

1 **Q. Further to Newfoundland Power’s response to NLH-NP-035 which states:**

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3 *"Section 75 of the Public Utilities Act (the “Act”) provides for interim orders*  
4 *governing rates. However, there is no provision in the Act which governs the approval*  
5 *of cost recovery deferrals on an interim basis. Newfoundland Power is uncertain as to*  
6 *how a cost recovery deferral on an interim basis would practically work and still be*  
7 *consistent with the prospective nature of utility regulation in the province."*

8  
9 **Order No. P.U. 58(2014) states:**

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11 *"The Board will therefore grant approval for Hydro to establish a deferral account in*  
12 *relation to the proposed 2014 revenue requirement and to segregate \$45.9 million in*  
13 *the account in 2014, subject to the Board's subsequent determination, following a full*  
14 *review, as to whether it is appropriate to grant any recovery to Hydro."*

15  
16 **Does the Board’s decision in Order No P.U. 58(2014) provide certainty to**  
17 **Newfoundland Power on how a cost recovery deferral would practically work and**  
18 **still be consistent with the prospective nature of utility regulation in the Province? If**  
19 **not, why not? Would Newfoundland Power consider a similar approach to be**  
20 **reasonable to deal with the current Application? If not, why not?**

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22 **A. A. What the Order Said**

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24 The approach taken by the Board in Order No. P.U. 58 (2014) (the “Order”) was clearly  
25 influenced by the timing of Hydro’s request for deferral of the \$45.9 million associated  
26 with 2014.

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28 In particular, the Board was concerned that an order on the deferral application which  
29 was filed on November 28, 2014 was required by year end:

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31 *“Normally this relief is granted where there has been some opportunity for review*  
32 *of the proposals made and the evidence filed. However, as a result of Hydro's*  
33 *approach to the management of its general rate application, including the late*  
34 *filing of the application seeking interim relief, there is no reasonable opportunity*  
35 *at this time to assess the evidence filed in support of Hydro proposals and*  
36 *determine the possible impacts and relevant considerations... While Hydro's*  
37 *proposals raise issues which, as a result of the late filing of the application, cannot*  
38 *be properly addressed at this time, the Board finds that approval in 2014 of a*  
39 *deferral account to segregate an amount associated with the 2014 revenue*  
40 *requirement is necessary to ensure that the Board retains jurisdiction with respect*  
41 *to Hydro's 2014 revenue requirement. Given the extraordinary circumstances, the*  
42 *Board will grant approval to establish a deferral account in relation to Hydro's*  
43 *proposed 2014 revenue requirement.” (emphasis added)<sup>1</sup>*

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<sup>1</sup> Order No. P.U. 58 (2014), pages 7-8.

1 Given the abbreviated timelines, the Board was clear that it could not determine  
2 whether recovery of *any* portion of the \$45.9 million was justified:  
3

4 “The Board also finds that considering all of the circumstances and issues  
5 associated with Hydro’s amended application, it cannot determine at this time  
6 whether Hydro should be granted recovery of any amount in relation to the  
7 proposed 2014 revenue requirement. *While it is possible that the Board will,*  
8 *after a full review, grant approval for Hydro to recover all or part of the \$45.9*  
9 *million, there is no certainty at this time of any recovery.* As stated by the Court  
10 of Appeal in Newfoundland (Board of Commissioners of Public Utilities), RE  
11 (1998), 164 Nfld and P.E.I. R. 60:  
12

13 The utility therefore takes the risk that its chosen management  
14 techniques and the future economic climate may not yield its  
15 expected success. Although some of the activities of the utility are  
16 regulated within the framework of the statutory objectives, the utility  
17 nevertheless remains subject to business risks and effects of  
18 management decisions. To that extent, the financial risks associated  
19 with the operation of the utility, just as in the case of any private  
20 business, are to be born by the investors in the enterprise, not the  
21 customer of the service.  
22

23 *The Board will therefore grant approval for Hydro to establish a deferral*  
24 *account in relation to the proposed 2014 revenue requirement and to segregate*  
25 *\$45.9 million in the account in 2014, subject to the Board’s subsequent*  
26 *determination, following a full review, as to whether it is appropriate to grant*  
27 *any recovery to Hydro.” (emphasis added)<sup>2</sup>  
28*

## 29 **B. The Order & the Application**

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31 The Order contains no indication of how the Board intends to approach its 2015  
32 consideration of the appropriateness of cost recovery for 2014. While the Order clearly  
33 indicates that the Board may not grant full recovery of the \$45.9 million to Hydro, it does  
34 not indicate the criteria to be used to determine what portion, if any, of the \$45.9 million  
35 associated with 2014 will be recovered from customers.  
36

37 For these reasons, the Order provides no certainty to Newfoundland Power regarding  
38 how a cost recovery deferral on an *interim* basis would practically work and still be  
39 consistent with the prospective nature of the utility regulation in the Province. Instead,  
40 the Order by its terms creates significant uncertainty regarding the recovery of the \$45.9  
41 million.

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<sup>2</sup> Order No. P.U. 58 (2014), page 9.

1 The Order simply highlights the inconsistencies and difficulties associated with  
2 determining the appropriateness of cost recovery from prior years in a regulatory  
3 framework which is intended to be prospective in nature.<sup>3</sup>  
4

5 To avoid encountering these inconsistencies and difficulties, the Application seeking  
6 2016 deferred cost recovery of approximately \$4 million was filed by Newfoundland  
7 Power on April 15, 2015. This timing permits adequate opportunity for review of the  
8 proposal and the evidence filed in support of it. In addition, it provides Newfoundland  
9 Power the flexibility to manage the risks presented by the current regulatory agenda. The  
10 extraordinary process-related concerns which clearly influenced the Board's decision  
11 making in the Order simply do not present themselves with the Application.  
12

13 Accordingly, Newfoundland Power would not consider the approach taken by the Board  
14 in the Order to be reasonable to deal with the Application. In Newfoundland Power's  
15 view, the approach taken by the Board in the Order may have been justified in the  
16 circumstances, particularly the timing of Hydro's Application. However, such an  
17 approach is not justified in the circumstances of the Application.  
18

19 Prominent among the considerations for the Board relevant to the Application, in  
20 Newfoundland Power's view, is the timing and complexity of Hydro's currently  
21 outstanding GRA. This clearly supports the Board's approval of the 2016 deferred cost  
22 recovery of approximately \$4 million proposed in the Application.  
23

24 In addition, the 2016 deferred cost recovery proposed in the Application is consistent  
25 with (i) prospective ratemaking<sup>4</sup>; (ii) the principle of intergenerational equity as applied  
26 by the Board<sup>5</sup>; (iii) reduced overall regulatory lag and delayed cost recovery<sup>6</sup>; (iv) overall  
27 regulatory cost efficiency<sup>7</sup>; and (v) past regulatory practice.<sup>8</sup> This also clearly supports  
28 the Board's approval.

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<sup>3</sup> The response to Request for Information NLH-NP-066 describes this inconsistency in more detail. The response to Request for Information NLH-NP-067 describes in more detail how such *ex post facto* determinations can deprive utility management of the flexibility to respond to the risk to which the utility is exposed.

<sup>4</sup> Refer to the response to Request for Information PUB-NP-006, pages 2-3.

<sup>5</sup> Refer to the response to Request for Information PUB-NP-006, pages 3-4.

<sup>6</sup> Refer to the response to Request for Information PUB-NP-003, pages 1-2.

<sup>7</sup> Refer to the responses to Request for Information PUB-NP-002, pages 2-4 and PUB-NP-003, page 2.

<sup>8</sup> Refer to the response to Request for Information PUB-NP-001, pages 1-4.