

1 **Q. Further to Newfoundland Power's response to NLH-NP-011 which states:**

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3 *"If the Board were to approve the proposed 2016 cost deferral on an interim basis, with*
4 *recovery to be determined following the hearing of Newfoundland Power's 2016 GRA*
5 *at a later time, this would not, depending on the timing of the Board's decision, provide*
6 *Newfoundland Power a reasonable opportunity to recover its 2016 costs on a*
7 *prospective basis."*

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9 **Please explain the difference in recovery of the proposed cost deferral if it is**
10 **approved subject to further review of the Board versus recovery of the proposed**
11 **cost deferral if it is approved on a final basis (as would be the result of approval of**
12 **the Application). If the cost recovery is ultimately justified before the Board**
13 **through the testing of 2016 costs, would Newfoundland Power still recover the costs**
14 **in future from customers? If not, why not?**

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16 **How does approval of the cost deferral without approval for recovery impact**
17 **Newfoundland Power?**

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19 **A.** If the Board granted approval of a cost deferral subject to further review, Newfoundland
20 Power's *opportunity* to earn a just and reasonable return on rate base in 2016 would
21 depend on a future Board approval that the cost deferral would be recovered.

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23 Put another way, approval of a cost deferral without approval for recovery of the costs
24 deferred does not provide Newfoundland Power with a reasonable *opportunity* to recover
25 its 2016 costs on a prospective basis, and earn a just and reasonable return for 2016, as
26 provided in the *Electrical Power Control Act, 1994* and the *Public Utilities Act*.¹

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28 This perspective on the fundamental principle that a utility is entitled to a just and
29 reasonable return reflects the majority opinion of the Newfoundland and Labrador Court
30 of Appeal in a stated case presented by the Board in 1996, which stated:

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

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40 The Board has recognized that *ex post facto* adjustments could be inconsistent with the
41 prospective nature of regulation and a predictable regulatory framework:

¹ Refer to the response to Request for Information NLH-NP-067.

² See Stated Case, paragraph 36.

1 “Consistent with regulatory practice and in the absence of special
2 circumstances, the Board does not look back to the actual results and make
3 adjustments to ongoing costs to reflect the differences between forecast
4 and actual. The Board finds that such an adjustment would be retroactive
5 in nature and is inappropriate in the circumstances in the absence of
6 language in the original Order to ground such an adjustment. Consistent
7 with regulatory practice and in the interests of a predictable and fair
8 regulatory framework that accepts the necessity and practicality of
9 prospective regulation the Board will not make the offset proposed by the
10 Consumer Advocate.” (at pages 6-7, Order No. P.U. 39 (2006))³

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12 Since it is inconsistent with the prospective nature of regulation in Newfoundland and
13 Labrador, the Application does *not* seek, as an alternative, approval of the proposed cost
14 deferral subject to further review of the Board.

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16 Newfoundland Power’s evidence is clear. If the 2016 cost recovery deferral is not
17 approved, Newfoundland Power will practically be required to file its next general rate
18 application in 2015 to enable it to have the opportunity to earn a just and reasonable
19 return in 2016 provided by Section 80 of the *Public Utilities Act*.⁴

³ Refer to the response to Request for Information PUB-NP-006, pages 2-3.

⁴ See Newfoundland Power’s 2016 Deferred Cost Recovery Application, 2016 Deferred Cost Recovery: Evidence, Section 1.0 Summary, page 1, lines 36-38.