

1 **Q. Section 4(i) (sic) of the Electrical Power Control Act (EPCA) requires that rates**
 2 **should be reasonable and not unjustly discriminatory. Newfoundland Power is**
 3 **requesting final approval of rates for 2016 including deferred cost recovery. Explain**
 4 **why approval of Newfoundland Power's application on an interim basis until the**
 5 **Board can test 2016 costs would not be appropriate to meet the requirement of the**
 6 **EPCA.**

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 8 A. The power policy of the province of Newfoundland and Labrador is declared in Section 3
 9 of the EPCA. In addition to the requirement that electricity rates be reasonable and not
 10 unjustly discriminatory, the EPCA also requires that rates should be established,
 11 wherever practicable, based on forecast costs and that they should provide the utility with
 12 an opportunity to earn a just and reasonable return as construed under the *Public Utilities*
 13 *Act*.¹

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 15 The balance inherent in the regulatory policy framework contained in the EPCA and the
 16 *Public Utilities Act* has been recognized by the Board on a number of occasions. In
 17 Order No. P.U. 32 (2007), the Board observed:

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 19 “The real challenge for the Board, in keeping with its legislative mandate, is to
 20 balance oftentimes competing objectives within the regulatory environment to
 21 ensure a set of sound and reasoned decisions serving the interests of both
 22 customer and utility alike.”

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 24 With respect to the interests of the utility, the Newfoundland and Labrador Court of
 25 Appeal, in the majority opinion in a stated case presented by the Board in 1996,
 26 recognized the fundamental nature of a just and reasonable rate of return in the following
 27 terms:

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 29 “The setting of a ‘just and reasonable’ rate of return is of fundamental importance
 30 to the utility and must always be an important focus of the Board’s deliberations;
 31 however, the ‘entitlement’ of the utility to a just and reasonable rate of return does
 32 not guarantee it that level of return. ***The ‘entitlement’ is to have the Board***
 33 ***address that issue and to make its best prospective estimate, based on its full***
 34 ***consideration of all available evidence***, for the purpose of setting rates, tolls and
 35 charges.”² (emphasis added)

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 37 Approval of the Application on an interim basis until the Board can test Newfoundland
 38 Power’s 2016 costs would not be consistent with the prospective nature of rate regulation

¹ In Newfoundland Power’s view, the requirement that rates not be unjustly discriminatory is not engaged by the Application. The Application proposes no changes to rates, tolls or charges to customers, or to rate design or availability.

² See Stated Case, paragraph 36.

1 in Newfoundland and Labrador.³ In the current circumstances, such approval would
2 likely not provide Newfoundland Power with an opportunity to recover its 2016 costs on
3 a prospective basis, and earn a just and reasonable return for 2016, as provided in the
4 EPCA and the *Public Utilities Act*. For this reason, the 2016 deferred cost recovery
5 proposed in the Application is the superior alternative to addressing the current
6 circumstances.

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8 For further information regarding the appropriateness of the 2016 deferred cost recovery
9 proposed in the Application, refer to the responses to Requests for Information
10 PUB-NP-001, PUB-NP-002, PUB-NP-003, PUB-NP-006, PUB-NP-007 and
11 PUB-NP-008.

³ For further information on the prospective nature of rate regulation in Newfoundland and Labrador, refer to the response to Request for Information PUB-NP-006.