

**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P. U. 21(2011)

1 **IN THE MATTER OF** the *Electrical Power*
2 *Control Act, 1994*, SNL 1994, Chapter E-5.1 (the
3 “*EPCA*”) and the *Public Utilities Act*, RSNL 1990,
4 Chapter P-47 (the “*Act*”), and regulations thereunder;

5
6 **AND**

7
8 **IN THE MATTER OF** an application by
9 Newfoundland Power Inc. pursuant to
10 Section 48 of the *Act* for an Order approving
11 the sale by Newfoundland Power Inc. of certain
12 support structures to Bell Aliant Regional
13 Communications Inc.

14
15 **AND**

16
17 **IN THE MATTER OF** Order No. P.U. 17(2011)
18 and an application by Newfoundland Power Inc.
19 pursuant to Section 28 of the *Board of*
20 *Commissioners of Public Utilities Regulations,*
21 *1996* to re-open and/or rehear the matter to
22 receive further evidence.

23
24 **The Application**

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26 On February 4, 2011 Newfoundland Power Inc. (“Newfoundland Power”) filed an application
27 requesting that the Board approve, pursuant to Section 48 of the *Act*, the sale to Bell Aliant
28 Regional Communications Inc. (“Bell Aliant”) of 40% of its joint use support structures for the
29 price of \$45,698,000 subject to adjustments, effective January 1, 2011 as set out in a joint use
30 support structures purchase agreement (the “Purchase Agreement”). In Order No. P.U. 17(2011)
31 the Board denied Newfoundland Power’s application.

32
33 This application, dated August 26, 2011, is made pursuant to Section 28 of the *Board of*
34 *Commissioners of Public Utilities Regulations, 1996* and seeks to re-open and/or rehear the
35 February 4, 2011 application to receive further evidence with respect to the proposed sale to Bell
36 Aliant by Newfoundland Power of certain of its support structures. The application also seeks

1 the Board's approval for the sale of the joint use support structures as provided for the Purchase
2 Agreement.

3
4 Requests for information were issued by the Consumer Advocate and the Board, which were
5 responded to by Newfoundland Power by September 12, 2011. The Consumer Advocate filed
6 final comments on September 14, 2011.

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8 Following review of the application, the additional evidence filed by Newfoundland Power, and
9 the comments filed by the Consumer Advocate, the Board is satisfied that it is appropriate to re-
10 open and/or rehear the matter to receive the new evidence filed. The Board is also satisfied that
11 the matter can be considered on the basis of the written record before it.

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13 **Discussion**

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15 In Order No. P.U. 17(2011) the Board accepted the following as the proper test to be applied in
16 its consideration of this matter:

17
18 **Has Newfoundland Power shown on a balance of probabilities that, when the**
19 **potential positive and negative impacts of the transaction are weighed, the balance**
20 **favours customers or at least leaves them no worse off, having regard to all the**
21 **circumstances.**

22
23 In reaching its conclusions on the evidence before it as part of the proceeding the Board stated in
24 Order No. P.U. 17(2011):

25
26 *"Newfoundland Power must demonstrate on a balance of probabilities that customers will be no*
27 *worse off with a return to pre-2001 joint ownership regime. Specifically, Newfoundland Power*
28 *has the burden of proof to show on a balance of probabilities that when the potential positive and*
29 *negative impacts of the transaction are weighed the balance favours customers or at least leaves*
30 *them no worse off, having regard to all the circumstances. The Board finds that this burden has*
31 *not been met, whether one looks to the net present value analysis provided or the impact on rates*
32 *or the other specific aspects of the proposed joint ownership regime."*

33
34 In Order No. P.U. 17(2011) the Board denied Newfoundland Power's application on the basis
35 that Newfoundland Power had not met the burden of proof required to show that the proposed
36 sale would, on balance, favour customers or at least leave them no worse off.

37
38 In its application Newfoundland Power provided new evidence that Newfoundland Power and
39 Bell Aliant agreed:

- 40
41 a) to extend the term of the 2011 Joint Use Agreement from 5 years to 10 years;
42 b) to have Newfoundland Power provide pole installation and removal services for Bell
43 Aliant through 2020; and
44 c) to extend the term of the Purchase Agreement.

45
46 Newfoundland Power filed evidence which, according to Newfoundland Power, shows that there
47 will be an orderly transition to a new joint use regime and demonstrates materially improved

1 benefits and protections for Newfoundland Power and its customers. (Additional Evidence of
2 Newfoundland Power, pg. 4/11-13)

3 With respect to the revenue requirement impact the updated financial analysis resulting from the
4 renegotiated joint use regime for a 10-year period, set out in Exhibit 10 and Table 1, shows a
5 material change in the revenue requirement impacts compared to the impacts identified in the
6 original application. The levelized annual revenue requirement savings (2011 to 2020) increase
7 from \$76,115 to \$1,445,127 and the net present value of the surplus (2011 to 2020) increases
8 from \$534,393 to \$10,146,084. According to Newfoundland Power the agreement to have
9 Newfoundland Power perform all installation and removal of joint use support structures for the
10 entire period 2011 to 2020 assures additional financial benefits to Newfoundland Power and its
11 customers.

12
13 Newfoundland Power also provided a sensitivity analysis to examine the impact of variations in
14 certain key assumptions underlying the financial analysis of the proposed sale. The sensitivity
15 analysis set out in Exhibit 11 examines the effect of changes to assumptions related to the
16 regulated return on equity, the incremental cost of capital, the inflation rate, the number of joint
17 use support additions/replacements per year, the joint use administrative costs and the
18 compensation for Newfoundland Power's continued installation and removal of all the joint use
19 support structures. This analysis shows positive revenue requirement impacts for customers
20 under all scenarios.

21
22 According to Newfoundland Power the new joint use regime will protect the financial benefits to
23 customers through equitable cost sharing over the 10-year period of the agreement and annual
24 adjustments based on changes to Newfoundland Power's costs. Newfoundland Power submits
25 that this provides protection from unforeseen cost increases associated with the installation and
26 removal of joint use support structures on behalf of Bell Aliant.

27
28 The Consumer Advocate states that he does not oppose Newfoundland Power's request that the
29 sale of certain joint use support structures to Bell Aliant be approved, noting that "*...in the*
30 *revised filing it is clear that the economic benefits associated with the sale favours customers,*
31 *whereas the company's original application failed in this regard.*"

32 33 **Conclusion**

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35 The Board is persuaded that the renegotiated joint use arrangements between Newfoundland
36 Power and Bell Aliant address the concerns identified by the Board in its Order. In particular the
37 financial benefits associated with the new joint use regime are substantially greater than those
38 identified in the original application. Given the significant positive impact on revenue
39 requirement and the material increase in the net present value of the surplus for the period 2011
40 to 2020 resulting from the new joint use regime the Board is satisfied that the potential positive
41 impacts outweigh the negative impacts or at least will leave customers no worse off.

1 **IT IS THEREFORE ORDERED THAT:**
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- 4 1. The proposed sale to Bell Aliant by Newfoundland Power of certain joint use support
5 structures as provided for in the Purchase Agreement is approved.
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7 2. Newfoundland Power shall pay the expenses of the Board arising from this Application.

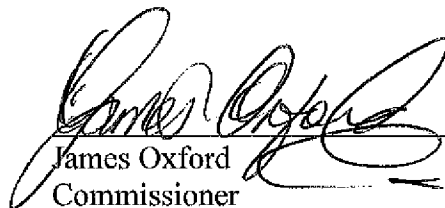
Dated at St. John's, Newfoundland and Labrador this 28th day of September, 2011.



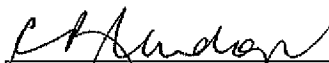
Darlene Whalen, P.Eng.
Vice-Chair



Dwanda Newman, LL.B.
Commissioner



James Oxford
Commissioner



Cheryl Blundon
Board Secretary