

Office of the Consumer Advocate

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September 18, 2017

Board of Commissions of Public Utilities
120 Torbay Road, P.O. Box 2140
St. John's, NL A1A 5B2

Attention: **G. Cheryl Blundon, Director of
Corporate Services / Board Secretary**

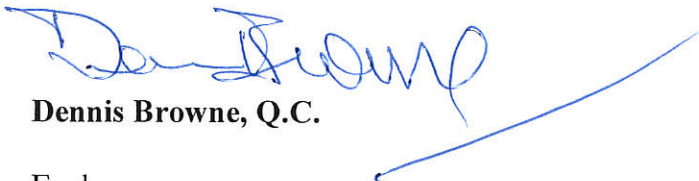
Dear Ms. Blundon:

RE: Newfoundland Power's 2018 Capital Budget Application

Further to the above-captioned, enclosed please find enclosed the original and twelve (12) copies of the Consumer Advocate Intervenor Submission.

A copy of this letter, together with enclosure, has been forwarded directly to the parties listed below.

Yours truly,



Dennis Browne, Q.C.

Encl.
/bb

cc **Newfoundland Power Inc.**
NP Regulatory (regulatory@newfoundlandpower.com)
Gerard Hayes (ghayes@newfoundlandpower.com)

Newfoundland & Labrador Hydro
Tracey Pennell (traceypennell@nlh.nl.ca)
Geoff Young (gyoung@nlh.nl.ca)
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Board of Commissioners of Public Utilities
Cheryl Blundon (cblundon@pub.nl.ca)
Jacqui Glynn (jblynn@pub.nl.ca)
PUB Official Email (ito@pub.nl.ca)

IN THE MATTER OF

the *Electrical Power Control Act, 1994*, SNL 1994, Chapter E-5.1 (the “EPCA”) and the *Public Utilities Act, RSNL 1990*, Chapter P-47 (the “Act”), as amended; and

IN THE MATTER OF capital expenditures and rate base of Newfoundland Power Inc.; and

AND IN THE MATTER OF an application by Newfoundland Power Inc. for an Order pursuant to Sections 41 and 78 of the Act;

- (a) approving a 2018 Capital Budget of \$83,876,000;
- (b) approving certain capital expenditures related to multi-year projects commencing in 2018; and
- (c) fixing and determining a 2016 rate base of \$1,061,044,000

CONSUMER ADVOCATE INTERVENOR SUBMISSION

Overview

1. Bonbright’s Principles of Public Utility Rates makes reference to the necessity of reconciling rate base and capital structure:

In determining the required rate, a regulatory commission must reconcile the jurisdictional rate base with the capital structure. This is needed since the required rate of return directly affects the revenue requirement.”

(See: p. 236)

This underscores the significance of the Public Utilities Board’s (“PUB”) legislative mandate in proving this capital expenditure and in fixing and determining the rate base in this application. A balancing of interests is required. It is in the Applicant’s shareholder’s interests to continually increase the rate base. It is in the ratepayer’s interests that the necessity of expenditures be considered based on affordability.

2. Under the provisions of the *Electrical Power Control Act, 1994*, utilities are required to manage and operate their facilities in a manner that results in power being delivered to consumers at the lowest possible cost consistent with reliable service. In examining each and every expenditure this is a test to be applied and if the Board concludes that the Applicant has not passed this test that particular item should be denied in the Capital Budget.

Procedural Deficiencies

3. The Applicant's Capital Budget was filed with the PUB on July 7, 2017. The parties were provided with a proposed schedule on Friday, July 14 and asked to respond to the proposed schedule by the close of business on Monday, July 17.
4. In a General Rate Application ("GRA"), the Board requires a pre-hearing conference, requests for information ("RFIs"), financial consultant's report, a second round of RFIs, experts' reports and pre-filed evidence. There are also settlement discussions, negotiation periods, a motions day, and a public hearing.
5. The procedures in a Capital Budget Application pale in comparison. A Capital Budget Application requires intervenor submissions, RFIs, and replies to RFIs, followed by written submissions from intervenors. There is not even provision for a second round of RFIs, which is a clear procedural deficiency. In short, this so-called paper hearing could be best described as perfunctory.
6. The PUB maintains that a paper hearing, which has no reference in the regulations, no written procedural rules and not so much as a practice note, is nonetheless consistent with the legislation and the promulgated regulations. We take issue. Section 20 of the Public Utilities Act provides:

The Board may make, revoke and alter rules and regulations for the effective execution of its duties and of the intention and objects of the Act, and the regulations of the practice and procedure with regard to matters over which it has jurisdiction, and the rules and regulations, when approved by the Lieutenant-Governor in Council shall have the force of the law. (Emphasis added)

7. Ratepayers may find it unusual that the PUB would adopt a “paper hearing” to consider an expenditure by ratepayers in excess of \$83 million and to fix a rate base in excess of \$1 billion, without the applicant having to testify in public, or to even utter a word. Why are procedural standards applicable to a Capital Budget Application less stringent than what is required in a General Rate Application? Whose interests are best served by a paper hearing? Ratepayers deserve better.
8. While the Public Utilities Board (“PUB”) in this province has been described in our Court of Appeal as an esteemed administrative body, the PUB is not a law unto itself. The PUB is subject to the legislation and regulations as provided to the Board under Section 20 of the Act. Furthermore, the Board is subject to general rules pertaining to natural justice. These would include procedural fairness and due process. An administrative tribunal must ensure procedural protections, including an opportunity for parties to present their case before an unbiased body. Proceedings before the PUB are also subject to the Canadian Charter of Rights and Freedoms.
9. This entire Capital Budget procedure as it pertains to a paper hearing, requires revisiting. At the very least, the Applicant, at the outset, should be required to convene a meeting of stakeholders with a detailed Capital Budget presentation. A Board sponsored conference of stakeholders should be able to deal with these matters.

The Application

10. The Applicant is seeking approval of a 2018 Capital Budget of \$83,876,000, fixing and determining a 2016 rate base of \$1,061,044,000. Comparatively, in 2003 the rate base

was in the amount of \$672,215,000. The rate base appears to be increasing exponentially. This comes at a time when rate pressure and affordability are topical. Each and every expenditure requires examination by the Board and some expenditures require rigorous scrutiny.

Mobile Gas Turbine

11. *Inter alia*, the Applicant is requesting the Board's approval to purchase a **mobile gas turbine ("MGT")**. This request is based on a budgetary estimate of roughly \$14 million. The estimate is but a quotation provided by a North American manufacturer for the new 5.4-megawatt mobile gas turbine.

12. This expenditure comes at a time when ratepayers are subject to upward rate pressure and when the province's electricity system, including issues of supply, are subject to reconfiguration. It is within this context that this particular expenditure should be considered. Relevant information includes:
 - (A) The MGT takes forty-eight hours to dismantle, transport, re-assemble, and prepare for generation.

 - (B) The average annual production runtime in the period 2006 to 2017, is 118.47 hours. Included in this calculation is 87.6 hours when the MGT was connected to the system at Holyrood and available throughout the Dark NL period. The MGT in that instance was used for black start purposes. Since then, Hydro has purchased its own diesel generation turbine in excess of 100 Mw at Holyrood and other equipment, all at ratepayers' expense. This will negate any further use of the Applicant's MGT at Holyrood.

 - (C) The MGT has been used mostly to offset construction outages. These are planned outages that can readily be controlled by the Applicant.

- (D) There will always be unplanned electricity outages. However, the evidence is that Newfoundland Power's System Average Interruption Duration Index (SADI) and System Average Interruption Frequency Index (SAFI) are better than the Canadian average.
 - (E) Although the Applicant maintains that the MGT is "*approaching*" the end of its service life, there is no evidence that its service life has ended. There is no evidence of the MGT's repair history. In fact, the MGT is still operational. On that basis alone the Application is premature.
 - (F) When the MGT was introduced to the island many institutions did not have their own emergency generation. Anecdotal evidence is that the larger municipalities, hospitals and fire stations do have this now; furthermore many ratepayers have purchased their own generators. It may be instructive to commission a study to determine how much generation would be available within the ratepayer community in an emergency. However, it is clear that there are ratepayer sources of generation available, negating the case for this MGT expenditure.
13. In the result, the Applicant's case for purchasing this MGT is wanting. The Applicant has an operational MGT and such a purchase would be extravagant. It seems this is an effort by the Applicant to increase its rate base unnecessarily at a cost to consumers. The MGT expenditure should be denied outright or deferred to some future date to be included for consideration into the Board's ongoing investigation and hearing into supply issues.

23 Hydro-Electric Plants

14. There are emerging issues pertaining to Newfoundland Power's 23 hydro-electric plants (the "plants"). What role will these plants have once Muskrat Falls power comes to the

island. Should ratepayers be paying for the ongoing maintenance and operation of these small facilities and also pay the burden for Muskrat Falls. It seems that choices will have to be made. In the interim, only absolute necessary expenditures on these plants should be considered. Also of note is that Newfoundland Power Inc. and the City of St. John's are in a dispute over the actual amount of the payment due to Newfoundland Power following the City's termination of its lease pertaining to the operations of the electrical power generating plant in the Mobile River watershed area. Will Newfoundland Power be attempting to renew that lease or will the Applicant be seeking to purchase the City's interest in this electrical power generating plant. Will the City be placing the facility on tender? Again, affordability is an issue. Once Muskrat Falls power comes to the island, generation duplication has to be addressed.

Real Property Expenditures

15. The Applicant's proposal for expenditures on real property appear in every Capital Budget as the Applicant's plans to upgrade, replace equipment and approve facilities seem to have no end. It is reasonable to conclude that if the Applicant were not into a rate base system these sorts of expenditures would not be forthcoming. As it stands, such expenditures expanding the rate base are really unsustainable. The Applicant is acting as if there is no emerging rate crisis based on affordability. The Board is requested to study each and every expenditure.

16. Finally, in its submission on Newfoundland Power's 2015 Capital Budget Application the Consumer Advocate wrote:

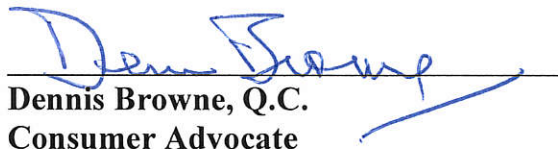
The Consumer Advocate has previously expressed concern over escalating amounts sought by utilities for capital projects, as the amounts spent on the same by each of the utilities need to be financed as either debt or equity. It is the consumer who ultimately will pay the interest on the debt and the return on equity as well as the costs of depreciation on the acquired assets. In Board Order No.

P.U. 26 (2011), the Board stated that it shared the Consumer Advocate's concern about the increasing levels of planned capital for both utilities in the province.

Unfortunately, this concern has never been addressed. In this Capital Budget, Newfoundland Power is seeking Board approval to fix and determine a 2016 rate base of in excess of one billion dollars. With a declining and aging population and the rate pressures forecast with the introduction of Muskrat Falls, affordable electricity is a real issue. The onus is on the Applicant to prove its case and on the Board to ensure that proof is forthcoming in each expenditure item. This level of rate base building is unsustainable.

DATED at St. John's, Newfoundland and Labrador, this 18th day of September, 2017.

Per:



Dennis Browne, Q.C.

Consumer Advocate

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