



NEWFOUNDLAND AND LABRADOR

Certified to be a true copy of the original documents dated at St. John's Newfoundland this 28<sup>th</sup> day of August 2001

CA-84  
Attachment H

AN ORDER OF THE BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

NO. P. U. 17 (2001-2002)

**IN THE MATTER OF** the *Public Utilities Act* (the "*Act*"); and

**IN THE MATTER OF** an application by Newfoundland Power Inc. (Newfoundland Power) for an Order pursuant to Sections 41 and 53 of the *Act*, and all other enabling powers:

- (a) for approval of the purchase by Newfoundland Power of certain additions to its property and Assets; and
- (b) for approval of an agreement concerning the terms and conditions upon which Aliant Telecom ("Aliant") shall jointly use certain facilities of Newfoundland Power; and

**IN THE MATTER OF** Order P.U. 6 (2001-2002) and an application by Newfoundland Power to re-open the application to receive further evidence, and seeking approval to acquire the joint use Support Structures of Aliant located in Newfoundland Power's service territory.

**WHEREAS** Newfoundland Power and Aliant entered into a Support Structures Purchase Agreement made as of January 1, 2001, pursuant to which Newfoundland Power agreed to purchase, from Aliant, the joint use and non-joint use Support Structures owned by Aliant and located on the island portion of Newfoundland; and

**WHEREAS** Newfoundland Power and Aliant had proposed to enter into a Facilities Partnership Agreement as of January 1, 2001 governing Aliant's use of all Support Structures in Newfoundland Power's service territory and related matters, including the payment of remuneration by Aliant to Newfoundland Power in connection with Aliant's use of Support Structures and payment of contributions with respect to the construction of certain Support Structures; and

**WHEREAS** Newfoundland Power applied to the Board on May 8, 2001 for approval of the purchase of Aliant's Support Structures in Newfoundland Power's service territory and other related matters; and

**WHEREAS** Newfoundland Power has assigned to 11003 Newfoundland Inc. its rights pursuant to the Support Structures Purchase Agreement to purchase those Support Structures which are outside of Newfoundland Power's Service Territory; and

**WHEREAS** the Board held a public hearing into the original application on June 7 and 8, 2001 at which Newfoundland and Labrador Hydro and Glovertown Cable appeared as Intervenors; and

**WHEREAS** following the public hearing, by Order P.U. 6 (2001-2002), the Board declined to permit the inclusion of the Aliant non-joint use poles in Newfoundland Power's rate base and denied Newfoundland Power's request for approval of the capital expenditures to purchase Aliant's joint use poles; and

**WHEREAS** in Order P.U. 6 (2000-2001) the Board indicted that it would require additional evidence from Newfoundland Power prior to determining whether to approve the capital expenditures for the 69,848 joint use poles in light of its decision with respect to the non-joint poles; and

**WHEREAS** following further negotiations with Aliant, Newfoundland Power applied to the Board on July 26, 2001, pursuant to Regulation 28 of the *Board of Commissioners of Public Utilities Regulations, 1996*, seeking to re-open the original application to receive further evidence with respect to the proposed acquisition by Newfoundland Power of the joint use support structures in Newfoundland Power's service territory; and

**WHEREAS** Newfoundland Power filed with the Board and the parties additional evidence and revisions to documents previously filed, including Exhibit 10 (Economic Analyses) and the Facilities Partnership Agreement, to reflect only the joint use support structures; and

**WHEREAS** on August 2, 2001 the Board issued Order P.U. 14 (2000-2001) giving leave, in the absence of any objection from the parties, to Newfoundland Power for the re-opening of the hearing and requesting written submissions in reply to the application from the parties by August 22, 2001; and

**WHEREAS** the Board received communication from both Newfoundland and Labrador Hydro and Glovertown Cable indicating they would not object to the re-opening of the application and that they would not be making any further submissions; and

**WHEREAS** Newfoundland Power has assigned to 11003 Newfoundland Inc., a related company of Newfoundland Power, its rights pursuant to the Support Structures Purchase Agreement to purchase Aliant's non-joint use telecommunications support structures within Newfoundland Power's service territory, thereby removing the non-joint use poles from the application; and

**WHEREAS** Newfoundland Power and Aliant propose to enter into a Facilities Partnership Agreement that has been modified to govern only the joint use support structures in Newfoundland Power's service territory, a copy of which has been filed with the Board as part of this application; and

**WHEREAS** Newfoundland Power will continue to provide those services it currently provides to Aliant in respect of the non-joint use poles to 11003 Newfoundland Inc. and will invoice 11003 Newfoundland Inc. for the costs associated with providing those services based on market rates Newfoundland Power charges to unrelated parties, and will report inter-company transactions to the Board in accordance with Board orders; and

**WHEREAS** the Support Structures Agreement, as amended by the assignments to 11003 Newfoundland Inc., provides that the aggregate purchase price payable by Newfoundland Power to Aliant for the joint use Support Structures in Newfoundland Power's service territory shall be \$40,439,669, in accordance with the following schedule:

| <i>Payment Date</i> | <i>Amount</i>             |
|---------------------|---------------------------|
| Closing Date        | 50% of the Purchase Price |
| January 1, 2002     | 20% of the Purchase Price |
| January 1, 2003     | 10% of the Purchase Price |
| January 1, 2004     | 10% of the Purchase Price |
| January 1, 2005     | 10% of the Purchase Price |

**WHEREAS** the amount to be paid to Aliant by Newfoundland Power in 2001 is \$20,219,834 as set out in Schedule A; and

**WHEREAS** the Facilities Partnership Agreement between Newfoundland Power and Aliant with respect to the joint-use Support Structures will also require supplementary capital expenditures by Newfoundland Power of \$1,881,750 for distribution plant additions in 2001 as set out in Schedule A; and

**WHEREAS** Newfoundland Power has provided additional information to the Board in response to information requests concerning the additional evidence and documentation filed; and

**WHEREAS** it is the opinion of the Board that approval of the Facilities Partnership Agreement is not required and that Newfoundland Power will have to apply to the Board of Commissioners of Public Utilities for approval under section 48 of the Act before the sale of any of the Support Structures as contemplated in the modified Facilities Partnership Agreement is finalized; and

**WHEREAS** pursuant to P.U. 24 (2000-2001) dated October 6, 2000 the Board approved the 2001 capital budget of \$39,109,000 of Newfoundland Power; and

**WHEREAS** pursuant to P.U. 12 (2001-2002) dated July 26, 2001 the Board approved amendments to the 2001 capital budget of Newfoundland Power totaling an additional \$1,817,000; and

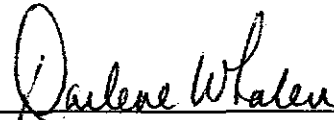
**WHEREAS** the Board acknowledges that the section 24(1) of the EPCA referenced on page 16 of Order P.U. 6(2001-2002) has not yet been proclaimed by Government and hence this section is not relevant to the consideration of the application; and

**WHEREAS** the Board has carefully considered the additional information and evidence before it.

**IT IS THEREFORE ORDERED THAT:**

1. The purchase by Newfoundland Power of Aliant's joint use Support Structures in Newfoundland Power's service territory is hereby approved.
2. Pursuant to section 41(3) of the Act, (a) the supplementary capital expenditures for 2001 of \$22,101,584 as set out in Schedule A; and (b) the revised 2001 capital budget of \$63,027,584 are hereby approved.
3. All costs and expenses of the Board incurred in connection with this application shall be borne by Newfoundland Power.

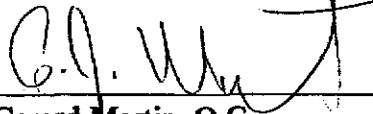
Dated at St. John's, Newfoundland this 28<sup>th</sup> day of August 2001.



Darlene Whalen, P.Eng.,  
Vice-Chairperson.



William B. Crosbie, P.Eng.,  
Commissioner.



Gerard Martin, Q.C.  
Commissioner.



G. Cheryl Blundon,  
Director of Corporate Services and  
Board Secretary

**SCHEDULE A**

Newfoundland Power Inc.  
2001 Capital Additions  
(\$000s)

|                                        |                 |            |        |
|----------------------------------------|-----------------|------------|--------|
| 50% interest in the Support Structures |                 |            | 20,220 |
| Distribution Additions:                | Line Extensions | 700        |        |
|                                        | Reconstruction  | 547        |        |
|                                        | Rebuilds        | <u>635</u> | 1,882  |
| Total                                  |                 |            | 22,102 |