 **WHEREAS** NP did not oppose deferral of the depreciation issue and acknowledged the position of
2 the Consumer Advocate and the Industrial Customers as being reasonable; and

3
4 **WHEREAS** NLH was available to proceed with the hearing of the depreciation issue and while
5 expressing concern about deferring the issue did not oppose having the matter set aside to be addressed
6 after the conclusion of this Application; and

7
8 **WHEREAS** having heard from the parties, and giving regard to their agreement with respect to the
9 Rules of Procedure, the Order of Witnesses and the Schedule of Dates, the Board makes the
10 following order pursuant to the provisions of the *Act*.

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13 **IT IS THEREFORE ORDERED THAT:**

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- 16 1. The Registered Intervenors in this proceeding are as set out in the Distribution List attached
17 as Appendix “A” to this Order.
 - 18 2. The intended Order of Witnesses is as set out in Appendix “B” to this Order, which may be
19 changed with appropriate notice to the Board and other parties to the hearing.
 - 20 3. The Schedule of Dates as set out in Appendix “C” to this Order shall be observed by the
21 parties, unless otherwise accepted by the Board.
 - 22 4. The Rules of Procedure as set out in Appendix “D” to this Order shall be observed by the
23 parties, unless otherwise directed by the Board.
 - 24 5. The request set out in paragraph 6 (6) (o) of the Application for approval, in principle, of the
25 straight line and equal life group depreciation methodology will be addressed after the
26 conclusion of the Application in a process to be established by the Board beginning in 2007.

DATED at St. John's, Newfoundland and Labrador this 12th day of September 2006.

Robert Noseworthy
Chair & Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chairperson

Barbara Thistle
Assistant Board Secretary

1 **Appendix “A”**

2
3 **Distribution Listing**

4
5 **The following is a Distribution Address Listing:**

6
7 **1. Board of Commissioners of Public Utilities**

8
9 Suite E210, Prince Charles Building
10 120 Torbay Road
11 P. O. Box 21040
12 St. John's, NL
13 A1A 5B2

14
15 G. Cheryl Blundon e-mail: cblundon@pub.nl.ca
16 Director of Corporate Services and Board Secretary
17 Telephone: 726-8600
18 Fax: 726-9604
19

20 **Applicant:**

21
22 **2. Newfoundland and Labrador Hydro**
23 *represented by*

24
25 Gillian Butler, Q.C., and Geoffrey P. Young
26 Counsel
27 Hydro Place, Columbus Drive
28 P. O. Box 12400
29 St. John's, NL
30 A1B 4K7

31
32 Gillian Butler, Q.C.
33 Geoffrey P. Young e-mail: gyoung@nlh.nl.ca
34 Telephone: 737-1277
35 Fax: 737-1782
36

37 **Registered Intervenors:**

38
39 **3. Consumer Advocate**
40 *represented by*

41
42 Thomas Johnson
43 c/o O'Dea Earle Law Offices
44 323 Duckworth Street
45 St. John's, NL
46 A1C 5X4
47 Attention: Thomas Johnson
48 Telephone: 726-3524
49 Fax: 726-9600

e-mail: tjohnson@odeaearle.nf.ca

1 4. **Industrial Customers**

2 *represented by*

3
4 Joseph S. Hutchings, Q.C. and
5 Poole Althouse
6 P. O. Box 812
7 49-51 Park Street
8 Corner Brook, NL
9 A2H 6H7

Paul L. Coxworthy
Stewart McKelvey
P. O. Box 5038
Cabot Place, 100 New Gower Street
St. John's, NL
A1C 5V3

10 Attention: Joseph S. Hutchings
11 Telephone: (709) 637-6425
12 Fax: (709) 634-8247
13 Paul L. Coxworthy
14 Telephone: 570-8830
15 Fax: (709) 722-4565

e-mail: jhutchings@pa-law.ca

e-mail: pcoxworthy@smss.com

16
17 5. **Newfoundland Power Inc.**

18 *represented by*

19
20 Ian F. Kelly, Q.C. and Peter Alteen
21 55 Kenmount Road
22 P.O. Box 8910
23 St. John's, NL
24 A1B 3P6

25
26 Attention: Ian F. Kelly, Q.C.
27 Peter Alteen, Counsel
28 Telephone: 737-5859
29 Fax: 737-2974

e-mail: palteen@newfoundlandpower.com

30
31
32

Appendix “B”

Order of Witnesses

The following order of witnesses is established:

NLH - Presentation of Application

NLH - President & Chief Executive Officer -

Ed Martin

NLH - Panel:

Vice-President, Regulatory Affairs

Jim R. Haynes

Manager, System Operations and Customer Service

Rob Henderson

Manager, Transmission and Rural Operations –Central Region

Rob Cater

NLH - Vice-President, Finance and Chief Financial Officer

Derrick F. Sturge

NLH - Corporate Controller and Treasurer

Mark Bradbury

NLH - Manager, Rates and Financial Planning

Glenn H. Mitchell

Consultants/Expert Witnesses

NLH - Cost of Service Witness

Robert D. Greneman

CA – Cost of Service Witness

Douglas Bowman

NP - Cost of Service Witness

Larry Brockman

IC - Cost of Service Witness

Patrick Bowman

Other witnesses

BOARD - Financial Consultant

Bill Brushett

Appendix “C”

Schedule of Dates

The following dates are set:

August 2006

August 3	Filing
August 19	Notice

September 2006

September 5	Intervenors Submissions
September 7	Pre-Hearing Conference
September 18	RFIs

October 2006

October 2	Responses to RFIs
October 6	Witness Lists, Issues Lists
October 10	2 nd Round of RFIs
October 13	Experts' Reports, and Pre-filed evidence
	Counsel Meeting – 10:00 a.m.
	Motions Day – 2:00 p.m.
October 17	Responses to 2 nd Round of RFIs
October 20	RFIs on Experts' Reports
October 24 & 25	Negotiation Days
October 27	Responses to RFIs on Experts' Reports
October 30	Counsel Meeting – 10:00 a.m.
	Motion Day – 2:00 p.m.
October 31	Hearing Start / Ed Martin

November 2006

November 1, 2, 3	Ed Martin/ Panel: Jim Haynes, Rob Henderson, Rob Cater
November 3, 6	Derrick Sturge, Mark Bradbury
November 7	Glenn Mitchell
November 8, 9	Other witnesses
November 15	Robert D. Greneman
November 16	Douglas Bowman
November 17	Larry Brockman
November 20	Patrick Bowman
November 21-24	Travel, if determined necessary
November 27-30	Other witnesses

December 2006

December 1	Other witnesses
December 11	Written Submissions
December 14	Oral Submissions

Appendix “D”**Rules of Procedure****Public Record**

1. Unless otherwise ordered by the Board, all documents filed with respect to this proceeding shall be placed on the public record.

Form of Documents

2. (1) Unless otherwise ordered by the Board, the official record of this proceeding will be the original paper copy filed with the Board’s Secretary
- (2) Every written document filed by a party shall be prepared as follows:
 - (a) Typed, written or printed on 8½” X 11” letter size paper, 3-hole punched for standard binders.
 - (b) Single sided.
 - (c) Each page shall be numbered.
 - (d) Where reasonable, each line shall be numbered.

Filing of Documents

3. (1) All documents shall be filed with the Board Secretary.
- (2) Documents may be filed by:
 - (a) Hand delivery;
 - (b) Courier service;
 - (c) Registered Mail;
 - (d) Facsimile; or
 - (e) Other means directed by the Board.
- (3) Filing is accomplished when the Board receives the submission.
- (4) All documents will be date and time stamped when received at the Board’s Office.
- (5) All documents filed according to the scheduled dates shall be filed no later than 3:00 P.M. on the date stipulated. Documents filed after this time or on a Board holiday shall be considered as filed on the next Board business day.

Revisions to Documents

4. (1) A party may revise any document to correct errors or to provide new information before the completion of the hearing.
- (2) Where all or any part of a document is revised, each revision shall indicate the page(s) revised, the line(s) revised, the number of the revision (i.e. 1st revision), and the date of the revision.
- (3) Where a revision is made to a document the Board may, upon its own motion or upon the request of another party, after receiving submissions of the parties, make any order in respect of the revisions.

Service of Documents

5. (1) All documents shall be served upon the other parties in this proceeding.
- (2) Parties will appoint one person to receive documents for this proceeding.
- (3) Service may be made as follows:
 - (a) Hand delivery;
 - (b) Courier service;
 - (c) Registered Mail;
 - (d) Facsimile; or
 - (e) Other means ordered by the Board.
- (4) Service will be effective:
 - (a) On the day of delivery, where the document is sent by hand, courier or facsimile.
 - (b) On the date of receipt, where the document is delivered by registered mail.
 - (c) On a date determined by the Board, where service is made by any other means.

Number of Copies of Filings and other Documents

6. (1) Unless otherwise ordered by the Board, parties filing documents with the Board shall adhere to the following guidelines:
 - (a) File with the Board Secretary one original signed copy of each document.
 - (b) Provide 10 copies of the original documents with the Board.
 - (c) Serve one copy of each document to the parties.
 - (d) Distribute the documents to the Distribution Listing attached to these rules.

Charge for Copies

7. (1) The Board will provide a copy of any document authored by the Board or its consultants at no charge.
- (2) Copies of documents originating or authored by a party should be requested directly from the party.
- (3) One copy of the transcript for each day of the hearing will be provided to each party at no cost.
- (4) Copies of the Legislation, Acts, and Regulations can be obtained from the Queen's Printer, viewed at the Board's Main Office, or viewed on the Board's Website at www.pub.nl.ca.
- (5) The Board may charge copy fees for the cost associated with the reproduction of any other document requested by an individual or party in accordance with the applicable legislation.

Electronic Filing

8. (1) Every party, unless otherwise ordered by the Board, shall file with the Board an electronic version of all documentation filed with the Board in this proceeding in the following manner:
 - a) Each individual document shall be converted while in electronic form to "read only" *.pdf format (Adobe Acrobat), still allowing for key word searches and cut and paste functionality.
 - b) Two days after the day of filing of the hard copy, one copy of the electronic *.pdf file will be emailed to ito@pub.nl.ca.
 - c) All Documents that are generated in-house by the parties are to be filed electronically in the manner prescribed in this Order, with the exception of:
 - i. Covering letters or correspondence;
 - ii. Background reports, Board orders or historical documentation that are unavailable or impractical to provide electronically, and
 - iii. Case law filed in support of Motions.
- (2) Copies of all documentation filed with the Board in this proceeding will be placed on the Board's website, (www.pub.nl.ca) where it will be available for review or download.
- (3) The electronic file is not an official record for the purposes of this proceeding.

Public Viewing

9. Interested persons may view any or all documents filed in this proceeding on the Board's website, (www.pub.nl.ca) or at the Board's main office by contacting the Board Secretary.

Time

10. All references to time shall be clear days, that is the first and the last day shall be excluded.

Motions

11. (a) As noted in the Schedule of Dates, certain days have been set aside for the purpose of hearing motions. Subject to part (b) of this section, any party intending to file a motion must do so in accordance with this schedule.
- (b) The Board may hear motions on other than scheduled Motion Days where determined by the Board to be necessary.
- (c) Motions must be filed in writing with the Board and served upon the parties two days before the scheduled Motion Day.
- (d) The responding parties must file with the Board and serve upon the parties response briefs to a Motion one day before the scheduled Motion Day.

Information Requests

12. (a) The Parties shall observe the dates set for the issuance and filing of requests for information ("RFIs") and dates for responses to RFIs.
- (b) RFIs shall be:
- i. labelled with the initials of the party issuing the RFI;
 - ii. numbered consecutively with whole numbers; and
 - iii. designated so as to provide notice of to whom the RFI is directed (i.e. PUB 10 NLH).
- (c) RFIs, and responses to RFIs, shall constitute part of the record in the proceeding and will be considered to be evidence in the proceeding.
- (d) Where ordered by the Board, a party providing a response to an RFI shall make a witness or witnesses available for cross-examination to speak to the information provided in the response.

Procedures for Presentation of Evidence and Cross-examination of Witnesses

13. (a) Pre-filed testimony of all non-expert witnesses and reports of expert witnesses should be adopted as evidence by the witnesses in sworn testimony.

- (b) Direct examination should be limited to matters set out in the witness's pre-filed testimony. The Board may allow a witness to provide supplementary evidence or may restrict direct testimony where it is irrelevant, redundant or not helpful to the Board in making its decision.
- (c) Direct evidence may be presented by way of a panel of witnesses. Prior notice must be given to the Board Secretary and the parties. When examining a panel of witnesses Counsel shall put each question to a particular witness on the panel. Co-counsel may examine the same witness, or panel of witnesses, provided notice is given to the Board Secretary and the parties prior to the start of the cross-examination of the witness.
- (d) Where co-counsel intend to examine the same witness, prior notice must be given to the Board Secretary and the parties. Co-counsel should not examine the same witness on the same subject matter.
- (e) Unless otherwise ordered by the Board, the Order of Presentation in the hearing, including cross-examination, will be as follows, excluding the party calling the witness, or making the motion or objection:
- NLH
 - Consumer Advocate
 - IC
 - NP
 - Board Counsel
- (f) The party calling the witness shall be afforded an opportunity for re-direct examination.
- (g) The Board may pose questions to a witness. Questions on new matters arising from the questions of the Board after re-direct examination as set out in the Order of Presentation with the exception that the party calling the witness is last.
- (h) When presenting a document to a witness one copy will be provided to the witness, 10 copies to the Board Secretary and one copy to each party.
- (i) A party wishing to examine or cross-examine a witness on a document that is not:
- a. already part of the record of the proceeding;
 - b. a portion of a transcript of the witness' own testimony given within the preceding two (2) years or in NLH's last two (2) General Rate Applications, or
 - c. an Order of the Board,
- shall:
- i file a copy of the document with the Board and all parties by 3 p.m. on the last business day before the examination or cross-examination is to take place;

- ii provide ten (10) copies to the Board Secretary on the day of the examination or cross-examination; and
- iii give the witness a reasonable time to review the document before the witness is asked to answer any questions concerning the document.

(j) Where the witness adopts the document it will be marked as an exhibit to his testimony.

(k) Where a document was not adopted as part of the witness' testimony the document may be:

- a. if the parties consent, entered as a consent exhibit; or
- b. entered as an information item.

Other

14. Unless otherwise ordered by the Board, the rules of procedure set out in *Regulation 39/96* apply in this proceeding to the extent that they are consistent with this Order.